



# City of Homer

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## Memorandum

### Agenda Changes/Supplemental Packet

TO: MAYOR WYTHE AND HOMER CITY COUNCIL

FROM: MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

DATE: DECEMBER 8, 2014

SUBJECT: AGENDA CHANGES AND SUPPLEMENTAL PACKET

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#### CONSENT AGENDA

Resolution 14-126, A Resolution of the City Council of Homer, Alaska, Approving the Kenai Peninsula Borough School District Agreement for Joint Use of Equipment and Facilities for the Period July 1, 2014 through June 30, 2016, and Authorizing the City Manager to Execute the Appropriate Documents. City Manager

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#### CITY ATTORNEY REPORT

City Attorney written report for November 2014

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#### COMMENTS OF THE MAYOR

Certificate of Appreciation and Recognition for Walt Wrede

**Page 13**

#### RECOMMENDATION:

Voice consensus to changes under Agenda Approval

Fiscal Note: N/A



**CITY OF HOMER  
HOMER, ALASKA**

City Manager

**RESOLUTION 14-126**

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA, APPROVING THE KENAI PENINSULA BOROUGH SCHOOL DISTRICT AGREEMENT FOR JOINT USE OF EQUIPMENT AND FACILITIES FOR THE PERIOD JULY 1, 2014 THROUGH JUNE 30, 2016, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE APPROPRIATE DOCUMENTS.

WHEREAS, The Kenai Peninsula School District and the City of Homer share common goals to provide opportunities and activities for the physical, mental and cultural development of the citizens of Homer through the City Community Recreation Program; and

WHEREAS, The benefits from limited financial resources can be maximized by the District and the City working together to provide facilities and programs to achieve their common goals; and

WHEREAS, The City and the District have agreed that the best way to maximize resources and achieve common goals is for the City to offer year-round educational and recreational programs for youth and adults through the Community Recreation Program and for the District to provide use of District equipment and facilities; and

WHEREAS, The District and the City have agreed to a draft Agreement for Joint Use of Equipment and Facilities for the period July 1, 2014 through June 30, 2016.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska, hereby approves the Kenai Peninsula Borough School District Agreement for Joint Use of Equipment and Facilities for the period July 1, 2014 through June 30, 2016, a copy of which is attached and incorporated herein, and authorizes the City Manger to execute the appropriate documents.

PASSED AND ADOPTED by the Homer City Council this 8<sup>th</sup> day of December, 2014.

CITY OF HOMER

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MARY E. WYTHE, MAYOR

43 ATTEST:

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JO JOHNSON, MMC, CITY CLERK

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49 Fiscal Note: 2014 budgeted expenses \$6,000; the fee for custodial services and supplies is also  
50 budgeted but could be reduced by "in-kind" services.

**AGREEMENT FOR JOINT USE OF EQUIPMENT  
AND FACILITIES AND SUMMER FIELDS SCHEDULING**

THIS AGREEMENT, made this 1<sup>st</sup> day of August, 2014, is between the Kenai Peninsula Borough School, hereinafter referred to as "KPBSD" and the City of Homer, Alaska, hereinafter referred to as "CITY".

WHEREAS, the KPBSD and the CITY share common goals to provide opportunities and activities for the physical, mental and cultural development of their respective client groups through the Community Recreation Program, and

WHEREAS, there is a need for scheduling school field use during the summer when school administrators may be unavailable, and

WHEREAS, the benefits from limited financial resources can be maximized by the KPBSD and the CITY working together to provide facilities and programs to achieve their common goals.

NOW, THEREFORE, WITNESSETH:

In consideration of the premises and agreements contained herein, the parties hereto agree as follows:

**ARTICLE 1 – COMMUNITY RECREATION PROGRAM**

**1.1. CITY OF HOMER-COMMUNITY RECREATION PROGRAM.** The CITY agrees to provide year-round educational and recreational programs among children, youth, young adults and adults in various sports, special events, hobbies, educational and other recreational activities known as the Community Recreation Program. Recognizing that this program uses school buildings and equipment, the extent, content, and management of the program shall be decided by the CITY with guidance and advice provided by the KPBSD and the Homer Middle School and Homer High School principals. Use of Homer High and Homer Middle Schools and equipment for this program is subject to the advance approval of the appropriate KPBSD administrator(s) who are responsible for such buildings and equipment.

**1.2. COMMUNITY RECREATION PROGRAM CONTENT.** This program is comprised of the following:

- a. Community Recreation Program classes; and
- b. Scheduled gym activities such as basketball and volleyball; and
- c. Periodic special events held in the school's theater, such as film festivals and musical performances, etc. (limit 1 per semester).

**1.3. PERSONNEL.** The CITY of Homer shall hire qualified personnel to organize, supervise, direct and implement the educational and recreational program services and help ensure building security. Such personnel shall be located in the schools (except when school is not in session - May through August). The Recreation Program Coordinator will work under the supervision of the City Manager, or his designee, and both the Coordinator and City Manager shall ensure that all activities of the Coordinator are done in cooperation with the KPBSD and the Homer Middle School and Homer High

School principals, and in accordance with the provisions of this agreement and school board policy. All personnel employed with the Community Recreation Program shall be employees of the City of Homer and the personnel regulations and evaluation procedures of the CITY shall apply.

**1.4. THE MANAGEMENT COMMITTEE.** The KPBSD will form a Management Committee consisting of Homer Middle School and Homer High School principals and the Homer High School Athletic/Activities Director. The Management Committee will meet quarterly with the City Manager or his/her designee and the Recreation Program Coordinator. At quarterly meetings the CITY will submit for review by the Management Committee a written and oral narrative of the programs and activities conducted during the previous quarter and those planned for the future. The KPBSD retains the right to review the proposed programs and activities and make suggestions concerning same, and to reject proposals that are inconsistent with KPBSD policies or applicable law related to the use of KPBSD facilities and equipment by the public. Reasonable progress reports shall be made by the Coordinator upon request in addition to the reports provided during the quarterly meetings.

**1.5. USE OF FACILITIES.** The KPBSD agrees to make its facilities at Homer Middle and Homer High Schools available for use by the Recreation Program subject to the terms and conditions of this agreement and applicable KPBSD policies. The KPBSD will be responsible for building and grounds maintenance, utilities to include water, sewer, electricity, and heating fuel, provided that the Recreation Coordinator shall promptly notify the KPBSD and building administrator of any damage done to KPBSD facilities by either the Recreation Program instructors or participants, or otherwise observed by the Coordinator.

Except as otherwise agreed herein, the KPBSD agrees to make the above mentioned public school facilities available for education/recreation program activities according to the stipulations of BP 1330, Use of School Facilities and Properties, with the provision that preference in the scheduling of them shall be given to the organized activities of the Kenai Peninsula Borough schools. For those activities requiring the use of the high school's swimming pool the building use form will be utilized and the appropriate fees assessed according to BP 1330 on a case by case basis. No later than April 30 of each contract year, the CITY agrees to pay to the KPBSD technical fees charged to the CITY for the use of the Mariner Theater and an annual fee of six thousand (\$6,000) dollars for custodial services and supplies that are used by the Recreation Program with exception of any mutually agreed upon in-kind service between the KPBSD and CITY as stated in Article 1.6. Should a scheduling conflict arise, the appropriate principal shall give the Recreation Program Coordinator at least one week notice when possible. The Homer High School and Homer Middle School principals will consult with the Recreation Program Coordinator prior to booking private rentals within the facilities and fields (with the exception of the theater and pool) to avoid potential scheduling conflicts.

As circumstances allow, the KPBSD agrees to provide the Recreation Coordinator with office space, use of copier, and office supplies provided that the Coordinator may not use KPBSD office supplies other than those provided to the Coordinator by the KPBSD, or the copier for more than 150 copies per month, without first obtaining advance approval of the building administrator. The CITY shall promptly reimburse the KPBSD for any unauthorized costs incurred by the Coordinator.

The Recreation Coordinator will be responsible for building security when activities are held after hours or they are the sole occupants of the school. The Recreation Coordinator will not be responsible for

security in areas where KPBSD events are concurrently running or activities of groups not associated with Community Recreation are being held.

The Recreation Coordinator is not authorized by this agreement, excepting summer activities otherwise specified in Article 2 or by amendment, to schedule any events or programs that are not part of the Recreation Program and is prohibited from using the school KPBSD facilities, equipment, computer, copier, office space or supplies in any way to schedule any such events or programs. Further, the Coordinator and Recreation Program are not authorized to expand their program offerings in KPBSD facilities beyond the scope of the present status quo for the duration of this agreement without the written consent of all parties involved.

**1.6. IN-KIND SERVICE.** Should the KPBSD determine it necessary to request the CITY to provide snow removal for the Homer High School upper and lower fields and the Homer Middle School football field, the pre-determined costs mutually agreed upon by the CITY and Homer High School administration for this "in-kind" service will reduce the \$6,000 annual fee in the same amount as the total costs of the in-kind service. The KPBSD's "hold harmless" statement in Article 1.8 applies to any in-kind service provided by the CITY.

**1.7. FISCAL AGENT.** The CITY shall act as the sole fiscal agent for the conduct of the Recreation Program Coordinator position in Homer.

**1.8. HOLD HARMLESS.** The CITY shall hold harmless the KPBSD and its officers, directors and employees from and against any and all damages, losses, claims, lawsuits, or liability, including attorney's fees and costs, of every kind arising out of loss, damages, whether tangible or intangible, or injury, including death, to persons or property sustained by the KPBSD, its employees and its volunteers, or any or all of them, from any cause arising out of or in the course of or in connection with its negligent use of KPBSD facilities, equipment and supplies and the performance or negligent performance of both its obligations and those of the Coordinator under this agreement, subject to the appropriation and availability of funds.

The KPBSD shall hold harmless the CITY and its officers and employees from and against any and all damages, losses, claims, lawsuits, or liability, including attorney's fees and costs, of every kind arising out of loss, damage, or injury, including death, to persons or property sustained by the KPBSD, its employees and its volunteers, or any or all of them, from any cause arising out of or in the course of the KPBSD's performance or negligent performance of its obligations under this agreement, subject to the appropriation and availability of funds.

**1.9. INSURANCE.** The KPBSD will maintain comprehensive general liability insurance for claims arising against the activities of the KPBSD pursuant to this agreement. The CITY will maintain comprehensive general liability insurance for claims arising against the CITY concerning the Recreation Program pursuant to this agreement.

**1.10. EQUIPMENT.** The KPBSD has various equipment and supplies used in the conduct of its programs that may, upon request and approval, be made available to facilitate and support the provision of recreational and educational programs conducted under this agreement. It is understood by both the KPBSD and the CITY that equipment or supplies traditionally provided to the Recreation Program will

continue to be made available. The CITY agrees to repair or replace any equipment that may be damaged while in their use or care.

## **ARTICLE 2 – SUMMER FIELD USE**

- 2.1. SCHEDULING OF SUMMER FIELDS.** The CITY will schedule and issue facility use agreements in the summer months for the KPBSD.
- 2.2. SERVICES.** The CITY will provide personnel to schedule various group usages of the Homer High School and Homer Middle School fields within the City of Homer and issue related facility use agreements, waivers and perform incidental related tasks for dates where school is not in session in the months of May through August.
- 2.3. COMPENSATION.** The KPBSD will compensate Homer \$500.00 per summer for these summer scheduling services.
- 2.4. HOLD HARMLESS:** In recognition that the CITY is only providing scheduling services on behalf of the KPBSD and not administering any of the programs or persons that may be using the fields under a KPBSD facility use agreement the KPBSD, to the extent allowed by law and subject to appropriation, shall indemnify, hold harmless, and defend the CITY from and against any claims of, or liability for, any wrongful or negligent act, error, or omission of the KPBSD or any subcontractor with regards to summer use of the fields under a KPBSD facility use agreement. The KPBSD shall not be required to defend or indemnify the CITY for any claims of, or liability for, any wrongful or negligent act, error, or omission solely due to the independent negligence of the CITY. If there is a claim of, or liability for, the joint negligence of KPBSD and the independent negligence of the CITY, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. Apportionment shall be determined upon final determination of percentage of fault. If any such determination is by settlement, the percentage of fault attributed to each party for purposes of this indemnification provision shall only be binding upon the parties included in the settlement agreement. "KPBSD" and the "CITY" as used in this article include the employees, agents, officers, directors, and other contractors who are directly responsible, respectively, to each.

## **ARTICLE 3 – GENERAL CLAUSES**

- 3.1. TERM.** This Agreement is effective for a term commencing August 1, 2014, and ending on June 30, 2016, unless terminated earlier pursuant to Article 3.3 of this Agreement, or unless extended as hereinafter provided in Article 3.2.
- 3.2. RENEWAL.** This Agreement may be extended on a year-by-year basis by mutual written agreement of the parties.
- 3.3. TERMINATION.** Either party may terminate this Agreement in whole or in part at any time without cause by giving written notice to the other party of such termination at least thirty (30) days before the effective date of such termination.



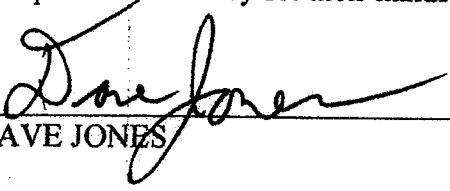
3.4. **AMENDMENT.** This Agreement may be amended only by a written document executed by the parties.

3.5. **AUTHORIZED AGENTS.** The individuals authorized to act as the agents on behalf of the parties to this agreement are:

KENAI PENINSULA BOROUGH SCHOOL KPBSD  
Dave Jones, Assistant Superintendent  
148 North Binkley Street  
Soldotna, Alaska 99669  
907-714-8888

CITY OF HOMER  
Walt Wrede, City Manager  
491 East Pioneer Avenue  
Homer, Alaska 99603  
907-235-8121

The parties do hereby set their hands and seals on the dates provided below.

  
DAVE JONES


WALT WREDE

STATE OF ALASKA )  
  ) ss  
THIRD JUDICIAL KPBSD )

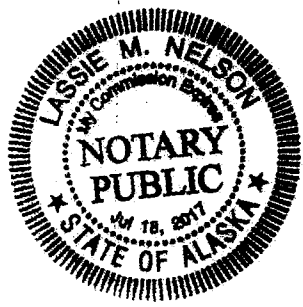
STATE OF ALASKA )  
  ) ss  
THIRD JUDICIAL KPBSD )

SUBSCRIBED AND SWORN TO before me  
this 3 day of Dec, 20 14.

SUBSCRIBED AND SWORN TO before me  
this \_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

  
NOTARY PUBLIC  
My Commission Expires: 7/18/17

NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_





## MEMORANDUM

**TO: MAYOR AND CITY COUNCIL MEMBERS**

**FROM: THOMAS F. KLINKNER**

**RE: CITY ATTORNEY REPORT FOR NOVEMBER 2014**

**CLIENT: CITY OF HOMER**

**FILE NO.: 506,742.18**

**DATE: DECEMBER 5, 2014**

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The following summarizes our activities as City Attorney during the month of November 2014.

City Council. I attended the November 24, 2014, City Council meeting.

City Manager. I advised the City Manager regarding a public records request for attorney billing information related to a zoning appeal. Holly Wells and I conducted research regarding the City's communicating with the public through social media, and advised the City administration regarding a policy for the City's use of social media. I continued to work with the City Manager on the issue of the assessment of condominiums for natural gas distribution system improvements. Amy Limeres represented the City in its response to an employment discrimination complaint.

City of Homer v. Shadle. The Superior Court awarded the City \$10,000 in civil penalties against Mr. Shadle and his company for a zoning violation.

Planning Department. Holly Wells advised the Board of Adjustment on procedural issues in an appeal from the granting of a conditional use permit.

Auction Block Company v. City of Homer. Holly Wells worked on the City's appellee's brief in Auction Block's appeal to the U.S. Court of Appeals for the Ninth Circuit from the Federal Maritime Commission's dismissal of its complaint.

Holly Wells will be available to answer questions regarding these matters at the December 8, 2014, Council meeting.

cc: Walt Wrede  
Jo Johnson



**CITY OF HOMER  
HOMER, ALASKA**

**APPRECIATION AND RECOGNITION**

**WALT WREDE**

**The City of Homer and its residents thank you for caring, sharing,  
and the selfless giving of your time and energy.**

As City Manager from March 2003 to December 2014  
you have accomplished these projects:

Ocean Drive Loop Erosion Control Project; Expansion of water and sewer to areas unserved, including East End Road, Hillside Acres, and Kachemak Drive; Road improvements for East End Road, Spruceview and Noview Roads, and Crittenden and Waddell Way; New Buildings for the Animal Shelter and the Library; City Hall renovation; and New Harbormaster building.

Collaboration in building the Kevin Bell Arena; Conference Center Feasibility Study; Water Treatment Facility and Waste Water Treatment Plant improvements; Implementation of Climate Action Plan; Energy audit on city buildings, implementing measures to reduce energy use by 8%; Public restrooms in town and along the spit trail; and city-wide natural gas distribution line.

Deepwater Dock improvements, East Harbor Expansion, Tidal power feasibility; Revenue bonding plan for Ramp 3 Gangway and Approach, Harbor Float Replacement, System 5 Upgrades, and Load and Launch Ramp; Uplands lease management; Vessel Underway policy, Homer spit parking policy, and harbor dredge materials management.

Acquisition of 160 acres in the Diamond Creek Corridor; Non-Motorized Transportation and Trails Plan; 2006 Arctic Winter Games; Community Recreation as a division of Public Works; Improvements at Karen Hornaday Park ball fields, playground and campground, and Jack Gist Park ball fields and disc golf course; Expanded trail system to include Reber Trail, Beluga Trail, Homer Spit Trail, and West Elementary Trail; and collaboration with Kachemak Nordic Ski Club for ski trail maintenance.

Kenai Peninsula Housing Initiative and Habitat for Humanity property acquisitions; Continued Coast Guard presence in Homer; Homer Coordinated Transportation Plan; Spruce Bark Beetle Mitigation Program in the Homer Reservoir Watershed and Baycrest ski areas; Acquisition of land in the Bridge Creek Watershed to protect the reservoir watershed; and New City of Homer Website.

**Your leadership and management has succeeded in reducing the City's budget,  
the property tax mil rate, and increased the City's financial integrity.**

For this and so much more may you long be remembered by the community as a true leader.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND CAUSED the Seal of the City of Homer, Alaska, to be affixed this 8<sup>th</sup> day of December, 2014.

CITY OF HOMER

\_\_\_\_\_  
MARY E. WYTHE, MAYOR

ATTEST:

\_\_\_\_\_  
JO JOHNSON, MMC, CITY CLERK

