

CBJ DOCKS AND HARBORS BOARD
REGULAR MEETING AGENDA
For Thursday, September 26th, 2013

- I. Call to Order** (5:30 p.m. at the CBJ Assembly Chambers.)
- II. Roll** (Greg Busch, John Bush, Tom Donek, Bob Janes, David Logan, Mike Peterson, Budd Simpson, Scott Spickler, and Kevin Jardell).
- III. Approval of Agenda**

MOTION: TO APPROVE THE AGENDA AS PRESENTED.
- IV. Approval of August 14th, 2013 Special Board Minutes and August 29th, 2013 Regular Board Meeting Minutes.**
- V. Public Participation on Non-Agenda Items** (not to exceed 5 minutes per person, or twenty minutes total time).
- VI. Items for Action.**

- ~~1. Net Float at Auke Nu Cove Purchase
Presentation by the Port Director~~

~~Board Questions~~

~~Public Comment~~

~~Board Discussion/Action~~

MOTION: TO BE DEVELOPED AT THE MEETING

- 2. Douglas Harbor Parking Agreement
Presentation by the Port Director

Board Questions

Public Comment

Board Discussion/Action

MOTION: TO BE DEVELOPED AT THE MEETING

- 3. Mt. Roberts Tram
Presentation by the Port Director

Board Questions

Public Comment

Board Discussion/Action

CBJ DOCKS AND HARBORS BOARD
REGULAR MEETING AGENDA (CONTINUED)
For Thursday, September 26th, 2013

MOTION: ACCEPT THE HORAN & COMPANY APPRAISAL IN SETTING THE BASE RENT OF THE MT ROBERTS AERIAL TRAMWAY LEASE, WITH THE LEASE PAYMENT SET AT 10% OF THE APPRAISED MARKET VALUE AS DETERMINED BY MR. HORAN, PLUS ROYALTY RENT AS OUTLINED IN SECTION 6 OF THE LEASE, AND TO INVOICE GOLDBELT ACCORDINGLY.

VII. Items for Information/Discussion.

VIII. Committee and Board Member Reports

1. Operations/CIP Committee Meeting – September 19th, 2013
2. Finance Committee Meeting – September 24th, 2013
3. Member Reports

IX. Port Engineer's Report

X. Harbormaster's Report

XI. Port Director's Report

XII. Assembly Liaison Report

XIII. Committee Administrative Matters

- a. Operations/CIP Committee Meeting – October 24th, 2013
- b. Finance Committee Meeting– October 29th, 2013
- c. Board Meeting – October 31st, 2013

XIV. Adjournment

CBJ DOCKS & HARBORS BOARD
SPECIAL BOARD MEETING MINUTES
Wednesday, August 14th, 2013

DRAFT

I. Call to Order.

Greg Busch called the meeting to order at 11:59 a.m. in CBJ Room 224.

II. Roll.

The following members were in attendance: John Bush, Tom Donek, Robert Janes, Budd Simpson, Scott Spickler, and Greg Busch.

Absent: Kevin Jardell, David Logan, and Michael Peterson

Also in attendance were: Carl Uchytel - Port Director, Dwight Tajon - Harbormaster, and Erich Schaal - Deputy Port Engineer.

III. Approval of Agenda.

MOTION By MR. SIMPSON: TO APPROVE THE AGENDA AS PRESENTED AND ASK UNANIMOUS CONSENT.

The motion passed without objection.

IV. Public Participation - None

V. Items for Action.

1. Cruise Ship Terminal Staging Area Phase II Construction Award

Mr. Schaal said August 13th the bids for the Cruise Ship Terminal Staging Area Phase II were opened. There were three bidders and Miller Construction came in at the apparent low bidder at \$2.99 Million. The Engineers estimate was at \$3.327 Million. The protest period expires today at 4:30 p.m. Staff recommends the Board approve this award and forward to the Assembly for final approval.

Board Questions

Mr. Spickler asked if there are financial penalties in the contract language if the Contractor is not completed on time?

Mr. Schaal said the contract is written with a \$2,500 a day liquid damage penalty if it is not completed by May 2nd. Docks and Harbors will have to show the actual damages if this does happen.

Mr. Bush asked what damages there could be if this is not completed?

CBJ DOCKS & HARBORS BOARD
SPECIAL BOARD MEETING MINUTES
Wednesday, August 14th, 2013

Mr. Schaal said if a vessel ties up and permit holders can't use that lot, there would be loss of revenue.

Mr. Busch said today is the day for the end of the protest period, and August 20th is the last day to have the sub-contract report. Is there any need to have that report completed before this goes to the Assembly?

Mr. Schaal said the protest period is for the non-selected bidders to raise a red flag and say they have a concern about something. The August 20th date is just for Millers to supply all the necessary paperwork for the Sub-contractors so CBJ can make sure they are on the list of approved vendors and don't have delinquent monies owed to CBJ.

Public Comments - None

Board Discussion/Action

MOTION By MR. SPICKLER: APPROVE THE BID TO MILLER CONSTRUCTION FOR \$2.99 MILLION AND ASK UNANIMOUS CONSENT.

Motion passed with no objection.

VI. Committee Administrative Matter - None

VII. Adjournment.

The meeting was adjourned at 12:05 p.m.

CBJ Docks and Harbors Board
REGULAR BOARD MEETING MINUTES
For Thursday, August 29th, 2013
DRAFT

I. Call to Order.

Mr. Busch called the Regular Board Meeting to order at 5:30 p.m. in the Assembly Chambers

II. Roll Call.

The following members were present: John Bush, Tom Donek, David Logan, Mike Peterson, Scott Spickler and Greg Busch.

Absent: Bob Janes, Kevin Jardell and Budd Simpson.

Also present were the following: Carl Uchytel – Port Director (via telephone), Gary Gillette – Port Engineer, Dwight Tajon – Harbormaster, and Loren Jones- Assembly Liaison.

III. Approval of Agenda.

Mr. Busch said to note the mark through on Action item #5 and the change to have Mr. Gillette present #4. He requested add a Special Presentation after public participation.

MOTION By MR. LOGAN: TO APPROVE THE AGENDA AS AMENDED AND ASK UNANIMOUS CONSENT.

Motion was approved with no objection.

IV. Approval of Previous Meeting Minutes.

Hearing no objection, the July 25th, 2013 Regular Board Meeting Minutes were approved as presented.

V. Public Participation on Non-Agenda Items – None

Special Presentation

Mr. Busch presented Employee of the Quarter award from April through June to Gary Gillette and read the award recognition letter.

VI. Items for Action

1. Aurora Harbor Rebuild – Option 2,3,and 4

Mr. Gillette said this item has been through several meetings for public input. Last Thursday the Operations/CIP Committee chose option 2 to recommend for the full Board approval. Option 2 uses wider finger floats, but retains the same number of berths.

CBJ Docks and Harbors Board
REGULAR BOARD MEETING MINUTES
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Options 3 and 4 -With the Consultants looking to the future, building for the future, and boats tending to get wider, options 3 and 4 with wider berths were looked at. With both options, slips would be reduced by two in one option and six in another. Most of the comments received from the public meetings were opposed to loosing slips. Also, if the berths were wider there could be issues with depth.

Mr. Gillette said in the future, the chosen option could be changed, but it would not be easy to do. Utilities would be impacted and piles would need to be pulled and reset. Since this is Phase I, the Committee concluded that if larger vessels started showing up before getting into Phase II a change could be made.

Board Questions –

Mr. Spickler wanted to know if the handicapped access concerns were addressed?

Mr. Gillette said PND has been instructed to design according to the new ADA requirements throughout the facility.

Mr. Logan said adding to what Gary provided for the details of the Ops/CIP Committee would be that there is no waiting list for any length of boat for the Aurora Harbor and the Committee concludes that the current needs for the boaters are being met.

Public Comment – None

Committee Discussion/Action

MOTION By MR LOGAN: TO MOVE FORWARD WITH OPTION TWO AS THE PREFERRED DIRECTION.

Mr. Logan said he recommends this motion for all the reasons Mr. Gillette articulated, and meeting the needs currently. The floats will be a little wider, but still maintain the number of slips. Larger boats will not be located where there is a shallower draft. This is the best option moving forward.

Mr. Peterson said option 2 also means no loss of revenue.

Motion passed with unanimous consent.

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2. PND Engineer Contract Amendment for Construction Administration & Inspection – Cruise Ship Staging Area Improvements (Phase II)

Mr. Gillette said in the packet is the proposal from PND to provide contract administration inspection services for phase II of the Cruise Ship Staging Area Improvements. Phase II will be the demolition and replacement of bus staging/parking area. Miller Construction is the low bidder on the project and this is scheduled to start on September 19th. PND will be the Onsite Inspector and the Construction Management. The fee proposal based on time and materials is \$286,210. This was approved at the Ops/CIP meeting and was provided as an information item at the Finance meeting. This will go to the Assembly for approval on September 9th.

Board Questions –

Mr. Busch asked if the impact on the vendor booth permit holders was just with the booths located in front of the Port Customs/Field Office building or also the booths located by the Visitor Center?

Mr. Gillette said it would be just the booths located in front of the Port Customs/Field Office building. A letter has been sent out to the vendors along with a map showing the parking area start times. Comments have been received from the letter and the vendor booth permit holders are concerned that moving the booths will cost them loss of revenue. The plan now is to move them to the side of the Port Customs building for two days and then remove them for storage.

Public Comment-None

Board Discussion/Action

MOTION By MR. LOGAN: TO APPROVE PND ESTIMATE FOR \$286,210 AND FORWARD TO THE ASSEMBLY FOR APPROVAL AND ASK FOR UNANIMOUS CONSENT.

Motion Passed without objection

3. PND Engineer Contract Amendment – Statter Harbor Launch Ramp Design.

Mr. Gillette said he wanted to clarify that PND has been chosen through a RFP process to do planning and permitting for these projects. In the RFP there was provision that allowed extending services to design, construction administration and inspection. This mean Docks & Harbors would not have to do a separate RFP.

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Mr. Gillette said this project is the final design of Phase II for the Statter Harbor Launch ramp. With all the permits in place and the appeal periods have run out, Docks & Harbors is ready to design the project. The intent is this would be ready to bid in May of 2014 and complete by mid year 2015. The first task item is based on time and materials because there could be additional public meetings, more survey work needed, final geotechnical work, and DOT permits for driveways. The remainder of the tasks will be based on a fixed fee. The total fee proposal is \$775,661. This would also go to the Assembly on September 9th.

Board Question –

Mr. Logan asked if Docks & Harbors has enough funds for that total?

Mr. Gillette said the funds are a little short and that will be discussed in the next item for action. Phase II is short by \$200,000. Phase III is short by \$400,000.

Public Comment – None

Board Discussion/Action

MOTION By MR. SPICKLER: TO APPROVE THE CONTRACT AMENDMENT FOR PND FOR \$775,661 AND FORWARD TO THE ASSEMBLY FOR APPROVAL AND ASK UNANIMOUS CONSENT.

Motion Passed without objection

4. Legislative Grant Prioritization List

Mr. Gillette said the list sent to the City Manager is in the packet.

Phase II Aurora Harbor Rebuild – Requested \$5,000,000. Even though \$11,000,000 is needed for this Phase, if we are awarded the \$5,000,000 Docks & Harbors could apply for grants to get the other \$6,000,000.

Douglas Harbor Rebuild – Requested \$3,000,000. This amount would make this project fully funded to be able to move forward.

Mr. Gillette said both projects were supported at the Finance meeting, but the Committee asked staff to look into potentially adding the Statter Harbor Master Plan to the list.

Statter Harbor Master Plan - Between the two Phases, Docks & Harbors is \$600,000 short. The \$600,000 would provide full funding to complete

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Phase II and Phase III. Phase III will not move forward until Phase II is completed.

Board Questions - None

Public Comment - None

Board Discussion/Action

MOTION By MR DONEK: TO APPROVE THE FY15 LEGISLATIVE GRANT REQUEST AMOUNTS FOR PHASE II AURORA HARBOR REBUILD, DOUGLAS HARBOR REBUILD, AND STATTER HARBOR MASTER PLAN AND ASK UNANIMOUS CONSENT.

Motion Passed without objection

5. This item was omitted from the Agenda

VII. Items for Information/Discussion - None

VIII. Committee and Board Member Reports

1. Operations/CIP Committee Meeting –August 22nd

Mr. Logan reported the Committee discussed;

- Different options for Aurora Harbor which was covered here.
- Mitigation for the new launch ramp in Statter Harbor. A representative from the Southeast Alaska Land Trust (SEAL) gave a presentation on the mitigation. The Committee was not happy with the outcome and put Mr. Uchytel to the task of trying to negotiate with SEAL Trust to a more reasonable amount under \$730,000.
- Leasing some of the Douglas Harbor Parking lot to the State of Alaska for long term parking for unused state vehicles and employee parking.
- Harbormaster reported the online sales were going good.

2. Finance Committee Meeting – August 27th

Mr. Donek reported the Committee discussed;

- Leasing some of the Douglas Harbor Parking lot to the State of Alaska - The Committee wanted more information before recommending to move forward.
- A proposal to purchase the net float that Docks & Harbors has been using at Auke Nu Cove - The Committee requested more information.

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- Raw fish tax revenues and how they are handled in accounting - Mr. Uchytel is working with Finance to get this on a real time basis.

Mr. Donek said the other items discussed at the meeting were discussed here.

3. Member Reports –

Mr. Peterson, Lands Liaison, reported that the Archipelago property has been purchased by CBJ.

IX. Port Engineer's Report –

Mr. Gillette said his report was in the packet.

Mr. Peterson asked what the adhesion issue was at Statter Harbor?

Mr. Gillette said between the head float and the main floats wherever the floats connect, there is a piece of neoprene between them to help buffer rubbing concrete to concrete. These were to be glued into place and some of them have not held and are loose. The Contractor has been asked to come back and fix this problem.

Mr. Peterson asked what the progress was for completing this adhesion issue?

Mr. Gillette said the Contractor has proposed a fix for this issue working with the adhesion manufacturer, and has been awaiting PND approval. Mr. Gillette said he just received a letter today that PND accepted the proposal and the Contractor was scheduling it, but they are waiting on materials.

X. Harbormaster's Report –

Mr. Tajon said he ordered reflective "No Moorage" signs for all the boarding floats. These will serve two purposes, keep boaters from mooring at the end of the dock, and the reflective part will help boaters see the dock at night. Trucano construction has begun site prep work for the Fish Terminal approach dock replacement. Pilings have been installed in the last couple of days for the footing of the dock.

The Douglas boarding float pump out has failed. He instructed staff to try to swap out the motors to get it running again until a new one can get here. He met with Doug Ward with Dolphin Tours. They were able to clarify where to allow temporary staging area for shorter buses in front of Dolphin Tours office area. With 27 days left in the season, he instructed staff to execute this plan if this works to make some permanent changes for next season.

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Due to complaints, the fish cleaning table at the end of the new A float at Statter Harbor has been moved to the end of the Statter Harbor Main float. This will prevent boaters going into the permanent stall holder stalls.

XI. Port Director's Report

Mr. Uchytel asked if the FY15 Legislative Grant requests are equally important or should it be Statter, Aurora, and Douglas if asked what the priority is?

Mr. Busch said a priority list was not discussed. Unless the Board decided otherwise, he recommended leave this for staff to decide.

There was no objection.

Mr. Uchytel said he drafted a letter to Mr. Pugh of UAS to reengage discussion on a possible land swap between CBJ owned land near the UAS main campus and property that is controlled by the University near the Aurora Harbor office. The 2006 negotiations fell through at the last hour. The back ground is the need and desire to find infrastructure that can support a robust Commercial Fisheries Industry in the downtown area.

XII. Assembly Liaison Report-

Mr. Jones said starting September the Assembly Finance will resume their meetings leading up to the budget process.

He said he has tried to schedule a Committee of the Whole meeting with the Assembly but it has not been scheduled yet. If this is something Docks & Harbors would still want, he will keep trying.

XIII. Committee Administrative Matters

- a. Operations/CIP Committee Meeting – Next meeting is September 19th, 2013 in the Assembly Chambers at 5:00 p.m.
- b. Finance Committee Meeting – Next meeting is September 24th, 2013 in CBJ Room 224 at 5:00 p.m.
- c. Board Meeting – Next meeting is September 26th, 2013 in the Assembly Chambers at 5:30 p.m.

6:15 The Board took a 5 minute recess.

XIV. Executive Session

MOTION By MR. LOGAN: TO ENTER INTO EXECUTIVE SESSION TO DISCUSS THE PORT DIRECTORS EVALUATION AND ASK FOR UNANIMOUS CONSENT

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With no objection, the Board entered into Executive Session at 6:20 pm.

Return from Executive Session at 6:56 p.m.

XV. Adjournment

The regular Board Meeting adjourned at 6:57 p.m.

**PARKING SPACE AGREEMENT
BETWEEN THE
STATE OF ALASKA
AND THE
CITY AND BOROUGH OF JUNEAU**

This Agreement is made and entered into this 1st day of October, 2013, by and between the City and Borough of Juneau, Docks and Harbors, whose mailing address is 155 S. Seward Street, Juneau, Alaska 99801, hereinafter referred to as "CBJ" or "Licensor", and the State of Alaska whose mailing address is _____, Juneau, Alaska, _____, hereinafter referred to as "Licensee."

NOW THEREFORE, for and in consideration of the mutual promises and obligations contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

Parking Space Premises:

1. Licensor and Licensee enter into this Parking Space Agreement upon the terms and conditions set out below, with respect to the following:

Sufficient land for the parking of forty (40) parking spaces located at the Douglas Boat Harbor, delineated in Exhibit A which is attached and made a part of this agreement and is hereafter called the Premises.

Covenants to Perform:

2. This Rental Agreement is made upon the above and the following terms and conditions, each of which the Party bound by such covenants and conditions agrees to perform, irrespective of whether the particular provision is in the form of a covenant, an agreement, a condition, a direction, or otherwise, and each Party agrees to provide the other Party with documents or further assurances as may be required to carry out the expressed intentions.

Licensor's Representations:

3. Licensor represents and warrants that it alone, has the right, power, and authority to make and enter into this Agreement. Licensor represents and warrants that, at the date of this agreement, there are no restrictions, covenants, easements, rights-of-way, or uses which would prevent Licensee from parking vehicles on the property depicted in Exhibit A.

Annual Payment and Term:

4. This Agreement shall be for a term of one (1) year commencing on the 1st day of October, 2013, and ending on the 30th day of September, 2014. A rent of \$42.00 per space per month (\$1,680.00), will be made payable in advance commencing on the 1st of October, 2013 and each and every October 1st thereafter for the duration of this agreement. The Annual payment by Licensee is subject to the availability of appropriations for the purpose of this Agreement. These appropriations are authorized by the Legislature of the State of Alaska and this Agreement may be terminated by Licensee due to lack of such appropriation by giving Licensor not less than thirty (30) days notice in writing.

Renewal Options:

5. This Agreement shall be renewable for ten (10) additional one (1) year periods upon the mutual consent of both Licensor and Licensee. Renewal periods shall commence on October 1st and end on September 30th of each year. The Agreement shall be \$42.00 per parking space per month (\$1,680.00) and shall be payable on or before each and every October 1st thereafter for the duration of this Agreement.

Terms and Conditions:

6. Licensee has the right to use the surface estate for parking Douglas Island Building Employee vehicles.
7. Licensee may neither assign nor sublet, either by grant or implication, the whole or any part of the Premises, or use for a purpose other than indicated in Section 1.
8. Licensee shall use and occupy the parcel in a lawful and proper manner.
9. Licensee shall not be responsible for or pay any local property taxes attributed to the unimproved parcel of land.

10. Licensee shall construct no improvements on the Premises.
11. Licensee agrees to snow plow this Agreement parking areas as depicted in Exhibit A. Snow stack area is also shown in Exhibit A. Any snow not gone by May 1st for the duration of this Agreement, the State of Alaska will have method and means to have it removed by May 2nd.

Holding Over:

12. All conditions and covenants of this Agreement shall remain in effect during any extension of this Agreement. Any holding over after the expiration date of this Agreement shall be construed to be a tenancy from month to month, at the same monthly rental and on the terms and conditions specified in this Agreement, so far as applicable. Month to month tenancy shall be terminable by either party upon 60 days notice.

Liability:

13. Licensee and Licensor shall each be responsible for its own acts or omissions (and those of its officers, agents, and employees); and each party to this Agreement agrees to indemnify, defend and hold harmless the other, to the maximum extent allowable under Alaska law, from any claim or liability (of whatever kind, including attorney fees) for damages to property or injury to persons occasioned by each party's own acts or omissions in connection with the use and occupancy of the Premises described in this Agreement.
14. The parties agree to notify each other of any claim, demand, or lawsuit arising out of or affecting Licensee's occupation or use of the Premises. Both parties will fully cooperate in the investigation and litigation of any claim, demand, or lawsuit affecting the Premises.

Insurance:

15. The State of Alaska and its agencies are covered for property liability exposures through major worldwide insurance programs with large self-insured retentions. Losses are covered by the financial resources of the State and are administered under the self-insured claims program handled by the Division of Risk management.
16. The State of Alaska, through its Division of Risk Management, provides comprehensive liability insurance coverage through our program of self-insurance for the activities and operations of its agencies.

Right of Refusal:

17. Licensors agree that at the termination of this Agreement or any subsequent extensions, neither the CBJ nor its designees will assign the parcel to any other party without first giving Licensee the opportunity to renew this Agreement on terms and conditions, including any payment due, no less favorable to Licensee than those offered any other party.

Right to Occupy:

18. Licensee shall have the right to possession of the Premises from and after the date of approval of the Agreement subject to the herein described terms.
19. Licensors agree to make any sale of the property during the term of the Agreement, or an extension thereof, subject to this Agreement. This also applies to any sales as a result of an encumbrance on the property that existed prior to the extension of this Agreement.

Default:

20. In the event of default by Licensee, Licensors must send a written notice to Licensee which specifies the particular alleged default. If Licensee fails to cure the default within sixty (60) days after receiving the written notice, Licensors may cancel this Agreement.

Notices:

21. All notices, demands or requests required or allowed hereunder or otherwise, shall be sent by mail, certified or registered, postage prepaid, or faxed, or delivered by hand to the addresses below. Notice shall be deemed to have been made at the time of delivery if delivered, faxing if faxed, and mailing if mailed. Either party must notify the other in writing of any change in address:

Licensors: City and Borough of Juneau
Docks and Harbors
155 S. Seward Street
Juneau, Alaska 99801

ATTN: Carl Uchytel, Port Director

Licensee: State of Alaska
Need address

Effect on Successors:

22. This Agreement is binding upon, and shall inure to the benefit of the parties themselves, as well as their respective representatives, successors, permitted assigns, heirs and estates.

Applicable Laws:

23. Both parties consent to the jurisdiction of the Superior Court of the State of Alaska and shall be bound by the laws of Alaska with respect to any dispute under this agreement.

Time is of the Essence:

24. Time, whenever expressed herein, shall be deemed to be of the essence in this agreement.

Partial Invalidity:

25. If any provision or covenant of this agreement is declared to be invalid by a court of competent jurisdiction, the remaining provisions and covenants will continue in full force.

Amendment:

26. No amendment or extension of this agreement shall be effective unless expressed in writing executed by both parties.

Entire Agreement:

27. This agreement contains all the terms, conditions, and agreements of the parties and supersedes any previous understanding or agreements regarding the Premises whether oral or written. This writing constitutes the total agreement between Licensor and Licensee.

LICENSOR: City and Borough of Juneau, Docks and Harbors

Signature

Printed Name

Title

Date

CBJ84496

State Vendor Code

LICENSEE: STATE OF ALASKA

Signature

Printed name

Title

Date

**PLEASE DIRECT ALL CORRESPONDENCE REGARDING THIS AGREEMENT
TO:**

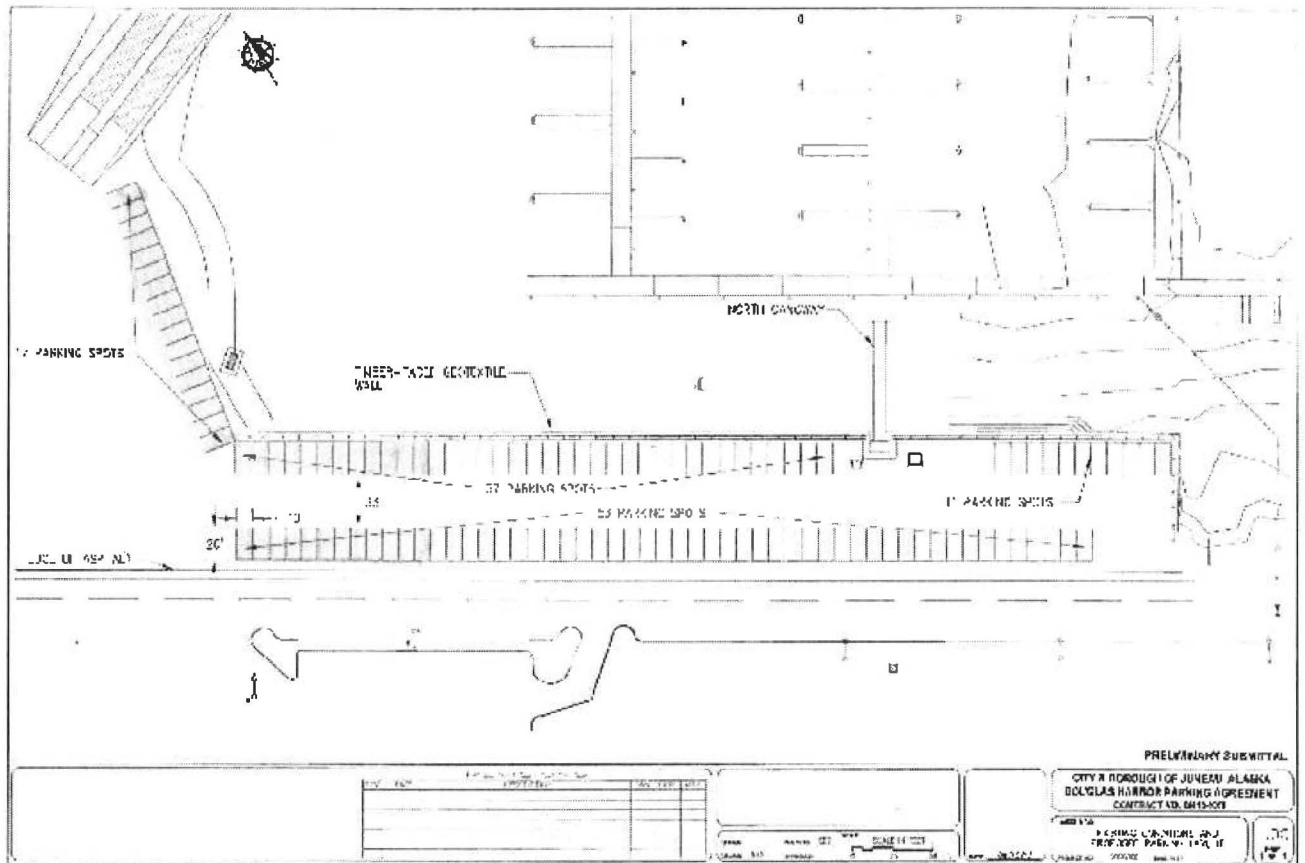
State of Alaska

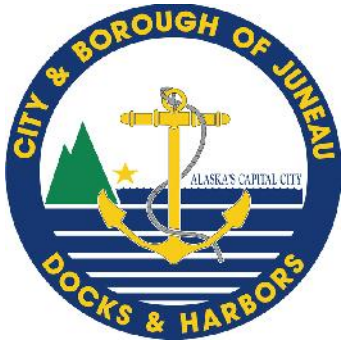
XXXXXXXXXXXXXXXXXXXX

Juneau, Alaska 99811-5526

Attn:

EXHIBIT A





Port of Juneau

155 S. Seward Street • Juneau, AK 99801
(907) 586-0292 Phone • (907) 586-0295 Fax

From: *Carl Uchytel*
Carl Uchytel, Port Director
To: Docks & Harbors Board
Date: September 27, 2013
Re: Recommendation for Final Decision – Mt Robert Lease Rent

The entirety of the Tram lease was codified by non-code ordinance at Ord. 94-42. Per the terms of the ordinance and, therefore, the lease, the rent due under the lease is a combination of a “base rent”, which was set at 10% of the **appraised market value** of the Leased Premises or \$30 per square foot (whichever was greater) plus a royalty rent based on revenue, set at a minimum of \$60,000.¹

The methodology to be used in appraising the property is outlined in Section 5(d). Section 5(d)(3) provides that “the basis of the appraisal shall be the fair market value of the unimproved land of the Leased Premises including Air Rights Easements, at its highest and best use” and that the appraisal “consider the Leased Premises as unimproved land.”

Mr. Horan appraised the leased premises as unimproved land at its highest and best use. Goldbelt’s appraiser imposed a condition required of him by Goldbelt’s attorney, which was to read “highest and best use” as meaning only that use authorize by the lease itself, in other words, as a tram property. Because the lease also requires the appraiser to value the property as unimproved land, Goldbelt’s appraiser concluded that the property was of no economic value. (Finding that since it was unlikely anyone could afford to build a new tram on the lot, the lot had no market value.)

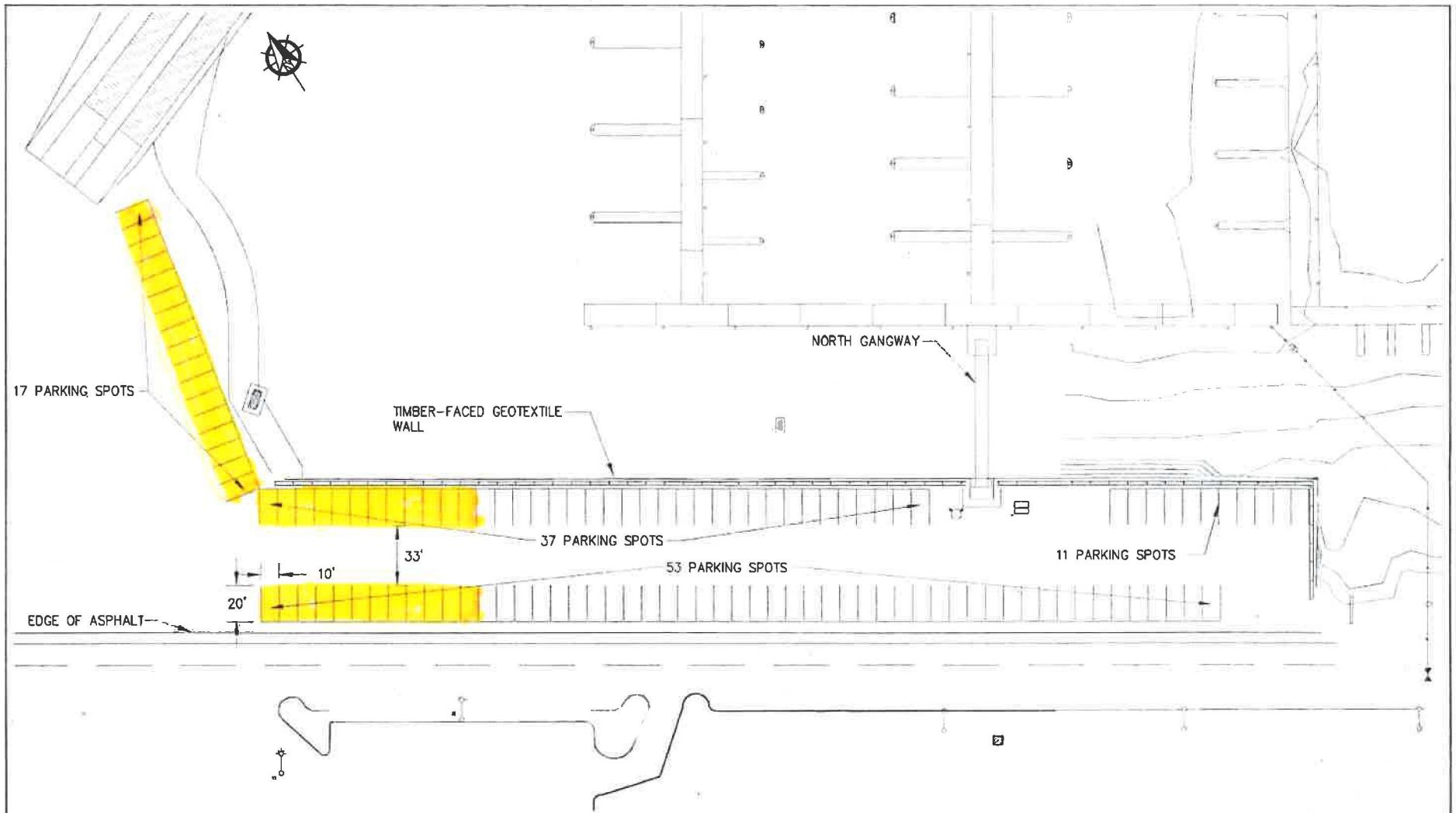
¹ The reason for requiring the royalty rent plus a percentage of the fair market value was explained in an affidavit signed by Steve Gilbertson, the Lands and Resource Manager at the time the lease ordinance was adopted. He stated that although CBJ code required lease rental rates to be set according to an appraisal based on the use specified in the lease application, doing so with respect to the Mt. Roberts project was not feasible because of the newness of the venture: “As a practical matter it is virtually impossible to predict the value of the land to be used in a new commercial venture, such as the tram terminal, because no such tram exists in Juneau.” He goes on to state that in order to ensure that the public received fair value for the leasing of the property, the Assembly approved “the concept of a base rent, based on the appraised value, plus a percentage from ticket sales.” Note this same reason – the newness of the venture – is also why the lease did not require that the appraisal be based on the use specified in the lease.

In her memo dated July 19, 2013, City Attorney Amy Mead provided us with the legislative history behind the Assembly's adoption of Ord. 94-42.

During the meeting, a member of the public commented that he felt the limiting language in the base rental adjustment paragraph "limits the return on the value of the land to the use as a tram site, rather than the highest and best use of the site." An Assembly Member asked the City Attorney to comment, to which the City Attorney replied that "the provision has to do with the highest and best use being made of the property at the time of the appraisal, regardless of what the highest and best use could conceivably be in some other context. This is a negotiated term which the developer would like included, but there is no legal reason to include it." There was then an amendment made by the Mayor "that there be no limitation on the definition of "highest and best use," which was adopted by unanimous consent.

At this point, the Board must decide whether it will accept Mr. Horan's appraisal, which does not limit the definition of "highest and best use" to use as a tram site, or if it will interpret the lease as Goldbelt has suggested.

#



PRELIMINARY SUBMITTAL

CITY & BOROUGH OF JUNEAU, ALASKA
DOUGLAS HARBOR PARKING AGREEMENT
CONTRACT NO. DH13-XXX

SHEET TITLE:
EXISTING CONDITIONS AND
PROPOSED PARKING LAYOUT

1.00
SHEET
1 OF 1

REVISIONS				
REV.	DATE	DESCRIPTION	BY	APP.

DATE: 08/15/13
SCALE: SCALE IN FEET
0 25 50 FT.