



AGENDA

City Council Meeting

Monday, April 10, 2023 at 6:00 PM

City Hall Cowles Council Chambers In-Person & Via Zoom Webinar

Homer City Hall

491 E. Pioneer Avenue
Homer, Alaska 99603
www.cityofhomer-ak.gov

Zoom Webinar ID: 205 093 973 Password: 610853

<https://cityofhomer.zoom.us>
Dial: 346-248-7799 or 669-900-6833;
(Toll Free) 888-788-0099 or 877-853-5247

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE

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

3. MAYORAL PROCLAMATIONS AND RECOGNITIONS

3.A. Recognition of Zachary Marley, Eagle Scout, Troop 555

4. PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA (The public may comment for three minutes on agenda items not schedule for public hearing.)

5. RECONSIDERATION

6. 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 Council Member)

6.A. Homer City Council Unapproved Regular Meeting Minutes of March 28, 2022. City Clerk. Recommend adoption. **Page 5**

6.B. Marijuana License Renewal for Wildflower Farms Standard Marijuana License Cultivation Facility License. Recommend approval. **Page 17**

6.C. Ordinance 23-17, An Ordinance of the City Council of Homer, Alaska Amending Homer City Code 19.08.110 Disposition of Revenues, to Deposit all Revenue from Fees Paid for Parking or Camping in City Campgrounds Located on the Homer Spit to the Port Operating Fund. City Manager. Recommend Introduction April 10, 2023, Public Hearing and Second Reading April 27, 2023. **Page 89**

- 6.D. Ordinance 23-18, An Ordinance of the City Council of Homer, Alaska Amending the FY23 Capital Budget by Adding Expected Campground Revenues in the Amount of \$60,000 and Amending Port Expenditures in the Amount of \$36,436.64 for the Purpose of Seasonal Staff and Campground Support. City Manager/Port Director. Recommend Introduction April 10, 2023, Public Hearing and Second Reading April 27, 2023. **Page 93**
- 6.E. Ordinance 23-19, An Ordinance of the City Council of Homer, Alaska Amending the FY23 Capital Budget by Authorizing a Transfer of \$144,360 from the Port Capital Projects Fund to the Port Reserves Fund to Establish a Dedicated Reserve for Required Maintenance or Repairs of the United States Coast Guard Cutter Berth Space. City Manager/Finance Director. Recommend Introduction April 10, 2023, Public Hearing and Second Reading April 27, 2023. **Page 97**
- 6.F. Resolution 23-030, A Resolution of the City Council of Homer, Alaska Supporting Improvements to the Properties of the Homer Public Library, According to a Design Plan Developed by the Friends of the Homer Library, Contingent upon the Availability of Funds for Construction. Aderhold/Venuti. Recommend adoption. **Page 100**
- 6.G. Resolution 23-031, A Resolution of the City Council of Homer, Alaska Authorizing the City Manager to Apply to the Alaska Department of Health and Social Services for a Healthy and Equitable Communities Grant in Support of the Homer Community Health Improvement Plan and the Bayveiw Park Renovation Project. City Manager. Recommend adoption. **Page 108**
- 6.H. Resolution 23-032, A Resolution of the City Council of Homer, Alaska Approving a Lease with Alaska Scrap and Salvage for a term of Eight Years with Two One-Year Options for Renewal and Authorizing the City Manager to Negotiate and Execute the Appropriate Documents. City Manager. Recommend adoption. **Page 113**
- 6.I. Resolution 23-033, A Resolution of the City Council of Homer, Alaska Approving a Lease with Fortune Sea, LLC for a term of Eight Years with Two One-Year Options for Renewal and Authorizing the City Manager to Negotiate and Execute the Appropriate Documents. City Manager. Recommend adoption. **Page 169**
- 6.J. Resolution 23-034, A Resolution of the City Council of Homer, Alaska Amending the City of Homer Fee Schedule under Camping Fees. City Manager/Port Director. Recommend adoption. **Page 232**
- 6.K. Resolution 23-035, A Resolution of the City Council of Homer, Alaska Adopting the Revised Port and Harbor Tariff No. 1. City Manager/Port Director. Recommend Public Hearing April 27, 2023. **Page 236**

7. VISITORS

- 7.A. Representative Sarah Vance Legislative Update

8. ANNOUNCEMENTS/PRESENTATIONS/REPORTS (5 minutes each)

- 8.A. Committee of the Whole
- 8.B. Mayor's Report
- 8.C. Borough Report
- 8.D. Planning Commission

9. PUBLIC HEARING(S)

9.A.. Ordinance 23-15, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code Section 11.20.070 to Specify that a Performance Guaranty is Required for New Subdivisions. City Manager/ Public Works Director. Introduction March 28, 2023 Public Hearing and Second Reading April 10, 2023. **Page 299**

9.B. Ordinance 23-16, An Ordinance of the City Council of Homer, Alaska, Amending the FY23 Capital Budget by Accepting and Appropriating a 2023-2025 Alaska Clean Water Actions (ACWA) Grant from the Alaska Department of Environmental Conservation (ADEC) in the Amount of \$153,307 for the Beluga Slough Green Infrastructure Storm Water Treatment System. City Manager/ Public Works Director. Introduction March 28, 2023 Public Hearing and Second Reading April 10, 2023. **Page 303**

Ordinance 23-16(S) An Ordinance of the City Council of Homer, Alaska Amending the FY23 Capital Budget by Accepting and Appropriating a 2023-2025 Alaska Clean Water Actions (ACWA) Grant from the Alaska Department of Environmental Conservation (ADEC) in the Amount of \$153,307 for the Beluga Slough Green Infrastructure Storm Water Treatment System and Appropriating an Additional \$107,182 in Local Matching Funds, of which \$81,313 is Appropriated from Homer Accelerated Roads and Trails (HART) Roads Fund and \$25,869 from an in-kind Match for Project Management Services. City Manager/Public Works Director. **Page 308**

10. ORDINANCE(S)

10.A. Ordinance 23-20, An Ordinance of the City Council of Homer, Alaska Appropriating Funds for the Fiscal Years 2024 and 2025 for the General Fund, the Water Fund, the Sewer Fund, the Port/Harbor Fund, and Internal Services Funds. City Manager. Recommend Introduction April 10, 2023, Public Hearing April 27, 2023 and May 8, 2023. **Page 353**

10.B. Ordinance 23-21, An Ordinance of the City Council of Homer, Alaska Amending Homer City Code Section 22.10.050 to Specify that Preliminary Plats Approved by the City Shall Include all Development Commitments made to the City, and that a Final Plat for the City of Homer Shall be an As-Built Survey. Davis/Erickson. Recommend Introduction

11. CITY MANAGER'S REPORT

11.A. City Manager's Report **Page 376**

12. PENDING BUSINESS

13. NEW BUSINESS

14. RESOLUTIONS

14.A. Resolution 23-036, A Resolution of the City Council of Homer, Alaska Directing the Port and Harbor Advisory Commission for Research and Reporting during the process of the Harbor Expansion General Investigation Study and Float Replacement Projects. Erickson/Venuti. **Page 381**

14.B. Resolution 23-037, A Resolution of the City Council of Homer, Alaska Outlining the Expectation of the City Council for Community and Stakeholder Engagement within the Harbor Expansion General Investigation/Feasibility Study. Lord/Aderhold/Davis. **Page 384**

14.C. Resolution 23-038, A Resolution of the City Council of Homer, Alaska Establishing a Harbor Expansion Study Communications Committee and Establishing the Scope of Work and Committee Make-Up. Erickson. **Page 388**

15. COMMENTS OF THE AUDIENCE (The public may comment for three minutes on any topic.)

16. COMMENTS OF THE CITY ATTORNEY

17. COMMENTS OF THE CITY CLERK

18. COMMENTS OF THE CITY MANAGER

19. COMMENTS OF THE MAYOR

20. COMMENTS OF THE CITY COUNCIL

21. ADJOURNMENT Next Regular Meeting is Monday, April 27, 2023 at 6:00 p.m., Committee of the Whole at 5:00 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

Session 23-06 a Regular Meeting of the City Council of Homer, Alaska was called to order on March 28, 2023 by Mayor Ken Castner at 6:00 p.m. at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska, and opened with the Pledge of Allegiance.

PRESENT: COUNCILMEMBERS ADERHOLD, DAVIS, ERICKSON, HANSEN, LORD, VENUTI

STAFF: CITY MANAGER DUMOUCHEL
CITY CLERK JACOBSEN
PORT DIRECTOR HAWKINS
FINANCE DIRECTOR WALTON
PUBLIC WORKS DIRECTOR KEISER
CHIEF TECHNOLOGY OFFICER JIRSA
SPECIAL PROJECTS COORDINATOR FOSTER
NETWORK ADMINISTRATOR SULCZYNSKI
CITY ATTORNEY GATTI

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

Mayor Castner announced the supplemental items: **Consent Agenda Resolution 23-027**, A Resolution of the City Council of Homer, Alaska Awarding a Task Order in the Amount of \$45,000 to HTRW, LLC of Anchorage, Alaska to test for PCB Laden Materials at the Homer Education and Recreation Complex (HERC) Buildings and Authorizing the City Manager to Negotiate and Execute the Appropriate Documents. City Manager/Public Works Director. Informational materials from Council Member Davis; **Resolution 23-028**, A Resolution of the City Council of Homer, Alaska Supporting the Alaska Legislature Adopting Definitions Related to Electric Bicycles and Allowing Municipalities to Regulate Them. Aderhold. Written Public Comments **Visitors** Update on Old Town Planning Meeting, Draft goals of Transportation Plan, Timeline for 1st public draft of Transportation Plan Presentation materials; **Public Hearing** Draft FY24/25 Budget and Written Public Comments **Pending Business** Appropriation Reduction related to Ordinance 23-11 and Veto of Resolution 23-017 in accordance with HCC 2.08.070 Mayor’s veto. Written Public Comments **Audience Comments** Written Public Comments

ADERHOLD/LORD MOVED TO APPROVE THE AGENDA

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

3. MAYORAL PROCLAMATIONS AND RECOGNITIONS

4. PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA (The public may comment for three minutes on agenda items not schedule for public hearing.)

Scott Adams, city resident, commented in support of Resolution 23-027. He shared his understanding from the Committee of the Whole is that this contactor is the only one interested in taking this on. He thinks it’s best to test both buildings.

Mike Illg, city resident, commented in support of Resolution 23-029. We don't get a second chance to educate our children and there isn't another issue more important than supporting the base student allowance increase.

Marilyn Sigmund, city resident, commented in support of postponing Resolution 23-026 and allowing more time for public comment on the Harbor Expansion General Investigation. With the veto of funding for the Comprehensive Plan she'd like to see more clarification on the whether the current Comp Plan addresses and makes accommodation for all the potential impacts of this project.

Robert Archibald, city resident, commented regarding Resolution 23-026. He hopes they've had a chance to look at the 2016 harbor study and what's changed to make this a viable project. A lot of money is going into this study. He questions at what point we pulled the plug before and if we'll end up spending the full amount and find out it isn't a viable project. There needs to be a clear understanding what we're looking at. He also commented regarding changes to Parks staffing.

Anne Coray, non-resident, commented in support of postponing Resolution 23-026. It's important to look at how this expansion is going to impact the community at large. She shared about growth throughout Alaska, that Homer is a wonderful town as is, and long term planning is necessary for big projects like this.

Katie Gavenus, city resident, commented in support of postponing Resolution 23-026. Setting out a resolution that has clear expectations for the process of the project is a good place to start. She thinks things have moved fast and people don't understand what is happening or why. She also commented in support of 23-029 and increasing the base student allowance in the state budget.

Nancy Hillstrand, city resident, commented in support of postponing Resolution 23-026. She shared concerns about the harbor expansion, and that residents don't know what's going on. She thinks the Comp Plan needs to be consulted and keep the residents involved.

Rika Mouw, city resident, commented in support of postponing Resolution 23-026, she's inspired by others who have spoken to this, she concurs and feels there needs to be more community discussion if this is the direction we want to go. She commented in support of Resolution 23-029 and increasing the base student allowance in the state budget.

Roberta Highland, city resident commenting on her own behalf, commented in support of postponing Resolution 23-026. She supports a well-advertised public meeting to explain what's going on with the harbor expansion. She supports an override of the Mayor's veto of the Comprehensive Plan, we need to get a vision that we can all come together on and that would be a good place to start. She supports Resolution 23-029 and an increase in the base student allocation in the state budget.

5. RECONSIDERATION

6. 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 Council Member.)

- 6.A. Homer City Council Unapproved Regular Meeting Minutes of March 13, 2023. City Clerk. Recommend adoption.

- 6.B. Reappointment of Karin Marks and Tulio Perez to the Economic Development Advisory Commission; and Reappointment of Clark Fair and Appointment of Kathryn Carssow to the Library Advisory Board. Mayor. Recommend approval.
- 6.C. Liquor License Renewal for Fat Olives. City Clerk. Recommend approval.
- 6.D. Ordinance 23-15, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code Section 11.20.070 to Specify that a Performance Guaranty is Required for New Subdivisions. City Manager/ Public Works Director. Recommend Introduction March 28, 2023 Public Hearing and Second Reading April 10, 2023.
- 6.E. Ordinance 23-16, An Ordinance of the City Council of Homer, Alaska, Amending the FY23 Capital Budget by Accepting and Appropriating a 2023-2025 Alaska Clean Water Actions (ACWA) Grant from the Alaska Department of Environmental Conservation (ADEC) in the Amount of \$153,307 for the Beluga Slough Green Infrastructure Storm Water Treatment System. City Manager/ Public Works Director. Recommend Introduction March 28, 2023 Public Hearing and Second Reading April 10, 2023.
- 6.F. Resolution 23-025, A Resolution of the City Council of Homer, Alaska Authorizing a Task Order to RESPEC in an amount not to Exceed \$15,000 for Conceptual Design of the Fish Waste Grinder Building Replacement Project and Authorizing the City Manager to Negotiate and Execute the Appropriate Documents. City Manager/Public Works Director. Recommend approval.
- 6.G. Resolution 23-026, A Resolution of the City Council of Homer, Alaska in Support of Entering into the US Army Corps of Engineers General Investigation Study for the New Large Vessel Harbor and Authorizing the City Manager to Negotiate and Execute the Appropriate Documents. City Manager. Recommend approval.

Moved to Resolutions. Venuti.

- 6.H. Resolution 23-027, A Resolution of the City Council of Homer, Alaska Awarding a Task Order in the Amount of \$45,000 to HTRW, LLC of Anchorage, Alaska to test for PCB Laden Materials at the Homer Education and Recreation Complex (HERC) Buildings and Authorizing the City Manager to Negotiate and Execute the Appropriate Documents. City Manager/Public Works Director. Recommend approval.

Moved to Resolutions. Davis.

- 6.I. Resolution 23-028, A Resolution of the City Council of Homer, Alaska Supporting the Alaska Legislature Adopting Definitions Related to Electric Bicycles and Allowing Municipalities to Regulate Them. Aderhold. Recommend approval.

Item 6.G. moved to Resolutions 14.B. Venuti, and Item 6.H. moved to Resolutions 14.C. Davis.

ADERHOLD/VENUTI MOVED TO APPROVE THE CONSENT AGENDA AS READ.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

7. VISITORS

7.A. Legislative Update - Senator Gary Stevens

Senator Stevens reported they're about halfway through the legislative session. He provided updates on the status of Senate Bill (SB) 42 and House Bill (HB) 65 that propose increases to the base student allocation in the state's budget. SB 88 brings back the defined benefit program for teachers and public employees, it's a very complex issue and mistakes will be costly, so it will probably not be resolved this year. HB 39 is the operating budget, the House takes it up this year and the Senate next year. They passed a supplemental budget from the Governor that both House and Senate agreed to, that addresses funding for the SNAP benefits program, and the Office of Public Adequacy and Public Defender. He touched on the State Capital Budget, State Fiscal Plan, and changes to oil and gas tax credits.

7.B. Update on Old Town Planning Meeting, Draft goals of Transportation Plan, Timeline for 1st public draft of Transportation Plan – Jan Keiser, Public Works Director

Public Works Director Keiser reported on the goals of the Transportation Plan that include increase safety of interactions between different modes of travel, provide a connected network of local and collector roads and trails that balances the modes based on land use contexts, maintain transportation network to be usable year-round, and provide expanded transportation options for year-round residents and seasonal travelers to support City of Homer goals for environmental preservation and climate threat reduction. These goals were developed through responses the Transportation Plan Survey. She reviewed the objectives of the goals as shown in the information provided in the supplemental packet to Council.

8. ANNOUNCEMENTS/PRESENTATIONS/REPORTS (5 minutes each)

8.A. Committee of the Whole

Council Member Aderhold reported at Committee of the Whole they discussed Resolution 23-026 related to the Harbor Expansion General Investigation Study, Resolution 23-027 and the task order to HTRW and PCB testing at the HERC, and Resolution 23-029 supporting increasing the base student allowance in the state budget. They also heard from City Manager Dumochel regarding the FY24/25 budget and his overview memo provided in the supplemental packet.

8.B. Mayor's Report

Mayor Castner reported he met with the auditors while they were here last week, they're a little bit behind in the audit and it won't be before Council until the April 27th meeting, he hopes they'll have a draft in a week or so.

8.C. Borough Report

Borough Assembly Member Lane Chesley reported on the Borough's purchase of new voting tablets and ADA compliant voting machines. He attended the Community Conversation on Housing this weekend and commended City Planner Abboud for his facilitation at the event. He noted comments he heard from the

attendees related to eliminating sales tax for rentals and offering property tax incentives. He reminded listeners that the Boroughs need to fund schools, their 911 call center, fire and ambulance emergency services, solid waste, roads, and emergency management. He shared information about work being done to inventory properties in Homer and the surrounding area to look at ways to help. He also commented conversations regarding the hazardous waste testing for the HERC.

8.D. Planning Commission

Planning Commission Chair Scott Smith reported at their last meeting the Commission approved conditional use permits at 3375 Sterling Highway for a storage area and a multi-family dwelling on Lakeshore Drive. They've been dealing with some plats that have received a lot of attention. It's helped them understand they need to work on upgrading the plat application process.

8.E. Economic Development Advisory Commission

Economic Development Advisory Commissioner Tulio Perez reported at their last meeting they heard a report from the Public Works Director on the Transportation Plan update. They reviewed some work on the wayfinding and streetscape plan, and heard from the Marine Trades Association on their training programs and emerging needs. They reviewed banner designs in the wayfinding and streetscape plan and continued work on their vision statement-*The Economic Development Advisory Commission provides a forum for civic and business engagement on behalf of the City of homework, with the goal of fostering a sustainable and diverse community while preserving its cultural and natural heritage to maintain a high quality of life.* They'll be taking up the mission statement at their next meeting.

8.F. Parks Art Recreation and Culture Advisory Commission

8.G. Library Advisory Board

Library Advisory Board Member Michael McKinney reported at their last meeting the Board heard from Karin Marks about the Community Housing Conversation event and online survey, and from Public Works Director Keiser on the Transportation Plan update. Library Director Berry updated the Board on ongoing projects at the library, and they addressed their strategic plan. Mr. McKinney gave an overview of upcoming events at the library.

8.F. Port and Harbor Advisory Commission

Port and Harbor Advisory Commissioner Bruce Friend reported at their last meeting they had a work session to discuss harbor fee updates. At their regular meeting they had a presentation from Economic Development Manager Engebretsen about Old Town and a presentation about ebikes and infrastructure on the spit. They reviewed two leases coming up for renewal and he reviewed their work and recommendations on the lease renewals.

8.G. AML Legislative Report – Council Member Aderhold

Council Member Aderhold reported the AML Legislative Committee reported on their discussion on SB 88 and defined contribution transition and AML's efforts regarding amendments that will benefit municipalities.

8.H. Lunch with a Council Member – Council Member Lord

Council Member Lord reported about 10 people attended lunch with a Council Member and they talked about invasive species, the Comprehensive Plan and Title 21 and the veto, seasonal and nightly rentals, and a bed tax.

9. PUBLIC HEARING(S)

9.A. FY24/25 Budget

Mayor Castner opened the public hearing. There were no comments and the hearing was closed.

Mayor Castner called for a 10 minute recess at 7:23 p.m. and called the meeting back to order at 7:33 p.m.

10. ORDINANCE(S)

11. CITY MANAGER'S REPORT

11.A. City Manager's Report

City Manager Dumouchel reported on his trip to Kodiak for a tsunami disaster management classes, provided an update on the purchase of a ladder truck for the fire department, and postponement of the April 3rd Council and Board and Commission work session. He recognized Christine Drais whose last day is today and welcomed Bella Vaz who will be moving upstairs from the Planning Office.

In response to questions City Manager Dumouchel reviewed the changes with Port & Harbor staff taking over management of the spit campgrounds, noting the goal of leaning in to larger teams with the result of better facilities and experiences for the public with a more sustainable model. Regarding the short term rental services, he explained the contract is signed and they've held a kick-off meeting. There is a bit of set up work to do and planning to launch in May if all goes as planned. Regarding budget process he commented in response to differentiating between "parks" and "recreation".

12. PENDING BUSINESS

12.A. Appropriation Reduction related to Ordinance 23-11 and Veto of Resolution 23-017 in accordance with HCC 2.08.070 Mayor's veto. Mayor.

Mayor Castner announced the motion on the floor from the March 13th regular meeting - ADERHOLD/LORD MOVED TO OVERRIDE THE MAYOR'S APPROPRIATION REDUCTION FOR ORDINANCE 23-11.

He opened the floor for discussion.

Council Member Aderhold commented regarding her experience at the Community Conversation on Housing and that something that was discussed is something our municipality can do is comprehensive planning and zoning. It was a diverse cross section of people from the community and there were active conversations happening. There was a mortgage lender in her group who said in the Homer area there are 15 houses available for less than \$300,000 and only 2 of them would be able to get a mortgage through her. That's very restrictive for someone who needs financing. This is an opportunity to use that event as a launch pad for our comprehensive plan to look at what's reality now and what do we want it to look like in the future. She hopes people think seriously about our need for starting the Comprehensive Plan and vote to override the veto.

Council Member Davis agreed with those comments, overall the event was a great thing. He was in a different group and they felt the City's zoning policies was the number one thing that needed to be changed in order for people, especially returning students, who want to live in a small apartment in a walkable area. He hopes

anyone who's wavering about moving ahead with this company who has so much experience on redoing our Comprehensive Plan will reconsider.

Council Member Lord listened to the work session and one thing she hears is that we don't need to redo the Comp Plan, we just need to update the zoning code. We can update Title 21, but to make meaningful changes and address issues that people are expressing concerns about in terms of land use and development, that won't happen without a robust process that involves the community through a comprehensive planning process. This is a lot of money and Council took steps to plan for this. She will vote to override the veto.

Council Member Venuti also attended the Community Conversation on Housing, but they discussed leases, land availability and things like that.

VOTE: YES: ADERHOLD, LORD, DAVIS
NO: VENUTI, ERICKSON, HANSEN

Motion failed.

Mayor Castner announced the motion on the floor from the March 13th regular meeting - ADERHOLD/LORD MOVED TO OVERRIDE THE MAYORS VETO OF RESOLUTION 23-017.

There was no further discussion.

VOTE: NO: ADERHOLD, HANSEN, LORD, VENUTI, ERICKSON, DAVIS

Motion failed.

13. NEW BUSINESS

14. RESOLUTIONS

- 14.A. Resolution 23-029, A Resolution of the City Council of Homer, Alaska Requesting the State of Alaska make a Meaningful Increase to the Base Student Allocation for Public Schools. Aderhold.

ADERHOLD/VENUTI MOVED TO ADOPT RESOLUTION 23-029 BY READING OF TITLE ONLY.

Council Member Aderhold explained she was approached by Assembly Member Cox to sponsor a resolution supporting an increase in the base student allocation. The Borough has passed a resolution and have requested support from all the municipalities in the Borough. The school district is having a budget deficit right now and they are intending to close the pools and the theaters, and those are important community resources. She feels this is in the City's wheelhouse and hopes others will support it.

Council Member Venuti added that if the state legislators don't properly fund the schools, they aren't looking at what cuts will have to by the school districts. She supports having the pools open, it's important that our kids know how to swim, and elementary school students get free lessons. We also have a responsibility to support our teachers.

Council Member Erickson expressed her understanding that 3% sales tax from the borough goes to the schools, but she's been told there's a formula of an amount the State will allow the school district to use, and she's like to know what happens to the remaining funds outside of the formula. She's also heard the pool and theater aren't part of the student allotment. She suggested someone from the school district present to them. Mayor Castner said he'd reach out to Assembly Member Chesley for information.

Council Member Lord commented that school funding is complicated, but the school district has a lot of resources online, including their budget document. It has a narrative that gives a clear layout of their funding, rationale, and definitions. She's heard concerns that the BSA funding is going to administration, not the classroom. She explained that KPB has cut the central office administration significantly and we have a large district with discontinuous roads, thousands of students, and a home school program. There are around 1700 FTE's and people in the system are frustrated because there aren't enough people in the central office to administrate. She supports this resolution. The City is a large employer and we have direct ties to the school district through our recreation programs. She also noted the school district cuts aren't just pools and theaters, but also high school and middle school staff, and student support services are being considered and that still hasn't closed the deficit.

Council Member Davis shared his support for the resolution. He noted an article in the Anchorage Daily News that the headline was outrage that most of the staff in the school district weren't teachers, but there was fine print later in the article of schools where a majority of the people were teachers, including KPB.

ADERHOLD/LORD MOVED TO AMEND LINES 48 THROUGH 50 TO REPLACE THAT WHEREAS CLAUSE WITH WHEREAS, ALASKA LEGISLATORS ARE CONSIDERING BILLS IN THE HOUSE AND SENATE TO RAISE THE BASE STUDENT ALLOCATION; AND

Council Member Aderhold noted this is because the numbers originally proposed will move so it's better to say we support raising it, without the specific numbers.

VOTE (amendment): NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

There was no further discussion on the main motion as amended.

VOTE (main motion): NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

- 14.B. Resolution 23-026, A Resolution of the City Council of Homer, Alaska in Support of Entering into the US Army Corps of Engineers General Investigation Study for the New Large Vessel Harbor and Authorizing the City Manager to Negotiate and Execute the Appropriate Documents. City Manager. Recommend approval.

DONNA/VENUTI MOVED TO ADOPT RESOLUTION 23-026 BY READING OF TITLE ONLY.

Council Member Lord acknowledged the concerns expressed by the public and shared her understanding that this is the agreement to start this project, develop a project management plan, and start working with the Federal partners to start having the community conversations about this project.

Council Member Erickson noted a lot of the comments tonight had to do with environmental studies and ask that it be reiterated what the study will entail.

Port Director Hawkins read from the information provided in the packet that General Investigation steps include –

- (1) specify problems and opportunities associated with the federal objective and specific state and local concerns;
- (2) inventory, forecast and analyze existing and future conditions relevant to the identified problems and opportunities;
- (3) geophysical site testing;
- (4) assesses environmental impacts under NEPA (National Environmental Policy Act of 1969)
- (5) formulate alternative plans to address the problems and capitalize on the opportunities;
- (6) evaluate the economic, environmental and other effects of each alternative plan to produce BCA
- (7) compare the alternative plans and their effects;
- (8) select a recommended plan;
- (9) Chief of Engineers issues Chief's report with recommendation on the project; and
- (10) USACE submits the completed Chief's reports to the congressional authorizing committees.

It is guaranteed to be completed in ten years, and stakeholders have input in the final plan. There will be many plans drawn up that will be evaluated through a feasibility process and be narrowed down to the final plan.

Council Member Davis added some of the comments were that the resolution should include specific requirements for environmental impact assessment. He asked if the resolution should be amended to include that. City Manager Dumouchel responded the resolution should stand as presented. The City is not the lead in this project and when we enter into the Federal environmental processes they determine what level of environmental analysis is needed.

There was brief discussion that this project has been in the top one or two spot of the Capital Projects list as far back as 2016.

Council Member Erickson added that it study determines it's not feasible to do the project, then it won't proceed. City Manager Dumouchel and Port Director Hawkins concurred.

Council Member Lord said she's looking forward to the process and shared steps that Council has taken over many years to prepare for this General Investigation.

Council Member Aderhold explained the NEPA (National Environmental Policy Act) process for determining levels of environmental study required for projects.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

- 14.C. Resolution 23-027, A Resolution of the City Council of Homer, Alaska Awarding a Task Order in the Amount of \$45,000 to HTRW, LLC of Anchorage, Alaska to test for PCB Laden Materials at the Homer Education and Recreation Complex (HERC) Buildings and Authorizing the City Manager to Negotiate and Execute the Appropriate Documents. City Manager/Public Works Director. Recommend approval.

ADERHOLD/VENUTI MOVED TO ADOPT RESOLUTION 23-027 BY READING OF TITLE ONLY.

Council Member Davis reiterated his doubts about the wisdom of testing when it's not required by the State or Federal government. According to correspondence with the Borough they're only requiring it because the consultant was pressing them on whether they could accept materials containing PCBs. His main thought is whether it makes sense to do this through a sole source contract to fully test one building, or to put it out to bid and fully test both buildings. There are other companies that do this, the company that would receive the materials has an office in Anchorage that provides this testing as well. He questioned if it makes more sense to slow this down, put it out to bid, and have it include an estimate for a remediation cost.

Public Works Director Keiser responded it does not make sense for several reasons. First, it's being implied that the consultant advised us to do testing for their own benefit and gain, which isn't the case. She reviewed the proposal that was included in the packet noting the purpose of each breakdown in costs to test HERC 2 and do a sampling in HERC 1. The Borough requires we validate whether there are PCB's present before they'll accept the demolition material, because they are responsible for what goes into their landfill. She shared health hazards and environmental hazards that can be caused by PCB's, noting improper deposits into landfills are the most common cause of release of PCB's into the environment through soil, air, and water contamination. She added that consultant and technical services are exempt from the bidding requirement, so we aren't required to do so, and it would delay what we already know needs to be done. There are very few laboratories that do this sampling and care needs to be taken in the laboratory selected. She shared examples of inaccurate testing that's been done in the past.

Mayor Castner asked the Clerk about Robert's Rules related to bringing something back again before Council, since the same resolution was voted down at a prior meeting. City Clerk Jacobsen referenced Robert's Rules of Order 11th edition, section 38 that addresses renewal of motions and directs that a motion can't come back before the body at the same meeting, but can be renewed at any later session.

Council Member Erickson asked about what the consultant had already done. Public Works Director Keiser responded at this point the consultant has only been asked to look at HERC 2. To her knowledge the consultant hasn't done any testing by wiping surfaces. She noted in the EPA information provided by Council Member Davis, they recommend a testing and development of a sampling plan, which is what the City has done. The task order includes conducting a sampling of the most likely contaminated materials in HERC 1, which is the caulking and materials in the boiler room.

VOTE: YES: LORD, ADERHOLD, HANSEN, VENUTI
NO: DAVIS, ERICKSON, VENUTI

There was brief discussion clarifying the motion that was on the floor.

VENUTI/ERICKSON MOVED FOR RECONSIDERATION.

There was no discussion.

VOTE (reconsideration): NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

There was no further discussion on the main motion.

VOTE (main motion): YES: HANSEN, LORD, VENUTI, ADERHOLD
NO: DAVIS, ERICKSON

Motion carried.

15. COMMENTS OF THE AUDIENCE (The public may comment for three minutes on any topic.)

Karin Marks commented on behalf of the Coalition that sponsored the Community Conversation on Housing. She's overwhelmed and pleased at how often it came up in Council's discussion, and the Coalition is planning to schedule a time to report to Council on the event. The Coalition wants to publicly thank everyone who attended and participated. The budget for the event was \$6500 and they want to thank the groups that provided financial backing. She reminded listeners the survey will stay up for two weeks, just google Homer Housing Solutions to participate.

Wayne Aderhold, city resident, noted the Transportation Plan update presentation and commented regarding on street parking. It has always been a no in the City, but it got snuck in on Hazel, and he does not want to see it become a precedence or an alternate for off street parking. If there's on street parking in a right of way being used mainly for the benefit of a business owner, there ought to be some way for the City to recoup some of the cost of that. He also commented regarding the plans in the presentation and how bicyclists are impacted by an on street parking lane.

Bruce Friend, city resident and Port and Harbor Advisory Commissioner, thanked Council for supporting Resolution 23-026. It's important that we move forward with the General Investigation. He appreciates the importance of listening to the community. There's been a lot of emphasis on the port expansion and opportunity for input, and there will be a lot more. He's a Board Member for the Marine Trades Association and they will be proud to hear we've moved forward.

Assembly Member Lane Chesley commented in response to Council Member Erickson question on school funding that 100% of the sales tax goes to education, there are no leftovers. This year the budget was approximately \$54.5 million, \$38 million came from sales tax and we make up the balance from property tax.

16. COMMENTS OF THE CITY ATTORNEY

Attorney Gatti had no comments.

17. COMMENTS OF THE CITY CLERK

City Clerk Jacobsen had no comments.

18. COMMENTS OF THE CITY MANAGER

City Manager Dumouchel had no comment.

19. COMMENTS OF THE MAYOR

Mayor Castner commented the Port and Harbor Lease Policy is that original leases go before the Commission and they have all the documents for review. City Code says that renewals are handled by the City Manager and is silent to the Commission, he thinks its reasonable for it to be something they see. He feels E-Bikes should be a city wide policy and charging stations could be the City’s contribution to promoting them. He congratulated Kyle Snyder and Jennifer Norton for their production of Newsies.

20. COMMENTS OF THE CITY COUNCIL

Council Member Lord commented that she saw Newsies and was unbelievably impressed, and she wished Christine Drais the best of luck. She encouraged the public to share with Council their budget priorities and what they’d like to see as public service. She shared about a recent trip to for an AmeriCorps training meeting in San Diego and her positive experience renting and riding an Ebike while she was there.

Council Member Venuti shared a comment she heard how well the students worked together in Newsies. She hates that they have to write letters of support to increase the base student allocation, but it’s what we have to do. She hopes the teachers know we support them. She wished everyone happy spring.

Council Member Aderhold said she knows of a number of people who have fallen on the ice and broken bones. She shared about a young man she knows who slipped on the ice getting out of his truck and died. She doesn’t know the circumstances, but he was a very smart, active and engaging young man who was doing a lot of very fine things. She encouraged everyone to please be very, very careful on the ice.

Council Member Davis congratulated the Chamber for hosting another successful Winter King Tournament. He attended a fund raiser at Grace Ridge for the Ptarmigan Art Visual Scholarship Fund. He added there’s compelling narrative in the current edition of Alaska Magazine about the electric vehicle trip to the North Slope that the Mayor participated in.

Council Member Erickson requested a work session at the next meeting for an update on grants. She thought they had good discussion tonight about the Harbor, and it was good to get some talking points. She shared briefly about her recent trip to the Sportsman Show in the Valley Rec Center.

Council Member Hansen commented she missed out on some of the weekend events others attended because she took Art Koeninger’s class through Community Recreation. She has worked with Community Rec for Popeye Wrestling and other events and agrees that the paperwork process is the most challenging pieces. She supports allocating money for software and an online program. She congratulated everyone involved in the production of Newsies, she wished she could have seen it.

21. ADJOURN

There being no further business to come before the Council Mayor Castner adjourned the meeting at 9:15 p.m. The next Regular Meeting is Monday, April 10, 2023 at 6:00 p.m., Committee of the Whole at 5:00 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

Melissa Jacobsen, MMC, City Clerk

Approved: _____



AGENDA ITEM REPORT

Marijuana License Renewal for Wildflower Farms Standard Marijuana Cultivation Facility License.

Item Type: Action Memorandum
Prepared For: Mayor Castner and Homer City Council
Meeting Date: 06 April 2023
From: Melissa Jacobsen, MMC, City Clerk

The City Clerk's Office has been notified by the Alcohol and Marijuana Control Office of a standard marijuana cultivation facility renewal application within the City of Homer for the following business:

Type: Standard Marijuana Cultivation Facility
Lic #: 12833
DBA Name: Wildflower Farms
Service Location: 2908 Kachemak Drive, Homer, Alaska
Licensee: Alaska Loven It, LLC
Designated Licensee: Janiese Stevens
Mailing Address: PO Box 1571, Homer, AK 99603

Recommendation:

Voice non-objection and approval for the standard marijuana cultivation facility license renewal application.

Attachments:

AMCO Applications
City of Homer Police Non-Objection
City of Homer Planning Non-Objection
KPB Non Objection



Alaska Marijuana Control Board

Form MJ-20: 2022-2023 Renewal Application Certifications

Alcohol and Marijuana Control Office
550 W 7th Avenue, Suite 1600
Anchorage, AK 99501

marijuana.licensing@alaska.gov

<https://www.commerce.alaska.gov/web/amco>

Phone: 907.269.0350

Why is this form needed?

This renewal application certifications form is required for all marijuana establishment license renewal applications. Each person signing an application for a marijuana establishment license must declare that he/she has read and is familiar with AS 17.38 and 3 AAC 306. A person other than a licensee may not have direct or indirect financial interest (as defined in 3 AAC 306.015(e)(1)) in the business for which a marijuana establishment license is issued, per 3 AAC 306.015(a).

This form must be completed and submitted to AMCO's Anchorage office **by each licensee** (as defined in 3 AAC 306.020(b)(2)) before any license renewal application will be considered complete.

Section 1 – Establishment Information

Enter information for the licensed establishment, as identified on the license application.

Licensee:	Alaska Loven It, LLC	License Number:	12833		
License Type:	Standard Marijuana Cultivation Facility				
Doing Business As:	Wildflower Farms				
Premises Address:	2908 Kachemak Drive				
City:	Homer	State:	Alaska	ZIP:	99603

Section 2 – Individual Information

Enter information for the individual licensee who is completing this form.

Name:	Janiese Stevens
Title:	Manager/Member of Hibernation Holding Company, LLC

Section 3 – Violations & Charges

Read each line below, and then sign your initials in the box to the right of any applicable statements:

I certify that I have not been convicted of any criminal charge in the previous two calendar years.

Initials

--

I certify that I have not committed any civil violation of AS 04, AS 17.38, or 3 AAC 306 in the previous two calendar years.

--

I certify that a notice of violation has not been issued for this license.

--

Sign your initials to the following statement only if you are unable to certify one or more of the above statements:

Initials

I have attached a written explanation for why I cannot certify one or more of the above statements, which includes the type of violation or offense, as required under 3 AAC 306.035(b).

--



Form MJ-20: 2022-2023 Renewal Application Certifications

Section 4 – Certifications

Read each line below, and then sign your initials in the box to the right of each statement:

Initials

I certify that no person other than a licensee listed on my marijuana establishment license renewal application has a direct or indirect financial interest, as defined in 3 AAC 306.015(e)(1), in the business for which the marijuana establishment license has been issued.

JS

I certify that I meet the residency requirement under AS 43.23 or I have submitted a residency exception affidavit (MJ-20a) along with this application.

JS

I certify that this establishment complies with any applicable health, fire, safety, or tax statute, ordinance, regulation, or other law in the state.

JS

I certify that the license is operated in accordance with the operating plan currently approved by the Marijuana Control Board.

JS

I certify that I am operating in compliance with the Alaska Department of Labor and Workforce Development's laws and requirements pertaining to employees.

JS

I certify that I have not violated any restrictions pertaining to this particular license type, and that this license has not been operated in violation of a condition or restriction imposed by the Marijuana Control Board.

JS

By initialing this box, I certify I have submitted an original fingerprint card and the applicable fees to AMCO for AMCO to obtain criminal justice information and a national criminal history record required by AS 17.38.200 and 3 AAC 306.035(d). If I have multiple marijuana licenses being renewed, I understand one fingerprint card and fee will suffice for all marijuana licenses being renewed.

JS

If multiple licenses are held, list all license numbers below:

21069, 12833

I hereby certify that I am the person herein named and subscribing to this application and that I have read the complete application, and I know the full content thereof. I declare that all of the information contained herein, and evidence or other documents submitted are true and correct. I understand that any falsification or misrepresentation of any item or response in this application, or any attachment, or documents to support this application, is sufficient grounds for denying or revoking a license/permit. I further understand that it is a Class A misdemeanor under Alaska Statute 11.56.210 to falsify an application and commit the crime of unsworn falsification.

JS

Janiese Stevens

Printed name of licensee

Janiese Stevens
Signature of licensee



Alcohol and Marijuana Control Office
 550 W 7th Avenue, Suite 1600
 Anchorage, AK 99501
marijuana.licensing@alaska.gov
<https://www.commerce.alaska.gov/web/amco>
 Phone: 907.269.0350

Alaska Marijuana Control Board

Form MJ-20: 2022-2023 Renewal Application Certifications

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This form must be completed and submitted to AMCO's Anchorage office by each licensee (as defined in 3 AAC 306.020(b)(2)) before any license renewal application will be considered complete.

Section 1 – Establishment Information

Enter information for the licensed establishment, as identified on the license application.

Licensee:	Alaska Loven It, LLC	License Number:	12833		
License Type:	Standard Marijuana Cultivation Facility				
Doing Business As:	Wildflower Farms				
Premises Address:	2908 Kachemak Drive				
City:	Homer	State:	Alaska	ZIP:	99603

Section 2 – Individual Information

Enter information for the individual licensee who is completing this form.

Name:	Robert Erik Fellows
Title:	Member of Hibernation Holding Company, LLC

Section 3 – Violations & Charges

Read each line below, and then sign your initials in the box to the right of any applicable statements:

Initials

I certify that I have **not** been convicted of any criminal charge in the previous two calendar years.

--

I certify that I have **not** committed any civil violation of AS 04, AS 17.38, or 3 AAC 306 in the previous two calendar years.

--

I certify that a notice of violation has **not** been issued for this license.

<input type="checkbox"/>

Sign your initials to the following statement only if you are unable to certify one or more of the above statements:

Initials

I have attached a written explanation for why I cannot certify one or more of the above statements, which includes the type of violation or offense, as required under 3 AAC 306.035(b).

--



Alaska Marijuana Control Board Form MJ-20: 2022-2023 Renewal Application Certifications

Section 4 – Certifications

Read each line below, and then sign your initials in the box to the right of each statement:

Initials

I certify that no person other than a licensee listed on my marijuana establishment license renewal application has a direct or indirect financial interest, as defined in 3 AAC 306.015(e)(1), in the business for which the marijuana establishment license has been issued.

[Handwritten initials: RF]

I certify that I meet the residency requirement under AS 43.23 or I have submitted a residency exception affidavit (MJ-20a) along with this application.

[Handwritten initials: RF]

I certify that this establishment complies with any applicable health, fire, safety, or tax statute, ordinance, regulation, or other law in the state.

[Handwritten initials: RF]

I certify that the license is operated in accordance with the operating plan currently approved by the Marijuana Control Board.

[Handwritten initials: RF]

I certify that I am operating in compliance with the Alaska Department of Labor and Workforce Development's laws and requirements pertaining to employees.

[Handwritten initials: RF]

I certify that I have not violated any restrictions pertaining to this particular license type, and that this license has not been operated in violation of a condition or restriction imposed by the Marijuana Control Board.

[Handwritten initials: RF]

By initialing this box, I certify I have submitted an original fingerprint card and the applicable fees to AMCO for AMCO to obtain criminal justice information and a national criminal history record required by AS 17.38.200 and 3 AAC 306.035(d). If I have multiple marijuana licenses being renewed, I understand one fingerprint card and fee will suffice for all marijuana licenses being renewed.

[Handwritten initials: RF]

If multiple licenses are held, list all license numbers below:

21069, 12833

I hereby certify that I am the person herein named and subscribing to this application and that I have read the complete application, and I know the full content thereof. I declare that all of the information contained herein, and evidence or other documents submitted are true and correct. I understand that any falsification or misrepresentation of any item or response in this application, or any attachment, or documents to support this application, is sufficient grounds for denying or revoking a license/permit. I further understand that it is a Class A misdemeanor under Alaska Statute 11.56.210 to falsify an application and commit the crime of unsworn falsification.

[Handwritten initials: RF]

Robert Erik Fellows

Printed name of licensee

[Handwritten signature of Robert Erik Fellows]
Signature of licensee



Alaska Marijuana Control Board

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This form must be completed and submitted to AMCO's Anchorage office by each licensee (as defined in 3 AAC 306.020(b)(2)) before any license renewal application will be considered complete.

Section 1 – Establishment Information

Enter information for the licensed establishment, as identified on the license application.

Licensee:	Alaska Loven It, LLC	License Number:	12833		
License Type:	Standard Marijuana Cultivation Facility				
Doing Business As:	Wildflower Farms				
Premises Address:	2908 Kachemak Drive				
City:	Homer	State:	Alaska	ZIP:	99603

Section 2 – Individual Information

Enter information for the individual licensee who is completing this form.

Name:	Louis Rocheleau
Title:	Member of Hibernation Holding Company, LLC

Section 3 – Violations & Charges

Read each line below, and then sign your initials in the box to the right of any applicable statements:

Initials

I certify that I have **not** been convicted of any criminal charge in the previous two calendar years.

I certify that I have **not** committed any civil violation of AS 04, AS 17.38, or 3 AAC 306 in the previous two calendar years.

I certify that a notice of violation has **not** been issued for this license.

Sign your initials to the following statement only if you are unable to certify one or more of the above statements:

Initials

I have attached a written explanation for why I cannot certify one or more of the above statements, which includes the type of violation or offense, as required under 3 AAC 306.035(b).



Section 4 – Certifications

Read each line below, and then sign your initials in the box to the right of each statement:

Initials

I certify that no person other than a licensee listed on my marijuana establishment license renewal application has a direct or indirect financial interest, as defined in 3 AAC 306.015(e)(1), in the business for which the marijuana establishment license has been issued.



I certify that I meet the residency requirement under AS 43.23 or I have submitted a residency exception affidavit (MJ-20a) along with this application.



I certify that this establishment complies with any applicable health, fire, safety, or tax statute, ordinance, regulation, or other law in the state.



I certify that the license is operated in accordance with the operating plan currently approved by the Marijuana Control Board.



I certify that I am operating in compliance with the Alaska Department of Labor and Workforce Development's laws and requirements pertaining to employees.



I certify that I have not violated any restrictions pertaining to this particular license type, and that this license has not been operated in violation of a condition or restriction imposed by the Marijuana Control Board.



By initialing this box, I certify I have submitted an original fingerprint card and the applicable fees to AMCO for AMCO to obtain criminal justice information and a national criminal history record required by AS 17.38.200 and 3 AAC 306.035(d). If I have multiple marijuana licenses being renewed, I understand one fingerprint card and fee will suffice for all marijuana licenses being renewed.



If multiple licenses are held, list all license numbers below:

21069, 12833

I hereby certify that I am the person herein named and subscribing to this application and that I have read the complete application, and I know the full content thereof. I declare that all of the information contained herein, and evidence or other documents submitted are true and correct. I understand that any falsification or misrepresentation of any item or response in this application, or any attachment, or documents to support this application, is sufficient grounds for denying or revoking a license/permit. I further understand that it is a Class A misdemeanor under Alaska Statute 11.56.210 to falsify an application and commit the crime of unsworn falsification.



Louis Rocheleau

Printed name of licensee


Signature of licensee



Alaska Marijuana Control Board

Form MJ-20: 2022-2023 Renewal Application Certifications

Alcohol and Marijuana Control Office

550 W 7th Avenue, Suite 1600

Anchorage, AK 99501

marijuana.licensing@alaska.gov

<https://www.commerce.alaska.gov/web/amco>

Phone: 907.269.0350

Why is this form needed?

This renewal application certifications form is required for all marijuana establishment license renewal applications. Each person signing an application for a marijuana establishment license must declare that he/she has read and is familiar with AS 17.38 and 3 AAC 306. A person other than a licensee may not have direct or indirect financial interest (as defined in 3 AAC 306.015(e)(1)) in the business for which a marijuana establishment license is issued, per 3 AAC 306.015(a).

This form must be completed and submitted to AMCO's Anchorage office by each licensee (as defined in 3 AAC 306.020(b)(2)) before any license renewal application will be considered complete.

Section 1 – Establishment Information

Enter information for the licensed establishment, as identified on the license application.

Licensee:	Alaska Loven It, LLC	License Number:	12833		
License Type:	Standard Marijuana Cultivation Facility				
Doing Business As:	Wildflower Farms				
Premises Address:	2908 Kachemak Drive				
City:	Homer	State:	Alaska	ZIP:	99603

Section 2 – Individual Information

Enter information for the individual licensee who is completing this form.

Name:	Kim Perkins
Title:	Member of Hibernation Holding Company, LLC

Section 3 – Violations & Charges

Read each line below, and then sign your initials in the box to the right of any applicable statements:

Initials

I certify that I have **not** been convicted of any criminal charge in the previous two calendar years.

 KP

I certify that I have **not** committed any civil violation of AS 04, AS 17.38, or 3 AAC 306 in the previous two calendar years.

 KP

I certify that a notice of violation has **not** been issued for this license.

Sign your initials to the following statement only if you are unable to certify one or more of the above statements:

Initials

I have attached a written explanation for why I cannot certify one or more of the above statements, which includes the type of violation or offense, as required under 3 AAC 306.035(b).

 KP



Section 4 – Certifications

Read each line below, and then sign your initials in the box to the right of each statement:

Initials

I certify that no person other than a licensee listed on my marijuana establishment license renewal application has a direct or indirect financial interest, as defined in 3 AAC 306.015(e)(1), in the business for which the marijuana establishment license has been issued.

Initials box containing 'KP'

I certify that I meet the residency requirement under AS 43.23 or I have submitted a residency exception affidavit (MJ-20a) along with this application.

Initials box containing 'KP'

I certify that this establishment complies with any applicable health, fire, safety, or tax statute, ordinance, regulation, or other law in the state.

Initials box containing 'KP'

I certify that the license is operated in accordance with the operating plan currently approved by the Marijuana Control Board.

Initials box containing 'KP'

I certify that I am operating in compliance with the Alaska Department of Labor and Workforce Development's laws and requirements pertaining to employees.

Initials box containing 'KP'

I certify that I have not violated any restrictions pertaining to this particular license type, and that this license has not been operated in violation of a condition or restriction imposed by the Marijuana Control Board.

Initials box containing 'KP'

By initialing this box, I certify I have submitted an original fingerprint card and the applicable fees to AMCO for AMCO to obtain criminal justice information and a national criminal history record required by AS 17.38.200 and 3 AAC 306.035(d). If I have multiple marijuana licenses being renewed, I understand one fingerprint card and fee will suffice for all marijuana licenses being renewed.

Empty initials box

If multiple licenses are held, list all license numbers below:

Text box containing '21069, 12833'

I hereby certify that I am the person herein named and subscribing to this application and that I have read the complete application, and I know the full content thereof. I declare that all of the information contained herein, and evidence or other documents submitted are true and correct. I understand that any falsification or misrepresentation of any item or response in this application, or any attachment, or documents to support this application, is sufficient grounds for denying or revoking a license/permit. I further understand that it is a Class A misdemeanor under Alaska Statute 11.56.210 to falsify an application and commit the crime of unsworn falsification.

Initials box containing 'KP'

Kim Perkins

Printed name of licensee

Handwritten signature of Kim Perkins

Signature of licensee



Alaska Marijuana Control Board

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This form must be completed and submitted to AMCO's Anchorage office by each licensee (as defined in 3 AAC 306.020(b)(2)) before any license renewal application will be considered complete.

Section 1 – Establishment Information

Enter information for the licensed establishment, as identified on the license application.

Licensee:	Alaska Loven It, LLC	License Number:	12833		
License Type:	Standard Marijuana Cultivation Facility				
Doing Business As:	Wildflower Farms				
Premises Address:	2908 Kachemak Drive				
City:	Homer	State:	Alaska	ZIP:	99603

Section 2 – Individual Information

Enter information for the individual licensee who is completing this form.

Name:	George Kirk
Title:	Member of Hibernation Holding Company, LLC

Section 3 – Violations & Charges

Read each line below, and then sign your initials in the box to the right of any applicable statements:

Initials

I certify that I have not been convicted of any criminal charge in the previous two calendar years.

GLK

I certify that I have not committed any civil violation of AS 04, AS 17.38, or 3 AAC 306 in the previous two calendar years.

GLK

I certify that a notice of violation has not been issued for this license.

GLK

Sign your initials to the following statement only if you are unable to certify one or more of the above statements:

Initials

I have attached a written explanation for why I cannot certify one or more of the above statements, which includes the type of violation or offense, as required under 3 AAC 306.035(b).

--



Form MJ-20: 2022-2023 Renewal Application Certifications

Section 4 – Certifications

Read each line below, and then sign your initials in the box to the right of each statement:

Initials

I certify that no person other than a licensee listed on my marijuana establishment license renewal application has a direct or indirect financial interest, as defined in 3 AAC 306.015(e)(1), in the business for which the marijuana establishment license has been issued.

GK

I certify that I meet the residency requirement under AS 43.23 or I have submitted a residency exception affidavit (MJ-20a) along with this application.

GK

I certify that this establishment complies with any applicable health, fire, safety, or tax statute, ordinance, regulation, or other law in the state.

GK

I certify that the license is operated in accordance with the operating plan currently approved by the Marijuana Control Board.

GK

I certify that I am operating in compliance with the Alaska Department of Labor and Workforce Development's laws and requirements pertaining to employees.

GK

I certify that I have not violated any restrictions pertaining to this particular license type, and that this license has not been operated in violation of a condition or restriction imposed by the Marijuana Control Board.

GK

By initialing this box, I certify I have submitted an original fingerprint card and the applicable fees to AMCO for AMCO to obtain criminal justice information and a national criminal history record required by AS 17.38.200 and 3 AAC 306.035(d). If I have multiple marijuana licenses being renewed, I understand one fingerprint card and fee will suffice for all marijuana licenses being renewed.

If multiple licenses are held, list all license numbers below:

21069, 12833

I hereby certify that I am the person herein named and subscribing to this application and that I have read the complete application, and I know the full content thereof. I declare that all of the information contained herein, and evidence or other documents submitted are true and correct. I understand that any falsification or misrepresentation of any item or response in this application, or any attachment, or documents to support this application, is sufficient grounds for denying or revoking a license/permit. I further understand that it is a Class A misdemeanor under Alaska Statute 11.56.210 to falsify an application and commit the crime of unsworn falsification.

GK

George Kirk

Printed name of licensee

Signature of licensee

Alcohol & Marijuana Control Office

License Number: 12833

License Status: Active-Operating

License Type: Standard Marijuana Cultivation Facility

Doing Business As: Wildflower Farm

Business License Number: 2128650

Designated Licensee: Janiese Stevens

Email Address: jstevens@ak.net

Local Government: Homer

Local Government 2: Kenai Peninsula Borough

Community Council:

Latitude, Longitude: 59.645021, -151.461600

Physical Address: 2908 Kachemak Drive
Homer, AK 99603
UNITED STATES

Licensee #1

Type: Entity

Alaska Entity Number: 10056827

Alaska Entity Name: Alaska Loven It, LLC

Phone Number: 907-942-5899

Email Address: jstevens@ak.net

Mailing Address: PO Box 1571
Homer, AK 99603
UNITED STATES

Entity Official #1

Type: Individual

Name: Janiese Stevens

[REDACTED]

[REDACTED]

[REDACTED]

Email Address: jstevens@ak.net

Mailing Address: P.O. Box 8593
Kodiak, AK 99615
UNITED STATES

Entity Official #2

Type: Entity

Alaska Entity Number: 10100965

Alaska Entity Name: Hibernation Holding Company, LLC

Phone Number: 907-942-5618

Email Address: jstevens@ak.net

Mailing Address: 2705 Millbay Road
Suite 205
Kodiak, AK 99615
UNITED STATES

Entity Official #3

Type: Individual

Name: Kim Perkin

[REDACTED]

[REDACTED]

[REDACTED]

Email Address: fvphantom@gmail.com

Mailing Address: P.O. Box 3763
Kodiak, AK 99615
UNITED STATES

Entity Official #4

Type: Individual

Name: Erik Fellows

[REDACTED]

[REDACTED]

[REDACTED]

Email Address: alaskavalkyrie@gmail.com

Mailing Address: PO Box 1065
Homer, AK 99603
UNITED STATES

Entity Official #5

Type: Individual

Name: Louie Rocheleau

[REDACTED]

[REDACTED]

[REDACTED]

Email Address: rockkodiak@gmail.com

Mailing Address: PO Box 8593
Kodiak, AK 99615
UNITED STATES

Entity Official #6

Note: No affiliates entered for this license.

Type: Individual

Name George Kirk

[REDACTED]

[REDACTED]

[REDACTED]

Email Address fvphantom@gmail.com

Mailing Address: PO Box 2796
Kodiak, AK 99615
UNITED STATES

State of Alaska
Department of Commerce, Community, and Economic Development
Corporations, Business, and Professional Licensing

Certificate of Organization

The undersigned, as Commissioner of Commerce, Community, and Economic Development of the State of Alaska, hereby certifies that a duly signed and verified filing pursuant to the provisions of Alaska Statutes has been received in this office and has been found to conform to law.

ACCORDINGLY, the undersigned, as Commissioner of Commerce, Community, and Economic Development, and by virtue of the authority vested in me by law, hereby issues this certificate to

Hibernation Holding Company, LLC



IN TESTIMONY WHEREOF, I execute the certificate
and affix the Great Seal of the State of Alaska
effective February 27, 2019.

A handwritten signature in cursive script, appearing to read "Julie Anderson".

Julie Anderson
Commissioner



THE STATE

of **ALASKA**

Department of Commerce, Community, and Economic Development
Division of Corporations, Business, and Professional Licensing
PO Box 110806, Juneau, AK 99811-0806
(907) 465-2550 • Email: corporations@alaska.gov
Website: Corporations.Alaska.gov

FOR DIVISION USE ONLY

Articles of Organization

Domestic Limited Liability Company

Web-2/27/2019 8:43:51 AM

1 - Entity Name

Legal Name: Hibernation Holding Company, LLC

2 - Purpose

General business holding company and any other lawful purpose.

3 - NAICS Code

551112 - OFFICES OF OTHER HOLDING COMPANIES

4 - Registered Agent

Name: Jana Weltzin

Mailing Address: 3003 Minnesota Dr., 201, Anchorage, AK 99503

Physical Address: 3003 Minnesota Dr., 201, Anchorage, AK 99503

5 - Entity Addresses

Mailing Address: 2705 Millbay Road, Suite 205, KODIAK, AK 99615

Physical Address: 158 ALIMAQ DR, KODIAK, AK 99615

6 - Management

The limited liability company is managed by a manager.

7 - Officials

Name	Address	% Owned	Titles
Jana Weltzin			Organizer

Name of person completing this online application

This form is for use by the named entity only. Only persons who are authorized by the above Official(s) of the named entity may make changes to it. If you proceed to make changes to this form or any information on it, you will be certifying under penalty of perjury that you are authorized to make those changes, and that everything on the form is true and correct. In addition, persons who file documents with the commissioner that are known to the person to be false in material respects are guilty of a class A misdemeanor. Continuation means you have read this and understand it.

Name: Jana D. Weltzin



THE STATE
 of ALASKA

Department of Commerce, Community, and Economic Development
 Division of Corporations, Business, and Professional Licensing
 PO Box 110806, Juneau, AK 99811-0806
 (907) 465-2550 • Email: corporations@alaska.gov
 Website: corporations.alaska.gov

FOR DIVISION USE ONLY

Domestic Limited Liability Company

2021 Biennial Report

For the period ending December 31, 2020

Web-11/2/2020 9:15:42 AM

Due Date: This report along with its fees are due by January 2, 2021

Fees: If postmarked before February 2, 2021, the fee is \$100.00.
 If postmarked on or after February 2, 2021 then this report is delinquent and the fee is \$137.50.

Entity Name: Hibernation Holding Company, LLC
Entity Number: 10100965
Home Country: UNITED STATES
Home State/Prov.: ALASKA

Physical Address: 158 ALIMAQ DR, KODIAK, AK 99615
Mailing Address: 2705 MILLBAY ROAD, SUITE 205,
 KODIAK, AK 99615

Registered Agent information cannot be changed on this form. Per Alaska Statutes, to update or change the Registered Agent information this entity must submit the Statement of Change form for this entity type along with its filing fee.

Name: Jana Weltzin
Physical Address: 901 PHOTO AVE, ANCHORAGE, AK 99503
Mailing Address: 901 PHOTO AVE, ANCHORAGE, AK 99503

Officials: The following is a complete list of officials who will be on record as a result of this filing.

- **Provide all officials and required information. Use only the titles provided.**
- **Mandatory Members:** this entity must have at least one (1) Member. A Member must own a %. In addition, this entity must provide all Members who own 5% or more of the entity. A Member may be an individual or another entity.
- **Manager:** If the entity is manager managed (per its articles or amendment) then there must be at least (1) Manager provided. A Manager may be a Member if the Manager also owns a % of the entity.

Full Legal Name	Complete Mailing Address	% Owned	Manager	Member
Janiese Stevens	BOX 8593 , KODIAK, AK 99615	30.00	X	X
Dan Coglianese	PO BOX 1571, HOMER, AK 99603	30.00		X
George Kirk	1365 SAWMILL CIR. , KODIAK, AK 99615	20.00		X
Erik Fellows	PO BOX 1065, HOMER, AK 99603	20.00		X

If necessary, attach a list of additional officers on a separate 8.5 X 11 sheet of paper.

Purpose: General business holding company and any other lawful purpose.

NAICS Code: 551112 - OFFICES OF OTHER HOLDING COMPANIES

New NAICS Code (optional):

This form is for use by the named entity only. Only persons who are authorized by the above Official(s) of the named entity may make changes to it. If you proceed to make changes to this form or any information on it, you will be certifying under penalty of perjury that you are authorized to make those changes, and that everything on the form is true and correct. In addition, persons who file documents with the commissioner that are known to the person to be false in material respects are guilty of a class A misdemeanor. Continuation means you have read this and understand it.

Name: Jana Weltzin



THE STATE
of **ALASKA**
Department of Commerce, Community and Economic Development
Division of Corporations, Business and Professional Licensing



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Juneau

DEC 6 2021

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✓ 25 CUL

Corporations Section
State Office Building, 333 Willoughby Avenue, 9th Floor
PO Box 110806, Juneau, AK 99811-0806
Phone: (907) 465-2550 • Fax: (907) 465-2974
Email: corporations@alaska.gov
Website: Corporations.Alaska.Gov


Notice of Change of Officials

Domestic Limited Liability Company (AS 10.50)

- This Notice of Change of Officials form is only for Domestic Limited Liability Companies and is used to report changes between biennial reporting periods in: members, managers, and percentage of interest held.
- This Notice of Change of Officials will not be filed if the entity's biennial report is not current. To verify the entity's biennial report due date, go online to www.Corporations.Alaska.Gov and select *Search Corporations Database*
- Standard processing time for complete and correct filings submitted to this office is approximately 10-15 business days. All filings are reviewed in the date order they are received.
- The information you submit is a public record and will be posted on the State's website.

1. Important:	AS 10.50.765
<p>Each Domestic Limited Liability Company is required to notify this office when there is a change of officials. — AS 10.50.765</p> <p>Failure to meet this requirement may result in involuntary dissolution of the entity's authority to transact business in the State of Alaska.</p> <p>The Domestic Limited Liability Company is to keep and make available the records of the official(s) changes. — AS 10.50.860-870</p>	

2. Fee:	<input checked="" type="checkbox"/> \$25 Nonrefundable Filing Fee (CORF)	3 AAC 16.065(b)
Mail this form and the non-refundable \$25 filing fee in U.S. dollars to the letterhead address. Make the check or money order payable to the State of Alaska, or use the attached credit card payment form.		

3. Entity Information:	AS 10.50.765
<p>Entity Name: <u>Hibernation Holding Company, LLC</u></p> <p>Alaska Entity Number: <u>10100965</u></p>	
	

4. REMOVE from Record: AS 10.50.765(b)

The following officials (members and, if applicable, managers) will be completely removed from the record as a result of this filing:

Name: Dan Coglianese Name: _____

Name: _____ Name: _____

RECEIVED
Juneau
DEC 6 2021
CBPL

If an official is not being removed from record, then list them in Item #5 below (with their current information).

5. ALL Current Officials: AS 10.50.765(b)

The following is a complete list of ALL remaining and new officials who will be on record as a result of this filing.

- An LLC must have at least one member who owns a % of the LLC. — AS 10.50.155(b)
- Must provide all members who own 5% or more of the LLC. — AS 10.50.765 (b)
- Members must own a % of the LLC. A member may be a manager if the LLC is manager managed.
- An LLC may be managed by a manager if provided in Articles of Organization. A manager may be a member if the manager also owns a % of the LLC. — AS 10.50.075(5) and AS 10.50.110(b)

- List ALL officials and their current information to be on record.
- Manager will only be accepted if the entity is manager-managed per the articles.
- BOLD fields are required.

FULL LEGAL NAME	COMPLETE MAILING ADDRESS	% OWNED	MEMBER	Manager
Janiese Stevens	PO Box 8593, Kodiak, AK 99615	43	*	*
Kim Perkins	PO Box 3763, Homer, AK 99603	14.25	*	
Erik Fellows	PO Box 1065, Homer, AK 99603	14.25	*	
Louis Rocheleau	PO Box 8593, Kodiak, AK 99615	14.25	*	
George Kirk	PO Box 2796, Kodiak, AK 99615	14.25	*	

→ If necessary, use the following supplement page and include all information required above in Item #5.

6. Required Signature: AS 10.50.840

The Notice of Change of Officials must be signed by: a member (AS 10.50.840(a)(2)); or a manager if manager managed (AS 10.50.840(a)(1)); or an attorney-in-fact (AS 10.50.840(c)). Persons who sign documents filed with the commissioner that are known to the person to be false in material respects are guilty of a class A misdemeanor.

Signature: [Signature] Date: 1/26/21

Printed Name: Janiese Stevens

Title of Authorized Signer: Member Manager Attorney-in-fact

If signing on behalf of a member or manager which is an entity, then identify the signer's relationship and signing authority with the member entity. For example: John Smith, President of XYZ Inc. the sole member of ABC LLC.

**LIMITED LIABILITY COMPANY
OPERATING AGREEMENT OF
HIBERNATION HOLDING
COMPANY, LLC
an Alaska limited liability company**

THIS LIMITED LIABILITY COMPANY OPERATING AGREEMENT (this “Agreement”) is entered into to be effective as of April 1, 2019 (the “Effective Date”), by and among each of the Members listed on **Exhibit A** and executing this Agreement, or a counterpart thereof, and the Manager, of HIBERNATION HOLDING COMPANY, LLC, an Alaska limited liability company (the “Company”).

Section I - Formation; Name and Office; Purpose

1.1. *Formation.* Pursuant to the Alaska Revised Limited Liability Company Act, A.S. Sections 10.50.010 through 10.50.995, as amended (the “Act”), the parties have formed an Alaska limited liability company effective upon the filing of the Articles of Organization of this Company (the “Articles”) with the State of Alaska Department of Commerce, Community, and Economic Development. The parties have executed this Agreement to serve as the “Operating Agreement” of the Company, as that term is defined in A.S. section 10.50.095, and, subject to any applicable restrictions set forth in the Act, the business and affairs of the Company, and the relationships of the parties to one another, shall be operated in accordance with and governed by the terms and conditions set forth in this Agreement. By executing this Agreement, the Members certify that those executing this Agreement constitute all of the Members of the Company at the time of its formation. The parties agree to execute all amendments of the Articles, and do all filing, publication, and other acts as may be appropriate from time to time hereafter to comply with the requirements of the Act.

1.2. *Name and Known Place of Business.* The Company shall be conducted under the name of HIBERNATION HOLDING COMPANY, LLC and the known place of business of the Company shall be at 158 Alimaq Dr., Kodiak, Alaska 99615, or such other place as the Manager may from time to time determine.

1.3. *Purpose.* The purpose and business of this Company shall be: (a) to own (as the sole Member) Alaska Lovin It, LLC, an Alaska limited liability company, and operate a commercial marijuana cultivation facility (“ALI”); (b) to own (as the sole Member) Three Sisters, LLC, an Alaska limited liability company, and operate a commercial marijuana retail facility (“Wild Flower”); and (c) any other lawful purpose as may be determined by the Members. The Company shall have the power to do any and all acts and things necessary, appropriate, or incidental in furtherance of such purpose as authorized by the Marijuana Control Board of Alaska (the “MCBA”), as promulgated under AS 17.38 *et seq.*, and 3 AAC 306.015 *et seq.*, as they may be amended, expanded or modified from time to time (collectively, the “AK Marijuana Governance”), the terms and provisions of which are incorporated herein by this reference. If any provision of this Agreement is or later becomes in violation of AK Marijuana Governance or if the federal government takes any position inconsistent with those positions regarding the enforcement of federal law on marijuana in Alaska then it shall, without any further action of the Members, be automatically amended to the minimum extent necessary to comply with such AK Marijuana Governance and such new federal government position.

1.4. *Treatment as a Partnership.* It is the intent of the Members that the Company shall always be operated in a manner consistent with its treatment as a partnership for federal income tax purposes, but that the Company shall not be operated or treated as a partnership for purposes of the federal Bankruptcy Code. It is the intent for the membership that taxation may be done in a manner consistent with guidance from tax professional adviser, which may be different than treatment as a partnership.

Section II - Definitions

Unless otherwise defined in this Agreement, the following terms set forth in this Agreement shall have the meanings set forth in this Section II:

“*Act*” means the Alaska Revised Limited Liability Company Act, A.S. Sections 10.50.010 through 10.50.995, as amended from time to time (or any corresponding provisions of succeeding law).

“*Affiliate*” means, with respect to any Member, any Person: (i) who is a member of the Member’s or Member’s Family; (ii) which owns more than ten percent (10%) of the voting or economic interests in the Member; (iii) in which the Member owns more than ten percent (10%) of the voting or economic interests; or (iv) in which more than ten percent (10%) of the voting or economic interests are owned by a Person who has a relationship with the Member described in clause (i), (ii), or (iii) above.

“*ALI Property*” means that certain real property leased by the Company **under the ALI Lease, as** defined below.

“*Capital Contribution*” means the total amount of cash and the fair market value of any other assets contributed (or deemed contributed under Regulation Section 1.704- 1(b)(2)(iv)(d)) to the Company by a Member, net of liabilities secured by the contributed Property that the Company is considered to assume or take subject to under Section 752 of the Code. Capital contributions are to be repaid prior to any issuances of dividends or profit draws from members.

“*Cash Flow*” means all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any noncash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, capital improvements, and replacements as determined by the Members. Cash Flow shall be increased by the reduction of any reserve previously established.

“*Cause*” in context of a Member’s expulsion for Cause under this Agreement, means, without limiting at common law the generality of such word, that such Member: (i) has been convicted of a disqualifying crime identified in AS 17.38.200(i) and/or 3AAC306.010(d); (ii) has committed an act of fraud or dishonesty with respect to the Company or the business operations thereof; (iii) has engaged in misconduct that seriously injures the Company’s or its subsidiaries’ good will and is injurious to the Company; (iv) has willfully and persistently committed a material breach of this Agreement; (v) has engaged conduct constituting larceny, fraud, or theft; (vi) has been guilty of wrongful conduct that adversely and materially affects the business or affairs of the Company; or (vii) in the case of any Member, or any Person holding a “direct or indirect financial interest,” in such Member, such Person or Member becomes disqualified from participating in an Alaska recreational marijuana business in any capacity, or takes any action that is in violation of any Alaska statute or regulation that would result in the revocation or termination of the Company’s Licenses on an ongoing basis, including without limitation, revocation, rejection, suspension, denial, or cancellation, as finally determined by the MCBA, or other Alaska court or administrative agency with proper jurisdiction and authority on the issue. Such determination of Cause must be made in good faith by the Manager and be approved by the Members by Major Decision Special Majority, excluding the vote and Interest of the Member being expelled for Cause.

“*Event of Withdrawal*” means those events and circumstances listed in Section 10.50.220 and 10.50.225 of the Act provided, however, that following an Event of Withdrawal described in Section 10.50.220 and 10.50.225(4) of the Act the Member shall remain a Member until it ceases to exist as a legal

entity.

“*Family*” means a Person’s spouse, lineal ancestor, or descendant by birth or adoption, sibling, and trust for the benefit of such Person or any of the foregoing.

“*Fiscal Year*” or “*Annual Period*” means the fiscal year of the Company, as determined under Section V.

“*Interest*” means a Member’s share of the Profits and Losses (and specially allocated items of income, gain, and deduction) of, and the right to receive distributions from, the Company.

“*Involuntary Transfer*” shall include, without limitation, any Transfer of a Member’s Interest pursuant to any order of any court relating to any petition for divorce, legal separation, marital dissolution, or annulment, or any guardianship, conservatorship, or other protective proceeding.

“*Landlord*” means that certain individual or entity which is the “landlord” or “lessor” under: (i) that certain commercial real estate lease for the ALI marijuana cultivation facility located at the ALI Property (the “ALI Lease”); and (ii) that certain commercial real estate lease for the Three Sisters retail marijuana store located at the Three Sisters Property (the “Three Sisters Lease”).

“*Licenses*” means collectively the marijuana cultivation facility license of ALI, No. 12833 (the “ALI License”) and the retail marijuana store license of Three Sisters, No. 19445 (the “Three Sisters License”).

“*Manager*” shall have the meaning set forth under Section V.

“Major Decision”. For purposes of this Agreement, “Major Decision” means a decision by the Company to:

- (i) admit one or more additional or substitute Members;
- (ii) transfer all or substantially all of the assets of the Company;
- (iii) merge or convert the Company into any other entity;
- (iv) dissolve the Company;
- (v) cause the Company to seek protection from creditors under federal or state bankruptcy or insolvency laws;
- (vi) take any action, excluding regulatory compliance filings, operating plan change submission so MCBA known as MJ15 or Premises Diagram Changes known as MJ15, with respect to either the ALI License or the Three Sisters License;
- (vii) take any material action with respect to either the ALI Property or the Three Sisters Property, or take any action to alter or engage in either the ALI Lease or the Three Sisters Lease;
- (viii) purchase, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in or with any real property, wherever situated;

(ix) sell, convey, mortgage, pledge, create a security interest in, lease, exchange, transfer and otherwise dispose of all or any part of any Company asset other than in the ordinary course;

(x) make guarantees, incur liabilities, borrow money, issue notes or secure any of the obligations of the Company by mortgage or pledge of any assets of the Company;

(xi) approve any transaction involving an actual or potential conflict of interest between a Member or a Manager and the Company, including the approval of any Member Loan;

(xii) make any capital expenditure in any single transaction in excess of Twenty-Five Thousand Dollars (\$25,000), except in cases of emergency (as determined by the Manager in good faith) where immediate action is needed to maintain or resume business operations in the ordinary course, or reoccurring payments in excess of Five Thousand Dollars (\$5,000), per month;

(xiii) make any capital call or require any additional Capital Contribution; or

(xiv) vote any shares or interests in other entities in which Company holds an interest;

(xv) approval of the Annual Operating Budget, as defined under Section VI, below.

(xvi) make any amendment to this Operating Agreement.

The Members agree that Major Decisions can only be made by a Major Decision Special Majority vote.

“*Major Decision Special Majority*” shall mean consent of seventy-five (75%) percent of the Members’ Percentage Interest. For the avoidance of doubt, if a Major Decision does not receive approval by a Major Decision Special Majority vote, the Major Decision shall not be approved, and no Manager or Member of the Company shall have the ability or authority to take action with respect to such Major Decision on behalf of the Company. If a Member is also a Landlord (as defined above), such Member shall have no right to vote on any matter coming before the Members concerning the ALI Lease, the ALI Property, the Three Sisters Lease, or the Three Sisters Property, and such Member’s vote and Percentage Interest shall be excluded from such vote.

“*Majority of the Members*” means a vote of the Members holding not less than 51% of the Percentage Interests held by all Members.

“*Member*” means each Person signing this Agreement as a member and any Person who subsequently is admitted as a member of the Company in accordance with Section VI of this Agreement and agrees in writing to be bound to the terms and conditions of this Agreement.

“*Member Loan*” means a loan made by a Member to the Company for the benefit of the Company.

“*Percentage Interest*” means, as to a Member, the percentage set forth after the Member’s name on Exhibit A, as amended from time to time.

“*Person*” means and includes an individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

“*Property*” means all real and personal property (including cash) acquired by the Company, and

any improvements thereto.

“*Three Sisters Property*” means that certain real property and leased by the Company under the Three Sisters Lease.

“*Transfer*” means, when used as a noun, any voluntary or involuntary sale, hypothecation, pledge, assignment, attachment, or other transfer, and, when used as a verb, means voluntarily or involuntarily to sell, hypothecate, pledge, assign, or otherwise transfer.

Section III - Capital Contributions

3.1. *Capital Contributions.*

3.1.1. *Initial Capital Contributions.* Upon the execution of this Agreement, the Members have or shall make contributions to the capital of the Company as set forth in **Exhibit A** attached hereto and by this reference made a part hereof.

3.1.2. *Additional Capital Contributions.* No Member shall be required to contribute any additional capital to the Company without a unanimous consent, and no Member shall have any personal liability for any obligation of the Company.

3.2. *Withdrawal or Return of Capital Contributions.* Except as specifically provided in this Agreement, no Member shall have the right to withdraw or reduce the Capital Contributions he or she makes to the Company. Upon dissolution of the Company or liquidation of his or her interest in the Company, each Member shall look solely to the assets of the Company for return of his or her Capital Contributions and, if the Company’s property remaining after the payment or discharge of the debts, obligations, and liabilities of the Company is insufficient to return the Capital contributions of each Member, no Member shall have any recourse against the Company or any Member except for gross negligence, malfeasance, bad faith, or fraud.

3.3. *Form of Return of Capital.* Under circumstances requiring a return of any Capital Contributions, no Member shall have the right to receive property other than cash except as may be specifically provided herein.

3.4. *In the Event of Member Loans.* All Member Loans made pursuant to this Agreement and approved by a Major Decision Special Majority shall bear interest at the prime rate of interest as reported by *the Wall Street Journal - Western Edition*, shall be unsecured, and shall be repaid in full out of available funds of the Company before any distribution may be made to any Member. If more than one Member has made a Member Loan, repayment shall be made to each Member in proportion to the amount of principal each has advanced.

Section IV - Distributions

4.1. *Distributions.* Except as otherwise provided in this Agreement, distributions shall be made to the Members at such times and in such amounts as determined by the Manager. Distributions will be made to Members *pro rata*, in proportion to their Percentage Interests, after capital contributions have been repaid.

42. *General.*

4.2.1. *Form of Distribution.* In connection with any distribution, no Member shall have the right to receive Property other than cash except as may be specifically provided herein. If any assets of the Company are distributed in kind to the Members, those assets shall be valued on the basis of their fair market value, and any Member entitled to any interest in those assets shall receive that interest as a tenant-in-common with all other Members so entitled. Unless the Members otherwise agree by a vote of the Majority of the Members, the fair market value of the assets shall be determined by an independent appraiser who shall be selected by the Manager.

4.2.2. *Withholding.* All amounts required to be withheld pursuant to Code Section 1446 or any other provision of federal, state, or local tax law shall be treated as amounts actually distributed to the affected Members for all purposes under this Agreement.

4.2.3. *Varying Interests; Distributions in Respect to Transferred Interests.* If any Interest is Transferred in compliance with the provisions of this Agreement, all distributions on or before the date of such Transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee. Solely for purposes of making distributions, and allocating Profits, Losses, and other items of income, gain, loss, and deduction pursuant to **Exhibit B** hereof, the Company shall recognize the Transfer not later than the end of the calendar month during which it is given notice of such, provided that if the Company does not receive a notice stating the date such Interest was Transferred and such other information as it may reasonably require within thirty (30) days after the end of the Fiscal Year during which the Transfer occurs, then all of such items shall be allocated, and all distributions shall be made, to the Person who, according to the books and records of the Company, on the last day of the Fiscal Year during which the Transfer occurs, was the owner of the Interest. Neither the Company nor any Member shall incur any liability for making allocations and distributions in accordance with the provisions of this Section, whether or not any Member or the Company has knowledge of any Transfer of ownership of Interest.

Section V - Management

5.1. *Management.* Subject to the rights under the Act or the provisions of this Agreement to approve certain actions, the business and affairs of the Company shall be managed exclusively by its Manager. The exact number of Managers of the Company shall be one (1) until amended in accordance with this Agreement. The Members shall vote and select a Manager that will direct, manage, and control the business of the Company to the best of their ability and, subject only to those restrictions set forth in the Act or this Agreement, shall have full and complete authority, power, and discretion to make any and all decisions and to do any and all things which the Manager deem appropriate to accomplish the business and objectives of the Company, other than those decisions requiring a Major Decision Special Majority or a vote of the Members as required by the Act. Manager(s) shall be elected and removed by a vote of the Majority of the Members, and an election or removal of Manager may be held at any time, by call of the majority percentage ownership, by providing proper written notice at least 14 days prior to election or removal. Any vacancy occurring in the position of Manager (whether caused by resignation, death, or otherwise) may be filled by the vote of the Majority of the Members. Each Member agrees not to incur any liability on behalf of the other Members or otherwise enter into any transaction or do anything which will subject the other Members to any liability, except in all instances as contemplated hereby.

5.2. *Certain Management Powers of the Manager.* Without limiting the generality of Section 5.1, and subject to all Major Decisions, the Manager shall have power and authority on behalf of the Company:

5.2.1. To manage the day-to-day business operations of the Company in accordance with this Agreement, the rules and regulations promulgated by the MCBA, and the AK Marijuana Guidance;

5.2.2. In the ordinary course of business, to acquire property from and sell property to any person as the Manager may determine;

5.2.3. Use credit facilities and borrow money for the Company from banks, other lending institutions, the Interest Holders, or Affiliates of the Interest Holders, on such terms as approved by the Manager, and in connection therewith, to hypothecate, encumber, and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt or other obligation shall be contracted or liability incurred by or on behalf of the Company by the Member;

5.2.4. To purchase liability and other insurance to protect the Company's property and business;

5.2.5. Except for any Major Decision, to execute on behalf of the Company all instruments and documents, including, without limitation, checks, drafts, notes, and other negotiable instruments, mortgages, or deeds of trust, security agreements, financing statements, documents providing for the acquisition, mortgage, or disposition of the Company's property, assignments, bills of sale, leases, partnership agreements, and any other instruments or documents necessary, in the opinion of the Manager, to accomplish the purposes of the Company;

5.2.6. To employ accountants, legal counsel, managing agents, or other experts to perform services for the Company and compensate them from Company funds;

5.2.7. Except for any Major Decision, to enter into any and all other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Manager may approve;

5.2.8. To do and perform all other acts as may be necessary or appropriate to accomplish the purposes of the Company; and

5.2.9. To take such other actions as do not expressly require the consent of any Members under this Agreement.

A Manager may act by a duly authorized attorney-in-fact. Unless authorized to do so by this Agreement, no Member, agent, or employee of the Company shall have any power or authority to bind the Company in any way, to pledge its credit, or to render it liable for any purpose.

5.3. *Duties of the Manager.* The Manager shall have all duties as set forth in the Act, including, without limitation, those duties set forth under AS § 10.50.135, as amended. Subject to AS § 10.50.140, a Manager shall not be required to manage the Company as the Manager's sole and exclusive function and the Manager may engage in other business and investment activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, solely by virtue of this Agreement or its relationship to a Member or the Company, to share or participate in any such other investments or activities of the Members or to the income or proceeds derived therefrom. Manager shall not have any obligation to disclose any such other investments or activities to the Members unless it actually or potentially adversely affects the business or property of the Company.

5.4. *Compensation and Expenses.* The Company may enter into management or employment contracts with one or more Member or Members or Persons Affiliated with the Member as approved by a

Major Decision Special Majority.

5.5. *Books and Records.* At the expense of the Company, the Manager shall keep or cause to be kept complete and accurate books and records of the Company and supporting documentation of transactions with respect to the conduct of the Company's business. The books and records shall be maintained in accordance with the Act and sound accounting practices and kept at the Company's known place of business and such other location or locations as the Manager shall from time to time determine. At a minimum the Company shall keep at its known place of business the following records:

5.5.1. A current list of the full name and last known business, residence, or mailing address of each Member;

5.5.2. A copy of the initial Articles and all amendments thereto and restatements thereof;

5.5.3. Copies of the Company's federal, state, and local income tax returns and reports, if *any*, for the three most recent fiscal years;

5.5.4. Copies of this Agreement and all amendments hereto or restatements hereof, including any prior operating agreements no longer in effect;

5.5.5. Copies of any documents relating to a Member's obligation to contribute cash, property, or services to the Company;

5.5.6. Copies of any financial statements of the Company for the three (3) most recent fiscal years; and

5.5.7. Copies of minutes of all meetings of the Members and all written consents obtained from Members for actions taken by Members without a meeting.

5.6. *Financial Accounting/Member Access to Books and Records.* In addition to the Annual Operating Budget, the Manager shall prepare and make available a financial accounting of the Company no less than once every sixty (60) days. Within three (3) calendar days following written notice, which may be submitted in writing, via facsimile or electronic mail, each Member shall have the right, during normal business hours, to inspect and copy, at the Member's expense, the Company's books and records.

5.7. *Reports.* Within seventy-five (75) days after the end of each Fiscal Year of the Company, the Members shall cause to be sent to each Person who was a Member at any time during the Fiscal Year a complete accounting of the affairs of the Company for the Fiscal Year then ended. In addition, within seventy-five (75) days after the end of each Fiscal Year of the Company, the Members shall cause to be sent to each Person who was a Member at any time during the Fiscal Year, the tax information concerning the Company which is necessary for preparing the Member's income tax returns for that year. At the request of any Member, and at the Member's expense, the Members shall cause an audit of the Company's books and records to be prepared by independent accountants for the period requested by the Member.

5.8. *Title to Company Property.*

5.8.1. Except as provided in Section 5.8.2, all real and personal property acquired by the Company shall be acquired and held by the Company in its name.

5.8.2. Ten (10) days after giving notice, the Manager may direct that legal title to all or any portion of the Company's property be acquired or held in a name other than the Company's name.

Without limiting the foregoing, the Manager may cause title to be acquired and held any one Member's name or in the names of trustees, nominees, or straw parties for the Company. It is expressly understood and agreed that the manner of holding title to the Company's property (or any part thereof) is solely for the convenience of the Company and all of that property shall be treated as Company property. The notice to be given to the Members under this section shall identify the asset or assets to be titled outside of the Company name, the Person in whom legal title is intended to vest, and the reason for the proposed transaction. If any Member provides written notice of an objection to the transaction before the expiration of the ten (10) day period, the transaction shall not be consummated except upon approval of a Majority of the Members.

Section VI - Members

6.1. *Members.* The names and addresses of the Members, their initial Capital Contributions, and Percentage Interest, are set forth on **Exhibit A**, as amended from time to time. No Person shall become a Member unless and until they: (a) execute this Agreement (or a counterpart signature page to the Agreement); (b) tender to the Company the consideration for their Percentage Interest; (c) are approved as a Member by a Major Decision Special Majority; and (d) are approved as a Member of the Company by the MCBA in accordance with all AK Marijuana Governance, as applicable.

6.2. *Meetings.* Unless otherwise prescribed by the Act, meetings of the Members may be called, for any purpose or purposes, by a Majority of the Members.

6.3. *Place of Meetings.* Whoever calls the meeting may designate any place, either within or outside the State of Alaska, as the place of meeting for any meeting of the Members.

6.4. *Notice of Meetings.* Except as provided in this Agreement, written notice stating the date, time, and place of the meeting, and the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, electronic mail, facsimile, or overnight or next-day delivery services by or at the direction of the person or persons calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two (2) days after being deposited in the United States mail, postage prepaid, addressed to the Member at his or her address as it appears on the books of the Company. If transmitted by way of electronic mail or facsimile, such notice shall be deemed to be delivered on the date of such electronic mail or facsimile transmission to the electronic mail address or fax number, if any, for the respective Member which has been supplied by such Member to the Company and identified as such Member's electronic mail address or facsimile number. If transmitted by overnight or next-day delivery, such notice shall be deemed to be delivered on the next business day after deposit with the delivery service addressed to the Member at his or her address as it appears on the books of the Company. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken, unless the adjournment is for more than thirty (30) days. At the adjourned meeting the Company may transact any business which might have been transacted at the original meeting.

6.5. *Meeting of All Members.* If all of the Members shall meet at any time and place, including by conference telephone call, either within or outside of the State of Alaska, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice.

6.6. *Record Date.* For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, the date on which notice of the meeting is mailed shall be the record date for such determination of Members. When a determination of Members entitled to

vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof, unless notice of the adjourned meeting is required to be given pursuant to Section 6.3.

6.7. *Quorum.* A Majority of the Members, represented in person or by proxy, shall constitute a quorum at any meeting of Members. Business may be conducted once a quorum is present.

6.8. *Voting Rights of Members.* Members shall be entitled to vote on any matter submitted to a vote. If all of an Interest is transferred to an assignee who does not become a Member, the Member from whom the Interest is transferred shall no longer be entitled to vote. No withdrawn Member shall be entitled to vote nor shall such Member's Interest be considered outstanding for any purpose pertaining to meetings or voting.

6.9. *Manner of Acting.* Unless otherwise provided in the Act, the Articles, or this Agreement, the affirmative vote of a Majority of the Members at a meeting at which a quorum is present shall be the act of the Members.

6.10. *Proxies.* At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Company before or at the time of its exercise. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

6.11. *Action by Members without a Meeting.* Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, circulated to all the Members with an explanation of the background and reasons for the proposed action, signed by that percentage or number of the Members required to take or approve the action. Any such written consent shall be delivered to the Members of the Company for inclusion in the minutes or for filing with the Company records. Action taken by written consent under this Section shall be effective on the date the required percentage or number of the Members have signed and delivered the consent to all Members, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the written consent is circulated to the Members.

6.12. *Telephonic Communication.* Members may participate in and hold a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such meeting shall constitute attendance and presence in person, except where the Member participates in the meeting for the express purpose of objecting to the transaction of any business on the ground the meeting is not lawfully called or convened.

6.13. *Waiver of Notice.* When any notice is required to be given to any Member, a waiver thereof in writing signed by the Person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

6.14. *Budget.* The Manager shall, within ninety (90) days of the complete execution of this Agreement, and on or before December 15 in each calendar year thereafter, deliver to the Members for approval by a Major Decision Special Majority, an estimated annual operating budget for the Company for the next calendar year (the "Annual Operating Budget") which shall set forth an estimate, on a monthly basis, of Company revenue and expenses, together with an explanation of anticipated changes to any charges, rates, expenses and positions, non-wage cost increases, the proposed methodology and formula employed by the Manager, and all other factors differing from the then-current calendar year. The Annual

Operating Budget shall be accompanied by a narrative description of operating objectives and assumptions. If the Members do not approve of an Annual Operating Budget in total, it shall do so, to the extent practicable, on a line item basis. The Manager and the Members shall cooperate to resolve disputed items, provided if a part of, or the total, Annual Operating Budget is not approved by the Members by a Major Decision Special Majority within thirty (30) days of the Manager's transmission of such Annual Operating Budget to the Members, the Manager shall operate under the expired Annual Operating Budget, on a line-item basis, until a new Annual Operating Budget is approved. The Manager shall obtain the prior written approval of a Major Decision Special Majority for any Company expenditure which will, or is reasonably expected to, result in a material variation to the Annual Operating Budget for the applicable calendar year or is materially outside the scope of any item set forth on the Annual Operating Budget.

Section VII - Transfers and Withdrawals

7.1. *Transfers.* Except as otherwise provided in this Section VII no Member may, voluntarily or involuntarily, Transfer all, or any portion of, a Member's Interest without the prior written consent of a Major Decision Special Majority, which consent may be withheld in the Members' sole and absolute discretion. In addition, such Transfer must receive the express written approval of the MCBA, or other Alaska court or administrative agency with proper jurisdiction and authority on the issue, after filing any and all necessary forms for such transfer in compliance with AK Marijuana Governance. Each Member hereby acknowledges the reasonableness of this prohibition in view of the purposes of the Company and the relationship of the Members. The Transfer of any Interest in violation of the prohibitions contained in this Section VII shall be deemed invalid, null, and void, and of no force or effect. Any Person to whom any Interest is attempted to be transferred in violation of this Section shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company, receive allocations or distributions from the Company, or have any other membership rights in or with respect to the Interest.

7.2. *Deemed Transfer.* In addition to the foregoing, each of the following shall be deemed a "Transfer" and shall be subject to Section 7.1:

7.2.1. *Involuntary Transfer.* Any Involuntary Transfer;

7.2.2. *Bankruptcy and Related Events.* Filing of a voluntary petition in bankruptcy or involuntary petition in bankruptcy by an Member pursuant to Chapters 7, 11 or 13 of the U.S. Bankruptcy Code, unless such a petition is denied or dismissed within thirty (30) days after filing in the case of a voluntary petition or within ninety (90) days after filing in the case of an involuntary petition; the entry of an order of relief in bankruptcy of an Member; the assignment by an Member of all or a portion of their Interests for the benefit of creditors; the appointment of a receiver or trustee for an Member's property; or the attachment of an Interest which is not released within thirty (30) days;

7.2.3. *Attachment and Security Interest.* Any portion of an Interest of a Member becomes subject to any attachment, levy, execution or other judicial seizure, or any lien, encumbrance or security interest;

7.2.4. *Voluntary Withdrawal.* A Member voluntarily withdraws by giving all Members thirty (30) days' prior written notice, and a Majority of the remaining Members approves such voluntary withdrawal;

7.2.5. *Involuntary Withdrawal.* An Event of Withdrawal occurs, as defined in this Agreement;

7.2.6. *Death.* Upon the transfer of any portion of an Interest in the Company as a result of death, whether to any heir, devisee, beneficiary, third-party, person, trust or estate;

7.2.7. *Breach of Lease.* Any Member who is also a Landlord materially breaches the terms of the ALI Lease or the Three Sisters Lease, as determined by the remaining Members of the Company in good faith; or

7.2.8. *Expulsion.* Any Member is expelled from the Company for Cause.

7.3. *Transfer.* Upon the Transfer or deemed Transfer of any portion of an Interest under Section 7.2, the holder of such Interest shall become an “assignee”. in accordance with this Agreement and the Act, with no voting rights, notice rights, rights to information, or other rights as a Member of any kind.

7.4. *Option of Company.* Upon the Transfer or deemed Transfer of any portion of an Interest under Section 7.2:

7.4.1. *Perpetual Option.* The Company shall automatically have the perpetual option to purchase and redeem all or any portion of the Interest in the manner as provided for in Section 7.4. In the event the Company exercises its option to purchase the Interest pursuant to Section 7.4.2, the Company shall, within ninety (90) days, distribute to the Member whose Interest is being purchased (the “Transferring Holder”), or such holder’s estate, the net taxable income allocable to such Transferring Holder’s Interest for the portion of the taxable year prior to the transfer date, if any.

7.4.2. *Exercise of Option; Notice.* In the event the Company wishes to exercise its option pursuant to Section 7.4.1, the Company shall deliver to the Transferring Holder written notification (“Notice”), by email to the Transferring Holder’s email address, certified mail, or personal delivery, of its intention to so exercise its option to purchase and redeem the Transferring Holder’s Interest. The value of such Transferring Holder’s Interest shall be determined in accordance with Section 7.4.3 and Exhibit C, and shall be distributed in accordance with Section 7.4.4.

7.4.3. *Valuation of Interest.*

7.4.3.1. *Purchase of Transferring Holder’s Interest.* Unless otherwise agreed between the Company and the Transferring Holder, for purposes of determining the purchase price to be paid for a Transferring Holder’s Interest, it is hereby agreed that a Transferring Holder’s Interest shall be purchased and redeemed for an amount equal to the Purchase Price, as defined below, based on the Transferring Holder’s Percentage Interest in the Company, subject to standard discounts for lack of marketability and lack of control, if applicable. Upon delivery of the Subordinated Promissory Note (as defined below) to the Transferring Holder, the Transferring Holder’s Interest shall have been redeemed by the Company pursuant hereto, without any further action by the Transferring Holder, the Company or any other Member.

7.4.4. *Purchase Price.* The Purchase Price of a Transferring Holder’s Interest shall be as follows:

7.4.4.1. Where the redemption of a Transferring Holder’s Interest is due to a Transfer event described in Section 7.2.1 through 7.2.6, then the Purchase Price shall be either: (a) the fair market value of the Company as mutually agreed upon by the Company and the Transferring Holder (or such Transferring Holder’s representative) in good faith, multiplied by the Transferring Holder’s Percentage Interest, subject to

standard discounts for lack of marketability and lack of control, if applicable; or (b) if no agreement can be reached, the fair market value of the Company (as determined by an Appraiser, selected pursuant to **Exhibit C**), multiplied by the Transferring Holder's Percentage Interest, subject to standard discounts for lack of marketability and lack of control, if applicable; or

7.4.4.2. Where the redemption of a Transferring Holder's Interest is due to a Transferring Holder's Transfer event under Section 7.2.7 or 7.2.8, then the Purchase Price shall be the fair market value of the Transferring Holder's Percentage Interest as determined in accordance with the provisions of Section 7.4.4.1, above, less fifty percent (50%) of such fair market value; provided, however, that such amount shall then be less (and off set by) the aggregate amount of damages, liabilities, losses or other expenses incurred by the Company due to such Transferring Holder's actions constituting Cause or such Transferring Holder's breach, as applicable, and including fees and legal expenses incurred in the purchase of such Transferring Holder's Interest.

7.5. *Terms of Payment.* Unless otherwise mutually agreed in writing by the Company and the Transferring Holder, after the Purchase Price has been established in accordance with Section 7.4.3, as applicable, the Company shall pay the Purchase Price, together with the principal amount of any loan outstanding to the Transferring Holder, or such Transferring Holder's estate, whose interest is being purchased, as follows: the value of the Transferring Holder's Interest shall be paid with a minimum of twenty percent (20%) down within thirty (30) days of the date the Purchase Price is established in accordance with Section 7.4.3, and the balance of eighty percent (80%) shall be made payable pursuant to an unsecured Subordinated Promissory Note, made by the Company in favor of the Transferring Holder, payable over sixty (60) months, beginning the first day of the first month following the down payment. In no event shall there be any prepayment penalty in the event the Company wishes to pay the amount due hereunder prior to the expiration of the term of the Subordinated Promissory Note. In each instance, interest shall be computed and paid on the balance owing at the prime rate charged by the Company's banking institution. The promissory notes described herein shall be expressly subordinated to all senior debt, pre-existing or hereafter existing debt to financial institutions or lessors in connection with commercial loans, credit arrangements, equipment financings, leases or similar transactions. If the Company is sold (whether via change in control or otherwise) or liquidated following the purchase of a Transferring Holder's Interest, the installment obligation shall be immediately due and owing.

7.6. *Transferee Not a Member.* The attempted Transfer or assignment of a Member's Interest shall not result in any transferee or assignee becoming a Member of the Company, unless the transferee or assignee is admitted as a Member pursuant to this Agreement, and the transferee or assignee shall only be entitled to receive, to the extent transferred, the share of distributions, including distributions representing the return of contributions, and the allocation of Profits and Losses (and other items of income, gain, or deduction), to which the Member would have otherwise been entitled with respect to the Member's Interest. The transferee or assignee shall have no rights as a Member or any other right to participate in the management of the business and affairs of the Company or any right to become a Member unless admitted by a Major Decision Special Majority.

7.7. *Substitute Members.* Notwithstanding any provision of this Agreement to the contrary, an assignee of a Member may only be admitted as a substitute Member upon the written consent of a Major Decision Special Majority, which consent may be withheld in the Members' sole and absolute discretion.

7.8. *Additional Members.* The Company shall not issue additional Interests after the date of formation of the Company without the written consent or approval of a Major Decision Special Majority, which consent may be withheld in the Members' sole and absolute discretion.

7.9. *Expenses.* Expenses of the Company or of any Member occasioned by transfers of Interests shall be reimbursed to the Company or Member, as the case may be, by the transferee.

Section VIII - Dissolution and Termination

8.1. *Dissolution.*

8.1.1. *Events of Dissolution.* The Company will be dissolved upon the occurrence of any of the following events:

8.1.1.1. Upon the written consent of a Major Decision Special Majority;

8.1.1.2. Upon the entry of a decree of dissolution under Section 10.50.405 of the Act or an administrative dissolution under Section 10.50.408 of the Act;

8.1.1.3. Upon the sale or other disposition of all or substantially all of the Company's assets and receipt by the Company of the proceeds therefrom; or

8.1.1.4. Upon the occurrence of an Event of Withdrawal of the last remaining Member unless within ninety (90) days all assignees of Interests in the Company consent in writing to admit at least one member to continue the business of the company.

8.2. *Continuation.* An Event of Withdrawal with respect to a Member shall not cause dissolution, and the Company shall automatically continue following such an Event of Withdrawal.

8.3. *Distributions and Other Matters.* The Company shall not terminate until its affairs have been wound up and its assets distributed as provided herein. Promptly upon the dissolution of the Company, the Members shall cause to be executed and filed a Notice of Winding Up with the Alaska Department of Commerce, Community, and Economic Development, and will liquidate the assets of the Company and apply and distribute the proceeds of such liquidation, or distribute the Company's assets in kind, as follows and in the following order:

8.3.1. *Ordinary Debts.* To payment of the debts and liabilities of the Company, including debts owed to Members, in the order of priority provided by law; provided that the Company shall first pay, to the extent permitted by law, liabilities with respect to which any Member is or may be personally liable;

8.3.2. *Reserves and Distributions.* To the setting up of such reserves as the Members may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company arising out of or in connection with the Company business;

8.3.3. *Remainder.* The balance of the proceeds shall be distributed to the Members in accordance with the positive balance in their Capital Accounts, determined as though all of the Company assets were sold for cash at their fair market value as of the date of distribution. Any such distributions shall be made in accordance with the timing requirements of Treasury Regulation Section 1.704-1(b)(2)(ii)(b)(2).

8.4. *Deficit Capital Accounts.* Notwithstanding anything to the contrary in this Agreement, if any Member's Capital Account has a deficit balance (taking into account all contributions, distributions, and allocations for the year in which a liquidation occurs), the Member shall not be obligated to make any contribution to the capital of the Company and the negative balance of such Member's Capital Account shall not be considered a debt owed by the Member to the Company or to any other person for any purpose

whatsoever.

8.5. *Rights of Members—Distributions of Property.* Except as otherwise provided in this Agreement, each Member shall look solely to the assets of the Company for the return of his or her Capital Contribution and shall have no right or power to demand or receive property other than cash from the Company. No Member shall have priority over any other Member for the return of his or her Capital Contributions, distributions, or allocations.

8.6. *Articles of Termination.* When all the assets of the Company have been distributed as provided herein, the Members shall cause to be executed and filed Articles of Termination as required by the Act.

Section IX - Other Interests of a Member

Any Member may engage in or possess interests in other business ventures of every nature and description, independently or with others. Neither the Company nor any Member shall have any right to any independent ventures of any other Member or to the income or profits derived therefrom. The fact that an Member, a member of his or her Family, or an Affiliate is employed by, or owns, or is otherwise directly or indirectly interested in or connected with, any person, firm, or corporation employed or retained by the Company to render or perform services, including without limitation, management, contracting, mortgage placement, financing, brokerage, or other services, or from whom the Company may buy property or merchandise, borrow money, arrange financing, or place securities, or may lease real property to or from the Company, shall not prohibit the Company from entering into contracts with or employing that person, firm, or corporation or otherwise dealing with him or it, and neither the Company nor any of the Members as such shall have any rights in or to any income or Profits derived therefrom.

Section X - Indemnity

10.1. *Indemnity Rights.* The Company shall indemnify, defend and hold harmless each Member who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of his or her actions as an Member or by reason of his or her acts while serving at the request of the Company as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses, including attorneys' fees, and against judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding, provided that the acts of such Member were not committed with gross negligence or willful misconduct, and, with respect to any criminal action or proceeding, such Member had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of no contest or its equivalent, shall not, in and of itself, create a presumption that the Member acted with gross negligence or willful misconduct, or with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

10.2. *Notice and Defense.* Any Member who is or may be entitled to indemnification shall give timely written notice to the Company, the Members that a claim has been or is about to be made against him or her, shall permit the Company to defend him or her through legal counsel of its own choosing, and shall cooperate with the Company in defending against the claim. The Member shall have the sole power and authority to determine the terms and conditions of any settlement of the claim.

10.3. *Other Sources.* The indemnification provided for herein shall apply only in the event, and to the extent that, the person is not entitled to indemnification, or other payment, from any other source

(including insurance), and the Company's indemnity obligations hereunder shall be in excess of any indemnification or other payment provided by such other source.

10.4. *Survival.* The indemnification provided for herein shall continue as to a person who has ceased to be a Member and shall inure to the benefit of the heirs, executors, and administrators of such person.

Section XI - Miscellaneous

11.1. *Notices.* Any notice, demand, offer, or other communication which any person is required or may desire to give to any other person shall be delivered in person or by United States mail, electronic mail, facsimile, or overnight or next-day delivery service. If mailed, such notice shall be deemed to be delivered two (2) days after being deposited in the United States mail, postage prepaid, addressed to the person at his or her address as it appears on the books of the Company. If transmitted by way of electronic mail or facsimile, such notice shall be deemed to be delivered on the date of such electronic mail or facsimile transmission to the electronic mail address or facsimile number, if any, for the person which has been supplied by such person and identified as such person's electronic mail address or facsimile number. If transmitted by overnight or next-day delivery, such notice shall be deemed to be delivered on the next business day after deposit with the delivery service addressed to the person at his or her address as it appears on the books of the Company.

11.2. *Bank Accounts.* All funds of the Company shall be deposited in a bank account or accounts opened in the Company's name. The Manager shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

11.3. *Severability.* The parties intend that this Agreement be enforced to the greatest extent permitted by applicable law. Therefore, if any provision of this Agreement, on its face or as applied to any person or circumstance, is or becomes unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances, or to any other extent, will not be impaired.

11.4. *Governing Law; Parties in Interest; Attorneys' Fees.* This Agreement will be governed by and construed according to the laws of the State of Alaska without regard to conflicts of law principles and will bind and inure to the benefit of the heirs, successors, assigns, and personal representatives of the parties. Unless otherwise agreed, if any litigation or other dispute resolution proceeding is commenced between parties to this Agreement to enforce or determine the rights or responsibilities of such parties, the prevailing party or parties in any such proceeding will be entitled to receive, in addition to such other relief as may be granted, its reasonable attorneys' fees, expenses and costs incurred preparing for and participating in such proceeding.

11.5. *Execution in Counterparts.* This Agreement may be executed in counterparts, all of which taken together shall be deemed one original.

11.6. *Titles and Captions.* All article, section, or paragraph titles or captions contained in this Agreement are for convenience only and are not deemed part of the context thereof.

11.7. *Pronouns and Plurals.* All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require.

11.8. *Waiver; Waiver of Action for Partition.* No right or obligation under this Agreement will be deemed to have been waived unless evidenced by a writing signed by the party against whom the waiver is asserted, or its duly authorized representative. Any waiver will be effective only with respect to the specific instance involved, and will not impair or limit the right of the waiving party to insist upon strict performance in any other instance, in any other respect, or at any other time. Each of the Members irrevocably waives any right that he or she may have to maintain any action for partition with respect to any of the Company Property.

11.9. *Entire Agreement.* This Agreement and all Exhibits attached hereto collectively contains the entire understanding between the parties, and supersedes any prior understandings and agreements between or among them with respect to the subject matter hereof.

Estoppel Certificate. Each Member shall, within ten (10) days after written request by any Member or the Members, deliver to the requesting Person a certificate stating, to the Member's knowledge, that: (a) this Agreement is in full force and effect; (b) this Agreement has not been modified except by any instrument or instruments identified in the certificate; and (c) there is no default hereunder by the requesting Person, or if there is a default, the nature and extent thereof.

Section XII – Arbitration

If the parties are unable to resolve any dispute arising out of this Agreement either during or after its term informally, including the question as to whether any particular matter is arbitrable, the parties agree to submit the matter to binding arbitration. In the event the parties have not agreed upon an arbitrator within twenty (20) days after either party has demanded arbitration, either party may file a demand for arbitration with an Alaska regional office of the American Arbitration Association (“AAA”) and a single arbitrator shall be appointed in accordance with the then existing Commercial Arbitration Rules of the AAA. At all times during arbitration, the arbitrator shall consider that the purpose of arbitration is to provide for the efficient and inexpensive resolution of disputes, and the arbitrator shall limit discovery whenever appropriate to insure that this purpose is pre-served. The dispute between the parties shall be submitted for determination within sixty (60) days after the arbitrator has been selected. The decision of the arbitrator shall be rendered within thirty (30) days after the conclusion of the arbitration hearing. The decision of the arbitrator shall be in writing and shall specify the factual and legal basis for the decision. Upon stipulation of the parties, or upon a showing of good cause by either party, the arbitrator may lengthen or shorten the time periods set forth herein for conducting the hearing or for rendering a decision. The decision of the arbitrator shall be final and binding upon the parties. Judgment to enforce the decision of the arbitrator, whether for legal or equitable relief, may be entered in any court having jurisdiction thereof, and the parties hereto expressly and irrevocably consent to the jurisdiction of the Alaska Courts for such purpose. The arbitrator shall conduct all proceedings pursuant to the then existing Commercial Arbitration Rules of the AAA, to the extent such rules are not inconsistent with the provisions of this Article III. The AAA Uniform Rules of Procedure shall not apply to any arbitration proceeding relating to the subject matter or terms of the documents. In the event a dispute is submitted to arbitration pursuant to this Section, the prevailing party shall be entitled to the payment of its reasonable attorneys' fees and costs, as determined by the arbitrator. Each of the parties shall keep all disputes and arbitration proceedings strictly confidential, except for disclosures of information required by applicable law or regulation.

Section XIII - Agreement of Spouses of Members

By executing the Spousal Consent to this Agreement, attached hereto as **Exhibit D**, the spouse of each Member acknowledges and consents to the terms and conditions of this Agreement and agrees, for himself or herself and for the community of himself and herself and the Member, to be bound hereby. Each

spouse of an Member, for himself or herself and the community of which he or she is a member, hereby irrevocably appoints the Member as attorney-in-fact with an irrevocable proxy coupled with an Interest to vote on any matter to come before the Members or to agree to and execute any amendments of this Agreement without further consent or acknowledgment of the spouse and to execute proxies, instruments, or documents in the spouse's name as may be required to effect the same. This power of attorney is intended to be durable and shall not be affected by disability of the spouse.

Section XIV – Representation -

The parties all acknowledge that the JDW, LLC (“Firm” and/or “Counsel”), prepared this Agreement in conjunction with Members personal counsels, but that currently the Firm only represents Member Janiese Stevens. In the event the Company desires to engage the Firm to represent the Company and its subsidiaries in the near future, all members agree and have been advised of the following:

The Firm representation of the Company, its subsidiaries, and Janise Stevens (a Member / Manager) in their respective individual capacities creates conflicts of interests;

The Members hereby are advised by the Firm that conflicts may exist among the Company, the subsidiaries, and/or Members' and/or Managers individual interests;

The Members hereby are advised by Counsel to seek the advice of independent counsel;

The Members are afforded and encouraged to seek the advice of independent counsel;

The Members have received no representations from Counsel or Firm about this Agreement, including without limitation, the tax consequences of this Agreement;

The Members are hereby advised by Counsel that this Agreement may have tax consequences;

The Members hereby are advised by Counsel to seek the advice of independent tax counsel; and

The Members have had the opportunity to seek the advice of independent tax counsel.

The Members hereby agree and understand that if the Company and its subsidiaries engage the Firm as counsel, then the Members will need to consent to the Firm's joint representation of the Company, its subsidiaries, and Janise Stevens (a Member / Manager) and are greatly encouraged to seek independent legal counsel prior to waiving said conflicts, consistent with Alaska's RPC 1.13(g), RPC 1.6 and RPC 1.7.

Signature page follows.

IN WITNESS WHEREOF, the Members and the Manager have executed this Operating Agreement, effective as of the date first set forth above.

X

Janiese Stevens

X

Dan Coqlanese

X

George Kirk


George Kirk

2-9-2019

X

Eric Fellows

IN WITNESS WHEREOF, the Members and the **Manager** have executed this Operating Agreement, effective as of the date first set forth above.

X 

Janiese Stevens

X

Dan Coqlianese

X

George Kirk

X

Robert Erik Fellows

IN WITNESS WHEREOF, the Members and the Manager have executed this Operating Agreement, effective as of the date first set forth above.

X

Janiese Stevens

X



Dan Coqlianese

X

George Kirk

X

Eric Fellows

IN WITNESS WHEREOF, the Members and the Manager have executed this Operating Agreement, effective as of the date first set forth above.

X

Janiese Stevens


X

Dan Coqlianese

X

George Kirk

X



Robert Erik Fellows

EXHIBIT A

Members, Capital Contributions, and Interest

	<u>Full Required Contribution</u>	<u>Paid Contribution</u>	<u>Total Remaining</u>	<u>Percentage Ownership</u>
Janiese Stevens				30%
Dan Coglianesi				30%
George Kirk				20%
Eric Fellows	\$		\$	20%
TOTALS:				100%

Retail Remaining Budget

**Sensitive financial information has been redacted from this Exhibit A by JDW for MCB submission.

EXHIBIT B

Tax Matters

1. *Definitions.* The capitalized words and phrases used in this **Exhibit B** shall have the following meanings:

1.1. “*Adjusted Book Value*” means with respect to Company Property, the Property’s Initial Book Value with the adjustments required under this Agreement.

1.2. “*Adjusted Capital Account Deficit*” means, with respect to any Member, the deficit balance, if any, in the Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

1.2.1. the Capital Account shall be increased by the amounts which the Member is obligated to restore under this Agreement or is deemed obligated to restore pursuant to Regulation Sections 1.704-2(g)(1) and (i)(5) (i.e., the Member’s share of Minimum Gain and Member Minimum Gain); and

1.2.2. the Capital Account shall be decreased by the items described in Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

This definition of Adjusted Capital Account Deficit is intended to comply with Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted and applied in a manner consistent with that Regulation.

1.3. “*Capital Account*” means the account maintained by the Company for each Member in accordance with the following provisions:

1.3.1. A Member’s Capital Account shall be credited with the amount of money contributed by the Member to the Company; the fair market value of the Property contributed by the Member to the Company (net of liabilities secured by such contributed Property that the Company is considered to assume or take subject to under Section 752 of the Code); the Member’s allocable share of Profit and items of income and gain; and the amount of Company liabilities that are assumed by the Member under Regulation Section 1.704-1(b)(2)(iv)(c);

1.3.2. A Member’s Capital Account shall be debited with the amount of money distributed to the Member; the fair market value of any Company property distributed to the Member (net of liabilities secured by such distributed Property that the Member is considered to assume or take subject to under Section 752 of the Code); the Member’s allocable share of Loss and items of deduction; and the amount of the Member’s liabilities that are assumed by the Company under Regulation Section 1.704-1(b)(2)(iv)(c);

1.3.3. If Company Property is distributed to a Member, the Capital Accounts of all Members shall be adjusted as if the distributed Property had been sold in a taxable disposition for the gross fair market value of such Property on the date of distribution (taking into account Section 7701 of the Code) and the Profit or Loss from such disposition allocated to the Members as provided in this **Exhibit B**.

1.3.4. If money or other Property (other than a *de minimis* amount) is (a) contributed to the Company by a new or existing Member in exchange for an interest in the Company; or (b) distributed by the Company to a retiring or continuing Member as consideration for an interest in the Company; then,

if the Members deem such an adjustment to be necessary to reflect the economic interests of the Members, the Book Value of the Company's Property shall be adjusted to equal its gross fair market value on such date (taking into account Section 7701(g) of the Code) and the Capital Accounts of all Members shall be adjusted in the same manner as if all the Company Property had been sold in a taxable disposition for such amount on such date and the Profit or Loss allocated to the Members as provided in this **Exhibit B**.

1.3.5. To the extent an adjustment to the tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the Book Value of the Company's Property and the Capital Account of the Members shall be adjusted in a manner consistent with the manner in which the Capital Accounts are required to be adjusted pursuant to that Section of the Regulations.

1.3.6. If any Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Interest. It is intended that the Capital Accounts of all Members shall be maintained in compliance with the provisions of Regulation Section 1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts or the Adjusted Book Value of Company Property shall be interpreted and applied in a manner consistent with that Section of the Regulations.

1.4. "*Code*" means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

1.5. "*Company Minimum Gain*" has the meaning set forth in Regulation Section 1.704-2(b)(2) for "partnership minimum gain."

1.6. "*Initial Book Value*" means, with respect to Property contributed to the Company by a Member, the Property's fair market value at the time of contribution and, with respect to all other Property, the Property's adjusted basis for federal income tax purposes at the time of acquisition.

1.7. "*Member Nonrecourse Debt*" has the meaning set forth in Section 1.704- 2(b)(4) of the Treasury Regulations for "partner nonrecourse debt."

1.8. "*Member Nonrecourse Debt Minimum Gain*" has the meaning set forth in Regulation Section 1.704-2(i) for "partner nonrecourse debt minimum gain."

1.9. "*Member Nonrecourse Deductions*" has the meaning set forth in Regulation Section 1.704-2(i) for "partner nonrecourse deductions."

1.10. "*Nonrecourse Deductions*" has the meaning set forth in Regulation Section 1.704-2(b)(1). The amount of Nonrecourse Deductions shall be determined according to the provisions of Regulation Section 1.704-2(c).

1.11. "*Nonrecourse Liability*" has the meaning set forth in Regulation Section 1.704-2(b)(3).

1.12. "*Profit*" and "*Loss*" means, for each Fiscal Year of the Company (or other period for which Profit or Loss must be computed), the Company's taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

1.12.1. All items of income, gain, loss, deduction, or credit required to be stated separately

pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss;

1.12.2. Any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing Profit or Loss;

1.12.3. Any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profit or Loss, shall be included in computing Profit or Loss;

1.12.4. If the Adjusted Book Value of Company Property differs from its adjusted basis for federal income tax purposes, then gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the Adjusted Book Value of the Property disposed of rather than the adjusted basis of the property for federal income tax purposes;

1.12.5. If the Adjusted Book Value of Company Property differs from its adjusted basis for federal income tax purposes, then in lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, the depreciation, amortization (or other cost recovery deduction) shall be an amount that bears the same ratio to the Adjusted Book Value of such Property as depreciation, amortization (or other cost recovery deduction) computed for federal income tax purposes for such period bears to the adjusted tax basis of such Property. If the Property has a zero adjusted tax basis, the depreciation, amortization (or other cost recovery deduction) of such Property shall be determined under any reasonable method selected by the Company; and

1.12.6. Any items that are specially allocated pursuant to Sections 2.3 and 2.4 hereof shall not be taken into account in computing Profit or Loss.

1.13. “Treasury Regulations” or “Regulations” means the income tax regulations, including any temporary regulations, promulgated under the Code as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

2. *Allocations.* After making any special allocations contained in Section 2.5, remaining Profits and Losses shall be allocated for any Fiscal Year in the following manner:

2.1. *Profits.*

2.1.1. First, Profits shall be allocated among the Members in proportion to the cumulative Losses previously allocated to the Member under Section 2.2.3 until the cumulative Profits allocated to each Member under this subparagraph equal the cumulative Losses previously allocated to each Member under Section 2.2.3;

2.1.2. Second, Profits shall be allocated proportionately among the Members until the cumulative Profits allocated to each Member under this subparagraph equal the cumulative Priority Return each Member has received through the end of the Fiscal Year plus Losses, if any, allocated to the Member under Section 2.2.2; and

2.1.3. Third, Profits shall be allocated to the Members in accordance with their Percentage Interests.

2.2. *Losses.*

2.2.1. First, Losses shall be allocated to the Members in proportion to the cumulative Profits previously allocated to the Members under Section 2.1.3 until the cumulative Losses allocated pursuant to this subparagraph to each Member are equal to the cumulative Profits previously allocated to each Member under Section 2.1.3.

2.2.2. Second, Losses shall be allocated to the Members in proportion to the cumulative Profits previously allocated to the Members under Section 2.1.2 until the cumulative Losses allocated pursuant to this subparagraph to each Member are equal to the cumulative Profits previously allocated to each Member under Section 2.1.2; and

2.2.3. Third, Losses shall be allocated to the Members in accordance with their Percentage Interests.

2.3. *Loss Limitations.*

2.3.1. *Adjusted Capital Account Deficit.* No Losses shall be allocated to any Member pursuant to Section 2.1 if the allocation causes the Member to have an Adjusted Capital Account Deficit or increases the Member's Capital Account Deficit. All Losses in excess of the limitations set forth in this Subsection shall be allocated to the other Members in accordance with the other Members' Percentage Interests until all Members are subject to the limitation of this Subsection, and thereafter, in accordance with the Members' interest in the Company as determined by the Members. If any Losses are allocated to an Member because of this Subsection, then notwithstanding any other provision of this Agreement, all subsequent Profits shall be allocated to the Members pro rata based on Losses allocated to them pursuant to this Subsection until each Member has been allocated an amount of Profits pursuant to this Subsection equal to the Losses previously allocated to that Member under this Subsection.

2.3.2. *Cash Method Limitation.* If the Company is on the cash method of accounting and more than 35% of the Company's Losses in any year would be allocable to Members who are limited entrepreneurs (within the meaning of § 464(e)(2) of the Code), then except as otherwise provided in Section 2.2.1, the Losses in excess of 35% otherwise allocable to those Members shall be specially allocated among the other Members in the ratio that each shares in Losses. If any Losses are allocated to a Member under this Subsection, then notwithstanding any other provision of this Agreement, all subsequent Profits shall be allocated to the Members pro rata based on Losses allocated to them pursuant to this Subsection until each Member has been allocated an amount of Profits pursuant to this Subsection in the current and previous Fiscal Years equal to the Losses allocated to that Member pursuant to this Subsection in previous Fiscal Years.

2.4. *Section 704(c) Allocations.*

2.4.1. *Contributed Property.* In accordance with Code Section 704(c) and the Regulations thereunder, as well as Regulation Section 1.704-1(b)(2)(iv)(d)(3), income, gain, loss, and deduction with respect to any property contributed (or deemed contributed) to the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of the property to the Company for federal income tax purposes and its fair market value at the date of contribution (or deemed contribution).

2.4.2. *Adjustments to Book Value.* If the Adjusted Book Value of any Company asset is adjusted as provided in clause (iv) of the definition of Capital Account, subsequent allocations of income, gain, loss, and deduction with respect to the asset shall, solely for tax purposes, take account of any variation between the adjusted basis of the asset for federal income tax purposes and its adjusted book value in the

manner as provided under Code Section 704(c) and the Regulations thereunder.

2.5. *Regulatory Allocations.* The following allocations shall be made in the following order:

2.5.1. *Company Minimum Gain Chargeback.* Except as set forth in Regulation Section 1.704-2(f)(2), (3), (4), and (5), if during any Fiscal Year there is a net decrease in Company Minimum Gain, each Member, prior to any other allocation pursuant to this Section IV, shall be specially allocated items of gross income and gain for such taxable year (and, if necessary, succeeding taxable years) in an amount equal to that Member's share of the net decrease of Company Minimum Gain, computed in accordance with Regulation Section 1.704-2(g)(2). Allocations of gross income and gain pursuant to this Subsection shall be made first from gain recognized from the disposition of Company assets subject to Nonrecourse Liabilities to the extent of the Minimum Gain attributable to those assets and, thereafter, from a pro rata portion of the Company's other items of income and gain for the taxable year. It is the intent of the parties hereto that any allocation pursuant to this Subsection shall constitute a "minimum gain chargeback" under Regulation Section 1.704-2(f).

2.5.2. *Member Nonrecourse Debt Minimum Gain Chargeback.* Except as set forth in Regulation Section 1.704-2(i)(4), if during any Fiscal Year there is a net decrease in Member Nonrecourse Debt Minimum Gain, each Member with a share of that Member Nonrecourse Debt Minimum Gain (determined under Regulation Section 1.704-2(i)(5)) as of the beginning of the Fiscal Year shall be specially allocated items of income and gain for such Fiscal Year (and, if necessary, succeeding Fiscal Years) in an amount equal to that Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain, computed in accordance with Regulation Section 1.704-2(i)(4). Allocations of gross income and gain pursuant to this Subsection shall be made first from gain recognized from the disposition of Company assets subject to Member Nonrecourse Debt to the extent of the Member Minimum Gain attributable to those assets and, thereafter, from a pro rata portion of the Company's other items of income and gain for the Fiscal Year. It is the intent of the parties hereto that any allocation pursuant to this Subsection shall constitute a "minimum gain chargeback" under Regulation Section 1.704-2(i)(4).

2.5.3. *Qualified Income Offset.* If a Member unexpectedly receives an adjustment, allocation, or distribution described in Regulation Section 1.704- 1(b)(2)(ii)(d)(4), (5), or (6), then to the extent required under Regulations Section 1.704- 1(b)(2)(d), such Member shall be allocated items of income and gain of the Company (consisting of a pro rata portion of each item of Company income, including gross income and gain for that Fiscal Year) before any other allocation is made of Company items for that Fiscal Year, in the amount and in proportions required to eliminate the Member's Adjusted Capital Account Deficit as quickly as possible. This Subsection is intended to comply with, and shall be interpreted consistently with, the "qualified income offset" provisions of the Regulations promulgated under Code Section 704(b).

2.5.4. *Nonrecourse Deductions.* Nonrecourse Deductions for a Fiscal Year or other period shall be allocated among the Members in proportion to their Percentage Interests.

2.5.5. *Member Nonrecourse Deductions.* Any Member Nonrecourse Deduction for any Fiscal Year or other period attributable to a Member Nonrecourse Liability shall be allocated to the Member who bears the risk of loss for the Member Nonrecourse Debt in accordance with Regulation Section 1.704-2(i).

2.5.6. *Regulatory Allocations.* The allocations contained in Section 2.5 are contained herein to comply with the Regulations under Section 704(b) of the Code. In allocating other items of Profit or Loss, the allocations contained in Section 2.5 shall be taken into account so that to the maximum extent

possible the net amount of Profit or Loss allocated to each Member will be equal to the amount that would have been allocated to each Member if the allocations contained in Section 2.4 had not been made.

2.6. *Varying Interests; Allocations in Respect to Transferred Interests.* Profits, Losses, and other items shall be calculated on a monthly, daily, or other basis permitted under Code Section 706 and the Regulations. If any Interest is sold, assigned, or transferred in compliance with the provisions of this Agreement, profits, losses, each item thereof, and all other items attributable to such Interest for such period shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the period in accordance with Code Section 706(d), using any conventions permitted by law and selected by the Company.

2.7. *Tax Matters Partner.* The Manager shall be the Company's tax matters partner ("Tax Matters Partner") unless the Members designate a different Person to serve in this capacity. The Tax Matters Partner shall have all powers and responsibilities provided in Code Section 6221, et seq. The Tax Matters Partner shall keep all Members informed of all notices from government taxing authorities which may come to the attention of the Tax Matters Partner. The Company shall pay and be responsible for all reasonable third-party costs and expenses incurred by the Tax Matters Partner in performing those duties. The Company shall be responsible for any costs incurred by any Member with respect to a tax audit or tax-related administrative or judicial proceeding against the Member. The Tax Matters Partner shall not compromise any dispute with the Internal Revenue Service without the approval of the Members.

2.8. *Returns and Other Elections.* The Manager shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business.

2.9. *Annual Accounting Period.* The annual accounting period of the Company shall be its Fiscal Year. The Company's Fiscal Year shall be selected by the Manager, subject to the requirements and limitations of the Code.

2.10. *Knowledge.* The Members acknowledge that they understand the economic and income tax consequences of the allocations and distributions under this Agreement and agree to be bound by the provisions of this **Exhibit B** in reporting their taxable income and loss from the Company.

2.11. *Amendment.* The Manager is hereby authorized, upon the advice of the Company's tax counsel, to amend this **Exhibit B** to comply with the Code and the Regulations promulgated under Code Section 704(b); provided, however, that no amendment shall materially affect the distributions to an Member without the Member's prior written consent.

EXHIBIT C

Formula For Determining an Appraiser to Determine the Purchase Price Of A Transferring Holder's Interest Pursuant To Section VII

When required pursuant to Section VII of this Agreement, the value of an Interest will be determined by a valuation professional accredited in business valuation by the AICPA or American Society of Appraisers ("Appraiser"). Such Appraiser shall be jointly selected by the Company and the Transferring Holder within fifteen (15) days after Manager's and the other Members' actual knowledge of the Transferring Holder's Transfer. The cost of the Appraiser shall be borne equally by the Company and the Transferring Holder. If a mutually satisfactory Appraiser cannot be selected, then the Company and the Transferring Holder each shall select and pay for its own Appraiser and the two Appraisers shall attempt to reconcile their valuations to arrive at a single valuation. If they are unable to do so, they shall jointly select a third Appraiser to value the Transferring Holder's Interest. The cost of the third Appraiser shall be borne equally by the Company and the Transferring Holder. The three Appraisers shall attempt to reconcile their valuations to arrive at a single valuation. If they are unable to do so, then the middle of the three appraisals shall be used as the valuation. The standard of value shall be fair market value.

If applicable, each party shall appoint its Appraiser within seven (7) days after the parties determine they cannot agree on a single Appraiser. The two Appraisers appointed shall select a third Appraiser within seven (7) days after they determine they cannot agree on a single valuation. The Appraisers shall be instructed to provide their valuations within thirty (30) days after their appointment.

EXHIBIT D

SPOUSAL CONSENT

I, James Stevens, being the spouse of Janiese Stevens hereby acknowledge that I have read and agree and consent to all of the terms and conditions of the foregoing Limited Liability Company Operating Agreement ("Agreement"). I understand that said Agreement may affect certain rights that I may have in the equity of Hibernation Holdings Company, LLC (the "Company"), held of record by my spouse, and that in the event of my spouse's death or the dissolution of our marriage or in certain other events, my spouse, the Company or the other members of the Company, as the case may be, may have the option under said Agreement to purchase from me any portion of the Interest in which I may have a marital property Interest, notwithstanding the provisions of any will, property settlement agreement, court order or decree of dissolution of marriage to the contrary.

Dated: 2/12/19



Signature
James Stevens
Print Name

EXHIBIT D

SPOUSAL CONSENT

I, Ratchanee Cogliamese, being the spouse of Daniel Cogliamese, hereby acknowledge that I have read and agree and consent to all of the terms and conditions of the foregoing Limited Liability Company Operating Agreement ("Agreement"). I understand that said Agreement may affect certain rights that I may have in the equity of Hibernation Holdings Company, LLC (the "Company"), held of record by my spouse, and that in the event of my spouse's death or the dissolution of our marriage or in certain other events, my spouse, the Company or the other members of the Company, as the case may be, may have the option under said Agreement to purchase from me any portion of the Interest in which I may have a marital property Interest, notwithstanding the provisions of any will, property settlement agreement, court order or decree of dissolution of marriage to the contrary.

Dated: 2-14-2019

Ratchanee Cogliamese
Signature

Ratchanee Cogliamese
Print Name

EXHIBIT D

SPOUSAL CONSENT

I, Lisa M Fellows, being the spouse of Robert Eric Fellows, hereby acknowledge that I have read and agree and consent to all of the terms and conditions of the foregoing Limited Liability Company Operating Agreement ("Agreement"). I understand that said Agreement may affect certain rights that I may have in the equity of Hibernation Holdings Company, LLC (the "Company"), held of record by my spouse, and that in the event of my spouse's death or the dissolution of our marriage or in certain other events, my spouse, the Company or the other members of the Company, as the case may be, may have the option under said Agreement to purchase from me any portion of the Interest in which I may have a marital property Interest, notwithstanding the provisions of any will, property settlement agreement, court order or decree of dissolution of marriage to the contrary.

Dated: 2/11/19



Signature

Lisa M. Fellows

Print Name



COR

**HIBERNATION HOLDING COMPANY, LLC
 RESOLUTION NUMBER: 0001**

**RESOLUTION OF HIBERNATION HOLDING COMPANY, LLC TO ASSUME THE
 MEMBERSHIP INTEREST OF DAN COGLIANESE**

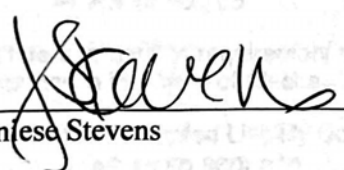
WHEREAS, upon a majority of Managers providing their written consent, Section 12.3 of the Operating Agreement of Hibernation Holding Company, LLC authorizes that unit holders may freely transfer their Units including full voting rights, if any, to any other Unit Holder.

WHEREAS, upon unanimous written consent pursuant to Section 12, Member Dan Coglianese has been removed as a Member of Hibernation Holding Company, LLC.

WHEREAS, Hibernation Holding Company, LLC seeks to assume the membership interest of Dan Coglianese. The membership shall be distributed to Janiese Stevens, Managing Member of Hibernation Holding Company, LLC.

THEREFORE, IT IS RESOLVED BY HIBERNATION HOLDING COMPANY, LLC AS FOLLOWS:

1. Dan Coglianese is hereby removed as Member of Hibernation Holding Company, LLC.
2. Dan Coglianese's membership interest is hereby distributed to managing member, Janiese Stevens.
3. This Resolution shall become effective immediately upon its passage.


 Janiese Stevens

DATE: 5/26/24

1.	Entity Name	Hibernation Holding Company, LLC
2.	Entity Number	10107965
3.	Entity Type	LLC

COMMERCIAL LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is entered into this 23rd Day of October, 2017

Between Alaska Loven It LLC ("Tenant")
and

Kachemak Properties LLC ("Landlord"),
an Alaska Limited Liability Company Landlord and Tenant agree as follows:

1. LEASE SUMMARY.

a. Leased Premises. The leased commercial real estate (the "Premises") are outlined on the site plan attached as Exhibit A located on the land legally described on attached Exhibit B, and is commonly known as a portion of property located at 2908 Kachemak Dr. Homer AK 99603. The building(s) ("Buildings"), the land upon which it is situated, all other improvements located on such land, and all common areas appurtenant to the Buildings as set forth on the site plan are referred to as the "Property".

b. Lease Commencement Date. The Lease is binding upon execution of this Lease but is to have commenced retroactively on the date Tenant first took leasehold control of the Premises after the date title to the Property was conveyed to Landlord, about (the "Commencement Date").

c. Lease Termination Date. The Lease shall terminate at midnight on 11/23/2022 (the "Termination Date"), and thereafter continue on a month to month basis until cancelled.

d. Monthly Rent. The monthly rent shall be \$ 10,000.00. Rent shall be payable at Landlord's address shown in Section 1.g. below, or such other place designated in writing by Landlord.

e. Security Deposit. There is no security deposit.

f. Permitted Use. The Premises shall be used only for the purposes of propagating, cultivating, harvesting, preparing, curing, packaging, storing, and labeling marijuana (as permitted in 3 AAC 306.405 of AMCO regulations) and for no other purpose without the prior written consent of Landlord.

g. Notice and Payment Addresses:

Landlord: 266 East Bayview Ave., Homer, AK 99603

Tenant: P.O. Box 1571, Homer, AK 99603

2. PREMISES. Landlord leases to Tenant, and Tenant leases from Landlord the Premises upon the terms specified in this Lease.





3. TERM.

- a. Commencement Date.** The Lease shall commence on the date specified in Section 1.b.
- b. Tenant Obligations.**

Landlord makes no representations or warranties to Tenant regarding the Premises, including the structural condition of the Premises and the condition of all mechanical, electrical, and other systems on the Premises. By signing this Lease, Tenant acknowledges that it has had adequate opportunity to investigate the Premises, acknowledges responsibility for making any corrections, alterations and repairs to the Premises, and acknowledges that the time needed to complete any such items shall not delay the Commencement Date.

4. RENT. Tenant shall pay Landlord without demand, deduction or offset, in lawful money of the United States, the monthly rental stated in Section 1.d. in advance on or before the first day of each month during the Lease Term beginning on the Commencement Date, and any other additional payments due to Landlord (hereafter the "Rent") when required under this Lease. Payments for any partial month at the beginning or end of the Lease term shall be prorated.

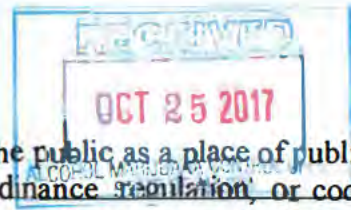
If any sums payable by Tenant to Landlord under this Lease are not received by the fifth (5th) day of each month, Tenant shall pay Landlord in addition to the amount due, for the cost of collecting and handling such late payment, an amount equal to the greater of \$50 or five percent (5%) of the delinquent amount. In addition, all delinquent sums payable by Tenant to Landlord and not paid within five days of the due date shall, at Landlord's option, bear interest at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by law, whichever is less. Interest on all delinquent amounts shall be calculated from the original due date to the date of payment.

Landlord's acceptance of less than the full amount of any payment due from Tenant shall not be deemed an accord and satisfaction or compromise of such payment unless Landlord specifically consents in writing to payment of such lesser sum as an accord and satisfaction or compromise of the amount which Landlord claims.

5. SECURITY DEPOSIT. There is no security deposit.

6. USES. The Premises shall be used only for the use(s) specified in Section 1.f. above (the "Permitted Use"), and for no other business or purpose without the prior written consent of Landlord. No act shall be done on or around the Premises that is unlawful or that will increase the existing rate of insurance on the Premises. Tenant shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance.

7. COMPLIANCE WITH LAWS. Tenant shall not cause or permit the Premises to be used in any way that violates any law, ordinance, or governmental regulation or order. Landlord represents to Tenant that, to the best of Landlord's knowledge, with the exception of any Tenant's Work, the Premises comply with all laws in existence as of the Commencement Date. Tenant shall be responsible for complying with all laws, now in existence or that may be hereafter implemented, applicable to the Premises, such as requirements by the Americans with Disabilities Act. Tenant shall be responsible for complying with all laws applicable to the Premises as a result of Tenant's particular use, such as modifications required by the Americans



With Disabilities Act as a result of Tenant opening the Premises to the public as a place of public accommodation. If the enactment or enforcement of any law, ordinance, regulation, or code during the Lease term requires any changes to the Premises during the Lease term, the Tenant shall perform all such changes at its expense if the changes are required due to the nature of Tenant's activities at the Premises, or to alterations that Tenant seeks to make to the Premises; otherwise, Landlord shall perform all such changes at its expense.

8. OPERATING COSTS. Tenant shall pay all of the Operating Costs of the Premises, other than real property taxes and casualty insurance, which shall be paid by the Landlord.

As used herein, "Operating Costs" paid by the Tenant shall mean all costs of operating, maintaining, and repairing the Premises and the Buildings determined in accordance with generally accepted accounting principles, and including without limitation the following: electricity and all other utility charges; janitorial and all other cleaning services; refuse and trash removal; refurbishing and repainting; carpet replacement; heating, ventilation and pest control; lighting systems, fire detection, landscape and driving surfaces maintenance; management (fees and/or personnel costs); amortization (in accordance with generally accepted accounting principles) of capital improvements as Landlord may in the future install to comply with governmental regulations and rules or undertaken in good faith with a reasonable expectation of reducing operating costs (the useful life of which shall be a reasonable period of time as determined by Landlord).

9. UTILITIES AND SERVICES. Tenant shall pay, at Tenant's sole expense, all utilities and other services that Tenant requires with respect to the Premises.

10. PERSONAL PROPERTY TAXES. Tenant shall pay all taxes, assessments, liens, and license fees ("Taxes") levied, assessed, or imposed by any authority having the direct or indirect power to tax or assess any such Taxes, by reason of Tenant's use of the Premises, and all Taxes on Tenant's personal property located on the Premises.

11. ALTERATIONS. Tenant may make alterations, additions, or improvements to the Premises, with the prior written consent of Landlord, which consent shall not be unreasonably withheld. The term "Alterations" shall not include the installation of shelves, movable partitions, Tenant's equipment, and trade fixtures, which may be performed without damaging existing improvements or the structural integrity of the Premises, and Landlord's consent shall not be required for Tenant's installation of those items. Tenant shall complete all Alterations at Tenant's expense in compliance with all applicable laws and in accordance with plans and specifications approved by Landlord, and using contractors approved by Landlord. Landlord shall be deemed the owner of all Alterations except for those which Landlord requires to be removed at the end of the Lease term. Tenant shall remove all Alterations at the end of the Lease term unless Landlord conditioned its consent upon Tenant leaving a specified Alteration at the Premises, in which case Tenant shall not remove such Alteration. Tenant shall immediately repair any damage to the Premises caused by removal of Alterations.

Proper permits must be obtained prior to the commencement of any Alterations. A

licensed, bonded contractor, who the Landlord has pre-approved, must perform any permitted Alterations. Any subcontractors working on Alterations must also be licensed and bonded, and pre-approved by the Landlord.

12. REPAIRS AND MAINTENANCE. Tenant shall, at its sole expense, maintain the Premises in good condition and promptly make all repairs and replacements, whether structural or non-structural, necessary to keep the Premises safe and in good condition, including all utilities, driving access surfaces, and other systems serving the Premises. Landlord shall maintain and repair the Buildings structure, foundation, exterior walls, and roof. If Tenant fails to maintain or repair the Premises, Landlord may enter the Premises and perform such repair or maintenance on behalf of Tenant. In such case, Tenant shall be obligated to pay to Landlord immediately upon receipt of demand for payment, as additional Rent, all costs incurred by Landlord. Notwithstanding anything in this Section to the contrary, Tenant shall not be responsible for any repairs to the Premises made necessary by the acts of Landlord or its agents, employees, contractors, or invitees therein. Tenant shall be responsible for maintaining the driving access surfaces and parking lot in good condition, the cost of which shall be at the Tenant's sole cost and expense.

Upon expiration of the Lease term, whether by lapse of time or otherwise, Tenant shall promptly and peacefully surrender the Premises, together with all keys, to Landlord in as good condition as when received by Tenant from Landlord or as thereafter improved, reasonable wear and tear and insured casualty excepted.

13. ACCESS AND RIGHT OF ENTRY. After at least 48 hours reasonable notice from Landlord (except in cases of emergency, where no notice is required), Tenant shall permit Landlord and its agents, employees, and contractors to enter the Premises at all reasonable times to make repairs, alterations, improvements, or inspections. This Section shall not impose any repair or other obligation upon Landlord not expressly stated elsewhere in this Lease. After reasonable notice to Tenant, Landlord shall have the right to enter the Premises for the purpose of showing the Premises to prospective purchasers or lenders at any time, and to prospective tenants within 180 days prior to the expiration or sooner termination of the Lease term.

14. DESTRUCTION.

a. Damage and Repair. If the Premises or the portion of the Property necessary for Tenant's occupancy are partially damaged but not rendered untenable, by fire or other insured casualty, then Landlord shall diligently restore the Premises and the portion of the Property necessary for Tenant's occupancy and this Lease shall not terminate; provided, however, Tenant may terminate the Lease if Landlord is unable to restore the Premises within six (6) months of the casualty event. The Premises or the portion of the Property necessary for Tenant's occupancy shall not be deemed untenable if less than twenty-five percent (25%) of each of those areas are damaged. Notwithstanding the foregoing, Landlord shall have no obligation to restore the Premises or the portion of the Property necessary for Tenant's occupancy if insurance proceeds are not available to pay the entire cost of such restoration. If insurance proceeds are available to Landlord but are not sufficient to pay the entire cost of restoration, then Landlord may elect to terminate this Lease and keep the insurance proceeds, by notifying Tenant within sixty (60) days of the date of such casualty.



If the Premises, the portion of the Property necessary for Tenant's occupancy, or 50% or more of the rentable area of the Property are entirely destroyed, or partially damaged and rendered untenantable, by fire or other casualty, Landlord may, at its option: (a) terminate this Lease as provided herein, or (b) restore the Premises and the portion of the Property necessary for Tenant's occupancy to their previous condition; provided, however, if such casualty event occurs during the last 6 months of the Lease term (after considering any option to extend the term timely exercised by Tenant) then either Tenant or Landlord may elect to terminate the Lease. If, within 60 days after receipt by Landlord from Tenant of written notice that Tenant deems the Premises or the portion of the Property necessary for Tenant's occupancy untenantable, Landlord fails to notify Tenant of its election to restore those areas, or if Landlord is unable to restore those areas within six (6) months of the date of the casualty event, then Tenant may elect to terminate the Lease.

b. If Landlord restores the Premises or the Property under this Section 16(a), Landlord shall proceed with reasonable diligence to complete the work, and the base Rent shall be abated in the same proportion as the untenantable portion of the Premises bears to the whole Premises, provided that there shall be a rent abatement only if the damage or destruction of the Premises or the Property did not result from, or was not contributed to directly or indirectly by the act, fault or neglect of Tenant, or Tenant's officers, contractors, licensees, agents, servants, employees, guests, invitees or visitors. Provided, Landlord complies with its obligations under this Section, no damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance directly, incidentally or consequentially arising from any repair or restoration of any portion of the Premises or the Property. Landlord will not carry insurance of any kind for the protection of Tenant or on Tenant's furniture or on any fixtures, equipment, improvements or appurtenances of Tenant under this Lease, and Landlord shall not be obligated to repair any damage thereto or replace the same unless the damage is caused by Landlord's negligence.

15. INSURANCE.

a. Liability Insurance. During the Lease term, Tenant shall pay for and maintain commercial general liability insurance with broad form property damage and contractual liability endorsements. This policy shall name Landlord as an additional insured, and shall insure Tenant's activities and those of Tenant's employees, officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors with respect to the Premises against loss, damage, or liability for personal injury or death or loss or damage to property with a combined single limit of not less than \$1,000,000, and a deductible of not more than \$5,000. The insurance will be primary and non-contributory with any liability insurance carried by Landlord.

b. Tenant Insurance. During the Lease term, Tenant shall pay for and maintain replacement cost fire and extended coverage insurance, with vandalism and malicious mischief, sprinkler leakage and earthquake endorsements, in an amount sufficient to cover not less than 100% of the full replacement cost, as the same may exist from time to time, of all of Tenant's personal property, fixtures, equipment and tenant improvements.

c. Miscellaneous. Insurance required under this Section shall be with companies rated A-V or better in Best's Insurance Guide, and which are authorized to transact business in the State



of Alaska. No insurance policy shall be cancelled or reduced in coverage and each such policy shall provide that it is not subject to cancellation or a reduction in coverage, except after thirty (30) days' prior written notice to Landlord. Tenant shall deliver to Landlord upon commencement of the Lease and from time to time thereafter, copies or certificates of the insurance policies required by this Section. In no event shall the limit of such policies be considered as limiting the liability of Tenant under this Lease.

d. Landlord Insurance. Landlord shall carry special form extended coverage fire insurance of the building shell and core in the amount of their full replacement value, and such other insurance of such types and amounts as Landlord, in its discretion, shall deem reasonably appropriate.

e. Waiver of Subrogation. Landlord and Tenant hereby release each other and any other tenant, their agents or employees, from responsibility for, and waive their entire claim of recovery for any loss or damage arising from any cause covered by insurance required to be carried by each of them. Each party shall provide notice to the insurance carrier or carriers of this mutual waiver of subrogation, and shall cause its respective insurance carriers to waive all rights of subrogation against the other. This waiver shall not apply to the extent of the deductible amounts to any such policies or to the extent of liabilities exceeding the limits of such policies.

16. INDEMNIFICATION. Tenant shall defend, indemnify, and hold Landlord harmless against all liabilities, damages, costs, and expenses, including attorneys' fees, arising from any negligent or wrongful act or omission of Tenant or Tenant's officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors on or around the Premises as a result of any act, omission, or negligence of Tenant, or Tenant's officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors, or arising from any breach of this Lease by Tenant.

17. ASSIGNMENT AND SUBLETTING. Tenant shall not assign, sublet, mortgage, encumber, or otherwise transfer any interest in this Lease (collectively referred to as a "Transfer") or any part of the Premises, without first obtaining Landlord's written consent. No Transfer shall relieve Tenant of any liability under this Lease notwithstanding Landlord's consent to such Transfer. Consent to any Transfer shall not operate as a waiver of the necessity for Landlord's consent to any subsequent Transfer.

If Tenant is a partnership, limited liability company, corporation, or other entity, any transfer of this Lease by merger, consolidation, redemption or liquidation, or any change(s) in the ownership of, or power to vote, which singularly or collectively represents a majority of the beneficial interest in Tenant, shall constitute a Transfer under this Section.

As a condition to Landlord's approval, if given, any potential assignee or sublessee otherwise approved by Landlord shall assume all obligations of Tenant under this Lease and shall be jointly and severally liable with Tenant and any guarantor, if required, for the payment of Rent and performance of all terms of this Lease. In connection with any Transfer, Tenant shall provide Landlord with copies of all assignments, subleases, and assumption instruments. Landlord shall approve all agreements for Tenant's rent, assignment, or sublease of any part of





the Premises.

18. LIENS. Tenant shall keep the Premises free from any liens created by or through Tenant. Tenant shall indemnify and hold Landlord harmless from liability for any such liens including, without limitation, liens arising from any Alterations. If a lien is filed against the Premises by any person claiming by, through or under Tenant, Tenant shall, upon request of Landlord, at Tenant's expense, immediately furnish to Landlord a bond in form and amount and issued by a surety satisfactory to Landlord, indemnifying Landlord and the Premises against all liabilities, costs and expenses, including attorneys' fees, which Landlord could reasonably incur as a result of such lien(s).

19. DEFAULT. The following occurrences shall each be deemed an Event of Default by Tenant:

a. **Failure To Pay.** Tenant fails to pay any sum, including Rent, due under this Lease following five (5) days written notice from Landlord of the failure to pay.

b. **Vacation/Abandonment.** Tenant vacates the Premises (defined as an absence for at least 15 consecutive days without prior notice to Landlord), or Tenant abandons the Premises (defined as an absence of five (5) days or more while Tenant is in breach of some other term of this Lease). Tenant's vacation or abandonment of the Premises shall not be subject to any notice or right to cure.

c. **Insolvency.** Tenant becomes insolvent, voluntarily or involuntarily bankrupt, or a receiver, assignee, or other liquidating officer is appointed for Tenant's business, provided that in the event of any involuntary bankruptcy or other insolvency proceeding, the existence of such proceeding shall constitute an Event of Default only if such proceeding is not dismissed or vacated within 30 days after its institution or commencement.

d. **Levy or Execution.** Tenant's interest in this Lease or the Premises, or any part thereof, is taken by execution or other process of law directed against Tenant, or is taken upon or subjected to any attachment by any creditor of Tenant, if such attachment is not discharged within 15 days after being levied.

e. **Other Non-Monetary Defaults.** Tenant breaches any agreement, term, or covenant of this Lease other than one requiring the payment of money and not otherwise enumerated in this Section, and the breach continues for a period of 30 days after notice by Landlord to Tenant of the breach.

f. **Failure to Take Possession.** Tenant fails to take possession of the Premises on the Commencement Date.

20. REMEDIES. Landlord shall have the following remedies upon an Event of Default. Landlord's rights and remedies under this Lease shall be cumulative, and none shall exclude any other right or remedy allowed by law.

a. **Termination of Lease.** Landlord may terminate Tenant's interest under the Lease, but

no act by Landlord other than written notice of termination from Landlord to Tenant shall terminate this Lease. The Lease shall terminate on the date specified in the notice of termination. Upon termination of this Lease, Tenant will remain liable to Landlord for damages in an amount equal to the rent and other sums that would have been owing by Tenant under this Lease for the balance of the Lease term, less the net proceeds, if any, of any re-letting of the Premises by Landlord subsequent to the termination, after deducting all Landlord's Reletting Expenses (as defined below). Landlord shall be entitled to either collect damages from Tenant monthly on the days on which rent or other amounts would have been payable under the Lease, or alternatively, Landlord may accelerate Tenant's obligations under the Lease and recover from Tenant: (i) unpaid rent which had been earned at the time of termination; (ii) the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of rent loss that Tenant proves could reasonably have been avoided; (iii) the amount by which the unpaid rent for the balance of the term of the Lease after the time of award exceeds the amount of rent loss that Tenant proves could reasonably be avoided (discounting such amount by the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1%); and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease, or which in the ordinary course would be likely to result from the Event of Default, including without limitation Reletting Expenses described in Section 20.b.

b. Re-Entry and Reletting. Landlord may continue this Lease in full force and effect, and without demand or notice, re-enter and take possession of the Premises or any part thereof, expel the Tenant from the Premises and anyone claiming through or under the Tenant, and remove the personal property of either. Landlord may relet the Premises, or any part of them, in Landlord's or Tenant's name for the account of Tenant, for such period of time and at such other terms and conditions, as Landlord, in its discretion, may determine. Landlord may collect and receive the rents for the Premises. Re-entry or taking possession of the Premises by Landlord under this Section shall not be construed as an election on Landlord's part to terminate this Lease, unless a written notice of termination is given to Tenant. Landlord reserves the right following any re-entry or reletting, or both, under this Section to exercise its right to terminate the Lease. Tenant will pay Landlord the rent and other sums which would be payable under this Lease if repossession had not occurred, plus the net proceeds, if any, after reletting the Premises, after deducting Landlord's Reletting Expenses. "Reletting Expenses" is defined to include all expenses incurred by Landlord in connection with reletting the Premises, including without limitation, all repossession costs, brokerage commissions, attorneys' fees, remodeling and repair costs, costs for removing and storing Tenant's property and equipment, and tenant improvements and rent concessions granted by Landlord to any new Tenant, prorated over the life of the new lease.

c. Waiver of Redemption Rights. Tenant, for itself, and on behalf of any and all persons claiming through or under Tenant, including creditors of all kinds, hereby waives and surrenders all rights and privileges which they may have under any present or future law, to redeem the Premises or to have a continuance of this Lease for the Lease term, as it may have been extended.

d. Nonpayment of Additional Rent. All costs which Tenant agrees to pay to Landlord pursuant to this Lease shall in the event of nonpayment be treated as if they were payments of



Rent, and Landlord shall have all the rights herein provided for in case of nonpayment of Rent.

- e. **Failure to Remove Property.** If Tenant fails to remove any of its property from the Premises at Landlord's request following an uncured Event of Default, Landlord may, at its option, remove and store the property at Tenant's expense and risk. The Landlord may not take possession of or remove marijuana from the premises, and AMCO notified no later than 24 hours in this event. Marijuana can only be sold by regulated businesses and Landlord by law will not be permitted to sell marijuana to the public or remove from the property unless directed by AMCO. If Tenant does not pay the storage cost within five (5) days of Landlord's request, Landlord may, at its option, have any property (to exclude marijuana as it is regulated by law) sold at public or private sale (and Landlord may become a purchaser at such sale), in such manner as Landlord deems proper, without notice to Tenant. Landlord shall apply the proceeds of such sale: (i) to the expense of such sale, including reasonable attorneys' fees actually incurred; (ii) to the payment of the costs or charges for storing such property; (iii) to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the terms hereof; and (iv) the balance, if any, to Tenant. Nothing in this Section shall limit Landlord's right to sell Tenant's personal property as permitted by law or to foreclose Landlord's lien for unpaid rent.

21. MORTGAGE SUBORDINATION AND ATTORNMENT. This Lease shall automatically be subordinate to any mortgage or deed of trust created by Landlord, which is now existing or hereafter placed upon the Premises, including any advances, interest, modifications, renewals, replacements, or extensions ("Landlord's Mortgage"), provided the holder of any Landlord's Mortgage or any person(s) acquiring the Premises at any sale or other proceeding under any such Landlord's Mortgage shall elect to continue this Lease in full force and effect. Tenant shall attorn to the holder of any Landlord's Mortgage or any person(s) acquiring the Premises at any sale or other proceeding under any Landlord's Mortgage provided such person(s) assume the obligations of Landlord under this Lease. Tenant shall promptly and in no event later than fifteen (15) days after request execute, acknowledge and deliver documents which the holder of any Landlord's Mortgage may reasonably require as further evidence of this subordination and attornment. Notwithstanding the foregoing, Tenant's obligations under this Section are conditioned on the holder of each Landlord's Mortgage and each person acquiring the Premises at any sale or other proceeding under any such Landlord's Mortgage not disturbing Tenant's occupancy and other rights under this Lease, so long as no uncured Event of Default exists.

22. NON-WAIVER. Landlord's waiver of any breach of any term contained in this Lease shall not be deemed to be a waiver of the same term for subsequent acts of Tenant. The acceptance by Landlord of Rent or other amounts due by Tenant hereunder shall not be deemed to be a waiver of any breach by Tenant preceding such acceptance.

23. HOLDOVER. If Tenant shall, without the written consent of Landlord, hold over after the expiration or termination of the Term, such tenancy shall be deemed to be on a month-to-month



basis and may be terminated according to Alaska law.

24. NOTICES. All notices under this Lease shall be in writing and effective (i) when delivered in person, (ii) three (3) days after being sent by registered or certified mail to Landlord or Tenant, as the case may be, at the Notice Addresses set forth in Section 1(h); or (iii) upon confirmed transmission by facsimile to such persons at the facsimile numbers set forth in Section 1(h) or such other addresses/facsimile numbers as may from time to time be designated by such parties in writing.

25. COSTS AND ATTORNEYS' FEES. If Tenant or Landlord engage the services of an attorney to collect monies due or to bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent or other payments, or possession of the Premises, the losing party shall pay the prevailing party a reasonable sum for attorneys' fees in such suit, in mediation or arbitration, at trial and on appeal.

26. ESTOPPEL CERTIFICATES. Tenant shall, from time to time, upon written request of Landlord, execute, acknowledge and deliver to Landlord or its designee a written statement specifying the following, subject to any modifications necessary to make such statements true and complete: (i) the date the Lease term commenced and the date it expires; (ii) the amount of minimum monthly Rent and the date to which such Rent has been paid; (iii) that this Lease is in full force and effect and has not been assigned, modified, supplemented, or amended in any way; (iv) that this Lease represents the entire agreement between the parties; (v) that all conditions under this Lease to be performed by Landlord have been satisfied; (vi) that there are no existing claims, defenses, or offsets that the Tenant has against the enforcement of this Lease by Landlord; (vii) that no Rent has been paid more than one month in advance; and (viii) that no security has been deposited with Landlord (or, if so, the amount thereof). Any such statement delivered pursuant to this Section may be relied upon by a prospective purchaser of Landlord's interest or assignee of any mortgage or new mortgagee of Landlord's interest in the Premises. If Tenant shall fail to respond within ten (10) days of receipt by Tenant of a written request by Landlord as herein provided, Tenant shall be deemed to have given such certificate as above provided without modification and shall be deemed to have admitted the accuracy of any information supplied by Landlord to a prospective purchaser or mortgagee.

27. TRANSFER OF LANDLORD'S INTEREST. This Lease shall be assignable by Landlord without the consent of Tenant. In the event of any transfer or transfers of Landlord's interest in the Premises, other than a transfer for security purposes only, upon the assumption of this Lease by the transferee, Landlord shall be automatically relieved of obligations and liabilities accruing from and after the date of such transfer, except for any retained security deposit or prepaid rent, and Tenant shall attorn to the transferee.

28. RIGHT TO PERFORM. If Tenant shall fail to timely pay any sum or perform any other act on its part to be performed hereunder, Landlord may make any such payment or perform any such other act on Tenant's part to be made or performed as provided in this Lease. Tenant shall, on demand, reimburse Landlord for its expenses incurred in making such payment or performance. Landlord shall (in addition to any other right or remedy of Landlord provided by law) have the same rights and remedies in the event of the nonpayment of sums due under this

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STATE OF ALASKA

Section as in the case of default by Tenant in the payment of Rent.

29. QUIET ENJOYMENT. So long as Tenant pays the Rent and performs all of its obligations in this Lease, Tenant's possession of the Premises will not be disturbed by Landlord or anyone claiming by, through or under Landlord, or by the holders of any Landlord's Mortgage or any successor thereto.

30. RIGHT OF ENTRY. Landlord and its agents, employees and contractors shall have the right to enter the Premises at reasonable times with forty-eight (48) hours notice for inspection, to make repairs, alterations, and improvements, to show the Premises to prospective purchasers and, within six (6) months prior to the expiration of the Lease term, to show the Premises to prospective tenants.

31. GENERAL.

a. Heirs and Assigns. This Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns.

b. Brokers' Fees. Tenant represents and warrants to Landlord that it has not engaged any broker, finder, or other person, who would be entitled to any commission or fees for the negotiation, execution, or delivery of this Lease other than as disclosed elsewhere in this Lease. Tenant shall indemnify and hold Landlord harmless against any loss, cost, liability, or expense incurred by Landlord as a result of any claim asserted by any such broker, finder, or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Tenant. This subparagraph shall not apply to brokers with whom Landlord has an express written brokerage agreement.

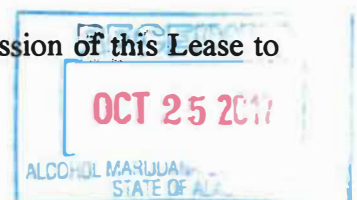
c. Entire Agreement. This Lease contains all of the covenants and agreements between Landlord and Tenant relating to the Premises. No prior or contemporaneous agreements or understanding pertaining to the Lease shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified, or added to except in writing signed by Landlord and Tenant.

d. Severability. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Lease.

e. Force Majeure. Time periods for either party's performance under any provisions of this Lease (excluding payment of Rent) shall be extended for periods of time during which the party's performance is prevented due to circumstances beyond such party's control, including without limitation, fires, floods, earthquakes, lockouts, strikes, embargoes, governmental regulations, acts of God, public enemy, war or other strife.

f. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Alaska.

g. Submission of Lease Form Not an Offer. One party's submission of this Lease to



the other for review shall not constitute an offer to lease the Premises. This Lease shall not become effective and binding upon Landlord and Tenant until it has been fully signed by both Landlord and Tenant.

h. No Light, Air or View Easement. Tenant has not been granted an easement or other right for light, air or view to or from the Premises. Any diminution or shutting off of light, air or view by any structure which may be erected on or adjacent to the Building shall in no way affect this Lease or the obligations of Tenant hereunder or impose any liability on Landlord.

i. Authority of Parties. Any individual signing this Lease on behalf of an entity represents and warrants to the other that such individual has authority to do so and, upon such individual's execution, that this Lease shall be binding upon and enforceable against the party on behalf of whom such individual is signing.

32. EXHIBITS AND RIDERS. The following exhibits and riders are made a part of this Lease. Any riders shall be effective only upon being initialed by the parties and attached to the Lease. Capitalized terms used in the Riders have the meanings given to them in the Lease.

- Exhibit A. Site Plan
- Exhibit B. Legal Description

33. AGENCY DISCLOSURE. At the signing of this Lease the neither party was represented by an agent.

IN WITNESS WHEREOF this Lease has been executed the date and year first above written.

LANDLORD:

Lorraine B. Fellows

TENANT:

[Handwritten Signature]

By: _____



STATE OF ALASKA)
) ss.
COUNTY OF Kenai
peninsula

I certify that I know or have satisfactory evidence that Daniel Coglianesse, Owner of Alaska Loven It LLC, is the person who appeared before me and said person acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: October 23, 2017



Printed Name: Brittany M. Williams
NOTARY PUBLIC in and for the
State of Alaska, residing at
88 Sterling Hwy Homer Alaska
My Commission expires: 08/04/2020
Brittany m. Williams

STATE OF ALASKA)
) ss.
COUNTY OF Kenai
peninsula

I certify that I know or have satisfactory evidence that Latrina Fellows is the person who appeared before me and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument as the member of Kachemak Properties LLC and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: October 23, 2017



Printed Name: Brittany M. Williams
NOTARY PUBLIC in and for the State
of Alaska, residing at 88 Sterling Hwy Homer
Alaska
My Commission expires: 08/04/2020
Brittany m. Williams

EXHIBIT A.

SITE PLAN

The Premises consist of the 20' x 30' office building and 50' x 100' shop building, and ingress and egress thereto, located on the Site Plan attached hereto.



EXHIBIT B. – LEGAL

DESCRIPTION

T 6S R 13W SEC 22 Seward Meridian HM 0850130 LAMPERT LAKE SUB NO 2 LOT 2A

Kenai Peninsula Borough
State of Alaska.

Tax Parcel Number 17936023





City of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

491 East Pioneer Avenue
Homer, Alaska 99603

clerk@cityofhomer-ak.gov

(p) 907-235-3130

(f) 907-235-3143

Memorandum

TO: MELISSA JACOBSEN, MMC, CITY CLERK

CC: LISA LINEGAR, COMMUNICATIONS SUPERVISOR

FROM: RYAN BROWNING, LIEUTENANT HOMER POLICE

DATE: MARCH 24, 2023

SUBJECT: MARIJUANA LICENSE RENEWAL ALASKA LOVEN IT, LLC STANDARD MARIJUANA CULTIVATION FACILITY

The Homer Police Department does not object to the Alcohol and Marijuana Control Office of a standard marijuana cultivation facility renewal application within the City of Homer for the following business:

Type: Standard Marijuana Cultivation Facility
Lic #: 12833
DBA Name: Wildflower Farms
Service Location: 2908 Kachemak Drive, Homer, Alaska
Licensee: Alaska Loven It, LLC
Designated Licensee: Janiese Stevens
Mailing Address: PO Box 1571, Homer, AK 99603

Lt Ryan Browning



City of Homer

www.cityofhomer-ak.gov

Planning

491 East Pioneer Avenue
Homer, Alaska 99603

Planning@ci.homer.ak.us

(p) 907-235-3106

(f) 907-235-3118

MEMORANDUM

TO: MAYOR CASTNER AND HOMER CITY COUNCIL
THROUGH: ROB DUMOUCHEL, CITY MANAGER
FROM: RICK ABOUD, AICP, CITY PLANNER
DATE: MARCH 28, 2023
SUBJECT: ALASKA LOVEN IT, LLC STANDARD MARIJUANA
CULTIVATION FACILITY LICENSE RENEWAL

I have received and reviewed the renewal application for Alaska Loven It marijuana cultivation facility, License number 12833, located at 2908 Kachemak Drive, Homer, AK.

I have no objection to the application on zoning related issues.



Office of the Borough Clerk

144 North Binkley Street, Soldotna, Alaska 99669 • (907) 714-2160 • (907) 714-2388 Fax

Michele Turner, CMC
Acting Borough Clerk

March 22, 2023

Sent via email: clerk@ci.homer.ak.us

City of Homer Clerk
Homer City Hall

RE: Renewal Application for Standard Marijuana Cultivation Facility

Business Name : Wildflower Farms
License Location : Homer/2908 Kachemak Drive, Homer, AK 99603
License No. : 12833

Dear Ms. Jacobsen,

This serves to advise that the Kenai Peninsula Borough (KPB) has reviewed the above referenced application and has no objection to the issuance of the license.

Should you have any questions, or need additional information, please don't hesitate to let us know.

Sincerely,

Michele Turner, CMC
Acting Borough Clerk

cc: jstevens@ak.net

MT/jr



AGENDA ITEM REPORT

Ordinance 23-17, An Ordinance of the City Council of Homer, Alaska Amending Homer City Code 19.08.110 Disposition of Revenues, to Deposit all Revenue from Fees Paid for Parking or Camping in City Campgrounds Located on the Homer Spit to the Port Operating Fund. City Manager.

Item Type: Ordinance
Prepared For: Mayor Castner and Homer City Council
Meeting Date: 10 April 2023
From: Bryan Hawkins, Port Director
Through: Rob Dumouchel, City Manager

Working with the City Manager, Public Works, and Port and Harbor staff, we have come up with a plan for Port and Harbor to assume the responsibilities of campground management this season. The leading factors behind this move include: that the Port has a good working relationship with the company that supplies the machines we use at the pay stations, we have a very solid cash-handling program, and by code we have the ability to write citations for parking and camping violations. Utilizing port seasonal parking officers to help with enforcement of both parking and campground areas will alleviate some of the burden for HPD, who would previously have been called out for issuance of any camping citations/violations.

Management will consist of working with the campground hosts, making regular patrols, confirming payment, and when necessary writing citations for nonpayment. Our Admin staff will process all the sales receipts and cash through our office and of course work with the customers that choose to call with questions or come to our counter.

Given that we were already planning on expanding fee pay parking on the spit and taking over the enforcement responsibilities for Airport parking this summer, with the addition of all the campgrounds we have determined that in order to have adequate enforcement in the field we will need to add two additional parking enforcement officers to the team. That will give us a total of four, which we believe will be adequate for seven-day coverage for parking and camping spit wide. We will also be taking on a seasonal summer admin staff member to assist with processing the extra deposit revenue collections and assist with fielding public inquiries and answering questions about the program. Existing budgeted summer Harbor Assistant staff will help with grounds keeping maintenance duties for the campgrounds as the wider program develops. This will consist of cleaning the fire rings, cleaning and or repairing picnic tables, making sure portable restrooms are serviced, emptying the trash barrels, and trash pickup around the facility. Public works custodial staff will be keeping their current schedule for bathrooms maintenance.

The revenues from campgrounds will offset operating costs, and if managed efficiently, may become a new revenue for the port. New revenues are going to be needed to help offset the local costs for our harbor float

recapitalization program and we are looking at parking and campgrounds to help fund those improvements. In the past, vessel owners and moorage within the harbor have shouldered a significant portion of the expenditures for improvements and services in both the harbor basin and uplands areas of the port facility. We are looking to distribute costs for services in a more balanced way between all user groups of the Port. Parking fees for day use will be increasing from \$5 per calendar day to \$10 and we're recommending that camping increase from \$20 to \$30 per day to make them equivalent to similar services offered in private camping areas in Homer and nearby cities like Seward.

Recommendation

Introduce Ordinance 23-17 and schedule Public Hearing and Second Reading for April 27, 2023.

Fiscal Notes:

- Total of budget amendment to bridge 3 months of new seasonal expenditures to get to July 1, 2023
FY24 budget = \$36,436.64
- Campgrounds revenues will be directed to the Port Enterprise fund. Future revenues unknown, but FY2023 budget estimates \$60,000 expected in between April 1 and June 30, 2023, and \$170,000 for the season as a whole.

Attachment

Ordinance 23-17

1 CITY OF HOMER
2 HOMER, ALASKA

City Manager

3
4 ORDINANCE 23-17

5
6 AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA
7 AMENDING HOMER CITY CODE 19.08.110 DISPOSITION OF
8 REVENUES. TO DEPOSIT ALL REVENUE FROM FEES PAID FOR
9 PARKING OR CAMPING IN CITY CAMPGROUNDS LOCATED ON THE
10 HOMER SPIT TO THE PORT OPERATIONS FUND.

11
12 WHEREAS, In March of 2023 the City shifted the spit campground fee collection and
13 enforcement duties to fall under the port and harbor department's existing parking fee
14 collection and enforcement program for: streamlined efficiency, better utilization of staff time,
15 clear and precise process, and improved customer service; and

16
17 WHEREAS, To support these services, all revenue from fees paid for parking or camping
18 at spit campgrounds shall be deposited into the Port Operations Fund.

19
20 NOW, THEREFORE, The City of Homer Ordains:

21
22 Section 1. Homer City Code Section 19.08.110 Disposition of revenues. Is hereby
23 amended as follows:

24
25 19.08.110 Disposition of revenues.

26
27 All revenue from fees paid for parking or camping **on the Homer Spit** shall be deposited
28 in to the ~~general fund~~ **port operations fund** or disposed of in accordance with the terms of the
29 contract with the concessionaire for parking and/or camping on City-owned or City-controlled
30 campgrounds.

31
32 Section 2. This ordinance is of a permanent and general character and shall be included
33 in Homer City Code.

34
35 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this ____ day of _____,
36 2021.

37
38 CITY OF HOMER

39
40
41 _____
42 KEN CASTNER, MAYOR

43 ATTEST:

44

45 _____

46 MELISSA JACOBSEN, MMC, CITY CLERK

47

48 YES:

49 NO:

50 ABSTAIN:

51 ABSENT:

52

53 First Reading:

54 Public Hearing:

55 Second Reading:

56 Effective Date:



AGENDA ITEM REPORT

Ordinance 23-18, An Ordinance of the City Council of Homer, Alaska Amending the FY23 Capital Budget by Adding Expected Campground Revenues in the Amount of \$60,000 and Amending Port Expenditures in the Amount of \$36,436.64 for the Purpose of Seasonal Staff and Campground Support. City Manager/Port Director.

Item Type: Ordinance
Prepared For: Mayor Castner and Homer City Council
Meeting Date: 10 April 2023
From: Bryan Hawkins, Port Director
Through: Rob Dumouchel, City Manager

Working with the City Manager, Public Works, and Port and Harbor staff, we have come up with a plan for Port and Harbor to assume the responsibilities of campground management this season. The leading factors behind this move include: that the Port has a good working relationship with the company that supplies the machines we use at the pay stations, we have a very solid cash-handling program, and by code we have the ability to write citations for parking and camping violations. Utilizing port seasonal parking officers to help with enforcement of both parking and campground areas will alleviate some of the burden for HPD, who would previously have been called out for issuance of any camping citations/violations.

Management will consist of working with the campground hosts, making regular patrols, confirming payment, and when necessary writing citations for nonpayment. Our Admin staff will process all the sales receipts and cash through our office and of course work with the customers that choose to call with questions or come to our counter.

Given that we were already planning on expanding fee pay parking on the spit and taking over the enforcement responsibilities for Airport parking this summer, with the addition of all the campgrounds we have determined that in order to have adequate enforcement in the field we will need to add two additional parking enforcement officers to the team. That will give us a total of four, which we believe will be adequate for seven-day coverage for parking and camping spit wide. We will also be taking on a seasonal summer admin staff member to assist with processing the extra deposit revenue collections and assist with fielding public inquiries and answering questions about the program. Existing budgeted summer Harbor Assistant staff will help with grounds keeping maintenance duties for the campgrounds as the wider program develops. This will consist of cleaning the fire rings, cleaning and or repairing picnic tables, making sure portable restrooms are serviced, emptying the trash barrels, and trash pickup around the facility. Public works custodial staff will be keeping their current schedule for bathrooms maintenance.

The revenues from campgrounds will offset operating costs, and if managed efficiently, may become a new revenue for the port. New revenues are going to be needed to help offset the local costs for our harbor float

recapitalization program and we are looking at parking and campgrounds to help fund those improvements. In the past, vessel owners and moorage within the harbor have shouldered a significant portion of the expenditures for improvements and services in both the harbor basin and uplands areas of the port facility. We are looking to distribute costs for services in a more balanced way between all user groups of the Port. Parking fees for day use will be increasing from \$5 per calendar day to \$10 and we're recommending that camping increase from \$20 to \$30 per day to make them equivalent to similar services offered in private camping areas in Homer and nearby cities like Seward.

Recommendation

Introduce Ordinance 23-18 and schedule Public Hearing and Second Reading for April 27, 2023.

Fiscal Notes:

- Total of budget amendment to bridge 3 months of new seasonal expenditures to get to July 1, 2023
FY24 budget = \$36,436.64
- Campgrounds revenues will be directed to the Port Enterprise fund. Future revenues unknown, but FY2023 budget estimates \$60,000 expected in between April 1 and June 30, 2023, and \$170,000 for the season as a whole.

Attachment:

Ordinance 23-18

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

3 City Manager/
4 Port Director

5 **ORDINANCE 23-18**

6
7 AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA,
8 AMENDING THE FY23 OPERATING BUDGET TO PROVIDE FOR
9 NECESSARY ADJUSTMENTS CONNECTED TO THE REDIRECTION
10 OF CAMPGROUND REVENUES IN THE AMOUNT OF \$60,000 FROM
11 THE GENERAL FUND TO THE PORT OPERATIONS FUND.
12

13 WHEREAS, In March of 2023 the City shifted the city campground fee collection and
14 enforcement duties to fall under the port and harbor department's existing parking fee
15 collection and enforcement program for: streamlined efficiency, better utilization of staff time,
16 clear and precise revenue tracking process, and better customer service; and
17

18 WHEREAS, The campgrounds are scheduled to open on April 1st per HHC 19.08.020, with
19 its resulting operations and staffing expenditures, yet the next fiscal year begins July 1, 2023;
20 and
21

22 WHEREAS, Campground management shifting to the Port has resulted in additional
23 port staffing and operations costs unaccounted for in the current FY23 budget; and
24

25 WHEREAS, All revenues from campgrounds collected on or after April 1, 2023 shall be
26 deposited into the Port Operations Fund, which is estimated to be approximately \$60,000 for
27 the remainder of FY23.
28

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

31 Section 1. The Homer City Council hereby amends the FY23 Operating Budget for the
32 General Fund by decreasing revenues and expenditures by \$60,000 as follows:
33

34 **Revenue:**

<u>Account</u>	<u>Description</u>	<u>Original</u>	<u>Amended</u>
100-0035-4608	City Campgrounds	\$170,294	\$110,294

37
38 **Expenditure:**

<u>Account</u>	<u>Description</u>	<u>Original</u>	<u>Amended</u>
100-0120-5101	Salary and Wages	\$540,592	\$506,038
100-0120-5102	Fringe Benefits	\$299,714	\$274,268

43 Section 2. The Homer City Council hereby amends the FY23 Operating Budget for the
44 Port Operations Fund by increasing revenues and expenditures by \$60,000 as follows:

45
46 **Revenue:**

<u>Account</u>	<u>Description</u>	<u>Original</u>	<u>Amended</u>
48 400-0601-4xxx	Spit Camping	\$0	\$60,000

49
50 **Expenditure:**

<u>Account:</u>	<u>Description</u>	<u>Original</u>	<u>Amended</u>
52 400-0600-5103	Admin 1	\$2,848	\$13,183
53 400-0601-5103	Part Time Wages	\$89,594	\$111,296
54 400-0601-5638	Campground T2 s	\$15,500	\$19,900
55 400-0600-5990	Transfer to Reserves	\$1,023,675	\$1,047,238

56
57 Section 3. This is a budget amendment ordinance only, is not permanent in nature, and
58 shall not be codified.

59
60 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this ___ day of _____,
61 2023.

62
63 CITY OF HOMER

64
65 _____
66 KEN CASTNER, MAYOR

67 ATTEST:

68
69 _____
70 MELISSA JACOBSEN, MMC, CITY CLERK

71
72 YES:

73 NO:

74 ABSTAIN:

75 ABSENT:

76
77 First Reading:

78 Public Hearing:

79 Second Reading:

80 Effective Date:



AGENDA ITEM REPORT

Ordinance 23-19, An Ordinance of the City Council of Homer, Alaska Amending the FY23 Capital Budget by Authorizing a Transfer of \$144,360 from the Port Capital Projects Fund to the Port Reserves Fund to Establish a Dedicated Reserve for Required Maintenance or Repairs of the United States Coast Guard Cutter Berth Space. City Manager/Finance Director.

Item Type: Ordinance 23-19
Prepared For: Mayor Castner and Homer City Council
Meeting Date: 10 April 2023
From: Melissa Jacobsen, MMC, City Clerk

The US Coast Guard leases berth space on the west side of the Pioneer Dock for mooring. As part of their priority use agreement a portion of their lease payment is set aside in a separate city account to be used for required maintenance or repairs of their berth space.

Previously these funds have been held in the Port Capital Project fund but it has been determined the Port Reserves fund is the appropriate place to hold these funds.

This ordinance accomplishes a new dedicated reserve for transparent accounting of the monthly lease payments from the US Coast Guard and maintenance or repair activity of their berth space.

Recommendation:

Introduce Ordinance 23-19 and schedule Public Hearing and Second Reading for April 27, 2023.

Attachment:

Ordinance 23-19

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

3 City Manager/Finance Director

4 **ORDINANCE 23-19**

5
6 AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA,
7 AMENDING THE FY23 CAPITAL BUDGET BY AUTHORIZING A
8 TRANSFER OF \$144,360 FROM THE PORT CAPITAL PROJECTS
9 FUND TO THE PORT RESERVES FUND TO ESTABLISH A DEDICATED
10 RESERVE FOR REQUIRED MAINTENANCE OR REPAIRS OF THE
11 UNITED STATES COAST GUARD CUTTER BERTH SPACE.
12

13 WHEREAS, The Coast Guard leases berth space on the West side of the Pioneer Dock to
14 moor their vessel the USCGC Aspen (previously USCGC Hickory); and
15

16 WHEREAS, As part of their priority use agreement for the USCGC Hickory berth space, a
17 portion of funds, paid monthly by the Coast Guard, is set aside in a separate City account (415-
18 0397) for use in the event of any required maintenance or repairs which has a current available
19 balance of \$144,360; and
20

21 WHEREAS, It has been determined that the Port Capital Projects Fund (415) is not the
22 appropriate fund source for these funds; and
23

24 WHEREAS, The Port Reserves Fund is most appropriate to hold these funds, as these
25 funds are collected and reserved for future ongoing maintenance needs on the USCGC berth
26 space; and
27

28 WHEREAS, A new dedicated reserve will be created for transparent accounting of
29 monthly lease payments and maintenance or repair activity of the USCGC berth space.
30

31 NOW, THEREFORE, THE CITY OF HOMER ORDAINS:
32

33 Section 1. That the FY23 Capital Budget is hereby amended by transferring \$144,360
34 from the Port Capital Projects Fund to the Port Reserves Fund as follows:
35

36 Transfer from:

<u>Fund No.</u>	<u>Description</u>	<u>Amount</u>
415-0397	Port Capital Projects – USCGC Hickory	\$144,360

40 Transfer to:

<u>Fund No.</u>	<u>Description</u>	<u>Amount</u>
456-xxxx	USCGC Berth Space Maintenance	\$144,360

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Section 2. This ordinance is a budget ordinance only, it is not permanent in nature and shall not be codified.

ENACTED BY THE HOMER CITY COUNCIL this ____ day of ____, 2023.

CITY OF HOMER

KEN CASTNER, MAYOR

ATTEST:

MELISSA JACOBSEN, MMC, CITY CLERK

YES:

NO:

ABSENT:

ABSTAIN:

First Reading:

Public Hearing:

Second Reading:

Effective Date:



AGENDA ITEM REPORT

Resolution 23-030, A Resolution of the City Council of Homer, Alaska Supporting Improvements to the Properties of the Homer Public Library, According to a Design Plan Developed by the Friends of the Homer Library, Contingent upon the Availability of Funds for Construction. Aderhold/Venuti.

Item Type:	Resolution
Prepared For:	Mayor Castner and Homer City Council
Meeting Date:	10 April 2023
From:	David Berry, Library Director
Through:	Rob Dumouchel, City Manager

Over the last two years, city staff, various community groups and the Friends of Homer Library have worked with the Rivers, Trails and Conservation Assistance (RTCA) program to develop plans for improvements to the trail on the western portion of the library lot.

Project Summary

The 2.24-acre wooded parcel directly west of the library already includes a public trail which library staff use for outdoor programming in summer. The trail is used as a throughway by pedestrians traveling between the library and points north or west, as well as recreationally by dogwalkers, birders and people reading the StoryWalk® books. The proposed improvements would:

1. Upgrade the trail to the standards of the Americans with Disabilities Act (ADA)
2. Add directional signage to connect the trail more firmly with the surrounding network
3. Provide educational signage regarding the human and natural history of the area
4. Encourage greater use of the lot with playspaces and room for library programs
5. Protect the environment, particularly the wetlands, while still allowing public access
6. Enhance the aesthetic attractions of the area with archways and a compass rose

Recent History

Here are some highlights of the process to date:

- March 20 and May 18, 2022: Placemaking workshops brought together various community groups to share their vision for the space.
- August 2022: Landscape architects presented three possible designs.
- September 9-10, 2022: The designs were on display at the book and plant sale, with Friends on hand to answer questions and gather feedback.

- October 7-8, 2022: Open houses at the library, where the public was invited to comment on the designs. We also collected public responses through a survey.
- January 2023: Based on public feedback, the three designs were boiled down to one.
- February 2023: The design was presented to the ADA Advisory Commission, the LAB and PARCAC. All three bodies favored the project, with the latter two passing motions of support.

Projected Timeline

To make the funding and maintenance easier, the Friends have split the project into three stages. They've also consolidated the various features toward the western end of the trail, leaving the grass along Hazel Avenue as-is. The overall strategy is to tackle the smaller and easier features first and leave the bigger, more expensive features for later.

PHASE 1:

- ADA trail upgrade (funded though Small Works Trails Program)
- Bird's nest (close to trail along eastern portion)
- Stump seating (near the midpoint of the trail)
- Book bench (at western end of trail)
- Reading tree (location TBD)
- Design work on interpretive signage
- Design work on extension of storywalk posts

PHASE 2:

- Setting up the play space at the western end of the trail, including a slide and picnic table
- Install interpretive signage
- Install storywalk extension

PHASE 3:

- Compass rose

POSSIBLE FUTURE PROJECTS, OUTSIDE THE SCOPE OF THIS DESIGN:

- Bridge
- Archways
- Covered outdoor space

As part of the broader citywide effort to improve Homer's trails, the Public Works department has graciously agreed to incorporate the ADA upgrades into their ongoing Small Works Trails Program.

The Friends will raise funds for all other improvements, and will turn those improvements over to the City upon completion. Maintenance thereafter is a City responsibility.

Following discussions with Public Works, the Friends removed the largest pieces of the project (the bridge, archways and covered outdoor space) from this design and will treat them as future, separate projects. This will cut down on maintenance in the short term and allow for individual focus on each of those features.

Given the extensive public input to date and the thoroughly-vetted design, the Friends of Homer Library would like to ask Council for permission to proceed with fundraising and negotiating with contractors.

Recommendation:

Adopt Resolution 23-030

Attachments:

Resolution 23-030
Western Lot Concept
Resolution 23-018

**CITY OF HOMER
HOMER, ALASKA**

Aderhold/Venuti

RESOLUTION 23-030

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA,
SUPPORTING IMPROVEMENTS TO THE PROPERTIES OF THE
HOMER PUBLIC LIBRARY, ACCORDING TO A DESIGN PLAN
DEVELOPED BY THE FRIENDS OF HOMER LIBRARY, CONTINGENT
UPON THE AVAILABILITY OF FUNDS FOR CONSTRUCTION.

WHEREAS, The library grounds consist of the parcel with the library building (Glacier View Subdivision No. 26 Tract A) and an adjacent property to the west with a trail and greenspace (Tract B); and

WHEREAS, The western parcel (Tract B) is underutilized and has great potential to be developed for library activities and public enjoyment; and

WHEREAS, The Friends of Homer Library have long advocated for improvements to Tract B that would serve various aims, including upgrading the trail to the standards of the Americans with Disabilities Act (ADA), protecting the environment, adding directional signage, adding educational signage covering the natural and human history of the area, encouraging greater use of the lot with a play space and room for programs, and enhancing the aesthetic attractions of the parcel; and

WHEREAS, Homer City Council adopted Resolution 21-018, supporting a public process to design such improvements in collaboration with City offices, the National Park Service, various community organizations and interested citizens; and

WHEREAS, The process has narrowed options down to one design plan, which has been reviewed by the Library Advisory Board, the ADA Advisory Board and the Parks, Art, Recreation and Culture Advisory Commission; and

WHEREAS, The Friends of Homer Library will comply with any applicable state or federal laws and City of Homer policies regarding the construction of all design features, will transfer ownership of the completed features to the City, and will raise funds for the construction of all features except the ADA upgrades to the trail; and

WHEREAS, the City of Homer will fund and execute the ADA upgrades and assume responsibility for the maintenance and upkeep of each part of the project as it reaches completion; and

WHEREAS, The design plan is included as Attachment A.

45 NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska, hereby
46 supports improvements to Glacier View Subdivision No. 26 Tract B, following the design plan
47 included in Attachment A, contingent upon the availability of funds for construction.

48
49 PASSED AND ADOPTED by the Homer City Council this 10th day of April, 2023.

50

51

CITY OF HOMER

52

53

54

KEN CASTNER, MAYOR

55

56 ATTEST:

57

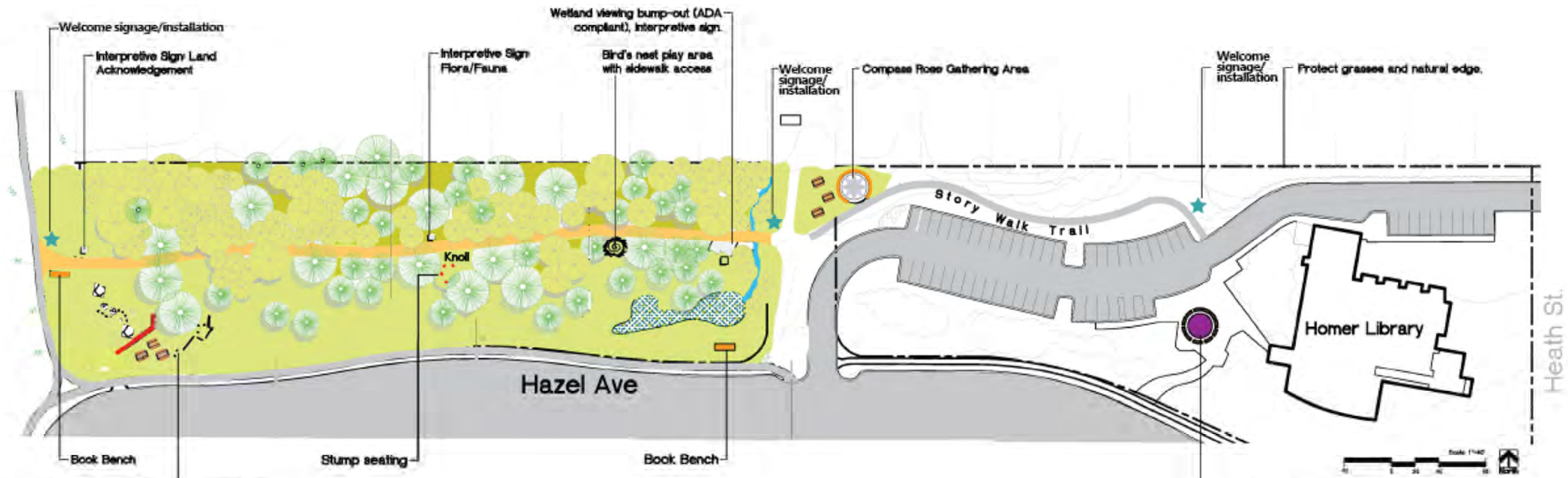
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MELISSA JACOBSEN, MMC, CITY CLERK

59

60

61 Fiscal note: N/A



Natural play area: Large boulders (local glacial), play sculpture climbable animals, other balance activities (stepping logs, driftwood, over/under tunnels, hillside slide and ladders). Built for safety, ecosystem protection, and minimal maintenance. Final siting and design to be developed.

Gathering area: Picnic tables and stump seating.

Reading Tree: seating around tree, location to be determined



Knoll Slide



Stump Seating



Bird's Nest Play Area



Wetland Viewing Platform



Reading Tree



Book Bench (ADA compliant)



Compass Rose Gathering Area

A vibrant, accessible community space adjacent to the Library where learning and nature give rise to a sense of discovery and delight.

Homer Library Placemaking

NPS Rivers, Trails and Conservation Assistance Program (RTCA)

American Society of Landscape Architects Alaska Chapter

Conceptual Design
Homer Library Western Lot

Friends of Homer Library Working Group
2020

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

Venuti

4
5 **RESOLUTION 21-018**
6

7 A RESOLUTION OF THE CITY COUNCIL, OF HOMER, ALASKA
8 SUPPORTING THE FRIENDS OF THE HOMER LIBRARY
9 APPLICATION TO THE NATIONAL PARK SERVICE ALASKA RIVERS,
10 TRAILS AND CONSERVATION ASSISTANCE PROGRAM TO PLAN
11 IMPROVEMENTS TO THE LIBRARY PROPERTIES, TRACTS A AND B,
12 GLACIER VIEW SUBDIVISION NO. 26.
13

14 WHEREAS, The National Park Service (NPS) Rivers, Trails and Conservation Assistance
15 program (RTCA) supports community-led natural resource conservation and recreation
16 projects around the nation; and
17

18 WHEREAS, Successful local projects facilitated by the NPS RTCA include the Woodard
19 Creek Watershed Plan, Kachemak Bay Water Trail, and Kachemak Heritage Land Trust
20 Poopdeck Property Master Plan; and
21

22 WHEREAS, the Homer Library has a been at its current site for 16 years and would like
23 to better utilize its grounds to expand low-key no-cost recreational opportunities to all users,
24 provide a location for library sponsored events, provide wetland education in an urban setting,
25 and increase cultural appreciation by incorporating land acknowledgement; and
26

27 WHEREAS, The library grounds consist of the parcel with the library building (Glacier
28 View Subdivision No. 26 Tract A) and an adjacent property to the west with a trail and
29 greenspace (Tract B); and
30

31 WHEREAS, The western parcel (Tract B) is underutilized and has great potential to be
32 developed for library activities and public enjoyment; and
33

34 WHEREAS, The Friends of Homer Library, in partnership with the library, the City of
35 Homer and community partners including Center for Alaska Coastal Studies, Pratt Museum,
36 Ninilchik and Port Graham Village Tribes, wish to apply for an RTCA Technical Assistance grant.
37

38 NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska hereby
39 supports the Friends of the Homer Library application to the NPS RTCA program for the
40 purposes of planning improvements to the library properties Tracts A and B, Glacier View
41 Subdivision No. 26.
42

43 PASSED AND ADOPTED by the Homer City Council this 22nd day of February, 2021.

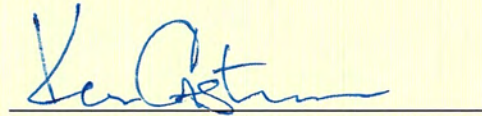
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CITY OF HOMER

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KEN CASTNER, MAYOR

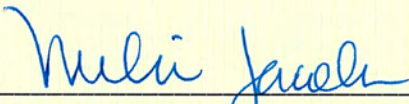
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52 ATTEST:

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MELISSA JACOBSEN, MMC, CITY CLERK

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57 Fiscal note: N/A

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AGENDA ITEM REPORT

Resolution 23-031, A Resolution of the City Council of Homer, Alaska Authorizing the City Manager to Apply to the Alaska Department of Health and Social Services for a Healthy and Equitable Communities Grant in Support of the Homer Community Health Improvement Plan and the Bayveiw Park Renovation Project. City Manager.

Item Type: Resolution
Prepared For: Mayor Castner and Homer City Council
Meeting Date: 10 April 2023
From: Jenny Carroll, Special Projects & Communications Coordinator
Through: Rob Dumouchel, City Manager

Issue: The purpose of this Memorandum is to recommend adoption of a Resolution of Support for the City of Homer's application to the Alaska Department of Health and Social Services, Division of Public Health (DHSS) in HEC Round 2 funding.

Background: DHSS is providing a second round of grant funding to Alaskan local governments in support of activities that promote and sustain healthy and equitable communities throughout Alaska. The City of Homer is eligible for up to \$99,919.

Two years ago, the City and South Peninsula Hospital (SPH) successfully cooperated to utilize Round 1 HEC funds to promote community health. A sub-grant agreement with SPH helped sustain operations at SPH's COVID-19 Test & Vaccine Clinic to provide free access to testing, vaccination and information services regardless of ability to pay. It also supported phase 1 of Homer's Community Health Improvement Plan (CHIP): development and publication of a Community Health Needs Assessment.

Staff recently attended informational sessions on HEC Round 2 and communicated with HEC program staff to confirm eligibility of the following proposed projects for HEC funding:

1. Phase II of Homer CHIP – host community engagement, develop and publish Homer's Community Health Improvement Plan. This would be accomplished through a sub-grant agreement with South Peninsula Hospital; and
2. Bayview Park Restoration – finalize park site plan, procure and install inclusive playground equipment and safety surfacing to transform the park into an inviting, safe and accessible destination for young families. Current cost estimate is \$131,264. Bayview Park Restoration has long been a project in the mid-range section of the City's Capital Improvement Plan, and enjoys additional support from Sprout Community Services and the Kachemak Bay Rotary Club (who has pledged \$12,000 to help acquire playground equipment). HEC Round 2 funds would be used to solicit community input on the park's

draft plan, produce a final park plan, procure and install new playground structures and safety surfacing.

If successful, staff will bring Ordinances before City Council to:

- accept HEC funds and appropriate \$60-70,000 to Bayview Park Renovation Project;
- approve a sub-grant agreement with South Peninsula Hospital for \$20-30,000 to execute grant activities related to the CHIP; and
- appropriate additional funds from ADA and HART to make an ADA parking space at the park and provide an accessible pathway from the ADA parking space to the playground structures estimated at \$45,000.

(Budget numbers here are approximate as project budgets are still under development.)

Recommendation

Adopt Resolution 23-031

Attachments:

Resolution 23-031

Conceptual plan for Bayview Park renovations to be developed into a final design with public input.

**CITY OF HOMER
HOMER, ALASKA**

RESOLUTION 23-031

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA,
AUTHORIZING THE CITY MANAGER TO APPLY TO THE ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES FOR A HEALTHY
AND EQUITABLE COMMUNITIES GRANT IN SUPPORT OF THE
HOMER COMMUNITY HEALTH IMPROVEMENT PLAN AND THE
BAYVIEW PARK RENOVATION PROJECT.

WHEREAS, The City of Homer strives to provide and improve city-operated facilities and services to meet the needs of the community; and

WHEREAS, The State of Alaska Department of Health and Social Services (DHSS) is making a second round of Healthy and Equitable Community (HEC) grant funding available to local units of government to support efforts statewide to create and sustain healthy and equitable communities; and

WHEREAS, The City previously partnered with South Peninsula Hospital to successfully administer HEC funds in support of the hospital's COVID-19 Test and Vaccine Clinic and to complete a Community Health Needs Assessment, which is phase one of the Homer Community Health Improvement Plan project; and

WHEREAS, Mobilizing partners to increase/improve data collection, reporting and planning to improve health outcomes among populations that are at higher risk or underserved and to guide current and future pandemic response is an eligible use of HEC Round 2 funds; and

WHEREAS, The City intends to again partner with South Peninsula Hospital through a sub-grant award of HEC Round 2 funds to complete the Community Health Improvement Plan, which is the second and final phase of the project; and

WHEREAS, Another eligible use of funds is to mobilize partners to improve spaces in the community to allow individuals and families greater access to and opportunities for better health outcomes, including recreational opportunities; and

WHEREAS, The Bayview Park Renovation project, long identified in the City of Homer's Capital Improvement Plan, seeks to improve park accessibility and its playground elements to make the park more inviting, accessible and safe for families with preschool age children to recreate; and

45 WHEREAS, The Bayview Park Renovation project has mobilized partnerships with
46 Sprout Community Services and will benefit from contributions from the Homer Kachemak
47 Bay Rotary Club.

48
49 NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska hereby
50 authorizes the City Manager to apply to the Alaska Department of Health and Social Services
51 for a Healthy and Equitable Communities grant in support of the Homer Community Health
52 Improvement Plan and the Bayview Park Renovation project.

53
54 PASSED AND ADOPTED by the Homer City Council this 10th day of April, 2023.

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56 CITY OF HOMER
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59 _____
60 KEN CASTNER, MAYOR

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62 ATTEST:
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65 MELISSA JACOBSEN, MMC, CITY CLERK

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67 Fiscal note: N/A

BAYVIEW PARK

Park Plan and Priorities



- ① Regrade ADA parking space. Pave with asphalt if feasible, provide striping to show access aisle.
- ② Provide accessible pathway connection between ADA parking space and playground structures, with compacted gravel or asphalt. Longitudinal slopes shall be less than 4.5% and cross slopes shall be less than 1.75%. End pathway with small roundabout at end with digging area in center. Provide accent plantings between pathway and fence.
- ③ Replace white picket fence and gates along West, South, and East perimeter of park with new fence design.
- ④ Install new play structure, 2-bay swingset, and rubber tile play surfacing with timber edge.
- ⑤ Create park entrance area. Provide accessible surfacing, location for future artwork/play sculpture, provide trash can, park signage, benches, BBQ grills, and drinking fountain (if possible).
- ⑥ Add more seating on other side of drainage.
- ⑦ Create look-out or birdwatching station at highpoint in northwest corner of site, with a deck to allow creative play.



AGENDA ITEM REPORT

**Resolution 23-032, A Resolution of the City Council of Homer, Alaska Approving a Lease with Alaska Scrap and Salvage for a term of Eight Years with Two One-Year Options for Renewal and Authorizing the City Manager to Negotiate and Execute the Appropriate Documents.
City Manager.**

Item Type: Resolution
Prepared For: Mayor & City Council
Meeting Date: 10 Apr 2023
Staff Contact: Rachel Tussey, CMC, Deputy City Clerk II
Through: Rob Dumouchel, City Manager

Summary Statement:

Alaska Scrap and Recycling has submitted a lease application and written request for a new short-term lease exempted from competitive bidding for a one-acre portion of Lot 12, Concrete Pad, Homer Spit Subdivision No. 5, for the purpose of continuing a scrap metal recycling operation.

The City Manager and Lease Staff have found Alaska Scrap and Recycling's proposal to be compatible with applicable land use regulations and either meets or exceeds the criteria outlined in City Code.

Staff recommends a new eight year-term lease with two, one-year options to renew, be awarded to Alaska Scrap and Recycling LLC for a one-acre portion of Lot 12, Concrete Pad, Homer Spit Subdivision No. 5, with a base rent of \$43,585.56 per year.

The Port and Harbor Advisory Commission passed a motion with discussion at their March 22, 2023 regular meeting supporting Alaska Scrap and Recycling's operation and proposed land use.

Staff Recommendation:

Adopt Resolution 23-032.

Attachments:

Resolution 23-032

City of Homer Lease Application Proposal Review & Staff Recommendations

Alaska Scrap & Recycling City Lease Application

DRAFT Base Lease Agreement

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

3 City Manager

4 **RESOLUTION 23-032**

5
6 A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA
7 APPROVING A LEASE WITH ALASKA SCRAP AND SALVAGE FOR A
8 TERM OF EIGHT YEARS WITH TWO ONE-YEAR OPTIONS FOR
9 RENEWAL AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE
10 AND EXECUTE THE APPROPRIATE DOCUMENTS.

11
12 WHEREAS, Alaska Scrap and Recycling, LLC currently has a five-year lease that will be
13 expiring January 31, 2024 with no options remaining for a one-acre portion of Lot 12, Concrete
14 Pad, Homer Spit Subdivision No. 5; and

15
16 WHEREAS, Alaska Scrap and Recycling submitted a lease application and written
17 request for a new short-term lease exempted from competitive bidding for the purpose of
18 continuing a scrap metal recycling operation in accordance with HCC 18.08.130(b) which states
19 a lessee must submit their request to the City Manager at least 12 months but no more than 18
20 months prior to the expiration of the existing lease; and

21
22 WHEREAS, HCC 18.08.130 further states Council, upon written recommendation by the
23 City Manager, may exempt the renewal of a lease from competitive bidding if Council finds such
24 exemption serves the City's best interests and must do so by resolution within six months prior
25 to the date of lease termination; and

26
27 WHEREAS, The City Manager and Lease Staff have found Alaska Scrap and Recycling's
28 proposal to be compatible with applicable land use regulations and either meets or exceeds
29 the criteria outlined in City Code, and recommend a lease be awarded exempted from the
30 competitive bidding process; and

31
32 WHEREAS, The City proposed a longer term of eight years with two, one-year options to
33 renew for a total of 10 years beginning February 1, 2024 and expiring January 31, 2034 to allow
34 a longer lease commitment, therefore spending less staff and lessee's time on multiple short
35 lease renewals, without the risk of delaying any future port expansion as the City will continue
36 to seek the highest and best use of all City-owned property; and

37
38 WHEREAS, The Port and Harbor Advisory Commission (PHC) has advisory capacity to
39 the City Manager and Council to make recommendations on land use and future development
40 within the port and harbor areas; and

41
42 WHEREAS, The PHC passed a motion with discussion at their March 22, 2023 regular
43 meeting supporting Alaska Scrap and Recycling's operation and proposed land use with a
44 recommendation that Council award a new lease.

45 NOW, THEREFORE, BE IT RESOLVED that the Homer City Council hereby approves a
46 new, eight year-term lease with two, one-year options to renew, to Alaska Scrap and Recycling
47 LLC for a one-acre portion of Lot 12, Concrete Pad, Homer Spit Subdivision No. 5, with a base
48 rent of \$43,585.56 per year, and authorizes the City Manager to negotiate and execute the
49 appropriate documents.

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51 PASSED AND ADOPTED by the Homer City Council this 10th day of April, 2023.

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53 CITY OF HOMER

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57 _____
58 KEN CASTNER, MAYOR

59 ATTEST:
60
61 _____
62 MELISSA JACOBSEN, MMC, CITY CLERK

63
64 Fiscal note: \$43,585.56 annually; subject to annual CPI increases and 5-year appraisals



City of Homer Lease Application Proposal Review & Staff Recommendations

Proposal Synopsis

Application is for: Alaska Scrap and Recycling LLC

**Lease Proposal
Synopsis:**

Alaska Scrap and Recycling currently has a 5-year lease that will be expiring January 31, 2024 with no options remaining. They have submitted a lease application and written request for a new lease exempted from competitive bidding for the purpose of continuing a scrap metal recycling operation. The request was received within the appropriate timeframe of 12-18 mos. before the expiration of their existing lease.

Per HCC 18.08.130 Lease renewal, Council, upon written recommendation by the City Manager, may exempt the renewal of a lease from competitive bidding if Council finds such exemption serves the City's best interests. Factors considered under this section are outlined in HCC. If Council approves the new lease without a competitive process, it must do so by resolution within 6 months prior to the date of lease termination (July 31, 2023).

Lease Staff has reviewed the proposal per the criteria outlined in HCC and recommends a lease be awarded exempted from the competitive bidding process. The proposed terms of the lease are as follows:

- Use of 1 acre portion of Lot 12, Concrete Pad, for the staging and storage of scrap metal as part of the business' recycling operations.

This use would be described in detail in Appendix D of the lease with the Applicant's written narrative attached for reference.

- Base rent will continue from the current rent of \$3,632.13/month plus tax since the proposed lease space and use has not changed; this will be subject to change depending on the 2024 CPI increase as the new lease would begin in 2024.

Base rent is subject to annual Consumer Price Index increases and appraisals.

Next appraisal for Lot 12 is scheduled for 2024.

- Term will be for 8 years with two 1-year options to renew, for a total of 10 years beginning February 1, 2024 and expiring January 31, 2034.

Applicant proposed a 5-year lease with two 1.25-year options to renew but they are open to any lease for 5-10 years that the City proposes so long as the lease language allows 90-day termination by either party with notice. The City proposed a longer term to allow a longer lease commitment, therefore less time spent on multiple short lease renewals, without risk of delaying any future port expansion.

- Continuation of existing standard terms per the City's base lease.

Criteria Checklist

Complete Lease Application form and a clear, precise written narrative that addresses all proposal criteria: Yes No N/A Incomplete

Notes: Staff worked with Applicant to ensure lease application and written narrative are complete.

Application fee is paid.

Property Plan is compatible with neighboring uses and consistent with applicable land use regulations including the Land Allocation Plan; Comprehensive Plan: Yes No N/A Incomplete

Notes: Planning Staff, Port and Harbor Staff, and Economic Development Manager have found the land use is compatible.

Port and Harbor Advisory Commission did not object to the proposed land use.

Development Plan details out any proposed improvements with a specific time schedule, benchmarks for development, and cost estimates/financing plan: Yes No N/A Incomplete

Notes: Applicant does not have any proposed improvement plans; in their written narrative they explain the existing infrastructure (fenced-in Concrete Pad on Lot 12) allows for the safe operation of their business, therefore there is no need to develop the property or change it in any way from its current condition.

As part of their current lease with the City, Applicant was required to improve the leased space by installing temporary security fencing with the ability to safely secure and lock access to the leased space. Applicant successfully completed these improvements and will continue to maintain them under a new lease.

Financial capability or backing of the applicant (including credit history, prior lease history, assets, capital investments) has been verified to support the lease proposal: Yes No N/A Incomplete

Notes: Applicant submitted a Profit and Loss income statement for FY2021 and FY2022 to fulfill the documentation requirement for business' vitality, and a Statement of Financial History from the Port and Harbor Office to fulfill the documentation requirement for payment history. Documentation has provided sufficient evidence they are capable of making timely monthly payments.

Applicant has not been found in default or sent to collections, has not filed for bankruptcy, and does not have any pending litigations against them.

Proposal found to be sufficient in other evaluation criteria per HCC 18.08.060 (includes experience of applicant in the proposed business or venture, economic, financial, and social impacts): Yes No N/A Incomplete

Notes: Applicant's proposal has found to be sufficient. Details are in the written narrative; other comments from Planning and Harbor Staff are below.

Applicant has verified they are insurable and licensable in the City, Kenai Peninsula Borough, and/or the State of Alaska for their proposed use: Yes No N/A Incomplete

Notes: Documentation confirms they are an LLC in good standing with the State.

Insurance is current with the City and meets the requirements of HCC and the lease.

Applicant has explained in their written narrative that no other approvals, permits, and/or inspections are applicable to their use.

Any other information that is directly pertinent to the proposal: Yes No N/A Incomplete

Notes: Applicant does not intend to sublease.

FOR ASSIGNMENTS ONLY – Current lessee is in full compliance with the lease terms and is eligible for lease reassignment: Yes No N/A Incomplete

Notes: n/a

All applicable documentation has been provided: Yes No N/A Incomplete

- Lease Application and Written Narrative
- Property Plan
- Development Plan
- Financial Information
- Business Entity and Licensing Information
- Verification that Insurance can be provided at Signing of Lease
- City Planning & Other Agency Approval Information

Comments/Recommendations from Planning & Zoning

Rick Abboud, City Planner: I have no objections to continuing the operation, based on zoning or other planning documents. I have not found any compliance issues on the site.

Julie Engebretsen, Economic Development Manager: I would encourage a lease term as long as ten years so we are not spending so much time and effort on lease renewals.

Comments/Recommendations from Port & Harbor Staff (if applicable) N/A

Bryan Hawkins, Port Director: I looked through the application and proposal and have no additions or changes. Port and Harbor recommends entering into a new 5 year lease with options as proposed by Alaska Scrap for the same sq. ft. area of the secure laydown facility (Chip Pad).

Recommendation from Port & Harbor Advisory Commission (if applicable) N/A

Rachel Tussey, Deputy City Clerk: Recommendations by the City Manager to Council do not require prior review by the PHC under HCC 18.08.130 Lease Renewal. However, I recognize the Commission's advisory capacity to the City Manager and Council to make recommendations on land use and future development within the port and harbor

areas. Therefore I requested the PHC’s consideration focus on the following key things: The applicant’s proposed use of the land, their development plan (if there is one), and if these items are consistent with the Commission’s goals for the planning and use of harbor facilities. The PHC has been advised that operation, maintenance, and compliance regarding City facilities are the direct responsibility of City Staff (e.g. Planning/Zoning, Port and Harbor, Public Works) under the direction of the City Manager, so any operational recommendations concerning the lease should be directed to the City Manager for consideration in a separate motion.

Port & Harbor Advisory Commission: The commission passed a motion with discussion at their March 22, 2023 regular meeting supporting Alaska Scrap & Recycling’s operation and proposed land use.

Commissioner Shavelson: Requested the City consider Alaska Scrap being required to have a multi-sector general permit under DEC under their business name. Per Port Director Hawkins, the Port and Harbor has a drainage/storm water system built into Lot 12’s concrete pad that meets current DEC requirements and the City is not required to have that permit. The question posed: are Alaska Scrap’s operations covered by that same rule while operating on City land or should they be required to have their own permit to comply with federal requirements?

Commissioners Shavelson & Matthews: Voiced objection to not being able to see draft leases of lease proposals they as a body are expected to make recommendations on. They read HCC and have differing interpretations from City Staff and the City Attorney on the roles and responsibilities the commission has when considering a lease application; they believe it’s beyond just land use recommendations.

Comments from City Manager’s Office

No additional comments; reviewed proposal 3/2/2023 and approved to proceed through PHC and Council.

Recommended Action to City Council

By resolution, award Alaska Scrap and Recycling LLC a new 8-year lease with two 1-year options for renewal, and authorizing the City Manager to negotiate and execute the appropriate documents.

Application Verified By: Rachel Tussey, CMC, Deputy City Clerk II

Date: 2/10/2023

City Manager Approval: Rob Dumouchel, City Manager

Date: 3/2/2023



City Lease Application

For City-Owned Real Property & Airport Terminal Space

Office of the City Clerk
 491 East Pioneer Avenue
 Homer, Alaska 99603
 Phone: (907) 235-3130
 Fax: (907) 235-3143

Lease Application Purpose	
<input type="checkbox"/>	Request for New Lease; New Lessee – Applicant is not currently a City lessee
<input checked="" type="checkbox"/>	Request for New Lease; Existing Lessee – Applicant is a current lessee with no remaining options to renew
<input type="checkbox"/>	Request for Assignment of Lease – Applicant is requesting to have an existing lease transferred to a new owner/business

Property Information	
This Lease is for:	<input checked="" type="checkbox"/> City-Owned Real Property <input type="checkbox"/> Space in the Homer Airport Terminal Building
Physical Address:	a portion of lot 12, Homer Spit Subdivision No. 5 (old chip pad)
Square Footage:	42,046 1 acre <input type="checkbox"/> Full Lot <input checked="" type="checkbox"/> Portion of Lot KPB Parcel No.: 18103220
Legal Description of Property: (If within the Airport Terminal Building list Space Description Info & square footage instead)	a portion of lot 12, Homer Spit Subdivision No. 5

Applicant Information	
Business Name:	Alaska Scrap and Recycling LLC
Representative's Full Name & Title:	Jeff Riley, General Manager Paul Keen, Facility Manager
Mailing Address:	44196 K-Beach Road
City, State, ZIP Code:	Soldotna, AK 99669
Phone Number(s):	Jeff's (907)230-0019, Paul's (907)398-6954
Email:	jeffr@pwinvestment.com / pkeen@alaskascrap.com

Business Entity & Financial Information	
<input type="checkbox"/>	Sole or Individual Proprietorship – Attached documentation must provide owner's full name, address, and verify they are the sole owner.
	Is entity authorized to do business in Alaska? <input type="checkbox"/> No <input type="checkbox"/> Yes – As of what date:
<input checked="" type="checkbox"/>	Partnership – Attached documentation must provide Partners' full names, addresses, and share percentages.
	Date of Organization: 12/03/2012 Type of Partnership: LLC

Is Partnership authorized to do business in Alaska? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes - As of what date: 12/03/2012	
<input type="checkbox"/> Corporation - Attached documentation must provide the full names of Officers and Principal Stockholders (10%+), their addresses, and share percentages.	
Date of Organization:	Type of Corporation:
Is Corporation authorized to do business in Alaska? <input type="checkbox"/> No <input type="checkbox"/> Yes - As of what date:	
Corporation is held: <input type="checkbox"/> Privately <input type="checkbox"/> Publicly - How and where is stock traded:	
<input type="checkbox"/> Other - Please explain:	
Proof of Financial Capability to Meet Obligations:	<input checked="" type="checkbox"/> Documentation of Payment History: Documents such as a credit report and score from one of the three credit bureaus (i.e. Experian, Equifax, TransUnion) or records of prior lease history.
	<input type="checkbox"/> Documentation of Applicant's Financial Backing: Records showing applicant has secured the funding necessary to implement their development/improvement plan and/or purchase the business (if applicable).
	<input checked="" type="checkbox"/> Documentation of Business' Vitality: Minimum of two years (past year and current year) of financial statements; this includes a Balance Sheet and Profit/Loss Statement (Revenue/Expense Statement).
Surety Information:	Has any surety or bonding company ever been required to perform upon your default or the default of any of the principals in you organization holding more than a 10% interest? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - Attach a statement naming the surety or bonding company, date and amount of bond, and the circumstances surrounding the default or performance.
Bankruptcy information:	Have you or any of the principals of your organization holding more than a 10% interest ever been declared bankrupt or are presently a debtor in a bankruptcy action? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - Attach a statement indicating state, date, Court having jurisdiction, case number and to amount of assets and debt.
Pending Litigation:	Are you or any of the principals of your organization holding more than a 10% interest presently a party to any pending litigation? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - Attach detailed information as to each claim, cause of action, lien, judgment including dates and case numbers.
Lease Proposal	
Type of Business/ Proposed Use of the Property:	existing scrap metal recycling operation

Requested Lease Term:	<input type="checkbox"/> Short Term Lease (One Year or Less) - Duration (in months): <input checked="" type="checkbox"/> Long Term Lease (More Than One Year) <ul style="list-style-type: none"> Standardized Lease is a 20-year term with two 5-year Options to Renew; City Manager may deviate from standardized lease term when reasonable and necessary, and approved by Council (18.08.030). No more than two Options to Renew; each option cannot exceed 25% of initial lease term (18.08.110). Duration (in years): 5 No. of Options to Renew: 2 - 15 month
Property Plan:	<input checked="" type="checkbox"/> Describe your Property Plan in your written narrative. Details should include but not be limited to: <ul style="list-style-type: none"> Proposed utilization of the lot/space, including parking If there are existing buildings on the property and what their proposed uses are Any intentions to rent out or sublease space on the property How the use is compatible with neighboring uses and consistent with applicable land use regulations including the Land Allocation Plan; Comprehensive Plan <input checked="" type="checkbox"/> Provide a detailed schematic (to scale) that shows the following: <ul style="list-style-type: none"> Size of lot - dimensions and total square footage Placement/size of existing buildings, storage units, and other miscellaneous structures Parking spaces - numbered on the drawing with a total number indicated Note: an as-built survey from a licensed surveyor may be required
Development Plan:	Do you have a development and/or improvement plan for the property, including plans for repairs or maintenance to any existing buildings? <input type="checkbox"/> Yes In your written narrative, provide as much information as possible on how you intend to develop/improve the property. Include a time schedule from project initiation to completion, major project milestones, cost estimate and financing plan, and any additional designs not already provided in the Property Plan's detailed schematic. <input checked="" type="checkbox"/> No In your written narrative, explain why.
City Planning & Other Agency Approvals: NOT APPLICABLE	Does your business/proposed use and/or development plan require agency approval? The granting of any lease is contingent upon lessee obtaining approval, necessary permits, and/or inspection statements from all appropriate City, State and/or Federal agencies. This includes but is not limited to: <ul style="list-style-type: none"> Applicable permits/approval from City Planning for zoning compliance, such as Conditional Use Permits, Zoning Permits Fire Marshall Plan Review and Permitting Waste Disposal System Plan Approval - Includes fish waste if applicable Other applicable permits/inspection statements from agencies such as U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, and Alaska Department of Environmental Conservation Division of Environmental Health <input checked="" type="checkbox"/> Explain in your written narrative what necessary approvals, permits, and/or inspections are applicable to your business/proposed use and the current status of your application with those agencies. <input type="checkbox"/> Attach any relevant documentation that verifies completion or pending status.

Insurance Requirements:	<p>The granting of any lease is contingent upon lessee obtaining and keeping in full force insurance as outlined in HCC 18.08.170. Certificates of insurance showing the required insurance is in effect and identifying the City as an additional insured must be provided to the City at the time a lease becomes effective and annually thereafter, and upon every change in insurance provider or insurance coverage.</p> <p><input checked="" type="checkbox"/> Provide proof of insurability for public liability insurance in the amount of not less than \$1,000,000 coverage per occurrence for bodily injury, including death, and property damage, and the City of Homer as co-insured. Additional insurance limits or types may be required due to the nature of the business, lease, or exposure.</p>
Benefits & Impacts on Community:	<p><input checked="" type="checkbox"/> In your written narrative answer the following questions:</p> <ul style="list-style-type: none"> • What experience do you have in the proposed business or venture? • How long have you resided or conducted business in the City, Kenai Peninsula Borough, and/or the State of Alaska? • What are some of the economic, social, and financial benefits and/or impacts your business/proposed use brings to the community?
Applicant References:	<p><input checked="" type="checkbox"/> In your written narrative, list four persons or firms with whom the Applicant or its owners have conducted business transactions with during the past three years. Two references named shall have knowledge of your financial management history, of which at least one must be your principal financial institution. Two of the references must have knowledge of your business expertise.</p> <p>Each reference must include the following:</p> <ul style="list-style-type: none"> • Full Name • Name of the organization/business and their title at this entity • Address • Phone number and email address • Nature of association with Applicant
Additional Information:	<p><input checked="" type="checkbox"/> Include in your written narrative, or attach relevant documentation, that you deem pertinent to your application/lease proposal. Criteria for evaluating and approving proposals and competing lease applications can be found under HCC 18.08.060.</p>

Required Attachments/Documentation

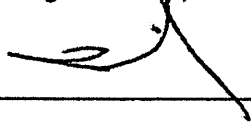
<input checked="" type="checkbox"/> Written Narrative ATTACH # 1
<input checked="" type="checkbox"/> Business Entity and Licensing Information <ul style="list-style-type: none"> • State of Alaska Business License ATTACH # 2 • Current State of Alaska Biennial Report ATTACH # 3 • If Partnership: Statement of Partnership/Partnership Agreement ATTACH 4 • If Corporation: Articles of Incorporation & Bylaws • Any additional documentation concerning the formation or operation of the entity
<input checked="" type="checkbox"/> Financial Information ATTACH #5
<input checked="" type="checkbox"/> Property Plan – Detailed Schematic of Property ATTACH # 6
<input checked="" type="checkbox"/> Development Plan documents/plans, if any

Proof of Insurability; verification that insurance can be provided at signing of lease **ATTACH #7**

City Planning & Other Agency Approval Information, if any

Application Signatures

By signing, I agree that the above information is true and correct to the best of my knowledge. I certify that I am authorized to sign as the applicant on behalf of the entity I represent.

Signature:  Date: 01-06-23

Printed Name & Title: JOE RILEY GENERAL MANAGER

Office Use Only

Received By & Date: Rachel Tussey 1/23/2023 Fee Processed: \$ 1,000.00 Date: 2/1/2023

Date Application Accepted as Complete: 2/10/2023 Application Timeout Date: (1 year from receipt) 1/23/2024

Submitted for Dept. Review: 2/10/23 Planning Port & Harbor Finance Public Works Other:

Submitted for City Manager Review: Approved on: Denied on:

For Existing Leases Exempt from Competitive Bidding: Current Lease Expires with No Options to renew: _____
6 mos. Prior to date of lease termination (Council Approval Deadline): _____
Request received within 12 to 18 mo. timeframe from expiration of lease date: Yes No



AS&R Alaska Scrap & Recycling LLC



Branch Office:
42462 Kalifornsky Beach Rd, Soldotna AK 99669
Office 907-262-7258

Main Office:
720 E. Whitney Rd, Anchorage AK 99501
Phone: 907-277-2727
www.alaskascrap.com

Homer City Council
491 E Pioneer Ave
Homer, AK 99603

C/O: Rachel Tussey
City of Homer

RE: Property Lease Extension

Dear City Council Members,

Enclosed you will find the application to extend the current lease arrangement between the City of Homer and Alaska Scrap & Recycling (AS&R). This lease occupies a portion of Lot 12 of the Homer Spit Subdivision No. 5 as a staging area for processed, recycled ferrous metals to be shipped South. There are no intentions of subleasing the space. We would store equipment used for stacking and loading barges onsite. AS&R has worked with the City of Homer in the past to clean up derelict vessels, old vehicles and equipment. We take a proactive approach to avoid environmental risks as we recycle unwanted metals.

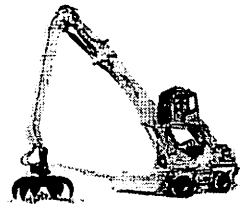
AS&R also operates within the Municipality of Anchorage and is the largest recycler of scrap metals in Alaska. We are locally owned with management and staff having many years of industry experience and a proven track record of safety.

The existing infrastructure at the Port of Homer allows for the safe and efficient process of loading barges with prepared recycled metal that are headed to the Seattle market. It also allows us the ability to accept scrap equipment, vessels, and vehicles from neighboring communities in the bay area. Thus, there is no need to develop the property or change it in any way from its current condition and use which is why no development plan is included in the application. The operation will remain consistent with current use which requires no approvals, permits, and/or inspections that are applicable to our use.

During the first four years of our initial lease period, AS&R has recycled more than 20,000 tons of scrap metal that would otherwise be sitting idle throughout our communities. We see ourselves as a collaborative partner to the Port and City of Homer and an asset to the residents of Homer. This lease extension allows us to continue our efforts.

Our lease proposal requests an additional 5 years with two 1.25 year renewals which meets the limitations within the City of Homer lease application. That said, we are open to 5-10 years with language consistent with our current lease which allows 90-day termination by either party with notice. This allows for a longer lease commitment without risk of delaying any future port expansion.

References attached.



Sincerely,

Paul Keen
Soldotna Operations Manager
pkeen@alaskascrap.com
907-398-6954

REFERENCES

Kenai Peninsula Borough Solid Waste Department
Lee Frey
Solid Waste Director
solidwaste@kpb.us
(907)262-9667

AS&R supports the landfill with the removal of metals that can be recycled which frees up additional airspace which in turn saves the borough residents money. This relationship has been in place for 15 years.

Matanuska Susitna Borough Solid Waste Department
Central Landfill
Jeff Smith
Solid Waste Division Manager
(907)861-7606
(907)795-2786

AS&R currently supports the MatSu landfill with the removal of metals that can be recycled.

Kenai Peninsula Borough Roads Department
Jed Painter
Roads Director
roads@kpb.us
(907)262-4427

AS&R has held road maintenance contracts consistently for 15 years.

First National Bank Alaska
Mike Frost
Banker
(907)260-6000

Alaska Department of Commerce, Community, and Economic Development

Division of Corporations, Business, and Professional Licensing
PO Box 110806, Juneau, AK 99811-0806

This is to certify that

ALASKA SCRAP & RECYCLING LLC

720 E WHITNEY RD, ANCHORAGE, AK 99501

owned by

ALASKA SCRAP & RECYCLING, LLC

is licensed by the department to conduct business for the period

October 26, 2022 to December 31, 2024
for the following line(s) of business:

42 - Trade



This license shall not be taken as permission to do business in the state without having complied with the other requirements of the laws of the State or of the United States.

This license must be posted in a conspicuous place at the business location.
It is not transferable or assignable.

Julie Sande
Commissioner

State of Alaska
Department of Commerce, Community and Economic Development
Corporations, Business and Professional Licensing

Certificate of Organization

The undersigned, as Commissioner of Commerce, Community and Economic Development of the State of Alaska, hereby certifies that a duly signed and verified filing pursuant to the provisions of Alaska Statutes has been received in this office and has been found to conform to law.

ACCORDINGLY, the undersigned, as Commissioner of Commerce, Community and Economic Development, and by virtue of the authority vested in me by law, hereby issues this certificate to

Alaska Scrap & Recycling, LLC



IN TESTIMONY WHEREOF, I execute the certificate and affix the Great Seal of the State of Alaska effective **December 03, 2012**.

A handwritten signature in black ink that reads "Susan K. Bell".

Susan K. Bell
Commissioner



Department of Commerce, Community, and Economic Development
CORPORATIONS, BUSINESS & PROFESSIONAL LICENSING

[State of Alaska](#) / [Commerce](#) / [Corporations, Business, and Professional Licensing](#) / [Search & Database Download](#) / [Corporations](#) / Entity Details

ENTITY DETAILS

Name(s)

Type	Name
Legal Name	Alaska Scrap & Recycling, LLC

Entity Type: Limited Liability Company

Entity #: 10008882

Status: Good Standing

AK Formed Date: 12/3/2012

Duration/Expiration: Perpetual

Home State: ALASKA

Next Biennial Report Due: 1/2/2024

Entity Mailing Address: P.O. BOX 202845, ANCHORAGE, AK 99520-2845

Entity Physical Address: 305 N VALLEY WAY, C-3, PALMER, AK 99645

Registered Agent

Agent Name: Joshua D. Hodes

Registered Mailing Address: 701 W 8TH AVE, STE 1200, ANCHORAGE, AK 99501

Registered Physical Address: 701 W 8TH AVE, STE 1200, ANCHORAGE, AK 99501

Officials

Show Former

AK Entity #	Name	Titles	Owned
10046963	ASR Acquisition, Inc.	Member	25.00
	Jonathan Rubini	Member	4.50
134563	RSP, INC	Member	31.75
10046663	Scrap Investor, LLC	Member	5.00
10008725	Southcentral Metal Recycling, LLC	Member, Manager	33.75

Filed Documents

Date Filed	Type	Filing	Certificate
12/03/2012	Creation Filing	Click to View	Click to View
6/07/2013	Initial Report	Click to View	
6/24/2013	Amendment	Click to View	Click to View
11/07/2013	Agent Change	Click to View	
11/07/2013	Biennial Report	Click to View	
8/03/2015	Change of Officials	Click to View	
8/24/2015	Change of Officials	Click to View	
11/12/2015	Biennial Report	Click to View	
8/01/2016	Agent Change	Click to View	
12/28/2017	Biennial Report	Click to View	
10/17/2019	Biennial Report	Click to View	
12/13/2021	Biennial Report	Click to View	

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THE STATE
 of ALASKA

Department of Commerce, Community, and Economic Development
 Division of Corporations, Business, and Professional Licensing
 PO Box 110806, Juneau, AK 99811-0806
 (907) 465-2550 • Email: corporations@alaska.gov
 Website: corporations.alaska.gov

FOR DIVISION USE ONLY

Domestic Limited Liability Company

2022 Biennial Report

For the period ending December 31, 2021

Web-12/13/2021 12:06:39 PM

Due Date: This report along with its fees are due by January 2, 2022

Fees: If postmarked before February 2, 2022, the fee is \$100.00.
 If postmarked on or after February 2, 2022 then this report is delinquent and the fee is \$137.50.

Entity Name: Alaska Scrap & Recycling, LLC

Entity Number: 10008882

Home Country: UNITED STATES

Home State/Prov.: ALASKA

Physical Address: 305 N Valley Way, C-3, Palmer, AK 99645

Mailing Address: P.O. BOX 202845, ANCHORAGE, AK
 99520-2845

Registered Agent information cannot be changed on this form. Per Alaska Statutes, to update or change the Registered Agent information this entity must submit the Statement of Change form for this entity type along with its filing fee.

Name: Joshua D. Hodes

Physical Address: 701 W 8TH AVE, STE 1200,
 ANCHORAGE, AK 99501

Mailing Address: 701 W 8TH AVE, STE 1200,
 ANCHORAGE, AK 99501

Officials: The following is a complete list of officials who will be on record as a result of this filing.

- **Provide all officials and required information. Use only the titles provided.**
- **Mandatory Members:** this entity must have at least one (1) Member. A Member must own a %. In addition, this entity must provide all Members who own 5% or more of the entity. A Member may be an individual or another entity.
- **Manager:** If the entity is manager managed (per its articles or amendment) then there must be at least (1) Manager provided. A Manager may be a Member if the Manager also owns a % of the entity.

Full Legal Name	Complete Mailing Address	% Owned	Manager	Member
RSP, INC	42115B K-BEACH RD, SOLDOTNA, AK 99669	31.75		X
Southcentral Metal Recycling, LLC	P.O. BOX 202846, ANCHORAGE, AK 99502	33.75	X	X
ASR Acquisition, Inc.	9360 GLACIER HWY, SUITE 202, JUNEAU, AK 99801	25.00		X
Scrap Investor, LLC	PO BOX 202845, ANCHORAGE, AK 99520	5.00		X
Jonathan Rubini	PO Box 202845, Anchorage, AK 99520	4.5		X

If necessary, attach a list of additional officers on a separate 8.5 X 11 sheet of paper.

Purpose: The Company is organized with a general business purpose to conduct any and all lawful affairs for which a limited liability company may be organized pursuant to Alaska Statute 10.50, as amended.

NAICS Code: 423930 - RECYCLABLE MATERIAL MERCHANT WHOLESALERS

New NAICS Code (optional):

This form is for use by the named entity only. Only persons who are authorized by the above Official(s) of the named entity may make changes to it. If you proceed to make changes to this form or any information on it, you will be certifying under penalty of perjury that you are authorized to make those changes, and that everything on the form is true and correct. In addition, persons who file documents with the commissioner that are known to the person to be false in material respects are guilty of a class A misdemeanor. Continuation means you have read this and understand it.

Name: Catherine Neely



City of Homer

www.cityofhomer-ak.gov

Port and Harbor

4311 Freight Dock Road

Homer, AK 99603

port@cityofhomer-ak.gov

(p) 907-235-3160

(f) 907-235-3152

February 3, 2023

Kelli Martin
Alaska Scrap & Recycling
720 E Whitney Rd
Anchorage, AK 99501

Dear Ms. Martin,

As requested, I conducted a review of our records for Alaska Scrap, and can provide the following statement regarding your history with us:

Alaska Scrap & Recycling has leased portions of Lot 12 in several different short- and long-term lease arrangements from the City since 2009. Their current 5-year lease of a 1-acre parcel began in 2019, and our billing records reflect a history of prompt payment of lease fees.

This office has experienced consistently responsive communication from Alaska Scrap & Recycling regarding their operations on the facility, to include scheduling load out operations, payment of dock fees, and calculation of wharfage charges. We can heartily recommend them for renewal of this lease based on both their financial history and their professional conduct.

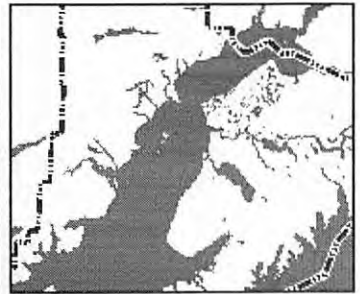
Best,

Amy Woodruff

Administrative Supervisor
City of Homer Port & Harbor
(907) 235-3160
awoodruff@ci.homer.ak.us



Portion of Lot 12



Legend

- Local Option Zones
- Mileposts
- City Limits
- Township Lines
- Section Lines
- Highways
- Major Roads
- Roads**
- Town Medium Volume
- Town Low/Seasonal; Other
- Proposed
- Parcels
- LOT LINES
- Image**
- Red: Red
- Green: Green
- Blue: Blue

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. It is not to be used for navigation.

Notes

Alaska Scrap & Recycling Lease
Detailed Schematic

DATE PRINTED: 2/2/2023



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/28/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh & McLennan Agency LLC 1031 W 4th Ave, Suite 400 Anchorage AK 99501	CONTACT NAME: Bonnie Lynn PHONE (A/C No. Ext): 907-276-5617 FAX (A/C No.): 907-276-6292 E-MAIL ADDRESS: Bonnie.Lynn@MarshMMA.com
	INSURER(S) AFFORDING COVERAGE
License# 62353 ALASKSCRAP1	INSURER A: Alaska National Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
NAIC # 38733	

INSURED
 Alaska Scrap & Recycling, LLC
 720 Whitney Road
 Anchorage AK 99501

COVERAGES **CERTIFICATE NUMBER: 1449355811** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO. JECT <input type="checkbox"/> LOC OTHER:		23APS09895	1/1/2023	1/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY		23AAS09895	1/1/2023	1/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		23ALU09895	1/1/2023	1/1/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	23AWS09895	1/1/2023	1/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Re: Terminal Use Permit. Where required by written contract, Certificate Holder, its elected or appointed officials, employees and volunteers are Additional Insured on the General Liability policy, subject to the terms, conditions and limitations of said policy and the additional insured endorsement. Where required by written contract, Waiver of Subrogation in favor of Certificate Holder applies to referenced policies subject to the terms, conditions and limitations of said policies and the Waiver of Subrogation endorsement. It is further agreed that, where required by written contract, such insurance as is afforded the Certificate Holder shall be primary and non-contributory with any other insurance in force for or which may be purchased by the Certificate Holder. The policies are endorsed to provide notice of cancellation to the certificate holder.

CERTIFICATE HOLDER Homer Port and Harbor 4311 Freight Dock Rd. Homer AK 99603	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	--

GROUND LEASE AND SECURITY AGREEMENT

BETWEEN

CITY OF HOMER, ALASKA

AND

ALASKA SCRAP & RECYCLING, LLC

Dated February 1, 2024

GROUND LEASE AND SECURITY AGREEMENT

GROUND LEASE AND SECURITY AGREEMENT (“Lease”) dated as of February 1, 2024 between the CITY OF HOMER, an Alaska municipal corporation (“Landlord”), whose address is 491 East Pioneer Avenue, Homer, Alaska 99603, and Alaska Scrap and Recycling LLC, an Alaskan Limited Liability Company (“Tenant”), whose address is 44196 Kalifornsky Beach Road, Soldotna, Alaska 99669.

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

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) “Additional Rent” includes all amounts defined or referred to in this lease as additional rent, as well as all charges in the nature of rent such as taxes, utilities and insurance, regardless of whether such amounts are due directly to or collectible by Landlord or to a third party under the terms of this Lease or under applicable law and including any of the preceding amounts that Landlord pays to a third party on behalf of Tenant, before or after any event of default.

(b) “Annual Rent Adjustment” and “Annual Rent Adjustment Date” are defined in Section 4.01(b).

(c) “Base Rent” is defined in Section 4.01.

(d) “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.

(e) "Council" means the City Council of the City of Homer, Alaska.

(f) "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%).

(g) "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.

(h) "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.

(i) "Extended Term" is defined in Section 3.05 if this Lease provides for extension at the option of the Tenant.

(j) "Five Year Rent Adjustment" and "Five Year Rent Adjustment Date" are defined in Section 4.01(a).

(k) "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.

(l) "Initial Term" is defined in Section 3.01.

(m) "Lease Ordinance" means such ordinances or other portions and provisions of the Homer City Code as may be enacted from time to time to dictate Landlord's policies and requirements in leasing real property, currently enacted as Chapter 18.08 of the Homer City Code, as such may be amended, reenacted, supplemented or recodified from time to time, and as used herein the term shall refer to the Lease Ordinance as currently in effect at the time its terms would have operative effect on this Lease.

(n) "Leasehold Mortgage" is defined in Section 13.01.

(o) "Property" is defined in Section 2.01.

(p) "Rent" means Base Rent plus any Additional Rent.

(q) "Qualified Mortgagee" is defined in Section 13.03.

(r) "Required Improvements" is defined in Section 6.02.

(s) "Term" means the Initial Term plus any Extended Term.

1.02 Attachments. The following documents are attached hereto, and such documents, as well as all drawings and documents prepared pursuant thereto and all documents, policies and endorsements delivered hereunder, including without limitation all copies of required insurance policies and/or endorsements, 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” 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 (the “Property”):

A portion of Lot 12, Homer Spit Subdivision No. 5, Homer Recording District, State of Alaska, as depicted on **Exhibit C**, containing 43,560 square feet, more or less, also known as Kenai Peninsula Borough Tax Parcel No. 18103220;

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.” None of landlord, its agents, or its employees make any 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.

2.04 No Subsurface or Mineral Rights. This Lease does not confer mineral rights, any rights to extract natural resources, or any rights with regard to the subsurface of the Property below the level necessary for the uses of the Property permitted in this Lease, all of which rights are, as between Landlord and Tenant, reserved to Landlord.

ARTICLE 3. TERM

3.01 Lease Term. The term of this Lease is eight (8) years, commencing on February 1, 2024, and ending on January 31, 2032 (the “Term”).

(a) This Lease may be terminated before the date listed as end of Term with 90 days prior given notice by Tenant, or with 90 days prior notice by Landlord if the City (Landlord) determines the Premises or Lot is needed for a public purpose, or by mutual agreement of both parties.

3.02 Lease Renewal.

(a) Tenant represents and warrants that it has determined that the duration of the Term, including 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, including any Required Improvements as Tenant may be required to develop. 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, including without limitation any option to renew this Lease, or any option to extend the Term other than as may be provided in Section 3.05.

(b) Notwithstanding the preceding subsection (a), not less than 12 months and not more than 18 months before the expiration of the Term, Tenant may apply to Landlord to enter into a new lease for the Property that is exempted from competitive bidding under and pursuant to the Lease Ordinance.

3.03 Surrender of Possession. Upon the expiration or earlier termination of the Term, unless Tenant and Landlord have entered into a new lease for the Property commencing upon the termination of the 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. 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.

3.04 Holding Over. Tenant's continuing in possession of the Property after the expiration or earlier termination of the 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.

3.05. Options to Extend Lease Term.

(a) At its option and in its sole discretion, Tenant may seek to extend the Term for [two (2)] additional, consecutive one (1) 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 day the Term would otherwise expire; and
- (2) The City Manager determines that the lessee is in full compliance with the terms of the lease at the time of renewal.

(b) Tenant's failure to exercise an option to extend the Term in strict compliance with all the requirements in subsection (a) renders that option and all options as to subsequent Extended Terms null and void.

ARTICLE 4. RENT, TAXES, ASSESSMENTS AND UTILITIES

4.01 Base Rent. Tenant shall pay to Landlord an initial annual rent of \$43,585.56 (as such may later be adjusted per the terms of this Lease, the “Base Rent”). Base Rent is payable monthly in advance in installments of \$3,632.13, plus sales and all other taxes Landlord is authorized or obligated to collect on such transactions, on February 1, 2024, and on the 1st 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 February 1, 2024, 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 alterations, additions or improvements (other than utilities) made by Tenant (or by Tenant’s predecessors under the Lease, if Tenant is party to this Lease by assignment). Following receipt of each such appraisal, the Base Rent will be adjusted (the “Five Year Rent Adjustment”), effective on the anniversary of the commencement of the term (each such date is a “Five Year Rent Adjustment Date”), to an amount equal to the greater of (1) the area of the Property in square feet, multiplied by the fair rental value per square foot determined by the appraisal, and (2) the Base Rent in effect immediately before the Five Year Rent Adjustment Date. The Base Rent as 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 on the anniversary of the commencement of the term in every year without a Five Year Rate Adjustment (each such date is an “Annual Rent Adjustment Date”), by the increase, 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, Tenant shall be obligated to pay the fraction of the assessment that is determined by dividing the number of years remaining in the Term by 10. If the Term of this Lease is subsequently extended renewed (i.e. if Tenant and Landlord later enter into a new lease without putting the Property out for competitive bidding as referenced in Section 2.02), then the part of the assessment that Tenant shall be liable for 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. Any taxes, installments of assessments on the Property that are due to or

collectible by Landlord, or for which Landlord becomes liable that are attributable to any portion of the Term, shall be Additional Rent.

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, telephone, internet service and refuse removal. Tenant shall be solely responsible for the cost of utility connections. Any of the preceding due to or collectible by Landlord shall be Additional Rent.

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, at the rates established by the City of Homer from time to time for such services, including without limitation wharfage, crane use, ice, and other Port and Harbor services. Tenant shall provide the City of Homer with the information necessary to determine the amount of service charges owed, 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, and in addition to any other security or credit support provided by or for the benefit of Tenant in entering into 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 may commingle the security deposit with other funds of Landlord, and its obligations with respect to such security deposit shall only be as a debtor and not as a trustee or fiduciary. 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.

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 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; (3) all compensation payable to Tenant as a result of eminent domain proceedings or a transfer in lieu thereof; (4) all rents from Tenant's subletting of all or a part of the Property; and (5) all improvements on the Property, including any Required Improvements. Said lien and security interest will be in addition to Landlord's liens provided by law.

This Lease shall constitute a mortgage by Tenant as mortgagor of all right, title and interest of Tenant in and to any and all improvements on the Property, including any Required Improvements, in favor of Landlord as mortgagee, and the recorded memorandum of this Lease shall reference Landlord as mortgagee of such improvements. In addition, Tenant shall execute, such financing statements and other instruments as Landlord may now or hereafter reasonably request to evidence the liens, mortgages and security interests granted by Tenant hereunder, including any deed of trust pertaining to additions, alterations and improvements on the Property. This Lease also 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.

ARTICLE 6. USE AND IMPROVEMENT OF PROPERTY

6.01 Use of Property. Tenant shall use and, if applicable, improve the Property only in the manner described in Tenant's proposal or application for the Property as more fully set forth on **Exhibit D**. Tenant's undertaking to use and, if applicable, improve the Property as described on Exhibit D is a material inducement to Landlord leasing the Property to Tenant, and Tenant shall not use or improve the Property for any purpose other than as described on Exhibit D 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 keep and maintain as the minimum development on the Property the Required Improvements as described on Exhibit D and as depicted more specifically in the site plan in **Exhibit E**. If the Required Improvements are not in place at the commencement of the Term, 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 of the Required Improvements 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 thirty (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, as well as all specific requirements for the issuance of any permits or zoning variances. Landlord shall communicate approval or disapproval in the manner provided for notices hereunder, accompanying any disapproval with a statement of the grounds therefor. Tenant shall be responsible for complying with all laws governing the construction, including any specific requirements for the issuance of any permits or zoning variances, notwithstanding Landlord's approval of preliminary plans and specifications under this paragraph.

(b) Not less than fifteen (15) 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 (5) 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 alterations, additions improvements that are not consistent with terms of this Lease or the proposed uses for the Property set forth on Exhibit D is prohibited unless the improvements are authorized by an amendment to this Lease approved by the Council via resolution.

(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. Other than the Required 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 may be removed or replaced by Tenant during the Term, subject to the provisions Section 6.08.

6.08 Disposition of Improvements at End of Term.

(a) Unless excepted by operation of the following subsection (b), any and all buildings, fixtures and improvements of any nature whatsoever constructed or maintained on the Property become the property of Landlord upon expiration or earlier termination of the Term.

(b) One year before the expiration of the Term, the Landlord and Tenant shall determine if the buildings, fixtures and improvements constructed or maintained on the Property,

including the Required Improvements, are structurally sound and in good condition. If such buildings, fixtures and improvements constructed or maintained on the Property are structurally sound and in good condition, 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, upon expiration of the Term, and 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 buildings, fixtures and improvements. Tenant shall be obligated to and shall remove, prior to the expiration of the Term, any buildings, fixtures and improvements constructed or maintained on the Property that are not structurally sound and in good condition, and Landlord shall not have or obtain any ownership interest in such buildings, fixtures and improvements by reason of this Lease.

(c) If Landlord terminates this Lease because of a default by Tenant prior to the expiration of the Term, any buildings, fixtures and improvements constructed or maintained on the Property shall, at Landlord's option, become the property of Landlord, which may use or dispose of them in its sole discretion. If Landlord elects not to obtain ownership of such buildings, fixtures and improvements under the preceding sentence or elects to remove any of such buildings, fixtures or improvements for any reason, Tenant shall be obligated to and shall remove such buildings, fixtures or improvements.

(d) Tenant shall notify Landlord before commencing the removal of an improvement as required under the preceding subsections (b) and/or (c) 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. All salvage resulting from such work will belong to Tenant, who is responsible for its removal and lawful disposal.

(e) If Tenant fails to remove any improvements from the Property that Tenant is required to remove under and per the terms of the preceding subsections (b), (c) and/or (d), Tenant shall pay Landlord the costs that Landlord 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, provided that:

- (1) if the cost of repairing or restoring the Required Improvements, less any available insurance proceeds not reduced by applicable deductibles and coinsurance, exceeds

10% of the replacement cost of the Required Improvements, then 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; or
- (3) if such damage or casualty to the Required Improvements occurs within three years before the end of the 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.

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 (4) four hour 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 only 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 garbage disposal facilities on the Homer Spit or any other public facility.

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.

7.10 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 (ii) the date Tenant ceases to use City of Homer Docks other than the Fish Dock.

ARTICLE 8. ASSIGNMENT AND SUBLEASE

8.01 Assignment or Sublease Absent Consent is Void.

(a) Tenant shall not assign or sublease its interest in this Lease or in the Property without compliance with applicable provisions of the Lease Ordinance, including applying for and receiving consent of Council, and any attempted assignment or sublease absent such compliance is and shall be null and void and of no effect and, at Landlord’s election, will constitute an event of default hereunder.

(b) If Tenant seeks to assign or sublease its interest in this Lease or in the Property, in addition to compliance with applicable provisions of the Lease Ordinance, Tenant shall request consent of Council to such assignment or sublease 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. If Tenant subleases any portion of the Property, Tenant shall be assessed Additional Rent equal to 10% of the current Base Rent for the subleased area.

(c) 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 entity, or the dissolution of the entity, will be deemed an assignment to the Tenant as reconstituted, subject to Section 8.01 and the Lease Ordinance. 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 to the Tenant as reconstituted, subject to Section 8.01 and the Lease Ordinance; 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 such an assignment. 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 and the Lease Ordinance, 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 man-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 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, including the minimum insurance requirements set forth for tenants under the Lease Ordinance. Landlord's insurance requirements in the Lease Ordinance (or any superseding policy permitted under the Lease Ordinance) specify only 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.

(b) Without limiting the generality of the foregoing, Tenant shall maintain in force at all times during the Term the following minimum 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 shall also 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. This policy shall include boiler and machinery coverage.

(c) During any 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, and the provision of any such certificates due at or prior to the commencement of the Term shall be a condition precedent to the commencement of the Term. 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 F** as Landlord may request.

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.

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 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, 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 the Tenant for the purpose of operation thereon 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 ten (10) days after the date such payment is due.

(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 the preceding subsection (a), which is not cured within thirty (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 ten (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) Landlord may terminate this Lease by written notice to Tenant, upon which termination Tenant shall immediately surrender possession of the Property, vacate the Property, and deliver possession of the Property to Landlord. Tenant hereby makes a present grant to Landlord of a full, free and irrevocable license to enter into and upon the Property, in the event Landlord terminates this Lease in accordance with this subsection (a), and to repossess the Property, 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, with or without process of law, 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. Tenant hereby makes a present grant to Landlord of a full, free and irrevocable license to enter into and upon the Property, in the event Landlord terminates Tenant's right of possession in accordance with this subsection (b), and to repossess the Property, 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, with or without process of law, 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.

(c) Subject to Section 12.01(e), 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, as applicable, for any sum that Landlord may deem reasonable.

(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 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, 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 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 such copies of notices hereunder shall be sent by written notice to Landlord. Landlord will not be bound to recognize any assignment of 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, the assignee will be deemed to 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 but which assignment will be subject to all of the other provisions of Article 8 and any provisions of the Lease Ordinance concerning acceptable assignees. 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: city_manager@ci.homer.ak.us

All notices, demands or requests from Landlord to Tenant shall be given to Tenant at the following address:

Alaska Scrap and Recycling, LLC
Attn: Jeff Riley, General Manager & Paul Keen, Facility Manager
44196 K-Beach Road
Soldotna, Alaska 99669
Facsimile: (907) 262-7258
Email: jeffr@pwinvestment.com; pkeen@alaskascrap.com

Each party may, from time to time, 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 of 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 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.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth above.

Landlord:

Tenant:

CITY OF HOMER

ALASKA SCRAP & RECYCLING, LLC

By: _____
Robert Dumouchel, City Manager

Jeff Riley, General Manager

Paul Keen, Facility Manager

ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on _____, 20___, by Robert Dumouchel, City Manager for, and on behalf of the City of Homer, an Alaska municipal corporation.

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on _____, 20___, by Jeff Riley, General Manager for, and on behalf of Alaska Scrap and Recycling, LLC, an Alaskan Limited Liability Company.

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on _____, 20___, by Paul Keen, Facility Manager for, and on behalf of Alaska Scrap and Recycling, LLC, an Alaskan Limited Liability Company.

Notary Public in and for Alaska
My Commission Expires: _____

EXHIBIT A

**SCHEDULE OF ORGANIZATION, OWNERS,
PERCENTAGE OF OWNERSHIP**

Tenant, Alaska Scrap and Recycling, LLC, is an Alaskan Limited Liability Company organized under the laws of the State of Alaska.

Attached to this exhibit is Tenant's State of Alaska Business License certifying that Tenant is in good standing, the Certificate of Organization, and Domestic Limited Liability records describing its legal organization and verifying the members and their percentage of ownership of Alaska Scrap and Recycling LLC.

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

(Section 2.01)

A portion containing 43,560 square feet, more or less, of T 6S R 13W SEC 36 Seward Meridian HM 0930012 Homer Spit Sub No. 5 Lot 12, also known as Kenai Peninsula Borough Tax Parcel No. 18103220, in Homer Recording District, State of Alaska. Physical Address is 4380 Freight Dock Road. Attached to this exhibit is the Property Plat.

EXHIBIT D

TENANT'S PROPOSED USE OF THE PROPERTY

(Section 6.01)

Landlord's Authorized Use of the Property: Use of a 1 acre portion of Lot 12, Concrete Pad, for the staging and storage of scrap metal as part of the business' recycling operations.

Required Improvements: Continue the maintenance of the temporary security fencing with the ability to safely secure and lock access to the area when area is unattended; must be installed around the perimeter of the leased square footage.

Attached to this exhibit is Tenant's written narrative and lease application for reference.

EXHIBIT E

SITE PLAN

(Section 6.02)

Attached to this exhibit is Tenant's property plan detailed schematic.

EXHIBIT F

PERMISSION TO OBTAIN INSURANCE POLICIES

(Section 9.04(d))

The City of Homer is hereby granted permission to request and obtain copies of Alaska Scrap and Recycling, LLC (“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: _____

ALASKA SCRAP & RECYCLING, LLC

By: _____
Jeff Riley, General Manager

By: _____
Paul Keen, Facility Manager



AGENDA ITEM REPORT

**Resolution 23-033, A Resolution of the City Council of Homer, Alaska Approving a Lease with Fortune Sea, LLC for a term of Eight Years with Two One-Year Options for Renewal and Authorizing the City Manager to Negotiate and Execute the Appropriate Documents.
City Manager.**

Item Type: Resolution
Prepared For: Mayor & City Council
Meeting Date: 10 Apr 2023
Staff Contact: Rachel Tussey, CMC, Deputy City Clerk II
Through: Rob Dumouchel, City Manager

Summary Statement:

Ian Pitzman, owner/manager of Fortune Sea, LLC, has submitted a lease application and written request for a new short-term lease exempted from competitive bidding for Lot 19, Homer Spit Sub No. 5, for the purpose of continuing upland vessel support, gear storage, and fishermen's freight handling.

The City Manager and Lease Staff has reviewed the request and found Mr. Pitzman's proposal to be compatible with applicable land use regulations and meets the criteria outlined in City Code.

Staff is recommending to Council that a new eight year-term lease with two, one-year options to renew, be awarded to Fortune Sea, LLC for Lot 19, with a base rent of \$12,222.24 per year. Note that the base rent at the time the final lease will be signed is likely to increase; rate is pending on ongoing 2023 appraisal that's to be completed by April 30th.

The Port and Harbor Advisory Commission discussed the proposal at their March 22, 2023 regular meeting. While they supported Fortune Sea's operation and proposed land use, their motion of recommendation failed due to lack of a majority.

Recommendation:

Adopt Resolution 23-033.

Attachments:

Resolution 23-033
City of Homer Lease Application Proposal Review & Staff Recommendations
Fortune Sea, LLC City Lease Application
DRAFT Base Lease Agreement
Written Public Comment

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

3 City Manager

4 **RESOLUTION 23-033**

5
6 A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA,
7 APPROVING A LEASE WITH FORTUNE SEA, LLC FOR A TERM OF
8 EIGHT YEARS WITH TWO ONE-YEAR OPTIONS FOR RENEWAL AND
9 AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE
10 THE APPROPRIATE DOCUMENTS.

11
12 WHEREAS, Fortune Sea, LLC currently has a ten-year lease that will be expiring April 30,
13 2023 with no options remaining for Lot 19, Homer Spit Subdivision No. 5; and

14
15 WHEREAS, Ian Pitzman, owner/manager of Fortune Sea, LLC, has submitted a lease
16 application and written request for a new five to ten-year lease exempted from competitive
17 bidding for the purpose of upland vessel support, fishermen's gear staging and storage,
18 fishermen's freight handling, and temporary trailer and equipment parking, in accordance
19 with HCC 18.08.130(b); and

20
21 WHEREAS, HCC 18.08.130 further states Council, upon written recommendation by the
22 City Manager, may exempt the renewal of a lease from competitive bidding if Council finds such
23 exemption serves the City's best interests and must do so by resolution within six months prior
24 to the date of lease termination; and

25
26 WHEREAS, The City Manager and Lease Staff have found Fortune Sea's proposal to be
27 compatible with applicable land use regulations and either meets or exceeds the criteria
28 outlined in City Code, and recommend a lease be awarded exempted from the competitive
29 bidding process; and

30
31 WHEREAS, The City proposed a longer term of eight years with two, one-year options to
32 renew for a total of 10 years beginning May 1, 2023 and expiring April 30, 2033 to allow a longer
33 lease commitment, therefore spending less staff and lessee's time on multiple short lease
34 renewals, without the risk of delaying any future port expansion as the City will continue to
35 seek the highest and best use of all City-owned property; and

36
37 WHEREAS, The Port and Harbor Advisory Commission (PHC) has advisory capacity to
38 the City Manager and Council to make recommendations on land use and future development
39 within the port and harbor areas; and

40
41 WHEREAS, The PHC discussed the proposal at their March 22, 2023 regular meeting and
42 voiced support for Fortune Sea's operation and proposed land use.
43

44 NOW, THEREFORE, BE IT RESOLVED that the Homer City Council hereby approves a
45 new, eight year-term lease with two, one-year options to renew, to Fortune Sea, LLC for Lot 19,
46 Homer Spit Subdivision No. 5, with a base rent of \$12,222.24 per year, and authorizes the City
47 Manager to negotiate and execute the appropriate documents.
48

49 PASSED AND ADOPTED by the Homer City Council this 10th day of April, 2023.

50

51

CITY OF HOMER

52

53

54

KEN CASTNER, MAYOR

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56

ATTEST:

57

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59

60

MELISSA JACOBSEN, MMC, CITY CLERK

61

62

Fiscal note: \$12,222.24 annually; subject to annual CPI increases and 5-year appraisals



City of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

491 East Pioneer Avenue
Homer, Alaska 99603

clerk@cityofhomer-ak.gov

(p) 907-235-3130

(f) 907-235-3143

City of Homer Lease Application Proposal Review & Staff Recommendations

Proposal Synopsis

Application is for: Fortune Sea, LLC

Lease Proposal Synopsis: Ian Pitzman, owner/manager of Fortune Sea, currently has a 10-year lease that will be expiring April 30, 2023 with no options remaining.

On September 14, 2022 Mr. Pitzman requested in writing a new lease exempted from competitive bidding for the purpose of continuing upland vessel support, gear storage, and fishermen's freight handling. City Staff found no initial objection to the request so Mr. Pitzman completed a lease application and submitted it on March 10, 2023.

Per HCC 18.08.130 Lease renewal, Council, upon written recommendation by the City Manager, may exempt the renewal of a lease from competitive bidding if Council finds such exemption serves the City's best interests. Factors considered under this section are outlined in HCC. If Council approves the new lease without a competitive process, it must do so by resolution within 6 months prior to the date of lease termination.

Lease Staff has reviewed the proposal per the criteria outlined in HCC and recommends a lease be awarded exempted from the competitive bidding process. The proposed terms of the lease are as follows:

- Use of Lot 19, Homer Spit Sub. No. 5, for upland vessel support, fishermen's gear staging and storage, fishermen's freight handling, and temporary trailer and equipment parking.

This use would be described in detail in Appendix D of the lease with the Applicant's written narrative attached for reference.

- Base rent will continue from the current rent of \$1,018.52/month plus tax since the proposed lease space and use has not changed. This is subject to change depending on the 2023 appraisal that is being conducted now; results are expected by early April.

Base rent is subject to annual Consumer Price Index increases and appraisals.

- Term will be for 8 years with two 1-year options to renew, for a total of 10 years beginning May 1, 2023 and expiring April 30, 2033.

Applicant initially proposed a 5-year lease with one 5-year option to renew but they are open to any lease for 5-10 years that the City proposes. HCC limits renewal options to no more than two and each option must not exceed 25% of the length of the initial lease term.

The City proposed a longer term to allow a longer lease commitment, therefore less time spent on multiple short lease renewals, without risk of delaying any future port expansion.

- Continuation of existing standard terms per the City's base lease.

Criteria Checklist

Complete Lease Application form and a clear, precise written narrative that addresses all proposal criteria: Yes No N/A Incomplete

Notes: Staff worked with Applicant to ensure lease application and written narrative are complete.

Application fee is paid.

Property Plan is compatible with neighboring uses and consistent with applicable land use regulations including the Land Allocation Plan; Comprehensive Plan: Yes No N/A Incomplete

Notes: Planning Staff, Port and Harbor Staff, and Economic Development Manager have found the use is compatible.

Port and Harbor Advisory Commission did not object to the proposed land use.

Development Plan details out any proposed improvements with a specific time schedule, benchmarks for development, and cost estimates/financing plan: Yes No N/A Incomplete

Notes: Applicant does not have any proposed improvement plans or long-term development on this property. In their written narrative they explain how they fenced and gated the property several years ago and they intend to maintain that infrastructure.

Applicant has Conex's with roof structures built over them; all storage facilities on the lot are temporary in nature and can be removed if they were subject to vacate the lot.

Financial capability or backing of the applicant (including credit history, prior lease history, assets, capital investments) has been verified to support the lease proposal: Yes No N/A Incomplete

Notes: Applicant submitted a Profit and Loss income statement for FY2021 and FY2022 to fulfill the documentation requirement for business' vitality, and a Statement of Financial History from the Port and Harbor Office to fulfill the documentation requirement for payment history. Documentation has provided sufficient evidence they are capable of making timely monthly payments.

Applicant has not been found in default or sent to collections, has not filed for bankruptcy, and does not have any pending litigations against them.

Proposal found to be sufficient in other evaluation criteria per HCC 18.08.060 (includes experience of applicant in the proposed business or venture, economic, financial, and social impacts): Yes No N/A Incomplete

Notes: Applicant's proposal has found to be sufficient.

Details are in the written narrative; other comments from Planning and Harbor Staff are below.

Applicant has verified they are insurable and licensable in the City, Kenai Peninsula Borough, and/or the State of Alaska for their proposed use: Yes No N/A Incomplete

Notes: Documentation confirms they are an LLC in good standing with the State.

Insurance is current with the City and meets the requirements of HCC and the lease.

Applicant has explained that no other approvals, permits, and/or inspections are applicable to their use.

Any other information that is directly pertinent to the proposal: Yes No N/A Incomplete

Notes: Applicant does not intend to sublease.

FOR ASSIGNMENTS ONLY – Current lessee is in full compliance with the lease terms and is eligible for lease reassignment: Yes No N/A Incomplete

Notes: n/a

All applicable documentation has been provided: Yes No N/A Incomplete

- Lease Application and Written Narrative
- Property Plan
- Development Plan
- Financial Information
- Business Entity and Licensing Information
- Verification that Insurance can be provided at Signing of Lease
- City Planning & Other Agency Approval Information

Comments/Recommendations from Planning & Zoning

Rick Abboud, City Planner: I have no objection related to zoning.

Julie Engebretsen, Economic Development Manager: The term of the lease is consistent with the City's goal of pursuing a port expansion in the next decade. At the end of this new lease, the City will need to analyze the conditions at that time and determine if yard storage is still the highest and best use of this property.

Comments/Recommendations from Port & Harbor Staff *(if applicable)* N/A

Bryan Hawkins, Port Director: No issues with this lessee, they are performing as agreed in the lease contract and are on auto-pay for the monthly rent.

Recommendation from Port & Harbor Advisory Commission *(if applicable)* N/A

Rachel Tussey, Deputy City Clerk: Recommendations by the City Manager to Council do not require prior review by the PHC under HCC 18.08.130 Lease Renewal. However, I recognize the Commission's advisory capacity to the City Manager and Council to make recommendations on land use and future development within the port and harbor areas. Therefore I requested the PHC's consideration focus on the following key things: The applicant's proposed use of the land, their development plan (if there is one), and if these items are consistent with the Commission's

goals for the planning and use of harbor facilities. The PHC has been advised that operation, maintenance, and compliance regarding City facilities are the direct responsibility of City Staff (e.g. Planning/Zoning, Port and Harbor, Public Works) under the direction of the City Manager, so any operational recommendations concerning the lease should be directed to the City Manager for consideration in a separate motion.

Port & Harbor Advisory Commission: The commission discussed the proposal at their March 22, 2023 regular meeting; they supported Fortune Sea’s operation and proposed land use, however their motion of recommendation failed due to lack of a majority.

Commissioners Shavelson & Matthews: Voiced objection to not being able to see draft leases of lease proposals they as a body are expected to make recommendations on. They read HCC and have differing interpretations from City Staff and the City Attorney on the roles and responsibilities the commission has when considering a lease application; they believe it’s beyond just land use recommendations.

Comments from City Manager’s Office

Rob Dumouchel, City Manager: I have no objections. Happy to see the use continue.

Reviewed proposal 3/15/2023 and approved to proceed through PHC and Council.

Recommended Action to City Council

By resolution, award Fortune Sea, LLC a new 8-year lease with two 1-year options for renewal, and authorizing the City Manager to negotiate and execute the appropriate documents.

Application Verified By: Rachel Tussey, CMC, Deputy City Clerk II

Date: 3/10/2023

City Manager Approval: Rob Dumouchel, City Manager

Date: 3/15/2023



City Lease Application

For City-Owned Real Property & Airport Terminal Space

Office of the City Clerk
 491 East Pioneer Avenue
 Homer, Alaska 99603
 Phone: (907) 235-3130
 Fax: (907) 235-3143
clerk@cityofhomer-ak.gov

Lease Application Purpose

- Request for New Lease; New Lessee – Applicant is not currently a City lessee
- Request for New Lease; Existing Lessee – Applicant is a current lessee with no remaining options to renew
- Request for Assignment of Lease – Applicant is requesting to have an existing lease transferred to a new owner/business

Property Information

This Lease is for:	<input checked="" type="checkbox"/> City-Owned Real Property	<input type="checkbox"/> Space in the Homer Airport Terminal Building
Physical Address:	4357 Freight Dock Road, Homer, AK 99603	
Square Footage:	13,939 sf	<input checked="" type="checkbox"/> Full Lot <input type="checkbox"/> Portion of Lot KPB Parcel No.: 181-032-38
Legal Description of Property: (If within the Airport Terminal Building list Space Description Info & square footage instead)	Lot 19, Homer Spit Subdivision, No. 5	

Applicant Information

Business Name:	Fortune Sea, LLC
Representative's Full Name & Title:	Ian Pitzman, Owner
Mailing Address:	4254 Svedlund Circle
City, State, ZIP Code:	Homer, AK 99603
Phone Number(s):	907-299-1159
Email:	ian@fortunesea.net

Business Entity & Financial Information

<input type="checkbox"/>	Sole or Individual Proprietorship – Attached documentation must provide owner's full name, address, and verify they are the sole owner.
	Is entity authorized to do business in Alaska? <input type="checkbox"/> No <input type="checkbox"/> Yes – As of what date:
<input type="checkbox"/>	Partnership – Attached documentation must provide Partners' full names, addresses, and share percentages.
	Date of Organization: _____ Type of Partnership: _____

	Is Partnership authorized to do business in Alaska? <input type="checkbox"/> No <input type="checkbox"/> Yes – As of what date:
<input checked="" type="checkbox"/>	Corporation – Attached documentation must provide the full names of Officers and Principal Stockholders (10%+), their addresses, and share percentages.
	Date of Organization: April 11, 2006 Type of Corporation: Limited Liability Company
	Is Corporation authorized to do business in Alaska? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes – As of what date: April 11, 2006
	Corporation is held: <input checked="" type="checkbox"/> Privately <input type="checkbox"/> Publicly – How and where is stock traded:
<input type="checkbox"/>	Other – Please explain:

Proof of Financial Capability to Meet Obligations:	<input checked="" type="checkbox"/> Documentation of Payment History: Documents such as a credit report and score from one of the three credit bureaus (i.e. Experian, Equifax, TransUnion) or records of prior lease history.
	<input checked="" type="checkbox"/> Documentation of Applicant's Financial Backing: Records showing applicant has secured the funding necessary to implement their development/improvement plan and/or purchase the business (if applicable).
	<input checked="" type="checkbox"/> Documentation of Business' Vitality: Minimum of two years (past year and current year) of financial statements; this includes a Balance Sheet and Profit/Loss Statement (Revenue/Expense Statement).
Surety Information:	Has any surety or bonding company ever been required to perform upon your default or the default of any of the principals in you organization holding more than a 10% interest? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – Attach a statement naming the surety or bonding company, date and amount of bond, and the circumstances surrounding the default or performance.
Bankruptcy information:	Have you or any of the principals of your organization holding more than a 10% interest ever been declared bankrupt or are presently a debtor in a bankruptcy action? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – Attach a statement indicating state, date, Court having jurisdiction, case number and to amount of assets and debt.
Pending Litigation:	Are you or any of the principals of your organization holding more than a 10% interest presently a party to any pending litigation? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – Attach detailed information as to each claim, cause of action, lien, judgment including dates and case numbers.

Lease Proposal	
Type of Business/ Proposed Use of the Property:	Upland Vessel Support, Gear Storage, Fishermen's Freight Handling This lot supports 10 large vessels in the Homer Harbor in their fishing activities

Requested Lease Term:	<input type="checkbox"/> Short Term Lease (One Year or Less) – Duration (in months): <input checked="" type="checkbox"/> Long Term Lease (More Than One Year) <ul style="list-style-type: none"> Standardized Lease is a 20-year term with two 5-year Options to Renew; City Manager may deviate from standardized lease term when reasonable and necessary, and approved by Council (18.08.030). No more than two Options to Renew; each option cannot exceed 25% of initial lease term (18.08.110). Duration (in years): 8 years No. of Options to Renew: 2 - 1 year options
Property Plan:	<input checked="" type="checkbox"/> Describe your Property Plan in your written narrative. Details should include but not be limited to: <ul style="list-style-type: none"> Proposed utilization of the lot/space, including parking If there are existing buildings on the property and what their proposed uses are Any intentions to rent out or sublease space on the property How the use is compatible with neighboring uses and consistent with applicable land use regulations including the Land Allocation Plan; Comprehensive Plan <input checked="" type="checkbox"/> Provide a detailed schematic (to scale) that shows the following: <ul style="list-style-type: none"> Size of lot – dimensions and total square footage Placement/size of existing buildings, storage units, and other miscellaneous structures Parking spaces – numbered on the drawing with a total number indicated Note: an as-built survey from a licensed surveyor may be required
Development Plan:	Do you have a development and/or improvement plan for the property, including plans for repairs or maintenance to any existing buildings? <input type="checkbox"/> Yes In your written narrative, provide as much information as possible on how you intend to develop/improve the property. Include a time schedule from project initiation to completion, major project milestones, cost estimate and financing plan, and any additional designs not already provided in the Property Plan’s detailed schematic. <input checked="" type="checkbox"/> No In your written narrative, explain why.
City Planning & Other Agency Approvals:	Does your business/proposed use and/or development plan require agency approval? The granting of any lease is contingent upon lessee obtaining approval, necessary permits, and/or inspection statements from all appropriate City, State and/or Federal agencies. This includes but is not limited to: <ul style="list-style-type: none"> Applicable permits/approval from City Planning for zoning compliance, such as Conditional Use Permits, Zoning Permits Fire Marshall Plan Review and Permitting Waste Disposal System Plan Approval – Includes fish waste if applicable Other applicable permits/inspection statements from agencies such as U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, and Alaska Department of Environmental Conservation Division of Environmental Health <input checked="" type="checkbox"/> Explain in your written narrative what necessary approvals, permits, and/or inspections are applicable to your business/proposed use and the current status of your application with those agencies. <input type="checkbox"/> Attach any relevant documentation that verifies completion or pending status.

Insurance Requirements:	<p>The granting of any lease is contingent upon lessee obtaining and keeping in full force insurance as outlined in HCC 18.08.170. Certificates of insurance showing the required insurance is in effect and identifying the City as an additional insured must be provided to the City at the time a lease becomes effective and annually thereafter, and upon every change in insurance provider or insurance coverage.</p> <p><input checked="" type="checkbox"/> Provide proof of insurability for public liability insurance in the amount of not less than \$1,000,000 coverage per occurrence for bodily injury, including death, and property damage, and the City of Homer as co-insured. Additional insurance limits or types may be required due to the nature of the business, lease, or exposure.</p>
Benefits & Impacts on Community:	<p><input checked="" type="checkbox"/> In your written narrative answer the following questions:</p> <ul style="list-style-type: none"> • What experience do you have in the proposed business or venture? • How long have you resided or conducted business in the City, Kenai Peninsula Borough, and/or the State of Alaska? • What are some of the economic, social, and financial benefits and/or impacts your business/proposed use brings to the community?
Applicant References:	<p><input checked="" type="checkbox"/> In your written narrative, list four persons or firms with whom the Applicant or its owners have conducted business transactions with during the past three years. Two references named shall have knowledge of your financial management history, of which at least one must be your principal financial institution. Two of the references must have knowledge of your business expertise.</p> <p>Each reference must include the following:</p> <ul style="list-style-type: none"> • Full Name • Name of the organization/business and their title at this entity • Address • Phone number and email address • Nature of association with Applicant
Additional Information:	<p><input type="checkbox"/> Include in your written narrative, or attach relevant documentation, that you deem pertinent to your application/lease proposal. Criteria for evaluating and approving proposals and competing lease applications can be found under HCC 18.08.060.</p>

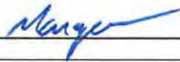
Required Attachments/Documentation	
<input checked="" type="checkbox"/>	Written Narrative
<input checked="" type="checkbox"/>	Business Entity and Licensing Information <ul style="list-style-type: none"> • State of Alaska Business License • Current State of Alaska Biennial Report • If Partnership: Statement of Partnership/Partnership Agreement • If Corporation: Articles of Incorporation & Bylaws • Any additional documentation concerning the formation or operation of the entity
<input checked="" type="checkbox"/>	Financial Information
<input checked="" type="checkbox"/>	Property Plan – Detailed Schematic of Property
<input type="checkbox"/>	Development Plan documents/plans, if any

<input checked="" type="checkbox"/>	Proof of Insurability; verification that insurance can be provided at signing of lease
<input type="checkbox"/>	City Planning & Other Agency Approval Information, if any

Application Signatures

By signing, I agree that the above information is true and correct to the best of my knowledge. I certify that I am authorized to sign as the applicant on behalf of the entity I represent.

Signature:  Date: 1/3/2023

Printed Name & Title: Ian Pitzman, ~~TITLE~~ 

Office Use Only

Received By & Date: <u>Rachel Tussey 1/10/23</u>	Fee Processed: \$ <u>1,000.00</u>	Date: <u>3/10/2023</u>
Date Application Accepted as Complete:	Application Timeout Date: <u>1/10/2024</u> (1 year from receipt)	
Submitted for Dept. Review:	<input type="checkbox"/> Planning <input type="checkbox"/> Port & Harbor <input type="checkbox"/> Finance <input type="checkbox"/> Public Works <input type="checkbox"/> Other:	
Submitted for City Manager Review:	<input type="checkbox"/> Approved on: <input type="checkbox"/> Denied on:	
For Existing Leases Exempt from Competitive Bidding:	Current Lease Expires with No Options to renew: _____	
	6 mos. Prior to date of lease termination (Council Approval Deadline): _____	
	Request received within 12 to 18 mo. timeframe from expiration of lease date: <input type="checkbox"/> Yes <input type="checkbox"/> No	

To Whom It May Concern.

Fortune Sea, LLC is a vessel holding and management company that operates a fleet of 10 large vessels in Alaskan waters. All ten of these vessels call Homer their home port. Fortune Sea Marine Services, LLC is a vessel haulout, support, and repair company that is affiliated with Fortune Sea, LLC. This lot is used as an upland fleet support area for these boats and for the service company that supports them. Additionally, the lot is used as fishermen's gear staging and storage, and for temporary trailer and equipment parking.

This enterprise is locally owned by Ian and Stephanie Pitzman and has been growing since 2007. This lease began as an RFP that was accepted and approved for two five-year blocks. I am requesting the same again, a five-year lease with one five-year extension. Our anticipated use is the same as in the past and we have no plans for long-term building on this lot currently. Years ago, we fenced and gated the property, and we intend to maintain that infrastructure.

As a direct benefit to the community of Homer, Fortune Sea Marine Service is currently employing 18 locals full time, and Fortune Sea, through the vessels, employs as many as 45 crew at a time when all are active during this seasonal business. This upland fleet support lot is critical to the smooth function of this enterprise.

We enjoy support from many local marine trade businesses and if necessary, I can arrange to provide references. We are customers of:

Homer Port and Harbor

South Central Radar

Petro Marine

LFS "The Gear Shed"

Desperate Marine

In Demand Marine

And many others throughout Southcentral Alaska

Thank you,

Ian Pitzman

**Fortune Sea
F/V Cape Caution**



Cape Caution fishes for crab & cod and tenders for salmon,
herring & cod.

108 ft. LOA ~ 24 ft. Beam ~ 6 ft. draft ~ 8 bunks

Twin Screw ~ Packs 280,000 lbs. in RSW

**Fortune Sea
F/V Kona Kai**



Kona Kai fishes for crab & cod and tenders for
salmon, herring & cod.
108 ft. LOA ~ 26 ft. Beam ~ 9 ft. draft ~ 11 bunks
Twin Screw ~ Packs 400,000 lbs. in RSW

Fortune Sea
F/V Katrina Em



Katrina Em fishes for cod and tenders for salmon, herring, and cod. Katrina Em has worked multiple Vessel of Opportunity spill response charters.
101 ft. LOA ~ 26 ft. Beam ~ 10 ft. draft ~ 8 bunks
Twin Screw ~ Packs 240,000 lbs. in RSW

Fortune Sea
F/V Akemi



Akemi tenders for salmon & herring, charters for research & dive work, and works as a Vessel of Opportunity for spill response.

95 ft. LOA ~ 24 ft. Beam ~ 6 ft. draft ~ 6 bunks

Twin Screw ~ Packs 220,000 lbs. in RSW

Fortune Sea
F/V Egegik Spirit



Egegik Spirit tenders for salmon & herring and charters for
research & dive work.

95 ft. LOA ~ 24 ft. Beam ~ 10 ft. draft ~ 7 bunks

Twin Screw & Bow Thruster ~ Packs 180,000 lbs. in RSW

Fortune Sea F/V Summer Bay



Summer Bay fishes for crab & cod as a featured boat on Discovery Channel.

Summer Bay tenders for salmon & herring and is a Vessel of Opportunity
for spill response in Central & SW Alaska.

113 ft. LOA ~ 26 ft. Beam ~ 10 ft. draft ~ 10 bunks

Twin Screw ~ Packs 350,000 lbs. in RSW

Fortune Sea F/V Camai



Camai tenders for salmon & herring and has a large, flat freight deck.
Camai is available in the off-season for research charters or as a
Vessel of Opportunity for spill response and Salvage
115 ft. LOA ~ 35 ft. Beam ~ 5 ft. draft ~ 9 bunks
Twin Screw ~ Packs 320,000 lbs. in RSW

Fortune Sea F/V Reliance



Reliance tenders for salmon & herring and has a large, flat freight deck.

Reliance is available in the off-season for research charters or as a

Vessel of Opportunity for spill response and Salvage

165 ft. LOA ~ 36 ft. Beam ~ 12 ft. draft ~ 12 bunks

Twin Screw, 10 knots ~ Packs 550,000 lbs. in RSW

Fortune Sea F/V Bella K



Bella K tenders for salmon & herring and has a large, flat freight deck.

Bella K is available in the off-season for research charters or as a

Vessel of Opportunity for spill response and Salvage

130 ft. LOA ~ 30 ft. Beam ~ 12 ft. draft ~ 12 bunks

Twin Screw, 10 knots ~ Packs 400,000 lbs. in RSW

Fortune Sea F/V Tempest



Tempest tenders for salmon, herring, and cod.
Tempest is available in the off-season for research charters or as a
Vessel of Opportunity for spill response and Salvage
124 ft. LOA ~ 26 ft. Beam ~ 10 ft. draft ~ 6 bunks
Twin Screw, 9 knots ~ Packs 400,000 lbs. in RSW



City of Homer

www.cityofhomer-ak.gov

Port and Harbor

4311 Freight Dock Road

Homer, AK 99603

port@cityofhomer-ak.gov

(p) 907-235-3160

(f) 907-235-3152

March 10, 2023

Ian Pitzman
Fortune Sea Marine
4254 Svedlund Circle
Homer, AK 99603

Dear Mr. Pitzman,

As requested, I conducted a review of our account records for Fortune Sea LLC's lease with the City, and can provide the following statement regarding your history with us:

Fortune Sea Marine has leased Lot 19 (T 6S R 13W SEC 36 Seward Meridian HM 0930012 Homer Spit Sub No 5 Lot 19) from the City since 2013. Our billing records reflect a history of prompt payment of lease fees.

This office has experienced responsive communication from Fortune Sea regarding their accounts with the City. We can heartily recommend them for renewal of this lease based on both their financial history and their professional conduct.

Best,

Amy Woodruff
Administrative Supervisor
City of Homer Port & Harbor
(907) 235-3160
awoodruff@ci.homer.ak.us

Alaska Department of Commerce, Community, and Economic Development

Division of Corporations, Business, and Professional Licensing
PO Box 110806, Juneau, AK 99811-0806

This is to certify that

Fortune Sea LLC

4254 Svedlund Circle, Homer, AK 99603

owned by

Ian Pitzman

is licensed by the department to conduct business for the period

December 31, 2022 to December 31, 2024
for the following line(s) of business:

11 - Agriculture, Forestry, Fishing and Hunting



This license shall not be taken as permission to do business in the state without having complied with the other requirements of the laws of the State or of the United States.

This license must be posted in a conspicuous place at the business location.
It is not transferable or assignable.

Julie Sande
Commissioner

Alaska Entity #: 100432

**State of Alaska
Department of Commerce, Community, and
Economic Development
Corporations, Business and Professional Licensing**

**CERTIFICATE
OF
ORGANIZATION
Limited Liability Company**

THE UNDERSIGNED, as Commissioner of Commerce, Community, and Economic Development of the State of Alaska, hereby certifies that Articles of Organization duly signed and verified pursuant to the provisions of Alaska Statutes has been received in this office and have been found to conform to law.

ACCORDINGLY, the undersigned, as Commissioner of Commerce, Community, and Economic Development, and by virtue of the authority vested in me by law, hereby issues this certificate to

Fortune Sea LLC

and attaches hereto the original copy of the Articles of Organization for such certificate.



IN TESTIMONY WHEREOF, I execute this certificate and affix the Great Seal of the State of Alaska on **April 11, 2006**.

A handwritten signature in black ink, appearing to read "William C. Noll".

William C. Noll
Commissioner



State of Alaska
Corporations, Business and Professional Licensing
CORPORATION SECTION
 PO Box 110808
 Juneau, AK 99811-0808

AK Entity #: 100432
 Date Filed: 04/11/2006 01:31 PM
 State of Alaska
 Department of Commerce

ARTICLES OF ORGANIZATION
 Online Filing
 (Domestic Limited Liability Company)

The undersigned person(s) of the age of 18 years or more, acting as organizers of a limited liability company under the Alaska Limited Liability Act (AS 10.50) hereby adopt the following Articles of Organization:

Article 1. Name of the Limited Liability Company. The name of a limited liability company must contain the words "limited liability company" or the abbreviation "L.L.C.," or "LLC":

Fortune Sea LLC

Article 2. The purpose for which the company is organized. A limited liability company may list any lawful as its purpose:

fishing/tender vessel owner

Article 3. Registered Agent Name and Address:

Name:	Ian Pitzman
Mailing Address:	P O Box 912 Homer, AK 99603
Physical Address if Mailing Address is a Post Office Box:	4254 Svedlund Circle Homer, AK 99603

Article 4. Duration:

Check this box if the duration is perpetual:

If the duration is not perpetual, list the latest date upon which the Limited Liability Company is to dissolve:

Article 5. Management: Check this box if the company will be managed by a manager.

Article 6. Optional Provisions:

One or more organizer shall sign the Articles of Organization for a limited liability company.

Name of Organizer	Online Signature of Organizer
Ken Ng	Ken Ng

Date Submitted Online

April 11, 2006

**DISCLOSURE OF COMPANY ACTIVITIES
USING THE
NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM
(NAICS)**

A separate disclosure of purpose must be attached to the entity creation filing that most closely describes the activities of the entity. The NAICS Code must not conflict with the purpose listed in the formation document.

The 6 digit NAICS industry grouping code that most clearly describe the initial activities of the corporation is:

114111



THE STATE
 of **ALASKA**

Department of Commerce, Community, and Economic Development
 Division of Corporations, Business, and Professional Licensing
 PO Box 110806, Juneau, AK 99811-0806
 (907) 465-2550 • Email: corporations@alaska.gov
 Website: corporations.alaska.gov

FOR DIVISION USE ONLY

Web-1/2/2022 4:25:09 PM

Domestic Limited Liability Company

2022 Biennial Report
 For the period ending December 31, 2021

Due Date: This report along with its fees are due by January 2, 2022

Fees: If postmarked before February 2, 2022, the fee is \$100.00.
 If postmarked on or after February 2, 2022 then this report is delinquent and the fee is \$137.50.

Entity Name: Fortune Sea LLC

Entity Number: 100432

Home Country: UNITED STATES

Home State/Prov.: ALASKA

Physical Address: 4254 SVEDLUND CIRCLE, HOMER, AK 99603

Mailing Address: 4254 SVEDLUND CIRCLE, HOMER, AK 99603

Registered Agent information cannot be changed on this form. Per Alaska Statutes, to update or change the Registered Agent information this entity must submit the Statement of Change form for this entity type along with its filing fee.

Name: Ian Pitzman

Physical Address: 4254 Svedlund Circle, Homer, AK 99603

Mailing Address: 4254 SVEDLUND CIRCLE, HOMER, AK 99603

Officials: The following is a complete list of officials who will be on record as a result of this filing.

- **Provide all officials and required information. Use only the titles provided.**
- **Mandatory Members:** this entity must have at least one (1) Member. A Member must own a %. In addition, this entity must provide all Members who own 5% or more of the entity. A Member may be an individual or another entity.
- **Manager:** If the entity is manager managed (per its articles or amendment) then there must be at least (1) Manager provided. A Manager may be a Member if the Manager also owns a % of the entity.

Full Legal Name	Complete Mailing Address	% Owned	Manager	Member
Ian Pitzman	4254 SVEDLUND CIRCLE, HOMER, AK 99603	100.00	X	X

If necessary, attach a list of additional officers on a separate 8.5 X 11 sheet of paper.

Purpose: fishing/tender vessel owner

NAICS Code: 114111 - FINFISH FISHING

New NAICS Code (optional):

This form is for use by the named entity only. Only persons who are authorized by the above Official(s) of the named entity may make changes to it. If you proceed to make changes to this form or any information on it, you will be certifying under penalty of perjury that you are authorized to make those changes, and that everything on the form is true and correct. In addition, persons who file documents with the commissioner that are known to the person to be false in material respects are guilty of a class A misdemeanor. Continuation means

you have read this and understand it.

Name: Ian Pitzman

Request for Taxpayer Identification Number and Certification

**Give Form to the
requester. Do not
send to the IRS.**

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	<p>1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. FORTUNE SEA LLC</p> <p>2 Business name/disregarded entity name, if different from above</p> <p>3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.</p> <p><input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate</p> <p><input checked="" type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ S</p> <p><small>Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</small></p> <p><input type="checkbox"/> Other (see instructions) ▶</p>	<p>4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from FATCA reporting code (if any) _____</p> <p><small>(Applies to accounts maintained outside the U.S.)</small></p>
	<p>5 Address (number, street, and apt. or suite no.) See instructions. 4254 SVEDLUND CIR</p> <p>6 City, state, and ZIP code HOMER AK 99603</p> <p>7 List account number(s) here (optional)</p>	<p>Requester's name and address (optional)</p>

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number	Employer identification number																			
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20	-	4	6	7	3	5	2	4												

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶	Date ▶ 03/09/2023
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/09/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J Gallagher Risk Mngt Serv Inc 2825 Eastlake Ave E Ste 110 Seattle WA 981023084	CONTACT NAME: BALL, PATRICIA PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____ <table style="width: 100%; border: none;"> <tr> <td style="text-align: center; border: none;">INSURER(S) AFFORDING COVERAGE</td> <td style="text-align: center; border: none;">NAIC #</td> </tr> <tr> <td style="border: none;">INSURER A: Ohio Security Insurance Company</td> <td style="border: none;">24082</td> </tr> <tr> <td style="border: none;">INSURER B:</td> <td style="border: none;"></td> </tr> <tr> <td style="border: none;">INSURER C:</td> <td style="border: none;"></td> </tr> <tr> <td style="border: none;">INSURER D:</td> <td style="border: none;"></td> </tr> <tr> <td style="border: none;">INSURER E:</td> <td style="border: none;"></td> </tr> <tr> <td style="border: none;">INSURER F:</td> <td style="border: none;"></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Ohio Security Insurance Company	24082	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
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INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															
INSURED Fortune Sea, Llc 4254 Svedlund Cir Homer AK 99603															

COVERAGES **CERTIFICATE NUMBER:** 0020031683 **REVISION NUMBER:** 2016-03

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____	X	X	BLS64321332	01/27/2023	01/27/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 OTHER: \$ _____
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ _____ BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE (Per accident) \$ _____
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED: _____ RETENTION \$ _____						EACH OCCURRENCE \$ _____ AGGREGATE \$ _____
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ _____ E.L. DISEASE - EA EMPLOYEE \$ _____ E.L. DISEASE - POLICY LIMIT \$ _____

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER City of Homer 491 E Pioneer Ave Homer AK 99603	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Curtis Luken
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GROUND LEASE AND SECURITY AGREEMENT

BETWEEN

CITY OF HOMER, ALASKA

AND

FORTUNE SEA, LLC

Dated May 1, 2023

GROUND LEASE AND SECURITY AGREEMENT

GROUND LEASE AND SECURITY AGREEMENT (“Lease”) dated as of May 1, 2023 between the City of Homer, an Alaska municipal corporation (“Landlord”), whose address is 491 East Pioneer Avenue, Homer, Alaska 99603, and Fortune Sea, LLC, an Alaskan Limited Liability Company (“Tenant”), whose address is 4254 Svedlund Circle, Homer, Alaska 99603.

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

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) “Additional Rent” includes all amounts defined or referred to in this lease as additional rent, as well as all charges in the nature of rent such as taxes, utilities and insurance, regardless of whether such amounts are due directly to or collectible by Landlord or to a third party under the terms of this Lease or under applicable law and including any of the preceding amounts that Landlord pays to a third party on behalf of Tenant, before or after any event of default.

(b) “Annual Rent Adjustment” and “Annual Rent Adjustment Date” are defined in Section 4.01(b).

(c) “Base Rent” is defined in Section 4.01.

(d) “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.

(e) "Council" means the City Council of the City of Homer, Alaska.

(f) "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%).

(g) "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.

(h) "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.

(i) "Extended Term" is defined in Section 3.05 if this Lease provides for extension at the option of the Tenant.

(j) "Five Year Rent Adjustment" and "Five Year Rent Adjustment Date" are defined in Section 4.01(a).

(k) "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.

(l) "Initial Term" is defined in Section 3.01.

(m) "Lease Ordinance" means such ordinances or other portions and provisions of the Homer City Code as may be enacted from time to time to dictate Landlord's policies and requirements in leasing real property, currently enacted as Chapter 18.08 of the Homer City Code, as such may be amended, reenacted, supplemented or recodified from time to time, and as used herein the term shall refer to the Lease Ordinance as currently in effect at the time its terms would have operative effect on this Lease.

(n) "Leasehold Mortgage" is defined in Section 13.01.

(o) "Property" is defined in Section 2.01.

(p) "Rent" means Base Rent plus any Additional Rent.

(q) "Qualified Mortgagee" is defined in Section 13.03.

(r) "Required Improvements" is defined in Section 6.02.

(s) "Term" means the Initial Term plus any Extended Term.

1.02 Attachments. The following documents are attached hereto, and such documents, as well as all drawings and documents prepared pursuant thereto and all documents, policies and endorsements delivered hereunder, including without limitation all copies of required insurance policies and/or endorsements, 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” 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 (the “Property”):

Lot 19, Homer Spit Subdivision No. 5, Homer Recording District, State of Alaska, as depicted on **Exhibit C**, containing 13,939 square feet, more or less, also known as Kenai Peninsula Borough Tax Parcel No. 18103238;

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.” None of landlord, its agents, or its employees make any 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.

2.04 No Subsurface or Mineral Rights. This Lease does not confer mineral rights, any rights to extract natural resources, or any rights with regard to the subsurface of the Property below the level necessary for the uses of the Property permitted in this Lease, all of which rights are, as between Landlord and Tenant, reserved to Landlord.

ARTICLE 3. TERM

3.01 Lease Term. The term of this Lease is eight (8) years, commencing on May 1, 2023, and ending on April 30, 2031 (the “Term”).

3.02 Lease Renewal.

(a) Tenant represents and warrants that it has determined that the duration of the Term, including 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, including any Required Improvements as Tenant may be required to develop. 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, including without limitation any option to renew this Lease, or any option to extend the Term other than as may be provided in Section 3.05.

(b) Notwithstanding the preceding subsection (a), not less than 12 months and not more than 18 months before the expiration of the Term, Tenant may apply to Landlord to enter into a new lease for the Property that is exempted from competitive bidding under and pursuant to the Lease Ordinance.

3.03 Surrender of Possession. Upon the expiration or earlier termination of the Term, unless Tenant and Landlord have entered into a new lease for the Property commencing upon the termination of the 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. 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.

3.04 Holding Over. Tenant's continuing in possession of the Property after the expiration or earlier termination of the 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.

3.05. Options to Extend Lease Term.

(a) At its option and in its sole discretion, Tenant may seek to extend the Term for two (2) additional, consecutive one (1) 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 day the Term would otherwise expire; and
- (2) The City Manager determines that the lessee is in full compliance with the terms of the lease at the time of renewal.

(b) Tenant's failure to exercise an option to extend the Term in strict compliance with all the requirements in subsection (a) renders that option and all options as to subsequent Extended Terms null and void.

ARTICLE 4. RENT, TAXES, ASSESSMENTS AND UTILITIES

4.01 Base Rent. Tenant shall pay to Landlord an initial annual rent of \$12,222.24 (as such may later be adjusted per the terms of this Lease, the "Base Rent"). Base Rent is payable monthly in advance in installments of \$1,018.52, plus sales and all other taxes Landlord is authorized or obligated to collect on such transactions, on May 1, 2023, and on the 1st 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, 2028, 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 alterations, additions or improvements (other than utilities) made by Tenant (or by Tenant's predecessors under the Lease, if Tenant is party to this Lease by assignment). Following receipt of each such appraisal, the Base Rent will be adjusted (the "Five Year Rent Adjustment"), effective on the anniversary of the commencement of the term (each such date is a "Five Year Rent Adjustment Date"), to an amount equal to the greater of (1) the area of the Property in square feet, multiplied by the fair rental value per square foot determined by the appraisal, and (2) the Base Rent in effect immediately before the Five Year Rent Adjustment Date. The Base Rent as 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 on the anniversary of the commencement of the term in every year without a Five Year Rate Adjustment (each such date is an "Annual Rent Adjustment Date"), by the increase, 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, Tenant shall be obligated to pay the fraction of the assessment that is determined by dividing the number of years remaining in the Term by 10. If the Term of this Lease is subsequently extended renewed (i.e. if Tenant and Landlord later enter into a new lease without putting the Property out for competitive bidding as referenced in Section 2.02), then the part of the assessment that Tenant shall be liable for 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. Any taxes, installments of assessments on the Property that are due to or collectible by Landlord, or for which Landlord becomes liable that are attributable to any portion of the Term, shall be Additional Rent.

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, telephone, internet service and refuse removal. Tenant shall be solely responsible

for the cost of utility connections. Any of the preceding due to or collectible by Landlord shall be Additional Rent.

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, at the rates established by the City of Homer from time to time for such services, including without limitation wharfage, crane use, ice, and other Port and Harbor services. Tenant shall provide the City of Homer with the information necessary to determine the amount of service charges owed, 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, and in addition to any other security or credit support provided by or for the benefit of Tenant in entering into 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 may commingle the security deposit with other funds of Landlord, and its obligations with respect to such security deposit shall only be as a debtor and not as a trustee or fiduciary. 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.

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 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; (3) all compensation payable to Tenant as a result of eminent domain proceedings or a transfer in lieu thereof; (4) all rents from Tenant's subletting of all or a part of the Property; and (5) all improvements on the Property, including any Required Improvements. Said lien and security interest will be in addition to Landlord's liens provided by law.

This Lease shall constitute a mortgage by Tenant as mortgagor of all right, title and interest of Tenant in and to any and all improvements on the Property, including any Required Improvements, in favor of Landlord as mortgagee, and the recorded memorandum of this Lease shall reference Landlord as mortgagee of such improvements. In addition, Tenant shall execute, such financing statements and other instruments as Landlord may now or hereafter reasonably request to evidence the liens, mortgages and security interests granted by Tenant hereunder, including any deed of trust pertaining to additions, alterations and improvements on the Property.

This Lease also 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.

ARTICLE 6. USE AND IMPROVEMENT OF PROPERTY

6.01 Use of Property. Tenant shall use and, if applicable, improve the Property only in the manner described in Tenant’s proposal or application for the Property as more fully set forth on **Exhibit D**. Tenant’s undertaking to use and, if applicable, improve the Property as described on Exhibit D is a material inducement to Landlord leasing the Property to Tenant, and Tenant shall not use or improve the Property for any purpose other than as described on Exhibit D 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 keep and maintain as the minimum development on the Property the Required Improvements as described on Exhibit D and as depicted more specifically in the site plan in **Exhibit E**. If the Required Improvements are not in place at the commencement of the Term, 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 of the Required Improvements 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 thirty (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, as well as all specific requirements for the issuance of any permits or zoning variances. Landlord shall communicate approval or disapproval in the manner provided for notices hereunder, accompanying any disapproval with a statement of the grounds therefor. Tenant shall be responsible for complying with all laws governing the construction, including any specific requirements for the issuance of any permits or zoning variances, notwithstanding Landlord’s approval of preliminary plans and specifications under this paragraph.

(b) Not less than fifteen (15) 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 (5) 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 alterations, additions improvements that are not consistent with terms of this Lease or the proposed uses for the Property set forth on Exhibit D is prohibited unless the improvements are authorized by an amendment to this Lease approved by the Council via resolution.

(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. Other than the Required 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 may be removed or replaced by Tenant during the Term, subject to the provisions Section 6.08.

6.08 Disposition of Improvements at End of Term.

(a) Unless excepted by operation of the following subsection (b), any and all buildings, fixtures and improvements of any nature whatsoever constructed or maintained on the Property become the property of Landlord upon expiration or earlier termination of the Term.

(b) One year before the expiration of the Term, the Landlord and Tenant shall determine if the buildings, fixtures and improvements constructed or maintained on the Property, including the Required Improvements, are structurally sound and in good condition. If such buildings, fixtures and improvements constructed or maintained on the Property are structurally sound and in good condition, 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, upon expiration of the Term, and 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 buildings, fixtures and

improvements. Tenant shall be obligated to and shall remove, prior to the expiration of the Term, any buildings, fixtures and improvements constructed or maintained on the Property that are not structurally sound and in good condition, and Landlord shall not have or obtain any ownership interest in such buildings, fixtures and improvements by reason of this Lease.

(c) If Landlord terminates this Lease because of a default by Tenant prior to the expiration of the Term, any buildings, fixtures and improvements constructed or maintained on the Property shall, at Landlord's option, become the property of Landlord, which may use or dispose of them in its sole discretion. If Landlord elects not to obtain ownership of such buildings, fixtures and improvements under the preceding sentence or elects to remove any of such buildings, fixtures or improvements for any reason, Tenant shall be obligated to and shall remove such buildings, fixtures or improvements.

(d) Tenant shall notify Landlord before commencing the removal of an improvement as required under the preceding subsections (b) and/or (c) 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. All salvage resulting from such work will belong to Tenant, who is responsible for its removal and lawful disposal.

(e) If Tenant fails to remove any improvements from the Property that Tenant is required to remove under and per the terms of the preceding subsections (b), (c) and/or (d), Tenant shall pay Landlord the costs that Landlord 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, provided that:

- (1) if the cost of repairing or restoring the Required Improvements, less any available insurance proceeds not reduced by applicable deductibles and coinsurance, exceeds 10% of the replacement cost of the Required Improvements, then 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; or
- (3) if such damage or casualty to the Required Improvements occurs within three years before the end of the 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.

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 (4) four hour 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 only 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 garbage disposal facilities on the Homer Spit or any other public facility.

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.

7.10 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 (ii) the date Tenant ceases to use City of Homer Docks other than the Fish Dock.

ARTICLE 8. ASSIGNMENT AND SUBLEASE

8.01 Assignment or Sublease Absent Consent is Void.

(a) Tenant shall not assign or sublease its interest in this Lease or in the Property without compliance with applicable provisions of the Lease Ordinance, including applying for and receiving consent of Council, and any attempted assignment or sublease absent such compliance is and shall be null and void and of no effect and, at Landlord's election, will constitute an event of default hereunder.

(b) If Tenant seeks to assign or sublease its interest in this Lease or in the Property, in addition to compliance with applicable provisions of the Lease Ordinance, Tenant shall request consent of Council to such assignment or sublease 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. If Tenant subleases any portion of the Property, Tenant shall be assessed Additional Rent equal to 10% of the current Base Rent for the subleased area.

(c) 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 entity, or the dissolution of the entity, will be deemed an assignment to the Tenant as reconstituted, subject to Section 8.01 and the Lease Ordinance. 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 to the Tenant as reconstituted, subject to Section 8.01 and the Lease Ordinance; 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 such an assignment. 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 and the Lease Ordinance, 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 man-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 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, including the minimum insurance requirements set forth for tenants under the Lease Ordinance. Landlord's insurance requirements in the Lease Ordinance (or any superseding policy permitted under the Lease Ordinance) specify only 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.

(b) Without limiting the generality of the foregoing, Tenant shall maintain in force at all times during the Term the following minimum 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 shall also 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. This policy shall include boiler and machinery coverage.

(c) During any 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, and the provision of any such certificates due at or prior to the commencement of the Term shall be a condition precedent to the commencement of the Term. 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 F** as Landlord may request.

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.

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 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, 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 the Tenant for the purpose of operation thereon 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 ten (10) days after the date such payment is due.

(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 the preceding subsection (a), which is not cured within thirty (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 ten (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) Landlord may terminate this Lease by written notice to Tenant, upon which termination Tenant shall immediately surrender possession of the Property, vacate the Property, and deliver possession of the Property to Landlord. Tenant hereby makes a present grant to Landlord of a full, free and irrevocable license to enter into and upon the Property, in the event Landlord terminates this Lease in accordance with this subsection (a), and to repossess the Property, 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, with or without process of law, 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. Tenant hereby makes a present grant to Landlord of a full, free and irrevocable license to enter into and upon the Property, in the event Landlord terminates Tenant's right of possession in accordance with this subsection (b), and to repossess the Property, 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, with or without process of law, 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.

(c) Subject to Section 12.01(e), 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, as applicable, for any sum that Landlord may deem reasonable.

(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 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, 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 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 such copies of notices hereunder shall be sent by written notice to Landlord. Landlord will not be bound to recognize any assignment of 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, the assignee will be deemed to 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 but which assignment will be subject to all of the other provisions of Article 8 and any provisions of the Lease Ordinance concerning acceptable assignees. 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: city_manager@ci.homer.ak.us

All notices, demands or requests from Landlord to Tenant shall be given to Tenant at the following address:

Fortune Sea, LLC
Attn: Ian Pitzman, Owner
4254 Svedlund Circle
Homer, AK 99603
Email: ian@fortunesea.net

Each party may, from time to time, 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 of 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 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.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth above.

Landlord:

Tenant:

CITY OF HOMER

FORTUNE SEA, LLC

By: _____
Robert Dumouchel, City Manager

Ian Pitzman, Owner/Manager

ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on _____, 20____, by Robert Dumouchel, City Manager for, and on behalf of the City of Homer, an Alaska municipal corporation.

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on _____, 20____, by Ian Pitzman, Owner/Manager for, and on behalf of Fortune Sea, LLC, an Alaskan Limited Liability Company.

Notary Public in and for Alaska
My Commission Expires: _____

EXHIBIT A

**SCHEDULE OF ORGANIZATION, OWNERS,
PERCENTAGE OF OWNERSHIP**

Tenant, Fortune Sea, LLC, is an Alaskan Limited Liability Company organized under the laws of the State of Alaska.

Attached to this exhibit is Tenant's State of Alaska Business License certifying that Tenant is in good standing, the Certificate of Organization, and Domestic Limited Liability records describing its legal organization and verifying the members and their percentage of ownership of Fortune Sea, LLC.

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

(Section 2.01)

T 6S R 13W SEC 36 Seward Meridian HM 0930012 Homer Spit Sub No. 5 Lot 19, also known as Kenai Peninsula Borough Tax Parcel No. 18103238, in Homer Recording District, State of Alaska. Physical Address is 4357 Freight Dock Road. Attached to this exhibit is the Property Plat.

EXHIBIT D

TENANT'S PROPOSED USE OF THE PROPERTY

(Section 6.01)

Landlord's Authorized Use of the Property: Upland vessel support, fishermen's gear staging and storage, fishermen's freight handling, and temporary trailer and equipment parking.

Required Improvements: Continue the maintenance of the lot including drainage, leveling, gravel, installed fencing, and lighting.

Attached to this exhibit is Tenant's written narrative and lease application for reference.

EXHIBIT E

SITE PLAN

(Section 6.02)

Attached to this exhibit is Tenant's property plan detailed schematic.

EXHIBIT F

PERMISSION TO OBTAIN INSURANCE POLICIES

(Section 9.04(d))

The City of Homer is hereby granted permission to request and obtain copies of Fortune Sea, LLC (“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: _____

FORTUNE SEA, LLC

By: _____
Ian Pitzman, Owner/Manager

From: [Bob Shavelson](#)
To: [Melissa Jacobsen](#)
Subject: Fwd: Fortune Sea Lease Renewal
Date: Wednesday, April 5, 2023 2:55:11 PM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi Mellisa -

I see the Fortune Sea lease renewal on the upcoming Council agenda and just wanted to make sure the note I sent (below) gets into Council packet.

Thanks -

Bob

----- Forwarded message -----

From: **Bob Shavelson** <bobshavelson@gmail.com>
Date: Thu, Mar 23, 2023 at 10:04 PM
Subject: Fortune Sea Lease Renewal
To: Robert Dumouchel <RDumouchel@ci.homer.ak.us>
Cc: <clerk@cityofhomer-ak.gov>

Hi Rob –

I'm writing to explain last night's Port & Harbor Commission (PHC) vote on the Fortune Sea, LLC, lease renewal, and to offer my support for the lease renewal to you and the City Council.

I opposed the Fortune Sea, LLC, lease renewal because staff requested the PHC to endorse a draft lease we had not seen (and apparently would not be allowed to see until the lease was executed). I also opposed the Alaska Scrap & Recycling, LLC, lease renewal for the same policy reason, despite the fact I strongly support the renewal of both these leases.

While the PHC was able to approve the Alaska Scrap & Recycling lease renewal with a majority vote, it could not approve the Fortune Sea lease renewal because Fortune Sea's owner sits on the PHC, and rightly recused himself from the vote.

So, I took a position based on my policy belief the PHC should see and review leases before it makes any recommendation to Council to renew a lease, and unfortunately, Fortune Sea suffered the collateral damage of that policy debate.

If last night was the first time this issue arose, I would have addressed it differently. But as I wrote on January 12 after a similar discussion around the Petro Marine lease, I believe the PHC should see all lease documents – including a draft lease – before making leasing recommendations to Council.

I'm writing now simply to emphasize to you and the Council my strong support for the Fortune Sea Lease renewal.

Thank you and I would welcome a meeting to discuss this and related issues. Let me know if there's a good time in the coming weeks to chat.

Bob

Bob Shavelson

bobshavelson@gmail.com

907.299.3277



AGENDA ITEM REPORT

Resolution 23-034, A Resolution of the City Council of Homer, Alaska Amending the City of Homer Fee Schedule under Camping Fees. City Manager/Port Director.

Item Type:	Resolution
Prepared For:	Mayor Castner and Homer City Council
Meeting Date:	10 April 2023
From:	Bryan Hawkins, Port Director
Through:	Rob Dumouchel, City Manager

Working with the City Manager, Public Works, and Port and Harbor staff, we have come up with a plan for Port and Harbor to assume the responsibilities of campground management this season. The leading factors behind this move include: that the Port has a good working relationship with the company that supplies the machines we use at the pay stations, we have a very solid cash-handling program, and by code we have the ability to write citations for parking and camping violations. Utilizing port seasonal parking officers to help with enforcement of both parking and campground areas will alleviate some of the burden for HPD, who would previously have been called out for issuance of any camping citations/violations.

Management will consist of working with the campground hosts, making regular patrols, confirming payment, and when necessary writing citations for nonpayment. Our Admin staff will process all the sales receipts and cash through our office and of course work with the customers that choose to call with questions or come to our counter.

Given that we were already planning on expanding fee pay parking on the spit and taking over the enforcement responsibilities for Airport parking this summer, with the addition of all the campgrounds we have determined that in order to have adequate enforcement in the field we will need to add two additional parking enforcement officers to the team. That will give us a total of four, which we believe will be adequate for seven-day coverage for parking and camping spit wide. We will also be taking on a seasonal summer admin staff member to assist with processing the extra deposit revenue collections and assist with fielding public inquiries and answering questions about the program. Existing budgeted summer Harbor Assistant staff will help with grounds keeping maintenance duties for the campgrounds as the wider program develops. This will consist of cleaning the fire rings, cleaning and or repairing picnic tables, making sure portable restrooms are serviced, emptying the trash barrels, and trash pickup around the facility. Public works custodial staff will be keeping their current schedule for bathrooms maintenance.

The revenues from campgrounds will offset operating costs, and if managed efficiently, may become a new revenue for the port. New revenues are going to be needed to help offset the local costs for our harbor float recapitalization program and we are looking at parking and campgrounds to help fund those improvements. In the past, vessel owners and moorage within the harbor have shouldered a significant portion of the

expenditures for improvements and services in both the harbor basin and uplands areas of the port facility. We are looking to distribute costs for services in a more balanced way between all user groups of the Port. Parking fees for day use will be increasing from \$5 per calendar day to \$10 and we're recommending that camping increase from \$20 to \$30 per day to make them equivalent to similar services offered in private camping areas in Homer and nearby cities like Seward.

Fiscal Notes:

- Total of budget amendment to bridge 3 months of new seasonal expenditures to get to July 1, 2023
FY24 budget = \$36,436.64
- Campgrounds revenues will be directed to the Port Enterprise fund. Future revenues unknown, but FY2023 budget estimates \$60,000 expected in between April 1 and June 30, 2023, and \$170,000 for the season as a whole.

Recommendation

Adopt Resolution 23-034

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

3 City Manager/
4 Port Director

5 **RESOLUTION 23-034**

6
7 A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA,
8 AMENDING THE CITY FEE SCHEDULE UNDER CAMPING FEES.
9

10 WHEREAS, In March of 2023 the City shifted the city campground fee collection and
11 enforcement duties to fall under the port and harbor department's existing parking fee
12 collection and enforcement program for: streamlined efficiency, better utilization of staff time,
13 clear and precise process, and better customer service; and
14

15 WHEREAS, The last time the City's rates for camping where adjusted was in 2018:
16 Resolution 18-077(A); and
17

18 WHEREAS, To ensure rates better equalize with surrounding similar services, and better
19 support the campground's operational needs, the following rate change is proposed: Tent
20 camping in campground west (beach) remains the same at \$20 per day, all other city
21 campgrounds increased from \$20 to \$30 per day; and
22

23 WHEREAS, It is in the best interest of the City of Homer facilitate the use of, and access
24 to, the City's campgrounds resource in a manner that provides sustainable support services
25 for public enjoyment.
26

27 NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska, hereby
28 amends the City Fee Schedule under Camping Fees as follows:
29

30 Camping fees:
31

All camping Tent Camping Area West (beach)	\$20.00 per day
All Other City Campgrounds	<u>\$30.00 per day</u>
Impound Fee	\$20.00 <u>\$30.00</u>
Pavilion Rental	\$25.00 per 4 hours

32
33 PASSED AND ADOPTED by the Homer City Council this 10th day of April, 2023.
34

35 CITY OF HOMER
36

37 _____
38 KEN CASTNER, MAYOR

39 ATTEST:

40

41 _____

42 MELISSA JACOBSEN, MMC, CITY CLERK

43

44 Fiscal note: Revenue amounts not defined in 2023-24 budget



AGENDA ITEM REPORT

Resolution 23-035, A Resolution of the City Council of Homer, Alaska Adopting the Revised Port and Harbor Tariff No. 1. City Manager/Port Director.

Item Type: Resolution
Prepared For: Mayor Castner and Homer City Council
Meeting Date: 10 April 2023
From: Bryan Hawkins, Port Director
Through: Rob Dumouchel, City Manager

Background

Staff conduct an annual review of our Port of Homer Tariff No. 1 to make sure it reflects our current polices and rates, submitting any prospective changes to the City for review and approval. The following information listed below pertains to this years proposed edits/changes. Per HCC 10.04.055 changes to the port and harbor tariff may be approved by City Council via resolution, but per JDOLaw recommendation we've drafted a Resolution to allow for extra public hearing review time.

Additional review components to our process include:

- Review by Jeff Monroe IAMPE, HDR's senior maritime consultant whose professional assistance we recruited to rewrite Tariff during major revision in 2017
- Review by the City's law firm, JDOLaw.
- US Federal Maritime Commission (FMC) provides federal oversight of our tariff and periodic review (our tariff is publicly posted on our website for easy access), verifying that the Tariff applies equally to all vessels and cargo handled.
- The Port and Harbor Advisory Commission (PHC) reviewed the staff proposed tariff changes at their February 22 and March 22 2023 meetings and made a motion of support recommending council approve the proposed tariff change Resolution (see attached meeting minutes for detail).

- Clarification changes prompted by PHC meeting: Components of the lightering fees and passenger wharfage fee definitions were combined in the language for regulated vessels in the version presented to PHC. After discussion with the commission at their March 22 meeting, those two fees have been separated and independently defined to better represent the specific usage activity they represent. The passenger wharfage fee was better defined for passengers within the port facilities, and is set as \$0 for both regulated and unregulated vessels at this time as a place holder for possible use in the future.

Changes to Fees and other updates

Changes are outlined below in general summary description. Each individual change is highlighted in **red** in the Tariff for detailed reference (*attachment to this memo*)

- All specific fee amounts, rates, and fee tables have been moved to Appendix A fee schedule for easier reference and edit.
- Fee changes- Increase of daily parking rate from \$5 per day to \$10 per day. Addition of lightering fee. Increase of cruise ship service charge to bring it closer to other Alaskan port's fees in this area. Definition added of a Passenger wharfage fee to capture description of facility usage, fee currently set at \$0.00.
- Language and conditions for Survivorship (transfer of reserved stall agreement upon death) have been revised with City lawyer input to make the conditions of transfer more representatively even between LLC's and individuals.
- Proof of vessel insurance will be required for all tenants of reserved stalls.
- Clarifying language edits throughout.

Recommendation

Pursuant to HCC 10.04.055 Fees, schedule a public hearing for Resolution 23-035 on April 27, 2023

Attachments

Resolution 23-035

March 22 2023 PHC Meeting Minutes

Proposed Draft Terminal Tariff No. 1 with red marked edits/changes

**CITY OF HOMER
HOMER, ALASKA**

City Manager/Port

RESOLUTION 23-035

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA
ADOPTING THE REVISED PORT AND HARBOR TARIFF NO. 1

WHEREAS, The Port and Harbor Tariff No. 1 is reviewed and updated annually; and

WHEREAS, Staff has completed its annual review and submitted edits, changes, and additions for review; and

WHEREAS, The proposed changes were reviewed by: Jeff Monroe IAMPE, HDR's senior maritime consultant regarding tariffs; JDOLaw, the city's contracted law firm; and the Port and Harbor Advisory Commission; and

WHEREAS, The Port and Harbor Advisory Commission reviewed the revised tariff at their February 22 and March 22 2023 meetings and, at the march meeting, recommended support for City Council to approve and adopt the revised Tariff No1; and

WHEREAS, The revised Tariff No. 1 accurately represents the Homer Harbor's current and planned operational and fiscal policies.

NOW, THEREFORE, BE IT RESOLVED that the City of Homer City Council adopts the revised Port and Harbor Tariff No. 1.

PASSED AND ADOPTED by the Homer City Council this 10th day of April, 2023.

CITY OF HOMER

KEN CASTNER, MAYOR

ATTEST:

MELISSA JACOBSEN, MMC, CITY CLERK

Fiscal note: N/A

HMTA March 1, 2023 Meeting Minutes

Friend, Hawkins gave verbal report

8. PUBLIC HEARING

9. PENDING BUSINESS

- 9.A. Port of Homer Tariff No. 1 Revisions for 2023
Agenda Item Report PHC 23-014
Submitted Written Testimony

Chair introduced the agenda item by reading the title and reconvened the discussion on the Terminal Tariff that took place at the PHC's 4pm worksession.

- Legality of reserved stall assignments not being able to transfer with the sale of vessels
- Equal access to public facilities and not being able to provide preferential use to any particular group over another
- Changing boat in reserved stalls and hotberth assignments
- How Survivorship works for the transferring of reserved stall holders
- Request for more legal scrutiny on the tariff document
- How the seasonal 20' stall reservations work
- Ranking of applicants in the stall wait list, and how ownership is proven to remain on the list

PITZMAN/SHAVELSON MOVED TO SUSPEND THE RULES TO ALLOW ADDITIONAL PUBLIC COMMENTS ON THE TARIFF FOR 3 MINUTES EACH.

There was no discussion.

VOTE: NON-OBJECTION: UNANIMOUS CONSENT.

Motion carried.

Katherine Brennan, comments on parking costs

Brian Ritchie, comments on harbor costs and issue of finding revenue sources

Chair requested a motion to approve the tariff, but with their added amendments and the idea staff will be doing further review with the City Attorney.

Shavelson commented on how it needs a thorough legal vetting before it should go to Council. Chair requested to see more wording regarding LLCs and stalls, and inquired if a parking pass discount is a viable option for business owners and their workers. Woodruff and Hawkins explained the logistical issues and staff constraints as to how providing preferred discounts has not worked and is not recommended by staff. Discussion ensued on employers buying parking passes for themselves and their employees.

Shavelson move to support and recommending City Council adopt the proposed amendments to the Port of Homer Terminal Tariff No. 1 for 2023 with the understanding that there will be a more significant legal vetting when it comes up for review within the year.

No discussion

Vote: Yes: Velsko, Friend, Siekaniec, Pitzman, Shavelson

No: Matthews

Motion carried.

9.B. Timing of Consumer Price Index Increases to Moorage Rates
Agenda Item Report PHC 23-015

Chair introduced the agenda item by reading the title and deferred to Woodruff.

Woodruff comments, facilitated discussion with the commission on Chair's request to change the timing of when the CPI increase is applied to moorage rates and her recommendations.

Siekaniec/Friend moved to request the City Manager direct staff to evaluate the timing of rate increases to more closely match inflation, at the time of the 2024 tariff review.

Discussion; agreement to review again in October for the mid-biennium budget

Approved unanimously

9.C. Land Allocation Plan – Part 2
Agenda Item Report PHC 23-016

Chair introduced the agenda item by reading the title and deferred to Engebretsen.

Engebretsen presented the final draft of the Land Allocation Plan with all the city lands and invited the commission to ask questions about the document.

- Identifying the portion of Lot 12 that is leased out
- What parts of the map will get updated after Council approves the 2023 LAP
- Leased land is a valuable resource; appraisal amounts are low

10. NEW BUSINESS

10.A. E-Bike Discussion
Agenda Item Report PHC 23-017

Chair introduced the agenda item by reading the title and opened the floor for discussion.

Mayor voiced his suggestions for installing e-bike infrastructure, such as charging stations and the necessary signage, and that the City enter into public private partnerships to pay for those items.

Woodruff recommended Homer Drawdown be involved to take action.

Shavelson comments



**PORT OF HOMER ALASKA
TERMINAL TARIFF NO. 1
RATES, CHARGES, RULES, & REGULATIONS
-AT-
MARINE TERMINAL**

**SECTION I: ALL FACILITIES
SECTION II: PIONEER DOCK & DEEP WATER
DOCK SECTION III: FISH DOCK
SECTION IV: SMALL BOAT HARBOR**

Issued by City of Homer
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FMC Organization #011879

EFFECTIVE June 26, 2017 AS AMENDED



AMENDMENTS

<u>DATE</u>	<u>PAGE</u>	<u>RULE</u>
June 26, 2017		Original Issued
June 1, 2018		28
June 20, 2018		12 and 34
January 1 2020		9, 12,13,26,27, 34 and 37
June 30 2021		12, 26, 35, 39



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SECTION I

All Facilities

Rules & Regulations

RULE 1 – SCOPE AND APPLICABILITY

1.01. SCOPE – The Port of Homer is operated by the City of Homer; a municipal entity of the State of Alaska. The intent of the Tariff is to specify rates, charges, rules and regulations for users of the facilities owned by the City of Homer. The Tariff specifies charges and associated requirements for authorized parties using or accessing the marine terminal facility.

1.02. APPLICABILITY – The rules, regulations, conditions commodity rates and/or charges set forth in this schedule apply to or from the following facilities:

- a. Port of Homer Docks –Deep Water Dock and Pioneer Dock
- b. Homer Harbor Fish Dock
- c. Homer Small Boat Harbor

1.03. COMPLIANCE – Use of the City docks and Terminal facilities shall be deemed acceptance of this Tariff and the terms and conditions named herein. The Port reserves the right to revoke or deny access to the Port of Homer, or any other facility operated by the Port, or any person or company who violates these Rules and Regulations. Use of City docks and Terminal facilities and the acceptance of services shall comply with any additional Conditions of Berthing set forth in any subsection contained herein.

1.04. FMC COMPLIANCE – This Tariff is published and compliant with the Federal Maritime Commission Tariff Requirements as required by law and is therefore notice to the public, shippers, consignees and carriers, that the rates, rules and charges apply to all traffic for which contract rates have not been arranged.

1.05. MUNICIPAL ORDINANCES – In addition to the Port and Harbor Tariff, the public, shippers, consignees and carriers using City of Homer facilities should consult and be aware that the City of Homer Code of Ordinances, including but not limited to Chapter 5 (Health and Public Safety), Chapter 21 (Zoning and Planning) and Chapter 10 (Port and Harbor), all as amended, apply and govern where not specifically provided otherwise in this Tariff.

1.06. AREA OF OPERATIONAL APPLICABILITY – Rates, charges, rules and regulations provided in this Tariff shall apply to persons and vessels for the use of designated terminal facilities under jurisdictional control of the City of Homer and located within the Harbor bounded by the City of Homer with the Small Boat Harbor entrance located at latitude 59 36’15” N and longitude 151 24’48” W, and specifically to docks, appurtenant structures thereto, and waterways managed and owned by the City of Homer. Special terms and conditions exist for the dock operations by the State of Alaska, ~~Alaska~~–Marine Highway System, ~~for operations of the State Ferry System~~ **and the US Coast Guard for operations** on the Pioneer Dock.



1.07. FACILITY APPLICABILITY – Rates, charges, rules and regulations named in this Tariff and any additions, revisions, or supplements thereto shall apply to all vessels or users and to all freight received at facilities subject to the Tariff on and after the effective date of revisions, or supplements thereto. Unless otherwise specified, all transit freight received at the Terminal and undelivered prior to effective dates of Tariff, revisions, or supplements thereto shall be charged the rates in effect on the date such freight was received until entire lot or shipment has been withdrawn.

1.08. CONTACT AND COMPLAINTS – Contact, requests and complaints may be made by any shipper, user, vessel, or vessel agent or other interested parties through the Port Director, 4311 Freight Dock Road, Homer, Alaska, 99603, or by facsimile, number (907) 235-3152 or by email port@ci.homer.ak.us. Requests and complaints must be in writing.

RULE 2 – AUTHORITY TO ESTABLISH SUPPLEMENTAL RULES AND CONTRACTS

2.01. SUPPLEMENTAL RULES AND REGULATIONS – The provisions, rules and regulations in this Tariff may be supplemented by other rules and regulations in conformance with Federal, State and City of Homer requirements under a separate document. Such Rules and Regulations shall constitute an agreement by terminal users to comply with all Rules and Regulations of the Port as specified and shall apply to all terminal(s) users in the same manner as the Tariff. Authority is granted under this Tariff to the Port Director to establish and revise those rules as appropriate.

2.02. SEPARATE CONTRACTS – The Port reserves the right to execute supplemental or separate contracts outside of this Tariff, as approved by the City Council and subject to Federal Maritime Commission Rules, Regulations and Administrative procedures as well as Alaska Statutes and local law. Such contracts shall be consistent with the provisions of this Tariff. However, where provisions of a separate contract differ, the terms and conditions of the contract shall supersede this Tariff to the extent permitted by law. 10.04.055 (b) HCC

2.03. RESERVATION OF AGREEMENT RIGHTS – Right is reserved by the City of Homer to enter into agreement with carriers, shippers, consignees, and/or their agents concerning rates and services providing such agreements are consistent with existing Local, State and Federal law governing the civil and business relations of all parties concerned.

RULE 3 – ABBREVIATIONS AND DEFINITIONS

The following abbreviations and definitions shall apply in this Tariff.

- 3.01. ABBREVIATIONS
- | | |
|---------|---------------|
| \$ | U.S. Currency |
| % | Per Cent |
| A.M. | Before Noon |
| Bbl. | Barrel |
| C.T. | Cubic Ton |
| Cu. Ft. | Cubic Feet |



F	Degrees Fahrenheit
FMC	Federal Maritime Commission
Gals.	U.S. Gallons
GRT	Gross Register Ton
LCL	Less than container load
LBS	Pounds
LOA	Length over all
M.B.M.	1,000 feet Board Measure
N.O.S.	Not otherwise specified
NRT	Net Registered Ton
P.M.	After Noon
S.T.	Weight by short ton (2,000 lbs)
Sq. Ft.	Square foot/feet
U.S.	United States of America
W/M	Weight ton (2,000 lbs)

3.02. DEFINITIONS

- a. BARREL – For the purposes of this Tariff, quantity measure for a barrel shall be 42 gallons per barrel of bulk petroleum products corrected to 60 F. net or 376 lbs. per barrel of bulk cement.
- b. BEAM – For the purpose of this Tariff, “beam” means greatest width of the vessel, including booms, spars, gins, or any affixed extensions.
- c. BOARD MEASURE – A board foot is equal to a piece of wood 12 inches long x 12 inches wide and 1 inch thick, or 144 cubic inches. Board measure shall be calculated as per 1,000 feet of lumber, rough or processed.
- d. CARGO – Merchandise or goods accepted for transportation, including commodities that are transported in commercial enterprise, either domestic or international trade, by a common carrier.
- e. CURRENCY – all rates shall be in United States Dollars (\$USD).
- f. DEMURRAGE – A fee assessed to cargo stored or remaining on site after it has been discharged or beyond free period by a vessel which is applied to cargo not covered under ground leases.
- g. DERELICT – For the purpose of this Tariff, and to the extent consistent with State of Alaska law, “derelict” means any vessel moored or otherwise located within the boundaries of the **Port of Homer Terminal facilities** ~~Homer Harbor~~ including all City owned tidelands and uplands which is forsaken, abandoned, deserted or cast away, or which by appearance gives perception of being in an unsound or unseaworthy condition as determined by Port Director.



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- h. DOCKAGE – The term dockage refers to the charge assessed against a vessel for berthing at the facility or for mooring to a vessel so berthed.
- i. DOCKS – The Homer City docks include the Deep Water Dock, the Pioneer Dock and the Fish Dock.
- j. FLOAT; FLOAT SYSTEM – Those portions of the Homer small boat harbor that rise and fall with the tide including the stalls, transient moorings, pilings, ramps, gangways, ladders, and utility connections.
- k. FREE TIME – The specific period during which cargo may occupy space assigned to it on terminal property free of wharfage, demurrage or terminal storage charges immediately prior to the movement of such cargo on or off the vessel.
- l. **LIGHTERING FEE- A fee charged to a ship using small boats to transport passengers from the ship into the harbor and or from the harbor to the ship.**
- m. PORT DIRECTOR – The senior manager, or his/her representative/designee, as designated by the City of Homer, to manage the marine terminal Port and Harbor facilities under the control of the City of Homer.
- n. **PORT OF HOMER/HOMER HARBOR** – For the purpose of this Tariff, **“Port of Homer” and “Homer Harbor”** shall mean all salt water or tide water lying within the boundaries of the City, including that area known as the Small Boat Harbor.
- o. LENGTH – For the purpose of this Tariff, “length” means the longest overall length (LOA) as measured from the furthestmost forward position including booms, spars, gins or any fixed extensions, to the further most after portion of the vessel including the booms, spars, gins or any fixed extensions.
- p. MEASUREMENT TON/**TONNAGE (US)** – The measurement of one (1) ton **of water** is ~~40~~ **32.1** cubic feet (CFT). **The value one (1) ton shall be 2,000 pounds (LBS) of weight.**
- q. OPERATOR – For the purpose of this Tariff, “operator” means any lessee of a vessel, and Master or Captain who has actual physical use, control and/or possession of a vessel and who is in the employ of, or who has a contractual relationship with the owner.
- r. OWNER – For the purpose of this Tariff, “owner” means the individual, LLC, or legal partnership or corporation holding legal title to the vessel and the individual, LLC, legal partnership or corporation representing or holding his, her, or itself out to be the owner of the vessel when there is a dispute regarding title.
- s. PASSENGER **WHARFAGE** FEE (Non Regulated) – A **Non-regulated** passenger **wharfage** fee shall be defined as a fee charged for a passenger embarking, disembarking or landing aboard a passenger vessel for hire at the Port of Homer.



- t. **PASSENGER WHARFAGE FEE (Regulated) – A regulated passenger wharfage fee shall be defined as a fee charged for a passenger embarking, disembarking or landing aboard a passenger vessel for hire that is subject to Coast Guard CFR 33 104 regulations and located at the Port of Homer.**
- u. POINT OF REST STAGING AREA – “Point of Rest Staging Area” is defined as that area on the Terminal facility which is assigned for the receipt of inbound cargo from the vessel and which inbound cargo may be delivered to the consignee, and that area which is assigned for the receipt of outbound cargo from shippers for vessel loading.
- v. PORT OF HOMER – The Port of Homer or Port shall mean all marine facilities including controlled berths and associated waterways, as well as associated facilities under the control of the City of Homer, Alaska.
- w. REGISTRATION – “Registration” means completing a moorage or use agreement with all necessary information concerning the vessel and vessel owner.
- x. RESERVED MOORING – “Reserved Mooring” means having a specific assigned stall the use of which, after payment of reserved mooring fees, takes precedence over the use of the stall by any other vessel.
- y. **RESERVED STALL PERMITTEE – “Reserved stall permittee” is an individual or corporation that has entered into an annual priority use agreement for a City assigned stall, to be used to moor one vessel that meets the length and beam requirement of the assigned stall and is owned by the permittee.**
- z. SMALL BOAT HARBOR – “Small Boat Harbor” means that area of water protected by breakwaters constructed by the Federal government and the Harbor basin created within, including docks, floats, berths, tidal grids and other mooring facilities owned and operated by the City.
- aa. STALL – Berthing location within the float system of the Homer Small Boat Harbor. A stall does not include the float or finger of the float; only the mooring space between or adjacent to it.
- bb. TERMINAL FACILITIES – Include the Deep Water Dock and the Pioneer (Ferry) Dock, Fish dock and small boat harbor, commercial barge ramps, recreational load and launch ramp, wood and steel tidal grids, wharves, piers, bulkheads, sea walls, associated equipment, offices, warehouses, storage space, roads, paved areas, uplands, beaches and shorelines under the management, ownership and control of the City of Homer, Port and Harbor including the tidelands within the boundaries of the City of Homer. ~~Any reference to “Terminal Facilities” in this Tariff is for reference only.~~
- cc. TRANSIENT – “Transient” means any vessel using the mooring space on a temporary basis or which does not have a specific reserved mooring space.



- dd. VESSEL – Whenever reference is made to a “vessel” in the Tariff, the term shall mean any boat, motor boat, ship, aircraft when waterborne, boathouse, floats, scows, rafts, pile drivers, or any floating structure or object used for recreational, commercial or any other purpose upon waterways.
- ee. WATERWAY – “Waterway” means any water, waterway, lake, river, tributary or lagoon within the boundaries of the City.
- ff. WHARFAGE, **INBOUND OR OUTBOUND- All wharfage is calculated in short Tons U/S/ (1 ton=2000 pounds)**. A charge assessed against all cargo and other materials such as fuel, stores or equipment, passing or conveyed over, onto, or under piers or between vessels (to or from barge, lighter, or water) when berthed in a pier or when moored in a slip adjacent to the pier. Wharfage is solely the charge for use of pier for the purpose of moving cargo or materials and does not include charges for any other service such as dockage **or demurrage**.

RULE 4 – HOURS OF OPERATION AND HOLIDAYS

- 4.01. HOURS OF OPERATION – The Port of Homer marine facilities are available for use 24 hours a day, 7 days per week and are open all year. Homer harbor officers are on duty 24 hours a day, 7 days per week. They can be contacted by phone 907 235-3160 or hailed on Channel 16 on VHF radio.
- 4.02. HOLIDAYS – Whenever in this Tariff reference is made to holidays the following are included:

New Year’s Day	Washington’s Birthday (President’s Day)
Seward’s Day	Memorial Day
Independence Day	Labor Day
Alaska Day	Veteran’s Day
Thanksgiving Day	Christmas Day
Day after Thanksgiving	

RULE 5 – LIABILITY, INDEMNITY, INSURANCE

- 5.01. LIABILITY – The City of Homer, its Port personnel, its employees and agents, are not responsible for loss or damage caused by fire, frost, heat, dampness leakage, weather damage, evaporation, natural shrinkage, waste, insects, decayed and live animals, leakage or discharge from fire protection systems, collapse of buildings or structures, breakdown of plant protection systems, breakage of plant or machinery or equipment, or by floats, logs, piling or camel logs required in breasting vessels away from wharf.
- 5.02. LABOR ACTIONS OF CIVIL UNREST – The City of Homer is not responsible for any loss, damage, delays, costs or from any consequences as a result of civil unrest, shortage of or action by labor, riots or strikes of any persons in their employ or in the service of others.
- 5.03. INDEMNITY – Users of the City of Homer’s Port facilities including vessels and crews, vessel owners and its agents or instruments, shippers or consignees, and shore personnel shall indemnify and hold harmless the City against any and all claims arising from any breach or default in performance of any obligation to such parties to be performed under the terms of this Tariff or arising from any act or



omission of said parties for all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims, action or proceeding brought against the City of Homer except for those caused by the City's own negligence.

5.04. LIMITS OF LIABILITY – No provisions contained in this Tariff shall limit or relieve the Port of Homer from liability for its own negligence nor require any person, vessel or lessee to indemnify or hold harmless the Port of Homer from liability for its own negligence.

5.05. INSURANCE – Rates named in the Tariff do not include insurance of any kind. The City of Homer shall be under no obligation to provide any insurance of any type for any vessel, cargo, or liability arising out of use of the City docks or Terminal facilities. Terminal facility users shall comply with any applicable insurance requirements included in the Homer City Code or Alaska Statutes.

5.06. ADDITIONAL INSURANCE – The City reserves the right to request additional insurance coverage by users of the Port's facilities or to be named additional insured at the discretion of the City. The City may request any additional insurance as deemed appropriate for port activities. For vessels that may be hazardous or become a menace to other vessels, their occupants, City facilities, the Port Director or City Manager may require an operator or owner of a vessel to furnish evidence that there is currently in effect liability insurance in an amount satisfactory to the City. The vessel's owner or agent shall file a certificate of insurance or other satisfactory evidence signed by an agent or officer of the insurance company and stating the effectiveness and expiration date.



RULE 6 – RIGHTS OF THE CITY AND USE OF FACILITIES

6.01. NO LIMITS TO CITY AUTHORITY – Nothing in this Tariff shall limit the general authority of the City of Homer.

6.02. NON-CONFORMANCE – Persons found NOT in full conformance with state, federal, and local laws and regulations can be barred from the **Terminal** facility.

6.03. CAPACITY OF FACILITIES – The Port does not obligate itself to provide vessel berthing, storage, equipment, labor, or other form of service beyond the reasonable capacity of its facilities.

6.04. ARRANGEMENTS FOR USE OF FACILITIES – Arrangements must be made in advance for the handling or storage of cargo or equipment; otherwise the Port retains the right to decline such business.

6.05. CONSENT OF USERS – The entry upon or use of the facilities under the jurisdiction of the Port shall constitute a consent to the terms and conditions of this Tariff, as well as an agreement on the part of all vessels, their owners or agents and other users of such facilities to pay all charges specified in the Tariff and be governed by all rules and regulations of the Port.

6.06. COOPERATION – All authorized representatives or agents of businesses or organizations shall so conduct and carry on their business at the Port as to maintain a cooperative relationship with others engaged in authorized business at the Port. Said persons shall not engage in open and public disputes, disagreements, or conflicts tending to deteriorate the quality of service or be incompatible to the best interest of the Port, the workers at the Terminal or the Port’s customers.

6.07. REVIEW AND APPEAL – Reviews of violations under these Rules and Regulations shall take place within one (1) week of the violation with the Port Director and the party committing the violation or as otherwise provided in the Homer City Code. Repeated violations will result in the loss of privilege to provide services in any Terminal facility. This loss of privilege, and the duration, will be determined by the Port Director whose decision shall be final.

6.08. RIGHT OF REMOVAL – The Port Director shall at all times have the right to move or rearrange any vessel or cargo from its present location to any other location in order to reduce congestion within or on the terminal, the docks or the harbor to prevent disruption of customary services to the public.

6.09. RIGHT OF REFUSAL – The City shall at all times have the right to refuse the use of any City dock, terminal or harbor facility by any person, equipment, materials or vessel and may remove any vessel, person or cargo at any time from any City dock, terminal, harbor facility, or City property. This right shall be reserved at all times to the City without responsibility for demurrage, loss or damage when:

- a. Previous arrangements for berthing, space, receiving or unloading have not been made with the Port Director; or
- b. The vessel is unsafe or hazardous and may pose risk to life or property; or
- c. The value of the vessel, in the opinion of the Port Director is less than the probable service charges and other charges to its use of the City dock or terminal, or harbor facility; or
- d. During periods of congestion, or in cases of emergency, when, in the judgment of the Port Director, the circumstances, prevailing or likely to occur, will prevent the City docks or



terminal, or harbor facilities, or any portion of them from providing customary services to the public. The decision of the Port Director in the event of dispute shall be final.

6.10. VESSELS POSING A HAZARD – The City of Homer reserves the right to deny use of its Port facilities to any vessel that may prove to be, or may potentially be, a hazard to the City’s property or users. The City reserves the right to order a vessel to move, or remove any such vessels that may pose a hazard to its property or other users at its discretion and at the cost of the owner or operator. If in such removal, a vessel causes damage to any Port facilities, the vessel shall be held fully responsible for repair of such damages.

6.11. RIGHT TO SCHEDULE VESSELS AND CARGO – The Port Director shall at all times have the right to schedule access to any harbor or port facility by any person or vessel but may manage any harbor or port facility on a first come, first serve basis.

6.12. VESSEL REQUIRED TO USE ASSIGNED BERTH– All vessels are required to use the berth or mooring assigned. Assignments of berth are not transferable. In the event of failure to use berths as and when assigned, the Port reserves the right to use such unoccupied berth for other purposes.

6.13. DAMAGE – Users are held liable for all claims, losses, costs or expenses by reason of property damage, personal injury or death which may occur, directly or indirectly as the result of improper handling of cargo on site or overweight or improperly stowed cargo, without regard as to whether such omissions are intentional or accidental.

6.14. VESSELS TRANSITING TO/FROM BERTHS – Vessels approaching or departing from berths when passing in and out of Federal channels, over submerged lands outside of terminal berths, and in periods of extreme tides and weather do so at their own risk and shall not hold the Port responsible for any vessel casualty during such transit.

6.15. PERSONAL RISK – Persons entering upon or using Port **Terminal** facilities do so at their own risk.

6.16. OWNER’S RISK – All of the following shall be at the owner’s risk except for those damages caused by the City’s own negligence:

- a. Glass, liquids and fragile articles will be accepted only at owner’s risk for breakage, leakage or chafing;
- b. Freight on open ground is at owner’s risk for loss or damage;
- c. Freight subject to freezing will be accepted only at owner’s risk;
- d. All water craft, moored in the Harbor or berthed at Port facilities, or on beach or uplands are at owner’s risk for loss or damage. This includes vessels, if and when permitted by the Port Director or his authorized agent, moored alongside of vessels;
- e. Property of any kind including vehicles not owned by the City but on City property is at owner’s risk for loss or damage.

6.17. RIGHT TO REMOVE AND DISPOSE OF NUISANCES – The City retains the right to abate and remove nuisances including vessels which are derelicts, unfit, unseaworthy or which are maintained in such manner as to make them liable to sinking for lack of being pumped or other maintenance. The provisions of Homer City Code 10.04.130, governs the declaration and abatement of nuisances including vessels, refuse and debris.



6.18. IMPOUNDMENT OF VESSELS FOR VIOLATIONS – The Port Director is authorized to impound any vessel in Homer Harbor, or at the terminal and dock facilities whose owner or operator is not aboard and which is not properly identified by name and/or number; or any vessel in violation of any provisions of this Tariff. The Port Director may also impound a vessel whose owner or operator has not paid harbor fees or any vessel which is unsafe and whose owner or operator has failed to remove it after notice. The Port Director may impound a vessel by immobilizing it or removing or having it removed from the water and placed in City or commercial storage with all expenses and risk of haul- out and storage to be borne by the owner of such vessel. The owner or operator of any vessel impounded by the City shall be subject to and liable for storage charge and shall be subject to and liable for all costs incurred by the City by reason of impounding or removal. The procedure for impoundment, including notice and pre-impoundment hearing are set forth in 10.04.120 of the Homer City Code.

RULE 7 – CARGO

7.01. LAY-DOWN AREAS – Cargo may not be placed on City docks or Terminal facilities except in designated laydown areas. All cargo is expected to vacate City docks, and piers as soon upon arrival as possible. Cargo is not to be stored on City piers awaiting pick up by vessels unless prior arrangements are made with the Port Director.

7.02. DESIGNATED LAY-DOWN AREAS – The Port Director shall designate laydown areas for cargo and shall have the discretion to refuse all cargo activities and/or laydown, either in-bound or out- bound.

7.03. REMOVAL OF CARGO OR OTHER EQUIPMENT OR GEAR NOT PLACED IN LAY-DOWN AREAS – Cargo, freight, equipment or other gear not placed in designated laydown area must be immediately removed from a City dock or Terminal facility upon order of the Port Director. A vessel, shipper or consignee who refuses to move any material on demand will be assessed wharf demurrage at five times its applicable rate, starting at the time the vessel, shipper or consignee is notified to move the cargo. In addition, the Port Director may, in his discretion move cargo or freight. Any expense or damages, including damage to cargo, freight, equipment or gear during such movement, are the responsibility of the vessel, shipper or consignee.

7.04. RIGHT TO REFUSE CARGO – In his discretion the Port Director shall at all times have the right to refuse to accept, receive or unload, or to permit a vessel to discharge:

- a. Cargo for which previous arrangements for space, receiving, unloading or handling have not been made with the Port Director by shipper, consignee or vessel.
- b. Cargo not suitably packed for safe transportation.
- c. Cargo deemed by the Port Director in the reasonable exercise of his discretion to be offensive, perishable or hazardous. Hazardous cargo must have been prepared for shipment in accordance with the applicable Department of Transportation regulations (including 49 C.F.R. Parts 171-179).
- d. Cargo, deemed by the Port Director in the reasonable exercise of his discretion to be less in value than the probable service charges and other charges related to it.
- e. Cargo during periods of congestion, or in cases of emergency, when, in the judgment of the Port Director, the circumstances prevailing or likely to occur will prevent the City docks or terminal, or harbor facilities, or any portion of them from providing customary service to the public.



7.05. CARGO BEYOND FREE TIME – Any cargo remaining on City dock, terminal, or harbor facilities after expiration of any free time, may be removed to public warehouses, and all expenses of removal and risk of loss or damage shall be charged to the account of the owner, shipper, consignee or vessel as responsibility may appear on shipping documents, manifests or other sources.

7.06. UNPAID FREIGHT CHARGES – Freight on which unpaid terminal, dock or harbor charges have accrued may be sold to satisfy such charges and costs; provided, such sale has been publicly advertised. Freight of a perishable nature or of a nature liable to damage other freight may be sold at public or private sale without advertising; provided owner has been given proper notice to pay charges and to remove said freight and has neglected or failed to do so within a prescribed and reasonable time.

**RULE 8 – HAZARDOUS AND DANGEROUS CARGOES**

8.01. HAZMAT OR DANGEROUS SHIPMENTS – Shipments of dangerous and hazardous cargoes moving via marine terminals of the Port must be accompanied by all required information including handling instructions. Shipments must be documented, marked, labeled, and/or placarded according to the US Department of Transportation (DOT) and other applicable Federal, State and City Regulations, as well as the International HAZCOM regulations. Shippers of dangerous articles are required to comply with all of the above and must present necessary permits from proper authorities, as well as obtain permission from the Port Director before such cargo shall be received on or transferred at the Terminal.

8.02. PERMIT REQUIRED – It shall be unlawful for any person, vessel, or firm, to handle, transport, load, discharge or store any hazardous materials or dangerous cargo, on any vessel, lighter, barge or other conveyance at any dock, wharf, bulkhead area or in any shed or storage area on Port property unless a permit has been obtained from the Coast Guard Marine Safety Division and also signed by the Port Director. Such materials are handled, stored, or transported according to Federal, State, and Local governmental law.

8.03. EXPLOSIVES – The Port Director upon pre-approval by the City of an approved location shall allow the acceptance, handling or storage of explosives within the confines of the Port but not in the Homer Small Boat Harbor. Class 1 (explosive) hazardous cargoes may not remain on the Port property beyond what is necessary to transfer the cargo to or from the vessel unless preapproved by the Port Director.

8.04. RIGHT TO REMOVE, TRANSFER OR WAREHOUSE HAZARDOUS OR DANGEROUS CARGO – The Port Director shall at all times have the right to remove hazardous or offensive cargo, which by its nature, is liable to damage other cargo or City docks, terminal or harbor facilities. The cargo may be removed from its present location on City property with all expenses, including labor, and risk of loss or damage to be charged to the account of the owner, shipper, or consignee.

8.05. HAZARDOUS VESSELS OR VESSELS WITH HAZARDOUS CARGO – The Port Director shall at all times have the right to immediately remove or direct to be removed any hazardous or offensive vessel, any vessel containing hazardous cargo, any vessel containing cargo, which by its nature, is liable to damage other vessels from the Harbor or Port facilities. The vessel may be removed from its present location to any other location at the expense and liability of the owner, shipper, vessel or consignee.

8.06. HAZARDOUS MATERIAL, NOTICE OF HAZARDOUS CARGO AND PERMIT – Hazardous materials, as established by the Department of Transportation Hazardous Materials Commodity List, will not be permitted without the express consent of the Port Director and previous arrangement (at least 12



hours prior to landing) and receipt of all appropriate manifests and U.S. Coast Guard Permits, and only at those locations designated by U.S. Coast Guard Permit.

8.07. HAZMAT SHIPMENTS – Hazardous and dangerous cargoes which are permitted to enter Port of Homer facilities must be prepared for shipment in accordance with the applicable US Department of Transportation regulations contained within 49 CFR 100-199. All shipping documents required by 49 CFR for the shipment of hazardous and dangerous cargoes must be submitted to the Port Director prior to the cargo’s arrival.

8.08. HAZMAT STORAGE – Temporary storage and/or shipment through the Port of Homer of quantities of hazardous waste in excess of 400 pounds of acutely hazardous material requires a minimum 14 day advance request for a permit, in compliance with the “Interim Policy for the Port and City of Homer concerning notification by hazardous waste carriers and/or generators, municipal review and public notification.”

8.09. DISCHARGE PROHIBITED – No person shall throw or discharge any gasoline, oil, hazardous waste or petroleum contaminated refuse nor pump bilge waters containing petroleum products into the water or uplands of the Homer Harbor and/or on Terminal facilities.

8.10. STORAGE – All hazardous and dangerous cargoes stored at Port of Homer facilities must be placed in designated areas which conform to regulations as prescribed in “Handling of Explosives or other Dangerous Cargoes within or Contiguous to Waterfront Facilities” (33 CFR 126) and the applicable Uniform Fire Code.

8.11. STORAGE DRUMS – Drums or any other type of container (full, partly full or empty) which has been used for the storage or transportation of hazardous materials, dangerous cargo or petroleum products shall not be allowed to remain within the Port area after sunset of the day received without securing permission from the Port Director. Storage on water or land of such materials must be secured in approved containers, properly labeled, and stored in a manner to preclude any accidental or intentional release into the waters of the Harbor. Storage of such materials must comply with Federal, State, Port and Local governmental rules and regulations.

8.12. WATCHMEN – Vessels may be required to employ special watchmen at their expense to keep vigil over any dangerous cargo on the Terminal facility in order to protect property against fire or other hazards until the condition is eliminated. Furthermore, vessels on docks with said cargo will not be left unattended.

8.13. RIGHT OF REFUSAL – The Port Director is authorized to refuse permission to any person, vessel or firm transporting hazardous materials or other dangerous cargo to berth at any dock, wharf, bulkhead area or alongside any transit shed; or to store such materials at any dock, wharf, bulkhead area or in any transit shed on Port property.



8.14. MOVEMENT OF HAZMAT CARGO BY DIRECTION – The Port Director may, at any time, cause any hazardous materials or dangerous cargoes to be removed at the sole expense of the vessel, cargo owner or assignee.

RULE 9 – ANCHORING

9.01. UNAUTHORIZED ANCHORING – Unauthorized anchoring in open areas in or adjacent to the City of Homer’s Port and Harbor facilities (Terminal) is prohibited.

9.02. ANCHORAGE MANNING REQUIREMENT – Any vessel anchoring on city property (tidelands) outside the city of Homer’s Port and Harbor (terminal) must be manned at all times and the vessel’s position monitored on a regular basis to insure that vessel anchors are not dragging and must comply with Coast Guard lighting requirements.

9.03. **LIGHTERING (PASSENGER) – Any ship either at anchor or adrift off shore of the Port of Homer for the purpose of transferring passengers to or from shore using the vessel’s small boats. All lightering operations require advance notice and must be approved by the Port of Homer. Associated lightering fees shall be assessed to the mothership for passengers that are lightered into and out of the port by way of the ship’s small boats. The passenger count used to determine the fee amount shall be based on the ship’s passenger manifest, not the actual number of persons that come ashore. Fee amounts are listed in Appendix A fee schedule.**

RULE 10 – SANITATION, HOT WORK AND VESSEL MAINTENANCE

10.01. GENERAL PROVISIONS – All users of City docks, Terminal and Harbor facilities shall exercise due care for the protection of life, property and the public from injury or damage. Additional safety and sanitation rules applicable to docks and terminals should be consulted including the Ordinances of the City of Homer stated in Homer City Code, Chapter 5.06, (Nuclear Free Zone Which Includes Harbor Facilities), Chapter 5.08 (Garbage and Solid Waste Disposal), Chapter 5.16 (Public Nuisances), Chapter 5.20 (Fire Prevention and Explosives), and Title 10 (Port and Harbor).

10.02. SANITATION – All sanitation laws, regulations and policies of the City of Homer, Homer Harbor’s Facility Security Plan, the Kenai Peninsula Borough, the State of Alaska, the United States Coast Guard and the United States Department of Homeland Security, including those adopted by international treaty, apply to City docks, Terminal or Harbor facilities. All users, including shippers, vessels, and consignees are hereby warned that the party or parties responsible for infractions of such laws, regulations or policies will be subject to and responsible for any penalties that may result from their violation of those laws, regulations and policies.

10.03. RESPONSIBILITY FOR HOUSEKEEPING – Users of docks and other terminal and harbor facilities will be required to maintain same in an orderly manner as directed by the Port Director. It is unlawful for any person to dump or otherwise dispose of refuse, sewage, garbage, rocks, and/or debris of any kind or type whatever into the water under the jurisdiction of the City of Homer Port and Harbor. Deposit of fish carcasses, including heads, bones or viscera from fishing activities is authorized only at designated locations.

10.04. MATERIAL IN WATER – Persons using City facilities shall not permit material of any type to enter the water. All persons are subject to the provisions of Homer City code and the Federal Clean Water Act.



10.05. DISCHARGE OF OIL OR REFUSE – It shall be unlawful for any person to pump, discharge, deposit or allow any oil, spirits, inflammable liquids, coal tar, refuse, residuary product of coal, petroleum, asphalt, bitumen, carbonaceous material or substance, any related product or compound, any bilge water containing any of these materials or substances into the waters of the Harbor.

10.06. USED OIL AND PETROLEUM PRODUCTS DISPOSAL – All used oil and petroleum products must be properly disposed of by the vessel/owner. The City of Homer provides disposal for used oil, antifreeze, oil filters, batteries, and oil absorbents at two locations at the harbor, Ramp 2 and 8. The disposal containers are for vessels that are currently moored in the small boat harbor and for small quantities of fluids. Twenty five (25) gallons or less for oil and twenty five (25) gallons or less for antifreeze. Vessels stored in any privately owned storage yards are not allowed to dispose of their waste materials at the Homer harbor. Likewise for home owners, area businesses or other related vessel industry.

Harbor patrons who have quantities larger than twenty five (25) gallons of used oil to dispose of should contact the harbor office for options. Clean used oil (meaning not contaminated with water, solvents, soaps, or other) is of value to local businesses that burn it for heating large buildings. Contact the harbor office for a list of businesses that may be willing to accept the clean oil for free.

Disposal of more than twenty five (25) gallons of used oil or antifreeze or any amount of oily water in one calendar day may be done by appointment with Port Maintenance. **Fee for disposal is listed in Appendix A fee schedule.**

Ships moored at either the Pioneer or Deep Water Dock need to contact the harbor office and make arrangements for disposal of used oil or other hazardous materials.

There shall be no storage, even of a temporary nature, of used oil or petroleum products on City docks, wharves, piers, or finger floats. Any vessel/owner/agent storing or disposing of used oil in an inappropriate or illegal manner may be barred from further use of the Homer Port and Harbor and/or penalized according to the provisions of Federal, State and Local law.

10.07. OVERBOARD DISCHARGE – Pumping untreated sewage into the waters of the Harbor is strictly prohibited by Federal and State law. The discharge of gray water, dirty ballast or other fluids deemed inappropriate by the Port Director while berthed at Port facilities is prohibited. Discharges by vessels utilizing treatment equipment approved under US Federal Standards is permitted under the authority of the Port Director whose determination shall be final. Discharge of fluids overboard does not apply to cooling water but does apply to the cleaning of decks and anchors/chain when in the sole discretion of the Port Director, it impacts Terminal property.



10.08. TRASH – The disposal of trash into the water is prohibited.

10.09. CLEANING OF OPERATIONAL AREAS – All authorized cargo handling entities and permit holders are responsible to clean up wharves, docks, and assigned premises used by them, in their operation, within twenty-four (24) hours after completion of a cargo operation, and within six (6) hours after completion of a cruise ship operation

10.10. TRASH AND OTHER MATERIALS – Trash, rubbish, refuse or other material must be removed from any property controlled by the Port. This includes floats in the harbor. Storing materials on the floats is prohibited due to public access. Materials may be removed by the Port Director at any time with all expenses of removal and liability assigned to the person or the vessel that last used the facility. This includes the owner, shipper, consignee or other responsible party as may appear on moorage agreements, shipping documents, manifests, or other sources. Material removed by the Port will be removed at the expense of the party responsible.

10.11. ABANDONED CARGO – The vessel shall bear the expense of removing from piers abandoned cargo, such as damaged or unaccepted goods, and shall be responsible for payment of wharfage, storage and other accrued charges on such cargo.

10.12. UTILITY SERVICES – No person shall tap, connect, disconnect, or interfere with any water outlet, water pipe, water connection, telephone equipment, as well as electrical devices of any kind on docks or in stalls maintained or operated by the City in the Homer Port or Small Boat Harbor without first having obtained the permission of the Port Director; or interfere with or tamper with any wharf, float, gangway, ramp, or any other facility operated by the City.

10.13. HARBOR EQUIPMENT – No person shall use or disturb any port or harbor equipment or facilities; except fire extinguishers in a fire emergency and harbor carts. City provided harbor carts are for use on the floats carts should be returned to floats after each use.

10.14. HOT WORK – Hot work is any operation involving oxyacetylene or electric welding, burning, cutting, open flame or other heat producing activities. Hot work is prohibited on any Marine Terminal or vessel moored thereto unless it is approved by the Port Director and it is in compliance with all Federal, State, Port and Local governmental rules and regulations.

10.15. HOTWORK PERMIT – Hot Work permit must be completed and approved by the Port Director prior to the start of any approved hot work. This Hot Work –permit shall include the **location of hotwork within the harbor or port facilities, the** expected start date, time and expected duration of the hot work.

10.16. PROHIBITION – Hot work is prohibited at any time, on the marine facilities, during the movement or transfer of dangerous cargoes or petroleum products.



10.17. COMPLIANCE – All hot work shall be conducted in accordance with the Rules and Regulations established by the Port and fire safety standards.

10.18. FIRE EXTINGUISHER REQUIREMENTS – Fire extinguishers in operating condition must be readily available on or immediately adjacent to all welding, cutting, or open flame equipment being used on vessels. Fire extinguishers in operating condition must be readily available on all machines, cranes, and welders used on the docks or within the Terminal.

RULE 11 – SAFETY

11.01. COMPLIANCE – All safety regulations as established by the Port Director, City of Homer, State of Alaska and Federal agencies shall be complied with at all times.

11.02. PERSONAL SAFETY EQUIPMENT – Personal safety equipment is required to be used at all times by Terminal staff, contract labor, truck drivers and vessel crews in open Terminal areas. This shall include an appropriate floatation work vests or coats, hard hats, hearing protection, steel toed shoes, high visibility safety vests, life jackets, and clothing offering full body coverage, respirators, gloves or other equipment.

11.03. DEFECTIVE OR UNSAFE PROPERTY – Whenever any wharf, wharf premise, property or any portion located in the Port of Homer is in such defective or damaged condition as to be unsafe or dangerous to persons or property, it shall be the duty of the owner, agent or person in charge to immediately advise the Port Director of said damage or dangerous condition. No person shall interfere with, remove or disturb in any manner any warnings, fences or other barriers which have been erected or set in place as protection or warnings against a dangerous condition.

11.04. FIRE EXTINGUISHERS – Hand held fire extinguishers are provided by the City and are located on all harbor floats, docks, laydown demurrage yards, barge ramp and the load and launch ramp. Any use of City fire extinguishers must immediately be reported to the Port Director.

11.05. STOVES, FIRES & EQUIPMENT – No person shall leave a stove or other heating equipment in unattended operation on a vessel moored or docked on the harbor facilities unless such equipment has been certified as safe for such unattended use. No person shall leave any vessel unattended while fire or open flame is burning or is present.

RULE 12 – VEHICLE PARKING

12.01. VEHICLE ACCESS LIMITED ON DOCKS (Pioneer dock, Deep Water Dock, Fish Dock) – It shall be unlawful for any person to operate any vehicle ~~within the Port~~ on the dock facilities area except while engaged in the performance of necessary duties which require the presence of such vehicle on a dock facility or while loading or discharging freight or passengers ~~Port property~~. Any vehicle shall be under the constant attendance of the operator and subject to the rules in this Tariff. It shall be the duty of such operator to immediately remove such vehicle from the



wharf or pier upon the completion of the transaction of necessary business. The Port Director has the authority to remove any vehicle in violation of this rule at the sole expense of the owner and may be refused further access to any Port property at the discretion of the Port Director.

12.02. STORAGE OF VEHICLES – It shall be unlawful for any motor vehicle to be stored on any wharf unless such vehicle shall first have been drained of all gasoline or other liquid petroleum products, except at such places as the Port Director may designate.

12.03. VEHICLE WARNING LIGHTS/ALARMS – Maintenance or vehicles working on piers or in Terminal yards, when moving or stationary, in working areas shall display an operating overhead **amber** warning light. All maintenance vehicles shall be equipped with backup alarms.

12.04. VEHICLE ACCESS TO VESSEL – Access to a berthed vessel by taxi, van, bus or other vehicle shall not be granted by the vessel without permission of the Port Director or designee.

12.05. SPEED LIMIT ON PORT PROPERTY – Any person operating a vehicle on any wharf area, within any transit shed, warehouse, marine terminal area, or in any other area where cargo is handled, shall not operate at a greater rate of speed than ten (10) miles per hour, unless otherwise posted. During cargo handling or other operations, no person shall operate a vehicle at such speed or in any manner so as to endanger life, limb or property.

12.06. PARKING OF VEHICLES – It shall be unlawful for any person to leave or park a vehicle upon any portion of any City property outside of designated parking areas or without the permission of the Port Director. The Port Director shall erect and maintain appropriate signage giving notice that no parking is allowed in restricted areas. Parking of motor vehicles, other than motor vehicles that are cargo, shall be permitted only in those areas designated for such parking. Vehicles are only permitted on wharf areas with the permission of the Port Director.

12.07. PARKING LIMITS – Parking of motor vehicles in areas designated for parking shall be for the time limits specified and posted for those areas. The parking of motor vehicles in areas in which parking is prohibited or the parking of motor vehicles in areas designated for parking beyond the time limits specified are subject to ticketing and towing or impound in accordance with applicable law.

~~12.08. PARKING FEES (SHORT TERM) – Parking fees are to be collected at Ramp 1, Ramp 2, Ramp 3 and Ramp 4 seasonally (Friday of Memorial Day weekend through Labor Day). Parking fee is \$5 per calendar day. Posted parking time limits will be established and enforced as per Homer City Code.~~

Parking fees are to be collected on the port terminal facility. Locations and times will be clearly marked with the appropriate signage, enforced by Port parking enforcement officers, and authorized in title 7 of Homer City Code.

12.09 PARKING FEES – VEHICLES WITH BOAT TRAILERS (7 DAYS) – The City owns and provides access to 7 day public use parking for vehicles with boat trailers. Persons with vehicles and boat trailers using the load and launch ramp are obligated to pay a levied parking impact fee at the time of load and launch pass purchase. Persons purchasing a season Load and Launch pass are similarly obligated to pay a seasonal levied parking impact fee. **Levied Parking impact fee costs can be found in Appendix A fee schedule.**



12.10. ~~LONG TERM~~ PARKING PERMITS – ~~Vehicles over 20’ are not eligible for long term parking permits.~~ **Listed below are the types of permits that are available for purchase and the rules associated with them. Parking permit fees/costs can be found in Appendix A fee schedule.**

TYPES OF PERMITS

- a. Seasonal permits for day use parking ~~(Ramps 1-4): \$250.00.~~
- b. Monthly permits for day use parking ~~(Ramps 1-4): \$100.00.~~
- e. Long Term parking annual permit fee for vessel owners paying annual moorage in the Homer Harbor: ~~fee \$100.00.~~
- f. Long Term parking annual permit (January 1st through December 31st): ~~fee \$200.00.~~
- e. **Long Term** Monthly parking permit for vehicles less than 20’: ~~fee \$70.00~~ (for 30 consecutive days).
- f. **Long Term** Monthly parking permit for non-commercial vehicles over 20’: ~~fee \$85.00 for 30 consecutive days in a portion of Lot 9 only.~~
- g. **Long Term** Weekly parking permit for vehicles less than 20’: ~~fee \$25.00~~ (for 7 consecutive days)
- h. **Long Term** Weekly parking permit for non-commercial vehicles over 20’: ~~fee \$30.00~~ (for 7 consecutive days)

RULES

- a. Long Term parking permits required for vehicles 20’ or less parked in excess of seven (7) consecutive 24-hour days.
- b. Long term parking will be enforced year-round.
- c. ~~Parking lot restrictions for long term parking, May 1 through October 1, as depicted on harbor map (Resolution 11-036(A)).~~ **Fee Pay Daily Parking requirements active from Memorial Day to Labor Day**
- d. Existing code definitions for restricted parking, vehicles, junk vehicles, and fines for violations apply. ~~Fines, \$25.00 per calendar day, provided that the fine for overtime parking in long term parking area will be limited to \$250.00 fine per calendar year, with \$200.00 of the fine credited towards the long term parking annual permit.~~
- e. Failure to pay violations will result in an additional ~~\$25.00~~ fee per month and any other legal or collection fee authorized by law.

RULE 13 – WHARFAGE, DEMURRAGE AND FREE TIME

13.01. WHARFAGE

- a. APPLICATION – Wharfage is the charge assessed against any freight or merchandise placed in transit sheds, on a wharf, passing through, over or under a wharf, transferred between vessels, loaded to or unloaded from a vessel at a wharf, regardless of whether or not a wharf is used. Wharfage is solely the charge for use of wharf and does not include handling, sorting, piling of freight or charges for any other services. Wharfage rates named in the Tariff will be charged for all merchandise or cargoes received inbound or shipped outbound over the City docks, barge ramp or barge beaching site, and will be in addition to all other charges made under provisions of this Tariff. Wharfage is applied to all inbound and outbound cargo.
- b. WHARFAGE REPORTS – Wharfage from all docks, ramps and beaches is self-reported. Report and payment are due to the Homer harbor office by date stated on the Wharfage report. Report forms are available at the harbor office and on the City of Homer Port



- c. EXCEPTIONS – No wharfage shall be charged to ship’s gear, such as strong-backs, lines, hatch covers, walking boards, etc., placed on wharf during unloading operations. This shall also exclude cargo moving to or from alongside a vessel for loading or unloading, or cargo between any place on the Terminal which are handled on trucks, lighter, barges or any other means of conveyance to and from the terminal facility. No wharfage shall be charged to gear used in commercial fishing operations, such as nets, reels, tendering equipment, or deck shelters. This shall also exclude cargo destined for direct use in a fishing operation.
- d. FUEL WHARFAGE – Fuel handled over wharf will not be considered as ship stores and will be subject to wharfage and other charges that may be incurred.
- e. LOG WHARFAGE – Logs that are unloaded at Port of Homer barge beaching site will be charged 50% of the wharfage rate applicable to outbound (export) shipment. However, if these cargoes are not exported over Deep Water Dock with full payment of outbound wharfage within 60 days of unloading at the barge beaching site, then the additional 50% of wharfage will be owed and paid for the inbound product. Log quantities will be reported by manifest to the Port Office for subsequent billing. The basis for measuring 1,000 board feet (M.B.M.) log scale shall be the Scribner Rule or Scribner Dec. C Log Rule. All log scales will be performed by an independent log scaling bureau. Certified copies of log scale tickets and/or log scale books shall be provided to the Port for all logs shipped. The basis for the Tariff payment to the City will be computed on a net log scale, with a maximum of a twenty five percent (25% deduct factor for defects and taper; that is gross scale minus 25% total deduct.
- f. OVERSIDE WHARFAGE – One-half of wharfage named herein will be charged to merchandise or cargo discharged or loaded over the side of vessels directly to or from another vessel or to the water when vessel is berthed at wharf.
- g. **PASSENGER WHARFAGE (REGULATED) – A fee charged for a passenger embarking, disembarking or landing aboard a passenger vessel for hire that is subject to Coast Guard CFR 33 104 regulations and located at the Port of Homer.**
- h. **PASSENGER WHARFAGE (NON-REGULATED) – A fee charged for a passenger embarking, disembarking or landing aboard a passenger vessel for hire at the Port of Homer**



- i. RESTOWED CARGO WHARFAGE – Restowed cargo destined for discharging at another port will be exempt of wharfage charges, provided such cargo is not removed from the wharf prior to re-loading to the vessel.
- j. BONE DRY UNITS – A Bone Dry Unit (BDU) is defined as 1.2 bone-dry tons of wood chips. A bone dry ton is that quantity of wood chips which would weigh 2,000 lbs. when dry.
- k. APPLICATION – Rates provided for commodities herein are specific and may not be applied by analogy. If rates are not provided for specific commodities, rates to be applied are those established for “Freight N.O.S.”
- l. RATE VALUES – Except as otherwise provided herein, rates apply per short ton which is 2,000 lbs., or per ~~40~~ **32** cu.ft. as rated by ocean carriers, or per 1,000 feet board measure, or 42 gallons per barrel of bulk petroleum products corrected to 60 degrees Fahrenheit net, or 376 lbs. per barrel of bulk cement, or per bone dry wood chips as rated by ocean carrier
- m. SCHEDULE OF WHARFAGE RATES – Except as otherwise specifically provided, rates are in U.S. dollars (USD) per short ton of 2000 lbs. or per ~~40~~ **32** cubic foot. **Specific rate table can be found in Appendix A fee schedule.** Short ton =0.907185 metric tons
 - (1) Finished lumber per MBM (Note: Industry standard conversion formulas shall be used in converting pounds to board feet measure.)
 - (2) In absence of board feet measure on bill of lading, a load-out rate will be assessed by converting the weight of logs to board foot measure, for the average diameter of logs (small end diameter) in accordance with the following table for white spruce logs:

Scaling Diameter of Logs-Inches	Weight per Board Feet-Pounds
8”	14.5
12”	11.5
16”	9.5
20”	8.5
24”	7.8

Kiln dried lumber: Three pounds will equal one board foot measure.

13.02. DEMURRAGE

- a. APPLICATION – Demurrage shall be assessed against cargo remaining in or on terminal facilities after the expiration of free time, unless arrangements have been made for storage.
- b. RATE – Demurrage will be assessed at a ~~rate of nine cents (\$.09)~~ **set rate** per square foot per day, based on the “foot print” occupied by cargo in the laydown area. For cargo with overhangs, the footprint plus the area under the overhang that is unusable for other



storage will be assessed. **Demurrage rate can be found in Appendix A fee schedule.**

13.03. FREE TIME

- a. APPLICATION – Free time is the specified period during which cargo may occupy space assigned to it on terminal property free of demurrage or terminal storage charges, immediately prior to the loading, or subsequent to the discharge, of such cargo from the vessel. Free time periods may be adjusted or changed at any time by the Port Director.
- b. FREE TIME PERIODS – Free time is calculated inclusive of Saturdays, Sundays or holidays. Free time starts the first 7 A.M. after freight is received or unloaded onto the Terminal from car, truck, or, in the case of freight received from a vessel, the first 7 A.M. after completion of vessel's discharge. When freight is transshipped between deep sea vessels and involves application of a long and short free time period, the longer period shall be used, but not the aggregate of any two free time periods. Free time of 3 days will be allowed on all inbound traffic. Free time of 3 days will be allowed on all outbound traffic.

RULE 14 – MISCELLANEOUS RULES: Smoking, Property Damage, Defacement, Animals

14.01. SMOKING PROHIBITED – No smoking shall be allowed on any wharf, pier or in any port or harbor facility during fueling operations or at any time on any fuel station. Persons violating this rule may be barred, at the discretion of the Port Director, from the further use of any wharf or facility and, in addition, shall be subject to prosecution under applicable Federal, State and Municipal laws.

14.02. DAMAGE TO PROPERTY – Users damaging City docks, floats, ramps, or other property of the City of Homer will be responsible for cost of repairs. User will be billed for repairs to damaged property at cost, including **materials, labor and administration overhead.**

14.03. NO POSTING OR DEFACEMENT – No person shall write or post any written or printed matter in any place within or on any Homer Port or Harbor facilities, except upon bulletin boards constructed for the purpose only after having obtained permission from the Port Director. **No person or organization shall install permanent signage on the Port facilities without permission from the Port Director and a signed Memorandum of Agreement (MOA).** No person shall disregard, deface, remove, tamper with or damage any sign or notice posted or installed by the Port Director.

14.04. ANIMALS – All dogs or other animals will at all times be under the physical control of the owner or person in charge of the animal in accordance with 20.08.020 of the City Code.



RULE 15 – CHARGES: Applications, Rules & Regulations

15.01. SALES TAXES – All rates in this Tariff will have a combined Borough and City sales tax applied. Exceptions: The load and launch ramp daily fee, seasonal launch ramp fee, and vehicle parking permits fees all have the Borough and City sales taxes included in the fee for ease of collection.

15.02. SERVICE CHARGES – A service charge is assessed, in addition to other charges set forth in this Tariff, for specific services provided by the City of Homer or its agents.

15.03. RESPONSIBILITY FOR CHARGES – The vessel, its owner or agents, shippers or consignees, and the owner of cargo on the vessel shall be jointly and severally responsible for payment of charges named herein. Payment responsibility applies without regard to the provisions of bills of lading, charter party agreements, contracts or other conflicting provisions.

15.04. PREPAYMENT, TIME OF PREPAYMENT, ACCEPTABLE SECURITY – All charges for services rendered by the Port or for the use of terminal, dock and harbor facilities are due and payable in United States currency as they accrue upon completion of such services or uses. Failure to pay an invoice when due shall render the account delinquent and subject to legal collection efforts. The Port Director may require payment in advance of any or all charges prior to rendering services or granting use of terminal, dock or harbor service.

15.05. CHARGES ON DELINQUENT ACCOUNTS – All invoices, except for damages to City of Homer property will be declared delinquent 45 days after billing date (Statement date) and will be charged interest at the rate of 10.5% per annum (.875% per month).

15.06. DELAYS AT BERTH – Delays occasionally associated with loading, unloading, receiving or delivering freight, or the berthing of vessels as a result of harbor, terminal or dock congestion, equipment failure or breakdown, or combinations of issues will not excuse the owners, shippers, consignees or carriers of the freight or vessel from full wharfage, demurrage, berthing, terminal, dock or harbor charges or expenses which may be incurred as a result of such actions.

15.07. COSTS RELATED TO STRIKES OR CIVIL ACTIONS – Strikes of any persons in the employ of the City of Homer or other parties, arising from any other cause not reasonably within the control of the City of Homer, will not excuse the owners, shippers, consignees or carriers of the freight or vessel from full wharfage, demurrage, berthing, terminal, dock or harbor charges or expenses which may be incurred as a result of such actions.



RULE 16 – RATES: Labor, Towing, Pumping, Equipment, Special Services, Sewage, Third Party Billing, Search & Rescue

16.01. LABOR/PERSONNEL

- a. City Labor-When labor is furnished by the City at the request of a user it is expressly stipulated that the City acts as agent of the user. The City shall charge for labor provided by the City for the following services not specifically described in this Tariff:
 - i. Rates Not Specified-Services for loading, unloading, or transferring cargo for which no specific commodity rates are provided and which cannot be performed at the rates named N.O.S. as well as cargo in packages or units of such unusual bulk, size, shape or weight as to preclude performing such services at rates named under individual items of this Tariff.
 - ii. Services for which no specific commodity rates are provided and any other services for which specific rates are named in this Tariff because of unusual conditions or requirements of shippers not normally incidental to such services preclude the performance.
 - iii. Services of cleaning City docks or terminal facilities of dunnage, stevedore gear, and other equipment or material when the shipper, vessel owner or consignee fails to promptly clear the facility as requested by the Port Director.
- b. Application Period-When a user notifies the Port Director for labor for a specific time and labor is on the job ready for work at that time, labor costs shall be charged from the time the labor is ready for work until the work is concluded even if the work is delayed through no fault of the City.
- c. Rates-All labor provided by City personnel shall be charged at **a rate \$102.00** per hour. (½ hour minimum ~~at \$51.00~~). Work requiring call-outs shall be charged at a minimum of two hours. **Rate for labor can be found in Appendix A fee schedule.**

16.02. TOWING SERVICES – Towing inside of the Small Boat Harbor shall be assessed ~~at the~~ **by using the following ~~rates~~ **criteria:****

- a. Skiff with operator ½ hour ~~\$68.00~~
- b. Skiff with operator 1 man hour ~~\$102.00.~~
- c. Any additional personnel required will be charged **additionally at the skiff with operator 1 man hour rate** ~~rate of \$102.00 per hour.~~

Towing services fees/rates can be found in Appendix A fee schedule.

16.03. PUMPING VESSELS – Use of an electric pump **is billed at a rate per day or portion of day. Use of gas pump **is billed at a rate** per hour, minimum charge of one hour, which includes attendant time. **Fee rates for use of pumps can be found in Appendix A fee schedule.****

16.04. EQUIPMENT – City Equipment-When the City utilizes their equipment to provide services; it will



charge users for the cost of that equipment on an hourly basis.

16.05. SPECIAL SERVICES – Special services including waste, bulk oil, or garbage disposal shall be billed at the City’s actual cost, including City labor costs, plus 125% of City costs for services. This includes the costs for outside services arranged and paid for by the City. Except where otherwise required by law, the Port Director has the authority to provide, arrange for or refuse the provision of services in addition to those set out in this Tariff.

16.06. SEWAGE – Special services shall not include the taking or handling of sewage of any kind. Sewage disposal must be accomplished by the vessel owner or his agent pursuant to Federal, State and Municipal laws, codes and ordinances.

16.07. THIRD PARTY BILLING ADMINISTRATIVE FEE – The City requires charges be billed to the vessel receiving the services. If arrangements are made with the Port Director for third party billing, a 5% Administrative Fee will be assessed to the vessel receiving services.

16.08. SEARCH AND RESCUE/EQUIPMENT & PERSONNEL – In addition to other Tariff provisions, when the City utilizes City equipment and personnel to provide search and rescue assistance to vessels including towing, outside of the Homer’s Port and Harbor, the Port Director may charge users of those services ~~\$102.00~~ per hour for skiff **or tug** and operator for the first hour or any part, and for additional

search and rescue assistance beyond one hour. **When skiff AND tug are used each will be charged at the hourly rate independently.**



SECTION II

Pioneer Dock and Deep Water Dock

Rules, Regulations, & Rates

RULE 17 – DOCKS: RULES AND REGULATIONS

17.01. RESPONSIBILITY LIMITED – No person other than employees of the holders of authorized Terminal Use Permits or Special Use Permits shall be permitted to perform any services on the Pioneer Dock or the Deep Water Dock except on written authorization of the Port Director. The City of Homer, its employees and agents, shall not be liable for the injury of persons or any loss, damage or theft caused by their presence on the City docks or terminal facilities. The City of Homer shall be liable for any portion of loss or damage that is directly caused by its own negligence.

17.02. TERMINAL USE PERMITS – Handling, loading and unloading services are provided by independent agents at all terminal facilities covered by this Tariff. ~~An annual~~ **A** Terminal Use Permit is required for any qualified agent desiring to provide longshoring services for hire (~~loading and unloading ships~~) at the terminal facilities. Terminal Use Permit holders only shall report and pay monthly to the City a permit fee equal to five percent (5%) of Permit charges invoiced to a customer for all handling, loading and unloading services.

17.03. APPLICATION FOR BERTHING – All vessels, or their owners or berthing agents, desiring a berth at the Deep Water Dock and Pioneer Dock shall, within a minimum time of twenty-four (24) hours, make advance application for berthing (namely a Berth Scheduling Request Form). Priority is given to dock use when reserved in advance. Reservation of dock use must specify the dock requested, arrival and departure dates, billing information, email address and the nature and quantity of the freight to be loaded or discharged.

- a. Preferential berthing rights may be accorded by contract.
- b. Berth Requests may require the timely filing of financial responsibility information in accordance with, and otherwise governed by, the terms and conditions set forth in this section.
- c. The berthing agent shall be held personally liable to the City of Homer as a result of the agent's failure to accurately report the information submitted on the Berth Request.
- d. Should any information change after submission of an application, the owner or berthing agent shall promptly file an amended Vessel Berthing Application with the Port Director before such berthing takes place.

17.04. TUG REQUIREMENT AND SPEED LIMITATIONS – Vessels berthing or departing docks subject to the Tariff must use sufficient tugs so vessel can be berthed or removed in a safe manner. Berthing speed



shall not exceed the maximum speed allowable for the tonnage or displacement of the vessel by the design of the facility.

17.05. MOORING AT PIERS – Tying to piling is prohibited. All vessels using the Deep Water Dock and Pioneer Dock will use bits and bollards provided.

17.06. DEEP WATER DOCK MAXIMUM CAPACITY – The Deep Water Dock (DWD) has the following maximum fender capacity:

Homer Deep Water Dock Fender Capacity									
Berthing Contact at Interior Fenders									
Vessel Weight (displacement)		Max forward velocity @ 15 degrees				Max velocity perpendicular to dock			
Short Ton	Metric Ton	ft/s	ft/min	m/s	knot	ft/s	ft/min	m/s	knot
8000	7500	3.4	200	1	2	0.88	53	0.27	0.5
44000	40000	1.3	78	0.4	0.77	0.38	23	0.12	0.2
72000	65000	0.9	54	0.27	0.53	0.26	16	0.08	0.2
Berthing Contact at Corner Fender									
Vessel Weight (displacement)		Max forward velocity @ 15 degrees				Max velocity perpendicular to dock			
Short Ton	Metric Ton	ft/s	ft/min	m/s	knot	ft/s	ft/min	m/s	knot
17000	15000	8.4	500	2.6	5	1.5	90	0.46	0.9
44000	40000	3.5	210	1.1	2	0.9	54	0.27	0.5
72000	65000	2.5	150	0.8	1.5	0.7	42	0.21	0.4
Berthing Contact with Foam Camel Fenders Deployed									
Vessel Weight (displacement)		Max forward velocity @ 10 degrees				Max velocity perpendicular to dock			
Short Ton	Metric Ton	ft/s	ft/min	m/s	knot	ft/s	ft/min	m/s	knot
107000	97000	0.67	40	0.2	0.4	0.12	7.2	0.04	0.07

17.07. PIONEER DOCK MAXIMUM CAPACITY – The Pioneer Dock has the following maximum fender capacity:

Homer Pioneer Dock Fender Capacity									
Vessel Weight (Displacement)		Max forward velocity @ 20 degrees				Max velocity perpendicular to dock			
Short Ton	Metric Ton	ft/s	ft/min	m/s	knot	ft/s	ft/min	m/s	knot
20000	18000	1.20	72.00	0.37	0.71	0.41	24.62	0.13	0.24
40000	36000	0.87	52.20	0.27	0.52	0.30	17.85	0.09	0.18
60000	55000	0.68	40.80	0.21	0.40	0.23	13.95	0.07	0.14
80000	73000	0.60	36.00	0.18	0.36	0.21	12.31	0.06	0.12

(Note: Vessel weight or displacement is the total weight of the vessel including hull, machinery, and all contents at the dock.)



17.08. NON-CITY EQUIPMENT – Non-City owned mobile cranes or boom trucks may not be brought onto the Deep Water Dock or Pioneer Dock for use in loading/unloading without advance Port Director approval.

17.09. RAT GUARDS – The vessel shall deploy, properly affix and maintain rat guards on all mooring lines after berthing and when alongside piers as required.

17.10. VESSELS ALONGSIDE – The vessel is responsible, at all times, for keeping mooring lines of vessels alongside, tightly secured whenever supply vessels, bunker barges, or other vessels are tied up alongside.

17.11. WINCHES – The vessel is responsible, at all times, for tending mooring winches to insure that the vessel is adequately moored alongside the berth. This shall include the frequent inspection of constant tension winches.

17.12. ADEQUATE CREW ABOARD – All vessels berthed at piers controlled by the Port shall at all times have sufficient crew to comply with orders issued by the Port and to tend to mooring lines or move the vessel at all times.

17.13. WEATHER AND TRAFFIC – The vessel shall, at all times, pay strict attention to weather conditions, water levels, currents, condition of mooring or other circumstances while at facilities. In the event of surge, operations as well as access to/from the vessel may be suspended and the gangway removed until any vessel surge has abated. The Port Director may require a vessel to get underway from facility if weather dictates to avoid facility damage.

17.14. LIGHTS AT NIGHT OR IN RESTRICTED VISIBILITY – All vessels, barges, cranes and other equipment, while anchored or moored at the Port, must show lights in accordance with applicable Federal, State and Municipal laws, rules and regulations.

17.15. LINEHANDLING – Line handling services may be contracted through a permitted stevedore or other approved provider.

RULE 18-DOCK SECURITY

18.01. REGULATORY APPLICABILITY – The Maritime Transportation Security Act OF 2002 (33 CFR Parts 101, 102, 103, 105 ET AL) applies to the Port of Homer. Those vessels subject to the Act are required to interface with the Port. The Maritime Transportation Security Act and US Coast Guard/Federal Regulations (33 CFR part 105) applies to the Port of Homer. The Port operates the terminals under a Facility Security Plan approved by the US Coast Guard. The Port by advance notification to U.S.



Customs and Border Protection is a border entry point, and all persons, effects, and vehicles are subject to search under Federal Statute 19 US Code Section 482.

18.02. DECLARATION OF SECURITY – Declaration of Security (DOS) when required under the US Code of Federal Regulations will be signed by the Vessel Security Officer and the Facility Security Officer or designee where the DOS is required. The vessel and Port will comply with all items agreed to on the DOS while in Port.

18.03. NOTIFICATIONS – Regulated vessels 33 CFR 104 rules require that the vessel will notify the Port if any crew or passengers intend to disembark and provide the names of all personnel leaving the ship. The vessel will provide advance notification of any visitors, and stores or goods to be delivered to the vessel while in the Port. The vessel must notify the Port and the US Coast Guard of any maritime incidents while in the Port.

18.04. SEARCHES – All vehicles and persons permitted to travel on piers may be searched prior to being permitted into the Terminal by security personnel.

RULE 19-DOCK -CONDITIONS OF BERTHING /BERTH REQUESTS

19.01. PAYMENT DUE – Unless otherwise arranged, the terms of payment for all applicable terminal or dockage charges shall be cash in advance. A cash deposit or acceptable security in an amount equal to 125% of the estimated applicable charges will be required to be posted with the Port Director six days prior to the vessel's scheduled arrival or at such time as may be authorized or directed by the Port Director, but in all cases in advance of actual services rendered.

19.02. CREDIT OR SECURITY – The Port Director may waive the requirement of cash in advance as to all or any category or categories of its anticipated Port charges when the party responsible for such charges has been identified by berthing agent to the satisfaction of the Port Director, and:

- a. That the party responsible has established credit worthiness acceptable to the Port Director; or
- b. Adequate security, acceptable to the Port Director in an amount equal to 125% of the applicable estimated port charges, has been posted; or
- c. The agent requesting the berth, or another entity, in each case applicable to the Port Director is credit worthy, has personally accepted financial responsibility for the applicable charges.

19.03. ESTIMATE REQUIRED-The vessel agent or other person requesting a berth shall provide an estimate of the amount of each category of port charges, as enumerated, and the party responsible there for.

19.04. APPROVAL REQUIRED – All estimates of terminal and dockage charges are subject to approval and/or adjustment by the Port Director.



19.05. ACKNOWLEDGEMENT – The Port Director shall promptly, after receipt of the berthing application form, advise the berthing agent as to its approval or provide an adjusted estimate of terminal charges. The Port Director will also advise whether posting of cash or security is required for any one or more categories of such charges and the amount due.

19.06. COMPLIANCE – In addition to the terms for berth reservation and establishment of financial responsibility as set forth herein, request for berth reservation and assignment of berths shall otherwise be in accordance with all Local rules and regulations established by the City of Homer.

19.07. TEMPORARY BERTHING – For safety or other reasons, the City of Homer in some circumstances may grant a vessel a temporary berth before the owner or agent has paid all applicable charges or otherwise complied with all applicable Tariff provisions of conditions of berthing. In such circumstances, the vessel may unload its cargo only if the Port Director determines that a regular berth is available. The owner shall pay all applicable charges and shall comply with all other Tariff provisions and conditions of berthing. If no regular berth is available, or the vessel owner or agent has not answered all financial responsibilities as required by the Port Director, the vessel may not unload its cargo and shall depart as soon as possible. The vessel shall be assessed appropriate fees as set forth in this Tariff.

RULE 20 – DOCK BULK PETROLEUM PRODUCTS

20.01. APPLICATION OF TARIFF – Except as otherwise provided in this section, the rates, rules and regulations published in other sections of this Tariff apply to vessels, shippers, and consignees of Bulk Petroleum Products.

20.02. CLEARING AND HEATING PETROLEUM LINES – Shippers, consignees, or vessels and persons in charge are responsible for providing steam or other heating means to assure the proper flow of asphalt and other petroleum products requiring heat. Shippers, consignees, or vessels and persons in charge will be responsible for clearing all petroleum products from lines located on or adjacent to any Terminal facility after a vessel completes loading or discharge unless otherwise authorized by the Port Director.

20.03. REGULATIONS GOVERNING PETROLEUM PRODUCTS – The transfer of bulk petroleum products shall be made in compliance with City of Homer Code provisions including Chapter 5.20 (Fire Prevention), as well as other Federal, State and Municipal laws, rules or regulations.

20.04. SPILLS AND CONNECTIONS – Flammable liquids and all hydrocarbons leaked or spilled on wharves shall be cleaned up immediately. Vessels or consignees shall remove temporary lines immediately upon completion of receipt or discharge of flammable liquids. Spillage from disconnected lines shall be cleaned up immediately by vessel or consignee.

20.05. MANIFEST REQUIREMENTS – Masters, owners, agents or operators of vessels are required to furnish the City of Homer with complete copies of vessel's manifests showing the name of consignees or consignors and the weights or measurements of all freight loaded or discharged at the docks,



terminal or harbor facilities of the City of Homer. Such manifests must be certified as correct by an authorized official of the company and must also designate the base weight or measurement on which ocean freight was assessed. In lieu of manifests, freight bills containing all information as required above may be accepted.

20.06. BERTH OCCUPANCY – Vessels may occupy a berth, subject to charges named in this Tariff providing such vessel shall vacate the berth upon demand by the Port. Vessels refusing to vacate berth upon demand may be moved by tug or otherwise, and any expense, including damages to other vessels or to the facility during such removal, shall be charged to the vessel so moved. Vessels at berth engaged in loading or discharging cargo may be required to work overtime at the discretion of the Port. Overtime differentials shall be the responsibility of the vessel’s owners, agents or operators.

20.07. PREFERENTIAL BERTHING, PIONEER DOCK – Preferential privileges per agreements are given to the Alaska Marine Highway System ferry vessels for docking on the face of the Pioneer Dock and the U.S. Coast Guard vessel assigned for docking on the northwest trestle berth of the Pioneer Dock.

RULE 21 – DOCK FUELING & BUNKERING AT THE PIONEER DOCK & DEEP WATER DOCK

21.01. SPECIAL TERMINAL USE PERMIT AND REQUIREMENTS: For Petroleum Product Transfer – Fueling vessels at the Pioneer Dock and the Deep Water Dock by truck or vessel is permitted with the permission of the Port Director and the completion of a Special Terminal Use Permit. The Special Terminal Use Permit shall be completed annually with an annual permit issuance fee of ~~\$200~~. **Fee cost can be found in Appendix A fee schedule**. In addition, the Permittee shall file timely fuel wharfage reports stating the gallons of petroleum product dispensed with the required payment.

21.02. INSURANCE – Vendors shall provide proof of liability insurance to the Port Director, naming the Port as co-insured. The level of insurance shall be determined by the Port Director whose decision shall be final.

21.03. SMOKING – Smoking shall not be allowed on vessel weather decks or the pier during fuel transfer operations.

21.04. SIGNAGE – Proper signage stating “No Smoking, No Visitors, No Open Lights” shall be posted at the head of the gangway on the pier during fueling operations in conformance with Federal Regulations. The Permittee shall observe all rules and signs posted at the Port, including “No Smoking” signs posted at the marine terminal and all U.S. Coast Guard Safety Requirements, whether or not they are posted.

21.05. FIRE FIGHTING EQUIPMENT – Prior to transfer operations, at least two ship fire hoses shall be laid out and connected to the fire main nearest the transfer station; one forward and one aft. At least two handheld dry chemical fire extinguishers shall be conveniently placed for use at the vessel’s manifold. The Permittee shall keep fire lanes clear and maintain fire control equipment in a readily accessible location.



21.06. SPILL PLAN – An oil spill response and contingency plan must be filed with the Port in advance for review by the Port Director.

21.07. CONTAINMENT – Permittee shall outfit its delivery trucks with spill containment and/or clean up equipment and materials sufficient to contain and clean up spills of petroleum products that may occur from its operations. Proper spill containment must be provided by the vessel at or near the manifold, including if necessary plugging of vessel scuppers.

21.08. COMMUNICATIONS – The vessel and vendor shall maintain direct communications with each other at all times during transfer operations.

21.09. NOTICES – The Port Director shall be notified in advance that fueling operations will take place. In the event of a spill on board or into the water it is the vessel Master's responsibility to shut down operations, contain the spill, immediately notify the US Coast Guard, the Port Director and other required Federal, State and Local authorities.

21.10. ACCESS TO VESSEL DURING FUELING – Access to the vessel by way of the gangway will not normally be prohibited during fueling operations. The Port Director shall prohibit access to the vessel if, in his/her opinion, an unsafe situation has developed or is developing.

21.11. FLAGS AND LIGHTS – During fueling operations a "Bravo" flag shall be flown on the vessel where clearly visible. A red light shall be displayed on the mast in times of darkness or restricted visibility.

21.12. EMERGENCY SHUTDOWN – If the Port Director, vessel Master or Person in Charge (PIC) of fueling operations finds cause or suspects a cause of an unsafe condition, or the potential of a spill, the transfer operations shall immediately stop. Transfer operations shall also be stopped during thunderstorms.

RULE 22 – DOCK RATES

22.01. DOCKAGE RATES – Vessels are charged by their length over all and by the calendar day. For billing purposes, the LOA shall be obtained from the vessel's Certificate of Registry or from another published reliable source, or actual measurement at the discretion of the Port Director. **Dockage rate chart can be found in Appendix A fee schedule.**

22.02. SUPPLEMENTAL SERVICE CHARGE IN ADDITION TO DOCKAGE

- a. A service charge ~~of \$52.00~~ per landing will be assessed to each vessel in addition to the dockage rates above.
- b. A service charge ~~of \$481.53~~ per landing will be assessed for each Cruise Ship in addition to dockage rates above.



22.03. POTABLE WATER – Potable water furnished to vessels at the Deep Water Dock and Pioneer Dock shall be assessed ~~at~~ **in** the following **rates ways**:

- a. Quantity charge, ~~\$38.81 dollars~~ per one thousand gallons (minimum five thousand gallons).
- b. Scheduled deliveries will have a minimum charge ~~of \$102.00~~ for combined connection and disconnection.
- ~~c. —Unscheduled deliveries will have a minimum charge of \$139.32 for combined connection and disconnection.~~

Rates for supplemental service fees can be found in Appendix A fee schedule.

22.04. CRANE – The crane at the inside of (berth No. 2) of Deep Water Dock shall be subject to the same charges and usage requirements. ~~See Section III for crane rules & rates.~~

22.05. REGULATED GARBAGE HANDLING

- a. APPLICATION – Regulated garbage, as per the Code of Federal Regulations, is garbage from foreign going vessels that contains, or that is suspected of containing, food scraps or food waste.
- b. REQUIRED DOCUMENTS – Foreign flagged vessels not in possession of a valid USA Customs issued “purge document” and who are requesting to dispose of regulated garbage are required to have their agent contact the Port of Homer prior to arrival for a contact list of qualified Terminal Use Permit vendors capable of providing this specialized service. Only qualified and approved vendors will be allowed to remove regulated garbage.



SECTION III

Fish Dock

Rules, Regulations, & Rates

RULE 23 – FISH DOCK RULES AND REGULATIONS

23.01. USE OF FISH DOCK BY COMMON CARRIERS – The use of the Fish Dock by Common Carrier Vessels is prohibited.

23.02. FISH DOCK USE – The Fish Dock is an open access dock. Use of the Fish Dock is on a first-come, first-served basis, but the loading and unloading of fish and delivery of ice at the City’s ice delivery station between cranes 4 and 5 will have priority. Vessel owners are encouraged to communicate and cooperate with other Fish Dock patrons to avoid congestion.

23.03. RESPONSIBILITY LIMITED –The City of Homer, its employees and agents, shall not be liable for the injury of persons or any loss, damage or theft caused by their presence on the City docks or terminal facilities. The City of Homer shall be liable for any portion of loss or damage that is directly caused by its own negligence.

23.04. USE OF VESSEL OR MOBILE CRANES – Cranes located onboard the vessel moored at Fish Dock may be utilized for loading/unloading the vessel only with prior approval granted by the Harbor staff on duty. No non-City owned mobile cranes mounted on the back of a truck may be brought onto Fish Dock for use in loading/unloading without advance Harbor staff approval. If approved, these trucks for hire must have a Terminal Use Permit to operate on any terminal facility. Mobile cranes mounted on the back of a truck may not work over side unless they are certified and inspected for that purpose by the State of Alaska.

23.05. NO UNATTENDED VESSELS AT THE FISH DOCK – Vessels moored at Fish Dock must have sufficient crew on board to move the vessel upon request or direction of Harbor staff. A fee ~~of one hundred fifty dollars (\$150.00)~~ per hour will be assessed against the owner or operator of a vessel per hour left unattended at Fish Dock that obstructs access to the Fish Dock by other vessels. **In the case that the vessel must be moved to a transient moorage location, standard tow rates apply in addition to the unattended vessel fine. Unattended vessel and tow rate fee amounts can be found in Appendix A fee schedule.**

RULE 24 – FISH DOCK USE PERMITS

24.01. FISH DOCK USE PERMITS – An annual Fish Dock Use Permit is required for any qualified agent desiring to provide services (loading and unloading vessels) at the Fish Dock facilities of the City of Homer. Applied and approved Fish Dock Use Permit holders shall pay an annual ~~\$5.00~~ permit issuance fee plus provide the required insurance and state permitting documents. **For annual permit amount see Appendix A fee schedule.**

24.02. WHARFAGE – Seafood wharfage, regardless of species is self-reported and paid monthly by Fish Dock Permit Holders. Freight NOS, Non-seafood wharfage at the Fish Dock is also self-reported and paid monthly. Fishing gear is free from wharfage. Ice brought onto the Fish Dock in totes or transferred



to boats at the dock shall be charged wharfage at the Ice Wharfage rate, unless said ice was purchased from the City Ice Plant. Wharfage rates are listed under Fish Dock Rates.

RULE 25 – FISH DOCK CRANES

25.01. CRANE ACCESS CARD-Every person or business using a crane on the Fish Dock shall first obtain an electronic crane access card from the City. All crane access card holders shall:

- a. Complete the required training,
- b. Sign an agreement(s) to comply with all crane use policies,
- c. Pay the annual access card fee as well as actual crane time set forth in this subsection
- d. Provide proof of insurance that meets the terms of the crane use policies

Fees associated with crane access cards can be found in Appendix A Fee Schedule.

RULE 26 – FISH DOCK RATES – COLD STORAGE

Cold storage lockers are seasonally available for non-edible product/bait storage only, and are open from mid-march to the beginning of November each year, season dependent. An Invitation To Bid (ITB) shall be issued in the Fall for the following season allowing the public to bid on seasonal cold storage rental space for the next year. The ITB shall be publicly posted and advertised per City policies. Any questions regarding ITB procedures or polices can be answered at any time by contacting the City of Homer Clerk’s office. Rates for cold storage rental fees can be found in Appendix A Fee Schedule.

~~26.01. GENERAL LIST OF FEES AS SET BY THE HOMER CITY COUNCIL (Section moved to Appendix A)~~

- ~~a. Annual Access Card (Private License) \$52.00 per year~~
- ~~b. Card replacement fee \$5.00 per occurrence~~
- ~~c. Cold Storage Lockers #2 #8 (8 feet X 10 feet) \$334.75/month~~
- ~~d. Cold Storage Rate (2 consecutive months) \$309.00/month~~
- ~~e. Cold Storage Rate (3 consecutive months) \$283.25/per month~~
- ~~f. Cold Storage Rate (9 month season) \$257.50 per month~~
- ~~g. Cold Storage Locker #9 (10’X22’) \$920.90/month~~
- ~~h. Cold Storage Locker #9 (2 consecutive months) \$849.60/month~~
- ~~i. Cold Storage Locker #9 (3 consecutive months) \$778.90/month~~
- ~~j. Cold Storage Locker #9 (9 month season) \$708.20/month~~
- ~~k. Inspections \$ 50.00 per hour~~
- ~~l. Bait Storage Fee per bin (4x4x4)~~
 - ~~1. Per Day \$5.15~~
 - ~~2. Per Week \$25.75~~
 - ~~3. Per Month \$77.25~~
- ~~m. Fish Dock Crane (Minimum 15 minutes) \$90.64/hour~~
- ~~n. Ice (Accumulated throughout year. Accounts reviewed each Dec. for rate adjustment based on previous year’s actual tons of ice purchased.)~~
 - ~~1. 0>100 tons \$130.90 per ton~~
 - ~~2. 101>300 tons \$128.00 per ton~~
 - ~~3. 301>500 tons \$124.00 per ton~~
 - ~~4. 501>700 tons \$121.00 per ton~~
 - ~~5. 701>1000 tons \$118.00 per ton~~
 - ~~6. Over 1001 tons \$115.00 per ton~~



Port of Homer Terminal Tariff No. 1

Section III: Fish Dock

- ~~o. After hours ice delivery call out fee \$250.00 per call out~~
- ~~p. Wharfage for Seafood \$4.76/ton or \$.00238/lb.~~
- ~~q. Ice Wharfage (not purchased from City) \$14.50/ton~~
- ~~r. Freight NOS Non-seafood Wharfage at Fish Dock \$14.50/ton~~



SECTION IV

Small Boat Harbor & Upland Facilities

Rules, Regulations, & Rates

RULE 27 – SMALL BOAT HARBOR RULES & REGULATIONS

27.01. MAXIMIZATION OF FACILITIES – The Homer Port and Harbor is often congested and it is the policy of the City of Homer to provide for the maximum public use of available facilities. The Port Director shall have discretion to implement that policy.

27.02. MOORAGE AGREEMENTS – As a condition to securing mooring space in the Homer small boat harbor, a signed Moorage Agreement must be on file with the Port Director's office. There are separate forms for Reserved Stall vessels and for Transient vessels. By completing the Moorage Agreement, the applicant agrees to the terms and conditions. Providing false or misleading information on the Moorage Agreement is grounds for immediate termination of services.

27.03. UNDERWAY REQUIREMENT – On at least two days in each calendar year, separated by at least 60 days, a vessel moored in the Homer harbor shall depart under its own power from the Homer harbor and travel beyond the one-quarter-mile turning basin of the Pioneer and Deep Water Docks before returning under the vessel's own power to the Homer harbor. The moorage charge for a vessel that fails to comply with this requirement shall be increased by 50 percent commencing at the time the vessel fails to comply and continuing during the period of noncompliance.

27.04. TRANSIENT MOORAGE SPACE – transient moorage space throughout the Homer small boat harbor is designated by a yellow painted bullrail (approximately 6,000 lineal feet). There are no transient stalls. If there is no available transient space at the bullrail, a vessel is permitted to side tie to a vessel of similar size that is already secured to the bullrail.

27.05. RENEWING RESERVE STALLS – A written renewal letter, **or an e-mail for customers who have chosen paperless billing**, is mailed to each Reserve Stall holder. Payment of fees, any updates to their contact information, current proof of ownership, **and current proof of insurance** is required each year by October 1 to renew.

27.06. SEWAGE DISCHARGE – In the small boat harbor an Eco barge is staged during the summer months to transfer sewage from small boats.

27.07. STACK EMISSIONS – The visible emission of stack gases or other emissions that contain any odors as deemed objectionable by the Port Director while berthed at the Port's facilities is prohibited.

27.08. SMALL BOAT HARBOR RESTRICTED SPEED – All craft shall restrict their speed to two miles per hour, no wake, while inside the Small Boat Harbor entering or leaving and shall operate at a reduced speed within one quarter mile of the docks outside the Harbor. It shall be unlawful for any vessel to travel at a speed within any waterway causing a wake, wash or wave action which will damage, endanger or cause undue distress to any other boat or occupant, regardless of established speed limits.



27.09. PLACEMENT OF GEAR PROHIBITION – The placement of fishing nets in the waters of the Homer Small Boat Harbor is prohibited. The physical limits of the “Small Boat Harbor” are set forth in this Tariff, section 1.06.

27.10. MOORING LINES – The vessel is responsible, at all times, for keeping all mooring lines tightly secured. Supplemental mooring lines and/or fenders may be required by the Port Director as conditions dictate.

27.11. AUTHORITY TO CHANGE MOORING CONDITION – If, in the opinion of the Port Director, any vessel or other watercraft, arriving, anchoring, moored or fastened to any wharf, pier, bulkhead, or another vessel in the Port of Homer, is so moored or placed in an unsafe or dangerous manner or impeding the proper operation of the facility, the Port Director is hereby authorized to order and direct the vessel or other watercraft to be moved or moored in an acceptable manner to prevent damage to City facilities. The Master or any other person having charge of such vessel or other watercraft shall immediately comply with such orders or directions as may be issued by the Port Director.

27.12. LIVE ABOARDS – No live aboard situations longer than three months in any one year is permitted in the Homer small boat harbor without the Port Director’s approval in writing after an evaluation of the sanitary, service and congestion problems that may be a result of such an arrangement. No live aboard situation exceeding one year will be allowed in the Homer small boat harbor.

27.13. BUSINESSES ON VESSELS IN HOMER SMALL BOAT HARBOR – No Bed & Breakfast, Air B&Bs, lodging business, coffee shops or sandwich shops, cafes or similar types of businesses are allowed on boats in the Homer small boat harbor. **Vessels that conduct their business elsewhere and only use the harbor as a point of loading and offloading are permitted (e.g. fishing vessels when selling or distributing fish, crab, or other products of the sea; charter, tour boats, and water taxis, when loading or unloading customers, supplies or gear; etc)**

RULE 28 – SMALL BOAT HARBOR VESSEL MOORAGE

APPLICABLE PERIOD – Mooring charges shall commence when a vessel is made fast to a wharf, pier, harbor float or other facility, or when a vessel is moored to another vessel so berthed (rafting). Charges shall continue until such vessel is completely free from and has vacated the Port and Harbor facilities. A vessel moored in the Harbor at any time between 12:01 A.M. and 10:00 A.M. shall be charged a full day’s moorage. Port Director may, in his sole discretion, waive a daily charge for a vessel **provided that: (1) Notice is made in writing prior to mooring in the Homer Boat Harbor, (2) Vessel stay is no more than 4 hours, and (3) Port Director determines that congestion and use of the public facilities by others will not be adversely affected. The City of Homer retains the right, in its sole discretion, to determine whether a vessel berthed at any time will be charged a full day’s charge.**

28.01. CALCULATION OF RATES – Mooring charges shall be calculated on the overall length of the vessel, (LOA), or in the case of a reserved stall, the length of the float stall assigned, whichever is greater. LOA shall be construed to mean the distance in feet from the most forward point at the stem to the aftermost part of the stern of the vessel, measured parallel to the base line of the vessel. The length shall include all hull attachments such as bowsprits, dinghies, davits, etc. For billing purposes, the LOA



shall be obtained from the vessel’s Moorage Agreement or from another published reliable source, or actual measurement at the discretion of the Port Director.

28.02. APPLICATION OF RATES/WORK SKIFFS – All vessels in the Small Boat Harbor are subject to these moorage rates, **except** properly registered seine skiffs or work skiffs attached to the mother vessel. Work skiff is defined as a boat that is usually carried on the deck or super structure of the mother vessel and is regularly used in the commercial enterprise of the mother vessel. When work /seine skiffs are moored with the mothership, the combined length overall or beam may not exceed the allowed criteria for the size of stall. If it does exceed, the skiff must be moved to a transient area and moorage fees will apply.

28.03. MOORAGE RATES

- a. The annual moorage fee for reserved moorage and transient moorage privileges is based on the overall length of the vessel (**LOA**), including all hull attachments such as bowsprits, davits, dinghies, swim steps, etc. and is calculated as follows:

Annual Moorage Rate = [Commodity Rate + (LOA x \$0.05)] x LOA, plus an ~~fifty dollar (\$50.00)~~ administration fee and subject to sales tax. The (\$0.05 per foot) increase is capped at the eighty six (86) foot vessel size. For a reserved stall, the length of the finger float stall assigned, or the overall length of the vessel, whichever is greater plus an ~~fifty dollar (\$50.00)~~ administration fee.

Commodity Rate shall be adjusted annually by the percentage of increase (between the first 6 months of the current year and the first 6 months of the previous year) in the Consumer Price Index Urban Alaska/Anchorage section. Changes in moorage rates will be effective on January 1 of each year.

- b. All reserved stall assignments are on an annual basis beginning October 1 and ending September 30 of the following year. Prepayment of a full year’s moorage is due on or before October 1 of each year. Payment for reserved moorage will only be accepted from the individual assigned the reserved stall. The reserved stall payment **as well as all other harbor fees owed by the reserved stall permittee** shall be paid in full at the time the reserved stall/moorage agreement is executed to the satisfaction of the Port Director.
- c. A semi-annual transient rate is available on a prepaid basis only for transient vessels mooring in the Small Boat Harbor for a period of six consecutive months. The transient semiannual rate is 67% of the annual rate plus an ~~thirty three dollars and fifty cents (\$33.50)~~ administration fee. Vessels that do not renew will automatically be charged the monthly rate if not removed after five days.
- d. The monthly transient rate will be 17% of the annual rate plus an ~~eight dollars and fifty cents (\$8.50) per month~~ administration fee. Vessels that are properly registered and pay all moorage fees in advance may **receive a deduction calculated fifty cents (\$.50)** per foot per month.



- e. The daily transient rates are: 3% of the annual rate plus an ~~one dollar and fifty cents (\$1.50) per day~~ administration fee. Vessels that properly register and pay all moorage fees in advance may **receive a deduction calculated five dollars (\$5.00)** per day from the daily rate.
- f. Any moorage fee that expires for a registered **vessel that** has a Moorage Agreement on file or an unregistered vessel will, after five days, automatically be charged a monthly rate retroactive to the expiration date.
- g. Refunds for cancellations of reserved stalls and annual prepaid moorage are calculated using the number of months used times the monthly prepaid rate.
- h. **Current Moorage rates and fees can be found in Appendix A Fee Schedule**

RULE 29 – RESERVE STALL ASSIGNMENTS IN HOMER SMALL BOAT PORT AND HARBOR

~~29.01. PREFERENTIAL USE—A Reserve stall assignment grants the holder the preferential use of the stall. In order to maximize the public’s use of existing facilities, the Port Director has the authority to temporarily assign (hot berth) vessels to stalls normally used by another vessel when that vessel is out of the Harbor. No person shall sell, lease, transfer or assign a moorage agreement for the use or control of the assigned stall to any other person or entity, or otherwise charge another person for the use of a stall. The City has the sole control of the assignment, transfer and use of the individual stalls.~~

29.01 PREFERENTIAL USE, NOT EXCLUSIVE USE – A Reserve stall assignment provides the reserved stall permittee the preferential use of the stall. To maximize the public’s use/benefit of existing facilities the Port Director has the authority to temporarily assign (hot berth) vessels to reserved stalls issued to another vessel when that vessel is out of the Harbor.

No person or entity shall sell, lease, transfer or assign a moorage agreement for the use or control of the stall to any other person or entity, or otherwise charge another person for the use of a stall. The City has the sole control of the assignment, transfer and use of the municipally owned vessel moorage slips at the Port of Homer. Upon issuance of a reserved stall in the Homer harbor the reserved stall permittee shall have one moorage year to occupy with a vessel they can document that they own or lease. In the case that a reserved stall permittee loses possession of their vessel for whatever reason, they shall have one moorage year to replace the vessel in their reserved stall with a vessel of appropriate size that they can prove they own or lease.

Except as provided in 29.04 it is the policy of the Port of Homer to prohibit the transfer of a reserved moorage slip or space assignment if the assignee no longer has ownership control of the vessel occupying the slip or space.

~~29.02. CHANGE BOAT IN RESERVE STALL—Reserve stall assignments are made to a particular combination of vessel and owner/operator and are not assignable by the owner/operator. A stall holder who no longer has possession, control or custody of the vessel or loses the vessel to fire, sinking or other casualty may continue to retain reserved use of the stall for a period of not more than one year from the date the stall holder lost possession, control or custody of the vessel so long as the stall holder has replaced the vessel with another vessel of appropriate size for the stall assigned. A Reserve stall holder may place another vessel of permitted size in the stall with permission of the Port Director and upon~~



~~payment of the Change Boat fee of \$25.00. Reserve stall holder must complete a new Moorage Agreement and show proof of ownership, lease, or bill of sale within 12 months for the replacement vessel for the duration of the stall lease.~~

29.02. CHANGE BOAT IN RESERVE STALL Reserve stall assignments are made by the City to a specific combination of vessel and vessel owner and are not assignable by the vessel owner. A Reserved stall permittee may exchange another vessel of qualifying/appropriate size that they own or lease in their reserved stall with permission of the Port Director and upon payment of the Change Boat fee contained in Appendix A Fee Schedule. In order to change or exchange the named vessel to a reserved stall the reserved stall permittee must complete a new Moorage Agreement and submit proof of ownership (bill of sale, title, USCG Documentation, and or state of Alaska DMV registration in the reserved stall permittee’s name. A reserved stall permittee may occupy their assigned stall with a leased vessel provided that the ownership, Current USCG Documentation, or State of Alaska DMV registration, and or title are provided to the Port Director along with a legal lease document for the new vessel.

~~29.03. SALE OR ASSIGNMENT OF MOORAGE CONTRACT– A sale, lease, transfer or assignment of a reserve stall by an individual owner or entity is prohibited. If it is determined that the reserve stall permittee has violated the terms of the reserve stall moorage agreement contract,~~ the Port Director shall revoke the moorage agreement after 10 days’ written notice to the reserved stall permittee holder Port Director of the moorage agreement.

~~An entity may not assign or transfer the reserve stall assigned to the vessel without written consent by the Port Director. Transfer or assignment of the reserve stall may only occur after the Port Director determines that 1) the entity is in full compliance with the Reserve Stall Moorage Agreement; 2) there has been a change of ownership of an entity, or reorganization of an agency; and 3) the nature of the entity’s business or enterprise, if applicable, and the use of the vessel and the stall will remain substantially the same after the transfer or assignment.~~

~~29.03. SURVIVORSHIP—Upon the death of any reserved stall holder, reserved mooring privileges shall be transferred to the surviving spouse, son or daughter upon written request to the Port Director.~~

29.04 SURVIVORSHIP - Upon the death of any reserve stall holder, the reserved moorage permit may be transferred (one time) to the surviving spouse, or child of original permittee upon written application to the Port Director. The following survivorship transfer/changes to the individual named as the reserved stall permittee will not cause the loss of a reserve stall:

- A. A transfer, to surviving spouse, or child as listed above;**
- B. For a partnership or corporation, a (One Time) change where the new assignee**
 - 1. Was a partner or corporate member of the original corporation at the time the wait list application was submitted to the harbor office. OR**
 - 2. Has applied for a reserved moorage and receives an assignment for the vessel in their own name. OR**
 - 3. Is a privately owned and managed corporation whose sole business is fulfilling Government required pilot boat services that are critical and essential to Port and harbor operations and whose reserved stalls are specifically for the vessels that are actively engaged in providing those services.**

~~29.05. NOTIFICATION OF DEPARTURE/ARRIVAL – A vessel assigned a reserved stall permittee shall~~



~~should~~ notify the Port Director when departing for more than 5 days. With 24 hour advance notice, reserve stall ~~holders~~ **permittee should shall** notify the Port Director when vessel is returning to allow the harbor staff to clear the stall. If, despite reasonable efforts, the Port Director is unable to clear a stall due to congestion, high winds, or safety considerations, a reserved stall vessel may be required to temporarily use another moorage space as directed by the Port Director.

RULE 30 – SMALL BOAT HARBOR RESERVE STALL WAITING LIST

~~30.01. WAITING LIST FOR RESERVED STALL ASSIGNMENT—Vessels will be assigned~~ **Issued a permanent reserved stall based on seniority there position on the waiting lists maintained by the Port Director’s office. Separate waiting lists shall be maintained for the following size stalls:**

20 Feet	24 Feet	32 Feet	40 Feet	50 Feet	60 Feet	75 Feet
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30.01. ~~WAITING LIST FOR RESERVED STALL ASSIGNMENT – Owners~~ **Reserved stall permittees** will be assigned a reserved stall based on seniority position on waiting lists maintained by the Port Director’s office. **Any individual, corporate entity or governmental agency may apply for a reserved stall at the Port of Homer for the purposes of mooring a vessel owned by the individual, entity or agency. All applicants (either individuals or entities), except government agencies, shall designate a single individual whose name shall appear on the waiting list and who shall be responsible for payment of all fees. Any change in the individual designated may result in the applicant’s loss of priority on the waiting list.** Separate ~~waiting~~ lists shall be maintained for the following size stalls:

20 Feet	24 Feet	32 Feet	40 Feet	50 Feet	60 Feet	75 Feet
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30.02. APPLICANT RANKING – The Port Director shall place applicants on the waiting list on a first-come, first-serve basis only upon receipt of all requested information and payment of the annual waiting list fee. There is an **annual** fee ~~of \$30.00 per year~~ per listing **to remain on the stall wait list for a permanent reserved stall assignment.** An applicant may sign up at any time during the year and pay a prorated fee to the May 1 Stall Wait List due date. Nonpayment of the fee by the May 1 due date means automatic cancellation from the waiting list. The annual waiting list fee will be accepted only from the individual whose name appears on the waiting list. The fee is neither refundable nor creditable to stall applicant. An applicant or existing reserved stall assignee may be placed on one or more of these lists. An applicant need not own or operate a vessel to be placed on the waiting list.

~~30.03.~~ NEW RESERVED STALL ISSUES – In mid-October of each year, after all Reserve stalls are renewed and any SWAP requests have been satisfied, new stall offers to those on the stall wait lists are issued in the order they were received. New ~~stall holders~~ **reserved stall permittees** must complete and sign a Reserve Stall Moorage Agreement, pay the annual moorage, **provide proof of insurance,** and provide proof of ownership or a written lease agreement ~~on~~ for the vessel. New reserved stall ~~holders~~ **permittees** have one year to ~~obtain~~ occupy the stall. ~~a vessel for the stall.~~

30.04. DECLINING STALL OFFER – If applicant does not want to accept the stall offer, it can be declined and the applicants name will be placed at the bottom of the stall wait list.



~~30.05. — SURVIORSHIP — Upon the death of a Stall Wait List applicant, the applicant’s rank on the waiting list shall be transferred to the surviving spouse, son or daughter upon written request to the Port Director.~~

30.05 SURVIORSHIP In **the case of the death of a Stall Wait List applicant, the applicant’s rank on the waiting list may be transferred to the surviving spouse or child. In the case of an entity, and the death of the entity member who was designated as the representative individual on the waitlist, a corporate member who was a partner at the time the wait list application was filed with the harbor office may request a transfer. The transfer may be allowed upon written request to the Port Director.**

30.06 CHANGE OF CONTACT INFORMATION – An applicant shall notify the Port Director in writing of any change of address or telephone number(s) immediately.

RULE 31-SMALL BOAT HARBOR FLOAT PLANE MOORAGE / FEES

31.01. APPLICATION – With proper registration and specific permission from the Port Director, float planes may arrange for short-term moorage in the Homer Small Boat Harbor providing space is available. This is only allowed when ice and weather conditions prevent float planes from landing on Beluga Lake.

31.02. FEES – A fee in the amount equal to the daily rate for moorage of two (2) 24’ vessels shall be assessed on a daily basis for float planes mooring within the confines of the Homer Small Boat Harbor. A monthly rate in the amount equal to the monthly rate for two (2) 24’ vessels shall be assessed for float plane moorage for longer periods

RULE 32 – SMALL BOAT HARBOR ELECTRICITY

32.01. RESERVE STALL ELECTRICITY (per kilowatt) – Reserved stalls having a meter base at the berth shall be charged a meter availability fee.

- a. There **will be a meter availability fee charged** ~~will be \$23.95~~ per month.
- b. There will be an electrical usage charge cost per kilowatt determined by the Local public utility.
- c. Reserve stall assignees shall notify the Port Director of any period when the assigned vessel will not occupy the stall. The Port Director, upon payment of a ~~\$28.80~~ connect/disconnect fee, shall discontinue charging the meter availability fee until the vessel returns.
- d. **Current reserve stall electric rates and fees can be found in Appendix A Fee Schedule**

**32.02. TRANSIENT VESSEL WINTER POWER**

- a. Transient Vessel Winter Power -Subject to availability, transient vessel may buy electrical power on a metered basis from October 15 to April 15. There will be a ~~\$28.80~~ connect/disconnect fee.
- b. Metered transient vessels will be charged a meter availability fee ~~of \$28.80~~ per month.
- c. There will be an electrical usage charge per kilowatt as determined by the Local public utility.
- d. **Current transient vessel winter power rates and fees can be found in Appendix A Fee Schedule**

32.03. TRANSIENT VESSEL SUMMER POWER – Transient vessels shall be charged ~~the following~~ rates **as listed in Appendix A Fee Schedule.** (where metered power is unavailable) from April 16 to October 14. The provided service is 110 volt, 220 volt, 208 volt 1 phase, 208 volt 3 phase & 480 volt 3 phase.

- a. Actual Consumption Charge-If a transient vessel consumes more electricity than would be covered by these flat rates, then such transient vessel shall be charged for the actual consumption.
- b. Vessels requiring conversion plugs may purchase them from at the Port Director's office for a nominal fee.

32.04. SYSTEM 5 ELECTRICAL SERVICE – 208 volt/3 phase & 480 volt electrical power is available at System 5 on a first come-first serve basis, for which the vessel will be charged the following rates:

- a. There will be an electrical usage charge per kilowatt hour as determined by the Local public utility.
- ~~b. Vessels will be charged a meter availability fee of \$28.80 per month.~~
- c. Vessels plugged in less than seven (7) consecutive days will be charged the daily rate.

RULE 33 – SMALL BOAT HARBOR TIDAL GRIDS

33.01. USE OF TIDAL GRIDS – The City of Homer operates two tidal grids. The wooden grid is for vessels less than 60 feet in length. The steel grid is generally for use by vessels 60 feet or greater in length. Vessels over 60' may not use the wooden grid without specific approval of the Port Director. Vessels over 300 displacement tons or over 120' may not use the steel grid without specific approval of the Port Director. Vessels that remain on either grid after their scheduled tide may be assessed a 50% surcharge for each unscheduled tide. Use of the steel grid shall be charged at the minimum rate applicable for a 60' boat if a boat of less length is allowed to use this grid.



33.02. SANDBLASTING PROHIBITED – Sandblasting of vessel is not permitted on tidal grids; water blasting of vessel to remove barnacles or other marine growth is permitted provided that the water pressure used does not result in removal of paints onto the grid work platform or into the water of the Harbor.

33.03. RATES – ~~The following rates apply to use of Tidal Grids:~~ **Current rates and fees for use of the tidal grids can be found in Appendix A Fee Schedule**

- ~~a. The rate per foot per tide is \$1.05 for vessels 0’-59’~~
- ~~a. The rate per foot per tide is \$2.55 for vessels 60’-80’~~
- ~~b. The rate per foot per tide is \$3.25 for vessels 81’-100’~~
- ~~c. The rate per foot per tide is \$3.82 for vessels 101’-120’~~
- ~~d. The rate per foot per tide is \$4.24 for vessels 121’-140’~~

33.04. USE OF TIDAL GRIDS – Use of the tidal grids must be scheduled in advance. For Steel Grid use, upon the discretion of the Port Director, prepayment is required. Prepayment may be refunded if cancellation of reservation is at least seven days prior to scheduled use. A working tide on the Steel Grid is defined as +1 and below.

33.05. WRITTEN PERMISSION FOR USE OF GRIDS – No vessel shall be moored onto the tidal grids until permission has been granted by the Port Director and the appropriate Utilization Agreement/Waiver and Release forms completed by User.

33.06. NO UNATTENDED VESSELS ON GRID – No vessels will be unattended while on the grids.

RULE 34 – SMALL BOAT HARBOR PUBLIC LAUNCH RAMP

34.01. BOAT PUBLIC LAUNCH RAMP – The City owns and provides access to public launch ramps. The principal intended use of the LAUNCH RAMP is the launch and recovery of small, boats on trailers. An authorized subsidiary use is the incidental, commercial and noncommercial, loading or unloading of goods, supplies or materials. **Fueling vessels (either as a private vessel owner or commercial fuel distribution company) at the Load and Launch Ramp is prohibited.** ~~Rates for use of the load and launch ramp and season passes can be found in Appendix A Fee Schedule.~~ ~~for a single launch is \$13.00 plus the addition of a \$7 levied parking impact fee for a total of \$20.00(see also 12.09);~~ A season pass ~~covers from~~ **covering** April 1 to October 15. ~~is \$130.00 with the addition of a \$70 levied parking impact fee for a total of \$200.00(see also 12.09).~~ The person who is obligated to pay the fee for using the load and launch ramp must make the ~~ticket~~ **receipt** verifying payment available upon request, or display the seasonal permit on the port side of the permit holder’s vessel. There is a ~~\$20.00~~ **per hour fee located in Appendix A Fee Schedule**. Reserved stall holders **and vessels paying transit annual moorage in the harbor** are exempt from launch fees for the vessel assigned to and registered to the stall or **has a transit annual sticker displayed on the vessel** only, not for other boats owned by the same individual. At the Port Director’s discretion, reasonable restrictions may be placed on the use of the public launch ramp.



34.02. COMMERCIAL LOADING - Commercial loading shall be defined as loading any amount of materials that exceed a total weight of 500 lbs. Commercial Loading at the Load and Launch Ramp shall be subject to the same use, application of fees, and charges as the Beaches and Barge Ramp. See Rule 37 Beaches and Barge Ramp Section 37.01 Use, 37.02 Application of Fees, and Section 37.03 Charges.

To avoid congestion at the Load and Launch Ramp during peak months, load and launch activities will be prioritized and commercial loading at the load and launch ramp will be restricted to the evening hours of 6pm to 6am from Memorial Day to Labor Day. Any commercial loading, not pre-approved by the Port Director that occurs during the hours of 6am to 6pm from Memorial Day to Labor Day will be prohibited and violators will be charged a penalty ~~of \$100~~ per occurrence. **(for fee reference Appendix A Fee Schedule)**

RULE 35 – UPLAND STORAGE

35.01. APPLICATION – Upland storage area is primarily for fishing related gear and cargo laydown. No vehicle or boat trailers may be placed on the upland storage area without prior permission of the Port Director.

35.02. AVAILABLE SPACE – The City of Homer may make available a limited area of land for gear storage on a first-come, first-serve basis. All storage assignments must be approved by the Port Director **or their designee**. Storage lots are a minimum of 1,000 square feet

35.03. RATE PERIODS – Charges shall be based on type of storage required, gear or equipment. Provided wharfage fees have been generated, No charge for storage shall be ~~generated~~ implemented for free time of 3 days or less. Storage time beyond 7 days shall generate a full, one month charge. There are no prorated daily fees for storage. A storage month shall extend from a date in one calendar month to, but not including, the same date of the next and all succeeding calendar months. Less than one month’s storage will be charged for the full month. The Port Director may negotiate storage contracts for six months or longer.

35.04. RATES – Fees for general storage ~~are as follows:~~ **can be found in Appendix A Fee Schedule.**

Open Areas, fishing gear (unsecured)	—————	\$.12 per square foot
Open Areas, non fishing gear (unsecured)	—————	\$.17 per square foot
Secure Storage	—————	\$.22 per square foot
Deck Shelter Storage — Prearranged	—————	\$35/per month

35.05. ARRANGEMENTS FOR STORAGE – Arrangements must be made in advance for the use of storage lots with the Port Director. Use of storage lots will be on a month to month basis. No prorated daily rates are allowed. Storage lot fees will be billed out to the renter until agreement is cancelled and lot is returned clean with all personal items removed. Unauthorized storage of gear is prohibited. Unauthorized stored gear or equipment may be removed by the Port Director at the owner’s expense, may be subject to fines or may be billed out at the daily demurrage rate set by the Port Director.



35.06. IMPROPER ARRANGEMENTS – Equipment and materials stored without proper registration and advance payment will be charged according to storage fees or at demurrage rates at the Port Director’s discretion.

RULE 36 – BOAT TRAILER STORAGE

36.01. SHORT TERM STORAGE – Short term storage of boat trailers not to exceed 7 days will be provided on a space available basis at no charge.

36.02. LONG TERM STORAGE – Long term storage rates for boat trailers (8 or more days) is available in a designated lot ~~for \$7.00 per foot on a~~ per month basis. Current rates for long term trailer storage can be found in Appendix A fee schedule. This storage is for trailers only, no boats on trailers or attached vehicles.

RULE 37 – BEACHES AND BARGE RAMP

37.01. USE – The use of beaches and barge ramp under the City ownership or control for commercial barge vessel repair, equipment loading or similar purposes, must be approved by the Port Director. At the Port Director’s discretion, reasonable restrictions may be placed on the use of the beach and barge ramp. Congestion, risk of loss of public or private property and public safety and/or response may result in restrictions. A beach use agreement will be filled out and signed by the user and Port Director prior to each use of the beach. The city of Homer is the titled owner of the tidelands immediately adjacent to the Homer Spit and extending to the city boundaries.

37.01 (b) Any vessel over 50’ in length will have priority use of the small boat harbor barge ramp facility and, depending on need, may be required to schedule use in order to avoid conflicts. All other users must work around the priority vessel use and schedule.

Any vessel going dry on the barge ramp, and thereby causing blockage or restricted access to the ramp, without permission/approval of the Port Director’s office, shall be charged a penalty ~~of \$150~~ per tide cycle.

37.02. APPLICATION OF FEES – The Port Director shall charge a fee per foot based on length overall of the vessel, for vessels landing or parking on the beaches under City ownership or control. This same rate shall apply to vessels using the barge ramp. The rate per linear foot for all vessels is ~~\$1.50~~ per day and can be found in Appendix A Fee Schedule. Charges for extended beach or barge ramp use may be adjusted by the Port Director under appropriate circumstance. Additionally, an annual pass covering from January 1 to December 31 of each year is available for vessels less than or equal to 50’ at the following rate:

Annual Pass for vessels ≤ 50’ = (single landing + wharfage) x10



37.03. CHARGES – Wharfage rates shall ~~also~~ apply for the beaches and barge ramp. Charges for extended beach or barge ramp use may be adjusted by the Port Director under appropriate circumstances. A flat rate fee of one ton wharfage per landing will be applied to vessels under or equal to 36’ using the beaches or barge ramp. Vessels from 37’ to 50’ using the beaches or barge ramp will be charged a flat rate of two tons wharfage per landing. Vessels over 50’ are required to report and pay for wharfage monthly at the tariffed rate. See Wharfage, Section I, Rule 13.

37.04. DAMAGE – The user of any beach area or barge ramp must repair any damage to the beach or ramp and remove all debris. Failure to make such repairs and removal will result in repairs and cleanup by Harbor staff. The costs incurred by the Harbor staff will be fully charged to the beach user **at the current** Labor rate for the Harbor staff ~~on a will be one hundred and two dollars (\$102.00 USD)~~ per hour basis.

RULE 38 – MARINE REPAIR FACILITY

38.01. HOMER MARINE REPAIR FACILITY – Facility can be utilized by vessels after approval by the Port Director. A User Agreement is required along with a Work Plan, proof of insurance and proof of ownership. The season for use of the Homer Marine Repair Facility is from September to May. Permission for use in June, July, or August may be granted by the Port Director under special circumstances. Complete information can be found in the City of Homer Marine Repair Facility Policies and Best Management Practices document.

38.02. FEES

- a. UPLAND DRY DOCKAGE FOOTPRINT CALCULATION – Charges are calculated as square feet, and are based on the overall length and beam of the vessel, plus a ten foot perimeter on all sides. If additional equipment is on site, it will be added to the total square footage.
- ~~b.~~ **UPLAND DRY DOCKAGE USE FEE PER MONTH will be rated with consideration to whether annual moorage, transient moorage, or no moorage is currently in effect for the vessel being hauled out/stored. (ANNUAL MOORAGE) – \$ 0.17 per square foot for vessels paying annual moorage in Homer Harbor**
- ~~c.~~ **UPLAND DRY DOCKAGE USE FEE PER MONTH (TRANSIENT MOORAGE) – \$ 0.20 per square foot for transient daily, monthly, semiannual moorage vessels**
- ~~d.~~ **UPLAND DRY DOCKAGE USE FEE PER MONTH (NO MOORAGE PAID) – \$0.25 per square foot for vessels not paying harbor moorage.**
- e. ~~c.~~ **ADMINISTRATION FEE – per month of Dry Dockage uplands usage: \$50.00**
- f. ~~d.~~ **BEACH LANDING FEE – per calendar day: \$1.50 per foot**
- g. ~~e.~~ **VENDOR FEE – per calendar year: \$150.00**
- h. ~~f.~~ **HARBOR LABOR FEE – \$102.00 per hour/\$51.00 minimum**
- i. **g. Current rates and fee costs can be found listed in Appendix A Fee Schedule.**

**RULE 39 – FISH DISPOSAL / GRINDING AND FEES**

39.01. FISH GRINDING AND FEE – The City owns a regulated fish disposal system that grinds and flushes fish waste through an outfall line. In addition to grinding sport caught fish carcasses collected at the fish cleaning tables, the City’s fish disposal system can facilitate disposal of fish waste generated from commercial enterprises who shall self-report their fish carcasses brought to the facility.

a. The rates for commercial enterprises are ~~calculated \$30.00~~ per tote (approximately 1,000 lbs.) and ~~\$5.00~~ per tub (approximately 100 lbs.). **Current Rates can be found listed in Appendix A Fee Schedule.**

b. For off-site Fish Processors discharging effluent using the City’s Outfall Line connection directly from the fish disposal system at their processing facility there is a one-time connection fee ~~of \$7,000.00~~. Processor has the option to pay the connection charge in five equal annual installments ~~of \$1400.00~~ plus 7.5% interest. Additionally, there shall be an annual operation and maintenance fee ~~of \$2,400.00~~. **Rates and fees for connection to the outfall line can be found in Appendix A Fee Schedule.**



APPENDIX A- FEE SCHEDULE

The Port Director has authority to protect rates against inflation, raising them by a calculated percentage using the Consumer Price Index –Urban Alaska/Anchorage table, at the Port Director’s discretion and with City Council’s approval.

PORT & HARBOR FEES

Effective 1/1/2023

Please add 7.85% sales tax to fees unless otherwise noted

FISH DOCK

Note: Vessels left unattended at Fish Dock or obstructing access will be charged \$150.00 per hour

- Fish Dock use permit: \$5.00 per issuance
- Special Terminal use permit: \$200 per issuance
- Annual Crane Card: \$52.00 w/signed Authorization Agreement
- Crane Card Replacement: \$5.00 per card replaced
- Cranes:

0 - 15 minutes \$22.66	<u>Crane Capacity:</u>
16 - 30 minutes \$45.32	2½ ton #1, #3, #4, #5, #6, #8
31 - 45 minutes \$67.98	5 ton #2, #7
46 - 60 minutes \$90.64	
- Ice: Accumulated throughout year. Accounts reviewed each December for rate adjustment based on previous year’s actual tons of ice purchased.)

0>100 tons	\$130.90 per ton	501>700 tons	\$121.00 per ton
101>300 tons	\$128.00 per ton	701>1000 tons	\$118.00 per ton
301>500 tons	\$124.00 per ton	Over 1001 tons	\$115.00 per ton

After hours call out for Ice delivery = \$250.00 fee per call out

- Seafood Wharfage: \$4.76 per ton of seafood/fish product across the dock, regardless of species
- Ice/Non Fish Wharfage: \$14.50/ton, Includes ice not purchased from City & transferred Freight NOS over Fish Dock
- Community Fish Grinder: \$5 per tub (approx. 100lbs), \$30 per tote (approx. 1,000lbs); processing plant connection fee to outfall line \$7,000 (can be in 5 annual installments plus 7.5% interest); Annual outfall connection maintenance fee \$2,400.
- Cold Storage:
 - Lockers #2 – 8 (8’ x 10’) \$334.75 per month
 - Locker #9 (10’ x 22’) \$920.90 per month
 - Inspections \$50.00 per hour



HARBOR

- Harbor Labor: \$102.00 per hour, plus equipment and direct costs (towing)
\$51.00/half hour minimum
- Pumps: \$40.79/day for electric pump
\$69.97/hour for gas pump, minimum charge of one hour. Includes attendant time
- Tow: Skiff with operator ½ hour \$68.00; skiff with operator 1 hour \$102.00
- Load & Launch Ramp: (Fees are inclusive of sales tax)
\$20 per day - (\$13.00 launch fee plus a \$7 parking impact levy for a total of \$20)
\$200 per season (April 1 – Oct. 15) - (\$130.00 launch fee plus a \$70 parking impact levy = \$200)
\$20.00 per hour for unattended vessel/blocking ramps
\$100 penalty for commercial loading @ L&L ramp during peak hours between 6am-6pm

GRIDS

Required: moorage agreement, grid utilization form, schedule, & pay in advance for first tide

- Wood: Max. 59 feet
0-59 feet \$1.05/ft/tide
- Steel: Max. 200 displacement tons - vessels 60 ft. to 120 ft
60-80 feet \$2.55/ft/tide 101-120 feet \$3.82/ft/tide
81-100 feet \$3.25/ft/tide 121-140 feet \$4.24/ft/tide

STALL WAIT LIST

Stalls are offered once a year, mid-October

- Stall Wait List: \$30.00 per year per listing; prorated fee to the May Stall Wait List due date
- Stall Swap Request: \$25.00 per request

ELECTRICITY

Billing cycle is the 16th to the 15th of each month; Kilowatt cost determined by public utility

- Daily/Flat Rate: 110v \$10.20/calendar day (monthly rate after 15 days)
208v/single phase \$20.12/calendar day (monthly rate after 17 days)
208v/3 phase \$45.20/calendar day (monthly rate after 7 consecutive days)
- Monthly Rate: 110v \$152.67
208v/single phase \$341.70
208v/3 phase & 480v \$28.80 + electrical usage charge per kilowatt
- Metered Reserved Stalls: \$23.95/month + electrical usage charge per kilowatt
Vacancy notification waiver available w/\$28.80 connect/disconnect fee
- Winter Power: \$28.80 connect/disconnect fee + \$28.80/month + electrical usage charge per kilowatt

Available October 16 – April 15 with signed application

Note: A transient vessel connected to power April 16 - October 15 will be charged the daily rate. If a transient vessel consumes more electricity than would be covered by these flat rates, then such transient vessel shall be charged for the actual consumption. Charges for kilowatts may be adjusted without advance notice.



PORT

- Barge Ramp/Beach Use: 01' - 36' = \$1.50 per ft based on length overall of vessel + 1 ton wharfage (\$5.14)
 37' - 49' = \$1.50 per ft based on length overall of vessel + 2 tons wharfage (\$10.28)
 50'+ = \$1.50 per ft based on length overall of vessel (+ wharfage as reported)
 Annual Pass (Jan 1-Dec 31) for vessels ≤ 36' = (landing + 1 ton wharfage) x 10
 Annual Pass (Jan 1-Dec 31) for vessels 37' to 49' = (landing + 2 tons wharfage) x 10
 Penalty for going dry on barge ramp/causing restricted access- \$150 per tide cycle

- Dockage:

Note: These charges are applicable to all berthing locations on the Deep Water Dock and Pioneer Dock

0' to 100'	\$338.00	451' to 475'	\$1,604.00	651' to 675'	\$3,917.00
101' to 200'	\$506.00	476' to 500'	\$1,762.00	676' to 700'	\$4,420.00
201' to 300'	\$788.00	501' to 525'	\$1,996.00	701' to 725'	\$5,119.00
301' to 350'	\$1,005.00	526' to 550'	\$2,154.00	726' to 750'	\$5,858.00
351' to 375'	\$1,098.00	551' to 575'	\$2,334.00	751' to 775'	\$6,644.00
376' to 400'	\$1,206.00	576' to 600'	\$2,582.00	776' to 800'	\$7,459.00
401' to 425'	\$1,337.00	601' to 625'	\$2,957.00		
426' to 450'	\$1,490.00	626' to 650'	\$3,443.00		

- ~~\$481.53~~ **963.06** Cruise Ship Service Charge

- \$52.00 Dockage Service Charge

- **Lightering Fee \$1,500, plus \$6.00 per passenger**

- **Passenger wharfage fee (non-regulated) \$0.00 per passenger**

- **Passenger wharfage fee (regulated) \$0.00 per passenger**

(passenger lightering fees and passenger wharfage fees shall be calculated by full passenger manifest regardless of how many passengers disembark)

- Storage:

- Open areas, fishing gear \$.12 per square foot/month
- Open areas, non-fishing gear \$.17 square foot/month
- Fenced storage yard \$0.22/sq ft/month
- Deck Shelter Storage- prearranged \$35/per month
- Demurrage - \$.09 per sq ft per day

(Haul- Out Facility)

- Upland Dry Dockage for vessel w/annual moorage=\$.17 per sq ft/month
- Upland Dry Dockage for vessel w/transient moorage = \$.20 per sq ft/month
- Upland Dry Dockage for vessel w/ no moorage= \$.25 per sq ft/month
- Dry Dockage admin fee \$50
- Haul Out facility Vendor Fee \$150

- Water:

- \$38.81 per 1,000 gal. – minimum 5,000 gals
- Scheduled delivery – \$102.00 connect/disconnect
- Unscheduled delivery – \$139.32 connect/disconnect



- **Wharfage:** \$5.14/ton wharfage on N.O.S. Freight (Not Otherwise Specified) for the Barge Ramp & Beach
 \$7.96/ton wharfage on N.O.S. Freight for the Deep Water Dock & Pioneer Dock

Except as otherwise specifically provided, rates are in U.S. dollars (USD) per short ton of 2000 lbs. or per 32 cubic foot. Short ton = 0.907185 metric tons (mt)

COMMODITY	WHARFAGE RATE (\$USD)
Aggregate (Gravel, stone, minerals)	\$1.00 per short ton/\$1.10 per mt
Agricultural Products (Grains, corn, legumes, etc.)	\$3.50 per short ton/\$3.86 per mt
Containerized Cargo	\$8.00 per short ton/\$8.82 per mt
Freight N.O.S. (Pioneer/Deep Water Docks) 1 ≥ 100 Short tons	\$7.96 per short ton/\$8.77 per mt
Freight N.O.S. (Pioneer/Deep Water Docks) 101 ≥ 1,000 Short Tons	\$6.00 per short ton/\$6.61 per mt
Freight N.O.S. (Pioneer/Deep Water Docks) 1,001 ≥ 10,000 Short Tons 10,000 + Short Tons	\$5.00 per short ton/\$5.51 per mt \$4.50 per short ton/\$4.96 per mt
Freight N.O.S. (Barge Ramp and Beach)	\$5.14 per short ton/ \$5.67 per mt
Freight N.O.S. (Fish Dock) ICE Fish Dock	\$14.50 per short ton/ 15.98 per mt \$14.50 per short ton/ 15.98 per mt
Hazardous materials, as established by Dept of Transportation materials commodity List. At location designated for loading, unloading or staging by USCG permit	\$8.00 per ton /Min. 1 ton
Livestock (horses, mules, cattle, hogs, sheep, goats, fowl)	\$10.12 per head
Petroleum	\$0.84 per barrel/\$0.02 per gallon
Poles, Logs, cant or cut	\$3.95 per thousand board feet
Seafood/Fish Products (regardless of species) (all docks)	\$4.76 per short ton/\$5.24 per mt

- **Disposal**
 - Oil \$3.35/gallon
 - Used Antifreeze \$8.00/gallon
 - Oily Water/Bilge Slop \$5.00/gal delivered in drums



PARKING

- Fee pay day use parking:

Day Use Fee Parking	\$5 <u>\$10 per calendar day</u>
Seasonal permits for day use parking	\$250.
Monthly permits for day use parking	\$100.
- Long term parking:

Annual parking permit	\$200
Monthly parking permit >20ft	\$70
Monthly parking permit <20ft	\$85
Weekly parking permit >20ft	\$25
Weekly parking permit <20ft	\$35
Trailer parking (no boat)	\$7 per linear ft./month
Parking Citation	\$25 per citation
Failure to pay parking citation	\$25 for each month past due

* Parking permits refer to vehicles unless otherwise specified as “trailer”. Citations specific to long term parking overstay shall be limited to \$250 per calendar year, with \$200 of the fine credited toward an annual permit if applicable

MOORAGE

Note: Mooring charges commence when a vessel is made fast to a wharf, pier, harbor float or other facility. A vessel moored between 12:01 a.m. and 10:00 a.m. shall be charged a full day’s moorage.

- Reserved: [\$63.41 + (LOA x \$.05)] x LOA, plus a \$50.00 administrative fee. (\$.05/ft caps at 86’)
- Annual Transient: [\$63.41 + (LOA x \$.05)] x LOA, plus a \$50.00 administrative fee. (\$.05/ft caps at 86’)
- Semi-Annual Transient: [\$42.48 + (LOA x \$.05)] x LOA, plus \$33.50 administrative fee (\$.05/ft caps at 86’)
- Monthly Transient: [\$10.78 + (LOA x \$.05)] x LOA, plus \$8.50 administrative fee (\$.05/ft caps at 86’)
***Vessels that properly register and prepay moorage may deduct \$0.50/foot/month**
- Daily: [\$1.90 + (LOA x \$.05)] x LOA, plus \$1.50 administrative fee (\$.05/ft caps at 86’)
***Vessels that properly register and prepay moorage may deduct \$5.00/day**



AGENDA ITEM REPORT

Ordinance 23-15, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code Section 11.20.070 to Specify that a Performance Guaranty is Required for New Subdivisions. City Manager/Public Works Director.

Item Type: Ordinance
Prepared For: Mayor & City Council
Meeting Date: 10 April 2023
Staff Contact: Janette Keiser, PE, Public Works Director
Through: Rob Dumouchel, City Manager

Issue:

The purpose of this Memorandum is to recommend that the City Council amend HCC 11.20.070 to require a performance guaranty for subdivision developments.

Background:

Homer City Code currently requires that performance guarantees be waived for new subdivisions:

A performance bond or other acceptable guarantee in the amount of 100 percent of the project cost, which bond shall be waived in the case of new subdivisions, in which right-of-way dedication, via plat filing or recordation, cannot occur until improvements are installed and accepted. HCC 11.20.070(f)

This language allows potential developers to initiate the process of real estate development and then, abandon it, leaving the City to manage the consequences, which could include increased costs and risks to the Homer public. This is not a speculative risk – it happened at the Foothills Subdivision. The developer initiated the subdivision process, clear cut the area of trees, and then, abandoned the platting process. The land lay, undeveloped and denuded for years. This is not in the public's best interests.

The City requires the developer to provide collateral, which guarantees that if defects in the infrastructure development show up within two years of completion, the developer will correct the defects or the City can foreclose on the collateral. The collateral can be a warranty bond, cash or in some cases, one of the lots in the subject development. The City should require similar collateral to guarantee that the subdivision project will be completed. This will ensure that subdivision developments do not become "paper plats", but are progressed to completion.

This can be done by a simple edit to existing code. HCC 11.20.070(f) can be amended to read as follows:

11.20.070(f) A performance bond or other acceptable guaranty in the amount of 150 percent of the Design Engineer's Construction Cost Estimate is required.

Staff Recommendation:

Conduct public hearing and move to adopt Ordinance 23-15 by reading of title only for second and final reading.

Attachment:

Ordinance 23-15

43 ATTEST:

44

45

46

47 _____
MELISSA JACOBSEN, MMC, CITY CLERK

48

49 YES:

50 NO:

51 ABSTAIN:

52 ABSENT:

53

54 First Reading:

55 Public Hearing:

56 Second Reading:

57 Effective Date:



AGENDA ITEM REPORT

Ordinance 23-16, An Ordinance of the City Council of Homer, Alaska, Amending the FY23 Capital Budget by Accepting and Appropriating a 2023-2025 Alaska Clean Water Actions (ACWA) Grant from the Alaska Department of Environmental Conservation (ADEC) in the Amount of \$153,307 for the Beluga Slough Green Infrastructure Storm Water Treatment System. City Manager/ Public Works Director.

Item Type: Ordinance
Prepared For: Mayor & City Council
Meeting Date: 10 April 2023
Staff Contact: Janette Keiser, PE, Public Works Director
Through: Rob Dumouchel, City Manager

Issue:

The purpose of this Memorandum is to recommend that the City Council accept the grant from the Alaska Department of Environmental Conservation for the Beluga Slough Green Infrastructure Storm Water Treatment System.

Background:

The City's Green Infrastructure Storm water Management System, introduced in late 2021, included, as one of the four components, the Beluga Slough Storm Water Treatment System, and has been part of the City's Capital Improvement Projects even since. Since then, we've made significant progress.

First, we commissioned a technical report to understand what the storm water issues at the Beluga Slough were and how we could best manage them. This report demonstrated that storm water from the City's roads and ditches was being discharged into the Beluga Slough, depositing sediment, free oils and other contaminants into the Slough and its surrounding wetlands. The report also indicated that if the wetlands were restored, they would serve as a wetland treatment system that would improve the water quality of the storm water before it flowed freely into the Slough and out into Kachemak Bay.

Second, we began outreach to local stakeholders, such as the Department of Fish & Wildlife, which owns the wetland property that will be restored. They offered their complete support!

Third, we submitted the project for consideration for an Alaska Department of Environmental Conservation (ADEC) State Revolving Fund (SRF) Loan, which covers storm water projects. We were able to see the project successfully listed on the ADEC's Intended Use Plan, in the amount of \$280,190.

This allows us to apply for a SRF loan, thereby reducing the cash requirement from the HART Road fund.

Fourth, we searched for funding and found it with the Alaska Department of Environmental Conservation (ADEC). This agency sponsors a grant program called the Alaska Clean Water Actions (ACWA) Grant, which focuses on mitigating the flow of pollutants into Alaska’s waters. We submitted an application, which was enthusiastically received and accepted by the ADEC. The agency representatives told us this was a “poster project”, which would highlight the potential for using green infrastructure in Alaska. We have been awarded a grant in the amount of \$153,307.80, which represents almost 60% of the estimated project costs.

Estimated Total Project Costs:	\$260,488.67	
City’s Share – Project Management	<u>\$ 23,792.43</u>	(In-kind Contribution)
Cash Required to Complete Project	\$236,696.24	
ACWA Grant	<u>\$153,307.80</u>	
Potential ADEC SRF Loan	\$ 83,388.44	

Staff will be preparing an Ordinance authorizing an application for an ADEC SRF loan to cover the costs of the project not covered by the ACWA grant for you to consider.

Staff Recommendation:

Conduct a public hearing, move to adopt Ordinance 23-16 by reading of title only for second and final reading, then move to substitute Ordinance 23-16(S) for 23-16.

Attachments:

- Ordinances 23-16 & 23-16(S)
- DRAFT Sub-Grant Agreement - Alaska Clean Water Actions (ACWA)
- Geoff Coble Green Infrastructure report - Beluga Slough

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

3 City Manager/
4 Public Works Director

5 **ORDINANCE 23-16**

6
7 AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA
8 AMENDING THE FY23 CAPITAL BUDGET BY ACCEPTING AND
9 APPROPRIATING A 2023-2025 ALASKA CLEAN WATER ACTIONS
10 (ACWA) GRANT FROM THE ALASKA DEPARTMENT OF
11 ENVIRONMENTAL CONSERVATION (ADEC) IN THE AMOUNT OF
12 \$153,307 FOR THE BELUGA SLOUGH GREEN INFRASTRUCTURE
13 STORM WATER TREATMENT SYSTEM.

14
15 WHEREAS, The ADEC administers the ACWA grant program that provides funding for
16 projects that support local stewardship of clean waters; and

17
18 WHEREAS, The Beluga Slough Green Infrastructure Storm Water Treatment System
19 reduces sediments and contaminants in storm water runoff before it discharges into the
20 natural wetlands of Beluga Slough and into the waters of Kachemak Bay, a designated critical
21 habitat area; and

22
23 WHEREAS, The City applied to ADEC for ACWA grant funds for the Beluga Slough Green
24 Infrastructure Storm Water Treatment System; and

25
26 WHEREAS, the City is pleased to have been awarded \$153,307 from ADEC to design and
27 install the following components of the system:

- 28 • a stormwater retention/filtration structure to clean runoff from Main
29 Street before it is conveyed to Beluga Slough wetlands, and
- 30 • replace the gravel walkway to help re-establish natural waterflow to the
31 area to enhance native vegetation habitat and its natural filtration
32 capabilities; and

33
34 WHEREAS, The 2023-2025 ACWA grant supports one of the projects within the Slope
35 Stability and Erosion Mitigation Program, a Legislative Priority in the 2023-2028 City of Homer
36 Capital Improvement Plan.

37
38 NOW, THEREFORE, THE CITY OF HOMER ORDAINS:
39

40 Section 1. The Homer City Council hereby amends the FY23 Capital Budget by
41 accepting and appropriating a 2023-2025 Alaska Department of Environmental Conservation
42 ACWA Grant in the amount of \$153,307 as follows:

<u>Fund</u>	<u>Description</u>	<u>Amount</u>
Xxxx	2023-2025 ADEC ACWA Grant	\$153,307

46
47 Section 2. The Homer City Council hereby amends the FY23 Capital Budget by
48 appropriating a total of \$107,181 matching funds for the purpose of implementing the Beluga
49 Slough Green Infrastructure Storm Water Treatment System as follows:

<u>Fund</u>	<u>Description</u>	<u>Amount</u>
160	HART-Roads Match	\$83,388.44
Various	In-Kind Match – Existing Employee Wages	\$23,792.43

54
55 Section 3. The total project appropriation is \$260,489, with \$153,307 from the 2023-
56 2025 ADEC ACWA Grant and \$107,181 in local match.

<u>Fund</u>	<u>Description</u>	<u>Amount</u>
Xxxx	2023-2025 ADEC ACWA Grant	\$153,307
160	HART-Roads Match	\$83,388.44
Various	In-Kind Match – Existing Employee Wages	\$23,792.43

62
63 Section 4. The City Manager is authorized to execute the appropriate documents.

64
65 Section 5. This is a budget amendment ordinance, is temporary in nature, and shall not
66 be codified.

67
68 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this __ day of _____, 2023.

69
70 CITY OF HOMER

71
72
73
74 _____
75 KEN CASTNER, MAYOR

76 ATTEST:

77
78
79 _____
80 MELISSA JACOBSEN, MMC, CITY CLERK

- 81
- 82 YES:
- 83 NO:
- 84 ABSENT:
- 85 ABSTAIN:
- 86
- 87 First Reading:
- 88 Public Hearing:
- 89 Second Reading:
- 90 Effective Date:

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

3 City Manager/
4 Public Works Director

5 **ORDINANCE 23-16(S)**

6
7 AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA
8 AMENDING THE FY23 CAPITAL BUDGET BY ACCEPTING AND
9 APPROPRIATING A 2023-2025 ALASKA CLEAN WATER ACTIONS
10 (ACWA) GRANT FROM THE ALASKA DEPARTMENT OF
11 ENVIRONMENTAL CONSERVATION (ADEC) IN THE AMOUNT OF
12 \$153,307 FOR THE BELUGA SLOUGH GREEN INFRASTRUCTURE
13 STORM WATER TREATMENT SYSTEM AND APPROPRIATING AN
14 ADDITIONAL \$107,182 IN LOCAL MATCHING FUNDS, OF WHICH
15 \$81,313 IS APPROPRIATED FROM HOMER ACCELERATED ROADS
16 AND TRAILS (HART) ROADS FUND AND \$25,869 FROM AN IN-KIND
17 MATCH FOR PROJECT MANAGEMENT SERVICES.

18
19 WHEREAS, The ADEC administers the ACWA grant program that provides funding for
20 projects that support local stewardship of clean waters; and

21
22 WHEREAS, The Beluga Slough Green Infrastructure Storm Water Treatment System
23 reduces sediments and contaminants in storm water runoff before it discharges into the
24 natural wetlands of Beluga Slough and into the waters of Kachemak Bay, a designated critical
25 habitat area; and

26
27 WHEREAS, The City applied to ADEC for ACWA grant funds for the Beluga Slough Green
28 Infrastructure Storm Water Treatment System; and

29
30 WHEREAS, the City is pleased to have been awarded \$153,307 from ADEC to design and
31 install the following components of the system:

- 32 • a stormwater retention/filtration structure to clean runoff from Main
33 Street before it is conveyed to Beluga Slough wetlands, and
- 34 • replace the gravel walkway to help re-establish natural waterflow to the
35 area to enhance native vegetation habitat and its natural filtration
36 capabilities; and

37
38 WHEREAS, To complete the project, local matching funds in the amount of \$107,182
39 are required; and

40 WHEREAS, The 2023-2025 ACWA grant supports one of the projects within the Slope
41 Stability and Erosion Mitigation Program, a Legislative Priority in the 2023-2028 City of Homer
42 Capital Improvement Plan.

43
44 NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

45
46 Section 1. The Homer City Council hereby amends the FY23 Capital Budget by
47 accepting and appropriating a 2023-2025 Alaska Department of Environmental Conservation
48 ACWA Grant in the amount of \$153,307 as follows:

<u>Fund</u>	<u>Description</u>	<u>Amount</u>
Xxxx	2023-2025 ADEC ACWA Grant	\$153,307

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53 Section 2. The Homer City Council hereby amends the FY23 Capital Budget by
54 appropriating a total of \$107,182 matching funds for the purpose of implementing the Beluga
55 Slough Green Infrastructure Storm Water Treatment System as follows:

<u>Fund</u>	<u>Description</u>	<u>Amount</u>
160	HART-Roads Match	\$81,313
Various	In-Kind Match – Existing Employee Wages	\$25,869

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61 Section 3. The total project appropriation is \$260,489, with \$153,307 from the 2023-
62 2025 ADEC ACWA Grant and \$107,182 in local match.

<u>Fund</u>	<u>Description</u>	<u>Amount</u>
Xxxx	2023-2025 ADEC ACWA Grant	\$153,307
160	HART-Roads Match	\$81,313
Various	In-Kind Match – Existing Employee Wages	\$25,869

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69 Section 4. The City Manager is authorized to execute the appropriate documents.

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71 Section 5. This is a budget amendment ordinance, is temporary in nature, and shall
72 not be codified.

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74 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this ___ day of ____, 2023.

75
76 CITY OF HOMER

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79 _____
80 KEN CASTNER, MAYOR

81

82 ATTEST:

83

84

85 _____

86 MELISSA JACOBSEN, MMC, CITY CLERK

87

88 YES:

89 NO:

90 ABSENT:

91 ABSTAIN:

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93 First Reading:

94 Public Hearing:

95 Second Reading:

96 Effective Date:



Sub-Grant Agreement - Alaska Clean Water Actions (ACWA)

Project Title	Grant Number	ACWA-23-13
Beluga Slough Green Infrastructure Stormwater Management System		
Funding Program	CWA Section 221 Sewer Overflow and Stormwater Reuse Municipal Grants Program	
Sub-Grant Period of Performance:	3/1/2023-6/30/2024	

Grantee

Grantee Name	City of Homer		
City of Homer	491 E. Pioneer Avenue		
Street/PO Box	491 E. Pioneer Avenue		
City/State/Zip	Homer, AK 99603		
Contact Name, Title	Jennifer Carroll, Special Projects & Communications Coordinator		
Unique Entity Identification (UEI)	QPAPRFMET7Q1	Federally Approved Indirect Cost Rate	N/A

Department

Department of Environmental Conservation
 Division of Water
 410 Willoughby Ave. Ste 303
 Juneau, AK 99801

Grantee	Department
Signature	Signature <small>DocuSigned by:</small> Larry Dunivin, Finance Officer, Division of Administrative Services
Printed Name and Title	Printed Name and Title Date 3/1/2023
Date	Signature <small>DocuSigned by:</small> Randy Bates, Director, Division of Water
	Printed Name and Title Date 2/28/2023

Agreement	
The Department of Environmental Conservation (hereinafter 'Department') and the City of Homer (hereinafter 'Grantee') agree as set forth herein.	
Section I.	Upon execution of this Agreement, and under the terms included herein, the Department shall administer funds, subject to appropriation and availability, to accomplish the scope of work described in Appendix A. The estimated cost of this scope of work is identified in this Sub-Grant Agreement and Appendix A.
Section II.	Performance under this Agreement begins upon signature by the Division of Water's Director and ends at Project completion.
Section III.	This Agreement becomes null and void if not signed by the Grantee within 90 days of the Department's signature.
Section IV.	The Agreement consists of this page and the following attachments and appendices, if applicable:
<u>Appendices</u>	<u>Attachments</u>
Appendix A - Workplan	Attachment 1 - Project Budget
Appendix B - General Conditions	Attachment 2 - Payment Schedule
Appendix C - Funding-Specific Conditions	

Project Funding

Federal Funding Agency	Funding Amount
Environmental Protection Agency (EPA)	\$ 122,646
Funding Source	
CFDA 66.447 Sewer Overflow and Stormwater Reuse Municipal Grant Program	
FAIN 02J19001 Date of Award 9/26/2022	

Contributor	Funding Amount
State of Alaska	\$ 30,661
Funding Source	
State of Alaska General Fund Match	

In order to perform the full scope of services described in the workplan, the Grantee agrees to provide matching non-federal dollars in the amount of:

Grantee	Funding Amount
City of Homer	\$ 107,182
Funding Source	
Third Party Match	

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Total Project Funding	\$	260,489
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Definitions

"Department" refers to the Department of Environmental Conservation (DEC) within the State of Alaska.

"Authorized Signature" means the person who has the authority to sign this Agreement and other legally binding forms related to the project on behalf of the Grantee and the Department.

"State of Alaska" fiscal year is defined as July 1st through June 30th.

In this Agreement and appendices, "DEC Project Manager" refers to the Environmental Specialist or other DEC staff assigned to manage and administer the project. The DEC Project Manager is the primary contact between the Department and the Grantee.

Legal Authority

The Grantee certifies by signing this Agreement that it possesses legal authority to accept grant funds and to execute the project described in this Agreement. The Grantee's relationship to the Department and the State of Alaska shall be at all times as an independent Grantee.

Appendix A: Workplan

PROJECT #: ACWA-23-13

GRANTEE: City of Homer

PROJECT TITLE: Beluga Slough Green Infrastructure Stormwater Management System

GRANT AGREEMENT PERFORMANCE PERIOD: March 1, 2023 – June 30, 2024

SFY	Grant Amount	Match Amount	Total Amount
2023	\$11,866	\$22,839	\$34,705
2024	\$141,441	\$84,343	\$225,784
TOTAL	\$153,307	\$107,182	\$260,489

Description and Purpose: This project implements a priority identified in Alaska’s Nonpoint Source Water Pollution Prevention and Restoration Strategy. The Beluga Slough Stormwater Treatment System designs and implements a large-scale low impact development/green infrastructure project to reduce nonpoint source pollution from Homer’s largest stormwater drainage system before it discharges into the natural wetlands of Beluga Slough, and in turn into Kachemak Bay, a state designated Critical Habitat Area. A retention/filtration structure will capture runoff conveying suspended sediment, with peaks roughly estimated at 30 cubic feet per second. In addition to the green infrastructure installation, a gravel walkway will be removed reestablishing natural waterflow which provides additional habitat for native vegetation and filtration capabilities. A final report summarizing project activities will be available on the DEC website at project conclusion.

Grantee Project Manager:

Jennifer Carroll, Special Projects & Communications Coordinator
City of Homer
491 E. Pioneer Avenue
Homer, AK 99603
Ph: 907-435-3101
Email: jcarroll@ci.homer.ak.us

Additional Grantee Project Staff:

Janette “Jan” Keiser, Director of Public Works
City of Homer
491 E. Pioneer Ave
Homer, AK
907-435-3141
JKeiser@ci.homer.ak.us

Owen Meyer, Project Technician
City of Homer
491 E. Pioneer Avenue
Homer, AK 99603
Phone 907-435-3124
Email: OMeyer@ci.homer.ak.us

Jessica McGuire, Accounts Payable
City of Homer
491 E. Pioneer Ave
Homer, AK 99603
Phone: 907-435-3114
JMcGuire@ci.homer.ak.us

DEC Project Manager:

Ashley Oleksiak, Environmental Program Specialist 3
Dept. of Environmental Conservation
1700 E. Bogard Rd., Bldg. B, Ste 103
Wasilla, AK 99654
Ph: 907-376-1865; Fax: 907-376-2382
Email: Ashley.oleksiak@alaska.gov

DEC Grant Administrator

Sarena Hackenmiller, Grants Administrator 2
Dept. of Environmental Conservation
P.O. Box 111800
Juneau, AK 99811
Ph: 907-465-5146 Fax: 907-465-5177
Email: sarena.hackenmiller@alaska.gov

DELIVERABLE SUMMARY TABLE

Task	Deliverable Narrative	Due Date
1	Meeting with Coble Geophysical Services (CGS) regarding schedule of work and workplan deliverables	March 30, 2023
1	Quality Assurance Project Plan	To be approved by DEC before data collection begins
1	Planning Documents: Survey (PDF)	June 30, 2023
1	Hydrologic Report (PDF)	June 30, 2023
2	Letter Report describing the research and making a recommendation of the selected containment structure (PDF)	June 30, 2023
3	Draft Plan for DEC Review	June 15, 2023
3	Project Plans and specifications and environmental benefit calculations	June 30, 2023
4	Corps of Engineers Permit application, permit approval, and a completed environmental checklist (PDF)	June 30, 2023
5	Procurement documents (PDF)	Sept. 30, 2023
5	Contract administration documents (PDF)	Dec. 31, 2023
5	Construction documentation: inspection reports	Dec. 31, 2023
5	Project photos of work in progress and final photos of installed containment structure, related infrastructure piping, bioswales and walkway. (Word, JPG) <i>add before photos</i>	Dec. 31, 2023
5	Water quality data after installation to document treatment effectiveness (PDF) one round of sampling only	Dec. 31, 2023
5	Draft Maintenance Agreement for DEC review	November 30, 2023
5	Maintenance agreement with City of Homer (PDF)	Dec. 31, 2023
<p>Deliverables may not be submitted via Google Drive. If files are too large to attach to an email, they may be sent using the State of Alaska ZendTo file drop-off service. Please reach out to your project manager for details.</p>		

PROJECT TASKS

TASK 1: Planning – Site Characterization

Collect baseline data necessary for designing a containment structure: survey location, water volume, sediment volume and water quality baseline of the stormwater flowing from the Main Street and Bunnell Avenue storm drains. We anticipate the survey will be completed during the winter by March 15th, but water volume measurements and water quality study need to wait for the spring thaw. The hydrologic work will be performed by Coble Geophysical Services (CGS), a consulting firm currently under a term contract with the City of Homer, under the management of Public Works.

Deliverable(s) and Permits:

Deliverable	Due Date:
Meeting with Coble Geophysical Services (CGS) regarding schedule of work and workplan deliverables	March 30, 2023
Quality Assurance Project Plan	To be approved by DEC before data collection begins
Planning Documents: Survey (PDF)	June 30, 2023
Hydrologic Report (PDF)	June 30, 2023

TASK 2: Planning – Design alternatives

CGS will research containment structure alternatives, and, based on the information collected in Task 1, provide a recommendation for the best design to collect, **treat** and discharge stormwater for the site which will guide the City's selection of the Preferred Alternative.

Deliverable(s) and Permits:

Deliverable	Due Date:
Letter Report describing the research and making a recommendation of the selected containment structure (PDF)	June 30, 2023

TASK 3: Project Design Plans

The City of Homer engineering team in collaboration with CGS will develop plans and specifications for the Preferred Alternative LID/green-infrastructure design and remediation of the gravel berm walkway which would involve removal of as much of the gravel as technically feasible and installation of an elevated walkway.

Deliverable(s) and Permits:

Deliverable	Due Date:
Draft Plan for DEC Review	July 15, 2023
Project Plans and specifications and environmental benefit calculations	June 30, 2023

TASK 4: Permits

Apply for and acquire approvals and permits necessary to proceed with installation. City staff will complete an application to the US Army Corps of Engineers for a wetlands permit, and obtain all other required environmental approvals.

Deliverable(s) and Permits:

Deliverable	Due Date:
Corps of Engineers Permit application, permit approval,	June 30, 2023

TASK 5: LID/Green Infrastructure Installation

This task involves the following steps: (1) City staff will competitively procure construction services by developing a bid package, advertising and awarding contract for project construction/installation. (2) Firm will install the containment structure and related infrastructure piping. The Public Works Department will conduct regular site visits for quality assurance and to monitor progress. This work will be done in the fall to avoid the bird nesting season.

Deliverable(s) and Permits:

Deliverable	Due Date:
Procurement documents (PDF)	Sept. 30, 2023
Contract administration documents (PDF)	Dec. 31, 2023
Construction documentation: inspection reports	Dec. 31, 2023
Project photos of work in progress and final photos of installed containment structure, related infrastructure piping, bioswales and walkway. (Word, JPG)	Dec. 31, 2023
Water quality data after installation to document treatment effectiveness (PDF) - one round of sampling only	Dec. 31, 2023
Draft maintenance agreement for DEC review	November 30, 2023
Maintenance agreement with City of Homer (PDF)	Dec. 31, 2023

Appendix B: General Conditions

Article 1. Project Management

Availability of funding is contingent upon approval of grant money from the U.S. Environmental Protection Agency (EPA) and legislative appropriation of funds. No expenditures incurred outside of the period of performance are authorized under this Agreement.

This project will be managed by the Grantee with signatory authority for execution of this Agreement, subsequent Amendments, and financial/progress reports granted to the DEC Project Manager. Delegation of signatory authority and changes in the authorized representative must be received in writing and approved by the Department.

The Grantee will acknowledge Department and federal funding for all reports, brochures, videos, maps, and outreach materials produced by this project with the following statement or similar as approved by the Department: "This project has been funded wholly or in part by the United States EPA under assistance agreement number [FAIN Number(s)] to the Department of Environmental Conservation through the Alaska Clean Water Actions (ACWA) program. The contents of this document do not necessarily reflect the views and policies of the EPA, nor does the EPA endorse trade names or recommend the use of commercial product mentioned in this document." The FAIN Number(s) will be provided to the Grantee by the Grants Administrator. Refer to Appendix B, Article 38 for more information regarding publicity and press releases.

The Grantee will notify the Department immediately of any significant organizational changes during the term of the Agreement, including changes in key personnel or tax status, and any unforeseen problem or project delay that may cause a change to the workplan or budget. Any unreported or unapproved changes to the workplan or budget evident in reports may result in an Amendment being required, costs disallowed, and/or suspension or termination of the Agreement as described in Appendix B, Article 35.

Article 2. Reporting Requirements

The Grantee shall submit all reports to the Department according to the terms and schedule established in this Agreement. Failure to submit progress reports or to make adequate progress may result in the Department withholding funds, suspending, or terminating the Agreement.

Progress Reports and Deliverables

The Grantee agrees to provide semiannual progress reports to the Department. These reports must update the Department on project progress and deliverables as necessary. The required format of the progress report will be determined by the DEC Project Manager and communicated to the Grantee prior to the end of the first quarter of the project.

The progress reports are due ten (10) days after the periods ending each year on June 30 and December 31. The final progress report is due thirty (30) days after the period of performance end date.

Financial Reports

The Grantee agrees to provide financial reports semiannually to the Department. These reports must update the Department on grant funds and match expenditures (as appropriate) during the reporting period. The financial reporting template will be provided by the Grants Administrator at project inception.

The financial reports are due ten (10) days after the end of the periods ending each year on June 30 and December 31. The final financial report is due thirty (30) days after the period of performance end date.

Costs incurred on the project after the ten (10) day grace period without submission compliance are at the Grantee's risk and may be disallowed. Payments and reimbursements will be subject to submission and approval of the required reports. Repeated failure to submit progress and/or financial status reports in a timely manner may result in the suspension or termination of the Agreement.

The final financial status report is due thirty (30) days after the period of performance end date. Final status reports received thirty-two (32) days or more after the project completion date will not be considered for final payment or reimbursement. Final payment or reimbursement will be paid upon completion of the project including submission and approval of the final financial status report, final project report (if applicable), and all project deliverables. The final project report (if applicable) and all other project deliverables are due thirty (30) days after the period of performance end date and are considered late after that date. All reports will be submitted in written and electronic formats requested by the Department. Electronic signatures are allowable by the Department.

Executive Compensation Reporting Requirement

The Grantee must report the names and totals of the five most highly compensated executives if 1) the Award equals or is greater than \$25,000, and 2) the Grantee received 80 percent or more of its annual gross revenues from federal contracts or grants, and 3) the Grantee received \$25,000,000 or more in annual gross revenues from federal contracts or grants. The Grantee is exempt from this reporting if the Grantee had a gross income from all sources under \$300,000 from the previous tax year. The Grants Administrator will provide a template to the Grantee for completion at grant inception. This form must be submitted to the Department within *thirty (30)* days of the award being obligated.

Disadvantaged Business Enterprise (DBE)

The Grantee agrees to comply with the following requirements and must review the full detail at EPA website under "Disadvantaged Business Enterprise Program Requirements" <https://www.epa.gov/grants/disadvantaged-business-enterprise-program-requirements>:

- MBE/WBE Certification. Entities must meet the certification criteria under at least one of the listed authorizing statutes to qualify for the DBE Program.
- Six Good Faith Efforts. The Grantee is required to make the listed good faith efforts whenever procuring construction, equipment services and supplies under this agreement.
- DBE Contract Administrative Requirements. The Grantee must adhere to the listed contract administrative requirements.

MBE/WBE Reporting. The Grantee agrees to report the compliance of the above requirements. MBE/WBE forms are due annually, at the end of each State Fiscal Year, and with the final financial report. A MBE/WBE template will be provided by the Grants Administrator at grant inception.

Article 3. Documentation and Record-Keeping

The Grantee shall set up a file containing the following: grant application, grant agreement and amendments; progress reports; documentation for products indicated in the workplan; financial reports with backup documentation such as billings, invoices or other records that validate expenditures or match; and any other documents pertinent to the performance of this Agreement and completion of the project.

The state or authorized federal representative may inspect, in the manner and at any reasonable time it considers appropriate, the Grantee's facilities, records or activities under this Agreement.

Article 4. Governing Law

The Grantee must conform to all applicable federal, state, and local laws, ordinances, and regulations. It is the responsibility of the Grantee to ensure that all permits required for this project by federal, state, or local governments have been obtained prior to any activity that requires permitting take place. All actions concerning this project shall be brought in the Superior Court of the State of Alaska.

Article 5. Severability and Waivers

If any provision under this Agreement or its application to any person or circumstances is held invalid by a court of rightful jurisdiction, this invalidity does not affect any other provisions of the Agreement which can be given effect without the invalid provision. No condition or provision of this Agreement can be waived unless approved by the Department in writing.

Article 6. Conflicting Provisions

Unless specifically amended and approved by the Department of Law, the General Provisions of this Agreement supersede any provisions in other appendices.

Article 7. Site Control

If the project involves occupancy, use, or modification of real property, the Grantee shall acquire the legal right to occupy, use, or modify the real property for the purposes of this Agreement and authority to access the project site to complete the proposed project.

Article 8. Sovereign Immunity

If the Grantee is an entity that possesses sovereign immunity, it is a requirement of this Agreement that the Grantee irrevocably waives its sovereign immunity with respect to state enforcement of this Agreement. The waiver of sovereign immunity affected by a resolution of the entity's governing body is hereby incorporated into this Agreement.

Article 9. Covenant Against Contingent Fee

The Grantee warrants that no person or agency has been employed or retained to solicit or secure this grant upon an agreement or understanding for a commission, percentage, contingent fee, or brokerage except employees or agencies maintained by the Grantee for the purpose of securing business. For the breach or violation of this warranty, the state may terminate this Agreement without liability or in its discretion deduct from the grant price or consideration of the full amount of the commission, percentage, brokerage, or contingent fee.

Article 10. Officials Not to Benefit

The Grantee must comply with all applicable federal or state laws regulating ethical conduct of public officers and employees.

Article 11. Political Activity

No portion of these funds will be used to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress. The Grantee must submit EPA Form 6600-06, "Certification Regarding Lobbying" to the Department if this award exceeds \$100,000. The Grant Administrator will provide the form at grant inception if applicable.

The Grantee must submit Standard Form-LLL, "Disclosure of Lobbying Activities" to the Department if any non-federal funds have been paid or will be paid to influence or attempt to influence an office or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress. A copy of the "Disclosure of Lobbying Activities" can be accessed at the following link: <https://www.epa.gov/grants/epa-grantee-forms>.

Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Failure to submit certification and disclosure forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

Article 12. Obligations regarding Third-Party Relationships

The Grantee may not assign or delegate this Agreement, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Department. None of the work specified in this Agreement shall be contracted by the Grantee unless stated in the Agreement or with prior written approval from the Department. The Grantee shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties of the undertaking of all or part of the project described therein. The Grantee shall bind all contractors to every applicable provision.

Article 13. Conflict of Interest

The Grantee must inform the Department immediately upon determination of any Conflict Of Interest (COI) as defined and described in the EPA's COI Policy found at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy> during the performance period of this Agreement via electronic mail.

Article 14. No Additional Work or Materials

No claim will be allowed for services not specifically provided for in this Agreement which are performed or furnished by the Grantee.

Article 15. Changes

Any changes that have been agreed to by both parties will be attached and made part of this Agreement by use of an Amendment. Any such Amendment must be dated and signed by both parties before the change is considered approved and effective. The change is effective upon final signature by the Department.

Article 16. Budget Flexibility

Notwithstanding the provisions in Article 15, "Changes", the Grantee may revise the project budget without a formal Amendment to this Agreement. Such revisions are limited to a maximum of 10% of the total grant amount over the entire term of this Agreement. Such budget revisions shall be limited to changes to existing budget line items. The creation of new budget line items or addition of funds to the award may only be done through a formal Amendment to the Agreement.

Article 17. Allowable Costs

The Grantee shall comply with the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200, Subpart E – Cost Principles. These cost principles must be used by the Grantee in determining the allowable costs of work performed under this Agreement.

Article 18. Light Refreshments

Upon Department approval, the Grantee may use grant funds for providing light refreshments at outreach events, as long as the activity is reasonable and necessary for the performance of the project as described below. The Grantee will be limited to tea, water, and/or coffee and cannot exceed a total of \$500. Outreach events may be meetings, workshops, or participation in a festival for the purpose of educating the public about water quality protection or restoration efforts. This may also include having a booth designed to educate the public or gather public information at public events. EPA policy prohibits the use of funds for receptions, banquets and similar activities that take place after normal business hours without prior approval.

Grant funds may not be used for any event where alcohol is served, purchased or otherwise available as part of the event or meeting, even if funds are not used to purchase alcohol.

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable.

Article 19. Consultant Cap

Individual consultants retained by the Grantee shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, available at: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed.

Article 20. Income

Program and interest earned on federal or state funds shall be reported to the Department who will make a determination if those funds can be used for the project during the Agreement period.

Article 21. Management Fees

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term “management fees or similar charges” refers to expenses added to the indirect costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this Agreement. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

Article 22. Federally Approved Indirect Rate

The Grantee is entitled to reimbursement of indirect costs, subject to any statutory or regulatory administrative cost limitations, if they have a current rate agreement or have submitted an indirect rate proposal to the appropriate federal agency for review and approval. The Grantee is responsible for maintaining an approved indirect cost rate throughout the life of the Agreement. Documentation of the current rate agreement must be provided at the beginning of each State Fiscal Year.

Budgets that have been placed with an indirect rate not yet approved by the federal agency, for project administrative expenses, are subject to revision based on the rejection or approval of the final approved indirect rate. If the indirect rate proposal was rejected or adjusted by the federal agency the Grantee will be required to notify the Department and adjust project administration expenses already incurred to the appropriate amount as required under federal regulations.

The Grantee will not be reimbursed for any indirect costs which are not incurred during the period of the approved rate agreement or for any period in which the rate has expired.

Article 23. Limitation of Administrative Costs

If the Grantee does not have a federally approved indirect rate, the Grantee may include administrative costs in the workplan budget but the amount cannot exceed 10% of the grant award.

Article 24. Local Share of Project

The Grantee shall contribute a local share of this project as stated in the Agreement. The matching funds may be in the form of cash or in-kind contributions and must be certified as a non-federal source.

Article 25. Debarment and Suspension

Prior to the offer of this Agreement, the Department has verified the Grantee is not included on the government wide suspension and debarment list. Failure to maintain this status may result in the termination of this Agreement. In addition, the Grantee will not award or permit any award to any party that has been debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs if the value of the subcontract is equal to or exceeds \$25,000. The Grantee may access suspension and debarment information at <http://www.sam.gov>.

Article 26. Procurement

The Grantee must comply with all applicable state or federal or procurement laws in 2 CFR Part 200, Subpart D, Section 200.317 through 200.326. The Grantee is required to follow fair and equitable procurement standards in the acquisition of all services, supplies, and materials. The Grantee must retain clear records of bid procedures. The Grantee will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts.

Article 27. Equipment Use and Disposition

The Grantee must comply with 2 CFR Part 200, Subpart D, Section 200.313 governing the use of equipment. Equipment purchased in part or wholly with federal funds shall be used by the Grantee in the project for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a federal agency. The Grantee shall be responsible for the operation and maintenance of equipment acquired with this project. Property records must be maintained which will include a description, serial number, source and title, cost and percentage of federal participation in cost, location, use and condition, and sale price and date of disposal. A physical inventory of the property must be taken at least once every two years. Disposition of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation. If the Grantee is a non-profit

corporation that dissolves, the assets from this project are to be distributed according to Alaska Statutory law, AS 10.20.290-10.20.452.

Article 28. Supplies

The Grantee will compensate the awarding agency if residual inventory of unused supplies exceeds \$5,000 and are not needed for any other federally funded projects upon completion or termination of the Agreement, in compliance with 2 CFR Part 200, Subpart D, Section 200.313, paragraph (e)(2).

Article 29. Recycled Paper

The Grantee agrees to use recycled paper and double-sided printing for all reports which are prepared as part of this Agreement. The Grantee agrees to give preference to the purchase of recycled materials.

Article 30. Financial Management and Accounting

The Grantee shall establish and maintain a financial management and accounting system that conforms to generally accepted accounting principles.

Article 31. Payment Schedule

The Grantee shall comply with the payment schedule established in Attachment 2 of this Agreement.

Article 32. Records Maintenance and Retention

The Grantee shall keep a file for financial, progress, and other records relating to the performance of the Agreement. The file must be retained for a period of three years from the fully executed close out of the Agreement or until final resolution of any audit findings claim or litigation related to the project.

Article 33. Inspection of Records

The state or authorized federal representative may inspect, in the manner and at any reasonable time it considers appropriate, the Grantee's facilities, records or activities under this Agreement.

Article 34. Audit

The Grantee must comply with the provisions of 2 CFR Part 200, Subpart F governing the audit of the state and local governments and nonprofit organizations federal assistance recipients.

Article 35. Compliance Enforcement

If the Grantee fails to comply with the terms of this Agreement, or fails to use the Agreement for only those purposes set forth therein, the Department may take one or more of the following actions:

a) Right to Withhold Funds

The Department may temporarily withhold payments under this Agreement for any violations pending correction of any deficiency by the Grantee or the Department may take more severe enforcement action.

b) Suspension

After written notice that the Grantee is out of compliance with the Agreement, the Department will suspend the project and withhold payment or prohibit the Grantee from incurring

additional obligations of grant funds pending corrective action or a decision to terminate. Response must be received within fifteen (15) days of notification.

c) Termination for Cause

The Department, by written notice, may terminate this Agreement, in whole or in part, when it is in the best interest of the state at any time before the final payment is made. The Department shall notify the Grantee in writing of its determination to terminate, the reason for such termination, the effective date, and the reason and amount for recoveries that will be made.

Article 36. Termination Due to Lack of Funding

In the event funding from the state, federal, match, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, the Department may terminate the Agreement, reduce funding, or re-negotiate subject to those new funding conditions.

If the Agreement is terminated, reduced, or re-negotiated for withdrawal or reduction of match funds, the Grantee shall be entitled to compensation of no more than 60% of total costs of the project, as approved by the Department for cost eligibility. The Grantee shall reimburse the Department for all unspent grant funds advanced to the Grantee for project expenses above the final total approved for project cost or above the renegotiated quarterly payment plan; whichever best applies to the current status of the project. The Grantee shall also reimburse the Department for expenses using grant funds during the course of the project that do not meet eligibility requirements. Eligibility requirements include but are not limited to the required match for all grant funds spent by the Grantee. The Grantee must ensure that grant funds expended during the project do not exceed the limit of total project cost.

Article 37. Closeout

The Department will close out the Agreement when it determines that all reporting requirements and required work has been completed. The Grantee must submit all financial, performance and other reports and deliverables required as a condition of the project within thirty-two (32) days of the expiration of this Agreement unless otherwise stated in the workplan or with prior written approval. The Grantee shall return all unexpended grant monies to the state within sixty (60) days of the expiration of the Agreement.

Article 38. Press Releases

The Grantee must notify the Department of any press releases or public announcements prior to publication or dissemination that describe or are otherwise related to the project supported by the Agreement. If the Department objects to any provision of a press release or public announcement under this section, it shall notify the Grantee within twenty-four (24) hours of receiving the notification described herein and shall work diligently and in good faith with the Grantee to develop mutually agreeable language prior to the planned publication or dissemination.

The Grantee must notify the Department within the same day of any media inquiries directed at the Grantee and describe any response or information provided to the media. For some projects, the Department may also issue press releases, may respond to media inquiries or may direct the Grantee to refer questions regarding the project to the Department.

Article 39. Ownership of Documents and Products

All designs, drawing, specifications, notes, artwork, computer programs, reports and other work developed with grant funds in the performance of this Agreement are public domain and will be used

by the state and/or public without notice or compensation to the Grantee. The Grantee agrees not to assert any rights and not to establish any claim under the design patent or copyright laws.

Article 40. Civil Rights

The Grantee must comply with all applicable civil rights regulations, state laws, and policies in accordance with the Equal Employment Opportunity Executive Orders, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. Failure in prevention of discriminatory employment practices constitutes a material breach of the Agreement and could result in termination of the Agreement.

Article 41. Electronic and Information Technology Accessibility

The Grantee must ensure that any electronic and information technology (EIT) developed under this Agreement must be designed to meet the diverse needs of users without barriers or diminished function or quality as described and defined in Section 504 of the Rehabilitation Act.

Article 42. Hotel-Motel Fire Safety Act

The Grantee agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act. The Grantee may research the Hotel-Motel National Master List at <https://apps.usfa.fema.gov/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

Article 43. Drug-Free Workplace

The Grantee must make an ongoing good faith effort to maintain a drug-free workplace as set forth in the Drug-Free Workplace Act of 1988.

Article 44. Disputes

Any disputes concerning a question of fact arising under this project which is not disposed of by mutual agreement shall be decided in accordance with contract controversies, AS 36.30.620-632 of the state Procurement Code.

Article 45. False Claim

The Grantee is advised that providing false, fictitious, or misleading information with respect to the receipt and disbursement of grant funds may result in criminal, civil or administrative fines and/or penalties.

The Grantee must promptly refer to EPA's Inspector General any credible evidence that a false claim has been submitted under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Agreement.

Article 46. Prohibition Statement

The Grantee is advised that no employees may engage in severe forms of trafficking in persons during the period of time that this Agreement is in effect; procure a commercial sex act during the period of time this Agreement is in effect; or use forced labor in the performance of this Agreement.

The Grantee must inform the Department immediately of any information that is received from any source alleging a violation of the Prohibition Statement above.

Article 47. Patents and Inventions

Rights to inventions made under this Agreement are subject to federal patent and licensing regulations as defined in Title 37 CFR Part 401 and Title 35 USC Sections 200-212.

Article 48. Indemnification

The Grantee shall indemnify, save harmless and defend the state, its officers, agents, and employees from all liability, including costs and expenses, for all actions or claims resulting from injuries or damages sustained by any person or property arising directly or indirectly as a result of any error, omission or negligent act of the Grantee, subcontractor or anyone directly or indirectly employed by them in the performance of this Agreement.

All actions or claims including costs and expenses resulting from injuries or damages sustained by any person or property arising directly or indirectly from the performance of this Agreement which are caused by the joint negligence of the state and the Grantee shall be apportioned on a comparative fault basis. Any such joint negligence on the part of the state must be a direct result of active involvement by the state.

Article 49. Insurance

Without limiting the Grantee's indemnification, it is agreed that the Grantee shall purchase and maintain in force at all times during the performance of services under this Agreement the following policies of insurance; when applicable. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Grantee's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits.

a. Worker's Compensation Insurance

The Grantee shall provide and maintain, for all employees of the Grantee engaged in work under this Agreement, Workers' Compensation Insurance as required by AS 23.30.045. The Grantee shall be responsible to ensure all subcontractors provide Workers' Compensation Insurance for anyone who directly or indirectly provides services under this Agreement. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection of not less than \$100,000 per person, \$100,000 per occurrence. Where applicable, coverage for all federal acts (i.e., U. S. L&H and Jones Act) must also be included.

b. Comprehensive (Commercial) General Liability Insurance: The Grantee shall ensure coverage limits not less than \$300,000 combined single limit per occurrence and annual aggregates where generally applicable, and shall include premises-operations, independent contractor, products/completed operations, broad form property damage, blanket contractual and personal injury endorsements.

c. Comprehensive Automobile Liability Insurance: covering all owned, hired and non-owned vehicles with coverage limits not less than \$100,000 per person/\$300,000 per occurrence bodily injury and \$50,000 property damage.

d. Professional Liability Insurance: covering all errors, omissions or negligent acts of the contractor, subcontractor or anyone directly or indirectly employed by them, made in the

performance of this Agreement which results in a financial loss to the state. Limits required as per the following schedule:

Contract Amount	Minimum Required Limit
Under \$100,000	\$100,000 per occurrence/annual aggregate
\$100,000-\$499,999	\$250,000 per occurrence/annual aggregate

Appendix C: Funding-Specific Conditions

Sewer Overflow and Stormwater Reuse Municipal Grant Program

Use of Logos

If the EPA logo is appearing along with logos from other participating entities on websites, outreach materials, or reports, it must not be prominently displayed to imply that any of the Grantee's activities are being conducted by the EPA. Instead, the EPA logo should be accompanied with a statement indicating that the Grantee received financial support from the EPA under an Assistance Agreement. More information is available at: <https://www.epa.gov/stylebook/using-epa-seal-and-logo>. Use of the Department logo is encouraged and available by request.

Signage Required – Nonpoint Source Construction Projects

The Grantee is required to place a sign at construction sites supported under this award displaying the EPA logo in a manner that informs the public that the project is funded in part or wholly by the EPA. The sign must be placed in a visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

Grantees are required to comply with the sign specifications provided by the EPA Office of Public Affairs (OPA) available at: <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients>.

Environmental Review – Treatment Works Construction Projects

Prior to any construction, the Grantee shall consult with the Department to determine the required level of environmental review. The Department will notify the Grantee of the type of environmental documentation that will be required, if any.

If an environmental review is needed, the Grantee shall complete an environmental review in accordance with the State Environmental Review Process (SERP), and in compliance with state and federal environmental laws prior to any ground disturbing or construction activities conducted as part of this Project. Construction activities shall not commence until the SERP review has been completed. Any ground disturbing or construction activities that occur prior to the notification to the Grantee, by the Department, that Department's decision has been finalized are ineligible for reimbursement. No grant funds related to Construction activities shall be expended by the Grantee until all documentation is received and the Environmental Review is approved by DEC. The Grantee shall allow 60-90 days for review.

An environmental determination is valid for five years. Any activities occurring more than five years following the original environmental determination must undergo an additional review.

Davis-Bacon Act- Treatment Works Construction Projects

For construction, alteration, and repair of treatment works, the Grantee shall ensure that contract wages paid are the higher of the State or Federal wage rate on a classification-by-classification basis for the construction of the Project. Both prevailing wage rates established for the locality by the Alaska Department of Labor under AS 36.05.010, and Federal standards in accordance with 40 U.S.C. Subtitle II Part A Subchapter IV (commonly referred to as the "Davis Bacon Act") apply. Laborers and mechanics employed by contractors and subcontractors shall be paid wages not less often than once a

week and at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor.

- a. The Grantee shall obtain the wage determination for the area in which the project is located prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) less than 10 days before posting. Wages are locked-in at bid opening if awarded within 90 days. Wages must be updated if contract award is more than 90 days after bid opening. Once a Davis-Bacon wage rate has been locked, it stays in effect for the duration of the project. These wage determinations shall be incorporated into solicitations and any subsequent contracts. In addition, the wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor or subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- b. The Grantee shall ensure that the required EPA contract language regarding Davis-Bacon Wages is in all contracts and sub-contracts in excess of \$2,000. Grantee shall ensure no contracts are awarded to contractors excluded from federal contracts. The Grantee may access suspension and debarment information at <http://www.sam.gov>.
- c. The Grantee shall periodically interview 10% of the work force entitled to Davis-Bacon prevailing wages to verify that contractors or subcontractors are paying the appropriate wage rates. Grantees shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. As provided in 29 CFR 5.6(a)(5), all interviews must be conducted in confidence. The Grantee must use Standard Form 1445 or equivalent documentation to memorialize the interviews.
- d. The Grantee shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. In addition, during the examinations, the Grantee shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions. The Grantee shall maintain records sufficient to document compliance with the Davis-Bacon Act, and make such records available for review upon request.
- e. In addition, the Grantee shall consult with the Department on any required contract or bid documents to ensure that appropriate federal "Davis Bacon Act" language and material is included in the documentation.

American Iron and Steel- Treatment Works Construction Projects

Per Section 608 of the Clean Water Act, none of the funds made available to the Grantee shall be used for a project for the construction, alteration, maintenance, or repair of a treatment works unless all of the iron and steel products used in the project are produced in the United States.

The Grantee may request a waiver to this requirement **during the design phase** if:

- i. It is inconsistent with the public interest;
- ii. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- iii. Inclusion of iron and steel products produced in the United States will increase the cost of the overall Project by more than 25 percent.

Waiver requests shall be submitted to the Department by the Grantee; the Department will then forward the request to the Environmental Protection Agency (EPA) for consideration. EPA will make a copy of the request, and information related to the request, available to the public on an EPA website for at least fifteen days for informal public input prior to making a finding.

Attachment 1: ACWA-23-13 Budget

Categories	FY23		FY24		Total Request
	Expenses between March 1, 2023 and June 30, 2023	Description (see column A for required details for each category)	Expenses between July 1, 2023 and June 30, 2024	Description (see column A for required details for each category)	
Personal Services	\$0		\$0		\$0
Travel	\$0		\$0		\$0
Contractual	\$11,866	Surveyor: 20 hours at \$84.76 Per hour = \$1,695.20; Design Engineer, Geoff Coble of Coble Geophysical Services 120 hours at \$84.76 per hour = \$10,171.20.	\$141,441	Construction Contract to furnish & install storm water facilities & trail work. One round of post-construction water sampling to assess treatment effectiveness.	\$153,307
Supplies	\$0		\$0		\$0
Equipment	\$0		\$0		\$0
Indirect/Admin	\$0		\$0		\$0
Other	\$0		\$0		\$0
Grand Total	\$11,866		\$141,441		\$153,307

Attachment 1: ACWA-23-13 Match

Categories	FY23		FY24		Total Request
	Expenses between March 1, 2023 and June 30, 2023	Description (see column A for required details for each category)	Expenses between July 1, 2023 and June 30, 2024	Description (see column A for required details for each category)	
Personal Services	\$13,429	The City of Homer (City) will provide in-kind services - staff and administrative time dedicated to the project. Jan Keiser, Project Manager, manage technical aspects of project - 128 hours at \$84.31/hour = \$10,791.68; Owen Meyer, Project Technician, administer documentation & payments - 32 hours at \$47.90/hour = \$1,532.80; Jenny Carroll, Grant Manager . QC for grant administration - 14 hours at \$78.88/hour = \$1,104.32	\$10,364	The City of Homer (City) will provide in-kind services - staff and administrative time dedicated to the project. Jan Keiser, Project Manager, manage technical aspects of project - 101 hours at \$84.31/hour = \$8,515.31; Owen Meyer, Project Technician, administer documentation & payments - 32 hours at \$47.90/hour = \$1,532.80; Jenny Carroll, Grant Manager . QC for grant administration - 4 hours at \$78.88/hour = \$315.52.	\$23,792
Travel	\$0		\$0		\$0
Contractual	\$7,334	The City will provide matching funds from the dedicated Homer Accelerated Roads & Trails Fund to cover consultant hourly costs exceeding the hourly rate cap of \$84.76. Design Engineer - Coble Geophysical Services: 120 hours @ \$50.24 per hour = \$6,028.80. Surveyor - 20 hours @ \$65.20 per hour = \$1,304.80.	\$73,979	Matching funds from Homer Accelerated Roads and Trails Fund to furnish and install the storm water appurtenance as well as perform the trail work.	\$81,313
Supplies	\$0		\$0		\$0
Equipment	\$0		\$0		\$0
Indirect/Admin	\$2,076.24	Office space for City of Homer special projects manager, public works director, project technician, accounting and administrative staff. Insurance, utilities, and office supplies.	\$0		\$2,076
Other	\$0		\$0		\$0
Grand Total	\$22,839		\$84,343		\$107,182

Attachment 2: Payment Plan for Reimbursable Expenses

Reimbursement

Eligible expenses incurred under the Agreement will be reimbursed on a semiannual basis. Reimbursement will be made upon receipt and approval of the progress, financial reports, and deliverables. If you require more frequent reimbursements, please contact the Department.

Matching Funds

If the Grantee is required by the Agreement to contribute a local share of this project, the Grantee shall certify that the match of cash and/or in-kind services provided for the project are supported solely with non-federal funding used exclusively for this project and is not being used to match any other federal grant. Match funds may be cash or in-kind services including volunteer time and donated supplies and must be from non-federal sources. The source of the match must be fully documented. Match activities must meet the same eligibility requirements and must conform to the same laws and regulations as the federal funds in the Agreement. Matching funds must be met according to the agreed upon schedule at grant inception, and in proportion to actual spending.

Certificate Of Completion

Envelope Id: E86E41EADE3447DB9F022E92440B46FD	Status: Completed
Subject: Complete with DocuSign: ACWA-23-13 Grant Award.pdf	
Source Envelope:	
Document Pages: 24	Signatures: 2
Certificate Pages: 4	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Disabled	Mariah Carpenter
Time Zone: (UTC-09:00) Alaska	PO Box 110206
	Juneau, AK 99811
	mariah.carpenter@alaska.gov
	IP Address: 158.145.15.26


Record Tracking

Status: Original 2/27/2023 2:54:54 PM	Holder: Mariah Carpenter mariah.carpenter@alaska.gov	Location: DocuSign
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: State of Alaska	Location: DocuSign

Signer Events

Heidi Thomerson
Heidi.Thomerson@alaska.gov
Accountant IV-Federal Grants
Department of Environmental Conservation
Security Level: Email, Account Authentication (None)

Signature



Signature Adoption: Pre-selected Style
Using IP Address: 10.1.96.28

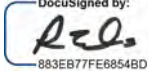
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ID: 9f2df446-33f9-4e5c-b878-12b1799a0ed7
Company Name: State of Alaska

Randy Bates
randy.bates@alaska.gov
Director
State of Alaska
Security Level: Email, Account Authentication (None)



Signature Adoption: Uploaded Signature Image
Using IP Address: 10.7.102.116

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ID: 861845b2-4df8-4150-b1ad-c5ec0bfbd08a
Company Name: State of Alaska

Larry Dunivin
Larry.Dunivin@alaska.gov
DEC Finance Officer
State of Alaska
Security Level: Email, Account Authentication (None)



Signature Adoption: Drawn on Device
Using IP Address: 24.237.20.46

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Electronic Record and Signature Disclosure:

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Company Name: State of Alaska

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Sarena Hackenmiller sarena.hackenmiller@alaska.gov Grants Administrator II State of Alaska Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 4/27/2022 2:29:40 PM ID: cc73dbb9-af31-43ec-90c3-c026a2cb6267 Company Name: State of Alaska	<div style="border: 2px solid blue; padding: 5px; display: inline-block;">COPIED</div>	Sent: 3/1/2023 2:06:55 PM
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Signing Complete	Security Checked	3/1/2023 2:06:53 PM
Completed	Security Checked	3/1/2023 2:06:55 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

Please read this Electronic Records and Signature Disclosure (ERSD). It concerns your rights regarding electronically undertaking, and the conditions under which you and the State of Alaska agree to electronically undertake, the transaction to which it relates (the “TRANSACTION”).

Consent to Electronically Undertake the TRANSACTION

You can electronically undertake the TRANSACTION only if you confirm that you meet the following requirements by selecting the box next to “I agree to use electronic records and signature” (the “AGREE BOX”):

1. you can fully access and have read this ERSD;
2. you can fully access all of the information in the other TRANSACTION records;
3. you can retain all of the TRANSACTION records in a form that you will be able to fully access for later reference;
4. you consent to undertake the TRANSACTION electronically; and
5. you are authorized to undertake the TRANSACTION. (Please note that falsely undertaking the TRANSACTION may subject you to civil liabilities and penalties and/or to criminal penalties.)

If you cannot or are not willing to confirm each of these five things, do not select the AGREE BOX.

Withdrawing Consent

If you select the AGREE BOX, you can withdraw your consent to electronically undertake the TRANSACTION at any time before you complete the TRANSACTION: simply do not finalize it. The only consequence of withdrawing your consent is that you will not finalize the TRANSACTION.

If you select the AGREE BOX, your consent will apply only to this TRANSACTION. You must separately consent to electronically undertake any other transaction with the State of Alaska.

Paper Option for Undertaking the TRANSACTION

You may undertake the TRANSACTION with the State of Alaska using paper records. (State of Alaska employees who want to undertake the TRANSACTION in paper should contact the agency responsible for the TRANSACTION.) Print the paper records on the website of the State of Alaska agency responsible for the TRANSACTION, or request them from the agency. The State of Alaska homepage is at <http://alaska.gov/>.

Copies of TRANSACTION Records

After completing the TRANSACTION but before closing your web browser, you should download the TRANSACTION records. Or you can download the records within 30 days after

completing the TRANSACTION using the link in the DocuSign email sent to the email address you used to complete the TRANSACTION. The State of Alaska will not provide a paper copy of the TRANSACTION records as part of the TRANSACTION. Under the Alaska Public Records Act (APRA), AS 40.25.100–.295, you can request a copy from the agency responsible for the TRANSACTION, but if too much time has passed, the agency may no longer have the records when you make your request. If required under the APRA, the agency will charge a fee.

Required Hardware and Software

For the minimum system requirements to electronically undertake the TRANSACTION, including accessing and thereby retaining the TRANSACTION records, visit <https://support.docusign.com/guides/signer-guide-signing-system-requirements>. These requirements may change. In addition, you need access to an email account.

How to Contact the State of Alaska

To ask a question on this ERSD or the DocuSign document generated after you complete the TRANSACTION or on using DocuSign to electronically undertake the TRANSACTION, contact the Alaska Department of Administration at either of the following addresses:

State of Alaska
Department of Administration
550 West 7th Avenue
Suite 1970
Anchorage, AK 99501
Reference: DocuSign

doa.commissioner@alaska.gov
Subject: DocuSign

To ask any other question on the TRANSACTION records or to update the information for contacting you electronically, contact the State of Alaska agency responsible for the TRANSACTION using the contact information in the TRANSACTION records or, if those records contain no contact information, using the contact information on the agency's website. Again, the State of Alaska homepage is at <http://alaska.gov/>.

COBLE GEOPHYSICAL SERVICES

P.O. Box 1637

Homer, Alaska

99603-1637

(907) 399-6366

GEOPHYSICAL CONSULTING

Groundwater/Surface Water
Geophysics

CGS MEMO 11/29/21

Janette Keiser, PE, JD

Director of Public Works, City of Homer

3575 Heath Street

Homer, Alaska 99603

Phone: (206) 714-8955

JKeiser@ci.homer.ak.us

RE: Stormwater Outfalls: Addressing Stormwater in the City of Homer
Recommendations for the Public Works Department
Addressing Stormwater Pollution in the Bishops Beach Area, Homer, Alaska

Dear Janette,

Stormwater drainage for the downtown areas of the City of Homer (COH) has used the Beluga Slough Freshwater and Saltwater Marshlands as its *de facto* stormwater treatment facility. Water is discharged into the higher elevations of this wetland, and it makes its way through to Palmer Creek and the ocean.

The Beluga Wetlands are also in the vicinity of a popular COH park and Bishops Beach.

Unfortunately, a large portion of untreated stormwater has bypassed the Beluga Wetlands and been discharged directly into the ocean from this area for many years.

Like many urban areas of Alaska, this stormwater includes the usual urban sources of pollutants from properties and roads, as well as extensive suspended sediment from road sanding and calcium chloride.

This proposal seeks to address its stormwater issues head-on using recommendations laid out in the Kinney Engineering 2020 Low Impact Development Report (Kinney, 2020) and add an additional property to this system in order to facilitate additional stormwater treatment capacity. This project also seeks to re-direct all remaining stormwater discharge of this area through the Beluga Wetlands.

Please let me know if you have any questions regarding this memo, and thank you very much for your business.

Sincerely,

COBLE GEOPHYSICAL SERVICES

Geoff Coble, M.S., PG

Homer Professional Building

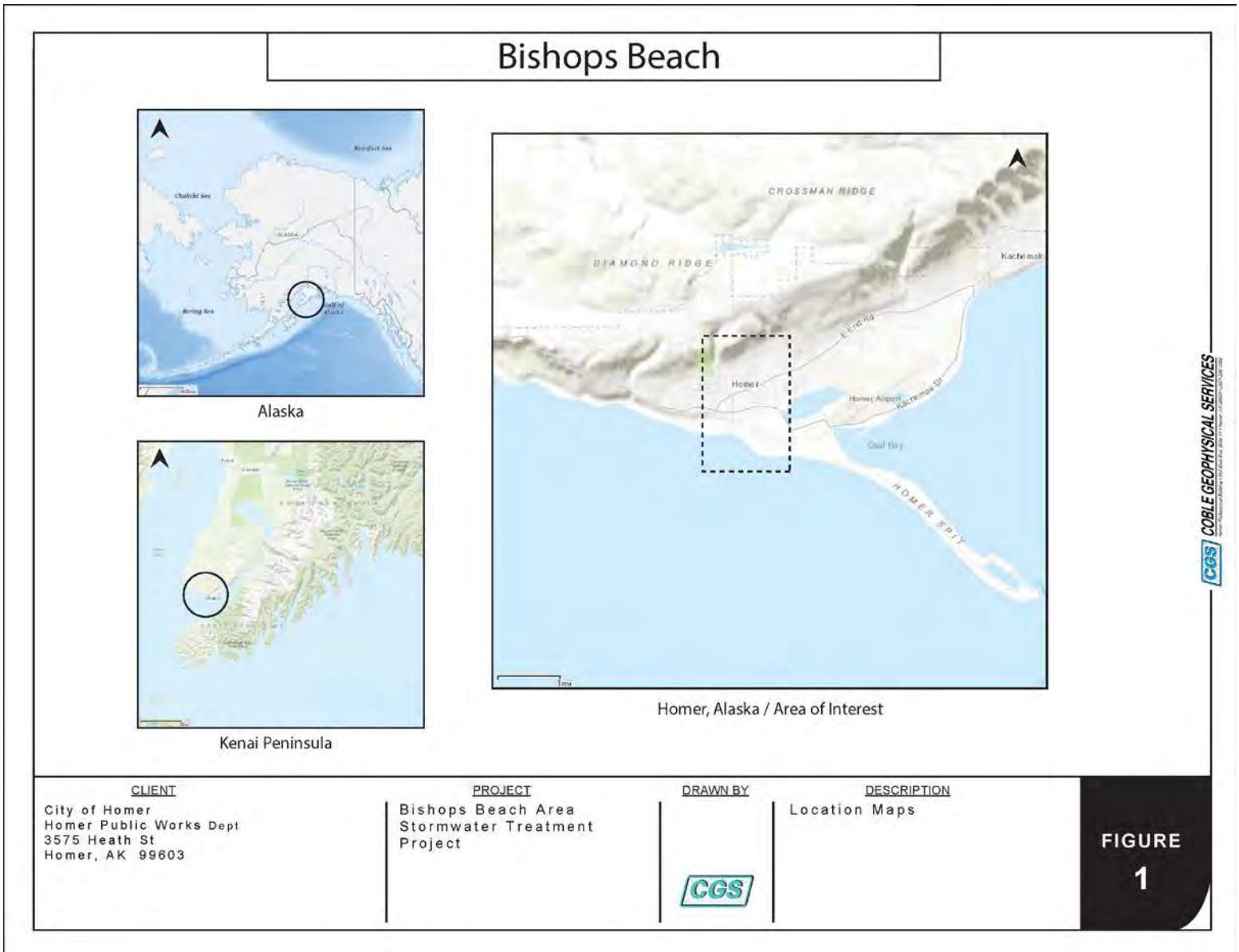
910 East End Rd, Suite #1

Homer, Alaska 99603



INTRODUCTION

A significant amount of stormwater drainage for the City of Homer is discharged in the vicinity of the popular Bishops Beach project area shown in Figure 1, in Homer, Alaska.

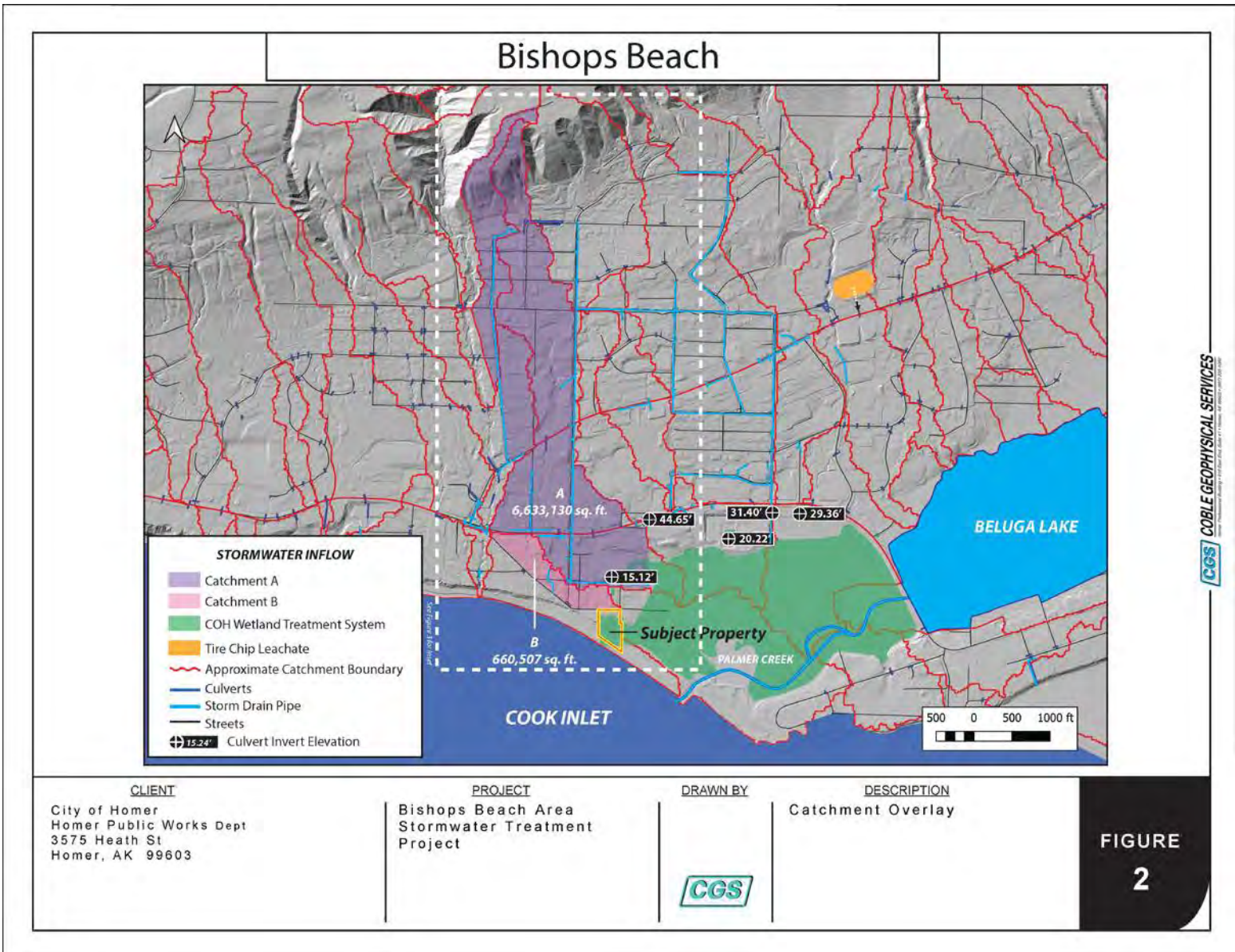


Untreated stormwater from the City of Homer Streets has been discharged into this area for many years.

Like many urban areas of Alaska, this stormwater also includes significant amounts of suspended sediment due to extensive road sanding operations, and this sand is frequently mixed with Calcium Chloride. The stormwater sediment load dictates periodic cleaning of drainage ditches in the Ben Walters neighborhood of the COH.

Stormwater from this neighborhood also contains the usual pollutants from properties and roads, and the usual 'other' known sources of pollutants such as tire chip leachate. This last pollutant comes from artificial turf athletic fields which use ground recycled scrap tires for an engineered substrate to astroturf that provides excellent drainage and a resilient base. Unfortunately, this resulting fine particle size porous medium also has a large surface area, and has been shown to contribute heavy metals and organic hydrocarbons into leachate from these areas (Tatlisov, 1996).

The COH has used the Beluga Slough Freshwater and Saltwater Marshlands as its stormwater treatment facility in this area. Figure 2 shows the major stormwater inputs to the Beluga Slough.



BELUGA WETLANDS STORMWATER TREATMENT SYSTEM

The COH finds that it is no longer acceptable for direct discharge stormwater into the ocean from a water quality standpoint and for a resilient community, and yet this continues to occur within the Beluga Wetlands area.

It has been shown for many years that plants growing in soils with high moisture content, i.e. in wetland conditions, can be effective at sequestering and removing elemental pollution from water, more so than plants growing in lower moisture conditions (Kissoon, 2012). The direct proximity of these wetlands to stormwater discharge will be rectified in this proposal.

MECHANICS

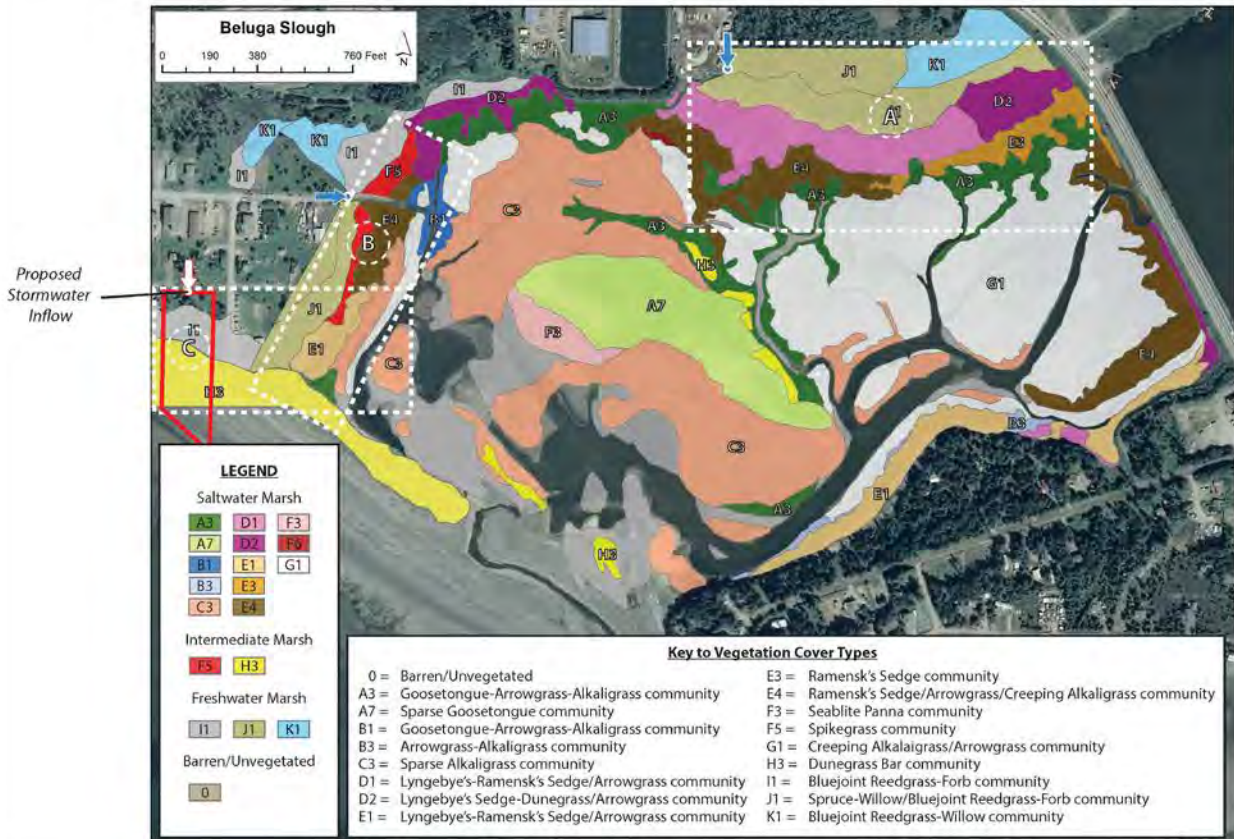
Emergent vegetation forms a collective of fringe freshwater and salt-tolerant marshland vegetation which forms the Beluga Slough surface water discharge area. While this is a natural slough with saltwater inundation, many changes to its function as a slough have changed since the creation of Beluga Lake (a recognized float plane base) around WWII, and the demands of KPB land subdivision and private property ownership at its margins.

With increased urbanization of Homer, the Beluga Wetlands rose to prominence to become the de facto COH hydrologic and pollutant removal system or water treatment plant for its urban stormwater inputs into that system. The relevant part of those wetlands are shown in Photo 1, and in detail in Figure 3.



Photo 1. Boardwalk near the project area, Beluga Wetlands, Homer, Alaska (COH)

Bishops Beach



Kachemak Bay Research Reserve Land Cover Data updated December 3, 2019, and augmented with Freshwater Marsh Land Cover Data (Field, Conrad, 2021)

CGS COBLE GEOPHYSICAL SERVICES

CLIENT

City of Homer
Homer Public Works Dept
3575 Heath St
Homer, AK 99603

PROJECT

Bishops Beach Area
Stormwater Treatment
Project

DRAWN BY



DESCRIPTION

Marsh Map

**FIGURE
3**

Over the last twenty years, wetland plants have been recognized for their ability to remediate hazardous substances. The body of this research is ever-expanding, and includes all the plant life which forms the Homer Beluga Slough. This de facto COH water treatment system begins with water inputs which encounter three separate environments on their way to the ocean: Freshwater, Intermediate and Saltwater Marshlands. This sophisticated stormwater treatment system can partly be summarized as follows:

Freshwater Marsh

The first wave of stormwater treatment is within the Freshwater Marshlands habitat as follows:

Bluejoint Reedgrass (e.g. *Calimagrostis canadensis*) The Freshwater Marshlands work to strip COH stormwater of road sand – something *Calimagrostis* was engineered to do in its natural environment dealing with sand deposits in floodplain situations. *Calimagrostis c.* can take over entire floodplains in natural environments.

Calimagrostis c. will grow in clumps and continue to rise in elevation, creating microtopography that helps distribute surface water in stormwater flooding situations. *Calimagrostis c.* even has the long term ability to grow around and above streams until they are completely covered. This makes this plant system a natural as the first system in Beluga Slough being used as a hydrologic feature, to reduce Total Suspended Solids (TSS) from stormwater flows and to assimilate aggradation from the resulting sediment deposition.

Calimagrostis has even been shown to be effective at phytoremediation of heavy metals polluted by acid mine drainage in Andean natural wetlands (Alvarez, 2012).

Willow The willow community is compatible with *Calimagrostis c.* grass, and well known for phytoremediation of contaminated soils, and for harboring microbial activity to do the work – including in Northern climates such as Canada. For example, a recent study showed the microbiome of willows growing in soils contaminated with petroleum hydrocarbons – currently a common pollutant in Homer’s urban stormwater discharge – changes to accommodate that reality. In fact, it was found that petroleum contamination was the primary factor structuring not only the willow’s rhizosphere constituents, but also willow plant tissue microbiomes (Tardif et al., 2016).

Intermediate Marsh

Dune Grass (*Leymus mollis*) Intermediate wetlands contain unique water chemistry challenges for dune grass. One remediation feature of this intermediate marsh plant is its associated rhizome fungal communities (Johansen, 2016). It has been shown through expansive research that fungal-based remediation of organic pollutants is effective in soil and water remediation. Root-associated fungal communities also co-exist with other plants in these marshland habitats, spruce being another well-known example.

Spike Grass (*Poa Eminens*) Dune spike grass is known to have an extensive network of roots, creeping rhizomes with runners which are excellent at stabilizing exposed sediments such as dunes. Among other contributions, this structural stability is highlighted here, since stability is necessary for other plants in this water treatment system to function.

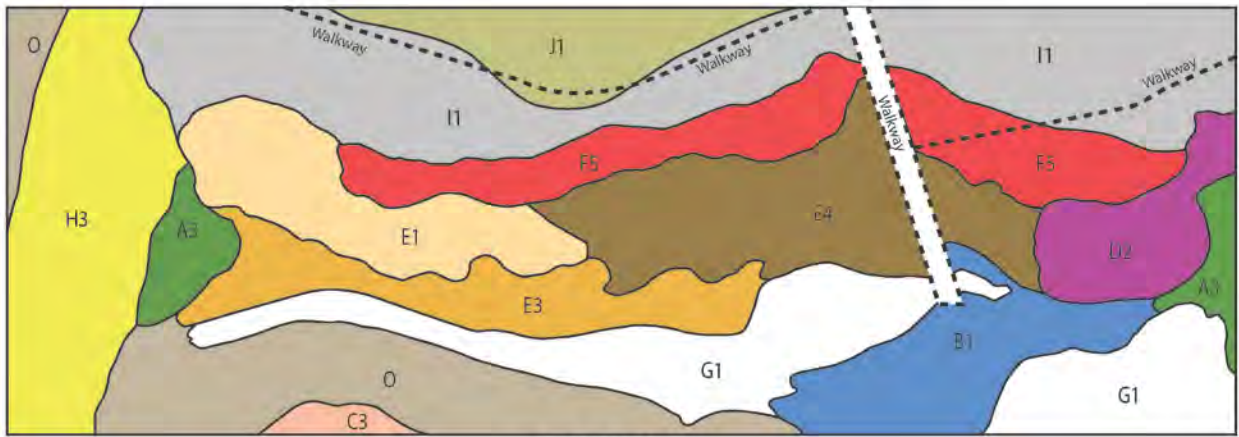
Salt Marsh

Arrowgrass (e.g. *Triglochin maritima*) has been shown to be effective at sequestering elemental pollutants in both root zone and plant tissue. In addition, *Triglochin* also has a role in reducing turbidity (Kissoon, 2012).

Sedges are highly advocated for stormwater biofilters in many climates, as they have been shown to remove everything from Arsenic to nutrients beyond their own requirements for growth (e.g. Oversby, 2014). Reducing nutrients from water has a direct equivalent to reducing Biological Oxygen Demand (BOD). Removal of organic pollution is therefore a primary function of wastewater treatment plants, but in this case as applied to Homer's stormwater treatment system. Sedges have also been shown to help with the removal of Total Suspended Solids (TSS) where they grow densely (Dagenai et al. 2018).

The current plant communities forming the network of stormwater remediation are shown in more detail in the A, B and C insets of Figure 3: Inset A is Figure 4; Inset B is Figure 5; and Inset C is Figure 6.

Bishops Beach



SECTION A

Key to vegetation cover types

- O = Barren/unvegetated
- A3 = Goosetongue-Arrowgrass-Alkaligrass community
- B1 = Arrowgrass-Goosetongue-Alkaligrass community
- C3 = Sparse Alkaligrass community
- D2 = Lyngbye's Sedge-Dunegrass/Arrowgrass community
- E1 = Ramensk's-Lyngbye's Sedge/Arrowgrass community
- E3 = Ramensk's Sedge community
- E4 = Ramensk's Sedge/Arrowgrass/Creeping Alkaligrass community
- F5 = Spikegrass community
- G1 = Creeping Alkaligrass-Arrowgrass community
- H3 = Dunegrass Bar community
- I1 = Bluejoint Reedgrass-Forb community
- J1 = Spruce-Willow/Blue-joint Reedgrass-Forb community

Notes

- In this section of the salt marsh height and slope of the land determine plant community composition.
- Saltwater inundation from tides select for the saltwater species.
- An increase of freshwater from the uplands will have a relatively minimal influence on this area as far as plant community composition.
- The boardwalks in this area also have no impact on the makeup of the surrounding plant communities.
- The gravel path into the marsh adjacent to the drainage ditch does influence the plant communities of the area.

CLIENT

City of Homer
Homer Public Works Dept
3575 Heath St
Homer, AK 99603

PROJECT

Bishops Beach Area
Stormwater Treatment
Project

DRAWN BY

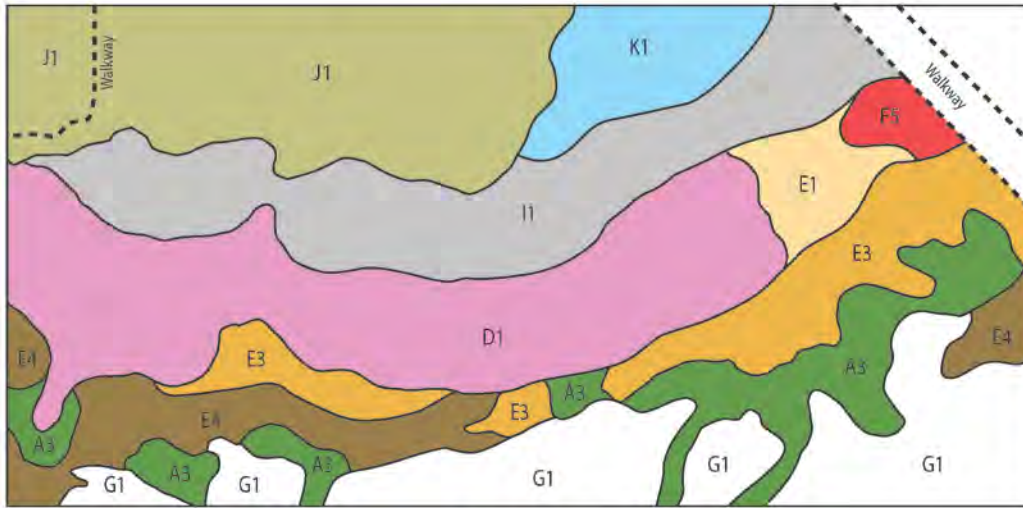


DESCRIPTION

Section A

FIGURE
4

Bishops Beach



SECTION B

Key to vegetation cover types

- A3 = Goosetongue-Arrowgrass-Alkaligrass community
- D1 = Lyngbye's-Ramensk's Sedge/Arrowgrass community
- E1 = Ramensk's-Lyngbye's Sedge/Arrowgrass community
- E3 = Ramensk's Sedge community
- E4 = Ramensk's Sedge/Arrowgrass/Creeping Alkaligrass community
- F5 = Spikegrass community
- G1 = Creeping Alkaligrass-Arrowgrass community
- I1 = Bluejoint Reedgrass-Forb community
- J1 = Spruce-Willow/Blue-joint Reedgrass-Forb community
- K1 = Bluejoint Reedgrass-Willow community

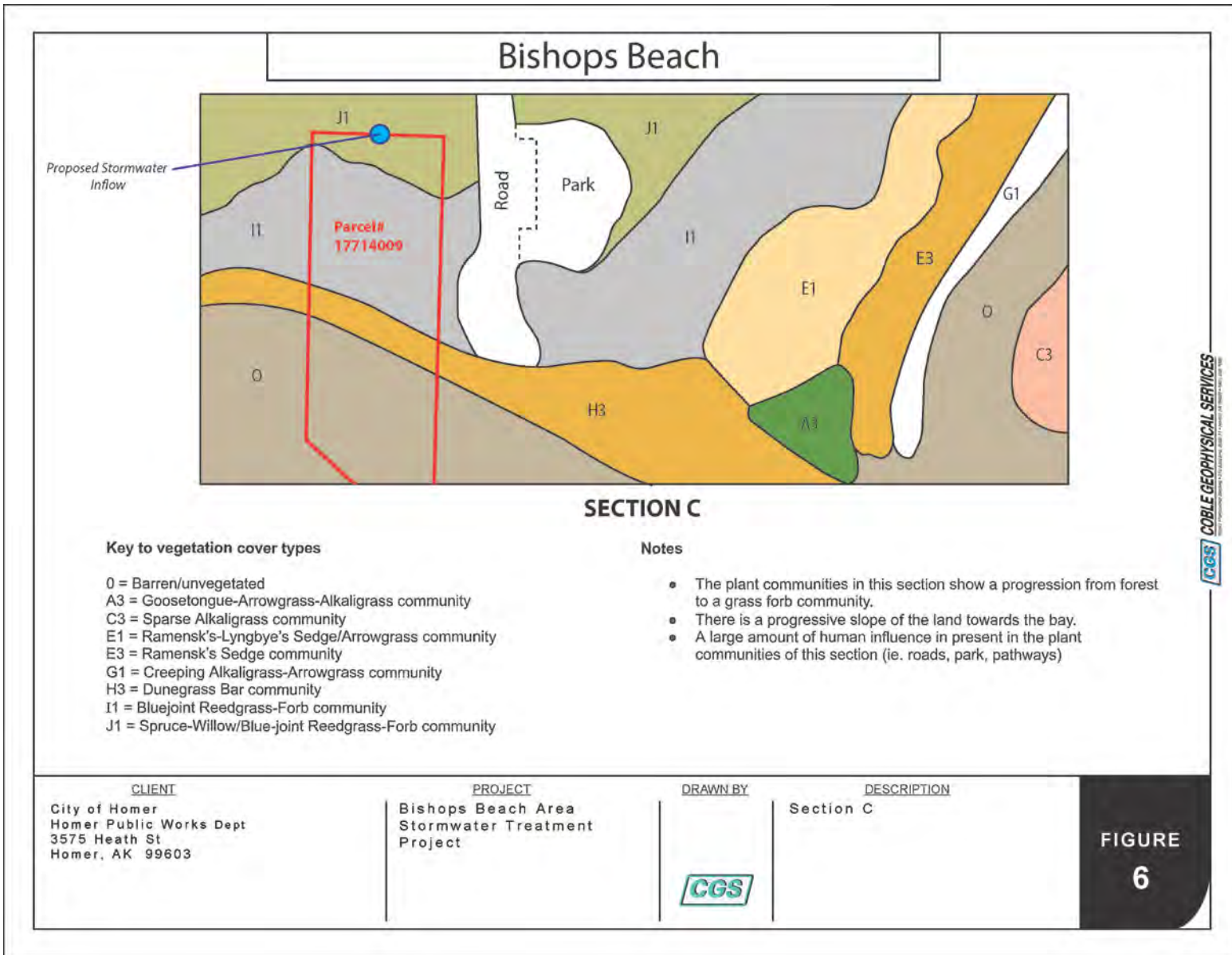
Notes

- This section has freshwater flowing into the salt marsh from the north.
- Water flows through the forest into the grass and sedge communities.
- These bluejoint and sedge areas slow the water and act as settling areas for sediments that wash in with the water.
- There is an accretion of sediments in these grass cover types building them up over time.

CGS COBLE GEOPHYSICAL SERVICES

CLIENT	PROJECT	DRAWN BY	DESCRIPTION	FIGURE 5
City of Homer Homer Public Works Dept 3575 Heath St Homer, AK 99603	Bishops Beach Area Stormwater Treatment Project		Section B	





NEED FOR DISTRIBUTION

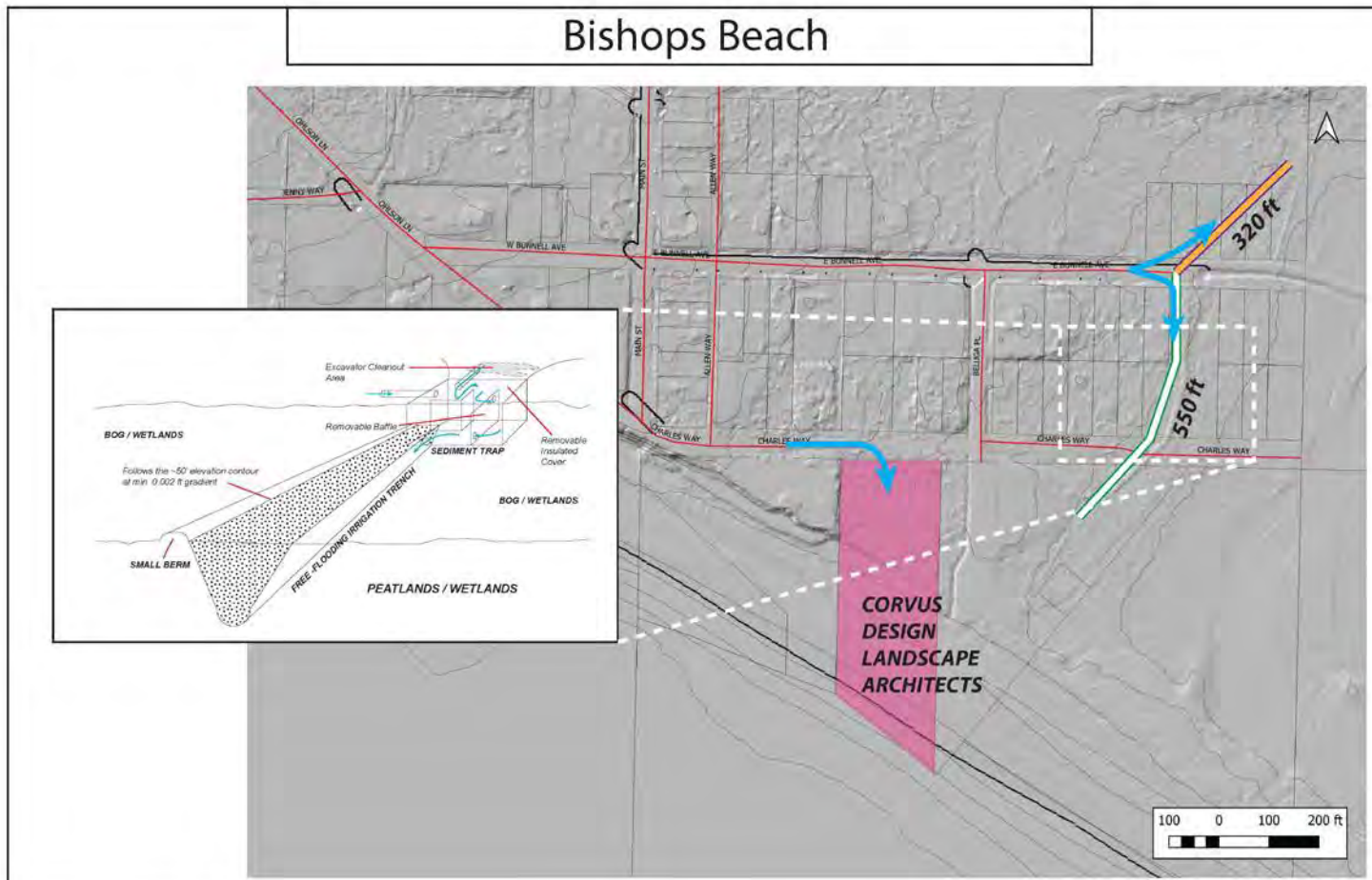
Figure 7 shows the plan to distribute water by open vegetated trench through the USFWS wetlands. The USFWS property this would also be constructed on is very interested this idea should the gravel walkway from the previous system of stormwater discharge be removed, which would allow for the salt marsh to re-establish itself in that area. Therefore, costs for installation of the raised walkway as a way for this to happen is included in this proposal. This would also enhance the stormwater treatment ability of the Beluga Wetlands.

A critical design parameter is currently being measured in the outfall culvert for this specific stormwater outfall. It is important to know stormwater discharge peaks in order to design the appropriate trench dimensions for this type of wetlands water distribution, commonly referred to

as irrigation. This outfall stormwater is currently being monitored by CGS as a critical parameter to assist with trenchworks design.

In agricultural terms a trench used to distribute water through openings would be called ‘flood irrigation’. With stormwater flows in this situation, it is still possible to occur during the winter months since there is often an un-thawed active layer near the surface and beneath the frozen surface which accepts water in these wetlands. The trenchworks in Figure 7 are large enough such that for much of the time it would represent an infiltration trench.

Stormwater flows would be expected to distribute water throughout the length of the trenchworks system. A sand trap is provided to serve as a cleanout for the trenchworks – road sand is particularly heavy in this storm drain. This system seeks to avoid any trenchworks maintenance through these sensitive wetlands.



CGS COBLE GEOPHYSICAL SERVICES

CLIENT	PROJECT	DRAWN BY	DESCRIPTION
City of Homer Homer Public Works Dept 3575 Heath St Homer, AK 99603	Bishops Beach Area Stormwater Treatment Project	CGS	Section C

FIGURE
7



NEED FOR EXPANSION – BISHOPS BEACH ADDITION

Additional untreated stormwater from downtown COH is currently discharged on the other side of the Bishops Beach recreational area directly into the ocean beach area as was depicted in Figure 2. The subject property in Figure 2 is available for acquisition, and this is proposed as an area for stormwater discharge. The current vegetation available at this site was shown in Figure 6.

A landscape architect, Corvus Designs of Anchorage, was hired by the COH to propose ways in which this land could function optimally next to an existing popular COH park. This design will use the necessary input data such as its plant profile (Figure 6) and stormwater input quantity (currently being measured by the COH) will optimize its stormwater treatment function.

PROJECT COSTS

Table 1. Project Costs for Ben Walters Stormwater Treatment System

Major Tasks	Material or Project Description	Cost
Property Acquisition	KPB #17714009: 2.49 Acres	\$4,300
SWPPP for Trench Construction	1 for project	\$3,000
Trench and Sediment Trap Construction/Elevation Survey	2-person team; 8 hours field (\$180/hr); 6 hours office (\$100/hr)	\$2,040
Trench Construction w/ Surveyor & total station	870 feet; 4 days construction (\$3,000/day); 2 days clearing (\$1,000/day)	\$14,000
Sediment Trap Construction	Materials (\$6,000); Labor Equip (2 days, \$2,000/day)	\$10,000
As-built from Survey Team	2-person team; 4 hours field (\$180/hr); 6 hours office (\$100/hr)	\$1,320
Walkway Construction: Augmentation of Beluga Wetlands Water Treatment Area	Grated walkway to match and connect to existing; costing off previous project adj. for inflation, 340 linear feet with viewing platform and connectors	\$200,000



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AGENDA ITEM REPORT

Ordinance 23-20, An Ordinance of the City Council of Homer, Alaska Appropriating Funds for the Fiscal Years 2024 and 2025 for the General Fund, the Water Fund, the Sewer Fund, the Port/Harbor Fund, and Internal Services Funds. City Manager.

Item Type: Ordinance
Prepared For: Mayor Castner and Homer City Council
Meeting Date: 10 April 2023
From: Rob Dumouchel, City Manager

The Operating Budget which covers the General Fund, Water and Sewer Utility, and Port Enterprise Fund are up for introduction on April 10th. The budget package presented amounts to \$26,230,142 for fiscal year 2024 and \$26,870,726 for fiscal year 2025.

There are a few notable changes from the preview provided at the March 28th City Council Meeting:

- The health insurance increase was negotiated down to 6.8% with our broker and provider
- The COLA for FY24 was increased to 1.5% from 1%
- An additional full-time position was added to the Port Enterprise that will focus, in part, on property management

Following the introduction, we plan to have a minimum of two public hearings before we reach adoption.

The Capital Budget will be introduced at the second meeting in April. A substantive **preview** of Capital Budget materials is expected to be available as a supplemental item on April 10th.

Recommendation:

Introduce Ordinance 23-20, conduct public hearings April 27 and May 8, and second reading May 8th.

Attachments:

Ordinance 23-20

Budget Preview Memorandum from March 28th regular meeting

**CITY OF HOMER
HOMER, ALASKA**

City Manager

ORDINANCE 23-20

AN ORDINANCE OF THE HOMER CITY COUNCIL APPROPRIATING FUNDS FOR THE FISCAL YEARS 2024 AND 2025 FOR THE GENERAL FUND, THE WATER FUND, THE SEWER FUND, THE PORT/HARBOR FUND, AND INTERNAL SERVICE FUNDS.

THE CITY OF HOMER ORDAINS:

Section 1. Pursuant to the authority of Alaska Statutes Title 29, the following appropriations are made for the fiscal year ending June 2024:

General Fund	\$16,122,999
Water Fund	\$ 2,370,842
Sewer Fund	\$ 1,949,879
Port/Harbor Fund	<u>\$ 5,786,422</u>
Total Expenditures	\$26,230,142
Internal Service Funds	\$2,735,926

Section 2. Pursuant to the authority of Alaska Statutes Title 29, the following appropriations are made for the fiscal year ending June 2025:

General Fund	\$16,421,394
Water Fund	\$ 2,429,922
Sewer Fund	\$ 2,085,485
Port/Harbor Fund	<u>\$ 5,870,925</u>
Total Expenditures	\$26,807,726
Internal Service Funds	\$2,940,129

Section 3. The amounts appropriated by this ordinance are appropriated to the objects and purposes stated in the adopted budget.

Section 4. Grant funds.

41 (a) If grant funds that are received during the fiscal year exceed the amounts of such
42 funds appropriated by this ordinance by not more than \$25,000, the affected
43 appropriation is increased by the amount of the increase in receipts.

44
45 (b) If grant funds that are received during the fiscal year exceed the amounts
46 appropriated by this ordinance by not more than \$25,000, the appropriation from
47 city funds for the affected program may be reduced by the excess if the reduction is
48 consistent with applicable federal and state statutes.

49
50 (c) If grant funds that are received during the fiscal year fall short of the amounts
51 appropriated by this ordinance, the affected appropriation is reduced by the
52 amount of the shortfall in receipts.

53
54 Section 5. Donations or charitable contributions. If donations or contributions are
55 received during the fiscal year that exceed the amounts of such funds appropriated by this
56 ordinance by not more than \$5,000, the affected appropriation is increased by the amount of
57 the increase in receipts.

58
59 Section 6. A copy of the adopted budget shall be certified by the City Clerk and filed in
60 the office of the City Clerk.

61
62 Section 7. The supporting Line Item Budget detail as presented by the Administration
63 and reviewed by the City Council is incorporated as part of this Budget Ordinance.

64
65 Section 8. The property tax mill levy is set at 4.5 mills for 2024.

66
67 Section 9. This Ordinance is limited to approval of the budget and appropriations for
68 Fiscal Year 2024 and 2025, is a non code Ordinance and shall become effective July 1, 2023.

69
70 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this ___ day of _____,
71 2023.

72
73 CITY OF HOMER
74
75 _____
76 KEN CASTNER, MAYOR

77 ATTEST:
78
79 _____
80 MELISSA JACOBSEN, MMC, CITY CLERK

81
82 YES:

- 83 NO:
- 84 ABSTAIN:
- 85 ABSENT:
- 86
- 87 First Reading:
- 88 Public Hearing:
- 89 Second Reading:
- 90 Effective Date:



City of Homer

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Office of the City Manager

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Homer, Alaska 99603

citymanager@cityofhomer-ak.gov

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(f) 907-235-3148

Memorandum

TO: Mayor Castner and Homer City Council

FROM: Rob Dumouchel, City Manager

DATE: March 26, 2023

SUBJECT: FY24/25 Budget Preview

In the supplemental packet, I have included a copy of the draft Operating Budget for Fiscal Years (FY) 2024 and 2025. I have also included a sneak peek at the capital projects list broken up by funding source with some insight as to what I am planning on approving. This is a **preview** and not the “official” budget. I’d say we’re at 95%, but we’re still working out some details before submitting a budget ordinance in April. I am providing these drafts so that Council gets the big picture of how the budget is coming together.

FY24/25 General Fund Operating Budget Highlights

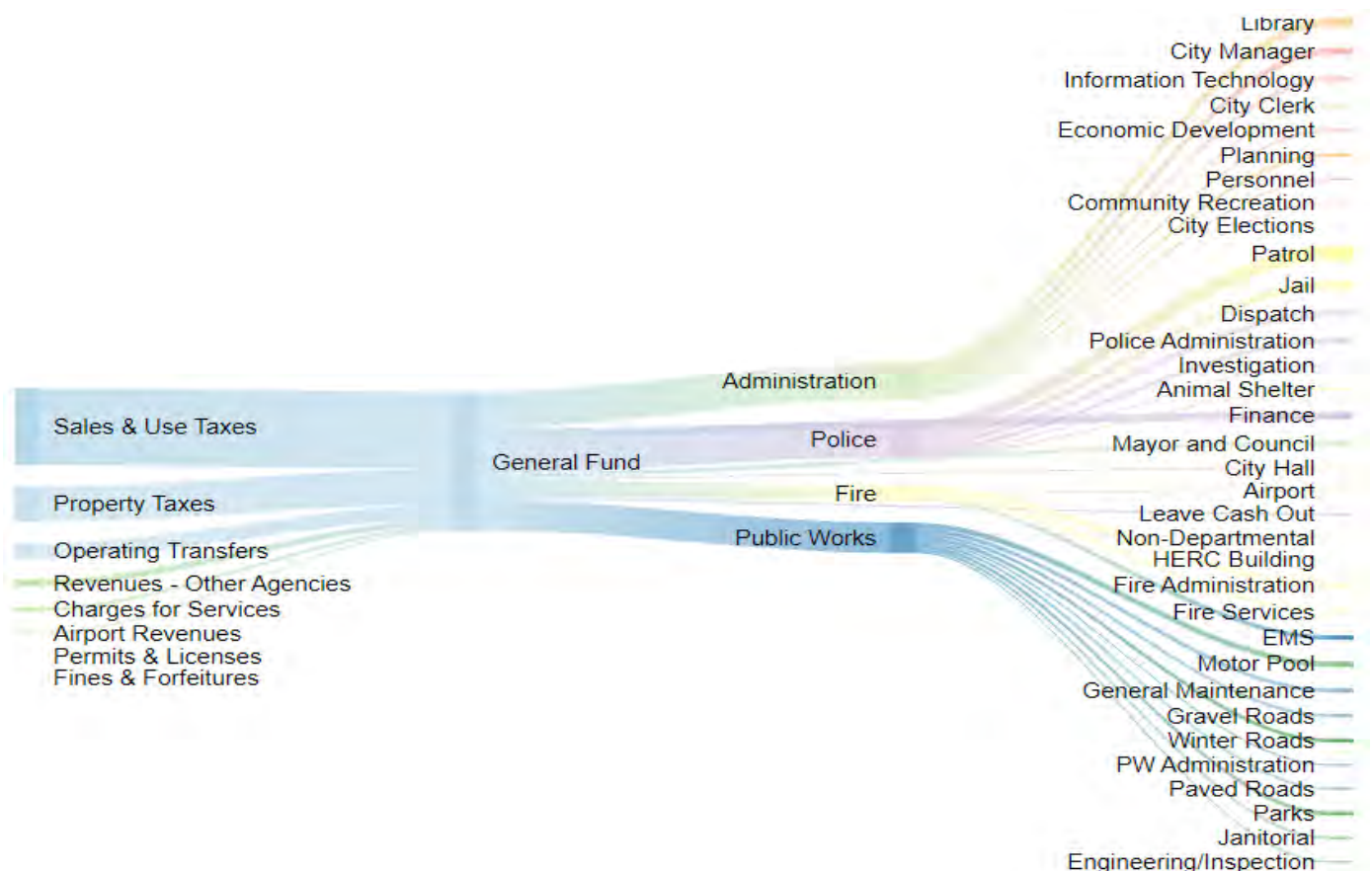


Figure 1 - Sankey diagram showing the flow of revenues and expenditures in the FY24 General Fund Operating Budget

The FY24 budget has a total of \$16.2 million in operating expenditures. The graph above shows how money flows into the Operating Budget and how it is expended (please note that the diagrams are also in draft status). The challenge with this budget was that while revenues continue to increase, so do costs of goods and services. As we've worked drafts, we've gone back and forth between a slight deficit and surplus. It includes the following highlights:

- A 1% COLA for employees and an increase in the health insurance incentive for full-time employees who do not take City insurance from \$400/month to \$800/month;
- Health insurance is forecasted with an 8% increase and property/auto/liability insurance (AMLJIA) is forecasted with a 10% increase;
- One Finance position will remain unfilled in 2024;
- The two Fire positions approved in Ordinance 22-82 will be funded by a transfer from the General Fund Fund Balance as described in the ordinance;
- A Parks Coordinator position will be created through the conversion of former temporary employee wages;
- In lieu of administrative fees:
 - The Harbor Enterprise will pay its own legal bills, sponsor the wages for one new janitorial position, and fund 50% of one special project coordinator; and
 - The Utility Fund will pay for 1.5 finance positions to offset the costs of utility billing and special assessment district management, the Utility will also pay its own postage fees for bills;
- Campground revenues will be moved to the Port Enterprise;
- Available funds for the Animal Shelter are increased by \$90,000 (will require a modification to the contract as well, if approved);
- Training, travel, and subsistence line items are being merged into "Employee Training";
- Travel related to lobbying has been merged into the "Lobbying" line item;
- An Economic Development page returns to the budget;
- We have significantly increased the IT budget to include the addition of a new line item for "IT Security" funded at \$80,000;
- A \$35,000 increase in professional services for Finance to allow for help with higher-end technical projects through term contracts;
- A proposed increase of \$10,000 per year to the Pratt Museum;
- A \$72,000 increase to the Fire budget for firefighter physicals;

The FY25 budget has a total of \$16.5 million in operating expenditures. The increase between FY23 and FY25 is 8.1%. The FY25 General Fund Operating Budget includes the following changes on top of what is proposed for FY24:

- No COLA for employees is included at this time because the economy is so volatile and it's difficult to forecast what will be appropriate and affordable – it is intended that we will revisit this at the midbiennium adjustment;
- The addition of a longevity pay program for employees who have topped out on the wage scale;
- The vacant Finance position will be reactivated;
- The Fire positions approved by Ordinance 22-82 will only be partially funded by the General Fund Fund Balance, putting us on track to absorb the cost by FY26 as originally planned.

FY24/25 Utility Fund Operating Budget Highlights

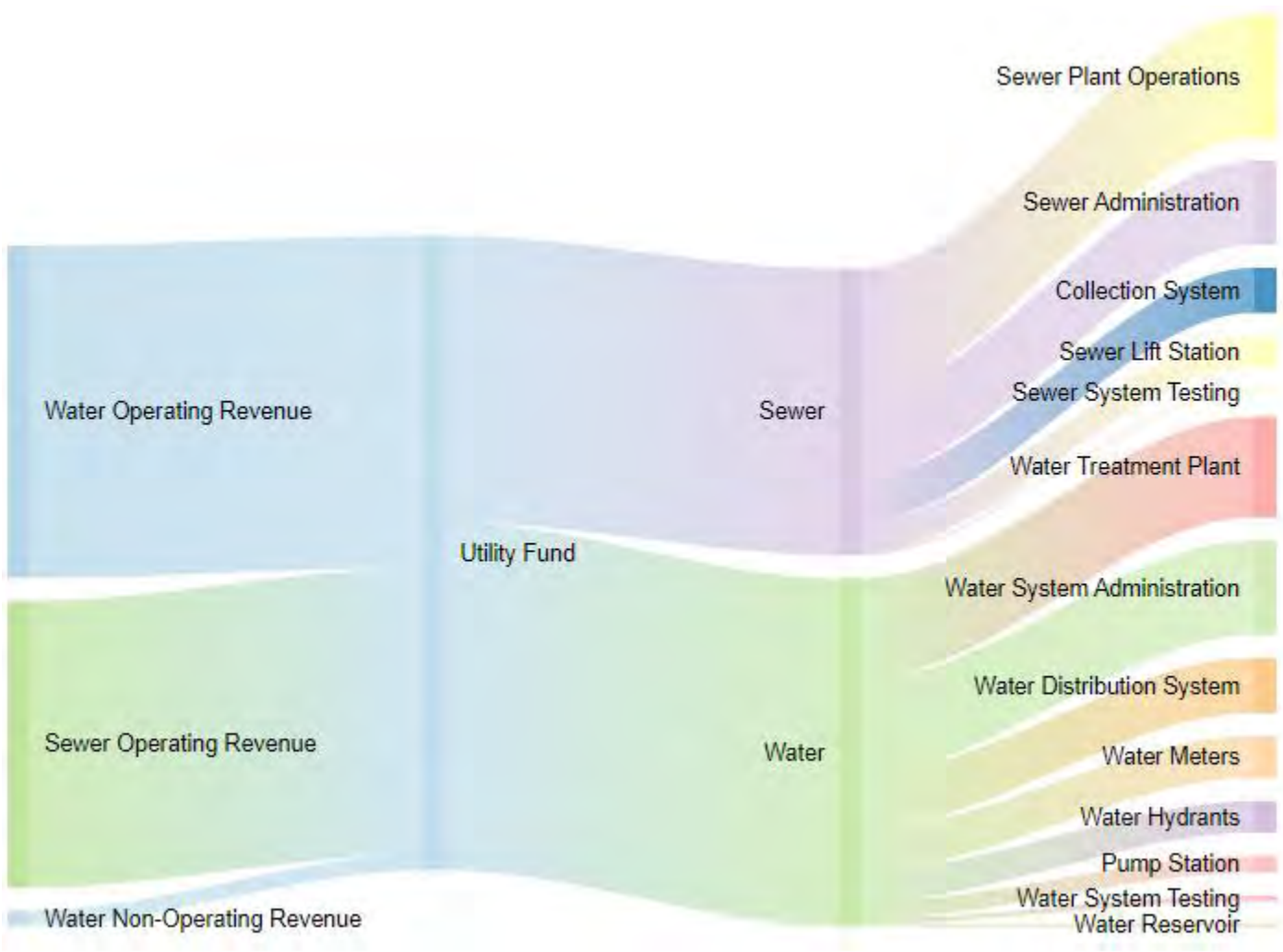


Figure 2- Sankey diagram showing the flow of revenues and expenditures in the FY24 Utility Fund Operating Budget

The Utility Budget sees expenditures of \$4.3 million for FY24 and \$4.5 million for FY25. The increase between FY23 and FY25 is 20.3%. The Finance Director, Public Works Director, and I have been working together to update both the rates and the budget for the new fiscal years. We will bring something more detailed back to Council shortly. The highlights for this biennium include:

- A continued lack of administrative fees;
- The Utility will pay for 1.5 Finance employees who directly support the utility fund;
- Movement of funds from utility operations to CARMA and moving towards the operating reserve goals set by Council

FY24/25 Port Enterprise Fund Operating Budget Highlights

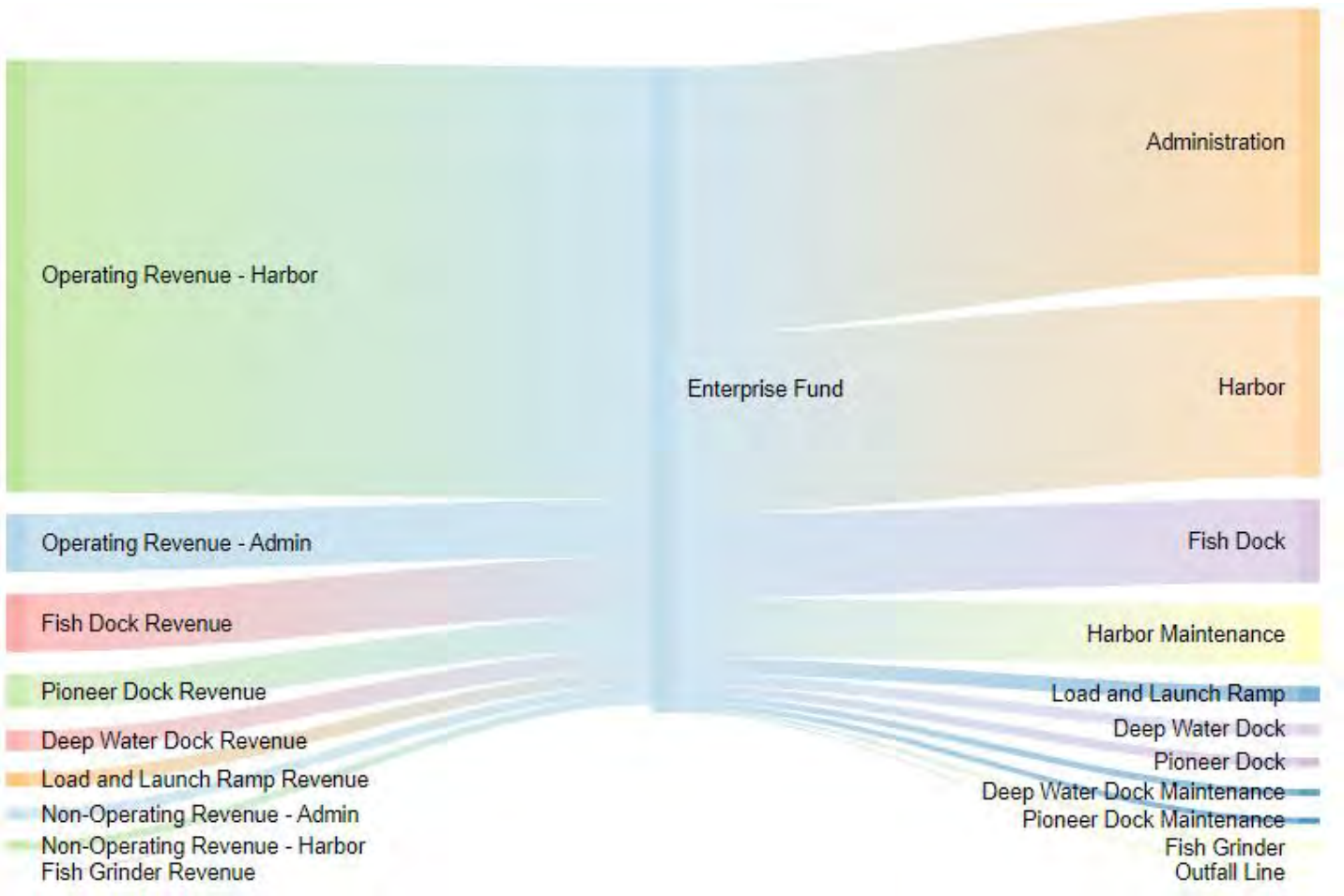


Figure 3- Sankey diagram showing the flow of revenues and expenditures in the FY24 Port Enterprise Fund Operating Budget

The Port and Harbor Enterprise is forecasted to have \$5.8 million in FY24 expenditures, and \$5.9 million in FY25. The increase from FY23's budget and FY25 is 11.1%. Operating budget highlights include:

- New revenue stream from Spit camping (~\$110,000/year);
- Increase parking revenues tied to an expansion in that program and an increase in rate;
- No administrative fees;
- Port will pay its own legal billings and a legal line item has been created;
- Port will sponsor the salary of one new full-time janitor (to be managed by Public Works), and pay 50% of one special projects coordinator;

- The seasonal temp budget will be expanded to support a small increase in the field and administrative teams
- Two seasonal positions will be converted to full time positions (ice plant operator and port maintenance technician)

FY24/25 Capital Budget Request Preview

The following tables show the requests made to the City Manager and a **draft** indication as to whether I intend to approve them or not. Something new this year is a series of requests for funds to be put aside for grant matches. We're still crunching numbers on the capital side, and I will have something more comprehensive available for Council in the not too distant future.

Fleet CARMA – Fund 152

Requesting Dept./Div.	Title	Description	Request	CM Approved
Fire	Ladder Truck (Used)	As the City has grown and allowed for larger structures to be built, the addition of a ladder truck to the fire fleet has become a necessary expansion. Ladder trucks can run \$1.4 – \$1.6 million new and appropriately equipped. We have an opportunity to purchase a used ladder truck from Ketchikan and staff is currently doing due diligence to inspect the vehicle and determine if it would be a good purchase for the City.	\$200,000	Pending – depends on outcome of inspections; may be a pre-budget ordinance
Fire	Off-road Firefighting Apparatus	This side-by-side vehicle with upgrades to haul water and crew for fire suppression purposes would replace the capabilities of Brush-2 which is at the end of its useful life. This vehicle would ensure we retain the capability to respond to fires off the road and on beaches.	\$45,000	YES
Fire	Deputy Chief Vehicle Replacement	The Deputy Chief is required as a Command Officer and paramedic to respond directly to calls with a reliable and tactical ready vehicle. The current vehicle is 19 years old and poorly suited to the job. The new vehicle will have all the required command equipment to manage emergency and disaster situations, communications systems, ALS medical supply storage, and rescue equipment. A plow will also be added to assist with response during winter weather.	\$95,000	YES
Fire	Pumper/Tanker Contingency	Council approved the purchase of an Enforcer 2500 gallon tender fire truck with Ordinance 22-22 at a price not to exceed \$800,000. The City received a large discount for prepayment and \$93,394 was left unspent. Administration would like to set \$25,000 aside as a contingency and return the rest (\$68,394) to Fleet CARMA.	\$25,000	YES
Fire	Engine-4 Replacement	Engine-4 is an essential part of the firefighting fleet in the city and is vital to sustaining an ISO rating that has been enjoyed by tax payers for years. Engine-4 is 40 years old, 20 years overdue for replacement and will not be classified during the next ISO visit due to its age which will have a noticeable impact on insurance premiums (increasing) on all insured businesses and homeowners in Homer. Engine-4 did	\$819,000	NO Expecting an opportunity to purchase a ladder truck before FY24/25 is

		not pass its last pump test in June of 2022 and was down with mechanical issues (failed brakes) for more than 5 months. With Engine-4 unable to pass its pump test it is essentially out of service and not to be used, leaving us with only one Engine.		adopted; this request should be seriously considered at the time of the mid-biennium adjustment, if not sooner
Public Works	Grader	Procure a grader for the purpose of plowing snow, grading roads, repairing water/utilities, and otherwise supporting the installation and maintenance of PW infrastructure.	\$365,000	NO

General CARMA – Fund 156

Requesting Dept./Div.	Title	Description	Request	CM Approved
Admin	HERC Match Funds	Move money remaining in the natural gas free main allowance account after the audit into HERC CARMA for future use	\$311,216	YES
Community Recreation	Bounce House	In an effort to provide additional fun, active and engaging programs specifically for the younger youth demographic. A bounce house would provide indoor and outdoor opportunities. The estimate includes shipping cost	\$15,000	NO
Community Recreation	Recreation Management Software	Software would be used to improve and streamline the overall operations of the division by allowing for: online registration and payment; improved scheduling and communications; participant tracking; etc.	\$11,000	NO CM would support software when the HERC is replaced
Fire	Fire Hose Replacement	The existing fire hose system used to fight structural, vehicle, marine, and industrial fires is due to be replaced.	\$78,000	YES
Human Resources	Personnel Regulations and Salary Schedule Overhaul	Both personnel regulations and salary schedule-related items need to be reviewed and updated intermittently to keep up with trends in the workplace and a changing legal environment. This project would be used to hire a consultant to help staff update and modernize current HR systems	\$75,000	YES
IT	Upgrade City Workstations to Microsoft Office 2021	Most City workstations are running Office 2016. The IT Division recommends updating all of these machines to Office 2021.	\$40,000	YES

IT	NextGen Firewall	Unlike a traditional firewall, which prevents or allows network traffic based on simple criteria like source or destination, NextGen firewalls perform realtime deeper analysis of packet-level information as it enters the network to monitor for malicious content.	\$50,000	YES
Library	Replace Library Chairs	When the library opened in 2006, the furnishings included 84 wooden chairs, 15 soft lounge chairs, and 49 office-style rolling chairs. The wooden chairs have held up well, but the rest are wearing out. This request would replace lounge and office chairs and includes shipping and a small contingency (\$2,500).	\$45,000	YES
Police	Police Station Fencing	This request will fund the purchase and installation of security fencing around the back of the police station. The fencing will be a six foot tall, 9 gauge chain link fence with a continuous top rail and it will include one 20 foot wide sliding gate. This fencing will close off the back perimeter of the police station grounds, running on the lot line between the station and the post office. This back area of the police station grounds is shadowed, thickly vegetated in areas and hard to monitor closely on our video surveillance system due to shadows, changing terrain elevations and vegetation. It is the area most vulnerable to approach and trespass around the station.	\$27,000	YES
Police	Two Ballistic Shields	These ballistic shields will replace two shields that over 25 years old. The new models are significantly upgraded larger shields with improved protection from higher powered rounds and viewing ports. This project will be supported by approximately \$16,000 from the seized assets account which may only be used for police related purchases.	\$23,000 - \$16,268 from seized asset account and \$6732 from CARMA	YES
Police	Virtual Reality Training System	This request is for a Virtual Reality Training system from InVeris Training Solutions for patrol and jail officer training. This system is an advanced training solution that uses virtual reality, (VR), for critical, real-world preparation of our officers for use of force situations.	\$79,900	NO Attempt to fund through Homeland Security Grant Programs first
Police	Night Vision Equipment	This request is to purchase night vision equipment for 12 police officers. We currently have four units that are 15 years old and in poor condition. The new equipment will consist of 10 single tube units and 2 double tube units along with the required mounting hardware. The new units mount to the officer's helmets and are adjusted to each individual officer's physical characteristics.	\$95,000	NO Attempt to fund through Homeland Security Grant Programs

Police	In-Car Video Cameras	This project will equip 12 of our patrol vehicles with in-car video cameras. It will also provide the necessary data storage and retrieval equipment. Approximately 80% of police departments are now operating with in-car video recording equipment. The recordings offer excellent documentation of what an officer saw and did during traffic stops and the subsequent encounters. The recordings obtained will primarily be used as evidence in court room proceedings. The district attorney's office is now requiring video recordings to go to trial in some driving cases. Without the recordings we are in danger of having cases dismissed. The recordings can also be used for training, liability protection, improving officer safety and providing transparency of police conduct to the public. Statistically, a police department is more likely to be sued for use of force allegations and driving related incidents versus anything else.	\$162,204 Would also include an annual expense for service and data storage	NO Attempt to fund through Homeland Security Grant Programs first
Public Works	Seawall Maintenance	To be paid from the Seawall CARMA fund within the General CARMA Fund	\$4,000	YES
Public Works	Hornaday Park Playground Improvements	The Homer Foundation's board of trustees approved the use of left over funds from the original playground project and the boat house pavillion to be used for maintenance and improvement of the existing Hornaday Park playground. The request to Council is for \$25,000, however, \$20,363 will be reimbursed by the Homer Foundation.	\$25,000 \$20,363 to be reimbursed by Homer Foundation	YES
Public Works	ADA-Family Restroom at Airport	This Request will fund the design and purchase of construction materials to build an ADA-compliant, gender-neutral Family Restroom at the Airport. The design will cost \$25,000, based on an estimate from a local architect and engineering team, mostly to address Fire Marshall requirements. Then, we would buy the construction materials and built it with PW labor, during "shoulder" seasons.	\$50,000	YES
Public Works	Airport Terminal Sidewalk Repairs	This Capital Request will fund the replacement of a portion of the concrete sidewalk at the airport that has buckled due to frost heave. The cost is based on a quote from a reputable local concrete contractor, which I incased by 10% for escalation.	\$76,175	YES
Public Works	GIS Upgrade	One-time license upgrade for GIS system, addition of two extra "seats" for Public Works employees, and two Trimble tables for field work	\$16,490	YES
Public Works	HERC I Roof Inspection	With the challenges related to demolishing the HERC structures, age of the existing roof structure, and series of buildings that have collapsed under snow weight in Alaska recently, it seems	\$15,000	YES

		wise to inspect the existing roof to determine its condition and how much life is left in it.		
Public Works	Karen Hornaday Park Master Plan	Develop a new master plan for Karen Hornaday Park	\$50,000	YES
Public Works	Air Conditioning for Public Works Server Room	Request would fund purchase of an air conditioning unit to be installed in the server room	\$8,000	YES
Public Works	Tenant Improvements for Kachemak Center	Kachemak Center is a potential rental location for Building Maintenance and Parks to reside once they leave the HERC.	\$40,000	NO Uncertain if this will be the best location, looking for alternatives
Public Works	HERC II Abatement and Demolition	Increases the funds available for the demolition of the HERC II building.	\$325,000	NO Take separate action when Admin and Council are aligned on a solution
Public Works	HERC I – HazMat Abatement/Demo Design	Fund the develop of a hazardous materials abatement and demolition plan for HERC I	\$75,000	NO Ongoing issue

Utility CARMA – Fund 256 – Water

Requesting Dept./Div.	Title	Description	Request	CM Approved
Public Works (Water)	Paint Brush Booster Station Pump Upgrade	The Paint brush booster Station supplies potable water to customers above the gravity feed water transmission main. In 2022 the electric components failed and left customer without water. The booster station was built in 2008. Parts are no longer available for this equipment. Operators were able to find old components at the STP, but those are limited. Funds will be used to replace existing booster pumps and upgrade electrical components and telemetry as needed. We submitted a ADEC SRF Questionnaire and expect this project will be added to the ADEC's Intended Use Plan, allowing us to access SRF Loan Funds.	\$250,000	YES
Public Works (Water)	WTP Membrane Filter Train FY24	This will buy one water filter membrane train for the Water Treatment Plant to replace one of the existing membrane trains that is beyond its useful life. A questionnaire for ADEC SRF has been submitted for this	\$80,000	YES

		project.		
Public Works (Water)	WTP Membrane Filter Train FY25	This will buy one water filter membrane train for the Water Treatment Plant to replace one of the existing membrane trains that is beyond its useful life. A questionnaire for ADEC SRF has been submitted for this project.	\$85,000	YES
Public Works (Water)	Design for Replacing 8" Cast Iron Distribution Line	Fund the design of a replacement line	\$90,000	YES
Public Works	Vehicle Contingency	We have had difficulties in ordering vehicles, and when we do, the costs have gone up significantly. The intent of this funding is to cover overages for vehicles already approved in the prior budget.	\$15,000	YES

Utility CARMA – Fund 256 – Sewer

*Expecting changes here as we get the Utility Fund and rates dialed in better.

Requesting Dept./Div.	Title	Description	Request	CM Approved
Public Works (Sewer)	Transfer Switch, STP	Backup power to the Sewer Treatment Plant is provided by an on-site diesel generator. During a power outage a transfer switch automatically transfers the plant to the generator. The original switch from 1990 is not transferring power properly. Funds will be used to purchase a new transfer switch and install it.	\$38,500	YES
Public Works	Vehicle Contingency	We have had difficulties in ordering vehicles, and when we do, the costs have gone up significantly. The intent of this funding is to cover overages for vehicles already approved in the prior budget.	\$15,000	YES
Public Works (Sewer)	Coatings for Digesters	Fund the renovation of the concrete coating on the WWTP digesters. Project is eligible for Clean Water SRF and we have submitted a questionnaire to ADEC which is the first step towards getting a loan	\$300,000	NO
Public Works (Sewer)	Coatings for Clarifiers	Renovate the coating on the WWTP clarifiers. Project is eligible for Clean Water SRF and we have submitted a questionnaire to ADEC which is the first step towards getting a loan	\$450,000	NO
Public Works (Sewer)	Final Design – Beluga Lift Station	Final design of project. Eligible for ADEC loans	\$100,000	NO
Public Works (Sewer)	WWTP Aeration Pond Effluent Box	Rebuild the electrical works for the aeration pond effluent box at the WWTP. A questionnaire for ADEC SRF loan funds has been submitted	\$73,000	NO
Public Works	Portable 3 Phase	Portable, 3 phase power backup generator. Public works does not have one at this time.	\$95,000	NO

(Sewer)	Back Up Generator	The sewer plant does have a backup generator, but it is not always available and we need a dedicated unit in case of emergency.		
Public Works (Sewer)	Dredge Sludge Lagoon at WTP	Fund the dredging and renovation of the sludge lagoon at the WTP	\$60,000	NO
Public Works (Sewer)	Electrical Works for Sewage Lift Station – 30 Acres	Project will upgrade/renovate the electrical works at the sewage lift station on the Spit known as the 30 acres lift station.	\$67,000	NO

HART Roads – Fund 160

*Currently working to assess whether we have available funds to also include Heath Street

Requesting Dept./Div.	Title	Description	Request	CM Approved
Admin	Road Grant Matching Funds	Seed a general grant match account for roads, stormwater, and sidewalk improvements	TBD	
Public Works	Nuclear Compaction Testing Device	Device measures compaction of soil and asphalt	\$20,000	YES
Public Works	Fuel Island Replacement - Construction	The fuel island at Public Works serves as a fueling station for vehicles citywide. It is over 30 years old and nearing end of life.	\$190,000	YES
Public Works	Bunnell Ave Road Restoration Project - Design	This project will fund the design of the Bunnell Avenue Road Restoration Project – road, sidewalks, and storm drain. The Council funded the design of the Ohlson/Bunnell Pavement Restoration Project in FY23. During preliminary design, it became apparent the local property owners wanted more discussion about what to do on Bunnell Avenue. The projects were split so that we can proceed with Ohlson Lanes final design and construction while the land use issues related to Bunnell Ave are addressed in other planning processes.	\$50,000	YES
Public Works	Beluga Slough Green Infrastructure Project	This request will fund matching funds required by the ACWA Grant to design/construct a green infrastructure project at the end of Bunnell Street	\$125,900	YES
Public Works	Ben Walters Sidewalk Construction	Fund the construction of the Ben Walters Sidewalk	\$1,700,000	YES
Public Works	Svedlund-Herndon Sidewalk Design	This request will fund the design of a sidewalk that connects pedestrians from Pioneer Avenue, north on Svedlund, and then west on Herndon to the Senior Citizen Housing Project	\$75,000	YES
Public Works	Iris Court Drainage	This request will increase funds to correct a drainage problem on Iris Court	\$100,000	YES
Public Works	Kachemak Sponge Green Infrastructure Project Property	This project will fund property acquisition for the Kachemak Sponge Green Infrastructure Project. We expect approximately \$883,524 to	\$418,100	YES

	Acquisition	be covered by grant funds and the remaining \$418,100 by the City or other funders.		
Public Works	Vehicle Contingency	We have had difficulties in ordering vehicles, and when we do, the costs have gone up significantly. The intent of this funding is to cover overages for vehicles already approved in the prior budget.	\$15,000	YES
Public Works	Kachemak Sponge Green Infrastructure Project Construction of Storm Water Works	The costs are eligible for ADEC SRF financing and currently listed on ADEC's intended use plan for \$1,000,000.	\$2,459,080	NO Currently seeking other funding sources first
Public Works	Kachemak Sponge Green Infrastructure Project Design and Other Professional Services	This request will fund the design and associated professional services for the Kachemak Sponge Green Infrastructure Project. Much of the work will be funded by a grant. The project is also listed on the ADEC's intended use plan for State Revolving Use Funds.	\$354,050	NO Currently seeking other funding sources first
Public Works	Allowance for HAPP Matching Funds	This request will fund matching funds required by the RAISE Grant, for which the City has submitted an application for the planning and design of multiple non-motorized transportation improvements	\$500,000	NO Put funds towards a general HART match instead since specific grant awards are unknown at this time
Public Works	Heath Street – Pavement Restoration Project	Project design was funded in FY23 and implementation programmed into the Road Financial Plan. The cost estimate is based on the 35% design, which calls for the rebuilding of Heath Street from the Sterling Highway to the High School. As the design progresses, we will be isolating which portions of the street need to be rebuilt	\$2,328,668	NO Exceeds current funds available
Public Works	Public Works Mechanics/Operators Shop - Design	This request will fund design and related professional services for a new mechanics and operators shop	\$100,000	NO Still seeking property

HART Trails – Fund 165

Requesting Dept./Div.	Title	Description	Request	CM Approved
Economic Development	Wayfinding and Streetscape Implementation	Phase one of wayfinding implementation with a focus on pedestrian trailheads, wayfinding in downtown, at Spit campgrounds and major Spit facilities, and Baycrest visitor kiosk.	\$50,000	YES
Economic Development	Trail Design Criteria Manual Update	The current manual was created in 2009. Since then, new guidelines have been proposed for ADA access, which should be incorporated into City trail standards. Project intended for FY25 so	\$50,000	YES

		the City has time to learn policy issues with the new requirements for non-motorized transportation in new subdivisions. Year round trail maintenance considerations also need to be incorporated into trail standards.		
Public Works	Lee Avenue Trail	Fund the completion of a new trail on Lee Avenue between Heath Street and Kachemak Way	\$15,000	YES
Public Works	Vehicle Contingency	We have had difficulties in ordering vehicles, and when we do, the costs have gone up significantly. The intent of this funding is to cover overages for vehicles already approved in the prior budget.	\$15,000	YES

HAWSP – Fund 205

Requesting Dept./Div.	Title	Description	Request	CM Approved
Admin	Water/Sewer Expansion Grant Match	Seed a general grant match account for water and sewer expansion projects	TBD	
Public Works	Master Water and Sewer Plan	Develop a new water/sewer master plan. This plan is eligible for ADEC Drinking Water and Clean Water loans and the high probability of being awarded Principal Forgiveness subsidies. ADEC likes communities who care enough to plan their infrastructure.	\$90,000	NO Seeking other funding opportunities first
Public Works	Bishop's Beach Restroom Replacement	This project will fund the construction of a new plumbed restroom at Bishop's Beach Park	\$400,000	NO

Port & Harbor Fleet – Fund 452

Requesting Dept./Div.	Title	Description	Request	CM Approved
Port	Patrol Truck	Harbor officers use the patrol vehicles throughout the various shifts to keep watch over the facilities. This expenditure replaces patrol truck 400 built in 2010. Once the new truck is in service, truck 400 will be moved to finish its useful life with seasonal port staff.	\$55,000	YES
Port	Port Maintenance Plow Truck	Port Maintenance has the responsibility of keeping the docks, ramps, ramp approaches, and some key parking areas cleared of snow.	\$60,000	YES

Port & Harbor Reserves – Fund 456

Requesting Dept./Div.	Title	Description	Request	CM Approved
Admin	Future Grant Match Start of FY24	Create a Harbor Grant Matching Fund and seed it with \$500,000 already in Port Reserves	\$500,000	YES
Admin	Future Grant Match FY24	Add \$500,000 at the end of FY24	\$500,000	YES
Admin	Future Grant Match FY25	Add \$500,000 at the end of FY25	\$500,000	YES
Port	Outfall Line Pump	Purchase a spare replacement pump for the City outfall line. This outfall line is connected to the fish grinder building and its purpose is to pump the ground fish materials to the disposal site between the first and second Pioneer Dock mooring dolphins at the end of the Homer Spit	\$25,000	
Port	Ice Metering System	This metering equipment upgrade will allow us to more accurately dispense the ice that we sell at the Fish Dock. The metering system currently in use for ice delivery is original equipment, not repairable, and also not accurate resulting in over-delivery of ice.	\$145,000	YES
Port	Harbor Bottom Survey	Survey the entire small boat basin and calculate the amount of materials that would need to be removed to get back to design depth. Based on the total number of cubic yards to be removed we would be able to estimate the cost to re-dredge the nonfederal portion of the harbor basin	\$25,000	YES
Port	Tank 1 Sludge Removal	Port Maintenance is tasked with collecting the used oil, antifreeze, filters, and absorbent rags from the ramp two and ramp seven collection satellite buildings. The materials are processed through our used oil building next to the Port Maintenance shop. We have three 10,000 gallon used oil tanks that we store the collected oil in. In an as needed agreement we pay a firm to pump the collected used oil into a tank truck and transport to a processing facility in Anchorage. Over time sludge (heavy contaminated oil waist) has accumulated on the bottom of the tanks resulting in less storage capacity. With this project, a team will be hired to clean the sludge out of the bottom of one of the three	\$40,000	YES

		storage tanks.		
Public Works (Sewer)	Electrical Works for Sewage Lift Station – Fish Grinder	Project will upgrade/renovate the electrical works at the sewage lift station at the Fish Grinder.	\$40,000	
Port	Camera System Ramps 1-5	A project designing the system was funded in the previous budget. Cameras have been very effecting to deter theft, vandalism, and facility misuse. Ramps 1 thru 5 are very high use areas of the harbor and having a reliable camera system to support our mission will be a huge benefit to vessel, business, and vehicle owners in those areas.	\$344,000	NO This project can wait while larger financial needs are considered
Port	Wood Grid Replacement Engineering	Staff have determined that the Wood Grid is very near its end of live from a safe operations use standpoint. During the CIP review the Wood Grid was moved up to level 1 of importance in the Capital improvement project list by the port commission and council. Phase 1 of this project will be to complete engineering and design for the replacement of this vessel maintenance facility.	\$25,000	NO
Port	Fish Grinder Building	Design and construct a new building for the Fish Grinder. This project, since it involves the disposal of waste products, qualifies for ADEC SRF loans. A questionnaire has been submitted.	\$300,000	NO Currently seeking other funding sources first
Port	Spit Parking Lot Storm Drain Project	This project will upgrade several parking lots on the Spit with paving and storm drain improvements so that the Enterprise can charge for parking. This project, since it involves storm water collection and treatment, qualifies for ADEC SRF funds. A questionnaire has been submitted.	\$1,198,628	NO Wait on outcome of loan questionnaire

Staff Recommendation: Review draft budget items and be prepared for further discussion in April and May as we move towards adoption.



AGENDA ITEM REPORT

Ordinance 23-21, An Ordinance of the City Council of Homer, Alaska Amending Homer City Code Section 22.10.050 to Specify that Preliminary Plats Approved by the City Shall Include all Development Commitments made to the City, and that a Final Plat for the City of Homer Shall be an As-Built Survey. Davis/Erickson.

Item Type: Ordinance
Prepared For: Mayor Castner and Homer City Council
Meeting Date: 10 April 2023
From: Council Members Davis and Erickson

The intent of this ordinance is to address the phenomenon of new subdivisions coming into existence in Homer that do not include various development commitments (e.g. sidewalks, trails, easements, drainage routes & infrastructure) that were made to the City during the approvals process for the subdivision, but were never implemented.

The proposed solution is to a) require that all development commitments made to the City be included on the preliminary plat prior to its approval by the City and transmittal to the Kenai Peninsula Borough, and b) to require that the final plat issued by the Borough be an as-built survey showing completion of all the commitments included on the preliminary plat.

Our intent in introducing this ordinance now is not that it be passed immediately, but that it be referred to the Planning Commission for comment and input.

Recommendation:

Introduce Ordinance 23-21 and refer to the Planning Commission, schedule public hearing and second reading on May 22, 2023.

Attachments:

Ordinance 23-21

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

Davis/Erickson

3
4 **ORDINANCE 23-21**

5
6 AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA,
7 AMENDING HOMER CITY CODE SECTION 22.10.050 TO SPECIFY
8 THAT PRELIMINARY PLATS APPROVED BY THE CITY SHALL
9 INCLUDE ALL DEVELOPMENT COMMITMENTS MADE TO THE CITY,
10 AND THAT A FINAL PLAT FOR THE CITY OF HOMER SHALL BE AN
11 AS-BUILT SURVEY.
12

13 WHEREAS, The City of Homer has a responsibility to its residents to ensure that new
14 subdivisions are designed and built with necessary infrastructure for the health and safety of
15 its citizens and the protection of the environment; and
16

17 WHEREAS, Developers of new subdivisions often make development commitments to
18 the City related to sidewalks, trails, sewer connections, drainage, storm water controls,
19 grading, slope, setbacks, protection of wetlands, preservation of existing watercourses and/or
20 mitigation of potential downstream impact of watercourse alteration, and other subdivision
21 improvements that may be required by code, or which may not be required by code but may
22 arise in consultations with city staff or in response to public testimony related to the
23 development; and
24

25 WHEREAS, The public hearing that is included in the preliminary plat approval process
26 is the primary opportunity for public engagement in the process of developing new
27 subdivisions, and this public engagement sometimes results in additional development
28 commitments being made to the city; and
29

30 WHEREAS, In the past there have been instances where development commitments
31 that were made to the City were not implemented as promised; and
32

33 WHEREAS, Current city code envisions a final plat to be issued by the Borough on the
34 basis of an agreement to carry out certain commitments, rather than on the basis of those
35 commitments actually having been carried out; and
36

37 WHEREAS, A policy requiring all development commitments to be included on the
38 preliminary plat, and requiring the final plat to be an as-built survey showing completion of all
39 the elements included on the preliminary plat would appear to be an effective means of
40 ensuring all commitments undertaken by a subdivider have been implemented.
41

42 NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

43 Section 1. Homer City Code Chapter 22.10.050 entitled “Improvement requirements -
44 General” is hereby amended as follows:

45
46 22.10.050 Improvement requirements - General

47 a. **The final plat for a subdivision in the City shall be an as-built survey showing**
48 **completion of all elements of the previously-approved preliminary plat.** The Kenai
49 Peninsula Borough shall not release any final plat for a subdivision in the City for filing at the
50 State Recorder’s office until the subdivider or developer of the subdivision ~~either enters a~~
51 ~~subdivision agreement for, or~~ constructs and obtains written City approval of, the following
52 improvements, according to the standards and procedures required under HCC Title 11:

- 53
- 54 1. Streets in all rights-of-way dedicated by the plat;
 - 55 2. All other utilities and public improvements to be constructed in the rights-of-way and
56 easements dedicated by the plat, including water, sewer, electric, communications,
57 and gas lines, and applicable means for non-motorized transportation; and
 - 58 3. Abandonment or relocation of existing water or sewer service lines required due to
59 conflict with new or relocated property lines, as required by the Public Works
60 Department.

61

62 b. The Commission may exempt a plat from the provisions of subsection (a) of this section as
63 provided in HCC 22.10.040.

64

65 c. The subdivider shall be required to dedicate street rights-of-way according to the standards
66 and specifications of Chapter 11.04 HCC and the City of Homer Design Criteria Manual. The
67 subdivider shall be required to dedicate ROW or easements required to support non-motorized
68 transportation facilities required by HCC 11.04.120. Beyond a minimum of 60 feet, the
69 subdivider may agree to a note attached to said subdivision plat providing sufficient setback
70 to allow future expansion of the right-of-way without removal of improvements. Horizontal
71 alignments are subject to City review; the City may require realignment of streets on proposed
72 plats if the alignments do not conform to Chapter 11.04 HCC and the Design Criteria Manual.
73 Final plat approval shall thus be subject to the approval of horizontal alignments by the City
74 Public Works Engineer.

75

76 d. All street, utility main improvements and means for non-motorized transportation to be
77 constructed as part of a subdivision agreement shall be constructed according to the
78 procedures of Chapter 11.20 HCC. The City shall accept no such improvements unless a
79 subdivision agreement is executed prior to construction of such improvements.

80

81 **e. Any development commitments made by a subdivider to the City shall be shown on the**
82 **preliminary plat prior to its transmittal by the City to the Kenai Peninsula Borough. Any**
83 **plat notes provided in lieu of drawings shall be specific and promissory. Such**
84 **development commitments may be related to sidewalks, trails, sewer connections,**

85 **drainage, storm water controls, grading, slope, setbacks, protection of wetlands,**
86 **preservation of existing watercourses and/or mitigation of potential downstream impact**
87 **of watercourse alteration, and any other subdivision improvements, whether required**
88 **by code, or which may not be required by code but may arise in consultations with city**
89 **staff or in response to public testimony related to the development.**

90

91 e **f.** All streets constructed as part of a subdivision improvement project shall be monumented
92 according to the procedures of Chapter [11.20](#) HCC (HCC [11.20.090](#)(d)).

93

94 Section 2. This ordinance is of a permanent and general character and shall be included
95 in the City Code.

96

97 ENACTED BY THE HOMER CITY COUNCIL this ____ day of ____, 2023.

98

99

CITY OF HOMER

100

101

102

103

KEN CASTNER, MAYOR

104

105

106 ATTEST:

107

108

109

110 _____
MELISSA JACOBSEN, MMC, CITY CLERK

111

112 YES:

113 NO:

114 ABSENT:

115 ABSTAIN:

116

117 First Reading:

118 Public Hearing:

119 Second Reading:

120 Effective Date:



City of Homer

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Memorandum

TO: Mayor Castner and Homer City Council
FROM: Rob Dumouchel, City Manager
DATE: April 5, 2023
SUBJECT: City Manager's Report for April 10, 2023 Council Meeting

Army Corps General Investigation Contract Has Been Signed

At our last meeting, Council adopted Resolution 23-026 authorizing the City Manager to negotiate and execute the appropriate documents to officially enter into an agreement with the US Army Corps of Engineers for the Homer Harbor Expansion's general investigation. Colonel Delarosa, who has been a regular visitor to Homer during his tour in Alaska, visited the harbormaster's office later that same week to sign the contract for the Army Corps. After many years of working towards this point, we are very excited to actually start the study with the Army Corps and see where the process takes us.

Tsunami Operations Workshop

Chief Kirko and I attended a two and a half day Tsunami Operations Workshop in Kodiak. The event was sponsored by a National Tsunami Hazard Mitigation Program grant and all costs incurred by the Chief and I were covered by a Federal grant to the State of Alaska. The workshop included lectures and tabletop exercises with representatives from the Alaska Department of Homeland Security & Emergency Management, the Alaska Division of Geological & Geophysical Surveys, the University of Alaska Geophysical Institute, the NOAA National Tsunami Warning Center, the National Weather Service, American Red Cross of Alaska, and US Coast Guard Sector Anchorage. It was a lot of information to digest, but I appreciated having an opportunity to focus on tsunami response and mitigation topics with a wide cross section of Alaska communities from "big" cities like Homer down to smaller cities like Achiook.

Update on State and Federal Grants

At the last meeting there was a request for an update regarding grant applications. We didn't have enough time to turn that interest into a work session, but we have been able to produce a matrix that gives an easy to digest overview of the various programs in motion and how we are interfacing with them. The matrix also includes State of Alaska CAPSIS requests and community directed spending (CDS – the federal earmark replacement). Projects associated with CDS requests were built to fit existing City interests into the programs available for CDS per Senator Murkowski's and Representative Peltola's offices.

Lt. Browning to Present to Alaska House Judiciary Committee

At the request of Representative Vance, Lieutenant Ryan Browning will be giving his Parenting in the Digital Age presentation to the House Judiciary Committee on April 10th. His presentation is a very candid and honest look at what social media is doing to our kids. Out of 1870 Alaskan high school aged teens, 48% of the girls

reported serious depression, 33% reported having had serious thoughts of suicide and 27% had an actual plan to kill themselves. Lt. Browning put this presentation together after investigating a sexting case with an 18 year old and much younger girls, then had a teen suicide call a few weeks after that. It's for parents to talk to their kids and WHY that is so important. Lt. Browning talks a lot about bullying, and what Instagram is doing to our youth. Some things parents need to look for when there's an issue creeping up in their kid and more than anything – it's an eye opening view for parents into what their kids are experiencing online.

Community Jails Funding

Last year Homer, along with other local governments that are home to community jails, lobbied the State Legislature for increased funding for the community jails program. Those efforts were successful and resulted in an increase for all jails. Since that time, the State has not been paying at the correct rate for FY23 and the Department of Corrections (DOC) has identified and is correcting this issue. We expect the DOC to issue a payment of \$134,904 to make up for the underpayments.

Collaborative Housing Event a Success

On Saturday, March 25, Special Projects Coordinator Ryan Foster and City Planner Rick Abboud, along with a wide coalition of community groups hosted the Greater Homer Housing Conversation at the Christian Community Church. Approximately 100 attendees gathered to discuss housing challenges and working solutions to help bring about more housing options in the community. A report on the findings of the event will be available in April and members of the organizing coalition anticipate providing a presentation on the report to the City Council. Additional information can be found at <https://ddaalaska.com/homer-housing-solutions/>.

Climate Change Workshop to Feature Homer Speakers

On April 11-12, Special Projects Coordinator Ryan Foster will be attending and presenting at the People on the Move in a Changing Climate Workshop hosted by the Alaska Sea Grant. Funded by the National Science Foundation (NSF), People on the Move in a Changing Climate (PEMOCC) is a Sea Grant-led Research Coordination Network that fosters collaboration among diverse experts and stakeholders to address research needs related to climate-induced human mobility, its socioeconomic consequences, and its role in building resilience and adaptation to the impacts of climate change in US coastal and Great Lakes regions. Additional information can be found at Alaska Sea Grant: <https://alaskaseagrant.org/event/people-on-the-move-in-a-changing-climate/>.

Cybersecurity Training

Over the last 10 days, members of the IT team visited work sites across the City to conduct a review of basic cybersecurity tips with City employees. The goal was to refresh staff awareness of the importance of the following topics: General overview of cyber threats to municipal governments; Best practices for password hygiene, including how to create memorable and strong passwords and how to determine if your passwords have been hacked; How to scan attachments for malware; How to lock your screen to prevent access to unattended computers; Precautions to use with external media (USB drives, etc). In general, staff has demonstrated a strong understanding of the importance of the users' role in defending our information technology against cyber threats, as well as a putting to use previous training in specific techniques. We would like to extend this training to Council at a future date.

Pratt Improvements

Economic Development Manager Julie Engebretsen attended the Pratt Museum and Park charrette on Wednesday, March 29th. Landscape Architect Peter Briggs of Corvus Design is working with the Pratt as part of an Economic Development Administration grant to explore options to make ADA improvements to parts of

the trail system, to create an outdoor education and community gathering space, and to better connect the Pratt to Pioneer Ave and downtown Homer's walkable network. The charrette included a walk in the woods, and an opportunity to comment on storyboards. Corvus Design is the same firm that created the City's Wayfinding and Streetscape Plan. It's exciting to see collaboration between the Pratt and the City toward the common goal of a walkable, engaging downtown area.

Homer Little League MOU Update

Economic Development staff have been busy working with Homer Little League on an updated MOU for the ballfields at Hornaday Park. The draft MOU and a resolution will be presented at the next Council meeting for review and approval. Little League begins in early May, depending on when the fields are dry.

Thank You to Drawdown Volunteers

The "Drawdown Baggers" bagged another 30 sandbags on April 1st for a season total of 506 sand bags! Over the last few months, volunteers gathered at Public Works every Saturday at noon, for an hour of sand bagging. The bags are used by parks staff to spread sand by hand for winter trail maintenance where the toolcat can't navigate. Having pre-bagged sand saves a lot of time and effort for staff. Parks Planner Matt Steffy is also working with Homer Drawdown volunteers to plan summer trail projects that will increase the number of trails that can be maintained in the winter by machine, rather than by hand. The Small Works Trail Program will cover material expenses for the upgrades, with the help of hardy trail volunteers for construction. One of the trails planned for an upgrade is East Fairview Ave, from Kachemak Way to Heath Street. This trail is heavily used by high school students walking to school.

Attachment:

State and Federal Grant update to Council



City of Homer

www.cityofhomer-ak.gov

Administration

491 East Pioneer Avenue
Homer, Alaska 99603

(p) 907-235-8121 x2222

(f) 907-235-3148

Memorandum

TO: Mayor and City Council
FROM: Jenny Carroll, Special Projects and Communications Coordinator
THROUGH: Rob Dumouchel, City Manager
DATE: April 4, 2023
SUBJECT: Update on Federal and State grant applications

This is an informational memo to provide an update on Federal and State grant applications submitted or in process in support of City of Homer projects.

Federal/State Grant Application Update

4/3/23

FY23

Project Supported	TPC	Grant Fund	Grant Funds Req	Match/Local Cost	Status	Notes
Slope Stability- Erosion Mitigation Program						
Kachemak Drive Peatland Water Quality Improvement (Kachemak Sponge)	\$4,388,791	NOAA Habitat Conservation KBNERSS led/City partner	\$ 1,188,275.00 (land acquisition)	\$ 418,000.00 (land acquisition)	Award pending	Awaiting notification/entering into sub-grant agreement. Grant is for peatland acquisition
		Congressionally Designated Spending Request #1 of 4	\$ 1,890,000.00 (water works)	\$ 892,516.00 (water works)	Submitted 3/17/2023	To Sen Murkowski & Representative Peltola City costs eligible for funds from ADEC Clean Water Revolving Loan Fund & HART funds
		State of AK CAPSIS	\$ 2,744,994.00		Submitted 2/14/2023	State capital funding very unlikely in the State's FY24 budget
Beluga Slough Stormwater Treatment System	\$ 690,000.00	Alaska Clean Water Actions	\$ 153,307.00	\$ 107,182.00	Submitted 11/9/2022 Awarded 3/1/2023	Grant agreement Ord before City Council City costs in-kind + eligible for funds from ADEC Clean Water Revolving Loan Fund
		State of AK CAPSIS	\$ 502,604.00		Submitted 2/14/2023	State capital funding very unlikely in the State's FY24 budget
Transportation						
Transportation Planning	\$ 960,000.00	Safe Streets For All KPB Applic/City partner	\$ 960,000.00	\$ 23,000.00 (in-kind)	Award announced	Application approved Reso 22-063
Non-Motorized Trans Network (REACH Project)	\$ 1,500,000.00	Fed RAISE Planning Grant	\$ 1,500,000.00	\$ -	Submitted 2/28/2023 Awaiting decision	HDR application support Reso 22-087 approved Project support Reso 23-012 approved Start date July '23/End date June '25 RAISE Constr Grant possible Feb '25
Homer All-Ages & Abilities Pedestrian Pathway	\$ 3,900,000.00	State of AK Transportation Alternatives (TAP)	\$ 3,432,000.00	\$ 468,000.00	Submitted 2/15/2023 Awaiting DOT cost estimate	HAPP sections in PW's 5-year road plan Project support Reso 23-011 approved Award announce May '23; end date June '25
Main Street Rehab/Sidewalk South	\$ 4,200,000.00	State of AK Community Transportation Program (CTP)	\$ 3,696,000.00	\$ 504,000.00	Submitted 2/15/2023 Awaiting DOT cost estimate	Main St in 7-10 year horizon in PW Road Plan Project support Reso 23-011 approved Award announce May '23; end date June '25 (\$500,000 set aside in HART for grant matching)
Homer Float Systems						
Float Systems 4 & 1 Replace		Fed Port Infrastructure Development Projects (PIDP)	\$ 32,800,000.00	\$ 8,200,000.00 (20% min match)	Application in progress Due date 4/28/2023	HDR application support Ord 23-12 approved Project support Reso to Council 4/24/2023 Could apply for PIDP '24 if '23 unsuccessful
		Municipal Harbor Grant	\$ 5,000,000.00	\$ 5,000,000.00	No action yet due in August 2023	If funded, leverages State match to lower City match
		Denali Commission Grant			Application not begun Due date 4/14/23	Can be used as non-Federal Match May not be competitive - \$1M max award
Building Code Development	\$ 587,500.00	State BRIC Sub-Grant (Building Resilient Infrastructure & Communities)	\$ 470,000.00	\$ 117,500.00 (covered by State of Alaska)	Submitted 12/21/2022 Awaiting decision	Council Approved application Reso 22-086 As a sub-applic State covers local match
Parks & Recreation						
Multi-Use Community Center	\$ 350,000.00	State of AK CAPSIS	\$ 350,000.00 (planning)	-	Submitted 2/14/2023 Awaiting decision	State capital funding very unlikely in the State's FY24 budget
Bayview Park Renovations	\$69,919 to \$79,919	State of AK Healthy & Equitable Community	\$ 70,000.00 (approximately)	Cost est. pending from PW director	Application in progress Due date 4/25/2023	Support Resolution on 4/10/23 CC agenda
Utilities - Infrastructure Resilience						
Drinking Water Resiliency (A-Frame Water Transmission & 250,000 gallon water tank)	\$ 2,852,253.00	Congressionally Designated Spending Request #2 of 4	\$ 1,931,090.00	\$ 921,163.00	Submitted 3/17/2023	To Sen Murkowski & Representative Peltola City costs eligible for funds from ADEC Clean Water Revolving Loan Fund & HAWSP
A-Frame Water Transmission	\$ 804,029.00	State of AK CAPSIS	\$ 643,274.00	\$ 160,818.00	Submitted 3/14/2023	State capital funding very unlikely in the State's FY24 budget
Beluga Lift Station	\$ 2,937,353.00	Congressionally Designated Spending Request #3 of 4	\$ 2,000,000.00	\$ 937,353.00	Submitted 3/17/2023	To Sen Murkowski & Representative Peltola City costs eligible for funds from ADEC Clean Water Revolving Loan Fund & HAWSP
Spit Road Erosion Mitigation (USACE General Investigation)	\$ 3,000,000.00	Congressionally Designated Spending Request #4 of 4	\$ 1,500,000.00	-	Submitted 3/17/2023	To Sen Murkowski & Representative Peltola Match funds potential from State PROTECT grant (unknown)
Raw Water Transmission Main		FEMA Disaster Mitigation	\$ 1,988,650.00	-	Submitted 1/32/2020	Responding to FEMA requests for information



AGENDA ITEM REPORT

Resolution 23-036, A Resolution of the City Council of Homer, Alaska Directing the Port and Harbor Advisory Commission for Research and Reporting during the process of the Harbor Expansion General Investigation Study and Float Replacement Projects. Erickson/Venuti.

Item Type: Resolution
Prepared For: Mayor Castner and Homer City Council
Meeting Date: 10 April 2023
From: Melissa Jacobsen, MMC, City Clerk

Attached for consideration is Resolution 23-036 sponsored by Council Members Erickson and Venuti.

Recommendation:

Move to adopt Resolution 23-036, discuss, and vote.

Attachment:

Resolution 23-036

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

Erickson/Venuti

3
4 **RESOLUTION 23-036**

5
6 A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA,
7 DIRECTING THE PORT AND HARBOR ADVISORY COMMISSION FOR
8 RESEARCH AND REPORTING DURING THE PROCESS OF THE
9 HARBOR EXPANSION GENERAL INVESTIGATION STUDY AND
10 FLOAT REPLACEMENT PROJECTS.

11
12 WHEREAS, In the next three years, there is vital information that needs to be gathered
13 and given to the Port and Harbor Advisory Commission (PHC), City Staff, HDR and City Council;
14 and

15
16 WHEREAS, City Code 2.64.040 under the Duties and Responsibilities of the Commission
17 is to “act in an advisory capacity to the City Manager and the City Council on the problems and
18 development of the City port and harbor facilities. Consideration may include the physical
19 facilities, possible future development and recommendations on land use within the Port and
20 harbor areas.” “The Commission shall consider any specific proposal, problem or project as
21 directed by the City Council and any report or recommendations thereon shall be made
22 directly to the Council, unless otherwise directed by the council.” “The City Council may at a
23 future date expand or withdraw duties and responsibilities of the Commission.”

24
25 WHEREAS, The public desires to be involved and the PH commissioners have ongoing
26 relationships with members of the community and can have dialogue with the public regarding
27 progress on the Harbor Expansion General Investigation and Float Replacement projects; and

28
29 WHEREAS, There are many financial decisions needing to be made that will directly
30 affect the Port and the City as a whole, and need to be addressed in a timely manner toward
31 the beginning of the three-year scoping project for the Harbor Expansion and for the match for
32 the Harbor Float Replacement; and

33
34 WHEREAS, The grant application process is demanding and information can be needed
35 sooner than the process takes; and

36
37 WHEREAS, The public needs to be involved and commissioners have unique
38 relationships with the members of the community in many different areas and can influence
39 public opinion to move the projects forward in a positive way.

40
41 NOW, THEREFORE, BE IT RESOLVED by the Homer City Council directs the Port and
42 Harbor Advisory Commission to gather the information directed by the Chair or Port Director
43 as needed, and report to the Commission the findings at their regular meetings as an agenda
44 item under reports.

45 BE IT FURTHER RESOLVED, Research is limited to one commissioner per subject in order
46 to satisfy the Open Meetings Act, are fact-finding in nature, and all decisions from that
47 information come from the commission as a whole to the Council. The following subjects are
48 allowed but not limited to:

- 49
- 50 1. Legislative information
 - 51 2. Marine Trades
 - 52 3. Tourism and related activities
 - 53 4. Communications on the water
 - 54 5. Clean Energy
 - 55 6. Fisheries and Aquaculture
 - 56 7. User Group and Communication Representatives (Parks, Rec., Conservation, small business
57 etc)
 - 58 8. Funding sources for Local grant match
 - 59 9. Spit Comp Plan Review and updates
 - 60 10. Cargo and Transportation and Movement
 - 61 11. Financial information for new rates and tariffs
 - 62 12. Leases

63
64 PASSED AND ADOPTED by the Homer City Council this 10th day of April, 2023.

65
66 CITY OF HOMER

67
68
69
70 _____
KEN CASTNER, MAYOR

71 ATTEST:
72
73
74 _____
75 MELISSA JACOBSEN, MMC, CITY CLERK

76
77 Fiscal note: N/A



AGENDA ITEM REPORT

Resolution 23-037, A Resolution of the City Council of Homer, Alaska Outlining the Expectation of the City Council for Community and Stakeholder Engagement within the Harbor Expansion General Investigation/Feasibility Study. Lord/Aderhold/Davis.

Item Type: Resolution
Prepared For: Mayor Castner and Homer City Council
Meeting Date: 10 April 2023
From: Melissa Jacobsen, MMC, City Clerk

Attached for consideration is Resolution 23-037 sponsored by Council Members Lord, Aderhold, and Davis.

Recommendation:
Move to adopt Resolution 23-037

Attachment:
Resolution 23-037

**CITY OF HOMER
HOMER, ALASKA**

Lord/Aderhold/Davis

RESOLUTION 23-037

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA
OUTLINING THE EXPECTATIONS OF THE CITY COUNCIL FOR
COMMUNITY AND STAKEHOLDER ENGAGEMENT WITHIN THE
HARBOR EXPANSION GENERAL INVESTIGATION/FEASIBILITY
STUDY.

WHEREAS, the Feasibility Cost-Sharing Agreement (FCSA) was signed between the City and the US Army Corps of Engineers in March which sets in motion the General Investigation/Feasibility Study (Study) for the Homer Harbor Expansion project; and

WHEREAS, the Study is a multi-stage and iterative process to identify and evaluate alternatives for a harbor expansion in Homer; and

WHEREAS, the FCSA states that the Project Management Plan (PMP) is developed in coordination with the Sponsor (the City of Homer) and it “specifies the scope, cost, and schedule for Study activities and tasks...and that guides the performance of the Study”; and

WHEREAS, the final decision regarding the Homer Harbor Expansion project will ultimately fall to the City Council; and

WHEREAS, during the course of the Study two types of questions will arise, those that may be addressed as part of the Study (e.g., harbor construction) and those that must be addressed by the City outside of the Study (e.g., harbor operations and maintenance, community growth) but during the Study process; and

WHEREAS, community engagement is critical to ensure that the Study and the subsequent City Council decision-making are robust public processes; and

WHEREAS, throughout the Study, the City will be a strong partner helping to direct the vision for the alternatives; and

WHEREAS, good project management leadership should integrate the voices of the Council, Commissions, and the broader community and stakeholders in a public and transparent way; and

WHEREAS, effective leadership from the City will require close coordination between elected and appointed officials to develop an ongoing operations and maintenance vision

43 related to any potential alternative, potential community growth, and other identified issues;
44 and

45
46 WHEREAS, all City elected and appointed officials should have the same information for
47 communicating and outreaching on this project.

48
49 NOW, THEREFORE BE IT RESOLVED, that the Homer City Council hereby outlines the
50 following expectations regarding community and stakeholder engagement within the Harbor
51 Expansion General Investigation/Feasibility Study-

- 52
- 53 1. The City Council will have an opportunity to review and provide feedback on the Project
54 Management Plan when it is developed and at any point in which it is modified.
55
 - 56 2. Once the City, US Army Corps of Engineers, and HDR have established the Study
57 leadership teams and organizational structure, the City will present that to the Council,
58 showing the point of contact for Council and the public and lines of communication
59 among the parties.
60
 - 61 3. A detailed timeline for this project will be provided to the public as soon as possible
62 now that the FCSA is signed.
63
 - 64 4. The City will develop an interactive project website intended to inform the public with
65 current and accurate information about the project and provide opportunities for the
66 public to provide comments on the project.
67
 - 68 5. There will be at least three scoping meetings for the project, with no more than one
69 held during summer months (May through August).
70
 - 71 6. The City Council and Commission members will be provided with outreach materials
72 for each public meeting and other outreach materials so they can help to engage the
73 community and spread the word with consistent and accurate information.
74
 - 75 7. City Council will be given a minimum of monthly written updates and a minimum of
76 quarterly in-person updates from the project leadership team.
77
 - 78 8. The City Council and Commissions will be provided a formalized way to submit
79 significant questions to be answered through the Study and City-led process. All
80 questions will be documented on the project website and updates/answers will be
81 updated as they are generated.
82

83 9. In order to ensure the broadest possible buy-in and support, any new messaging and
84 concepts developed should be presented to City Council prior to being adopted in final
85 and formally rolled out to the public.

86
87 10. City Council will continue to listen to feedback from the public and Commissions, and
88 may update these expectations through resolution at any time over the course of the
89 Study.

90
91 PASSED AND ADOPTED by the Homer City Council this 10th day of April, 2023.

92
93 CITY OF HOMER
94
95 _____
96 KEN CASTNER, MAYOR

97 ATTEST:
98
99 _____
100 MELISSA JACOBSEN, MMC, CITY CLERK

101
102 Fiscal note: N/A



AGENDA ITEM REPORT

Resolution 23-038, A Resolution of the City Council of Homer, Alaska Establishing a Harbor Expansion Study Communications Committee and Establishing the Scope of Work and Committee Make-Up. Erickson.

Item Type: Resolution
Prepared For: Mayor Castner and Homer City Council
Meeting Date: 10 April 2023
From: Bryan Hawkins, Port Director
Through: Rob Dumouchel, City Manager

The Harbor Expansion Study is a large project with many contributing partners and groups, including the Army Corps of Engineers, the borough, state, and federal legislature, HDR as the City's owner representatives, City Council, City staff, public committees, and the general public and wider Homer community at large. All of these invested parties need informative and accurate progress updates and clear communication. To streamline that communication between the various City entities/groups, and to provide a consistent City conduit for internal and public communication, a communications oversight committee is proposed that contains members from each of the individual City groups. This mix of City staff, Council, and committee members will serve as a focused representative point for project reports, progress updates and information, that can then be disseminated, keeping everyone on the same page. This would be a non-voting, no action committee whose main purpose would be to facilitate communication between all interested parties.

The proposed harbor expansion study communications committee members would consist of the Port Director or designee, the City Manager or designee, the Director of Public Works or designee, the Mayor, one Council Member (chosen by the council), and one Port and Harbor Advisory Commissioner (chosen by the Commission). The general scope of work would be outlined to include serving as public representatives, providing oversight, review and internal tracking for reports in order to keep information available and consistent throughout, and attending community based meetings.

After speaking with HDR, I believe it would be a wise first step within the committee's scope of work/tasks to hold a half day chartering meeting that outlines, as it pertains to the City, the committee's and the harbor expansion study's overall:

- 1) Vision and Mission
- 2) Purpose and Need
- 3) Scope Definition or Principals
- 4) Goals & Objectives
- 5) Success Criteria

A document like this would be helpful as a touchstone for not only the committee's operation but also as a general guidance for analyzing key events, processes and commitments that come up in communication with our outside partners for best discussion, and in collating and consolidating reports of those events to disseminate back to member's representative City groups.

I also would like to propose that meetings for the committee be held during the daytime to keep overtime hours/costs to a minimum. Perhaps work lunch meetings for concise effective use of time?
The proposed committee will be disbanded when the USACE's General Investigation of the Harbor Expansion Study is complete, or at such time as Council determines it is no longer needed.

Recommendation:

Move to adopt Resolution 23-038

Attachment:

Resolution 23-038

**CITY OF HOMER
HOMER, ALASKA**

Erickson

RESOLUTION 23-038

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA
ESTABLISHING A HARBOR EXPANSION STUDY COMMUNICATIONS
COMMITTEE AND ESTABLISHING THE SCOPE OF WORK AND
COMMITTEE MAKE-UP.

WHEREAS, Establishing a Harbor Expansion Study Communications Committee will be beneficial to the community; and

WHEREAS, The Harbor Expansion Study Communications Committee will be a non-voting, non-action taking committee who's purpose will be-

1. Serve as representatives to the public
2. Provide recommendation and input on communication needs and internal tracking
3. Review reports from the USACE, Contractors, and HDR
4. Meet with dignitaries and representatives working on the project
5. Be available to attend community based meetings to represent the City on behalf of the project, gather input, and answer or refer questions

WHEREAS, The Committee will be comprised of the Port Director or designee, the City Manager or designee, the Public Works Director of designee, and the Mayor, one Council Member selected by City Council, and one Port and Harbor Advisory Commissioner selected by the Port and Harbor Advisory Commission.

NOW, THEREFORE, BE IT RESOLVED that the City of Homer City Council hereby establishes the Harbor Expansion Study Communications Committee.

BE IT FURTHER RESOLVED the Committee will be disbanded upon the completion of the Harbor Expansion General Investigation study, or at such time as Council determines it is no longer needed.

PASSED AND ADOPTED by the Homer City Council this 10th day of April, 2023.

CITY OF HOMER

KEN CASTNER, MAYOR

43 ATTEST:

44

45

46

47 _____
MELISSA JACOBSEN, MMC, CITY CLERK

48

49 Fiscal note: N/A