

**Regular Meeting**  
**Tuesday, March 9, 2021**  
**6:00 p.m.**



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

**Council Members**

Thomas D. Bell  
Darin Nicholson  
David M. Gregory

**Council Members**

Dennis M. Robinson  
Alejandro R. Tungul  
Shari Coleman

**UNALASKA CITY COUNCIL**

P. O. Box 610 • Unalaska, Alaska 99685  
Tel (907) 581-1251 • Fax (907) 581-1417 • [www.ci.unalaska.ak.us](http://www.ci.unalaska.ak.us)

Vincent M. Tutiakoff Sr., Mayor  
Erin Reinders, City Manager  
Marjie Veeder, City Clerk [mveeder@ci.unalaska.ak.us](mailto:mveeder@ci.unalaska.ak.us)

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**COUNCIL MEETING ATTENDANCE**

The community is encouraged to attend meetings of the City Council:

- Attend in person (socially-distanced seating available; coverings over the nose and mouth are required to be worn upon entering City Hall until seated, and again when exiting)
- Participate online via ZOOM (link, meeting ID & password below)
- Participate by telephone (toll and toll free numbers, meeting ID & password below)
- Listen on KUCB TV Channel 8 or Radio Station 89.7

**PUBLIC COMMENT**

The Mayor and City Council value and encourage community input at meetings of the City Council. There is a time limit of 3 minutes per person, per topic. Options for public comment:

- In person at the meeting
- By telephone or ZOOM - notify the City Clerk if you'd like to provide comment using ZOOM features (chat message or raise your hand); or \*9 by telephone; or during regular business hours in advance of the meeting
- Written comment is accepted up to one hour before the meeting begins by email, regular mail, fax or hand delivery to the City Clerk, which will be read during the meeting; include your name

**ZOOM MEETING LINK:** <https://us02web.zoom.us/j/85203975430>

**Meeting ID:** 852 0397 5430 / **Passcode:** 977526

**TELEPHONE: Meeting ID:** 852 0397 5430 / **Passcode:** 977526

Toll Free numbers: (833) 548-0276; or (833) 548-0282; or (877) 853-5247; or (888) 788-0099

Non Toll Free numbers: (253) 215-8782; or (346) 248-7799; or (669) 900-9128

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**AGENDA**

1. **Call to order**
2. **Roll call**
3. **Pledge of allegiance**
4. **Adoption of agenda**
5. **Recognize City Employee Anniversaries**
  - a. [Peter Galaktionoff - 15 years, Unalaska Public Library \(PCR\)](#)
  - b. [Deputy Chief William Simms - 20 years, Unalaska Department of Public Safety](#)
  - c. [Trudie Rose-McKeague - 25 years, Supply Division, Department of Public Works](#)
6. **Approve minutes:** [February 23 Regular Meeting](#) & [March 3 Special Meeting](#)
7. **Reports:** [City Manager](#)

8. **Community Input & Announcements** *Members of the public may provide information to council and make announcements of interest to the community.*
9. **Public comment on agenda items** *Time for members of the public to 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 notifying the City Clerk.*
10. **Work session** *Work sessions are for planning purposes, or studying and discussing issues before the Council.*
  - a. [Comprehensive Annual Financial Report \(CAFR\), Fiscal Year Ended June 30, 2020](#)
  - b. [Makushin Geothermal Project Update - OCCP, LLC](#)
  - c. [Electric and Water Utility Rate Increases - Aldrich CPAs + Advisors LLP](#)
  - d. [Terminal Services Agreements - Peggy McLaughlin, Director of Ports & Harbors](#)
11. **Regular agenda** *Persons wishing to speak on regular agenda items must notify the City Clerk.*
  - a. [Ordinance 2021-02: Amending Title 6 of the Unalaska Code of Ordinances to Adopt a New Chapter 6.56 Excise Tax on Tobacco Products](#)
12. **Council Directives to City Manager**
13. **Community Input & Announcements** *Members of the public may provide information to council; and make announcements of interest to the community.*
14. **Executive Session**
  - a. Discuss upcoming negotiations with the Public Safety Employee Association (PSEA)
15. **Adjournment**



# CITY EMPLOYEE ANNIVERSARY AWARDS

## **Peter Galaktionoff**

15 years, Unalaska Public Library (PCR)

## **Deputy Chief William Simms**

20 years, Unalaska Dept. of Public Safety

## **Trudie Rose-McKeague**

25 years, Supply Division, Public Works

**Regular Meeting**  
**Tuesday, February 23, 2021**  
**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 23, 2021 at 6:01 pm.

**2. Roll call**

<u>Present in chambers:</u>	<u>Present Via Telephone or Zoom:</u>	<u>Absent/Excused:</u>
Vincent Tutiakoff, Sr., Mayor	Dennis Robinson	None
Thomas D. Bell	Darin Nicholson	
David Gregory	Alejandro Tungul	
	Shari Coleman	

**3. Pledge of allegiance** - Council Member led the Pledge of Allegiance

**4. Adoption of agenda**

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

**5. Approve minutes of previous meetings:** February 9 and February 11, 2021

Gregory made a motion to approve the February 9 and February 11, 2021 meeting minutes; Bell seconded.  
Roll Call Vote: Tungul – yes; Gregory – yes; Robinson – yes; Bell – yes; Nicholson – yes; Coleman – yes.  
Motion passed 6-0.

**6. Reports**

- a. City Manager – report in the packet  
City Manager responded to council questions; and asked for feedback regarding specific information they would like included on the Annual Financial Report.
- b. Financials: December 2020 and January 2021  
Finance Director presented the December 2020 and January 2021 reports. Finance Director and DPU Director answered Council questions.



- c. Annual Reports of Boards/Commissions – reports in the packet
  - i. Planning Commission and Platting Board
  - ii. Historic Preservation Commission

**7. Community Input & Announcements**

The following announcements were made:

- Avalanche Awareness Presentation – March 19, 2021 at 6:30 pm.
- Business Personal Property Tax reports - due March 1<sup>st</sup>
- Senior Citizen Real Property Tax Exemption - due March 1<sup>st</sup>
- Volunteer Fire/EMS Real Property Tax Exemption – due March 1<sup>st</sup>
- 2021 Annual Public Official Financial Disclosures – due March 15<sup>th</sup>
- Senior Citizen Sales Tax Refund – due March 31<sup>st</sup>

**8. Public comment on agenda items - None**

**9. Public Hearing**

Mayor opened the Public Hearing on Ordinance 2021-04 Creating Budget Amendment #5 to the Fiscal Year 2021 Budget, appropriating an additional \$500,000 for the DPS Repeater Site and Radio Upgrade Project. Hearing no testimony, the Public Hearing closed.

**10. Work session**

Bell made a motion to enter Work Session; Gregory seconded.

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

Motion passed 6-0.

- a. FY22 Rolling Stock Plan, continued discussion: Tom Cohenour, DPW Director  
DPW Director presented a continuation of the FY22 Rolling Stock Plan. DPW and DPU Directors answered Council questions. Council requested staff to provide them with a copy of the vehicle replacement policy.

7:27 pm – Break

7:32 pm – Back on record

- b. FY22 Request for additional full-time staff positions: JR Pearson, Assistant City Manager  
Assistant City Manager presented the FY22 Request for additional full-time staff positions. Assistant City Manager and Fire Chief answered Council questions.
- c. Public Utility Rate Study presentation: James Keen, Aldrich CPAs + Advisors LLP  
James Keen and Amber Miller, Aldrich CPA's presented the Public Utility Rate Study to council. James Keen and DPU Director answered Council questions.

**11. Regular agenda**

- a. Ordinance 2021-04: Creating Budget Amendment #5 to the Fiscal Year 2021 Budget, appropriating an additional \$500,000 for the DPS Repeater Site and Radio Upgrade Project (second reading)

Bell made a motion to adopt Ordinance 2021:04; Gregory seconded.

Council discussion.

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

Motion passed 6-0.

b. Resolution 2021-11: Continuing Measures to Protect Public Health

Gregory made a motion to adopt Resolution 2021-11; Bell seconded.

Council discussion.

Robinson made a motion to amend Resolution 2021-11 to insert “*3(d) United States Coast Guard vessels are exempt from gathering limitations when occupying a closed establishment*”; Nicholson seconded. Council discussion.

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

Motion failed 0-6

Robinson made a motion to amend Resolution 2021-11 to insert “*3(b) United States Coast Guard vessels are exempt from “sit down table service only” when occupying a closed establishment*”; Gregory seconded. Council discussion. City Clerk read Public Comment submitted by Daneen Looby into record.

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

Motion passed 4-2.

City Clerk read Public Comment submitted by Louisa Ortiz into record.

Roll Call Vote on main motion as amended: Coleman – yes; Gregory – yes; Nicholson – yes; Robinson – yes; Tungul – yes; Bell – yes.

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

**13. Community Input & Announcements**

Public Comment given by Jennifer Shockley regarding request for Emergency Management Coordinator.

**14. Adjournment** – Mayor adjourned the meeting at 10:18 pm.

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Marjie Veeder, CMC  
City Clerk

*rfw*

**Special Meeting  
Wednesday, March 3, 2021  
12:00 p.m. Noon**



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

**Council Members**

Thomas D. Bell  
Darin Nicholson  
David M. Gregory

**Council Members**

Dennis M. Robinson  
Alejandro R. Tungul  
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**SPECIAL MEETING MINUTES**

1. Call to order  
Mayor Tutiakoff called the special meeting of the Unalaska City Council to order on Wednesday, March 3, 2021 at 12:00 pm.
2. Roll call  

<u>Present in chambers:</u> Vincent Tutiakoff, Sr., Mayor Thomas D. Bell David Gregory	<u>Present Via Telephone or Zoom:</u> Dennis Robinson Alejandro Tungul Shari Coleman	<u>Absent:</u> Darin Nicholson
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3. Pledge of allegiance – Council Member Bell led the Pledge of Allegiance
4. Adoption of agenda  
Bell made a motion to adopt agenda; Gregory seconded.  
Roll Call Vote: Gregory – yes; Coleman – yes; Tungul – yes; Robinson – yes; Bell – yes.  
Motion passed 5-0.
5. Resolution 2021-13: Continued Measures to Protect Public Health  
Bell made a motion to adopt Resolution 2021-13; Gregory seconded.  
Discussion.  
Roll Call Vote: Tungul – yes; Gregory – es; Bell – yes; Coleman – yes; Nicholson – yes;  
Robinson – yes.  
Motion passes 5-0.
6. Adjournment  
Mayor adjourned the meeting at 12:31 pm.

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Marjie Veeder, CMC  
City Clerk

*rfw*

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## MEMORANDUM TO COUNCIL

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To: Mayor and City Council Members  
From: Erin Reinders, City Manager  
Date: March 9, 2021  
Re: City Manager Report

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

- March 15, 2021 Deadline for elected officials to file Annual Public Official Financial Disclosure (POFD) – for Mayor, Council, School Board and Planning Commission
- March 31, 2021 Deadline to apply for Senior Citizen Sales Tax Refund. Applications available on the city website and the vestibule at city hall.

**Strategic Planning:** Strategic Planning meetings are now planned for the week of August 9-13, 2021. The facilitator will meet with the Mayor and City Council on Thursday, August 12 (9:00-3:30) and Friday, August 13 (9:00-1:00). This will be after the facilitator works with the Director Team earlier in the week. This process will help Council set goals and focus areas that best address community needs and your vision for the future. With added focus, this will help us use our resources more effectively and sustainability. Please keep these dates on your radar.

**CAPSIS Funding Requests and Additional Potential Support:** We submitted Unalaska's project funding requests into CAPSIS, the state legislative Capital Project Submission and Information System, on February 15, 2021. This is a way to communicate capital project priorities for consideration by the legislature during the capital budgeting process. After talking with Dianne Bloomer, we kept our projects the same as last year. We requested varying levels of funding assistance for the following projects: Captains Bay Road and Utility Improvements (an identified funding priority), Bobby Storrs Boat Harbor A & B Float (an identified funding priority), General Hill Booster Pump, Pyramid Water Treatment Plant Micro Turbines, and the Cruise Ship Terminal. The Bobby Storrs Boat Harbor A & B Float is specifically identified on a potential State of Alaska GO Bond. Dianne is following that.

We received word from our Federal Lobbyist that there may be an opportunity for federal support on specific projects through earmarks. Brad Gilman suggests we identify two projects. Specifically that we focus on additional support for the entrance channel dredging project as well as one of the CAPSIS projects. He also recommended we consider Bobby Storrs Boat Harbor A & B Float, General Hill Booster Pump or Pyramid Water Treatment Plant Micro Turbines. Staff is reviewing to determine what is most appropriate at this time, with Brad's guidance.

**FY21 Financial Update:** Council was presented with the January financials at the last Council meeting, and it was pointed out that our revenues were down from last year at this time. The City tried to plan for this in the FY21 budget. When preparing the FY21 budget, the COVID-19 pandemic was beginning. As a result of the uncertainty, we budgeted for significantly decreased revenues, and staff cut operating expenditures accordingly. Year to date (month ending January 2021), the General Fund revenues are at just over \$23 million, and we have \$30 million budgeted for General Fund revenues -- meaning we have already received 77% of our budgeted revenues.

We have spent 48% of the General fund budgeted expenses. For context, we are 58% of the way through FY21.

**FY22 Budget Process:** Staff is working hard on preparing the FY22 budget, and all its components. Again, with uncertainty remaining for FY22 and operational needs continuing, this year will be more challenging than last to present a balanced budget. Additional revenues may need to be sought or consideration may be given to using reserves. Alternately, services may need to be limited, operational improvements requiring funding may need to be paused, projects and purchases may need to be postponed. Or the approach could be somewhere in between. Your feedback in budget related work sessions is greatly appreciated. At the last meeting we understood the consensus as being that now is not the time to increase rolling stock and equipment, with the potential exception of a loader for Ports Department and a smaller scale back up generator to assist the Waste Water Division. We also understood the consensus as being that now is not the time to increase number of FTE's. We thank you for the feedback and will proceed accordingly.

**State's Airport Master Plan Update:** Marc Luiken, the State's consultant for the project, has reached out to meet with Staff regarding one of the alternatives they are exploring. They are trying to set up a meeting for the week of March 8. The Ports Director and Planning Director will be involved in this discussion.

**Innovative Readiness Training (IRT):** Chris Salts with OC, Chris Price with the Q-Tribe and I continue to meet monthly, in keeping with the MOU signed in August. The Tribe submitted a request for IRT support in a feasibility study for a local military presence. This concept was referenced in the IRT Community Assessment from this past fall, and will provide additional information that we all may find useful.

We are developing a presentation to summarize the report, key recommendations and action items, and some ideas for future IRT support applications. Later this month we plan to share this with City Council, Tribal Council and OC's Board to garner their input and identify opportunities to work together. This will include some shared ideas we can work on together, as well as ideas from each organization (where there may still be potential for collaboration). The goal is to have a number of ideas so that whatever the training needs for IRT may be, the community of Unalaska could have a project that would fit.

After considering the recommendations and action items in the IRT's initial Assessment as well as discussion with staff, ideas at this point for future IRT assistance with city projects include:

- Development of a Pavement Management Plan.
- Creation of an International Port of Dutch Harbor Development Plan for Iliuliuk Bay and Dutch Harbor.
- Projects identified in the CMMP will also serve as a resource in identifying concepts for future IRT applications. Projects could include:
  - Assistance with the Gasification project.
  - Assistance with the design and reconstruction of the Icy Lake Road.
  - Assistance with the Captains Bay Road and Utility Improvements.

**Geothermal PPA:** The City Team met with OCCP on February 26 and heard update on the project status at that point. They have requested an extension of the deadline to obtain funding. Council will hear the update and more about this request tonight. As communicated previously, OCCP is working through the permitting process with the Army Corps of Engineers, in hopes to begin access road construction this spring. We were invited by the Corps to be a signatory on a

Memorandum of Agreement for the project. The Tribe and OC have also agreed to be signers of the MOA. I need to review the draft MOA that the Corps has just released.

**Vaccine Rollout:** The Qawalangin Tribe of Unalaska, the City of Unalaska, the Aleutian Pribilof Islands Association, and the Iliuliuk Family Health Services Clinic continue working together with the shared goal of getting vaccines into arms. We meet together on a regular basis. City staff, primarily PCR and Fire/EMS, is assisting with hosting APIA and IFHS Vaccine Events at the Community Center. We are currently exploring a potential funding option through DHSS to help support these efforts. Discovery Health representatives are also on island assisting with industry care and vaccinations.

**COVID-19 Emergency:** I thank City staff for all they continue to do both in response to and in spite of our current state of emergency, and encourage you to do the same. Staff is focused on continuing to provide critical public services, safely adjusting operations, responding to outbreaks and adapting to pandemic related regulatory changes. This includes not only our regular duties but also: coordinating regular news releases with the IFHS; assisting vessels with COVID related issues; participating in calls with the State and other agencies addressing outbreaks, response measures, and updates; managing the isolation site; assisting with vaccine clinics; and monitoring and testing waste water samples for the virus. Incident Commanders (Melanee representing the Clinic and I representing the City) meet together weekly with the Mayor. City staff meets on a weekly basis to discuss any necessary actions and updates. The Unalaska Unified Command Stakeholder group meets on a monthly basis.

**Directives to the City Manager:** One directive to the City Manager remains outstanding:

- *Options for Increased Tobacco Tax (11/27/18). Ongoing.* City Clerk Marjie Veeder has worked with our city attorneys on this complex topic and at various work sessions. The Ordinance addressing what has been the general consensus up to this point is before City Council this evening. I thank the clerk for her continued efforts on this project.

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## MEMORANDUM TO COUNCIL

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To: Mayor and City Council Members  
From: Erin Reinders, City Manager  
Date: March 9, 2021  
Re: OCCP Geothermal Update and PPA Revision Request

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**SUMMARY:** Ounalashka/Chena Power, LLC (OCCP) required a Power Purchase Agreement (PPA) with the City of Unalaska to obtain financing for their Geothermal Project. In August of 2020, City Council approved Resolution 2020-55, and authorized entering into the PPA with OCCP. **OCCP has requested an amendment to the PPA, extending the deadline outlined in the PPA to obtain financing. The purpose of this meeting is for OCCP to provide Council with an update on the project in preparation of considering an amendment to the PPA at the March 23, 2021 meeting.** No action is required this evening.

**PREVIOUS COUNCIL ACTION:** The City continues to support efforts and programs for reliable and cost effective alternate energy sources, including geothermal. City Council has identified this support as a federal priority. To this end, during the fall lobby trip to Washington DC in 2019, City representatives sat alongside representatives from the Q-tribe and OC in a meeting with Department of Energy demonstrating support for a geothermal project on our island. In August of 2020, City Council approved Resolution 2020-55 and authorized entering into the PPA with OCCP.

November 26, 2019

- Work Session, Presentation from OCCP regarding their Geothermal Project

January 30, 2020

- Special Meeting for a Work Session for an update on OCCP geothermal project (standalone meeting)

February 25, 2020

- Work Session, Report from OCCP regarding their Makushin geothermal project

March 10, 2020

- Reports, City Attorney conflict of interest opinion related to OCCP
- Executive Session
  - Discussion regarding potential PPA between City of Unalaska and OCCP
  - Discussion regarding potential Power Sales Agreements between City of Unalaska and local seafood processing facilities

May 26, 2020

- Directive to the Manager, *“Report back to the City Council by June 16, 2020 for possible action committing to a PPA with OCCP at the Council Meeting on June 23, 2020 a cos/benefit/risk analysis for a potential Power Purchase Agreement concept that commits Unalaska for the purchase of 100MkWhr/year, at \$0.16/kWh, for 30 years taking into account the probability of securing sufficient load sources by fall of 2023 within the Unalaska City Limits.”*



June 23, 2020

- Work Session, Presentation and discussion of the financial feasibility and potential risks and rewards related to OCCP's proposed Makushin Geothermal Power Project
- Directive to the Manager, *"Negotiate and work cooperatively with OCCP LLC to develop a Power Purchase Agreement that enables the City Council to act on such agreement at the Council Meeting on July 14, 2020. Initial loads to be negotiated should be between 80mkwhr and 100mkwhr. Costs and rates to be negotiated within the Power Purchase Agreement."*

July 21, 2020

- Special Meeting for Work Session & Executive Session, Discussion of PPA with OCCP

August 11, 2020

- Executive Session, Discussion of PPA with OCCP
- Directive to the Manager, *"I move to direct staff to accept both the OCCP proposal to share in the upside and daily liquidated damages in the amount of \$20,000.00 per day with a cap of \$5 million. The heat pump contribution is to remain at \$10 million cost to OCCP. The Annual cost is to be \$16,300,000.00. The meter on the upside sharing starts at 100,000,000kwh. A minimum of two transmission lines to the delivery point of the City is required."*

August 25, 2020

- Regular Meeting, City Council approves Resolution 2020-55: Approving the PPA with OCCP and authorizing the City Manager to enter into the agreement

**BACKGROUND:** City staff began working with the OCCP team in late 2019 to address project planning and development questions and to draft a PPA. On January 15 and 16, 2020, the City team met with OCCP representatives for a working meeting in Anchorage. The focus of the meeting was developing framework of general concepts that OCCP can take to its potential lenders to determine if financing can be obtained.

Following these Anchorage meetings, discussions and work continued. Focus was on the PPA, understanding the project, identifying challenges, mitigating risks, expanding opportunities, identifying what would need to be done should the project move forward, and refining displaced costs. OCCP communicated that they planned to proceed with their fieldwork and research, which will help reduce the number of uncertainties and assumptions. We reached out to processors to garner their interest in the project and encourage them to attend the February 25, 2020 Council meeting, where OCCP would be presenting on their project. The City team met with the OCCP team while they were in town that week. Given travel and weather challenges, this meeting was not as in-depth as planned.

City staff met and talked with processors throughout March and April, striving to ensure they had an understanding of the overall concept of the project and potential agreements. Processors were unable to make a long term commitment at that time. The City team held a conference call with OCCP on April 24, 2020 and communicated the feedback we were getting from the processors. This was not done in person due COVID related challenges. The next step was for OCCP, along with the City, to meet with the processors. While those meetings were never organized, OCCP did provide a detailed document outlining several concepts for consideration to the City on May 19, 2020. We responded with some initial thoughts and questions in a timely fashion.

On May 26, 2020, City Council issued a directive to provide a report and cost/benefit/risk analysis regarding a PPA at a particular commitment level. Our focus then shifted to the Council Directive

and our long time consultant, Mike Hubbard, prepared the formal report and analysis. Brooks Chandler, our City Attorney, provided a memo related to non-recourse financing as another component of the assessment. This material was presented to Council at the June 23, 2020 Council Meeting. At the end of that meeting Council issued a directive to negotiate and work cooperatively with OCCP to develop a PPA for loads between 80mkwhr and 100mkwhr.

Given the complex nature of this topic and the time required to discuss it, a stand-alone special meeting was scheduled for July 21, 2020. This date was selected in coordination with OCCP. City Council provided direction to the City Team for further negotiations with OCCP.

City Council participated in a follow-up Executive Session on August 11, 2020. The City Team provided an update on the continued negotiations. City Council then issued a formal directive for continued negotiation. The PPA was then finalized consistent with Council Directives to the City Manager. At their August 25, 2020 meeting, City Council approved Resolution 2020-55 and authorized entering into the PPA.

**DISCUSSION:** A copy of the PPA is attached. Since the signing of the PPA, the City team has been regularly communicating with OCCP and are now meeting on a monthly basis. We have also welcomed Anchorage based consultant, Thomas Lovas of Energy & Resource Economics to the City's team. In accordance with the PPA, the City contracted with Electrical Power Systems (EPS) to conduct the Interconnection and Integration Study. Much of the details and results will depend on the final design of OCCP's project itself, which is not yet completed. We have worked to support OCCP's efforts in Air Source Heat Pump Study, as outlined in the PPA.

**Tonight you will hear an update on the project from OCCP, as they review the attached PowerPoint.** In that update you will hear OCCP's request to amend the PPA to extend by one year their deadline to obtain written commitment for project financing. **The letter requesting this extension and amendment is included in the packet.** The City team is reviewing the implications of the request, particularly on the Interconnection and Integration plan. We are working to develop an amendment that addresses OCCP's request for an extension as well as the implications to interconnection and integration. **We plan to bring an amendment to the PPA before Council for consideration at the March 23, 2021 meeting.**

**FINANCIAL IMPLICATIONS:** Primary financial implications of the PPA relate to the cost of purchasing power and the financial impacts with purchasing power from a City perspective. Ultimately, these costs will be passed along to the rate payers. In depth analysis of these financial implications of the PPA in various scenarios were provided to the City Council during the negotiation process.

Additionally, there are known expenses the City is agreeing to contribute in the PPA. This includes up to \$5 million for upgrading the City distribution system, with OCCP committing up to \$7 million. The City agreed to initially fund the integration and interconnection study, but will be reimbursed from OCCP after the fact. Associated funds are included in the CMMP City Council will be considering in upcoming meetings.

**LEGAL:** City Attorney Brooks Chandler has been engaged in discussions with OCCP from the beginning and remains so. **Mr. Chandler will provide a memorandum to Council about this issue that will be provided separately, but prior to the Council Meeting.**

**STAFF RECOMMENDATION:** No action is needed at this time.

**PROPOSED MOTION:** No action is required at this time.

**ATTACHMENTS:**

- [PPA between OCCP and City of Unalaska](#)
- [Letter from OCCP Requesting Extension](#)
- [OCCP Power Point Presentation](#)

# POWER PURCHASE AGREEMENT

BETWEEN

CITY OF UNALASKA, a first-class Alaska municipal corporation

AND

OUNALASHKA CORPORATION/CHENA POWER, LLC, an Alaska limited liability company

Parties

This POWER PURCHASE AGREEMENT, dated August 31, 2020 (Agreement) is made between the City of Unalaska, a first-class Alaska municipal corporation (Purchaser) and Ounalashka Corporation/Chena Power, LLC (Seller) a licensed Alaska limited liability company duly organized under the laws of the State of Alaska.

Recitals

Whereas, the Purchaser owns and operates water, sewer and electric public utilities for the City of Unalaska;

Whereas, the Seller intends to develop and build a geothermal power system to generate electricity for sale to the Purchaser (Makushin Geothermal Project); and

Whereas, the Purchaser desires to purchase electric power from the Seller under the terms and conditions set forth herein; and

Whereas, upon complete satisfaction of the conditions precedent set forth in this Agreement, the Purchaser and Seller intend for this Agreement to become binding and fully enforceable on the Parties.

Now, therefore, the Purchaser and the Seller (jointly the Parties) in order to achieve the foregoing do agree and commit as follows.

## Terms and Conditions

### 1. DEFINITIONS

- (a) “Agreement” means this Power Purchase Agreement.
- (b) “Actual Project Capability” means a Project Capability, as determined by an independent third-party engineer, that is less than the stated Project Capability and

such that the Purchaser is unable to meet 100% electrical demand with Energy from the Facility.

- (c) **“City Distribution System”** means all city-owned equipment interconnected with the City distribution and transmission lines up to the Delivery Point.
- (d) **“Commercial Operations Date”** means the date on which the last of the following events occurs: 1) construction of the Facility and the transmission lines from the Facility to the Delivery Point have been substantially completed in accordance with the terms and conditions of this Agreement and Applicable Laws and the Facility and transmission lines possess all the other material characteristics necessary for delivery of Energy to the Delivery Point pursuant to this Agreement; 2) the Facility has successfully completed all tests which must be performed prior to commercial operation as required by applicable laws, start up and testing procedures required by the Engineering Procurement Construction Contract between OCCP, LLC and its manufacturers and installers and has demonstrated as confirmed by an independent engineer retained by Seller in a written report consistent with Prudent Electrical Practices or the terms of the Interconnection/Integration Plan that the Facility is fully available to be operated and able to provide not less than the Project Capability to the Delivery Point and that output can be dispatched into the Purchaser’s system without disruption and on a commercial basis; 3) Seller has obtained all governmental approvals and Permits required to begin commercial operations and operate and maintain the Facility in accordance with this Agreement, and all such Permits and approvals are final and in full force and effect; and; 4) Seller and Purchaser have obtained the insurance specified in Section 18.
- (e) **“Commercial Operation Deadline”** means May 31, 2024 which is the date by which the Facility must have reached the Commercial Operations Date, or such other date as provided in this Agreement or as may be agreed to in a writing signed by both Parties.
- (f) **“Delivery Point”** means the interconnection point(s) between the Seller’s Facility and the City Distribution System. This may be comprised of a single point or points for transferring energy between the Seller’s Facility and the City Distribution System.
- (g) **“Energy”** means geothermal energy for electrical power generation expressed in kWh generated from the Facility and provided to Purchaser by Seller under this Agreement.

- (h) **“Equivalent Availability Factor”** means the ratio of hours the Facility is available for power generation at Project Capacity to the number of hours in a particular calendar month. The removal or derating of any operational component which would limit the ability to generate at Plant Capacity to the Delivery Point shall be considered Unavailable. An example of how Equivalent Availability Factor is calculated is attached as Exhibit D.
- (i) **“Facility”** means any Facility/facilities or component/components of/to the Makushin Geothermal Project used to produce Energy owned by the Seller including all electric power interconnection and transmission equipment located on Seller’s side of the Delivery Point. Transmission equipment shall include two subsea cables each capable of transmitting Energy to the Delivery Point. Facility includes an electric generating facility with a net output of 30 MVA at the Delivery Point, using geothermal fluid as the fuel source and located near the existing ST-1 well (“Project Site”). Additional capacity added to the Facility after the Commercial Operation Date shall not be subject to this Agreement unless the Parties have executed and approved an amendment to this Agreement.
- (j) **“Fixed Payment”** means the annual payment Purchaser and Seller agree will be paid for electrical energy which may be utilized during the initial Year of the Term and thereafter increased based on Section 5 requirements. The fixed payment shall be divided into 12 equal monthly payments.
- (k) **“Force Majeure”** means (a) any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, civil disturbances, sabotage, blockade, expropriation, confiscation, fire, unusual or extreme adverse weather-related events or natural disasters (such as lightning, landslide, earthquake, tornado, hurricane, storm or flood), pandemic, epidemic or any order, regulation or restriction imposed by any Governmental Authority, or (b) any other event of circumstance, which, in each case of clauses (a) and (b), (i) prevents a Party from performing any of its obligations under this Agreement, (ii) could not reasonably be anticipated as of the date of this Agreement, (iii) is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party), and (iv) which by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; provided, nothing in this clause (iv) shall be construed so as to require either Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. A Force Majeure does not include any of the following: (1) events arising from the failure by Seller to construct, operate or maintain the Facility in

accordance with this Agreement; (2) any increase of any kind in any cost; (3) delays in or inability of a Party to obtain financing or other economic hardship of any kind; or (4) any changes in the financial condition of Purchaser, Seller, or any subcontractor or supplier affecting the affected Party's ability to perform its obligations under this Agreement.

- (l) **“Initial Synchronization”** means the date upon which the Facility is first synchronized at the Delivery Point with Purchaser's system.
- (m) **“Interconnection / Integration Plan”** means the document agreed by the Parties that represents requirements for system interconnection and integration of power to the Purchaser's existing system. The plan shall include two subsea cables each capable of transmitting Energy to the Delivery Point and shall consider city, state, federal codes and standards, in conjunction with the geothermal plant design basis and shall incorporate Prudent Electrical practices to integrate the City Distribution System taking into account methodology to improve Purchaser's Electrical System Integrity to the extent agreed in Section 11, or as mutually agreed in the actual plan which is to be attached as Exhibit B, when completed.
- (n) **“kWh”** means a kilowatt-hour of electric energy.
- (o) **“Local Tax”** means ad valorem real and personal property taxes levied by the City of Unalaska on the Facility.
- (p) **“Metered Energy”** means the Energy delivered to Purchaser by Seller at the Delivery Point as measured by the Purchaser's supplied Meter at the Delivery Point.
- (q) **“Metering Equipment”** means equipment required to provide a complete metering circuit including; cabinets, potential transformers (PT's), current transformers (CT's), raceway and interconnection wiring.
- (r) **“Month”** means a calendar month.
- (s) **“Outage”** means a duration of time in which the facility cannot provide 100% of required demand, requiring the Purchaser or self-generators to run additional generation, interrupt loads, or reduce loads. Outages shall be measured in hours. An outage of any period of time up to 60 minutes shall be equal to 1 hour. A sum of all single outages less than 60 minutes, in a 24-hour period shall be a maximum of 24 hours.
- (t) **“Peak Capacity”** has been reached when a measurement of power in MVA or KW has exceeded 1.5% for any duration of time, i.e., 30 MVA Peak Capacity = 30.405 MVA.



- (u) **“Permits”** means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements, and similar requirements of whatever kind and however described that are required to be obtained from a Governmental Authority with respect to the development, siting, design, acquisition, construction, equipping, financing, ownership, possession, start-up, testing, operation or maintenance of the Facility, the production and delivery of Energy or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental, and occupational safety and health requirements).
- (v) **“Plant Availability”** means that the Facility is operating at a capacity such that all power requirements of the Purchaser are met up to the Project Capability.
- (w) **“Plant Reliability”** is defined as the Facility’s ability to load follow demand, up to Project Capability.
- (x) **“Project Capability”** means the installed capability of the Facility to maintain Plant Reliability at the Delivery Point at Peak Capacity.
- (y) **“Project Finance”** means a loan from the Department of Energy or third-party lender sufficient to pay for and/or reimburse Seller for construction and initial operations costs and expenses associated with the Makushin Geothermal Project.
- (z) **“Project Site”** means the real property shown on the attached Exhibit A.
- (aa) **“Prudent Electrical Practices”** means those standards of design, engineering, construction, workmanship, operation, care and diligence normally practiced by internationally recognized engineering and construction firms and prudent operators of electric generation facilities similar to the Facility and electrical transmission systems in the Western United States during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent Electrical Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the Western United States during the relevant time period. Prudent Electrical Practice includes taking reasonable steps to ensure that: (a) equipment, materials, resources, and supplies are available to meet the Party’s needs; (b) sufficient operating personnel or control procedures are available at all times and are adequately

experienced, trained and licensed as necessary to operate the Facility or Purchaser's system properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions; (c) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools; and (d) appropriate monitoring and testing are performed to ensure equipment is functioning as designed.

- (bb) **"Purchaser"** means the City of Unalaska through its Public Utilities Department.
- (cc) **"Purchaser's Electric System Integrity"** means operation of Purchaser's electric power and transmission system in a manner that minimizes risks of injury or damage to persons and/or property and enables Purchaser to provide reliable electric power service to its customers.
- (dd) **"Seller"** means the Ounalashka Corporation/Chena Power, LLC, an Alaska limited liability company.
- (ee) **"Startup Period"** means the period that begins at Initial Synchronization and ends at the Commercial Operations Date.
- (ff) **"Year"** means each twelve (12) month period during the Term commencing on the Commercial Operation Date or the anniversary of such date.

## 2. GENERAL

- (a) During the Startup Period and continuing through the term of this Agreement, Seller shall deliver to Purchaser, and Purchaser shall receive from Seller electric energy output from the project Facility/facilities in accordance with the terms and conditions of this Agreement.
- (b) Subject to 2 (c) and (d) below, Seller shall sell exclusively to Purchaser; provided, however, that minimum payments are made by the Purchaser, as described in Section 5 of this Agreement.
- (c) Purchaser shall have the exclusive right to provide electric service to all new and existing customers within Purchaser's existing service area at the City's then existing tariff rates. Purchaser shall have the right of first refusal to provide electric service to all new customers located outside Purchaser's existing service area that

may request electric service from the Project, including to any operations owned and/or controlled by Seller and new customers owned in whole or in part by Ounalashka Corporation, Chena Power LLC or any subsidiary or affiliated entity at a rate equal to the City's cost of city purchased or city generated power plus applicable standard customer charges. The first right of refusal period shall expire thirty (30) days after Purchaser is provided written notice of such new customer ("Refusal Period"). At the expiration of the Refusal Period Seller shall have the exclusive right, in its sole discretion, to provide electrical service to new customer(s) under a separate agreement, the terms of which shall be negotiated exclusively between Seller and such third-party(ies). Any such Agreement between Seller and such third party(ies) shall not reduce Seller's obligation to provide 30 MVA to the Purchaser at the Delivery Point.

- (d) Seller shall convey title to and risk of loss of all energy delivered to the Purchaser at the Delivery Point.

### **3. FACILITY CONSTRUCTION AND COMMERCIAL OPERATION**

- (a) Seller shall use reasonable commercial efforts to construct the Facility and achieve the Commercial Operation Date by the Commercial Operation Deadline. Seller shall provide Purchaser with periodic reports about the progress of the Facility construction and completion.
- (b) Seller shall provide Purchaser with at least 70 days advance notice of the date when Seller anticipates achieving Initial Synchronization.
- (c) Seller shall provide Purchaser with at least 45 days advance notice of when Seller anticipates beginning to demonstrate Commercial Operation has been achieved. Purchaser shall be allowed to observe the Facility during demonstration or testing required to establish Commercial Operation. Purchaser shall accommodate or allow reasonable correspondence and collaboration with Purchaser customers to facilitate adequate loading of Facility to allow completion of all tests required to complete the "start-up" process.
- (d) Energy exchange during the Start-Up Period shall be at no cost to the Purchaser or customers of the Purchaser.
- (e) Seller shall provide Purchaser written certification of Commercial Operations when Seller believes that all requirements under this Agreement for achieving

Commercial Operation Date of the Facility, including the conditions precedent specified in the definition of “Commercial Operation Date” in Section 1, have been satisfied. If Purchaser rejects certification of Commercial Operations, Purchaser shall state in detail the reasons for its rejection. The Parties shall immediately meet and confer to address Purchaser’s concerns. Commercial Operation shall be deemed to have occurred on the date that the requirements for Commercial Operation are satisfied, which date may be earlier or later than the date on which Purchaser accepts Seller’s certification that Commercial Operation has occurred and/or the date on which any concerns that Purchaser expresses in connection with Seller’s notice are resolved; provided the Parties acknowledge or are deemed to have acknowledged, or it is determined through dispute resolution, that all such requirements for Commercial Operation have been satisfied on such earlier date.

- (f) Seller shall provide Purchaser with as built drawings of the Facility and all equipment placed at the Delivery Point within sixty (60) days after the date of Commercial Operations.
- (g) Purchaser may inspect the Facility during the term hereof upon reasonable advance notice to Seller.

#### **4. TERM**

- (a) Subject to Sections 4 (b) and (c) below, this Agreement shall become effective on the date it is executed and delivered by both Parties and shall continue in effect for a period of thirty (30) years after the Commercial Operation Date (Term).
- (b) The Term of this Agreement may be extended by mutual agreement of the Parties for an additional period, provided that the Purchaser or the Seller request in writing an extension of this Agreement not less than eighteen (18) months prior to the expiration of the initial Term. In the event an extension request is submitted by either party, Purchaser and Seller shall each negotiate in good faith using commercially reasonable efforts to agree on the terms, conditions, and length of an extended term.
- (c) Seller and Purchaser agree that the purpose and intent of this Agreement is dependent on the successful completion of the construction of the Facility/Facilities and the related achievement of the Commercial Operation Date by the Commercial Operation Deadline. As such, in the event that either; 1) Seller fails to obtain Project Financing by June 10, 2021; or 2) construction of the Facility/Facilities is

at any time discontinued, abandoned or otherwise terminated by Seller in its sole discretion , or 3) Seller fails to provide written assurances to Purchaser that the Commercial Operation Deadline will be achieved in a form consistent with Prudent Utilities Practices, or 4) the Project fails to reach Commercial Operation by the Commercial Operation Deadline, then either Party may terminate this Agreement upon thirty (30) day's prior written notice to the other party. In the event that a party elects to terminate this Agreement pursuant to this Section 4 (c), neither Seller nor Purchaser shall have any further liability and/or obligations to the other hereunder after the termination date, except for obligations, liabilities and/or duties that accrued prior to such termination or that survive such termination by the terms of this Agreement.

## **5. FIXED PAYMENT**

- (a) The Seller agrees to sell and the Purchaser agrees to purchase electrical energy which may be utilized immediately for a Fixed Payment of sixteen million three hundred thousand dollars per year (\$16,300,000.00). Each successive Year during the Term the Fixed Payment shall increase; 1) by one per cent (1%) plus; 2) by an amount equal to the total amount of Local Tax paid by Seller during the previous Year.
- (b) If Seller elects to construct the Project at a different location than the Project Site which decreases construction and operating costs by more than five per cent (5%), prices shall be revised downward to reflect the decreased construction and operating costs.
- (c) If Purchaser requests Seller to increase the generating capacity of the Facility above the Project Capability, the Fixed Payment shall be increased, via an addendum to this PPA in an amount to be negotiated by the Parties.
- (d) In the event the Facility fails to deliver Plant Availability at Project Capability the following adjustment to pricing and Seller actions are agreed. The intent of these adjustments are not to act as a penalty to the Seller, but to reduce Purchaser's actual financial hardship and to place Purchaser in the same position as if the Facility delivered Plant Availability at Project Capability as agreed. Purchaser and Seller recognize that determination of the actual financial impact to Purchaser in such circumstances is not easily capable of precise calculation and have adopted these provisions for that reason. This subsection does not supersede Purchaser's or Seller's rights to declare a Default under section 15.

(e) If in any month during the Term the Seller cannot provide the Plant Availability at the Delivery Point for reasons other than limitations within the Purchaser's Electric System Integrity and the Purchaser must either operate its generation equipment or generate power from its own facilities or purchase power from other sources to meet its load obligations or allow customers to self-generate power they otherwise would have been supplied by Purchaser or reimburse customers for their cost of fuel used to self-generate power, Seller shall reimburse the Purchaser the sum of the following : ("Reimbursement Payment"):

- 1) the cost of Purchaser's fuel
- 2) the cost of fuel of customers who self-generate
- 3) one cent (.01) per kilowatt hour for each kWh of energy generated by Purchaser and self-generators that would have been supplied by the Facility ("Administrative Charge"). Each successive Year during the Term the Administrative Charge shall increase by one per cent (1%).

The Reimbursement Payment or Increased Reimbursement Payment shall be treated as a deduction to the Fixed Price Payment made by the Purchaser in the following month.

(f) If at any period during the Term, Seller cannot provide the Project Capability at the Delivery Point for either a period of three consecutive calendar months, or six or more months in any Year, the Actual Project Capability will be determined and the Administrative Charge for those months shall be increased by .02 per kWh beginning with the next monthly payment ("Increased Reimbursement Payment").

(g) After Actual Project Capability has been determined, Seller shall then undertake the necessary means and methods to restore the Facility to Project Capability. The applicable Increased Reimbursement Payment shall continue until Seller has restored Project Capability. However, if instead of restoring Project Capability Seller negotiates lower Project Finance payments the Fixed Price shall be reduced in proportion to Seller's lower Project Finance payments.

(h) If Metered Energy delivered in any Year exceeds 100,000,000 kWh Purchaser shall make an additional payment to Seller calculated as set forth in Exhibit F ("Additional Payment"). The Additional Payment shall be paid in the first month of the following Year.

## 6. METERING AND PAYMENT OF INVOICES

- (a) Meters shall be owned and operated per city code. Purchaser shall read Purchaser's meter at the Delivery Point on the last day of each month after Initial Synchronization and continuing through the month following the end of the Term, unless otherwise mutually agreed to by the Parties. Purchaser shall prepare and render to Seller within five (5) business days after the end of each month a statement detailing daily and hourly records of Metered Energy during the preceding month. Seller shall have the right to monitor and witness such readings at its own cost and expense. Within five (5) business days after receipt of the statement of Metered Energy Seller shall prepare and render to Purchaser an invoice for Seller's calculation of the payments due to Seller for such month.
- (b) Each Year, monthly payments due shall be equal to one-twelfth of the Base Price (less applicable credits)
- (c) Purchaser shall pay the undisputed amount of Seller's invoices within thirty (30) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Payment shall be made at the office of the Seller, as designated in writing by the Seller. If Purchaser disputes the accuracy of an invoice, or Seller disputes the accuracy of the statement of Metered Energy, the Parties shall use commercially reasonable efforts to resolve the dispute. Any adjustments which the Parties may subsequently agree to make regarding any such invoice shall be made by a credit or additional charge on the next invoice submitted.
- (d) If any payment due from either party under this Agreement shall not be paid when due and payable to the other party, the offending party agrees to compensate the harmed party at the amount in arrears times a rate equal to two percent (2%) over the prime rate as published by the "Money Rates" section of the New York City edition of the *Wall Street Journal*, or mutually agreed upon alternative ("Interest Rate").
- (e) At any time during normal business hours, either party shall have the right, upon reasonable prior notice to the other party, to examine and /or make copies of the records and data of the other party relating to this Agreement (including all records and data relating to or substantiating any charges paid by or to either party and including without limitation metering records of energy delivered) for the period such records and data are required to be maintained. All such records and data shall



be maintained for a minimum of seven (7) years after the creation of such records for data.

## **7. METER AND SUBSTATION LOCATION AND PROCEDURES**

- (a) As a condition precedent the Parties agree to establish a mutually acceptable location for a new terminal switching station taking the undersea cable and fiber and converting to power acceptable for tie into the City Distribution System.
- (b) As a condition precedent the Parties agree to establish mutually acceptable locations for Metering Equipment locations.
- (c) Supply, operation, maintenance and ownership of revenue meters and all Metering Equipment shall be in accordance with paragraph 7(e), and the Interconnection/Integration Plan and Operating Procedures adopted as required by Section 11.
- (d) Purchaser and Seller shall supply each other with easements as needed for installation, operation and maintenance of equipment by the responsible party.
- (e) After the date of Commercial Operations meters shall be maintained and read by the Purchaser. Purchaser shall maintain the Meter according to the manufacturer's suggested maintenance and testing recommendations. The manufacturer's maintenance recommendations and Purchaser's maintenance records for the Meter will be made available to Seller upon reasonable written request. Meters shall be furnished and installed by Purchaser.
- (f) Purchaser shall test and calibrate the meters by comparison with accurate standards at intervals satisfactory to the Parties. Purchaser shall make special meter tests at any time at Seller's request using an independent party selected by Purchaser. The costs of all tests shall be borne by Purchaser; provided however, that if any special meter test made at Seller's request discloses that the meters are reading accurately, Seller shall reimburse Purchaser for the cost of such test. Meters registering no more than two percent (2%) above or below normal shall be deemed to be accurate. The readings of any meter which shall have been disclosed by the test to be inaccurate shall be corrected, based on the inaccuracy at the time of testing, for the shorter of (1) the number of days since the meter being tested was installed, (2) the number of days since the last test indicating that such meters were performing properly, or (3)

the one hundred eighty (180) days prior to the current test, in accordance with the percentage of inaccuracy found by such test.

- (g) To the extent that the adjustment period covers a period of deliveries for which payment has been made by Purchaser, Seller shall use the corrected measurements to re-compute the amount due (which amount shall not include interest) for the period of the inaccuracy and shall subtract the previous payments by Purchaser for such period from such re-computed amount. If the difference is a positive number, such difference shall be paid by the Purchaser to the Seller, and if the difference is a negative number, such difference shall be paid by the Seller to the Purchaser. Payment of such difference shall be made by means of a credit or an additional charge on the next statement rendered.

## **8. HEATING SYSTEM**

Within one (1) month of executing this PPA, Seller will commission a feasibility study, at its cost, to survey Unalaska homes and business for conversion and use of air source heat pump (ASHP) technology. Assuming feasibility proven to the mutual satisfaction of Seller and Purchaser (metrics for feasibility are less greenhouse gas emissions and air pollution to the community, and less net cost to consumers for heating), Seller will design, procure, and install to entities who wish to convert their homes and business to ASHP at no cost to consumers. Seller shall pay for all design and installation costs up to a maximum of ten million dollars.

## **9. DISPATCH, OPERATIONS AND MAINTAINENCE.**

- (a) After the Commercial Operation Date, Purchaser (or a designee on behalf of Purchaser) shall dispatch the Facility as necessary to meet Purchaser's need for electrical energy, up to the Project Capability.
- (b) Seller (or a designee on behalf of Seller) shall operate and maintain the Facility in accordance with Prudent Electrical Practices, Applicable Laws and Permits and in a manner that does not materially adversely affect Purchaser's Electric System Integrity. It shall be Seller's responsibility to provide suitable protective equipment as it concerns the Facility, such as fuses, circuit breakers, and relays, to adequately protect the Facility's and Purchaser's electric power equipment, and to ensure that the electric power interconnection for the Facility complies with all applicable legal, safety, and electrical code requirements.
- (c) To the extent not inconsistent with Prudent Electrical Practices and manufacturers' guidelines and recommendations generally applicable to the Facility, Seller shall

cause the Facility to promptly comply with all dispatch orders issued by Purchaser or on behalf of Purchaser.

- (d) At least sixty (60) days prior to the estimated date of Initial Synchronization, Seller shall provide Purchaser with a maintenance schedule for the Facility for the Facility's first year of operation. Thereafter, Seller shall submit to Purchaser annual maintenance schedules for the Facility no later than October 1 of each year that cover the twelve (12) month period starting January 1 and ending December 31 of the succeeding year and a long-term maintenance schedule that will encompass the immediately ensuing four (4) maintenance years. Purchaser shall provide written notice of any reasonable objections to the proposed then applicable annual maintenance schedule within ten (10) Business Days of Purchaser's receipt thereof. Seller shall furnish Purchaser with reasonable advance notice of any change in the annual maintenance schedule. Reasonable advance notice of any change in the annual maintenance schedule involving any shutdown of the entire Facility is as follows:

Scheduled Outage	Expected Duration	Advance Notice to Purchaser
(1)	Less than 2 days	At least 24 hours
(2)	2 to 5 days	At least 7 days
(3)	Major overhauls (over 5 days)	At least 30 days

- (e) The Facility shall be designed to operate with 100% Plant Availability and 100% Plant Reliability.
- (f) The Facility shall obtain and maintain an average Equivalent Availability Factor of ninety-five percent (95%).
- (g) Outages shall not exceed more than 87 hours in a 365-day period. If the number of Outages is exceeded, the Seller shall be required to install equipment to limit outages to less than 87 hours, provided same outages are a result of Facility.
- (h) Subject to the foregoing, Seller shall have the right to interrupt the supply of electrical power and energy for reasonable maintenance of lines, generation equipment and other facilities. Seller shall have no obligation or responsibility to Purchaser to provide standby generation in the event power delivery from the Facility is interrupted.
- (i) If either Seller's ability to supply available electric power and energy from the Facility or Purchaser's ability to receive and transmit available electrical power and energy from the Facility shall fail, be interrupted, or become defective through an act of Force Majeure, the affected party shall be excused from performance of obligations under this Agreement to the extent such performance is prevented or

delayed by such event or circumstance and the affected party shall not be liable therefore for damages caused thereby, provided the Party, as soon as practicable after becoming aware of the Force Majeure, declares the Force Majeure by giving a written notice (the "Force Majeure Notice") to the other Party and upon request by the other Party furnishes the other Party with a detailed description of the full particulars of the Force Majeure reasonably promptly (and in any event within fourteen (14) days after the request therefor), which shall include information with respect to the nature, cause and date and time of commencement of such event, and the anticipated scope and duration of the delay. The Party providing the Force Majeure Notice shall be excused from fulfilling its obligations under this Agreement until such time as the Force Majeure has ceased to prevent performance or other remedial action is taken, at which time the Party shall promptly notify the other Party of the resumption of its obligations under this Agreement. The relief provided by this section shall only apply if the affected party is taking commercially reasonable efforts to remedy such situation and such situation was not the result of the negligence or fault of the affected party. No event or circumstance shall be considered to excuse a party's obligations under this Agreement to the extent such event or circumstance could have been prevented, overcome or remedied if the affected party had exercised commercially reasonable efforts to do so, and shall expressly exclude a party's financial inability to perform.

- (j) **Operations Log.** Seller shall maintain an operations log, which shall include information on the actual average hourly, monthly and annual electric power output of the Facility, well availability and output, planned and unplanned maintenance outages, circuit breaker trip operations requiring a manual reset, partial de-ratings of equipment, and any other significant event related to the operation of the Facility. The operations record shall be available for inspection by Purchaser upon reasonable advance written request, and Seller shall make the data available on a real-time basis by remote access to Purchaser if Purchaser acquires the necessary equipment and software license to process the data by remote access.
- (k) **Monthly Reports.** If requested in writing by Purchaser, Seller shall provide to Purchaser an electronic monthly report, no later than thirty (30) days after the end of each calendar month identified in the written request, regarding the operations of the Facility that shall include: all reporting information maintained in the operations record and hourly electric power output of the Facility. The monthly report shall also include an estimate of monthly electric power output for the calendar year and such other information related to the operation of the Facility that Purchaser reasonably requests in writing.

## **10. OPERATING COMMITTEE AND OPERATING PROCEDURES**

- (a) Purchaser and Seller shall each appoint one delegate and one alternate delegate to act on matters relating to the operation of the Facility under this Agreement. Such

delegates shall constitute the "Operating Committee". The Parties shall notify each other in writing of such appointments and any changes thereto. The Operating Committee shall have no authority to modify the terms or conditions of this Agreement.

- (b) The Operating Committee shall, acting reasonably, establish mutually agreeable written operating procedures ("Operating Procedures") in draft form no later than the Commercial Operations Date. Operating Procedures shall include: the method of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; operating and maintenance scheduling and reporting; operations log; and such other matters as may be mutually agreed upon by the Parties.

## **11. SYSTEMS INTERCONNECTION AND INTEGRATION**

- (a) Within twenty months (20) of executing this Agreement, the Parties shall agree to the Interconnection/Integration Plan a copy of which shall be attached to this Agreement by reference as Exhibit B.
- (b) The Seller shall bear all cost of outside engineering, design and installation costs associated with the Interconnection and Integration requirements with the City Distribution System. The equipment necessary to interconnect at Project Capacity with the City system shall be approved by the City consistent with Prudent Electrical Practice.
- (c) Purchaser shall commission an engineering study to determine reliability upgrades required for the City Distribution System to accept Energy from the Facility. The first two million dollars, (\$2,000,000.00) in cost, for the engineering study and resulting reliability upgrades to the City Distribution System identified in the Interconnection/Integration Plan will be borne solely by the Seller. The next ten million dollars (\$10,000,000) in cost for reliability upgrades identified in the Interconnection/Integration Plan, will be shared equally by Purchaser and Seller. Seller's obligation to share costs are in addition to Seller's cost obligations under paragraph 11(b).
- (d) All equipment interconnected with the City Distribution System shall be installed in accordance with applicable City of Unalaska ordinances and the Interconnection/Integration Plan including but not limited to installation of a revenue grade meter(s) approved, installed and maintained by Purchaser, in equipment provided by the Seller at each Point of Delivery.

## 12. TAXES

The Parties shall pay to the appropriate taxing authority when due all sales, use and similar taxes levied on Seller's sales, and Purchaser's purchase from or use, occupancy, or operation of the Facility/facilities during or for any part of the Term.

## 13. COMPLIANCE WITH APPLICABLE LAW

The Parties shall comply with all local, state and federal laws, statutes, ordinances, rules, regulations, decrees, injunctions, orders and codes now or hereafter applicable to the Facility/facilities, regardless of whether they are of legislative, administrative or judicial origin or implement a new or changed governmental policy, including all of those which address planning, zoning, use, subdivision, occupancy, building, construction, maintenance, repair, health, safety, insurance, environmental conservation, environmental pollution and/or hazardous substances.

## 14. RIGHT OF ACCESS

Duly authorized representatives of either party shall be permitted entry and/or access to premises, facilities and property of the other party, to the extent related to the Facility/Facilities, at all reasonable times in order to carry out the provisions of this Agreement.

## 15. DEFAULT

- (a) Seller Events of Default. The following shall constitute an event of default on the part of Seller under this Agreement: 1) Seller shall fail to comply with any material provision of this Agreement, and such failure shall continue uncured for thirty (30) days after notice thereof by Purchaser, provided that if such failure is not capable of being cured within such period with the exercise of reasonable diligence, then such cure period shall be extended for an additional reasonable period of time (not to exceed one hundred and eighty (180) days) so long as Seller is exercising reasonable diligence to cure such failure; 2) Seller fails to achieve Commercial Operation by the Commercial Operation Deadline and such failure is not cured within ninety (90) Business Days after Notice from Purchaser; or 3) Seller abandons the Facility (i.e., ceased construction or operation of the Facility or the Facility has ceased production and delivery of the Energy for a consecutive sixty (60) day period and such cessation is not a result of an event of weather or Force Majeure) and such abandonment is not cured within sixty (60) Business Days after Notice from Purchaser.
- (b) Purchaser Events of Default. The following shall constitute events of default on the part of Purchaser under this Agreement:



- (i) Purchaser shall fail to make payments for undisputed amounts due under this Agreement to Seller within ten (10) days after notice from Seller that such payment is unpaid when due;
  - (ii) Purchaser shall fail to comply with any material provision of this Agreement (other than the obligation to pay money when due), and such failure shall continue uncured for thirty (30) days after notice thereof by Seller, provided that if such failure is not capable of being cured within such period of thirty (30) days with the exercise of reasonable diligence, then such cure period shall be extended for an additional reasonable period of time (not to exceed one hundred and eighty (180) days) so long as Purchaser is exercising reasonable diligence to cure such failure.
  
- (c) With Respect to Either Party. The following shall constitute events of default on the part of either Party under this Agreement: 1) a Party assigns this Agreement or any of its rights hereunder for the benefit of creditors other than a collateral assignment by Seller with respect to the financing of the Facility; 2) a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state if filed against a Party and is not dismissed within sixty (60) days of such filing, or the Party voluntarily taking advantage of any such law or act by answer; or 3) a Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
  
- (d) Remedies for Default. If an event of Default occurs there will be no opportunity for cure except as specified in Sections 15 (a) and 15(b). The Party claiming Default may, for so long as the Event of Default is continuing, (i) deliver a written notice which establishes a date (which date shall be no earlier than thirty (30) days after the Non-Defaulting Party delivers notice) on which this Agreement shall be terminated (Termination Date), (ii) withhold any payments due under this Agreement, (iii) seek recovery of liquidated damages to the extent allowed under Section 16; and (iv) pursue any other remedies available at law or in equity, except to the extent such remedies are expressly limited by this Agreement.
  
- (e) Survival. Expiration or termination of this Agreement shall not affect any rights or obligations which have arisen or accrued prior to such expiration or termination. In addition, all rights and obligations for indemnity under Section 17 shall survive termination of this Agreement.



## **16. LIQUIDATED DAMAGES**

Seller and Purchaser recognize that delivery of Energy is the essence of this Agreement and that the Purchaser will suffer financial loss if Energy is not delivered as promised in accordance with the Agreement. These losses include employee overtime hours, additional wear and tear on Purchaser's generation equipment, actual and estimated future expense of procuring an alternate supply of electricity, lost sales to customers who return to self-generating, lost opportunities for sales to prospective customers and general public inconvenience. They also recognize that such losses multiply over time and that there is significant difficulty and expense in proving in a legal proceeding the actual loss suffered by Purchaser if Energy is not delivered as promised. Accordingly, instead of requiring such proof, Seller and Purchaser agree that as liquidated damages for failure to supply Energy (but not as a penalty) Seller shall pay Purchaser Twenty Thousand Dollars ( \$20,000) for each day a Seller Event of Default as described in Paragraph 15(a) exists up to a maximum of five million dollars (\$5,000,000).

## **17. INDEMNIFICATION**

- (a) Each Party shall indemnify, defend and hold the other and its officers, directors, affiliates, agents, employees, contractors and subcontractors, harmless from and against any and all Claims, to the extent caused by the negligence or willful misconduct of the indemnifying Party or the indemnifying Party's own officers, directors, affiliates, agents, employees, contractors or subcontractors. In the event that any loss or damage with respect to any Claim is caused by the negligence or willful misconduct of both Seller and Purchaser, including their respective officers, directors, affiliates, agents, employees, contractors or subcontractors, such loss or damage shall be borne by Seller and Purchaser in the proportion that their respective negligence or willful misconduct bears to the total negligence or willful misconduct causing such loss or damage.
- (b) An Indemnitee seeking indemnification under this Section 16 shall give notice to the Indemnitee within twenty (20) days of receipt of notice of the assertion of any action or claim (including discovery of any loss, damage or injury giving rise to any claim by the Indemnitee), or the commencement of any action, suit, or proceeding, in respect of which indemnity may be sought hereunder. Failure to give such notice shall not relieve the Indemnitor of any liability hereunder, except that the Indemnitor shall be entitled to relief from its obligations under this Section 17 to the extent such failure to give such timely notice materially prejudiced the Indemnitor. The Indemnitee shall give the Indemnitor such information regarding the claim, action or proceeding as the Indemnitee may reasonably request. If a claim for indemnification arises from any action, suit or proceeding, the Indemnitor shall, at its expense assume the defense of such action, suit or proceeding, with counsel of its choice, reasonably satisfactory to the Indemnitee and the Indemnitor shall conduct the defense actively and diligently. The Indemnitee shall have the right, but not the duty, to participate in its own defense and to employ at its own expense counsel separate from counsel

employed by the Indemnitor. The Indemnitor shall be liable for the fees and expenses of counsel employed by the Indemnitee if the Indemnitor has not assumed the defense thereof. Whether or not the Indemnitor chooses to defend or prosecute any claim, the Indemnitees and the Indemnitor shall cooperate in the defense or prosecution thereof and shall furnish such records, information and testimony, and attend such conferences as are reasonably required. The Indemnitor will not consent to the entry of any judgment on or enter into any settlement with respect to a claim without the prior written consent of the Indemnitee, which shall not be unreasonably delayed, conditioned or withheld, unless the judgment or proposed settlement involves only the payment of money damages by the Indemnitor and does not impose an injunction or other equitable relief upon the Indemnitee. The Indemnitee shall not consent to the entry of any judgment on or enter into any settlement with respect to any claim without the prior written consent of the Indemnitor, which shall not be unreasonably delayed, conditioned or withheld.

## **18. INSURANCE**

Within ten (10) days from the date of Seller's notice pursuant to section 3(b) and continuing through the entire Term, Seller shall obtain and maintain in force, insurance coverage in accordance with the requirements stated in Exhibit C, Insurance Requirements, which is attached hereto and incorporated into this Agreement.

Within ten (10) days from the date of receipt of notice from Seller pursuant to section 3(b) and continuing until the Commercial Operations Date, Purchaser shall obtain and maintain in force, insurance coverage in accordance with the requirements stated in Exhibit C, Insurance Requirements, which is attached hereto and incorporated into this Agreement.

Each party shall deliver to the other party an insurance certificate evidencing the required coverage, limits and additional insured provisions as required by Exhibit C.

## **19. REPRESENTATIONS and WARRANTIES**

On the Effective Date, each Party represents, warrants and covenants to the other Party that:

- (a) It has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (b) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform under this Agreement;
- (c) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its

obligations under this Agreement;

- (d) It is acting for its own account and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement.
- (e) It has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement;
- (f) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Energy as contemplated in this Agreement; and
- (g) It shall act in good faith in its performance under this Agreement.

## **20. CONDITIONS PRECEDENT**

This Agreement is subject to the following conditions precedent, which shall be fully satisfied on or before the dates identified for each condition precedent:

- (a) Seller shall obtain a written commitment for Project Financing, by 6/10/2021.
- (b) The Parties shall negotiate in good faith to establish the Interconnection / Integration Plan” no later than 20 months after contract execution. The Interconnection/Integration Plan shall include but not be limited to; 1) a mutually acceptable Delivery Point; 2) a location for new distribution and transmission equipment required to connect to the Purchasers existing City Distribution System at Project Capacity, and 3) locations for metering equipment.
- (c) Seller shall have provided Purchaser a utility easement allowing placement, maintenance and operation of all equipment and connections at 1) the Delivery Point and 2) a location for new distribution and transmission equipment required to connect to the Purchasers existing City Distribution System at Project Capacity in a form reasonably satisfactory to Purchaser at no cost to Purchaser by 20 months after contract execution.
- (d) Seller shall have provided Purchaser fully executed Member Guarantees in the form attached hereto as Exhibit E no later than September 1, 2020.
- (e) The Parties have required insurance in place by the dates specified in Section 18.

Termination Caused by Failure to Satisfy Conditions Precedent. This Agreement may be terminated by either party due to the failure of any such condition precedent to timely or fully occur through no fault on the part of such Party. If and when such a termination should occur neither Purchaser nor Seller shall have any further claims, rights or remedies against each other under this Agreement except for obligations, liabilities and/or duties that accrued prior to such termination or that survive such termination by the terms of this Agreement.

## **21. Dispute Resolution**

The Parties shall attempt in good faith to resolve all disputes arising out of or related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Senior executives of both Parties shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they mutually agree, to attempt to resolve the dispute. The Parties further agree to provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to the Parties' senior executives, or if no meeting of the Parties' senior executives has taken place within fifteen (15) days after such referral, either Party may initiate legal action for resolution of the dispute. All negotiations pursuant to this Section 21 are deemed confidential hereunder. Transfers or assignments of the Facility shall not relieve Seller of any obligation hereunder except to the extent agreed to in writing by Purchaser.

## **22. GENERAL PROVISIONS.**

- (a) Time of Performance. Time is of the essence of this Agreement. It is the express intention of all of the parties to this Agreement that no extensions or grace periods beyond the deadlines set forth in this Agreement shall be provided, because all intended extensions and grace periods have been taken into consideration in establishing such deadlines.
- (b) Parties Bound and Benefitted. The covenants, terms and conditions contained in this Agreement shall be binding upon and inure to the benefit of the assigns and successors of the respective parties hereto.
- (c) Amendment and Novation. No amendment or novation to or of this Agreement shall be effective unless it is completely and unambiguously contained in a writing executed by all of the parties to this Agreement. No such amendment or novation shall be effective unless and until it is supported by a resolution of the board of directors of each corporation, the council of each municipal corporation or the

policy-making authority of each other entity that is a party or a successor or assign of a party to this Agreement, which has expressly approved such amendment or novation.

- (d) Marginal Titles and Headings. The marginal titles, subtitles, headings and subheadings of the paragraphs, subparagraphs, sections and subsections herein are intended to be for reference and for the sake of convenience only and shall not be construed to narrow or broaden the scope of or affect whatever interpretation or construction would otherwise be given to the plain and ordinary meanings of the words herein.
- (e) Entire Agreement. This written Agreement is fully integrated, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all other prior and contemporaneous agreements, contracts, representations, promises, acknowledgments, warranties and covenants, oral or written, by and between the parties with respect to such subject matter which are not expressly included herein. In the case of any conflict or inconsistency between this Agreement and any other prior agreement between the parties relating to any property or easement conveyed or exchanged herein, this Agreement shall prevail.
- (f) Applicable Law. This Agreement and the respective rights and obligations of the parties hereunder shall be construed and interpreted as a contract under the laws of the State of Alaska, without regard to its conflicts of law principles.
- (g) Exclusive Jurisdiction/Venue. In the event that a question, dispute or requirement for interpretation or construction should arise with respect to this Agreement, the jurisdiction and venue therefor shall lie exclusively with the courts for the Third Judicial District for the State of Alaska, or, alternatively, with the United States District Court for the District of Alaska, at Anchorage, Alaska, unless a nonwaivable federal or Alaska state law should require to the contrary.
- (h) Limited Waivers. Any failure or delay by any party to object to a default or exercise any rights or remedies under this Lease shall not constitute a waiver of the right to do so in the future, unless such failure is accompanied by an express written waiver by such party.
- (i) Interpretation. The language in all parts of this Agreement shall be construed (a) according to its fair meaning and common usage and (b) not strictly for or against any party to this Agreement.

- (j) Counterparts. This Agreement may be executed in counterparts, so long as each of the parties to this Agreement executes at least one counterpart; and all such executed counterparts shall collectively constitute one and the same original document
- (k) Warranties of Authority. Each party and each natural person who executes this Agreement on behalf of such party acknowledges, warrants and represents for the benefit of the other party(ies) to this Agreement: (a) that such person is duly authorized and empowered to execute this Agreement on behalf of such party; (b) that, if a corporation, limited liability company, joint venture, trust, partnership, limited liability partnership or other entity (i) such party has been duly formed and organized and is in good standing and (ii) all necessary and appropriate resolutions and actions by such party's board of directors, general partner(s), manager(s), members or other policy-making authority authorizing such party to enter into, execute and perform this Agreement and the transactions contemplated by this Agreement have been obtained; and (c) that all steps have been taken and acts performed that are conditions precedent to making this Agreement valid, enforceable and binding against such party in accordance with its terms and conditions.
- (l) Independent Counsel. Each party to this Agreement acknowledges that it has enjoyed the advice and representation of competent independent legal counsel in negotiating, entering into and executing this Agreement or waived its right to do so. The fact that this Agreement may have been drafted in whole or in part by one such party's counsel shall not cause any part of this Agreement to be construed against such party.
- (m) Severability. In the event that any term or condition of this Agreement is declared by a court of competent jurisdiction to be void or unenforceable, the remaining terms and conditions shall nevertheless be valid and enforceable; and such void or unenforceable term shall be modified to the minimum extent necessary to be valid and enforceable to the fullest extent permitted by applicable law and enforced as such.
- (n) Survival. All of the representations, warranties and covenants of the parties shall survive any and all deadlines contemplated by this Agreement and shall remain in full force and effect unless and until otherwise satisfied, terminated or discharged.
- (o) Attorneys Fees and Legal Costs. All of the attorneys fees and legal costs incurred by the respective parties in negotiating and forming this Agreement shall be borne by the respective parties. All legal costs and attorneys fees actually incurred by any



party to this Agreement to enforce any obligations of any other party under this Agreement or any instruments executed in connection herewith shall be paid to the prevailing party by the other party and shall bear interest at the legal rate.

- (p) No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any rights in, or grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation or understanding established under this Agreement. Neither Party, by this Agreement, dedicates any part of the Facility to the public or to the service provided under this Agreement, nor affects the status of Purchaser as an unregulated utility enterprise of a municipal corporation, or Seller as an individual or entity.

### 23. NOTICES AND DEMANDS

Each notice required under this Agreement or by law shall: (a) be in writing; (b) contain a clear and concise statement setting forth the subject and substance thereof and the reasons therefor; and (c) be personally delivered, electronically transmitted (Email), or duly mailed by certified mail, return receipt requested, to each party to this Agreement at its address set forth below or to such other address as that party may have most recently given notice of to all of the other parties. All such notices shall be effective (a) when actually received by the recipient or an authorized representative or agent of the recipient or (b) three (3) business days after they are mailed, whichever occurs earlier.

### 24. MAILING ADDRESSES/POINTS OF CONTACT

**OC/CP, LLC:**

Attn: Natalie A. Cale  
P. O. Box 149  
Unalaska, Alaska 99685  
Tel. No. (907) 581-1276

**City:**

City of Unalaska  
Attn: City Manager  
P. O. Box 610  
Unalaska, Alaska 99685  
Tel. No. (907) 581-1251



with a copy to:

Boyd, Chandler, Falconer & Munson  
Attn: Brooks W. Chandler  
911 West Eighth Avenue, Suite 302  
Anchorage, Alaska 99501  
Tel. No. (907) 272-8401

**Formation**

In witness whereof, Seller and Purchaser have duly executed, delivered and formed this Agreement through their authorized representatives, the effective date of which is August 31, 2020 ("Effective Date").

OC/CP, LLC:

By: OUNALASHKA CORPORATION, an  
Alaska business corporation  
Its Managing Member

Dated: August 31, 2020

By Christopher P. Salts, Sr.  
Christopher P. Salts  
Its Chief Executive Officer

Dated: 8.31, 2020

By Margaret A. Lekanoff  
Margaret A. Lekanoff  
Its Secretary

CITY OF UNALASKA:

Dated: 9/3, 2020

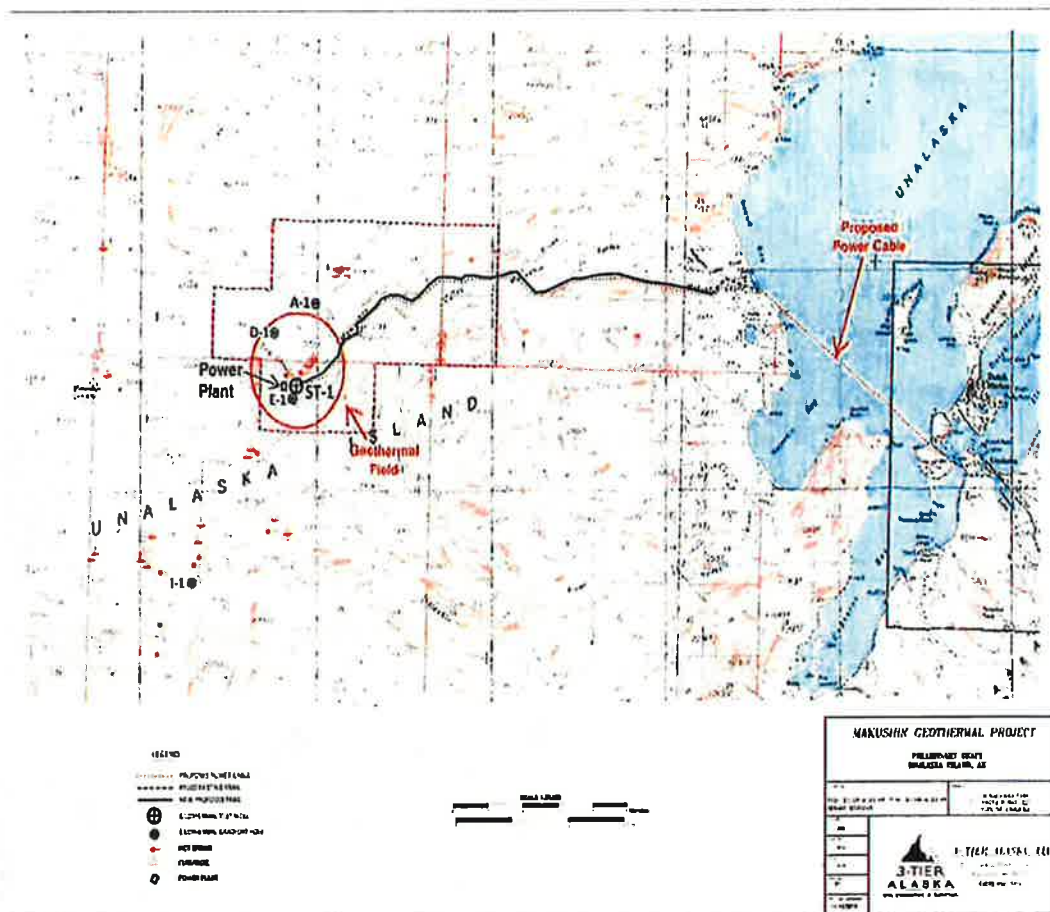
By [Signature]  
Erin Reinders  
Its City Manager

## Exhibit A

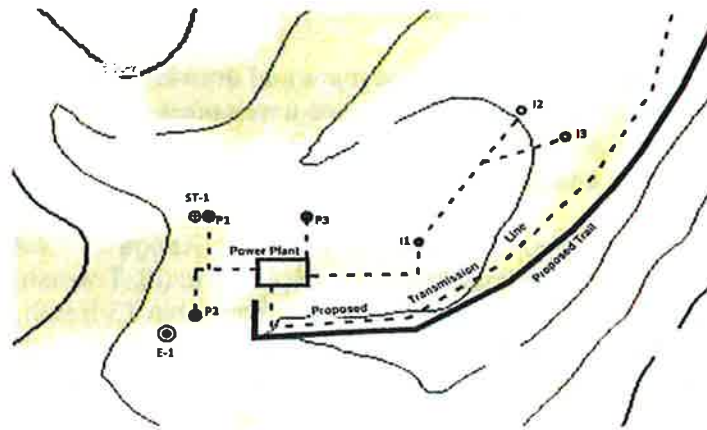
### Project Site

The project site is as generally depicted on the attached maps and drawings. Actual project site will be updated to reflect the as-built status when development is complete. Specifically, the Project Site or Project is the Facility described in this PPA and is included within the following legal boundaries:

"All of the area located in Sections 30 and 31, Township 72 South, Range 118 West (Unsurveyed), Seward Meridian; Sections 25, 26, 27, 33, 34, 35, and 36, Township 72 South, Range 119 West, Seward Meridian; Sections 2 and 3, Township 73 South, Range 120 West, Seward Meridian; located within the Records of the Aleutian Island Recording District, Third Judicial District, State of Alaska and more particularly shown cross-hatched in the attached."

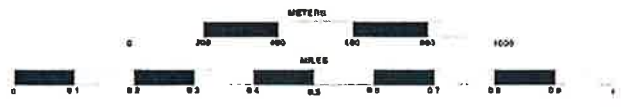


Power Purchase Agreement – Exhibit A- between City of Unalaska and OCCP, LLC



1. ALL DISTANCES ARE APPROXIMATE.  
 2. ALL DISTANCES ARE IN METERS.  
 3. ALL DISTANCES ARE TO THE CENTER OF THE LINE.  
 4. ALL DISTANCES ARE TO THE CENTER OF THE TRAIL.  
 5. ALL DISTANCES ARE TO THE CENTER OF THE POWER PLANT.

- LEGEND
- POWER PLANT
  - TRANSMISSION LINE
  - PROPOSED TRAIL
  - POINT
  - POINT
  - POINT
  - POINT
  - POINT



MOUNTAIN COMMUNITY ENERGY  
 COMMUNITY WIND ENERGY PROJECT  
 POWER PLANT LOCATION

DATE: 10/15/10	PROJECT: COMMUNITY WIND ENERGY PROJECT
DRAWN BY: J. HERR	CHECKED BY: J. HERR
SCALE: AS SHOWN	PROJECT NO: 10-001

J. HERR  
 ALASKA  
 J. HERR CONSULTING, LLC  
 1000 W. 10TH AVENUE, SUITE 100  
 ANCHORAGE, ALASKA 99501

Gov Lot 9, Section 2, T735, R118W, S14



1. This plan is a legal description of the  
 Community Wind Energy Project, Section 2,  
 T735, R118W, S14.



Power Purchase Agreement – Exhibit A- between City of Unalaska and OCCP, LLC

**Exhibit B**

**Interconnection / Integration Plan**

**[to be provided by the Parties within 20 months of Agreement**

## **Exhibit C**

### **Insurance Requirements**

1. Within ten (10) days from the date of Seller's notice pursuant to section 3(b), Seller and Purchaser shall secure and maintain all insurance required.

2. Seller and Purchaser shall maintain in effect at all times specified by Section 18, insurance in accordance with the applicable laws relating to workers' compensation and employers' liability insurance, regardless of whether such coverage or insurance is mandatory or merely elective under the law.

3. Insurance coverage and limits shall be at a level as reflected in Paragraph 8 for the risks associated with the Facility contemplated by this Agreement. Required insurance coverages are to be purchased by respective Seller and Purchase at their sole expense. Purchaser may increase the limits of required coverage each five (5) years during the term of the Agreement provided the increased limits are commercially reasonable coverage limits.

4. Seller and Purchaser shall notify one or the other of any reduction of the aggregate limits under any of the required insurance policies, and if requested in writing, purchase additional limits of coverage as may be deemed appropriate by Purchaser in order to satisfy Seller's insurance obligations.

a. Seller and Purchaser shall maintain such insurance in full force and effect at all times specified by Section 18 of the Agreement. Seller shall maintain completed operations coverage, for two (2) years after the expiration or termination of this Agreement.

5. Seller and Purchaser shall ensure that any policies of insurance that Seller/Purchaser or any of its subcontractors and suppliers are required to carry as insurance by this Agreement) shall:

a. Be placed with such insurers and under such forms of policies as may be reasonably acceptable to Seller/ Purchaser.

b. With the exception of workers' compensation and employers' liability,

(i) be endorsed to name Purchaser/Seller as an additional insured; and

(ii) apply severally and not collectively to each insured against whom claim is made or suit is brought, except that the inclusion of more than one insured shall not operate to increase Seller's / Purchaser's limits of liability as set forth in the insurance policy.

c. Include within automobile coverage(s), owned, non-owned, hired and borrowed vehicles.

d. Be primary insurance with respect to the interest of Seller/ Purchaser respectively as an additional insured with any insurance maintained by Seller / Purchaser as excess and not contributory insurance with the insurance required under this Agreement.

e. Include a waiver of the insurer's right of subrogation against Seller/ Purchaser. Seller/Purchaser also hereby waives all rights of subrogation against Purchaser/Seller.

f. Provide that the policies will not be cancelled, or their limits or coverage reduced or restricted without at least thirty (30) days prior written notice to Seller / Purchaser.

6. Seller / Purchaser shall instruct and require its insurance agent/broker to complete and return an insurance certificate, in an ACORD form, as evidence that insurance policies providing the required coverage, limits and additional insured provisions as outlined within this Exhibit C are in full force and effect. Seller / Purchaser shall be fully responsible for all deductibles and self-insured retention's related to their respective insurance provided herein. At least sixty (60) days prior to the Startup Period, the completed insurance certificate form is to be returned to Seller/ Purchaser in accordance with the notice provisions included in the Agreement.

7. The insurance requirements of the Agreement and acceptability to Seller / Purchaser of insurers and insurance to be maintained by Seller/Purchaser, its subcontractors/suppliers, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the insured under the Agreement. Seller /Purchaser is fully and solely responsible for the level of insurance coverage it requires of its subcontractors and suppliers. Purchaser/Seller will look to Seller/Purchaser and thereby Seller's /Purchaser's insurer for coverage for claims arising from the negligent acts or omissions of Seller/Purchaser or any subcontractor/supplier of Seller's /Purchaser's choosing.

8. Evidence of the following coverages shall be provided on an ACCORD Form or equivalent:

\$5,000,000 General Liability

\$10,000,000 Aggregate Liability

\$1,000,000 Automobile Liability

Statutory Worker's Compensation



## Exhibit D

### Equivalent Availability Factor

Availability measures are concerned with the fraction of time in which a unit is capable of providing service and accounts for outage frequency and duration. Equivalent Availability Factor (EAF) shows the percentage of capacity that could be delivered if it had to be dispatched. The EAF metric takes into account both scheduled maintenance and unplanned outages.

Equivalent Availability Factor (EAF) definition from IEEE Std 762-2006: "Equivalent availability factor (EAF): The fraction of a given operating period in which a generating unit is available without any outages and equipment or seasonal deratings."

The geothermal power plant will consist of a number of independent units composed of steam screw expanders, wet steam ORCs and low and high temperature brine ORCs. Each unit can be operated separately.

Each unit is capable of operating separately, and if any unit is operating and not derated, or capable of being operated, though it might not be in operation, and no matter its output and power delivered, the EAF for that unit is 100% for that time period. If all units are in the state described above the geothermal plant is at 100% EAF. Scheduled and unscheduled maintenance/outage, are also components of EAF.

It is agreed for illustrative purposes that:

1. Total equipment hours available (TEHA) per year = 5 ORCs x 24 hours/day x 365 days = 43,800 hours
2. Twelve 4-hour monthly maintenance checks (MMC) will be performed in a year (final number of hours or frequency may be different)
3. Four 12-hour quarterly maintenance checks (QMC) will be performed in a year (final number of hours or frequency may be different)
4. An annual 48-hour service check (ASC) will be performed (final number of hours may be different)
5. Unplanned failures (UF) may occur and are calculated as: number of ORC's down \* number of repair hours
6. A unit may be derated (UD) for a period of time. Downtime is calculated as: derating fraction \* number of days derated \* 24 hours in a day

Total hours unavailable (THU) = MMC+QMC+ASC+UF+UD

Then EAF (%) =  $1.0 - (\text{THU}/\text{TEHA}) * 100$

If MMC = 240, QMC = 240, and QMC = 240, then EAF (%) =  $1.0 - (720 + \text{UF} + \text{UD})/\text{TEHA} * 100$



## Exhibit E

### Member Guaranty

**THIS GUARANTEE** (this "Guarantee") is made and entered into this 31<sup>st</sup> day of August, 2020, by and among Ounalashka Corporation, an Alaska Native Claims Act corporation organized under the laws of the State of Alaska, Chena Power LLC, an Alaska limited liability corporation (collectively the "Guarantor"), and the City of Unalaska an Alaska municipal corporation ("Purchaser"). Guarantor and Purchaser are each referred to herein as a "Party" and collectively as the "Parties." Capitalized terms used but not defined in this Guarantee shall have the meanings ascribed to them in the PPA (as defined below).

### RECITALS

A. Guarantors are members of, Ounalashka Corporation/ Chena Power LLC, a limited liability company organized under the Laws of the State of Alaska ("Seller"). Seller has, as of the date hereof, entered into that certain Power Purchase Agreement (the "PPA") with the Purchaser, for the purchase by Purchaser of Energy.

B. Guarantor, directly or indirectly, owns all of the equity interests in Seller.

C. As a condition precedent to the execution of the PPA, the Purchaser requires the execution of this Guarantee.

NOW, THEREFORE, in order to induce the Purchaser to buy Energy from Seller as provided in the PPA, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

- 1. Guarantee.** Guarantor hereby unconditionally and irrevocably guarantees to the Purchaser the prompt, punctual and full payment and performance of (a) the obligations and covenants of Seller under the PPA to pay when due any amounts owing under the PPA for Liquidated Damages under the terms of the PPA, as now or hereafter amended, in accordance with the terms and conditions thereof (the "Obligation").
- 2. Term.** This Guarantee is a continuing guarantee of payment. This Guarantee shall remain in full force and effect until the earlier to occur of (a) the termination of the PPA in accordance with its terms and (b) the date Seller has fully discharged the Obligation.
- 3. Enforcement.** Guarantor's obligations are primary obligations and independent of all of Seller's obligations to the Purchaser. Upon default by Seller with respect to the Obligation, the Purchaser shall have no obligation to proceed against Seller, and may proceed directly against Guarantor without proceeding against Purchaser or any other person or pursuing any other remedy. Guarantor agrees to reimburse the Purchaser for all costs and expenses (including, without limitation, court and arbitration costs and reasonable attorneys' fees) incurred by the Purchaser in connection with the enforcement of the Purchaser's rights under this Guarantee.
- 4. Invalidation of Payments.** Guarantor's obligations hereunder shall not be affected by the commencement of any proceedings by or against Seller under the Bankruptcy Code (U.S.C. Title

11) or any other liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws affecting the rights of creditors generally, any stay or ruling thereunder, or the disallowance of any claim thereunder. If all or any part of any payment to or for the benefit of the Purchaser in respect of the Obligations shall be invalidated, declared to be fraudulent or preferential, set aside or required for any reason to be repaid or paid to a trustee, receiver or other third party, then any Obligation that otherwise would have been satisfied by that payment or partial payment shall be revived and continue in full force and effect as if that payment had not been made. Guarantor shall be fully and primarily liable for such Obligation and as set forth in this Guarantee.

**5. Waiver of Defenses.** The Purchaser may, without notice to or consent of Guarantor (a) extend or, with the prior written consent of Seller, alter, the time, manner, place or terms of payment or performance of the Obligations, or (b) waive, or, with the prior written consent of Seller, amend any terms of the PPA or any other agreement executed pursuant to the PPA, without in any way changing, releasing or discharging Guarantor from liability hereunder. Guarantor hereby waives any defenses which Seller or any other person liable for the Obligation may have or assert regarding (i) the insolvency, bankruptcy, liquidation or dissolution of Seller or such other person or (ii) the invalidity, illegality, voidability or unenforceability of all or any portion of the Obligation as a result of ultra vires or other lack of authority, defective formation or other organizational deficiencies or similar types of defenses. Guarantor further waives notice of the acceptance of this Guarantee, presentment, demand, protest, and notices of protest, nonpayment, default or dishonor of the Obligation, and all other notices or demands of any kind or nature whatsoever with respect to the Obligation. Nothing in this Guarantee shall limit or otherwise affect the rights of Purchaser under the terms of the PPA.

**6. Representation and Warranties.** Each Guarantor represents and warrants to the Purchaser that: (a) Guarantor has received, or will receive, direct or indirect benefit from the making of this Guarantee; (b) Guarantor is a corporation duly organized, validly existing and in good standing under the Laws of the State of Alaska; (c) Guarantor has the requisite corporate power to enter into this Guarantee and to perform its obligations hereunder; (d) the execution, delivery and performance of this Guarantee have been duly and validly authorized by all necessary corporate action on the part of Guarantor; (e) this Guarantee has been duly executed and delivered by Guarantor and constitutes the valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms; (f) the execution, delivery and performance of this Guarantee will not (i) violate any provision of the certificate of incorporation or bylaws (or other governing instruments) of Guarantor or (ii) violate any judgment, order, ruling, or regulation applicable to Guarantor; (g) the execution, delivery and performance of this Guarantee by Guarantor will not be subject to any consent, approval or waiver from any Governmental Body or other third Person; (h) Guarantor possesses the necessary financial capability to fulfill the Obligation; and (i) there are no bankruptcy, insolvency, reorganization or receivership proceedings pending against, being contemplated by or, to Guarantor's knowledge, threatened against Guarantor.

**7. Assignment.** This Guarantee and the rights and obligations hereunder shall not be assignable or transferable by Guarantor except with the prior written consent of the Purchaser.

**8. Amendments and Waivers.** No amendment, modification or waiver in respect of this Guarantee shall be effective unless, in the case of an amendment or modification, such

amendment or modification shall be in writing and signed by Guarantor and the Purchaser, and, in the case of a waiver, such waiver shall be in writing, specifically refer to this Guarantee and be signed by the Person against which such waiver is sought to be enforced.

**9. Notices.** All notices and other communications shall be in writing and shall be delivered by hand or sent, postage prepaid, by express mail or reputable overnight courier service to the address for the Sellers set forth in Section 23 of the PPA or, in the case of Guarantor Chena Power LLC, to the following address:

Chena Power LLC  
PO Box 58740  
Fairbanks, Alaska 99711  
Attn: Bernie Karl

Each Party may change its address for notice by notice to the other in the manner set forth above. All notices shall be deemed to have been duly given at the time of receipt by the Party to which such notice is addressed.

**10. Governing Law.** This Guarantee and the legal relations between the Parties shall be governed by and construed in accordance with the Laws of the State of Alaska, without regard to principles of conflicts of Laws that would direct the application of the Laws of another jurisdiction.

**11. Counterparts.** This Guarantee may be executed in counterparts, each of which shall be deemed an original instrument, but all such counterparts together shall constitute but one agreement.

**12. Entire Agreement.** This Guarantee constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties pertaining to the subject matter hereof.

**13. Severability.** If any term or other provision of this Guarantee is held invalid, illegal or incapable of being enforced under any rule of law, all other conditions and provisions of this Guarantee shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in a materially adverse manner with respect to either Party.

IN WITNESS WHEREOF, the Parties have executed this Guarantee on the day and year first written above.

*[Signature page follows]*

**GUARANTOR:**

**OUNALASHKA CORPORATION**

By: /s/ Christopher P. Salts, Jr.  
Name: Christopher P. Salts  
Title: Chief Executive Officer

**GUARANTOR:**

**CHENA POWER, LLC**

By: /s/ Bernie Karl  
Name: Bernie Karl  
Title: Chief Executive Officer

**PURCHASER:**

**CITY OF UNALASKA**

By: /s/ Erin Reinders  
Name: Erin Reinders  
Title: City Manager

**Exhibit F**

**Additional Payment**

**The formula for the Additional Payment only applies when Metered Energy for a Year exceeds 100,000,000 kWh. If that occurs, an Additional Payment is due calculated as follows:**

$$\text{Additional Payment} = \text{Facility Rate} \times (\text{kWh through Meter for Year}) - \text{Fixed Payment}$$

$$\text{Facility Rate} = \frac{\text{Fixed Payment}}{100 \text{ million kWh}} - \frac{\frac{\text{Fixed Payment}}{100 \text{ million kWh}} - \frac{\text{Fixed Payment}}{\text{kWh through Meter for the Year}}}{2}$$

**EXAMPLE**

Year 1- Fixed Payment = \$16,300,000

kWh through meter = 125,000,000

Facility Rate = 16,300,000/ 100 million kWh - [(16,300,000/ 100 million kWh) - (16,300,000/125 million kWh) / 2]

Facility Rate = .163-[(.163-.1304)/2]

.163-(.0326/2)= .1467

Additional Payment = (.1467 X 125,000,000)-\$16,300,000

18,337,500-16,300,000 =2,037,500

Additional Payment is 2,037,500







February 25, 2021

Ms. Erin Reinders  
City Manager  
City of Unalaska  
43 Raven Way  
PO Box 610  
Unalaska, AK 99685

Dear Erin:

On behalf of OCCP, LLC, I am submitting written intent to amend the PPA by extending the project financing deadline by one (1) year, from 6/10/2021 to 6/10/2022.

We did not anticipate the pandemic's effect on travel to Washington D.C. and elsewhere lasting as long as it has. This has directly impacted our ability to seek financing from Federal agencies. Changes of personnel in departmental posts at the DOE and other agencies have also made it difficult to interact without being physically present in Washington D.C. Since Biden's inauguration, additional changes in personnel have, and continue to, occur. These are among the reasons we are seeking an extension in the financing deadline.

Per Article 22(c), this amendment must be in writing and include resolutions from the OCCP Board of Directors and by the City Council. OCCP's resolution will specifically state:

*We hereby resolve to amend the Power Purchase Agreement, executed on August 31, 2020 between the City of Unalaska and Ounalashka Corporation/Chena Power, in order to extend the date to obtain project financing by one (1) year, from 6/10/21 to 6/10/22 in Article 4 (c) and 20 (a).*

OCCP's resolution is attached to this letter.





Extending the project financing deadline from 6/10/2021 to 6/10/2022 will **not** impact the project completion schedule, as OCCP, LLC is self-financing the 2021 project construction budget, pushing ahead with the road to the geothermal area during the 2021 construction season , which has always been the plan.

Thank you for your time and attention to this matter, and please let us know when to expect this before the City Council. If there is additional information or clarity around this request, do not hesitate to reach out to me and OCCP will promptly respond.

Sincerely,

A handwritten signature in black ink that reads "Christopher P. Salts, Sr." with a stylized flourish at the end.

Christopher P. Salts, Sr.  
Director – OCCP, LLC

Attachments – OCCP, LLC Resolution to Extend Project Financing

**RESOLUTION 21-02-01  
OF THE BOARD OF DIRECTORS  
OF  
OUNALASHKA CORPORATION/CHENA POWER**

NOW THEREFORE BE IT RESOLVED, that the Ounalashka Corporation/Chena Power of Directors hereby resolve to amend the Power Purchase Agreement, executed on August 31, 2020 between the City of Unalaska and Ounalashka Corporation/Chena Power, in order to extend the date to obtain project financing by one (1) year, from 6/10/21 to 6/10/22 in Article 4 (c) and 20 (a).

This resolution read and approved at a duly convened meeting of the Ounalashka Corporation/Chena Power Board of Directors held on Thursday, February 25, 2021, at which time a quorum was present.

Thursday, February 25, 2021  
Date

\_\_\_\_\_  
Bernie Karl, President

\_\_\_\_\_  
Natalie A. Cale, Secretary/Treasurer

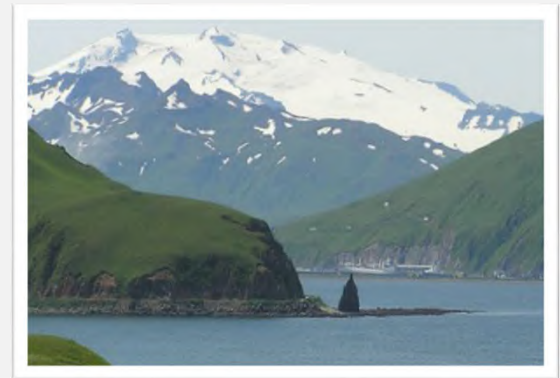
# MAKUSHIN GEOTHERMAL PROJECT BRIEFING

March 9, 2021

Ounalashka Corporation and  
Chena Power Partnership  
OCCP, LLC

Presents

Makushin Geothermal Project Briefing  
to the  
City of Unalaska





## A BRIEF RECAP FOR PERSPECTIVE



- For a perspective, one year ago:
  - Project was scheduled to be completed in fall of 2022.
  - Financing focus was a DOE TITLE XVII loan.
  - Under a teaming agreement with Kaishan for power plant technology.
  - In negotiations for Power Purchase Agreement with the City.
  - Considering seven different power plant sizes and working from high level estimates (lack of detail).
  - Then the COVID Pandemic hit...





TODAY, MARCH 9, 2021



- Directly related to COVID 19:
  - The project completion date slipped one year, to the end of 2023.
- But the silver lining is:
  - We have excellent project definition – cost and construction and logistic plans.
  - Overall development costs remained the same, and project confidence has gone up.
  - We are methodically transitioning from the planning to execution phases.







**Slide 4**

---

**DM1** David Matthews, 9/16/2020





## KEY ACCOMPLISHMENT SINCE LAST BRIEFING



- A 30-year power purchase agreement with **you**.
- Construction and logistic plans developed.
- Environmental studies and survey base lines established.
- Major permit applications submitted.
- Class 3 estimate prepared, backed by numerous quotes.
- Competitive bidding the power plant and resource gathering field.
- Project valuation and financial decks developed.
- Integration / Interconnection plan with Unalaska underway.
- Long term financing underway.





# WORKED ALL WINTER CAT D-9 AND CAT 245 UNDER RETROFIT





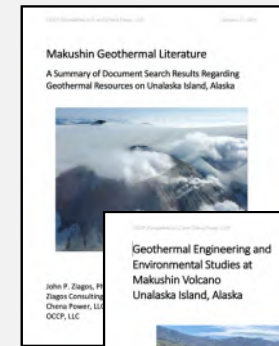
# INDIVIDUAL ACCOMPLISHMENTS



- The entire MGP database has been cataloged and gleaned for useful information.
- Makushin Geothermal Resources, Engineering and Environmental evaluation reports have been written and drilling targets selected.
- Dozens of Request for Proposal's and bid responses cataloged.
- Internal project control systems and protocols have been established.
- A class 3 (budget authorization) estimate has been prepared.



*And there is more...*







# MGP DESIGN CRITERIA DOCUMENT UNDER REVIEW




December 11, 2020


**OUNALASHKA CORPORATION / CHENA POWER**

---

**Makushin Geothermal Project**

*DESIGN CRITERIA  
PEI-GE-AA-DSG-001*





**PROJECT NUMBER:**  
166920

CONTENTS

1.0	INTRODUCTION .....	2
2.0	PROJECT LAYOUT .....	2
3.0	CODES AND STANDARDS .....	7
4.0	LANGUAGE AND UNITS OF MEASURE .....	9
5.0	PROJECT SPECIFIC CONDITIONS .....	10
5.1	SITE-SPECIFIC CONDITIONS .....	10
5.2	RESOURCE CONSIDERATIONS .....	13
5.3	WIND, SEISMIC, LOADING DESIGN .....	14
5.4	SITE SOIL CONDITIONS AND GROUND STABILITY .....	15
5.5	COLD WEATHER AND SNOW .....	15
5.6	AVALANCHES .....	16
5.7	SITE REMOTENESS .....	16
5.8	VOLCANIC ACTIVITY .....	17
5.9	NOISE .....	17
5.10	EMISSIONS .....	17
6.0	PLANT PERFORMANCE .....	18
6.1	PERFORMANCE CRITERIA .....	18
6.2	OUTPUT SENSITIVITY .....	18
6.3	DESIGN LIFE .....	18
6.4	POWER PURCHASE AGREEMENT (PPA) REQUIREMENTS .....	19
7.0	SYSTEM CONFIGURATIONS .....	28
7.1	RESOURCE GATHERING SYSTEM CONFIGURATION .....	28
7.2	POWER PLANT CONFIGURATION .....	29
7.3	POWER DELIVERY CONFIGURATION .....	30
7.4	EQUIPMENT & SCOPE OF SUPPLY .....	31
8.0	RESOURCE GATHERING SYSTEM DESIGN .....	33
9.0	POWER PLANT DESIGN .....	35
9.1	MECHANICAL REQUIREMENTS .....	35
9.2	ELECTRICAL REQUIREMENTS .....	40
9.3	INSTRUMENTATION & CONTROL REQUIREMENTS .....	43
9.4	CIVIL, STRUCTURAL, ARCHITECTURAL REQUIREMENTS .....	45
9.5	REDUNDANCY .....	45
9.6	EQUIPMENT DESIGN CONSIDERATIONS FOR GEOTHERMAL ENVIRONMENTS .....	46
9.7	INSPECTION & TESTING .....	48
9.8	HEALTH, SAFETY AND ENVIRONMENT .....	50
9.9	CONSTRUCTABILITY, MAINTAINABILITY AND OPERABILITY .....	51
9.10	SHUTDOWN PHILOSOPHY .....	51
9.11	HAZARDOUS AREA CLASSIFICATION PHILOSOPHY .....	51
9.12	DIVISION OF RESPONSIBILITY .....	52
9.13	TIE-INS AND INTERFACES .....	52
9.14	O&M, TRAINING, SPECIAL TOOLS, SPARE PARTS .....	52
9.15	RECORDED DRAWINGS .....	53
9.16	COATINGS .....	53
10.0	POWER DELIVERY DESIGN .....	54

MAKUSHIN GEOTHERMAL PROJECT      DESIGN CRITERIA  
 PEI-GE-AA-DSG-001      REV. B (11/18/2020)  
 JULY 315-145-1166920

A **Design Criteria** is being developed by Power Engineers & OCCP teams with input from City for the entire project and for site specific conditions, in part to address risk.





# REGULATORY APPROVALS PROGRESSING



Excerpt from regulatory agency and permit status table

Ref #	Agency Name	Type of Permit/Approval	Reason for Permit / Approval	Responsible Party	Comments	Permitting Requirements	Permit Status
<b>Right-of-way</b>							
1	USACE	Utility access permit for access road and for transmission line	Required before construction. Jurisdictional determination report and permitting under Nation Wide 12 criteria	OCCP, LLC	Required to access plant site, 10 miles, from beach and to install terrestrial transmission line, camps, PDCM'S	Still being determined as of 1/11/21	Application submitted and under review as of 1/11/21
2	Alaska State Historic Preservation Office (AK SHPO)	Level 1 determination for 2020 work	Enter properties and access for historical significance for 2020 work season	OCCP, LLC	scouting for road and camp locations and cataloging archeological features	file reports and have reviewed	closed out
3	Alaska State Historic Preservation Office (AK SHPO)	Section 106 of the National Historic Preservation Act	Cultural resources Desktop assessment of entire Makushin Geothermal Project	OCCP, LLC	Identify affected areas from development and correlate with historical significant areas	MOA with the USACE taking lead, some areas found to be impacted	as of 1/11/21, MOA under development
4	USACE	Subsea cable cross, part of NW 12 permit	Required before construction. Jurisdictional determination report and permitting under Nation Wide 12 criteria	OCCP, LLC	Desk top study spring of 2021, the cable route survey Fall of 2021, the permit can be submitted	unknown	not started
5	NPS	part of Section 106 of NHPA	East substation on Amaknak island need findings of effect letter from Park service	OCCP, LLC	National park service likely has jurisdiction of the WW2 artifacts	Identif in relation to development and show mitigation	not started
<b>Water</b>							
6	ADEC	APDES - SWPPP	Alaska pollutant discharge elimination system Storm Water pollution prevention plan	OCCP, LLC	Can start early, but expect USACE Comments on requirements	develop plan and submit	not applied as of 1/21/21
7	ADEC	Camp drinking water	Clean water standards for inhabitants	OCCP, LLC	Underway	submit design and application	not applied as of 1/21/21
8	ADEC	camp septic system	water water system	OCCP, LLC	underway	submit design and application	not applied as of 1/21/21
9	ADEC / EPA	Reinjection of Geothermal waters	Injection of geothermal fluids is a permitted category	OCCP, LLC	Underway	Submit after information of resource determined	not started
<b>Wildlife, Archaeology &amp; Historic</b>							
10	ADF&G	Alaska Department of Fish and Game, active stream crossing	access across biologically active stream requires permits	OCCP, LLC	Needed to cross Makushin River during 2020 survey season	crossing limited to certain vehicle types and time of year	closed out
11	ADF&G	Alaska Department of Fish and Game, active stream crossing	access across biologically active stream requires permits	OCCP, LLC	Need to cross and enter Makushin River for road, bridge construction	unknown	not applied as of 1/21/21



- We keep track of all regulatory agencies and permits.
- Eight different agencies involved.
- 17 different permits for current regulatory approach.

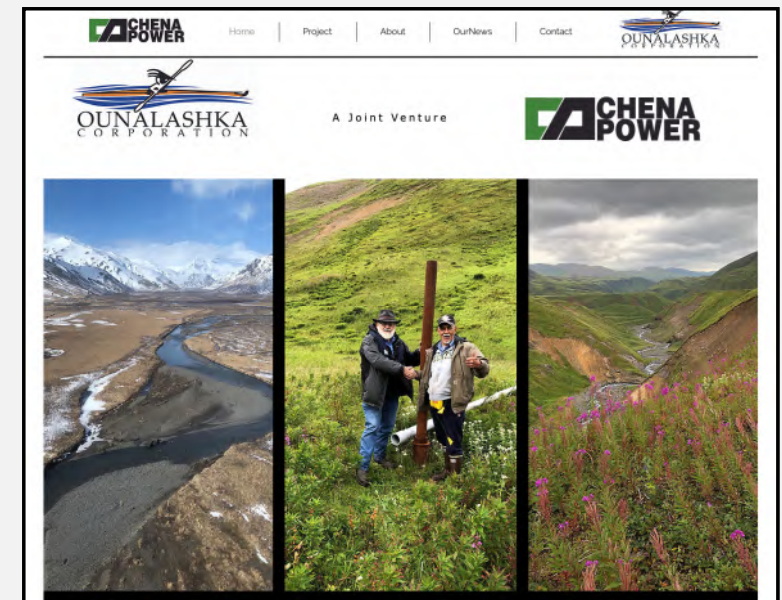




## MGP WEB SITE ESTABLISHED



- Web site established for project communications, information and updates.
- Drives awareness and support for Project.
- Interest in project has grown substantially.
- Views and subscription requests increasing weekly.
- <https://www.alaskageothermal.info/>







# OCCP HIRES POWER ENGINEERS



- OCCP is pleased to announce that effective September 8, 2020 Power Engineers, (POWER), of Hailey, ID (<https://www.powereng.com/our-services/power-generation/geothermal-2/>) has been hired for the Owners Engineer (OE) role on the Makushin Geothermal Project.
- POWER is a premier geothermal design firm with experience across technology types of geothermal power production.
- They are a leader in assessment, planning, development and design and have worked on more than 2,000 MW of new renewable energy generation projects worldwide.



**POWER HEADQUARTERS**

Washington Montana  
Oregon Idaho Wyoming

3940 Glenbrook Drive  
P.O. Box 1066  
Hailey, ID 83333 USA  
P: (208) 788-3456  
F: 208-788-2082

**OUR COMPANY**

Since POWER Engineers began in 1976, we have grown into a 100% employee-owned, flexible and progressive consulting services and engineering firm. As innovators, we encourage new ideas and fresh approaches. As trusted advisors, we strive to be our clients' first choice. These traits, combined with deep technical skill, account for the mutual success of our clients, employees and shareholders.

**OFFICE LOCATIONS** >

**CONTACT US** >





# AIR SOURCE HEAT PUMP (ASHP) CITY STUDY AND EVALUATION



## Goals:

- **Reduce individual and business heating bills, and**
- **Reduce fossil fuel-based heating fuel use.**
  - OCCCP has completed a cost benefit analysis for conversion of Unalaska homes and business to ASHPs. Program will provide equipment and installation at no cost to users up to \$10M.
  - OCCCP hired **OptimERA** in Unalaska to perform data acquisition.
  - OptimERA has hired Warren Taylor, PE to assist in categorization, evaluation, and selection of equipment.



**OptimERA**  
**WiFi**

Contact Information  
**Telephone:** (907) 581-4983  
**Email:** [optimerawifi@gmail.com](mailto:optimerawifi@gmail.com)  
**Address:**  
P.O. Box 921134  
Dutch Harbor, AK 99692





## OCCP/CITY INITIATE UTILITY DISTRIBUTION SYSTEM UPGRADES STUDY



- Unalaska and OCCP initiated a contract with **Electric Power Systems (EPS)** of Anchorage Alaska, (<https://epsinc.com/>), to assist in determining strength and resiliency of City's existing power grid in light of a 30MW plant coming online.
- Study will identify and quantify infrastructure improvements to allow delivery of electrical power from MGP to all current and potential electrical utility customers.
- OCCP has committed up to \$7M to assist with the City distribution upgrades.





## OCCP INITIATES GEOCHEMICAL STUDY WITH GEOLOGICA GEOTHERMAL GROUP



- OCCP initiated a contract with **Geologica Geothermal Group (GGG)** of San Francisco, CA, (<https://geologica.net>) to assist in geochemical analyses.
- Study will determine whether or not geochemical mitigation will be necessary to reduce scaling given the chemical composition of ST-I brines.
- GGG provides high-quality global geothermal resource exploration, development, and assessment services, with over 30 years of geothermal experience in an extensive list of geothermal projects and clients all over the World and the US.



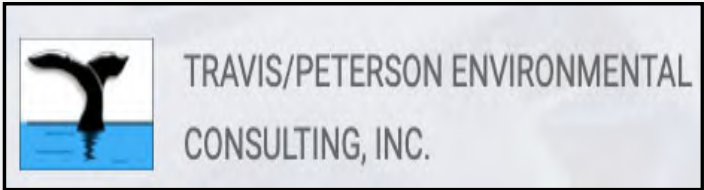




# ROAD AND TRANSMISSION LINE ROUTING AND DESIGN



- OCCP has contracted with:
  - **3-Tier Alaska** (Fairbanks), <https://www.3tieralaska.com/>
  - **Travis Peterson Environmental Inc,** (Anchorage) <http://www.tpeci.com/>, and
  - **Northern Land Use Research Alaska** (Fairbanks), <https://northernlanduse.com/>.
- They will assist in routing delineation, wetland, biological, and archeological resource identification, and design of access/maintenance road from Broad bay to powerhouse site.
- Work began in summer of 2020. **Permit applications were submitted to the USACE in October 2020** for a planned start of construction in April 2021.





IRT TEAM AUGUST VISIT ON LEFT  
ANDY DIETRICK ON RIGHT  
FLYING DRONE







# GEOTECHNICAL ENGINEERING



- OCCP hired **Shannon & Wilson, Inc.** to perform geotechnical services and preliminary foundation engineering. Shannon & Wilson is a nationwide firm, with long history of working in Alaska, including Unalaska.
- Work scope will take place late summer 2021 in Makushin valley.



<https://www.shannonwilson.com/>

2355 Hill Road, Fairbanks, AK. 99709

GEOTECHNICAL ENGINEERING & ENVIRONMENTAL SCIENCE

*Technical Excellence  
& Shared Success*

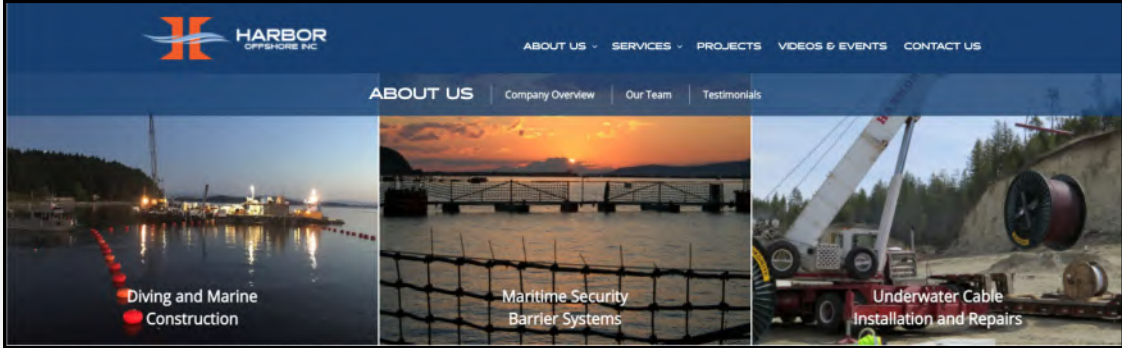




# MARINE SURVEY AND INSTALLATION



- OCCP has hired **TerraSond Limited** for performing the Marine desk top study and survey.
- In separate contract **Harbor Offshore** is hired to perform the sub-sea cable installation.
- Both firms have long history of working in Alaska, including Unalaska.
- Work scope will take place summer 2021.

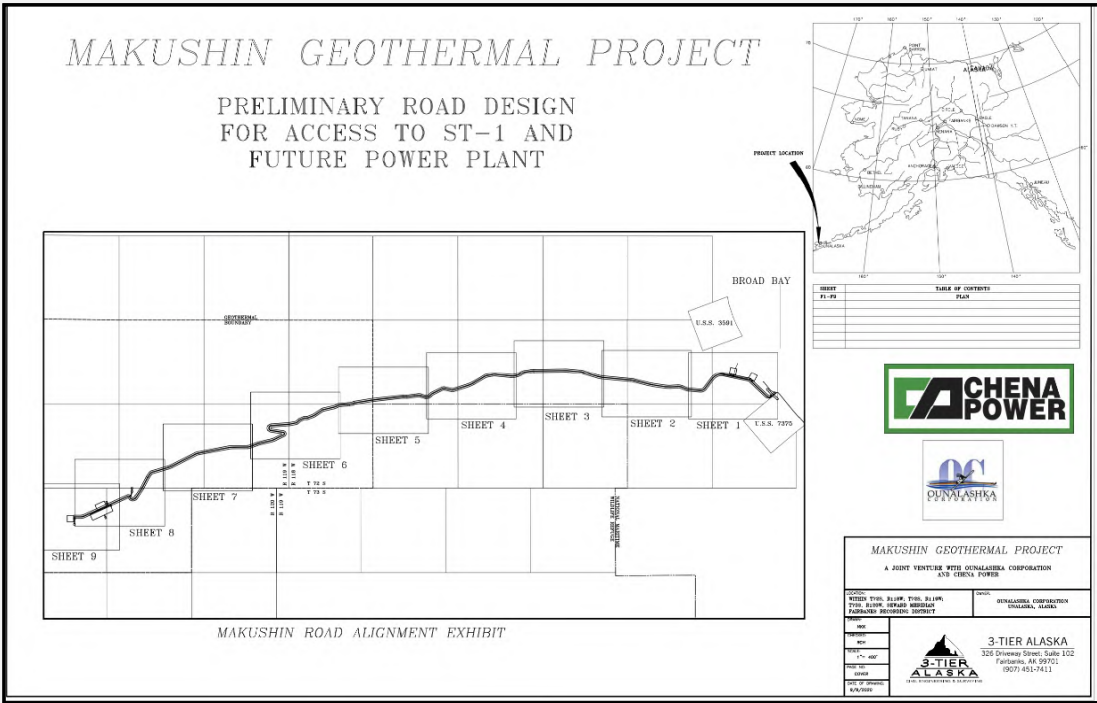




# PRELIMINARY ROAD DESIGN COMPLETED IN NINE MAPS



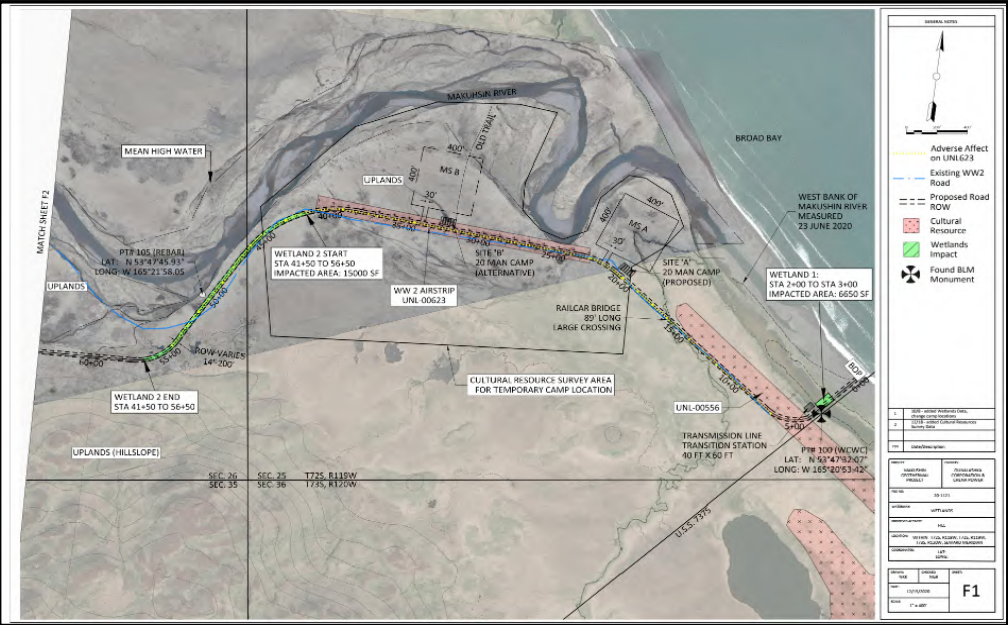
- Total road length is about 10 miles from east switch yard to power plant
- Minimum impact to wetlands by routing on hillside, eight wetland area crossings.
- ROW varies from 30' to 200'.
- Three bridges.
- Numerous culverts.



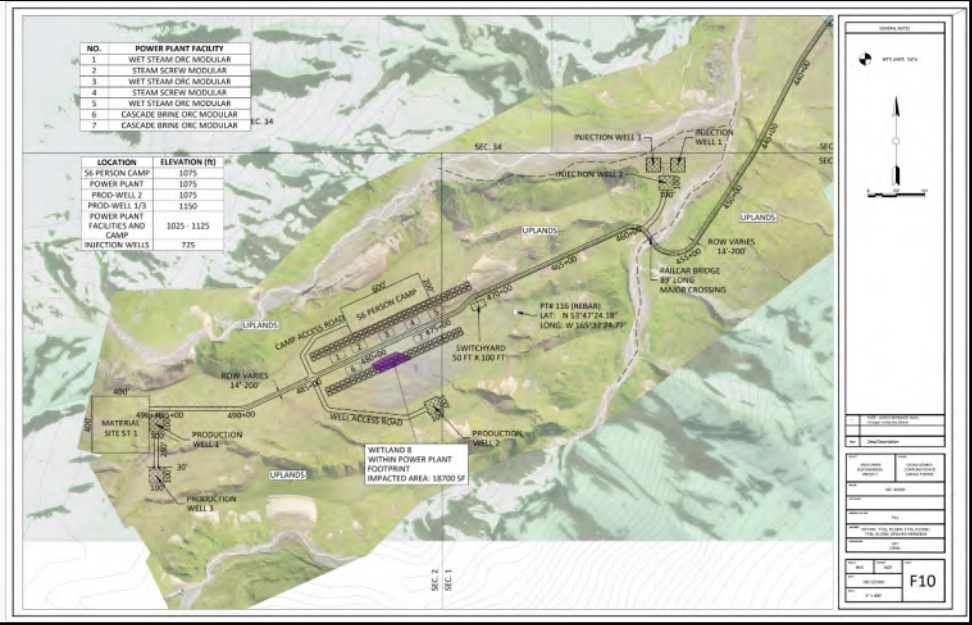




# FIRST AND LAST ALIGNMENT MAPS FOR ROADS AND PADS



Broad Bay Area

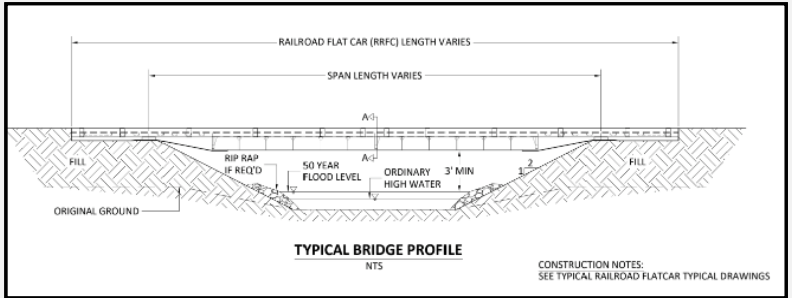
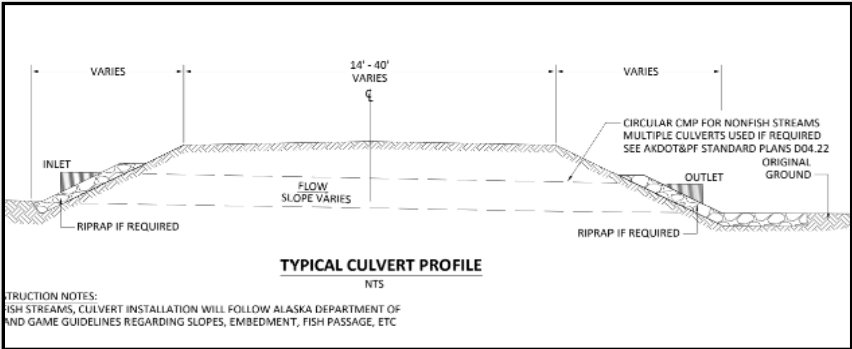
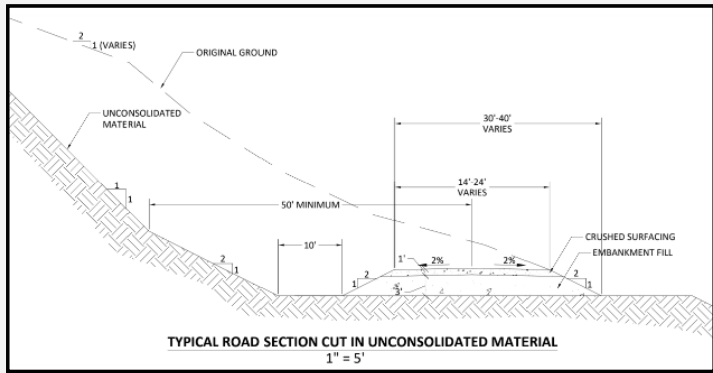
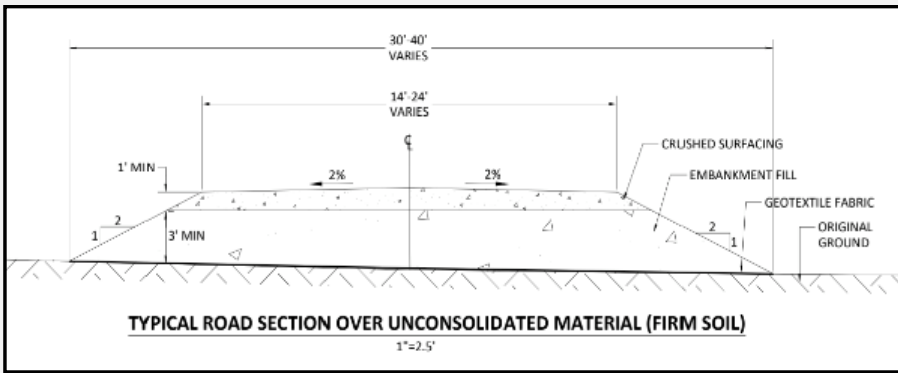


Power plant site and wells at Lower Fox Canyon Plateau





# EIGHT TYPICAL ROAD SECTIONS DETAILED, ALONG WITH CULVERT AND BRIDGE DETAILS





10 EACH, 89-FOOT RR FLAT CARS  
PURCHASED FOR BRIDGES







## THE POWER PLANT AND RESOURCE GATHERING SYSTEM



- Request for proposal (RFP) were sent to prospective **Engineering, Procurement, Construction (EPC)** contractors December 21, 2020.
- Four of the most qualified geothermal EPC's in the geothermal technology space are preparing proposals for delivery to OCCP on February 5, 2021. They are:
  - **ORMAT Technologies**(Israel) \$5.2B market cap, projects in 25 countries
  - **Kaishan USA** – parent Zhejiang Kaishan Compressor Co Ltd. (China) \$12B market cap. Projects in approximately 10 countries
  - **Turboden** (Italy) Owned by Mitsubishi Heavy Industries (Japan). Projects in 45 countries and 396 plants operating.
  - **Atlas Copco** (Swedish). \$60B market cap. Power plants in multiple countries.
- Bids will be evaluated on a best value basis.





# ALTERNATIVE EVALUATION EPC SELECTION CRITERIA



Technology will be selected on the best value basis and it must fit the Unalaska grid demands:

- Load following and turn-down,
- Capital costs,
- Life cycle cost,
- To name a few.



EVALUATION CRITERIA			
Scale of 1 - 10 on how individual bidder is evaluated in each category. One (1) is poor, ten (10) is excellent			
Eval Tab	CATEGORY	WEIGHT	
	<b>Company Criteria</b>	<b>15%</b>	
cc 1	EPC qualifications and experience	10%	Best =10, worst = 1
cc 2	Locations for Major work manufacturing	5%	Best and comprehensive =10, worst = 1
	<b>Technical Criteria</b>	<b>35%</b>	
TC 1	Preliminary engineering docs & conform to RFP	10%	Best =10, worst = 1
TC 2	OCCP schedule synchronization	15%	Best =10, worst = 1
TC 3	Technology reliability verification	10%	Best =10, worst = 1
	<b>Cost Criteria</b>	<b>50%</b>	
CST 1	Overall costs/kW - ranking	15%	Assign \$ value to bid differences - equalize bids, convert to \$/kW
CST 2	Field labor installation costs	15%	less field install cost = 10, most field install cost = 1
CST 3	Life cycle and Annual O&M costs	20%	Best =10, worst = 1

WORKSHEET			
	Weight factor	Ranking	Category Score
EPC qualification and experience	10%	0	0
Locations or Major work manufacturing	5%	0	0
Preliminary engineering docs & Conform to RFP	10%	0	0
OCCP schedule synchronization	15%	0	0
Technology reliability verification	10%	0	0
Overall costs/kW - ranking	15%	0	0
Field labor installation costs	15%	0	0
Life cycle and Annual O&M costs	20%	0	0
<b>Overall Score</b>			<b>0</b>

Use individual work sheets for each bidder and rank per each category with consistent methodology across the bidder field. Enter results into the "Ranking" column in the Worksheet



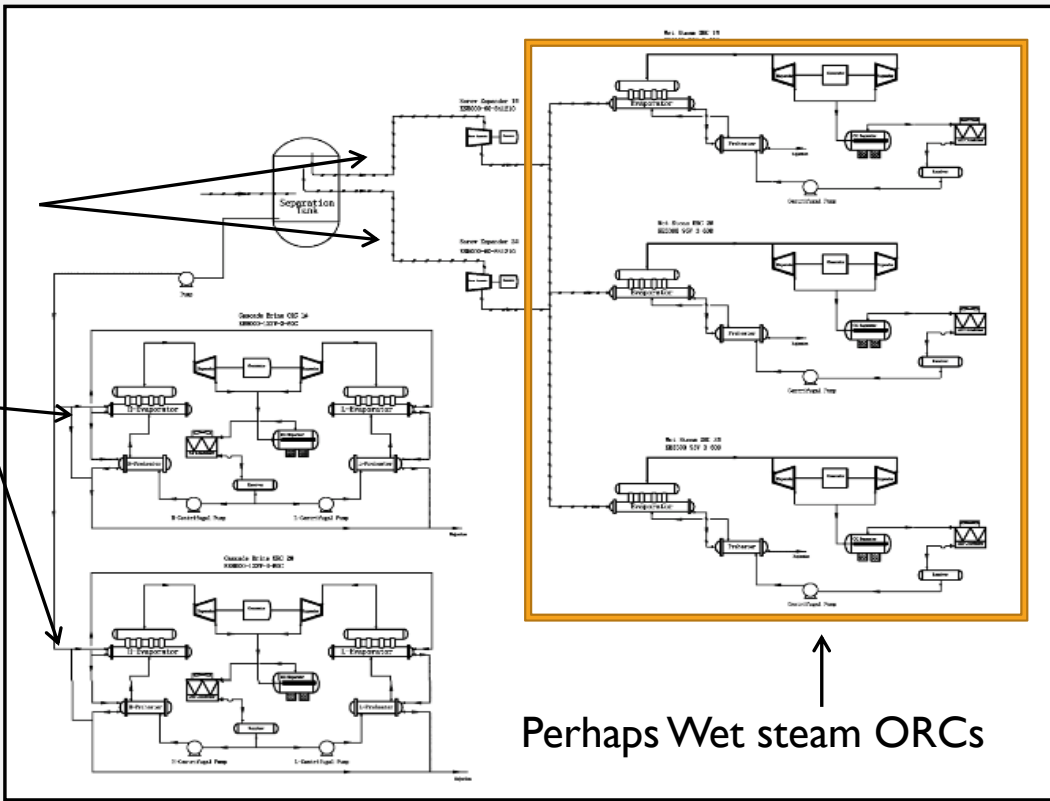


# GENERATION TECHNOLOGY AT THE POWER PLANT



Perhaps Steam Expanders

Perhaps Cascade brine ORC's



- OCCP has arrived at a preferred power generation solution with a cascading hybrid plant. Technology providers will consider and provide their own solution.
- Total gross power 36 MWg.
- Total net power 30 MWe.

Perhaps Wet steam ORCs

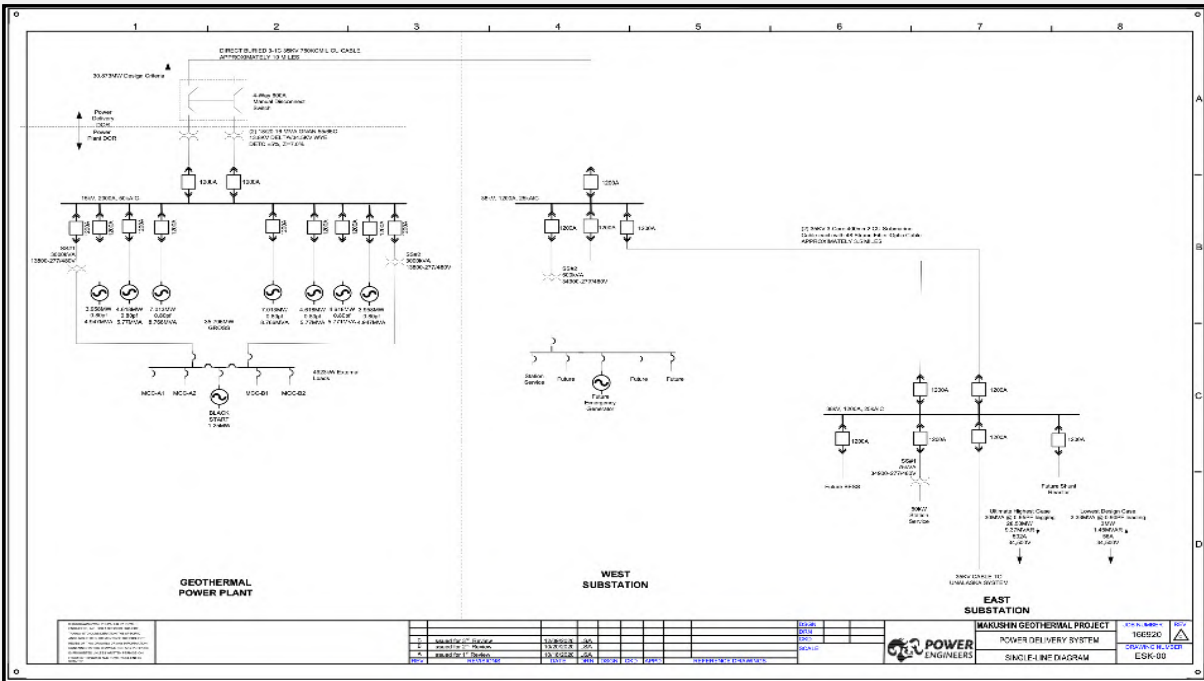




# POWER DELIVERY SCHEME



- Up to seven power modules, delivering varying amounts of power all hooked together
- 36MVA Main Power Transformer
- Direct buried 3-IC 35KV 750 CMIL cable (two 18MVA)
- West substation with expansion switch
- 2 ea. 35KV 3-Core 400MM2 CU Submarine cable, with 48 strand fiber optic cable
- East substation, meter line to Unalaska System and switches for future BESS.





## INTERCONNECTION / INTEGRATION PLAN



- OCCP, Power Engineers, Unalaska City Utilities, and EPS held their first planning meeting on October 21, 2020.
- Discuss initial design concept for power delivery.
- Discussed Unalaska voltage regulations requirements.
- Discussed Power tie-in location.
- Discussed metering specification.
- Discussed scope of work for City Distribution upgrades.
- Drafts of project design criteria have been exchanged and comments received.







# OCCP APPLIES FOR RCA UTILITY STATUS



OCCP applied to the Regulatory Commission of Alaska for generation and transmission utility status certificate

Tracking Number	Date	Type	Description	Related Matters
<input type="checkbox"/> <a href="#">TR2100638</a> <a href="#">View File(s)</a>	1/28/2021	Comments	Public Comment for U-20-083 by Brooks W. Chandler Filed By: Brooks W. Chandler <a href="#">More Details</a>	<a href="#">U-20-083</a>
<input type="checkbox"/> <a href="#">TR2100576</a>	1/26/2021	Comments	Public Comment for U-20-083 by Andy Dietrick Filed By: Andy Dietrick <a href="#">More Details</a>	<a href="#">U-20-083</a>
<input type="checkbox"/> <a href="#">TR2100215</a> <a href="#">View File(s)</a>	1/11/2021	Petition	Petition by OCCP for an Exemption from Regulation Filed By: Natalie Cale <a href="#">More Details</a>	<a href="#">U-20-083</a>
<input type="checkbox"/> <a href="#">21-0010</a> <a href="#">View File(s)</a>	1/11/2021	Initiating-Chair	U-20-083(1): ORDER ADDRESSING TIMELINE FOR DECISION, DESIGNATING COMMISSION PANEL, AND APPOINTING ADMINISTRATIVE LAW JUDGE <a href="#">More Details</a>	<a href="#">U-20-083</a>
<input type="checkbox"/> <a href="#">TR2100146</a> <a href="#">View File(s)</a>	1/7/2021	Public Notice-Outgoing	Public Notice-Outgoing for Ounalashka Chena Power, LLC <a href="#">More Details</a>	<a href="#">U-20-083</a>
<input type="checkbox"/> <a href="#">TR2100021</a> <a href="#">View File(s)</a>	1/4/2021	Petition	Petition by OCCP to Classify Financial Information Supporting its Application as Confidential and Cover Letter for Ounalashka Chena Power, LLC (Confidential routed to commission vault 011321) Filed By: Natalie Cale <a href="#">More Details</a>	<a href="#">U-20-083</a>
<input type="checkbox"/> <a href="#">TR2100020</a> <a href="#">View File(s)</a>	1/4/2021	Petition	Petition for Expedited Consideration of Application for new Certificate of Public Convenience and Necessity and Affidavit of Natalie A. Cale in Support of Petition for Expedited Consideration of Application for new CPCN for Ounalashka Chena Power, LLC Filed By: Natalie Cale <a href="#">More Details</a>	<a href="#">U-20-083</a>
<input type="checkbox"/> <a href="#">TR2007262</a> <a href="#">View File(s)</a>	12/31/2020	Application	Application for New Certificate of Public Convenience and Necessity (CPCN) for Ounalashka Chena Power, LLC Filed By: Natalie Cale <a href="#">More Details</a>	<a href="#">U-20-083</a>







## PROJECT FINANCING UPDATE



- OCCP is considering selling equity in the project in the form of:
  - Equity for cash,
  - Debt equity financing, and
  - Tax equity.
- Several irons in the fire that we are vetting:
  - DOE Title XVII loan,
  - AEA/AIDEA bonds / Financing,
  - Private investment firms,
  - USDA RUS system loan program, and
  - Grants from CARES act and other grant potential.
- The goal is to have long-term financing method selected and secured by the end of the first quarter 2022.





## CONTINUING STEPS



- Monitor environmental permit application status.
- Evaluate the EPC technology providers tender response for best value.
- Enter EPC contract negotiations with short list of technology EPC providers.
- Make ready construction equipment and multiple shipments of same to Unalaska to support access road installation in the 2021 season.
- Perform marine survey and geotechnical work in 2021.
- Work the long-term financing from all angles.





OUR PASSION: BRING CLEAN, AFFORDABLE, AND STABLE ENERGY TO UNALASKA



Connie Mae and Fin whale

Christmas boat parade



We are very happy to be part of your community and look forward to working with you in the future!





THE END



THANK YOU FOR YOUR TIME!

ANY QUESTIONS?



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## MEMORANDUM TO COUNCIL

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To: Mayor and City Council Members  
From: Dan Winters, Director of Public Utilities  
Through: Erin Reinders, City Manager  
Date: March 9, 2021  
Re: Electric and Water Proprietary Funds Rate Increases

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**SUMMARY:** At this evening's Council Meeting, Staff and Aldrich LLP presents three options to Council for the Electric and Water Proprietary Fund's rate increases. Staff is seeking direction from Council on which option or options to use to implement the rate increases. The Team is also seeking guidance from the Council on implementing the rate increases evenly across all customer classes or implementing the rate increases where the cost causer is the cost payer, following the Cost of Service Study. Staff will return to Council on April 27, 2021, with a Resolution to implement the rate increases. The rate increases will take effect on July 1, 2021.

**PREVIOUS COUNCIL ACTION:** At the February 28, 2017 Council Meeting, Council adopted Resolution 2017-14. Through Resolution 2017-14, Council approved a consecutive four-year rate increase in the Wastewater Proprietary Fund and a consecutive three-year rate increase in the Solid Waste Proprietary Fund.

At the June 9, 2020 Council Meeting, Council adopted Fiscal Year 2021 Operating and Capital Budget through Resolution 2020-10.

At the February 23, 2021 Council Meeting, James Keen, and Amber Miller of Aldrich LLP presented the FY2021 Rate Study to Council.

**BACKGROUND:** Department of Public Utilities Staff performs a rate study on each of the Utility Proprietary Funds every three years. In 2012, Staff contracted Mike Hubbard of the Financial Engineering Company to perform a High-Level Rate Study, which depicted a rate increase of 29% for the Water Fund, 68% for the Wastewater Fund, and 75% for the Solid Waste Fund was needed by 2016. Rates increased consecutively for three years starting in FY2013. The sum of these rate increases was 21.3% for Water, 42.3% for Wastewater, and 32.1% for Solid Waste. These rate increases brought the difference between expenses and revenues closer to the budget before the new Water, and Wastewater Plants became operational. However, the rate increases did little to make up for the budget shortfall after the new plants were online.

Staff performed the last rate study in 2016. A rate increase of 15% for the Wastewater Proprietary Fund over four years, and a rate increase of 13.5% for the Solid Waste Proprietary Fund, over three years, was initiated on July 1, 2017. During Staff's discussion with Council, there was a clear consensus that another monetary source was necessary



to reduce impacts on needed rate increases. Council decided that using a portion of the 1% Sales Tax Special Revenue Fund was the most logical approach. Council approved using an amount not to exceed \$1,300,000 to supplement the Water, Wastewater, and Solid Waste Proprietary Funds.

The Electrical Proprietary Fund has not experienced a rate increase in 18 years.

**DISCUSSION:** During February 23, 2021, Council Meeting, James Keen, and Amber Miller of Aldrich LLP presented the FY2021 Rate Study and Revenue Requirements to Council. The presentation was clear that the four Utility Proprietary Funds require rate increases to meet their revenue needs. Aldrich LLP and Staff have developed three options that we believe are the most logical for the rate. At this evening's Council Meeting, Staff is seeking direction from Council that is twofold. One, to provide direction on which option, or options, to implement the rate increases for the Electric and Water Proprietary Funds. Also, do we implement these chosen options evenly across all customer classes or implement the rate increases where the cost causer is the cost payer, following the Cost of Service Study (COSS)? These options are:

**Option 1: Increase rates to meet a cash-based revenue requirement with a target DSC ratio for each utility.** This option consists of increasing the rates to obtain the needed revenues required to complete the Debt Services Coverage Ratio (DSC) of 1.25 for each Proprietary Fund. The DSC ratio is the amount of net cash recovered from operations before debt service divided by debt service. As depicted in Ordinance 2010-09, approved by Council on August 10, 2010, the Electric Proprietary Fund must maintain a DSC of 1.25 or keep revenue of 125% (1.25 DSC ratio) of the average annual debt services. Currently, the Electric Proprietary fund's DSC ratio is 1.06, and the DSC ratio for the Water Proprietary Fund is 1.58.

If Council selects Option 1, the Electric Proprietary Fund rates will need to be increased by 6.1%. Staff recommends raising the Water Proprietary Fund rates to accomplish a 2.0 DSC Ratio. If approved, the Water Proprietary Fund rates will need to be increased by 3.1%. If Council desires this option, Staff recommends a onetime increase of 6.1% to the Electrical rates and a onetime Water rate increase of 3.6%, to take effect on July 1, 2021.

The Council could combine Option 1 and Option 3 to bring the Electrical and Water Proprietary Funds revenues closer to the revenue requirements. Tables 1 through 5, in Attachment 1, illustrate Option 1 Impact on Electrical and Water Customer Classifications.

**Option 2: Increase rates to meet the full income-based revenue requirement.** This option will increase the Electric and Water Proprietary Funds rates to complete the full revenue requirements. Also included is net revenue for capital expenditures.

The Electric Proprietary Fund requires a 34.7% rate increase to meet the full revenue requirements. The Water Proprietary Fund will require a 34.9% rate increase. Typically, these types of larger rate increases are implemented consecutively over three or four years. Tables 6 thorough 10, in Attachment 1, illustrate Option 2 impacts.

**Option 3: Create a Utility Infrastructure Fund through a 1% Sales Tax increases.** This option consists of increasing the sales tax by 1%. Doing so would create a Utility Infrastructure Fund that will supplement the Utility Proprietary Funds. An increase in the sales tax will require a vote of the residents of Unalaska.

Table 5 below illustrates the FY21 projected revenue generated from the 1% Sales Tax Special Revenue of \$2,666,667. It is the opinion of Staff that a 1% sale tax increase will generate the same revenue.

TABLE 1

	FY2017 Actual	FY2018 Actual	FY2019 Actual	FY2020 Budget	Adopted Budget
<b>1% Sales Tax Special Revenue</b>					
REVENUES					
11010040 - 41310 1% Capital Sales tax	3,705,737	3,522,767	3,629,169	3,500,000	2,666,667

**ALTERNATIVES:** Staff and Aldrich LLP have researched all options concerning the needed rate increases and believe the options brought forward to Council are the most logical approach. However, the staff is always willing to research other options that Council may consider are viable.

**FINANCIAL IMPLICATIONS:** The economic implications vary between the different options to increase the utility rates. Currently, the Electrical Rates achieves revenues of \$7,248,373. The revenue requirements for the Electrical Proprietary Fund are \$9,762,823. This leaves a deficiency in revenue (\$2,514,450) which depicts a deficiency in the electrical rates of 34.7%, as Table 2 below illustrates.

TABLE 2

Budgeted Customer Revenues:	\$	7,248,373
Revenue Requirement:	\$	9,762,823
Surplus/(Deficiency):	\$	(2,514,450)
Overall % Increase/(Decrease):		34.7%

Currently, the water rates realize revenues of \$2,616,686. The revenue requirements for the Water Proprietary Fund are \$3,530,573. This leaves a revenue deficit of (\$913,877) and a water rate deficiency of 34.9%, as Table 3 below depicts.

TABLE 3

Budgeted Customer Revenues	\$ 2,616,686
Full Revenue Requirement	\$ 3,530,573
Deficit	\$ (913,887)
Revenue Increase Required	34.90%

If Council selects Option 1, this will increase electrical rates by 6.1% and water rates by 3.6%. Option 1 will meet the DSC ratio of 1.25 for the Electrical Proprietary Fund and 2.0 for the Water Proprietary Fund. This rate increase option will achieve a \$444,436 increase in electrical revenue and \$94,532 in water revenue. The first table in Table 4 below illustrates this.

TABLE 4

	Electric	Water	Wastewater	Solid Waste	Total
Target DSC:	1.25	2.00	TBD	TBD	N/A
Cash-Based Revenue Requirement:	\$ 7,692,809	\$ 2,711,218	TBD	TBD	TBD
Current Revenues:	\$ 7,248,373	\$ 2,616,686	\$ 2,468,212	\$ 2,562,531	\$ 14,895,802
Revenue Increase:	\$ 444,436	\$ 94,532	TBD	TBD	TBD
Overall % Increase:	6.1%	3.6%	TBD	TBD	TBD
Deficit of Current Revenues to Income-Based Revenue Requirement:	\$ (2,514,450)	\$ (913,887)	\$ (1,851,293)	\$ (1,540,289)	\$ (6,819,919)
Increased Revenues from Option 1:	\$ 444,436	\$ 94,532	TBD	TBD	TBD
Income from 1% Infrastructure Tax:	\$ 666,667	\$ 666,667	\$ 666,667	\$ 666,667	\$ 2,666,667 *
Outstanding Deficit:	\$ (1,403,347)	\$ (152,688)	TBD	TBD	TBD

\* Assumes even distribution of infrastructure tax for the purpose of illustration

If Council decides to combine Option 1 and Option 3, the second table in Table 4 shows the projected revenue collected from Option 1 and a 1% sales tax. This will leave a deficit of (\$1,403,347) in the Electrical Proprietary Fund and a deficit of (\$152,688) in the Water Proprietary Fund. However, it will move both proprietary funds closer to realizing their full revenue requirements.

**LEGAL:** None needed at this time.

**STAFF RECOMMENDATION:** Staff recommends Council adopt Option 1, a one-time 6.1% increase in electrical rates to all customer classes, and a one-time 3.6% increase in water rates to all customer classifications. Staff also recommends Council adopt Option 3, increasing the sales tax by 1%, which will create a Utility Infrastructure Fund, supplementing the Utility Proprietary Funds.

**PROPOSED MOTION:** I move to adopt Option 1 of the 2021 Rate Study. Implementing a one-time 6.1% rate increase to the Electric Proprietary Fund rates and a one-time 3.6% rate increase to the Water Proprietary Fund, distributed evenly to all customer classifications. I also move to adopt Option 3 of the 2021 Rate Study.

**CITY MANAGER COMMENTS:** I again thank Aldrich LLP and City Staff for their hard work on these rate and cost of service, and with evaluating options to meet the revenue requirements. The last meeting, Council heard an overview of the rate study and revenue requirements. Tonight's meeting focuses on the cost of service and approaches for Electrical and Water. On April 13, Council is scheduled to have a focused work session on Waste Water and Solid Waste. Council will be asked to take formal action impacting the utility rates in the meetings following that discussion. The consultant team and staff remain committed work with Council to identify a path forward.

**ATTACHMENTS:**

- Attachment 1: Impact to Electrical and Water Customer Classifications Tables.
- City of Unalaska Electric and Water Utilities Cost of Service Study Results & Recommendations Council Presentation

## ATTACHMENT 1

### Impact to Electrical and Water Customer Classifications Tables.

**Table 1**  
**Option 1: Residential Impact Comparison**

<u>Residential Bill</u> <u>(500 kWh Energy)</u>	<u>Current Rates</u>	<u>Option 1a:</u> <u>Cost-Based</u>	<u>Options 1b:</u> <u>Across-the-Board</u>
Customer	\$ 8.00	\$ 69.25	\$ 8.49
Energy	116.98	80.91	124.15
COPA	55.00	55.00	55.00
PCE Credit	(40.55)	(40.55)	(40.55)
	\$ 139.43	\$ 164.61	\$ 147.09
% Change:	0.0%	18.1%	5.5%

**Table 2**  
**Option 1: Small Commercial Impact Comparison**

<u>Small General Service</u> <u>(1,534 kWh Energy)</u>	<u>Current Rates</u>	<u>Option 1a:</u> <u>Cost-Based Rates</u>	<u>Options 1b</u> <u>Across-the-Board</u> <u>Increase</u>
Customer	\$ 10.00	\$ 71.01	\$ 10.61
Energy	315.16	238.29	334.48
COPA	168.74	168.74	168.74
	\$ 493.90	\$ 478.04	\$ 513.84
% Change:	0.0%	-3.2%	4.0%

**Table 3**  
**Option 1: Large Commercial Impact Comparison**



Large General Service (10,993 kWh Energy & 29 kW Demand)	Options 1b		
	Current Rates	Option 1a: Cost-Based Rates	Across-the-Board Increase
Customer	\$ 50.00	\$ 79.75	\$ 53.07
Demand	194.30	1,547.89	206.21
Energy	1,912.23	245.92	2,029.48
COPA	1,209.23	1,209.23	1,209.23
	<u>\$ 3,365.76</u>	<u>\$ 3,082.80</u>	<u>\$ 3,497.99</u>
% Change:	0.0%	-8.4%	3.9%

**Table 4  
Option 1: Industrial Impact Comparison**

Industrial (170,993 kWh Energy & 446 kW Demand)	Options 1b		
	Current Rates	Option 1a: Cost-Based Rates	Across-the-Board Increase
Customer	\$ 100.00	\$ 92.10	\$ 106.13
Demand	3,568.00	24,550.14	3,786.77
Energy	24,597.34	3,825.27	26,105.54
COPA	18,809.23	18,809.23	18,809.23
	<u>\$ 47,074.57</u>	<u>\$ 47,276.73</u>	<u>\$ 48,807.67</u>
% Change:	0.0%	0.4%	3.7%

**Table 5  
Option 1: Streetlight Impact Comparison**

Streetlights (1,024 kWh Energy)	Options 1b		
	Current Rates	Option 1a: Cost-Based Rates	Across-the-Board Increase
Customer	\$ 10.00	\$ 68.64	\$ 10.61
Energy	210.38	218.15	223.28
COPA	112.64	112.64	112.64
	<u>\$ 333.02</u>	<u>\$ 399.42</u>	<u>\$ 346.53</u>
% Change:	0.0%	19.9%	4.1%

**Table 6  
Option 2: Residential Impact Comparison**

<b>Residential Bill</b> <b>(500 kWh Energy)</b>	<b>Current Rates</b>	<b>Option 2:</b> <b>Cost-Based</b>
Customer	\$ 8.00	\$ 87.89
Energy	116.98	102.68
COPA	55.00	55.00
PCE Credit	(40.55)	(40.55)
	<u>\$ 139.43</u>	<u>\$ 205.02</u>
% Change:	0.0%	47.0%

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**Table 7**  
**Option 2: Small Commercial Impact Comparison**

<b>Small General Service</b> <b>(1,534 kWh Energy)</b>	<b>Current Rates</b>	<b>Option 2:</b> <b>Cost-Based Rates</b>
Customer	\$ 10.00	\$ 90.12
Energy	315.16	302.41
COPA	168.74	168.74
	<u>\$ 493.90</u>	<u>\$ 561.27</u>
% Change:	0.0%	13.6%

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**Table 8**  
**Option 2: Large Commercial Impact Comparison**

<b>Large General Service</b> <b>(10,993 kWh Energy</b> <b>&amp; 29 kW Demand)</b>	<b>Current Rates</b>	<b>Option 2:</b> <b>Cost-Based Rates</b>
Customer	\$ 50.00	\$ 101.21
Demand	194.30	1,964.41
Energy	1,912.23	312.10
COPA	1,209.23	1,209.23
	<u>\$ 3,365.76</u>	<u>\$ 3,586.95</u>
% Change:	0.0%	6.6%

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**Table 9**  
**Option 2: Industrial Impact Comparison**

<b>Industrial</b> (170,993 kWh Energy & 446 kW Demand)	<b>Current Rates</b>	<b>Option 2: Cost-Based Rates</b>
Customer	\$ 100.00	\$ 116.88
Demand	3,568.00	31,156.19
Energy	24,597.34	4,854.58
COPA	18,809.23	18,809.23
	<u>\$ 47,074.57</u>	<u>\$ 54,936.88</u>
% Change:	0.0%	16.7%

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**Table 10**  
**Option 2: Streetlight Impact Comparison**

<b>Streetlights</b> (1,024 kWh Energy)	<b>Current Rates</b>	<b>Option 2: Cost-Based Rates</b>
Customer	\$ 10.00	\$ 87.11
Energy	210.38	276.85
COPA	112.64	112.64
	<u>\$ 333.02</u>	<u>\$ 476.59</u>
% Change:	0.0%	43.1%

# City of Unalaska

## Electric and Water Utilities Cost of Service Study Results & Recommendations

March 9, 2021

James Keen, CDP & Amber Miller, CPA - Aldrich Advisors + CPAs

## Our Scope of Work

- Rate Review for Electric, Water & Wastewater and Solid Waste Utilities
- Phase 1: Determine the appropriate Revenue Requirement for each utility.
  - FY2021 Budget was used as the basis for the study
  - ✓ • Results were presented on February 23<sup>rd</sup>
- Phase 2: Develop cost-based rates for each utility and perform rate design
  - ➔ • Electric & Water: Presented today – March 9<sup>th</sup>
  - Wastewater & Solid Waste: Tentatively scheduled for April 13<sup>th</sup>



## Recap of the February 23<sup>rd</sup> Presentation

- General reviews performed periodically, most recently in 2012 and 2016.
- There are two different ways to develop a revenue requirement:
  1. Income Basis (a bottom-up approach)
    - Used in traditional ratemaking
    - Includes all operating expenses and interest on debt and depreciation (a non-cash expense)
  2. Cash Basis (a top-down approach)
    - Includes all operating expenses, interest on debt, principal payments, and an additional cash requirement defined by a Debt Service Coverage (DSC) ratio.

## Overview of Results (Income Basis Revenue Requirement)

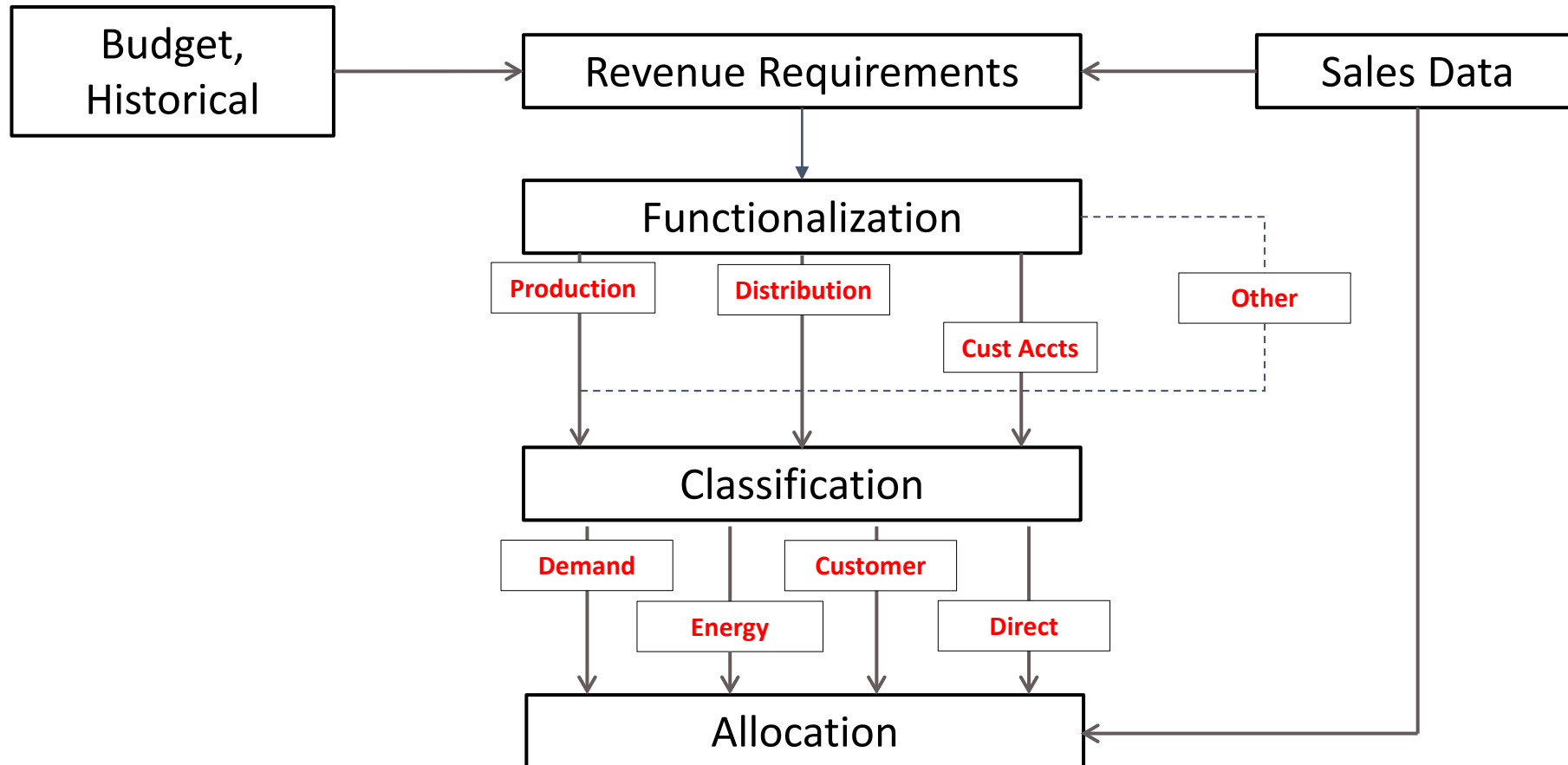
	<b>Electric</b>	<b>Water</b>	<b>Wastewater</b>	<b>Solid Waste</b>
Budgeted Customer Revenues:	\$ 7,248,373	\$ 2,616,686	\$ 2,468,212	\$ 2,562,531
Full Revenue Requirement:	<u>9,762,823</u>	<u>3,530,573</u>	<u>4,319,505</u>	<u>4,102,820</u>
Surplus/(Deficit):	\$ (2,514,450)	\$ (913,887)	\$ (1,851,293)	\$ (1,540,289)
Revenue Increase/(Decrease) Required:	34.7%	34.9%	75.0%	60.1%

## What is a Cost of Service Study (COSS)?

- How to slice the “Revenue Requirement Pie”
- An analytical method of allocating costs between groups of customers and determining how those costs will be collected in rate elements.



# Cost of Service Study Concepts



## Results and Recommendations may be presented two ways:

1. Applying the revenue requirement to the Cost of Service Study results.
  - An overall revenue increase of 34.7% will be split differently between customer groups, based upon cost-causation.
  
2. Applying the revenue requirement equally to all customer groups.
  - A rate increase will be shared equally by all customer classes (across-the-board) and be reflected equally in each billing component (e.g. customer charge, demand charge, volumetric charge)



## Overview of Recommended Options

1. Increase rates to meet a cash-based revenue requirement with a target DSC ratio for each utility.
  2. Increase rates to meet the full income-based revenue requirement.
  3. Create a Utility Infrastructure Fund through a 1% Sales Tax increase.
- NOTE:** Options 1 and 3 could be combined.

## Overview:

- **Income-Based:** includes \$300,000 in margins.

- **Cash-Based:** 1.25 DSC Target

# Electric

## Income-Based Revenue Requirement

Budgeted Customer Revenues:	\$	7,248,373
Revenue Requirement:	\$	9,762,823
Surplus/(Deficiency):	\$	(2,514,450)
Overall % Increase/(Decrease):		34.7%

## Cash-Based Revenue Requirement

Budgeted Customer Revenues:	\$	7,248,373
Revenue Requirement:	\$	7,692,809
Surplus/(Deficiency):	\$	(444,436)
Overall % Increase/(Decrease):		6.1%

# Electric Option 1: Cash-Based Revenue Requirement with 1.25 DSC

## Option 1: Cash-Based Revenue Requirement with 1.25 DSC

- Why 1.25 DSC?
  - Municipal ordinance requires meeting a minimum 1.25 DSC
  - Industrial customer sensitivity to rate increases
- Advantages:
  - The minimum DSC requirement would be met through rates.
  - Rate increase is mitigated.
- Disadvantages:
  - It remains almost \$2.1 million below the income-based revenue requirement

# COU Electric Cost of Service Study

## Electric Utility Option 1: Cash-Based with 1.25 DSC

### Option 1a: Cost of Service Study Based Rates Revenue Requirement Results

	Total	Residential	Small General Service	Large General Service	Industrial	Street Lights
Current:	\$ 7,248,373	\$ 955,606	\$ 696,808	\$ 1,015,800	\$ 4,540,507	\$ 39,652
Proposed:	\$ 7,692,809	\$ 1,245,223	\$ 662,832	\$ 883,062	\$ 4,850,088	\$ 51,604
Surplus/Deficit:	\$ (444,436)	\$ (289,616)	\$ 33,976	\$ 132,738	\$ (309,581)	\$ (11,952)
% Increase/(Decrease):	6.1%	30.3%	-4.9%	-13.1%	6.8%	30.1%



# COU Electric Cost of Service Study

## Electric Utility Option 1: Cash-Based with 1.25 DSC

### Option 1a: Cost of Service Study Based Rates

**Current  
Rates:**

Charge	Unit	Residential	Small General Service	Large General Service	Industrial	Street Lights
Customer	\$/month	\$ 8.00	\$ 10.00	\$ 50.00	\$ 100.00	\$ 10.00
Energy	\$/kWh	0.2340	0.2055	0.1740	0.1439	0.2055
Demand	\$/kW	-	-	6.70	8.00	-

**Option 1a  
Rates:**

Charge	Unit	Residential	Small General Service	Large General Service	Industrial	Street Lights
Customer	\$/month	\$ 69.25	\$ 71.01	\$ 79.75	\$ 92.10	\$ 68.64
Energy	\$/kWh	0.1618	0.1553	0.0224	0.0224	0.2130
Demand	\$/kW	-	-	53.38	55.05	-

# COU Electric Cost of Service Study

## Electric Utility Option 1: Cash-Based with 1.25 DSC

### Option 1b: Across-the-Board Rate Increase Revenue Requirement Results

	Total	Residential	Small General Service	Large General Service	Industrial	Street Lights
Current:	\$ 7,248,373	\$ 955,606	\$ 696,808	\$ 1,015,800	\$ 4,540,507	\$ 39,652
Proposed:	\$ 7,692,809	\$ 1,014,199	\$ 739,533	\$ 1,078,084	\$ 4,818,909	\$ 42,084
Surplus/Deficit:	\$ (444,436)	\$ (58,593)	\$ (42,725)	\$ (62,284)	\$ (278,402)	\$ (2,431)
% Increase/(Decrease):	6.1%	6.1%	6.1%	6.1%	6.1%	6.1%

# COU Electric Cost of Service Study

## Electric Utility Option 1: Cash-Based with 1.25 DSC

### Option 1b: Across-the-Board Rate Increase

**Current  
Rates:**

Charge	Unit	Residential	Small General Service	Large General Service	Industrial	Street Lights
Customer	\$/month	\$ 8.00	\$ 10.00	\$ 50.00	\$ 100.00	\$ 10.00
Energy	\$/kWh	0.2340	0.2055	0.1740	0.1439	0.2055
Demand	\$/kW	-	-	6.70	8.00	-

**Option 1b  
Rates:**

Charge	Unit	Residential	Small General Service	Large General Service	Industrial	Street Lights
Customer	\$/month	\$ 8.49	\$ 10.61	\$ 53.07	\$ 106.13	\$ 10.61
Energy	\$/kWh	0.2483	0.2180	0.1846	0.1527	0.2180
Demand	\$/kW	-	-	7.11	8.49	-

# COU Electric Cost of Service Study

## Electric Utility Option 1: Cash-Based with 1.25 DSC

### Option 1: Residential Impact Comparison

<b>Residential Bill (500 kWh Energy)</b>	<b>Current Rates</b>	<b>Option 1a: Cost-Based</b>	<b>Options 1b: Across-the-Board</b>
Customer	\$ 8.00	\$ 69.25	\$ 8.49
Energy	116.98	80.91	124.15
COPA	55.00	55.00	55.00
PCE Credit	(40.55)	(40.55)	(40.55)
	<b>\$ 139.43</b>	<b>\$ 164.61</b>	<b>\$ 147.09</b>
<b>% Change:</b>	<b>0.0%</b>	<b>18.1%</b>	<b>5.5%</b>

# COU Electric Cost of Service Study

## Electric Utility Option 1: Cash-Based with 1.25 DSC

### Option 1: Small Commercial Impact Comparison

Small General Service (1,534 kWh Energy)	Option 1a:		Options 1b
	Current Rates	Cost-Based Rates	Across-the-Board Increase
Customer	\$ 10.00	\$ 71.01	\$ 10.61
Energy	315.16	238.29	334.48
COPA	168.74	168.74	168.74
	<b>\$ 493.90</b>	<b>\$ 478.04</b>	<b>\$ 513.84</b>
% Change:	0.0%	-3.2%	4.0%



# COU Electric Cost of Service Study

## Electric Utility Option 1: Cash-Based with 1.25 DSC

### Option 1: Large Commercial Impact Comparison

Large General Service (10,993 kWh Energy & 29 kW Demand)	Option 1a:		Options 1b
	Current Rates	Cost-Based Rates	Across-the-Board Increase
Customer	\$ 50.00	\$ 79.75	\$ 53.07
Demand	194.30	1,547.89	206.21
Energy	1,912.23	245.92	2,029.48
COPA	1,209.23	1,209.23	1,209.23
	<b>\$ 3,365.76</b>	<b>\$ 3,082.80</b>	<b>\$ 3,497.99</b>
% Change:	0.0%	-8.4%	3.9%

# COU Electric Cost of Service Study

## Electric Utility Option 1: Cash-Based with 1.25 DSC

### Option 1: Industrial Impact Comparison

Industrial (170,993 kWh Energy & 446 kW Demand)	Option 1a:		Options 1b
	Current Rates	Cost-Based Rates	Across-the-Board Increase
Customer	\$ 100.00	\$ 92.10	\$ 106.13
Demand	3,568.00	24,550.14	3,786.77
Energy	24,597.34	3,825.27	26,105.54
COPA	18,809.23	18,809.23	18,809.23
	<b>\$ 47,074.57</b>	<b>\$ 47,276.73</b>	<b>\$ 48,807.67</b>
% Change:	0.0%	0.4%	3.7%

# COU Electric Cost of Service Study

## Electric Utility Option 1: Cash-Based with 1.25 DSC

### Option 1: Streetlight Impact Comparison

Streetlights (1,024 kWh Energy)	Options 1b		
	Current Rates	Option 1a: Cost-Based Rates	Across-the-Board Increase
Customer	\$ 10.00	\$ 68.64	\$ 10.61
Energy	210.38	218.15	223.28
COPA	112.64	112.64	112.64
	<hr/>	<hr/>	<hr/>
	\$ 333.02	\$ 399.42	\$ 346.53
% Change:	0.0%	19.9%	4.1%

# Electric Option 2: Income-Based Revenue Requirement

## Option 2: Income-Based Revenue Requirement

- Advantages:
  - It is the traditional, nationally-accepted approach to ratemaking
  - It will more than amply meet all DSC requirements
  - It will provide a cash flow that can be used to reinvest in new projects
- Disadvantages:
  - It is a significant rate increase overall (34.7%)
  - It would hit some classes of customers harder than others
  - It would likely need to be phased-in
  - It could discourage industrial customers from remaining on the system



# COU Electric Cost of Service Study

## Electric Utility Option 2: Income-Based

### Option 2: Cost of Service Study Based Rates Revenue Requirement Results

	Total	Residential	Small General Service	Large General Service	Industrial	Street Lights
Current:	\$ 7,248,373	\$ 955,606	\$ 696,808	\$ 1,015,800	\$ 4,540,507	\$ 39,652
Proposed:	\$ 9,762,822	\$ 1,580,292	\$ 841,190	\$ 1,120,680	\$ 6,155,170	\$ 65,490
Surplus/Deficit:	\$ (2,514,449)	\$ (624,686)	\$ (144,382)	\$ (104,880)	\$ (1,614,663)	\$ (25,838)
% Increase/(Decrease):	34.7%	65.4%	20.7%	10.3%	35.6%	65.2%

# COU Electric Cost of Service Study

## Electric Utility Option 2: Income-Based

### Option 1a: Cost of Service Study Based Rates

**Current  
Rates:**

Charge	Unit	Residential	Small General Service	Large General Service	Industrial	Street Lights
Customer	\$/month	\$ 8.00	\$ 10.00	\$ 50.00	\$ 100.00	\$ 10.00
Energy	\$/kWh	0.2340	0.2055	0.1740	0.1439	0.2055
Demand	\$/kW	-	-	6.70	8.00	-

**Option 2  
Rates:**

Charge	Unit	Residential	Small General Service	Large General Service	Industrial	Street Lights
Customer	\$/month	\$ 87.89	\$ 90.12	\$ 101.21	\$ 116.88	\$ 87.11
Energy	\$/kWh	0.2054	0.1971	0.0284	0.0284	0.2704
Demand	\$/kW	-	-	67.74	69.86	-

# COU Electric Cost of Service Study

## Electric Utility Option 2: Income-Based

### Option 2: Residential Impact Comparison

<b>Residential Bill (500 kWh Energy)</b>	<b>Option 2: Cost-Based</b>	
	<b>Current Rates</b>	
Customer	\$ 8.00	\$ 87.89
Energy	116.98	102.68
COPA	55.00	55.00
PCE Credit	(40.55)	(40.55)
	<b>\$ 139.43</b>	<b>\$ 205.02</b>
<b>% Change:</b>	<b>0.0%</b>	<b>47.0%</b>

# COU Electric Cost of Service Study

## Electric Utility Option 2: Income-Based

### Option 2: Small Commercial Impact Comparison

<b>Small General Service (1,534 kWh Energy)</b>	<b>Current Rates</b>	<b>Option 2: Cost-Based Rates</b>
Customer	\$ 10.00	\$ 90.12
Energy	315.16	302.41
COPA	168.74	168.74
	<hr/>	<hr/>
	\$ 493.90	\$ 561.27
% Change:	0.0%	13.6%

# COU Electric Cost of Service Study

## Electric Utility Option 2: Income-Based

### Option 2: Large Commercial Impact Comparison

Large General Service (10,993 kWh Energy & 29 kW Demand)	Option 2:	
	Current Rates	Cost-Based Rates
Customer	\$ 50.00	\$ 101.21
Demand	194.30	1,964.41
Energy	1,912.23	312.10
COPA	1,209.23	1,209.23
	<b>\$ 3,365.76</b>	<b>\$ 3,586.95</b>
% Change:	0.0%	6.6%



# COU Electric Cost of Service Study

## Electric Utility Option 2: Income-Based

### Option 2: Industrial Impact Comparison

<b>Industrial</b> (170,993 kWh Energy & 446 kW Demand)	<b>Current Rates</b>	<b>Option 2: Cost-Based Rates</b>
Customer	\$ 100.00	\$ 116.88
Demand	3,568.00	31,156.19
Energy	24,597.34	4,854.58
COPA	18,809.23	18,809.23
	<b>\$ 47,074.57</b>	<b>\$ 54,936.88</b>
<b>% Change:</b>	<b>0.0%</b>	<b>16.7%</b>

# COU Electric Cost of Service Study

## Electric Utility Option 2: Income-Based

### Option 2: Streetlight Impact Comparison

<b>Streetlights</b> <b>(1,024 kWh Energy)</b>	<b>Current Rates</b>	<b>Option 2:</b> <b>Cost-Based Rates</b>
Customer	\$ 10.00	\$ 87.11
Energy	210.38	276.85
COPA	112.64	112.64
	<hr/>	<hr/>
	\$ 333.02	\$ 476.59
% Change:	0.0%	43.1%

# Electric Option 3: **Implement Utility Infrastructure Tax**

## Option 3: Utility Infrastructure Tax

- Receipts from a 1% increase in Sales Tax could provide a cash flow to be used for funding utility infrastructure needs and directed towards specific projects at the direction of the City Council

	FY2017 Actual	FY2018 Actual	FY2019 Actual	FY2020 Budget	Adopted Budget
<b>1% Sales Tax Special Revenue</b>					
REVENUES					
11010040 - 41310 1% Capital Sales tax	3,705,737	3,522,767	3,629,169	3,500,000	2,666,667

\$2,666,667 estimated  
FY2021 receipts

## Overview:

- **Income-Based:** includes \$100,000 in margins.
- **Cash-Based: 2.00**  
DSC Target

# Water

## Income-Based Revenue Requirement

Budgeted Customer Revenues:	\$	2,616,686
Revenue Requirement:	\$	3,530,573
Surplus/(Deficiency):	\$	(913,887)
Overall % Increase/(Decrease):		34.9%

## Cash-Based Revenue Requirement

Budgeted Customer Revenues:	\$	2,616,686
Cash-Based Revenue Requirement:	\$	2,711,218
Surplus/(Deficiency):	\$	(94,532)
Overall % Increase/(Decrease):		3.6%



# Water Option 1: Cash-Based Revenue Requirement with 2.00 DSC



## Option 1: Cash-Based Revenue Requirement with 2.00 DSC

- Why 2.00 DSC?
  - Municipal ordinance requires meeting a minimum 1.25 DSC
  - Achieved DSC is currently 1.58 and rate study results support a rate increase
  - Using a higher target DSC will provide more security and allow the utility to generate more cash towards capital expenditures
- Advantages:
  - The minimum DSC requirement would be met through rates.
  - Rate increase is mitigated.
- Disadvantages:
  - It remains almost \$820,000 below the income-based revenue requirement

# COU Water Cost of Service Study

## Water Utility Option 1: Cash-Based with 2.00 DSC

### Option 1a: Cost of Service Study Based\* Rates Revenue Requirement Results

	<b>Total</b>	<b>Unmetered</b>	<b>Metered</b>
Current:	<b>\$ 2,616,686</b>	\$ 147,521	\$ 2,469,165
Proposed:	<b>\$ 2,710,514</b>	\$ 147,521	\$ 2,562,993
Surplus/Deficit:	<b>\$ (93,828)</b>	\$ -	\$ (93,828)
% Increase/(Decrease):	<b>3.6%</b>	0.0%	3.8%

\*Cost of Service Study results indicate unmetered rates are higher than the class's cost of service, however City Staff felt it would be more prudent to keep unmetered rates unchanged rather than reducing rates.

# COU Water Cost of Service Study

## Water Utility Option 1: Cash-Based with 2.00 DSC

### Option 1a: Cost of Service Study Based Rates

#### Current Rates:

Charge	Unit	Unmetered	Metered										
			5/8" Service	3/4" Service	1" Service	1 1/2" Service	2" Service	3" Service	4" Service	6" Service	8" Service	10" Service	12" Service
Customer	\$/month	\$ 35.59	\$ 3.53	\$ 3.74	\$ 4.15	\$ 5.21	\$ 6.47	\$ 9.40	\$ 13.18	\$ 24.08	\$ 36.67	\$ 63.43	\$ 100.12
Volume	\$/000 Gal	-	2.51	2.51	2.51	2.51	2.51	2.51	2.51	2.51	2.51	2.51	2.51

#### Option 1a Rates:

Charge	Unit	Unmetered	Metered										
			5/8" Service	3/4" Service	1" Service	1 1/2" Service	2" Service	3" Service	4" Service	6" Service	8" Service	10" Service	12" Service
Customer	\$/month	\$ 35.59	\$ 3.66	\$ 3.88	\$ 4.31	\$ 5.41	\$ 6.72	\$ 9.76	\$ 13.68	\$ 25.00	\$ 38.06	\$ 65.84	\$ 103.92
Volume	\$/000 Gal	-	2.61	2.61	2.61	2.61	2.61	2.61	2.61	2.61	2.61	2.61	2.61

# COU Water Cost of Service Study

## Water Utility Option 1: Cash-Based with 2.00 DSC

### Option 1b: Across-the-Board Rate Increase Revenue Requirement Results

	<b>Total</b>	<b>Unmetered</b>	<b>Metered</b>
Current:	\$ <b>2,616,686</b>	\$ 147,521	\$ 2,469,165
Proposed:	\$ <b>2,711,218</b>	\$ 152,850	\$ 2,558,368
Surplus/Deficit:	\$ <b>(94,532)</b>	\$ (5,329)	\$ (89,203)
% Increase/(Decrease):	<b>3.6%</b>	3.6%	3.6%

# COU Water Cost of Service Study

## Water Utility Option 1: Cash-Based with 2.00 DSC

### Option 1b: Across-the-Board Rate Increase

#### Current Rates:

Charge	Unit	Unmetered	Metered										
			5/8" Service	3/4" Service	1" Service	1 1/2" Service	2" Service	3" Service	4" Service	6" Service	8" Service	10" Service	12" Service
Customer	\$/month	\$ 35.59	\$ 3.53	\$ 3.74	\$ 4.15	\$ 5.21	\$ 6.47	\$ 9.40	\$ 13.18	\$ 24.08	\$ 36.67	\$ 63.43	\$ 100.12
Volume	\$/000 Gal	-	2.51	2.51	2.51	2.51	2.51	2.51	2.51	2.51	2.51	2.51	2.51

#### Option 1b Rates:

Charge	Unit	Unmetered	Metered										
			5/8" Service	3/4" Service	1" Service	1 1/2" Service	2" Service	3" Service	4" Service	6" Service	8" Service	10" Service	12" Service
Customer	\$/month	\$ 36.88	\$ 3.66	\$ 3.88	\$ 4.30	\$ 5.40	\$ 6.70	\$ 9.74	\$ 13.66	\$ 24.95	\$ 37.99	\$ 65.72	\$ 103.74
Volume	\$/000 Gal	-	2.60	2.60	2.60	2.60	2.60	2.60	2.60	2.60	2.60	2.60	2.60

# COU Water Cost of Service Study

## Water Utility Option 1: Cash-Based with 2.00 DSC

### Option 1: Average Customer Impact Comparison

	<b>Current Rates</b>	<b>Option 1a: Cost-Based Rates</b>	<b>Options 1b Across-the- Board Increase</b>
Metered	\$ 35.59	\$ 35.59	\$ 36.88
% Change:	0.0%	0.0%	3.6%
Unmetered	\$ 694.56	\$ 720.95	\$ 719.65
% Change:	0.0%	3.8%	3.6%



# Water Option 2: **Income-Based Revenue Requirement**

## Option 2: Income-Based Revenue Requirement

- Advantages:
  - It is the traditional, nationally-accepted approach to ratemaking
  - It will more than amply meet all DSC requirements
  - It will provide a cash flow that can be used to reinvest in new projects
- Disadvantages:
  - It is a significant rate increase overall (34.9%)
  - It would result in a decrease to unmetered rates and an increase to metered It would likely need to be phased-in

# COU Water Cost of Service Study

## Water Utility Option 2: Income-Based

### Option 2: Cost of Service Study Based Rates Revenue Requirement Results

	<b>Total</b>	<b>Unmetered</b>	<b>Metered</b>
Current:	<b>\$ 2,616,686</b>	\$ 147,521	\$ 2,469,165
Proposed:	<b>\$ 3,530,573</b>	\$ 135,519	\$ 3,395,054
Surplus/Deficit:	<b>\$ (913,887)</b>	\$ 12,002	\$ (925,889)
% Increase/(Decrease):	<b>34.9%</b>	-8.1%	37.5%

# COU Water Cost of Service Study

## Water Utility Option 2: Income-Based

### Option 2: Cost of Service Study Based Rates

#### Current Rates:

Charge	Unit	Unmetered	Metered										
			5/8" Service	3/4" Service	1" Service	1 1/2" Service	2" Service	3" Service	4" Service	6" Service	8" Service	10" Service	12" Service
Customer	\$/month	\$ 35.59	\$ 3.53	\$ 3.74	\$ 4.15	\$ 5.21	\$ 6.47	\$ 9.40	\$ 13.18	\$ 24.08	\$ 36.67	\$ 63.43	\$ 100.12
Volume	\$/000 Gal	-	2.51	2.51	2.51	2.51	2.51	2.51	2.51	2.51	2.51	2.51	2.51

#### Option 2 Rates:

Charge	Unit	Unmetered	Metered										
			5/8" Service	3/4" Service	1" Service	1 1/2" Service	2" Service	3" Service	4" Service	6" Service	8" Service	10" Service	12" Service
Customer	\$/month	\$ 32.69	\$ 4.85	\$ 5.14	\$ 5.71	\$ 7.16	\$ 8.90	\$ 12.92	\$ 18.12	\$ 33.11	\$ 50.42	\$ 87.22	\$ 137.66
Volume	\$/000 Gal	-	3.45	3.45	3.45	3.45	3.45	3.45	3.45	3.45	3.45	3.45	3.45

# COU Water Cost of Service Study

## Water Utility Option 2: Income-Based

### Option 2: Average Customer Impact Comparison

	<b>Current Rates</b>	<b>Option 2: Cost-Based Rates</b>
Metered	\$ 35.59	\$ 32.69
% Change:	0.0%	-8.1%
Unmetered	\$ 694.56	\$ 955.01
% Change:	0.0%	37.5%



# Water Option 3: **Implement Utility Infrastructure Tax**



## Option 3: Utility Infrastructure Tax

- Receipts from a 1% increase in Sales Tax could provide a cash flow to be used for funding utility infrastructure needs and directed towards specific projects at the direction of the City Council

	FY2017 Actual	FY2018 Actual	FY2019 Actual	FY2020 Budget	Adopted Budget
<b>1% Sales Tax Special Revenue</b>					
REVENUES					
11010040 - 41310 1% Capital Sales tax	3,705,737	3,522,767	3,629,169	3,500,000	2,666,667

\$2,666,667 estimated  
FY2021 receipts

# Combining Options 1 & 3: **Overall Impact**

## Combining Options 1 & 3

The table below estimates the impact of combining Option 1 (cash-based DSC target revenue requirement) and Option 3 (1% Utility Infrastructure Tax) in comparison to the income-based revenue requirement.

	Electric	Water	Wastewater	Solid Waste	Total
Target DSC:	1.25	2.00	TBD	TBD	N/A
Cash-Based Revenue Requirement:	\$ 7,692,809	\$ 2,711,218	TBD	TBD	TBD
Current Revenues:	\$ 7,248,373	\$ 2,616,686	\$ 2,468,212	\$ 2,562,531	\$ 14,895,802
Revenue Increase:	\$ 444,436	\$ 94,532	TBD	TBD	TBD
Overall % Increase:	6.1%	3.6%	TBD	TBD	TBD
Deficit of Current Revenues to Income-Based Revenue Requirement:	\$ (2,514,450)	\$ (913,887)	\$ (1,851,293)	\$ (1,540,289)	\$ (6,819,919)
Increased Revenues from Option 1:	\$ 444,436	\$ 94,532	TBD	TBD	TBD
Income from 1% Infrastructure Tax:	\$ 666,667	\$ 666,667	\$ 666,667	\$ 666,667	\$ 2,666,667 *
Outstanding Deficit:	\$ (1,403,347)	\$ (152,688)	TBD	TBD	TBD

\* Assumes even distribution of infrastructure tax for the purpose of illustration



# Terminal Services Agreements-TSA



## Mission:

The Port of Dutch Harbor promotes the growth and health of the community of Unalaska through the planning, development, and management of marine related municipal properties and facilities to provide moorage and other marine services on a self-supporting basis.

# Terminal Services Agreements-Goals

## **Provide an Overview to Council for:**

- The framework for Port Operations
- The Customer Base
- The Infrastructure of Unalaska Marine Center
- The purpose of a Terminal Service Agreement
- The components of a Terminal Services Agreement and structuring and RFP

# Terminal Services Agreements-Goals

## **Council to provide direction forward for:**

- Future Public Access
- Structure of RFP for Agreements
- Term of agreements
- Long-range considerations



# Terminal Services Agreements-Framework

- Unalaska Marine Center and the Federal Maritime Commission
- Port Registration
- Federal Shipping Act and the Port of Dutch Harbor
- Unalaska Code of Ordinances and Terminal Service Agreements

# Terminal Services Agreement-Customers

570 individual Vessel Calls

Estimated 65000 containers moves

28,000,000 Gallons of Fuel

450,000 tons of cargo

8000 passengers

# Terminal Services Agreements-Customers



# Terminal Services Agreement-Customers

**Tustumena**

**NOAA**





# Terminal Services Agreement- Customers

USCG

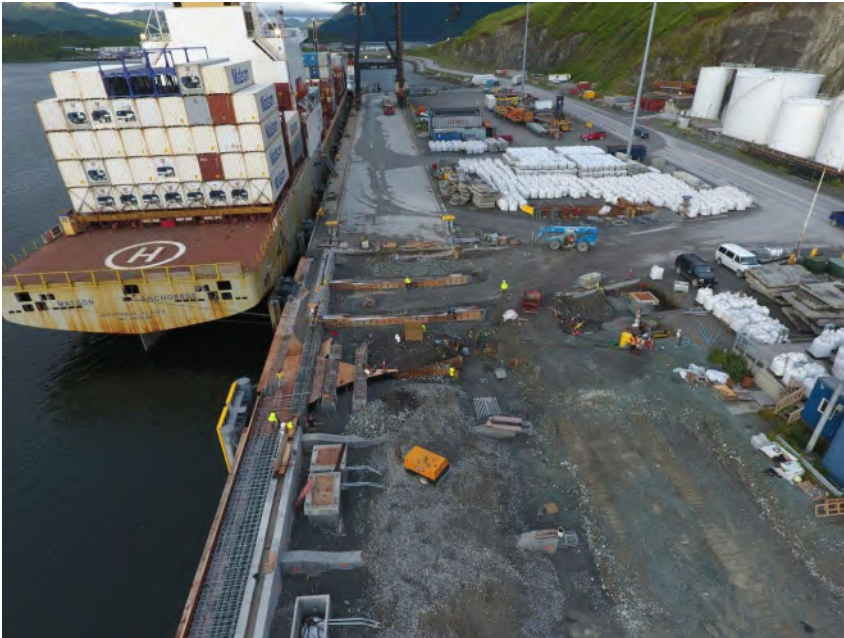


Fuel Tanker & Northern Hawk





## D7 during Construction



## Fishing Fleet



## Terminal Services Agreements-Infrastructure

- 6 Acres uplands
- 2051 Linear feet of dock space
- 800 Feet of Crane Rail
- 3 New Fresh Water hook-ups
- 7 New Fuel Vaults
- 1 New Sewer hook-up
- 2000 Feet Port Security Fence
- 168 Hours weekly for scheduling windows



# Terminal Services Agreement-Infrastructure

- Fuel lines



- Crane Rails





# Terminal Services Agreement-Infrastructure

- Pile supports and rebar for Crane rails



- Electrical conduit for pedestals



# Terminal Services Agreement-Infrastructure

What is at the heart \$40,000,000 project?

- Crane rails and room for additional crane service
- Electric cable trough for crane rail
- Electrical conduit for future pedestals
- Surfaced, clean, durable uplands with load capacity
- Access to a deep draft docking facility



# Terminal Services Agreements-TSA

- What is a Terminal Service Agreement?
- When are Terminal Service Agreements beneficial?
- How does this work with our Port practices?
- Who benefits?
- What is the process for negotiating agreements?

# Terminal Services Agreements-TSA

- **Benefits to the User**
  - Consistent operational window
  - Predictable rates
  - Continuity for capital investment
- **Benefits to the Port**
  - Management of facility
  - Manage debt service
  - Predictable Revenues
  - Framework for management of growth

# Terminal Services Agreements-TSA

- 6 Responders interested in agreements
  - 6 Committed berthing windows
  - 1 Seasonal berth
  - 2.75 Acres total requested for yard space
  - 3 Requested to pay below Tariff
  - 2 Indicated they would pay Tariff
  - 1 Non-Response in regards to rates
- Vessel LOAs vary from 150' - 965'

# Terminal Services Agreement- Components

Determining the goals of the dock

- Honoring the existing agreements
- Maintaining Public Access
- Utilizing function of existing infrastructure
- Developing future infrastructure
- Revenue

# Terminal Services Agreement- Components

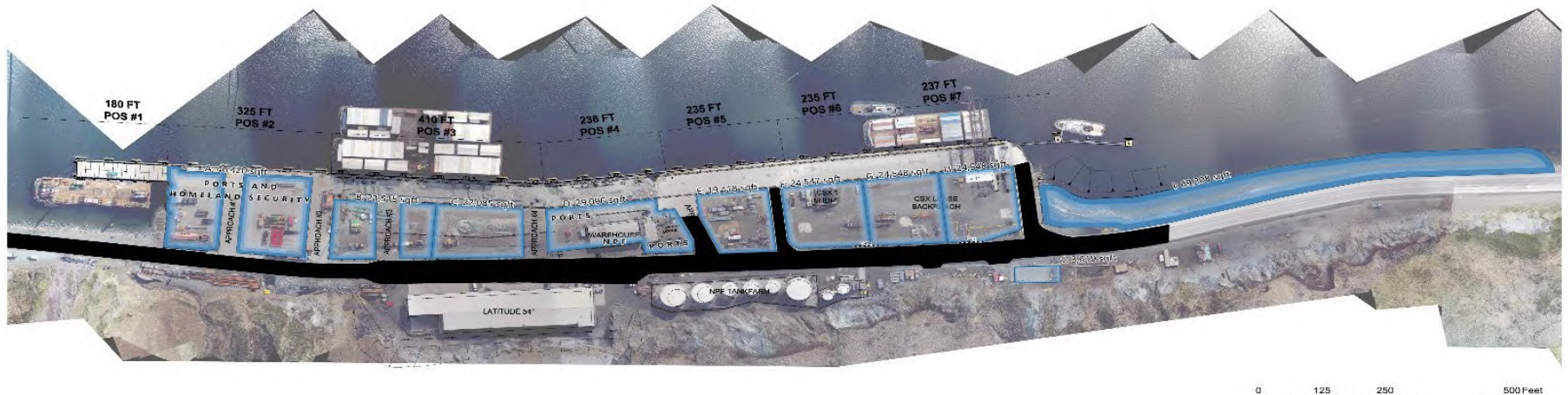
Structuring the scoring criteria for the RFP

- Land
- Time at the dock
- Volume
- Commodity
- Vessel Calls
- Relationship with the Port
- Proposed Term of Agreement
- Proposed use of new infrastructure
- Ability to meet City's criteria for FSP, Public Access, and existing agreements

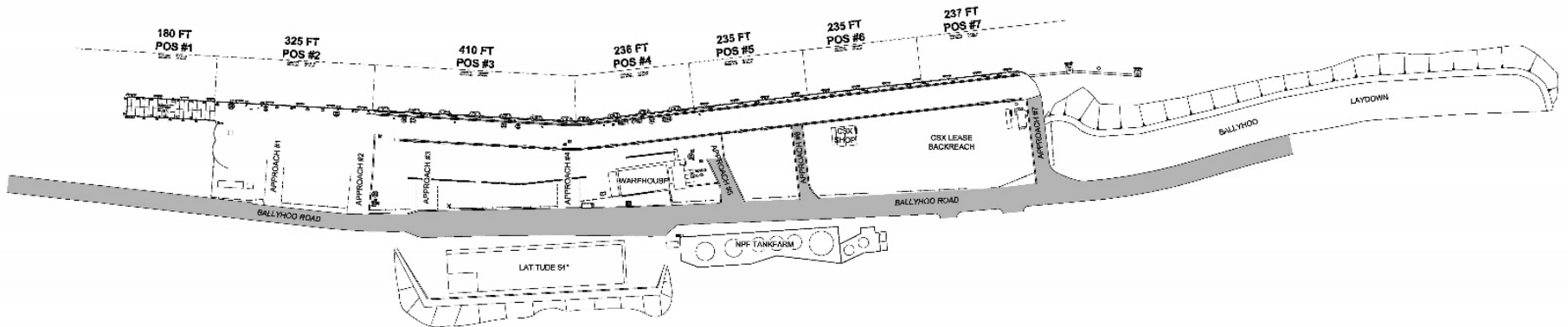


# Terminal Services Agreement- Components

Unalaska Marine Center



# Terminal Services Agreement- Components



# Terminal Services Agreement-Options

## RFP possibilities

- Request for land leases only
- Request for Land leases and berthing agreements
- Request for a bid for an outside entity to manage the dock
- No requirement to request proposals

# Terminal Services Agreements

## Discussion and Questions

CITY OF UNALASKA  
UNALASKA, ALASKA

ORDINANCE 2021-02

AN ORDINANCE AMENDING TITLE 6 OF THE UNALASKA CODE OF ORDINANCES TO ADOPT A NEW CHAPTER 6.56 EXCISE TAX ON TOBACCO PRODUCTS

**BE IT ENACTED** by the City Council of the City of Unalaska:

**Section 1: Form.** This is a code ordinance.

**Section 2: Amendment to Title 6.** Title 6 of the Unalaska Code of Ordinances is hereby amended by adding a new Chapter, numbered 6.56, to read as follows:

**CHAPTER 6.56 EXCISE TAX ON TOBACCO**

§ 6.56.010	Purpose
§ 6.56.020	Definitions
§ 6.56.030	Levy of excise tax on tobacco
§ 6.56.040	Exemptions
§ 6.56.050	Registration
§ 6.56.060	Application for tax refund
§ 6.56.070	Remittance of tax levied
§ 6.56.080	Form of return
§ 6.56.090	Returns and information confidential; exceptions
§ 6.56.100	Amended returns
§ 6.56.110	Extension of time to file return
§ 6.56.120	Cessation or transfer of business
§ 6.56.130	Procedures on delinquency
§ 6.56.140	Repayment plans
§ 6.56.150	Period of limitation
§ 6.56.160	Recordkeeping
§ 6.56.170	Withholding of personal property of distributor failing to withhold
§ 6.56.180	Tax rulings

**§6.56.010 PURPOSE.**

(A) The tax levied by this chapter is intended to generate revenue and improve public health by reducing consumption of cigarettes and tobacco products in the City of Unalaska.

(B) Each annual budget shall determine what portion of the tax levied by this chapter shall be dedicated to smoking cessation or related public health programs

(C) The tax imposed by this chapter is an excise tax on the privilege of bringing cigarettes or tobacco products into the City of Unalaska for commercial purposes. It is the intent and purpose of this chapter to provide for the collection of the excise tax from a distributor who brings, or causes to be brought, cigarettes or tobacco products into the City of Unalaska. The excise tax is levied when a distributor brings, or causes to be brought, cigarettes or tobacco products into the City of Unalaska from outside the City of Unalaska.



**§6.56.020 DEFINITIONS.**

For the purposes of this chapter, unless the context otherwise requires, the following words and phrases shall have the meanings defined herein.

(A) Cigarette means a roll for smoking of any size or shape, made wholly or partly of tobacco, whether the tobacco is flavored, adulterated, or mixed with another ingredient, if the wrapper or cover of the roll is made of paper or a material other than tobacco.

(B) Distributor means a person who brings cigarettes or tobacco products, or causes them to be brought, into the City of Unalaska, and who sells or distributes them to others in the City of Unalaska.

(C) Electronic smoking product means, without including marijuana as defined in AS 11.71.900,

(1) any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person through inhalation of vapor or aerosol from the product, of any size or shape, whether the product is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, or any other product name or descriptor; or

(2) a component, solution, alternative tobacco product, e-liquid, e-juice, vapor product, flavoring, or other related product of an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device of any size or shape used for, or to assist with, aerosolizing and inhaling chemical substances that may cause an adverse effect on human health.

(D) In transit means passing through the City of Unalaska while solely in the possession of a common carrier, shipping, cargo, or freight operator or private carrier, other than a distributor, and where title to the goods does pass not while in the City of Unalaska.

(E) Tobacco product means:

(1) A cigar;

(2) A cheroot;

(3) A stogie;

(4) A perique;

(5) Snuff and snuff flour;

(6) Smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or cigarette;

(7) Chewing tobacco, including cavendish, twist, plug, scrap, and tobacco suitable for chewing;

(8) An article or product made wholly or in part of tobacco or a tobacco substitute or otherwise containing nicotine, other than a cigarette, that is expected or intended for human consumption, but not including a product prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation product or for other medical purposes and which is being marketed and sold solely for that approved purpose; and

- (9) An electronic smoking product.
- (F) Wholesale price means the price the distributor pays for a tobacco product, after deduction of a discount or other reduction received by the distributor for quantity or cash.

**§ 6.56.040 EXEMPTIONS.**

The tax imposed under this chapter does not apply to:

- (A) Cigarettes or tobacco products brought into the City of Unalaska by an exchange, commissary, or ship's stores operated by one of the uniformed services of the United States as defined in 5 U.S.C. § 2101, nor shall such exchange, commissary, or ship's stores be considered a distributor.
- (B) Cigarettes or tobacco products if the United States Constitution, the Alaska Constitution, or other federal or state laws prohibit the levying of the tax on the product by the city.
- (C) Cigarettes or tobacco products in transit.

**§ 6.56.050 REGISTRATION.**

- (A) No person may sell, purchase, possess or bring cigarettes or tobacco products into the City of Unalaska as a distributor without first registering with the city. All business in the city holding a business license endorsement required by AS 43.70.075 shall register. The registration shall be on a form provided by the city and must include the information requested by the city.
- (B) The registration required by this chapter is in addition to any other registration or license required by law.

**§ 6.56.060 APPLICATION FOR TAX REFUND.**

If a distributor has remitted tobacco products tax in excess of what is due to the city, the distributor may apply to the city for a refund within one year of the date the overpayment was made. The city shall audit the distributor's account and may request any additional information the city requires to determine that a refund is due. If the city determines that a refund is due, the distributor may take a credit on the next tobacco products tax report, or the city shall pay the refund of the tax paid with interest at 3.5% per annum beginning 30 days from the date of the application for refund, with all documentation and information necessary to determine a refund is due, is received. A claim for refund not filed within one year of the date the tax was remitted to the city is forever barred. A distributor may claim a refund only where the distributor has filed a timely tobacco products tax return and therewith remitted the tobacco products taxes due under that return.

**§ 6.56.070 REMITTANCE OF TAX LEVIED.**

Distributors shall complete and file required returns and remit the tax levied in accordance with the following schedule:

- (A) QUARTERLY. Unless otherwise provided for in this chapter, distributors shall on or before the last day of the month succeeding the end of each quarter year ending March

31, June 30, September 30, and December 31, prepare a return for the preceding quarter year upon forms furnished by the city. Returns shall be filed personally at city hall by 5:00 p.m. or postmarked on the last day of the month following the end of each quarter year. In the event the last day of the month falls on a legal holiday or weekend, the return may be filed on the first business day following.

(B) **FILINGS TO BE CONTINUOUS.** A distributor which has filed a tobacco products tax return will be presumed to be a distributor in successive quarters unless that distributor files a return showing termination or sale of the business.

#### **§ 6.56.080 FORM OF RETURN.**

On forms furnished by the city and available at city hall, the distributor shall furnish the required information, sign the form and certify that the form correctly states the information set forth therein.

#### **§ 6.56.090 RETURNS AND INFORMATION CONFIDENTIAL; EXEMPTIONS.**

Returns filed with the city for the purpose of complying with the terms of this chapter and all data obtained from such returns are confidential, and such returns, and data obtained shall be kept from inspection by all private persons, except as necessary to investigate violations of and to enforce this chapter. Nothing contained in this section shall be construed to prohibit the delivery to a person, or their duly authorized representative, of a copy of any return or report filed by them, nor to prohibit the publication of statistics, nor to prohibit the furnishing of information on the reciprocal basis to other agencies of the State of Alaska or the United States concerned with the enforcement of tax laws.

#### **§ 6.56.100 AMENDED RETURNS.**

(A) A distributor may file an amended return, with supporting documentation, and the city may accept the amended return, but only in the following circumstances:

- (1) The amended return is filed within one year of the original due date for the return;
- (2) The distributor provides a written justification for requesting approval of the amended return; and
- (3) The distributor agrees to submit to an audit upon request of the city.

(B) The city shall notify the distributor in writing (by email or otherwise) whether the city accepts or rejects an amended return, including the reasons for any rejection.

(C) The city may adjust a return for a distributor if, after investigation, the city determines the figure included in the original returns are incorrect, and the city adjusts the return within two years of the original due date for the return.

(D) A distributor may file a supplemental tobacco products tax return, with supporting documentation, and the city may accept the supplemental return, but only in the following circumstances:

- (1) The distributor provides a written justification for requesting approval of the supplemental return;
- (2) The distributor agrees to submit to an audit upon request of the city.

**§ 6.56.110 EXTENSION OF TIME TO FILE RETURN.**

Upon written application of a distributor, stating the reasons therefor, the city may extend the time to file a tobacco products tax return but only if the city finds each of the following:

- (A) For reasons beyond the distributor's control, the distributor has been unable to maintain in a current condition the books and records that contain the information required to complete the return;
- (B) Such extension is a dire necessity for bookkeeping reasons and would avert undue hardship upon the distributor;
- (C) The distributor has a plan to cure the problem that caused the distributor to apply for an extension and the distributor agrees to proceed with diligence to cure the problem;
- (D) At the time of the application, the distributor is not delinquent in filing any other tobacco products tax return, in remitting tobacco products tax to the city or otherwise in violation of this chapter; and
- (E) No such extension shall be made retroactively to cover existing delinquencies.

**§ 6.56.120 CESSATION OR TRANSFER OF BUSINESS.**

(A) A distributor who sells, leases, conveys, forfeits, transfers or assigns the majority of their business interest, including to a creditor or secured party, shall make a final tobacco products tax return within 30 days after the date of such conveyance.

(B) At least ten business days before any such sale is completed, the distributor shall send to the city clerk, by approved communication (email confirmation, certified first-class mail, postage prepaid) a notice that the distributor's interest is to be conveyed and shall include the name, address and telephone number of the person or entity to whom the interest is to be conveyed.

(C) Upon notice of sale and disclosure of buyer, the city shall be authorized to disclose the status of the distributor's tobacco products tax account to the named buyer or assignee.

(D) Upon receipt of notice of a sale or transfer, the city shall send the transferee a copy of this code with this section highlighted.

(E) Neither the city's failure to give the notice nor the transferee's failure to receive the notice shall relieve the transferee of any obligations under this section.

(F) Following receipt of the notice, the city shall have 60 days in which to perform a final tobacco products tax audit and assess tobacco products tax liability against the seller of the business. If the notice is not mailed at least ten business days before the sale is completed, the city shall have 12 months from the date of the completion of the sale or the city's knowledge of the completion of the sale within which to begin a final tobacco products tax audit and assess tobacco products tax liability against the seller of the business. The city may also initiate an estimated assessment if the requirements for such an assessment exist.

(G) A person acquiring any interest of a distributor in a business required to remit the tax under this chapter assumes the liability of the distributor for all taxes due the city,

whether current or delinquent, whether known to the city or discovered later, and for all interest, penalties, costs and charges on such taxes.

(H) Before the effective date of the transfer, the transferee of a business shall obtain from the city an estimate of the delinquent tobacco products tax, penalty and interest, if any, owed by the distributor as of the date of the transfer, and shall withhold that amount from the consideration payable for the transfer, until the distributor has produced a receipt from the city showing that all tax obligations imposed by this chapter have been paid. A transferee that fails to withhold the amount required under this subsection shall be liable to the city for the lesser of the amount of delinquent tobacco products tax, penalty and interest due from the distributor as of the date of transfer, and the amount that the transferee was required to withhold.

(I) In this section, the term "transfer" includes the following:

- (1) A change in voting control, or in more than 50% of the ownership interest in a distributor that is a corporation, limited liability company or partnership; or
- (2) A sale of all or substantially all the assets used in the business of the distributor; or
- (3) The initiation of a lease, management agreement or other arrangement under which another person becomes entitled to the remote distributor's or marketplace facilitator's gross receipts from sales, rentals or services.

(J) A distributor who terminates the business without the benefit of a purchaser, successor or assign shall make a final tax return and settlement of tax obligations within 30 days after such termination. If a final return and settlement are not received within 30 days of the termination, the distributor shall pay a penalty of \$500, plus an additional penalty of \$25 for each additional 30 day period, or part of such a period, during which the final return and settlement have not been made, for a maximum of six additional periods.

#### **§ 6.56.130 PROCEDURES ON DELINQUENCIES.**

(A) **PENALTY.** A penalty equal to 5% of the delinquent tax shall be added to the tax for the first month, or any part thereof, and an additional 5% shall be added to the tax due for each month, or fraction thereof, of delinquency until a total penalty of 20% of the tobacco products tax due has accrued. The penalty shall be assessed and collected in the same manner as the tax is assessed and collected. The penalty does not bear interest.

(B) **INTEREST.** In addition to the penalty provided in subsection (A) above, interest assessed on delinquent tax shall accrue at the rate of 15% per annum. Interest shall accrue from the date of delinquency until paid in full and shall be collected in the same manner as the delinquent tax is collected.

(C) **PRIORITY FOR CREDITING PAYMENTS.** All payments received shall be applied in the following order:

- (1) Penalties due, beginning with the oldest penalty;
- (2) Interest due, beginning with the interest due on the oldest month; and
- (3) Taxes due, beginning with the taxes due from the oldest month.

(D) **WRITTEN DEMAND AND ADDITIONAL PROCEDURES.** If a distributor fails to file the return or make the remittance in accordance with § 6.56.070 or § 6.56.080, the city may do any or all of the following things:



- (1) Cite the offender for a violation of this chapter. Any person, firm, or entity violating any provision of this chapter is guilty of a minor offense and shall be subject to a penalty as provided in § 1.24.040 or if no fine is there established, in an amount not to exceed \$500 for each violation or day a violation exists. In all cases where a person is found to have violated this chapter, the court shall order the person to file an accurate tobacco products tax return within 15 days, in addition to any fine that may be imposed as a result of the violation. Prosecution under this subsection does not limit the ability of the city to recover any amount of unpaid taxes through civil action or as otherwise provided by this chapter.
  - (2) File a civil complaint against the distributor for violation of any obligation in this chapter.
  - (3) Make a tobacco products tax assessment against the distributor, with the assessment based upon an estimate of tax levied and owed by the distributor during the period and institute civil action to recover the amount of the tobacco products tax, interest, and penalty due and to request injunctive relief. The estimate of tax may all be derived from past tobacco products tax returns of the distributor or their predecessor, the general economic level of the business community, information from tobacco products tax audits conducted by the city, if available, returns of comparable businesses and any other information believed to be reliable or helpful to the city in making an estimate of the tobacco products tax due. Notice of the estimated assessment of tobacco products taxes due shall be furnished the distributor by the city via first-class mail to the last known address of the distributor or via hand-delivery to the distributor and the estimated assessment shall become final for the purposes of determining liability of the distributor to the city after 30 days of the date of mailing or hand-delivery of the estimated assessment to the distributor unless the distributor earlier files with the city an accurate tobacco products tax return, supported by satisfactory records or documentation indicating a lesser liability.
  - (4) The tax, interest and penalty imposed under this chapter shall constitute a lien in favor of the city upon all the property of the distributor whether tangible or intangible and wherever located. The lien arises upon delinquency and continues until the liability is satisfied or the lien is foreclosed. The lien is not valid as against a mortgagee, pledgee, purchaser or judgment lien creditor until notice of the lien is filed in the office of the recorder for the Aleutian Islands or Anchorage recording district. The manner provided for Federal tax liens under AS 40.19.010 et seq. are by this reference incorporated herein as if set forth in full.
- (E) WAIVER. A penalty assessed under this section for the delinquent remittance of tobacco products tax or failure to file a tobacco products tax return may be waived by the city manager, upon written application of the distributor accompanied by a payment of all delinquent tobacco products tax, interest and penalty otherwise owed by the distributor, within 45 calendar days after the date of delinquency. A distributor may not be granted more than one waiver of penalty under this subsection in any one calendar year. The city manager shall report such waivers of penalty to the city council, in writing.

#### **§ 6.56.140 REPAYMENT PLANS.**

- (A) The city may agree to enter into a repayment plan with a delinquent distributor. No repayment plan shall be valid unless agreed to by both parties in writing.

(B) A distributor shall not be eligible to enter into a repayment plan with the city if the distributor has defaulted on a repayment plan in the previous two calendar years.

(C) The repayment plan shall include a secured promissory note that substantially complies with the following terms:

- (1) The distributor agrees to pay a minimum of 10% down payment on the tax, interest and penalty amount due. The down payment shall be applied first to penalty, then to accumulated interest, and then to the tax owed.
- (2) The distributor agrees to pay the balance of the tax, penalty and interest owed in monthly installments over a period not to exceed two years.
- (3) Interest at a rate of 15% per annum shall accrue on the principal sum due. Interest shall not apply to penalties owed or to interest accrued at the time the repayment plan is executed or accruing during the term of the repayment plan.
- (4) If the distributor is a corporation or a limited liability entity the distributor agrees to provide a personal guarantee of the obligations under the repayment plan.
- (5) The distributor agrees to pay all future tax bills in accordance with the provisions of this chapter.
- (6) The distributor agrees to provide a security interest in the form of a tobacco products tax lien for the entire unpaid balance of the promissory note to be recorded by the city at the time the repayment plan is signed. The distributor shall be responsible for the cost of recording the tax lien.

(D) If a distributor fails to pay two or more payments as required by the repayment plan agreement, the distributor shall be in default and the entire amount owed at the time of default shall become immediately due. The city will send the distributor a notice of default. The city may immediately foreclose on the tobacco products tax lien or take any other remedy available under the law.

#### **§ 6.56.150 PERIOD OF LIMITATION.**

(A) The amount of any tobacco products tax imposed under this chapter may be determined and assessed at any time within a period of six years after the tax became due and payable. The period shall begin on the date when a return is required to be filed. Where no tobacco products tax return has been filed, or where a fraudulent return has been filed, then the period of limitation does not begin to run until discovery of the delinquency or fraud occurs. No proceeding for the collection of the tobacco products tax shall be begun after the expiration of this period.

(B) No obligation to remit tax established by § 6.56.030 shall be applied retroactively.

#### **§ 6.56.160 RECORDKEEPING.**

(A) Every distributor shall retain for a period of six years all of the tobacco products tax returns, reports, forms, records and supporting schedules as may be necessary to determine the amount of tax required to be remitted.

(B) All such records and documentation required to be retained shall be made available for examination at reasonable times by the city or agents of the city, for the

purpose of ascertaining the correctness of a return for the purpose of determining the amount of tax levied.

**§ 6.56.170 WITHHOLDING OF PERSONAL PROPERTY OF DISTRIBUTOR FAILING TO WITHHOLD.**

(A) The city manager may by notice, served personally or by first-class mail, require any employer, person, officer or department of the state, political subdivision or agency of the state, having in their possession, or under their control, any credits or other personal property or other things of value, belonging to a distributor, to withhold, from the credits or other personal property or other things of value, the amount of any tax, interest, or penalties due from the distributor or the amount of any liability incurred by that person for failure to withhold and transmit amounts due from a distributor and to transmit the amount withheld to the city at the times that the city manager may designate. However, in the case of a depository institution, as defined in § 19(b) of the Federal Reserve Act (12 U.S.C.A. § 461(b)(1)(A)), amounts due from a distributor under this section shall be transmitted to the city not less than ten business days from receipt of the notice. To be effective, the notice shall state the amount due from the distributor and shall be delivered or mailed to any branch or office where the city manager reasonably believes credits or other property is held.

(B) When the city, pursuant to this section issues a levy upon, or requires by notice, any person, or financial institution, as applicable, to withhold all, or a portion of, a financial asset for the purpose of collecting a delinquent tax liability, the person, or financial institution, that maintains, administers, or manages that asset on behalf of the distributor, or has the legal authority to accept instructions from the distributor as to the disposition of that asset, shall liquidate the financial asset in a commercially reasonable manner within 90 days of the issuance of the order to withhold. Within five days of liquidation, the person, or financial institution, as applicable, shall remit to the city the proceeds of the liquidation, less any reasonable commissions or fees, or both, which are charged in the normal course of business.

(C) If the value of the financial assets to be liquidated exceeds the tax liability, the distributor may, within 60 days after the service of the order to withhold upon the person, or financial institution, instruct the person, or financial institution, as to which financial assets are to be sold to satisfy the tax liability. If the distributor does not provide instructions for liquidation, the person, financial institution, or securities intermediary shall liquidate the financial assets in a commercially reasonable manner and in an amount sufficient to cover the tax liability, and any reasonable commissions or fees, or both, which are charged in the normal course of business, beginning with the financial assets purchased most recently.

(D) Any corporation or person failing to withhold the amounts due from any distributor and transmit them to the city after service of the notice shall be liable for those amounts. However, in the case of a depository institution, if a notice to withhold is mailed to the branch where the account is located or principal banking office, the depository institution shall be liable for a failure to withhold only to the extent that the accounts can be identified in information normally maintained at that location in the ordinary course of business.

**§ 6.56.180 TAX RULINGS.**

(A) The city manager or designee shall adopt and amend procedures and forms for the administration of this chapter, and shall adopt guidelines for the determination of the taxability of transactions.

(B) The city manager or their designee shall take all steps necessary and appropriate to administer this chapter which includes the authority to enter into payment plans for delinquent tobacco products taxes, penalties and interest.

**Section 3: Amendment to Title 6.** Title 6, Chapter 56 of the Unalaska Code of Ordinances is hereby amended by adding a new Section, numbered 6.56.030, to read as follows:

**§ 6.56.030 LEVY OF EXCISE TAX ON TOBACCO.**

(A) An excise tax of \$3.00 per pack of cigarettes brought into the City of Unalaska is hereby levied.

(B) An excise tax on tobacco products at the rate of 75% of the wholesale price of tobacco products brought into the City of Unalaska is hereby levied.

**Section 4: Effective Date.** Section 2 of this ordinance shall be effective ninety days after passage. Section 3 of this ordinance shall be effective of October 1, 2021.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on \_\_\_\_\_, 2021.

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

ATTEST:

\_\_\_\_\_  
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 9, 2021  
Re: Ordinance 2021-02 Amending Title 6 of the Unalaska Code of Ordinances to Adopt a New Chapter 6.56 Excise Tax on Tobacco Products

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**SUMMARY:** On November 10, 2020, Council last discussed tobacco excise tax, with a proposed ordinance included in the council packet. Staff requested direction from council as to the rate of levy and potential dedication of revenue. The proposed ordinance is presented this evening for council's consideration and first reading, with public hearing and adoption anticipated on March 23, 2021.

**PREVIOUS COUNCIL ACTION:**

- 2017: Council approved Ordinance 2017-07, amending the code of ordinances to increase the rate of sales tax on alcohol, marijuana and tobacco from 3% to 6%. Voters struck down the proposed sales tax increase by 35 votes: 263 yes votes and 298 no votes.
- November 2018: APIA presented to Council about tobacco tax, requesting the city increase tax on tobacco with the goal of deterring use, especially by young people. Council directed the City Manager to bring back information on a tax increase for tobacco products.
- July 2019: Council again discussed tobacco tax during the work session and asked the city manager to bring back further information on Tobacco Excise Tax; a combination Tobacco Excise Tax with increased sales tax on alcohol and marijuana; fund dedication options; and potential rates.
- November 2020: Council discussed tobacco excise tax and provided general direction to proceed with an ordinance levying excise tax on tobacco. The rate of levy in Ordinance 2021-02 is \$3 per pack, and 75% of the wholesale price on other tobacco products. As to dedication, no clear direction was provided, so the dedication language provided in the proposed ordinance at paragraph 6.56.010(B) is: "Each annual budget shall determine what portion of the tax levied by this chapter shall be dedicated to smoking cessation or related public health programs."

**DISCUSSION:**

***Taxing Rationale.*** Rationale used for considering tax increases includes changing behavior to curb the use of the associated products due to cost increase. Another purpose might be to help fund the response to the public health impacts and societal costs related to these products. Additionally, the tax increase can be viewed as a revenue generator.

***Decision Making Authority.*** City Council may impose excise tax without voter ratification.



**Dedicated Revenue Use.** Council may dedicate tax revenue. The impact is that dedicated funding may reduce spending from the general fund or free up that dollar amount in the general fund to support other expenses.

Funds can be dedicated “generally”, such as “to mitigate the public health consequences of tobacco use”; or a specific dedication, such as “to the Iliuliuk Family & Health Services Clinic for the benefit of community health”. This is a policy choice for council, each with pros and cons. A broader purpose provides greater flexibility, but would require budget appropriation annually. A more specific dedication may eliminate the need to revisit the appropriation each year, but results in inflexibility if circumstances change. Council can also include an “escape” valve in the event circumstances change in the future by making the dedication subject to annual appropriation, as we have done with the proposed ordinance language.

Council may choose not to dedicate the revenue, in which case the revenue would go to the general fund to support city operations. In light of decreased funding from the state, this is a valid consideration.

**Potential Taxing Rates.** Discussion this evening is limited to excise tax. The rate of levy is Council’s decision, with the draft ordinance using \$3 per pack and 75% of wholesale price on other tobacco products. Past discussions included a range of \$1 to \$4 per pack of cigarettes and 50% on other tobacco products (OTP).

In the State’s model tax policy they recommend a minimum of \$2 per pack so that the price increase is significant enough to reach the desired behavioral change (decreased consumption of tobacco) and that it increases the overall price at least 10% from the current price. They claim a tobacco price increase that is too low or insignificant will not deliver those results over time, especially if coupons and tobacco sales take place at retail stores. Since much work goes into passing a single increase it is also recommend to try for the mid-rate (\$2/pack) or higher when possible. The recommended 75% of the wholesale price on OTP (other tobacco products) is to ensure price parity to cigarettes, because they don’t want people to be influenced by the lower price and switch to a cheaper product that still delivers nicotine. The average tobacco excise around the State of Alaska is about \$2.46 per pack and 64% for other tobacco products. Examples of tobacco excise tax levies from other Alaska communities are:

	<b>Cigarettes per Pack</b>	<b>Other Tobacco Products</b>
Sitka	\$2.46	90%
Juneau	\$3.00	45%
Ketchikan	\$2.00	75%
Bethel	\$2.21	45%

In discussion with five top sellers to tobacco in Unalaska, it appears that \$9 is the going rate for a pack of cigarettes. These sellers also provided their estimated annual sales of tobacco. Dividing their annual sales by 9 gave an estimated number of packs sold per year (leaving other tobacco products out of the calculation for discussion purposes). Using the number of packs per year, we were able to estimate potential excise tax revenue at \$1, \$2, \$3 and \$4 per pack:

**POTENTIAL EXCISE TAX REVENUE**

	Est Annual Sales	Packs Per Year at \$9/pack	Tax Rate: \$1/Pack	Tax Rate: \$2/Pack	Tax Rate: \$3/Pack	Tax Rate: \$4/Pack
Vendor 1	\$ 1,620,000	180,000	\$ 180,000	\$ 360,000	\$ 540,000	\$ 720,000
Vendor 2	\$ 676,000	75,111	\$ 75,111	\$ 150,222	\$ 225,333	\$ 300,444
Vendor 3	\$ 150,000	16,667	\$ 16,667	\$ 33,333	\$ 50,000	\$ 66,667
Vendor 4	\$ 20,000	2,222	\$ 2,222	\$ 4,444	\$ 6,667	\$ 8,889
Vendor 5	\$ 40,000	4,444	\$ 4,444	\$ 8,889	\$ 13,333	\$ 17,778
<b>Total</b>	<b>\$ 2,506,000</b>		<b>\$ 278,444</b>	<b>\$ 556,889</b>	<b>\$ 835,333</b>	<b>\$ 1,113,778</b>

These are only estimates, and not every seller of tobacco products was contacted. However, this data will provide council an estimate of potential revenue from a tobacco excise tax at various rates.

**Effective Date.** If Council chooses to impose an excise tax on tobacco, the draft ordinance provides an effective date 90 days after adoption, but the tax is suspended until October 1, 2021. That time lapse will allow staff to work with vendors, develop forms and processes to administer the tax and allow for the vendors to register with the City.

**Timing of Sales Tax Increase.** If Council chooses to proceed with increasing sales tax, Council would take action through an ordinance, which could be put to the voters for ratification in October 2021.

**ALTERNATIVES:**

1. Take no action
2. Modify the language of the Ordinance
3. Schedule the Ordinance in the present form for public hearing and second reading on March 23, 2021 or a later regular meeting date selected by Council

**FINANCIAL IMPLICATIONS:** At the rate of levy presently contained in the ordinance, the City may realize up to \$835,000 annually from tobacco excise tax. The cost of implementation to the City is not clear, but those costs will be absorbed within the departmental budgets, primarily Clerks and Finance.

**LEGAL:** Staff has worked closely with the City Attorney on this issue, and Charles Cacciola has provided a memorandum reviewing the changes made to the ordinance since November 2020. Mr. Cacciola is available by telephone to respond to council inquiries.

**STAFF RECOMMENDATION:** This is a Council decision.

**PROPOSED MOTION:** If council chooses to proceed, it would be appropriate to move to schedule Ordinance 2021-02 for public hearing and second reading on March 23, 2021.

**ATTACHMENTS:** Three memos from the City Attorney

1. [March 3, 2021 discussing the proposed ordinance;](#)
2. [September 23, 2019 reviewing dedication of tax proceeds to a specific purpose \(both excise tax and sales tax\); and](#)
3. [January 28, 2019: Taxing Tobacco – Sales and Excise](#)

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**MEMORANDUM**

**To:** Mayor Tutiakoff, Sr.  
City Council

**From:** Charles A. Cacciola

**Date:** March 3, 2021

**Re:** Tobacco Excise Tax Ordinance 2021-02

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Ordinance 2021-02 follows from a draft tobacco excise tax ordinance the council discussed at its November 10, 2020 work session. This memo summarizes the intent and effect Ordinance 2021-02 and changes from the November work session draft.

**1. Summary of Ordinance 2021-02**

Ordinance 2021-02 amends the city code with a new Chapter 6.56 to levy an excise tax on cigarettes and tobacco products brought into the City of Unalaska. The levy is \$3.00 per pack of cigarettes and 75% of the wholesale price on other tobacco products. The tobacco distributor is directly responsible for paying the tax, unlike a sales tax where the tax falls directly on the consumer but is collected by the seller. (Of course, the consumer pays a higher price for the tobacco product to cover the distributor's tax obligation.) Also distinct from a new sales tax, an excise tax does not require voter ratification.

Ordinance 2021-02 has a staggered effective date. All sections of the proposed excise tax chapter *except for the levy* are effective 90 days from the date the ordinance is adopted. The levy is effective as of October 1, 2021. The staggered effective date is intended to provide the city administration and tobacco distributors sufficient time to establish the registration system, register distributors, and adopt necessary policies and practices before needing to pay and remit the tax, which will not occur until October 2021.

Though the tobacco excise tax is distinct from the city's sales tax, many administrative and collections provisions of the proposed Chapter 6.56 mirror provisions found in the city's sales tax code. Tobacco distributors are also "sellers" under the sales tax code. Distributors will be able to file and remit excise tax returns together with the distributor's sales tax returns, minimizing the administrative burden on distributors and the clerk's office.

Remote sales into the City of Unalaska, and application of the tax to remote distributors, were discussed at the November work session. Alaska Statute 43.50.105 declares the shipping of cigarettes direct to consumers to be a criminal offense. Thus, the city does not need to impose the tax on remote distributors of cigarettes. This state statute does not, however, prohibit direct to consumer shipping of other tobacco products. For the same reasons the city could not effectively impose sales tax on remote sellers prior to the Alaska Remote Seller Sales Tax Commission and adoption of the remote sellers sales tax code, it cannot effectively enforce the excise tax on remote distributors shipping non-cigarette tobacco products direct to consumers in the City of Unalaska. Unfortunately, the proposed excise tax cannot be collected through the ARSSTC sales tax system. The city's sales tax *will* be collected on remote sales of other tobacco products, but the city cannot effectively collect the tobacco excise tax from such distributors.

Finally, Ordinance 2021-02 contemplates an annual dedication of some portion of the excise tax to smoking cessation and related public health programs.

## **2. Changes from November 10 Draft Ordinance**

Ordinance 2021-02 addresses concerns expressed at the November work session and also includes changes to facilitate administration of the tax and clarify the ordinance's intent and effect.

### *i. Effective Date.*

The most significant change to the form of the ordinance is that the code section levying the tax (UCO § 6.56.030) now appears in a separate ordinance section (Section 3), while the remainder of the proposed Chapter 6.56 appears in Section 2 of the ordinance. This change is to facilitate the staggered effective date of the registration aspects of the chapter and the obligation to pay and remit the tax. The effective date of the tax levy has also been pushed out to October 1 instead of July 1.

ii. *Purpose - § 6.56.010.*

The proposed Chapter 6.56 now begins with a section codifying the purpose of the tax, generating revenue and improving public health by reducing tobacco consumption. This section also provides that with each annual budget the city shall determine what portion of the tax proceeds will be dedicated to smoking cessation and related public health programs.

iii. *Definitions - § 6.56.020.*

The definition section has been significantly revised with formal and substantive changes, including the addition of several defined terms. Foremost, *tobacco product* now includes *electronic smoking product*, which is given a separate definition that did not appear in the earlier draft. *Electronic smoking product* is defined using a definition from existing state statute. *In transit* is now defined, which was done to clarify an exemption to the tax.

iv. *Exemptions - § 6.56.040.*

This section is changed to clarify the exemption for US Armed Forces ship's commissaries. The section is also changed to simplify the in-transit exemption through use of the defined term.

Private fishing and commercial vessels are not exempt. If such a vessel has a store that distributes cigarettes or tobacco products, it must either refrain from distributing such products while in the City of Unalaska or register as distributor and remit the tax to the city.

We will be attending the March 9, 2021 council meeting to assist the council in its consideration of this ordinance.




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**MEMORANDUM**

**To:** Erin Reinders  
City Manager

**From:** Charles A. Cacciola 

**Date:** September 23, 2019

**Re:** Dedicating Tax Proceeds to a Specific Purpose – Excise and Sales

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The council has expressed interest in establishing a tobacco excise tax and/or an additional sales tax levy on marijuana and alcohol. It is also interested in dedicating the proceeds from these taxes to a specific purpose. This memo explains the council’s authority to dedicate tax proceeds to a specific purpose and provides examples of different approaches to dedication.

**A. Dedication of Tax Proceeds by Ordinance is Lawful**

Article IX, ¶ 7 of the state constitution provides that the “proceeds of any state tax or license shall not be dedicated to any special purpose”. Based on the text, legislative history,<sup>1</sup> existing municipal practice within the state,<sup>2</sup> and judicial precedent,<sup>3</sup> this restriction applies to the state only, not to municipalities.

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<sup>1</sup> See e.g., *State v. Alex*, 646 P.2d 203 (Alaska 1982); *State v. Ketchikan Gateway Borough*, 366 P. 3d 86 (Alaska 2016).

<sup>2</sup> E.g., Anchorage Code of Ordinances §12.20.220; Fairbanks General Code §74-117; City and Borough of Juneau Code Ordinance No 2017—22(am); Haines Borough Code § 3.80.220; Homer City Code § 9.16.010; Kodiak City Code § 3.08.025.

<sup>3</sup> E.g., *State v. Ketchikan Gateway Borough*, 366 P. 3d 86 (Alaska 2016).

Alaska Statute Title 29 does not prohibit a council from dedicating tax proceeds to a specific purpose.<sup>4</sup> Accordingly, the council is authorized to adopt such ordinances.<sup>5</sup> Nor do the City's ordinances prohibit an ordinance dedicating certain tax proceeds to a particular purpose, although any appropriation remains subject to budget procedure.<sup>6</sup>

Whether the council wishes to pursue a general use (e.g., “to mitigate the public health consequences of tobacco use”) or a specific one (“subject to appropriation, to the Iliuliuk Family & Health Services Clinic for the benefit of community health”)<sup>7</sup> is a policy choice, each with benefits and drawbacks: A broader purpose allows for greater flexibility in the future, but requires more work, potentially each year, to determine precisely how the funds are to be used in furtherance of the purpose. A more specific use may reduce or eliminate the need to revisit the question each year, but can also result in inflexibility should circumstances change.

### **B. Challenges of Dedication of Sales Tax Proceeds by Ordinance**

As a general principle, a council cannot pass an ordinance that it is unable to amend or repeal at a future date. An ordinance dedicating funds to a specific purpose can be revised by the council the same as any other ordinance, though, as explained below, this can become a more complicated question if proposed dedication is put before the voters in the same ballot proposition that ratifies the increase in the sales tax rate.

An ordinance levying a tobacco excise tax is effective without voter ratification. (As a practical concern, an ordinance adopting such a tax should have an effective date that provides City and business administrators sufficient time to adopt implementing policies.) Because the council can adopt a tobacco excise tax the same as it would any other code ordinance, it can adopt an

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<sup>4</sup> See AS 29.35.100(a).

<sup>5</sup> See AS 29.35.260(a). Moreover, AS 29.35.010(9) grants all municipalities authority “to expend money for a community purpose, facility, or service for the good of the municipality to the extent the municipality is otherwise authorized by law to exercise power necessary to accomplish the purpose or provide the facility or service”.

<sup>6</sup> See UCO Chap. 6.12; see also AS 29.35.100(a).

<sup>7</sup> Dedication to a use outside of municipal government draws closer to constitutional limitations and requires careful scrutiny. We nevertheless believe that dedicating certain tax proceeds to the clinic, subject to annual appropriation, is a constitutionally valid “public purpose” as required by Art. IX, Sec. 6 of the Alaska Constitution and further authorized by AS 29.35.010(9).

ordinance that dedicates some or all of the proceeds of the tax to a particular purpose in the same manner.<sup>8</sup>

On the other hand, “an increase in the rate of levy of a sales tax approved by ordinance does not take effect until ratified by the majority of the voters at an election.”<sup>9</sup> If voters are asked to approve a rate increase on the same ballot proposition containing a dedication of the proposed tax’s proceeds, the proposition may garner additional public support and votes; other voters may support the rate increase but not the dedication thereof, eroding support for the rate increase proposition if the increase and dedication are put forth as a single ballot proposition.

The fundamental challenge with including a dedication as an express and absolute condition in the ballot proposition authorizing the rate increase is that the council’s authority to later amend the dedication is uncertain. This question is complicated by the fact that a dedication cannot be the subject of an initiative ordinance,<sup>10</sup> so the two-year moratorium on council repeal of an initiative does not serve to impose a time limitation the council amending the dedication.<sup>11</sup> Most likely, a sales tax rate increase ballot proposition that includes an unconditional dedication would permanently prohibit the council from amending the dedication without also repealing the rate increase.<sup>12</sup> (Alternatively though unlikely, the entire ballot proposition could be seen as an unlawful delegation of the council’s responsibility for the budget.)<sup>13</sup>

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<sup>8</sup> Historically, excise taxes have served dual purposes – raising revenue and shaping consumer conduct. In particular, Tobacco excise taxes seek to reduce tobacco consumption owing to the public health costs associated with tobacco use. Dedicating proceeds of an excise tax to mitigate such costs is a natural complement to the tax’s purpose.

<sup>9</sup> AS 29.45.670.

<sup>10</sup> Dedication by initiative ordinance would run afoul of art. XI, § 7 of the state constitution and AS 29.26.100, which provide that “The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation.” *See Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough*, 273 P.3d 1128, 1136-1138 (Alaska 2012); *see also City of Fairbanks v. Fairbanks Convention and Visitors Bureau*, 818 P.2d 1153 (Alaska 1991).

<sup>11</sup> *See* AS 29.26190(a).

<sup>12</sup> *See City of St. Mary’s v. St. Mary’s Native Corporation*, 9 P.3d 1002 (Alaska 2000) (“when a local government grants an exemption by ordinance and the exemption is not subjected to a public vote, it may repeal that exception by ordinance without a public vote”).

<sup>13</sup> *See* AS 29.35.100(a); *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*, 818 P.2d 1153, 1158 (Alaska 1991).

### C. Examples of Dedication of Tax Proceeds

Including a dedication in the same ballot proposition that authorizes an increase in the sales tax rate poses complicated and uncertain questions as to the effect of the dedication and how it may be amended. Most municipal dedications of sales taxes avoid these problems, entirely or in part, by (i) not putting the dedication before the voters, (ii) posing the dedication as a separate ballot proposition, (iii) stating the dedication as a non-binding expression of intent,<sup>14</sup> (iv) limiting the duration of the tax increase conditioned upon the dedication, or (v) providing an “escape valve” in the dedication.

#### (i) *Non-Binding Expression of Intent*

Juneau has a permanent 1%, a temporary 1%, and a temporary 3% sales tax rate.<sup>15</sup> These temporary levies were scheduled to be automatically repealed in 2017 and 2018, respectively. In 2016<sup>16</sup> and 2017,<sup>17</sup> the Juneau assembly put the question of five-year extensions of these temporary levies to the voters. The ballots stated the *intent* of the assembly to use the proceeds of the temporary levies, if extended, for a specific purpose.<sup>18</sup> However, the Juneau code and ballot propositions do not specifically *require* the proceeds to be used for the specified purposes. The assembly could, through the budget process, appropriate the proceeds for other use. This authority is also established in Juneau’s charter.<sup>19</sup>

Juneau’s approach ultimately leaves appropriation to the assembly’s discretion. The decision to appropriate proceeds contrary to the intended dedication erects a political, rather than legal, protection for the dedication.

#### (ii) *Code Dedication Not Put Before Voters*

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<sup>14</sup> No ordinance dedicates any portion of Unalaska’s bed tax to a specific use. The City’s Community Support Program Guidelines consider funding of the program to be provided by bed tax proceeds, but these guidelines do not create a dedication of the proceeds.

<sup>15</sup> CBJC §69.50.020.

<sup>16</sup> City and Borough of Juneau Ord. No. 2016-19.

<sup>17</sup> City and Borough of Juneau Ord. No. 2017-22(am).

<sup>18</sup> City and Borough of Juneau Ord. No. 2016-19; City and Borough of Juneau Ord. No. 2017-22(am).

<sup>19</sup> City and Borough of Juneau Charter, § 9.11 – 9.13.

The City of Kodiak has an ordinance separate from the levying ordinance that dedicates use of sales tax proceeds.<sup>20</sup> Voter approval of the tax rate increase was not conditioned on the dedication.<sup>21</sup> Moreover, Kodiak’s charter clarifies that its council may, by motion, resolution, or ordinance transfer appropriations to any other item of appropriation, whether or not such other items are within the same department, office, or agency.<sup>22</sup> The Haines Borough follows a similar structure.<sup>23</sup>

By codifying the dedication separate from the ballot proposition, the council would need to introduce and have a public hearing on any ordinance that would alter the dedication, at which time City residents can be heard on the matter. Similar to a non-binding intent, dedicating tax proceeds by council code ordinance erects a political, rather than legal, barrier to amending or repealing the dedication.

*(iii) Posing the dedication as a separate ballot proposition*

One solution to the problems of putting the question of dedication of certain tax proceeds before the voters in connection with required voter ratification of the increased rate is to have two separate ballot propositions:

1. Should the City of Unalaska levy an additional 5%, for a total levy of 8%, on all retail sales of marijuana and alcoholic beverages?
2. If proposition 1 is approved, shall the City use the proceeds of the increased rate to mitigate impacts on public health related to alcohol and marijuana use?

By having two different propositions appear on the same ballot, the increased rate on alcohol and marijuana is permanently authorized, independent of the dedication. The council could, in the future, amend the dedication without losing authorization for the increased rate. Once again, altering the dedication approved by the voters becomes a political question, not a legal one.

The City of Homer took this approach, in part, in 2006 when it extended a temporary 3/4% additional levy.<sup>24</sup> The ballot had separate propositions. The first asked voters to authorize

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<sup>20</sup> Kodiak City Code § 3.08.025.

<sup>21</sup> See City of Kodiak Ordinance No. 1155 (2003).

<sup>22</sup> City of Kodiak Charter, § V-6.

<sup>23</sup> Haines Borough Code § 3.80.220; Haines Borough Charter § 9.02.

<sup>24</sup> City of Homer Ordinance No. 06-42.



an extension of the additional levy. The second (and third) proposition authorized the use of the proceeds for new local roads and new local non-motorized trails.

(iv) *Limiting the duration of the rate increase conditioned upon a dedication*

Like Juneau, Homer dedicates sales tax proceeds that accrue from a *temporary* levy. Unlike Juneau, the duration of the additional levy is not limited by a number of years, but by the dedication itself: The supplemental levies are dedicated to the payment of specific debt incurred for capital projects.<sup>25</sup> The supplemental levy terminates when the debt is retired.<sup>26</sup>

The Homer city council has sought voter approval to suspend<sup>27</sup> and modify dedications,<sup>28</sup> although it is unclear if Homer believes it is legally obligated to obtain voter approval or “that it is in the best interest of the community to ask the voters if they will authorize amendments to” the dedications.<sup>29</sup> In any case, by limiting the levy to paying down specific debts, Homer avoided the problem of having a permanent dedication where the increased rate would continue even if the purpose of the dedication becomes outdated.

If the council wishes the dedication to appear in the same ballot proposition that authorizes the rate increase, one option is to place a time limit on the dedication. *E.g.:*

Should the City of Unalaska levy an additional 5%, for a total levy of 8%, on all retail sales of marijuana and alcoholic beverages with the proceeds of such tax use, *for a period of not less than two years*, to mitigate impacts on public health related to alcohol and marijuana use?

(v) *Including an “escape valve” in the dedication*

Fairbanks dedicates use of its hotel/motel tax revenue to a specific purpose “unless the city council votes otherwise.”<sup>30</sup> The dedication is “subject to annual appropriation.”<sup>31</sup> In short, dedication is the default, but the council retains ultimate control of the funds and can deviate

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<sup>25</sup> Homer City Code §9.16.010(b)-(d).

<sup>26</sup> Homer City Code §9.16.010(d).

<sup>27</sup> City of Homer Ordinance No. 15-36(A-2).

<sup>28</sup> City of Homer Ordinance No. 06-42.

<sup>29</sup> City of Homer Ordinance No. 06-42.

<sup>30</sup> *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*, 818 P.2d 1153, 1154 (Alaska 1991).

<sup>31</sup> Fairbanks Code of Ordinances §74-117(c).

from the dedication by affirmative council action. The ultimate effect is, as with Juneau, that altering the use of the dedicated tax proceeds is a political question.

Anchorage follows a hybrid approach for the dedication of its bed tax. One-third is dedicated to financing a new civic center and the Egan Civic and Convention Center.<sup>32</sup> However, “If all or a portion of the taxes levied and dedicated to the purposes in subsection C. are no longer needed for the purposes described in subsection C., including repayment of bonded indebtedness, *the assembly shall consider* whether the tax increase levied pursuant to AO 2005-17, approved by the voters as ballot proposition 2 on April 5, 2005, shall be eliminated or reduced.”<sup>33</sup> Again, this approach makes amending the dedication into a political question, on which the voters can be heard at public hearing the ordinance that would amend the dedication, rather than instituting a legal barrier.

#### **CONCLUSION**

The council may dedicate certain tax proceeds to a specific purpose provided that the proceeds are used for a public purpose. Should the council wish to dedicate any tax proceeds, it should first consider the use to which the proceeds will be dedicated. If the dedicated proceeds arise from an increased sales tax rate, which must be ratified by the voter before the increase takes effect, the council must consider a second policy question – how closely it wants to tie the dedication to voter ratification of the rate increase.

Please let us know if you have any further questions on this matter.

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<sup>32</sup> Anchorage Municipal Charter, § 14.05.


<sup>33</sup> ACO § 12.20.020(D) (emphasis added).

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**MEMORANDUM**

**To:** Thomas Thomas  
City Manager

**From:** Charles A. Cacciola 

**Date:** January 28, 2019

**Re:** Taxing Tobacco – Sales and Excise

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The council is interested in imposing additional taxes on tobacco. You asked for an overview of the merits of doing so by an excise tax or by a supplemental sales tax levy.

**Excise Tax Overview**

An excise tax is a tax imposed on the performance of an act, the engaging in an occupation, or the enjoyment of a privilege.<sup>1</sup> The power to levy an excise tax, though not explicitly provided by statute, is enjoyed by all Alaska municipalities.<sup>2</sup>

Common features distinguish excise taxes from sales taxes, but the line is not always clear. Sales taxes tend to be imposed at the final sale to the consumer. Excise taxes are imposed at other points in the commercial cycle, for example, at the time of production,<sup>3</sup> or importation into a city.<sup>4</sup> As a result, the cost to the consumer is indirect: A

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<sup>1</sup> 16 Eugene McQuillan, *The Law of Municipal Corporations* § 44.190 (3<sup>rd</sup> ed.2003).

<sup>2</sup> *See e.g. Fannon v. Matanuska-Susitna Borough*, 192 P. 3d 982 (Alaska 2008).

<sup>3</sup> For example, the state levies a \$50-per-ounce excise tax on any part of the bud and flower and \$15 an ounce for the remainder of the plant that is due at the time the marijuana is harvested.

municipality levies the tax on the producer or merchant, who passes it onto the consumer by including it in the product's price, distinguishing excise taxes from a sales tax that is added at the time the consumer purchases the product.

Excise taxes target specific good or acts, unlike broad-based sales taxes. They are often customized to the major industries of the taxing jurisdiction. (The state's Commercial Passenger Vessel Excise Tax - \$34.50 per cruise ship passenger per voyage and paid by the operator - is a paradigmatic example.) Another common, though not defining, distinction is that excise taxes are often assessed at a flat rate (*e.g.*, \$50 per ounce on marijuana; \$2 per pack of cigarettes).

Finally, excise taxes often have a goal beyond generating revenue. Because an excise tax is imposed on a specific industry or product, they are used to influence behavior, such as deterring smoking, drinking (although municipalities cannot impose an excise tax on alcohol, the state can and does<sup>5</sup>), and fuel consumption,<sup>6</sup> often with consideration given to the significant social costs resulting from the activity.

For Alaska municipalities, excise taxes offer collection opportunities superior to sales taxes and can capture transactions that a retail sales tax cannot (such as production, importation, etc.). But a major reason Alaska municipalities levy excise taxes (and almost only on tobacco) is that sales tax increases require voter approval in most municipalities, including Unalaska.<sup>7</sup> No ballot question is required for excise taxes. Excise taxes also have favorable optics because the tax is included in list prices consumers see: People are more accepting of a \$2-a-pack cigarette excise tax than of a 30% sales tax added at the register, even if the total cost is the same.

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<sup>4</sup> Importation of tobacco products into a municipality is often the "privilege" that invokes tobacco excise taxes. *E.g.* Juneau City and Borough Code 69.08.20(a) "The City and Borough hereby levies an excise tax of \$3.00 per pack of cigarettes brought into the City and Borough after April 1, 2015."

<sup>5</sup> State alcohol excise rates depend upon the beverage that is distributed. *See* <http://www.tax.alaska.gov/programs/documentviewer/viewer.aspx?2>

<sup>6</sup> The federal excise tax on gasoline is 18.4 cents per gallon and 24.4 cents per gallon for diesel fuel.

<sup>7</sup> *See* AS 29.45.670. Home-rule municipalities are exempt from the statutory voter requirement, but many home-rule charters nevertheless require sales tax increases be put on the ballot.

## **Tobacco Sales Tax**

Imposing higher taxes on tobacco by way of a supplemental sales tax levy has two distinct advantages. First, required code changes are minimal. So too is the administrative burden resulting from collection of the additional taxes. Second, a supplemental sales tax levy on tobacco also enables a municipality to impose that same sales tax rate on sales of alcoholic beverages. (Municipalities are prohibited from imposing excise tax on alcohol and can impose a sales tax no higher than it imposes on other goods or services.<sup>8</sup>)

The disadvantages to using a supplemental sales tax levy are varied. First, as with any sales tax increase, the rate would not be effective until it is ratified by the voters.<sup>9</sup> Second, to achieve a levy similar to common excise taxes (i.e., \$2-\$3 dollars a pack), the additional levy would exceed 20% of the selling price. Though this is not a legal barrier, practical considerations – including public perception – militate against such high sales tax rates. A sales tax is also likely less convenient for merchants as they will need to apply multiple tax rates to different items and are likely to have customers that are upset that a pack of cigarettes advertised as \$8 rings up as \$10 with tax.

## **Tobacco Excise Tax**

An excise tax is the common method of imposing significant tax burdens on tobacco. The federal government imposes a \$1 per pack excise tax.<sup>10</sup> The State of Alaska imposes \$2.00 a pack and numerous municipalities impose \$2-\$3 a pack.<sup>11</sup> The advantages of an excise tax are essentially the inverse of the disadvantages to a sales tax: Voter ratification is not required. The tax is imposed upon the merchant and is therefore included in the advertised selling price, not added at the register. Similarly, none of the City's sales tax exemptions would be applicable to an excise tax.

The disadvantages are also the inverse of a supplemental sales tax: A new code chapter would be required and implementing the tax would impose some additional

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<sup>8</sup> AS 04.21.010.

<sup>9</sup> AS 29.45.670.

<sup>10</sup> Technically \$1.0066 as the actual levy is \$50.33 per thousand cigarettes.

<sup>11</sup> *E.g.*, Juneau - \$3; Anchorage \$2.46; Bethel \$2.21; Haines \$2.00; Ketchikan \$2.00; Kotzebue \$2. The Fairbanks North Star Borough stands out at an 8% levy on the wholesale price.

burdens on the city administration. But these burdens are not extreme. As noted, many Alaska municipalities have tobacco excise taxes, providing strong models on which to base the necessary ordinances. While excise tax registration and collection would be separate from sales tax procedures, the two are similar in practice. Initial implementation will impose moderate administrative burdens, but once underway processing a tobacco excise tax is no more resource consuming than processing a sales tax return.

Excise taxes on cigarettes are often set on a per-pack basis. Because other tobacco products (cigars, loose tobacco, etc.) are not distributed in standardized packaging, they tend to be taxed at a percentage of the wholesale price. In Alaska, such levies range from a low of 8% in the Fairbanks North Star Borough to the state's 75% rate. Most municipal levies appear to be clustered around 50%.

### **Conclusion**

Tobacco taxes are used to raise revenue<sup>12</sup> and deter tobacco consumption. The preferred method of Alaska municipalities appears to be excise taxes, but supplemental sales taxes are possible. If the council wishes to pursue a tax on tobacco products, it should first determine whether it wishes to do so as an excise or sales tax and, following that determination, the appropriate rate of levy.

Please let us know if you have any further questions.

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<sup>12</sup> The Ketchikan Gateway Borough collected \$1,074,563 in tobacco taxes in 2017.