

MEMORANDUM 08-101

TO: Mayor Hornaday and Homer City Council

FROM: Walt Wrede

DATE: July 16, 2008

SUBJECT: Proposed Lease / AMHS / Lot 48

BACKGROUND

The Pioneer Dock was completed in or around 2002. Both the Federal Government (United States Coast Guard / USCG) and the State of Alaska (Alaska Marine Highway System /AMHS) made very significant contributions to the cost of construction. In exchange for those contributions, both agencies received certain rights and privileges with respect to the use of the new dock and the adjacent uplands.

Lot 45 A is the lot that is located between the Sterling Highway and the two approach ramps to the Pioneer Dock. It contains the Ferry Terminal, the dock staging area, and parking for USCG employees. It will be referred to repeatedly in this memo.

The City entered into several agreements with these agencies when the dock was completed. The City and AMHS signed a preferential dock agreement which provided AMHS with preferential docking privileges on certain sections of the dock when its ships were in port. The parties also signed an amended long-term land use agreement which gave AMHS exclusive use of the Staging Area (Lot 45A) during certain periods before arrival and after departure of the Ferry. The City and the Coast Guard entered into a long-term lease agreement which provided the Coast Guard with exclusive use of the approach ramp and the North side of the dock. The lease also provides the USCG with 25 parking spaces on Lot 45-A, adjacent to the USCG approach ramp, for the personnel of *USCG Hickory*. According to the City's former City Manager and Finance Director who were here at the time, this arrangement and joint use of Lot 45A was understood and agreed to by the parties.

This all worked very well and there were no conflicts for several years. Then several events occurred which placed a premium on space at Lot 45A. First, AMHS decided to homeport the *Tustumena* here and to bring the *Kennecott* to Homer more frequently, especially in the summer. Both decisions were welcomed by the City. However, they had the effect of creating a greater need for staging and parking space. Further, AMHS

began exercising its rights at the dock and on Lot 45A more frequently; sometimes to the detriment of other shippers.

Second, AMHS decided that it wanted to construct a relatively large warehouse on Lot 45 A. Doing so would have increased the pressure there because of the space needed for the warehouse itself and for staging and forklift operations. The City opposed placing the warehouse at the proposed location because doing so would potentially violate the City Zoning Code and the Marine Highway Scenic Byways Plan.

The City worked with AMHS over the course of several years to select an alternative site for the warehouse which was mutually acceptable. The City offered land on Lot 48. AMHS remained focused on placing the warehouse somewhere on Lot 45 A. AMHS has experienced a great turnover in staff and leadership positions and none of the personnel making decisions now were around when the dock was completed. As we were evaluating various sites on Lot 45 A, it came to AMHS's attention that the City had leased part of Lot 45 A to the Coast Guard for employee parking. AMHS was very unhappy about this and accused the City of violating its land use agreement with the State and with illegally "double leasing" Lot 45 A."

The City does not necessarily agree with the State's legal posture on this matter. Instead of getting involved in a protracted legal battle, which would probably have included the Coast Guard as well, the City decided that the best and most productive course of action was to try and find a solution that worked for all parties. The City is motivated to do what it can to accommodate both AMHS and USCG because they are both such important components of the local economy and fabric of life.

As I noted to you in several Manager's Reports, the City has offered to provide AMHS some space on Lot 48 to effectively compensate it for the space it claims it lost on Lot 45A. Lot 48 is the lot across the road which contains the Port and Harbor Maintenance Shop. USCG once had a warehouse there. A conditional use permit has already been approved for an AMHS warehouse in this location. After lots of stops and starts, we are now at a point where we are actively discussing a lease document for a portion of Lot 48.

The City has offered AMHS approximately 16,000 square feet in this location to be used for a warehouse, staging area, employee parking, and some long- term parking. The City administration believes this is a good solution because it gets the warehouse in a more appropriate location, it relieves congestion on Lot 45 A, its gets AMHS employee vehicles out of the Sterling Highway ROW and into a safe location, and it provides for secure long term parking for customers. We have offered to recommend to the Council that this property be provided rent free because AMHS does not currently pay rent for its use of Lot 45A.

The Lease is still in draft form and is not ready for formal consideration by the Council. The purpose of this Memorandum is to seek conceptual approval for a lease term which is longer than normal. AMHS very much wants to enter into a 50 year lease and has made it clear that it needs an answer to this question before it is willing to proceed further with negotiations. The City responded that 50 years is a very long time and was beyond what the Administration could agree to without Council concurrence.

Under the City Code and the Adopted Lease Policies, the Council can award leases that are below fair market value and for extended terms if it finds in a resolution that it is in the overall public interest to do so. In my view, creating a good environment and good working conditions for AMHS and USCG is clearly in

the community interest provided that the City is not saddled with unacceptable impacts.

RECOMMENDATION:

Conceptual approval for a 50 year, rent free lease to AMHS for approximately 16,000 square feet on Lot 48 to be used only for a warehouse, staging area, employee parking, and long term parking. Resolution and Lease Document to follow.