

Subject: Authorize the Mayor or City Manager to Execute a Contract with Southwest Alaska Equipment (SWAE) for Scrap Metal Removal from the City Landfill

Agenda of: **November 7, 2013**

Council Action:

Manager: Recommend approval.

City Manager: Rose Loera
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Finance / Carol Shade	CS	
X	Public Works / Francisco Garcia	FG	
X	City Clerk / Janice Williams	JW	

Fiscal Note: Yes X No Funds Available: Yes X No

Other Attachment(s): Contract and Rental Agreement

Summary Statement.

The purpose of this Action Memorandum is to authorize the Mayor or City Manager to execute a contract with SWAE for Scrap Metal Removal from the City Landfill. The attached contract and rental agreement were reviewed and revised by the City's Attorney.

The City Manager was contacted by BBEDC and SWAE months ago to see if the City was interested in SWAE removing the scrap metal at the landfill. BBEDC agreed to provide two (2) seasonal workers to help with the removal, which they have since the month of August. BBEDC agreed for us to hire the workers and have them work in various capacities within the City until the scrap metal project started.

SWAE purchased a baler in Seattle and shipped it to Dillingham and it arrived last week at the City Dock. The scope of work, for both entities, include:

Contractor agrees to provide:

- Barges to bring in equipment and vans and to remove metal from Dillingham;
- Crane to load and unload equipment and shipping;
- Equipment to bale the metal and major repairs on that equipment if needed;
- Vans/shipping units to put the metal in; and
- Supervision of the removal of Scrap Metal.

The project will commence in the fall of 2013 and can extend indefinitely or until terminated by one of the parties.

City will provide the following equipment and operator:

- Front end loader;
- Excavator;
- Lowboy and tractor;
- Operation and routine maintenance of the baler.

The City will also provide an area at the landfill near the scrap metal pile for the equipment and Personnel to work to process the scrap metal and put it into the vans or other shipping units. The City will provide all consumables, small tools, and safety equipment to process the scrap metal.

The removal of the Scrap Metal from the Dillingham Landfill is a joint effort by the City of Dillingham and SWAE. Each party will provide their expertise, equipment and assist each other for the success of the project. There is no exchange of money between the parties for this project.

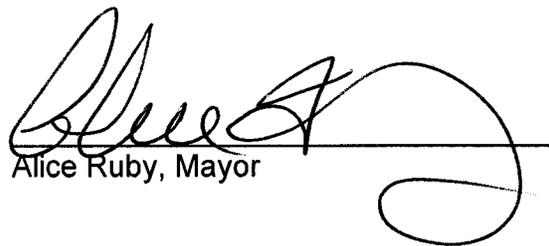
The City will use the BBEDC seasonal employees until the end of November along with the City's landfill staff. SWAE will train all staff on how to use the baler prior to project starting. After November, the landfill staff will continue to bale the metal and put in the connexes or store the baled metal at the landfill until the City can move them to Bristol Alliance area for barging out next year.

The additional cost to the City, not including staff and equipment time, will be:

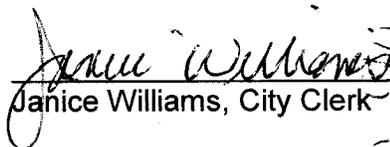
- ½ the freight for shipping the baler from Seattle to Dillingham - \$7,000
- Freight for moving the baler and approximately 3 connexes, round-trip, to the landfill @ \$500 each trip X 7 = \$3,500. (Equipment for moving the connexes is inoperable at this time. Once fixed the City will be able to move them.)

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on November 7, 2013.

SEAL:


Alice Ruby, Mayor

ATTEST:


Janice Williams, City Clerk

City of Dillingham
Fiscal Note

Agenda Date: November 7, 2013

Request:

ORIGINATOR: _____

FISCAL ACTION (TO BE COMPLETED BY FINANCE)		FISCAL IMPACT <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
AMOUNT REQUESTED: <p style="text-align: right; margin-right: 50px;">\$ 10,500.00</p>		FUNDING SOURCE <p style="text-align: center;">Scrap Metal Contract</p>	
FROM ACCOUNT 2200 7060 30 81 0000 0 Appraisal \$ 10,500.00		Project <p style="text-align: center;">Landfill</p>	
TO ACCOUNT:	VERIFIED BY: Carol Shade	Date: 10/29/2013	

EXPENDITURES

OPERATING	FY14	FY15	FY16	FY17
Personnel				
Fringe Benefits				
Contractual	\$10,500.00			
Computer Hardware				
Land/Buildings				
Miscellaneous				
TOTAL OPERATING	\$ 10,500.00	\$ -	\$ -	\$ -

Major Equipment				
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REVENUE				
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FUNDING

General Fund	\$ 10,500.00			
State/Federal Funds				
Homeland Security Grant				
TOTAL FUNDING	\$ 10,500.00	\$ -	\$ -	\$ -

POSITIONS

Full-Time				
Part-Time				
Temporary				

ANALYSIS: (Attach a separate page if necessary)

See Action Memorandum 2013-31

PREPARED BY: Carol Shade

November 7, 2013

DEPARTMENT: Finance Department

November 7, 2013

CONTRACT FOR SCRAP METAL REMOVAL

This Agreement is entered into this _____ day of _____ 2013, by and between **Southwest Alaska Equipment, LLC** or its affiliates (herein referred to as "**Contractor**") and the **City of Dillingham** (herein referred to as "**City**"). For good and valuable consideration, the receipt whereof is hereby acknowledged, Contractor and City agree as follows:

WHEREAS, City is in need of the removal of scrap metal at the City Landfill;

WHEREAS, Contractor, possesses the requisite license and skills to perform such duties;

WHEREAS, the parties hereto desire to enter into a basic agreement and understanding setting forth the terms under which Contractor will, as requested, perform such work;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Services of Contractor

The Contractor's service to be provided in accordance with the provisions of this Agreement are as follows: to assist the City in removal of scrap metal by providing a metal baler and operating instruction for the baler; to provide shipping units for the bales of scrap metal; to provide laydown area at a dock on the Nushagak; and to ship scrap metal from Dillingham to a metal recycling facility.

2. Time of Performance

Contractor shall proceed as soon as possible to perform the work described in Appendix A; Contractor shall complete all services in accordance with the schedule set forth in Appendix A.

3. Service of the City

The City's service to be provided in accordance with provisions of this Agreement are as follows: to provide Contractor transportation for equipment and shipping units from the Nushagak dock to the Landfill and back to the dock; to provide a staging area for the baler and the shipping units to put the scrap metal in; to sort scrap by type; to prepare larger pieces of scrap to the proper size for the baler; and to operate, fuel, and perform routine maintenance on the baler as specified in the Standard Equipment Rental Agreement.

4. Payments

Both parties understand that there will be no payments from or to each other and that this contract provides the mechanism to remove the scrap metal from the landfill with the City providing equipment and personnel and Contractor oversight of the removal of the scrap metal.

5. Personnel

City agrees to furnish two laborers funded by the Bristol Bay Economic Development Corporation and other employees that have CDL licensing as needed. Contractor agrees to provide oversight of the removal of the scrap metal from the Landfill. All personnel will work together for expeditious and satisfactory performance of this Agreement, all to be competent, experienced and well qualified for the work assigned.

6. Indemnification

Each party agrees to indemnify and hold the other harmless (including any agents, employees, or other representatives) from and against losses, damages, liabilities, expenses, claims, legal fees, and demands of whatever nature, including for death, personal injury, property damage or economic loss, to the extent arising out of any negligent act or negligent omission or willful misconduct of either party, its agents or employees while performing under the terms of this Agreement.

7. Assignment

Contractor shall not assign this Agreement or any of the monies due or to become due hereunder without the prior written consent of City.

8. Subcontracting

Contractor may not subcontract its performance under this Agreement without prior written consent of City. Any subcontractor must agree to be bound by the terms of this Agreement applicable to the services to be performed by the subcontractor.

9. Designation of Representatives

The parties agree, for the purposes of this Agreement, that City shall be represented by and may act only through the City Manager or such other person as they may designate in writing. Contractor shall be represented by and may act only through Justin Buckley or Ryan Pleas.

10. Termination

Either party may terminate this Agreement, with or without cause, after first giving thirty (30) days written notice.

11. Insurance and Licensing

The City and Contractor shall, at all times, at its own expense, keep in force the following described insurance for protection against the claims of employees or other persons, insuring both the Contractor and the City against liability that may accrue against them or either of them in connection with the performance of Contractor under this Agreement:

Proof of Insurance and Licensing

Contractor will be required to provide:

- Must be in compliance with Dillingham Municipal Code 4.20.240, Tax Delinquent List
- Copy of 2013 City of Dillingham Business License, if required
- State of Alaska Business License
- Certification of Insurance and Workers Compensation as required under AS23.30 naming all employees

Contractor and City will be required to provide:

- Proof of commercial insurance, covering bodily injury, death, and property damage with a single limit not less than One Million dollars (\$1,000,000) dollars
- Vehicle Liability insurance including applicable Uninsured/Underinsured coverage with limits of liability not less than One Million (\$1,000,000) dollars per occurrence combined

All Insurances, Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance, as described above shall include an endorsement stating the following: Thirty (30) days advance written notice of cancellation, non-renewal, reduction change, shall be sent to the City Manager, Box 889, Dillingham, AK 99576, or to Justin Buckley, 2404 Boyer Ave East, Seattle, WA 98112, respectively.

12. Insurance Certificate

All insurance shall be placed with an insurance carrier or carriers satisfactory to the City and Contractor and shall not be subject to cancellation or any material change except after thirty (30) days written notice to the City and Contractor and shall provide that no failure of City or Contractor to comply with any condition or provision of this Agreement or other conduct of City or Contractor or those for whose conduct it is responsible, shall void or otherwise affect the protection under the policy afforded to the City or Contractor. A Certificate of Insurance reflecting full compliance with these requirements shall, at all times during the term of this Agreement, be kept on deposit at the general offices of the City. If Contractor fails to comply with these insurance requirements, the City may terminate this Agreement on ten (10) days written notice.

Unless otherwise set forth in this Agreement, all insurance policies or other contract security required in this Agreement shall allow claims to be filed based upon the time of an occurrence, and shall not provide for a shorter period in which to make claims than that provided by the applicable statute of limitations. The coverage required by this Agreement shall cover all claims arising in connection with the performance of the City and Contractor under this Agreement, whether or not such claim is asserted during the term of this Agreement, and even though judicial proceedings may not be commenced until after the expiration of this Agreement.

All insurance policies shall be written as primary policies; shall waive subrogation against City or Contractor, respectively, and its agents and employees; and shall not be contributing with, or in excess of, any insurance coverage that the City or Contractor may otherwise carry. All insurance provided under this Agreement must remain fully available to satisfy claims arising out of this Agreement, notwithstanding any other claims that may be filed against that policy.

14. Compliance with Applicable Laws

City and Contractor shall, in the performance of this Agreement, comply with all applicable federal, state and local laws, ordinances, orders, rules and regulations applicable to its performance hereunder, including, without limitation, all such legal provisions pertaining to social security, income tax withholding, medical aid, industrial insurance, worker's compensation, and other employee benefit laws. Contractor also agrees to comply with all contract provisions pertaining to grant or other funding assistance which City may choose to utilize to perform work under this Agreement. Services performed under this Agreement

shall be in accordance with sound, generally accepted consulting practices and shall comply with all applicable codes and standards.

15. Records and Audit

Contractor agrees to maintain sufficient and accurate records and books of account, including detailed time records, showing all direct labor hours expended and all reimbursable costs incurred for at least three years after receipt of final payment and closure of all pending matters related to this Agreement. Said books shall be subject to inspection and audit by City. (Applicable / Not Applicable)

16. Notices

Any official notice that either party hereto desires to give the other shall be delivered through the United States mail by certified mail, return receipt requested, with postage thereon fully prepaid and addressed as follows:

To City of Dillingham:

Rose Loera
City Manager
PO Box 165
Dillingham, AK 99576

To Contractor:

Justin Buckley
Operations Manager
Southwest Alaska Equipment
2404 Boyer Ave East
Seattle, WA 98112

17. Venue and Applicable Law

The venue of any legal action between the parties arising as a result of this Agreement shall exclusively be laid in the Third Judicial District of the Superior Court of the State of Alaska, at Dillingham, Alaska, and this Agreement shall be interpreted in accordance with the laws of the State of Alaska.

18. Attorney's Fees

In the event either party institutes any suit or action to enforce its rights hereunder, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and costs in such suit or action and on any appeal therefrom.

19. Waiver

No failure on the party of either City or Contractor to enforce any covenant or provision herein contained, nor any waiver of any right hereunder unless in writing and signed by the parties sought to be bound, shall discharge or invalidate such covenants or provisions or affect the right of the City or Contractor to enforce the same or any other provision in the event of any subsequent breach or default.

20. Binding Effect

The terms, conditions and covenants contained in this Agreement shall apply to, inure to the benefit of, and bind the parties and their respective successors.

21. Entire Agreement

This Agreement and the accompanying Rental Agreement constitutes the entire agreement

FY 2014 Contract with Southwest Alaska Equipment

between the parties with respect to the subject matter hereof, and all prior negotiations and understandings are superseded and replaced by this Agreement and shall be of no further force and effect. No modification of this Agreement shall be of any force or effect unless reduced to writing, signed by both parties and expressly made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement on the respective date indicated below.

CITY

Dated: _____

By: _____

Rose Loera
City of Dillingham

Dated: _____

BY: _____

Justin Buckley
Southwest Alaska Equipment

DRAFT

APPENDIX A

SCOPE OF SERVICES

Contractor shall provide the following services upon request of the City of Dillingham:

Scope of Work

1. Contractor agrees to provide:
 - a. barges to bring in equipment and vans and to remove metal from Dillingham;
 - b. crane to load and unload equipment and shipping units;
 - c. equipment to bale the metal and major repairs on that equipment if needed;
 - d. vans / shipping units to put the metal in;
 - e. supervision of the removal of the scrap metal.
2. The project will commence in the fall of 2013 and can extend indefinitely, until terminated by one of the parties in accordance with paragraph 10.
3. The City will provide the following equipment and operator:
 - a. front end loader;
 - b. excavator;
 - c. lowboy and tractor;
 - d. operation and routing maintenance of baler.
4. The City will provide an area at the landfill near the scrap metal pile for the equipment and Personnel to work to process the scrap metal, and put it into the vans or other shipping units. The City will provide all consumables, small tools, and safety equipment to process the scrap metal.

Note: The removal of the Scrap Metal from the Dillingham Landfill is a joint effort by the City of Dillingham and Southwest Alaska Equipment. Each party will provide their expertise, and equipment and assist each other for the success of the project. There is no exchange of money between the parties for this project.

SOUTHWEST ALASKA EQUIPMENT, LLC.

2404 Boyer Avenue East

Seattle, WA 98112

Phone (206) 322-3705/Fax (206) 325-6984

RENTAL AGREEMENT

DATE: October 21, 2013

RENTED TO:

City of Dillingham	Start Date: On or about: October 21, 2013
PO Box 889	Estimated Return Date: on or about October 1, 2014
Dillingham, AK 99576	Actual Return Date:
Phone #: (907) 842-5148	Customer P. O. #:
Fax #: (907) 842-2060	Location of Use/ Project: Dillingham, AK

EQUIPMENT RENTED

Make	Model	Serial No.
Mosley	Bailer	ML10CDP10438176

LIST ATTACHMENTS

Two grapple buckets.

RATE

Minimum Term	8 Hr Day	40 Hr Week	176 Hr Month	Machine Value
1 Week				\$90,000.00

OTHER SPECIAL CONDITIONS (attach additional sheet if necessary)

This agreement entered into in conjunction with the Contract for Scrap Metal Removal. There will be no rental rate charge for the City's use of the equipment. Rental F.O.B. point for the purpose of this agreement is the City Dock in Dillingham.

Terms and Conditions

- 1) SOUTHWEST ALASKA EQUIPMENT, LLC., an Alaska LLC, of Naknek, AK, hereafter also referred to as the "company", hereby rents to the customer identified in the block at the top of page one certain equipment detailed below, and the customer agrees to pay as the rental therefor the sums set forth on page one. That said property is rented on the terms and conditions which are set forth below and on page one:
- 2) LOCATION OF USE: It is agreed that said equipment is used in business and is not consumer goods; the said equipment shall be inspected daily, and periodically, and properly maintained to conform to all current safety standards during the term of this agreement at the location set forth on page one.
- 3) PERIOD OF RENTAL: Effective date of this Rental Agreement (R.A.) begins when equipment is shipped and ends when the equipment is returned in good order (See 12J) to the company's yard in Seattle, Washington or other mutually agreeable location.
- 4) RENTAL RATES: Single shift rental rates, values and description of the equipment are listed on page one. It is agreed that equipment is rented for a basic single shift of 8 hours per day, 40 hours per week, 176 hours per month. If the equipment is used additional shift hours, a pro rata rate (dependent on actual additional usage) will be paid by customer for the additional hours of use. Customer shall keep accurate written records on its use of the equipment, and such records shall be available for the company's inspection at reasonable times.
- 5) WAIVER OF DEFECTS: Customer acknowledges that the described equipment has been received in good, safe and serviceable condition, and is fit for its intended use. It is the customer's responsibility to obtain and maintain proper State and/or Federal inspection certifications for its intended and actual use(s) of the equipment.
- 6) **DISCLAIMER OF ALL WARRANTIES: There is no implied warranty of merchantability, no implied warranty of fitness for a particular purpose, and no other warranty, express or implied, applicable to the leased equipment. No further warranty shall be implied by law.**
- 7) **WARNING: Failure to promptly return the equipment herein may result in criminal prosecution.**
- 8) LIMITATION OF LIABILITY OF COMPANY: Company shall not be liable for any loss of business or other damages caused by any interruption of any service herein to be given by the company.
- 9) TERMS: Rentals will be due in advance and will be payable in lawful money at company's principal office, Seattle, WA. Maximum legal interest will be charged on all past due amounts.
- 10) TRANSPORTATION AND RETURN OF PROPERTY: The rental price is F.O.B. at the company yard in Seattle, Washington or other mutually agreeable location. Customer agrees to pay all transportation charges and at the end of the lease term to return the leased property in as good condition as at the beginning of the lease term.
- 11) INSURANCE: Customer agrees to bear full responsibility and liability for the leased equipment and assume all risks of loss or damage to the equipment from the time the equipment leaves the premise of the company until the time it is returned. Customer agrees to procure insurance at his expense showing the company (Southwest Alaska Equipment, LLC.) as the named insured and securing Southwest Alaska Equipment, LLC. against all risks of damage, loss, theft or destruction, partial or complete of the equipment from whatever source.

Detailed Insurance Requirements

- a) Comprehensive General Liability
 - i) Limit \$1,000,000 minimum.
 - ii) Southwest Alaska Equipment, LLC. named as additional insured.
 - b) Contractors Equipment Floater (Inland Marine Form) Covering Physical Damage
 - i) Limit adequate to cover value of rental unit.
 - ii) Boom and boom overload and waterborne exclusions deleted- Note: This must be on the certificate.
 - iii) All risk form.
 - iv) Southwest Alaska Equipment, LLC. named as additional insured and loss payee.
 - v) Unit should be listed on certificate with serial number and value.
 - c) Evidence of Insurance
 - i) Only a proper certificate issued by insurance agent to Southwest Alaska Equipment, LLC. with additional insured and loss payee endorsement will be deemed acceptable evidence.
- 12) MAINTENANCE AND REPAIRS: Customer agrees: (a) to properly protect all equipment from weather by suitable housing, (b) to provide competent operators, (c) to perform routine and periodic, (d) to use the equipment in a careful manner in conformity with all governmental laws, ordinances, regulations, requirements, and rules, (e) to maintain the equipment in good operating condition during the term of this lease, (f) to make, at his expense, all necessary repairs and replacements to maintain the equipment in good condition provided that all repairs and replacements shall constitute accessions to the equipment and title thereto shall vest in the company, (g) to permit the company to have access to the equipment at all reasonable times for inspection, (h) to permit and authorize the company to make repairs, if the equipment becomes damaged

during the term of this Agreement, and the customer agrees to pay the company the bill for such repairs, at the price prevailing for such work required, (i) to pay the company the valuation price as set forth on page one in the event the damage is so serious that it would not be practicable to repair the equipment, provided that the company will be the sole judge as to the seriousness of any such damage, (j) to permit the company to apply any money paid by the customer first on any handling charge or repair charges or any other charges, accruing under the terms of this contract which the company may have obliged to advance or make, prior to applying such payment upon amounts due for rents, (k) to reimburse the company for gross rental loss during the time leased equipment is being repaired.

- 13) INDEMNITY: Customer shall indemnify Southwest Alaska Equipment, LLC. against all claims, suits, actions, proceeding, damages and liabilities, including attorney's fees and costs, arising from or connected with this agreement or Customer's possession, use or return of the leased equipment.
- 14) REMOVAL OR SALE: Without prior written consent of the company, customer will not remove the property from the job for which rented or leased, and customer will not sell nor re-let the property or any interest therein. Further, customer will not assign any of his rights under this rental agreement without prior written consent of the company.
- 15) DEFAULT: If rental is not paid when due or if customer fails to comply with any of the terms or conditions of this agreement, Southwest Alaska Equipment, LLC. may, at its option, terminate this agreement and at Customer's expense enter upon the premises where the equipment is stored, take possessions of the equipment without previous notice or demand, and return it to the yard of Southwest Alaska Equipment, LLC.. The retaking of such equipment shall not relieve the customer of his obligations herein, including but not limited to all rentals and expenses chargeable to him. Upon such retaking, all rights of the customer shall thereupon terminate.
- 16) WAIVERS: No waiver by the company of any term of this lease shall be effective unless in writing signed by a duly authorized officer of the company; and no waiver or indulgence by the company of any deviation by customer from full performance of his agreements shall be a waiver of the right of the company of subsequent or other full and timely performance.
- 17) RENTAL ONLY: This is an agreement of rental only and nothing herein conveys to Customer any right, title or interest in or to any of the equipment except as renter. No option covering this equipment is given unless there is a separate option agreement signed by the company.
- 18) TAXES AND FEES: Customer shall be liable for and shall reimburse company for amounts equal to any sales or use tax, or license or registration fees, levied or based upon the rentals, or the equipment or use or operation thereof; and all other applicable taxes will be paid by customer.
- 19) NOTICES: Any notice by the company to customer shall be transmitted to the mailing address of customer, which is recited on the front of this agreement.
- 20) MERGER: This lease agreement expresses the full and final purpose of the parties and course of dealing shall not qualify or supplement it.
- 21) Time is of the essence in this rental agreement.

I HAVE READ THIS CONTRACT AND HEREBY ACKNOWLEDGE AND AGREE TO THE TERMS AND CONDITIONS STATED HEREIN.

Signature must be by a person authorized to sign and should indicate their title. Please return a signed copy of this agreement to our office as soon as possible.

CUSTOMER SIGNATURE: _____

NAME AND TITLE (please print): _____

COMPANY SIGNATURE: _____

NAME AND TITLE (please print): _____