



City Manager
334 Front Street
Ketchikan, AK 99901

Phone (907) 228-5603
Fax (907) 225-5075

TRANSMITTAL MEMORANDUM

TO: The Honorable Mayor and City Council

FROM: Lacey G. Simpson, Acting City Manager

DATE: July 26, 2022

RE: **Budget Transfer and Amendment No. 2 to Contract No. 17-12 – Tongass Sewer Force Main Rehabilitation Phase II Design, Stephi Engineering LLC**

At its meeting of February 16, 2017, the City Council approved the award of Contract No. 17-12, Tongass Sewer Force Main Rehabilitation Phase II to Stephi Engineering LLC in the amount of \$70,000. At its meeting of June 15, 2017 the City Council approved Amendment No. 1 to Contract No. 17-12 in the amount of \$129,000 for expedited design work on the project, bringing the project total to \$199,000.

The motion detailed below was prepared at the request of Project Engineer Karlee Miller, who asked that it be placed before the City Council for consideration at its meeting of August 4, 2022. If adopted, the motion provides for approving Amendment No. 2 to Contract No. 17-12, Tongass Sewer Force Main Rehabilitation Phase II between the City and Stephi Engineering LLC in the amount of \$14,490 to finalize design work. The rationale for the change order is detailed in Ms. Miller's transmittal memorandum and requires no elaboration on the part of the City Manager's Office. I concur with the Project Engineer's recommendation.

Public Works Director Mark Hilson will be attending the City Council meeting of August 4, 2022, in order to address any questions and/or concerns that Councilmembers may have.

A motion has been prepared for City Council consideration.

RECOMMENDATION

It is recommended that the City Council adopt the motion approving Amendment No. 2 to Contract No. 17-12 in the amount of \$14,940 between the City and Stephi Engineering LLC to finalize design work for Phase II of the Tongass Avenue Sewer Force Main Rehabilitation and Gravity Sewer Replacement Project, bringing the contract amount to \$213,490; approving a budget transfer in the amount of \$14,940 from Appropriated Reserves of the Wastewater Services Fund to the Wastewater Division's 2017 Force Main Replacement/Rehabilitation capital account; authorizing funding from the Wastewater Division's 2017 Force Main Replacement/Rehabilitation capital account; and directing the Acting City Manager to execute the contract amendment on behalf of the City Council.

Recommended Motion: I move the City Council approve Amendment No. 2 to Contract No. 17-12 in the amount of \$14,940 between the City and StephI Engineering LLC to finalize design work for Phase II of the Tongass Avenue Sewer Force Main Rehabilitation and Gravity Sewer Replacement Project, bringing the contract amount to \$213,490; approving a budget transfer in the amount of \$14,940 from Appropriated Reserves of the Wastewater Services Fund to the Wastewater Division's 2017 Force Main Replacement/Rehabilitation capital account; authorize funding from the Wastewater Division's 2017 Force Main Replacement/Rehabilitation capital account and directing the Acting City Manager to execute the contract amendment on behalf of the City Council.

MEMORANDUM

TO: Lacey Simpson, Acting City Manager

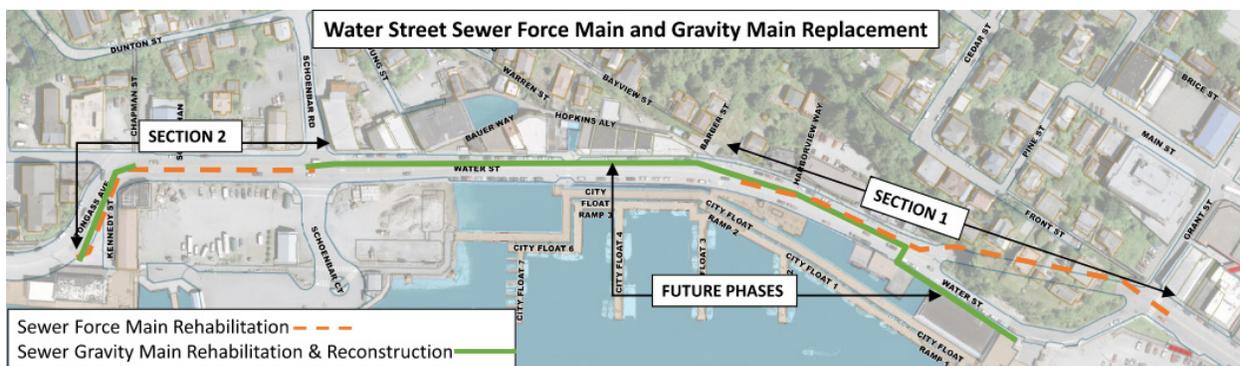
CC: Mark Hilson, P.E., Public Works Director
Kara Jurczak, P.E., Assistant Public Works Director

FROM: Karlee Miller, P.E., Project Engineer

DATE: July 26, 2022

SUBJECT: **Contract No. 17-12 – Tongass Sewer FM Rehabilitation Phase II Design – Amendment 2**

In February 2017 the City Council awarded a contract to StephI Engineering LLC in the amount of \$70,000 for design services for a second phase of sewer force main rehabilitation. City Council may recall that the first phase of sewer force main rehabilitation successfully slip lined force main on Tongass Avenue, Front Street, and Stedman Street with substantial cost savings versus installation of new force main. Amendment 1 was approved in June 2017 and added substantial scope to the contract including design for gravity sewer replacement and rehabilitation in addition to the slip lining. Amendment 1 resulted in a new contract total of \$199,000. Public Works staff and the consultant made considerable efforts to value engineer the project scope to minimize the capital costs. As a result of this value engineering effort, the design contract needs additional funding to bring the design to completion. Amendment 2 will add \$14,940 to the design contract for a new total of \$213,940 and will result in a project estimated to cost \$4.5 million for slip lining, gravity sewer replacement, and gravity sewer cure in place lining as shown on the following drawing:



It is worth noting that a small length of gravity sewer from Kennedy Street to Schoenbar Bypass is so deep (20+ feet) that it has been determined to be too disruptive and expensive to replace. While we are not looking for another pump station in our system, in this case it may make financial sense to plan for future installation of a shallow gravity sewer, small pump station and force main instead of replacing this deep gravity sewer. The alternative to a new pump station would be to line this pipe, however the old main is not a very good candidate for lining due to a large sag that holds water, and the tidal influence on the pipe.

Staff anticipates pursuing grant funding for construction when the State Revolving Fund publishes their new requirements, currently anticipated to be at the end of this year. Having the design complete will make the grant application more competitive, which will increase the likelihood of securing grant funding.

RECOMMENDATION

It is recommended that the City Council adopt a motion authorizing the Acting City Manager to enter into Amendment 2 in the amount of \$14,940 to the professional services agreement 17-12 with StephI Engineering LLC; and approving a budget transfer of \$14,940 from the Appropriated Reserves of the Wastewater Services Fund to the Wastewater Division's 2017 Force Main Replacement/Rehabilitation capital account.

Recommended Motion: I move the City Council authorize the Acting City Manager to enter into Amendment 2 in the amount of \$14,940 to the professional services agreement 17-12 with StephI Engineering LLC; and approve a budget transfer of \$14,940 from the Appropriated Reserves of the Wastewater Services Fund to the Wastewater Division's 2017 Force Main Replacement/Rehabilitation capital account.

Enclosures:

17-12 Professional Design Services Amendment 2

AMENDMENT 2

TO

AGREEMENT **FOR** **PROFESSIONAL DESIGN SERVICES** **Contract 17-12**

Tongass Sewer FM Rehabilitation Phase II Design

THIS AGREEMENT made and entered into this _____ day of _____, 20____, by and between the City of Ketchikan (“**Owner**”) and **Stephl Engineering LLC.**, a company organized and existing under the laws of the State of Alaska, whose address is **3900 Arctic Boulevard, Suite 204, Anchorage, AK 99503**, and licensed and qualified to do business within the State of Alaska, hereinafter called "**Contractor.**"

R E C I T A L S

- (a) The **Owner** desires the performance, provision, and accomplishment of the work, services and materials described and set forth in Section 1.
- (b) **Contractor** represents that it is ready, able and qualified to perform, and will perform, in all respects, all of the work, services, and materials, and to otherwise perform all of the terms, covenants, conditions and provisions of the agreement in the manner, at the times, and for the consideration hereafter provided.

NOW, THEREFORE, for and in consideration of the terms, covenants, conditions, and provisions contained herein, and/or attached and incorporated herein and made a part hereof, the parties hereto agree as follows:

Section 1: Agreement to Perform. The **Owner** hereby agrees to engage the **Contractor**, and the **Contractor** hereby agrees to perform, complete, provide and furnish, in a timely and proper manner, and pursuant to and in accordance with all of the terms, covenants, conditions and provisions of this Agreement, all of the work, services, labor and materials required to accomplish all of the work described in **Exhibit A_Amendment 2** hereof at the times, in the manner, and for the consideration and payments hereinafter set forth.

Section 2: Scope of Work. The **Contractor** shall perform, supply, and provide all of the work, services and materials [hereinafter collectively referred to as "work"] as follows:

As set forth and described on **Exhibit A_Amendment 2** attached

hereto and incorporated herein by this reference.

Section 3: Time for Commencement and for Completion of Work.

(a) **Commencement.** Contractor shall commence the work called for in this Agreement upon the giving of a Notice to Proceed by the Owner.

(b) **Completion.** Upon giving of Notice to Proceed, the work called for in this Agreement shall be performed and completed no later than:

December 31, 2022

Section 4: Compensation and Payment. For and in consideration of the timely and proper performance of work authorized as provided herein, the Owner shall pay the Contractor as follows: As stipulated in **Exhibit B_Amendment 2.**

Section 5: No Additional Work. No claim for additional work, services or materials, not specifically and expressly requested and authorized as provided for in this Agreement, or by a written amendment thereto signed by both parties, done or furnished by the Contractor, will be allowed or paid by the Owner and Contractor expressly waives any claim therefor.

Section 6: Owner's Contracting Officer. For purposes of this Agreement, the Owner's contracting officer shall be Acting KPU/City General Manager Lacey Simpson or such other person as is designated in writing by such person.

Section 7: Compliance with Guidelines and Procedures. The Contractor shall provide and perform all work, services and materials in full, strict and complete compliance with all the following procedures and guidelines: using that degree of care and skill ordinarily exercised under the same conditions by Project Management and Engineering Design Professionals practicing in the same field, at the same time, in the same or similar locality.

Section 8: Contractor Qualified. The Contractor expressly represents and warrants it is now and shall continue to be at all times during the performance of this Agreement, the holder of all required or necessary professional, business or other licenses or permits and is qualified and capable of performing all of the work covered or called for by this Agreement and is presently ready, able and willing to undertake and perform all of such work and services, and to supply all necessary materials and equipment, at the times, and in a non-negligent professional and workmanlike manner, and pursuant to the terms, conditions and provisions, and for the compensation and payments as herein provided.

Section 9: Contractor Responsible for Personnel. The Contractor has or will secure, at Contractor's own cost and expense, all personnel required to perform this Agreement in a timely and proper manner. The parties hereto agree and understand that such personnel shall in no event be deemed to be, and are not, employees, agents, or representatives of the Owner and such persons shall have no contractual or other relationship with the Owner, and the Owner shall have no responsibility or liability whatsoever to any of said persons, or for the acts or omissions of any of

such persons.

Section 10: Personnel Supervision. Contractor agrees that all work and services required or provided under this Agreement shall be performed personally by the Contractor, unless otherwise authorized in writing by the Owner's contracting officer, and in such event all personnel engaged in any such work shall be fully qualified, and shall be licensed and authorized under applicable state, federal and local laws to perform such services; provided, however, the Owner hereby authorizes the following persons to participate as follows:

Section 11: Independent Contractor. The parties hereto expressly agree that the Contractor shall be and is an independent contractor and is not an employee or agent of the Owner, and is, therefore, entitled to no insurance coverage, whether worker's compensation or otherwise, and no other benefits accorded to Owner's employees. No withholding, FICA, or other taxes (whether income, sales or otherwise) or other amounts will be withheld from the payments due to the Contractor, it being understood that the Contractor is solely responsible therefor, provided Owner shall be entitled to withhold such retainage or other amounts from any progress or other payments as have been provided for elsewhere in this Agreement.

Section 12: Forms To Be Provided To Contractor. The Owner shall provide the Contractor with any special forms required by the Owner for reporting to the Owner and the necessary instruction regarding proper use of the forms.

Section 13: Termination. (a) **Termination for Cause.** This Agreement may be terminated in whole or in part in writing by Owner in the event of failure by Contractor to fulfill any of the terms and conditions of this Agreement upon the giving of not less than ten (10) days prior written notice of intent to terminate in the manner provided in Section 25 hereof.

(b) **Termination for Convenience of Owner.** This Agreement may be terminated in whole or in part in writing by the Owner for Owner's convenience provided the Contractor is given not less than twenty (20) calendar days prior written notice of intent to terminate in the manner provided in Section 25 hereof.

(c) In the event termination by the Owner is effected pursuant to (a) above, the Contractor shall not be entitled to receive any further payment until the work is completed, or the Owner elects to not proceed further with the project. Upon completion of the work, or termination of the project in the event the Owner elects to not proceed with the project, the Contractor shall be paid as follows:

(1) In the event the costs and expense of taking over, re-advertising and completing the project or the costs of closing out the project if the Owner elects to not proceed with the project (hereinafter referred to as "close out costs"), exceed the remaining unpaid amount of this Agreement, any amount which was otherwise due and unpaid to Contractor at the time

of termination shall be applied to such increased costs in taking over, re-advertising and completing the project, (or applied to close out costs) and the remaining amount of such costs, if any, shall be paid by the **Contractor** to the **Owner**.

(2) In the event said costs and expense of taking over, re-advertising and completing the project, (or close out costs) are less than the total amount which was otherwise due and unpaid to the **Contractor** at the time of termination, the increased costs of taking over and completing the project (or the close out costs) shall be deducted from the amounts due the **Contractor** and the balance, if any, paid to the **Contractor** without interest.

(d) In the event termination is for the convenience of the **Owner** pursuant to (b) above, the **Contractor** shall be paid for the services or other work that have been actually performed prior to the effective time of such notice of intent to terminate, and for reimbursement of any reimbursable expenses that were actually expended and paid prior to the effective time of such notice of intent to terminate, computed and fixed as provided for on **Exhibit B_Amendment 2** and the **Owner** shall not be liable or responsible for any loss of profits or any other damages, amounts, or payments whatsoever to the **Contractor**.

(e) Upon receipt of a termination notice pursuant to paragraphs (a) or (b) above, the **Contractor** shall promptly discontinue all services (unless the notice directs otherwise), and deliver or otherwise make available to the **Owner** all data, drawings, notes, specifications, reports, estimates, summaries, work in progress, and any and all other information and/or materials as may have been accumulated by the **Contractor** in performing this Agreement, whether completed or in process, and free and clear of any mechanics or other liens or claims in favor of **Contractor** or any other person.

(f) Upon termination pursuant to paragraphs (a) or (b) above, the **Owner** may, but shall not be required to, take over the work and prosecute the same to completion by agreement with another person or otherwise, may elect to complete the work itself, or to not proceed further with the work and project.

(g) If, after termination by the **Owner** pursuant to (a) above, it is determined that the **Contractor** had not so failed, the termination shall be deemed to have been effected for the convenience of the **Owner**. In such event, adjustment of the amounts to be paid to **Contractor** for termination shall be made as provided in paragraph (d) of this section.

(h) No other damages, whether for lost profits or otherwise, other than the amounts allowed and computed as provided for in this Section 13 shall be due or payable to **Contractor** in the event of termination.

Section 14: Changes or Modifications. Any change in any regulations or requirements applicable to the work called for herein, made, caused or imposed by, or as a result of, the action of any state, federal or other governmental agency that has or will provide all or any portion of any funds for payment for the work or project which is the subject of this Agreement shall automatically become a part of and amendment to this Agreement and the **Contractor** shall comply therewith.

Section 15: Conflict of Interest. The **Contractor** covenants, warrants and represents that the **Contractor** has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner with the subject matter or the performance of this Agreement. The **Contractor** further covenants, warrants and represents that in the performance of this Agreement, no person having any such interest shall be employed.

Section 16: Information Confidential. All information, and work products relating to or generated pursuant to this Agreement shall be kept confidential and shall not be disclosed, discussed or made available to any other person or organization by the **Contractor**, its employees or representatives, without the prior written approval of the **Owner** and the further consent of any other agency as may be required by the **Owner**; provided, however, the **Owner** shall have the right to audit, inspect and otherwise obtain any information as provided in Section 17, or regarding performance of this Agreement by the **Contractor**.

Section 17: Reporting and Records. (a) At any time during normal business hours, and as often as the **Owner** or any agency providing any portion of the funds provided to the **Owner** for this project deems necessary, there shall be made available to the **Owner** or to such other funding agency and/or their representatives, at a location within the City of Ketchikan, or Anchorage, any and all books, records and documents regarding matters covered or related to this Agreement or the performance of, or payment for, the work called for herein, and the **Owner** and/or such agencies shall be entitled to make audits and copies of all books, records, contracts, invoices, receipts, payrolls, records of personnel, and other documents or data relating to any and all matters covered by this Agreement or performance or payment for the work called for herein.

(b) The performance and administration of this program and this Agreement will be monitored by the **Owner** and such other agencies as may be required or authorized pursuant to the terms of any grant to the **Owner**. Necessary reports, in proper form, will be required as a prerequisite to any payment to the **Contractor**.

(c) All project records shall be maintained by the **Contractor** for not less than three (3) years after completion and final acceptance of all work by the **Owner** and shall be subject to inspection and copying by the **Owner** or any funding agency during said period.

Section 18: Hold Harmless and Indemnity. The **Contractor** shall indemnify, defend, and hold harmless the **Owner** from and against any claim of, or liability for, negligent acts, errors, and omissions of the **Contractor** related to the performance or nonperformance of this agreement. The **Contractor** is not required to indemnify, defend, or hold harmless the **Owner** for a claim of, or liability for, the independent negligent acts, errors, and omissions of the **Owner**. If there is a claim of, or liability for, a joint negligent act, error, or omission of the **Contractor** and the **Owner**, the indemnification, defense, and hold harmless obligation of this provision shall be apportioned on a comparative fault basis. In this provision, "**Contractor**" and "**Owner**" include the employees, agents, and contractors who are directly responsible, respectively, to each. In this provision, "independent negligent acts, errors, and omissions" means negligence other than in the **Owner's** selection, administration, monitoring, or controlling of the **Contractor**, or in approving or accepting

the **Contractor's** work. In this provision "claim" and "liability" include penalties and fines, claims or liabilities for any damages to any goods or properties or personal injury, including death, whether or not valid, any cost or expense, including attorney fees, and include claims by reason of any negligent defects in any plans, drawings, specifications, computer programs, technical reports, or other work product of **Contractor** prepared for or submitted to the **Owner** pursuant to this agreement, provided said claim is not based upon a use of said plans, drawings, specifications, or other work product for other than the purposes for which such data was prepared and submitted to the **Owner**.

The **Owner** has no duty to review or correct **Contractor's** work. The **Owner's** review, inspection, acceptance, or approval of **Contractor's** work does not affect the **Contractor's** duty to defend, indemnify, and hold the **Owner** harmless. The **Owner's** review, inspection, acceptance, or approval of **Contractor's** work is solely for the **Owner's** purposes. The **Owner** has no duty to notify the **Contractor** of any defects, errors, or omissions in **Contractor's** work which **Owner** may find or should have found as a result of **Owner's** review, inspection, acceptance, or approval of **Contractor's** work.

For purposes of the statute of limitations, any defect, error, or omission in **Contractor's** work shall be deemed discovered no earlier than the date upon which **Contractor's** work products are substantially completed.

Section 19: Insurance. (a) **Public Liability Insurance.** **Contractor** agrees to keep and maintain in full force at **Contractor's** own expense during the entire period of the project or work called for herein, broad form comprehensive public liability insurance with limits of not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) general aggregate insuring **Contractor**, and the **Owner** as an additional named insured, from any and all claims for bodily injury and death, and for property damage, that may arise out of, or in relation to, this Agreement. Such insurance shall require the insurance company give not less than thirty (30) days prior written notice to **Owner** prior to any cancellation, nonrenewal or reduction in the amount of coverage of such insurance coverage.

(b) **Contractor** shall in addition to (a) above, keep and maintain any additional policies of insurance specified on **Exhibit F** hereto.

(c) Each policy, or a certificate of the policy, together with evidence of payment of premiums, shall be deposited with the **Owner** prior to execution of this Agreement by the **Owner**, and on renewal of the policy not less than twenty (20) days before expiration of the term of the policy.

Section 20: Ownership of Drawings and Contract Documents. All original documents, including but not limited to, tracings, plans, specifications, maps, basic work notes, sketches, charts, computations, photographs and original negatives thereof, and all other data prepared, obtained or received by **Contractor**, its employees, agents, or representatives, under the terms of, or in the performance of this Agreement, shall be and become the sole and exclusive property of the **Owner**, and shall upon request be delivered to the **Owner** at no cost and without restriction or limitation on

their use; and provided further, the **Owner** shall be entitled to withhold payment of any amounts otherwise due **Contractor** unless and until all of said documents and writings are delivered to **Owner** free and clear of any liens or claims of **Contractor** or any third parties relating thereto. The **Owner** shall have the sole and exclusive right to copyright, patent, license, or otherwise protect, sell, dispose of, or otherwise use any of the materials or work produced pursuant to this Agreement.

Section 20: Independent Contractor; No Authority to Bind Owner. The parties hereto agree that **Contractor** is an independent **Contractor** and is not, and shall not be construed to be a partner, joint venturer, employee or agent of the **Owner** and shall not, and is not authorized to, enter into or make any contracts, agreements, or enter into any other understanding with any other person, corporation, partnership, joint venturer, or other entity, in the name of or for the benefit of the **Owner**.

Section 21: No Third Party Beneficiaries. Nothing in this Agreement shall be construed to give any person other than the **Owner** and the **Contractor** any legal or equitable right, remedy or claim under this Agreement, but it shall be held to be for the sole and exclusive benefit of the **Owner** and the **Contractor**.

Section 22: Payment of Taxes. The **Contractor** shall timely pay all federal, state, and local sales, excise or other taxes or assessments incurred by the **Contractor**.

Section 23: Assignment and Subletting Prohibited. The **Contractor** shall not assign, transfer, convey, pledge, hypothecate, sublet, subcontract, or otherwise dispose of or encumber this Agreement, or the rights thereunder, nor shall the **Contractor** delegate any of his/her/its duties hereunder without the prior written consent of the **Owner**. Any such attempted assignment, transfer, conveyance, pledge, hypothecation, subletting, or other disposition, or the attempted assignment, disposition or delegation of duties or rights shall be null and void and of no force or effect and shall be grounds and cause for immediate termination of this Agreement without liability by and at the option of the **Owner**.

Section 24: Notice. Any notice, demand, request, consent, approval, or other communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail at the address set forth below. Either party may change its address by notifying the other party of its change of address in writing. Notice shall be deemed to have been duly made and given when delivered if served personally, or upon the expiration of twenty-four (24) hours after the time of mailing if mailed as provided in this section.

Owner: City of Ketchikan
334 Front Street
Ketchikan, Alaska 99901

Contractor: Steph Engineering LLC

3900 Arctic Boulevard
Suite 204
Anchorage, AK 99503

Section 25: Equal Employment Opportunity. (a) The **Contractor** shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, or sex. The **Contractor** will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, ancestry, age or sex. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The **Contractor** agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) The **Contractor** shall state in all solicitations or advertisements for employees to work on contract jobs to be let in the performance of this Agreement, that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, age, or sex.

(c) The **Contractor** agrees to fully cooperate with the office or agency of the State of Alaska which seeks to deal with the problem of unlawful or invidious discrimination, and with all other state efforts to guarantee fair employment practices under this Agreement, and said **Contractor** will comply promptly with all requests and directions from the State Commission of Human Rights or any of its officers or against relating to prevention of discriminatory employment practice.

(d) Full cooperation as expressed in the foregoing clause (c) shall include, but not be limited to, being a witness in any proceeding involving questions of unlawful or invidious discrimination if such is deemed necessary by any official or agency of the State of Alaska, permitting employees of said **Contractor** to be witnesses or complainants in any proceeding involving questions of unlawful or invidious discrimination, if such is deemed necessary by any official or agency of the State of Alaska, or the **Owner**, participating in meetings, submitting periodic reports on the equal employment aspects of present and future employment, assisting in inspection of relevant facilities, and promptly complying with all state directives deemed essential by any office or agency of the State of Alaska, or the **Owner**, to insure compliance with all federal and state laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.

(e) Failure to perform any of the above agreements pertaining to equal employment opportunities shall be deemed a material breach of the contract and sufficient grounds for termination of this Agreement for cause without liability.

Section 26: Worker's Compensation Coverage. The **Contractor**, if subject to the provisions of the Alaska Worker's Compensation Act (AS 23.30), shall, upon request, provide the **Owner** and the State of Alaska with proof, furnished by the insurance carrier, of current coverage by worker's compensation with an insurance company or association authorized to transact such business in the State of Alaska, or an approved current certificate of self-insurance by the Alaska

Worker's Compensation Board. The **Contractor** further acknowledges and agrees that in the event it fails to maintain proper Worker's Compensation coverage, the State will implement the provisions of AS 23.30.045(c) and the **Owner**, at its option, may terminate this Agreement for cause without liability.

Section 27: Pay Requests, Statement Concerning Claims and Final Release. (a) All pay requests, whether for a progress payment or final payment, shall be made upon the form attached hereto as **Exhibit C_Amendment 2** and shall be accompanied by an executed statement concerning claims on the form attached hereto as **Exhibit D**.

(b) Upon satisfactory completion of all of the work to be performed hereunder, and prior to final payment under this Agreement for such work, or prior to payment of any amounts upon termination of the agreement, and as a condition precedent thereto, the **Contractor** shall execute and deliver to the **Owner** a release of all claims against the **Owner** arising under or by virtue of this Agreement on the form attached hereto as **Exhibit E**.

Section 28: Miscellaneous. (a) **Relationship of the Parties.** Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither method of computation of payment nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of **Owner** and an independent contractor.

(b) **Terminology.** Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

(c) **Nonwaiver.** No delay or omission of the right to exercise any power by either party shall impair any such right or power, or be construed as a waiver of any default or as acquiescence therein. One or more waivers of any covenant, term or condition of this Agreement by either party shall not be construed by the other party as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party to any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

(d) **Law Applicable.** The laws of the State of Alaska shall govern the construction, validity, performance and enforcement of this Agreement. Venue as to any action, claim, or proceeding arising out of, or based upon this Agreement, including, but not limited to, any action for declaratory or injunctive relief, shall be the appropriate court sitting in the City of Ketchikan, First Judicial District, Alaska.

(e) **Paragraph Headings.** The headings of the several sections and subsections contained herein are for convenience only and do not define, limit or construe the contents of such sections and subsections.

(f) **Successors and Assigns.** Except as otherwise provided herein, the covenants,

agreements and obligations herein contained shall extend to bind and inure to the benefit not only of the parties hereto but their respective personal representatives, heirs, successors and assigns.

(g) **Compliance with Laws and Regulations.** Contractor shall, at Contractor's sole cost and expense, comply with all of the requirements of all local, state, or federal laws, ordinances, or regulations now in force, or which may hereafter be in force, pertaining to this Agreement, or the project or work to be performed, and shall faithfully observe in the performance of this Agreement, all local, state, and federal laws, ordinances and regulations now in force or which may hereafter be in force.

(h) **Terms Construed as Covenants and Conditions.** Every term and each provision of this Agreement performable by Contractor shall be construed to be both a covenant and a condition.

(i) **Time of the Essence.** Time is of the essence of each term, condition, covenant and provision of this Agreement.

(j) **Entire Agreement.** This Agreement and any schedules, appendices or exhibits attached hereto sets forth all the covenants, promises, agreements, conditions and understandings between the parties hereto, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth. Except as herein otherwise expressly provided, no contemporaneous or subsequent agreement, understanding, alteration, amendment, change or addition to this Agreement, or any schedule, appendix, exhibit or attachment thereto shall be binding upon the parties hereto unless reduced to writing and signed by both parties. This Agreement constitutes a final, complete, and exclusive statement of the agreement between the parties.

(k) **Severability.** In the event any provision of this Agreement is adjudicated or held to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

(l) **Corporate Authority.** If Contractor is a corporation Contractor shall deliver to the Owner at the time of execution of this Agreement a certified copy of a resolution of its board of directors authorizing the execution of this Agreement and naming the officers that are authorized to execute this Agreement on behalf of the corporation.

Section 29: Additional Terms and Conditions. This Agreement is subject to each of the additional terms, covenants, conditions and provisions attached hereto as **Exhibit(s) "A_Amendment 2", "B_Amendment 2", "C_Amendment 2", "D", "E" and "F"** which are hereby expressly referred to and incorporated herein as though set forth in full.

Section 30: Maximum Amount of Contract. Contractor acknowledges and agrees Owner's funding is of a limited nature and source and Owner shall in no event be liable for payment of any amounts under this Agreement, or otherwise, in excess of the total amount of **Two Hundred and Thirteen Thousand Nine Hundred and Forty Dollars (\$213,940.00)**, and at such times as the total amount paid or due, or claimed by Contractor, reaches a total of **Two Hundred and Ten**

Thousand Dollars (\$210,000.00), Contractor shall forthwith notify **Owner** thereof. It shall be the **Contractor's** obligation to notify **Owner** and to assure no work in excess of said total sum of **Two Hundred and Thirteen Thousand Nine Hundred and Forty Dollars (\$213,940.00)** is done and any work done in excess thereof shall not entitle **Contractor** to any payment and **Contractor** expressly waives any claim therefor, unless such additional work was separately authorized in writing as a written change order or amendment to this Agreement prior to commencement and performance of any such additional work.

WHEREFORE the parties have entered into this Agreement the date and year first above written at the City of Ketchikan, Alaska.

Owner:

CITY OF KETCHIKAN, ALASKA

By: _____
Lacey Simpson, Acting City Manager

ATTEST:

Kim Stanker, City Clerk

Reviewed and Approved as
to Content

By: _____

Title: _____

Certified Funds Available

By: _____

Title: _____

Contractor:

(type in name)

(signature of authorized officer)

(title of person signing)

(Corporate Seal)

CITY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 20____, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **LACEY SIMPSON** and **KIM STANKER**, to me known to be the **ACTING CITY MANAGER** and the **CITY CLERK** of the **CITY OF KETCHIKAN**, a municipal corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said corporation; who acknowledged to me that they signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in the certificate first above written.

NOTARY PUBLIC FOR ALASKA
My Commission Expires: _____

(Seal)

CORPORATE CERTIFICATE

I, _____, certify that I am the Secretary of the Corporation named as Contractor in the foregoing instrument; that _____, who signed said instrument on behalf of the Contractor, was then _____ of said Corporation; that said instrument was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

(Corporate Seal)



**Agreement for Professional Design Services
between Steph Engineering LLC and the
City of Ketchikan, Contract 17-12
Tongass Sewer FM Rehabilitation Phase II Design
Amendment No. 2
June 17th, 2022**

Background

This amendment is to finalize the Water Street Sewer Improvements Pump Station 3 to Front Street design documents.

Scope of Work

Task-Finalize design documents

1.1 Finalize Design Documents

Contractor will finalize the documents for the Pump Station 3 to Front Street project. The design is currently at the 95 percent design level. The existing budget was exhausted due to multiple revisions of the design documents to try to keep the project within a construction budget that could be afforded by the City of Ketchikan while still upgrading the existing infrastructure. This included multiple revisions of the documents that were outside the original scope of work.

Compensation

The Contractor services described above would be paid on a time and materials basis. Estimated cost for the different projects is \$14,940. A more detailed description of the engineering fee is attached.

Ketchikan 2017 Force Main Phase II Design						
Stephl Engineering LLC Fee Estimate						
6/17/22						
				Staff and Hourly Rate		
				Senior	Project	Expenses
				Engineer	Engineer II	Subtotal
				\$170	\$140	
Pump Station 3 to Front Street						
Task-Finalize Documents						
Finalize Design documents				22	80	\$0 \$14,940
Subtotal				22	80	\$0 \$14,940
TOTAL				22	80	\$0 \$14,940

CONTRACTOR'S REQUEST FOR PAYMENT / PROGRESS PAYMENT SUMMARY
CITY OF KETCHIKAN / PUBLIC WORKS & ENGINEERING DEPARTMENT
 2930 Tongass Avenue, Ketchikan, AK 99901 / PH: 907.228.4727 / FX: 907.247.8721

Project:	Tongass Sewer FM Rehabilitation Phase II Design		
Contractor:	Stephl Engineering LLC		
Mailing Add:	3900 Arctic Boulevard, Suite 204, Anchorage, AK 99503		
Invoice No:		P.O. No:	2017-429
Period of:		Contract No:	17-12

In accordance with the attached schedule, the Contractor is entitled to payment of the amount set forth below. The present status of the account for this Contract is as follows:

CHANGE ORDERS	INCREASE or (DECREASE)
Amendment I	\$ 129,000.00
Amendment II	\$ 14,940.00
TOTAL:	\$ 143,940.00

PAYMENT REQUEST NO:	
Original Contract Amount:	\$ 70,000.00
Change Orders:	\$ 143,940.00
Total Contract to Date:	\$ 213,940.00
Total Completed to Date:	\$ -
Less Previous Payments:	\$ -
Balance to Complete:	\$ 213,940.00
PAYMENT REQUESTED:	\$ -

CONTRACTOR'S CERTIFICATION

The undersigned CONTRACTOR certifies that (1) all previous progress payments received from OWNER on account of Work done under the Contract referred to above have been applied to discharge in full all obligations of CONTRACTOR incurred in connection with Work covered by ALL prior Request for Payments; and (2) title to all materials and equipment incorporated in said Work or otherwise listed in or covered by this Request for Payment will pass to OWNER at time of payment free and clear of all liens, claims, security interests and encumbrances. The undersigned CONTRACTOR further certifies, represents, and agrees that there are no claims for additional work or other claims not put in writing prior to this date.

Subscribed and Sworn to before me this _____ day of _____, 20____

CONTRACTOR

Notary Public for State of: _____

PRINCIPAL OF FIRM

My Commission Expires: _____

Date: _____

NOTARY SEAL:

TO BE COMPLETED BY OWNER (CITY/KPU)

Final Payment:	Yes ____ No ____	ADJUSTMENT:	\$ -
		DUE THIS PAY REQUEST:	\$ -

Comments: _____

Recommended by Engineer: _____ Date: _____

Approval-Owner's Project Administrator: _____ Date: _____

P.O. #	PROJECT #	CONTRACT #	G/L ACCOUNT	BY:
2017-429	3000-2017-002	17-12	505-3000-190-730.00	AP
VENDOR #				

**RELEASE, WAIVER AND DISCHARGE
OF ALL CLAIMS AND LIENS**

This Certificate and Affidavit is made this _____ day of _____, 20_____,
by Steph Engineering LLC
("Releasor"), the Contractor under that certain Agreement for the performing and/or furnishing of work,
labor, service, materials and/or equipment in connection with the Agreement and Project known as:

Tongass Sewer FM Rehabilitation Phase II Design Contract 17-12

For and in consideration of the total sum of _____
Dollars (\$ _____), and other good and valuable consideration, which sum is
acknowledged as being the **FINAL AND TOTAL AMOUNT** due or alleged due or owing from the City of
Ketchikan, Alaska (hereinafter referred to as "Releasee"), the receipt and payment of which sum is
hereby acknowledged, the Releasor for and on behalf of itself and all parties claiming any interest in or
through it, and for its successors and assigns, does hereby waive, release and discharge the Releasee
from any and all causes of action, suits, debts, accounts, bonds, contracts, promises, damages, liens,
encumbrances, judgment, claims and demands whatsoever, in law or equity which against the Releasee,
jointly or separately Releasor ever had, now has, or might hereinafter have, relating directly or indirectly
to the aforesaid Agreement and/or Project. The Releasor further hereby agrees to appear and defend
and to indemnify and hold the Releasee harmless from any and all damages, costs, expenses, demands,
suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party
for work, labor, service, materials and/or equipment which directly or indirectly relates to that which was
performed or should have been performed by he Releasor, and from and against any claim relating to any
work, labor, services, materials and/or equipment allegedly performed, supplied, or provided by the
Releasor.

The Releasor further hereby represents, certifies and warrants that it has fully paid for any and all
work, labor, services, materials and/or equipment provided to it in connection with the Contract and/or the
Project. The Releasor hereby grants to the Releasee and its authorized representatives the right to
review and audit any and all books and records of the Releasor at any time for verification of such
payments.

CONTRACTOR (Releasor)

By: _____

Title: _____

CERTIFICATE OF INSURANCE

PRODUCER		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONTAINS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
		COMPANIES AFFORDING COVERAGE			
		COMPANY A			
INSURED		COMPANY B			
		COMPANY C			
		COMPANY D			
COVERAGE					
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GEN LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> OWNERS/CONTRACTORS PROT <input type="checkbox"/> _____ <input type="checkbox"/> _____				GENERAL AGGREGATE# \$2,000,000 PRODUCTS-COMP/OP AGG \$ PERSONAL & ADV INJURY \$1,000,000 EACH OCCURRENCE \$1,000,000 FIRE DAMAGE (Any one Fire) MED EXP (Any one person) \$ 5,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> _____ <input type="checkbox"/> _____				COMBINED SINGLE LIMIT \$1,000,000 BODILY INJURY (Per accident) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> _____ <input type="checkbox"/> _____				AUTO ONLY EA ACCIDENT \$ OTHER THAN AUTO ONLY EACH ACCIDENT \$ AGGREGATE \$
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$1,000,000 AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYER'S LIABILITY THE PROPRIETORS <input type="checkbox"/> INC PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> EXCL	If applicable to bidder			AK WC STATUTORY LIMITS EL EACH ACCIDENT \$ 500,000 EL DISEASE-POLICY LIMIT \$ 500,000 EL DISEASE EA EMPLOYEE \$ 500,000
	OTHER COURSE OF CONSTRUCTION (All Builder's Risk)				100% Completed Value
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS					
EFFECTIVE _____, THE CITY OF KETCHIKAN IS SHOWN AS ADDITIONAL INSURED WITH ALL RIGHTS OF SUBROGATION WAIVED AGAINST THEM ON THE GENERAL LIABILITY, AUTO AND EXCESS LIABILITY POLICIES AND ALL RIGHTS OF SUBROGATION ARE WAIVED ON THE WORKERS COMPENSATION POLICY AS RESPECTS THE Tongass Sewer FM Rehabilitation Phase II Design Contract 17-12					
CERTIFICATE HOLDER			CANCELLATION		
CITY OF KETCHIKAN 334 FRONT STREET KETCHIKAN, ALASKA 99901			SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.		
			AUTHORIZED REPRESENTATIVE		

February 16, 2017

separately, and Councilmember Isom requested to consider the award of the three-year publication of the telephone directory separately; no objections were heard.

Approval of Minutes - Special City Council Meeting of January 26, 2017 and Regular City Council Meeting of February 2, 2017

Moved by Sivertsen, seconded by Coose for approval of the minutes of the special City Council meeting of January 26, 2017 and the regular City Council meeting of February 2, 2017.

Motion passed with Kiffer, Sivertsen, Flora, Isom, Zenge, Coose and Gage voting yea.

Budget Transfer - Commissioning Ceremonies and/or Activities for the United States Coast Guard Cutter John McCormick

Moved by Sivertsen, seconded by Coose the City Council authorize a budget transfer in the amount of \$1,000 from Appropriated Reserves of the General Fund to the City Council's 2017 Community Promotion Account No. 610.01 for the purpose of funding commissioning ceremonies and/or activities for the United States Coast Guard Vessel John McCormick on April 12, 2017.

Motion passed with Kiffer, Sivertsen, Flora, Isom, Zenge, Coose and Gage voting yea.

Exempting the Procurement of Professional Engineering Services for the Design of the Second Phase of the Tongass Avenue Sanitary Sewer Force Main Replacement/Rehabilitation Project from the Competitive Bidding/Quotation Requirements of the Ketchikan Municipal Code - Stephl Engineering LLC

Moved by Sivertsen, seconded by Coose pursuant to subparagraph (A) of Section 3.12.051(c)(2) of the Ketchikan Municipal Code, the City Council exempt the procurement of professional engineering services for the design of the second phase of the Tongass Avenue Sanitary Sewer Force Main Replacement/Rehabilitation Project from the competitive bidding/written quotation requirements of the Ketchikan Municipal Code; authorize the procurement of such design services from Stephl Engineering LLC at a cost of \$70,000; establish a ten percent contingency in the amount of \$7,000, bringing the total project cost to \$77,000; approve funding from the Wastewater Division's 2017 Force Main Replacement/Rehabilitation Capital Account; and direct the city manager to execute the contract documents on behalf of the City Council.

Motion passed with Kiffer, Sivertsen, Flora, Isom, Zenge, Coose and Gage voting yea.

Exempting the Procurement of ProComm Alaska LLC Annual Maintenance Agreement from Competitive Bidding/Written Quotation Requirements of the Ketchikan Municipal Code

June 15, 2017

Councilmember Gage felt even if work was during the summer the times can be changed to accommodate all, a lot of the cruise ships are gone by 3 p.m.

Vice-Mayor Sivertsen said he has concerns with the Department of Transportation and their lack of communication. He felt Councilmember Isom's amendment didn't fix the problem.

Councilmember Isom withdrew her motion with concurrence of the seconder. No objections were heard.

Councilmember Isom stated we need to concentrate on the noise of the construction, not the traffic; it will be a mess no matter what time of the day.

Manager Amylon stated the Department of Transportation will need to resolve these issues almost immediately to be able to meet the October 1st start date or you run the risk of extending this project to two years. He said it's not an ideal situation in any case, but the work needs to be done.

Councilmember Coose suggested representatives from DOT come to the next Council meeting to answer questions. He said we need to consider the impact on the local businesses as well as the cruise ship traffic.

Manager Amylon suggested a special meeting and would contact the DOT representatives to see if they are available.

Moved by Coose, seconded by Zenge to defer until the next City Council meeting.

Motion to defer passed with Coose, Zenge, Gage, Isom, Kiffer and Sivertsen voting yea; Flora absent.

NEW BUSINESS

Authorizing Projects for Nomination Under a National Infrastructure Program

Moved by Coose, seconded by Kiffer the City Council authorize the city manager to submit Federal Community Project Requests to the State of Alaska for infrastructure funding as detailed in staff's report dated June 6, 2017.

Public Works Director Hilson answered question from the Council.

Motion passed with Coose, Zenge, Gage, Isom, Kiffer and Sivertsen voting yea; Flora absent.

Moved by Coose, seconded by Kiffer the City Council authorize the city manager to enter into an amendment in the amount of \$129,000 to the professional services agreement between the City and Steph Engineering LLC for expedited design of Phase II of the Tongass Avenue Sewer Force Main Rehabilitation and Gravity Sewer Replacement Project; and approve a budget

June 15, 2017

transfer of \$129,000 from Appropriated Reserves of the Wastewater Services Fund to the Wastewater Division's 2017 Force Main Replacement/Rehabilitation Capital Account.

Motion passed with Coose, Zenge, Gage, Isom, Kiffer and Sivertsen voting yea; Flora absent.

**Termination of 2017 Community Agency Funding Agreement -
Big Brothers Big Sisters of Alaska**

Moved by Zenge, seconded by Coose the City Council direct staff to take such action regarding the 2017 unexpended appropriation of \$9,292.25 to Big Brothers Big Sisters of Alaska as determined appropriate by the City Council.

Councilmember Zenge suggested giving the funds to the Alaska Community Foundation for distribution.

Councilmember Isom thought all the Community Agency funds should be given to them for distribution.

Councilmember Zenge explained that is not how they operate. She said they are an endowment, and didn't necessarily distribute funds to everyone that applies.

Councilmember Coose suggested staff terminate the agreement and use for the homeless this winter.

Manager Amylon said if the motion passes as is, the funds will remain in the account and can be used for the homeless or rollover to 2018 for re-appropriation.

Motion passed with Coose, Zenge, Gage, Isom, Kiffer and Sivertsen voting yea; Flora absent.

Funding of Fire Department Apparatus Replacement

Moved by Coose, seconded by Isom the City Council direct staff to prepare the draft 2018 Fire Department Operating and Capital Budget incorporating an Apparatus Replacement Plan utilizing lease financing.

Motion passed with Coose, Zenge, Gage, Isom, Kiffer and Sivertsen voting yea; Flora absent.

**Approving Permanent Easements and Rights-of-Way and
Temporary Construction Easements - Alaska Department of
Transportation & Public Facilities' Front, Mill and Stedman
Streets Reconstruction Project, Project No. Z681600000**

Moved by Kiffer, seconded by Zenge the City Council approve permanent easements and rights-of-way and temporary construction easements for the Alaska Department of Transportation & Public Facilities' Front, Mill and Stedman Streets Reconstruction Project as submitted by staff; waive compensation for the permanent easements and rights-of-way and temporary construction