ADDENDUM TO THE CONTRACT

for the

Downtown Waterfront Improvements Phase I

Contract No. DH19-014

ADDENDUM NO.: **ONE**

CURRENT DEADLINE FOR BIDS:
July 2, 2019

PREVIOUS ADDENDA: **NONE**

ISSUED BY:

City and Borough of Juneau
ENGINEERING DEPARTMENT
155 South Seward Street
Juneau, Alaska 99801

PREVIOUS DEADLINE FOR BIDS:
June 25, 2019

DATE ADDENDUM ISSUED: **June 6, 2019**

The following items of the contract are modified as herein indicated. All other items remain the same. This is a faxed addendum. A confirming copy will not be mailed to you. This addendum has been issued and is posted online. Please refer to the CBJ Engineering Contracts Division webpage at: http://www.juneau.org/engineering_ftp/contracts/Contracts.php

INFORMATION ITEMS:

- Alaska Employment information per Pamphlet 600 requires that Alaska Residents who are eligible be given 90 percent employment preference on public works contracts. Additional information can be found at https://labor.alaska.gov/lss/forms/pamp600-050119.pdf

- Added to the CBJ project site at http://www.juneau.org/engineering_ftp/contracts/viewdetails.php?UID=706

    - GeoTech Report
    - Shop Drawings for Materials Supplied by Owner

PROJECT MANUAL:

Item No. 1 SECTION 00010- PROJECT LABOR AGREEMENT ***Delete*** in its entirety and ***Replace*** with SECTION 00010 Project Labor Agreement labeled Addendum No. 1.

Item No. 2 SECTION 00030 - NOTICE INVITING BIDS. DEADLINE FOR BIDS.

Change the date of the Deadline for Bids ***from*** June 25, 2019, ***to*** July 2, 2019. The time remains the same.

Item No. 3 SECTION 00300- BID

Remove in its entirety and ***replace*** with the attached Section 00300- Bid labeled Addendum No. 1

Item No. 4 SECTION 00852- PERMITS
ADD Item 4- Corps of Engineers Permit, attached and labeled Addendum No. 1.

By: _____
Greg Smith,
Contract Administrator

Total number of pages contained within this Addendum: 67

PART 1 – GENERAL

1.1 SPECIAL NOTICE

A. Bidders are hereby alerted that this Project, Downtown Waterfront Improvements, Phase 1, CBJ Contract No. DH 19-014 is subject to a Project Labor Agreement (PLA). It shall be understood that the PLA is an exclusive agreement between the eventual Contractor (and Subcontractors) and the organized labor unions. The City and Borough of Juneau (CBJ) (also known as Owner), the Engineer, and the Design Professionals of Record are not members of this agreement and play no role in its implementation or administration.

B. Bidders may contact the following individuals (as appropriate) with any questions pertaining to the provisions of the PLA, covered trades and crafts, or the specific manner in which their involvement in the PLA will be administered. **A copy of each current labor agreement for the organizations below is available on a CD-ROM from the CBJ Engineering Department Contracts Office upon request – 907-586-0490.** *No portion of the attached Project Labor Agreement may be changed without agreement by both the Contractor and the Juneau Building and Construction Trades Council.*

Directory of Unions signatory to the Downtown Waterfront Improvements, Phase 1, CBJ Contract No. DH 19-014 **Project Labor Agreement**

Union Name	**Contact**	**Telephone**	**Fax**	**E-mail Address**
Carpenters Local 1281	Kirk Perisich	907 586-3675	907 586-3671	kperisich@nwcarpenters.org
Piledrivers & Divers Local 2520	Steve Abel	907-272-7576	907-277-8967	steve@local2520.org
Heat& Frost Insulators Local 97	Anthony See	907-272-8224		awl97@insulators.org
IBEW Local 1547	Rodney Hesson	907 586-3050	907 586-9614	rhesson@ibew1547.org
Ironworkers Local 751	Anthony Ladd	907 522-8277	907 563-2855	coordinator751@icloud.com
Laborers Local 942	Trent English	907 586-2860	907 586-5757	tenglish@local942.net
Operators Local 302	Corey Baxter	907 586-3850	907 463-5464	cbaxter@iuoe302.org
Plumbers & Pipefitters Local 262	Gene Bay	907 586-2874	907 463-5116	gbay@uanet.org
Teamsters Local 959	Joe Rintala	907 586-3225	907 586-1227	jrintala@akteamsters.com
Sheetmetal Local 23	Randy Golding	907 277-5329	907 277-2457	randygolding@aklocal23.org
Sprinklerfitters Local 669	Chris Hayes	907 283-8198	n/a	clhayes669@alaska.net
Painters Local 1959	Bronson Frye	907 562-8843	907 563-8843	bfrye@local1959.org
Juneau Bldg. Trades Council	**Rodney Hesson**	**907 586-3050**	**907 586-9614**	rhesson@ibew1547.org

C. A full copy of the proposed PLA is provided on the following pages.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

PREAMBLE

This Agreement is entered into this _____ day of _____, 2019, by and between _____ Construction Co. (hereinafter referred to as the "Employer") and the Juneau Building and Construction Trades Council and those of its affiliated Local Unions which have signed this agreement through their duly authorized officers (hereinafter referred collectively to as the "Union" or "Unions").

The Project is defined as follows:

Downtown Waterfront Improvements, Phase 1, CBJ Contract No. DH 19-014

The Union wishes to preserve work traditionally performed by employees represented by the Unions. The Employer recognizes the need for gaining ready access to and retaining a competent work force within the local community and Alaska. The Employer also wishes to provide training and employment opportunities for local and Alaskan workers and veterans through registered, apprenticeship programs with proven track records in graduating skilled apprentices. One important objective in doing so is to ensure a ready supply of labor is also available for future City & Borough of Juneau projects and other projects The Employer also wishes to secure a cost savings by employing skilled apprentices enrolled in bona fide apprenticeship & training programs at a reduced rate.

The Unions recognize and respect the Employer's need to ensure that construction work for large scale or serial projects dependent upon each other for completion, in both the private and public sectors, proceed continuously and without interruption, as efficiently and economically as possible.

In consideration of the above, the parties agree that the construction work associated with the Downtown Waterfront Improvements Phase I, CBJ Contract No. DH19-014, (the "Project") shall be performed by workers secured through referral halls pursuant to this Agreement. The Unions agree to such modifications to their respective construction agreements, work rules, customs and practices as are incorporated into, inherent in, or implied by this Agreement.

ARTICLE 1
PURPOSE

1.01 The purpose of this Agreement is to establish and maintain harmonious relations between all parties to this Agreement, to secure optimum productivity, to ensure an adequate supply of competent, skilled, and qualified local and Alaskan crafts people today and on future Projects, and to ensure labor stability by eliminating strikes, work stoppages, lockouts, slowdowns, or delays in the prosecution of the work undertaken by the Employer. The Parties recognize the need for the timely, cooperative completion of the Project without interruption or delay. This Agreement is intended to enhance this cooperative effort through the establishment of a framework for labor-management cooperation and stability.

1.02 The parties agree to, establish and put into practice effective and binding methods for the settlement of all misunderstandings, disputes, or grievances that may arise between the Union or its members and the Employer so that the Project is assured of complete efficiency and continuity of operation, without slowdown or interruption of any kinds, and labor-management peace is maintained.

ARTICLE 2
EFFECTS OF OTHER AGREEMENTS

2.01 The provisions of this Agreement shall apply to the work described in Article 3, regardless of provisions of local or national union agreements and local work rules, customs and practices except where provision of other such agreements, rules, customs and practices are specifically noted or adopted elsewhere in this Agreement. Otherwise, the full and complete agreement between the signatory parties is embodied in this Agreement.

ARTICLE 3
SCOPE OF THE AGREEMENT

3.01 This Agreement shall be applicable to the recognized and accepted work falling within the historical definition of new construction under the direction of and performed by the Employer, and all contractor(s), of whatever tier who are awarded contracts for such work on the Project. Such work shall include site preparation work and dedicated off-site work specifically including supply of concrete and excavation work.

This Agreement shall not apply to field personnel or non-manual employees of the Employer including but not limited to executives, engineers, surveyors, surveyor assistants, draftsmen, supervisors, assistant supervisors, timekeepers, messengers, office workers and guards.

It is understood that this is a self-contained, stand-alone Agreement and that by virtue of having become bound to this Project Agreement, neither the Employer, nor any contractors at any tier will be obligated to sign any other local, area, or national agreement.

This Agreement expressly does not apply to:

A. All employees of the public or private owner of the Project and of the Employer who do not perform manual labor.

B. Any equipment and machinery owned or controlled and operated by the public owner.

C. Any work performed on or near, or leading to or into, the Project site by governmental bodies, or their contractors, or by public utilities or their contractors (for work which is not part of the Project).

D. Off-site maintenance of leased equipment under warranty and on-site supervision of such work.

E. Delivery of items or materials is not subject to this Agreement if such materials are delivered by persons who does not perform any work on the Project site or common carriers.

3.02 Nothing in this Agreement shall limit the right of the Employer to subcontract work or to select its subcontractors. The Employer shall notify each subcontractor at whatever tier of the provisions of this Agreement, and shall require each such subcontractor performing work within the scope of this Agreement to sign and comply with the provisions of this Agreement before commencing work.

3.03 Repairs of any defects in manufactured equipment that must be completed prior to acceptance or is covered by the warranty of the supplier or manufacturer may be supervised by the supplier’s or manufacturer’s personnel at the Employer’s construction site.

When the warranty requirements are such as to require the repair to be completed with the supplier's or manufacturer's personnel, warranty mechanics shall supervise and perform actual work on equipment, machinery, or materials. (It is generally understood that work of the type described above is proprietary in nature. This Section shall not be utilized to circumvent the intent of this Agreement.)

ARTICLE 4
NON-DISCRIMINATION

4.01 The Employer and the Union agree that they will not unlawfully discriminate against any employee or applicant for employment because of race, creed, sex, color, age, national origin, physical, mental or sensory handicap, status as a veteran of the United States Armed Forces or membership or non-membership in the Union. This non-discrimination policy will include, but is not limited to, the following: employment, upgrading, demotions or transfer, layoff or termination, rates of pay or forms of compensation, recruitment or recruitment advertising, and selection for training, including apprenticeship.

4.02 Where the masculine or feminine gender has been used in any job classification or in any provision in this Agreement, it is used solely for the purpose of illustration and shall not in any way be used to designate the sex of the employee eligible for the position or the benefits of any other provisions.

ARTICLE 5
MANAGEMENT RIGHTS

5.01 The Employer retains full and exclusive authority for the management of its operations, except as expressly limited by other provisions of this Agreement.

The Employer shall direct its working forces at its sole prerogative, including, but not limited to hiring, promotion, transfer, lay-off or discharge for just cause. No rules, customs, or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees. The Employer shall utilize the most efficient method or techniques of construction, tools, or other labor-saving devices. There shall be no limitations upon the choice of materials or design. The Employer shall schedule work in accordance with applicable local collective bargaining agreements except as otherwise expressly limited in this Agreement.

5.02 Except as otherwise expressly stated in this Agreement, there shall be no limitation or restriction upon the Employer's choice of materials or design, nor, regardless of source or location, upon the full use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor-saving devices. The Employer may without restriction install or otherwise use materials, supplies or equipment regardless of their source. The on-site installation or application of such items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that other personnel having special talents or qualifications may participate in the installation, check-off or testing of specialized or unusual equipment.

5.03 The foregoing enumeration of management rights shall not be deemed to exclude other functions not specifically set forth. The Employer, therefore, retains all legal rights not specifically limited by this Agreement.

5.04 The Employer has the absolute right to select any qualified bidder for the award of contracts on this Project without reference to previous union affiliation or the existence or non-existence of any agreements between such bidder and any party to this Agreement provided, however, only that such bidder

is willing, ready and able to execute and comply with this Agreement, should it be designated the successful bidder. It is agreed that all subcontractors who have been awarded contracts for work covered by this Agreement on or after the effective date of this Agreement shall be required to accept, sign, and be bound by the terms and conditions of this Agreement.

ARTICLE 6
UNION REPRESENTATION

6.01 The Employer recognizes the Unions signatory to this Agreement as the sole and exclusive bargaining representatives with respect to rates of pay, hours, and other conditions of employment for the job classifications contained in the appropriate Local Union agreements and Schedule A's for this Project.

6.02 Authorized representatives of the Union shall have access to the Project provided they do not interfere with the work of employees, and further provided, that they comply with posted security and safety rules of the Project.

6.03 The selection of stewards shall be in accordance with the terms contained in the appropriate Local Union agreement, except that the Employer agrees to notify the appropriate Union twenty-four hours prior to termination of a steward, except in the case of discipline or discharge for cause. In any case in which a steward is discharged or disciplined for cause, the appropriate Union shall be notified immediately by the Employer.

For the purpose of this provision, "cause for discharge" shall mean: incompetence; unexcused absenteeism; disobedience of orders; unsatisfactory performance of duties; and violation of posted Project rules of conduct.

Stewards shall be qualified workmen assigned to a crew and shall perform the work of their craft. Activities on behalf of a Union shall not unreasonably interfere with their work for the Employer.

6.04 All employees covered by this Agreement shall be required as a condition of employment for this Project only to apply for and become members of and to maintain memberships in the respective Unions, or they may pay and remain current in the payment of such reasonable fees as are established for non-members by each Union within eight days following the beginning of their employment or the effective date of this Agreement, whichever is later. All requests to discharge an employee for failure to obtain and maintain membership or pay non-membership fees shall be in writing and the Employer agrees that it will, upon receipt of such notice, dismiss such employee or employees from their services. The Unions agree to defend any charge or suit made or brought against the Employer as the result of a request for an employee's termination or dismissal, pursuant to the provisions of this Article and to indemnify and hold the Employer harmless.

6.05 The Employer and subcontractors will deduct working membership dues, assessments and non-membership fees in the amount designated by a particular Union, provided that the employee has executed a written assignment calling for such deduction and provided it to the Employer. It is understood and agreed that the Employer assumes no liability in connection with dues or fee collection, except for ordinary diligence and care in transmittal of the monies to the appropriate Local Union. Once a month the Employer will remit to the Union the dues deducted on or before the fifteenth day of each month following the month of accrual.

ARTICLE 7
HIRING PROCEDURES

7.01 For Unions having a hiring hall or job referral system in their local agreements, the Employer agrees to be bound by such system and it shall be used exclusively by the employer. Such system must be operated in accordance with federal and Alaska law applicable at the time of hire, and the conditions set forth in this Article.

7.02 The Employer retains the right to reject any applicant for employment. The Union shall have the right to refer applicants to the Employer on a preferential basis for a limited period determined by each union's local agreement, which generally is no more than forty-eight (48) hours. The Unions have no right to compel the Employer to hire any such applicants.

7.03 The selection of applicants by a Union for referral to jobs shall be on a non-discriminatory basis and in accordance with the President's Executive Order 11246 and Title VII of the Civil Rights Act of 1964, as amended, and shall not be based on, or in any way affected by, current or previous union membership, or the lack thereof.

7.04 All of the foregoing hiring procedures, including affected apprenticeship and training, will be operated so as to permit the Employer to meet its statutory Equal Employment Opportunity obligations.

7.05 The foregoing hiring procedures shall be operated in compliance with any obligation imposed by statute requiring preference in employment for residents of Alaska.

ARTICLE 8
WORK STOPPAGES AND LOCKOUTS

8.01 During the term of this Agreement, there shall be no strikes, picketing, work stoppages, slowdowns, or other disruptive activity for any reason by the Union or by any employee and there shall be no corresponding lockout by the Employer.

8.02 The Union shall not be liable for acts of employees for which it has no responsibility. The Union will immediately instruct, order, and use the best efforts of its office to cause any member or group of members to cease any violations of this Article. When the Union complies with its obligation concerning the above described activity, it shall not be liable for unauthorized acts of its members. The failure of the Employer to exercise its rights in any instance shall not be deemed a waiver of its rights in any other instance.

ARTICLE 9
STANDARDIZED GRIEVANCE PROCEDURES

Section 1. This Agreement is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

Section 2. The Contractors, Unions, and the employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

Section 3. Any question or dispute arising out of and during the term of this Project Agreement (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following standardized procedures:

Step 1. (a) When any employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her local union business representative or job steward, shall, within five (5) working days after the occurrence of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) alleged to have been violated. The business representative of the local union or the job steward and the work-site representative of the involved Contractor and the Project Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Project Contractor) at the conclusion of the meeting but
not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated.

(b) Should the Local Union(s) or the Project Contractor or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The Local Union Representative and the involved Contractor shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the American Arbitration Association to provide them with a list of arbitrators from which the Arbitrator shall be selected. The rules of the AAA shall govern the conduct of the arbitration hearing. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

Section 4. The Project Contractor and Owner shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

ARTICLE 10
JURISDICTIONAL DISPUTES

10.01 There will be no strikes, no work stoppages or slowdowns, or other interference with the work because of jurisdictional disputes.

10.02 Work shall be assigned by the Employer in accordance with the procedural rules of the Impartial Jurisdictional Disputes Board or its successor agency and jurisdictional disputes will be settled in accordance with the procedure rules and decisions of the Board.

10.03 Where a jurisdictional dispute involves any Union or Employer not a party of the procedures established by the Impartial Jurisdictional Disputes Board and is not resolved between the Unions, it shall be referred for resolution to the Juneau Building and Construction Trades Council ("Council"). The nature of the dispute shall be reduced to writing, signed by the representatives of the Local Union(s) involved and presented to the Council for resolution. The Unions party to the dispute will have fifteen (15) minutes each to present their side of the argument at a special meeting of the Council scheduled as soon as possible after submission of the dispute to it by the parties, but in no event more than 5 working days thereafter. All representatives of the parties to the dispute shall leave the room after the parties' presentations and the affiliated Unions will then vote. There will be only one (1) vote per affiliate; the decision will be determined by majority vote of the affiliates present and voting. The Unions and the Employer agree to abide and be bound by the decision of the Council. The disputed work shall continue to be performed as assigned by the Employer until the dispute has been resolved. The Employer shall be held harmless against and will not be required to provide any back pay or other make whole remedy to the prevailing union in the event the Council determines that a mistake was made in the assignment(s) of work. The Employer will implement any change in work assignment (s) required by the decision of the Council, as soon as possible after receiving notice of the Council's decision.

ARTICLE 11
SAFETY AND HEALTH

11.01 The Employer and employees shall comply with all applicable provisions of state and federal laws and regulations relating to job safety and safe work practices and with the Employer's own Safety meetings will be scheduled and conducted periodically (but not less than once per week) by the Employer.

11.02 All employees shall be required to use appropriate, personal, protective equipment as is or may be prescribed by state or federal safety and health standards or by the Employer. Failure of employees to use such equipment shall be grounds for disciplinary action including dismissal.

11.03 Where an unsafe condition is alleged to exist, the affected employee shall first notify his or her immediate supervisor who shall make any necessary corrective action. If the parties fail to resolve any difference or disagreement over the existence of such an unsafe condition or the appropriate corrective measure to be taken, the issue shall be referred for final and binding resolution under the procedures of Article 9 exclusively, which procedures shall be expedited.

11.04 No employee may be required to work in circumstances which place that employee in imminent danger of physical harm or injury, except that the employee may not make any such claim a pretext for refusing to carry out a work assignment for engaging in concerted activity in violation of Article 8.

11.05 It will not be a violation of this Agreement for the Employer to shut down a job, or a portion thereof, because, in the Employer's judgment, there exists an emergency situation that could endanger the life and safety of an employee. In such cases, employees will be compensated only for the actual time worked or for standby time requested by the Employer.

ARTICLE 12
WAGES, HOURS, AND WORKING CONDITIONS

12.01 Wages, Rates and Fringe Benefits.

a. All employees covered by this Agreement shall be classified in accordance with Alaska Statute Title 36, Public Contracts. This shall be applicable to all contractors and subcontractors.

b. The Employer shall make contributions to the established fringe benefit funds in the amounts designated in the appropriate Union agreement and its Schedule A.

c. When the Employer(s) contribute(s) fringe benefit payments into local, regional, or national trust funds, the Employer agrees to be bound to all lawful terms and conditions of such trust agreements, and all amendments thereto.

12.02 Workweek and Workday

a. Regular Workweek and Workday. The regular workweek shall be five consecutive days falling within Monday through Saturday. Where a single shift is worked, the regular workday shall be eight consecutive hours between 6:00 a.m. and 6:00 p.m., exclusive of a meal period of not less than one-half hour. Nothing herein shall preclude the employer from scheduling any workday in excess of eight hours or a workweek in excess of forty hours. The Employer shall determine and establish the work starting times at any time between 6:00 a.m. and 8:00 a.m. All work performed before the regular starting time or after eight consecutive hours shall be paid at the regular overtime rate, except that under conditions beyond the control of the parties to this Agreement (such as concrete paving, concrete pouring, asphalt and road oiling work) or on work requiring special crews, or when the job or weather conditions warrant, the work starting time shall be mutually arranged to fit such conditions without penalty or premium payment. Other starting times, including staggered starting times, may be mutually agreed upon by the parties without premium pay.

b. Four-Ten Hour Workweek (4-10's) With notification to the employees prior to the end of their workweek, the Employer may schedule, with the consensus of the majority of the crew, a workweek of four (4) consecutive ten (10) hour workdays between Monday and Saturday within the standard starting times as stated in 12.01 (a) at the straight time rate of pay. Any work in excess of ten (10) hours on scheduled workdays shall be paid at the overtime rate of pay, and overtime shall be paid for any hours in excess of forty (40) in any workweek.

12.03 Meal Period. The Employer will schedule a meal period of not less than one-half hour, or more than one hour's duration at approximately the mid-point of the scheduled shift regardless of such shift duration (8, 10, or 12 hours). The Employer shall make an earnest effort not to work employees six hours without a meal period. If the Employer finds it is necessary to work employees beyond six hours without a meal period, the employees shall be allowed a later meal period, and it shall be considered time worked and paid for at the proper overtime rate.

12.04 Overtime.

a. All work performed in excess of eight consecutive hours in any one day or forty hours in any one workweek shall be paid at one and one-half times the straight time rate of pay. Saturday worked as the sixth day or Saturday worked following a holiday in any one workweek shall be paid at one and one-half times the straight time rate of pay. Employees shall be paid in accordance with the appropriate Union agreement and its Schedule A for all work performed on recognized holidays and Sundays.

b. When a shift is started at the basic rate or at the appropriate overtime rate applicable on that day, it shall be completed at that rate. There will be no restrictions upon the Employer's scheduling of overtime or the non-discriminatory designation of employees that shall be worked. There will be no pyramiding of overtime.

12.05 Holidays.

a. Recognized holidays shall be:

New Year's Day
Presidents' Day
Memorial Day (observed on the last Monday in May)
Fourth of July
Labor Day
Veteran's Day (observed on November 11)
Thanksgiving Day
Christmas Day

The holidays will be observed as set forth on the calendar.

b. All holidays, with the exception of Labor Day, may be worked. No work may be performed or scheduled on Labor Day unless an emergency situation exists.

12.06 Shift Work.

a. Shift work may be performed at the option of the Employer. The Employer shall have the sole right to establish the starting time and duration of a shift, to designate the craft or crafts performing work on a shift basis on the Project or any portion thereof, and to determine the number of employees required. Any time worked in excess of the regular shift shall be paid for at the normal overtime rate. The meal period provisions of Section 4 of this Article shall apply to both shifts.

b. On two- or three-shift operations, the work starting time for the first shift will not be established earlier than 5:00 a.m., unless an earlier starting time is mutually agreed upon. If an earlier starting time is established without such mutual consent, overtime for those hours earlier than 5:00 a.m. will be paid. When an employee is moved from one shift to another, they shall be allowed a minimum of eight consecutive hours off duty before they are required to begin work on the shift. An employee not having an eight-hour break between shifts shall be paid the overtime rate until such time as they receive an eight-hour break.

c. Employees shall remain at their designated place of work until quitting time. The parties endorse the policy of a fair day's work for a fair day's wage.

d. Scheduling and premium pay for two- or three-shift operations shall be in accordance with the appropriate local Union agreement and its Schedule A.

e. When two or three shifts are regularly established and the first or second shift cannot be worked due to conditions caused by weather, either shift may be worked in accordance with the applicable local Union agreement and its Schedule A.

12.07 Reporting Pay.

a. Any employee, applicant, or new hire who reports to work for a regular or assigned shift, and weather permitting, is not put to work, shall be paid two hours reporting time and shall remain at the job site for the two hours if required by the Employer.

b. An employee who starts to work shall be paid for not less than two hours, and if the employee works beyond two hours, the employee shall be paid for actual time worked. It shall be the Employer's prerogative whether or not to stop work.

c. Any employee who has completed a scheduled shift and is "called out" to perform special work of a casual, incidental or irregular nature, shall receive overtime pay in accordance with the applicable local Union agreement and its Schedule A.

d. Any employee who leaves the job or work location of his or her own volition or is discharged for cause shall be paid only for the time worked.

12.08 Payday.

a. Wages will be paid weekly by check on a designated day during working hours and in no case shall more than five days be held back in any one payroll week. It is agreed that included with the check shall be a stub or statement showing hours, deductions, and hourly rates of pay, with the Employer's name and address clearly stated. It is further agreed that the check issued by any Employer on this project shall be bankable or cashable in Juneau without penalty to the employee.

b. It is understood and agreed, however, that when an employee is laid off, that employee's wages become due immediately and must be paid within the day of separation provided, however, that an Employee separated after 5:00 p.m., shall be given a check prior to noon of the following day. Employees who quit or who are discharged for cause shall be paid not later than the end of the first work day following separation. Where complete payroll information is not available and the check issued is less than the total amount due, a check for the balance shall be sent to the
employee's local Union office. Should the Employer fail to comply with this provision, the employee will be entitled to eight hours pay at the straight time rate of pay for each day termination pay is delayed (excluding Saturdays, Sundays and holidays). Checks not picked up by the employee shall be delivered to the appropriate Union hall.

12.09 Travel and Subsistence. Travel, daily travel, subsistence, per diem, or zone pay are not required under the provisions of this Agreement.

12.10 Work and Conduct Rules. The Employer may promulgate and post rules and regulations governing the performance of work and conduct of employees at the work site. Failure to observe the posted rules and regulations by an employee shall be grounds for discipline, including discharge.

12.11 Foreman and General Foreman.

a. The selection of craft foreman and general foremen shall be the exclusive responsibility of the Employer. Foremen and general foremen shall take directions from authorized representatives of the Employer.

b. Craft foremen may be required to work at the trade.

c. General foremen may perform incidental work at the trade.

d. Craft and general foremen shall be paid at the applicable foremen rate.

All foremen shall have the authority and responsibility to terminate any employee working under their supervision who fails to satisfactorily, competently and diligently perform his or her assigned duties.

12.12 Hazard Pay. Refer to the applicable local Union agreement.

Pre-Job Conferences: It is understood that the Employer or subcontractors at all levels working under this Project Labor Agreement shall arrange a pre-job conference with the Unions prior to the commencement of their work. Foremen and general foremen shall take orders from authorized representatives of the Employer. One of the purposes of a pre-job conference will be to establish the scope of the work in the Employer's contract. A markup conference shall be required. Such conference will include presentation of information as available to the Employer regarding jurisdictional work assignments, starting date for the work, location of the project, duration of the job, estimated peak employment, and any other conditions deemed peculiar to the particular contract or subcontract, including a general description of the nature of the work to be performed and drawings and specifications, if available. The Employer will schedule and attend all pre-job conferences and markup meetings and participate in discussions as they pertain to the terms and conditions of the Agreement. This section may be waived by mutual agreement of the parties.

ARTICLE 13
PROTECTION OF PERSON AND PROPERTY

13.01 Employees must use diligent care to perform their work in a safe manner and to protect themselves, the environment, and the property of the Employer. Failure to do so may result in immediate dismissal. The Employer shall establish and post reasonable visitor, security, and safety rules to achieve this objective.

ARTICLE 14
APPRENTICES

14.01 The owner recognizes and acknowledges that there is a need for increased training and apprenticeship opportunities in the construction industry, and that a diverse and well-trained workforce is essential to the economic and social vitality of The City & Borough of Juneau and surrounding communities as well as across the state of Alaska.

14.02 Apprentices shall be utilized in accordance with the Local Union agreement and its Schedule A and applicable law. Apprentices shall be indentured in a program through their Local Union approved by the United States Department of Labor, Office of Apprenticeship Training, Employer Labor Services, (formerly the Bureau of Apprenticeship & Training).

14.03 The Employer shall ensure that not less than twenty percent (20%) of the total labor hours worked under this Agreement on the Project are performed by apprentices referred to in Article and Section 14.02 above.

HELMETS TO HARDHATS

14.04 The Employer and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Employer and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

Section 2. The Unions and Employer agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE 15
SAVINGS AND SEPARABILITY

15.01 In the event any section or provision of this Agreement shall be declared or held to be invalid or illegal by an authorized board or court of competent jurisdiction, only the part, section, provision, or the entire agreement so held or declared invalid or illegal shall forthwith cease to be of
further force and effect, and in such event either party hereto may, upon not less than thirty days written notice to the other, have the right to open negotiations for the substitution of a new section, sections, or agreement consistent with the decision of the board or court. This agreement is governed by the laws of the State of Alaska and the City and Borough of Juneau. Jurisdiction for any legal dispute arising hereunder shall be in the Superior Court for the First Judicial District in Juneau.

ARTICLE 16
ENTIRE UNDERSTANDING

16.01 The parties agree that the total results of their bargaining are embodied in this Agreement and no party signatory hereto is required to render any performance not set forth in the working of this Agreement. This Agreement may be amended only by written agreement signed by the parties hereto.

ARTICLE 17
LEGAL COMPLIANCE

17.01 Nothing in this Agreement shall be interpreted to require or result in any violation of applicable federal or state laws or regulations.

ARTICLE 18
DURATION AND APPLICATION OF AGREEMENT; DECERTIFICATION

18.01 This Project Agreement shall be effective _____, 2019, and shall continue in full force and effect until completion of the Project. This Agreement applies only to this Project. Nothing in this

Agreement shall be construed to limit the ability of employees through the voting process to decertify representation by one or more Unions in accordance with state and federal law.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year above written.

Employer	Date
President, Juneau Building Trades Council	Date
Teamsters, Local 959	Date
Operators Local 302	Date
Pacific Northwest Regional Carpenter's Council (PNWRCC)	Date
Iron Workers Local 751	Date
Laborers Local 942	Date
Plumbers and Pipefitters Local 262	Date
IBEW Local 1547	Date
Painters Local 1959	Date
Piledrivers & Divers Local 2520	Date
Sheetmetal Local 23	Date
Sprinklerfitters Local 669	Date
Heat&Frost Insulators Local 97	Date

PROJECT LABOR AGREEMENT
SUBCONTRACTOR LETTER OF ASSENT (LOA)
Downtown Waterfront Improvements, Phase 1, Contract No. DH 19-014

The Downtown Waterfront Improvements Phase I (Docks and Harbors, City and Borough of Juneau Contract DH19-014 hereafter "CONTRACT"), is subject to a Project Labor Agreement (PLA) The Contractor and Subcontractors who are awarded the work are contractually required to sign and comply with the PLA. The PLA is included in the CONTRACT as Section 001 – SPECIAL NOTICE TO BIDDERS.

Pursuant to the PLA, including Articles 3.02 and 5.04, the undersigned authorized representative of the Subcontractor employer acknowledges and understands that they will comply with and be bound by all of the terms and conditions of the PLA, including any present or future modifications, amendments or addenda thereto. The Subcontractor acknowledges the PLA as the singular binding Agreement for the defined Project. The PLA and this LOA shall only apply to the project defined in the PLA and to no other project(s). The Subcontractor acknowledges and agrees to make contributions to the established fringe benefit funds under Article 12.01 in the amounts designated in the Appropriate Union agreement and its accompanying Schedule A.

This LOA shall remain in effect for the duration of all work performed under the PLA, by the undersigned Employer, on the defined Project.

For the Employer (Subcontractor):	*For the General Contractor:*
Authorized Representative (Print):	*Authorized Representative (Print):*
_____	_____
*Title:*_____	*Title:*_____
Authorized Representative (Signature):	*Authorized Representative (Signature):*
_____	_____
*Date:*_____	*Date:*_____

*Name of Employer (Subcontractor:*_____

*License or Registration No.:*_____

*Address:*_____

*City, State, Zip:*_____

*Phone:*_____

*Fax:*_____

END OF SECTION

SECTION 00300 - BID

BID TO: THE CITY AND BOROUGH OF JUNEAU

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the OWNER on the form included in the Contract Documents (as defined in Article 7 of Section 00500 - Agreement) to perform the WORK as specified or indicated in said Contract Documents entitled

Downtown Waterfront Improvements- Phase 1
Contract No. E19-014

2. Bidder accepts all of the terms and conditions of the Contract Documents, including without limitation those in the "Notice Inviting Bids" and "Instructions to Bidders," dealing with the disposition of the Bid Security.

3. This Bid will remain open for the period stated in the "Notice Inviting Bids" unless otherwise required by law. Bidder will enter into an Agreement within the time and in the manner required in the "Notice Inviting Bids" and the "Instructions to Bidders," and will furnish insurance certificates, Payment Bond, Performance Bond, and any other documents as may be required by the Contract Documents.

4. Bidder has familiarized itself with the nature and extent of the Contract Documents, WORK, site, locality where the WORK is to be performed, the legal requirements (federal, state and local laws, ordinances, rules, and regulations), and the conditions affecting cost, progress or performance of the WORK and has made such independent investigations as Bidder deems necessary.

5. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.

6. To all the foregoing, and including all Bid Schedule and information required of Bidder contained in this Bid Form, said Bidder further agrees to complete the WORK required under the Contract Documents within the Contract Time stipulated in said Contract Documents, and to accept in full payment therefore the Contract Price based on the total bid price(s) named in the aforementioned Bid Schedule.

7. Bidder has examined copies of all the Contract Documents including the following Addenda (receipt of all of which is hereby acknowledged by the Undersigned):

Addenda No.	Date Issued	Addenda No.	Date Issued

Give number and date of each Addenda above. Failure to acknowledge receipt of all Addenda may cause the Bid to be non-responsive and may cause its rejection.

8. The Bidder has read this Bid and agrees to the conditions as stated herein by signing its signature in the space provided below.

Dated: _____	Bidder: _____ (Company Name)
Alaska CONTRACTOR's Business License No: _____	By: _____ (Signature)
Alaska CONTRACTOR's License No: _____	Printed Name: _____
Telephone No: _____	Title: _____
Fax No: _____	Address: _____ (Street or P.O. Box)
E-mail: _____	_____ (City, State, Zip)

9. TO BE CONSIDERED, ALL BIDDERS MUST COMPLETE AND INCLUDE THE FOLLOWING AT THE TIME OF THE DEADLINE FOR BIDS. **MISSING DOCUMENTS WILL DEEM THIS BID NON-RESPONSIVE:**

- Bid, Section 00300 (includes Addenda receipt statement)
- Completed Bid Schedule, Section 00310
- Bid Security (Bid Bond, Section 00320, or by a certified or cashier's check as stipulated in the Notice Inviting Bids, Section 00030)

10. The apparent low Bidder is required to complete and submit the following documents by 4:30 p.m. on the ***fifth business day*** following the date of the Posting Notice.

- Subcontractor Report, Section 00360

The apparent low Bidder who fails to submit the completed Subcontractor Report within the time specified in Section 00360 – Subcontractor Report, may be found to be not a responsible Bidder and may be required to forfeit the Bid security. The OWNER may then consider the next lowest Bidder for award of the contract.

11. The successful Bidder will be required to submit, ***within ten Days (calendar)*** after the date of the "Notice of Intent to Award" letter, the following executed documents:

- Agreement Forms, Section 00500
- Performance Bond, Section 00610
- Payment Bond, Section 00620
- Certificates of Insurance, (CONTRACTOR) Section 00700 and Section 00800

END OF SECTION

This notice of authorization must be conspicuously displayed at the site of work.

United States Army Corps of Engineers
Gastineau Channel

A permit to: Construct a concrete retaining wall and pile supported deck.

at: Section 23, T. 41 S., R. 67 E., Copper River Meridian; USGS Quad Map Juneau B-2; Latitude 58.297498° N., Longitude -134.403391° W.; in Juneau, Alaska.

has been issued to: Mr. Carl Uchytil – City and Borough of Juneau.

on: June 5, 2019 **and expires:** June 30, 2024

Address of Permittee: Mr. Carl Uchytil - City and Borough of Juneau Docks and Harbors, 155 South Seward Street, Juneau, Alaska 99801.

Permit Number:

ADDENDUM NO. 1

POA-2018-00433

Roberta K Budnik

FOR: ***District Commander***
Roberta Budnik
Project Manager

DEPARTMENT OF THE ARMY
ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REGULATORY DIVISION
P.O. BOX 22270
JUNEAU, AK 99802-2270

June 5, 2019

Regulatory Division
POA-2018-00433

City and Borough of Juneau
Docks and Harbors
Attention: Mr. Carl Uchytil
155 South Seward Street
Juneau, Alaska 99801

Dear Mr. Uchytil:

Enclosed is the signed Department of the Army (DA) permit, file number POA-2018-00433, Gastineau Channel, which authorizes the construction of a concrete retaining wall and pile supported deck. The project site is located within The project site is located within Section 23, T. 41 S., R. 67 E., Copper River Meridian; USGS Quad Map Juneau B-2; Latitude 58.297498° N., Longitude -134.403391° W.; in Juneau, Alaska. Also enclosed is a Notice of Authorization which should be posted in a prominent location near the authorized work.

If changes to the plans or location of the work are necessary for any reason, plans must be submitted to us immediately. Federal law requires approval of any changes before construction begins.

Nothing in this letter excuses you from compliance with other Federal, State, or local statutes, ordinances, or regulations.

Please contact Matthew Brody via email at Matthew.T.Brody@usace.army.mil, by mail at the address above, or by phone at (907) 790-4493, if you have questions. For more information about the Regulatory Program, please visit our website at: www.poa.usace.army.mil/Missions/Regulatory.

Sincerely,

Roberta K Budnik

Roberta Budnik
Project Manager

Enclosures

CF:

Carl.Uchytil@juneau.org
DSomerville@pndengineers.com

Hard Copy:

Mr. Carl Uchytil
City and Borough of Juneau
Docks and Harbors
155 South Seward Street
Juneau, Alaska 99801

Mr. Dick Somerville
PND Engineers, Inc.
9360 Glacier Highway
Suite 100
Juneau, Alaska 99801

DEPARTMENT OF THE ARMY PERMIT

Permittee: Mr. Carl Uchytil – City and Borough of Juneau Docks and Harbors

Permit No.: POA-2018-00433

Issuing Office: U.S. Army Engineer District, Alaska

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: The construction of a pile supported deck along the waterfront to enhance waterfront cruise ship visitor accessibility through the construction of a concrete retaining wall and pile supported deck with upland features including a passenger covered shelter, open space, passenger restrooms, and a transportation staging area. The work would take place within tidal waters of Gastineau Channel below the High Tide Line (+20.8 feet above the 0.0 foot contour) and the Mean High Water (+15.4 feet above the 0.0 foot contour). Specifically the work includes:

1. The demolition of existing timber deck and approach structures consisting of approximately 4,260 square feet and the removal of approximately 100 tapered 16-18 inch diameter creosote treated timber pilings,
2. Installation of (87) 18-inch diameter steel temporary template pilings,
3. Removal of (87) 18-inch diameter steel temporary template pilings,
4. Installation of (42) 16-inch diameter steel pipe pilings,
5. Installation of (45) 18-inch diameter steel pipe pilings,
6. Installation of (40) 24-inch diameter steel pipe pilings,
7. Construction of a 500 cubic yard concrete retaining wall measuring 2 feet wide x 390 feet long,
8. Construction of a new timber ramp and decking measuring 20,160 square feet,
9. Construction of a new concrete deck measuring 15,900 square feet,
10. The placement of 2,500 cubic yards of class A shot rock backfill and 700 cubic yards of class II armor rock into 0.08 acres.

All work will be performed in accordance with the attached plan, sheets **1-9**, dated **October, 2018**.

Project Location: The project site is located within Section 23, T. 41 S., R. 67 E., Copper River Meridian; USGS Quad Map Juneau B-2; Latitude 58.297498° N., Longitude -134.403391° W.; in Juneau, Alaska.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on **5 years from the end of issuing month**.

If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. The permittee shall comply with the Federal Endangered Species Act, you must implement all of the mitigating measures identified in the enclosed National Marine Fisheries Service letter of concurrence (Number NMFS # AKRO-2018-00369, dated May 10, 2019), including those ascribed to the Corps therein. If you are unable to implement any of these measures, you must immediately notify the Corps and the National Marine Fisheries Service so we may consult as appropriate, prior to initiating the work, in accordance with Federal law.

2. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States (U.S.).

3. You must install and maintain, at your expense, any safety lights and signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on your authorized facilities. The USCG may be reached at the following address and telephone number: Commander (dpw), 17th Coast Guard District, Post Office Box 25517, Juneau, Alaska 99802; or by telephone at (907) 463-2272.

4. The permittee understands and agrees that, if future operations by the U.S. require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the U.S. No claim shall be made against the U.S. on account of any such removal or alteration.

5. **Self-Certification:** Within 60 days of completion of the work authorized by this permit, the Permittee shall complete the attached "Self-Certification Statement of Compliance" form (Attachment 2) and submit it to the Corps. In the event that the completed work deviates in any manner from the authorized work, the Permittee shall describe the deviations between the work authorized by this permit and the work as constructed on the "Self-Certification Statement of Compliance" form. The description of any deviations on the "Self-Certification Statement of Compliance" form does not constitute approval of any deviations by the Corps.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(**X**) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(**X**) Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, State, or local authorization required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or un-permitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the U.S. in the public interest.

c. Damages to persons, property, or to other permitted or un-permitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Re-evaluation of Permit Decision. This office may re-evaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a revaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a re-evaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a re-evaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Carl J Uchytil

Carl Uchytil, P.E. Juneau Port Director — June 3rd, 2019

(PERMITTEE) AND TITLE — (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Roberta K Budnik

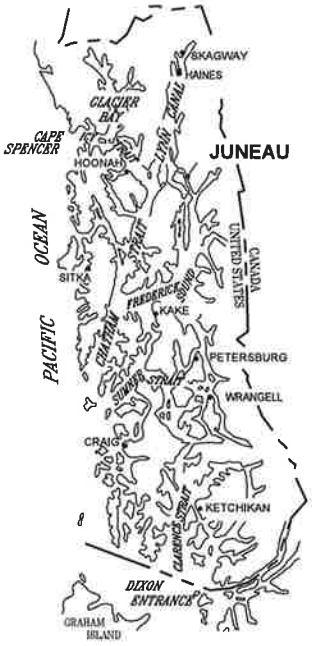
June 4, 2019

FOR (DISTRICT COMMANDER) — (DATE)
Colonel Phillip J. Borders
Roberta Budnik
South Branch, Regulatory Division

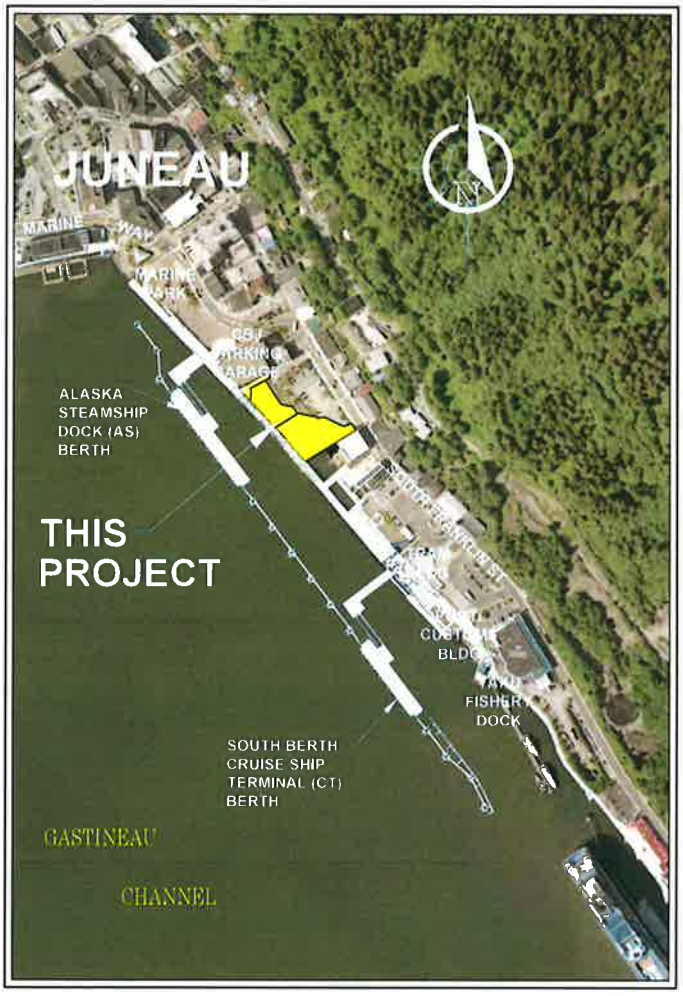
When the structures or work authorized by this permit are still in existence at the time the property is transferred the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions have the transferee sign and date below.

(TRANSFEREE) — (DATE)

LOCATION



SOUTHEAST ALASKA



AERIAL PHOTO MODIFIED FROM:
CITY AND BOROUGH OF JUNEAU, 2006

VICINITY MAP

SCALE IN MILES

0 ⅛ ¼

PURPOSE:

THE PROPOSED DOWNTOWN WATERFRONT IMPROVEMENTS PROJECT WILL MEET THE NEEDS OF AN EXPANDING CRUISE SHIP INDUSTRY AND ITS PASSENGERS BY CREATING AMPLE OPEN SPACE THEREBY DECREASING CONGESTION AND IMPROVING PEDESTRIAN CIRCULATION.

DATUM:

MLLW = 0.0'
HTL = 20.6'
MHW = 15.4'

LOCATION AND VICINITY MAP

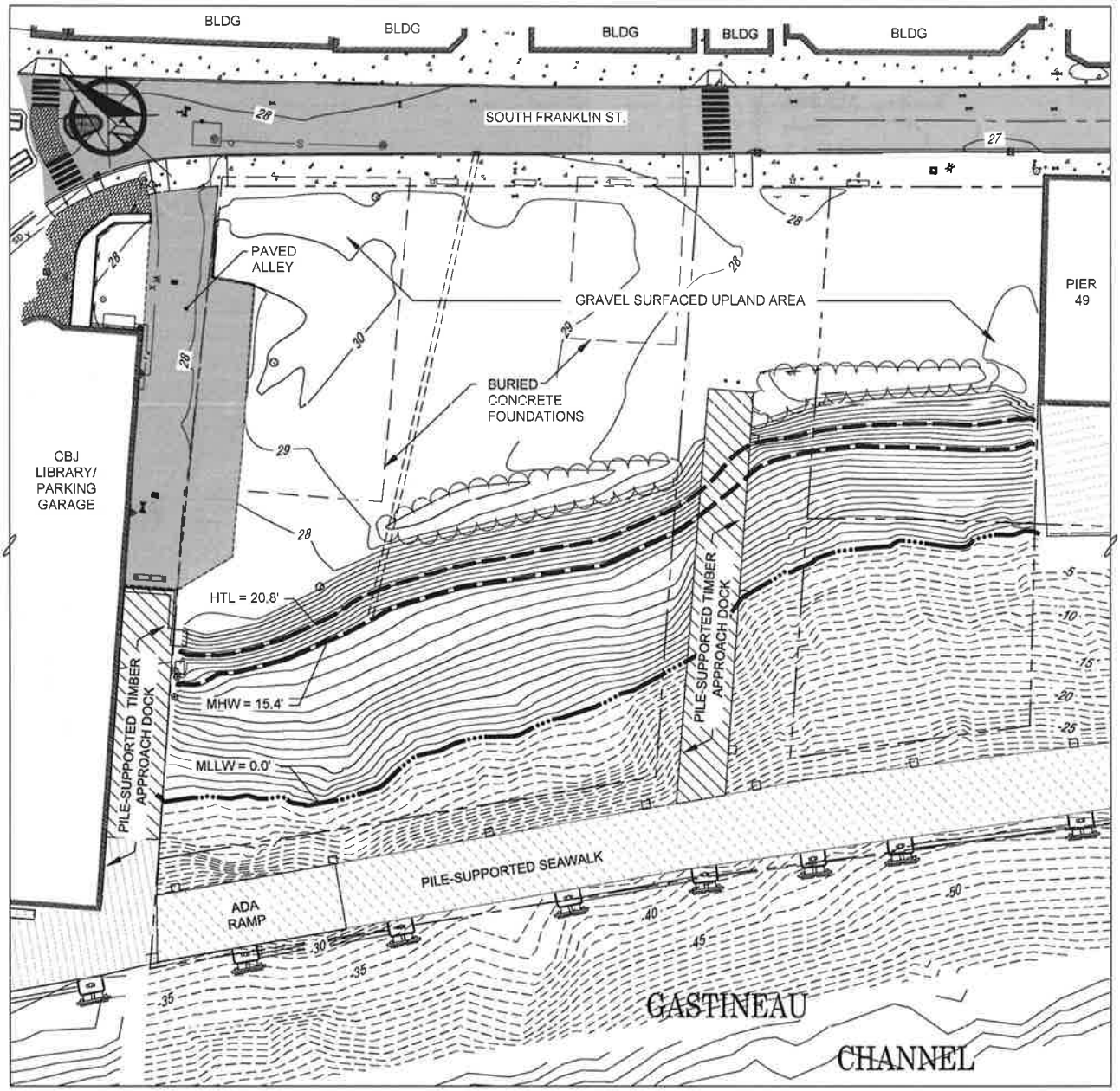
APPLICANT ADRESS:
CITY AND BOROUGH OF JUNEAU
DOCKS AND HARBORS
155 S. SEWARD STREET
JUNEAU, AK 99801

PND PROJECT NO. 182045

CBJ DOWNTOWN WATERFRONT IMPROVEMENTS

APPLICANT: CITY AND BOROUGH OF JUNEAU D&H
FILE NO.:
WATERWAY: GASTINEAU CHANNEL
PROPOSED ACTIVITY: WATERFRONT IMPROVEMENTS
SEC. 23 T. 41 S R. 67 E M CRM
LAT.: 58°17' 51" N LONG.: 134° 24' 13" W
DATE: OCTOBER 2018

ADDENDUM NO. 1



PURPOSE:

THE PROPOSED DOWNTOWN WATERFRONT IMPROVEMENTS PROJECT WILL MEET THE NEEDS OF AN EXPANDING CRUISE SHIP INDUSTRY AND ITS PASSENGERS BY CREATING AMPLE OPEN SPACE THEREBY DECREASING CONGESTION AND IMPROVING PEDESTRIAN CIRCULATION.

DATUM:

MLLW = 0.0'
HTL = 20.6'
MHW = 15.4'

EXISTING CONDITIONS
PLAN
SCALE IN FEET
0 40 80

APPLICANT ADRESS:
CITY AND BOROUGH OF JUNEAU
DOCKS AND HARBORS
155 S. SEWARD STREET
JUNEAU, AK 99801

PND PROJECT NO. 182045

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APPLICANT: CITY AND BOROUGH OF JUNEAU D&H
FILE NO.:
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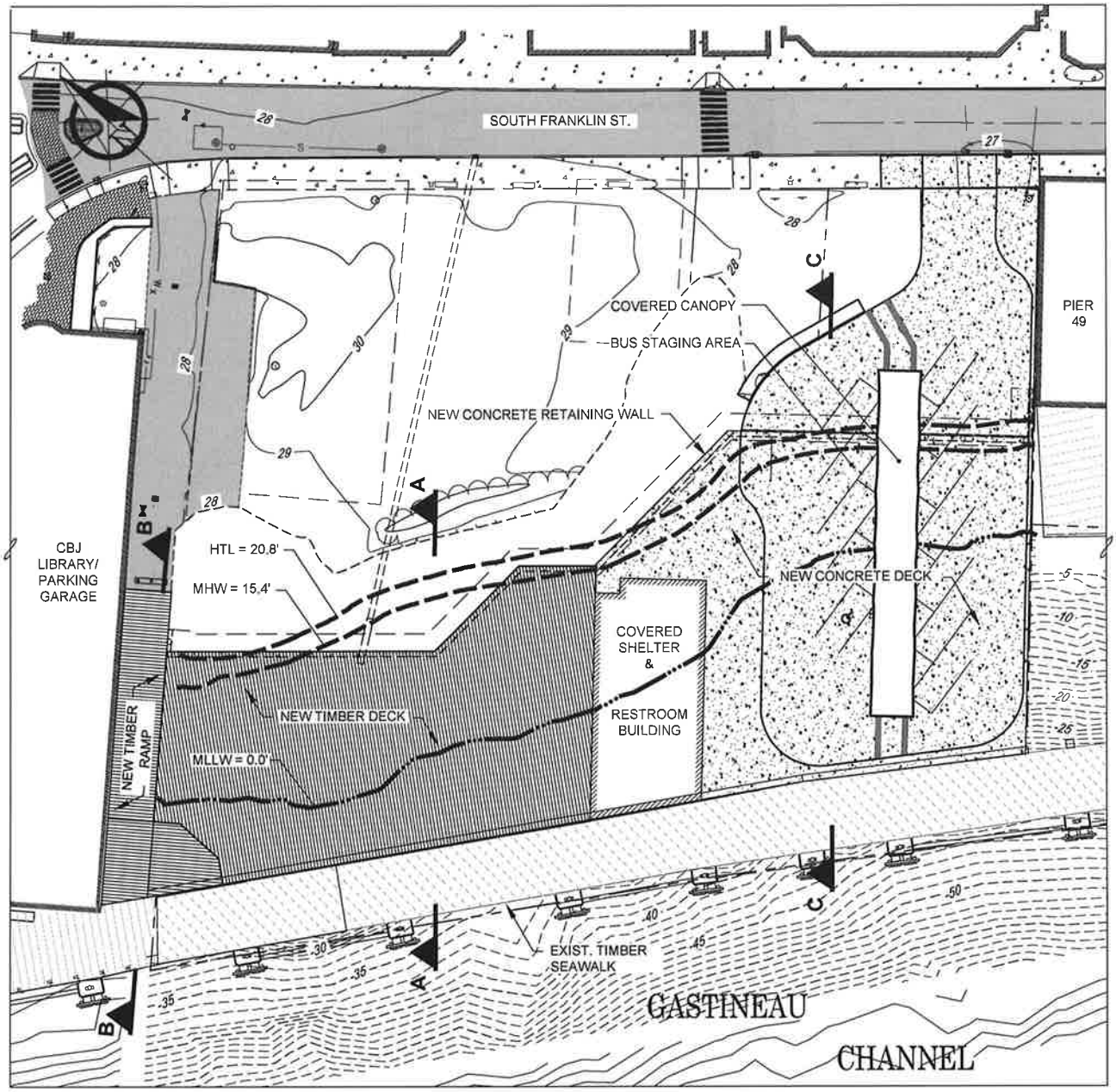


PURPOSE:

THE PROPOSED DOWNTOWN WATERFRONT IMPROVEMENTS PROJECT WILL MEET THE NEEDS OF AN EXPANDING CRUISE SHIP INDUSTRY AND ITS PASSENGERS BY CREATING AMPLE OPEN SPACE THEREBY DECREASING CONGESTION AND IMPROVING PEDESTRIAN CIRCULATION.

DATUM:

MLLW = 0.0' HTL = 20.6'
MHW = 15.4'

PROPOSED GENERAL SITE PLAN

SCALE IN FEET

0 40 80

APPLICANT ADRESS:
CITY AND BOROUGH OF JUNEAU
DOCKS AND HARBORS
155 S. SEWARD STREET
JUNEAU, AK 99801

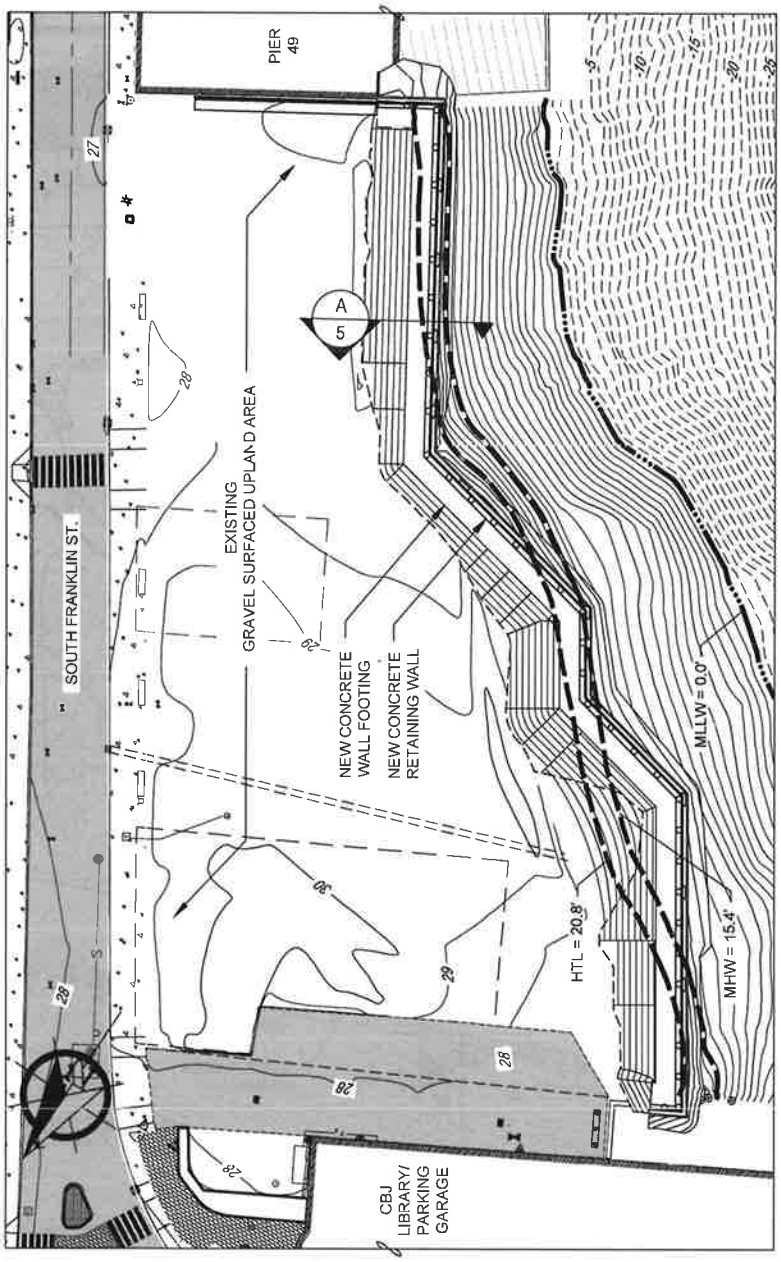
PND PROJECT NO. 182045

CBJ DOWNTOWN WATERFRONT IMPROVEMENTS

APPLICANT: CITY AND BOROUGH OF JUNEAU D&H
FILE NO.:
WATERWAY: GASTINEAU CHANNEL
PROPOSED ACTIVITY: WATERFRONT IMPROVEMENTS
SEC. 23 T. 41 S R. 67 E M CRM
LAT.: 58°17' 51" N LONG.: 134° 24' 13" W
DATE: OCTOBER 2018

CONCRETE RETAINING WALL STRUCTURE SUMMARY

LINEAR FEET (FT)	# OF PILES	PILE Ø (INCH)	CLASS A SHOT ROCK QUANTITY (CY) BELOW HTL	ARMOR ROCK QUANTITY (CY) BELOW HTL	CONCRETE QUANTITY (CY)
388	40	24	2,500	700	500



RETAINING WALL FOUNDATION PLAN

PURPOSE:

THE PROPOSED DOWNTOWN WATERFRONT IMPROVEMENTS PROJECT WILL MEET THE NEEDS OF AN EXPANDING CRUISE SHIP INDUSTRY AND ITS PASSENGERS BY CREATING AMPLE OPEN SPACE THEREBY DECREASING CONGESTION AND IMPROVING PEDESTRIAN CIRCULATION.

DATUM:

MLLW = 0.0'
HTL = 20.6'
MHW = 15.4'

RETAINING WALL FOUNDATION PLAN
SCALE IN FEET
0 30 60

APPLICANT ADRESS:
CITY AND BOROUGH OF JUNEAU
DOCKS AND HARBORS
155 S. SEWARD STREET
JUNEAU, AK 99801

PND PROJECT NO. 182045

CBJ DOWNTOWN WATERFRONT IMPROVEMENTS

APPLICANT: CITY AND BOROUGH OF JUNEAU D&H
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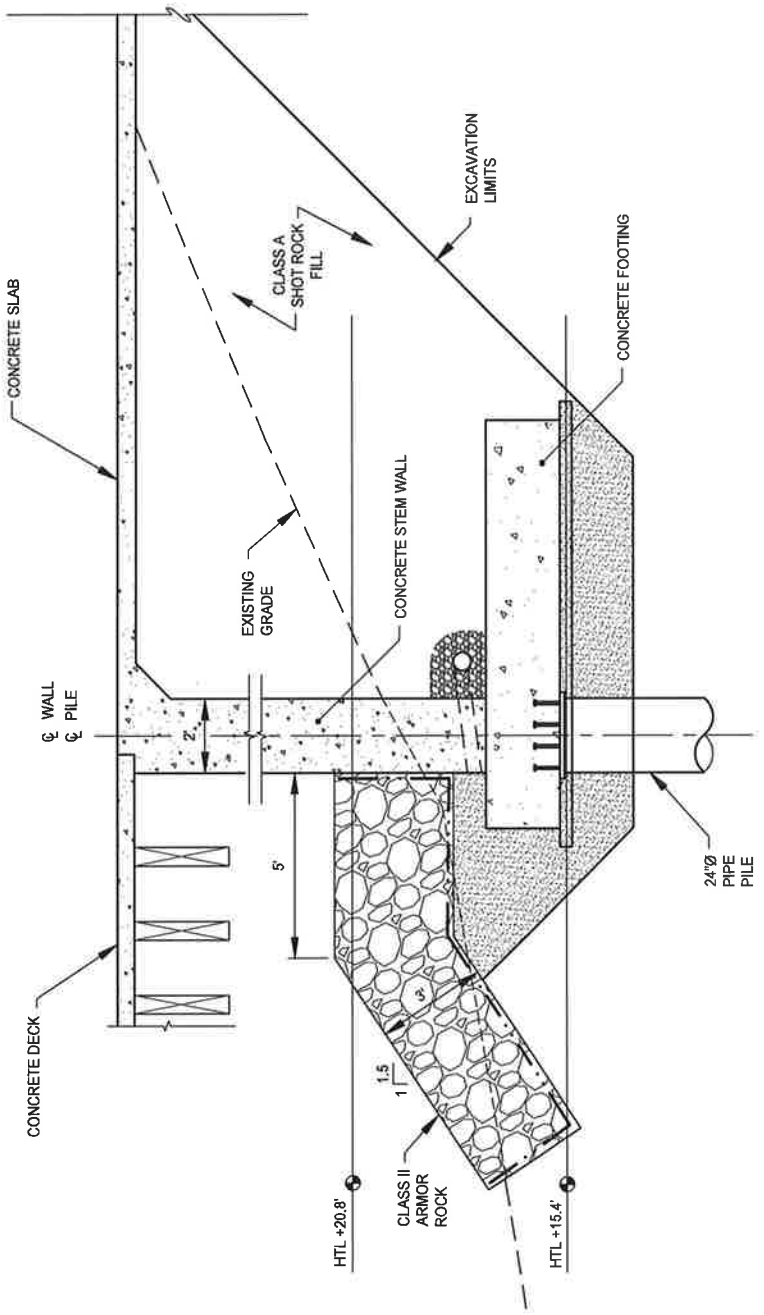
SEC. 23 T. 41 S R. 67 E M CRM
LAT.: 58°17' 51" N LONG.: 134° 24' 13" W
DATE: OCTOBER 2018



RETAINING WALL SECTION
A 4

PURPOSE:

THE PROPOSED DOWNTOWN WATERFRONT IMPROVEMENTS PROJECT WILL MEET THE NEEDS OF AN EXPANDING CRUISE SHIP INDUSTRY AND ITS PASSENGERS BY CREATING AMPLE OPEN SPACE THEREBY DECREASING CONGESTION AND IMPROVING PEDESTRIAN CIRCULATION.

DATUM:

MLLW = 0.0'
HTL = 20.6'
MHW = 15.4'

RETAINING WALL SECTION

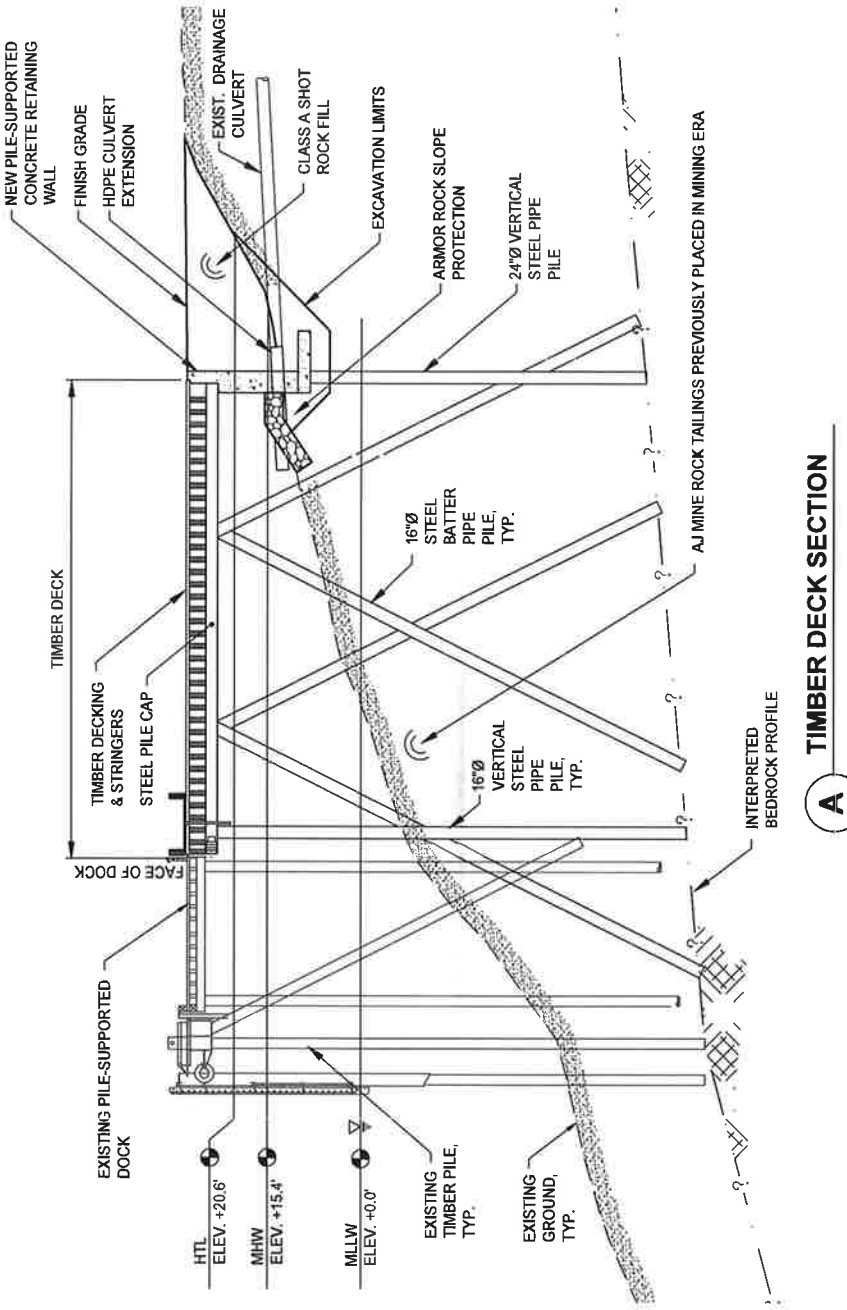
NTS

APPLICANT ADRESS:
CITY AND BOROUGH OF JUNEAU
DOCKS AND HARBORS
155 S. SEWARD STREET
JUNEAU, AK 99801

PND PROJECT NO. 182045

CBJ DOWNTOWN WATERFRONT IMPROVEMENTS

APPLICANT: CITY AND BOROUGH OF JUNEAU D&H
FILE NO.:
WATERWAY: GASTINEAU CHANNEL
PROPOSED ACTIVITY: WATERFRONT IMPROVEMENTS
SEC. 23 T. 41 S R. 67 E M CRM
LAT.: 58°17' 51" N LONG.: 134° 24' 13" W
DATE: OCTOBER 2018



TIMBER DECK STRUCTURE SUMMARY

SURFACE COVERAGE (SF)	# OF PILES	PILE Ø (INCH)
13,600	30	16

PURPOSE:

THE PROPOSED DOWNTOWN WATERFRONT IMPROVEMENTS PROJECT WILL MEET THE NEEDS OF AN EXPANDING CRUISE SHIP INDUSTRY AND ITS PASSENGERS BY CREATING AMPLE OPEN SPACE THEREBY DECREASING CONGESTION AND IMPROVING PEDESTRIAN CIRCULATION.

DATUM:

MLLW = 0.0'
HTL = 20.6'
MHW = 15.4'

TIMBER DECK SECTION

SCALE IN FEET

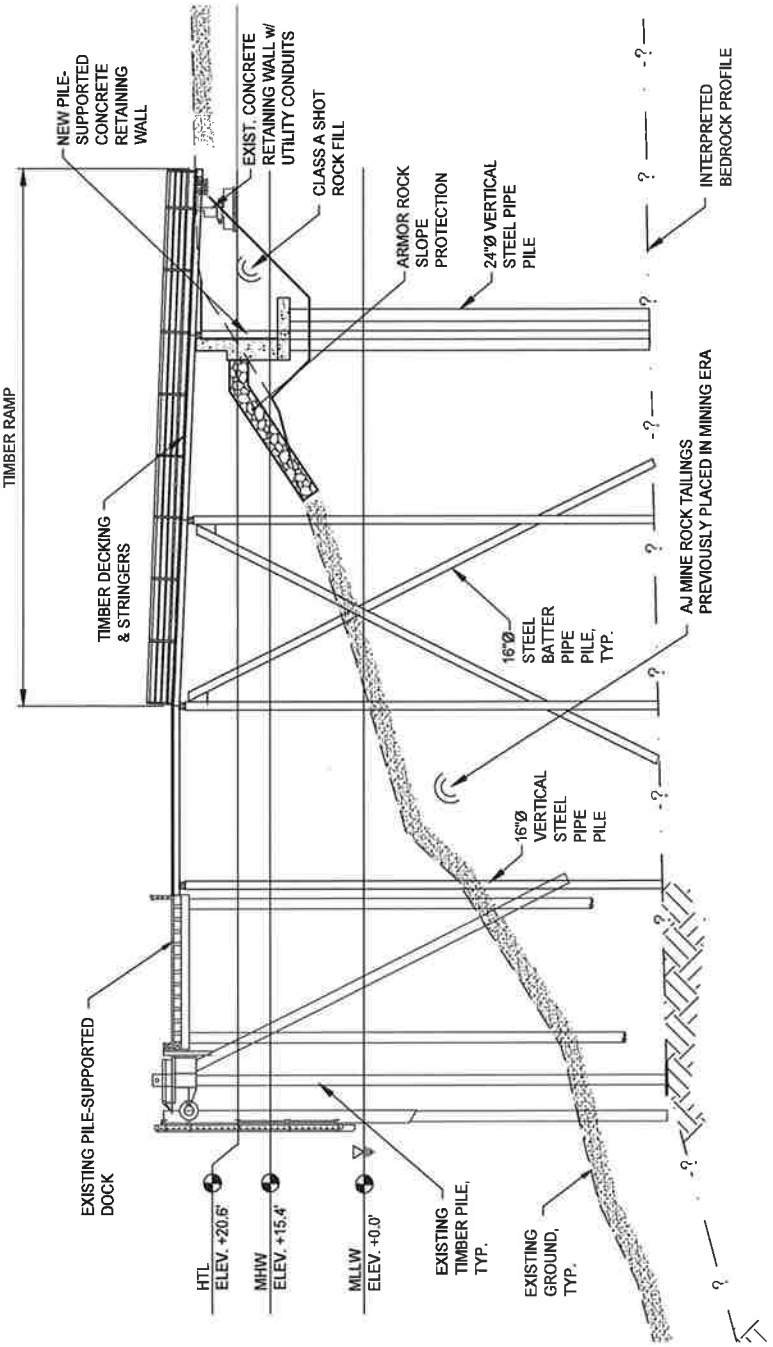
0 15 30

APPLICANT ADRESS:
CITY AND BOROUGH OF JUNEAU
DOCKS AND HARBORS
155 S. SEWARD STREET
JUNEAU, AK 99801

PND PROJECT NO. 182045

CBJ DOWNTOWN WATERFRONT IMPROVEMENTS

APPLICANT: CITY AND BOROUGH OF JUNEAU D&H
FILE NO.:
WATERWAY: GASTINEAU CHANNEL
PROPOSED ACTIVITY: WATERFRONT IMPROVEMENTS
SEC. 23 T. 41 S R. 67 E M CRM
LAT.: 58°17' 51" N LONG.: 134° 24' 13" W
DATE: OCTOBER 2018



B TIMBER RAMP SECTION

TIMBER RAMP STRUCTURE SUMMARY

SURFACE COVERAGE (SF)	# OF PILES	PILE Ø (INCH)
2,020	12	16

PURPOSE:

THE PROPOSED DOWNTOWN WATERFRONT IMPROVEMENTS PROJECT WILL MEET THE NEEDS OF AN EXPANDING CRUISE SHIP INDUSTRY AND ITS PASSENGERS BY CREATING AMPLE OPEN SPACE THEREBY DECREASING CONGESTION AND IMPROVING PEDESTRIAN CIRCULATION.

DATUM:

MLLW = 0.0'
HTL = 20.6'
MHW = 15.4'

TIMBER RAMP SECTION

SCALE IN FEET

0 15 30

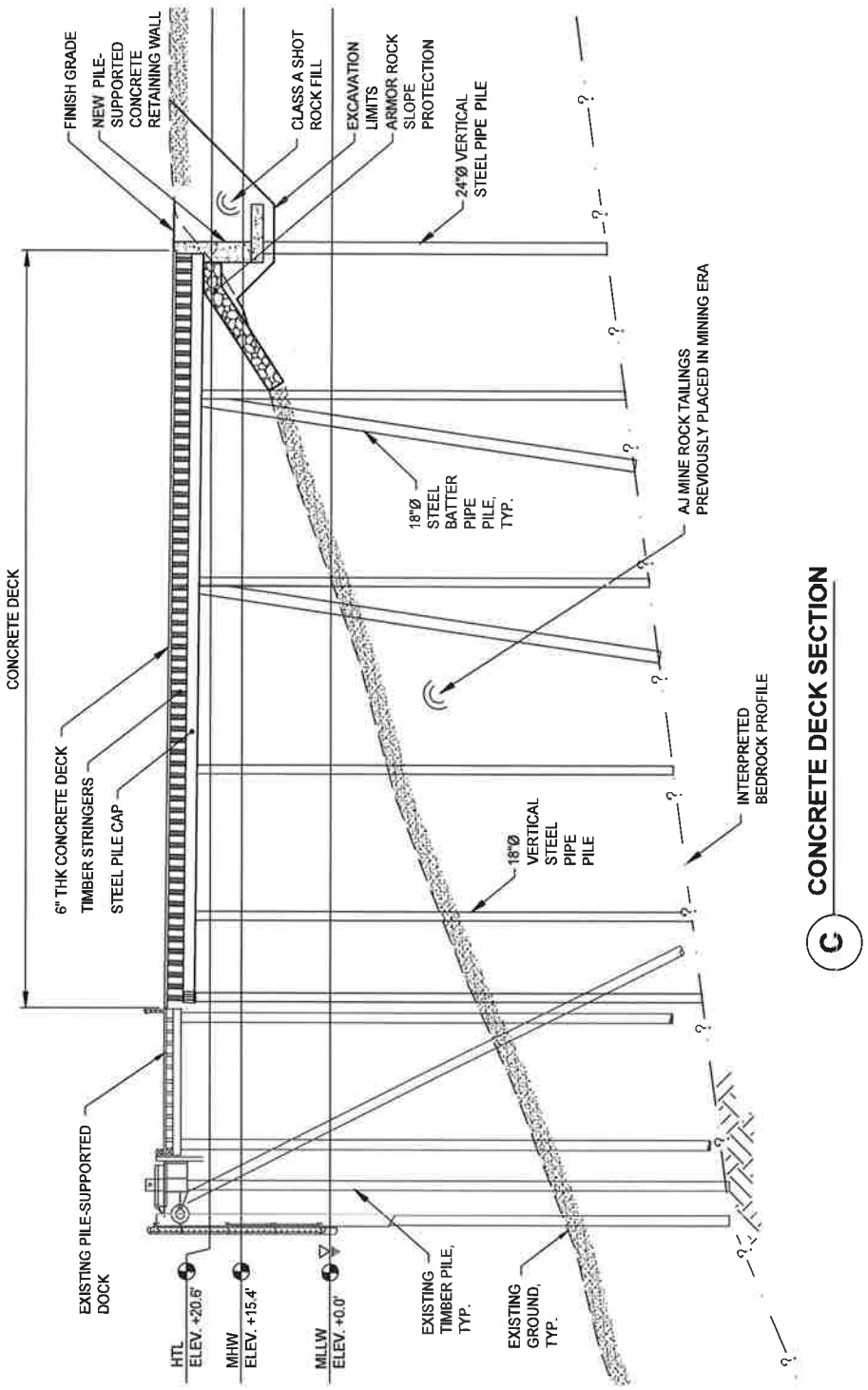
APPLICANT ADRESS:
CITY AND BOROUGH OF JUNEAU
DOCKS AND HARBORS
155 S. SEWARD STREET
JUNEAU, AK 99801

PND PROJECT NO. 182045

CBJ DOWNTOWN WATERFRONT IMPROVEMENTS

APPLICANT: CITY AND BOROUGH OF JUNEAU D&H
FILE NO.:
WATERWAY: GASTINEAU CHANNEL
PROPOSED ACTIVITY: WATERFRONT IMPROVEMENTS
SEC. 23 T. 41 S R. 67 E M CRM
LAT.: 58°17' 51" N LONG.: 134° 24' 13" W
DATE: OCTOBER 2018

SHEET 7 of 9



C CONCRETE DECK SECTION

CONCRETE DECK STRUCTURE SUMMARY

SURFACE COVERAGE (SF)	# OF PILES	PILE Ø (INCH)
27,000	45	18

PURPOSE:

THE PROPOSED DOWNTOWN WATERFRONT IMPROVEMENTS PROJECT WILL MEET THE NEEDS OF AN EXPANDING CRUISE SHIP INDUSTRY AND ITS PASSENGERS BY CREATING AMPLE OPEN SPACE THEREBY DECREASING CONGESTION AND IMPROVING PEDESTRIAN CIRCULATION.

DATUM:

MLLW = 0.0'
HTL = 20.6'
MHW = 15.4'

CONCRETE DECK SECTION

SCALE IN FEET

0 15 30

APPLICANT ADRESS:
CITY AND BOROUGH OF JUNEAU
DOCKS AND HARBORS
155 S. SEWARD STREET
JUNEAU, AK 99801

PND PROJECT NO. 182045

CBJ DOWNTOWN WATERFRONT IMPROVEMENTS

APPLICANT: CITY AND BOROUGH OF JUNEAU D&H
FILE NO.:
WATERWAY: GASTINEAU CHANNEL
PROPOSED ACTIVITY: WATERFRONT IMPROVEMENTS
SEC. 23 T. 41 S R. 67 E M CRM
LAT.: 58°17' 51" N LONG.: 134° 24' 13" W
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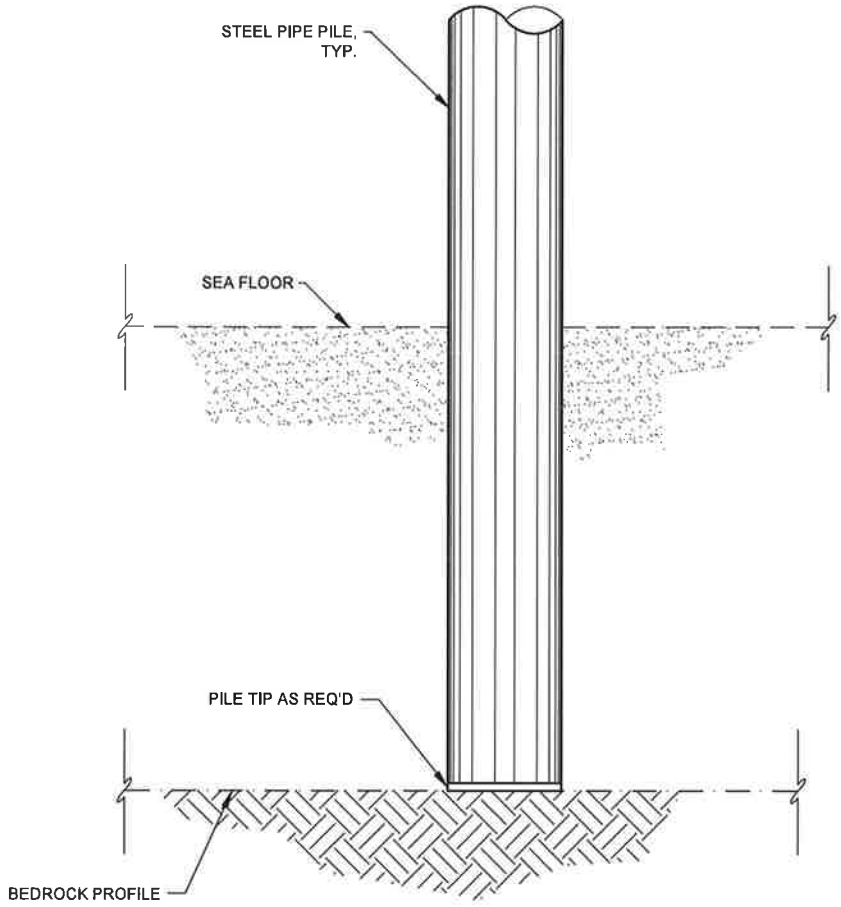

PILE DETAILS

PURPOSE:

THE PROPOSED DOWNTOWN WATERFRONT IMPROVEMENTS PROJECT WILL MEET THE NEEDS OF AN EXPANDING CRUISE SHIP INDUSTRY AND ITS PASSENGERS BY CREATING AMPLE OPEN SPACE THEREBY DECREASING CONGESTION AND IMPROVING PEDESTRIAN CIRCULATION.

DATUM:

MLLW = 0.0' HTL = 20.6' MHW = 15.4'

PILE DETAILS

NTS

APPLICANT ADRESS:
CITY AND BOROUGH OF JUNEAU
DOCKS AND HARBORS
155 S. SEWARD STREET
JUNEAU, AK 99801

PND PROJECT NO. 182045

CBJ DOWNTOWN WATERFRONT IMPROVEMENTS

APPLICANT: CITY AND BOROUGH OF JUNEAU D&H
FILE NO.:
WATERWAY: GASTINEAU CHANNEL
PROPOSED ACTIVITY: WATERFRONT IMPROVEMENTS
SEC. 23 T. 41 S R. 67 E M CRM
LAT.: 58°17' 51" N LONG.: 134° 24' 13" W
DATE: OCTOBER 2018

SHEET **9** of **9**

SELF-CERTIFICATION STATEMENT OF COMPLIANCE

Permit Number: POA- -

Permittee's Name & Address (please print or type):_____

_____

_____

Telephone Number:_____

Location of the Work:_____

_____

Date Work Started:_____ Date Work Completed:_____

PROPERTY IS INACCESSIBLE WITHOUT PRIOR NOTIFICATION: YES _____ NO_____
TO SCHEDULE AN INSPECTION PLEASE CONTACT _____
AT _____

Description of the Work (e.g. bank stabilization, residential or commercial filling, docks, dredging, etc.):_____

_____

_____

Acreage or Square Feet of Impacts to Waters of the United States: _____

Describe Mitigation completed (if applicable): _____

_____

_____

Describe any Deviations from Permit (attach drawing(s) depicting the deviations):

_____

_____

I certify that all work and mitigation (if applicable) was done in accordance with the limitations and conditions as described in the permit. Any deviations as described above are depicted on the attached drawing(s).

_____
Signature of Permittee

_____
Full Name of Permittee (printed or typed)

_____
Date

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Mr. Carl Uchytil – City and Borough of Juneau	File Number: POA-2018-00433	Date: June 5, 2019
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
X	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/Pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:	If you only have questions regarding the appeal process you may also contact:
Matthew Brody, RS Alaska District Corps of Engineers Juneau Regulatory Field Office (CEPOA-RD-SE) Post Office Box 22270 Juneau, Alaska 99802-2270 (907) 790-4493	Regulatory Program Manager U.S. Army Corps of Engineers, Pacific Ocean Division CEPOD-PDC, Bldg 525 Fort Shafter, HI 96858-5440

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

	Date:	Telephone number:
_____ Signature of appellant or agent.		

THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Environmental Conservation

DIVISION OF WATER
Wastewater Discharge Authorization Program

555 Cordova Street
Anchorage, Alaska 99501-2617
Main: 907.269.6285
Fax: 907.334.2415
www.dec.alaska.gov/water/wwdp

February 19, 2019

City and Borough of Juneau (CBJ)
Attention: Mr. Carl Uchytil
155 South Seward Street
Juneau, AK 99801

Re: City and Borough of Juneau, Downtown Waterfront Improvements – Juneau
POA-2018-433, Gastineau Channel

Dear Mr. Uchytil:

In accordance with Section 401 of the Federal Clean Water Act of 1977 and provisions of the Alaska Water Quality Standards, the Department of Environmental Conservation (DEC) is issuing the enclosed Certificate of Reasonable Assurance for placement of dredged and/or fill material in waters of the U.S., including wetlands and streams, associated with the waterfront improvements in Juneau, Alaska.

DEC regulations provide that any person who disagrees with this decision may request an informal review by the Division Director in accordance with 18 AAC 15.185 or an adjudicatory hearing in accordance with 18 AAC 15.195 – 18 AAC 15.340. An informal review request must be delivered to the Director, Division of Water, 555 Cordova Street, Anchorage, AK 99501, within 20 days of the permit decision. Visit http://dec.alaska.gov/commish/ReviewGuidance.htm for information on Administrative Appeals of Department decisions.

An adjudicatory hearing request must be delivered to the Commissioner of the Department of Environmental Conservation, 410 Willoughby Avenue, Suite 303, PO Box 111800, Juneau, AK 99811-1800, within 30 days of the permit decision. If a hearing is not requested within 30 days, the right to appeal is waived.

By copy of this letter we are advising the U.S. Army Corps of Engineers of our actions and enclosing a copy of the certification for their use.

Sincerely,

James Rypkema
Program Manager, Storm Water and Wetlands

Enclosure: 401 Certificate of Reasonable Assurance

cc: (with encl.)
Matt Brody, USACE, Juneau
Dick Somerville, PND Engineers Inc.
Jackie Timothy, ADF&G
USFWS Field Office Juneau
Mark Douglas, EPA Operations, Anchorage

STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CERTIFICATE OF REASONABLE ASSURANCE

In accordance with Section 401 of the Federal Clean Water Act (CWA) and the Alaska Water Quality Standards (18 AAC 70), a Certificate of Reasonable Assurance, is issued to City and Borough of Juneau, Attention: Mr. Carl Uchytil, at 155 South Seward Street, Juneau, AK 99801, for placement of dredged and/or fill material in waters of the U.S. including wetlands and streams in association with the improvements to the cruise ship waterfront located in Juneau, Alaska.

CBJ plans to meet the needs of the expanding cruise ship industry and its passengers by creating ample open space thereby decreasing congestion and improving pedestrian circulation in Juneau. CBJ is proposing to construct a pile supported deck along the waterfront to enhance waterfront cruise ship visitor accessibility through the construction of a concrete retaining wall and pile supported deck with upland features including a passenger covered shelter, open space, passenger restrooms, and a transportation staging area. The proposed work would take place within tidal waters of Gastineau Channel below the High Tide Line (+20.8 feet above the 0.0 foot contour) and the Mean High Water (+15.4 feet above the 0.l0 foot contour). Specifically the work includes:

1. The demolition of existing timber deck and approach structures consisting of approximately 4,260 square feet and the removal of approximately 100 tapered 16-18 inch diameter creosote treated timber pilings,
2. Installation of (87) 18-inch diameter steel temporary template pilings,
3. Removal of (87) 18-inch diameter steel temporary template pilings,
4. Installation of (42) 16-inch diameter steel pipe pilings,
5. Installation of (45) 18-inch diameter steel pipe pilings,
6. Installation of (40) 24-inch diameter steel pipe pilings,
7. Construction of a 500 cubic yard concrete retaining wall measuring 2 feet wide x 390 feet long,
8. Construction of a new timber ramp and decking measuring 20,160 square feet,
9. Construction of a new concrete deck measuring 15,900 square feet,
10. The placement of 2,500 cubic yards of Class A shot rock backfill and 700 cubic yards of Class II armor rock into 0.08 acres.

A state issued water quality certification is required under Section 401 because the proposed activity will be authorized by a U.S. Army Corps of Engineers permit (POA-2018-433) and a discharge of pollutants to waters of the U.S. located in the State of Alaska may result from the proposed activity. Public notice of the application for this certification was given as required by 18 AAC 15.180 in the Corps Public Notice POA-2018-433 posted from December 21, 2018 to January 7, 2019.

The proposed activity is located within Section 23, T. 41 S., R. 67 E., Copper River Meridian; Latitude 58.297498° N., Longitude -134.403391° W.; in Juneau, Alaska.

The Department of Environmental Conservation (DEC) reviewed the application and certifies that there is reasonable assurance that the proposed activity, as well as any discharge which may result, will comply with applicable provisions of Section 401 of the CWA and the Alaska Water Quality Standards, 18 AAC 70, provided that the following additional measures are adhered to.

1. Reasonable precautions and controls must be used to prevent incidental and accidental discharge of petroleum products or other hazardous substances. Fuel storage and handling activities for equipment must be sited and conducted so there is no petroleum contamination of the ground, subsurface, or surface waterbodies.
2. During construction, spill response equipment and supplies such as sorbent pads shall be available and used immediately to contain and cleanup oil, fuel, hydraulic fluid, antifreeze, or other pollutant spills. Any spill amount must be reported in accordance with Discharge Notification and Reporting Requirements (AS 46.03.755 and 18 AAC 75 Article 3). The applicant must contact by telephone the DEC Area Response Team for Southeast Alaska (907) 465-5340 during work hours or 1-800-478-9300 after hours. Also, the applicant must contact by telephone the National Response Center at 1-800-424-8802.
3. Construction equipment shall not be operated below the high tide line if equipment is leaking fuel, oil, hydraulic fluid, or any other hazardous material. Equipment shall be inspected on a daily basis for leaks. If leaks are found, the equipment shall not be used and pulled from service until the leak is repaired.
4. Excavated or fill material, including overburden, shall be placed so that it is stable, meaning after placement the material does not show signs of excessive erosion. Indicators of excess erosion include: gullying, head cutting, caving, block slippage, material sloughing, etc. The material must be contained with siltation best management practices (BMPs) to preclude reentry into any waters of the U.S., which includes wetlands.
5. Fill material must be clean sand, gravel or rock, free from petroleum products and toxic contaminants in toxic amounts.
6. Demolition - Minimal cutting and boring should take place over the water. Tarps, tubs and/or vacuums should be used to capture the debris. Any debris that falls into the water should be promptly removed. Additionally, wood should be stored in a dry place where the debris will not be swept away by any rising waters. If pilings are removed, disturbance of sediments should be minimized to prevent the spread of any contamination. The piles should be pulled, if possible. If pulling is not possible, the pilings should be cut at or below the sediment line and capped as warranted.
7. Disposal - Dispose of the used pilings properly with all other debris in a manner that does not expose or affect aquatic resources. Local requirements for disposal may vary but need to be followed.

This certification expires five (5) years after the date the certification is signed. If your project is not completed by then and work under U.S. Army Corps of Engineers Permit will continue, you must submit an application for renewal of this certification no later than 30 days before the expiration date (18 AAC 15.100).

Date: February 19, 2019

James Rypkema, Program Manager
Storm Water and Wetlands

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

May 10, 2019

Col. Phillip Borders
US Army Corps of Engineers, Alaska District
Regulatory Division
PO Box 6898
JBER, Alaska 99506-0898

Re: Gastineau Channel Letter of Concurrence, NMFS # AKRO-2018-00369

Dear Col. Borders:

The National Marine Fisheries Service (NMFS) has completed informal consultation under section 7(a)(2) of the Endangered Species Act (ESA) regarding the proposed deck construction located in Gastineau Channel at Juneau, Alaska (Figure 1). The non-Federal designee, Ms. Bre Lambert of PND Engineers, requested, on behalf of The US Army Corps of Engineers (Corps), written concurrence that the proposed action may affect, but is not likely to adversely affect, the western distinct population segment (DPS) of Steller sea lions or the Mexico DPS of humpback whales. Based on our analysis of the information you provided to us, and additional literature cited below, NMFS concurs with your determination.

This letter underwent pre-dissemination review in compliance with applicable Data Quality Act guidelines. A complete administrative record of this consultation is on file in this office.

The Corps determined that this project will have no effect on Steller sea lion critical habitat because critical habitat does not overlap with the action area. Therefore, Steller sea lion critical habitat will not be discussed further in this consultation.

Consultation History

NMFS received your request for consultation on December 21, 2018, and your correspondence identifying Ms. Bre Lambert as your non-Federal representative for this project on February 5, 2019. Consultation was held in abeyance for 38 days due to a lapse in appropriations and resulting partial government shutdown that began on December 22, 2018. NMFS requested more information about the project via email on February 4, 2019. On February 5, 2019, Ms. Lambert provided NMFS with additional information regarding the project schedule and proposed mitigation measures. Additional emails and telephone calls with Ms. Lambert provided more information and clarity on the proposed action and NMFS received final confirmation of exclusion zones on May 8, 2019. NMFS initiated consultation on May 8, 2019.

The Corps submitted an Incidental Harassment Authorization (IHA) application to the NMFS Office of Protected Resources (PR1) for the incidental take of non-listed marine mammals under the Marine Mammal Protection Act (MMPA). NMFS AKR is not consulting with PR1 on this project under section 7 of the ESA because the IHA will not include ESA-listed species.

Description of the Proposed Action

The City and Borough of Juneau Docks and Harbors (CBJ) is proposing improvements to the downtown waterfront within Gastineau Channel in Juneau, Alaska to accommodate the needs of the growing visitor industry including constructing a pile supported deck along the waterfront near the existing cruise ship berths. In-water work is detailed in Table 1 below and will be done between June 15, 2019 and June 15, 2020.

Project components include:

- The demolition of existing timber deck and approach structures,
- The removal of approximately 100 tapered 16-18 inch diameter creosote treated timber pilings,
- Construction of a concrete retaining wall (above the tideline and out of water),
- The placement class A shot rock backfill and class II armor rock into 0.08 acres supported by retaining wall (above the tideline and out of water).
- Construction of a new timber ramp and decking (above the tideline and out of water),
- Installation and removal of (87) 18-inch diameter steel temporary template pilings,
- Installation of (42) 16-inch and (45) 18-inch steel pipe piles,
- Installation of (40) 24-inch steel pipe piles (above the tideline and out of water),
- Construction of a new concrete deck support by the new piles.

Our analysis will focus on the proposed in-water work that has the potential to overlap in time and space with listed species under NMFS's jurisdiction (Table 1).

Table 1. In-Water Work

Activity	# piles	Pile Type	Method	Average Piles/day (1)	Driving Days (2)	Strike/pile or seconds/pile
Timber Pile Removal	100	Timber, unknown diameter	Vibratory	10	10	900
Pile Supported Deck	42	Steel; 16-inch	Vibratory	5	9	5,400
			Impact	5	9	150
	45	Steel; 18-inch	Vibratory	5	9	5,400
			Impact	5	9	150
Temporary Pile Installation	87	Steel; 18-inch or smaller	Vibratory	5	18	5,400
Temporary Pile Removal	87	Steel; 18-inch or smaller		5	18	900

(1) Average piles per day and driving duration are the best estimates based on similar project experience from an adjacent project at the Juneau Port Customs Visitor Center, however, actual number of piles per day, driving duration and driving days are subject to chance based on the actual field conditions encountered and the contractor's means and methods.
(2) It is anticipated that the contractor will use the vibratory hammer to install up to 5 piles per day to the extent possible and come back a day or two later and finish installing the piles with an impact hammer, however, this is dependent on the contractor's means and methods.

Removal of creosote treated timber piles will be performed with vibratory hammer. Vibratory pile removal would generally consist of clamping the vibratory hammer to the pile and vibrating the hammer while extracting the pile. Piles that can't be removed with the vibratory hammer would be cut off at the mudline. The pile is then completely removed from the water by hoisting with the crane and placing on the uplands. The Contractor would be required to dispose of demolished items in accordance with all federal, state, and local regulations at an approved uplands facility.

Once staged, a large crane would be used to drive the majority of the steel piles for the deck. The crane would use a vibratory hammer to drive 16-inch (41- cm) and 18- inch (46-cm) steel piles to bedrock per the pile foundation plan. Additionally, (87) 18-inch steel template pilings would be driven using the vibratory hammer to facilitate locating the above mentioned pilings and would be removed using the vibratory hammer. These temporary piles are necessary to provide a template. They will help to locate piles for pile driving and to hold the piles in place until the pile caps can be installed. The permanent piles are for structural loads and need to be located precisely, especially since they have pile caps, which need to be installed across multiple piles. Without the temporary piles to stabilize the permanent ones, the installed piles often move around and end up at unsuitable angle to install the caps and subsequently the structures.

Once a number of piles have been driven with the vibratory hammer, the double acting diesel impact hammer would be used to seat the piles into the bedrock surface. The impact hammer would be sized to meet the required compressive capacity of the piles. Pile driving and removal times and durations are shown Table 1. The vibratory installation process would reduce the need for sustained impact driving, driving piles only 1-3 feet (0.3-0.9 m) and reducing the required number of blows with the impact hammer.

Once piles have been driven to refusal, a steel pile cap would be welded to the tops of the piles. Once a few caps have been installed, the timber glue laminated stringers would be bolted to the pile caps. Prior to installing the deck, if the crane was not able to reach any piles from shore, a smaller truck crane may be used on the timber stringers to reach the remaining piles. The temporary piles would then be removed with the vibratory hammer.

Action Area

The action area is defined in the ESA regulations (50 CFR 402.02) as the area within which all direct and indirect effects of the project will occur. The action area is distinct from and larger than the project footprint because some elements of the project may affect listed species some distance from the project footprint. The action area, therefore, extends out to a point where no measurable effects from the project are expected to occur.

The action area for this consultation includes (see Figure 1):
(1) the project site in Gastineau Channel proposed for construction, and
(2) a sound propagation buffer around the construction site.

NMFS defines the action area for this project as the area within which project-related noise levels are ≥120 dB_{rms} re 1µPa or approaching ambient noise levels (i.e., the point where no measurable effect from the project would occur). The loudest sound source with the greatest propagation distance associated with the proposed action is anticipated to be vibratory driving and removal of 18-inch steel piles. Received sound levels associated with pile removal and a source level of 156.2 dB_{rms} re 1µPa (as predicted by Denes et al. 2016) are anticipated to decline to 120 dB_{rms} re 1µPa within 1,815 m of the pile based upon the practical spreading loss formula (15 log R) (Denes et al 2016). To define the action area, we considered the diameter and type of piles, the pile-driving and/or removal method, and empirical measurements of noise from similar projects, as well as the topography and coastline of the action area. The action area has been reduced in some locations due to land masses that will block the transmission of sound (Figure 1).

Figure 1. Project location and action area in Gastineau Channel.

Mitigation Measures

Ms. Lambert informed NMFS via email dated February 5, 2019, March 27, 2019, May 8, 2019, and phone calls that the project would incorporate the mitigation measures listed below.

Mitigation to prevent acoustic harassment

Exclusion Zones
During in-water work, a minimum 10-meter shutdown zone will be implemented to prevent physical injury of marine mammals (i.e., demolition activities). If any marine mammal approaches with 10 meters of any in-water activity, work will cease. Activities will not begin until the animal(s) has left the exclusion zone or no marine mammals have been observed in the exclusion zone for 15 minutes (for pinnipeds) or 30 minutes (for cetaceans).

During in-water pile driving and removal a shutdown zone shall include all areas where the Level B harassment threshold would be exceeded for Steller sea lions and humpback whales, as shown in Table 2. The harassment zones will be monitored throughout the permitted in-water or over-water construction activity. If a Steller sea lion or humpback whale approaches or enters a Level B zone, all permitted construction activities will be immediately halted until the marine mammal has left the shutdown zone.

Take, in the form of Level A or Level B harassment of Steller sea lions or humpback whales is not authorized and will be avoided by shutting down construction activities before individuals of these species enter the Level B harassment zones (Table 2). Take in any other form of Level A or B harassment is also prohibited.

Table 2. Shutdown zones to eliminate acoustic harassment and physical injury.

Source	Behavioral Disturbance Shutdown Zone
In-Water Vibratory Steel (16-18 inch) Pile Driving and Removal	1,820m (2000 m)
In-Water Vibratory Timber Pile Removal	1,585 m (1750 m)
In-Water Impact Steel Pile Driving	1000 m (1150 m)
Physical Safety	10 m

Protected Species Observers
Pile removal and driving in-water can generate underwater sound pressure waves that have the potential to disrupt migration and harass or injure species listed under the ESA. ESA listed species with the potential to be in the action area include Mexico DPS humpback whales and western DPS of Steller sea lions.

- Two protected species observers (PSO) shall be assigned to the project during in-water pile driving and removal operations. The observers shall begin to observe 30 minutes prior to in-water pile driving or removal activities, and throughout the duration of each event. The following measures will be taken:
- Two protected species observers (PSOs), able to accurately identify and distinguish species of Alaska marine mammals, will be present before and during all in-water construction and demolition activities.

- Prior to in-water pile driving or removal activities, an exclusion (i.e., shut-down) zone will be established. For this project, the exclusion zone includes all marine waters within 1,820 meters of the sound source for humpback whales and Steller sea lions. If a marine mammal is observed within 2,000 meters approaching the shutdown zone while vibratory driving or removal or steel piles is occurring, then measures will be taken to

begin shutdown. Similarly, while timber piles are being removed with a vibratory hammer, measures will be taken to begin shutdown after an animal is observed within 1,750 meters and when impact driving of steel piles is occurring, measures will be taken to begin shutdown after an animal is observed within 1,150 meters.

- In-water pile-driving or removal will not be conducted unless all waters within and adjacent to the exclusion zone are clearly visible.
- The PSOs will be positioned such that the entire exclusion zone is visible to them (e.g., situated on a platform, elevated promontory, boat or aircraft).
- The PSOs will have the following to aid in determining the location of observed listed species, to take action if listed species enter the exclusion zone, and to record these events:
  - Binoculars
  - Range finder
  - GPS
  - Compass
  - Two-way radio communication with construction foreman/superintendent
  - A log book of all activities which will be made available to the Corps and NMFS upon request
- The PSOs will have no other primary duty than to watch for and report on events related to listed species.
- The PSOs will be in direct communication with on-site project lead and will have shutdown authority.
- The PSOs will work in shifts lasting no longer than four (4) hours with at least a one (1) hour break between shifts, and will not perform duties as a PSO for more than 12 hours in a 24 hour period (to reduce PSO fatigue).
- The PSOs will scan the exclusion zone for the presence of listed species for 30 minutes before any pile-driving or removal activities take place.
- If any listed species are present within the exclusion zone, pile-driving and removal activities will not begin until the animal(s) has left the exclusion zone or no listed species have been observed in the exclusion zone for 15 minutes (for pinnipeds) or 30 minutes (for cetaceans).
- Throughout all in-water pile-driving activity, the PSOs will continuously scan the exclusion zone to ensure that listed species do not enter it.
- If a humpback whale or Steller sea lion enters, or appears likely to enter, the exclusion

zone during pile-driving or removal activities, all pile-driving or removal activity will cease immediately. Pile-driving or removal activities may resume when the animal(s) has been observed leaving the area on its own accord. If the animal(s) is not observed leaving the area but is no longer visible, pile-driving activity may begin 15 minutes (for pinnipeds) or 30 minutes (for cetaceans) after the animal is last observed in the area. Note: If a listed species is observed within the exclusion zone during construction operations, the PSO will notify NMFS immediately after ordering a shut-down of operations.

- Ramp-up (soft start) procedures will be applied prior to beginning pile-driving and removal activities each day and/or when pile-driving hammers have been idle for more than 30 minutes:
    - For impact hammers, the soft start technique must initiate approximately three strikes at a reduced energy level, followed by a 30-second waiting period. This procedure would also be repeated two additional times.
- Monthly PSO reports and a final PSO report will be provided to NMFS.
    - The reporting period for each monthly PSO report will be the entire calendar month, and reports will be submitted by close of business on the fifth day of the month following the end of the reporting period (e.g., the monthly report covering April 1 to 30, 2019, would be submitted to the NMFS by close of business on May 5, 2019). PSO report data will also include the following for each listed species observation or "sighting event" if repeated sightings are made of the same animal(s):
        - Species, date, and time for each sighting event.
        - Number of animals per sighting event; and number of adults/juveniles/calves per sighting event.
        - Primary, and, if observed, secondary behaviors of the marine mammals in each sighting event.
        - Geographic coordinates for the observed animals, with the position recorded by using the most precise coordinates practicable (coordinates must be recorded in decimal degrees, or similar standard, and defined coordinate system).
        - Time of the most recent pile-driving or other project activity prior to marine mammal observation.
        - Environmental conditions as they existed during each sighting event, including sea state, weather conditions, visibility (km/mi), lighting conditions, and percent ice cover.

Though take is not authorized, if a listed species is taken (i.e., a listed species is observed entering the exclusion zone before pile-driving or removal operations can be shut down), reinitiation of consultation is required, and the take must be reported to NMFS within one business day (contact listed at item 14 below). PSO records for listed species taken by project activities must include:

- All the information that must be listed in the PSO report.
- Number and species of animals taken.
- The date and time of each take.
- The cause of the take (e.g., impact hammer operating at maximum energy).
- The time the animal(s) entered the exclusion zone, and, if known, the time it exited the zone.
- Mitigation measures implemented prior to and after the animal entered the exclusion zone.
- Monthly reports and reports of take will be submitted to:

  Kristin R Mabry, Protected Species Biologist
  Kristin.Mabry@NOAA.gov
  907.586.7490
  NMFS Protected Resources Division, Juneau Office NMFS.

Mitigation to minimize habitat alteration

- Avoid migration barriers to salmonids. At no time will the construction activities result in a migration barrier to salmonids.
- Avoid introduction of contaminated material during construction. Contaminant-free, clean shot rock embankment and surface materials will be used during all aspects of construction. Material used for construction or discharge will not consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.).
- Avoid impacts to water quality. The contractor will comply with water quality standards as required by law and implement corrective measures if water quality standards are exceeded.
- Avoid potential water quality impacts to Gastineau Channel by controlling surface water run-off. Surface water runoff will be directed away from Gastineau Channel through a storm drain conveyance and treatment system prior to discharge.
- Avoid impacts from potential spills during construction. To prevent spills or leakage of hazardous material during construction, standard spill-prevention measures including on-site spill kits will be implemented. The contractor will be responsible for the preparation of a Spill Prevention, Control, and Countermeasures (SPCC) plan to be used for the duration of the project as required by permitting agencies.
- Prevent petroleum and hazardous materials from entering waters of the U.S. during construction. Care will be taken to prevent any petroleum products or other toxic or

deleterious materials from entering the waters of the U.S. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., will be checked regularly for drips or leaks, and shall be maintained and stored properly on secondary containment pallets to prevent spills.

Listed Species and Critical Habitat

Threatened Mexico DPS humpback whales and endangered western DPS Steller sea lions may occur in the action area. Critical habitat has not been designated for the humpback whale, and the nearest Steller sea lion critical habitat is the Benjamin Island haulout (over 45 kilometers northwest of the action area). No effects to critical habitat are expected or analyzed in this consultation.

Western DPS Steller Sea Lions

The Steller sea lion was listed as a threatened species under the ESA on November 26, 1990 (55 FR 49204). In 1997, NMFS reclassified Steller sea lions into two DPSs based on genetic studies and other information (62 FR 24345); at that time the eastern DPS was listed as threatened and the western DPS was listed as endangered. On November 4, 2013, the eastern DPS was removed from the endangered species list (78 FR 66139). Information on Steller sea lion biology and habitat (including critical habitat) is available at: http://alaskafisheries.noaa.gov/pr/steller-sea-lions

We assume western DPS Steller sea lions may be present in Gastineau Channel for the following reasons:

- Steller sea lions are highly mobile and have large ranges.
- One Steller sea lion was observed transiting through the project area during pre-project surveys on August 31, 2018.
- The presence of potential prey sources near the project area (ADF&G 2018):
    - Several anadromous streams within one kilometer of the action area provide habitat for varying life stages of sockeye, pink, and coho salmon.
- Based on Jemison et al. (2013) and Fritz et al. (2013), NMFS concludes that western DPS Steller sea lions are common north of Sumner Strait (see https://www.fisheries.noaa.gov/resource/document/occurrence-western-distinct-population-segment-steller-sea-lions-east-144deg).

The ability to detect sound and communicate underwater is important for a variety of Steller sea lion life functions, including reproduction and predator avoidance. NMFS categorizes Steller sea lions in the otariid pinniped functional hearing group, with an applied frequency range between 60 Hz and 39 kHz in water (NMFS 2018).

Mexico DPS Humpback Whales

The humpback whale was listed as endangered under the Endangered Species Conservation Act (ESCA) on December 2, 1970 (35 FR 18319). Congress replaced the ESCA with the ESA in 1973, and humpback whales continued to be listed as endangered. NMFS recently conducted a

global status review and changed the status of humpback whales under the ESA. The Western North Pacific DPS (which includes a small proportion of humpback whales found in the Aleutian Islands, Bering Sea, and Gulf of Alaska) is listed as endangered; the Mexico DPS (which includes a small proportion of humpback whales found in the Aleutian Islands, Bering Sea, Gulf of Alaska, and Southeast Alaska) is listed as threatened; and the Hawaii DPS (which includes most humpback whales found in the Aleutian Islands, Bering Sea, Gulf of Alaska, and Southeast Alaska) is not listed (81 FR 62260; September 8, 2016). Critical habitat has not been designated for the Western North Pacific or Mexico DPSs.

Relatively high densities of humpback whales occur throughout much of Southeast Alaska and northern British Columbia, particularly during the summer months. The abundance estimate for humpback whales in the Southeast Alaska is estimated to be 6,137 (CV= 0.07) animals which includes whales from the Hawaii DPS (94%) and Mexico DPS (6%) (Wade et al. 2016). Although migration timing varies among individuals, most whales depart for Hawaii or Mexico in fall or winter and begin returning to Southeast Alaska in spring, with continued returns through the summer and a peak occurrence in Southeast Alaska during late summer to early fall. However, there are significant overlaps in departures and returns (Baker et al. 1985, Straley 1990). Given their widespread range and their opportunistic foraging strategies, Mexico DPS humpback whales may be in the vicinity during the proposed project activities.

Humpback whales produce a variety of vocalizations ranging from 20 Hz to 10 kHz (Winn et al. 1970, Tyack and Whitehead 1983, Payne and Payne 1985, Silber 1986, Thompson et al. 1986, Richardson et al. 1995b, Au 2000, Frazer and Mercado III 2000, Erbe 2002a, Au et al. 2006, Vu et al. 2012). NMFS categorizes humpback whales in the low-frequency cetacean functional hearing group, with an applied frequency range between 7 Hz and 35 kHz (NMFS 2018).

There are anecdotal reports of rare sightings of humpbacks in Gastineau Channel as far up as the action area (Whale Alert opportunistic data). Sightings are more frequent towards the end of the channel near larger open waters.

Additional information on humpback whale biology and natural history is available at:
https://www.fisheries.noaa.gov/species/humpback-whale
https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region

Effects of the Action

For purposes of the ESA, "effects of the action" means the direct and indirect effects of an action on the listed species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action (50 CFR 402.02). The applicable standard to find that a proposed action is "not likely to adversely affect" listed species or critical habitat is that all of the effects of the action are expected to be insignificant, discountable, or completely beneficial. Insignificant effects relate to the size of the impact and are those that one would not be able to meaningfully measure, detect, or evaluate, and should never reach the scale where take occurs. Discountable effects are those that are extremely unlikely to occur. Beneficial effects are contemporaneous positive effects without any adverse effects to the species.

This consultation includes recent NMFS guidance on the term "harass," which means to: "create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering" (Wieting 2016).

The potential effects of the proposed action on listed species and critical habitat include acoustic disturbance from vibratory and impact pile driving and vibratory pile removal, and habitat alteration. The action does not include vessel activity because all of the supplies will be trucked from the AML dock to the site, all piles (even in-water piles) will be driven from the uplands, and the deck and retaining wall construction will occur out of water. Accordingly, no other stressors are analyzed.

Acoustic Thresholds

Since 1997 NMFS has used generic sound exposure thresholds to determine whether an activity produces underwater sounds that might result in impacts to marine mammals (70 FR 1871). NMFS recently developed comprehensive guidance on sound levels likely to cause injury to marine mammals through onset of permanent and temporary threshold shifts (PTS and TTS; Level A harassment) (83 FR 28824). NMFS is in the process of developing guidance for behavioral disruption (Level B harassment). However, until such guidance is available, NMFS uses the following conservative thresholds of underwater sound pressure levels[1], expressed in root mean square[2] (rms), from broadband sounds that cause behavioral disturbance, and referred to as Level B harassment under section 3(18)(A)(ii) of the Marine Mammal Protection Act (MMPA):

- impulsive sound: 160 dB_{rms} re 1 µPa
- continuous sound: 120 dB_{rms} re 1µPa

Under the PTS/TTS Technical Guidance, NMFS uses the following thresholds for underwater sounds that cause injury, referred to as Level A harassment under section 3(18)(A)(i) of the MMPA (NMFS 2018). These acoustic thresholds are presented using dual metrics of cumulative sound exposure level (L_E) and peak sound level (L_{pk}) for impulsive sounds and L_E for non-impulsive sounds:

Hearing Group	**PTS Onset Acoustic Thresholds* (Received Level)**	
	Impulsive	**Non-impulsive**
Low-Frequency (LF) Cetaceans	Lpk,flat: 219 dB L_E,LF,24h: 183 dB	L_E,LF,24h: 199 dB

[1] Sound pressure is the sound force per unit micropascals (µPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in acoustics is 1 µPa, and the units for underwater sound pressure levels are decibels (dB) re 1 µPa.

[2] Root mean square (rms) is the square root of the arithmetic average of the squared instantaneous pressure values.

Hearing Group	PTS Onset Acoustic Thresholds* (Received Level)	
	Impulsive	Non-impulsive
Mid-Frequency (MF) Cetaceans	Lpk,flat: 230 dB L_E,MF,24h: 185 dB	L_E,MF,24h: 198 dB
High-Frequency (HF) Cetaceans	Lpk,flat: 202 dB L_E,HF,24h: 155 dB	L_E,HF,24h: 173 dB
Phocid Pinnipeds (PW) (Underwater)	Lpk,flat: 218 dB L_E,PW,24h: 185 dB	L_E,PW,24h: 201 dB
Otariid Pinnipeds (OW) (Underwater)	Lpk,flat: 232 dB L_E,OW,24h: 203 dB	L_E,OW,24h: 219 dB

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (Lpk) has a reference value of 1 µPa, and cumulative sound exposure level (LE) has a reference value of 1µPa^{2}s. The subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Acoustic Disturbance

Steller sea lions and humpback whales could be harassed by noise from vibratory and impact pile driving and vibratory removal activities if present in the action area.

Pile Installation and Removal with Vibratory Hammer

Table 1 provides details on the numbers and types of piles installed and removed with a vibratory hammer. Source levels for vibratory driving and removal of 16-inch and 18-inch steel piles are based on measurement of vibratory pile removal of 18-inch piles at Kake, Alaka (Denes et al, 2016). The extraction of 18-inch steel pipe piles using a vibratory hammer resulted in a mean underwater noise levels reaching 156.2dB re µPa at 7 m and was normalized to 153.9 dB re µPa at 10m.

Source level for vibratory timber pile removal is based on measurements of vibratory pile removal at Port Townsend, Washington (WSDOT, 2011). The measured level was 150 dB re 1 µPa at 52 ft, and is corrected to 153 dB re 1 µPa at 10 m.

Pile Installation with Impact Hammer

Table 1 provides details on the numbers of steel piles to be installed with an impact hammer. Impact pile driving is expected to be the loudest sound source associated with the proposed action. Impact pile driving methods can generate peak pulsed sound pressure levels of 237 dB re

1 µPa at 1m at frequencies between 0.1 and 1 kHz (Hildebrand 2009). However, impact pile driving will only be used at the very end of the installation (last 1-3 feet) to seat the piles into the bedrock surface.

Source levels for impact pile driving of 16-in and 18-in steel piles are based on JASCO's pile driving review for a 24- in steel pile (Yurk et al., 2015). The values are 175 dB re 1 mPa2-s, 190 dB re 1 mPa, and 205 dB re 1 mPa for single strike SEL, SPLrms, and SPLpk, respectively.

Table 3. Source Levels for In-water Pile Driving and Removal

Method	Pile Type/Size (in)	SEL, dB re 1 µPa2-s	SPLrms, dB re 1 µPa	SPLpk, dB re 1 µPa
Vibratory driving/removal	Steel, 16-18	153.9	153.9	-
Vibratory removal	Timber	153	153	-
Impact driving	Steel, 16-18	175	190	205

For Level A harassment zones, since the peak source levels for both pile driving and removal are below the injury thresholds, cumulative SEL was used to do the calculations using the NMFS acoustic guidance (NMFS 2018).

The Level B harassment ensonified areas for vibratory removal of timber piles are based on the above source level of 153 dB_{rms} re 1 mPa at 10 m, applying practical spreading loss of 15*log(R) for transmission loss calculation. The derived distance to the 120-dB Level B zone is 1,585 m. For Level B harassment ensonified areas for vibratory pile driving and removal of the 16-in and 18-in steel piles, the distance is based on source level of 153.9 dB_{rms} re 1 mPa at 10 m, applying practical spreading loss of 15*log(R) for transmission loss calculation. The derived distance to the 120-dB zone is 1,820 m. For Level B harassment ensonified areas for impact proofing of 16-in and 18-in steel piles, the distance is based on source level of 190 dB_{rms} re 1 mPa at 10 m, applying practical spreading loss of 15*log(R) for transmission loss calculation. The derived distance to the 160-dB zone is 1,000 m. For Level A harassment, calculation is based on pile driving duration of each pile and the number of piles installed or removed per day, using NMFS's optional spreadsheet.

Table 4. Distance to Harassment Zones

Pile Type & Size	Driving/Removal Method	Injury Distance (m) LF Cetacean	Otariid	Behavioral Distance (m)
Steel, 16-18 inch	Vibratory Driving 5400 s/pile, 5 piles/day	8.8	0.4	1820 (2000)
Steel, 16-18 inch	Vibratory Removal 900 s/pile, 5 piles/day	2.7	0.1	1820 (2000)
Timber, various	Vibratory Removal 900 s/pile, 10 piles/day	3.7	0.2	1585 (1750)

Pile Type & Size	Driving/Removal Method	Injury Distance (m) LF Cetacean	Otariid	Behavioral Distance (m)
Steel, 16-18 inch	Impact Proofing 150 s/pile, 5 piles/day	241.4	9.4	1000 (1150)

Based on Denes et al (2016), WSDOT (2011), and Yurk et al. (2015), it would be extremely unlikely for Mexico DPS humpback whales or western DPS Steller sea lions to be exposed to continuous noise levels ≥ 120 dB_{rms} re 1µPa if operations are shut down whenever these marine mammals appear likely to approach within 1,850 meters of the sound source for driving and removing steel piles and within 1,585 meters of the sound source for removing timber piles. Similarly, it would be extremely unlikely for Mexico DPS humpback whales or western DPS Steller sea lions to be exposed to impulsive noise levels ≥ 160 dB_{rms} re 1µPa if operations are shut down whenever these marine mammals appear likely to approach within 1,000 meters of the sound source. The probability of exposure is very small, and thus adverse effects to humpback whales and Steller sea lions are extremely unlikely to occur. Therefore, we conclude that the adverse effects from vibratory pile driving and removal noise on Mexico DPS humpback whales and western DPS Steller sea lions are discountable.

Noise generated from vibratory hammers can reduce the fitness and survival of fish consumed by foraging marine mammals; however, given the small area of the project site and the fact that any physical changes to this habitat would not measurably reduce the localized availability of fish (Fay and Popper 2012), effects to Mexico DPS humpback whales or western DPS Steller sea lions would be immeasurably small. We consider potential impacts to listed species from effects to prey resources to be insignificant.

Conclusions for Acoustic Disturbance

We do not anticipate that this project will expose humpback whales or Steller sea lions to sound pressure levels that reach Level B acoustic thresholds because: 1) we expect few humpback whales or Steller sea lions to be present in the area, 2) of those present, only a fraction are anticipated to be ESA-listed animals, 3) the project incorporates protected species observers, and monitoring and mitigation measures that include exclusion zones which minimize the risk of exposure for any individual that enters it, and 4) the project duration is short, thereby reducing the likelihood of exposure to listed species. We do not anticipate that Mexico DPS humpback whales or western DPS Steller sea lions will be exposed to project-related noise, and if exposure were to occur, mitigation measures would make exposure to sound levels in excess of Level B MMPA take thresholds extremely unlikely. Any effects to listed species from decreased availability of prey resources would be immeasurably small. Therefore, we conclude that any effects from acoustic disturbance are insignificant or discountable.

Habitat Alteration

Pile Driving and Removal Sedimentation

The installation and removal of piles will disturb bottom sediments and may cause a temporary increase in suspended sediment in the action area. Using available information collected from a

project in the Hudson River, we expect pile driving and removal activities to produce total suspended sediment (TSS) concentrations of approximately 5.0 to 10.0 mg/L above background levels within approximately 300 feet (91 meters) of the pile being driven (FHWA 2012).

Studies of the effects of turbid water on fish suggest that concentrations of suspended sediment can reach thousands of milligrams per liter before an acute toxic reaction is expected (Burton 1993). The TSS levels expected for pile driving or removal (5.0 to 10.0 mg/L) are below those shown to have adverse effect on fish (580.0 mg/L for the most sensitive species, with 1,000.0 mg/L more typical; see summary of scientific literature in Burton 1993) and benthic communities (390.0 mg/L (EPA 1986)).

Benthic disturbance associated with project activities will likely result in temporary suspension of sediments in the water column. The effects resulting from sediment suspension will be localized in space, well within the acoustically impacted area. In addition, suspended sediments are not expected to persist in the area for more than a few hours because tidal action will sufficiently disperse re-suspended sediments to a point there they are not detectably different from surrounding waters. Much of the larger diameter re-suspended sediment is expected to quickly settle back into the substrate. The small number of prey that may be affected by this project will have no measurable effect on overall prey availability in the area.

Creosote Piles
Contaminants contained in the timber piles may be released into the water column during removal of creosote-treated pilings. Polycyclic aromatic hydrocarbons (PAHs) may be released into the water column if the pile is broken during removal. Studies have shown that exposure to PAHs may be associated with reduced growth and altered immune function in anadromous fish species (Johnson 2000). However, the proposed action includes measures that will limit the amount of any PAH releases; in particular, the applicant will immediately backfill and cap the hole with clean sediment, and remove the piling from the water immediately. The applicant will replace the removed piling with steel piling, so there is no new source of treated wood chemicals.

The proposed mitigation will result in a very small potential increase in PAHs in the water column, and the PAHs are expected to dissipate within a few hours (Werme et al. 2011). Thus, we expect any effects of contaminant exposure will be too small to detect or measure. There may be a net decrease in PAH exposure because of the removal of the creosote-treated piling from the ecosystem (Vines et al. 2000); however, this potential beneficial effect is not the basis for our conclusion that the effects from removing the creosote-treated piling is insignificant.

Shading
The newly constructed deck will shade water and likely alter the species composition of the marine habitat. However, the area shaded is small and already poor quality habitat for listed species compared to other nearby available habitat due to very shallow depth and vessel traffic and potential pollution. Because of the small spatial and temporal scale at which this project may affect the habitat of western DPS Steller sea lions or Mexico DPS humpback whales from shading, we consider the effects of this project on the habitat of these species and their prey to be insignificant.

Conservation Recommendations

Section 7(a)(1) of the ESA directs Federal agencies to use their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of the threatened and endangered species. Specifically, conservation recommendations are suggestions regarding discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat or regarding the development of information. For this action, NMFS recommends the following conservation measures:

- The Corps should recommend that CBJ install informational signs designed by NMFS but constructed and supplied by CBJ with a public message about Alaska Humpback Whale Approach Regulations. These signs should be located near whale watching vessel docks and where those tours are sold. NMFS expects this effort will help to minimize harassment of humpback whales by informing tourists of the importance of these regulations, thereby decreasing the pressure on whale watching companies to approach whales closely. We encourage CBJ to contact NMFS (information below) to pursue this idea.
- The Corps and its permittees should encourage construction crews, vessel operators, and all mariners to participate in the WhaleAlert program to report real-time sightings of whales while transiting in the waters of Alaska to minimize the risk of vessel strikes. A short-term account with access to real-time whale sightings may be available during construction to aid in mitigating interactions. More information is available at https://alaskafisheries.noaa.gov/pr/whale-alert.

In order for NMFS to be kept informed of actions minimizing or avoiding adverse effects on, or benefiting, ESA-listed species or their habitats, the Corps should notify NMFS of any conservation recommendations it implements.

Conclusion

Based on this analysis, NMFS concurs with your determination that the proposed action may affect, but is not likely to adversely affect, Mexico DPS humpback whales or western DPS Steller sea lions. Reinitiation of consultation is required where discretionary federal involvement or control over the action has been retained or is authorized by law and if (1) take of listed species occurs, (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered, (3) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this concurrence letter, or (4) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16).

Please direct any questions regarding this letter to Kristin.Mabry@noaa.gov or you may reach Kristin at 907.586.7490.

Sincerely,

Jonathan M. Kurland
Assistant Regional Administrator
for Protected Resources

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