



## CITY & BOROUGH OF WRANGELL SPECIAL ASSEMBLY MEETING AGENDA

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Friday, December 2, 2016  
12:00 p.m. (noon)

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Location: Assembly Chambers, City Hall

1. Call to Order
2. Roll Call
3. Conflict of Interest:
4. Persons to be Heard:
5. Items of Business:
  - a. **PROPOSED ORDINANCE No. 929:** AN ORDINANCE of the City and Borough of Wrangell, Alaska, authorizing the issuance of a sewer revenue bond in the principal amount of \$91,000 to finance a portion of the cost of acquiring, constructing and installing certain additions and betterments to and extensions of the Borough's sewer system; fixing the date, form, terms, maturities and covenants of the bond; reserving the right of the Borough to issue future revenue bonds with a lien on revenues on a parity with the bond upon compliance with certain conditions; and providing for the sale of the bond to the United States Department of Agriculture, Rural Development *(first reading)*
  - b. Consideration of Local Bidder Preference provision (WMC 5.10.040 (D))
  - c. Approval of the Bid received for the Wrangell City Dock Lighting project *(removed from the November 29, 2016 Regular Assembly meeting Agenda)*
  - d. Approval to sign onto a letter in support of the Tongass Transition Plan Amendment
6. Adjournment

# Agenda Item 5a

## CITY & BOROUGH OF WRANGELL

### BOROUGH ASSEMBLY SPECIAL AGENDA ITEM December 2, 2016

#### INFORMATION:

**PROPOSED ORDINANCE No. 929:** AN ORDINANCE of the City and Borough of Wrangell, Alaska, authorizing the issuance of a sewer revenue bond in the principal amount of \$91,000 to finance a portion of the cost of acquiring, constructing and installing certain additions and betterments to and extensions of the Borough's sewer system; fixing the date, form, terms, maturities and covenants of the bond; reserving the right of the Borough to issue future revenue bonds with a lien on revenues on a parity with the bond upon compliance with certain conditions; and providing for the sale of the bond to the United States Department of Agriculture, Rural Development (*first reading*)

#### Attachments:

1. Memo from Manager Jabusch
2. **PROPOSED ORDINANCE No. 929: Clean version**
3. Proposed Ordinance (showing tract changes)

#### RECOMMENDED ACTION:

Move to approve first reading of Ordinance No. 929 and move to a second with a Public Hearing to be held on December 13, 2016.

## **MEMORANDUM**

**TO: HONORABLE MAYOR AND MEMBERS OF THE ASSEMBLY  
CITY AND BOROUGH OF WRANGELL**

**FROM: JEFF JABUSCH BOROUGH MANAGER**

**SUBJECT: USDA Loan Ordinance No. 929**

**DATE: December 2, 2016**

This Ordinance will repeal the Ordinance that was previously adopted on September 27, 2016 to comply with some minor changes the USDA requires. Upon submittal of the close out documents, USDA notified us that there were some minor changes required within the Ordinance. Below is the information on why the Ordinance is necessary.

The ordinance attached is required to accept the loan offered by USDA for the final steps needed for the recently completed sewer pump station upgrades. Back almost a year ago the assembly passed a resolution to authorize the loan and move forward with the application with USDA for the loan to help us pay for the unfunded portion of the project. USDA required a portion of the funding to come from this loan (\$91,000) with the balance from them in the form of a grant. An ordinance is required by USDA to complete this portion of the process.

Once this portion is completed, the borough manager can sign the final paperwork and bond and we can then get our money.

CITY AND BOROUGH OF WRANGELL, ALASKA

SEWER REVENUE BOND, 2016

\$91,000

ORDINANCE NO. 929

AN ORDINANCE of the City and Borough of Wrangell, Alaska, authorizing the issuance of a sewer revenue bond in the principal amount of \$91,000 to finance a portion of the cost of acquiring, constructing and installing certain additions and betterments to and extensions of the Borough's sewer system; fixing the date, form, terms, maturities and covenants of the bond; reserving the right of the Borough to issue future revenue bonds with a lien on revenues on a parity with the bond upon compliance with certain conditions; and providing for the sale of the bond to the United States Department of Agriculture, Rural Development.

Passed \_\_\_\_\_, 2016

Prepared by:

STRADLING YOCCA CARLSON & RAUTH, P.C.  
Seattle, Washington

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CITY AND BOROUGH OF WRANGELL, ALASKA

ORDINANCE NO. 929

AN ORDINANCE of the City and Borough of Wrangell, Alaska, authorizing the issuance of a sewer revenue bond in the principal amount of \$91,000 to finance a portion of the cost of acquiring, constructing and installing certain additions and betterments to and extensions of the Borough's sewer system; fixing the date, form, terms, maturities and covenants of the bond; reserving the right of the Borough to issue future revenue bonds with a lien on revenues on a parity with the bond upon compliance with certain conditions; and providing for the sale of the bond to the United States Department of Agriculture, Rural Development.

WHEREAS, the City and Borough of Wrangell, Alaska (the "Borough"), a municipal corporation and home rule borough of the State of Alaska, owns, operates and maintains a sewage collection and treatment system (the "System"), as authorized by Section 8-1 of the Borough Charter; and

WHEREAS, the Borough has determined that it is in the best interest of the Borough and its residents to construct and equip upgrades to some of the pumping stations in the System (as described more fully herein, the "Project"); and

WHEREAS, the Borough has received state and federal grants for most of the cost of the Project; and

WHEREAS, by a letter of conditions dated August 31, 2015 (the "Letter of Conditions"), the United States of America, acting through the United States Department of Agriculture, Rural Development ("USDA"), has offered to lend the Borough \$91,000 for a portion of the cost of the Project; and

WHEREAS, by resolution of the Borough Assembly, adopted on October 13, 2015 (the "Loan Resolution"), the Borough accepted the terms of the USDA loan; and

WHEREAS, in accordance with the Letter of Conditions and the Loan Resolution, the Borough now wishes to authorize the issuance of a sewer revenue bond of the Borough in the principal amount of \$91,000 (the "Bond") to evidence and secure payment of the USDA loan; and

WHEREAS, the former City of Wrangell (the "City"), by Ordinance No. 636, passed by the City Council on July 8, 1997, issued to USDA the City's Sewer Revenue Bond, 1997, in the initial principal amount of \$250,000 (the "1997 Bond"), approximately \$188,120.68 of which remains outstanding; and

WHEREAS, the incorporation of the Borough as a unified home rule borough was approved by the Local Boundary Commission and by the Borough's voters and became effective on May 30, 2008; and

WHEREAS, as a result of the incorporation of the Borough, the City was dissolved and the Borough succeeded to all rights, powers, duties, assets and liabilities of the City, including the System and the 1997 Bond; and

WHEREAS, as required by the Letter of Conditions, the Bond will be issued with a first lien position on revenue of the System, so USDA as holder of the 1997 Bond is deemed to have waived the parity conditions set forth in Ordinance No. 636 and consented to the issuance of the Bond on a parity of lien with the 1997 Bond, as provided herein;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA, as follows:

Section 1.      Definitions. As used in this ordinance the following terms have the following meanings:

“Assembly” means the Borough Assembly as the general legislative authority of the Borough as the same shall be duly and regularly constituted from time to time.

“Assessments” means the assessments (including interest and penalties) levied in any utility local improvement district of the Borough created for the acquisition or construction of additions and betterments to, or extensions of the System, if the assessments are pledged to the Bond Fund.

“Average Annual Debt Service” on any of the Parity Bonds means the amount determined by dividing (a) the sum of all interest and principal to be paid on such bonds from the date of determination to the last maturity date of the bonds, by (b) the number of calendar years from and including the calendar year in which the determination is made to the last calendar year in which the bonds will be outstanding.

“Bond” means the \$91,000 par value sewer revenue bond of the Borough authorized to be issued by this ordinance.

“Bond Fund” means the “City and Borough of Wrangell Sewer Revenue Bond Redemption Fund” renamed and continued by Section 5 of this ordinance to pay and secure the payment of all Parity Bonds.

“Borough” means the City and Borough of Wrangell, a municipal corporation and home rule borough duly organized and existing under and by virtue of the laws of the State of Alaska and the Borough’s Charter.

“Borough Clerk” means the Borough Clerk, or the successor to the duties of that office.

“Costs of Maintenance and Operation” means all necessary operating expenses, current maintenance expenses, expenses of reasonable upkeep and repairs, and insurance and administrative expenses, but excludes depreciation, payments for debt service or into reserve accounts and costs of capital additions to or replacements of the System, taxes levied by the Borough or payments in lieu of such taxes.

“Finance Director” means the Finance Director of the Borough or the successor to the duties of that office.

“Future Parity Bonds” means any and all sewer revenue bonds of the Borough issued after the date of the issuance of the Bond and having a lien on the money in the Sewer Fund for the payment of the principal thereof and interest thereon equal to the lien upon the money in such fund for the payment of the principal of and interest on the Bond.

“Gross Revenue” means all of the earnings, revenue and money, except Assessments, received by the Borough from or on account of the operation of the System including proceeds from the sale, lease or other disposition of any of the properties or facilities of the System, and the income from investments of money in the Revenue Fund and any bond fund or from any other investment thereof except the income from investments irrevocably pledged to the payment of revenue bonds pursuant to a plan of retirement or refunding. Gross Revenue shall not include grants or bond proceeds, but shall include federal or state reimbursements of operating expenses to the extent that such expenses are included as Costs of Maintenance and Operation.

“Letter of Conditions” means the letter from USDA to the Borough dated August 31, 2015, establishing conditions for the USDA loan, together with any amendments or supplements to that letter.

“Loan Resolution” means the resolution adopted by the Assembly on October 13, 2015, in the form set forth in RUS Bulletin 1780-27, accepting the USDA loan and prescribing certain terms to be included in this ordinance.

“Net Revenue” means Gross Revenue less the Costs of Maintenance and Operation.

“Parity Bonds” means the 1997 Bond, the Bond, and any Future Parity Bonds.

“Principal and Interest Account” means the special account of that name heretofore created in the Bond Fund and continued pursuant to Section 5 for the purpose of paying the principal of and interest on all Parity Bonds.

“Professional Utility Consultant” means the independent person(s) or firm(s) selected by the Borough having a favorable reputation for skill and experience with sewer systems of comparable size and character to the System in such areas as are relevant to the purposes for which they are retained.

“Project” means constructing and equipping upgrades to pumping stations in the System.

“Reserve Account” means the special account of that name heretofore created in the Bond Fund and continued pursuant to Section 5B for the purpose of securing the payment of all Parity Bonds.

“Sewer Fund” means the heretofore established Sewer Fund of the Borough.

“Short-Lived Asset Reserve Fund” means the fund of that name established pursuant to Section 6 of this ordinance.

“System” means the existing sewage collection and treatment system of the Borough and such improvements or additions as may be made to such system for as long as any Parity Bonds are outstanding and may include the water supply and distribution system of the Borough and the storm drainage system of the Borough if either is or both are ever combined with the sewer system.



“Term Bonds” means any Future Parity Bonds identified as Term Bonds in the ordinance authorizing the issuance thereof, the payment of the principal of which is provided for by a mandatory schedule of deposits of money equal (in the aggregate) to the full principal amount of such Term Bonds, into the Bond Fund, and by a mandatory redemption schedule corresponding (as to time and amounts) to such mandatory schedule of deposits.

“USDA” means the United States, acting by and through the Department of Agriculture, Rural Development.

“1997 Bond” means the City of Wrangell, Alaska, Sewer Revenue Bond, 1997, issued pursuant to Ordinance No. 636 passed by the Wrangell City Council on July 8, 1997, and now an obligation of the Borough.

Section 2. Authorization of Bond. To provide financing for a portion of the cost of the Project, the Borough shall issue and sell its sewer revenue bond in the aggregate principal amount of \$91,000 (the “Bond”). The Bond shall be designated “City and Borough of Wrangell, Alaska, Sewer Revenue Bond, 2016,” shall be dated as of the date of its delivery to USDA as the initial purchaser, shall be numbered R-1, shall be in the denomination of \$91,000, shall be fully registered, shall bear interest from the date of its issuance on the unpaid principal balance thereof at a per annum interest rate to be established by USDA, as provided in Section 16 of this ordinance (so long as that rate does not exceed 4.0% per annum), shall be amortized over a 40-year period with approximately equal semiannual installments of principal and interest payable on the dates acceptable to USDA and set forth in the Bond, until all principal installments of the Bond have been paid or such payment has been duly provided for; provided, however, that the final payment of all principal of and interest on the Bond shall nevertheless be due at final maturity of the Bond approximately 40 years after the date of the Bond, and provided, further, however, that so long as the Bond is held by USDA, the Borough may not defease all or any portion of the Bond.

Payments will be applied first to interest and then to principal, and interest shall accrue on the basis of a 365-day year.

Both principal of and interest on the Bond are payable in lawful money of the United States of America to the owner or owners thereof at the address appearing on the registration books of the Borough maintained by the Finance Director; provided, however, that as long as USDA is the owner and holder of the Bond, the Borough will make payments by any electronic pre-authorized debit system or other transfer system that may be required by USDA from time to time.

The Bond is payable solely from the Gross Revenue and is not a general obligation of the Borough.

The Bond shall be registered as to both principal and interest as long as any of the installments of the Bond remain unpaid, and the Borough will maintain in the office of the Finance Director books for the registration and transfer of the Bond. No transfer of the Bond so registered will be valid unless made on those registration books upon the written request of the registered owner or its duly authorized agent.

Section 3. Prepayment. The Borough hereby reserves the right to prepay some or all of the Bond at any time, with any such prepayment applied first to interest accrued to the date of receipt

of the prepayment and second to principal. No advance notice of intended prepayment or redemption is required.

Section 4. Priority of Payments from Sewer Fund. There has heretofore been established in the office of the Finance Director a special fund of the Borough designated as the “City and Borough of Wrangell Sewer Fund” (the “Sewer Fund”). All of the Gross Revenue must be deposited in the Sewer Fund as collected. The Sewer Fund must be held separate and apart from all other funds and accounts of the Borough, and the Gross Revenue deposited in the Sewer Fund will be used only for the following purposes and in the following order of priority:

First, to pay the Costs of Maintenance and Operation;

Second, to pay the interest on any Parity Bonds;

Third, to pay the principal of any Parity Bonds;

Fourth, to make all payments required to be made into the Reserve Account created to secure the payment of Parity Bonds;

Fifth, to make all payments required to be made into any revenue bond redemption fund or revenue warrant redemption fund and debt service account or reserve account created to pay and secure the payment of the principal of and interest on any revenue bonds or revenue warrants of the Borough having a lien upon the Gross Revenue junior and inferior to the lien thereon for the payment of the principal of and interest on the Parity Bonds; and

Sixth, to make all payments required to be made into the Short-Lived Asset Reserve Fund; and

Seventh, to retire by redemption or purchase in the open market any outstanding revenue bonds or revenue warrants of the Borough, to make necessary additions, betterments, improvements and repairs to or extensions and replacements of the System of the Borough, or for any other lawful Borough purposes.

Section 5. Bond Fund. To pay and secure payment of all Parity Bonds, Ordinance No. 636 authorized the creation of a special fund designated as the “City of Wrangell 1997 Sewer Revenue Bond Redemption Fund.” That fund is hereby renamed and continued as the “City and Borough of Wrangell Sewer Revenue Bond Redemption Fund” (the “Bond Fund”), which fund contains the Principal and Interest Account and the Reserve Account established by Ordinance No. 636 and is to be drawn upon for the sole purpose of paying the principal of and interest on all Parity Bonds.

A. Principal and Interest Account. As long as the Bond remains outstanding, the Borough hereby irrevocably obligates and binds itself to set aside and pay from the Sewer Fund into the Principal and Interest Account, in addition to amounts required to be paid therein on account of any other issue of Parity Bonds, those amounts necessary, after taking into consideration such other funds as are on hand in the Principal and Interest Account and available for the payment of principal and interest on the Bond, to pay the interest or principal and interest next coming due on the Bond. These payments from the Sewer Fund shall be made on or before the day on which the regular

semiannual payment of principal of and interest on the Bond is due and payable in an amount equal to such regular payment.

The Borough covenants and agrees that if it issues any Future Parity Bonds that are Term Bonds, it will provide in each ordinance authorizing the issuance of the same for annual payments to be made from the Sewer Fund into the Principal and Interest Account sufficient, together with Gross Revenue collected and deposited and such other money as is on hand and available therefor in such account, to amortize the principal of Future Parity Bonds that are Term Bonds on or before the maturity date thereof.

B. Reserve Account. The Borough covenants and agrees that it will pay into the Reserve Account out of the Gross Revenue (or, at the option of the Borough, out of any other funds on hand legally available for such purposes) annual payments sufficient with other money in the Reserve Account to have on deposit therein by ten years from the date of delivery of the Bond, a total amount of not less than the Average Annual Debt Service on the Bond, to be paid at the rate of not less than 1/10 of such amount per year.

The Borough further covenants and agrees that if it issues any Future Parity Bonds it will provide in each ordinance authorizing the issuance of such Future Parity Bonds that, within ten years of the date of issuance of such Future Parity Bonds, the Borough will have set aside and paid into the Reserve Account an amount that will at least equal the Average Annual Debt Service on such Future Parity Bonds. This amount shall be accumulated by one or more deposits commencing not later than six months after the date of issuance of such Future Parity Bonds and continuing no less often than semiannually until such amount has been accumulated.

The Borough further covenants and agrees that when the required deposits have been made into the Reserve Account, it will at all times maintain therein an amount at least equal to the Average Annual Debt Service on all outstanding Parity Bonds. Whenever there is a sufficient amount in the Bond Fund, including the Reserve Account and the Principal and Interest Account, to pay the principal of premium if any, and interest on all outstanding Parity Bonds, the money in the Reserve Account may be used to pay such principal, premium, if any, and interest. Money in the Reserve Account may also be withdrawn to redeem and retire, and to pay the premium, if any, and interest due to such date of redemption, on any outstanding Parity Bonds, as long as the money left remaining on deposit in the Reserve Account are equal to the average annual debt service on the remaining outstanding Parity Bonds.

If there is a deficiency in the Principal and Interest Account to meet maturing installments of either interest on or principal of and interest on Parity Bonds, the deficiency shall be made up from the Reserve Account by the withdrawal of money therefrom. Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up out of Gross Revenue after making necessary provision for the payments required to be made under paragraph "First" through "Third" of Section 4 of this ordinance.

All money in the Reserve Account may be kept in cash or invested as permitted under Alaska law. Interest earned on or any profits made from the sale of any such investments shall be deposited in and become a part of the Principal and Interest Account.

Section 6. Short-Lived Asset Reserve Fund. A special fund designated the "Wrangell Sewer System Short-Lived Asset Reserve Fund" (the "Short-Lived Asset Reserve Fund") is hereby

authorized to be established in the office of the Finance Director. Money in the Short-Lived Asset Reserve Fund may be used from time to time to replace short-lived assets of the System. So long as the Bond remains outstanding, subject to the priorities established in Section 5 of this ordinance, the Borough must deposit \$45,963 annually (or such other amounts as may be required by USDA) into the Short-Lived Asset Reserve Fund.

Section 7. Pledge of Sewer Revenue. The amounts pledged to be paid into the Bond Fund and the accounts therein out of the Sewer Fund are hereby declared to be a lien and charge upon Gross Revenue and the money in the Sewer Fund junior, subordinate and inferior to the Costs of Maintenance and Operation, equal in rank to the lien and charge that may later be made thereon to pay and secure the payment of the 1997 Bond and any Future Parity Bonds, and superior to all other charges of any kind or nature.

Section 8. Sufficiency of Revenues. The corporate authorities of the Borough hereby declare that in fixing the amounts to be paid into the Bond Fund as aforesaid they have exercised due regard to the reasonable and necessary costs of maintenance and operation of the System and the charges necessary to pay and secure the payment of the principal of and interest on the Bond and have not obligated the Borough to set aside and pay into the Bond Fund a greater amount of the Gross Revenue than in their judgment will be available over and above such reasonable and necessary costs of maintenance and operation and the amounts necessary to pay the principal of and interest on the Bond.

Section 9. General Covenants. So long as the Bond remains unpaid, the Borough hereby covenants and agrees with the owner of the Bond from time to time, as follows:

A. Maintenance and Operations. The Borough will at all times maintain and keep the System in good repair, working order and condition, will at all times operate the System and the business in connection therewith in an efficient manner and at a reasonable cost, and will comply with all applicable laws of the State of Alaska.

B. Rates. The Borough will impose and collect such rates and charges for service rendered by the System (i) that Gross Revenue paid into the Sewer Fund will be sufficient at all times to provide for the payment of the Costs of Maintenance and Operation and payments of principal of and interest on the Bond and any Parity Bonds; (ii) that all service rendered by the System shall be subject to the full rates prescribed by the rules and regulations of the Borough; and (iii) that no free service from the System will be permitted.

C. Books and Records. The Borough will maintain complete books and records relating to the operation of the System and its financial affairs, and will cause such books and records to be audited annually at the end of each fiscal year and an audit prepared in accordance with State law. At all reasonable times USDA shall have the right to inspect the System and the records, accounts and data of the Borough relating thereto.

D. Insurance. The Borough will carry fire and extended coverage insurance in an amount at least equal to the depreciated replacement value for all above-ground structures of the System, including equipment and machinery. The Borough will also carry adequate public liability insurance, workers' compensation insurance and other kinds of insurance as under good practice are ordinarily carried on such properties by utilities engaged in the operation of a sewer utility. The

premiums paid for all such insurance may be regarded and paid as a Cost of Maintenance and Operation.

E. Assessments. The Borough shall promptly collect all Assessments levied in any utility local improvement district now or hereafter created to secure the payment of the principal of and interest on any Parity Bonds and shall pay the same into the Bond Fund without allocation of such Assessments to any particular series of Parity Bonds. It is hereby provided further, however, that nothing in this ordinance or in this subsection shall be construed to prohibit the Borough from issuing revenue bonds having a lien on Gross Revenue junior to the lien on such revenue for the payment of the principal of and interest on Parity Bonds and pledging as security for the payments of such junior lien bonds assessments levied in any utility local improvement district that may have been created to pay part or all the cost of improvements to the System for which such junior lien revenue bonds were specifically issued.

F. Disposition of Facilities. The Borough will not mortgage, sell, lease, or in any manner encumber or dispose of all the property of the System, unless provision is made for payment into the Bond Fund of a sum sufficient to pay the principal of and interest on all outstanding Parity Bonds, and that it will not mortgage, sell, lease, or in any manner encumber or dispose of any part of the System that is used, useful and material to the operation of the System unless provision is made for replacement thereof or for payment into the Bond Fund of an amount that bears the same ratio to the amount of the outstanding Parity Bonds as the revenue available for debt service for those Parity Bonds for the 12 months preceding such sale, lease, encumbrance or disposed of, bears to the revenue available for debt service for those Parity Bonds from the entire System for the same period. Any such money so paid into the Bond Fund shall be used to retire outstanding Parity Bonds at the earliest possible date.

Notwithstanding any other provision of this Subsection F, the Borough may sell or otherwise dispose of any of the works, plant, properties and facilities of the System or any real or personal property comprising a part of the same with a value less than 4% of the net utility plant of the System or which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the System, or no longer necessary, material to or useful in such operation, without making any deposit into the Bond Fund.

G. Fidelity Bond. The Borough will maintain an officer's fidelity bond for its Finance Director for as long as USDA is the registered owner of the Bond. A certified copy of such bond will be delivered to USDA.

#### Section 10. Tax Covenants; Special Designation.

A. General. The Borough hereby covenants that it will not make any use of the proceeds of sale of the Bond or any other funds of the Borough that may be deemed to be proceeds of the Bond pursuant to Section 148 of the Code that will cause the Bond to be an "arbitrage bond" within the meaning of said section and said regulations.

The Borough further covenants that it will not take any action or permit any action to be taken that would cause the Bond to constitute a "private activity bond" under Section 141 of the Code.

B. Special Designation. The Borough hereby designates the Bond as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Code. The Borough does not anticipate issuing more than \$10,000,000 of qualified tax-exempt obligations during 2016.

Section 11. Future Parity Bonds. The Borough hereby further covenants and agrees with the owner from time to time of the Bond for as long as any portion of the same remains outstanding, as follows:

A. That it will not hereafter issue any sewer revenue bonds or other obligations of the Borough that will have a lien and charge upon Gross Revenue superior to the lien and charge thereon of the Bond. The Borough may issue Future Parity Bonds for:

First, the purpose of acquiring, constructing and installing additions, betterments and improvements to and extensions of, acquiring necessary equipment for, or making necessary replacements of or repairs to the System, or

Second, the purpose of refunding by payment, redemption, exchange or purchase at or prior to their maturity any outstanding Parity Bond,

upon compliance with the following conditions:

1. So long as USDA holds the 1997 Bond and the Bond, USDA consents to the issuance of such Future Parity Bonds. With such consent, the certificate described in paragraph 6 below is not required, and the Borough will comply with the rest of the conditions set forth in this Section 11.A to the extent required by USDA.

2. At the time of the issuance of such Future Parity Bonds there is no deficiency in the Principal and Interest Account or the Reserve Account.

3. Each ordinance authorizing the issuance of such Future Parity Bonds must require that principal and interest on the Future Parity Bonds be payable out of the Bond Fund and further provide (i) for payments into the Bond Fund to satisfy the sinking fund requirement set forth in Section 5.A hereof with respect to any such Future Parity Bonds that are Term Bonds and (ii) for payments into the Reserve Account to satisfy the requirements of Section 5.B hereof.

4. Each ordinance authorizing the issuance of such Future Parity Bonds must require that any and all Assessments will be paid directly into the Bond Fund.

5. Each ordinance authorizing the issuance of refunding Future Parity Bonds must require that all uncollected Assessments that may have been levied to secure the payment of the principal of and interest on the bonds being refunded be paid directly into the Bond Fund.

6. At the time of the issuance of such Future Parity Bonds, the Borough shall have on file in the office of the Borough Clerk a certificate of a Professional Utility Consultant showing: that the Net Revenue determined and adjusted as hereafter provided for each calendar year after the issuance of such Future Parity Bonds (the “Adjusted Net Revenue”) will equal at least 1.10 times the Annual Debt Service (after deducting Assessments, allocated to the years in which they would be received if the unpaid balance of each assessment roll were paid in the remaining number of installments with interest on the declining balance at the times and at the rate provided in the

ordinance confirming the assessment roll) for each such calendar for all Parity Bonds plus the Future Parity Bonds proposed to be issued.

The Adjusted Net Revenue shall be the Net Revenue for a period of any 12 consecutive months out of the 24 months immediately preceding the date of delivery of such proposed Future Parity Bonds as adjusted by such Professional Utility Consultant to take into consideration changes in Net Revenue estimated to occur under the following conditions for each year after such delivery for so long as any Parity Bonds, including the Future Parity Bonds proposed to be issued, shall be outstanding:

(i) the additional Net Revenue that would have been received if any change in rates and charges adopted by ordinance of the Borough prior to the date of such certificate and subsequent to the beginning of such 12-month period, had been in force during the full 12-month period;

(ii) the additional Net Revenue that would have been received if any facility of the System that became fully operational after the beginning of such 12-month period had been so operating for the entire period;

(iii) the additional Net Revenue estimated by such Professional Utility Consultant to be received from potential customers of the System with existing homes or other buildings that will be required to connect to any additions, betterments and improvements to and extensions of any facilities of the System that are (a) under construction at the time of such certificate or (b) will be constructed from the proceeds of the Future Parity Bonds to be issued;

(iv) the additional Net Revenue that would have been received if those customers added to the System subsequent to the beginning of such 12-month period had been customers for the entire period;

(v) the additional Net Revenue estimated to be received from any potential customers of the System who paid any required connection charge subsequent to the beginning of such 12-month period;

(vi) the additional Net Revenue estimated to be received from any potential customers of the System who received building permits subsequent to the beginning of such 12-month period and are anticipated to connect to the System;

(vii) The additional Net Revenue estimated to be received from any person, firm, association, private or municipal corporation under any executed service contract, which net revenue is not included in any of the sources of Net Revenue heretofore described in this subsection A(5); and,

(viii) The estimated change in Net Revenue as a result of any actual or reasonably anticipated changes in the Costs of Maintenance and Operation after such 12-month period.

Such Professional Utility Consultant may rely upon, and his or her certificate shall have attached thereto, financial statements of the System certified by the Finance Director showing income and expenses for the period upon which the same is based.

The certificate of such Professional Utility Consultant shall be conclusive and the only evidence required to show compliance with the provisions and requirements of this subsection A(5).

B. Notwithstanding the foregoing requirement, if Future Parity Bonds are to be issued for the purpose of refunding at or prior to their maturity any part or all of the then outstanding Parity Bonds and the issuance of such refunding Future Parity Bonds will result in a debt service savings and does not require an increase of more than \$5,000 in any fiscal or calendar year for principal of and interest on such refunding Future Parity Bonds over and above the amount required in such year for the principal of and interest on the bonds being refunded thereby, the certificate described in subsection A.6 of this section is not required.

C. Nothing herein contained shall prevent the Borough from issuing any revenue bonds, warrants or other obligations that create a lien and charge upon Gross Revenue and money in the Sewer Fund junior or inferior to the payments required by this ordinance to be made into the Bond Fund and the Reserve Account; provided, however, that in accordance with the Loan Resolution, so long as the Bond is held by USDA, the prior written consent of USDA must be obtained before the Borough issues any such junior lien revenue bond, warrant, or other obligation of the Sewer Fund.

Section 12. Transfer. The Bond may be transferred by the registered owner thereof, provided that such transfer relates to the entire unpaid principal amount of the Bond, and any such transfer shall be noted on the bond registration books of the Borough.

Section 13. Lost or Destroyed Bond. If the Bond is lost, stolen or destroyed, the Borough may execute and deliver a new bond of like date, number and tenor to the registered owner thereof in the manner provided by law and upon the owner's paying the expenses and charges of the Borough in connection therewith.

Section 14. Form of Bond. The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. R-1

\$91,000

STATE OF ALASKA

CITY AND BOROUGH OF WRANGELL  
SEWER REVENUE BOND, 2016

The City and Borough of Wrangell, Alaska, a municipal corporation and home rule borough of the State of Alaska (the "Borough"), acknowledges itself indebted and for value received promises to pay, but solely from the Bond Fund (hereinafter identified), to the United States of America, acting by and through the Department of Agriculture, Record Development (the "Payee"), the principal sum of

NINETY-ONE THOUSAND AND NO/100 DOLLARS (\$91,000)

and to pay interest, from the date hereof, on the balance of said principal from time to time remaining unpaid at the rate of \_\_\_\_% per annum payable in semiannual amortized installments of principal and interest, equal to \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_), payable on \_\_\_\_\_, and semiannually thereafter, until all of such installments have been paid or such payment has been duly



provided for, provided that the final payment of principal of and interest on this bond shall nevertheless be due on \_\_\_\_\_, 2056.

As long as the Payee is the registered owner of this bond, the Borough will make payments of principal and interest by any electronic pre-authorized debit system or other transfer system that may be required by the Payee from time to time. Upon final payment of the principal of and interest on this bond, it shall be submitted to the Borough for cancellation and surrender.

Both principal of and interest on this bond are payable solely out of the special fund of the Borough known as the "City and Borough of Wrangell Sewer Revenue Bond Redemption Fund" (the "Bond Fund"). As described below, the Net Revenue of the System is pledged to payment of this bond.

In addition to the installments of principal required to be paid by the Borough as hereinabove set forth, the Borough, at its option, shall have the right to prepay this bond as provided in the Bond Ordinance. No advance notice need be given of any prepayment hereunder.

This bond is issued pursuant to Ordinance No. \_\_\_\_\_ (the "Bond Ordinance") for the purpose of financing the completion of certain additions and improvements to the Borough's sewer system (the "System"). Capitalized terms used in this bond and not otherwise defined herein have the meanings given those terms in the Bond Ordinance.

The Borough does hereby pledge and bind itself to set aside from the Gross Revenue and to pay into the Bond Fund the various amounts required by the Bond Ordinance to be paid into and maintained in said Fund, on the dates and at the times provided by the Bond Ordinance. Said amounts so pledged to be paid into the Bond Fund are hereby declared to be a lien and charge upon such Gross Revenue junior, subordinate and inferior to the Costs of Maintenance and Operation of the System, equal in rank to the lien thereon of the 1997 Bond and any Future Parity Bonds, and superior to all other charges of any kind or nature. In the Bond Ordinance, the Borough has reserved the right to issue Future Parity Bonds on terms and conditions as set forth therein, which conditions include Payee's consent, as set forth therein.

Reference is made to the Bond Ordinance for a more complete description of the covenants with and the rights of the owner of this bond. The Borough hereby covenants and agrees with the owner of this bond that it will keep and perform all the covenants of this bond and of the Bond Ordinance to be by it kept and performed.

This bond may be assigned, and upon such assignment the assignor shall promptly notify the Borough Finance Director by registered mail.

It is hereby certified and declared that this bond is issued pursuant to and in strict compliance with the Constitution and laws of the State of Alaska and the Charter and ordinances of the Borough, and that all acts, conditions and things required to be done precedent to and in the issuance of this bond have happened, been done and performed.

IN WITNESS WHEREOF, the City and Borough of Wrangell, Alaska, has caused this bond to be signed on behalf of the Borough with the manual or facsimile signature of the Mayor, to be attested by the manual signature of the Borough Clerk, and the seal of the Borough to be impressed hereon, as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

CITY AND BOROUGH OF WRANGELL,  
ALASKA

\_\_\_\_\_  
/s/  
Mayor

[SEAL]

ATTEST:

\_\_\_\_\_  
/s/  
Borough Clerk

REGISTRATION CERTIFICATE

This bond is registered in the name of the owner on the books of the Borough in the office of the Borough Finance Director as to both principal and interest as noted in the registration blank below. No transfer hereof shall be valid unless made by the registered owner or his/her duly authorized agent in writing, and similarly noted hereon and on the bond registration books of the Borough.

Date of Registration	Name and Address of Registered Owner	Signature of Registrar
_____, 20__	United States Department of Agriculture, Rural Development Palmer, AK	
_____	_____	_____
_____	_____	_____

The Bond shall have endorsed thereon the following form of assignment:

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned registered owner thereof hereby sells, assigns and transfers the within bond unto \_\_\_\_\_.

DATED \_\_\_\_\_

\_\_\_\_\_  
In the presence of

\_\_\_\_\_  
NOTICE: Signature(s) must be  
guaranteed pursuant to law.

(Repeat this form of assignment)

Section 15. Execution of the Bond. The Bond will be executed on behalf of the Borough with the manual or facsimile signatures of the Mayor and the Borough Clerk, and will have the seal of the Borough impressed or imprinted thereon.

If any officer of the Borough who has signed, attested, authenticated, registered or sealed the Bond ceases to hold that office before the Bond so signed, attested, authenticated, registered or sealed has been actually issued and delivered, the Bond will be valid nevertheless and may be issued by the Borough with the same effect as though the person who had signed, attested, authenticated, registered or sealed that Bond had not ceased to hold that office. The Bond may also be signed, attested, authenticated, registered or sealed on behalf of the Borough by a person who, at the actual date of execution of the Bond is a proper officer of the Borough although at the original date of the Bond that person did not hold that office.

Only a Bond that bears a Registration Certificate in the form set forth in Section 14, manually executed by the Bond Registrar, will be valid or obligatory for any purpose or entitled to the benefits of this ordinance. The executed Registration Certificate will be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefits of this ordinance.

Section 16. Sale of Bond. The Bond shall be sold to USDA at a price of par on the terms and conditions set forth in the Letter of Conditions and in this ordinance. The Borough Manager is authorized to accept the applicable interest rate provided by USDA, so long as that interest rate does not exceed 4.0%, and that interest rate and the applicable principal and interest payment dates acceptable to USDA shall be set forth in the Bond.

Section 17. Application of Bond Proceeds. The proceeds of the sale of the Bond shall be accounted for in the Sewer Fund and used to pay costs of the Project and costs of issuance of the Bond.

Section 18. Repealer. Ordinance No. 924, passed by the Assembly on September 27, 2016, is repealed in its entirety.

Section 19. Severability. If any covenant or agreement provided in this ordinance to be performed on the part of the Borough is declared by any court of competent jurisdiction to be contrary to law, then that covenant or agreement will be null and void and deemed separable from the remaining covenants and agreements in this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bond.

Section 20. General Authorization. The Mayor, Borough Manager, Borough Clerk, Finance Director and all other appropriate officers of the Borough are each hereby authorized and directed to take such steps, to do such other acts and things, and to execute such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable in order to carry out the terms and provisions of and complete the transactions contemplated by, this ordinance.

Section 21. Prior Acts. All acts taken pursuant to the authority of this ordinance but prior to its effective date are hereby ratified and confirmed.

Section 22. Effective Date. This ordinance is effective upon passage, in accordance with Section 2-10 of the Borough Charter.

PASSED by the Borough Assembly of the City and Borough of Wrangell, Alaska, at a regular meeting thereof held this \_\_\_\_ day of \_\_\_\_\_, 2016.

CITY AND BOROUGH OF WRANGELL,  
ALASKA

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Mayor

ATTEST:

---

Borough Clerk

## CERTIFICATE

I, the undersigned, Borough Clerk of the City and Borough of Wrangell, Alaska (the "Borough"), and keeper of the records of the Borough Assembly (the "Assembly"), DO HEREBY CERTIFY:

1. That the attached Ordinance No. \_\_\_\_\_ (the "Ordinance") is a true and correct copy of an ordinance of the Borough as passed at a regular meeting of the Assembly held on \_\_\_\_\_, 2016, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Borough this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

---

Kim Lane, Borough Clerk

[Borough Seal]

CITY AND BOROUGH OF WRANGELL, ALASKA

SEWER REVENUE BOND, 2016

\$91,000

ORDINANCE NO. 929

AN ORDINANCE of the City and Borough of Wrangell, Alaska, authorizing the issuance of a sewer revenue bond in the principal amount of \$91,000 to finance a portion of the cost of acquiring, constructing and installing certain additions and betterments to and extensions of the Borough's sewer system; fixing the date, form, terms, maturities and covenants of the bond; reserving the right of the Borough to issue future revenue bonds with a lien on revenues on a parity with the bond upon compliance with certain conditions; and providing for the sale of the bond to the United States Department of Agriculture, Rural Development.

Passed \_\_\_\_\_, 2016

Prepared by:

STRADLING YOCCA CARLSON & RAUTH, P.C.  
Seattle, Washington

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CITY AND BOROUGH OF WRANGELL, ALASKA

ORDINANCE NO. ~~929~~

AN ORDINANCE of the City and Borough of Wrangell, Alaska, authorizing the issuance of a sewer revenue bond in the principal amount of \$91,000 to finance a portion of the cost of acquiring, constructing and installing certain additions and betterments to and extensions of the Borough's sewer system; fixing the date, form, terms, maturities and covenants of the bond; reserving the right of the Borough to issue future revenue bonds with a lien on revenues on a parity with the bond upon compliance with certain conditions; and providing for the sale of the bond to the United States Department of Agriculture, Rural Development.

WHEREAS, the City and Borough of Wrangell, Alaska (the "Borough"), a municipal corporation and home rule borough of the State of Alaska, owns, operates and maintains a sewage collection and treatment system (the "System"), as authorized by Section 8-1 of the Borough Charter; and

WHEREAS, the Borough has determined that it is in the best interest of the Borough and its residents to construct and equip upgrades to some of the pumping stations in the System (as described more fully herein, the "Project"); and

WHEREAS, the Borough has received state and federal grants for most of the cost of the Project; and

WHEREAS, by a letter of conditions dated August 31, 2015 (the "Letter of Conditions"), the United States of America, acting through the United States Department of Agriculture, Rural Development ("USDA"), has offered to lend the Borough \$91,000 for a portion of the cost of the Project; and

WHEREAS, by resolution of the Borough Assembly, adopted on October 13, 2015 (the "Loan Resolution"), the Borough accepted the terms of the USDA loan; and

WHEREAS, in accordance with the Letter of Conditions and the Loan Resolution, the Borough now wishes to authorize the issuance of a sewer revenue bond of the Borough in the principal amount of \$91,000 (the "Bond") to evidence and secure payment of the USDA loan; and

WHEREAS, the former City of Wrangell (the "City"), by Ordinance No. 636, passed by the City Council on July 8, 1997, issued to USDA the City's Sewer Revenue Bond, 1997, in the initial principal amount of \$250,000 (the "1997 Bond"), approximately \$188,120.68 of which remains outstanding; and

WHEREAS, the incorporation of the Borough as a unified home rule borough was approved by the Local Boundary Commission and by the Borough's voters and became effective on May 30, 2008; and



WHEREAS, as a result of the incorporation of the Borough, the City was dissolved and the Borough succeeded to all rights, powers, duties, assets and liabilities of the City, including the System and the 1997 Bond; and

WHEREAS, as required by the Letter of Conditions, the Bond will be issued with a first lien position on revenue of the System, so USDA as holder of the 1997 Bond is deemed to have waived the parity conditions set forth in Ordinance No. 636 and consented to the issuance of the Bond on a parity of lien with the 1997 Bond, as provided herein;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA, as follows:

Section 1.      Definitions. As used in this ordinance the following terms have the following meanings:

“Assembly” means the Borough Assembly as the general legislative authority of the Borough as the same shall be duly and regularly constituted from time to time.

“Assessments” means the assessments (including interest and penalties) levied in any utility local improvement district of the Borough created for the acquisition or construction of additions and betterments to, or extensions of the System, if the assessments are pledged to the Bond Fund.

“Average Annual Debt Service” on any of the Parity Bonds means the amount determined by dividing (a) the sum of all interest and principal to be paid on such bonds from the date of determination to the last maturity date of the bonds, by (b) the number of calendar years from and including the calendar year in which the determination is made to the last calendar year in which the bonds will be outstanding.

“Bond” means the \$91,000 par value sewer revenue bond of the Borough authorized to be issued by this ordinance.

“Bond Fund” means the “City and Borough of Wrangell Sewer Revenue Bond Redemption Fund” renamed and continued by Section 5 of this ordinance to pay and secure the payment of all Parity Bonds.

“Borough” means the City and Borough of Wrangell, a municipal corporation and home rule borough duly organized and existing under and by virtue of the laws of the State of Alaska and the Borough’s Charter.

“Borough Clerk” means the Borough Clerk, or the successor to the duties of that office.

“Costs of Maintenance and Operation” means all necessary operating expenses, current maintenance expenses, expenses of reasonable upkeep and repairs, and insurance and administrative expenses, but excludes depreciation, payments for debt service or into reserve accounts and costs of capital additions to or replacements of the System, taxes levied by the Borough or payments in lieu of such taxes.

“Finance Director” means the Finance Director of the Borough or the successor to the duties of that office.

“Future Parity Bonds” means any and all sewer revenue bonds of the Borough issued after the date of the issuance of the Bond and having a lien on the money in the Sewer Fund for the payment of the principal thereof and interest thereon equal to the lien upon the money in such fund for the payment of the principal of and interest on the Bond.

“Gross Revenue” means all of the earnings, revenue and money, except Assessments, received by the Borough from or on account of the operation of the System including proceeds from the sale, lease or other disposition of any of the properties or facilities of the System, and the income from investments of money in the Revenue Fund and any bond fund or from any other investment thereof except the income from investments irrevocably pledged to the payment of revenue bonds pursuant to a plan of retirement or refunding. Gross Revenue shall not include grants or bond proceeds, but shall include federal or state reimbursements of operating expenses to the extent that such expenses are included as Costs of Maintenance and Operation.

“Letter of Conditions” means the letter from USDA to the Borough dated August 31, 2015, establishing conditions for the USDA loan, together with any amendments or supplements to that letter.

“Loan Resolution” means the resolution adopted by the Assembly on October 13, 2015, in the form set forth in RUS Bulletin 1780-27, accepting the USDA loan and prescribing certain terms to be included in this ordinance.

“Net Revenue” means Gross Revenue less the Costs of Maintenance and Operation.

“Parity Bonds” means the 1997 Bond, the Bond, and any Future Parity Bonds.

“Principal and Interest Account” means the special account of that name heretofore created in the Bond Fund and continued pursuant to Section 5 for the purpose of paying the principal of and interest on all Parity Bonds.

“Professional Utility Consultant” means the independent person(s) or firm(s) selected by the Borough having a favorable reputation for skill and experience with sewer systems of comparable size and character to the System in such areas as are relevant to the purposes for which they are retained.

“Project” means constructing and equipping upgrades to pumping stations in the System.

“Reserve Account” means the special account of that name heretofore created in the Bond Fund and continued pursuant to Section 5B for the purpose of securing the payment of all Parity Bonds.

“Sewer Fund” means the heretofore established Sewer Fund of the Borough.

“Short-Lived Asset Reserve Fund” means the fund of that name established pursuant to Section 6 of this ordinance.

“System” means the existing sewage collection and treatment system of the Borough and such improvements or additions as may be made to such system for as long as any Parity Bonds are outstanding and may include the water supply and distribution system of the Borough and the storm drainage system of the Borough if either is or both are ever combined with the sewer system.

“Term Bonds” means any Future Parity Bonds identified as Term Bonds in the ordinance authorizing the issuance thereof, the payment of the principal of which is provided for by a mandatory schedule of deposits of money equal (in the aggregate) to the full principal amount of such Term Bonds, into the Bond Fund, and by a mandatory redemption schedule corresponding (as to time and amounts) to such mandatory schedule of deposits.

“USDA” means the United States, acting by and through the Department of Agriculture, Rural Development.

“1997 Bond” means the City of Wrangell, Alaska, Sewer Revenue Bond, 1997, issued pursuant to Ordinance No. 636 passed by the Wrangell City Council on July 8, 1997, and now an obligation of the Borough.

Section 2. Authorization of Bond. To provide financing for a portion of the cost of the Project, the Borough shall issue and sell its sewer revenue bond in the aggregate principal amount of \$91,000 (the “Bond”). The Bond shall be designated “City and Borough of Wrangell, Alaska, Sewer Revenue Bond, 2016,” shall be dated as of the date of its delivery to USDA as the initial purchaser, shall be numbered R-1, shall be in the denomination of \$91,000, shall be fully registered, shall bear interest from the date of its issuance on the unpaid principal balance thereof at a per annum interest rate to be established by USDA, as provided in Section 16 of this ordinance (so long as that rate does not exceed 4.0% per annum), shall be amortized over a 40-year period with approximately equal semiannual installments of principal and interest payable on the dates acceptable to USDA and set forth in the Bond, until all principal installments of the Bond have been paid or such payment has been duly provided for; provided, however, that the final payment of all principal of and interest on the Bond shall nevertheless be due at final maturity of the Bond approximately 40 years after the date of the Bond, and provided, further, however, that so long as the Bond is held by USDA, the Borough may not defease all or any portion of the Bond.

Payments will be applied first to interest and then to principal, and interest shall accrue on the basis of a 365-day year.

Both principal of and interest on the Bond are payable in lawful money of the United States of America to the owner or owners thereof at the address appearing on the registration books of the Borough maintained by the Finance Director; provided, however, that as long as USDA is the owner and holder of the Bond, the Borough will make payments by any electronic ~~funds~~ pre-authorized debit system or other transfer ~~or similar means established~~ system that may be required by USDA from time to time. [I mention “other transfer system” in case USDA changes its payment system over the long period of the loan.]

The Bond is payable solely from the Gross Revenue and is not a general obligation of the Borough.

The Bond shall be registered as to both principal and interest as long as any of the installments of the Bond remain unpaid, and the Borough will maintain in the office of the Finance Director books for the registration and transfer of the Bond. No transfer of the Bond so registered will be valid unless made on those registration books upon the written request of the registered owner or its duly authorized agent.

Section 3. Prepayment. The Borough hereby reserves the right to prepay debt service on the Bond at any time, with any such prepayment applied first to interest accrued to the date of receipt of the prepayment and second to principal installments ~~remaining unpaid at the price of par plus accrued interest~~, in whole, or in part. [Will USDA permit Wrangell to pick the principal installments to be prepaid or must they be in chronological order, at any time? USDA in WA has typically required chronological order for prepayment.] No advance notice of intended prepayment or redemption is required.

Section 4. Priority of Payments from Sewer Fund. There has heretofore been established in the office of the Finance Director a special fund of the Borough designated as the “City and Borough of Wrangell Sewer Fund” (the “Sewer Fund”). All of the Gross Revenue must be deposited in the Sewer Fund as collected. The Sewer Fund must be held separate and apart from all other funds and accounts of the Borough, and the Gross Revenue deposited in the Sewer Fund will be used only for the following purposes and in the following order of priority:

First, to pay the Costs of Maintenance and Operation;

Second, to pay the interest on any Parity Bonds;

Third, to pay the principal of any Parity Bonds;

Fourth, to make all payments required to be made into the Reserve Account created to secure the payment of Parity Bonds;

Fifth, to make all payments required to be made into any revenue bond redemption fund or revenue warrant redemption fund and debt service account or reserve account created to pay and secure the payment of the principal of and interest on any revenue bonds or revenue warrants of the Borough having a lien upon the Gross Revenue junior and inferior to the lien thereon for the payment of the principal of and interest on the Parity Bonds; and

Sixth, to make all payments required to be made into the Short-Lived Asset Reserve Fund; and

Seventh, to retire by redemption or purchase in the open market any outstanding revenue bonds or revenue warrants of the Borough, to make necessary additions, betterments, improvements and repairs to or extensions and replacements of the System of the Borough, or for any other lawful Borough purposes.

Section 5. Bond Fund. To pay and secure payment of all Parity Bonds, Ordinance No. 636 authorized the creation of a special fund designated as the “City of Wrangell 1997 Sewer Revenue Bond Redemption Fund.” That fund is hereby renamed and continued as the “City and Borough of Wrangell Sewer Revenue Bond Redemption Fund” (the “Bond Fund”), which fund contains the Principal and Interest Account and the Reserve Account established by Ordinance No. 636 and is to be drawn upon for the sole purpose of paying the principal of and interest on all Parity Bonds.

A. Principal and Interest Account. As long as the Bond remains outstanding, the Borough hereby irrevocably obligates and binds itself to set aside and pay from the Sewer Fund into the Principal and Interest Account, in addition to amounts required to be paid therein on account of any other issue of Parity Bonds, those amounts necessary, after taking into consideration such other funds as are on hand in the Principal and Interest Account and available for the payment of principal and

interest on the Bond, to pay the interest or principal and interest next coming due on the Bond. These payments from the Sewer Fund shall be made on or before the day on which the regular semiannual payment of principal of and interest on the Bond is due and payable in an amount equal to such regular payment.

The Borough covenants and agrees that if it issues any Future Parity Bonds that are Term Bonds, it will provide in each ordinance authorizing the issuance of the same for annual payments to be made from the Sewer Fund into the Principal and Interest Account sufficient, together with Gross Revenue collected and deposited and such other money as is on hand and available therefor in such account, to amortize the principal of Future Parity Bonds that are Term Bonds on or before the maturity date thereof.

B. Reserve Account. The Borough covenants and agrees that it will pay into the Reserve Account out of the Gross Revenue (or, at the option of the Borough, out of any other funds on hand legally available for such purposes) annual payments sufficient with other money in the Reserve Account to have on deposit therein by ten years from the date of delivery of the Bond, a total amount of not less than the Average Annual Debt Service on the Bond, to be paid at the rate of not less than 1/10 of such amount per year.

The Borough further covenants and agrees that if it issues any Future Parity Bonds it will provide in each ordinance authorizing the issuance of such Future Parity Bonds that, within ten years of the date of issuance of such Future Parity Bonds, the Borough will have set aside and paid into the Reserve Account an amount that will at least equal the Average Annual Debt Service on such Future Parity Bonds. This amount shall be accumulated by one or more deposits commencing not later than six months after the date of issuance of such Future Parity Bonds and continuing no less often than semiannually until such amount has been accumulated.

The Borough further covenants and agrees that when the required deposits have been made into the Reserve Account, it will at all times maintain therein an amount at least equal to the Average Annual Debt Service on all outstanding Parity Bonds. Whenever there is a sufficient amount in the Bond Fund, including the Reserve Account and the Principal and Interest Account, to pay the principal of premium if any, and interest on all outstanding Parity Bonds, the money in the Reserve Account may be used to pay such principal, premium, if any, and interest. Money in the Reserve Account may also be withdrawn to redeem and retire, and to pay the premium, if any, and interest due to such date of redemption, on any outstanding Parity Bonds, as long as the money left remaining on deposit in the Reserve Account are equal to the average annual debt service on the remaining outstanding Parity Bonds.

If there is a deficiency in the Principal and Interest Account to meet maturing installments of either interest on or principal of and interest on Parity Bonds, the deficiency shall be made up from the Reserve Account by the withdrawal of money therefrom. Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up out of Gross Revenue after making necessary provision for the payments required to be made under paragraph "First" through "Third" of Section 4 of this ordinance.

All money in the Reserve Account may be kept in cash or invested as permitted under Alaska law. Interest earned on or any profits made from the sale of any such investments shall be deposited in and become a part of the Principal and Interest Account.

Section 6. Short-Lived Asset Reserve Fund. A special fund designated the “Wrangell Sewer System Short-Lived Asset Reserve Fund” (the “Short-Lived Asset Reserve Fund”) is hereby authorized to be established in the office of the Finance Director. Money in the Short-Lived Asset Reserve Fund may be used from time to time to replace short-lived assets of the System. So long as the Bond remains outstanding, subject to the priorities established in Section 5 of this ordinance, the Borough must deposit \$45,963 annually (or such other amounts as may be required by USDA) into the Short-Lived Asset Reserve Fund.

Section 7. Pledge of Sewer Revenue. The amounts pledged to be paid into the Bond Fund and the accounts therein out of the Sewer Fund are hereby declared to be a lien and charge upon Gross Revenue and the money in the Sewer Fund junior, subordinate and inferior to the Costs of Maintenance and Operation, equal in rank to the lien and charge that may later be made thereon to pay and secure the payment of the 1997 Bond and any Future Parity Bonds, and superior to all other charges of any kind or nature.

Section 8. Sufficiency of Revenues. The corporate authorities of the Borough hereby declare that in fixing the amounts to be paid into the Bond Fund as aforesaid they have exercised due regard to the reasonable and necessary costs of maintenance and operation of the System and the charges necessary to pay and secure the payment of the principal of and interest on the Bond and have not obligated the Borough to set aside and pay into the Bond Fund a greater amount of the Gross Revenue than in their judgment will be available over and above such reasonable and necessary costs of maintenance and operation and the amounts necessary to pay the principal of and interest on the Bond.

Section 9. General Covenants. So long as the Bond remains unpaid, the Borough hereby covenants and agrees with the owner of the Bond from time to time, as follows:

A. Maintenance and Operations. The Borough will at all times maintain and keep the System in good repair, working order and condition, will at all times operate the System and the business in connection therewith in an efficient manner and at a reasonable cost, and will comply with all applicable laws of the State of Alaska.

B. Rates. The Borough will impose and collect such rates and charges for service rendered by the System (i) that Gross Revenue paid into the Sewer Fund will be sufficient at all times to provide for the payment of the Costs of Maintenance and Operation and payments of principal of and interest on the Bond and any Parity Bonds; (ii) that all service rendered by the System shall be subject to the full rates prescribed by the rules and regulations of the Borough; and (iii) that no free service from the System will be permitted.

C. Books and Records. The Borough will maintain complete books and records relating to the operation of the System and its financial affairs, and will cause such books and records to be audited annually at the end of each fiscal year and an audit prepared in accordance with State law. At all reasonable times USDA shall have the right to inspect the System and the records, accounts and data of the Borough relating thereto.

D. Insurance. The Borough will carry fire and extended coverage insurance in an amount at least equal to the depreciated replacement value for all above-ground structures of the System, including equipment and machinery. The Borough will also carry adequate public liability insurance, workers' compensation insurance and other kinds of insurance as under good practice are ordinarily

carried on such properties by utilities engaged in the operation of a sewer utility. The premiums paid for all such insurance may be regarded and paid as a Cost of Maintenance and Operation.

E. Assessments. The Borough shall promptly collect all Assessments levied in any utility local improvement district now or hereafter created to secure the payment of the principal of and interest on any Parity Bonds and shall pay the same into the Bond Fund without allocation of such Assessments to any particular series of Parity Bonds. It is hereby provided further, however, that nothing in this ordinance or in this subsection shall be construed to prohibit the Borough from issuing revenue bonds having a lien on Gross Revenue junior to the lien on such revenue for the payment of the principal of and interest on Parity Bonds and pledging as security for the payments of such junior lien bonds assessments levied in any utility local improvement district that may have been created to pay part or all the cost of improvements to the System for which such junior lien revenue bonds were specifically issued.

F. Disposition of Facilities. The Borough will not mortgage, sell, lease, or in any manner encumber or dispose of all the property of the System, unless provision is made for payment into the Bond Fund of a sum sufficient to pay the principal of and interest on all outstanding Parity Bonds, and that it will not mortgage, sell, lease, or in any manner encumber or dispose of any part of the System that is used, useful and material to the operation of the System unless provision is made for replacement thereof or for payment into the Bond Fund of an amount that bears the same ratio to the amount of the outstanding Parity Bonds as the revenue available for debt service for those Parity Bonds for the 12 months preceding such sale, lease, encumbrance or disposed of, bears to the revenue available for debt service for those Parity Bonds from the entire System for the same period. Any such money so paid into the Bond Fund shall be used to retire outstanding Parity Bonds at the earliest possible date.

Notwithstanding any other provision of this Subsection F, the Borough may sell or otherwise dispose of any of the works, plant, properties and facilities of the System or any real or personal property comprising a part of the same with a value less than 4% of the net utility plant of the System or which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the System, or no longer necessary, material to or useful in such operation, without making any deposit into the Bond Fund.

G. Fidelity Bond. The Borough will maintain an officer's fidelity bond for its Finance Director for as long as USDA is the registered owner of the Bond. A certified copy of such bond will be delivered to USDA.

#### Section 10. Tax Covenants; Special Designation.

A. General. The Borough hereby covenants that it will not make any use of the proceeds of sale of the Bond or any other funds of the Borough that may be deemed to be proceeds of the Bond pursuant to Section 148 of the Code that will cause the Bond to be an "arbitrage bond" within the meaning of said section and said regulations.

The Borough further covenants that it will not take any action or permit any action to be taken that would cause the Bond to constitute a "private activity bond" under Section 141 of the Code.

B. Special Designation. The Borough hereby designates the Bond as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Code. The Borough does not anticipate issuing more than \$10,000,000 of qualified tax-exempt obligations during 2016.

Section 11. Future Parity Bonds. The Borough hereby further covenants and agrees with the owner from time to time of the Bond for as long as any portion of the same remains outstanding, as follows:

A. That it will not hereafter issue any sewer revenue bonds or other obligations of the Borough that will have a lien and charge upon Gross Revenue superior to the lien and charge thereon of the Bond. The Borough may issue Future Parity Bonds for:

First, the purpose of acquiring, constructing and installing additions, betterments and improvements to and extensions of, acquiring necessary equipment for, or making necessary replacements of or repairs to the System, or

Second, the purpose of refunding by payment, redemption, exchange or purchase at or prior to their maturity any outstanding Parity Bond,

upon compliance with the following conditions:

1. So long as USDA holds the 1997 Bond and the Bond, USDA consents to the issuance of such Future Parity Bonds. With such consent, the certificate described in paragraph 6 below is not required, and the Borough will comply with the rest of the conditions set forth in this Section 11.A to the extent required by USDA.

2. At the time of the issuance of such Future Parity Bonds there is no deficiency in the Principal and Interest Account or the Reserve Account.

3. Each ordinance authorizing the issuance of such Future Parity Bonds must require that principal and interest on the Future Parity Bonds be payable out of the Bond Fund and further provide (i) for payments into the Bond Fund to satisfy the sinking fund requirement set forth in Section 5.A hereof with respect to any such Future Parity Bonds that are Term Bonds and (ii) for payments into the Reserve Account to satisfy the requirements of Section 5.B hereof.

4. Each ordinance authorizing the issuance of such Future Parity Bonds must require that any and all Assessments will be paid directly into the Bond Fund.

5. Each ordinance authorizing the issuance of refunding Future Parity Bonds must require that all uncollected Assessments that may have been levied to secure the payment of the principal of and interest on the bonds being refunded be paid directly into the Bond Fund.

6. At the time of the issuance of such Future Parity Bonds, the Borough shall have on file in the office of the Borough Clerk a certificate of a Professional Utility Consultant showing: that the Net Revenue determined and adjusted as hereafter provided for each calendar year after the issuance of such Future Parity Bonds (the “Adjusted Net Revenue”) will equal at least 1.10 times the Annual Debt Service (after deducting Assessments, allocated to the years in which they would be received if the unpaid balance of each assessment roll were paid in the remaining number of installments with interest on the declining balance at the times and at the rate provided in the ordinance



confirming the assessment roll) for each such calendar for all Parity Bonds plus the Future Parity Bonds proposed to be issued.

The Adjusted Net Revenue shall be the Net Revenue for a period of any 12 consecutive months out of the 24 months immediately preceding the date of delivery of such proposed Future Parity Bonds as adjusted by such Professional Utility Consultant to take into consideration changes in Net Revenue estimated to occur under the following conditions for each year after such delivery for so long as any Parity Bonds, including the Future Parity Bonds proposed to be issued, shall be outstanding:

(i) the additional Net Revenue that would have been received if any change in rates and charges adopted by ordinance of the Borough prior to the date of such certificate and subsequent to the beginning of such 12-month period, had been in force during the full 12-month period;

(ii) the additional Net Revenue that would have been received if any facility of the System that became fully operational after the beginning of such 12-month period had been so operating for the entire period;

(iii) the additional Net Revenue estimated by such Professional Utility Consultant to be received from potential customers of the System with existing homes or other buildings that will be required to connect to any additions, betterments and improvements to and extensions of any facilities of the System that are (a) under construction at the time of such certificate or (b) will be constructed from the proceeds of the Future Parity Bonds to be issued;

(iv) the additional Net Revenue that would have been received if those customers added to the System subsequent to the beginning of such 12-month period had been customers for the entire period;

(v) the additional Net Revenue estimated to be received from any potential customers of the System who paid any required connection charge subsequent to the beginning of such 12-month period;

(vi) the additional Net Revenue estimated to be received from any potential customers of the System who received building permits subsequent to the beginning of such 12-month period and are anticipated to connect to the System;

(vii) The additional Net Revenue estimated to be received from any person, firm, association, private or municipal corporation under any executed service contract, which net revenue is not included in any of the sources of Net Revenue heretofore described in this subsection A(5); and,

(viii) The estimated change in Net Revenue as a result of any actual or reasonably anticipated changes in the Costs of Maintenance and Operation after such 12-month period.

Such Professional Utility Consultant may rely upon, and his or her certificate shall have attached thereto, financial statements of the System certified by the Finance Director showing income and expenses for the period upon which the same is based.

The certificate of such Professional Utility Consultant shall be conclusive and the only evidence required to show compliance with the provisions and requirements of this subsection A(5).

B. Notwithstanding the foregoing requirement, if Future Parity Bonds are to be issued for the purpose of refunding at or prior to their maturity any part or all of the then outstanding Parity Bonds and the issuance of such refunding Future Parity Bonds will result in a debt service savings and does not require an increase of more than \$5,000 in any fiscal or calendar year for principal of and interest on such refunding Future Parity Bonds over and above the amount required in such year for the principal of and interest on the bonds being refunded thereby, the certificate described in subsection A.6 of this section is not required.

C. Nothing herein contained shall prevent the Borough from issuing any revenue bonds, warrants or other obligations that create a lien and charge upon Gross Revenue and money in the Sewer Fund junior or inferior to the payments required by this ordinance to be made into the Bond Fund and the Reserve Account; provided, however, that in accordance with the Loan Resolution, so long as the Bond is held by USDA, the prior written consent of USDA must be obtained before the Borough issues any such junior lien revenue bond, warrant, or other obligation of the Sewer Fund.

Section 12. Transfer. The Bond may be transferred by the registered owner thereof, provided that such transfer relates to the entire unpaid principal amount of the Bond, and any such transfer shall be noted on the bond registration books of the Borough.

Section 13. Lost or Destroyed Bond. If the Bond is lost, stolen or destroyed, the Borough may execute and deliver a new bond of like date, number and tenor to the registered owner thereof in the manner provided by law and upon the owner's paying the expenses and charges of the Borough in connection therewith.

Section 14. Form of Bond. The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. R-1

\$91,000

STATE OF ALASKA

CITY AND BOROUGH OF WRANGELL  
SEWER REVENUE BOND, 2016

The City and Borough of Wrangell, Alaska, a municipal corporation and home rule borough of the State of Alaska (the "Borough"), acknowledges itself indebted and for value received promises to pay, but solely from the Bond Fund (hereinafter identified), to the United States of America, acting by and through the Department of Agriculture, Record Development (the "Payee"), the principal sum of

NINETY-ONE THOUSAND AND NO/100 DOLLARS (\$91,000)

and to pay interest, from the date hereof, on the balance of said principal from time to time remaining unpaid at the rate of \_\_\_\_% per annum payable in semiannual amortized installments of principal and interest, equal to \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_), payable on \_\_\_\_\_, and semiannually thereafter, until all of such installments have been paid or such payment has been duly provided for, provided that the final payment of principal of and interest on this bond shall nevertheless be due on \_\_\_\_\_, 2056.

As long as the Payee is the registered owner of this bond, the Borough will make payments of principal and interest by any electronic ~~funds~~pre-authorized debit system or other transfer ~~or similar means established by~~system that may be required by the Payee from time to time. Upon final payment of the principal of and interest on this bond, it shall be submitted to the Borough for cancellation and surrender.

Both principal of and interest on this bond are payable solely out of the special fund of the Borough known as the "City and Borough of Wrangell Sewer Revenue Bond Redemption Fund" (the "Bond Fund"). As described below, the Net Revenue of the System is pledged to payment of this bond.

In addition to the installments of principal required to be paid by the Borough as hereinabove set forth, the Borough, at its option, shall have the right to prepay ~~any or all unpaid principal installments in the chronological order of such installments at any time~~debt service on this bond as provided in the Bond Ordinance. No advance notice need be given of any prepayment hereunder.

This bond is issued pursuant to Ordinance No. 924 (the "Bond Ordinance") for the purpose of financing the completion of certain additions and improvements to the Borough's sewer system (the "System"). Capitalized terms used in this bond and not otherwise defined herein have the meanings given those terms in the Bond Ordinance.

The Borough does hereby pledge and bind itself to set aside from the Gross Revenue and to pay into the Bond Fund the various amounts required by the Bond Ordinance to be paid into and maintained in said Fund, on the dates and at the times provided by the Bond Ordinance. Said amounts so pledged to be paid into the Bond Fund are hereby declared to be a lien and charge upon such Gross Revenue junior, subordinate and inferior to the Costs of Maintenance and Operation of the System, equal in rank to the lien thereon of the 1997 Bond and any Future Parity Bonds, and superior to all other charges of any kind or nature. In the Bond Ordinance, the Borough has reserved the right to issue Future Parity Bonds on terms and conditions as set forth therein, which conditions include Payee's consent, as set forth therein.

Reference is made to the Bond Ordinance for a more complete description of the covenants with and the rights of the owner of this bond. The Borough hereby covenants and agrees with the owner of this bond that it will keep and perform all the covenants of this bond and of the Bond Ordinance to be by it kept and performed.

This bond may be assigned, and upon such assignment the assignor shall promptly notify the Borough Finance Director by registered mail.

It is hereby certified and declared that this bond is issued pursuant to and in strict compliance with the Constitution and laws of the State of Alaska and the Charter and ordinances of the Borough, and that all acts, conditions and things required to be done precedent to and in the issuance of this bond have happened, been done and performed.

IN WITNESS WHEREOF, the City and Borough of Wrangell, Alaska, has caused this bond to be signed on behalf of the Borough with the manual or facsimile signature of the Mayor, to be attested by the manual signature of the Borough Clerk, and the seal of the Borough to be impressed hereon, as of this \_\_\_\_ day of \_\_\_\_\_, 2016.

CITY AND BOROUGH OF WRANGELL,  
ALASKA

\_\_\_\_\_  
/s/  
Mayor

[SEAL]

ATTEST:

\_\_\_\_\_  
/s/  
Borough Clerk

REGISTRATION CERTIFICATE

This bond is registered in the name of the owner on the books of the Borough in the office of the Borough Finance Director as to both principal and interest as noted in the registration blank below. No transfer hereof shall be valid unless made by the registered owner or his/her duly authorized agent in writing, and similarly noted hereon and on the bond registration books of the Borough.

Date of Registration	Name and Address of Registered Owner	Signature of Registrar
_____, 20__	United States Department of Agriculture, Rural Development Palmer, AK	_____
_____	_____	_____
_____	_____	_____

The Bond shall have endorsed thereon the following form of assignment:

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned registered owner thereof hereby sells, assigns and transfers the within bond unto \_\_\_\_\_.

DATED \_\_\_\_\_

In the presence of \_\_\_\_\_

\_\_\_\_\_  
NOTICE: Signature(s) must be  
guaranteed pursuant to law.

(Repeat this form of assignment)

Section 15. Execution of the Bond. The Bond will be executed on behalf of the Borough with the manual or facsimile signatures of the Mayor and the Borough Clerk, and will have the seal of the Borough impressed or imprinted thereon.

If any officer of the Borough who has signed, attested, authenticated, registered or sealed the Bond ceases to hold that office before the Bond so signed, attested, authenticated, registered or sealed has been actually issued and delivered, the Bond will be valid nevertheless and may be issued by the Borough with the same effect as though the person who had signed, attested, authenticated, registered or sealed that Bond had not ceased to hold that office. The Bond may also be signed, attested, authenticated, registered or sealed on behalf of the Borough by a person who, at the actual date of execution of the Bond is a proper officer of the Borough although at the original date of the Bond that person did not hold that office.

Only a Bond that bears a Registration Certificate in the form set forth in Section 14, manually executed by the Bond Registrar, will be valid or obligatory for any purpose or entitled to the benefits of this ordinance. The executed Registration Certificate will be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefits of this ordinance.

Section 16. Sale of Bond. The Bond shall be sold to USDA at a price of par on the terms and conditions set forth in the Letter of Conditions and in this ordinance. The Borough Manager is authorized to accept the applicable interest rate provided by USDA, so long as that interest rate does not exceed 4.0%, and that interest rate and the applicable principal and interest payment dates acceptable to USDA shall be set forth in the Bond.

Section 17. Application of Bond Proceeds. The proceeds of the sale of the Bond shall be accounted for in the Sewer Fund and used to pay costs of the Project and costs of issuance of the Bond.

Section 18. Repealer. Ordinance No. 924, passed by the Assembly on September \_\_, 2016, is repealed in its entirety.

Section 19. ~~Section 18.~~ Severability. If any covenant or agreement provided in this ordinance to be performed on the part of the Borough is declared by any court of competent jurisdiction to be contrary to law, then that covenant or agreement will be null and void and deemed separable from the remaining covenants and agreements in this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bond.

Section 20. ~~Section 19.~~ General Authorization. The Mayor, Borough Manager, Borough Clerk, Finance Director and all other appropriate officers of the Borough are each hereby authorized and directed to take such steps, to do such other acts and things, and to execute such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable in order to carry out the terms and provisions of and complete the transactions contemplated by, this ordinance.

Section 21. ~~Section 20.~~ Prior Acts. All acts taken pursuant to the authority of this ordinance but prior to its effective date are hereby ratified and confirmed.

Section 22. ~~Section 21.~~ Effective Date. This ordinance is effective upon passage, in accordance with Section 2-10 of the Borough Charter.

PASSED by the Borough Assembly of the City and Borough of Wrangell, Alaska, at a regular meeting thereof held this \_\_\_\_ day of \_\_\_\_\_, 2016.

CITY AND BOROUGH OF WRANGELL,  
ALASKA

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Mayor

ATTEST:

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Borough Clerk

## CERTIFICATE

I, the undersigned, Borough Clerk of the City and Borough of Wrangell, Alaska (the "Borough"), and keeper of the records of the Borough Assembly (the "Assembly"), DO HEREBY CERTIFY:

1. That the attached Ordinance No. \_\_\_\_\_ (the "Ordinance") is a true and correct copy of an ordinance of the Borough as passed at a regular meeting of the Assembly held on \_\_\_\_\_, 2016, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Borough this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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Kim Lane, Borough Clerk

[Borough Seal]

Document comparison by Workshare Compare on Monday, November 28, 2016  
3:58:04 PM

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Rendering set	Standard

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Statistics:	
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Insertions	33
Deletions	28
Moved from	0
Moved to	0
Style change	0
Format changed	0



Total changes	61
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# Agenda Item 5b

## CITY & BOROUGH OF WRANGELL

### BOROUGH ASSEMBLY SPECIAL AGENDA ITEM December 2, 2016

#### INFORMATION:

Consideration of Local Bidder Preference provision (WMC 5.10.040 (D))

#### Attachments:

1. Memo from Manager Jabusch
2. WMC Section 5-10-040 (D)
3. Memo from Amber Al-Haddad, PW Director
4. Preliminary Bid Tab
5. Bid received from Tongass Electric
6. Bid received from Bunes Electric
7. Bid Project Manual (bid information)
8. Letter received from Bunes Electric
9. Letter received from Tongass Electric

**\* The Assembly may wish to hear the public or written testimony on this item before the Assembly Discussion.**

**\*\* The Assembly is required to discuss and consider each item (#'s 1 – 4 and the sub sections in #4) of the Borough Manager's memo. This is a requirement of the Wrangell Municipal Code.**

#### RECOMMENDED ACTION:

Assembly Discussion and Consideration.

## MEMORANDUM

**TO: HONORABLE MAYOR AND MEMBERS OF THE ASSEMBLY  
CITY AND BOROUGH OF WRANGELL**

**FROM: JEFF JABUSCH  
BOROUGH MANAGER**

**SUBJECT: LOCAL PREFERENCE DISCUSSION**

**DATE: NOVEMBER 30<sup>TH</sup>, 2016**

### **Discussion of the borough's local preference ordinance:**

On Tuesday, November 29<sup>th</sup>, 2016 the borough opened bids for electrical work on our city dock. This project was funded through a State of Alaska grant. After the bid was opened, Tongass Electric, of Coffman Cove, was the apparent low bidder with a bid of \$246,577.79. Buness Electric, the next low bidder has inquired into our local preference ordinance.

### **Some of the factors involved:**

1. The funding for this project comes from a State of Alaska Grant and 100% of the funding comes from state sources. The grant agency has emailed us and told us that we should follow our local procurement ordinances and that there is nothing that prevents us from using our local preference ordinance. So there is no issue from the state either way.
2. The grant amount available for this project is \$247,811.34. Anything above this amount will come out of the Port Fund Reserve.
3. The bid document did not address that a local preference would be applied and there is not anywhere in the bid documents that we could find that says all local laws will be part of the bid process. There is section that says that the contractor will follow all local laws. We interpret this to mean after the award.
4. WMC 5.10.040 (D) Local Preference Award is attached in full. For the Local Preference to be awarded several things have to be shown and they are as follows:
  - a. For bids under 1,000,000, the local bidder's bid cannot be more than 5% of lowest responsible nonlocal bid. In this case the nonlocal bid was \$246,577.79. If 5% is added to that amount it equals \$258,906.68. The local bid was \$254,440.00. This satisfies the requirement as the local bid is within the 5% rule.
  - b. **In WMC 5.10.040 (D) 2, This preference shall not be interpreted to mean that the borough is precluded from making the purchase from whatever source is most advantageous to the borough after considering all factors in the public interest even when the price quoted by the local bidder satisfies subsection (D)(1)(a) or (b).** In this section the assembly should consider all factors in determining what is most advantageous to the borough and public interest. As an example, following are possibly some of the factors the borough assembly could consider:
    - i. If the local contractor is hired in this case, it will cost the borough \$7,862.21 more than if the lowest bidder and nonlocal contractor is selected.

- ii. It can be argued that if a nonlocal contractor comes to town they will spend money in town while they are here which will for a short time add to the economy.
  - iii. A fact to consider is that local contractors pay local taxes.
  - iv. Money local contractors receive on borough contracts get spent in town and that money recirculates through the community and helps drive the economy.
- c. WMC 5.10.40(D) (3)“Local bidder” for purposes of the section shall mean a bidder who:
  - i. Holds a current Alaska Business License- Yes
  - ii. Submits a bid under name on AK Business License- Yes
  - iii. Has maintained a place of business within the borough- Yes
  - iv. Is not delinquent in the payment of utilities, taxes, charges or assessments owing the borough- As of today, November 30<sup>th</sup>, Buness Electric is 10 days delinquent on a light bill in the amount of \$128.86. All other bills are current.
  - v. Is incorporated or qualified to do business under laws of Alaska- Yes

**Conclusion:**

The City and Borough of Wrangell has an ordinance that allows the borough to award a contract under the local ordinance code to a local bidder instead of a nonlocal contractor if certain criteria are met. All of the factors above should be thoroughly examined and any written or oral testimony provided at the meeting should also be considered. In the end the borough assembly has the task of deciding, after all factors are discussed and considered, whether it is more advantageous to accept the low overall bid or if the borough should apply the local preference and award the bid to the local bidder.

**5.10.040 (D)****D. Local Bidder Preference Award.**

1. Unless contrary to federal or state law or regulation, or as otherwise provided in section (D)(2) of this section, a contract for, or purchase of, supplies, materials, equipment, contractual services, or public improvements shall be awarded to a local bidder where the bid by such local bidder is in all material respects comparable to the lowest responsible nonlocal bid, and if the amount bid by such local bidder does not exceed the lowest responsible nonlocal bid by more than:

a. Five percent of the amount bid by the lowest responsible nonlocal bidder if that nonlocal bidder's bid is \$1,000,000 or less;

b. Three percent of the amount bid by the lowest responsible nonlocal bidder if that nonlocal bidder's bid is \$1,000,001 or more.

2. This preference shall not be interpreted to mean that the borough is precluded from making the purchase from whatever source is most advantageous to the borough after considering all factors in the public interest even when the price quoted by the local bidder satisfies subsection (D)(1)(a) or (b) of this section.

3. "Local bidder" for purposes of the section shall mean a bidder who:

a. Holds a current Alaska business license;

b. Submits a bid for goods or services under the name appearing on the person's current Alaska business license;

c. Has maintained a place of business within the boundaries of the borough for a period of six months immediately preceding the date of the bid;

d. Is not delinquent in the payment of any utilities, taxes, charges or assessments owing to the borough on account of that business;

e. Is incorporated or qualified to do business under the laws of Alaska with its principal place of business in the borough, is a proprietorship and the proprietor is a resident of the borough, or is a partnership and all partners are residents of the City and Borough of Wrangell;

f. If a joint venture, all joint venture partners must qualify under subsection (D)(3)(a) through (e) of this section;

g. The manager may require such documentation or verification by the person claiming to be a local bidder as is deemed necessary to establish the requirements of this section. [Ord. 817 § 1, 2008; Ord. 816 § 1, 2008; Ord. 605 § 4, 1995; Ord. 444 § 4, 1983.]

# MEMORANDUM

5b-3

**TO:** HONORABLE MAYOR AND MEMBERS OF THE ASSEMBLY  
CITY AND BOROUGH OF WRANGELL

**FROM:** AMBER AL-HADDAD, PUBLIC WORKS DIRECTOR

**SUBJECT:** CONSTRUCTION CONTRACT AWARD  
WRANGELL DOCK LIGHTING

**DATE:** November 21, 2016

## **BACKGROUND**

The City and Borough of Wrangell received a grant from the State of Alaska Department of Commerce, Community and Economic Development (DCCED) for the Commercial Passenger Vessel Facility Projects (aka City Dock). An invitation to bid was issued for the construction of the Wrangell Dock Lighting project for which bids were due by 10:00 a.m. on Tuesday, November 29, 2016.

The work will take place at Wrangell's City Dock. The project was developed to include a Base Bid for replacing the 240V single phase service with a 240V, three phase service, replacing the new service equipment in the uplands, new lighting on the dock, and a new power center on the dock with 208V receptacles among other features. The Base Bid was estimated at \$250,000 - \$260,000.

An Additive Alternate A was developed as an upgrade to the power center that includes a different electrical service, different service equipment, different feeders, etc. This includes leaving the existing 240V, single phase service in place and providing a new 480V, three phase service, new service equipment in the uplands, new feeders to the float and a new power center on the dock with both 208V and 480V receptacles. The Additive Alternate A was estimated at \$30,000 - \$40,000.

Nine bids were received. Tongass Electric was the low bidder, with a combined Base Bid and Additive Alternate A bid amount of \$246,577.79. This project amount is within the funds available for this project from the State of Alaska, DCCED grant for Wrangell's City Dock facility improvements. It is the intent to include the construction of the work under the Base Bid and the power upgrade identified under Additive Alternate A.

## **RECOMMENDATION**

Move to approve a contract award to Tongass Electric for construction of the Wrangell Dock Lighting project, including both the Base Bid and Additive Alternate A, in the total amount of \$246,577.79. Funding for this project is to come from the DCCED grant for the Commercial Passenger Vessel Facility.

## **ATTACHMENTS**

1. Preliminary Bid Tabulation Summary for the Wrangell Dock Lighting project
2. Tongass Electric's Bid

Preliminary

City and Borough of Wrangell, Alaska

5b-4

Wrangell Dock Lighting  
Bid Opening Checklist and Tabulations

Bid Opening Date: November 29, 2016 @ 10:00 a.m. - Assembly Chambers

Bidder's Name	Signed Bid	Bid Bond	AK Business License	AK Contractors License	Addenda Acknowledged	Base Bid	Additive Alternate A	Base Bid Modification	Additive Alternate A Modification	Total Project (including modifications)
					#1					
Johnson Construction & Supply	x	x	x	x	x	\$ 347,134.00	\$ 54,604.00			\$ 401,738.00
Tongass Electric	x	x	x	x	x	\$ 204,585.15	\$ 27,195.00	\$ 14797.64		\$ 246,577.79
Buness Electric	x	x	x	x	x	\$ 224,480.00	\$ 29,960.00			\$ 254,440.00
Alaska Electric	x	x	x	x	x	\$ 300,000.00	\$ 60,000.00	\$ (62,000.00)	\$ (22,000.00)	\$ 276,000.00
EverElectric	x	x	x	x	x	\$ 255,000.00	\$ 35,000.00			\$ 290,000.00
Sitka Electric	x	x	x	x	x	\$ 300,000.00	\$ 50,000.00	\$ (50,835.00)	\$ (9,133.00)	\$ 290,032.00
LiveWire	x	x	x	x	x	\$ 276,541.00	\$ 296,729.00			\$ 573,270.00
Chatham Electric	x	x	x	x	x	\$ 270,000.00	\$ 40,000.00	\$ (13,705.00)	\$ (7,322.00)	\$ 288,973.00
Puffin Electric	x	x	x	x	x	\$ 550,000.00	\$ 100,000.00	\$ (293,335.00)	\$ (64,573.00)	\$ 292,092.00

Verified By:

*Kurt Lane*

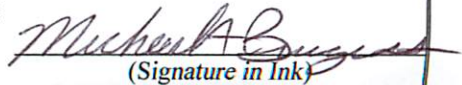
Witnessed By:

*Amber M. Faddess*

Page 1 of 1

**SECTION 00300 - BID**

8. The Bidder has read this Bid and agrees to the conditions as stated herein by signing its signature in the space provided below.

Dated:	<u>November 25, 2016</u>	Bidder:	<u>Tongass Electric</u>
			(Company Name)
Contractor's License No.:	<u>114300</u>	By:	
			(Signature in Ink)
Telephone No.:	<u>907-329-2054</u>	Printed Name:	<u>Micheal Burgess</u>
		Title:	<u>Owner</u>
Facsimile No.:	<u>907-329-2054</u>	Address:	<u>114 NW Coho Drive</u>
			(Street or P.O. Box)
			<u>Coffman Cove, Alaska 99918</u>
			(City, State, Zip)

9. TO BE CONSIDERED, ALL BIDDERS MUST COMPLETE AND INCLUDE THE FOLLOWING AT THE TIME OF THE BID OPENING:

- Signed Bid, Section 00300 (includes Addenda receipt statement)
- Completed Bid Schedule, Section 00310
- Bid Security (Bid Bond, Section 00320, or by a certified or cashier's check as stipulated in the Notice Inviting Bids, Section 00030)

10. Unless otherwise notified by the Borough Manager, the apparent low Bidder is required to complete and submit, within five days after the "Notice of Intent to Award" letter, the following documents:

- Subcontractor Report, Section 00360

The apparent low Bidder who fails to submit a completed Subcontractor Report within the time specified in Section 00360 – Subcontractor Report will be found to be not a responsible Bidder and may be required to forfeit the Bid security. The OWNER will then consider the next lowest Bidder for award of the contract.

11. The successful Bidder will be required to submit, within ten days after the date stated in the "Notice of Intent to Award" letter, the following executed documents:

- Alaska Business License
- Agreement Forms, Section 00500
- Performance Bond, Section 00610
- Payment Bond, Section 00620
- Certificates of Contractor Insurance Section 00700 and Section 00800

12. The successful Bidder will be required to submit, within ten Days after the date stated in the "Notice to Proceed" the following executed documents:

- Certificates of Subcontractor Insurance Section 00700 and Section 00800
- One executed copy of each subcontract for WORK that exceeds one half of one percent of the intended contract award amount.

**END OF SECTION**



## SECTION 00300 - BID

**BID TO: CITY & BOROUGH OF WRANGELL**

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the OWNER on the form included in the Contract Documents (as defined in Article 7 of Section 00500 - Agreement) to perform the WORK as specified or indicated in said Contract Documents entitled:

### WRANGELL DOCK LIGHTING

2. Bidder accepts all terms and conditions of the Contract Documents, *including without limitation* those in the "Notice Inviting Bids" and "Instructions to Bidders," dealing with the disposition of the Bid Security.
3. This Bid will remain open for the period stated in the "Notice Inviting Bids" unless otherwise required by law. Bidder will enter into an Agreement within the time and in the manner required in the "Notice Inviting Bids" and the "Instructions to Bidders," and will furnish insurance certificates, Payment Bond, Performance Bond, and any other documents as may be required by the Contract Documents.
4. Bidder has familiarized itself with the nature and extent of the Contract Documents, WORK, site, locality where the WORK is to be performed, the legal requirements (federal, state and local laws, ordinances, rules, and regulations), and the conditions affecting cost, progress or performance of the WORK and has made such independent investigations as Bidder deems necessary.
5. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.
6. To all the foregoing, and including all Bid Schedule and information required of Bidder contained in this Bid Form, said Bidder further agrees to complete the WORK required under the Contract Documents within the Contract Time stipulated in said Contract Documents, and to accept in full payment therefor the Contract Price based on the total bid price(s) named in the aforementioned Bid Schedule.
7. Bidder has examined copies of all the Contract Documents including the following Addenda (receipt of all of which is hereby acknowledged by the Undersigned):

Addenda No.	Date Issued
1	November 21, 2016

Addenda No.	Date Issued

*Michael Burgess, Owner, Tongass Electric*  
Give number and date of each Addendum above. Failure to acknowledge receipt of all Addenda will cause the Bid to be non-responsive and shall cause its rejection.

**SECTION 00310 - BID SCHEDULE**

**WRANGELL DOCK LIGHTING - BASE BID**

Pay Item No.	Pay Item Description	Pay Unit	Approximate Quantity	Unit Price		Amount	
				Dollars	Cents	Dollars	Cents
01505.1	Mobilization	LS	All Req'd	4000	00	4000	00
16000.1	Electrical	LS	All req'd	200585	15	200585	15

**TOTAL WRANGELL DOCK LIGHTING - BASE BID**

**AMOUNT IN FIGURES:** \$ 204,585.15

**TOTAL WRANGELL DOCK LIGHTING - BASE BID**

**AMOUNT IN WORDS:** Two hundred and four thousand, five hundred eighty five dollars and fifteen cents

**WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A**

Pay Item No.	Pay Item Description	Pay Unit	Approximate Quantity	Unit Price		Amount	
				Dollars	Cents	Dollars	Cents
16000.1-A	Electrical	LS	All Req'd	27195	00	27195	00

**TOTAL WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A**

**AMOUNT IN FIGURES:** \$ 27,195.00

**TOTAL WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A**

**AMOUNT IN WORDS:** Twenty seven thousand, one hundred and ninety five dollars

**BIDDER'S NAME:** Micheal Burgess, Owner of Tongass Electric

**DATE OF BID:** November 25, 2016

**END OF SECTION**

Modification

SECTION 00310 - BID SCHEDULE

RECEIVED  
NOV 28 2016  
WRANGELL CITY HALL

WRANGELL DOCK LIGHTING - BASE BID

Pay Item No.	Pay Item Description	Pay Unit	Approximate Quantity	Unit Price		Amount	
				Dollars	Cents	Dollars	Cents
01505.1	Mobilization	LS	All Req'd	4000	00	4000	00
16000.1	Electrical	LS	All req'd	215,382	79	215,382	79

TOTAL WRANGELL DOCK LIGHTING - BASE BID

AMOUNT IN FIGURES: \$ 219,382.79

TOTAL WRANGELL DOCK LIGHTING - BASE BID

AMOUNT IN WORDS: Two hundred and four thousand, five hundred eighty five dollars and fifteen cents

WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A

Pay Item No.	Pay Item Description	Pay Unit	Approximate Quantity	Unit Price		Amount	
				Dollars	Cents	Dollars	Cents
16000.1-A	Electrical	LS	All Req'd	27195	00	27195	00

TOTAL WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A

AMOUNT IN FIGURES: \$ 27,195.00

TOTAL WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A

AMOUNT IN WORDS: Twenty seven thousand, one hundred and ninety five dollars

BIDDER'S NAME: Micheal Burgess, Tongass Enterprises LLC, DBA Tongass Electric

DATE OF BID: November 25, 2016

END OF SECTION

WRANGELL DOCK LIGHTING

BID SCHEDULE  
Page 00310-1

## SECTION 00300 - BID

8. The Bidder has read this Bid and agrees to the conditions as stated herein by signing its signature in the space provided below.

Dated:	<u>11-29-2016</u>	Bidder:	<u>BUNESS ELECTRIC LLC</u> (Company Name)
Contractor's License No.:	<u>CONS 38100</u>	By:	<u>[Signature]</u> (Signature in Ink)
Telephone No.:	<u>907 305 0547</u>	Printed Name:	<u>JORDAN T BUNESS</u>
Facsimile No.:	<u>907 874 3122</u>	Title:	<u>Owner</u>
		Address:	<u>PO Box 66</u> (Street or P.O. Box)
			<u>WRANGELL AK 99929</u> (City, State, Zip)

9. TO BE CONSIDERED, ALL BIDDERS MUST COMPLETE AND INCLUDE THE FOLLOWING AT THE TIME OF THE BID OPENING:
- Signed Bid, Section 00300 (includes Addenda receipt statement)
  - Completed Bid Schedule, Section 00310
  - Bid Security (Bid Bond, Section 00320, or by a certified or cashier's check as stipulated in the Notice Inviting Bids, Section 00030)
10. Unless otherwise notified by the Borough Manager, the apparent low Bidder is required to complete and submit, within five days after the "Notice of Intent to Award" letter, the following documents:
- Subcontractor Report, Section 00360
- The apparent low Bidder who fails to submit a completed Subcontractor Report within the time specified in Section 00360 – Subcontractor Report will be found to be not a responsible Bidder and may be required to forfeit the Bid security. The OWNER will then consider the next lowest Bidder for award of the contract.
11. The successful Bidder will be required to submit, within ten days after the date stated in the "Notice of Intent to Award" letter, the following executed documents:
- Alaska Business License
  - Agreement Forms, Section 00500
  - Performance Bond, Section 00610
  - Payment Bond, Section 00620
  - Certificates of Contractor Insurance Section 00700 and Section 00800
12. The successful Bidder will be required to submit, within ten Days after the date stated in the "Notice to Proceed" the following executed documents:
- Certificates of Subcontractor Insurance Section 00700 and Section 00800
  - One executed copy of each subcontract for WORK that exceeds one half of one percent of the intended contract award amount.

END OF SECTION

WRANGELL DOCK LIGHTING  
WOOD STREET  
IMPROVEMENTS



## SECTION 00300 - BID

**BID TO: CITY & BOROUGH OF WRANGELL**

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the OWNER on the form included in the Contract Documents (as defined in Article 7 of Section 00500 - Agreement) to perform the WORK as specified or indicated in said Contract Documents entitled:

### WRANGELL DOCK LIGHTING

2. Bidder accepts all terms and conditions of the Contract Documents, including without limitation those in the "Notice Inviting Bids" and "Instructions to Bidders," dealing with the disposition of the Bid Security.
3. This Bid will remain open for the period stated in the "Notice Inviting Bids" unless otherwise required by law. Bidder will enter into an Agreement within the time and in the manner required in the "Notice Inviting Bids" and the "Instructions to Bidders," and will furnish insurance certificates, Payment Bond, Performance Bond, and any other documents as may be required by the Contract Documents.
4. Bidder has familiarized itself with the nature and extent of the Contract Documents, WORK, site, locality where the WORK is to be performed, the legal requirements (federal, state and local laws, ordinances, rules, and regulations), and the conditions affecting cost, progress or performance of the WORK and has made such independent investigations as Bidder deems necessary.
5. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.
6. To all the foregoing, and including all Bid Schedule and information required of Bidder contained in this Bid Form, said Bidder further agrees to complete the WORK required under the Contract Documents within the Contract Time stipulated in said Contract Documents, and to accept in full payment therefor the Contract Price based on the total bid price(s) named in the aforementioned Bid Schedule.
7. Bidder has examined copies of all the Contract Documents including the following Addenda (receipt of all of which is hereby acknowledged by the Undersigned):

Addenda No.	Date Issued
# 1	11-21-16

Addenda No.	Date Issued

**Give number and date of each Addendum above. Failure to acknowledge receipt of all Addenda will cause the Bid to be non-responsive and shall cause its rejection.**

# SECTION 00310 - BID SCHEDULE

## WRANGELL DOCK LIGHTING - BASE BID

Pay Item No.	Pay Item Description	Pay Unit	Approximate Quantity	Unit Price		Amount	
				Dollars	Cents	Dollars	Cents
01505.1	Mobilization	LS	All Req'd	Ø	Ø	Ø	Ø
16000.1	Electrical	LS	All req'd	224,480	00	224,480	00

TOTAL WRANGELL DOCK LIGHTING - BASE BID

AMOUNT IN FIGURES: \$ 224,480.00

TOTAL WRANGELL DOCK LIGHTING - BASE BID

AMOUNT IN WORDS: two hundred twenty four thousand four hundred eighty dollars &  $\frac{00}{100}$

## WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A

Pay Item No.	Pay Item Description	Pay Unit	Approximate Quantity	Unit Price		Amount	
				Dollars	Cents	Dollars	Cents
16000.1-A	Electrical	LS	All Req'd	29,960	00	29,960	00

TOTAL WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A

AMOUNT IN FIGURES: \$ 29,960.00

TOTAL WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A

AMOUNT IN WORDS:

twenty nine thousand nine hundred sixty &  $\frac{00}{100}$

BIDDER'S NAME: BUNESS ELECTRIC LLC. PO Box 66

WRANGELL, AK 99929

DATE OF BID: 11-29-2016

END OF SECTION

WRANGELL DOCK LIGHTING

BID SCHEDULE

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# WRANGELL CITY DOCK LIGHTING

## PROJECT MANUAL



NOVEMBER 2016

## **SECTION 00005 - TABLE OF CONTENTS**

### **DIVISION 0 - BIDDING AND CONTRACT REQUIREMENTS, CONTRACT FORMS, AND CONDITIONS OF THE CONTRACT**

<b>BIDDING AND CONTRACT REQUIREMENTS</b>		<b>No. of Pages</b>
00005	Table of Contents .....	2
00030	Notice Inviting Bids .....	2
00100	Instructions to Bidders .....	8
00300	Bid .....	2



## SECTION 00030 - NOTICE INVITING BIDS

**OBTAINING CONTRACT DOCUMENTS.** The Contract Documents are entitled:

### **WRANGELL DOCK LIGHTING**

Notice is hereby given that the City and Borough of Wrangell, Alaska will receive sealed bids for the construction of **WRANGELL DOCK LIGHTING**.

The Contract Documents are available in electronic format only and are available for viewing and/or downloading from the City and Borough of Wrangell website ([www.wrangell.com](http://www.wrangell.com)) under the Bids and RFP's section. Downloading Contract Documents from the City and Borough of Wrangell's website requires registration with the Borough Clerk to be placed on the Plan Holders List and to ensure receipt of subsequent Addenda. Failure to register may adversely affect your proposal. It is the Offeror's responsibility to ensure that they have received all Addenda affecting this Solicitation. To be registered, contact the Borough Clerk at 907-874-2381 or at [clerk@wrangell.com](mailto:clerk@wrangell.com)

**DESCRIPTION OF WORK.** The WORK consists of all activities necessary to construct the Wrangell Dock Lighting, as shown in the contract documents. The Work includes mobilization, demolition and disposal of existing electrical system on the dock, replacement of service or addition of a service, replacement of uplands rack mounted equipment including service equipment and enclosures, re-powering of existing services, new light poles and luminaires with new structural bases, new power center, conduit, conduit supports, conductors, cables, and all other work required and shown to provide a fully functional electrical system with the features shown. The Work is comprised of a Base Bid and an Additive Alternate A. The Engineer's estimate for the Base Bid is \$250,000 - \$260,000 and the estimate for the Additive Alternate A is \$30,000 - \$40,000.

**SITE OF WORK.** The WORK is located at the Wrangell City Dock on Front Street in Wrangell, Alaska.

**COMPLETION OF WORK.** The OWNER will open the work site to the CONTRACTOR immediately following the Notice to Proceed. Substantial completion must be reached by May 15, 2017.

**BIDDING, CONTRACT, or TECHNICAL QUESTIONS.** All communications relative to this WORK, prior to opening Bids, shall be directed to the following:

Amber Al-Haddad  
Public Works Director  
Telephone: (907) 874-3904  
Email: [aal-haddad@wrangell.com](mailto:aal-haddad@wrangell.com)

**BID SECURITY.** Each bid shall be accompanied by a bid bond, cashier's check or certified check made payable to the City and Borough of Wrangell in the amount of five percent (5%) of the total bid price. This serves as a guarantee that the Bidder, if its Bid is accepted, will promptly execute the Agreement. A Bid shall not be considered unless one of the forms of Bidder's security is enclosed with it.

**RECEIPT OF BIDS.** Sealed bids will be received by the City and Borough of Wrangell, Post Office Box 531, Wrangell, Alaska 99929, located at the Borough Clerk's Office, 205 Brueger Street, Wrangell, Alaska 99929, until 10:00 AM prevailing time on November 28, 2016. Opening date and time may be changed to a later date or time via Addendum. Clearly mark on the outside of the envelope "**Request for Bids, WRANGELL DOCK LIGHTING, Opening Date: November 28, 2016**". Proposals may not be withdrawn for 60 Days following date of opening.

**OPENING OF BIDS.** The Bids will be publicly opened and read at the time stated in the Receipt of Bids in the Borough Assembly Chambers of the City and Borough of Wrangell, Alaska.

## SECTION 00030 - NOTICE INVITING BIDS

**SUBCONTRACTORS.** The apparent low Bidder is required to complete and submit the following documentation within 5 (five) calendar days following the posting of bids by the City and Borough of Wrangell:

- Section 00360 - Subcontractor Report.

**CONTRACTOR'S LICENSE.** All contractors are required to have a current Alaska Contractor's License, prior to submitting a Bid, and a current Alaska Business License prior to award of the bid.

**BID TO REMAIN OPEN.** The Bidder shall guarantee the Bid for a period of 60 Days from the date of Bid opening. Any component of the Bid including additive alternates may be awarded anytime during the 60 Days.

**OWNER'S RIGHTS RESERVED.** The OWNER reserves the right to reject any or all Bids, to waive any informality in a Bid, and to make award to the lowest responsive, responsible Bidder as it may best serve the interests of the OWNER.

**OWNER: The City and Borough of Wrangell**

By: \_\_\_\_\_  
Jeff Jabusch, City and Borough Manager

\_\_\_\_\_  
Date

**END OF SECTION**

## SECTION 00100 - INSTRUCTIONS TO BIDDERS

**1.0 DEFINED TERMS.** Terms used in these “Instructions to Bidders” and the “Notice Inviting Bids” which are defined in the General Conditions have the meanings assigned to them in the General Conditions. The term “Bidder” means one who submits a Bid directly to the OWNER, as distinct from a sub-bidder, who submits a Bid to a Bidder.

### **2.0 INTERPRETATIONS AND ADDENDA.**

A. **INTERPRETATIONS.** All questions about the meaning or intent of the Contract Documents are to be directed to the ENGINEER. Interpretations or clarifications considered necessary by the ENGINEER in response to such questions will be issued by Addendum, and emailed to all parties recorded by the OWNER as having received the Contract Documents. Questions received less than 7 Days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect.

B. **ADDENDA.** Addenda may be issued to modify the Contract Documents as deemed advisable by the OWNER. The OWNER may issue addenda by fax, with a follow-up addendum copy issued by regular mail. Addenda may be emailed less than 7 Days prior to the anticipated Bid opening. The OWNER will make reasonable attempts to provide addenda, however, it is strongly recommended by the OWNER that Bidders independently confirm the contents, number, and dates of each Addenda prior to submitting a Bid. All Bidders who submit a bid shall be deemed to have received and reviewed all addenda.

**3.0 FAIR COMPETITION.** More than one Bid from an individual, firm, partnership, corporation, or association under the same or different names will not be considered. If the OWNER believes that any Bidder is interested in more than one Bid for the WORK contemplated, all Bids in which such Bidder is interested will be rejected. If the OWNER believes that collusion exists among the Bidders, all Bids will be rejected.

**4.0 RESPONSIBLE BIDDER.** Only responsive Bids from responsible Bidders will be considered. A Bid submitted by a Bidder determined to be not responsible may be rejected. A responsible Bidder is one who is considered to be capable of performing the WORK.

A. The general standards for responsibility are to determine the CONTRACTOR’s ability to perform WORK adequately, considering the CONTRACTOR’s

1. Financial Resources
2. Ability to Meet Delivery Standards
3. Past Performance Record
  - a. References from others on CONTRACTOR’s performance
  - b. Record of performance on prior OWNER contracts
4. Record of Integrity
5. Obligations to OWNER
  - a. Bidders must be registered as required by law and in good standing for all amounts owed to the OWNER within 5 Days of OWNER’s Notice of Intent to Award.

## SECTION 00100 - INSTRUCTIONS TO BIDDERS

- B. Special standards for responsibility, if applicable, will be specified. These special standards establish minimum standards or experience required for a responsible Bidder on a specific contract.
- C. Before a Bid is considered for award, a Bidder may be requested to submit information documenting its ability and competency to perform the WORK, according to general standards of responsibility and any special standards which may apply. It is Bidder's responsibility to submit sufficient, relevant, and adequate information. OWNER will make its determination of responsibility and has no obligation to request clarification or supplementary information.

**5.0 RESPONSIVE BIDS.** Only responsive Bids will be considered. Bids may be considered non-responsive and may be rejected. Some of the reasons a Bid may be rejected for being non-responsive are:

- A. If the Bid is on a form other than that furnished by the OWNER, or legible copies thereof; or if the form is altered or any part thereof is detached; or if the Bid is improperly signed.
- B. If there are unauthorized additions, conditional or alternate bids, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- C. If the Bidder adds any unauthorized conditions, limitations, or provisions reserving the right to accept or reject any award, or to enter into a contract pursuant to an award. This does not exclude a Bid limiting the maximum gross amount of awards acceptable to any one Bidder at any one bid opening, provided that any selection of awards will be made by the OWNER.
- D. If the Bid does not contain a unit price for each pay item listed, except in the case of authorized alternate pay items.
- E. If the Bidder has not acknowledged receipt of each Addendum.
- F. If the Bidder fails to furnish an acceptable Bid Guaranty with the Bid.
- G. If any of the unit prices bid are excessively unbalanced (either above or below the amount of a reasonable Bid) to the potential detriment of the OWNER.
- H. If a bid modification does not conform to Article 15.0 of this Section.

**6.0 BIDDER'S EXAMINATION OF CONTRACT DOCUMENTS AND SITE.** It is the responsibility of each Bidder before submitting a Bid:

- A. To examine thoroughly the Contract Documents, and other related data identified in the bidding documents (including "technical data" referred to below):
  - 1. To visit the site to become familiar with and to satisfy the Bidder as to the general and local conditions that may affect cost, progress, or performance of the WORK;
  - 2. To consider federal, state and local laws and regulations that may affect cost, progress, or performance of the WORK;

## **SECTION 00100 - INSTRUCTIONS TO BIDDERS**

3. To study and carefully correlate the Bidder's observations with the Contract Documents, and other related data; and
4. To notify the ENGINEER of all conflicts, errors, or discrepancies in or between the Contract Documents and such other related data.

### **7.0 REFERENCE IS MADE TO THE SUPPLEMENTARY GENERAL CONDITIONS FOR IDENTIFICATION OF:**

- A. Those reports of explorations and tests of subsurface conditions at the site which have been utilized by the Engineer of Record in the preparation of the Contract Documents. The Bidder may rely upon the accuracy of the technical data contained in such reports, however, the interpretation of such technical data is the responsibility of the Bidder.
- B. Those drawings of physical conditions in or relating to existing surface and subsurface conditions (except underground utilities) which are at, or contiguous to, the site have been utilized by the Engineer of Record in the preparation of the Contract Documents. The Bidder may rely upon the accuracy of the technical data contained in such drawings, however, the interpretation of such technical data is the responsibility of the Bidder.
- C. Copies of such reports and drawings will be made available by the OWNER to any Bidder on request if said reports and drawings are not bound herein. Those reports and drawings are not part of the Contract Documents, but the technical data contained therein upon which the Bidder is entitled to rely, as provided in Paragraph SGC-4.2 of the Supplementary General Conditions, are incorporated herein by reference.
- D. Information and data reflected in the Contract Documents with respect to underground utilities at or contiguous to the site is based upon information and data furnished to the OWNER and the Engineer of Record by the owners of such underground utilities or others, and the OWNER and ENGINEER do not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary General Conditions, or in Section 01530 - Protection and Restoration of Existing Facilities.
- E. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders on subsurface conditions, underground utilities and other physical conditions, and possible changes in the Contract Documents due to differing conditions appear in Paragraphs 4.2, 4.3, and 4.4 of the General Conditions.
- F. Before submitting a Bid, each Bidder will, at its own expense, make or obtain any additional examinations, investigations, explorations, tests, and studies and obtain any additional information and data which pertain to the physical conditions (surface, subsurface, and underground utilities) at, or contiguous to, the site or otherwise which may affect cost, progress, or performance of the WORK and which the Bidder deems necessary to determine its Bid for performing the WORK in accordance with the time, price, and other terms and conditions of the Contract Documents.
- G. On request in advance, the OWNER will provide each Bidder access to the site to conduct such explorations and tests as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and shall clean up and restore the site to its former condition upon completion of such explorations.

## SECTION 00100 - INSTRUCTIONS TO BIDDERS

- H. The lands upon which the WORK is to be performed, rights-of-way and easements for access thereto and the lands designated for use by the CONTRACTOR in performing the WORK are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by the CONTRACTOR. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by the OWNER unless otherwise provided in the Contract Documents.
- I. The submission of a Bid will constitute an incontrovertible representation by the Bidder that the Bidder has complied with every requirement of Article 6, "Bidder's Examination of Contract Documents and Site" herein, that without exception the Bid is premised upon performing the WORK required by the Contract Documents and such means, methods, techniques, sequences, or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the WORK.

### 8.0 BID FORM.

- A. The Bid shall be made on the Bid Schedule(s) bound herein, or on the yellow bid packet provided, or on legible and complete copies thereof, and shall contain the following: Sections 00300 - Bid, 00310 – Bid Schedule, and the required Bid Security. In the event there is more than one Bid Schedule, the Bidder may bid on any individual schedule or on any combination of schedules. The envelope enclosing the sealed Bids shall be plainly marked in the upper left-hand corner with the name and address of the Bidder and shall bear the words "BID FOR," followed by the title of the Contract Documents for the WORK, the name of the OWNER, the address where Bids are to be delivered or mailed to, and the date and hour of opening of Bids. The Bid Security shall be enclosed in the same envelope with the Bid.
- B. All blanks on the Bid Form and Bid Schedule(s) must be completed in ink or typed.
- C. Bids by corporations shall be executed in the corporate name by the president, a vice-president (or other corporate officer). The corporate address and state of incorporation must appear below the signature.
- D. Bids by partnerships must be executed in the partnership name and be signed by a managing partner, and the official address of the partnership must appear below the signature.
- E. The Bidder's Bid shall be signed with ink. All names must be printed or typed below the signature.
- F. The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which must be filled in on the Bid Form. Failure to acknowledge Addenda shall render Bid non-responsive and shall cause its rejection.
- G. The address to which communications regarding the Bid are to be directed must be shown.

## SECTION 00100 - INSTRUCTIONS TO BIDDERS

- H. All Bidders shall provide evidence of authority to conduct business in Alaska to the extent required by law.
- I. On Projects including Federal funding any contractor otherwise qualified to perform the WORK, is not required to be licensed nor to submit application for license in advance of submitting a Bid or having such Bid considered; provided, however, that such exemption does not constitute a waiver of the OWNER's right under existing license laws to require a contractor, determined to be a successful Bidder, to be licensed to do business as a contractor in the State of Alaska in connection with the award of a contract to the successful Bidder.
- J. A Bid for the WORK will not be accepted from a contractor who does not hold a valid Alaska Business License and a valid Contractor's License in Alaska (applicable to the type of work bid upon) at the time of opening Bids.

### 9.0 BID ALTERNATES. The project contains two alternates:

- A. Optional Paving Alternate A. Paving Alternate A consists of replacing the asphalt paving surface with concrete surface according to Drawing C6.01. Materials and construction methods for Paving Alternate A is included in Divisions 3 of these contract documents. The alternate scope of work is outlined in the Drawings and the bid schedule. The bid schedule provides credit line items for embankment and asphalt paving that are not required if concrete paving is selected. It is expected that the total price for Paving Alternate A will therefore be negative to reflect savings from the asphalt surfacing in the Base Bid. The Bidder may opt to not provide a price for Paving Alternate A, in which case all blanks on the Bid Schedule applying to Paving Alternate A shall be filled with "Not applicable" or "NA". The decision to take Paving Alternate A will be made at bid award by the OWNER. Paving Alternate A will be selected if the lowest responsible Bid reflects a lower price for Paving Alternate A than the asphalt surfacing in the Base Bid.
- B. Additive Alternate B. Additive Alternate B is the addition of sidewalks, curbs and gutters, storm drains, and sewer in the eastern half of the project as defined in the Drawings. Additive Alternate B includes sidewalks between Station 1+40 and Station 4+41, curbs and gutters between Station 2+34 and Station 4+41, storm drains between Station 2+34 and the end of the project, and the sanitary sewer stub. The bid schedule includes an item for separate mobilization for Additive Alternate B which shall include all mobilization costs (if any) per Section 01505 that are unique to Additive Alternate B and would not be included if Additive Alternate B is not awarded. The decision to take Additive Alternate B will be made at bid award by the OWNER.

### 10.0 QUANTITIES OF WORK. The quantities of WORK, or material, stated in unit price items of the Bid are supplied only to give an indication of the general scope of the WORK; the OWNER does not expressly or by implication agree that the actual amount of WORK, or material, will correspond therewith, and reserves the right after award to increase or decrease the amount of any unit price item of the WORK by an amount up to and including 25 percent of any Bid item, without a change in the unit price, and shall include the right to delete any Bid item in its entirety, or to add additional Bid items up to and including an aggregate total amount not to exceed 25 percent of the Contract Price (see General Conditions, Article 10 Changes In the Work).

### 11.0 SUBSTITUTE OR "OR-EQUAL" ITEMS. The procedure for the submittal of substitute or "or-equal" products is specified in Section 01300 - Contractor Submittals.

## SECTION 00100 - INSTRUCTIONS TO BIDDERS

- 12.0 SUBMISSION OF BIDS.** The Bid shall be delivered by the time and to the place stipulated in the Notice Inviting Bids. It is the Bidder's sole responsibility to see that its Bid is received in proper time. Oral, telegraphic, telephonic or faxed Bids will not be considered.
- 13.0 BID SECURITY, BONDS, AND INSURANCE.** Each Bid shall be accompanied by a certified, or cashier's check, or approved Bid Bond in an amount of at least 5 percent of the total Bid price. The "total Bid price" is the amount of the base bid, plus the amount of alternate bids, if any, which total to the maximum amount for which the contract could be awarded. Said check or Bond shall be made payable to the OWNER and shall be given as a guarantee that the Bidder, if offered the WORK, will enter into an Agreement with the OWNER, and will furnish the necessary insurance certificates, Payment Bond, and Performance Bond; each of said Bonds, if required, and insurance amounts shall be as stated in the Supplementary General Conditions. In case of refusal or failure to enter into said Agreement, the check or Bid Bond, as the case may be, shall be forfeited to the OWNER. If the Bidder elects to furnish a Bid Bond as its Bid security, the Bidder shall use the Bid Bond form bound herein, or one conforming substantially to it in form. Bid Bonds must be accompanied by a legible power of attorney.
- 14.0 RETURN OF BID SECURITY.** Within 14 Days after award of the contract, the OWNER will return the Bid securities accompanying such of the Bids as are not considered in making the award. All other Bid securities will be held until the Agreement has been executed. They will then be returned to the respective Bidders whose Bids they accompanied.
- 15.0 DISCREPANCIES IN BIDS.** In the event there is more than one pay item in a Bid Schedule, the Bidder shall furnish a price for all pay items in the schedule, and failure to do so may render the Bid non-responsive and cause its rejection. In the event there are unit price pay items in a Bid Schedule and the "amount" indicated for a unit price pay item does not equal the product of the unit price and quantity, the unit price shall govern and the amount will be corrected accordingly, and the Bidder shall be bound by said correction. In the event there is more than one pay item in the Bid Schedule and the total indicated for the schedule does not agree with the sum of the prices bid on the individual items, the prices bid on the individual items shall govern and the total for the schedule will be corrected accordingly, and the Bidder shall be bound by the correction.
- 16.0 BID MODIFICATIONS AND UNAUTHORIZED ALTERNATIVE BIDS.**
- A. Any Bidder may modify a Bid by mail, email ([clerk@wrangell.com](mailto:clerk@wrangell.com)), or fax (**Fax: 907-874-3952**) provided that such modification is received by the OWNER prior to the time set for opening of Bids. Bid Modifications can be made as a lump sum adjustment or line by line adjustment on a copy of the project bid schedule. Bidders are strongly advised to telephone the City & Borough of Wrangell (**Telephone: 907-874-2381**) to confirm the successful and timely transmission of all email and fax Bid modifications.
- An email or fax modification should not reveal the Bid price but should provide the addition or subtraction or other modification so that the final prices will not be known by the OWNER until the sealed Bid is opened. Modifications shall include both the modification of the unit bid price and the total modification of each item modified. The OWNER shall not be responsible for its failure to receive fax modifications whether such failure is caused by transmission line problems, fax device problems, operator error or otherwise.



## SECTION 00100 - INSTRUCTIONS TO BIDDERS

- B. Unauthorized conditions, limitations, or provisions attached to the Bid will render it informal and cause its rejection as being non-responsive. The completed bid forms shall be without interlineation, alterations, or erasures in the printed text. All changes shall be initialed by the person signing the Bid. Alternative bids will not be considered unless called for.

**17.0 WITHDRAWAL OF BID.** The Bid may be withdrawn by the Bidder by means of a written request, signed by the Bidder or its properly authorized representative. Such written request must be delivered to the place stipulated in the Notice Inviting Bids for receipt of Bids prior to the scheduled closing time for receipt of Bids.

### **18.0 AWARD OF CONTRACT.**

- A. Award of a contract, if it is awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Technical Specifications and will be made to the lowest responsive, responsible Bidder whose Bid complies with all the requirements prescribed. Unless otherwise specified, any such award will be made within the period stated in the Notice Inviting Bids that the Bids are to remain open. Unless otherwise indicated, a single award will be made for all the pay items in an individual Bid Schedule.
- B. If the OWNER has elected to advertise this Project with a base bid and additive or deductive alternates, the OWNER may elect to award the contract for the base bid, or the base bid plus one or more alternates selected by the OWNER. In either case, award shall be made to the responsive, responsible Bidder offering the lowest total bid for the WORK to be awarded.
- C. Low Bidder will be determined on the basis of the lowest total of the base bid plus combinations of additive alternatives as deemed in the best interest of the OWNER.

### **19.0 EXECUTION OF AGREEMENT.**

- A. All Bids must be approved by the Wrangell Borough Assembly. After the Assembly has approved the award, the OWNER will issue a Notice of Intent to Award to the approved Bidder within 14 days of the Bid Opening. The Bidder to whom award is made shall execute a written Agreement with the OWNER on the Agreement form, Section 00500, and shall secure all insurance and furnish all certificates and bonds required by the Contract Documents within 10 Days from the date stated in the Notice of Intent to Award letter.
- B. Failure or refusal to enter into the Agreement as herein provided or to conform to any of the stipulated requirements in connection therewith shall be just cause for annulment of the award and forfeiture of the Bid security. If the lowest responsive, responsible Bidder refuses or fails to execute the Agreement, the OWNER may award the contract to the second lowest responsive, responsible Bidder. If the second lowest responsive, responsible Bidder refuses or fails to execute the Agreement, the OWNER may award the contract to the third lowest responsive, responsible Bidder. On the failure or refusal of such second or third lowest Bidder to execute the Agreement, each such Bidder's Bid securities shall be likewise forfeited to the OWNER.

## **SECTION 00100 - INSTRUCTIONS TO BIDDERS**

- 20.0 LIQUIDATED DAMAGES.** Provisions for liquidated damages are set forth in Section 00500 - Agreement.
- 21.0 PERMITS.** The CONTRACTOR is responsible for all WORK associated with meeting any local, state, and/or federal permit requirements.

**END OF SECTION**

## SECTION 00300 - BID

### BID TO: CITY & BOROUGH OF WRANGELL

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the OWNER on the form included in the Contract Documents (as defined in Article 7 of Section 00500 - Agreement) to perform the WORK as specified or indicated in said Contract Documents entitled:

#### WRANGELL DOCK LIGHTING

2. Bidder accepts all terms and conditions of the Contract Documents, including without limitation those in the "Notice Inviting Bids" and "Instructions to Bidders," dealing with the disposition of the Bid Security.
3. This Bid will remain open for the period stated in the "Notice Inviting Bids" unless otherwise required by law. Bidder will enter into an Agreement within the time and in the manner required in the "Notice Inviting Bids" and the "Instructions to Bidders," and will furnish insurance certificates, Payment Bond, Performance Bond, and any other documents as may be required by the Contract Documents.
4. Bidder has familiarized itself with the nature and extent of the Contract Documents, WORK, site, locality where the WORK is to be performed, the legal requirements (federal, state and local laws, ordinances, rules, and regulations), and the conditions affecting cost, progress or performance of the WORK and has made such independent investigations as Bidder deems necessary.
5. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.
6. To all the foregoing, and including all Bid Schedule and information required of Bidder contained in this Bid Form, said Bidder further agrees to complete the WORK required under the Contract Documents within the Contract Time stipulated in said Contract Documents, and to accept in full payment therefor the Contract Price based on the total bid price(s) named in the aforementioned Bid Schedule.
7. Bidder has examined copies of all the Contract Documents including the following Addenda (receipt of all of which is hereby acknowledged by the Undersigned):

Addenda No.	Date Issued

Addenda No.	Date Issued

**Give number and date of each Addendum above. Failure to acknowledge receipt of all Addenda will cause the Bid to be non-responsive and shall cause its rejection.**

## SECTION 00300 - BID

8. The Bidder has read this Bid and agrees to the conditions as stated herein by signing its signature in the space provided below.

Dated:	_____	Bidder:	_____
			(Company Name)
Contractor's License No.:	_____	By:	_____
			(Signature in Ink)
Telephone No.:	_____	Printed Name:	_____
		Title:	_____
Facsimile No.:	_____	Address:	_____
			(Street or P.O. Box)
			(City, State, Zip)

9. TO BE CONSIDERED, ALL BIDDERS MUST COMPLETE AND INCLUDE THE FOLLOWING AT THE TIME OF THE BID OPENING:
- Signed Bid, Section 00300 (includes Addenda receipt statement)
  - Completed Bid Schedule, Section 00310
  - Bid Security (Bid Bond, Section 00320, or by a certified or cashier's check as stipulated in the Notice Inviting Bids, Section 00030)
10. Unless otherwise notified by the Borough Manager, the apparent low Bidder is required to complete and submit, within five days after the "Notice of Intent to Award" letter, the following documents:
- Subcontractor Report, Section 00360
- The apparent low Bidder who fails to submit a completed Subcontractor Report within the time specified in Section 00360 – Subcontractor Report will be found to be not a responsible Bidder and may be required to forfeit the Bid security. The OWNER will then consider the next lowest Bidder for award of the contract.
11. The successful Bidder will be required to submit, within ten days after the date stated in the "Notice of Intent to Award" letter, the following executed documents:
- Alaska Business License
  - Agreement Forms, Section 00500
  - Performance Bond, Section 00610
  - Payment Bond, Section 00620
  - Certificates of Contractor Insurance Section 00700 and Section 00800
12. The successful Bidder will be required to submit, within ten Days after the date stated in the "Notice to Proceed" the following executed documents:
- Certificates of Subcontractor Insurance Section 00700 and Section 00800
  - One executed copy of each subcontract for WORK that exceeds one half of one percent of the intended contract award amount.

**END OF SECTION**

November 30, 2016

CITY CLERK  
DEC 01 2016  
RECEIVED

To: Mr. Jeff Jabusch

Re: Wrangell Dock Lighting Bid

From: Jordan Buness

Dear Mr. Jabusch,

I am writing to request that our recent bid for the Wrangell Dock Lighting Project be considered for award.

As I am sure you are aware the Local Bidder Preference, (Wrangell Municipal Code, Chapter 5.10.040D) allows for a 5% allowance for businesses that are located in the Wrangell Borough. Buness Electric LLC is confident that our company meets the definition of a "Local Business".

The lowest total project bid for this project is from a company that is located in Coffman Cove, Alaska. This companies bid was \$246,577.79, whereas our bid was \$254,400. This amounts to a difference of \$7862.21 or a 3.2% overage. As stated in our Wrangell municipal Code a contract "shall be awarded to a local bidder" if the bid is within 5% of the lowest bid. We clearly meet this requirement.

I am more than willing to answer any questions that you or the Assembly may have. I am planning on attending Fridays Special Meeting.

Sincerely,

Jordan Buness

A handwritten signature in dark ink, consisting of a stylized 'J' and 'B' followed by a horizontal line extending to the right.



November 30, 2016

City and Borough of Wrangell  
Jeff Jabusch, Borough Manager  
PO BOX 531  
Wrangell, Alaska 99929

RE: Wrangell Harbor Lighting Upgrade Project Bid

Dear Mr. Jabusch,

Thank you for the opportunity to address the Assembly regarding our bid for the Wrangell Harbor Lighting Upgrade Project.

We understand that the Assembly is tasked with choosing between two alternatives: Selecting Tongass Electric as the lowest bidder and implementing the local contractor preference to select the next highest bidder. We also understand that the Assembly will choose the contractor whose bid is most advantageous to the City and Borough of Wrangell. The purpose of this letter is to outline the reasons that the Borough Assembly should choose Tongass Electric as the lowest responsible bidder on the Wrangell Harbor Lighting Upgrade Project as well as the contractor whose bid is most advantageous to the City & Borough.

Tongass Electric has demonstrated experience in Harbor Electrical Projects including the Coffman Cove Harbor Electrical Upgrade Project, completed in 2016. The scope of work was very similar to the upcoming Wrangell Harbor Project. The work was completed successfully and a letter of recommendation is attached for your reference. Also, our lead Electrician, Mr. Plate has extensive electrical expertise and would supervise every aspect of the Wrangell Harbor Project. Mr. Plate served as General Foreman on the Kodiak Harbor Electrical Project, Whittier Tunnel Electrical Project, and the Seward Sea Life Center Electrical Project, to name a few.

Tongass Electric has demonstrated experience contracting with government entities: State, Federal and Local. We employ a skilled administrative staff to oversee the project, ensuring that all reporting and regulatory requirements are strictly adhered to including certified payroll reports, etc. Attached is a Statement of Qualifications for your reference.

Also, we feel you should choose Tongass Electric as a legal and ethical matter. While reviewing the Invitation to Bid for this project, we found no mention of a local contractor preference. Our experience is that while some government entities have a provision in their code for a local contractor preference, it is implemented with contracts of this amount, only under the following conditions:

1. With permission from the funding agency, as most will not allow use of a local contractor preference and will require a municipality to choose the lowest responsible bidder.
2. The local contractor preference is clearly stated in the Invitation to Bid, so that contractors bidding on the project are fully aware that the local contractor preference will be implemented.



As you may know, putting together and submitting a bid for a project of this size is time-consuming and requires the contractor to put forth considerable resources, both time and money. Making potential bidders aware of a local preference is not only a legal requirement but also a practice of fairness and courtesy. We may have submitted a substantially different number, or none at all, if we were made aware of the local contractor preference. The same may be true for the other bidders.

Lastly, Tongass Electric will inject a considerable amount of money into Wrangell's economy over the course of the project with crew lodging, meals, fuel, equipment rentals, vehicle rentals, transportation, materials, supplies and hardware. Also, we pride ourselves in giving back to the community, both in our own Community on Prince of Wales Island and in the communities we work. Every community in which we complete a project, we donate a percentage of the profit to a local non-profit, typically schools and libraries.

In summary, we strongly feel that you should choose Tongass Electric for the Wrangell Harbor Lighting Project for the following reasons: the local contractor preference was not advertised, we have demonstrated experience in similar projects and a documented commitment to quality as well as strong management skills not to mention the economic benefit and cost savings to the project.

Again, thank you for the opportunity to address this issue and provide information for consideration of the Assembly. We wish you success in this exciting project and many more successes for the City and Borough of Wrangell.

Sincerely,

Micheal Burgess, Owner

Attachments: Letters of Recommendations  
Statement of Qualifications

# **Agenda Item 5c**

## **CITY & BOROUGH OF WRANGELL**

### **BOROUGH ASSEMBLY SPECIAL AGENDA ITEM December 2, 2016**

#### **INFORMATION:**

Approval of the Bid received for the Wrangell City Dock Lighting project (removed from the November 29, 2016 Regular Assembly meeting Agenda)

1. Memo from Amber Al-Haddad, PW Director
2. Preliminary Bid Tab
3. Bid received from Tongass Electric
4. Bid received from Buness Electric

#### **RECOMMENDED ACTION:**

Move to approve a contract award to Tongass Electric based on the discussion from item 5b that it is more advantageous to select the lowest bid for the construction of the Wrangell Dock Lighting project, including both the Base Bid and Additive Alternate A, in the total amount of \$246,577.79. Funding for this project is to come from the DCCED grant for the Commercial Passenger Vessel Facility.

- OR -

Move to approve a contract award to Buness Electric based on the discussion from item 5b that is more advantageous to select the local bidder for the construction of the Wrangell Dock Lighting project, including both the Base Bid and Additive Alternate A, in the total amount of \$254,440.00. Funding for this project is to come from the DCCED grant for the Commercial Passenger Vessel Facility.



# MEMORANDUM

5c-1

**TO:** HONORABLE MAYOR AND MEMBERS OF THE ASSEMBLY  
CITY AND BOROUGH OF WRANGELL

**FROM:** AMBER AL-HADDAD, PUBLIC WORKS DIRECTOR

**SUBJECT:** CONSTRUCTION CONTRACT AWARD  
WRANGELL DOCK LIGHTING

**DATE:** November 21, 2016.

## **BACKGROUND**

The City and Borough of Wrangell received a grant from the State of Alaska Department of Commerce, Community and Economic Development (DCCED) for the Commercial Passenger Vessel Facility Projects (aka City Dock). An invitation to bid was issued for the construction of the Wrangell Dock Lighting project for which bids were due by 10:00 a.m. on Tuesday, November 29, 2016.

The work will take place at Wrangell's City Dock. The project was developed to include a Base Bid for replacing the 240V single phase service with a 240V, three phase service, replacing the new service equipment in the uplands, new lighting on the dock, and a new power center on the dock with 208V receptacles among other features. The Base Bid was estimated at \$250,000 - \$260,000.

An Additive Alternate A was developed as an upgrade to the power center that includes a different electrical service, different service equipment, different feeders, etc. This includes leaving the existing 240V, single phase service in place and providing a new 480V, three phase service, new service equipment in the uplands, new feeders to the float and a new power center on the dock with both 208V and 480V receptacles. The Additive Alternate A was estimated at \$30,000 - \$40,000.

Nine bids were received. Tongass Electric was the low bidder, with a combined Base Bid and Additive Alternate A bid amount of \$246,577.79. This project amount is within the funds available for this project from the State of Alaska, DCCED grant for Wrangell's City Dock facility improvements. It is the intent to include the construction of the work under the Base Bid and the power upgrade identified under Additive Alternate A.

## **RECOMMENDATION**

Move to approve a contract award to Tongass Electric for construction of the Wrangell Dock Lighting project, including both the Base Bid and Additive Alternate A, in the total amount of \$246,577.79. Funding for this project is to come from the DCCED grant for the Commercial Passenger Vessel Facility.

## **ATTACHMENTS**

1. Preliminary Bid Tabulation Summary for the Wrangell Dock Lighting project
2. Tongass Electric's Bid

Preliminary

City and Borough of Wrangell, Alaska

5c-2

Wrangell Dock Lighting  
Bid Opening Checklist and Tabulations

Bid Opening Date: November 29, 2016 @ 10:00 a.m. - Assembly Chambers

Bidder's Name	Signed Bid	Bid Bond	AK Business License	AK Contractors License	Addenda Acknowledged	Base Bid	Additive Alternate A	Base Bid Modification	Additive Alternate A Modification	Total Project (including modifications)
					#1					
Johnson Construction & Supply	x	x	x	x	x	\$ 347,134.00	\$ 54,604.00			\$ 401,738.00
Tongass Electric	x	x	x	x	x	\$ 204,585.15	\$ 27,195.00	\$ 14797.64		\$ 246,577.79
Buness Electric	x	x	x	x	x	\$ 224,480.00	\$ 29,960.00			\$ 254,440.00
Alaska Electric	x	x	x	x	x	\$ 300,000.00	\$ 60,000.00	\$ (62,000.00)	\$ (22,000.00)	\$ 276,000.00
EverElectric	x	x	x	x	x	\$ 255,000.00	\$ 35,000.00			\$ 290,000.00
Sitka Electric	x	x	x	x	x	\$ 300,000.00	\$ 50,000.00	\$ (50,835.00)	\$ (9,133.00)	\$ 290,032.00
LiveWire	x	x	x	x	x	\$ 276,541.00	\$ 296,729.00			\$ 573,270.00
Chatham Electric	x	x	x	x	x	\$ 270,000.00	\$ 40,000.00	\$ (13,705.00)	\$ (7,322.00)	\$ 288,973.00
Puffin Electric	x	x	x	x	x	\$ 550,000.00	\$ 100,000.00	\$ (293,335.00)	\$ (64,573.00)	\$ 292,092.00

Verified By:

*Kurt Lane*

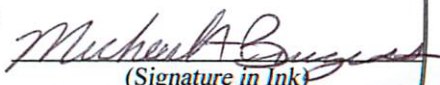
Witnessed By:

*Amber M. Haddad*

Page 1 of 1

**SECTION 00300 - BID**

8. The Bidder has read this Bid and agrees to the conditions as stated herein by signing its signature in the space provided below.

Dated:	<u>November 25, 2016</u>	Bidder:	<u>Tongass Electric</u> (Company Name)
Contractor's License No.:	<u>114300</u>	By:	<u></u> (Signature in Ink)
Telephone No.:	<u>907-329-2054</u>	Printed Name:	<u>Micheal Burgess</u>
Facsimile No.:	<u>907-329-2054</u>	Title:	<u>Owner</u>
		Address:	<u>114 NW Coho Drive</u> (Street or P.O. Box) <u>Coffman Cove, Alaska 99918</u> (City, State, Zip)

9. TO BE CONSIDERED, ALL BIDDERS MUST COMPLETE AND INCLUDE THE FOLLOWING AT THE TIME OF THE BID OPENING:
- Signed Bid, Section 00300 (includes Addenda receipt statement)
  - Completed Bid Schedule, Section 00310
  - Bid Security (Bid Bond, Section 00320, or by a certified or cashier's check as stipulated in the Notice Inviting Bids, Section 00030)
10. Unless otherwise notified by the Borough Manager, the apparent low Bidder is required to complete and submit, within five days after the "Notice of Intent to Award" letter, the following documents:
- Subcontractor Report, Section 00360
- The apparent low Bidder who fails to submit a completed Subcontractor Report within the time specified in Section 00360 – Subcontractor Report will be found to be not a responsible Bidder and may be required to forfeit the Bid security. The OWNER will then consider the next lowest Bidder for award of the contract.
11. The successful Bidder will be required to submit, within ten days after the date stated in the "Notice of Intent to Award" letter, the following executed documents:
- Alaska Business License
  - Agreement Forms, Section 00500
  - Performance Bond, Section 00610
  - Payment Bond, Section 00620
  - Certificates of Contractor Insurance Section 00700 and Section 00800
12. The successful Bidder will be required to submit, within ten Days after the date stated in the "Notice to Proceed" the following executed documents:
- Certificates of Subcontractor Insurance Section 00700 and Section 00800
  - One executed copy of each subcontract for WORK that exceeds one half of one percent of the intended contract award amount.

**END OF SECTION**



## SECTION 00300 - BID

**BID TO: CITY & BOROUGH OF WRANGELL**

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the OWNER on the form included in the Contract Documents (as defined in Article 7 of Section 00500 - Agreement) to perform the WORK as specified or indicated in said Contract Documents entitled:

### WRANGELL DOCK LIGHTING

2. Bidder accepts all terms and conditions of the Contract Documents, *including without limitation* those in the "Notice Inviting Bids" and "Instructions to Bidders," dealing with the disposition of the Bid Security.
3. This Bid will remain open for the period stated in the "Notice Inviting Bids" unless otherwise required by law. Bidder will enter into an Agreement within the time and in the manner required in the "Notice Inviting Bids" and the "Instructions to Bidders," and will furnish insurance certificates, Payment Bond, Performance Bond, and any other documents as may be required by the Contract Documents.
4. Bidder has familiarized itself with the nature and extent of the Contract Documents, WORK, site, locality where the WORK is to be performed, the legal requirements (federal, state and local laws, ordinances, rules, and regulations), and the conditions affecting cost, progress or performance of the WORK and has made such independent investigations as Bidder deems necessary.
5. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.
6. To all the foregoing, and including all Bid Schedule and information required of Bidder contained in this Bid Form, said Bidder further agrees to complete the WORK required under the Contract Documents within the Contract Time stipulated in said Contract Documents, and to accept in full payment therefor the Contract Price based on the total bid price(s) named in the aforementioned Bid Schedule.
7. Bidder has examined copies of all the Contract Documents including the following Addenda (receipt of all of which is hereby acknowledged by the Undersigned):

Addenda No.	Date Issued
1	November 21, 2016

Addenda No.	Date Issued

*Michael Burgess, Owner, Tongass Electric*  
Give number and date of each Addendum above. Failure to acknowledge receipt of all Addenda will cause the Bid to be non-responsive and shall cause its rejection.

**SECTION 00310 - BID SCHEDULE****WRANGELL DOCK LIGHTING - BASE BID**

Pay Item No.	Pay Item Description	Pay Unit	Approximate Quantity	Unit Price		Amount	
				Dollars	Cents	Dollars	Cents
01505.1	Mobilization	LS	All Req'd	4000	00	4000	00
16000.1	Electrical	LS	All req'd	200585	15	200585	15

**TOTAL WRANGELL DOCK LIGHTING - BASE BID****AMOUNT IN FIGURES: \$** 204,585.15**TOTAL WRANGELL DOCK LIGHTING - BASE BID****AMOUNT IN WORDS:** Two hundred and four thousand, five hundred eighty five dollars and fifteen cents**WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A**

Pay Item No.	Pay Item Description	Pay Unit	Approximate Quantity	Unit Price		Amount	
				Dollars	Cents	Dollars	Cents
16000.1-A	Electrical	LS	All Req'd	27195	00	27195	00

**TOTAL WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A****AMOUNT IN FIGURES: \$** 27,195.00**TOTAL WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A****AMOUNT IN WORDS:**Twenty seven thousand, one hundred and ninety five dollars**BIDDER'S NAME:** Micheal Burgess, Owner of Tongass Electric**DATE OF BID:** November 25, 2016**END OF SECTION**

Modification

SECTION 00310 - BID SCHEDULE

RECEIVED  
NOV 28 2016  
WRANGELL CITY HALL

WRANGELL DOCK LIGHTING - BASE BID

Pay Item No.	Pay Item Description	Pay Unit	Approximate Quantity	Unit Price		Amount	
				Dollars	Cents	Dollars	Cents
01505.1	Mobilization	LS	All Req'd	4000	00	4000	00
16000.1	Electrical	LS	All req'd	215,382	79	215,382	79

TOTAL WRANGELL DOCK LIGHTING - BASE BID

AMOUNT IN FIGURES: \$ 219,382.79

TOTAL WRANGELL DOCK LIGHTING - BASE BID

AMOUNT IN WORDS: Two hundred and four thousand, five hundred eighty five dollars and fifteen cents

WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A

Pay Item No.	Pay Item Description	Pay Unit	Approximate Quantity	Unit Price		Amount	
				Dollars	Cents	Dollars	Cents
16000.1-A	Electrical	LS	All Req'd	27195	00	27195	00

TOTAL WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A

AMOUNT IN FIGURES: \$ 27,195.00

TOTAL WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A

AMOUNT IN WORDS: Twenty seven thousand, one hundred and ninety five dollars

BIDDER'S NAME: Micheal Burgess, Tongass Enterprises LLC, DBA Tongass Electric

DATE OF BID: November 25, 2016

END OF SECTION

WRANGELL DOCK LIGHTING

BID SCHEDULE  
Page 00310-1

## SECTION 00300 - BID

8. The Bidder has read this Bid and agrees to the conditions as stated herein by signing its signature in the space provided below.

Dated:	<u>11-29-2016</u>	Bidder:	<u>BUNESS ELECTRIC LLC</u> (Company Name)
Contractor's License No.:	<u>CONS 38100</u>	By:	<u>[Signature]</u> (Signature in Ink)
Telephone No.:	<u>907 305 0547</u>	Printed Name:	<u>JORDAN T BUNESS</u>
Facsimile No.:	<u>907 874 3122</u>	Title:	<u>Owner</u>
		Address:	<u>PO Box 66</u> (Street or P.O. Box)
			<u>WRANGELL AK 99929</u> (City, State, Zip)

9. TO BE CONSIDERED, ALL BIDDERS MUST COMPLETE AND INCLUDE THE FOLLOWING AT THE TIME OF THE BID OPENING:

- Signed Bid, Section 00300 (includes Addenda receipt statement)
- Completed Bid Schedule, Section 00310
- Bid Security (Bid Bond, Section 00320, or by a certified or cashier's check as stipulated in the Notice Inviting Bids, Section 00030)

10. Unless otherwise notified by the Borough Manager, the apparent low Bidder is required to complete and submit, within five days after the "Notice of Intent to Award" letter, the following documents:

- Subcontractor Report, Section 00360

The apparent low Bidder who fails to submit a completed Subcontractor Report within the time specified in Section 00360 – Subcontractor Report will be found to be not a responsible Bidder and may be required to forfeit the Bid security. The OWNER will then consider the next lowest Bidder for award of the contract.

11. The successful Bidder will be required to submit, within ten days after the date stated in the "Notice of Intent to Award" letter, the following executed documents:

- Alaska Business License
- Agreement Forms, Section 00500
- Performance Bond, Section 00610
- Payment Bond, Section 00620
- Certificates of Contractor Insurance Section 00700 and Section 00800

12. The successful Bidder will be required to submit, within ten Days after the date stated in the "Notice to Proceed" the following executed documents:

- Certificates of Subcontractor Insurance Section 00700 and Section 00800
- One executed copy of each subcontract for WORK that exceeds one half of one percent of the intended contract award amount.

END OF SECTION

WRANGELL Dock Lighting  
~~WOOD STREET~~  
IMPROVEMENTS



## SECTION 00300 - BID

**BID TO: CITY & BOROUGH OF WRANGELL**

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the OWNER on the form included in the Contract Documents (as defined in Article 7 of Section 00500 - Agreement) to perform the WORK as specified or indicated in said Contract Documents entitled:

### WRANGELL DOCK LIGHTING

2. Bidder accepts all terms and conditions of the Contract Documents, including without limitation those in the "Notice Inviting Bids" and "Instructions to Bidders," dealing with the disposition of the Bid Security.
3. This Bid will remain open for the period stated in the "Notice Inviting Bids" unless otherwise required by law. Bidder will enter into an Agreement within the time and in the manner required in the "Notice Inviting Bids" and the "Instructions to Bidders," and will furnish insurance certificates, Payment Bond, Performance Bond, and any other documents as may be required by the Contract Documents.
4. Bidder has familiarized itself with the nature and extent of the Contract Documents, WORK, site, locality where the WORK is to be performed, the legal requirements (federal, state and local laws, ordinances, rules, and regulations), and the conditions affecting cost, progress or performance of the WORK and has made such independent investigations as Bidder deems necessary.
5. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.
6. To all the foregoing, and including all Bid Schedule and information required of Bidder contained in this Bid Form, said Bidder further agrees to complete the WORK required under the Contract Documents within the Contract Time stipulated in said Contract Documents, and to accept in full payment therefor the Contract Price based on the total bid price(s) named in the aforementioned Bid Schedule.
7. Bidder has examined copies of all the Contract Documents including the following Addenda (receipt of all of which is hereby acknowledged by the Undersigned):

Addenda No.	Date Issued
# 1	11-21-16

Addenda No.	Date Issued

**Give number and date of each Addendum above. Failure to acknowledge receipt of all Addenda will cause the Bid to be non-responsive and shall cause its rejection.**



# SECTION 00310 - BID SCHEDULE

## WRANGELL DOCK LIGHTING - BASE BID

Pay Item No.	Pay Item Description	Pay Unit	Approximate Quantity	Unit Price		Amount	
				Dollars	Cents	Dollars	Cents
01505.1	Mobilization	LS	All Req'd	Ø	Ø	Ø	Ø
16000.1	Electrical	LS	All req'd	224,480	00	224,480	00

TOTAL WRANGELL DOCK LIGHTING - BASE BID

AMOUNT IN FIGURES: \$ 224,480.00

TOTAL WRANGELL DOCK LIGHTING - BASE BID

AMOUNT IN WORDS: two hundred twenty four thousand four hundred eighty dollars &  $\frac{00}{100}$

## WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A

Pay Item No.	Pay Item Description	Pay Unit	Approximate Quantity	Unit Price		Amount	
				Dollars	Cents	Dollars	Cents
16000.1-A	Electrical	LS	All Req'd	29,960	00	29,960	00

TOTAL WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A

AMOUNT IN FIGURES: \$ 29,960.00

TOTAL WRANGELL DOCK LIGHTING - ADDITIVE ALTERNATE A

AMOUNT IN WORDS:

twenty nine thousand nine hundred sixty &  $\frac{00}{100}$

BIDDER'S NAME: BUNESS ELECTRIC LLC. PO Box 66

WRANGELL, AK 99929

DATE OF BID: 11-29-2016

END OF SECTION

WRANGELL DOCK LIGHTING

BID SCHEDULE

Page 00310-1

# **Agenda Item 5d**

## **CITY & BOROUGH OF WRANGELL**

### **BOROUGH ASSEMBLY SPECIAL AGENDA ITEM December 2, 2016**

#### **INFORMATION:**

Approval to sign onto a letter in support of the Tongass Transition Plan Amendment

#### **Attachments:**

1. Memorandum (w/letter) from Jim Clark

#### **RECOMMENDED ACTION:**

Move to approve signing onto a letter in support of the Tongass Transition Plan Amendment.

**LAW OFFICE OF JAMES F. CLARK**  
**1109 C Street**  
**Juneau, Alaska 99801**  
**Telephone: 907-586-0122 Fax: 907-586-1093**

Senator Lisa Murkowski, Chair  
Senate Committee on Energy and Natural Resources  
304 Dirksen Senate Office Building  
Washington, DC 20510

November 21, 2016

Dear Senator Murkowski;

Governor Bill Sheffield, Governor Frank H. Murkowski, Former R-10 Regional Forester and Alaska Commissioner of the Department of Transportation and Public Facilities Mike Barton, Former R-10 Deputy Regional Forester Steve Brink, The City of Craig, the Ketchikan Gateway Borough, Alaska Power & Telephone Inc., the Alaska Miners' Association, The Resource Development Council of Alaska, Icy Straits Lumber and Milling Inc., Alaska Electric Light & Power, Inc., Tyler Rental Inc., Alaska Marine Lines Inc., the First Things First Foundation, The Greater Ketchikan Chamber of Commerce, Durette Construction Company, Inc., Hyak Mining Co., Inc., First Bank of Ketchikan, Southeast Stevedoring Company and the undersigned request that you ask the appropriate officials in the Department of Agriculture to delay implementation of the Tongass Transition Plan Amendment to the 2008 Amended Tongass Land and Management Resource Plan pending a review by the incoming Administration.

In 2003 USDA temporarily exempted the Tongass from the Roadless Rule because "the roadless values on the Tongass are sufficiently protected under the Tongass Forest Plan and the additional restrictions associated with the roadless rule are not required."<sup>1</sup> The 2003 Regulation also stated:

*The Department has concluded that the social and economic hardships to Southeast Alaska outweigh the potential long-term ecological benefits because the Tongass forest plan adequately provides for the ecological sustainability of the Tongass. Every facet of Southeast Alaska's economy is important and the potential adverse impacts from application of the roadless rule are not warranted, given the abundance of roadless areas and protections already afforded in the Tongass Forest Plan.*<sup>2</sup>

USDA also observed: "As discussed in the roadless rule FEIS (Vol. 1, 3-202, 3-326 to 3-350, 3-371 to 3-392) substantial negative economic effects are anticipated if the roadless rule is applied to the Tongass [...]."<sup>3</sup>

These observations by USDA also apply to the proposed Tongass Transition Plan. The Transition Plan further restricts the areas in which old growth timber harvesting can occur, does

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<sup>1</sup> 68 Fed. Reg. *supra* at 75137.

<sup>2</sup> *Ibid.* at 75141 – 75142.

<sup>3</sup> *Ibid.* at 75142

not authorize renewable energy development to the extent contemplated by national policy, and unduly impacts mining exploration and development.

For the reasons given below, and in more detail in the Attachment, implementation of the Tongass Transition Plan should be delayed pending review by the new Administration.

## **TIMBER**

Until the Forest Service has completed a comprehensive young growth inventory and a financial feasibility and marketing analysis of young growth manufacturing in Southeast Alaska, transitioning to young growth harvesting on the Tongass within approximately 15 years cannot be accomplished while in compliance with the law and preserving a viable timber manufacturing industry in Southeast Alaska.

### **1. The Transition Plan Should Be Delayed Pending An Inventory Of The Second Growth On The Tongass To Determine Whether There Is Sufficient Second Growth To Meet Market Demand As Required By The Tongass Timber Reform Act Of 1990.**

Unlike the situation in the Lower 48, significant timber harvesting in Alaska has only been ongoing for 55 - 60 years and there is insufficient young growth timber of sufficient size in Southeast Alaska to support even a single sawmill, let alone an industry. We need a complete inventory so that a reliable feasibility analysis can be made before fully committing to any early transition to young growth harvesting.

### **2. The Transition Plan Draft ROD Admits That Second Growth Is Not Economic or Marketable.**

At page 10 the Draft ROD admits that:

Harvesting 55-year old trees does not appear to be practical or economic in Southeast Alaska at this time. The market for large volumes of young-growth logs has not been demonstrated and this is especially true for small logs from 55-year old stands.

### **3. The Transition Plan Draft ROD Fails to Explain Why an Earlier Forest Service Report That Stated That Significant Public Investment Was Required to Make Second Growth Economically Viable Is No Longer the Case.**

That considerable public investment is needed to achieve 2<sup>nd</sup> growth timber was explained at page 23 of Forest Service's May 2010 *The Economic Analysis of Southeast Alaska*:

Based on the best available information regarding the costs of conducting commercial thinning of young growth, the products that can be made from it, and the values of such products, *young growth management is not currently economically viable without substantial public investments to pay for thinning. This is because the vast majority of young growth currently available on the developed land base is too young and small to generate profits in excess of the logging and transportation costs used in this analysis* (see appendices C, D and E for cost and price details).

The Transition Plan Draft ROD fails to explain the basis for the assumption that *substantial public investments to pay for thinning* will be made available by Congress.

**4. The Draft ROD Is Arbitrary and Capricious Because It Says Nothing About Whether the Forest Service Will Create New Roadless Areas In The Tongass Through Road Decommissioning.**

**RENEWABLE ENERGY**

**1. The Forest Service Should Remove Barriers to Renewable Energy Development in non-Roadless Areas by Clarifying the Criteria Set Out in Chapter 5 of the Draft ROD.**

The new Renewable Energy Direction for areas outside IRAs leaves all decision-making power in the Forest Service without criteria for deciding. The Forest Service should adopt the Renewable Energy Overlay LUD which would take precedence over any underlying LUD (subject to applicable laws). As such, it would represent a “window” through the underlying LUD through which renewable resources could be accessed and developed.

**2. The Transportation and Utility System Overlay LUD Should Not Be Eliminated.**

There are some project types which are allowable under ANILCA, and which were allowable under the existing 2008 Amended Plan TUS Overlay LUD, which are not be addressed by the Tongass Transition Plan draft ROD’s Renewable Energy S&G or the Transportation Systems Corridors Direction – for example, pipelines, communication systems, and more. These projects will be made impossible by the proposed plan Amendment. The existing TUS Overlay LUD should be preserved and a Renewable Energy Overlay LUD added.

**3. The Forest Service Should Propose Amendments to the Roadless Rule to Allow Renewable Energy Development in Roadless Areas.**

New geothermal leasing in the Tongass is prohibited by the Roadless Rule. Because there is no mention of *future* utilities, or any mention of hydropower in the Roadless Rule exceptions<sup>4</sup>, the implication is that the 2001 Roadless Rule does not allow new roads for future development.

**MINING**

**1. The Requirement of the 1872 Mining Act That the Forest Service Must Allow Reasonable Access to Locatable Minerals Should be Liberally Construed by the Forest Plan to Accommodate the Particular Access Problems on the Tongass.**

Rock is heavy and voluminous. Helicopters are expensive and often unable to transport the heavy equipment required for mining exploration and development. Surface roads are required to safely move and store rock at a standard mining operation. Economical movement of supplies, personnel, and materials is dependent on road access and haulage. The experience of the AMA and its members is that Special Use Permits authorizing road access in or near Roadless Areas are very difficult to obtain.

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<sup>4</sup> 36 C.F.R. § 294.12(b).

**2. The Draft ROD Should Consider an Amendment to the Roadless Rule that Would Allow Access to Leasable Minerals on the Tongass.**

While the 2001 Roadless Rule allows “reasonable access” to locatable minerals, it denies access to new leases for minerals subject to the Mineral Leasing Act of 1920, as well as leases for geothermal resources:<sup>5</sup> “because of the potentially significant environmental impacts that road construction could cause to inventoried roadless areas.”<sup>6</sup> There is no explanation in the 2001 Final Roadless Rule and ROD why the access impacts to IRAs associated with locatable minerals is different from the access impacts to IRAs associated with leasable minerals.

**3. The Draft ROD Should Clarify That the Cutting Trees Associated with Mining Exploration and Development Is Allowed.**

**4. The Transition Plan Should Propose an Amendment to the 2001 Roadless Rule to Allow Rural Communities And Villages On Prince Of Wales Island, Such As Craig And Klawock, To Access Mines With A Road.**

**5. A Regulatory Exemption From The Roadless Rule’s Impacts On Mining Is A Reasonable Alternative That Must Be Displayed In The Transition Plan Draft ROD.**

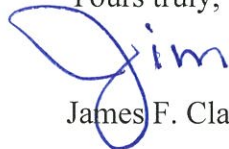
**CONCLUSION**

The 16.9 million acre Tongass National Forest is large enough to allow reasonable resource development and maintain the various uses that all who live in Southeast Alaska cherish. For the reasons described below the incoming Administration should be afforded the opportunity to decide whether it should proceed with the Transition Plan Draft ROD.

For the foregoing reasons the Tongass Transition Plan should not be rushed to completion as the current Administration is trying to do. In a repeat of the manner in which the Clinton Administration jammed the 2001 Roadless Rule through eight days before it left office, the Regional Forester intends to sign the Tongass Transition Plan ROD on December 28, 2016 – three weeks before President-elect Trump is sworn in. The Tongass Transition Plan should be delayed pending a review by the incoming Administration.

Thanks for your consideration.

Yours truly,

A handwritten signature in blue ink that reads "Jim". The signature is stylized with a large loop at the beginning and a trailing flourish.

James F. Clark

cc. Senator Dan Sullivan  
Congressman Don Young

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<sup>5</sup> *Ibid.*, at page 3255-3256.

<sup>6</sup> *Ibid.*, at page 3256.

## ATTACHMENT

### TIMBER

#### **The Transition Plan Should Be Delayed Pending An Inventory Of The Second Growth On The Tongass To Determine Whether There Is Sufficient Second Growth To Meet Market Demand As Required By The Tongass Timber Reform Act Of 1990.**

In 2010, the Secretary of Agriculture announced a decision to transition to harvesting young growth timber on the Tongass thirty or more years before those trees reach maturity as required by the National Forest Management Act of 1976 (NFMA). Unlike the situation in the Lower 48, significant timber harvesting in Alaska has only been ongoing for about sixty years and there is insufficient young growth timber of sufficient size in Southeast Alaska to support even a single sawmill, let alone an industry.

Further, analyses by the timber industry, the timber consulting company Beck Group and the Forest Service all conclude that manufacturing the current young growth stands is not economically feasible.

In order to perform additional, more precise, financial analyses of the feasibility of this accelerated transition, an inventory of the young growth timber quality, growth rates and harvesting costs is needed. The Forest Service currently proposes to perform an inventory of only 50,000 acres of the older (pre-1976) young growth acres on the Tongass and even this small inventory is not expected to be completed until a year after the agency plans to sign a Record of Decision that will mandate the Transition.

It makes no sense to limit management options on the Tongass National Forest by mandating an early transition to young growth without confirming that the Transition is financially feasible. These 40-year old and older stands, which represent less than 10% of the existing young growth timber, are predominantly on lower elevation sites where the timber quality, growth rates and harvesting costs are much different than on the remaining 90% of the young growth in Southeast Alaska.

All of the young growth studies done in Southeast Alaska have been done on sites that are below 500-foot elevation, however, most of the young growth acres are above 500-foot elevation. In Southeast Alaska, complex and steep topography contribute greatly to the growth of timber. There is an inverse relationship between elevation increase and timber height. The trees become rapidly shorter as the elevation increases until timberline is reached at which point trees no longer exist. The direct correlation of tree height and timber volume results in less volume with short trees. There is a substantial difference in both height and diameter of the same age class of timber on different sites and even if better growth models are developed, there is no accurate way to apply the growth models to the different sites until those actual site classes have been visited, measured and mapped.



In order to have a basis to perform a financial analysis of the proposed early transition, young growth stands in all age classes need to be assessed to determine appropriate site index curves, present age confirmation, height, and present volumes. Additional data in regards to aspect, elevation, slope, soils, and expected harvest costs must also be collected. Since the elevation, growth rates and harvest cost factors from the older stands are not comparable to the remaining stands there is no reliable way to simply apply site index and other information from a limited inventory to the remaining stands without first gathering information from those remaining stands. Hence the need for a more complete inventory of all the young growth stands.

In summary, an inventory of just the 40 year and older stands will not be representative of the bulk of the young growth; we need a complete inventory so that a reliable feasibility analysis can be made before fully committing to any early transition to young growth harvesting.

**The Transition Plan Draft ROD Admits That Second Growth Is Not Economic or Marketable.**

At page 10 the Draft ROD admits that:

Harvesting 55-year old trees does not appear to be practical or economic in Southeast Alaska at this time. The market for large volumes of young-growth logs has not been demonstrated and this is especially true for small logs from 55-year old stands.

While this is set out as a reason for rejecting a transition to 2<sup>nd</sup> growth in 5 years, there is no showing how extending the transition time to 15 years makes any difference with respect to 2<sup>nd</sup> growth economics or marketability. Moreover, the Transition Plan says that for the first 10 years of the Plan, 12 MMBF of the 46 MMBF annual sales will be 2<sup>nd</sup> growth. What good is the 2<sup>nd</sup> growth component if it's not economic? The failure to provide economic timber (sufficient to supply an integrated industry) violates the conditions on 2008 Amended Plan approval made by Mark Rey without any explanation/justification whatsoever.

**The Transition Plan Draft ROD Fails to Explain Why an Earlier Forest Service Report That Stated That Significant Public Investment Was Required to Make Second Growth Economically Viable Is No Longer the Case.**

That considerable public investment is needed to achieve 2<sup>nd</sup> growth timber was explained at page 23 of Forest Service's May 2010 *The Economic Analysis of Southeast Alaska*. (This came out at roughly the same time as the May 25, 2010 Obama Administration announcement of the plan to transition the Tongass timber program from old growth to second growth):

Based on the best available information regarding the costs of conducting commercial thinning of young growth, the products that can be made from it, and the values of such products, *young growth management is not currently economically viable without substantial public investments to pay for thinning. This is because the vast majority of young growth currently available on the developed land base is too young and small to generate profits in excess of the logging and transportation costs used in this analysis* (see appendices C, D and E for cost and price details).

Precommercial thinning is done by the Forest Service. The Draft ROD does not explain the need for precommercial thinning, what level of funding is needed, or how the Forest Service will obtain



that level of funding from Congress. This is an important aspect of the problem that the Plan does not consider.

Commercial thinning is part of a timber sale and thus affects timber sale economics. It follows that how much commercial thinning takes place is in the hands of operators, not the Forest Service. Accordingly, there is absolutely no basis for the Forest Service saying that sufficient commercial thinning will be done to achieve 12 MMBF of 2<sup>nd</sup> growth for years 1 – 10 of the Plan or 28 MMBF for years 11 – 15. This is another important aspect of the problem that the Plan does not explain.

**The Draft ROD Is Arbitrary And Capricious Because It Says Nothing About Whether The Forest Service Will Create New Roadless Areas In The Tongass Through Road Decommissioning.**

The draft ROD states:

[U]nder the 1997 Forest Plan approximately 8500 miles of roads were anticipated to exist on NFS lands by 2095, whereas under the Selected Alternative less than 6100 total miles of roads are anticipated to exist by 2095. This translates to substantially lower road densities than under the 1997 Plan. The additional area of POG will function as additional reserves, enhancing the existing reserves, and increasing the habitat quality when located around harvest units. Thus, the substantially greater spatial extent of the old-growth forest on the landscape and fewer roads across the planning area will outweigh the local, adverse effects of young growth harvest proposed by the Selected Alternative in the Old-Growth Habitat LUD, the beach and estuary fringe, and the RMAs (Final EIS, Appendix D).<sup>7</sup>

However, the Draft ROD says nothing about the potential of the Forest Service's road decommissioning policy to result in new roadless areas on the Tongass and their impact on timber harvest and other resources.

The decommissioning-new roadless area policy was described in a Roads Specialist's Report which was part of the 2001 Roadless Rule FEIS. The Specialist's Report stated that by decommissioning roads, the Forest Service actually will *increase* unroaded areas in the National Forests over time:

The combined effect of implementing the Roads Policy, proposed Roadless Rule, and individual land management plans all within the planning framework established in the Planning Regulations would likely be reductions in road densities and possibly the creation of the unroaded areas. The prohibitions on road construction and reconstruction proposed under Alternatives 2 through 4 would not apply to these newly created unroaded areas.<sup>8</sup>

At a later point the Specialist's Roadless Rule Report stated "The Agency estimates that unroaded area acres are likely to increase 5% to 10% due to road decommissioning.

As is made clear by the definition of Inventoried Roadless Area (IRAs), the ability of the Regional Forester to convert areas around decommissioned roads to Roadless Areas as part of a Forest Plan is simply a matter of updating or revising the 2001 Roadless Area maps:

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<sup>7</sup> See pages 20 -21 of the draft ROD.

<sup>8</sup> Report at page 18.

36 C.F.R. § 294.11 Definitions. The following terms and definitions apply to this subpart:

*Inventoried roadless areas.* Areas identified in a set of inventoried roadless area maps, contained in Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume 2, dated November 2000, which are held at the National headquarters office of the Forest Service, **or any subsequent update or revision of those maps.**

*Responsible official.* The Forest Service line officer with the authority and responsibility to make decisions regarding protection and management of inventoried roadless areas pursuant to this subpart.

The Plan should explain whether new or draft updates or revisions of the 2000 IRA maps exist and how the Regional Forester plans to update or revise the IRA maps during the life of the Plan.

### **Final Points on Timber**

In addition to the foregoing:

- ✓ The Draft ROD is fatally flawed because it is based on a NEPA Analysis that is tainted by a flawed Demand Analysis, and because the underlying NEPA Analysis starts with an overly narrow Statement of Purpose and Need that leads to an Inadequate Range of Alternatives;
- ✓ The Draft ROD embodies a Forest Service change in position with respect to the need for development of an integrated timber industry in Southeast Alaska in violation of the Administrative Procedures Act (APA) because the agency fails to even acknowledge that it is changing its position;
- ✓ The Draft ROD violates the Tongass Timber Reform Act (TTRA), the National Forest Management Act (NFMA), and the National Environmental Policy Act (NEPA) by relying on a flawed market demand analysis that underestimates the demand for Tongass timber and by capping supply; and
- ✓ The Forest Service's Reliance on the Morse Methodology is arbitrary and capricious given the Forest Service's artificial cap on supply.

Until the Forest Service has completed a comprehensive young growth inventory and a financial feasibility and marketing analysis of young growth manufacturing in Southeast Alaska and until the agency has complied with the laws as mentioned above, the agency must accept the reality that transitioning to young growth harvesting on the Tongass within approximately 15 years cannot be accomplished while complying with the law and preserving a viable timber manufacturing industry in Southeast Alaska.

### **RENEWABLE ENERGY**

**The Forest Service Should Remove Barriers to Renewable Energy Development in non-Roadless Areas by Clarifying the Criteria Set Out in Chapter 5 of the Draft ROD.**

Chapter 5 of the EIS states: “When a written proposal is submitted, beyond the initial stage, for a renewable energy project, the Chapter 5 plan components [Renewable Energy Standards and Guidelines] take precedence if there is a conflict with management direction in Chapters 3 and 4.” However, Chapter 5 also specifies “consideration of the LUD,” which indicates that Chapters 3 and 4 have precedence. The total effect is circular reasoning that is resolved through discretion of the Forest Service “on a case by case basis” rather than through some sort of predictable, repeatable, and objective process.

Thus, the new Renewable Energy Direction for areas outside IRAs leaves all decision-making power in the Forest Service without criteria for deciding. Saying that suitability as a renewable energy site “is only an indication that the use might be appropriate,” cannot be interpreted in any other way.

The Forest Service should adopt the Renewable Energy Overlay LUD which in essence would provide take precedence over any underlying LUD (subject to applicable laws). As such, it would represent a “window” through the underlying LUD through which renewable resources could be accessed and developed.

The Renewable Energy Overlay LUD has been submitted to the Forest Service numerous times. At one point, the Forest Service specifically indicated that it would be utilizing this approach.<sup>9</sup> However, for unexplained reasons the Overlay LUD concept has been dropped.

**The Transportation And Utility System Overlay LUD Should Not Be Eliminated In The Name Of “Renewable Energy.”**

There are some project types which are allowable under ANILCA, and which were allowable under the current TUS Overlay LUD, which may not be addressed by the Renewable Energy S&G or the Transportation Systems Corridors Direction – for example, pipelines, communication systems, and more. These projects will be made impossible by the proposed plan Amendment.

The TUS Overlay LUD should be preserved, with the addition of a Renewable Energy Overlay LUD.

By creating new regulation which conflicts with ANILCA, the USFS appears to be in violation of EO 12866, which specifies that “Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations [...]”

The overly vague Transportation Systems Corridors Direction is inconsistent with EO12866, which states: “Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.”

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<sup>9</sup> A letter from Forrest Cole to Alaska Power & Telephone dated March 2<sup>nd</sup>, 2015 stated that: “A new Renewable Energy Overlay LUD is being developed that will also be included in the DEIS. Because we do not know where all future potential projects are, this new Standard and Guide will be used as an overlay, similar to the TUS overlay, allowing projects to proceed through the environmental analysis phase.”

### **The Forest Service Should Propose Amendments to the Roadless Rule to Allow Renewable Energy Development in Roadless Areas.**

The conclusion that the 2001 Roadless Rule limits road construction to, and development of, hydropower sites existing at the time the 2001 Roadless Rule was promulgated is specifically stated in the Rule's Preamble:

The final rule retains all of the provisions that recognize *existing* rights of access and use. Where access to these facilities is needed to ensure safe operation, a utility company may pursue necessary authorizations pursuant to the terms of the *existing* permit or contract.<sup>10</sup>

This conclusion is further supported by Table 1, which summarizes the costs and benefits of the Final Rule, describes the impact of the Final Rule on "Special Use authorizations (such as communications sites, electric transmission lines, pipelines)" as follows: "Current use and occupancies not affected, future developments requiring roads excluded in inventoried roadless areas unless one of the exceptions applies."<sup>11</sup>

Because there is no mention of *future* utilities, or any mention of hydropower in the Roadless Rule exceptions<sup>12</sup>, the implication is that the 2001 Roadless Rule does not allow new roads for future development.

The draft ROD could have addressed this problem by proposing changes to the Roadless Rule. Alternatives 2 and 3 that were considered in the draft ROD, but not selected, provided for rulemakings to modify the Roadless Rule or to reinstate the Tongass Exemption to allow timber harvest in specified IRAs. Thus, proposing rulemaking to amend the Roadless Rule to allow access to hydropower sites and development of hydropower facilities and other forms of renewable energy including geothermal was demonstrably within the authority of the Forest Service and the scope of the Transition Plan.

## **MINING**

### **The Requirement of the 1872 Mining Act That The Forest Service Must Allow Reasonable Access to Locatable Minerals Should be Liberally Construed by the Forest Plan to Accommodate the Particular Access Problems on the Tongass.**

While "reasonable access" to locatable minerals is technically authorized in Wilderness Areas and IRAs under 36 C.F.R. Part 228, there are very few mines in Wilderness Areas. Even though the 2001 Roadless Rule specifies: "Reasonable rights of access may include, but are not limited to, road construction and reconstruction, helicopters, or other non-motorized access" (2008 FEIS Vol. 1, 3-329 to 3-350),<sup>13</sup> the experience of the AMA and its members is that Special Use Permits authorizing road access in or near Wilderness Areas are very difficult to obtain.

For example, the Quartz Hill Project was adjacent to the Misty Fjords Wilderness Study Area. In 1977 the Forest Service denied a Special Use Permit to U.S. Borax to construct a road for a bulk sample of 5,000 tons of ore at the Quartz Hill Project, requiring access to be by helicopter.

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<sup>10</sup> 66 Fed. Reg. *supra*. at 3256. (Emphasis added).

<sup>11</sup> 66 Fed Reg. *supra*. at 3270.

<sup>12</sup> 36 C.F.R. § 294.12(b).

<sup>13</sup> 66 Fed. Reg. *supra*. at 3264 .

*SEACC v. Watson*, 697 F.2d 1305 (9th Cir. 1983). As the opinion shows, six years later Borax still did not have a permit to build the road needed to move that volume of ore.

Given the paucity of transportation infrastructure on the Tongass, and the nature of equipment and processes involved in typical mining operations, the TLMP amendment should interpret “reasonable access” for mining operations within the Tongass to mean road access.

Rock is heavy and voluminous. Helicopters are expensive and often unable to transport the heavy equipment required for mining exploration and development. Surface roads are required to safely move and store rock at a standard mining operation. Economical movement of supplies, personnel, and materials is dependent on road access and haulage.

**The Draft ROD Should Consider an Amendment to the Roadless Rule that Would Allow Access to Leasable Minerals on the Tongass.**

While the 2001 Roadless Rule allows “reasonable access” to locatable minerals, it denies access to new leases for minerals subject to the Mineral Leasing Act of 1920, as well as leases for geothermal resources:<sup>14</sup> “because of the potentially significant environmental impacts that road construction could cause to inventoried roadless areas.”<sup>15</sup> There is no explanation in the 2001 Final Roadless Rule and ROD why the access impacts to IRAs associated with locatable minerals is different from the access impacts to IRAs associated with leasable minerals.

By prohibiting road construction to access future mineral leases (including leases for renewable geothermal resources) that was previously authorized under NFMA and the 1997 and 1999 TLMP, the Roadless Rule “withdrew” land under ANILCA as defined by the District Court and federal defendants in *Southeast Conference v. Vilsack* 684 F.Supp.2d 135, 145 (D.D.C. 2010). The USDA did not notify Congress nor seek a Congressional joint resolution approving the withdrawal. Thus, because federal defendants ignored the Congressional notice requirements of ANILCA when the Roadless Rule was promulgated more than a decade ago, the Mineral Leasing Act withdrawals made by the Roadless Rule are illegal and must terminate as provided in ANILCA § 1326.

This issue is not discussed in the Transition Plan Draft ROD. The Draft ROD should include an alternative that would allow access to future mineral leases (including geothermal leases) on the Tongass, even if such alternative required a modification to the Roadless Rule.

Mining exploration requires the drilling of multiple holes to determine from the surface the subsurface characteristics and extent of the mineral resource. Mine development requires site clearing for buildings, tailings piles, mills, and other facilities. Roads are required to move equipment, personnel, and materials. The level of exploration required to develop a mine on the Tongass National Forest would typically require the substantial cutting of trees. Mine development would typically require significantly more cutting of trees.

**The Draft ROD Should Clarify That the Cutting Trees Associated With Mining Exploration And Development Is Allowed.**

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<sup>14</sup> *Ibid.*, at page 3255-3256.

<sup>15</sup> *Ibid.*, at page 3256.

36 CFR § 294.13 (b) (2) authorizes the cutting of timber “incidental to implementation of a management activity not otherwise prohibited by this subpart.” However, there is no mention of mining in the examples provided in the 2001 Rule and ROD of what this section authorizes.<sup>16</sup> Moreover, in describing this section, the 2001 Rule and ROD states: “Such management activities are expected to be rare and to focus on small diameter trees.”<sup>17</sup> The Draft ROD should include clear guidelines allowing for cutting trees in association with mining exploration and development access on the Tongass, even if such alternative required a modification to the Roadless Rule.

**The Transition Plan Should Propose An Amendment to the 2001 Roadless Rule to Allow Rural Communities And Villages On Prince Of Wales Island, Such As Craig And Klawock, To Access Mines With A Road.**

Not only does this deprive rural Alaskans of access to employment, it also deprives proposed mining operations such as Niblack and Bokan Mountain of access to a local workforce, to the detriment of the project’s economic feasibility, and communities’ and families’ socioeconomic well-being. The draft ROD should propose an amendment to the 2001 Roadless Rule to allow for construction of road between communities and mines on Prince of Wales Island. As USDA pointed out in its decision to exempt the Tongass in the 2003 Roadless Exemption rulemaking Record of Decision:

*There is a need to retain opportunities for the communities of Southeast Alaska regarding basic access and utility infrastructure. This is related primarily to road systems, the state ferry system, electric utility lines, and hydropower opportunities that are on the horizon. This need reflects in part the overall undeveloped nature of the Tongass and the relationship of the 32 communities that are found within its boundaries. Most, if not all, of the communities are lacking in at least some of the basic access and infrastructure necessary for reasonable services, economic stability, and growth that almost all other communities in the United States have had the opportunity to develop.*<sup>18</sup>

**A Regulatory Exemption From The Roadless Rule’s Impacts On Mining Is A Reasonable Alternative That Must Be Displayed In The Transition Plan Draft ROD.**

In 2003 USDA temporarily exempted the Tongass from the Roadless Rule because “the roadless values on the Tongass are sufficiently protected under the Tongass Forest Plan and the additional restrictions associated with the roadless rule are not required.”<sup>19</sup> The 2003 Regulation also stated:

*The Department has concluded that the social and economic hardships to Southeast Alaska outweigh the potential long-term ecological benefits because the Tongass forest plan adequately provides for the ecological sustainability of the Tongass. Every facet of Southeast Alaska’s economy is important and the potential adverse impacts from application of the roadless rule are not warranted, given the abundance of roadless areas and protections already afforded in the Tongass Forest Plan.*<sup>20</sup>

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<sup>16</sup> *Ibid.*, at page 3258.

<sup>17</sup> *Ibid.*, at page 3257.

<sup>18</sup> 68 Fed. Reg. 75136 at 75142 – 75143, December 30, 2003.

<sup>19</sup> 68 Fed. Reg. *supra* at 75137.

<sup>20</sup> *Ibid.* at 75141 – 75142.

USDA also observed: “As discussed in the roadless rule FEIS (Vol. 1, 3-202, 3-326 to 3-350, 3-371 to 3-392) substantial negative economic effects are anticipated if the roadless rule is applied to the Tongass [...] .”<sup>21</sup>

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<sup>21</sup> *Ibid.* at 75142