

**City of Kodiak Regular Council Meeting Agenda for September 25, 2014**  
**7:30 p.m., at 710 Mill Bay Road, Assembly Chambers (Room 232)**

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- I. Call to Order/Roll Call**  
Pledge of Allegiance/Invocation
- II. Previous Minutes**  
Approval of Minutes of the September 11, 2014, Regular Council Meeting
- III. Persons to Be Heard**
  - a. Proclamation: Declaring Fire Prevention Week
  - b. Public Comments (limited to 3 minutes) (486-3231)
- IV. Unfinished Business**  
None
- V. New Business**
  - a. First Reading, Ordinance No. 1326, Authorizing the City to Enter Into a Preferential Use Agreement, A Terminal Operation Contract, and a Warehouse Lease Agreement With Horizon Lines of Alaska, LLC
  - b. Resolution No. 2014-34, Naming Election Workers for the October 7, 2014, Regular Municipal Election
  - c. Authorization of Lease and Pipeline Easement Agreement With Andrew Airways
  - d. Authorization of Transfer of Alcoholic Beverage License From Safeway Inc. to Albertson's Holdings LLC
- VI. Staff Reports**
  - a. City Manager
  - b. City Clerk
- VII. Mayor's Comments**
- VIII. Council Comments**
- IX. Audience Comments** (limited to 3 minutes) (486-3231)
- X. Adjournment**

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**MINUTES OF THE REGULAR COUNCIL MEETING  
OF THE CITY OF KODIAK  
HELD THURSDAY, SEPTEMBER 11, 2014  
IN THE BOROUGH ASSEMBLY CHAMBERS**

**I. MEETING CALLED TO ORDER/PLEDGE OF ALLEGIANCE/INVOCATION**

Mayor Pat Branson called the meeting to order at 7:30 p.m. Councilmembers Randall C. Bishop, Charles E. Davidson, Terry J. Haines, Gabriel T. Saravia, and Richard H. Walker were present and constituted a quorum. Councilmember John B. Whiddon was absent. City Manager Aimée Kniazowski, City Clerk Debra L. Marlar, and Deputy Clerk Michelle Shuravloff-Nelson were also present.

After the Pledge of Allegiance, Salvation Army Sergeant Major Dave Blacketer gave the invocation.

Mayor Branson asked for a moment of silence to honor the victims and families of September 11, 2001.

**II. PREVIOUS MINUTES**

Councilmember Haines MOVED to approve the minutes of the August 19, 2014, special meeting and August 28, 2014, regular meeting as presented.

The roll call vote was Councilmembers Bishop, Davidson, Haines, Saravia, and Walker in favor. Councilmember Whiddon was absent. The motion passed.

**III. PERSONS TO BE HEARD**

**a. Proclamation: Recognizing Kodiak's Seafood Processing Workers**

Councilmember Saravia read the proclamation, which recognizes the hard work of seafood processing workers and the positive contribution they make to the community.

Mayor Branson handed out proclamations to the cannery representatives that were present, and Councilmember Saravia handed out t-shirts, and sweatshirts.

**b. Proclamation: Declaring Hispanic Heritage Month**

Mayor Branson read the proclamation, which urges all citizens to celebrate the rich history and recognize the important contributions of Hispanic Americans in Kodiak. She stated the proclamation will be given to Nancy Castro, a leader in the Hispanic community.

**c. Proclamation: Declaring Senior Center Month**

Councilmember Davidson read the proclamation, which urges all citizens to recognize the special contributions of senior center participants and the special efforts of the staff and volunteers who work every day to enhance and enrich the lives of the elder citizens in our community.

David Blacketer, President of the Senior Citizens of Kodiak Board of Director and Commissioner on the Alaska Commission on Aging accepted the proclamation. He stated it is a privilege to be an elder and said all seniors have great value in the community. He complimented the director and staff at the Senior Center.

**d. Public Comments**

**Jim Graham** with Brechan Enterprises Inc. thanked the Council and the City Engineer for the work they did on the rock quarry. He stated there is not a monopoly on the rock quarry.

**IV. UNFINISHED BUSINESS**

**a. Second Reading and Public Hearing, Ordinance No. 1323, Authorizing a Lease of a Communication Site in U.S. Survey 3945 on Pillar Mountain to NCWPCS MPL 31 – Year Sites Tower Holdings, LLC (Pillar No. 11)**

Mayor Branson read Ordinance No. 1323 by title. The City has issued a lease for the Pillar Mountain Communication Site No. 11 with AT&T and affiliates since 2010. The current lease for Site No. 11 with CCATT, LLC, will expire in December 2014. Its successor, NCWPCS MPL 31- Year Sites Tower Holdings, LLC, through Crown Castle, requested the lease be renewed.

Councilmember Walker MOVED to adopt Ordinance No. 1323.

Mayor Branson closed the regular meeting, opened and closed the public hearing when no one came forward to testify, and reopened the regular meeting.

The roll call vote was Councilmembers Bishop, Davidson, Haines, Saravia, and Walker in favor. Councilmember Whiddon was absent. The motion passed.

**b. Second Reading and Public Hearing, Ordinance No. 1324, Amending Kodiak City Code 2.08.025, Compensation of Councilmembers, and Kodiak City Code 2.08.034, Compensation of Mayor, to Increase Monthly Compensation for Councilmembers From \$200 to \$400, and to Increase Monthly Compensation for the Mayor From \$250 to \$500**

Mayor Branson read Ordinance No. 1324 by title. Councilmembers initiated discussion of increasing the elected officials’ stipend in February 2014, have had discussions about the issue at work sessions, and have reviewed compensation of elected officials in other Alaska municipalities.

Councilmember Haines MOVED to adopt Ordinance No. 1324.

Mayor Branson closed the regular meeting, opened and closed the public hearing when no one came forward to testify, and reopened the regular meeting.

Councilmember Bishop said he does not support the increase at this time, noting Kodiak’s economic development needs improvement. He stated he did not feel an increase in compensation was a good marketing tool to attract new Councilmembers.

Councilmembers Davidson, Haines, Saravia, and Walker voiced support and noted the increase in the Council’s work load during the past few years. It was also noted the stipend was last raised in 1984, and the increase would put Kodiak’s elected officials at the midrange of statewide compensation for elected officials.

The roll call vote was Councilmembers Davidson, Haines, Saravia, and Walker in favor. Councilmember Bishop was opposed. Councilmember Whiddon was absent. The motion passed.

**c. Second Reading and Public Hearing, Ordinance, No. 1325, Authorizing an Amendment to the Lease Between the City of Kodiak and NOAA for Office and Warehouse Space on Pier II**

Mayor Branson read Ordinance, No. 1325 by title. Ordinance No. 1325 authorizes Amendment No. 1 to the existing NOAA Warehouse Lease at Pier II, which excludes a 147 square foot (sf) office on the second floor. Currently, NOAA leases warehouse and office space totaling 5,547 sf at \$17.55 per square foot per year. Exclusion of the office space will result in a reduction in rent of \$2,580.33 annually.

Councilmember Davidson MOVED to adopt Ordinance No. 1325.

Mayor Branson closed the regular meeting, opened and closed the public hearing when no one came forward to testify, and reopened the regular meeting.

The roll call vote was Councilmembers Bishop, Davidson, Haines, Saravia, and Walker in favor. Councilmember Whiddon. The motion passed.

**V. NEW BUSINESS**

**a. Resolution No. 2014–33, Accepting the 2013 Assistance to Firefighter Grant**

Mayor Branson read Resolution No. 2014 – 33by title. The City of Kodiak Fire Department has been awarded a 2013 Assistance to Firefighter Grant (AFG) in the amount of \$77,600, with a local match of 5% or \$4,084. The funds will be used to replace a breathing air compressor module and two sets of hydraulic rescue tools.

Councilmember Bishop MOVED to adopt Resolution No. 2014–33.

The roll call vote was Councilmembers Bishop, Davidson, Haines, Saravia, Walker in favor. Councilmember Whiddon was absent. The motion passed.

**VI. STAFF REPORTS**

**a. City Manager**

Manager Kniazowski provided project updates for Pier III, the composting facility, Aleutian Homes Phase V, Monashka pumphouse, Baranof Park, the skate park and the various street pavement repairs. She said that Harbormaster Lon White has been working with the State on Pier

I, and Parks and Recreation staff have been cleaning up the St. Paul Plaza. She indicated the Candidate Forum sponsored by the Chamber of Commerce is on September 23. Manager Kniazowski stated the Kodiak Island Borough Community Development Department sent out October planning and zoning meeting dates for the rewrite of Title 16 and Title 17. She indicated she has been discussing an economic development summit with Joe Jacobson, State of Alaska Director of the Division of Economic Development and anticipates this will occur in January 2015.

**b. City Clerk**

City Clerk Marlar reminded registered voters of the City of Kodiak’s Municipal Election on October 7, 2014, for two Councilmember seats. She stated voting will occur between 7 a.m. and 8 p.m. at the Teen Center and the Fishermen’s’ Hall. She said absentee voting would be available September 22 through October 6 in the Clerk’s Offices. She provided an update of the next scheduled Council work session and regular meeting.

**VII. MAYOR’S COMMENTS**

Mayor Branson thanked the seafood processors for the work they perform and for attending the meeting. She thanked Fire Chief Kamai for securing the firefighter grant funds and the Parks and Recreation staff for the work they have done at the St. Paul Plaza. She encouraged the public to go to the Alaska Marine Highway System website to comment on the Kodiak ferry schedule services for 2015. She stated Resolution No. 2014–32 failed at the last regular meeting and cannot be considered on the Council agenda for a year. She said she does not support the timing of Ordinance No. 1324, regarding the compensation increase but did not veto the ordinance to continue her working relationship and provide support for the Council majority vote.

**VIII. COUNCIL COMMENTS**

Councilmember Walker thanked Manager Kniazowski, Engineering, Public Works, and staff for their hard work. He said the upcoming weekend is homecoming for the high school, and he provided a schedule of events for the volleyball and football teams and encouraged the public to attend and provide support.

Councilmember Haines said he had disappointment and gently reminded the public and Council to provide a positive atmosphere of mutual respect when interacting on local topics. He encouraged the public to absentee vote; he thanked Engineer Glenn Melvin for his hard work; and he stated there is classical music on KMXT on Thursdays.

Councilmember Davidson thanked Engineer Glenn Melvin and the seafood processors for their hard work.

Councilmember Saravia thanked Manager Kniazowski and Engineer Glenn Melvin for their work. He thanked the seafood workers for their dedication and stated it is a privilege to represent the public. He shared he is proud to be Hispanic and thanked the Council for the recognition of Hispanic Heritage Month. He referenced an email he received from the PANDA group and reiterated he votes from his heart and his principles.

Councilmember Bishop gave his condolences to the families of September 11. He thanked Engineer Glenn Melvin and the seafood processors.

**IX. AUDIENCE COMMENTS**

None

**X. ADJOURNMENT**

Councilmember Davidson MOVED to adjourn the meeting.

The roll call vote was Councilmembers Bishop, Davidson, Haines, Saravia, and Walker in favor. Councilmember Whiddon was absent. The motion passed.

The meeting adjourned at 8:26 p.m.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

Minutes Approved:

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## **PERSONS TO BE HEARD**

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## MEMORANDUM TO COUNCIL

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**Date:** September 25, 2014

**Agenda Item:** III. a. Proclamation: Declaring Fire Prevention Week

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**SUMMARY:** This proclamation urges all citizens to test their smoke alarms at least every month by pushing the test button, and to support the many public safety activities and efforts of Kodiak fire and emergency services.

**ATTACHMENTS:**

Attachment A: Proclamation: Declaring Fire Prevention Week

# PROCLAMATION

## Declaring Fire Prevention Week

### October 5–11, 2014

WHEREAS, the City of Kodiak is committed to ensuring the safety and security of people living in and visiting our city; and

WHEREAS, fire is a serious safety concern both locally and nationally, and homes are the locations where people are at greatest risk from fire; and

WHEREAS, home fires killed more than 2,300 people in the United States in 2012, according to the National Fire Protection Association, and fire departments in the United States responded to 365,000 home fires; and

WHEREAS, working smoke alarms cut the risk of dying in reported home fires in half; and

WHEREAS, three out of five home fire deaths result from fires in properties without working smoke alarms; and

WHEREAS, in one-fifth of all homes with smoke alarms, none were working primarily because batteries were missing, disconnected, or dead; and

WHEREAS, residents should install smoke alarms, including devices that meet the needs of people who are deaf or hard of hearing, in every sleeping room, outside each separate sleeping area, and on every level of the home; and

WHEREAS, first responders are dedicated to reducing the occurrence of home fires and resulting injuries through prevention and protection education; and

WHEREAS, the 2014 Fire Prevention Week theme is “Smoke Alarms Save Lives: Test Yours Every Month.”

NOW THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, Alaska, do hereby proclaim October 5–11, 2014, as

### Fire Prevention Week

in Kodiak, and urge all citizens to test their smoke alarms at least every month by pushing the test button, and to support the many public safety activities and efforts of Kodiak fire and emergency services during Fire Prevention Week 2014.

Dated this 25th day of September 2014.

City of Kodiak

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Pat Branson, Mayor

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# **NEW BUSINESS**

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Lon White, Acting City Manager for Horizon Lines Agreements 

**Date:** September 25, 2014

**Agenda Item:** V. a. **First Reading, Ordinance No. 1326, Authorizing the City to Enter Into a Preferential Use Agreement, A Terminal Operation Contract, an a Warehouse Lease Agreement with Horizon Lines of Alaska, LLC**

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**SUMMARY:** Ordinance No. 1326 authorizes the City of Kodiak to enter into the following agreements with Horizon Lines of Alaska, LLC: a Preferential Use Agreement for a term of ten years plus two five year renewals upon mutual agreement; a Terminal Operating Contract for a term of ten years plus two five year renewals upon mutual agreement, and a Pier II Warehouse Lease Agreement for a term of five years plus one five year renewal upon mutual agreement. These agreements replace agreements with Horizon Lines that expired on 12/31/2013 and that were extended on a month to month basis by Resolution No. 2014-01, dated January 7, 2014. The City of Kodiak owns the Paceco crane, Pier II and III, and the structures on the Piers, which are currently used by Horizon Lines. Pier III and the Paceco crane are nearing the end of their useful lives. A new Pier III is currently being constructed with completion estimated in June 2015. The project is funded by a \$33.1 million grant from the Alaska Legislature and \$715,000 funded by the City. Horizon Lines will furnish a 100-foot gauge crane with an estimated value of \$10 million, which will replace the existing City owned Paceco crane.

**PREVIOUS COUNCIL ACTION:** The Council authorized the previous agreements with Horizon Lines by Ordinance Nos. 1270, 1271 and 1272 in March of 2010. Resolution No. 2014-01 of the City Council authorized the extension of those agreements on a month-to-month basis. Beginning in January 2014, the City's negotiating team received direction from the Council on negotiating new agreements with Horizon Lines, and reported to the Council on the progress of those negotiations.

**BACKGROUND:** Horizon Lines serves Alaska with three container vessels, the Horizon Anchorage, Tacoma and Kodiak. The vessels were built in 1987, are 710 feet long, with a loaded draft of approximately 34 feet and a beam of approximately 78 feet. Each vessel's carrying capacity is 1,668 twenty foot equivalent units. Horizon Lines provide two sailings per week to Anchorage and Kodiak and once per week service to Dutch Harbor. Horizon Lines also provides truck and barge service connecting Anchorage, Dutch Harbor and Kodiak with surrounding points. The City's relationship with Horizon Lines is governed by three agreements between the parties, in addition to the City's Port Tariff. These agreements are the Preferential Use Agreement covering Horizon Lines' use (lease) of the Pier III terminal and the Paceco crane, wharfage rates, dockage rates, and other terms; the Terminal Operating Contract addressing Horizon Lines' operation of Pier II and III; and the Pier II Warehouse Agreement covering Horizon Lines' lease of warehouse space on Pier II.

**DISCUSSION:** In conjunction with the Pier III terminal replacement and the expiration of its agreements with Horizon Lines, the City renegotiated the Preferential Use Agreement, the Terminal Operations Contract, and the Warehouse Lease. The new agreements and rates address the following conditions: the grant funded construction costs associated with the Pier III replacement, the fact that Horizon Lines will supply its own crane at Pier III rather than using the City supplied Paceco crane as in the past, competitive or industry standard rate levels for container wharfage and dockage at similarly situated ports, exclusive rights and non-exclusive rights offered Horizon Lines, and warehouse lease rates based on current market values.

In order to facilitate the development of the new agreements, the City hired BST Associates to study the rates and compare them with ports of comparable size and volume. BST reviewed the current agreements, prepared a port rate analysis, and recommended modifications to the agreements. The new agreements were developed by a team consisting of City staff, a City Council member, BST consultants, the construction project administrator, and the City's Attorney. The City Council was updated on a regular basis in the development of the draft agreements via executive sessions.

**ALTERNATIVES:**

- 1) Approve the new agreements with Horizon Lines as drafted. This is staff's recommendation and the option less likely to interrupt critical freight service to and from Pier II and Pier III terminals.
- 2) Council could choose to renegotiate the agreements, amend them, or reject them entirely and continue to use the month-to-month agreements or tariff rates. This may affect the City's ability to maintain a viable operation at Pier II and Pier III and is not recommended by staff.

**FINANCIAL IMPLICATIONS:** Given the significant investments being made by both the City and Horizon Lines, the new agreements make strong commitments and guarantees in order to protect the interests of both parties. The new Preferential Use Agreement will be for ten years with two five year renewals upon mutual agreement. The rates under the Preferential Use Agreement escalate from year to year after the scheduled completion date for the new Pier III, and will be subject to renegotiation upon each renewal of the agreement. The new agreement grants Horizon Lines preferential use, dockage and wharfage fees at Pier III. Horizon commits to making a minimum of 45 annual container ship calls at Pier III, and gives the City the right to purchase the new crane if Horizon ceases operation in Kodiak or offers to sell the crane to a third party. The State and the City are making a \$34 million investment in Pier III and need to be assured of rate levels and a revenue stream that cover all operating costs including a fair allocation of overhead costs, and makes a contribution to capital replacement in the future. The Terminal Operation Contract will be for a ten year term with two five year renewals upon mutual agreement. The Terminal Operating Contract grants Horizon Lines exclusive rights to perform all stevedoring and terminal services at Pier III, and non exclusive rights at Pier II. The Warehouse Lease will be for a five year term with one five year renewal upon mutual agreement. Applicable rates and effective dates are detailed within each agreement.

**LEGAL:** The City Attorney participated in negotiating the agreements with Horizon Lines and has reviewed all documents for compliance.

**STAFF RECOMMENDATION:** Staff and the City negotiating team recommend City Council approve this ordinance in order to maintain the agreements with Horizon Lines of Alaska, LLC, and to ensure uninterrupted freight service to and from Pier II and Pier III.

**ACTING CITY MANAGER'S COMMENTS:** As Acting City Manager for these agreements, I concur with staff and the negotiating team recommendations that the City Council approve the ordinance.

**ATTACHMENTS:**

- Attachment A: Ordinance No. 1326
- Attachment B: Preferential Use Agreement, and Exhibit A
- Attachment C: Terminal Operation Contract, with Exhibit A and B
- Attachment D: Warehouse Lease Agreement, with Exhibit A and B

**PROPOSED MOTION:**

Move to pass Ordinance No. 1326 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.



**CITY OF KODIAK  
ORDINANCE NUMBER 1326**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING THE CITY TO ENTER INTO A PREFERENTIAL USE AGREEMENT, A TERMINAL OPERATION CONTRACT, AND A WAREHOUSE LEASE AGREEMENT WITH HORIZON LINES OF ALASKA, LLC**

WHEREAS, City Charter Article V-17 requires that any contract which by its terms will not be fully executed within five years and which cannot be terminated by the City upon not more than one month’s notice without penalty, and the sale or lease of any City property, real or personal, or the sale or other disposal of any interest therein, the value of which property, lease, or interest is more than \$30,000, shall be made only by ordinance; and

WHEREAS, the City of Kodiak and Horizon Lines of Alaska, LLC have renegotiated a ten-year Preferential Use Agreement to provide Horizon Lines of Alaska, LLC preferential berthing rights at the Port of Kodiak Pier III Terminal, a ten-year Terminal Operation Contract for Horizon Lines of Alaska, LLC to provide services for the Port of Kodiak at Piers II and III, and a five-year Warehouse Lease Agreement of the City property located at 727 Shelikof Street, Kodiak, Alaska, situated within U.S. Survey 2537B, commonly known as the Pier II Warehouse; and

WHEREAS, the terms of the Preferential Use Agreement, the Terminal Operation Contract and the Warehouse Lease Agreement are intended to complement one another; and

WHEREAS, City Code Section 18.20.230 requires that the subleasing of any property leased from the City must be approved by the Council and subject to the terms and conditions of the original lease; and

WHEREAS, Horizon Lines of Alaska, LLC will continue to sublease space in the Pier II Warehouse to American President Lines, Ltd. (APL) and Amak Towing Company, Inc. (Amak Towing); and

WHEREAS, there have been presented to this meeting the forms of the Preferential Use Agreement, the Terminal Operation Contract and the Warehouse Lease Agreement, and it appears that these documents, which now are before this meeting, are in appropriate form and are appropriate instruments for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kodiak, Alaska:

**Section 1:** The Council of the City of Kodiak hereby authorizes the Preferential Use Agreement with Horizon Lines of Alaska, LLC, which is attached hereto and incorporated by reference according to the terms, covenants, conditions, and agreements contained in the Agreement and further stated in the Terminal Operation Contract and the Warehouse Lease Agreement.

**Section 2:** The Council of the City of Kodiak hereby authorizes the Terminal Operation Contract with Horizon Lines, LLC, which is attached hereto and incorporated by reference according to the terms, covenants, conditions, and agreements contained in the Contract and further stated in the Warehouse Lease Agreement and the Preferential Use Agreement.

**Section 3:** Notwithstanding anything to the contrary in Kodiak City Code Chapter 18.20, the Council of the City of Kodiak hereby authorizes the Warehouse Lease Agreement with Horizon Lines of Alaska, LLC of the property located at 727 Shelikof Street, Kodiak, Alaska, situated within U.S. Survey 2537B, more commonly known as the Pier II Warehouse, which is attached hereto and incorporated by reference according to the terms, covenants, conditions, and agreements contained in the Agreement and further stated in the Preferential Use Agreement and the Terminal Operation Contract.

**Section 4:** The Council of the City of Kodiak hereby authorizes Horizon Lines of Alaska, LLC to sublease space in the Pier II Warehouse to APL and Amak Towing.

**Section 5:** The agreements authorized by this ordinance are subject to the requirements of City Charter Section V-17. Therefore, if one or more referendum petitions with signatures are properly filed within one month after the passage and publication of this ordinance, this ordinance shall not go into effect until the petition or petitions are finally found to be illegal and/or insufficient, or, if any such petition is found legal and sufficient, until the ordinance is approved at election by a majority of the qualified voters voting on the question. If no referendum petition with signatures is filed, this ordinance shall go into effect one month after its passage and publication.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

First Reading:  
Second Reading:  
Effective Date:

**PORT OF KODIAK  
PREFERENTIAL USE AGREEMENT  
(Pier III)  
City of Kodiak and Horizon Lines of Alaska, LLC  
City Contract 217720**

This Preferential Use Agreement (“Agreement”) is made and entered into as of December 1, 2014, between the City of Kodiak, an Alaska municipal corporation (“City”), and Horizon Lines of Alaska, LLC (“Horizon Lines”), a limited liability company organized under the laws of the state of Delaware.

WHEREAS, Horizon Lines and the City have entered into a Terminal Operation Contract and a Warehouse Lease Agreement, both dated December 1, 2014, which together with this Agreement provide for Operator’s use and occupancy of facilities at Port of Kodiak Piers II and III.

WHEREAS, Horizon Lines has agreed herein to install a 100 foot gauge crane for use on Pier III and to make a minimum number of container vessel calls at Pier III annually, and leases all storage areas, marshalling yard and buildings at the Pier III Terminal, and it is therefore appropriate that the City grant Horizon Lines the preferential use of the Pier III Terminal as provided herein.

NOW, THEREFORE, in consideration of the premises, and the terms, covenants, conditions, and agreements contained herein and further stated in the Terminal Operation Contract and the Warehouse Lease Agreement, Horizon Lines and the City hereby agree as follows:

**I. DESCRIPTION OF PREMISES**

The premises that are the subject of this Agreement consist of the terminal and adjacent property at Pier III as further described below (“Premises”).

- A.** At the commencement of this Agreement, the Premises consists of 4.46 acres for freight operations; a container terminal pier, 490 feet by 64 feet with an overall length of 880 feet, bollard to bollard; and a 30-ton Paceco container crane (“Old Crane”); as depicted in Exhibit A to this Agreement.
- B.** The City presently is preparing to construct a new Pier III dock structure, consisting of a new 330-ft. long, 110-ft wide dock structure extending eastward from the existing Pier III, plus associated backland terminal area, which should be substantially complete on or about June 30, 2015, as depicted in Exhibit A to this Agreement. Upon its substantial completion, the new Pier III will become part of the Premises. As further described below, Horizon Lines will provide, at its own expense, a 100-foot gauge container crane (“New Crane”) on the new Pier III to replace the Old Crane on the existing Pier III. Horizon Lines will own the New Crane, and the New Crane will not be part of the Premises.

**II. USE OF PREMISES; PREFERENTIAL BERTHING**

- A.** The City hereby grants Horizon Lines the right to use and occupy the Premises in connection with its transportation business and related activities during the term of this Agreement.

**B.** Horizon Lines vessels calling to load and discharge containerized cargo on a scheduled basis shall be entitled to preferential berthing rights at Pier III in accordance with the terms and conditions set forth in this Agreement.

1. Preferential Berthing and Old Crane Use Rights.

- a. Horizon Lines shall have the preferential right to use the Pier III dock, berth and Old Crane for purposes of mooring, docking, and loading or discharging cargo on or from Horizon Lines' vessels, including ships, barges, or other watercraft which are owned, operated, or chartered by or for Horizon Lines or any affiliated or related company, or which are used in connection with any of Horizon Lines' freight operations, or a vessel owned or operated by an entity with which Horizon Lines has a connecting carrier, consortium, or rationalization agreement, if, and to the extent that, said vessel is carrying cargo on Horizon Lines' behalf. Horizon Lines' preferential right to use the Old Crane terminates upon the earlier to occur of (i) one year after the date on which the New Crane becomes operational, and (ii) the date when removal of the Old Crane has been completed.
- b. The preferential right of use provided by this paragraph is defined to mean that Horizon Lines shall be accorded the right, after furnishing a vessel schedule, to berth a vessel and utilize the Old Crane in preference to any other user immediately upon the vessel's arrival in Kodiak harbor, provided that (a) the vessel arrives during a period of twelve (12) hours before or after the arrival time designated in a vessel schedule on file with the City Harbormaster (which schedule may be changed from time-to-time upon ten (10) days' written notice), or (b) the vessel arrives at an arrival time designated at least eight (8) hours in advance by radio or other message from Horizon Lines to the City Harbormaster.
- c. The preferential right provided herein shall apply whether or not the Pier III dock, berth and Old Crane are being used by any other vessel, and any such other vessel, barge or craft occupying the berth at the time of arrival of Horizon Lines' vessel during a preferential berthing period shall be removed immediately from the berth at no cost to Horizon Lines.
- d. Horizon Lines shall make a reasonable effort to vacate the berth within six (6) hours after working cargo; provided however, should weather conditions prevent the vessel from leaving safely, an extension may be granted by the City Harbormaster.
- e. Horizon Lines agrees that during the term of this Agreement its Kodiak representative, upon request, will furnish the City Harbormaster with information as to the position, estimated time of arrival in Kodiak, and estimated port time of any vessel due to arrive in Kodiak which will claim preferential berthing rights under this Agreement.

2. Preferential Use of Storage, Marshaling Areas, and Facilities Other than the Dock, Berth and Old Crane. Horizon Lines shall have a continuing preferential right to use and occupy the storage, marshaling areas, parking areas, and all improvements included in the Pier III Terminal other than the dock, berth and Old Crane for its freight operations, including without limitation the operations of loading, unloading, working, parking, and storage of cargo, vans, chassis, trucks, and other equipment; provided that the City reserves from this grant of preferential right the use of access ways shown on Exhibit A for the transit of cargo from non-Horizon Lines vessels between Pier III and public rights-of-way. "Preferential right" as used in this paragraph is defined to mean that Horizon Lines' use and occupancy of the Premises shall have first priority over any use and occupancy of the Premises by others which interferes with Horizon Lines' operation, at no cost to Horizon Lines other than as elsewhere set forth in this Agreement.
3. Reservation of Secondary Rights. The City specifically reserves to itself and for non-Horizon Lines vessels secondary rights to use and occupy the Pier III Terminal, or portions thereof, subject to the priorities of use accorded to Horizon Lines under this Agreement. The City agrees that it will issue tariffs governing the rates, charges, and conditions for the secondary use of the Pier III Terminal by others, and shall assess reasonable rates and charges to secondary users of the facility.
4. Berthing of Horizon Lines Barges. In addition to preferential berthing for loading and unloading cargo as provided above, barges owned, chartered, or operated by Horizon Lines shall be allowed to berth at Pier III while not engaged in cargo operations, unless the City Harbormaster requests their removal to allow the use of Pier III by other vessels. In such event, the City Harbormaster will notify the tug captain as early as possible of the time the barge must clear the pier.

### **III. OPERATION AND MAINTENANCE OF CRANES.**

#### **A. Operation, Maintenance and Removal of Old Crane.**

1. Horizon Lines shall provide competent and qualified operators for the Old Crane who shall be available on a 24-hour basis during the time that it is operational, to provide crane services to vessels utilizing the Pier III Terminal. Horizon Lines shall be responsible for all costs of operating and maintaining the Old Crane.
2. Third parties requiring use of the Old Crane shall request such services through Horizon Lines. Third parties shall be charged for the use of the Old Crane at the rate of \$1,000.00 per hour, with a minimum of one hour for equipment warm-up plus a minimum of one hour for equipment usage. Horizon Lines shall retain \$850.00 per hour of this amount and shall remit the balance of \$150.00 per hour to the City.
3. Within one year after the New Crane becomes operational, Horizon Lines shall be responsible for all costs of decommissioning, removing and disposing of the Old Crane. At time that demolition of the Old Crane is to commence, the City shall

transfer title to the Old Crane to Horizon Lines or to a third party designated by Horizon Lines for this purpose, and Horizon Lines may retain any proceeds from the salvage, scrapping or sale of the Old Crane.

**B. Installation, Operation and Maintenance of New Crane.**

1. Commencing upon the later to occur of (i) determination by the City or its representative that the new Pier III is substantially complete under the terms of the contract for its construction (“Substantial Completion”), and (ii) Kodiak Electric Association completion of the power line extension to Pier III and the flywheels needed for the operation of the New Crane, and continuing thereafter for the duration of this Agreement, the City grants Horizon Lines an easement to install, operate and maintain the New Crane on the crane rails located on the new Pier III. The City may not grant any other entities the right to use the crane rails without Horizon Lines’ consent, but the City may grant to other entities the right to cross the easement or to install equipment or fixtures or other improvements in the easement that do not interfere with Horizon Lines’ use of the easement. The City shall install on Pier III in time for the commencement of operation of the New Crane a 12.47kva isolation transformer for the protection of the New Crane. Upon the installation of the transformer, Horizon Lines shall reimburse the City’s actual cost of acquiring and installing the transformer, which is estimated to be approximately \$60,000.
2. Horizon Lines shall maintain sole authority for and control of the New Crane. Horizon Lines shall provide competent and qualified operators for the New Crane who shall be available on a 24-hour basis commencing upon the New Crane becoming operational and continuing thereafter for the duration of this Agreement, to provide crane services to all vessels utilizing the Pier III Terminal, and may allow its use for other purposes at its discretion. Horizon Lines shall be responsible for all costs of installing, operating and maintaining the New Crane.
3. Horizon Lines shall charge third parties an hourly rate for the use of the New Crane based on comparable rates in the marketplace, with a minimum time requirement not greater than two hours. Horizon Lines shall retain the entire amount of such charges.

**IV. PAYMENTS**

**A.** Horizon Lines shall pay to the City wharfage fees at the rates shown in the following table. Transhipped/transloaded cargo shall be subject to a single-move, one-time wharfage charge at the same rate.

<u>Year</u>	<u>Rate per Ton</u>	<u>Year</u>	<u>Rate per Ton</u>
2014	\$3.45	2019	\$4.60
2015	3.45	2020	4.72
2016	3.45	2021	4.83
2017	3.80	2022	4.96
2018	4.17	2023	5.08

**B.** All Horizon Lines vessels (as described in Section II.B.1.a) shall pay dockage fees at the rates shown in the following table.

<u>Year</u>	<u>Rate per Foot</u>	<u>Year</u>	<u>Rate per Foot</u>
2014	\$1.62	2019	\$2.27
2015	1.62	2020	2.50
2016	1.70	2021	2.75
2017	1.87	2022	3.05
2018	2.06	2023	3.64

**C.** Horizon Lines shall submit to the City within ten days of the end of each month a statement detailing the vessel dockage and cargo tonnage handled during the previous month.

**D.** Horizon Lines shall pay the City for use of the facilities depicted on Exhibit “A,” including the Old Crane until its replacement, and in addition to wharfage, dockage, and other fees or charges elsewhere specified in this Agreement, the monthly payments due on the first day of each month as shown in the table below.

<u>Year</u>	<u>Monthly Payment</u>	<u>Year</u>	<u>Monthly Payment</u>
2014	\$23,352.92	2019	\$26,906.25
2015	23,352.92	2020	27,578.91
2016	23,352.92	2021	28,268.38
2017	24,750.00	2022	28,975.09
2018	26,250.00	2023	29,699.47

**E.** Amounts payable by Horizon Lines for facilities or services under this Agreement supersede any charges for the same facilities or services under the Tariff for the Port of Kodiak Cargo Terminal. Nothing in this Agreement reduces or modifies the liability of

Horizon Lines for fees or charges for other facilities or services set out in the Tariff for the Port of Kodiak Cargo Terminal.

- F. All amounts due under this Agreement that are not paid within thirty days of the date of invoice thereafter shall bear interest at the rate of 12% per annum for as long as the delinquency continues.

**V. TERM OF AGREEMENT**

- A. Initial Term. The term of his Agreement shall commence on December 1, 2014, and shall continue in full force and effect until midnight November 30, 2024, unless earlier terminated pursuant to this section.

- B. Renewal Terms. This Agreement may be renewed for two consecutive additional five-year periods (each a “Renewal Term”), by mutual agreement of the parties. At least ninety (90) days’ prior to the expiration of the term then in effect, Horizon Lines shall provide written notice to the City of its desire to renew or not renew this Agreement for the next succeeding Renewal Term. The City will then reply to Horizon Lines within fifteen (15) days whether it wishes to renew this Agreement. If both parties agree to renew this Agreement, they shall then enter good faith negotiations to address any modifications to this Agreement requested by either party. The failure of the parties to agree upon a renewal of this Agreement shall cause this Agreement to terminate at the end of the current term.

- C. The City may declare a default hereunder and terminate this Agreement, in addition to exercising any other available remedy, upon the occurrence of any of the following:

1. The failure of Horizon Lines to pay any sum of money due under this Agreement within ten (10) days after the due date.
2. The failure of Horizon Lines to perform or observe any covenant or condition of this Agreement, other than a default in the payment of money described in Section V.C.1, which is not cured within thirty (30) days after notice thereof from the City to Horizon Lines, unless the default is of a kind that may be cured, but not within such thirty (30)-day period, in which case no default shall be declared so long as Horizon Lines shall commence the curing of the default within such thirty (30) day period and thereafter shall diligently and continuously prosecute the curing of same.
3. The commencement of a case under any chapter of the federal Bankruptcy Code by or against Horizon Lines, or the filing of a voluntary or involuntary petition proposing the adjudication of Horizon Lines as bankrupt or insolvent, or the reorganization of Horizon Lines, or an arrangement by Horizon Lines with its creditors, unless the petition is filed or case commenced by a party other than Horizon Lines and is withdrawn or dismissed within ninety (90) days after the date of its filing.
4. The admission in writing by Horizon Lines of its inability to pay its debts when due; the appointment of a receiver or trustee for the business or property of Horizon Lines, unless such appointment shall be vacated within ten (10) days



after its entry; Horizon Lines making an assignment for the benefit of creditors; or the voluntary or involuntary dissolution of Horizon Lines.

5. If Horizon Lines is in default under either the Warehouse Lease Agreement or the Terminal Operation Contract.

**D.** The City may terminate this Agreement on one hundred eighty (180) days' notice to Horizon Lines if Horizon Lines makes (i) fewer than forty-five (45) container vessel calls at the City in any period of twelve (12) consecutive months, or (ii) no Horizon Lines vessel calls at Pier III for a period of ninety (90) or more consecutive days.

## **VI. USE OF PREMISES**

**A.** Horizon Lines shall not use the Premises or any facilities for any unlawful purposes.

**B.** Horizon Lines shall use the Pier III Terminal area solely for freight transportation purposes.

**C.** Horizon Lines is entitled to quiet enjoyment of the Premises provided that Horizon Lines does not breach the terms of this Agreement.

## **VII. MAINTENANCE AND REPAIR OF PREMISES**

**A.** The City shall maintain and repair, at its own expense, the utilities (water, sewer or septic system, storm drainage, and electrical except items stated in Paragraph VII.B), common roadbeds and pier structures (less mooring capstans). In no event shall the City be obligated to repair or otherwise mitigate or respond to damages resulting from Horizon Lines' use of the pier and pavement pursuant to this Agreement; except that the City shall be obligated to repair or otherwise attempt to mitigate or respond to damages resulting from an act or omission by the City or a third party. The City shall insure that other users of Pier III, if any, keep it clean and orderly.

**B.** Horizon Lines shall, at its own expense, provide all routine preventive maintenance, repairs, and replacements to the structures, including: marine department building, maintenance facility building, container cranes, crane medium voltage 12.47KVA electrical system and associated equipment, crane rails, cable trench, heat trace system, overhead lights, electric pedestals, van back stack area, and electric capstan mooring units.

**C.** Asphalt: Horizon Lines will maintain and repair all asphalt pavement in good condition. Horizon Lines will provide all snow removal and de-icing of the Pier III Terminal. Horizon Lines shall keep the Premises clean, orderly, and free of rubbish. If Horizon Lines fails to adequately remove snow, ice, or debris, the City may furnish the necessary equipment and manpower to provide this service in which event Horizon Lines shall promptly pay the City's billings for such services.

**D.** Horizon Lines shall provide the City Harbormaster a semi-annual maintenance and repair report on any single incident of damage or repair over ten thousand dollars (\$10,000).

**E.** Within thirty (30) days after each anniversary of the date of this Agreement, Horizon Lines and the City agree to inspect the Premises and prepare a report describing the condition of the Premises and specifying any items in need of repair. The party

responsible for those repairs shall start those repairs within thirty (30) days after the report is prepared and shall promptly complete them.

- F.** If, at any time during the term of this Agreement, the Premises are damaged or destroyed by fire or other casualty, due to any cause other than an act or omission solely of Horizon Lines, the City may elect to either (i) at its expense, repair, rebuild, replace and restore the Premises to a condition comparable to that which existed immediately prior to the fire or other casualty, or (ii) terminate this Agreement. In the event the City elects to repair, rebuild, replace or restore the Premises, payments under this Agreement shall be abated in proportion to the extent that the Premises are not usable by Horizon Lines during the time the unusable areas remain unrepaired or unrestored.
- G.** The City shall maintain a depth of approximately minus 38 feet MLLW in the berthing area.
- H.** Horizon Lines shall make no alterations, additions, or improvements to the Pier III Terminal without the prior written approval of the City. At the expiration of this Agreement, or any renewal thereof, any such improvements shall become the property of the City.
- I.** Horizon Lines acknowledges having inspected or having been given a full opportunity to inspect the Premises and hereby accepts them in their present condition, and shall at the termination of this Agreement surrender said Premises in as good a condition and repair to the City, reasonable wear and tear excepted.
- J.** Notwithstanding any other provision of this Agreement:
  - 1. Commencing upon the earlier to occur of (i) one (1) year after the date on which the New Crane becomes operational, and (ii) the date when removal of the Old Crane has been completed, neither party shall have any obligation to maintain, repair or restore the old Pier III.
  - 2. On and after the date of Substantial Completion of the new Pier III, Horizon Lines may continue to use the old Pier III at its own risk, subject to load limits that the City may impose from time to time, and subject to J.3 of this paragraph.
  - 3. At any time after the earlier to occur of (i) one (1) year after the date on which the New Crane becomes operational, and (ii) the date when removal of the Old Crane has been completed, the City may determine in its sole discretion to:
    - a. Discontinue permission to use the old Pier III, or
    - b. Decommission, demolish and remove the old Pier III.

### **VIII. ADDITIONAL TERMS REGARDING THE NEW CRANE.**

- A.** Covenant against Liens. Horizon Lines may not permit any lien, including without limitation a lien to secure financing or a mechanic's or materialman's lien, to be filed or recorded against the New Crane. The Operator shall indemnify and save the City harmless from all liability for damages occasioned by any such lien, together with all costs and expenses (including attorneys' fees) incurred by the City in negotiating, settling, defending, or otherwise protecting against such lien and shall, in the event of a judgment

of foreclosure of the lien, cause the lien to be discharged and removed prior to any attempt at execution of such judgment. If any lien is filed or recorded against the New Crane, Horizon Lines shall cause the lien to be removed; provided that Horizon Lines may in good faith and at Horizon Lines' own expense contest the validity of any mechanic's or materialman's lien without subjecting the New Crane to foreclosure, if Horizon Lines has furnished the bond required in AS 34.35.072 (or any comparable statute hereafter enacted providing for a bond freeing the New Crane from the effect of such a lien claim).

**B. Option to Purchase.**

1. Upon occurrence of any of the following events, the City shall have the option to purchase the New Crane as provided below: (i) the City terminates this Contract upon a default by Horizon Lines as provided in Section V; or (ii) Horizon Lines ceases to operate at Pier III under the terms of this Agreement.
2. The City shall exercise the option to purchase by giving Horizon Lines written notice not less than ninety 90 days before the purchase date. The City shall, at its own expense, retain an independent appraiser, who shall determine the fair market value of the New Crane at its location on Pier III. The City shall complete such appraisal and deliver a copy of the appraisal report to Horizon Lines with its notice exercising the option to purchase.
3. The appraiser's determination of the fair market value of the New Crane under (2) of this paragraph shall constitute a final binding determination of the fair market value and the option purchase price for the New Crane, unless Horizon Lines gives written notice to the City of its objection to the appraiser's determination within thirty (30) days after receiving the appraiser's report, and Horizon Lines shall then engage a second independent appraiser at Horizon Lines' expense to make a second appraisal of the fair market value in accordance with (2) of this paragraph.
4. If the second appraisal determines a fair market value that varies from that determined by the first appraisal by no more than twenty percent (20%), then the option purchase price shall be the average of the fair market values determined by the appraisals. If the second appraisal determines a fair market value that varies from the first appraisal by more than twenty percent (20%), then, unless the City and Horizon Lines agree on an option purchase price themselves, the option purchase price shall be determined by arbitration by a single arbitrator under the rules of the American Arbitration Association.

**C. Right of First Refusal.** The City is hereby given a right of first refusal to purchase the New Crane on the following terms and conditions:

1. Horizon Lines may accept an offer to purchase the New Crane only if it is made subject to the City's right of first refusal herein. Upon acceptance of an offer to purchase the New Crane from a third party (the "Purchase Offer"), Horizon Lines will present a copy of the offer and acceptance to the City by written notice at the address set forth in Section XIX. The City will then have ninety (90) days to

either agree to purchase the New Crane on the same terms and conditions set forth in the Purchase Offer or decline to exercise its right of first refusal. The City shall give written notice of its decision to exercise or decline to exercise its right of first refusal to Horizon Lines at the address set forth in Section XIX no later than ninety (90) days after being presented with a copy of the Purchase Offer.

2. If the City does not exercise its right of first refusal, Horizon Lines may then sell the New Crane to the third party, or any assignee/nominee of said third party, on the same terms and conditions set forth in the Purchase Offer. If the New Crane sells to the third party, or any assignee/nominee of said third party, on the same terms and conditions set forth in the Purchase Offer, then any interest of the City in and to the New Crane shall cease and be of no further force and effect.
3. If the New Crane is not sold to the third party, or the third party's assignee/nominee, on the terms and conditions in the Purchase Offer, then the City will continue to have the right of first refusal to purchase the New Crane under the procedures outlined above in this paragraph.

## **IX. INDEMNITY**

- A. Horizon Lines shall indemnify and hold harmless the City and its elected and appointed officials, employees, agents, and servants from any and all losses, expenses, damages, demands, and claims by any person in connection with or rising out of any injury (including death) to persons or in connection with damage to property or the natural environment, sustained in whole or in part as a result of Horizon Lines' use and operation of the Old Crane or New Crane, its occupancy and maintenance of the Premises, and/or exercise of its rights under this Agreement or Horizon Lines' breach of this Agreement. Horizon Lines shall defend all suits and actions brought against the City and any of its elected or appointed officials, employees, agents or servants from any such injury or damage and shall pay all damages, costs, and expenses, including attorney's fees incurred in connection with the suits or actions. The only exception to this indemnity provision shall be for claims resulting from the negligence, gross negligence, or willful misconduct of the City or its employees, agents, or servants, and for claims resulting from an act or omission of a third party, with respect to which Horizon Lines' obligations under this paragraph shall be limited to that portion of any such claim not attributable to the City and not attributable to a third party.
- B. This indemnity provision specifically includes all environmental damage that may result from Horizon Lines' operations under this Agreement and any penalties or fines which may be assessed in connection therewith.
- C. Claims arising in whole or in part out of any incident or event occurring during the term of this Agreement or any extension or renewal of it shall be covered by the provisions of this section IX even though they may not have been asserted or discovered until after the expiration of said term.

## **X. UTILITIES**

- A. During the term of this Agreement, except as provided in paragraph B of this section, Horizon Lines shall pay the providers directly for all utility bills and accounts for utility

services used or consumed by Horizon Lines on or in connection with the Premises, including all operating costs for the Old Crane.

- B.** The City shall provide water and septic tank pump-out service, or sewer service if available, to the Premises at no charge to Horizon Lines.
- C.** Horizon Lines shall be responsible for obtaining its own janitorial services for the facilities associated with the Pier III Terminal.

**XI. INSURANCE**

**A.** Horizon Lines shall procure and maintain at its sole expense, and shall keep in full force and effect throughout the term of this Agreement, the following policies of insurance:

- 1. Commercial General Liability Insurance, \$5,000,000 combined single limit per occurrence for bodily injury and property damage claims arising from all operations related to this Lease. The general aggregate limit shall be \$5,000,000.
- 2. Commercial Automobile Liability Insurance, \$5,000,000 combined single limit per accident for bodily injury and property damage.
- 3. Worker's Compensation and Employers Liability. Worker's Compensation shall be statutory as required by the State of Alaska. Employers Liability shall be endorsed to the following minimum limits and contain USL&H coverage endorsement, if applicable: (i) bodily injury by accident--\$1,000,000 each accident; and (ii) bodily injury by disease--\$1,000,000 each employee, \$1,000,000 policy limit.

**B.** Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

- 1. Commercial General Liability and Automobile Liability
  - a. City, its officers, officials, employees and volunteers are to be covered as additional insureds. The coverage shall contain no special limitation on the scope of protection afforded to City, its officers, officials, employees and volunteers.
  - b. Horizon Lines' insurance coverage shall be primary insurance as respects City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of Horizon Lines' insurance and shall not contribute to it.
  - c. Horizon Lines' insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from work performed by Horizon Lines for City.
- 2. Worker's Compensation and Employer's Liability. Horizon Lines' insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from work performed by Horizon Lines for City.

3. All Insurance. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given by the Insurer to City by certified mail, return receipt requested.
- C. Acceptability of Insurers. Insurance is to be placed with insurers qualified to do business in Alaska having a Best's rating of no less than A-: VII.
  - D. Verification of Coverage. Horizon Lines shall furnish City with approved certificates of insurance and with certified copies of all endorsements effecting coverage required by this Section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms which meet industry standard. City reserves the right to require complete, certified copies of all required insurance policies at any time.

## **XII. RIGHT OF INSPECTION**

- A. The City shall have the right to inspect the Premises without prior notice to ensure compliance with the terms of this Agreement.
- B. The City shall have the right to audit Horizon Lines' records and to require Horizon Lines to prepare summaries or reports from its records to determine compliance with the payment terms of this Agreement.

## **XIII. TAXES**

- A. In addition to the fees and charges provided in this Agreement, Horizon Lines shall pay when due all taxes and other charges which are levied at any time during the term of this Agreement upon the leasehold interest and any improvements on the Premises. If the City receives a notice of assessment from any taxing jurisdiction claiming that the City or Horizon Lines is liable for any tax or charge for which Horizon Lines has agreed to make payment under this paragraph, the City shall notify Horizon Lines in writing no later than thirty (30) days after receipt of the claim. If the City fails to provide Horizon Lines such notice, Horizon Lines shall have no obligation to pay the tax or charge.
- B. If Horizon Lines has a reasonable basis to contest, protest, or appeal (the "Appeal") the imposition or amount of any tax or charge, Horizon Lines, at its own expense, may prosecute the Appeal, in which case the City shall cooperate fully with Horizon Lines including, but not limited to, providing documentation and other information as required for Horizon Lines to settle or sustain the Appeal. If Horizon Lines prosecutes the Appeal, and if, but only if, such proceedings suspend enforcement and collection of the tax or charge, and no part of the Premises or any interest therein is or will be in danger of being sold or forfeited, Horizon Lines shall have no obligation to pay the tax or charge until the taxing jurisdiction's decision that the City or Horizon Lines is liable for the tax or charge becomes final. If any of the Premises is subjected to a lien which is not discharged within thirty (30) days after Horizon Lines receives notice of such lien, Horizon Lines shall deposit with the City cash, a sufficient corporate surety bond or other security satisfactory to the City in an amount adequate to provide for the discharge of the lien plus any

interest, costs, attorneys' fees or other charges that could accrue as a result of such contest.

#### **XIV. ASSIGNMENT**

The parties stipulate and agree that the services rendered under this Agreement are of such a nature that the rights and duties of Horizon Lines hereunder shall not be assignable without the prior written consent of the City, which consent shall not be unreasonably withheld, except to an entity that is owned solely by or that is an affiliate of Horizon Lines, after thirty (30) days' prior notice to the City. Horizon Lines shall include in such notice a statement of any legal requirement for confidentiality regarding the notice or the related transaction, with which the City shall comply. Should the City consent to an assignment Horizon Lines shall nevertheless remain liable for the performance of all of its obligations under this Agreement and the acceptance by the City directly from an assignee of any payments or other performance due under this Agreement shall not be construed as a waiver of Horizon Lines' continuing liability. A change of control of Horizon Lines other than from the parent entity of Horizon Lines to an affiliate shall constitute an assignment for purposes of this provision.

#### **XV. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS**

At all times during the term of this Agreement, Horizon Lines shall conduct operations in accordance with all applicable federal, state, and local laws and ordinances.

#### **XVI. SEVERABILITY**

If any part, term or provision of this Agreement is declared null or unenforceable by a court or other tribunal of competent jurisdiction, the validity and enforceability of the rest of this Agreement shall not be affected.

#### **XVII. WAIVERS**

No waiver by Horizon Lines or the City of any covenant or condition of this Agreement shall be construed as a waiver of any other covenant or condition, nor shall the waiver of one breach be considered as a waiver of any other breach.

#### **XVIII. SURRENDER**

- A.** Horizon Lines agrees not to encumber the Premises at any time during the term of this Agreement. Horizon Lines agrees that the Premises shall not be subject to any liens, charges or encumbrances and agrees that at the expiration of the term of this Agreement it will deliver to the City or its designee, the Premises in good condition (ordinary wear and tear excepted) and without liens, charges, or encumbrances.
- B.** Unless required for the performance by Horizon Lines of its obligations hereunder, Horizon Lines shall have the right at any time during the Term to remove from the Premises all its equipment, removable fixtures and other personal property, and all property of third persons for which Horizon Lines is responsible, and on or before the expiration or earlier termination of this Agreement it shall remove all of the same from the Premises, repairing all damage caused by any removal; provided, however, that, except with respect to the New Crane, if Horizon Lines shall fail to remove all such

property within forty-five (45) days after the expiration or earlier termination of this Agreement, the City may remove such property to a public warehouse for deposit or may retain the same in its own possession and in either event may sell the same at public auction; provided, further, that the City shall have given Horizon Lines ten (10) days' notice of the City's intent to sell such property at public auction, the proceeds of which shall be applied: first to the expenses of removal, including repair required thereby, and of storage and sale; second, to any sums owed by Horizon Lines to the City, with any balance remaining to be paid to Horizon Lines; if the expenses of such removal, repair, storage, and sale shall exceed the proceeds of sale, Horizon Lines shall pay such excess to the City upon demand. Without limiting any other term or provisions of this Agreement, Horizon Lines shall indemnify and hold harmless the City, its officers, agents, employees, and contractors from all claims of third persons arising out of the City's removal and disposition of property pursuant to this Section, including claims for conversion, claims for loss of or damage to property, claims for injury to persons (including death), and claims for any other damages, consequential or otherwise, excluding only claims based on the City's sole negligence.

**XIX. MODIFICATIONS AND NOTICES**

- A. No modification of this Agreement shall be effective unless agreed to by Horizon Lines and the City in writing. No modification of one provision of this Agreement shall be considered a waiver, breach or cancellation of any other provision.
- B. All notices required to be given under this Agreement shall be in writing, and shall be effective on the date of receipt and shall be mailed to the parties at the following addresses:

Horizon Lines of Alaska, LLC	City Manager
1717 Tidewater Road	City of Kodiak
Anchorage, Alaska 99501	710 Mill Bay Road
Attn: _____	Kodiak, Alaska 99615

Any notice or document delivered by facsimile transmission to a facsimile machine at which the recipient routinely receives such transmissions shall be effective upon the date of receipt of the complete and fully legible document (so long as the original is also mailed in accordance with this paragraph) unless the transmission occurred outside of the usual business hours of the recipient, in which event the document shall be deemed to have been received on the next business day.

**XX. ANTI-DISCRIMINATION**

During the performance of this Agreement, Horizon Lines agrees:

- A. In connection with its performance under this Agreement including construction, maintenance, and operation of or on the Premises, Horizon Lines will not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, or national origin.
- B. Horizon Lines and its employees shall not discriminate, by segregation or otherwise, against any person on the basis of race, color, ancestry, religion, sex, or nationality by



curtailing or refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally.

- C. Horizon Lines shall include and require compliance with the above nondiscrimination provisions in any subletting or subcontract made with respect to construction or maintenance operations under this Agreement.

**XXI. ALASKA LAW**

The parties agree that this Agreement was entered into in the State of Alaska, that Alaska law will govern its interpretation and application, and that venue of any suit or other action arising out of this Agreement shall be in Alaska.

**XXII. BINDING ON SUCCESSORS AND ASSIGNS**

All provisions of this Agreement shall inure to the benefit of and be binding on the parties, their successors, and permitted assigns.

**XXIII. COMPLETE AGREEMENT**

This Agreement, including Exhibit A hereto, and the Terminal Operation Contract and Warehouse Lease Agreement, both dated December 1, 2014, between Horizon Lines and the City, constitute the final agreement between the parties. They are the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous oral and written negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by the aforementioned agreements.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date or dates indicated beneath the signature of their respective officers or agents.

City of Kodiak

Horizon Lines of Alaska, LLC

\_\_\_\_\_  
Acting City Manager                      Date

\_\_\_\_\_  
Kenneth Gill                                      Date  
Director of Operations

ATTEST:

ATTEST:

\_\_\_\_\_  
Debra L. Marlar                                      Date  
City Clerk

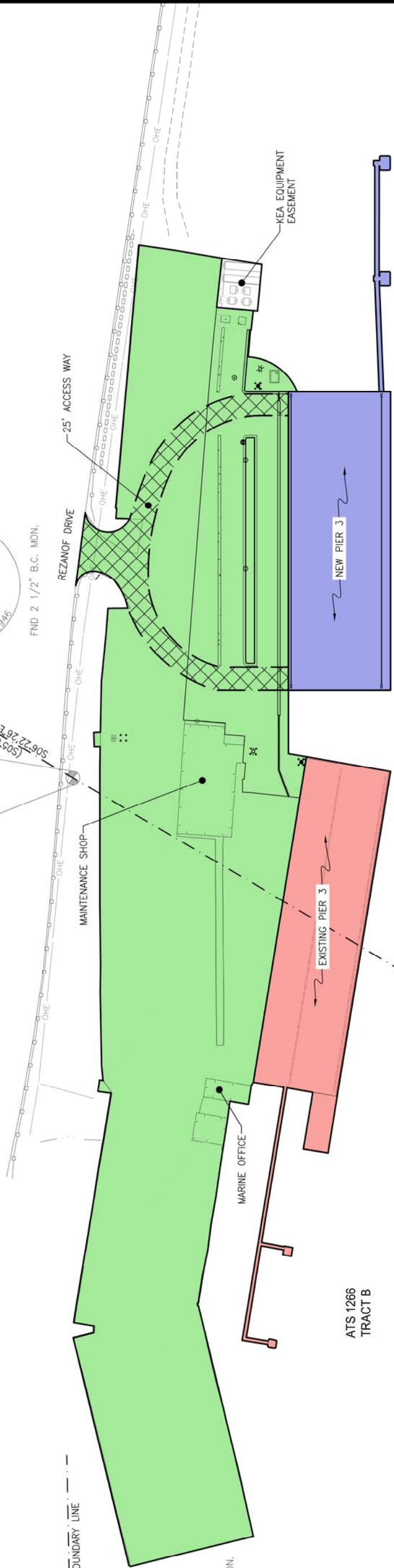
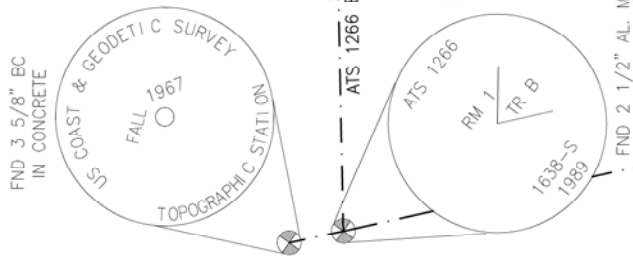
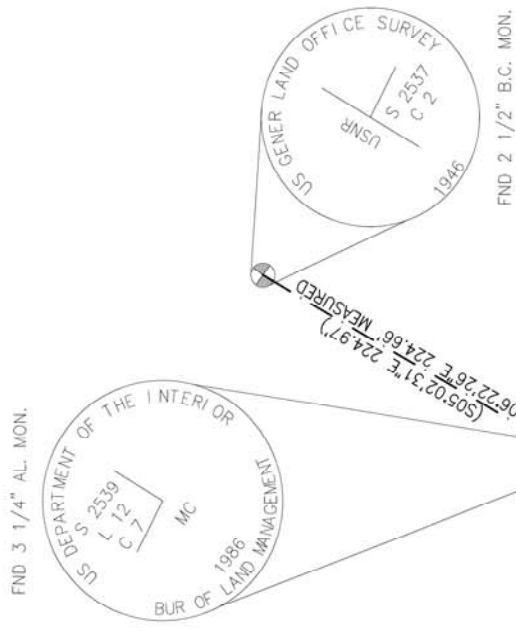
\_\_\_\_\_  
Richard Kniazowski                                      Date  
Terminal Manager

**NOTES:**

1. BASIS OF BEARING FOR THIS SURVEY IS N75°14'36"E AND IS BASED ON THE ST. DENNY CONTROL POINTS 521 AND 524, AS PER THE ST. DENNY SITE PLAN SURVEY OF PIER 2. THIS IS A LOCAL GRID AND WAS USED TO ALLOW CONTINUITY BETWEEN PIER 2 & PIER 3 SURVEYS.
2. REZANOF DRIVE RIGHT OF WAY WAS LOCATED PER RECORD INFORMATION FROM THE PLAT OF ATS 1266, RECORDED IN THE KODIAK RECORDING DISTRICT AS PLAT # 93-48.
3. FIELD SURVEY PERFORMED DECEMBER 14-17, 2004 AND MARCH 6-11, 2013.
4. THIS DRAWING SHOWS THE EXISTING AND FINAL POSSIBLE FUTURE CONSTRUCTED FACILITY.

**LEGEND**

- FOUND MONUMENT
- ( ) RECORD INFO. P #93-48
- ATS 1266 BOUNDARY



AREA OCCUPIED BY PIER 3 FACILITY EXISTING AND NEW PERMANENT STRUCTURE AND BUILDINGS		
LEGEND	AREA LOCATION	TOTAL AREA
[Green Box]	STAGING AREA	5.62 ACRE
[Red Box]	EXISTING PIER 3	0.86 ACRE
[Blue Box]	NEW PIER 3	0.89 ACRE
[Green Hatched Box]	ACCESS WAY	---
TOTAL:		7.37 ACRE



**CITY OF KODIAK**  
 2410 MILL BAY RD  
 KODIAK, ALASKA 99615  
 PHONE: (907) 486-8065  
 FAX: (907) 486-8066

REV	DATE	DESCRIPTION

PHD Engineers, Inc. is not responsible for safety programs, methods or procedures of operation, or the construction of the design shown on these drawings. Where specifications are general or not called out, the specifications shall conform to standards of industry. Drawings are for use on this project only and are not intended for reuse without written approval from PHD. Drawings are also not to be used in any manner that would constitute a detriment directly or indirectly to PHD.

1506 West 36th Avenue  
 Anchorage, Alaska 99503  
 Phone: 907.561.1011  
 Fax: 907.563.4220  
 www.phdengineers.com

**P | N | D**  
**ENGINEERS, INC.**

**KODIAK PIER 3**  
**PREFERENTIAL USE AGREEMENT**  
 EXHIBIT A

DESIGNED BY: MT DATE: 8/19/14  
 CHECKED BY: BH PROJECT NO: 111012

1 of 1

**PORT OF KODIAK  
TERMINAL OPERATION CONTRACT  
(Piers II and III)  
City of Kodiak and Horizon Lines of Alaska, LLC  
City Contract 217719**

This Terminal Operation Contract made and entered into as of December 1, 2014, by and between the City of Kodiak, Alaska, an Alaska municipal corporation (“City”), and Horizon Lines of Alaska, LLC, a limited liability company organized under the laws of state of Delaware (“Operator”).

**W I T N E S S E T H**

WHEREAS, the parties desire to enter into a Terminal Operation Contract and Operator is willing and able to perform the services; and

WHEREAS, the Operator and the City have entered into a Preferential Use Agreement and a Warehouse Lease Agreement, both dated December 1, 2014, which together with this Contract provide for Operator’s use and occupancy of facilities at Port of Kodiak Piers II and III, and the City agrees that it is in the best interest of the public for the Operator to provide services for the Port of Kodiak at Piers II and III; and

WHEREAS, Operator has agreed in the Preferential Use Agreement to install a 100 foot gauge crane for use on Pier III and to make a minimum number of container vessel calls at Pier III annually, and leases all storage areas, marshalling yard and buildings at Pier III, and it is therefore appropriate that Operator be the exclusive provider of stevedoring and terminal services at Pier III.

NOW, THEREFORE, in consideration of premises, and the terms, covenants, conditions, and agreements herein contained and further stated in the Warehouse Lease Agreement and Preferential Use Agreement, the Operator and the City hereby agree as follows:

**1. Term.**

A. Pier III. With regard to Operator’s services at Pier III, this Contract shall continue in effect for the term of the Preferential Use Agreement.

B. Pier II. With regard to Operator’s services at Pier II:

1. Initial Term. The term of this Contract shall commence on December 1, 2014, and shall continue in full force and effect until midnight November 30, 2024, unless earlier terminated pursuant to the terms of Paragraph 13 below.

2. Renewal Terms. This Contract may be renewed for two consecutive additional five-year terms (each a “Renewal Term”) by mutual agreement of the parties. At least ninety (90) days prior to the expiration of the term then in effect, the Operator shall provide written notice to the City of its desire to renew or not renew this Contract for the next succeeding Renewal Term. The City will then reply to the Operator within fifteen (15) days whether it wishes to renew this Contract. If both parties agree to renew this Contract, they shall then enter good faith negotiations to address any modifications to this Contract requested by either party. The failure of the parties to agree upon a renewal of this Contract shall cause this Contract to terminate at the end of the current Term.

**2. Facilities.** The City will make available to the Operator those certain terminals and adjacent properties at Piers II and III, as depicted in Exhibit A to this Contract (the “Facilities”). The City shall have the right to make additions, alterations, or improvements to the Facilities which do not impede Operator's access to or use of the Facilities.

**3. Terminal Operator Services.** Subject to the foregoing and to any future modifications or revisions of the Preferential Use Agreement, the Operator agrees to perform Stevedoring and Cargo Terminal Services at the Facilities in a prompt, efficient, prudent, and economical manner including the provision of all clerical personnel, laborers, and supervision necessary to perform such Stevedoring and Cargo Terminal Services.

A. Exclusive and Non-Exclusive Rights

(1) **Horizon Lines Vessels.** The Operator shall have the exclusive right to perform Stevedoring of vessels and Cargo Terminal Services twenty-four (24) hours per day, seven (7) days per week on Horizon Lines vessels and associated cargo at the Facilities. Horizon Lines vessels include ships, barges, or other watercraft which are owned, operated, or chartered by or for Horizon Lines or any affiliated or related company, or which are used in connection with any of Horizon Lines’ freight operations, or a vessel owned or operated by an entity with which Horizon Lines has a connecting carrier, consortium, or rationalization agreement, if, and to the extent that, said vessel is carrying cargo on Horizon Lines’ behalf.

(2) **Non-Horizon Lines Vessels at Pier II**

(a) The City shall have the planning and management responsibility in accommodating any non-Horizon Lines vessels at Pier II, including the planning and assignment of berthing and cargo staging/storage space and the rearrangement or relocation of other customers’ berthing and cargo staging/storage space at Pier II.

(b) The Operator shall have a non-exclusive right to perform Stevedoring of vessels and Cargo Terminal Services twenty-four (24) hours per day, seven (7) days per week on all non-Horizon Lines vessels at Pier II.

(3) **Non-Horizon Lines Vessels at Pier III**

(a) Subject to (3)(b) below, the Operator shall have the exclusive right to perform Stevedoring and Cargo Terminal Services for non-Horizon Lines vessels at Pier III.

(b) The Operator and City agree to cooperate and collaborate in good faith in accommodating any non-Horizon Lines vessels at Pier III under the City’s secondary berthing rights in the Preferential Use Agreement, including the planning and assignment of berthing and cargo staging/storage space and the rearrangement of Horizon Lines’ cargo staging/storage space at Pier III, provided Operator’s Stevedoring and Cargo Terminal Services for Horizon Lines vessels are not unreasonably altered or disrupted.

(4) **Exemptions.** Unless services are requested, the following vessels are exempt from using the services of the Operator: vessels of the Alaska Marine Highway System, vessels in port at the invitation of the City for special occasions where the ship will be open to the public, U.S. flagged government vessels, including university research

vessels, and vessels seeking fuel or other services from Harbor Enterprises dba Petro Marine Services and North Pacific Fuel aka Petro Star. Commercial fishing vessels, catcher-processors and fish processors, and cargo vessels under 300' are also exempt, unless loading or unloading commercial freight or hazardous materials. For this purpose, commercial freight means cargo transported on a vessel under a bill of lading.

(5) Use of Vessels' Gear. It is recognized that some vessels carry on-board cranes or other vessel's gear for the discharging or loading of cargo. In the interests of safety and expeditious handling of cargo, it is agreed that vessel's cranes or vessel's gear may be used for the discharge or loading of cargo at Pier II unless, in the City's opinion the vessel's cranes are not suitable for the handling of such cargo.

B. Stevedoring. For the purpose of this Contract, the term "Stevedoring" is defined to include the following vessel loading and discharging functions:

(1) Perform the stowage of cargo on board vessels in accordance with instructions received from their masters or their designated representatives.

(2) Discharge cargo or containers from vessels and transport the cargo or containers to a place of rest in the Facilities.

(3) Transport cargo or containers from a place of rest in the Facilities and load and stow cargo or containers onto the vessels.

(4) Lash and unlash cargo on vessels.

(5) Open and close hatches and cells.

(6) Plug and unplug shipboard electrical reefer receptacles if necessary to the extent not performed by the vessels.

(7) Check and tally containers and container seals and cargo.

(8) Spot vessels and handle lines as may be required.

(9) Bill, receive, or attempt to collect and, where applicable, remit to the City, all charges incurred under the applicable Port of Kodiak Tariff by persons, vessels, or cargo utilizing Port facilities or services subject to this Contract.

C. Cargo Terminal Services. For the purpose of this Contract, the term ("Cargo Terminal Services" is defined to include the following functions:

(1) Transport empty and loaded containers within the Facilities.

(2) Receive and deliver empty or loaded containers or chassis.

(3) Perform all necessary housekeeping services.

(4) Furnish all security at Pier III, for commercial cargo vessels, in accordance with a U.S. Coast Guard approved facility security plan, except for cruise ship operations.

(5) Visually inspect the condition of containers and cargo discharged from vessels at the Facilities, reporting to the vessels' masters or agents any damage or defects noted.

(6) Prepare daily reports reflecting the movement of containers or cargo.

(7) Provide expeditious movement of containers and cargo.

(8) Perform such other duties as are reasonable in such operations and as negotiated between the parties involved.

**4. Definition of Vessel.** For the purpose of this Contract, the term “vessel” shall mean and include every type of self propelled or non-self propelled vessel, including without limitation barges, container vessels, break-bulk vessels, and combinations of break-bulk and container vessels, and all other types of cargo or passenger vessels.

**5. Operator’s Equipment.** The Operator will provide all equipment necessary to perform the services required by this Contract.

**6. Public Berth.** It is agreed that the berths and facilities as above mentioned are public berths and subject to the provisions of the Preferential Use Agreement regarding Pier III shall be made available to and are available to all types of vessels that may wish to load or unload without discrimination in favor of or against any vessel, shipper, or consignee; provided, however, that the City at its option may determine that a given vessel is unsuitable for servicing at the berth and may prohibit the berthing of such vessel or alternatively may require the owner of such vessel to post such bond as the City may deem appropriate in the circumstances. Nothing contained herein is to be deemed to allow the berthing or transit of cargo which is prohibited by any applicable law including without limitation explosives or other dangerous commodities.

**7. Services by Other Persons at Pier II.** A person other than Operator may provide Stevedoring or Cargo Terminal Services at Pier II only under the following conditions.

A. Such other person may provide Stevedoring or Cargo Terminal Services only in accordance with the terms of a written contract between the City and such other person. The City will provide a copy of such contract to the Operator.

B. If any term of such contract between the City and such other person to provide Stevedoring or Cargo Terminal Services at Pier II is more favorable to such other person than the terms of this Contract are to the Operator, the Operator may elect to adopt any or all of such more favorable terms under this Contract, commencing as of the date on which the contract with such other person becomes effective.

C. A contract between the City and any other person to provide Stevedoring or Cargo Terminal Services at Pier II shall require that if there exists a labor organization which represents a majority of the individuals living in or around Kodiak, Alaska who earn their livelihood as stevedores or longshoremen, such other person shall make reasonable good-faith efforts to negotiate a collective bargaining agreement with said labor organization for the provision of the Stevedoring and Cargo Terminal labor under the contract.

**8. Compensation to City.** As and for compensation to the City, the City shall be entitled to all income derived from wharfage, dockage, and sale of water. All such sums shall be a charge against the vessel or cargo, as the case may be, and shall be collected by the Operator and remitted by the Operator to the City. Such remittances shall be accompanied by appropriate itemized documentation. Charges shall be paid by the Operator to the City within ninety (90) days after the first billing to the vessel or cargo, as the case may be or within ten (10) working days of receipt of payment by the Operator, whichever is less, provided that credit terms shall be those chosen by the Operator. All such billings to the vessels and cargo will be itemized for services rendered by the Operator and shall be made promptly after performance of those services.

**9. Compensation to Operator.** The Operator shall be entitled to keep all other charges (including charges for electrical energy, storage, and the movement of cargo) authorized and fixed in accordance with the applicable Port of Kodiak Tariff. The Operator shall be bound by any future modification or amendments of the Port of Kodiak Tariff; provided, however, the City shall not alter the credit terms of the tariff during the term of this Contract. When charges involve stevedoring or other labor services based upon an hourly wage rate, then the Operator may add to the total applicable labor charge an administrative fee not exceeding thirty percent (30%) and shall collect such fee from the person or vessel requiring the services in question. In no event, however, shall the Operator charge or collect an administrative fee with respect to any portion of its labor costs which are based upon or derived from wage rates exceeding those applicable to similar work under contracts or agreements subject to the Davis-Bacon Act. If, on the date of execution of this Contract, there exists a labor organization which represents a majority of the individuals living in or around Kodiak, Alaska who earn their livelihood as stevedores or longshoremen, then the Operator shall make reasonable good-faith efforts to negotiate a collective bargaining agreement with said labor organization for the provision of stevedoring labor services under this Contract.

**10. Indemnification.**

A. The Operator shall indemnify and hold harmless the City and its elected and appointed officials, employees, agents, and servants from any and all losses, expenses, damages, demands, and claims by any person in connection with or rising out of any injury (including death) to persons or in connection with damage to property or the natural environment, sustained in whole or in part as a result of the Operator's occupancy and maintenance of the Facilities, and/or exercise of its rights under this Contract or the Operator's breach of this Contract. The Operator shall defend all suits and actions brought against the City and any of its elected or appointed officials, employees, agents or servants from any such injury or damage and shall pay all damages, costs, and expenses, including attorney's fees incurred in connection with the suits or actions. The only exception to this indemnity provision shall be for claims resulting from the negligence, gross negligence, or willful misconduct of the City or its employees, agents, or servants, and for claims resulting from an act or omission of a third party, with respect to which the Operator's obligations under this paragraph shall be limited to that portion of any such claim not attributable to the City and not attributable to a third party.

B. This indemnity provision specifically includes all environmental damage that may result from the Operator's operations under this Contract and any penalties or fines which may be assessed in connection therewith.

C. Notwithstanding any provision of this Contract, Operator shall not be liable for, and shall not be liable to indemnify, defend or hold the City harmless from, any condition at the Facilities, whether known or unknown, which was in existence before July 1, 2004.

**11. Insurance.**

A. Operator shall procure and maintain at its sole expense, and shall keep in full force and effect throughout the term of this Lease, the following policies of insurance:

- (1) Commercial General Liability Insurance, \$5,000,000 combined single limit per occurrence for bodily injury and property damage claims arising from all operations related to this Contract. The general aggregate limit shall be \$5,000,000.

(2) Commercial Automobile Liability Insurance, \$5,000,000 combined single limit per accident for bodily injury and property damage.

(3) Worker's Compensation and Employers Liability. Worker's Compensation shall be statutory as required by the State of Alaska. Employers Liability shall be endorsed to the following minimum limits and contain USL&H coverage endorsement, if applicable: (i) bodily injury by accident--\$1,000,000 each accident; and (ii) bodily injury by disease--\$1,000,000 each employee, \$1,000,000 policy limit.

B. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

(1) Commercial General Liability and Automobile Liability

(i) City, its officers, officials, employees and volunteers are to be covered as additional insureds. The coverage shall contain no special limitation on the scope of protection afforded to City, its officers, officials, employees and volunteers.

(ii) Operator's insurance coverage shall be primary insurance as respects City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of Operator's insurance and shall not contribute to it.

(iii) Operator's insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from work performed by Operator for City.

(2) Worker's Compensation and Employer's Liability. Operator's insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from work performed by Operator for City.

(3) All Insurance. Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days' prior written notice has been given by the Insurer to City by certified mail, return receipt requested.

C. Acceptability of Insurers. Insurance is to be placed with insurers qualified to do business in Alaska having a Best's rating of no less than A-: VII.

D. Verification of Coverage. Operator shall furnish City with approved certificates of insurance and with certified copies of all endorsements effecting coverage required by this Section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms which meet industry standard. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**12. Damage to the Facilities.** The Operator shall pay for all damage to City-owned property caused by the Operator, its agents, employees, or invitees. A person does not become an invitee of the Operator under this section solely because of the person's use of the Operator's stevedoring or cargo terminal services.



**13. Default and Termination.** The City may declare a default hereunder and terminate this Contract, in addition to exercising any other available remedy, upon the occurrence of any of the following:

A. The failure of the Operator to pay any sum of money due under this Contract within ten (10) days after the due date.

B. The failure of the Operator to perform or observe any covenant or condition of this Contract, other than a default in the payment of money described in Paragraph 13(A), which is not cured within thirty (30) days after notice thereof from the City to the Operator, unless the default is of a kind that may be cured, but not within such thirty (30)-day period, in which case no default shall be declared so long as the Operator shall commence the curing of the default within such thirty (30) day period and thereafter shall diligently and continuously prosecute the curing of same.

C. The commencement of a case under any chapter of the federal Bankruptcy Code by or against the Operator, or the filing of a voluntary or involuntary petition proposing the adjudication of the Operator as bankrupt or insolvent, or the reorganization of the Operator, or an arrangement by the Operator with its creditors, unless the petition is filed or case commenced by a party other than the Operator and is withdrawn or dismissed within ninety (90) days after the date of its filing.

D. The admission in writing by the Operator of its inability to pay its debts when due; the appointment of a receiver or trustee for the business or property of the Operator, unless such appointment shall be vacated within ten (10) days after its entry; the Operator making an assignment for the benefit of creditors; or the voluntary or involuntary dissolution of the Operator.

E. If the Operator is in default under either the Preferential Use Agreement or the Warehouse Lease Agreement.

**14. Inspection of Books.** The City reserves the right at any reasonable time after seven days written notice to Operator to inspect and make copies of the books and records of the Operator related to operations conducted pursuant to this Contract. The Operator agrees that cargo manifests shall not be released by Operator to a third party except in accordance with the laws of the United States.

**15. Assignment.** The parties stipulate and agree that the services rendered under this Agreement are of such a nature that the rights and duties of the Operator hereunder shall not be assignable without the prior written consent of the City, which consent shall not be unreasonably withheld, except to an entity that is owned solely by or that is an affiliate of the Operator, after thirty (30) days' prior notice to the City. The Operator shall include in such notice a statement of any legal requirement for confidentiality regarding the notice or the related transaction, with which the City shall comply. Should the City consent to an assignment the Operator shall nevertheless remain liable for the performance of all of its obligations under this Agreement and the acceptance by the City directly from an assignee of any payments or other performance due under this Agreement shall not be construed as a waiver of the Operator's continuing liability. A change of control of the Operator other than from the parent entity of the Operator The parties stipulate and agree that the services rendered under this Agreement are of such a nature that the rights and duties of Horizon Lines hereunder shall not be assignable without the prior written consent of the City, which consent shall not be unreasonably withheld, except to an entity that is owned solely by or that is an affiliate of Horizon Lines, after thirty (30) days' prior notice to the

City. Horizon shall include in such notice a statement of any legal requirement for confidentiality regarding the notice or the related transaction, with which the City shall comply. Should the City consent to an assignment Horizon Lines shall nevertheless remain liable for the performance of all of its obligations under this Agreement and the acceptance by the City directly from an assignee of any payments or other performance due under this Agreement shall not be construed as a waiver of Horizon Lines' continuing liability. A change of control of Horizon Lines other than from the parent entity of Horizon Lines to an affiliate shall constitute an assignment for purposes of this provision. to an affiliate shall constitute an assignment for purposes of this provision.

**16. Compliance with Federal, State, and Local Laws.** At all times during the term of this Contract, the Operator shall conduct operations in accordance with all applicable federal, state, and local laws and ordinances. Without limiting the generality of the foregoing, the Operator shall obtain coverage under the Multi-Sector General Permit for all industrial storm water discharges from the Pier III Terminal.

**17. Severability.** If any part, term or provision of this Contract is declared null or unenforceable by a court or other tribunal of competent jurisdiction, the validity and enforceability of the rest of this Contract shall not be affected.

**18. Waivers.** No waiver by the Operator or the City of any covenant or condition of this Contract shall be construed as a waiver of any other covenant or condition, nor shall the waiver of one breach be considered as a waiver of any other breach.

**19. Modifications and Notices.**

A. No modification of this Agreement shall be effective unless agreed to by the Operator and the City in writing. No modification of one provision of this Agreement shall be considered a waiver, breach or cancellation of any other provision.

B. All notices required to be given under this Agreement shall be in writing, and shall be effective on the date of receipt and shall be mailed to the parties at the following addresses:

Horizon Lines of Alaska, LLC  
1717 Tidewater Road  
Anchorage, Alaska 99501  
Attn: \_\_\_\_\_

City Manager  
City of Kodiak  
710 Mill Bay Road  
Kodiak, Alaska 99615

Any notice or document delivered by facsimile transmission to a facsimile machine at which the recipient routinely receives such transmissions shall be effective upon the date of receipt of the complete and fully legible document (so long as the original is also mailed in accordance with this paragraph) unless the transmission occurred outside of the usual business hours of the recipient, in which event the document shall be deemed to have been received on the next business day.

**20. Alaska Law.** The parties agree that this Contract was entered into in the State of Alaska, that Alaska law will govern its interpretation and application, and that venue of any suit or other action arising out of this Contract shall be in Alaska.

**21. Binding on Successors and Assigns.** All provisions of this Contract shall inure to the benefit of and be binding on the parties, their successors, and permitted assigns.

**22. Complete Agreement.** This Contract, including Exhibit A, hereto, and the Preferential Use Agreement and Warehouse Lease Agreement, both dated December 1, 2014, between the Operator and the City, constitute the final agreement between the parties. They are the complete and exclusive expression of the parties' agreement on the matters contained in this Contract. All prior and contemporaneous oral and written negotiations and agreements between the parties on the matters contained in this Contract are expressly merged into and superseded by the aforementioned agreements.

IN WITNESS WHEREOF, these parties have signed this Contract on the date or dates indicated beneath the signature of their respective officers or agents.

City of Kodiak

Horizon Lines of Alaska, LLC

\_\_\_\_\_  
Acting City Manager                      Date

\_\_\_\_\_  
Kenneth Gill                                      Date  
Director of Operations

ATTEST:

ATTEST:

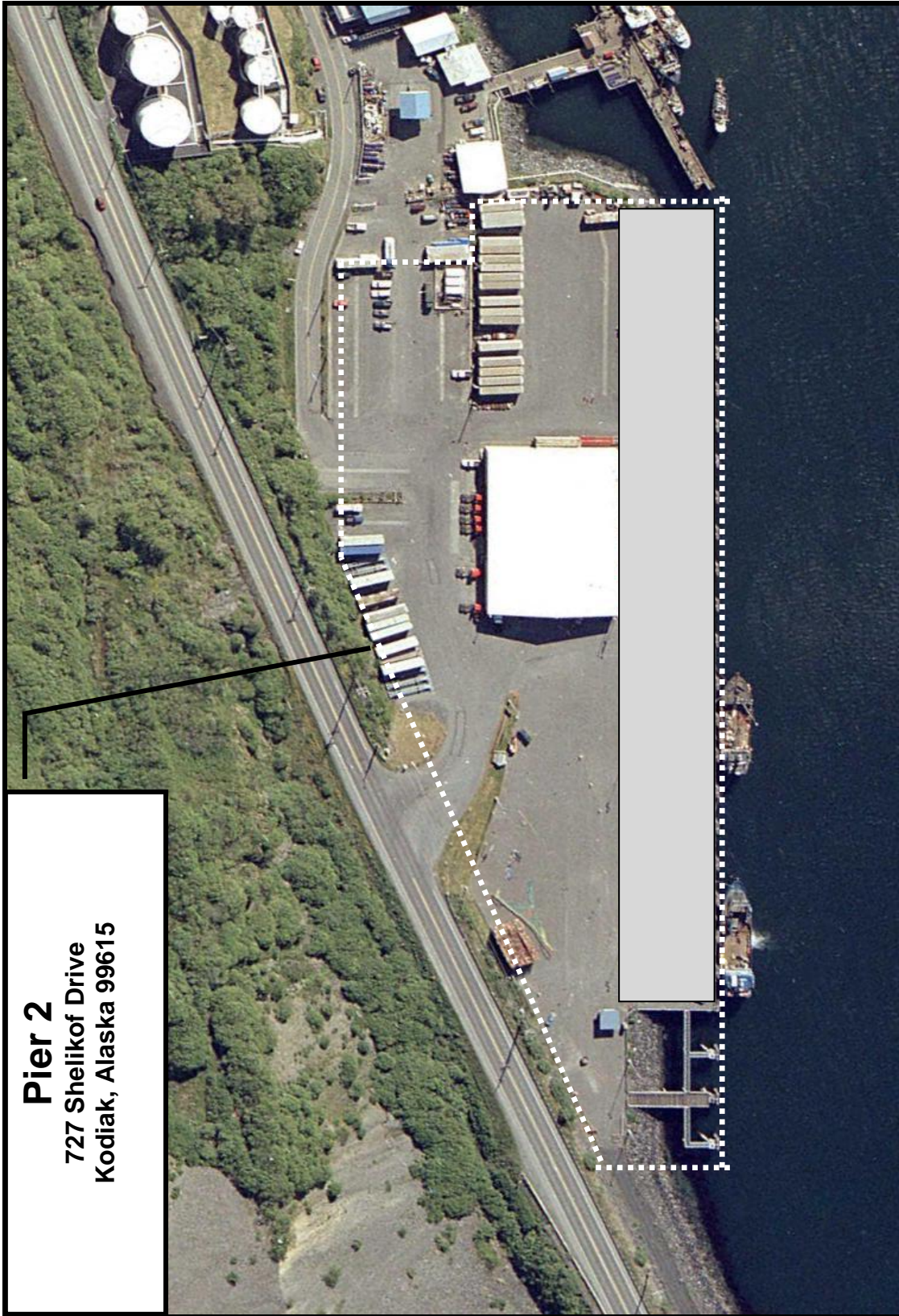
\_\_\_\_\_  
Debra L. Marlar                                      Date  
City Clerk

\_\_\_\_\_  
Richard Kniazowski                                      Date  
Terminal Manager

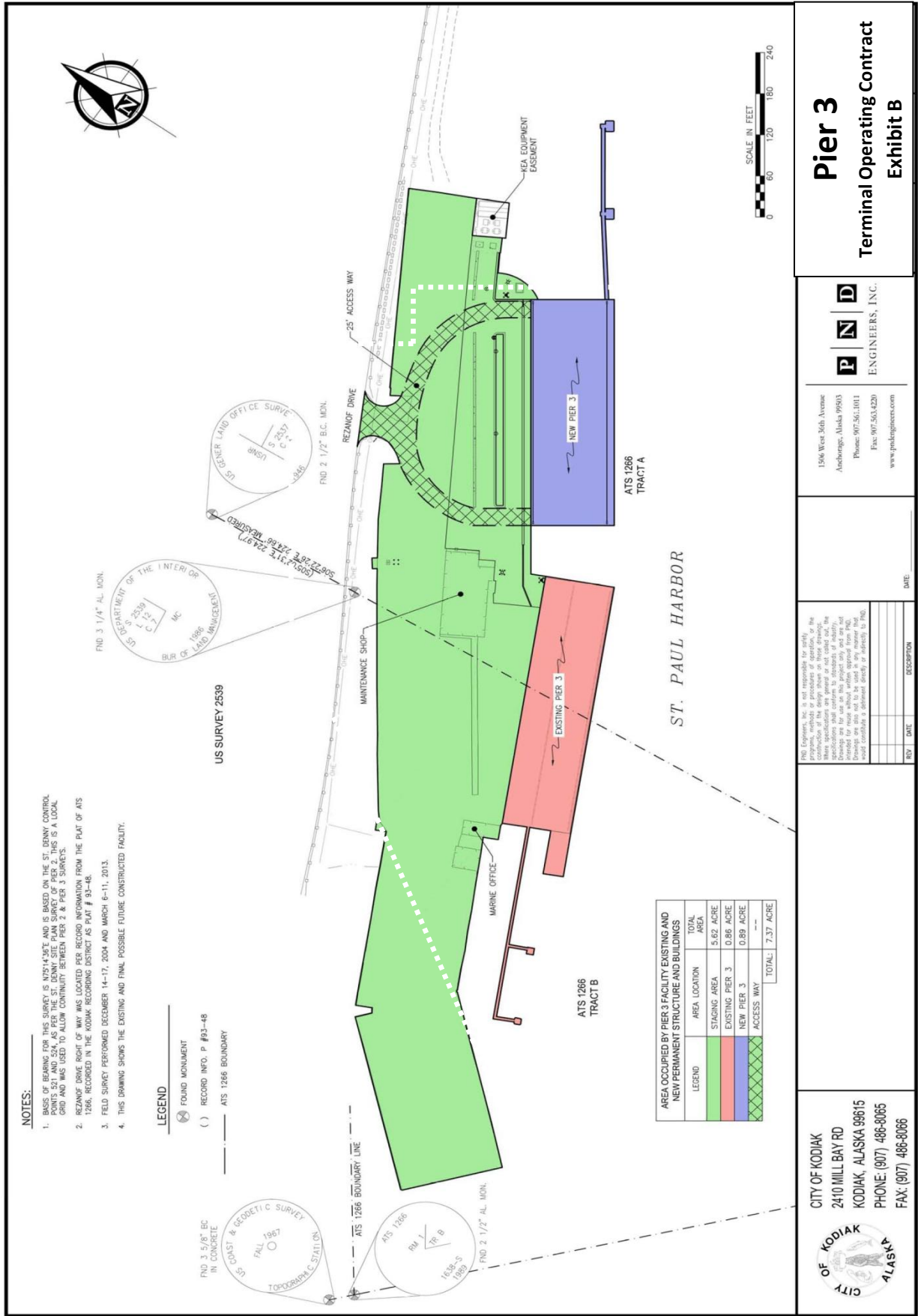
**Exhibit-A Terminal Operation Contract**

**Pier 2**

727 Shelikof Drive  
Kodiak, Alaska 99615



# Exhibit- B Terminal Operation Contract



**NOTES:**

1. BASIS OF BEARING FOR THIS SURVEY IS N7514307E AND IS BASED ON THE ST. DENNY CONTROL POINTS 531 AND 524, AS PER THE ST. DENNY SITE PLAN SURVEY OF PIER 2. THIS IS A LOCAL GRID AND WAS USED TO ALIGN CONTINUITY BETWEEN PIER 2 & PIER 3 SURVEYS.
2. REZANOF DRIVE RIGHT OF WAY WAS LOCATED PER RECORD INFORMATION FROM THE PLAN OF ATS 1266, RECORDED IN THE KODIAK RECORDING DISTRICT AS PLAN # 93-48.
3. FIELD SURVEY PERFORMED DECEMBER 14-17, 2004 AND MARCH 6-11, 2013.
4. THIS DRAWING SHOWS THE EXISTING AND FINAL POSSIBLE FUTURE CONSTRUCTED FACILITY.

**LEGEND**

- ( ) FOUND MONUMENT
- ( ) RECORD INFO. P #93-48
- ATS 1266 BOUNDARY

**CITY OF KODIAK**  
2410 MILL BAY RD  
KODIAK, ALASKA 99615  
PHONE: (907) 486-8065  
FAX: (907) 486-8066

**Pier 3**  
Terminal Operating Contract  
Exhibit B

150w West 34th Avenue  
Anchorage, Alaska 99503  
Phone: 907.561.1011  
Fax: 907.563.4220  
www.p3advisors.com

**P N D**  
ENGINEERS, INC.

REV	DATE	DESCRIPTION	DATE

P3ADVISORS, Inc. is not responsible for utility programs, methods or procedures of operation, or the accuracy of utility records. Where specifications are general or not called out, the specifications shall conform to standards of industry practice. The contractor shall be responsible for obtaining all necessary permits for work without, written approval from P3ADVISORS, Inc. The contractor shall be responsible for obtaining all necessary permits for work without, written approval from P3ADVISORS, Inc.

**PORT OF KODIAK  
PIER II WAREHOUSE LEASE AGREEMENT  
City of Kodiak and Horizon Lines of Alaska, LLC  
City Contract 217718**

THIS LEASE AGREEMENT (“Agreement”) made and entered into as of December 1, 2014, by and between the City of Kodiak, Alaska, an Alaska municipal corporation (“City”), and Horizon Lines of Alaska, LLC, a limited liability company organized under the laws of state of Delaware (“Lessee”).

W I T N E S S E T H

WHEREAS, the City owns property situated in U.S. Survey 2537B in the City of Kodiak, Alaska, commonly known as Pier II or Fishermen’s Terminal, on which is situated a building (the “Warehouse”), which includes warehouse and office space, and adjacent parking space.

WHEREAS, the City has entered into a Preferential Use Agreement and a Terminal Operation Contract with the Lessee, both dated December 1, 2014, which together with this Agreement provide for the Lessee’s use and occupancy of facilities at Port of Kodiak Piers II and III.

NOW, THEREFORE, in consideration of the premises and the terms, covenants, conditions, and agreements contained herein, and further stated in the Preferential Use Agreement and the Terminal Operation Contract, the parties agree as follows.

**1. Premises.** The City leases to the Lessee, and the Lessee takes and hires from the City, the Warehouse including offices, a site for a vehicle off-loading ramp, van rows 8 and 9, and parking adjacent to the Warehouse, but excluding the following: (i) all other city-owned property in the vicinity of Pier II, (ii) 162 sq. ft. of office space on the second floor, (iii) a 320 sq. ft. area in the warm room, (iv) two 60-ft parking areas on the north and south sides of the Warehouse , (v) one 120-ft parking area on the east end of the Warehouse , and (vi) a 60 ft. by 120 ft. (7,200 sq. ft.) section of the Warehouse for use as a port maintenance shop and other purposes as deemed appropriate by the City (the “Premises”), for storage, loading, and unloading of freight shipped or to be shipped across the City port facilities. The Premises is more particularly described in attached Exhibits A and B.

**2. Term.** (a) Initial Term. This Agreement shall continue in effect for a period of five (5) years commencing on December 1, 2014, and shall continue in full force and effect until midnight November 30, 2019, unless earlier terminated pursuant to the terms of Paragraph 12.

(b) This Agreement may be renewed for an additional term of five (5) years, by mutual agreement of the parties. At least ninety (90) days prior to the expiration of the term then in effect, the Lessee shall provide written notice to the City of its desire to renew or not renew this Agreement. The City will then reply within fifteen (15) days whether it wishes to renew the Agreement with the Lessee. If both parties agree, they shall then enter good faith negotiations to address any modifications to this Agreement requested by either party.

**3. Rental.** (a) Lessee agrees to pay rent for the Premises in monthly installments due on the first day of each month as shown in the table below.

<u>Year</u>	<u>Monthly Rent</u>
2014	\$8,966.70
2015	\$8,966.67
2016	\$9,235.67
2017	\$9,512.74
2018	\$9,798.12
2019	\$10,092.06

(b) Insurance Cost Escalation Clause. The monthly rent may be adjusted no more than once annually so as to require the Lessee to reimburse the City for the full amount by which the cost to the City of maintaining casualty insurance coverage for the Premises has increased over the cost of such insurance as of July 1, 2013, but only if such insurance premium costs incurred by the City have increased by five (5%) percent or more over the FY2013 cost.

**4. Use.** The Lessee shall use the Premises for the storage, loading, and unloading of freight shipped or to be shipped across the City port facilities. If on the date of execution of this Agreement there exists a labor organization which represents the majority of the individuals living in or around Kodiak, Alaska, who earn their livelihood as warehousemen, then the Lessee shall make reasonable good faith efforts to negotiate a collective bargaining agreement with said labor organization for the provision of warehousing labor services with respect to the Premises.

**5. Office Space and Mutual Access.** The City agrees that reasonable access to and from the Premises over the contiguous property shall be made available to the Lessee, except during cruise ship operations when access to the dock and east side of the Warehouse may be restricted to comply with marine transportation security requirements. Lessee agrees that the City shall have unrestricted access to the second-floor office, the warm room, the NOAA warehouse area, and the City's port maintenance shop, all located within the Warehouse .

**6. Repairs and Maintenance.** (a) All routine preventive maintenance and repairs costing fifteen thousand dollars (\$15,000) or less in connection with any single incident of damage, decay, or breakdown shall be accomplished at the sole cost and expense of the Lessee, including but not limited to repairs to the overhead door, exterior doors and windows, boiler and electrical systems, and excepting only repairs to the roof, exterior walls, foundation, water and sewer systems and fire suppression system, all of which shall be maintained by the City.

(b) Except for the foregoing items to be maintained by the City and items covered by insurance and force majeure, the cost of any repairs totaling more than fifteen thousand dollars (\$15,000) in connection with any single incident of damage, decay, or breakdown, shall be shared by the City and the Lessee, with the Lessee bearing the first fifteen thousand dollars (\$15,000) of such cost and the City bearing the remainder; provided, however, that in no event shall the Lessee be liable for more than fifty thousand dollars (\$50,000) in total out-of-pocket costs associated with routine preventive maintenance and repair during any one calendar year.

(c) The Lessee shall keep the Premises in a neat and broom-clean condition and contract with a janitorial service for the offices. The City retains the right to inspect the Premises during regular business hours and, should such inspection reveal a failure by the Lessee to adequately

maintain the Premises, the Lessee shall make such corrections as may be required within a reasonable time specified by the City.

(d) Snow removal on the Pier II dock shall be the responsibility of the City.

**7. Utilities.** The City shall pay all water and sewer charges. All electric, heating oil, garbage, telephone, and janitorial charges shall be borne by the Lessee.

**8. Insurance.**

(a) Lessee shall procure and maintain at its sole expense, and shall keep in full force and effect throughout the term of this Lease, the following policies of insurance:

(1) Commercial General Liability Insurance, \$5,000,000 combined single limit per occurrence for bodily injury and property damage claims arising from all operations related to this Lease. The general aggregate limit shall be \$5,000,000.

(2) Commercial Automobile Liability Insurance, \$5,000,000 combined single limit per accident for bodily injury and property damage.

(3) Worker's Compensation and Employers Liability. Worker's Compensation shall be statutory as required by the State of Alaska. Employers Liability shall be endorsed to the following minimum limits and contain USL&H coverage endorsement, if applicable: (i) bodily injury by accident--\$1,000,000 each accident; and (ii) bodily injury by disease--\$1,000,000 each employee, \$1,000,000 policy limit.

(4) Insurance in an amount of not less than \$50,000 for loss due to property lost or stolen while in the Lessee's custody or control.

(b) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

(1) Commercial General Liability and Automobile Liability

(i) City, its officers, officials, employees and volunteers are to be covered as additional insureds. The coverage shall contain no special limitation on the scope of protection afforded to City, its officers, officials, employees and volunteers.

(ii) Lessee's insurance coverage shall be primary insurance as respects City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of Lessee's insurance and shall not contribute to it.

(iii) Lessee's insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from work performed by Lessee or any sublessee for City.

(2) Worker's Compensation and Employer's Liability. Lessee's insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from work performed by Lessee or any sublessee for City.

(3) All Insurance. Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days' prior written notice has been given by the Insurer to City by certified mail, return receipt requested.



(c) Acceptability of Insurers. Insurance is to be placed with insurers qualified to do business in Alaska having a Best's rating of no less than A-: VII.

(d) Verification of Coverage. Lessee shall furnish City with approved certificates of insurance and with certified copies of all endorsements effecting coverage required by this Section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms which meet industry standard. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(e) The City shall provide fire insurance coverage for the Warehouse and Pier II structures.

**9. Alterations.** The Lessee shall make no alterations, additions, or improvements to the Premises without the prior written approval of the City. At the expiration of this Agreement or any renewal thereof, any such improvements shall become the property of the City.

**10. Fire or Other Casualty Loss.** In the event the Warehouse is damaged to such an extent as to render the same untenable in whole or in substantial part, or is destroyed, the City has the option to repair, rebuild, or not to rebuild. During such repair or reconstruction, the Lessee's rental shall be abated in the proportion that the damaged space bears to the whole of the leased space. Should the City elect not to rebuild, this Agreement shall be deemed terminated and any advanced but unaccrued rentals shall be repaid to the Lessee. In either event, the City shall furnish notice of its intent to the Lessee within thirty (30) days after the loss occurrence.

**11. Assignment.** The Lessee may not assign or sublease any rights or interests under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, except to an entity that is owned solely by or that is an affiliate of the Lessee, after thirty (30) days prior notice to the City. The Lessee shall include in such notice a statement of any legal requirement for confidentiality regarding the notice or the related transaction, with which the City shall comply. Should the City consent to an assignment the Lessee shall nevertheless remain liable for the performance of all of its obligations under this Agreement and the acceptance by the City directly from an assignee of any payments or other performance due under this Agreement shall not be construed as a waiver of The lessee's continuing liability. A change of control of the Lessee other than from the parent entity of the Lessee to an affiliate shall constitute an assignment for purposes of this provision.

**12. Default and Termination.** The City may declare a default hereunder and terminate this Agreement upon the occurrence of any of the following:

A. The failure of the Lessee to pay rent or any other sum of money due under this Agreement within 10 days after the due date.

B. The failure of the Lessee to perform or observe any covenant or condition of this Agreement, other than a default in the payment of money described in Section 12(A), which is not cured within 30 days after notice thereof from the City to Lessee, unless the default is of a kind that may be cured, but not within such 30-day period, in which case no event of default shall be declared so long as Lessee shall commence the curing of the default within such 30 day period and thereafter shall diligently and continuously prosecute the curing of same.

C. The commencement of a case under any chapter of the federal Bankruptcy Code by or against the Lessee, or the filing of a voluntary or involuntary petition proposing the adjudication of the Lessee as bankrupt or insolvent, or the reorganization of the Lessee, or an

arrangement by the Lessee with its creditors, unless the petition is filed or case commenced by a party other than the Lessee and is withdrawn or dismissed within ninety (90) days after the date of its filing.

D. The admission in writing by the Lessee of its inability to pay its debts when due; the appointment of a receiver or trustee for the business or property of the Lessee, unless such appointment shall be vacated within 10 days after its entry; the Lessee making an assignment for the benefit of creditors; or the voluntary or involuntary dissolution of the Lessee.

E. If the Lessee is in default under either the Preferential Use Agreement or the Terminal Operation Contract.

### **13. Indemnification.**

(a) The Lessee shall indemnify and hold harmless the City and its elected and appointed officials, employees, agents, and servants from any and all losses, expenses, damages, demands, and claims by any person in connection with or rising out of any injury (including death) to persons or in connection with damage to property or the natural environment, sustained in whole or in part as a result of the Lessee's occupancy and maintenance of the Premises, and/or exercise of its rights under this Agreement or the Lessee's breach of this Agreement. The Lessee shall defend all suits and actions brought against the City and any of its elected or appointed officials, employees, agents or servants from any such injury or damage and shall pay all damages, costs, and expenses, including attorney's fees incurred in connection with the suits or actions. The only exception to this indemnity provision shall be for claims resulting from the negligence, gross negligence, or willful misconduct of the City or its employees, agents, or servants, and for claims resulting from an act or omission of a third party, with respect to which the Lessee's obligations under this paragraph shall be limited to that portion of any such claim not attributable to the City and not attributable to a third party.

(b) This indemnity provision specifically includes all environmental damage that may result from the Lessee's operations under this Agreement and any penalties or fines which may be assessed in connection therewith.

(c) Notwithstanding any provision of this Agreement, Lessee shall not be liable for, and shall not be liable to indemnify, defend or hold the City harmless from, any condition on the Premises, whether known or unknown, which was in existence before July 1, 2004.

**14. Compliance with Federal, State, and Local Laws.** At all times during the lease term the Lessee shall conduct operations in accordance with all applicable federal, state, and local laws and ordinances.

**15. Severability.** If any part, term or provision of this Agreement is declared null or unenforceable by a court or other tribunal of competent jurisdiction, the validity and enforceability of the rest of this Agreement shall not be affected.

**16. Waivers.** No waiver by Lessee or the City of any covenant or condition of this Agreement shall be construed as a waiver of any other covenant or condition, nor shall the waiver of one breach be considered a waiver of any other breach.

**17. Modifications and Notices.** (a) No modification of this Agreement shall be effective unless agreed to by Lessee and the City in writing. No modification of one provision of this Agreement shall be considered a waiver, breach or cancellation of any other provision.

(b) All notices required to be given under this Agreement shall be effective on the date of

receipt and shall be mailed to the parties at the following addresses:

Horizon Lines of Alaska, LLC  
1717 Tidewater Road  
Anchorage, Alaska 99501  
Attn: \_\_\_\_\_

City Manager  
City of Kodiak  
710 Mill Bay Road  
Kodiak, Alaska 99615

Any notice or document delivered by facsimile transmission to a facsimile machine at which the recipient routinely receives such transmissions shall be effective upon the date of receipt of the complete and fully legible document (so long as the original is also mailed in accordance with this paragraph) unless the transmission occurred outside of the usual business hours of the recipient, in which event the document shall be deemed to have been received on the next business day.

**18. Alaska Law.** The parties agree that this Agreement was entered into in the State of Alaska, that Alaska law will govern its interpretation and application, and that venue of any suit or other action arising out of this Agreement shall be in Alaska.

**19. Binding on Successors and Assigns.** All provisions of this Agreement shall inure to the benefit of and be binding on the parties, their successors, and permitted assigns.

**20. Complete Agreement.** This Agreement, including Exhibits A and B hereto, and the Preferential Use Agreement and Terminal Operation Contract , both dated December 1, 2014, between the Lessee and the City, constitute the final agreement between the parties. They are the complete and exclusive expression of the parties’ agreement on the matters contained in this Agreement. All prior and contemporaneous oral and written negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by the aforementioned agreements.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date or dates indicated beneath the signature of their respective officers or agents.

City of Kodiak

Horizon Lines of Alaska, LLC

\_\_\_\_\_  
Acting City Manager                      Date

\_\_\_\_\_  
Kenneth Gill                                Date  
Director of Operations

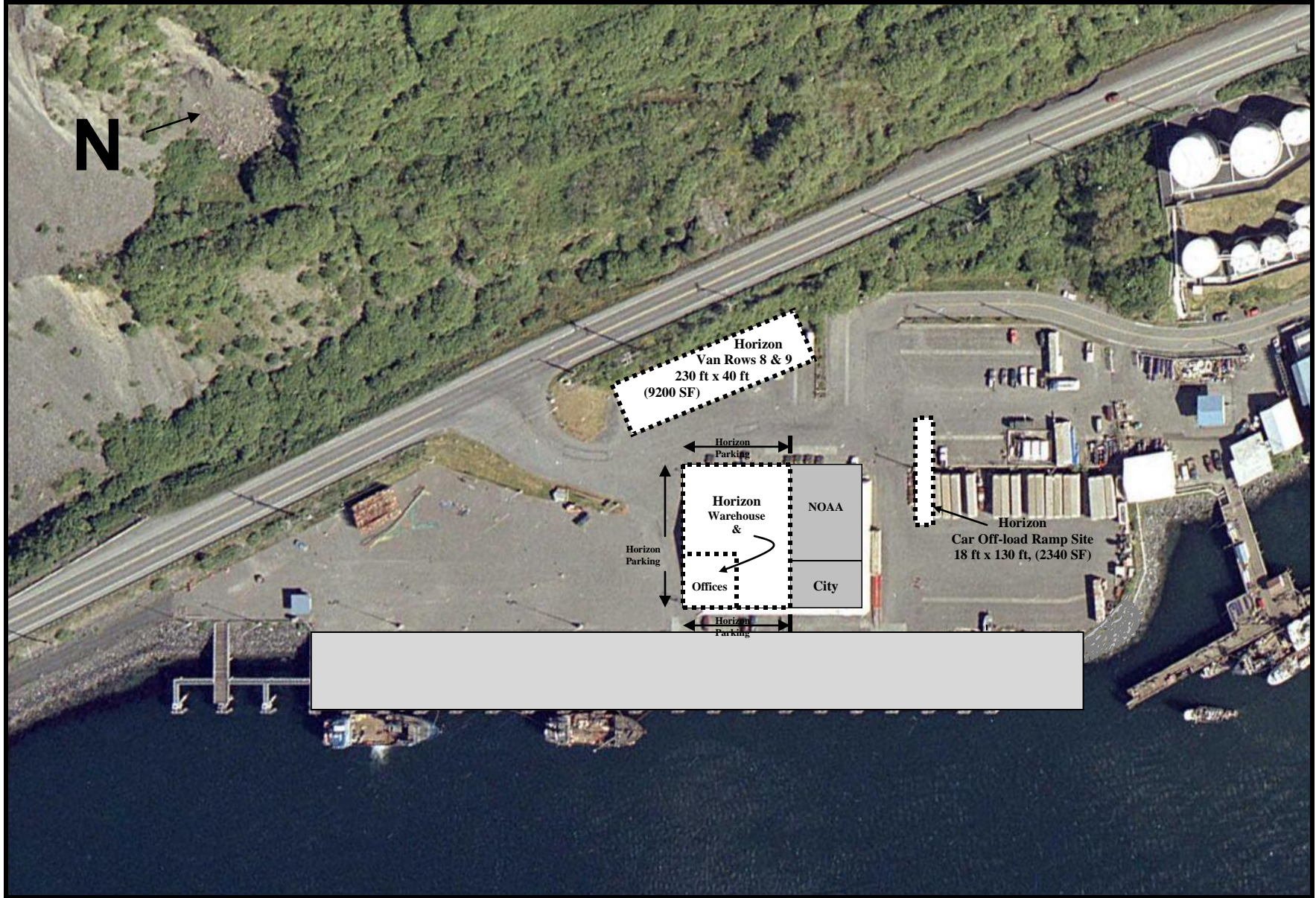
ATTEST:

ATTEST:

\_\_\_\_\_  
Debra L. Marlar                            Date  
City Clerk

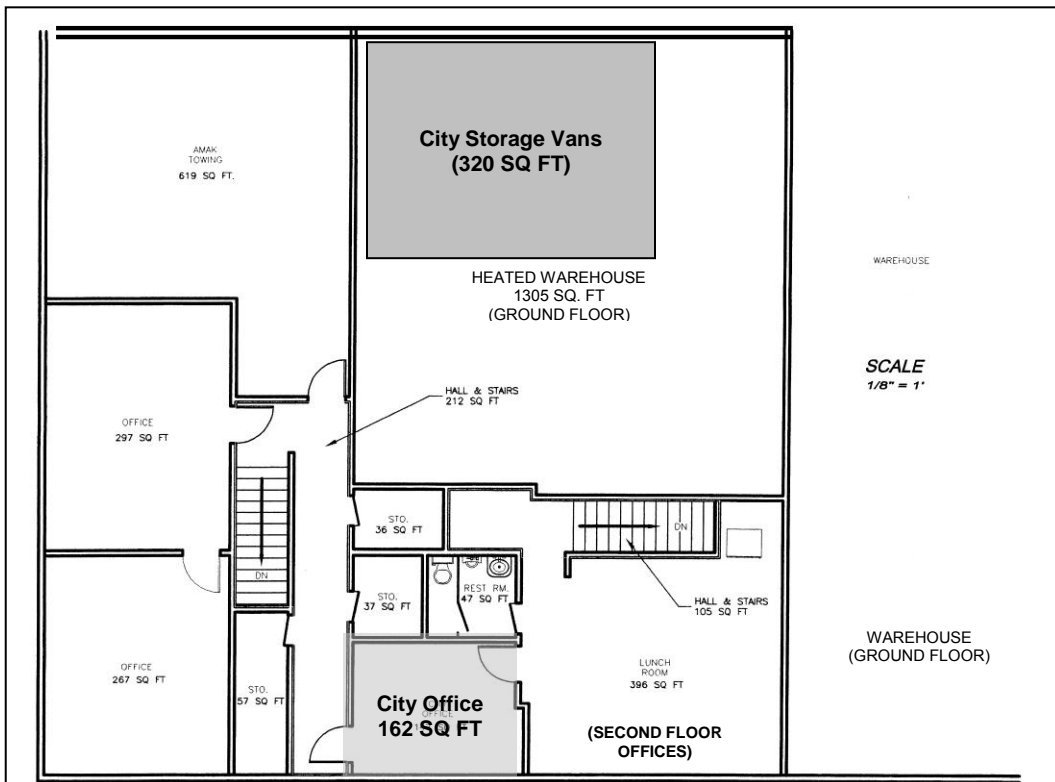
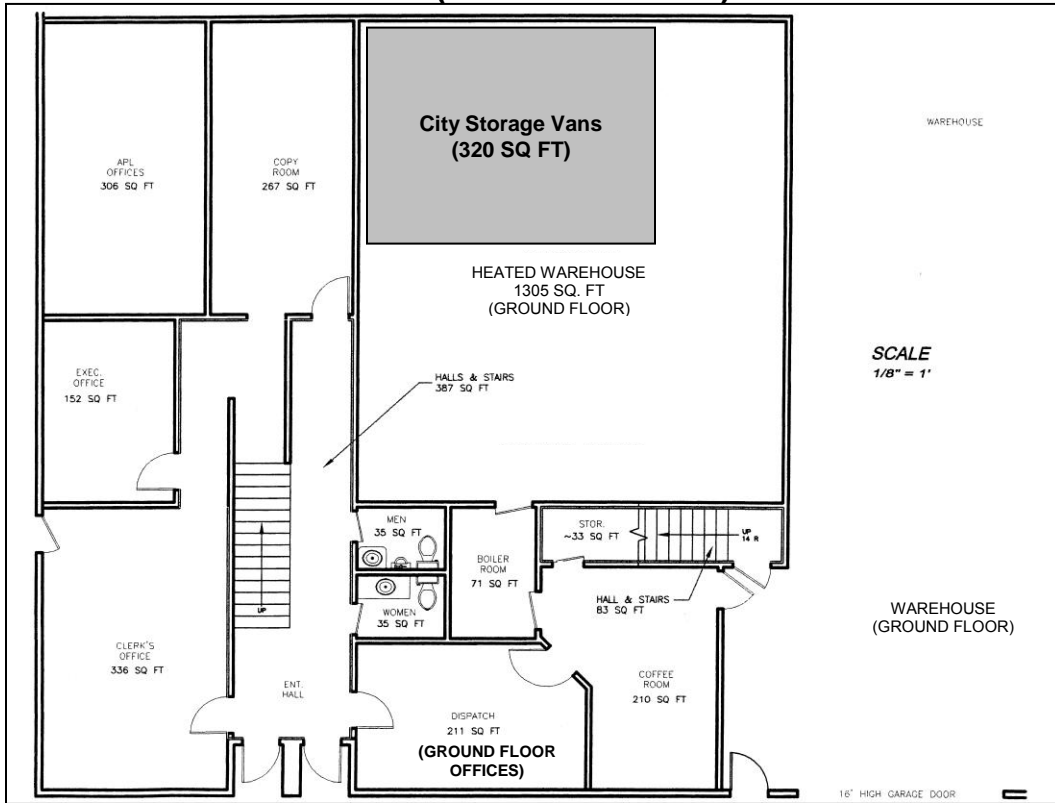
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Richard Kniazowski                    Date  
Terminal Manager

**Exhibit -A**  
**Pier 2 Warehouse Lease Agreement**  
(Warehouse, Van Rows, Car Off-load Ramp Site and parking)



# EXHIBIT- B

## PIER 2 WAREHOUSE LEASE AGREEMENT (Office Floor Plans)



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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Debra Marlar, City Clerk *ms w DM*

**Date:** September 25, 2014

**Agenda Item:** V. b. **Resolution No. 2014–34, Naming Election Workers for the October 7, 2014, Regular Municipal Election**

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**SUMMARY:** Resolution No. 2014–34 names election workers and canvass board members for the October 7, 2014, regular municipal election.

**PREVIOUS COUNCIL ACTION:** Annually, the Council adopts a resolution naming election workers for the regular municipal election.

**BACKGROUND:** Kodiak City Code specifies that prior to each election, the Council shall appoint judges and clerks for each City precinct and will also appoint a canvass board consisting of at least three persons.

This resolution names election workers and canvass board members for the October 7, 2014, regular municipal election and authorizes the City Clerk to appoint other persons, if necessary, to ensure that an adequate number of workers are present to conduct and canvass the election.

**CITY CLERK’S COMMENTS:** The City Clerk recommends the Council adopt Resolution No. 2014–34.

**ATTACHMENTS:**

Attachment A: Resolution No. 2014–34

**PROPOSED MOTION:**

Move to adopt Resolution No. 2014–34.

**CITY OF KODIAK  
RESOLUTION NUMBER 2014-34**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK NAMING  
ELECTION WORKERS FOR THE OCTOBER 7, 2014, REGULAR MUNICIPAL  
ELECTION**

WHEREAS, the City will conduct a regular municipal election on Tuesday, October 7, 2014; and

WHEREAS, the City Code requires that Judges and Clerks of the election be named.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Kodiak, Alaska, hereby appoints the following individuals to serve as election workers for the regular municipal election to be held within the City of Kodiak on Tuesday, October 7, 2014:

- Section 1.** The election workers for Precinct No. 820 (Kodiak No. 1), located at the Harbor-master Building, shall be Merle Powell, Chair and Sandy Peotter, Co-chair; and Margaret Bosworth, Yvonne Boudreau, Angelito Llave, Nenita Nicolas, and Gretchen Saupe as Judges.
- Section 2.** The election workers for Precinct No. 825 (Kodiak No. 2), located at the Teen Center, shall be Esther Waddell, Chair and Richard Waddell, Co-Chair; and Delia Aspiras, Cecelia Esparza, Agnes McCormick, Carol Wandersee, and Helen Williams as Judges.
- Section 3.** The Accuvote Board shall be the City and Borough Clerks and their staff.
- Section 4.** The Receiving Board shall be Cathy Cordry, Jeanne Miller, Susan Norton, and Marya Nault.
- Section 5.** The Canvass Board shall be Dick Ross, Michelle Shuravloff-Nelson, Charles E. Davidson and Pat Szabo.
- Section 6.** The City Clerk and Clerk’s staff shall have the authority to fill in where needed, and the City Clerk shall have the authority to appoint additional persons, as necessary, to ensure an adequate number of election workers are available to conduct and canvass the election.

CITY OF KODIAK

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

Adopted:

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniaziowski, City Manager 

**Thru:** Mark Kozak, Public Works Director 

**Date:** September 25, 2014

**Agenda Item:** V. c. **Authorization of Lease and Pipeline Easement Agreement With Andrew Airways**

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**SUMMARY:** This is the first renewal of a five year lease to Andrew Airways for the placement of their fueling system. Council approved the first lease in 2009, and it was due for renewal in April of 2014. The City Clerk received a letter from Andrew Airways dated August 1, 2014 requesting renewal. Staff recommends the Council approve the renewal of the lease to Andrew Airways for another five year period beginning August 1, 2014 through July 31, 2019.

**PREVIOUS COUNCIL ACTION:** The City Council approved the lease and pipe line easement agreement with Andrew Airways at the regular meeting on April 21, 2009.

**DISCUSSION:** In the summer of 2007, the City Council authorized the lease of property at Trident Basin to Andrew Airways for the construction of a building to support their air charter business. At that time, Andrew Airways noted their interest in installing a fuel facility at some time in the future to further support their business. The Council discussed options for a fuel facility with Andrew Airways representatives at the February 2009 work session. The consensus of the Council at the work session was that the public would best be served by a fixed (tank) fuel facility. Andrew Airways worked with City staff to locate their proposed fuel facility so that it meets both their needs and allows for continued development of the Trident Basin Float Plane facility. The proposed lease and easement areas have been surveyed and the survey is incorporated into the lease.

As mentioned above, when Andrew Airways applied for the original lease of the building site the owner noted an interest in a possible future fuel system to support his air charter business. In February 2009 Andrew Air met with the City Council at a work session and worked with staff and a surveyor to locate and identify a location to develop a fueling system for their aircraft. In April of 2009, Council approved the lease and easement and documents were signed on the beginning of May 2009. This fuel facility services only Andrew Air and does not sell fuel to other users.

This lease is a renewal using the same lease requirements as last time. The area of the tank location is calculated at 453.2 square feet and the easement from the tank to the top of the float ramp is 184.4 square feet for a combined leased area of 637.6 square feet.



Public Works Director Mark Kozak, who manages the City's airport facilities, recommends the same lease rate as the Seahawk Air lease that was renewed early this year. That rate is \$1.03 per square foot with annual 2.5 percent increases built into the lease. This rate is a downward adjustment from Andrew Airways' past rate to reflect equal rental rates for similar property uses as required by FAA grant assurances.

The existing lease expired at the end of April, 2014.

Year 1, \$656.73

Year 2, \$673.15 (102.5% of Year 1 rate)

Year 3, \$689.57 (105.0% of Year 1 rate)

Year 4, \$705.98 (107.5% of Year 1 rate)

Year 5, \$722.40 (110% of Year 1 rate)

**ALTERNATIVES:**

- 1) Approve the lease renewal to Andrew Airways as identified in the attached lease and drawing (Attachment A) which is staff's recommendation because development at the City's airports is supported by Council and will enhance revenues for the airports.
- 2) Do not authorize the lease. This is not recommended because the goal of the Trident Basin Float Plane Facility is to support future growth of the facility.

**FINANCIAL IMPLICATIONS:** This lease supports the objectives of the Trident Basin Float Plane Facility to support additional rental revenues and growth. The downward adjustment in square foot rental rate will have a minor effect on total overall revenue.

**LEGAL:** The lease has been reviewed by the City's Attorney.

**STAFF RECOMMENDATION:** Staff recommends Council approve the renewal of the Trident Basin lease for Andrew Airways fuel facility and pipeline easement for a period of five years as reflected in the attached lease.

**CITY MANAGER'S COMMENTS:** I support the renewal of this lease as recommended by Mark Kozak. Andrew Airways is a good tenant and contributes rents to the Trident Basin Enterprise Fund in keeping with FAA requirements.

**ATTACHMENTS:**

Attachment A: Lease agreement and survey of lease and easement area

Attachment B: Andrew Airways letter requesting renewal of the lease

**PROPOSED MOTION:**

Move to approve Lease and Pipeline Easement Agreement No. 217715 with Andrew Airways for a term of five years from August 1, 2014, through July 31, 2019, and authorize the City Manager to execute the necessary documents.

**LEASE AND FUEL LINE EASEMENT AGREEMENT NO. 217715  
TRIDENT BASIN FUEL FACILITY  
ANDREW AIRWAYS, INC.**

THIS LEASE AND EASEMENT AGREEMENT, made this 1st day of August 2014, by and between the CITY OF KODIAK, an Alaska municipal corporation, herein referred to as "Lessor," and Andrew Airways an Alaska corporation, herein referred to as "Lessee," provides as follows:

**1. Premises.** Upon the terms and conditions herein set forth and subject to the prompt payment and performance by Lessee of each and every sum and other obligation hereinafter referred to, the Lessor does hereby:

A. Lease, let, and demise to the Lessee, and the Lessee does hereby lease from the Lessor that certain property located within the Kodiak Recording District, State of Alaska, containing approximately 453.2 square feet as described on Attachments "A."

B. Grant to Lessee an easement for the location and maintenance of a fuel line for an aviation fuel delivery system, over, across, on, and under that portion of the premises as described on Attachment "A" containing approximately 184.4 square feet for ingress and egress to and from the Fuel Distribution Facility; provided, however, that in no event shall the rights granted to the Lessee pursuant to this easement be construed or exercised so as to interfere with the access to or use of the Trident Basin Float Plane Dock by other parties.

These leased premises and pipeline easement are hereinafter referred to as the "Site."

**2. Term.** This Lease shall continue in effect for a period of five years from August 1, 2014, through July 31, 2019, provided, however, that either party shall have the right to cancel this Lease upon thirty (30) days written notice in advance of the date of such cancellation, such notice to be by certified mail sent to the usual mailing address of the party to be notified.

**3. Rental.** Lessee agrees to pay as and for rent the sum of \$656.73 annually in monthly installments which fall due on the first of each calendar month of the Lease term and according to the following schedule for the remaining four years.

<u>YEAR</u>	<u>RENTAL</u>
2	102.5% of Year 1
3	105.0% of Year 1
4	107.5% of Year 1
5	110.0% of Year 1

If a monthly installment is not paid by the fifth of the month in which it becomes due, a penalty of \$30 will be added to the rental amount; and, in addition, simple interest shall accrue and be added to the rental amount at the rate of 12% per annum from the due date until paid.

**4. Conditions of Lease.** The premises shall be used solely as an aviation fuel distribution facility.

**5. Parties Interested Herein.** Nothing in this Lease, express or implied, is intended or shall be construed to give to any person, other than Lessor, any right, remedy or claim under or by reason of this Lease.

**6. Improvements.** Lessor shall have the right to make additions, alterations, or improvements to the Site which will not impede Lessee's access to or use of the Site. Lessee shall have the right to erect or construct a suitable building and/or associated structure(s) necessary for the distribution of aviation fuel. Any improvements constructed by Lessee shall be consistent with the limited use of the Site authorized by this Lease and shall be constructed at Lessee's expense. Upon termination of this Lease, such improvements shall become the property of Lessor or, at Lessee's option, removed by Lessee at its sole expense.

**7. Maintenance.** Except as otherwise specifically provided herein, the Lessee shall, at all times and at its sole expense, keep and maintain the premises in good repair, and in neat, orderly, and slightly condition. Lessee shall not cause or permit any litter, debris, or refuse to be accumulated or stored upon the premises and shall promptly remove all such materials without cost to Lessor.

**8. Insurance/Indemnification.** The Lessee shall not commence with use of the city's land until the Lessee has obtained the insurance required under this contract. All coverage shall be with insurance carriers licensed and admitted to do business in the State of Alaska. All coverage shall be with carriers acceptable to the City of Kodiak. The required lines and limits of insurance are as follows:

A. General Liability Insurance: The Lessee shall procure and maintain during the life of this agreement, general liability insurance on an "occurrence basis" with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit, personal injury, bodily injury and property damage.

B. Motor Vehicle Liability Insurance: The Lessee shall procure and maintain during the life of this agreement, motor vehicle liability insurance, including all applicable no fault coverages, with limits of liability of not less than \$1,000,000 per occurrence combined single limit.

C. Workers Compensation Insurance: The Lessee shall procure and maintain during the life of this contract, workers compensation insurance, including employer's liability coverage, in accordance with all applicable statutes of the State of Alaska.

D. Pollution Liability Insurance: The Lessee shall procure and maintain during the life of this contract, pollution liability insurance, on an "occurrence basis" with limits of liability not less than \$1,000,000 per occurrence.

E. Additional Insured: All insurance policies, as described above, shall include an endorsement stating the following shall be Additional Insured: The City of Kodiak, its elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof.

This coverage shall be primary to the Additional Insured, and not contributing with any other insurance or similar protection available to the Additional Insured, whether the other available coverage be primary, contributing or excess.

Cancellation Notice: All insurance policies, as described above, shall include an endorsement stating the following: "Sixty (60) days advance written notice of cancellation, non-renewal, reduction and/or material change shall be sent to: City of Kodiak.

**9. Environmental.** A. For purposes of this section:

i. Environmental Requirement shall mean any law, regulation, or legal requirement relating to health, safety, or the environment, now in effect or hereinafter enacted, including but not limited to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), the Toxic Substances Control Act (TSCA), the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), the Resource Conservation and Recovery Act

(RCRA), the Clean Air Act (CAA) and the Clean Water Act (CWA), the Occupational Safety and Health Act (OSHA) and all similar state and local laws, rules, regulations, and guidance, now in existence or hereinafter enacted, as each such law, rule, or regulation may be amended from time to time.

ii. Environmental Hazard shall mean Hazardous Materials (as defined hereinafter), or the storage, handling, production, disposal, treatment, or release thereof.

iii. Hazardous Material shall mean

(a) any hazardous waste, any extremely hazardous waste, or any restricted hazardous waste, or words of similar import, as defined in the Resource Conservation and Recovery Act (42 USC §6901 et seq.)

(b) any hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act (42 USC §9601 et seq.)

(c) any toxic substances as defined in the Toxic Substances Control Act (15 USC §2601 et seq.)

(d) any pollutant as defined in the Clean Water Act (33 USC §1251 et seq.)

(e) gasoline, petroleum, or other hydrocarbon products or by-products

(f) asbestos

(g) any other materials, substances, or wastes subject to environmental regulation under any applicable federal, state, or local law, regulation, or ordinance now or hereafter in effect

iv. Environmental Liabilities shall mean any liability, penalties, fines, forfeitures, demands, damages, losses, claims, causes of action, suits, judgements, and costs and expenses incidental thereto (including cost of defense, settlement, reasonable attorneys' fees, reasonable consultant fees, and reasonable expert fees), arising from or based on (i) environmental contamination or the threat of environmental contamination or (ii) noncompliance, or violation of, any Environmental Requirement and shall include, but not be limited to, liability arising from

(a) any governmental action, order, directive, administrative proceeding, or ruling

(b) personal or bodily injuries (including death) or damages to any property (including loss of use) or natural resources

(c) clean-up, remediation, investigation, monitoring, or other response action

v. Environmental Release shall mean any release, spill, leak, discharge, injection, disposal, or emission of any Hazardous materials into the environment.

B. At all times during the term of the Lease, Lessee shall conduct its activities at the Premises, and shall ensure that any invitee of Lessee conducts its activities at the Premises in strict compliance with all applicable Environmental Requirements.

C. Notwithstanding any other provision of this Lease, Lessee agrees to indemnify and hold harmless Lessor, Lessor's successors and assigns, and Lessor's present and future officers, directors, employees, and agents, (collectively "Lessor Indemnitees") from and against any and all Environmental Liabilities which Lessor or any or all of the Lessor Indemnitees may hereafter suffer, air, be responsible for, or disburse as a result of any Environmental Hazard at the Premises to the extent caused by or attributable to Lessee or Lessee's activities, including any Environmental Hazard at the Premises to the extent caused by or attributable to any invitee of Lessee or by the activities of any invitee of Lessee.

D. The provisions of this section shall survive termination of this Lease.

**10. Utility Charges and Taxes.** All utility charges shall be borne and paid for by Lessee, together with all personal or real property taxes or assessments that may be levied against the Lessee by reasons of its occupancy of the premises or its rights hereunder.

**11. Operation of Equipment.** In installing, operating, or maintaining any equipment on the Site and in its general management of the Site, the Lessee will act in accordance with applicable laws and regulations and will not do, attempt, or permit any acts in connection with this Lease which could be construed as a violation of law.

**12. Condition of Site.** The Lessee takes the Site in its present condition and the Lessor shall have no responsibility for its condition, or for any damage suffered by the Lessee or any other person due to such conditions.

**13. Assignment and Subleasing.** Lessee may not sublease the premises, either in whole or in any portion, without first obtaining the approval of the City Council in writing. Lessee may not assign, mortgage, pledge, or otherwise encumber all or any portion of this Lease or the Lease premises without first obtaining the approval of the City Council. Any assignment, pledge, or encumbrance approved by the Council shall be subject to all terms and provisions of this Lease. Any assignment, pledge, or encumbrance executed without the proper approval of the Council shall be void and of no force and effect.

**14. Default and Re-Entry.** If Lessee fails to cure any default of the conditions of this Lease within thirty (30) days after written notice thereof by Lessor, or in the event insolvency proceedings should be instituted by or against Lessee, then Lessor may terminate the Lease as of such date and re-enter the premises and remove all property therefrom and Lessee shall remain liable for the payment of rental to the extent provided by law.

**19. Applicable Law.** Lessee shall, at all times, in its use and occupancy of the premises and in the conduct of its operations thereon, comply with all applicable federal, state, and local laws, ordinances, and regulations.

IN WITNESS WHEREOF, the parties executed this instrument the day and month first above written.

CITY OF KODIAK

LESSEE

\_\_\_\_\_  
Aimée Kniaziowski, City Manager  
710 Mill Bay Road  
Kodiak, Alaska 99615

\_\_\_\_\_  
Dean Andrew, President  
Andrew Airways, Inc.  
P.O. Box 1037  
Kodiak, Alaska 99615

Attest:

Witness:

\_\_\_\_\_  
Debra L. Marlar, City Clerk

\_\_\_\_\_

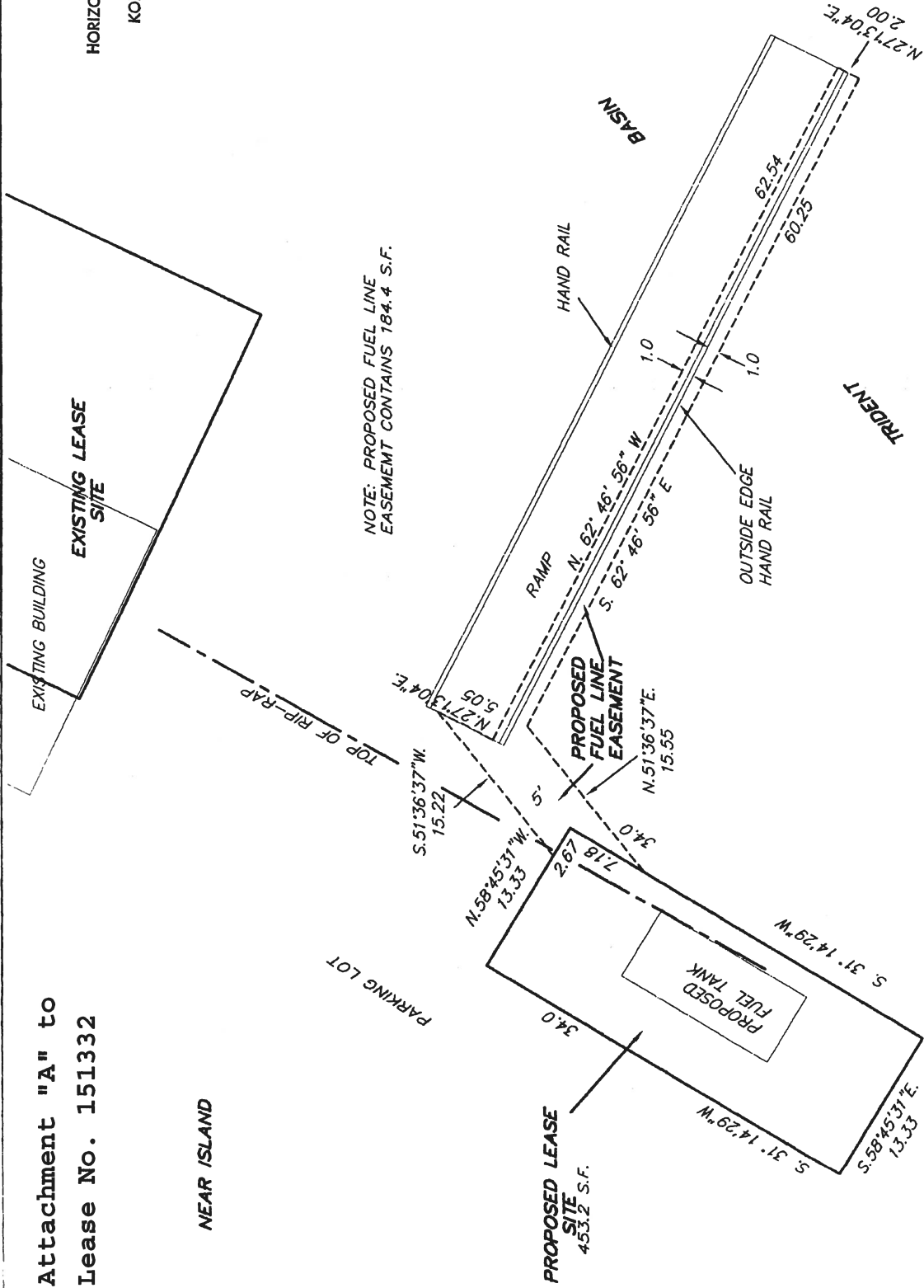
Date \_\_\_\_\_

Date \_\_\_\_\_

**Attachment "A" to  
Lease No. 151332**

**NEAR ISLAND**

**HORIZON LAND SURVEYING INC.  
BOX 1945  
KODIAK, ALASKA 99615  
(907) 486-6506**



NOTE: PROPOSED FUEL LINE  
EASEMENT CONTAINS 184.4 S.F.



FLOAT AND WHEEL PLANE CHARTERS

Attachment: B

August 1, 2014



Office of the City Clerk  
710 Mill Bay Road  
Room 217  
Kodiak, Alaska 99615

RE: Trident Basin Fuel Facility Lease

Dear Debra:

Please accept this letter as written authorization to renew the lease for the Trident Basin Fuel Facility and fuel line easement agreement.

Please let us know if you need anything further for this process.

Thank you in advance for your time.

Sincerely,

Dean Andrew  
Owner/President

DA

cc: Lease File





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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniazowski, City Manager and Debra Marlar, City Clerk *AS for DM*

**Date:** September 25, 2014

**Agenda Item:** V. d. Authorization to Transfer the Alcoholic Beverage License From Safeway Inc. to Albertson's Holding LLC

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**SUMMARY:** Safeway Inc. filed an application for a transfer of ownership with the State of Alaska Alcoholic Beverage Control (ABC) Board to Alberson's Holding LLC. State regulations require the ABC Board to forward the applications to the City Council for the option to protest the approval of the applications for the transfer of the alcoholic beverage licenses.

**DISCUSSION:** State regulations outlined in AS 04.11.520 and AS 04.11.480 require that an application for transfer of ownership license designation must be sent to a governing body having jurisdiction over the area in which the licensed premises exists; therefore, the ABC Board forwarded the application to the City for Council review. City staff was consulted and found no issues with nonpayment of taxes, criminal activity, fire code violations or any other reason for the City to file a protest of the transfer of the alcoholic beverage license applications.

**ALTERNATIVES:** Council may voice no objection to transfer the alcoholic beverage license from Safeway Inc. to Albertson's Holding Inc. or Council may protest the application pursuant to AS 04.11.480 by furnishing the board and applicant with clear and concise written reasons for the protest.

**LEGAL:** State regulations defined under AS 04.11.520 and AS 04.11.480 require that a local governing body receive notification of the transfer of license and they be offered the option to protest the approval of applications.

**ATTACHMENTS:**

Attachment A: Package Store License #2509 DBA Safeway Liquor Store #1090, Transfer of Ownership letter and application, dated September 12, 2014

Attachment B: Package Store License #174 DBA Safeway Liquor Store #2522, Transfer of Ownership letter and application, dated September 12, 2014

**PROPOSED MOTION:**

Move to voice non-objection to the Alcoholic Beverage Control Board regarding transfer of Package Store License Numbers 174 and 2509 from Safeway Inc. to Albertson's Holding LLC



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Department of Commerce, Community,  
and Economic Development

ALCOHOLIC BEVERAGE CONTROL BOARD

5848 E. Tudor Road  
Anchorage, Alaska 99507  
Main: 907.269.0350  
TDD: 907.465.5437  
Fax: 907.272.9412

September 12, 2014

Attachment A

City of Kodiak  
Attn: Debra Marlar, City Clerk  
VIA Email: [clerk@city.kodiak.ak.us](mailto:clerk@city.kodiak.ak.us)  
Cc: [njavier@kodiakak.us](mailto:njavier@kodiakak.us)

**Safeway Inc. – Package Store License #2509 DBA Safeway Liquor Store #1090**

- New Application       Transfer of Ownership (stock)       Transfer of Location  
 Restaurant Designation Permit       DBA Name Change

We have received an application for the above listed licenses (see attached application documents) within your jurisdiction. This is the notice as required under AS 04.11.520. Additional information concerning filing a "protest" by a local governing body under AS 04.11.480 is included in this letter.

A local governing body as defined under AS 04.21.080(11) may protest the approval of an application(s) pursuant to AS 04.11.480 by furnishing the board **and** the applicant with a clear and concise written statement of reasons in support of a protest within 60 days of receipt of this notice. If a protest is filed, the board will not approve the application unless it finds that the protest is "arbitrary, capricious and unreasonable". Instead, in accordance with AS 04.11.510(b), the board will notify the applicant that the application is denied for reasons stated in the protest. The applicant is entitled to an informal conference with either the director or the board and, if not satisfied by the informal conference, is entitled to a formal hearing in accordance with AS 44.62.330-44.62-630. **IF THE APPLICANT REQUESTS A HEARING, THE LOCAL GOVERNING BODY MUST ASSIST IN OR UNDERTAKE THE DEFENSE OF ITS PROTEST.**

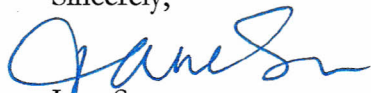
Under AS 04.11.420(a), the board may not issue a license or permit for premises in a municipality where a zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages, unless a variance of the regulation or ordinance has been approved. Under AS 04.11.420(b) municipalities must inform the board of zoning regulations or ordinances which prohibit the sale or consumption of alcoholic beverages. If a municipal zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages at the proposed premises and no variance of the regulation or ordinance has been approved, please notify us and provide a certified copy of the regulation or ordinance if you have not previously done so.

Protest under AS 04.11.480 and the prohibition of sale or consumption of alcoholic beverages as required by zoning regulation or ordinance under AS 04.11.420(a) are two separate and distinct subjects. Please bear that in mind in responding to this notice.

If you wish to protest the application referenced above, please do so in the prescribed manner and within the prescribed time. Please show proof of service upon the applicant. For additional information please refer to 3 AAC 304.145, Local Governing Body Protest.

**Note:** Applications applied for under AS 04.11.400(g), 3 AAC 304.335(a)(3), AS 04.11.090(e), and 3 AAC 304.660(e) must be approved by the governing body.

Sincerely,



Jane Sawyer  
Business Registration Examiner  
[Jane.sawyer@alaska.gov](mailto:Jane.sawyer@alaska.gov)  
907-269-0359

State of Alaska  
Alcoholic Beverage Control Board

Date of Notice: September 12, 2014

Application Type: **NEW** \_\_\_\_\_

**TRANSFER**  
 Ownership (stock)  
 \_\_\_\_\_ Location  
 \_\_\_\_\_ Name Change

Governing Body: **City of Kodiak**  
 Community Councils: None

License #: 2509  
 License Type: Package Store  
 D.B.A.: Safeway Liquor Store #1090  
 Licensee/Applicant: Safeway Inc.  
 Physical Location: 2685 Mill Bay Road, Kodiak  
 Mailing Address: PO Box 29096 MS 6531, Phoenix, AZ 85038-9096  
 Telephone #: 623-869-3573  
 EIN: 94-3019135

Corp/LLC Agent:	Address	Phone	Date and State of Incorporation	Good standing?
United States Corporation Company	9360 Glacier Hwy. Ste. 202 Juneau, AK 99801	800-927-9800	11/07/1986	Yes

***Please note: the Members/Officers/Directors/Shareholders (principals) listed below are the principal members. There may be additional members that we are not aware of because they are not primary members. We have listed all principal members and those who hold at least 10% shares.***

Member/Officer/Director:	DOB	Address	Phone	Title/Shares (%)
Robert L. Edwards President	08/11/1955	3954 Pontina Court Pleasanton, CA 94566	925-467-3276	0
Robert A. Gordon Sr. VP	09/14/1951	24 Robert Road Orinda, CA 94563	925-467-3276	0
Bradley S. Fox VP	12/31/1955	315 Lowell Lane West Lafayette, CA	925-467-3276	0
Albertson's Holdings LLC Shareholder	N/A	250 Parkcenter Blvd. W. Plaza Boise, ID 83706	N/A	100

If **transfer** application, current license information:

License #: 2509  
 Current D.B.A.: Safeway Store #1090  
 Current Licensee: Safeway Inc.  
 Current Location: 2685 Mill Bay Road, Kodiak

Additional comments:

A local governing body as defined under AS 04.21.080(11) may protest the approval of an application(s) pursuant to AS 04.11.480 by furnishing the board **and** the applicant with a clear and concise written statement of reasons in support of a protest within 60 days of receipt of this notice. If a protest is filed, the board will not approve the application unless it finds that the protest is “arbitrary, capricious and unreasonable”. Instead, in accordance with AS 04.11.510(b), the board will notify the applicant that the application is denied for reasons stated in the protest. The applicant is entitled to an informal conference with either the director or the board and, if not satisfied by the informal conference, is entitled to a formal hearing in accordance with AS 44.62.330-44.62-630. **IF THE APPLICANT REQUESTS A HEARING, THE LOCAL GOVERNING BODY MUST ASSIST IN OR UNDERTAKE THE DEFENSE OF ITS PROTEST.**

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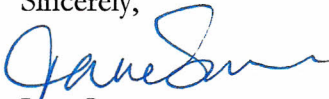
Protest under AS 04.11.480 and the prohibition of sale or consumption of alcoholic beverages as required by zoning regulation or ordinance under AS 04.11.420(a) are two separate and distinct subjects. Please bear that in mind in responding to this notice.

AS 04.21.010(d), if applicable, requires the municipality to provide written notice to the appropriate community council(s).

If you wish to protest the application referenced above, please do so in the prescribed manner and within the prescribed time. Please show proof of service upon the applicant. For additional information please refer to 3 AAC 304.145, Local Governing Body Protest.

**Note:** Applications applied for under AS 04.11.400(g), 3 AAC 304.335(a)(3), AS 04.11.090(e), and 3 AAC 304.660(e) must be approved by the governing body.

Sincerely,



Jane Sawyer  
Business Registration Examiner  
[Jane.sawyer@alaska.gov](mailto:Jane.sawyer@alaska.gov)  
907-269-0359

# Transfer Liquor License

License is:  Full Year OR  Seasonal List Dates of Operation: \_\_\_\_\_

SECTION A - LICENSE INFORMATION			FEEES
License Year: 2014-2015	License Type: <u>Package Store</u>	Statute Reference	Filing Fee: \$100.00
License #: <u>2509</u>		Sec. 04.11.150	Rest. Desig. Permit Fee: (\$50.00) \$
Local Governing Body: (City, Borough or Unorganized) <u>Kodiak Island Borough</u>	Community Council Name(s) & Mailing Address: <u>City of Kodiak</u>		Fingerprint: \$ (\$51.50 per person)
Name of Applicant (Corp/LLC/LP/LLP/Individual/Partnership): <u>Safeway Inc.</u>	Doing Business As (Business Name): <u>Safeway Liquor Store #1090</u>	Business Telephone Number: <u>(623) 869-3573</u>	TOTAL \$100.00
Mailing Address: <u>PO Box 29096 MS 6531</u>	Street Address or Location of Premises: <u>2685 Mill Bay Road Kodiak, AK</u>	Fax Number: <u>(623) 869-1399</u>	Email Address: <u>Nasc.tax@safeway.com</u>
City, State, Zip: <u>Phoenix, AZ 85038-9096</u>			
Is any shareholder related to the current owner? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
If "yes" please state the relationship _____			
SECTION B - TRANSFER INFORMATION			
<input checked="" type="checkbox"/> Regular Transfer		Name and Mailing Address of <i>CURRENT</i> Licensee: <u>Safeway Inc.</u>	
<input type="checkbox"/> Transfer with security interest: Any instrument executed under AS 04.11.670 for purposes of applying AS 04.11.360(4)(b) in a later involuntary transfer, must be filed with this Application. Real or personal property conveyed with this transfer must be described. Provide security interest documents.		Business Name (dba) <i>BEFORE</i> transfer: <u>Safeway Store #1090</u>	
<input type="checkbox"/> Involuntary Transfer. Attach documents which evidence default under AS 04.11.670.		Street Address or Location <i>BEFORE</i> transfer: <u>2685 Mill Bay Road Kodiak, AK</u>	
SECTION C - PREMISES TO BE LICENSED			
Distance to closest school grounds: <u>.1 Miles</u>	<i>Distance measured under:</i> <input checked="" type="checkbox"/> AS 04.11.410 OR <input type="checkbox"/> Local ordinance No.	<input type="checkbox"/> Premises is GREATER than 50 miles from the boundaries of an incorporated city, borough, or unified municipality.	
Distance to closest church: <u>.2 Miles</u>	<i>Distance measured under:</i> <input checked="" type="checkbox"/> AS 04.11.410 OR <input type="checkbox"/> Local ordinance No.	<input type="checkbox"/> Premises is LESS than 50 miles from the boundaries of an incorporated city, borough, or unified municipality.	
Premises to be licensed is: <input type="checkbox"/> Proposed building <input checked="" type="checkbox"/> Existing facility <input type="checkbox"/> New building		<input type="checkbox"/> Plans submitted to Fire Marshall (required for new & proposed buildings) <input checked="" type="checkbox"/> Diagram of premises attached	

## Transfer Liquor License

### SECTION D – LICENSEE INFORMATION

1. Does any individual, corporate officer, director, limited liability organization member, manager or partner named in this application have any direct or indirect interest in any other alcoholic beverage business licensed in Alaska or any other state?

Yes  No If Yes, complete the following. Attach additional sheets if necessary.

Name	Name of Business	Type of License	Business Street Address	State
See Attached				

2. Has any individual, corporate officer, director, limited liability organization member, manager or partner named in this application been convicted of a felony, a violation of AS 04, or been convicted as a licensee or manager of licensed premises in another state of the liquor laws of that state?

Yes  No If Yes, attach written explanation.

### SECTION E – OWNERSHIP INFORMATION - CORPORATION

*Corporations, LLCs, LLPs and LPs must be registered with the Dept. of Community and Economic Development.*

Name of Entity (Corporation/LLC/LLP/LP) (or N/A if an Individual ownership): <b>Safeway Inc.</b>		Telephone Number: <b>(623) 869-3573</b>	Fax Number: <b>(623) 869-1399</b>
Corporate Mailing Address: <b>PO Box 29096 MS 6531</b>	City: <b>Phoenix</b>	State: <b>AZ</b>	Zip Code: <b>85038-9096</b>
Name, Mailing Address and Telephone Number of Registered Agent <b>United States Corporation Company 9360 Glacier Hwy., Ste. 202, Juneau, AK 99801 (800) 927-9800</b>		Date of Incorporation OR Certification with DCED: <b>11/7/1986</b>	State of Incorporation: <b>Delaware</b>
Is the Entity in "Good Standing" with the Alaska Division of Corporations? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, attach written explanation. Your entity <i>must</i> be in compliance with Title 10 of the Alaska Statutes to be a valid liquor licensee.			

Entity Members (Must include President, Secretary, Treasurer, Vice-President, Manager and Shareholder/Member with at least 10%)					
Name	Title	%	Home Address & Telephone Number	Work Telephone Number	Date of Birth
Robert L. Edwards	President	0	3954 Pontina Court, Pleasanton, CA 94566	(925) 467-3276	8/11/1955
Robert A. Gordon	Secretary/ <i>Sr.</i> VP	0	24 Robert Road, Orinda, CA 94563	(925) 467-3276	9/14/1951
Bradley S. Fox	Treasurer/ VP	0	315 Lowell Lane West, Lafayette, CA 94549	(925) 467-3276	12/31/1955
Albertson's Holdings LLC	Shareholder	100	250 Parkcenter Blvd., West Plaza Boise, ID 83706	N/A	N/A
<b>NOTE: If you need additional space, please attach a separate sheet.</b>					



## Transfer Liquor License

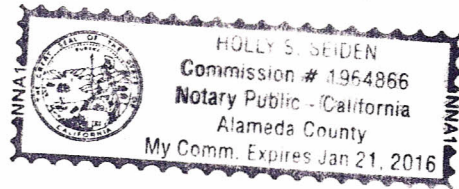
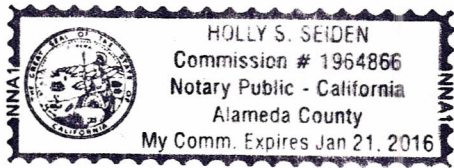
**SECTION F – OWNERSHIP INFORMATION – SOLE PROPRIETORSHIP (INDIVIDUAL OWNER & SPOUSE)**

Individual Licensees/Affiliates (The ABC Board defines an "Affiliate" as the spouse or significant other of a licensee. Each Affiliate must be listed.)			
Name: Address:	Applicant <input type="checkbox"/> Affiliate <input type="checkbox"/>	Name: Address:	Applicant <input type="checkbox"/> Affiliate <input type="checkbox"/>
Home Phone: Work Phone:	Date of Birth:	Home Phone: Work Phone:	Date of Birth:
Name: Address:	Applicant <input type="checkbox"/> Affiliate <input type="checkbox"/>	Name: Address:	Applicant <input type="checkbox"/> Affiliate <input type="checkbox"/>
Home Phone: Work Phone:	Date of Birth:	Home Phone: Work Phone:	Date of Birth:

**Declaration**

- I declare under penalty of perjury that I have examined this application, including the accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct and complete, and this application is not in violation of any security interest or other contracted obligations.
- I hereby certify that there have been no changes in officers or stockholders that have not been reported to the Alcoholic Beverage Control Board. The undersigned certifies on behalf of the organized entity, it is understood that a misrepresentation of fact is cause for rejection of this application or revocation of any license issued.
- I further certify that I have read and am familiar with Title 4 of the Alaska statutes and its regulations, and that in accordance with AS 04.11.450, no person other than the licensee(s) has any direct or indirect financial interest in the licensed business.
- I agree to provide all information required by the Alcoholic Beverage Control Board in support of this application.

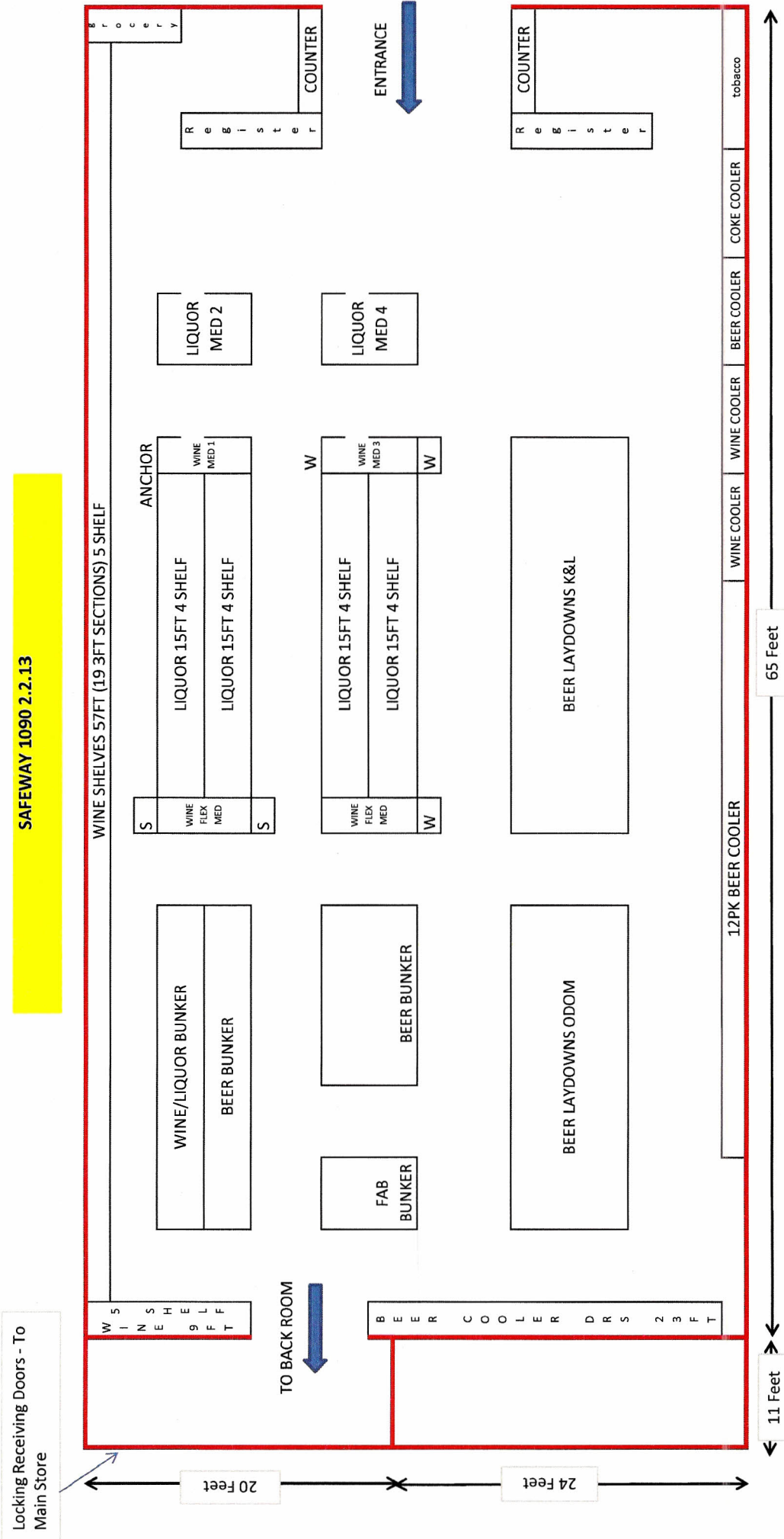
Signature of Current Licensee(s)	Signature of Transferee(s)
Signature <i>Robert Gordon</i>	Signature <i>Robert Gordon</i>
Signature Safeway Inc. <i>Robert GORDON</i>	Signature Safeway Inc. <i>Robert GORDON</i>
Name & Title (Please Print) <i>Secretary + Sr. Vice President</i>	Name & Title (Please Print) <i>Secretary + Sr. Vice President</i>
By: <i>Secretary + Sr. Vice President</i>	By: <i>Secretary + Sr. Vice President</i>
Subscribed and sworn to before me this <i>29</i> day of <i>AUGUST</i> <i>2014</i>	Subscribed and sworn to before me this <i>29</i> day of <i>AUGUST</i> <i>2014</i>
Notary Public in and for the State of <i>CALIFORNIA</i> <i>Holly S. Seiden</i>	Notary Public in and for the State of <i>CALIFORNIA</i> <i>Holly S. Seiden</i>
My commission expires: <i>JAN. 21, 2016</i>	My commission expires: <i>JAN. 21, 2016</i>



**ATTACHMENT A**

<b>ALASKA LIQUOR LICENSES</b>							
<b>Current DBA</b>	<b>Facility</b>	<b>Liq Lic No.</b>	<b>Liq Lic Exp</b>	<b>Address</b>	<b>City</b>	<b>Zip Code</b>	<b>Corporate Owner</b>
Safeway	2522	174	2014	502 MARINE WAY	KODIAK	99615	Safeway Inc.
Crow Creek Mercantile	1839	287	2015	HIGHTOWER STREET	GIRDWOOD	99587	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1821	778	2015	301 NORTH SANTA CLAUS LANE	NORTH POLE	99705	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1802	792	2014	1340 GAMBELL STREET	ANCHORAGE	99501	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1805	793	2014	1650 W. NORTHERN LIGHTS BLVD.	ANCHORAGE	99503	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1806	795	0014	600 E. NORTHERN LIGHTS BLVD.	ANCHORAGE	99503	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1809	799	2014	5600 DEBARR ROAD	ANCHORAGE	99504	Carr-Gottstein Foods Co.
Safeway Store	2754	995	2015	3627 AIRPORT WAY	FAIRBANKS	99701	Safeway Inc.
Oaken Keg	3410	999	2015	30 COLLEGE RD	FAIRBANKS	99701	Safeway Inc.
Oaken Keg Spirit Shop	1843	1336	2014	3678 COLLEGE ROAD	FAIRBANKS	99709	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	520	1358	2015	3101 PENLAND PARKWAY	ANCHORAGE	99508	Safeway Inc.
Oaken Keg Spirit Shop	1812	1397	2014	4000 WEST DIMOND BLVD.	ANCHORAGE	99515	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1807	1464	2014	11409 BUSINESS PARK BLVD.	EAGLE RIVER	99577	Carr-Gottstein Foods Co.
Oaken Keg	1813	1799	2014	1501 HUFFMAN ROAD	ANCHORAGE	99515	Carr-Gottstein Foods Co.
Oaken Keg	548	1845	2015	44428 STERLING HWY S	SOLDOTNA	99669	Safeway Inc.
Oaken Keg Spirit Shop	1817	2094	2014	7731 EAST NORTHERN LIGHTS BLVD	ANCHORAGE	99504	Carr-Gottstein Foods Co.
Oaken Keg	1739	2098	2014	644 WEST EVERGREEN	PALMER	99645	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1811	2266	2014	595 EAST PARKS HIGHWAY	WASILLA	99654	Carr-Gottstein Foods Co.
Safeway Store	1090	2509	2015	2685 MILL BAY RD.	KODIAK	99615	Safeway Inc.
Oaken Keg	1833	2912	2014	1313 MEALS STREET	VALDEZ	99686	Safeway Inc.
Oaken Keg Spirit Shop	1808	3218	2014	10576 KENAI SPUR HIGHWAY	KENAI	99611	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1820	3507	2015	3033 VINTAGE BLVD.	JUNEAU	99801	Carr-Gottstein Foods Co.
Oaken Keg	1832	4162	2015	90 STERLING HIGHWAY	HOMER	99603	Safeway Inc.
Oaken Keg	2628	4167	2014	1725 ABBOTT ROAD	ANCHORAGE	99507	Safeway Inc.
Oaken Keg	2728	4334	2014	1907 SEWARD HWY.	SEWARD	99664	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1818	4361	2014	2417 TONGASS AVE.	KETCHIKAN	99901	Carr-Gottstein Foods Co.
<b>OUTSIDE OF ALASKA SAFEWAY INC. HAS INTERESTS IN ALCOHOLIC BEVERAGE LICENSES AS SHOWN BELOW</b>							
<b>SAFEWAY INC.</b>							
Arizona, California, Colorado, District of Columbia, Hawaii, Idaho, Maryland, Montana, Nebraska, Nevada, New Mexico, Oregon, South Dakota, Virginia, Washington, Wyoming							
<b>RANDALL'S FOOD AND DRUG</b>							
Texas							
<b>TOM THUMB</b>							
Texas							
<b>VONS</b>							
California							
<b>PAVILIONS</b>							
California							
<b>PAK 'N SAVE</b>							
California							

**SAFEWAY 1090 2.2.13**





September 12, 2014

City of Kodiak  
Attn: Debra Marlur, City Clerk  
VIA Email: [clerk@city.kodiak.ak.us](mailto:clerk@city.kodiak.ak.us)  
Cc: [njavier@kodiakak.us](mailto:njavier@kodiakak.us)

Attachment B

**Safeway Inc.: Package Store License #174 DBA Safeway Liquor Store #2522**

- New Application     
  Transfer of Ownership *(stock)*     
  Transfer of Location  
 Restaurant Designation Permit     
  DBA Name Change

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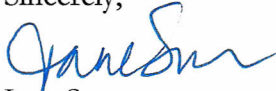
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**Note:** Applications applied for under AS 04.11.400(g), 3 AAC 304.335(a)(3), AS 04.11.090(e), and 3 AAC 304.660(e) must be approved by the governing body.

Sincerely,



Jane Sawyer  
Business Registration Examiner  
[Jane.sawyer@alaska.gov](mailto:Jane.sawyer@alaska.gov)  
907-269-0359

State of Alaska  
Alcoholic Beverage Control Board

Date of Notice: September 12, 2014

Application Type: **NEW**\_\_\_\_\_

**TRANSFER**  
 Ownership (stock)  
 \_\_\_\_\_ Location  
 \_\_\_\_\_ Name Change

Governing Body: **City of Kodiak**  
 Community Councils: None

License #: 174  
 License Type: Package Store  
 D.B.A.: Safeway Liquor Store #2522  
 Licensee/Applicant: Safeway Inc.  
 Physical Location: 502 Marine Way, Kodiak, AK  
 Mail Address: PO Box 29096 MS 6531, Phoenix, AZ 85038-9096  
 Telephone #: 623-869-3573  
 EIN: 94-3019135

Corp/LLC Agent:	Address	Phone	Date and State of Incorporation	Good standing?
United States Corporation Company	9360 Glacier Hwy. Ste. 202 Juneau, AK 99801	800-927-9800	11/07/1986	Yes

*Please note: the Members/Officers/Directors/Shareholders (principals) listed below are the principal members. There may be additional members that we are not aware of because they are not primary members. We have listed all principal members and those who hold at least 10% shares.*

Member/Officer/Director:	DOB	Address	Phone	Title/Shares (%)
Robert L. Edwards President	08/11/1955	3954 Pontina Court Pleasanton, CA 94566	925-467-3276	0
Robert A. Gordon Sr. VP	09/11/1951	24 Robert Road Orinda, CA 94563	925-467-3276	0
Bradley S. Fox VP	12/31/1955	315 Lowell Lane West Lafayette, CA 94549	925-467-3276	0
Albertson's Holdings LLC Shareholder	N/A	250 Parkcenter Blvd. W. Plaza Boise, ID 83706	N/A	100

If **transfer** application, current license information:

License #: 174  
 Current D.B.A.: Safeway #2522  
 Current Licensee: Safeway Inc.  
 Current Location: 502 Marine Way, Kodiak, AK

Additional comments:

A local governing body as defined under AS 04.21.080(11) may protest the approval of an application(s) pursuant to AS 04.11.480 by furnishing the board **and** the applicant with a clear and concise written statement of reasons in support of a protest within 60 days of receipt of this notice. If a protest is filed, the board will not approve the application unless it finds that the protest is “arbitrary, capricious and unreasonable”. Instead, in accordance with AS 04.11.510(b), the board will notify the applicant that the application is denied for reasons stated in the protest. The applicant is entitled to an informal conference with either the director or the board and, if not satisfied by the informal conference, is entitled to a formal hearing in accordance with AS 44.62.330-44.62-630. **IF THE APPLICANT REQUESTS A HEARING, THE LOCAL GOVERNING BODY MUST ASSIST IN OR UNDERTAKE THE DEFENSE OF ITS PROTEST.**

Under AS 04.11.420(a), the board may not issue a license or permit for premises in a municipality where a zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages, unless a variance of the regulation or ordinance has been approved. Under AS 04.11.420(b) municipalities must inform the board of zoning regulations or ordinances which prohibit the sale or consumption of alcoholic beverages. If a municipal zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages at the proposed premises and no variance of the regulation or ordinance has been approved, please notify us and provide a certified copy of the regulation or ordinance if you have not previously done so.

Protest under AS 04.11.480 and the prohibition of sale or consumption of alcoholic beverages as required by zoning regulation or ordinance under AS 04.11.420(a) are two separate and distinct subjects. Please bear that in mind in responding to this notice.

AS 04.21.010(d), if applicable, requires the municipality to provide written notice to the appropriate community council(s).

If you wish to protest the application referenced above, please do so in the prescribed manner and within the prescribed time. Please show proof of service upon the applicant. For additional information please refer to 3 AAC 304.145, Local Governing Body Protest.

**Note:** Applications applied for under AS 04.11.400(g), 3 AAC 304.335(a)(3), AS 04.11.090(e), and 3 AAC 304.660(e) must be approved by the governing body.

Sincerely,

  
Jane Sawyer  
Business Registration Examiner  
[Jane.sawyer@alaska.gov](mailto:Jane.sawyer@alaska.gov)  
907-269-0359

## Transfer Liquor License

License is:       Full Year                      OR                       Seasonal      List Dates of Operation: \_\_\_\_\_

SECTION A - LICENSE INFORMATION			FEES
License Year: 2013-2014	License Type: Package Store	Statute Reference	Filing Fee:      \$100.00
License #: 174		Sec. 04.11.150	
Local Governing Body: (City, Borough or Unorganized) Kodiak Island Borough <i>City of Kodiak</i>	Community Council Name(s) & Mailing Address: None		Rest. Desig. Permit Fee: (\$50.00)      \$
Name of Applicant (Corp/LLC/LP/LLP/Individual/Partnership): Safeway Inc.	Doing Business As (Business Name): Safeway Liquor Store #2522	Business Telephone Number: (623) 869-3573	Fingerprint:      \$ (\$51.50 per person)
Mailing Address: PO Box 29096 MS 6531	Street Address or Location of Premises: 502 Marine Way Kodiak, AK	Business Telephone Number: (623) 869-1399	TOTAL      \$100.00
City, State, Zip: Phoenix, AZ 85038-9096		Email Address: <a href="mailto:Nasc.tax@safeway.com">Nasc.tax@safeway.com</a>	
Is any shareholder related to the current owner? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "yes" please state the relationship _____			
<b>SECTION B - TRANSFER INFORMATION</b>			
<input checked="" type="checkbox"/> Regular Transfer <input type="checkbox"/> Transfer with security interest: Any instrument executed under AS 04.11.670 for purposes of applying AS 04.11.360(4)(b) in a later involuntary transfer, must be filed with this Application. Real or personal property conveyed with this transfer must be described. Provide security interest documents. <input type="checkbox"/> Involuntary Transfer. Attach documents which evidence default under AS 04.11.670.		Name and Mailing Address of <i>CURRENT</i> Licensee: Safeway Inc.  Business Name (dba) <i>BEFORE</i> transfer: Safeway #2522  Street Address or Location <i>BEFORE</i> transfer: 502 Marine Way Kodiak, AK	
<b>SECTION C - PREMISES TO BE LICENSED</b>			
Distance to closest school grounds: .3 Miles	Distance measured under: <input checked="" type="checkbox"/> AS 04.11.410      OR <input type="checkbox"/> Local ordinance No.	<input type="checkbox"/> Premises is GREATER than 50 miles from the boundaries of an incorporated city, borough, or unified municipality. <input type="checkbox"/> Premises is LESS than 50 miles from the boundaries of an incorporated city, borough, or unified municipality. <input checked="" type="checkbox"/> Not applicable	
Distance to closest church: .2 Miles	Distance measured under: <input checked="" type="checkbox"/> AS 04.11.410      OR <input type="checkbox"/> Local ordinance No.		
Premises to be licensed is: <input type="checkbox"/> Proposed building <input checked="" type="checkbox"/> Existing facility <input type="checkbox"/> New building		<input type="checkbox"/> Plans submitted to Fire Marshall (required for new & proposed buildings) <input checked="" type="checkbox"/> Diagram of premises attached	



## Transfer Liquor License

### SECTION D – LICENSEE INFORMATION

1. Does any individual, corporate officer, director, limited liability organization member, manager or partner named in this application have any direct or indirect interest in any other alcoholic beverage business licensed in Alaska or any other state?

Yes  No If Yes, complete the following. Attach additional sheets if necessary.

Name	Name of Business	Type of License	Business Street Address	State
See Attached				

2. Has any individual, corporate officer, director, limited liability organization member, manager or partner named in this application been convicted of a felony, a violation of AS 04, or been convicted as a licensee or manager of licensed premises in another state of the liquor laws of that state?

Yes  No If Yes, attach written explanation.

### SECTION E – OWNERSHIP INFORMATION - CORPORATION

*Corporations, LLCs, LLPs and LPs must be registered with the Dept. of Community and Economic Development.*

Name of Entity (Corporation/LLC/LLP/LP) (or N/A if an Individual ownership): Safeway Inc.		Telephone Number: (623) 869-3573	Fax Number: (623) 869-1399
Corporate Mailing Address: PO Box 29096 MS 6531	City: Phoenix	State: AZ	Zip Code: 85038-9096
Name, Mailing Address and Telephone Number of Registered Agent United States Corporation Company 9360 Glacier Hwy., Ste. 202, Juneau, AK 99801 (800) 927-9800		Date of Incorporation OR Certification with DCED: 11/7/1986	State of Incorporation: Delaware

Is the Entity in "Good Standing" with the Alaska Division of Corporations?  Yes  No  
 If no, attach written explanation. Your entity *must* be in compliance with Title 10 of the Alaska Statutes to be a valid liquor licensee.

#### Entity Members (Must include President, Secretary, Treasurer, Vice-President, Manager and Shareholder/Member with at least 10%)

Name	Title	%	Home Address & Telephone Number	Work Telephone Number	Date of Birth
Robert L. Edwards	President	0	3954 Pontina Court, Pleasanton, CA 94566	(925) 467-3276	8/11/1955
Robert A. Gordon	Secretary/ <i>SR</i> VP	0	24 Robert Road, Orinda, CA 94563	(925) 467-3276	9/14/1951
Bradley S. Fox	Treasurer/ VP	0	315 Lowell Lane West, Lafayette, CA 94549	(925) 467-3276	12/31/1955
Albertson's Holdings LLC	Shareholder	100	250 Parkcenter Blvd., West Plaza Boise, ID 83706	N/A	N/A

NOTE: If you need additional space, please attach a separate sheet.

## Transfer Liquor License

### SECTION F – OWNERSHIP INFORMATION – SOLE PROPRIETORSHIP (INDIVIDUAL OWNER & SPOUSE)

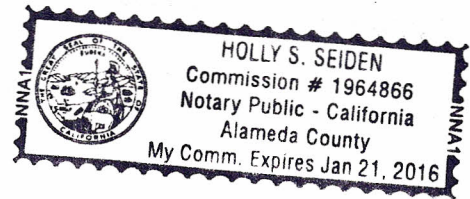
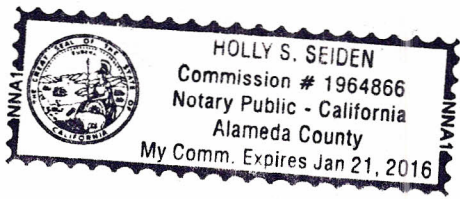
**Individual Licensees/Affiliates** (The ABC Board defines an "Affiliate" as the spouse or significant other of a licensee. Each Affiliate must be listed.)

Name: Address:	Applicant <input type="checkbox"/> Affiliate <input type="checkbox"/>	Name: Address:	Applicant <input type="checkbox"/> Affiliate <input type="checkbox"/>
Home Phone: Work Phone:	Date of Birth:	Home Phone: Work Phone:	Date of Birth:
Name: Address:	Applicant <input type="checkbox"/> Affiliate <input type="checkbox"/>	Name: Address:	Applicant <input type="checkbox"/> Affiliate <input type="checkbox"/>
Home Phone: Work Phone:	Date of Birth:	Home Phone: Work Phone:	Date of Birth:

#### Declaration

- I declare under penalty of perjury that I have examined this application, including the accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct and complete, and this application is not in violation of any security interest or other contracted obligations.
- I hereby certify that there have been no changes in officers or stockholders that have not been reported to the Alcoholic Beverage Control Board. The undersigned certifies on behalf of the organized entity, it is understood that a misrepresentation of fact is cause for rejection of this application or revocation of any license issued.
- I further certify that I have read and am familiar with Title 4 of the Alaska statutes and its regulations, and that in accordance with AS 04.11.450, no person other than the licensee(s) has any direct or indirect financial interest in the licensed business.
- I agree to provide all information required by the Alcoholic Beverage Control Board in support of this application.

<b>Signature of Current Licensee(s)</b>	<b>Signature of Transferee(s)</b>
Signature: <i>Robert Gordon</i>	Signature: <i>Robert Gordon</i>
Signature Safeway Inc.	Signature Safeway Inc.
Name & Title (Please Print) <i>Robert GORDON</i>	Name & Title (Please Print) <i>Robert GORDON</i>
By: <i>Secretary + Sr. Vice President</i>	By: <i>Secretary + Sr. Vice President</i>
Subscribed and sworn to before me this <i>29</i> day of <i>AUGUST</i> <i>2014</i>	Subscribed and sworn to before me this <i>29</i> day of <i>AUGUST</i> <i>2014</i>
Notary Public in and for the State of <i>CALIFORNIA</i> <i>Holly S. Seiden</i>	Notary Public in and for the State of <i>CALIFORNIA</i> <i>Holly S. Seiden</i>
My commission expires: <i>JAN. July 21, 2016</i> <i>HS</i>	My commission expires: <i>JAN. July 21, 2016</i> <i>HS</i>



**ATTACHMENT A**

<b>ALASKA LIQUOR LICENSES</b>							
<b>Current DBA</b>	<b>Facility</b>	<b>Liq Lic No.</b>	<b>Liq Lic Exp</b>	<b>Address</b>	<b>City</b>	<b>Zip Code</b>	<b>Corporate Owner</b>
Safeway	2522	174	2014	502 MARINE WAY	KODIAK	99615	Safeway Inc.
Crow Creek Mercantile	1839	287	2015	HIGHTOWER STREET	GIRDWOOD	99587	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1821	778	2015	301 NORTH SANTA CLAUS LANE	NORTH POLE	99705	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1802	792	2014	1340 GAMBELL STREET	ANCHORAGE	99501	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1805	793	2014	1650 W. NORTHERN LIGHTS BLVD.	ANCHORAGE	99503	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1806	795	0014	600 E. NORTHERN LIGHTS BLVD.	ANCHORAGE	99503	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1809	799	2014	5600 DEBARR ROAD	ANCHORAGE	99504	Carr-Gottstein Foods Co.
Safeway Store	2754	995	2015	3627 AIRPORT WAY	FAIRBANKS	99701	Safeway Inc.
Oaken Keg	3410	999	2015	30 COLLEGE RD	FAIRBANKS	99701	Safeway Inc.
Oaken Keg Spirit Shop	1843	1336	2014	3678 COLLEGE ROAD	FAIRBANKS	99709	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	520	1358	2015	3101 PENLAND PARKWAY	ANCHORAGE	99508	Safeway Inc.
Oaken Keg Spirit Shop	1812	1397	2014	4000 WEST DIMOND BLVD.	ANCHORAGE	99515	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1807	1464	2014	11409 BUSINESS PARK BLVD.	EAGLE RIVER	99577	Carr-Gottstein Foods Co.
Oaken Keg	1813	1799	2014	1501 HUFFMAN ROAD	ANCHORAGE	99515	Carr-Gottstein Foods Co.
Oaken Keg	548	1845	2015	44428 STERLING HWY S	SOLDOTNA	99669	Safeway Inc.
Oaken Keg Spirit Shop	1817	2094	2014	7731 EAST NORTHERN LIGHTS BLVD	ANCHORAGE	99504	Carr-Gottstein Foods Co.
Oaken Keg	1739	2098	2014	644 WEST EVERGREEN	PALMER	99645	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1811	2266	2014	595 EAST PARKS HIGHWAY	WASILLA	99654	Carr-Gottstein Foods Co.
Safeway Store	1090	2509	2015	2685 MILL BAY RD.	KODIAK	99615	Safeway Inc.
Oaken Keg	1833	2912	2014	1313 MEALS STREET	VALDEZ	99686	Safeway Inc.
Oaken Keg Spirit Shop	1808	3218	2014	10576 KENAI SPUR HIGHWAY	KENAI	99611	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1820	3507	2015	3033 VINTAGE BLVD.	JUNEAU	99801	Carr-Gottstein Foods Co.
Oaken Keg	1832	4162	2015	90 STERLING HIGHWAY	HOMER	99603	Safeway Inc.
Oaken Keg	2628	4167	2014	1725 ABBOTT ROAD	ANCHORAGE	99507	Safeway Inc.
Oaken Keg	2728	4334	2014	1907 SEWARD HWY.	SEWARD	99664	Carr-Gottstein Foods Co.
Oaken Keg Spirit Shop	1818	4361	2014	2417 TONGASS AVE.	KETCHIKAN	99901	Carr-Gottstein Foods Co.
<b><u>OUTSIDE OF ALASKA SAFEWAY INC. HAS INTERESTS IN ALCOHOLIC BEVERAGE LICENSES AS SHOWN BELOW</u></b>							
<b><u>SAFEWAY INC.</u></b>							
Arizona, California, Colorado, District of Columbia, Hawaii, Idaho, Maryland, Montana, Nebraska, Nevada, New Mexico, Oregon, South Dakota, Virginia, Washington, Wyoming							
<b><u>RANDALL'S FOOD AND DRUG</u></b>							
Texas							
<b><u>TOM THUMB</u></b>							
Texas							
<b><u>VONS</u></b>							
California							
<b><u>PAVILIONS</u></b>							
California							
<b><u>PAK 'N SAVE</u></b>							
California							

Safeway Liquor 2522 Kodiak

