

PORT AND HARBOR ADVISORY COMMISSION

Regular Meeting

Wednesday,
December 7, 2016



Regular Meeting 5:00 P.M.
City Hall Council Chambers
491 E. Pioneer Ave.
Homer, AK 99603



**NOTICE OF MEETING
REGULAR MEETING AGENDA**

1. CALL TO ORDER

2. APPROVAL OF THE AGENDA

3. PUBLIC COMMENT REGARDING ITEMS ON THE AGENDA

4. RECONSIDERATION

5. APPROVAL OF MINUTES

- A. October 26, 2016 Regular Meeting Minutes and November 9, 2019 Special Meeting Minutes **Page 5**

6. VISITORS/PRESENTATIONS

7. STAFF & COUNCIL REPORT/COMMITTEE REPORTS/ BOROUGH REPORTS

- A. Port and Harbor Director's Report for November/December 2016 **Page 17**

8. PUBLIC HEARING

9. PENDING BUSINESS

- A. Homer Marine Repair Facility
i. Haul Out Trailer Info (*if provided by commissioners*)
- B. Port & Harbor Crane Use Policy Draft Review **Page 19**
i. Crane Use Policy – Staff Guidelines
ii. Packet A: Individual User Agreements/Policies
iii. Packet B: Commercial User Agreements/Policies
- C. Memo to Port & Harbor Advisory Commission from Port Director Re: Icycle Seafoods New Lease dated December 1, 2016 **Page 45**
i. City of Homer Ground Lease and Security Agreement
ii. Memo to Port & Harbor Advisory Commission from City Manager Re: Icycle Seafoods Lease Recommendations dated November 2, 2016
iii. Resolution 16-xxx Awarding New Lease to Cooke Aquaculture, dba Icycle Seafoods

10. NEW BUSINESS

11. INFORMATIONAL ITEMS

- A. Port & Harbor Monthly Statistical Report for October and November 2016 **Page 87**
- B. Water/Sewer Bills Report for October 2016 and November 2016 **Page 89**
- C. Crane and Ice Report **Page 90**
- D. Deep Water Dock Report **Page 93**
- E. Pioneer Dock Report **Page 97**
- F. Dock Water Report **Page 99**
- G. KSTK News Article Re: AAHPA Pushing for Tighter Derelict Vessel Laws dated November 4, 2016 **Page 101**
- H. Anchorage Daily News Article Re: State Sues Company Over Abandoned Barge dated November 25, 2016 **Page 107**

12. COMMENTS OF THE AUDIENCE

13. COMMENTS OF THE CITY STAFF

14. COMMENTS OF THE COUNCILMEMBER (*If one is assigned*)

15. COMMENTS OF THE CHAIR

16. COMMENTS OF THE COMMISSION

- 17. ADJOURNMENT/NEXT REGULAR MEETING IS SCHEDULED FOR WEDNESDAY, JANUARY 25, 2016 at 5:00 p.m.** in the City Hall Cowles Council Chambers located at 491 E. Pioneer Ave, Homer, Alaska

Session 16-08, a Regular Meeting of the Port and Harbor Advisory Commission was called to order by Chair Ulmer at 6:00 p.m. on August 24, 2016 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONER CARROLL, DONICH, HARTLEY, STOCKBURGER, ULMER, ZIMMERMAN

ABSENT: ZEISET (excused)

STAFF: HARBORMASTER HAWKINS
DEPUTY CITY CLERK JACOBSEN

APPROVAL OF THE AGENDA

STOCKBURGER/DONICH MOVED TO APPROVE THE AGENDA

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

PUBLIC COMMENT REGARDING ITEMS ON THE AGENDA

RECONSIDERATION

APPROVAL OF MINUTES

A. August 24, 2016 Regular Meeting Minutes

ZIMMERMAN/STOCKBURGER MOVED TO APPROVE THE MINUTES

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

VISITORS/PRESENTATIONS

STAFF & COUNCIL REPORT/COMMITTEE REPORTS/ BOROUGH REPORTS

A. Port and Harbor Director's Report for September and October, 2016

Harbormaster Hawkins reviewed his staff reports.

Discussion points included:

- The Deep Water Dock Expansion Study presentation scheduling and funding for the study

- Lease Advisors- Discussion on new GSFA lease, Snug Harbor, and new tower RFP
- Video surveillance camera recording of a theft in the trailer parking area

Harbormaster Hawkins advised them of the need to schedule a special meeting on November 9th at 5:00 p.m. to review three leases before they go to City Council on November 21st.

PUBLIC HEARING

PENDING BUSINESS

- A. Memo to Port & Harbor Advisory Commission from City Lease Staff Re: Policies for Overslope Leasing and Development dated August 8, 2016
- i. Overview of Map and Homer Spit Parcels
 - ii. NCC 21.46 Small Boat Harbor Overlay

Harbormaster Hawkins reviewed the memo and directed the Commission to review and comment on the recommendations at the end.

Lease Staff requests input from the Port and Harbor Advisory Commission regarding overslope leasing and development, specifically on the following questions:

- 1.** *Which sections of the overslope are to be available for development, and which areas are to stay undeveloped?*

Recommended areas to be available for overslope include lots 88-2 through 88-4, lot G8, lots 26-34, lots 14-17, and lots between ramp 4&5.

- 2.** *Does the commission support Lease Staff's recommendation of a "Parking Impact Fee" as a solution to the parking issue?*

The Commission agreed with the notion of the parking impact fee to satisfy code requirements for parking. It was suggested they call it something different, like a parking compliance fee, and consider the lessee purchasing two long term parking passes instead.

- 3.** *Does the commission support Lease Staff's recommendation of a "Sanitation Impact Fee" in lieu of requiring individual dumpsters for every overslope lease?*

They agreed with the sanitation impact fee and suggested it be delineated in the lease and that the fee be based on the service provided, as a restaurant would have a larger impact than a retail space.

- 4. (a)** *Once the overslope areas are depicted in the LAP, how does the City solicit for proposals in a fair and equitable way when it could be unfair to the lessee/land owner occupying the adjacent uplands lot?*

(b) Should the City send out notifications to all lessees and land owners that have adjacent upland property giving them the first opportunity to submit a lease/development proposal?

(c) Does the commission think the City should or shouldn't advertise a RFP?

In response to the three questions, the Commission agreed that adjacent lessees should have first option to lease, and then advertise an RFP after they have declined.

- 5. (a)** *What revisions to the Planning code would the commission like to see?*

Commissioner Zimmerman expressed his disagreement with the code requirement 21.46.060(h) regarding public access on and at each end of the overslope platform. Lessees would lose 16 feet off their platform for public access but still have to pay the full lease rate. He also question who's liable for the public access and the security for their business. If the goal of the boardwalk is to protect the view shed, then the buildings should be spaced to accommodate it.

It was suggested that the size of the building should factor into the amount of public access required.

It was also suggested the design requirements are too restrictive and should allow more creativity into the development.

(b) Would the commission rather see all the overslope lots available for individual development, or designate some lots for City development?

Some lots should be designated for city development, but at this time the city doesn't have money to develop overslope.

(c) If the City builds all or some of the boardwalks, how should staff proceed in determining the funding sources and investment/rate of return information?

This option is not realistic at this time.

B. Homer Marine Repair Facility

Question was raised if the new ramp was engineered to take the weight load for hauling large vessels. Harbormaster Hawkins said he will have an allowable live load limit per square inch.

Commissioner Stockburger provided information regarding on Conolift, Hostar, and Brodeur Machine Co. yard trailers and the Commission discussed models, features, and capacities of the yard trailers; and also photos.

As far as who purchases the trailer, there was discussion of a co-op or corporation where folks buy shares. It could be boat owners, hydraulic shop owners, or marine hardware store owners. Banks might invest with the interest of getting more business happening in Homer. After looking at the facility, equipment, and getting a feel for cost, then we can pursue funding a little better.

Commissioner Stockburger commented the first thing to look at is to confirm how big of a boat could be pulled up the ramp. Having hauled out a lot on the ramp he thinks the biggest problem is getting down the ramp. None of the trailers he provided information for have breaks, so the vehicle hauling has to control the speed, or some other way like a winch situation, an extendable hitch, or incorporating bags and beach haul outs.

NEW BUSINESS

- A. Port & Harbor Crane Use Policy Draft Review
 - i. Crane Use Policy-Staff Guidelines
 - ii. Packet A: Individual User Agreements/Policies
 - iii. Packet B: Commercial User Agreements/Policies

Harbormaster Hawkins reviewed the information in the packet and said they could take some time to review the information and have it on the agenda again in December. He would like to bring it into effect on January 1st.

Commissioner Zimmerman questioned the reference to the court cases in the agreements and asked if copies of the cases are provided to the users. Harbormaster Hawkins said that copies of the cases are not provided. Mr. Zimmerman said it would be nice if it were easier to understand and requested a copy of the court cases at the next meeting.

B. Memorandum from City Clerk Re: Approval of 2017 Meeting Schedule

ZIMMERMAN/HARTLEY MOVED TO APPROVE THE 2017 MEETING SCHEDULE.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

INFORMATIONAL ITEMS

- A. Harbormaster's Monthly Statistical Report for August, 2016
- B. Harbormaster's Monthly Statistical Report for September, 2016
- C. Water/Sewer Bills Report for August, 2016
- D. Water/Sewer Bills Report for September, 2016
- E. Crane and Ice Report
- F. Deep Water Dock Report
- G. Pioneer Dock Report
- H. Dock Water Report
- I. Northern Economics Study: Economic Benefits of Ports & Harbors in Alaska – August 2016
- J. Commissioner Attendance at City Council Meeting

There was brief discussion of the stall wait list and about the Northern Economics study on the Economic Benefits of Ports & Harbors in Alaska.

COMMENTS OF THE AUDIENCE

COMMENTS OF CITY STAFF

COMMENTS OF THE COUNCILMEMBER *(If one is assigned)*

COMMENTS OF THE CHAIR

Commissioner Ulmer appreciates everyone's work.

COMMENTS OF THE COMMISSION

Commissioner Donich commented he would be absent on December 7th.

Commissioner Carroll commented that at worksession with Council he kept thinking that we do need an interface to help educate councilmembers. They so much material to go through and the port and harbor really seems like a minimal part. Keeping them up to speed on their work so what happened in the spring won't happen again.

There was discussion that the Commission felt like they had a good exchange with the Council at their worksession and appreciated that the Mayor let everyone have their say in a somewhat informal setting. It was beneficial for everyone.

Commissioner Zimmerman thanked everyone for their work on the trailer and haul out information.

Commissioner Hartley dittoed Mr. Zimmerman's comments.

Commissioner Stockburger thanked everyone for hanging in on all this. He liked that there were so many people in the audience at the worksession and no one was mad about it, but more of a group effort to get everyone on board. He was impressed that many times they have more people at their meetings than the council does.

ADJOURN

There being no further business to come before the Commission the meeting adjourned at 7:46 p.m. The next regular meeting is scheduled for Wednesday, December 7, 2016 at 5:00 p.m. at the City Hall Conference Room located at 491 E. Pioneer Avenue, Homer, Alaska.

MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

Approved: _____

Session 16-09, a Special Meeting of the Port and Harbor Advisory Commission was called to order by Chair Ulmer at 6:00 p.m. on November 9, 2016 at the City Hall Conference Room located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONER CARROLL, DONICH, HARTLEY, STOCKBURGER, ULMER, ZIMMERMAN

STAFF: HARBORMASTER HAWKINS
DEPUTY CITY CLERK JACOBSEN

APPROVAL OF THE AGENDA

Chair Ulmer called for a motion to approve the agenda.

STOCKBURGER/HARTLEY MOVED TO APPROVE THE AGENDA AS WRITTEN

There was no discussion

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

PUBLIC COMMENT REGARDING ITEMS ON THE AGENDA

Kevin Hogan, city resident, commented for the record expressing his disagreement with the process and manner the agenda items have been handled. He noted his 20 plus year experience in dealing with the City's leasing process and his time served on the Economic Development Advisory Commission, Port and Harbor Advisory Commission, and the City Council. Mr. Hogan commented regarding discrepancies in HCC 18.08 and the Property Management Policies and Procedures manual (PMPP). HCC 18.08 mandates the formation of a lease committee and the committee's duties are outlined in the PMPP. He expressed no opposition to approving the leases included on the agenda but strongly disputed the process in which the city reviews the leases and that the recommendations now come from the Lease Advisors. Mr. Hogan believes there should be a lease committee that includes members of the public and a commissioner from this group and that it should be subjected to the requirements of the Open Meetings Act. He also commented about his concerns with the oversight of current leases and dissatisfaction in dealings with the City Manager's office regarding his request for a lease assignment.

Mike McCune, part owner of the Fish Factory, noted the time restraints regarding their application and permitting requirements to be operating by January 1. He appreciates their time and is available tonight to answer questions they may have.

Ken Landfield, city resident, commented in support of the Pier 1 lease. He summarized this year's summer productions, statistics of volunteers and attendance, and the benefit the theater brings to our community.

Duff Hoyt, Icicle Seafoods manager, thanked the Commission for their service and said he is available tonight to answer questions.

Jennifer Norton, Artistic Director for Pier 1 Theater, recognized former Artistic Director Lance Petersen for his years of work and commented in support of the theater's lease.

NEW BUSINESS

- A. Assignment of Lease for Bob's Trophy Charters on Tract 1-B and Awarding Todd Strand, DBA Bob's Trophy Charters a 20-Year Lease with two, five-year options for Tract 1-B, Fishing Hole Subdivision No. 2

Harbormaster Hawkins reviewed the lease information provided in the packet.

Todd Strand, applicant, attended via telephone.

Discussion points included:

- The current lease is being terminated as there is only one year left.
- The applicant will address the sign code violation with planning and the commission encouraged to try to find a way to keep the halibut painted on the side of the building.
- There is not a sublease required for the antenna that Spit Spots has on the building because there is no compensation for the antenna to be on the roof.
- The applicant confirmed he has no plans to change the building at this time.

Chair Ulmer read the recommendation included in the memorandum:

The City Manager and Port and Harbor Staff recommends approving Resolution 16-xxx, approving an assignment of lease for Bob's Trophy Charters on Tract 1-B and awarding Todd Strand, dba Bob's Trophy Charters a 20-year lease with two, five-year options for Tract 1-B, FISHING HOLE SUBDIVISION NO. 2, with an annual base rent of \$6,256.80 (subject to change as determined by lease negotiations and/or ordered appraisal if needed), and authorizing the City Manager to move forward with lease negotiations and execute the appropriate documents.

Chair Ulmer asked for a motion to approve the recommendation.

CARROLL/DONICH SO MOVED

There was no further discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

- B. Assignment of Lease for The Fish Factory on Lot 12-A1 and Awarding Seven Seas Fish Co. DBA Alaskan Fish Factory a new Lease with options to Renew for Lot 12-A1, Port Industrial No. 3, and a Portion of Lot 12B, Port Industrial No. 4

Harbormaster Hawkins reviewed the lease information in the packet.

Chair Ulmer read the recommendation included in the memorandum:

The City Manager and Port and Harbor Staff recommends approving Resolution 16-xxx, approving an assignment of lease for The Fish Factory on Lot 12-A1 and awarding Seven Seas Fish Company, Ltd., dba Alaskan Fish Factory, Ltd. A new lease with options to renew for Lot 12-A1, PORT INDUSTRIAL NO. 3, and a Portion of Lot 12B, PORT INDUSTRIAL NO. 4, with an annual base rent of \$26,119.80 (subject to change as determined by lease negotiations and/or ordered appraisal if needed), and authorizing the City Manager to move forward with lease negotiations and execute the appropriate documents.

Chair Ulmer asked for a motion to approve the recommendation.

STOCKBURGER/CARROLL SO MOVED

There were comments supporting the lease and encouraging as much fish processing as possible. We want the processing done here, we need the fish tax.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

- C. Awarding Pier One Theatre a 5-Year Lease with no options for renewal, a portion of Tract 1-A, Fishing Hole Sub No. 2

Chair Ulmer read the recommendation included in the memorandum:

The City Manager and Port and Harbor Staff recommends approving Resolution 16-xxx, awarding Pier One Theatre a five year lease with no options for renewal, for a Portion of Tract 1-A, FISHING HOLE SUB NO. 2, with an annual base rent of \$1.00, and authorizing the City Manager to move forward with lease negotiations and execute the appropriate documents.

In response to question about what the regular lease amount would be, Harbormaster Hawkins explained the property hasn't been appraised so he does not know what the amount would be.

The comment was made that this lease is kind of a gift from the enterprise to the city so perhaps the city would put some of the funds the enterprise gives them and return them to the enterprise to make up the difference.

ZIMMERMAN/HARTLEY MOVED TO APPROVE THE LEASE FOR PIER ONE.

There was brief discussion that arrangements can be made if an emergency arises and a vessel needs to be hauled out in the area. It was noted that when the theater is operating, the haul out area is used for camping.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

- D. Awarding Cooke Aquaculture, Inc. DBA Icicle Seafoods A New 20-Year Lease with two, 5-Year Options to renew for Lot 41, Homer Spit Sub Amended ADL 18009

Chair Ulmer read the recommendation included in the memorandum:

The City Manager and Port and Harbor Staff recommends approving Resolution 16-xxx, awarding Cooke Aquaculture, Inc., dba Icicle Seafoods a 20-year lease with two, five-year options for Lot 41, HOMER SPIT SUB AMENDED ADL 18009, with an annual base rent of \$35,070.00, and authorizing the City Manager to move forward with lease negotiations and execute the appropriate documents.

Chair Ulmer asked for a motion to approve the recommendation.

CARROLL/STOCKBURGER SO MOVED

Point was raised that the lease was not included in the packet as the others were tonight. Harbormaster Hawkins confirmed this is a new lease and will be a straight ground lease just like all the others. It does not have preferential use of the cranes and they will have to address their infrastructure during negotiations. It does not include the same conditions as Icicles original lease.

In response to questions about whether there will be processing at the location, Duff Hoyt Icicle Seafoods Manager, explained currently they plan to put money into the existing plant to get it ready for next season. He gave a brief overview of Cooke Aquaculture and explained they are new to the Alaska salmon industry. In the long term, if the opportunity arises to pursue processing, they may want to do something. Mr. Hoyt added that Icicle has been a good customer of our local processors and looks forward to continuing that relationship going forward, and also working with our local fishing fleet.

The Commission asked if it would be timely to view the application at their next meeting on December 7th. Mr. Hoyt said he didn't think it would be an issue to wait for the next meeting, they should have the ground lease paperwork completed for them to review by then.

STOCKBURGER/ZEISET MOVED TO POSTPONE TO THEIR NEXT MEETING

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

Commissioner Donich was excused from the meeting at 7:00 p.m.

- E. Awarding United States Coast Guard (USCG) a New One-Year Lease with nine, one-year options to renew for Lot 2, Homer Spit Four Sub

Chair Ulmer reviewed the recommendation included in the memorandum:

The City Manager and Port and Harbor Staff recommends approving Resolution 16-xxx, awarding United States Coast Guard (USCG) a one-year lease with nine, one-year options for Lot 2, HOMER SPIT FOUR SUB, with an annual base rent of \$17,058.60, and authorizing the City Manager to move forward with lease negotiations and execute the appropriate documents

CARROLL/HARTLEY MOVED TO APPROVE.

There was brief discussion about the terms of the Coast Guard lease.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

COMMENTS OF THE AUDIENCE

Kevin Hogan referenced a comment by the Harbormaster that the Lease Committee doesn't exist. Mr. Hogan said it does exist in city code and it can't be reformulated unless done so by the City Council. He reiterated his position regarding compliance with the city code, the makeup of the lease committee, and their compliance with the Open Meetings Act.

Aaron Larson from Spit Spots commented that dissatisfaction with the City's lease policy is a common theme he has heard. He suggested an alternative method of charging more and controlling less so lessee's can have more freedom with their business and commented regarding his experience with the lease process.

COMMENTS OF THE CITY STAFF

There were no staff comments.

COMMENTS OF THE CHAIR

COMMENTS OF THE COMMISSION

Commissioner Zimmerman said the idea of charge more and manage less is an interesting concept. Something he has brought up to Council that even though there may not be impropriety with a closed meeting, it can create a perception of impropriety. If the perception is there then we have distrust and that's why we have the open meetings law. It was a good meeting.

Chair Ulmer commented that a few City Managers ago when she began on the commission, they didn't even get to see the leases; they were locked up in the City Manager's office, so they are making progress.

There were no further commission comments.

ADJOURNMENT

PORT AND HARBOR ADVISORY COMMISSION
SPECIAL MEETING
NOVEMBER 9, 2016

There being no further business to come before the Commission the meeting adjourned at 7:18 p.m. The next regular meeting is scheduled for Wednesday, December 7, 2016 at 5:00 p.m. at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

Approved: _____



City of Homer

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NOVEMBER – DECEMBER 2016 PORT & HARBOR STAFF REPORT

1. Administration

Staff met with:

- Department Head Staff Meeting
- R&M Consulting – Anchorage Meeting Re: Deep Water Dock Project
- Cook Inlet Safety Committee – Anchorage Meeting
- Lease Advisors Meeting
- Derry & Associates & City Manager – Land Plat Issues
- Gary Thomas, Fire Inspector – Linda Kay Fire in Harbor
- AAHPA Board – Teleconference Meeting
- Duff Hoyt, Icicle Seafoods – Site Visit

Port and Harbor Admin have been staying busy with rewriting the Terminal Tariff and new reserved stall offers. Some reserved stall offers are declined, creating a pool of stalls that staff offers out as Round Two, lasting into December. Soon, admin staff will be moving into the New Year with tasks such as records retention, updating forms to reflect the new moorage rates, mail-outs for Terminal Use and Fish Dock Use permits, and Spit lease updates.

The Port and Harbor partnered again with the Homer Marine Trades Association to manage a booth at Seattle's Pacific Marine Expo, which was held November 17 – 19, 2016. It's a well-attended event and it means a great deal to have the City's harbor collaborating with the local businesses that encourage marine trade jobs.

2. Operations

Harbor officers completed the installation of a 12 volt battery maintainer and supplemental LED lighting in the harbor tug's engine room. They continue comprehensive review and revision of port & harbor standard operating procedures.

Landings at all harbor facilities included the following vessels: Tustumena, CISPRI Endeavor, CISPRI Perseverance & Barge Responder, Pacific Freedom, Pacific Wolf & DBL54, Bob Franco, Paragon & Barge Nakao, Scorpious, Champion, Bering Sea, Helenka B, Polar Bear, Cape Caution, Kona Kai, Bering Sea, Paul C Johnson, and Egavik.

Other notable events:

- On 10/28 a 28' abandoned recreational vessel and trailer were removed from the port facility.
- On 10/31 a harbor officer prevented a 24' recreational vessel from sinking by implementing dewatering pumps.
- On 11/3 operations staff and HFD responded to a fire aboard a 32' commercial fishing vessel on D float. The fire was extinguished without collateral damage to the float system or adjacent vessels. The vessel was towed to the L&L ramp for removal the following day.
- On 11/3 operations staff responded to a sinking 30' commercial fishing vessel. Dewatering pumps were implemented, prevent further flooding damage.
- On 11/4 harbor officers responded to a diesel fuel spill in the vicinity of ramp 2.
- On 11/5, a harbor officer assisted AST, HPD, and a harbor customer recover his stolen inflatable raft.

- On 11/9 operations staff assisted HPD and a harbor customers investigate the theft of snow tires from a pick-up truck parked in the vicinity of ramp 8.
- On 11/14 a graveyard shift officer prevented a 28' sailboat from sinking by implementing dewatering pumps.
- On 11/15 the deputy harbormaster met with engineers from PN&D and ADF&G during a -5.4' low tide at the L&L ramp to inspect for final construction details required by the contractor.
- On 11/16 operations staff met with the manager of the Oyster co-op building to identify several rafts of tires used for erosion prevention that had floated free from the building and had washed onto adjacent properties.
- On 11/16 operations staff assisted with vehicle parking/signage during the Ken Jones's memorial service.
- On 11/23 Operations staff worked with a local contractor to remove an impounded 42' wooden motor sail from the port facility.

3. Ice Plant

The Port and Harbor Department wishes all the best to George Tyrer, Ice Plant/Fish Dock Supervisor, as he rides off on his new motorcycle into the sunset of retirement. The Ice Plant is shut down for winter maintenance; the ice bin has been emptied, the bait room cleaned, and the Fish Dock high mast light replaced with new LED fixtures.

4. Port Maintenance

Over the last month Maintenance has:

- Bid farewell to our summer Temp Walt Swearingen. Hope to see him again next summer!
- Worked on the high-mast light LED conversion Request for Proposals
- Prepared equipment for plowing and sanding; new sanding truck is working great
- Assisted HVFD by moving junked cars into their training area
- Took baseline light level reading around the harbor for the LED RFP
- Replaced salt water well pump for the fish grind shed
- Purged the System 1 fire line of water for the winter
- Assisted USCG Hickory with spooooky lighting for the haunted ship
- Performed annual fall maintenance on the patrol skiff
- Performed maintenance and repairs on the Hickory's corner fender
- Pulled the ECO Barge for the winter

STAFF GUIDELINES FOR THE CRANE USAGE AGREEMENTS

Effective January, 2017, the Homer Port and Harbor's new crane use and training requirements will be implemented. In addition to online and practical training requirements, the City of Homer Port and Harbor ("Port") shall be requiring the execution of crane usage agreements and releases. While ultimately each crane user will be required to execute one agreement and one release, the content of the agreement and release differs depending upon the crane user's corporate status and the nature of his, her or its usage. Consequently, this handout is designed to provide Harbor staff with the guidelines for distributing the agreements to crane users.

There are two packets of agreements: (1) Packet A and (2) Packet B. Distribution guidelines for each packet is addressed below:

PACKET A: INDIVIDUAL USERS

Packet A should be distributed to crane users and operators that are single/sole users of the crane. These individuals are the only individuals authorized to use the crane on their behalf and no more than one user is covered by Packet A.

Packet A includes two documents. These documents are:

1. The Individual Crane Agreement and Use Permit (Form A-1)
2. The Individual User Release and Indemnification (Form A-2)

PACKET B: COMMERCIAL USERS

Packet B should be distributed to crane users and operators that are corporate entities or commercial enterprises. Packet B should also be distributed to individual business owners who have more than one crane operator/user operating the cranes on their behalf. Packet B has two forms for the commercial operator to execute, which will generally be the authorized agent for the business entity or the business owner. Packet B also has two forms for each covered operator to execute. The covered operator is the actual individual using the crane. **It is the commercial user's responsibility to ensure that all of its covered operators execute the covered operator documents.**

Packet B includes four documents. These documents are:

1. Commercial/Permit Holder Crane Agreement and Use Permit (Form B-1)
2. Commercial/Permit Holder Release Of Liability And Indemnification Agreement For Operation And Use Of City-Owned Cranes (Form B-2)
3. Covered Operator Crane Agreement and Use Permit (Form B-3)
4. Covered Operator Release of Liability and Indemnification Agreement (Form B-4)

PACKET A

INDIVIDUAL USERS

Packet A should be distributed to crane users and operators that are single/sole users of the crane. These individuals are the only individuals authorized to use the crane on their behalf and no more than one user is covered by Packet A.

Packet A includes two documents. These documents are:

1. The Individual Crane Agreement and Use Permit (Form A-1)
2. The Individual User Release of Liability and Indemnification Agreement (Form A-2)

FORM A-2

INDIVIDUAL USER RELEASE OF LIABILITY AND INDEMNIFICATION AGREEMENT

_____ ("User"), hereby acknowledges that operation and use of cranes owned by the City of Homer, Alaska ("City") may be dangerous and even life-threatening. User further acknowledges that the City, through its employees and other representatives, has provided User with training materials related to the operation and use of the cranes, which specifically identify the risks associated with operating the cranes.

User, on its behalf and on behalf of all its employees, designees, representatives, subcontractors, directors, officers, volunteers, administrators, agents, heirs, beneficiaries, executors, successors, assigns, and other entities or individuals claiming through it or affiliated with it (hereafter collectively referred to as "User"), hereby covenants and agrees to release, indemnify, and hold harmless the City, its employees, volunteers, officials, agents, officers, departments, boards, commissions, or other bodies (hereafter collectively referred to as the "City") from and for any and all demands, claims, suits or causes of action, whether known or unknown, arising from any and all loss, damage, and/or mental or physical injury (including, but not limited to injuries leading to death and death itself) to any property or any person which is caused by or related to the operation or use of a City-owned crane by User.

This Release and Indemnification also prohibits User and other entities or individuals claiming through it or affiliated with it, from bringing an action, suit, claim or cause of action, or making a demand, whether known or unknown, against the City arising out of the use or operation of any City-owned crane by User.

FORM A-2

User also warrants that injuries, death or damage stemming from not only the inherent risk of the operation of heavy equipment, like cranes, but also equipment malfunction or misuse, human error, ignoring a known hazard, and a defect in the property, including, but not limited to, the cranes or the dock on which the cranes are located, are all within the scope of this Release and Indemnification and User or individual through User or on his or her behalf is barred from bringing any and all present or future demands, suits, claims or causes of action arising from the City's conduct, including demands, suits, claims or causes of action arising from the City's negligence and User is obligated to indemnify and hold harmless the City for any such claims brought against the City that arise from the operation or use of a City-owned crane by User. The above list of potential causes of injury, death or loss is intended only to provide an example of the broad scope of this Release and Indemnification and is in no way intended to limit the Release to the named causes as this Release and Indemnification is intended to apply to any and all causes of liability.

User is familiar with the decision of the Alaska Supreme Court in *Young v. State*, 455 P.2d 889 (Alaska 1969) and it is still the undersigned's true intent and desire to fully release all of the entities and persons described above collectively as the City even though all of such entities and persons are not specifically named herein. User further acknowledges familiarity with the decision of the Alaska Supreme Court in *Witt v. Watkins*, 579 P.2d 1065 (Alaska 1978) and intends this release to discharge the City from any liability for damages or losses subsequently discovered or incurred or for damages or losses that are different in extent, degree, or kind than those now alleged, known, anticipated, or expected.

FORM A-2

This Release and Indemnification has been submitted to the scrutiny of all parties and their counsel if desired, and it shall be interpreted without consideration to or weight given to its being drafted by any party or its counsel and interpreted according to its fair meaning and intent and not for or against either party.

This Release and Indemnification shall be governed by the laws of the State of Alaska.

USER:

[Business Name]

By: _____

Date: _____

Print Name: _____

Title: _____

FORM A-1

INDIVIDUAL USER CRANE AGREEMENT AND USE PERMIT

Name: _____ (“User”) Phone: _____

Address: _____
P.O. Box or Street Address City State Zip

ID/Driver’s License #: _____ S.S. # (Optional): _____

Section 1. Equipment Use Permit

Subject to the conditions and limitations of this equipment use permit between _____ (“User” or “Permit Holder”) and the City of Homer, Alaska (“City”), which is hereafter called the Permit, the City hereby grants permission to User to access any City-owned Crane. This Permit represents a nonexclusive privilege authorizing use of City-owned Cranes and does not convey an interest or right to any City property or to the use of any City property.

Section 2. User Access Card

A. Upon execution of this Permit, User shall be issued a crane access card.

Section 3. Term and Rates

This Permit shall be in effect beginning on _____ (“Effective Date”) and ending on _____. (“Term”) In exchange for use of the City-owned cranes under this Permit, User agrees to pay the City \$150.00 with \$50.00 payable on the Effective Date and the second payment of \$50.00 due no later than 12 months after the Effective Date. A final payment of \$50.00 shall be due no later than 12 months after the second payment is due. A \$50.00 late charge shall be due if a payment is more than 30 days late. In addition to the charge for this Permit, User shall be charged the published crane rates or rates identified in a separate agreement between User and the City.

Section 4. Training

User shall, prior to operating any City-owned cranes, verify the successful completion of the following:

- A. The online training course and any other training requirements specified by the City in Attachment A to this Permit.
- B. A practical training session administered by the City as described in Attachment A to this Permit.
- C. Any other requirements included in Attachment A to this Permit.

Section 5. Users Warranties and Representations

- A. User warrants that their use of the City-owned cranes is for individual use only.
- B. User must read and comply with City Port and Harbor Crane Use Policies and Procedures, incorporated into this Permit and included in Attachment B to this Permit ("Crane Use Policies").
- C. User shall sign and date Crane Use Policies and Procedures verifying that User has read and fully understands the Crane Use Policies and Procedures prior to operating any City-owned Crane.
- D. User shall comply with all federal, state, and local laws related to the operation and use of any City-owned Cranes.

Section 6. Operation and Access

- A. The City does not guaranty the availability of any City-owned Crane at any time. City-owned Cranes may be unavailable due to City use or service without notice to User.
- B. User must have his or her Crane Operator Permit Card in their possession at all times when operating any City-owned Crane.
- C. User shall not permit any other person to use their Crane Operator Permit Card.
- D. The City does not guaranty the availability of any City-owned Crane at any time. City-owned Cranes may be unavailable due to City use or service without notice to User.
- E. City-owned Cranes cannot be reserved and are available only on a first come first serve basis. However, offloading of fish shall be given priority over other uses of City-owned cranes on the Fish Dock.
- F. User shall be fully alert and shall not be under the influence of alcohol or any controlled substance while operating or using City-owned Cranes. User shall always use extreme care and caution when operating City-owned Cranes. The harbormaster or his designee has full discretion to determine when a user is operating a City-owned crane recklessly or impaired. Impairment may include but is not limited to operating the crane while under the influence of alcohol or any controlled substance or operation of a City-owned crane while suffering from fatigue. If the Harbormaster determines that a user is unfit to operate any City-owned crane, the Harbormaster or his designee has full authority to order user to immediately cease crane operations. Harbormaster may also prohibit a user from operating any City-owned crane in the future.

- G. User agrees that he or she will immediately report to port and harbor personnel any accident involving crane use or any malfunction or problem with a City-owned Crane. Any report must be received by port and harbor personnel within 1 hour from incident or user's knowledge of any malfunction or problem with City-owned Cranes. In the event of serious bodily injury, user shall first call 9-1-1 and then report the incident to port and harbor personnel.

Section 7. Insurance

- A. Minimum Scope and Limits of Insurance. User shall carry and maintain at its expense commercial general liability insurance, including, without limitation, insurance against assumed or contractual liability under this Permit, with limits of liability not less than \$1,000,000 combined single limit bodily injury and property damage, \$1,000,000 personal injury, and \$2,000,000 aggregate. This insurance shall be primary and exclusive of any other insurance held by the City, and the policy purchased shall name the City as an additional insured with respect to the use or operation of City-owned Cranes by User or a Covered Operator.
- B. Verification of Coverage. User shall deliver to the City certificates of insurance required by this section before using or operating any City-owned Crane.

Section 8. Termination.

- A. The Crane Operator Permit may be revoked by the City at any time with or without cause and does not create a right of use.
- B. The Crane Operator Permit shall terminate immediately and User's Permit Card shall be immediately revoked if User violates any provision of this Permit or federal, state or local law or City of Homer policies or procedures during operation of any City-owned Crane.

Section 9. Indemnification.

User shall execute the Individual User Release of Liability and Indemnification Agreement, incorporated into this Permit and included as Attachment C to this Permit ("Indemnification Agreement:"). Under the Indemnification Agreement and this Permit, User shall indemnify City against any claims, suits, losses, damages, costs, fee, expenses (including actual outside attorneys' fees) arising out of or based upon personal injury, death or property damage resulting directly or indirectly from any act or failure to act in connection with the operation or use of any City-owned crane by User.

Section 10. General Provisions

- A. This Permit may not be transferred or assigned without the City's prior written consent.

- B. Any provision or clause of this Permit that is deemed invalid by a court or otherwise by law shall not affect the validity of the remainder of the Permit.
- C. This Permit and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the State of Alaska. Any legal proceeding in connection with this Permit shall be in the trial courts of the State of Alaska for the Third Judicial District in Homer. It is understood that consultation and negotiation are the first option for resolving all disputes arising under this Permit.
- D. The failure of the City at any time to enforce a provision or part of this Permit shall in no way constitute a waiver of such provision or part, nor in any way affect the validity of this Permit or any part of this Permit. A waiver by the City of any provision or part of this Permit shall not be construed as a continuing or future waiver of such provision or part or as a continuing or future waiver of any other provision or part of this Permit. Any waivers of the Permit conditions shall be in writing and signed by both parties.
- E. No provision of this Permit shall be construed to create a partnership or joint venture or any other arrangement between the City and User under which the City would be liable for the debts, losses or liabilities of User.
- F. The parties intend this Permit to be the complete and exclusive expression of their agreement and the Permit granted to User. No representations or promises not contained in this document have been made by the City. No modification to this Permit may be made unless in writing and executed by both parties.
- G. This Permit has been submitted to the scrutiny of all parties and their counsel if desired, and it shall be interpreted without consideration to or weight given to its being drafted by any party or its counsel and interpreted according to its fair meaning and intent and not for or against either party.
- H. The Parties hereby warrant and represent that each has the authority to enter into and perform the obligations of this Permit and that the individual signing this Permit on behalf of User has the authority to enter into this Permit on behalf of the User.
- I. All notices or notifications required by this Permit to be effective must be in writing and must be served personally to the Port and Harbor office.

IN WITNESS WHEREOF, the parties hereto have executed this Permit as of the date first written above.

CITY OF HOMER, ALASKA:

By: _____

PERMIT HOLDER:

By: _____

User's Authorized Representative

**TRAINING REQUIREMENTS FOR USE OF CITY-OWNED CRANES
ATTACHMENT A**

PACKET B

COMMERCIAL USERS

Packet B should be distributed to crane users and operators that are corporate entities or commercial enterprises. Packet B should also be distributed to individual business owners who have more than one crane operator/user operating the cranes on their behalf. Packet B has two forms for the commercial operator to execute, which will generally be the authorized agent for the business entity or the business owner. Packet B also has two forms for each covered operator to execute. The covered operator is the actual individual using the crane. **It is the commercial user's responsibility to ensure that all of its covered operators execute the covered operator documents.**

Packet B includes four documents. These documents are:

1. Commercial/Permit Holder Crane Agreement and Use Permit (Form B-1)
2. Commercial/Permit Holder Release Of Liability And Indemnification Agreement For Operation And Use Of City-Owned Cranes (Form B-2)
3. Covered Operator Crane Agreement and Use Permit (Form B-3)
4. Covered Operator Release of Liability and Indemnification Agreement (Form B-4)

FORM B-1

COMMERCIAL/PERMIT HOLDER CRANE AGREEMENT AND USE PERMIT

Section 1. Permit Holder Access Card.

- A. Upon execution of this Permit, Commercial Permit Holder shall be issued a crane access card.
- B. Any individual using Permit Holder's access card shall be a "Covered Operator" under this Permit. Permit Holder warrants that prior to the use or operation of any City-owned crane, a Covered Operator must: (1) enter into and sign the Covered Operator Agreement, attached to this Permit as Attachment A; (2) enter into and sign the Covered Operator Waiver and Release Form, attached to this Permit as Attachment B; and (3) comply with all other applicable provisions in this Permit.

Section 2. Equipment Use Permit.

Subject to the conditions and limitations of this equipment use permit between _____ ("Permit Holder") and the City of Homer, Alaska ("City"), which is hereafter called the Permit, the City hereby grants permission to Permit Holder to access any City-owned crane. Any person using _____ Permit Holder access card to operate or use a City-owned crane shall be a "Covered Operator" under _____'s Permit. This Permit represents a nonexclusive privilege authorizing use of City-owned cranes and does not convey an interest or right to any City property or to the use of any City property.

Section 3. Term and Rate.

This Permit shall be in effect beginning on _____ ("Effective Date") and ending on _____. ("Term") In exchange for use of City-owned cranes under this Permit, Commercial Permit Holder agrees to pay the City \$150.00 with \$50.00 payable on the Effective Date and the second payment of \$50.00 due no later than 12 months after the Effective Date. A final payment of \$50.00 shall be due no later than 12 months after the second payment is due. A \$50.00 late charge shall be due if a payment is more than 30 days late. In addition to the charge for this Permit, Permit Holder shall be charged the published crane rates or rates identified in a separate agreement between Permit Holder and the City.

Section 4. Training.

Commercial Permit Holder shall, prior to operating any cranes owned by the City or permitting any employee, agent, representative, service provider, or other person to operate any City-owned crane using Commercial Permit Holder's access card, ensure and verify that each Covered Operator has successfully completed:

- A. The online training course and any other training requirements specified by the City in Attachment A to this Permit.

- B. A practical training session administered by the City and described in Attachment A to this Permit.
- C. Any other requirements included in Attachment A to this Permit.

Section 5. Permit Holder Warranties and Representations.

- A. Permit Holder and any Covered Operator must read and comply with City Port and Harbor Crane Use Policies and Procedures, incorporated into this Permit and included in Attachment C to this Permit ("Crane Use Policies").
- B. Permit Holder's authorized representative and any Covered Operator shall sign and date the Crane Use Policies verifying that Permit Holder and any Covered Operator using Permit Holder's access card have read and fully understands the Crane Use Policies prior to operating any City-owned Crane.
- C. Permit Holder and its Covered Operators shall comply with all federal, state, and local laws related to the operation and use of any City-owned crane.

Section 6. Operation and Access.

- A. Permit Holder or any Covered Operator must have Permit Holder's access card in his or her possession at all times when operating any City-owned crane.
- B. Permit Holder agrees that all Covered Operators under its permit must immediately report to port and harbor personnel any accident involving crane use or any malfunction or problem with a City-owned Crane. Any report must be received by port and harbor personnel within 1 hour from incident or Covered Operator's knowledge of any malfunction or problem with City-owned cranes. In the event of serious bodily injury, user shall first call 9-1-1 and then report the incident to port and harbor personnel.
- C. The City does not guaranty the availability of any City-owned Crane at any time. City-owned Cranes may be unavailable due to City use or service without notice to Permit Holder or a Covered Operator.
- D. City-owned cranes cannot be reserved and are available only on a first come first serve basis. However, the use of City-owned cranes on the Fish Dock to offload fish shall be given priority over other uses.
- E. Permit Holder shall guaranty and prohibit any Covered Operator from operating any City-owned crane recklessly or while impaired. The harbormaster or his designee has full discretion to determine when a user is operating a City-owned crane recklessly or impaired. Impairment may include but is not limited to operating the crane while under the influence of alcohol or a controlled substance

or operating a crane when suffering from extreme fatigue. If the Harbormaster determines that a user is unfit to operate any City-owned crane, the Harbormaster or his designee has full authority to order user to immediately cease crane operations. Harbormaster may also prohibit a user from operating any City-owned crane in the future. If a Covered Operator is prohibited from operating any City-owned crane due to reckless or impaired operation under this section of the Permit, Permit Holder shall ensure that the Covered Operator does not operate any City-owned crane using Permit Holder's access card. The City shall provide notice to Permit Holder of any action taken against a Covered Operator under this section within 24 hours of such action.

Section 7. Insurance.

- A. **Minimum Scope and Limits of Insurance.** Permit Holder shall carry and maintain at its expense commercial general liability insurance, including, without limitation, insurance against assumed or contractual liability under this Permit, with limits of liability not less than \$1,000,000 combined single limit bodily injury and property damage, \$1,000,000 personal injury, and \$2,000,000 aggregate. This insurance shall be primary and exclusive of any other insurance held by the City, and the policy purchased shall name the City as an additional insured with respect to the use or operation of City-owned cranes by Permit Holder or a Covered Operator.
- B. **Verification of Coverage.** Permit Holder shall deliver to the City certificates of insurance required by this section before using or operating any City-owned crane or permitting any Covered Operator to use or operate a City-owned crane.

Section 8. Termination.

- A. This Permit may be terminated by the City at any time with or without cause and does not create a right of use.
- B. This Permit shall terminate immediately and Permit Holder's access card shall be immediately revoked if Permit Holder or any Covered Operator violates any provision of this Permit or federal, state or local law or City of Homer policies or procedures during operation of any City-owned crane. In the event Permit Holder's access card is revoked, Permit Holder is liable for the immediate full payment of any monies owed to the City Port and Harbor for services rendered.

Section 9. Indemnification.

Permit Holder shall execute the General Release of Liability and Indemnification Agreement for the Operation and Use of City-owned Cranes, incorporate into this Permit and included as Attachment D to this Permit ("Indemnification Agreement:"). Under the Indemnification Agreement and this Permit, Permit Holder shall indemnify City against any claims, suits, losses, damages, costs, fee, expenses (including actual outside attorneys' fees) arising out of or based upon personal injury, death or property

damage resulting directly or indirectly from any act or failure to act in connection with the operation or use of any City-owned crane by Permit Holder or a Covered Operator.

Section 10. General Provisions

- A. This Permit may not be transferred or assigned.
- B. Any provision or clause of this Permit deemed invalid by a court or otherwise by law shall not affect the validity of the remainder of the Permit.
- C. This Permit and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the State of Alaska. Any legal proceeding in connection with this Permit shall be in the trial courts of the State of Alaska for the Third Judicial District in Homer. It is understood that consultation and negotiation are the first option for resolving all disputes arising under this Permit.
- D. The failure of the City at any time to enforce a provision or part of this Permit shall in no way constitute a waiver of such provision or part, nor in any way affect the validity of this Permit or any part of this Permit. A waiver by the City of any provision or part of this Permit shall not be construed as a continuing or future waiver of such provision or part or as a continuing or future waiver of any other provision or part of this Permit. Any waivers of the Permit conditions shall be in writing and signed by both parties.
- E. No provision of this Permit shall be construed to create a partnership or joint venture or any other arrangement between the City and Permit Holder or any Covered Operator under which the City would be liable for the debts, losses or liabilities of Permit Holder or any Covered Operator.
- F. The parties intend this Permit to be the complete and exclusive expression of their agreement and the Use Permit granted to Permit Holder. No representations or promises not contained in this document have been made by the City. No modification to this Permit may be made unless in writing and executed by both parties.
- G. This Permit has been submitted to the scrutiny of all parties and their counsel if desired, and it shall be interpreted without consideration to or weight given to its being drafted by any party or its counsel and interpreted according to its fair meaning and intent and not for or against either party.
- H. The Parties hereby warrant and represent that each has the authority to enter into and perform the obligations of this Permit and that the individual signing this Permit on behalf of Permit Holder has the authority to enter into this Permit on behalf of the Permit Holder.

I. All notices or notifications required by this Permit to be effective must be in writing and must be served personally to the Port and Harbor office.

IN WITNESS WHEREOF, the parties hereto have executed this Permit as of the date first written above.

CITY OF HOMER, ALASKA:

By: _____

PERMIT HOLDER:

By: _____

Permit Holder's Authorized Representative

FORM B-2

**COMMERCIAL/PERMIT HOLDER RELEASE OF LIABILITY AND INDEMNIFICATION
AGREEMENT
FOR OPERATION AND USE OF CITY-OWNED CRANES**

_____, a _____ ("Permit Holder"), hereby acknowledges that operation and use of cranes owned by the City of Homer, Alaska ("City") may be dangerous and even life-threatening. Permit Holder further acknowledges that the City, through its employees and other representatives, has provided Permit Holder with training materials related to the operation and use of the cranes, which specifically identify the risks associated with operating the cranes.

Permit Holder, on its behalf and on behalf of all its employees, designees, representatives, subcontractors, directors, officers, volunteers, administrators, agents, heirs, beneficiaries, executors, successors, assigns, and other entities or individuals claiming through it or affiliated with it, and on behalf of any person using or operating a City-owned crane with Permit Holder's access card (collectively referred to as "Permit Holder or its Covered Operators"), hereby covenants and agrees to release, indemnify, and hold harmless the City, its employees, volunteers, officials, agents, officers, departments, boards, commissions, or other bodies (hereafter collectively referred to as the "City") from and for any and all demands, claims, suits or causes of action, whether known or unknown, arising from any and all loss, damage, and/or mental or physical injury (including, but not limited to, injuries leading to death and death itself) to any property or any person which is caused by or related to the operation or use of a City-owned crane by Permit Holder or its Covered Operators.

This Release and Indemnification also prohibits Permit Holder or its Covered Operators and other entities or individuals claiming through it or affiliated with it, from bringing an action, suit, claim or cause of action, or making a demand, whether known or unknown, against the City arising out of the use or operation of any City-owned crane by Permit Holder or its Covered Operators.

Permit Holder also warrants that injuries, death or damage stemming from not only the inherent risk of the operation of heavy equipment, like cranes, but also equipment malfunction or misuse, human error, ignoring a known hazard, and a defect in the property, including, but not limited to, the cranes or the dock on which the cranes are located, are all within the scope of this Release and Indemnification and Permit Holder and its Covered Operators are barred from bringing any and all present or future demands, suits, claims or causes of action arising from the City's conduct, including demands, suits, claims or causes of action arising from the City's negligence and Permit Holder is obligated to indemnify and hold harmless the City for any such claims brought against the City that arise from the operation or use of a City-owned crane by Permit Holder or its Covered Operators. The above list of potential causes of injury, death or loss is intended only to provide an example of the broad scope of this Release and Indemnification and is in no way intended to limit the Release to the named causes as this Release and Indemnification is intended to apply to any and all causes of liability.

Permit Holder is familiar with the decision of the Alaska Supreme Court in *Young v. State*, 455 P.2d 889 (Alaska 1969) and it is still the undersigned's true intent and desire to fully release all of the entities and persons described above collectively as the

City even though all of such entities and persons are not specifically named herein. User further acknowledges familiarity with the decision of the Alaska Supreme Court in *Witt v. Watkins*, 579 P.2d 1065 (Alaska 1978) and intends this release to discharge the City from any liability for damages or losses subsequently discovered or incurred or for damages or losses that are different in extent, degree, or kind than those now alleged, known, anticipated, or expected.

This Release and Indemnification has been submitted to the scrutiny of all parties and their counsel if desired, and it shall be interpreted without consideration to or weight given to its being drafted by any party or its counsel and interpreted according to its fair meaning and intent and not for or against either party.

The representative signing this Release and Indemnification hereby warrants that he or she has authority to sign this Release and Indemnification on behalf of Permit Holder. This Release and Indemnification shall be governed by the laws of the State of Alaska.

PERMIT HOLDER:

[Business Name]

By: _____

Date: _____

Print Name: _____

Title: _____

FORM B-3

COVERED OPERATOR CRANE AGREEMENT AND USE PERMIT

This Agreement is entered into by and between the City of Homer, Alaska ("City") and _____ ("Covered Operator") beginning on _____ ("Effective Date") and ending on _____ ("Term"). Covered Operator shall not use City-owned cranes prior to or after the Effective Date of this Agreement.

Covered Operator Warranties

In exchange for permission to use City-owned cranes, Covered Operator hereby agrees and warrants that:

- A. The Covered Operator has been authorized by _____ ("Permit Holder") to operate and use City-owned cranes with Permit Holder's access card and that Covered Operator shall not use Permit Holder's access card for any purpose that has not been authorized by Permit Holder.
- B. Covered Operator has successfully completed the training required under the Commercial Use Permit granted to Permit Holder and has submitted his or her certificate or completion to Permit Holder.
- C. Covered Operator has read and fully understands the City Port and Harbor Crane Use Policies provided to it by Permit Holder and that Covered Operator has signed and dated these Policies attesting to his or her review and understanding of these policies.
- D. Covered Operators shall comply with all federal, state, and local laws related to the operation and use of any City-owned crane.
- E. Covered Operator shall have Permit Holder's permit card in his or her possession at all times when operating any City-owned crane.
- F. Covered Operator shall immediately report to port and harbor personnel any accident involving crane use or any malfunction or problem with a City-owned crane. Any report must be received by port and harbor personnel within 1 hour from incident or Covered Operator's knowledge of any malfunction or problem with City-owned cranes. In the event of serious bodily injury, user shall first call 9-1-1 and then report the incident to port and harbor personnel.
- G. Covered Operator understands that the City does not guaranty the availability of any City-owned Crane at any time. City-owned Cranes may be unavailable due to City use or service without notice to Permit Holder or a Covered Operator.

H. Covered Operator understands that City-owned cranes cannot be reserved and are available only on a first come first serve basis. However, the use of City-owned cranes on the Fish Dock to offload fish shall be given priority over other uses.

I. Covered Operator shall use the utmost care when operating City-owned cranes. Covered operator shall not operate any City-owned crane recklessly or while impaired. The harbormaster or his/her designee has full discretion to determine when Covered Operator or any user of a City-owned crane is operating the crane recklessly or impaired. Impairment may include but is not limited to operating the crane while under the influence of alcohol or a controlled substance or operating a crane when suffering from extreme fatigue. If the Harbormaster determines that Covered Operator is unfit to operate any City-owned crane, the Harbormaster or his designee has full authority to order Covered Operator to immediately cease crane operations. Harbormaster may also prohibit Covered Operator from operating any City-owned crane in the future. The City shall notify Permit Holder of Covered Operator's operation restrictions and prohibitions under this section within 24 hours of the harbormaster or his designee's determination.

CITY OF HOMER, ALASKA:

By: _____

COVERED OPERATOR

FORM B-4

**COVERED OPERATOR RELEASE OF LIABILITY AND INDEMNIFICATION
AGREEMENT**

_____ ("Covered Operator"), who has access to cranes owned by the City of Homer, Alaska ("City") through an access card held by _____ ("Permit Holder") hereby acknowledges that operation and use of cranes owned by the City may be dangerous and even life-threatening. Covered Operator further acknowledges that the City, through its employees and other representatives, has identified and required training, and that training has materials related to the operation and use of the City-owned cranes, which specifically identify the risks associated with operating the cranes.

Covered Operator, on its behalf and on behalf of all its heirs, beneficiaries, executors, successors, assigns, and other entities or individuals claiming through it or affiliated with it (hereafter collectively referred to as "Covered Operator"), hereby covenants and agrees to release, indemnify, and hold harmless the City, its employees, volunteers, officials, agents, officers, departments, boards, commissions, or other bodies (hereafter collectively referred to as the "City") from and for any and all demands, claims, suits or causes of action, whether known or unknown, arising from any and all loss, damage, and/or mental or physical injury (including, but not limited to injuries leading to death and death itself) to any property or any person which is caused by or related to the operation or use of a City-owned crane by Covered Operator.

This Release and Indemnification also prohibits Covered Operator and other entities or individuals claiming through it or affiliated with it, from bringing an action, suit,

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claim or cause of action, or making a demand, whether known or unknown, against the City arising out of the use or operation of any City-owned crane by Covered Operator.

Covered Operator also warrants that injuries, death or damage stemming from not only the inherent risk of the operation of heavy equipment, like cranes, but also equipment malfunction or misuse, human error, ignoring a known hazard, and a defect in the property, including, but not limited to, the cranes or the dock on which the cranes are located, are all within the scope of this Release and Indemnification and Covered Operator or individual through Covered Operator or on his or her behalf is barred from bringing any and all present or future demands, suits, claims or causes of action arising from the City's conduct, including demands, suits, claims or causes of action arising from the City's negligence and Covered Operator is obligated to indemnify and hold harmless the City for any such claims brought against the City that arise from the operation or use of a City-owned crane by Covered Operator. The above list of potential causes of injury, death or loss is intended only to provide an example of the broad scope of this Release and Indemnification and is in no way intended to limit the Release to the named causes as this Release and Indemnification is intended to apply to any and all causes of liability.

Covered Operator is familiar with the decision of the Alaska Supreme Court in *Young v. State*, 455 P.2d 889 (Alaska 1969) and it is still the undersigned's true intent and desire to fully release all of the entities and persons described above collectively as the City even though all of such entities and persons are not specifically named herein. Covered Operator further acknowledges familiarity with the decision of the Alaska

FORM B-4

Supreme Court in *Witt v. Watkins*, 579 P.2d 1065 (Alaska 1978) and intends this release to discharge the City from any liability for damages or losses subsequently discovered or incurred or for damages or losses that are different in extent, degree, or kind than those now alleged, known, anticipated, or expected.

This Release and Indemnification has been submitted to the scrutiny of all parties and their counsel if desired, and it shall be interpreted without consideration to or weight given to its being drafted by any party or its counsel and interpreted according to its fair meaning and intent and not for or against either party.

This Release and Indemnification shall be governed by the laws of the State of Alaska.

COVERED OPERATOR:

By: _____

Date: _____

Print Name: _____

Title: _____



Memorandum

TO: PORT & HARBOR ADVISORY COMMISSION
FROM: BRAYN HAWKINS, PORT DIRECTOR/HARBORMASTER
DATE: DECEMBER 1, 2016
SUBJECT: BACKGROUND ON ICICLE SEAFOODS LEASE

Included in your packet is a blank boilerplate lease which the City uses to build new leases from. Though preliminary conversations have begun between the City's and Icicle's legal counsels, a final lease will not be available until after City Council authorizes negotiations by resolution.

The ground lease plus the bulleted items listed in the supporting memo from the City Manager will form the basis of the new lease agreement. As I related in the last meeting, the new lease will be strictly a ground lease for the use of our property, Lot 41, and will not give any special conditions for the use of the Fish Dock.

Special agreements outside of a normal ground lease are handled in a separate Memorandum of Agreement contract such as the MOA between the Fish Factory and the City for the operations of the Fish Grinder Facility. If there are any special conditions concerning Icicle's use of the Fish Dock they will be addressed in a separate MOA between the City and Icicle Seafoods.

Next Steps

The Fish Pump and Covered Awning

The City Manager and staff have discussed the fish pump and have come to the opinion that this opportunity should be opened up to other businesses in a competitive bid. We propose that a Request for Proposals (RFP) be advertised for the purpose of seeking bids from qualified firms to provide fish pump offloading services on the Fish Dock. We feel that this MOA should be a three to five year contract and that we would be seeking proposals that detailed how they would service not only their own fleet but other buyers' needs as well.

I think we should also discuss the possibility of allowing a second fish pump operation to be installed on the facility. Could another pumping operation help to alleviate congestion while at the same time bring more business across the dock?

Ice Delivery System

Icicle currently has a pneumatic ice delivery system plumbed out onto the City's Fish Dock from their ice plant on Lot 41. Other buyers that bring their own ice onto the dock do so by tote and pay wharfage on the ice by the ton.

I would like to hear the commission's views on if Icicle should be allowed to continue have a distribution system on the dock, or not. Some talking points to consider:

- Does Icicle's delivery system compete with the City's ice sales?
- During peak use times, is there a fleet benefit to having another system that can deliver ice to the boats?
- Is this second system an effective backup system to our own ice plant in case our system breaks down?
- In the past there was no revenue (ice wharfage) paid to the City for ice delivered to the dock by Icicle. If the delivery system were allowed to remain on the dock what would the potential new revenue be?

- If allowed to continue, could there be parameters detailed in a MOA that would limit the impact on the City's ice sales? Examples: active during peak use times only, specify customers that they may deliver to (their fleet), tote delivery off season?

FYI – Even with this delivery system and ice plant at peak times, Icicle buys ice from the City. In the 2016 season they purchased 300 tons.

Fish Buying Shack

Currently Icicle is the only buyer allowed to leave a buying shed on the dock. All other buyers bring a shed onto the dock for the offload and then remove the shed once the transaction is completed. What are the commission's thoughts on this issue?

Recommendation

Please review underlined questions/topics listed above for discussion.

GROUND LEASE AND SECURITY AGREEMENT

BETWEEN

CITY OF HOMER, ALASKA

AND

Dated _____, 2016

GROUND LEASE AND SECURITY AGREEMENT

GROUND LEASE AND SECURITY AGREEMENT (“Lease”) dated as of _____, 201__, between the CITY OF HOMER, an Alaska municipal corporation (“Landlord”), whose address is 491 East Pioneer Avenue, Homer, Alaska 99603, and _____ a _____ [state of organization] _____ [type of entity] (“Tenant”), whose address is _____

OPTIONAL PARAGRAPH, APPLICABLE WHEN TENANT IS NOT A NATURAL PERSON

Attached as **Exhibit A** is a schedule naming each owner of Tenant and describing the percentage of ownership of each. Also attached to **Exhibit A** are a certificate of good standing issued by the state under whose laws Tenant is organized, and, if Tenant is a foreign entity, a certificate of authority issued by the State of Alaska. Attached as **Exhibit B** is a true and correct copy of a resolution of Tenant authorizing Tenant to enter into this Lease and authorizing the undersigned individual(s) or officer(s) to execute the Lease on behalf of Tenant.

RECITALS

WHEREAS, Landlord owns certain properties having a strategic location near the waterfront and marine-related public infrastructure; and

WHEREAS, it is the policy of Landlord to retain ownership of these properties, and to make them available for leasing, in order to encourage growth in targeted economic sectors, to insure that Landlord receives the maximum benefit from a large investment in public infrastructure, and to provide land for businesses that require close proximity to the waterfront or infrastructure to operate efficiently and profitably; and

WHEREAS, Landlord has accepted Tenant’s proposal to lease and develop the property leased herein, because Tenant’s proposed use of the property should further Landlord’s goals for the development of Landlord’s properties, and Tenant’s proposal to lease and develop the property is a material inducement to Landlord leasing the property to Tenant; and

WHEREAS, Tenant has made its own determination that its proposed development of the property will be economically feasible, and that the term for which it is leasing the property will be sufficient to amortize Tenant’s investment in developing the leased property under Tenant’s proposal.

NOW, THEREFORE, in consideration of the matters recited above, and the mutual covenants herein, the parties agree as follows:

ARTICLE 1. DEFINITIONS AND ATTACHMENTS

1.01 Definitions. As used herein, the term:

(a) "Annual Rent Adjustment" and "Annual Rent Adjustment Date" are defined in Section 4.01(b).

(b) "Base Rent" is defined in Section 4.01.

(c) "Complete" and "Completion" mean, with regard to an improvement, that construction of the improvement is finished and the improvement is fully operational and ready for occupancy or use for its intended purpose, including without limitation the issuance of any applicable certificate of occupancy and other applicable permits, licenses, certificates or inspection reports necessary to the improvement's legally authorized use.

(d) "Council" means the City Council of the City of Homer, Alaska.

(e) "Default Rate" means an annual rate of interest equal to the lesser of (i) the maximum rate of interest for which Tenant may lawfully contract in Alaska, or (ii) ten and one-half percent (10.5%).

(f) "Environmental Laws" means all local, state, and federal laws, ordinances, regulations, and orders related to environmental protection; or the use, storage, generation, production, treatment, emission, discharge, remediation, removal, disposal, or transport of any Hazardous Substance.

(g) "Excusable Delay" means delay due to strikes, acts of God, inability to obtain labor or materials, orders of any governmental authority having jurisdiction, removal of Hazardous Materials discovered at any time after the commencement of the Term, enemy action, civil commotion, fire, unusual inclement weather, unavoidable casualty or similar causes beyond the reasonable control of Tenant.

(h) "Extended Term" is defined in Section 3.02.

(i) "Five Year Rent Adjustment Date" is defined in Section 4.02(a).

(j) "Hazardous Substance" means any substance or material defined or designated as hazardous or toxic waste; hazardous or toxic material; hazardous, toxic, or radioactive substance; or other similar term by any federal, state, or local statute, regulation, or ordinance or common law presently in effect or that may be promulgated in the future as such statutes, regulations, and ordinances may be amended from time to time.

(k) "Landlord" means the City of Homer, Alaska.

(l) "Lease Policy" means the City of Homer Property Management Policy and Procedures, as adopted and amended from time to time by Council resolution.

(m) "Leasehold Mortgage" is defined in Section 13.01.

(n) "Property" is defined in Section 2.01.

(o) "Qualified Mortgagee" is defined in Section 13.03.

(p) "Required Improvements" is defined in Section 6.02.

(q) "Tenant" means _____.

(r) "Term" is defined in Section 3.01.

1.02 Attachments. The following documents are attached hereto, and such documents, as well as all drawings and documents prepared pursuant thereto, shall be deemed to be a part hereof:

Exhibit "A" Schedule of Organization, Owners, Percentage of Ownership

Exhibit "B" Conformed Copy of Resolution Authorizing Lease and Authorizing Signers to Sign Lease Agreement on Behalf of Tenant

Exhibit "C" Legal Description of Property

Exhibit "D" Tenant's Lease Proposal

Exhibit "E" Site Plan

Exhibit "F" Required Improvements Floor Plan

Exhibit "G" Certificates of Insurance

Exhibit "H" Permission to Obtain Insurance Policies

ARTICLE 2. THE PROPERTY

2.01 Lease of Property. Subject to the terms and conditions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the following described property ("Property"):

[must insert legal description], Homer Recording District, State of Alaska, as depicted on **Exhibit C**, containing _____ square feet, more or less, also known as Kenai Peninsula Borough Tax Parcel No. _____;

subject, however, to reservations, restrictions, easements and encumbrances of record, and to encroachments that may be revealed by an inspection of the Property.

2.02 Quiet Enjoyment. Landlord covenants that Tenant, upon paying the rent and other charges and performing its other obligations under this Lease shall have quiet enjoyment of the Property during the Term without hindrance or interference by Landlord or by any person claiming an interest in the Property through Landlord.

2.03 Property Accepted "As Is." Tenant has inspected the Property, has made its own determination as to the suitability of the Property for Tenant's intended use, and accepts the Property "AS IS." Landlord, its agents and employees make no warranties, expressed or implied, concerning the condition of the Property, including without limitation the habitability or fitness of the Property for any particular purpose, including those uses authorized by this Lease, or subsurface and soil conditions, including the presence of any Hazardous Substance.

OPTIONAL PARAGRAPH 2.03. APPLICABLE IF TENANT OBTAINS ENVIRONMENTAL ASSESSMENT.

2.03 Property Accepted "As Is;" Exception for Hazardous Substances.

(a) Tenant has inspected the Property, has made its own determination as to the suitability of the Property for Tenant's intended use, and accepts the Property "AS IS." Except as provided in subsection (b), Landlord, its agents and employees make no warranties, expressed or implied, concerning the condition of the Property, including without limitation the habitability or fitness of the Property for any particular purpose, including those uses authorized by this Lease, or subsurface and soil conditions.

(b) Tenant shall obtain, at its own expense, a phase I environmental assessment of the Property as of the earlier of (i) the commencement of the Term, and (ii) Tenant's initial occupancy of the Property. If Landlord reasonably determines that the phase I environmental assessment is acceptable, Landlord will warrant that the condition of the Property as of the applicable date with regard to the presence of any Hazardous Substance is consistent with the results of the phase I environmental assessment.

2.04 No Subsurface Rights. This Lease confers no mineral rights or rights with regard to the subsurface of the Property below the level necessary for the uses of the Property permitted in this Lease.

ARTICLE 3. TERM

3.01 Lease Term. The term of this Lease is _____ years, commencing on _____ 201 __, and ending on _____, 201 __ ("Term").

3.02. Options to Extend Lease Term.

(a) Tenant has the option to extend the Term for _____ additional, consecutive _____ year periods (each an "Extended Term"), provided that:

(1) Tenant gives Landlord written notice of its exercise of the option not more than one year and not less than 120 days before the last day of the Term or current Extended Term, as the case may be;

(2) At the time Tenant exercises the option, and at all times thereafter until the Extended Term commences, Tenant is not materially in default of any term or condition of this Lease and has not made an assignment or subletting of this Lease or any interest in the Property except as permitted under this Lease; and

3) Tenant may exercise no more than one option to extend the Term during the Term or any Extended Term.

(b) Tenant's failure to exercise an option to extend the Term in strict compliance with all the requirements in Section 3.02(a) renders that option and all options as to subsequent Extended Terms null and void.

3.03 Lease Renewal.

(a) Tenant represents and warrants that it has determined that the duration of the Term, plus any available Extended Terms, will be sufficient for Tenant to amortize any investment that it makes in connection with this Lease, including without limitation any investment in leasehold improvements. Tenant acknowledges that it has no right of any kind to continue using or occupying the Property after the expiration or earlier termination of the Term or the final Extended Term, including without limitation any option to renew this Lease, or any option to extend the Term other than as provided in Section 3.02.

(b) Not less than 12 months before the expiration of the Term or the final Extended Term, Tenant may apply to Landlord for a renewal of this Lease in the manner that a person then would apply for a new lease of the Property. In response to a timely application, the Council will determine whether to renew this Lease, and the term of any renewal, in its sole discretion. The Council is under no obligation to renew this Lease, or to renew this Lease for the term that Tenant requests. If the Council does not grant a timely application to renew this Lease, Tenant shall prepare to surrender possession of the Property as required by Section 3.04, and dispose of improvements on the Property as required by Section 6.08.

3.04 Surrender of Possession. Upon the expiration or earlier termination of the Term or the final Extended Term, Tenant shall promptly and peaceably surrender the Property, clean, free of debris, and in as good order and condition as at the commencement of the Term, ordinary wear and tear excepted, and shall remove from the Property all personal property that was not present on the Property at the commencement of the Term. If Tenant fails to surrender the Property in the required condition, Landlord may restore the Property to such condition and Tenant shall pay the cost thereof, plus interest at the Default Rate, on demand. Section 6.08 governs the disposition of improvements on the Property at the expiration or earlier termination of the Term or final Extended Term.

3.05 Holding Over. Tenant's continuing in possession of the Property after the expiration or earlier termination of the Term or final Extended Term will not renew or extend this Lease. In the absence of any agreement renewing or extending this Lease, Tenant's continued possession of the Property after the end of the Term will be a tenancy from month to month, terminable upon 30 days written notice by either party at any time, at a monthly rental equal to 150% of the monthly Base Rent in effect at the end of the Term, subject to all other terms of this Lease. For good cause, Landlord may waive all or part of the increase in Base Rent during the holdover period.

ARTICLE 4. RENT, TAXES, ASSESSMENTS AND UTILITIES

4.01 Base Rent. Tenant shall pay to Landlord an initial annual rent of \$ _____ (“Base Rent”). Base Rent is payable monthly in advance in installments of \$ _____, plus tax, on _____, 201_, and on the _____ day of each month thereafter, at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. All Base Rent shall be paid without prior demand or notice and without deduction or offset. Base Rent that is not paid on or before the due date will bear interest at the Default Rate. Base Rent is subject to adjustment as provided in Section 4.02.

4.02 Rent Adjustments.

(a) **Five-Year Appraised Rent Adjustments.** Commencing January 1, _____, and in every fifth year thereafter, Landlord will obtain an appraisal by a qualified real estate appraiser of the fair rental value of the Property as if privately owned in fee simple, excluding the value of improvements (other than utilities) made by tenants. The appraisal may be performed as part of an appraisal of other properties of Landlord that are comparable in location and value. The Base Rent will be adjusted effective _____ of the year of each appraisal (each such date is a "Five Year Rent Adjustment Date") to an amount equal to the greater of (i) the area of the Property in square feet, multiplied by the fair rental value per square foot determined by the appraisal, and (ii) the adjusted Base Rent in effect immediately before the Five Year Rent Adjustment Date. The rent adjusted on a Five Year Rent Adjustment Date thereafter shall be the Base Rent.

(b) **Annual Rent Adjustments.** In addition to the rent adjustments under Section 4.02(a), the Base Rent also shall be adjusted annually (the "Annual Rent Adjustment") effective _____, and on each _____ thereafter, excluding each Five Year Rent Adjustment Date (each such date being an "Annual Rent Adjustment Date"), by the increase or decrease, if any, for the previous year in the cost of living as stated in the Consumer Price Index, All Urban Consumers, Anchorage, Alaska Area, All Items 2000 – present = 100 ("CPI-U"), as published by the United States Department of Labor, Bureau of Labor Statistics most recently before the Annual Rent Adjustment Date. If the CPI-U is revised or ceases to be published, Landlord instead shall use such revised or other index, with whatever adjustment in its application is necessary, to most nearly approximate in Landlord’s judgment the CPI-U for the relevant period.

4.03 Taxes, Assessments and Other Governmental Charges. Tenant shall pay prior to delinquency all taxes, installments of assessments that are payable in installments and other governmental charges lawfully levied or assessed upon or with respect to the Property, improvements on the Property and personal property that is situated on the Property; provided that Tenant may contest in good faith any such tax, assessment or other governmental charge without subjecting the Property to lien or forfeiture. If an assessment on the Property that is not payable in installments becomes due during the Term or an Extended Term, Tenant shall be obligated to pay the fraction of the assessment that is determined by dividing the number of years remaining in the Term or Extended Term by 10. If this Lease subsequently is extended or renewed, the part of the assessment that Tenant shall pay shall be determined by adding the extended or renewal term to the number of years remaining in the Term when the assessment became due. If the Term commences or expires during a tax year, the taxes or assessments payable for that year will be prorated between Landlord and Tenant. Tenant shall exhibit to Landlord, on demand, receipts evidencing payment of all such taxes, assessments and other governmental charges.

4.04 Utility Charges. Tenant shall pay all charges for utility and other services provided to or used on the Property, including without limitation gas, heating oil, electric, water, sewer, heat, snow removal and refuse removal. Tenant shall be solely responsible for the cost of utility connections.

4.05 Tenant to Pay for City Services. Tenant shall pay for all services provided by the City of Homer that are related to the use or operation of the Property, improvements thereon and Tenant's activities thereon. Without limiting the generality of the preceding sentence, Tenant shall pay for wharfage, crane use, ice, and other Port and Harbor services at the rates established by the City of Homer from time to time. Tenant shall provide the City of Homer with the information necessary to determine wharfage, crane use, ice and other Port and Harbor service charges, keep written records of such information for not less than two years after such charges are due, and, upon request, make such records available to the City of Homer for inspection and audit.

4.06 Additional Rent and Landlord's Right to Cure Tenant's Default. All costs or expenses that Tenant is required to pay under this Lease at Landlord's election will be treated as additional rent, and Landlord may exercise all rights and remedies provided in this Lease in the event of nonpayment. If Tenant defaults in making any payment required of Tenant or defaults in performing any term, covenant or condition of this Lease that involves the expenditure of money by Tenant, Landlord may, but is not obligated to, make such payment or expenditure on behalf of Tenant, and any and all sums so expended by Landlord, with interest thereon at the Default Rate from the date of expenditure until repaid, will be additional rent and shall be repaid by Tenant to Landlord on demand, provided, however, that such payment or expenditure by Landlord will not waive Tenant's default, or affect any of Landlord's remedies for such default.

4.07 Security Deposit. Upon execution of this Lease, Tenant shall deposit with Landlord an amount equal to 10% of the annual Base Rent as security for Tenant's performance of its obligations under this Lease. Landlord will hold the security deposit, and may commingle it with other funds of Landlord. If Tenant defaults in performing any obligation under this Lease, including without limitation the payment of rent, Landlord may apply all or any portion of the security deposit to the payment of any sum in default or any damages suffered by Landlord as result of the default, or any sum that Landlord may be required to incur by reason of the default. Upon demand, Tenant shall deposit with Landlord the amount so applied so that Landlord will have the full deposit on hand at all times during the Term or Renewal Term. If Tenant has fully complied with all of its obligations under this Lease through the first five years of the Term, Landlord will remit to Tenant any balance of the security deposit, without interest, within 30 days after the expiration of the first five years of the Term.

OPTIONAL PARAGRAPH 4.08, APPLICABLE TO FISH PROCESSORS WITH ACCESS TO OUTFALL LINE

4.08 Outfall Line Connection Agreement. Tenant shall connect to the City of Homer fish processor outfall line. On or before the commencement of the Term of this Lease, Tenant shall enter into a Fish Processor Outfall Line Connection Agreement with Landlord, and thereafter at its own expense install and maintain a fish grinder as required by the Fish Processor Outfall Line Connection Agreement. Tenant shall comply with the terms of the Fish Processor Outfall Line Connection Agreement until the earlier to occur of (i) the expiration or earlier termination of the

Term and any Extended Term, and (ii) the date the City of Homer ceases to maintain the outfall line.

ARTICLE 5. SECURITY INTEREST

To secure the performance of Tenant's obligations under this Lease, including without limitation the obligations to pay rent and other sums to be paid by Tenant, Tenant grants to Landlord a security interest in the following collateral: ("Collateral"): (1) all security deposits or other monies owing from Landlord to Tenant (as collateral in the possession of the secured party); (2) all insurance proceeds from any policy insuring the Property or improvements thereon against environmental contamination or pollution; (3) all compensation payable to Tenant as a result of eminent domain proceedings or a transfer in lieu thereof; and (4) all rents from Tenant's subletting of all or a part of the Property. Said lien and security interest will be in addition to Landlord's liens provided by law.

This Lease constitutes a security agreement under the Uniform Commercial Code as enacted in Alaska ("UCC"), and Landlord will have all rights and remedies of a secured party under the UCC regarding the Collateral. Tenant shall execute, such financing statements and other instruments as Landlord may now or hereafter reasonably request to evidence the security interest granted by Tenant.

ARTICLE 6. USE AND IMPROVEMENT OF PROPERTY

6.01 Use of Property. Tenant's undertaking to use and improve the Property as described in Tenant's proposal to Landlord is a material inducement to Landlord leasing the Property to Tenant. Tenant shall improve and use the Property in the manner described in Tenant's proposal. Tenant's proposed use of the Property is described in **Exhibit D**. Tenant shall not use or improve the Property for any purpose other than as described in Tenant's proposal without Landlord's written consent, which consent Landlord may withhold in its sole discretion.

6.02 Required Improvements. Tenant shall, at Tenant's sole expense, construct, and at all times during the Term and any Renewal Term keep and maintain as the minimum development on the Property the following improvements ("Required Improvements"):

The Required Improvements also are depicted in the site plan and floor plans in **Exhibit E** and **Exhibit F**, respectively. Tenant shall commence construction of the Required Improvements within one year after the date of commencement of the Term, prosecute the construction of the Required Improvements with diligence, and Complete construction within one additional year.

6.03 Construction Prerequisites. Tenant may not commence any construction on the Property, including without limitation construction of the Required Improvements, without first satisfying the following conditions:

_____ (a) Not less than 30 days before commencing construction, Tenant shall submit to Landlord preliminary plans and specifications, and an application for a City of Homer zoning permit, for the construction, showing the layout of proposed buildings and other improvements, ingress and egress, dimensions and locations of utilities, drainage plans, and any other information required for the zoning permit or other required permits. The preliminary plans and specifications are subject to Landlord's approval, which will not be unreasonably withheld. Landlord shall communicate approval or disapproval in the manner provided for notices, accompanying any disapproval with a statement of the grounds therefor. Tenant shall be responsible for complying with all laws governing the construction, notwithstanding Landlord's approval of preliminary plans and specifications under this paragraph.

(b) Not less than five days before commencing construction, Tenant shall deliver to Landlord one complete set of final working plans and specifications as approved by the governmental agencies whose approval is required for Tenant to commence construction. The final working plans and specifications shall conform substantially to the preliminary plans and specifications previously approved by Landlord, subject to changes made to comply with suggestions, requests or requirements of a governmental agency or official in connection with the application for permit or approval.

(c) Not less than five days before commencing construction, Tenant shall give Landlord written notice of its intent to commence construction, and furnish to Landlord the following:

(1) Proof that all applicable federal, state and local permits required for the construction have been obtained.

(2) For construction, alteration or restoration of Required Improvements, a current certificate of insurance with the coverages specified in Section 9.04(c).

6.04 Extensions of Time for Completion of Required Improvements. Landlord shall grant an extension of the time to Complete the Required Improvements for a period of time equal to the duration of an Excusable Delay, upon Tenant's written request describing the nature of the Excusable Delay, provided Tenant has commenced construction in a timely manner and is proceeding diligently to Complete construction.

6.05 Additional and Replacement Improvements.

(a) Construction of improvements that are not consistent with terms of this Lease is prohibited unless the improvements are authorized by an amendment to this Lease approved by the Council.

(b) Subject to Section 6.05(a), upon satisfying the conditions in section 6.03, Tenant at any time may, but is not obligated to, construct new improvements on the Property and demolish, remove, replace, alter, relocate, reconstruct or add to existing improvements; provided that Tenant is not then in default under this Lease and provided further that Tenant continuously maintains on

the Property the Required Improvements, or their equivalent of equal or greater value. Once any work is begun, Tenant shall with reasonable diligence prosecute to Completion all construction of improvements, additions, alterations, or other work. All salvage resulting from such work will belong to Tenant, who is responsible for its removal and lawful disposal.

6.06 As-Built Survey. Within 30 days after Completion of construction of any improvements on the Property involving construction, alteration, addition, removal or demolition of the foundation, structure, utility services, ingress and egress, or any major changes of all or any part of any structure or improvement on the Property, Tenant shall provide Landlord with three copies of an as-built survey of the Property prepared by a registered professional surveyor, showing the location of all improvements on the Property, including underground utilities, pipelines and pre-existing improvements. Tenant shall accompany the as-built survey with a description of all changes from the approved plans or specifications made during the course of the work.

6.07 Ownership of Improvements. Any and all buildings, fixtures and improvements of any nature whatsoever constructed or maintained on the Property by Tenant will be and remain the property of Tenant at all times during the Term and any Extended Terms and may be removed or replaced by Tenant, subject, however, to (i) Tenant's obligations concerning the Required Improvements in Section 6.02; and (ii) the designation of improvements in **Exhibit D** for transfer to Landlord and retention on the Property at the expiration of the Term or Extended Term as provided in Section 6.08(a).

6.08 Disposition of Improvements at End of Term.

(a) One year before the expiration of the Term or Extended Term, the Landlord and Tenant shall determine if the improvements designated in the proposed use of the Property described in the preceding lease agreement, are structurally sound and in good condition or are ineligible for transfer to Landlord and retention on the Property at the expiration of the Term or Extended Term. If the improvements are eligible to remain, Tenant shall leave such improvements intact with all components, including without limitation doors, windows, and plumbing, electrical and mechanical fixtures and systems, in good condition and ready for use or occupancy. Tenant shall execute, acknowledge, and deliver to Landlord a proper instrument in writing, releasing and quitclaiming to Landlord all of Tenant's interest in such improvements. If the improvements are ineligible, Tenant shall remove all improvements constructed by Tenant or other occupants of the Property under this Lease before the expiration of the Term or Extended Term.

(b) Tenant shall notify Landlord before commencing the removal of an improvement as required under Section 6.08(a), and coordinate the removal work with Landlord. Once Tenant commences the removal work, Tenant shall prosecute the removal with reasonable diligence to Completion and shall repair all damages to the Property caused by such removal no later than the expiration of the Term or Extended Term. All salvage resulting from such work will belong to Tenant, who is responsible for its removal and lawful disposal.

(c) If Tenant fails to remove any improvements from the Property that Tenant is required to remove under Section 6.08(a), Tenant shall pay Landlord the costs that it incurs in removing and disposing of the improvements and repairing damages to the Property caused by such removal.

(d) If Landlord terminates this Lease because of a default by Tenant, all improvements on the Property become the property of Landlord, which may use or dispose of them in its sole discretion. If Landlord elects to remove any improvements, Tenant shall pay Landlord the costs that it incurs in removing and disposing of the improvements and repairing damages to the Property caused by such removal.

ARTICLE 7. CARE AND USE OF THE PROPERTY

7.01 Maintenance of the Property. Tenant at its own cost and expense shall keep the Property and all buildings and improvements that at any time may be situated thereon in a clean, safe and orderly condition, and in good repair at all times during the Term.

7.02 Repair of Improvements.

(a) Except as provided in Section 7.02(b), in the event any buildings or improvements situated on the Property by Tenant are damaged or destroyed by fire, earthquake, tsunami, or other casualty, Tenant shall at Tenant's expense restore the same to good and tenable condition or shall remove the same as soon as is reasonably possible, but in no event may the period of restoration exceed 18 months nor may the period of removal exceed 45 days.

(b) Unless Tenant is excused from the obligation under this paragraph, if the Required Improvements or any part thereof are damaged or destroyed by fire, earthquake, tsunami, or other casualty, rendering the Required Improvements totally or partially inaccessible or unusable, Tenant shall at Tenant's expense restore the Required Improvements to substantially the same condition as they were in immediately before such damage. Tenant shall not be required to restore the Required Improvements under the following circumstances:

(1) If the cost of repairing or restoring the Required Improvements, net of any available insurance proceeds not reduced by applicable deductibles and coinsurance, exceeds 10% of the replacement cost of the Required Improvements, Tenant may terminate this Lease by giving notice to Landlord of Tenant's election to terminate within 15 days after determining the restoration cost and replacement cost, and this Lease shall terminate as of the date of such notice.

(2) If the repair or restoration of the Required Improvements would be contrary to law, either party may terminate this Lease immediately by giving notice to the other party.

(3) If any damage or casualty to the Required Improvements occurs within three years before the end of the Term or any Renewal Term, Tenant may, in lieu of restoring or replacing the Required Improvements, terminate this Lease by giving written notice of termination to Landlord within 120 days after such damage or casualty.

Nothing in this paragraph relieves Tenant of the obligation to surrender the Property upon the expiration or earlier termination of the Term in the condition required by Section 3.03.

(c) Under no circumstance shall Landlord be under any obligation to use or advance any of its own funds to restore any Required Improvements.

7.03 Nuisances Prohibited. Tenant at all times shall keep the Property in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; junk, abandoned or discarded property, including without limitation vehicles, equipment, machinery or fixtures; and litter, rubbish or trash. Tenant shall not use the Property in any manner that will constitute waste or a nuisance. Landlord, at Tenant's expense and without any liability to Tenant, may remove or abate any such junk, abandoned or discarded property, litter, rubbish or trash, or nuisance on the Property after 15 days written notice to Tenant, or after (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 erect signs on the Property that comply with state and local sign laws and ordinances. City Planning Department approval is required prior to the erection of any sign on the Property.

7.08 Garbage Disposal. Tenant shall keep any garbage, trash, rubbish or other refuse in industry standard containers until removed, and cause all garbage, trash, rubbish or other refuse on the Property to be collected and transported to a Kenai Peninsula Borough solid waste facility or transfer station at least once a week. Tenant may not place garbage, trash, rubbish or other refuse from the Property in Landlord's Homer Spit garbage disposal facilities.

7.09 Access Rights of Landlord. Landlord's agents and employees shall have the right, but not the obligation, to enter the Property at all reasonable times to inspect the use and condition

of the Property; to serve, post or keep posted any notices required or allowed under the provisions of this Lease, including notices of non-responsibility for liens; and to do any act or thing necessary for the safety or preservation of the Property.

OPTIONAL PARAGRAPH 7. __ APPLICABLE FOR USE OF FISH DOCK

7. Fish Dock Use Permit. Before using the City of Homer Fish Dock, Tenant shall obtain a City of Homer Fish Dock Use Permit. Tenant shall continue to have a current Fish Dock Use Permit in force until the earlier to occur of (i) the expiration or earlier termination of the Term and any Extended Term, and (ii) the date Tenant ceases to use the Fish Dock.

OPTIONAL PARAGRAPH 7. __ APPLICABLE FOR USE OF OTHER DOCKS

7. Terminal Use Permit. Before using City of Homer Docks other than the Fish Dock, Tenant shall obtain a City of Homer Terminal Use Permit. Tenant shall continue to have a current Terminal Use Permit in force until the earlier to occur of (i) the expiration or earlier termination of the Term and any Extended Term, and (ii) the date Tenant ceases to use City of Homer Docks other than the Fish Dock.

ARTICLE 8. ASSIGNMENT AND SUBLEASE

8.01 Consent Required for Assignment or Sublease. Tenant shall not assign or sublease its interest in this Lease or in the Property without first obtaining the written consent of the Council, which will not be withheld unreasonably. Any assignment or sublease without the consent of the Council will be voidable and, at Landlord's election, will constitute a default. Tenant shall request consent of the Council in writing at least 30 days prior to the effective date of the proposed assignment or sublease, accompanied by a copy of the proposed assignment or sublease. Tenant shall be assessed additional rent, equal to 10% of the current Base Rent for the subleased area, but not upon a sublease of space within a building or other structure on the Property. No consent to any assignment or sublease waives Tenant's obligation to obtain Landlord's consent to any subsequent assignment or sublease. An assignment of this Lease shall require the assignee to assume the Tenant's obligations hereunder, and shall not release Tenant from liability hereunder unless Landlord specifically so provides in writing.

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 subject to Section 8.01. If Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of 25% of the value of the assets of Tenant, will be deemed an assignment subject to Section 8.01; provided that if Tenant is a corporation the stock of which is traded through an exchange or over the counter, a sale or other transfer of a controlling percentage of the capital stock of Tenant will not constitute an assignment subject to Section 8.01. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least 25% of the total combined voting power of all classes of Tenant's capital

stock issued, outstanding and entitled to vote for the election of directors.

8.03. Costs of Landlord's Consent to be Borne by Tenant. As a condition to Landlord's consent to any assignment or sublease under section 8.01, Tenant shall pay Landlord's reasonable costs, including without limitation attorney's fees and the expenses of due diligence inquiries, incurred in connection with any request by Tenant for Landlord's consent to the assignment or sublease.

ARTICLE 9. LIABILITY, INDEMNITY AND INSURANCE

9.01 Limitation of Landlord Liability. Landlord, its officers and employees shall not be liable to Tenant for any damage to the Property or the buildings and improvements thereon, or for death or injury of any person or damage to any property, from any cause; however, this provision shall not affect the liability of Landlord, its officers and employees on any claim to the extent the claim arises from their negligence or willful misconduct.

9.02 Indemnity Generally. Tenant shall indemnify, defend, and hold harmless Landlord, its officers and employees from all claims arising from death or injury of any person or damage to any property occurring in or about the Property; however, this provision shall not apply to any claim to the extent the claim arises from the sole negligence or willful misconduct of Landlord, its officers and employees.

9.03 Indemnity for Emergency Service Costs. Without limiting the generality of Section 9.02, in the event of a major fire or other emergency, Tenant shall reimburse Landlord for the cost of providing fire-fighting and other emergency service to Tenant, the Property or at any other location where the fire or emergency requiring response arises from or is related to the use of the Property or Tenant's operations. For purposes of this section, a major fire or other emergency is one that requires more than five hours of effort by the City of Homer Fire Department.

9.04 Insurance Requirements.

(a) Without limiting Tenant's obligations to indemnify under this Lease, Tenant at its own expense shall maintain in force such policies of insurance with a carrier or carriers reasonably satisfactory to Landlord and authorized to conduct business in the state of Alaska, as Landlord may reasonably determine are required to protect Landlord from liability arising from Tenant's activities under this Lease. Landlord's insurance requirements shall specify the minimum acceptable coverage and limits, and if Tenant's policy contains broader coverage or higher limits, Landlord shall be entitled to such coverage to the extent of such higher limits.

(b) Tenant shall maintain in force at all times during the Term the following policies of insurance:

(1) Comprehensive general liability insurance with limits of liability not less than a combined single limit for bodily injury and property damage of \$1,000,000 each occurrence and

\$2,000,000 aggregate. This insurance also shall be endorsed to provide contractual liability insuring Tenant's obligations to indemnify under this Lease.

(2) Comprehensive automobile liability covering all owned, hired and non-owned vehicles with coverage limits not less than \$1,000,000 occurrence combined single limit for bodily injury and property damage.

(3) Workers' compensation insurance as required by AS 23.30.045. This coverage shall include employer's liability protection not less than \$1,000,000 per person, \$1,000,000 per occurrence. Where applicable, coverage for all federal acts (i.e. U.S. Longshoremen and Harbor Worker's Compensation and Jones Acts) shall also be included. The workers' compensation insurance shall contain a waiver of subrogation clause in favor of Landlord.

(4) Environmental remediation and environmental impairment liability, including sudden and accidental coverage, gradual pollution coverage, and clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property, with coverage limits not less than \$1,000,000 for any one accident or occurrence. Coverage shall extend to loss arising as a result of the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.

(5) Property insurance covering the Required Improvements described in Section 6.02 in an amount not less than full replacement cost of the Required Improvements. The policy shall include boiler and machinery coverage.

(c) During construction of the Required Improvements and during any subsequent alteration or restoration of the Required Improvements at a cost in excess of \$250,000 per job, Tenant shall maintain builder's risk insurance in an amount equal to the completed value of the project.

(d) Tenant shall furnish Landlord with certificates evidencing the required insurance not later than the date as of which this Lease requires the insurance to be in effect. The certificates of insurance shall be attached hereto as **Exhibit G**. The certificates and the insurance policies required by this Section shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire, and limits of liability will not be reduced, without at least 30 days' prior written notice to Landlord. Landlord shall be named as an additional insured under all policies of liability insurance required of Tenant. Landlord's acceptance of a deficient certificate of insurance does not waive any insurance requirement in this Lease. Tenant also shall grant Landlord permission to obtain copies of insurance policies from all insurers providing required coverage to Tenant by executing and delivering to Landlord such authorizations substantially in the form of **Exhibit H** as Landlord may request.

[*ALTERNATIVE 9.04(b)(4)* — Optional provision waiving environmental insurance based on the authorized uses of Section 6.01.]

(4) Based on the authorized uses of the Property stated in Section 6.01, environmental insurance is not required. However, if Tenant uses the Property, with or without authorization from the Landlord, for purposes other than those stated in paragraph Section 6.01, if

Landlord so elects, and within 10 days after Landlord gives notice of such election, Tenant shall procure and at all times thereafter maintain, at its expense, environmental remediation and environmental impairment liability, including sudden and accidental coverage, gradual pollution coverage, and clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property, with coverage limits not less than \$1,000,000 for any one accident or occurrence. Coverage shall extend to loss arising as a result of the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.

ARTICLE 10. ENVIRONMENTAL MATTERS

10.01 Use of Hazardous Substances. Tenant shall not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process any Hazardous Substance, except as is necessary or useful to Tenant's authorized uses of the Property stated in Section 6.01, and only in compliance with all applicable Environmental Laws. Any Hazardous Substance permitted on the Property as provided in this section, and all containers therefor, shall be handled, used, kept, stored and disposed of in a manner that complies with all applicable Environmental Laws, and handled only by properly trained personnel.

10.02 Prevention of Releases. Tenant shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Tenant or any of its agents, employees, contractors, tenants, subtenants, invitees or other users or occupants of the Property, a release of any Hazardous Substance onto the Property or onto any other property.

10.03 Compliance with Environmental Laws. Tenant at all times and in all respects shall comply, and will use its best efforts to cause all tenants, subtenants and other users and occupants of the Property to comply, with all Environmental Laws, including without limitation the duty to undertake the following specific actions: (i) Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of, any and all permits, licenses and other governmental and regulatory approvals required by all Environmental Laws, including without limitation permits required for discharge of (appropriately treated) Hazardous Substances into the ambient air or any sanitary sewers serving the Property; and (ii) except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, all Hazardous Substances from or on the Property to be treated and/or disposed of by Tenant will be removed and transported solely by duly licensed transporters to a duly licensed treatment and/or disposal facility for final treatment and/or disposal (except when applicable Environmental Laws permit on-site treatment or disposal in a sanitary landfill).

10.04 Notice. Tenant shall promptly give Landlord (i) written notice and a copy of any notice or correspondence it receives from any federal, state or other government agency regarding Hazardous Substances on the Property or Hazardous Substances which affect or will affect the Property; (ii) written notice of any knowledge or information Tenant obtains regarding Hazardous Substances or losses incurred or expected to be incurred by Tenant or any government agency to study, assess, contain or remove any Hazardous Substances on or near the Property, and (iii) written notice of any knowledge or information Tenant obtains regarding the release or discovery of Hazardous Substances on the Property.

10.05 Remedial Action. If the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment or disposal at the Property of any Hazardous Substance (i) gives rise to liability (including but not limited to a response action, remedial action or removal action) under any Environmental Law, (ii) causes a significant public health effect, or (iii) pollutes or threatens to pollute the environment, Tenant shall, at its sole expense, promptly take any and all remedial and removal action necessary to clean up the Property and mitigate exposure to liability arising from the Hazardous Substance, whether or not required by law.

10.06 Indemnification. Subject to Section 10.09, Tenant shall indemnify, defend, and hold harmless Landlord, its officers and employees from and against any and all claims, disbursements, demands, damages (including but not limited to consequential, indirect or punitive damages), losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including experts', consultants' and attorneys' fees and expenses, and including without limitation remedial, removal, response, abatement, cleanup, legal, investigative and monitoring costs), imposed against Landlord, arising directly or indirectly from or out of, or in any way connected with (i) the failure of Tenant to comply with its obligations under this Article; (ii) any activities on the Property during Tenant's past, present or future possession or control of the Property which directly or indirectly resulted in the Property being contaminated with Hazardous Substances; (iii) the discovery of Hazardous Substances on the Property whose presence was caused during the possession or control of the Property by Tenant; (iv) the clean-up of Hazardous Substances on the Property; and (v) any injury or harm of any type to any person or damage to any property arising out of or relating to Hazardous Substances on the Property or from the Property on any other property. The liabilities, losses, claims, damages, and expenses for which Landlord is indemnified under this section shall be reimbursable to Landlord as and when the obligation of Landlord to make payments with respect thereto are incurred, without any requirement of waiting for the ultimate outcome of any litigation, claim or other proceeding, and Tenant shall pay such liability, losses, claims, damages and expenses to Landlord as so incurred within 10 days after notice from Landlord itemizing in reasonable detail the amounts incurred (provided that no itemization of costs and expenses of counsel to Landlord is required where, in the determination of Landlord, such itemization could be deemed a waiver of attorney-client privilege).

10.07 Survival of Obligations. The obligations of Tenant in this Article, including without limitation the indemnity provided for in Section 10.06, are separate and distinct obligations from Tenant's obligations otherwise provided for herein and shall continue in effect after the expiration of the Term and any Renewal Term.

10.08 Claims against Third Parties. Nothing in this Article shall prejudice or impair the rights or claims of Tenant against any person other than Landlord with respect to the presence of Hazardous Substances as set forth above.

10.09 Extent of Tenant's Obligations. Tenant's obligations under this Article apply only to acts, omissions or conditions that (i) occur in whole or in part during the Term or any Extended Term or during any time of Tenant's possession or occupancy of the Property prior to or after the Term of this Lease; or (ii) are proximately caused in whole or in part by the occupancy of, use of, operations on, or actions on or arising out of the Property by Tenant or its employees, agents, customers, invitees or contractors.

10.10 Inspection at Expiration of Term. Within 90 days before the expiration of the Term or final Extended Term, Tenant shall at its own expense obtain a Phase I environmental inspection of the Property, and conduct any further inspection, including without limitation test holes, that is indicated by the results of the Phase I inspection. Tenant, at its own expense, shall remediate any contamination of the Property that is revealed by the inspections and that is Tenant's responsibility under this Article.

ARTICLE 11. CONDEMNATION

11.01 Article Determines Parties' Rights and Obligations. If any entity having the power of eminent domain exercises that power to condemn the Property, or any part thereof or interest therein, or acquires the Property, or any part thereof or interest therein by a sale or transfer in lieu of condemnation, the interests of Landlord and Tenant in the award or consideration for such transfer and the effect of the taking or transfer upon this Lease will be as provided in this Article.

11.02 Total Taking. If all of the Property is taken or so transferred, this Lease and all of Tenant's interest thereunder will terminate on the date title to the Property vests in the condemning authority.

11.03. Partial Taking. If the taking or transfer of part of the Property causes the remainder of the Property to be not effectively and practicably usable in the opinion of 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 10 days after the due date.

(b) The failure of Tenant to perform or observe any covenant or condition of this Lease, other than a default in the payment of money described in Section 12.01(a), which is not cured within 30 days after notice thereof from Landlord to Tenant, unless the default is of a kind that cannot be cured within such 30-day period, in which case no event of default shall be declared so long as Tenant shall commence the curing of the default within such 30 day period and thereafter shall diligently and continuously prosecute the curing of same.

(c) The use of the Property or buildings and improvements thereon for purposes other than those permitted herein, to which Landlord has not given its written consent.

(d) The commencement of a case under any chapter of the federal Bankruptcy Code by or against Tenant, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant as bankrupt or insolvent, or the reorganization of Tenant, or an arrangement by Tenant with its creditors, unless the petition is filed or case commenced by a party other than Tenant and is withdrawn or dismissed within ninety (90) days after the date of its filing.

(e) The admission in writing by Tenant of its inability to pay its debts when due; the appointment of a receiver or trustee for the business or property of Tenant, unless such appointment shall be vacated within 10 days after its entry; Tenant making an assignment for the benefit of creditors; or the voluntary or involuntary dissolution of Tenant.

12.02 Landlord's Remedies. Upon the occurrence of an event default, Landlord has all of the following remedies, all in addition to any other remedies that Landlord may have at law or in equity:

(a) Terminate this lease by written notice to Tenant, upon which Tenant shall surrender possession and vacate the Property immediately, and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Property in such event with or without process of law and to repossess Landlord of the Property and to expel or remove Tenant and any others who may be occupying or within the Property and to remove any and all property therefrom, using such force as may be necessary, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law.

(b) By written notice declare Tenant's right to possession of the Property terminated without terminating this Lease, upon which Landlord will have all the rights to repossess the Property and remove Tenant and Tenant's property that are described Section 12.02(a).

(c) Subject to Section 12.01(e), relet the Property in whole or in part for any period equal to or greater or less than the remainder of the Term or Extended Term, as applicable, for any sum that Landlord may deem reasonable.

(d) Collect any and all rents due or to become due from subtenants or other occupants of the Property.

(e) Landlord may recover from Tenant, with or without terminating this Lease, actual attorney's fees and other expenses incurred by Landlord by reason of Tenant's default and elect to recover damages described under either (1) or (2):

(1) from time to time, an amount equal to the sum of all Base Rent and other sums that have become due and remain unpaid, less the rent, if any, collected by Landlord on reletting the Property reduced by the amount of all expenses incurred by Landlord in connection with reletting the Property; or

(2) immediately upon Tenant's default, an amount equal to the difference between the Base Rent and the fair rental value of the Property for the remainder of the Term or Renewal Term, discounted to the date of such default at a rate per annum equal to the rate at which Landlord could borrow funds for the same period as of the date of such default.

(f) Reentry or reletting of the Property, or any part thereof, shall not terminate this Lease, unless accompanied by Landlord's written notice of termination to Tenant.

12.03 Assignment of Rents. Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any subletting of all or a part of the Property, and Landlord, as assignee and attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Lease, except that Tenant has the right to collect such rent until the occurrence of an event of default by Tenant.

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, and subject to all of the other provisions of Article 8. Upon such acquisition by a Qualified Mortgagee, or its assignee of Tenant's leasehold, Landlord will execute and deliver a new ground lease of the Property to the Qualified Mortgagee or its assignee not later than 120 days after such party's acquisition of Tenant's leasehold. The new ground lease will be identical in form and content to this Lease, except with respect to the parties thereto, the term thereof (which will be co-extensive with the remaining Term hereof), and the elimination of any requirements that Tenant fulfilled prior thereto, and the new ground lease will have priority equal to the priority of this Lease. Upon execution and delivery of the new ground lease, Landlord will cooperate with the new tenant, at the sole expense of said new tenant, in taking such action as may be necessary to cancel and discharge this Lease and to remove Tenant from the Property.

ARTICLE 14. GENERAL PROVISIONS

14.01 Authority. Tenant represents and warrants that it has complete and unconditional authority to enter into this Lease; this Lease has been duly authorized by Tenant's governing body; this Lease is a binding and enforceable agreement of and against Tenant; and the person executing the Lease on Tenant's behalf is duly and properly authorized to do so.

14.02 Estoppel Certificates. Either party shall at any time and from time to time upon not less than 30 days prior written request by the other party, execute, acknowledge and deliver to such party, or to its designee, a statement in writing certifying that this Lease is in full force and effect and has not been amended (or, if there has been any amendment thereof, that the same is in full force and effect as amended and stating the amendment or amendments); that there are no defaults existing, (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the Base Rent and other charges have been paid in advance. The requesting party shall pay the cost of preparing an estoppel certificate, including the cost of conducting due diligence investigation and attorney's fees.

14.03 Delivery of Notices -Method and Time. All notices, demands or requests from one party to another shall be delivered in person or be sent by (i) mail, certified or registered, postage prepaid, (ii) reputable overnight air courier service, or (iii) electronic mail or facsimile transmission (accompanied by reasonable evidence of receipt of the transmission and with a confirmation copy mailed by first class mail no later than the day after transmission) to the address for the recipient in Section 14.04 and will be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.

14.04 Addresses for Notices. All notices, demands and requests from Tenant to Landlord shall be given to Landlord at the following address:

City Manager
City of Homer
491 East Pioneer Avenue
Homer, Alaska 99603
Facsimile: (907) 235-3148
Email: _____

All notices, demands or requests from Landlord to Tenant shall be given to Tenant at the following address:

Facsimile: _____
Email: _____

Each party may, from time to time, 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 defendant to any litigation concerning this Lease or the Property by reason of any act or omission of Tenant, or if Landlord is made a party to any litigation brought by or against Tenant without any fault on the part of Landlord, then Tenant shall pay the amounts reasonably incurred and expended by Landlord, including the reasonable fees of Landlord's agents and attorneys and all expenses incurred in defense of such litigation.

(b) In the event of litigation between Landlord and Tenant concerning enforcement of any right or obligation under this Lease, the non-prevailing party shall reimburse the prevailing party for the attorney's fees reasonably incurred and expended by the prevailing party in the litigation.

14.16 Severability. If any provision of this Lease shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Lease, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Lease shall remain in full force and effect.

14.17 Entire Agreement, Amendment. This Lease constitutes the entire and integrated agreement between Landlord and Tenant concerning the subject matter hereof, and supersedes all prior negotiations, representations or agreements, either written or oral. No affirmation, representation or warranty relating to the subject matter hereof by any employee, agent or other representative of Landlord shall bind Landlord or be enforceable by Tenant unless specifically set forth in this Lease. This Lease may be amended only by written instrument executed and acknowledged by both Landlord and Tenant.

14.18 Governing Law and Venue. This Lease will be governed by, construed and enforced in accordance with, the laws of the State of Alaska. Any action or suit arising between the parties in relation to or in connection with this Lease, or for the breach thereof, shall be brought in the trial courts of the State of Alaska for the Third Judicial District at Homer.

14.19 Execution in Counterparts. This Lease may be executed in two or more counterparts, each of which shall be an original and all of which together shall constitute one and the same document.

[OPTIONAL SPECIAL PROVISIONS] -- 14.20 prior lease amended and superseded

14.20 Prior Lease. Landlord and Tenant are parties to a prior lease affecting the Property dated _____, 19__, a memorandum of which has been recorded in the records of the Homer Recording District under Document No. _____ (the "Prior Lease"). This Lease replaces and supersedes the Prior Lease effective as of _____, 201_, and on and after that date the Prior Lease shall have no force or effect, except that it shall remain in effect as to events, rights, obligations, or remedies arising or accruing under the Prior Lease prior to that date.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth above.

Landlord:

CITY OF HOMER

By: _____
Walt Wrede, City Manager
(name/title)

Tenant:

By: _____

ACKNOWLEDGMENTS

STATE OF ALASKA)

) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on _____, 201__, by Walt Wrede, City Manager of the City of Homer, an Alaska municipal corporation, on behalf of the City of Homer.

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on _____, 201__, by _____, as _____ (title) of _____ (name of entity) on behalf of _____ (name of entity).

Notary Public in and for Alaska
My Commission Expires: _____

EXHIBIT A

**SCHEDULE OF ORGANIZATION, OWNERS,
PERCENTAGE OF OWNERSHIP**

Tenant, _____, is a _____ organized under the laws of the state of _____. Attached to this exhibit is a certificate issued by that state certifying that Tenant is in good standing and describing its legal organization. If Tenant is a foreign entity authorized to conduct business in Alaska, its certificate of authority is also attached

The _____ (specify whether shareholders, partners, members, etc.) and their percentage of ownership are as follows:

Name _____ %

Address: _____

Name _____ %

Address: _____

Name _____ %

Address: _____

TOTAL 100 %

EXHIBIT B

**CONFORMED COPY OF RESOLUTION AUTHORIZING LEASE AND
AUTHORIZING SIGNERS TO SIGN LEASE AGREEMENT ON BEHALF
OF TENANT**

EXHIBIT C
LOCATION OF PROPERTY
(Section 2.01)

EXHIBIT D
TENANT'S PROPOSED USE OF THE PROPERTY
(Section 6.01)

EXHIBIT E
SITE PLANS
(Section 6.02)

EXHIBIT F
FLOOR PLANS
(Section 6.02)

EXHIBIT G

CERTIFICATES OF INSURANCE

(Section 9.04(d))

EXHIBIT H

PERMISSION TO OBTAIN INSURANCE POLICIES

(Section 9.04(d))

The City of Homer is hereby granted permission to request and obtain copies of _____ ("Tenant") insurance policies from Tenant's broker and/or insurer, _____. Tenant requests the broker/insurer to provide the City of Homer with information about and copies of all of Tenant's insurance policies providing the type of coverage required by the Lease between Tenant and the City of Homer.

It is understood that the Tenant may revoke this permission at any time by written notice to City of Homer and to Tenant's broker and/or insurer; however, such revocation will constitute a default of Tenant's lease from the City of Homer.

Date: _____

TENANT NAME

By:

_____ (printed name)
_____ (title)

By: _____
_____ (printed name)
_____ (title)



City of Homer

www.cityofhomer-ak.gov

Office of the City Manager

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citymanager@cityofhomer-ak.gov

(p) 907-235-8121 x2222

(f) 907-235-3148

Memorandum

TO: MAYOR BRYAN ZAK & HOMER CITY COUNCIL
THROUGH: PORT & HARBOR ADVISORY COMMISSION
FROM: KATIE KOESTER, CITY MANAGER
DATE: NOVEMBER 2, 2016
SUBJECT: RECOMMENDATIONS RE: NEW LEASE FOR ICICLE SEAFOODS

ICICLE SEAFOODS, INC., now owned by COOKE AQUACULTURE, INC.

In May 2016 the City became aware of the sale of Icicle Seafoods, Inc. to Cooke Aquaculture, Inc. The City has had a long and collaborative relationship with Icicle, which has operated in the City in some capacity since the construction of Homer's Harbor in the 1970's. The City Attorneys reached out to the new company to explain how a change in ownership affects the lease Icicle has with the City. While the City looks forward to forging a new relationship with Cooke Aquaculture, the City denied an assignment of Icicle's current lease to Aquaculture. The City has adopted a strong policy against providing discounts on port and harbor services and cannot consent to an assignment that perpetuates lower rates for any one lessee. The City Attorney provided a current boilerplate lease to Cooke Aquaculture as the basis for a new long-term lease.

Over the course of the summer, the City Attorney has been working with City Staff and Cooke Aquaculture in preparing a draft lease. As part of the lease procedure, the proposal must go before the Port and Harbor Advisory Commission for recommendations and then to City Council for approval.

It is my recommendation to City Council that a new lease with Cooke Aquaculture, dba Icicle Seafoods, be approved. Cooke Aquaculture has provided sufficient information to the City to show that it's a viable company and they agree to the City's terms and conditions. Below are some highlighted details of the draft lease:

- **2.01 Lease of Property:** Lot 41, KPB 181-034-19, consists of 64,944 square feet.
- **3.01 Lease Term:** New term is a 20-year lease, with two 5-year extensions to begin October 1, 2016 and expire September 30, 2046 with no options remaining.
- **4.01 Base Rent:** As per a recent appraisal from October 13, 2016, the annual base rent will be no more than \$35,070.00. Rent will be subject to annual CPI increases and 5-year appraisals.
- **4.05 Tenant to Pay for City Services:** As is standard with all Homer Spit leases, Cooke Aquaculture shall pay for all services provided by the Port and Harbor, including but not limited to wharfage, crane use, and ice.
- **4.08 Outfall Line Connection Agreement:** Cooke Aquaculture is not required to have access to the outfall line due to the City's Fish Grinder Facility having limited outfall line connections. They will be required to bring their fish waste by tote to the facility where it will be properly disposed of per the City's general permit.

Recommendation

The City Manager and Port and Harbor Staff recommends approving Resolution 16-xxx, awarding Cooke Aquaculture, Inc., dba Icicle Seafoods a 20-year lease with two, five-year options for Lot 41, HOMER SPIT SUB AMENDED ADL 18009, with an annual base rent of \$35,070.00, and authorizing the City Manager to move forward with lease negotiations and execute the appropriate documents; and

Attached: Resolution 16-xxx Awarding Icicle Seafoods 20-year Lease for Lot 41

Fiscal Note: Icicle Seafoods Annual Base Rent will be \$35,070.00. Rates are adjusted annually per the Consumer Price Index.

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

3 City Manager

4 **RESOLUTION 16-xxx**

5
6 A RESOLUTION OF THE HOMER CITY COUNCIL AWARDING
7 COOKE AQUACULTURE, INC. DBA ICICLE SEAFOODS A NEW 20-
8 YEAR LEASE WITH TWO, 5-YEAR OPTIONS TO RENEW FOR LOT 41,
9 HOMER SPIT SUB AMENDED ADL 18009, WITH AN ANNUAL BASE
10 RENT OF \$35,070.00, AND AUTHORIZING THE CITY MANAGER TO
11 MOVE FORWARD WITH LEASE NEGOTIATIONS AND EXECUTE THE
12 APPROPRIATE DOCUMENTS.

13
14 WHEREAS, The City has had a long and collaborative relationship with Icycle Seafoods,
15 which has operated in Homer, Alaska in some capacity since the construction of the Homer
16 Harbor in the 1970's; and

17
18 WHEREAS, In May 2016 the City of Homer became aware of the sale of Icycle Seafoods,
19 Inc. to Cooke Aquaculture, Inc., who wish to continue operating it as a seafood-buying and
20 fleet support facility under the name Icycle Seafoods; the City Attorney reached out to the
21 new company to explain how a change in ownership affects the lease Icycle has with the City;
22 and

23
24 WHEREAS, The City has adopted a strong policy against providing discounts on port
25 and harbor services and cannot consent to an assignment of lease that perpetuates lower
26 rates for any one lessee, therefore the City Attorney provided a current boilerplate lease to
27 Cooke Aquaculture as the basis for a new long-term lease; and

28
29 WHEREAS, Cooke Aquaculture has been working with the City Attorney and City
30 Administration in preparing a draft lease as they wish to enter into a new lease with the City
31 of Homer for a 20-year term with two, 5-year options to renew; and

32
33 WHEREAS, The City Administration, City Attorney, and the Port and Harbor Advisory
34 Commission conclude that Cooke Aquaculture, Inc. has provided sufficient information to
35 show that they can continue operating Icycle Seafoods as a viable seafood-buying and fleet
36 support facility on the Homer Spit; and

38 WHEREAS, The City Manager and the Port and Harbor Advisory Commission
39 recommend to City Council that a new 20-year lease with two, five-year options be awarded
40 to Cooke Aquaculture, Inc., dba Icicle Seafoods for Lot 41 for the purpose of operating a
41 seafood-buying and fleet support facility without the parcel being advertised through the
42 Request for Proposals process.

43
44 NOW, THEREFORE, BE IT RESOLVED that the Homer City Council hereby approves that
45 the City of Homer enter into a new, 20 year-term lease with two 5-year options to renew with
46 Cooke Aquaculture, Inc., dba Icicle Seafoods for Lot 41, HOMER SPIT SUB AMENDED ADL
47 18009, with a base rent of \$35,070.00 per year, and authorizing the City Manager to move
48 forward with lease negotiations and execute the appropriate documents.

49
50 PASSED AND ADOPTED by the Homer City Council this 12th day of December, 2016.

51

52

53

CITY OF HOMER

54

55

56

BRYAN ZAK, MAYOR

57

58

59 ATTEST:

60

61

62

JO JOHNSON, MMC, CITY CLERK

63

64

65

Fiscal Note: Base lease will be \$35,070.00 annually, and is adjusted annually to keep pace
66 with the Consumer Price Index.

Port & Harbor Monthly Statistical & Performance Report

For the Month of: **October 2016**

<u>Moorage Sales</u>	<u>2016</u>	<u>2015</u>	<u>Stall Wait List</u>	<u>2016</u>	<u>2015</u>
Daily Transient	121	129	No. on list at Month's End		
Monthly Transient	136	140	20' Stall	1	5
Semi-Annual Transient	3	6	24' Stall	48	11
Annual Transient	14	12	32' Stall	84	36
Annual Reserved	150	159	40' Stall	38	23
			50' Stall	23	27
			60' Stall	4	3
			75' Stall	3	3
			Total:	201	108
<u>Grid Usage</u>					
1 Unit = 1 Grid Tide Use	<u>2016</u>	<u>2015</u>			
Wood Grid	5	13			
Steel Grid	1	1			
			<u>Docking & Beach/Barge Use</u>		
			1 Unit = 1 or 1/2 Day Use	<u>2016</u>	<u>2015</u>
			Deep Water Dock	17	43
			Pioneer Dock	25	29
			Beach Landings	11	0
			Barge Ramp	5	14
<u>Services & Incidents</u>	<u>2016</u>	<u>2015</u>	<u>Marine Repair Facility</u>	<u>2016</u>	<u>2015</u>
Vessels Towed	0	1	Vessels Hauled-Out	0	0
Vessels Moved	12	40	Year to Date Total	12	2
Vessels Pumped	5	0			
Vessels Sunk	0	0	<u>Wharfage (in short tons)</u>		
Vessel Accidents	0	0	In Tons, Converted from Lb./Gal.	<u>2016</u>	<u>2015</u>
Vessel Impounds	0	0	Seafood	0	630
Equipment Impounds	5	0	Cargo/Other	717	3,067
Vehicle Impounds	0	0	Fuel	28,162	63,965
Property Damage	0	0			
Pollution Incident	0	0			
Fires Reported/Assists	0	0			
EMT Assists	2	3			
Police Assists	3	4			
Public Assists	14	22			
Thefts Reported	0	3			
			<u>Ice Sales</u>	<u>2016</u>	<u>2015</u>
<u>Parking Passes</u>	<u>2016</u>	<u>2015</u>	For the Month of October	86	105
Long-term Pass	5	1			
Monthly Long-term Pass	1	1	Year to Date Total	2,289	1,648
Seasonal Pass	0	0			
			<u>Difference between</u>		
<u>Crane Hours</u>	<u>2016</u>	<u>2015</u>	<u>2015 YTD and 2016 YTD:</u>	641 tons more	
	89.8	122.6			

Port & Harbor Monthly Statistical & Performance Report

For the Month of: **November 2016**

<u>Moorage Sales</u>	<u>2016</u>	<u>2015</u>	<u>Stall Wait List</u>	<u>2016</u>	<u>2015</u>
Daily Transient	60	65	No. on list at Month's End	147	130
Monthly Transient	95	97	20' Stall	1	6
Semi-Annual Transient	3	2	24' Stall	20	18
Annual Transient	4	5	32' Stall	66	47
Annual Reserved	64	41	40' Stall	32	26
			50' Stall	22	27
			60' Stall	3	3
			75' Stall	3	3
			Total:	<hr/>	<hr/>
<u>Grid Usage</u>					
1 Unit = 1 Grid Tide Use	<u>2016</u>	<u>2015</u>			
Wood Grid	7	4			
Steel Grid	5	4			
			<u>Docking & Beach/Barge Use</u>		
			1 Unit = 1 or 1/2 Day Use	<u>2016</u>	<u>2015</u>
			Deep Water Dock	25	23
			Pioneer Dock	27	17
			Beach Landings		2
			Barge Ramp	5	4
<u>Services & Incidents</u>	<u>2016</u>	<u>2015</u>			
Vessels Towed	0	0			
Vessels Moved	14	22	<u>Marine Repair Facility</u>	<u>2016</u>	<u>2015</u>
Vessels Pumped	6	3	Vessels Hauled-Out	0	0
Vessels Sunk	0	0	Year to Date Total	12	2
Vessel Accidents	0	0			
Vessel Impounds	0	0	<u>Wharfage (in short tons)</u>		
Equipment Impounds	0	0	In Tons, Converted from Lb./Gal.	<u>2016</u>	<u>2015</u>
Vehicle Impounds	0	0	Seafood	1,418	3
Property Damage	3	8	Cargo/Other	677	1,361
Pollution Incident	1	0	Fuel	*	3,421
Fires Reported/Assists	1	0			
EMT Assists	2	0			
Police Assists	1	2			
Public Assists	10	29			
Thefts Reported	2	0			
<u>Parking Passes</u>	<u>2016</u>	<u>2015</u>	<u>Ice Sales</u>	<u>2016</u>	<u>2015</u>
Long-term Pass	4	1	For the Month of November	2*	4*
Monthly Long-term Pass	0	0	* closed for season		
Seasonal Pass	0	0	Year to Date Total	2,291	1,652
<u>Crane Hours</u>	<u>2016</u>	<u>2015</u>	<u>Difference between</u>		
	27.2	26.1	<u>2015 YTD and 2016 YTD:</u>	<hr/>	
				639 tons more	

Port & Harbor Water/Sewer Bills

Service Period End Date: November 30, 2016

Meter Reading Period: 10/17 to 11/16/2016

Meter Address - Location	Acct. #	Meter ID	Service/ Customer Charge	Water Charges	Sewer Charges	Total Charges	Previous Reading	Current Reading	Total Usage (gal)
810 FISH DOCK ROAD - Fish Grinder	1.0277.01	84810129	\$19.00	-	-	\$19.00	1,160,800	1,160,800	-
4244 HOMER SPIT RD - SBH & Ramp 2	1.0290.01	84872363	\$19.00	\$6,441.90	-	\$6,460.90	11,690,500	-	591,000
4166X HOMER SPIT RD - SBH & Ramp 4	1.0345.01	70291488	\$19.00	-	-	\$19.00	22,949,900	22,949,900	-
4171 FREIGHT DOCK RD - SBH & Ramp 6	1.0361.01	71145966	\$19.00	-	-	\$19.00	1,473,700	1,473,700	-
4690C HOMER SPIT RD - Pioneer Dock	1.0262.01	70315360	\$19.00	\$353.16	-	\$372.16	3,129,200	3,161,600	32,400
4690A HOMER SPIT RD - Pioneer Dock	1.0261.01	70315362	\$19.00	\$67.58	-	\$86.58	467,500	473,700	6,200
4666 FREIGHT DOCK RD - Deep Water Dock	1.0357.01	70564043	\$19.00	\$247.43	-	\$266.43	8,648,700	8,671,400	22,700
4448 HOMER SPIT RD - Steel Grid	1.0230.01	80394966	\$19.00	-	-	\$19.00	229,800	229,800	-
795 FISH DOCK ROAD - Fish Dock/Ice Plant	1.0180.01	70291512	\$19.00	\$784.80	\$13.92	\$817.72	8,665,744	866,646,400	72,000
4147 FREIGHT DOCK RD - SBH & Ramp 6 Restroom	1.4550.01	70315668	\$19.00	\$18.53	\$39.44	\$76.97	1,013,900	1,015,600	1,700
4147X FREIGHT DOCK RD - Ramp 6 Fish Cleaning	1.0457.01	80856895	\$19.00	-	-	\$19.00	1,633,800	1,633,800	-
4001 FREIGHT DOCK RD - L&L Ramp Restrooms	10.4550.01	70364713	\$19.00	\$25.07	\$53.36	\$97.43	1,380,000	1,382,300	2,300
4667 HOMER SPIT RD L - Port Maintenance	1.0109.01	70257255	\$19.00	\$57.77	\$122.96	\$199.73	726,700	432,000	5,300
4667 HOMER SPIT RD - Bldg Near Water Tank	1.0100.02	70315820	\$9.50	-	-	\$9.50	320,400	320,400	-
4667 FREIGHT DOCK RD - DWD Restroom	1.0495.01	84920900	\$19.00	\$11.99	\$25.52	\$56.51	56,400	57,500	1,100
4311 FREIGHT DOCK RD - Port & Harbor Office	5.1020.01	83912984	\$19.00	\$17.44	\$25.12	\$61.56	42,900	44,500	1,600
4000 HOMER SPIT RD - Ramp 5 Restroom	5.1250.01	86083228	\$19.00	\$99.19	\$142.87	\$261.06	192,000	201,100	9,100
4425 FREIGHT DOCK RD - Sys 5 & Ramp 8	5.1050.01	86094861	\$19.00	\$143.88	-	\$162.88	303,600	316,800	13,200

Overall Charges: \$9,024.43

Overall Water Usage: 758,600

Water/Sewer Monthly Comparison CY 2013 to Current								
	2013		2014		2015		2016	
January	\$1,039.71	62,100	\$3,545.49	288,500	\$2,526.35	183,700	\$1,216.22	68,800
February	\$995.09	57,300	\$4,042.38	322,400	\$2,015.14	140,800	\$1,891.14	122,500
March	\$3,777.17	91,400	\$3,968.26	320,400	\$3,339.49	253,700	\$2,341.13	162,300
April	\$2,825.07	208,200	\$5,792.92	452,200	\$4,997.38	467,700	\$3,532.78	256,700
May	\$11,647.05	1,176,600	\$12,019.73	973,600	\$6,982.27	541,900	\$9,770.89	709,300
June	\$19,728.26	1,660,800	\$13,396.30	1,106,200	\$14,116.19	1,134,100	\$21,628.74	1,800,700
July	\$73,511.61	6,344,600	\$16,516.50	1,348,000	\$12,038.01	919,900	\$19,490.97	1,583,400
August	\$18,766.53	1,547,500	\$15,883.21	1,279,500	\$15,033.97	1,197,000	\$22,468.25	2,189,100
September	\$12,784.77	1,057,600	\$13,105.89	1,073,100	\$15,661.07	1,307,300	\$19,710.24	1,651,300
October	\$6,823.64	558,200	\$3,874.68	266,000	\$5,445.90	406,300	\$8,887.32	708,200
November	\$5,696.76	456,800	\$3,658.86	283,400	\$1,917.85	106,100	\$9,024.43	758,600
December	\$2,699.74	186,900	\$1,748.09	111,900	\$1,284.30	30,100		
YTD Total	\$160,295.40	13,408,000	\$97,552.31	7,825,200	\$85,357.92	6,688,600	\$119,962.11	10,010,900

WEEKLY CRANE TIME / TONS OF ICE
City of Homer - Fish Dock 2016

Date From	Date To	Crane Hours (Weekly)	YTD Crane	Tons of Ice (Weekly)	YTD Ice
1/4/2016	1/10/2016	6	6	shut down for maintenance	0
1/11/2016	1/17/2016	24	30	shut down for maintenance	0
1/18/2016	1/24/2016	29.1	59.1	shut down for maintenance	0
1/25/2016	1/31/2016	28.5	87.6	shut down for maintenance	0
2/1/2016	2/7/2016	30.1	117.7	shut down for maintenance	0
2/8/2016	2/16/2016	64.5	182.2	shut down for maintenance	0
2/15/2016	2/21/2016	40.2	222.4	shut down for maintenance	0
2/22/2016	2/28/2016	36.9	259.3	shut down for maintenance	0
2/29/2016	3/6/2016	32.3	291.6	shut down for maintenance	0
3/7/2016	3/13/2016	51.3	342.9	shut down for maintenance	0
3/14/2016	3/20/2016	43.3	386.2	19	19
3/21/2016	3/27/2016	46.1	432.3	28	47
3/28/2016	4/3/2016	21	453.3	13	60
4/4/2016	4/10/2016	25.4	478.7	20	80
4/11/2016	4/17/2016	52.6	531.3	81	161
4/18/2016	4/24/2016	48.6	579.9	31	192
4/25/2016	5/1/2016	26.1	606	52	244
5/2/2016	5/8/2016	30.9	636.9	16	260
5/9/2016	5/15/2016	42.5	679.4	109	369
5/16/2016	5/22/2016	48.9	728.3	73	442
5/23/2016	5/29/2016	42.4	770.7	77	519
5/30/2016	6/5/2016	56.2	826.9	65	584
6/6/2016	6/12/2016	77.3	904.2	83	667
6/13/2016	6/19/2016	59.7	963.9	81	748
6/20/2016	6/26/2016	84.7	1048.6	113	861
6/27/2016	7/3/2016	91.5	1140.1	77	938
7/4/2016	7/10/2016	111.2	1251.3	95	1033
7/11/2016	7/17/2016	108.1	1359.4	345	1378
7/18/2016	7/24/2016	63.9	1423.3	276	1654
7/25/2016	7/31/2016	48.8	1472.1	73	1727
8/1/2016	8/7/2016	88.1	1560.2	40	1767
8/8/2016	8/14/2016	87.5	1647.7	82	1849
8/15/2016	8/21/2016	51.1	1698.8	42	1891
8/22/2016	8/28/2016	77.3	1776.1	98	1989
8/29/2016	9/4/2016	30	1806.1	53	2042
9/5/2016	9/11/2016	55.3	1861.4	59	2101
9/12/2016	9/18/2016	30	1891.4	41	2142
9/19/2016	9/25/2016	35	1926.4	68	2210
9/26/2016	10/2/2016	27.1	1953.5	31	2241
10/3/2016	10/9/2016	50.5	2004	41	2282
10/10/2016	10/16/2016	10.3	2014.3	16	2298
10/17/2016	10/23/2016	10.2	2024.5	25	2323
10/24/2016	10/30/2016	18.8	2043.3	4	2327
10/31/2016	11/6/2016	12.7	2056	2	2329
11/7/2016	11/13/2016	4.6	2060.6	0	2329
11/14/2016	11/20/2016	6	2066.6	shut down for maintenance	2329
11/21/2016	11/27/2016	3.9	2070.5	shut down for maintenance	2329
11/28/2016	12/4/2016			shut down for maintenance	
12/5/2016	12/11/2016			shut down for maintenance	
12/12/2016	12/18/2016			shut down for maintenance	
12/19/2016	12/25/2016			shut down for maintenance	
12/26/2016	1/1/2017			shut down for maintenance	
				shut down for maintenance	

Deep Water Dock 2016

Date	Vessel	LOA	Times	Billed	\$ Dock	Srv Chg
1/3	Tustumena	296	1900/2200	St of AK	788.00	52.00
1/7	Swiftwater	218	1000/2100	Turnagain Ma	788.00	52.00
1/13	DBL 54	300	0820/1215	Kirby Offshor	788.00	52.00
1/13	Pacific Wolf	121	0845/1215	Kirby Offshor	506.00	52.00
1/17	Java Sea & DBL 78	395	0430/0900	Kirby Offshor	1,206.00	52.00
1/17	Java Sea INSIDE	121	0900/	Kirby Offshor	506.00	na
1/18	Java Sea & DBL 78	395		Kirby Offshor	1,206.00	
1/18	Java Sea INSIDE	121	/1000	Kirby Offshor	253.00	na
1/19	Java Sea & DBL 78	395	/0245	Kirby Offshor	1,206.00	
1/27	Tustumena INSIDE 1/6	296	0915/1200	St of AK	131.28	na
1/30	Java Sea & DBL 78	395	0500/	Kirby Offshor	1,206.00	52.00
1/31	Java Sea & DBL 78	395	/2020	Kirby Offshor	1,206.00	
1/31	Millennium Star	105	1800/	Olympic	253.00	na
2/1	Millennium Star INSIDE	105	/1200	Olympic	253.00	
2/4	Perseverance	207	1000/	Cispri	788.00	52.00
2/5	Perseverance	207		Cispri	788.00	
2/6	Perseverance	207	/1030	Cispri	788.00	
2/9	Millennium Star INSIDE	105	1350/	Olympic	253.00	na
2/10	Millennium Star INSIDE	105		Olympic	506.00	
2/11	Millennium Star INSIDE	105	/0900	Olympic	253.00	
2/16	PacWolf & DBL54 INSIDE	395	0745/1645	Kirby Offshor	603.00	na
2/23	Tustumena	296	1900/2030	St of AK	788.00	52.00
2/24	DBL 106	383	1630/	Kirby Offshor	1,206.00	52.00
2/24	Bismarck Sea INSIDE	125	1730/	Kirby Offshor	253.00	na
2/25	DBL 106	383		Kirby Offshor	1,206.00	
2/25	Bismarck Sea INSIDE	125		Kirby Offshor	506.00	
2/26	DBL 106	383	/2120	Kirby Offshor	1,206.00	
2/26	Bismarck Sea INSIDE	125	/2100	Kirby Offshor	506.00	
3/2	Anna T INSIDE	105	1215/	Amak Towing	253.00	na
3/3	Anna T	105		Amak Towing	506.00	
3/3	Millennium Star INSIDE	105	0030/	Olympic	506.00	na
3/4	Anna T	105		Amak Towing	506.00	
3/4	Millennium Star INSIDE	105	/1830	Olympic	506.00	
3/5	Anna T	105		Amak Towing	506.00	
3/6	Anna T	105		Amak Towing	506.00	
3/6	Millennium Star INSIDE	105	1600/	Olympic	253.00	na
3/7	Millennium Star INSIDE	105	/1130	Olympic	506.00	
3/7	Anna T	105		Amak Towing	506.00	
3/8	Millennium Star	105	/1315	Olympic	506.00	
3/8	Anna T	105	/1300	Amak Towing	506.00	
3/9	Anna T	105		Amak Towing	506.00	
3/9	Millennium Star INSIDE	105		Olympic	506.00	
3/10	Anna T	105		Amak Towing	506.00	
3/10	Millennium Star INSIDE	105		Olympic	506.00	
3/11	Anna T	105		Amak Towing	506.00	
3/11	Millennium Star INSIDE	105		Olympic	506.00	
3/12	Randolf Yost RIG	350	1930/	Furie	1,005.00	52.00
3/12	Anna T	105	/1530	Amak Towing	506.00	
3/12	Millennium Star INSIDE	105	/1500	Olympic	506.00	
3/13	Randolf Yost RIG	350		Furie	1,005.00	
3/13	Anna T	105	/1115	Amak Towing	506.00	
3/13	Millennium Star INSIDE	105	/1130	Olympic	253.00	
3/14	Randolf Yost RIG	350		Furie	1,005.00	
3/15	Randolf Yost RIG	350		Furie	1,005.00	
3/16	Randolf Yost RIG	350		Furie	1,005.00	
3/17	Randolf Yost RIG	350		Furie	1,005.00	
3/18	Randolf Yost RIG	350		Furie	1,005.00	
3/19	Randolf Yost RIG	350		Furie	1,005.00	

3/20	Randolf Yost RIG	350		Furie	1,005.00	
3/21	Randolf Yost RIG	350		Furie	1,005.00	
3/22	Randolf Yost RIG	350		Furie	1,005.00	
3/23	Randolf Yost RIG	350		Furie	1,005.00	
3/23	Perseverance Cispri INSIDE	207	0030/	Cispri	788.00	na
3/24	Randolf Yost RIG	350		Furie	1,005.00	
3/24	Perseverance Cispri INSIDE	207	/1745	Cispri	788.00	
3/25	Randolf Yost RIG	350		Furie	1,005.00	
3/26	Randolf Yost RIG	350		Furie	1,005.00	
3/27	Randolf Yost RIG	350		Furie	1,005.00	
3/28	Randolf Yost RIG	350		Furie	1,005.00	
3/29	Randolf Yost RIG	350		Furie	1,005.00	
3/30	Randolf Yost RIG	350		Furie	1,005.00	
3/31	Randolf Yost RIG	350		Furie	1,005.00	
3/31	Silver Arrow	242	0930/1145	AK Maritime	131.28	na
4/1	Randolf Yost RIG	350		Furie	1,005.00	
4/2	Randolf Yost RIG	350		Furie	1,005.00	
4/2	Bismarck Sea	125	1300/	Kirby Offshore	506.00	52.00
4/3	Bismarck Sea	125	/2130	Kirby Offshore	506.00	
4/3	Randolf Yost RIG	350		Furie	1,005.00	
4/3	Endurance INSIDE	207	0600/2030	Alyeska Pipe	788.00	na
4/4	Randolf Yost RIG	350		Furie	1,005.00	
4/5	Randolf Yost RIG	350		Furie	1,005.00	
4/6	Randolf Yost RIG	350		Furie	1,005.00	
4/6	Endurance INSIDE	207	1600/	Alyeska Pipe	394.00	na
4/7	Randolf Yost RIG	350		Furie	1,005.00	
4/7	Endurance INSIDE	207	/0800	Alyeska Pipe	394.00	
4/8	Randolf Yost RIG	350		Furie	1,005.00	
4/8	Endurance INSIDE	207	1600/2110	Alyeska Pipe	394.00	na
4/9	Randolf Yost RIG	350		Furie	1,005.00	
4/10	Randolf Yost RIG	350		Furie	1,005.00	
4/11	Randolf Yost RIG	350		Furie	1,005.00	
4/12	Randolf Yost RIG	350		Furie	1,005.00	
4/13	Randolf Yost RIG	350		Furie	1,005.00	
4/14	Randolf Yost RIG	350		Furie	1,005.00	
4/15	Randolf Yost RIG	350		Furie	1,005.00	
4/15	Ramblin Rose	96	1300/1400	Diamond Back	338.00	52.00
4/15	Sam M Taalak	150	1030/1200	Naknek Barg	84.30	na
4/16	Randolf Yost RIG	350		Furie	1,005.00	
4/17	Randolf Yost RIG	350		Furie	1,005.00	
4/18	Randolf Yost RIG	350		Furie	1,005.00	
4/19	Randolf Yost RIG	350		Furie	1,005.00	
4/20	Randolf Yost RIG	350		Furie	1,005.00	
4/21	Randolf Yost RIG	350		Furie	1,005.00	
4/22	Randolf Yost RIG	350		Furie	1,005.00	
4/23	Randolf Yost RIG	350		Furie	1,005.00	
4/24	Randolf Yost RIG	350		Furie	1,005.00	
4/25	Randolf Yost RIG	350		Furie	1,005.00	
4/26	Randolf Yost RIG	350		Furie	1,005.00	
4/27	Randolf Yost RIG	350		Furie	1,005.00	
4/28	Randolf Yost RIG	350		Furie	1,005.00	
5/1	Randolf Yost RIG	350		Furie	1,005.00	
5/1	Anna T	105		Amak Towing	506.00	
5/2	Randolf Yost RIG	350		Furie	1,005.00	
5/2	Anna T	105		Amak Towing	506.00	
5/3	Randolf Yost RIG	350		Furie	1,005.00	
5/3	Anna T	105		Amak Towing	506.00	
5/3	Arctic Titan	120	?	Western Tow	506.00	52.00
5/4	Randolf Yost RIG	350		Furie	1,005.00	
5/4	Anna T	105		Amak Towing	506.00	
5/4	Arctic Titan	120	94 /1330	Western Tow	506.00	

5/4	Guardzman INSIDE	127	1600/	Crowley	253.00	na
5/5	Randolf Yost RIG	350		Furie	1,005.00	
5/5	Anna T	105		Amak Towing	506.00	
5/5	Arctic Titan	120		Western Tow	506.00	
5/5	Guardzman INSIDE	127	/1500	Crowley	253.00	
5/6	Randolf Yost RIG	350	/0530	Furie	1,005.00	
5/6	Anna T	105	/0520	Amak Towing	506.00	
5/6	Arctic Titan	120	/0575	Western Tow	506.00	
5/12	Anna T	105	0540/	Amak Towing	506.00	52.00
5/13	Anna T	105	/0700	Amak Towing	506.00	
5/18	Silver Shadow	610	/1700	AK Maritime	2,957.00	481.53
5/18	Bismark Sea INSIDE	125	1830/	Kirby Offshore	253.00	na
5/18	DBL 106	383	1800/	Kirby Offshore	1,206.00	52.00
5/19	DBL 106	383		Kirby Offshore	1,206.00	
5/19	Bismark Sea INSIDE	125		Kirby Offshore	506.00	
5/20	DBL 106	383		Kirby Offshore	1,206.00	
5/20	Bismark Sea INSIDE	125		Kirby Offshore	506.00	
5/21	DBL 106	383		Kirby Offshore	1,206.00	
5/21	Bismark Sea INSIDE	125	/1400	Kirby Offshore	506.00	
5/21	Nakao barge	275	1900/	Kirby Offshore	788.00	52.00
5/22	Bismark Sea & DBL106	536	/0620	Kirby Offshore	2,154.00	
5/23	Perseverance	207	0600/	Cispri	788.00	52.00
5/24	Perseverance INSIDE	207		Cispri	788.00	
5/25	Perseverance INSIDE	207		Cispri	788.00	
5/26	Perseverance INSIDE	207	/1130	Cispri	788.00	
5/31	Maasdam	720	0900/1745	Holland Am	5,119.00	481.53
6/1	North Pacific	98	1230/1700	North Pac	169.00	na
6/1	Whale INSIDE	86	1730/	Suomela LLC	169.00	na
6/7	Whale INSIDE	86	/0230	Suomela LLC	56.31	
6/11	Maasdam	720	0900/1800	Holland Amer	5,119.00	481.53
6/17	Rainier NOAA	231	0900/	NOAA	788.00	52.00
6/17	Rainier NOAA	231		NOAA	788.00	
6/18	Rainier NOAA	231		NOAA	788.00	
6/19	Rainier NOAA	231		NOAA	788.00	
6/20	Bismark Sea&DBL 106	536	2200/	Kirby	2,154.00	52.00
6/21	Bismark Sea&DBL 106	536	/2200	Kirby	2,154.00	
6/22	Maasdam	720	0915/1800	Holland Amer	5,119.00	481.53
7/1	NOAA Fairweather	231	0650/	NOAA	788.00	52.00
7/2	NOAA Fairweather	231		NOAA	788.00	
7/3	NOAA Fairweather	231		NOAA	788.00	
7/4	NOAA Fairweather	231		NOAA	788.00	
7/5	NOAA Fairweather	231	/2000	NOAA	788.00	
7/10	Pacific Wolf & DBL 54	395	1630/	Kirby Offshore	1,206.00	52.00
7/11	Pacific Wolf & DBL 54	395	/0500	Kirby Offshore	1,206.00	
7/12	Maasdam	720	0900/?	Holland Am	5,119.00	481.53
7/18	Barge Swiftwater	218	1000/	Turnagain M	788.00	52.00
7/19	Barge Swiftwater	218		Turnagain M	788.00	
7/20	Barge Swiftwater	218		Turnagain M	788.00	
7/21	Barge Swiftwater	218		Turnagain M	788.00	
7/22	Barge Swiftwater	218	/0930	Turnagain M	788.00	
7/22	RM Thornstensen	315	1115/	Icicle	1,005.00	52.00
7/23	RM Thornstensen	315		Icicle	1,005.00	
7/24	RM Thornstensen	315		Icicle	1,005.00	
7/25	RM Thornstensen	315		Icicle	1,005.00	
7/26	RM Thornstensen	315	/0600	Icicle	1,005.00	
7/26	Maasdam	720	0900/1815	Holland Am	5,119.00	481.53
7/27	Perseverance	207	1700/	Cispri	788.00	52.00
7/28	Perseverance INSIDE	207		Cispri	788.00	
7/29	Perseverance INSIDE	207		Cispri	788.00	
7/30	Perseverance INSIDE	207	/1800	Cispri	788.00	
8/7	Labrador	132	0900/ 95	Silver Bay Seaf	506.00	52.00

8/8	Labrador	132	/1215	Silver Bay Seaf	506.00	
8/9	Maasdam	720	0930/1800	Holland Am	5,119.00	481.53
8/21	Katrina Em	101	0900/1400	Alaska Access	253.00	na
9/6	Maasdam	720	0800/1915	Holland Am	5,119.00	481.53
9/17	Millennium Star INSIDE	105	0300/	Olympic	506.00	na
9/18	Millennium Star INSIDE	105	/0845	Olympic	253.00	
10/1	Millenium Star	105	0930/	Olympic Tug	506.00	na
10/2	Millenium Star	105	/0015	Olympic Tug	nc 15min.	
10/6	Pacific Wolf&DBL54	395	1315/1700	Kirby	1,206.00	52.00
10/8	Millenium Falcon INSIDE	105	0600/	Olympic Tug	506.00	na
10/8	Millennium Star INSIDE	105	1015/1900	Olympic Tug	253.00	na
10/9	Millennium Falcon INSIDE	105	/1430	Olympic Tug	506.00	
10/11	Tustumena	296	1945/	ST of AK	788.00	52.00
10/12	Tustumena	296	/1800	ST of AK	788.00	
10/18	Tustumena	296	1900/	ST of AK	788.00	52.00
10/19	Tustumena	296	/0120	ST of AK	chrg above	
10/20	Pacific Wolf&DBL54	395	0600/	Kirby	1,206.00	52.00
10/21	Pacific Wolf&DBL54	395	/1030	Kirby	1,206.00	
10/22	Millennium Star INSIDE	105	1500/	Olympic Tug	253.00	na
10/23	Millennium Star INSIDE	105		Olympic Tug	506.00	
10/24	Millennium Star INSIDE	105	/1100	Olympic Tug	253.00	
11/4	CISPRI Responder Barge	175	1000/	Cispri	506.00	52.00
11/5	CISPRI Responder Barge	175	/1600	Cispri	506.00	
11/6	Tustumena	296	1915/	St of Alaska	788.00	52.00
11/7	Tustumena	296	/2215	St of Alaska	788.00	
11/11	Pacific Wolf & DBL 54	395	0600/1200	Kirby Offshor	1,206.00	52.00
11/12	Pacific Freedom&DBL 54	345	/1130	Kirby Offshor	1,005.00	
11/14	Paragon & Nakoa	120	0600/2145	Kirby Offshor	506.00	52.00
11/14	Cispri Endeavor INSIDE	181	0845/	Cispri	506.00	NA
11/15	Cispri Endeavor INSIDE	181	/0930	Cispri	506.00	na
11/16	Cispri Endeavor INSIDE	181	/0715	Cispri	253.00	na
11/16	Champion INSIDE	171	0745/1030	Ocean Marine	84.30	na
11/22	Pacific Freedom&DBL 54	345	1600/	Kirby Offshor	chrgd PD	52.00
11/23	Pacific Freedom&DBL 54	345		Kirby Offshor	1,005.00	52.00
11/24	Pacif Freedom&DBL 54	345	/1000	Kirby Offshor	1,005.00	
12/01/16				Year to Date Totals:	\$184,870.17	\$5,360.24

Pioneer Dock 2016

Date	Vessel	LOA	Times	Billed	\$ Dock	Srv Chg
1/8	Pacific Wolf & DBL54	395	0030/1315	Kirby Offshore	\$1,206.00	\$52.00
1/13	Perseverance	207	0600/1400	Cispri	\$788.00	\$52.00
1/22	Pacific Wolf & DBL55	395	0730/1400	Kirby Offshore	\$1,206.00	\$52.00
1/23	Bob Franco	120	0030/	Olympic	\$506.00	\$52.00
1/24	Bob Franco	120	/1200	Olympic	\$506.00	
2/5	Pacific Wolf & DBL54	395	0800/1220	Kirby Offshore	\$1,206.00	\$52.00
2/12	Perseverance	207	1015/1600	Cispri	\$788.00	\$52.00
3/9	Pacific Wolf & DBL 55	395	1200/1700	Kirby Offshor	\$1,206.00	\$52.00
3/10	Java Sea & DBL 78 noPO	395	?	Kirby Offshor	\$1,206.00	\$52.00
3/11	Java Sea & DBL 78 noPO	395		Kirby Offshor	\$1,206.00	
3/12	Java Sea & DBL 78 noPO	395		Kirby Offshor	\$1,206.00	
3/13	Java Sea & DBL 78 noPO	395		Kirby Offshor	\$1,206.00	
3/14	Java Sea & DBL 78 noPO	395		Kirby Offshor	\$1,206.00	
3/15	Java Sea & DBL 78 noPO	395	/0730	Kirby Offshor	\$1,206.00	
3/16	Pacific Wolf & DBL 54	395	0800/2045	Kirby Offshor	\$1,206.00	\$52.00
4/1	Silver Arrow	242	1000/	AK Maritime	\$788.00	\$52.00
4/2	Silver Arrow	242	/1115	AK Maritime	\$788.00	
4/2	DBL 106	383	1200/	Kirby Offshor	\$1,206.00	\$52.00
4/3	DBL 106	383	/2200	Kirby Offshor	\$1,206.00	
4/6	Bob Franco	120	1100/1545	Olympic	\$506.00	\$52.00
4/13	Pacific Wolf & DBL54	395	0730/1830	Kirby Offshor	\$1,206.00	\$52.00
4/19	Sam M Taalak	150	1400/1630	Naknek Barg	\$506.00	\$52.00
4/21	Perseverance	207	0900/1400	Cispri	\$788.00	\$52.00
4/21	Capt. Frank Moody	73	1415/1700	Cook Inlet Tug	\$338.00	\$52.00
5/2	Pacific Wolf & DBL54	395	0130/	Kirby Offshore	\$1,206.00	\$52.00
5/3	Pacific Wolf & DBL54	395	/1830	Kirby Offshore	\$1,206.00	
5/3	Swiftwater	218	1945/	Turnagain Mar	\$788.00	\$52.00
5/4	Swiftwater	218		Turnagain Mar	\$788.00	
5/5	Swiftwater	218	/1000	Turnagain Mar	\$788.00	
5/11	Arctic Titan	120	0550/0950	Western Tow	\$506.00	\$52.00
5/18	Pacific Wolf & DBL54	395	0615/1900	Kirby Offshore	\$1,206.00	\$52.00
6/3	Pacific Wolf & DBL 54	395	0000/1700	Kirby	\$1,206.00	\$52.00
6/15	Pacific Wolf & DBL 54	395	0745/1500	Kirby	\$1,206.00	\$52.00
6/16	Bob Franco	120	0815/1200	Olympic	\$506.00	\$52.00
6/17	Millie Cruz & Inokoa	150	1400/1515	Cruz Marine	\$506.00	\$52.00
6/25	Pacific Wolf & DBL 54	395	1130/2000	Kirby	\$1,206.00	\$52.00
7/14	Pacific Wolf & DBL 54	395	1530/	Kirby	\$1,206.00	\$52.00
7/15	Pacific Wolf & DBL 54	395	/2000	Kirby	\$1,206.00	
7/27	Pacific Wolf & DBL 54	395	0700/1700	Kirby	\$1,206.00	\$52.00
8/19	Pacific Wolf & DBL 54	395	1500/2000	Kirby	\$1,206.00	\$52.00
9/5	Pacific Wolf & DBL 54	395	0800/1545	Kirby	\$1,206.00	\$52.00
9/28	Pacific Wolf & DBL 54	395	1230/2000	Kirby	\$1,206.00	\$52.00
10/8	Millennium Star	105	0600/1010	Olympic	\$506.00	\$52.00
10/28	Pacific Wolf & DBL 54	395	2215/0415	Kirby	\$1,206.00	\$52.00
11/7	Pacific Wolf & DBL 54	395	1400/1730	Kirby	\$1,206.00	\$52.00
11/14	Scorpius	118	1330/1645	Kirby	\$506.00	\$52.00
11/22	Pacific Freedom & 54	345	1215/1545	Kirby	\$1,005.00	\$52.00
12/01/16				Year to Date Totals:	\$45,969.00	\$1,820.00

Ferry Landings 2016

	Pioneer Dock	Deep Water Dock
January	14	2
February	21	1
March	12	0
April	8	0
May	9	0
June	25	
July	25	

August	23	
September	24	
October	23	4
November	24	1
December		



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FEATURED NEWS

As Alaska’s boats age, Harbormasters Association pushes for tighter derelict vessel laws

by Aaron Bolton, KSTK News

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State agencies, harbormasters and communities around the state want stronger laws on abandoned and derelict vessels. The Alaska Association of Harbormasters and Port Administrators submitted proposed legislation to Gov. Bill Walker’s office last month that would make it easier to find vessel owners and hold them accountable.

The Harbormasters Association has been working with government agencies, as well as Native and environmental organizations to develop the proposal. In a nutshell, it would require titles on all boats that are currently required to register with the state. It would also create a derelict vessel tracking program and make it a misdemeanor offense to abandon a boat.

“We need to make some changes to the law so that it empowers the state agencies and the local governments and even the private land owners to protect themselves from derelict vessels,” said Bryan Hawkins, Homer’s harbormaster and vice president of the Harbormasters Association.

Hawkins said the state can’t ignore the problem. Several derelict vessels show up on shores, sloughs and in other waterways around the state each year.

These boats are expensive to clean up and pose safety and environmental hazards. Hawkins said the problem is growing. He noted that Bethel has about 40 barges in Steamboat Slough.

“These are 200-foot-plus vessels that have been basically dumped there,” said Hawkins.

Statewide, the issue is harder to get a handle on. No one knows just how many ships are lying around. The legislation would create a Department of Natural Resources-run derelict vessel program that would track at-risk and abandoned boats. Anyone who sees a derelict vessel or denies an at-risk boat harbor access would be able to report them.

“These reporting forms would be done online, and the report is sent in and the database is generated,” said Hawkins. “Pretty soon we end up with points on the map that give us real numbers for how big the current situation is.”

The program would be state funded. Current boat registration would go up \$6 in 2017 and continue increasing every three years to help fund the program. Hawkins said the proposed legislation also clears up the process to dispose of or sell an impounded vessel. Some of those proceeds would go the program after covering impoundment costs.

Hawkins said derelict vessels have become an issue for two primary reasons. It’s hard to track down owners, and even if you do, it’s hard to hold them accountable.

“When we have a derelict vessel, often times there’s this broken paper trail for ownership. Then you get into large vessels, and they’re registered through the Coast Guard. Documentation is the process there. We find the same thing,” said Hawkins.

All motorized boats are required to be registered with the state. Hawkins said some owners don’t register vessels and enforcement can be an issue in such a

large state. Derelict boat owners may also remove registration numbers, including an imprinted hull ID number. That's a number all boat manufactures are required to brand into the hull of boats and is required to register a vessel in Alaska.

A title program would be implemented under the proposed legislation to tighten up the registration process. Hawkins said the push for a title system would create a better paper trail. If the legislation is passed as is, owners of derelict boats could be convicted of a misdemeanor.

"A class B misdemeanor to abandon a vessel on state or private or city property," said Hawkins. "I believe there was a maximum 90 day sentence and a \$5,000 to \$10,000 fine."

Petersburg Harbormaster Glorianne Wollen said the penalty would enable Southeast harbors to have one more thing to hold over boat owners. She said most boat ownership in Petersburg's harbor is local, making it easier to find boat owners. But, when boats are left, it can be costly.

"We just got done demolishing a 40-foot boat that was abandoned in our harbor and sank. So I had to have it hauled out and there it sat for four or five years waiting for

the owner to come back and retrieve it and settle up,” said Wollen. “He never did, and then he just dropped off the map.”

Wollen said the price tag to take care of the vessel was around \$5,000. She was happy the boat was small enough to take care of.

“So if you start having a 100 footer, then all of a sudden we don’t have facilities here to deal with that,” she said. “So then you have to end up taking it down south or to a place that does have a facility, and that’s a huge expense.”

The legislation would also require boats over 35 feet to have insurance. An unclearly outlined initiative included would be a fund dedicated to cleaning up derelict vessels and taking boats that owners can’t afford to dispose of. Hawkins said tightening up laws and getting a grasp on the current issue is only part of the problem.

“You can’t just say that’s a derelict vessel, and it can’t go here. Well, where can it go? In the end, a lot of these vessels are going to have to be disposed,” said Hawkins. “I don’t have all the answers, nobody does. It’s going to be expensive, but we have to be thinking about that.”

The association also submitted a resolution asking the state to fully fund the harbor matching grant program. It ranks harbor projects around the state and pays for half of projects it's able to fund.

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Crime & Courts

In a first, state sues company over an abandoned barge in a slough near Bethel

 Author: **Jerzy Shedlock**  Updated: 5 days ago  Published 5 days ago

The state of Alaska is suing a Bethel-based business over a barge that the state says has been left to rust since it sank in a Southwest Alaska slough more than four years ago.

The case against Faulkner Walsh Constructors marks the first time the Alaska Department of Natural Resources has pursued a civil suit over an abandoned or derelict vessel obstructing navigable waters, said DNR natural resources manager Jusdi McDonald.

"We issued a trespass notice on this particular vessel, and we made multiple attempts to work with Faulkner Walsh Constructors to bring them into compliance," McDonald said. "When that didn't happen, the next step was to take this action with the Department of Law."

Named in the civil complaint as defendants are Faulkner Walsh, H2W Constructors Inc. and Foundation Services Inc. Prosecutors argue each of the entities is the "alter-ego, co-conspirator and/or agent" of the others.

The trespass notice was issued on Oct. 4, 2012, when the barge Delta Chief sank in shallow waters of the Kuskokuak Slough near Bethel. It has disrupted travel through the slough since, according to the complaint.

[Abandoned vessels litter Alaska's shorelines while officials work on a fix]

The Delta Chief was carrying a huge payload of gravel, vehicles and other heavy equipment when it sank, said assistant attorney general Peter Caltagirone.

There is no straightforward mention of pollution due to the sinking in the court document, other than the state arguing the barge is causing "natural resource damages."

"All the concerns (about the barge) have been laid out in the complaint," Caltagirone said.

An Alaska Department of Environmental Conservation **situation report** released a day after the barge sank says potential contaminants included diesel fuel, lubricating oil and hydraulic fluid. Initial reports indicated that there was a minor sheen in the area, but the total amount of spilled fluids was unknown, the report says.

Faulkner Walsh had not responded to the complaint as of Wednesday. A company representative could not be reached for comment for this story.

In response to demands from the state, Faulkner Walsh submitted a plan for the removal of the Delta Chief in early March of 2013, according to the complaint. Three days later, the chief financial officer of the business told state officials the barge would be removed by spring 2013, after breakup, the complaint says.

With the assurance the barge would be gone, the Department of Natural Resources gave Faulkner Walsh a land-use permit to carry out the removal.

The business' project manager reassured a DNR employee about a month after the permit was issued that the Delta Chief would be removed, the complaint says.

But the removal never happened, prosecutors said, and Faulkner Walsh employees stopped communicating with officials. The barge has been left to rust for more than four years, they said.

The lawsuit is the last step in a DNR process established for castoff watercraft.

Under state regulations, anchoring a vessel for fewer than two weeks is generally allowed, McDonald said. Anything anchored for longer than 14 days requires authorization from her department, she said.

To address out-of-compliance vessels, officials determine if they're on state land, issue trespass notices and work with owners and operators toward removal, McDonald said.

DNR has never pursued criminal charges against someone for abandoning a vessel, she said.

"I don't necessarily have an opinion as to any criminal liability here one way or the other," said Caltagirone, the state attorney on the Faulkner Walsh case. "I looked at it and identified various causes of action under a civil liability theory that we're pursuing for DNR."

The state is suing Faulkner Walsh for damages in an amount to be proven at trial, the complaint says. It argues the business' negligent and intentional trespass on state lands is causing a public

nuisance and damaging natural resources.

Faulkner Walsh is a repeat offender, McDonald said, and officials issued the business 13 notices of trespass in 2013 — with each notice representing a vessel. None of the vessels have been removed, she said.

Caltagirone declined to comment when asked if the state was considering additional civil action against Faulkner Walsh.

There are about 160 abandoned or derelict vessels statewide, McDonald said. That number is continuing to increase, and so are the number of reports about the vessels that the department receives, she said.

About this author **Jerzy Shedlock**

Jerzy Shedlock is a reporter. A graduate of the University of Alaska Anchorage, he worked at the Peninsula Clarion before coming to Alaska Dispatch News.



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