

AGENDA

FOR THE REGULAR MEETING
OF THE CITY COUNCIL FOR THE
CITY OF THORNE BAY, ALASKA
TUESDAY, DECEMBER 16, 2025

TIME: 6:30 p.m.

THERE WILL BE A WORKSHOP BEGINNING AT 5:30PM

LOCATION: IN PERSON AT CITY HALL or TELECONFERENCE/VIDEO CONFERENCING LINE

Phone Number: 1- 650-479-3208 Meeting

Link:

<https://cityofthornebay.my.webex.com/cityofthornebay.my/j.php?MTID=m42b083fd76962762fbfe73f3a84b405b>

Meeting number: 182 229 9375 Password D4gxVSXpz84 (34498797 from phones and video systems)

- 1) CALL TO ORDER:
- 2) PLEDGE TO FLAG:
- 3) ROLL CALL:
- 4) APPROVAL OF AGENDA:
- 5) MAYOR'S REPORT:
- 6) ADMINISTRATIVE REPORTS:
 - a) City Administrator:
 - b) Clerk:
- 7) PUBLIC COMMENTS:
- 8) COUNCIL COMMENTS:
- 9) CONSENT AGENDA:
 - a) **Minutes from the December 2nd, 2025 Regular City Council Meeting, action item;**
- 10) UNFINISHED BUSINESS:
 - a) **Discussion item: Independent Audit discussion, allocation of funds;**
- 11) NEW BUSINESS:
 - a) **Confirmation of Mayor appointed Community Center Planning Committee members, discussion and action item;**
 - b) **Goal Setting and Performance Evaluation of City Administrator, Discussion and possible action item;**
 - c) **Review of MOA between the City of Thorne Bay and OVK, discussion and possible action item;**
- 12) CONTINUATION OF PUBLIC COMMENT:
- 13) CONTINUATION OF COUNCIL COMMENT:
- 14) ADJOURNMENT:

POSTED: December 12, 2025

MINUTES

FOR THE REGULAR MEETING
OF THE CITY COUNCIL FOR THE
CITY OF THORNE BAY, ALASKA
TUESDAY, DECEMBER 2, 2025

TIME: 6 : 30 p.m.

THERE WAS A WORKSHOP BEGINNING AT 5:30PM

1) **CALL TO ORDER:**

Vice Mayor called the meeting to order at 6:30pm

2) **PLEDGE TO FLAG:**

The audience and council stood for the pledge to the flag.

3) **ROLL CALL:**

Those present were:

Pesterfield, Lovell, Killian, Cunningham, Kaer

Those absent were: Nyquest, Anderson

4) **APPROVAL OF AGENDA:**

Vice Mayor moved to approve the Agenda, Seconded, discussion:

MOTION: Move to approve Agenda.

F/S: Lovell/ Pesterfield

YEAS: Pesterfield, Lovell, Cunningham, Killian, Kaer

NAYS:

STATUS: Motion Passed

5) **MAYOR'S REPORT:**

6) **ADMINISTRATIVE REPORTS:**

a) **City Administrator: Attached**

b) **City Clerk: Attached**

7) **DEPARTMENT REPORTS:**

a) **Harbor: Attached**

8) **PUBLIC COMMENTS:**

a) **Kim Redmond** questioned what the status of the gaming permit?

b) **Lucette O'Hagan-Lovell:** requesting Council recognize a strip as an easement. Suggested the 2019 administrator findings invalid due to lack of process and appeal instructions. Would like City of Thorne Bay to recognize the right of way on Tract A and apply TBMC for ROW's to this section as such.

c) **David Shilts** commented in response on Tract A; Was discussed by DNR and Core of Engineers who both agreed no road should exist there due to wetlands. City of Thorne Bay has no rights to determine what happens on State lands.

9) **COUNCIL COMMENTS:**

a) **Thom Cunningham** commented on the Seely lease; commented that Seely suggested that he would like to purchase the land rather than lease it, this may be the reason for the slow down in the lease process. Read community concern sent via text into the record:

- i. "It's wintertime. Days are short. Most of us leave in the dark, come home in the dark. Some of us have boats that are responsible boat owners, we go down and check them. I walked down, check my boat after work every other day in the dark at Davidsons. There are bulbs out on the light poles at the top of the ramp that lights up the harbor. The harbor is pitched black, the dock has so much green slime on it and is very slippery. If someone were to slip and fall overboard, it's pitched black down there. It's a good way to drown. Now, I've let the Harbor Master know two months ago thinking anything is becoming of it? No. So what does it take to change a couple of light

bulbs at the top of a 20 ft pole so people can safely walk? Yes, I pack a head lamp, but that's not the point. The point is they do nothing at this harbor. They can't even change a light bulb. It's pretty pathetic"

- Clerk Responded that the City received a quote from an electric company to fix the lighting out there and is in the process of getting it fixed.
- b) **Timber Pesterfield** commented that Council determined it would be best to lease property not sell based on the Waterfront plan. City still sold property after the Waterfront plan was accepted, leasing would be long term income while selling would be quick money. Council made correct decision to lease not sell. Has not seen lease, even though requested, to make any judgement or requested changes. Commented on Gaming permit status, new account caused delays, Clerk is working on it. Disagreed with Administrator's report to use Community Fund and quoted budget amount for cemetery when volunteers could do the work and use the city equipment to make it happen. Permits through state good, but DEC Permit is required. Requested to know what lot Cemetery is located on to scope out needs. Commented on the easement issue. Suggested the City not take action at this for a few reasons. LAS 3295 with the State was denied and is in an appeal process with the State and the Trespass with the State is still open. Walked the site and looked at plat maps, property is owned by State . The property belongs to the state and it is not in the City's authority to make decisions until the State decides on both open items.
- c) **Sean Kaer** agreed Council can't make action on easement. Commented on the Harbor situation, three-legged chair in handicap restroom still out of commission. Commented on the lack of ADA ramps around municipal buildings. Commented on tax and sales tax changes. Suggested raising taxes would hurt the community, not those coming up.
- d) **Tony Lovell** commented that it is important that the Council and community know what agreement the city is entered into with OVK. Council and people should be able to see the agreement for transparency.

10) CONSENT AGENDA:

- a) **Minutes** of the November 18, 2025, Regular City Council Meeting, action item:

Vice Mayor moved to approve Consent Agenda, Seconded, no discussion.

MOTION: Move to approve Consent Agenda;

F/S: Lovell/ Pesterfield

YEAS: Pesterfield, Lovell, Cunningham, Killian, Kaer

NAYS: None

STATUS: Motion Passed

11) UNFINISHED BUSINESS:

- a) **Discussion item;** a Discussion on Independent Audit;
 - **Pesterfield commented** the last discussion was about 1 year audit, would like to see a multi-year to identify patterns and deficiencies. Audit would help with future monies and streamline accounting systems.
 - **Cunningham** agreed with 5 year audit.
 - **Killian** agreed with 5 year audit to figure it out.
 - **Kaer** agreed, potentially longer since it's been 20 years. Should do a legal search of property and assets. Would like to know what's been liquidated or what's been set aside for other uses.
 - **Pesterfield** commented that a forensic audit would be more in depth and expensive but a good idea. Biggest hurdle for Council and the City will be where to get the funds and when we can use them. Not budgeted for this fiscal year, even though its been talked about for a long time. Need to start going back through the budget to see where we can glean some of the funds. Potentially set aside funds to for the consultation and audit.
 - **Kaer** commented that we could have a raffle with a gaming license. Community would potentially put in for it. Would like to have research done on any company chosen.

- Clerk clarified process for choosing companies for the audit and the questions asked of those companies.
- **Shilts** asked to comment, Chair allowed. Shilts suggested using the Community Funds to pay for the audit.
- **Kaer** questioned if we could sell lumber to subsidize the cost of the audit? Questioned grant for help, denied a grant in the past.
- **Lovell** questioned if a good starting point would be to open an account to collect donations?
- **Pesterfield** commented a Resolution would be necessary. When we get our gaming license we can use it to generate fundraising funds. First thing would be to go through money and budget now to identify goal needed to set. To determine the maximum to budget for, set the goal high, to be able to have a starting point.
- **Kaer** if we came up with other ways to fund the Community Center, could we use Community Development Funds for the Independent Audit?
- **Lovell** stated that the use of the Community Development funds should be put in front of the citizens of Thorne Bay.
- **Pesterfield** would like to see a Resolution for the creation of an account to add funds for the Independent Audit. Suggested Council look into the budget created and the financial statements to see where to pull the monies from.

12) NEW BUSINESS:

- Discussion item;** a discussion on establishing a projects committee;
 - **Lovell** commented that the intent was to establish the Community Center and in addition add potential projects.
 - **Pesterfield** commented that since we have the Community Center Committee Resolution on the agenda, discussion should be closed.
- Discussion item;** a discussion on the adoption of an Employee Safety Ordinance (Internal Employee Policy) to be modified, updated or adjusted;
 - **Cunningham** was under the impression that this item was considered settled. Internal safety was the goal.
 - **Kaer commented** that we could add it to our policies, even if the state restricts it. Not for restricting civil rights, but proper training and liability.
 - **Cunningham** spoke with Iura and to try to implement something like that would involve attorneys and litigation. Not against people carrying concealed weapons, just don't agree with concealed carry on company time or in city vehicles. State pretty well restricts how this can be done.
 - **Lovell** commented on safety in the workplace. Council must consider the greatness of the second amendment as it is woven in federal, state law. City can regulate, request safe storage processes in buildings and vehicles. Threat assessment is taken care of when there is open communication between City Departments. Monthly safety meetings, post incident debriefs, anonymous reporting hotlines, VPSO or trooper advisement, things that Council could create in policy for safety.
 - **Cunningham** commented that if there is a threat or incident, it would be handled in either Klawock or Juneau dependent on severity. Safety meetings once a month is a good idea, and equipment checks should be done regularly. Suggested maintenance logs for vehicles for preventative safety measures.
- Discussion item;** a discussion of the future of legal counsel for the City of Thorne Bay,
 - **Cunningham** questioned what the discussion item is?
 - **Lovell** clarified the intent of this discussion is to re-evaluate the needs of the City and if legal counsel is currently meeting those needs.
 - **Cunningham** commented it's hard to discuss this as there is no report or information on what the attorney does or how he has done.
 - **Kaer** would like to know how often he's been used, what he's been asked to do, and if the duties performed are adequate.

- **Pesterfield** commented that in the Finance Report the legal fees are budgeted and \$5000, YTD amount is \$2125.00. Legal Counsel does more than just advise, they review proposed Ordinances, Resolutions, filed petitions. Legal Counsel has been with the City for about 30 years. Is this the right type of attorney for the City?
- **Kaer** questioned the amount spent in legal fees to date if the attorney has been reviewing leases and agreements.
- **Pesterfield** expressed concern about an attorney that reviewed or supported the employment agreement for the City Administrator as the contract seems to be one sided and not beneficial to the City. Would like to interview the attorney and others.
- **Cunningham** agreed to interviewing additional Attorneys.
- Clerk answered Chair's question of how to proceed with interviews.
- **Pesterfield** commented that we should interview current attorney to asses if needs are being met. Need to have City's best interests at the forefront. Let Counsel know what expectations are.
- **Kaer** commented that if he was Counsel behind legal documents that don't benefit the city, Council doesn't need to pay him to ask questions.
- **Cunningham POI:** Can Council look over other contracts he has approved in the past?
- **Lovell** commented those questions would be submitted to the attorney. And supplied the following questions;
- **How many other clients does Hoffman & Blasco retain or assist? How does it effect the needs of the City.**

d) **Discussion item;** a discussion of the city Webpage/Carrier selection

- **Lovell** to determine whether website meets City needs.
- **Pesterfield** commented The city website is difficult to navigate and feels disorganized, with important information scattered across different pages in inconsistent locations. Users often spend a long time searching for documents and can get stuck in confusing loops. Although the site has improved recently—especially in posting meetings and resolutions—it still feels clunky and unintuitive, especially for older or less tech-savvy users. The current hosting service is affordable and appropriate for a municipality, but the site's structure has become cluttered over time as different administrators added content without an overall plan. Streamlining and reorganizing the website would benefit residents, council members, and visitors, many of whom use the website as their first introduction to Thorne Bay. The content and photos are good; the main issue is navigation and usability.
- **Cunningham:** commented that it is hard to use and search. Would like to see it simplified.
- **Clerk** clarified WordPress is \$399/year, plugins can add to cost. Website is not easy to manage with many pages and an abundance of information and links. Time to upload or update is anywhere from 15-20 minutes. Requested time to process a new page, and make corrections and edits. Suggested CivicPlus, a commonly used Municipal Government host which can cost up to \$2000 per year. ADA compliance is another concern that they would address and keep updated.
- **Pesterfield** commented that \$2000 is not that much in the grand scheme when you consider time put in and time saved to do other Clerk things.

- **Lovell motioned to add this to the next agenda and action item, Second Pesterfield**
- **Pesterfield motioned to amend the motion to add the item to the agenda in January in order to give clerk time to research**
- **POI: the quorum has been lost, and the motion on the floor is dead. Vice Mayor re-established the quorum and Roll Call was re called.**

❖ **ROLL CALL:**

Those present were:

Pesterfield, Lovell, Killian, Cunningham

Those absent were: Nyquest, Anderson, Kaer

➤ A quorum was re-established.

MOTION: Move to approve adding agenda item to discuss the Website and possible carriers in 30 days;

F/S: Lovell/ P

YEAS: Pesterfield, Lovell, Cunningham, Killian

NAYS:

STATUS: Motion Passed

- a) **Resolution 25-12-02-01**, a Resolution Establishing the Community Center Planning Committee, discussion and action item;

Vice Mayor moved to approve Ordinance 25-12-02-02 , Seconded, discussion:

- Cunningham questioned Community Center Grant opportunities.

➤ Pesterfield moved to amend the Resolution to amend number of members to include 9 interested individuals, Cunningham seconded

MOTION: Move to approve Resolution amendment, to amend number of members to include 9 interested individuals;

F/S: Lovell/ Pesterfield

YEAS: Pesterfield, Lovell, Cunningham, Killian

ABSENT: Kaer, Nyquest, Anderson

NAYS:

STATUS: Motion Passed

MOTION: Move to approve Amended Resolution 25-12-02-01, Community Center Planning Committee;

F/S: Lovell/ Pesterfield

YEAS: Pesterfield, Lovell, Cunningham, Killian,

ABSENT: Kaer, Nyquest, Anderson

NAYS:

STATUS: Motion Passed

13) **ORDINANCES FOR PUBLIC HEARING:**

- a) **Ordinance 25-12-02-01**, Amending TBMC 02.04.130(A), Day of Meetings Held, discussion and action item;

Vice Mayor moved to approve Ordinance 25-12-02-01 for public hearing, Seconded

- Trina Pesterfield thanked Clerk and Council for work needed for 2 meetings and sees the necessity for two meetings.
- David Shilts agreed with two meetings a month to take care of more business. City can move forward with reliable agendas.
- Lucette O'Hagan-Lovell agrees there is enough business needed to have two meetings a month.

MOTION: Move to approve Ordinance 25-12-02-01;

F/S: Lovell/ Cunningham

YEAS: Pesterfield, Lovell, Cunningham, Killian

ABSENT: Kaer, Nyquest, Anderson

NAYS: None

STATUS: Motion Passed

- b) Ordinance 25-12-02-02, Amending TBMC 02.04.050 – Compensation of Council Members, discussion and action item;

Vice Mayor moved to approve Ordinance 25-12-02-02 for public hearing, Seconded

- **David Shilts** commented that this ordinance is good and appreciative of Council's willingness to cut stipends in half.

MOTION: Move to approve Ordinance 25-12-02-02;

F/S: Lovell/ Cunningham

YEAS: Pesterfield, Lovell, Cunningham, Killian

ABSENT: Kaer, Nyquest, Anderson

NAYS: None

STATUS: Motion Passed

14) CONTINUATION OF PUBLIC COMMENT:

- **David Shilts** appreciates the good discussion. Speculated that he had heard the lakeside of the road that goes to Kasaan, suggested that the City log and develop that property. Commented that the plan being followed for waterfront development, in relation to the JS Hardware deal, can see point where he would want to own the land and City would want to Lease. Potentially the city could lease itself. Should consider the sales tax revenue that would be increased with a hardware store. Negotiations should not be made with concrete ideas and thoughts.

POI 8:57pm Quorum has been unmet due to Councilmembers leavings. No decisions will be made, public and Council comments will commence until adjournment.

- **Trina Pesterfield** Would like to see what's been submitted to Seeley for the lease. Suggested a special meeting to put a vote to the people for where to use funds from. suggested a violence policy instead of gun policies. Website comments, awareness is down sue to paying bills online – suggested popups with information. Thanked Council for hard work for half pay.
- **Lucy Aragon** suggested grants for ADA compliance and budget lines that may be subsidized with grant funds.
- **Lucette O'Hagan Lovell** CPA audits necessary for qualifying for grants.
- **Trina Pesterfield** website commentary – feedback on sites before purchase.

15) CONTINUATION OF COUNCIL COMMENT:

- **Pesterfield** thanked community for coming and commenting. In response to the talk to lease vs sale of city land. Council has requested to be involved more in the process and has not been given the contract yet. Cannot move forward with good information without knowing the specifics of what has been put out there to Mr. Seely. Goal is to maintain without selling, but it is not the only option Council is willing to consider. Commented that Community Development grant was available in September and had a 20% match, it is a grant that is out there that Council is considering. Thanked everyone for staying late and going through the work presented.
- **Cunningham** commented that Council doesn't really have information on the lease to offer an opinion on the lease to buy. RV park generates income and would like to see it fixed to help the city gain revenue. Used to be a money maker when it is operating, thanked the community for showing up and participating.
- **Lovell** commented various block grant programs—such as community service block grants, CDBG disaster recovery and mitigation grants, CARES funding, and NPR-A impact grants—are available annually and follow predictable timelines. The city should track these deadlines so it can be prepared to apply each year. Emphasized the need to complete and maintain the city administrator's annual review process, which is currently delayed. Highlighted the importance of reviewing the Memorandum of Agreement (MOA) with

OVK regarding road management on the Kassan Highway. It has not been reviewed for at least a year, even though such agreements should be evaluated annually, and the current MOA may not reflect the city's present needs. The proposed Memorandum of Understanding (MOU) transferring management of all city roads to OVK should be brought before the council and the community. Grant opportunities may require the city to retain ownership or management authority, and both the city and OVK are capable of obtaining grants—potentially more effectively if they work together rather than one entity acting on behalf of both.

16) **ADJOURNMENT: Vice Mayor adjourned the meeting at 9:11 pm.**

Shane Nyquest, Mayor

ATTEST:

Caitlyn Sawyer, City Clerk Treasurer

DRAFT



City of Thorne Bay

Thorne Bay, AK 999109

PHONE: (907) 828-3380; FAX: (907) 828-3374

E-MAIL: cityclerk@thornebay-ak.gov

DEPARTMENT REPORT

Subject: Monthly Department Report

Department: _____

Supervisor: _____

Employees: _____

Date: _____

A Departmental Overview

Current Department Activities:

City Clerk's Report

December 16, 2025

Prepared by:

Caitlyn Sawyer, City Clerk

Monthly Focus:

- **End-of-Year File Maintenance:** Organizing records, updating digital files, and preparing archives for year-end closeout.
- **Mid-Fiscal Year Review:** Reviewing current expenditures and preparing mid-year budget summary.
- **State Best Practices Reporting:** Compiling required documentation to send to the State for Best Practices requirements.
- **Council Training Packets:** Preparing training materials for new and current council members.
- **Pre-Audit Preparation:** Reviewing pre-audit steps and document requests provided by Teuscher Walpole, LLC.
- **Researching Website management hosts:** Research for new website management has been started and will be presented to the Council in January.
- **Community Christmas Dinner:** Assisted with planning, coordination, and event support. Outcome was smaller than normal, but a success none the less. All volunteers put in a lot of work and are very much appreciated. Thank you to Sonya Cook for the time put in to make it happen.
- **Dump Tickets:** This is the last month to use Solid Waste Coupons. Council will deliberate on renewal in January.
- **Water Dept Request:** The water department has requested residents to run their water, just a drip, to prevent freezing of pipes and potential leaks. There will be no overage charges for water for the month of December.

Thorne Bay Community Center Planning Committee

Appointed Members by Mayor:

- 1) Libby Neiland
- 2) Lisa Roseland
- 3) Amanda Allard
- 4) Rose Mathis
- 5) Tara Blair
- 6) Lucy Aragon
- 7) Korrisa Oatman
- 8) Amy Killian



Sponsor: Mayor Lee Burger
Adoption: February 21, 2023
Vote: 6 Yeas, 0 Nays, 1 Absent

CITY OF THORNE BAY
RESOLUTION 23-02-21-02

A RESOLUTION OF THE CITY COUNCIL, FOR THE CITY OF THORNE BAY (TNB), APPROVING A MEMORANDUM OF AGREEMENT (MOA) WITH THE ORGANIZED VILLAGE OF KASAAN (OVK) FOR ROAD MAINTENANCE AND OTHER SERVICES TO BE PROVIDED BY OVK THROUGH ITS DEPARTMENT OF TRANSPORTATION (DOT) IN PARTNERSHIP WITH TNB AND AUTHORIZING THE MAYOR TO SIGN THE MOA

WHEREAS, the City Council is the governing body of Thorne Bay, Alaska; and

WHEREAS, OVK intends to continue to assist TNB in performing road maintenance, on the Kasaan to Goose Creek Access Road within the City limits of the TNB as it has done in partnership with TNB for many years; and

WHEREAS, this update to the MOA is intended to refresh this commitment and specifically cover additional areas of interest between the two agencies such as the application and delivery of certain grants and grant funded projects on the Kasaan to Goose Creek Road project; and

WHEREAS, OVK is capable of providing the necessary road maintenance, grant writing, construction project delivery and administration of grants and other services in conjunction with the above mentioned road and projects on this road; and

WHEREAS, it is in the best interest of both OVK and TNB to enter into this MOA because citizens of both TNB and OVK rely on this road as their sole access in and out of South TNB and the community of Kasaan on a daily basis and both agencies have different strengths and different operational capacities and a strong partnership is critical to the mission of both agencies in managing this transportation asset; and

WHEREAS, OVK's FHWA approved Long-Range Transportation Plan and Tribal Transportation Improvement Program which is used to implement its transportation priorities shows its further commitment to supporting the Kasaan to Goose Creek Road project completion as it is identified as the number one priority transportation project and supports its intent to work with TNB on its further development and delivery to include long term maintenance even after the construction is completed in the future; and

WHEREAS, the maintenance and construction of the Kasaan to Goose Creek Road project has strong regional support and is the number one priority surface transportation project for OVK, the City of Kasaan, the City of Thorne Bay and the Prince of Wales Community Advisory Committee; and


WHEREAS, after the appropriate public input and due consideration, TNB has recommended that the road maintenance and construction services MOA with OVK be approved.

NOW THEREFORE BE IT RESOLVED, by the TNB City Council that the attached MOA creating a unified maintenance and construction program between TNB and the OVK Department of Transportation is hereby approved to guide the work the two agencies do together to achieve their goals and objectives in creating an improved and well-maintained roadway network and to jointly support each other on project delivery to the mutual benefit of all of our citizens; and

BE IT FURTHER RESOLVED, that the TNB City Council authorizes the Mayor to sign the MOA and any subsequent documents mentioned in the MOA or other project level agreements either specified or required for carrying out the intent and spirit of the MOA in the maintenance and operations of the roads or projects to improve the roads covered under this MOA.

PASSED AND APPROVED February 21, 2023

ATTEST:



Lee Burger, Mayor



Teri Feibel, CMC
For Caitlyn Sawyer, City Clerk/Treasurer



ORGANIZED VILLAGE OF KASAAN

P. O. Box 26-Kasaan ☎ Ketchikan, Alaska 99950-0340
(907) 542-2230 ☎ (fax) 907-542-3006

Memorandum of Agreement

This Agreement (MOA) dated, _____, by and between, the **Organized Village of Kasaan** (hereinafter referred to as **OVK**) and the **City of Thorne Bay** (hereinafter referred to as **TNB**).

WITNESSETH:

WHEREAS, OVK intends to continue to assist TNB in performing road maintenance, on the Kasaan to Goose Creek Access Road within the City limits of the City of Thorne Bay as it has done in partnership with TNB for many years; and

WHEREAS, this update to the MOA is intended to refresh this commitment and specifically cover additional areas of interest between the two agencies such as the application and delivery of certain grants and grant funded projects; and

WHEREAS, OVK is capable of providing the necessary road maintenance, grant writing, construction project delivery and administration of grants and other services in conjunction with the above mentioned road and projects on this road; and

WHEREAS, it is in the best interest of both OVK and TNB to enter into this MOA because citizens of both TNB and OVK rely on this road as their sole access in and out of South TNB and the community of Kasaan on a daily basis and both agencies have different strengths and different operational capacities and a strong partnership is critical to the mission of both agencies in managing this transportation asset.

NOW, THEREAFTER, in consideration of the mutual promises of the parties contained herein, the parties agree as follows:

ARTICLE 1. GENERAL

- 1. SCOPE.** This is an Agreement to assist TNB with year-round road maintenance services and other transportation asset management services such as grant writing, grant management, operations projects and grant funded construction projects delivery and administration. The TNB Administrator will work closely with the OVK DOT Director in the performance of the duties and responsibilities outlines in this MOA.
- 2. LOCATION OF WORK.** The location of the road maintenance activities and projects is the

The Organized Village of Kasaan is committed to promoting, preserving, and protecting indigenous Kasaan culture. In partnership with our citizens and youth, we look to the future in words, by developing and implementing programs promoting education, and maintaining our traditional values and social responsibilities.

a federally recognized tribe

road known as the Kasaan Access Road and the delivery of the overall project on this road known as the Kasaan to Goose Creek Road project and more specifically that part of the road located within the TNB city limits and contained within the BIA approved OVK Tribal Transportation Program Road Inventory.

3. **INFORMATION.** All data, information, reports, plans, specifications, estimates, permits, surveys and other pertinent information required to manage the operations and maintenance and delivery projects on this roadway are of mutual interest to both OVK and TNB and shall be the property of OVK and TNB collectively and both shall be provided their respective copies of such information.
4. **PURPOSE:** The primary objective of this project is to create a unified maintenance and construction program between TNB and the OVK Department of Transportation. We strive to work together to achieve the same goals and objectives in creating an improved and well-maintained roadway network and to jointly support each other on project delivery to the mutual benefit of all our citizens.

ARTICLE 2. AGREEMENT OF SERVICES TO BE PROVIDED

Information in Article 2 constitutes the Scope of Work for this MOA. OVK agrees to assist with all basic services as set forth and specifically made a part hereof by reference and other services that may have been missed here but are of similar nature and intent and can be agreed upon on a case-by-case basis while still utilizing the MOA to govern the relationship established herein:

Winter Weather Maintenance: Jointly develop plowing and sanding parameters that may be required including the following:

1. Plowing snow: As needed.
2. Sanding: As needed and sharing the responsibility for making and using the sand.

Routine Maintenance: Jointly develop grading and ditching parameters and timelines for scheduled work and equipment that may be required including the following:

Kasaan to Goose Creek Access Road

1. Grading: Once a month grading and compacting. TNB to participate with their grader and operator. Estimated 3 days a month.
2. Ditching: Once a year during the summer months. Estimated 2 weeks per year.
3. Resurfacing: Once a year during the summer months. Estimated 1 week per year.

Goose Creek, South Thorne Bay Subdivision and Steep Road

1. Grading: Twice per year, spring & fall, grade and compact all public roads within the plats of Goose Creek, South Thorne Bay Subdivision and Steep Road. Estimated seven (7) days per event.
2. As Needed: Upon request assist TNB with additional maintenance work as requested within the plats of Goose Creek, South Thorne Bay Subdivision and Steep Road.

Project Development and Construction: Jointly develop operations projects and grant applications for construction funds and deliver construction projects for the completion of the Kasaan to Goose Creek Road project as designed and permitted to continue to deliver this top priority project for each agency that may be required including the following:

1. **Grant Applications:** Investigate, complete and submit grant funding requests for this road project: Partner on the development and completion of grant applications for the various applicable programs with the goal of getting enough funding to complete the construction of the entire 17.4 mile road project over time. Either Agency can apply and who does apply should be coordinated with one Agency taking the lead in the submission of the application and one Agency taking a supporting role.
2. **Operations Projects:** Cooperate and partner on the development, budgeting and delivery of special operations on the roadway such as:
 - Major embankment excavation
 - Roadway cross-slope correction
 - Grade reduction
 - Heavy ditching
 - New culvert installation
 - Rocking sections of the road with new surfacing gravel
3. **Construction Projects:** Design, engineer, survey, contract or otherwise cause to be delivered with internal forces all types of construction work on the road to further the goal of completing the reconstruction of the entire roadway over time. Both agencies will partner in these efforts as the opportunities arise but nothing in this MOA is intended to limit the ability of either agency to deliver and construct projects on this road with funding that is received for this project or that is eligible to be spent on this project from any source. Both OVK and TNB will seek to provide matching funds to the extent possible and Resolutions of support where beneficial to further the partnership, intent, and spirit of this MOA.

Note: TNB may request assistance with grading and compacting outside the once per month schedule. All routine maintenance will be scheduled based on working conditions established by OVK and TNB staff. Use of the TNB Solid Waste site and DNR sand pit for referenced work will be allowed per this MOA with coordination between operations staff.

Liability

Joint use of heavy equipment, dump trucks, trailers and other vehicles and facilities is authorized by both OVK and TNB through the execution of this MOA while performing work covered under this MOA and this use is covered by each agencies insurance policy.

OVK and TNB each hereby waives all claims against the other entity for compensation for any property loss or damage and/or personal injury or death occurring as consequence of the performance of this agreement.

OVK assumes all liability and/or cost of damage to its equipment and the injury or death of its personnel when responding to performing under this agreement.

TNB assumes all liability and/or cost of damages to its equipment and the injury or death of its personnel when responding to performing under this agreement.

Agreement and work associated with this MOA to be reviewed in June and December 2023 and thereafter once a year in June.

Insurance

OVK and TNB shall each procure and maintain such insurance as is required by applicable federal and state law and as may be appropriate and reasonable to cover its staff, equipment, vehicles, and property, including but not limited to liability insurance, workers compensation (if applicable), unemployment insurance, automobile liability, and property damage.

It is hereby understood that at times staff from OVK may operate vehicles or equipment owned by TNB and TNB staff and operators may operate vehicles and equipment owned by OVK and pursuant to the permission such granted through the execution of this MOA such uses shall be allowed and approved and thus covered by each agencies insurance policies.

ARTICLE 3. TIME

COMMENCEMENT OF SERVICES: The services covered under this MOA shall commence upon the signed execution of this Agreement by both OVK and TNB and that date shall constitute the effective date.

EXPIRATION OF SERVICES: This Agreement shall be effective until superseded by a future MOA with a new effective date.

PERIOD OF PERFORMANCE:

Commence: Upon signed execution of this Agreement by both OVK and TNB.

Completion: There is no completion date for this MOA as it is on-going and intended to survive until it is superseded by an updated version in the future. The partnership by both agencies on this road project and road maintenance will be on-going for the foreseeable future.

ARTICLE 4. COMPENSATION

OVK will submit invoices to the TNB monthly for their services. OVK will be compensated for equipment and man hours, fuel, and materials supplied by OVK or as otherwise agreed to in writing on a project-by-project basis. Equipment, materials and labor costs shall be those actually incurred by OVK while performing the scope of services under this MOA and are subject to be changed from time to time as determined necessary by OVK to keep up with inflation.

Compensation for services provided by OVK will be billed to TNB per time and materials actual costs. All work will be agreed upon by both parties before the work begins. For any unforeseen cost that might arise, OVK will discuss with TNB and get an approval in writing before proceeding with the work.

ARTICLE 5. TERMINATION

This agreement may be terminated by either party upon **thirty (30)** days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the other. In addition, OVK may terminate the MOA in its discretion at any time on **thirty (30)** days written notice to TNB. In the event of such termination OVK shall be compensated for work performed prior to the termination date, including reimbursable expenses then due.

ARTICLE 6. DISPUTES

In the event of any dispute arising under this Agreement, as a condition precedent of any action being initiated by TNB or OVK, TNB shall submit to OVK, within **ten business** days of the date of the event giving rise to the dispute, a written statement of TNB claim which shall include a full description of the basis for said claim, its amount, and the contract provision(s) relied upon. The DOT Director and Tribal Administrator shall review the content of TNBs written dispute or program and a written determination shall be provided to TNB within 5 working days after receipt of the TNB written dispute.

If after reviewing the written determination from OVK, TNB believes that the dispute has not been resolved, TNB may appeal the determination to the President of OVK. The President or his/her designee will review the pertinent facts and provide a written determination to TNB within 10 working days of receiving the appeal from TNB. The OVK President's determination shall be final and if TNB is not satisfied it may elect to provide notification to OVK of its intent to terminate this MOA in 30 days.

ARTICLE 7. CHANGES

OVK and TNB retain the right to make additions or deletions to the scope of the services hereunder and the compensation to be paid under this MOA. Additions or deletions to the scope of services set forth in the MOA must be agreed upon and approved in writing by OVK and TNB on a case-by-case basis and will be incorporated into this MOA when a future update is executed.

ARTICLE 8. INTEGRATION

This agreement represents the entire integrated agreement between OVK and TNB and supersedes all prior negotiations, representations, or agreements, either written or oral. This agreement may be amended only by written instrument signed by both OVK and TNB.

ARTICLE 9. INDEPENDENT CONTRACTOR

The parties intend that the relation between them created by this MOA is that of employer-independent Contractor. TNB will be solely and entirely responsible for their acts and those of

their agents, employees, and sub-contractors and none of said persons shall be considered employees of OVK for any purpose. OVK will be solely and entirely responsible for their acts and those of their agents, employees, and sub-contractors and none of said persons shall be considered employees of TNB for any purpose.

ARTICLE 10. EMPLOYEES AND CONSULTANTS

Both OVK and TNB and its employees and sub-consultants, will perform the work required under this MOA. Both OVK and TNB shall have the sole right to designate which of its employees shall perform the services required, under this MOA.

The undersigned agree to the terms and conditions of this MEMORANDUM OF AGREEMENT and any attached Scope of Work.


Michael Jones 02-18-2023
Tribal President Date


Lee Burger 2-21-23
Mayor Date