

CITY OF BETHEL

City Council Meeting Agenda, June 23, 2020 – 6:30 PM

Website: <https://www.cityofbethel.org/council>

Location: Council Chambers, City Hall, 300 Chief Eddie Hoffman Highway, Bethel

Council Members: Mayor Perry Barr, Vice-Mayor Haley Hanson, Alyssa Leary, Mark Springer, Cece Franko, Michelle DeWitt, Hugh Dymont



City of Bethel governmental meetings will resume in-person participation. In-person participants will be required to wear face-masks while in the building and will be required to maintain six feet of distance between other participants. We recognize there are still many people who wish to continue to maintain physical distancing, so we will continue to hold meetings through Zoom.

Join Zoom Meeting

<https://us02web.zoom.us/j/6634614089?pwd=Z0xZcncwQWFPNFZiV0RaRG8xc0k4UT09>

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1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. PEOPLE TO BE HEARD – FIVE MINUTES PER PERSON

5. APPROVAL OF CONSENT AGENDA AND REGULAR AGENDA

6. APPROVAL OF MEETING MINUTES

- 6.1. *6-4-2020 Special City Council Meeting-Budget
- 6.2. *6-9-2020 Regular City Council Meeting

Posted June 17, 2020 at City Hall, AC Co., Swanson's, and the Post Office.

Kevin Morgan, Asst. City Clerk

City Clerk's Office Contact Information: Email cityclerk@cityofbethel.net Phone 907-543-1384

Items noted with an asterisk (*) are consent agenda items, unless removed from the consent agenda they are approved upon the approval of the agenda. Ordinances introduced at this meeting may be set for public hearing at the next regular meeting.

The Council may by unanimous consent, after 12:00 AM Fix the Time to Which To Adjourn until the following day at 6:30 PM

7. REPORTS OF STANDING COMMITTEES

- 7.1. Committee/Commission/Board Agendas And Draft Meeting Minutes

8. SPECIAL ORDER OF BUSINESS

9. UNFINISHED BUSINESS

- 9.1. Public Hearing Of Ordinance 20-15: Amending Chapter 4.16 By Repealing The Alcohol Use Tax (Council Member DeWitt)
- 9.2. Public Hearing Of Ordinance 20-16: Clarifying And Superseding Prior Ordinances Regarding Funding Of The Yukon-Kuskokwim Fitness Center And Requiring One Half Of One Percent (0.5%) Of All Sales Tax Collected By The City To Be Held In An Interest Bearing Account Used Exclusively To Fund The Development, Expansion, And Operations Of The Yukon-Kuskokwim Fitness Center (Council Member Dewitt)
- 9.3. Public Hearing Of Ordinance 20-17: Amending Bethel Municipal Code 7.70 To Remove Absentee In Person Voting, Establish Early Voting, And Permit The Electronic Receipt And Transmission Of Ballots In Municipal Elections (Mayor Barr)

10. NEW BUSINESS

- 10.1. *Introduction Of Ordinance 20-18: Amending Chapter 4.16.090 Of The Bethel Municipal Code, Sales Tax Collection (Finance Committee)
- 10.2. *Introduction Of Ordinance 20-19: Amending Chapter 4.16.240 Of The Bethel Municipal Code, Tax Filing Schedule (Finance Committee)
- 10.3. *Introduction Of Ordinance 20-20: Amending Chapter 5.04.100 Of The Bethel Municipal Code, Failure To Obtain And Failure To Give Notice Of Termination (Finance Committee)
- 10.4. *Introduction Of Ordinance 20-21: Amending Chapter 5.04.040 Of The Bethel Municipal Code, Fee (Finance Committee)
- 10.5. *Introduction Of Ordinance 20-22: Amending Chapter 5.04.080 Of The Bethel Municipal Code, Renewal Of Business License And Termination Of Business (Finance Committee)
- 10.6. *AM 20-23: Appointment Of Committee/Commission/Board Members. Michael Husa- Board Of Ethics. Nicholai Joekay- Public Safety And Transportation. Mary Nanuwak- Public Safety And Transportation (Mayor Barr)
- 10.7. *AM 20-24: Authorize The City Manager To Negotiate And Execute And Agreement With The University Of Alaska To Authorize The Financial Contributions To The University Of Alaska Cooperative Extension 4-H Program (City Manager Corazza)

Posted June 17, 2020 at City Hall, AC Co., Swanson's, and the Post Office.

Kevin Morgan, Asst. City Clerk

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The Council may by unanimous consent, after 12:00 AM Fix the Time to Which To Adjourn until the following day at 6:30 PM

10.8. *AM 20-25: Authorize The City Manager To Negotiate And Execute A Contract Renewal With Health Fitness For An Additional Two (2) Years Of Professional Services Managing The Health Facility (City Manager Corazza)

10.9. Direct Administration To Take Immediate Action To Stabilize the Finance Department, To Include Emergency Procurement Of Contractor's Services (Council Member DeWitt)

11. REPORTS

11.1. Mayor's Report

11.2. City Manager's Report

11.3. Clerk's Report

12. COUNCIL MEMBER COMMENTS

13. EXECUTIVE SESSION

13.1. In Accordance With AS 44.62.310 (C)(1): Matters, The Immediate Knowledge Of Which Would Clearly Have An Adverse Effect Upon The Finances Of The Public Entity And AS 44.62.6310 (C)(4): Matters Involving Consideration Of Government Records That By Law Are Not Subject To Public Disclosure- Potential Litigation C. Sharp V. City Of Bethel (Mayor Barr)

14. ADJOURNMENT

Posted June 17, 2020 at City Hall, AC Co., Swanson's, and the Post Office.

Kevin Morgan, Asst. City Clerk

City Clerk's Office Contact Information: Email cityclerk@cityofbethel.net Phone 907-543-1384

Items noted with an asterisk (*) are consent agenda items, unless removed from the consent agenda they are approved upon the approval of the agenda. Ordinances introduced at this meeting may be set for public hearing at the next regular meeting.

The Council may by unanimous consent, after 12:00 AM Fix the Time to Which To Adjourn until the following day at 6:30 PM

1. CALL TO ORDER

A Regular Meeting of the Bethel City Council was held on June 4, 2020 at 6:00 p.m., in the Council Chambers, Bethel, Alaska.

Mayor Barr called the meeting to order at 6:01 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Comprising a quorum of the Council, the following members were present:
Council Member Cece Franko Mayor Perry Barr Vice-Mayor Haley Hanson City Council Member Alyssa Leary City Council Member Michelle DeWitt City Council Member Hugh Dymont City Council Member Mark Springer (arrived after roll call)
Members Absent:
Also in attendance were the following:
City Manager Vinny Corazza, City Clerk Lori Strickler, City Attorney Libby Bakalar (telephonically)

4. PEOPLE TO BE HEARD – Five minutes per person

No one present to be heard.

5. APPROVAL OF AGENDA

Approve the agenda.

Moved by:	Alyssa Leary
Seconded by:	Michelle DeWitt
In favor:	Perry Barr, Cece Franko, Haley Hanson, Alyssa Leary, Michelle DeWitt, Hugh Dymont
Opposed:	None

Results: | Motion Carries

6. UNFINISHED BUSINESS

Item 6.1. - City Council Review/Amendment to City Administration's Proposed Budget for Fiscal Year 2021

Move into Committee of the Whole.

Moved by:	Cece Franko
Seconded by:	Alyssa Leary
In favor:	Perry Barr, Cece Franko, Haley Hanson, Alyssa Leary, Michelle DeWitt, Hugh Dymment
Opposed:	None
Results:	Motion Carries

Council Member Springer arrived at 6:35 p.m.

Motion to amend the administration's proposed FY budget as presented.

Moved by:	Alyssa Leary
Seconded by:	Cece Franko
In favor:	Perry Barr, Cece Franko, Haley Hanson, Alyssa Leary, Michelle DeWitt, Hugh Dymment, Mark Springer
Opposed:	None
Results:	Motion Carries

7. NEW BUSINESS

8. ADJOURNMENT

Main Motion: Adjournment.

Moved by:	Mark Springer
Seconded by:	Alyssa Leary
In favor:	Perry Barr, Cece Franko, Haley Hanson, Alyssa Leary, Michelle DeWitt, Hugh Dymment, Mark Springer
Opposed:	None
Results:	Motion Carries

Council Adjourned at 7:26 p.m.

Perry Barr, Mayor

ATTEST:

Lori Strickler, City Clerk

1. CALL TO ORDER

A Regular Meeting of the Bethel City Council was held on June 9, 2020 at 6:30 p.m., in the Council chambers, Bethel, Alaska.

Mayor Barr called the meeting to order at 6:30 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Comprising a quorum of the Council, the following members were present:
City Council Member Hugh Dymont City Council Member Mark Springer City Council Member Alyssa Leary City Council Member Michelle DeWitt Council Member Cece Franko Vice-Mayor Haley Hanson Mayor Perry Barr
Members Absent:
Also in attendance were the following:
City Manager Vinny Corazza, City Clerk Lori Strickler, City Attorney Libby Bakalar (telephonically)

4. PEOPLE TO BE HEARD – Five minutes per person

Mary Nanuak -Stated concerns of the COVID-19 pandemic; wanted to make sure the public knows that everyone can get it.

Bill Howell Jr. III- Spoke in opposition to Ordinance 20-12, Vote-by Mail Ordinance.

Beverly Hoffman- Suggested the Bethel Police Department get involved in future dialogues and participate in peaceful protest. Also asked the Police Department to make friendly stops at community areas such as parks. Spoke in favor of Ordinance 20-16. As a member of the PRAHSC Committee, was disappointed with the lack of participation the Committee had in the development of the budget for the YK Fitness

Center. Spoke in favor of looking at options for mail in voting.

Melanie Fredericks- As a resident of Bethel for almost twenty years, presented concerns and ideas related to the Black Lives Matter movement. Asked the City and the Council to be proactive and open-minded to ensure there are safe discussions about racism and institutional racism.

5. APPROVAL OF CONSENT AGENDA AND REGULAR AGENDA

Approve the Consent and Regular Agenda.

Moved by:	Alyssa Leary
Seconded by:	Michelle DeWitt
In favor:	Perry Barr, Cece Franko, Haley Hanson, Alyssa Leary, Mark Springer , Michelle DeWitt, Hugh Dymont
Opposed:	None
Results:	Motion Carries

6. APPROVAL OF MEETING MINUTES

Approve the Consent and Regular agenda.

Moved by:	Alyssa Leary
Seconded by:	Michelle DeWitt
In favor:	Perry Barr, Cece Franko, Haley Hanson, Alyssa Leary, Mark Springer , Michelle DeWitt, Hugh Dymont
Opposed:	None
Results:	Motion Carries

Item 6.1. - *5-19-2020 Special City Council Meeting-Budget
Passed on the consent agenda.

Item 6.2. - *5-21-2020 Special City Council Meeting-Budget
Passed on the consent agenda.

Item 6.3. - *5-26-2020 Regular City Council Meeting
Passed on the consent agenda.

Item 6.4. - *5-28-2020 Special City Council Meeting-Budget
Passed on the consent agenda.

Item 6.5. - *6-1-2020 Special City Council Meeting-Budget
Passed on the consent agenda.

7. REPORTS OF STANDING COMMITTEES

Item 7.1. - Committee/Commission/Board Agendas And Draft Meeting Minutes

Port Commission, Hugh Dymont-
A meeting has not been held since the last City Council meeting.

Planning Commission, Vice- Mayor Hanson-
A meeting will be held on Thursday; the Commission will discuss zoning, tall towers and subdivision zoning.

Community Action Grant Technical Review Board, Mayor Barr-
A meeting will be held at 7 p.m. on June 17th.

Parks, Recreation, Aquatic Health and Safety Center Committee, Council Member DeWitt-
Request for the City Administration to apply for and secure funding for a phase two of the YK Fitness Center. The Committee is very appreciative of the Clean-up Green-up efforts by the City . City Administration presented an idea for the 4th of July parade. The Committee reviewed the YK Fitness Center budget and provided some recommended changes. The committee reviewed Ordinance 20-16.

Finance Committee, Council Member Franko-
The Committee reviewed some draft ordinances which will be presented to the City Council for their review. There are two vacant seats on the Finance Committee.

Public Works Committee, Council Member Leary-
A meeting has not been held since the last regular City Council Meeting.

Public Safety and Transportation Commission, Council Member Springer-
A meeting will be held in June now that they have a quorum.

8. SPECIAL ORDER OF BUSINESS

Item 8.1. - Clean Up - Green Up Prize Drawing (Mayor Barr)

9. UNFINISHED BUSINESS

Item 9.1. - Public Hearing Of Ordinance 20-12: Establishing A City Of Bethel Budget For Fiscal Year 2021. Beginning July 1, 2020 Ending June 30, 2021 (City Manager Corazza)

Council Member DeWitt declared a conflict of interest as the organization she works with may profit from the administration \$20,000 budget for rental unit.

Mayor Barr determines that it is not a conflict of interest.

Council Member Hugh Dymont declared a conflict of interest as his son is employed for the Fire Department and clarified that in the previous Budget meetings he did not participate in discussions regarding the Fire Department per Mayor Barr's ruling.

Mayor Barr opened the Public Hearing.

No one Present to be heard.

Mayor Barr closed the Public Hearing.

Main Motion: Adopt Ordinance 20-12.

Moved by:	Mark Springer
Seconded by:	Cece Franko
In favor:	Perry Barr, Cece Franko, Haley Hanson, Alyssa Leary, Mark Springer , Michelle DeWitt, Hugh Dymont
Opposed:	None
Results:	Motion Carries

Amend Motion to amend the FY 21 Budget to insert under General Fund Transfers, Transfers to - YKRH Aquatic Center Marijuana Tax \$40,000.

Moved by:	Michelle DeWitt
Seconded by:	Mark Springer
In favor:	Perry Barr, Cece Franko, Haley Hanson, Alyssa Leary, Mark Springer , Michelle DeWitt, Hugh Dymont
Opposed:	None
Results:	Motion Carries

Motion to amend Enterprise Fund - YK Regional Health & Aquatic Center to strike

2,199,894 and insert \$1,835,999.

Moved by:	Michelle DeWitt
Seconded by:	Alyssa Leary
In favor:	Perry Barr, Cece Franko, Haley Hanson, Alyssa Leary, Mark Springer , Michelle DeWitt, Hugh Dymont
Opposed:	None
Results:	Motion Carries

Item 9.2. - Public Hearing Of Ordinance 20-13: Amending Chapter 7 Regarding City Elections To Provide For Vote By Mail Elections (Mayor Barr)

Mayor Barr opened the Public Hearing.

No one present to be heard.

Mayor Barr closed the Public Hearing.

Main Motion: Adopt Ordinance 20-13.

Moved by:	Mark Springer
Seconded by:	Alyssa Leary
In favor:	Perry Barr, Cece Franko, Haley Hanson, Alyssa Leary, Mark Springer , Michelle DeWitt
Opposed:	Hugh Dymont
Results:	Motion Carries

Suspend the rules to move back to Public Hearing.

Moved by:	Mark Springer
Seconded by:	Alyssa Leary
In favor:	Perry Barr, Cece Franko, Haley Hanson, Alyssa Leary, Mark Springer , Michelle DeWitt, Hugh Dymont
Opposed:	None
Results:	Motion Carries

Mayor Barr opened the Public Hearing.

Mary Nanuwak- Reminded the Council to listen to their constituents.

Mayor Barr closed the Public Hearing.

Item 9.3. - Public Hearing Of Ordinance 20-14: Amending Chapter 15.12.060 (A and C) Of The Bethel Municipal Code To Make Explicitly Clear That The 10-Day Deadline To Review Site Plan Permit Applications Does Not Apply To Projects That Require State Or Federal Approval, And To Remove The Four References To

Tentative Approval (Planning Commission)

Mayor Barr opened the Public Hearing.

No one present to be heard.

Mayor Barr closed the Public Hearing.

Main Motion: Adopt Ordinance 20-14.

Moved by:	Hugh Dymont
Seconded by:	Haley Hanson
In favor:	Perry Barr, Cece Franko, Haley Hanson, Alyssa Leary, Mark Springer , Michelle DeWitt, Hugh Dymont
Opposed:	None
Results:	Motion Carries

10. NEW BUSINESS

Item 10.1. - *Introduction Of Ordinance 20-15: Amending Chapter 4.16 By Repealing The Alcohol Use Tax (Council Member DeWitt)

Passed on the consent agenda.

Item 10.2. - *Introduction Of Ordinance 20-16: Clarifying And Superseding Prior Ordinances Regarding Funding Of The Yukon-Kuskokwim Fitness Center And Requiring One Half Of One Percent (0.5%) Of All Sales Tax Collected By The City To Be Held In An Interest Bearing Account Used Exclusively To Fund The Development, Expansion, And Operations Of The Yukon-Kuskokwim Fitness Center (Council Member Dewitt)

Passed on the consent agenda.

Item 10.3. - *Introduction Of Ordinance 20-17: Amending Bethel Municipal Code 7.70 To Remove Absentee In Person Voting, Establish Early Voting, And Permit The Electronic Receipt And Transmission Of Ballots In Municipal Elections (Mayor Barr)

Passed on the consent agenda.

Item 10.4. - *Resolution 20-05: Acceptance Of Coronavirus Relief Funds (City Manager Corazza)

Passed on the consent agenda.

Item 10.5. - *AM 20-22: Direct Administration To Negotiate And Execute An Agreement With Bethel Community Services Foundation For The Use Of Funds From The Coronavirus Aid, Relief, And Economic Security Act (Cares Act) (City Manager Corazza)

Council Member DeWitt declared a conflict of interest on this issue as she is an employee of the Bethel Community Services Foundation.

Mayor Barr determined Council Member DeWitt did have a conflict of interest.

Main Motion: Approve AM 20-22.

Moved by:	Alyssa Leary
Seconded by:	Mark Springer
In favor:	Perry Barr, Cece Franko, Haley Hanson, Alyssa Leary, Mark Springer, Hugh Dymont
Opposed:	None
Results:	Motion Carries

Item 10.6. - *IM 20-07: Presentation Of The City's Water And Sewer Services Expenditures Compared To Budget From July 1, 2019 To April 30, 2020 – Utilities Maintenance – Water And Wastewater Activity Report (City Manager Corazza)

Passed on the consent agenda.

11. REPORTS

Item 11.1. - Mayor's Report

Suspend the rules to hear from Mary Nanuwak.

Moved by:	Mark Springer
Seconded by:	Michelle DeWitt
In favor:	Perry Barr, Cece Franko, Haley Hanson, Alyssa Leary, Mark Springer , Michelle DeWitt, Hugh Dymont
Opposed:	None
Results:	Motion Carries

Item 11.2. - City Manager's Report

Item 11.3. - Clerk's Report

12. COUNCIL MEMBER COMMENTS

Mayor Barr-

Thanked Amy Davis for her service for the Community of Bethel and the City of Bethel. Welcomed Richard Simmons to the City of Bethel. Pleaded to the public to wear their PFD's. Thanked Bethel Family Clinic for putting all of the COVID-19 posters around town.

Vice-Mayor Hanson-

Thanked the community members for picking up trash.

Council Member Leary-

Thanked the YK Injury Prevention Store for providing PFD sales at cost.

Council Member Franko-

Thanked Melanie Fredericks and Beverly Hoffman for their comments under people to be heard to support the Black Lives Matter initiative. If public safety is an issue you are passionate about, please apply to be on the Public Safety and Transportation Commission. Wear your life jackets.

Council Member Springer-

Recognized Mary Nanuwak and welcomed her back to Bethel. Congratulated Amy Davis for her service to the Community of Bethel. Provided the public information on the new Chief of Police and his history in working in other tribal law enforcement.

Council Member DeWitt- Apologized for the confusion with the consent agenda item.

Council Member Dymment- No comment.

13. EXECUTIVE SESSION

Item 13.1. - In Accordance With AS 44.62.310(c)2: Subjects That Tend To Prejudice The Reputation And Character Of Any Person, Provided The Person May Request A Public Discussion- Personnel Review, City Attorney (Mayor Barr)

Main Motion: Move into Executive Session- In Accordance With AS 44.62.310(c)2: Subjects That Tend To Prejudice The Reputation And Character Of Any Person, Provided The Person May Request A Public Discussion- Personnel Review, City

Attorney. Those attending are the Council Members and City Attorney.

Moved by:	Mark Springer
Seconded by:	Alyssa Leary
In favor:	Perry Barr, Cece Franko, Haley Hanson, Alyssa Leary, Mark Springer , Michelle DeWitt, Hugh Dymont
Opposed:	None
Results:	Motion Carries

Council went into executive session at 9:03 p.m. Council Came out of executive session at approx. 9:26 p.m.

Item 13.2. - In Accordance With AS 44.62.310(c)2: Subjects That Tend To Prejudice The Reputation And Character Of Any Person, Provided The Person May Request A Public Discussion- Personnel Review, City Manager (Mayor Barr)

Main Motion: Move into Executive Session- In Accordance With AS 44.62.310(c)2: Subjects That Tend To Prejudice The Reputation And Character Of Any Person, Provided The Person May Request A Public Discussion- Personnel Review, City Manager. Those attending are the Council and City Manager Corazza.

Moved by:	Mark Springer
Seconded by:	Michelle DeWitt
In favor:	Perry Barr, Cece Franko, Haley Hanson, Alyssa Leary, Mark Springer , Michelle DeWitt, Hugh Dymont
Opposed:	None
Results:	Motion Carries

Mark Springer departed the meeting at 10:36 p.m.

14. ADJOURNMENT

Main Motion: Adjournment.

Moved by:	Alyssa Leary
Seconded by:	Cece Franko
In favor:	Perry Barr, Cece Franko, Haley Hanson, Alyssa Leary, Michelle DeWitt, Hugh Dymont
Opposed:	None
Results:	Motion Carries

Meeting ended at 10:45 p.m.

Perry Barr, Mayor

ATTEST:

Lori Strickler, City Clerk

City of Bethel, Alaska

Planning Commission

June 11, 2020

Regular Meeting

Bethel, Alaska

I. CALL TO ORDER:

A regular meeting of the Planning Commission was held on June 11, 2020 at the Bethel City Hall, Council Chambers in Bethel, Alaska. The Chair of Commission, Kathy Hanson called the meeting to order at 6:40 PM.

II. ROLL CALL:

Compromising a quorum of the Commission, the following members were present for roll call: Kathy Hanson, Lorin Bradbury, John Guinn, Alex Wasierski, Shadi Rabi, Stanley Hoffman Jr., & Haley Hanson

Un-Excused Absence: Scott Campbell

Also Present: Ted Meyer, City Planner; Pauline Boratko, Recorder; Vincenzo Corazza, City Manager; Libby Bakalar, City Attorney.

III. PEOPLE TO BE HEARD: Mike Shantz- addressed current code violations happening in Blueberry Subdivision, concerned that nothing is being done about it by the City.

IV. APPROVAL OF THE AGENDA:

MOVED:	Lorin Bradbury	Motion to approve the agenda and adding approval of the April 9, 2020 Meeting minutes to unfinished business.
SECONDED:	John Guinn	
VOTE ON MOTION	unanimous	

I. APPROVAL OF THE MINUTES:

MOVED:	Lorin Bradbury	Motion to approve the meeting minutes from March 12, 2020
SECONDED:	John Guinn	
VOTE ON MOTION	Unanimous	

II. SPECIAL ORDER OF BUSINESS:

III. NEW BUSINESS:

- A. Haroldson's Subdivision Update: City manager updated the planning commission on recent road maintenance.

MOVED:	Lorin Bradbury	Motion to suspend the rules to hear from Mike Shantz.
SECONDED:	Alex Wasierski	
VOTE ON MOTION	unanimous	

- B. Tall Tower: Commissioners discussed the need for small tower code section.

- C. Zoning Subdivisions: Kasayuli Subdivision is in the process of getting zoned. Planning a meeting at cultural center no later than November to final zoning.

IV. UNFISHINSHED BUSINESS:

A. Approval of April 9, 2020 meeting minutes

MOVED:	Lorin Bradbury	Motion the approve the April 9, 2020 Meeting minutes
SECONDED:	Alex Wasierski	
VOTE ON MOTION	unanimous	

V. PLANNER'S REPORT: Ted Meyer gave his report. Lorin left the meeting at 7:49pm

VI. COMMISSIONER'S COMMENTS:

- H. Hanson- no comment.
- A. Wasierski- no comment.
- J. Guinn- no comment.
- S. Hoffman- no comment.
- K. Hanson- Good Meeting.
- S. Rabi-no comment.

X. ADJOURNMENT:

MOVED:	John Guinn	Motion to adjourn the meeting.
SECONDED:	Shadi Rabi	
VOTE ON MOTION	Unanimous	

With no further business the meeting adjourned at 7:55 pm

APPROVED THIS ____ DAY OF _____, 2020

Kathy Hanson, Chair

ATTEST: Pauline Boratko, Recorder



Planning Commission Teleconference Meeting Agenda
Regular Scheduled Meeting Thursday, June 11, 2020– 6:30PM
CITY HALL COUNCIL CHAMBERS 300 CHIEF EDDIE HOFFMAN HIGHWAY

MEMBERS

Kathy Hanson
Chair
Term Expires 12/2021

Lorin Bradbury
Vice-Chair
Term Expires 12/2020

John Guinn
Commission Member
Term Expires 12/2021

Alex Wasierski
Commission Member
Term Expires 12/2021

Shadi Rabi
Commission Member
Term Expires 12/2021

Scott Campbell
Commission Member
Term Expires 12/2020

Stanley Hoffman Jr
Alternate Member
Term Expires 12/2021

Haley Hanson
Council Representative
Term Expires 10/2020

Ted Meyer
Ex-Officio Member

Pauline Boratko
Recorder

A handwritten signature in black ink, appearing to read "Pauline Boratko", is written over the printed name and title.

AGENDA

- I. CALL TO ORDER:
- II. ROLL CALL:
- III. PEOPLE TO BE HEARD – (3 Minute Limit)
- IV. APPROVAL OF THE AGENDA:
- V. APPROVAL OF THE MINUTES:
 - A. May 14, 2020—no meeting due to the lack of quorum.
- VI. SPECIAL ORDER OF BUSINESS:
- VII. NEW BUSINESS:
 - A. Haroldson's Subdivision update (discussion item)
 - B. Tall Towers- Alex Wasierski (discussion item)
 - C. Zoning subdivisions- Alex Wasierski (discussion item)
- VIII. UNFINISHED BUSINESS:
- IX. PLANNER'S REPORT:
- X. COMMISSIONER'S COMMENTS:
- XI. ADJOURNMENT:

City of Bethel, Alaska

Public Safety & Transportation Commission

June 03, 2020

Regular Meeting

Bethel, Alaska

I. CALL TO ORDER

A regular meeting of the Public Safety and Transportation Commission was held on June 03, 2020 in the Bethel City Hall Council Chambers.

This meeting was called to order at 6:45pm.

II. ROLL CALL

Present: Madelene Reichard *Chair*
Peter Williams

Absent: Azara Mohammadi

Ex-Officio Present: Amy Davis *Acting Police Chief*
Daron Solsebee *Fire Captain*
Jesslyn McGowan *Recorder*

Others Present: Vincenzo Corazza *City Manager*

A quorum was not established of the Commission. Madelene Reichard called for a special meeting to be held, Wednesday June 10th at 6:30pm.

III. ADJOURNMENT

Meeting adjourned at 6:47 pm.

APPROVED THIS _____ DAY OF _____, 2020.

Jesslyn McGowan, Recorder

Madelene Reichard, Chair

CITY OF BETHEL, ALASKA

Ordinance #20-15

AN ORDINANCE BY THE BETHEL CITY COUNCIL AMENDING CHAPTER 4.16 BY REPEALING THE ALCOHOL USE TAX

WHEREAS, on April 14, 2020, the Bethel City Council adopted Ordinance #20-06, adopting the Alaska Remote Sellers Sales Tax Code, which will go into effect September 1, 2020;

WHEREAS, through the Remote Sellers Sales Tax Code, tax collection will be applied to remote sellers, defined as "a seller or marketplace facilitator making sales of goods or services delivered within the State of Alaska, without having a physical presence in a taxing jurisdiction, or conducting business between taxing jurisdictions, when sales are made by internet, mail order, phone or other remote means. A marketplace facilitator shall be considered the remote seller for each sale facilitated through its marketplace;"

WHEREAS, the City has established a 15% tax on alcohol sales which, through the Remote Sellers Sales Tax Code, would be applied to all alcohol orders made within and outside of Bethel;

WHEREAS, the alcohol use tax will not be necessary while in or out of local option now that the Council has adopted the Remote Sellers Sales Tax Code;

WHEREAS, the revenue position for the City is not expected to change by switching from collecting the use tax to collecting the remote sellers sales tax, as the two rates are the same and the collection of the tax is applied to the same vendors.

NOW THEREFORE BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF BETHEL, ALASKA:

SECTION 1. Classification. This is a codified Ordinance and shall become part of the Bethel Municipal Code.

Section 2. Amendment: The Bethel Municipal Code Chapter 4.16 is amended as follows, new language is underlined and old language is stricken out.

4.16.010 Definitions.

For purposes of this chapter, certain words and phrases are defined as follows:

A. ~~"Alcohol use tax" means a tax imposed by the city, while under a local option as defined in AS 04.11.491, on the use, storage, or consumption of alcoholic beverages.~~

B. "Buyer" means and includes persons who acquire interest in real or personal property, or the right to use or occupy property, or who receive a service for consideration.

C. "City" means the city of Bethel.

D. "Coin-operated machine" means a slot machine, jukebox, merchandise vending machine, laundry and any other service dispensing machine or amusement device of any kind which requires the insertion of currency to make it operative.

E. "Consumer" means the person who, in the ordinary meaning of the term, takes title to, takes possession of, or rents property, or receives services for consideration.

F. "Engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect economic benefit.

G. "Federally recognized Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior has acknowledged to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, Public Law 103-454, 25 USC 479a.

H. "Finance director" means the finance director of the city or the designee of the finance director, the city manager or the city council; the designee may be an employee of the city, an accountant or other person who is not an employee of the city, a certified public accounting firm or other type of firm.

I. "Goods," "fixtures," "investment securities," "general intangibles," "accounts," "chattel paper," "documents," "instruments" and "money" and their singulars have the

meanings given the terms by the Alaska Uniform Commercial Code, AS 45.01 et seq., as amended.

J. "Lease," "leasing" or "rental," regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, means a transfer of possession or control of tangible personal property or real estate of a fixed or indeterminate term for consideration; a lease or rental may include future option to purchase or extend. The provisions of 26 USC (Internal Revenue Code), AS 45.01 through AS 45.08, AS 45.12, AS 45.14 and AS 45.29 (Uniform Commercial Code) shall apply.

K. "Person" means an individual, partnership, cooperative, association, joint venture, corporation, estate trust, business, receiver, or any entity, group or combination acting as a unit.

L. "Political subdivision" means a local government created by the state of Alaska to help fulfill its obligations. Political subdivisions include counties, cities, towns, villages, and special districts such as school districts, water districts, park districts, and airport districts.

M. "Price" means the amount of money, or the fair market value of consideration other than money, that the buyer gives to the seller in exchange for the property, the right to use or occupy the property, or the rendering of services.

N. "Rental" means any transfer of the right to use or occupy property for consideration.

O. "Responsible individual" means any individual, including a group of individuals such as a board of directors, partnership, joint venture, corporation or other entity, who has the responsibility to, is required to, or has the authority to direct or cause another person to:

1. Collect the tax levied under this chapter;

2. Segregate funds in lieu of the direct collection of the tax under this chapter;
3. Remit over to the city taxes required to be collected under this chapter; or
4. Determine which creditors of the seller are to be paid; and may include, but is not limited to, such officers and employees of a seller as the chief executive officer, president, vice president for finance, controller, comptroller, treasurer, bookkeeper, majority shareholder, finance director, manager, partner, managing partner, chief fiscal or financial officer and accountant if they possess any of the authority, responsibility or duties described in this definition.

P. "Resale" means to sell again and is limited to items which are resold per se or are physically present in a final product which is sold and is subject to tax at the time of final sale. The item must be easily and readily identifiable in the final product.

Q. "Sale" or "retail sale" or "sale at retail" means every sale or rental of real property or sale or rental of personal property (whether tangible or intangible), every sale or exchange of services, including barter, credit, lease, installment and conditional sales, for any purpose other than resale when such resale is made in the regular course of business.

1. A "sale," "retail sale," or "sale at retail" includes, but is not limited to, the following transactions:
 - a. Selling property; or
 - b. Renting, leasing, or letting of real or personal property, accommodations, facilities, or services of any nature whatsoever; or
 - c. Storing for use or consumption any item or article of personal property; or
 - d. Rendering occupational or professional services of any nature whatsoever; or

- e. Furnishing materials and rendering services in connection therewith to accomplish the installation, construction, repair or completion of a specific end product or project; or
- f. Selling real estate comprising parcels of land and buildings or improvements thereto, either separately or conjunctively; or
- g. Transfer of the product of a manufacture or construction process to the user of the product; or
- h. Importing, or causing to be imported, property from outside the city for sale or for rent, storage, distribution, use or consumption within the city; or
- i. Selling or furnishing, preparing and serving food or beverages, alcoholic or nonalcoholic, for consumption on or off the premises of the seller; or
- j. Every use or play of a coin-operated machine; or
- k. Transacting or engaging in any type of business not enumerated herein.

R. "Sales price" or "selling price" means the consideration paid by the buyer, whether money, credit, rights or other property or interest in property expressed in terms of money equal to fair market value of the consideration including delivery costs, taxes, or any other expenses whatsoever and without deduction on account of the cost of property sold, the cost of materials used, labor costs, discount, delivery costs or other expenses paid or accrued, and without any deduction on account of losses.

S. "Seller" means every person who, as principal or agent, makes a sales transaction to a buyer or consumer, every person renting goods, real or personal property and every person performing or providing services, for consideration. In the event that retail sales transactions are being conducted in the name of a corporation, partnership, cooperative, association, joint venture or other entity, the "seller" for purposes of responsibility and liability for the collection and remittance of sales tax shall include every director, officer and partner without exception.

T. "Selling price" or "sales price" means the consideration paid by the buyer, whether money, credit, rights or other property or interest in property expressed in terms of money equal to the fair market value of the consideration including delivery costs, taxes, or any other expenses whatsoever and without deduction on account of the cost of property sold, the cost of materials used, labor costs, discount, delivery costs or other expenses paid or accrued, and without any deduction on account of losses.

U. "Services" means and includes all services of every manner and description which are performed or furnished for compensation of any kind, except services rendered to an employer by an employee, including but not limited to:

1. Professional services;
2. Services in which a product or sale of property may be involved including personal property made to order;
3. The sale of transportation services;
4. Services rendered for compensation by any person who furnishes any services in the course of their business or occupation;
5. Services wherein labor and materials are used to accomplish a specified result;
6. Commissions earned during business conducted within the city; and
7. Any other services including advertising, maintenance, recreation, amusement and craftsmen's services.

V. "Time of sale" for installment sales is the time at which the initial payment is made.

W. "Transaction" means any transfer of property or the right to use or occupy property, or the rendering of a service, for consideration.

X. "Wholesaler" means a merchant who sells goods, in the regular course of business, to retailers who sell to consumers, or sell goods in the regular course of business to dealers or other wholesalers, for the purpose of taxable resale in the city. To qualify as
City of Bethel, Alaska

a wholesaler, a merchant must be regularly recognized as such, and known to the trade as such.

Y. "Wholesale sale" means a sale of goods by a merchant selling them in the regular course of business; or a sale of goods by a merchant selling them in the regular course of business at wholesale prices to dealers or other wholesalers for the purpose of taxable resale in the city. The term does not include a sale by a wholesaler to users or consumers when such sale is not for taxable resale in the city.

Z. "Z tape" means the report feature of a cash register which records the total transactions, such as sales by type, the number of customers and the number of items rung in for the period; the transactional total of the current day's receipts.

~~4.16.075 — Alcohol use tax.~~

~~There is levied and shall be collected a use tax on the storage, use, and/or consumption of alcoholic beverages in the city.~~

~~A. The tax applied shall be at the same rate as the highest sales tax rate levied under this chapter.~~

~~B. The buyer shall pay the tax.~~

~~C. Business operating outside the city limits receiving orders for alcoholic beverages to be shipped by the seller, seller's agent or employee by common carrier to an address or person in the city is responsible for tax collection and remittance to the city in the same manner as required for sales taxes levied by the city.~~

~~D. Such seller shall be liable for remittance of the use tax in the same manner as a person who is required to collect the city sales tax on the sale of other goods.~~

~~E. The buyer shall be liable to the city for all use taxes not collected by a seller.~~

Section 3. Effective Date. This Ordinance shall become effective September 1, 2020, following adoption by the Bethel City Council.

City of Bethel, Alaska

Ordinance #20-15
7 of 8

Introduced by: Council Member DeWitt
Introduction Date April 9, 2020
Public Hearing Date:
Action:
Vote:

**ENACTED THIS ___ DAY OF JUNE 2020 BY A VOTE OF _ IN FAVOR AND _
OPPOSED.**

Perry Barr, Mayor

ATTEST:

Lori Strickler, City Clerk

CITY OF BETHEL, ALASKA

Ordinance #20-16

**AN ORDINANCE BY THE BETHEL CITY COUNCIL CLARIFYING AND
SUPERSEDING PRIOR ORDINANCES REGARDING FUNDING OF THE YUKON-
KUSKOKWIM FITNESS CENTER AND REQUIRING ONE HALF OF ONE PERCENT
OF THE SIX PERCENT (0.5% of the 6%), OF ALL SALES TAX COLLECTED BY
THE CITY TO BE HELD IN AN INTEREST BEARING ACCOUNT USED
EXCLUSIVELY TO FUND THE DEVELOPMENT, EXPANSION, AND OPERATIONS
OF THE YUKON-KUSKOKWIM FITNESS CENTER**

WHEREAS, over the past fifteen years, the Bethel City Council has adopted uncodified ordinances associated with creating and funding the Yukon-Kuskokwim Fitness Center, also known from time to time as the Multiuse Recreation Facility, the Bethel Aquatic Training and Health Center, and other similar names;

WHEREAS, on October 25, 2005, the Bethel City Council unanimously passed Resolution #05-38, supporting development of a multiuse recreation facility in Bethel;

WHEREAS, on March 7, 2007, the Council adopted **Ordinance #07-08**, designating an annual budgetary allotment for the planning, construction, operation and maintenance of a multiuse recreational center, and further:

- designating an allotment of \$500,000 annually for the purpose of construction, operation, and/or maintenance of a multiuse recreation facility in Bethel;
- requiring that \$500,000 be spent each year or saved in an interest bearing account for up to 2 years;
- prohibiting the designated interest bearing account from accumulating more than \$1,050,000; and
- requiring that the ordinance would become effective only if and after the voters approved a 2 year 1% sales tax increase in the October, 2007 general election;

WHEREAS, on May 22, 2007, the Council adopted **Ordinance #07-10**, amending

Ordinance #07-08 by making the annual \$500,000 designation for the multiuse recreation facility contingent upon the voters approving, at the October, 2007 general election, a 1% sales tax increase for 2 years for planning, construction, operation, and costs, and a 5% sales tax increase for 18 years;

WHEREAS, on August 14, 2007, the Council adopted **Ordinance #07-21**, approving the following ballot proposition language for Proposition No. 1 on the October, 2007 general election ballot:

Shall the City of Bethel increase the sales tax and use tax by one (1) percent (total tax of 6%) for a period of 2 years followed by a decrease of a half (.5) percent (total tax 5.5%) which shall sunset on October 27, 2027?

WHEREAS, Ordinances #07-21 and #07-08 clearly tie sales tax increase to the multiuse recreation facility;

WHEREAS, on October 2, 2007, the majority of the voters, voting in the City's regular election, approved Proposition 1 as stated above;

WHEREAS, on November 27, 2007, the Council adopted **Ordinance #07-12 (B)**, a special budget ordinance amending the Fiscal Year 2008 budget and transferring \$500,000 to the Multiuse Recreation Center Capital Project Fund;

WHEREAS, on May 27, 2008, the Council adopted **Ordinance #08-08**, amending Ordinance #07-08 by removing the \$1,050,000 account cap and the \$500,000 annual contribution identified in Ordinances #07-08 and #07-10, and instead designating contribution to the fund in an amount equal to the amount of total City sales tax revenue collected multiplied as follows:

FY 2009 = 16.67%
FY 2010 = 12.88%
FY 2011-2027 = 9.09 %
FY 2028 = 4.55%

WHEREAS, on August 11, 2009, the Council adopted **Ordinance #09-21**, approving the following ballot proposition language for Proposition No. 2 at the October, 2009 general election:

Shall the current sales and use tax be maintained in the City of Bethel at the rate of six percent (6%)? (Ordinance No. 09-21).

Currently, the sales and use tax rate is six percent (6%). This sales and use tax rate of six percent (6%) is to be reduced on January 1, 2010 to five and one half percent (5.5%), and reduced further on October 2, 2027 to a rate of five percent (5%). A yes vote would cause the sales and use tax to be maintained at a rate of six percent (6%).

WHEREAS, on October 6, 2009, the majority of the voters, voting in the City's regular election, approved Proposition 2, causing the 6% sales tax rate to be maintained at that rate in perpetuity;

WHEREAS, on August 25, 2009, the Council adopted **Ordinance #09-25**, requiring that funds generated from sales tax revenue designated for the pool and recreation center be appropriated monthly to a designated interest bearing account;

WHEREAS, on April 27, 2010, the Council adopted **Ordinance #10-13**, which further amended Ordinance #07-08 to:

- Require transfer of an amount equal to one-half of one percent of sales taxes collected to a designated interest-bearing account established for use on the Bethel Aquatic Training and Health Center;
- Require that all funds deposited to the designated interest bearing account be allowed to accumulate as needed and be used to pay all expenses related to the development and operation of the Bethel Aquatic Training and Health Center, including but not limited to its design, promotion, construction, operation, and repair; and;
- Require the City Manager and/or his designee to administer the funds and ensure that the proceeds from the designated interest bearing account be spent for the purpose stated;

WHEREAS, on October 11, 2011, the Council adopted **Ordinance #11-20**, directing the administration to transfer all remaining pool and recreation facility monies held by the City into the designated interest bearing account;

WHEREAS, the foregoing string of ordinances and actions in totality create a picture of the Council's directives; however, the flurry of documents and amended actions render the legislative record unclear and Council directives difficult to decipher;

WHEREAS, an unclear legislative record is problematic, and a consolidated action representing current directives will make the collection, dedication, accounting, and spending of recreation center funds clear and concise for administration, the Council, the public, and the legislative record;

NOW THEREFORE BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF BETHEL, ALASKA:

SECTION 1. This is a non-codified Ordinance and shall not become part of the Bethel Municipal Code.

SECTION 2. Ordinances #07-08, #07-10, #08-08, #09-25, and #10-13 are hereby clarified and superseded as follows. To the extent this ordinance conflicts with the prior ordinances named in this section, this ordinance shall control.

SECTION 3. There is established a YK Regional Aquatic Health and Safety Center Fund. The fund is created to cover expenses related to the development, expansion, and operation of the Yukon-Kuskokwim Fitness Center, including but not limited to, design, promotion, construction, operation, repair, and maintenance of the facility.

SECTION 4. One half of one percent of the six percent, of all sales tax remitted to the City shall be deposited in an interest bearing account dedicated to the YK Regional Aquatic Health and Safety Center Fund. Sales tax collections designated to the fund shall include all sales taxes that the City is permitted to collect under the Bethel Municipal Code, whether the sale occurs in Bethel or through a remote seller. The one half of one percent sales tax designation described and directed under this section does not sunset and shall continue in perpetuity.

SECTION 5. This Ordinance shall become effective immediately following adoption by the Bethel City Council.

Introduced by: Council Member DeWitt
Introduction Date June 9, 2020
Public Hearing Date: June 23, 2020
Action:
Vote:

**ENACTED THIS ____ DAY OF JUNE 2020 BY A VOTE OF _ IN FAVOR AND _
OPPOSED.**

Perry Barr, Mayor

ATTEST:

Lori Strickler, City Clerk

Introduced by: Councilmember Jorgensen
Introduction Date: February 13, 2007
Public Hearing: February 27, 2007
March 13, 2007
March 27, 2007
Action: Passed
Vote: 5-1

CITY OF BETHEL, ALASKA

Ordinance #07-08

AN ORDINANCE DESIGNATING AN ANNUAL BUDGETARY ALLOTMENT FOR THE PLANNING, CONSTRUCTION, OPERATION AND MAINTENANCE OF A MULTIUSE RECREATION CENTER

WHEREAS the Bethel City Council has the authority to designate funds for certain projects within the City of Bethel;

WHEREAS the community of Bethel, with approximately 5,900 permanent residents, currently has no public or private facility that offers a variety of indoor recreation opportunities, such as the use of a swimming pool, fitness center, or gymnasium on a daily basis;

WHEREAS the need for a community recreation facility was expressed by the public as a priority in the 1979 Community Comprehensive Plan and has been mentioned in every community plan since 1982;

WHEREAS the Community Economic Development Strategy Plan (2003), co-produced by the City of Bethel and Orutsararmiut Native Council, is a plan containing input from the Bethel community over the course of one year that recommends that the City of Bethel work with other partners to "develop healthy activities for youth and adults" and "obtain funds to construct and build a recreational center;"

WHEREAS the City of Bethel Multiuse Recreation Facility Plan (2005) states that "significant local financial support over the long term will be required," to develop a recreation facility, and that "the larger the percentage of total cost contributed locally, the quicker the project will move from idea to reality;"

WHEREAS a multiuse recreation facility that offers people a range of activities in which to engage, such as swimming, racquetball, volleyball, running, arts and crafts, karate, ballet, and aerobics, offers many benefits to residents and visitors, including increased health and longevity, employment and entrepreneurship opportunities, a place to socialize and be a spectator or participant, and incentive for the recruitment and retention of employees;

WHEREAS the City of Bethel previously passed Resolution #05-38 supporting development of a Multiuse Recreation Facility in Bethel;

Introduced by: Councilmember Jorgensen
Introduction Date: February 13, 2007
Public Hearing: February 27, 2007
March 13, 2007
March 27, 2007
Action: Passed
Vote: 5-1

THEREFORE BE IT ENACTED by the City Council of the City of Bethel, Alaska, that:

SECTION 1. Classification. This ordinance is of a permanent nature and shall not be codified within the Bethel Municipal Code.

Designation of Annual Budgetary Allotment.

- A. The City of Bethel shall designate an allotment of \$500,000 (five hundred thousand dollars) annually for the purpose of construction, operation, and/or maintenance of a multiuse recreation facility to be built within the city limits of Bethel, Alaska.
- B. The \$500,000 (five hundred thousand dollars) must be spent each year or saved in an interest bearing account for up to two years.
- C. That at no time shall the designated interest bearing account accumulate more than \$1,050,000.
- D. All funds expended from the designated interest bearing account shall be used for the promotion, construction, operation and maintenance of a City of Bethel Multiuse Recreation Facility.
- E. The City Manager and/or his designee shall be responsible for administering the funds and insuring that the proceeds from said designated interest bearing account are spent for the purposes stated.

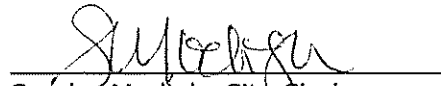
SECTION 3. Effective Date. This ordinance shall become effective upon passage of a 2 year 1% sales tax increase in the October, 2007 General Election.

ENACTED THIS 27th DAY OF MARCH 2007, BY A VOTE OF 5 IN FAVOR AND 1 OPPOSED.



Daniel C. Leinberger, Mayor

ATTEST:


Sandra Modigh, City Clerk

Introduced by: Mayor Leinberger
Date: April 24, 2007
Public Hearing: May 8, 2007
May 22, 2007
Action: Passed
Vote: 4-1

CITY OF BETHEL, ALASKA

Ordinance #07-10

AN ORDINANCE AMENDING SECTION 3 OF ORDINANCE 07-08 FOR THE PLANNING, CONSTRUCTION, OPERATION, AND MAINTENANCE OF A MULTIUSE RECREATION CENTER

WHEREAS the Bethel City Council has passed Ordinance #07-08 which calls for a budgetary allotment for the planning, construction, operation and maintenance of a multiuse recreation center;

WHEREAS the effective date of Ordinance #07-08 was upon passage by the citizens of Bethel of a two year, 1% sales tax increase in the October 2007 general election;

WHEREAS certain grant funds may be available to help defray the costs associated with planning, construction, operation and maintenance of a multiuse recreation center;

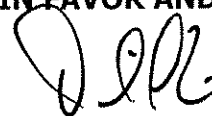
WHEREAS the recreation center project would be more attractive to grant funding agencies with a longer tax commitment from the city of Bethel;

THEREFORE BE IT ENACTED by the City Council of the City of Bethel, Alaska, that:

SECTION 1. Classification. This ordinance is of a permanent nature and shall not be codified within the Bethel Municipal Code.

SECTION 3. Effective Date. This ordinance shall become effective upon passage of a 1% sales tax increase for 2 yrs for planning, construction, operation & costs and a .5% sales tax increase for the next 18 yrs for operation & maintenance costs in the October, 2007 General Election.

ENACTED THIS 22nd DAY OF MAY 2007, BY A VOTE OF 4 IN FAVOR AND 1 OPPOSED.



Daniel C. Leinberger, Mayor

ATTEST:


Sandra Modigh, City Clerk

City of Bethel, Alaska

Ordinance #07-10
1 of 2

Introduced by: Council Member
Jorgensen
Introduction Date: July 24, 2007
Public Hearing: August 14, 2007
Action: Passed
Vote: 5-1

CITY OF BETHEL, ALASKA

ORDINANCE #07-21

AN ORDINANCE APPROVING THE LANGUAGE OF THE OCTOBER 2007 GENERAL ELECTION BALLOT PROPOSITION NO.1 INCREASING CITY SALES TAX

WHEREAS the Bethel City Council has passed Ordinance #07-08 which calls for a budgetary allotment for the planning, construction, operation and maintenance of a multiuse recreation center;

WHEREAS the effective date of Ordinance #07-08 was upon passage by the citizens of Bethel of a two year, 1% sales tax increase in the October 2007 general election;

WHEREAS the Bethel City Council has passed Ordinance #07-10 amending ordinance 07-08 by increasing the sales tax and use tax by one (1) percent (total tax of 6%) for a period of 2 years followed by a decrease of a half (.5) percent (total tax 5.5%) for 18 years, upon passage by the citizens of Bethel in the October 2007 general election.

BE IT ORDAINED by the City Council of Bethel, Alaska, that:

SECTION 1. Classification. This ordinance is of a permanent nature and shall not be codified within the Bethel Municipal Code.

SECTION 2. Election. The City Clerk shall place the following proposition on the October 2, 2007 ballot to be presented to the voters of the City of Bethel:

Proposition No. 1

ONE PERCENT INCREASE IN BETHEL SALES AND USE TAX

Shall the City of Bethel increase the sales tax and use tax by one (1) percent (total tax of 6%) for a period of 2 years followed by a decrease of a half (.5) percent (total tax 5.5%) which shall sunset on October 2, 2027?

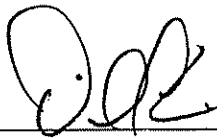
☐ Yes

☐ No

SECTION 3. Effective Date. This ordinance shall become effective immediately upon passage by the City Council.

ENACTED THIS 14th DAY OF AUGUST, 2007, BY A VOTE OF 5 IN FAVOR AND 1 OPPOSED.

ATTEST:


Daniel C. Leinberger, Mayor


Sandra Modigh, City Clerk

Introduced by: Council Member
Leinberger
Date May 13, 2008
Public Hearing: May 27, 2008
Action: Passed
Vote: 4-2

CITY OF BETHEL, ALASKA

ORDINANCE #08-08

AN ORDINANCE AMENDING ORDINANCE 07-08 FOR DESIGNATING AN ANNUAL BUDGETARY ALLOTMENT FOR THE PLANNING, CONSTRUCTION, OPERATION AND MAINTENANCE OF A MULTIUSE RECREATION CENTER

WHEREAS, the Bethel City Council has passed Ordinance #07-08 which calls for a budgetary allotment for the planning, construction, operation and maintenance of a multiuse recreation facility; and

WHEREAS, in Ordinance #07-08, a budgetary allotment totaling \$500,000 (five hundred thousand dollars) and a designated interest bearing account limited to \$1,050,000 (one million fifty thousand dollars) annually was allotted for the purpose of construction, operation, and/or maintenance of a multiuse recreation facility; and

WHEREAS, capping the amount allotted for the multiuse recreation facility in accordance with Ordinance #07-08 would leave the balance of the 1%, and then 0.5%, sales tax revenue collected in the General Fund, which is a direct contradiction to Ordinance 07-10, Section 3; and

WHEREAS, as reiterated in Ordinance #07-10, the intent of the 1% increase in city sales tax is for the planning, construction, operation and maintenance costs of the multiuse recreation center;

WHEREAS, with a changing economy the revenue from city sales tax also changes, so establishing a fixed dollar cap for the allotment to the multiuse recreation facility would not allow the full 1% sales tax revenue to be used for its intended purpose.

NOW, THEREFORE BE IT ENACTED by the City Council of Bethel Alaska as follows:

SECTION 1. Classification. This ordinance is of permanent nature and shall not be codified within the Bethel Municipal Code.

Section 2. Amendment.

Designation of Annual Budgetary Allotment

- A. The City of Bethel shall designate an allotment of ~~\$500,000 (five hundred thousand dollars)~~ annually equal to the amount of total sales tax revenue collected multiplied by the appropriate annual percentage as indicated in following calculation table, for the purpose of construction, operation, and/or maintenance of a multiuse recreation facility to be built within the city limits of Bethel, Alaska.

Introduced by: Council Member
Leinberger
Date May 13, 2008
Public Hearing: May 27, 2008
Action: Passed
Vote: 4-2

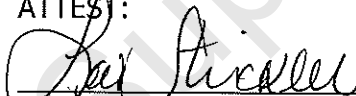
<u>Fiscal Year</u>	<u>Percentage</u>
FY2009	16.67%
FY2010	12.88%
FY2011 – FY2027	9.09%
FY2028	4.55%

- B. The \$500,000 (five hundred thousand dollars) allotment must be spent each year or saved in an interest bearing account.
- C. ~~That at no time shall the designated interest bearing account accumulate more than \$1,050,000.~~
- D. All funds expended from the designated interest bearing account shall be used for the promotion, construction, operation and maintenance of a City of Bethel Multiuse Recreation Facility.
- E. The City Manager and/or his designee shall be responsible for administering the funds and insuring that the proceeds from said designated interest bearing account are spent for the purposes stated.

SECTION 3. Effective Date. This section shall become effective upon passage by the Bethel City Council.

ENACTED THIS 27 DAY OF MAY 2008, BY A VOTE OF 4 IN FAVOR AND 2 OPPOSED.

ATTEST:


Lori Strickler, City Clerk


Eric Middlebrook, Mayor

Introduced by: Council Member
Hoffman
Date August 5, 2009
Public Hearing: August 11, 2009
Action: Passed
Vote: 6-0

CITY OF BETHEL, ALASKA

ORDINANCE #09-21

AN ORDINANCE MAINTAINING THE 6% SALES AND USE TAX RATE , AND PLACING THE ISSUE ON THE OCTOBER 6, 2009 BALLOT

WHEREAS, the qualified voters of the City of Bethel ("City") authorized an increase in the sales and use tax to: (i) a rate of six percent (6%) for a period terminating on January 1, 2010, and (ii) a rate of five and one half percent (5.5%) from January 1, 2010 through October 1, 2027; and

WHEREAS, on October 2, 2027, the sales and use tax is to be reduced to a rate of five percent (5%).

BE IT ORDAINED by the City Council of Bethel, Alaska, that:

SECTION 1. Classification. This ordinance is permanent in nature and shall be incorporated into the Bethel Municipal Code.

SECTION 2. Election. An election is to be held on October 6, 2009 in and for the City for the purpose of submitting a ballot proposition to the qualified voters of the City for approval or rejection. The proposition must receive a majority vote of the qualified voters in the City voting on the question to be approved. The Proposition shall be substantially in the following form:

Shall the current sales and use tax be maintained in the City of Bethel at the rate of six percent (6%)? (Ordinance No. 09-21).

Currently, the sales and use tax rate is six percent (6%). This sales and use tax rate of six percent (6%) is to be reduced on January 1, 2010 to five and one half percent (5.5%), and reduced further on October 2, 2027 to a rate of five percent (5%). A yes vote would cause the sales and use tax to be maintained at a rate of six percent (6%).

SECTION 3. Ballots. The proposition, both for paper ballots and machine ballots, shall be printed on a ballot which may set forth other ballot propositions, and the following words shall be added as appropriate and next to a square provided for marking the ballot for voting by a machine.

PROPOSITION NO. _____

☐ Yes

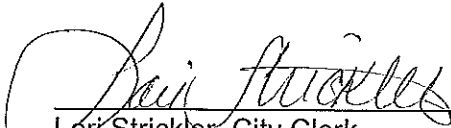
☐ No

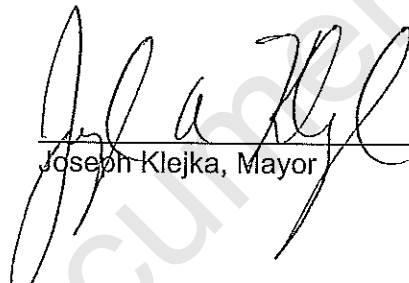
SECTION 4. Intent. Effective January 1, 2010, the sales and use tax in the City shall be set at the rate of six percent (6%)

SECTION 5. Effective Date Section 4 of this ordinance shall become effective only if the proposition described in Section 3 above is approved by a majority of the qualified voters voting on the proposition at the regular election held on October 6, 2009. The remaining sections of this ordinance shall become effective upon adoption.

ENACTED THIS 11 DAY OF AUGUST, 2009, BY A VOTE OF 6 IN FAVOR AND 0 OPPOSED.

ATTEST:


Lori Strickler, City Clerk


Joseph Klejka, Mayor

CITY OF BETHEL, ALASKA

ORDINANCE #09-25

AN ORDINANCE BY THE BETHEL CITY COUNCIL AUTHORIZING THE FUNDING OF THE DESIGNATED BATH CENTER ACCOUNT

WHEREAS, the City of Bethel ("City") levies a sales tax, of which a percentage is intended to fund development of the Bethel Aquatic Training and Health (BATH) Center;

WHEREAS, the City has established in Ordinance 07-08 that no more than \$1,050,000 shall be held in a designated account;

WHEREAS, it is imperative that funds designated for the BATH Center account not be co-mingled with other funding to ensure availability;

WHEREAS, a designated interest bearing account specifically for the BATH Center has already been established;

BE IT ORDAINED, by the City Council of Bethel, Alaska; that:

Section 1. Classification. This ordinance is permanent in nature and shall not be codified in the Bethel Municipal Code.

SECTION 2. Amendment. The Designation of Annual Budgetary Allotment in Ordinance 07-08 is hereby amended to read as follows (new language is underlined and deleted language is stricken out):

F. Funds generated from sales tax revenue that are designated for the BATH Center will be appropriated on a monthly basis to the designated interest bearing BATH Center account.

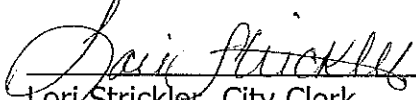
Section 3. Effective Date. This ordinance shall become effective no sooner than 60 days and no later than 90 days, after passage of said ordinance.

ENACTED THIS 25 DAY OF AUGUST 2009 BY A VOTE OF 6 IN FAVOR AND 1 OPPOSED.



Joseph Klejka, Mayor

ATTEST:



Lori Strickler, City Clerk

Supporting Documents

Introduced by: Council Member Hoffman
Introduction Date: April 13, 2010
Public Hearing: April 27, 2010
Action: Passed
Vote: 5-2

CITY OF BETHEL, ALASKA

Ordinance #10-13

AN AMENDMENT TO ORDINANCE #07-08 DESIGNATING AN ANNUAL BUDGETARY ALLOTMENT FOR ALL EXPENSES RELATED TO THE BETHEL AQUATIC TRAINING AND HEALTH CENTER

WHEREAS the Bethel City Council has the authority to designate funds for certain projects within the City of Bethel;

WHEREAS the community of Bethel, with approximately 5,803 permanent residents, currently has no public or private facility that offers a variety of indoor recreation opportunities, such as the use of a swimming pool, fitness center, or weight room/exercise room on a daily basis;

WHEREAS the need for a community recreation facility was expressed by the public as a priority in the 1979 Community Comprehensive Plan and has been mentioned in every community plan since 1982;

WHEREAS the Community Economic Development Strategy Plan (2003), co-produced by the City of Bethel and Orutsararmiut Native Council, is a plan containing input from the Bethel community over the course of one year that recommends that the City of Bethel work with other partners to "develop healthy activities for youth and adults" and "obtain funds to construct and build a recreational center;"

WHEREAS the City of Bethel Multiuse Recreation Facility Plan (2005) states that "significant local financial support over the long term will be required," to develop a recreation facility, and that "the larger the percentage of total cost contributed locally, the quicker the project will move from idea to reality;"

WHEREAS the proposed Bethel Aquatic Training and Health Center will contain a four-lane swimming pool, family swim area, kiddie pool, hot tub, fitness room, and exercise/weight room that will provide many benefits to residents and visitors, including increased health and longevity, employment and entrepreneurship opportunities, a place to socialize and be a spectator or participant, and incentive for the recruitment and retention of employees;

THEREFORE BE IT ENACTED by the City Council of the City of Bethel, Alaska, that:

SECTION 1. Classification. This ordinance is of a permanent nature and shall not be codified within the Bethel Municipal Code.

Introduced by: Council Member Hoffman
Introduction Date: April 13, 2010
Public Hearing: April 27, 2010
Action: Passed
Vote: 5-2

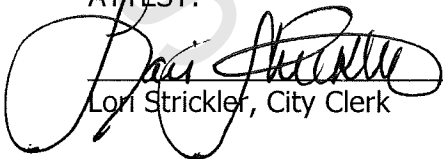
Designation of Annual Budgetary Allotment.

- A. The City of Bethel shall ~~designate an allotment of \$500,000 (five hundred thousand dollars) annually for the purpose of construction, operation, and/or maintenance of a multiuse recreation facility to be built within the city limits of Bethel, Alaska.~~ transfer an amount equal to one-half of one percent of sales taxes collected to a designated interest-bearing account established for use on the Bethel Aquatic Training and Health Center;
- B. ~~The \$500,000 (five hundred thousand dollars) must be spent each year or saved in an interest bearing account for up to two years.~~
- C. ~~That at no time shall the designated interest bearing account accumulate more than \$1,050,000.~~
- B. All funds ~~expended deposited to from~~ the designated interest-bearing account shall be allowed to accumulate as needed and will be used to pay for the all expenses related to the development and operation of the Bethel Aquatic Training and Health Center, including but not limited to, design, promotion, construction, operation, repair and maintenance of a City of Bethel Multiuse Recreation Facility. multiuse recreational facility to be built in the city limits of Bethel, Alaska.
- C. The City Manager and/or his designee shall be responsible for administering the funds and insuring that the proceeds from said designated interest bearing account are spent for the purposes stated.

SECTION 3. Effective Date. This ordinance shall become effective immediately upon passage.

ENACTED THIS 11 DAY OF MAY 2010, BY A VOTE OF 5 IN FAVOR AND 2 OPPOSED.

ATTEST:


Lori Strickler, City Clerk


Joseph Klejka, Mayor

CITY OF BETHEL, ALASKA

ORDINANCE #11-20 Substitute

AN ORDINANCE BY THE BETHEL CITY COUNCIL AUTHORIZING THE TRANSFER OF ALL REMAINING MULTI-USE RECREATION CENTER FUNDS IN THE CENTRAL TREASURY TO THE DESIGNATED WELLS FARGO BATH ACCOUNT

WHEREAS, the City of Bethel ("City") levies a sales tax, of which a percentage is intended to fund development of the Bethel Aquatic Training and Health (BATH) Center;

WHEREAS, it is imperative that funds designated for the BATH Center account not be commingled with other funding to ensure availability;

WHEREAS, a designated interest bearing account specifically for the BATH Center has already been established;

BE IT ORDAINED, by the City Council of Bethel, Alaska; that:

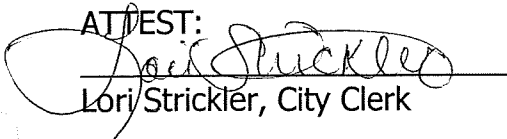
Section 1. Classification. This ordinance is not permanent in nature and shall not be codified in the Bethel Municipal Code.

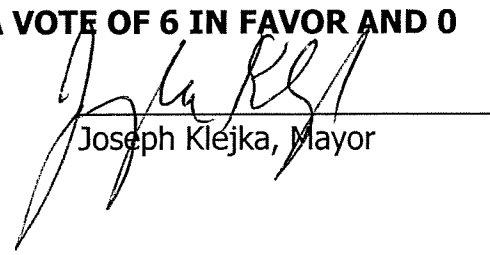
SECTION 2. Authorization. Administration is directed by this ordinance to transfer all remaining Multi-Use Recreation Center funds in the Central Treasury of the City to the designated BATH Account.

Section 3. Effective Date. This ordinance shall become effective immediately upon passage by the City Council.

ENACTED THIS 22 DAY OF NOVEMBER 2011 BY A VOTE OF 6 IN FAVOR AND 0 OPPOSED.

ATTEST:


Lori Strickler, City Clerk


Joseph Klejka, Mayor

CITY OF BETHEL, ALASKA

Ordinance #20-17

AN ORDINANCE BY THE BETHEL CITY COUNCIL AMENDING BETHEL MUNICIPAL CODE 7.70 TO REMOVE ABSENTEE IN PERSON VOTING, ESTABLISH EARLY VOTING, AND PERMIT THE ELECTRONIC RECEIPT AND TRANSMISSION OF BALLOTS IN MUNICIPAL ELECTIONS

- WHEREAS,** the City of Bethel is working hard provide voters improved access and flexibility when voting in municipal elections while also maintaining election integrity;
- WHEREAS,** absentee voting is a process in which a voter is provided an envelope to fill out with verifying information included, and an oath certifying that the voter has not voted in any other way;
- WHEREAS,** the Bethel Municipal Code currently provides for three forms of absentee voting: in person, by mail, and special needs;
- WHEREAS,** the absentee ballot envelope and voted ballots are held for the Canvass Board to review after the election; at that time the Canvass Board compares each absentee ballot envelope to the voter's voting record, which includes by mail ballots issued in advance of election day, other absentee ballots, the precinct registers used during election day, special needs voter envelopes, and questioned ballot envelopes from election day, to ensure the voter has not voted in any other manner;
- WHEREAS,** the City Clerk's Office has the equipment necessary to conduct early voting, thereby allowing voters to go to an early voting site within 15 days prior to the election to cast their ballot;
- WHEREAS,** absentee voting in person is a process that is redundant to early voting, in that it provides voters an opportunity to vote prior to election day; with early voting however, instead of completing an absentee ballot envelope, the voter votes in person at an early vote center; the election official will have the registered voter sign a precinct register and cast their ballot there

Introduced by: Mayor Barr
Introduction Date: June 9, 2020
Public Hearing Date: June 23, 2020
Action:
Vote:

just as if the early vote center was a polling place, rather than the ballot being held for the canvass board counting as with absentee in person voting;

WHEREAS, early voting in October will provide voters early voting access and is likely reduce the number of voters going to the polls on election day; in the current COVID-19 public health emergency, this will help reduce crowds during election day and will protect our voters and election officials with increased capacity for social distancing;

WHEREAS, the electronic receipt and transmission of ballots will allow ballot access to voters who have emergency travel during the election period or who live outside of the United States;

WHEREAS, under current Code provisions, the City Clerk's Office is generally not authorized to release ballots until 15 days prior to the day of the election; this requirement may prevent the ballot from being returned by mail in time for the Canvass Board to review it;

NOW THEREFORE BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF BETHEL, ALASKA:

SECTION 1. This is a codified Ordinance is of general and permanent nature and shall become part of the Bethel Municipal Code.

SECTION 2. Bethel Municipal Code Chapters 7.10 and 7.70 are amended as follows, new language is underlined old language is stricken.

BMC 7.10 General Provisions

7.10.060 Notice of elections

A. *Notice of Voter Registration.* The clerk shall post a notice of voter registration prior to the posting of the notice of election. The notice of voter registration shall include the qualifications required of voters, and the manner, time and place of registration.

B. *Notice and Posting.* The clerk shall post a notice of each election in three (3) public places in the city. The first (1st) such posting shall be accomplished at least thirty (30) calendar days before a regular election and twenty (20) calendar days before a special election. Each notice of election shall include:

1. The type of election: regular or special;
2. The date of election;
3. The hours the polling places shall be open;
4. The offices to which candidates are to be elected and the subjects of propositions and questions to be voted upon;
5. The locations of the polling places;
6. Instructions for absentee and early voting; and
7. Notification that anyone needing special assistance in casting their vote due to a disability or bilingual need shall contact the clerk at least twenty-four (24) hours before the time of casting their ballot.

BMC 7.70 Absentee and Early Voting

- 7.70.010 Administration of early and absentee voting.
- 7.70.020 Eligibility.
- 7.70.030 Materials for absentee voting.
- 7.70.040 Fee prohibited.
- ~~7.70.050 Absentee Voting In Person~~
- 7.70.050 Early Voting

7.70.060 Absentee Voting-By Mail

7.70.070 Absentee voting – Special needs.

~~7.70.070~~ 7.70.080 Absentee voting-By electronic transmission.

~~7.70.080~~ ~~Names of absentee voters.~~

7.70.010 Administration of early and absentee voting.

The clerk shall provide general administrative supervision over the conduct of early and absentee voting. The clerk shall make available instructions to voters regarding the procedure for early and absentee voting.

7.70.020 Eligibility.

Any qualified voter may vote an early or absentee ballot at any election for any reason pursuant to the procedures set forth in this chapter.

7.70.030 Materials for absentee voting.

The clerk shall provide ballots for use as absentee ballots for all precincts and shall provide a small envelope in which the voter shall initially place the marked ballot, and shall provide a larger envelope, with the prescribed voter's certificate, in which the smaller envelope with ballot enclosed shall be placed. The clerk shall provide the form of and prepare the voter's certificate on the back, in which the smaller envelope with ballot enclosed shall be placed. The clerk shall provide the form of and prepare the voter's certificate which shall include an oath, for use when required, that the voter is a qualified voter in all respects, a blank for the voter's signature, a certification that the affiant properly executed the marking of the ballot and identified himself, blanks for the witness, and a place for recording the date the envelope was sealed and witnessed.

7.70.040 **Fee prohibited.**

No person may receive a fee from the voter for attesting to any voter's certificate required in voting absentee.

~~7.70.050 Absentee voting—In person.~~

~~A. Absentee voting in person before an election official, including the clerk, shall not begin prior to fifteen (15) calendar days before a regular or ten (10) calendar days before a special election, up to and including the day of the election. The absentee voter shall appear before an election official, and provide his or her name and proof of~~

~~identification as required in this title. The voter shall complete the required information and sign the certification on the ballot oath and affidavit envelope and have it witnessed by an election official. The voter shall receive an official ballot, mark the ballot in private, and place the ballot in a secrecy sleeve. The secrecy sleeve shall then be placed in the completed ballot oath and affidavit envelope and the envelope will be sealed. An election official shall deliver the voted absentee ballots to the clerk. The clerk shall deliver the voted absentee ballots to the canvass board for canvassing.~~

~~B. Prior to the election, the clerk shall give to the election board in each precinct a list of voters from the precinct who have voted absentee ballots. If a voter who voted an absentee ballot in person returns to the voter's precinct on election day, the voter may not vote a regular ballot but may vote a questioned ballot.~~

7.70.050 Early voting.

A. For fifteen (15) calendar days before an election, a qualified voter who meets the requirements set out in this section may vote in locations designated by the clerk, to be noticed as required under BMC 7.10.060.

B. The election official shall issue a ballot to the voter upon

(1) exhibition of proof of identification in the same manner required under BMC 7.50.040.

(2) the voter's signing the early voting register.

C. After the voter has marked the ballot, the voter shall deposit the ballot in the ballot box in the presence of the election supervisor or other election official unless the voter requests the election supervisor or other election official to deposit the ballot on the voter's behalf. The tabulation of early voting ballots may not begin before 8:00 p.m. on election day.

D. Prior to the election, the clerk shall mark the precinct registers of those voters who voted early or give to the election board in each precinct a list of voters from the precinct who have voted early. If the voter who voted an early ballot returns to the voter's precinct on election day, the voter may not vote a regular ballot but may vote a questioned ballot.

7.70.060 Absentee voting – By mail.

A. A qualified voter may apply for an absentee ballot by mail if postmarked not earlier than the first (1st) of the year in which the election is to be held, nor less than ten (10) calendar days before an election. A request may be accepted by facsimile.

B. All applications for an absentee ballot by mail shall be in writing either on a form provided by the clerk's office or in a letter containing the following information:

1. The applicant's place of residence;
2. The address the applicant desires the absentee ballot to be mailed;
3. The applicant's signature; and
4. A voter identifier such as voter number, a Social Security number, or date of birth.

C. After receipt of an application by mail, the clerk shall deliver to the applicant, at the mailing address given in the application, an official ballot for the election and other absentee voting material by regular first (1st) class mail. The materials shall be sent as soon as they are ready for distribution. The return envelope sent with the materials shall be addressed to the city clerk.

D. At any time on or before the day of the election, any voter receiving an absentee ballot by mail may vote the ballot. The voted ballot shall then be placed in the secrecy sleeve, which is then placed in the return envelope, and the voter shall sign the certification on the return envelope and have it witnessed in the presence of:

1. An authorized official such as a notary public, U.S. Postmaster or authorized postal clerk, commissioned military officer, judge, justice, magistrate, clerk of the court, a duly appointed voter registrar, or election official as defined in BMC [7.10.020](#); or
2. If none of the officials listed in subsection [\(D\)\(1\)](#) of this section is reasonably accessible, an absentee voter shall sign the voter's certificate in the presence of an individual who is eighteen (18) years of age or older. In addition, the voter shall certify, as prescribed in AS [09.63.020](#), under penalty of perjury, that the statements in the voter's certification are true.

E. After witnessing the absentee voter's signature, the official or witness shall attest to the date on which the voter signed the certificate in the individual's presence, and return the voted ballot to the voter who shall mail or otherwise deliver the ballot to

the clerk. A precinct election official shall deliver the voted absentee ballots to the clerk. The clerk shall deliver the voted absentee ballots to the canvass board for canvassing.

F. The clerk may require a voter casting an absentee ballot by mail to provide proof of identification or other information to aid in the establishment of his identity.

G. The clerk shall maintain a record of the name of each voter to whom an absentee ballot is sent by mail. The record must list the date on which the ballot is mailed, the date on which the ballot is received by the city clerk and the date on which the ballot was executed and postmarked.

H. Prior to the election, the clerk shall give the election board a list of voters from the city who have been issued absentee by-mail ballots. If a voter who was issued an absentee ballot by mail returns to the voter's precinct on election day, the voter may not vote a regular ballot at the polling place unless the voter first surrenders to the election board the absentee ballot, ballot envelope and return envelope issued to the voter. If the absentee voter does not have the absentee ballot to surrender, the voter may vote a questioned ballot. Surrendered absentee ballots, ballot envelopes and return envelopes collected by the election board shall be returned to the clerk.

I. To be counted in the election, absentee by-mail ballots shall be postmarked on or before election day and must be received by the clerk no later than 6:00 p.m. two (2) calendar days following the election. Absentee by-mail ballot envelopes received by the clerk after the deadline shall not be opened, shall be marked invalid with the date of the receipt noted thereon and shall not be counted.

7.70.070 Absentee voting – Special needs.

A voter with a disability who, because of that disability, is unable to go to an absentee voting office to vote may vote a special needs ballot pursuant to BMC [7.50.110](#).

7.70.080 Absentee voting-By electronic transmission.

A. A qualified voter may apply for a ballot to be sent by electronic transmission. Such request must be received at least seven days before election day, except that an absent uniform services voter or an overseas voter may apply at any time. Requests received after this time will be processed, subject to the availability of

staff resources. The city clerk shall not honor a request received after 5:00 p.m. Alaska time on the day before the election for which the ballot is sought.

B. In order to receive a ballot, the request must include:

1. The applicant's first, middle, and last name and their residence address;
2. The Alaska residence address of the voter, other than an overseas voter qualifying under AS 15.05.011;
3. The method for receiving the ballot by electronic transmission;
4. The information necessary for the voter to receive the ballot by electronic transmission;
5. The voter's signature;
6. A telephone number where the voter can be contacted; and
7. A form of identification. The form of identification provided must be the voter's:
 - a. Voter registration number;
 - b. Social security number or last four digits of the social security number;
 - c. Date of birth;
 - d. Alaska driver's license number; or
 - e. Alaska State identification number.

C. Ballots will be electronically transmitted to the location designated in the application. If no location is designated, the ballot will be mailed in the manner provided in 7.70.050 for absentee ballots by mail. The clerk will provide reasonable conditions for the receipt and submission of electronically-transmitted ballots.

D. A ballot electronically transmitted shall contain a copy of the ballot to be used at the election in a form suitable for transmission. A photocopy of the ballot to be used by persons voting in person at the polling locations or by mail is acceptable.

E. A voted ballot may be returned to the clerk by electronic transmission. A voted ballot that is returned by electronic transmission must:

1. Contain or be accompanied by the following statement: "I understand that by using electronic transmission to return my marked ballot, I am voluntarily waiving a

portion of my right to a secret ballot to the extent necessary to process my ballot, but expect that my vote will be held as confidential as possible.”, followed by the voter’s signature and date of signature; and

2. Contain or be accompanied by a statement executed under oath as to the voter’s identity; the statement under oath must be witnessed by one United States citizen who is 18 years of age or older.

F. To be counted in the election, voted ballots returned by electronic transmission must be received no later than 8:00p.m. on election day.

G. When a completed ballot is received by electronic transmission, the election official will note the date of receipt on the absentee ballot application log and, if the ballot is received on election day, the time of receipt.

H. An electronically transmitted ballot shall be counted in accordance with BMC 7.80.030. However, it shall be unlawful to display an electronically transmitted ballot in a manner revealing the way in which a particular voter cast his or her ballot to any person other than the clerk, a member of the clerk’s staff, an election official, or an attorney advising the clerk on legal questions concerning the ballot for the sole purpose of allowing these individuals to perform their duties as necessary to the administration of the election.

~~7.70.080 — Names of absentee voters.~~

~~The clerk shall maintain a record of the name of each voter to whom an absentee ballot is sent under this section. The record must list the date on which the ballot is mailed or provided by personal representative and the date on which the ballot is received by the clerk. The record shall be available for public inspection.~~

SECTION 3. This Ordinance shall become effective immediately following adoption by the Bethel City Council.

**BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF BETHEL, ALASKA
THIS 23rd DAY OF JUNE 2020 BY A VOTE OF _ IN FAVOR AND _ OPPOSED.**

Introduced by: Mayor Barr
Introduction Date June 9, 2020
Public Hearing Date: June 23, 2020
Action:
Vote:

Perry Barr, Mayor

ATTEST:

Lori Strickler, City Clerk

CITY OF BETHEL, ALASKA

Ordinance #20-18

AN ORDINANCE BY THE BETHEL CITY COUNCIL AMENDING CHAPTER 4.16.090 OF THE BETHEL MUNICIPAL CODE, SALES TAX COLLECTION

WHEREAS, the voters of the city of Bethel have granted to the city government the power to levy sales taxes and, by doing so, have entrusted the city to administer those taxes fairly, effectively, efficiently, and in full compliance with state and city laws;

WHEREAS, no person may engage in any taxable transactions within the city without first procuring a sales tax collection certificate from the city finance department;

WHEREAS, a new business shall apply for a sales tax collection certificate not later than ten (10) days after the date of commencing business or opening additional places of business;

WHEREAS, sales tax collection certificates shall expire at the same time as the establishment's business license and may be renewed concurrently;

THEREFORE BE IT ORDAINED by the City Council of Bethel, Alaska, that the Bethel Municipal Code shall be amended and revised as follows:

SECTION 1. Classification. This ordinance is permanent and general in nature and shall be placed in the Bethel Municipal Code

SECTION 2. Amendment The Bethel Municipal Code Section 4.16.090, is amended as follows (new language is underlined and old language is stricken out):

4.16.090 Sales tax collection – Registration requirement.

A. No person may engage in any ~~taxable~~ transactions within the city without first procuring a sales tax collection certificate from the city finance department.

B. A new business shall apply for a sales tax collection certificate ~~not later than ten (10) days after the date of commencing business or opening additional places of business~~

Introduced by: Finance Committee
Introduction Date June 23, 2020
Public Hearing Date: July 14, 2020
Action:
Vote:

concurrently with the new business license application that must be obtained before commencing business.

C. Sales tax collection certificates shall expire at the same time as the establishment's business license and ~~may~~ must be renewed concurrently.

D. A person, firm, partnership, corporation or other business entity shall file an application for a sales tax collection certificate with the finance department, ~~on a form provided by the city,~~ prior to conducting business within the city. The complete business license and sales tax certificate application shall be returned to the finance department along with a copy of the business entity's Alaska State business license and city of Bethel business license. The sales tax collection certificate ~~application~~ will not be complete issued until all of these requirements have been met.

SECTION 3. Effective Date. This ordinance shall become effective upon passage by the Bethel City Council.

**ENACTED THIS DAY OF 2020, BY A VOTE OF IN FAVOR AND
OPPOSED.**

Perry Barr, Mayor

ATTEST:

Lori Strickler, City Clerk

CITY OF BETHEL, ALASKA

Ordinance #20-19

AN ORDINANCE BY THE BETHEL CITY COUNCIL AMENDING CHAPTER 4.16.240 OF THE BETHEL MUNICIPAL CODE, TAX FILING SCHEDULE

WHEREAS, the voters of the city of Bethel have granted to the city government the power to levy sales taxes and, by doing so, have entrusted the city to administer those taxes fairly, effectively, efficiently, and in full compliance with state and city laws;

WHEREAS, all persons subject to this chapter shall file a return on a form or in a format prescribed by the city and shall pay the tax due;

WHEREAS, the utility billing code states that 13.04.260 "Billing. D. Payments sent by mail and postmarked on or before the day that a bill would be considered delinquent will not be considered delinquent;"

WHEREAS, the sales tax code states that sales tax returns and taxes remitted must be received (not merely postmarked) by the finance department on or before 3:00 p.m. local time;

WHEREAS, there should be continuity in the municipal code regarding payments due;

WHEREAS, the sales tax code should be written to help business owners submit sales tax returns and remit sales taxes in a timely manner;

WHEREAS, the length of time between mailing point and destination can vary substantially;

THEREFORE BE IT ORDAINED by the City Council of Bethel, Alaska, that the Bethel Municipal Code shall be amended and revised as follows:

SECTION 1. Classification. This ordinance is permanent and general in nature and shall be placed in the Bethel Municipal Code.

SECTION 2. Amendment. The Bethel Municipal Code Section 4.16.240, is amended as follows (new language is underlined and old language is stricken out):

4.16.240 Tax filing schedule.

A. All persons subject to this chapter shall file a return on a form or in a format prescribed by the city and shall pay the tax due. Each person engaged in business in the city subject to taxation shall file a return in accordance with the following:

1. *Monthly.* Unless as otherwise provided for in this section, sellers shall file on or before ~~3:00 p.m. Alaska Time~~ on the last day of the month following the end of each preceding month.
2. *Semi-Monthly.* If a seller fails to file or is late in filing returns for two (2) or more months, whether or not consecutive, the finance director may require the seller to submit returns and payments semi-monthly for other good cause, including, but not limited to, a lack of sales history, seasonal sales, etc.
3. *Annually.* Upon approval of the finance director, a seller that has a documented history of less than twenty-four thousand dollars (\$24,000) in taxable sales annually as well as a documented history of on-time filings and payments may file its sales tax return and remittance of taxes on an annual basis. Returns and taxes filed and paid on an annual basis must be received or postmarked by the United States Postal Service or private delivery service no later than January thirty-first (31st) following the calendar year for which the tax return is required to be submitted. Penalties for late filing of an annual return and for the late remittance of taxes shall be double the rate applicable to monthly returns and interest shall accrue on late annual remittances from January first (1st) of the preceding year.
4. *Filing to Be Continuous.* A person who has filed a sales tax return will be presumed to be making sales in successive periods unless the person files a return showing a termination or sale of their business in accordance with BMC 4.16.380.

B. *Special and/or Seasonal Events.* For all sellers only operating at special and/or seasonal events, the tax return shall be due on or before the fifth (5th) business day following the event(s).

C. It is the duty and responsibility of every seller liable for the collection of any tax imposed herein, unless otherwise provided herein, to file with the city upon forms prescribed and furnished by the city, a return, prepared under oath, setting forth the amount of all sales, taxable and nontaxable, the amount of tax thereon and other information the city may require on the form or forms.

D. The completed and executed return, together with the remittance in full for the amount of the tax due, shall be transmitted to and must be received ~~(not merely postmarked)~~ by the finance department or postmarked by the United States Postal Service or private delivery service on or before 3:00 5:00 p.m. local time on:

1. *Monthly Filers.* The last day of the following month.
2. *Annual Filers.* January thirty-first (31st) of the following year.
3. *Seasonal Filers.* The fifth (5th) business day following the event.

~~Failure of the United States Postal Service or any private delivery service to make timely delivery of a sales tax return or the related remittance of sales tax shall not excuse an untimely filing or remittance.~~

E. If the last day of the month following the end of the filing period falls on a Saturday, Sunday or federal, state or city holiday, the due date will be extended until the next business day immediately following. Exceptions will be made for proper proof of remittance (such as certified mail receipt, weigh bill, etc.) showing timely submittal.

F. Any person holding or required to hold a city of Bethel business license shall file a sales tax return even though no tax may be due. This return shall show why no tax is due. If the person intends to continue doing business they shall file a return reflecting no sales and a statement indicating their intent to continue doing business, and shall continue to do so each filing period until they cease doing business or sell the business. If the person intends to cease doing business they shall file a final return and statement of business closure, and must register before restarting operations. If the business is sold, then the person must file a final return upon sale of the business in accordance with BMC 4.16.380.

G. The seller shall prepare the return and remit sales tax to the city on the same basis, cash or accrual, which the seller uses in preparing its federal income tax return. The seller shall sign the return, and transmit the return, with the amount of sales tax that it shows to be due, to the city.

H. Sellers failing to comply with the provisions of this chapter shall, if required by the city, file and transmit collected sales taxes monthly until such time that they have demonstrated to the city that they are or will be able to comply with the provisions of this chapter. Six (6) consecutive on-time sales tax filings shall establish the presumption of compliance ~~and return to quarterly filing status.~~

Introduced by: Finance Committee
Introduction Date June 23, 2020
Public Hearing Date: July 14, 2020
Action:
Vote:

I. Sales tax returns shall be accompanied by proof, satisfactory to the city, as to claimed exemptions or exceptions from tax herein imposed. In the absence of proof, the sales, rentals or services shall be deemed to have been taxable. The burden of establishing any tax exemption is upon the claimant.

J. The preparer of the sales tax return form shall keep and maintain all documentation supporting any and all claims of exempted sales and purchases and be able to produce the documentation if requested by the city. Documentation for exempted sales should include the number of the city exemption authorization card presented by the buyer at the time of the purchase, the date of the purchase, the name of the person making the purchase, the organization making the purchase, the total amount of the purchase and the amount of sales taxes exempted. Failure to provide such documentation may invalidate that portion of the claim of exemption for which no documentation is provided. [Ord. 17-39 § 2.]

SECTION 3. Effective Date. This ordinance shall become effective upon passage by the Bethel City Council.

**ENACTED THIS DAY OF 2020, BY A VOTE OF IN FAVOR AND
OPPOSED.**

Perry Barr, Mayor

ATTEST:

Lori Strickler, City Clerk

CITY OF BETHEL, ALASKA

Ordinance #20-20

AN ORDINANCE BY THE BETHEL CITY COUNCIL AMENDING CHAPTER 5.04.100 OF THE BETHEL MUNICIPAL CODE, FAILURE TO OBTAIN AND FAILURE TO GIVE NOTICE OF TERMINATION

WHEREAS, for the privilege of engaging in business in the city, a person shall first (1st) apply upon forms prescribed by the director of finance and obtain a license to do so, and pay the license fee provided in BMC 5.04.040;

WHEREAS, it is unlawful for a person to engage in or operate a business without a license issued pursuant to this chapter;

WHEREAS, it is unlawful for a person to willfully evade the licensing provisions of this chapter;

WHEREAS, it is unlawful for a person to fail to pay the required licensing fee, sales taxes, port fees, and any and all other payments, fees, taxes, charges, penalties, interest, and/or other amounts that are due and owing to the city;

WHEREAS, there should be continuity in the municipal code regarding payments due;

WHEREAS, the utility billing code states that 13.04.260 "Billing. D. Payments sent by mail and postmarked on or before the day that a bill would be considered delinquent will not be considered delinquent;"

WHEREAS, the business license code should be written to help business owners apply for and renew their business license in a timely manner;

WHEREAS, the length of time between mailing point and destination can vary substantially;

THEREFORE BE IT ORDAINED by the City Council of Bethel, Alaska, that the Bethel Municipal Code shall be amended and revised as follows:

Introduced by: Finance Committee
Introduction Date: June 23, 2020
Public Hearing Date: July 14, 2020
Action:
Vote:

SECTION 1. Classification. This ordinance is permanent and general in nature and shall be placed in the Bethel Municipal Code

SECTION 2. Amendment The Bethel Municipal Code Section 5.04.100, is amended as follows (new language is underlined and old language is stricken out):

5.04.100 Failure to obtain and failure to give notice of termination.

A person who engages in business before filing a business license application, or who fails to file any report or to pay the fee as prescribed by this chapter, or who fails to file a license renewal application or postmark a license renewal application by the United States Postal Service or private delivery service before February first (1st), shall, in addition to payment of the required fee, be subject to a penalty of one hundred dollars (\$100) that shall be paid before the license may be issued. A business license holder who fails to give notice of termination of business shall also be subject to a penalty of one hundred dollars (\$100).

SECTION 3. Effective Date. This ordinance shall become effective upon passage by the Bethel City Council.

**ENACTED THIS DAY OF 2020, BY A VOTE OF IN FAVOR AND
OPPOSED.**

Perry Barr, Mayor

ATTEST:

Lori Strickler, City Clerk

CITY OF BETHEL, ALASKA

Ordinance #20-21

AN ORDINANCE BY THE BETHEL CITY COUNCIL AMENDING CHAPTER 5.04.040 OF THE BETHEL MUNICIPAL CODE, FEE

WHEREAS, for the privilege of engaging in business in the city, a person shall first (1st) apply upon forms prescribed by the director of finance and obtain a license to do so, and pay the license fee provided in BMC 5.04.040;

WHEREAS, it is unlawful for a person to engage in or operate a business without a license issued pursuant to this chapter;

WHEREAS, it is unlawful for a person to willfully evade the licensing provisions of this chapter;

WHEREAS, it is unlawful for a person to fail to pay the required licensing fee, sales taxes, port fees, and any and all other payments, fees, taxes, charges, penalties, interest, and/or other amounts that are due and owing to the city;

WHEREAS, the different business license fees cause confusion within the Finance Department and to business owners;

WHEREAS, the Finance Department issues check refunds for businesses that overpay for their business license application and renewal fee;

WHEREAS, the Finance Department must collect the additional fee amount if a business pays the lesser incorrect business license application fee;

WHEREAS, the State of Alaska business license fee is one set amount for all forms of business;

THEREFORE BE IT ORDAINED by the City Council of Bethel, Alaska, that the Bethel Municipal Code shall be amended and revised as follows:

Introduced by: Finance Committee
Introduction Date: June 23, 2020
Public Hearing Date: July 14, 2020
Action:
Vote:

SECTION 1. Classification. This ordinance is permanent and general in nature and shall be placed in the Bethel Municipal Code

SECTION 2. Amendment The Bethel Municipal Code Section 5.04.040, is amended as follows (new language is underlined and old language is stricken out):

5.04.040 Fee.

The biennial license fee for businesses that have less than two hundred and fifty thousand dollars (\$250,000) in taxable sales in a calendar year ~~with the business classification of BT, TB, ER, RE, FN, NF, IS, SI, NP, PN, PS, SP, PV, VP, RT, TR, FP, PF, MS or SM is fifty dollars (\$50).~~ The biennial license fee for businesses with the classification of CM, TG, FT, TF, GT, TG, PR, RP, RM, MR, RS, SR, TC, CT, TX, XT, OT or TO ~~is one hundred fifty (\$150)~~ is one hundred dollars (\$100). Classification of business ~~appears on the business license.~~ The fee for a license issued to a new business that commences after the beginning of the biennial period applicable to the applicant, shall be twenty-five (25) percent of the biennial fee times the number of full and partial semesters remaining in the biennial period. No proration may be given for seasonal or other part-year operations. [Ord. 01-28 § 11; Ord. 98-29 § 2.]

SECTION 3. Effective Date. This ordinance shall become effective upon passage by the Bethel City Council.

**ENACTED THIS DAY OF 2020, BY A VOTE OF IN FAVOR AND
OPPOSED.**

Perry Barr, Mayor

ATTEST:

Lori Strickler, City Clerk

CITY OF BETHEL, ALASKA

Ordinance #20-22

AN ORDINANCE BY THE BETHEL CITY COUNCIL AMENDING CHAPTER 5.04.080 OF THE BETHEL MUNICIPAL CODE, RENEWAL OF BUSINESS LICENSE AND TERMINATION OF BUSINESS

WHEREAS, for the privilege of engaging in business in the city, a person shall first (1st) apply upon forms prescribed by the director of finance and obtain a license to do so, and pay the license fee provided in BMC 5.04.040

WHEREAS, it is unlawful for a person to engage in or operate a business without a license issued pursuant to this chapter;

WHEREAS, it is unlawful for a person to willfully evade the licensing provisions of this chapter;

WHEREAS, it is unlawful for a person to fail to pay the required licensing fee, sales taxes, port fees, and any and all other payments, fees, taxes, charges, penalties, interest, and/or other amounts that are due and owing to the city;

WHEREAS, there should be continuity in the municipal code regarding payments due;

WHEREAS, the utility billing code states that 13.04.260 "Billing. D. Payments sent by mail and postmarked on or before the day that a bill would be considered delinquent will not be considered delinquent;"

WHEREAS, the business license code should be written to help business owners apply for and renew their business license in a timely manner;

WHEREAS, the length of time between mailing point and destination can vary substantially;

THEREFORE BE IT ORDAINED by the City Council of Bethel, Alaska, that the Bethel Municipal Code shall be amended and revised as follows:

Introduced by: Finance Committee
Introduction Date: June 23, 2020
Public Hearing Date: July 14, 2020
Action:
Vote:

SECTION 1. Classification. This ordinance is permanent and general in nature and shall be placed in the Bethel Municipal Code

SECTION 2. Amendment The Bethel Municipal Code Section 5.04.080, is amended as follows (new language is underlined and old language is stricken out):

5.04.080 Renewal of business license and termination of business.

A. Application for renewal of a license and payment of the biennial fee shall be made or postmarked by the United States Postal Service or private delivery service before December thirty-first (31st) of the license expiration year. Any renewal application made or postmarked after December thirty-first (31st) of the license expiration year shall be subject to a fee for the business license of twice the fee set out in BMC 5.04.040. By December tenth (10th) of each year, the finance department shall mail a written notice of renewal to each licensed business whose license will expire that year; provided, neither the failure of the city to mail the notice or the failure of a business to receive the notice shall have the effect of extending the December thirty-first (31st) renewal deadline nor of waiving any penalty or additional or increased fee for the late filing of a renewal application.

B. When a business licenseholder ceases to do business that the holder has been authorized to conduct under a business license issued by the city, the licenseholder shall notify the city in writing of the termination of the business within fourteen (14) days of such termination. Notice is not required where the business licenseholder transfers the business license to a successor assignee or purchaser. [Ord. 00-14 § 2; Ord. 98-29 § 2.]

SECTION 3. Effective Date. This ordinance shall become effective upon passage by the Bethel City Council.

**ENACTED THIS DAY OF 2020, BY A VOTE OF IN FAVOR AND
OPPOSED.**

Perry Barr, Mayor

City of Bethel, Alaska

Ordinance #20-22
2 of 3

Introduced by: Finance Committee
Introduction Date June 23, 2020
Public Hearing Date: July 14, 2020
Action:
Vote:

ATTEST:

Lori Strickler, City Clerk

City of Bethel Action Memorandum

Action memorandum No.	20-23		
Date action introduced:	June 23, 2020	Introduced by:	Mayor Barr
Date action taken:		Approved	Denied
Confirmed by:			

Appointment of Committee/Commission/Board members.

Michael Husa- Board of Ethics.

Nicholai Joekay- Public Safety and Transportation.

Mary Nanuwak- Public Safety and Transportation.

Amount of fiscal impact:		Account information:
x	No fiscal impact	

Action Memorandum 20-23 is sponsored by Mayor Barr at the request of the City Clerk.

Michael Husa has requested appointment to the Board of Ethics. If appointed, the term would be three years as a Regular member with a term expiration of December 31, 2022.

Nicholai Joekay has requested appointment to the Public Safety and Transportation. If appointed, the term would be three years as a Regular member with a term expiration of December 31, 2022.

Mary Nanuwak has requested appointment to the Public Safety and Transportation. If appointed, the term would be three years as a Regular member with a term expiration of December 31, 2022.

City of Bethel Action Memorandum

Action memorandum No.	20-24		
Date action introduced:	June 23, 2020	Introduced by:	City Manager Vinny Corazza
Date action taken:		Approved	Denied
Confirmed by:			

Authorize the City Manager to negotiate and execute and agreement with the University of Alaska to authorize the financial contributions to the University of Alaska Cooperative Extension 4-H Program.

Amount of fiscal impact:		Account information:
\$112,000	No fiscal impact	10-72-798

2021 marks the 26th year the City of Bethel has supported the annual operation of the University of Alaska's Cooperative Extension 4-H program which is operated out of the City's Teen Center building. In addition to the financial contributions made through the reduced leased rate and utilities to the facility, the City Council has approved in the Fiscal Year 2021 Budget \$112,000 to the University in exchange for the management and operation through the 4-H program.

Alaska 4-H is the state's premier youth development program that is open to all youth from kindergarten through high school. 4-H is the only youth program affiliated with a university and using research-based information and strategies. 4-H gives young people the extra edge for life success by teaching essential life skills such as confidence, competence, character and community service. In 4-H, youth work together with adults to make a difference in their communities, helping build a stronger nation. Bethel 4-H provides an after school program that can support up to 60 kids per day with about 300 youth annually enrolled. They oversee traditional clubs such as the popular Kusko Kicker's soccer club which enrolls about 90 participants per season and the Sports camp at the Fitness Center is a chartered 4-H Club.

Changes to this annual contract: Add use of the Teen Center garden, green house and storage sheds.

CITY OF BETHEL AND
THE UNIVERSITY OF ALASKA
FAIRBANKS SCHOOL OF NATURAL
RESOURCES & EXTENSION

This Agreement is made between the City of Bethel, hereinafter referred to as the "City" and the University of Alaska a Fairbanks, School of Natural Resources and Extension, hereinafter referred to as "UAF." This Memorandum of Agreement is effective July 1, 2020 through June 30, 2021 unless terminated by the City or UAF in accordance with the terms of this Agreement.

Whereas, the University and the City have determined that it is in the public interest to provide and operate a 4-H program in Bethel;

The parties do mutually agree as follows:

ARTICLE I

UAF shall:

- A. Manage and provide a UAF Cooperative Extension 4-H Program to accommodate and include:
 - 1. Access for youth;
 - 2. Trained personnel;
- B. Provide all personnel to manage the program.
- C. Provide 4-H programs to meet the needs of the community as possible with existing 4-H staff and volunteers.

City shall:

- A. Grant the sum of One Hundred Twelve Thousand (\$112,000) Dollars to UAF for operation of the 4-H Program as UAF deems most appropriate;
- B. The above sum is to be paid by the City in two (2) equal payments of Fifty-Six Thousand (\$56,000) Dollars, on or about August 15, 2020 and the other on or about January 15, 2021.

ARTICLE II

It is further mutually agreed that:

- A. This Agreement pertains to programming only;
- B. Equipment, furnishings, and holdings shall remain the property of

the respective owner/purchaser; however, UAF shall have access to all Teen Center premises, including but not limited to the Teen Center garden, greenhouse, and storage shed;

- C. All programing at the Teen Center will be exclusively conducted by UAF and their staff. The City of Bethel has no authority, control or oversite of any of the programs or activities at the Teen Center and takes no responsibilities whatsoever for any of UAF's activities or personnel;
- D. UAF shall indemnify, hold harmless, and defend the City from and against any claim or liability for negligent acts, errors or omissions of UAF under Agreement. UAF shall not be required to indemnify the City for a claim of, or liability for, the independent negligence of the City. If there is a claim of, or liability for, the joint negligent error or omission of UAF and the independent negligence of the City, the indemnification and hold harmless obligation shall be apportioned on comparative fault bases. "City" and "UAF," as used within this article, include the employees, agents, representatives and contractors who are directly responsible, respectively, to each.
- E. To the extent that the UAF is required to indemnify the City, the obligation to indemnify is effective only to the extent permitted by law. The obligation to indemnify is further conditioned on the availability of a valid existing appropriation to cover the obligation. The parties to this Agreement recognize and agree that the UAF has no current appropriation available to it to indemnify under the provisions of this Agreement and that the enactment of an appropriation in the future to finance a payment under these provisions remains in the sole discretion of the legislature and the legislature's failure to make the appropriations creates not further obligation or liability of the UAF.
- F. This Agreement is subject to renegotiations and amendment annually upon a six (6) month written notice.

The signatories of this Agreement warrant that they have the authority and are authorize to sign this Agreement.

City Manager Vincenzo S. Corazza
City of Bethel

Date

[NAME]
University of Alaska

Date

City of Bethel Action Memorandum

Action memorandum No.	20-25		
Date action introduced:	June 23, 2020	Introduced by:	City Manager Corazza
Date action taken:		Approved	Denied
Confirmed by:			

Summary Statement: Authorize the City Manager to negotiate and execute a contract renewal with Health Fitness for an additional two (2) years of professional services managing the Health Facility.

Attachment(s): copy of proposed renewal contract.

Amount of fiscal impact:		Account information:
	No fiscal impact	
FY 21 \$148,526 FY 22 \$152,981	Funds are budgeted and approved for FY21. FY22 has not yet been budgeted.	40-50-649
	Funds are not budgeted. Budget modification is required.	

In 2016, after a procurement process, the City of Bethel hired Health Fitness to operate and manage the Yukon Kuskokwim Fitness Center.

A few months ago, pursuant to section 4(b) of the contract, Health Fitness provided notice to the City of Bethel of its desire to renew the contract. After verifying that insurance was up to date, that all taxes were up to date and that the business licenses were up to date, the City of Bethel responded positively to the request. Since then renewal discussions have ensued.

Changes to this 2-year contract extension include: Increase in the fee amount FY-22 (above), deletion of the annual bonus incentive, changes to the maintenance plan dates and addition of a personnel management plan and deletion of the renewal provision.

This is the final renewal under the 2016 contract.

AMENDED YUKON KUSKOKWIM REGIONAL AQUATIC HEALTH & SAFETY CENTER

CITY OF BETHEL, ALASKA

OPERATIONS AND MAINTENANCE AGREEMENT

Covering the period between July 1, 2020 through June 30, 2022



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Amended Yukon Kuskokwim Regional Aquatic Health & Safety Center Operations and Maintenance Agreement

This Amended Facility Operations and Maintenance Agreement (hereinafter "Agreement") is made and entered into on this 1st day of July 2020, (the updated Effective Date) by and between the **CITY OF BETHEL**, a municipal corporation (hereinafter "City") and **HEALTH FITNESS CORPORATION** (hereinafter "Operator").

PURPOSE OF AGREEMENT

Operator is in the business of managing, operating and maintaining community swimming pools and recreational facilities.

City is a municipal corporation that owns and operates a community swimming pool and recreational facility with related fixtures, amenities and equipment for its residents, members and guests (collectively, "Visitors") and is seeking to retain Operator to assume the supervision, control, maintenance and operation of the Yukon Kuskokwim Regional Health and Safety Center (hereinafter the "Facility") under the terms of this Agreement.

In consideration of the mutual covenants set forth below, the parties agree as follows:

1. SCOPE OF OPERATOR SERVICES

Operator shall continue to operate and maintain the Facility as a public facility commencing on July 1, 2020, in continuation of the Agreement entered into in 2016 as amended herein. Operator and City shall determine the dates and hours that the Facility shall be open to the public (per Operation Plan described more fully below in Section 7 – Required Plans). Operator's professional services shall include, at a minimum, the services described in this Agreement (the "Services"). The parties may mutually agree to amend or modify the Services during the Term of this Agreement or any Extended Period to include additional Services or exclude unnecessary Services by doing so in a writing signed by both parties.

Operator is an independent contractor under this Agreement. Services provided by Operator pursuant to this Agreement shall be subject to the supervision of the Operator. In providing such services, neither Operator nor Operator's agents shall act as officers, employees or agents of the City. No partnership, joint venture or other joint relationship is created hereby. City does not extend to Operator or Operator's agents any authority of any kind to bind City in any respect whatsoever.

Operator shall perform Operator's duties, obligations and services under this Agreement in a skillful and professional manner. The quality of Operator's performance and interim and final product(s) provided to or on behalf of the City shall be comparable to the best local and national standards. Operator shall permit representatives of City to inspect, review or observe the services under this Agreement at any reasonable time.

2. LIST OF FACILITIES

The Operator shall perform services under this Agreement at the Facility described in Exhibit A (List of Facilities) of the original Agreement. The City and the Operator shall, from time to time, amend Exhibit A to reflect changes in the Facilities that shall be covered under this Agreement, including, without limitation, amending Exhibit A to reflect the addition of real property improvements completed in accordance with the terms and conditions of this Agreement (if any) and to reflect withdrawal of Facilities as set forth below.

- a. Condition of Facility: Upon termination of this Agreement, the City and Operator will inspect the Facility and all property listed under Exhibit A. All property shall be accounted for and in good and operating condition, less reasonable wear and tear. The City shall give written notice to Operator of any defects in the condition of any of the equipment or property that is being provided to Operator under this Agreement. Operator will be responsible for repairs to or replacement of any damaged property at the sole cost and expense of the City.
- b. Facility Withdrawal: The City may withdraw all or portions of the Facility listed on Exhibit A at any time during the term of this Agreement if:
 - i. The withdrawal is necessary for the purpose of protecting the public safety or to protect, conserve and preserve the Facility;
 - ii. The operations utilizing the listed Facility have been terminated or suspended by the City; or
 - iii. Land or real property improvements that are made available to the Operator are no longer necessary for the operation;
 - iv. The withdrawal is necessary for use by the City or other reasonable need of the City.
- c. Effect of Withdrawal: Any permanent withdrawal of listed Facilities which the City or the Operator considers to be essential for the Operator to provide the services required by this Agreement will be treated as a termination pursuant to Section 21 of this Agreement. The Operator will be compensated pursuant to Section 3 for the value of any allowable incurred costs up to the date of the withdrawal. No other compensation is due the Operator in these circumstances.
- d. Personal Property: The City will provide certain items of personal property, including without limitation, removable equipment, furniture and goods, for the Operator's use in the performance of this Agreement. The City hereby provides to the Operator personal property listed in Exhibit A – Land, Real Property Improvements and Equipment.
- e. Utilities: The City will provide the following utilities at no cost to the Operator for use in connection with the operations required or authorized hereunder:
 - i. Electricity
 - ii. Water
 - iii. Sewer
 - iv. Fuel Oil
 - v. Internet and Voice Over Internet Protocol (VOIP) Telephone
 - vi. Solid Waste Disposal

- vii. Emergency Communications Line for Security and Fire
- viii. Heat

The following utilities are not provided by the City and are to be procured, managed and paid for by the Operator in accordance with the budget:

- ✓ Cable (if desired by Operator and submitted in the approved budget); Fees associated with cable will be passed through to the City.
 - ✓ Cleaning and laundry supplies
 - ✓ Laundry Supplies (towels, detergent, etc.)
 - ✓ First Aid, AED and CPR equipment and supplies
 - ✓ Postage and delivery fees in connection with the Facility, as needed
- f. Automobile. The City will provide a vehicle for Operator's exclusive use during the term of this Agreement. Said vehicle will be the sole property of City with Operator expected to use reasonable care in the operation and maintenance of the vehicle. Costs for maintenance and/or replacement of the vehicle will be the responsibility of the City.
- g. Capital Expenditures. The City is responsible for making capital expenditures for the Facility. Capital expenditures include all items for the Facility including, but not limited to, office equipment and furniture, computer hardware and connectivity, and audio/visual equipment.

3. **COMPENSATION: PAYMENT SCHEDULE AND FEES.**

- a. Cost Plus Fixed Fee Type Agreement: This is a cost-plus-fixed-fee-type Agreement. This Agreement provides for the reimbursement of allowable incurred costs to the extent prescribed in this Agreement. The approved annual budget establishes the maximum total cost for the purpose of obligating funds and establishing a ceiling that the Operator may not exceed (except at their own risk) without the approval of the City. Allowable incurred costs are those costs directly attributable to operations and maintenance of the Facility. For the purposes of this Agreement, allowable incurred costs are those defined in the approved annual budget, are reasonable and prudent, and conform to generally accepted accounting practices.

Operator is expected to collect all revenue, including sales tax, generated from operation of the Facility for and on behalf of the City. Operator is to submit that revenue to the City monthly along with the monthly budget reports. Such revenue will be a projection in each budget and the budget shall be amended annually to reflect the previous year's revenue. ***Revenue derived from operation of the Facility is the property of the City and not compensation to the Operator. The City shall be responsible for any tax-related payments due and owing to the applicable taxing authority that are derived from the operation of the Facility.***

- b. Fixed Fee: The fixed fee payable by the City to Operator is One Hundred Forty-Eight Thousand Five Hundred Twenty-Six Dollars (\$148,526) for (July 1, 2020-June 30, 2021) and One Hundred Fifty-Two Thousand Nine Hundred Eighty-One Dollars ((\$152,981) in (July 1, 2021-June 30, 2022) (the "Fee") and shall be pro-rated monthly. The Fee includes profit and indirect costs that are not directly attributable to the operations and maintenance of the Facility, are generally considered to be overhead and

are generally provided off-site. The Fee includes, but is not limited to, proportionate share of home office expenses, management oversight and travel, accounting and clerical personnel, human resources management, payroll processing, invoicing and required reporting.

- c. Compensation for Personal Property: No compensation is due to the Operator from the City or a successor operator for the Operator's personal property used in operations under this Agreement. However, the City or a successor operator may purchase such personal property from the Operator subject to mutually agreed-upon terms. Personal property not removed from the Facility by the Operator in accordance with the terms of this Agreement shall be considered abandoned property subject to disposition by the City, at full cost and expense of the Operator, in accordance with applicable laws. Any cost or expense incurred by the City as a result of such disposition may be offset from any amounts owed to the Operator by the City to the extent consistent with applicable laws.
- d. Invoicing: The Operator shall invoice their Fee each month in advance. For example, the fixed fee for July shall be billed in June. City shall have thirty (30) days from receipt of the invoice to submit payment to Operator.

Operator shall also bill the City monthly for incurred costs for operating the Facility. Copies of all receipts and other invoices for which reimbursement is requested shall be included with the Operator's invoice. Such costs shall be in accordance with the approved budget. The City shall have thirty (30) days from receipt of the invoice to submit payment to Operator.

- e. Late Payment: Payments not submitted in a timely manner (within 30 days of receipt) shall incur a five (5%) penalty. If for any reason not the fault of the Operator, the Operator does not receive payment from the City within thirty-five (35) days after the time such payment is due, then the Operator shall assess a five (5%) percent finance charge to the invoice. If payment is not received within 30 days, the Operator has the right to send written notice to the City, alerting them of a fourteen (14) day remedy period. If payment is not received after that fourteen (14) day remedy period, the Operator shall have the right, at its option, and within its sole discretion, to interrupt its personnel and supplies from, and stop providing Services to, the City's Facility without any further or additional notice to the City.
- f. Disputed Invoices: In the event of a dispute regarding an invoice or part of an invoice, the City shall provide the Operator written notice of the dispute within ten (10) business days of receipt of the invoice. Operator and City agree to work cooperatively to resolve the matter. Should the parties be unable to resolve the dispute within thirty (30) calendar days after written notice, the parties agree to follow the dispute process laid out in this Agreement.
- g. Fee Adjustment: In the event this Agreement expires and the Services continue to be performed without a new Agreement, there will be a five (5%) increase to the Fees that will apply until a new Agreement can be made between the parties. This fee increase will be waived in the event that the renewal delay is caused by the Operator.

It is agreed to by both parties that this Agreement total can be adjusted either upward or downward if both parties decide on a change, which would affect the totals (i.e., Facility hours or number of staff, etc.) An amendment to this Agreement will be executed so that proper billing can be made and such terms made a part of this Agreement. No amendment may be made to this Agreement which will lower the minimum standards established in the Agreement. Both parties must sign any amendment to this Agreement before the respective terms will be binding.

4. TERM OF AGREEMENT/RENEWAL

- a. This Amended Agreement shall commence at midnight on the 1st day of July, 2020 and terminate on the 30th day of June, 2022 (the "Term").
- b. Renewal: This is the final extension to this contract. The City will issue a new Request for Proposals prior to the end of this contract.

5. CITY'S RESPONSIBILITIES AND OBLIGATIONS

- A. Cooperation: In order for Operator to provide the level and quality of Services under this Agreement as expected by City, Operator will expect the unconditional and full cooperation of City, which shall include, but not be limited to, the City agreeing to:
 - a. Make available to Operator access to the City's Facility as necessary to provide Services;
 - b. Respond to all reasonable requests of Operator to facilitate performance of the Services;
 - c. Provide good faith cooperation reasonably necessary for Operator to perform the Services;
 - d. Provide and maintain a telephone that has restrictions on long distance, 900 and 976 calls. Such telephones are intended for business use only and lifeguards may use them for necessary 911 calls and to page supervisors and managers. Operator will be responsible for ensuring long distance phone bills are kept to those necessary for operation of the Facility. For safety reasons, pool will be closed if phone is not operable.
 - e. Agrees to support Operator in the enforcement of all Facility rules and regulations. Enforcement may include temporary or permanent expulsion from the Facility of any person who fails to comply with any safety rule or regulation.
 - f. Provide Operator with three (3) sets of keys to all doors and gates.
 - g. Cooperate with, and provide assistance to, the Operator who will procure, in City's name and at City's sole cost and expense, all applicable music licenses.
 - h. Designate at least one (1) management level person as the Management Representative. On an ongoing basis, the Management Representative will devote an adequate amount of his or her time to provide management oversight for the program.
 - i. Provide IT services/licenses and support;
 - j. Provide building maintenance.
- B. Office Space: City will and provide a lockable and enclosed office space for the on-site program management staff which will contain the :
 - a. Telephone with conferencing and long distance capability;
 - b. Computer containing the City's standard software systems
 - c. Color printer with fax capability;
 - d. Internet access with secure firewall system;
 - e. File cabinets with capability of being locked

6. DUTY TO NOTIFY

Without prejudice to the other obligations in this Agreement:

- a. Operator shall, as soon as practicable after it becomes aware of the same, inform the City of any circumstances which affect, or will affect, its ability to perform the requirements under this Agreement;
- b. Operator shall notify City of any maintenance issues which it observes or should reasonably observe;
- c. Operator shall notify City of any IT issues which it observes or should reasonably observe; and
- d. City shall, as soon as reasonably practicable after it becomes aware of the same, inform Operator of any circumstances which affect, or will affect, its ability to operate the Facilities.

7. REQUIRED PLANS

Operator will provide a facility manager, lifeguards and other personnel as reasonably required to operate the Facility in accordance with the pool schedules, hours of operation, and staffing requirements as shown in the most recent Operations Plan. Except for routine and emergency maintenance as required, City agrees to not enter the Facility without the express consent or knowledge by the Operator.

Upon the signing of this Agreement, Operator shall be expected to operate the Facility as per the current Plans set out in Exhibit C. These Plan set out the dates, times, hours and other essential operating parameters for the Facility. Operator will have Policies and Procedures in place for managing its personnel and those policies and procedures will be utilized for personnel management at the Facility. Thereafter Operator shall amend and update each plan in accordance with the process and timeline set out in subsection (i) below.

- a. Operations Plan: Operator shall submit a proposed Operations Plan annually to the City which shall include, at a minimum:
 - i. Proposed Facility schedules;
 - ii. Review of an/or recommended changes to the Fees and Rates set out in the most current City of Bethel Fee & Rate schedule;
 - iii. Proposed hours of operation
 - iv. Proposed program offerings;
 - v. Proposed staffing;
 - vi. Draft checklists for Natatorium/Pool Maintenance (daily, weekly, monthly, quarterly, annually);
 - vii. Draft Cleaning and Maintenance Checklists (daily, weekly, monthly, quarterly, annually);
- b. Personnel Policy and Procedure Manual: The Operator shall utilize its own personnel policy and procedure manual (hereinafter "Manual") for all Operator personnel. A copy of the Manual shall be provided to the City upon the signing of this Agreement. Operator shall review its Manual by November 1st of each year to ensure it fully complies with all State and local laws. Any deficiencies shall be addressed and corrected by Operator and a revised Personnel Policy and Procedure Manual shall be prepared. Operator shall provide City with a copy of any updates or changes to Operator's Personnel Policy and Procedure

Manual.

- i. Employee Orientation: Operator shall conduct orientation with each new employee which shall cover the health and safety practices of Operator and the City.
- ii. Hazards (Health and Safety) Meetings: Operator shall conduct a hazards (health and safety) orientation for all employees at least quarterly. This orientation shall cover, at a minimum, at least two (2) of the following topics:
 - The safety rules specific to Operator and/or City;
 - The Health, Safety and Wellness policies of Operator;
 - A tour of the work areas and Facility with a discussion associated with work area hazards and safe work practices;
 - Demonstrations and education on how to use emergency eyewashes, first aid kits, fire extinguishers, fire exits, fire alarm pull boxes;
 - Identification and training, where applicable, of workspaces and where hazardous materials are used, stored and/or disposed;
 - Review of Emergency Evacuation Plan; evacuation signals and procedures, pointing out proper exit routes and a designated assembly area;
 - Review of personal Protective Equipment (PPE) that may be required for any position/employee;
 - Review of proper reporting procedures in the event of an injury and/or accident;
 - Review of the Facility telephone list with names of Health and Safety Committee members highlighted as well as location of safety bulletin board and list of persons who may be contacted in case of an emergency.

Operator to document and maintain a record of all health and safety trainings/meetings and to forward a summary of the training and attendance to the Risk Manager within three (3) weeks of completion of the training or meeting.

- c. Budget: Operator shall submit a proposed operating Budget to the City for review. Operator shall submit a proposed budget annually no later than February 15 of each year. City shall review the proposed budget, discuss any requested modifications with Operator and present the proposed operating budget to the City Council for review and approval during the annual budget process each year. Other than the initial operating budget, annual budgets should encompass the timeframe from July 1 to June 30.

Because the Facility is a public facility, Operator and Operator's staff must observe a strict impartiality as to rates and services charged to all visitors in all circumstances. Operator shall have discretion to set reduced and/or complimentary rates for such things as corporate memberships; sponsorship of events; or other situations where it is a customary or reasonable business practice.

The City reserves the right to review and modify the Operator's complimentary or reduced rate policies and practices as part of its budget approval or whenever the City has articulable concerns regarding a decision by Operator to provide a complimentary or reduced rate.

- d. Maintenance Plan: The Maintenance Plan shall include, but is not limited to, addressing how Operator will provide continued maintenance of the Facility and the equipment located

within the Facility. Examples of areas to be addressed include:

- i. Maintenance, incorporating the manufacturers recommended procedure to comply with and maintain warranties of new equipment;
 - ii. Upkeep and maintenance of building equipment, including fitness equipment, pumps, valves, regulators, etc.,
 - iii. Upkeep and maintenance of sanitation and hygiene throughout Facility;
 - iv. Training of personnel on maintaining proper Facility cleanliness;
 - v. Checklists and schedules for daily, weekly, monthly, quarterly and annual cleaning;
 - vi. Recommended cleaning and maintenance supply list;
- e. Transition Plan: Upon either the City and Operator mutually agreeing not to renew the Agreement or upon the natural expiration of this Agreement, the Operator shall prepare a Transition Plan addressing how the City can manage the Facility on its own. The Transition plan shall include steps on how the City could achieve self-management of the Facility. The Transition Plan shall be completed and submitted to the City no later than sixty (60) days prior to termination of the Agreement.
- f. Amendment or Modification: Schedules, hours of operation, or staffing requirements may be amended or modified. Any amendment or modification to the hours of operation will be in writing, signed by both parties and attached as an addendum to this Agreement and incorporated into this Agreement with full affect. The parties agree that any amendment or modification will be in accordance with the fees and budget set out in this Agreement.
- g. Summary of Plan Deadlines: Operator shall provide draft Plans per the deadlines outlined below. City shall review the drafts and provide any feedback to Operator. Thereafter, Operator shall complete and submit the final plan to City.

Description	Draft Deadline	City Response Deadline	Final Plan Due
Operation Plan July 1 to June 30	February 1	March 1	March 30
Annual Operating Budget July 1 to June 30	February 15	March 15	March 30
Maintenance Plan	May 1	June 1	June 30
Personnel Policy and Procedures Manual	November 1	December 1	December 31

8. PERSONNEL

- a. Operator shall employ only personnel who have been properly trained, certified (if appropriate for the position at issue), and screened by Operator in accordance with Operator's personnel policy rules.
- b. Non-Discrimination: In carrying out this Agreement, Operator shall not discriminate against any employee or applicant for employment because of race, national origin, color, age, creed, religion, sex, sexual orientation, gender identity, political affiliation, marital status, ancestry,

disability, or status as a disabled veteran. Operator's Personnel Policies and Procedures Manuals shall clearly reflect a non-discrimination policy.

- c. Personnel Approval: All personnel will be pre-screened, hired, trained, disciplined (if appropriate), and terminated (when appropriate) by Operator in accordance with Operator's personnel policies and procedures manual.
- d. Employer. All personnel who will work at the Facility under the terms of this Agreement shall be employees of Operator, and not employees of City. Operator will pay the following for Operator's employees:
 - i. Wages;
 - ii. Income tax withholdings;
 - iii. Social security withholdings;
 - iv. Medicare withholdings;
 - v. State unemployment insurance;
 - vi. Workmen's Compensation insurance;
 - vii. Any other State of Alaska or federal requirements.
- e. Reporting: Operator shall be solely responsible for complying with all State of Alaska and Federal employment reporting requirements such as, but not limited to, OSHA injury reporting, worker's compensation reporting, child labor reporting, etc.
- f. Certification: All lifeguards employed by Operator shall have, at a minimum, current American Red Cross Lifeguarding, CPR for the Professional Rescuer, and First Aid Certificates, or equivalent Lifeguard Training Certificates as required by the State of Alaska.

At all times during the term of this Agreement, Operator shall have at least two (2) employees with current certification as a Certified Pool Operator (CPO). At least one (1) of the CPO's shall serve in a management capacity.

- g. Identification: Lifeguards and all other personnel will wear identification at all times. Such identification shall be in the form of a swimsuit or t-shirt displaying Operator's name and/or logo as well as identification badges.
- h. Authority: To create a safe and enjoyable experience, Lifeguards and management staff shall have the authority to discipline all individuals, including expulsion, who use the Facility and will do so within the Lifeguards or management staff's best judgment and sole discretion and will be consistent with all published and posted rules of the Facility and minimum safety standards. City agrees to support Lifeguard or management staff in enforcing the Facility rules and regulations to provide a safe environment.
- i. Drug, Alcohol and Tobacco Free Workplace: The Operator shall maintain, to the greatest extent possible, a drug, alcohol and tobacco free environment within and outside the Facility. The Operator shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance, marijuana or alcohol, is prohibited in the Facility, and specifying actions that will be taken against the employee's for violating the prohibition. In addition, Operator shall establish a drug, alcohol, marijuana and tobacco-free awareness program to inform employees about the danger of drug, alcohol and

tobacco abuse in the workplace and the Facility and Operator's policy of maintaining a drug, alcohol and tobacco-free environment both in the workplace and in the Facility. Subject to applicable laws, the Operator shall take appropriate personnel action, up to and including termination, for any employee that is found to be in violation of any of these prohibitions.

j. Minimum Staffing/Services:

- i. Lifeguards: Operator will provide a sufficient number of qualified lifeguards to maintain adequate safety standards at the Facility and to comply with all Alaska rules and regulations. The lifeguards shall be responsible for maintaining orderly and safe conditions in and around the pool.
- ii. Instructors: Operator shall provide qualified instructor's to regularly provide swim lessons, exercise lessons and instruction for proper use of Facility equipment. The goal of providing lessons shall be to generate revenue and attendance at the Facility.
- iii. Gatekeepers/Concession Workers: Under this Agreement, Operator will provide a sufficient number of gatekeepers/concession workers to be on duty at all times during open hours.
- iv. Maintenance/Housekeeping: Operator will provide a sufficient number of employees to ensure the Facility remains reasonably clean at all times. Sufficient personnel must be on duty at all times to ensure regular inspections of the restrooms, mechanical rooms and locker rooms. Locker rooms are to be checked at a minimum once every fifteen (15) minutes in order to ensure the water is not left running, the area is reasonably clean, and theft is reasonably deterred.

9. FACILITY CLOSURE

- a. In case of emergency, Operator may close the Facility temporarily. An emergency may include, but is not limited to, any failure or threatened failure of Facility equipment or other unforeseen causes outside Operator's control. Such action will be documented in writing to City. City will be notified immediately by phone and fax of such closure. Further, Operator will publicly post the closing for such action at the location, will advise the local radio station as soon as practicable and will take all reasonable steps to inform the general public of the closure. No refunds will be given for temporary closings without the authorization of the City Council.
- b. The date on which the Facility is closed for any reason under this section will be the Facility Closing Date. The Facility may be closed by Operator for the following:
 - 1) Emergency Closing: Operator reserves the right to close the Facility if, in Operator's personnel's reasonable belief, there is a threat to the safety or welfare of visitors which may result from (without limitation): hazardous weather advisories, or contamination. Operator personnel will reasonably attempt to contact City's Representative if it is necessary to close the Facility early.
 - 2) Breakdown and Repair of Facility: In Operator's best judgment, Operator reserves the right to close the Facility due to a breakdown of the Facility including, without limitation, the Facility:
 - i. Is significantly inoperable for whatever reason;
 - ii. Requires repairs that must be performed during Facility hours of operation; or

iii. Requires repairs necessitating the pool being drained of water.

3) Annual Maintenance Closure: Operator and City may schedule an annual closure of the Facility for necessary cleaning and other repairs. If they choose to exercise this option, it is anticipated the closure will be no longer than two (2) weeks in duration and will be done in sections so as to minimize disruption to users of the Facility (for example, the pool area will be closed while the work-out rooms are open). Based on previous usage data, such annual closure, if it occurs, will be scheduled for the summer months whenever possible. This schedule may be amended however, as more reliable user data is collected.

c. In the event of a scheduled Facility Closing, the parties agree that there shall not be any cause for the amendment or modification of this Agreement and Operator will not refund any amounts of compensation paid by City because of a Facility Closing, except as allowed in Section d below.

d. Should a time lapse of more than seven (7) days from the Facility Closing Date be necessary to perform repairs and/or restore the Facility to normal operations due to the negligent acts or omissions of Operator, then beginning on the tenth (10th) day, Operator shall refund to City V2 percent (0.5%) per day of the total Agreement compensation. If the Facility is not opened for normal operation within ten (10) days after the Facility Closing Date due to the negligent acts or omissions of Operator, then the City may cancel this Agreement by giving seven (7) days advance written notice to Operator.

10. PRIVATE USE OF FACILITY

The Facility is a municipal facility required to be made available to all members of the public. For this reason, the Facility may not be closed to the public for the sole purpose of accommodating the private use of the Facility.

Operator may make the Facility available for private use only after regular Facility hours. Private parties will be booked by the Operator and staffed by lifeguards and other necessary personnel provided by the Operator. The Operator will strictly enforce the Facility rules at these private events and if for any reason the persons attending do not adhere to the Facility rules, the Facility may be closed.

11. ADDITIONAL FACILITIES

City acknowledges that neither the parking lot nor the wind turbine used to provide additional power to the Facility are under the direct supervision of Operator's personnel and shall be beyond the parties' intended scope of services to be provided by Operator.

In no event shall Operator be liable to any party for any loss or claim arising from any injury, damage, cost or other event or occurrence which takes place in any area not directly assigned to Operator under this Agreement, including but not limited to the Facility parking lot and the wind turbine (and area surrounding the wind turbine) used to provide additional power to the Facility.

12. REPAIRS/MAINTENANCE

- a. **City's Responsibilities:** City is solely responsible for all reasonable maintenance and repair of the Facility except for damages from the negligent or otherwise actionable conduct of the Operator. City will maintain the Facility free of any mechanical, structural, electrical or fire hazards; in compliance with all applicable local and state codes; and in a good state of general repair and maintenance suitable for the Operator's use. City may enter the Facility at all reasonable times to examine the condition of the Facility.
- b. **Operator's Responsibilities:** Operator shall be responsible for general maintenance, preventative maintenance, repairs and housekeeping of the Facility to the reasonable satisfaction of the City. Operator maintenance includes, but is not limited to, all surfaces, furniture, fixtures, and equipment. This includes pool systems, fitness and exercise equipment, and concession equipment. Operator is not expected to make major repairs but is expected to maintain the Facility in reasonably good shape, less normal wear and tear. Operator is responsible for notifying City of any maintenance issues.
- c. **Maintenance:** Operator shall notify City of any significant maintenance or repair issues that occur at the Facility as soon as practicable but in no case no more than forty-eight (48) hours after the incident has occurred.
- d. Operator shall at all times during the term of this Agreement provide and maintain adequate safety equipment as outlined in Exhibit "B".
- e. **Maintenance Records and Logs.** The Operator shall maintain maintenance records and logs. At a minimum, these records shall include:
 - i. To the extent that the following pertains to matters for which Operator is responsible and that are included in the services to be performed by Operator under this Agreement and/or all other related documents, demonstrated compliance with current Alaska Department of Environmental Conservation (ADEC) regulations, including, but not limited to, the recording of the following information for each day that the Facility is open to the public:
 - ✓ The hours of operation;
 - ✓ The length of time that the pumps and filters are in operation, and the rate of pressure, vacuum, and rate of flow readings;
 - ✓ The date that each filter is backwashed or cleaned;
 - ✓ The frequency and results of alkalinity and hardness tests;
 - ✓ The frequency and results of pH and disinfectant tests (pH and disinfectant tests must be made two [2] or more times, and depending upon chlorine or bromine demand);
 - ✓ The amount of water and chemicals added to maintain water quality;
 - ✓ Equipment failure;
 - ✓ Any gross water contamination, for example, vomiting, feces, etc.; or
 - ✓ Repair while the pool is in operation
 - ii. The Operator shall submit duplicate records on a monthly basis to ADEC while the Facility is in operation.

- iii. Check-lists for routine maintenance, preventative maintenance and janitorial duties (daily, weekly, monthly, quarterly, bi-annual and annual).
 - iv. Equipment logs for each piece of major equipment with the maintenance schedule, maintenance contracts, record of work or repairs conducted, manufacturer guidelines and specifications.
 - v. Confined space entry equipment (as specified by manufacturer).
 - vi. All logs and records must be maintained for a minimum of three (3) years.
- f. City shall be responsible for causing the completion of all major structural repairs. Operator shall be solely responsible for reporting any repair needs to the City as soon as they are identified. The City will provide snow plowing of the parking lot and will maintain the Wind Turbine. The City does not intend to provide any other maintenance.
- g. Operator will supply all necessary personnel and chemicals to provide the services required by this Agreement that all materials, services and repairs shall comply with the annual approved budget and shall be charged to the City. It is also understood that equipment breakdowns cannot always be foreseen. Operator will do everything reasonable to maintain the Facility in good repair. Any extra usage of chemicals or labor as a result of repair will be billed to City. Operator assumes no liability or responsibility for water quality or facility maintenance due to breakdowns of City's Facility (unless caused by Operator), during periods of repair, or other unforeseen reasons causing damage to the Facility, and Operator shall not be responsible or liable to City for a facility closing due to a breakdown or repair unless that breakdown or repair was caused by Operator or Operator's failure to reasonably act. Operator will maintain Water Quality by balancing all readings of chemicals to a proper and safe level for swimmers within a reasonable time once repairs have been completed. Should additional services or chemicals be needed to restore the Facility to like new condition, the cost of these services and chemicals will be charged to the City. Operator may close the Facility under this Section during which time Section 9 (Facility Closing) of this Agreement shall apply.
- h. Operator shall have authority to replace, repair or obtain the services of third parties to replace or repair Facility equipment for all repairs that are equal to or less than two thousand (\$2000.00) dollars without the prior approval of City. Such items will be billed separately to City. City must provide written approval for any repair expected to cost more than two thousand (\$2,000.00) dollars, except when repairs are immediately required to prevent further damage to the Facility or when Operator reasonably believes there is an immediate need or emergency situation, or Operator is unable to reasonably contact City's Representative.
- i. Any repairs required as the result of Operator's gross negligence or willful conduct shall be done at Operator's sole expense, and shall not be subject to reimbursement.

13. SIGNAGE AND POSTING OF RULES

Operator shall prominently display a sign at the Facility in a conspicuous place stating Operator's name, address and phone number and designating Operator personnel as being responsible for the safety and welfare of users, the quality of the Facility and performance of Operator personnel.

14. DAMAGES DUE TO VANDALISM, WEATHER AND ACTS OF GOD

- a. Operator shall not be responsible for any vandalism or mischief, inclement weather or Acts of God which cause damage to the Facility or related facilities, and Operator shall not be responsible for any additional expenses to restore Facility to working order as a result thereof. Operator shall report any incidents of vandalism or mischief, or damages caused by inclement weather or Acts of God to City's Representative prior to undertaking any repairs.
- b. In the event of vandalism or mischief, inclement weather, or Acts of God, Operator personnel will take steps reasonably necessary to prevent additional damage to the Facility, but assumes no duty or responsibility for any failure to prevent damage and shall not be held responsible for any damages other than that caused due to the negligence of Operator and its employees.

15. CHEMICAL AND MAINTENANCE SUPPLIES

- a. Operator will provide Facility chemicals including, but no limited to, **chlorine tablets, liquid chlorine, muriatic acid, stabilizers, calcium chloride, soda ash, soda bicarbonate**, and other chemicals needed for normal Facility operation and to maintain Water Quality in a safe and sanitary manner.
- b. Operator will provide miscellaneous cleaning and operating supplies including **Facility test equipment and reagents, restroom cleaning materials, toilet paper, paper towels, light bulbs, trash bags, Facility tile cleaner, hand soap, sponges, etc.**
- c. Operator shall order sufficient quantities of all chemical and maintenance supplies during the summer barge season to have a full-year of stock on hand by the close of barge transportation (late summer). Chemical and maintenance supplies shall include all critical spare parts needed for proper operation of the Facility.

16. VISITOR SAFETY EQUIPMENT

Based upon the recommendations and training programs of the American Red Cross, the City mandates the equipment identified and set out in Exhibit B (Minimum Safety Equipment) of this Agreement be present at the Facility at all times. This equipment is the property of the Facility.

Operator will inventory and inspect this equipment prior to the Facility transfer, will notify and inform City of any shortfalls and necessary purchases and repairs of same and will ensure the proper supplies are ordered, on hand, and, if feasible, will order any recommended spares.

17. INDEMNIFICATION, INSURANCE, AND LIABILITY LIMITS

a. Indemnification

- 1) The Operator agrees to indemnify, defend, and hold harmless City against all claims, demands, suits, judgments, court costs, reasonable attorney's fees, attachments, and other legal action for loss of life, injury, or damage to property of any third party to the extent growing out of or by reason of any negligent act or omission or any willful misconduct of Operator, while performing Services at the Facility under this

Agreement. The Operator shall not have any obligation to indemnify, defend and hold harmless to the extent that any such claim is caused by the negligence or willful misconduct of the City, its employees, its agents or any other third party.

- 2) The City agrees to indemnify, defend, and hold harmless Operator against all claims, demands, suits, judgments, court costs, reasonable attorney's fees, attachments, and other legal action for loss of life, injury, or damage to property of any third party to the extent growing out of or by reason of any negligent act or omission or any willful misconduct of City. The City shall not have any obligation to indemnify, defend and hold harmless to the extent that any such claim is caused by the negligence or willful misconduct of the Operator, its employees, its agents or any other third party.
 - 3) This Agreement does not create a third party benefit to the public or any member of the public, nor does it authorize any person or entity not a party to this Agreement to maintain a suit based on this Agreement or any term or provision of the Agreement, whether for personal injuries, property damage, or any other claim or cause of action.
- b. **Right to Defend Actions:** The indemnifying Party shall have the right, but not the duty, to assume the defense of any claim for which indemnification is sought. Any Party shall, as soon as practicable after receiving notice of any claim brought against it, deliver to the indemnifying Party full particulars thereof and shall render all reasonable assistance requested by the indemnifying Party in the defense of such claim.
 - c. **Indemnified Party not to Compromise:** Where any Party has an obligation to indemnify the other Party, such other Party shall not compromise or in any way settle any claim, lawsuit, action or cause of action without the express written consent of the other Party who has the obligation of indemnifying. Where such consent is not obtained prior to such compromise in settlement, and the claim is, in fact, settled, then the Party who had the obligation of indemnifying shall be released and discharged from all obligations.
 - d. Any payment payable by the indemnifying Party to the indemnified Party pursuant to this Section 17 shall be paid within forty-five (45) days from the date on which a claim for such payment accrues to the indemnified Party under this Agreement.
 - e. **Required Insurance** - Operator shall maintain the following noted insurance during the duration of the Agreement as evidenced by the filing a certificate of insurance annually within two weeks of the annual renewal and including the City of Bethel as additional insureds:
 - i. **Workers' Compensation:** As required by AS 23.30.045, for all employees of the Operator engaged in work under this Agreement. The coverage shall include:
 - 1) Waiver of subrogation against the City;
 - 2) Employer's Liability Protection at \$500,000 each accident/each employee and \$500,000 policy limit;
 - ii. **Commercial General Liability:** On an occurrence policy form covering all operations with combined single limits not less than:
 - 1) \$1,000,000 Each Occurrence;

- 2) \$1,000,000 Personal Injury;
 - 3) \$2,000,000 General Aggregate; and
 - 4) \$2,000,000 Products-Completed Operations Aggregate.
- iii. **Automobile Liability:** Covering all vehicles used by Operator in the performance of its duties with coverage limits not less than \$1,000,000 each occurrence.
 - iv. **Umbrella Coverage:** Not less than \$5,000,000 umbrella or excess liability. Umbrella or excess policy shall include products liability, completed operations coverage and may be subject to \$5,000,000 aggregate limits. Further, the umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted. The Umbrella coverage described herein covers general liability and automobile liability only.
 - v. The City shall be included as an additional insured on policies required by paragraphs 17.a.i thru iv above. All of the above insurance coverages shall be considered to be primary and non-contributory to any other insurance carried by the City of Bethel whether through self-insurance or otherwise for any claims subject to Operator's indemnification obligation set forth in this Agreement.

In any agreement with subcontractors performing work, the Operator shall require that all indemnities and waivers of subrogation it obtains, and any stipulation to be included as an additional insured it obtains, shall also be extended to waive rights of subrogation against the City of Bethel and to add the City of Bethel as an additional named indemnity and include the City as an additional insured through the use of a blanket additional insured endorsement.

- f. **Certificate of Insurance** - The Operator shall furnish evidence of insurance to the City upon renewal annually. The evidence shall be issued to the City and shall be a certificate of insurance:
 - i. Denoting the type, amount, and class of operations covered;
 - ii. Showing the effective (and retroactive) dates of the policy;
 - iii. Showing the expiration date of the policy;
 - iv. Including all required endorsements;
 - v. Be executed by the carrier's representative; and
 - vi. If a certificate of insurance, include the following statement:

"This is to certify that the policies described herein comply with all aspects of the insurance requirements of the Yukon Kuskokwim Regional Aquatic Health and Safety Center. The Operator endeavors to notify the City, in writing, at least thirty (30) days before cancellation of any coverage or reduction in any Limits of liability. "

The City's acceptance of deficient evidence of insurance does not constitute a waiver of Agreement requirements.

Failure to maintain the specified insurance or to provide substitute insurance if an insurance carrier becomes insolvent, is placed in receivership, declares bankruptcy, or cancels a policy may, in the City's discretion, be sufficient grounds for declaring the Operator in default should Operator fail

to cure said action within five (5) business days of notice from the City.

- g. **Liability Limits** - Both parties mutually agree to waive any remedy or claim for indirect, incidental, special or consequential damages or claims for loss of business or profits.

18. BONDING (Fidelity Bonds)

Fidelity Bonds – For the duration of this Agreement, Operator shall show evidence of, and maintain in force the following:

- a. An employee's blanket fidelity bond which provides coverage for honesty and loss from fraudulent or dishonest acts by employees.
- b. Computer fraud fidelity bond, which provides coverage for the fraudulent transfer by computer causing wrongful abstraction of money, securities or other property.
- c. The two items above (a) and (b) may be separate or combined into one form of bond in an amount not less than Two Hundred Fifty-Thousand (\$250,000) Dollars.

19. ACCOUNTING RECORDS AND REPORTS

- a. **Accounting System** - The Operator shall maintain an accounting system with an easy to understand account classification system under which its accounting can be readily identified. Such accounting system shall be capable of providing the information required by this Agreement, including but not limited to, revenues collected, repair and maintenance expenses, operating expenses, etc. The Operator's system of accounts classification shall be directly related to the Operator's annual budget, monthly and annual financial reports and invoicing.
- b. **Monthly Reports** - The Operator shall submit a monthly financial report to the City. The report shall be in narrative and numerical accounting format and include copies of all invoices supporting claimed expenses.
 - i. The narrative report shall clearly state if the overall operations, both revenue and expenses, are over or under budget for the month and the year, identify specifically what cost areas are over budget or revenue areas are under budget, provide an explanation as to any deviation and explain what corrective actions are required, if any.
 - ii. The numerical accounting report shall provide actual costs and revenues versus budgeted amounts for each category of accounts classification, reported for the specific month and cumulative for the year. Deviations from the operations plan, annual budget, or maintenance plan require advance written approval from the City Manager. The monthly report shall provide a record of all such approvals provided by the City the previous month.
 - iii. The monthly report shall be certified as true and correct by an officer of the Operator and submitted with the monthly invoice.
 - iv. In addition to the monthly financial reports, the Operator shall provide a monthly statistical and narrative report on the usage of the Facility. The report shall be in a form and format as approved by the City. The report shall be submitted monthly with the invoices and annually with the other annual reports.
 - v. Miscellaneous Reports and Data: From time to time the City may require the Operator to submit other reports and data regarding its performance under the

Agreement or otherwise, including, but not limited to, operational information. This may include presentations to the City Council and discussing such things as programs, and local hire and training.

- c. **Annual Financial Report** - The Operator shall submit an annual financial report in the same form and format as the monthly reports. The narrative report shall summarize any significant cost and revenue deviations from the annual budget. The annual report shall be certified as true and correct by an officer of the Operator and submitted with the final invoice for that budget year.
- d. **Inventory** - The Operator shall perform an annual inventory of the real property as set forth in Exhibit A -Land, Real Property Improvements and Equipment. The inventory report shall be certified as true and correct by an officer of the Operator and submitted either before or along with the final invoice for that budget year.
- e. **Accounting Records** - For all expenditures made for the operations and maintenance of the Facility, the Operator shall maintain and make available, on reasonable notice, for inspection and examination, at all reasonable times, all records relating to this Agreement and of transactions performed pursuant to this Agreement for a minimum of five (5) years from the date of the record. If the City has reasonable cause to believe that any information on the monthly or annual financial report is not accurate, the City may audit the books and/or estimate the figures based on any information available.
 - i. The City shall notify the Operator, in writing, that the City has estimated the amount of sales and revenue, stating the estimated amount. The City shall serve the notice on the Operator by delivering the notice to the Operator as per the notice section of this Agreement.
 - ii. The City's estimate shall become a final determination unless:
 - 1) The Operator, within thirty (30) days after service of notice of the estimate, files a formal appeal to the City Manager; or
 - 2) The Operator files a complete and accurate financial statement indicating the figures in question and explaining them to the satisfaction of the City.
 - 3) In either event above, Operator consents to an independent audit and agrees to cooperate fully with the audit process.
 - 4) The City may request, and the Operator must furnish, any additional information deemed necessary for a correct evaluation of the finances of the Facility.
- f. **Sales Tax Records** -Operator shall familiarize themselves with, at a minimum, that portion of the Bethel Municipal Code (hereinafter "Code") which deals with Sales Tax. Operator shall collect the appropriate sales taxes for each sale and rental at the facility (currently 6%). The taxes shall be in addition to the sales and rental costs. Operator shall file a City of Bethel tax return form and shall remit the appropriate taxes as per the Code and any subsequent amendments thereto.
- g. **Audit by City:** The City reserves the right to conduct an annual audit by an external expert and/or industry professional at any time for any reason; provided, however, the City shall not seek or use the services of a competitor of Operator. Operator agrees to cooperate by providing, upon reasonable notice which shall be not less than thirty (30) days prior to the date of audit, and at no additional cost, such books, papers, statements, memoranda, records,

accounts and other written material as may be set out in the request by the finance director or City Manager. In the case of an audit, the City shall be responsible for selecting and scheduling the audit. The audit may include, but is not limited to:

- i. Agreement Compliance
- ii. Review of Financial Records that relate to the services performed under this Agreement
- iii. Staff Skills Assessment
- iv. Staff Selection and Training Procedures
- v. Policies and Procedures Review
- vi. Site Inspection
- vii. Code Compliance and Record Keeping Practices
- viii. Adherence to Aquatic Safety Standards
- ix. Facility and Equipment Maintenance

In the event deficiencies are identified in the audit, the Operator and the City will be required to discuss, in good faith, such findings as well as the extent to which any corrections may be made.

If the independent audit discovers more than five percent (5%) of the annual budget in errors resulting from Operator's failure to accurately report revenues, expenses and/or sales and taxes due thereupon, the Operator shall bear responsibility for the full cost of the audit. Otherwise the cost of the audit will be borne solely by the City.

- h. **Dispute:** If any dispute arises between the Parties, all records relating to matters involved in such Dispute shall be preserved until the resolution of such Dispute. Certified copies of such records as are required to be maintained by this Agreement shall be made available at the requesting Party's cost and expense.

20. NOTICES

- a. **Safety:** It is the Operator's duty and responsibility to notify the City of any problems or areas of concern pertaining to safety of the Facility and its patrons.
- b. **Injury:** Operator shall notify the City of any injuries requiring medical attention or any significant incidences (such as potential drowning) as soon as practicable but in no case no more than forty-eight (48) hours after the incident has occurred.

All notices required or permitted under this Agreement shall be in writing [in English] and shall be sent to:

OPERATOR: *Health Fitness Corporation*

400 Field Drive

Lake Forest, IL 60045

Attention: Contract Administration Associate Facsimile: 847.615.3872

Email: contracts@hfit.com and lawcontracts@trustmarkins.com

CITY:	City of Bethel	with copy to	City of Bethel
	Attn: City Manager		Attn: City Attorney's Office
	PO Box 1388		PO Box 1388

Bethel AK 99559-1388

Bethel AK 99559-1388

Each party's designated representative for day-to-day operations and in case of emergencies shall be:

OPERATOR: Stacey Reardon, General Manager, Yukon-Kuskokwim Fitness Center Facility Director, 907-543-0390; 907-545-3928

Either party may notify the other Party of a change to its name, relevant addressee, address or facsimile number, provided that such notification shall only be effective on the date specified in the notification as the date on which the change is to take place or, if no date is specified or the date specified is less than fifteen (15) business days after the date on which notice is given, the date falling thirty (30) business days after notice of any such change has been given.

21. SUSPENSION/TERMINATION

- A. Suspension. In the event of danger to life or significant damage to the Facility, the City may temporarily suspend operations under this Agreement in whole or in part. As soon as practicable, the City will give notice to the Operator and will determine a re-open plan. During such period of suspension, the City shall continue to pay to Operator all amounts due under this Agreement.
- B. Cancellation for Un-Appropriated Funds: The City reserves the right, in its best interest as determined by the City, to cancel this Agreement for unappropriated funds or unavailability of funds by giving written notice to the Operator at least one hundred twenty (120) days prior to the Effective date of such cancellation. The obligation of the City for payment to Operator is limited to the availability of funds appropriated in a current fiscal period, and continuation of the Agreement into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.
- C. Termination for Convenience: Either party may terminate this Agreement at any time and for any reason whatsoever upon providing at least one (1) year prior written notice to the non-terminating party.
- D. Events of Default:
 - i. **Cancellation for Non-Payment**: If for any reason payment in full of any charge is not received within thirty (30) days from the due date, the Operator may cancel this Agreement and terminate all services by giving a fourteen (14) day written notice to terminate at the end of such fourteen (14) day period without further liability whatsoever.
 - ii. **Cancellation by Mutual Agreement**: Operator and City may cancel this Agreement at any time by mutual written agreement. Each party shall be required to continue full performance under the terms of this Agreement until the effective cancellation date.
 - iii. **City's Event of Default**: Each of the events described below shall constitute a City Event of Default:
 - 1) A material breach by City of any obligation under this Agreement, which (where capable of remedy) has not been remedied within thirty (30) days

following notice from Operator stating that such breach has occurred, identifying the breach and demanding it to be remedied, provided that if City has diligently and as quickly as possible commenced the remedial action necessary but is unable to complete it within thirty (30) days, it shall be allowed such further period of up to sixty (60) days or as may be reasonably necessary and approved by Operator to complete the remedial action;

- 2) City has made material misrepresentation in the representations and warranties set out in this Agreement and has not disclosed any material fact which renders any such representation or warranty materially misleading;
- 3) The reorganization, merger, consolidation, amalgamation, dissolution or reconstruction of City, except to the extent that it does not affect the ability of the resulting entity to perform its obligations under this Agreement;
- 4) Except for the purposes permitted under subsection 3, the occurrence of any of the following events (other than as a direct result of Operator Event of Default):
 - Passing of a resolution or initiation of any proceeding for the bankruptcy, insolvency, winding up, liquidation of or other similar proceedings relating to the Facility;
 - The appointment of a trustee, liquidator, custodian or a similar person, which appointment has not been set aside or stayed within sixty (60) days of such appointment; or
 - The making by a court having jurisdiction of an order winding up or otherwise confirming the bankruptcy or insolvency of the Facility, which order has not been set aside or stayed within sixty (60) days; and
- 5) City ceasing to hold a license, permit or consent, as a result of breach by City of the terms and conditions of such license, permit or consent, making it unlawful for City to operate.

iv. **Operator Event of Default:** Each of the events described below shall constitute an Operator Default:

- 1) A material breach by Operator of any obligation under this Agreement, which (where capable of remedy) has not been remedied within thirty (30) days following notice from City stating that such breach has occurred, identifying the breach and demanding it to be remedied, provided that if Operator has diligently and as quickly as possible commenced the remedial action necessary but is unable to complete it within thirty (30), it shall be allowed such further period of up to sixty (60) days or as may be reasonably necessary to complete the remedial action;
- 2) Operator has made material misrepresentation in the representations and warranties set out in this Agreement and has not disclosed any material fact which renders any such representation or warranty materially misleading;
- 3) The reorganization, merger, consolidation, amalgamation, dissolution or reconstruction of Operator, except to the extent that it does not affect the ability of the resulting entity to perform its obligations under this Agreement;
- 4) Except for the purposes permitted under subsection 3), the occurrence of any of the following events (other than as a direct result of City Event of Default):
 - Passing of a resolution or initiation of any proceeding for the bankruptcy,

insolvency, winding up, liquidation of or other similar proceedings relating to Operator;

- The appointment of a trustee, liquidator, custodian or a similar person, which appointment has not been set aside or stayed within sixty (60) days of such appointment; or
- The making by a court having jurisdiction of an order winding up or otherwise confirming the bankruptcy or insolvency of Operator, which order has not been set aside or stayed within sixty (60) days; and

5) Operator ceasing to hold a license, permit or consent, as a result of breach by Operator of the terms and conditions of such license, permit or consent, making it unlawful for City to operate.

v. **Consequences in the Event of Default:** In the case of Operator Event of Default, City may terminate this Agreement and in the case of a City Event of Default, Operator may terminate this Agreement, in either case by giving a notice ("Termination Notice") to the other whereupon this Agreement shall terminate upon the date specified in such Termination Notice or such later date as the Parties may have agreed.

vi. **Sole Grounds for Termination:** The provisions of this Paragraph 21, and any other provisions in this Agreement wherein a termination right exists, shall be the sole and exclusive grounds on which the Parties may terminate this Agreement.

vii. **Damages/Payment in the Event of Termination:** In the event of termination of this Agreement for breach, the total compensation due to the Operator for such termination shall be calculated based on the work completed through the effective date of termination.

Upon termination of this Agreement for any reason or upon its expiration, and except as otherwise provided in this section the Operator shall, at the Operator's sole expense, promptly vacate the premises, remove all of the Operator's personal property, repair any damages occasioned by installation or removal of such property (reasonable wear and tear excepted), and ensure the Facility is in at least as good condition as it was at the beginning of the term of this Agreement, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this Agreement. Operator shall also comply with all applicable requirements of the transition plan. *All documents, manuals, logs and other records prepared by Operator during the operation of the Facility shall be turned over to the City at the termination or expiration of this Agreement.*

22. DISPUTE RESOLUTION

The parties agree to work cooperatively to resolve all issues.

- 1) Should an issue arise, the party believing itself to be aggrieved shall provide written notice to the other party within ten (10) days of the alleged grievance.
- 2) Upon receipt of the grievance, the parties will schedule a teleconference to attempt to resolve the issue. The teleconference shall occur within fourteen (14) days of the

grievance occurring.

- 3) If the parties are unable to resolve the matter during the teleconference, they shall schedule a face-to-face meeting. Said meeting shall be attended by those persons from City and Operator empowered to resolve the matter. The meeting shall occur within thirty (30) days from the date the grievance occurred unless otherwise extended by mutual consent of the parties. Such consent shall not be unreasonably withheld.
- 4) Should the face-to-face meeting fail to resolve the matter; the parties agree to submit the matter to a court having competent jurisdiction by filing a complaint.

23. CONFIDENTIALITY AND SECURITY

Each party shall take all proper steps to keep confidential any trade secrets or confidential information learned about the other party or its customers during the course of this Agreement.

Each party shall protect the keys and other secure property of the other party and shall take appropriate and reasonable steps to ensure security is maintained. In the event of a breach of security, the party whose security is breached shall notify the other party as soon as practicable.

24. CONFLICTS

Neither Operator nor any of Operator's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Operator's loyal and conscientious exercise of judgment and care related to Operator's performance under this Agreement.

Operator further agrees that none of Operator's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she or Operator is not a party, unless compelled by court process. Further, Operator agrees that such persons shall not give sworn testimony or issue a report in writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of the City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Operator or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Operator is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Operator agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Operator. If Operator is unable to require a subcontractor to comply with the provisions of this section, then Operator shall notify the City and the parties agree to discuss, in good faith, reasonable alternatives.

25. SUBCONTRACTORS

Operator may hire or retain such employees and subcontractors as it deems reasonably necessary

or appropriate in connection with the Services provided under this Agreement. Prior to hiring any subcontractors, Operator shall ensure the subcontractor is eligible to work on City facilities. Eligible subcontractors are those that:

- a. Are not delinquent in their remittance of city sales taxes or other fees;
- b. Have a State of Alaska business license;
- c. Are properly licensed and/or certified to perform the services for which they are being retained (when applicable).

In the event Operator engages any subcontractor in the performance of this Agreement, Operator shall ensure that all of Operator's subcontractors perform in accordance with the terms and conditions of this Agreement. Operator shall be fully responsible for all of Operator's subcontractors' performance, and liable for any of the Operator's subcontractors' non-performance and all of subcontractor's negligent acts and omissions. Operator shall defend, at Operator's expense and indemnify and hold City and City's officers, employees and agents harmless from and against any claim, lawsuit, third party action, fine, penalty, settlement or judgment, including any award of reasonable attorneys' fees and any award of reasonable costs, by or in favor of any of Operator's subcontractors for payment for work performed for City by any of such subcontractors; provided that City made available and paid to Operator the funds necessary to pay such subcontractor for work performed for the City, and from and against any third party claim, lawsuit, action, fine, penalty, settlement or judgment, including any award of reasonable attorney fees and any award of reasonable costs, to the extent occasioned by or arising out of any negligent act or omission by any of Operator's subcontractors.

26. GENERAL PROVISIONS

- a. Amendments: This Agreement may only be amended or varied by the written agreement of both Parties.
- b. Assignment and Performance: Neither this Agreement nor any right or interest herein shall be assigned, transferred or encumbered without the written consent of the other party whose consent shall not be unreasonably withheld, conditioned or delayed.
- c. Captions/Headings: The captions or headings of this Agreement are for convenience or reference only, and in no way define, describe, extend or limit the scope or intent of this Agreement or the meaning or intent of any provision hereof.
- d. Entire Agreement: This Agreement constitutes the entire agreement between the parties and supersedes all other prior agreements, relationships or negotiations, written or oral. Any rights or liabilities arising by reason of any prior written or oral representations, whether or not at the date of this Agreement, are canceled to the extent they have any bearing on this Agreement.
- e. Further Assurance: Each Party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary for the carrying out of the provisions of this Agreement.
- f. Good Faith: The Parties undertake to act in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realization of its objectives.
- g. Governing Law: This Agreement shall be deemed to have been entered into in Bethel,

Alaska. All questions regarding the validity, interpretation or performance of any of its terms or of any rights or obligations of the parties to this Agreement shall be governed by Alaska law, and any action brought by either party to enforce any of the terms of this Agreement shall be filed in the appropriate local or federal court. If any claim, at law or otherwise, is made by either party to this Agreement, the prevailing party shall be entitled to its costs and reasonable attorney's fees.

- h. Interpretation: Whenever the terms of this Agreement are unclear, the parties and any court reviewing the same shall first look to the original Agreement, then this Agreement, then the Request for Proposals (Exhibit D – Original Agreement) and finally the Operator's Proposal (Exhibit E – Original Agreement) for clarity as to the parties' intent.
- i. Joint Drafting: The parties expressly agree that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.
- j. Hazardous Materials: Operator will be working with pool chemicals which are considered hazardous materials. Operator is required to follow all Alaska Department of Environmental Conservation (DEC) rules and regulations regarding the proper storage, use and disposal of the Facility chemicals. Any spills will be reported immediately to the City and DEC and clean-up will be undertaken as per 18 AAC 75.300, et al. If a spill or hazardous condition is caused by or materially contributed to by Operator and/or their use of the Facility, Operator shall be solely responsible for the safe clean-up and disposal of the hazardous material(s).
- k. Legal, Regulatory And Policy Compliance: This Agreement, operations thereunder by the Operator, and the administration of it by the City shall be subject to all applicable state, federal and local laws, especially, but not limited to, 18 AAC 30.500-590 (Regulations for Public Swimming Pools and Spas). Operator agrees to comply with all applicable laws in fulfilling its obligations under this Agreement at its sole cost and expense; provided, however, Operator shall have no responsibility or liability whatsoever for any costs or expenses associated with compliance with applicable federal state, and/or local laws, rules or regulations covering public access to the Facility (e.g. the American Disabilities Act access standards).
- l. Materiality: City and Operator agree that each requirement, duty and obligation set forth here was bargained forth at arm's length and is agreed to by the parties in exchange for *quid pro quo*, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.
- m. Public Release: All information required to be submitted to the City by the Operator pursuant to this Agreement is subject to public release by the City.
- n. Intellectual Property. Each party acknowledges that the other party owns Intellectual Property as of the effective date of this Agreement, the possession of which shall not be challenged while this Agreement is in effect nor upon expiration or termination of this Agreement. Each party agrees that, except as explicitly and specifically provided in this Agreement, it shall acquire no license, right, title or interest in or to the other party's Intellectual Property by virtue of this Agreement. For purposes of this Agreement, "**Intellectual Property**" means the collective reference to all rights, title, interest, and privileges in or relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including all creative or proprietary interests,

data, tools, business processes, methods, symbols, copyrights, patents, trademarks, service marks, trade names, trade secrets, internet domain names and licenses, whether now or hereafter existing.

The City shall own and continue to own: (i) all Intellectual Property owned by the City prior to the date of this Agreement, and (ii) all Intellectual Property developed or purchased by the City independent of and apart from this Agreement (collectively, "**City Intellectual Property**"), and nothing herein grants or transfers to Operator any ownership interest in such City Intellectual Property.

Operator (including, for all purposes, Operator's Affiliates, and third party licensors) shall own and continue to own all Intellectual Property owned by Operator prior to the date of this Agreement, including, without limitation, (i) all registrations worldwide for a family of trademarks incorporating the term *Live for Life*, used for a variety of health-related goods and services and (ii) all programming and operational manuals prepared by Operator for delivery of services and management of the Facility under this Agreement and all systems and methods of delivery for the services and management of the Facility (collectively, "**Operator Intellectual Property**"), and nothing herein grants or transfers to the City any ownership interest in such Operator Intellectual Property, even if such Intellectual Property is embodied in any services or deliverables provided to the City under this Agreement. Notwithstanding the foregoing, the City shall have the right to use and reproduce, for its business purpose and not in any way that competes with Operator, such reports and manuals produced for it by Operator under this Agreement without having to pay a royalty to Operator and (ii) Operator shall have the right to use, consistent with its customary business practices, any Operator Intellectual Property (which shall not include any City data) contained in such reports. For purposes of this Agreement, the term "**Affiliate**" shall mean any other entity directly or indirectly controlling, controlled by or under common control with entity. An entity shall be deemed to control another entity if the controlling entity owns fifty-one percent (51%) or more of any class of voting securities (or other ownership interests) of the controlled entity or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled entity, whether through ownership of stock or other ownership interests, by contract or otherwise.

- o. Relationship of Parties: This Agreement does not create an association, joint venture, or partnership between the Parties. Neither Party has any right, power or authority to enter into any agreement or undertaking for, or to act on behalf of, or to act as an agent or representative of, or to otherwise bind, the other.
- p. Right of Entry: The City shall have the right at any time to enter upon or into the Facility for any purpose it may deem necessary for the administration of this Agreement.
- q. Rights and Remedies: The parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be those expressly set forth in this Agreement, as well as permitted at law or in equity.
- r. Severability: If a court of competent jurisdiction invalidates or finds any one or more of the provisions of this Agreement are unenforceable it shall in no way affect any of the other provisions thereof, which shall remain in full force and effect.
- s. Successors: This Agreement binds and ensures to the benefit of the Parties and their

- respective successors and permitted assigns.
- t. Taxes: Any and all taxes or assessments of any nature that may be lawfully imposed by the State or the City upon the business, including sales taxes, shall be collected and paid promptly by the Operator.
 - u. Third Parties: This Agreement does not grant rights or benefits of any nature to any third party.
 - v. Waiver: The failure of either party to insist, enforce or require strict performance of any provision in the Agreement or to act in respect to the defaults of the other Party, and no acceptance of payment or performance during the continuance of any such default precludes any right, relief or remedy available to the non-defaulting Party, and may not be relied on by the other Party as a consent to those defaults.

27. REPRESENTATION AND WARRANTIES

- a. Operator represents and warrants to City that:
 - i. It has the full legal ability and authority to enter into and carry out its obligations under this Agreement and this Agreement constitutes a valid, legally binding and enforceable obligation of Operator and does not conflict with the terms of any other agreement by which it may be bound;
 - ii. All approvals necessary to allow Operator to enter into this Agreement and to carry out the obligations contemplated herein have been given or received and shall remain in full force and effect;
 - iii. There are no applicable constitutional provisions, laws, regulations, decrees or rules of Competent Authorities of Alaska in force on the date of execution of this Agreement, which restrict or prohibit the ability of Operator to enter into and perform the terms of this Agreement. Operator is not entitled to immunity from legal process or jurisdiction on grounds of sovereignty or otherwise; and
 - iv. This Agreement does not conflict with any provisions of any Jaw, including any regulation of the State of Alaska as in effect on the date of execution of this Agreement.
- b. City represents and warrants to Operator that:
 - i. It is a validly existing municipal corporation under the laws of the State of Alaska;
 - ii. It has the full legal ability and authority to enter into and carry out its obligations under this Agreement and this Agreement constitutes a valid, legally binding and enforceable obligation of City and does not conflict with the terms of any agreement by which it may be bound; and
 - iii. There are no provisions of any organizational document of City which restrict or prohibit the ability of City to enter into and perform the terms of this Agreement.

28. EXHIBITS

Exhibit A - Land, Real Property Improvements and Equipment (updated 7/1/18). To be updated annually by June 30.

CITY OF BETHEL

Vincenzo S. Corazza
City Manager
Dated: _____

HEALTH FITNESS

By:
Its:
Dated: _____