

AIRPORT BOARD
AGENDA
6:00 P.M., WEDNESDAY, AUGUST 14, 2013
ALASKA ROOM

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF MINUTES: Regular Monthly Meeting of July 10, 2013
- IV. APPROVAL OF AGENDA
- V. PUBLIC COMMENTS
- VI. SPECIAL RECOGNITION: Nicole Nelson's achievement of the Girl Scout's Gold Award for her "Fuel the Spark for Art" project at the Airport.
- VII. UNFINISHED BUSINESS
 - A. **Republic Parking Request for Contract Extension to Amortize Proposed New Equipment** (Attachment #1): At the July 10, 2013, Airport Board meeting, a letter (dated July 1, 2013) from Republic Parking was presented which requested a contract extension based on improvements of a new ticketing system (PARCS system). Republic Parking representative, Vince Speziale, will be available at the meeting to discuss the new system and answer any questions. Any contract extension would require an amendment to their current contract.

Board Action: "Motion to grant a seven year extension to the current contract with Republic Parking, through October 31, 2022, to allow for amortization of the new PARCS system equipment with a total cost to Republic of \$204,801.23 (installed)."
 - B. **100th Anniversary of Aviation in Alaska.** Update of where the Airport is on displays. Staff will be requesting assistance/volunteers from Board or others, to help in gathering aviation display memorabilia.
- VIII. NEW BUSINESS
 - A. **Exclusion of Project Labor Agreement (PLA) for the Snow Removal Equipment Facility (SREF) Resolution** (Attachment #2 through #4): In preparation of the final bid documents for the SREF, the Airport must consider whether a PLA will be included in the bid documents. The Airport has used the criteria outlined by the City Assembly and guidance by the City Attorney. The attached documents include the summary memorandum of PLA condition findings, the City Attorney memorandum on PLA (in full), and the 1999 Alaska Attorney General Decision (excerpts; cover page and pages 18-19, full document will be available at the meeting).

Based on the criteria and findings, Staff recommends the exclusion of PLA requirements in the SREF bid documents.

Board Motion: *Board accepts the findings of the Project Labor Agreement, as detailed in the August 6, 2013, Memorandum, and recommends that the Airport Snow Removal Equipment Facility project proceed without the use of a PLA.*

B. Law Department Assessment of Airport Land Leases: CBJ Law has advised the Airport to take steps to ensure the Airport is complying with the lease authorization and approval requirements of CBJ 05.20.020 Administration of airport lands and CBJ 53.20 (re 'Leases,' generally – to which Airport leases are also subject). Under CBJ 53.20, CBJ leases require CBJ Assembly authorization/approval. The Airport's lease provision provides that "... any action required by title 53 of the manager or of the assembly by ordinance or otherwise may be performed by the airport manager or by the airport board by motion respectively." It also provides that ***"[t]he airport manager shall maintain a master plat of the airport depicting all leased lots and areas, and shall have the authority to negotiate leases subject to approval by the airport board."***

In 2008, the Board approved the current lease form, and further Board action with respect to leases is not typically taken. Moreover, the Airport's "Leasing Policy" (approved in 1997 and slightly amended in 2002) is in need of update and revision, as it is not entirely consistent with current CBJ Code. Finally, there may be some practical conflicts in how to harmonize and implement some of the Title 5 and Title 53 leasing requirements (ie, the appraisal provisions). Eventually, the long term goal would be to revise relevant sections of the code, regulations and policies, to clarify the airport-specific land leasing process. Coordination with the Law Dept. will still be required.

Until appropriate reviews/revisions of the Airport Leasing Policy and relevant CBJ Code sections can be completed, and to the extent the approved lease form with lease rates adopted by regulation is used, CBJ Law believes that the Board's lease 'approval' could take the form of a blanket authorization/approval of multiple leases/lots, as long as the scope of the Airport Manager's authority is clearly stated in the Board action. Thus, for instance, the Board could, if it wishes, authorize the Airport Manager to execute leases for identified propert(ies) that are consistent with the Board-approved Master Plan, at the rates set by regulation, using the approved lease form, etc. Any lease not falling within the parameters of the Board's approval action, would require individual approval by the Airport Board.

Board Action: *"Motion authorizing the Airport Manager to negotiate and execute leases for real property surveyed and identified on the Juneau International Airport Layout Plan that are consistent with the current Airport Master Plan (dated 1998), that follow the current Airport Leasing Policy to the extent it is not inconsistent with CBJ Code, that use the lease form approved in 2008, and incorporate the applicable lease rates set out in Airport Rates and Fees Regulation Title 07 CBJAC, Chapter 10."*

C. Glacier Valley Rotary use and charges for Alaska Room (Attachments #5 through #7). On August 17, 2011, Glacier Valley Rotary (GVR) sent a letter to the Airport and Board requesting the use of the Alaska Room for their weekly meetings and be given special consideration on the rates. This matter (and letter) were taken up at the September 14, 2011, Airport Board meeting. Since no agreements and no rates had been established yet, the Board ordered staff and the Finance Committee to come up with “*a preliminary plan*” for the Alaska Room (see September 14, 2011, meeting minutes; pages 1-3 only).

At the October 12, 2011, Airport Board meeting, the Board was presented the recommendation from the Finance Committee. The Board approved “*the interim plan*” which was “*Rotary specific*” for the rate and use. It was hoped that the Airport would have a permanent plan by February 2012, or be at least started. (see October 12, 2011, meeting minutes; pages 1-3 only)

A permanent plan for use and rental of the rental room (specifically, Alaska Room) was not established until July 2013. The Airport contacted Glacier Restaurant regarding the agreement and charges for the room because of their coordination with Glacier Valley Rotary meals and collection of meals, etc. It was at this time that the Airport discovered that the restaurant was not collecting for the room rental as it was not their room. At this time, the Airport contacted Glacier Valley Rotary regarding the interim room fees. There has been a changeover in GVR Presidents and Mr. Bill Peters knew nothing about the outstanding room rentals dating back to October 2011. Mr. Peters contacted past Presidents and there was no collection of dues from their members to cover the room rental. There was never an agreement in place since none had been developed until July 2013.

Mr. Peters on behalf of Glacier Valley Rotary and its members is looking for some compromise on the past due bills. This in light of Rotary contributing through parking and meal charges (percentage to the Airport). Additionally, the \$50 interim fee would now be raised to \$100 corresponding to the time that the room is used for set up, meeting and clean up. As this is outside of the rate schedule established, Glacier Valley Rotary requests this be considered by the Board. GVR contends that they are a weekly guarantee as well as parking fees and restaurant revenues (at least through the end of 2013).

Staff has no recommendations on these two requests and defers to the Board for discussion and direction.

D. New Grants:

1. Runway Rehabilitation Grant (Design)—Staff has submitted a grant application in the amount \$1,875,000 for design of the runway rehabilitation. Matching funds from Airport and ADOT are \$62,500 each.

Board Motion: “*Move to appropriate an AIP Runway Rehabilitation Design grant in the amount \$1,875,000, and Airport and ADOT matching funds in the amount \$62,500 each.*”

2. Master Plan Grant—Staff has submitted a grant application in the amount \$703,125 for a new Airport Master Plan. Matching funds from Airport (\$23,438) and ADOT (\$23,437).

Board Motion: *“Move to appropriate an AIP Airport Master Plan grant in the amount \$703,125, and Airport match of \$23,438, and ADOT match of \$23,437.”*

E. Airport Manager’s Report:

1. Airport Engineer Report (Attachment #8)

2. Airport Architect Report (Attachment #9)

IX. CORRESPONDENCE (Attachment # 10) August 5, 2013, email correspondence received through Juneau Arts and Humanities Council (JAHC) regarding the Airport’s Music on the Fly program.

X. COMMITTEE REPORTS

A. **Wildlife Hazards Working Group**

B. **Finance Committee.** A finance meeting is scheduled for 1:00 p.m., August 20, 2013, to discuss Airport Fund Balance.

C. **Operations Committee**

XI. ASSEMBLY LIAISON

XII. PUBLIC COMMENTS

XIII. BOARD MEMBER COMMENTS

XIV. ANNOUNCEMENTS

XV. TIME AND PLACE OF NEXT MEETING:

A. Airport Finance Committee Meeting, 1:00 p.m., August 20, 2013, Alaska Room

B. Airport Board, 6:00 p.m., September 11, 2013, Alaska Room

XVI. EXECUTIVE SESSION: Culture Survey Results

XVII. ADJOURN



Executive Offices • Republic Centre Suite 2000 • 633 Chestnut Street • Chattanooga • Tennessee • 37450 • 423.756.2771

July 1, 2013

Ms. Patricia deLaBruere
Airport Manager
Juneau International Airport
1873 Shell Simmons Drive, Suite 200
Juneau, AK 99801

Dear Patty,

As a follow up to our conversation last week regarding Republic Parking System's proposal to invest in a new Parking and Revenue Control System (PARCS), I wanted to outline the specific reasons and components of our offer.

The existing PARCS, manufactured by Federal APD was originally installed more than ten years ago. Some additional components of the PARCS have been added over the years, but the technology and central components of the system such as the ticket dispensers and gates are the original pieces. The system does not take advantage of the latest technologies, frequently breaks down causing customer service issues, and is costly to maintain.

RPS has experience working with all PARCS manufacturers, but based upon the unique needs and requirements at Juneau International Airport, we would install a PARCS manufactured by HUB Technologies. This system is identical to the system we use at Fairbanks International Airport. Due to our volume purchasing, we can secure more favorable pricing than the Airport or City could on their own.

This system has several benefits and upgrades from the existing equipment including:

- Intercoms at each of the four entrances for customers to be able to communicate directly with staff
- Greater flexibility for future enhancements and technology
- An automated exit that is reliable, easy to use, and more identifiable to customers
- Greater reporting capability
- Easier to service and maintain – the components are easy to replace. A component that needs repairing would be replaced by a working component and the one needing repair would be sent to Seattle for service.

The total cost of the system is \$204,801.23 including shipping, taxes, and installation.

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Ms. Patricia deLaBruere
July 1, 2013
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Republic Parking System is proposing to make the entire investment based upon a seven year extension to our existing contract under the existing terms and conditions. This will enable us to amortize the investment on a seven year, straight line basis.

As part of the project, we will manage the removal of the existing system and the complete installation of the new system. There will be little need for your staff to be involved or distracted by the project.

Since we have a concession contract at the Airport, the FAA allows us to make an investment in the property in exchange for an extension. The key is for us to make improvements in the property which the PARCS would definitely accomplish.

We would be happy to meet with your Board to answer any questions regarding the benefits and features of the PARCS or the details of our investment and extension proposal.

I look forward to discussing this with you further. In the meantime, please do not hesitate to contact me.

Regards,

A handwritten signature in black ink, appearing to read "Bob Linehart". The signature is fluid and cursive, with the first name "Bob" being more prominent than the last name "Linehart".

Bob Linehart
Chief Operating Officer
Airport Division

C: Gary Beck
Chris Howley
Vince Speziale



To: Amy Gurton Mead, City Attorney

From: Christopher F. Orman, Assistant City Attorney

Date: July 24, 2013

RE: Project Labor Agreements

“A project labor agreement (PLA) is a pre-bid contract between a construction project owner and a labor union (or unions) establishing the union as the collective bargaining representative for all persons who will perform work on the project. A PLA generally requires all bidders on the project to hire workers through the union hiring halls; follow specified dispute resolution procedures; comply with union wage, benefit, seniority, apprenticeship and other rules; and contribute to the union benefit funds.”¹

The Assembly – consistent with the case law – has never adopted a resolution requiring PLAs for certain projects.² Instead, the Assembly passed a motion on March 8, 2008 generally supporting PLAs “to the extent allowed by law.”³ During this argument on the motion, Mayor Botelho stated each PLA would be reviewed “on a case by case

¹ *Laborers Local #942 v. Lampkin*, 956 P.2d 422, 428 (Alaska 1998).

² In 2008, the Assembly considered Resolution No. 2437 which would have required a PLA for all municipal contracts in excess of \$4,000,000. Based on emails including John Hartle and Barbara Ritchie, the resolution was never adopted because a blanket authority would be antithetical to the case law and policies espoused therein. *Lampkin* notes a PLA could be upheld for a myriad of reasons, but the dollar amount of the project alone would not be one of those reasons.

³ Assembly Meeting No. 2008-07 Notes, p. 4-7 (March 10, 2008)



basis . . . applying the law,” even though the Assembly noted a general policy of supporting PLAs. Therefore, in examining whether a PLA would be permitted “to the extent allowed by law” the CBJ must consider: (1) whether the PLA would violate equal protection rights; and (2) whether the PLA undermines the policies underlying the Borough’s procurement code.⁴ Analyzing the validity of a PLA occurs on a case by case basis and when an agency determines – based on its own policy considerations – whether a PLA would be appropriate for a specific project.⁵

I. Equal Protection

“Analysis of claims under the equal protection clause embodied in article 1, section 1 of the Alaska Constitution requires a sliding scale approach that often affords greater protection to individual rights than that provided by the federal constitution.”⁶ When “the right to engage in an economic endeavor” such as to bid on a city project has been infringed, the court considers “whether the [City’s] interest in requiring successful bidders to sign the PLA was important and whether the nexus between that interest and the PLA was close.”⁷

The Alaska Supreme Court has found equal protection rights were not violated by a PLA entered by a borough for a complex school project to ensure the project would be completed on schedule, be below budget, could secure meaningful labor concessions, would be free of labor strife, and would have uniform grievance procedures in place. In

⁴ *Lampkin* at 428 and 432.

⁵ *Id.*; This means the CBJ Law Department analyzes whether a PLA would pass legal muster. The choice on whether to use a PLA rests with the department analyzing the project. A department can always choose to not use a PLA, though the political concerns are clear from the Assembly’s 2008 motion.

⁶ *State Dept. of Transp. & Labor v. Enserch Alaska Constr., Inc.*, 787 P.2d 624, 631 (Alaska 1989).

⁷ *Lampkin*, 956 P.2d at 430.

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Laborer's Local #942 v. Lampkin, the Fairbanks North Star Borough decided to renovate Lathrop High School; a \$20 million project.⁸ This was one of the biggest projects undertaken by the Borough.⁹ Before the bidding process commenced, the Borough Mayor approached the Fairbanks Building and Trades Council.¹⁰ A PLA was produced and a resolution was passed by the assembly which outlined the reasons for the PLA, such as

to meet the construction time schedules for the projects, to ensure that the projects will be completed with qualified Alaskan workers, to ensure that the projects will meet the highest standards of safety and quality, to avoid labor disputes or conflicts, and to promote overall stability.¹¹

The PLA required all contractors to sign the PLA, and all employees under the PLA to join their respective Unions. The PLA established certain grievance procedures, and made the Unions the “sole and exclusive bargaining representatives with respect to rates of pay, hours, and other conditions of employment.”¹² A group of non-union employees filed suit, claiming the PLA violated equal protection rights.¹³ The Alaska Supreme Court ruled the PLA did not violate equal protection rights because: (1) the PLA promoted labor stability; (2) the Borough had previously used PLAs to good results; (3) the project was complex; (4) the PLA ensured the project would be completed in a timely fashion; and (5) by ensuring stability and completing the project in a timely fashion,

⁸ *Id.* at 427.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 428 fn. 2.

¹² *Id.* at 428. This fact makes *Lampkin* unique from cases in other states. See *Associated Builders and Contractors, Inc. v. Southern Nevada Water Authority*, 115 Nev. 151, 979 P.2d 224 (Nev. 1999). Other states have found a PLA did not violate the procurement code if it allowed all contractors to bid, required signing the PLA, but did not require all contractors to join their respective unions. *Lampkin* upheld a PLA in this circumstance. The dissent notes this problem and cites cases to support its analysis.

¹³ *Id.* at 430.

economic savings were likely.¹⁴ As a result, the Alaska Supreme Court concluded the PLA served an important interest and there was a close relationship between the Borough's interest and the PLA which had been entered.¹⁵

Many projects have facts which would prevent a PLA from being rendered unconstitutional for equal protection reasons. A project may be complex in that it requires the use of several general contractors, subcontractors, and laborers wherein organizing the workforce becomes paramount; in particular if the PLA aims to resolve labor disputes through one intermediary. If out of state contractors are being used, then there are economic and labor stability considerations which will arise. Furthermore, a complex project will often be time sensitive; thus a PLA can ensure flexible scheduling to aim to have a task completed on schedule. PLAs can, as a result, create economic savings which can be analyzed and addressed where a PLA is being considered. If such facts exist, a PLA will withstand a constitutional attack for equal protection reasons.

II. Reasonable basis to the interests underling the CBJ's procurement code.

"Because of the overlap between the interests underlying the Borough's procurement code and the "important interests" justifying the Borough's impairment of the right of non-union workers to engage in an economic endeavor [the] analysis of the PLA under the equal protection clause is fundamentally similar to [the] analysis of its validity under the procurement code."¹⁶ Despite the similarity in the analysis, there are certain policy differences. A procurement code's competitive bidding code serves

To prevent fraud, collusion, favoritism, and improvidence in the administration of public business, as well as to insure that the [state] receives the best work or supplies at the most reasonable prices

¹⁴ *Id.* at 431-432.

¹⁵ *Id.*

¹⁶ *Id.* at 435 fn. 17.

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practicable. The requirement of public bidding is for the benefit of property holders and taxpayers, and not for the benefit of the bidders; and such requirements should be construed with the primary purpose of best advancing the public interest.¹⁷

These policies balance competitive bidding with the interests of the public. Therefore, when considering these policies, the validity of a PLA under the procurement code will be based on whether “the Borough had a reasonable basis to determine that the PLA furthered the interests underlying the Borough’s procurement code.”¹⁸ The City cannot provide a “post-hoc rationalization” for the PLA, but must outline the reason via resolution prior to entering a PLA.¹⁹

A PLA in Fairbanks for renovating a high school was reasonably related to Fairbanks’ procurement code’s policies. In *Lampkin*, the Alaska Supreme Court analyzed a PLA for a \$20 million renovation of Lathrop High School.²⁰ The Fairbanks procurement code stated,

Maximum practicable competition. All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage maximum free and open competition in satisfying the borough’s minimum needs.”²¹

The Alaska Supreme Court in interpreting the Fairbanks procurement code, ruled the PLA for the Lathrop School Project reasonably related to the interests of the procurement code because: (1) the project was complex; (2) the PLA ensured flexible scheduling to

¹⁷ *Id.* at 434.

¹⁸ *Id.* at 435.

¹⁹ *Id.* at 433.

²⁰ *Id.*

²¹ *Id.* The CBJ’s procurement code grants more discretion to the assembly and lacks this any broad declaration regarding competition. See CBJ 53.50.050(c)(3) [the contract “shall be awarded to the responsive and responsible offeror **whose proposal is determined to be the most advantageous to the City** and Borough of Juneau.”] Given the history of emails and correspondence between CBJ Law and the assembly, the issue of the procurement code and its scope appears inapplicable here.

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not interfere with students and classes; (3) the PLA ensured flexible scheduling to eliminate potential strikes or other labor difficulties; and (4) the PLA ensured despite the scheduling the costs would be kept to a minimum.²² Therefore, the Alaska Supreme Court found the Fairbanks Borough's PLA "does not violate the mandates of its procurement code" because it had a reasonable basis to granting competition while protecting the public's interests.²³

From Alaska cases and pertinent out of state cases, a list can be created containing the various reasons a PLA has been deemed reasonably related to the interests of a procurement code. In a 1999 Attorney General Decision titled "The Legality of Project Labor Agreements," the State listed the holdings and reasons given by various courts for upholding a PLA. The list includes:

- (1) the construction project is very complex;
- (2) the project is to be constructed over an unusually long period;
- (3) there has been a history of labor strife on past projects concerning the same facility;
- (4) there are demonstrable cost savings or other efficiencies flowing from a project labor agreement;
- (5) the owner-agency is operating under court mandated deadlines;
- (6) there is some unique feature of the project which necessitates the use of an agreement;
- (7) the project unquestionably presents special challenges to the owner-agency;
- (8) the project requires multiple general contracts or an unusually large number of contractors or sub-contractors;

²² *Id.*

²³ *Id.* at 435.

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- (9) the scope of the project could result in conflicts between competing labor unions regarding jurisdiction over the same type of work.²⁴

Examining this list²⁵, the “crux of the court’s concern [is] that the agency show ‘something more’ than a generalized desire for labor stability so that the work will be completed on time.”²⁶ Given the factors provided above are not all inclusive, the CBJ Assembly has recognized a tenth factor: how many projects are occurring in Juneau at the same time.²⁷ This tenth factor recognizes if there are several large projects occurring at the same time the labor force may be depleted; thus a PLA can ensure the work on this specific project will not be delayed and that sufficient and capable workers will be handling the project.

The same facts affirming the legality of a PLA from an equal protection attack are echoed as to the legality of the PLA pursuant to the procurement code analysis. A project may be complex in that it requires the use of several general contractors, subcontractors, and laborers wherein organizing the workforce becomes paramount; in particular if the PLA aims to resolve labor disputes through one intermediary.

²⁴ Joseph Perkins, *Legality of Project Labor Agreements*, 1999 WL 345978 * 11-12 (Alaska A.G. 1999) [“This list of factors is not exhaustive. The cases from which the above list is derived are: *Boston Harbor*, 113 S.Ct, 1190; *Lampkin*, 956 P.2d 422; *New York State Thruway*, 666 N.E.2d 185; *Assoc, Builders v. San Francisco Airports Comm.*, 68 Cal.Rptr.2d 737; *Assoc, Builders v. Metropolitan Water District of So. Cal.*, 69 Cal.Rptr.2d 885 (Cal. App. 1997) review granted, 951 P.2d 1182 (1998); *Enertech Electrical, Inc. v. Mahoning County Commr's.*, 1994 WL 902493 (D.C.N.D. Ohio 1994); *Assoc, Builders v. Mass. Water Resources Auth.*, 1990 WL 86360 (D. Mass. 1990) (the district court decision affirmed in *Boston Harbor*); *Utility Contractors Assoc. v. Commr's of Mass, Dep't of Public Works*, 1996 WL 106983 (Mass. Super. 1996).].

²⁵ Calling these “factors” or a “factor list” may be a misnomer. In *Lampkin*, only three of these factors were present: (1) complex project; (2) involved a school with students, therefore a unique feature existed; and (3) the project required multiple contractors. While the AAG Decision regarding PLAs mentions these as factors, they really constitute a list of holdings from various cases. How many of these holdings must be present to satisfy the procurement code remains unclear, though *Lampkin* provides at least a base level for the analysis.

²⁶ *Lampkin*, 956 P.2d at 433.

²⁷ Noted at CBJ Assembly Meeting 2008-07.

Furthermore, a complex project will often be time sensitive; thus a PLA can ensure flexible scheduling to aim to have a task completed on schedule. A department will also want to examine the cost-savings from a PLA which includes flexible scheduling and creates a uniform policy for handling labor disputes. If such facts exist, a PLA – if a department chooses to use a PLA – will withstand an argument of illegality as to the CBJ's procurement code.

Conclusion

A PLA will be upheld if the City can articulate important reasons for the agreement and show the agreement has a reasonable relationship to the procurement code's policies. Historically, PLAs are used in complex projects, such as renovating a school, because those projects include a myriad of general and sub-contractors ranging from electrical, plumbing, and architects to carpentry, and other more specialized ornamental contractors and work. A PLA in those circumstances will ensure: (1) the labor associated with such a project will remain coordinated no matter other projects transpiring; (2) a large and sufficient labor force; (3) save money by having negotiations and issues dealt with by one intermediary; and (4) avoid unnecessary delays on time sensitive projects. A school renovation for example, triggers all of these concerns and thus a PLA can meet the legal standards outlined herein.

The cost of the project alone – while an aspect in analyzing a project's complexity and certainly could be considered in how a PLA could generate cost savings – is not dispositive.²⁸ This explains why the Assembly resolution was not adopted. Instead, the

²⁸ Of interest, in 2009 President Obama issued an executive order which recommended PLAs for projects costing more than \$25 million. However, Obama's executive order provides some great analysis and language about PLAs, such as not requiring PLAs to be used, but only adopting a policy of their use. This executive order revoked President Bush's executive orders which adopted a more competitive bidding policy.

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focus turns on whether the project will require a myriad of general and subcontractors and if coordinating those groups on a long term project will be served by a PLA.

But the ultimate decision on whether to use a PLA rests with the department. There are no legal precepts requiring a PLA be used; only political (the assembly's possible predilection) and policy reasons (those by the department). If a department believes a PLA will serve the interests and concerns raised by a project, then the legality of that PLA can be examined for risk assessment purposes by the CBJ Law Department. The decision to not use a PLA does not touch upon any legal issues, and thus does not trigger a risk assessment.

CBJ Law Department
MEMORANDUM

To: Amy Gurton Mead, City Attorney

From: Christopher F. Orman, Assistant City Attorney

Date: July 24, 2013

RE: Project Labor Agreements

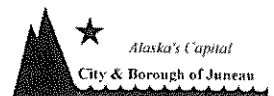
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I. Equal Protection

“Analysis of claims under the equal protection clause embodied in article 1, section 1 of the Alaska Constitution requires a sliding scale approach that often affords greater protection to individual rights than that provided by the federal constitution.”⁶ When “the right to engage in an economic endeavor” such as to bid on a city project has been infringed, the court considers “whether the [City’s] interest in requiring successful bidders to sign the PLA was important and whether the nexus between that interest and the PLA was close.”⁷

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¹³ *Id.* at 430.

economic savings were likely.¹⁴ As a result, the Alaska Supreme Court concluded the PLA served an important interest and there was a close relationship between the Borough's interest and the PLA which had been entered.¹⁵

Many projects have facts which would prevent a PLA from being rendered unconstitutional for equal protection reasons. A project may be complex in that it requires the use of several general contractors, subcontractors, and laborers wherein organizing the workforce becomes paramount; in particular if the PLA aims to resolve labor disputes through one intermediary. If out of state contractors are being used, then there are economic and labor stability considerations which will arise. Furthermore, a complex project will often be time sensitive; thus a PLA can ensure flexible scheduling to aim to have a task completed on schedule. PLAs can, as a result, create economic savings which can be analyzed and addressed where a PLA is being considered. If such facts exist, a PLA will withstand a constitutional attack for equal protection reasons.

II. Reasonable basis to the interests underling the CBJ's procurement code.

"Because of the overlap between the interests underlying the Borough's procurement code and the "important interests" justifying the Borough's impairment of the right of non-union workers to engage in an economic endeavor [the] analysis of the PLA under the equal protection clause is fundamentally similar to [the] analysis of its validity under the procurement code."¹⁶ Despite the similarity in the analysis, there are certain policy differences. A procurement code's competitive bidding code serves

To prevent fraud, collusion, favoritism, and improvidence in the administration of public business, as well as to insure that the [state] receives the best work or supplies at the most reasonable prices

¹⁴ *Id.* at 431-432.

¹⁵ *Id.*

¹⁶ *Id.* at 435 fn. 17.

practicable. The requirement of public bidding is for the benefit of property holders and taxpayers, and not for the benefit of the bidders; and such requirements should be construed with the primary purpose of best advancing the public interest.¹⁷

These policies balance competitive bidding with the interests of the public. Therefore, when considering these policies, the validity of a PLA under the procurement code will be based on whether “the Borough had a reasonable basis to determine that the PLA furthered the interests underlying the Borough’s procurement code.”¹⁸ The City cannot provide a “post-hoc rationalization” for the PLA, but must outline the reason via resolution prior to entering a PLA.¹⁹

A PLA in Fairbanks for renovating a high school was reasonably related to Fairbanks’ procurement code’s policies. In *Lampkin*, the Alaska Supreme Court analyzed a PLA for a \$20 million renovation of Lathrop High School.²⁰ The Fairbanks procurement code stated,

Maximum practicable competition. All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage maximum free and open competition in satisfying the borough’s minimum needs.”²¹

The Alaska Supreme Court in interpreting the Fairbanks procurement code, ruled the PLA for the Lathrop School Project reasonably related to the interests of the procurement code because: (1) the project was complex; (2) the PLA ensured flexible scheduling to

¹⁷ *Id.* at 434.

¹⁸ *Id.* at 435.

¹⁹ *Id.* at 433.

²⁰ *Id.*

²¹ *Id.* The CBJ’s procurement code grants more discretion to the assembly and lacks this any broad declaration regarding competition. See CBJ 53.50.050(c)(3) [the contract “shall be awarded to the responsive and responsible offeror **whose proposal is determined to be the most advantageous to the City** and Borough of Juneau.”] Given the history of emails and correspondence between CBJ Law and the assembly, the issue of the procurement code and its scope appears inapplicable here.

not interfere with students and classes; (3) the PLA ensured flexible scheduling to eliminate potential strikes or other labor difficulties; and (4) the PLA ensured despite the scheduling the costs would be kept to a minimum.²² Therefore, the Alaska Supreme Court found the Fairbanks Borough's PLA "does not violate the mandates of its procurement code" because it had a reasonable basis to granting competition while protecting the public's interests.²³

From Alaska cases and pertinent out of state cases, a list can be created containing the various reasons a PLA has been deemed reasonably related to the interests of a procurement code. In a 1999 Attorney General Decision titled "The Legality of Project Labor Agreements," the State listed the holdings and reasons given by various courts for upholding a PLA. The list includes:

- (1) the construction project is very complex;
- (2) the project is to be constructed over an unusually long period;
- (3) there has been a history of labor strife on past projects concerning the same facility;
- (4) there are demonstrable cost savings or other efficiencies flowing from a project labor agreement;
- (5) the owner-agency is operating under court mandated deadlines;
- (6) there is some unique feature of the project which necessitates the use of an agreement;
- (7) the project unquestionably presents special challenges to the owner-agency;
- (8) the project requires multiple general contracts or an unusually large number of contractors or sub-contractors;

²² *Id.*

²³ *Id.* at 435.

ATTACHMENT #3

- (9) the scope of the project could result in conflicts between competing labor unions regarding jurisdiction over the same type of work.²⁴

Examining this list²⁵, the “crux of the court’s concern [is] that the agency show ‘something more’ than a generalized desire for labor stability so that the work will be completed on time.”²⁶ Given the factors provided above are not all inclusive, the CBJ Assembly has recognized a tenth factor: how many projects are occurring in Juneau at the same time.²⁷ This tenth factor recognizes if there are several large projects occurring at the same time the labor force may be depleted; thus a PLA can ensure the work on this specific project will not be delayed and that sufficient and capable workers will be handling the project.

The same facts affirming the legality of a PLA from an equal protection attack are echoed as to the legality of the PLA pursuant to the procurement code analysis. A project may be complex in that it requires the use of several general contractors, subcontractors, and laborers wherein organizing the workforce becomes paramount; in particular if the PLA aims to resolve labor disputes through one intermediary.

²⁴ Joseph Perkins, *Legality of Project Labor Agreements*, 1999 WL 345978 * 11-12 (Alaska A.G. 1999) [“This list of factors is not exhaustive. The cases from which the above list is derived are: *Boston Harbor*, 113 S.Ct. 1190; *Lampkin*, 956 P.2d 422; *New York State Thruway*, 666 N.E.2d 185; *Assoc. Builders v. San Francisco Airports Comm.*, 68 Cal.Rptr.2d 737; *Assoc. Builders v. Metropolitan Water District of So. Cal.*, 69 Cal.Rptr.2d 885 (Cal. App. 1997) review granted, 951 P.2d 1182 (1998); *Enertech Electrical, Inc. v. Mahoning County Commr’s.*, 1994 WL 902493 (D.C.N.D. Ohio 1994); *Assoc. Builders v. Mass. Water Resources Auth.*, 1990 WL 86360 (D. Mass. 1990) (the district court decision affirmed in *Boston Harbor*); *Utility Contractors Assoc. v. Commr’s of Mass. Dep’t of Public Works*, 1996 WL 106983 (Mass. Super. 1996).].

²⁵ Calling these “factors” or a “factor list” may be a misnomer. In *Lampkin*, only three of these factors were present: (1) complex project; (2) involved a school with students, therefore a unique feature existed; and (3) the project required multiple contractors. While the AAG Decision regarding PLAs mentions these as factors, they really constitute a list of holdings from various cases. How many of these holdings must be present to satisfy the procurement code remains unclear, though *Lampkin* provides at least a base level for the analysis.

²⁶ *Lampkin*, 956 P.2d at 433.

²⁷ Noted at CBJ Assembly Meeting 2008-07.

Furthermore, a complex project will often be time sensitive; thus a PLA can ensure flexible scheduling to aim to have a task completed on schedule. A department will also want to examine the cost-savings from a PLA which includes flexible scheduling and creates a uniform policy for handling labor disputes. If such facts exist, a PLA – if a department chooses to use a PLA – will withstand an argument of illegality as to the CBJ's procurement code.

Conclusion

A PLA will be upheld if the City can articulate important reasons for the agreement and show the agreement has a reasonable relationship to the procurement code's policies. Historically, PLAs are used in complex projects, such as renovating a school, because those projects include a myriad of general and sub-contractors ranging from electrical, plumbing, and architects to carpentry, and other more specialized ornamental contractors and work. A PLA in those circumstances will ensure: (1) the labor associated with such a project will remain coordinated no matter other projects transpiring; (2) a large and sufficient labor force; (3) save money by having negotiations and issues dealt with by one intermediary; and (4) avoid unnecessary delays on time sensitive projects. A school renovation for example, triggers all of these concerns and thus a PLA can meet the legal standards outlined herein.

The cost of the project alone – while an aspect in analyzing a project's complexity and certainly could be considered in how a PLA could generate cost savings – is not dispositive.²⁸ This explains why the Assembly resolution was not adopted. Instead, the

²⁸ Of interest, in 2009 President Obama issued an executive order which recommended PLAs for projects costing more than \$25 million. However, Obama's executive order provides some great analysis and language about PLAs, such as not requiring PLAs to be used, but only adopting a policy of their use. This executive order revoked President Bush's executive orders which adopted a more competitive bidding policy.

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focus turns on whether the project will require a myriad of general and subcontractors and if coordinating those groups on a long term project will be served by a PLA.

But the ultimate decision on whether to use a PLA rests with the department. There are no legal precepts requiring a PLA be used; only political (the assembly's possible predilection) and policy reasons (those by the department). If a department believes a PLA will serve the interests and concerns raised by a project, then the legality of that PLA can be examined for risk assessment purposes by the CBJ Law Department. The decision to not use a PLA does not touch upon any legal issues, and thus does not trigger a risk assessment.

MEMORANDUM

State of Alaska

Department of Law

TO: Joseph L. Perkins, P.E.
Commissioner
Department of Transportation

DATE: January 6, 1999

FILE NO.: 665-98-0098

TELEPHONE NO.: 451-2811

SUBJECT: Legality of Project Labor
Agreements

FROM: Paul R. Lyle
Assistant Attorney General

INTRODUCTION

The Department of Transportation and Public Facilities (department) is exploring the use of a specification in selected rural airport construction contracts that requires successful bidders to enter into project labor agreements. The agreements would require the contractor to obtain workers for that project exclusively through a union or trade council job referral system that would recruit and train workers, "including those in the immediate community," to perform work on the project. You have asked whether project labor agreements may be lawfully required in airport construction contracts in rural communities. While our opinion is tailored to this specific issue, the analysis in this opinion applies to all departmental construction projects.

The draft specification we have reviewed appears to require the successful bidder to negotiate a project labor agreement after obtaining a construction contract. However, project labor agreements are usually negotiated between owners and unions before the contract is advertised for bids. *See, e.g., Building & Trades Council v. Associated Builders and Contractors*, 113 S.Ct. 1190, 1192-93 (1993) ("*Boston Harbor*"). This approach is necessary in order to ensure a level competitive playing field for prospective bidders. Bidders cannot bid on a contract if they cannot ascertain the labor rules with which they will be required to comply once the contract is awarded. Therefore, this memorandum assumes that the department would undertake to negotiate with an appropriate trades council the terms of the project labor agreement before any rural airport construction project requiring use of a project labor agreement was put out to bid. The project labor specification would need to be revised to require the successful bidder to sign the project labor agreement as a condition precedent to the award of the contract.

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Joseph L. Perkins, P.E., Commissioner
Department of Transportation & Public Facilities
A.G. file no: 665-98-0098

January 6, 1999
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advancement of the interests embodied in the competitive bidding statutes.

666 N.E.2d at 190 (emphasis added).

If the department proceeds with a project labor agreement, with or without first seeking to amend the procurement regulations, then it should be prepared to demonstrate the state's specific needs for the agreement. In addition, the department should be prepared to demonstrate the rational relationship between the terms of the agreement and the twin goals of obtaining the best work at the lowest price and the prevention of favoritism, fraud or improvidence in the award of the contract. It will be especially important for the department to demonstrate how the agreement "promotes overall economy" for the project in order to comply with AS 36.30.060(c).

It would be advisable for the department to prepare a record of decision that sets out, in writing, the specific state needs (unrelated to regional hire) that would be met by the terms of a project labor agreement.¹⁵ An agreement could then be negotiated with a trades council that satisfactorily meets those needs. If the department does not first seek to have the Department of Administration change the procurement regulations, it will also be necessary for the department to explain why the state's needs cannot be met through any less restrictive specification than one mandating that project labor be acquired from a single source and why no other manner of project hiring will suffice. 2 AAC 12.090; 2 AAC 12.790.

Examples of cases upholding the use of project labor agreements under competitive bidding laws include those where:

- (1) the construction project is very complex;
- (2) the project is to be constructed over an unusually long period;
- (3) there has been a history of labor strife on past projects concerning the same facility;

¹⁵ The record of decision envisioned here would be similar to the decisional document prepared in state condemnation cases. See *Ship Creek Hydraulic Syndicate v. State*, 685 P.2d 715 (Alaska 1984).

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Joseph L. Perkins, P.E., Commissioner
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- (4) there are demonstrable cost savings or other efficiencies flowing from a project labor agreement;
- (5) the owner-agency is operating under court-mandated deadlines;
- (6) there is some unique feature of the project that necessitates the use of an agreement;
- (7) "[t]he project unquestionably present[s] special challenges" to the owner-agency, *Lampkin*, 956 P.2d at 435;
- (8) the project requires multiple general contracts or an unusually large number of contractors or subcontractors;
- (9) the scope of the project could result in conflicts between competing labor unions regarding jurisdiction over the same type of work.¹⁶

As stated earlier, *post-hoc* rationalizations for the adoption of a project labor agreement will not be tolerated by the supreme court. *Lampkin*, 956 P.2d at 433; *New York State Thruway*, 666 N.E.2d at 193-94. A generalized "desire for labor stability so that work will be completed on time" will also be insufficient to sustain the use of a project labor agreement under the procurement code. *Lampkin*, *id.* (quoting *New York State Thruway*, *id.*).

Project labor agreements that "have as their purpose social policy making, such as remedying racial and gender bias, will not be sustained." *New York State Thruway*, 666 N.E.2d at 194. In addition to being unconstitutional, a project labor

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MEMORANDUM

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Joseph L. Perkins, P.E., Commissioner
Department of Transportation & Public Facilities
A.G. file no: 665-98-0098

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Joseph L. Perkins, P.E., Commissioner
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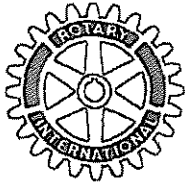
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ATTACHMENT #5



Glacier Valley Rotary Club
P.O. Box 34418
Juneau, AK 99803

August 17, 2011

RECEIVED

AUG 17 2011

Juneau International
Airport

Jerry Godkin, Chair
Juneau International Airport Board of Directors
and Jeannie Johnson, Airport Manager
1873 Shell Simmons Dr., Ste. 200
Juneau, Ak 99801

Re: Use of the Alaska Room – Juneau Glacier Valley Rotary Club

Dear Jerry,

This letter is directed to both you and the entire Juneau Airport Board by way of providing some history and other background information as the board reached a point of making decisions on the use of the new "Alaska Room". Needless to say, access and cost for the weekly use of the new room is of great interest to our club, which has made its home at the airport for many years. I would like to give you a short overview on our Rotary club, take you back to the days of the Taku Room, and describe our involvement in the new Alaska room.

Juneau Glacier Valley Rotary Club was formed in 1964 currently has about 65 members. The very nature of Rotary is that each member represents the top of their respective business or profession, typically being the owner or primary manager of the company. In Glacier Valley Rotary's case, our members range from the University of Alaska Southeast, the Juneau School District Administration, insurance, banking, and contracting, medical, real estate, on to a variety of privately owned and operated businesses. Rotary's motto is "Service Above Self", and the club sponsors many worthwhile events, provides scholarships to graduating seniors and volunteers countless hours over the course of a year.

Seeking a home: By virtue of the club's name, holding our weekly meetings in the "the valley" has always been a priority. When the club was first formed, it was so small that members met at tables in the old Glacier Restaurant overlooking the runway. As membership grew they moved into a small meeting room off the restaurant. However, as the club grew even more we were forced to seek a larger meeting space, and for a number of years we were very nomadic as we looked for a permanent location.

Following the first major expansion of the Juneau International Airport, there was a large unfinished space on the second floor, designed with the future in mind. It sat vacant and unused. It had an unfinished concrete floor, no window coverings, open ceiling and no other amenities. Glacier Valley Rotary approached the airport to determine if we could use the room. We agreed to pay for and provide all the tables and chairs, and eventually assisted with the cost of window coverings for part of the room. In exchange for our investment in furniture, we were allowed to use the room for no additional charge. The "Taku" room was born, and soon other groups,

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looking for larger meeting space in the valley, found this room to be perfect to hold a variety of receptions and other events. There was clearly a community need.

Move to the Aurora Room: However, the Taku Room was eventually closed and the space leased to the FAA, clearly an opportunity to have the space generate revenue. Rotary was moved to another vacant space on the ground floor of the old end of the airport. As part of that move, the airport remodeled the room and ensured that a room was still available for a variety of events. Rotary continued to provide the tables (we purchased the 8-foot white tables in the Aurora room in 1992), and eventually paid for the installation of an overhead projector for its meetings, making sure it was available to anyone using the room. We have always tried to maintain a spirit of cooperation and collaboration with the airport staff and with other users of the room and hope that spirit continues.

Latest remodel of the airport: The Rotary club's growth pressured the capacity of the Aurora room and the topic of finding larger space was back on the table. But consistent access, parking and catering were the positive attributes of the location that kept us in place. However, the moment there was an indication that a new expansion would take place; Rotary started a dialogue with the management of the airport (Dave Palmer) to lobby for the return of the "Taku Room" to accommodate larger groups, and provide for the club's weekly meetings. Members of the Rotary club, along with other community members, testified as to the need for this community room and encouraged it's inclusion in the final design of the remodel.

Consistent throughout this process, was Glacier Valley Rotary's expectation that the club would have access to any new room with an arrangement that mirrored the same level of fairness and cooperation as had been in place for more that twenty years. The club waited patiently for the remodel to be complete, and the space sorted out. As the club brought Rotary year 2010 to a close, the board made a decision to purchase an expensive but extremely functional podium to accommodate today's technology, in anticipation of moving into the new room very soon. The club had also offered to provide a new overhead projector for use in the room. The only other special need that Rotary has is for some type of storage closet for the various trappings of a weekly meeting (banners, badges, bell, awards etc.)

Current concerns: During the last several months as we checked on the status of moving in, the club became aware that the airport board was considering a change in how the new room would be managed and priced. In a recent meeting with the airport manager, it became very apparent that the room would be managed much like the rooms at Centennial Hall, and would be treated as a source of revenue for the airport, and in turn holding down operating costs. Certainly no one could disagree with that concept.

While we respect the need for additional revenue, we also must point out that there are no weekly meetings being held at Centennial Hall, primarily due to cost. For an organization like ours that meets weekly, the rate for use of the space would have to be very accommodating considering the consistent revenue versus the inconsistent use for one-off events. Rotary is held in high regard world-wide and posting a bronze plaque stating "Rotary meets here" is an asset to wherever the location happens to be.

ATTACHMENT #5

We appreciate you taking the time to read this. We also ask that the Juneau Glacier Valley Rotary Club be given special consideration for the use of the new Alaska Room, different that what might prove to be the "retail" rate. The work done by our membership has an impact on this community, our long history with the airport, and our commitment to working with the needs of the airport, should be taken into consideration as you set policies for the management and use of this room. We also hope to begin using the space soon, and don't understand the long delay in the public being able to use the room that the public advocated for throughout the design process.

We stand ready to discuss a fair arrangement for both sides.

Respectfully

A handwritten signature in black ink, appearing to read "Chris Letterman", with a stylized flourish at the end.

Chris Letterman, President
Juneau Glacier Valley Rotary

ATTACHMENT #6

MINUTES of
AIRPORT BOARD MEETING
September 14, 2011
Alaska Room, 7:00 p.m.

I. **CALL TO ORDER**: Chair Jerry Godkin called the meeting to order at 7:01 p.m.

II. **ROLL CALL**:

Members Present:

Pete Carlson

Jerry Godkin

Ron Swanson

David Epstein

Butch Laughlin

Steve Zimmerman

Member Absent:

Tamara Cook

Staff/CBJ Present:

Jeannie Johnson, Airport Manager

Marc Cheatham, Airport Special

Patty deLaBruere, Deputy Airport Manager

Projects Officer

John Coleman, Airport Business Manager

Keith Walker, CCF/R

Catherine Fritz, Airport Architect

Public Present:

Sarah Day, Juneau Empire

Chris Letterman, Glacier Valley Rotary

Irene Gallion, DOWL/LEPC

Max Mertz, Resident

Ella Rogers, Glacier Restaurant

III. **APPROVAL OF MINUTES**: *Steve Zimmerman moved, Ron Swanson seconded, the adoption of the August 10, 2011, regular monthly meeting minutes as amended. Steve Zimmerman noted a change on page 4 of 6, under Committee Reports, change the numbers "3" and "4" to numbers "1" and "2." The motion passed by unanimous consent.*

IV. **APPROVAL OF AGENDA**: Airport Manager Jeannie Johnson asked to add bid openings for the remodel of the 1984 portion of the terminal under Unfinished Business. The second item is Ms. Johnson asked if the Board liked the set up of the tables. A sound system needs to be installed and in order to do that, some channels will be installed under the tables. The Board liked the current set up. *Steve Zimmerman moved, Ron Swanson seconded, to approve the agenda as amended. The motion passed by unanimous consent.*

V. **PUBLIC COMMENTS**: None.

AIRPORT BOARD MEETING

September 14, 2011

Page 2

VI. **UNFINISHED BUSINESS:**

A. **Bid Openings for the Remodel of the 1984 Section of the Front Entry Renovation of the Terminal:** Airport Architect Catherine Fritz said bids were opened earlier today. This project will take the diagonal piece of the main entry of the terminal and replace it with a canted out wall with the same vernacular that was used in the new 2010 addition. Four bids were received for the base bid and one additive alternate. The alternate was for a piece of canopy to ensure a continuous canopy all the way from the old north end throughout the terminal frontage. Sufficient funds are available to award both the base bid and the alternate. The lowest bid was exactly what the architect's estimate was and the other three were slightly higher than the estimate. The lower bidder was McGraw's Custom Construction, which is the same contractor the Airport recently had. This will go before the Assembly on Monday night. The award usually takes place within a couple of weeks. The project will begin in early February, with substantial completion scheduled for approximately May 26, 2012. Board Member Ron Swanson said that when discussion about this began, there was a consideration to make this an add-on to the contract or adding a significant amount to go out to bid. He asked what cost was incurred to go out to bid. Ms. Fritz replied there was no guarantee as it would have been a negotiated price, which may have been more or less expensive. The cost of bidding this project is estimated at \$20,000 to \$25,000 for advertising, bidding, preparation by the Engineering Department staff and those kinds of things. The designers were paid \$75,000, which would have been about half of that because the designers would have been able to do less than they had to do for complete specifications.

VII. **NEW BUSINESS:**

A. **Glacier Valley Rotary Letter dated August 17, 2011 (Attachment #1):** Ms. Johnson said a letter was received from Glacier Valley Rotary, who is very interested in using the Alaska Room for their meetings. They have met for many years in the airport. On Monday, Jerry Godkin, Pete Carlson and Ms. Johnson met with Chris Letterman, Max Mertz and Craig Dahl of Glacier Valley Rotary to discuss this letter. Primarily, the discussion centered around the rate for the room. In Ms. Johnson's research, in comparison to Centennial Hall and the Baranof the rate for a not-for-profit group would be \$100 to \$125 for a one- to four-hour use. Rotary feels that this would be a budget buster for them and they would like to request a different figure than that. She thought the issue should be forwarded to the Finance Committee so that staff can lay out more of the facts and figures in a working session and have them bring back a recommendation to the full Board.

One of the things the airport is concerned about is that this is not a clubhouse room. It is a room that has been set up for revenue generation and, certainly, the convenience and the enjoyment of the community and Rotary is a part of that community. The big issue is what is set as a rate for a not-for-profit organization is what has to be charged to all not-for-profit organizations. *Ron Swanson moved, David Epstein seconded, that staff come up with a preliminary plan for the rental of the Alaska Room, submit it to the Finance*

AIRPORT BOARD MEETING

September 14, 2011

Page 3

Committee and the Finance Committee bring it back to the Board for further discussion. Ms. Johnson said that the first piece is what to charge not-for-profit organizations. She noted there are many other pieces to this: such as catering agreements, use agreement, parking, storage. She wanted to meet with the Finance Committee some time during the first week in October to discuss this rate. Board Member Ron Swanson suggested coming up with an interim plan. Max Mertz said that because of the lease agreement that ESS has with the Airport, Rotary's agreement is with ESS. He didn't think that anyone in the club expected free use. The number that they came up with is about \$2,600 per year, which works out to about \$50 a meeting. This excludes parking and meals. He noted that at the Baranof, you pay a meal rate for the use of the room, not a room charge. He felt this was a reasonable charge. Rotary will be happy to be flexible. *The motion passed by unanimous consent.* Ms. Johnson said information on the going rates will be given to the Finance Committee, which will then be forwarded to the Board.

B. Airport Manager's Report:

1. Sand Shed Painting Costs: At the last meeting, a Board Member said just paint the sand shed. Ms. Johnson said research was done on just painting the sand shed – paint over rust (POR). Most painters did not want the project due to the effect on their reputation. The one bid received was for one coat, no preparation, paint over rust for \$16,785, including tax. This painter said that power washing would be an additional \$6,800. If the building was primed, it would cost an additional \$9,100. Board Member Butch Laughlin brought up the money the Lokens have paid for placing membrane across the seams between the buildings. Ms. Johnson said that the Loken hangar was built second and the problem was created when it was built.
2. Visit by Byron Huffman, Manager FAA Airports Division, Alaska Region and Others: Ms. Johnson said that Byron Huffman, the Manager of FAA Airports Division, Alaska Region, spent a day at the airport. He came down to look at the RSA project. He met with Ms. Johnson and Ms. Fritz. He was shown the shop and sand shed. He could not believe all of the material that had come from the float pond. He was very impressed with the project.

On September 13, the following people from the FAA Airports Division came to Juneau: Jim Lomen, the Deputy Division Manager; John Lovett, the Lead Civil Engineer; Pat Oien, the Lead Capacity Planner; and Mike Edelman, the Project Manager. Discussions occurred about money, future funding, the finishing up of the RSA and the timing for that. They were driven around to see the project. This was a good visit. Chair Godkin asked Ms. Johnson to draft a letter to Mr. Huffman from the Board. He is a remarkable person as shown by e-mails and correspondence he sent during the last few weeks. Mr. Huffman clarified that Ms. Johnson had been in line with what he had been directing her to do. He was taken back by a letter sent to the City Manager by another FAA employee. It put the issue to rest.

ATTACHMENT #7

MINUTES of
AIRPORT BOARD MEETING
October 12, 2011
Alaska Room, 7:00 p.m.

I. **CALL TO ORDER:** Chair Jerry Godkin called the meeting to order at 7:01 p.m.

II. **ROLL CALL:**

Members Present:

Pete Carlson	Jerry Godkin	Ron Swanson
Tamara Cook (via phone)	Butch Laughlin	Steve Zimmerman
David Epstein		

Staff/CBJ Present:

Jeannie Johnson, Airport Manager	Marc Cheatham, Airport Special
Patty deLaBruere, Deputy Airport Manager	Projects Officer
John Coleman, Airport Business Manager	Mark Lykins, Sr. Equipment Operator
Catherine Fritz, Airport Architect	Merrill Sanford, CBJ Assembly

Public Present:

Sarah Day, Juneau Empire	Robert Breffeilh, Hangar Owner
Irene Gallion, DOWL/LEPC	Chris Letterman, Glacier Valley Rotary

III. **APPROVAL OF MINUTES:** *Steve Zimmerman moved, Ron Swanson seconded, the adoption of the September 14, 2011, regular monthly meeting minutes. Ron Swanson said that Catherine Fritz gave a presentation on the bid opening for McGraw and he had asked and gotten the answer at the meeting. He asked to have this added to the minutes.*

IV. **APPROVAL OF AGENDA:** *Steve Zimmerman moved, Ron Swanson seconded, to approve the agenda. The motion passed by unanimous consent.*

V. **PUBLIC COMMENTS:** None.

VI. **UNFINISHED BUSINESS:**

A. **Winter Meeting Times:** Proposed 6 P.M. October through March – Ron Swanson suggested this meeting time be considered as he found himself waiting for the 7:00 start time during the winter. If it is okay with other Board Members, the meeting could start earlier and finish earlier. He noted another consideration is the operating times of the air taxi operators and they would be done by this time during the winter. *Ron Swanson moved, David Epstein seconded, from October through March the meeting time starts at 6:00 p.m. until completion. The motion passed by unanimous consent.*

B. **Not for Profit Rate for Alaska Room** (Attachment #1) - Finance Committee Report and Recommendations: Airport Manager Jeannie Johnson said that the Finance

ATTACHMENT #7

AIRPORT BOARD MEETING

October 12, 2011

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Committee met on October 11. All members were present and four public members (members of Rotary) were present. Mark Cheatham put together a PowerPoint presentation on the rental rates on various rooms around town. The bottom line is that while ESS is catering and with the goal of getting Rotary in the room as quickly as possible, the Committee set a temporary rate of a minimum of \$75 per week, which includes a \$50 base rental rate and \$25 of concession income. This meeting will tie the room up for about three hours. Once the Airport has the concession agreements in place for other caterers to come in, the rate will go to \$100 minimum, which will be a \$50 room rental rate, plus the additional will be made up with concession fees. The reason for the difference is that the concession rate with ESS is at 4%, which is very, very low. This seemed to be something that will work for Rotary. Mr. Swanson asked why the Board is setting the concession rates. Ms. Johnson said that the concession fees are what the Airport gets from the food sales. When ESS sells a meal, they pay 4% of that price to the Airport. This is a base rental fee of \$50 and the way the Airport can get it to \$75 to cover the staff time, is to supplement the \$50 with a concession fee that the Airport gets. The Airport would get this amount from ESS anyway, but the Airport is trying to be community friendly as Rotary cannot pay more than \$50.

Tam Cook asked how the rate would compare to the cost of a regular user. That rate has not been set yet as the Finance Committee meeting was to set the not-for-profit rate simply because Rotary needs to get into the room. Ms. Cook had an objection to giving a non profit a break that is excessive as the City & Borough is a non-profit itself. When you consider the public interest, she was not sure that the Airport Board should give a very huge discount to non-profits. She felt this was putting the cart before the horse. David Epstein said the Rotary was asking for a volume discount as they meet every week. He asked if the Manager had spoken to Law. Ms. Johnson said Jane Sebens had not been available. Mr. Epstein said the 4% is status quo until such time as the contract expires and then whoever comes in afterwards will not likely have 4%. Ms. Johnson said ESS will not be the only ones catering in this room and ESS has been notified that ESS will apply the same way that another caterer will for this room. The Airport will negotiate a concession rate across the board with each one of the caterers. The rate will be set, but a 4% concession rate for food at an airport is extremely low. Ms. Johnson said that her understanding was the Board wanted to get something in the interim to get Rotary into the Alaska Room, which is what is being done. She did not feel this was a cut rate. She said both for-profit rates and not-for-profit rates have been reviewed. Mr. Swanson said Ms. Johnson has done this under the Board's direction to meet with the Finance Committee and come up with an interim plan as the Airport had a willing renter and the Airport wasn't sure if they were a willing landlord. It turns out that the Airport is in the interim and this is the interim plan to accommodate a willing renter. This will bring in income. He noted that although the City is not-for-profit, the Airport sort of is and must keep its head above water. He felt that the room should be rented, even though a permanent

AIRPORT BOARD MEETING

October 12, 2011

Page 3

plan is not in place. Ms. Cook asked how long this will be an interim plan. Ms. Johnson said her goal is by the end of the year staff will have the concession contracts ready to go through law and whoever is interested in dealing with those has the ability to sign up. She said that Ms. Cook had suggested whatever is done for a not-for-profit organization should be a percentage of what we do for a for-profit business. *Ron Swanson moved, Steve Zimmerman seconded, to approve the interim plan as presented by Ms. Johnson until February 2012, which is Rotary specific. By February, the permanent plan for the room should be at least started. The motion passed by unanimous consent.*

VII. **NEW BUSINESS:**

A. **AIP Grant:** The Airport has received FAA grant AIP54 in the amount \$6,301,428 for the Runway Safety Area (RSA) project, and a State of Alaska DOT matching grant in the amount \$161,575. Ms. Johnson said this is what you call running an airport on the installment plan. Because Congress only gives the authorization for FAA to operate in little bits and spurts, that is how the Airport gets its money. Although \$6.3 million is not a little money, it makes FAA staff and City staff work harder to put the grants together for installments. This will go toward paying for Runway Safety Area construction. *David Epstein moved, Pete Carlson seconded, that the Airport Board approve the appropriation of AIP54, \$6,301,428, as well as the State of Alaska matching grant in the amount \$161,575. The motion passed by unanimous consent.*

B. **Airport Manager's Report:**

1. Condolences: Ms. Johnson extended the condolence of the entire Airport staff to Mr. Godkin for the loss of his father.
2. Field Maintenance Staffing: Jerry Mahle is home and doing better. Mark Lykins is now the Acting Airport Maintenance & Operations Superintendent and was in attendance at the meeting. He is doing an excellent job. Bob Simpson retired from the Airfield crew. Lamar Riddle moved into Mr. Simpson's position. Everyone is getting ready for winter and working very hard as they are short-handed.
3. Sand Shed Paint Update: Ms. Johnson reported Aral Loken said they paid \$13,800 to have the Coastal Helicopters building painted. This compares to the one quote for the same work at \$32,500. The Loken contractor was not licensed and bonded. Through Purchasing rules, an RFP will have to go out for this work. Another piece is that the Airport does not have money in the budget. She asked for direction from the Board. Mr. Swanson asked when the eye-sore will be torn down. Ms. Johnson said that it will be torn down when the money is received to build the new chemical storage building in approximately three years or maybe longer. Mr. Swanson reiterated that the Loken contractor cannot be hired and



TO: Patricia deLaBruere,
JNU Airport Manager

DATE: August 8, 2013

FROM: Ken Nichols,
JNU Airport Engineer

FILE:

RE: Engineer's Report

General

In the past month three major capital construction projects and one planning project are on-going. Project specific summaries are presented below for each project. Grant applications were submitted to FAA for FFY 2013 funding for the Runway 8/26 Rehabilitation project and the Master Plan Update.

RSA Expansion Phase IIA

Significant accomplishments in the last month include:

- Striping of new Taxiway B
- Installation of pilings and bridge structures for the STA 10+00 light bar in Mendenhall River
- Installation of the new Airfield Lighting Control System
- Painting on the North Sea Plane Base Road
- Installation of grounding cables across the Float Pond Access Road

Anticipated work in August includes:

- Re-construction of the 8 MALSR Threshold Bar
- Continue installation of Runway Guard Lights at TWY C, and F

Alaska Airlines has requested that several trees be cleared in the approach to Runway 26 that will allow them to provide a special RNP Approach with minimum visibility of $\frac{1}{2}$ mile instead of $\frac{3}{4}$ mile. We have opened the discussion with DNR and ADF&G who both acknowledge that we can remove the trees under our avigation easement on the property. Additional survey work will be initiated to identify which trees penetrate the obstacle clearance surface.

We are holding weekly construction meetings at 9:30 Tuesday mornings in the Juneau Room. Pictures are included on the next pages.

Runway 8/26 Rehabilitation

Proposals were due from consultants for design of the project on July 19, 2013. Six proposals were received and evaluated by a committee of five staff members. USKH Inc. was selected to be the design firm with PND as a subconsultant. Zane Shanklin, P.E. is the project manager. Zane was the engineer for the last runway rehab project here in Juneau that was completed in 1997 and has a long resume of similar projects in Alaska.

With the approval of FAA, we have signed a contract with USKH on a time and materials basis to perform

initial formulation tasks such as survey, geotechnical investigation, document review, and conceptual drawings. A full contract will be prepared in the next month which includes all design tasks.



New Regulator Vault and Emergency Generator



New Regulator Equipment and Lighting Controls



RWY 26 Shortened MALS Lighting



Aerial view of trees in the Runway 26 approach to be removed.

Yandukin/Shell Simmons Pavement Rehabilitation

Significant accomplishments in the last month include:

- Installation of new guard rail sections on Yandukin
- Painting and installation of signage on the project

Final punchlist work includes:

- Completion of the Pedestrian Ramps at the employee parking lot
- Addition of truncated dome warning device at the ramp at the crosswalk from the north wing of the terminal to the short-term parking lot.



ATTACHMENT # 9

TO: Patricia deLaBruere,
JNU Airport Manager

DATE: August 7, 2013

FROM: Catherine Fritz, AIA
JNU Airport Architect

FILE: 1382.16

Terminal Renovation.

Concession planning was very busy throughout July. The survey data has been compiled into a draft report that is being reviewed by staff and consultants; I expect to have the final report by mid-August. The following excerpts summarize the general findings.

Stakeholder Survey.

The Stakeholder Survey was an online survey that allowed the public to report on their experiences with current concessions and provide input on the development of future concessions at the Airport. The survey was conducted between June 5, 2013 and July 24, 2013. There were 372 respondents, 45% were male and 55% were female. 77% were at least 40 years of age, and most of the survey participants were travelers who use the airport four or more times per year.

The most frequently expressed concern regarding existing Airport concessions is the lack of options in the secure departure lounge. Regarding the existing concession offerings, the least favorable results were found in the existing food and beverage operations with mostly *poor* or *fair* ratings. For future in-terminal dining opportunities, there was a strong preference for a café or full service restaurant, indicating that travelers are looking for a more substantial food opportunity than pre-packaged sandwiches or vending machine alternatives.

Passenger Intercept Survey.

The Passenger Intercept Survey was conducted on June 4-6, 2013. The consultants used a pre-written survey on a handheld digital tablet to record responses in a friendly and informal interview setting. Typical passenger interaction with the surveyor took approximately 10-12 minutes. A total of 163 individuals were surveyed, 45% were male and 55% female. 77% were Alaska Airlines departing passengers, 10% were Part 135 passengers, 10% were employees at the airport, and 3% were Alaska Airlines arriving passengers.

The recent renovation of the terminal was positively noticed by travelers, although some felt that food and beverage should have been incorporated into the secure departure lounge. Many expressed positive overall experiences with the terminal, emphasizing its simplicity and convenience.

Airport staff has been working closely with CBJ Purchasing and Law departments to develop a friendly and straightforward solicitation that will invite creative concepts from food and beverage businesses. Rather than the traditional Request for Proposals (RFP), we are using a "Request for Letters of Interest" that requires only a modest amount of information to be supplied by the business to participate. All respondents will then be interviewed, and the highest scoring business then invited into negotiations with the Airport. This will allow us to work directly with proposers to see how their proposed food and beverage concept can align with Airport and traveler needs. This concessions contract will be for an interim period, beginning in January 2014 until the next stage of renovation is complete, approximately May 2016. It will include a possible extension to May 2018 if agreeable by the parties.

ATTACHMENT # 9

The Request for Letters of Interest is in the final draft stages, and scheduled to begin advertisement during the week of August 12, 2013. It will run for approximately 30 days; selection and negotiations will immediately follow. Once the concessionaire(s) are selected, design modifications to airport facilities can begin. These are expected to be modest so as to minimize the need for construction and allow a smooth transition in January, 2014.

Snow Removal Equipment Facility.

Two construction contracts are underway on the SREF site. One is AEL&P's contract (approximately \$55,000) to bring electrical utilities into the site. The second is a temporary fencing contract that was awarded to AAA Fencing in the amount of \$37,300. Both projects are scheduled for completion by September 30, 2013.

The building permit for the SREF has been submitted for review, and the Airport's job trailer is currently being set up. Other construction preparations have included setting up construction files and developing the budget for construction administration.

I am working with CBJ Engineering Contracts staff to prepare the "front end" documents for bidding the SREF. This includes an analysis to determine if inclusion of a Project Labor Agreement (PLA) into the contract would benefit the project. This issue is expected to be discussed at the August 14, 2013 Airport Board meeting. The project will immediately proceed with advertisement for bids once FAA assurance of funding is secured.

ATTACHMENT #10

From: Nancy DeCherney [<mailto:nancy@jahc.org>]
Sent: Monday, August 05, 2013 12:10 PM
To: Cynthia Johnson
Subject: Re: sorry yesterday was First Friday nutty

thank you Cynthia.

I have to share this story from last night's Music on the Fly:

“ I was sitting on a bench with friends listening to the music. A very shy young man came and sat next to us. After a bit, he asked me if all Alaskans were this happy and played music all the time. I told him that long dark nights encourage people to play music together, so, yes, there is a lot of music.

He said that he had just got off the plane in Juneau to go to work on a ship. He is far away from home - he spoke very quietly so I couldn't hear where he was from - and he was feeling very sad and lonely. But then he heard the music. And it made him happy again.

Thank you for this great program.”

Barbara Bradford

Subject: Airport Manager

Date: Saturday, August 10, 2013 8:43:09 AM Alaska Daylight Time

From: Shelly Deering

To: godkinjm@gci.net

Morning Jerry,

This email is to reference a recent interaction I had with Airport Manager Patty deLaBruere. I was concerned about parking at the Dike Trail and sent an email. I received a prompt response to my email and a plan to look into the concern. Shortly there after I received another email with a solution and monitoring system to address my concern. I was impressed with the professionalism and timeliness that this was addressed with.

Juneau is fortunate to have Ms. deLaBruere in her position and thank you to the airport board for hiring her!

Have a good weekend.

Shelly Deering
723-0168

ATTACHMENT #12



Glacier Valley Rotary Club

P.O. Box 34418

Juneau, AK 99803

August 9, 2013

Patricia deLaBruere
Airport Manager
Juneau International Airport
1873 Shell Simmons Drive, Suite 200
Juneau, AK 99801

Dear Ms. deLaBruere:

In follow up to our discussions via email and over the phone, I am writing to inform you that Craig Dahl, a past-president of the Glacier Valley Rotary Club, will join you at the Airport Board meeting on August 14, 2013 to address the issue of Glacier Valley Rotary Club's (GVR) continued use of the Alaska Room.

As we have discussed, it is my understanding that as a result of a meeting with Airport Board roughly two years ago, an interim ruling was adopted which allowed GVR to move to the Alaska Room (roughly 18 months ago); although, no formal arrangement was reached with GVR. It appears that the Airport Board was anticipating Glacier Catering to bill us for the use of the room, which hasn't happened since we moved to the Alaska Room. Also, given a formal agreement was not communicated to GVR, the matter of a fee for rental of the Alaska Room was not taken up with the prior boards for the past two years. Further, it will be present a financial hardship for GVR to designate funds for the past use of the Alaska Room given we were not aware of the final outcome, the issue was not addressed with our members, nor had we designated funds in our prior budgets to accommodate the expense.

As indicated in our letter to you dated August 17, 2011 (copy included) GVR has been meeting at the airport for over 40 years. We'd like to continue this tradition; however, we will not be able to do so if the cost to use the Alaska Room creates a financial hardship for our members. Members of GVR embrace Rotary's motto of "Service above Self" and the club sponsors many worthwhile projects in our community with the money we raise – namely, scholarships for high school seniors, Pillars of America Speaker Series, Riverside Rotary Park – and we volunteers countless hours over the course of every year to support these programs.

Additionally, our continued presence at the airport provides a consistent, ongoing revenue stream for Glacier Restaurant (roughly \$25,000 a year) and for any other

ATTACHMENT #12

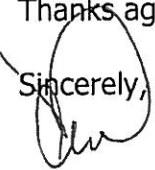
restaurant that may take over the space should Glacier Catering not continue after December 31st. Also, the agreement Glacier Catering has with Republic Parking, which allows our members to park for two hours for \$1 is an added benefit. It is our hope that this will continue should Glacier Restaurant be unsuccessful in their bid to retain space and the Airport Board were to select a new vendor.

We understand the need to provide revenue for the Airport. Under your current agreement, GVR would not be able to absorb a \$100 weekly cost for the roughly 3 – 4 hours (to include our meeting time) it takes Glacier Catering to setup and take down the room. GVR would like to continue meeting in the Alaska Room if we can reach an agreement for a nominal cost to use the space and we are prepared to pay a flat rate of \$50 per week, which would incorporate the setup and takedown time required by the caterer to run our meeting. As we have discussed, it is our intent to begin payment immediately - starting with the first meeting of FY 2014 year on July 10th.

Patty, it is my sincere hope that the Airport Board will consider the above arrangement and GVR can continue to meet at the Alaska Room for many years to come. Should you have any questions while I am out next week, please contact Craig Dahl at 790-5101, or contact me on my cell at 723-9711. I'll be in Nashville, but will get back to you at my earliest convenience.

Thanks again, Patty,

Sincerely,



Bill Peters
Juneau Glacier Valley Rotary Club, President