

MEMORANDUM OF AGREEMENT

Operation, Maintenance, Repairs, Clean-Up Of City of Homer Fish Waste Grinding Equipment and System during the Calendar Year 2013

1. PARTIES TO THE AGREEMENT

This Memorandum of Agreement (MOA) is made and entered into between the City of Homer, Port and Harbor Department (hereinafter referred to as COH) and The Fish Factory, LLC (hereinafter referred to as TFF).

2. PURPOSE AND OBJECTIVE

This MOA is made for the following purposes and objectives:

- The operation, clean-up, and maintenance of COH's Fish Waste Grinding Equipment and System;
- Recording and reporting to COH, the required data and information to enable COH to prepare invoices for fish waste grinding and disposal services to the commercial fish charter businesses and commercial fish-buying/fish packing businesses which elect to utilize this COH provided service;
- Recording and reporting to COH, the data required by EPA for submitting the annual reports of total weight of fish carcasses/fish waste processed through COH's Fish Waste Grinding Equipment;
- For the period May 1, 2013 through September 30, 2013, submitting itemized invoices, pursuant to work orders and/or purchase orders, to COH for providing the services of operation, clean-up, and maintenance of the system, with man hours, materials, supplies detailed sufficiently to enable COH to gather cost data to be utilized for the purpose of developing an RFP to bid these services.

3. AGREEMENT DURING THE PERIODS JANUARY 1, 2013 through APRIL 30, 2013 and OCTOBER 1, 2013 through DECEMBER 31, 2013

Specific obligations of the parties are:

City of Homer (COH)

- a) Will not be delivering sport caught fish carcasses to the grinder location.
- b) Will pay for the electricity and water meter/service monthly fee.
- c) Will not charge TFF for any work by COH Public Works Department to clear blockages of the pipe from the grinder building sump to the vault, to clear blockages of the pumps in the vault, or to maintain outfall line vault as it is agreed that the annual outfall vault hook up/maintenance fee that TFF pays to COH covers this.

The Fish Factory (TFF)

- a) Will handle its own fish carcasses/wastes and/or other commercial enterprises fish carcasses/wastes at no labor cost to COH during the period (man hours not to be billed by TFF).

b) Will be allowed to use the COH's fish grinding equipment and building free of charges during this period provided that:

- TFF will be allowed to charge for grinding other commercial enterprises fish carcasses/wastes from fish processed on the Homer Spit only at a rate to be worked out between TFF and these commercial enterprises and to be approved by COH.
- TFF will maintain/repair the grinder system and building and will not charge COH for labor or parts used.
- TFF will continue reporting to COH, quantities (weight) processed through the grinder, for use in making the required year-end report to EPA.

4. AGREEMENT DURING THE PERIOD MAY 1, 2013 and SEPTEMBER 30, 2013

Specific obligations of the parties are:

City of Homer (COH)

- a) Will oversee the required record keeping, reporting and invoicing as indicated in No. 2 above.
- b) Upon receipt of an itemized invoice from TFF will verify the invoice for payment and will process for payment for these services rendered, and to be mailed to TFF within 21 days of receipt of valid and correct invoice.
- c) Will provide the Fish Waste Grinding System equipment, building, electricity, water, and connection to the COH outfall line which are required to enable TFF to provide service under this MOA.
- d) Will order materials, supplies, repair parts and other necessities for operation of the system, upon receipt of request from TFF, but when such items are needed by TFF more quickly than this ordering system by COH can reasonable provide them, TFF will be reimbursed at cost, plus 5%, for providing these items itself, based on documentation of such expenses submitted as part of the invoice for the services provided under this MOA.

The Fish Factory (TFF)

- a) Will operate, clean-up, and maintain and repair the COH Fish Waste Grinding System and Building per this MOA to grind the following categories of fish carcasses/fish waste:
 - Sport-caught fish waste brought to the fish waste grinder building in fish carcass trailers by COH employees, and dumped by COH employees into TFF totes with lids;
 - Commercial charter boat fish waste brought to the fish waste grinder building in fish totes or tubs by these businesses;
 - Commercial fish buyer/fish packer fish waste brought to the fish waste grinder building in fish totes by these businesses.
- b) Will keep necessary records as requested by COH to enable COH to bill the commercial charter boat businesses and commercial fish buyers/fish packer businesses for these fish grinding and disposal services provided to them under this MOA.

- c) Will keep necessary records as requested by COH and as required by EPA for preparation by COH of the annual report of fish waste poundage processed through the COH fish waste grinding and disposal system, broken out by the three categories shown in "a)" above.
- d) Will invoice COH for this service provided as per this MOA, prior to the total invoiced amount exceeding the "not to exceed" quantity specified in the work order or purchase order. Such invoice to provide detailed information of man hours charged and what category of service (per "a)" above) the man hours were associated with, materials, supplies, repairs, parts, etc. then will continue providing this service until termination of this MOA by either party as per the Termination section of this agreement.

5. TERMINATION

This agreement is effective through December 31, 2013 or until earlier terminated in writing by 30-day written notice from either party to this agreement, hand-delivered or mailed to the party at the address indicated in the Notification section of this agreement. Both parties agree that termination must be based on just cause.

6. NOTIFICATION

The following addresses are to be used for issuance of work orders or purchase orders, for delivery of required records and reports, for submittal of invoices, and for any notification of termination, under the provisions of the MOA.

- For COH – Port and Harbor of Homer, 4350 Homer Spit Road, Homer, Alaska 99603;
- For TFF – The Fish Factory LLC, 800 Fish Dock Road, Homer, Alaska 99603.

7. HOURLY RATE FOR PAYMENT FOR INVOICED MAN HOURS

Unless amended as shown in the Amendment section below, the hourly rate per man hour billed by TFF to COH for services provided under this agreement by TFF employees shall be \$32.00 per man hour. This is an all inclusive rate, regardless of whether the hours of provided services include overtime payments to employees of TFF, and this rate also includes TFF's forklift when needed.

8. INSURANCE

- a) While providing service under this MOA, TFF shall maintain in good standing insurance described in this section.
- b) TFF shall obtain and keep in force at all times while providing service under this MOA:
 - General liability insurance providing coverage for bodily injury, including death, in an amount not less than \$500,000 for any one person and not less than \$1,000,000 for any one accident or occurrence.
 - Worker's Compensation or Longshoremen's and Harbor Workers' Compensation Insurance as may be required by state or federal law and Employer's Liability Insurance.
 - Property damage liability, which shall include any and all property whether or not in the care, custody or control of the Permittee, in an amount of not less than \$1,000,000 on account of any one accident.

c) The insurance obtained pursuant to this section shall name COH, its officers, and employees as additional insured. Such policies must be endorsed to permit COH, its officers and employees to recover on the insurance for damages and injuries suffered by them that are caused by TFF or any other insured under the policy. Such policies must provide that a termination, cancellation or expiration of the policy is ineffective until 30 days after written notice of the termination, cancellation or expiration has been delivered to the City Manager.

9. AMENDMENTS

Amendments to this agreement may be proposed by either party and shall become executed upon being reduced to a written instrument executed by both parties.

IN WITNESS WHEREOF, each party hereto has caused this MOA to be executed by an authorized official on the day and year set forth below his/her signature.

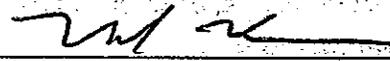
City of Homer:



Bryan Hawkins, Port and Harbor Director

12-28-12
Date

The Fish Factory:



Mike McCune, Managing Member

12-28-12
Date