

City of Kodiak Regular Council Meeting Agenda for October 23, 2014
7:30 p.m., at 710 Mill Bay Road, Assembly Chambers (Room 232)

I. Call to Order/Roll Call	
Pledge of Allegiance/Invocation	
II. Previous Minutes	
Approval of Minutes of the September 25, 2014, Regular Council Meeting	1
III. Persons to Be Heard	
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c. Public Comments (limited to 3 minutes) (486-3231)	
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V. New Business	
a. First Reading, Ordinance No. 1327, Authorizing Fire and Rescue Mutual Aid Agreements Between the City of Kodiak and the Kodiak Island Borough and the United States Coast Guard Base Kodiak	54
b. Resolution No. 2014-35, Adopting a FY2016 State Capital Improvements Program List	70
c. Certification of Election.....	80
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a. City Manager	
b. City Clerk	
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VIII. Council Comments	
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XI. Adjournment	

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**MINUTES OF THE REGULAR COUNCIL MEETING
OF THE CITY OF KODIAK
HELD THURSDAY, SEPTEMBER 25, 2014
IN THE BOROUGH ASSEMBLY CHAMBERS**

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

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

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

II. PREVIOUS MINUTES

Councilmember Haines MOVED to approve the minutes of the September 11, 2014, regular meeting as presented.

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

III. PERSONS TO BE HEARD

a. Proclamation: Declaring Fire Prevention Week

Councilmember Davidson read the proclamation, which urges all citizens to test their smoke alarms at least every month and to support the many public safety activities and efforts of Kodiak fire and emergency services.

Dan Farmer, Firefighter EMT III, accepted the proclamation and thanked the Council for recognizing fire prevention in October. He thanked the local firefighters for their service, and he encouraged the public to maintain their heating systems and practice fire safety.

b. Public Comments

Michael Murray, Safeway Manager, stated that Albertsons's Holdings LLC will take ownership of Safeway, Inc, which is occurring nationwide. He said there have been no plans for Albertson's to change the current name and operations of Safeway. He asked for the Council to support the transfer of the alcohol beverage license and send a letter to the Alcohol Beverage Control Board waiving the right to protest the transfer.

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

Deputy Mayor Saravia read Ordinance No. 1326 by title. 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 Operation 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 December 31, 2013, and that were extended on a month-to-month basis by Resolution No. 2014-01, dated January 7, 2014.

Councilmember Davidson MOVED 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.

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

b. Resolution No. 2014-34, Naming Election Workers for the October 7, 2014, Regular Municipal Election

Deputy Mayor Saravia read Resolution No. 2014-34 by title. Resolution No. 2014-34 names election workers and canvass board members for the October 7, 2014, regular municipal election and authorizes the City Clerk to appoint additional election workers, as needed.

Councilmember Walker MOVED to adopt Resolution No. 2014-34.

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

c. Authorization of Lease and Pipeline Easement Agreement With Andrew Airways

This five-year lease to Andrew Airways is for the placement of their fueling system at Trident Basin.

Councilmember Haines MOVED 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.

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

d. Authorization to Transfer Alcoholic Beverage Licenses From Safeway Inc. to Albertson’s Holding LLC

Safeway Inc. filed an application with the State of Alaska Alcoholic Beverage Control (ABC) Board for a transfer of their package store liquor licenses to Albertson’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 application transfers.

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

VI. STAFF REPORTS

a. City Manager

Manager Kniaziowski announced Corey Gronn is the new Parks and Recreation Director; he has worked for the City since 2011, and he has filled in during the absence of a director. She stated the skate park project is out to bid, and the Parks and Recreation staff continues to work on clearing out the St. Paul Plaza. She announced the Kodiak Public Library received an award with the submission of application from BRR Architects. Manager Kniaziowski said she will be out of the office attending an insurance pool training from October 2 through October 10. She gave a reminder that Roe Sturgelewski will be providing a Pier III update at the October 21, 2014, work session, and she said the auditors will be here the week of October 13.

b. City Clerk

City Clerk Marlar reminded registered voters of the City of Kodiak’s Municipal Election on October 7, 2014; she encouraged citizens to vote, stating there are four candidates running for two Councilmember seats. She said voting will occur between 7 a.m. and 8 p.m. at the Teen Center and Fisherman’s Hall. She thanked the election workers for their service and encouraged the public to volunteer. She provided an update of the next scheduled Council work session and regular meeting.

VII. MAYOR’S COMMENTS

The Deputy Mayor did not make comments on behalf of the Mayor.

VIII. COUNCIL COMMENTS

Councilmember Walker thanked the staff for the great job they are doing. He said the projects are running on schedule and on budget. He voiced appreciation of the City street improvement projects and the Horizon Lines agreements. He stated he enjoys working with the Council.

Councilmember Haines concurred with Councilmember Walker’s comments and thanked all the City workers; he voiced appreciation for the Fire department and hopes to have a new building for them in the future. He encouraged citizens to vote.

Councilmember Davidson reminded drivers to be cautious of school children in the morning. He congratulated Corey Gronn as the new Parks and Recreation Director. He encouraged citizens to vote and increase the voter turnout for the City Municipal Election and stated he feels Kodiak is one of the best managed cities in Alaska.

Councilmember Saravia thanked the City staff for their hard work on pier projects, and he thanked the Council for their professionalism. He gave a fishing update and reminded citizens of their opportunities to vote and run for Council seats.

IX. AUDIENCE COMMENTS

None

X. ADJOURNMENT

Councilmember Davidson MOVED to adjourn the meeting.

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

The meeting adjourned at 8:13 p.m.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Minutes Approved:

PERSONS TO BE HEARD

MEMORANDUM TO COUNCIL

Date: October 23, 2014

Agenda Item: III. a. Proclamation: Declaring Filipino American History Month

SUMMARY: This proclamation urges all citizens to celebrate the rich history and contributions of Filipino Americans in Kodiak.

ATTACHMENTS:

Attachment A: Proclamation: Declaring Filipino American History Month

PROCLAMATION

Declaring Filipino American History Month

WHEREAS, Filipino presence in the United States has been documented back to 1587; and

WHEREAS, the Filipino American National Historical Society continues to promote the study of Filipino American history and culture; and

WHEREAS, Filipino Americans play an important role in the history of Kodiak; and

WHEREAS, positive role models are important in teaching Filipino American youth the importance of cultural education, ethnicity, and the values of their legacy; and

WHEREAS, Kodiak is fortunate to count among its population citizens of Filipino descent who contribute to Kodiak's economy and society through their commitment to their professions, commerce, family, and the arts.

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

Filipino American History Month

in Kodiak and urge all citizens to celebrate the rich history and contributions of Filipino Americans in Kodiak.

Dated this 23rd day of October 2014.

City of Kodiak

Pat Branson, Mayor

MEMORANDUM TO COUNCIL

Date: October 23, 2014

Agenda Item: III. b. **Proclamation: Declaring Extra Mile Day**

SUMMARY: The Extra Mile America Foundation requested this proclamation, which urges citizens to go the extra mile to maximize their personal contribution to their individual ambitions, family, friends, and the community.

ATTACHMENTS:

Attachment A: Proclamation: Declaring Extra Mile Day

PROCLAMATION

Declaring Extra Mile Day

WHEREAS, the City of Kodiak acknowledges that a special vibrancy exists within the entire community when its individual citizens collectively “go the extra mile” in personal effort, volunteerism, and service; and

WHEREAS, the City of Kodiak encourages its citizens to maximize their personal contribution to the community by giving of themselves wholeheartedly and with total effort, commitment, and conviction to their individual ambitions, family, friends, and community; and

WHEREAS, the City of Kodiak chooses to shine a light on and celebrate individuals and organizations within its community who “go the extra mile” in order to make a difference and lift up fellow members of their community; and

WHEREAS, the City of Kodiak acknowledges the mission of Extra Mile America to create 500 Extra Mile cities in America and is proud to support “Extra Mile Day” on November 1, 2014.

NOW THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, do hereby proclaim November 1, 2014, to be Extra Mile Day in Kodiak. I urge each individual in the community to take time on this day to not only “go the extra mile” in his or her own life, but to also acknowledge all those around who are inspirational in their efforts and commitment to make their organizations, families, community, country, or world a better place.

Dated this 23rd day of October 2014.

City of Kodiak

Pat Branson, Mayor

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UNFINISHED BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

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

Date: October 23, 2014

Agenda Item: **IV. a. Second Reading and Public Hearing, 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**

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:

- March 2010 - the Council authorized the previous agreements with Horizon Lines by Ordinance Nos. 1270, 1271 and 1272.
- January 7, 2014 - the Council adopted Resolution No. 2014-01 that authorized the extension of those agreements on a month-to-month basis.
- January – August 2014 - the Council provided direction to the City's negotiating team about negotiating new agreements with Horizon Lines, and the team reported to the Council on the progress of those negotiations.
- September 25, 2014 - the Council passed Ordinance No. 1326 in the first reading and advanced to second reading and public hearing.

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

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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 adopt the ordinance in the second reading following the public hearing.

ATTACHMENTS:

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

PROPOSED MOTION:

Move to adopt Ordinance No. 1326.

**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

MAYOR

ATTEST:

CITY CLERK

First Reading: September 25, 2014

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

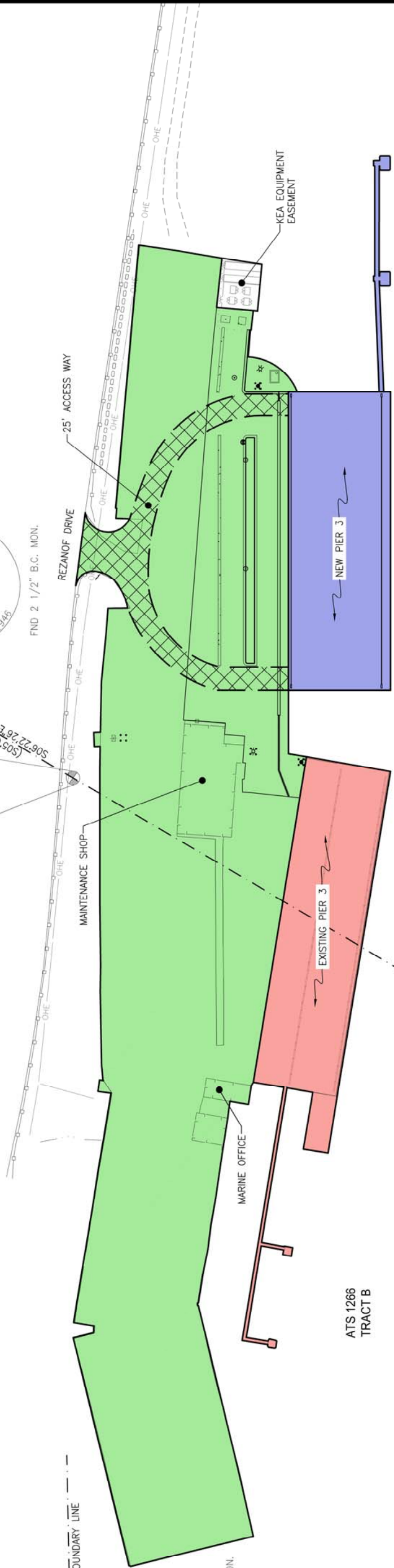
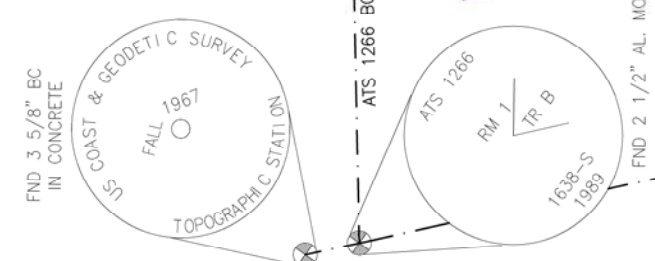
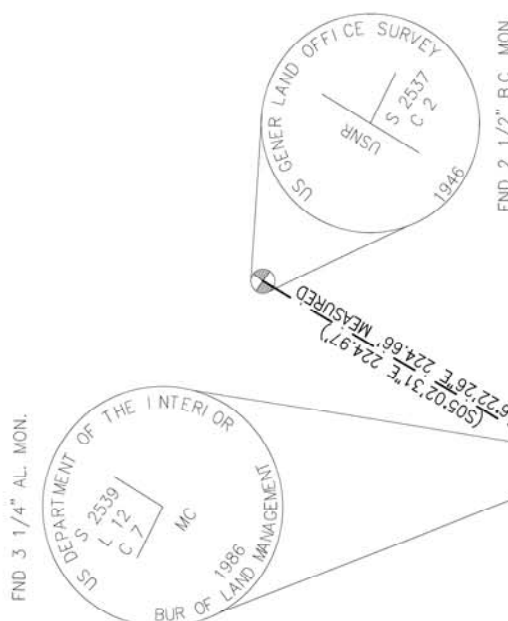
Richard Kniazowski Date
Terminal Manager

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		TOTAL AREA
LEGEND	AREA LOCATION	
[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

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.

REV	DATE	DESCRIPTION

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”).

WITNESSETH

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

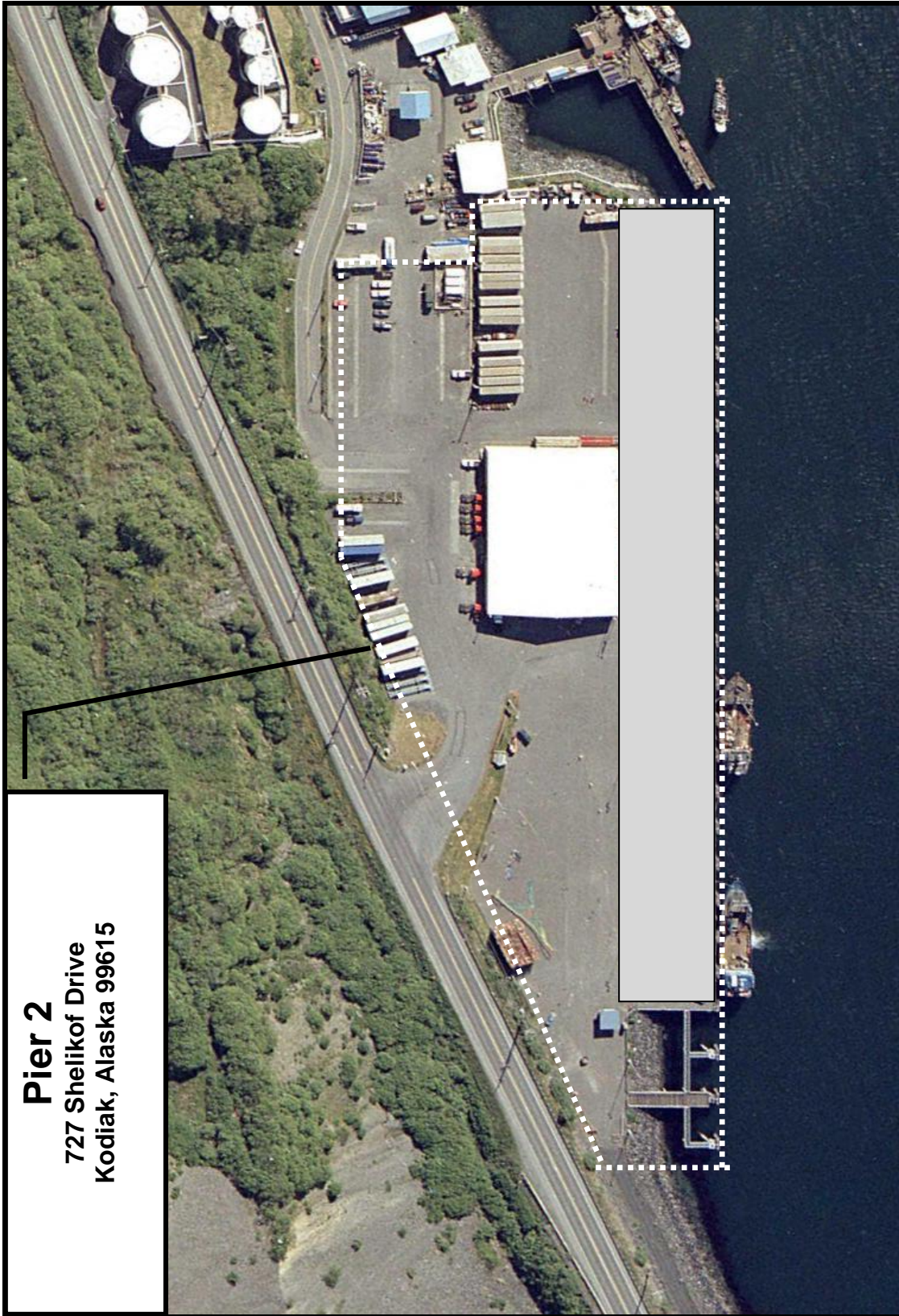
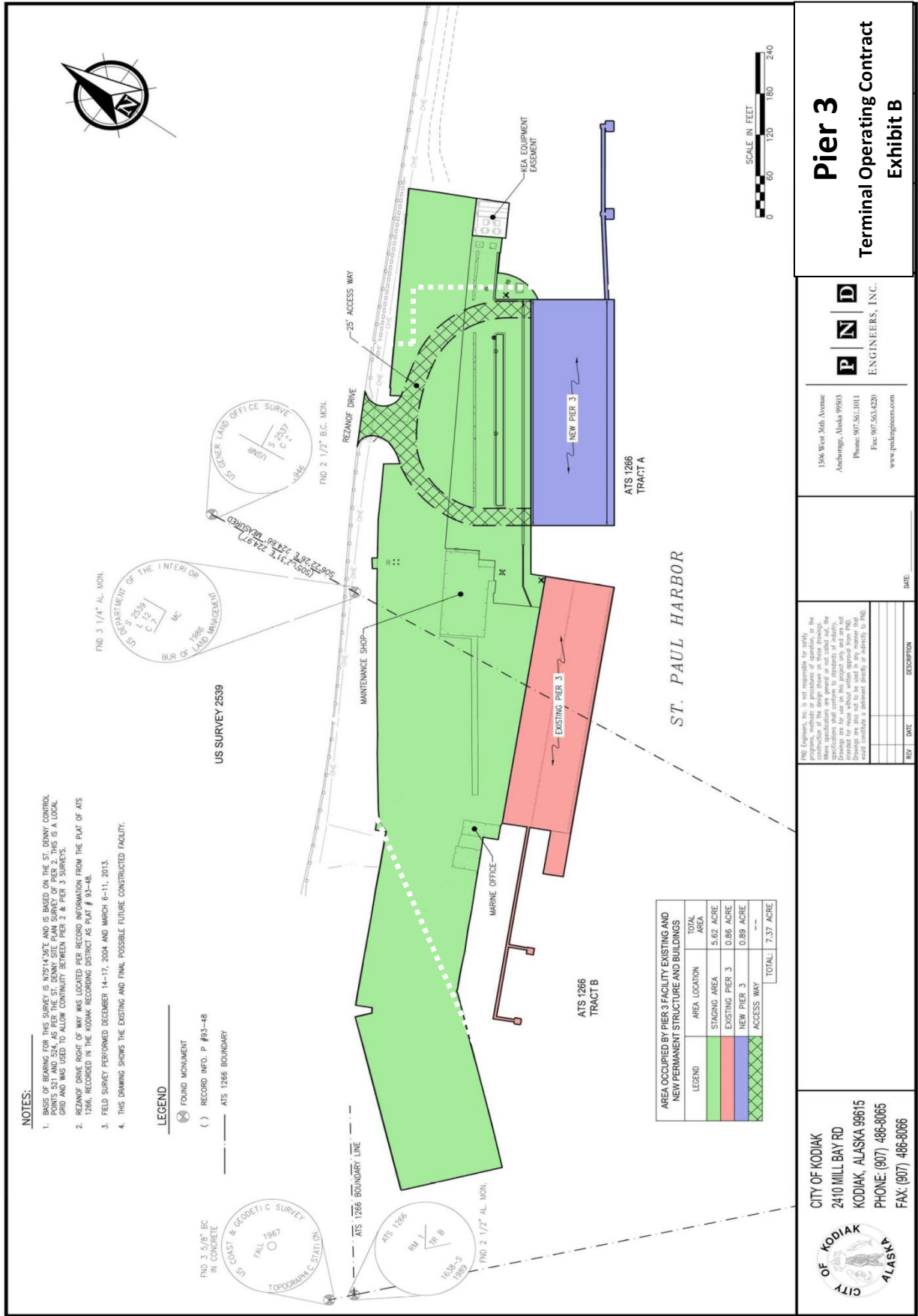


Exhibit- B Terminal Operation Contract



Pier 3
Terminal Operating Contract
Exhibit B

P N D
ENGINEERS, INC.

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

REV	DATE	DESCRIPTION

DATE: _____

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

CITY OF KODIAK
ALASKA

**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

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

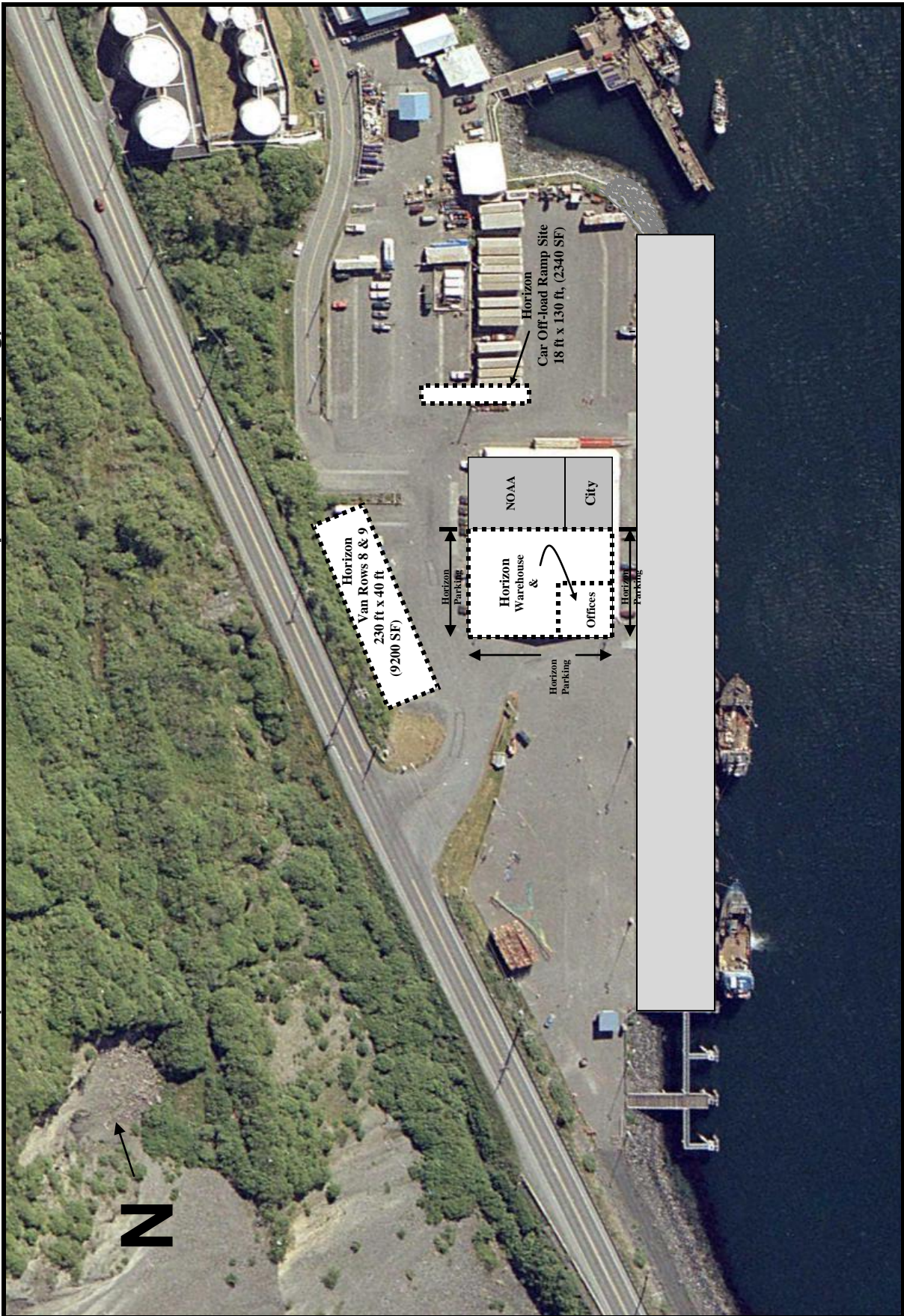
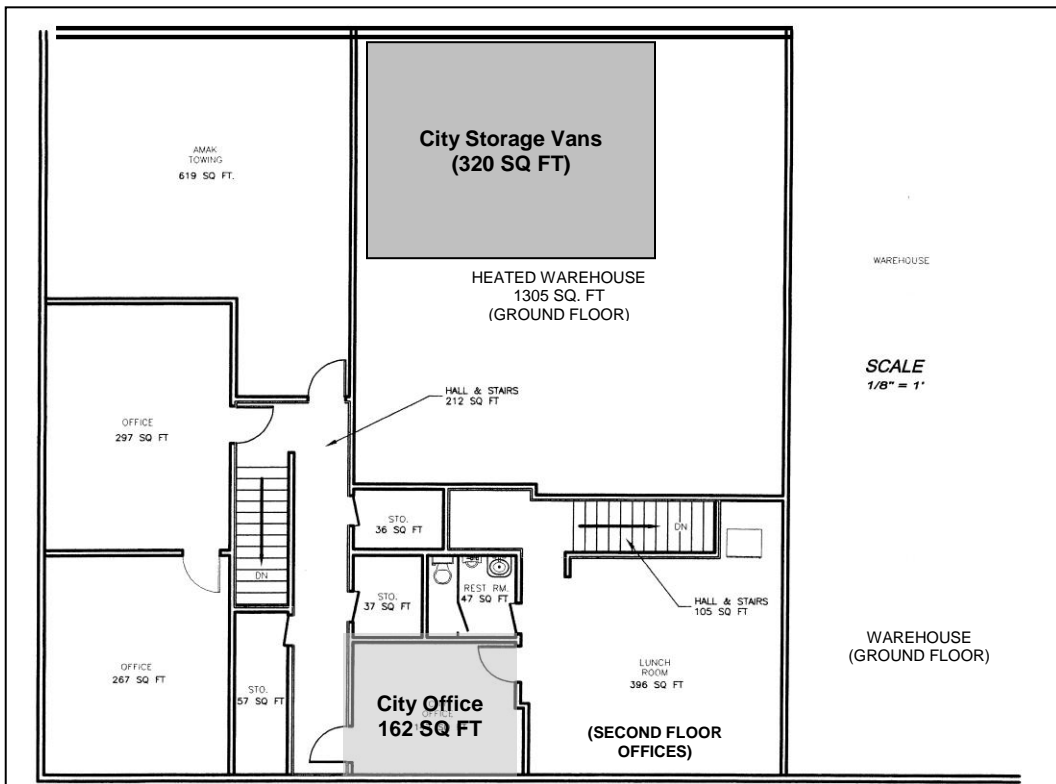
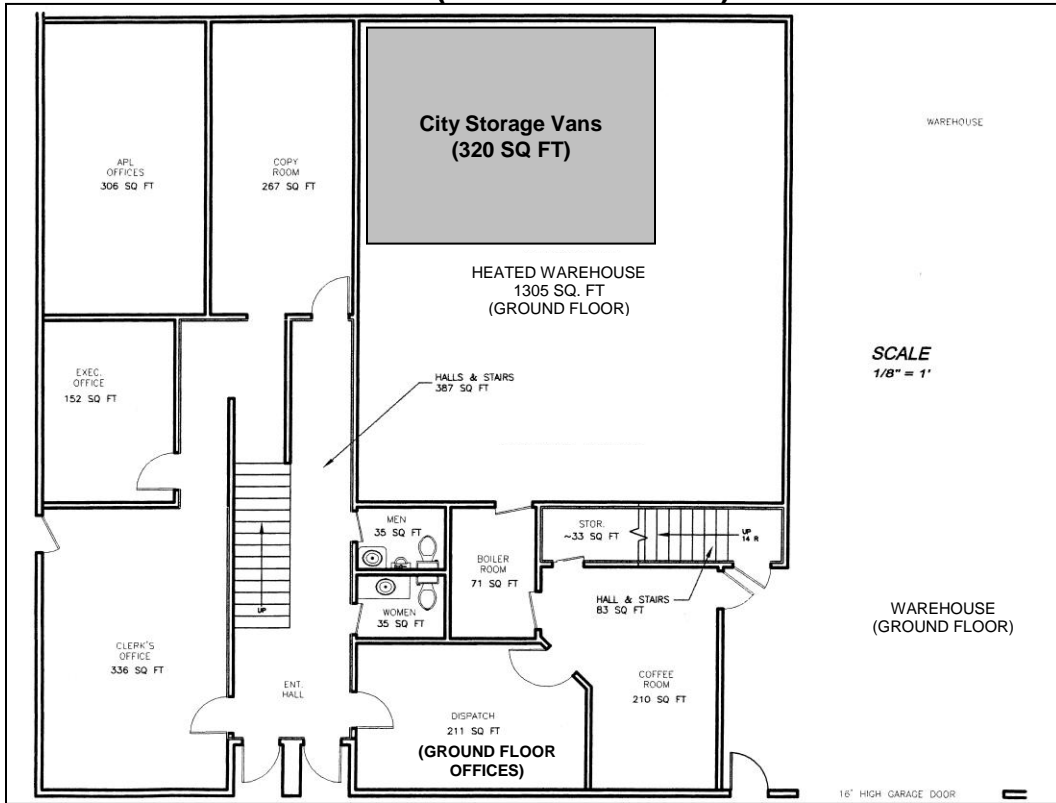


EXHIBIT- B


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



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NEW BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Aimée Kniazowski, City Manager 
Thru: Rome Kamai, Fire Chief
Date: October 23, 2014

Agenda Item: V. a. **First Reading, Ordinance No. 1327, Authorizing Fire and Rescue Mutual Aid Agreements Between the City of Kodiak and the Kodiak Island Borough and the United States Coast Guard Base Kodiak**

SUMMARY: The City of Kodiak Fire Department maintains fire and rescue mutual aid agreements with both Kodiak Island Borough Fire Protection Areas at Bayside and Womens Bay Service Area, and with the United States Coast Guard Base Kodiak for the mutual protection of life and property pursuant to Alaska Statute 18.70.150-160 (relating to the adoption of mutual fire aid agreements) and Article X, 13 of the Alaska Constitution (authorizing intergovernmental agreements for cooperative or joint administration of municipal functions or powers). The mutual aid agreements have expired and require renewal. Staff recommends the Borough agreements be for five-year terms and recommends Council pass Ordinance No. 1327 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

PREVIOUS COUNCIL ACTION: Staff discussed the last mutual aid agreements at a joint work session with the Borough Assembly in February 2009. The City Manager was later authorized by Council to sign the three mutual aid agreements on behalf of the City.

DISCUSSION: It was unclear in 2009 if Council was required to authorize the mutual aid agreements by ordinance or motion. In July of this year, the City Attorney recommended that Council authorize the renewal agreements by ordinance based on the language provided in Section XII-1 of the City Charter.

The City, the Kodiak Island Borough, and the United States Coast Guard wish to renew the fire and rescue mutual aid agreements in order to memorialize their current understanding and expectations with regard to the furnishing of firefighting and emergency services outside the normal and regular service areas of each entity. Based on a three-year average from 2011 through 2013, the City of Kodiak Fire Department provided mutual aid approximately five times per year and received mutual aid approximately 2.3 times per year. The mutual aid agreements provide an outline of expectations that include command and control, joint procedures, and interoperable communication procedures as established by the Fire Chiefs of each party.

ALTERNATIVES: Council has two main alternatives.

- 1) Pass Ordinance No. 1327 in the first reading and advance to second reading at the next regular or special Council meeting, which is staff's recommendation, because it continues to provide for mutual support and protection of life and property.
- 2) Do not pass Ordinance No. 1327, which is not recommended by staff, because it does not provide for continued support of the beneficial protections offered by the agreements.

FINANCIAL IMPLICATIONS: Pursuant to the Mutual Aid Agreements Section 5, Costs and Expense, each party shall be responsible for its own costs or expenses incurred in maintaining its equipment, insurance coverage, apparatus, salaries, and any and all other items of cost or expense associated with providing services. However, expendable firefighting material used by a responding party in its activities at the scene such as firefighting foam may be replaced by the party that issued the request for assistance if the request is made in writing by the requesting party within sixty (60) days after the materials were used. To date, no party has provided written claim for such expendable firefighting material to be replaced.

LEGAL: The City Attorney reviewed the renewal authorization process, the mutual aid agreements, and prepared the ordinance language which identifies by reference sections of the Alaska Statutes, State Constitution, and City Charter that allow the City to enter into agreements, including those for cooperative or joint administration of any function or power with other governmental units and proscribes the way in which such agreements are approved.

STAFF RECOMMENDATION: Staff recommends Council pass Ordinance No. 1327 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

CITY MANAGER'S COMMENTS: I appreciate Chief Kamai's work on this renewal process and support his recommendation that the City renew the three fire and rescue mutual aid agreements. The agreements are for a period of five years as were the previous agreements.

ATTACHMENTS:

Attachment A: Ordinance No. 1327

Attachment B: Mutual Aid Agreement with Kodiak Island Borough, Fire Protection Area No. 1
(Bayside Fire Station)

Attachment C: Mutual Aid Agreement with Kodiak Island Borough, Womens Bay Service Area

Attachment D: Mutual Aid Agreement with the United States Coast Guard Base Kodiak

PROPOSED MOTION:

Move to pass Ordinance No. 1327 in the first reading and advance to the second reading and public hearing at the next regular or special Council meeting.

**CITY OF KODIAK
ORDINANCE NUMBER 1327**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK
AUTHORIZING FIRE AND RESCUE MUTUAL AID AGREEMENTS BETWEEN THE
CITY OF KODIAK AND THE KODIAK ISLAND BOROUGH AND THE UNITED
STATES COAST GUARD BASE KODIAK**

WHEREAS, Alaska Statutes 18.70.150-160, Article X, §13 of the Alaska Constitution, and Section XII-1 of the Kodiak City Charter authorize the City to enter into agreements, including those for cooperative or joint administration of any function or power, with other governmental units; and

WHEREAS, Fire and Rescue Mutual Aid Agreements between the City and each of the Kodiak Island Borough Fire Protection Areas, which include Fire Protection Area No. 1 (Bayside Fire Station) and Womens Bay Service Area, and the United States Coast Guard Base Kodiak have been presented to this meeting; and

WHEREAS, it is in the best interest of the City and its residents to enter into agreements for mutual aid with other firefighting agencies in the vicinity of the City.

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

Section 1: The form and content of the Fire and Rescue Mutual Aid Agreements between the City, the Kodiak Island Borough Fire Protection Area No. 1, (Bayside Fire Station), Womens Bay Service Area, and the United States Coast Guard Base Kodiak are hereby in all respects authorized, approved, and confirmed, and the City Manager hereby is authorized, empowered, and directed to execute and deliver the Fire and Rescue Mutual Aid Agreements to the respective counterparties on behalf of the City, in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as she shall deem necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions, or deletions therein from the form and content of said documents now before this meeting, and from and after the execution and delivery of said documents, the City Manager hereby is authorized, empowered, and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of said documents as executed.

Section 2: This ordinance shall be effective upon the later to occur of (i) the date that is one month after its final passage and publication in accordance with the Kodiak Charter Section 2–13; and (ii) January 1, 2015.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

First Reading:
Second Reading:
Effective Date:

FIRE AND RESCUE MUTUAL AID AGREEMENT

This Agreement is made and entered into by and between the City of Kodiak ("the City") and the Kodiak Island Borough, Fire Protection Area No. 1, Bayside Fire Station ("Bayside").

RECITALS

(a) The City and Bayside acknowledge the possibility that fires or other public emergencies may occur within their respective jurisdictions which could reach such proportions as to be impossible to control with their own local equipment, personnel, and resources and therefore find it appropriate that this Agreement be entered into for the mutual protection of life and property pursuant to AS 18.70.150-160 (relating to the adoption of mutual fire aid agreements), Article X, §13 of the Alaska Constitution (authorizing intergovernmental agreements for cooperative or joint administration of municipal functions or powers).

(b) The City and Bayside are desirous of entering into this Fire and Rescue Mutual Aid Agreement in order to memorialize their current understandings and expectations with regard to the furnishing of fire fighting and emergency services outside the normal and regular area of service by each party.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, terms and conditions herein contained the parties agree as follows:

1. **Furnishing of Emergency Fire Fighting and Rescue Assistance**

(a) Each party agrees to respond, to the extent it deems reasonably prudent and possible, to requests for assistance from the other and to furnish fire fighting and emergency rescue services, utilizing paid and volunteer fire fighters, and fire fighting apparatus and equipment owned and operated by each of the parties. The judgment as to whether or not it is reasonably prudent and possible to respond to a given request and, if so, to what extent and with what resources, shall rest exclusively with the party from whom such assistance is sought. Both parties hereby

formally disavow any intention to create, through the execution of this or any other agreement or through any course of past or future conduct, a binding contractual right to require the other to respond, or to respond at a particular level of resources, to requests for assistance.

(b) The term "request for assistance" shall mean a request for firefighting or emergency aid made by the fire chief, or other personnel who have been authorized by the chief of the requesting fire department to make such a request.

2. Determination of Priority

It is mutually understood and agreed that the dispatch of any personnel or equipment in response to a request for assistance shall be subordinate to the needs and responsibilities of the responding fire department as determined by its fire chief and that his or her judgment as to the level of resources which should be withheld in order to respond to any actual or potential requests for assistance or public emergencies within the geographical area regularly served by the responding party shall be conclusive. No violation of this Agreement shall be considered to have occurred if, for any reason, in the judgment of the responding fire chief, a response to a request for assistance made by the other party to this Agreement might jeopardize the fire or other protection provided to the geographical area regularly served by the responding party.

3. Non-liability

Without limiting the generality of the foregoing it is explicitly agreed that a party to this Agreement shall not be responsible or liable for any loss or claims which may result from a failure to respond to a request for assistance received from the other party, or from an alleged failure to respond in a prompt or timely manner.

4. Operational Control

(a) Control of Fire Fighting

The fire chief of the party requesting assistance, or his authorized representative, shall have the sole responsibility for conducting all fire fighting or emergency operations at the scene; however, such requesting fire chief may delegate management authority over all or any part of such operations to any responding fire chief as provided in (b) below.

(b) Emergency Scene Management

The requesting fire chief, or his authorized representative, may request that a responding fire chief, or his authorized representative, assume management authority over the control and direction of all or any part of the fire fighting operations at the fire or emergency; however, the requesting fire chief shall not, by relinquishing such control, be relieved of his overall control and responsibility for the operation.

(c) Control of Personnel

Notwithstanding any other provision herein, the officers, fire fighters and other personnel of each fire fighting organization, both the responding or the requesting units, shall remain under the control and direction of their own fire chief or his authorized representative and shall not become the agent, employees, or representatives of any other party.

(d) Right to Protect Personnel and Equipment

Each fire chief, both responding and requesting, and their authorized representative, shall have and retain the right to refuse to commit their personnel or equipment to any position which is considered unreasonably dangerous to life of any of their personnel, another person, or to equipment. A fire chief, or his authorized representative, shall have the sole and exclusive right and discretion to determine the extent and imminence of any such danger.

5. Costs and Expense

Each party shall be responsible for all of its own costs or expense, incurred in maintaining its equipment, insurance coverage, apparatus, paying salaries, and any and all other items of cost or expense associated with providing services pursuant

to this Agreement; provided, however, that expendable fire fighting material used or expended by a responding party in its activities at the scene, such as fire fighting foam, shall be replaced by the party that issued the request for assistance if the responding party expending such materials serves a written claim therefore upon the requesting party not later than sixty (60) days after such materials were used or expended.

6. Damage and Loss

With the exception of replacement of expendable fire fighting materials as provided above, any loss or damage to fire apparatus or other equipment of the responding party incurred or arising out of activities in responding to a request for assistance pursuant to this Agreement, including any loss which may occur while the responding party is traveling to the scene, working at the scene, or returning therefrom, shall be the responsibility of, and shall be paid by, such party responding to the request for assistance.

7. Immunities to Continue

This Agreement is not intended to, and it shall not be construed to, waive, relinquish, alter, amend or vitiate in any manner whatsoever, the privileges or immunities otherwise provided by law to either of the parties hereto or to any of their officers, employees, volunteers or other agents, whether in the course of responding to a request for assistance under this Agreement or otherwise. Each party and all such individuals shall have and retain all privileges and immunities otherwise applicable to the performance of the same or similar functions within the party's own area.

8. Not Employees or Agents

Nothing in this Agreement shall be construed to render or establish any officer, employee or volunteer of any one of the parties the agent, employee, representative or volunteer of any of the other parties and all such personnel shall be and remain, for all purposes and at all times, the personnel of the party providing such personnel.

9. No Warranty

By entering into this Agreement, or taking any action pursuant to it, neither party is making any representation or warranty, whether express or implied, concerning the training or reliability of its personnel or that of the other party, or with respect to the safety, durability or reliability of its fire fighting apparatus or equipment or that of the other party. Each party expressly disclaims any such express or implied approval or warranty.

10. No Duty to Inhabitants or Third Parties

This Agreement shall not be construed as creating or giving rise to any duties on the part of either party toward the inhabitants of the geographical area regularly served by the other or to the owners of property within such area. The parties hereby disclaim any intention of creating third party beneficiaries to this Agreement.

11. Procedures

The fire chiefs of the parties shall establish the manner and method of requesting assistance for fire or other emergency response under this Agreement. Each party shall develop and maintain a communication system, which will facilitate the procedures agreed upon.

12. Hazardous Materials

Assistance for any emergency involving hazardous materials or hazardous wastes in Fire Protection Area No. 1, or in the City will be in accordance with the Terms of this agreement.

13. Effective Date and Term

This term of this agreement is for (5) years and shall become effective upon the date specified in Section 2 of City of Kodiak Ordinance No. 1327 and upon approval by the Kodiak Island Borough. This Agreement may be terminated by either party by providing written notice to the other party not less than thirty (30) days prior to the desired date of termination.

CITY OF KODIAK

KODIAK ISLAND BOROUGH

Recommended for Approval:

Recommended for Approval:

Rome Kamai
Fire Chief
Dated: _____

Robert Himes
Fire Chief
Dated: _____

Approved:

Approved:

Aimée Kniaziowski
City Manager
Dated: _____

Bud Cassidy
Borough Manager
Dated: _____

Attest:

Attest:

Debra Marlar
City Clerk
Dated: _____

Nova Javier
Borough Clerk
Dated: _____

FIRE AND RESCUE MUTUAL AID AGREEMENT

This Agreement is made and entered into by and between the City of Kodiak ("the City") and the Kodiak Island Borough Womens Bay Service Area ("Womens Bay").

RECITALS

(a) The City and Womens Bay acknowledge the possibility that fires or other public emergencies may occur within their respective jurisdictions that could reach such proportions as to be impossible to control with their own local equipment, personnel, and resources and, therefore, find it appropriate that this Agreement be entered into for the mutual protection of life and property pursuant to AS 18.70.150-160 (relating to the adoption of mutual fire aid agreements), Article X, §13 of the Alaska Constitution (authorizing intergovernmental agreements for cooperative or joint administration of municipal functions or powers).

(b) The City and Womens Bay are desirous of entering into this Fire and Rescue Mutual Aid Agreement in order to memorialize their current understandings and expectations with regard to the furnishing of fire fighting and emergency services outside the normal and regular area of service by each party.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, terms and conditions herein contained the parties agree as follows:

1. **Furnishing of Emergency Fire Fighting and Rescue Assistance**

(a) Each party agrees to respond, to the extent it deems reasonably prudent and possible, to requests for assistance from the other and to furnish fire fighting and emergency rescue services, utilizing paid and volunteer fire fighters, and fire fighting apparatus and equipment owned and operated by each of the parties. The judgment as to whether or not it is reasonably prudent and possible to respond to a given request and, if so, to what extent and with what resources, shall rest exclusively with the party from whom such assistance is sought. Both parties hereby formally disavow any intention to create,

through the execution of this or any other agreement or through any course of past or future conduct, a binding contractual right to require the other to respond, or to respond at a particular level of resources, to requests for assistance.

(b) The term "request for assistance" shall mean a request for firefighting or emergency aid made by the fire chief, or other personnel who have been authorized by the chief of the requesting fire department to make such a request.

2. **Determination of Priority**

It is mutually understood and agreed that the dispatch of any personnel or equipment in response to a request for assistance shall

be subordinate to the needs and responsibilities of the responding fire department as determined by its fire chief and that his or her judgment as to the level of resources which should be withheld in order to respond to any actual or potential requests for assistance or public emergencies within the geographical area regularly served by the responding party shall be conclusive. No violation of this Agreement shall be considered to have occurred if, for any reason, in the judgment of the responding fire chief, a response to a request for assistance made by the other party to this Agreement might jeopardize the fire or other protection provided to the geographical area regularly served by the responding party.

3. Non-liability

Without limiting the generality of the foregoing it is explicitly agreed that a party to this Agreement shall not be responsible or liable for any loss or claims which may result from a failure to respond to a request for assistance received from the other party, or from an alleged failure to respond in a prompt or timely manner.

4. Operational Control

(a) Control of Fire Fighting

The fire chief of the party requesting assistance, or his authorized representative, shall have the sole responsibility for conducting all fire fighting or emergency operations at the scene; however, such requesting fire chief may delegate management authority over all or any part of such operations to any responding fire chief as provided in (b) below.

(b) Emergency Scene Management

The requesting fire chief, or his authorized representative, may request that a responding fire chief, or his authorized representative, assume management

authority over the control and direction of all or any part of the fire fighting operations at the fire or emergency; however, the requesting fire chief shall not, by relinquishing such control, be relieved of his overall control and responsibility for the operation.

(c) Control of Personnel

Notwithstanding any other provision herein, the officers, fire fighters and other personnel of each fire fighting organization, both the responding or the requesting units, shall remain under the control and direction of their own fire chief or his authorized representative and shall not become the agent, employees, or representatives of any other party.

(d) Right to Protect Personnel and Equipment

Each fire chief, both responding and requesting, and their authorized representative, shall have and retain the right to refuse to commit their personnel or equipment to any position which is considered unreasonably dangerous to life of any of their personnel, another person, or to equipment. A fire chief, or his authorized representative, shall have the sole and exclusive right and discretion to determine the extent and imminence of any such danger.

5. Costs and Expense

Each party shall be responsible for all of its own costs or expense, incurred in maintaining its equipment, insurance coverage, apparatus, paying salaries, and any and all other items of cost or expense associated with providing services pursuant to this Agreement; provided, however, that expendable fire fighting material used or expended by a responding party in its activities at the scene, such as fire fighting foam, shall be replaced by the party that

issued the request for assistance if the responding party expending such materials serves a written claim therefore upon the requesting party not later than sixty (60) days after such materials were used or expended.

6. Damage and Loss

With the exception of replacement of expendable fire fighting materials as provided above, any loss or damage to fire apparatus or other equipment of the responding party incurred or arising out of activities in responding to a request for assistance pursuant to this Agreement, including any loss which may occur while the responding party is traveling to the scene, working at the scene, or returning therefrom, shall be the responsibility of, and shall be paid by, such party responding to the request for assistance.

7. Immunities to Continue

This Agreement is not intended to, and it shall not be construed to, waive, relinquish, alter, amend or vitiate in any manner whatsoever, the privileges or immunities otherwise provided by law to either of the parties hereto or to any of their officers, employees, volunteers or other agents, whether in the course of responding to a request for assistance under this Agreement or otherwise. Each party and all such individuals shall have and retain all privileges and immunities otherwise applicable to the performance of the same or similar functions within the party's own area.

8. Not Employees or Agents

Nothing in this Agreement shall be construed to render or establish any officer, employee or volunteer of any one of the parties the agent, employee, representative or volunteer of any of the other parties and all such personnel shall be and remain, for

all purposes and at all times, the personnel of the party providing such personnel.

9. No Warranty

By entering into this Agreement, or taking any action pursuant to it, neither party is making any representation or warranty, whether express or implied, concerning the training or reliability of its personnel or that of the other party, or with respect to the safety, durability or reliability of its fire fighting apparatus or equipment or that of the other party. Each party expressly disclaims any such express or implied approval or warranty.

10. No Duty to Inhabitants or Third Parties

This Agreement shall not be construed as creating or giving rise to any duties on the part of either party toward the inhabitants of the geographical area regularly served by the other or to the owners of property within such area. The parties hereby disclaim any intention of creating third party beneficiaries to this Agreement.

11. Procedures

The fire chiefs of the parties shall establish the manner and method of requesting assistance for fire or other emergency response under this Agreement. Each party shall develop and maintain a communication system, which will facilitate the procedures agreed upon.

12. Hazardous Materials

Assistance for any emergency involving hazardous materials or hazardous wastes in Fire Protection Area No. 2, or in the City will be in accordance with the Terms of this agreement.

13. Effective Date and Term

This term of this agreement is for (5) years and shall become effective upon the date

specified in Section 2 of City of Kodiak Ordinance No. 1327 and upon approval by the Kodiak Island Borough. This Agreement may be terminated by either party by providing written notice to the other party not less than thirty (30) days prior to the desired date of termination.

CITY OF KODIAK

Recommended for Approval:

Rome Kamai
Fire Chief
Dated: _____

Approved:

Aimée Kniaziowski
City Manager
Dated: _____

Attest:

Debra Marlar
City Clerk
Dated: _____

KODIAK ISLAND BOROUGH

Recommended for Approval:

Dale Rice
Fire Chief
Dated: _____

Approved:

Bud Cassidy
Borough Manager
Dated: _____

Attest:

Nova Javier
Borough Clerk
Dated: _____

FIRE AND RESCUE MUTUAL AID AGREEMENT

This Agreement is made and entered into by and between the City of Kodiak, a municipal corporation of the State of Alaska (“the City”) and the United States Coast Guard Base Kodiak (“Base Kodiak”).

RECITALS

(a) The City and Base Kodiak acknowledge the possibility that fires or other public emergencies may occur within their respective jurisdictions which could reach such proportions as to be impossible to control with their own local equipment, personnel, and resources and therefore find it appropriate that this Agreement be entered into for the mutual protection of life and property pursuant to AS 18.70.150-.160 (relating to the adoption of mutual fire aid agreements) and Article X, §13 of the Alaska Constitution (authorizing intergovernmental agreements for cooperative or joint administration of municipal functions or powers).

(b) The City and Base Kodiak are desirous of entering into this Fire and Rescue Mutual Aid Agreement in order to memorialize their current understandings and expectations with regard to the furnishing of fire fighting and emergency services outside the normal and regular area of service by each party.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, terms and conditions herein contained the parties agree as follows:

1. **Furnishing of Emergency Fire Fighting and Rescue Assistance**

(a) Each party agrees to respond, to the extent it deems reasonably prudent and possible, to requests for assistance from the other and to furnish fire fighting and emergency rescue services, utilizing paid and volunteer fire fighters, and fire fighting apparatus and equipment owned and operated by each of the parties. The judgment as to whether or not it is reasonably prudent and possible to respond to a given request and, if so, to what extent and with what resources, shall rest exclusively with the party from whom such

assistance is sought. Both parties hereby formally disavow any intention to create, through the execution of this or any other agreement or through any course of past or future conduct, a binding contractual right to require the other to respond, or to respond at a particular level of resources, to requests for assistance.

(b) The term “request for assistance” shall mean a request for firefighting or emergency aid made by the fire chief, or other personnel who have been authorized by the chief of the requesting fire department to make such a request.

2. Determination of Priority

It is mutually understood and agreed that the dispatch of any personnel or equipment in response to a request for assistance shall be subordinate to the needs and responsibilities of the responding fire department as determined by its fire chief and that his or her judgment as to the level of resources which should be withheld in order to respond to any actual or potential requests for assistance or public emergencies within the geographical area regularly served by the responding party shall be conclusive. No violation of this Agreement shall be considered to have occurred if, for any reason, in the judgment of the responding fire chief, a response to a request for assistance made by the other party to this Agreement might jeopardize the fire or other protection provided to the geographical area regularly served by the responding party.

3. Non-liability

Without limiting the generality of the foregoing it is explicitly agreed that a party to this Agreement shall not be responsible or liable for any loss or claims which may result from a failure to respond to a request for assistance received from the other party, or from an alleged failure to respond in a prompt or timely manner.

4. Operational Control

(a) Control of Fire Fighting

The fire chief of the party requesting assistance, or his authorized representative, shall have the sole responsibility for conducting all fire fighting or emergency operations at the scene; however, such requesting fire chief may delegate management authority over all or any part of such operations to any responding fire chief as provided in (b) below.

(b) Emergency Scene Management

The requesting fire chief, or his authorized representative, may request that a responding fire chief, or his authorized representative, assume management authority over the control and direction of all or any part of the fire fighting operations at the fire or emergency; however, the requesting fire chief shall not, by relinquishing such control, be relieved of his overall control and responsibility for the operation.

(c) Control of Personnel

Notwithstanding any other provision herein, the officers, fire fighters and other personnel of each fire fighting organization, both the responding or the requesting units, shall remain under the control and direction of their own fire chief or his authorized representative and shall not become the agent, employees, or representatives of any other party.

(d) Right to Protect Personnel and Equipment

Each fire chief, both responding and requesting, and their authorized representative, shall have and retain the right to refuse to commit their personnel or equipment to any position which is considered unreasonably dangerous to life of any of their personnel, another person, or to equipment. A fire chief, or his authorized representative, shall have the sole and exclusive right and discretion to determine the extent and imminence of any such danger.

5. Costs and Expense

Each party shall be responsible for all of its own costs or expense, incurred in maintaining its equipment, insurance coverage, apparatus, paying salaries, and any and all other items of cost or expense associated with providing services pursuant

to this Agreement; provided, however, that expendable fire fighting material used or expended by a responding party in its activities at the scene, such as fire fighting foam, shall be replaced by the party that issued the request for assistance if the responding party expending such materials serves a written claim therefore upon the requesting party not later than sixty (60) days after such materials were used or expended and, provided further, that nothing in this Agreement shall be construed as a waiver on the part of the city of the right to assess fees in accordance with City of Kodiak Resolution 92-18 or any other duly enacted resolution or ordinance.

6. Damage and Loss

With the exception of replacement of expendable fire fighting materials as provided above, any loss or damage to fire apparatus or other equipment of the responding party incurred or arising out of activities in responding to a request for assistance pursuant to this Agreement, including any loss which may occur while the responding party is traveling to the scene, working at the scene, or returning therefrom, shall be the responsibility of, and shall be paid by, such party responding to the request for assistance.

7. Withdrawal

Either party may withdraw from this Agreement at any time within the provision of paragraph 14.

8. Immunities to Continue

This Agreement is not intended to, and it shall not be construed to, waive, relinquish, alter, amend or vitiate in any manner whatsoever, the privileges or immunities otherwise provided by law to either of the parties hereto or to any of their officers, employees, volunteers or other agents, whether in the course of responding to a

request for assistance under this Agreement or otherwise. Each party and all such individuals shall have and retain all privileges and immunities otherwise applicable to the performance of the same or similar functions within the party's own area.

9. Not Employees or Agents

Nothing in this Agreement shall be construed to render or establish any officer, employee or volunteer of any one of the parties the agent, employee, representative or volunteer of any of the other parties and all such personnel shall be and remain, for all purposes and at all times, the personnel of the party providing such personnel.

10. No Warranty

By entering into this Agreement, or taking any action pursuant to it, neither party is making any representation or warranty, whether express or implied, concerning the training or reliability of its personnel or that of the other party, or with respect to the safety, durability or reliability of its fire fighting apparatus or equipment or that of the other party. Each party expressly disclaims any such express or implied approval or warranty.

11. No Duty to Inhabitants or Third Parties

This Agreement shall not be construed as creating or giving rise to any duties on the part of either party toward the inhabitants of the geographical area regularly served by the other or to the owners of property within such area. The parties hereby disclaim any intention of creating third party beneficiaries to this Agreement.

12. Procedures

The fire chiefs of the parties shall establish the manner and method of requesting assistance for fire or other

emergency response under this Agreement. Each party shall develop and maintain a communication system which will facilitate the procedures agreed upon.

13. Hazardous Materials

Assistance for any emergency involving hazardous materials or hazardous wastes stored at the Base Kodiak, or in the City of Kodiak, will be in accordance with the Terms of this agreement. Base Kodiak will provide a copy of its Hazardous Waste Contingency Plan to the City of Kodiak Fire Department. This plan will be maintained in a place known and accessible to the City of Kodiak Fire Department personnel. Any such plans prepared by the City of Kodiak, or persons within the City of Kodiak Fire Department’s jurisdiction, will similarly be provided to the Base Kodiak Fire Department. Periodic training in hazardous materials and hazardous waste emergency response will be scheduled on mutually agreeable basis.

CITY OF KODIAK

Recommended for Approval:

Rome Kama
Fire Chief
Dated: _____

Approved:

Aimée Kniazowski
City Manager
Dated: _____

Attest:

Debra Marlar, City Clerk

14. Effective Date and Term

This Agreement shall become effective upon the date specified in Section 2 of City of Kodiak Ordinance No. 1327 and approval by the Commanding Officer, USCG Base Kodiak or other appropriate U.S. Coast Guard Official. This Agreement shall be terminated by either party by providing written notice to the other party not less than thirty (30) days prior to the desired date of termination.

15. Authority

This Agreement is entered into by the USCG Base Kodiak, pursuant to the authority granted by 14 USC, Section 141.

UNITED STATES COAST GUARD
BASE KODIAK


Recommended for Approval

Jeffery D. Halcomb
Fire Chief, USCG Base Kodiak
Dated: _____

Approved:

Captain TBD
Commanding Officer, USCG Base Kodiak
Dated: _____

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Aimée Kniaziowski, City Manager 
Date: October 23, 2014

Agenda Item: V. b. **Resolution No. 2014–35, Adopting a FY2016 State Capital Improvements Program List**

SUMMARY: Following Council and staff discussion of a suggested draft FY2016 state CIP list on September 9 and further discussion with Representative Alan Austerman and Doug Letch from Senator Gary Stevens’ staff on October 21, 2014, Council indicated support for the attached list of state capital funding priorities for FY2016 (Attachment A). The state is facing major financial limitations again this year, and with the outcome of the statewide elections still to be determined, staff recommends Council adopt Resolution No. 2014–35, which is a short, cost-reduced list of infrastructure improvements and long-term priority projects.

PREVIOUS COUNCIL ACTION:

- September 9, 2014, Council reviewed and discussed a proposed list of three projects to become the City’s FY2016 state CIP request list. Staff reworked the requested funding for the projects and recommended they be brought forward for discussion again at an upcoming work session.
- October 21, 2014, Council discussed the City’s proposed CIP list with Representative Austerman and staff from Senator Stevens’ office. There was support to move this list forward for adoption at the October 23 regular meeting.

DISCUSSION: Staff presented a recommended list of CIP projects for Council review and discussion in September as noted above. The top priority recommended was to rebuild Mill Bay Road for an estimated \$7 million. Right before that meeting, staff discovered that the overall condition of Mill Bay Road was better than expected with no roadbed deterioration apparent. Repair work done on several sections of the road worked well. Staff explained the change to Council and asked for a chance to develop a less expensive alternative to full replacement for the final CIP resolution. Council agreed and staff worked with the DOWK HKM engineers to develop a plan to evaluate and resurface the road as a rehabilitation project and not full replacement. Staff rewrote the project summary and reduced the legislative request to \$3.5 million (Attachment A).

Staff also recommended Council consider reducing the request for the Phase II Shelikof Pedestrian Improvement Project given the likelihood of limited funding in FY2016. The main elements of this next phase include:

Visitor shelter – information kiosk – public restrooms, Pier II:	\$1,100,000
Sidewalk Improvements Jack Hinkel to Alaska Hydraulics:	\$ 330,000

OCTOBER 23, 2014
Agenda Item V. b. Memo Page 1 of 3

Road & landscape improvements, Alaska Hydraulics to Marine Way:	\$1,750,000
Breakwater Trail:	\$ 959,000

The bulkhead parking, estimated at \$1,650,000, was removed from this phase of the project and identified as a separate priority, reflected as priority No. 2 in the resolution.

Council requested that the Pier II structure be selected as providing the most benefit, if funded, and is included as the third priority in the FY2016 CIP resolution.

Representative Austerman and staff from Senator Stevens’ office met with the City Council on October 21 to review the revised list of projects. They discussed upcoming legislative issues and the financial outlook for the state, especially as it relates to declining oil revenues. As was the case last session, they expect the upcoming session to reflect reduced operating and capital budgets.

Based on the discussion at the September and October meetings, staff is submitting a resolution of three prioritized projects for FY2016, which includes a request to fund rehabilitation of the paving on Mill Bay Road, state funding for the Shelikof bulkhead parking project, and funding via the cruise ship excise tax fund for one element of the Shelikof Street pedestrian improvement project – the construction of a visitor shelter, information kiosk, and public restroom facility on Pier II.

Staff will send an approved copy of Resolution No. 2014–35 to the Kodiak delegation and state lobbyist, Ray Gillespie, as soon as it is adopted for their use in promoting these three important community projects.

ALTERNATIVES: There are two alternatives for Council to consider.

- 1) Adopt the list of project requests for FY2016 as discussed in September and October and as identified in Resolution No. 2014–35. The list reflects Council’s direction and will provide the delegation and lobbyist with information to use when promoting Kodiak’s funding needs during this coming legislative session. This is staff’s recommendation.
- 2) Amend or do not adopt the resolution, which is not recommended, as it would not reflect support for the City’s key projects as discussed.

FINANCIAL IMPLICATIONS: There are no direct financial implications in adopting the CIP resolution. However, the entire community will benefit if the City receives state funding assistance for any of these important projects. If funded, the much needed paving rehabilitation will reduce maintenance costs in the future, and the Shelikof projects will improve safety, parking, and public convenience, but require future funding for operations and maintenance.

CITY MANAGER’S COMMENTS: I prepared the attached resolution for the City’s FY2016 state funding requests that reflect staff’s recommendations and the discussions from the September 9 and

October 21 work sessions. The City's lobbyist, Ray Gillespie, also had a chance to review the projects and supports advancing our short list. The resolution reflects projects that reflect Council's direction, can be advocated for by City representatives and our lobbyist, and can be supported by our delegation. I am uncertain if we will receive funding for the Shelikof project elements due to the expected lack of funding. However, we should keep these elements on the list in the event funding does become available. I recommend Council adopt the resolution, keeping in mind that the state will be facing very difficult financial realities this coming year.

ATTACHMENTS:

Attachment A: Resolution No. 2014-35, Adopting the FY2016 State CIP List

Attachment B: Resolution No. 2013-30, FY2015 State CIP List

PROPOSED MOTION:

Move to adopt Resolution No. 2014-35.

**CITY OF KODIAK
RESOLUTION NUMBER 2014-35**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK ADOPTING
A FY2016 STATE CAPITAL IMPROVEMENTS PROGRAM LIST**

WHEREAS, the City of Kodiak uses a Capital Improvements Program planning process to identify the capital improvement project needs of the community; and

WHEREAS, this identification and planning process plays a vital role in directing the City's administration and is utilized as a long-range planning and policy setting tool for City infrastructure maintenance and enhancement; and

WHEREAS, the City of Kodiak is committed to paying its way to the greatest extent possible, but the cost of some of the City's capital project needs are greater than the resources available locally; and

WHEREAS, the Kodiak City Council has identified and prioritized capital improvement projects for submission to the Alaska State Legislature and Governor for funding consideration due to their significance and/or magnitude.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that the following infrastructure replacement/improvement projects are considered of primary importance and are hereby adopted as the City of Kodiak's FY2016 State capital improvement project list:

1. Mill Bay Road Pavement Rehabilitation Project: \$3,500,000

Mill Bay Road is a 2.5 mile major arterial that provides access to the City of Kodiak's main business district. It is the most traveled road in Kodiak with approximately 12,000 vehicle trips per day. The City took ownership of Mill Bay Road from the State after it was reconstructed by DOT in 1991. The road surface has developed extreme pavement wear in the driving lanes over the past 23 years. The City has maintained and repaired sections and the driving lanes were milled and overlaid twice, but the overall road condition has not been assessed. The most critical issue is the development of ruts in the driving lanes up to 3" deep in some lanes in major intersections. Ruts create drainage problems which further accelerate wear on the pavement. The need for further pavement rehabilitation is necessary to prevent areas of roadbed failure. The City must plan on full road width pavement rehabilitation for the most traveled 2 mile portion from the main intersection downtown (the "Y") to Island Lake Road (Walmart) and is completing an engineering study to assess the condition of the pavement, address drainage, and review the possibility of updating and reusing the original design segments to help reduce project costs. The total road rehabilitation cost, including engineering and construction, is estimated to be \$4,000,000 with funds coming from a combination of local funds for design & engineering and state funds for the remainder of the

project. The City of Kodiak is requesting state funding assistance for permitting, redesign , and construction in the amount of \$3,500,000 to fully rehabilitate Mill Bay Road.

2. Shelikof Street Bulkhead Parking

Funding Request: \$1,650,000

In 2009, the City identified the need for pedestrian improvements from Pier II to downtown Kodiak to more safely accommodate pedestrian traffic and to improve facilities for local residents, workers, and businesses that use the pier, street, and access to the City's adjacent 250 slip boat harbor. The first phase of the project, construction of an ADA accessible sidewalk, new retaining walls, improved lighting and parking, and utility work was completed in 2013. The City must plan and design the next parking improvement phase of this project, which is to construct a 30 space bulkhead parking area on the south side of Shelikof Street adjacent to St. Paul Harbor. The roadway area adjacent to the proposed bulkhead parking is dangerously congested. Due to lack of adequate parking, vehicles block walkways, equipment operates in the ROW, and access to businesses is often blocked, forcing pedestrians into the roadway. Construction of additional off-road parking will direct pedestrian traffic out of the congested roadway. The net increase in parking will benefit harbor users and retail businesses along Shelikof Street. It will provide improved and safer pedestrian access from Marine Way to the fish processors in the immediate area. Associated tasks for this phase of the project include geotechnical investigation, design, permitting, mapping, construction, improved lighting, and utility relocates. The City of Kodiak is requesting state funding assistance for planning, permitting, design, and construction in the amount of \$1,650,000 to construct this bulkhead parking project to enhance pedestrian and vehicle safety.

3. Shelikof Street Pedestrian Improvements Pier II to Downtown

Funding Request: \$1,100,000

In 2009 the City of Kodiak started work to improve pedestrian and roadway improvements along Shelikof Street (Cannery Row) from Pier II to downtown Kodiak to more safely accommodate cruise ship passengers who walk along the street and to improve the roadway and parking facilities for local residents and businesses that use the highly congested street and pier year round. The first phase, construction of an ADA accessible sidewalk, improved lighting and parking, retaining walls, and utility relocates was completed in 2013. The City wants to begin work on a portion of the next phase of improvements with design and construction of a visitor shelter-information kiosk-public restroom facility at Pier II. The shelter will benefit ferry and cruise ship passengers and visitors with a place to come in out of the weather, a location for the distribution of visitor information, and provide the only public restroom facility at Pier II. The City has 65% engineering design drawings and two drawings showing floor plans and elevations. The City of Kodiak is requesting state funding assistance in the amount of \$1,100,000 through the cruise ship excise tax fund for planning, permitting, design, and construction of this shelter for the community of Kodiak, its visitors, and residents.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Adopted:

DRAFT

is unable to receive this funding through the Department of Environmental Conservation's grant and loan programs.

2. E911 Replacement Equipment:

Funding Request: \$400,000

The City completed its new public safety building in 2010. One of the important aspects of the new facility is to continue to provide area-wide dispatch services and enhanced 911 (E911) service to the Kodiak area, including areas outside the City's corporate boundaries. The City completed a study in 2009 which advised replacement of the system. The study indicated that basic upgrades with future expansion capabilities will cost at least \$400,000. The current system is operable but replacement parts and service/maintenance agreements are no longer available due to the age of the system. The City has been unable to afford the full replacement costs or find grant funding to help offset the replacement costs. The City of Kodiak is requesting State funding assistance in the amount of \$400,000 to assist with the upgrade of this important public safety tool.

3. Shelikof Street Bulkhead Parking

Funding Request: \$1,650,000

In 2009, the City identified the need for pedestrian improvements from Pier II to downtown Kodiak to more safely accommodate pedestrian traffic and to improve facilities for local residents, workers, and businesses that use the pier, street, and access to the City's adjacent 250 slip boat harbor. The first phase of the project, construction of an ADA accessible sidewalk, improved lighting and parking, and utility relocates is under underway and will be completed in 2013. The City must plan and design the next parking improvement phase of this project, which is to construct a 30 space bulkhead parking area on the south side of Shelikof Street adjacent to St. Paul Harbor. The roadway area adjacent to the proposed bulkhead parking is dangerously congested. Due to lack of adequate parking, vehicles block walkways, equipment operates in the ROW, and access to businesses is often blocked, forcing pedestrians into the roadway. Construction of additional off-road parking will direct pedestrian traffic out of the congested roadway. The net increase in parking will benefit harbor users and retail businesses along Shelikof Street. It will provide improved and safer pedestrian access from Marine Way to the fish processors in the immediate area. Associated tasks for this phase of the project include geotechnical investigation, design, permitting, mapping, construction, improved lighting, and utility relocates. The City of Kodiak is requesting state funding assistance for planning, permitting, design, and construction in the amount of \$1,650,000 to construct this bulkhead parking project to enhance pedestrian and vehicle safety.

**4. Shelikof Street Pedestrian Improvements
Pier II to Downtown**

Funding Request: \$3,800,000

In 2009 the City of Kodiak started work to improve pedestrian and roadway improvements along Shelikof Street (Cannery Row) from Pier II to downtown Kodiak to more safely accommodate cruise ship passengers who walk along the street and to improve the roadway and parking facilities for local residents and businesses that use the highly congested street and pier year round. The first phase, construction of an ADA accessible sidewalk, improved lighting and parking, and utility relocates is scheduled to be completed in 2013. The City wishes to plan the next phase of the project, which will carry pedestrian improvements further along Shelikof Street from Jack Hinkle Way to Marine Way. This phase includes a visitor shelter-information kiosk-public restroom facility at Pier II, rehabilitation of the sidewalk from Jack Hinkle Way to Marine Way, improved lighting, landscaping, benches, signage, redesign of existing on-street parking, a walkway along the harbor side of the street, and a scenic trail along the St. Paul Harbor breakwater. Additional tasks include permitting, ROW acquisition & mapping, geotechnical investigation, and utility relocates. The City of Kodiak is requesting state funding assistance in the amount of \$3,800,000 through the cruise ship excise tax fund for planning, permitting, design, and construction of this project for the community of Kodiak, its visitors, and residents.



CITY OF KODIAK

Pat Mauer

MAYOR

ATTEST:

Dulce Mark
CITY CLERK

Adopted: December 12, 2013

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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Debra Marlar, City Clerk DM

Date: October 23, 2014

Agenda Item: V. c. Certification of Election

SUMMARY: The City of Kodiak held a regular election October 7, 2014, and voters cast ballots for two three-year City Council positions. The Canvass Board met October 15, 2014, to tally the votes of the admissible questioned and absentee ballots, together with votes counted on election night. The final results of the October 7, 2014, Municipal City election were:

City Council—Two Three-Year Terms

Randall Cruz Bishop	317
Terry Haines	375
David Haught	123
Marnie Leist	257
Write-Ins	16

Of the 3,443 registered City voters, 698 cast eligible City ballots, for a 20% voter turnout, which is 4.5% higher than last year.

NOTES/ATTACHMENTS:

- Attachment A: Certificate of Election
- Attachment B: Canvass Report of Final Results

PROPOSED MOTION:

Move to certify the results of the October 7, 2014, regular election and declare Randall Cruz Bishop and Terry Haines elected to the City Council for three-year terms.

CITY OF KODIAK, ALASKA
2014 Municipal Election
Certificate of Election

WE, the undersigned MAYOR and CITY CLERK of the City of Kodiak, Alaska, do hereby certify that the Council of the City of Kodiak, Alaska, in accordance with KCC 2.28.015, have received the report of the Canvass Board for the 2014 Municipal Election, held on the 7th day of October 2014 and have determined that the election was validly held and have certified the following results:

Councilmember, two three-year terms

Number of ballots cast:698

Candidates	Votes Received
Randall Cruz Bishop	317
Terry Haines.....	375
David Haught	123
Marnie Leist.....	257
Write-ins.....	16

By the authority vested in us by the laws of the State of Alaska and the Charter and Code of the City of Kodiak, Alaska, we do hereby affix our hand and seal.

MAYOR

CITY CLERK

DATED this 23rd day of October 2014.

**October 7, 2014, Regular Election
Canvass Report of Final Results**

Attachment B

(Harbor) (Teen) Admissible
32/820 32/825 Questioned Total Percent

REGISTERED VOTERS/BALLOTS CAST

REGISTERED VOTERS	1,741	1,702		3,443	
BALLOTS CAST	355	285	58	698	20%

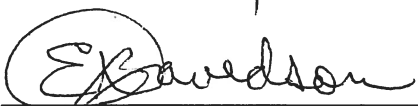
VOTES CAST

City Council, Two Three-Year Terms


Randall Cruz Bishop	163	128	26	317	29.1%
Terry Haines	198	145	32	375	34.5%
David Haught	52	54	17	123	11.3%
Marnie Leist	136	92	29	257	23.6%
Write-ins	10	5	1	16	1.5%
Total	559	424	105	1088	100%

We, the undersigned Canvass Board for the 2014 City of Kodiak Municipal Election held October 7, 2014, hereby certify that the above is a true and correct statement of election results.


Dated this 15th day of October 2014.



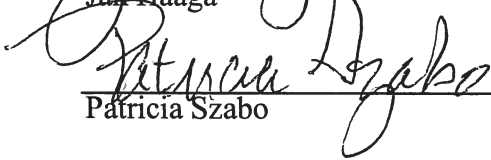
Charles Davidson



Richard Ross



Jan Haaga



Patricia Szabo

OATH OF OFFICE

MEMORANDUM TO COUNCIL

Date: October 23, 2014

Agenda Item: X. Oath of Office

SUMMARY: KCC 2.28.080 requires elected officials to take and subscribe to the Oath of Office. The City Clerk will now administer the Oath of Office to the City's re-elected officials.

NOTES/ATTACHMENTS:

Attachment A: Oath of Office

CITY OF KODIAK, ALASKA

Oath of Office

October 23, 2014

I, _____, do solemnly affirm that I will support the Constitution and laws of the United States, the laws of the State of Alaska, the ordinances of the City of Kodiak, and that I will faithfully and honestly perform the duties of Councilmember, so help me God.

CITY OF KODIAK

Councilmember

ATTEST:

Debra L. Marlar, City Clerk