

CBJ DOCKS & HARBORS BOARD
CIP / PLANNING COMMITTEE MEETING REVISED AGENDA
For Thursday, September 20th, 2012

- I. Call to Order** (5:00 pm in the Assembly Chambers)
- II. Roll Call** (Greg Busch, Kevin Jardell, Eric Kueffner, David Logan, Budd Simpson, and Michael Williams).
- III. Approval of Agenda.**

MOTION: TO APPROVE THE AGENDA AS PRESENTED OR AMENDED.

- IV. Public Participation on Non-Agenda Items.**
(Not to exceed five minutes per person or twenty minutes total time).
- V. Approval of August 23rd, 2012 CIP/Planning Meetings Minutes.**
- VI. Items for Action.**

- 1. Professional services contract amendment for PND Engineers, Inc. in the amount of \$86,400 for final design and bid ready documents for a navigational boom at the South Berth as part of the Juneau Cruise Berths project.

Presentation by the Port Director

Committee Questions

Public Discussion

Committee Discussion/Action

MOTION: TO RECOMMEND APPROVAL OF A PROFESSIONAL SERVICES CONTRACT AMENDMENT FOR PND ENGINEERS, INC. IN THE AMOUNT OF \$86,400 FOR FINAL DESIGN AND BID READY DOCUMENTS FOR A NAVIGATIONAL BOOM AT THE SOUTH BERTH AS PART OF THE JUNEAU CRUISE BERTH PROJECT.

- 2. Professional services contract for PND Engineers, Inc in the amount of \$25,255 for Juneau Fisheries Terminal Approach Dock Rebuild design and bid phases.

Presentation by the Port Director

Committee Questions

Public Discussion

Committee Discussion/Action

MOTION: TO RECOMMEND APPROVAL OF A PROFESSIONAL SERVICES CONTRACT FOR PND ENGINEERS, INC. IN THE AMOUNT OF \$25,255 FOR

DESIGN AND BID PHASES FOR THE JUNEAU FISHERIES TERMINAL APPROACH DOCK REBUILD.

VII. Items for Information/Discussion.

1. Mega-Yacht Harbor: Presentation by Howard Lockwood
2. Aurora Harbor – Public Meeting Preparation: Presentation by Port Director

VIII. Member & Staff Reports.

IX. Committee Administrative Matters.

Next Meeting: Wednesday October 17th, 2012

X. Adjournment.

CBJ DOCKS & HARBORS BOARD
CIP/PLANNING COMMITTEE MEETING MINUTES
For August 23, 2012

I. Call to Order.

Committee member Mr. Williams called the meeting to order at 5:00 p.m.

II. Roll.

The following members were present: Mr. Williams, Mr. Simpson, Mr. Kueffner, Mr. Jardell, and Mr. Logan.

The following member was absent: Mr. Busch.

Also in attendance was: Mr. Uchytel – Port Director and Mr. Gillette Port Engineer.

III. Approval of Agenda.

MOTION by Mr. Jardell: ASK UNANIMOUS CONSENT TO APPROVE THE AGENDA AS PRESENTED. The motion passed without objection.

IV. Public Participation.

There was none at this time.

V. Approval of Previous Meeting Minutes.

MOTION by Mr. Simpson: ASK UNANIMOUS CONSENT TO APPROVE THE MINUTES FROM July 19, 2012. The motion passed without objection.

VI. Items for Action.

There were none at this time.

VII. Items for Information/Discussion.

1. Seawalk Extension on CBJ Tidelands.

Mr. Gillette explained to the committee that there is a hand out showing where the seawalk extension will go. He stated that the issue at this time is that we have tide lands down near the Franklin dock developer and the seawalk is proposed to go in front of the little building at Minors Cove and in front of the staging area for the Franklin Dock and then it will cross in front of the bridge out to the dock. He went on to explain in more detail the specific way that this proposed seawalk will be with the committee members at this time.

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Further discussion among the committee members and Mr. Gillette took place at this time.

Mr. Gillette stated that this is just an item for information and said that the Franklin Dock is part of our tidelands and stated that the engineering department is negotiating with the Franklin Dock owners and they have no problem with granting the easement on their property and they have no issues with putting the seawalk on the lease property.

It was recommended waiting to take it up as an action item until we have the revised lease agreement.

2. Relocation of USS Juneau Memorial.

Mr. Gillette stated that we have had comments from people asking what happened to the Juneau Memorial when we took it down to do the visitor center. He stated that the proposal is to basically put back pretty much what we had, which was the flag pole and the commemorative plaques. They are proposing to put it along the seawalk between Taku Fisheries and the Franklin Dock and there is an engineering firm analyzing it a little bit further and said it will be easy to do. There is electricity there and we will be able to put lighting there for the flags. It will be pretty much the same look as it was before. It won't be built out of concrete but steel or wood. This will be a temporary location until we can find a more permanent one.

Further discussion took place at this time among Mr. Gillette and the committee members at this time.

3. Funding Match for Aurora Harbor.

Mr. Gillette stated that we have gotten 1.5 million dollars transferred out of the harbor fund balance to match part of the 2 million dollar grant that we have received from DOT for the municipal harbor program which is for Aurora harbor. He stated that we had \$500,000 dollars in an account that was for the cruise ship tug boat moorage rehabilitation at Aurora harbor but they have moved the tug and have no intention of returning it to our harbor so we will not be able to use this funding which leaves us with the short fall in the match to take full advantage of the DOT grant. Mr. Gillette stated that one thought is to take the \$500,000 dollars out of the harbors fund balance that could be used toward the project. There is no particular hurry because we won't be under construction until next year.

Mr. Jardell stated that this item should go to the Finance Committee before forwarding it on to the full Board.

Further discussion followed regarding these funds among the committee members and Mr. Gillette took place at this time.

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4. Funding Match for Statter Harbor.

Mr. Gillette stated that this item is a bit different with a unique situation here. We have got these projects at Statter Harbor and we have been lucky enough to get quite a bit of State support either from legislative appropriations, a DOT grant and DCD grant. The problem with this is that we do not have enough match and that is because we can not match state money to state money. We are trying to get a clarification on some funds from Fish and Game because they are actually Federal funds that are basically passed through. This has not been clarified yet.

Further discussion among the committee members and Mr. Uchytel took place regarding the funding sources at this time.

5. Auke Bay Loading Facility – Washdown System.

Mr. Gillette stated that there is information in the committee member's packet (See attached). Basically Mr. Gillette just wants to keep the members informed of what is going on with the Auke Bay Loading facility projects phase two, which was funded by the Tiger grant. The contractor is done and we have written the final check to them. Mr. Gillette stated that there is still money left in there and they are working with us to help us spend it for things that we can use out there.

The one missing link is a washdown pad. There is a letter in the packet from Mr. Gillette requesting the funds for this and also included some information regarding the portable washdown table with a water treatment pump. (See attached)

Further discussion took place at this time among the committee members.

It was also discussed among the members the fees that would be charged for the use of this as well as the haulout and it will be presented at the finance committee.

VIII. Member & Staff Reports.

Mr. Uchytel updated the committee members on the Statter harbor projects 404b and 401 permits for the boat launch project and we have received the water quality permit from DEC. We essentially got the 404b fill work permit from the Corp of Engineers and have been working with them to do the mitigation requirement.

He went on to explain this in more detail to the committee members at this time.

Mr. Gillette stated that the moorage project is going along real well and the Bellingham Marine expects to have all the fingers floats poured by the end of the month.

The main float poured by the end of September and scheduled to be in town mid to late October with everything.

CIP/Planning Committee Meeting Minutes

August 23, 2012

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IX. Committee Administrative Matters.

The next meeting is scheduled for September 20 at 5:00 pm in the City Chambers.

X. Adjournment.

**MOTION by Mr. Preston: THE MEETING ADJOURNED BY UNANIMOUS CONSENT.
The motion passed without objection.**

The meeting was adjourned at 5:40 pm.



September 11, 2012

PND 102050.04

Mr. Gary Gillette, AIA
Port Engineer
CBJ Docks and Harbors Department
155 South Seward Street
Juneau, Alaska 99801

Re: Cruise Ship Berths – Marine Navigational Boom
Design Phase Proposal

Dear Mr. Gillette:

PND Engineers, Inc. (PND) is pleased to provide this fee proposal for additional engineering services on the referenced project. The scope of services under this proposal includes preparation of final designs and bid ready contract documents for a marine navigational boom at the South Berth to be included in the bid package for the Port of Juneau Cruise Ship Berths.

The proposed navigation boom is intended to assist in maneuvering and navigating vessels between the proposed Cruise Ship Dock and Taku Fisheries / IVF. Mooring of vessels will not be allowed at the boom however a UHMW rubboard will be provided along the inside face for the breasting of small vessels in case of emergency. Total project costs are budgeted at \$2.07 million including contingency and indirects. Enclosed please find a conceptual level site plan and budget estimate prepared for this work prior to commencing with design.

PND proposes to prepare final design and bid ready contract documents for the proposed boom on a fixed fee basis for \$86,400. The anticipated scope of improvements is as outlined in the enclosed documents. The proposals assume the work will be incorporated into the bid documents for the cruise ship berths rather than bidding as a standalone project. Services include bid phase assistance.

Thank you for this opportunity to present our proposal for your consideration. Feel free to contact me with any questions you may have or if you prefer to modify the scope in any way.

Sincerely,
PND Engineers, Inc. | Juneau Office

A handwritten signature in blue ink, appearing to read 'Dick Somerville'.

Dick Somerville, P.E.
Vice President

Enclosures

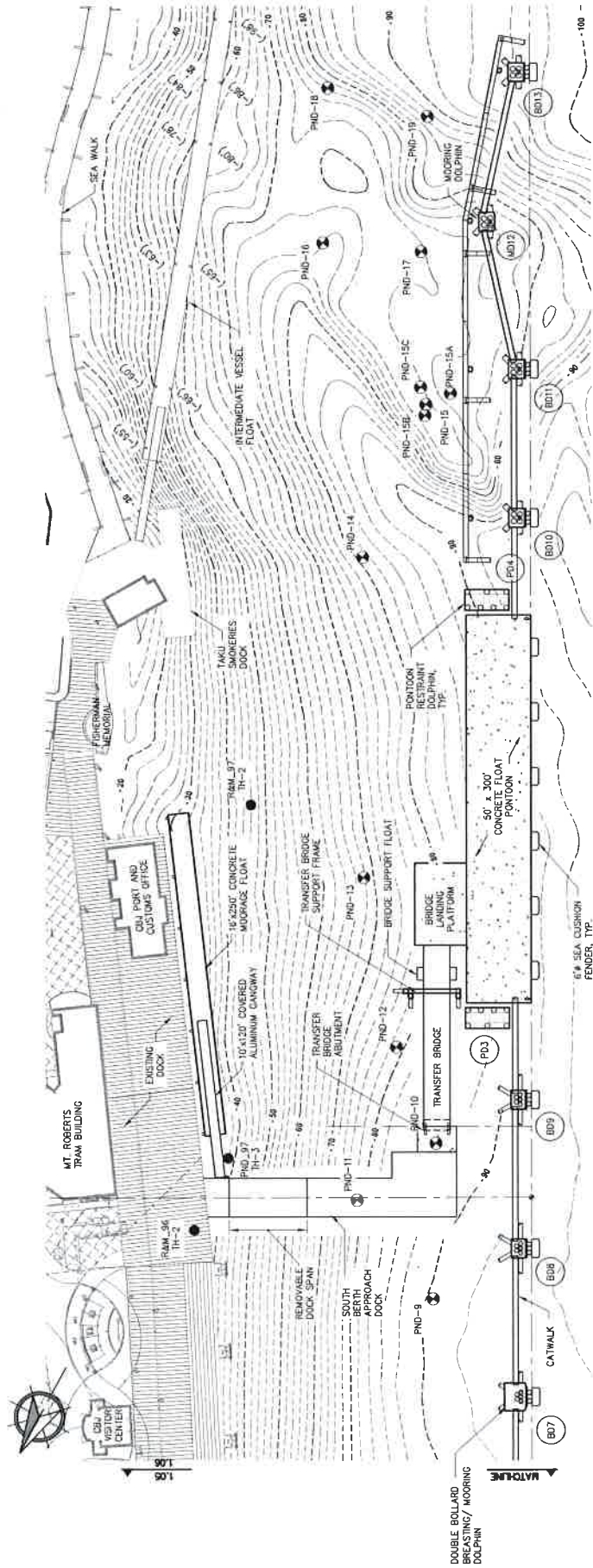
NAVIGATIONAL BOOM

ROM PLANNING LEVEL BUDGET (ESTIMATED PRIOR TO DESIGN)

Prepared By: PND Engineers, Inc. September 11, 2012

NAVIGATIONAL BOOM

Item	Item Description	Units	Quantity	Unit Cost	Amount
1	Mobilization	LS	All Req'd	8%	\$128,000
2	48" Dia. Fabricated Steel Pipe Pontoon & Outriggers	LF	500	\$1,800	\$900,000
3	Pontoon Rubbrail & Support Weldments	LF	400	\$250	\$100,000
4	48" x 0.750" Thick Pipe Piles	EA	4	\$100,000	\$400,000
5	Pile Hoops, Struts, Ballast Assemblies and Misc.	LS	All Req'd	\$200,000	\$200,000
ESTIMATED CONSTRUCTION BID PRICE					\$1,728,000
CONTINGENCY (10%)					\$172,800
FINAL DESIGN AND CONTRACT DOCUMENTS (5%)					\$86,400
CONTRACT ADMINISTRATION & INSPECTION (5%)					\$86,400
RECOMMENDED PROJECT BUDGET					\$2,073,600



1 SOUTH BERTH PLAN AND BOREHOLE LOCATIONS

NOTES:
1.

65% DESIGN REVIEW SUBMITTAL

PORT OF JUNEAU
CRUISE SHIP BERTHS
CONTRACT NO. DH12-001

SOUTH BERTH PLAN
AND BOREHOLE LOCATIONS

SHEET TITLE
1.06
SHEET
8 OF 8

DATE: 7/27/12

SCALE: 1" = 40' FT

DESIGN: J.D. CHECKED: J.D. APPROVED: J.D.

UNAWN: J.D. APPROVED: J.D.

PORT OF JUNEAU
CRUISE SHIP BERTHS
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SHEET TITLE
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SHEET
8 OF 8

DATE: 7/27/12

SCALE: 1" = 40' FT

DESIGN: J.D. CHECKED: J.D. APPROVED: J.D.

UNAWN: J.D. APPROVED: J.D.



September 18, 2012

PND 12J066

Mr. Gary Gillette, AIA
Port Engineer
CBJ Docks and Harbors Department
155 South Seward Street
Juneau, Alaska 99801

Re: Fisheries Terminal Dock Rebuild
Engineering Services Fee Proposal – Revision 1

Dear Mr. Gillette

PND Engineers, Inc. (PND) appreciates the opportunity to provide this fee proposal for engineering services on the Fisheries Terminal Dock Rebuild project. The scope of services under this proposal includes scoping/coordination, topographic survey, engineering design, preparation of bid ready plans, bid schedule, technical specifications, cost estimate, and bid phase assistance. It is understood that CBJ will apply for and secure all necessary permitting, and will provide the boiler plate for specifications. Construction phase engineering services are not included in this proposal however can be negotiated at a future date following successful completion of the design and bid phases.

PND proposes to perform these tasks on a time and expenses reimbursable basis utilizing our standard billing rates at time of service. A detailed breakdown of the fees associated with each task is attached. The fees indicated in the breakdown shall not be exceeded without prior written authorization from the City. A fee estimate for scoping and preliminary electrical engineering is included, however PND has not consulted with an electrical engineer regarding this project and thus a comprehensive fee for electrical engineering services is not yet confirmed.

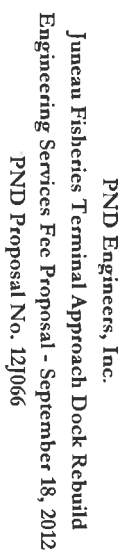
We appreciate the opportunity to provide services to the CBJ on this important project. Please let us know if we have perceived your needs appropriately for this project and feel free to contact me should you have any questions. We are available to commence immediately and look forward to working with the Docks and Harbors Department towards the successful completion of this project.

Sincerely,

PND Engineers, Inc. | Juneau Office

A handwritten signature in blue ink, reading 'John DeMuth', is written over the printed name.

John DeMuth, P.E.
Principal | Senior Engineer
Enclosures



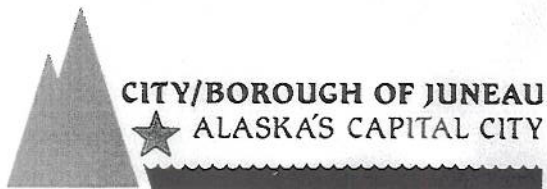
Tasks: Scoping, Topographic Survey, Geotechnical Research, Designs & Permit Applications

Scope of Services		Task Subtotal Costs										
		PND Senior Engineer VII	PND Senior Engineer VI	PND Senior Engineer III	PND Senior Engineer I	PND Staff Engineer V	PND Staff Engineer IV	PND Staff Engineer III	PND Tech V	PND Tech IV	PND CAD Designer V	Line Item Costs
		\$175,000	\$165,000	\$130,000	\$110,000	\$100,000	\$95,000	\$90,000	\$105,000	\$90,000	\$95,000	
Tasks: Scoping, Topographic Survey, Geotechnical Research, Designs & Permit Applications												
1. Project management & admin: client and subconsultant work sessions & correspondence		4	8		4					4		\$2,820
2. Site reconnaissance, utility research & initial work session with D&E/I		2	4		4							\$1,450
3. Geotechnical - N.I.C.												
4. Topographic Survey & Basemap: Field survey area & develop basemap.		1	2		8	8					8	\$2,045
5. Prepare Preliminary Design, bid schedule technical specifications, cost estimate. Review with D&E/I and make revisions as required.		2	4		20						16	\$4,730
6. Prepare Final Design, bid schedule, technical specifications, Engineer cost estimate. (BJ) to provide boiler plate.		4	8		40						32	\$9,460
7. Bid Phase assistance.			2		4					2		\$950
8. All project permitting to be done by (BJ). PND to review only.						4						\$400
Total Estimated Manhours		13	28		80	12				6	56	\$22,755

Misc Expenses	
Electrical Engineering	Scoping & prelim engineering - <i>total fee to be determined</i>

TOTAL ESTIMATED FEE (T&E)

Misc Expenses			
Electrical Engineering	Scoping & prelim engineering - total fee to be determined	\$2,500	\$2,500
TOTAL ESTIMATED FEE (T&E)			\$25,250



City & Borough of Juneau • Docks & Harbors
155 S. Seward Street • Juneau, AK 99801
(907) 586-0292 Phone • (907) 586-0295 Fax

Port of Juneau

October 29, 2010

Juneau Port Development LLC
PO Box 20734
Juneau, Alaska 99802

Re: Two Year Extension under Paragraph 5(c) of Appendix A of the Lease


Dear Mr. Lockwood,

At its regular meeting of October 28, 2010, the Docks and Harbors Board granted a two year extension under paragraph 5(c) of Appendix A of the lease between Juneau Port Development LLC and the City and Borough of Juneau for the purpose of providing additional time to obtain permits for your proposed development.

This letter will be filed with your lease records for future reference.

Please call me at 586-0294 if you have questions.

Sincerely,



John M. Stone, P.E.

A
L
A
S
K
A

2007-007947-0

Recording Dist: 101 - Juneau

12/10/2007 3:30 PM Pages: 1 of 22



cc

THIS COVER SHEET HAS BEEN ADDED TO
THIS DOCUMENT TO PROVIDE SPACE FOR
THE RECORDING DATA. THIS COVER
SHEET APPEARS AS THE FIRST PAGE OF
THE DOCUMENT IN THE OFFICIAL PUBLIC
RECORD.

DO NOT DETACH

JUNEAU PORT DEVELOPMENT TIDELANDS LEASE 2007

PART I. PARTIES. This Lease is between the City and Borough of Juneau, Alaska, a municipal corporation in the State of Alaska, hereafter "City," and Juneau Port Development, LLC, hereafter "Lessee."

PART II. LEASE ADMINISTRATION. All communications about this Lease shall be directed as follows, and any reliance on a communication with a person other than that listed below is at the party's own risk.

CITY:

Attn: John M. Stone, P.E.
Port Director
City and Borough of Juneau

155 S. Seward Street
Juneau, Alaska 99801
Phone: (907) 586-0494
Fax: (907) 463-2606

LESSEE:

Juneau Port Development, LLC
Howard H. Lockwood, Manager
Lessee

P.O. Box 20734
Juneau, Alaska 99802
Phone: (907) 209-4250
Fax: (907) 463-3055

STATE RECORDER:

PLEASE RETURN TO JOHN M. STONE AT ABOVE LISTED ADDRESS

PART III. LEASE DESCRIPTION. This Lease is identified as the Juneau Port Development Tidelands Lease 2007. The following appendices are attached hereto and are considered a part of this Lease as well as anything incorporated by reference or attached to those appendices.

Appendix A: Property Description & Additional Lease Provisions
Appendix B: Lease Provisions Required by CBJ Chapter 53.20
Appendix C: Standard Provisions

If in conflict, the order of precedence shall be: this document, Appendix A, then B, and then C.

PART IV. LEASE EXECUTION. City and Lessee agree and sign below. This Lease is not effective until signed by City.

CITY:

Date: NOV 14, 2007
By: [Signature]
Authorized Representative
John M. Stone
Port Director

LESSEE:

Date: Nov 14, 2007
By: [Signature]
Juneau Port Development, LLC
Howard H. Lockwood, Manager
Lessee

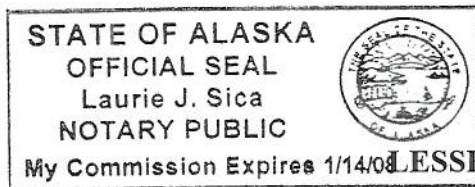


CITY ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss:
FIRST JUDICIAL DISTRICT)

This is to certify that on the 14th day of November, 2007, before the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared John M. Stone to me known to be the Port Director of the City and Borough of Juneau, Alaska, a municipal corporation which executed the above and foregoing instrument, who on oath stated that he was duly authorized to execute said instrument on behalf of said corporation; who acknowledged to me that he signed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in the certificate first above written.



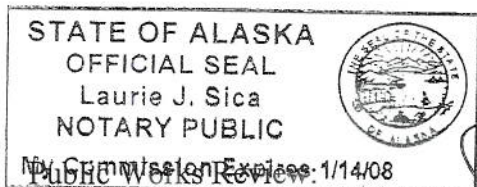
Laurie J. Sica
Notary Public in and for the State of Alaska
My Commission Expires: 11/14/2007

LESSEE ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss:
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 14th day of November, 2007, before me, the undersigned, duly commissioned and sworn, personally appeared Howard H. Lockwood to me known to be the identical individual described in and who executed the foregoing instrument as Lessee; who on oath stated that he was duly authorized to execute said instrument on behalf of Juneau Port Development, LLC; who acknowledged to me that he signed the same freely and voluntarily for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in the certificate first above written.



Laurie J. Sica
Notary Public in and for the State of Alaska
My Commission Expires: 11/14/2007

[Signature], Public Works Department

Risk Management Review: Tom Allen, Risk Manager

Approved as to Form: Pombura, Law Department



**APPENDIX A:
PROPERTY DESCRIPTION & ADDITIONAL LEASE PROVISIONS**

1. DESCRIPTION OF PROPERTY

The property subject to this Lease is referred to as “the Leased Premises” or “the Property.” The Leased Premises are as follows:

(a) The premises comprised of filled and unfilled tidelands described as a portion of Alaska Tidelands Survey 556A as depicted on Exhibit A and shown generally on Exhibit B, exclusive of any recorded easements and any easements needed by the City and Borough of Juneau for its operations and activities at the Juneau Wastewater Treatment Plant, which plant is located on the northwest portion of the Leased Premises at 1540 Thane Road. City agrees to provide Lessee with a description of the easements on and over the Leased Premises that City needs for its operations and activities at the Juneau Wastewater Treatment Plant not later than 12 months after the effective date of this Lease; those easements shall be attached to and incorporated by this reference into this Lease.

(b) Lessee agrees to allow City to continue to use the area known as the “Little Rock Dump” shown on Exhibit A, or any portion of that area, for its operations and storage uses until such time as Lessee begins construction within that area; provided that areas within the “Little Rock Dump” that are not used by Lessee as part of its development shall remain under the direction and control of City.

(c) Lessee agrees to provide City with a survey plat showing the exact boundaries and a legal description of the Leased Premises, including all recorded easements within the Leased Premises, and all easements identified by City as needed by City for its operations and activities at the Juneau Wastewater Treatment Plant. Lessee will provide this survey plat and legal description to City no later than 24 months after the effective date of this Lease. The survey plat shall also show the boundaries and area of Lessee’s proposed development and public use areas. Upon acceptance of the survey plat and legal description by City as satisfactory, this survey plat and legal description shall replace the survey contained in Exhibit A to this Lease; a Revised Exhibit A with the new survey plat and legal description of the Leased Premises shall be attached to this Lease and this Lease shall be amended accordingly.

2. AUTHORITY

This Lease is entered into pursuant to the authority of CBJ 85.02.060(a)(5) and CBJ Chapter 53.20; and Ordinance 2007- 43 enacted by the Assembly on August 20, 2007, and effective on September 20, 2007.

3. TERM AND RENEWAL OPTION

(a) The term of this Lease shall be for an initial period of 35 years, commencing on the effective date of this Lease, unless sooner terminated as provided herein. The effective date of this Lease shall be the date this Lease is signed by City.

(b) City grants Lessee an option to renew this Lease for one successive period of 35 years. Lessee shall exercise this option, if at all, by written notice given to City during the first six months of the last year of the underlying Lease term, provided City may deny renewal of this Lease for good cause shown. "Good cause" must relate to acts and omissions under this Lease.

4. LEASE PAYMENTS AND ADJUSTMENTS

(a) Lessee agrees to pay City annual Lease payments for the Leased Premises. A qualified appraiser shall establish the annual Lease payment and the appraisal shall consider the values of comparable land in the same or similar areas. When establishing the Lease payment, the appraiser shall not include the value of improvements made by Lessee pursuant to this Lease. The appraiser shall also take into consideration encumbrances that existed upon the Leased Premises on the effective date of the Lease, such as mineral claims, environmental contamination, and access issues. The appraiser shall not value areas of the Leased Premises that are not developable or that are made available for public use under this Lease, such as waterfront parks and seawalks. Lessee agrees to pay for all appraisal costs required to establish the annual Lease payment under this subsection.

(b) Lessee shall submit the initial appraisal to City before the harbor facility to be constructed by Lessee on the Leased Premises is opened for occupancy. The first annual Lease payment will be due to City one year after the date the harbor facility is opened for occupancy. The first Lease payment will be calculated to include retroactive annual Lease payments beginning with the effective date of this Lease through one year after the date the harbor facility

is opened for occupancy. Subsequent annual Lease payments shall be due at the end of the calendar year (December 31) following the year the first annual Lease payment is due. City agrees to offset the Lease payments under this section with credits that are approved under Appendix B, Section 3(23) of this Lease.

(c) Lessee agrees to a review and adjustment by the Port Director of the annual Lease payment to City not less often than every fifth year of the Lease term, beginning with the Lease payment due after completion of each review period. Any changes or adjustments shall be based primarily upon an appraisal that considers the values of comparable land in the same or similar areas. The appraisal shall not include the value of improvements made by Lessee pursuant to this Lease, except that the value of any improvements credited against payments shall be included in the appraisal as necessary to grant credits approved under Appendix B, Section 3(23) of this Lease. Lessee may protest the adjustment to City, and if denied wholly or in part, Lessee may appeal to the City Docks & Harbors Board. Lessee agrees to pay for all appraisal costs required to establish the Lease payment adjustments under this subsection.

5. AUTHORIZED USE OF LEASED PREMISES

(a) Lessee agrees to use the Leased Premises to plan, design, engineer, permit, finance, construct, sub-lease, and operate a full-scale harbor marina complex, together with uplands commercial marine-related facilities, a public park, and all of the related amenities necessary for the operation of these facilities and improvements.

(b) Lessee shall be responsible for obtaining all necessary permits and approvals that may be necessary for Lessee's development of the Leased Premises.

(c) Lessee agrees to obtain and have in place the permits and approvals necessary to start construction of the harbor facilities and amenities listed in subsection (a) of this Section 5 within 36 months after the effective date of this Lease. The site plan, conceptual design, cost estimates, and construction plan and schedule for the development of the Leased Premises will be presented to the Port Director and the City Docks & Harbor Board for review and approval prior to the commencement of any construction, unless otherwise agreed in writing by the parties. If Lessee does not have the permits in place within 36 months after the effective date of this Lease, the Lease shall terminate; provided, Lessee may request in writing to the Port Director that City extend the 36-month planning and permitting period if Lessee makes a showing satisfactory to



City that it has pursued the planning and permitting for its development of the harbor facilities on the Leased Premises with all due diligence and cannot meet this 36-month deadline for reasons beyond its control. Any extension to this 36-month period must be approved in writing by the Port Director.

(d) Lessee agrees to complete construction and commence operation of the harbor facilities and amenities within 48 months after Lessee has been issued all the permits and approvals necessary to start construction. If Lessee does not complete construction and commence operation within this 48 month period, the Lease shall terminate; provided, Lessee may request in writing to the Port Director that City extend this 48-month period if Lessee makes a showing satisfactory to City that it will complete construction and commence operation of the harbor facilities and amenities with all due diligence and cannot meet this 48-month deadline for reasons beyond its control. The time period of any such extension shall be decided by the Docks and Harbors Board; any extension must be in writing by City.

(e) The Leased Premises shall be used only for purposes within the scope of Lessee's lease proposal and the terms of this Lease, and in conformity with the City and Borough Code, and all applicable State and Federal laws and regulations. Use or development of the Leased Premises for other than the authorized uses shall constitute a violation of this Lease and subject the Lease to cancellation at any time. Lessee acknowledges that the Leased Premises adjoin the Juneau Wastewater Treatment Plant and that the Treatment Plant does and will cause the release of malodorous vapors. Lessee agrees to hold City harmless from any and all effects resulting from or caused by any and all such releases. This indemnification provision is in addition to the hold harmless and indemnification provision set out in Appendix C, Section 9, of this Lease, which also applies to this Lease.

6. ENVIRONMENTAL MATTERS

(a) **Lessee's Responsibility for Environmental Laws.** Lessee shall, at its own expense, comply with all existing and hereafter enacted environmental responsibility laws, hereafter "Environmental Laws." Lessee shall, at its own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority, hereafter "Authority," under the Environmental Laws. Should the Authority require that a cleanup plan be prepared and that a cleanup be undertaken because of any spills or discharges of

or contamination by Hazardous Materials, as hereafter defined, or other materials, on the Leased Premises that occur during the term of the Lease, or arise out of or in connection with Lessee's use or occupancy of the Leased Premises and occur during the term of the Lease, then Lessee shall, at its own expense, prepare and submit the required plans and financial assurances and carry out the approved plans. Lessee's obligations under this section shall arise if there is any event or occurrence on the Leased Premises during the term of the Lease or arising out of or in connection with the Lessee's use or occupancy of the Leased Premises that requires compliance with the Environmental Laws. At no expense to City, Lessee shall promptly provide all information requested by City for preparation of affidavits or other documents required by City to determine the applicability of the Environmental Laws to the Lease, and shall sign the affidavits promptly when requested to do so by City.

(b) Indemnification by Lessee. Lessee shall indemnify, defend and hold harmless City from all fines, suits, procedures, claims, liabilities, and actions of any kind arising out of or in any way connected with any spills or discharges of or contamination by Hazardous Materials on the Leased Premises that occur during the term of the Lease or arise out of or in connection with Lessee's use or occupancy of the Leased Premises; and from all fines, suits, procedures, claims, liabilities, and actions of any kind arising out of Lessee's failure to provide all information, make all submissions, and take all steps required by the Authority under the Environmental Laws or any other law concerning any spills or discharges or contamination that occur during the term of the Lease or arise out of or in connection with Lessee's use or occupancy of the Leased Premises, unless such contamination was placed upon the Leased Premises by City or City's action, prior to the signing of this Lease. This indemnification provision is in addition to the hold harmless and indemnification provision set out in Appendix C, Section 9, of this Lease, which also applies to this Lease.

(c) Lessee's Assurances to City. Lessee agrees that it will not discharge or dispose of or suffer the discharge or disposal of any petroleum products, gasoline, hazardous chemicals or Hazardous Materials upon the Leased Premises except when fully in compliance with the Environmental Laws. Lessee agrees that it will not construct any above ground or under ground fuel or chemical tanks without the written consent of City.

(d) Notice of Environmental Problems. Lessee agrees to immediately notify City if Lessee becomes aware of (1) any Hazardous Material or other environmental problem or liability with respect to the Leased Premises, or (2) any lien, action, or notice resulting from the claimed or actual violation of Environmental Laws, including but not limited to the generation, recycling, reuse, sale, storage, handling, transport and disposal of any Hazardous Material.

(e) Lessee's Obligations Unconditional. Lessee's obligations under this section regarding environmental compliance are unconditional and shall not be limited by any non-recourse or other limitations of liability provided for in the Lease or any document executed in connection with the Lease. The representations and covenants of Lessee set forth in the Lease, including without limitation, the indemnity for environmental compliance provided herein, are (1) separate and distinct obligations from Lessee's obligations under the Lease, (2) shall not be discharged or satisfied by Lease compensation or other payment under the Lease, and (3) shall continue in effect after any further transfer of the Leased Premises.

(f) "Environmental Laws" Defined. For purposes of the Lease, "Environmental Laws" is defined to include all City, State, and Federal laws or regulations, whether currently in existence or hereafter enacted, that govern (1) the existence, clean-up, or remedy of contamination on property; (2) the protection of the environment from spilled, deposited, or otherwise emplaced contamination; (3) the control of hazardous waste; or (4) the use, generation, transport, treatment, removal, or recovery of Hazardous Material.

(g) "Hazardous Material" Defined. For purposes of the Lease, "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by the City and Borough of Juneau, Alaska, the State of Alaska, or the United States government. It is any substance which at any time shall be listed as "hazardous" or "toxic" or which has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under Environmental Laws. The term "Hazardous Material" shall also include, without limitation, raw materials, building components, the products of any manufacturing or other activities on the Leased Premises, wastes, petroleum, oil, and source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 301 1, *et seq.*, as amended).

(h) Pre - Construction Audits. Lessee shall responsible for engaging a qualified contractor(s) to conduct any and all pre-construction environmental audits that may be necessary to secure the permits and approvals for its planned development of the harbor facilities and amenities on the Leased Premises. All pre-construction audits required for the permitting process must be completed by Lessee prior to the commencement of any construction. The cost of environmental audits shall be paid by Lessee. The results of all environmental audits shall be made available to employees or agents of City as designated by the Port Director.

(i) Modification of Leased Premises Possible. It is recognized by the parties that the portion of the Leased Premises known as the Old Garbage Dump near Snowslide Creek was used as a material waste dump by the City and Borough of Juneau during the late 1940's, the 1950's, and the 1960's, and sewerage sludge deposit site by the City and Borough of Juneau sewer disposal system. Further, the cove area west towards the current Juneau Wastewater Treatment Plant was used for many years as an "old boat bone yard." Lessee intends to review all available options for the satisfactory clean-up and reclamation of the Little Rock Dump portion of the Leased Premises. In the event this planned clean-up and reclamation is not approved by the applicable Federal and State agencies, and by City, then Lessee, at its sole discretion, may remove the unacceptable portion of the Leased Premises from the development plan without liability or responsibility to Lessee to conduct clean-up and reclamation of that portion, and continue with the project; removal of the unacceptable portion of the Leased Premises from the development plan, if any, shall have no affect on the amount of the next annual Lease payment due or subsequent Lease payment adjustments.

(j) Costs and Expenses Incurred by Lessee. All costs and expenses incurred by Lessee as a result of fulfilling the environmental remediation requirements of City, State, or Federal agencies for all pre-construction environmental audits necessary for the permitting process and construction monitoring, together with the collection, clean-up, and proper removal and disposal of the contaminated and undesirable material that is known to exist in or upon the Leased Premises, will be eligible for lease rental credit as provided in Appendix B, Section 3(23) of this Lease.



7. SPECIAL CONDITIONS REGARDING THE LEASED PREMISES

(a) At any time after the first 36 months of this Lease, City or the City Docks & Harbors Board may, at City's discretion and at its cost and expense, undertake planning, designing, permitting, financing, and construction of any improvement or facility within the Leased Premises. Any such work by City will be planned to fit into Lessee's work schedule and development plans for the Leased Premises.

(b) Lessee's planning, design, construction, and development of any improvement or facility within the Leased Premises must be in accordance with all applicable City and Borough Code provisions and all City, State, and Federal permitting and approval requirements, and must be compatible with the Long Range Waterfront Development Plan.

(c) Lessee represents that the Leased Premises is covered by valid existing mining claims described as WAST 1-5 ADL 517981 through ADL 517985, which claims are governed by Alaska Statutes, AS 38.05.185 through AS 38.05.275. City agrees that, as between City and Lessee, it is permissible for Lessee to remove and dispose of specific materials in accordance with these mining claims and the applicable Alaska Statutes. The parties further agree that upon expiration of this Lease, Lessee will assign to City all of Lessee's rights remaining under these mining claims.

8. INSURANCE

(a) **Commercial General Liability Insurance.** Lessee shall maintain at all times during this Lease commercial general liability insurance in the amounts of \$1,000,000 per occurrence and \$2,000,000 general aggregate. The insurance policy shall name City as an "Additional Insured" and shall contain a clause that the insurer will not cancel or change the insurance without first giving City 31-days' prior written notice. Lessee will provide evidence of this insurance to City in a form acceptable to the City's Risk Management office.

(b) **Property Insurance.** Lessee acknowledges that City carries no fire or other casualty insurance on the Leased Premises or the improvements located on the Leased Premises, and that it is Lessee's obligation to obtain adequate insurance coverage for protection of Lessee's buildings, fixtures, facilities, or other improvements, or personal property, located or to be developed and located on the Leased Premises by Lessee, and adequate insurance to cover debris removal.



**APPENDIX B:
LEASE PROVISIONS REQUIRED BY CBJ CHAPTER 53.20**

1. RESPONSIBILITY TO PROPERLY LOCATE ON LEASED PREMISES.

As required by CBJ 53.20.160, it shall be the responsibility of Lessee to properly locate Lessee's improvements on the Leased Premises and failure to so locate shall render Lessee's liable as provided by law.

2. APPROVAL OF OTHER AUTHORITIES.

As required by CBJ 53.20.180, the issuance by City of leases, including this Lease, under the provisions of CBJ Title 53 does not relieve Lessee of responsibility for obtaining licenses, permits, or approvals as may be required by City or by duly authorized State or Federal agencies.

3. TERMS AND CONDITIONS OF LEASES REQUIRED BY CBJ 53.20.190.

As required by CBJ 53.20.190, the following terms and conditions govern all leases and are incorporated into this Lease unless modified by the Assembly by ordinance or resolution for this specific Lease. Modifications of the provisions of this Appendix B applicable to this specific Lease, if any, must specifically modify such provisions and be supported by the relevant ordinance or resolution to be effective.

(1) **Lease Utilization.** The Leased Premises shall be utilized only for purposes within the scope of the application and the terms of the Lease, and in conformity with the provisions of City and Borough Code, and applicable State and Federal laws and regulations. Utilization or development of the Leased Premises for other than the allowed uses shall constitute a violation of the Lease and subject the Lease to cancellation at any time.

(2) **Adjustment of Rental.** See Appendix A, Section 4, regarding Adjustment of Rental.

(3) **Subleasing.** As authorized by Ordinance 2007-43, Lessee may sublease the Leased Premises or any part of the Leased Premises; provided, that Lessee must first obtain the prior written consent of City. Subleases shall be in writing and be subject to the terms and conditions of the original Lease; all terms, conditions, and covenants of the underlying Lease that may be made to apply to the sublease are hereby incorporated into the sublease.



(4) **Assignment.** Lessee may assign its rights and obligations under this Lease; provided that the proposed assignment shall be approved by City prior to any assignment. The assignee shall be subject to all of the provisions of the Lease. All terms, conditions, and covenants of the underlying Lease that may be made applicable to the assignment are hereby incorporated into the assignment.

(5) **Modification.** The Lease may be modified only by an agreement in writing signed by all parties in interest or their successor in interest.

(6) **Cancellation and Forfeiture.**

(A) The Lease, if in good standing, may be canceled in whole or in part, at any time, upon mutual written agreement by Lessee and City.

(B) City may cancel the Lease if it is used for any unlawful purpose.

(C) If Lessee shall default in the performance or observance of any of the Lease terms, covenants or stipulations thereto, or of the regulations now or hereafter in force, or any of the provisions of this code, and should the default continue for thirty calendar days after service of written notice by City without remedy by Lessee of the conditions warranting default, City may subject Lessee to appropriate legal action including, but not limited to, forfeiture of the Lease. No improvements may be removed by Lessee or other person during any time Lessee is in default.

(D) Failure to make substantial use of the land, consistent with the proposed use, within one year shall in the discretion of City with the approval of the Assembly constitute grounds for cancellation.

(7) **Notice or Demand.** Any notice or demand, which under the terms of a lease or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address of record. However, either party may designate in writing such new or other address to which the notice or demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed delivered when deposited in a United States general or branch post office enclosed in a registered or certified mail prepaid wrapper or envelope addressed as hereinbefore provided.



(8) **Rights of Mortgagee or Lienholder.** In the event of cancellation or forfeiture of a lease for cause, the holder of a properly recorded mortgage, conditional assignment or collateral assignment will have the option to acquire the lease for the unexpired term thereof, subject to the same terms and conditions as in the original lease.

(9) **Entry and Reentry.** In the event that the Lease should be terminated as hereinbefore provided, or by summary proceedings or otherwise, or in the event that the demised lands, or any part thereof, should be abandoned by Lessee during the term, City or its agents, servants, or representative, may, immediately or any time thereafter, reenter and resume possession of the lands or such thereof, and remove all persons and property there from either by summary proceedings or by a suitable action or proceeding at law without being liable for any damages therefor. No reentry by City shall be deemed an acceptance of a surrender of the Lease.

(10) **Release.** In the event that the Lease should be terminated as herein provided, or by summary proceedings, or otherwise, City may offer the lands for lease or other appropriate disposal pursuant to the provisions of City and Borough Code.

(11) **Forfeiture of Rental.** In the event that the Lease should be terminated because of any breach by Lessee, as herein provided, the annual rental payment last made by Lessee shall be forfeited and retained by City as partial or total damages for the breach.

(12) **Written Waiver.** The receipt of rent by City with knowledge of any breach of the Lease by Lessee or of any default on the part of Lessee in observance or performance of any of the conditions or covenants of the Lease, shall not be deemed a waiver of any provision of the Lease. No failure on the part of City to enforce any covenant or provision therein contained, nor any waiver of any right thereunder by City unless in writing, shall discharge or invalidate such covenants or provisions or affect the right of City to enforce the same in the event of any subsequent breach or default. The receipt, by City, of any rent or any other sum of money after the termination, in any manner, of the term demised, or after the giving by City of any notice thereunder to effect such termination, shall not reinstate, continue, or extend the resultant term therein demised, or destroy, or in any manner impair the efficacy of any such notice or termination as may have been given thereunder by City to Lessee prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by City.

(13) **Expiration of Lease.** Unless the Lease is renewed or sooner terminated as provided herein, Lessee shall peaceably and quietly leave, surrender and yield up unto City all of the Leased Premises on the last day of the term of the Lease.

(14) **Renewal Preference.** Any renewal preference granted Lessee is a privilege, and is neither a right nor bargained for consideration. The lease renewal procedure and renewal preference shall be that provided by ordinance in effect on the date the application for renewal is received by the designated official.

(15) **Removal or Reversion of Improvements upon Termination of Lease.** Improvements owned by Lessee shall within sixty calendar days after the termination of the Lease be removed by Lessee; provided, such removal will not cause injury or damage to the lands or improvements demised; and further provided, that City may extend the time for removing such improvements in cases where hardship is proven. Improvements owned by Lessee may, with the consent of City, be sold to the succeeding Lessee. All periods of time granted Lessee to remove improvements are subject to Lessee's paying to City pro rata lease rentals for the period.

(A) If any improvements and/or chattels not owned by City and having an appraised value in excess of five thousand dollars as determined by the assessor are not removed within the time allowed, such improvements and/or chattels shall upon due notice to Lessee, be sold at public sale under the direction of City. The proceeds of the sale shall inure to Lessee preceding if Lessee placed such improvements and/or chattels on the lands, after deducting for City rents due and owing and expenses incurred in making such sale. Such rights to the proceeds of the sale shall expire one year from the date of such sale. If no bids acceptable to the Port Director are received, title to such improvements and/or chattels shall vest in City.

(B) If any improvements and/or chattels having an appraised value of five thousand dollars or less, as determined by the assessor, are not removed within the time allowed, such improvements and/or chattels shall revert to, and absolute title shall vest in, City.



(16) **Rental for Improvements or Chattels not Removed.** Any improvements and/or chattels belonging to Lessee or placed on the Lease during Lessee's tenure with or without his permission and remaining upon the premises after the termination date of the Lease shall entitle City to charge Lessee a reasonable rent therefor.

(17) **Compliance with Regulations and Code.** Lessee shall comply with all regulations, rules, and the Code of the City and Borough of Juneau, and with all State and Federal laws, regulations, and as the Code or any such laws, regulations or rules may affect the activity upon or associated with the Leased Premises.

(18) **Condition of Premises.** Lessee shall keep the Leased Premises in neat, clean, sanitary and safe condition and shall take all reasonable precautions to prevent, and take all necessary action to suppress destruction or uncontrolled grass, brush or other fire on the Leased Premises. Lessee shall not undertake any activity that causes or increases a sloughing off or loss of surface materials of the Leased Premises.

(19) **Inspection.** Lessee shall allow an authorized representative of City to enter the Leased Premises for inspection at any reasonable time.

(20) **Use of Material.** Lessee of the surface rights shall not sell or remove for use elsewhere any timber, stone, gravel, peat moss, topsoils, or any other material valuable for building or commercial purposes; provided, however, that material required for the development of the Leased Premises may be used. In addition, as authorized by Ordinance 2007- 43 and as provided in Appendix A, Section 7(c), of this Lease, the parties are aware that the Leased Premises is covered by valid existing mining claims described as WAST 1-5 ADL 517981 through ADL 517985, which claims are governed by Alaska Statutes, AS 38.05.185 through AS 38.05.275. City agrees that, as between City and Lessee, it is permissible for Lessee to remove and dispose of specific materials in accordance with these mining claims and the applicable Alaska Statutes.

(21) **Rights-of-Way.** City expressly reserves the right to grant easements or rights-of-way across the Leased Premises if it is determined in the best interest of City to do so. If City grants an easement or right-of-way across any of the Leased Premises, Lessee shall be entitled to damages for all Lessee-owned improvements or crops destroyed or damaged. Damages shall be



limited to improvements and crops only, and loss shall be determined by fair market value. Annual rentals may be adjusted to compensate Lessee for loss of use.

(22) **Warranty.** City does not warrant by its classification or leasing of land that the land is ideally suited for the use authorized under the classification or Lease and no guaranty is given or implied that it shall be profitable to employ land to said use.

(23) **Lease Rental Credit.** When authorized in writing by City prior to the commencement of any work, Lessee may be granted credit against current or future rent; provided the work accomplished on or off the Leased Premises results in increased valuation of the Leased Premises or other City-owned lands. The authorization may stipulate type of work, standards of construction, and the maximum allowable credit for each phase of the specific project. The credit will be based upon appraised value of such improvements or the actual costs of work performed. Title to improvements or chattels credited against rent under this section shall vest immediately and be in City and shall not be removed by Lessee upon termination of this Lease.



APPENDIX C: STANDARD PROVISIONS

(1) **Holding Over.** If Lessee holds over beyond the expiration of the term of this Lease and the term has not been extended or renewed in writing, such holding over will be a tenancy from month-to-month only.

(2) **Interest on Late Payments.** Should any installment of rent or other charges provided for under the terms of this Lease not be paid when due, the same shall bear interest at the rate established by ordinance for late payments or at the rate of 12 percent per annum, if no rate has been set by ordinance.

(3) **Taxes, Assessments, and Liens.** During the term of this Lease, Lessee shall pay, in addition to the rents, all taxes, assessments, rates, charges, and utility bills for the Leased Premises and Lessee shall promptly pay or otherwise cause to be discharged, any claim resulting or likely to result in a lien, against the Leased Premises or the improvements placed thereon.

(4) **Easements.** Lessee shall place no building or structure over any portion of the Leased Premises where the same has been set aside or reserved for easements.

(5) **Encumbrance of Parcel.** Lessee shall not encumber or cloud City's title to the Leased Premises or enter into any lease, easement, or other obligation of City's title without the prior written consent of City; and any such act or omission, without the prior written consent of City, shall be void against City and may be considered a breach of this Lease.

(6) **Valid Existing Rights.** This Lease is entered into and made subject to all existing rights, including easements, rights-of-way, reservations, or other interests in land in existence, on the date of execution of this Lease. As authorized by Ordinance 2007- 43, and as provided in Appendix A, Section 7(c) of this Lease, the parties agree that upon expiration of this Lease, Lessee will assign to City all of Lessee's rights remaining under the valid existing mining claims described as WAST 1-5 ADL 517981 through ADL 517985.

(7) **State Discrimination Laws.** Lessee agrees, in using and operating the Leased Premises, to comply with applicable sections of Alaska law prohibiting discrimination, particularly Title 18 of the Alaska Statutes, Chapter 80, Article 4 (Discriminatory Practices Prohibited). In the event of Lessee's failure to comply any of the above non-discrimination covenants, City shall have the right to terminate the Lease.



(8) **Unsafe Use.** Lessee shall not do anything in or upon the Leased Premises, nor bring or keep anything therein, which will unreasonably increase or tend to increase the risk of fire or cause a safety hazard to persons or obstruct or interfere with the rights of any other tenant(s) or in any way injure or annoy them or which violates or causes violation of any applicable health, fire, environmental or other regulation by any level of government.

(9) **Hold Harmless.** Lessee agrees to defend, indemnify, and save City, its employees, volunteers, consultants, and insurers, with respect to any action, claim, or lawsuit arising out of the use and occupancy of the Leased Premises by Lessee. This agreement to defend, indemnify, and hold harmless is without limitation as to the amount of fees, and without limitation as to any damages resulting from settlement, judgment, or verdict, and includes the award of any attorneys fees even if in excess of Alaska Civil Rule 82. The obligations of Lessee arise immediately upon notice to City of any action, claim, or lawsuit. City shall notify Lessee in a timely manner of the need for indemnification, but such notice is not a condition precedent to Lessee's obligations and may be waived where Lessee has actual notice. This agreement applies, and is in full force and effect whenever and wherever any action, claim, or lawsuit is initiated, filed, or otherwise brought against City.

(10) **Successors.** This Lease shall be binding on the successors, administrators, executors, heirs, and assigns of Lessee and City.

(11) **Choice of Law; Venue.** This Lease shall be governed by the law of the State of Alaska. Venue shall be in the State of Alaska, First Judicial District at Juneau.



Exhibit A - Leased Premises
Sheet 1 of 2

Sheet 1 of 2

A. T. S. 201
A. J. Industries Inc.

A.T.S. 556
TRACT A

GASTINEAU

CHANNEL

[illegible]

Exhibit B - Leased Area Map

