

City Council
May 24, 2011
Tuesday



Worksession 4:00 P.M.
Committee of the Whole 5:00 P.M.
Regular Meeting 6:00 P.M.



Cowles Council Chambers
City Hall
491 E. Pioneer Avenue
Homer, Alaska



May/June 2011

- Tuesday 24th** CITY COUNCIL Worksession 4:00 p.m., Committee of the Whole 5:00 p.m., and Regular Meeting 6:00 p.m.
- Wednesday 25th** PORT AND HARBOR ADVISORY COMMISSION Regular Meeting 5:00 p.m.
- Thursday 26th** KACHEMAK DRIVE WATER/SEWER IMPROVEMENT DISTRICT 5:00 – 6:00 p.m.
- KACHEMAK DRIVE PATH COMMITTEE 6:15 p.m.
- Monday 30th** CITY OFFICES CLOSED in observance of Memorial Day.
- Wednesday 1st** PLANNING COMMISSION Worksession 5:30 p.m. and Regular Meeting 7:00 p.m.
- Monday 6th** CITY HALL RENOVATION AND EXPANSION TASK FORCE 5:00 p.m.
- Tuesday 7th** LIBRARY ADVISORY BOARD 5:00 p.m.
- Thursday 9th** LEASE COMMITTEE Special Meeting 3:00 p.m.
- PUBLIC ARTS COMMITTEE 5:00 p.m.
- Monday 13th** Committee of the Whole 5:00 p.m. and Regular Meeting 6:00 p.m.

Regular Meeting Schedule

- City Council 2nd and 4th Monday 6:00 p.m.
Library Advisory Board 1st Tuesday 5:00 p.m.
Economic Development Advisory Commission 2nd Tuesday 6:00 p.m.
Parks and Recreation Advisory Commission 3rd Thursday of the months of January, March, May, June, July, August, September and November 5:30 p.m.
Planning Commission 1st and 3rd Wednesday 7:00 p.m.
Port and Harbor Advisory Commission 4th Wednesday 5:00 p.m.
Transportation Advisory Committee Quarterly 3rd Tuesday 5:30 p.m.
Public Arts Committee Quarterly 3rd Thursday 5:00 p.m.
Lease Committee Quarterly 2nd Thursday 3:00 p.m.
Permanent Fund Committee Quarterly 2nd Thursday 5:15 p.m.

MAYOR AND CITY COUNCILMEMBERS AND TERMS

- JAMES C. HORNADAY, MAYOR – 12
KEVIN HOGAN, COUNCILMEMBER – 12
BARBARA HOWARD, COUNCILMEMBER – 11
DAVID LEWIS, COUNCILMEMBER – 11
FRANCIE ROBERTS, COUNCILMEMBER – 12
MARY E. (BETH) WYTHE, COUNCILMEMBER – 13
BRYAN ZAK, COUNCILMEMBER – 13
City Manager, Walt Wrede
City Attorney, Thomas Klinkner

<http://www.cityofhomer-ak.gov/cityclerk> home page access, Clerk's email address is: clerk@ci.homer.ak.us Clerk's office phone number: direct line 235-3130, other number 435-3106.

HOMER CITY COUNCIL/WORKSESSION
491 E. PIONEER AVENUE
HOMER, ALASKA

MAY 24, 2011
TUESDAY, AT 4:00 P.M.
COWLES COUNCIL CHAMBERS

**MEETING NOTICE
WORKSESSION AGENDA**

1. CALL TO ORDER, 4:00 P.M.

Mayor Hornaday has requested excusal.
Councilmember Zak has requested excusal.

2. AGENDA APPROVAL (Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual, pg. 5)

3. Water and Sewer Rates

Page 7

4. COMMENTS OF THE AUDIENCE

5. ADJOURNMENT NO LATER THAN 4:50 P.M. NEXT REGULAR MEETING IS SCHEDULED FOR MONDAY, JUNE 13, 2011 AT 6:00 P.M. THE NEXT COMMITTEE OF THE WHOLE IS SCHEDULED FOR MONDAY, JUNE 13, 2011 AT 5:00 P.M. All meetings scheduled to be held in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

HOMER WATER AND SEWER SPECIAL REVENUE FUND

	FY2003 Actual	FY2004 Actual	FY2005 Actual	FY2006 Actual	FY2007 Actual	FY2008 Actual	FY2009 Actual	FY2010 Draft	FY2011 Budget
Revenue									
Water Revenue					\$ 1,199,744	\$ 1,475,565	\$ 1,551,497	\$ 1,685,021	\$ 1,547,482
Sewer Revenue					1,380,994	1,457,354	1,478,825	1,483,423	1,871,561
Total Operating Revenue:	\$ 2,281,615	\$ 2,569,495	\$ 2,605,373	\$ 2,580,739	\$ 2,683,847	\$ 2,932,919	\$ 3,277,986	\$ 3,168,444	\$ 3,419,043
Operating Expenses before Depreciation:									
Personnel	895,231	1,086,027	1,227,306	1,391,744	\$ 1,593,155	\$ 1,817,854	\$ 1,846,907	\$ 1,714,978	\$ 1,648,078
Operations & Maintenance	599,854	561,184	629,790	715,807	738,032	849,247	1,091,714	874,559	914,227
Debt Service	60,000	240	107	1,124	13,183	882	3,038	(222)	-
Other Charges (Administrative Costs)	435,515	466,567	533,080	511,802	567,923	497,694	467,317	476,861	479,980
Total Operating Expenses	1,990,600	2,209,197	2,390,283	2,620,476	\$ 2,912,292	\$ 3,165,677	\$ 3,408,975	\$ 3,066,176	\$ 3,042,285
Operating Income before Depreciation:	291,015	360,298	215,090	(39,737)	(228,444)	(232,758)	(130,989)	102,267	376,758
Depreciation Expense	1,605,942	1,611,192	1,780,181	1,784,142	2,016,613	2,069,133	2,225,964	-	-
Earnings from Operations	(1,314,927)	(1,250,894)	(1,565,092)	(1,823,879)	\$(2,245,058)	\$(2,301,891)	\$(2,356,953)	\$ 102,267	\$ 376,758
Total Non - Operating Revenue	8,713	15,538	79,899	42,179	140,091	394,364	132,265	210,709	81,000
Earnings before contributions & transfers	(1,306,214)	(1,235,356)	(1,485,193)	(1,781,700)	\$(2,104,966)	\$(1,907,527)	\$(2,224,688)	\$ 312,977	\$ 457,758
Capital Contributions	1,385,493	1,027,915	1,032,414	1,049,409	1,118,516	1,249,118	1,251,292	-	-
Reserves	224,000	274,000	440,000	440,000	440,000	100,000	100,000	500,000	500,000
Leave Cash Out Bank	-	-	-	-	22,704	54,837	37,439	30,849	36,623
Change in Net Assets	(144,721)	(481,441)	(892,779)	(1,172,291)	(1,449,154)	(813,246)	(1,110,835)	(217,872)	(78,865)

Question	Answer
1. What is the difference between a primary and a secondary cell?	A primary cell is a cell that can be recharged, while a secondary cell is a cell that cannot be recharged.
2. What is the difference between a primary and a secondary cell?	A primary cell is a cell that can be recharged, while a secondary cell is a cell that cannot be recharged.
3. What is the difference between a primary and a secondary cell?	A primary cell is a cell that can be recharged, while a secondary cell is a cell that cannot be recharged.
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9. What is the difference between a primary and a secondary cell?	A primary cell is a cell that can be recharged, while a secondary cell is a cell that cannot be recharged.
10. What is the difference between a primary and a secondary cell?	A primary cell is a cell that can be recharged, while a secondary cell is a cell that cannot be recharged.

	FY2008 Actual	FY 2009 Actual	FY2010 Draft	FY2011 Budget
Water / Sewer Expenses				
Personnel	\$ 1,817,854	\$ 1,846,907	\$ 1,714,978	\$ 1,648,078
Operations & Maintenance	849,247	1,091,714	874,559	914,227
Debt Service	882	3,038	(222)	-
Other Charges (Administrative Costs)	497,694	467,317	476,861	479,980
Reserves	100,000	100,000	500,000	500,000
Leave Cash Out Bank	54,837	37,439	30,849	36,623
	3,320,514	3,546,414	3,597,025	3,578,908

Variable costs can be seen in the operations & maintenance. As billable gallons dropped in 2010, this line item decreased.

basidiospores

Basidiospores are borne on sterigmata of the basidium. They are usually 4 in number and are often of different sizes. The sterigmata are usually 4-rayed and the basidium is usually 4-celled. The sterigmata are usually 4-rayed and the basidium is usually 4-celled.

Basidium	Basidiospores	Basidium	Basidiospores
1. Sterigmata 4-rayed	4 spores	2. Sterigmata 4-rayed	4 spores
2. Sterigmata 4-rayed	4 spores	3. Sterigmata 4-rayed	4 spores
3. Sterigmata 4-rayed	4 spores	4. Sterigmata 4-rayed	4 spores
4. Sterigmata 4-rayed	4 spores	5. Sterigmata 4-rayed	4 spores
5. Sterigmata 4-rayed	4 spores	6. Sterigmata 4-rayed	4 spores
6. Sterigmata 4-rayed	4 spores	7. Sterigmata 4-rayed	4 spores
7. Sterigmata 4-rayed	4 spores	8. Sterigmata 4-rayed	4 spores
8. Sterigmata 4-rayed	4 spores	9. Sterigmata 4-rayed	4 spores
9. Sterigmata 4-rayed	4 spores	10. Sterigmata 4-rayed	4 spores

Variable costs are identified in the water utility...

Water Expenditures	FY 2008		FY 2009		FY 2010 Draft		FY 2011
	FY2008 Actual	Actual	FY 2009 Actual	FY 2010 Draft	FY 2010 Draft	Budget	
Total Salaries and Benefits	965,231	987,827	929,599	868,276			
Maintenance and Operations							
Office Supplies	732	242	1,274	1,200			
Operating Supplies	67,707	95,369	50,784	41,200			
Fuel/Lube	25,019	25,746	34,490	35,000			
Chemicals	26,094	44,398	43,714	32,000			
Vehicle/Boat Maintenance	-	-	414	1,200			
Equipment Maintenance	30,401	35,014	15,203	42,500			
Building & Grounds Maintenance	2,343	101,675	12,088	12,500			
Professional & Special Services	29,915	23,422	28,683	28,600			
Accounting/Auditing	9,059	6,715	7,392	9,342			
Survey/Appraisal	750	-	950	1,200			
Rents & Leases	-	-	394	2,000			
Communications	6,017	4,119	3,887	4,200			
Postage/Freight	2,200	1,684	83	1,500			
Electricity	108,417	143,794	122,864	127,000			
Refuse/Disposal	-	270	170	-			
Property Insurance	11,567	11,108	12,243	15,349			
Auto Insurance	12,299	14,086	11,808	11,140			
Liability Insurance	19,145	21,695	19,274	17,602			
Testing/Analysis	12,480	14,444	19,009	16,000			
Advertising	-	-	249	700			
Tools/Equipment	6,845	6,985	9,980	9,200			
Computer Related Items	-	-	-	1,000			
Recording/Permit Fees	-	235	150	1,000			
Memberships/Dues	276	724	343	1,000			
Transportation	-	-	386	-			
Subsistence	-	-	301	-			
Credit Card Expense	19,761	23,043	24,712	24,000			
Construction	-	-	6,072	-			
Safety Equipment	2,120	2,426	1,508	2,000			
Employee Training	8,766	5,123	7,331	8,400			
Bad Debt Expense	(5,907)	12,164	3,635	-			
Total Maintenance & Operations	396,003	594,480	439,389	446,833			

Variable costs are identified in the water utility...

Account	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Total	
Water	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Electricity	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50
Gas	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20
Chemicals	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
Salaries	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Benefits	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50
Depreciation	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Interest	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50
Other	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
Total	310																						

	FY2008 Actual	FY 2009 Actual	FY2010 Draft	FY2011 Budget
Water / Sewer Expenses				
Personnel	\$ 1,817,854	\$ 1,846,907	\$ 1,714,978	\$ 1,648,078
Operations & Maintenance	849,247	1,091,714	874,559	914,227
Debt Service	882	3,038	(222)	-
Other Charges (Administrative Costs)	497,694	467,317	476,861	479,980
Reserves	100,000	100,000	500,000	500,000
Leave Cash Out Bank	54,837	37,439	30,849	36,623
	3,320,514	3,546,414	3,597,025	3,578,908

Variable costs can be seen in the operations & maintenance. As billable gallons dropped in 2010, this line item decreased.

1. *Aspergillus niger* (Fr.) Link. & Peck
 2. *Aspergillus fumigatus* (Fr.) Sacc.
 3. *Aspergillus terreus* (Fr.) Sacc.
 4. *Aspergillus nidulans* (Fr.) Sacc.
 5. *Aspergillus oryzae* (Fr.) Sacc.

Sl. No.	Name of the Fungus	Characteristics	Uses
1.	<i>Aspergillus niger</i>	Black mold, produces citric acid	Production of citric acid, enzymes
2.	<i>Aspergillus fumigatus</i>	Common indoor air contaminant	Production of enzymes, antibiotics
3.	<i>Aspergillus terreus</i>	Soil-dwelling fungus	Production of lovastatin, enzymes
4.	<i>Aspergillus nidulans</i>	Common mold, used in research	Production of enzymes, antibiotics
5.	<i>Aspergillus oryzae</i>	Used in traditional food fermentation	Production of enzymes, soy sauce, miso

Variable costs are identified in the water utility...

Water Expenditures	FY 2009		FY 2010 Draft		FY 2011 Budget
	FY2008 Actual	Actual	FY 2010 Draft	Budget	
Water Expenditures					
Total Salaries and Benefits	965,231	987,827	929,599	868,276	
Maintenance and Operations					
Office Supplies	732	242	1,274	1,200	
Operating Supplies	67,707	95,369	50,784	41,200	
Fuel/Lube	25,019	25,746	34,490	35,000	
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Equipment Maintenance	30,401	35,014	15,203	42,500	
Building & Grounds Maintenance	2,343	101,675	12,088	12,500	
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Refuse/Disposal	-	270	170	-	
Property Insurance	11,567	11,108	12,243	15,349	
Auto Insurance	12,299	14,086	11,808	11,140	
Liability Insurance	19,145	21,695	19,274	17,602	
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Memberships/Dues	276	724	343	1,000	
Transportation	-	-	386	-	
Subsistence	-	-	301	-	
Credit Card Expense	19,761	23,043	24,712	24,000	
Construction	-	-	6,072	-	
Safety Equipment	2,120	2,426	1,508	2,000	
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Bad Debt Expense	(5,907)	12,164	3,635	-	
Total Maintenance & Operations	396,003	594,480	439,389	446,833	

Variable costs are identified in the water utility...

Account Name	Debit	Credit	Balance
Water Utility - Variable Costs			
Fuel	1000		1000
Electricity	2000		3000
Maintenance	500		3500
Repairs	1000		4500
Supplies	1500		6000
Travel	200		6200
Miscellaneous	300		6500
Depreciation	1000		7500
Interest	500		8000
Insurance	1000		9000
Taxes	1000		10000
Salaries	1000		11000
Retirement	500		11500
Unemployment	500		12000
Health Insurance	500		12500
Life Insurance	500		13000
Professional Fees	500		13500
Legal Fees	500		14000
Accounting Fees	500		14500
Consulting Fees	500		15000
Advertising	500		15500
Public Relations	500		16000
Office Expenses	500		16500
Postage	500		17000
Printing	500		17500
Telephone	500		18000
Internet	500		18500
Travel Agency	500		19000
Car Rental	500		19500
Hotel	500		20000
Restaurant	500		20500
Gasoline	500		21000
Parking	500		21500
Tolls	500		22000
Fees	500		22500
Licenses	500		23000
Permits	500		23500
Insurance Premiums	500		24000
Interest on Loans	500		24500
Dividends	500		25000
Retirement Contributions	500		25500
Charitable Contributions	500		26000
Gifts	500		26500
Entertainment	500		27000
Travel Expenses	500		27500
Miscellaneous	500		28000
Total	28000		28000

Variable costs identified in the sewer utility....

SEWER EXPENDITURES	FY2008 Actual	FY 2009 Actual	FY 2010 Draft	FY 2011 Adopted Budget
Total Salaries and Benefits	852,623	859,079	785,379	729,802
Maintenance and Operations				
Office Supplies	460	571	105	-
Operating Supplies	20,035	29,954	23,324	24,300
Fuel/Lube	39,201	33,339	46,895	45,000
Chemicals	55,068	34,121	29,654	25,000
Equipment Maintenance	34,011	22,666	23,061	29,200
Building & Grounds Maintenance	1,175	2,462	3,119	3,500
Professional & Special Services	28,503	43,839	6,449	41,100
Earnings before transfers	7,060	6,715	7,392	9,341
Rents & Leases	1,063	250	850	1,500
Postage/Freight	2,146	1,645	34	2,500
Electricity	174,610	210,521	188,528	189,700
Water	11,092	16,541	17,044	15,000
Sewer	906	796	598	900
Property Insurance	18,464	17,279	12,262	9,314
Auto Insurance	12,299	12,585	11,808	11,140
Liability Insurance	18,740	23,174	18,311	15,149
Testing/Analysis	1,810	3,974	3,300	4,000
Advertising	-	338	-	500
Tools/Equipment	2,421	3,290	4,438	4,500
Damage not covered by Insurance	-	-	5,850	-
Memberships/Dues	90	50	1,926	1,500
Credit Card Expense	18,726	23,043	24,712	24,000
Clothing/Uniforms	93	-	470	250
Safety Equipment	1,341	1,895	1,592	1,500
Employee Training	4,906	1,143	1,892	4,000
Bad Debt Expense	(4,300)	6,756	980	-
Total Operations & Maintenance	453,244	497,234	435,169	467,395

2009 Rate Model:

Water		
User Type	Monthly Customer	Charge per Gallon
Residential (Single Family Dwelling)	\$25	.00442
Other (Commercial, B&B, Multi-Dwelling, Etc)	\$25	.01140
Bulk	\$25	.01269

Sewer		
User Type	Monthly Customer	Charge per Gallon
Residential (Single Family Dwelling)	\$20	.00997
Other (Commercial, B&B, Multi-Dwelling, Etc)	\$20	.01264

1. Die
2. Die
3. Die

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SOLB 6576 Model

INDIRECT COSTS

OVERHEAD ALLOCATION BASED ON ADOPTED 2011 BUDGET BASIS: ESTIMATED WORK EFFORT BY DEPARTMENT

Department	TOTAL	General Fund	HART Fund	HAWSP Fund	Water Fund	Sewer Fund	Port & Harbor Fund
Mayor & Council Distribution	\$ 276,176	\$179,514 65%	\$19,332 7%	\$30,379 11%	\$8,285 3%	\$8,285 3%	\$30,379 11%
City Clerk Distribution	315,706	205,209 65%	22,099 7%	34,728 11%	9,471 3%	9,471 3%	34,728 11%
Janitorial Distribution	152,258	114,193 75%	-	-	7,613 5%	7,613 5%	22,839 15%
City Manager Distribution	269,952	164,671 61%	18,897 7%	29,695 11%	8,099 3%	8,099 3%	40,493 15%
Economic Development Distribution	104,727	41,891 40%	-	-	20,945 20%	20,945 20%	20,945 20%
Personnel/Publications Distribution	131,913	89,617 68%	-	-	10,118 8%	9,940 8%	22,238 17%
Information Systems Distribution	199,036	135,217 68%	-	-	15,266 8%	14,998 8%	33,554 17%
Finance Distribution	719,858	215,957 30%	50,390 7%	93,582 13%	136,773 19%	129,574 18%	93,582 13%
Planning Zoning Distribution	400,032	300,024 75%	8,001 2%	8,001 2%	12,001 3%	12,001 3%	60,005 15%
City Hall Complex Distribution	148,210	59,284 40%	7,559 5%	7,559 5%	24,603 17%	24,603 17%	24,603 17%
PW Eng-Inspection Distribution	177,260	141,808 80%	8,863 5%	26,589 15%	-	-	-
Public Works Administration Distribution (excludes debt)	239,031	83,661 35%	23,903 10%	23,903 10%	47,806 20%	47,806 20%	11,952 5%
Allocation before adjustments	3,134,159	1,731,046	159,044	254,435	300,981	293,336	395,317
Total Water Allocation	\$3,134,159	\$1,731,046	\$159,044	\$254,435	\$300,981	\$293,336	\$395,317
Less Hydrant Reimbursement	(85,690)	-	-	-	(85,690)	-	-
Less Labor Portion of PW charged to depts	(25,082)	-	-	-	(8,361)	(8,361)	(8,361)
Less Labor Portion of Janitorial charged to other depts	(29,814)	-	-	-	(5,963)	(5,963)	(17,889)
Total Allocated	\$2,993,573	\$1,731,046	\$159,044	\$254,435	\$200,968	\$279,013	\$369,068
Percent of Allocation	100%	57.83%	5.31%	8.50%	6.71%	9.32%	12.33%

<p>1. Name of the person 2. Address 3. City 4. State 5. Zip 6. Telephone 7. E-mail 8. Fax 9. Other</p>	<p>1. Name of the person 2. Address 3. City 4. State 5. Zip 6. Telephone 7. E-mail 8. Fax 9. Other</p>	<p>1. Name of the person 2. Address 3. City 4. State 5. Zip 6. Telephone 7. E-mail 8. Fax 9. Other</p>	<p>1. Name of the person 2. Address 3. City 4. State 5. Zip 6. Telephone 7. E-mail 8. Fax 9. Other</p>	<p>1. Name of the person 2. Address 3. City 4. State 5. Zip 6. Telephone 7. E-mail 8. Fax 9. Other</p>
<p>1. Name of the person 2. Address 3. City 4. State 5. Zip 6. Telephone 7. E-mail 8. Fax 9. Other</p>	<p>1. Name of the person 2. Address 3. City 4. State 5. Zip 6. Telephone 7. E-mail 8. Fax 9. Other</p>	<p>1. Name of the person 2. Address 3. City 4. State 5. Zip 6. Telephone 7. E-mail 8. Fax 9. Other</p>	<p>1. Name of the person 2. Address 3. City 4. State 5. Zip 6. Telephone 7. E-mail 8. Fax 9. Other</p>	<p>1. Name of the person 2. Address 3. City 4. State 5. Zip 6. Telephone 7. E-mail 8. Fax 9. Other</p>

Rate Comparison:		Homer	Wasilla
Water Customers			
Single Family Dwelling Units			
1,000 Gallons	29.42	36.68	\$7.34 per 1,000, Monthly Minimum = \$36.68
2,500 Gallons	36.05	36.68	
3,750 Gallons	41.58	36.68	
5,000 Gallons	47.10	36.70	
7,500 Gallons	58.15	55.05	
Other (Includes Multi-Family, Business, B&B, Etc)			
1,000 Gallons	36.40	36.68	\$7.34 per 1,000, Monthly Minimum = \$36.68
2,500 Gallons	59.50	36.68	
3,750 Gallons	67.75	36.68	
5,000 Gallons	82.00	36.70	
7,500 Gallons	110.50	55.05	
10,000 Gallons	139.00	73.40	
20,000 Gallons	253.00	146.80	
30,000 Gallons	367.00	220.20	
50,000 Gallons	595.00	367.00	
100,000 Gallons	1,165.00	734.00	
Rate Comparison:			
Homer			
500,000 Gallons	6,370.00	3,870.00	\$7.73 per 1,000, Monthly Minimum = \$38.63
1,400,000 Gallons	17,781.00	10,476.00	
Wasilla			
Proposed Rates:			
Sewer Customers			
Single Family Dwelling Units			
1,000 Gallons	29.97	44.18	\$7.73 per 1,000, Monthly Minimum = \$38.63
2,500 Gallons	44.93	52.66	
3,750 Gallons	57.89	59.72	
5,000 Gallons	69.85	66.78	
7,500 Gallons	94.78	80.9	
Other (Includes Multi-Family, Business, B&B, Etc)			
1,000 Gallons	32.64	31.63	\$7.73 per 1,000, Monthly Minimum = \$38.63
2,500 Gallons	51.60	38.63	
3,750 Gallons	67.40	38.63	
5,000 Gallons	88.20	38.65	
7,500 Gallons	114.80	57.98	
10,000 Gallons	146.40	77.30	
20,000 Gallons	272.80	154.60	
30,000 Gallons	399.20	1.90	
50,000 Gallons	652.00	386.50	
100,000 Gallons	1,284.00	773.00	

<p>1. Name of the person 2. Address 3. City 4. State 5. Zip</p>	<p>1. Name of the person 2. Address 3. City 4. State 5. Zip</p>	<p>1. Name of the person 2. Address 3. City 4. State 5. Zip</p>	<p>1. Name of the person 2. Address 3. City 4. State 5. Zip</p>
<p>1. Name of the person 2. Address 3. City 4. State 5. Zip</p>	<p>1. Name of the person 2. Address 3. City 4. State 5. Zip</p>	<p>1. Name of the person 2. Address 3. City 4. State 5. Zip</p>	<p>1. Name of the person 2. Address 3. City 4. State 5. Zip</p>
<p>1. Name of the person 2. Address 3. City 4. State 5. Zip</p>	<p>1. Name of the person 2. Address 3. City 4. State 5. Zip</p>	<p>1. Name of the person 2. Address 3. City 4. State 5. Zip</p>	<p>1. Name of the person 2. Address 3. City 4. State 5. Zip</p>

HOMER CITY COUNCIL/COMMITTEE OF THE WHOLE
491 E. PIONEER AVENUE
HOMER, ALASKA

MAY 24, 2011
TUESDAY, AT 5:00 P.M.
COWLES COUNCIL CHAMBERS

**MEETING NOTICE
COMMITTEE OF THE WHOLE AGENDA**

1. CALL TO ORDER, 5:00 P.M.

Mayor Hornaday has requested excusal.
Councilmember Zak has requested excusal.

2. AGENDA APPROVAL (Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual, pg. 5)

3. Lynn Whitmore, Kenai Peninsula Borough Parcel for Moose Habitat, 15 minutes.

4. REGULAR MEETING AGENDA

5. COMMENTS OF THE AUDIENCE

6. ADJOURNMENT NO LATER THAN 5:50 P.M. NEXT REGULAR MEETING IS SCHEDULED FOR MONDAY, JUNE 13, 2011 AT 6:00 P.M. THE NEXT COMMITTEE OF THE WHOLE IS SCHEDULED FOR MONDAY, JUNE 13, 2011 AT 5:00 P.M. All meetings scheduled to be held in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

CALL TO ORDER
PLEDGE OF ALLEGIANCE
AGENDA APPROVAL

**MEETING NOTICE
REGULAR MEETING AGENDA**

Worksession 4:00 p.m. and Committee of the Whole 5:00 p.m. in Homer City Hall Cowles Council Chambers.

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE

Mayor Hornaday has requested excusal.
Councilmember Zak has requested excusal.

Department Heads may be called upon from time to time to participate via teleconference.

2. AGENDA APPROVAL

(Addition of items to or removing items from the agenda will be by unanimous consent of the Council. HCC 1.24.040.)

3. PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA

4. RECONSIDERATION

- A. **Ordinance 11-16(A)**, An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating \$20,000 from the ~~Fund Balance of the General Fund~~ **Water Sewer Depreciation Reserves** to Purchase a Used Allman Light Tower and a Used Dynapac Diesel Plate. City Manager/Public Works Director. Introduction April 25, 2011, Public Hearing and Second Reading May 9, 2011, Reconsidered May 9, 2011 by Councilmember Lewis. Page 37

5. CONSENT AGENDA

(Items listed below will be enacted by one motion. If separate discussion is desired on an item, that item may be removed from the Consent Agenda and placed on the Regular Meeting Agenda at the request of a Councilmember.)

- A. Homer City Council unapproved Special and Regular Meeting Minutes of May 9, 2011. City Clerk. Recommend adoption. Page 45
- B. **Memorandum 11-070**, from Deputy City Clerk, Re: Liquor License Transfer from Uncle Thirsty's to Grog Shop East End. Page 63

- C. **Memorandum 11-071**, from Mayor Pro Tempore, Re: Appointment of Lindianne Sarno to the Economic Development Advisory Commission and Reappointment of Marianne Aplin and Gaye Wolfe to the Public Arts Committee. Page 69

6. VISITORS

- A. Brent Johnson, Kenai Peninsula Borough Assemblyman, re: KPB Ordinance 2011-07 Reducing the Number of KPB Planning Commissioners, 10 minutes. Page 75
- B. Duane Bannock, Kenai Peninsula Borough, Spruce Bark Beetle Program, 10 minutes.

7. ANNOUNCEMENTS/PRESENTATIONS/BOROUGH REPORT/COMMISSION REPORTS

- A. **Mayor's Proclamation** – Mary Epperson Day – June 6, 2011 Page 83

- B. Borough Report

- C. Commissions/Board Reports:

- 1. Library Advisory Board
- 2. Homer Advisory Planning Commission
- 3. Economic Development Advisory Commission
- 4. Parks and Recreation Advisory Commission
- 5. Port and Harbor Advisory Commission

- D. Meeting of Kenai Peninsula Mayors and City Managers, May 16, 2011 Page 85

- E. Thank you from Kachemak Nordic Ski Club Page 101

8. PUBLIC HEARING(S)

- A. **Ordinance 11-17**, An Ordinance of the City Council of Homer, Alaska, Amending the 2008 Homer Comprehensive Plan to Incorporate the Homer Spit Plan and Recommending Approval of the Amendment by the Kenai Peninsula Borough. Planning Introduction May 9, 2011, Public Hearing and Second Reading May 24, 2011.

Page 103

Memorandum 11-068 from City Planner as backup.

Page 113

- B. **Ordinance 11-18**, An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating \$7,793.75 from the Public Works Fleet Reserve for the Purpose of Sandblasting and Recoating a CAT Loader. City Manager/Public Works Director. Introduction May 9, 2011, Public Hearing and Second Reading May 24, 2011. Page 115

Memorandum 11-064 from Public Works Superintendent as backup. Page 119

- C. **Ordinance 11-19**, An Ordinance of the City Council of Homer, Alaska, Establishing a Preliminary Budget and Authorizing the Expenditure of \$486,948 from Depreciation Reserves for the Renovation and Expansion of City Hall. Roberts/Wythe. Introduction May 9, 2011, Public Hearing and Second Reading May 24, 2011. Page 121

Ordinance 11-19(S), An Ordinance of the City Council of Homer, Alaska, Establishing a Preliminary Budget and Authorizing the Expenditure of \$486,948 from Depreciation Reserves for the Renovation and Expansion of City Hall. Roberts/Wythe. Page 125

Memorandum 11-066 from Public Works Director as backup. Page 129

9. **ORDINANCE(S)**

- A. **(If Reconsidered) Ordinance 11-16(A)**, An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating \$20,000 from the ~~Fund Balance of the General Fund~~ **Water Sewer Depreciation Reserves** to Purchase a Used Allman Light Tower and a Used Dynapac Diesel Plate. City Manager/Public Works Director. Introduction April 25, 2011, Public Hearing and Second Reading May 9, 2011, Reconsideration issued May 9, 2011. Page 133

- B. **Ordinance 11-21**, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 2.04.010, Definitions; and Amending Homer City Code 2.08.010, Management of Public Records; Regarding the Management of City Records. City Attorney/City Manager. Recommended dates: Introduction May 24, 2011, Public Hearing and Second Reading June 13, 2011. Page 141

- C. **Ordinance 11-22**, An Ordinance of the City Council of Homer, Alaska, Establishing a Preliminary Project Budget and Authorizing Expenditures for Phase I Improvements to Karen Hornaday Park. City Manager/Parks & Recreation Advisory Commission. Recommended dates: Introduction May 24, 2011, Public Hearing and Second Reading June 13, 2011. Page 151

10. **CITY MANAGER'S REPORT**

- A. City Manager's Report Page 163

B. Bid Report Page 191

C. Games Report Page 193

1. Cook Inletkeeper

11. CITY ATTORNEY REPORT

12. COMMITTEE REPORT

A. Public Arts Committee

B. Transportation Advisory Committee

C. Permanent Fund Committee

D. Lease Committee

E. City Hall Renovation and Expansion Task Force

13. PENDING BUSINESS

A. **Resolution 11-041**, A Resolution of the City Council of Homer, Alaska, Approving and Adopting a New, Amended Standard Ground Lease Document, and Authorizing the Amendment of the City of Homer Property Management Policy and Procedures Manual to Conform to the Amended Standard Ground Lease Document. City Manager/Lease Committee. (Postponed from April 25, 2011. Page 197

Memorandum 11-060 from Lease Committee Staff as backup. Page 199

Memorandum 11-058 from City Manager to Lease Committee as backup. Page 201

B. **Resolution 11-050**, A Resolution of the City Council of Homer, Alaska, Awarding the Contract for the Soundview Avenue/Woodard Creek Culvert Replacement Project to the Firm of _____ of _____, _____ in the Amount of \$_____ and Authorizing the City Manager to Execute the Appropriate Documents. City Clerk. Page 345

Resolution 11-050(S), A Resolution of the City Council of Homer, Alaska, Awarding the Contract for the Soundview Avenue/Woodard Creek Culvert Replacement Project to the Firm of **Green Construction of Homer, Alaska**, in the Amount of **\$215,699.37** and Authorizing the City Manager to Execute the Appropriate Documents. City Clerk. Page 347

Memorandum 11-072 from Public Works Director as backup. Page 349

14. NEW BUSINESS

- A. **Memorandum 11-073**, from Special Projects Coordinator, Re: Capital Improvement Plan Development - Schedule for 2012-2017. Page 355

15. RESOLUTIONS

- A. **Resolution 11-051**, A Resolution of the City Council of Homer, Alaska, Approving and Adopting a Transfer of Responsibility Agreement (TORA) Between the State of Alaska and the City of Homer Regarding Management and Enforcement of Parking, Loading Zones, Pedestrian Crossings, and Seasonal Speed Zones Within the Sterling Highway Right of Way on the Homer Spit. City Manager. Page 359
- B. **Resolution 11-052**, A Resolution of the City Council of Homer, Alaska, Establishing an Adopt-a-Park Program. City Manager. Page 385
- C. **Resolution 11-053**, A Resolution of the City Council of Homer, Alaska, Expressing Support for the Establishment of a Water Infrastructure Set Aside Funding Program Within the Army Corps of Engineers, Pacific Ocean Division, Civil Works Program. City Manager/Port and Harbor Director. Page 397

16. COMMENTS OF THE AUDIENCE

17. COMMENTS OF THE CITY ATTORNEY

18. COMMENTS OF THE CITY CLERK

19. COMMENTS OF THE CITY MANAGER

20. COMMENTS OF THE MAYOR

21. COMMENTS OF THE CITY COUNCIL

22. ADJOURNMENT/NEXT REGULAR MEETING IS SCHEDULED FOR MONDAY, JUNE 13, 2011 AT 6:00 P.M. THE NEXT COMMITTEE OF THE WHOLE IS SCHEDULED FOR MONDAY, JUNE 13, 2011 AT 5:00 P.M. All meetings scheduled to be held in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

**PUBLIC COMMENTS UPON MATTERS
ALREADY ON THE AGENDA**

RECONSIDERATION

ORDINANCE REFERENCE SHEET
2011 ORDINANCE
ORDINANCE 11-16

An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating \$20,000 from the Fund Balance of the General Fund to Purchase a Used Allman Light Tower and a Used Dynapac Diesel Plate.

Sponsor: City Manager/Public Works Director

1. City Council Regular Meeting April 25, 2011 Introduction
 - a. Photos of equipment
2. City Council Regular Meeting May 9, 2011 Public Hearing and Second Reading
 - a. Ordinance 11-16(A)
 - b. Photos of equipment
3. City Council Regular Meeting May 24, 2011 Reconsideration/Second Reading
 - a. Ordinance 11-16(A)
 - b. Photos of equipment

COMMISSION ON THE STATUS OF WOMEN
IN THE UNITED STATES
1975-1976

The Commission on the Status of Women was established in 1975 by the President of the United States to study and report on the status of women in the United States. The Commission was composed of 15 members, including 10 women and 5 men.

The Commission's report, "The Status of Women in the United States," was published in 1976.

The Commission's report is available in the following format:

Printed version

The Commission's report is available in the following format:

- a. Original (1-1976)
- b. Copy of original

The Commission's report is available in the following format:

- c. Copy of original (1-1976)
- d. Copy of original

1 CITY OF HOMER
2 HOMER, ALASKA

3 City Manager/
4 Public Works Director

5 ORDINANCE 11-16(A)
6

7 AN ORDINANCE OF THE CITY COUNCIL OF HOMER,
8 ALASKA, AMENDING THE FY 2011 OPERATING BUDGET
9 BY APPROPRIATING \$20,000 FROM THE FUND BALANCE
10 OF THE GENERAL FUND WATER SEWER
11 DEPRECIATION RESERVES TO PURCHASE A USED
12 ALLMAN LIGHT TOWER AND A USED DYNAPAC DIESEL
13 PLATE.

14
15 WHEREAS, A local contracting / construction firm is ceasing operations and is offering
16 all of its equipment for disposal and sale; and

17
18 WHEREAS, The Department of Public Works has reviewed and inspected the list of
19 available equipment and has identified two items, the Allman Light Tower (\$10,000) and the
20 Dynapac Diesel Plate (\$9,000), that would be particularly useful; and

21
22 WHEREAS, These pieces of equipment are well maintained and purchasing them new
23 would cost an additional \$12,300; and

24
25 WHEREAS, The Public Works Department frequently rents pieces of equipment similar
26 to these for construction, maintenance, and repair on roads, water and sewer lines, and other
27 applications, and acquiring this equipment would save money and increase efficiency in the long
28 term.

29
30 NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

31
32 Section 1: The Homer City Council hereby amends the FY 2011 Operating Budget by
33 appropriating \$20,000 from the ~~fund balance of the general fund~~ Water Sewer Depreciation
34 Reserves for the purpose of acquiring a used Allman Light Tower (\$10,000) and a used Dynapac
35 Diesel Plate (\$9,000) as follows:

36
37 Expenditure:

<u>Account No.</u>	<u>Description</u>	<u>Amount</u>
100-100-5901 <u>256-378/379</u>	Allman Light Tower/ Dynapac Diesel Plate	\$20,000

41
42 Section 2. This is a budget amendment ordinance, is temporary in nature, and shall not
43 be codified.

44
45 ENACTED BY THE HOMER CITY COUNCIL this _____ day of _____, 2011.

46
47 CITY OF HOMER

48
49
50 _____
51 JAMES C. HORNADAY, MAYOR

52 ATTEST:

53 _____
54 JO JOHNSON, CMC, CITY CLERK

55
56
57 YES:

58 NO:

59 ABSENT:

60 ABSTAIN:

61
62
63 First Reading:

64 Public Hearing:

65 Second Reading:

66 Effective Date:

67
68
69 Reviewed and approved as to form:

70
71 _____
72 Walt Wrede, City Manager

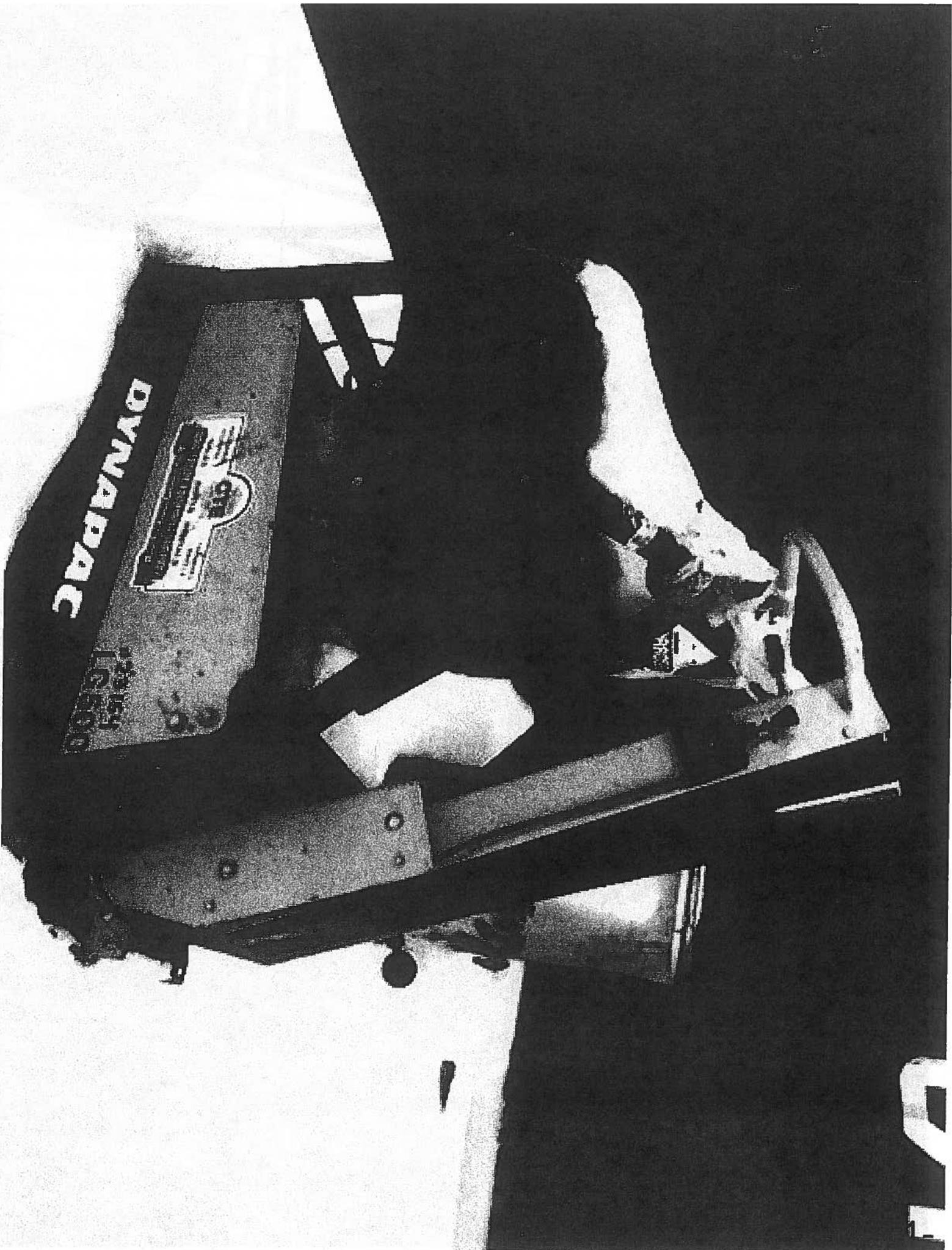
71 _____
72 Thomas F. Klinkner, City Attorney

73
74 Date: _____

73
74 Date: _____

75

76

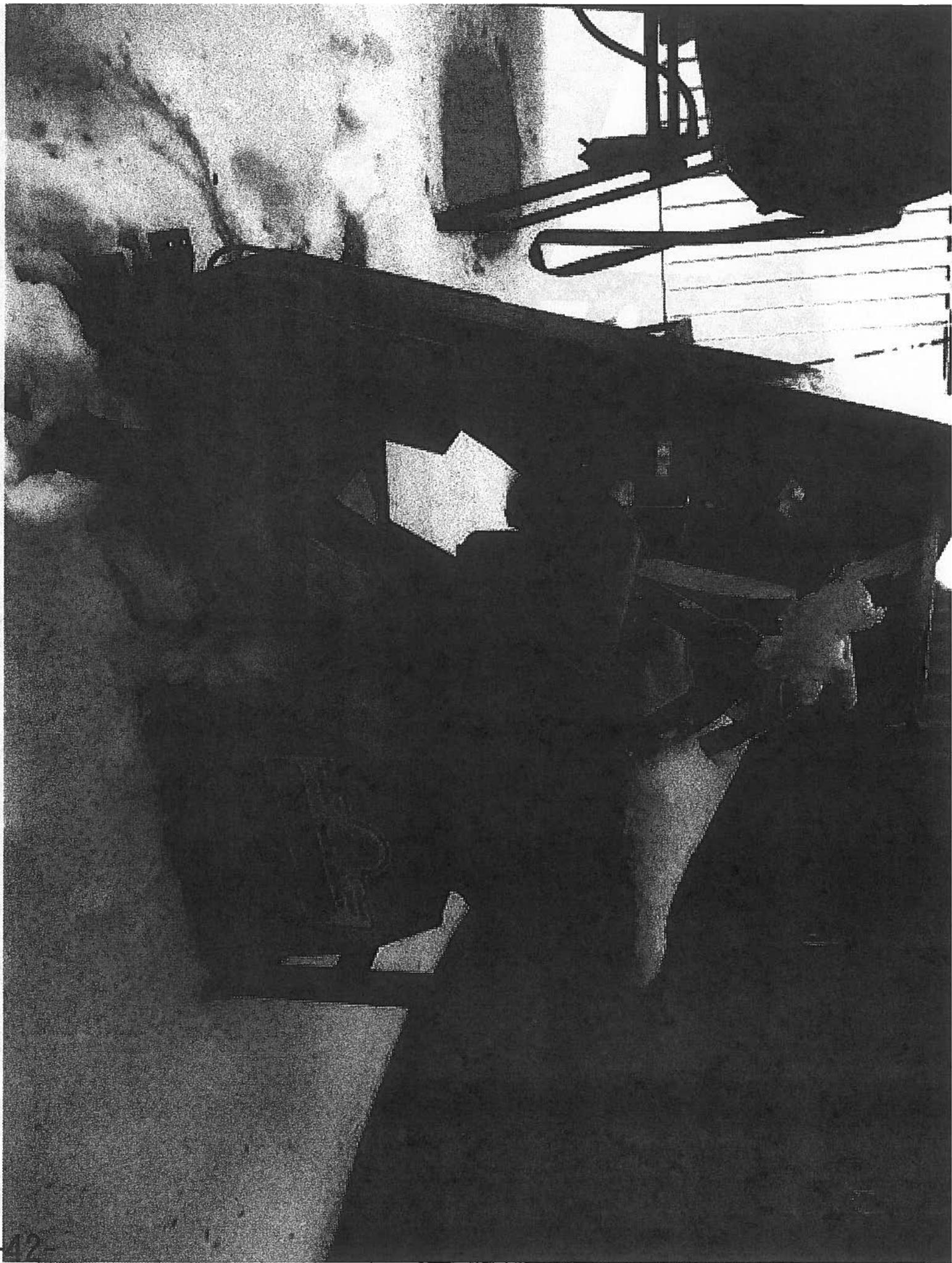


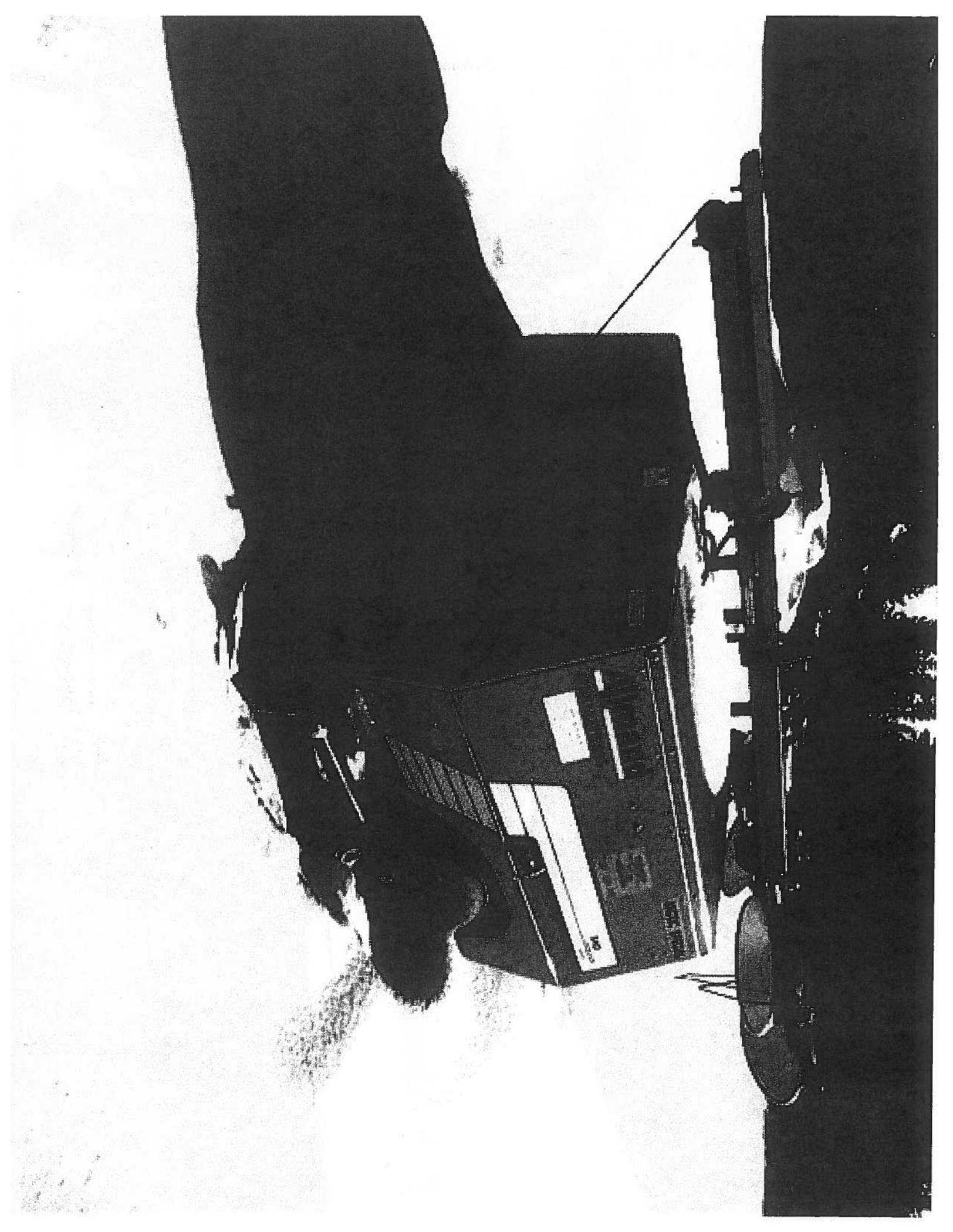
DYNAPAC

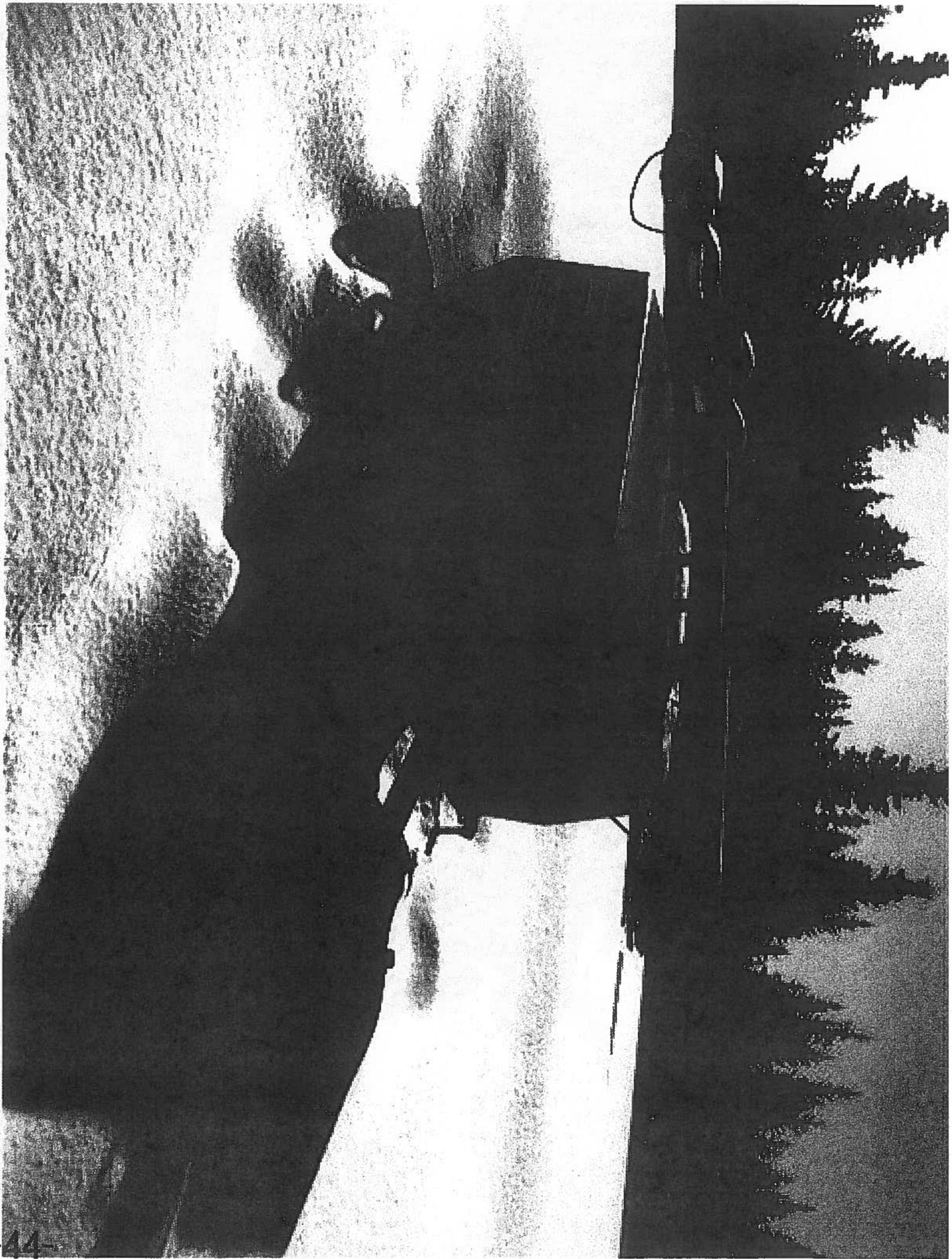


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DA







CONSENT AGENDA

Session 11-16 a Special Meeting of the Homer City Council was called to order on May 9, 2011 at 4:00 p.m. by Mayor James C. Hornaday at the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska, and opened with the Pledge of Allegiance.

PRESENT: COUNCILMEMBERS: HOGAN, HOWARD, LEWIS, ROBERTS,
ABSENT: WYTHE, ZAK (excused)
STAFF: CITY CLERK JOHNSON
CITY MANAGER WREDE
ATTORNEY KOZIOL
POLICE CHIEF ROBL

Councilmembers Zak and Wythe have requested excusal.

Mayor Hornaday ruled Councilmembers Zak and Wythe as excused absences. There was no objection from the Council.

AGENDA APPROVAL (Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual, pg. 5)

The agenda was approved by consensus of the Council.

PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA

There were no public comments.

NEW BUSINESS

- A. **Memorandum 11-065**, From City Clerk Re: Request for Executive Session Pursuant to AS §44.62.310(C)(1&5), Matters, Which the Immediate Knowledge of which Would Clearly have an Adverse Effect upon the Finances of the Government Unit and Attorney Client Privilege. (Airport Apprehension Incident and Boatyard Fire, Briefing by Attorney Frank Koziol)

Mayor Hornaday called for a motion to approve the recommendations of Memorandum 11-065 to adjourn to Executive Session to discuss Airport Apprehension Incident and Boatyard Fire.

HOWARD/LEWIS – SO MOVED.

There was no discussion.

VOTE: YES. HOWARD, ROBERTS, HOGAN, LEWIS

Motion carried.

Council adjourned to Executive Session at 4:03 p.m. and reconvened at 4:46 p.m.

Councilmember Roberts stated Council spoke with their attorney regarding several litigation issues and he advised them of the status of the issues.

COMMENTS OF THE AUDIENCE

There were no comments of the audience.

COMMENTS OF THE CITY ATTORNEY

City Attorney Klinkner had no comment.

COMMENTS OF THE CITY CLERK

City Clerk Johnson had no comment.

COMMENTS OF THE CITY MANAGER

City Manager Wrede had no comment.

COMMENTS OF THE MAYOR

Mayor Hornaday had no comment.

COMMENTS OF THE CITY COUNCIL

Councilmembers Hogan, Howard, Lewis, and Roberts had no comment.

ADJOURNMENT

There being no further business to come before the Council, Mayor Hornaday adjourned the meeting at 4:47 p.m. The next Regular Meeting is scheduled for Tuesday, May 24, 2011 at 6:00 p.m. The next Committee of the Whole is scheduled for Tuesday, May 24, 2011 at 5:00 p.m. A Worksession is scheduled for Tuesday, May 24, 2011 at 4:00 p.m. All meetings scheduled to be held in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

JO JOHNSON, CMC, CITY CLERK

Approved: _____

Session 11-16 a Regular Meeting of the Homer City Council was called to order on May 9, 2011 at 6:00 p.m. by Mayor James C. Hornaday at the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska, and opened with the Pledge of Allegiance.

PRESENT: COUNCILMEMBERS: HOGAN, HOWARD, LEWIS, ROBERTS,
WYTHE (telephonic)

ABSENT: ZAK (excused)

STAFF: CITY MANAGER WREDE
CITY CLERK JOHNSON
CITY ATTORNEY KLINKNER
CITY PLANNER ABBOD
PORT AND HARBOR DIRECTOR HAWKINS
PUBLIC WORKS DIRECTOR MEYER

Councilmember Zak has requested excusal.
Councilmember Wythe has requested telephonic participation.

ROBERTS/HOGAN – MOTION TO ALLOW COUNCILMEMBER WYTHE TO PARTICIPATE BY PHONE.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Mayor Hornaday ruled Councilmember Zak's absence was excused. There was no objection from the Council.

Council met for a Special Meeting from 4:00 p.m. to 4:47 p.m. and held an Executive Session with a briefing from Attorney Frank Koziol to discuss Airport Apprehension Incident and Boatyard Fire. Council conducted a Worksession from 4:47 p.m. to 4:58 p.m. to discuss the ground lease document. Council met as a Committee of the Whole from 5:05 p.m. to 5:35 p.m. to continue discussion on the ground lease document and Regular Meeting Agenda items.

Department Heads may be called upon from time to time to participate via teleconference.

AGENDA APPROVAL

(Addition of items to or removing items from the agenda will be by unanimous consent of the Council. HCC 1.24.040.)

The agenda was approved by consensus of the Council.

PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA

There were no public comments.

RECONSIDERATION

None.

CONSENT AGENDA

(Items listed below will be enacted by one motion. If separate discussion is desired on an item, that item may be removed from the Consent Agenda and placed on the Regular Meeting Agenda at the request of a Councilmember.)

- A. Homer City Council unapproved Special Meeting (BOA) minutes of March 24, 2011 and Regular Meeting minutes of April 25, 2011. City Clerk. Recommend adoption.

Mayor Hornaday called for a motion for the approval of the recommendations of the consent agenda as read.

LEWIS/ROBERTS - SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VISITORS

None.

ANNOUNCEMENTS/PRESENTATIONS/BOROUGH REPORT/COMMISSION REPORTS

- A. **Mayor's Recognition** – Homer High School Choir

The Homer High School choir sang the Alaska Flag song. Mayor Hornaday read and presented the surprise recognition to Mark Robinson, Choir Director.

- B. **Mayor's Proclamation** – National Public Works Week May 15 – 21, 2011

Mayor Hornaday read the proclamation.

- C. **Mayor's Proclamation** – National Hospital Week May 8 – 14, 2011

Mayor Hornaday read the proclamation.

D. Borough Report

Bill Smith, Kenai Peninsula Borough Assemblyman, reported he went to Juneau on the Borough's behalf to testify on the natural gas line extension to Homer and Kachemak City. Walt made a good impression with his presentation; overall they made a good impression on the House Energy Committee. The appearance provides a better chance than testifying over the radio. The Borough budget includes a mil rate of 4.5%. They are down almost one full time employee in 10 years with the potential of losing a few more. The Borough has union and administrative employees, with the union compromising most of the employee base. Health care insurance has increased to 17%; the union contract says the Borough can open the contract if it exceeds 10%. Mayor Carey is trying to negotiate with the union to pay 3.5% of the 17%. He suggested \$21 per pay period (every two weeks) be deducted from the employees; the union turned it down, along with other alternatives. Mayor Carey said it leaves no choice other than to lay off four employees and reduce hours for emergency employees. The Borough is trying to control the run-away costs of health insurance. Assemblyman Smith introduced an ordinance to require Assembly members to pay 30% of the health insurance cost. The budget introduced by the Mayor cuts non departmental including Kenai Peninsula Tourism Marketing Council, Small Business Development Center, EDD, and CARTS. The budget increases the contribution to the college by \$20,000. Taxable property assessments are up and oil properties assessments are up by 15%.

Mayor Hornaday commented people are unhappy about the tracks at the schools. They are no longer able to have track meets due to the conditions. Assemblyman Smith answered he has not been contacted, but was approached by someone about maintaining the fields for soccer. Mayor Hornaday thanked Assemblyman Smith for traveling to Juneau and working on the gas line.

Councilmember Hogan asked about the proposed increase on the sales tax cap. Assemblyman Smith answered it was a resounding no to raise the cap from \$500 to \$2,500. A lot of people thought \$1,000 was more reasonable. There was much testimony about residential rentals. On this fall's ballot there is a measure to remove the tax holiday on non prepared foods. If the tax holiday goes away it will help support the school district. If it fails the sales tax cap may return. Councilmember Lewis asked where the definition of non prepared food came from and if a snack tax on pop, chips, candy, and energy drinks was feasible. Assemblyman Smith answered the original definition of non prepared food came from James Price who started the initiative following the items exempted under the food stamp program. It is unlikely the definition of non prepared food will change.

Councilmember Howard asked Mr. Smith if elected officials were participating in the health insurance working group. Mayor Carey has responses from cities and hospitals on getting a group together, but it is unclear if elected officials are part of the group.

Councilmember Roberts asked if members could participate telephonically due to the City's budgetary issues. Mr. Smith answered people should be able to participate telephonically.

E. House Resolution No. 8 – Opposing the Designation by the National Oceanic and Atmospheric Administration of 3,016 Square Miles of Upper Cook Inlet and Kachemak Bay as Critical Habitat for Beluga Whales.

F. Commissions/Board Reports:

1. Library Advisory Board
2. Homer Advisory Planning Commission
3. Economic Development Advisory Commission
4. Parks and Recreation Advisory Commission

Dave Brann, Parks and Recreation Advisory Commissioner, reported work on the Kachemak Drive Path with individual commissioners researching the feasibility with DOT. The commission is working on ideas and concepts for Karen Hornaday Park. On May 21st there is a work party scheduled to improve the playground equipment, ball fields, and install a fence. A group of parents are excited about making short and long term improvements to the park. They are exploring the concept of Adopt-a-Park where service groups can adopt a park. The commission had the park walk through with Angie and visited Mariner Park. They have asked staff to research how and when the park was acquired since it is not designated as a park. At the Pier One Theatre the picnic shelter is in a sad state of repair. Volunteers and donated materials are needed. They are exploring a new concept of a water trail from Pier One Theatre near the potential new Wooden Boat Society home up the north side of the bay to Seldovia. It would identify access points, landing spots, trailheads, and facilities, with 95% of the landing spots in Kachemak Bay state parks. The commission is applying to the National Park Service Rivers and Trails Conservation Assistance Program that would provide for two years of free help. The commission is diverse, energetic, and ready to make things happen. They are not asking for any money, just that Council listen, understand, and support them.

5. Port and Harbor Advisory Commission

PUBLIC HEARING(S)

A. **Ordinance 11-14**, An Ordinance of the City Council of Homer, Alaska, Accepting and Appropriating a Rasmuson Foundation Grant of \$15,000 for Collection Development for the Homer Public Library and Authorizing the City Manager to Execute the Appropriate Documents. City Manager. Introduction April 25, 2011, Public Hearing and Second Reading May 9, 2011.

Mayor Hornaday opened the public hearing. In the absence of public testimony, Mayor Hornaday closed the public hearing.

Mayor Hornaday called for a motion for the adoption of Ordinance 11-14 by reading of title only for second and final reading.

LEWIS/HOGAN - SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- B. **Ordinance 11-15**, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 10.04.100, Vehicles and Other Wheeled Conveyances; and Homer City Code 10.04.110, Violation--Penalty; Regarding the Regulation of Parking in the Harbor Area. City Manager/Port and Harbor Director. Introduction April 25, 2011, Public Hearing and Second Reading May 9, 2011.

Mayor Hornaday opened the public hearing. In the absence of public testimony, Mayor Hornaday closed the public hearing.

Mayor Hornaday called for a motion for the adoption of Ordinance 11-15 by reading of title only for second and final reading.

HOWARD/LEWIS - SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- C. **Ordinance 11-16(A)**, An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating \$20,000 from the ~~Fund Balance of the General Fund~~ **Water Sewer Depreciation Reserves** to Purchase a Used Allman Light Tower and a Used Dynapac Diesel Plate. City Manager/Public Works Director. Introduction April 25, 2011, Public Hearing and Second Reading May 9, 2011.

Mayor Hornaday opened the public hearing. In the absence of public testimony, Mayor Hornaday closed the public hearing.

ROBERTS/LEWIS - MOVED TO ADOPT ORDINANCE 11-16(A).

In the absence of either the model year or number of engine hours, Councilmember Hogan believes the price tag for both items is highly excessive to their market value. Equipmenttrader.com offers a new 2011 Allman light tower for \$9,800. There are not as many Dynapac's available. He questioned if we are getting a value for used equipment for what we are spending. Equipment can be rented as needed. In Seward the same light tower can be rented for \$95 per day, \$385 a week, or \$895 per month. In Kenai the equipment rental prices are \$128 per day, \$346 a week, or \$777 a month. We don't need to spend \$20,000 on a couple pieces of

equipment that will have limited use with little benefit to the community. It is not a wise use of the taxpayer's money.

Councilmember Roberts inquired as to the shipping fee for the \$9,800 light tower to Alaska. Councilmember Hogan answered it would be about \$1,200, comparable to other shipping costs here.

VOTE: YES. ROBERTS, WYTHE, HOWARD

VOTE: NO. HOGAN, LEWIS

Motion failed.

ORDINANCE(S)

- A. **Ordinance 11-17**, An Ordinance of the City Council of Homer, Alaska, Amending the 2008 Homer Comprehensive Plan to Incorporate the Homer Spit Plan and Recommending Approval of the Amendment by the Kenai Peninsula Borough. Planning. Recommended dates: Introduction May 9, 2011, Public Hearing and Second Reading May 24, 2011.

Memorandum 11-068 from City Planner as backup.

ROBERTS/HOWARD - MOVED TO ADOPT ORDINANCE 11-17.

Once adopted, the Spit Plan will be part of the Comprehensive Plan. Updates to the Spit Plan will be part of the Comprehensive Plan.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- B. **Ordinance 11-18**, An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating \$7,793.75 from the Public Works Fleet Reserve for the Purpose of Sandblasting and Recoating a CAT Loader. City Manager/Public Works Director. Recommended dates: Introduction May 9, 2011, Public Hearing and Second Reading May 24, 2011.

Memorandum 11-064 from Public Works Superintendent as backup.

Mayor Hornaday called for a motion for the adoption of Ordinance 11-18 for introduction and first reading by reading of title only.

LEWIS/HOWARD – SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- C. **Ordinance 11-19**, An Ordinance of the City Council of Homer, Alaska, Establishing a Preliminary Budget and Authorizing the Expenditure of \$486,948 from Depreciation Reserves for the Renovation and Expansion of City Hall. Roberts/Wythe. Recommended dates: Introduction May 9, 2011, Public Hearing and Second Reading May 24, 2011.

Memorandum 11-066 from Public Works Director as backup.

ROBERTS/HOWARD - MOVED FOR THE ADOPTION OF ORDINANCE 11-19.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- D. **Ordinance 11-20**, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.24.020, Permitted Uses and Structures; and Homer City Code 21.24.030, Conditional Uses and Structures; Regarding the Permission of Single Family and Duplex Dwellings as Conditional Uses in the General Commercial 1 Zoning District. Planning. Recommended dates: Introduction May 9, 2011, Public Hearing and Second Reading May 24, 2011.

Memorandum 11-063 from City Planner as backup.

Mayor Hornaday called for a motion for the adoption of Ordinance 11-20 for introduction and first reading by reading of title only.

HOGAN/LEWIS - SO MOVED.

There was no discussion.

VOTE: YES. LEWIS, WYTHER, HOGAN

VOTE: NO. ROBERTS, HOWARD

Motion failed.

CITY MANAGER'S REPORT

A. City Manager's Report

1. Dredge Materials: We got off to a rocky start with the dredging projects this year. We were scheduled to have the harbor entrance and parts of the main fairway dredged this

spring. The contractor arrived late which placed us under a time constraint since all work had to be completed by April 30. Last Wednesday, the contractor overfilled the dewatering pond on Lot 49 and flooded the end of the Spit with silt and seawater. The businesses out there were not impressed and it was a pretty bad week overall in terms of PR. The contractor paid to clean-up the mess on private property and the Corps of Engineers closed the project down. So, the end result is that the rest of the dredging will have to take place in the fall. Also, we agreed to allow the remaining materials on Lot49 to stay there until the fall dredging and then all of the materials can be transported at once to the storage site. This will save the Corps a great deal of money but it will also mean that the materials is there all summer; pretty unsightly from a tourism perspective. The pipeline and the big mound on the road will be removed. There is another special project in July that will remove about 10,000 yards of material from under the Pioneer Dock. This is an experiment to see if creating a sink to capture materials before they are transported to the Hickory berth will lower the cost of operations for maintaining that berth. This dredging can be done from the beach at a much lower cost. An excavator will load this material directly on to trucks for transport away from the sight. But again, while necessary, the timing is not the best from a tourism perspective. All of this reminds us again about the need for a long term dredging plan.

2. Old Water Treatment Plant: This demolition project is basically complete. The next step for us is to bring the Council a proposal for establishing a satellite fire station there.
3. Parks News: The City staff is working with volunteer groups to find ways to get them involved and take advantage of their energy and desire to improve the parks. As you know, at the last meeting the Council accepted a donation for playground equipment at Bayview Park. This week, the staff had a meeting on-site at the Karen Hornaday playground with parents who wish to help design the playground and raise money for improvements. We are presently working on an MOU with Jack Gist Park advocates and have had discussions with others about volunteer opportunities in all of the parks. This week the staff drafted a resolution and some policies and procedures to implement an Adopt-A-Park Program. This will be reviewed by the Parks and Recreation Commission at its next meeting and presented to the Council for approval on May 23. The main driver behind this effort is the Rotary Club's desire to adopt Ben Walters Park and invest in improvements there. I believe all of these efforts should be encouraged and could not come at a better time.
4. New Personnel: I would like to formally introduce the newest members of the management team. At the last meeting, many of you met Andrea Petersen for the first time. Andrea is the new Personnel Director and will be assuming the duties formerly handled by Sheri Hobbs. Andrea spent the past three years working in the HR Department for South Peninsula Hospital. Her experience, training, and certifications make her uniquely qualified for the job. Andrea began work on April 4th and benefitted from almost an entire month of orientation while Sheri was still here. Sheri also served as the Airport Terminal Manager and supervised the Community Recreation Program. I have moved those duties elsewhere so that Andrea can focus her full attention on HR duties. The Library Director position has been accepted by Ann Dixon. Anne spent three days orienting with Helen Hill before she left and will officially start work at the end of May. Ann has a wide variety of library experience and the desired education and certifications. She comes to us from Willow Alaska where she has lived for many years.

She has been director of the Willow Public Library and is presently the librarian for the Willow Public School. Anne is also a well known author of children's books. Please welcome these new employees when you get the chance.

5. **Redistricting:** The Mayor and I attended the public hearing held by the Redistricting Board in Homer on May 3. Copies of the proposed House and Senate districts will be available at the meeting. Written testimony and comments will be accepted until early June, at which time the Board must adopt its final plan. There are two options put forward by the Board and several by other organizations. Both Board options have Homer in an identical House District. Basically the House District no longer includes Seward and it goes up along Cook Inlet toward Kenai. At least one of the proposals put forward by other entities has Homer and Seward in the same House District. There are two options regarding the Senate district put forward by the Board. One has Homer grouped with Kodiak and Seward, much as we are now. The other has Homer in a Senate district with the Kenai area.
6. **Bridge Creek Fire Mitigation Project:** The Fire Mitigation Project has basically wrapped up for the season because of the rapidly diminishing snow and warm temperatures. I think the contractor did a very job with the mechanical work. He may have to come back next winter to finish his work and clean-up a few things. There will likely be some hand crews at work this summer cutting dead trees in sensitive and buffer areas. A tree stock assessment will also be conducted to see if replanting would be beneficial. The head of the Borough Spruce Bark Beetle Program, Duane Bannock, will be here to give you a report at the next meeting.
7. **Request for Proposals / Leased Land on Spit:** An RFP has been prepared and is about to be publicized. The RFP invites proposals to lease City land on all lots approved for lease by the Council in the Land Allocation Plan. The Lease Committee will be reviewing the proposals and making recommendations to Council in early June.
8. **Proposal Deadline / Old Middle School:** The deadline for proposals is Friday, May 6. By meeting time, I should be able to tell you if we received any. At the time this report was written, there were only two parties on the plan holders list. The Lease Committee has scheduled a special meeting for May 17 to review the proposals. The Lease Committee will be supplemented by available members of the Economic Development Commission since it is likely that body will not have a quorum.
9. **Land Sales:** Appraisals have been commissioned for the lots designated for sale in the Land Allocation Plan. As soon as we have the appraisals, we will take the steps necessary to put those parcels up for sale.
10. **TORA Agreement:** We are back on track with the proposed Transfer of Responsibility Agreement (TORA) with ADOT/PF. You will recall that this is the agreement that transfers responsibility for parking, pedestrian amenities, and seasonal speed limits to the City. We have one or two additional things to work out and we expect to bring you a resolution at the next meeting.

City Manager Wrede reported he made a quick trip to Juneau on Friday when the House held a hearing on the Capital Budget. He and Assemblyman Bill Smith were asked to make a presentation before the Special Energy Committee and House Resource on the gas line. The Senate Finance Committee still has the capital budget which will go to the Senate and then the House.

Councilmember Roberts asked about the TORA agreement for the Spit right of way and if there would be enough time to enact changes this summer. City Manager Wrede answered we won't get everything enacted, although the Port and Harbor staff started last year on the parking and loading zones. We won't be prepared to do the crosswalks and signage improvements. The biggest crosswalk issue is by Mariner Park as there is no good warning of the crosswalk that is on a curve. Mayor Hornaday expressed reservations about the TORA agreement as the City has been laying people off. He questioned if we could really enforce the Spit parking with less personnel. City Manager Wrede answered one of the summer parking aid positions was not funded and we cut signs and striping materials from the budget. The TORA agreement was discussed and he had the sense Council was ready to move ahead. Mayor Hornaday will consider vetoing it as he doesn't think the City can take it over.

Councilmember Howard recounted the decision to go ahead with TORA had to do with pedestrian safety. She encouraged everyone to stay focused on public safety.

Councilmember Hogan asked about the dredge materials on the Spit and if there was a chance to get it cleaned up. City Manager Wrede answered April 30th was the Corps dredging deadline with May 8th the deadline to clear the campground. The dredge materials will remain and be moved in the fall when there is more dredging scheduled. The pipe and the mound in the road are gone. Councilmember Hogan asked if it was the City's responsibility to incur costs due to the contractors delay. Port and Harbor Director Hawkins stated only 3,500 yards was produced by the dredging this spring and is stored on Lot 49. Most of the material is the dike created to dewater and to move the materials they would have to tear the dike down. It was agreed the materials would be left in place for this fall's dredging, which is a lot bigger project.

Councilmember Lewis asked about the proposals for the Old Intermediate School. City Manager Wrede answered there were two groups on the plan holders list and proposals were received from both.

B. Bid Report

CITY ATTORNEY REPORT

Councilmember Hogan asked Attorney Klinkner about the quasi judicial function of city government as it applies to the Board of Ethics. He referenced an Anchorage case that relies on a record. Attorney Klinkner answered it is appropriate and lawful for City Council to perform as a quasi-judicial body. In city government there is not the same separation of powers as at the state and federal level. In Homer although the proceeding is confidential, there is a record because the proceedings are recorded, they are just not made public unless the subject of the complaint agrees to make the record public. We are still on safe ground with the City Council acting in that capacity.

COMMITTEE REPORT

A. Public Arts Committee

- B. Transportation Advisory Committee
- C. Permanent Fund Committee
- D. Lease Committee
- E. City Hall Renovation and Expansion Task Force

PENDING BUSINESS

None.

NEW BUSINESS

None.

RESOLUTIONS

- A. **Resolution 11-046**, A Resolution of the City Council of Homer, Alaska, Approving City Participation in the Proposed, Borough Sponsored, Kenai Peninsula Borough Health Insurance Working Group. City Manager.

ROBERTS/HOWARD - MOVED FOR THE ADOPTION OF RESOLUTION 11-046.

Councilmember Wythe noted the resolution states councilmembers will attend the meetings and provide reports. Generally councilmembers are by appointment so they may act on behalf of the Council.

City Manager Wrede answered the resolution was written to give Council the option of participating. If Council wishes to be represented by councilmembers the appointments may be made now or at the next meeting. The main purpose of the resolution is to give the Borough an indication if the City wishes to participate.

Councilmember Lewis stated if the Borough could use the Kenai River Campus and the City could use a room at the college they could do an e-live to cut down on transportation.

Asked if there was a need to specify the number of representatives authorized, City Attorney answered it was an advisory group and the City's participation could be informal.

Councilmember Roberts does not see a need for a councilmember, but rather a staff member with a familiarity with the City's insurance.

ROBERTS/LEWIS – MOVED TO ELIMINATE THE WORDS “AND/OR COUNCIL MEMBERS” ON LINE 27.

Councilmember Hogan noted the councilmember is the conduit for representation of the public. He would like to see participation from both council and staff.

VOTE: YES. LEWIS, ROBERTS, HOWARD

VOTE: NO. HOGAN, WYTHE

Motion failed.

Councilmember Howard expressed opposition.

Councilmember Hogan is supportive and with the ability to teleconference it would not require much of a fiscal note.

Mayor Hornaday stated he is encouraging city employees to form a committee to study the City's health plan.

Councilmember Wythe believes it is an interesting concept, although she doesn't know how fruitful it will be. Getting this number of government entities to work together for one goal is comparable to the Obama health care plan. It may be an interesting exercise to see how people are perceiving health insurance. The City is currently self-funded, it works well, and people are managing it. The employer contribution fee was reduced this year. It will be interesting to see if by incorporating a larger group there may be an economy of benefit. Will there be individuals participating that have adequate knowledge to compare plan.

Councilmember Roberts referenced Assemblyman Smith's comments that the Borough will have some actuarial people look at the statistics from all the groups that are participating and come back with numbers. We would like to be able to see what we would be paying if we participate. Passage of the resolution is not a commitment.

VOTE: YES. HOGAN, LEWIS, ROBERTS, WYTHE

VOTE: NO. HOWARD

Motion carried.

B. **Resolution 11-047**, A Resolution of the City Council of Homer, Alaska, Approving City Participation in a Kenai Peninsula Borough Project to Address the Federal Communications Commission Narrow Band Mandate. City Manager.

Mayor Hornaday called for a motion for the adoption of Resolution 11-047 by reading of title only.

HOWARD/LEWIS - SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- C. **Resolution 11-048**, A Resolution of the City Council of Homer, Alaska, Approving the 2011 Annual Operating Plan Between the City of Homer and the State Division of Forestry. City Manager.

Memorandum 11-067 from Fire Chief as backup.

Mayor Hornaday called for a motion for the adoption of Resolution 11-048 by reading of title only.

HOWARD/LEWIS - SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- D. **Resolution 11-049**, A Resolution of the City Council of Homer, Alaska, Awarding a Contract to Paul's Services, of Anchor Point, Alaska, in the Amount of \$28,500 for the Carter Drive Access Improvements; and to East Road Services, Inc., of Homer, Alaska, in the Amount of \$52,475 for the Jack Gist Drainage and Field Improvements; and Authorizing the City Manager to Execute the Appropriate Documents. City Clerk/Public Works Director.

Memorandum 11-069 from Public Works Director as backup.

City Clerk Johnson noted the amendment on the fiscal note for Jack Gist Drainage to account number 157-713.

ROBERTS/HOWARD - MOVED FOR THE ADOPTION OF RESOLUTION 11-049.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- E. **Resolution 11-050**, A Resolution of the City Council of Homer, Alaska, Awarding the Contract for the Soundview Avenue/Woodard Creek Culvert Replacement Project to the Firm of _____ of _____, _____ in the Amount of \$ _____ and Authorizing the City Manager to Execute the Appropriate Documents. City Clerk.

Mayor Hornaday called for a motion for the adoption of Resolution 11-050 by reading of title only.

ROBERTS/LEWIS – SO MOVED.

City Clerk Johnson recommended postponement to the May 24th meeting since it will be coming back.

HOGAN/LEWIS – MOVED TO POSTPONE TO MAY 24TH.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

COMMENTS OF THE AUDIENCE

Kelly Jackman, city resident and Boys and Girls Club Director, thanked Council for continued support with the HERC building. Kids need a safe place to go after school. There are 200 kids in the club and she hopes the club has a future in the town.

Carey Meyer, Public Works Director, thanked Mayor and Council for the proclamation for Public Works Week. He invited the public to the Public Works facility to view their operations. He expressed disappointment on Council's choice to not purchase the used equipment, as rental equipment is not always readily available in an emergency situation. Public Works has been sweeping and cleaning streets; the new sweeper has been helpful in making the community clean for the summer.

COMMENTS OF THE CITY ATTORNEY

City Attorney Klinkner had no comment.

COMMENTS OF THE CITY CLERK

City Clerk Johnson had no comment.

COMMENTS OF THE CITY MANAGER

City Manager Wrede had no comment.

COMMENTS OF THE MAYOR

Mayor Hornaday had no comment.

COMMENTS OF THE CITY COUNCIL

Councilmember Wythe appreciates being able to teleconference as it is important to be with her family at her son's college graduation. She would be happy to lend her experience to be Council's representative for the health insurance working group with the Borough as long as it is not a conflict with her husband's employment with the City.

Councilmember Lewis thanked Public Works for getting the streets clean; he spends a lot of time walking so notices it. He congratulated Mayor Hornaday for pulling off the Mark Robinson Recognition secret.

Mayor Hornaday commented Laura Norton had a great deal to do with that.

Councilmember Hogan thanked Planning for their quick response to a safety issue with a sandwich sign.

Councilmember Howard congratulated Beth and her family, as their son's graduation is an achievement to the whole family. The street and sidewalk cleanup is a miracle to behold. She recommended proclamations be read for folks that are coming to accept them and the others be distributed through the Clerk's office.

ADJOURNMENT

There being no further business to come before the Council, Mayor Hornaday adjourned the meeting at 7:19 p.m. The next Regular Meeting is scheduled for Tuesday, May 24, 2011 at 6:00 p.m. The next Committee of the Whole is scheduled for Tuesday, May 24, 2011 at 5:00 p.m. A Worksession is scheduled for Tuesday, May 24, 2011 at 4:00 p.m. All meetings scheduled to be held in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

JO JOHNSON, CMC, CITY CLERK

Approved: _____

DECLARATION OF THE COURT

I, the undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original as the same appears in the files of the court, and that the same is a true and correct copy of the original as the same appears in the files of the court.

Subscribed and sworn to before me this 10th day of October, 2010, at the County of Santa Clara, State of California.

Notary Public for the State of California

I, the undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original as the same appears in the files of the court, and that the same is a true and correct copy of the original as the same appears in the files of the court.

I, the undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original as the same appears in the files of the court, and that the same is a true and correct copy of the original as the same appears in the files of the court.

ATTEST:

I, the undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original as the same appears in the files of the court, and that the same is a true and correct copy of the original as the same appears in the files of the court.

NOTARY PUBLIC

Signature

Office of the City Clerk

Jo Johnson, CMC, City Clerk
Melissa Jacobsen, CMC, Deputy City Clerk II
Renee Krause, CMC, Deputy City Clerk I



491 E. Pioneer Avenue
Homer, Alaska 99603
(907) 235-3130
(907) 235-8121
ext: 2224, 2226, or 2227
Fax: (907) 235-3143
Email: clerk@ci.homer.ak.us

MEMORANDUM 11-070

TO: MAYOR HORNADAY AND HOMER CITY COUNCIL

FROM: MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK *uj*

DATE: MAY 16, 2011

SUBJ: LIQUOR LICENSE TRANSFER FROM UNCLE THIRSTY'S TO GROG SHOP EAST END

We have been notified by the ABC Board of applications for a liquor license transfer within the City of Homer from Uncle Thirsty's Liquor Store to the following:

Type:	Package Store
Lic #:	2301
DBA Name:	Grog Shop East End
Premise Address:	3125 East End Road
Owner:	MSA, Inc.
Mailing Address:	369 E. Pioneer Ave.

RECOMMENDATION: Voice non objection and approval for the new liquor license as listed above.

Fiscal Note: Revenues.

City of San Diego
Department of Public Works
San Diego, California
941 421-3100
www.sandiego.gov



City of San Diego

San Diego, California
941 421-3100
www.sandiego.gov

MEMORANDUM

TO: THE CITY MANAGER AND CITY COUNCIL

FROM: THE CITY ATTORNEY

DATE: 10/15/2014

RE: [Illegible subject line]

1. [Illegible text]

2. [Illegible text]

3. [Illegible text]

4. [Illegible text]

[Illegible text]

[Illegible text]



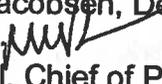
CITY OF HOMER

POLICE DEPARTMENT

4060 HEATH STREET HOMER, AK 99603-7609

EMERGENCY 911
TELEPHONE (907) 235-3150
TELECOPIER (907) 235-3151

MEMORANDUM

DATE: May 9, 2011
TO: Melissa Jacobsen, Deputy City Clerk
FROM:  Mark Robl, Chief of Police
SUBJECT: Liquor License Transfer

The Homer Police Department has no objection to the liquor license transfer from the following business:

Package Store

Uncle Thirsty's Liquor Store – License #2301

Owner: UTL Inc.
Premise Address: 3125 East End Rd
Homer, AK 99603

To:

Grog Shop East End

Owner: MSA, Inc.
Mailing Address: 369 E. Pioneer Ave.
Homer, AK 99603

Office of the City Clerk

Jo Johnson, CMC, City Clerk
Melissa Jacobsen, CMC, Deputy City Clerk II
Renee Krause, CMC, Deputy City Clerk I



Faxed.
491 E. Pioneer Avenue
Homer, Alaska 99603
(907) 235-3130
(907) 235-8121
ext: 2224, 2226, or 2227
Fax: (907) 235-3143
Email: clerk@ci.homer.ak.us

MEMORANDUM

DATE: May 6, 2011
TO: Mark Robl, Police Chief
FROM: Melissa Jacobsen, CMC, Deputy City Clerk
SUBJECT: Liquor License Transfer from Uncle Thirsty's Liquor Store to Grog Shop East End

We have been notified by the ABC Board of applications for a liquor license transfer within the City of Homer from Uncle Thirsty's Liquor Store to the following:

Type: Package Store
Lic #: 2301
DBA Name: Grog Shop East End
Premise Address: 3125 East End Road
Owner: MSA, Inc.
Mailing Address: 369 E. Pioneer Ave.

This matter is scheduled for the May 24, 2011 City Council meeting. Please respond with any objections/non-objections to this liquor license renewal by Wednesday, May 18, 2011.

Thank you for your assistance.

State of Alaska
Alcoholic Beverage Control Board

Date of Notice: May 5, 2011

Application Type: NEW

- TRANSFER
- Ownership
- Location
- Name Change

Governing Body: City of Homer
Community Councils:

License #: 2301
License Type: Package Store
D.B.A.*: Grog Shop East End
Licensee/Applicant: MSA, Inc.
Physical Location: 3125 E. End Road
Homer, AK 99603

Mail Address: 369 E, Pioneer Ave
Homer, AK 99603

Telephone #: Phone: (907) 235-5101 Fax: (907) 235-6139
EIN:

Corp/LLC Agent:	Address	Phone	Date and State of Limited Partnership/Corporation	Good standing?
MSA, Inc	369 E, Pioneer Ave Homer, AK 99603	(907) 235-5101	06/22/2004	Yes

Please note: the Members/Officers/Directors/Shareholders (principals) listed below are the principal members. There may be additional members that we are not aware of because they are not primary members. We have listed all principal members and those who hold at least 10% shares.

Member/Officer/Director:	DOB	Address	Phone	Title/Shares (%)
Melvyn Strydom	05/08/54	61477 Skyline Drive Homer	907-235-5101	100%

If transfer application, current license information:

License #: 2301
Current D.B.A.: Uncle Thirsty's Liquor Store
Current Licensee: UTL, Inc.
Current Location: 3125 E End Road, Homer

A local governing body as defined under AS 04.21.080(11) may protest the approval of an application(s) pursuant to AS 04.11.480 by furnishing the board and the applicant with a clear and concise written statement of reasons in support of a protest within 60 days of receipt of this notice. If a protest is filed, the board will not approve the application unless it finds that the protest is "arbitrary, capricious and unreasonable". Instead, in accordance with AS 04.11.510(b), the board will notify the applicant that the application is denied for reasons stated in the protest. The applicant is entitled to an informal conference with either the director or the board and

if not satisfied by the informal conference, is entitled to a formal hearing in accordance with AS 44.62.330-44.62-630. **IF THE APPLICANT REQUESTS A HEARING, THE LOCAL GOVERNING BODY MUST ASSIST IN OR UNDERTAKE THE DEFENSE OF ITS PROTEST.**

Under AS 04.11.420(a), the board may not issue a license or permit for premises in a municipality where a zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages, unless a variance of the regulation or ordinance has been approved. Under AS 04.11.420(b) municipalities must inform the board of zoning regulations or ordinances which prohibit the sale or consumption of alcoholic beverages. If a municipal zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages at the proposed premises and no variance of the regulation or ordinance has been approved, please notify us and provide a certified copy of the regulation or ordinance if you have not previously done so.

Protest under AS 04.11.480 and the prohibition of sale or consumption of alcoholic beverages as required by zoning regulation or ordinance under AS 04.11.420(a) are two separate and distinct subjects. Please bear that in mind in responding to this notice.

AS 04.21.010(d), if applicable, requires the municipality to provide written notice to the appropriate community council(s).

If you wish to protest the application referenced above, please do so in the prescribed manner and within the prescribed time. Please show proof of service upon the applicant. For additional information please refer to 13 AAC 104.145, Local Governing Body Protest.

Note: Applications applied for under AS 04.11.400(g), 13 AAC 104.335(a)(3), AS 04.11.090(e), and 13 AAC 104.660(e) must be approved by the governing body.

Sincerely,

/s/ Leighanne D. Atwood
Leighanne D. Atwood
Business Registration Examiner



Office of the Mayor
James C. Hornaday
Homer City Hall
491 E. Pioneer Avenue
Homer, Alaska 99603-7624

Phone 907-235-8121 x2229
Fax 907-235-3143

MEMORANDUM 11-071

TO: HOMER CITY COUNCIL

FROM: BETH WYTHER, MAYOR PRO TEMPORE

DATE: MAY 16, 2011

SUBJECT: APPOINTMENT OF LINDIANNE SARNO TO THE ECONOMIC DEVELOPMENT ADVISORY COMMISSION AND REAPPOINTMENT OF MARIANNE APLIN AND GAYE WOLFE TO THE PUBLIC ARTS COMMITTEE.

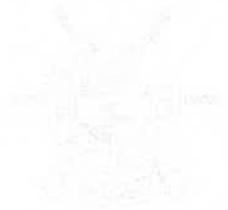
Lindianne Sarno is appointed to the Economic Development Advisory Commission for a three-year term to expire April 1, 2014. This fills the seat vacated by Todd Hoppe. Marianne Aplin and Gay Wolfe are reappointed to the Public Arts Committee with terms to expire April 28, 2013.

RECOMMENDATION:

Confirm the appointment of Lindianne Sarno to the Economic Development Advisory Commission and the reappointment of Marianne Aplin and Gaye Wolfe to the Public Arts Committee.

Fiscal Note: N/A

Office of the Mayor
James C. H. ...
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Printed at the City of New York
...
...

MEMORANDUM

TO: THE BOARD OF ALDERMEN
FROM: THE COMMISSIONER OF THE BOARD OF ALDERMEN
SUBJECT: ...

The following information was received from ...
...
...

It is recommended that ...
...
...

Very respectfully,
...
...

Page 1 of 1



CITY OF HOMER
 COMMISSION, COMMITTEE, BOARD & TASK FORCE
 APPLICATION FORM

CITY CLERKS OFFICE
 CITY OF HOMER
 491 E. PIONEER AVENUE
 HOMER, ALASKA 99603
 PHONE 907-235-3130
 FAX 907-235-3143

RECEIVED BY CLERK'S OFFICE

The information below provides some basic background for the Mayor and Council.
 This information is public and will be included in the Council Information packet.

Name Lindianne Sarno Date May 13, 2011

Physical Address 3059 Kachemak Drive City Homer

Mailing Address 3059 Kachemak Drive Zip Code

Phone 907-235-2628 Work # Cell #

Email Address lindisarno@gmail.com

NOTE: The above information will be published in the City Directory and within the City web pages if you are appointed by the Mayor and your appointment is confirmed by the City Council.

Please indicate the commission(s), committee(s), board or task force you are interested in:

Select	COMMISSION/COMMITTEE/BOARD/TASK FORCE	REGULAR MEETING SCHEDULE
<input type="checkbox"/>	ADVISORY PLANNING COMMISSION	1ST & 3RD WEDNESDAY OF THE MONTH AT 7:00 P.M. WORKSESSIONS AT 5:30 P.M.
<input checked="" type="checkbox"/>	ECONOMIC DEVELOPMENT ADVISORY COMMISSION	2ND TUESDAY OF THE MONTH AT 6:00 P.M.
<input type="checkbox"/>	LIBRARY ADVISORY BOARD	1ST TUESDAY OF THE MONTH AT 5:00 P.M.
<input type="checkbox"/>	PARKS & RECREATION ADVISORY COMMISSION	3RD THURSDAY OF THE MONTH AT 5:30 P.M.
<input type="checkbox"/>	PORT & HARBOR ADVISORY COMMISSION	4TH WEDNESDAY OF THE MONTH AT 5:00 P.M.
<input type="checkbox"/>	PUBLIC ARTS COMMITTEE	QUARTERLY - 2ND THURSDAY OF THE MONTH AT 5:00 P.M.
<input type="checkbox"/>	TRANSPORTATION ADVISORY COMMITTEE	3RD TUESDAY OF THE MONTH AT 5:30 P.M.
<input type="checkbox"/>	PERMANENT FUND COMMITTEE	QUARTERLY - 2ND THURSDAY OF THE MONTH AT 6:00 P.M.
<input type="checkbox"/>	LEASE COMMITTEE	QUARTERLY - 2ND THURSDAY OF THE MONTH AT 3:00 P.M.
<input type="checkbox"/>	OTHER - PLEASE ENTER THE COMMITTEE/TASK FORCE	

one month and one year

I have been a resident of the City for mos. yrs I have been a resident of the area for mos. yrs.

I am presently employed as:

List any special training, education or background you have which is related to your choice of commission, committee,

Have you ever served on a similar commission, committee, board or task force?

If so when and where?

When are you available for meetings? Weekly Monthly Bi-Monthly

I am interested in serving on the above because:

Do you currently belong to any organizations specifically related to the area of your choice(s) you wish to serve on?

Yes No If yes, please list organizations:

Questions regarding the Homer Advisory Planning Commission:

Have you ever developed real property, other than your personal residence?

If yes, briefly describe the development:

Questions regarding the Port & Harbor Advisory Commission:

Do you use the Homer Port and/ or Harbor on a regular basis?

If yes, is you use primarily: Commercial Recreational Both

Please include any additional information that may assist the Mayor in his decision:

When you have completed the form please review all the information and then click on the submit or print button.

Renee Krause

From: Marianne_Aplin@fws.gov
Sent: Wednesday, May 04, 2011 9:20 AM
To: Renee Krause
Subject: Request for reappointment to PAC

Dear Mayor Hornaday and Council members:

I respectfully request to be reappointed to the City Public Arts Committee for another term.

Thank you,

Marianne Aplin

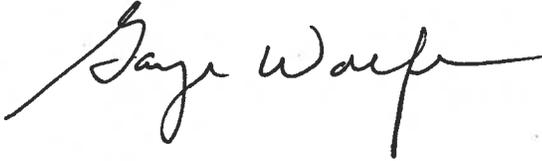
May 9, 2011

MAY 09 2011 PM 02:47 *Rk*

Dear Mayor Hornaday and Council members:

I respectfully request to be reappointed to the City Public Arts Committee for another term.

Thank you,

A handwritten signature in black ink that reads "Gaye Wolfe". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Gaye Wolfe

VISITORS

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**CITY OF HOMER
HOMER, ALASKA**

City Manager

RESOLUTION 11-042

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA, EXPRESSING OPPOSITION TO KENAI PENINSULA BOROUGH ORDINANCE 2011-07 WHICH REDUCES THE NUMBER OF BOROUGH PLANNING COMMISSION MEMBERS FROM THIRTEEN TO ELEVEN AND COMBINES THE DESIGNATED HOMER AND SELDOVIA SEATS INTO ONE.

WHEREAS, Kenai Peninsula Borough Ordinance 2011-07 was introduced on April 5, 2011 and if enacted, would reduce the number of Borough Planning Commission members from 13 to 11 and combine the designated Homer and Seldovia seats into one; and

WHEREAS, KPB 2.40.010 provides that the planning commission shall include one member from each first class or home rule city of the borough; a requirement that is more stringent than AS 29.40.020 which requires that representation on the planning commission from within first class and home rule cities be proportionate with representation of the planning commission on a non area-wide basis; and

WHEREAS, The Borough Assembly, when it adopted 2.40.010, recognized that home rule and first class cities within the Borough exercised planning functions that were unique to those communities and were more expansive and complex than the Borough exercised itself on behalf of the remainder of the Borough, and that therefore, separate designated seats for home rule and first class cities was warranted; and

WHEREAS, Homer is the second largest city within the Borough and should not be penalized because of its geographical proximity to Seldovia or because Seldovia does not have many issues on the planning commission agenda; and

WHEREAS, A commission member from Seldovia cannot adequately represent Homer's interests nor can a member from Homer adequately represent Seldovia.

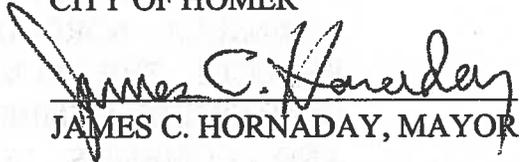
NOW, THEREFORE, BE IT RESOLVED that the Homer City Council hereby expresses its opposition to Kenai Peninsula Borough Ordinance 2011-07 for the reasons stated herein.

39 BE IT FURTHER RESOLVED if the Assembly's goal is to reduce travel expenditures
40 and increase efficiency on the Planning Commission, the Council urges it to do so in a way that
41 does not unfairly impact Homer and Seldovia.

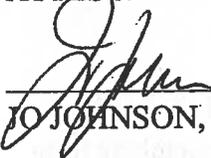
42
43 PASSED AND ADOPTED by the Homer City Council this 25th day of April, 2011.



CITY OF HOMER


JAMES C. HORNADAY, MAYOR

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49 ATTEST:

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52 JO JOHNSON, CMC, CITY CLERK

53
54 Fiscal Note: N/A

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KENAI PENINSULA BOROUGH

Kenai Peninsula Borough Assembly

144 North Binkley Street
Soldotna, AK 99669
Phone 907-714-2160
Fax 907-714-2388

Gary Knopp, Assembly President
Charlie Pierce, Vice President

MEMORANDUM

TO: Gary Knopp, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Brent Johnson, Assembly Member *B for BJ*

DATE: April 5, 2011

RE: Ordinance 2011-07; reducing the number of Kenai Peninsula Borough Planning Commissioners from 13 to 11

In 2001 planning commission membership was increased from 11 to 13. The number 13 resulted from retaining a planning commissioner from each home rule or first class city in the borough, which totals five commissioners. AS 29.40.020 requires that the number of planning commissioners from within the home rule and first class cities be proportionate to the home rule and first class city population; however, the statute does not require each city to have its own representative. In order for representation on the planning commission to meet this requirement it was necessary to have eight nonareawide planning commissioners.

Having served on the planning commission for 15 years I am aware that the work of the commission can be accomplished with fewer than 13 commissioners. Seldovia has few items on the planning commission agenda and is the most costly seat to accommodate due to travel expenses. It could save the borough approximately \$16,000 - \$20,000 to combine the Seldovia and Homer seats and eliminate one seat from outside of the cities. By reducing the number of city representatives by one, the borough can also reduce the number of commissioners outside the cities by one. I am proposing to combine the Seldovia and Homer seats and the Sterling and Ridgway seats. Both the Seldovia and Sterling terms end in 2012, the proposed effective date of the ordinance, so no commissioner's term would be truncated by this ordinance.

Your consideration of this cost saving measure is appreciated.

Introduced by:	Johnson
Date:	04/05/11
Hearing:	05/03/11
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2011-07**

**AN ORDINANCE REDUCING THE NUMBER OF KENAI PENINSULA BOROUGH
PLANNING COMMISSIONERS FROM 13 TO 11**

- 1 **WHEREAS,** Ordinance 2001-29 increased the KPB Planning Commission from 11 members to
- 2 13 members; and

- 3 **WHEREAS,** the workload of the Planning Commission can be accomplished by fewer than 13
- 4 planning commissioners; and

- 5 **WHEREAS,** KPB 2.40.010 provides that the planning commission shall include one member
- 6 from each first class or home rule city of the borough, which is not required by
- 7 statute; and

- 8 **WHEREAS,** AS 29.40.020 requires that representation on the planning commission from
- 9 within the first class and home rule cities be proportionate with the representation
- 10 of the planning commission on a nonareawide basis; and

- 11 **WHEREAS,** according to the most current census data, the City of Seldovia has less than 300
- 12 residents, while the other first class cities in the borough all have more than 3,000
- 13 residents; and

- 14 **WHEREAS,** the cost of providing Seldovia with a planning commissioner is nearly twice the
- 15 cost of providing other cities with planning commissioners; and

- 16 **WHEREAS,** Seldovia seldom has a subject on planning commission agendas; and

1 **WHEREAS**, the reduction of one planning commissioner from a city would allow for the
 2 reduction of a planning commission seat from outside cities in accordance with
 3 AS 29.40.020(A); and

4 **WHEREAS**, the Kenai Peninsula Borough is now facing budget constraints; and

5 **WHEREAS**, the Kenai Peninsula Borough will very likely face budget constraints in the future;
 6 and

7 **WHEREAS**, it is in the best interest of the borough taxpayers to streamline government
 8 wherever possible;

9 **NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI**
 10 **PENINSULA BOROUGH:**

11 **SECTION 1.** KPB 2.40.010 is amended as follows:

12 2.40.010. Membership—Apportionment.

13 In accordance with AS 29.40.020(A):

14 A. The planning commission shall consist of a maximum of eleven
 15 [THIRTEEN] members including one member each from the cities of Kenai,
 16 Soldotna, and Seward and a member from either the city of Homer or city
 17 of Seldovia. The seats on the borough planning commission shall be
 18 apportioned so that the number of commissioners from first class and
 19 home rule cities reflects the proportion of borough population residing in
 20 first class and home rule cities. The home rule and first class city
 21 representatives on the borough planning commission shall be selected by
 22 the borough mayor and confirmed by the assembly from a list submitted
 23 by the respective city council. Both the Homer and Seldovia city councils

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may submit a list for consideration when the Homer-Seldovia seat is vacant. [FROM EACH FIRST CLASS OR HOME RULE CITY OF THE BOROUGH AND THE REMAINDER APPORTIONED SO THAT THE NUMBER OF MEMBERS FROM HOME RULE AND FIRST CLASS CITIES REFLECTS THE PROPORTION OF BOROUGH POPULATION RESIDING IN HOME RULE AND FIRST CLASS CITIES LOCATED IN THE BOROUGH.] The planning commission seats within the first class or home rule cities of the borough are:

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- 1. Kenai
- 2. Soldotna
- 3. Seward
- 4. Homer/Seldovia
- [5. SELDOVIA]

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B. One planning commissioner from outside of first class and home rule cities shall be appointed by the mayor and confirmed by the assembly from each of the following areas as generally described below and depicted in the map on file at the borough clerk's office bearing the borough seal and identified as the planning commission apportionment map approved in Ordinance [2001-29]. The sections described in the map and below provide guidelines from which deviations are permitted consistent with the intent that commissioners reside in areas throughout the borough:

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- 5.[6.] East Peninsula;
- 6.[7.] Southwest Borough;
- 7.[8.] Anchor Point/Ninilchik;
- 8.[9.] Kasilof/Clam Gulch;
- 9.[10.] Kalifornsky Beach
- 10.[11.] Ridgeway/Sterling;
- [12. STERLING;]

1 11.[13.] Northwest Borough.

2 **SECTION 2.** That this ordinance takes effect July 31, 2012.

3 **ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS ***
4 **DAY OF * 2011.**

Gary Knopp, Assembly President

ATTEST:

Johni Blankenship, Borough Clerk

Yes:

No:

Absent:

**ANNOUNCEMENTS
PRESENTATIONS
BOROUGH REPORT
COMMISSION REPORTS**

CITY OF HOMER
HOMER, ALASKA

MAYOR'S PROCLAMATION

MARY EPPERSON DAY
JUNE 6, 2011

WHEREAS, Mayor James C. Hornaday and the Homer City Council proclaimed June 6, 2010 as Mary Epperson Day and encouraged everyone to recognize June 6th as Mary Epperson Day; and

WHEREAS, Mary Epperson has contributed so much of her time and energy to the advancement of the arts in Homer that her name is synonymous with the arts; and

WHEREAS, She has played an integral part in helping to start, guide, and support local organizations, including the Homer Council on the Arts, Kenai Peninsula Orchestra, The Homer Foundation, and Kenai Peninsula College; and

WHEREAS, She has provided support and inspiration to other arts organizations, including Pier One Theatre, Inlet Winds, and Homer Youth String Orchestra Club, consistently supporting artists and their artistic endeavors; and

WHEREAS, By sharing her passion of the arts so generously, Mary is largely responsible for the vibrant Homer arts community; and

WHEREAS, Mary was recently awarded the University of Alaska Meritorious Service Award in recognition of her vitality and commitment to community service, higher education, life-long learning and the arts; and

WHEREAS, She inspires us all to take on artistic challenges, give freely of ourselves, and to do so with a loving heart and a warm smile; and

NOW, THEREFORE, I, Beth Wythe, Mayor Pro Tempore, do hereby proclaim the day of June 6, 2011 as;

MARY EPPERSON DAY

in the City of Homer, Alaska.

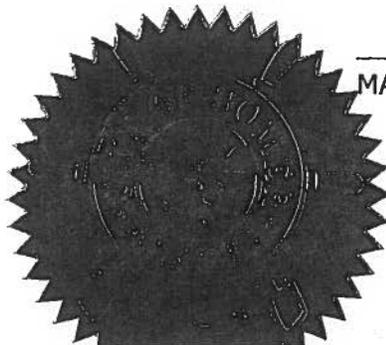
IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official seal of the City of Homer, Alaska, on this 24th day of May, 2011.

CITY OF HOMER

MAYOR PRO TEMPORE BETH WYTHE

ATTEST:

JO JOHNSON, CMC, CITY CLERK



OFFICE OF THE ATTORNEY GENERAL

STATE OF NEW YORK
ALBANY

IN SENATE, January 15, 1912.

REPORT OF THE COMMISSIONERS OF THE LAND OFFICE, MADE AT THE ANNUAL MEETING HELD AT ALBANY, ON JANUARY 10, 1912.

ALBANY: PUBLISHED BY THE STATE PRINTING OFFICE, 1912.

RECEIVED JAN 15 1912

OFFICE OF THE ATTORNEY GENERAL
STATE OF NEW YORK

ALBANY

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STATE OF NEW YORK

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OFFICE OF THE ATTORNEY GENERAL

**Meeting of Kenai Peninsula Mayors and City Managers
May 16, 2011**

Documents Enclosed

1. Proposed Formation of Ad Hoc Coalition of Alaskan Coastal Communities to Support Federal and State Funding for Water Infrastructure
2. Proposal to Establish a Pacific Ocean Division Water Infrastructure Funding Line Item Within the Army Corps of Engineers Civil Works Construction Program
3. Letter, City of Seward, March 24, 2011, to Division Commander, Pacific Ocean Division, U.S. Army Corps of Engineers
4. Resolution, City of Seward (with Agenda Statement)
5. Resolution, Alaska Association of Harbormasters and Port Administrators
6. Resolution, City of Petersburg
7. Resolution, City and Borough of Sitka

**Proposed Formation of a Ad Hoc Coalition
Of Alaskan Coastal Communities to Support
Federal and State Funding for Water Infrastructure**

The Congress has recently decided to suspend the use of congressionally-directed spending within appropriations bills while it grapples with the Federal deficit. This moratorium will make it impossible for Alaskan coastal communities to seek funding assistance from the Army Corps of Engineers to build breakwaters, wave barriers, flood control and erosion control features, dredging of new, expanded or improved harbors, or local water supply projects. The communities of Hawaii and the Pacific Island territories also face the same fate.

Under the moratorium on congressionally-directed spending, only projects which are identified in the President's Budget Request are eligible for funding. Projects contained in the President's Request are identified through a scoring system which favors the more developed ports of major urban areas and large-scale environmental restoration such as the Everglades Restoration Project. Rural coastal communities do not have the population base to compete within a scoring system that provides a bias towards large cargo volumes and urban populations. Rural communities, however, are more economically dependent on waterborne commerce in relation to the rest of their local and regional economies than the large urban areas, which have more diversified economies. There needs to be some mechanism within the Army Corps budget to recognize the unique circumstances of the rural communities of Alaska, Hawaii, and the Island territories.

Army Corps officials have stated Alaskan coastal communities should have a unified voice in advocating for federal funding for water infrastructure projects. The Corps has also stated that Alaskans will have a bigger impact on the national budget discussion if the State of Alaska also becomes more active in the planning, prioritization, and funding of this water infrastructure. The Corps believes that a proposed Federal-State-Local partnership presents a strong argument to the Congress and the Administration in seeking a dedicated source of funding for coastal Alaskan water infrastructure.

Alaskan Mayors and Municipal Governments should form an ad hoc coalition to do the following—

- **Reach out to their counterparts in Hawaii and Pacific Territories of the United States to coordinate an advocacy effort within Washington, D.C. for a dedicated source of funding for the communities falling within the geographic jurisdiction of the Army Corps' Pacific Ocean Division. Such a regional initiative is essential to succeed within the Washington political arena.**

- **Communicate in one voice to the Alaska Congressional Delegation, the congressional committees of jurisdiction, and Federal Administration officials about the need for funding water infrastructure in the Pacific Ocean Division region.**
- **Gather concrete data to demonstrate the importance of water infrastructure to the health and economic diversity of Alaskan communities.**
- **Communicate in one voice to Governor Parnell and the Alaska State Legislature about the need of the State of Alaska to partner with the Army Corps and local governments for the planning, development, and funding of water infrastructure.**

**Proposal to Establish a Pacific Ocean Division
Water Infrastructure Funding Line Item
Within the Army Corps of Engineers Civil Works Construction Program**

Background

The Army Corps of Engineers has been the central governmental agency for the development of water-related infrastructure throughout the Nation. The ACOE has established a comprehensive process to identify, evaluate, and fund projects related to navigation, safe harbor, flood control, erosion control, and water supply. This process involves an initial reconnaissance study of a proposed project; an extensive feasibility analysis to determine the project's net benefit to the Nation; a report to Congress presenting the Chief of Engineers' findings; a Water Resources Development Act authorization of the specific project by Congress; and finally appropriations over a period of years to pay for the Federal share of the specific project.

The Congress has recently decided to suspend the use of congressionally-directed spending within appropriations bills while it grapples with the Federal deficit. The Army Corps Civil Works Construction Program has depended on a project-specific authorization and appropriations process for almost a century. The current moratorium on congressionally-directed spending has severely curtailed the ability of the Army Corps fulfill its mission throughout the country. This adverse impact is particularly acute within the Army Corps' Pacific Ocean Division.

The Pacific Ocean Division is comprised of the State of Hawaii, the State of Alaska, and the Pacific Island territories of the United States. The communities within this region are either located on islands or are in the coastal areas of Alaska (many of which are not connected to the road system). All of these communities share in common the fact that port activity is the dominant feature of their local and regional economies. This dependency on waterborne commerce makes the Army Corps Civil Works program essential to the long-term health and welfare of the Pacific Ocean Division region.

Under the moratorium on congressionally-directed spending, only projects which are identified in the President's Budget Request are eligible for funding. These projects are identified through a scoring system which favors the more developed ports of major urban areas and large-scale environmental restoration such as the Everglades Restoration Project. The rural coastal communities of the Pacific Ocean Division do not have the population base to compete within a scoring system that provides a bias towards large cargo volumes and urban populations. These rural communities, however, are more economically dependent on waterborne commerce in relation to the rest of their local and regional economies than the large urban areas, which have more diversified economies. There needs to be some mechanism within the Energy & Water appropriations bill to recognize the unique circumstances of the rural communities within the Pacific Ocean Division.

Proposal

The Fiscal Year 2012 Energy & Water appropriations bill and the Fiscal Year 2013 President's Budget Request should be amended to include a set-aside of \$50 million annually for use within the Pacific Ocean Division to develop and sustain water infrastructure in the small coastal communities of the region. The Army Corps would be charged with the responsibility of working with the States, territorial governments, and local communities to prioritize projects throughout the Pacific Ocean Division region. The Corps would be provided with discretion to investigate, evaluate, plan, and provide funding continuity for projects identified within its priority list. Non-federal cost share requirements set out in existing law would remain in place. Projects to be funded would include breakwaters, wave barriers, dredging of navigation channels and mooring basins required as part of new harbor construction or harbor improvement projects, removal of barriers to navigation specifically authorized by law, flood control, water supply, and erosion control. Routine dredging of navigation features would remain within the Army Corps' national Operations & Maintenance Program.



City of Seward

P.O. Box 167
Seward, Alaska 99664-0167

Main Office (907) 224-4050

Facsimile (907) 224-4038

City of Seward, Alaska
1963 1965 2005



March 24, 2011

Colonel Edward J. Kertis, Jr.
Division Commander, Pacific Ocean Division
U.S. Army Corps of Engineers
Bldg 525, Room 300
Fort Shafter, Hawaii 96858-5440

Re: Water Infrastructure Funding within Pacific Ocean Division

Dear Colonel Kertis,

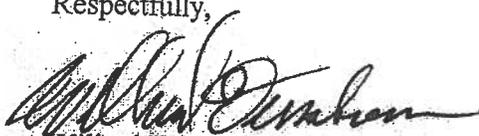
During our visit to Washington, D.C. last month a major point of discussion was funding of water infrastructure projects within the Army Corps of Engineers Civil Works Construction Program. As you are aware, the Civil Works Construction Program has been dependent on a project-specific authorization and appropriations process for almost a century. This approach will no longer be viable in light of the recent decision by Congress to suspend the use of congressionally-directed spending within appropriations bills. This adverse impact is particularly acute within the Pacific Ocean Division.

As a result of discussions at Corps Headquarters and collaboration with our congressional delegation, the City of Seward has developed two white papers to address funding of water infrastructure projects. We have attached those documents to this letter. The first proposes that the Fiscal Year 2012 Energy & Water appropriations bill and the Fiscal Year 2013 President's Budget Request should be amended to include a set-aside of \$50 million annually for use within the Pacific Ocean Division to develop and sustain water infrastructure in the small coastal communities of the region. The second advocates for the formation of an ad hoc coalition of Alaskan coastal communities to support Federal and State funding for water infrastructure projects.

In addition, to working within Alaska we have asked our congressional delegation to reach out to Hawaii Governor Abercrombie and solicit his support for a dedicated source of funding for the Pacific Ocean Division. As a final note, we plan on extending an invitation to The Honorable Jo-Ellen Darcy, Assistant Secretary of the Army for Public Works to meet with Alaskan mayors sometime during the week of 8 August 2011 and discuss these initiatives (probably in Sitka).

We look forward to being the host city for your 2011 Pacific Ocean Division Annual Conference. Perhaps during your time in Seward we will find time to discuss these initiatives.

Respectfully,


Willard E. Dunham
Mayor


Phillip E. Oates
City Manager

Enclosures:

1 – Proposal to Establish a Pacific Ocean Division Water Infrastructure Funding Line Item Within the Army Corps of Engineers Civil Works Construction Program

2 – Proposed Formation of an Ad Hoc Coalition of Alaskan Coastal Communities to Support Federal and State Funding for Water Infrastructure

Cf:

Commander, Alaska District, USACE, PO Box 6898, JBER, Alaska 99506-0898

Mr. Lloyd D. Pike, CECC-ZB, 441 G Street NW, Washington, D.C. 20314

**CITY OF SEWARD, ALASKA
RESOLUTION 2011-022**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEWARD,
ALASKA, IN SUPPORT OF ESTABLISHING WATER INFRASTRUCTURE
FUNDING IN THE ARMY CORPS OF ENGINEERS, PACIFIC OCEAN
DIVISION, CIVIL WORKS PROGRAM**

WHEREAS, the City of Seward recognizes the U.S. Army Corps of Engineers (ACOE) has been the central governmental agency for the development of water-related infrastructure throughout the Nation and has established a comprehensive process to identify, evaluate, and fund projects related to navigation, safe harbor, flood control, erosion control, and water supply; and

WHEREAS, the ACOE, Pacific Ocean Division includes Alaska, Hawaii, and the Pacific Island Territories all of which have economies highly dependent upon port infrastructure; and

WHEREAS, Congress suspended use of congressionally-directed spending and now only funds projects identified through a scoring system which favors urban ports; and

WHEREAS, the rural coastal communities of the Pacific Ocean Division do not have the population to compete with urban ports, yet are highly dependent on waterborne commerce; and

WHEREAS, there may be a mechanism within the Energy & Water appropriations bill to recognize the unique circumstances of coastal rural communities of the ACOE, Pacific Ocean Division; and

WHEREAS, projects in need of funding include breakwaters, wave barriers, dredging, mooring basins, and flood/erosion control.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEWARD, ALASKA, THAT:

Section 1. The City of Seward encourages the United States Congress to amend fiscal year 2012 Energy and Water Appropriations Bill and the Fiscal Year 2013 President's Budget Request to include a set-aside of \$50 million annually for use within the Pacific Ocean Division to develop and sustain water infrastructure in the small coastal communities of the region.

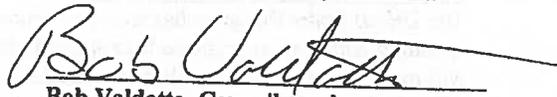
Section 2. The City of Seward requests the Army Corps of Engineers be charged with the responsibility of working with the States, territorial governments, and local communities to prioritize projects throughout the Pacific Ocean Division region and be granted the discretion to investigate, evaluate, plan, and provide funding continuity for projects identified within its priority list.

Section 3. This resolution shall take effect April 11, 2011.

**CITY OF SEWARD, ALASKA
RESOLUTION YEAR-022**

PASSED AND APPROVED by the City Council of the City of Seward, Alaska, this 11th day of April, 2011.

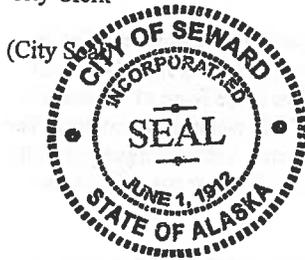
THE CITY OF SEWARD, ALASKA


Bob Valdatta, Councilmember

AYES: Keil, Shafer, Casagranda, Valdatta
NOES: None
ABSENT: Smith, Bardarson, Dunham
ABSTAIN: None

ATTEST:


Johanna Kinney, CMC
City Clerk



Agenda Statement

Meeting Date: April 11, 2011
To: Phillip Oates, City Manager
From: Kari Anderson, Harbormaster



Agenda Item: A Resolution in support of establishing water infrastructure funding in the Pacific Ocean Division within the Army Corps of Engineers.

BACKGROUND & JUSTIFICATION:

The United States Congress has recently decided to suspend the use of congressionally-directed spending within appropriations bills while it grapples with the Federal deficit. This moratorium will make it impossible for Alaskan coastal communities to seek funding assistance from the Army Corps of Engineers to build breakwaters, wave barriers, flood control and erosion control features, dredging of new, expanded or improved harbors, or local water supply projects. The communities of Hawaii and the Pacific Island territories also face these difficulties.

Under the moratorium on congressionally-directed spending, only projects which are identified in the President's Budget Request are eligible for funding. Projects contained in the President's Request are identified through a scoring system which favors the more developed ports of major urban areas. Rural coastal communities do not have the population base to compete within a scoring system that provides a bias towards large cargo volumes and urban populations. Rural communities, however, are more economically dependent on waterborne commerce in relation to the rest of their local and regional economies than the large urban areas, which have more diversified economies. A mechanism must be developed within the Army Corps budget to recognize the unique circumstances of the rural communities of Alaska, Hawaii, and the Island territories.

Army Corps officials have stated Alaskan coastal communities should have a unified voice in advocating for federal funding for water infrastructure projects. The Corps has also stated that Alaskans will have a bigger impact on the national budget discussion if the State of Alaska also becomes more active in the planning, prioritization, and funding of this water infrastructure. The Corps believes that a proposed Federal-State-Local partnership presents a strong argument to the Congress and the Administration in seeking a dedicated source of funding for coastal Alaskan water infrastructure.

The Fiscal Year 2012 Energy & Water appropriations bill and the Fiscal Year 2013 President's Budget Request should be amended to include a set-aside of \$50 million annually for use within the Pacific Ocean Division to develop and sustain water infrastructure in the small coastal communities of the region. The Army Corps would be charged with the responsibility of working with the States, territorial governments, and local communities to prioritize projects throughout the Pacific Ocean Division region. Projects to be funded would include breakwaters, wave barriers, dredging of navigation channels and mooring basins required as part of new harbor construction or harbor improvement projects, removal of barriers to navigation specifically authorized by law, flood control, water supply, and erosion control.

INTENT: To support a Federal bill to include \$50 million annually for use with in the Army Corps of Engineers Pacific Ocean Division to develop and sustain water infrastructure in the small coastal communities of the region.

CONSISTENCY CHECKLIST: Where applicable, this agenda statement is consistent with the Seward City Code, Charter, Comprehensive Plans, Land Use Plans, Strategic Plan and City Council Rules of Procedures or Other Plans or Policies:

Yes (*List Below*)

No

1. Comprehensive Plan

Economic Development, Small Boat Harbor Development, expand and maximize potential of the existing harbor.

2. Strategic Plan

Economic Base, Improve and Expand Maritime Facilities: complete eastward expansion of the Small Boat Harbor

FISCAL NOTE:

This resolution does not have an immediate impact on the City of Seward, however, in the future this federal legislation could assist the Harbor and Seward Marine Industrial Center Enterprise Funds by providing assistance with capital construction, improvement, and deferred maintenance projects.

Approved by Finance Department: *Kristen Archangis*

ATTORNEY REVIEW: Yes _____ No X

RECOMMENDATION:

Council approve Resolution 2011-022 supporting the establishment of water infrastructure funding in the Pacific Ocean Division within the Army Corps of Engineers.

Alaska Association of Harbormasters and Port Administrators



RESOLUTION NO. 2011-01

A RESOLUTION OF THE ALASKA ASSOCIATION OF HARBORMASTERS AND PORT ADMINISTRATORS IN SUPPORT OF SUPPORTING THE ESTABLISHMENT OF A PACIFIC OCEAN DIVISION WATER INFRASTRUCTURE FUNDING LINE ITEM WITHIN THE ARMY CORPS OF ENGINEERS CIVIL WORKS CONSTRUCTION PROGRAM.

Whereas, the Alaska Association of Harbormasters and Port Administrators recognizes the Army Corps of Engineers (ACOE) has been the central governmental agency for the development of water-related infrastructure throughout the Nation and has established a comprehensive process to identify, evaluate, and fund projects related to navigation, safe harbor, flood control, erosion control, and water supply; and

Whereas, The Congress has recently decided to suspend the use of congressionally-directed spending within appropriations bills while it grapples with the Federal deficit; and

Whereas, Under the moratorium on congressionally-directed spending, only projects which are identified in the President's Budget Request are eligible for funding; and

Whereas, These projects are identified through a scoring system which favors the more developed ports of major urban areas and large-scale environmental restoration such as the Everglades Restoration Project; and

Whereas, The rural coastal communities of the Pacific Ocean Division do not have the population base to compete within a scoring system that provides a bias towards large cargo volumes and urban populations, yet these rural communities are more economically dependent on waterborne commerce in relation to the rest of their local and regional economies than the large urban areas, which have more diversified economies; and

Whereas, There needs to be some mechanism within the Energy & Water appropriations bill to recognize the unique circumstances of the rural communities within the Pacific Ocean Division; and

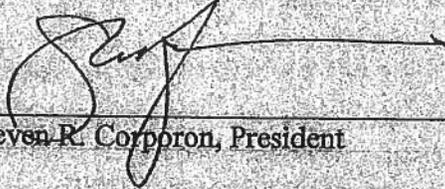
Whereas, The Pacific Ocean Division is comprised of the State of Alaska, the State of Hawaii, and the Pacific Island territories of the United States and the communities within this region are either located on islands or are in the coastal areas of Alaska which are not connected to the road system which means port activity is the dominant feature of their local and regional economies; and

Whereas, Projects in need of funding include breakwaters, wave barriers, dredging of navigation channels and mooring basins required as part of new harbor construction or harbor improvement projects, removal of barriers to navigation specifically authorized by law, flood control, water supply, and erosion control; and

Now therefore be it resolved that the Alaska Association of Harbormasters and Port Administrators encourages The Congress to amend the Fiscal Year 2012 Energy & Water appropriations bill and the Fiscal Year 2013 President's Budget Request to include a set-aside of \$50 million annually for use within the Pacific Ocean Division to develop and sustain water infrastructure in the small coastal communities of the region; and

Be it further resolved, that the Alaska Association of Harbormasters and Port Administrators requests the Army Corps of Engineers be charged with the responsibility of working with the States, territorial governments, and local communities to prioritize projects throughout the Pacific Ocean Division region and granted the discretion to investigate, evaluate, plan, and provide funding continuity for projects identified within its priority list.

Passed and approved by the Board of Directors of the Alaska Association of Harbormasters and Port Administrators on this 6th day of April 2011.



Steven R. Corporon, President

ATTEST:

Kim Elliot

Kim Elliot, Executive Secretary

CITY OF PETERSBURG, ALASKA

RESOLUTION # 1967

A RESOLUTION IN SUPPORT OF ESTABLISHING WATER INFRASTRUCTURE SET-ASIDE FUNDING IN THE ARMY CORPS OF ENGINEERS, PACIFIC OCEAN DIVISION, CIVIL WORKS PROGRAM

WHEREAS, the Army Corps of Engineers (ACOE) is the central agency for the development of water related infrastructure throughout the Nation; and

WHEREAS, the ACOE, Pacific Ocean Division includes Alaska, Hawaii and the Pacific Island Territories, all of which have economies highly dependent upon port infrastructure; and

WHEREAS, Congress suspended use of congressionally directed spending and now only funds projects identified through a scoring system which favors urban ports; and

WHEREAS, the rural coastal communities of the Pacific Ocean Division do not have the population to compete with urban ports, yet are highly dependent on waterborne commerce; and

WHEREAS, there should be a mechanism within the Energy & Water appropriations bill to recognize the unique circumstances of coastal rural communities of the ACOE, Pacific Ocean Division; and

WHEREAS, projects in need of funding include breakwaters, wave barriers, dredging, mooring basins and flood/erosion control.

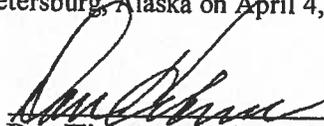
THEREFORE BE IT RESOLVED the Petersburg City Council encourages our federal legislators to amend the FY2012 Energy & Water appropriations bill and the FY2013 President's Budget Request to include an annual \$50M set-aside that the ACOE, Pacific Ocean Division, can prioritize and spend on projects necessary to sustain water infrastructure in the small coastal communities of the region.

PASSED and APPROVED by the City Council of the City of Petersburg, Alaska on April 4, 2011.

ATTEST:



Kathy O'Rear, City Clerk



Dan Hickman, Acting Mayor

CITY AND BOROUGH OF SITKA

RESOLUTION NO. 2011-10

A RESOLUTION OF THE CITY OF SITKA IN SUPPORT OF ESTABLISHING WATER INFRASTRUCTURE SET-ASIDE FUNDING IN THE ARMY CORPS OF ENGINEERS, PACIFIC OCEAN DIVISION, CIVIL WORKS PROGRAM.

WHEREAS, the Army Corps of Engineers (ACOE) is the central agency for the development of water-related infrastructure throughout the Nation; and

WHEREAS, the ACOE, Pacific Ocean Division includes Alaska, Hawaii, and the Pacific Island Territories all of which have economies highly dependent upon port infrastructure; and

WHEREAS, Congress suspended use of congressionally-directed spending and now only funds projects identified through a scoring system which favors urban ports; and

WHEREAS, the rural coastal communities of the Pacific Ocean Division do not have the population to compete with urban ports, yet are highly dependent on waterborne commerce; and

WHEREAS, there could be a mechanism within the Energy & Water appropriations bill to recognize the unique circumstances of coastal rural communities of the ACOE, Pacific Ocean Division; and

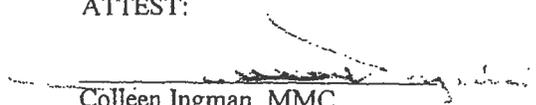
WHEREAS, projects in need of funding include breakwaters, wave barriers, dredging, mooring basins, and flood/erosion control; and

NOW THEREFORE BE IT RESOLVED that the Assembly of the City and Borough of Sitka encourages Congress to amend the FY2012 Energy & Water appropriations bill and the FY2013 President's Budget Request to include an annual \$50M set-aside that the ACOE, Pacific Ocean Division can prioritize and spend on projects necessary to sustain water infrastructure in small coastal communities of the region.

Passed and approved by the Assembly of the City and Borough of Sitka on this 26th day of April 2011.


Cheryl Westover, Mayor

ATTEST:


Colleen Ingman, MMC
Municipal Clerk

Kachemak Nordic Ski Club

www.kachemaknordicskiclub.org
PO Box 44** Homer, AK 99603-0044
kachemaknordicskiclub@gmail.com

City of Homer - Mayor
Mayor Jim Hornaday
491 East Pioneer Ave.
HOMER, AK 99603

Winter Season 2010-2011

Dear *MAYOR HORNADAY,*

The Kachemak Nordic Ski Club would like to thank you for being a Land Use Partner. Community cash donations and in-kind contributions make it possible for us to build, maintain and groom over 70 km of non-motorized ski trails in the Homer area. We appreciate the private landowners who allow us to have trails on their property.

Eveline State Recreation Site and McNeil Canyon Ski Trails allow snowshoeing and skiing with dogs. Eveline has wonderful wildflower summer hiking trails. Land Use Partners for these trails are the Alaska State Parks, the Kenai Peninsula Borough and the KPBSD.

The Baycrest Ski trails have designated snowshoe areas and allow skiing with dogs on the lower trails. Baycrest Ski Trails are located within the Homer Demonstration Forest, the City of Homer Diamond Creek property, Kenai Peninsula Borough parcels, and a variety of private parcels. The Homer Demonstration Forest manages summer hiking trails in the area.

The Lookout Mountain Nordic Trails are available for hiking, running, and mountain biking during the summer and skiing in the winter. These trails are located on Kenai Peninsula Borough Leased Land and State Agricultural and Recreational Land.

You will receive the Alaska Nordic Skier, published during the winter, which has important information about KNSC fundraising events and trail construction projects.

We deeply appreciate your support,

KNSC Board of Directors

Alan Parks - President 235-5680

Dave Brann - Vice-president

Mike Byerly - Secretary

Richard Burton - Treasurer

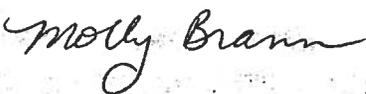
Kenton Bloom

Molly Brann - Membership 235-6018

Atz Kilcher

Nicky Szarzi

Kevin Walker



PUBLIC HEARING(S)

CLERK'S AFFIDAVIT OF POSTING

I, Renee Krause, CMC, Deputy City Clerk I for the City of Homer, Alaska, do hereby certify that a copy of the Public Hearing Notice for Ordinance 11-017, Amending the 2008 Homer Comprehensive Plan to Incorporate the Homer Spit Plan and Approval of the Amendment by the Kenai Peninsula Borough; Ordinance 11-018, Amending the FY 2011 Operating Budget by Appropriating \$7,793.75 from the Public Works Fleet Reserve for the Purpose of Sandblasting and Recoating a CAT Loader; and Ordinance 11-019, Establishing a Preliminary Budget and Authorizing Expenditure of \$486,948.00 from Depreciation Reserves for the Renovation and Expansion of City Hall at the City of Homer kiosks located at City Clerk's Office, Captain's Coffee Roasting Co., Harbormaster's Office, and Redden Marine Supply of Homer, on May 13, 2011 and that the City Clerk posted same on City of Homer Homepage on May 11, 2011.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of said City of Homer this 11th day of May, 2011.



Renee Krause, CMC, Deputy City Clerk I



ORDINANCE REFERENCE SHEET
2011 ORDINANCE
ORDINANCE 11-17

An Ordinance of the City Council of Homer, Alaska, Amending the 2008 Homer Comprehensive Plan to Incorporate the Homer Spit Plan and Recommending Approval of the Amendment by the Kenai Peninsula Borough.

Sponsor: Planning

1. City Council Regular Meeting May 9, 2011 Introduction
 - a. Memorandum 11-068 from City Planner as backup w/attachments:
 1. Draft Ordinance
 2. Homer Spit Comprehensive Plan Final Draft (April 20, 2011)
 3. Staff Reports
 4. Minutes
 5. Written public comments
2. City Council Regular Meeting May 24, 2011 Public Hearing and Second Reading
 - a. Memorandum 11-068 from City Planner without attachments

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**CITY OF HOMER
HOMER, ALASKA**

Planning

ORDINANCE 11-17

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, AMENDING THE 2008 HOMER COMPREHENSIVE PLAN TO INCORPORATE THE HOMER SPIT PLAN AND RECOMMENDING APPROVAL OF THE AMENDMENT BY THE KENAI PENINSULA BOROUGH.

WHEREAS, The Kenai Peninsula Borough as a second class borough shall provide for planning on an areawide basis in accordance with AS 29.40; and

WHEREAS, As provided in Kenai Peninsula Borough Code 21.01.025, cities in the Borough requesting extensive comprehensive plan amendments may recommend to the Kenai Peninsula Borough Planning Commission a change to the city comprehensive plan; and

WHEREAS, The City of Homer has prepared an extensive amendment to the 2008 Comprehensive Plan in the form of the Homer Spit Plan; and

WHEREAS, A comprehensive plan is a public declaration of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the City; and

WHEREAS, The Homer Spit Plan will guide development on the Homer Spit; and

WHEREAS, The Homer Advisory Planning Commission and other City commissions and bodies have reviewed and/or conducted public hearings regarding the Homer Spit Plan; and

WHEREAS, The Homer City Council, based upon the recommendation of the Homer Advisory Planning Commission, recommends that the Kenai Peninsula Borough Planning Commission and Assembly amend the 2008 Homer Comprehensive Plan to incorporate the Homer Spit Plan.

NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. The 2008 Homer Comprehensive Plan is hereby amended to incorporate the Homer Spit Plan, which shall supersede the Homer Spit Plan section of the 1999 Homer Comprehensive Plan Update.

Section 2. Subsection (b) of Homer City Code 21.02.010, Comprehensive Plan—Adoption, is amended to read as follows:

b. The following documents, as initially approved and subsequently amended, are adopted by reference as comprising the Homer Comprehensive Plan.

- 47 1. Homer Comprehensive Plan (2008)
- 48 2. Homer Non-Motorized Transportation and Trail Plan (2004)
- 49 3. Homer Area Transportation Plan (2005)
- 50 4. Homer Town Center Development Plan (2006)
- 51 5. **Homer Spit Plan (2010)**
- 52

53 Section 3. The City hereby recommends that the Kenai Peninsula Borough Planning
54 Commission and Assembly amend the 2008 Homer Comprehensive Plan by incorporating the
55 Homer Spit Plan as an extensive comprehensive plan amendment under Kenai Peninsula
56 Borough Code 21.01.025, and as an element of the Official Borough Comprehensive Plan within
57 the City of Homer planning area of the Borough.

58
59 Section 4. Sections 1 and 2 of this ordinance shall take effect upon the Kenai Peninsula
60 Borough Assembly amending the 2008 Homer Comprehensive Plan to incorporate the Homer
61 Spit Plan. The remainder of this ordinance shall take effect upon its adoption by the Homer City
62 Council.

63
64 Section 5. Section 2 of this ordinance is of a permanent and general character and shall
65 be included in the city code. The remainder of this ordinance is not of a permanent nature and is
66 a non code ordinance.

67
68 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this _____ day of
69 _____ 2011.

70
71 CITY OF HOMER

72
73
74 _____
75 JAMES C. HORNADAY, MAYOR

76
77 ATTEST:

78
79
80 _____
81 JO JOHNSON, CMC, CITY CLERK

82
83
[**Bold and underlined added.** Deleted language ~~stricken through.~~]

- 84 YES:
- 85 NO:
- 86 ABSTAIN:
- 87 ABSENT:
- 88
- 89
- 90 First Reading:
- 91 Public Hearing:
- 92 Second Reading:
- 93 Effective Date:

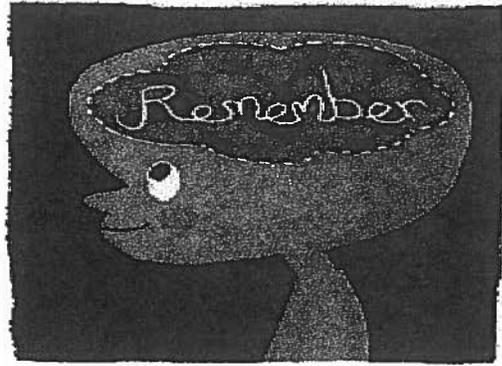
- 94
- 95
- 96
- 97 Reviewed and approved as to form:
- 98
- 99

100 _____
101 Walt E. Wrede, City Manager

Thomas F. Klinkner, City Attorney

102
103
104 Date: _____

Date: _____



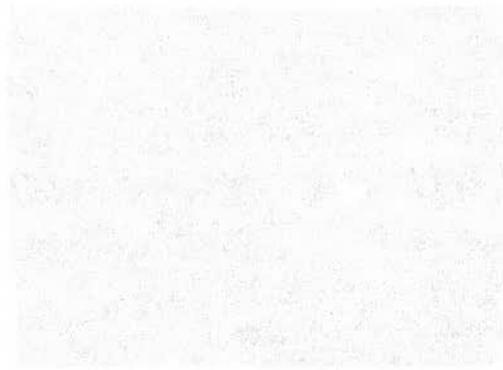
Bring your:

**Homer Spit Comprehensive
Plan**

Final Draft

April 20, 2011

(from May 9th)



Bring your:

Homebrew Spit Comprehensive

Plan

Final Draft

April 30, 2011

(From May 2011)



City of Homer Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone (907) 235-3106
Fax (907) 235-3118
E-mail Planning@ci.homer.ak.us
Web Site www.ci.homer.ak.us

MEMORANDUM 11-068

TO: MAYOR HORNADAY AND HOMER CITY COUNCIL
WALT WREDE, CITY MANAGER
FROM: RICK ABOUD, CITY PLANNER
DATE: May 3, 2011
SUBJECT: Ordinance 11-17, Amending the 2008 Homer Comprehensive Plan to Incorporate the Homer Spit Plan.

After several public workshops and extensive review and public hearings held by the Homer Advisory Planning Commission the Homer Spit Plan is now ready to be incorporated into the 2008 Homer Comprehensive Plan.

The plan has incorporated many public comments and concerns. 5 public workshops/meeting were conducted. The plan was reviewed at various stages at 18 regular Homer Advisory Planning Commission Meetings in addition to 2 Port and Harbor Commission meetings.

Starting in the summer of 2009, the City Planning Office worked with USKH to create the plan. After gathering information, conducting a parking study, and holding public workshops, a framework Plan was developed and a draft plan was created. Written comments on the draft plan were solicited for over 30 days. After reviewing comments and holding a Public Hearing to provide the opportunity for public testimony, the Planning Commission conducted an extensive line-by-line review of the plan. Once the Planning Commission revisions were completed, additional public hearings were held and the final draft was completed. A history of the plan Along with an extensive list of public comments can be found on the web at <http://www.homerspitfutureplan.com/index.html>.

The final draft is available for public review at several locations. Copies of the plan may be found on the Planning Page of the City web site, the Public Library, the Port Office, and at City Hall.

Recommendation:

The Homer Advisory Planning Commission recommends that the Homer City Council hold public hearings and forward the Homer Spit Plan to the Kenai Peninsula Borough for incorporation into the 2008 Homer Comprehensive Plan.

Attachments:

Draft Ordinance 11-XX
Spit Comprehensive Plan
Staff Reports
Minutes
Public Comments



City of Houston Planning & Zoning Department of Public Works

6000 West Loop West, Suite 1000
Houston, Texas 77056
713-871-1000
www.houston.gov

MEMORANDUM FOR THE CITY COMMISSION

TO: City Commission
FROM: Planning & Zoning Department
SUBJECT: [Illegible subject text]

The purpose of this memorandum is to provide information regarding the proposed [illegible] and to recommend that the City Commission approve the [illegible].

The proposed [illegible] is located at [illegible] and is currently zoned [illegible]. The proposed [illegible] is consistent with the [illegible] and the [illegible].

The [illegible] is a [illegible] and is proposed to be used for [illegible]. The [illegible] is a [illegible] and is proposed to be used for [illegible]. The [illegible] is a [illegible] and is proposed to be used for [illegible].

The Planning & Zoning Department recommends that the City Commission approve the [illegible] and the [illegible].

Respectfully,
[Illegible Signature]

The [illegible] is a [illegible] and is proposed to be used for [illegible]. The [illegible] is a [illegible] and is proposed to be used for [illegible].

City of Houston
Planning & Zoning
Department of Public Works
6000 West Loop West, Suite 1000
Houston, Texas 77056
713-871-1000
www.houston.gov

ORDINANCE REFERENCE SHEET
2011 ORDINANCE
ORDINANCE 11-18

An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating \$7,793.75 from the Public Works Depreciation Reserve for the Purpose of Sandblasting and Recoating a CAT Loader.

Sponsor: City Manager/Public Works Director

1. City Council Regular Meeting May 9, 2011 Introduction
 - a. Memorandum 11-064 from Public Works Superintendent as backup
2. City Council Regular Meeting May 24, 2011 Public Hearing and Second Reading
 - a. Memorandum 11-064 from Public Works Superintendent as backup

STATE OF TEXAS
COUNTY OF [illegible]
[illegible]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]



CITY OF HOMER PUBLIC WORKS DEPARTMENT

Jan C. Jonker, Superintendent
3575 Heath St.
Homer, Alaska 99603

Telephone: (907)235-3170
Fax: (907)235-3145

EMAIL : jjonker@ci.homer.ak.us

MEMORANDUM 11-064

To: Walt Wrede, City Manager

From: Jan Jonker, Public Works Superintendent

Thru: Carey Meyer, PW Director

Date: Tuesday, May 03, 2011

Subject: HEAVY EQUIPMENT SANDBLASTING & REPAINTING

Discussion

The City owns several pieces of heavy equipment which are 25+ years old and should be replaced. However due to the climate of the economy we do not have the funds for these major purchases. In light of this we are proposing that several of our main pieces of equipment be sandblasted and repainted in an effort to extend their useful life.

We have contacted two local and one Mat Su Valley vendors that provide this service. One local vendor, Homer Boat Yard, indicated that they are too busy with boat work. The quotes from the two others are as follows.

	Active Coatings LLC Homer, AK	Northern Industrial Coatings Wasilla, AK
• 1980 Cat 120G Motor Grader	\$8,268.75	\$5,500.00 + \$4,000 trucking
• 1986 Cat 140G Motor Grader	\$9,527.85	\$5,500.00 + \$4,000 trucking
• 1987 Cat 950B Front End Loader	\$7,793.75	\$3,600.00 + \$4,000 trucking
• Trucking	n/a	\$12,000.00
Total Quote	\$25,590.35	\$26,600.00

Recommendation

As this is an unbudgeted item and due to the quoted costs, we recommend award to Active Coatings LLC, Homer, Alaska in the amount of \$7,793.75 for sandblasting and repainting of the 1987 Cat 950B Loader.

We will request additional funding to complete the other two pieces of equipment in 2012.

Fiscal Note

Public Works Fleet Reserve Account 152-383. Account balance is \$336,700.00

CITY OF BIRMINGHAM
PUBLIC WORKS DEPARTMENT

Telephone: (205) 325-4100
Fax: (205) 325-4100
City Hall, 200 North 20th Street

City of Birmingham, Alabama
Department of Public Works
100 North 20th Street, Birmingham, AL 35203



MEMORANDUM

To: Mr. Mayor
From: Mr. [Name]
Subject: [Topic]

Reference is made to the report of the [Committee/Board] dated [Date].

The [Committee/Board] has recommended that the [Action] be taken.

It is recommended that the [Action] be approved by the City Council.

The [Committee/Board] also recommended that the [Action] be implemented.

Item	Amount	Source
[Item 1]	[Amount]	[Source]
[Item 2]	[Amount]	[Source]
[Item 3]	[Amount]	[Source]
[Item 4]	[Amount]	[Source]
[Item 5]	[Amount]	[Source]

Very truly yours,

[Signature]

[Title]

Approved by the City Council on [Date]

ORDINANCE REFERENCE SHEET
2011 ORDINANCE
ORDINANCE 11-19

An Ordinance of the City Council of Homer, Alaska, Establishing a Preliminary Budget and Authorizing the Expenditure of \$486,948 from Depreciation Reserves for the Renovation and Expansion of City Hall.

Sponsor: Roberts/Wythe

1. City Council Regular Meeting May 9, 2011 Introduction
 - a. Memorandum 11-066 from Public Works Director as backup
 - b. 65% Budget Breakdown
 - c. Resolution 11-028

2. City Council Regular Meeting May 24, 2011 Public Hearing and Second Reading
 - a. Ordinance 11-19(S)
 - b. Memorandum 11-066 from Public Works Director as backup
 - c. 65% Budget Breakdown (Attachment A)
 - d. Resolution 11-028

MEMORANDUM FOR THE DIRECTOR
FROM THE ASSISTANT ATTORNEY GENERAL
DATE: 11-1-57

An application for the City Council of the City of New York, New York, to amend the City Charter, Chapter 1, Section 24, to provide for the election of a Mayor and City Council for the City of New York, New York, is being considered by the City Council.

The proposed amendment is as follows:

Section 24 of the City Charter, Chapter 1, Article 3, shall read:

Section 24. The Mayor and City Council shall be elected for a term of four years, beginning on the first day of January next following the general election, and shall hold office until the first day of January next following the general election.

The proposed amendment is being considered by the City Council.

Very truly yours,
Assistant Attorney General
City of New York, New York

1 CITY OF HOMER
2 HOMER, ALASKA

3 Roberts/Wythe

4 ORDINANCE 11-19

5
6 AN ORDINANCE OF THE CITY COUNCIL OF HOMER,
7 ALASKA, ESTABLISHING A PRELIMINARY BUDGET AND
8 AUTHORIZING THE EXPENDITURE OF \$486,948 FROM
9 DEPRECIATION RESERVES FOR THE RENOVATION AND
10 EXPANSION OF CITY HALL.

11
12 WHEREAS, Upon review of the renovations and expansion of City Hall, the City Hall
13 Renovation and Expansion Task Force recommended improvements to the current City Hall
14 heating system, lighting, and air handling unit and replacement of the roof, deck, carpets and
15 exterior siding; and

16
17 WHEREAS, Depreciation reserves were set aside for the purpose of repairs and
18 maintenance of the existing City Hall building to extend the useful life of the building; and

19
20 WHEREAS, Council declared via Resolution 11-028 their support to use City Hall
21 Depreciation Reserves to assist with the costs of renovation to the existing City Hall, finding it
22 economically sensible to complete the improvements and replacements of the existing building
23 during the renovation and expansion project.

24
25 NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

26
27 Section 1. The Homer City Council hereby establishes a preliminary budget and
28 authorizes the expenditure of Depreciation Reserves for the Renovation and Expansion of City
29 Hall as follows:

30
31 Expenditure:

<u>Account No.</u>	<u>Description</u>	<u>Amount</u>
156-375	Depreciation Reserves	\$486,948

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33
34
35
36 Section 2. This is a budget amendment ordinance, is temporary in nature, and shall not
37 be codified.

38
39 ENACTED BY THE HOMER CITY COUNCIL this _____ day of _____, 2011.
40

1 CITY OF HOMER
2 HOMER, ALASKA

3 Roberts/Wythe

4 ORDINANCE 11-19(S)
5

6 AN ORDINANCE OF THE CITY COUNCIL OF HOMER,
7 ALASKA, ESTABLISHING A PRELIMINARY BUDGET AND
8 AUTHORIZING THE EXPENDITURE OF \$486,948 FROM
9 DEPRECIATION RESERVES FOR THE RENOVATION AND
10 EXPANSION OF CITY HALL.
11

12 WHEREAS, Upon review of the renovations and expansion of City Hall, the City Hall
13 Renovation and Expansion Task Force recommended improvements to the current City Hall
14 heating system, lighting, and air handling unit and replacement of the roof, deck, carpets and
15 exterior siding; and
16

17 WHEREAS, Depreciation reserves were set aside for the purpose of repairs and
18 maintenance of the existing City Hall building to extend the useful life of the building; and
19

20 WHEREAS, Council declared via Resolution 11-028 their support to use City Hall
21 Depreciation Reserves to assist with the costs of renovation to the existing City Hall, finding it
22 economically sensible to complete the improvements and replacements of the existing building
23 during the renovation and expansion project.
24

25 NOW, THEREFORE, THE CITY OF HOMER ORDAINS:
26

27 Section 1. The Homer City Council hereby establishes a preliminary budget (Attachment
28 A) and authorizes the expenditure of Depreciation Reserves for the Renovation and Expansion of
29 City Hall as follows:
30

31 Expenditure:
32

<u>Account No.</u>	<u>Description</u>	<u>Amount</u>
34 156-375	Depreciation Reserves	\$486,948

35

36 Section 2. This is a budget amendment ordinance, is temporary in nature, and shall not
37 be codified.
38

39 ENACTED BY THE HOMER CITY COUNCIL this _____ day of _____, 2011.
40

Attachment A

65% Budget Breakdown
 City Hall Renovation and Expansion
 May 3, 2011

Proposed Project	Original Budget	Proposed Budget
Expansion Construction	\$1,500,000	\$1,510,909
1% for Art	\$15,000	\$15,000
Preconstruction Services	\$135,000	\$129,869
Construction Assistance Services	\$30,000	\$22,150
City Salaries/Administration	\$40,000	\$40,000
Contingency (10%)	\$150,000	\$150,000
Total Proposed Project	\$1,870,000	\$1,867,928

4100 SF new bldg: removal of HEA power line, no work on existing bldg

	Proposed
Additional Work (addn funding r'qrd)	
Energy Efficiency Improvements	
New Heating System	\$39,400
Lighting Upgrade	\$27,500
New Air Handling Unit	\$24,500
Subtotal Energy Improvements	\$91,400
Renovations per UAA Architect's Report	
New Roof	\$52,000
Deck Replacement	\$25,000
New Carpet	\$62,900
Interior Painting	\$22,660
Exterior Siding	\$71,850
Window Replacement (2)	\$2,000
Work Space Improvements	\$131,400
Elevator Pit Repair	\$4,550
Subtotal Renovation Improvements	\$372,360
Contingency (5%)	\$23,188
Total Addition Funding Required =	\$486,948

replace electric heat with hydronic (heating fuel)
 replace lighting with energy efficient lighting
 replace old roof AHU with new efficient unit

replace shingle roof/rehab flat roof
 replace handicap ramp and deck (north side of bldg)
 install new carpeting in existing bldg
 paint and patch all interior wall surfaces
 new siding on exterior of existing building
 replace two damaged windows
 Wall moving/breakroom relocation/storage area adjustments
 repair mountings bottom of elevation shaft



**CITY OF HOMER
PUBLIC WORKS**

3575 HEATH STREET HOMER, AK 99603

TELEPHONE (907)235-3170
FACSIMILE (907)235-3145

MEMORANDUM 11-066

TO: Walt Wrede, City Manager
FROM: Carey Meyer, Public Works Director
DATE: May 3, 2011
RE: **City Hall Expansion and Renovation Project
Additional Funding to Complete Renovations**

The City Hall Expansion and Renovation Task Force has been meeting since February to provide guidance and oversight of the design team regarding the development of plans for this project.

During the conceptual design stage, it became evident that additional funding would be required to complete both the expansion and renovation portion of the project.

The Task Force supports the idea that City Hall expansion work be funded using the available State Legislative Grant monies; and that it would be appropriate to use City reserve account depreciation funds to complete the renovation of the existing City Hall building.

Attached is the current budget for the project, separating the expansion work from the renovation work. An additional \$486,948 is required to complete all renovation work.

Recommendations: The City Council pass an ordinance authorizing the use of depreciation funds to complete the renovation portion of the project.

**CITY OF HOMER
HOMER, ALASKA**

Wythe

RESOLUTION 11-028

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA, IN SUPPORT OF USING CITY HALL DEPRECIATION RESERVES TO ASSIST WITH THE COSTS OF RENOVATION TO THE EXISTING CITY HALL FACILITY.

WHEREAS, The City Hall Renovation and Expansion Task Force is working with the architects and contractors in reviewing and discussing improvements for the renovated and expanded City Hall; and

WHEREAS, Areas in the existing building were identified as requiring upgrade and replacement in the University of Alaska Anchorage engineer's facility report and are being considered for inclusion in the renovation project; and

WHEREAS, It is economically sensible to replace the roof, deck, and carpets of the existing building during the remodel; and

WHEREAS, Improvements to the current heating system, lighting, and air handling unit are desired to increase overall energy efficiency; and

WHEREAS, Exterior siding to the existing building will add stability, reduce long term maintenance costs, and create an aesthetically pleasing flow with the new addition; and

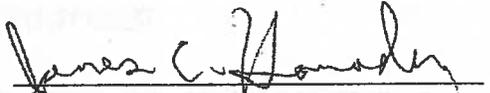
WHEREAS, Depreciation reserves are allocated to be made available for the purpose of repairs and maintenance of the building as required to extend the useful life of the building; and

WHEREAS, Consistent with the design build process, it is desirable to know at this time if depreciation reserve funds may be utilized to finance the projects identified as necessary repairs in the existing building.

NOW, THEREFORE, BE IT RESOLVED that the Homer City Council supports utilizing depreciation reserves to assist with the costs of renovation to the existing City Hall facility.

PASSED AND ADOPTED by the Homer City Council this 14th day of March, 2011.

CITY OF HOMER


JAMES C. HORNADAY, MAYOR




JO JOHNSON, CMC, CITY CLERK

Fiscal Note: N/A

ORDINANCE(S)

ORDINANCE REFERENCE SHEET
2011 ORDINANCE
ORDINANCE 11-16

An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating \$20,000 from the Fund Balance of the General Fund to Purchase a Used Allman Light Tower and a Used Dynapac Diesel Plate.

Sponsor: City Manager/Public Works Director

1. City Council Regular Meeting April 25, 2011 Introduction
 - a. Photos of equipment
2. City Council Regular Meeting May 9, 2011 Public Hearing and Second Reading
 - a. Ordinance 11-16(A)
 - b. Photos of equipment
3. City Council Regular Meeting May 24, 2011 Reconsideration/Second Reading
 - a. Ordinance 11-16(A)
 - b. Photos of equipment

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
LABORATORY OF ORGANIC CHEMISTRY

The following is a list of the members of the Laboratory of Organic Chemistry, Department of Chemistry, University of Chicago, during the year 1954-1955.

Name of Member

Address

Telephone

Date of Birth

Date of Admission

Date of Graduation

Degree

Thesis Title

Advisor

1 CITY OF HOMER
2 HOMER, ALASKA

3 City Manager/
4 Public Works Director

5 ORDINANCE 11-16(A)
6

7 AN ORDINANCE OF THE CITY COUNCIL OF HOMER,
8 ALASKA, AMENDING THE FY 2011 OPERATING BUDGET
9 BY APPROPRIATING \$20,000 FROM THE FUND BALANCE
10 OF THE GENERAL FUND WATER SEWER
11 DEPRECIATION RESERVES TO PURCHASE A USED
12 ALLMAN LIGHT TOWER AND A USED DYNAPAC DIESEL
13 PLATE.
14

15 WHEREAS, A local contracting / construction firm is ceasing operations and is offering
16 all of its equipment for disposal and sale; and
17

18 WHEREAS, The Department of Public Works has reviewed and inspected the list of
19 available equipment and has identified two items, the Allman Light Tower (\$10,000) and the
20 Dynapac Diesel Plate (\$9,000), that would be particularly useful; and
21

22 WHEREAS, These pieces of equipment are well maintained and purchasing them new
23 would cost an additional \$12,300; and
24

25 WHEREAS, The Public Works Department frequently rents pieces of equipment similar
26 to these for construction, maintenance, and repair on roads, water and sewer lines, and other
27 applications, and acquiring this equipment would save money and increase efficiency in the long
28 term.
29

30 NOW, THEREFORE, THE CITY OF HOMER ORDAINS:
31

32 Section 1: The Homer City Council hereby amends the FY 2011 Operating Budget by
33 appropriating \$20,000 from the ~~fund balance of the general fund~~ Water Sewer Depreciation
34 Reserves for the purpose of acquiring a used Allman Light Tower (\$10,000) and a used Dynapac
35 Diesel Plate (\$9,000) as follows:
36

37 Expenditure:

<u>Account No.</u>	<u>Description</u>	<u>Amount</u>
100-100-5901-256-378/379	Allman Light Tower/ Dynapac Diesel Plate	\$20,000

38
39
40

41
42 **Section 2.** This is a budget amendment ordinance, is temporary in nature, and shall not
43 be codified.

44
45 ENACTED BY THE HOMER CITY COUNCIL this _____ day of _____, 2011.

46
47 CITY OF HOMER

48
49
50 _____
51 JAMES C. HORNADAY, MAYOR

52 ATTEST:

53 _____
54 JO JOHNSON, CMC, CITY CLERK

55
56
57 YES:

58 NO:

59 ABSENT:

60 ABSTAIN:

61
62
63 First Reading:

64 Public Hearing:

65 Second Reading:

66 Effective Date:

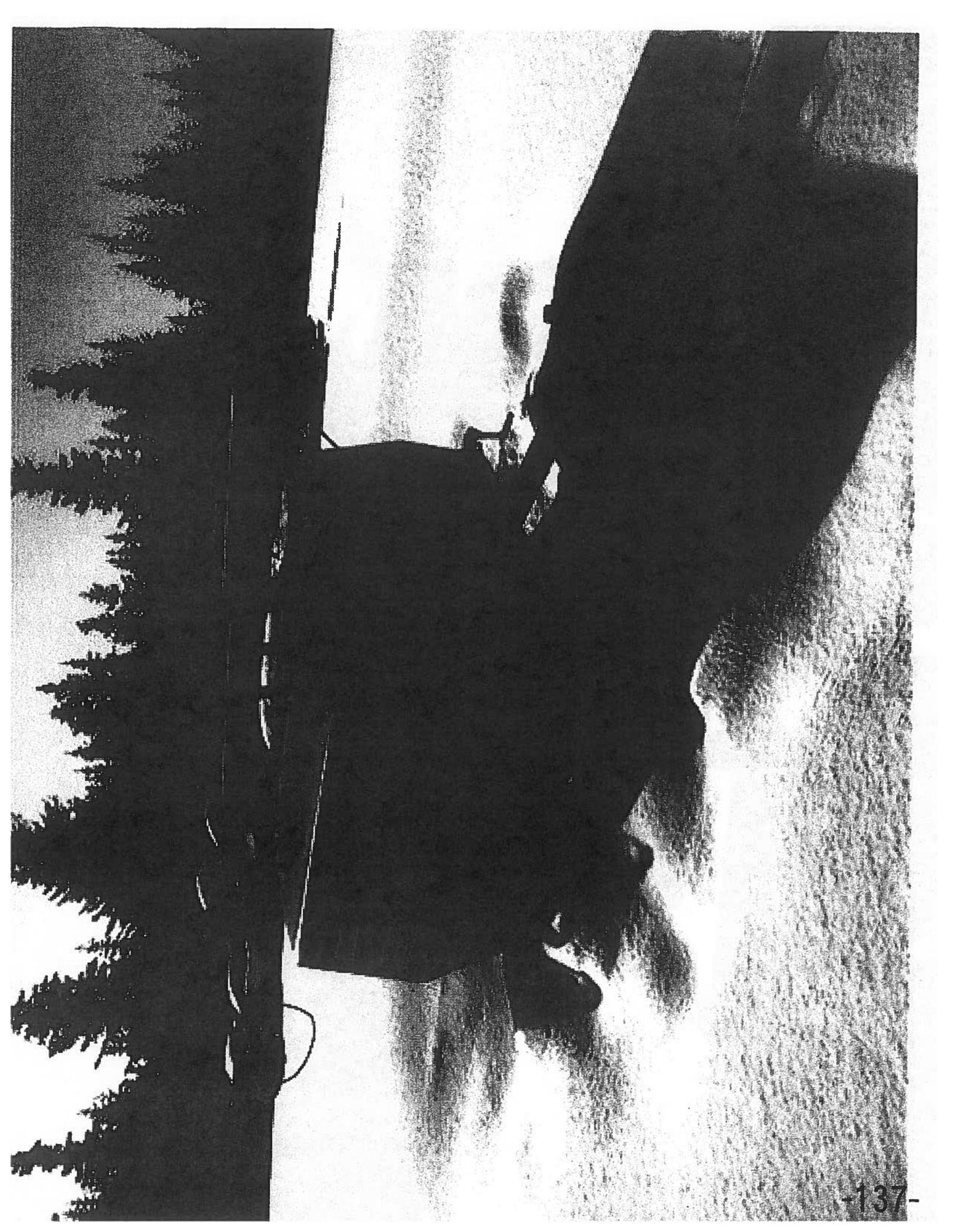
67
68
69 Reviewed and approved as to form:

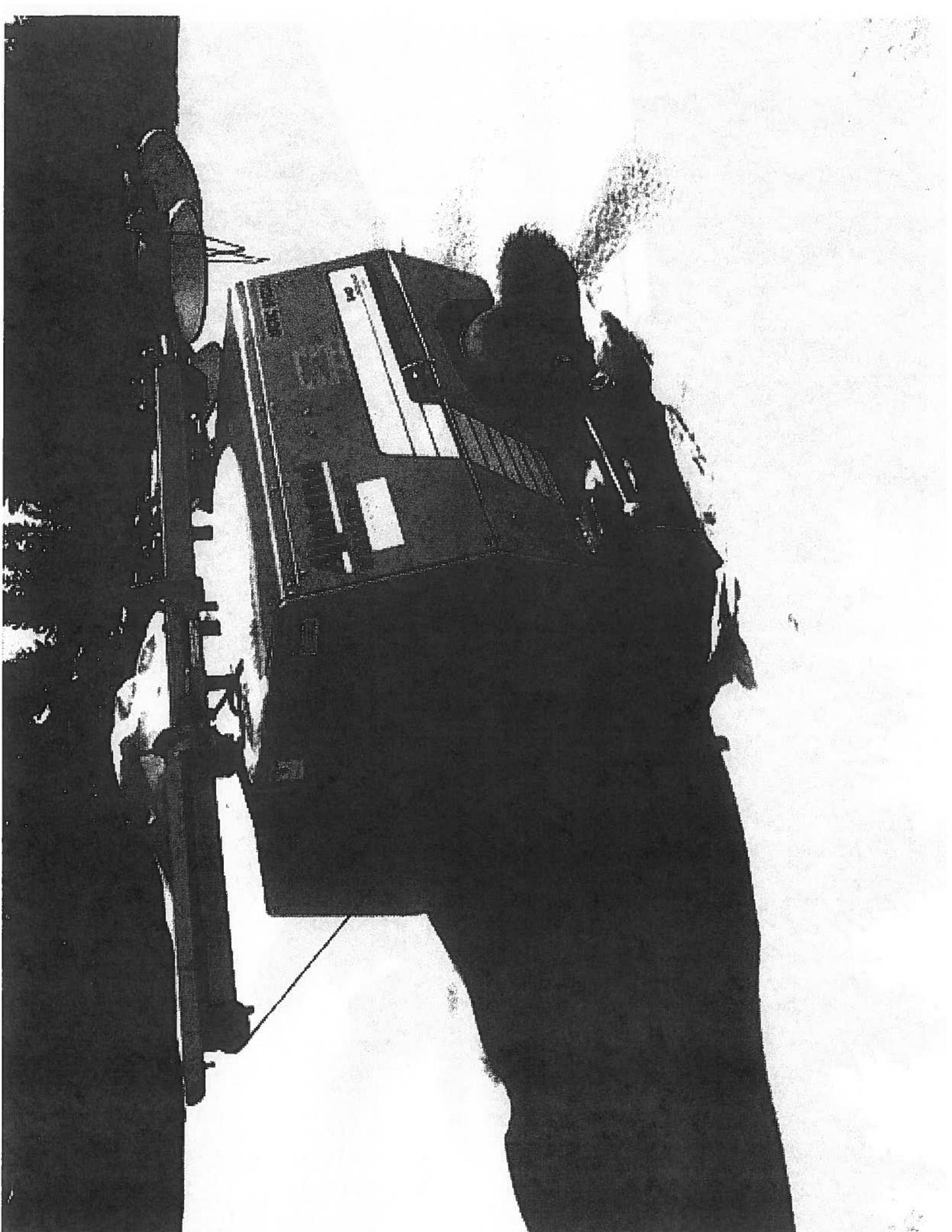
70
71 _____
72 Walt Wrede, City Manager

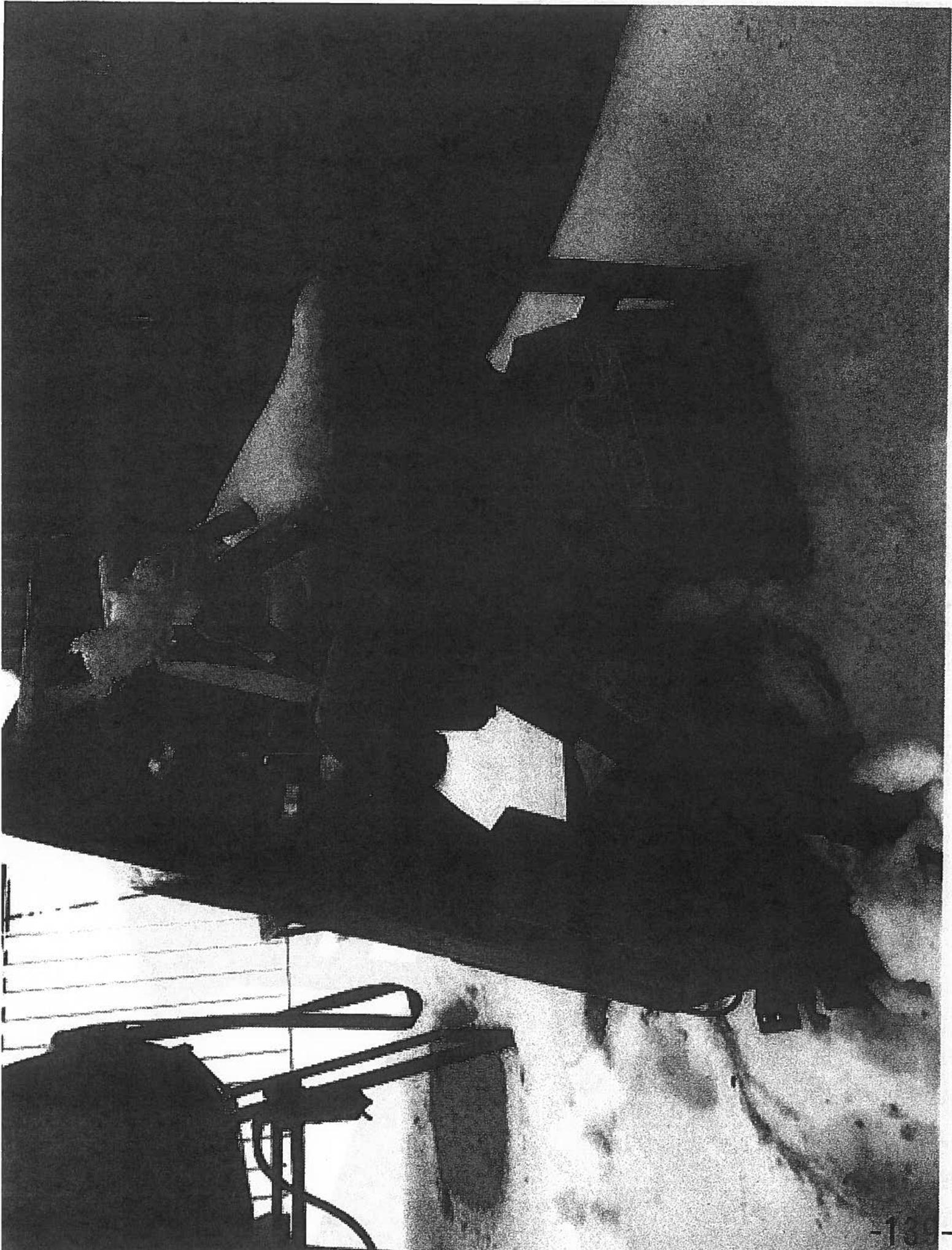
73
74 Date: _____

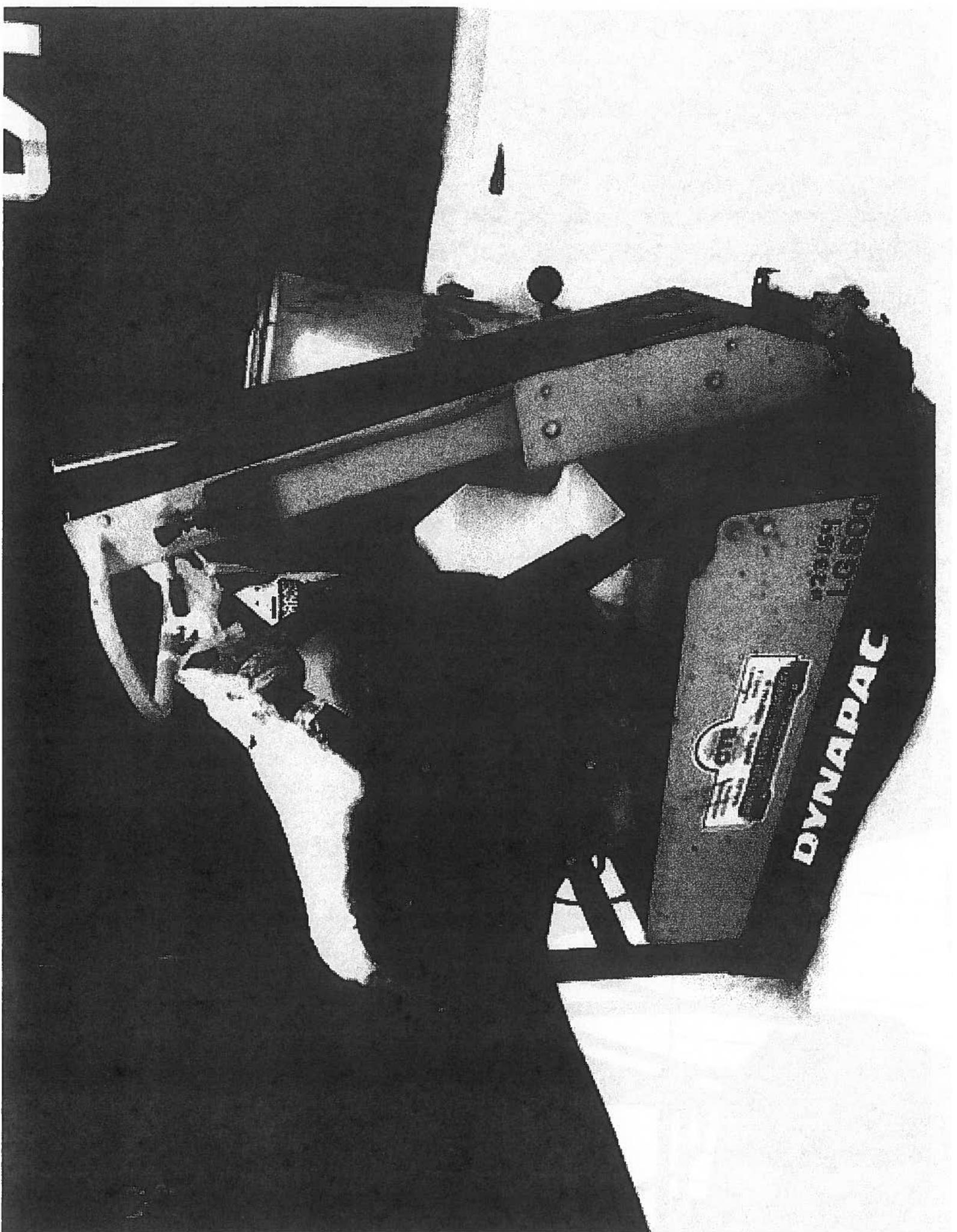
75

76









DYNAPAC



122154
1050

ORDINANCE REFERENCE SHEET
2011 ORDINANCE
ORDINANCE 11-21

An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 2.04.010, Definitions; and Amending Homer City Code 2.08.010, Management of Public Records; Regarding the Management of City Records.

Sponsor: City Attorney/City Manager

1. City Council Regular Meeting May 24, 2011 Introduction
 - a. Clean copy of amendments

CITY OF HOMER
HOMER, ALASKA

City Attorney/City Manager

ORDINANCE 11-21

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA,
AMENDING HOMER CITY CODE 2.04.010, DEFINITIONS; AND
AMENDING HOMER CITY CODE 2.08.010, MANAGEMENT OF PUBLIC
RECORDS; REGARDING THE MANAGEMENT OF CITY RECORDS.

THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code 2.04.010, Definitions, is amended to read as follows:

2.04.010 Definitions. When used in this chapter, the following words shall have the meanings respectively ascribed to them in this section:

af. Active Records. "Active records" means those departmental records that are in active use by a department in the transaction of official business maintained by the department liaison which are not classified as vital, legal or historical records.

b. "Electronic records" means records that are stored in an electronic or magnetic storage medium, and that are retrieved or read by a computer or other electronic device.

ce. Historical Value. A record series has "Historical value" means the value of a record for use if it will be useful at a later date in reconstructing a general history of the development and government of the City.

dg. Inactive Records. "Inactive records" means those records that have been transferred from departmental active records files to central storage for retention which are held until their scheduled destruction.

ed. "Legal Value. A record has "legal value" means the value of a record for use as evidence in pending or threatened litigation or to document a legal relationship or event, including without property and commercial transactions and if it relates to current or possible legal action by or against the City and records relating to land, construction, legislative and judicial actions of the Homer City Council, for potential court claims.

fh. Micromedia. "Micromedia" means the filming media application meaning microfilm, microfiche, aperture or other recognized standard records film method.

ga. Record. The term "Record" means includes all recorded information in any form, acquired or stored by the City for future use or preservation, including without limitation any document, paper, book, letter, photograph, microfilm, map, drawing, chart, card, magnetic media or computer printout, developed or received under law or in connection with the transaction of official business and appropriate for preservation as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the city or because of its informational value. The term "record" does not include:

1. Library and museum material developed or acquired and preserved solely for reference, historical or exhibition purposes, extra copies of documents preserved solely for convenience of reference, or stocks of publications and processed documents.

2. Reference documents.

[Bold and underlined added. Deleted language stricken through.]

46 **3. Transitory documents.**

47 ~~hb.~~ **"Record Series.** A "record series" **means** ~~is~~ a group of identical or related records
48 which are normally used and filed as a unit and **whose functional similarities** ~~which~~ permit
49 **their** evaluation as a unit for retention scheduling purposes. Each record series shall be
50 segregated according to series and the year of acquisition.

51 **i. "Reference document"** means a writing or image that is acquired or created solely
52 **for the purpose of creating or incorporation into a record, and includes without limitation,**
53 **notes, calculations, and working papers.**

54 **j. "Transitory document"** means a writing or image that after its immediate use has
55 **no value as evidence of the organization, function, policies, decisions, procedures,**
56 **operations, or other activities of the city, and includes without limitation transmittals,**
57 **suspense copies when a reply has been received, routine requests for information, and**
58 **routine appointment and scheduling requests.**

59 ~~ke. Vital Records.~~ "Vital records" **means** are those records **that are** necessary to assure
60 continuance of essential governmental operations to protect the legal and financial operation of
61 the City in the event of disaster or catastrophic loss of the City records.

62
63 Section 2. Homer City Code 2.08.010, Management of public records, is amended to
64 read as follows:

65
66 **2.08.010 Management of public records.** a. Records' Manager. The City Clerk is the
67 Records' Manager for the City. The **City** Clerk shall develop, maintain and coordinate the
68 operations of the City's records management system. **The City Clerk also shall provide for the**
69 **physical security of all original signature documents classified as vital, or as having legal or**
70 **historical value.**

71 b. Department ~~R~~records' ~~L~~liaison. Each department head shall appoint a departmental
72 records' liaison. The **department records** liaison shall **be responsible for the organization and**
73 **safekeeping** ~~act as custodian~~ of all **active records in the** departmental records ~~except that the~~
74 ~~City Clerk shall provide for the physical security of all original signature documents classified as~~
75 ~~vital, legal or historical.~~

76 c. Records ~~I~~inventory. The City Clerk shall take and maintain an inventory of ~~the~~ City
77 records. The inventory shall be reviewed and revised annually, and shall set forth each record
78 series being developed, used, stored or scheduled for disposal by the City.

79 d. **Electronic** ~~Computerized~~ records. The City Clerk shall cause **electronic** records stored
80 ~~in computer memory~~ ~~devise systems to be~~ **inventoried,** reviewed, stored and destroyed in the
81 same manner and at the same time as if the records were maintained in written, printed or
82 photographic form.

83 e. Records ~~C~~classification and ~~P~~procedure. The City Clerk shall develop and provide
84 each department with a records classification and procedures manual. **The City Clerk shall**
85 **review and update record series annually with each department records liaison to ensure**
86 **that all active record series are adequately described, to provide for necessary changes,**

[**Bold and underlined added.** Deleted language stricken through.]

87 **additions and deletions to the records classification and procedures manual, and to ensure**
88 **compliance with state and federal law.**

89 f. Inactive Records Storage. The City Clerk shall **provide** ~~make provisions for and~~
90 manage ~~an a central inactive records storage center and shall develop a general schedule for the~~
91 annual relocation of inactive records to the storage center. Wherever possible, only one copy of
92 **each inactive record in a record series, documents duplicated in the and of duplicate inactive**
93 records series of **two or more** ~~several departments,~~ shall be retained.

94 g. Records Retention **and destruction**. The Council shall adopt by resolution a schedule
95 setting forth minimum times ~~schedules~~ for the retention of particular types of records series
96 relocated to the centralized inactive storage. Records series shall be reviewed and updated
97 annually by the Records Manager with appointed custodians of each department to ensure that all
98 active records series kept and maintained by the City are adequately described, to provide for
99 necessary changes, additions and deletions to the manual, and to ensure compliance with state
100 and federal law. The City Clerk annually shall provide for the destruction of records series
101 whose retention periods have expired, after removing from each such records series for
102 permanent preservation any records that are vital, or that have continuing historic or legal value.

103 h. Records Destruction. ~~The Records Manager shall develop a schedule for the~~
104 ~~destruction or other disposal of obsolete records at the end of the retention period established for~~
105 ~~that type of records series. This schedule shall not apply to records of vital, historical, legal or~~
106 ~~financial value. Thirty~~ **Not less than thirty days before destroying a** prior to destruction of any
107 record **series,** the **City Clerk** ~~Records Manager~~ shall circulate to each department head for
108 comment a detailed list of all records series to be destroyed, and **the department head shall**
109 **recommend to the City Clerk** ~~to obtain his recommendations as to which relocated records in~~
110 **those record series** may be **vital or of continuing** historical, **or vital,** legal **value** ~~or financial~~
111 ~~significance, and which records are of sufficient importance as to warrant continued storage of a~~
112 ~~certified duplicate and/or microform. The City Clerk shall maintain a permanent log of all~~
113 records **series** which have been destroyed, ~~The City Clerk and~~ shall report to the City Council
114 by March 31st of each year a detailed description of all records series to be removed from active
115 departmental files to the **inactive** centralized records **storage** center, **and** ~~The Clerk shall also~~
116 ~~inform the Council of all obsolete records series destroyed during the preceding year. The~~
117 ~~records log of destroyed records or records series have been destroyed in accordance with to~~
118 ~~state, federal and City administrative regulations, except as otherwise noted.~~

119 **hi. Records certification. The City Clerk or department records liaison having**
120 **custody of a record that is open to public inspection under HCC Chapter 1.80 shall, upon**
121 **request and payment of the fee therefor established by Council resolution provide a**
122 **certified copy of the record, and the certified copy shall in all cases be evidence of the**
123 **original.** ~~Certification of documents shall be made for the original signature document.~~
124 ~~Certification of any record, record series or record duplicate by the Clerk or by a Departmental~~
125 ~~Records Custodian shall constitute evidence that the stored or duplicated record is a true and~~
126 ~~accurate copy of that record or record series as maintained by each of the City's several~~
127 ~~departments. The microform operator shall certify that the duplicates are true and accurate copies~~
128 ~~of the records contained therein. The Clerk shall prescribe standards of clarity and reproduction~~

[**Bold and underlined added.** Deleted language stricken through.]

129 ~~for all City records. The Clerk may replace any original record which is lost, worn or damaged~~
130 ~~by a certified copy of that record, and the replacement shall be considered an original record for~~
131 ~~all purposes.~~

132 **ij. Public inspection**~~Records Release. Public inspection of records is governed by~~
133 **HCC Chapter 1.80** ~~The Clerk shall provide to all City departments and to the general public all~~
134 ~~retrieval, duplication and distribution of all records stored in custody, unless restricted or~~
135 ~~confidential.~~

136 **jk. Micromedia.** The Clerk shall have the authority to provide for use of Micromedia; i.e.
137 film, fiche, aperture or other appropriate application as determined to be the best suited for
138 filming of the document. Records considered to be ~~of vital~~, **or of historical, or legal** ~~or financial~~
139 ~~value to the City shall be duplicated on Micromedia~~ **and** deposited with the state archivist or in a
140 secure, bonded vault physically removed from the City Administration Building.

141
142 **Section 3.** This Ordinance is of a permanent and general character and shall be included
143 in the City Code.

144
145 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this _____ day of
146 _____ 2011.

147
148 CITY OF HOMER

149
150
151
152 JAMES C. HORNADAY, MAYOR

153
154 ATTEST:

155
156
157
158 JO JOHNSON, CMC, CITY CLERK

159
160
161 YES:

162 NO:

163 ABSTAIN:

164 ABSENT:

165
166
167 First Reading:

168 Public Hearing:

169 Second Reading:

170 Effective Date:

[Bold and underlined added. Deleted language stricken through.]

171 Reviewed and approved as to form:

172
173
174
175
176
177

Walt E. Wrede, City Manager

Thomas F. Klinkner, City Attorney

Date: _____

Date: _____

[Bold and underlined added. Deleted language stricken through.]

CLEAN COPY OF AMENDMENTS OF ORDINANCE 11-21
HCC 2.04.010 & 2.08.010

2.04.010 Definitions. When used in this chapter, the following words shall have the meanings respectively ascribed to them in this section:

a. "Active records" means records that are in active use by a department in the transaction of official business.

b. "Electronic records" means records that are stored in an electronic or magnetic storage medium, and that are retrieved or read by a computer or other electronic device.

c. "Historic value" means the value of a record for use at a later date in reconstructing a general history of the development and government of the City.

d. "Inactive records" means records that have been transferred from departmental active records files to central storage for retention until their scheduled destruction.

e. "Legal value" means the value of a record for use as evidence in pending or threatened litigation or to document a legal relationship or event, including without property and commercial transactions and legislative and judicial actions of the Homer City Council.

f. "Micromedia" means the filming media application meaning microfilm, microfiche, aperture or other recognized standard records film method.

g. "Record" means recorded information in any form, including without limitation any document, paper, book, letter, photograph, microfilm, map, drawing, chart, card, magnetic media or computer printout, developed or received under law or in connection with the transaction of official business and appropriate for preservation as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the city or because of its informational value. The term "record" does not include:

1. Library and museum material developed or acquired and preserved solely for reference, historical or exhibition purposes, extra copies of documents preserved solely for convenience of reference, or stocks of publications and processed documents.

2. Reference documents.

3. Transitory documents.

h. "Record series" means a group of identical or related records which are normally used and filed as a unit and whose functional similarities permit their evaluation as a unit for retention scheduling purposes. Each record series shall be segregated according to series and the year of acquisition.

i. "Reference document" means a writing or image that is acquired or created solely for the purpose of creating or incorporation into a record, and includes without limitation, notes, calculations, and working papers.

j. "Transitory document" means a writing or image that after its immediate use has no value as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the city, and includes without limitation transmittals, suspense copies when a reply has been received, routine requests for information, and routine appointment and scheduling requests.

k. "Vital records" means records that are necessary to assure continuance of essential governmental operations to protect the legal and financial operation of the City in the event of disaster or catastrophic loss of the City records.

2.08.010 Management of public records. a. Records Manager. The City Clerk is the Records Manager for the City. The City Clerk shall develop, maintain and coordinate the operations of the City's records management system. The City Clerk also shall provide for the physical security of all original signature documents classified as vital, or as having legal or historical value.

b. Department records liaison. Each department head shall appoint a department records liaison. The department records liaison shall be responsible for the organization and safekeeping of all active records in the department.

c. Records inventory. The City Clerk shall take and maintain an inventory of City records. The inventory shall be reviewed and revised annually, and shall set forth each record series being developed, used, stored or scheduled for disposal by the City.

d. Electronic records. The City Clerk shall cause electronic records to be inventoried, stored and destroyed in the same manner and at the same time as if the records were maintained in written, printed or photographic form.

e. Records classification and Procedure. The City Clerk shall develop and provide each department with a records classification and procedures manual. The City Clerk shall review and update record series annually with each department records liaison to ensure that all active record series are adequately described, to provide for necessary changes, additions and deletions to the records classification and procedures manual, and to ensure compliance with state and federal law.

f. Inactive records storage. The City Clerk shall provide for and manage an inactive records storage center and shall develop a schedule for the annual relocation of inactive records to the storage center. Wherever possible, only one copy of each inactive record in a record series, and of duplicate inactive record series of two or more departments, shall be retained.

g. Records retention and destruction. The Council shall adopt by resolution a schedule setting forth minimum times for the retention of particular types of record series. The City Clerk annually shall provide for the destruction of records series whose retention periods have expired, after removing from each such record series for permanent preservation any records that are vital, or that have continuing historic or legal value. Not less than thirty days before destroying a record series, the City Clerk shall circulate to each department head for comment a detailed list of all record series to be destroyed, and the department head shall recommend to the City Clerk which records in those record series may be vital or of continuing historic or legal value. The City Clerk shall maintain a permanent log of all record series which have been destroyed, and shall report to the City Council by March 31st of each year all record series to be removed from active departmental files to the inactive records storage center, and all record series destroyed during the preceding year.

h. Records certification. The City Clerk or department records liaison having custody of a record that is open to public inspection under HCC Chapter 1.80 shall, upon request and payment of the fee therefor established by Council resolution provide a certified copy of the record, and the certified copy shall in all cases be evidence of the original.

i. Public inspection. Public inspection of records is governed by HCC Chapter 1.80.

j. Micromedia. The Clerk shall have the authority to provide for use of Micromedia; i.e. film, fiche, aperture or other appropriate application as determined to be the best suited for filming of the document. Records considered to be vital, or of historic or legal value shall be duplicated on Micromedia and deposited with the state archivist or in a secure, bonded vault physically removed from the City Administration Building.

ORDINANCE REFERENCE SHEET
2011 ORDINANCE
ORDINANCE 11-22

An Ordinance of the City Council of Homer, Alaska, Establishing a Preliminary Project Budget and Authorizing Expenditures for Phase I Improvements to Karen Hornaday Park:

Sponsor: City Manager/Parks & Recreation Advisory Commission

1. City Council Regular Meeting May 24, 2011 Introduction
 - a. Project Budget
 - b. Grant Agreement
 - c. Ordinance 11-06
 - d. Ordinance 10-23(A)

TABLE 1
SUMMARY OF RESULTS

The following table shows the results of the analysis of the data collected from the 1000 respondents. The results are presented in terms of the percentage of respondents who chose each of the four options.

The results show that the majority of respondents (65%) chose option A, while 15% chose option B, 10% chose option C, and 10% chose option D.

Option	Percentage
A	65%
B	15%
C	10%
D	10%

1 **CITY OF HOMER**
2 **HOMER, ALASKA**

3 City Manager/Parks & Recreation
4 Advisory Commission

5 **ORDINANCE 11-22**
6

7 AN ORDINANCE OF THE CITY COUNCIL OF HOMER,
8 ALASKA, ESTABLISHING A PRELIMINARY PROJECT
9 BUDGET AND AUTHORIZING EXPENDITURES FOR PHASE I
10 IMPROVEMENTS TO KAREN HORNADAY PARK.
11

12 WHEREAS, The City of Homer received an FY 2010 state legislative grant in the
13 amount of \$250,000 to be used for Phase I improvements to Karen Hornaday Park (Ordinance
14 11-06); and
15

16 WHEREAS, The City Council also appropriated \$55,000 in Stimulus funding toward
17 improvements at the park (Ordinance 10-23A), bringing the total amount available for the project
18 to \$305,000; and
19

20 WHEREAS, The Parks and Recreation Advisory Commission has deliberated on the best
21 use of the funding and forwarded a recommendation to the City Council to allocate an
22 appropriate amount of funding for preliminary engineering to include road realignment, a bridge
23 over Woodard Creek, and drainage improvements; as well as \$10,000 for ballfield improvements
24 and \$5,000 for playground improvements; and
25

26 WHEREAS, The Commission also wanted to keep some of the funding in reserve as a
27 possible match for future grants and/or to fund additional Phase I improvements.
28

29 NOW, THEREFORE, THE CITY OF HOMER ORDAINS:
30

31 Section 1. The Homer City Council hereby establishes a preliminary budget and
32 authorizes the expenditure of funds for improvements to Karen Hornaday Park as follows:
33

34 Expenditure:
35

<u>Account No.</u>	<u>Description</u>	<u>Amount</u>
151-776	Engineering / Survey	\$ 50,000
	Ball Field Improvements	\$ 10,000
	Playground Improvements	\$ 5,000
	Reserved / Unallocated	<u>\$240,000</u>
	TOTAL	\$305,000

41

42 Section 2. This is a budget amendment ordinance, is temporary in nature, and shall not
43 be codified.

44
45 ENACTED BY THE HOMER CITY COUNCIL this _____ day of _____, 2011.

46
47 CITY OF HOMER

48
49 _____
50 JAMES C. HORNADAY, MAYOR

51 ATTEST:

52
53 _____
54 JO JOHNSON, CMC, CITY CLERK

55
56
57 YES:
58 NO:
59 ABSENT:
60 ABSTAIN:

61
62
63 First Reading:
64 Public Hearing:
65 Second Reading:
66 Effective Date:

67
68
69 Reviewed and approved as to form:

70
71
72 _____
73 Walt Wrede, City Manager

74
75 _____
76 Thomas F. Klinkner, City Attorney

77
78
79 Date: _____

80
81 Date: _____

CITY OF HOMER
PROJECT BUDGET

Project Number: 1571-1716	DATE: <u>FEB 8, 2011</u>
Project Name: <u>KAREN HORNADAY PARK IMPROVEMENTS (PHASE I)</u>	
Project Start Date: <u>JAN 30, 2011</u>	Project End Date: <u>DEC 30, 2012</u>
Project Description: <u>IMPLEMENT PHASE I IMPROVEMENTS OF MASTER PLAN</u>	
Funding Source: <u>LEGISLATIVE GRANT 11-DC-234 \$250,000.00</u> <u>? (match) \$55,000.00</u>	
Other Comments: <u>Legislative Grant does NOT require a match.</u>	

Codes	Expense Description	Project Budget	
		GRANT	MATCHING
5101/2	Project -Salaries & Benefits	<u>5,000</u>	
5202	Materials		
5210	Professional Services		
	Project Management		
	Inspection		
5212	Engr / Arch / Design	<u>30,000</u>	
5216	Postage / Freight		
5227	Advertising	<u>5,000</u>	
5261	Construction	<u>210,000</u>	<u>55,000</u>
5262	Contingency		
5901	Equipment		
TOTAL		<u>\$ 250,000</u>	<u>\$ 55,000</u>

Approvals:

<u>Carey Meyer</u>	<u>FEB 8, 2011</u>
Requesting Department	Date
<u>Reema Haidar</u>	<u>2 8 11</u>
Finance Department	Date
City Manager	Date

XRMJ
2/9/11

Resolution : _____ Ordinance: _____

Copies Sent: <u>e-mailed</u>	City Clerk: <u>2-8-2011</u>	Finance Dept.: <u>Lawrence Moore 2-8-2011</u>
	Requesting Dept.: <u>Public Works</u>	Project File: <u>Ji</u>

* Grant Agreement Document attached

(Rev 05/2010)



DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF COMMUNITY AND REGIONAL AFFAIRS

Designated Legislative Grant Program
Grant Agreement

Grant Agreement Number 11-DC-234		Amount of State Funds \$250,000.00	
Collocation Code(s)	Encumbrance Number/AR/Lapse Date / 8291 / 06/30/2015	Project Title Karen Hornaday Park Improvements, Phase I	
Grantee		Department Contact Person	
Name City of Homer		Name Jean Mason	
Street/PO Box 491 East Pioneer Avenue		Title Grants Administrator	
City/State/Zip Homer, AK 99603		Street/PO Box P.O. Box 110809	
Contact Person Jo Earls, Grant Administrator		City/State/Zip Juneau, AK 99811-0809	
Phone 907-235-8121	Email jearls@ci.homer.ak.us	Phone 907-465-5647	Fax 907-465-5867

AGREEMENT

The Alaska Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs (hereinafter 'Department') and **City of Homer** (hereinafter 'Grantee') agree as set forth herein.

Section I. The Department shall pay the Grantee for the performance of the project work under the terms outlined in this agreement. The amount of the payment is based upon project expenses incurred, which are authorized under this Agreement. In no event shall the payment exceed **\$250,000.00**.

Section II. The Grantee shall perform all of the work required by this Agreement.

Section III. The work to be performed under this agreement begins **04/19/2010** and shall be completed no later than **06/30/2015**.

Section IV. The agreement consists of this page and the following:

ATTACHMENTS

- Attachment A: Scope of Work
1. Project Description
 2. Project Budget
 3. Project Narrative
 4. Project Management/Reporting
 5. Forms Packet
- Attachment B: Payment Method
Attachment C: Standard Provisions

APPENDICES

- Appendix A: Audit Regulations
Appendix B: Audit Compliance Supplement
Appendix B2: Insurance
Appendix C: State Laws and Regulations
Appendix D: Special Requirements and Assurances for Federally Funded Projects (if applicable)
Appendix E: Site Control
Appendix F: State Fire Marshal Review

AMENDMENTS: Any fully executed amendments to this Agreement

Grantee		Department	
Signature <i>Walt Wrede</i>		Signature <i>Jolene Julian</i>	
Printed Name and Title Walt Wrede, City Manager		Printed Name and Title Jolene Julian, Grants Administrator III	
Date JAN 31, 2011		Date 02/03/11	

Reviewed by: _____

Attachment A Scope of Work

1. Project Description

The purpose of this FY 2011 Designated Legislative Grant in the amount of \$250,000.00 [pursuant to the provisions of AS 37.05.315, SLA 2010, Chapter 43, Section 10, Page 92, Lines 30-32] is to provide funding to City of Homer for use towards Karen Hornaday Park Improvements. The objective of this project is to implement portions of Phase I of the Karen Hornaday Park Master Plan.

This project may include, but is not limited to:

- Topographic survey, engineering, and construction of drainage improvements;
- Acquisition and construction of a pedestrian bridge;
- Construction of a pedestrian ramp;
- Development of a detailed plan for a revitalized and improved playground;
- Acquisition and placement of new playground equipment;
- Expand and improve day use area;
- Demolition and removal of an old storage shed; and,
- Resurfacing and other parking improvements

No more than five percent (5%) of the total grant award may be reimbursed for Administrative expenses for projects involving equipment purchase or repairs and no more than ten percent (10%) of the total grant award may be reimbursed for Administrative expenses for all other projects. To be reimbursed for eligible administrative costs, expenses must be reported on the Designated Legislative Grant Financial/Progress Report form.

2. Project Budget

Cost Category	Grant Funds	Total Project Cost
Program Funds	\$250,000.00	\$250,000.00

3. Budget Narrative

The Grant Funds identified above will be used to complete the project described in the above Project Description.

4. Project Management/Reporting

This project will be managed by the Grantee.

If the Grantee is a City, signatory authority for execution of the Grant Agreement and subsequent amendments is granted to the Mayor. The Mayor may delegate signatory authority for executing the Grant Agreement and amendments to others within the City government via the Signatory Authority Form. The Mayor may also designate financial and progress reporting authority via the Signatory Authority Form. Such delegation is limited to others within the City government, unless otherwise approved by the Department.

If the Grantee is not a City, signatory authority for execution of the Grant Agreement and subsequent amendments is granted to the Chief Executive Officer (CEO). The CEO may delegate authority for executing the Grant Agreement and amendments to others within the Grantee's organization via the Signatory Authority Form. The CEO may also designate financial and performance progress reporting authority via the Signatory Authority Form. Such delegation is limited to others within the Grantee's organization unless otherwise approved by the Department.

The Grantee must establish and maintain separate accounting for the use of this Grant. The use of Grant funds in any manner contrary to the terms and conditions of this Grant Agreement may result in the subsequent revocation of the grant and any balance of funds under the grant. It may also result in the Grantee being required to return such amounts to the State.

The Grantee shall submit a Designated Legislative Grant Financial/Progress Report Form (see attached) each month, or quarterly, with the concurrence of the Department, during the life of the Grant Agreement. Grant Financial/Progress Report Forms are due fifteen (15) days after the end of the month or quarter being reported. The report period is the first of the month through the last day of the month. If quarterly reporting is approved, the report period is the first day of the first month through the last day of the third month of the quarter. The final Financial/Progress Reports must be submitted within thirty (30) days following completion of the project. Under no circumstances will the Department release funds to the Grantee unless all required reporting is current.

5. Grant Forms Packet

The following page, which includes the Designated Legislative Grant Financial/Progress Report Form, is to be used by the Grantee for monthly/quarterly reporting. Additional copies of this form are available from the Department, electronically or in hard copy.

CITY OF HOMER
HOMER, ALASKA

City Manager

ORDINANCE 11-06

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, ACCEPTING AND APPROPRIATING A STATE OF ALASKA LEGISLATIVE GRANT IN THE AMOUNT OF \$250,000 FOR THE PURPOSE OF CONSTRUCTING PARK IMPROVEMENTS CONTAINED IN PHASE I OF THE KAREN HORNADAY PARK MASTER PLAN.

WHEREAS, The City has received a Legislative Grant in the amount of \$250,000 for the purpose of constructing park improvements contained in Phase I of the Karen Hornaday Park Master Plan.

NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. The Homer City Council hereby accepts and appropriates a State of Alaska Legislative Grant in the amount of \$250,000 for the purpose of constructing park improvements contained in Phase I of the Karen Hornaday Park Master Plan as follows:

Revenue:

<u>Account</u>	<u>Description</u>	<u>Amount</u>
151-776	Legislative Grant/ Karen Hornaday Park Phase I	\$250,000

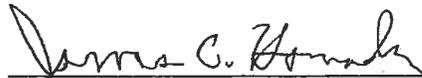
Expenditure:

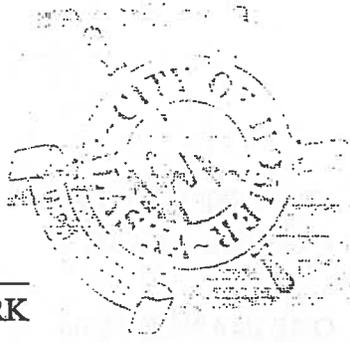
<u>Account</u>	<u>Description</u>	<u>Amount</u>
151-776	Karen Hornaday Park / Phase I	\$250,000

Section 2. This is a budget amendment ordinance, in temporary in nature, and shall not be codified.

ENACTED BY THE HOMER CITY COUNCIL this 28 day of Feb, 2011.

CITY OF HOMER


JAMES C. HORNADAY, MAYOR



ATTEST:

[Signature]
JO JOHNSON, CMC, CITY CLERK

YES: 5
NO: 0
ABSENT: 1
ABSTAIN: 0

First Reading: 2/15/11
Public Hearing: 2/28/11
Second Reading: 2/28/11
Effective Date: 3/01/11

Reviewed and approved as to form:

[Signature]
Walt Wrede, City Manager

[Signature]
Thomas F. Klinkner, City Attorney

Date: 3/2/11

Date: 3-16-11

**CITY OF HOMER
HOMER, ALASKA**

City Manager

ORDINANCE 10-23(A)

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, AMENDING THE FY 2010 OPERATING BUDGET BY RE-APPROPRIATING \$161,979.77 RECEIVED IN AMERICAN RECOVERY AND REINVESTMENT ACT (STIMULUS) FUNDS TO THE GENERAL FUND FOR ENERGY EXPENSES AND SEVERAL PARKS AND RECREATION CAPITAL PROJECTS WITHIN THE CITY.

WHEREAS, Resolution 09-86(A) authorized the City Manager to apply for American Recovery and Reinvestment Act (ARRA) (Stimulus Funds) for municipalities administered by the State Department of Commerce, Community, and Economic Development (DCCED) in the estimated amount of \$163,000.00, and stipulated that the application contain a request that included \$85,000.00 for the proposed Skyline Fire Station, \$55,000.00 for improvements at the Nick Dudiak Fishing Lagoon, and the remainder for improvements at Jack Gist Park; and

WHEREAS, Subsequent to adoption of Resolution 09-86(A), DCCED issued program regulations and suggested that municipalities simplify their applications and apply for reimbursement of energy costs so that the applications could be processed efficiently and funding directed to municipalities as quickly as possible, which the City did; and

WHEREAS, The Council adopted Ordinance 10-15 accepting and appropriating the ARRA funds in the amount of \$161,979.77; and

WHEREAS, Those funds are now available for re-appropriation and the Council wishes to use them for several parks and recreation capital improvements which include Phase I of the Karen Hornaday Park Master Plan, improvements at the Nick Dudiak Fishing Lagoon, Phase I improvements at Jack Gist Park, and for energy expenses.

NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. The Homer City Council hereby amends the FY 2010 Operating Budget by appropriating \$161,979.77 for parks and recreation capital projects and energy expenses as follows:

<u>Expenditure</u>	<u>Description</u>	<u>Amount</u>
156-385	Phase I Karen Hornaday Park	\$55,000.00
	Nick Dudiak Fishing Lagoon Improvements	\$15,000.00
	Phase I, Jack Gist Park Improvements	\$51,979.77

100-100

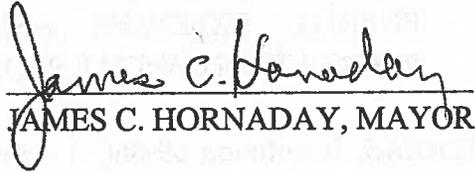
General Fund (Energy Expenses)

\$40,000.00

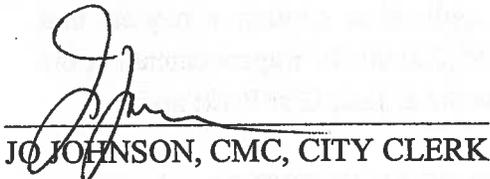
Section 2. This is a budget amendment ordinance, is temporary in nature, and shall not be codified.

PASSED AND ENACTED by the Homer City Council this 24th day of May, 2010.

CITY OF HOMER


JAMES C. HORNADAY, MAYOR



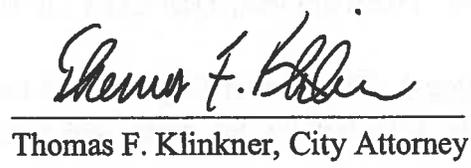

JO JOHNSON, CMC, CITY CLERK

Introduction: 5/10/10
Public Hearing: 5/24/10
Second Reading: 5/24/10
Effective Date: 5/25/10

AYES: 5
NOES: 1
ABSTAIN: 0
ABSENT: 0

Reviewed and approved as to form:


Walt E. Wrede City Manager


Thomas F. Klinkner, City Attorney

Date: 5/27/10

Date: 6-2-10

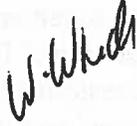
Fiscal Note: Fiscal information included in body of Ordinance.

CITY MANAGER'S REPORT

MANAGERS REPORT
May 24, 2011

TO: MAYOR HORNADAY / HOMER CITY COUNCIL

FROM: WALT WREDE



UPDATES / FOLLOW-UP

1. Attorney Contract: Jo recently reminded me that the one year attorney services contract with Birch, Horton, Bittner et al expires at the end of July. So, it would be timely for Council to have a discussion about how it would like to proceed. It seems like the choices are to a) enter into another contract with Birch Horton b) put out an RFP for attorney services, or c) renew discussion about an in-house attorney. Options b and c require some lead time so if Council wishes to go in either of those directions, we should have the discussion sooner rather than later. I believe that this discussion could take place in executive session if Council wishes because the legal status and strategy of certain cases and performance issues could be discussed.
2. Health Insurance: We are currently looking into hiring a broker to assist us with managing the City's Health Insurance Program. Most cities have brokers and it appears that hiring one would not cost any additional money since the broker would be paid by the plan administrator (Meritain Health). The broker would do some of the tasks Meritain is doing now for us. A broker would have a number of advantages including helping to shop for competitive rates and acting as a consultant on all things related to health insurance. This is very important in this time of rapidly changing rules and regulations. If the City moves ahead on this, we would issue an RFP for broker services. A sample RFP is attached so that you can see the scope of what a broker might be asked to do. We are currently evaluating a number of cost saving measures for the health care plan and will be talking with the employees about the options soon. Council will be pleased to know that at this point we project that we will likely be in a position to reduce the contribution to the health insurance fund, or at least keep it static, again this year. This is great considering that most other municipalities are experiencing huge cost increases. The primary reasons for this are the fact that Homer has a well managed self insured plan, the staff has been relatively healthy overall, and the reserve account is very healthy.
3. Lynn Whitmore Presentation: Lynn Whitmore is associated with the Kenai Moose Habitat group which owns land and advocates for conservation of moose habitat in the area bounded by Kachemak Drive and the airport complex. The Borough owns a large tract of land near the end of the airstrip on the north side which is classified as undesignated. This land has wetland and moose habitat values and it serves as a discharge area for the Bear Creek drainage. Lynn has been talking to the Borough about changing the land designation for this parcel to "habitat." A longer term goal might be critical habitat; a state designation. This proposal would assist greatly with conservation of important habitat within the

City limits. It would also make more land around the airport off-limits to development. Lynn is scheduled to make a brief presentation on his idea at the Committee of the Whole. He would like to see if he can obtain City support before he goes any further. If the Council wants to take a position on this, a member could sponsor a resolution for the next meeting.

4. City Hall Construction: The City Hall Renovation and Expansion Task Force is moving ahead right on schedule. You may have noticed that some work has already begun (storage connex buildings removed and power lines placed underground.) Construction is scheduled to begin in mid-June. We will be ready to provide a full report on progress with this project if asked. It can also be discussed when the project funding ordinance is on the table (using depreciation money on the existing building). We are currently having an internal discussion about how we can most efficiently continue operations while construction is going on. The pros and cons of moving some of the staff (administration and planning) over to the old intermediate school for six months are being evaluated.
5. State Capital Projects /: The Capital Budget approved by the Legislature contains approximately \$32,000,000 for the Homer area. Of that amount, \$16,032,000 is designated for City of Homer projects. This includes \$10,032,000 for the gas pipeline and \$6,000,000 in cruise ship tax money for improvements at the dock, around the harbor, and on Pioneer Avenue. The ball now rests in the Governor's court. No one knows what he will veto but it is pretty certain that he will eliminate some projects. Right now we are planning to get as much information as we can to the Governor to demonstrate the value of the City's projects. The City pipeline website has been updated. This week I will be drafting a letter to the Governor for the Mayor's signature touting the benefits of the project and inviting him to Homer to see the City's projects for himself.
6. Lease Committee / Old Intermediate School: The joint Lease Committee and Economic Development Committee met in executive session on May 17 to evaluate proposals received to lease the old intermediate school. No decisions were made and at present, there is no recommendation. Important information was missing from the proposals and the City Manager was asked to meet with the parties involved and report back if additional relevant information can be obtained.
7. Soccer Fields: Soccer is a rapidly growing sport in Homer and the demand for additional soccer fields is great. The Parks and Recreation Commission has been talking about this alot. I was recently contacted by the Homer Soccer Association about this. This week, Mike Illg and I met with the School District to discuss and coordinate Community Recreation programs this summer and fall. One topic that came up was soccer fields. The School District would like to build at least one soccer field, preferably with artificial turf. There are several potential alternatives but the District definitely has the land available to do this. We talked about several scenarios under which the City and the District could "partner" to achieve a community wide goal. You will likely be hearing more about this in the future and I will be happy to discuss it in more detail tonight if the Council wishes.
8. Lobbyist Visit: The City lobbyist would like to make another trip to Homer to speak with the Council and strategize about tasks and agenda items for the

interim. One thing they will definitely be working on during the interim is the fish tax issue. We originally talked about bringing them down in May or June. We are now thinking that the fall might be a better time since we will be working on the CIP and getting ready for the session. Also, everyone is more likely to be around during that period. Comments from Council would be great.

ATTACHMENTS

1. Sample RFP for health insurance broker
2. Sandwich board notice to property owners
3. City Hall project Talking Points / Project Schedule

TALKING POINTS
City Hall Renovation and Expansion Task Force
May 16, 2011

1) Progress to Date

- Design team proceeds with 65% design
- Continued meetings with design team/staff
- 65% drawings prepared
- 65% cost estimate prepared
- Conditional Use permit determined not to be required (informal Planning Commission presentation set for May 18).
- Connex's moved. Overhead relocation coordinated with utilities (Done 3rd week of May).

2) Discussion About 65% Drawings

- Floor Plan (room layout and access)
- Civil Site Plan (parking, drainage, landscaping)

3) Discussion About 65% Cost Estimate

- Overall comparison with 35% budget
 - 1) Building Expansion
 - 2) Renovations

4) Where do we go from here?

Project Tasks	Original Schedule	Current Schedule
Pre-Construction Services Agreement Signed/NTP	February 1, 2011	Done
Preliminary 10% Design Complete	February 21, 2011	Done
Final 10% Design Complete	March 1, 2011	Done
35% Design Complete	April 11, 2011	Done
Task Force Meeting (65%)		Done
Foundation/Site Civil Construction Begins	June 1, 2011	May 22, 2011
Task Force Meeting (95%)		June 13, 2011
100% Design Complete	June 27, 2011	June 30, 2011
Building Expansion Begins	August 1, 2011	July 15, 2011
Building Shell/Utility Service/Heat Complete	October 15, 2011	October 1, 2011
Expansion Complete - Occupancy Ready	February 15, 2012	April 1, 2011
Renovation Complete - Occupation Ready		June 15, 2011



City of Homer Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone (907) 235-3106
Fax (907) 235-3118
E-mail Planning@ci.homer.ak.us
Web Site www.ci.homer.ak.us

May 11, 2011

RE: Temporary and sandwich board signage along roadways

To property or business owners:

54 letters sent.

This letter is being sent to all businesses along the Sterling Highway, Ocean Drive and Homer Spit Road. In recent years, sandwich board and other temporary signs have become more common along and in the roadway. While some signs are legal and meet City sign regulations, many do not. They are a source of complaint calls to our office, and can be a hazard to the public when they are placed illegally in a right of way. The City would like to work with property owners and businesses to address this problem. Here are a few guidelines for proper placement and size of temporary signs:

1. One temporary sign per parcel.
2. All signs must be set back five (5) feet from the property line. If your sign is on the shoulder of the road, there is a good chance it is not legal.
3. Maximum size of a temporary sign on your property is 16 square feet.
4. Sandwich signs must be included on your sign permit.

Signs in the rights-of-way are a violation of Homer City Code and are subject to fines of \$75.00 per day. Signs in a public right-of-way are subject to seizure and may be reclaimed upon payment of any fines. The attached aerial image shows the approximate location of the property lines.

Business owners often get 'stuck' with junk cars. In an effort to help with clean-up efforts, Homer's Junk Car Program covers the expense of removing fluids from passenger vehicles, vans, or pick-ups. The application is on line at: <http://www.cityofhomer-ak.gov/planning/junk-car-removal-program>.

Sincerely,

Dotti Harness-Foster

Dotti Harness-Foster
Planning Technician/Code Enforcement
435-3118

REQUEST FOR PROPOSAL



KENAI PENINSULA BOROUGH
AND
KENAI PENINSULA BOROUGH SCHOOL DISTRICT
2011 Health Benefits Consultant

RFP #11-003

Release Date: October 8, 2010

Due Date: November 3, 2010, no later than 4:00 PM



KENAI PENINSULA BOROUGH
144 North Binkley Street • Soldotna, Alaska 99669-7520
Toll-free within the Borough: 1-800-478-4441
PHONE: (907) 262-4441
www.borough.kenai.ak.us

DAVID R. CAREY
BOROUGH MAYOR

REQUEST FOR PROPOSAL

2011 Health Benefits Consultant

The Kenai Peninsula Borough and Kenai Peninsula Borough School District hereby invites qualified firms to submit proposals to provide health benefits consulting.

Proposal packets may be obtained beginning October 8, 2010 are available at the Purchasing and Contracting office, 144 North Binkley Street, Soldotna, Alaska 99669 (907) 714-2260. Proposal documents may also be downloaded from the web at:

<http://purchasing.borough.kenai.ak.us/Opportunities.aspx>

Six (6) complete sets of the proposal package are to be submitted to the Kenai Peninsula Borough, Purchasing and Contracting Department, 144 North Binkley Street, Soldotna, Alaska 99669. These forms must be enclosed in a sealed envelope with the proposer's name on the outside and clearly marked:

PROPOSAL: 2011 Health Benefits Consultant
DUE DATE: November 3, 2010, no later than 4:00 PM

Kenai Peninsula Borough: Peninsula Clarion – October 13, 2010
Anchorage Daily News – October 13, 2010

**REQUEST FOR PROPOSAL
2011 HEALTH BENEFITS CONSULTANT**

1.0 GENERAL INFORMATION

1.1 Purpose

The Kenai Peninsula Borough, Kenai Peninsula Borough School District and Service Areas, (including all Borough Assemblies, Boards, Committees, Commissions and Political Subdivisions or Organizations), all hereafter referred to as the "Borough" or "KPB", are seeking proposals for an Insurance Broker of Record to provide health benefits insurance consulting, marketing and placement services for a period of three (3) years.

1.2 Background

The Borough provides health benefits for approximately 300 employees and the School District provides health benefits for approximately 1200 employees. Information about the Kenai Peninsula Borough and the Kenai Peninsula Borough School District is available at the following Internet sites:

<http://www.borough.kenai.ak.us>

<http://www.kpbsd.k12.ak.us>

1.3 Questions

Any questions regarding this proposal are to be submitted in writing to the Purchasing and Contracting Officer by no later than 5:00 p.m. local time on October 21, 2010. Questions may be faxed to 907-714-2373 or emailed to purchasing@borough.kenai.ak.us. The subject line of the email must read: "Questions: RFP for 2011 Health Benefits Consultants".

Verbal requests for information will not be accepted. Questions or requests for clarification directed to any employee or elected official of the Borough other than the Purchasing Officer may be grounds for disqualification from the process. All questions will be compiled, answered and distributed to all prospective proposers.

1.4 Preparation Costs

The Borough shall not be responsible for proposal preparation cost, nor for cost including attorney fees associated with any (administrative, judicial or otherwise) challenge to the determination of the highest ranked proposer and/or award of contract and/or rejection of proposal. By submitting a proposal, each proposer agrees to be bound in this respect and waives all claims to such costs and fees.

1.5 Insurance Requirements

Respondents must maintain a current general liability insurance policy applicable to employee health benefits consulting in an amount not less than \$1,000,000 per occurrence. Coverage must be maintained throughout the term of the contract. Evidence of this coverage will be required prior to implementation of a contract with the Borough.

The Kenai Peninsula Borough will be noted as an additional insured on all policies except where prohibited.

1.6 Term of Services

The effective date of the negotiated contract shall begin on or about January 1, 2011. It is KPB's intention to obtain the services of a broker for a period of three (3) years. At the end of such period, the broker's performance will be reviewed by Borough and School District Health Insurance Program administrators who will determine at that time whether or not it is in the best interest of KPB to again seek competitive proposals or to continue with the incumbent broker for an additional three (3) year period. However, KPB must reserve the right to terminate the services of the broker upon any anniversary date should said services prove to be unsatisfactory. KPB must also reserve the right to seek insurance coverage from other sources at any time should the servicing broker be unable to place coverage at any time.

2.0 RULES GOVERNING COMPETITION

2.1 Examination of Proposals

Proposers should carefully examine the entire RFP and any addenda thereto, and all related materials and data referenced in the RFP. Proposers should become fully aware of the nature of the work and the conditions likely to be encountered in performing the work.

2.2 Proposal Acceptance Period

Award of this proposal is anticipated to be announced within thirty (30) calendar days, although all offers must be complete and irrevocable for sixty (60) days following the submission date.

2.3 Confidentiality

The content of all proposals will be kept confidential until the selection of the Consultant is announced. At that time, the selected proposal is open for review by the competing proposers, excluding any tabulations and evaluations thereof. After the award of the Contract, all proposals, tabulations and evaluations will then become public information.

2.4 Proposal Format

Proposals are to be prepared in such a way as to provide a straight forward, concise delineation of the proposers' capabilities to satisfy the requirements of this RFP. Emphasis should be concentrated on:

- a. Conformance to the RFP instructions;
- b. Responsiveness to the RFP requirements;
- c. Completeness and clarity of content.

2.5 Signature Requirements

All proposals must be signed. A proposal may be signed by: an officer or other agent of a corporate vendor, if authorized to sign contracts on its behalf; a member of a partnership; an owner of a privately-owned vendor; or other agent if properly authorized by a power of attorney or equivalent document. The name and title of the individual(s) signing the proposal must be clearly shown immediately below the signature.

2.6 Proposal Submission

Six (6) copies of the complete proposal package are to be submitted no later than 4:00 p.m. local time on November 3, 2010, to the Purchasing and Contracting Office, 144 N. Binkley Street, Soldotna, Alaska 99669. Proposals shall be completely sealed in an envelope clearly marked with the company name. The Borough reserves the right to establish any and all elements or terms of this proposal. All proposals submitted shall be binding upon the contractor if accepted by the Borough.

Please note that overnight delivery from the lower 48 states is generally not available. Proposers should anticipate a minimum of two to three days delivery time for express, priority or expedited delivery services.

2.7 Tax Compliance

Kenai Peninsula Borough Code requires that businesses or individuals contracting to do business with the Borough be in compliance with Borough tax provisions. No contract will be awarded to any individual or business found to be in violation of the Borough Code of Ordinances in several areas of taxation.

2.8 Licenses and Certifications

Proposers shall include with their proposals copies of all licenses, certificates, registrations and other credentials required for performance under the contract. Documentation must be current and must have been issued by or under authority of the State of Alaska or, if documentation is from an outside jurisdiction, such documentation must be accepted as valid by the State of Alaska for performance in Alaska. Such documentation shall include, but is not limited to, Alaska business license and applicable professional licenses, registrations and certificates.

2.9 News Releases

News releases pertaining to the award resulting from the RFPs shall not be made without prior written approval of the Borough's Purchasing and Contracting Officer.

2.10 Disposition of Proposals

All materials submitted in response to this RFP will become the property of the Kenai Peninsula Borough. One copy shall be retained for the official files of the Purchasing Office and will become public record after award of the Contract.

2.11 Oral Change/Interpretation

No oral change or interpretation of any provision contained in this RFP is valid whether issued at a pre-proposal conference or otherwise. Written addenda will be issued when changes, clarifications, or amendments to proposal documents are deemed necessary by the Borough.

Proposer shall acknowledge receipt of each addendum in the space provided on the Cost Proposal Form. Only a proposal acknowledging receipt of all addenda may be considered responsive, unless the addendum, in the opinion of the mayor or the agency head, would have no material effect on the terms of the proposal.

2.12 Modifications of Proposals

Modifications will be accepted by the Borough and binding upon the responding firm where the modification:

- a. Is received by the Borough at the place designated for submission of RFP responses prior to the deadline.
- b. Is sealed in an envelope clearly stating "RFP for 2011 Health Benefits Consultants Modification" and the name of the responding firm.
- c. Is signed by the same individual who signed the original submittal.

The modification document shall include a photocopy of each page of the original submittal that the responding firm seeks to modify, with the modification and the respondent's signature clearly set out in ink on each page. Facsimile modification documents will be accepted within a sealed envelope provided that the proposer's signature is clearly legible.

Should there be more than one submittal modification from a responding firm, the last modification received prior to the deadline shall be opened and applied to the submittal. All earlier modifications shall be returned to the responding firm unopened.

Any modification, which fails to meet any requirement of this section, shall be rejected and the submittal shall be considered as if no modification had been attempted.

2.13 Late Submissions

PROPOSALS NOT RECEIVED PRIOR TO THE DATE AND TIME SPECIFIED IN THE COVER LETTER WILL NOT BE CONSIDERED AND WILL BE RETURNED UNOPENED AFTER RECOMMENDATION OF AWARD.

2.14 Withdrawal of Proposals

At any time prior to the scheduled closing time for receipt of RFP submittals, any responding firm may withdraw their submittal, either personally or by written request. However, a proposal may not be withdrawn after opening without the written consent of the Borough.

2.15 Acceptance – Rejection of Proposals

The borough may reject any or all proposals if the mayor determines that it is in the best interest of the borough and may waive irregularities, other than the requirements for timeliness and manual signature, if the irregularities do not affect the competitive advantage of any proposer.

If any proposer has interest in more than one proposal, all proposals in which such proposer has interest shall be rejected.

2.16 Choice of Law and Jurisdiction

The laws of the State of Alaska shall govern this RFP, and any legal action brought thereon shall be filed in the Third Judicial District at Kenai, Alaska.

2.17 Conflicts of Interests

No member of the governing body of the Kenai Peninsula Borough or other officer, employee or agent of the Borough who exercises any functions or responsibilities in connection with the carrying out of the project shall have any personal interests, direct or indirect, in any ensuing contract as a result of this Invitation to Bid, **without first disclosing his/her potential conflict, by submitting a letter to the Borough Clerk's Office establishing their "intent to do business with the Borough" (KPB 2.58.050).** The contractor for itself and its principal employees, officers, agents, directors or shareholders covenants that neither the contractor nor any of the listed classes of individuals has nor shall acquire any interest, direct or indirect, in the project, direct or indirect, to which the contract pertains which would conflict in any manner or degree with the performance of its work hereunder. The selected bidder further covenants that in its performance of the contract no person having such interest shall be employed, **without first disclosing his/her potential conflict.**

3.0 SCOPE OF WORK

The scope of the services provided by the insurance broker shall include the following:

- a. Assist KPB in clarifying objectives, expectations and concerns to establish short and long term goals of the employee health insurance program;
- b. Compare actual results to stated goals and projections;
- c. Benefit related actuarial services;
- d. Review existing data, contracts and agreements and provide written commentary;
- e. Preparation for and attendance at School Board, Assembly and other appropriate meetings for the purpose of explaining status reports and recommended changes or courses of action;
- f. Research and reports on:
 - 1) Plan design with respect to short and long range objectives;

- 2) Eligibility formulas with respect to industry work patterns;
 - 3) Cost containment features and administration;
 - 4) Participant incentives related to cost containment procedures;
 - 5) State and federal proposed and enacted legislation and its impact;
 - 6) Health promotion;
 - 7) Funding alternatives (conventional insurance, minimum premium, self-funding);
 - 8) Claim administration (quality and location);
 - 9) Relative competitiveness of plans;
 - 10) Flexible benefit plans;
 - 11) Alternative delivery systems (PPO's, contractual services, mail order drug programs, etc.); and,
 - 12) Employee satisfaction and cost sharing.
- g. Draft employee communication materials announcing a change in benefits or the addition of a new benefit;
 - h. Draft summary plan descriptions or other official publication concerning employee benefits for distribution to employees or administrative reports;
 - i. Provide cost/benefit information for collective bargaining;
 - j. Assist in conducting employee meetings to discuss benefit topics;
 - k. Assist in developing enrollment procedures and forms;
 - l. Monitor eligibility claims experience and provide monthly reports regarding trends;
 - m. Negotiate insurance company or TPA renewals on benefits that are insured or provide cost projections for self-funded benefits;
 - n. Make available published information regarding research, legislative matters and technical compliance;
 - o. Review claim payments and procedures;
 - p. When benefit modifications are made, report on estimates of cost impact;
 - q. Assist with claim appeals or disputes, including attendance at hearings;
 - r. Include monthly attendance of on-site meetings during the periods of August through May.
 - s. Review and comment on contracts and/or amendments provided by the insurance carriers or TPA's;
 - t. Calculate COBRA rates;

- u. Prepare specifications for insurance carriers, TPA's, or vendors to offer competitive bids on any or all employee benefit plans, to include:
 - v. Assist in establishing the criteria used to determine which carriers, administrators or other vendors are to receive the specifications;
 - w. Review the specifications with KPB prior to submission to the insurance carriers, administrators or other vendors;
 - x. Receive proposals and prepare a bid analysis, including recommendations; and,
 - y. If new carriers or providers are selected, assist in development of claims and administrative procedures, review contracts, agreements, booklets, and other associated forms necessitated by the transfer.
 - z. Provide any other services that are usual and necessary for prudent administration of the KPB's health benefits program.
- aa. Services not covered:
- 1) Production costs for special employee communications and audio/visual presentations;
 - 2) Preparation and filing of various governmental reports;
 - 3) Legal or investment advice;
 - 4) Projects outside the scope of services listed above; and,
 - 5) Claims audits.

4.0 PROPOSAL AND SUBMISSION REQUIREMENTS

To achieve a uniform review process and obtain the maximum degree of comparability, it is required that the proposals be organized in the following manner:

4.1 Letter of Transmittal

- a. Briefly state your firm's understanding of the services to be performed and make a positive commitment to provide the services as specified.
- b. List name(s) of the person(s) who are authorized to make representations for your firm, their titles, address, and telephone numbers.
- c. The letter must be signed by a corporate officer or other individual who has the authority to bind the firm.

4.2 Experience/Qualification

- a. Detail the firm's experience in the same or similar areas of expertise, stability, and its adaptability to providing the required services. Provide how the firms will support the Borough in reviewing plan expenditures and contractual obligations of the TPA in

their administration of the Borough and School Districts self insurance health care plan.

- b. Provide at least three (3) references for which your firm has provided the same or similar services. Include a point of contact, telephone number, e-mail address, and a brief description of the services provided.
- c. Identify key project staff and sub-consultants expected to provide services on behalf of the firm. Resumes should be included for each of the individuals and sub-consultants referenced.

4.3 Analytical Reporting

Provide information regarding the firm's ability to provide analytical reports to include company actual cost to budgeted amounts and to stop loss estimates both by group and by individual. Provide samples of reports to include IBNR.

4.4 Available Resources/Consultant Location

Provide information on resources available to your firm, which indicates that you have access to the services necessary to perform the work.

Describe the firm's location where the primary services are to be provided and the ability to meet in person with Department personnel when required during the performance of the contract.

4.5 Methodology and Approach

Provide detailed information on the firm's methodology in meeting the scope of work requirements identified in Section 3.0. Describe overall approach to include any special considerations, which may be envisioned.

Detail the firm's ability to assistance the Borough in securing coverage as needed for prescription coverage, stop loss and other policies currently in place for the Borough and School District health care plans.

4.6 Fee Schedule

Under a separate cover, submit one copy of a fee schedule for all services. The broker's compensation shall be on a flat fee basis, as mutually agreed to by KPB and the Broker. Said fee shall be paid annually either in one lump sum or in increments mutually agreed to by KPB and the Broker, upon delivery to KPB of the appropriate contract, to include any necessary and/or required endorsements.

5.0 EVALUATION AND CRITERIA PROCESS

A committee of individuals representing the Kenai Peninsula Borough and Kenai Peninsula Borough School District will perform evaluation of the proposal. The committee will rank the proposal as submitted. The Borough reserves the right to award a contract solely on the written proposal.

The Borough also reserves the right to request oral interviews with the highest ranked firms (short list). The purpose of the interviews with the highest ranked firms is to allow expansion upon, and possible refinement of the written responses. If interviews are conducted, a maximum of three (3) firms will be short-listed. A second score sheet will be used to score those firms interviewed. The final recommendation for selection will be based on the total of all evaluators scores achieved on the second rating. The same categories and point ranges will be used during the second evaluation as for the first.

The evaluation committee will forward a recommendation for contract award based on points awarded. The firm, whose proposal is ranked highest, may be invited to enter into final negotiations with the Borough for the purposes of contract award.

5.1 Criteria

The criteria to consider during evaluations, and the associated point values, are as follows:

1.	Experience/Qualifications	20 points
2.	Analytical Reporting	10 points
3.	Available Resources/Consultant Location	10 points
4.	Methodology/Approach	30 points
5.	Cost	<u>30 points</u>
Total Points Available		100 points

5.2 Qualitative Rating Factor

Firms will be ranked using the following qualitative rating factors, excluding cost, for each RFP criteria-

1.0	Outstanding
.8	Excellent
.6	Good
.4	Fair
.2	Poor
0	Unsatisfactory

The rating factor for each criteria category will be multiplied against the points available to determine the total points for that category.

6.0 SELECTION PROCESS

The Proposer with the highest total evaluation points may be invited to enter into contract negotiations with the Kenai Peninsula Borough. If an agreement cannot be reached with the highest ranked Proposer, the Borough shall notify the proposer and terminate the negotiations. If proposals are submitted by one or more other proponents determined to be qualified, negotiations may then be conducted with such other proposers in the order of their respective rankings. This process may continue until successful negotiations are achieved. The Kenai Peninsula Borough reserves the right to reject any and all proposals submitted.

7.0 APPEAL PROCESS

A proposer adversely affected by the provisions of Chapter 5.28 of the KPB Code, or regulations promulgated there under, or by any acts of the borough in connection with the award of this contract may file a bid protest personally received at the office of the borough purchasing officer within 3 business days after the notice of intent to award is provided. This appeal must comply with the requirements of KPB 5.28.320 of the borough code and may be hand delivered, delivered by mail, or by facsimile at 907-714-2373. A fee of \$300 shall be paid to the borough and must be received by the deadline for filing the written appeal. This fee shall be refundable if the appellant prevails in the appeal to the mayor or assembly.

8.0 SAMPLE CONTRACT OR MINIMUM MANDATORY CONTRACT PROVISIONS

In addition to carefully reading all of the information in the RFP, all Proposers must carefully read and review the attached sample contract. The successful Proposer shall be required to enter into a Contract with the Kenai Peninsula Borough, which will be substantially similar to the sample.

Therefore, the Proposer must make any proposed changes to the sample Contract consistent with Section 1.3 of this RFP

IF NO CHANGES ARE MADE, THE PROPOSER SHALL BE DEEMED TO HAVE ACCEPTED THE SAMPLE CONTRACT. IF THE RESPONDENT MAKES CHANGES, SUCH CHANGES WILL BE CONSIDERED IN ANY NEGOTIATIONS WITH THE BOROUGH. CHANGES MADE TO THE SAMPLE CONTRACT SHALL NOT BE CONSIDERED DURING PROPOSAL EVALUATIONS.

PROFESSIONAL SERVICES AGREEMENT
FOR
2011 HEALTH BENEFITS CONSULTANT

THIS AGREEMENT made and entered by and between the KENAI PENINSULA BOROUGH and _____.

Section 1. Definition. In this Agreement:

1. The term "Borough" means the Kenai Peninsula Borough.
2. The term "Consultant" means _____.
3. The term "Mayor" means the mayor of the Kenai Peninsula Borough or his authorized representative.

Section 2. Scope of Services. The Consultant shall perform all the services provided for by this Agreement:

See Attachment A, incorporated by reference as if fully set forth herein.

Section 3. Personnel. Personnel shall be limited to _____.

Section 4. Time of Performance. The services of the Consultant shall commence January 1, 2011, and shall terminate on June 30, 2014. The period of performance may be extended for additional periods only by the mutual written agreement of the parties.

Section 5. Compensation.

- A. Subject to the provisions of this Agreement, the Borough shall pay the Consultant a total sum for all services and expenses for the term of this Agreement not exceeding the sum of \$ _____.
- B. Except as otherwise provided in this Agreement, the Borough shall not provide any additional compensation, payment, service or other thing of value to the Consultant in connection with performance of Agreement duties. The parties understand and agree that, except as otherwise provided in this agreement, administrative overhead and other indirect or direct costs the Consultant may incur in the performance of its obligations under this Agreement have already been included in computation of the Consultant's fee and may not be charged to the Borough.

Section 6. Method and Time of Payment.

- A. Payment shall be made within 30 calendar days from receipt of an approved invoice.
- B. Any expenditures identified as reimbursable under the request for proposal shall be included with the billings for professional services. Billing shall include a summary of expenditures to date by line item categories (e.g., personal services, travel, lodging, telephone, mail, photography, and photo copies). Documentation of expenditures need not be submitted with billings but must be retained by the Consultant in the event the Borough requests said documentation.
- C. No payment will be disbursed until the completed task and associated expenditures have been approved by the Borough.
- D. All invoices must be submitted in duplicate and addressed as follows:

Kenai Peninsula Borough

Attn: Human Resources
144 N. Binkley Street
Soldotna, AK 99669

- E. It is expressly understood and agreed that in no event shall the total compensation due the Consultant exceed \$ _____.

Section 7. Ownership. All finished or unfinished documents, data, studies, surveys, and reports or other material prepared by the Consultant under this agreement are the property of the Borough.

Section 8. Termination of Agreement for Cause. If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner the obligations under this Agreement or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the Borough shall have the right to terminate this Agreement by giving written notice to the Consultant of termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. All finished or unfinished documents, data, studies, surveys and reports or other material prepared by the Consultant under this Agreement are the property of the Borough and shall be delivered to the Borough by or upon the effective date of termination. The Consultant shall be entitled to receive compensation only for work completed to the Borough's satisfaction in accordance with the terms of this Agreement.

Section 9. Termination for Convenience of Borough. The Borough may terminate this Agreement at any time by giving written notice to the Consultant of such termination and specifying the effective date of such termination. All finished or unfinished documents and other materials as described in Section 8, above, are the property of the Borough and shall be delivered to the Borough by or upon the effective date of termination. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of this Agreement only for work completed to the Borough's satisfaction in accordance with the terms of this Agreement. If this Agreement is terminated due to the fault of the Consultant, Section 8 of this Agreement shall govern the rights and liabilities of the parties.

Section 10. Causes Beyond Control. In the event the Consultant is prevented by a cause or causes beyond control of the Consultant from performing any obligation of this Agreement, nonperformance resulting from such cause or causes shall not be deemed to be a breach of this Agreement which will render the Consultant liable for damages or give rights to the cancellation of this Agreement for cause. However, if and when such cause or causes cease to prevent performance, the Consultant shall exercise all reasonable diligence to resume and complete performance of the obligation with the least possible delay. The phrase "cause or causes beyond control," as used in this section, means any one or more of the following causes which are not attributable to the fault or negligence of the Consultant and which prevent the performance of the Consultant: fire, explosions, acts of God, war, orders or law of duly constituted public authorities, and other major uncontrollable and unavoidable events, all of the foregoing which must actually prevent the Consultant from performing the terms of this Agreement. Events which are peculiar to the Consultant and would not prevent another Consultant from performing, including, but not limited to financial difficulties, are not causes beyond the control of the Consultant. The Borough will determine whether the event preventing the Consultant from performing is a cause beyond the Consultant's control.

Section 11. Modifications.

- A. The parties may mutually agree to modify the terms of this Agreement. Modifications to this Agreement shall be incorporated into this Agreement by written amendments.

- B. It is expressly understood that the Borough may require changes in the scope of services and an unreasonable refusal by the Consultant to agree to modification in the scope of services will be the basis for termination of this Agreement for cause. It is expressly understood that the total amount of compensation for successful performance of this Agreement will not be modified, under any circumstances, without prior written approval of the Borough.

Section 12. Interest of Members of Borough and Others. No officer, member or employee of the Borough and no member of its governing body, and no other public official of the governing body shall participate in any decision relating to this Agreement which affects their personal interest or the interest of any corporation, partnership or association in which they are, directly or indirectly, interested or having any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 13. Assignability. The Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the Borough thereto; provided, however, that claims for money due or to become due to the Consultant from the Borough under this Agreement may be assigned by court order or to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Borough, or the Consultant shall be responsible to the Borough for any moneys due the assignee of this Agreement which are paid directly to the Consultant.

Section 14. Interest of Consultant. The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed.

Section 15. Findings Confidential. To the extent permitted or required by law any reports, information, data, etc., given to or prepared or assembled by the Consultant under this Agreement which the Borough requests to be kept confidential shall not be made available to any individual or organization by the Consultant without the prior written approval of the Borough.

Section 16. Publication, Reproduction and Use of Materials. No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The Borough shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

Section 17. Jurisdiction; Choice of Law. Any civil action arising from this Agreement shall be brought in the superior court for the third judicial district of the state of Alaska at Kenai. The law of the state of Alaska shall govern the rights and obligations of the parties.

Section 18. Non-Waiver. The failure of the Borough at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this Agreement or any part thereof, or the right of the Borough thereafter to enforce each and every protection hereof.

Section 19. Permits, Laws and Taxes. The Consultant shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this Agreement. All actions taken by the Consultant under this Agreement shall comply with all applicable federal, state, and local

regulations including, but not limited to, those laws related to wages, taxes, social security, workers compensation, nondiscrimination, licenses, and registration requirements. The Consultant shall pay all taxes pertaining to its performance under this Agreement.

Section 20. Agreement Administration.

- A. The Human Resources director, or his designee, will be the representative of the Borough administering this Agreement.
- B. The services to be furnished by the Consultant shall be administered, supervised, and directed by the Human Resources director. In the event that the individual named above or any of the individuals identified in the proposal to perform work under this Agreement is unable to serve for any reason, the Consultant shall appoint a successor in interest subject to written approval of the Borough.

Section 21. Integration. This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties.

Section 22. Defense and Indemnification. The Consultant shall indemnify, defend, save and hold the Borough, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys fees resulting from Consultant or Consultant's officers, agents, employees, partners, attorneys, suppliers, and subconsultants' performance or failure to perform this Agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the Borough or its agents which are said to have contributed to the losses, failure, violations, or damage. However, Consultant shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the Borough, its agents, or employees. Consultant and subconsultants shall also not be required to defend or indemnify the Owner for damage or loss that has been found to be attributed to an independent contractor directly responsible to the Borough under separate written contract.

Section 23. Interpretation and Enforcement. This Agreement is being executed by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The titles of sections in this Agreement are not to be construed as limitations or definitions but are for identification purposes only.

Section 24. Relationship of the Parties. The services to be rendered under this Agreement are those of an independent contractor. The Consultant will not at any time directly or indirectly act as an agent, servant or employee of the Borough or make any commitments or incur any liabilities on behalf of the Borough without the Borough's express consent. The Borough shall not supervise or direct the Consultant except as set forth in this agreement.

Section 25. Insurance. Consultant and all subconsultants, if any, shall be responsible for the purchase and maintenance of minimum insurance coverage as specified in paragraphs A and B of this section.

This insurance coverage shall be in acceptable form, and for the amounts specified by the Borough, or as required by law, whichever is greater.

This insurance coverage shall remain in effect for the life of this Agreement and shall be a part of the contract price. This insurance shall be primary and exclusive of any other insurance carried by the Borough.

- A. Professional Liability: \$1,000,000 combined single limit per occurrence. The general aggregate limit shall be \$1,000,000. The professional liability insurance shall be maintained in effect until final acceptance by the Borough of the completed project. If the professional liability insurance is written on a claims made form, the Consultant shall provide insurance for a period of two years after final payment of this Agreement. The policy(s) shall evidence a retroactive date, no later than the beginning of this Agreement.
- B. Commercial general/automobile liability insurance shall not be less than \$1,000,000 combined single limit bodily injury and property damage per occurrence.
- C. Worker's compensation and employers liability insurance shall be provided for all employees per Alaska State Statutes who are performing work under this Agreement.
- D. Certificate(s) of insurance as described in paragraphs A, B, and C of this section shall be provided by Consultant, and certificates as described in paragraphs B and C by all subconsultants, or their insurance companies or their agents. The Borough shall be named as an additional insured on the policies specified in paragraph B for the work specified in this Agreement. Certificates of insurance, acceptable in form and content, will be delivered to:

Kenai Peninsula Borough
Human Resources
144 N. Binkley Street
Soldotna, AK 99669

- E. There shall be no cancellation or material change of the insurance coverages, or intent not to renew the insurance coverages as specified in this Agreement, without thirty (30) days prior written notice to the Borough. Notice of cancellation, material change in coverage, or intent not to renew will be delivered to the address designated in paragraph D of this section. Cancellation or material change in insurance coverage without written authorization by the Borough is a material breach of this Agreement, and subjects this Agreement to termination for cause under Section 8.
- F. Upon renewal or change in policies during this Agreement, certificates of insurance shall be delivered to the address designated in paragraph D of this section.

Section 26. Severability. If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Agreement shall remain in full force and effect.

Section 27. Understanding. The Consultant acknowledges that the Consultant has read and understands the terms of this Agreement, has had the opportunity to review the same with counsel of their choice, and is executing this Agreement of their own free will.

Section 28. Notices. Any notice required pertaining to the subject matter of this Agreement shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following addresses:

Notary Public for State of Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__,
by (name) _____, the (title) _____ of (name of
corporation) _____ for and on behalf of the corporation.

Notary Public for State of Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__,
by (name) _____, the (title) _____ of (name of
corporation) _____ for and on behalf of the corporation.

Notary Public for State of Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__,
by (name) _____, (partner or agent) _____ of (name of
partnership) _____ for and on behalf of the partnership.

Notary Public for State of Alaska
My Commission Expires: _____



KENAI PENINSULA BOROUGH

Purchasing and Contracting

144 North Binkley Street • Soldotna, Alaska 99669-7520

Toll-free within the Borough: 1-800-478-4441, Ext. 2260

PHONE: (907) 714-2260 • **FAX:** (907) 714-2373

www.borough.kenai.ak.us

**DAVID R. CAREY
BOROUGH MAYOR**

ADDENDUM NO. 1

This addendum consists of 2 pages

TO: All RFP Packet Holders

FROM: Kenai Peninsula Borough – Purchasing & Contracting Office

DATE: October 22, 2010

SUBJECT: Request for Proposals – RFP11-003 2011 Health Benefits Consultant

DUE DATE: November 3, 2010, by no later than 4:00 PM

Proposers must acknowledge receipt of this Addendum in the appropriate place on the Cost Proposal Form. Failure to do so may result in the disqualification or rejection of the proposal.

Clarification:

Section 1.5 Insurance Requirements:

The Borough also requires \$1,000,000.00 in errors and omissions insurance along with general liability coverage of \$1,000,000.00.

As specified in Section 1.3 of the Kenai Peninsula Borough's request for proposals, we have agreed to answer written questions received through October 21, 2010. Attached are formal responses to all the questions that we have received.

We look forward to receiving your proposals by no later than 4:00 PM on **November 3, 2010**.

Note: Information in this addendum takes precedence over original information. All other provisions of the document remain unchanged.

Addendum #1
2011 Health Benefits Consultant

Questions and Answers

Question #1: Who is the current consultant?

Answer: The current consultant is Alaska USA Insurance Broker.

Question #2: What is the current annual fee?

Answer: The current annual fee is \$50,000.00.

Question #3: What communication materials are currently used for employee communication (ie: website, mailers, newsletter, etc.) regarding their benefit plan?

Answer: The consultant is expected to attend health care meeting as requested by the Borough. The Borough provides a website, handouts, some communication via email, mail, flyers, etc.

Question #4: What wellness programs are offered to employees? Are these included in the current service contract? Has KPB held a health fair for employees?

Answer: For approximately 18 months nine (9) "Brown Bag Lunch" wellness seminars' have been facilitated by the Borough at no cost and which are not currently included in our service contract. The Borough has not held a health fair for employees.

Question #5: How much is online technology utilized? For example, do you have online enrollment (if so, what vendor); do you have an employee benefit center/portal where benefit information is accessed?

Answer: The Borough does not offer online enrollment. Benefit information is accessed via home portal.

Office of the City Clerk

Jo Johnson, CMC, City Clerk
Melissa Jacobsen, CMC, Deputy City Clerk II
Renee Krause, CMC, Deputy City Clerk I



491 E. Pioneer Avenue
Homer, Alaska 99603
(907) 235-3130
(907) 235-8121
ext: 2224, 2226, or 2227
Fax: (907) 235-3143
Email: clerk@ci.homer.akus

MEMORANDUM - REPORT

TO: MAYOR HORNADAY AND HOMER CITY COUNCIL
FROM: MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK
DATE: MAY 16, 2011
SUBJECT: CURRENT BID(S) AND REQUEST FOR PROPOSALS

INVITATION TO BID For City Owned 2011 Dredge Spoils. Sealed bids will be received at the Office of the City Clerk, 491 E. Pioneer Avenue, Homer, Alaska 99603 until 2:00 p.m. Thursday, May 26, 2011 at which time they will be publicly opened. Bids received after the time fixed for receipt of the bid shall not be considered.

REQUEST FOR PROPOSALS to Lease Property on the Homer Spit. Sealed Proposals will be received by the Office of the City Clerk, at 491 E. Pioneer Avenue, Homer, Alaska 99603 until 4:00 p.m. Thursday, May 19, 2011, at which time they will be logged in and provided to the City Lease Committee. Proposals received after the time specified or proposals received from proposers not listed on the plan holders list will be considered non-responsive and shall not be considered. A non-refundable lease application fee of \$30 is required. The City of Homer, Alaska is hereby advertising for sealed proposals and statements of qualifications from individuals or firms to lease one or more of the following parcels:

- Parcel A Lot 9A Homer Spit Replat 2006 on Fish Dock Road
- Parcel B Lot 10A Homer Spit Replat 2006 on Fish Dock Road
- Parcel C Lot 4 Homer Spit Subdivision, No. 5 on Freight Dock Road
- Parcel D Lot 5 Homer Spit Subdivision, No. 5 on Freight Dock Road
- Parcel E Lot 6 Homer Spit Subdivision, No. 5 on Freight Dock Road
- Parcel F Lot 7 Homer Spit Subdivision, No. 5 on Freight Dock Road
- Parcel G Lot 8 Homer Spit Subdivision, No. 5 on Freight Dock Road
- Parcel H Lot 9 Homer Spit Subdivision, No. 5 on Freight Dock Road
- Parcel I Lot 10 Homer Spit Subdivision, No. 5 on Freight Dock Road
- Parcel J Lot 11 Homer Spit Subdivision, No. 5 on Freight Dock Road
- Parcel K Lot 12 Homer Spit Subdivision, No. 5 on Freight Dock Road
- Parcel L Lot 19 Homer Spit Subdivision, No. 5 on Freight Dock Road
- Parcel M Lot 20 Homer Spit Subdivision, No. 5 on Freight Dock Road

City of Chicago
Department of Public Health
Office of the City Clerk
100 North Dearborn Street
Chicago, Illinois 60610
Phone: (773) 554-3300
Fax: (773) 554-3301



Chicago, Illinois
Official Record
Book 100000, Page 100000

OFFICIAL RECORD

THE CITY OF CHICAGO
OFFICE OF THE CITY CLERK
100 NORTH DEARBORN STREET
CHICAGO, ILLINOIS 60610
PHONE: (773) 554-3300
FAX: (773) 554-3301

THIS OFFICIAL RECORD IS A TRUE AND CORRECT COPY OF THE ORIGINAL RECORD AS KEPT IN THE OFFICE OF THE CITY CLERK, CHICAGO, ILLINOIS.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Chicago, this _____ day of _____, 20__.

City Clerk
Name
Address
City
State
Zip

Office of the City Clerk

Jo Johnson, CMC, City Clerk
Melissa Jacobsen, CMC, Deputy City Clerk II
Renee Krause, CMC, Deputy City Clerk I

491 E. Pioneer Avenue
Homer, Alaska 99603
(907) 235-3130
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ext: 2224, 2226, or 2227
Fax: (907) 235-3143
Email: clerk@ci.homer.ak.us

MEMORANDUM

TO: MAYOR PRO TEMPORE WYTHE AND CITY COUNCIL

FROM: JO JOHNSON, CMC, CITY CLERK 

DATE: MAY 16, 2011

SUBJECT: GAMES REPORT

We have received notification by the following entities of 2011 Alaska Gaming Permits:

Organization: Cook Inletkeeper

RECOMMENDATION:

Informational only.

Fiscal Note: Revenues.

City of Chicago
Office of the City Clerk
44 North La Salle Street
Chicago, Illinois 60602
Phone: (312) 321-1000
Fax: (312) 321-1001
www.cityofchicago.org

Chicago, Illinois
June 15, 2011

MEMORANDUM

TO: Mayor Paul Taylor and City Council

DATE: May 12, 2011

SUBJECT: CAREER REPORT

We have received notification by the following source of 2011 data regarding the following:

Chicago, Illinois

RECOMMENDATION:

Report as is.

1. Citywide Review

2011 Alaska Gaming Permit Application

Organization Information

Department use only	
Validation #	MAY - 9 2011
Date stamp	

City of Homer City Clerk
Fax number

Federal EIN 92-0156450	If renewing, enter gaming permit # 2414	Phone number 907-235-4068 x21 907-235-4069
Organization name Cook Inlet Keeper	Website address www.inletkeeper.org	
Mailing address 3734 Ben Walters Lane	City Homer	State AK
Entity type (check one)		Zip + 4 99603-3269
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Association		Organization type (check one) for definitions, see AS 05.15.690 and 15 AAC 160.995 <input checked="" type="checkbox"/> Charitable <input type="checkbox"/> Civic or service <input type="checkbox"/> Dog mushers' association <input type="checkbox"/> Educational <input type="checkbox"/> Fishing derby association <input type="checkbox"/> Fraternal <input type="checkbox"/> Labor <input type="checkbox"/> Municipality <input type="checkbox"/> Nonprofit trade association <input type="checkbox"/> Outboard motor association <input type="checkbox"/> Police or fire department <input type="checkbox"/> Political <input type="checkbox"/> Religious <input type="checkbox"/> Veterans <input type="checkbox"/> IRA/Native village
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Does the organization have 25 or more members who are Alaska residents as defined in your articles of incorporation or bylaws?		

Members in Charge of Games

Members in charge must be natural persons and active members of the organization, or employees of the municipality, and designated by the organization: Members in charge may not be licensed as an operator, be a registered vendor or an employee of a vendor for this organization. If more than one alternate, attach a separate sheet.

Primary member first name Robert	MI W	Primary member last name Shavelson	Alternate member first name Michael	MI B	Alternate member last name O'Meara
Social security number	Email Bob@Inletkeeper.org		Social security number	Email mikeo@cosmichamlet.com mike@horizonsatellite.com	
Daytime phone number 907-235-4068 x22	Mobile number 907-399-3277		Daytime phone number see mobile	Mobile number 907.399.4022	
Home mailing address P.O. Box 1498			Home mailing address P.O. Box 361		
City Homer	State AK	Zip + 4 99603-1498	City Homer	State AK	Zip + 4 99603-0361
Has the primary member passed the test? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Permit # under which test was taken 2414	Has the alternate member passed the test? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Permit # under which test was taken 2414

Legal Questions These questions must be answered. If you answer Yes to either question, see instructions.

- Yes No Does any member of management or any person who is responsible for gaming activities have a prohibited conflict of interest as defined by 15 AAC 160.954?
- Yes No Has any member of management or any person who is responsible for gaming activities ever been convicted of a felony, extortion, or a violation of a law or ordinance of this state, or another jurisdiction, that is a crime involving theft or dishonesty, or a violation of gambling laws?

We declare, under penalty of unsworn falsification that we have examined this application, including any attachments, and that to the best of our knowledge and belief it is true and complete. We understand that any false statement made on the application or any attachments is punishable by law. By our signatures below, we the primary member, the alternate member, and if applicable, the manager of games, agree to allow the Department of Revenue to review any criminal history we may have, in accordance with 15 AAC 160.934.

Primary Member in Charge's signature 	Printed name Robert Shavelson	Date 3/27/2011
President or other officer's signature (see instructions) 	Printed name Benjamin Jackinski	Date 4/1/2011
Alternate Member in Charge's signature 	Printed name Michael O'Meara	Date 3/30/2011
Manager of Games signature No pull tab or bingos N/A	Printed name	Date

Mail to Alaska Department of Revenue - Tax Division
PO Box 110420 • Juneau, AK 99811-0420
Phone (907)465-2320 • Fax (907)465-3098
www.tax.alaska.gov/gaming

One copy of the application must be sent to the nearest municipality or borough. See instructions for mandatory attachments.

Pay online with OTIS at www.tax.alaska.gov or make check payable to State of Alaska. New applicants must pay by check.

Permit Fee

The permit fee is based on 2010 estimated gross receipts. Check the appropriate box.

<input type="checkbox"/> New applicant	\$20
<input checked="" type="checkbox"/> \$0 - \$20,000	\$20
<input type="checkbox"/> \$20,001 - \$100,000	\$50
<input type="checkbox"/> \$100,001 or more	\$100

Facility-based Games (self-directed) If more than two facilities, attach a separate sheet.

Facility name N/A	Physical address	City	State AK	Zip + 4
Facility type (check one) <input type="checkbox"/> Owned <input type="checkbox"/> Leased <input type="checkbox"/> Donated	Game type (check all that apply) <input type="checkbox"/> Bingo <input type="checkbox"/> Raffle <input type="checkbox"/> Pull-tabs <input type="checkbox"/> Animal classic (chicken)* <input type="checkbox"/> Animal classic (rat race)* <input type="checkbox"/> Special draw raffle** <input type="checkbox"/> Calcutta pool**			

* restricted game type ** see instructions for mandatory attachments

Area-based Games If more than two areas, attach a separate sheet.

Area Kenai Den Borough	Game type (check all that apply) <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Contest of skill <input type="checkbox"/> Fish derby <input type="checkbox"/> Dog mushers' contest <input type="checkbox"/> Classic (specify) _____
Area Anchorage	Game type (check all that apply) <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Contest of skill <input type="checkbox"/> Fish derby <input type="checkbox"/> Dog mushers' contest <input type="checkbox"/> Classic (specify) _____

Manager of Games Required only for self-directed pull-tabs and bingo.

Manager first name N/A	MI	Manager last name	Social security number	Daytime phone number
Home mailing address			Email	Mobile phone
City	State	Zip + 4	Has the manager of games passed the test? <input type="checkbox"/> Yes <input type="checkbox"/> No	Permit # under which test taken PLANS

Vendor Information Attach 2011 vendor registration form(s) and fee(s) for each vendor listed below. **(NO GAMING SPECIFIED TO DATE 2011)**

Bar or liquor store name N/A	Physical address	City	State AK	Zip + 4
Bar or liquor store name	Physical address	City	State AK	Zip + 4
Bar or liquor store name	Physical address	City	State AK	Zip + 4
Bar or liquor store name	Physical address	City	State AK	Zip + 4
Bar or liquor store name	Physical address	City	State AK	Zip + 4

Operator Information

Designate operator who will conduct activities on the organization's behalf. Attach signed operating contract(s). If more than one operator, attach a separate sheet.

Operator license #	Operator N/A	Facility name	Game type(s)
Physical address		City	State Zip + 4

Multiple-beneficiary Permittee Information (MBP)

Designate the MBP with which the organization has signed a partnership or joint-venture agreement.

MBP permit #	MBP name N/A	Facility name	Game type(s)
Physical address		City	State Zip + 4

Dedication of Net Proceeds Describe in detail how the organization will use the net proceeds from gaming activities.

All proceeds are directly applied to operations of Cook Inlet Keeper - citizen based water quality & monitoring for marine habitat in AK's Cook Inlet Watershed.

CITY ATTORNEY REPORT

COMMITTEE REPORT(S)

PENDING BUSINESS

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**CITY OF HOMER
HOMER, ALASKA**

City Manager/
Lease Committee

RESOLUTION 11-041

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A RESOLUTION OF THE CITY COUNCIL OF HOMER,
ALASKA, APPROVING AND ADOPTING A NEW,
AMENDED STANDARD GROUND LEASE DOCUMENT,
AND AUTHORIZING THE AMENDMENT OF THE CITY OF
HOMER PROPERTY MANAGEMENT POLICY AND
PROCEDURES MANUAL TO CONFORM TO THE AMENDED
STANDARD GROUND LEASE DOCUMENT.

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WHEREAS, Section 9.1(A) of the adopted Property Management Policy and Procedures (Lease Policy) provides that the City Manager and the Lease Committee shall develop a standardized ground lease document that is reviewed by the City Attorney and approved by the City Council; and

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WHEREAS, At the request of the City Council and the City Manager, the City Attorney produced a draft document which includes proposed amendments to the current standard ground lease document; and

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WHEREAS, The purpose for these amendments is to update the standard ground lease document, incorporate changes recommended by the attorney and staff, incorporate selected changes recommended by the Economic Development Advisory Commission, and incorporate amendments to the Lease Policy recently approved by the Council; and

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WHEREAS, The Lease Committee reviewed the draft amended standard ground lease document at its regular meeting on April 14, 2011 and passed a motion to approve the document and forward it to Council for final review and approval along with a memorandum containing the Committee's comments; and

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WHEREAS, It is the intent of the Council that in the case of a conflict between the terms of the amended standard ground lease document and the terms of the Property Management Policy and Procedures, the terms of the amended standard ground lease document shall govern.

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NOW, THEREFORE, BE IT RESOLVED that the Homer City Council hereby approves and adopts the amended standard ground lease document, a copy of which is attached and incorporated herein; and authorizes the City Manager and the Lease Committee to amend the Property Management Policy and Procedures to conform to the terms of the amended standard ground lease document.

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PASSED AND ADOPTED by the Homer City Council this 25th day of April, 2011.

CITY OF HOMER

JAMES C. HORNADAY, MAYOR

ATTEST:

JO JOHNSON, CMC, CITY CLERK

Fiscal Note: N/A

MEMORANDUM 11-060

TO: Mayor Hornaday and Homer City Council
FROM: Terry Felde, Lease Committee Staff *TF*
THROUGH: Walt Wrede, City Manager *W. Wrede*
DATE: April 19, 2011
SUBJECT: Amended Standard Ground Lease / Lease Committee Comments

The Lease Committee reviewed the attached amended standardized ground lease at its regular meeting on April 14, 2011. The Committee passed a motion to approve the document with comments and move it on to the City Council for final review and approval.

The Committee expressed concern about two specific sections:

2.03: There was general discussion about whether the City should have to do environmental assessments before it leases property and provide assurances that the property is free of hazardous substances and pollution.

6.08: This section did not appear to adequately reflect the intent that upon termination of the lease, all improvements remain the property of the tenant and shall be removed by the tenant unless prior arrangements are made or understandings are in place between the tenant and the landlord.

In response to the concerns from the Lease Committee, staff reviewed these sections with the City Attorney after the April 14th meeting. The attached amended standardized ground lease has incorporated revisions from the City Attorney addressing and resolving the Lease Committee's concerns as follows:

2.03: The tenant has the option to obtain an environmental assessment and thereby not be held responsible for the presence, if any, of any hazardous substance which may have occurred prior to the commencement/occupancy of their lease.

6.08: The wording in this section was strengthened to reflect that there may be mutually agreed upon improvements to remain on the property either as per the proposal or per a subsequent agreement reached between the City and the tenant.

Additionally, after the April 14th meeting, the City's insurance company and insurance broker completed their review of Section 9.04. The attached document now reflects updated insurance terminology and coverage requirements which are both typical and available in today's insurance market.

RECOMMENDATION: Approve the amended standard ground lease

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MEMORANDUM 11-058

TO: Lease Committee

FROM: Walt Wrede

DATE: April 8, 2011

SUBJECT: Staff Report / Amended Base Ground Lease

The City Attorney has prepared a new, amended base ground lease for City Council review and approval. He did this at the request of both the Council and the administration. The purpose for doing this was to make changes and updates that were necessary and recommended by both the staff and the attorney. It was also done to incorporate some of the recommendations submitted by the Economic Development Commission and the amendments the Council recently made to the Lease Policies. This is the standardized base lease required by the Lease Policies. All lease negotiations begin with this document and it can then be modified to meet specialized requirements of each lease and proposed use of the property.

The draft document before you has been revised several times. A document that included all of the strike outs and all of the underlined new language would have been confusing and difficult to read. Therefore, we have provided you with a clean copy of the old lease and a clean copy of the new one so that you can compare them easily. In this memorandum, I will bring your attention first to the sections of the document which have seen significant and substantive changes. After that, I identify the sections that were changed specifically in response to comments from the EDC. Each section contains a brief summary of what the changes accomplish.

Sections with Significant and Substantive Amendments

1.01 Definitions

3.02 Options

3.03 Lease Renewals

3.04 Surrender of Possession

4.01 Rent Adjustments

4.03 Taxes and Assessments

4.07 Security Deposit

6.02 Required Improvements

6.03 Construction Prerequisites

6.08 Disposition of Improvements at End of Term

8.01 Assignments and Subleases

Sections Amended in Response to EDC Recommendations

3.03 (b) Lease Renewal: States clearly that a tenant may apply for a new lease after the lease term and all options have expired.

3.04, 6.07, and 6.08 A-C: Ownership of Improvements. These sections state clearly that the tenant owns all of the improvements placed upon the land and can remove them after the lease expires unless other arrangements and understandings were in place.

4.02 (A) Appraisals: Makes it clear that the City will commission group appraisals every five years and pay for the cost of the appraisals.

4.02 (B) Annual Rent Adjustments: Provides that the rent will be adjusted downward if the CPI decreases.

4.03 Taxes and Assessments: States that if the leased property is subject to an assessment for an LID improvement that benefits the property, the assessment is prorated based upon the years remaining in the lease.

4.07 Security Deposit: Removes the requirement that the security deposit must be increased each time the rent is adjusted and also provides that the deposit is refunded to the tenant after five years of good performance and lease compliance.

6.02 Required Improvements: Eliminates the requirement that improvements must, when completed, have an appraised value of not less than the estimate provided in the lease proposal.

6.03 Construction Prerequisites: removes the requirement that the tenant provide an engineer's or architect's estimate that the required improvements, when constructed according to the preliminary plans and specifications, will have a minimum value stated in the lease proposal.

8.01 Assignments and Subleases: Makes it clear that the City will charge additional rent for subleases of the land but not for subleases within building improvements financed and constructed by the tenant.

8.01 Assignments: Speeds up the process for getting requests for assignments approved by adding the 30 day criteria and taking such requests directly to the City Council.

9.04 Insurance Requirements: Updates insurance requirements based upon today's standards. Makes the requirement for environmental insurance optional and up to the discretion of the City based upon the type of use and activity proposed.

The following information is provided for your information only. It is not intended to be used as a substitute for professional advice. The information is provided for your information only. It is not intended to be used as a substitute for professional advice.

Jo Johnson

From: Walt Wrede
Sent: Wednesday, May 18, 2011 11:17 AM
To: Jo Johnson
Subject: FW: Ground Lease

From: Thomas Klinkner [<mailto:tklinkner@BHB.com>]
Sent: Monday, May 16, 2011 2:03 PM
To: Walt Wrede
Cc: Terry Felde
Subject: Ground Lease

Walt,

This follows up on outstanding items in the form ground lease.

The following is amended Section 8.01 of the ground lease regarding subleasing:

8.01. Consent Required for Assignment or Sublease. Tenant shall not assign or sublease its interest in this Lease or in the Property without first obtaining the written consent of the Council, which will not be withheld unreasonably. Any assignment or sublease without the consent of the Council will be voidable and, at Landlord's election, will constitute a default. Tenant shall request consent of the Council in writing at least 30 days prior to the effective date of the proposed assignment or sublease, accompanied by a copy of the proposed assignment or sublease. Tenant shall be assessed additional rent, equal to ____% of the current Base Rent for the subleased area, but not upon a sublease of space within a building or other structure on the Property. No consent to any assignment or sublease waives Tenant's obligation to obtain Landlord's consent to any subsequent assignment or sublease. An assignment of this Lease shall require the assignee to assume the Tenant's obligations hereunder, and shall not release Tenant from liability hereunder unless Landlord specifically so provides in writing.

The reference in Section 9.04(b)(2) to "non-owned" requires coverage for the tenant's use of vehicles that it does not own. It would not apply to a vehicle owned by an employee of the tenant, except when the vehicle is being used in the tenant's business.

As an alternative to the specific listing of coverages in Section 9.04, Section 9.04 could be rewritten as follows:

9.04 Insurance Requirements. Without limiting Tenant's obligations to indemnify under this Lease, Tenant at its own expense shall maintain in force such policies of insurance with a carrier or carriers reasonably satisfactory to Landlord and authorized to conduct business in the state of Alaska, as Landlord may reasonably determine are required to protect Landlord from liability arising from Tenant's activities under this Lease. Landlord's insurance requirements shall specify the minimum acceptable coverage and limits, and if Tenant's policy contains broader coverage or higher limits, Landlord shall be entitled to such coverage to the extent of such higher limits.

I also have attached a draft ordinance changing the code provision for additional rent in the event of a sublease.

Thomas F. Klinkner | Birch Horton Bittner & Cherot
1127 W 7th Avenue | Anchorage, AK 99501
Tel: (907) 276-1550 | Fax: (907) 276-3680
Email: tklinkner@bhb.com | Website: www.birchhorton.com

1. The first part of the document is a list of the names of the members of the committee. The names are listed in alphabetical order.

2. The second part of the document is a list of the names of the members of the committee. The names are listed in alphabetical order.

This follows as an appendix to the main document.

The following is a list of the names of the members of the committee.

3. The third part of the document is a list of the names of the members of the committee. The names are listed in alphabetical order.

4. The fourth part of the document is a list of the names of the members of the committee. The names are listed in alphabetical order.

5. The fifth part of the document is a list of the names of the members of the committee. The names are listed in alphabetical order.

6. The sixth part of the document is a list of the names of the members of the committee. The names are listed in alphabetical order.

7. The seventh part of the document is a list of the names of the members of the committee. The names are listed in alphabetical order.

8. The eighth part of the document is a list of the names of the members of the committee. The names are listed in alphabetical order.

GROUND LEASE AND SECURITY AGREEMENT

BETWEEN

CITY OF HOMER, ALASKA

ORIGINAL
AND
ORIGINAL

October __, 2002

GROUND LEASE AND SECURITY AGREEMENT

THIS GROUND LEASE AND SECURITY AGREEMENT ("Lease") is made as of this _____ day of _____, 2002, between the CITY OF HOMER, 491 East Pioneer Avenue, Homer, Alaska 99603, a municipal corporation organized under the laws of the State of Alaska, hereinafter referred to as "Landlord" and _____ a _____ (type of entity) organized under the laws of the state of _____, whose address is _____ ("Tenant").

Attached as **Exhibit A** is a schedule naming each owner of Tenant and describing the percentage of ownership of each. Also attached to Exhibit A are a certificate of good standing issued by the state under whose laws Tenant is organized, and, if Tenant is a foreign entity, a certificate of authority issued by the State of Alaska. Attached as **Exhibit B** is a true and correct copy of a resolution of Tenant authorizing Tenant to enter into this Lease and authorizing the undersigned individual(s) or officer(s) to execute the Lease on behalf of Tenant.

Landlord and Tenant agree as follows:

1. PROPERTY

1.01. Property

Subject to the terms, covenants, conditions, rights and obligations set forth in this Lease, Landlord leases to Tenant and Tenant leases from Landlord the following described property:



[must insert legal description], Homer Recording District, State of Alaska, as depicted on **Exhibit H**.

Also known as Kenai Peninsula Borough Tax Parcel No. _____.

The described parcel contains approximately _____ square feet, more or less, and is referred to herein as the "Property."

1.02. Quiet Enjoyment, Restrictions, Easements, Etc.

Landlord covenants and agrees that Tenant, upon paying the rent and other charges herein provided for and observing and keeping the covenants, conditions and terms of this Lease on Tenant's part to be kept or performed, will lawfully and quietly hold, occupy and enjoy the Property during the term of this Lease without hindrance or molestation, subject, however, to the rights and reservations expressed in the U.S. or State patent to the Property, the existing easements for roads, gas, electric, water, sewer and other utility lines, restrictions of record and to encroachments ascertained by physical inspection of the Property.

1.03. Property Accepted "As Is"

Tenant acknowledges that it has inspected the Property and accepts the same "as is" and without reliance on any representations or warranties of Landlord, its agents, servants, or employees as to the physical condition of the Property, including, but not limited to, subsurface and soil conditions, the presence of any hazardous waste as defined in paragraph 16.03, or as to the habitability or fitness of the Property for any particular purpose.

1.04. No Subsurface Rights

This Lease confers no mineral rights or rights with regard to the subsurface of the land below the level necessary for the use of the Property as stated in this Lease. Landlord makes no warranty or representation as to whether the Property is open or closed to mineral claims or leases under state or federal law.

2. TERM

2.01. Lease Term

The term of this Lease is _____ years, commencing on the first day of _____, ____ and ending on the last day of _____, _____ (the "Term").

2.02. Hold-Over

If Tenant holds over after the expiration of the term of this Lease and Landlord accepts payment of rent, Tenant's occupancy will be deemed a tenancy from month to month, terminable upon 30 days written notice given by either party at any time, subject to all the terms, covenants and conditions of this Lease, and will not operate as a renewal or extension of this Lease. Landlord is not required to accept Tenant's tender of rent or to agree to any extended tenancy.

2.03. Surrender of Possession

Upon expiration of the term of this Lease, whether by lapse of time or otherwise, Tenant must promptly and peaceably surrender the Property, and all buildings and improvements thereon, except as provided in paragraph 6.01. Tenant agrees to execute, acknowledge and deliver to Landlord a proper instrument in writing, releasing and quitclaiming to Landlord all right, title and interest of Tenant in and to the Property and all such buildings and improvements thereon under paragraph 6.01.

OPTIONAL RENEWAL PROVISION:

2.04. Renewal Options

Tenant will have the right to renew this Lease for _____ additional, consecutive _____ year periods ("Renewal Terms"), provided:

- (a) that Tenant must exercise its option to renew not more than one year and not less than 120 days prior to the last day of the Term or current Renewal Term, as the case may be;

(b) that Tenant is not at that time materially in default of any term or condition of this Lease and has not made an assignment or subletting of this Lease or any interest in the Property except as permitted under this Lease;

(c) that Tenant must exercise its option to renew only by sending written notice thereof in accordance with the provisions of paragraph 17.17 of this Lease;

(d) that Tenant may exercise only one renewal option per Term or Renewal Term, as the case may be, i.e., Tenant will not be entitled to exercise more than one renewal option during each period of time described in subparagraph (a); and

(e) that at the time of exercise of the option the Tenant is still using the Property as required or permitted under this Lease.

3. RENT, TAXES, ASSESSMENTS AND UTILITIES

3.01. Rent

(a) **Initial Base Rent.** Tenant agrees to pay to Landlord an initial annual rent of \$ _____ (the "Base Rent"), payable monthly in advance in equal installments of \$ _____, plus tax. The first monthly payment is due on the first day of _____, and subsequent monthly payments are due on the first day of each calendar month thereafter. Rent must be paid at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. Delinquent rent will bear interest at the rate set forth in AS 45.45.010(a) as now enacted or hereinafter amended.

(b) **Periodic Appraised Adjustment of Rent.** The Base Rent will be adjusted on January 1, _____ and on January 1 every five years thereafter (each such January 1 is a "Five Year Rent Adjustment Date") to equal the then current fair market rental value of the Property, determined by appraisal as set forth in paragraph 3.01(d) not more than six months before the Five Year Rent Adjustment Date. In no event, however, will the adjusted Base Rent be less than the Base Rent, adjusted annually, during the year immediately prior to such Five Year Rent Adjustment Date. After such Five Year Rent Adjustment Date, the adjusted rent will thereafter be referred to as the Base Rent.

(c) **Annual Rent Adjustment.** In addition to the five year rent adjustments provided in paragraph 3.01(b), the Base Rent will also be adjusted annually (the "Annual Rent Adjustment") on the first day of January _____, and on the first day of January every year thereafter, excluding each of the years of the five year rent adjustment, (each such day being an "Annual Rent Adjustment Date") throughout the Term and all Renewal Terms as follows:

(i) The base for computing the Annual Rent Adjustment is the Consumer Price Index for All Urban Consumers (CPI-U), Anchorage, Alaska, for All Items (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"). For the first five years of the Term, the Index published for the second half of the calendar year immediately preceding the year in which the Term of this Lease commences is the "Beginning Index". Thereafter, the Index published for the second half of the calendar year immediately preceding the year of the most recent Five Year Rent Adjustment Date is the "Beginning Index." The Index published for the second half of the calendar year nearest,

but preceding, the Annual Rent Adjustment Date will be the "Extension Index". On each Annual Rent Adjustment Date the Base Rent will be adjusted to equal the Base Rent determined according to paragraph 3.01(a) or 3.01(b), as the case may be, increased by a percentage equal to the percentage increase from the Beginning Index to the Extension Index. In no case will the Base Rent be reduced because of a decrease in the Index. Landlord will promptly provide written notice to Tenant of the adjustment of the Base Rent, but its failure to do so will not relieve Tenant of the obligation to pay the adjusted Base Rent commencing as of the Annual Rent Adjustment Date.

(ii) If the Index is changed so the base year differs from that used as of the commencement of the term of this Lease, the Index must be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

(d) **Appraisal of Property.** For purposes of paragraph 3.01(b), the appraised market rent will be based on the fair market rental value of the property, as if privately owned in fee simple, and will not include the value of buildings or improvements placed on the Property by Tenant (with the exception of utilities). The cost of the appraisal must be paid by Tenant, but if Tenant fails to do so, Landlord may pay the cost of the appraisal and the amount paid will become additional rent immediately due and payable under this Lease. The fair market rental value will be determined by a qualified real estate appraiser selected by mutual agreement of Landlord and Tenant. The appraiser's determination of fair market rent will be conclusive between the parties.

ALTERNATE 3.01 — TO BE USED ONLY WHEN THE COMBINED TERM AND RENEWAL TERMS WILL NOT EXCEED FIVE YEARS TOTAL

3.01. Rent

(a) **Initial Base Rent.** Tenant agrees to pay to Landlord an initial annual rent of \$ _____ (the "Base Rent"), payable monthly in advance in equal installments of \$ _____, plus tax. The first monthly payment is due on the first day of _____, _____, and subsequent monthly payments are due on the first day of each calendar month thereafter. Rent must be paid at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. Delinquent rent will bear interest at the rate set forth in AS 45.45.010(a) as now enacted or hereinafter amended.

(b) **Periodic Appraised Adjustment of Rent.** The requirement of a rent adjustment every five years based on an appraisal of the fair market rental value of the Property is waived because the maximum Term and Renewal Terms combined does not exceed five years.

(c) **Annual Rent Adjustment.** The Base Rent will be adjusted annually (the "Annual Rent Adjustment") on the first day of January _____, and on the first day of January every year thereafter (each such day being an "Annual Rent Adjustment Date") throughout the Term and all Renewal Terms as follows:

(i) *The base for computing the Annual Rent Adjustment is the Consumer Price Index for All Urban Consumers (CPI-U), Anchorage, Alaska, for All Items (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"). The Index published for the second half of the calendar year immediately preceding the year in which the Term of this Lease commences is the "Beginning Index". The Index published for the second half of the calendar year nearest, but preceding, the Annual Rent Adjustment Date will be the "Extension Index". On each Annual Rent Adjustment Date the Base Rent will be recalculated to equal the Base Rent determined according to paragraph 3.01(a), increased by a percentage equal to the percentage increase from the Beginning Index to the Extension Index. In no case will the Base Rent be reduced because of a decrease in the Index. Landlord will promptly provide written notice to Tenant of the adjustment of the Base Rent, but its failure to do so will not relieve Tenant of the obligation to pay the adjusted Base Rent commencing as of the Annual Rent Adjustment Date.*

(ii) *If the Index is changed so the base year differs from that used as of the commencement of the term of this Lease, the Index must be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.*

(d) *Appraisal of Property. For purposes of paragraph 3.01(b), the appraised market rent will be based on the fair market rental value of the property, as if privately owned in fee simple, and will not include the value of buildings or improvements placed on the Property by Tenant (with the exception of utilities). The cost of the appraisal must be paid by Tenant, but if Tenant fails to do so, Landlord may pay the cost of the appraisal and the amount paid will become additional rent immediately due and payable under this Lease. The fair market rental value will be determined by a qualified real estate appraiser selected by mutual agreement of Landlord and Tenant. The appraiser's determination of fair market rent will be conclusive between the parties.*

3.02. Tenant to Pay Taxes

Tenant agrees to pay prior to delinquency and directly to the taxing authorities in which the Property is located a applicable real property taxes levied or assessed upon or against the Property and all buildings and improvements thereon during the term of this Lease. Tenant further agrees to pay prior to delinquency and directly to the taxing authorities in which the Property is located all applicable personal property taxes on personal property situated on the Property and placed thereon by Tenant, its agents, servants, or employees. Tenant further agrees to pay prior to delinquency any other taxes for which it may be liable. Tenant must, within thirty (30) days after any such tax, assessment or other charge, whether or not constituting a lien on the Property, becomes due and payable, produce and exhibit to Landlord satisfactory evidence of payment thereof.

Tenant acknowledges that it is subject to and will pay applicable municipal taxes, including property tax on Tenant's leasehold interest in the Property.

3.03. Tenant to Pay Assessments

Tenant during the term of this Lease agrees to pay directly to the public authorities charged with collection thereof any and all assessments levied on the Property for any part or

all of the costs of any public work or improvement assessed according to benefit found by the levying authority to accrue therefrom to the Property, provided, however, that if an option is given to pay such assessment(s) in installments, Tenant may elect to pay the same in installments, and in such case Tenant will be liable only for such installments as may become due during the term of this Lease. Landlord warrants and represents that there are currently no outstanding assessments levied on the Property for any part or all of the cost of any public work or improvement constructed by Landlord, except as follows: none.

3.04. Proration of Taxes and Assessments

If Tenant's obligation to pay taxes or assessments commences or ends during a tax year by reason of commencement or termination of this Lease, such taxes or assessments will be prorated between Landlord and Tenant.

3.05. Contest

Tenant has the right to contest any taxes or assessments that Tenant is obligated to pay under paragraphs 3.02 or 3.03 of this Lease. Such proceedings must, if instituted, be conducted promptly at Tenant's own expense and free from all expense to Landlord. Before instituting any such proceedings, Tenant must pay under protest any such taxes or assessments, or must furnish to Landlord a surety bond written by a company acceptable to Landlord or other security acceptable to Landlord, sufficient to cover the amount of such taxes or assessments, with interest for the period that such proceedings may reasonably be expected to take, and costs, securing the payment of such taxes or assessments, interest and costs in connection therewith when finally determined. Notwithstanding the furnishing of any such bond or security, Tenant must pay any such taxes or assessments at least thirty (30) days before the time when the Property or any part thereof, might be forfeited. The proceedings referred to in this paragraph 3.05 may include appropriate appeals from any order or judgments therein, but all such proceedings must be begun as soon as reasonably possible after the imposition or assessment of any such taxes or assessments and must be prosecuted to final adjudication promptly. In the event of any reduction, cancellation or discharge, Tenant must pay the amount that is finally levied or assessed against the Property or adjudicated to be due and payable, and if there is any refund payable by the governmental authority with respect thereto, Tenant will be entitled to receive and retain the same, subject, however, to apportionment as provided in paragraph 3.04 of this Lease. Landlord, at Landlord's option, may, but is not obligated to, at Landlord's own expense contest any such taxes or assessments that are not contested by Tenant as set forth above, and, unless Tenant promptly joins with Landlord therein, Landlord will be entitled to receive and retain any refund payable by any governmental authority with respect thereof.

3.06. Tenant to Pay Utility Charges

Tenant must pay or cause to be paid all charges for gas, oil, electricity, water, sewer, heat, snow removal, refuse removal and any and all other utilities or services used upon the Property throughout the term of this Lease, including any connection fees.

3.07. Tenant to Pay for City Services Related to the Property or to Tenant's Operations

(a) Tenant must pay for all services provided by the City of Homer that are related to the Property or to Tenant's operations, including but not limited to Port and Harbor serv-

ices, whether incurred by Tenant, or any business entity owned in whole or in part by Tenant or by one or more partners of Tenant.

(b) Tenant must pay for wharfage, crane use, ice, and other Port and Harbor services at the rates published in the Port and Harbor of Homer Terminal Tariff, which is subject to change from time to time. In the event the City of Homer changes the method of establishing or publishing any or all such rates, then Tenant must pay for such services at the rates so established by such changed method. Tenant further agrees to provide the City of Homer with the necessary information to determine wharfage, crane use, ice and other Port and Harbor service charges, to keep written records of such information for not less than six years after such charges are due, and, upon request, to make such records available to the City of Homer for audit.

3.08. Additional Rent and Landlord's Right to Cure Tenant's Default

All costs and expenses that Tenant assumes or agrees to pay pursuant to this Lease will, at Landlord's election, be treated as additional rent, and in the event of nonpayment, Landlord will have all rights and remedies provided in this Lease in the case of nonpayment of rent or of a breach of condition, at Landlord's election. If Tenant defaults in making any payment required to be made by Tenant or defaults in performance of any term, covenant or condition of this Lease on the part of Tenant to be kept, performed or observed that involves the expenditure of money by Tenant, Landlord at Landlord's option may, but is not obligated to, make such payment, or, on behalf of Tenant, expend such sum as may be necessary to keep, perform or observe such term, covenant or condition, and any and all sums so expended by Landlord, with interest thereon at the legal rate of interest from the date of such expenditure until repaid, will be, and will be deemed to be, additional rent and must be repaid by Tenant to Landlord, on demand provided, however, that no such payment or expenditure by Landlord will be deemed a waiver of Tenant's default, nor will it affect any remedy of Landlord by reason of such default.

3.09 Security Deposit

Upon execution of this Lease, Tenant must deposit with Landlord 10% of the Base Rent (i.e., the sum of \$ _____) as security for the performance of Tenant's obligations under this Lease. Landlord will invest the security deposit in an interest bearing account in Landlord's name, subject to Tenant's approval, which will not be unreasonably withheld. If Tenant is in default with respect to any covenant or condition of this Lease, including but not limited to the payment of rent, Landlord may apply all or any portion of the security deposit, including interest earned thereon, to the payment of any sum in default or any damages suffered by Landlord as result of the default, or any sum that Landlord may be required to incur by reason of Tenant's default. Tenant must upon demand deposit with Landlord the amount so applied so that Landlord will have the full deposit on hand at all times during the Term or Renewal Term of this Lease. If Tenant has fully complied with all of the covenants or conditions of the Lease, the Landlord will remit to the Tenant the security deposit, including any interest on deposit, within thirty days after the expiration or termination of this Lease. On each Annual Rent Adjustment Date and each Five Year Rent Adjustment Date, the principal amount of the security deposit will be adjusted to equal ten percent of the annual rent, after making the required adjustment under paragraph 3.01. Within 30 days of notification of the adjustment of the annual rent, Tenant must deposit with Landlord the amount of the increase in the security deposit.

4. GRANT OF SECURITY INTEREST

To secure Tenant's obligation for payment of rent and all other sums agreed to be paid by Tenant under this Lease, Tenant hereby grants to Landlord a lien and security interest in the following collateral: (1) all security deposits or other monies owing from Landlord to Tenant (as collateral in the possession of the secured party); (2) all insurance proceeds from any policy insuring the Property or improvements thereon against environmental contamination or pollution; (3) all compensation payable to Tenant as a result of eminent domain proceedings or a transfer in lieu thereof; and (4) all rents from Tenant's subletting of all or a part of the Property. Said lien and security interest will be in addition to Landlord's liens provided by law.

This Lease constitutes a security agreement under the Uniform Commercial Code as enacted in Alaska ("UCC"), and Landlord will have all rights and remedies afforded a secured party under the UCC. Tenant must execute, as debtor, such financing statement or statements as Landlord may now or hereafter reasonably request further evidencing said security interest.

5. USE AND CARE OF THE PROPERTY

5.01. Use

Tenant warrants that it has not entered into this Lease for purposes of speculation or for reserve for future uses, but rather to immediately and fully use and develop the Property. Except as otherwise provided herein, Tenant must use the Property for the following purposes:

ORIGINAL

Tenant must use the Property for no other purposes without the Landlord's written consent, which consent will not be unreasonably withheld. Tenant's use must comply with the zoning code. Tenant must not use the Property for any unlawful purpose and must comply with all applicable statutes, laws and ordinances during the entire term of the lease and any extension or renewal thereof. If Tenant ceases to use the Property for the approved purposes, Landlord may, as one of its remedies, terminate this Lease upon thirty days written notice.

5.02. Care of the Property

Tenant at its own cost and expense must keep the Property and all buildings and improvements that at any time may be situated thereon in good condition and repair during the term of this Lease, ordinary wear and tear excepted. The Property must always be kept by Tenant neat, clean and free of litter.

5.03. Restoration or Removal of Damaged Buildings and Improvements

Except as provided in paragraph 6.02, in the event any buildings or improvements situated on the Property by Tenant are damaged or destroyed by fire, earthquake, tsunami, or other casualty, Tenant must at Tenant's expense restore the same to good and tenantable condition or must remove the same as soon as is reasonably possible, but in no event may the

period of restoration exceed eighteen (18) months nor may the period of removal exceed forty-five (45) days.

5.04. Property Returned to Previous Condition

At the termination of this Lease, Tenant must remove all debris and return the Property clean and in as good order and condition as when the Tenant took possession, failing which Landlord may restore the Property to such condition and Tenant must pay the cost thereof on demand. This paragraph does not require the removal of buildings, improvements, or fixtures upon termination of the Lease, which are governed by other provisions of this Lease.

OPTIONAL PROVISION TO BE USED IF TENANT POSSESSES OR OCCUPIES THE PROPERTY PRIOR TO TERM OF THIS LEASE:

Tenant acknowledges that it took possession and has continuously occupied the Property prior to the Term of this Lease, commencing on _____. The obligations created by this paragraph and other provisions of this Lease referring to the time of Tenant's possession or occupancy of the Property relate back to that date.

5.05. Access Rights of Landlord

~~Landlord, its agents, servants, or employees, have the right to enter into and upon the Property and all buildings or improvements situated thereon upon reasonable notice to Tenant and during normal business hours (defined as 9 a.m. to 5 p.m. Monday through Friday, except for holidays as defined in paragraphs 17.06 of this Lease) for the purpose of inspecting the Property and all buildings and improvements situated thereon for compliance with the terms of this Lease.~~

5.06. Nuisances Prohibited

Tenant must immediately remove from the Property any abandoned or junk vehicles, buildings, improvements, equipment, machinery or fixtures. Tenant must not permit any nuisance or public nuisance to exist or to be created or maintained on the Property. Tenant agrees that any nuisance or public nuisance, under the common law, statute, or as defined by the Homer City Code, or any other code or regulations incorporated therein or otherwise adopted by ordinance or resolution of the City of Homer, may, after fifteen (15) days written notice to Tenant, or after four (4) hours notice in writing, by telephone, facsimile, or in person to Tenant if Landlord makes a written finding that such nuisance or public nuisance constitutes a threat of imminent harm to public health, safety or welfare, be removed or abated by Landlord without Tenant's further permission, with use of force if necessary, and without incurring any civil or criminal liability therefor. All the costs of such removal must be paid by Tenant to Landlord as additional rent under the terms of this Lease. This paragraph may not be construed as any limitation on any other legal rights or remedies available to the City of Homer to abate any nuisance or to prosecute any violation of the Homer City Code.

5.07. Compliance with Laws

Tenant must comply with all applicable laws, ordinances and regulations of duly constituted public authorities now or hereafter in any manner affecting Tenant's activities on the Property or any buildings or other improvements that may be situated thereon.

5.08. Radio Interference

At Landlord's request, the Tenant must discontinue the use of any machine or device that interferes with any government operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

5.09. Signs

Tenant may erect signs upon the Property that comply with state and local sign laws and ordinances. City Planning Department approval is required prior to the erection of any sign on the Property.

5.10 Garbage Disposal

Tenant is responsible for removing all garbage generated by Tenant's business to a Kenai Peninsula Borough solid waste facility or transfer station. Tenant must not use the Landlord's Homer Spit garbage disposal facilities.

OPTIONAL PARAGRAPHS 5.11 AND 5.12 APPLICABLE TO FISH PROCESSORS WITH ACCESS TO OUTFALL LINE AND FOR USE OF FISH DOCK

5.11 Outfall Line Connection Agreement

Tenant must connect to the City of Homer fish processor outfall line. On or before the commencement of the Term of this Lease, Tenant must enter into Fish Processor Outfall Line Connection Agreement with Landlord. Tenant must maintain such an agreement in force for so long as the City of Homer continues to maintain the outfall line. Tenant must at its own expense install and maintain a fish grinder as required by the Fish Processor Outfall Line Connection Agreement.

5.12 Fish Dock Use Permit

Before using the City of Homer Fish Dock, Tenant must obtain from the Landlord a Fish Dock Use Permit. Tenant must continue to have a current Fish Dock Use Permit in force for so long as Tenant intends to use the Fish Dock.

6. IMPROVEMENTS

6.01. Ownership of Buildings and Improvements

(a) Any and all buildings, fixtures, and improvements of any nature whatsoever constructed or maintained on the Property by Tenant will be and remain the property of Tenant at all times during the Term and any Renewal Terms and may be removed or replaced by Tenant, subject, however, to the obligations concerning the Required Improvements set forth in paragraph 6.02.

(b) Upon the expiration or termination of the Lease, all buildings, improvements, and fixtures must remain upon the Property and must be surrendered with the Property to Landlord, unless Landlord elects to require the removal of any or all of such property. If Landlord requires that buildings, improvements, and fixtures, or any part of them, be removed, Tenant must remove the same at its expense and repair or pay Landlord the cost of repairing any damage resulting from such removal. Approximately 60 days prior to the Tenant's scheduled vacation of the Property, Landlord and Tenant will meet and Landlord will advise Tenant what items must be removed and what items must remain.

6.02. Required Improvements

(a) Tenant must, at Tenant's sole expense, construct certain Required improvements on the Property. Tenant must at all times during the Term and any Renewal Term keep and maintain the Required Improvements, or their equivalent of equal or greater value, as the minimum development on the Property. The Required Improvements are:

Tenant's proposed site plan and floor plans for the Required Improvements are attached as ~~Exhibit C and Exhibit D~~. Tenant must commence construction of the Required Improvements within one year of the date of commencement of the Term and Complete construction within one additional year. When Completed, the Required Improvements must have an appraised value of not less than \$ _____.

(b) Tenant warrants that it has not entered into this Lease for the purpose of speculation, but in order to fully develop the Property with such Required Improvements and to actually use the Property for Tenant's proposed operations. Tenant's promise to timely construct the Required Improvements and operate on the Property is a major and material consideration to Landlord in granting this Lease.

(c) In the event the Required Improvements are damaged or destroyed by fire, earthquake, tsunami or other casualty, Tenant must, at Tenant's expense, restore or replace the same to good and tenable condition as soon as is reasonably possible, but in no event may the period of restoration or replacement exceed 12 months. Modifications to the Required Improvements will be allowed only if approved by Landlord, whose approval will not be unreasonably withheld. If any damage or casualty to the Required Improvements occurs within three years of the end of the Term or any Renewal Term, Tenant may, in lieu of restoring or replacing the Required Improvements, terminate this Lease by giving written notice of termination to Landlord within 120 days after such damage or casualty.

6.03. Construction Prerequisites

(a) No construction on the Property, including but not limited to the Required Improvements, may be commenced unless the following events have occurred:

(i) Not less than 30 days prior to the intended start of construction, Tenant must submit to Landlord for its approval preliminary plans and specifications and an application for a City of Homer zoning permit. The preliminary plans and specifications

must show the layout of proposed buildings and other improvements, ingress and egress, dimensions and locations of utilities, drainage plan, and any other information required for the zoning permit or other required permits. Tenant must also provide an engineer's or architect's estimate that, when constructed according to the preliminary plans and specifications, the Required Improvements will satisfy the minimum value requirement of paragraph 6.02. Landlord will not unreasonably disapprove preliminary plans and specifications. Approval or disapproval must be communicated in the manner provided for notices, and disapproval must be accompanied by specification of the grounds for disapproval.

(ii) Tenant must prepare final working plans and specifications substantially conforming to preliminary plans previously approved by Landlord, submit them to the appropriate governmental agencies for approval, and deliver to Landlord one complete set as approved by the governmental agencies. Changes from the preliminary plans will be considered to be within the scope of the preliminary plans if they are not substantial or if they are made to comply with suggestions, requests, or requirements of a governmental agency or official in connection with the application for permit or approval.

(iii) Not less than five days prior to the commencement of any construction, Tenant must give written notice of intent to commence construction and furnish to Landlord proof that all applicable federal, state, and local permits have been obtained or applications therefor have been submitted to the appropriate governmental agency.

(iv) Not less than five days prior to the commencement of any construction, Tenant must furnish to Landlord current certificates of insurance in the amounts and for the purposes specified in paragraphs 11.01 through 11.04 of this Lease.

(v) Not less than five days prior to the commencement of any construction, Tenant must deliver to Landlord satisfactory proof that workers' compensation insurance has been procured to cover all persons employed in connection with the construction. Upon notice to Tenant of any deficiency in workers' compensation coverage, such deficiency must be cured immediately, and no work will be performed on the project until Tenant has provided Landlord satisfactory proof that proper workers' compensation insurance is in place.

(b) On Completion of the improvements, Tenant must give Landlord notice of all changes in plans or specifications made during the course of the work. Landlord acknowledges that it is common practice in the construction industry to make numerous changes during the course of construction on substantial projects. Changes that do not substantially alter plans and specifications previously approved by Landlord do not constitute a breach of Tenant's obligations, but Tenant must nevertheless give Landlord notice of such changes.

(c) At any time and from time to time, Tenant may, but is not obligated to, construct or otherwise make new improvements on any part or all of the Property and to demolish, remove, replace, alter, relocate, reconstruct, or add to existing improvements in whole or in part; provided that Tenant is not then in default under any condition or provision of this Lease and provided further the Required Improvements, or their equivalent of equal or greater value, are always maintained on the Property. All salvage will belong to Tenant. Once any work is begun, Tenant must with reasonable diligence prosecute to completion all construction of improvements, additions, alterations, or other work.

6.04. As-Built Survey

Within thirty (30) days after Completion of construction of any improvements on the Property involving construction, alteration, addition, removal or demolition of the foundation, structure, utility services, ingress and egress, or any major changes of all or any part of any structure or improvement on the Property, Tenant must provide Landlord with three (3) copies of an as-built survey of the Property prepared by a registered professional surveyor, showing the location of all improvements on the Property, including underground utilities, pipelines, and pre-existing improvements.

6.05 Definitions

As used in this Article 6 of this Lease, the following terms and phrases will have the meanings given here, unless the context requires otherwise:

"Complete" and "Completion" mean that construction is finished and the improvement is fully operational and ready for occupancy or use for its intended purpose, including, but not limited to, the receipt of any applicable certificate of occupancy and other applicable permits, licenses, certificates, or inspection reports necessary to the improvement's legally authorized use. The existence of a contractor's punch list of items to be performed to finish the project will not prevent the construction from being Complete if the improvement otherwise meets the requirements of this definition.

"Excusable Delay" means delay due to strikes, act of God, inability to obtain labor or materials, governmental requirements, such as laws and requirements of any governmental authority having jurisdiction over the improvements or over any permits or licenses needed for Tenant's proposed operations, removal of Hazardous Materials discovered at any time after the Commencement Date, enemy action, civil commotion, fire, unusual inclement weather, unavoidable casualty or similar causes beyond the reasonable control of Tenant.

6.06 Extensions of Time for Completion of Required Improvements

An extension of the time to Complete the Required Improvements will be granted for the period of time of any Excusable Delay (as defined in paragraph 6.05); provided Tenant has commenced construction in a timely manner and is proceeding diligently to complete construction.

7. RESERVED

8. RESTRICTIONS ON TRANSFER

8.01. Assignment or Sublease Without Consent Generally Prohibited

Tenant must not voluntarily assign, encumber or sublease its interest in this Lease or in the Property without first obtaining Landlord's consent. Any assignment, encumbrance or sublease without Landlord's consent will be voidable and, at Landlord's election, will constitute a default. Any request for Landlord's consent must be made to Landlord in writing

at least thirty (30) days prior to the proposed effective date of the assignment, encumbrance or sublease. No consent to any assignment, encumbrance or sublease will constitute a further waiver of the provisions of this paragraph. Any assignment effected pursuant to this paragraph 8.01 must require the assignee to assume the Tenant's obligations hereunder. An assignment will not release the Tenant from liability hereunder unless specifically so provided in writing and approved by Landlord. Tenant must promptly deliver to Landlord a copy of any instrument or must promptly notify Landlord of any unwritten agreement, that assigns, encumbers or subleases the Property. Landlord's consent to assign, encumber or sublease the Property will not be withheld unreasonably.

8.02. Change of Ownership

If Tenant is a partnership or limited liability company a withdrawal or change, voluntary, involuntary or by operation of law, of any partner(s) or member(s) owning twenty-five percent (25%) or more of the entity, or the dissolution of the entity, will be deemed a voluntary assignment under paragraph 8.01. If Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of twenty-five percent (25%) of the value of the assets of Tenant, will be deemed a voluntary assignment under paragraph 8.01. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least twenty-five percent (25%) of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and entitled to vote for the election of directors. As to a corporation the stock of which is traded through an exchange or over the counter, a sale or other transfer of a controlling percentage of the capital stock of such a Tenant corporation will not be deemed to be a voluntary assignment.

8.03. Costs of Landlord's Consent to be Borne by Tenant

~~Tenant must pay Landlord's reasonable costs, including attorney's fees, and the expenses of due diligence inquiries, incurred by Landlord in connection with any request by Tenant for Landlord to consent to any assignment or subletting by Tenant.~~

[ALTERNATIVE 1 — Optional Additional Rent Provisions for Sublease.]

8.04. Additional Rent For Sublease.

If Landlord gives its written consent, Tenant may sublet all or a portion of the Property. If any rent accrues to Tenant as the result of such sublease that exceeds the pro rata share of rent then being paid by Tenant for the portion of the Property being sublet, then 25% of such excess rent must be paid by Tenant to Landlord as additional rent.

[ALTERNATIVE 2 — Optional Additional Rent Provisions for Sublease or Assignment. Note subparagraph (d)'s reference to the optional Article 14. Alternative 1 is favored as more workable than Alternative 2.]

8.04. Additional Rent For Certain Transfers

(a) Except as provided in subparagraph 8.04(d), if Tenant subleases, assigns, or otherwise transfers to another for valuable consideration all or substantially all of its interest

in this Lease or the Property or the buildings located on the Property, for any length of time, then Tenant shall pay to Landlord additional rent. The additional rent will equal 25% of the consideration payable for such sublease, assignment, or transfer of the Lease or Property, or both.

(b) If the consideration paid for the sublease, assignment, or transfer of the Lease or Property is not separately stated, or if Landlord in good faith concludes that the separately stated consideration is unreasonably low, then the consideration will be deemed to be an amount as calculated in this subparagraph. In such case the consideration for the sublease, assignment, or transfer of the Lease or Property, or both, will be deemed to be a proportion of the total consideration that equals the proportion that the fair market value of the Property (as if owned in fee simple)(including utility improvements, regardless of who installed them) bears to the fair market value of the Property plus the Tenant's buildings and Tenant's other real property improvements on the Property. The fair market values will be determined by a qualified real estate appraiser selected by mutual agreement of Landlord and Tenant. The appraiser's determination of fair market values will be conclusive between the parties. The cost of the appraisal must be paid by Tenant, but if Tenant fails to do so, Landlord may pay the cost of the appraisal and the amount paid will become additional rent immediately due and payable under this Lease.

(c) Payment of the additional rent is due at the time the Landlord gives written consent to the sublease, assignment, or transfer, and such consent is required prior to any such sublease, assignment, or transfer. If the consideration for the sublease, assignment, or transfer is payable in installments, then the stream of installment payments will be discounted to present value at 6.0% for purposes of computing the additional rent due.

(d) The requirement of subparagraph 8.04(a) to pay additional rent does not apply to (i) a sublease of a commercial, storage, or office rental unit made in the normal course of Tenant's leasing business, provided such sublease is for substantially less than all of the Property or building(s), and is for an authorized purpose described in paragraph 5.01, or (ii) an assignment or other conveyance of Tenant's interest in the Lease or the Property solely for collateral purposes, provided such assignment or other conveyance qualifies as a Permitted Mortgage under Article 14 of this Lease.

9. PROHIBITION OF LIENS

Tenant must not suffer or permit any liens, including without limitation, mechanic's or materialmen's liens, to be recorded against the Property. If any such liens are recorded against the Property, Tenant must cause the same to be removed, or, in the alternative, if Tenant in good faith desires to contest the same, Tenant will be privileged to do so, but in such case Tenant hereby agrees to indemnify and save Landlord harmless from all liability for damages occasioned thereby and must, in the event of a judgment or foreclosure of such liens, cause the same to be discharged and removed prior to any attempt at execution of such judgment. Nothing contained in this Lease may be construed to be a waiver of the provisions of AS 09.38.015(c), as may be amended from time to time.

10. INDEMNITY

10.01. Indemnity Generally

Tenant agrees to protect, indemnify and hold Landlord harmless from and against any and all liability arising from acts or omissions of any person and of any nature whatsoever occurring on the Property during the Term or during Tenant's possession of the Property, or arising out of or relating to the Tenant's use of the Property, causing injury to, or death of persons, or loss of, or damage to, property, and from any expense, including attorneys fees, incidental to the defense of and by Landlord therefrom, excepting only liability arising from the sole negligence of Landlord. If any action or proceeding is brought against Landlord by reason of any such occurrences, Landlord will promptly notify Tenant in writing of such action or proceeding.

10.02. Indemnity For Emergency Service Costs

Without limiting the generality of paragraph 10.01, in the event of a major fire or other emergency, Tenant must reimburse Landlord for the cost of providing fire fighting and other emergency service to Tenant or the Property, or elsewhere if the fire or emergency requiring response arises from or is related to the use of the Property or Tenant's operations. For purposes of this paragraph, a major fire or other emergency is one that requires more than five hours of effort by the Homer Department of Public Safety or its successors.

11. INSURANCE

11.01. Liability Insurance

(a) Tenant must procure and at all times maintain, at its expense, public liability insurance covering Tenant's operations and the Property in an amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence to protect against liability for bodily injury, death or property damage that might arise from the construction, occupancy or use of the Property and the operations conducted on, from, or related to it. Such insurance must include coverage for comprehensive general liability; bodily injury and property damage liability; premises and operations liability, including underground, products and completed operations; broad form property damage liability; blanket contractual liability; personal injury liability; and comprehensive automobile liability including without limitation bodily injury and property damage and all owned, hired, and non-owned automobiles. Such insurance policy or policies must be additionally endorsed to provide sudden and accidental pollution coverage for claims or losses arising out of activities or events taking place on the Property or arising out of Tenant's operations, wherever conducted in the City of Homer.

(b) Tenant must procure and at all times maintain, at its expense, environmental remediation and environmental impairment liability insurance, including sudden and accidental coverage and gradual pollution coverage. Such coverage must also include clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property. Tenant must maintain limits of liability of ONE MILLION DOLLARS (\$1,000,000.00) for any one accident or occurrence. Environmental impairment liability insurance must extend to loss arising as a result of: (i) liability of others assumed by Tenant under contract or agreement; (ii) clean-up operations; (iii) activities performed by or on behalf of Tenant while Tenant has care, custody, possession, or control of vessels, equipment, people, supplies, products or materials for which Tenant performs services or upon which

Tenant performs actions; and (iv) the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.

[ALTERNATIVE 11.01(b) — Optional provision waiving environmental insurance based on the authorized uses of paragraph 5.01.]

(b) Based on the authorized uses of the Property stated in paragraph 5.01, environmental insurance is not required. However, if Tenant uses the Property, with or without authorization from the Landlord, for purposes other than those stated in paragraph 5.01, then if Landlord so elects, and within ten days after Landlord gives notice of such election, Tenant must procure and at all times thereafter maintain, at its expense, environmental remediation and environmental impairment liability insurance, including sudden and accidental coverage and gradual pollution coverage. Such coverage must also include clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property. Tenant must maintain limits of liability in the amount stated by Landlord in its notice to Tenant, but in no event less than ONE MILLION DOLLARS (\$1,000,000.00) for any one accident or occurrence. Environmental impairment liability insurance must extend to loss arising as a result of: (i) liability of others assumed by Tenant under contract or agreement; (ii) clean-up operations; (iii) activities performed by or on behalf of Tenant while Tenant has care, custody, possession, or control of vessels, equipment, people, supplies, products or materials for which Tenant performs services or upon which Tenant performs actions; and (iv) the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.

11.02. Worker's Compensation and Employer's Liability Insurance

Tenant must procure and at all times during the term of this Lease maintain, at its expense, Worker's Compensation Insurance as required by statute and Employer's Liability Insurance.

11.03. Named Insured, Notice to Landlord, and Waiver of Subrogation

All insurance policies required to be maintained by Tenant under paragraph 11.01 must name Landlord, and its officers, employees and agents, as additional insured, but they must not contain any exclusion from coverage for Tenant's liability for damages or loss incurred by Landlord because of Landlord's status as an additional insured. All policies issued under paragraph 11.01 must contain a waiver of any subrogation rights any insurer might have against Landlord. All policies issued under paragraphs 11.01 or 11.02 must contain an agreement by the insurers to provide at least thirty (30) days prior written notice to Landlord of cancellation, expiration or substantial changes in policy conditions and coverage. Tenant must furnish insurance certificates and copies of all such insurance policies to Landlord promptly after the issuance thereof.

11.04. Fire and Extended Coverage Insurance; Builder's Risk Insurance

(a) Except as provided in subparagraphs 11.04(b) and (c), Tenant may at its own expense and in its own name obtain insurance against loss or damage by fire and such other risks as it determines to cover buildings, equipment, inventory, fixtures, personal property and improvements made to the Property by Tenant subsequent to Tenant's taking possession of the Property under this Lease.

(b) Tenant must procure and at all times maintain, in its own name and at its expense, physical property damage insurance covering the Required Improvements described in paragraph 6.02 in an amount not less than 90% of the replacement cost of the Required Improvements. Such insurance must afford coverage for damages resulting from, at a minimum (i) fire, (ii) perils covered by extended coverage insurance, and (iii) explosion of steam and pressure boilers and similar apparatus located on the Property.

(c) During construction of the Required Improvements and during any subsequent restorations, alterations, or changes in the Required Improvements at a cost in excess of \$250,000 per job, Tenant must procure and maintain builder's all risk insurance in an amount reasonably satisfactory to Landlord.

11.05 Required Endorsements and Authorization

In addition to, and without limiting the requirements of paragraphs 11.01 through 11.04, Tenant must at all times maintain and give to the Landlord, for Landlord's benefit, current insurance endorsements substantially in the form of **Exhibit E** and **Exhibit F**. Tenant must also grant Landlord permission to obtain copies of insurance policies from all insurers providing required coverage to Tenant by executing and delivering to Landlord an authorization substantially in the form of **Exhibit G**. Tenant must, from time to time, execute and deliver to Landlord such additional authorizations (**Exhibit G**) that Landlord may request.

12. CONDEMNATION

12.01. Condemnation

In the event the Property, or any part thereof or interest therein, is taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or is transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of Landlord and Tenant in the award or consideration for such transfer and the effect of the taking or transfer upon this Lease will be as provided in this Article 12.

12.02. Total Taking

If all of the Property is taken or so transferred, this Lease and all the right title and interest thereunder of Tenant will cease on the date title to the Property vests in the condemning authority.

12.03. Partial Taking - Termination of Lease

In the event the taking or transfer of part of the Property leaves the remainder of the Property in such location, or in such form, shape or reduced size, or so inaccessible as to be not effectively and practicably usable in the opinion of the Tenant for the purpose of operation thereon of Tenant's business, then this Lease and all of the right, title and interest thereunder of Tenant will cease on the date title to the Property vests in the condemning authority, and the condemning authority enters into possession.

12.04. Partial Taking - Continuation of Lease

In the event the taking or transfer of a part of the Property leaves the remainder of the Property in such location and in such form, shape or size, or so accessible as to be effectively

and practicably usable in the opinion of Tenant for the purpose of operation thereon of Tenant's business, this Lease will terminate and end as to the portion of the Property so taken or transferred as of the date title to such portion vests in the condemning authority and the condemning authority enters into possession, but will continue in full force and effect as to the portion of the Property not so taken or transferred. If there is a partial taking and this Lease is not terminated, then the annual rent payable under this Lease will abate for the portion of the Property taken in the proportion that such portion bears to all of the Property.

12.05. Compensation

If any compensation is payable as a result of eminent domain proceedings or a transfer in lieu thereof, Landlord and Tenant may each make a claim against the condemning or taking authority for the amount of any just compensation due to each of them, respectively. Tenant must make no claim against Landlord for damages for termination of the leasehold or interference with Tenant's business, even if Landlord is the condemning or taking authority. Neither Tenant nor Landlord will have any rights in or to any award made to the other by the condemning authority; provided, that in the event of a single award to Landlord that includes specific damages for loss of Tenant's leasehold interest separately awarded in the eminent domain proceeding and not as a part of the damages recoverable by Landlord, Landlord will transmit such separately awarded damages to Tenant.

13. DEFAULT

13.01. Default

Each of the following events will be deemed an event of default by the Tenant under this Lease and a breach of the terms, covenants and conditions of this Lease.

(a) A default in the payment of the rent and additional sums due under this Lease, or any part thereof, for a period of ten (10) days from the due date for the payment of such rent or additional sums.

(b) A default in the performance of any other term, covenant or condition on the part of the Tenant to be kept, performed or observed for a period of fifteen (15) days after Landlord gives to Tenant a written notice specifying the particular default or defaults; provided, however, that any default on the part of Tenant in the performance of work or acts required to be done, or conditions to be modified, will be deemed to be cured if steps are taken promptly (and in no event later than thirty (30) days after such notice has been given) by Tenant to rectify the same and are prosecuted to completion with diligence and continuity.

(c) The use of the Property or buildings and improvements thereon for purposes other than those enumerated herein, to which Landlord has not given its written consent.

(d) The abandonment of the Property by Tenant. If the Property is deserted or Tenant does not use the Property for the purposes stated in paragraph 5.01 for 12 months or more, it will be deemed abandoned, even if Tenant continues to pay rent.

(e) Tenant making an assignment for the benefit of creditors, filing a petition in bankruptcy, petitioning or applying to any tribunal for the appointment of a custodian, receiver, or any trustee for it or a substantial part of its assets, or commencing any proceedings under any bankruptcy, reorganization, arrangement, readjustment of debt,

dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or the filing of any such petition or application, or the commencing of any such proceeding against it, in which an order for relief is entered or that remains undismissed for a period of 30 days or more; or Tenant by any act or omission indicating its consent to, approval of, or acquiescence in any such petition, application, or proceeding or order for relief or the appointment of a custodian, receiver, or any trustee for it or any substantial part of any of its properties, or the suffering of any such custodianship, receivership, or trusteeship to continue undischarged for a period of 30 days or more.

(f) Tenant being generally unable to pay its debts as such debts become due.

(g) Tenant having concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay, or defraud its creditors or any of them, or making or suffering a transfer of any of its property that may be fraudulent under any bankruptcy, fraudulent conveyance, or similar law; or suffering or permitting, while insolvent, any creditor to obtain a lien upon any of its property through legal proceedings or distraint that is not vacated within 30 days from the date thereof.

13.02. Landlord's Remedies

In the event of any default by Tenant as recited in paragraph 13.01 of this Lease, Landlord will have all of the below-enumerated rights and remedies, all in addition to any rights and remedies that Landlord may be given by statute, common law or otherwise. All rights of Landlord are cumulative, and none will exclude any other right or remedy. Landlord's rights and remedies include the following:

(a) Landlord may declare the term of this lease ended by written notice to Tenant. Upon such termination of this Lease, Tenant must surrender possession and vacate the Property immediately, and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Property in such event with or without process of law and to repossess Landlord of the Property and to expel or remove Tenant and any others who may be occupying or within the Property and to remove any and all property therefrom, using such force as may be necessary, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law.

(b) Landlord may by written notice declare Tenant's right to possession of the Property terminated without terminating this Lease. Upon such termination of Tenant's right to possession, Landlord will have all the rights to repossess the Property and remove Tenant and Tenant's property that are enumerated in paragraph 13.02 (a).

(c) Landlord may relet the Property in whole or in part for any period equal to or greater or less than the remainder of the Term or Renewal Term, as applicable, for any sum that Landlord may deem reasonable, except as provided in (e) of this paragraph.

(d) Landlord may collect any and all rents due or to become due from subtenants or other occupants of the Property.

(e) Landlord may recover, whether this Lease be terminated or not, from Tenant, damages provided for below consisting of items (i), and (ii), or, at Landlord's election in lieu of (ii), item (iii):

(i) actual attorney's fees and other expenses incurred by Landlord by reason of the breach or default by Tenant; and

(ii) an amount equal to the amount of all rent and additional sums reserved under this Lease, less the net rent, if any, collected by Landlord on reletting the Property, that shall be due and payable by Tenant to Landlord on the several days on which the rent and additional sums reserved in this Lease would have become due and payable; that is to say, upon each of such days Tenant must pay to Landlord the amount of deficiency then existing. Such net rent collected on reletting by Landlord will be computed by deducting from the gross rent collected all expenses incurred by Landlord in connection with the reletting of the Property, or any part thereof, including broker's commission and the cost of renovating or remodeling the Property or the buildings or improvements thereon, provided, however, Landlord must take diligent effort in reletting the Property to obtain a rental rate as close to or above that required of Tenant under this Lease or else Landlord will not have access to the remedy set out in this subparagraph 13.02(e)(ii); or

(iii) an amount to be due immediately on breach, equal to the difference between the rent and the fair and reasonable rental value of the Property for the same period. In the computation of such damages the difference between any installment of rent thereafter becoming due and the fair and reasonable value of the Property for the period for which such installment was payable will be discounted to the date of such breach at the rate of eight percent (8%) per year.

(f) Reentry or reletting of the Property, or any part thereof, will not be deemed a termination of this Lease, unless expressly declared to be so by Landlord.

(g) If this Lease is deemed terminated, Tenant's liabilities will survive and Tenant will be liable for damages as provided in this paragraph 13.02.

13.03. Assignment of Rents to Landlord

Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under the Lease, all rent from any subletting of all or a part of the Property as permitted by this Lease, and Landlord, as assignee and attorney-in-fact for Tenant or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligation under this Lease, except that, until the occurrence of an act of default by Tenant, Tenant will have the right to collect such rent.

14. RESERVED

OPTIONAL ARTICLE 14

(to be used when the lease needs to be "mortgageable")

14. LEASEHOLD MORTGAGES

14.01. Definitions

As used in this article 14, the following capitalized terms will have the meanings set forth below:

"Indebtedness" means the amount that is outstanding at any given time under a Permitted Mortgage.

"Landlord's Estate" means all of Landlord's right, title and interest in its fee estate in the Property, its reversionary interest in improvements under this Lease, and all other rental and benefits due Landlord hereunder.

"Mortgagee" means the holder or beneficiary of any Permitted Mortgage.

"Permitted Mortgage" means collectively any deed(s) of trust, mortgage(s), and other collateral security instruments serving as security for a construction loan or permanent loans, or both, (otherwise permitted to be incurred hereunder) that encumber Tenant's Estate, together with any modification, substitution, amendment, extension, increase, refinancing, replacement or recasting (otherwise permitted to be incurred hereunder) of any Permitted Mortgage; provided, however in no event may any such Permitted Mortgage encumber Landlord's Estate.

"Tenant's Estate" means all of Tenant's right, title and interest in its leasehold estate in the Property, its fee estate in the improvements, and its interest under this Lease.

14.02. Encumbrance of Tenant's Estate

~~Tenant will have the right at any time and from time to time to encumber all or any portion of Tenant's Estate pursuant to one or more Permitted Mortgages, provided Tenant must:~~

(a) promptly following its receipt of any notice of default or other notice of the acceleration of the maturity of a Permitted Mortgage from a Mortgagee, deliver a true and correct copy thereof to Landlord; and

(b) refrain from encumbering or purporting to encumber, by means of a Permitted Mortgage or otherwise, Landlord's Estate.

14.03. Conditions For Mortgage Protections

Provided that any Mortgagee first provides Landlord with a conformed copy of a Permitted Mortgage that contains the name and address of such Mortgagee, and provided such Permitted Mortgage was executed in compliance with the terms hereof, Landlord hereby covenants and agrees to faithfully perform and comply with the provisions of paragraph 14.04 below with respect to such Permitted Mortgage.

14.04. Mortgage Protections

Subject to compliance with the provisions of paragraphs 14.01 through 14.03 above, Landlord agrees as follows:

(a) **No Termination.** No action by Tenant or Landlord to cancel, surrender, or materially modify the economic terms of this Lease or the provisions of article 14 of this Lease will be binding upon a Mortgagee without its prior written consent.

(b) **Notices.** If Landlord gives any notice, demand, election or other communication that may adversely affect the security for a Permitted Mortgage, including without limitation a notice of an event of default hereunder (hereinafter collectively "Notices"), to Tenant, Landlord must give a copy of each such Notice to the Mortgagee at the address previously designated by it. Such copies of Notices will be sent by Landlord and deemed received as described in article 17 of this Lease. No Notice given by Landlord to Tenant will be binding upon or affect said Mortgagee unless a copy of said Notice is given to it pursuant to this article. In the case of an assignment of such Permitted Mortgage or change in address of such Mortgagee, said assignee or Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent. Landlord will not be bound to recognize any assignment of such Permitted Mortgage unless and until Landlord has been given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee will be deemed to be the Mortgagee hereunder with respect to the Permitted Mortgage being assigned. If such Permitted Mortgage is held by more than one person, corporation or other entity, no provision of this Lease requiring Landlord to give Notices or copies thereof to said Mortgagee will be binding upon Landlord unless and until all of said holders designate in writing one of their number to receive all such Notices and copies thereof and have given to Landlord an original executed counterpart of such designation. Notice given to the one so designated is effective as notice to all them.

(c) **Performance of Covenants.** The Mortgagee may perform any term, covenant or condition and remedy any default by Tenant under this Lease within the time periods specified in the Lease, and Landlord will accept such performance with the same force and effect as if furnished by Tenant; provided, however, that the Mortgagee will not thereby be subrogated to the rights of Landlord.

(d) **Delegation to Mortgagee.** Tenant may delegate irrevocably to the Mortgagee the non-exclusive authority to exercise any or all of Tenant's rights hereunder, but no such delegation will be binding upon Landlord unless and until either Tenant or the Mortgagee gives Landlord a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Permitted Mortgage itself, in which case service upon Landlord of an executed counterpart or conformed copy of said Permitted Mortgage in accordance with this article, together with written notice specifying the provisions therein that delegate such authority to said Mortgagee, will be sufficient to give Landlord notice of such delegation.

(e) **Default by Tenant.** In the event of an event of default by Tenant in the payment of any monetary obligation hereunder, Landlord agrees not to terminate this Lease unless and until Landlord provides written notice of such event of default to any Mortgagee and such Mortgagee fails to cure such event of default within ten (10) business days following the expiration of any grace or cure periods granted Tenant herein. In the event of an event of default by Tenant in the performance or observance of any non-monetary term, covenant, or condition to be performed by it hereunder, Landlord agrees not to terminate this Lease unless and until Landlord provides written notice of such event of default to any Mortgagee and such Mortgagee fails to cure such event of default within thirty (30) business days following the expiration of any grace or cure periods granted Tenant herein; provided, however, if such event or default cannot practicably be cured by the Mortgagee without taking possession of the Property, or if such event of default is not susceptible to being cured by the Mortgagee, then Landlord will not terminate this Lease if and as long as:

(i) In the case of an event of default that cannot practicably be cured by the Mortgagee without taking possession of the Property, the Mortgagee has delivered to Landlord, prior to the date on which Landlord is entitled to give notice of lease termination, a written instrument wherein the Mortgagee unconditionally agrees that it will cure such an event of default, and that if this Lease thereafter is terminated prior to the curing of such default, said Mortgagee must pay to Landlord the cost of curing such an event of default;

(ii) In the case of an event of default that cannot practicably be cured by the Mortgagee without taking possession of the Property, said Mortgagee must proceed diligently to obtain possession of the Property as Mortgagee (including possession by receiver), and, upon obtaining such possession, must proceed diligently to cure such event of default in accordance with the guarantee delivered pursuant to subsection (i) above; and

(iii) In the case of an event of default that is not susceptible to being cured by the Mortgagee, the Mortgagee must institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it acquires Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure).

The Mortgagee will not be required to obtain possession or to continue in possession as Mortgagee of the property pursuant to subsection (ii) above, or to continue to prosecute foreclosure proceedings pursuant to subsection (iii) above, if and when such event of default is cured. Nothing herein will preclude Landlord from exercising any of its rights or remedies with respect to any other event of default by Tenant during any period of such forbearance, but in such event the Mortgagee will have all of its rights provided for herein. If the Mortgagee, its nominee, or a purchaser in a foreclosure sale acquires title to Tenant's Estate and cures all events of default that are susceptible of being cured by the Mortgagee or by said purchaser, as the case may be, then prior events of default that are not susceptible to being cured by the Mortgagee or by said purchaser will no longer be deemed events of default hereunder.

(f) **New Lease.** If any Mortgagee acquires Tenant's Estate as a result of a judicial or non-judicial foreclosure under any Permitted Mortgage, or by means of a deed in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, such Mortgagee will thereafter have the right to assign or transfer Tenant's Estate to an assignee upon obtaining Landlord's consent with respect thereto, which consent will not be unreasonably withheld or delayed, and subject to all of the other provisions of article 8 above. Upon such acquisition of Tenant's Estate as described in the preceding sentence by the Mortgagee, or the assignee of Mortgagee, Landlord will execute and deliver a new ground lease of the Property to such Mortgagee or such assignee of Mortgagee given not later than one hundred twenty (120) days after such party's acquisition of the Tenant's Estate. Said new ground lease will be identical in form and content to the provisions of this Lease, except with respect to the parties thereto, the term thereof (which will be co-extensive with the remaining term hereof), and the elimination of any requirements that have been fulfilled by Tenant prior thereto, and said new ground lease will have priority equal to the priority of this Lease. Upon execution and delivery of such new ground lease, Landlord will cooperate with the new tenant, at the sole expense of said new tenant, in taking such action as may be necessary to cancel and discharge this Lease and to remove Tenant named herein from the Property.

(g) **Further Amendments.** Landlord and Tenant hereby agree to cooperate in including in this Lease by suitable amendment from time to time any provision that may reasonably be requested by any proposed Mortgagee for the purpose of implementing the Mortgagee protection provisions contained in this Lease and allowing such Mortgagee reasonable means to protect or preserve the lien of the Permitted Mortgage on the occurrence of an event of default hereunder. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate any such amendment; provided, however, that any such amendment must not in any way affect the term or rental under this Lease, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

(h) **Financial.** Landlord hereby agrees to cooperate reasonably with Tenant or any third party, or both, at Tenant's sole expense, in connection with Tenant's efforts to obtain financing for, or in connection with, the Property.

15. REMOVAL OF TRADE FIXTURES, EQUIPMENT, AND MACHINERY UPON EXPIRATION OR TERMINATION OF LEASE

15.01. Removal Upon Expiration

Trade fixtures, machinery, equipment, and other items of personal property owned by Tenant will be considered Tenant's property at all times during this Lease and must be removed by Tenant at its own expense from the Property upon the expiration of the Term or Renewal Term of this Lease, unless Landlord gives written consent to allow such property to remain on the Property. If the removal of Tenant's trade fixtures, machinery, equipment and other items of personal property causes injury or damage to the Property, including buildings or improvements that will remain on the Property, Tenant must repair such injury or damage or pay Landlord the full amount to repair the same. In the event Tenant, without Landlord's written consent, fails to remove such property on or before the expiration of this Lease, the Landlord may, at its election, immediately (i) declare all or any part of the property abandoned, in which case title to such property will vest in Landlord, or (ii) to the extent Landlord does not elect to declare it abandoned and take title to such property, Landlord may, in any manner that it sees fit, remove, store, destroy, or otherwise dispose of the property at the Tenant's expense and without liability to Tenant for any loss, damage, value, or other compensation claimed by Tenant as a consequence.

15.02. Removal After Early Termination

In the event this Lease terminates for any reason before the scheduled expiration of the Term or Renewal Term, as applicable, Tenant must within one month after such early termination date remove Tenant's trade fixtures, machinery, equipment and other items of personal property, unless Landlord gives written consent to allow such personal property to remain on the Property. If the removal of Tenant's trade fixtures, machinery, equipment and other items of personal property causes injury or damage to the Property, including buildings or improvements that will remain on the Property, Tenant must repair such injury or damage or pay Landlord the full amount to repair the same. On or before the end of such one month period, Tenant may extend the time for removal of such personal property for an additional one month upon written notice to Landlord accompanied by payment of compensation for the entire two month period following the early termination date at a rate equal to 125% of the monthly rental rate in effect on the early termination date (i.e., monthly rental rate x 125% x 2 months). Acceptance of such compensation will not extend the term of the Lease nor create

a month-to-month tenancy. In the event Tenant fails to remove such property within one month after the early termination of this Lease, or within two months if Tenant elects to extend by giving timely notice and paying compensation, the Landlord may, at its election, immediately (a) declare all or any part of the property abandoned, in which case title to such property will vest in Landlord, or (b) to the extent Landlord does not elect to declare abandoned and take title to such property, Landlord may, in any manner that it sees fit, remove, store, destroy, or otherwise dispose of the property at the Tenant's expense and without liability to Tenant for any loss, damage, value, or other compensation claimed by Tenant as a consequence.

16. HAZARDOUS MATERIALS

16.01. Use of Hazardous Materials on the Property

(a) Tenant must not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Property by Tenant or its authorized representatives, customers, invitees or sublessees, except for such Hazardous Material as is necessary or useful to Tenant's lawful use of the Property.

(b) Any Hazardous Material permitted on the Property as provided in this paragraph, and all containers therefor, must be handled, used, kept, stored and disposed of in a manner that complies with all laws or regulations applicable to any such Hazardous Material. Such Hazardous Material must be handled only by properly-trained personnel.

(c) Tenant must not discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system or any body of water, if such material (as reasonably determined by the Landlord, or any governmental authority) does or may, pollute or contaminate the same, or may adversely affect (i) the health, welfare or safety of persons, whether located on the Property or elsewhere; or (ii) the condition, use or enjoyment of the Property or any other real or personal property.

(d) If any discharge, leak, spill, emission, or pollution of any type occurs upon or from the Property during the Lease term or any holdover, Tenant will immediately notify Landlord and all appropriate federal, state, and local authorities, and will act immediately to contain the spill, repair any damage, absorb and clean up the spill area and restore the Property to comply with the applicable portions of any federal, state, or local law or regulation then in effect.

(e) Tenant hereby agrees that it will be fully liable for all costs and expenses related to the handling, use, storage, and disposal of Hazardous Material brought or kept on the Property by the Tenant, its authorized representatives, customers, invitees and sublessees, and the Tenant must give immediate notice to the Landlord of any violation or potential violation of the provisions of subparagraphs 16.01 (a), (b), (c) and (d).

16.02. Indemnification of Landlord

Any other provisions of the Lease to the contrary notwithstanding, Tenant must defend, indemnify and hold harmless Landlord and its authorized representatives, from and against any claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorney, consultant and expert fees, court costs and litigation expenses) of whatever kind of nature, known or unknown, contingent or

otherwise, arising out of or in any way related to: (a) the presence, disposal, release, or threatened release of any such Hazardous Material that is on, from, or affecting the Property, soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (b) any bodily injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Material; (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Material; and/or (d) any violation of any laws applicable thereto. However, this paragraph will apply only if the acts or omissions giving rise to the claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses: (i) occur in whole or in part during the Term of this Lease or during any time of Tenant's possession or occupancy of the Property prior to or after the term of this Lease; or (ii) are proximately caused in whole or in part by the occupancy of, use of, operations on, or actions on or arising out of the Property by Tenant or its employees, agents, customers, invitees or contractors. The provisions of this paragraph will be in addition to any other obligations and liabilities Tenant may have to Landlord at law or equity and will survive the termination of this Lease.

16.03. Hazardous Material Defined

"Hazardous Material" is any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Alaska, or the United States government. "Hazardous Material" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to local, state or federal law, including without limitation, the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder. "Hazardous Material" also includes, but is not restricted to, asbestos, polychlorobiphenyls ("PCB's") and petroleum and petroleum products.

17. GENERAL PROVISIONS

17.01. Estoppel Certificates

Either party must at any time and from time to time upon not less than thirty (30) days prior written request by the other party, execute, acknowledge and deliver to such party, or to its designee, a statement in writing certifying that this Lease is unamended and in full force and effect (or, if there has been any amendment thereof, that the same is in full force and effect as amended and stating the amendment or amendments), that there are no defaults existing, (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the rent and other charges have been paid in advance. The cost of preparing an estoppel certificate, including the cost of conducting due diligence investigation and attorney's fees, must be paid by the requesting party.

17.02. Conditions and Covenants

All the provisions of this Lease will be deemed as running with the land, and will be construed to be "conditions" as well as "covenants," as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

17.03. No Waiver of Breach

No failure by either Landlord or Tenant to insist upon the strict performance by the other of any term, covenant or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, will constitute a waiver of any such breach or of such terms, covenants or conditions. No waiver of any breach will affect or alter this Lease, but each and every term, covenant and condition of this Lease will continue in full force and effect with respect to any other then existing or subsequent breach.

17.04. Attorney's Fees

(a) If Landlord is involuntarily made a party defendant to any litigation concerning this Lease or the Property by reason of any act or omission of Tenant, or if Landlord is made a party to any litigation brought by or against Tenant without any fault on the part of Landlord, then Tenant must pay the amounts reasonably incurred and expended by Landlord, including the reasonable fees of Landlord's agents and attorneys and all expenses incurred in defense of such litigation.

(b) In the event of litigation between Landlord and Tenant concerning enforcement of any right or obligation under this Lease, the non-prevailing party must reimburse the prevailing party for the attorney's fees reasonably incurred and expended by the prevailing party in the litigation.

17.05. Time of Essence

Time is of the essence of the Lease and of each provision.

17.06. Computation of Time

The time in which any act provided by this Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a holiday, and then it is also excluded. The term "holiday" will mean all holidays as defined by the statutes of Alaska.

17.07. Successors in Interest

Each and all of the terms, covenants and conditions in this Lease will inure to the benefit of and will be binding upon the successors in interest of Landlord and Tenant.

17.08. Entire Agreement

This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agreement, statement of promise made by any party that is not contained in the Lease will be binding or valid.

17.09. Governing Law and Venue

This Lease will be governed by, construed and enforced in accordance with the laws of the State of Alaska. Any action or suit arising between the parties in relation to or in connection with this Lease, or for the breach thereof, must be brought in the Third Judicial District of the State of Alaska.

17.10. Partial Invalidity

If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will remain in full force and effect and will in no way be affected, impaired or invalidated, unless such provisions are considered by Tenant to be integral to Tenant's use of the Property for the purposes stated herein in which case Tenant will have the authority to terminate this Lease upon thirty (30) days written notice to Landlord.

17.11. Relationship of Parties

Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant and neither the method of computation of rent, nor any other provision contained in this Lease nor any acts of the parties, shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.

17.12. Interpretation

The language in all parts of this Lease must in all cases be simply construed according to its fair meaning and not for or against Landlord or Tenant as both Landlord and Tenant have had opportunity for the assistance of attorneys in drafting and reviewing this Lease.

17.13. Number and Gender

In this Lease, the neuter gender includes the masculine and the feminine, and the singular number includes the plural; the word "person" includes corporation, partnership, firm or association wherever the context so requires.

17.14. Mandatory and Permissive

"Shall," "must," "will," and "agrees" are mandatory; "may" is permissive.

17.15. Captions

Captions of the paragraphs of this Lease are for convenience and reference only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

17.16. Amendment

This Lease is not subject to amendment except in writing executed by all parties hereto.

17.17. Delivery of Notices - Method and Time

All notices, demands or requests from one party to another must be delivered in person or be sent by (i) mail, certified or registered, postage prepaid, or (ii) facsimile transmission (accompanied by reasonable evidence of receipt of the transmission and with a confirmation copy mailed by first class mail no later than the day after transmission) to the

addresses stated in paragraph 17.18 and will be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.

17.18. Notices

All notices, demands and requests from Tenant to Landlord must be given to Landlord at the following address:

City Manager
City of Homer
491 East Pioneer Avenue
Homer, Alaska 99603
Facsimile: (907) 235-3148

All notices, demands or requests from Landlord to Tenant must be given to Tenant at the following address:

Facsimile: _____

17.19. Change of Address or Agent

Each party may, from time to time, designate a different address or different agent for service of process by notice given in conformity with paragraph 17.17.

17.20. Multi-Party Tenant

If Tenant is comprised of more than one natural person or legal entity, the obligations under this Lease imposed upon Tenant are joint and several obligations of all such persons and entities. All notices, payments, and agreements given or made by, with, or to any one of such persons or entities will be deemed to have been given or made by, with, or to all of them, unless expressly agreed otherwise by Landlord in writing.

[OPTIONAL SPECIAL PROVISIONS] -- 18.01 prior lease amended and superceded

18. SPECIAL PROVISIONS

18.01. Prior Lease

Landlord and Tenant are parties to a Lease Agreement affecting the Property dated November 1995 and recorded in the records of the Homer Recording District at Book 247, commencing at Pages 893 (the "Former Lease"). This Lease amends and supercedes the Former Lease effective as of November 1, 2002, and on and after that date the Former Lease shall have no force or effect, except that it shall remain in effect as to events, rights, obligations, or remedies arising or accruing under the Former Lease prior to that date.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the dates hereinbelow set forth.

Landlord:

CITY OF HOMER

Date: _____

By _____
Ronald Wm. Drathman,
City Manager

Tenant:

Date: _____

By _____

(name)
(title)

ORIGINAL

Date: _____

By _____

(name)
(title)

ACKNOWLEDGMENTS

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me on _____, 2002, by Ronald Wm. Drathman, City Manager of the City of Homer, on behalf of the City of Homer.

Mary Calhoun, AAE/CMC,
Homer City Clerk
My Term Expires: with office .

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me on _____,
2002, by _____, as _____ (title) of
_____ (name of entity), a state of _____
(state) _____ (type of entity) on behalf of _____
(name of entity).

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me on _____,
2002, by _____, as _____ (title) of
_____ (name of entity), a state of _____
(state) _____ (type of entity) on behalf of _____
(name of entity).

ORIGINAL

Notary Public in and for Alaska
My Commission Expires: _____

EXHIBIT A

**SCHEDULE OF ORGANIZATION, OWNERS,
PERCENTAGE OF OWNERSHIP**

Tenant, _____, is a _____ organized under the laws of the state of _____. Attached to this exhibit is a certificate issued by that state certifying that Tenant is in good standing and describing its legal organization. If Tenant is a foreign entity authorized to conduct business in Alaska, its certificate of authority is also attached

The _____ (specify whether shareholders, partners, members, etc.) and their percentage of ownership are as follows:

Name _____ %

Address: _____

TOTAL 100 %

EXHIBIT B

**CONFORMED COPY OF RESOLUTION AUTHORIZING LEASE
AND AUTHORIZING SIGNERS TO SIGN LEASE AGREEMENT ON
BEHALF OF TENANT**

ORIGINAL

EXHIBIT C

SITE PLANS

ORIGINAL

EXHIBIT D
FLOOR PLANS

ORIGINAL

EXHIBIT E

GENERAL LIABILITY INSURANCE ENDORSEMENT

City of Homer ("City")
491 East Pioneer Ave.
Homer, Alaska 99603-7624

Attn.: City Manager

A. POLICY INFORMATION

- 1. Insurance company; Policy no.
2. Policy term (from) to; Endorsement effective date:
3. Named insured
4. Address of named insured

5. Policy is: claims-made occurrence
6. If claims made: Retroactive date: Is tail coverage afforded?
7. Limit of liability any one occurrence: \$ Aggregate: \$
8. Deductible or self-insured retention (tail unless otherwise specified): \$

B. POLICY AMENDMENTS

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:

1. INSURED. The City, its elected or appointed officials, employees and volunteers are included as insured with regard to damages and defense of claims arising from: (a) activities performed by or on behalf of the named insured; (b) products and completed operations of the named insured; or (c) premises owned, leased or used by named insured.

2. CONTRIBUTION NOT REQUIRED. As respects: (a) work performed by the named insured for or on behalf of the City; or (b) products sold by the named insured to the City; or (c) premises leased by the named insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its elected or appointed officials, employees or volunteers; or stand in an unbroken chain of coverage excess of the named insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its elected or appointed officials, employees or volunteers shall be excess of this insurance and shall not contribute with it.

3. SCOPE OF COVERAGE. The policy: (a) if primary, affords coverage at least as broad as forms currently in use as approved by the State of Alaska Division of Insurance; and (b) if excess, affords coverage which is at least as broad as the primary insurance forms reference in the preceding subpart (a).

4. SEVERABILITY OF INTEREST. The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the Company's limit of liability.

5. PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its elected or appointed officials, employees or volunteers.

6. CANCELLATION NOTICE. The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail return receipt requested has been given to the City. Such notice shall be addressed as shown in the heading of this endorsement.

C. SIGNATURE OF INSURER OR ITS AUTHORIZED REPRESENTATIVE:

I, _____ (print/type name), _____ (title)
warrant that I have authority to bind the below-named insurance company and by my
signature hereon do so bind this company.

Signature _____
(original signature required on endorsement furnished to the City)

Company _____

Address _____

Phone _____

Fax _____

EXHIBIT F

WORKERS' COMPENSATION/EMPLOYERS LIABILITY ENDORSEMENT

City of Homer ("City")
491 East Pioneer Ave.
Homer, Alaska 99603-7624

A. POLICY INFORMATION

- 1. Insurance company: _____ ("Company");
Policy No. _____
2. Effective date of this endorsement: _____
3. Named insured: _____
4. Employer's liability limit (Coverage B): _____

B. POLICY AMENDMENTS

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:

1. CANCELLATION NOTICE. The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Such notice shall be sent to the address given in the heading of this endorsement.

2. WAIVER OF SUBROGATION. The Company agrees to waive all rights of the subrogation against the City, its elected or appointed officials, agents and employees for losses paid under the terms of this policy which arise from work performed by the named insured for the City.

C. SIGNATURE OF INSURER OR ITS AUTHORIZED REPRESENTATIVE

I, _____ (print/type name), _____ (title) warrant that I have authority to bind the below-named insurance company and, by my signature hereon, do so bind this company.

Signature: _____
(original signature required on endorsement furnished to the City)

Company _____
Address _____

Phone _____ Fax _____

EXHIBIT G

PERMISSION TO OBTAIN INSURANCE POLICIES

The City of Homer is hereby granted permission to request and obtain copies of _____ ("Tenant") insurance policies from Tenant's broker and/or insurer, _____. Tenant requests the broker/insurer to provide the City of Homer with information about and copies of all of Tenant's insurance policies providing the type of coverage required by the Lease between Tenant and the City of Homer.

It is understood that the Tenant may revoke this permission at any time by written notice to City of Homer and to Tenant's broker and/or insurer; however, such revocation will constitute a default of Tenant's lease from the City of Homer.

ORIGINAL

Date: _____

TENANT NAME

By: _____
_____ (printed name)
_____ (title)

By: _____
_____ (printed name)
_____ (title)

EXHIBIT H

LEGAL DESCRIPTION EXHIBIT

ORIGINAL

GROUND LEASE AND SECURITY AGREEMENT

BETWEEN

CITY OF HOMER, ALASKA
NEW
AND
NEW

_____, 201__

GROUND LEASE AND SECURITY AGREEMENT

GROUND LEASE AND SECURITY AGREEMENT ("Lease") dated as of _____, 201____, between the CITY OF HOMER, an Alaska municipal corporation ("Landlord"), whose address is 491 East Pioneer Avenue, Homer, Alaska 99603, and _____ a _____ [state of organization] _____ [type of entity] ("Tenant"), whose address is _____.

OPTIONAL PARAGRAPH, APPLICABLE WHEN TENANT IS NOT A NATURAL PERSON

Attached as **Exhibit A** is a schedule naming each owner of Tenant and describing the percentage of ownership of each. Also attached to **Exhibit A** are a certificate of good standing issued by the state under whose laws Tenant is organized, and, if Tenant is a foreign entity, a certificate of authority issued by the State of Alaska. Attached as **Exhibit B** is a true and correct copy of a resolution of Tenant authorizing Tenant to enter into this Lease and authorizing the undersigned individual(s) or officer(s) to execute the Lease on behalf of Tenant.

NEW RECITALS

WHEREAS, Landlord owns certain properties having a strategic location near the waterfront and marine-related public infrastructure; and

WHEREAS, it is the policy of Landlord to retain ownership of these properties, and to make them available for leasing, in order to encourage growth in targeted economic sectors, to insure that Landlord receives the maximum benefit from a large investment in public infrastructure, and to provide land for businesses that require close proximity to the waterfront or infrastructure to operate efficiently and profitably; and

WHEREAS, Landlord has accepted Tenant's proposal to lease and develop the property leased herein, because Tenant's proposed use of the property should further Landlord's goals for the development of Landlord's properties, and Tenant's proposal to lease and develop the property is a material inducement to Landlord leasing the property to Tenant; and

WHEREAS, Tenant has made its own determination that its proposed development of the property will be economically feasible, and that the term for which it is leasing the property will be sufficient to amortize Tenant's investment in developing the leased property under Tenant's proposal.

NOW, THEREFORE, in consideration of the matters recited above, and the mutual covenants herein, the parties agree as follows:

ARTICLE 1. DEFINITIONS AND ATTACHMENTS

1.01 Definitions. As used herein, the term:

(a) "Annual Rent Adjustment" and "Annual Rent Adjustment Date" are defined in Section 4.01(b).

(b) "Base Rent" is defined in Section 4.01.

(c) "Complete" and "Completion" mean, with regard to an improvement, that construction of the improvement is finished and the improvement is fully operational and ready for occupancy or use for its intended purpose, including without limitation the issuance of any applicable certificate of occupancy and other applicable permits, licenses, certificates or inspection reports necessary to the improvement's legally authorized use.

(d) "Council" means the City Council of the City of Homer, Alaska.

(e) "Default Rate" means an annual rate of interest equal to the lesser of (i) the maximum rate of interest for which Tenant may lawfully contract in Alaska, or (ii) ten and one-half percent (10.5%).

(f) "Environmental Laws" means all local, state, and federal laws, ordinances, regulations, and orders related to environmental protection; or the use, storage, generation, production, treatment, emission, discharge, remediation, removal, disposal, or transport of any Hazardous Substance.

(g) "Excusable Delay" means delay due to strikes, acts of God, inability to obtain labor or materials, orders of any governmental authority having jurisdiction, removal of Hazardous Materials discovered at any time after the commencement of the Term, enemy action, civil commotion, fire, unusual inclement weather, unavoidable casualty or similar causes beyond the reasonable control of Tenant.

(h) "Extended Term" is defined in Section 3.02.

(i) "Five Year Rent Adjustment Date" is defined in Section 4.02(a).

(j) "Hazardous Substance" means any substance or material defined or designated as hazardous or toxic waste; hazardous or toxic material; hazardous, toxic, or radioactive substance; or other similar term by any federal, state, or local statute, regulation, or ordinance or common law presently in effect or that may be promulgated in the future as such statutes, regulations, and ordinances may be amended from time to time.

(k) "Landlord" means the City of Homer, Alaska.

(l) "Lease Policy" means the City of Homer Property Management Policy and Procedures, as adopted and amended from time to time by Council resolution.

(m) "Leasehold Mortgage" is defined in Section 13.01.

(n) "Property" is defined in Section 2.01.

(o) "Qualified Mortgagee" is defined in Section 13.03.

(p) "Required Improvements" is defined in Section 6.02.

(q) "Tenant" means _____.

(r) "Term" is defined in Section 3.01.

1.02 Attachments. The following documents are attached hereto, and such documents, as well as all drawings and documents prepared pursuant thereto, shall be deemed to be a part hereof:

- Exhibit "A" Schedule of Organization, Owners, Percentage of Ownership
- Exhibit "B" Conformed Copy of Resolution Authorizing Lease and Authorizing Signers to Sign Lease Agreement on Behalf of Tenant
- Exhibit "C" Legal Description of Property
- Exhibit "D" Tenant's Lease Proposal
- Exhibit "E" Site Plan
- Exhibit "F" Required Improvements Floor Plan
- Exhibit "G" Certificates of Insurance
- Exhibit "H" Permission to Obtain Insurance Policies

ARTICLE 2. THE PROPERTY

2.01 Lease of Property. Subject to the terms and conditions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the following described property ("Property"):

[must insert legal description], Homer Recording District, State of Alaska, as depicted on Exhibit C, containing _____ square feet, more or less, also known as Kenai Peninsula Borough Tax Parcel No. _____;

subject, however, to reservations, restrictions, easements and encumbrances of record, and to encroachments that may be revealed by an inspection of the Property.

2.02 Quiet Enjoyment. Landlord covenants that Tenant, upon paying the rent and other charges and performing its other obligations under this Lease, shall have quiet enjoyment of the Property during the Term without hindrance or interference by Landlord or by any person claiming an interest in the Property through Landlord.

2.03 Property Accepted "As Is." Tenant has inspected the Property, has made its own determination as to the suitability of the Property for Tenant's intended use, and accepts the Property "AS IS." Landlord, its agents and employees make no warranties, expressed or implied, concerning the condition of the Property, including without limitation the habitability or fitness of the Property for any particular purpose, including those uses authorized by this Lease, or subsurface and soil conditions, including the presence of any Hazardous Substance.

OPTIONAL PARAGRAPH 2.03. APPLICABLE IF TENANT OBTAINS ENVIRONMENTAL ASSESSMENT.

2.03 Property Accepted "As Is;" Exception for Hazardous Substances.

(a) Tenant has inspected the Property, has made its own determination as to the suitability of the Property for Tenant's intended use, and accepts the Property "AS IS." Except as provided in subsection (b), Landlord, its agents and employees make no warranties, expressed or implied, concerning the condition of the Property, including without limitation the habitability or fitness of the Property for any particular purpose, including those uses authorized by this Lease, or subsurface and soil conditions.

(b) Tenant shall obtain, at its own expense, a phase I environmental assessment of the Property as of the earlier of (i) the commencement of the Term, and (ii) Tenant's initial occupancy of the Property. If Landlord reasonably determines that the phase I environmental assessment is acceptable, Landlord will warrant that the condition of the Property as of the applicable date with regard to the presence of any Hazardous Substance is consistent with the results of the phase I environmental assessment.

2.04 No Subsurface Rights. This Lease confers no mineral rights or rights with regard to the subsurface of the Property below the level necessary for the uses of the Property permitted in this Lease.

ARTICLE 3. TERM

3.01 Lease Term. The term of this Lease is _____ years, commencing on _____, 201____, and ending on _____, 20____ ("Term").

3.02 Options to Extend Lease Term.

(a) Tenant has the option to extend the Term for _____ additional consecutive _____ year periods (each an "Extended Term"), provided that:

(1) Tenant gives Landlord written notice of its exercise of the option not more than one year and not less than 120 days before the last day of the Term or current Extended Term, as the case may be;

(2) At the time Tenant exercises the option, and at all times thereafter until the Extended Term commences, Tenant is not materially in default of any term or condition of this Lease and has not made an assignment or subletting of this Lease or any interest in the Property except as permitted under this Lease; and

(3) Tenant may exercise no more than one option to extend the Term during the Term or any Extended Term.

(b) Tenant's failure to exercise an option to extend the Term in strict compliance with all the requirements in Section 3.02(a) renders that option and all options as to subsequent Extended Terms null and void.

3.03 Lease Renewal.

(a) Tenant represents and warrants that it has determined that the duration of the Term, plus any available Extended Terms, will be sufficient for Tenant to amortize any investment that it makes in connection with this Lease, including without limitation any investment in leasehold improvements. Tenant acknowledges that it has no right of any kind to continue using or occupying the Property after the expiration or earlier termination of the Term or the final Extended Term, including without limitation any option to renew this Lease, or any option to extend the Term other than as provided in Section 3.02.

(b) Not less than 12 months before the expiration of the Term or the final Extended Term, Tenant may apply to Landlord for a renewal of this Lease in the manner that a person then would apply for a new lease of the Property. In response to a timely application, the Council will determine whether to renew this Lease, and the term of any renewal, in its sole discretion. The Council is under no obligation to renew this Lease, or to renew this Lease for the term that Tenant requests. If the Council does not grant a timely application to renew this Lease, Tenant shall prepare to surrender possession of the Property as required by Section 3.04, and dispose of improvements on the Property as required by Section 6.08.

3.04 Surrender of Possession. Upon the expiration or earlier termination of the Term or the final Extended Term, Tenant shall promptly and peaceably surrender the Property, clean, free of debris, and in as good order and condition as at the commencement of the Term, ordinary wear and tear excepted, and shall remove from the Property all personal property that was not present on the Property at the commencement of the Term. If Tenant fails to surrender the Property in the required condition, Landlord may restore the Property to such condition and Tenant shall pay the cost thereof, plus interest at the Default Rate, on demand. Section 6.08 governs the disposition of improvements on the Property at the expiration or earlier termination of the Term or final Extended Term.

3.05 Holding Over. Tenant's continuing in possession of the Property after the expiration or earlier termination of the Term or final Extended Term will not renew or extend this Lease. In the absence of any agreement renewing or extending this Lease, Tenant's continued possession of the Property after the end of the Term will be a tenancy from month to month, terminable upon 30 days written notice by either party at any time, at a monthly rental equal to 150% of the monthly Base Rent in effect at the end of the Term, subject to all other terms of this Lease. For good cause, Landlord may waive all or part of the increase in Base Rent during the holdover period.

ARTICLE 4. RENT, TAXES, ASSESSMENTS AND UTILITIES

4.01 Base Rent. Tenant shall pay to Landlord an initial annual rent of \$ _____ ("Base Rent"). Base Rent is payable monthly in advance in installments of \$ _____, plus tax, on _____, 201____, and on the ____ day of each month thereafter, at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. All Base Rent shall be paid without prior demand or notice and without deduction or offset. Base Rent that is not paid on or before the due date will bear interest at the Default Rate. Base Rent is subject to adjustment as provided in Section 4.02.

4.02 Rent Adjustments.

(a) **Five-Year Appraised Rent Adjustments.** Commencing January 1, _____, and in every fifth year thereafter, Landlord will obtain an appraisal by a qualified real estate appraiser of the fair rental value of the Property as if privately owned in fee simple, excluding the value of improvements (other than utilities) made by tenants. The appraisal may be performed as part of an appraisal of other properties of Landlord that are comparable in location and value. The Base Rent will be adjusted effective _____ 1 of the year of each appraisal (each such date is a "Five Year Rent Adjustment Date") to an amount equal to the greater of (i) the area of the Property in square feet, multiplied by the fair rental value per square foot determined by the appraisal, and (ii) the adjusted Base Rent in effect immediately before the Five Year Rent Adjustment Date. The rent adjusted on a Five Year Rent Adjustment Date thereafter shall be the Base Rent.

(b) **Annual Rent Adjustments.** In addition to the rent adjustments under Section 4.02(a), the Base Rent also shall be adjusted annually (the "Annual Rent Adjustment") effective _____ 1, and on each _____ 1 thereafter, excluding each Five Year Rent Adjustment Date (each such date being an "Annual Rent Adjustment Date"), by the increase or decrease, if any, for the previous year in the cost of living as stated in the Consumer Price Index, All Urban Consumers, Anchorage, Alaska Area, All Items 2000-present=100 ("CPI-U"), as published by the United States Department of Labor, Bureau of Labor Statistics most recently before the Annual Rent Adjustment Date. If the CPI-U is revised or ceases to be published, Landlord instead shall use such revised or other index, with whatever adjustment in its application is necessary, to most nearly approximate in Landlord's judgment the CPI-U for the relevant period.

4.03 Taxes, Assessments and Other Governmental Charges. Tenant shall pay prior to delinquency all taxes, installments of assessments that are payable in installments and other governmental charges lawfully levied or assessed upon or with respect to the Property, improvements on the Property and personal property that is situated on the Property; provided that Tenant may contest in good faith any such tax, assessment or other governmental charge without subjecting the Property to lien or forfeiture. If an assessment on the Property that is not payable in installments becomes due during the Term or an Extended Term, Tenant shall be obligated to pay the fraction of the assessment that is determined by dividing the number of years remaining in the Term or Extended Term by 10. If this Lease subsequently is extended or renewed, the part of the assessment that Tenant shall pay shall be determined by adding the extended or renewal term to the number of years remaining in the Term when the assessment became due. If the Term commences or expires during a tax year, the taxes or assessments payable for that year will be prorated between Landlord and Tenant. Tenant shall exhibit to Landlord, on demand, receipts evidencing payment of all such taxes, assessments and other governmental charges.

4.04 Utility Charges. Tenant shall pay all charges for utility and other services provided to or used on the Property, including without limitation gas, heating oil, electric, water, sewer, heat, snow removal and refuse removal. Tenant shall be solely responsible for the cost of utility connections.

4.05 Tenant to Pay for City Services. Tenant shall pay for all services provided by the City of Homer that are related to the use or operation of the Property, improvements thereon and Tenant's activities thereon. Without limiting the generality of the preceding sentence, Tenant shall pay for wharfage, crane use, ice, and other Port and Harbor services at

the rates established by the City of Homer from time to time. Tenant shall provide the City of Homer with the information necessary to determine wharfage, crane use, ice and other Port and Harbor service charges, keep written records of such information for not less than two years after such charges are due, and, upon request, make such records available to the City of Homer for inspection and audit.

4.06 Additional Rent and Landlord's Right to Cure Tenant's Default. All costs or expenses that Tenant is required to pay under this Lease at Landlord's election will be treated as additional rent, and Landlord may exercise all rights and remedies provided in this Lease in the event of nonpayment. If Tenant defaults in making any payment required of Tenant or defaults in performing any term, covenant or condition of this Lease that involves the expenditure of money by Tenant, Landlord may, but is not obligated to, make such payment or expenditure on behalf of Tenant, and any and all sums so expended by Landlord, with interest thereon at the Default Rate from the date of expenditure until repaid, will be additional rent and shall be repaid by Tenant to Landlord on demand, provided, however, that such payment or expenditure by Landlord will not waive Tenant's default, or affect any of Landlord's remedies for such default.

4.07 Security Deposit. Upon execution of this Lease, Tenant shall deposit with Landlord an amount equal to 10% of the annual Base Rent as security for Tenant's performance of its obligations under this Lease. Landlord will hold the security deposit, and may commingle it with other funds of Landlord. If Tenant defaults in performing any obligation under this Lease, including without limitation the payment of rent, Landlord may apply all or any portion of the security deposit to the payment of any sum in default or any damages suffered by Landlord as result of the default, or any sum that Landlord may be required to incur by reason of the default. Upon demand, Tenant shall deposit with Landlord the amount so applied so that Landlord will have the full deposit on hand at all times during the Term or Renewal Term. If Tenant has fully complied with all of its obligations under this Lease through the first five years of the Term, Landlord will remit to Tenant any balance of the security deposit, without interest, within 30 days after the expiration of the first five years of the Term.

OPTIONAL PARAGRAPH 4.08, APPLICABLE TO FISH PROCESSORS WITH ACCESS TO OUTFALL LINE

4.08 Outfall Line Connection Agreement. Tenant shall connect to the City of Homer fish processor outfall line. On or before the commencement of the Term of this Lease, Tenant shall enter into a Fish Processor Outfall Line Connection Agreement with Landlord, and thereafter at its own expense install and maintain a fish grinder as required by the Fish Processor Outfall Line Connection Agreement. Tenant shall comply with the terms of the Fish Processor Outfall Line Connection Agreement until the earlier to occur of (i) the expiration or earlier termination of the Term and any Extended Term, and (ii) the date the City of Homer ceases to maintain the outfall line.

ARTICLE 5. SECURITY INTEREST

To secure the performance of Tenant's obligations under this Lease, including without limitation the obligations to pay rent and other sums to be paid by Tenant, Tenant grants to Landlord a security interest in the following collateral ("Collateral"): (1) all security deposits or other monies owing from Landlord to Tenant (as collateral in the possession of the secured party); (2) all insurance proceeds from any policy insuring the Property or improvements

thereon against environmental contamination or pollution; (3) all compensation payable to Tenant as a result of eminent domain proceedings or a transfer in lieu thereof; and (4) all rents from Tenant's subletting of all or a part of the Property. Said lien and security interest will be in addition to Landlord's liens provided by law.

This Lease constitutes a security agreement under the Uniform Commercial Code as enacted in Alaska ("UCC"), and Landlord will have all rights and remedies of a secured party under the UCC regarding the Collateral. Tenant shall execute such financing statements and other instruments as Landlord may now or hereafter reasonably request to evidence the security interest granted by Tenant.

ARTICLE 6. USE AND IMPROVEMENT OF PROPERTY

6.01 Use of Property. Tenant's undertaking to use and improve the Property as described in Tenant's proposal to Landlord is a material inducement to Landlord leasing the Property to Tenant. Tenant shall improve and use the Property in the manner described in Tenant's proposal. Tenant's proposed use of the Property is described in **Exhibit D**. Tenant shall not use or improve the Property for any purpose other than as described in Tenant's proposal without Landlord's written consent, which consent Landlord may withhold in its sole discretion.

6.02 Required Improvements. Tenant shall, at Tenant's sole expense, construct, and at all times during the Term and any Renewal Term keep and maintain as the minimum development on the Property the following improvements ("Required Improvements")

The Required Improvements also are depicted in the site plan and floor plans in **Exhibit E** and **Exhibit F**, respectively. Tenant shall commence construction of the Required Improvements within one year after the date of commencement of the Term, prosecute the construction of the Required Improvements with diligence, and Complete construction within one additional year.

6.03 Construction Prerequisites. Tenant may not commence any construction on the Property, including without limitation construction of the Required Improvements, without first satisfying the following conditions:

(a) Not less than 30 days before commencing construction, Tenant shall submit to Landlord preliminary plans and specifications, and an application for a City of Homer zoning permit, for the construction, showing the layout of proposed buildings and other improvements, ingress and egress, dimensions and locations of utilities, drainage plans, and any other information required for the zoning permit or other required permits. The preliminary plans and specifications are subject to Landlord's approval, which will not be unreasonably withheld. Landlord shall communicate approval or disapproval in the manner provided for notices, accompanying any disapproval with a statement of the grounds therefor. Tenant shall be responsible for complying with all laws governing the construction,

notwithstanding Landlord's approval of preliminary plans and specifications under this paragraph.

(b) Not less than five days before commencing construction, Tenant shall deliver to Landlord one complete set of final working plans and specifications as approved by the governmental agencies whose approval is required for Tenant to commence construction. The final working plans and specifications shall conform substantially to the preliminary plans and specifications previously approved by Landlord, subject to changes made to comply with suggestions, requests or requirements of a governmental agency or official in connection with the application for permit or approval.

(c) Not less than five days before commencing construction, Tenant shall give Landlord written notice of its intent to commence construction, and furnish to Landlord the following:

(1) Proof that all applicable federal, state and local permits required for the construction have been obtained.

(2) For construction, alteration or restoration of Required Improvements, a current certificate of insurance with the coverages specified in Section 9.04(c).

6.04 Extensions of Time for Completion of Required Improvements. Landlord shall grant an extension of the time to Complete the Required Improvements for a period of time equal to the duration of an Excusable Delay, upon Tenant's written request describing the nature of the Excusable Delay, provided Tenant has commenced construction in a timely manner and is proceeding diligently to Complete construction.

6.05 Additional and Replacement Improvements.

(a) Construction of improvements that are not consistent with terms of this Lease is prohibited unless the improvements are authorized by an amendment to this Lease approved by the Council.

(b) Subject to Section 6.05(a), upon satisfying the conditions in section 6.03, Tenant at any time may, but is not obligated to, construct new improvements on the Property and demolish, remove, replace, alter, relocate, reconstruct or add to existing improvements; provided that Tenant is not then in default under this Lease and provided further that Tenant continuously maintains on the Property the Required Improvements, or their equivalent of equal or greater value. Once any work is begun, Tenant shall with reasonable diligence prosecute to Completion all construction of improvements, additions, alterations, or other work. All salvage resulting from such work will belong to Tenant, who is responsible for its removal and lawful disposal.

6.06 As-Built Survey. Within 30 days after Completion of construction of any improvements on the Property involving construction, alteration, addition, removal or demolition of the foundation, structure, utility services, ingress and egress, or any major changes of all or any part of any structure or improvement on the Property, Tenant shall provide Landlord with three copies of an as-built survey of the Property prepared by a registered professional surveyor, showing the location of all improvements on the Property, including underground utilities, pipelines and pre-existing improvements. Tenant shall

accompany the as-built survey with a description of all changes from the approved plans or specifications made during the course of the work.

6.07 Ownership of Improvements. Any and all buildings, fixtures and improvements of any nature whatsoever constructed or maintained on the Property by Tenant will be and remain the property of Tenant at all times during the Term and any Extended Terms and may be removed or replaced by Tenant, subject, however, to (i) Tenant's obligations concerning the Required Improvements in Section 6.02; and (ii) the designation of improvements in **Exhibit D** for transfer to Landlord and retention on the Property at the expiration of the Term or Extended Term as provided in Section 6.08(a).

6.08 Disposition of Improvements at End of Term.

(a) At the expiration of the Term or Extended Term Tenant shall leave in place on the Property all improvements designated in **Exhibit D** for transfer to Landlord and retention on the Property at the expiration of the Term or Extended Term. Tenant shall leave such improvements intact with all components, including without limitation doors, windows, and plumbing, electrical and mechanical fixtures and systems, in good condition and ready for use or occupancy. Tenant shall execute, acknowledge and deliver to Landlord a proper instrument in writing, releasing and quieting to Landlord all of Tenant's interest in such improvements. Except for improvements that Tenant is required to leave on the Property, Tenant shall remove any improvements constructed by Tenant or other occupants of the Property under this Lease before the expiration of the Term or Extended Term.

(b) Tenant shall notify Landlord before commencing the removal of an improvement as required under Section 6.08(a), and coordinate the removal work with Landlord. Once Tenant commences the removal work, Tenant shall prosecute the removal with reasonable diligence to completion and shall repair all damages to the Property caused by such removal no later than the expiration of the Term or Extended Term. All salvage resulting from such work will belong to Tenant, who is responsible for its removal and lawful disposal.

(c) If Tenant fails to remove any improvements from the Property that Tenant is required to remove under Section 6.08(a), Tenant shall pay Landlord the costs that it incurs in removing and disposing of the improvements and repairing damages to the Property caused by such removal.

(d) If Landlord terminates this Lease because of a default by Tenant, all improvements on the Property become the property of Landlord, which may use or dispose of them in its sole discretion. If Landlord elects to remove any improvements, Tenant shall pay Landlord the costs that it incurs in removing and disposing of the improvements and repairing damages to the Property caused by such removal.

ARTICLE 7. CARE AND USE OF THE PROPERTY

7.01 Maintenance of the Property. Tenant at its own cost and expense shall keep the Property and all buildings and improvements that at any time may be situated thereon in a clean, safe and orderly condition, and in good repair at all times during the Term.

7.02 Repair of Improvements.

(a) Except as provided in Section 7.02(b), in the event any buildings or improvements situated on the Property by Tenant are damaged or destroyed by fire, earthquake, tsunami, or other casualty, Tenant shall at Tenant's expense restore the same to good and tenantable condition or shall remove the same as soon as is reasonably possible, but in no event may the period of restoration exceed 18 months nor may the period of removal exceed 45 days.

(b) Unless Tenant is excused from the obligation under this paragraph, if the Required Improvements or any part thereof are damaged or destroyed by fire, earthquake, tsunami, or other casualty, rendering the Required Improvements totally or partially inaccessible or unusable, Tenant shall at Tenant's expense restore the Required Improvements to substantially the same condition as they were in immediately before such damage. Tenant shall not be required to restore the Required Improvements under the following circumstances:

(1) If the cost of repairing or restoring the Required Improvements, net of any available insurance proceeds not reduced by applicable deductibles and coinsurance, exceeds 10% of the replacement cost of the Required Improvements, Tenant may terminate this Lease by giving notice to Landlord of Tenant's election to terminate within 15 days after determining the restoration cost and replacement cost, and this Lease shall terminate as of the date of such notice.

(2) If the repair or restoration of the Required Improvements would be contrary to law, either party may terminate this Lease immediately by giving notice to the other party.

(3) If any damage or casualty to the Required Improvements occurs within three years before the end of the Term or any Renewal Term, Tenant may, in lieu of restoring or replacing the Required Improvements, terminate this Lease by giving written notice of termination to Landlord within 120 days after such damage or casualty.

Nothing in this paragraph relieves Tenant of the obligation to surrender the Property upon the expiration or earlier termination of the Term in the condition required by Section 3.03.

(c) Under no circumstance shall Landlord be under any obligation to use or advance any of its own funds to restore any Required Improvements.

7.03 Nuisances Prohibited. Tenant at all times shall keep the Property in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; junk, abandoned or discarded property, including without limitation vehicles, equipment, machinery or fixtures; and litter, rubbish or trash. Tenant shall not use the Property in any manner that will constitute waste or a nuisance. Landlord, at Tenant's expense and without any liability to Tenant, may remove or abate any such junk, abandoned or discarded property, litter, rubbish or trash, or nuisance on the Property after 15 days written notice to Tenant, or after four hours notice to Tenant in writing, by telephone, facsimile or in person if Landlord makes a written finding that such removal or abatement is required to prevent imminent harm to public health, safety or welfare. Tenant shall pay Landlord all the costs of such removal, plus interest at the Default Rate, as additional rent under this Lease. This section does not

limit or waive any other remedy available to the City of Homer to abate any nuisance or for the violation of the Homer City Code.

7.04 Compliance with Laws. Tenant's improvement and use of the Property shall comply with all governmental statutes, ordinances, rules and regulations, including without limitation the City of Homer Zoning Code and all applicable building codes, now or hereafter in effect.

7.05 Liens. Except as provided in Article 13, Tenant may not permit any lien, including without limitation a mechanic's or materialman's lien, to be recorded against the Property. If any such lien is recorded against the Property, Tenant shall cause the same to be removed; provided that Tenant may in good faith and at Tenant's own expense contest the validity of any such lien without subjecting the Property to foreclosure, and in the case of a mechanic's or materialman's lien, if Tenant has furnished the bond required in A.S. 34.35.072 (or any comparable statute hereafter enacted providing for a bond freeing the Property from the effect of such a lien claim). Tenant shall indemnify and save Landlord harmless from all liability for damages occasioned by any such lien, together with all costs and expenses (including attorneys' fees) incurred by Landlord in negotiating, settling, defending, or otherwise protecting against such lien and shall, in the event of a judgment of foreclosure of the lien, cause the same to be discharged and removed prior to any attempt at execution of such judgment.

7.06 Radio Interference. Upon Landlord's request, Tenant shall discontinue the use on the Property of any source of electromagnetic radiation that interferes with any government operated transmitter, receiver or navigation aid until the cause of the interference is eliminated.

7.07 Signs. Tenant may erect signs on the Property that comply with state and local sign laws and ordinances. City Planning Department approval is required prior to the erection of any sign on the Property.

7.08 Garbage Disposal. Tenant shall keep any garbage, trash, rubbish or other refuse in industry standard containers until removed, and cause all garbage, trash, rubbish or other refuse on the Property to be collected and transported to a Kenai Peninsula Borough solid waste facility or transfer station at least once a week. Tenant may not place garbage, trash, rubbish or other refuse from the Property in Landlord's Homer Spit garbage disposal facilities.

7.09 Access Rights of Landlord. Landlord's agents and employees shall have the right, but not the obligation, to enter the Property at all reasonable times to inspect the use and condition of the Property; to serve, post or keep posted any notices required or allowed under the provisions of this Lease, including notices of non-responsibility for liens; and to do any act or thing necessary for the safety or preservation of the Property.

OPTIONAL PARAGRAPH 7. APPLICABLE FOR USE OF FISH DOCK

7. Fish Dock Use Permit. Before using the City of Homer Fish Dock, Tenant shall obtain a City of Homer Fish Dock Use Permit. Tenant shall continue to have a current Fish Dock Use Permit in force until the earlier to occur of (i) the expiration or earlier termination of the Term and any Extended Term, and (ii) the date Tenant ceases to use the Fish Dock.

OPTIONAL PARAGRAPH 7. __ APPLICABLE FOR USE OF OTHER DOCKS

7. __ Terminal Use Permit. Before using City of Homer Docks other than the Fish Dock, Tenant shall obtain a City of Homer Terminal Use Permit. Tenant shall continue to have a current Terminal Use Permit in force until the earlier to occur of (i) the expiration or earlier termination of the Term and any Extended Term, and (ii) the date Tenant ceases to use City of Homer Docks other than the Fish Dock.

ARTICLE 8. RESTRICTIONS ON TRANSFER

8.01. Consent Required for Assignment or Sublease. Tenant shall not assign or sublease its interest in this Lease or in the Property without first obtaining the written consent of the Council, which will not be withheld unreasonably. Any assignment or sublease without the consent of the Council will be voidable and, at Landlord's election, will constitute a default. Tenant shall request consent of the Council in writing at least 30 days prior to the effective date of the proposed assignment or sublease, accompanied by a copy of the proposed assignment or sublease. Tenant shall be assessed additional rent, as approved by the Council, upon approval of a sublease of the Property, but not upon a sublease of a building or other structure on the Property. No consent to any assignment or sublease waives Tenant's obligation to obtain Landlord's consent to any subsequent assignment or sublease. An assignment of this Lease shall require the assignee to assume the Tenant's obligations hereunder, and shall not release Tenant from liability hereunder unless Landlord specifically so provides in writing.

8.02. Events that Constitute an Assignment. If Tenant is a partnership or limited liability company, a withdrawal or change, voluntary, involuntary or by operation of law, of one or more partners or members owning 25% or more of the equity, or the dissolution of the entity, will be deemed an assignment subject to Section 8.01. If Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of 25% of the value of the assets of Tenant, will be deemed an assignment subject to Section 8.01; provided that if Tenant is a corporation the stock of which is traded through an exchange or over the counter, a sale or other transfer of a controlling percentage of the capital stock of Tenant will not constitute an assignment subject to Section 8.01. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least 25% of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and entitled to vote for the election of directors.

8.03 Costs of Landlord's Consent to be Borne by Tenant. As a condition to Landlord's consent to any assignment or sublease under section 8.01, Tenant shall pay Landlord's reasonable costs, including without limitation attorney's fees and the expenses of due diligence inquiries, incurred in connection with any request by Tenant for Landlord's consent to the assignment or sublease.

ARTICLE 9. LIABILITY, INDEMNITY AND INSURANCE

9.01 Limitation of Landlord Liability. Landlord, its officers and employees shall not be liable to Tenant for any damage to the Property or the buildings and improvements thereon, or for death or injury of any person or damage to any property, from any cause; however, this provision shall not affect the liability of Landlord, its officers and employees on any claim to the extent the claim arises from their negligence or willful misconduct.

9.02 Indemnity Generally. Tenant shall indemnify, defend, and hold harmless Landlord, its officers and employees from all claims arising from death or injury of any person or damage to any property occurring in or about the Property; however, this provision shall not apply to any claim to the extent the claim arises from the sole negligence or willful misconduct of Landlord, its officers and employees.

9.03 Indemnity for Emergency Service Costs. Without limiting the generality of Section 9.02, in the event of a major fire or other emergency, Tenant shall reimburse Landlord for the cost of providing fire fighting and other emergency service to Tenant, the Property or at any other location where the fire or emergency requiring response arises from or is related to the use of the Property or Tenant's operations. For purposes of this section, a major fire or other emergency is one that requires more than five hours of effort by the City of Homer Fire Department.

9.04 Insurance Requirements.

(a) Without limiting Tenant's obligations to indemnify under this Lease, Tenant at its own expense shall maintain in force at the times provided in this section the following policies of insurance with a carrier or carriers reasonably satisfactory to Landlord and authorized to conduct business in the state of Alaska. Specific limits shown shall be the minimum acceptable limits, and if Tenant's policy contains higher limits, Landlord shall be entitled to coverage to the extent of such higher limits.

(b) Tenant shall maintain in force at all times during the Term the following policies of insurance:

(1) Comprehensive general liability insurance with limits of liability not less than a combined single limit for bodily injury and property damage of \$1,000,000 each occurrence and \$2,000,000 aggregate. This insurance also shall be endorsed to provide contractual liability insuring Tenant's obligations to indemnify under this Lease.

(2) Comprehensive automobile liability covering all owned, hired and non-owned vehicles with coverage limits not less than \$1,000,000 occurrence combined single limit for bodily injury and property damage.

(3) Workers' compensation insurance as required by AS 23.30.045. This coverage shall include employer's liability protection not less than \$1,000,000 per person, \$1,000,000 per occurrence. Where applicable, coverage for all federal acts (i.e. U.S. Longshoremen and Harbor Worker's Compensation and Jones Acts) shall also be included. The workers' compensation insurance shall contain a waiver of subrogation clause in favor of Landlord.

(4) Environmental remediation and environmental impairment liability, including sudden and accidental coverage, gradual pollution coverage, and clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property, with coverage limits not less than \$1,000,000 for any one accident or occurrence. Coverage shall extend to loss arising as a result of the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.

(5) Property insurance covering the Required Improvements described in Section 6.02 in an amount not less than full replacement cost of the Required Improvements. The policy shall include boiler and machinery coverage.

(c) During construction of the Required Improvements and during any subsequent alteration or restoration of the Required Improvements at a cost in excess of \$250,000 per job, Tenant shall maintain builder's risk insurance in an amount equal to the completed value of the project.

(d) Tenant shall furnish Landlord with certificates evidencing the required insurance not later than the date as of which this Lease requires the insurance to be in effect. The certificates of insurance shall be attached hereto as **Exhibit G**. The certificates and the insurance policies required by this Section shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire, and limits of liability will not be reduced, without at least 30 days' prior written notice to Landlord. Landlord shall be named as an additional insured under all policies of liability insurance required of Tenant. Landlord's acceptance of a deficient certificate of insurance does not waive any insurance requirement in this Lease. Tenant also shall grant Landlord permission to obtain copies of insurance policies from all insurers providing required coverage to Tenant by executing and delivering to Landlord such authorizations substantially in the form of **Exhibit H** as Landlord may request.

[*ALTERNATIVE 9.04(b)(4)* — Optional provision waiving environmental insurance based on the authorized uses of Section 6.01.]

(4) Based on the authorized uses of the Property stated in section 6.01, environmental insurance is not required. However, if Tenant uses the Property, with or without authorization from Landlord, for purposes other than those stated in section 6.01, if Landlord so elects, and within 10 days after Landlord gives notice of such election, Tenant shall procure and at all times thereafter maintain, at its expense, environmental remediation and environmental impairment liability, including sudden and accidental coverage, gradual pollution coverage, and clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property, with coverage limits not less than \$1,000,000 for any one accident or occurrence. Coverage shall extend to loss arising as a result of the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.

ARTICLE 10. ENVIRONMENTAL MATTERS

10.01 Use of Hazardous Substances. Tenant shall not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process any Hazardous Substance, except as is necessary or useful to Tenant's authorized uses of the Property stated in Section 6.01, and only in compliance with all applicable Environmental Laws. Any Hazardous Substance permitted on the Property as provided in this section, and all containers therefor, shall be handled, used, kept, stored and disposed of in a manner that complies with all applicable Environmental Laws, and handled only by properly trained personnel.

10.02 Prevention of Releases. Tenant shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Tenant or any of its agents,

employees, contractors, tenants, subtenants, invitees or other users or occupants of the Property, a release of any Hazardous Substance onto the Property or onto any other property.

10.03 Compliance with Environmental Laws. Tenant at all times and in all respects shall comply, and will use its best efforts to cause all tenants, subtenants and other users and occupants of the Property to comply, with all Environmental Laws, including without limitation the duty to undertake the following specific actions: (i) Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of, any and all permits, licenses and other governmental and regulatory approvals required by all Environmental Laws, including without limitation permits required for discharge of (appropriately treated) Hazardous Substances into the ambient air or any sanitary sewers serving the Property; and (ii) except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, all Hazardous Substances from or on the Property to be treated and/or disposed of by Tenant will be removed and transported solely by duly licensed transporters to a duly licensed treatment and/or disposal facility for final treatment and/or disposal (except when applicable Environmental Laws permit on-site treatment or disposal in a sanitary landfill).

10.04 Notice. Tenant shall promptly give Landlord (i) written notice and a copy of any notice or correspondence it receives from any federal, state or other government agency regarding Hazardous Substances on the Property or Hazardous Substances which affect or will affect the Property, (ii) written notice of any knowledge or information Tenant obtains regarding Hazardous Substances or losses incurred or expected to be incurred by Tenant or any government agency to study, assess, contain or remove any Hazardous Substances on or near the Property, and (iii) written notice of any knowledge or information Tenant obtains regarding the release or discovery of Hazardous Substances on the Property.

10.05 Remedial Action. If the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment or disposal at the Property of any Hazardous Substance (i) gives rise to liability (including but not limited to a response action, remedial action or removal action) under any Environmental Law, (ii) causes a significant public health effect, or (iii) pollutes or threatens to pollute the environment, Tenant shall, at its sole expense, promptly take any and all remedial and removal action necessary to clean up the Property and mitigate exposure to liability arising from the Hazardous Substance, whether or not required by law.

10.06 Indemnification. Subject to section 10.09, Tenant shall indemnify, defend, and hold harmless Landlord, its officers and employees from and against any and all claims, disbursements, demands, damages (including but not limited to consequential, indirect or punitive damages), losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including experts', consultants' and attorneys' fees and expenses, and including without limitation remedial, removal, response, abatement, cleanup, legal, investigative and monitoring costs), imposed against Landlord, arising directly or indirectly from or out of, or in any way connected with (i) the failure of Tenant to comply with its obligations under this Article; (ii) any activities on the Property during Tenant's past, present or future possession or control of the Property which directly or indirectly resulted in the Property being contaminated with Hazardous Substances; (iii) the discovery of Hazardous Substances on the Property whose presence was caused during the possession or control of the Property by Tenant; (iv) the clean-up of Hazardous Substances on the Property; and (v) any injury or harm of any type to any person or damage to any property arising out of or relating to Hazardous Substances on the Property or from the Property on any other property.

The liabilities, losses, claims, damages, and expenses for which Landlord is indemnified under this section shall be reimbursable to Landlord as and when the obligation of Landlord to make payments with respect thereto are incurred, without any requirement of waiting for the ultimate outcome of any litigation, claim or other proceeding, and Tenant shall pay such liability, losses, claims, damages and expenses to Landlord as so incurred within 10 days after notice from Landlord itemizing in reasonable detail the amounts incurred (provided that no itemization of costs and expenses of counsel to Landlord is required where, in the determination of Landlord, such itemization could be deemed a waiver of attorney-client privilege).

10.07 Survival of Obligations. The obligations of Tenant in this Article, including without limitation the indemnity provided for in Section 10.06, are separate and distinct obligations from Tenant's obligations otherwise provided for herein and shall continue in effect after the expiration of the Term and any Renewal Term.

10.08 Claims against Third Parties. Nothing in this Article shall prejudice or impair the rights or claims of Tenant against any person other than Landlord with respect to the presence of Hazardous Substances as set forth above.

10.09 Extent of Tenant's Obligations. Tenant's obligations under this Article apply only to acts, omissions or conditions that (i) occur in whole or in part during the Term or any Extended Term or during any time of Tenant's possession or occupancy of the Property prior to or after the Term of this Lease; or (ii) are proximately caused in whole or in part by the occupancy of, use of, operations on, or actions on or arising out of the Property by Tenant or its employees, agents, customers, invitees or contractors.

10.10 Inspection at Expiration of Term. Within 90 days before the expiration of the Term or final Extended Term, Tenant shall at its own expense obtain a Phase I environmental inspection of the Property, and conduct any further inspection, including without limitation test holes, that is indicated by the results of the Phase I inspection. Tenant, at its own expense, shall remediate any contamination of the Property that is revealed by the inspections and that is Tenant's responsibility under this Article.

ARTICLE 11. CONDEMNATION

11.01 Article Determines Parties' Rights and Obligations. If any entity having the power of eminent domain exercises that power to condemn the Property, or any part thereof or interest therein, or acquires the Property, or any part thereof or interest therein by a sale or transfer in lieu of condemnation, the interests of Landlord and Tenant in the award or consideration for such transfer and the effect of the taking or transfer upon this Lease will be as provided in this Article.

11.02 Total Taking. If all of the Property is taken or so transferred, this Lease and all of Tenant's interest thereunder will terminate on the date title to the Property vests in the condemning authority.

11.03. Partial Taking. If the taking or transfer of part of the Property causes the remainder of the Property to be not effectively and practicably usable in the opinion of Tenant for the operation of Tenant's business, this Lease and all of Tenant's interest thereunder will terminate on the date title to the Property vests in the condemning authority. If the taking or transfer of part of the Property leaves the remainder of the Property effectively

and practicably usable in the opinion of Tenant for the operation of Tenant's business, this Lease and all of Tenant's interest thereunder will terminate as to the portion of the Property so taken or transferred on the date title to the Property vests in the condemning authority, but will continue in full force and effect as to the portion of the Property not so taken or transferred, and the Base Rent will abate in the proportion that the portion of the Property taken bears to all of the Property.

11.04 Compensation. Landlord and Tenant each may make a claim against the condemning or taking authority for the amount of just compensation due to it. Tenant shall make no claim against Landlord for damages for termination of the leasehold or interference with Tenant's business, even if Landlord is the condemning or taking authority. Neither Tenant nor Landlord will have any rights in or to any award made to the other by the condemning authority; provided, that if a single award to Landlord includes specific damages for loss of Tenant's leasehold interest separately awarded in the eminent domain proceeding and not as a part of the damages recoverable by Landlord, Landlord will transmit such separately awarded damages to Tenant.

ARTICLE 12. DEFAULT

12.01 Events of Default. Each of the following shall constitute an event of default under this Lease:

(a) The failure of Tenant to pay rent or any other sum of money due under this Lease within 10 days after the due date.

(b) The failure of Tenant to perform or observe any covenant or condition of this Lease, other than a default in the payment of money described in Section 12.01(a), which is not cured within 30 days after notice thereof from Landlord to Tenant, unless the default is of a kind that cannot be cured within such 30-day period, in which case no event of default shall be declared so long as Tenant shall commence the curing of the default within such 30 day period and thereafter shall diligently and continuously prosecute the curing of same.

(c) The use of the Property or buildings and improvements thereon for purposes other than those permitted herein, to which Landlord has not given its written consent.

(d) The commencement of a case under any chapter of the federal Bankruptcy Code by or against Tenant, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant as bankrupt or insolvent, or the reorganization of Tenant, or an arrangement by Tenant with its creditors, unless the petition is filed or case commenced by a party other than Tenant and is withdrawn or dismissed within ninety (90) days after the date of its filing.

(e) The admission in writing by Tenant of its inability to pay its debts when due; the appointment of a receiver or trustee for the business or property of Tenant, unless such appointment shall be vacated within 10 days after its entry; Tenant making an assignment for the benefit of creditors; or the voluntary or involuntary dissolution of Tenant.

12.02 Landlord's Remedies. Upon the occurrence of an event default, Landlord has all of the following remedies, all in addition to any other remedies that Landlord may have at law or in equity:

(a) Terminate this Lease by written notice to Tenant, upon which Tenant shall surrender possession and vacate the Property immediately, and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Property in such event with or without process of law and to repossess Landlord of the Property and to expel or remove Tenant and any others who may be occupying or within the Property and to remove any and all property therefrom, using such force as may be necessary, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law.

(b) By written notice declare Tenant's right to possession of the Property terminated without terminating this Lease, upon which Landlord will have all the rights to repossess the Property and remove Tenant and Tenant's property that are described Section 12.02(a).

(c) Subject to Section 12.01(e), relet the Property in whole or in part for any period equal to or greater or less than the remainder of the Term or Extended Term, as applicable, for any sum that Landlord may deem reasonable.

(d) Collect any and all rents due or to become due from subtenants or other occupants of the Property.

(e) Landlord may recover from Tenant, with or without terminating this Lease, actual attorney's fees and other expenses incurred by Landlord by reason of Tenant's default, and elect to recover damages described under either (1) or (2):

(1) from time to time, an amount equal to the sum of all Base Rent and other sums that have become due and remain unpaid, less the rent, if any, collected by Landlord on reletting the Property reduced by the amount of all expenses incurred by Landlord in connection with reletting the Property; or

(2) immediately upon Tenant's default, an amount equal to the difference between the Base Rent and the fair rental value of the Property for the remainder of the Term or Renewal Term, discounted to the date of such default at a rate per annum equal to the rate at which Landlord could borrow funds for the same period as of the date of such default.

(f) Reentry or reletting of the Property, or any part thereof, shall not terminate this Lease, unless accompanied by Landlord's written notice of termination to Tenant.

12.03 Assignment of Rents. Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any subletting of all or a part of the Property, and Landlord, as assignee and attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Lease, except that Tenant has the right to collect such rent until the occurrence of an event of default by Tenant.

ARTICLE 13. LEASEHOLD MORTGAGES

13.01 Mortgage of Leasehold Interest. Tenant shall have the right at any time, and from time to time, to subject the leasehold estate and any or all of Tenant's improvements

situated on the Property to one or more deeds of trust, mortgages, and other collateral security instruments as security for a loan or loans or other obligation of Tenant (each a "Leasehold Mortgage"), subject to the remainder of this Article 13.

13.02 Subordinate to Lease. The Leasehold Mortgage and all rights acquired under it shall be subject and subordinate to all the terms of this Lease, and to all rights and interests of Landlord except as otherwise provided in this Lease.

13.03 Notice to Landlord. Tenant shall give Landlord notice before executing each Leasehold Mortgage, and shall accompany the notice with a true copy of the note and the Leasehold Mortgage as proposed for execution. Upon Landlord's written consent to the Leasehold Mortgage and upon execution of the Leasehold Mortgage by all parties, the mortgagee shall become a Qualified Mortgagee as that term is used in this Lease. Tenant also shall deliver to Landlord a true and correct copy of any notice from a Qualified Mortgagee of default or acceleration of the maturity of the note secured by a Leasehold Mortgage promptly following Tenant's receipt thereof.

13.04 Modification or Termination. No action by Tenant or Landlord to cancel, surrender, or materially modify the economic terms of this Lease or the provisions of this Article 11 will be binding upon a Qualified Mortgagee without its prior written consent.

13.05 Notice to Qualified Mortgagee.

(a) If Landlord gives any notice hereunder to Tenant including without limitation a notice of an event of default, Landlord shall give a copy of the notice to each Qualified Mortgagee at the address previously designated by it.

(b) If a Qualified Mortgagee changes its address or assigns the Leasehold Mortgage, the Qualified Mortgagee or assignee may change the address to which copies of notices hereunder shall be sent by written notice to Landlord. Landlord will not be bound to recognize any assignment of a Qualified Mortgagee unless and until Landlord has been given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, the assignee will be the Qualified Mortgagee hereunder with respect to the assigned Leasehold Mortgage.

(c) If a Leasehold Mortgage is held by more than one person, Landlord shall not be required to give notices to the Qualified Mortgagee of the Leasehold Mortgage unless and until all of the holders of the Leasehold Mortgage give Landlord an original executed counterpart of a written designation of one of their number to receive notices hereunder. Notice given to the one so designated is effective as notice to all them.

13.06 Performance of Tenant Obligations.

(a) A Qualified Mortgagee may perform any obligation of Tenant and remedy any default by Tenant under this Lease within the time periods specified in the Lease, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant; provided, however, that the Qualified Mortgagee will not thereby be subrogated to the rights of Landlord.

(b) Tenant may delegate irrevocably to a Qualified Mortgagee the non-exclusive authority to exercise any or all of Tenant's rights hereunder, but no such delegation will be

binding upon Landlord unless and until either Tenant or the Qualified Mortgagee gives Landlord a true copy of a written instrument effecting such delegation.

(c) If Tenant defaults in the payment of any monetary obligation hereunder, Landlord shall not terminate this Lease unless and until Landlord provides written notice of such default to each Qualified Mortgagee and no Qualified Mortgagee cures such default within 10 days after the expiration of any grace or cure periods granted Tenant herein. If Tenant defaults in the performance of any non-monetary obligation hereunder, Landlord shall not terminate this Lease unless and until Landlord provides written notice of such default to each Qualified Mortgagee and no Qualified Mortgagee cures such default within 30 days after the expiration of any grace or cure periods granted Tenant herein.

13.07 Possession by Qualified Mortgagee. A Qualified Mortgagee may take possession of the Property and vest in the interest of Tenant in this Lease upon the performance of the following conditions:

(a) The payment to Landlord of any and all sums due to Landlord under this Lease, including without limitation accrued unpaid rent.

(b) The sending of a written notice to Landlord and Tenant of the Qualified Mortgagee's intent to take possession of the Property and assume the Lease.

(c) The curing of all defaults not remediable by the payment of money within an additional 30 days after the date upon which such default was required to be cured by Tenant under the terms of this Lease.

13.08 No Liability of Mortgagee without Possession. A Qualified Mortgagee shall have no liability or obligation under this Lease unless and until it sends to Landlord the written notice described in paragraph 13.07(b). Nothing in this Lease or in the taking of possession of the Property and assumption of the Lease by a Qualified Mortgagee or a subsequent assignee shall relieve Tenant of any duty or liability to Landlord under this Lease.

13.09 New Lease. If a Qualified Mortgagee acquires Tenant's leasehold as a result of a judicial or non-judicial foreclosure under a Leasehold Mortgage, or by means of a deed in lieu of foreclosure, the Qualified Mortgagee thereafter may assign or transfer Tenant's leasehold to an assignee upon obtaining Landlord's written consent thereto, which consent will not be unreasonably withheld or delayed, and subject to all of the other provisions of Article 8. Upon such acquisition by a Qualified Mortgagee or its assignee of Tenant's leasehold, Landlord will execute and deliver a new ground lease of the Property to the Qualified Mortgagee or its assignee not later than 120 days after such party's acquisition of Tenant's leasehold. The new ground lease will be identical in form and content to this Lease, except with respect to the parties thereto, the term thereof (which will be co-extensive with the remaining Term hereof), and the elimination of any requirements that Tenant fulfilled prior thereto, and the new ground lease will have priority equal to the priority of this Lease. Upon execution and delivery of the new ground lease, Landlord will cooperate with the new tenant, at the sole expense of said new tenant, in taking such action as may be necessary to cancel and discharge this Lease and to remove Tenant from the Property.

ARTICLE 14. GENERAL PROVISIONS

14.01 Authority. Tenant represents and warrants that it has complete and unconditional authority to enter into this Lease; this Lease has been duly authorized by Tenant's governing body; this Lease is a binding and enforceable agreement of and against Tenant; and the person executing the Lease on Tenant's behalf is duly and properly authorized to do so.

14.02 Estoppel Certificates. Either party shall at any time and from time to time upon not less than 30 days prior written request by the other party, execute, acknowledge and deliver to such party, or to its designee, a statement in writing certifying that this Lease is in full force and effect and has not been amended (or, if there has been any amendment thereof, that the same is in full force and effect as amended and stating the amendment or amendments); that there are no defaults existing, (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the Base Rent and other charges have been paid in advance. The requesting party shall pay the cost of preparing an estoppel certificate, including the cost of conducting due diligence investigation and attorney's fees.

14.03 Delivery of Notices - Method and Time. All notices, demands or requests from one party to another shall be delivered in person or be sent by (i) mail, certified or registered postage prepaid, (ii) reputable overnight air courier service, or (iii) electronic mail or facsimile transmission (accompanied by reasonable evidence of receipt of the transmission and with a confirmation copy mailed by first class mail no later than the day after transmission) to the address for the recipient in Section 14.04 and will be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.

14.04 Addresses for Notices. All notices, demands and requests from Tenant to Landlord shall be given to Landlord at the following address:

City Manager
City of Homer
491 East Pioneer Avenue
Homer, Alaska 99603
Facsimile: (907) 235-3148
Email:

All notices, demands or requests from Landlord to Tenant shall be given to Tenant at the following address:

Facsimile: _____
Email: _____

Each party may, from time to time, to designate a different address or different agent for service of process by notice given in conformity with Section 14.03.

14.05 Time of Essence. Time is of the essence of each provision this Lease.

14.06 Computation of Time. The time in which any act provided by this Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a holiday, and then it is also excluded. The term "holiday" will mean all holidays as defined by the statutes of Alaska.

14.07 Interpretation. Each party hereto has been afforded the opportunity to consult with counsel of its choice before entering into this Lease. The language in this Lease shall in all cases be simply construed according to its fair meaning and not for or against either party as the drafter thereof.

14.08 Captions. The captions or headings in this lease are for convenience only and in no way define, limit or describe the scope or intent of any provision of this Lease.

14.09 Independent Contractor Status. Landlord and Tenant are independent contractors under this Lease, and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between Landlord and Tenant. Neither party shall have any authority to enter into agreements of any kind on behalf of the other and shall have no power or authority to bind or obligate the other in any manner to any third party.

14.10 Parties Interested Herein. Nothing in this Lease, express or implied, is intended or shall be construed to give to any person other than Landlord, Tenant and any Qualified Mortgagee any right, remedy or claim, legal or equitable, under or by reason of this Lease. The covenants, stipulations and agreements contained in this Lease are and shall be for the sole and exclusive benefit of Landlord, Tenant and any Qualified Mortgagee, and their permitted successors and assigns.

14.11 Multi-Party Tenant. If Tenant is comprised of more than one natural person or legal entity, the obligations under this Lease imposed upon Tenant are joint and several obligations of all such persons and entities. All notices, payments, and agreements given or made by, with, or to any one of such persons or entities will be deemed to have been given or made by, with, or to all of them, unless expressly agreed otherwise by Landlord in writing.

14.12 Broker's Commissions. Each of the parties represents and warrants that there are no claims for brokerage commissions or finders' fees in connection with the execution of this Lease, and agrees to indemnify the other against, and hold it harmless from, all liability arising from any such claim including, without limitation, the cost of counsel fees in connection therewith.

14.13 Successors and Assigns. This Lease shall be binding upon the successors and assigns of Landlord and Tenant, and shall inure to the benefit of the permitted successors and assigns of Landlord and Tenant.

14.14 Waiver. No waiver by a party of any right hereunder may be implied from the party's conduct or failure to act, and neither party may waive any right hereunder except by a writing signed by the party's authorized representative. The lapse of time without giving notice or taking other action does not waive any breach of a provision of this Lease. No waiver of a right on one occasion applies to any different facts or circumstances or to any future events, even if involving similar facts and circumstances. No waiver of any right hereunder constitutes a waiver of any other right hereunder.

14.15 Attorney's Fees

(a) If Landlord is involuntarily made a party defendant to any litigation concerning this Lease or the Property by reason of any act or omission of Tenant, or if Landlord is made a party to any litigation brought by or against Tenant without any fault on the part of Landlord, then Tenant shall pay the amounts reasonably incurred and expended by Landlord, including the reasonable fees of Landlord's agents and attorneys and all expenses incurred in defense of such litigation.

(b) In the event of litigation between Landlord and Tenant concerning enforcement of any right or obligation under this Lease, the non-prevailing party shall reimburse the prevailing party for the attorney's fees reasonably incurred and expended by the prevailing party in the litigation.

14.16 Severability. If any provision of this Lease shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Lease, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Lease shall remain in full force and effect.

14.17 Entire Agreement Amendment. This Lease constitutes the entire and integrated agreement between Landlord and Tenant concerning the subject matter hereof, and supersedes all prior negotiations, representations or agreements, either written or oral. No affirmation, representation or warranty relating to the subject matter hereof by any employee, agent or other representative of Landlord shall bind Landlord or be enforceable by Tenant unless specifically set forth in this Lease. This Lease may be amended only by written instrument executed and acknowledged by both Landlord and Tenant.

14.18 Governing Law and Venue. This Lease will be governed by, construed and enforced in accordance with, the laws of the State of Alaska. Any action or suit arising between the parties in relation to or in connection with this Lease, or for the breach thereof, shall be brought in the trial courts of the State of Alaska for the Third Judicial District at Homer.

14.19 Execution in Counterparts. This Lease may be executed in two or more counterparts, each of which shall be an original and all of which together shall constitute one and the same document.

[OPTIONAL SPECIAL PROVISIONS] -- 14.20 prior lease amended and superseded

14.20 Prior Lease. Landlord and Tenant are parties to a prior lease affecting the Property dated _____, 19____, a memorandum of which has been recorded in the records of the Homer Recording District under Document No. _____ (the "Prior Lease"). This Lease replaces and supersedes the Prior Lease effective as of _____, 201____, and on and after that date the Prior Lease shall have no force or effect, except that it shall remain in effect as to events, rights, obligations, or remedies arising or accruing under the Prior Lease prior to that date.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth above.

Landlord:

Tenant:

CITY OF HOMER

By: _____
Walt Wrede, City Manager
(name/title)

By: _____

ACKNOWLEDGMENTS

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me on _____, 201_, by Walt Wrede, City Manager of the City of Homer, an Alaska municipal corporation, on behalf of the City of Homer.

NEW

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me on _____, 201_, by _____, _____ (title) of _____ (name of entity), a _____ (state) _____ (type of entity) on behalf of _____ (name of entity).

Notary Public in and for Alaska
My Commission Expires: _____

EXHIBIT A

**SCHEDULE OF ORGANIZATION, OWNERS,
PERCENTAGE OF OWNERSHIP**

Tenant, _____, is a _____ organized under the laws of the state of _____. Attached to this exhibit is a certificate issued by that state certifying that Tenant is in good standing and describing its legal organization. If Tenant is a foreign entity authorized to conduct business in Alaska, its certificate of authority is also attached

The _____ (specify whether shareholders, partners, members, etc.) and their percentage of ownership are as follows:

Name _____ %

Address: _____

NEW
Name _____ %
Address: _____
Name _____ %
Address: _____
Name _____ %
Address: _____

TOTAL 100 %

EXHIBIT B

**CONFORMED COPY OF RESOLUTION AUTHORIZING LEASE AND
AUTHORIZING SIGNERS TO SIGN LEASE AGREEMENT ON BEHALF
OF TENANT**

NEW

EXHIBIT C
LOCATION OF PROPERTY
(Section 2.01)

NEW

EXHIBIT D

TENANT'S PROPOSED USE OF THE PROPERTY

(Section 6.01)

NEW

EXHIBIT E
SITE PLANS
(Section 6.02)

NEW

EXHIBIT F
FLOOR PLANS
(Section 6.02)

NEW

EXHIBIT G
CERTIFICATES OF INSURANCE
(Section 9.04(d))

NEW

EXHIBIT H

PERMISSION TO OBTAIN INSURANCE POLICIES

(Section 9.04(d))

The City of Homer is hereby granted permission to request and obtain copies of _____ ("Tenant") insurance policies from Tenant's broker and/or insurer, _____. Tenant requests the broker/insurer to provide the City of Homer with information about and copies of all of Tenant's insurance policies providing the type of coverage required by the Lease between Tenant and the City of Homer.

It is understood that the Tenant may revoke this permission at any time by written notice to City of Homer and to Tenant's broker and/or insurer; however, such revocation will constitute a default of Tenant's lease from the City of Homer.

NEW

Date: _____

TENANT NAME

By:

(printed name)
(title)

By:

(printed name)
(title)

~~Master Homer Ground Lease Form #2002.1~~

~~MASTER FORM — COPY ONLY~~

~~NOT SUITABLE FOR PRESENTATION TO PROSPECTIVE
TENANT WITHOUT SUBSTANTIVE REVIEW AND EDITING~~

~~Notes~~

~~Includes:~~

- ~~_____ optional par. 2.04 for renewal options~~
- ~~_____ rent adjustments: both 5-year appraised and annual CPI adjustments~~
- ~~_____ optional par. 3.01 for five-year leases (CPI rent adjustment only)~~
- ~~_____ alternative opt. par. 8.04 for additional rent on sublease or assignments~~
- ~~_____ optional Article 14 to allow leasehold mortgages~~
- ~~_____ alternative opt. par. 11.02(b) waiving environmental insurance based on uses~~
- ~~_____ optional par. 18.01 referring to prior amended and superceded lease~~

~~Revision History~~

~~form prepared by Gordon Tans, 9 February 2001~~

~~originally based primarily on AA003674341 (Aurora Northern draft lease)~~

~~revisions 11 April 2001 by G Tans (add optional 8.04 — additional rent for certain transfers)~~

~~revisions 16 May 2001 by G Tans (change 3.01 CPI adjustment from US City Average to Anchorage, and change adjustment date from July 1 to January 1)~~

~~revision 2001.4 — 15 Oct 2001 by G Tans (add an alternative 8.04 — additional rent for subleases)~~

~~revision 2001.5 — 7 Nov 2001 by G Tans (add sentence to 3.01(b) to prevent reduction in Base Rent if upon reappraisal for five-year rent adjustment)~~

~~revision 2002.1 — 3 October 2002 by G Tans (adding alternative 11.01(b) to waive environmental insurance based on authorized uses in par. 5.01; and optional 18.01 referring to a prior lease amended and superceded by current lease)~~

2004

~~CONFIDENTIAL COMMENTS AND INSTRUCTIONS
FROM: GORDON TANS
TO: WALT WREDE AND CITY OF HOMER~~

1.

GROUND LEASE AND SECURITY AGREEMENT

BETWEEN

CITY OF HOMER, ALASKA

AND

October _____, 2002

_____, 201

GROUND LEASE AND SECURITY AGREEMENT

~~THIS GROUND LEASE AND SECURITY AGREEMENT ("Lease") is made dated~~
as of this _____ day of _____, 2002, _____, 201, between the CITY
OF HOMER, an Alaska municipal corporation ("Landlord"), whose address is 491 East
Pioneer Avenue, Homer, Alaska -99603, a municipal corporation organized under the laws of
the State of Alaska, hereinafter referred to as "Landlord" and
_____ a _____ (a
_____ [state of organization] _____ [type of entity] organized
under the laws of the state of _____, whose address is

_____] ("Tenant"), whose address is
_____.

OPTIONAL PARAGRAPH, APPLICABLE WHEN TENANT IS NOT A NATURAL PERSON

Attached as Exhibit A is a schedule naming each owner of Tenant and describing the percentage of ownership of each. Also attached to Exhibit A are a certificate of good standing issued by the state under whose laws Tenant is organized, and, if Tenant is a foreign entity, a certificate of authority issued by the State of Alaska. Attached as Exhibit B is a true and correct copy of a resolution of Tenant authorizing Tenant to enter into this Lease and authorizing the undersigned individual(s) or officer(s) to execute the Lease on behalf of Tenant.

RECITALS

WHEREAS, Landlord owns certain properties having a strategic location near the waterfront and marine-related public infrastructure; and

WHEREAS, it is the policy of Landlord to retain ownership of these properties, and to make them available for leasing, in order to encourage growth in targeted economic sectors, to insure that Landlord receives the maximum benefit from a large investment in public infrastructure, and to provide land for businesses that require close proximity to the waterfront or infrastructure to operate efficiently and profitably; and

WHEREAS, Landlord has accepted Tenant's proposal to lease and develop the property leased herein, because Tenant's proposed use of the property should further Landlord's goals for the development of Landlord's properties, and Tenant's proposal to lease and develop the property is a material inducement to Landlord leasing the property to Tenant; and

WHEREAS, Tenant has made its own determination that its proposed development of the property will be economically feasible, and that the term for which it is leasing the property will be sufficient to amortize Tenant's investment in developing the leased property under Tenant's proposal.

NOW, THEREFORE, in consideration of the matters recited above, and the mutual covenants herein, the parties agree as follows:

ARTICLE 1.- DEFINITIONS AND ATTACHMENTS

1.01 Definitions. As used herein, the term:

(a) "Annual Rent Adjustment" and "Annual Rent Adjustment Date" are defined in Section 4.01(b).

(b) "Base Rent" is defined in Section 4.01.

(c) "Complete" and "Completion" mean, with regard to an improvement, that construction of the improvement is finished and the improvement is fully operational and ready for occupancy or use for its intended purpose, including without limitation the issuance of any applicable certificate of occupancy and other applicable permits, licenses, certificates or inspection reports necessary to the improvement's legally authorized use.

(d) "Council" means the City Council of the City of Homer, Alaska.

(e) "Default Rate" means an annual rate of interest equal to the lesser of (i) the maximum rate of interest for which Tenant may lawfully contract in Alaska, or (ii) ten and one-half percent (10.5%).

(f) "Environmental Laws" means all local, state, and federal laws, ordinances, regulations, and orders related to environmental protection; or the use, storage, generation, production, treatment, emission, discharge, remediation, removal, disposal, or transport of any Hazardous Substance.

(g) "Excusable Delay" means delay due to strikes, acts of God, inability to obtain labor or materials, orders of any governmental authority having jurisdiction, removal of Hazardous Materials discovered at any time after the commencement of the Term, enemy action, civil commotion, fire, unusual inclement weather, unavoidable casualty or similar causes beyond the reasonable control of Tenant.

(h) "Extended Term" is defined in Section 3.02.

(i) "Five Year Rent Adjustment Date" is defined in Section 4.02(a).

(j) "Hazardous Substance" means any substance or material defined or designated as hazardous or toxic waste; hazardous or toxic material; hazardous, toxic, or radioactive substance; or other similar term by any federal, state, or local statute, regulation, or ordinance or common law presently in effect or that may be promulgated in the future as such statutes, regulations, and ordinances may be amended from time to time.

(k) "Landlord" means the City of Homer, Alaska.

(l) "Lease Policy" means the City of Homer Property Management Policy and Procedures, as adopted and amended from time to time by Council resolution.

(m) "Leasehold Mortgage" is defined in Section 13.01.

(n) "Property" is defined in Section 2.01.

(o) "Qualified Mortgagee" is defined in Section 13.03.

(p) "Required Improvements" is defined in Section 6.02.

(q) "Tenant" means _____.

(r) "Term" is defined in Section 3.01.

1.02 Attachments. The following documents are attached hereto, and such documents, as well as all drawings and documents prepared pursuant thereto, shall be deemed to be a part hereof:

Exhibit "A" Schedule of Organization, Owners, Percentage of Ownership

Exhibit "B" Conformed Copy of Resolution Authorizing Lease and Authorizing Signers to Sign Lease Agreement on Behalf of Tenant

Exhibit "C" Legal Description of Property

Exhibit "D" Tenant's Lease Proposal

Exhibit "E" Site Plan

Exhibit "F" Required Improvements Floor Plan

Exhibit "G" Certificates of Insurance

Exhibit "H" Permission to Obtain Insurance Policies

ARTICLE 2. THE PROPERTY

2.01-- Lease of Property

Subject to the terms, covenants, and conditions, ~~rights and obligations set forth in~~ of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the following ~~described~~ described property: ("Property"):

[must insert legal description], Homer Recording District, State of Alaska, as depicted on Exhibit H.

Also C, containing _____ square feet, more or less, also known as Kenai Peninsula Borough Tax Parcel No. _____;

The described parcel contains approximately _____ square feet, more or less, and is referred to herein as the "Property."

subject, however, to reservations, restrictions, easements and encumbrances of record, and to encroachments that may be revealed by an inspection of the Property.

2.02. Quiet Enjoyment, Restrictions, Easements, Etc.

Landlord covenants and agrees that Tenant, upon paying the rent and other charges herein provided for and observing and keeping the covenants, conditions and terms of and performing its other obligations under this Lease on Tenant's part to be kept or performed, will lawfully and quietly hold, occupy and enjoy, shall have quiet enjoyment of the Property during the term of this Lease Term without hindrance or molestation, subject, however, to the rights and reservations expressed in the U.S. or State patent to the Property, the existing easements for roads, gas, electric, water, sewer and other utility lines, restrictions of record and to encroachments ascertained by physical inspection of the Property, interference by Landlord or by any person claiming an interest in the Property through Landlord.

12.03. Property Accepted "As Is"

Tenant acknowledges that it has inspected the Property, has made its own determination as to the suitability of the Property for Tenant's intended use, and accepts the same "as is" and without reliance on any representations or warranties of Property "AS IS." Landlord, its agents, servants, or and employees as to make no warranties, expressed or implied, concerning the physical condition of the Property, including, but not limited to, subsurface and soil conditions, the presence of any hazardous waste as defined in paragraph 16.03, or as to without limitation the habitability or fitness of the Property for any particular purpose, including those uses authorized by this Lease, or subsurface and soil conditions, including the presence of any Hazardous Substance.

1OPTIONAL PARAGRAPH 2.03. APPLICABLE IF TENANT OBTAINS ENVIRONMENTAL ASSESSMENT.

2.03 Property Accepted "As Is;" Exception for Hazardous Substances.

(a) Tenant has inspected the Property, has made its own determination as to the suitability of the Property for Tenant's intended use, and accepts the Property "AS IS." Except as provided in subsection (b), Landlord, its agents and employees make no warranties, expressed or implied, concerning the condition of the Property, including without limitation the habitability or fitness of the Property for any particular purpose, including those uses authorized by this Lease, or subsurface and soil conditions.

(b) Tenant shall obtain, at its own expense, a phase I environmental assessment of the Property as of the earlier of (i) the commencement of the Term, and (ii) Tenant's initial occupancy of the Property. If Landlord reasonably determines that the phase I environmental assessment is acceptable, Landlord will warrant that the condition of the Property as of the applicable date with regard to the presence of any Hazardous Substance is consistent with the results of the phase I environmental assessment.

2.04. No Subsurface Rights

This Lease confers no mineral rights or rights with regard to the subsurface of the land Property below the level necessary for the uses of the Property as stated permitted in this Lease. Landlord makes no warranty or representation as to whether the Property is open or closed to mineral claims or leases under state or federal law.

2. — ARTICLE 3. TERM

23.01. Lease Term

The term of this Lease is _____ years, commencing on ~~the first day of~~ _____, 201____, and ending on ~~the last day of~~ _____, 20____ (the "Term").

23.02. Hold-Over

~~If Tenant holds over after the expiration of the term of this Lease and Landlord accepts payment of rent, Tenant's occupancy will be deemed a tenancy from month to month, terminable upon 30 days written notice given by either party at any time, subject to all the terms, covenants and conditions of this Lease, and will not operate as a renewal or extension of this Lease. Landlord is not required to accept Tenant's tender of rent or to agree to any extended tenancy.~~

2.03. Surrender of Possession

~~Upon expiration of the term of this Lease, whether by lapse of time or otherwise, Tenant must promptly and peaceably surrender the Property, and all buildings and improvements thereon, except as provided in paragraph 6.01. Tenant agrees to execute, acknowledge and deliver to Landlord a proper instrument in writing, releasing and quietclaiming to Landlord all right, title and interest of Tenant in and to the Property and all such buildings and improvements thereon under paragraph 6.01.~~

OPTIONAL RENEWAL PROVISION:

2.04. Renewal Options to Extend Lease Term.

(a) Tenant will have ~~has~~ the right option to renew this Lease ~~extend the Term for~~ _____ additional, consecutive _____ year periods (~~“Renewal Terms”~~ each an “Extended Term”), provided that:

~~(a) that 1) _____ Tenant must give Landlord written notice of its exercise of the option to renew not more than one year and not less than 120 days prior to before the last day of the Term or current Renewal/Extended Term, as the case may be;~~

~~(b) that Tenant is not at that time~~ (2) At the time Tenant exercises the option, and at all times thereafter until the Extended Term commences, Tenant is not materially in default of any term or condition of this Lease and has not made an assignment or subletting of this Lease or any interest in the Property except as permitted under this Lease; and

~~(e) that Tenant must exercise its option to renew only by sending written notice thereof in accordance with the provisions of paragraph 17.17 of this Lease;~~

~~(d) that 3) _____ Tenant may exercise only one renewal option per Term or Renewal Term, as the case may be, i.e., Tenant will not be entitled to exercise no more than one renewal option to extend the Term during each period of time described in subparagraph (a); and the Term or any Extended Term.~~

~~(e) that at the time of b)~~ Tenant's failure to exercise of ~~the an~~ option ~~the to~~ extend the Term in strict compliance with all the requirements in Section 3.02(a) renders that option and all options as to subsequent Extended Terms null and void.

3.03 Lease Renewal.

(a) ~~Tenant is still~~ represents and warrants that it has determined that the duration of the Term, plus any available Extended Terms, will be sufficient for Tenant to amortize any investment that it makes in connection with this Lease, including without limitation any investment in leasehold improvements. Tenant acknowledges that it has no right of any kind to continue using or occupying the Property after the expiration or earlier termination of the Term or the final Extended Term, including without limitation any option to renew this Lease, or any option to extend the Term other than as provided in Section 3.02.

(b) Not less than 12 months before the expiration of the Term or the final Extended Term, Tenant may apply to Landlord for a renewal of this Lease in the manner that a person then would apply for a new lease of the Property. In response to a timely application, the Council will determine whether to renew this Lease, and the term of any renewal, in its sole discretion. The Council is under no obligation to renew this Lease, or to renew this Lease for the term that Tenant requests. If the Council does not grant a timely application to renew this Lease, Tenant shall prepare to surrender possession of the Property as required ~~or permitted under this Lease~~ by Section 3.04, and dispose of improvements on the Property as required by Section 6.08.

3. ~~3.04~~ Surrender of Possession. Upon the expiration or earlier termination of the Term or the final Extended Term, Tenant shall promptly and peaceably surrender the Property, clean, free of debris, and in as good order and condition as at the commencement of the Term, ordinary wear and tear excepted, and shall remove from the Property all personal property that was not present on the Property at the commencement of the Term. If Tenant fails to surrender the Property in the required condition, Landlord may restore the Property to such condition and Tenant shall pay the cost thereof, plus interest at the Default Rate, on demand. Section 6.08 governs the disposition of improvements on the Property at the expiration or earlier termination of the Term or final Extended Term.

3.05 Holding Over. Tenant's continuing in possession of the Property after the expiration or earlier termination of the Term or final Extended Term will not renew or extend this Lease. In the absence of any agreement renewing or extending this Lease, Tenant's continued possession of the Property after the end of the Term will be a tenancy from month to month, terminable upon 30 days written notice by either party at any time, at a monthly rental equal to 150% of the monthly Base Rent in effect at the end of the Term, subject to all other terms of this Lease. For good cause, Landlord may waive all or part of the increase in Base Rent during the holdover period.

ARTICLE 4. RENT, TAXES, ASSESSMENTS AND UTILITIES

34.01. Rent

(a) ~~Initial~~ Base Rent. Tenant ~~agrees to~~ shall pay to Landlord an initial annual rent of \$ _____ (the ~~“(“Base Rent”)~~”). Base Rent is payable monthly in advance in

~~equal installments of \$ _____, plus tax. The first monthly payment is due on _____, 201, and on the first day of _____, and subsequent monthly payments are due on the first day of each calendar month each month thereafter. Rent must be paid, at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. Delinquent rent will bear interest at the rate set forth in AS 45.45.010(a) as now enacted or hereinafter amended. All Base Rent shall be paid without prior demand or notice and without deduction or offset. Base Rent that is not paid on or before the due date will bear interest at the Default Rate. Base Rent is subject to adjustment as provided in Section 4.02.~~

~~(b) — Periodic 4.02 Rent Adjustments.~~

~~(a) Five-Year Appraised Adjustment—Rent Adjustments. Commencing January 1, _____, and in every fifth year thereafter, Landlord will obtain an appraisal by a qualified real estate appraiser of Rent the fair rental value of the Property as if privately owned in fee simple, excluding the value of improvements (other than utilities) made by tenants. The appraisal may be performed as part of an appraisal of other properties of Landlord that are comparable in location and value. The Base Rent will be adjusted on January 1, _____ and on January effective _____ 1 every five years thereafter of the year of each appraisal (each such January 1 date is a "Five Year Rent Adjustment Date") to an amount equal to the then-current greater of (i) the area of the Property in square feet, multiplied by the fair market rental value of the Property per square foot determined by the appraisal as set forth, and (ii) the adjusted Base Rent in paragraph 3.01(d) not more than six months effect immediately before the Five Year Rent Adjustment Date. In no event, however, will the The rent adjusted Base on a Five Year Rent Adjustment Date thereafter shall be less than the Base Rent, adjusted annually, during the year immediately prior to such Five Year Rent Adjustment Date. After such Five Year Rent Adjustment Date, the adjusted rent will thereafter be referred to as the Base Rent.~~

~~(eb) Annual Rent Adjustment Adjustments. In addition to the five-year rent adjustments provided in paragraph 3.01(b) under Section 4.02(a), the Base Rent will also shall be adjusted annually (the "Annual Rent Adjustment") on the first day of January _____, and on the first day of January every year effective _____ 1, and on each _____ 1 thereafter, excluding each of the years of the five year rent adjustment, Five Year Rent Adjustment Date (each such day date being an "Annual Rent Adjustment Date" throughout), by the increase or decrease, if any, for the previous year in the Term and all Renewal Terms cost of living as follows:~~

~~(i) — The base for computing the Annual Rent Adjustment is stated in the Consumer Price Index for All Urban Consumers (CPI-U), Anchorage, Alaska, for Area, All Items (1982-1984 = 100) 2000-present = 100 ("CPI-U"), as published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"). For the first five years of the Term, the Index published for the second half of the calendar year immediately preceding the year in which the Term of this Lease commences is the "Beginning Index". Thereafter, the Index published for the second half of the calendar year immediately preceding the year of the most recent Five Year Rent Adjustment Date is the "Beginning Index." The Index published for the second half of the calendar year nearest, but preceding, the Annual Rent Adjustment Date will be the "Extension Index". On each Annual Rent Adjustment Date the Base Rent will be adjusted to equal the Base Rent determined according to paragraph 3.01(a) or 3.01(b), as the case may be, increased by a percentage equal to the percentage increase from the Beginning Index to the Extension Index. In no case will the Base Rent be reduced~~

~~because of a decrease in the Index. Landlord will promptly provide written notice to Tenant of the adjustment of the Base Rent, but its failure to do so will not relieve Tenant of the obligation to pay the adjusted Base Rent commencing as of the Annual Rent Adjustment Date most recently before the Annual Rent Adjustment Date. If the CPI-U is revised or ceases to be published, Landlord instead shall use such revised or other index, with whatever adjustment in its application is necessary, to most nearly approximate in Landlord's judgment the CPI-U for the relevant period.~~

~~(ii) If the Index is changed so the base year differs from that used as of the commencement of the term of this Lease, the Index must be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.~~

~~(d) Appraisal of Property. For purposes of paragraph 3.01(b), the appraised market rent will be based on the fair market rental value of the property, as if privately owned in fee simple, and will not include the value of buildings or improvements placed on the Property by Tenant (with the exception of utilities). The cost of the appraisal must be paid by Tenant, but if Tenant fails to do so, Landlord may pay the cost of the appraisal and the amount paid will become additional rent immediately due and payable under this Lease. The fair market rental value will be determined by a qualified real estate appraiser selected by mutual agreement of Landlord and Tenant. The appraiser's determination of fair market rent will be conclusive between the parties.~~

~~**ALTERNATE 3.01 TO BE USED ONLY WHEN THE COMBINED TERM AND RENEWAL TERMS WILL NOT EXCEED FIVE YEARS TOTAL**~~

~~**3.01. Rent**~~

~~(a) Initial Base Rent. Tenant agrees to pay to Landlord an initial annual rent of \$ _____ (the "Base Rent"), payable monthly in advance in equal installments of \$ _____, plus tax. The first monthly payment is due on the first day of _____, and subsequent monthly payments are due on the first day of each calendar month thereafter. Rent must be paid at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. Delinquent rent will bear interest at the rate set forth in AS 45.45.010(a) as now enacted or hereinafter amended.~~

~~(b) Periodic Appraised Adjustment of Rent. The requirement of a rent adjustment every five years based on an appraisal of the fair market rental value of the Property is waived because the maximum Term and Renewal Terms combined does not exceed five years.~~

~~(c) Annual Rent Adjustment. The Base Rent will be adjusted annually (the "Annual Rent Adjustment") on the first day of January _____, and on the first day of January every year thereafter (each such day being an "Annual Rent Adjustment Date") throughout the Term and all Renewal Terms as follows:~~

~~(i) The base for computing the Annual Rent Adjustment is the Consumer Price Index for All Urban Consumers (CPI U), Anchorage, Alaska, for All Items (1982-1984-100) published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"). The Index published for the second half of the calendar year immediately preceding the year in which the Term of this Lease commences is the "Beginning Index". The Index published for the second half of the calendar year nearest, but preceding, the Annual Rent Adjustment Date will be the "Extension Index". On each Annual Rent Adjustment Date the Base Rent will be recalculated to equal the Base Rent determined according to paragraph 3.01(a), increased by a percentage equal to the percentage increase from the Beginning Index to the Extension Index. In no case will the Base Rent be reduced because of a decrease in the Index. Landlord will promptly provide written notice to Tenant of the adjustment of the Base Rent, but its failure to do so will not relieve Tenant of the obligation to pay the adjusted Base Rent commencing as of the Annual Rent Adjustment Date.~~

~~(ii) If the Index is changed so the base year differs from that used as of the commencement of the term of this Lease, the Index must be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.~~

~~(d) Appraisal of Property. For purposes of paragraph 3.01(b), the appraised market rent will be based on the fair market rental value of the property, as if privately owned in fee simple, and will not include the value of buildings or improvements placed on the Property by Tenant (with the exception of utilities). The cost of the appraisal must be paid by Tenant, but if Tenant fails to do so, Landlord may pay the cost of the appraisal and the amount paid will become additional rent immediately due and payable under this Lease. The fair market rental value will be determined by a qualified real estate appraiser selected by mutual agreement of Landlord and Tenant. The appraiser's determination of fair market rent will be conclusive between the parties.~~

3.02. Tenant to Pay Taxes

~~Tenant agrees to pay prior to delinquency and directly to the taxing authorities in which the Property is located a applicable real property taxes levied or assessed upon or against the Property and all buildings and improvements thereon during the term of this Lease. Tenant further agrees to pay prior to delinquency and directly to the taxing authorities in which the Property is located all applicable personal property taxes on personal property situated on the Property and placed thereon by Tenant, its agents, servants, or employees. Tenant further agrees to pay prior to delinquency any other taxes for which it may be liable. Tenant must, within thirty (30) days after any such tax, assessment or other charge, whether or not constituting a lien on the Property, becomes due and payable, produce and exhibit to Landlord satisfactory evidence of payment thereof.~~

~~Tenant acknowledges that it is subject to and will pay applicable municipal taxes, including property tax on Tenant's leasehold interest in the Property.~~

3.03. Tenant to Pay Assessments

~~Tenant during the term of this Lease agrees to pay directly to the public authorities charged with collection thereof any and all assessments levied on the Property for any part or~~

~~all of the costs of any public work or improvement assessed according to benefit found by the levying authority to accrue therefrom to the Property, provided, however, that if an option is given to pay such assessment(s) in installments, Tenant may elect to pay the same in installments, and in such case Tenant will be liable only for such installments as may become due during the term of this Lease. Landlord warrants and represents that there are currently no outstanding assessments levied on the Property for any part or all of the cost of any public work or improvement constructed by Landlord, except as follows: none.~~

3.04. Proration of Taxes and Assessments

~~If Tenant's obligation to pay taxes or assessments commences or ends during a tax year by reason of commencement or termination of this Lease, such taxes or assessments will be prorated between Landlord and Tenant.~~

3.05. Contest

~~Tenant has the right to contest any taxes or assessments that Tenant is obligated to pay under paragraphs 3.02 or 3.03 of this Lease. Such proceedings must, if instituted, be conducted promptly at Tenant's own expense and free from all expense to Landlord. Before instituting any such proceedings, Tenant must pay under protest any such taxes or assessments, or must furnish to Landlord a surety bond written by a company acceptable to Landlord or other security acceptable to Landlord, sufficient to cover the amount of such taxes or assessments, with interest for the period that such proceedings may reasonably be expected to take, and costs, securing the payment of such taxes or assessments, interest and costs in connection therewith when finally determined. Notwithstanding the furnishing of any such bond or security, Tenant must pay any such taxes or assessments at least thirty (30) days before the time when the Property or any part thereof, might be forfeited. The proceedings referred to in this paragraph 3.05 may include appropriate appeals from any order or judgments therein, but all such proceedings must be begun as soon as reasonably possible after the imposition or assessment of any such taxes or assessments and must be prosecuted to final adjudication promptly. In the event of any reduction, cancellation or discharge, Tenant must pay the amount that is finally levied or assessed against the Property or adjudicated to be due and payable, and if there is any refund payable by the governmental authority with respect thereto, Tenant will be entitled to receive and retain the same, subject, however, to apportionment as provided in paragraph 3.04 of this Lease. Landlord, at Landlord's option, may, but is not obligated to, at Landlord's own expense contest any such taxes or assessments that are not contested by Tenant as set forth above, and, unless Tenant promptly joins with Landlord therein, Landlord will be entitled to receive and retain any refund payable by any governmental authority with respect thereof.~~

3.06. Tenant to Pay Utility Charges

~~**Tenant must pay or cause to be paid all charges for 4.03 Taxes, Assessments and Other Governmental Charges.** Tenant shall pay prior to delinquency all taxes, installments of assessments that are payable in installments and other governmental charges lawfully levied or assessed upon or with respect to the Property, improvements on the Property and personal property that is situated on the Property; provided that Tenant may contest in good faith any such tax, assessment or other governmental charge without subjecting the Property to lien or forfeiture. If an assessment on the Property that is not payable in installments becomes due during the Term or an Extended Term, Tenant shall be obligated to pay the fraction of the assessment that is determined by dividing the number of years remaining in the Term or Extended Term by 10. If this Lease subsequently is extended or renewed, the part~~

of the assessment that Tenant shall pay shall be determined by adding the extended or renewal term to the number of years remaining in the Term when the assessment became due. If the Term commences or expires during a tax year, the taxes or assessments payable for that year will be prorated between Landlord and Tenant. Tenant shall exhibit to Landlord, on demand, receipts evidencing payment of all such taxes, assessments and other governmental charges.

4.04 Utility Charges. Tenant shall pay all charges for utility and other services provided to or used on the Property, including without limitation gas, heating oil, electricity, electric, water, sewer, heat, snow removal, and refuse removal and any and all other utilities or services used upon. Tenant shall be solely responsible for the Property throughout the term cost of this Lease, including any connection fees utility connections.

~~3.07.4.05~~ Tenant to Pay for City Services Related to the Property or to Tenant's Operations

(a) ~~_____~~ Tenant shall pay for all services provided by the City of Homer that are related to the Property or to Tenant's operations, including but not limited to Port and Harbor services, whether incurred by Tenant, or any business entity owned in whole or in part by Tenant or by one or more partners of Tenant.

(b) ~~Tenant must~~ use or operation of the Property, improvements thereon and Tenant's activities thereon. Without limiting the generality of the preceding sentence, Tenant shall pay for wharfage, crane use, ice, and other Port and Harbor services at the rates published in established by the Port and Harbor City of Homer Terminal Tariff, which is subject to change from time to time. In the event Tenant shall provide the City of Homer changes the method of establishing or publishing any or all such rates, then Tenant must pay for such services at the rates so established by such changed method. Tenant further agrees to provide the City of Homer with the necessary with the information necessary to determine wharfage, crane use, ice and other Port and Harbor service charges, to keep written records of such information for not less than sixtwo years after such charges are due, and, upon request, to make such records available to the City of Homer for inspection and audit.

~~3.08.4.06~~ Additional Rent and Landlord's Right to Cure Tenant's Default

~~_____~~ All costs and/or expenses that Tenant assumes or agrees is required to pay pursuant to under this Lease will, at Landlord's election, will be treated as additional rent, and in the event of nonpayment, Landlord will have may exercise all rights and remedies provided in this Lease in the easevent of nonpayment of rent or of a breach of condition, at Landlord's election. If Tenant defaults in making any payment required to be made by of Tenant or defaults in performance of performing any term, covenant or condition of this Lease on the part of Tenant to be kept, performed or observed that involves the expenditure of money by Tenant, Landlord at Landlord's option may, but is not obligated to, make such payment; or, expenditure on behalf of Tenant, expend such sum as may be necessary to keep, perform or observe such term, covenant or condition, and any and all sums so expended by Landlord, with interest thereon at the legal rate of interest Default Rate from the date of such expenditure until repaid, will be, and will be deemed to be, additional rent and mustshall be repaid by Tenant to Landlord, on demand, provided, however, that no such payment or expenditure by Landlord will be deemed a waiver of not waive Tenant's default, nor will it or affect any remedy of Landlord by reason of of Landlord's remedies for such default.

3.094.07 Security Deposit

Upon execution of this Lease, Tenant ~~must~~ shall deposit with Landlord an amount equal to 10% of the annual Base Rent (i.e., the sum of \$ _____) as security for ~~the~~ Tenant's performance of ~~Tenant's~~ obligations under this Lease. Landlord will ~~invest~~ hold the security deposit in an interest bearing account in Landlord's name, subject to Tenant's approval, which will not be unreasonably withheld, and may ~~come~~ mingle it with other funds of Landlord. If Tenant ~~is~~ defaults in default with respect to performing any covenant or condition of obligation under this Lease, including but not limited to without limitation the payment of rent, Landlord may apply all or any portion of the security deposit, including interest earned thereon, to the payment of any sum in default or any damages suffered by Landlord as result of the default, or any sum that Landlord may be required to incur by reason of ~~Tenant's~~ the default. Upon demand, Tenant ~~must~~ upon demand shall deposit with Landlord the amount so applied so that Landlord will have the full deposit on hand at all times during the Term or Renewal Term of this Lease. If Tenant has fully complied with all of its obligations under this Lease through the covenants or conditions first five years of the Lease, the Term, Landlord will remit to the Tenant any balance of the security deposit, including any without interest on deposit, within ~~thirty~~ 30 days after the expiration or termination of this Lease. On each Annual Rent Adjustment Date and each Five Year Rent Adjustment Date, the principal amount of the first five years of the security deposit will be adjusted to equal ten percent of the annual rent, after making the required adjustment under paragraph 3.01. Within 30 days of notification of the adjustment of the annual rent, Tenant must deposit with Landlord the amount of the increase in the security deposit. Term.

OPTIONAL PARAGRAPH 4. GRANT OF 08, APPLICABLE TO FISH PROCESSORS WITH ACCESS TO OUTFALL LINE

4.08 Outfall Line Connection Agreement. Tenant shall connect to the City of Homer fish processor outfall line. On or before the commencement of the Term of this Lease, Tenant shall enter into a Fish Processor Outfall Line Connection Agreement with Landlord, and thereafter at its own expense install and maintain a fish grinder as required by the Fish Processor Outfall Line Connection Agreement. Tenant shall comply with the terms of the Fish Processor Outfall Line Connection Agreement until the earlier to occur of (i) the expiration or earlier termination of the Term and any Extended Term, and (ii) the date the City of Homer ceases to maintain the outfall line.

ARTICLE 5. SECURITY INTEREST

To secure the performance of Tenant's obligation for payment of obligations under this Lease, including without limitation the obligations to pay rent and all other sums agreed to be paid by Tenant under this Lease, Tenant hereby grants to Landlord a ~~lien and~~ security interest in the following collateral: ("Collateral"): (1) all security deposits or other monies owing from Landlord to Tenant (as collateral in the possession of the secured party); (2) all insurance proceeds from any policy insuring the Property or improvements thereon against environmental contamination or pollution; (3) all compensation payable to Tenant as a result of eminent domain proceedings or a transfer in lieu thereof; and (4) all rents from Tenant's subletting of all or a part of the Property. Said lien and security interest will be in addition to Landlord's liens provided by law.

This Lease constitutes a security agreement under the Uniform Commercial Code as enacted in Alaska ("UCC"), and Landlord will have all rights and remedies ~~afforded~~ of a secured party under the UCC regarding the Collateral. Tenant ~~must~~ shall execute, as debtor,

such financing statement or statements and other instruments as Landlord may now or hereafter reasonably request ~~further evidencing said to~~ evidence the security interest granted by Tenant.

~~5.~~ ARTICLE 6. USE AND CARE/IMPROVEMENT OF THE PROPERTY

~~56.01.~~ Use

~~Tenant warrants that it has not entered into this Lease for purposes of speculation or for reserve for future uses, but rather to immediately and fully use and develop the Property. Except, Tenant's undertaking to use and improve the Property as otherwise provided herein, described in Tenant's proposal to Landlord is a material inducement to Landlord leasing the Property to Tenant. Tenant must shall improve and use the Property for the following purposes:~~

~~Tenant must in the manner described in Tenant's proposal. Tenant's proposed use of the Property is described in Exhibit D. Tenant shall not use or improve the Property for no any purpose other purposes than as described in Tenant's proposal without the Landlord's written consent, which consent will not be unreasonably withheld. Tenant's use must comply with the zoning code. Tenant must not use the Property for any unlawful purpose and must comply with all applicable statutes, laws and ordinances during the entire term of the lease and any extension or renewal thereof. If Tenant ceases to use the Property for the approved purposes, Landlord may, as one of its remedies, terminate this Lease upon thirty days written notice Landlord may withhold in its sole discretion.~~

~~5.02.~~ Care of the Property

6.02 Required Improvements. Tenant shall, at Tenant's sole expense, construct, and at all times during the Term and any Renewal Term keep and maintain as the minimum development on the Property the following improvements ("Required Improvements"):

The Required Improvements also are depicted in the site plan and floor plans in Exhibit E and Exhibit F, respectively. Tenant shall commence construction of the Required Improvements within one year after the date of commencement of the Term, prosecute the construction of the Required Improvements with diligence, and Complete construction within one additional year.

6.03 Construction Prerequisites. Tenant may not commence any construction on the Property, including without limitation construction of the Required Improvements, without first satisfying the following conditions:

(a) Not less than 30 days before commencing construction, Tenant shall submit to Landlord preliminary plans and specifications, and an application for a City of Homer zoning permit, for the construction, showing the layout of proposed buildings and other improvements, ingress and egress, dimensions and locations of utilities, drainage plans, and any other information required for the zoning permit or other required permits. The preliminary plans and specifications are subject to Landlord's approval, which will not be unreasonably withheld. Landlord shall communicate approval or disapproval in the manner provided for notices, accompanying any disapproval with a statement of the grounds therefor. Tenant shall be responsible for complying with all laws governing the construction, notwithstanding Landlord's approval of preliminary plans and specifications under this paragraph.

(b) Not less than five days before commencing construction, Tenant shall deliver to Landlord one complete set of final working plans and specifications as approved by the governmental agencies whose approval is required for Tenant to commence construction. The final working plans and specifications shall conform substantially to the preliminary plans and specifications previously approved by Landlord, subject to changes made to comply with suggestions, requests or requirements of a governmental agency or official in connection with the application for permit or approval.

(c) Not less than five days before commencing construction, Tenant shall give Landlord written notice of its intent to commence construction, and furnish to Landlord the following:

(1) Proof that all applicable federal, state and local permits required for the construction have been obtained.

(2) For construction, alteration or restoration of Required Improvements, a current certificate of insurance with the coverages specified in Section 9.04(c).

6.04 Extensions of Time for Completion of Required Improvements. Landlord shall grant an extension of the time to Complete the Required Improvements for a period of time equal to the duration of an Excusable Delay, upon Tenant's written request describing the nature of the Excusable Delay, provided Tenant has commenced construction in a timely manner and is proceeding diligently to Complete construction.

6.05 Additional and Replacement Improvements.

(a) Construction of improvements that are not consistent with terms of this Lease is prohibited unless the improvements are authorized by an amendment to this Lease approved by the Council.

(b) Subject to Section 6.05(a), upon satisfying the conditions in section 6.03, Tenant at any time may, but is not obligated to, construct new improvements on the Property and demolish, remove, replace, alter, relocate, reconstruct or add to existing improvements; provided that Tenant is not then in default under this Lease and provided further that Tenant continuously maintains on the Property the Required Improvements, or their equivalent of equal or greater value. Once any work is begun, Tenant shall with reasonable diligence prosecute to Completion all construction of improvements, additions, alterations, or other work. All salvage resulting from such work will belong to Tenant, who is responsible for its removal and lawful disposal.

6.06 As-Built Survey. Within 30 days after Completion of construction of any improvements on the Property involving construction, alteration, addition, removal or demolition of the foundation, structure, utility services, ingress and egress, or any major changes of all or any part of any structure or improvement on the Property, Tenant shall provide Landlord with three copies of an as-built survey of the Property prepared by a registered professional surveyor, showing the location of all improvements on the Property, including underground utilities, pipelines and pre-existing improvements. Tenant shall accompany the as-built survey with a description of all changes from the approved plans or specifications made during the course of the work.

6.07 Ownership of Improvements. Any and all buildings, fixtures and improvements of any nature whatsoever constructed or maintained on the Property by Tenant will be and remain the property of Tenant at all times during the Term and any Extended Terms and may be removed or replaced by Tenant, subject, however, to (i) Tenant's obligations concerning the Required Improvements in Section 6.02; and (ii) the designation of improvements in Exhibit D for transfer to Landlord and retention on the Property at the expiration of the Term or Extended Term as provided in Section 6.08(a).

6.08 Disposition of Improvements at End of Term.

(a) At the expiration of the Term or Extended Term Tenant shall leave in place on the Property all improvements designated in Exhibit D for transfer to Landlord and retention on the Property at the expiration of the Term or Extended Term. Tenant shall leave such improvements intact with all components, including without limitation doors, windows, and plumbing, electrical and mechanical fixtures and systems, in good condition and ready for use or occupancy. Tenant shall execute, acknowledge and deliver to Landlord a proper instrument in writing, releasing and quitclaiming to Landlord all of Tenant's interest in such improvements. Except for improvements that Tenant is required to leave on the Property, Tenant shall remove any improvements constructed by Tenant or other occupants of the Property under this Lease before the expiration of the Term or Extended Term.

(b) Tenant shall notify Landlord before commencing the removal of an improvement as required under Section 6.08(a), and coordinate the removal work with Landlord. Once Tenant commences the removal work, Tenant shall prosecute the removal with reasonable diligence to Completion and shall repair all damages to the Property caused by such removal no later than the expiration of the Term or Extended Term. All salvage resulting from such work will belong to Tenant, who is responsible for its removal and lawful disposal.

(c) If Tenant fails to remove any improvements from the Property that Tenant is required to remove under Section 6.08(a), Tenant shall pay Landlord the costs that it incurs in removing and disposing of the improvements and repairing damages to the Property caused by such removal.

(d) If Landlord terminates this Lease because of a default by Tenant, all improvements on the Property become the property of Landlord, which may use or dispose of them in its sole discretion. If Landlord elects to remove any improvements, Tenant shall pay Landlord the costs that it incurs in removing and disposing of the improvements and repairing damages to the Property caused by such removal

ARTICLE 7. CARE AND USE OF THE PROPERTY

7.01 Maintenance of the Property. Tenant at its own cost and expense ~~must~~ shall keep the Property and all buildings and improvements that at any time may be situated thereon in good condition and repair during the term of this Lease, ordinary wear and tear excepted. The Property must always be kept by Tenant neat, a clean and free of litter, safe and orderly condition, and in good repair at all times during the Term.

5.03. ~~Restoration or Removal~~ 7.02 Repair of Damaged Buildings and Improvements.

(a) Except as provided in paragraph ~~6~~ Section 7.02, (b), in the event any buildings or improvements situated on the Property by Tenant are damaged or destroyed by fire, earthquake, tsunami, or other casualty, Tenant ~~must~~ shall at Tenant's expense restore the same to good and tenantable condition or ~~must~~ shall remove the same as soon as is reasonably possible, but in no event may the period of restoration exceed ~~eighteen~~ (18) months nor may the period of removal exceed ~~forty five~~ (45) days.

5.04. Property Returned to Previous Condition

~~At the termination of this Lease, Tenant must remove all debris and return the Property clean and in as good order and condition as when the Tenant took possession, failing which Landlord may restore the Property to such condition and Tenant must pay the cost thereof on demand. This paragraph does not require the removal of buildings, improvements, or fixtures upon termination of the Lease, which are governed by other provisions of this Lease.~~

OPTIONAL PROVISION TO BE USED IF TENANT POSSESSES OR OCCUPIES THE PROPERTY PRIOR TO TERM OF THIS LEASE:

~~Tenant acknowledges that it took possession and has continuously occupied the Property prior to the Term of this Lease, commencing on _____ . The obligations created by this paragraph and other provisions of this Lease referring to the time of Tenant's possession or occupancy of the Property relate back to that date.~~

5.05. Access Rights of Landlord

~~Landlord, its agents, servants, or employees, have the right to enter into and upon the Property and all buildings or improvements situated thereon upon reasonable notice to Tenant and during normal business hours (defined as 9 a.m. to 5 p.m. Monday through Friday, except for holidays as defined in paragraphs 17.06 of this Lease) for the purpose of inspecting the Property and all buildings and improvements situated thereon for compliance with the terms of this Lease.~~

5.06. Nuisances Prohibited

~~Tenant must immediately remove from the Property any abandoned or junk vehicles, buildings, improvements, (b) Unless Tenant is excused from the obligation under this paragraph, if the Required Improvements or any part thereof are damaged or destroyed by fire, earthquake, tsunami, or other casualty, rendering the Required Improvements totally or partially inaccessible or unusable, Tenant shall at Tenant's expense restore the Required Improvements to substantially the same condition as they were in~~

immediately before such damage. Tenant shall not be required to restore the Required Improvements under the following circumstances:

(1) If the cost of repairing or restoring the Required Improvements, net of any available insurance proceeds not reduced by applicable deductibles and coinsurance, exceeds 10% of the replacement cost of the Required Improvements, Tenant may terminate this Lease by giving notice to Landlord of Tenant's election to terminate within 15 days after determining the restoration cost and replacement cost, and this Lease shall terminate as of the date of such notice.

(2) If the repair or restoration of the Required Improvements would be contrary to law, either party may terminate this Lease immediately by giving notice to the other party.

(3) If any damage or casualty to the Required Improvements occurs within three years before the end of the Term or any Renewal Term, Tenant may, in lieu of restoring or replacing the Required Improvements, terminate this Lease by giving written notice of termination to Landlord within 120 days after such damage or casualty.

Nothing in this paragraph relieves Tenant of the obligation to surrender the Property upon the expiration or earlier termination of the Term in the condition required by Section 3.03.

(c) Under no circumstance shall Landlord be under any obligation to use or advance any of its own funds to restore any Required Improvements.

7.03 Nuisances Prohibited. Tenant at all times shall keep the Property in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; junk, abandoned or discarded property, including without limitation vehicles, equipment, machinery or fixtures. ~~Tenant must not permit any nuisance or public nuisance to exist or to be created or maintained on the Property; and litter, rubbish or trash.~~ Tenant agrees that any nuisance or public nuisance, under the common law, statute, or as defined by the Homer City Code, or any other code or regulations incorporated therein or otherwise adopted by ordinance or resolution of the City of Homer, may, after fifteen (15) shall not use the Property in any manner that will constitute waste or a nuisance. Landlord, at Tenant's expense and without any liability to Tenant, may remove or abate any such junk, abandoned or discarded property, litter, rubbish or trash, or nuisance on the Property after 15 days written notice to Tenant, or after four (4) hours notice to Tenant in writing, by telephone, facsimile, or in person to Tenant if Landlord makes a written finding that such ~~nuisance or public nuisance constitutes a threat of removal or abatement is required to prevent imminent harm to public health, safety or welfare, be removed or abated by Landlord without Tenant's further permission, with use of force if necessary, and without incurring any civil or criminal liability therefor.~~ All. Tenant shall pay Landlord all the costs of such removal ~~must be paid by Tenant to Landlord~~, plus interest at the Default Rate, as additional rent under the terms of this Lease. This ~~paragraph may~~ section does not be construed as any limitation on limit or waive any other legal rights or remedies available to the City of Homer to abate any nuisance or remedy available to prosecute any the City of Homer to abate any nuisance or for the violation of the Homer City Code.

5.07-7.04 Compliance with Laws

~~Tenant must.~~ Tenant's improvement and use of the Property shall comply with all applicable laws governmental statutes, ordinances, rules and regulations, including without limitation the City of duly constituted public authorities Homer Zoning Code and all applicable building codes, now or hereafter in any manner affecting Tenant's activities on the Property or any buildings or other improvements that may be situated thereon effect.

5.08-7.05 Liens. Except as provided in Article 13, Tenant may not permit any lien, including without limitation a mechanic's or materialman's lien, to be recorded against the Property. If any such lien is recorded against the Property, Tenant shall cause the same to be removed; provided that Tenant may in good faith and at Tenant's own expense contest the validity of any such lien without subjecting the Property to foreclosure, and in the case of a mechanic's or materialman's lien, if Tenant has furnished the bond required in A.S. 34.35.072 (or any comparable statute hereafter enacted providing for a bond freeing the Property from the effect of such a lien claim). Tenant shall indemnify and save Landlord harmless from all liability for damages occasioned by any such lien, together with all costs and expenses (including attorneys' fees) incurred by Landlord in negotiating, settling, defending, or otherwise protecting against such lien and shall, in the event of a judgment of foreclosure of the lien, cause the same to be discharged and removed prior to any attempt at execution of such judgment.

7.06 Radio Interference

At. Upon Landlord's request, the Tenant must shall discontinue the use of any machine or device on the Property of any source of electromagnetic radiation that interferes with any government operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

5.09-7.07 Signs

Tenant may erect signs upon on the Property that comply with state and local sign laws and ordinances. City Planning Department approval is required prior to the erection of any sign on the Property.

5.107.08 Garbage Disposal

Tenant is responsible for removing shall keep any garbage, trash, rubbish or other refuse in industry standard containers until removed, and cause all garbage generated by Tenant's business, trash, rubbish or other refuse on the Property to be collected and transported to a Kenai Peninsula Borough solid waste facility or transfer station at least once a week. Tenant must may not use the place garbage, trash, rubbish or other refuse from the Property in Landlord's Homer Spit garbage disposal facilities.

7.09 Access Rights of Landlord. Landlord's agents and employees shall have the right, but not the obligation, to enter the Property at all reasonable times to inspect the use and condition of the Property; to serve, post or keep posted any notices required or allowed under the provisions of this Lease, including notices of non-responsibility for liens; and to do any act or thing necessary for the safety or preservation of the Property.

OPTIONAL PARAGRAPHS 5.11 AND 5.12 PARAGRAPH 7. APPLICABLE TO FISH PROCESSORS WITH ACCESS TO OUTFALL LINE AND FOR USE OF FISH DOCK

5.11 ~~Outfall Line Connection Agreement~~

~~Tenant must connect to the City of Homer fish processor outfall line. On or before the commencement of the Term of this Lease, Tenant must enter into Fish Processor Outfall Line Connection Agreement with Landlord. Tenant must maintain such an agreement in force for so long as the City of Homer continues to maintain the outfall line. Tenant must at its own expense install and maintain a fish grinder as required by the Fish Processor Outfall Line Connection Agreement.~~

5.127. ~~Fish Dock Use Permit~~

~~Before using the City of Homer Fish Dock, Tenant ~~must~~shall obtain from the Landlord a City of Homer Fish Dock Use Permit. Tenant ~~must~~shall continue to have a current Fish Dock Use Permit in force ~~for so long as Tenant intends~~until the earlier to occur of (i) the expiration or earlier termination of the Term and any Extended Term, and (ii) the date Tenant ceases to use the Fish Dock.~~

6. ~~IMPROVEMENTS~~

6.01. ~~Ownership of Buildings and Improvements~~

~~(a) Any and all buildings, fixtures, and improvements of any nature whatsoever constructed or maintained on OPTIONAL PARAGRAPH 7. APPLICABLE FOR USE OF OTHER DOCKS~~

~~7. Terminal Use Permit. Before using City of Homer Docks other than the Property by Fish Dock, Tenant will be and remain shall obtain a City of Homer Terminal Use Permit. Tenant shall continue to have a current Terminal Use Permit in force until the property earlier to occur of Tenant at all times during the Term and any Renewal Terms and may be removed or replaced by Tenant, subject, however, to the obligations concerning the Required Improvements set forth in paragraph 6.02.~~

~~(b) Upon (i) the expiration or earlier termination of the Lease, all buildings, improvements, and fixtures must remain upon the Property and must be surrendered with the Property to Landlord, unless Landlord elects to require the removal of any or all of such property. If Landlord requires that buildings, improvements, and fixtures, or any part of them, be removed, Tenant must remove the same at its expense and repair or pay Landlord the cost of repairing any damage resulting from such removal. Approximately 60 days prior to the Tenant's scheduled vacation of the Property, Landlord and Tenant will meet and Landlord will advise Tenant what items must be removed and what items must remain.~~

6.02. ~~Required Improvements~~

~~(a) Tenant must, at Tenant's sole expense, construct certain Required improvements on the Property. Tenant must at all times during the Term and any Extended Term and any Renewal Term keep and maintain the Required Improvements, or their equivalent of equal or greater value, as the minimum development on the Property. The Required Improvements are:~~

~~(iii) Not less than five days prior to the commencement of any construction, Tenant must give written notice of intent to commence construction and furnish to Landlord proof that all applicable federal, state, and local permits have been obtained or applications therefor have been submitted to the appropriate governmental agency.~~

~~(iv) Not less than five days prior to the commencement of any construction, Tenant must furnish to Landlord current certificates of insurance in the amounts and for the purposes specified in paragraphs 11.01 through 11.04 of this Lease.~~

~~(v) Not less than five days prior to the commencement of any construction, Tenant must deliver to Landlord satisfactory proof that workers' compensation insurance has been procured to cover all persons employed in connection with the construction. Upon notice to Tenant of any deficiency in workers' compensation coverage, such deficiency must be cured immediately, and no work will be performed on the project until Tenant has provided Landlord satisfactory proof that proper workers' compensation insurance is in place.~~

~~(b) On Completion of the improvements, Tenant must give Landlord notice of all changes in plans or specifications made during the course of the work. Landlord acknowledges that it is common practice in the construction industry to make numerous changes during the course of construction on substantial projects. Changes that do not substantially alter plans and specifications previously approved by Landlord do not constitute a breach of Tenant's obligations, but Tenant must nevertheless give Landlord notice of such changes.~~

~~(e) At any time and from time to time, Tenant may, but is not obligated to, construct or otherwise make new improvements on any part or all of the Property and to demolish, remove, replace, alter, relocate, reconstruct, or add to existing improvements in whole or in part, provided that Tenant is not then in default under any condition or provision of this Lease and provided further the Required Improvements, or their equivalent of equal or greater value, are always maintained on the Property. All salvage will belong to Tenant. Once any work is begun, Tenant must with reasonable diligence prosecute to completion all construction of improvements, additions, alterations, or other work.~~

~~6.04. As-Built Survey~~

~~Within thirty (30) days after Completion of construction of any improvements on the Property involving construction, alteration, addition, removal or demolition of the foundation, structure, utility services, ingress and egress, or any major changes of all or any part of any structure or improvement on the Property, Tenant must provide Landlord with three (3) copies of an as built survey of the Property prepared by a registered professional surveyor, showing the location of all improvements on the Property, including underground utilities, pipelines, and pre-existing improvements.~~

~~6.05 Definitions~~

~~As used in this Article 6 of this Lease, the following terms and phrases will have the meanings given here, unless the context requires otherwise:~~

~~"Complete" and "Completion" mean that construction is finished and the improvement is fully operational and ready for occupancy or use for its intended~~

~~purpose, including, but not limited to, the receipt of any applicable certificate of occupancy and other applicable permits, licenses, certificates, or inspection reports necessary to the improvement's legally authorized use. The existence of a contractor's punch list of items to be performed to finish the project will not prevent the construction from being Complete if the improvement otherwise meets the requirements of this definition.~~

~~"Excusable Delay" means delay due to strikes, act of God, inability to obtain labor or materials, governmental requirements, such as laws and requirements of any governmental authority having jurisdiction over the improvements or over any permits or licenses needed for Tenant's proposed operations, removal of Hazardous Materials discovered at any time after the Commencement Date, enemy action, civil commotion, fire, unusual inclement weather, unavoidable casualty or similar causes beyond the reasonable control of Tenant.~~

~~6.06 — Extensions of Time for Completion of Required Improvements~~

~~An extension of the time to Complete the Required Improvements will be granted for the period of time of any Excusable Delay (as defined in paragraph 6.05); provided Tenant has commenced construction in a timely manner and is proceeding diligently to complete construction.~~

~~7. — RESERVED~~

ARTICLE 8. — RESTRICTIONS ON TRANSFER

~~8.01. Consent Required for Assignment or Sublease Without Consent Generally Prohibited~~

~~. Tenant ~~must~~shall not voluntarily assign, encumber or sublease its interest in this Lease or in the Property without first obtaining ~~Landlord's consent~~ the written consent of the Council, which will not be withheld unreasonably. Any assignment, encumbrance or sublease without ~~Landlord's~~the consent of the Council will be voidable and, at Landlord's election, will constitute a default. ~~Any Tenant shall request for Landlord's consent must be made to Landlord~~of the Council in writing at least ~~thirty~~ (30) days prior to the proposed effective date of the proposed assignment, encumbrance or sublease, accompanied by a copy of the proposed assignment or sublease. Tenant shall be assessed additional rent, as approved by the Council, upon approval of a sublease of the Property, but not upon a sublease of a building or other structure on the Property. No consent to any assignment, encumbrance or sublease will constitute a further waiver of the provisions of this paragraph. ~~Anywaives Tenant's obligation to obtain Landlord's consent to any subsequent assignment effected pursuant to this paragraph 8.01 must~~or sublease. An assignment of this Lease shall require the assignee to assume the Tenant's obligations hereunder. ~~An assignment will, and shall not release the~~ Tenant from liability hereunder unless Landlord specifically so provided~~provides~~ in writing and approved by Landlord. ~~Tenant must promptly deliver to Landlord a copy of any instrument or must promptly notify Landlord of any unwritten agreement, that assigns, encumbers or subleases the Property. Landlord's consent to assign, encumber or sublease the Property will not be withheld unreasonably.~~~~

8.02.—Change of Ownership

Events that Constitute an Assignment. If Tenant is a partnership or limited liability company, a withdrawal or change, voluntary, involuntary or by operation of law, of ~~any partner(s) or member(s)~~ one or more partners or members owning ~~twenty-five percent (25%)~~ 25% or more of the entity, or the dissolution of the entity, will be deemed ~~a voluntary~~ an assignment under paragraph subject to Section 8.01. If Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of ~~twenty-five percent (25%)~~ 25% of the value of the assets of Tenant, will be deemed ~~a voluntary~~ an assignment under paragraph subject to Section 8.01. ~~The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least twenty-five percent (25%) of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and entitled to vote for the election of directors. As to;~~ provided that if Tenant is a corporation the stock of which is traded through an exchange or over the counter, a sale or other transfer of a controlling percentage of the capital stock of such a Tenant corporation will not be deemed to be a voluntary assignment. Tenant will not constitute an assignment subject to Section 8.01. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least 25% of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and entitled to vote for the election of directors.

8.03. Costs of Landlord's Consent to be Borne by Tenant

~~Tenant must pay.~~ As a condition to Landlord's consent to any assignment or sublease under section 8.01, Tenant shall pay Landlord's reasonable costs, including without limitation attorney's fees, and the expenses of due diligence inquiries, incurred by Landlord in connection with any request by Tenant for Landlord to Landlord's consent to any the assignment or subletting by Tenant sublease.

~~{ALTERNATIVE 1—Optional Additional Rent Provisions for Sublease.}~~

8.04.—Additional Rent For Sublease.

~~If Landlord gives its written consent,~~ **ARTICLE 9. LIABILITY,
INDEMNITY AND INSURANCE**

9.01 Limitation of Landlord Liability. Landlord, its officers and employees shall not be liable to Tenant for any damage to the Property or the buildings and improvements thereon, or for death or injury of any person or damage to any property, from any cause; however, this provision shall not affect the liability of Landlord, its officers and employees on any claim to the extent the claim arises from their negligence or willful misconduct.

9.02 Indemnity Generally. ~~Tenant may sublet shall indemnify, defend, and hold harmless Landlord, its officers and employees from all or a portion of the Property. If any rent accrues to Tenant as the result of such sublease that exceeds the pro rata share of rent then being paid by Tenant for the portion claims arising from death or injury of any person or damage to any property occurring in or about the Property being sublet, then 25% of such excess rent must be paid by Tenant to Landlord as additional rent.~~

~~[ALTERNATIVE 2 — Optional Additional Rent Provisions for Sublease or Assignment. Note subparagraph (d)'s reference to the optional Article 14. Alternative 1 is favored as more workable than Alternative 2.]~~

~~8.04. Additional Rent For Certain Transfers~~

~~(a) Except as provided in subparagraph 8.04(d), if Tenant subleases, assigns, or otherwise transfers to another for valuable consideration all or substantially all of its interest in this Lease or the Property or the buildings located on the Property, for any length of time, then Tenant shall pay to Landlord additional rent. The additional rent will equal 25% of the consideration payable for such sublease, assignment, or transfer of the Lease or Property, or both.~~

~~(b) If the consideration paid for the sublease, assignment, or transfer of the Lease or Property is not separately stated, or if Landlord in good faith concludes that the separately stated consideration is unreasonably low, then the consideration will be deemed to be an amount as calculated in, however, this subparagraph. In such case the consideration for the sublease, assignment, or transfer of the Lease or Property, or both, will be deemed to be a proportion of the total consideration that equals the proportion that the fair market value of the Property (as if owned in fee simple)(including utility improvements, regardless of who installed them) bears to the fair market value of the Property plus the Tenant's buildings and Tenant's other real property improvements on the Property. The fair market values will be determined by a qualified real estate appraiser selected by mutual agreement of Landlord and Tenant. The appraiser's determination of fair market values will be conclusive between the parties. The cost of the appraisal must be paid by Tenant, but if Tenant fails to do so, Landlord may pay the cost of the appraisal and the amount paid will become additional rent immediately due and payable under this Lease.~~

~~(c) Payment of the additional rent is due at the time the Landlord gives written consent to the sublease, assignment, or transfer, and such consent is required prior to any such sublease, assignment, or transfer. If the consideration for the sublease, assignment, or transfer is payable in installments, then the stream of installment payments will be discounted to present value at 6.0% for purposes of computing the additional rent due.~~

~~(d) The requirement of subparagraph 8.04(a) to pay additional rent does provision shall not apply to (i) a sublease of a commercial, storage, or office rental unit made in the normal course of Tenant's leasing business; provided such sublease is for substantially less than all of the Property or building(s), and is for an authorized purpose described in paragraph 5.01, or (ii) an assignment or other conveyance of Tenant's interest in the Lease or the Property solely for collateral purposes, provided such assignment or other conveyance qualifies as a Permitted Mortgage under Article 14 of this Lease.~~

~~9. — PROHIBITION OF LIENS~~

~~Tenant must not suffer or permit any liens, including without limitation, mechanic's or materialmen's liens, to be recorded against the Property. If any such liens are recorded against the Property, Tenant must cause the same to be removed, or, in the alternative, if Tenant in good faith desires to contest the same, Tenant will be privileged to do so, but in such case Tenant hereby agrees to indemnify and save Landlord harmless from all liability for~~

~~damages occasioned thereby and must, in the event of a judgment or foreclosure of such liens, cause the same to be discharged and removed prior to any attempt at execution of such judgment. Nothing contained in this Lease may be construed to be a waiver of the provisions of AS 09.38.015(e), as may be amended from time to time.~~

10. — INDEMNITY

10.01. Indemnity Generally

~~Tenant agrees to protect, indemnify and hold Landlord harmless from and against any and all liability arising from acts or omissions of any person and of any nature whatsoever occurring on the Property during the Term or during Tenant's possession of the Property, or arising out of or relating to the Tenant's use of the Property, causing injury to, or death of persons, or loss of, or damage to, property, and from any expense, including attorneys fees, incidental to the defense of and by Landlord therefrom, excepting only liability arising any claim to the extent the claim arises from the sole negligence of Landlord. If any action or proceeding is brought against Landlord by reason of any such occurrences, Landlord will promptly notify Tenant in writing of such action or proceeding or willful misconduct of Landlord, its officers and employees.~~

10.02.9.03 Indemnity Forfor Emergency Service Costs

~~Without limiting the generality of paragraph 10.01 Section 9.02, in the event of a major fire or other emergency, Tenant ~~must~~shall reimburse Landlord for the cost of providing fire fighting and other emergency service to Tenant ~~or~~, the Property, ~~or elsewhere ifat any other location where~~ the fire or emergency requiring response arises from or is related to the use of the Property or Tenant's operations. For purposes of this paragraphsection, a major fire or other emergency is one that requires more than five hours of effort by the City of Homer Fire Department of Public Safety or its successors.~~

11. — INSURANCE

11.01. Liability 9.04 Insurance Requirements.

~~(a) Tenant must procure and at all times maintain, at its expense, public liability insurance covering Tenant's operations and the Property in an amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence to protect against liability for bodily injury, death or property damage that might arise from the construction, occupancy or use of the Property and the operations conducted on, from, or related to it. Such insurance must include coverage for comprehensive general liability; bodily injury and property damage liability; premises and operations liability, including underground, products and completed operations; broad form property damage liability; blanket contractual liability; personal injury liability; and comprehensive automobile liability including without limitation bodily injury and property damage and all owned, hired, and non owned automobiles. Such insurance policy or policies must be additionally endorsed to provide sudden and accidental pollution coverage for claims or losses arising out of activities or events taking place on the Property or arising out of Tenant's operations, wherever conducted in the City of Homer.~~

~~(b) Tenant must procure and at all times maintain, at its expense, environmental~~(a) Without limiting Tenant's obligations to indemnify under this Lease, Tenant at its own expense shall maintain in force at the times provided in this section the following policies of insurance with a carrier or carriers reasonably satisfactory to Landlord

and authorized to conduct business in the state of Alaska. Specific limits shown shall be the minimum acceptable limits, and if Tenant's policy contains higher limits, Landlord shall be entitled to coverage to the extent of such higher limits.

(b) Tenant shall maintain in force at all times during the Term the following policies of insurance:

(1) Comprehensive general liability insurance with limits of liability not less than a combined single limit for bodily injury and property damage of \$1,000,000 each occurrence and \$2,000,000 aggregate. This insurance also shall be endorsed to provide contractual liability insuring Tenant's obligations to indemnify under this Lease.

(2) Comprehensive automobile liability covering all owned, hired and non-owned vehicles with coverage limits not less than \$1,000,000 occurrence combined single limit for bodily injury and property damage.

(3) Workers' compensation insurance as required by AS 23.30.045. This coverage shall include employer's liability protection not less than \$1,000,000 per person, \$1,000,000 per occurrence. Where applicable, coverage for all federal acts (i.e. U.S. Longshoremen and Harbor Worker's Compensation and Jones Acts) shall also be included. The workers' compensation insurance shall contain a waiver of subrogation clause in favor of Landlord.

(4) Environmental remediation and environmental impairment liability insurance, including sudden and accidental coverage and gradual pollution coverage. ~~Such coverage must also include, and~~ clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property. ~~Tenant must maintain, with coverage limits of liability of ONE MILLION DOLLARS (\$not less than \$1,000,000.00) for any one accident or occurrence. Environmental impairment liability insurance must~~ Coverage shall extend to loss arising as a result of: (i) liability of others assumed by Tenant under contract or agreement; (ii) clean-up operations; (iii) activities performed by or on behalf of Tenant while Tenant has care, custody, possession, or control of vessels, equipment, people, supplies, products or materials for which Tenant performs services or upon which Tenant performs actions; and (iv) the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.

(5) Property insurance covering the Required Improvements described in Section 6.02 in an amount not less than full replacement cost of the Required Improvements. The policy shall include boiler and machinery coverage.

(c) During construction of the Required Improvements and during any subsequent alteration or restoration of the Required Improvements at a cost in excess of \$250,000 per job, Tenant shall maintain builder's risk insurance in an amount equal to the completed value of the project.

(d) Tenant shall furnish Landlord with certificates evidencing the required insurance not later than the date as of which this Lease requires the insurance to be in effect. The certificates of insurance shall be attached hereto as Exhibit G. The certificates and the insurance policies required by this Section shall contain a provision that coverages afforded

under the policies will not be cancelled or allowed to expire, and limits of liability will not be reduced, without at least 30 days' prior written notice to Landlord. Landlord shall be named as an additional insured under all policies of liability insurance required of Tenant. Landlord's acceptance of a deficient certificate of insurance does not waive any insurance requirement in this Lease. Tenant also shall grant Landlord permission to obtain copies of insurance policies from all insurers providing required coverage to Tenant by executing and delivering to Landlord such authorizations substantially in the form of Exhibit H as Landlord may request.

[~~ALTERNATIVE 11.019.04(b)(4)~~ — Optional provision waiving environmental insurance based on the authorized uses of ~~paragraph 5~~Section 6.01.]

~~(b)(4)~~ Based on the authorized uses of the Property stated in ~~paragraph 5~~section 6.01, environmental insurance is not required. However, if Tenant uses the Property, with or without authorization from ~~the~~Landlord, for purposes other than those stated in ~~paragraph 5~~section 6.01, ~~then~~if Landlord so elects, and within ~~ten~~10 days after Landlord gives notice of such election, Tenant ~~must~~shall procure and at all times thereafter maintain, at its expense, environmental remediation and environmental impairment liability ~~insurance~~, including sudden and accidental coverage ~~and~~, gradual pollution coverage. ~~Such coverage must also include, and~~ clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property. ~~Tenant must maintain, with coverage limits of liability in the amount stated by Landlord in its notice to Tenant, but in no event not less than ONE MILLION DOLLARS (\$1,000,000.00) for any one accident or occurrence. Environmental impairment liability insurance must~~ Coverage shall extend to loss arising as a result of: (i) ~~liability of others assumed by Tenant under contract or agreement;~~ (ii) ~~clean-up operations;~~ (iii) ~~activities performed by or on behalf of Tenant while Tenant has care, custody, possession, or control of vessels, equipment, people, supplies, products or materials for which Tenant performs services or upon which Tenant performs actions;~~ and (iv) the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.

~~11.02. Worker's Compensation and Employer's Liability Insurance~~

~~Tenant must procure and at all times during the term of this Lease maintain, at its expense, Worker's Compensation Insurance as required by statute and Employer's Liability Insurance.~~

~~11.03. Named Insured, Notice to Landlord, and Waiver of Subrogation~~

~~All insurance policies required to be maintained by Tenant under paragraph 11.01 must name Landlord, and its officers, employees and agents, as additional insured, but they must not contain any exclusion from coverage for Tenant's liability for damages or loss incurred by Landlord because of Landlord's status as an additional insured. All policies issued under paragraph 11.01 must contain a waiver of any subrogation rights any insurer might have against Landlord. All policies issued under paragraphs 11.01 or 11.02 must contain an agreement by the insurers to provide at least thirty (30) days prior written notice to Landlord of cancellation, expiration or substantial changes in policy conditions and coverage.~~

~~Tenant must furnish insurance certificates and copies of all such insurance policies to Landlord promptly after the issuance thereof.~~

11.04. Fire and Extended Coverage Insurance; Builder's Risk Insurance

~~(a) Except as provided in subparagraphs 11.04(b) and (c), Tenant may at its own expense and in its own name obtain insurance against loss or damage by fire and such other risks as it determines to cover buildings, equipment, inventory, fixtures, personal property and improvements made to the Property by Tenant subsequent to Tenant's taking possession of the Property under this Lease.~~

~~(b) Tenant must procure and at all times maintain, in its own name and at its expense, physical property damage insurance covering the Required Improvements described in paragraph 6.02 in an amount not less than 90% of the replacement cost of the Required Improvements. Such insurance must afford coverage for damages resulting from, at a minimum (i) fire, (ii) perils covered by extended coverage insurance, and (iii) explosion of steam and pressure boilers and similar apparatus located on the Property.~~

~~(c) During construction of the Required Improvements and during any subsequent restorations, alterations, or changes in the Required Improvements at a cost in excess of \$250,000 per job, Tenant must procure and maintain builder's all risk insurance in an amount reasonably satisfactory to Landlord.~~

11.05 Required Endorsements and Authorization

~~In addition to, and without limiting the requirements of paragraphs 11.01 through 11.04, Tenant must at all times maintain and give to the Landlord, for Landlord's benefit, current insurance endorsements substantially in the form of Exhibit E and Exhibit F. Tenant must also grant Landlord permission to obtain copies of insurance policies from all insurers providing required coverage to Tenant by executing and delivering to Landlord an authorization substantially in the form of Exhibit G. Tenant must, from time to time, execute and deliver to Landlord such additional authorizations (Exhibit G) that Landlord may request.~~

12. ARTICLE 10. ENVIRONMENTAL MATTERS

10.01 Use of Hazardous Substances. Tenant shall not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process any Hazardous Substance, except as is necessary or useful to Tenant's authorized uses of the Property stated in Section 6.01, and only in compliance with all applicable Environmental Laws. Any Hazardous Substance permitted on the Property as provided in this section, and all containers therefor, shall be handled, used, kept, stored and disposed of in a manner that complies with all applicable Environmental Laws, and handled only by properly trained personnel.

10.02 Prevention of Releases. Tenant shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Tenant or any of its agents, employees, contractors, tenants, subtenants, invitees or other users or occupants of the Property, a release of any Hazardous Substance onto the Property or onto any other property.

10.03 Compliance with Environmental Laws. Tenant at all times and in all respects shall comply, and will use its best efforts to cause all tenants, subtenants and other users and occupants of the Property to comply, with all Environmental Laws, including

without limitation the duty to undertake the following specific actions: (i) Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of, any and all permits, licenses and other governmental and regulatory approvals required by all Environmental Laws, including without limitation permits required for discharge of (appropriately treated) Hazardous Substances into the ambient air or any sanitary sewers serving the Property; and (ii) except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, all Hazardous Substances from or on the Property to be treated and/or disposed of by Tenant will be removed and transported solely by duly licensed transporters to a duly licensed treatment and/or disposal facility for final treatment and/or disposal (except when applicable Environmental Laws permit on-site treatment or disposal in a sanitary landfill).

10.04 Notice. Tenant shall promptly give Landlord (i) written notice and a copy of any notice or correspondence it receives from any federal, state or other government agency regarding Hazardous Substances on the Property or Hazardous Substances which affect or will affect the Property; (ii) written notice of any knowledge or information Tenant obtains regarding Hazardous Substances or losses incurred or expected to be incurred by Tenant or any government agency to study, assess, contain or remove any Hazardous Substances on or near the Property, and (iii) written notice of any knowledge or information Tenant obtains regarding the release or discovery of Hazardous Substances on the Property.

10.05 Remedial Action. If the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment or disposal at the Property of any Hazardous Substance (i) gives rise to liability (including but not limited to a response action, remedial action or removal action) under any Environmental Law, (ii) causes a significant public health effect, or (iii) pollutes or threatens to pollute the environment, Tenant shall, at its sole expense, promptly take any and all remedial and removal action necessary to clean up the Property and mitigate exposure to liability arising from the Hazardous Substance, whether or not required by law.

10.06 Indemnification. Subject to section 10.09, Tenant shall indemnify, defend, and hold harmless Landlord, its officers and employees from and against any and all claims, disbursements, demands, damages (including but not limited to consequential, indirect or punitive damages), losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including experts', consultants' and attorneys' fees and expenses, and including without limitation remedial, removal, response, abatement, cleanup, legal, investigative and monitoring costs), imposed against Landlord, arising directly or indirectly from or out of, or in any way connected with (i) the failure of Tenant to comply with its obligations under this Article; (ii) any activities on the Property during Tenant's past, present or future possession or control of the Property which directly or indirectly resulted in the Property being contaminated with Hazardous Substances; (iii) the discovery of Hazardous Substances on the Property whose presence was caused during the possession or control of the Property by Tenant; (iv) the clean-up of Hazardous Substances on the Property; and (v) any injury or harm of any type to any person or damage to any property arising out of or relating to Hazardous Substances on the Property or from the Property on any other property. The liabilities, losses, claims, damages, and expenses for which Landlord is indemnified under this section shall be reimbursable to Landlord as and when the obligation of Landlord to make payments with respect thereto are incurred, without any requirement of waiting for the ultimate outcome of any litigation, claim or other proceeding, and Tenant shall pay such liability, losses, claims, damages and expenses to Landlord as so incurred within 10 days after notice from Landlord itemizing in reasonable detail the amounts incurred (provided that

no itemization of costs and expenses of counsel to Landlord is required where, in the determination of Landlord, such itemization could be deemed a waiver of attorney-client privilege).

10.07 Survival of Obligations. The obligations of Tenant in this Article, including without limitation the indemnity provided for in Section 10.06, are separate and distinct obligations from Tenant's obligations otherwise provided for herein and shall continue in effect after the expiration of the Term and any Renewal Term.

10.08 Claims against Third Parties. Nothing in this Article shall prejudice or impair the rights or claims of Tenant against any person other than Landlord with respect to the presence of Hazardous Substances as set forth above.

10.09 Extent of Tenant's Obligations. Tenant's obligations under this Article apply only to acts, omissions or conditions that (i) occur in whole or in part during the Term or any Extended Term or during any time of Tenant's possession or occupancy of the Property prior to or after the Term of this Lease; or (ii) are proximately caused in whole or in part by the occupancy of, use of, operations on, or actions on or arising out of the Property by Tenant or its employees, agents, customers, invitees or contractors.

10.10 Inspection at Expiration of Term. Within 90 days before the expiration of the Term or final Extended Term, Tenant shall at its own expense obtain a Phase I environmental inspection of the Property, and conduct any further inspection, including without limitation test holes, that is indicated by the results of the Phase I inspection. Tenant, at its own expense, shall remediate any contamination of the Property that is revealed by the inspections and that is Tenant's responsibility under this Article.

ARTICLE 11. CONDEMNATION

12.01. Condemnation

In the event 11.01 Article Determines Parties' Rights and Obligations. If any entity having the power of eminent domain exercises that power to condemn the Property, or any part thereof or interest therein, ~~is taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or is transferred or acquires the Property, or any part thereof or interest therein by a sale or transfer in lieu of condemnation to any authority entitled to exercise the power of eminent domain,~~ the interests of Landlord and Tenant in the award or consideration for such transfer and the effect of the taking or transfer upon this Lease will be as provided in this Article ~~12~~.

1211.02. Total Taking

If all of the Property is taken or so transferred, this Lease and all the right title and of Tenant's interest thereunder of Tenant will cease terminate on the date title to the Property vests in the condemning authority.

1211.03. Partial Taking—Termination of Lease

In the event, If the taking or transfer of part of the Property leaves causes the remainder of the Property in such location, or in such form, shape or reduced size, or so

~~inaccessible as to be not effectively and practicably usable in the opinion of the Tenant for the purpose of operation thereon of Tenant's business, then this Lease and all of the right, title and Tenant's interest thereunder of Tenant will cease terminate on the date title to the Property vests in the condemning authority, and the condemning authority enters into possession.~~

~~12.04. Partial Taking—Continuation of Lease~~

~~In the event, if the taking or transfer of a part of the Property leaves the remainder of the Property in such location and in such form, shape or size, or so accessible as to be effectively and practicably usable in the opinion of Tenant for the purpose of operation thereon of Tenant's business, this Lease and all of Tenant's interest thereunder will terminate and end as to the portion of the Property so taken or transferred as of on the date title to such portion the Property vests in the condemning authority and the condemning authority enters into possession, but will continue in full force and effect as to the portion of the Property not so taken or transferred. If there is a partial taking and this Lease is not terminated, then the annual rent payable under this Lease, and the Base Rent will abate for in the proportion that the portion of the Property taken in the proportion that such portion bears to all of the Property.~~

~~12.05.11.04 Compensation~~

~~If any compensation is payable as a result of eminent domain proceedings or a transfer in lieu thereof, Landlord and Tenant may each may make a claim against the condemning or taking authority for the amount of any just compensation due to each of them, respectively, it. Tenant must shall make no claim against Landlord for damages for termination of the leasehold or interference with Tenant's business, even if Landlord is the condemning or taking authority. Neither Tenant nor Landlord will have any rights in or to any award made to the other by the condemning authority; provided, that in the event of if a single award to Landlord that includes specific damages for loss of Tenant's leasehold interest separately awarded in the eminent domain proceeding and not as a part of the damages damages recoverable by Landlord, Landlord will transmit such separately awarded damages to Tenant.~~

13.—ARTICLE 12. DEFAULT

~~1312.01. Events of Default~~

~~Each of the following events will be deemed shall constitute an event of default by the Tenant under this Lease and:~~

~~(a breach of the terms, covenants and conditions) The failure of this Lease:~~

~~(a) A default in the payment of the rent and additional sums Tenant to pay rent or any other sum of money due under this Lease, or any part thereof, for a period of ten (within 10) days from after the due date for the payment of such rent or additional sums.~~

~~(b) A default in the performance of any other term, covenant or condition on the part of the Tenant to be kept, performed or observed for a period of fifteen (15) days after Landlord gives to Tenant a written notice specifying the particular default or defaults; provided, however, that any default on the part of Tenant in the performance of work or acts required to be done, or conditions to be modified, will be deemed to be cured if steps are taken promptly (and in no event later than thirty (30) days after such notice has been given)~~

~~by Tenant to rectify the same and are prosecuted to completion with diligence and continuity~~
The failure of Tenant to perform or observe any covenant or condition of this Lease, other than a default in the payment of money described in Section 12.01(a), which is not cured within 30 days after notice thereof from Landlord to Tenant, unless the default is of a kind that cannot be cured within such 30-day period, in which case no event of default shall be declared so long as Tenant shall commence the curing of the default within such 30 day period and thereafter shall diligently and continuously prosecute the curing of same.

(c) ~~—~~ The use of the Property or buildings and improvements thereon for purposes other than those ~~enumerated~~permitted herein, to which Landlord has not given its written consent.

(d) ~~The abandonment of the Property by Tenant. If the Property is deserted or Tenant does not use the Property for the purposes stated in paragraph 5.01 for 12 months or more, it will be deemed abandoned, even if Tenant continues to pay rent. The commencement of a case under any chapter of the federal Bankruptcy Code by or against Tenant, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant as bankrupt or insolvent, or the reorganization of Tenant, or an arrangement by Tenant with its creditors, unless the petition is filed or case commenced by a party other than Tenant and is withdrawn or dismissed within ninety (90) days after the date of its filing.~~

(e) ~~Tenant making an assignment for the benefit of creditors, filing a petition in bankruptcy, petitioning or applying to any tribunal for the appointment of a custodian, receiver, or any trustee for it or a substantial part of its assets, or commencing any proceedings under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or the filing of any such petition or application, or the commencing of any such proceeding against it, in which an order for relief is entered or that remains undismissed for a period of 30 days or more; or Tenant by any act or omission indicating its consent to, approval of, or acquiescence in any such petition, application, or proceeding or order for relief or the appointment of a custodian, receiver, or any trustee for it or any substantial part of any of its properties, or the suffering of any such custodianship, receivership, or trusteeship to continue undischarged for a period of 30 days or more.~~

(f) ~~Tenant being generally unable to pay its debts as such debts become due.~~

(g) ~~Tenant having concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay, or defraud its creditors or any of them, or making or suffering a transfer of any of its property that may be fraudulent under any bankruptcy, fraudulent conveyance, or similar law; or suffering or permitting, while insolvent, any creditor to obtain a lien upon any of its property through legal proceedings or distraint that is not vacated within 30 days from the date thereof.~~

13(e) The admission in writing by Tenant of its inability to pay its debts when due; the appointment of a receiver or trustee for the business or property of Tenant, unless such appointment shall be vacated within 10 days after its entry; Tenant making an assignment for the benefit of creditors; or the voluntary or involuntary dissolution of Tenant.

12.02. Landlord's Remedies

~~In.~~ Upon the occurrence of an event of any default by Tenant as recited in paragraph 13.01 of this Lease, Landlord ~~will have~~has all of the below enumerated rights and following remedies, all in addition to any rights and other remedies that Landlord may be given by statute, common law or otherwise. All rights of Landlord are cumulative, and none will exclude any other right or remedy. Landlord's rights and remedies include the following have at law or in equity:

(a) Landlord may declare the term of ~~Terminate~~ this lease ended Lease by written notice to Tenant. ~~Upon such termination of this Lease, upon which Tenant must~~shall surrender possession and vacate the Property immediately, and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Property in such event with or without process of law and to repossess Landlord of the Property and to expel or remove Tenant and any others who may be occupying or within the Property and to remove any and all property therefrom, using such force as may be necessary, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law.

(b) ~~Landlord may by~~ By written notice declare Tenant's right to possession of the Property terminated without terminating this Lease. ~~Upon such termination of Tenant's right to possession, upon which~~ Landlord will have all the rights to repossess the Property and remove Tenant and Tenant's property that are enumerated in paragraph 13.02 described Section 12.02(a).

(c) ~~Landlord may~~ Subject to Section 12.01(e), relet the Property in whole or in part for any period equal to or greater or less than the remainder of the Term or ~~Renewal~~Extended Term, as applicable, for any sum that Landlord may deem reasonable, except as provided in (e) of this paragraph.

(d) ~~Landlord may collect~~ Collect any and all rents due or to become due from subtenants or other occupants of the Property.

(e) Landlord may recover, whether this Lease be terminated or not, from Tenant, damages provided for below consisting of items (i), and (ii), or, at Landlord's election in lieu of (ii), item (iii):

(i) ~~with or without terminating this Lease,~~ actual attorney's fees and other expenses incurred by Landlord by reason of the breach or Tenant's default by Tenant; and, and elect to recover damages described under either (1) or (2):

(ii) 1) from time to time, an amount equal to the ~~amount~~sum of all ~~rent~~Base Rent and ~~additional~~other sums reserved under this Lease that have become due and remain unpaid, less the net-rent, if any, collected by Landlord on reletting the Property, that shall be due and payable by Tenant to Landlord on the several days on which the rent and additional sums reserved in this Lease would have become due and payable; that is to say, upon each of such days Tenant must pay to Landlord the amount of deficiency then existing. Such net rent collected on reletting by Landlord will be computed by deducting from the gross rent collected all Property reduced by the amount of all expenses incurred by Landlord in connection with the reletting of the Property, or any part thereof, including broker's commission and the cost of

~~renovating or remodeling-reletting the Property or the buildings or improvements thereon, provided, however, Landlord must take diligent effort in reletting the Property to obtain a rental rate as close to or above that required of Tenant under this Lease or else Landlord will not have access to the remedy set out in this subparagraph 13.02(e)(ii); or~~

~~(iii) an amount to be due(2) immediately on breach, upon Tenant's default, an amount equal to the difference between the rentBase Rent and the fair and reasonable rental value of the Property for the same period. In the computation of such damages the difference between any installment of rent thereafter becoming due and the fair and reasonable value of the Property for the period for which such installment was payable will be remainder of the Term or Renewal Term, discounted to the date of such breach at default at a rate per annum equal to the rate of eight percent (8%) per year at which Landlord could borrow funds for the same period as of the date of such default.~~

~~(f) Reentry or reletting of the Property, or any part thereof, willshall not be deemed a termination of terminate this Lease, unless expressly declared to be soaccompanied by LandlordLandlord's written notice of termination to Tenant.~~

~~(g) If this Lease is deemed terminated, Tenant's liabilities will survive and Tenant will be liable for damages as provided in this paragraph 13.02.~~

~~1312.03. Assignment of Rents to Landlord~~

~~Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under thethis Lease, all rent from any subletting of all or a part of the Property as permitted by this Lease, and Landlord, as assignee and attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligationobligations under this Lease, except that, Tenant has the right to collect such rent until the occurrence of an aetevent of default by Tenant, Tenant will have the right to collect such rent.~~

~~14. RESERVED~~

~~OPTIONAL ARTICLE 14~~

~~(to be used when the lease needs to be "mortgageable")~~

~~14. 13. LEASEHOLD MORTGAGES~~

~~1413.01. Definitions~~

~~As used in this article 14, the following capitalized terms will Mortgage of Leasehold Interest. Tenant shall have the meanings set forth below:~~

~~"Indebtedness" means the amount that is outstanding at any given time under a Permitted Mortgage.~~

~~"Landlord's Estate" means right at any time, and from time to time, to subject the leasehold estate and any or all of Landlord's right, title and interest in its fee estate in the~~

~~Property, its reversionary interest in Tenant's improvements under this Lease, and all other rental and benefits due Landlord hereunder.~~

~~"Mortgagee" means the holder or beneficiary of any Permitted Mortgage.~~

~~"Permitted Mortgage" means collectively any deed(s) situated on the Property to one or more deeds of trust, mortgage(s), mortgages, and other collateral security instruments serving as security for a construction loan or permanent loans, or both, (otherwise permitted to be incurred hereunder) that encumber Tenant's Estate, together with any modification, substitution, amendment, extension, increase, refinancing, replacement or recasting (otherwise permitted to be incurred hereunder) of any Permitted Mortgage; provided, however in no event may any such Permitted Mortgage encumber Landlord's Estate as security for a loan or loans or other obligation of Tenant (each a "Leasehold Mortgage"), subject to the remainder of this Article 13.~~

~~"Tenant's Estate" means all of Tenant's right, title and interest in its leasehold estate in the Property, its fee estate in the improvements, and its interest under this Lease.~~

~~14.02. Encumbrance of Tenant's Estate~~

~~Tenant will have the right at any time and from time to time to encumber all or any portion of Tenant's Estate pursuant to one or more Permitted Mortgages, provided Tenant must:~~

~~(a) promptly following its receipt of any notice of default or other notice of the acceleration of the maturity of a Permitted Mortgage from a Mortgagee, deliver a true and correct copy thereof to Landlord; and~~

~~(b) refrain from encumbering or purporting to encumber, by means of a Permitted Mortgage or otherwise, Landlord's Estate.~~

~~14.03. Conditions For Mortgagee Protections~~

~~Provided that any Mortgagee first provides Landlord with a conformed copy of a Permitted Mortgage that contains the name and address of such Mortgagee, and provided such Permitted Mortgage was executed in compliance with the terms hereof, Landlord hereby covenants and agrees to faithfully perform and comply with the provisions of paragraph 14.04 below with respect to such Permitted Mortgage.~~

~~14.04. Mortgagee Protections~~

~~Subject to compliance with the provisions of paragraphs 14.01 through 14.03 above, Landlord agrees as follows:~~

~~(a) No 13.02 Subordinate to Lease. The Leasehold Mortgage and all rights acquired under it shall be subject and subordinate to all the terms of this Lease, and to all rights and interests of Landlord except as otherwise provided in this Lease.~~

~~13.03 Notice to Landlord. Tenant shall give Landlord notice before executing each Leasehold Mortgage, and shall accompany the notice with a true copy of the note and the Leasehold Mortgage as proposed for execution. Upon Landlord's written consent to the Leasehold Mortgage and upon execution of the Leasehold Mortgage by all parties, the~~

mortgagee shall become a Qualified Mortgagee as that term is used in this Lease. Tenant also shall deliver to Landlord a true and correct copy of any notice from a Qualified Mortgagee of default or acceleration of the maturity of the note secured by a Leasehold Mortgage promptly following Tenant's receipt thereof.

13.04 Modification or Termination. No action by Tenant or Landlord to cancel, surrender, or materially modify the economic terms of this Lease or the provisions of ~~article 14 of this Lease~~ Article 11 will be binding upon a Qualified Mortgagee without its prior written consent.

~~(b) Notices.~~ **13.05 Notice to Qualified Mortgagee.**

~~(a) If Landlord gives any notice, demand, election or other communication that may adversely affect the security for a Permitted Mortgage, hereunder to Tenant, including without limitation a notice of an event of default hereunder (hereinafter collectively "Notices"), to Tenant, Landlord must~~ shall give a copy of the notice to each such Notice to the Qualified Mortgagee at the address previously designated by it. ~~Such copies of Notices will be sent by Landlord and deemed received as described in article 17 of this Lease. No Notice given by Landlord to Tenant will be binding upon or affect said Mortgagee unless a copy of said Notice is given to it pursuant to this article. In the case of an assignment of such Permitted Mortgage or change in address of such~~

~~(b) If a Qualified Mortgagee, said assignee or changes its address or assigns the Leasehold Mortgage, the Qualified Mortgagee, by written notice to Landlord, or assignee may change the address to which such copies of Notices are to~~ notices hereunder shall be sent by written notice to Landlord. Landlord will not be bound to recognize any assignment of such Permitted a Qualified Mortgage unless and until Landlord has been given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such the assignee will be deemed to be the Qualified Mortgagee hereunder with respect to the Permitted Mortgage being assigned. Leasehold Mortgage.

~~(c) If such Permitted a Leasehold Mortgage is held by more than one person, corporation or other entity, no provision of this Lease requiring Landlord~~ Landlord shall not be required to give Notices or copies thereof notices to said the Qualified Mortgagee will be binding upon Landlord of the Leasehold Mortgage unless and until all of said the holders designate in writing one of their number to receive all such Notices and copies thereof and have given to of the Leasehold Mortgage give Landlord an original executed counterpart of such a written designation. of one of their number to receive notices hereunder. Notice given to the one so designated is effective as notice to all them.

~~(e)~~ **13.06 Performance of Covenants. The Tenant Obligations.**

~~(a) A Qualified Mortgagee may perform any term, covenant or condition obligation of Tenant and remedy any default by Tenant under this Lease within the time periods specified in the Lease, and Landlord will~~ shall accept such performance with the same force and effect as if furnished by Tenant; provided, however, that the Qualified Mortgagee will not thereby be subrogated to the rights of Landlord.

~~(d) Delegation to Mortgagee.~~ ~~(b)~~ Tenant may delegate irrevocably to the a Qualified Mortgagee the non-exclusive authority to exercise any or all of Tenant's rights hereunder, but no such delegation will be binding upon Landlord unless and until either

Tenant or the Qualified Mortgagee gives Landlord a true copy of a written instrument effecting such delegation. ~~Such delegation of authority may be effected by the terms of the Permitted Mortgage itself, in which case service upon Landlord of an executed counterpart or conformed copy of said Permitted Mortgage in accordance with this article, together with written notice specifying the provisions therein that delegate such authority to said Mortgagee, will be sufficient to give Landlord notice of such delegation.~~

~~(e) — Default by (c) If Tenant. In the event of an event of default by Tenant defaults in the payment of any monetary obligation hereunder, Landlord agrees shall not to terminate this Lease unless and until Landlord provides written notice of such event of default to any each Qualified Mortgagee and such no Qualified Mortgagee fails to cure cures such event of default within ten (10) business days following after the expiration of any grace or cure periods granted Tenant herein. In the event of an event of default by If Tenant defaults in the performance or observance of any non-monetary term, covenant, or condition to be performed by it obligation hereunder, Landlord agrees shall not to terminate this Lease unless and until Landlord provides written notice of such event of default to any each Qualified Mortgagee and such no Qualified Mortgagee fails to cure cures such event of default within thirty (30) business days following after the expiration of any grace or cure periods granted Tenant herein; provided, however, if such event or default cannot practicably be cured.~~

13.07 Possession by the Qualified Mortgagee without taking. A Qualified Mortgagee may take possession of the Property, or if such event of default is not susceptible to being cured by the Mortgagee, then Landlord will not terminate this Lease if and as long as vest in the interest of Tenant in this Lease upon the performance of the following conditions:

~~(i) — In the case of an event of default that cannot practicably be cured by the Mortgagee without taking possession of the Property, the Mortgagee has delivered to Landlord, prior to the date on which Landlord is entitled to give notice of lease termination, a written instrument wherein the Mortgagee unconditionally agrees that it will cure such an event of default, and that if this Lease thereafter is terminated prior to the curing of such default, said Mortgagee must pay to Landlord the cost of curing such an event of default;~~

~~(ii) — In the case of an event of default that cannot practicably be cured by the Mortgagee without taking possession of the Property, said Mortgagee must proceed diligently to obtain possession of the Property as Mortgagee (including possession by receiver), and, upon obtaining such possession, must proceed diligently to cure such event of default in accordance with the guarantee delivered pursuant to subsection (i) above; and~~

~~(iii) — In the case of an event of default that is not susceptible to being cured by the Mortgagee, the Mortgagee must institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it acquires Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure).~~

The Mortgagee will not be required to obtain possession or to continue in possession as Mortgagee of the property pursuant to subsection (ii) above, or to continue to prosecute foreclosure proceedings pursuant to subsection (iii) above, if and when such event of default is cured. Nothing herein will preclude Landlord from exercising any of its rights or remedies with respect to any other event of default by Tenant during any period of such forbearance;

~~but in such event the Mortgagee will have all of its rights provided for herein. If the Mortgagee, its nominee, or a purchaser in a foreclosure sale, acquires title to Tenant's Estate and cures all events of default that are susceptible of being cured by the Mortgagee or by said purchaser, as the case may be, then prior events of default that are not susceptible to being cured by the Mortgagee or by said purchaser will no longer be deemed events of default hereunder.~~

(f)(a) The payment to Landlord of any and all sums due to Landlord under this Lease, including without limitation accrued unpaid rent.

(b) The sending of a written notice to Landlord and Tenant of the Qualified Mortgagee's intent to take possession of the Property and assume the Lease.

(c) The curing of all defaults not remediable by the payment of money within an additional 30 days after the date upon which such default was required to be cured by Tenant under the terms of this Lease.

13.08 No Liability of Mortgagee without Possession. A Qualified Mortgagee shall have no liability or obligation under this Lease unless and until it sends to Landlord the written notice described in paragraph 13.07(b). Nothing in this Lease or in the taking of possession of the Property and assumption of the Lease by a Qualified Mortgagee or a subsequent assignee shall relieve Tenant of any duty or liability to Landlord under this Lease.

13.09 New Lease. If any Qualified Mortgagee acquires Tenant's Estate leasehold as a result of a judicial or non-judicial foreclosure under any Permitted Leasehold Mortgage, or by means of a deed in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, such the Qualified Mortgagee will thereafter have the right to may assign or transfer Tenant's Estate leasehold to an assignee upon obtaining Landlord's written consent with respect thereto, which consent will not be unreasonably withheld or delayed, and subject to all of the other provisions of article Article 8 above. Upon such acquisition of Tenant's Estate as described in the preceding sentence by the Qualified Mortgagee, or the its assignee of Mortgagee Tenant's leasehold, Landlord will execute and deliver a new ground lease of the Property to such the Qualified Mortgagee or such its assignee of Mortgagee given not later than one hundred twenty (120) days after such party's acquisition of the Tenant's Estate. Said leasehold. The new ground lease will be identical in form and content to the provisions of this Lease, except with respect to the parties thereto, the term thereof (which will be co-extensive with the remaining term Term hereof), and the elimination of any requirements that have been Tenant fulfilled by Tenant prior thereto, and said the new ground lease will have priority equal to the priority of this Lease. Upon execution and delivery of such the new ground lease, Landlord will cooperate with the new tenant, at the sole expense of said new tenant, in taking such action as may be necessary to cancel and discharge this Lease and to remove Tenant named herein from the Property.

(g) Further Amendments. Landlord and Tenant hereby agree to cooperate in including in this Lease by suitable amendment from time to time any provision that may reasonably be requested by any proposed Mortgagee for the purpose of implementing the Mortgagee protection provisions contained in this Lease and allowing such Mortgagee reasonable means to protect or preserve the lien of the Permitted Mortgage on the occurrence of an event of default hereunder. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate any such amendment; provided, however, that any such amendment must not in any way

~~affect the term or rental under this Lease, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.~~

~~(h) — Financial. Landlord hereby agrees to cooperate reasonably with Tenant or any third party, or both, at Tenant's sole expense, in connection with Tenant's efforts to obtain financing for, or in connection with, the Property.~~

~~15. REMOVAL OF TRADE FIXTURES, EQUIPMENT, AND MACHINERY UPON EXPIRATION OR TERMINATION OF LEASE~~

~~15.01. Removal Upon Expiration~~

~~Trade fixtures, machinery, equipment, and other items of personal property owned by Tenant will be considered Tenant's property at all times during this Lease and must be removed by Tenant at its own expense from the Property upon the expiration of the Term or Renewal Term of this Lease, unless Landlord gives written consent to allow such property to remain on the Property. If the removal of Tenant's trade fixtures, machinery, equipment and other items of personal property causes injury or damage to the Property, including buildings or improvements that will remain on the Property, Tenant must repair such injury or damage or pay Landlord the full amount to repair the same. In the event Tenant, without Landlord's written consent, fails to remove such property on or before the expiration of this Lease, the Landlord may, at its election, immediately (i) declare all or any part of the property abandoned, in which case title to such property will vest in Landlord, or (ii) to the extent Landlord does not elect to declare it abandoned and take title to such property, Landlord may, in any manner that it sees fit, remove, store, destroy, or otherwise dispose of the property at the Tenant's expense and without liability to Tenant for any loss, damage, value, or other compensation claimed by Tenant as a consequence.~~

~~15.02. Removal After Early Termination~~

~~In the event this Lease terminates for any reason before the scheduled expiration of the Term or Renewal Term, as applicable, Tenant must within one month after such early termination date remove Tenant's trade fixtures, machinery, equipment and other items of personal property, unless Landlord gives written consent to allow such personal property to remain on the Property. If the removal of Tenant's trade fixtures, machinery, equipment and other items of personal property causes injury or damage to the Property, including buildings or improvements that will remain on the Property, Tenant must repair such injury or damage or pay Landlord the full amount to repair the same. On or before the end of such one month period, Tenant may extend the time for removal of such personal property for an additional one month upon written notice to Landlord accompanied by payment of compensation for the entire two month period following the early termination date at a rate equal to 125% of the monthly rental rate in effect on the early termination date (i.e., monthly rental rate x 125% x 2 months). Acceptance of such compensation will not extend the term of the Lease nor create a month to month tenancy. In the event Tenant fails to remove such property within one month after the early termination of this Lease, or within two months if Tenant elects to extend by giving timely notice and paying compensation, the Landlord may, at its election, immediately (a) declare all or any part of the property abandoned, in which case title to such property will vest in Landlord, or (b) to the extent Landlord does not elect to declare abandoned and take title to such property, Landlord may, in any manner that it sees fit, remove, store, destroy, or otherwise dispose of the property at the Tenant's expense and~~

~~without liability to Tenant for any loss, damage, value, or other compensation claimed by Tenant as a consequence.~~

~~16. HAZARDOUS MATERIALS~~

~~16.01. Use of Hazardous Materials on the Property~~

~~(a) Tenant must not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Property by Tenant or its authorized representatives, customers, invitees or sublessees, except for such Hazardous Material as is necessary or useful to Tenant's lawful use of the Property.~~

~~(b) Any Hazardous Material permitted on the Property as provided in this paragraph, and all containers therefor, must be handled, used, kept, stored and disposed of in a manner that complies with all laws or regulations applicable to any such Hazardous Material. Such Hazardous Material must be handled only by properly trained personnel.~~

~~(c) Tenant must not discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system or any body of water, if such material (as reasonably determined by the Landlord, or any governmental authority) does or may, pollute or contaminate the same, or may adversely affect (i) the health, welfare or safety of persons, whether located on the Property or elsewhere, or (ii) the condition, use or enjoyment of the Property or any other real or personal property.~~

~~(d) If any discharge, leak, spill, emission, or pollution of any type occurs upon or from the Property during the Lease term or any holdover, Tenant will immediately notify Landlord and all appropriate federal, state, and local authorities, and will act immediately to contain the spill, repair any damage, absorb and clean up the spill area and restore the Property to comply with the applicable portions of any federal, state, or local law or regulation then in effect.~~

~~(e) Tenant hereby agrees that it will be fully liable for all costs and expenses related to the handling, use, storage, and disposal of Hazardous Material brought or kept on the Property by the Tenant, its authorized representatives, customers, invitees and sublessees, and the Tenant must give immediate notice to the Landlord of any violation or potential violation of the provisions of subparagraphs 16.01 (a), (b), (c) and (d).~~

~~16.02. Indemnification of Landlord~~

~~Any other provisions of the Lease to the contrary notwithstanding, Tenant must defend, indemnify and hold harmless Landlord and its authorized representatives, from and against any claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorney, consultant and expert fees, court costs and litigation expenses) of whatever kind of nature, known or unknown, contingent or otherwise, arising out of or in any way related to: (a) the presence, disposal, release, or threatened release of any such Hazardous Material that is on, from, or affecting the Property, soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (b) any bodily injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Material; (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Material; and/or (d) any violation of any laws applicable thereto. However, this paragraph will apply only if the acts or omissions~~

~~giving rise to the claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses: (i) occur in whole or in part during the Term of this Lease or during any time of Tenant's possession or occupancy of the Property prior to or after the term of this Lease; or (ii) are proximately caused in whole or in part by the occupancy of, use of, operations on, or actions on or arising out of the Property by Tenant or its employees, agents, customers, invitees or contractors. The provisions of this paragraph will be in addition to any other obligations and liabilities Tenant may have to Landlord at law or equity and will survive the termination of this Lease.~~

16.03. Hazardous Material Defined

~~"Hazardous Material" is any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Alaska, or the United States government. "Hazardous Material" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to local, state or federal law, including without limitation, the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder. "Hazardous Material" also includes, but is not restricted to, asbestos, polychlorobiphenyls ("PCB's") and petroleum and petroleum products.~~

17. — GENERAL PROVISIONS

17.01. ARTICLE 14. GENERAL PROVISIONS

14.01 Authority. Tenant represents and warrants that it has complete and unconditional authority to enter into this Lease; this Lease has been duly authorized by Tenant's governing body; this Lease is a binding and enforceable agreement of and against Tenant; and the person executing the Lease on Tenant's behalf is duly and properly authorized to do so.

14.02 Estoppel Certificates

~~Either party ~~must~~ shall~~ at any time and from time to time upon not less than ~~thirty~~ (30) days prior written request by the other party, execute, acknowledge and deliver to such party, or to its designee, a statement in writing certifying that this Lease is ~~unamended and~~ in full force and effect and has not been amended (or, if there has been any amendment thereof, that the same is in full force and effect as amended and stating the amendment or amendments); that there are no defaults existing, (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the ~~rent~~ Base Rent and other charges have been paid in advance. The requesting party shall pay the cost of preparing an estoppel certificate, including the cost of conducting due diligence investigation and attorney's fees, must be paid by the requesting party.

14.03 Delivery of Notices - Method and Time. All notices, demands or requests from one party to another shall be delivered in person or be sent by (i) mail, certified or registered, postage prepaid, (ii) reputable overnight air courier service, or (iii) electronic mail or facsimile transmission (accompanied by reasonable evidence of receipt of the transmission and with a confirmation copy mailed by first class mail no later than the day after transmission) to the address for the recipient in Section 14.04 and will be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.

14.04 Addresses for Notices. All notices, demands and requests from Tenant to Landlord shall be given to Landlord at the following address:

City Manager
City of Homer
491 East Pioneer Avenue
Homer, Alaska 99603
Facsimile: (907) 235-3148
Email:

All notices, demands or requests from Landlord to Tenant shall be given to Tenant at the following address:

Facsimile: _____
Email: _____

Each party may, from time to time, to designate a different address or different agent for service of process by notice given in conformity with Section 14.03.

14.05 Time of Essence. Time is of the essence of each provision this Lease.

14.06 Computation of Time. The time in which any act provided by this Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a holiday, and then it is also excluded. The term "holiday" will mean all holidays as defined by the statutes of Alaska.

14.07 Interpretation. Each party hereto has been afforded the opportunity to consult with counsel of its choice before entering into this Lease. The language in this Lease shall in all cases be simply construed according to its fair meaning and not for or against either party as the drafter thereof.

14.08 Captions. The captions or headings in this lease are for convenience only and in no way define, limit or describe the scope or intent of any provision of this Lease.

14.09 Independent Contractor Status. Landlord and Tenant are independent contractors under this Lease, and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between Landlord and Tenant. Neither party shall have any authority to enter into agreements of any kind on behalf of the other and shall have no power or authority to bind or obligate the other in any manner to any third party.

14.10 Parties Interested Herein. Nothing in this Lease, express or implied, is intended or shall be construed to give to any person other than Landlord, Tenant and any Qualified Mortgagee any right, remedy or claim, legal or equitable, under or by reason of this Lease. The covenants, stipulations and agreements contained in this Lease are and shall be for the sole and exclusive benefit of Landlord, Tenant and any Qualified Mortgagee, and their permitted successors and assigns.

14.11 Multi-Party Tenant. If Tenant is comprised of more than one natural person or legal entity, the obligations under this Lease imposed upon Tenant are joint and several obligations of all such persons and entities. All notices, payments, and agreements given or made by, with, or to any one of such persons or entities will be deemed to have been given or made by, with, or to all of them, unless expressly agreed otherwise by Landlord in writing.~~17.02.~~
~~Conditions and Covenants~~

~~All the provisions of this Lease will be deemed as running with the land, and will be construed to be "conditions" as well as "covenants," as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.~~

17.03. No Waiver of Breach

~~No failure by either Landlord or Tenant to insist upon the strict performance by the other of any term, covenant or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, will constitute a waiver of any such breach or of such terms, covenants or conditions. No waiver of any breach will affect or alter this Lease, but each and every term, covenant and condition of this Lease will continue in full force and effect with respect to any other then existing or subsequent breach.~~

~~17.04.~~

14.12 Broker's Commissions. Each of the parties represents and warrants that there are no claims for brokerage commissions or finders' fees in connection with the execution of this Lease, and agrees to indemnify the other against, and hold it harmless from, all liability arising from any such claim including, without limitation, the cost of counsel fees in connection therewith.

14.13 Successors and Assigns. This Lease shall be binding upon the successors and assigns of Landlord and Tenant, and shall inure to the benefit of the permitted successors and assigns of Landlord and Tenant.

14.14 Waiver. No waiver by a party of any right hereunder may be implied from the party's conduct or failure to act, and neither party may waive any right hereunder except by a writing signed by the party's authorized representative. The lapse of time without giving notice or taking other action does not waive any breach of a provision of this Lease. No waiver of a right on one occasion applies to any different facts or circumstances or to any future events, even if involving similar facts and circumstances. No waiver of any right hereunder constitutes a waiver of any other right hereunder.

14.15 Attorney's Fees

(a) ~~___~~ If Landlord is involuntarily made a party defendant to any litigation concerning this Lease or the Property by reason of any act or omission of Tenant, or if Landlord is made a party to any litigation brought by or against Tenant without any fault on the part of Landlord, then Tenant ~~must~~shall pay the amounts reasonably incurred and expended by Landlord, including the reasonable fees of Landlord's agents and attorneys and all expenses incurred in defense of such litigation.

(b) ~~___~~ In the event of litigation between Landlord and Tenant concerning enforcement of any right or obligation under this Lease, the non-prevailing party ~~must~~shall

reimburse the prevailing party for the attorney's fees reasonably incurred and expended by the prevailing party in the litigation.

17.05. Time of Essence

~~Time is of the essence of the Lease and of each provision.~~

17.06. Computation of Time

~~The time in which any act provided by this Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a holiday, and then it is also excluded. The term "holiday" will mean all holidays as defined by the statutes of Alaska.~~

17.07. Successors in Interest

~~Each and all of the terms, covenants and conditions in this Lease will inure to the benefit of and will be binding upon the successors in interest of Landlord and Tenant.~~

17.08. Entire Agreement

~~This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agreement, statement of promise made by any party that is not contained in the Lease will be binding or valid.~~

17.09-14.16 Severability. If any provision of this Lease shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Lease, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Lease shall remain in full force and effect.

14.17 Entire Agreement, Amendment. This Lease constitutes the entire and integrated agreement between Landlord and Tenant concerning the subject matter hereof, and supersedes all prior negotiations, representations or agreements, either written or oral. No affirmation, representation or warranty relating to the subject matter hereof by any employee, agent or other representative of Landlord shall bind Landlord or be enforceable by Tenant unless specifically set forth in this Lease. This Lease may be amended only by written instrument executed and acknowledged by both Landlord and Tenant.

14.18 Governing Law and Venue

This Lease will be governed by, construed and enforced in accordance with, the laws of the State of Alaska. Any action or suit arising between the parties in relation to or in connection with this Lease, or for the breach thereof, must shall be brought in the trial courts of the State of Alaska for the Third Judicial District of the State of Alaska at Homer.

17.10. Partial Invalidity

~~If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will remain in full force and effect and will in no way be affected, impaired or invalidated, unless such provisions are considered by Tenant to be integral to Tenant's use of the Property for the purposes stated herein in which case Tenant will have the authority to terminate this Lease upon thirty (30) days written notice to Landlord.~~

17.11. Relationship of Parties

~~Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant and neither the method of computation of rent, nor any other provision contained in this Lease nor any acts of the parties, shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.~~

17.12. Interpretation

~~The language in all parts of this Lease must in all cases be simply construed according to its fair meaning and not for or against Landlord or Tenant as both Landlord and Tenant have had opportunity for the assistance of attorneys in drafting and reviewing this Lease.~~

17.13. Number and Gender

~~In this Lease, the neuter gender includes the masculine and the feminine, and the singular number includes the plural; the word "person" includes corporation, partnership, firm or association wherever the context so requires.~~

17.14. Mandatory and Permissive

~~"Shall," "must," "will," and "agrees" are mandatory; "may" is permissive.~~

17.15. Captions

~~Captions of the paragraphs of this Lease are for convenience and reference only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.~~

17.16. Amendment

~~19 Execution in Counterparts. This Lease is not subject to amendment except in writing may be executed by all parties hereto.~~

17.17. Delivery of Notices Method and Time

~~All notices, demands or requests from two or more counterparts, each of which shall be an original and all of which together shall constitute one party to another must be delivered in person or be sent by (i) mail, certified or registered, postage prepaid, or (ii) facsimile transmission (accompanied by reasonable evidence of receipt of the transmission~~

~~and with a confirmation copy mailed by first class mail no later than the day after transmission) to the addresses stated in paragraph 17.18 and will be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.~~

17.18. Notices

~~All notices, demands and requests from Tenant to Landlord must be given to Landlord at the following address:~~

City Manager
City of Homer
491 East Pioneer Avenue
Homer, Alaska 99603
Facsimile: (907) 235 3148

~~All notices, demands or requests from Landlord to Tenant must be given to Tenant at the following address:~~

Facsimile: _____

17.19. Change of Address or Agent

~~Each party may, from time to time, to designate a different address or different agent for service of process by notice given in conformity with paragraph 17.17.~~

17.20. Multi Party Tenant

~~and the same document. If Tenant is comprised of more than one natural person or legal entity, the obligations under this Lease imposed upon Tenant are joint and several obligations of all such persons and entities. All notices, payments, and agreements given or made by, with, or to any one of such persons or entities will be deemed to have been given or made by, with, or to all of them, unless expressly agreed otherwise by Landlord in writing.~~

[OPTIONAL SPECIAL PROVISIONS] — 18.01- 14.20 prior lease amended and superceded/superseded

18. — SPECIAL PROVISIONS

18.01.14.20 Prior Lease

Landlord and Tenant are parties to a ~~Lease Agreement~~ prior lease affecting the Property dated ~~November 1995 and~~ _____, 19____, a memorandum of which has been recorded in the records of the Homer Recording District ~~at Book 247, commencing at Pages 893~~ under Document No. _____ (the "~~Former~~ Prior Lease"). This Lease ~~amends, replaces and supercedes/supersedes~~ the ~~Former~~ Prior Lease effective as of ~~November 1, 2002,~~ _____, 201____, and on and after that date the ~~Former~~ Prior Lease shall have no force or effect, except that it shall remain in effect as to events, rights, obligations, or remedies arising or accruing under the ~~Former~~ Prior Lease prior to that date.

Notary Public in and for Alaska
My ~~Term~~ Commission Expires: ~~with office~~

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me on _____,
2002, 201, by _____, as _____
(title) of _____ (name of entity), a ~~state~~ of _____
_____ (state) _____ (type of entity) on behalf of
_____ (name of entity).

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA _____)
_____) ss.
THIRD JUDICIAL DISTRICT _____)

The foregoing instrument was acknowledged before me on _____,
2002, by _____, as _____ (title) of _____
_____ (name of entity), a state of _____
(state) _____ (type of entity) on behalf of _____
(name of entity).

Notary Public in and for Alaska
My Commission Expires: _____

EXHIBIT A

**SCHEDULE OF ORGANIZATION, OWNERS,
PERCENTAGE OF OWNERSHIP**

Tenant, _____, is a _____ organized under the laws of the state of _____. Attached to this exhibit is a certificate issued by that state certifying that Tenant is in good standing and describing its legal organization. If Tenant is a foreign entity authorized to conduct business in Alaska, its certificate of authority is also attached

The _____ (specify whether shareholders, partners, members, etc.) and their percentage of ownership are as follows:

Name _____ %

Address: _____

TOTAL 100 %

EXHIBIT B

**CONFORMED COPY OF RESOLUTION AUTHORIZING LEASE AND
AUTHORIZING SIGNERS TO SIGN LEASE AGREEMENT ON BEHALF
OF TENANT**

EXHIBIT-C

SITE PLANS LOCATION OF PROPERTY

(Section 2.01)

EXHIBIT-D

FLOOR PLAN TENANT'S PROPOSED USE OF THE PROPERTY

(Section 6.01)

EXHIBIT E

GENERAL LIABILITY INSURANCE ENDORSEMENT

City of Homer ("City")
491 East Pioneer Ave.
Homer, Alaska 99603-7624

Attn.: City Manager

A. POLICY INFORMATION

- 1. Insurance company; Policy no.
2. Policy term (from) to; Endorsement effective date:
3. Named insured
4. Address of named insured
5. Policy is: claims made occurrence
6. If claims made: Retroactive date: Is tail coverage afforded?
7. Limit of liability any one occurrence: \$ Aggregate: \$
8. Deductible or self insured retention (nil unless otherwise specified): \$

B. POLICY AMENDMENTS

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:

1. INSURED. The City, its elected or appointed officials, employees and volunteers are included as insured with regard to damages and defense of claims arising from: (a) activities performed by or on behalf of the named insured; (b) products and completed operations of the named insured; or (c) premises owned, leased or used by named insured.

2. CONTRIBUTION NOT REQUIRED. As respects: (a) work performed by the named insured for or on behalf of the City; or (b) products sold by the named insured to the City; or (c) premises leased by the named insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its elected or appointed officials, employees or volunteers; or stand in an unbroken chain of coverage excess of the named insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its elected or appointed officials, employees or volunteers shall be excess of this insurance and shall not contribute with it.

~~3. SCOPE OF COVERAGE. The policy: (a) if primary, affords coverage at least as broad as forms currently in use as approved by the State of Alaska Division of Insurance; and (b) if excess, affords coverage which is at least as broad as the primary insurance forms reference in the preceding subpart (a).~~

~~4. SEVERABILITY OF INTEREST. The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the Company's limit of liability.~~

~~5. PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its elected or appointed officials, employees or volunteers.~~

~~6. CANCELLATION NOTICE. The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail return receipt requested has been given to the City. Such notice shall be addressed as shown in the heading of this endorsement.~~

~~C. SIGNATURE OF INSURER OR ITS AUTHORIZED REPRESENTATIVE:~~

~~I, _____ (print/type name), _____ (title) warrant that I have authority to bind the below named insurance company and, by my signature hereon, do so bind this company.~~

~~Signature: _____
(original signature required on endorsement furnished to the City)~~

~~Company _____~~

~~Address _____~~

~~_____~~

~~_____~~

~~Phone _____~~

~~Fax _____~~

SITE PLANS

(Section 6.02)

EXHIBIT F

~~WORKERS' COMPENSATION/EMPLOYERS LIABILITY ENDORSEMENT~~

City of Homer ("City")
491 East Pioneer Ave.
Homer, Alaska 99603-7624

A. POLICY INFORMATION

- 1. Insurance company: _____ ("Company");
Policy No. _____
- 2. Effective date of this endorsement: _____
- 3. Named insured: _____
- 4. Employer's liability limit (Coverage B): _____

B. POLICY AMENDMENTS

~~In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:~~

- 1. ~~CANCELLATION NOTICE. The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Such notice shall be sent to the address given in the heading of this endorsement.~~
- 2. ~~WAIVER OF SUBROGATION. The Company agrees to waive all rights of the subrogation against the City, its elected or appointed officials, agents and employees for losses paid under the terms of this policy which arise from work performed by the named insured for the City.~~

C. SIGNATURE OF INSURER OR ITS AUTHORIZED REPRESENTATIVE

I, _____ (print/type name), _____ (title)
warrant that I have authority to bind the below named insurance company and, by my signature hereon, do so bind this company.

Signature: _____
(original signature required on endorsement furnished to the City)

Company _____
Address _____

Phone _____

Fax _____

FLOOR PLANS

(Section 6.02)

EXHIBIT G
CERTIFICATES OF INSURANCE
(Section 9.04(d))

EXHIBIT H

PERMISSION TO OBTAIN INSURANCE POLICIES

(Section 9.04(d))

The City of Homer is hereby granted permission to request and obtain copies of _____ ("Tenant") insurance policies from Tenant's broker and/or insurer, _____. Tenant requests the broker/insurer to provide the City of Homer with information about and copies of all of Tenant's insurance policies providing the type of coverage required by the Lease between Tenant and the City of Homer.

It is understood that the Tenant may revoke this permission at any time by written notice to City of Homer and to Tenant's broker and/or insurer; however, such revocation will constitute a default of Tenant's lease from the City of Homer.

Date: _____

TENANT NAME

By:

_____ (printed name)
_____ (-title)

By: _____

_____ (printed name)
_____ (-title)

EXHIBIT H

LEGAL DESCRIPTION EXHIBIT

[Faint, illegible text, likely a legal description of property]

CITY OF HOMER
HOMER, ALASKA

City Clerk

RESOLUTION 11-050

A RESOLUTION OF THE CITY COUNCIL OF HOMER,
ALASKA, AWARING THE CONTRACT FOR THE
SOUNDVIEW AVENUE/WOODARD CREEK CULVERT
REPLACEMENT PROJECT TO THE FIRM OF _____
OF _____, _____ IN THE AMOUNT OF
\$ _____ AND AUTHORIZING THE CITY MANAGER TO
EXECUTE THE APPROPRIATE DOCUMENTS.

WHEREAS, The Invitation to Bid was advertised in the Homer Tribune on April 6 and
13, 2011 and posted on the City's website as required by the City's Procurement Manual; and

WHEREAS, The project will complete the Soundview Avenue/Woodard Creek culvert
replacement; and

WHEREAS, _____ was determined to be the low responsive bidder; and

WHEREAS, This award is not final until written notification is received by
_____ of _____, _____, from the City of Homer.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of Homer, Alaska,
approves the award of the contract for the Soundview Avenue/Woodard Creek Culvert
Replacement to the Firm of _____ OF _____, _____, in the
amount of \$ _____ and authorizes the City Manager to execute the appropriate documents to
complete construction.

PASSED AND ADOPTED by the Homer City Council this 9th day of May, 2011.

CITY OF HOMER

JAMES C. HORNADAY, MAYOR

ATTEST:

JO JOHNSON, CMC, CITY CLERK

Fiscal Note: \$ _____, Acct. No. 160-766

STATE OF TEXAS
COUNTY OF [illegible]

[illegible]

[illegible]

[illegible text]

CITY OF HOMER
HOMER, ALASKA

City Clerk

RESOLUTION 11-050(S)

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA, AWARDING THE CONTRACT FOR THE SOUNDVIEW AVENUE/WOODARD CREEK CULVERT REPLACEMENT PROJECT TO THE FIRM OF GREEN CONSTRUCTION OF HOMER, ALASKA IN THE AMOUNT OF \$215,699.37 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE APPROPRIATE DOCUMENTS.

WHEREAS, The Invitation to Bid was advertised in the Homer Tribune on April 6 and 13, 2011 and posted on the City's website as required by the City's Procurement Manual; and

WHEREAS, The project will complete the Soundview Avenue/Woodard Creek culvert replacement as authorized by City Council via Ordinance 11-08 on February 28, 2011; and

WHEREAS, Four bids were received and Green Construction was determined to be the low responsive bidder; and

WHEREAS, This award is not final until written notification is received by Green Construction of Homer, Alaska, from the City of Homer.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska, approves the award of the contract for the Soundview Avenue/Woodard Creek Culvert Replacement to the Firm of Green Construction of Homer, Alaska, in the amount of \$215,699.37 and authorizes the City Manager to execute the appropriate documents to complete construction.

PASSED AND ADOPTED by the Homer City Council this 24th day of May, 2011.

CITY OF HOMER

JAMES C. HORNADAY, MAYOR

ATTEST:

JO JOHNSON, CMC, CITY CLERK

Fiscal Note: \$179,199 Acct. No. ~~160-766~~ 160-771 & \$36,500.37 Acct. No. 256-381



CITY OF HOMER
PUBLIC WORKS
3575 HEATH STREET HOMER, AK 99603

TELEPHONE (907)235-3170
FACSIMILE (907)235-3145

MEMORANDUM 11-072

To: Walt Wrede, City Manager
From: Carey Meyer, Public Works Director
Date: May 16, 2011
Subject: **Soundview Avenue/Woodard Creek Culvert Replacement
Construction Contract Award Recommendations**

The City opened bids for this project on May 5. Four bids were opened and read:

Peninsula Construction	\$353,885	Kenai, AK
Prosser-Dagg	\$309,915	Palmer, AK
Green Construction	\$215,699.37	Homer, AK
East Road Services	\$370,680	Homer, AK
Engineer's Estimate	\$236,095	

Green Construction was found to be the low responsive bidder. Public Works has reviewed the qualifications and abilities of Green Construction and find that the firm is qualified to complete the work. The low bid for this project is within the budget established by the City Council.

Recommendations:

The City Council award the construction contract for the Soundview Avenue/Woodard Creek Culvert Replacement project to Green Construction, of Homer, Alaska in the amount of \$215,699.37; and authorize the City Manager to execute all appropriate documents to complete construction.

Fiscal note: \$36,500.37, Acct. No. 256-381; Water/Sewer Reserve Account
\$179,199, Acct. No. 160-771; HART



MEMORANDUM FOR THE CITY OF HOUMA

TO: Mayor
FROM: Police Chief
SUBJECT: [Illegible]

[Illegible text block]

[Illegible]	[Illegible]	[Illegible]
[Illegible]	[Illegible]	[Illegible]
[Illegible]	[Illegible]	[Illegible]
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CITY OF HOMER

BID TALLY SHEET: **PROJECT:** Soundview Avenue Woodard Creek Culvert Replacement

Due Date and Time: May 5, 2011 @ 2:00 p.m. **PROJECT No.:** _____
City Clerk's Office

Bidder No.	Bidder Name and Address	Part B / Part A	Bid Amount / Additive Alternate Amt.
1.	Peninsula Construction, Inc. 39981 Dodge Court Kenai, Alaska 99611	✓/✓	\$353,885.00
2.	East Road Services 33740 Jones Drive Homer, AK 99603	✓/✓	\$370,680.00
3.	Prosser Dagg Construction 1301 S. Felton St. Palmer, AK 99645	✓/✓	\$309,915.00
4.	Green Construction PO Box 1371 Homer, AK 99603	✓/✓	\$215,701.00
5.	Arno Construction Homer, AK 99603		Pulled bid before it was opened
6.	Endries Construction 35280 Rockwood Dr. Soldotna, AK 99669		Addendum Acknowledgement incomplete Non Responsive
7.	Twin Peaks PO Box 70 Anchor Point, AK 99603		Addendum Acknowledgement incomplete Non Responsive

City Engineer's Estimate if applicable: \$ 297,950.00

Staff Present: Public Works Director Meyer, Deputy City Clerk Jacobsen,

Comments: _____

CITY OF HOMER
HOMER, ALASKA

City Manager/
Public Works Director

ORDINANCE 11-08

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, AUTHORIZING AN EXPENDITURE OF \$359,800 (\$67,860 FROM THE WATER/SEWER RESERVE AND \$291,940 FROM THE HOMER ACCELERATED ROADS AND TRAILS PROGRAM (HART) FOR THE PURPOSE OF COMPLETING THE DESIGN AND CONSTRUCTION OF SOUNDVIEW AVENUE /WOODARD CREEK CROSSING IMPROVEMENT.

WHEREAS, The sewer main on Soundview Avenue at Woodard Creek has settled and needs to be repaired (described in a Memorandum 10-36 from Public Works); and

WHEREAS, The Woodard Creek culvert at Soundview conflicts with the needed sewer repair and needs to be removed and replaced; and

WHEREAS, Public Works recommends that the existing Woodard Creek culvert be replaced with a bridge type structure (described in Memorandum 11-022 from Public Works); and

WHEREAS, The cost of the design and construction of the recommended new creek crossing improvement (including the repair of the sewer main and replacement of the water main) is estimated to be \$359,800.

NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. The Homer City Council hereby authorizes \$359,800 to be expended for the design and construction of the Soundview Avenue/Woodard Creek Crossing Improvement from the accounts described below:

Expenditure:

<u>Account</u>	<u>Description</u>	<u>Amount</u>
256-381	Water/Sewer Reserve	\$ 67,860
160-771	Homer Accelerated Roads & Trails Program (HART)	\$ 291,940

ENACTED BY THE HOMER CITY COUNCIL this 28 day of Feb, 2011.

CITY OF HOMER


JAMES C. HORNADAY, MAYOR

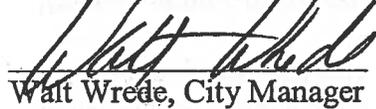
ATTEST:


JO JOHNSON, CMC, CITY CLERK

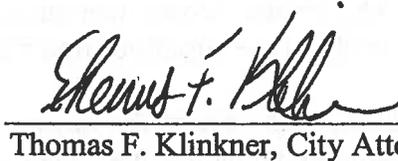
YES: 5
NO: 0
ABSENT: 1
ABSTAIN: 0

First Reading: 2/15/11
Public Hearing: 2/28/11
Second Reading: 2/28/11
Effective Date: 3/01/11

Reviewed and approved as to form:


Walt Wrede, City Manager

Date: 3/2/11


Thomas F. Klinkner, City Attorney

Date: 3-16-11

NEW BUSINESS

Memorandum No. 11-073

To: Mayor & Council
From: Anne Marie Holen, Special Projects Coordinator
Through: Walt Wrede, City Manager
Date: May 12, 2011
Re: Capital Improvement Plan Development

It is time to start the process of identifying and prioritizing projects for inclusion in the 2012-2017 Capital Improvement Plan. This process involves the public, the Council, the advisory commissions, and local non-profit organizations and agencies. Council approval of the CIP schedule is the first step in the process.

RECOMMENDATION: Approve 2012-2017 CIP Schedule and FY 2013 Legislative Request Development Schedule.

MEMORANDUM FOR THE RECORD

TO: Mr. [Name]

FROM: Mr. [Name]

SUBJECT: [Subject]

On [Date], [Name] advised that [Name] had been assigned to [Location] and would be reporting to [Name] on [Date]. [Name] stated that [Name] had been assigned to [Location] and would be reporting to [Name] on [Date]. [Name] stated that [Name] had been assigned to [Location] and would be reporting to [Name] on [Date].

[Name] advised that [Name] had been assigned to [Location] and would be reporting to [Name] on [Date]. [Name] stated that [Name] had been assigned to [Location] and would be reporting to [Name] on [Date]. [Name] stated that [Name] had been assigned to [Location] and would be reporting to [Name] on [Date].

CITY OF HOMER
2012-2017 CAPITAL IMPROVEMENT PLANNING PROCESS
FY 2013 LEGISLATIVE REQUEST DEVELOPMENT SCHEDULE

ACTION	TIMEFRAME
City Council approval of schedule	May 24, 2011
Solicit new/revised project information from City departments, local agencies and non-profits	May 25
Input for new draft requested by	June 17
Prepare and distribute draft CIP to City advisory groups for review and input	(Meeting dates): Planning Commission July 6, July 20, August 3, August 17
	Parks and Recreation Commission July 21 or August 18
	Port and Harbor Commission June 22, July 27, or August 24
	Library Advisory Board July 5 or August 2
	Economic Development Commission July 12 or August 9
	Transportation Advisory Committee August 16
Administrative review and compilation	August 29-September 2
City Council worksession to review proposed projects	September 12
Public Hearing on CIP/Legislative request	September 26
Local Election	October 4 (First regular meeting for new Council members: 10/24)
Adoption of resolutions by City Council	October 10
Administration forwards requests for Governor's Budget	by end of October
Administrative compilation of CIP	through end of October
Distribution of CIP and State Legislative Request	beginning November 2011
Compilation/distribution of Federal Request	February 2012

RESOLUTION(S)

CITY OF HOMER

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MARY E. WYTHE, MAYOR PRO TEMPORE

ATTEST:

JO JOHNSON, CMC, CITY CLERK

Fiscal Note: TBD. Costs associated with signage, striping, etc. estimated <\$8,000 / yr.

TRANSFER OF RESPONSIBILITIES AGREEMENT

Between

THE STATE OF ALASKA

Department of Transportation and Public Facilities

And

THE CITY OF HOMER

The Parties to this Agreement are the State of Alaska, acting by and through its Department of Transportation and Public Facilities, of P.O. Box 196900, Anchorage, Alaska 99519-6900 (hereinafter called DOT&PF) and the City of Homer, a municipality established under Alaska law, of 491 East Pioneer Avenue, Homer, Alaska 99603-7624 (hereinafter called CITY).

Whereas the CITY is currently in the process of updating the Homer Spit Comprehensive Plan; and

Whereas traffic, parking, and pedestrian safety on the Homer Spit, including the portion of the Sterling Highway located thereon, have been identified as areas of serious concern; and

Whereas, the Sterling Highway is a state owned and maintained roadway; and

Whereas the CITY has requested delegation of parking management and enforcement within that portion of the Sterling Highway on the Homer Spit between Freight Dock Road and Fish Dock Road from the DOT&PF by passage of Resolution 08-81; and

Whereas DOT&PF and the CITY recognize the need to address the management of public parking, loading zones, seasonal speed zones, pedestrian crossings, and related signage on the Homer Spit for the benefit of the community and the travelling public; and

Whereas AS 19.05.040(10) and 23 CFR 1.27 provide that DOT&PF may enter into agreements with other government entities;

Therefore the Parties do hereby agree, in consideration of the mutual covenants contained in this Agreement as set forth below, that public parking, loading zone designations, seasonal speed zones, and pedestrian crossings within that portion of the Sterling Highway right-of-way from its intersection at Kachemak Drive southerly to the end of the Sterling Highway right-of-way near the end of the Homer Spit will be addressed as follows:

1. The CITY acknowledges that DOT&PF's authority extends only to state owned right-of-way and its facilities. The state's highway right-of-way for the Sterling Highway varies in width at different locations. The current Sterling Highway right-of-way is shown on the Sterling

Highway right-of-way map for the Homer Spit Pathway Project No. TEA-021-1(45)/52478 (recorded in the Homer Recording District, Third Judicial District, State of Alaska on January 9, 2001 as Plat No. 2001-2). A copy of this map is attached for reference as Exhibit A. The intersection of Kachemak Drive and the Sterling Highway is shown as Station 0+060.960 on Sheet 4 of Exhibit A. The end of the Sterling Highway near the end of the Homer Spit is shown as Station 6+887.985 on Sheet 7 of Exhibit A.

2. The DOT&PF shall be responsible for design review, construction and maintenance acceptance, utilities permitting, driveway and approach road permitting, and any road/lane closure permitting within the state right-of-way. Prior to commencing any construction within the state right-of-way, the CITY will submit plans to DOT&PF for written approval. The plans need to include, but are not limited to, the following information related to public parking, loading zones, seasonal speed zones, and pedestrian crossings within the state right-of-way:
 - a. proposed materials
 - b. proposed sight triangles for traffic entering and exiting the state right-of-way
 - c. proposed surface type(s) (i.e. gravel, asphalt)
 - d. proposed typical markings
 - e. proposed typical sections
 - f. proposed drainage and grading plans
 - g. proposed sign locations and types
 - h. general public parking layout and offsets
3. The DOT&PF retains full authority for establishing speed limits and seasonal speed zones in conformance with the department's Policy and Procedure Number 05.05.020 *Establishment of Speed Limits and Zones*. A copy of this policy is attached for reference as Exhibit B.
4. The DOT&PF retains full authority for designation of the locations of all pedestrian crossings within the state right-of-way. Pedestrian crossings and related improvements are approved as shown in the five drawings attached as Exhibit C. Any other pedestrian crossing locations and related improvements or modifications to existing pedestrian crossings must be approved in writing by DOT&PF.
5. The CITY shall be responsible for designation, installation, maintenance, and operations of all improvements associated with, and enforcement of, public parking and loading zones located within state right-of-way that are established after the date of this agreement. For the purposes of this Agreement, public parking is defined as designated parking areas that are available to any member of the travelling public, and are not designated parking associated with a specific business or entity. Existing permits previously issued by the DOT&PF shall remain in effect until they expire or are terminated by the DOT&PF. A list of existing DOT&PF permits is attached as Exhibit D. At such time as the existing private parking permits expire, if they apply for a renewal, or if the DOT&PF receives a new application for private parking within the state right-of-way on this portion of the Sterling

Highway, the DOT&PF agrees to include the CITY as a part of the DOT&PF application review process.

6. The CITY shall be responsible for installation, maintenance, and operations of all improvements associated with, and enforcement of, seasonal speed zones and pedestrian crossings located within the state right-of-way.
7. The CITY shall be responsible for all costs associated with installation, maintenance, operations, and enforcement of public parking, loading zones, seasonal speed zones, and pedestrian crossings within the state right-of-way.
8. The CITY acknowledges that any potential revenue generated from use of the Sterling Highway right-of-way must be used to support Title 23 U.S. Code eligible activities. The CITY agrees to obtain DOT&PF written approval prior to utilizing any portion of the Sterling Highway right-of-way for paid public parking.
9. The CITY shall be responsible for traffic control during installation, maintenance, and operations of any improvements associated with public parking, loading zones, seasonal speed zones, and pedestrian crossings within the state right-of-way. DOT&PF hereby authorizes the CITY to perform mobile, short duration work zone traffic control associated with maintenance and operations pursuant to the provisions of Part 6 of the Alaska Traffic Manual. No lane, shoulder, or pathway closures for work zone traffic control will be permitted without DOT&PF review and approval, and shall require Temporary Construction Permits and/or Lane Closure Permits, as needed, issued by the DOT&PF.
10. All improvements made by the CITY that are associated with public parking, loading zones, seasonal speed zones, and pedestrian crossings located within the state right-of-way must comply with the established and accepted standards of DOT&PF, including, but not limited to, the requirements and specifications prescribed in the current versions of the following documents:
 - a. Alaska Traffic Manual
 - b. Alaska Sign Design Specifications
 - c. Alaska Highway Preconstruction Manual, Section 1170 (Highway Design – Special Design Elements)
 - d. Standard Specifications for Highway Construction
 - e. Standard Drawings Manual – English version, S Sheets (Sign & Sign Supports) and T Sheets (Striping)
 - f. Regional Detail Drawings, CR Stopbar Details and H Sign Attachment Details
 - g. Alaska Administrative Code, Section 17 AAC 10.010 through 17 AAC 10.015 (Encroachments)

These manuals listed as items a through e are available online at the following website:
<http://www.dot.state.ak.us/stwddes/dcspubs/index.shtml>

The regional Detail Drawings are available online at the following website:

http://www.dot.state.ak.us/creg/dot-cadastral/Design_Engineering/Region%20Details/Traffic/

The Alaska Administrative Code is available at the following website:

<http://www.legis.state.ak.us/basis/folio.asp>

If for any reason the CITY is not able to locate any of these publications at these online sites, they may contact the DOT&PF for copies.

11. The CITY agrees that all signage authorized by DOT&PF under this agreement shall be limited to public parking, speed zones, and pedestrian crossing related R, D, and M series signage as set forth in the Alaska Traffic Manual and the Alaska Sign Design Specifications.
12. The CITY agrees to maintain and operate all improvements associated with public parking, loading zones, seasonal speed zones, and pedestrian crossings located within the state right-of-way consistent with the provisions of 23 CFR 1.27 and DOT&PF's Alaska Highway Maintenance and Operations Manual. The DOT&PF will continue to be responsible for all other maintenance, operations, and improvement projects related to this portion of the Sterling Highway.
13. The CITY will not modify any aspect of the existing structural section of the Sterling Highway (the road prism; including lanes, shoulders, and pathway), including, but not limited to, pavement, drainage, and cut or fill needed for the structural integrity of the highway, without written permission of the DOT&PF.
14. The CITY shall indemnify, defend, and hold harmless the State of Alaska and its agencies, officers, agents and employees, including the DOT&PF, from all liability, claims, or causes of action, including costs and attorney's fees, resulting from injuries or damages sustained by any person or property as a result of the CITY's, its contractors', subcontractors', or its employees' activities or performance in relation to the construction, maintenance and operation, or the enforcement, of public parking, loading zones, seasonal speed zones, and pedestrian crossings within the state right-of-way; however, this provision has no effect if, but only if, the sole proximate cause of the injury or damage is the DOT&PF's acts or negligence.
15. In addition, the CITY shall, in any contract or agreement with contractors or subcontractors performing work on the public parking, loading zones, seasonal speed zones, and pedestrian crossings within the state right-of-way, require that in all indemnities and waivers of subrogation it obtains, and in any stipulation or other agreement wherein the CITY is to be named as an additional insured, that coverage be extended to protect the State of Alaska by waiving rights of subrogation against the State of Alaska and by adding the State of Alaska as an additional named indemnitee and as an additional insured.
16. This Agreement may only be modified or amended by written agreement signed by the authorized representatives of both Parties.

17. This Agreement becomes effective as of the date of the final signature below.
18. If the CITY defaults under the terms of this Agreement, the DOT&PF will notify the CITY of the default in writing, and the notice will state the amount of time allowed for correction of the default. If the CITY does not correct the default within the time provided or offer assurance satisfactory to the DOT&PF that the default will be remedied within a reasonable period, the DOT&PF may, at its discretion, terminate this Agreement. If the DOT&PF terminates the Agreement due to a default that the CITY does not remedy, the CITY agrees to reimburse the DOT&PF the direct costs associated with remediation of the default. The DOT&PF will give written notice to the CITY at least thirty (30) days before the effective date of termination, and will state the reason(s) for the termination.
19. If either the CITY or the DOT&PF wishes to terminate this Agreement, the initiating party will notify the other party in writing at least thirty (30) days prior to the proposed date of termination. If the parties terminate this Agreement, the state's right-of-way must be returned to its current condition, unless the parties agree otherwise in writing.
20. Nothing in this Agreement, express or implied, is intended or shall be construed to give to any person other than the DOT&PF and the CITY any right, remedy or claim, legal or equitable, under or by reason of this Agreement. The covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the DOT&PF and the CITY, and their permitted successors and assigns.
21. Any notices to the Parties shall be sent to:

City of Homer
Attn: City Manager
491 East Pioneer Avenue
Homer, Alaska 99603-7624

State of Alaska
Department of Transportation and Public Facilities
Attn: Regional Director, Central Region
P.O. Box 196900
Anchorage, Alaska 99519-6900

22. Signatures:

CITY OF HOMER

APPROVED this _____ day of _____, 2011

Signature: _____

Name: Walt Wrede

Title: City Manager

NOTARY ACKNOWLEDGEMENT

STATE OF ALASKA)

) ss.

THIRD JUDICIAL DISTRICT)

On this ____ day of _____, 2011, Walt Wrede, City Manager of the City of Homer, acknowledged before me that he executed the foregoing document freely and voluntarily with full authority to do so.

Notary Public, State of Alaska

My commission expires: _____

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

APPROVED this ____ day of _____, 2011

Signature: _____
Name: Robert Campbell, P.E.
Title: Regional Director, Central Region

NOTARY ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

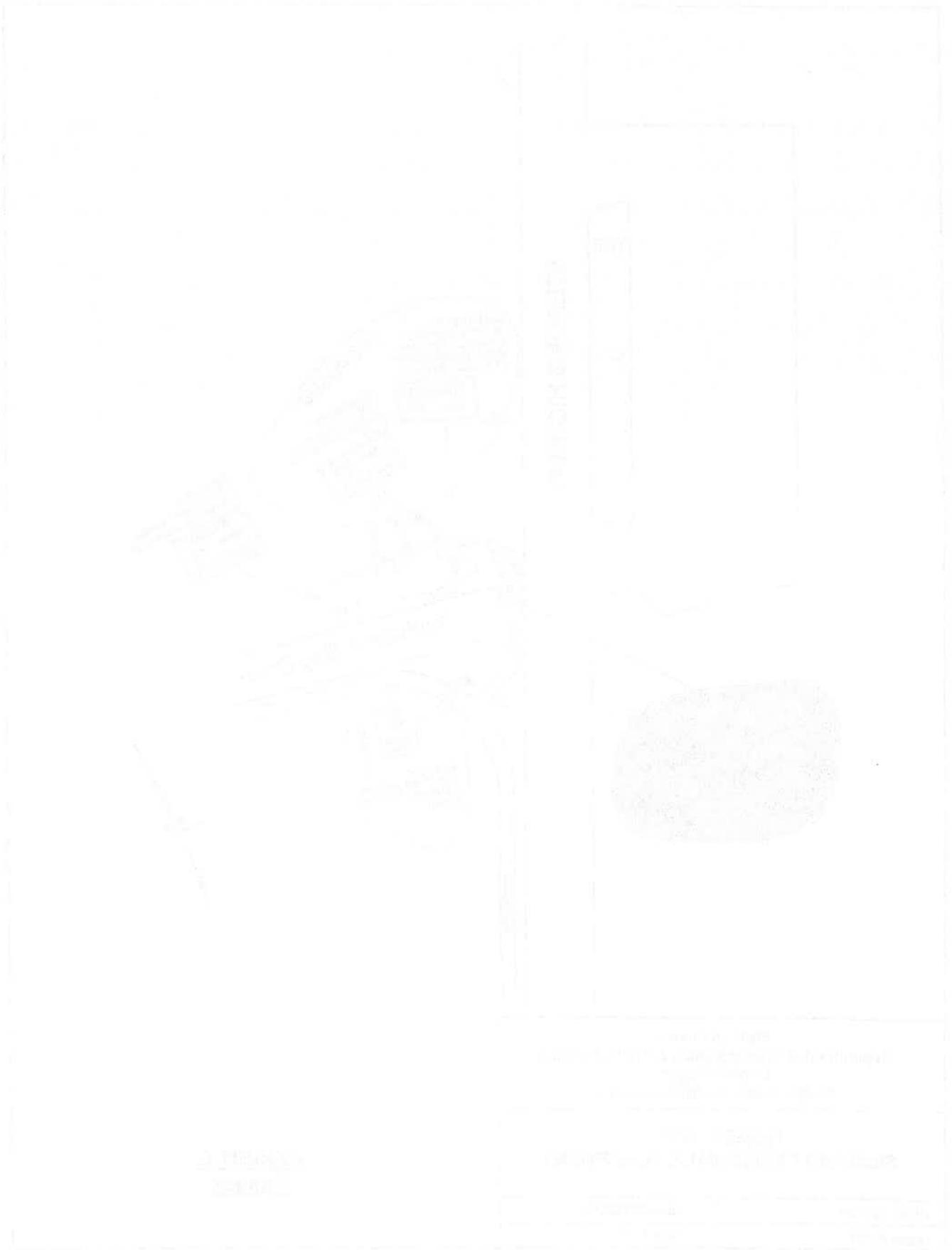
On this ____ day of _____, 2011, Robert Campbell, P.E., Regional Director of the Central Region of the State Department of Transportation and Public Facilities, acknowledged before me that he executed the foregoing document freely and voluntarily with full authority to do so.

Notary Public, State of Alaska
My commission expires: _____

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF CHEMISTRY

PHYSICAL CHEMISTRY



MARINER PARK



Install W11-2: 36 X 36
& W16-7PL: 36 X 18 and
mount on 2.5" pt post, 7 ft
to base of sign

Install W11-2: 36 X 36
& W16-7PL: 36 X 18 and
mount on 2.5" pt post, 7 ft
to base of sign



STERLING HIGHWAY

pathway



Install W11-2: 36 X 36
& W16-7PL: 36 X 18 and
mount on 2.5" pt post, 7 ft
to base of sign

Install W11-2: 36 X 36
& W16-2P: 36 X 18 and mount on
2.5" pt post, 7 ft to base of sign



State of Alaska
Department of Transportation & Public Facilities
Central Region
Traffic, Safety & Utilities Section

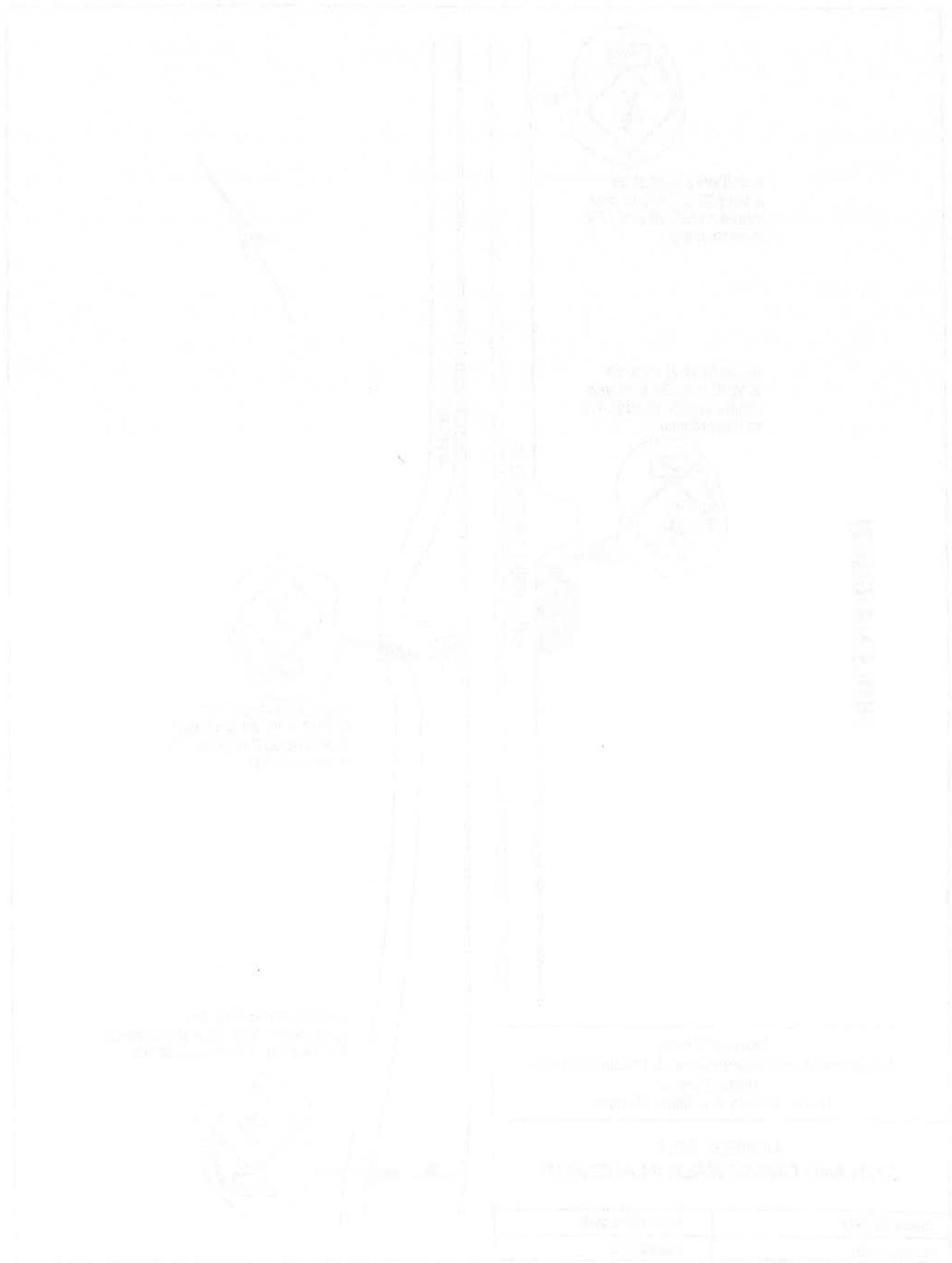
HOMER SPIT
SIGN AND CROSSWALK PLACEMENT

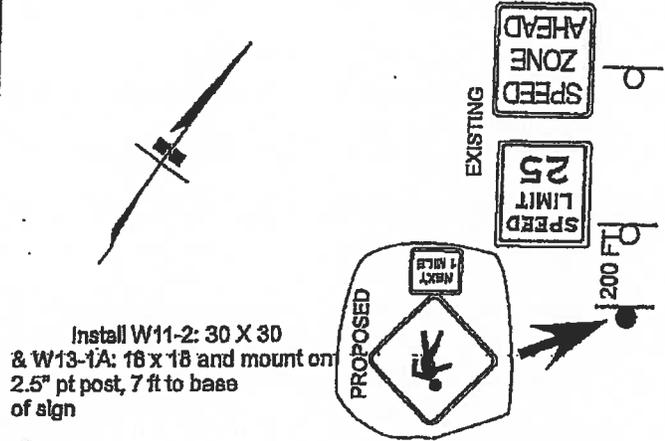
Drawn By: MZR

Date: 05/12/2004

Modified: SET

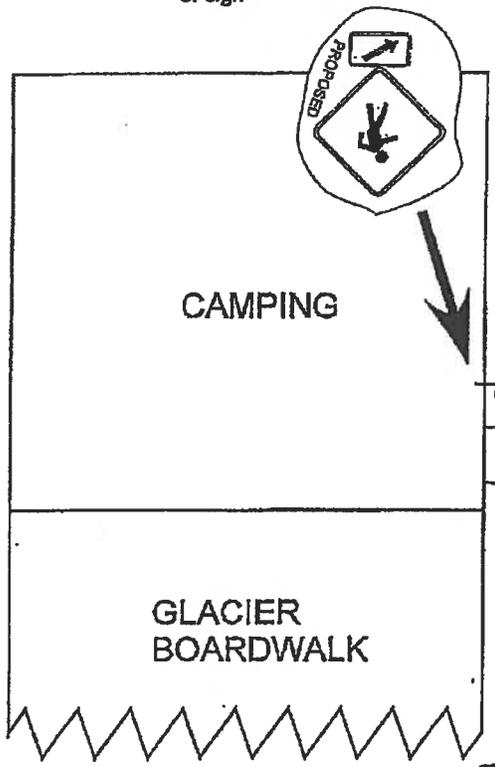
Page 2 of 5





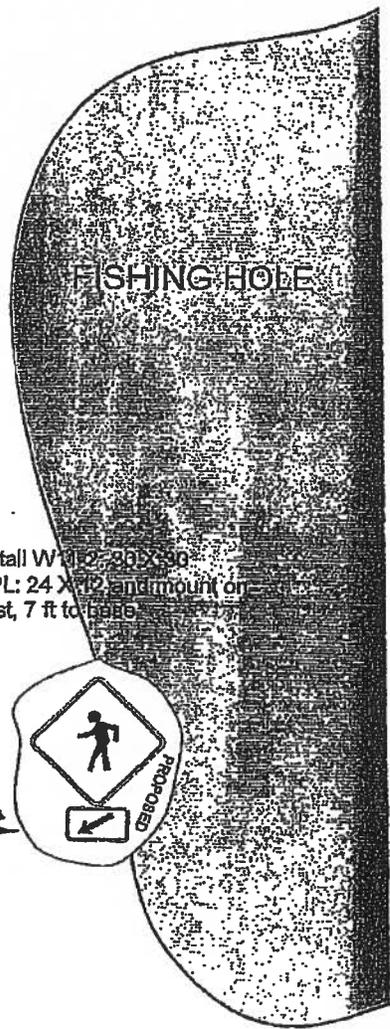
Install W11-2: 30 X 30 & W13-1A: 18 x 18 and mount on 2.5" pt post, 7 ft to base of sign

Install W11-2: 30 X 30 & W16-7PL: 24 X 12 and mount on 2.5" pt post, 7 ft to base of sign



STERLING HIGHWAY

pathway

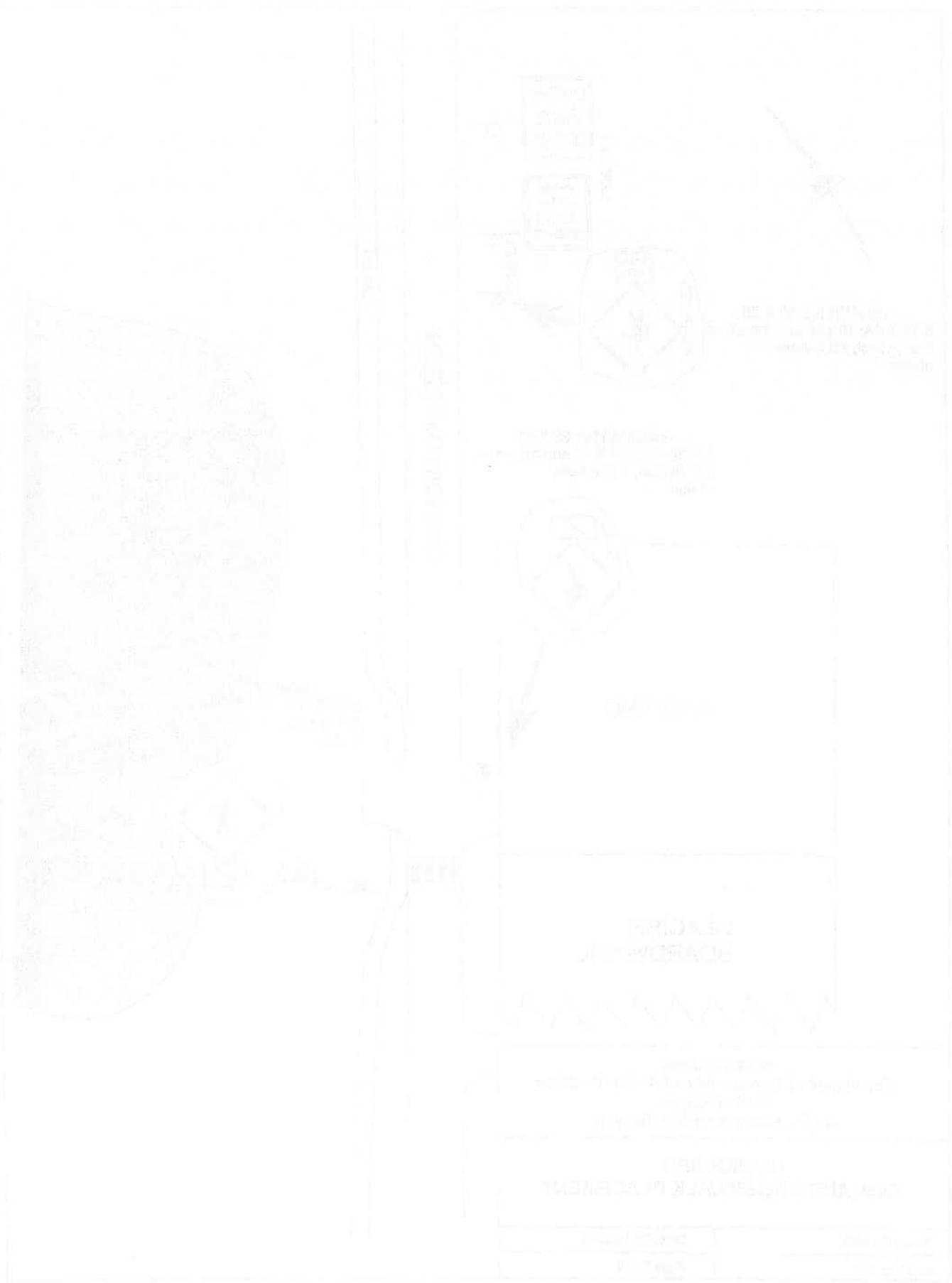


Install W11-2: 30 X 30 & W16-7PL: 24 X 12 and mount on 2.5" pt post, 7 ft to base of sign

State of Alaska
 Department of Transportation & Public Facilities
 Central Region
 Traffic, Safety & Utilities Section

**HOMER SPIT
 SIGN AND CROSSWALK PLACEMENT**

Drawn By: MZR	Date: 05/12/2004
Modified: SET	Page 3 of 5



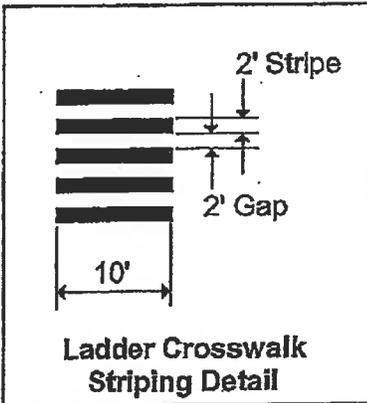
Install W11-2: 30 X 30
& W16-7PL: 24 X 12. Mount on
2.5" pt post, 7 ft to base of sign.



Install R7-101: 12 X 18. Mount on
2.5" pt post, 7 ft to base of sign.

Install crosswalk.
See Ladder Crosswalk
Striping Detail Below.

Remove parking spaces to make
room for the installation of W11-2: 30 X 30
& W16-7PL: 24 X 12. Mount on
2.5" pt post, 7 ft to base of sign.



* All Ramp signs are existing.

State of Alaska
Department of Transportation & Public Facilities
Central Region
Traffic, Safety & Utilities Section

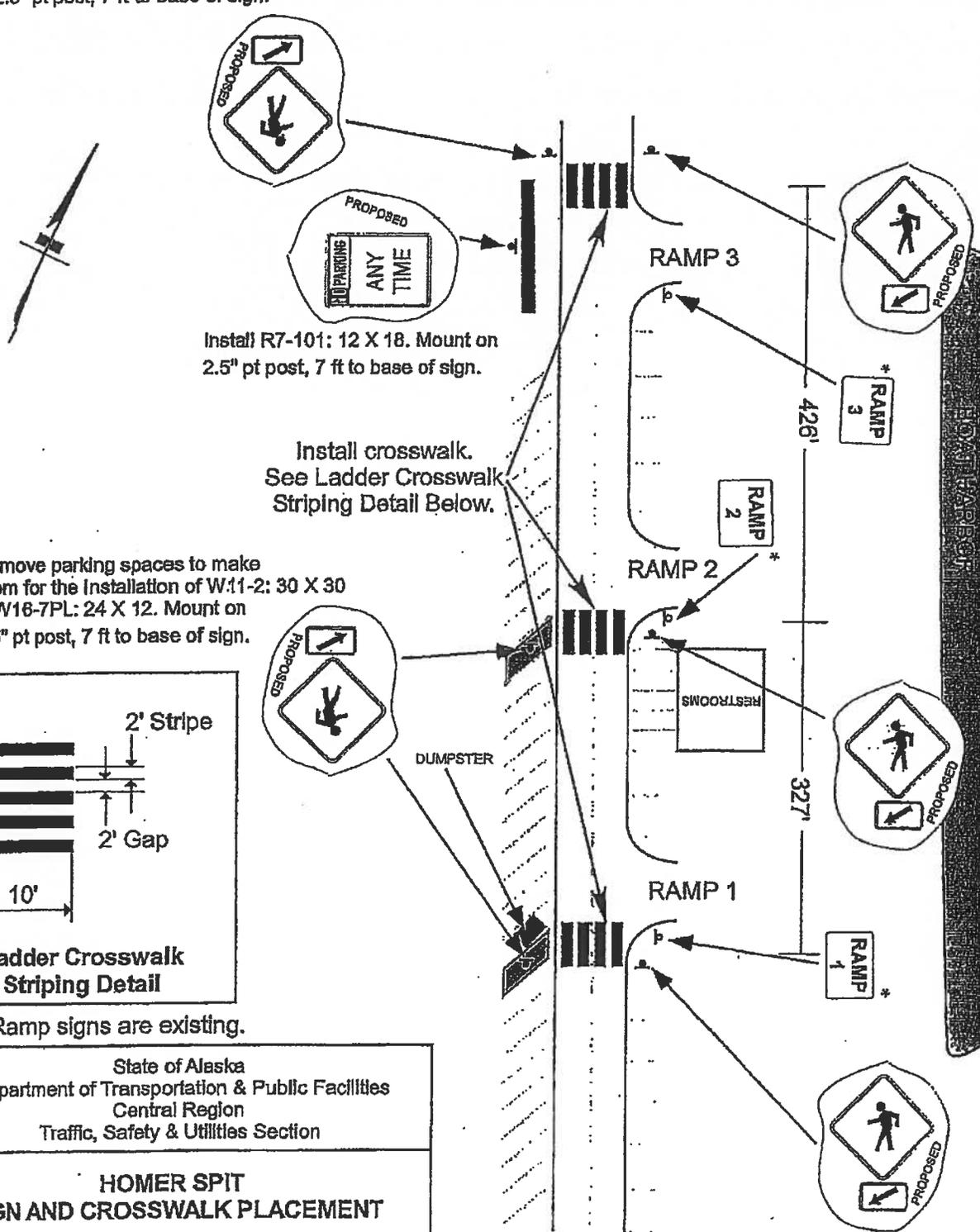
**HOMER SPIT
SIGN AND CROSSWALK PLACEMENT**

Drawn By: MZR

Date: 05/12/2004

Modified: SET

Page 4 of 5



HOMER SPIT

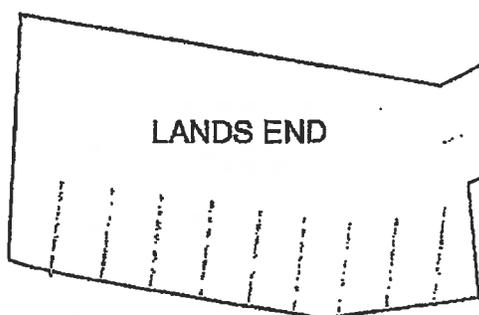




Install W11-2: 30 X 30
& W13-1A: 18 X 18. Mount on
2.5" pt post, 7 ft to base of sign.

STERLING HIGHWAY

STATE FERRY TERMINAL



State of Alaska
Department of Transportation & Public Facilities
Central Region
Traffic, Safety & Utilities Section

**HOMER SPIT
SIGN AND CROSSWALK PLACEMENT**

Drawn By: MZR	Date: 05/12/2004
Modified: SET	Page 5 of 5



Permits

Enc #	Contact	Company	Location	Exp. Date	Comments
333.004	Carey Meyer	City of Homer	Katchemak Dr @ Sterling Hwy.	12/31/2014	Encroachment
321.006		City of Homer	Sterling Hwy - Pioneer to Land's End		Airspace Agreement for Gate
321.027		City of Homer	Homer Spit Rd		Airspace Agreement for Welcome to Homer Spit sign
321.034	Steven Morphis	Ted's East, Inc	NE side of Homer Spit Rd	12/31/2010	Encroachment
ASA-21-1-005-1		City of Homer	Homer Spit Rd		Airspace Agreement for drainage area
ASA-21-1-011-1		City of Homer	Homer Spit		Airspace Agreement for Rec Parking

1954
ERHART

DATE	DESCRIPTION	AMOUNT	BALANCE
1954-01-01	Balance forward		100.00
1954-01-15	Check #100	25.00	75.00
1954-02-01	Deposit	50.00	125.00
1954-02-15	Check #101	30.00	95.00
1954-03-01	Deposit	40.00	135.00
1954-03-15	Check #102	20.00	115.00
1954-04-01	Deposit	35.00	150.00
1954-04-15	Check #103	15.00	135.00
1954-05-01	Deposit	45.00	180.00
1954-05-15	Check #104	30.00	150.00
1954-06-01	Deposit	55.00	205.00
1954-06-15	Check #105	25.00	180.00
1954-07-01	Deposit	40.00	220.00
1954-07-15	Check #106	35.00	185.00
1954-08-01	Deposit	50.00	235.00
1954-08-15	Check #107	20.00	215.00
1954-09-01	Deposit	45.00	260.00
1954-09-15	Check #108	30.00	230.00
1954-10-01	Deposit	55.00	285.00
1954-10-15	Check #109	25.00	260.00
1954-11-01	Deposit	40.00	300.00
1954-11-15	Check #110	35.00	265.00
1954-12-01	Deposit	50.00	315.00
1954-12-15	Check #111	20.00	295.00
1955-01-01	Balance forward		295.00

TOTAL

**CITY OF HOMER
HOMER, ALASKA**

City Manager

RESOLUTION 08-81

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA, REQUESTING THAT THE ALASKA DEPARTMENT OF TRANSPORTATION TRANSFER PARKING MANAGEMENT AND ENFORCEMENT AUTHORITY WITHIN THE STERLING HIGHWAY RIGHT OF WAY BETWEEN FREIGHT DOCK ROAD AND FISH DOCK ROAD TO THE CITY OF HOMER.

WHEREAS, The Sterling Highway between Freight Dock Road and Fish Dock Road becomes extremely busy and congested with delivery trucks, commercial vehicles, port traffic, busses, RVs, vehicles, bicycles, and pedestrians during the summer months; and

WHEREAS, This year the City of Homer hired two summer enforcement officers in the Police Department in large part to cope with parking issues and to enforce state parking statutes along this section of road; and

WHEREAS, The Port and Harbor Advisory Commission has expressed concern about public safety and about the present allocation of limited parking space; and

WHEREAS, The Port and Harbor Advisory Commission and the Advisory Planning Commission recently conducted a joint workshop to discuss Homer Spit parking issues and forwarded joint recommendations to the City Council; and

WHEREAS, The recommendations included implementing parking space size limitations, limiting parking to one side of the road, creating loading zones, improving sight lines for those emerging from ramp parking areas, and creating a broad pedestrian zone; and

WHEREAS, On street parking within the Sterling Highway Right of Way is under the control of the Alaska Department of Transportation and Public Facilities; and

WHEREAS, At the joint Advisory Planning Commission / Port and Harbor Advisory Commission workshop, a DOT/PF Right of Way agent stated that the City could assume management and enforcement authority along the Sterling Highway if it entered into an agreement with the State.

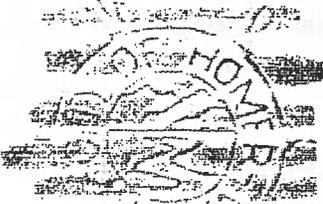
NOW, THEREFORE, BE IT RESOLVED that the Homer City Council finds that it is in the best interest of the City and of public safety generally for the City to assume parking authority within the Right of Way of the Sterling Highway in this area because it

would be able to respond to local parking problems in a specific and concentrated area in a quicker and more efficient manner; and

BE IT FURTHER RESOLVED that the Council hereby requests that the Department of Transportation and Public Facilities transfer parking management and enforcement authority within the Sterling Highway Right of Way between Freight Dock Road and Fish Dock Road to the City of Homer; and

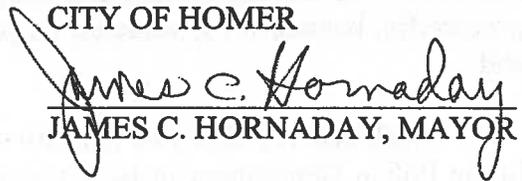
BE IT FURTHER RESOLVED that the Council authorizes the City Manager to contact DOT/PF and initiate discussions regarding the process to initiate the transfer of responsibility as quickly as possible.

PASSED AND ADOPTED by the Homer City Council this 28th day of July, 2008.



ATTEST:


JO JOHNSON, CMC, CITY CLERK

CITY OF HOMER

JAMES C. HORNADAY, MAYOR

Fiscal Note: Not determined. Could include the cost of signage, striping, flashing lights, parking meters, enforcement costs, parking ordinance development. It depends upon the parking plan ultimately adopted.

MEMORANDUM 08-104

TO: Port and Harbor Commission

FROM: Walt Wrede

DATE: July 16, 2008

SUBJECT: Update on Spit Parking Issues

The Purpose of this memorandum is to provide the Commission with an update on Administration actions so far regarding the Spit Parking Recommendations that were a product of the Joint Planning Commission / Port and Harbor Commission workshop earlier this summer. It is also a response to requests made by the Commission at its last meeting.

The City Council will receive a Memorandum from the Commission which contains its recommendations from the last meeting; including an emergency parking ordinance and creation of a Spit Parking Committee. The staff elected to not do anything directly with those recommendations other than to make sure the Council was aware of them.

Both recommendations were discussed at a recent staff meeting regarding Spit Parking. It was decided that drafting an emergency ordinance for parking along a State Highway would have little effect until the City reached an agreement with DOT/PF and assumed responsibility for parking enforcement. The Chief of Police relayed that Committees have been formed before. He said he served on one for two years but nothing came out of it. The problem is that the community just seems to have a hard time deciding on a course of action when it comes to parking on the Spit. No matter what you recommend, somebody thinks their ox is getting gored! It is hard for the administration to act without clear and agreed upon direction.

As noted above, a staff meeting took place last week to talk about Spit Parking issues and to establish a formal course of action and assign responsibility for various tasks. What follows is about as far as we can take it without direction from the City Council. Although the Council received the recommendations which resulted from of the joint workshop, they have not yet discussed them or taken any action.

The meeting started with a report from the Chief of Police. Mark reported that parking enforcement activities have ramped up significantly this summer. As you may know, the City hired two summer officers that are responsible for Spit parking enforcement and beach patrols. As of the end of June, the officers had issued 24 parking citations, 30 warnings, and many verbal contacts. Emphasis has been on having a presence, making contact, and educating people. Mark also said that the Department has not received any complaints about parking on the Spit since October of last year. Bryan noted that it is probably because they contact the Port and Harbor office instead!

The Chief reported further that the Department examined the existing parking signage and determined that it was adequate but could certainly be improved. He also reported that the Department purchased pedestrian crossing signs that are designed to sit on the center line right in the crosswalk however, they have not yet been able to get permission from DOT/PF to put them there. The Police applied for a ROW permit to do this many months ago but have received no response.

The staff established the following action items:

1. The City Manager will contact people at the DOT/PF ROW division, and higher up if necessary, to try and get some action on the ROW Permit application.
2. The staff will draft a resolution for Council consideration at the July 28 meeting that formally requests that the City be given the authority to manage all parking in the State ROW between Freight Dock Road and Fish Dock Road (or all the way to End of the Road Park). This would enable the City to implement and to enforce some of the Commission recommendations including limiting the size of parking spaces, creating loading zones, establishing better lines of sight, parking on one side of the road only, creating a pedestrian zone, etc.
3. The staff will draft an ordinance for Council consideration and possible introduction at the July 28 meeting which appropriates \$15,000 for a parking study.
4. The City Manager will explore with the Council and DOT/PF the idea of the City taking over ownership and maintenance responsibility for the Sterling Highway from Freight Dock Road to the End. There are cost, liability, and other considerations to take into account and DOT/PF many not want to do this for a variety of reasons, including federal highway system inter-modal connectivity with the ferry dock and terminal. However, doing this would give the City the ability to manage and enforce parking in the ROW without undue delays and oversight by a State agency.

Hope this information is helpful and that you think we are on the right track.

**CITY OF HOMER
HOMER, ALASKA**

City Manager

RESOLUTION 11-052

**A RESOLUTION OF THE CITY COUNCIL OF HOMER,
ALASKA, ESTABLISHING AN ADOPT-A-PARK PROGRAM.**

WHEREAS, The City of Homer owns and maintains various parks and trails for the use and enjoyment of its residents and visitors; and

WHEREAS, The City Council desires to provide volunteer opportunities for local citizens to participate in the care and maintenance of the City's parks and trails; and

WHEREAS, An Adopt-a-Park program is a model for volunteer participation that has been used successfully in many other communities; and

WHEREAS, An Adopt-a-Park program will increase civic involvement and participation, pride in the community, and sense of stewardship in helping to care for the City's parks and trails; and

WHEREAS, An Adopt-a-Park program will also help improve and beautify the City's parks and trails for the benefit of all park visitors; and

WHEREAS, City staff have prepared an Adopt-a-Park Program inclusive of policies, procedures, releases, and waivers as necessary to implement the program; and

WHEREAS, The City of Homer Parks and Recreation Commission recommended approval of the Adopt-a-Park Program at its _____(date) meeting;

NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska, establishes the City of Homer Adopt-a-Park Program as described in Exhibit A attached hereto, to accommodate and promote volunteer participation in conserving and maintaining City parks, trails, and recreational facilities.

BE IT FURTHER RESOLVED that City staff are authorized to administer the Adopt-a-Park Program, including processing applications, providing initial orientation to volunteers, collecting volunteer time logs and inspection reports, and conducting any follow-up coordination with volunteers as necessary.

BE IT FURTHER RESOLVED that establishment of this program does not commit the City to any future improvements of any parks, trails, or recreation areas or facilities.

PASSED AND ADOPTED by the Homer City Council this 24th day of May, 2011.

CITY OF HOMER

JAMES C. HORNADAY, MAYOR

ATTEST:

JO JOHNSON, CITY CLERK

Fiscal Note: Staff time.

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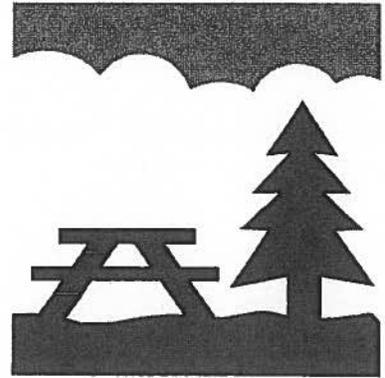
CITY OF HOMER ADOPT-A-PARK PROGRAM OVERVIEW

Mission

The mission of the Adopt-a-Park Program is to engage Homer area citizens in helping to enhance the City's park and trail system.

What is Adopt-a-Park?

Adopt-a-Park is a volunteer program that recruits and trains citizens to assist in the general care and maintenance of City parks and trails. Adoption will augment, rather than replace, publicly-funded maintenance to improve quality of life in the community.



Adopt-a-Park is an opportunity for businesses, community groups, families, and civic-minded individuals to lend a hand in the preservation and beautification of the parks and trails within the City of Homer. It helps raise public awareness about the parks and trails and contributes to a sense of community pride and stewardship.

Who can adopt a park or trail?

Businesses, community groups, schools, youth groups, faith-based organizations, and families or individuals are all encouraged to participate in the program.

What are the obligations and responsibilities of the adopter?

Adopt-a-Park is designed to be flexible to meet the needs of individual parks and trails and the interest and abilities of the park and trail adopters. Typically volunteers perform tasks at their adopted locations a minimum of twice a month, with a minimum commitment of one year. One-time projects are also available.

Typical tasks to be performed include litter pickup, spreading fall protection material around play equipment, sweeping, graffiti removal, painting and minor repair of equipment, and reporting of safety hazards and other problems. One-time projects might include planting shrubs, trees, or flowers and assisting in construction projects. Adopters will work with Parks and Recreation staff to determine the scope of the volunteer commitment for each park or trail and should notify staff in advance of any work days.

Although not required for participation, the Homer Parks and Recreation Division welcomes donations which support the purchase of playground equipment, tables, and other items.

What are the obligations and responsibilities of the City?

City of Homer Parks and Recreation staff will provide training/orientation and basic supplies such as trash collection bags, paintbrushes, etc.

The City of Homer will recognize the contribution of park and trail adopters by erecting a sign with the adopter's name at the park or trailhead, listing the adopter's name on the City of Homer website, and inviting adopters to an annual recognition event.

TABLE 2
RESULTS OF THE SURVEY



The survey results are presented in Table 2. The first column shows the number of respondents who answered each question, and the second column shows the percentage of respondents who chose each answer.

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CONCLUSIONS

The survey results are presented in Table 2. The first column shows the number of respondents who answered each question, and the second column shows the percentage of respondents who chose each answer.

REFERENCES

The survey results are presented in Table 2. The first column shows the number of respondents who answered each question, and the second column shows the percentage of respondents who chose each answer.

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APPENDIX

The survey results are presented in Table 2. The first column shows the number of respondents who answered each question, and the second column shows the percentage of respondents who chose each answer.

The survey results are presented in Table 2. The first column shows the number of respondents who answered each question, and the second column shows the percentage of respondents who chose each answer.

CITY OF HOMER ADOPT-A-PARK AGREEMENT

This Agreement is made on _____ (date) by and between the individual noted below (Volunteer) and the City of Homer and is valid from the date above through _____ (date).

Volunteer's name:

Address:

Email address:

Phone/cell phone:

Affiliation (if with group);

Adopted park or trail:

Describe Adopter's basic responsibilities and work schedule for the months of June, July, and August:

Describe Adopter's basic responsibilities and work schedule for the months of September through May:

Describe other tasks that Adopter is willing to perform or assist with on a less frequent basis, if any.

TERMS AND CONDITIONS

The adoption of a park or trail will be in effect as long as the adopting group or individual is actively participating.

Regularly-scheduled inspection and maintenance of the park or trail will be reported to the City of Homer Parks and Recreation Division according to the schedule noted above. The City of Homer will provide trash bags and other basic supplies as needed, along with training/orientation.

Adopting groups or individuals will be recognized on the City of Homer website, by a sign at the park or trailhead (if they wish), and at an annual Adopt-a-Park appreciation event.

As a Volunteer, I intend to donate my services to the City of Homer, and the City of Homer intends to accept the donation of volunteer services. Both parties agree as follows:

- *I understand that as a Volunteer, I am not an employee of the City of Homer and am not entitled to receive salary, benefits, or other compensation.*
- *I understand that as a Volunteer, I do not qualify for workers' compensation benefits and understand I will be responsible for my own personal medical expenses for any injuries I incur while performing volunteer services.*
- *As a Volunteer, I agree to follow the supervision and direction of any personnel, employee, or volunteer to whom I have been assigned to perform services, and to participate in any training required by the City of Homer in order to perform the voluntary services.*
- *I am fully aware of the possible hazards of performing the volunteer services described above and I am aware that in performing such volunteer services I may incur personal injury, death and/or property damage. I understand that my volunteer services may include a variety of physical hazards, including but not limited to, steep and uneven terrain and the use of tools and equipment.*
- *I attest that I am physically fit, able, and qualified to perform the volunteer services described above. I agree to perform these volunteer services with knowledge of the risks involved and I hereby agree to accept any and all risks of injury, or death and/or property damage.*
- *As a Volunteer, I agree to release and hold harmless the City of Homer, its officers, agents, employees, and all other persons against loss or expense, including attorney's fees, arising from any and all claims, lawsuits, or actions I or, my heirs or legal representatives may have for bodily injury, death or property damage I may incur as a result of my volunteer services under this Agreement. This release does not apply to liability due to the sole negligence of the City of Homer.*
- *I understand the nature of the Volunteer assignment and I certify that I have taken all necessary precautions to participate in such activities.*

I hereby grant the City of Homer permission to use my likeness in a photograph in any and all of its publications, including website entries, without payment or any other consideration. I understand and agree that these materials will become the property of the City of Homer and will not be returned. I am 18 years of age or older and am competent to contract in my own name. I have read this release before signing below and I fully understand the contents, meaning, and impact of this release. (PLEASE CHECK BOX)

IN CASE OF EMERGENCY, PLEASE CONTACT:

Name: _____ Relationship: _____

Telephone number: _____ Mobile phone number: _____

The Volunteer has executed this Volunteer Service and Release Agreement as of the date below.

Printed name: _____

Signature: _____ Date: _____

PARENTAL ENDORSEMENT TO BE COMPLETED IF THE VOLUNTEER/PARTICIPANT IS UNDER 18 YEARS OF AGE:

I certify that, as parent/guardian with legal responsibility for this Volunteer, I do hereby consent to and agree to his/her release as provided above, and for myself, my heirs, assigns, and next of kin, release and agree to indemnify and hold harmless the City of Homer, its agents, and employees from any and all liabilities incident to my minor child's voluntary participation to the fullest extent permitted by law.

Printed name: _____

Signature: _____ **Date:** _____

CITY OF HOMER REPRESENTATIVE

Printed name: _____

Signature: _____ **Date:** _____

CITY OF HOMER ADOPT-A-PARK APPLICATION FORM

Date: _____ Name of adopting group or individual: _____

Group contact person: _____

Contact person phone: _____

Contact person email: _____

Contact person address: _____

Which park or trail do you wish to adopt?

Karen Hornaday Park	Bishops Beach Park	Mariner Park	Jack Gist Park	WKFL Park
Bayview Park	Ben Walters Park	Baycrest Overlook Park	Skateboard Park	
Reber Trail	Calhoun & Poopdeck Trails	Beluga Slough Trail	Homer Spit Trail	

How much time are you willing to commit in the next year?

weekly every two weeks once a month one-time special project

What tasks are you willing to perform?

litter control vandalism control maintenance projects weeding brush cutting
special projects other (describe): _____

Other comments:

Please return this form to:

Angie Otteson, City of Homer Department of Public Works, 3575 Heath Street, Homer, AK 99603
or fax to 235-3145 or email to AOTTESON@CITYOFHOMER-AK.GOV. Questions? Call Angie at 435-3139.

We will contact you soon to discuss your interest in adopting a park or trail!

CITY OF HOMER PARKS AND RECREATION



Date

Name of individual or institution

City and State

Address

Country

Telephone

For the purpose of this form, the name of the individual or institution should be given in full, including the name of the street, city, state, and country. If the name of the institution is given, the name of the individual should be given in full, including the name of the street, city, state, and country. If the name of the individual is given, the name of the institution should be given in full, including the name of the street, city, state, and country.

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Signature

Empty rectangular box for signature or stamp.

This form is to be filled out by the individual or institution. It should be filled out in full, including the name of the street, city, state, and country. If the name of the institution is given, the name of the individual should be given in full, including the name of the street, city, state, and country. If the name of the individual is given, the name of the institution should be given in full, including the name of the street, city, state, and country.

UNIVERSITY OF MICHIGAN LIBRARY



ADOPT-A-PARK PROGRAM EXAMPLES

Note: All programs involve submitting an application form. A liability waiver is typically part of the agreement. This is typical language describing who may adopt a park: "Businesses, community groups, schools, youth groups, faith-based organizations, and families or individuals are all encouraged to participate in the program."

City or County	Adopter obligations	City/County obligations	Other comments
City of Chicago	<ul style="list-style-type: none"> • Conduct a Park Assessment Survey. • Work four days per year. • Work days could include: removing litter and recycling; sweeping and picking up glass; mulching trees; planting flowers, shrubs, and trees; pruning; watering grass; painting and minor repair of equipment; spreading woodchips around play equipment, removing graffiti. 	<ul style="list-style-type: none"> • The Chicago Parks District and Friends of the Parks provides materials such as garbage bags, paint, paint brushes, rakes, trowels, work gloves, hammers... • Provides recognition in Friends of the Parks' newsletter • Provides Adopt-a-Park certificate 	
Knox County, TN	<ul style="list-style-type: none"> • Fills out an inspection report (form) and "assists in the general care, supervision, and maintenance of neighborhood parks... Adoption will augment, rather than replace, publicly funded maintenance." • Inspection and maintenance to take place at least twice a month. However, one-time projects are also available. • Adopters agree to a background check. 	<ul style="list-style-type: none"> • County personnel provide training/ orientation. • County erects an Adopt-a-Park sign in the park bearing the name of the adopter and lists adopter's name on website. • Invitation to annual recognition event. 	<ul style="list-style-type: none"> • Application form and Park Inspection Report form available online. • Brochure notes that "financial contributions are also welcome and are fully tax-deductible."
City of Knoxville, TN	<ul style="list-style-type: none"> • Adopters are asked to commit to a minimum of one year of service. Work commitment is for at least once a month. • Projects may include litter pickup; leaf raking; painting; staining of bridges, benches, etc.; graffiti removal; spreading of mulch, gravel, playground rock; sweeping of courts or paved trails; removal of exotic invasive plants; planting flowers; reporting of safety hazards, illegal dumping, injured or dead animals, storm damage, and other issues. 	<ul style="list-style-type: none"> • Parks and Rec employees work with volunteers to approve projects. • Parks and Rec supplies working tools and materials needed. • Adopt-a-Park recognition signs are permanently displayed. 	<ul style="list-style-type: none"> • Requires a "commitment form" along with the enrollment (application) form. • Enrollment form and Commitment form available online.
City of Chandler, AZ	<ul style="list-style-type: none"> • Adopter agrees to work at park once a month. • Volunteer work includes: pick up litter and dog droppings; sweep court surfaces; clean picnic tables and benches; clean and rake children's play areas; remove graffiti; plant trees and flowers (approved in advance). • Adopter also makes note of vandalism damage, dirty restrooms, and buildings or structures needing repair. • Adopters are asked to furnish their own supplies "due to the coordination and staffing time required for the City to provide materials." 	<ul style="list-style-type: none"> • Groups adopting a park are recognized after each year of service with a plaque presented by the Mayor and City Council. 	<ul style="list-style-type: none"> • Brochure specifically says that adopters are <u>not</u> expected to mow grass, trim vegetation, pull weeds, clean restrooms or perform major repairs or maintenance. • Brochure notes that youth organizations are required to have at least one adult supervisor while working at adopted park.

<p>City of Redmond, OR</p>	<ul style="list-style-type: none"> • Adopters can make 1, 2, or 3-year commitments for litter pickup or landscape maintenance. • Adopters provide their own transportation, grapplers or other "picking" tools, appropriate clothes for the season, and sturdy footwear and gloves. • Adopters are asked to notify Public Works a day or two in advance of litter pickup, so that the filled bags can be scheduled for removal. 	<ul style="list-style-type: none"> • City provides permanent acknowledgement signs • City also provides portable signs, safety vests, safety training/videos, litter bags, flags for hazardous materials, and disposal of bagged litter. 	<ul style="list-style-type: none"> • Brochure notes that "political organizations desiring to use the program in campaign of a political cause would constitute an inappropriate use of County funds and is therefore not allowed." • Parents are required to sign releases for children under the age of 16 who participate in the program. • Application form available online.
<p>Douglas County, OR</p>	<ul style="list-style-type: none"> • Adopters are expected to conduct specified park maintenance activities on their adopted park no less than six times yearly from March 15 through November 15. Off season, November 15 to March 14, may require two or more maintenance activities. • Adopters must adopt a park for a minimum of 2 years. • Adopters are required to conduct safety meetings involving all participants prior to park maintenance activities. • List of activities will vary from park to park, but generally includes general cleaning; minor repairs; painting signs, tables, play equipment and buildings; cultivating shrub beds; mowing; trash removal; litter pick-up; weedeating, trimming brush, and pruning limbs. • If the volunteers agree to mow or weedeat within their adopted park, the power mowers or weedeaters must be provided by the adopting organization. • Adopters will provide 5-day advance notification to the County of planned park maintenance events. 	<ul style="list-style-type: none"> • County will provide safety equipment, park maintenance and safety orientation, paint, hand tools, and other necessary maintenance supplies. • The County will notify news media of the adopter's activity and issue certificates of appreciation either during or upon completion of the term of adoption. • The County will provide and erect an Adopt-a-Park sign bearing the name of the organization. 	<ul style="list-style-type: none"> • Program will recognize the volunteer efforts with a park sign listing their name. • Invitation to annual recognition event.
<p>Kitsap County, WA</p>	<ul style="list-style-type: none"> • On the application form, adopters fill in how much time they're willing to commit: weekly, monthly, quarterly, or one-time project, and estimate the hours. They also fill in proposed start and end dates for the commitment. • Adopters also check which tasks they are interested in performing: brush cutting, litter control, landscaping, trail maintenance, weeding, vandalism control, maintenance projects, interpretive program/materials, and special projects. 	<ul style="list-style-type: none"> • City provides certificate of adoption, t-shirts, invitation to annual recognition event, and adoption plaques posted at the park. • Tools can be checked out. 	<ul style="list-style-type: none"> • Brief application form is part of the brochure. • More detailed Volunteer Interest and Liability Form is also available online. • Long-term commitments are not necessary. One-time projects are encouraged.
<p>City of San Jose, CA</p>	<ul style="list-style-type: none"> • Can adopt entire park, trail, or particular area in a park, such as flower beds or sports fields. • Minimum of 1-year commitment, once a month. • Tasks are divided into Basic (e.g., litter removal) and Advanced (e.g. re-painting park fixtures). 	<ul style="list-style-type: none"> • Includes Adopt-a-Trail component • Provides detailed Training Handbook 	

40 Ocean Division, can prioritize and spend on projects necessary to sustain water related
41 infrastructure in the coastal communities of the region.

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43 PASSED AND ADOPTED by the Homer City Council this 24th day of May, 2011.

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45 CITY OF HOMER

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48 JAMES C. HORNADAY, MAYOR

49 ATTEST:

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52 JO JOHNSON, CMC, CITY CLERK

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54 Fiscal Note: N/A

Alaska Association of Harbormasters and Port Administrators



RESOLUTION NO. 2011-01

A RESOLUTION OF THE ALASKA ASSOCIATION OF HARBORMASTERS AND PORT ADMINISTRATORS IN SUPPORT OF SUPPORTING THE ESTABLISHMENT OF A PACIFIC OCEAN DIVISION WATER INFRASTRUCTURE FUNDING LINE ITEM WITHIN THE ARMY CORPS OF ENGINEERS CIVIL WORKS CONSTRUCTION PROGRAM.

Whereas, the Alaska Association of Harbormasters and Port Administrators recognizes the Army Corps of Engineers (ACOE) has been the central governmental agency for the development of water-related infrastructure throughout the Nation and has established a comprehensive process to identify, evaluate, and fund projects related to navigation, safe harbor, flood control, erosion control, and water supply; and

Whereas, The Congress has recently decided to suspend the use of congressionally-directed spending within appropriations bills while it grapples with the Federal deficit; and

Whereas, Under the moratorium on congressionally-directed spending, only projects which are identified in the President's Budget Request are eligible for funding; and

Whereas, These projects are identified through a scoring system which favors the more developed ports of major urban areas and large-scale environmental restoration such as the Everglades Restoration Project; and

Whereas, The rural coastal communities of the Pacific Ocean Division do not have the population base to compete within a scoring system that provides a bias towards large cargo volumes and urban populations, yet these rural communities are more economically dependent on waterborne commerce in relation to the rest of their local and regional economies than the large urban areas, which have more diversified economies; and

Whereas, There needs to be some mechanism within the Energy & Water appropriations bill to recognize the unique circumstances of the rural communities within the Pacific Ocean Division; and

Whereas, The Pacific Ocean Division is comprised of the State of Alaska, the State of Hawaii, and the Pacific Island territories of the United States and the communities within this region are either located on islands or are in the coastal areas of Alaska which are not connected to the road system which means port activity is the dominant feature of their local and regional economies; and

Whereas, Projects in need of funding include breakwaters, wave barriers, dredging of navigation channels and mooring basins required as part of new harbor construction or harbor improvement projects, removal of barriers to navigation specifically authorized by law, flood control, water supply, and erosion control; and

Now therefore be it resolved that the Alaska Association of Harbormasters and Port Administrators encourages The Congress to amend the Fiscal Year 2012 Energy & Water appropriations bill and the Fiscal Year 2013 President's Budget Request to include a set-aside of \$50 million annually for use within the Pacific Ocean Division to develop and sustain water infrastructure in the small coastal communities of the region; and

Be it further resolved, that the Alaska Association of Harbormasters and Port Administrators requests the Army Corps of Engineers be charged with the responsibility of working with the States, territorial governments, and local communities to prioritize projects throughout the Pacific Ocean Division region and granted the discretion to investigate, evaluate, plan, and provide funding continuity for projects identified within its priority list.

Passed and approved by the Board of Directors of the Alaska Association of Harbormasters and Port Administrators on this 6th day of April 2011.

Steven R. Corporon, President

ATTEST:

Kim Elliot, Executive Secretary

CITY OF KODIAK
RESOLUTION NUMBER 2011-__

**A RESOLUTION OF THE KODIAK CITY COUNCIL IN SUPPORT OF ESTABLISHING
WATER INFRASTRUCTURE SET-ASIDE FUNDING IN THE ARMY CORPS OF
ENGINEERS, PACIFIC OCEAN DIVISION, CIVIL WORKS PROGRAM.**

WHEREAS, the Army Corps of Engineers (ACOE) is the central agency for the development of water-related infrastructure throughout the Nation; and

WHEREAS, the ACOE, Pacific Ocean Division includes Alaska, Hawaii, and the Pacific Island Territories all of which have economies highly dependent upon port infrastructure; and

WHEREAS, Congress suspended use of congressionally-directed spending and now only funds projects identified through a scoring system which favors urban ports; and

WHEREAS, the rural coastal communities of the Pacific Ocean Division do not have the population to compete with urban ports, yet are highly dependent on waterborne commerce; and

WHEREAS, there could be a mechanism within the Energy & Water appropriations bill to recognize the unique circumstances of coastal rural communities of the ACOE, Pacific Ocean Division; and

WHEREAS, projects in need of funding include breakwaters, wave barriers, dredging, mooring basins, and flood/erosion control; and

NOW THEREFORE BE IT RESOLVED that the Kodiak City Council encourages Congress to amend the FY2012 Energy & Water appropriations bill and the FY2013 President's Budget Request to include an annual \$50M set-aside that the ACOE, Pacific Ocean Division can prioritize and spend on projects necessary to sustain water infrastructure in small coastal communities of the region.

Passed and approved by the City Council, Kodiak, Alaska __ day of April 2011.

CITY OF KODIAK

Carolyn Floyd, Mayor

ATTEST:

CITY CLERK

COMMENTS OF THE AUDIENCE
COMMENTS OF THE CITY ATTORNEY
COMMENTS OF THE CITY CLERK
COMMENTS OF THE CITY MANAGER
COMMENTS OF THE MAYOR
COMMENTS OF THE CITY COUNCIL
ADJOURNMENT

