CBJ DOCKS & HARBORS BOARD
FINANCE MEETING AGENDA
For Tuesday, May 29th, 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 April 24th, 2012 Finance Committee Meeting Minutes.

VI. Items for Action.

1. Petro Marine Fuel Dock Lease
   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. FY12 Spend Down

VIII. Staff & Member Reports.

IX. Committee Administrative Matters.

1. Next Finance Committee Meeting June 26th, 2012

X. Adjournment.

CBJ DOCKS & HARBORS BOARD
FINANCE MEETING MINUTES
For Tuesday, April 24th, 2012

I. Call to Order.

Eric Kueffner called the Finance Committee Meeting to order at 5:03 p.m. in room 224 of the Assembly building.

II. Roll Call.

The following members were present: Tom Donek, John Bush, Michael Williams and Erick Kueffner.

The following members were absent: Kevin Jardell and Wayne Wilson.

Also in attendance was: Mr. Uchytil-Port Director.

III. Approval of Agenda.

MOTION by Mr. Williams: TO APPROVE THE AGENDA AS PRESENTED.

The motion passed without objection.

IV. Public Participation on Non-Agenda Items.

There was none.

V. Approval of March 27, 2012 Finance Committee Meeting Minutes.

Hearing no objection, the minutes of the March 27, 2012 Finance Committee Meeting were approved as presented.

VI. Items for Action.

1. Potable Water Rates.

Mr. Uchytil said he started this discussion at the last Finance Meeting and he was suggesting the water rates be raised by $ .16 to stay current. After further review and direction from the Finance Committee, he decided to review what the Port has collected in potable water fees. Mr. Uchytil provided an information sheet back to 2004 comparing the water department charges with D&H fees collected for water. The sheet also includes the percent markup D&H is receiving in water fees. He said as we go forward the question is what is a reasonable fee to be charging for this utility. We do have overhead costs for personnel to provide this service. He suggested increasing the D&H water fees to $4.67 per 1,000 gallons to bring the markup to 48%. These new fees would be effective October 1, 2012.

VII. Items for Action. (Continued)

Mr. Kueffner asked if the Cruise Ship Companies had been provided water rates for the coming season.

Mr. Uchytil said the Cruise Ship Companies like to have the water rates for the next season by January 1st so they can budget the expenses in. He sent a notification for the coming season saying the water rates would remain the same as the previous year.

Mr. Bush asked if the large decrease in fees collected from 2010 to 2011 was from a decrease in volume.

Mr. Uchytil said the fees are based on volume, but he could not explain the large decrease in fees collected. He also said the Board may want to consider an automatic increase in fees based on either a percentage of what the water department is charging or based on the Anchorage CPI.

MOTION by Mr. Bush: TO RECOMMEND A RATE INCREASE FOR POTABLE WATER TO $4.67 PER 1,000 GALLONS AND TO REVIEW THE FEES EVERY TIME THERE IS AN INCREASE FROM THE CBJ WATER DEPARTMENT TO THE FULL BOARD AND ASK UNANIMOUS CONSENT

The motion passed without objection.

2. Moorage Auto Escalator Rates.

Mr. Uchytil said we have an automatic escalation for our moorage rates based on the Anchorage CPI. For the calendar year 2011, the CPI increase was 3.2% Based on the ordinance, the moorage fees will increase 3.2% unless the Board chooses not to allow the increase. He also provided a comparison of rates in other harbors in Southeast.

Public comment

Mr. Dennis Watson said he was in favor of the 3.2% increase in moorage fees. He wished the Harbor Department required annual moorage payment in full and did not offer a monthly payment plan.

Mr. Uchytil said he did not think any action was require to allow the 3.2% moorage increase, but he did want the Finance Board to discuss the increase.

Mr. Kueffner said he thought Finance Committee should point out to the full board that public members testified in favor of the increase.

Mr. Uchytil said he is sensitive to the patron's complaints that we have one of the higher moorage rates in southeast and most of the other harbors do allow you to pay by the month.

VII. Items for Action. (Continued)

Mr. Donek said he did not feel a motion was needed but he did think the Finance Committee's recommendation to allow the increase should be forwarded to the full Board.

Mr. Uchytil said the Finance Committee did make a motion to forward the recommendation of the CPI increase to the full board at the meeting last year.

MOTION by Mr. Williams: TO RECOMMEND AN INCREASE IN MOORAGE FEES OF 3.2% IN ACCORDANCE WITH THE ANCHORAGE CPI TO THE FULL BOARD AND ASK UNANIMOUS CONSENT.

The motion passed without objection.

VII. Items for Information/Discussion.

1. Harbor Revenues & Expense Report.

Mr. Uchytil provided a revenue and expense report for Docks and Harbors. He would like to provide the report on a monthly basis as a snapshot of where D&H is financially.

Mr. Bush asked about going over budget in phone expenses.

Mr. Uchytil said he needed to work with someone in procurement and make sure items are being expensed in the appropriate expense account.

Mr. Donek provided some suggestions for refining the revenue and expense report.

Mr. Uchytil said the report still does need some refining.

2. Preparation for Assembly Finance Committee.

Mr. Uchytil said we are on the docket for the Assembly Finance Committee on the 9th of May and he wanted some feedback about what will be presented and who will present it. He gave a brief power point presentation of what would be presented to the Assembly Finance Committee. The Assembly would like to know who we are, how we are organized, how many facilities we have, where they are at and some financial information. He also included the pitch for the 1% and we are asking for 7 million for Aurora Harbor and 2.3 million for the Auke Bay haul out.

Mr. Kueffner said he and Mr. Jardell should also attend the Assembly Finance Committee Meeting. He liked the pitch for the 1% but the power point was hard to see.

VIII. Staff & Member Reports.

Mr. Williams said looked at the construction around the new visitor center and it was progressing. He also mentioned the Harbors were in good shape.

Mr. Uchytil said Trucano has seven of the twelve pilings in at the Douglas Breakwater. The final seven pilings will be finished in August. The new visitor center is running behind schedule because the siding arrived damaged.

IX. Committee Administrative Matters.

1. Next Finance Committee Meeting May 29, 2012.

X. Adjournment.

MOTION BY Mr. Williams: TO ADJOURN THE DOCKS AND HARBORS FINANCE COMMITTEE MEETING AND ASK UNANIMOUS CONSENT.

The Finance Committee Meeting adjourned at 5:55p.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
Port Director
City and Borough of Juneau
155 S. Seward Street
Juneau, AK 99801
Phone: (907) 586-0292
Fax: (907) 586-0295

Lessee: James Beckham
Vice-President, Operations
Harbor Enterprises, Inc
d/b/a Petro Marine
P.O. Box 389
Seward, AK 99664
(907) _____
(907) _____

Deleted: John M. Stone
Deleted: , P.E.

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.

It is intended that with the effective date of this lease, the lease agreement assigned by Richard Deems for the DeHarts fuel float lease to the City on <date> is terminated, except that Lessee may continue to operate its fuel float at DeHarts under the provisions of that lease until September 30, 2013 and no additional rent or flowage fee will occur as result of continued operations.

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4. LEASE PAYMENTS AND ADJUSTMENTS

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.

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.

8. REQUIRED HOURS OF OPERATION

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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Deleted: Beginning on March 1, 2014 and continuing for a five year period until February 28, 2019, and for every five year interval thereafter, the rent shall be adjusted to no higher than the highest of the following, plus CBJ sales tax if applicable:¶
¶
. 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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It is intended for Lessee to provide fuel dock service on a year-round basis. During the boating season (April 1 to September 30), Lessee is intended 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 is intended 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

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 possible adjustment of the annual rental payment by the Port Director not less often than every fifth 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.

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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.

(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.

(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.

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

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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

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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.