CBJ DOCKS & HARBORS BOARD
FINANCE MEETING AGENDA
For Tuesday, June 26th, 2012

I. **Call to Order** (5:00 p.m. to 7:00 p.m.) in the **Room 224, City Hall.**

II. **Roll Call** (John Bush, Tom Donek, Kevin Jardell, Michael Williams, Wayne Wilson, and Eric Kueffner).

III. **Approval of Agenda**.

MOTION: TO APPROVE THE AGENDA AS PRESENTED OR AMENDED.

IV. **Public Participation on Non-Agenda Items** (not to exceed five minutes per person, or twenty minutes total).

V. **Approval of May 29th, 2012 Finance Committee Meeting Minutes**.

VI. **Items for Action.**

1. Auke Bay Fuel Dock lease
   Presentation by the Port Director

   Committee Questions

   Public Comment

   Committee Discussion/Action

   MOTION: TO BE DEVELOPED AT THE MEETING

2. Alaska Department of Fish & Game – Douglas Parking
   Presentation by the Port Director

   Committee Questions

   Public Comment

   Committee Discussion/Action

   MOTION: TO BE DEVELOPED AT MEETING

3. Capital Office JV
   Presentation by the Port Director

   Committee Questions

   Public Comment

Committee Discussion/Action

MOTION: TO BE DEVELOPED AT THE MEETING

4. Regulatory Change – Assigned Moorage Credit
   Presentation by the Port Director

Committee Questions

Public Comment

Committee Discussion/Action

MOTION: TO BE DEVELOPED AT THE MEETING

VII. Items for Information/Discussion.

1. Lease Rent Review – People's Wharf/Bill Heumann

VIII. Staff & Member Reports.

IX. Committee Administrative Matters.

1. Next Finance Committee Meeting July 24th, 2012

X. Adjournment.

CBJ DOCKS & HARBORS BOARD
FINANCE MEETING MINUTES
For Tuesday, May 29th, 2012

I. Call to Order.

Tom Donek called the Finance Committee Meeting to order at 5:05 p.m. in room 224 of the Assembly building.

II. Roll Call.

The following members were present: John Bush, Kevin Jardell, Wayne Wilson and Tom Donek

The following members were absent: Eric Kueffner and Michael Williams.

Also in attendance was: Carl Uchytil-Port Director.

III. Approval of Agenda.

Mr. Uchytil asked to add to items for information/discussion
(2) Potential lease with Capital Office Park J.V.

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

The motion passed without objection.

IV. Public Participation on Non-Agenda Items.

None

V. Approval of April 24th, 2012 Finance Committee Meeting Minutes.

Hearing no objection, the minutes of the April 24th, 2012 Finance Committee Meeting were approved as presented.

VI. Items for Action.

1. Petro Marine Fuel Dock Lease

Mr. Uchytil said on the phone is Mr. Jim Beckham who is the Vice President of operations for Harbor Enterprises dba Petro Marine. At the March 27th Finance Meeting, the members discussed the Auke Bay fuel dock lease. In the packet is the proposed lease drafted by the CBJ attorney. The red lines are recommended changes by Harbor Enterprises. The lease currently states that Docks and Harbors receive $.05 on every gallon pumped across the dock. The previous Port Director John Stone suggested a built in increase adjusted every five years. Harbor Enterprises is suggesting that the investment for the fuel float of $1.5 million is sufficient to keep the present lease rate at $.05 a gallon

for the entire lease term. Mr. Uchytil said at the March 27th meeting Mr. Kueffner suggested to have a review every five years or CPI adjustment and list the hours of operation in the lease. There was also discussion about the automatic adjustment being passed on to the customer, and without the automatic escalator the lease will need to be renegotiated every five years. FY11 Harbors received just over $29,000, and FY 12 Harbors received just over $31,000 with a month still remaining.
Mr. Uchytil said he talked to Mr. Beckham about the CPI adjustment and it is Harbor Enterprises position that the CIP adjustment should not be included in the lease. Mr. Uchytil invited Mr. Beckham to state Petro Marines views.
Mr. Beckham said he wanted to know why CBJ wants to mandate the hours of operation. They will continue to be open when there are customers. Summer hours now are from 6:00 am to 10:00 pm. Petro Marine tried to staff this dock in the winter and it was not successful. He understands CBJ wants the facility open for the patrons to use, and Petro Marine wants that as well. If there are hours of operation in the lease agreement, and they are held rigidly to the hours, that does not make good business sense. Mr. Beckham said he wants the option of staffing the fuel dock seasonally and hopefully going into a year round to cost effectively staff.

Mr. Bush asked what the summer months are?

Mr. Beckham said May 1 – September 30.

Mr. Bush asked if there was an on call person?

Mr. Beckham said there is a sign posted there for an on call person. They will come down and fuel or take appointments.

Mr. Jardell said on appointment basis would be in compliance with the lease. He said he understands it would not be cost effective to be open when there are no customers.

Mr. Beckham said Petro Marine would like to have the option. If there is an increase in activity, Petro Marine will staff to get the most sales. If no one is out boating, it does not make sense to staff, and the patrons have an option to call in.

Mr. Wilson said he has been using the fuel dock at DeHart's for several years and has been very happy with the call in procedure in the winter time for fuel and it works well.

Mr. Donek asked if there was a quantity limit on a call in for fuel?

Mr. Beckham said he was not sure.

Mr. Jardell said he is looking for something for the long term that services will be provided at a reasonable basis and not be totally profitable. Over the course of a year, Petro Marine would make money, but maybe on a call out they would just break even. A Harbor with services is important.

Mr. Beckham said Petro Marine does not offer services on a break even basis. They pride themselves on their service and they go the extra mile to provide service to the boating and land community.

Mr. Jardell said providing the service is valuable to Docks and Harbors.

Mr. Beckham said at a significant cost, and no other companies here in Juneau are looking at building this fuel dock. The benefit CBJ gets is a full service Harbor at Statter.

Mr. Donek said he has a problem with having required hours of operation in the lease. It would be difficult to pick what hours of operation they should be open.

Mr. Wilson said being open from 6:00 am to 10:00 pm at night is very generous hours. He agrees with Mr. Donek and does not see the need for putting hours of operation in the lease.

Mr. Beckham said if the customers start needing different times of operation, the hours of operation would be adjusted to meet the needs of the customers. Petro Marine wants to provide the best service. Mr. Beckham said he does not want something in the lease that could maybe not be met, and having the hours of operation in the lease is unnecessary.

Mr. Bush asked if there would still be an on call after the fuel dock is closed if the fuel dock is open seven days a week.

Mr. Beckham said Petro Marine is always on call for any fuel delivery.

Mr. Uchytil asked Mr. Beckham to explain the $.05 per gallon.

Mr. Beckham said originally the $.05 that was started with Dick Deems included other items in the agreement. The other items included maintenance and other improvements that Mr. Deems wanted to be reimbursed for. When CBJ bought the property, the amounts carried over. This is almost three times what Petro Marine pays various municipalities from Ketchikan to Kodiak for wharfage fee. He said he knows CBJ has gotten used to receiving the $.05 per gallon. This is equal to the state tax on a gallon of fuel. Mr. Beckham said the discussion to just pass this on to the customer is a lot more complex. Any optic that increases fuel or thought of increase is not good for business for Petro Marine. Mr. Beckham said customers don't like buying gas for $5.00 per gallon just as much as Petro Marine does not like selling it at that amount. Just because the price is $5.00 per gallon does not mean that 90 percent is profit. He talked about the different fees and taxes on a gallon of gas. He asked if the services Petro Marine is going to receive worth $.05 per gallon, and he is opposed to automatic escalators. Essentially all CBJ is giving to Petro Marine is an easement or alleyway to run their pipes. If in five years it costs more to have their pipes in the alleyway, he would be willing to discuss the share of the additional costs. He said going forward he would like the fee to stay the same at $.05 per gallon and not be on an automatic escalator. Petro Marine is committing to the long term of 25 years and paying in excess of $1 million for the fuel float for their

benefit and Docks and Harbors benefit. Mr. Beckham said he would like to see a static cost as the lease moves forward.

Mr. Jardell said he has concerns with no increase over a long time. The dollar value today will not have the same buying power in 50 years, and having this static for 70 years is concerning.

Mr. Beckham asked what efforts Docks and Harbors is doing other than cashing their check. Petro Marine will be maintaining everything.

Mr. Wilson said Petro Marine would be getting service provided on Docks and Harbors dime. Garbage service, water and provided a safe and secure area. He said he does not agree with a fee escalator but he would like to see the $.05 continue and revisit the agreement in five years to assess whether or not there should be an adjustment.

Mr. Jardell said he see this more like a tideland lease. Providing an area Petro Marine is going to operate in. He does not think to raise the cost right now. He is concerned with signing a static 70 year lease, because 70 years is a long time.

Mr. Donek said Petro Marine will be getting a place to put their fuel dock. In reference to the $.05, a boater is less likely to travel 20 to 30 miles than to pay $.05 per gallon.

Mr. Beckham said the whole question is why should Petro Marine pay more for essentially a sunk cost? He doesn't see having an automatic escalator just because he is there. What more will he be getting with the increase?

Mr. Jardell said now it may be a profit for Docks and Harbors, but in 35 years that value of the dollar could be nothing. Petro Marine could be a drain on our revenue. To maintain the value of the $.05, at some periodic time, this should be allowed to go up. At some point Docks and Harbors has to look at our costs?

Mr. Beckham said costs for what? If Petro Marine has to pay more, what more will Petro Marine be getting?

Mr. Jardell said a rebalancing to equalize the inflation at some point. He said he would even look at $.05 for the value of the tideland lease.

Mr. Bush said the adjustment of the rental on page 7 says that the Lessee agrees to review and possible adjustment of the annual rental payment by the Port Director not less often than every 5th year of the lease term beginning after completion of the initial term.

Mr. Beckham said he added *possible* adjustment and *after the completion of the initial term.* That would mean it could be reviewed after 35 years.

Mr. Busch asked if he deleted *with the rental due on March 1, 2014, as provided above?* Mr. Beckham said it was too specific. It should have maybe read that rent would be due the first Monday in March.

Mr. Donek said he reads the original paragraph it would review the agreement every five years, but with the add in, it will not be reviewed for 35 years. He said that will not work.

Mr. Bush said it doesn't mean it will change, but it should be reviewed.

Mr. Jardell said if the possible adjustment was limited, and Docks and Harbors had to justify the $.05 value. Would that give some sense of comfort?

Mr. Donek said everything goes up and nothing is static.

Mr. Jardell said he understands the investment for the fuel dock and Petro Marine need to figure out how to get that back.

Mr. Beckham said everything will be owned by Petro Marine and Docks and Harbors will not have to maintain anything.

Mr. Bush said he recommended to leave the possible adjustment in the paragraph and a review every 5 to 7 years.

Mr. Jardell is looking to preserve the value at the $.05 for the life of the lease and not diminish the value.

Mr. Wilson said the Committee is going in the right direction. Add, lessee agrees to a review or adjustment every 5 to 7 years from date of initial term.

Mr. Donek asked if it would help to put a limit on an amount of an adjustment?

Mr. Beckham said he agrees that CBJ should have some revenues raised to meet the needs of the facility, and seven years sounds better for review than every five years. He said he is optimistic that reasonable people can come to reasonable conclusions. Fees and rates limitations are already set in law. He is not too concerned that in seven years CBJ will raise the rate to $.20 per gallon. He said he is happy with a seven year review.

Mr. Donek wanted to know when this needed to be completed?

Mr. Uchytil said Petro Marine has a lease in effect until the end of next year. He said in review of comments tonight, the Committee members and Mr. Beckham is okay with not having an automatic CPI adjustment, but having a review every seven years.

Mr. Donek commented that this $.05 should be looked at everywhere in the Harbors that fuel is sold across the dock.

Mr. Bush said seven year review is good with him. He is okay with the wording of possible increase.

Mr. Wilson asked if Petro Marine pays a wharfage fee to Trucano?

Mr. Beckham said it is $1.70 per gallon.

Mr. Uchytil asked if Mr. Beckham was good with the suggestions.

Mr. Donek directed Mr. Uchytil to work on the wording in the lease and bring back to the Committee.

Mr. Bush recommended to take the rental credit part of the lease out.

Mr. Donek asked if Petro Marine was using Docks and Harbors tanks?

Mr. Uchytil said he thinks Petro Marine owns the tanks.

There was more discussion.

No Motion – Mr. Uchytil was asked to verify who's tanks Petro Marine was using, work on the new wording of the lease, and bring back to the Committee.

VII. Items for Information/Discussion.

1. FY12 Spend Down

Mr. Uchytil provided a revenue and expense report for Docks and Harbors. Harbors is at about $333,000 left in the Harbors monies based on expenditures. He said with the revenues, there is no way of knowing for sure what Harbors will receive from the fish tax until October. Going with what was budgeted, Harbors should have approximately $200,000 left. Mr. Uchytil said he would like to spend this money on the following:
Wash down pad at the ABLF
Chip Seal
Electric Meters
New Pump out at Harris and Douglas
Pressure release valve for Douglas
Uniforms
This is the priority list and he said he would like to see things getting done in the Harbors.

There was discussion on the listed items.

2. Potential Lease with Capital Office Park J.V.

Mr. Uchytil said this lease has not moved forward because the Board did not want to sign a ten year lease, and the Lessee wants more than a two year renewable lease. This area is approximately 16 parking spaces that they are using, and have been using.

Mr. Bush recommended a five year lease.

Mr. Jardell said it is important to keep the flexibility for that property.

Mr. Donek asked Mr. Uchytil to find out what this property is worth by comparable lands. He wanted to know the size of the property.

Mr. Uchytil said the property size is .11 acres.

There was more discussion on the lease.

The committee recommended for Mr. Uchytil to work with the lessee to sign maybe a five year lease, and try to get some revenue out of it.

VII. Staff & Member Reports.

Mr. Wilson said that he would like Docks and Harbors looking into leasing some parking property at Auke Bay in between AEL & P and the bus barn. He would like this while the Harbor is being refitted.

Mr. Donek said he does not want to do that. The problem would be getting the permits for Statter Harbor. Our parking is going away and there is nothing that can be done at this point. PND's study determined the only feasible parking was to be on fill. There was more discussion on this topic.

IX. Committee Administrative Matters.

1. Next Finance Committee Meeting June 26th.

X. Adjournment.

MOTION By MR. BUSH: TO ADJOURN THE DOCKS AND HARBORS FINANCE COMMITTEE MEETING AND ASK UNANIMOUS CONSENT.

The Finance Committee Meeting adjourned at 6:42 p.m.

AFTER RECORDING RETURN TO: Carl Uchytil, Port Director
City and Borough of Juneau
155 S. Seward Street
Juneau, AK 99801

Deleted: John M. Stone

FUEL DOCK LEASE AGREEMENT

PART 1. PARTIES. This lease is between the City and Borough of Juneau, Alaska, a municipal corporation in the State of Alaska, hereafter "City" or "Lessor," and Harbor Enterprises, Inc. dba Petro Marine Services, hereafter "Petro" or "Lessee", a corporation organized under the laws of the State of Alaska.

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

City: Carl Uchytil,	**Lessee:** James Beckham
Port Director	Vice-President, Operations
City and Borough of Juneau	Harbor Enterprises, Inc
155 S. Seward Street	d/b/a Petro Marine
Juneau, AK 99801	P.O. Box 389
Phone: (907) 586-0292	Seward, AK 99664
Fax: (907) 586-0295	Phone: (907) 224-6222
	Fax: (907) 224-6225

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PART III. LEASE DESCRIPTION. This lease agreement is identified as: Fuel Dock Lease Agreement. The following appendices, as well as anything incorporated by reference or attached to those appendices, are attached hereto and are considered to be part of this lease agreement.

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

If in conflict, the order of precedence shall be: this document, Appendix A, B, and then C.
PART V. LEASE EXECUTION. City and Lessee agree and sign below. This contract is not effective until signed by the City.

City:	**Lessee:** Harbor Enterprises, Inc.
Date: _____	Date: _____
By: _____	By: _____
Carl Uchytil, Port Director	Carol A. Lindsey, CEO

Deleted: John M. Stone
Deleted: Petro Marine Services, Inc.

CITY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss:
FIRST JUDICAL DISTRICT)

This is to certify that on the ____ day of _____, 2012, before the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Carl Uchytil to me known to be the Port Director of the City and Borough of Juneau, Alaska, a municipal corporation which executed the above foregoing instrument, who on oath stated that he was duly authorized to executive said instrument on behalf of said corporation; who acknowledged to that that he signed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

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

_____
Notary Public in and for the State of Alaska
My Commission Expires: _____

LESSEE ACKNOWLEDGMENT

STATE OF ALASKA)
) ss:
FIRST JUDICAL DISTRICT)

This is to certify that on the ____ day of _____, 2012, before the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Carol A. Lindsey, to me known to be the identical individual described in and who executed the foregoing instrument for and on behalf of Harbor Enterprises, Inc., as Lessee, which executed the

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above and foregoing instrument; who on oath stated that she was duly authorized to execute said instrument; who acknowledged to me that she signed the same freely and voluntarily for the uses and purposes therein mentioned.

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

_____
Notary Public in and for the State of Alaska
My Commission Expires: _____

Risk Management Review: _____, Risk Manager
Approved as to Form: _____, Law Department
Approved as to Content: _____, Docks & Harbors

APPENDIX A:
PROPERTY DESCRIPTION & ADDITIONAL LEASE PROVISIONS

1. DESCRIPTION OF PROPERTY

The property subject to this lease is generally referred to as "the Leased Premises" or "the Property." The Leased Premises are described as follows (as depicted in Exhibit 1):

a. The uplands area where the Lessee has its fuel storage tanks and associated equipment;
b. An easement extending from the fuel storage tank uplands area to the Lessee's fuel float in the harbor allowing the Lessee to install, maintain, and operate fuel lines, electrical lines, and communication lines;
c. Submerged lands where the Lessee's fuel dock is located, including the adjacent area surrounding the fuel dock that is used by marine vessels to access the fuel dock, provided such use does not interfere with the operation of the City's facilities that are adjacent to the fuel dock; and
d. The end of the City's main float where the Lessee's fuel dock is attached.

A copy of Exhibit 1 is attached to and made a part of this lease by this reference.

Lessee shall submit to the City an as-built legal description and plat within 1 year of executing the Lease.

2. AUTHORITY

This lease is entered into pursuant to the authority of CBJ Code Section 85.02.060(a)(5) and CBJ Chapter 53.20.

3. TERM AND RENEWAL OPTION

The effective date of this lease shall be the date this lease agreement is signed by the City. The term of the lease is 35 years, commencing on the effective date of this lease agreement, unless sooner terminated. City grants Lessee an option to renew this lease for one, successive period of 35 years. Lessee shall exercise this option, if at all, by written notice given to City during the first six months of the last year of the underlying lease term.

4. LEASE PAYMENTS AND ADJUSTMENTS

From the effective date through the initial seven years of this Lease, Lessee shall pay rent in the amount of $0.05 for each gallon of fuel sold at the facility, plus CBJ sales tax if applicable. On

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Deleted: 4. LEASE PAYMENTS AND ADJUSTMENTS¶

the first seven year anniversary and every seven year interval thereafter, the rent shall be reviewed and may be adjusted as (1 + The Anchorage CPI for the cumulative 5 year period immediately preceding the renewal as reported by the Alaska Department of Labor) multiplied by the rent currently in effect.

Lessee shall determine fuel sales from daily meter readings and keep records of these readings for a period of no less than one year from the date of the reading. The City may inspect, in the manner and at reasonable times it considers appropriate, Lessee's daily meter reading records.

5. AUTHORIZED USE OF PREMISES

Lessee may use the leased premises only for fuel sales and the sale of other products customarily sold the by the Lessee. The leased premises may be used for other purposes only with the written consent of the City, which consent shall not be unreasonably withheld. The Lessee shall notify the City of any seasonal or other closure of the facility no later than ten (10) days prior to closure.

6. INSURANCE

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

Property Insurance
Lessee acknowledges that City carries no fire or other casualty insurance on the Lease Premises or improvements located thereon belonging to Lessee, and that it is the Lessee's obligation to obtain adequate insurance for protection of Lessee's buildings, fixtures, or other improvements, or personal property located on the Leased Premises, and adequate insurance to cover debris removal.

7. SPECIAL CANCELLATION PROVISION.

This provision applies only during the initial lease term, and only if CBJ terminates the lease because CBJ, due to its own actions, is unable to provide the Lessee with either the leased premises listed in this lease or alternate leased premises acceptable to the Lessee. If the lease is terminated due to these factors, CBJ will compensate the Lessee in an amount equal to the initial capital investment made by the Lessee minus depreciation (calculated by a 35 year straight line method) and any residual salvage value at the time of termination. If this provision is exercised, Lessee will provide CBJ with documentation, satisfactory to the City, establishing Lessee's initial capital investment. This documentation will form the basis for the depreciation calculation.

Comment [WU1]: Carl, as I was beginning to discuss with John, this move and repiping and new float is going to cost us in excess of $1.5m. we think it is a good move on everyone's part and benefits the city, the customers and us. 5cpg is the most by a factor of 3 that we assess anywhere in the state. We want to keep that from escalating because all you harbormasters and port directors talk and want to push that fee and ultimately the customer pays. and I am opposed to an automatic escalation based on CPI or other factors. We are providing a service to your customer base as well as selling fuel, so we dont want to make that cost prohibitive. Ideally, we sell more fuel, you get more $ without squeezing more money out of customers. Our current lease does not provide for an escalation of fees, so we w ouldnt face this for quite a few yrs under that lease.

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a. 1.075 multiplied by the rent currently in effect; or¶
¶
b. (1 + The Anchorage CPI for the cumulative 5 year period immediately preceding the renewal as reported by the Alaska Department of Labor) multiplied by the rent currently in effect.

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8. REQUIRED HOURS OF OPERATION

Lessee intends to provide fuel dock service on a year-round basis. During the boating season (April 1 to September 30), Lessee intends to operate seven days per week. Hours of operation shall be prominently posted at the fuel dock office and made available to the Statter Harbor Office. During the off-season (October 1 to March 31), Lessee intends to operate the fuel dock service on a periodically scheduled and/or appointment basis with hours of operation and contact number prominently posted at the fuel dock office.

Comment [WU2]: If we for some reason have slow business hours, we do not want to , for the sake of the lease, have to operate a little used facility and incur the overhead costs. We will of course operate it to the maximum extent possible which is good for both parties.

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9. LEASEHOLD IMPROVEMENTS

The Lessee shall obtain the prior approval of the City before installing any improvements to the leased premises. Improvements made to Lessee's equipment or facilities do not need prior approval. The City shall not unreasonably withhold approval.

10. MAINTENANCE

Lessee shall be responsible for maintaining all improvements made to the leased premises in good working order. The City shall be responsible for maintaining all areas adjacent to the leased premises in good working order.

11. UTILITIES AND SERVICES

The Lessee shall be responsible for electricity, communications, and janitorial services at their facilities. The Lessee may use the Lessor's solid waste dumpster. The Lessor will provide seasonal water service to the fuel float.

12. PARKING

The City will designate one (1) parking space for use by the Lessee's employees.

13. FUEL DELIVERY

The Lessee shall, to the extent possible, schedule fuel deliveries to replenish the upland tanks so as not to conflict with peak use of the City's facilities. During peak activity periods, it may be necessary to make multiple deliveries per day and assistance from the Statter Harbor staff may be necessary to accomplish this. Lessee shall, where possible, notify Lessor 24 hours in advance if such conditions are expected to occur.

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APPENDIX B: LEASE PROVISIONS REQUIRED BY CBJ CHAPTER 53.20 and CBJ CHAPTER 50

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1. RESPONSIBILITY TO PROPERLY LOCATE ON LEASED PREMISES.
As required by CBJ 53.20.160, it shall be the responsibility of Lessee to properly locate Lessee's improvements on the Leased Premises and failure to so locate shall render Lessee's liable as provided by law.

2. APPROVAL OF OTHER AUTHORITIES.
As required by CBJ 53.20.180, the issuance by City of leases, including this lease, under the provisions of CBJ Title 53 does not relieve Lessees of responsibility for obtaining licenses, permits, or approvals as may be required by City or by duly authorized state or federal agencies.

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

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

(2) **Adjustment of Rental.** Lessee agrees to a review and adjustment of the annual rental payment by the Port Director not less often than every seventh year of the lease term beginning after completion of the initial term.

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(3) **Subleasing.** Lessee may sublease Leased Premises or any part thereof leased to Lessee hereunder; provided, that the proposed sub-lessee shall first apply to City for a permit therefore; and further provided, that the improvements on the Leased Premises are the substantial reason for the sublease. Leases not having improvements thereon shall not be sublet. Subleases shall be in writing and be subject to the terms and conditions of the original lease; all terms, conditions, and covenants of the underlying lease that may be made to apply to the sublease are hereby incorporated into the sublease.

(4) **Assignment.** Lessee may assign its rights and obligations under this lease; provided, that the proposed assignment shall be approved by City prior to any assignment. Approval of assignment will not unreasonably be withheld. The assignee shall be subject to all of the provisions of the lease. All terms, conditions, and covenants of the underlying lease that may be made applicable to the assignment are hereby incorporated into the assignment.

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

(6) **Cancellation and Forfeiture.**

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

(b) City may cancel the lease if it is used for any unlawful purpose.

(c) City shall provide written notice if Lessee shall default in the performance or observance of any of the lease terms, covenants or stipulations thereto, or of the regulations now or hereafter in force, without remedy by Lessee of the conditions warranting default within 30 days of receipt of notice, City may subject Lessee to appropriate legal action including, but not limited to, forfeiture of the lease. No improvements may be removed by Lessee or other person during any time Lessee is in default.

Deleted: If

Deleted: or service of written notice by City

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

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

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

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

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

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

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

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

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

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

(a) If any improvements and/or chattels not owned by City and having an appraised value in excess of five thousand dollars as determined by the assessor are not removed within the time allowed, such improvements and/or chattels on the lands, after deducting for City rents due and owning and expenses incurred in making such sale. Such rights to proceeds of the sale shall expire one year from the date of such sale. If no bids acceptable to the Port Director are received, title to such improvements and/or chattels shall vest in City.

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

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

(17) **Compliance with Regulations Code.** Lessee shall comply with all regulations, rules, and the code of the City and Borough of Juneau, and with all state and federal regulations, rules and laws as the code or any such rules, regulations or laws may affect the activity upon or associated with the leased land.

(18) **Condition of Premises.** Lessee shall keep the premises of the lease in neat, clean, sanitary and safe condition.

Comment [WU3]: Doesn't apply to this lease

Deleted: and shall take all reasonable precautions to prevent, and take all

Deleted: necessary action to suppress destruction or uncontrolled grass, brush or other fire on the leased lands. Lessee shall not undertake any activity that causes or increases a sloughing off or loss of surface materials of the leased land

(19) **Inspection.** Lessee shall allow an authorized representative of City to enter the lease land for inspection at any reasonable time and upon 24hrs advanced notice.

(20) **Use of Material.** Lessee of the surface rights shall not sell or remove for use elsewhere any timber, stone, gravel, peat moss, topsoils, or any other materials valuable for building or commercial purposes; provided, however, that material required for the development of the leasehold may be used, if its use is first approved by the City.

(21) **Rights-of-Way.** City expressly reserves the right to grant easements or rights-of-way across leased land if it is determined in the best interest of the City to do so. If City grants an easement or right-of-way across the leased land, Lessee shall be entitled to damages for all Lessee-owned improvements destroyed or damaged. Damages shall be limited to improvements only, and loss shall be determined by fair market value. Annual rentals may be adjusted to compensate Lessee for loss of use and loss of business.

Deleted: or crops

Deleted: and crops

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

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

APPENDIX C: STANDARD PROVISIONS

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

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

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

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

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

(6) **Valid Existing Rights.** This lease is entered into and made subject to all existing rights, including easements, rights-of-way, reservations, or other interests in land in existence, on the date of execution of this lease.

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

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

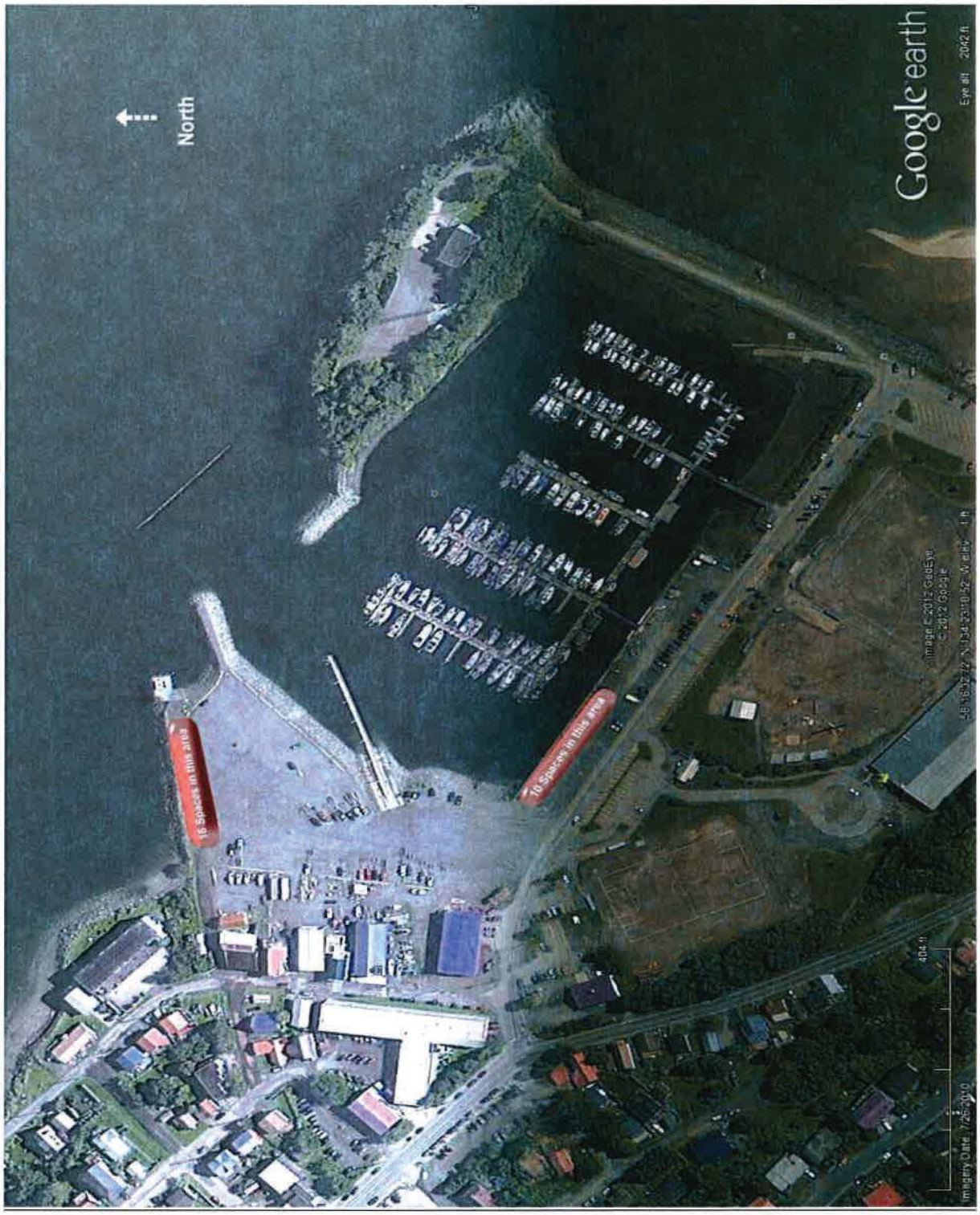
(9) **Hold Harmless.** Lessee agrees to defend, indemnify, and save City, its employees, volunteers, consultants, and insurers, with respect to any action, claim, or lawsuit arising out of the use and occupancy of the Leased Premises by Lessee. This agreement to defend, indemnify, and hold harmless is without limitation as to the amount of fees, and without limitation as to any damages resulting from settlement, judgment or verdict, and includes the

award of any attorneys fees even if in excess of Alaska Civil Rule 82. The obligations of Lessee arise immediately upon notice to City of any action, claim, or lawsuit. City hall notify Lessee in a timely manner if the need for indemnification, but such notice is not a condition precedent to Lessee's obligations and may be waived where Lessee has actual notice. This agreement applies, and is in full force and effect whenever and wherever any action, claim, or lawsuit is initiated, filed, or otherwise brought against the City.

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

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

EXHIBIT A


North
Google earth
15 spaces in this area
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N
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House
House
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St. Anns Avenue
B Street
House
House
House
Lease #1951
25 Spaces
$7650/yr
Lease #IH-101
25 Spaces
$8100/yr
C Street
3rd Street
House
House
House
Apartment House
Commercial Building
Douglas
CBJ Douglas Harbor Parking
Montessori School
Savikko Road
City Shop
Tanner's Marine
CBJ Douglas Harbor Parking
Commercial Building
NO PARKING
Front Street
Douglas Island Center Building
4 H.C. spaces
4 spaces
5 spaces
11 spaces
6 spaces
U.S. Post Office
F&G Library
House
Lease
#1921 252
25 Spaces
$12,600/yr
INCLUDES MAINTENANCE
Perseverance Theatre
Douglas Café
House
House
House

05 CBJAC 20.025 - Assigned moorage credit.

(a)

Definition. A fee credit applied to the account of a person with a moorage assignment that makes their private shorepower connection available for temporary moorage assignments.

(b)

Administration. Once each year, the harbormaster shall issue a credit memo to the account of a person with a moorage assignment that makes their private shorepower available for temporary moorage assignments. The credit shall equal $1.00 for each day that the harbormaster uses their stall for a temporary moorage assignment and the temporary moorage assignee uses the private shorepower connection. The credit is redeemable only against docks and harbors charges levied against the account of the moorage assignee.

Comment [cu1]: $8.00?

(Amended 12-5-2005, eff. 12-12-2005; Amended 12-11-2006, eff. 7-1-2007)

Port of Juneau

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

June 7th, 2012

William Heumann
P.O. Box 35096
Juneau, AK 99803

RE: Lease Lots 9B & 13B Blk 83 within ATS 3

Dear Bill,

I am required by ordinance to review all CBJ tideland leases on a periodic basis. Specifically, CBJAC 53.20.190 (2) calls for every five years and is reiterated in our lease agreement:
Adjustment of Rental. Lessee agrees to a review and adjustment of the annual rental payment by the Port Director not less often than every fifth year of the lease term beginning with the rental due after completion of each review period. Any changes or adjustments shall be based primarily upon the values of comparable land in the same or similar areas; such evaluations shall also include all improvements, placed upon or made to the land, to which City has right or title, excluding landfill placed upon the land by Lessee, except that the value of any improvements credited against rentals shall be included in the value. Lessee may protest the adjustment to the Port Director, and if denied wholly or in part, an appeal may be taken to the Assembly. The decision of the Assembly shall be final.

Your lease was due for review in November of 2011. In our review process, my staff contacted the CBJ assessor for evaluation of changes to the lease assessed value with the following results:

1C070K830071 – HEUMANN WILLIAM (LEGAL - TIDELANDS BL 83 L 9B FR & 13B FR)

2010	ASSESSED VALUE (BEFORE DOWNTOWN LAND STUDY)	$59,500
2011	ASSESSED VALUE	$142,800
2012	ASSESSED VALUE	$134,600

To be consistent, other leases were reviewed for a fair market value. I have directed my staff to use eight percent of the 2012 assessed value, which is in-line with similar lease properties in CBJ. This would make your annual lease payment with tax of $11,306.40, or monthly payments of $942.20, an increase of $6,308.40 and $525.70 respectively. This change will become effective July 1, 2012. If you wish to protest this adjustment, I would proceed with a formal appraisal which you would be invoiced for. If you have any questions, please contact me or Teena at 586-0292.

Sincerely,

Carl Uchytil, P.E.
Port Director