



## Agenda

### Port & Harbor Advisory Commission Regular Meeting

Wednesday, May 22, 2024 at 5:30 PM

City Hall Cowles Council Chambers In-Person & Via Zoom Webinar

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#### Homer City Hall

491 E. Pioneer Avenue  
Homer, Alaska 99603  
[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

#### Zoom Webinar ID: 954 2610 1220 Password: 556404

<https://cityofhomer.zoom.us>  
Dial: 346-248-7799 or 669-900-6833;  
(Toll Free) 888-788-0099 or 877-853-5247

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**CALL TO ORDER, 5:30 P.M.**

#### **AGENDA APPROVAL**

**PUBLIC COMMENTS ON MATTERS ALREADY ON THE AGENDA** (3 minute time limit)

#### **RECONSIDERATION**

#### **APPROVAL OF MINUTES**

- [A.](#) Unapproved April 24, 2024 PHC Minutes

#### **VISITORS / PRESENTATIONS**

- A. City Council Champions - Harbor Expansion

#### **STAFF & COUNCIL REPORT / COMMITTEE REPORTS**

- [A.](#) Port Finance/Budget Report - FYTD Report for May 2024
- [B.](#) Port & Harbor Staff Report - May 2024
- [C.](#) Homer Marine Trades Association (HMTA) Report

#### **PUBLIC HEARING**

#### **PENDING BUSINESS**

- [A.](#) Election of Officers  
Memorandum PHC 24-008 from Deputy City Clerk as backup
- [B.](#) Amendments to Port & Harbor Advisory Commission Bylaws  
Memorandum PHC 24-007 from Deputy City Clerk as backup

## **NEW BUSINESS**

- A. Berth II, Inc. Application for Lease Assignment from Y&C LLC for 4400 Homer Spit Rd ('Happy Face Restaurant')

Memorandum PH 24-012 from Port Property Associate as backup  
Existing City of Homer Lease with Y & C LLC  
Letter of Good Standing re: Y & C LLC

- B. Cruise Ship Capacity and Policy

Memorandum PHC 24-011 from Port Administrative Supervisor as backup

- C. Port & Harbor Enterprise Fund Financial Policy

Memorandum PHC 24-010 from Port Administrative Supervisor as backup

## **INFORMATIONAL MATERIALS**

- A. May 2024 Port Operations Report  
April 2024 Statistics

- B. May City Manager's Report to Council

- C. Homer Harbor Critical Float Replacement Project

- D. Homer Harbor Expansion General Investigation

## **COMMENTS OF THE AUDIENCE** (3 minute time limit)

## **COMMENTS OF THE CITY STAFF**

## **COMMENTS OF THE COMMISSION**

## **ADJOURNMENT**

Next Regular Meeting is **Wednesday, June 26th, 2024 at 5:30 p.m.** All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska and via Zoom Webinar.

**1. CALL TO ORDER, 5:30 P.M.**

Session 24-03, a Regular Meeting of the Port and Harbor Advisory Commission was called to order by Acting Chair Mark Zeiset at 5:30 p.m. on April 24, 2024 in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska and via Zoom Webinar.

PRESENT: COMMISSIONERS FRIEND, PITZMAN, VELSKO, ZEISET & STUDENT REPRESENTATIVE ROGERS

ABSENT: COMMISSIONER SHAVELSON (EXCUSED) & COMMISSIONER SIEKANIEC

CONSULTING: PORT DIRECTOR HAWKINS, PORT ADMINISTRATIVE SUPERVISOR WOODRUFF

STAFF: PORT ADMIN ASSISTANT S. JACOBSEN

**2. AGENDA APPROVAL**

Commissioner Pitzman requested a motion and a second to approve the agenda as amended.

PITZMAN/FRIEND MOVED TO APPROVE THE AGENDA AS AMENDED.

There was no discussion.

VOTE: NON-OBJECTION: UNANIMOUS CONSENT.

Motion carried.

**3. PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA (3 minute time limit)**

William Roth noted that he attended the previous meeting. A young fisherman who has owned his boat for 10 years, he reflected on how difficult it was starting as a fisherman. Roth said that enforcing the skiff policy will adversely affect new and young fishermen. Roth approximated seiner's operating expenses are around \$150,000 to \$200,000 a year and that of the approximate 131 seiners in Homer that they provide approximately 26 million dollars a year of expenses to Homer businesses.

Megan Corazza, a local seiner since 2000, agreed with William Roth's comments. Corazza shares that she feels unwelcome in the Homer Harbor as it is expensive. Corazza felt that the fleet should not be charged the work seine skiff fee as it would be a nice gesture and a nicer environment without it. Corazza stated that she opposes the extra skiff tariff. Thanked commission members for their time serving on the board.

Gus Cotton, owner of a seiner and an operator in marine trades, shares that the Homer Harbor lacks amenities such as showers, laundry, or parking.

Lillian Connor, Homer local and commercial fisherman is now fishing out of Kodiak. Connor states that fisheries are facing a big shift and requested that Homer Harbor maintain the work skiff exemption to provide relief to fishermen and stand in solidarity with those who contribute to Alaska and its way of life. Connor thanked the commission.

Pete Alexson, owner of a seiner and seine skiff in Homer Harbor. Alexson supported Megan Corazza's comments that he does not believe he has been charged an extra fee for his seine skiff in other harbors in Alaska.

Scott Adams shares that he researched where the funds originated for the Fishing Hole and stated that he was unable to find the lot division that is shared in the agenda packet. Adams requested the commission to find where the money came from for the Fishing Hole. Adams also shared that he shared his opposition of the work skiff policy in October. Adams shared that he believes the pipes on the steel grid look great. He also questioned the commission if there has been a study or survey of the steel grid. Lastly, Adams requested that he would like to see American flags hung at the Harbormaster Office.

Evan Moore, owner of a seiner, reiterates William Ross's comment that Moore has spent over \$100,000 in repairs. He shares that the removal of the work seine skiff policy would be a financial burden for him. Moore shares that coming from Valdez, there is no extra charge for seine skiffs. Moore thanked the commission.

Brooke shared that she is the seine vessel's other owner with Mr. Cotten. Brooke shares that she feels the Homer Harbor is expensive and enjoys the tourists and community before fishing season. Brooke states that they try to remain out of the harbor due to high costs, as well as dry docking as it is inconvenient. She indicates she opposes the change in the work seine skiff policy. Brooke thanked the commission.

Garrity Fabich a Homer local that has been seining for the last 10 years and recently purchased his own boat. Fabich shares that everything in the fishing industry is becoming expensive and is difficult on new fishermen trying to establish themselves. He shares that no other harbor charges for seine skiffs. Fabich thanked commission for listening.

Amber Lukin and her husband have been commercial fishermen for over 20 years. They are both Prince William seiners and Copper River gillnetters and own a seine boat. She shares that their skiff is not designed to fit on their commercial fishing boat. Lukin shares that she opposes the seine skiff policy. Lukin thanked the commission.

Amy Stonorov and her husband Ivan own a seiner and fish out of Homer. She was less interested in her boat and more interested in the timing of the change of tariff and that it was unfair to other seiners, especially the young ones. Stonorov advised the commission to wait a year for the tariff and that she opposes the removal of the work seine skiff policy. Stonorov thanked the commission.

Christopher Clucas the owner of a seiner for 2 years. Clucas opposes the seine skiff policy.

Dan Miotke a local seiner, states that he opposes the seine skiff policy. Miotke recommended that the commission give all fishermen 4 weeks of free moorage for seine skiffs in the harbor. He indicated that many individuals have to also coordinate with Northern Enterprises to launch and load their skiffs and are not always timely. Miotke recommended that those who fish the herring fisheries could provide their permit to the harbor to receive an additional month of free moorage for the seine skiff. Miotke thanked the commission.

Ivan Stonorov, a local Homer harbor user and Prince William Sound seiner. Stonorov opposes the work skiff policy as it adds a burden to young fishermen and those entering the fisheries. Stonorov mentioned the condemned steel grid and shared that the steel grid offers a place for individuals to affordably work on their

vessels. He requested that the steel grid be included in the study along with the Harbor Expansion Project. Stonorov thanked the commission.

Mr. Veerhusen, a Homer local, states he is opposed to the seine skiff policy. He shares that he had utilized the harbor before the harbor existed. Veerhusen shares that the seine skiffs are not taking space where revenue could be made. He indicated the seine skiff policy was proposed at a bad time. Veerhusen requested a bulletin board to be placed on the restroom building near the Harbormaster office. Veerhusen thanked the commission.

Mystique Ross, a lifelong fisherman now has her own boat. She indicated that the current industry is difficult and that the policy change was frustrating. Ross shared that she is unable to load her seine skiff onto her vessel along with others with the same issue. Ross thanked the commission.

Theresa Ross is a local fisherman who owns 4 boats and shares she is opposed to the seine skiff charge. Ross shares that they are unable to load their skiffs on their seiner. Ross states that she has been in many harbors in Alaska and in other states and feels that commercial fishermen are not appreciated. Ross also shared that the steel grid is an affordable option compared to hauling out their boat. Ross thanked the commission.

Rich and Sonja Corazza on zoom shared that they have been fishing in Homer when there was no harbor. Sonja shares that over the last few years that the commercial fishermen have not felt appreciated. Sonja suggested the price fee should mirror the Kodiak fees as they do not charge seine skiffs in the spring in summer. Sonja requested that the seine skiffs should not receive an additional fee. Sonja thanked the commission.

#### **4. RECONSIDERATION**

#### **5. APPROVAL OF MINUTES**

5.A. Unapproved March 27<sup>th</sup>, 2024 PHC Minutes

FRIEND/PITZMAN MOVED TO APPROVE THE MARCH 27, 2024 MEETING MINUTES.

There was no discussion.

VOTE: NON-OBJECTION: UNANIMOUS CONSENT.

Motion carried.

#### **6. VISITORS/PRESENTATIONS**

6.A. City Council Champions – Harbor Expansions

Councilmember Lord presented a few updates for her and Councilmember Hansen. Councilmember Lord, Councilmember Hansen, and Jenny Carrol special projects coordinator are traveling to Washington D.C. to lobby on behalf of the City of Homer and primarily for the Homer Harbor Expansion project. They will be meeting with Dana Herndon with Senator Murkowski's office who is in charge of the congressionally delegated funds, Senator Murkowski, Senator Sullivan, Representative Peltola, and Steve Kopecky with the corp. of

engineers. They will also be meeting with a Federal lobbyist to discuss if a lobbyist is needed for the General Investigation when the Homer Harbor Expansion becomes a federal project. Councilmember Lord informed the commission that if they have any questions to pass them along with her to take to Washington D.C.

6.B. HDR – Electric Possibilities Related to Float Replacement and Harbor Expansion

Ronny McPherson and KC Kent are HDR's coastal engineers and representatives for the Homer Harbor Expansion Project. McPherson discussed what electrification means to Homer Harbor and how providing shore power to vessels reduces emissions. He indicated that there is a lot of federal grant funding to assist in implementing electrification for port infrastructure. McPherson explained with the increase of electric vehicles, especially electric trucks pulling trailers, Homer Harbor may see an influx of need for electric vehicles. McPherson shared that the Homer Harbor already has more than 200 pedestals in the harbor for vessels, and indicated that the Homer Harbor is already ahead of the curve. Ending the presentation, McPherson left ideas with the commission to consider options for electric vehicle charging stations and renewable energy options for the Homer Harbor.

**7. STAFF & COUNCIL REPORT/COMMITTEE REPORTS**

7.A. Port Finance/Budget Report – FYTD Report for April 2024

Ms. Woodruff shared that wharfage from the Deep Water Dock has seen an increase in wharfage and the commission will see an increase in revenue shortly. Mr. Hawkins mentioned that the Homer Harbor is at 79% of the fiscal year as something to keep in mind for the commission. Ms. Woodruff discussed that the city of Homer is working on the mid-biennium budget and that the Homer Harbor has submitted changes for the next fiscal year. She shared that the harbor requested to raise categories in the operations budget and add a full-time seasonal position for the Ice Plant due to the additional ice being produced this year as the OBI ice plant is down for maintenance.

7.B. Port & Harbor Staff Report – April 2024

Ms. Woodruff discussed the Homer Harbor Expansion Project with an additional 1.15 million for the study, half is a local match that will be shared with the state and the request has been submitted to the state.

Ms. Woodruff shared that there will be two electric vessels that will be utilizing the Homer Harbor and will be sharing data with staff to learn about what that user group may need to utilize the harbor.

Ms. Woodruff shared that the Homer City Council is requesting the commission to share the Homer Harbor financial plan as well as to look at the plan for scheduling cruise ship landings. Other discussion topics included:

- Lease ordinances
- Scheduling an upcoming work session for May 2024
- Discuss time to meet with Agnew Beck in regards to the Homer Comprehension Plan Rewrite
- Awarding contract for ADA doors at Homer Harbor Master Office
- Fish Grinder design is complete and will request RFP soon be submitted

7.C. Homer Marine Trades Association (HMTA) Report

Commissioner Zeiset shared that HMTA has awarded \$4,245 in scholarship money towards marine-related courses at the local college. Zeiset shared that HMTA hosted a round hall meeting at the Homer High School (HHS) to show individuals what classes are offered at HHS. Student representative Rogers shared that FOLs about trades have been engaging for students.

**8. PUBLIC HEARING(S)**

**9. PENDING BUSINESS**

**10. NEW BUSINESS**

PITZMAN/VELSKO MOVED TO MOVE DISCUSSION OF WORK SKIFF EXEMPTION TO BEGINNING OF NEW BUSINESS.

VOTE: NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

**10.A. Work Skiff Policy**

Commissioner Pitzman shared that the tariff rewrite began in the spring of 2023 and was implemented before immense public comment. He shares that with the large number of comments from this meeting from the public that he felt the topic to be reconsidered with the commission due to the current state of the industry.

PITZMAN/VELSKO MOVED TO RECOMMEND POSTPONEMENT OF THE IMPLEMENTATION OF THE WORK SKIFF POLICY FOR THE PORT AND HARBOR TARIFF TO 2025.

Ms. Woodruff asked a clarifying question for Commissioner Pitzman if this was a postponement through 2025 to begin in 2026. Commissioner Pitzman confirmed that this movement is to be postponed to the end of 2024 and to be implemented in 2025. He added clarifying comments that the work skiff policy is to include all work skiffs and not just seine skiffs but would like to be responsive to public comments.

Commissioner Zeiset agreed with continuous discussion for policy change and postponing the policy change to the end of the year.

Commissioner Velsko agreed with Commissioner Pitzman's comment and that she is aware of the high cost of the commercial fishing industry.

Commissioner Friend supports the tariff change as well as postponing the policy change and was appreciative of the public comment received. He also commented that staff works hard to upgrade the harbor with limited funds but acknowledged the policy change was bad timing. However, he noted that the Homer Harbor is too small for the activity that takes place and that the policy change wasn't any animosity towards the commercial fishing business.

VOTE: NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

10.B. Land Allocation Plan Annual Review

Ms. Woodruff prefaced with background information to the commission about the land allocation plan and that the commission has an opportunity to weigh in on those changes. Ms. Woodruff shared the suggested staff change of the removal of over-slope area 1 and change Lot 12, the concrete pad, to a long-term lease.

Mr. Hawkins agreed with the recommendation for the removal of overslope area 1. Mr. Hawkins disagreed with the change to a long-term lease for Lot 12, the concrete pad, as it has functioned well as being a short-term lease as it provides secure lay down for the Deep Water Dock services as well as the additional generated revenue.

VELSKO/PITZMAN MOVE TO REMOVE OVER SLOPE AREA ONE FROM LANDS AVAILABLE FOR THE LEASE PORTION OF THE LAND ALLOCATION PLAN

VOTE: NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

10.C. Land Allocation Plan – Large Vessel Haul Out

Ms. Woodruff referenced resolution 24-024 that the city council consider a change of the parcel where the Large Vessel Haul Out resides and discuss the pros and cons of a city-run or public-private partnership. Additionally, Ms. Woodruff shared that the commission will need to discuss the result of the Pier One Theatre. Ms. Woodruff shared the memorandum provided that designate what would be the campground area and the Large Vessel Haul Out Facility area, along with the revenue generated from the campground in 2023.

Commissioner Zeiset shared that it is worth considering a phase-out of the campsite while working towards the haul-out facility. In regards to Pier One Theatre, he shared that the building appears to be unrepairable.

Commissioner Pitzman shared that the option of a Large Vessel Haul Out or the temporary campground was not an equivalent comparison of options. He shares that modernization of the Large Vessel Haul Out would provide local revenue without vessel owners taking their work to another city.

Commissioner Friend shares his support for moving forward and modernizing the Large Vessel Haul Out and providing lighting to the area while camping remains temporary while phasing out. Commissioner Friend shares that the campground could still share a portion of the lot that could be improved with a new layout while providing access to the Fishing Hole. He discussed that any upgrades to the campground while phasing out next to an improved Large Vessel Haul Out would not be a great use of money.

Commissioner Zeiset indicated that it would be helpful to look into grant options for Pier One Theatre to assist in relocating the business as the Theatre is appreciated by the community. Commissioner Zeiset shares that he

would support the city in facilitating the Large Vessel Haul Out for vendors however would be concerned that a single vendor with a large fleet would lease the entire space without space for other vendors.

Commission Velsko shared that the city of Kodiak Haul Out has recently partnered with a private partnership that improved their haul out for its customers. She also shares that she would support Pier One looking into other options for the business. Commissioner Velsko asked Commissioner Pitzman his thoughts on what business would look like during the summer months for a Large Vessel Haul Out. Commissioner Pitzman shares that a majority of vessels would be working however there are emergency repairs during the summer.

Commissioner Friend asks Commissioner Pitzman his thoughts on if the Large Vessel Haul Out had power it would be more attractive in the summer. Commissioner Pitzman agreed it would be more attractive as customers wouldn't have to run generators and burn diesel for a better working environment and the public, with less noise pollution.

Mr. Hawkins shared experience and conversation about city owned haul outs and private companies operating a haul out. He discussed the revenue the facility would bring to the community but not much of the revenue would return to the Port.

PITZMAN/VELSKO MOVE TO RECOMMEND TO THE CITY COUNCIL THAT THE CITY LOOK INTO THE PUBLIC PRIVATE PARTNERSHIP TO RUN THE LARGE VESSEL HAUL OUT.

VOTE: NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

#### 10.D. Steel Grid Replacement Study

Mr. Hawkins shared that he had discussed with Commissioner Pitzman about having an engineer inspect the grid to see if a specific tonnage could still use the steel grid. Mr. Hawkins is under the impression that with the condition of the steel grid, it will be deemed non-operational.

Commissioner Pitzman would like to see an engineer deem a specific tonnage for small vessels if possible and potentially repair some of the damage that would allow a safe working environment. Or to ultimately tell the commission that the steel grid is non-operational.

Commissioner Velsko discussed that she agrees it would be a good idea to have an engineer inspect the steel grid.

Mr. Hawkins discussed that cathodic protection is not an effective tool for a grid as it needs to be submerged consistently to protect the grid and equipment.

PITZMAN/VELSKO MOVE TO RECOMMEND THAT THE CITY COUNCIL APPROPRIATE FUNDS FROM PORT RESERVES TO COVER COST OF HIRING A MARINE ENGINEER TO EVALUATE THE STEEL GRID.

VOTE: NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

10.E. Amendments to Port & Harbor Advisory Commission Bylaws

Ms. Woodruff discussed that the bylaws are to be considered every twelve months and that she does not have any requests for any changes.

10.F. Election of Officers

A unanimous decision was made to postpone the election of officers as Commissioner Shavelson and Commissioner Siekanic were not present and to discuss at next month's meeting.

**11. INFORMATIONAL MATERIALS**

- 11.A. April 2024 Port Operations Report
  - March 2024 Statistics
  - Q3 2024 Statistics
  - Memorandum to City Council re: Cruise Ships and Homer Spit Parking
  - Memorandum for Port Director as backup

Ms. Woodruff shared the staff report, monthly statistics, and memorandum were additionally shared with the city council. She noted the cruise ship memo will likely arise again at the next meeting. Ms. Woodruff noted the summary of parking changes to the commission members. Mr. Hawkins outlined in detail to the Commission where parking changes took effect.

- 11.B. April City Newsletter
- 11.C. April City Manager's Reports to Council
  - CM Report for April 8, 2024
  - CM Report for April 22, 2024
- 11.D. Catalytic Cities Decarbonization Fund – Final Report Memorandum from Councilmember Lord as back up
- 11.E. Financial Policies for the City of Los Angeles Harbor Department – Port of L/A/ Memorandum from Councilmember Lord as backup

**12. COMMENTS OF THE AUDIENCE (3 minute time limit)**

William Roth, noted that the Homer Harbor had not ever charged for the seine skiffs until the tariff change and the Homer Harbor was still profitable. Roth shares that the commercial fishing fleet is only in the harbor temporarily. Roth thanked the commission for the additional 1-hour parking and asked why a parking pass is not included in harbor fees.

Richard Roth, a local fisherman in Homer questioned why the commission removed the seine skiff policy. Roth shares that he supports the Large Vessel Haul Out as it would bring business to the Homer Harbor.

Scott Adams shared that if the Port does not have the funds to pay for grid inspection the commission should take it to the city council. Adams discusses that he is unable to locate the funds for the fishing hole and haul-out property and advises the commission to look for where the original funds came from. Adams shares that camping should still use haul-out facilities during summer while boats are gone fishing.

### **13. COMMENTS OF THE CITY STAFF**

Ms. Woodruff reminded the Commission to let her know about Work Session dates. Ms. Woodruff thanked commission.

Mr. Hawkins discussed a new tug and barge that has arrived in town and is excited for the business. Mr. Hawkins informed commission that 18 finger floats have been rebuilt by Port Maintenance staff. Mr. Hawkins thanked commission.

### **14. COMMENTS OF THE MAYOR**

### **15. COMMENTS OF THE COMMISSION**

Commissioner Friend thanked all public comments.

Commissioner Pitzman appreciated the public turnout and reminded the public that the commission only makes recommendations to the city council and advised the public to attend City Council meetings.

Commissioner Velsko acknowledged the consolidation of the commercial fisheries and vessels. Commissioner Velsko encourages the public to attend meetings and talk with Port and Harbor Staff about why recommended changes are happening.

Commissioner Bradshaw looks forward to discussion as a new commissioner and thanked the commission.

Student Representative Rogers agreed that she appreciated the public in the audience. Rogers thanked the Commission.

### **16. ADJOURNMENT**

There being no further business to come before the Commissioner Zeiset adjourned the meeting at 8:36 p.m. The next Regular Meeting is Wednesday, May 22<sup>nd</sup>, 2024 at 5:30 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska and via Zoom Webinar.

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Samantha Jacobsen, Port & Harbor Administrative Assistant

Approved: \_\_\_\_\_

FUND 400 - PORT & HARBOR ENTERPRISE FUND				5/10/2024		
REVENUE DETAIL BY LINE ITEM, SORTED BY TYPE				86% of FY elapsed		
A/C Num.	Revenue Categories & Descriptions	FY22	FY23	FY24 YTD		FY24
		7/1/21 - 6/30/22	7/1/22 - 6/30/23	ACTUAL		7/1/23 - 6/30/24
		ACTUAL	ACTUAL	\$	%	BUDGET
<b>0600</b>	<b>HARBOR ADMINISTRATION</b>					
4515	Ferry Lease	18,000	18,000	18,000	100.0%	18,000
4650	Rents & Leases	413,267	503,987	484,213	96.8%	500,000
	<b>Operating Revenue - Admin</b>	<b>431,267</b>	<b>521,987</b>	<b>502,213</b>	<b>97.0%</b>	<b>518,000</b>
4527	PERS Revenue	92,383	-	-	0.0%	-
4634	Port Storage Fee	119,992	207,662	143,378	149.1%	96,164
4635	Port Impound Fee	204	816	1,609	0.0%	-
4705	Business Licenses	10	20	15	0.0%	-
4801	Interest On Investments	(62,000)	73,468	93,950	0.0%	-
4901	Surplus Property	26,078	2,187	-	0.0%	-
4902	Other Revenue	123,189	11,189	-	0.0%	-
	<b>Non-Operating Revenue - Admin</b>	<b>299,855</b>	<b>295,341</b>	<b>238,952</b>	<b>248.5%</b>	<b>96,164</b>
<b>0601</b>	<b>HARBOR</b>					
4245	Waste Oil Disp	603	1,079	-		-
4249	Oil Spill Recovery	(100)	-	-		-
4318	Parking Revenue	180,789	158,725	119,988	53.3%	225,000
4319	Electrical Supplies	2,275	1,449	798	33.2%	2,403
4402	Non Moving Fine	-	100	9,898		-
4624	Berth Transient Monthly	649,848	716,742	535,800	76.7%	698,295
4625	Berth Reserved	1,533,906	1,628,043	1,821,931	102.8%	1,771,547
4626	Berth Transient Annual	315,591	325,749	326,807	101.3%	322,486
4627	Berth Transient Semi Annual	130,453	132,878	113,265	74.8%	151,515
4628	Berth Transient Daily	152,145	159,413	115,040	76.8%	149,805
4629	Metered Energy	186,689	140,575	132,438	142.9%	92,677
4644	Pumping	-	-	-	0.0%	-
4645	Wooden Grid	5,006	4,089	2,239	39.3%	5,697
4646	Commerical Ramp	54,913	49,562	45,117	82.0%	55,000
4647	Berth Wait List	15,211	15,082	11,766	94.9%	12,394
4648	Steel Grid Fees	7,900	6,969	2,605	32.6%	8,000
4654	Spit Camping	-	35,018	151,658	0.0%	-
4663	Trans Energy 110v	47,616	34,863	33,409	78.2%	42,746
4664	Trans Energy 220v	16,186	20,569	20,967	72.9%	28,744
4665	Trans Energy 208v	205,197	204,723	160,590	100.9%	159,228
4666	Commerical Ramp Wharfage	38,422	41,055	56,877	36.0%	158,000
	<b>Operating Revenue - Harbor</b>	<b>3,542,651</b>	<b>3,676,683</b>	<b>3,661,194</b>	<b>94.3%</b>	<b>3,883,536</b>
4802	Penalty/Int	6,101	7,797	12,026	185.0%	6,500
4902	Other Revenue	68,633	66,923	59,728	83.7%	71,325
	<b>Non-Operating Revenue - Harbor</b>	<b>74,735</b>	<b>74,720</b>	<b>71,754</b>	<b>92.2%</b>	<b>77,825</b>

FUND 400 - PORT & HARBOR ENTERPRISE FUND				5/10/2024		
REVENUE DETAIL BY LINE ITEM, SORTED BY TYPE				86% of FY elapsed		
A/C Num.	Revenue Categories & Descriptions	FY22	FY23	FY24 YTD		FY24
		7/1/21 - 6/30/22	7/1/22 - 6/30/23	ACTUAL		7/1/23 - 6/30/24
		ACTUAL	ACTUAL	\$	%	BUDGET
<b>0602</b>	<b>PIONEER DOCK</b>					
4631	USCG Leases	35,067	38,976	37,108	101.7%	36,494
4637	Seafood Wharfage-PD	-	-	-		-
4638	PD Fuel Wharfage	207,277	198,654	160,682	74.8%	214,809
4639	Pioneer Dock - Wharfage	-	-	-		-
4641	PD Water Sales	11,338	9,291	5,645	53.8%	10,500
4642	PD Docking	41,079	39,991	34,652	75.3%	46,000
	<b>Operating Revenue - Pioneer Dock</b>	<b>294,761</b>	<b>286,911</b>	<b>238,088</b>	<b>77.4%</b>	<b>307,804</b>
<b>0603</b>	<b>FISH DOCK</b>					
4620	Ice Sales	272,257	243,997	258,480	97.3%	265,742
4621	Cold Storage	27,398	22,319	21,590	86.4%	25,000
4622	Crane Rental	193,965	203,818	152,570	80.2%	190,306
4623	Card Access Fees	5,780	6,144	4,893	85.8%	5,700
4637	Seafood Wharfage	17,200	20,530	21,189	122.3%	17,324
4700	Other Wharfage Fish Dock	6,694	9,945	68	0.7%	9,843
	<b>Operating Revenue - Fish Dock</b>	<b>523,294</b>	<b>506,754</b>	<b>458,789</b>	<b>89.3%</b>	<b>513,915</b>
4206	<b>Fish Tax</b>	<b>66,865</b>	<b>116,236</b>	<b>78,772</b>	<b>122.0%</b>	<b>64,562</b>
<b>0604</b>	<b>DEEP WATER DOCK</b>					
4633	Stevedoring	8,882	49,565	5,783	48.2%	12,000
4637	Seafood Wharfage	-	-	-	0.0%	-
4640	Deep Water Dock Wharfage	-	152,709	8,402	20.8%	40,426
4643	Deep Water Dock Docking	116,132	121,387	80,975	81.0%	100,000
4668	Dwd Water Sales	32,419	41,651	16,179	53.9%	30,000
4672	Port Security Revenues	-	-	-	0.0%	-
	<b>Operating Revenue - DW Dock</b>	<b>157,434</b>	<b>365,311</b>	<b>111,338</b>	<b>61.0%</b>	<b>182,426</b>
<b>0605</b>	<b>OUTFALL LINE</b>					
4704	<b>Outfall Line</b>	<b>4,626</b>	<b>4,800</b>	<b>4,800</b>	<b>100.0%</b>	<b>4,800</b>
<b>0606</b>	<b>FISH GRINDER</b>					
4706	<b>Fish Grinder</b>	<b>7,018</b>	<b>6,803</b>	<b>10,393</b>	<b>140.6%</b>	<b>7,390</b>
<b>0615</b>	<b>LOAD AND LAUNCH RAMP</b>					
4653	L & L Ramp Revenue	132,446	120,243	73,762	56.7%	130,000
	<b>Operating Revenue - L &amp; L Ramp</b>	<b>132,446</b>	<b>125,519</b>	<b>73,762</b>	<b>56.7%</b>	<b>130,000</b>
	<b>Total Revenues</b>	<b>5,534,952</b>	<b>5,981,065</b>	<b>5,450,055</b>	<b>94%</b>	<b>5,786,422</b>
	<b>Net Surplus (Deficit)</b>	<b>420,116</b>	<b>724,490</b>	<b>1,960,083</b>		<b>(0)</b>

FUND 400 - PORT & HARBOR ENTERPRISE FUND				5/10/2024		
COMBINED EXPENDITURES				86% of FY elapsed		
A/C Num.	Expenditure Categories & Descriptions	FY22	FY23	FY24 YTD		FY24
		7/1/21 - 6/30/22	7/1/22 - 6/30/23	ACTUAL		7/1/23 - 6/30/24
		ACTUAL	ACTUAL	\$	%	BUDGET
Salaries and Benefits						
5101	Salary and Wages	1,128,870	1,195,402	1,136,918	77.7%	1,464,034
5102	Fringe Benefits	634,397	742,528	821,467	89.8%	914,743
5103	Part-time Wages	107,259	164,248	85,104	51.5%	165,371
5104	Part-time Benefits	12,256	19,005	9,946	52.1%	19,086
5105	Overtime	31,929	29,403	26,619	67.5%	39,439
5107	Part-time Overtime	855	212	506	13.1%	3,879
5108	Unemployment Benefits	348	-	1,145	0.0%	-
5112	PERS Relief	92,383	-	-	0.0%	-
Total Salaries and Benefits		2,008,297	2,150,797	2,081,706	79.9%	2,606,550
Maintenance and Operations						
5201	Office Supplies	5,322	6,257	3,403	72.4%	4,700
5202	Operating Supplies	20,623	21,809	21,008	80.8%	26,000
5203	Fuel and Lube	40,700	43,534	36,186	99.7%	36,300
5204	Chemicals	6,410	-	-	0.0%	6,000
5207	Vehicle and Boat Maintenance	21,532	18,002	22,892	91.6%	25,000
5208	Equipment Maintenance	68,340	73,212	44,036	68.8%	64,000
5209	Building & Grounds Maintenance	24,264	56,517	19,401	29.0%	67,000
5210	Professional Services	16,176	47,195	12,214	56.8%	21,500
5211	Audit Services	37,510	16,196	26,094	64.5%	40,446
5213	Survey and Appraisal	24,000	-	17,500	140.0%	12,500
5214	Rents & Leases	4,280	3,716	3,858	55.1%	7,000
5215	Communications	17,310	8,840	9,885	123.6%	8,000
5216	Freight and Postage	2,619	1,492	2,028	36.9%	5,500
5217	Electricity	664,046	649,413	478,809	65.5%	730,450
5218	Water	75,643	85,913	92,444	111.1%	83,208
5219	Sewer	13,157	11,977	9,835	68.0%	14,472
5220	Refuse and Disposal	40,694	52,883	43,164	68.2%	63,300
5221	Property Insurance	64,722	88,108	106,791	110.2%	96,919
5222	Auto Insurance	10,007	9,740	10,852	101.3%	10,714
5223	Liability Insurance	86,649	77,367	86,006	124.6%	69,016
5226	Testing and Analysis	-	-	3,280	46.9%	7,000
5227	Advertising	6,076	4,345	5,731	81.9%	7,000
5228	Books and Subscriptions	26	107	-		-
5231	Tools and Equipment	9,471	17,252	4,096	24.5%	16,700
5234	Record and Permits	-	-	-	0.0%	2,000
5235	Membership Dues	6,088	7,435	5,235	74.8%	7,000
5236	Transportation	6,641	12,464	1,344	33.6%	4,000
5237	Subsistence	6,837	8,765	317	7.9%	4,000
5238	Printing and Binding	1,482	3,993	282	8.1%	3,500
5248	Lobbying	21,000	21,245	17,303	49.4%	35,000
5249	Oil Spill Response	2,833	-	-	0.0%	1,000
5250	Camera Area Network	214	7,094	-	0.0%	18,000
5252	Credit Card Expenses	104,946	100,587	119,294	114.7%	104,000

FUND 400 - PORT & HARBOR ENTERPRISE FUND				5/10/2024		
COMBINED EXPENDITURES				86% of FY elapsed		
A/C Num.	Expenditure Categories & Descriptions	FY22	FY23	FY24 YTD		FY24
		7/1/21 - 6/30/22	7/1/22 - 6/30/23	ACTUAL		7/1/23 - 6/30/24
		ACTUAL	ACTUAL	\$	%	BUDGET
5256	Waste Oil Disposal	45,458	18,691	39,049	86.8%	45,000
5258	Float and Ramp Repairs	8,545	43,986	11,642	46.6%	25,000
5287	Electrical Supplies	2,326	1,010	-	0.0%	2,100
5601	Uniform	8,785	5,986	8,515	89.6%	9,500
5602	Safety Equipment	10,601	5,880	5,943	39.6%	15,000
5603	Employee Training	7,918	5,681	28,152	73.1%	38,500
5606	Bad Debt Expenses	5,230	35,620	13,724	45.7%	30,000
5608	Debt Payment-Interest	4,665	16,800	-		-
5624	Legal Services	-	-	4,388	4.4%	100,000
5627	Port Security	-	-	-	0.0%	2,500
5635	Software	938	134	3,058	76.4%	4,000
5637	Diving Services	4,350	16,045	6,500	76.5%	8,500
5638	Signage Parking Delineation	12,243	18,065	18,644	60.1%	31,000
	<b>Total Maint. and Operations</b>	<b>1,520,676</b>	<b>1,623,355</b>	<b>1,342,902</b>	<b>70.2%</b>	<b>1,912,325</b>
	<b>C/O and Transfers</b>					
5106	Leave Cash Out	66,243	62,025	-	0.0%	73,867
5241	GF Admin Fees	-	-	-		-
5990	Transfers To	1,519,620	1,420,397	65,364	5.5%	1,193,680
	<b>Total Others</b>	<b>1,585,862</b>	<b>1,482,422</b>	<b>65,364</b>	<b>5.2%</b>	<b>1,267,546</b>
	<b>Total</b>	<b>5,114,836</b>	<b>5,256,575</b>	<b>3,489,972</b>	<b>60.3%</b>	<b>5,786,422</b>



## **Memorandum**

**To:** Port and Harbor Advisory Commission  
**From:** Amy Woodruff, Port Administrative Supervisor  
**Date:** May 15, 2024  
**Subject:** May Staff Report

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### **Harbor Expansion Update**

The State House passed the capital budget on Friday, May 10<sup>th</sup>. That approved capital budget includes the \$288,523 in funding to support the additional costs associated with the General Investigation Study. It will still need to receive the Governor's approval.

The USACE released its FY 2024 work plan on Monday, May 13<sup>th</sup>. This work plan covers activities in the period from October 1, 2023 to September 30, 2024. It includes \$800,000 for the Harbor Expansion General Investigation Study (referred to by USACE as the "Homer Navigation Improvements") for the purpose of continuing the feasibility study phase. This means that we can continue study activities this year, and do not need to wait until the next federal budget passes!

### **PIDP**

Staff submitted our Port Infrastructure Development Program grant application on Friday, May 10<sup>th</sup>. We are so grateful to Jenny Carroll and to HDR for being tremendous teammates in this process. We expect to hear back from the US DOT Maritime Administration (MARAD) about the status of our application by October 2024. The design drawings and a freight route map from that application are included in this report.

### **Strategic Planning**

I hoped to revisit our strategic plan before the season gets busy, and we've missed that window. We also have very specific requests from Council related to financial and cruise ship policy to address this summer. I'm looking for the commission's support to focus on those tasks in the short term and address strategic planning again in Fall 2024 or Spring 2025.

### **Attachments:**

Map of freight routes from Homer

2024 Council Meetings Schedule

Project update form

Design Drawings for Homer FREIGHT float replacement project



## 2024 Council Meetings

Please look over your calendars to see which dates you are available for prior to the meeting. If shared equally, each commissioner will sign up for three meetings.

Date	Commission Report	Commissioner
January 8 <sup>th</sup>	--	Lacey Velsko
January 22 <sup>nd</sup>	--	Bob Shavelson
February 12 <sup>th</sup>	<b>January Meeting</b>	Casey Siekaniec
February 26 <sup>th</sup>	--	Ian Pitzman
March 11 <sup>th</sup> (Tuesday)	<b>February Meeting</b>	Bob Shavelson
March 26 <sup>th</sup>	--	Bob Shavelson
April 8 <sup>th</sup>	<b>March Meeting</b>	Crisi Matthews
April 22 <sup>nd</sup>	--	Bruce Friend
May 13 <sup>th</sup>	<b>April Meeting</b>	Bruce Friend
May 28 <sup>th</sup> (Tuesday)	<b>May Meeting</b>	Lacey Velsko
June 10 <sup>th</sup>	--	
June 24 <sup>th</sup>	--	
July 22 <sup>nd</sup>	<b>June Meeting</b>	
August 12 <sup>th</sup>	<b>July Meeting</b>	
August 26 <sup>th</sup>	--	
September 9 <sup>th</sup>	<b>August Meeting</b>	
September 23 <sup>rd</sup>	--	
October 14 <sup>th</sup>	<b>September Meeting</b>	
October 28 <sup>th</sup>	<b>October Meeting</b>	
November 12 <sup>th</sup>	--	
November 25 <sup>th</sup>	<b>November Meeting</b>	



**City of Homer**

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

**Port and Harbor**

4311 Freight Dock Road

Homer, AK 99603

[port@cityofhomer-ak.gov](mailto:port@cityofhomer-ak.gov)

(p) 907-235-3160

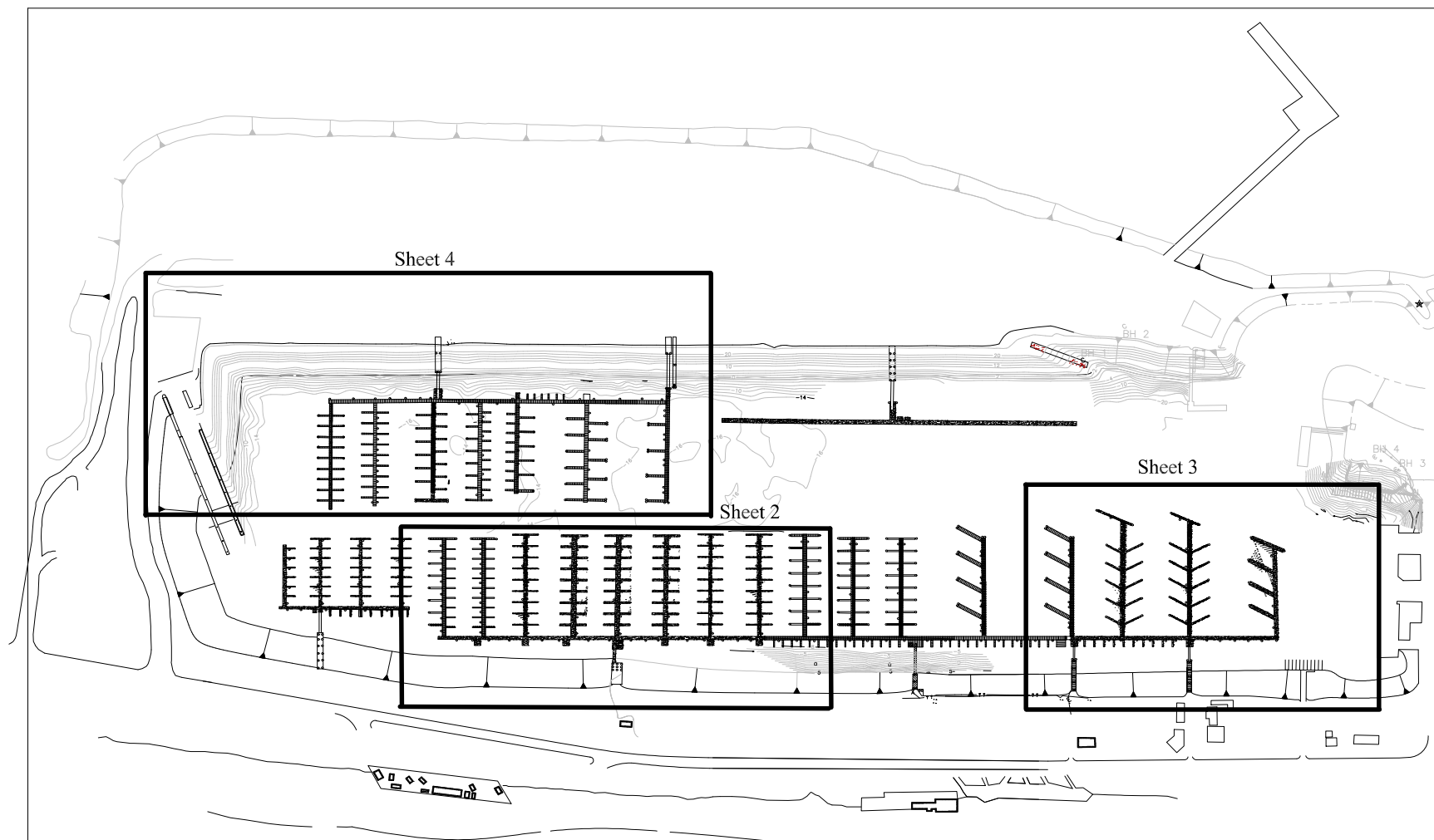
(f) 907-235-3152

## Port & Harbor Special Project Status Updates May 2024

Fish Grinder Building Replacement	<b>Design Complete</b> <b>Project Funded</b>	RFP to be released this month
Fish Grinder Building Drainage	<b>Design Complete</b> <b>Seeking project funding</b>	Pursuing additional ADF&G Funding for drainage project; notification June 2024
Parking Lot Improvements	<b>Project on Hold</b>	No further progress expected until permitting complete.
Paid Parking Program Planning & Permitting	<b>Project in progress</b>	Drafting language for permit application from DOT Right of Way
Harbor Office ADA Entry Door Improvements	<b>Project in Progress</b>	Contract has been awarded, we're scheduling improvements soon
Outfall Line Pump Controls	<b>Project Funded</b>	Public Works will complete project; waiting on supplier to manufacture controls
Ice Metering System	<b>Project Funded</b>	Install planned for Winter 24-25
Harbor Bottom Survey	<b>Project Funded</b>	Preparing RFP for the survey
Crane 8 Control Replacement	<b>Project in Progress</b>	Parts have been ordered, project completion anticipated in June

### Status Categories:

Seeking design funding Design funded Design in progress Design complete	Seeking project funding Project Funded Project in Progress Project Complete
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# FREIGHT PROJECT PRELIMINARY DESIGN



No.	Description	Date

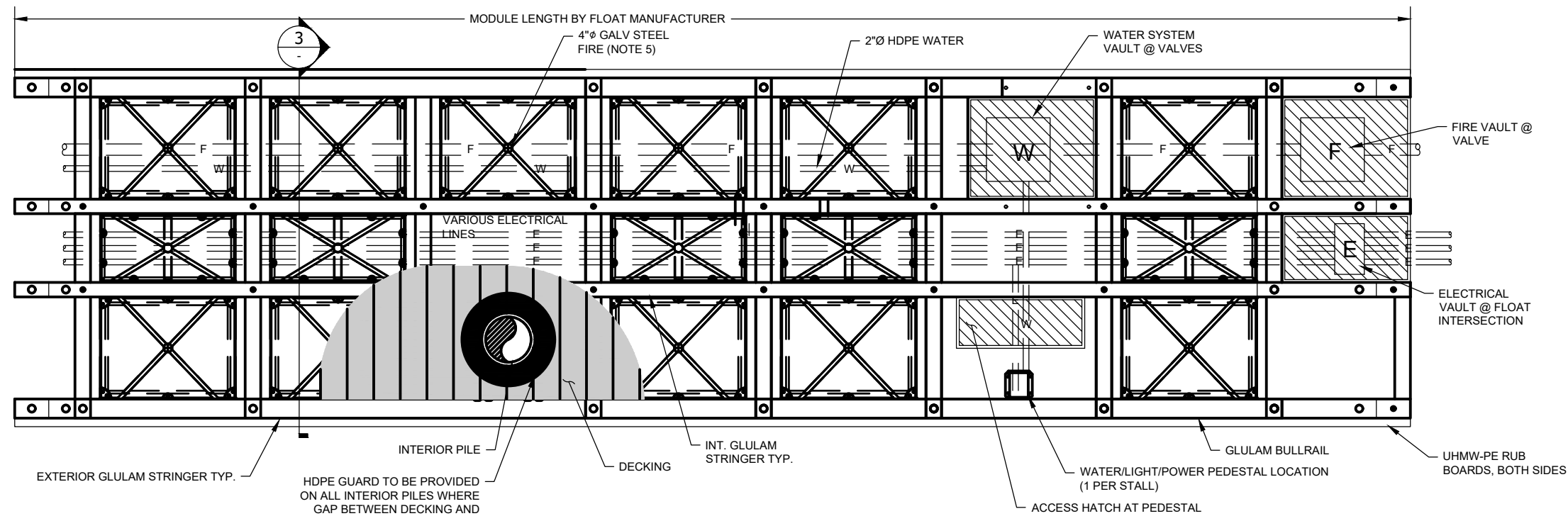
Order No.	Customer No. <b>XX</b>
<b>May 1, 2024</b>	
Place	
Product No. <b>3002.01</b>	
SUBJECT TITLE <b>Cover And Index</b>	
SHEET NO.	





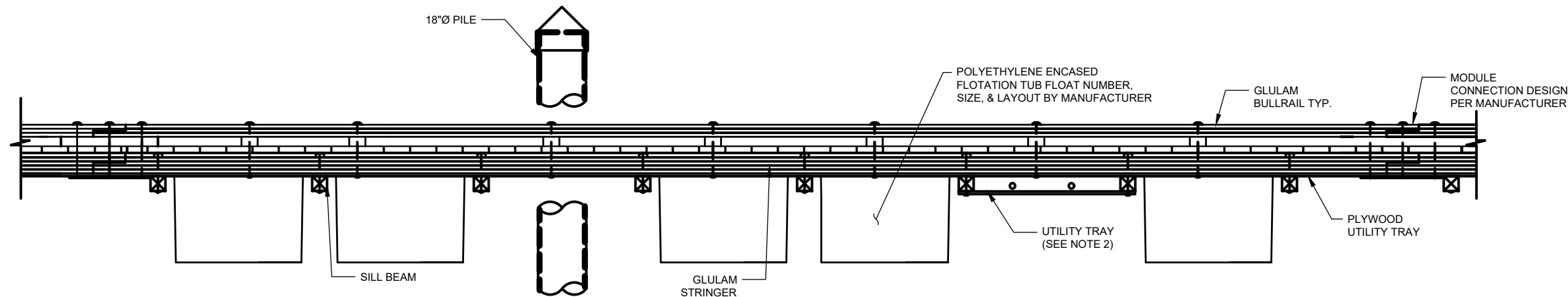


Plotted 5/6/2024 by L. Galbraith



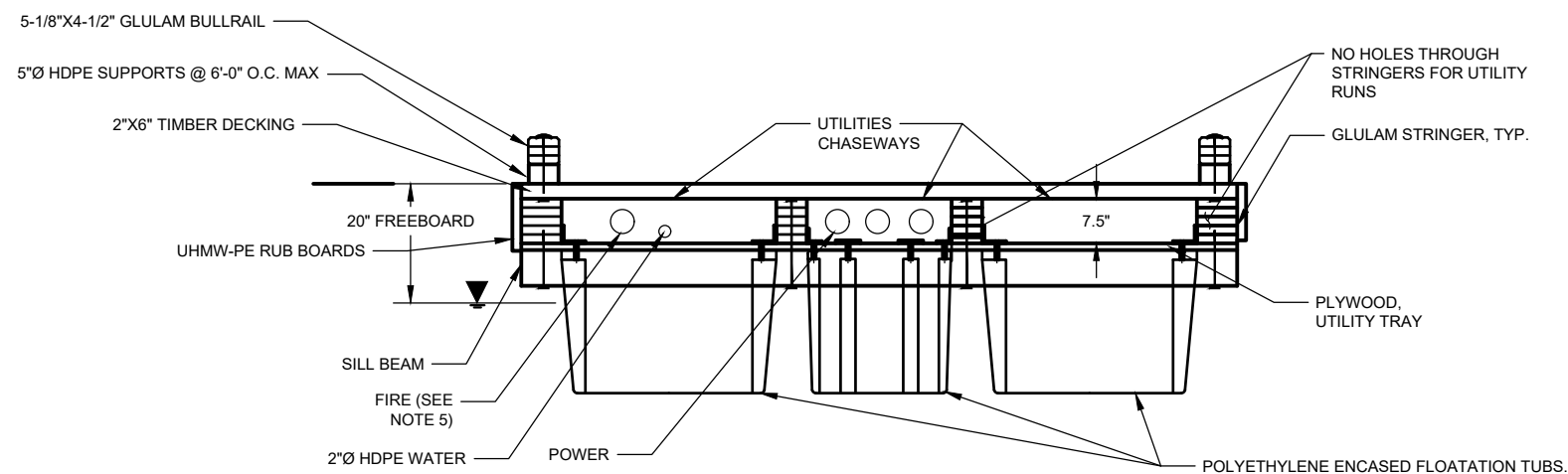
1 MAIN FLOAT MODULE PLAN  
TYPICAL

Scale: 1/2" = 1'-0"



2 MAIN FLOAT ELEVATION  
TYPICAL

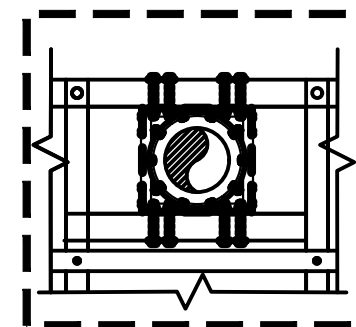
Scale: 1/2" = 1'-0"



3 MAIN FLOAT SECTION  
TYPICAL

Scale: 3/4" = 1'-0"

24

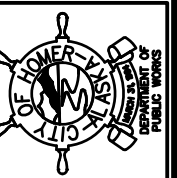


USE INTERIOR PILE COLLAR WHERE INDICATED IN THE PLANS

NOTES:

1. FLOATING DOCK SYSTEM TO BE MANUFACTURER-DESIGNED. THESE PLANS OUTLINE THE OWNER-PREScribed FEATURES AND PERFORMANCE SPECIFICATIONS FOR THE FLOATS SYSTEM.
2. PROVIDE FRP GRATE UTILITY TRAY AT ALL LOCATIONS WHERE UTILITIES RUN ACROSS FLOAT TO PEDESTALS AND AT MAIN FLOAT INTERSECTION LOCATIONS. GRATE SHALL BE RATED FOR MIN. 150 POUND DISTRIBUTED LOAD.
3. PROVIDE BELOW DECK UTILITY TRAYS ON ALL FLOATS.
4. PROVIDE POLYETHYLENE UTILITY VAULTS WITH REMOVABLE STEEL COVER DIAMOND PLATE AND 1" DIA FINGER HOLES @ FLOAT INTERSECTIONS, CORNERS, AND VALVE LOCATIONS. COORDINATE WITH ELECTRICAL, WATER, AND FIRE SYSTEM UTILITIES.
5. ALTERNATE FIRE SUPPRESSION SYSTEM MAY BE PROVIDED AT THE APPROVAL OF THE CITY OF HOMER.

City of Homer  
Homer Boat Harbor



No.	Description	Date

Drawn By: DM Checked By: KN

Date: MAY 1, 2024

Phone:  

Project No:  

SHEET TITLE:  
TYPICAL FLOAT  
DESIGN

SHEET NO:

5



**Homer Marine Trades Association  
Regular Business Meeting  
March 20, 2024  
Harbor Master's Office**

**MINUTES**

Call to Order: The meeting was called to order at 6:15 p.m. by President, Aaron Fleenor.

Officers/Directors present/quorum: Aaron Fleenor, Eric Engebretsen, Jen Hakala, Cinda Martin, Kate Mitchell, Bruce Friend, Adam Smude, George Hall, Mark Zieset, Matt Alward and Amy Woodruff, Communications Director. A quorum was established.

**Guest Presentations:**

- Harbormaster – Bryan reported that the Federal Budget came out with \$800K in funding for the study for 2025, it remains on the President's desk for signing. Float repairs are ongoing; parking is getting revamped to create special parking for oversized vehicles and also step-up enforcement. The City is working on the Comprehensive Plan that will be a two-year process where the plan will be revised in the first year and policy/ordinance changes will happen in the second year to complete and implement the plan. The plan will include the harbor expansion and impacts of the expansion construction. They applied for a Dingle Johnson grant to replace the fish grinding plant which is a metal building where the fish waste goes built 22 years ago and has deteriorated. The grid is down for piling replacement. Bryan also reported on the airport project that will have some impact on travel due to several closures.
- Nine Star – Presentation by student intern about Nine Star, it's mission, programs and eligibility; ED, Rhapsody Soderberg invited our board members to a meeting next Friday, 3/29 at KPC with the main presentation at noon, relating to a new virtual training program that she would like to get employers involved in and implement in Homer. Rhapsody will forward information to Amy to distribute.
- Janel Harris of KPC – reported that the college will be hosting a Marine Safety Open House on May 1<sup>st</sup> partnering with the USCG and other marine trades businesses to educate the public about boat safety, regulations as well as licensing. She is also working on recertifying KPC's licensed courses however it takes about 90 days to run through National so it isn't likely that they will have licensed courses this spring. Ivy Borland will be teaching Deck Hand Skills and Navigation. She's looking for other courses and instructors for April and into May.

Approval of Agenda – Motion by Adam Smude to approve the Agenda as presented, 2<sup>nd</sup> and carried.

Approval of Minutes of February 13<sup>th</sup> 2024 meeting: Motion by George Hall to approve the minutes of the last meeting as written, 2<sup>nd</sup> and carried.

Treasurer's Report –Jen Hakala gave her report, a copy is attached. We came out a little short on the Anchorage Boat Show but she did not have the exact information. There are no payables outstanding at this time.

Communication Director's Report – Amy reported that she would like a weekly check-in contact, Aaron/Cinda. Spring Round Haul options include Northrim who has had their soft opening with grand opening on March 25th, and potentially the HHS with the newfound focus on CTE; will discuss further under new business. She plans to draft a letter to the organizer of the Boat Show petitioning earlier end times. Amy reported that there is a non-resident opening on the Harbor Commission, if anyone is interested or knows someone; the Harbor needs a new letter of support of the PIDP grant for float replacements; Amy will update the letter from last year with our permission and submit; and lastly, we received an inquiry about employment and needed direction.

**Committee Reports:**

- Draft Marketing Plan – no update
  - Advertising – Amy/Kate National Fisherman and Fisherman's News are both digital. Eric reported that he is having National Fisherman come up to do some writing for them and will try to get some ads in for HMTA.
  - Website/Social Media –Amy reported that we are plugging Scholarships on SM and she has made flyers as well
  - Radio – Mark (re-visit spring agenda)
  - Podcast options – Amy touching base with Shannon
- Workforce Development - Aaron
  - FOLs – Discussion held regarding Doug's presentation and the level of HMTA's involvement in future FOLs. Consensus to meet with Doug to see if it is possible to make the FOLs mandatory. Janel suggested holding the FOLs at the college. Cinda will reach out to Doug to further the conversation.
  - KPC courses – Janel/Jill via email upcoming courses include Marine Electronics, CAD and Deckhand Skills

- Hoodies/shirt status – Amy/Jen reported that she will hang some up at NOMAR to sell.
- Scholarship – Cinda reported that we received \$1,000 from Rotary and \$3,000 from Aleutian Harvester Fund; we have expended \$4,245 to date and have \$2,755 remaining to award for the year not including our spring scholarship. We've received 1 application for that so far.
- Membership – Amy reported that in an effort to grow membership she has made a list of potential community business members for us to reach out to: SPH – Kate/Cinda; HEA – Eric; Boat Yard Café – Aaron; Global USA – Aaron; Lazer Print – George; Cook Inlet Aquaculture – Matt; Grog Shop - ?; Grace Ridge – Cinda; Alaska Plumbing & Mechanical – Adam; Salty Dawg – Cinda (Amy will send me a complete list)

#### Old Business:

- Annual To-Do List – Mark review/action items
  - HHS Awards Banquet – May 1<sup>st</sup> time TBD
  - Homer High School picnic – ask Doug for date/time
- Anchorage Boat Show thoughts - organization was poor; timing/days advertising had errors; felt that attendance was down as well; hours were long and without high impact. Improvement on number of booths, coffee availability and lots of good conversations and connections for most of us but the consensus was that the show didn't have the value that the price demanded. Eric is looking at moving focus toward the Alaska Sportsman's show and would like to start a conversation with the organizers to move that event back to the Sullivan with a large show. More to come.
- Chamber upcoming events –
  - Winter King Tournament – HCOC put out a blast for HMTA in their advertising and we are manning their after party from noon to 7pm on Saturday 3/23, need 4 volunteers – Amy, George, Jen, Bruce and Kate. Will have tide books and membership applications.
  - Food Truck Festival – Friday May 10<sup>th</sup>, Saturday, May 11<sup>th</sup> noon-6pm; HCOC wants us to create and run the beer garden for the event; interest was lukewarm as all volunteers would be required to have a TAMs card and we would need to arrange for the tent and beer, etc.

#### New Business:

- Spring Round Haul – consensus to hold spring event at the HHS to help advertise for a new CTE instructor; Amy and Cinda will meet with Doug to discuss along with FOL organization and the year-end picnic
- Promotion Ceremony for Will Singletery who has been promoted to Lt Commander – George will find out when his promotion is happening and let us know so we can attend.

#### Action Items for Amy:

Nine Star flyer

Comprehensive Plan events flyer

Scholarship application to HCOC

Meet with Doug re: Round Hall, FOLs, CTE and year-end picnic; Cinda will accompany

Next Meeting: Wednesday, April 24<sup>th</sup> at the Harbor Office

Adjourn: There being no business to come before the board members, the meeting was adjourned at 8:28 p.m.

Respectfully submitted,

Cinda Martin

HMTA Secretary



# AGENDA ITEM REPORT

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## Election of PHC Officers

**Item Type:** Action Memorandum  
**Prepared For:** Port & Harbor Advisory Commission  
**Meeting Date:** April 24, 2024  
**Staff Contact:** Zach Pettit

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### Summary Statement:

Per Article IV, Sec. 1 of the PHC Bylaws: "A Chairperson and Vice-Chairperson shall be elected from among the appointed commissioners at the regular February meeting of the Commission."

### Recommended process for Election of Vice Chair:

- 1) A commissioner will make a motion to determine the PHC's method of voting for the elections. Voting is commonly done by a Show of Hands or a Voice Vote (yes/no).
- 2) Once the election method is decided, the Chair will open the floor for nominations.
- 3) Commissioners are free to call out nominations, they do not need to be recognized by the Chair.
  - ***These are not motions and do not require a second.***
  - It's ok for a commissioner to nominate themselves.
  - If a commissioner calls out a nomination and that individual is fully against serving, it is acceptable for that nominated commissioner to speak up and say they would not be willing to accept the seat if elected. They have still been nominated though and should still go through the voting process; the rest of the commission at least now knows who of the nominees is/is not interested in serving.
- 4) Once all nominations are called out, the Chair will close the floor to nominations.
- 5) Chair will then call out each nominee's name for voting. For each name called out, commissioners will vote using the selected method (Show of Hands/Voice Vote).
- 6) As soon as one of the nominees receives the majority of votes, the Chair will declare them elected. If only one person is nominated, the Chair simply declares the nominee elected.

**Recommended process for Election of Chair:**

- 1) It is preferred the gavel be handed over to the newly elected Vice Chair to conduct the vote for Chair.
- 2) Election is conducted in the same manner as it was for the Vice Chair (see steps 2-6 above).
- 3) The gavel/meeting will be turned over to the newly elected (or re-elected) Chair to conduct the remainder of the meeting.
  1. The gavel/meeting will be turned over to the newly elected (or re-elected) Chair to conduct the remainder of the meeting.



# ACTION ITEM REPORT

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## Annual Review of PHC Policies/Bylaws

**To:** Port and Harbor Advisory Commission

**From:** Zach Pettit, Deputy City Clerk

**Meeting Date:** May 22, 2024

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### Summary Statement:

Per the PHC's calendar, every year at the April meeting the commission reviews their policies, rules, and regulations (aka the bylaws).

### What are Bylaws?

Bylaws are rules established by an organization to regulate itself. They prescribe how the group functions, and include rules that can't be changed unless the members get previous notice of a proposed change, and a 2/3<sup>rd</sup> vote is required to enact any changes. In the case of the City advisory bodies, it goes one step further and bylaw amendments have to be approved by City Council. Bylaws require two commission meetings before they go to Council, and then are adopted by resolution.

Bylaws should include only fundamental rules governing the commission, some of which are established by Homer City Code (such as the commission's purpose) and would require Council amending HCC to change. Information that is likely to change frequently should not be included; those items are better suited for documents related to strategic planning documents or calendars.

### Proposed Changes from Staff:

Update worksession quorum requirements.

### Staff Recommendation:

- 1) Make a motion to update the bylaws by requiring a quorum for the purpose of conducting a worksession.
- 2) Make a motion to forward the updated bylaws to City Council for their review and approval.

### Attachments:

PHC Bylaws

## **CITY OF HOMER PORT & HARBOR ADVISORY COMMISSION BYLAWS**

### **ARTICLE I – NAME AND AUTHORIZATION**

This organization shall be called the Port and Harbor Advisory Commission, established via Ordinance 73-1, existing by virtue of the provisions of Chapter 2.64 of the Homer Municipal Code, and exercising the powers and authority and assuming the responsibilities delegated under said Code. The following bylaws were adopted on March 11, 2019 and shall be in effect and govern the procedures of the Port and Harbor Advisory Commission.

### **ARTICLE II – PURPOSE**

Section 1. Act in an advisory capacity to the City Manager and the City Council on the problems and development of the City port and harbor facilities. Consideration may include the physical facilities, possible future development and recommendations on land use within the port and harbor areas.

Section 2. Direct recommendations regarding the operation and maintenance of the facilities to the City Manager via memorandum from the Port and Harbor Advisory Commission.

Section 3. Consider any specific proposal, problem or project as directed by the City Council and any report or recommendations thereon shall be made directly to the Council, unless otherwise directed by the Council.

### **ARTICLE III – MEMBERSHIP**

Section 1. The Commission shall consist of seven members comprised of at least five (5) members that reside inside city limits. Members shall be nominated by the Mayor and confirmed by City Council to serve for three-year terms to expire on February 1<sup>st</sup> of designated years.

Section 2. Notice of term expirations will be delivered to members by the City Clerk's Office. Members wishing to continue services upon the completion of a three-year term must submit a reappointment application to the City Clerk's Office, which is subject to review by the Mayor and confirmed by City Council. There are no limits on the number of terms a member may serve.

Section 3. Members may not have alternates. If a position is vacated during a term, it shall be filled for the unexpired term by an appointee selected by the Mayor and confirmed by City Council.

Section 4. A member's appointment is vacated under the following conditions:

- A member fails to qualify to take office within 30 days after their appointment;
- A member resigns;
- A member is physically or mentally unable to perform the duties of the office;
- A member is convicted of a felony or of an offense involving a violation of their oath of office; or
- A member has three consecutive unexcused absences, or misses half of all meeting within an appointment year, whether excused or unexcused.

Section 5. The Mayor may appoint, subject to confirmation by the City Council, one City Council member and one Homer area high school Student Representative to serve as consulting, non-voting

members. The Mayor, City Manager, and Port Director/Harbormaster may serve as non-voting, consulting members.

#### **ARTICLE IV – OFFICERS**

Section 1. A Chairperson and Vice-Chairperson shall be elected from among the appointed commissioners at the regular February meeting of the Commission.

Section 2. Officers shall serve a term of one year from the February meeting at which they are elected, and until their successors are duly elected. Officers may be re-elected in subsequent years.

Section 3. The Chairperson shall preside at all meetings of the Commission, authorize calls for any special meetings, execute all documents authorized by the Commission, serve as ex officio/voting member of all committees, and generally perform all duties associated with that office.

Section 4. In the event of the absence, or disability of the Chairperson, the Vice-Chairperson shall assume and perform the duties of the Chair. If both the Chairperson and Vice-Chairperson are absent, and a quorum of four members are present, the senior member shall assume and perform the duties and functions of the Chair.

#### **ARTICLE V – CITY STAFF ROLES**

Section 1. The staff liaison, assigned by the City Manager, shall assist the Chairperson in setting meetings, preparing agendas, and other documentary material, and coordinating the acquisition of needed materials and training. The staff liaison shall submit reports and recommendations for those agenda items requiring decisions or recommendations by the Commission. Other staff having experience, education, and professional training in the subject matter may provide input into the reports and recommendations, or may provide supplemental information. The information submitted may be oral, written or graphic, or some combination of all.

Section 2. The City Clerk shall designate a recording clerk to take minutes for the Commission and serve as the Commission's parliamentary advisor pursuant to AS 29.20.380(10) and HCC 2.12.010, and assist the Chairperson with the conduct of the meeting.

#### **ARTICLE VI – MEETINGS**

Section 1. Regular meetings shall be open to the public and held on the fourth Wednesday January through October at 5:30 p.m. and the second Wednesday of November and December at 5:30 p.m. in the designation location and shall be posted for public information as required by Homer City Code and Alaska State Statutes.

Section 2. Special meetings and Worksessions may be called by the staff liaison, Chair, or a majority of the Commission. Notice of such meetings shall be posted in the same manner as that for regular meetings.

Section 3. A quorum for the transaction of business at any meeting shall consist of four members. For purposes of determining the existence of a quorum, consulting members shall not be counted.

Worksessions require a quorum, however, no action may be taken at a worksession; items on the agenda are for discussion only.

Section 4. Any member who is unable to attend a meeting, whether regular or special, shall contact the Clerk in advance no later than two hours prior to the scheduled meeting time for excusal.

Section 5. Meeting agenda deadline is at 5:00 p.m. the Wednesday preceding the meeting. Allowances will be made for holidays.

Section 6. The order of business for the regular meetings shall include, but not be limited to, the following items, which shall be covered in the sequence shown, as far as circumstances permit. Agenda shall be posted for public information as required by Homer City Code and Alaska State Statutes.

CITY LOGO

NOTICE OF MEETING  
REGULAR MEETING AGENDA

DEPT. CONTACT INFO  
(City Clerk's Office)

NAME OF BODY  
DAY OF WEEK, DATE, AND TIME OF MEETING  
PHSICAL LOCATION OF MEETING & MEETING ROOM

1. CALL TO ORDER
2. APPROVAL OF AGENDA
3. PUBLIC COMMENTS REGARDING ITEMS ON THE AGENDA. (3 MINUTE TIME LIMIT)
4. RECONSIDERATION
5. APPROVAL OF MINUTES or CONSENT AGENDA
6. VISITORS (Chair set time limit not to exceed 20 minutes) (Public may not comment on the visitor or the visitor's topic until audience comments. No action may be taken at this time.)
7. STAFF & COUNCIL REPORT/COMMITTEE REPORTS
8. PUBLIC HEARING (3 MINUTE TIME LIMIT)
9. PENDING BUSINESS
10. NEW BUSINESS
11. INFORMATIONAL MATERIALS (No action may be taken on these matters, for discussion only.)
12. COMMENTS OF THE AUDIENCE (3 minute time limit)
13. COMMENTS OF THE CITY STAFF
14. COMMENTS OF THE COUNCILMEMBER (If one is assigned)
15. COMMENTS OF THE COMMISSION (includes Comments of the Chair since they are part of the Commission.)
16. ADJOURNMENT Next regular meeting is scheduled for \_\_\_\_\_. (Note any worksessions, special meetings, committee meetings etc.) All meetings scheduled to be held in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska. (The meeting may be scheduled for the Conference Room or virtually.)

Section 7. Per Resolution of the City Council (Resolution 06-115(A)), Public Testimony shall normally be limited to three minutes per person. Exceptions may be provided at the Chairperson's discretion or by a majority vote of the members in attendance.

Section 8. Recorded minutes shall be made available by the City Clerk's Office to the Commission prior to the next meeting and a record of all voting will be included in the minutes of each meeting. Minutes shall be available to the public as required by Homer City Code and Alaska State Statutes.

Section 9. Teleconference participation is allowed per the rules and limitations set forth in Homer City Code 2.58.060.

## **ARTICLE VII – GENERAL OPERATING PROCEDURES**

Section 1. The Commission shall abide by the current edition of Robert’s Rules of Order insofar as it is consistent with the Commission’s bylaws, other provisions of Homer City Code, or standing rules. In all other cases, bylaws, the code, or the standing rules shall prevail. This includes, but is not limited to, HCC 1.18 Conflicts of Interest, Partiality, and Code of Ethics; HCC 2.58 Boards and Commissions; HCC 2.64 Port and Harbor Advisory Commission; and the Open Meetings Act – AS 44.62.310-312.

Section 2. Each member, including the Chairperson, shall vote, and shall not abstain from voting, unless such member claims a conflict of interest, or has an excused absence, in which event the member shall be excused from voting. The member shall then state for the record the basis for the abstention. Four affirmative votes are required to pass a motion. Voting will be by a roll call vote, the order to be rotated; or by unanimous consent if no objection is expressed. Voting by proxy or absentee is prohibited.

Section 3. Any rule or resolution of the Commission, whether contained in these Bylaws or otherwise, may be suspended temporarily in connection with business at hand; and such suspension to be valid; may be taken only at a meeting in which at least four of the members of the Commission shall be present, and two-thirds of those present shall so approve.

Section 4. Training sessions developed or arranged by the City Clerk and approved by the City Manager shall be mandatory unless a member’s absence is excused by the Chairperson. The City Manager and/or City Clerk, in their discretion and in consultation with the City Attorney as needed, may develop model procedures to be used as a guide for the Commission.

## **ARTICLE VIII – COMMITTEES**

Section 1. Committees of one or more members for such specific purposes as the business of the Commission will only become active upon approval of Council. A memorandum and resolution will go before Council outlining the reason, tasks assigned and termination date. Committees shall be considered to be discharged upon completion of the purpose for which it was appointed, and after its final report is made to and approved by the Commission.

Section 2. All committees shall make a progress report to the Commission at each of its meetings.

## **ARTICLE VII – BYLAW AMENDMENTS**

The Bylaws may be amended at any meeting of the Commission by a majority plus one of the members, provided that notice of said proposed amendment is given to each member in writing. The proposed amendment shall be introduced at one meeting and action shall be taken at the next Commission meeting. Amendments to bylaws shall be effective upon approval of the amendments by City Council via resolution.

ADOPTED BY CITY COUNCIL VIA RESOLUTION 23-057 ON JUNE 12<sup>TH</sup>, 2023



# MEMORANDUM

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## Application from Berth II Inc. for Lease Assignment from Y & C LLC. of Lot #18103432

**Item Type:** Action Memorandum  
**Prepared For:** Port and Harbor Advisory Commission  
**Date:** May 13, 2024  
**From:** Roslyn Kriegh, Port Property Associate  
**Through:** Bryan Hawkins, Port Director

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**Requested Action:** Review lease assignment application submitted by Berth II Inc. in regards to Lot #18103432, currently leased by Y & C LLC.

### Background:

Berth II Inc. has submitted a request for Assignment of the Lease currently held by Y & C LLC. of lot #18103432, located at 4400 Homer Spit Rd as a part of the purchase of the building. Y & C LLC.'s current lease ends on January 31<sup>st</sup>, 2039 with two five (5) year extension periods available. Berth II Inc. is requesting a standard 20-year lease with two five (5) year extensions, thus ending in 2044. All other conditions of the current lease would remain the same. Berth II Inc., representing the Southwest Alaska Pilots Association, has stated they intend to continue subleasing the existing business space on the 1<sup>st</sup> floor, in addition to establishing sleeping quarters and administrative office space for their pilots and crew (2<sup>nd</sup> floor). Per Homer City Code 18.08.110, the current lease is in compliance and the leasing history has demonstrated that contractual obligations have been satisfactorily met, please see attached Letter of Good Standing.

### RECOMMENDATION:

We recommend the Port and Harbor Advisory Commission make a motion supporting the Lease Assignment from the current tenant, Y & C LLC, to Berth II Inc.

### Attached:

Lease Assignment Application submitted by Berth II Inc.

Existing City of Homer Lease with Y & C LLC.

Letter of Good Standing regarding Y & C LLC. from Amy Woodruff



## City Lease Application For City-Owned Real Property

**Homer Port & Harbor**  
4311 Freight Dock Road  
Homer, AK 99603  
Phone: (907)235-3160  
Fax: (907)235-3152  
port@cityofhomer-ak.gov

### Lease Application Purpose

- ☐ Request for New Lease; New Lessee – Applicant is not currently a City lessee
- ☐ Request for New Lease; Existing Lessee – Applicant is a current lessee with no remaining options to renew
- ☒ Request for Assignment of Lease – Applicant is requesting to have an existing lease transferred to a new owner/business

### Property Information

Physical Address:	4400 HOMER SPIT ROAD		
Square Footage:	<input checked="" type="checkbox"/> Full Lot <input type="checkbox"/> Portion of Lot	KPB Parcel No.:	18103432
Legal Description of Property:	T7S R 13W SEC 7 SEWARD MERIDIAN HM 0890034 LOT 32 HOMER SPIT AMENDED		

### Applicant Information

Business Name:	Berth II, Inc.
Representative's Full Name & Title:	John Stewart President
Mailing Address:	PO Box 3147
City, State, ZIP Code:	Homer, AK 99603
Phone Number(s):	907-235-8783
Email:	office@swpilots.net

### Business Entity & Financial Information

<input type="checkbox"/>	Sole or Individual Proprietorship – Attached documentation must provide owner's full name, address, and verify they are the sole owner.	
	Is entity authorized to do business in Alaska? <input type="checkbox"/> No <input type="checkbox"/> Yes – As of what date:	
<input type="checkbox"/>	Partnership – Attached documentation must provide Partners' full names, addresses, and share percentages.	
	Date of Organization:	Type of Partnership:
	Is Partnership authorized to do business in Alaska? <input type="checkbox"/> No <input type="checkbox"/> Yes – As of what date:	

<input checked="" type="checkbox"/>	Corporation – Attached documentation must provide the full names of Officers and Principal Stockholders (10%+), their addresses, and share percentages.
Date of Organization: 08/18/1993      Type of Corporation: S Corp	
Is Corporation authorized to do business in Alaska? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes – As of what date: 08/18/1993	
Corporation is held: <input checked="" type="checkbox"/> Privately <input type="checkbox"/> Publicly – How and where is stock traded:	
<input type="checkbox"/>	Other – Please explain:

Proof of Financial Capability to Meet Obligations:  SEE ATTACHED	<input checked="" type="checkbox"/> Documentation of Payment History: Documents such as a credit report and score from one of the three credit bureaus (i.e. Experian, Equifax, TransUnion) or records of prior lease history.
	<input checked="" type="checkbox"/> Documentation of Applicant's Financial Backing: Records showing applicant has secured the funding necessary to implement their development/improvement plan and/or purchase the business (if applicable).
	<input checked="" type="checkbox"/> Documentation of Business' Vitality: Minimum of two years (past year and current year) of financial statements; this includes a Balance Sheet and Profit/Loss Statement (Revenue/Expense Statement).
Surety Information:	Has any surety or bonding company ever been required to perform upon your default or the default of any of the principals in your organization holding more than a 10% interest?  <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – Attach a statement naming the surety or bonding company, date and amount of bond, and the circumstances surrounding the default or performance.
Bankruptcy information:	Have you or any of the principals of your organization holding more than a 10% interest ever been declared bankrupt or are presently a debtor in a bankruptcy action?  <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – Attach a statement indicating state, date, Court having jurisdiction, case number and to amount of assets and debt.
Pending Litigation:	Are you or any of the principals of your organization holding more than a 10% interest presently a party to any pending litigation?  <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – Attach detailed information as to each claim, cause of action, lien, judgment including dates and case numbers.

Lease Proposal	
Type of Business/ Proposed Use of the Property:	ADMINISTRATIVE OFFICES, MAIN BASE OF OPERATIONS + CONTINUATION OF GENERAL STORE / SPACE BELOW.

Requested Lease Term:	<input type="checkbox"/> Short Term Lease (One Year or Less) – Duration (in months): <input checked="" type="checkbox"/> Long Term Lease (More Than One Year) <ul style="list-style-type: none"> <li>Standardized Lease is a 20-year term with two 5-year Options to Renew; City Manager may deviate from standardized lease term when reasonable and necessary, and approved by Council (18.08.030).</li> <li>No more than two Options to Renew; each option cannot exceed 25% of initial lease term (18.08.110).</li> </ul> Duration (in years): <u>20 YEAR</u> No. of Options to Renew: <u>2</u>
Property Plan:  SEE ATTACHED	<input checked="" type="checkbox"/> Describe your Property Plan in your written narrative. Details should include but not be limited to: <ul style="list-style-type: none"> <li>Proposed utilization of the lot/space, including parking</li> <li>If there are existing buildings on the property and what their proposed uses are</li> <li>Any intentions to rent out or sublease space on the property</li> <li>How the use is compatible with neighboring uses and consistent with applicable land use regulations including the Land Allocation Plan; Comprehensive Plan</li> </ul> <input type="checkbox"/> Provide a detailed schematic (to scale) that shows the following: <ul style="list-style-type: none"> <li>Size of lot – dimensions and total square footage</li> <li>Placement/size of existing buildings, storage units, and other miscellaneous structures</li> <li>Parking spaces – numbered on the drawing with a total number indicated</li> <li>Note: an as-built survey from a licensed surveyor may be required</li> </ul>
Development Plan:  SEE ATTACHED/N/A.	Do you have a development and/or improvement plan for the property, including plans for repairs or maintenance to any existing buildings? <input type="checkbox"/> Yes    In your written narrative, provide as much information as possible on how you intend to develop/improve the property. Include a time schedule from project initiation to completion, major project milestones, cost estimate and financing plan, and any additional designs not already provided in the Property Plan's detailed schematic. <input checked="" type="checkbox"/> No    In your written narrative, explain why.
City Planning & Other Agency Approvals:  N/A	Does your business/proposed use and/or development plan require agency approval? The granting of any lease is contingent upon lessee obtaining approval, necessary permits, and/or inspection statements from all appropriate City, State and/or Federal agencies. This includes but is not limited to: <ul style="list-style-type: none"> <li>Applicable permits/approval from City Planning for zoning compliance, such as Conditional Use Permits, Zoning Permits</li> <li>Fire Marshall Plan Review and Permitting</li> <li>Waste Disposal System Plan Approval – Includes fish waste if applicable</li> <li>Other applicable permits/inspection statements from agencies such as U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, and Alaska Department of Environmental Conservation Division of Environmental Health</li> </ul> <input type="checkbox"/> Explain in your written narrative what necessary approvals, permits, and/or inspections are applicable to your business/proposed use and the current status of your application with those agencies. <input type="checkbox"/> Attach any relevant documentation that verifies completion or pending status.

Insurance Requirements:	<p>The granting of any lease is contingent upon lessee obtaining and keeping in full force insurance as outlined in HCC 18.08.170. Certificates of insurance showing the required insurance is in effect and identifying the City as an additional insured must be provided to the City at the time a lease becomes effective and annually thereafter, and upon every change in insurance provider or insurance coverage.</p> <p>SEE ATTACHED <input checked="" type="checkbox"/> Provide proof of insurability for public liability insurance in the amount of not less than \$1,000,000 coverage per occurrence for bodily injury, including death, and property damage, and the City of Homer as co-insured. Additional insurance limits or types may be required due to the nature of the business, lease, or exposure.</p>
Benefits & Impacts on Community:	<p><input checked="" type="checkbox"/> In your written narrative answer the following questions:</p> <ul style="list-style-type: none"> <li>• What experience do you have in the proposed business or venture?</li> <li>• How long have you resided or conducted business in the City, Kenai Peninsula Borough, and/or the State of Alaska?</li> <li>• What are some of the economic, social, and financial benefits and/or impacts your business/proposed use brings to the community?</li> </ul>
Applicant References:	<p><input checked="" type="checkbox"/> In your written narrative, list four persons or firms with whom the Applicant or its owners have conducted business transactions with during the past three years. Two references named shall have knowledge of your financial management history, of which at least one must be your principal financial institution. Two of the references must have knowledge of your business expertise.</p> <p>Each reference must include the following:</p> <ul style="list-style-type: none"> <li>• Full Name</li> <li>• Name of the organization/business and their title at this entity</li> <li>• Address</li> <li>• Phone number and email address</li> <li>• Nature of association with Applicant</li> </ul>
Additional Information:	<p><input type="checkbox"/> Include in your written narrative, or attach relevant documentation, that you deem pertinent to your application/lease proposal. Criteria for evaluating and approving proposals and competing lease applications can be found under HCC 18.08.060.</p>

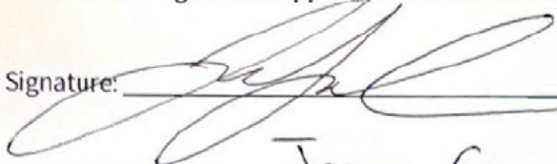
#### Required Attachments/Documentation

<input checked="" type="checkbox"/>	Written Narrative
<input type="checkbox"/>	Business Entity and Licensing Information <ul style="list-style-type: none"> <li>• State of Alaska Business License</li> <li>• Current State of Alaska Biennial Report</li> <li>• If Partnership: Statement of Partnership/Partnership Agreement</li> <li>• If Corporation: Articles of Incorporation &amp; Bylaws</li> <li>• Any additional documentation concerning the formation or operation of the entity</li> </ul>
<input type="checkbox"/>	Financial Information
<input type="checkbox"/>	Property Plan - Detailed Schematic of Property - NO CHANGES TO CURRENT PLAN
<input type="checkbox"/>	Development Plan documents/plans, if any NA
<input type="checkbox"/>	Proof of Insurability; verification that insurance can be provided at signing of lease

☐ City Planning & Other Agency Approval Information, if any

### Application Signatures

By signing, I agree that the above information is true and correct to the best of my knowledge. I certify that I am authorized to sign as the applicant on behalf of the entity I represent.

Signature:  Date: 15 May 2024

Printed Name & Title: JORDAN GOULD SECRETARY/TREASURER

### Office Use Only

Received By & Date:		Fee Processed: \$	Date:
Date Application Accepted as Complete/Submitted for Review:		Application Timeout Date: (1 year from receipt)	
Submitted for Dept. Review: <input type="checkbox"/> Planning <input type="checkbox"/> Port & Harbor <input type="checkbox"/> Economic Development <input type="checkbox"/> Finance <input type="checkbox"/> Public Works			
Submitted for City Manager Review:		<input type="checkbox"/> Approved on:	<input type="checkbox"/> Denied on:
For Existing Leases Exempt from Competitive Bidding:	Current Lease Expires with No Options to renew: _____		
	6 mos. Prior to date of lease termination (Council Approval Deadline): _____		
	Request received within 12 to 18 mo. timeframe from expiration of lease date: <input type="checkbox"/> Yes <input type="checkbox"/> No		



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/15/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Chinook Insurance Group, LLC 10002 Aurora Avenue N, Suite 36 PMB 315 Seattle, WA 98133	<b>CONTACT NAME:</b> Chris Trainer <b>PHONE (A/C, No, Ext):</b> (206) 660-3500 <b>E-MAIL ADDRESS:</b> chris@chinookins.com <b>FAX (A/C, No):</b>
<b>INSURED</b> Berth II, Inc PO Box 3147 Homer, AK 99603	<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Endurance American Insurance Group <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	OPK10015116303	01/01/2024	01/01/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y / N <input type="checkbox"/> N / A						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Evidence of Insurance for City of Homer

**CERTIFICATE HOLDER****CANCELLATION**

City of Homer

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Christopher Trainer*

# **Lease Application Narrative: Berth II**

**4400 Homer Spit Road, Homer, Alaska**

## **Property Plan and Proposed Utilization**

Berth II (a wholly owned subsidiary of Southwest Alaska Pilots Association, SWAPA) would like to propose the leasing of 4400 Homer Spit Road as our main administrative headquarters with rental space below. The property spans an approximate total of 7392 square feet, strategically situated on Homer Spit with easy access to essential maritime and logistical operations. Berth II operates properties in Seward, Valdez, Anchorage, and the current main office located in Homer at 1230 Ocean Drive Homer, AK.

The existing building on the premises will be utilized primarily for our administrative offices and as accommodations for pilots prior to assignments occupying the upper levels of the structure. The lower level is designated for year-round rental space, which we aim to offer to local businesses, fostering community growth and economic development.

The initial work planned to be completed will consist of any repairs to health and safety items as outlined in the due diligence buyers inspection.

**Alaska Department of Commerce, Community, and Economic Development**

Division of Corporations, Business, and Professional Licensing

PO Box 110806, Juneau, AK 99811-0806

This is to certify that

**BERTH II, INC.**

PO BOX 3147, HOMER, AK 99603

owned by

BERTH II, INC.

is licensed by the department to conduct business for the period

October 16, 2023 to December 31, 2025  
for the following line(s) of business:

53 - Real Estate, Rental and Leasing



This license shall not be taken as permission to do business in the state without having complied with the other requirements of the laws of the State or of the United States.

This license must be posted in a conspicuous place at the business location.  
It is not transferable or assignable.

Julie Sande  
Commissioner

Department of Commerce, Community, and Economic Development  
DIVISION OF CORPORATIONS, BUSINESS &  
PROFESSIONAL LICENSING

[State of Alaska](#) / [Commerce](#) / [Corporations, Business, and Professional Licensing](#) / [Search & Database Download](#) /  
[Business License](#) / License #173338

## LICENSE DETAILS

**License #:** 173338

[Print Business License](#)

**Business Name:** BERTH II, INC.

**Status:** Active

**Issue Date:** 08/26/1993

**Expiration Date:** 12/31/2025

**Mailing Address:** PO BOX 3147  
HOMER, AK 99603

**Physical Address:** 1230 OCEAN DRIVE  
HOMER, AK 99603

## Owners

BERTH II, INC.

## Activities

Line of Business	NAICS	Professional License #
53 - Real Estate, Rental and Leasing	531110 - LESSORS OF RESIDENTIAL BUILDINGS AND DWELLINGS	

## Endorsements

No Endorsements Found

## License Lapse(s)

If this business license lapsed within the last four years the lapsed periods will appear below. Lapsed periods are the unlicensed period between an expiration date and renewal date.

No Lapses on record for the last 4 years.

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CONTACT US



THE STATE  
of ALASKA

Department of Commerce, Community, and Economic Development  
Division of Corporations, Business, and Professional Licensing  
PO Box 110806, Juneau, AK 99811-0806  
(907) 465-2550 • Email: [corporations@alaska.gov](mailto:corporations@alaska.gov)  
Website: [corporations.alaska.gov](http://corporations.alaska.gov)

AK Entity #: 52170D  
Date Filed: 12/02/2022  
State of Alaska, DCCED

FOR DIVISION USE ONLY

## Domestic Business Corporation

### 2023 Biennial Report

For the period ending December 31, 2022

Web-12/2/2022 9:54:30 AM

**Due Date:** This report along with its fees are due by January 2, 2023

**Fees:** If postmarked before February 2, 2023, the fee is \$100.00.

If postmarked on or after February 2, 2023 then this report is delinquent and the fee is \$137.50.

**Entity Name:** BERTH II, INC.

**Entity Number:** 52170D

**Home Country:** UNITED STATES

**Home State/Prov.:** ALASKA

**Physical Address:** 1230 OCEAN DR, HOMER, AK 99603

**Mailing Address:** PO BOX 3147, HOMER, AK 99603

**Registered Agent** information cannot be changed on this form. Per Alaska Statutes, to update or change the Registered Agent information this entity must submit the Statement of Change form for this entity type along with its filing fee.

**Name:** Matthew Michalski

**Physical Address:** [REDACTED]  
ANCHORAGE, AK 99502

**Mailing Address:** [REDACTED]  
ANCHORAGE, AK 99502

**Officials:** The following is a complete list of officials who will be on record as a result of this filing.

- **Provide all officials and required information. Use only the titles provided.**
- **Mandatory Officers (3) and Directors (1), who must be individuals:** this entity must have a President, Secretary, and Treasurer. The President and Secretary cannot be the same person unless the President is 100% Shareholder. This entity must have at least one (1) Director. Provide all the individuals who are directors.
- **Shareholders:** the entity must provide all Shareholders who own 5% or more of the Issued Shares. Shareholders may be an individual or another entity.
- **Alien Affiliates:** the entity must provide all Alien Affiliates (non-U.S.), which may be an individual or another entity.

Full Legal Name	Complete Mailing Address	% Owned	Alien Affiliate	Assistant Secretary	Assistant Treasurer	Director	President	Secretary	Shareholder	Treasurer	Vice President
James Cunningham	[REDACTED], HOMER, AK 99603	6.66				X			X		X
Peter Garay	[REDACTED], HOMER, AK 99603	6.67							X		
Ian Maury	[REDACTED], ANCHORAGE, AK 99501	6.66							X		
Matthew Michalski	[REDACTED], ANCHORAGE, AK 99502	6.66				X			X		
CHRISTOPHER MITCHELL	[REDACTED], HOMER, AK 99603	6.66				X			X		
MICHAEL O'HARA	[REDACTED], ANCHORAGE, AK 99507	6.67							X		
Jeffrey Pierce	[REDACTED], EAGLE RIVER, AK 99577	6.67							X		
R. O. Baker II Revocable Trust	[REDACTED], ANCHOR POINT, AK 99566	6.67							X		
Donal Ryan	[REDACTED], HOMER, AK 99603	6.67				X		X	X	X	
C VINCENT TILLION	[REDACTED] HOMER, AK 99603	6.67							X		
Bryan Vermette	[REDACTED] SOLDOTNA, AK 99669	6.67							X		
CAROLYN VERMETTE	[REDACTED], KASILOF, AK 99610	6.66							X		
Andrew Wakefield	[REDACTED], ANCHORAGE, AK 99515					X	X				
WAKEFIELD REVOCABLE TRUST	[REDACTED], ANCHORAGE, AK 99515	6.67							X		
Ronald Ward, II	[REDACTED], ANCHORAGE, AK 99517	6.67							X		
Joshua Weston	[REDACTED], HOMER, AK 99603	6.67				X			X		

If necessary, attach a list of additional officers on a separate 8.5 X 11 sheet of paper.

**Purpose:** PROPERTY RENTALS

**NAICS Code:** 531110 - LESSORS OF RESIDENTIAL BUILDINGS AND DWELLINGS

**New NAICS Code (optional):**

**Issued Shares:** The entity must provide the number of Issued Shares

- Do not leave Issued Shares blank.
- If there are Shareholders then you must provide a number of Issued Shares. Do not exceed the number of Authorized Shares.
- If there are no Issued Shares (and no Shareholders) then provide "0" or "zero" or "none".
- To change Class, Series, Authorized Shares, or Par Value submit an amendment.

Class	Series	Authorized Shares	Par Value	Number of Issued Shares
Common		50000	0.00000	15

*Mandatory. Do not leave blank.*

This form is for use by the named entity only. Only persons who are authorized by the above Official(s) of the named entity may make changes to it. If you proceed to make changes to this form or any information on it, you will be certifying under penalty of perjury that you are authorized to make those changes, and that everything on the form is true and correct. In addition, persons who file documents with the commissioner that are known to the person to be false in material respects are guilty of a class A misdemeanor. Continuation means you have read this and understand it.

**Name:** Annie Wiard

State of Alaska  
Department of Commerce and Economic Development  
Division of Banking, Securities and Corporations

**CERTIFICATE  
OF  
INCORPORATION**  
Business Corporation

The undersigned, as Commissioner of Commerce and Economic Development of the State of Alaska, hereby certifies that duplicate originals of the Articles of Incorporation of

BERTH II, INC.

have been received in this office and are found to conform to law.

ACCORDINGLY, the undersigned, as such Commissioner of Commerce and Economic Development, and by virtue of the authority vested in him by law, hereby issues the Certificate of Incorporation and attaches hereto a duplicate original of the Articles of Incorporation.



IN TESTIMONY WHEREOF, I execute this certificate and affix the Great Seal of the State of Alaska on August 18, 1993.

Paul Fuhs

COMMISSIONER OF COMMERCE  
AND ECONOMIC DEVELOPMENT

ARTICLES OF INCORPORATION

OF

BERTH II, INCORPORATED

Record  
State of Alaska

AUG 10 1993

Department of Commerce  
& Economic Development

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KNOW ALL MEN BY THESE PRESENTS: That the undersigned, being over eighteen years of age, has formed a business corporation under and pursuant to the laws of the State of Alaska and does hereby certify:

ARTICLE I

The name of this corporation is Berth II, Inc.

ARTICLE II

The object and purposes for which this corporation is formed are as follows:

(a) This corporation shall have all the powers to do and transact any and all actions and have all of the powers mentioned and set forth directly or by inference in the Alaska Statutes, Title 10, Chapter 6, including AS 10.06.010.

(b) Without in any manner intending to limit the powers specified in the Alaska Statutes, this corporation, at its inception and as its main corporate purpose, shall engage in the business of Property development, rental, and any other legal activity within Alaska and elsewhere.

ARTICLE III

The authorized capital of this corporation shall be 50,000 shares of nonassessable common stock fully voting, fully participating.

There is no cumulative voting of shares.

ARTICLE IV

To the extent available, both retained earnings and paid-in capital may be used for the purchase and redemption of common stock issued by this corporation.

No holder of any stock of this corporation shall be entitled, as a matter of right, to purchase, subscribe for or otherwise acquire any new or additional shares of stock of the corporation of

any class, or any options or warrants to purchase, subscribe for or otherwise acquire any such new or additional share, or any shares, bonds, notes, debentures or other securities convertible into or carrying options or warrants to purchase, subscribe for or otherwise acquire any such new or additional shares.

Pursuant to AS 10.06.210(1)(c) regarding special qualifications of persons who may be shareholders, ownership of stock in this corporation is restricted and limited as follows:

(a) During any time that the corporation shall have elected to be taxed as a small business corporation under Subchapter S of the Internal Revenue Code, as amended, no person who is not qualified to be a shareholder as described in section 1361(c)(2)(A)(i) of the Internal Revenue Code (or treated as so described by reason of IRC section 1361(d) may acquire shares in the corporation unless all other shareholders first agree, in writing, to such acquisition. Such provisions of the Internal Revenue code, as amended, are hereby incorporated by reference.

(b) During any time that the corporation shall be bound by provision in its Bylaws or by an agreement with its shareholders restricting transfer of shares, no person may acquire shares in the corporation except in accordance with the terms of such Bylaws or agreement, a copy of which shall be available for inspection at the office of the corporation. The provisions of such Bylaws or agreement, as amended, are hereby incorporated by reference.

#### ARTICLE V

To the full extent permitted by law and subject only to those limitations expressly stated in AS 10.06.210(1)(M), no director of this corporation shall have any personal liability to the corporation or its shareholders for monetary damages for the breach of fiduciary duty as a director. This provision shall apply in addition to, and not in substitution for, indemnification provisions contained in this corporation's Bylaws or provided by contract.

#### ARTICLE VI

There are no alien affiliates.

#### ARTICLE VII

The address of the corporation's initial registered office is:

The name of the corporation's initial registered agent is:

Mark Hawker  
P.O. Box 65  
Homer, AK 99603

#### ARTICLE VIII

The management of the affairs and concerns of this corporation is hereby vested in its Board of Directors. The number of directors shall be fixed from time to time by the Bylaws. The name and address of the initial Board of Directors is:

Mark Hawker

[REDACTED]  
Homer, AK 99603

Steven Hunnicutt

[REDACTED]  
Anchorage, AK 99511

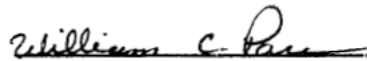
Mike Stone

[REDACTED]  
Anchorage, AK 99501

#### ARTICLE IX

The name and address of the incorporator is: William C. Pace, [REDACTED],  
Anchorage, AK 99518.

IN WITNESS WHEREOF, the undersigned, being the original incorporator hereinabove named, has signed these Articles of Incorporation, in duplicate, this 5th day of August, 1993.

  
William C. Pace

VERIFICATION

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

I, William C. Pace, say on oath or affirm that I have read the foregoing Articles of Incorporation and believe all statements made therein are true.

William C. Pace  
William C. Pace

SUBSCRIBED AND SWORN TO or affirmed before me at Anchorage, Alaska, this 5th day of August, 1993.

[Signature]  
NOTARY PUBLIC in and for Alaska  
My Commission Expires: 10-17-95

## **RESTATED BYLAWS**

### **OF**

### **BERTH II, INC.**

Note: Throughout this document, all gender-specific terms are to be considered to refer to both the feminine and the masculine form.

## **ARTICLE I**

### **Shareholders**

Section 1. Annual Meeting. The annual meeting of the shareholders for the election of Directors and the transaction of such other business as may properly come before it shall be held at the principal office of the corporation in Homer, Alaska, or at such other place within or without the state of Alaska as shall be set forth in the notice of meeting. The meeting shall be held during the fourth quarter of each and every year. The Secretary (or Secretary/Treasurer) shall give, personally, by email or by mail, not less than seven (7) days nor more than sixty (60) days before the date of the meeting, written notice of the meeting, stating the place, date and hour of the meeting. The notice shall be addressed to the shareholder at his mailing or email address as it appears on the record of the shareholders of the corporation, unless he has filed with the Secretary (or Secretary/Treasurer) of the corporation a written request that notices intended for him be mailed to a different address, in which case it shall be mailed to the address designated in the request. Any and all notice of meetings may be waived by a shareholder by submitting a signed waiver, either before or after the meeting, or by attendance at the meeting.

Section 2. Special Meetings. Special meetings of shareholders may be called at any time by a majority of the Directors or by the President and must be called by the President upon the written request of any three (3) shareholders entitled to vote at such special meetings. Written notice of such meetings, stating the place of the meeting, within or without the state of Alaska, the date and hour of the meeting, the purpose or purposes for which it is called and the name of the person(s) by whom or at whose direction the meeting is called, shall be given not less than seven (7) nor more than sixty (60) days before the date set for the meeting. The notice shall be given to each shareholder of record in the same manner as notice of the annual meeting. No business other than that specified in the notice of meeting shall be transacted at any such special meeting. Notice of a special meeting may be waived by submitting a signed waiver or by attendance at the meeting.

Section 3. Quorum. The presence, in person, by teleconference or by proxy, of a majority of the shareholders (51% or more) shall be necessary to constitute a quorum for the transaction of business at all meetings of shareholders, except as may be otherwise provided in the Alaska Business Corporation Code. If, however, such quorum cannot be present or

represented at any meeting of the shareholders, the shareholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting to a future date at which a quorum shall be present or represented. At such adjourned meeting, any business may be transacted which might have been transacted at the meeting as originally called.

Section 4. Record Date. The Directors may fix in advance a date, not less than seven (7) nor more than sixty (60) days prior to the date of any meeting of the shareholders or prior to the last day on which the consent or dissent of, or action by, the shareholders may be effectively expressed for any purpose without a meeting, as the record date for the determination of shareholders.

Section 5. Voting. A shareholder entitled to vote at a meeting may vote at such meeting in person or by a proxy, except as otherwise provided by law or by the Articles of Incorporation. Every shareholder shall be entitled to one (1) vote for each share standing in his name on the record of shareholders. Except as otherwise provided herein or in the Articles of Incorporation, all corporate action shall be determined by a majority of the votes cast at a meeting of shareholders by the holders of the shares entitled to vote thereon. Authority to make major decisions affecting the welfare and business of the corporation is reserved by the shareholders.

Section 6. Proxies. Every proxy must be dated and signed by the shareholder or by his attorney-in-fact and may be executed in writing, electronically or telephonically by the shareholder, or by his duly authorized attorney-in-fact. A proxy shall only be valid for the specific meeting referenced or for a specified amount of time, not to exceed eleven (11) months from the date of its execution, unless otherwise provided therein. Every proxy shall be revocable at the pleasure of the shareholder executing it, except where an irrevocable proxy is permitted by statute. Proxies shall be shareholders. Proxy voting shall be limited to those matters submitted to the tentative agenda. The proxy must be received by the President or his designee or the person presiding at the meeting at or before the time of convening the meeting; however, a shareholder present at a meeting who was called out by assignment or by other business prior to a vote, will be entitled to have a proxy with another shareholder. A proxy may state the agent shareholder's vote on one (1) or more issues, and such proxy shall be valid for one (1) meeting only, and the power to vote a proxy may be revoked by the person giving the proxy at any time prior to actual voting.

Section 7. Consents. Whenever, by a provision of statute or of the Articles of Incorporation or of these Bylaws, the vote of shareholders is required or permitted to be taken at a meeting thereof in connection with any corporate action, the meeting and the vote of shareholders may be dispensed with if all the shareholders who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such corporate action being taken. Such written consents shall be identical in content, and shall set out the action taken.

Section 8. Shareholders. Only full members of Southwest Alaska Pilots Association, may purchase the required number of shares to become an equal shareholder in

Berth II, Inc. Share price shall be established in the first quarter of each and every year pursuant to Article V, Sections 2 and 3.

Section 9. Balloting Procedures. Paper or electronic ballot, where required under these Bylaws, will be conducted as follows:

- (a) The ballot will be secret;
- (b) The ballot will be mailed or sent electronically to each shareholder of the Corporation, addressed to the shareholder at his mailing address or email address as it appears in the books of the Corporation; save that if direct hand delivery to the shareholder or delivery to the shareholder's mail distribution receptacle in the main office of the Corporation would be more expeditious than the U.S. mail, such ballots will be so delivered; and
- (c) Paper Ballot: The paper ballot will be returned to the principal office of the Corporation not more than twenty (20) days following the date of its mailing/email dissemination to each shareholder. Ballots not returned within this period of time will be considered invalid and will not be counted. A paper ballot will only be valid if at least two-thirds (2/3) of the shareholders cast ballots.
- (d) Electronic Ballot: The electronic ballot will be specifically conducted via an online voting portal and shall be returned to the relevant voting portal not more than fourteen (14) days following the date of its dissemination to each shareholder. Ballots not returned within this period of time will be considered invalid and will not be counted. An electronic ballot will only be valid if at least two-thirds (2/3) of the shareholders cast ballots.
- (e) It will be at the discretion of the Board of Directors whether they choose to submit a ballot via (c) or (d) above and the shareholders shall be apprised of the decision prior to the distribution of the ballot.

## ARTICLE II

### Directors

Section 1. Number and Qualifications. The Board of Directors shall consist of six (6) persons, who shall be of full age, unless the total number of shareholders shall be less than six (6), in which case the number of Directors shall equal the number of shareholders. The number of Directors may be changed by an amendment of the Bylaws.

Section 2. Manner of Election. The Directors shall be elected by paper or electronic ballot by a plurality vote, except as otherwise prescribed by statute. The Officers shall be elected at the annual meeting of the shareholders.

Section 3. Term of Office. The term of office of each Director shall be for one (1) year and shall commence from January 1 to December 31 or until the next annual meeting of the shareholders and until his successor has been duly elected and has qualified.

Section 4. Duties and Powers. The Board of Directors shall have control and management of the affairs and business of the corporation. The Directors shall in all cases act as a Board, regularly convened, and, in the transaction of business, the act of a majority present at a meeting, except as otherwise provided by law or the Articles of Incorporation, shall be the act of the Board, provided a quorum is present. The Directors may adopt such rules and regulations for the conduct of their meetings and the management of the corporation as they may deem proper, not inconsistent with law or these Bylaws.

It shall be the duty of the Board of Directors to:

- (a) Approve for payment all non-routine statements and accounts of the Corporation which are in excess of five thousand dollars (\$5,000). The Board of Directors will submit to the shareholders any issue of major importance, policy, or non-routine expenditure or project in excess of forty thousand dollars (\$40,000.00) that, in the exercise of good judgment, may be considered a major policy decision affecting the welfare or business of the corporation. A two-thirds (2/3) affirmative vote of the shareholders shall decide the issue. The shareholders may be polled by a director or an approved agent of the corporation either telephonically, by text, by email or by mail and the results shall be tabulated and retained as part of the official record. However, the Board of Directors does have the authority to approve necessary and emergency repairs on Berth II properties or equipment, without prior approval from the shareholders, when time is of the essence and if deemed that, to not move forward expeditiously, would be detrimental to the welfare and business of the Corporation.
- (b) Retain a certified public accountant to audit books and accounts of the Corporation and advise regarding fiscal matters;
- (c) Obtain legal counsel for advice regarding legal matters;
- (d) Maintain one or more bank accounts in the conduct of the business of the Corporation;
- (e) Tender to the shareholders the annual fiscal statement prepared by the certified public accountant;
- (f) Supervise, through the President or his designee, the maintenance of equipment, supplies, property, and the maintenance of full and complete files of the business activity of the Corporation.

Section 5. Meetings. The Board of Directors shall meet for the election or appointment of officers and for the transaction of any other business at the annual meeting of the

shareholders, and other regular meetings of the Board shall be held at such times as the Board may from time to time determine.

Special meetings of the Board of Directors may be called by the President at any time; he must, upon the written request of two (2) Directors, call a special meeting to be held not more than ten (10) days after the receipt of such a request.

Section 6. Notice of Meetings. No notice need be given of any regular meeting of the Board. Notice of special meetings shall be served upon each Director in writing sent by mail, addressed to him at his last known mailing address, at least seven (7) days prior to the date of such meeting, or served by electronic means, personal messenger, or comparable person-to-person communication given at least twenty-four (24) hours before the meeting. The notice of special meeting shall specify the time and place of the meeting, and the business to be transacted and the purpose of the meeting. At any meeting at which all of the Directors shall be present, although held without notice, any business may be transacted which might have been transacted if the meeting had been duly called.

Section 7. Place of Meetings. The Board of Directors may hold its meetings either within or without the state of Alaska, at such place as may be designated in the notice of any such meeting.

Section 8. Quorum. At any meeting of the Board of Directors, the presence of a majority of the Board shall be necessary to constitute a quorum for the transaction of business. However, should a quorum not be present, a lesser number may adjourn the meeting to some future time, not more than five (5) days later.

Section 9. Compensation. No Board member shall be entitled to any compensation for his attendance at, and participation in, board meetings or for any other reason.

Section 10. Vacancies. Any vacancy occurring in the Board of Directors by death, resignation or otherwise shall be filled promptly by a majority vote of the remaining Directors at a special meeting which shall be called for that purpose within five (5) days after the occurrence of the vacancy. The Director thus chosen shall hold office for the unexpired term of his predecessor and until the election and qualification of his successor.

Section 11. Removal of Directors. Any Director may be removed, either with or without cause, at any time, by a vote of the shareholders holding a majority of the shares then issued and outstanding and who were entitled to vote for the election of the Director sought to be removed, at any special meeting called for that purpose or at the annual meeting.

Section 12. Resignation. Any Director may resign his office at any time, such resignation to be made in writing and to take effect immediately, without acceptance.

## ARTICLE III

### Officers

Section 1. Officers and Qualifications. The officers of the corporation shall be a President, one (1) or more Vice Presidents, a Secretary, and a Treasurer (or Secretary/Treasurer) as the positions of Secretary and Treasurer may be combined and such other officers as the Board of Directors may determine. Any two (2) or more offices, except the offices of President and Secretary/Treasurer, may be held by the same person.

Section 2. Election. All officers of the corporation shall be elected annually by the Board of Directors, at its annual meeting of shareholders.

Section 3. Term of Office. All officers shall hold office until their successors have been duly elected and have qualified, or until removed as hereinafter provided.

Section 4. Removal of Officers. Any officer may be removed, either with or without cause, by the vote of a majority of the Board of Directors.

Section 5. Duties of Officers. The duties and powers of the officers of the corporation shall be as follows and shall hereafter be set by resolution of the Board of Directors:

#### President

(a) The President or, hereinafter, his designee shall preside at all meetings of the Board of Directors. He shall also preside at all meetings of the shareholders.

(b) He shall present, at each annual meeting of the shareholders and Directors, a report of the condition of the business of the corporation.

(c) He shall cause to be called regular and special meetings of the shareholders and Directors in accordance with the requirements of the statutes and of these Bylaws.

(d) He shall appoint, discharge and fix the compensation of all employees and agents of the corporation other than the duly elected officers, subject to the approval of the Board of Directors.

(e) He shall sign and execute all contracts in the name of the corporation and all notes, drafts or other orders for the payment of money.

(f) He shall sign all certificates representing shares.

(g) He shall cause all books, reports, statements and certificates to be properly kept and filed as required by law.

(h) He shall enforce these Bylaws and perform all the duties incident to the office and which are required by law, and, generally, shall supervise and control the business and affairs of the corporation.

#### Vice President

During the absence or incapacity of the President, the Vice President or, hereinafter, his designee, shall perform the duties of the President and, when so acting, shall hold all the powers and be subject to all the responsibilities of the office of President and shall perform such duties and functions as the Board may prescribe.

#### Secretary

(a) The Secretary or, hereinafter, his designee, shall keep the minutes of the meetings of the Board of Directors and of the shareholders in appropriate books.

(b) He shall attend to the giving of notice of special meetings of the Board of Directors and of all the meetings of the shareholders of the corporation.

(c) He shall be custodian of the records and seal of the corporation and shall affix the seal to the certificates representing shares and other corporate papers when required.

(d) He shall keep at the principal office of the corporation a book or record containing the names, alphabetically arranged, of all persons who are shareholders of the corporation, showing their places of residence, the number and class of shares held by them respectively and the dates when they respectively became the owners of record thereof. He shall keep such book or record and the minutes of the proceedings of the corporation's shareholders open daily, during the usual business hours, for inspection, within the limits prescribed by law, by any person duly authorized to inspect such records. At the request of the person entitled to an inspection thereof, he shall prepare and make available a current list of the officers and Directors of the corporation and their residence addresses.

(e) He shall sign all certificates representing shares and affix the corporate seal thereto.

(f) He shall attend to all correspondence and present to the Board of Directors at its meetings all official communications received.

(g) He shall perform all the duties incident to the office of Secretary of the corporation.

### Treasurer

(a) The Treasurer or, hereinafter, his designee, shall have the care and custody of, and be responsible for, all the funds and securities of the corporation, and shall deposit such funds and securities in the name of the corporation in such bank accounts or safe deposit boxes as the Board of Directors may designate.

(b) He shall make, sign and endorse, in the name of the corporation, all checks, drafts, notes and other orders for the payment of money, and pay out and dispose of such under the direction of the President or the Board of Directors.

(c) He shall keep at the principal office of the corporation accurate books of account of all its business and transactions and shall, at all reasonable hours, exhibit books and accounts to any Director upon application at the office of the corporation during business hours.

(d) He shall render a report of the condition of the finances of the corporation at each regular meeting of the Board of Directors and at such other times as shall be required, and shall make a full financial report at the annual meeting of the shareholders.

(e) He shall further perform all duties incident to the office of Treasurer of the corporation.

(f) If required by the Board of Directors, he shall give such bond as they shall determine appropriate for the faithful performance of his duties.

### Other Officers

Other officers shall perform such duties and have such powers as may be assigned to them by the Board of Directors.

Section 6. Vacancies. All vacancies in any office shall be filled promptly by the Board of Directors, either at regular meetings or at a meeting specially called for that purpose.

Section 7. Compensation of Officers. Officers shall serve without compensation.

## **ARTICLE IV**

### **Seal**

The Board of Directors shall provide a corporate seal, which shall be in the form of a circle and shall bear the name of the corporation and the state of incorporation.

## ARTICLE V

### Shares

Section 1. Certificates. The shares of the corporation shall be represented by certificates approved by the Board of Directors and signed by the President or a Vice President and by the Secretary or Secretary/Treasurer and sealed with the seal of the corporation or a facsimile. The certificates shall be numbered consecutively and in the order in which they are issued; and, in the margin of each certificate shall be entered the name of the person to whom the shares represented by each such certificate are issued, the number and class or series of such shares and the date of issue. Each certificate shall state that the corporation is organized under the laws of Alaska, the registered holder's name, the number and class of shares represented thereby, the date of issue and the par value of such shares or that they are without par value.

Section 2. Value of One Share of Stock. The value of one share of stock for the purchase of such share by a new shareholder, or sale of such share pursuant to the provisions of this article, or for other purposes which refer to this provision, shall be established on an annual basis and shall be based on the Gross Book Value as referenced in Section 3, below. Annual share valuation will be provided by the corporation's accountant.

Section 3. Transfer of Shares. The shares of the corporation shall be assignable and transferable only on the books and records of the corporation by the registered owner, or by his duly-authorized attorney, upon surrender of the certificate for the shares to the person or persons entitled thereto. Upon retirement of a shareholder, he shall transfer and assign his shares back to the corporation and he shall be paid the value of his shares as follows: the value of the shares shall be established during the first quarter of the year of retirement (gross book value as at December 31<sup>st</sup> of prior year). Their final share price shall be adjusted for any pro-rata earnings attributable to their shares from January 1 in year of retirement to buy-back date in year of retirement. One third (33.33%) of the final share price shall be paid to the shareholder in the year of retirement with the balance, which shall accrue simple interest at the Prime Rate plus 1% as published by Wells Fargo Bank NA, Anchorage on the date of retirement, paid in two (2) equal installments on the anniversary date of the retirement in the subsequent two years following retirement. A draft copy of the buy-back agreement is attached to these bylaws.

Section 4. Return of Certificates. All certificates for shares changed or returned to the corporation for transfer shall be marked "Canceled" by the Secretary (or Secretary/Treasurer), with the date of cancellation, and the transaction shall be immediately recorded in the certificate book opposite the memorandum of their issue. The returned certificates may be inserted in the corporate book.

Section 5. Installment Payments of Purchase Price. Purchase of a share on an installment basis shall be made pursuant to the following terms. The purchase price shall be the value of the stock as determined pursuant to Section 3, above, and shall be represented by a promissory note executed by the purchasing shareholder. Twenty five percent (25%) of that

value shall be required as a down payment and the remaining balance of the purchase price shall be amortized over three years, with simple interest at the Prime Rate plus 1% per annum (as published by Wells Fargo Bank NA, Anchorage) or more subject to approval by the board of directors. The down payment shall be paid within one month of becoming a full member of Southwest Alaska Pilots Association (SWAPA) and the first payment will on the first of the month after becoming a full member and equal installments payment made each month thereafter. Prepayment of all or any part of the principal may be made at any time without penalty. The share of stock sold shall be held by the corporation as security for full and timely payment of the purchase. As long as no default occurs in payments on the note, the purchaser shall be entitled to vote the share, and upon payment of the full purchase price under the terms of the note, the certificate for such share be delivered to the shareholder. The note repayment period may be extended by up to an additional two years (maximum five-year amortization period) at the discretion of the board of directors and pursuant to mitigating economic factors. Any such extension must be made by majority vote of the directors then in office. A draft copy of the promissory note is attached to these bylaws.

Section 6. Failure to Make Payments: Deductions. If a promissory shareholder fails to make timely payment pursuant to the terms set forth under Section 5 of this Article, the corporation may then deduct overdue payment from such shareholder's account and/or the shareholder's semimonthly member draw from the Southwest Alaska Pilots Association (SWAPA) until such time as the shareholder's payment obligations are current and/or the note balance becomes fully paid. Any such deduction shall be paid directly to the corporation. See Article III of SWAPA Bylaws for terms and conditions of deductions from member draws.

Section 7. Failure to Make Payment: Default. The promissory note shall additionally provide that if a promisor fails to make timely payment, then, in addition to the remedy described in Section 6 above, the board of directors shall have option of declaring the note in default. Written notice of such declaration shall be provided to the promisor. If the default is not cured within sixty calendar days after the notice of default is sent to the promisor, the entire sum of principal and interest remaining on the note shall become immediately due and payable. If a note upon which default has been cured is subsequently declared in default then the sum of principal and interest shall become immediately due and payable without opportunity to cure unless otherwise approved by the board of directors.

Section 8. Terms of Default. If a default is not timely cured, then the corporation may foreclose on the shareholder's share of stock, and such share shall revert to the corporation. Upon foreclosure, the corporation shall refund to the shareholder the smaller of 1) the value of the share as of the date of default or 2) the amount of principal paid by the promisor under the note. The amount to be refunded shall be reduced by the collection costs, including but not limited to attorney's fees, incurred by the corporation in connection with the default. Unless otherwise determined by the board of directors, the time and terms of such refund shall be made in accordance with Section 5 above. Notwithstanding the foregoing or any other provision under these bylaws, in the event of default the corporation shall have all available remedies provided by law.

## **ARTICLE VI**

### **Dividends**

The Board of Directors, at any regular or special meeting, may declare dividends payable out of the surplus of the corporation whenever, in the exercise of its discretion, it may deem such declaration advisable. Such dividends may be paid in cash, property or shares of the corporation.

## **ARTICLE VII**

### **Bills, Notes, Etc.**

All bills payable, notes, checks, drafts, warrants or other negotiable instruments of the corporation shall be made in the name of the corporation and shall be signed by such officer or officers as the Board of Directors shall from time to time by resolution direct.

No officer or agent of the corporation, either singly or jointly with others, shall have the power to make any bill payable, note, check, draft, warrant or other negotiable instrument, or endorse the same in the name of the corporation, or contract or cause to be contracted any debt or liability in the name and on behalf of the corporation, except as herein expressly prescribed and provided.

## **ARTICLE VIII**

### **Offices**

The principal office of the corporation shall be located at 1230 Ocean Drive, Suite 3, Homer, Alaska 99603; its mailing address is P.O. Box 3147, Homer, Alaska 99603. The Board of Directors may change the location of the principal office of the corporation and may, from time to time, designate other offices within or without the state of Alaska, as the business of the corporation may require.

## **ARTICLE IX**

### **Amendments**

These Bylaws may be altered, amended, repealed or new Bylaws adopted by a two-thirds (2/3) majority of the shareholders by paper or electronic ballot.

## **ARTICLE X**

### **Waiver of Notice**

Whenever, under the provisions of these Bylaws or of any statute, any shareholder or Director is entitled to notice of any regular or special meeting, or of any action to be taken by the corporation, such meeting may be held or such action may be taken without the giving of such notice, provided every shareholder or Director entitled to such notice in writing waives the requirements of these Bylaws with respect thereto.

## **ARTICLE XI**

### **Fiscal Year**

The fiscal year of the corporation shall begin on the 1st day of January and end on the 31st day of December in each year.

These Bylaws were first duly adopted by the corporation on the 1st day of January 1996; these bylaws are restated by the corporation in 2004 and duly amended in accordance with the dated catalogue of revisions attached to these Bylaws.

\_\_\_\_\_  
Secretary

Attest: \_\_\_\_\_  
President

## AMENDMENTS SINCE 12/01/2018

- I. 12/14/18 Per Board of Directors; amend Article V, Shares, Section 3, final share price including pro-rata earnings attributable in year of retirement.
- II. 09/29/20 Per Board of Directors; amend Article II, Directors, Section 1, Number and Qualifications, increasing the three (3) member board to six (6).
- III. 07/06/21 Multiple sections revised allowing for general cleanup of language and terminology in the Berth II Bylaws to endeavor to ensure consistency and clarity throughout document. Balloting Procedures added. Allowing for positions of Secretary and Treasurer to be combined (Secretary/Treasurer). Allowing for extension of note repayment for shareholders buying in to Corporation if mitigating circumstances warrant such extension. Clarification of terms for buy-in and buy-out terms. Additional duties for Board of Directors including expenditure limit. Bylaw amendments or repeal to be authorized by a 2/3 majority of shareholders.

**BERTH II, INC.  
PO BOX 3147  
HOMER, AK 99603  
907-235-8783**

May 16, 2024

RE: Requested Credit References for City of Homer Land Lease Application; 4400 Homer Spit Road

Homer Electric Association  
3977 Lake Street  
Homer, AK 99603  
907-235-8551

City of Homer  
491 E. Pioneer Avenue  
Homer, AK 99603  
907-235-8121

Enstar Natural Gas  
36225 Kenai Spur Highway  
Soldotna, AK 99669  
907-262-9334

Collins Excavation and Services, Inc.  
55090 Finch Avenue  
Homer, AK 99603  
907-299-2625

**GROUND LEASE AND SECURITY AGREEMENT**

**BETWEEN**

**CITY OF HOMER, ALASKA**

**AND**

**Y & C LLC**

**Dated February 1, 2019**

## **GROUND LEASE AND SECURITY AGREEMENT**

GROUND LEASE AND SECURITY AGREEMENT ("Lease") dated as of February 1, 2019, between the CITY OF HOMER, an Alaska municipal corporation ("Landlord"), whose address is 491 East Pioneer Avenue, Homer, Alaska 99603, and Y & C LLC, an Alaskan Limited Liability Company ("Tenant") whose address is 4400 Homer Spit Road, Homer, AK, 99603.

Attached as **Exhibit A** is a schedule naming each owner of Tenant and describing the percentage of ownership of each. Also attached to **Exhibit A** is a certificate of good standing issued by the state under whose laws Tenant is organized. Attached as **Exhibit B** is a true and correct copy of a resolution of Tenant authorizing Tenant to enter into this Lease and authorizing the undersigned individual(s) or officer(s) to execute the Lease on behalf of Tenant.

### **RECITALS**

WHEREAS, Landlord owns certain properties having a strategic location near the waterfront and marine-related public infrastructure; and

WHEREAS, it is the policy of Landlord to retain ownership of these properties, and to make them available for leasing, in order to encourage growth in targeted economic sectors, to insure that Landlord receives the maximum benefit from a large investment in public infrastructure, and to provide land for businesses that require close proximity to the waterfront or infrastructure to operate efficiently and profitably; and

WHEREAS, Landlord has accepted Tenant's proposal to lease and develop the property leased herein, because Tenant's proposed use of the property should further Landlord's goals for the development of Landlord's properties, and Tenant's proposal to lease and develop the property is a material inducement to Landlord leasing the property to Tenant; and

NOW, THEREFORE, in consideration of the matters recited above, and the mutual covenants herein, the parties agree as follows:

### **ARTICLE 1. DEFINITIONS AND ATTACHMENTS**

#### **1.01 Definitions.** As used herein, the term:

(a) "Additional Rent" includes all amounts defined or referred to in this lease as additional rent, as well as all charges in the nature of rent such as taxes, utilities and insurance, regardless of whether such amounts are due directly to or collectible by Landlord or to a third party under the terms of this Lease or under applicable law and including any of the preceding amounts that Landlord pays to a third party on behalf of Tenant, before or after any event of default.

(b) "Annual Rent Adjustment" and "Annual Rent Adjustment Date" are defined in Section 4.01(b).

(c) "Base Rent" is defined in Section 4.01.

(d) "Complete" and "Completion" mean, with regard to an improvement, that construction of the improvement is finished and the improvement is fully operational and ready for occupancy or use for its intended purpose, including without limitation the issuance of any applicable certificate of occupancy and other applicable permits, licenses, certificates or inspection reports necessary to the improvement's legally authorized use.

(e) "Council" means the City Council of the City of Homer, Alaska.

(f) "Default Rate" means an annual rate of interest equal to the lesser of (i) the maximum rate of interest for which Tenant may lawfully contract in Alaska, or (ii) ten and one-half percent (10.5%).

(g) "Environmental Laws" means all local, state, and federal laws, ordinances, regulations, and orders related to environmental protection; or the use, storage, generation, production, treatment, emission, discharge, remediation, removal, disposal, or transport of any Hazardous Substance.

(h) "Excusable Delay" means delay due to strikes, acts of God, inability to obtain labor or materials, orders of any governmental authority having jurisdiction, removal of Hazardous Materials discovered at any time after the commencement of the Term, enemy action, civil commotion, fire, unusual inclement weather, unavoidable casualty or similar causes beyond the reasonable control of Tenant.

(i) "Extended Term" is defined in Section 3.05 if this Lease provides for extension at the option of the Tenant.

(j) "Five Year Rent Adjustment" and "Five Year Rent Adjustment Date" are defined in Section 4.01(a).

(k) "Hazardous Substance" means any substance or material defined or designated as hazardous or toxic waste; hazardous or toxic material; hazardous, toxic, or radioactive substance; or other similar term by any federal, state, or local statute, regulation, or ordinance or common law presently in effect or that may be promulgated in the future as such statutes, regulations, and ordinances may be amended from time to time.

(l) "Initial Term" is defined in Section 3.01.

(m) "Lease Ordinance" means such ordinances or other portions and provisions of the Homer City Code as may be enacted from time to time to dictate Landlord's policies and requirements in leasing real property, currently enacted as Chapter 18.08 of the Homer City Code, as such may be amended, reenacted, supplemented or recodified from time to time, and as used herein the term shall refer to the Lease Ordinance as currently in effect at the time its terms would have operative effect on this Lease.

(n) "Leasehold Mortgage" is defined in Section 13.01.

(o) "Property" is defined in Section 2.01.

(p) "Rent" means Base Rent plus any Additional Rent.

(q) "Qualified Mortgagee" is defined in Section 13.03.

(r) "Required Improvements" is defined in Section 6.02.

(s) "Term" means the Initial Term plus any Extended Term.

**1.02 Attachments.** The following documents are attached hereto, and such documents, as well as all drawings and documents prepared pursuant thereto and all documents, policies and

endorsements delivered hereunder, including without limitation all copies of required insurance policies and/or endorsements, shall be deemed to be a part hereof:

Exhibit "A" Schedule of Organization, Owners, Percentage of Ownership

Exhibit "B" Conformed Copy of Resolution Authorizing Lease and Authorizing Signers to Sign Lease Agreement on Behalf of Tenant

Exhibit "C" Legal Description of Property

Exhibit "D" Tenant's Lease Proposal

Exhibit "E" Site Plan

Exhibit "F" Permission to Obtain Insurance Policies

## **ARTICLE 2. THE PROPERTY**

**2.01 Lease of Property.** Subject to the terms and conditions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the following described property (the "Property"):

**Lot 32, of the Amended Plat of the Homer Spit, according to Plat No. 89-34. Homer Recording District, State of Alaska, as depicted on Exhibit C, containing 24,639 square feet, more or less, also known as Kenai Peninsula Borough Tax Parcel No. 181-034-32;**

subject, however, to reservations, restrictions, easements and encumbrances of record, and to encroachments that may be revealed by an inspection of the Property.

**2.02 Quiet Enjoyment.** Landlord covenants that Tenant, upon paying the Rent and other charges and performing its other obligations under this Lease shall have quiet enjoyment of the Property during the Term without hindrance or interference by Landlord or by any person claiming an interest in the Property through Landlord.

**2.03 Property Accepted "As Is."** Tenant has inspected the Property, has made its own determination as to the suitability of the Property for Tenant's intended use, and accepts the Property "AS IS." None of landlord, its agents, or its employees make any warranties, expressed or implied, concerning the condition of the Property, including without limitation the habitability or fitness of the Property for any particular purpose, including those uses authorized by this Lease, or subsurface and soil conditions, including the presence of any Hazardous Substance.

**2.04 No Subsurface or Mineral Rights.** This Lease does not confer mineral rights, any rights to extract natural resources, or any rights with regard to the subsurface of the Property below the level necessary for the uses of the Property permitted in this Lease, all of which rights are, as between Landlord and Tenant, reserved to Landlord.

## **ARTICLE 3. TERM**

**3.01 Lease Term.** The term of this Lease is 20 years, commencing on February 1, 2019, and ending on January 31, 2039 (the "Term").

**3.02 Lease Renewal.**

(a) Tenant represents and warrants that it has determined that the duration of the Term, including any available Extended Terms, will be sufficient for Tenant to amortize any investment that it makes in connection with this Lease, including without limitation any investment in leasehold improvements, including any Required Improvements as Tenant may be required to develop. Tenant acknowledges that it has no right of any kind to continue using or occupying the Property after the expiration or earlier termination of the Term, including without limitation any option to renew this Lease, or any option to extend the Term other than as may be provided in Section 3.05.

(b) Notwithstanding the preceding subsection (a), not less than 12 months and not more than 18 months before the expiration of the Term, Tenant may apply to Landlord to enter into a new lease for the Property that is exempted from competitive bidding under and pursuant to the Lease Ordinance.

**3.03 Surrender of Possession.** Upon the expiration or earlier termination of the Term, unless Tenant and Landlord have entered into a new lease for the Property commencing upon the termination of the Term, Tenant shall promptly and peaceably surrender the Property, clean, free of debris, and in as good order and condition as at the commencement of the Term, ordinary wear and tear excepted. If Tenant fails to surrender the Property in the required condition, Landlord may restore the Property to such condition and Tenant shall pay the cost thereof, plus interest at the Default Rate, on demand. Section 6.08 governs the disposition of improvements on the Property at the expiration or earlier termination of the Term.

**3.04 Holding Over.** Tenant's continuing in possession of the Property after the expiration or earlier termination of the Term will not renew or extend this Lease. In the absence of any agreement renewing or extending this Lease, Tenant's continued possession of the Property after the end of the Term will be a tenancy from month to month, terminable upon 30 days written notice by either party at any time, at a monthly rental equal to 150% of the monthly Base Rent in effect at the end of the Term, subject to all other terms of this Lease. For good cause, Landlord may waive all or part of the increase in Base Rent during the holdover period.

**3.05. Options to Extend Lease Term.**

(a) At its option and in its sole discretion, Tenant may seek to extend the Term for two (2) additional, consecutive five (5) year periods (each an "Extended Term"), provided that:

- (1) Tenant gives Landlord written notice of its exercise of the option not more than one year and not less than 120 days before day the Term would otherwise expire; and
- (2) the City Manager determines that the lessee is in full compliance with the terms of the lease at the time of renewal.

(b) Tenant's failure to exercise an option to extend the Term in strict compliance with all the requirements in subsection (a) renders that option and all options as to subsequent Extended Terms null and void.

**ARTICLE 4. RENT, TAXES, ASSESSMENTS AND UTILITIES**

**4.01 Base Rent.** Tenant shall pay to Landlord an initial annual rent of \$ 19,888.68 (as such may later be adjusted per the terms of this Lease, the "Base Rent"). Base Rent is payable monthly in advance in installments of \$1,657.39, plus sales and all other taxes Landlord is authorized or obligated to collect on such transactions, on February 1, 2019, and on the first day of each month

thereafter, at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. All Base Rent shall be paid without prior demand or notice and without deduction or offset. Base Rent that is not paid on or before the due date will bear interest at the Default Rate. Base Rent is subject to adjustment as provided in Section 4.02.

#### **4.02 Rent Adjustments.**

(a) **Five-Year Appraised Rent Adjustments.** Starting on January 1, 2019, and in every fifth year thereafter, Landlord will obtain an appraisal by a qualified real estate appraiser of the fair rental value of the Property as if privately owned in fee simple, excluding the value of alterations, additions or improvements (other than utilities) made by Tenant (or by Tenant's predecessors under the Lease, if Tenant is party to this Lease by assignment). Following receipt of each such appraisal, the Base Rent will be adjusted (the "Five Year Rent Adjustment"), effective on the anniversary of the commencement of the term (each such date is a "Five Year Rent Adjustment Date"), to an amount equal to the greater of (1) the area of the Property in square feet, multiplied by the fair rental value per square foot determined by the appraisal, and (2) the Base Rent in effect immediately before the Five Year Rent Adjustment Date. The Base Rent as adjusted on a Five Year Rent Adjustment Date thereafter shall be the Base Rent.

(b) **Annual Rent Adjustments.** In addition to the rent adjustments under Section 4.02(a), the Base Rent also shall be adjusted annually (the "Annual Rent Adjustment"), effective on the anniversary of the commencement of the term in every year without a Five Year Rate Adjustment (each such date is an "Annual Rent Adjustment Date"), by the increase, if any, for the previous year in the cost of living as stated in the Consumer Price Index, All Urban Consumers, Anchorage, Alaska Area, All Items 2000 – present = 100 ("CPI-U"), as published by the United States Department of Labor, Bureau of Labor Statistics most recently before the Annual Rent Adjustment Date. If the CPI-U is revised or ceases to be published, Landlord instead shall use such revised or other index, with whatever adjustment in its application is necessary, to most nearly approximate in Landlord's judgment the CPI-U for the relevant period.

**4.03 Taxes, Assessments and Other Governmental Charges.** Tenant shall pay prior to delinquency all taxes, installments of assessments that are payable in installments and other governmental charges lawfully levied or assessed upon or with respect to the Property, improvements on the Property and personal property that is situated on the Property; provided that Tenant may contest in good faith any such tax, assessment or other governmental charge without subjecting the Property to lien or forfeiture. If an assessment on the Property that is not payable in installments becomes due during the Term, Tenant shall be obligated to pay the fraction of the assessment that is determined by dividing the number of years remaining in the Term by 10. If the Term of this Lease is subsequently extended renewed (i.e. if Tenant and Landlord later enter into a new lease without putting the Property out for competitive bidding as referenced in Section 2.02), then the part of the assessment that Tenant shall be liable for shall be determined by adding the extended or renewal term to the number of years remaining in the Term when the assessment became due. If the Term commences or expires during a tax year, the taxes or assessments payable for that year will be prorated between Landlord and Tenant. Tenant shall exhibit to Landlord, on demand, receipts evidencing payment of all such taxes, assessments and other governmental charges. Any taxes, installments of assessments on the Property that are due to or collectible by Landlord, or for which Landlord becomes liable that are attributable to any portion of the Term, shall be Additional Rent.

**4.04 Utility Charges.** Tenant shall pay all charges for utility and other services provided to or used on the Property, including without limitation gas, heating oil, electric, water, sewer, heat, snow removal, telephone, internet service and refuse removal. Tenant shall be solely responsible for the cost of utility connections. Any of the preceding due to or collectible by Landlord shall be Additional Rent.

**4.05 Tenant to Pay for City Services.** Tenant shall pay for all services provided by the City of Homer that are related to the use or operation of the Property, improvements thereon and Tenant's activities thereon, at the rates established by the City of Homer from time to time for such services, including without limitation wharfage, crane use, ice, and other Port and Harbor services. Tenant shall provide the City of Homer with the information necessary to determine the amount of service charges owed, keep written records of such information for not less than two years after such charges are due, and, upon request, make such records available to the City of Homer for inspection and audit.

**4.06 Additional Rent and Landlord's Right to Cure Tenant's Default.** All costs or expenses that Tenant is required to pay under this Lease at Landlord's election will be treated as Additional Rent, and Landlord may exercise all rights and remedies provided in this Lease in the event of nonpayment. If Tenant defaults in making any payment required of Tenant or defaults in performing any term, covenant or condition of this Lease that involves the expenditure of money by Tenant, Landlord may, but is not obligated to, make such payment or expenditure on behalf of Tenant, and any and all sums so expended by Landlord, with interest thereon at the Default Rate from the date of expenditure until repaid, will be Additional Rent and shall be repaid by Tenant to Landlord on demand, provided, however, that such payment or expenditure by Landlord will not waive Tenant's default, or affect any of Landlord's remedies for such default.

**4.07 Security Deposit.** Upon execution of this Lease, and in addition to any other security or credit support provided by or for the benefit of Tenant in entering into this Lease, Tenant shall deposit with Landlord an amount equal to 10% of the annual Base Rent as security for Tenant's performance of its obligations under this Lease. Landlord may commingle the security deposit with other funds of Landlord, and its obligations with respect to such security deposit shall only be as a debtor and not as a trustee or fiduciary. If Tenant defaults in performing any obligation under this Lease, including without limitation the payment of rent, Landlord may apply all or any portion of the security deposit to the payment of any sum in default or any damages suffered by Landlord as result of the default, or any sum that Landlord may be required to incur by reason of the default. Upon demand, Tenant shall deposit with Landlord the amount so applied so that Landlord will have the full deposit on hand at all times during the Term.

## **ARTICLE 5. SECURITY INTEREST**

To secure the performance of Tenant's obligations under this Lease, including without limitation the obligations to pay rent and other sums to be paid by Tenant, Tenant grants to Landlord a lien and security interest in the following collateral: ("Collateral"): (1) all security deposits or other monies owing from Landlord to Tenant (as collateral in the possession of the secured party); (2) all insurance proceeds from any policy insuring the Property or improvements thereon; (3) all compensation payable to Tenant as a result of eminent domain proceedings or a transfer in lieu thereof; (4) all rents from Tenant's subletting of all or a part of the Property; and (5) all improvements on the Property, including any Required Improvements. Said lien and security interest will be in addition to Landlord's liens provided by law.

This Lease shall constitute a mortgage by Tenant as mortgagor of all right, title and interest of Tenant in and to any and all improvements on the Property, including any Required

Improvements, in favor of Landlord as mortgagee, and the recorded memorandum of this Lease shall reference Landlord as mortgagee of such improvements. In addition, Tenant shall execute, such financing statements and other instruments as Landlord may now or hereafter reasonably request to evidence the liens, mortgages and security interests granted by Tenant hereunder, including any deed of trust pertaining to additions, alterations and improvements on the Property. This Lease also constitutes a security agreement under the Uniform Commercial Code as enacted in Alaska ("UCC"), and Landlord will have all rights and remedies of a secured party under the UCC regarding the Collateral.

## **ARTICLE 6. USE AND IMPROVEMENT OF PROPERTY**

**6.01 Use of Property.** Tenant shall use and, if applicable, improve the Property only in the manner described in Tenant's proposal or application for the Property as more fully set forth on Exhibit D. Tenant's undertaking to use and, if applicable, improve the Property as described on Exhibit D is a material inducement to Landlord leasing the Property to Tenant, and Tenant shall not use or improve the Property for any purpose other than as described on Exhibit D without Landlord's written consent, which consent Landlord may withhold in its sole discretion.

Tenant's proposed use of the Property is a restaurant, gift shop, general store, with future allowable uses: laundry/shower facility, and rental units.

**6.02 Required Improvements.** Tenant shall, at Tenant's sole expense, construct, and at all times during the Term keep and maintain as the minimum development on the Property the Required Improvements as described on Exhibit D and as depicted more specifically in the site plan in Exhibit E. If the Required Improvements are not in place at the commencement of the Term, Tenant shall commence construction of the Required Improvements within one year after the date of commencement of the Term, prosecute the construction of the Required Improvements with diligence, and Complete construction of the Required Improvements within one additional year.

**6.03 Construction Prerequisites.** Tenant may not commence any construction on the Property, including without limitation construction of the Required Improvements, without first satisfying the following conditions:

(a) Not less than thirty (30) days before commencing construction, Tenant shall submit to Landlord preliminary plans and specifications, and an application for a City of Homer zoning permit, for the construction, showing the layout of proposed buildings and other improvements, ingress and egress, dimensions and locations of utilities, drainage plans, and any other information required for the zoning permit or other required permits. The preliminary plans and specifications are subject to Landlord's approval, which will not be unreasonably withheld, as well as all specific requirements for the issuance of any permits or zoning variances. Landlord shall communicate approval or disapproval in the manner provided for notices hereunder, accompanying any disapproval with a statement of the grounds therefor. Tenant shall be responsible for complying with all laws governing the construction, including any specific requirements for the issuance of any permits or zoning variances, notwithstanding Landlord's approval of preliminary plans and specifications under this paragraph.

(b) Not less than fifteen (15) days before commencing construction, Tenant shall deliver to Landlord one complete set of final working plans and specifications as approved by the governmental agencies whose approval is required for Tenant to commence construction. The final working plans and specifications shall conform substantially to the preliminary plans and specifications previously approved by Landlord, subject to changes made to comply with

suggestions, requests or requirements of a governmental agency or official in connection with the application for permit or approval.

(c) Not less than five (5) days before commencing construction, Tenant shall give Landlord written notice of its intent to commence construction, and furnish to Landlord the following:

- (1) Proof that all applicable federal, state and local permits required for the construction have been obtained.
- (2) For construction, alteration or restoration of Required Improvements, a current certificate of insurance with the coverages specified in Section 9.04(c).

**6.04 Extensions of Time for Completion of Required Improvements.** Landlord shall grant an extension of the time to Complete the Required Improvements for a period of time equal to the duration of an Excusable Delay, upon Tenant's written request describing the nature of the Excusable Delay, provided Tenant has commenced construction in a timely manner and is proceeding diligently to Complete construction.

**6.05 Additional and Replacement Improvements.**

(a) Construction of alterations, additions improvements that are not consistent with terms of this Lease or the proposed uses for the Property set forth on Exhibit D is prohibited unless the improvements are authorized by an amendment to this Lease approved by the Council via resolution.

(b) Subject to Section 6.05(a), upon satisfying the conditions in section 6.03, Tenant at any time may, but is not obligated to, construct new improvements on the Property and demolish, remove, replace, alter, relocate, reconstruct or add to existing improvements; provided that Tenant is not then in default under this Lease and provided further that Tenant continuously maintains on the Property the Required Improvements, or their equivalent of equal or greater value. Once any work is begun, Tenant shall with reasonable diligence prosecute to Completion all construction of improvements, additions, alterations, or other work. All salvage resulting from such work will belong to Tenant, who is responsible for its removal and lawful disposal.

**6.06 As-Built Survey.** Within 30 days after Completion of construction of any improvements on the Property involving construction, alteration, addition, removal or demolition of the foundation, structure, utility services, ingress and egress, or any major changes of all or any part of any structure or improvement on the Property, Tenant shall provide Landlord with three copies of an as-built survey of the Property prepared by a registered professional surveyor, showing the location of all improvements on the Property, including underground utilities, pipelines and pre-existing improvements. Tenant shall accompany the as-built survey with a description of all changes from the approved plans or specifications made during the course of the work.

**6.07 Ownership of Improvements.** Other than the Required Improvements, any and all buildings, fixtures and improvements of any nature whatsoever constructed or maintained on the Property by Tenant will be and remain the property of Tenant at all times during the Term and may be removed or replaced by Tenant during the Term, subject to the provisions Section 6.08.

**6.08 Disposition of Improvements at End of Term.**

(a) Unless excepted by operation of the following subsection (b), any and all buildings, fixtures and improvements of any nature whatsoever constructed or maintained on the Property become the property of Landlord upon expiration or earlier termination of the Term.

(b) One year before the expiration of the Term, the Landlord and Tenant shall determine if the buildings, fixtures and improvements constructed or maintained on the Property, including the Required Improvements, are structurally sound and in good condition. If such buildings, fixtures and improvements constructed or maintained on the Property are structurally sound and in good condition, Tenant shall leave such improvements intact with all components, including without limitation doors, windows, and plumbing, electrical and mechanical fixtures and systems, in good condition and ready for use or occupancy, upon expiration of the Term, and Tenant shall execute, acknowledge, and deliver to Landlord a proper instrument in writing releasing and quitclaiming to Landlord all of Tenant's interest in such buildings, fixtures and improvements. Tenant shall be obligated to and shall remove, prior to the expiration of the Term, any buildings, fixtures and improvements constructed or maintained on the Property that are not structurally sound and in good condition, and Landlord shall not have or obtain any ownership interest in such buildings, fixtures and improvements by reason of this Lease.

(c) If Landlord terminates this Lease because of a default by Tenant prior to the expiration of the Term, any buildings, fixtures and improvements constructed or maintained on the Property shall, at Landlord's option, become the property of Landlord, which may use or dispose of them in its sole discretion. If Landlord elects not to obtain ownership of such buildings, fixtures and improvements under the preceding sentence or elects to remove any of such buildings, fixtures or improvements for any reason, Tenant shall be obligated to and shall remove such buildings, fixtures or improvements.

(d) Tenant shall notify Landlord before commencing the removal of an improvement as required under the preceding subsections (b) and/or (c) and coordinate the removal work with Landlord. Once Tenant commences the removal work, Tenant shall prosecute the removal with reasonable diligence to Completion and shall repair all damages to the Property caused by such removal no later than the expiration of the Term. All salvage resulting from such work will belong to Tenant, who is responsible for its removal and lawful disposal.

(e) If Tenant fails to remove any improvements from the Property that Tenant is required to remove under and per the terms of the preceding subsections (b), (c) and/or (d), Tenant shall pay Landlord the costs that Landlord incurs in removing and disposing of the improvements and repairing damages to the Property caused by such removal.

## **ARTICLE 7. CARE AND USE OF THE PROPERTY**

**7.01 Maintenance of the Property.** Tenant at its own cost and expense shall keep the Property and all buildings and improvements that at any time may be situated thereon in a clean, safe and orderly condition, and in good repair at all times during the Term.

### **7.02 Repair of Improvements.**

(a) Except as provided in Section 7.02(b), in the event any buildings or improvements situated on the Property by Tenant are damaged or destroyed by fire, earthquake, tsunami, or other casualty, Tenant shall at Tenant's expense restore the same to good and tenantable condition or shall remove the same as soon as is reasonably possible, but in no event may the period of restoration exceed 18 months nor may the period of removal exceed 45 days.

(b) Unless Tenant is excused from the obligation under this paragraph, if the Required Improvements or any part thereof are damaged or destroyed by fire, earthquake, tsunami, or other casualty, rendering the Required Improvements totally or partially inaccessible or unusable, Tenant shall at Tenant's expense restore the Required Improvements to substantially the same condition as they were in immediately before such damage, provided that:

- (1) if the cost of repairing or restoring the Required Improvements, less any available insurance proceeds not reduced by applicable deductibles and coinsurance, exceeds 10% of the replacement cost of the Required Improvements, then Tenant may terminate this Lease by giving notice to Landlord of Tenant's election to terminate within 15 days after determining the restoration cost and replacement cost, and this Lease shall terminate as of the date of such notice;
- (2) if the repair or restoration of the Required Improvements would be contrary to law, either party may terminate this Lease immediately by giving notice to the other party; or
- (3) if such damage or casualty to the Required Improvements occurs within three years before the end of the Term, Tenant may, in lieu of restoring or replacing the Required Improvements, terminate this Lease by giving written notice of termination to Landlord within 120 days after such damage or casualty.

Nothing in this paragraph relieves Tenant of the obligation to surrender the Property upon the expiration or earlier termination of the Term in the condition required by Section 3.03.

**7.03 Nuisances Prohibited.** Tenant at all times shall keep the Property in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; junk, abandoned or discarded property, including without limitation vehicles, equipment, machinery or fixtures; and litter, rubbish or trash. Tenant shall not use the Property in any manner that will constitute waste or a nuisance. Landlord, at Tenant's expense and without any liability to Tenant, may remove or abate any such junk, abandoned or discarded property, litter, rubbish or trash, or nuisance on the Property after 15 days written notice to Tenant, or after (4) four hour notice to Tenant in writing, by telephone, facsimile or in person if Landlord makes a written finding that such removal or abatement is required to prevent imminent harm to public health, safety or welfare. Tenant shall pay Landlord all the costs of such removal, plus interest at the Default Rate, as Additional Rent under this Lease. This section does not limit or waive any other remedy available to the City of Homer to abate any nuisance or for the violation of the Homer City Code.

**7.04 Compliance with Laws.** Tenant's improvement and use of the Property shall comply with all governmental statutes, ordinances, rules and regulations, including without limitation the City of Homer Zoning Code and all applicable building codes, now or hereafter in effect.

**7.05 Liens.** Except as provided in Article 13, Tenant may not permit any lien, including without limitation a mechanic's or materialman's lien, to be recorded against the Property. If any such lien is recorded against the Property, Tenant shall cause the same to be removed; provided that Tenant may in good faith and at Tenant's own expense contest the validity of any such lien without subjecting the Property to foreclosure, and in the case of a mechanic's or materialman's lien, if Tenant has furnished the bond required in A.S. 34.35.072 (or any comparable statute hereafter enacted providing for a bond freeing the Property from the effect of such a lien claim). Tenant shall indemnify and save Landlord harmless from all liability for damages occasioned by any such lien, together with all costs and expenses (including attorneys' fees) incurred by Landlord 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 same to be discharged and removed prior to any attempt at execution of such judgment.

**7.06 Radio Interference.** Upon Landlord's request, Tenant shall discontinue the use on the Property of any source of electromagnetic radiation that interferes with any government operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

**7.07 Signs.** Tenant may only erect signs on the Property that comply with state and local sign laws and ordinances. City Planning Department approval is required prior to the erection of any sign on the Property.

**7.08 Garbage Disposal.** Tenant shall keep any garbage, trash, rubbish or other refuse in industry standard containers until removed, and cause all garbage, trash, rubbish or other refuse on the Property to be collected and transported to a Kenai Peninsula Borough solid waste facility or transfer station at least once a week. Tenant may not place garbage, trash, rubbish or other refuse from the Property in Landlord's garbage disposal facilities on the Homer Spit or any other public facility.

**7.09 Access Rights of Landlord.** Landlord's agents and employees shall have the right, but not the obligation, to enter the Property at all reasonable times to inspect the use and condition of the Property; to serve, post or keep posted any notices required or allowed under the provisions of this Lease, including notices of non-responsibility for liens; and to do any act or thing necessary for the safety or preservation of the Property.

## **ARTICLE 8. ASSIGNMENT AND SUBLEASE**

### **8.01 Assignment or Sublease Absent Consent is Void.**

(a) Tenant shall not assign or sublease its interest in this Lease or in the Property without compliance with applicable provisions of the Lease Ordinance, including applying for and receiving consent of Council, and any attempted assignment or sublease absent such compliance is and shall be null and void and of no effect and, at Landlord's election, will constitute an event of default hereunder.

(b) If Tenant seeks to assign or sublease its interest in this Lease or in the Property, in addition to compliance with applicable provisions of the Lease Ordinance, Tenant shall request consent of Council to such assignment or sublease in writing at least 30 days prior to the effective date of the proposed assignment or sublease, accompanied by a copy of the proposed assignment or sublease. If Tenant subleases any portion of the Property, Tenant shall be assessed Additional Rent equal to 10% of the current Base Rent for the subleased area.

(c) No consent to any assignment or sublease waives Tenant's obligation to obtain Landlord's consent to any subsequent assignment or sublease. An assignment of this Lease shall require the assignee to assume the Tenant's obligations hereunder, and shall not release Tenant from liability hereunder unless Landlord specifically so provides in writing.

**8.02. Events that Constitute an Assignment.** If Tenant is a partnership or limited liability company, a withdrawal or change, voluntary, involuntary or by operation of law, of one or more partners or members owning 25% or more of the entity, or the dissolution of the entity, will be deemed an assignment to the Tenant as reconstituted, subject to Section 8.01 and the Lease Ordinance. If Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital

stock of Tenant, or the sale of 25% of the value of the assets of Tenant, will be deemed an assignment to the Tenant as reconstituted, subject to Section 8.01 and the Lease Ordinance; provided that if Tenant is a corporation the stock of which is traded through an exchange or over the counter, a sale or other transfer of a controlling percentage of the capital stock of Tenant will not constitute such an assignment. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least 25% of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and entitled to vote for the election of directors.

**8.03. Costs of Landlord's Consent to be Borne by Tenant.** As a condition to Landlord's consent to any assignment or sublease under section 8.01 and the Lease Ordinance, Tenant shall pay Landlord's reasonable costs, including without limitation attorney's fees and the expenses of due diligence inquiries, incurred in connection with any request by Tenant for Landlord's consent to the assignment or sublease.

## **ARTICLE 9. LIABILITY, INDEMNITY AND INSURANCE**

**9.01 Limitation of Landlord Liability.** Landlord, its officers and employees shall not be liable to Tenant for any damage to the Property or the buildings and improvements thereon, or for death or injury of any person or damage to any property, from any cause; however, this provision shall not affect the liability of Landlord, its officers and employees on any claim to the extent the claim arises from their negligence or willful misconduct.

**9.02 Indemnity Generally.** Tenant shall indemnify, defend, and hold harmless Landlord, its officers and employees from all claims arising from death or injury of any person or damage to any property occurring in or about the Property; however, this provision shall not apply to any claim to the extent the claim arises from the sole negligence or willful misconduct of Landlord, its officers and employees.

**9.03 Indemnity for Emergency Service Costs.** Without limiting the generality of Section 9.02, in the event of a major fire or other emergency, Tenant shall reimburse Landlord for the cost of providing fire-fighting and other emergency service to Tenant, the Property or at any other location where the fire or emergency requiring response arises from or is related to the use of the Property or Tenant's operations. For purposes of this section, a major fire or other emergency is one that requires more than five man-hours of effort by the City of Homer Fire Department.

### **9.04 Insurance Requirements.**

(a) Without limiting Tenant's obligations to indemnify under this Lease, Tenant at its own expense shall maintain in force such policies of insurance with a carrier or carriers reasonably satisfactory to Landlord and authorized to conduct business in the state of Alaska, as Landlord may reasonably determine are required to protect Landlord from liability arising from Tenant's activities under this Lease, including the minimum insurance requirements set forth for tenants under the Lease Ordinance. Landlord's insurance requirements in the Lease Ordinance (or any superseding policy permitted under the Lease Ordinance) specify only the minimum acceptable coverage and limits, and if Tenant's policy contains broader coverage or higher limits, Landlord shall be entitled to such coverage to the extent of such higher limits.

(b) Without limiting the generality of the foregoing, Tenant shall maintain in force at all times during the Term the following minimum policies of insurance:

- (1) Comprehensive general liability insurance with limits of liability not less than a combined single limit for bodily injury and property damage of \$1,000,000 each

occurrence and \$2,000,000 aggregate. This insurance shall also be endorsed to provide contractual liability insuring Tenant's obligations to indemnify under this Lease.

- (2) Comprehensive automobile liability covering all owned, hired and non-owned vehicles with coverage limits not less than \$1,000,000 occurrence combined single limit for bodily injury and property damage.
- (3) Workers' compensation insurance as required by AS 23.30.045. This coverage shall include employer's liability protection not less than \$1,000,000 per person, \$1,000,000 per occurrence. Where applicable, coverage for all federal acts (i.e. U.S. Longshoremen and Harbor Worker's Compensation and Jones Acts) shall also be included. The workers' compensation insurance shall contain a waiver of subrogation clause in favor of Landlord.
- (4) Based on the authorized uses of the Property stated in Section 6.01, environmental insurance is not required. However, if Tenant uses the Property, with or without authorization from the Landlord, for purposes other than those stated in paragraph Section 6.01, if Landlord so elects, and within 10 days after Landlord gives notice of such election, Tenant shall procure and at all times thereafter maintain, at its expense, environmental remediation and environmental impairment liability, including sudden and accidental coverage, gradual pollution coverage, and clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property, with coverage limits not less than \$1,000,000 for any one accident or occurrence. Coverage shall extend to loss arising as a result of the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.
- (5) Property insurance covering the Required Improvements described in Section 6.02 in an amount not less than full replacement cost of the Required Improvements. This policy shall include boiler and machinery coverage.

(c) During any construction of the Required Improvements and during any subsequent alteration or restoration of the Required Improvements at a cost in excess of \$250,000 per job, Tenant shall maintain builder's risk insurance in an amount equal to the completed value of the project.

(d) Tenant shall furnish Landlord with certificates evidencing the required insurance not later than the date as of which this Lease requires the insurance to be in effect, and the provision of any such certificates due at or prior to the commencement of the Term shall be a condition precedent to the commencement of the Term. The certificates and the insurance policies required by this Section shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire, and limits of liability will not be reduced, without at least 30 days' prior written notice to Landlord. Landlord shall be named as an additional insured under all policies of liability insurance required of Tenant. Landlord's acceptance of a deficient certificate of insurance does not waive any insurance requirement in this Lease. Tenant also shall grant Landlord permission to obtain copies of insurance policies from all insurers providing required coverage to Tenant by executing and delivering to Landlord such authorizations substantially in the form of **Exhibit F** as Landlord may request.

## **ARTICLE 10. ENVIRONMENTAL MATTERS**

**10.01 Use of Hazardous Substances.** Tenant shall not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process any Hazardous Substance, except as is necessary or useful to Tenant's authorized uses of the Property stated in Section 6.01, and only in compliance with all applicable Environmental Laws. Any Hazardous Substance permitted on the Property as provided in this section, and all containers therefor, shall be handled, used, kept, stored and disposed of in a manner that complies with all applicable Environmental Laws, and handled only by properly trained personnel.

**10.02 Prevention of Releases.** Tenant shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Tenant or any of its agents, employees, contractors, tenants, subtenants, invitees or other users or occupants of the Property, a release of any Hazardous Substance onto the Property or onto any other property.

**10.03 Compliance with Environmental Laws.** Tenant at all times and in all respects shall comply, and will use its best efforts to cause all tenants, subtenants and other users and occupants of the Property to comply, with all Environmental Laws, including without limitation the duty to undertake the following specific actions: (i) Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of, any and all permits, licenses and other governmental and regulatory approvals required by all Environmental Laws, including without limitation permits required for discharge of (appropriately treated) Hazardous Substances into the ambient air or any sanitary sewers serving the Property; and (ii) except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, all Hazardous Substances from or on the Property to be treated and/or disposed of by Tenant will be removed and transported solely by duly licensed transporters to a duly licensed treatment and/or disposal facility for final treatment and/or disposal (except when applicable Environmental Laws permit on-site treatment or disposal in a sanitary landfill).

**10.04 Notice.** Tenant shall promptly give Landlord (i) written notice and a copy of any notice or correspondence it receives from any federal, state or other government agency regarding Hazardous Substances on the Property or Hazardous Substances which affect or will affect the Property; (ii) written notice of any knowledge or information Tenant obtains regarding Hazardous Substances or losses incurred or expected to be incurred by Tenant or any government agency to study, assess, contain or remove any Hazardous Substances on or near the Property, and (iii) written notice of any knowledge or information Tenant obtains regarding the release or discovery of Hazardous Substances on the Property.

**10.05 Remedial Action.** If the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment or disposal at the Property of any Hazardous Substance (i) gives rise to liability (including but not limited to a response action, remedial action or removal action) under any Environmental Law, (ii) causes a significant public health effect, or (iii) pollutes or threatens to pollute the environment, Tenant shall, at its sole expense, promptly take any and all remedial and removal action necessary to clean up the Property and mitigate exposure to liability arising from the Hazardous Substance, whether or not required by law.

**10.06 Indemnification.** Subject to Section 10.09, Tenant shall indemnify, defend, and hold harmless Landlord, its officers and employees from and against any and all claims, disbursements, demands, damages (including but not limited to consequential, indirect or punitive damages), losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including experts', consultants' and attorneys' fees and expenses, and including without limitation remedial, removal, response, abatement, cleanup, legal, investigative and monitoring costs), imposed against Landlord, arising directly or indirectly from or out of, or in any way connected

with (i) the failure of Tenant to comply with its obligations under this Article; (ii) any activities on the Property during Tenant's past, present or future possession or control of the Property which directly or indirectly resulted in the Property being contaminated with Hazardous Substances; (iii) the discovery of Hazardous Substances on the Property whose presence was caused during the possession or control of the Property by Tenant; (iv) the clean-up of Hazardous Substances on the Property; and (v) any injury or harm of any type to any person or damage to any property arising out of or relating to Hazardous Substances on the Property or from the Property on any other property. The liabilities, losses, claims, damages, and expenses for which Landlord is indemnified under this section shall be reimbursable to Landlord as and when the obligation of Landlord to make payments with respect thereto are incurred, without any requirement of waiting for the ultimate outcome of any litigation, claim or other proceeding, and Tenant shall pay such liability, losses, claims, damages and expenses to Landlord as so incurred within 10 days after notice from Landlord itemizing in reasonable detail the amounts incurred (provided that no itemization of costs and expenses of counsel to Landlord is required where, in the determination of Landlord, such itemization could be deemed a waiver of attorney-client privilege).

**10.07 Survival of Obligations.** The obligations of Tenant in this Article, including without limitation the indemnity provided for in Section 10.06, are separate and distinct obligations from Tenant's obligations otherwise provided for herein and shall continue in effect after the expiration of the Term.

**10.08 Claims against Third Parties.** Nothing in this Article shall prejudice or impair the rights or claims of Tenant against any person other than Landlord with respect to the presence of Hazardous Substances as set forth above.

**10.09 Extent of Tenant's Obligations.** Tenant's obligations under this Article apply only to acts, omissions or conditions that (i) occur in whole or in part during the Term or during any time of Tenant's possession or occupancy of the Property prior to or after the Term of this Lease; or (ii) are proximately caused in whole or in part by the occupancy of, use of, operations on, or actions on or arising out of the Property by Tenant or its employees, agents, customers, invitees or contractors.

**10.10 Inspection at Expiration of Term.** Within 90 days before the expiration of the Term, Tenant shall at its own expense obtain a Phase I environmental inspection of the Property, and conduct any further inspection, including without limitation test holes, that is indicated by the results of the Phase I inspection. Tenant, at its own expense, shall remediate any contamination of the Property that is revealed by the inspections and that is Tenant's responsibility under this Article.

## **ARTICLE 11. CONDEMNATION**

**11.01 Article Determines Parties' Rights and Obligations.** If any entity having the power of eminent domain exercises that power to condemn the Property, or any part thereof or interest therein, or acquires the Property, or any part thereof or interest therein by a sale or transfer in lieu of condemnation, the interests of Landlord and Tenant in the award or consideration for such transfer and the effect of the taking or transfer upon this Lease will be as provided in this Article.

**11.02 Total Taking.** If all of the Property is taken or so transferred, this Lease and all of Tenant's interest thereunder will terminate on the date title to the Property vests in the condemning authority.

**11.03. Partial Taking.** If the taking or transfer of part of the Property causes the remainder of the Property to be not effectively and practicably usable in the opinion of the Tenant for the purpose of operation thereon of Tenant's business, this Lease and all of Tenant's interest thereunder will terminate on the date title to the Property vests in the condemning authority. If the taking or transfer of part of the Property leaves the remainder of the Property effectively and practicably usable in the opinion of Tenant for the operation of Tenant's business, this Lease and all of Tenant's interest thereunder will terminate as to the portion of the Property so taken or transferred on the date title to the Property vests in the condemning authority, but will continue in full force and effect as to the portion of the Property not so taken or transferred, and the Base Rent will abate in the proportion that the portion of the Property taken bears to all of the Property.

**11.04 Compensation.** Landlord and Tenant each may make a claim against the condemning or taking authority for the amount of just compensation due to it. Tenant shall make no claim against Landlord for damages for termination of the leasehold or interference with Tenant's business, even if Landlord is the condemning or taking authority. Neither Tenant nor Landlord will have any rights in or to any award made to the other by the condemning authority; provided, that if a single award to Landlord includes specific damages for loss of Tenant's leasehold interest separately awarded in the eminent domain proceeding and not as a part of the damages recoverable by Landlord, Landlord will transmit such separately awarded damages to Tenant.

## **ARTICLE 12. DEFAULT**

**12.01. Events of Default.** Each of the following shall constitute an event of default under this Lease:

(a) The failure of Tenant to pay Rent or any other sum of money due under this Lease within ten (10) days after the date such payment is due.

(b) The failure of Tenant to perform or observe any covenant or condition of this Lease, other than a default in the payment of money described in the preceding subsection (a), which is not cured within thirty (30) days after notice thereof from Landlord to Tenant, unless the default is of a kind that cannot be cured within such 30-day period, in which case no event of default shall be declared so long as Tenant 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 use of the Property or buildings and improvements thereon for purposes other than those permitted herein, to which Landlord has not given its written consent.

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

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

**12.02 Landlord's Remedies.** Upon the occurrence of an event default, Landlord has all of the following remedies, all in addition to any other remedies that Landlord may have at law or in equity:

(a) Landlord may terminate this Lease by written notice to Tenant, upon which termination Tenant shall immediately surrender possession of the Property, vacate the Property, and deliver possession of the Property to Landlord. Tenant hereby makes a present grant to Landlord of a full, free and irrevocable license to enter into and upon the Property, in the event Landlord terminates this Lease in accordance with this subsection (a), and to repossess the Property, to expel or remove Tenant and any others who may be occupying or within the Property, and to remove any and all property therefrom, using such force as may be necessary, with or without process of law, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law.

(b) Landlord may by written notice declare Tenant's right to possession of the Property terminated without terminating this Lease. Tenant hereby makes a present grant to Landlord of a full, free and irrevocable license to enter into and upon the Property, in the event Landlord terminates Tenant's right of possession in accordance with this subsection (b), and to repossess the Property, to expel or remove Tenant and any others who may be occupying or within the Property, and to remove any and all property therefrom, using such force as may be necessary, with or without process of law, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law.

(c) Subject to Section 12.01(e), Landlord may relet the Property in whole or in part for any period equal to or greater or less than the remainder of the Term, as applicable, for any sum that Landlord may deem reasonable.

(d) Landlord may collect any and all rents due or to become due from subtenants or other occupants of the Property.

(e) Landlord may recover from Tenant, with or without terminating this Lease, actual attorney's fees and other expenses incurred by Landlord by reason of Tenant's default and elect to recover damages described under either (1) or (2):

- (1) from time to time, an amount equal to the sum of all Base Rent and other sums that have become due and remain unpaid, less the rent, if any, collected by Landlord on reletting the Property reduced by the amount of all expenses incurred by Landlord in connection with reletting the Property; or
- (2) immediately upon Tenant's default, an amount equal to the difference between the Base Rent and the fair rental value of the Property for the remainder of the Term, discounted to the date of such default at a rate per annum equal to the rate at which Landlord could borrow funds for the same period as of the date of such default.

(f) Reentry or reletting of the Property, or any part thereof, shall not terminate this Lease, unless accompanied by Landlord's written notice of termination to Tenant.

**12.03 Assignment of Rents.** Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any subletting of all or a part of the Property, and Landlord, as assignee and attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Lease, except that Tenant has the right to collect such rent until the occurrence of an event of default by Tenant.

## **ARTICLE 13. LEASEHOLD MORTGAGES**

**13.01. Mortgage of Leasehold Interest.** Tenant shall have the right at any time, and from time to time, to subject the leasehold estate and any or all of Tenant's improvements situated on the Property to one or more deeds of trust, mortgages, and other collateral security instruments as security for a loan or loans or other obligation of Tenant (each a "Leasehold Mortgage"), subject to the remainder of this Article 13.

**13.02 Subordinate to Lease.** The Leasehold Mortgage and all rights acquired under it shall be subject and subordinate to all the terms of this Lease, and to all rights and interests of Landlord except as otherwise provided in this Lease.

**13.03 Notice to Landlord.** Tenant shall give Landlord notice before executing each Leasehold Mortgage, and shall accompany the notice with a true copy of the note and the Leasehold Mortgage as proposed for execution. Upon Landlord's written consent to the Leasehold Mortgage and upon execution of the Leasehold Mortgage by all parties, the mortgagee shall become a Qualified Mortgagee as that term is used in this Lease. Tenant also shall deliver to Landlord a true and correct copy of any notice from a Qualified Mortgagee of default or acceleration of the maturity of the note secured by a Leasehold Mortgage promptly following Tenant's receipt thereof.

**13.04 Modification or Termination.** No action by Tenant or Landlord to cancel, surrender, or materially modify the economic terms of this Lease or the provisions of Article 11 will be binding upon a Qualified Mortgagee without its prior written consent.

**13.05 Notice to Qualified Mortgagee.**

(a) If Landlord gives any notice hereunder to Tenant, including without limitation a notice of an event of default, Landlord shall give a copy of the notice to each Qualified Mortgagee at the address previously designated by it.

(b) If a Qualified Mortgagee changes its address or assigns the Leasehold Mortgage, the Qualified Mortgagee or assignee may change the address to which such copies of notices hereunder shall be sent by written notice to Landlord. Landlord will not be bound to recognize any assignment of a Qualified Mortgage unless and until Landlord has been given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, the assignee will be deemed to be the Qualified Mortgagee hereunder with respect to the assigned Leasehold Mortgage.

(c) If a Leasehold Mortgage is held by more than one person, Landlord shall not be required to give notices to the Qualified Mortgagee of the Leasehold Mortgage unless and until all of the holders of the Leasehold Mortgage give Landlord an original executed counterpart of a written designation of one of their number to receive notices hereunder. Notice given to the one so designated is effective as notice to all them.

**13.06 Performance of Tenant Obligations.**

(a) A Qualified Mortgagee may perform any obligation of Tenant and remedy any default by Tenant under this Lease within the time periods specified in the Lease, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant; provided, however, that the Qualified Mortgagee will not thereby be subrogated to the rights of Landlord.

(b) Tenant may delegate irrevocably to a Qualified Mortgagee the non-exclusive authority to exercise any or all of Tenant's rights hereunder, but no such delegation will be binding upon Landlord unless and until either Tenant or the Qualified Mortgagee gives Landlord a true copy of a written instrument effecting such delegation.

(c) If Tenant defaults in the payment of any monetary obligation hereunder, Landlord shall not terminate this Lease unless and until Landlord provides written notice of such default to each Qualified Mortgagee and no Qualified Mortgagee cures such default within 10 days after the expiration of any grace or cure periods granted Tenant herein. If Tenant defaults in the performance of any non-monetary obligation hereunder, Landlord shall not terminate this Lease unless and until Landlord provides written notice of such default to each Qualified Mortgagee and no Qualified Mortgagee cures such default within 30 days after the expiration of any grace or cure periods granted Tenant herein.

**13.07 Possession by Qualified Mortgagee.** A Qualified Mortgagee may take possession of the Property and vest in the interest of Tenant in this Lease upon the performance of the following conditions:

(a) The payment to Landlord of any and all sums due to Landlord under this Lease, including without limitation accrued unpaid rent.

(b) The sending of a written notice to Landlord and Tenant of the Qualified Mortgagee's intent to take possession of the Property and assume the Lease.

(c) The curing of all defaults not remediable by the payment of money within an additional 30 days after the date upon which such default was required to be cured by Tenant under the terms of this Lease.

**13.08 No Liability of Mortgagee Without Possession.** A Qualified Mortgagee shall have no liability or obligation under this Lease unless and until it sends to Landlord the written notice described in paragraph 13.07(b). Nothing in this Lease or in the taking of possession of the Property and assumption of the Lease by a Qualified Mortgagee or a subsequent assignee shall relieve Tenant of any duty or liability to Landlord under this Lease.

**13.09 New Lease.** If a Qualified Mortgagee acquires Tenant's leasehold as a result of a judicial or non-judicial foreclosure under a Leasehold Mortgage, or by means of a deed in lieu of foreclosure, the Qualified Mortgagee thereafter may assign or transfer Tenant's leasehold to an assignee upon obtaining Landlord's written consent thereto, which consent will not be unreasonably withheld or delayed but which assignment will be subject to all of the other provisions of Article 8 and any provisions of the Lease Ordinance concerning acceptable assignees. Upon such acquisition by a Qualified Mortgagee or its assignee of Tenant's leasehold, Landlord will execute and deliver a new ground lease of the Property to the Qualified Mortgagee or its assignee not later than 120 days after such party's acquisition of Tenant's leasehold. The new ground lease will be identical in form and content to this Lease, except with respect to the parties thereto, the term thereof (which will be co-extensive with the remaining Term hereof), and the elimination of any requirements that Tenant fulfilled prior thereto, and the new ground lease will have priority equal to the priority of this Lease. Upon execution and delivery of the new ground lease, Landlord will cooperate with the new tenant, at the sole expense of said new tenant, in taking such action as may be necessary to cancel and discharge this Lease and to remove Tenant from the Property.

## **ARTICLE 14. GENERAL PROVISIONS**

**14.01 Authority.** Tenant represents and warrants that it has complete and unconditional authority to enter into this Lease; this Lease has been duly authorized by Tenant's governing body; this Lease is a binding and enforceable agreement of and against Tenant; and the person executing the Lease on Tenant's behalf is duly and properly authorized to do so.

**14.02 Estoppel Certificates.** Either party shall at any time and from time to time upon not less than 30 days prior written request by the other party, execute, acknowledge and deliver to such party, or to its designee, a statement in writing certifying that this Lease is in full force and effect and has not been amended (or, if there has been any amendment thereof, that the same is in full force and effect as amended and stating the amendment or amendments); that there are no defaults existing, (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the Base Rent and other charges have been paid in advance. The requesting party shall pay the cost of preparing an estoppel certificate, including the cost of conducting due diligence investigation and attorney's fees.

**14.03 Delivery of Notices -Method and Time.** All notices, demands or requests from one party to another shall be delivered in person or be sent by (i) mail, certified or registered, postage prepaid, (ii) reputable overnight air courier service, or (iii) electronic mail or facsimile transmission (accompanied by reasonable evidence of receipt of the transmission and with a confirmation copy mailed by first class mail no later than the day after transmission) to the address for the recipient in Section 14.04 and will be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.

**14.04 Addresses for Notices.** All notices, demands and requests from Tenant to Landlord shall be given to Landlord at the following address:

City Manager  
City of Homer  
491 East Pioneer Avenue  
Homer, Alaska 99603  
Facsimile: (907) 235-3148  
Email: citymanager@cityofhomer-ak.gov

All notices, demands or requests from Landlord to Tenant shall be given to Tenant at the following address:

Grace Chon  
Y & C LLC, Organizer  
4400 Homer Spit Rd  
Homer, AK 99603  
Email: GraceChon888@yahoo.com

Each party may, from time to time, designate a different address or different agent for service of process by notice given in conformity with Section 14.03.

**14.05 Time of Essence.** Time is of the essence of each provision of this Lease.

**14.06 Computation of Time.** The time in which any act provided by this Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a holiday, and then it is also excluded. The term "holiday" will mean all holidays as defined by the statutes of Alaska.

**14.07 Interpretation.** Each party hereto has been afforded the opportunity to consult with counsel of its choice before entering into this Lease. The language in this Lease shall in all cases be simply construed according to its fair meaning and not for or against either party as the drafter thereof.

**14.08 Captions.** The captions or headings in this lease are for convenience only and in no way define, limit or describe the scope or intent of any provision of this Lease.

**14.09 Independent Contractor Status.** Landlord and Tenant are independent contractors under this Lease, and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between Landlord and Tenant. Neither party shall have any authority to enter into agreements of any kind on behalf of the other and shall have no power or authority to bind or obligate the other in any manner to any third party.

**14.10 Parties Interested Herein.** Nothing in this Lease, express or implied, is intended or shall be construed to give to any person other than Landlord, Tenant and any Qualified Mortgagee any right, remedy or claim, legal or equitable, under or by reason of this Lease. The covenants, stipulations and agreements contained in this Lease are and shall be for the sole and exclusive benefit of Landlord, Tenant and any Qualified Mortgagee, and their permitted successors and assigns.

**14.11 Multi-Party Tenant.** If Tenant is comprised of more than one natural person or legal entity, the obligations under this Lease imposed upon Tenant are joint and several obligations of all such persons and entities. All notices, payments, and agreements given or made by, with, or to any one of such persons or entities will be deemed to have been given or made by, with, or to all of them, unless expressly agreed otherwise by Landlord in writing.

**14.12 Broker's Commissions.** Each of the parties represents and warrants that there are no claims for brokerage commissions or finders' fees in connection with the execution of this Lease, and agrees to indemnify the other against, and hold it harmless from, all liability arising from any such claim including, without limitation, the cost of counsel fees in connection therewith.

**14.13 Successors and Assigns.** This Lease shall be binding upon the successors and assigns of Landlord and Tenant, and shall inure to the benefit of the permitted successors and assigns of Landlord and Tenant.

**14.14 Waiver.** No waiver by a party of any right hereunder may be implied from the party's conduct or failure to act, and neither party may waive any right hereunder except by a writing signed by the party's authorized representative. The lapse of time without giving notice or taking other action does not waive any breach of a provision of this Lease. No waiver of a right on one occasion applies to any different facts or circumstances or to any future events, even if involving similar facts and circumstances. No waiver of any right hereunder constitutes a waiver of any other right hereunder.

**14.15 Attorney's Fees.**

(a) If Landlord is involuntarily made a party to any litigation concerning this Lease or the Property by reason of any act or omission of Tenant, or if Landlord is made a party to any litigation brought by or against Tenant without any fault on the part of Landlord, then Tenant shall pay the amounts reasonably incurred and expended by Landlord, including the reasonable fees of Landlord's agents and attorneys and all expenses incurred in defense of such litigation.

(b) In the event of litigation between Landlord and Tenant concerning enforcement of any right or obligation under this Lease, the non-prevailing party shall reimburse the prevailing party for the attorney's fees reasonably incurred and expended by the prevailing party in the litigation.

**14.16 Severability.** If any provision of this Lease shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Lease, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Lease shall remain in full force and effect.

**14.17 Entire Agreement, Amendment.** This Lease constitutes the entire and integrated agreement between Landlord and Tenant concerning the subject matter hereof, and supersedes all prior negotiations, representations or agreements, either written or oral. No affirmation, representation or warranty relating to the subject matter hereof by any employee, agent or other representative of Landlord shall bind Landlord or be enforceable by Tenant unless specifically set forth in this Lease. This Lease may be amended only by written instrument executed and acknowledged by both Landlord and Tenant.

**14.18 Governing Law and Venue.** This Lease will be governed by, construed and enforced in accordance with, the laws of the State of Alaska. Any action or suit arising between the parties in relation to or in connection with this Lease, or for the breach thereof, shall be brought in the trial courts of the State of Alaska for the Third Judicial District at Homer.

**14.19 Execution in Counterparts.** This Lease may be executed in two or more counterparts, each of which shall be an original and all of which together shall constitute one and the same document.

**14.20 Prior Lease Amended And Superseded.** Landlord and Tenant are parties to a prior lease affecting the Property dated April 29, 2014, a memorandum of which has been recorded in the records of the Homer Recording District under Document No. 2014-001333-0 (the "Prior Lease"). This Lease replaces and supersedes the Prior Lease effective as of February 1, 2019, and on and after that date the Prior Lease shall have no force or effect, except that it shall remain in effect as to events, rights, obligations, or remedies arising or accruing under the Prior Lease prior to that date.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth above.

**Landlord:**

**Tenant:**

**CITY OF HOMER**

**Y & C LLC**

By: Katie Koester  
Katie Koester, City Manager

Grace Chon  
Grace Chon, Organizer for Y & C LLC

**ACKNOWLEDGMENTS**

STATE OF ALASKA                     )  
   ) ss.  
THIRD JUDICIAL DISTRICT         )

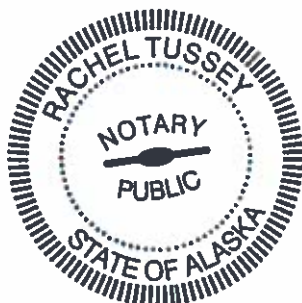
The foregoing instrument was acknowledged before me on January 21, 2019, by Katie Koester, City Manager of the City of Homer, an Alaska municipal corporation, on behalf of the City of Homer.



Rachel Tussey  
Notary Public in and for Alaska  
My Commission Expires: 12/10/2022

STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

The foregoing instrument was acknowledged before me on January 21, 2019, by Grace Chon, as President (title) of Y&C LLC on behalf of \_\_\_\_\_ Y&C LLC.



Rachel Tussey  
Notary Public in and for Alaska  
My Commission Expires: 12/10/2022

**EXHIBIT A**  
**SCHEDULE OF ORGANIZATION, OWNERS,**  
**PERCENTAGE OF OWNERSHIP**

Tenant, Y & C LLC, is a Limited Liability Company organized under the laws of the state of Alaska. Attached to this exhibit is a certificate issued by that state certifying that Tenant is in good standing and describing its legal organization.

The members and their percentage of ownership are as follows:

Name: Kum Ho Yang	25%
Address: 9142 Browning Dr., Huntington, Beach, CA 92646	
Name: Jo Ja Yang	25%
Address: 9142 Browning Dr., Huntington, Beach, CA 92646	
Name: Moses Y Chon	25%
Address: 14495 Persimmon Dr., Huntington Beach, CA 92880	
Name: Grace U Chon	25%
Address: 14495 Persimmon Dr., Huntington Beach, CA 92880	
 TOTAL	 100 %



THE STATE

of **ALASKA**

Department of Commerce, Community, and Economic Development  
Division of Corporations, Business, and Professional Licensing  
PO Box 110806, Juneau, AK 99811-0806  
(907) 465-2550 • Email: [corporations@alaska.gov](mailto:corporations@alaska.gov)  
Website: [Corporations Alaska.gov](http://Corporations.Alaska.gov)

State of Alaska, DCCED

FOR DIVISION USE ONLY

## Articles of Organization

Domestic Limited Liability Company

Web-11/13/2018 3:41:30 PM

### 1 - Entity Name

Legal Name: Y & C LLC

### 2 - Purpose

The LLC's primary purpose for Which the LLC is organized is to engage in the business of serving American Food to tourists and the general public.

### 3 - NAICS Code

722110 - FULL-SERVICE RESTAURANTS

### 4 - Registered Agent

Name: Grace Chun

Mailing Address: 4400 Homer Spit Rd, Homer, AK 99603

Physical Address: 4400 Homer Spit Rd, Homer, AK 99603

### 5 - Entity Addresses

Mailing Address: 4400 Homer Spit Rd, Homer, AK 99603

Physical Address: 4400 Homer Spit Rd, Homer, AK 99603

### 6 - Management

The limited liability company is managed by its members.

Details

## ENTITY DETAILS

## Name(s)

Type	Name
Legal Name	Y & C LLC

Entity Type: Limited Liability Company

Entity #: 10094600

Status: Good Standing

AK Formed Date: 11/13/2018

Duration/Expiration: Perpetual

Home State: ALASKA

Next Biennial Report Due: 1/2/2020

Entity Mailing Address: 4400 HOMER SPIT RD, HOMER, AK 99603

Entity Physical Address: 4400 HOMER SPIT RD, HOMER, AK 99603

## Registered Agent

Agent Name: Grace Chun

Registered Mailing Address: 4400 HOMER SPIT RD, HOMER, AK 99603

Registered Physical Address: 4400 HOMER SPIT RD, HOMER, AK 99603

## Officials

AK Entity #	Name	Titles	<input type="checkbox"/> Show Former	
			Owned	
	Grace U Chun → chon	Member	25	
	Jo Ja Yang	Member	25	
	Kum Ho Yang	Member	25	
	Moses Y Chun → chon	Member	25	

## Filed Documents

Date Filed	Type	Filing	Certificate
11/13/2018	Creation Filing	<a href="#">Click to View</a>	<a href="#">Click to View</a>
11/13/2018	Initial Report	<a href="#">Click to View</a>	



THE STATE

of **ALASKA**

Department of Commerce, Community, and Economic Development  
Division of Corporations, Business, and Professional Licensing  
PO Box 110806, Juneau, AK 99811-0806  
(907) 465-2550 • Email: [corporations@alaska.gov](mailto:corporations@alaska.gov)  
Website: [Corporations Alaska.gov](http://Corporations.Alaska.gov)

State of Alaska, DCCED

FOR DIVISION USE ONLY

**Limited Liability Company**  
Initial Biennial Report

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Entity Name: Y & C LLC  
Entity Number: 10094600  
Home Country: UNITED STATES  
Home State/Province: ALASKA

**Registered Agent**

Name: Grace Chun (CHON)  
Physical Address: 4400 HOMER SPIT RD, HOMER, AK 99603  
Mailing Address: 4400 HOMER SPIT RD, HOMER, AK 99603

Entity Physical Address: 4400 HOMER SPIT RD, HOMER, AK 99603

Entity Mailing Address: 4400 HOMER SPIT RD, HOMER, AK 99603

Please include all officials. Check all titles that apply. Must use titles provided. Please list the names and addresses of the members of the domestic limited liability company (LLC). There must be at least one member listed. If the LLC is managed by a manager(s), there must also be at least one manager listed. Please provide the name and address of each manager of the company. You must also list the name and address of each person owning at least 5% interest in the company and the percentage of interest held by that person.

Name	Address	% Owned	Titles
Kum Ho Yang	9142 Browning Dr, Huntington Beach, CA 92646	25	Member
Jo Ja Yang	9142 Browning Dr, Huntington Beach, CA 92646	25	Member
Moses Y Chun → CHON	14495 Persimmon Dr, Huntington Beach, CA 92880	25	Member
Grace U Chun → CHON	14495 Persimmon Dr, Huntington Beach, CA 92880	25	Member

NAICS Code: 722110 - FULL-SERVICE RESTAURANTS

New NAICS Code (optional):

This form is for use by the named entity only. Only persons who are authorized by the above Official(s) of the named entity may make changes to it. If you proceed to make changes to this form or any information on it, you will be certifying under penalty of perjury that you are authorized to make those changes, and that everything on the form is true and correct. In addition, persons who file documents with the commissioner that are known to the person to be false in material respects are guilty of a class A misdemeanor. Continuation means you have read this and understand it.

Name: kang J cho

## 7 - Officials

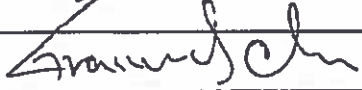
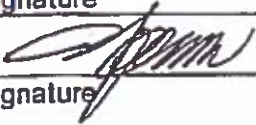
Name	Address	% Owned	Titles
Grace Chun ~ CHON			Organizer

### Name of person completing this online application

This form is for use by the named entity only. Only persons who are authorized by the above Official(s) of the named entity may make changes to it. If you proceed to make changes to this form or any information on it, you will be certifying under penalty of perjury that you are authorized to make those changes, and that everything on the form is true and correct. In addition, persons who file documents with the commissioner that are known to the person to be false in material respects are guilty of a class A misdemeanor. Continuation means you have read this and understand it.

Name: kang cho

**ITEM 4:** The Certificate of Correction must be signed in the same manner as the original document. Attach an additional sheet if necessary.

	Grace U Chon	LLC Member	11/16/2018
Signature	Printed Name	Title	Date
	Moses Y Chon	LLC Member	11/16/2018
Signature	Printed Name	Title	Date

**NOTE:** Persons who sign documents filed with the commissioner that are known to the person to be false in material respects are guilty of a class A misdemeanor.

Mail the Certificate of Correction and the non-refundable \$25.00 filing fee in U.S. dollars to:  
State of Alaska, Corporations Section, PO Box 110806, Juneau, AK 99811-0806

**STANDARD PROCESSING TIME** for complete and correct applications submitted to this office is approximately 10-15 business days. All applications are reviewed in the date order they are received.

**EXHIBIT B**

**CONFORMED COPY OF RESOLUTION AUTHORIZING LEASE AND  
AUTHORIZING SIGNERS TO SIGN LEASE AGREEMENT ON BEHALF  
OF TENANT**

**CITY OF HOMER  
HOMER, ALASKA**

City Manager

**RESOLUTION 19-002**

A RESOLUTION OF THE HOMER CITY COUNCIL APPROVING A LEASE ASSIGNMENT FROM LEE AND KIM LLC TO Y & C LLC AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE APPROPRIATE DOCUMENTS FOR A NEW TWENTY YEAR LEASE WITH OPTIONS FOR TWO CONSECUTIVE FIVE YEAR RENEWALS FOR LOT 32, OF THE AMENDED PLAT OF THE HOMER SPIT, ACCORDING TO PLAT NO. 89-34, AT AN INITIAL ANNUAL RATE OF \$19,888.68.

WHEREAS, Lee and Kim LLC dba "Happy Face Restaurant" applied to transfer their 2014 City lease to Y & C LLC dba "Shogun Seafood & Steak BBQ Restaurant" as part of Y and C LLC's purchase of Happy Face; and

WHEREAS, Y & C LLC submitted a complete application pursuant Homer City Code (HCC) 18; and

WHEREAS, Y & C LLC has indicated in their lease application their intention of continuing the business previously listed in the lease between the City and Lee and Kim LLC without changes; and

WHEREAS, The City approved in Lee and Kim LLC's 2014 lease with the proposed use of the property being a restaurant, gift shop, general store, with future allowable uses including a laundry/shower facility, and rental units; and

WHEREAS, Per HCC 18.08.110 the lease is in compliance and the past lease history has shown contractual obligations are satisfactorily met; and

WHEREAS, The lease assignment will be based on the City's updated lease template which reflects the new and current code requirements; and

WHEREAS, Y & C LLC are aware that the initial annual rental rate of \$19,888.68 will change as a result of City Lot 32's reappraisal in 2019 per HCC 18.08.100; and

WHEREAS, The City Administration and the Port and Harbor Advisory Commission on January 3<sup>rd</sup>, 2019 reviewed the application pursuant HCC 18.08.060 and recommend a new twenty year lease with options for two consecutive five-year renewals for Lot 32, of the amended plat of the Homer Spit, according to Plat No. 89-34; and

WHEREAS, HCC 18.08.160 (4) states the Council shall approve or deny the request for lease assignment via resolution.

NOW, THEREFORE, BE IT RESOLVED that the Homer City Council hereby approves the lease assignment of the Lee and Kim LLC Lease from Lee and Kim LLC to Y & C LLC, and authorizes the City Manager to execute a new twenty year lease with options for two consecutive five-year renewals for Lot 32, of the amended plat of the Homer Spit, according to Plat No. 89-34, at an initial annual base rent of \$19,888.68 for the purpose of a restaurant, gift shop, general store, with future allowable uses including a laundry/shower facility, and rental units.

PASSED AND ADOPTED by the Homer City Council on this 14<sup>th</sup> day of January, 2019.

CITY OF HOMER



KEN CASTNER, MAYOR

ATTEST:



MELISSA JACOBSEN, MMC, CITY CLERK

Fiscal Note: \$19,88.68 Annually



**EXHIBIT C**  
**LOCATION OF PROPERTY**

**(Section 2.01)**

**Lot 32, of the Amended Plat of the Homer Spit, according to Plat No. 89-34. Homer Recording District, State of Alaska, containing 24,639 square feet, more or less, also known as Kenai Peninsula Borough Tax Parcel No. 181-034-32.**

## **EXHIBIT D**

### **TENANT'S PROPOSED USE OF THE PROPERTY**

#### **(Section 6.01)**

Tenant's proposed use of the Property is a restaurant, gift shop, general store, with future allowable uses: laundry/shower facility, and rental units.

City of Homer  
Lease Application

**RECEIVED** / RESUBMITTED  
DEC 12 2018  
Dec. 17, 2018  
BY: Zachary Friedlander 1pm

**Directions:**

1. Please submit this application form to the City Clerk's Office, 491 Pioneer Avenue, Homer, AK 99603.
2. Please answer all questions. If the question is not applicable, indicate why it is "N/A."

Applicant Name:	Y & C LLC
Mailing Address:	4400 HOMER SPIT RD
City, State, ZIP code:	HOMER ALASKA 99603
Business Telephone No.	
Email address:	gracechon888@yahoo.com
Representative's Name:	GRACE CHON
Mailing Address:	4400 HOMER SPIT RD
City, State, ZIP code:	HOMER ALASKA 99603
Business Telephone No.	714-904-9094 (C)
Location within the airport:	HOMER ALASKA
Legal Description:	4400 HOMER SPIT AMEND L-32
Type of Business:	EXISTING: RESTAURANT, GIFT, GENERAL STORE
Area and size to be leased:	EXISTING
Duration of Lease requested:	50 YEARS
Options to re-new:	50 YEARS
Proposed Lease Rate:	SAME RATE AS PRIOR TO.
Special lease requirements:	N/A

The following materials must be submitted when applying for a lease of City of Homer real property		
1.	Parking spaces	<u>A drawing of the proposed leased property showing:</u> <input type="checkbox"/> Parking spaces – needed <i>Existing parking plan</i>
2.	Development Plan	<input type="checkbox"/> <u>List the time schedule from project initiation to project completion, including major project milestones.</u> <div style="display: flex; justify-content: space-between;"> <div>Dates _____</div> <div>Tasks <i>See Attached</i></div> </div>
3.	Insurance <i>See Attached</i> <i>Will transfer from</i> <i>Happy Face Restau</i>	<input type="checkbox"/> Attach a statement of proof of insurability of lessee for a minimum liability insurance for combined single limits of \$1,000,000 showing the City of Homer as co-insured. Additional insurance limits may be required due to the nature of the business, lease or exposure. Environmental insurance may be required. If subleases are involved, include appropriate certificates of insurance.
4.	Subleases <i>No Sublease</i>	<input type="checkbox"/> Please indicate and provide a detailed explanation of any plans that you may have for subleasing the property. The City of Homer will generally require payment of 25% of proceeds paid Lessee by subtenants. Refer to chapter 13 of the Property Management Policy and Procedures manual.
5.	Health Requirements <i>Restaurant license</i> <i>Tabacco license Attached</i> <i>Liquor license (study)</i> <i>permit.</i>	<input type="checkbox"/> Attach a statement documenting that the plans for the proposed waste disposal system, and for any other necessary health requirements, have been submitted to the State Department of Environmental Conservation for approval. Granting of this lease shall be contingent upon the lessee obtaining all necessary approvals from the State DEC.
6.	Agency Approval <i>Business license</i> <i>Fire Marshall</i> <i>Sales Tax</i>	<input type="checkbox"/> Attach statement(s) of proof that your plans have been inspected and approved by any agency which may have jurisdiction of the project; i.e. Fire Marshall, Army Corps of Engineers, EPA, etc. The granting of this lease shall be contingent upon lessee obtaining approval, necessary permits, and/or inspection statements from all appropriate State and/or Federal agencies.
7.	Fees <i>Received 12/17/18</i>	<u>All applicable fees must be submitted prior to the preparation and/or execution of a lease.</u> <input type="checkbox"/> Application fee - \$30.00. <input type="checkbox"/> Lease/Assignment fee - \$300.00.

## Grace U. Chon

---

PRESIDENT OF Y&C LLC-PROFESSIONAL RESTAURANTEUR

14495 Persimmon Court, Corona, CA, 92880

714.904.9094

Gracechon888@yahoo.com

### GOAL

---

*To establish a new pan-Asian restaurant and gift shop for locals and tourists to enjoy. My husband and I visited Homer a few years ago and fell in love with the town and its' people. We found the perfect opportunity for us to thrive in that will allow us to retire in this beautiful town. We bring over 40 years of experience operating and opening 4 successful restaurant businesses in California and Washington.*

### RELEVANT EXPERIENCE

---

RESIDENTIAL REAL ESTATE AGENT- NEW STAR REALTY- LOS ANGELES/ CORONA, CA	2003- present
EXECUTIVE- MISSION 2 THE WORLD (CHRISTIAN NON-PROFIT)-ANAHEIM HILLS, CA	2004-2014
OWNER/ OPERATOR- WASABI & SUSHI RESTAURANT- GARDEN GROVE, CA	2001-2013
OWNER/OPERATOR- LUCKY PAINTING AND DECORATING COMPANY- LOS ANGELES, CA	1990-1997
OWNER/OPERATOR- FUJI GARDEN RESTAURANT- SANTA MONICA, CA	1987-1991
OWNER OPERATOR-OWL's ROOST RESTAURANT- GIG HARBOR, WA	1980-1983

### EDUCATION

---


SOUTHERN CALIFORNIA THEOLOGICAL SEMINARY	Bachelor of Theology	1986
MINNESOTA GRADUATE SCHOOL OF THEOLOGY	Master of Divinity	2007

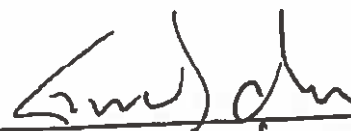
REFERENCES UPON REQUEST

Dec 13 2018

1. Yong Kim owner of Happy Face Restaurant  
& General Store DBA: Lee & Kim, LLC.

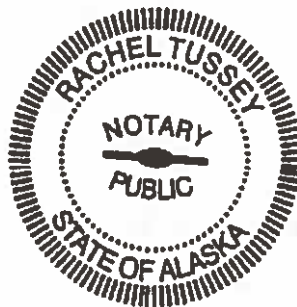
Request the City of Homer to Transfer  
for my Ground Lease to Y & C LLC  
DBA: Shogun Restaurant & General Store


  
\_\_\_\_\_  
Yong Kim 12/13/18  
Lee & Kim, LLC

  
\_\_\_\_\_  
Grace Chan 12-13-18  
Y & C. LLC

State of Alaska  
2nd Judicial District

Subscribed and sworn to before me, Yong Kim and  
Grace Chan, this 13th day of December 2018.



  
Rachel Tussey

My commission expires 12/10/2022

**EXHIBIT E**

**SITE PLANS**

**(Section 6.02)**



# Kenai Peninsula Borough, Alaska

## Assessing Department

Go Back

Property Search

Print Report

Property Taxes

## General Info

## Property Owner:

LEE & KIM LLC  
4400 HOMER SPIT RD  
HOMER AK 99603-8003

Change of Address

Owner(s)

## Property ID

18103432LH01

## Address

4400 HOMER SPIT RD UNIT LH01

## Transfer Date

5/16/2014

## Document / Book Page

20140013330

## Acreage

0.5700

## Tax Authority Group

20 - HOMER CITY

## Legal Description

## Description

T 7S R 13W SEC 1 Seward Meridian HM LSEHLD EST CREATED BY LSE 248/791 & ASN 20 14-1335 RESIDING ON LT 32 HOMER SPIT AMD

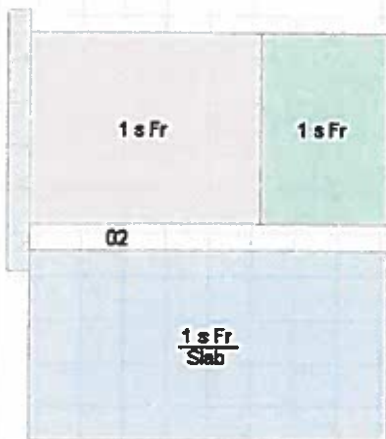
## Value History

Year	2018	2017	2016	2015
Reason	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification
Land Assd	\$126,800	\$123,700	\$134,300	\$137,000
Imp Assd	\$396,000	\$399,800	\$395,500	\$507,500
Total Assd	\$522,800	\$523,500	\$529,800	\$644,500

## Extension Details

C01

Scale 10 ft



Attributes		Exterior Features			
Code	Description	Story	Gross	Heated	AC
GENRET	Retail Store	1	3,696	3,696	0
APARTRES	Multiple Res	2	1,320	1,320	0
RESTURNT	Restaurant	2	2,376	2,376	0

Address	4400 HOMER SPIT RD UNIT LH01
Grade	Low+
Year Built	1995
Value	\$514,200

Total Area: 7,392 7,392 00

Sketch Legend

Improvements								
Code	Description	Year	Building	Length	Width	Units	Unit Type	Value
SHEDGP	Shed - Gen Purpose Frame, up to 10'eave	1995	C01	24	16	384	SF	\$800

**EXHIBIT F**

**PERMISSION TO OBTAIN INSURANCE POLICIES**

**(Section 9.04(d))**

The City of Homer is hereby granted permission to request and obtain copies of Y & C LLC ("Tenant") insurance policies from Tenant's broker and/or insurer, IPFS Corporation, 49 Stevenson Street, San Francisco, CA 94105. Tenant requests the broker/insurer to provide the City of Homer with information about and copies of all of Tenant's insurance policies providing the type of coverage required by the Lease between Tenant and the City of Homer.

It is understood that the Tenant may revoke this permission at any time by written notice to City of Homer and to Tenant's broker and/or insurer; however, such revocation will constitute a default of Tenant's lease from the City of Homer.

Date: Jan 21. 2019

Y & C LLC

By: 

Printed Name: Grace Chon

Title: president





## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

### Port and Harbor

4311 Freight Dock Road  
Homer, AK 99603

[port@cityofhomer-ak.gov](mailto:port@cityofhomer-ak.gov)

(p) 907-235-3160

(f) 907-235-3152

May 13, 2024

Y & C, LLC  
4400 Homer Spit Rd  
Homer, AK 99603

Dear Y&C LLC,

As requested, I conducted a review of our records for Y&C LLC's tenancy, and can provide the following statement regarding your history with us:

*Y&C LLC has leased the property at 4400 Homer Spit Rd from the City since February 1<sup>st</sup> of 2019. This business was among those granted a payment plan as a result of the COVID-19 pandemic, and the account has been current since completing that payment plan in September of 2023. We find no reason to withhold the assignment of their lease to another party.*

Best,

Amy Woodruff

Administrative Supervisor  
City of Homer Port & Harbor  
(907) 235-3160  
[awoodruff@ci.homer.ak.us](mailto:awoodruff@ci.homer.ak.us)



## MEMORANDUM

PHC-24-011

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### Cruise Ship Capacity and Policy

**Item Type:** Action Memorandum  
**Prepared For:** Port & Harbor Advisory Commission  
**Date:** May 14, 2024  
**From:** Amy Woodruff, Port Administrative Supervisor  
**Through:** Bryan Hawkins, Port Director

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**Requested Action:** Review resolution 24-048 and the draft responses, and provide comments to commission staff.

**NOTE:** The resolution requested that the commission report back to City Council by July, after some discussion City staff and the City Manager determined that the commission report should coincide with the report from the Economic Development Advisory Commission. Our new due date is September 23, 2024.

**Staff Recommendation:** Identify a working group of up to two commissioners to finalize a response to Council in tandem with Port & Harbor staff.

**Background:** City Council requested via Resolution 24-048 that the commission consider the City's cruise ship policies and provide information to the council to answer the following questions.

#### **What is the Capacity of the Deep Water Dock and the Pioneer Dock?**

Please see the attached info sheets for each dock.

#### **What are the criteria for whether a cruise ship have to transport passengers to shore via tender (aka "lighter") instead of using a dock?**

Any ship that exceeds one or both of the berthing limits for a dock will not be permitted to use that dock, and will have to lighter passengers instead. A typical cruise ship lightering vessel can carry between 60-100 passengers at a time.

### **What do we consider when determining whether to approve a lightering request?**

What is the level of vessel activity in the Harbor? What is the time of year? How many passengers are on board the vessel? Will we be able to provide a secure facility in compliance with our Facilities Security Plan without requesting special authorization from the USCG—which may or may not be approved?

### **What are the responsibilities and potential liabilities the Port & Harbor has for accepting cruise ships?**

The Port's **responsibilities** are defined in the Facilities Security Plan. Cruise Ships are regulated vessels, which means that the Port ensures that there will be security at the gate to screen passengers and crew as they board the ship. Under normal circumstances the cruise ship will arrange for private port security services and cover the cost, however, if that were not provided the City would have to provide that coverage in order to remain in compliance with our security plan. The Port also conducts a pre-arrival facility security inspection and a declaration of security with the ship. Operations personnel are communication with the ship's agent before, during, and after a cruise ship landing.

The Port has the same or similar exposure to **liability** for lawsuit as they would from any other patron at the harbor (trips, slips, falls, etc)

The Cruise Ship has **liability** if they damage Harbor facilities.

### **What amenities does the City share with companies requesting a cruise ship landing?**

The Port does not advertise specific amenities as available in Homer beyond simply communicating the capacity of our dock facilities. The City contracts with the Chamber of Commerce to do visitor marketing, which includes a relationship with the Cruise Lines International Association – Alaska

### **What increased staffing considerations are made by Harbor Operations Staff to address additional trash and restroom cleaning needs?**

At this time the port will not be providing any additional staffing for our cruise ship landings as our job stays the same as long as we only schedule one ship at a time. Any additional staffing required for security will be contracted by and paid by the Ship. Restroom cleaning is handled by Public Works. At present they do not provide additional staffing, but it could become necessary in certain areas with increased landing volumes, which would require scheduling and cost tracking by Public Works.

### **What the emergency response plan is for potential tsunami evacuation:**

If a Tsunami Warning is issued, Harbor staff will evacuate the spit and communicate with Cruise Ship personnel via VHF radio. The cruise ship will follow its EOP for a tsunami. Depending on the anticipated time of impact, cruise ship personnel may encourage

passengers to board the vessel or to evacuate by land. Cruise ship passengers who are off the spit at the time the warning is issued will remain off the spit and the ship's agent will make arrangements to reunite those passengers with the vessel.

### **How will information about cruise ships be incorporated in to the comprehensive plan?**

Per Agnew::Beck, information about cruise ships will be guided by the conversations about what the community values about growth, and what community members don't want to lose about the way Homer is now. It will be incorporated in many places—economic development, transportation, sustainability, resilience, and of course any spit-specific sections of the plan.

### **What are the costs and impacts of cruise ship landings on HVFD and HPD staff**

Fire Chief Kirko wrote "At this point I don't believe we will be impacted by the number of cruise ships docking in Homer. My previous experience with the cruise industry was while I was in Skagway which experienced a definite impact to EMS services. If we get ships weekly or greater I would then say it could be something we would be concerned about."

HPD/HVFD dispatch indicated that there have maybe been one or two EMS calls in the past 4 years related to cruise ship landings, and that the cruise ship landings aren't a factor in how HPD schedules their personnel.

### **What are the revenue and expense considerations surrounding cruise ship business at the Port?**

In general, the function of a port is to facilitate commerce, and we try to do that with our cruise ship customers as we do with any other user group. There are some revenues to the Enterprise associated with a cruise ship landing, however, this dockage revenue is not a primary motivator. The impact on staffing costs is minimal because security is provided by a private firm. We may shift schedules to have additional personnel available for a cruise ship landing but we are not hiring staff to accommodate cruise ships.

### **What's the broad legal landscape of local cruise ship policies in Alaska? What's within the norms of what other communities are doing.**

More research is needed to address this question.

**Staff Recommendation:** Identify a working group of up to two commissioners to finalize a response to Council in tandem with Port & Harbor staff.

### **Attachments:**

Resolution 24-048 and backup

Pioneer Dock Spec quick reference sheet

Deep Water Dock Spec quick reference sheet

**CITY OF HOMER  
HOMER, ALASKA**

Erickson/Lord

**RESOLUTION 24-048**

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA,  
REQUESTING THE PORT AND HARBOR ADVISORY COMMISSION  
DISCUSS AND CONSIDER CRUISE SHIP CAPACITY AND POLICY  
ADOPTION FOR THE PORT AND HARBOR OPERATIONS AND THE  
ECONOMIC DEVELOPMENT ADVISORY COMMISSION DISCUSS  
AND CONSIDER BROADER COMMUNITY EFFECTS AND POTENTIAL  
CITY CRUISE SHIP POLICIES.

WHEREAS, The City of Homer has been a port of call for numerous cruise ships over the  
years; and

WHEREAS, The City should expect continued interest in cruise ship calls in the coming  
years; and

WHEREAS, The City's Deep Water Dock can accommodate cruise ships up to certain  
sizes, but larger ships cannot dock there and must anchor out and tender, or lighter,  
passengers to harbor floats to disembark; and

WHEREAS, The City operates the Port and Harbor under written policies that may not  
fully encompass the considerations for cruise ships, especially larger vessels that have to  
lighter passengers; and

WHEREAS, In addition to effects on the City, large cruise ships also influence the  
business community and the community-at-large; and

WHEREAS, Cities around Alaska and the country have addressed cruise ship tourism  
through the implementation of different policies.

NOW, THEREFORE BE IT RESOLVED, Port and Harbor staff will engage the Port and  
Harbor Advisory Commission (PHC) in discussion around cruise ship calls to the Port, including:

- The capacity of our current docks for different size classes of large vessels;
- Passenger lightering considerations, including moorage and safety;
- What responsibilities and potential liabilities the Port and Harbor has for accepting  
cruise ships of any size, including what amenities we advertise as available as a City  
for cruise ship companies looking to make a call at our public Port;
- What the emergency response plan is for potential tsunami evacuation;
- What are the costs and impacts of cruise ship landings on our HVFD and HPD staff;

- What increased staffing considerations are made by Harbor operations staff to address additional trash and restroom cleaning needs;
- What criteria are used currently for deciding capacity to accept a cruise ship, including when there is passenger lightering required, and are those criteria adequate;
- How this topic will be integrated into the Comprehensive Plan;
- Revenue and expense considerations surrounding cruise ship business at the Port;
- The broad legal landscape of local policies around the cruise ship industry.

BE IT FURTHER RESOLVED, The Economic Development Advisory Commission (EDC) should develop an understanding of City/Municipal cruise ship policies from other communities, and engage in a conversation with the Chamber of Commerce and other stakeholders about the effects of the Cruise Ship industry on the local businesses and the community to help inform any potential City policy development.

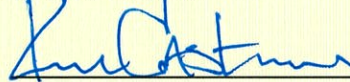
BE IT FURTHER RESOLVED, Both the EDC and the PHC will provide reports back to the City Council with summaries of their conversations, noting where further discussion may be needed, and any immediate policy recommendations by:

Port and Harbor Advisory Commission: July 22, 2024 Council Meeting

Economic Development Advisory Commission: September 23, 2024 Council Meeting


PASSED AND ADOPTED by the Homer City Council this 22<sup>nd</sup> day of April, 2024.

CITY OF HOMER



KEN CASTNER, MAYOR

ATTEST:



RENEE KRAUSE, MMC, ACTING CITY CLERK

Fiscal Note: NA





# MEMORANDUM

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**Resolution 24-048, A Resolution of the City Council of Homer, Alaska, Providing Direction to the Port and Harbor Advisory Commission and the Economic Development Advisory Commission Regarding Cruise Ships in Homer**

**Item Type:** Backup Memorandum  
**Prepared For:** Mayor Castner and Homer City Council  
**Date:** April 22, 2024  
**From:** Council Members Erickson and Lord

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The 2024 cruise ship season is quickly approaching, and with it will come a large ship to Homer that cannot tie up to our deep water dock. Other cruise ships had requested coming to Harbor earlier in the season, and they were told we do not have the operational capacity to safely accommodate them. This has highlighted a number of issues that the Port & Harbor Advisory Commission (PHC) can consider, and additional broader issues that the City should better understand when considering any policy making from the business and overall community.

There is potential for additional cruise ships, including larger cruise ships, to have interest in docking in Homer in the future. As itineraries are developed early, it is prudent for the City to understand our infrastructure and staffing capacity, and the community to broadly understand their interest and appetite for cruise ships sooner rather than later. We understand the turnaround time on these requests to the PHC and the Economic Development Advisory Commission (EDC) may feel tight, but we'd encourage the Commissions to engage in this dialogue and provide a summary of what they are able to cover - including where more time and information may be needed, and/or any immediate policy recommendations for the Council to consider.

To facilitate a dialogue, we are asking the Port and Harbor Advisory Commission to engage in this topic with staff to understand:

- The capacity of our current docks for different size classes of large vessels
- Passenger lightering considerations, including moorage and safety
- What responsibilities and potential liabilities the Port and Harbor has for accepting cruise ships of any size, including what amenities we share with companies requesting these services
- What the emergency response plan is for potential tsunami evacuation

- What are the costs and effects of cruise ship landings on our EMS and HPD staff
- What increased staffing considerations are made by Harbor operations staff to address additional trash and restroom cleaning needs
- What criteria are used currently for deciding capacity to accept a cruise ship, including when there is passenger lightering required, and are those criteria adequate
- How this topic will be integrated into the Comprehensive Plan
- Revenue and expense considerations surrounding cruise ship business at the Port
- The broad legal landscape of local policies around the cruise ship industry

Additionally, we would like to encourage the Chamber of Commerce to engage with Homer-area businesses to better understand the limitations and opportunities within the private sector around cruise ship tourism in Homer. We believe this conversation needs to be integrated into the Comprehensive Plan process, and would like the Economic Development Advisory Commission to begin having conversations with stakeholders to better inform the City Council on policy options and the pros/cons of different City cruise ship policies.

For an interesting reference, look up Bar Harbor, Maine and their long-standing and recent municipal policies surrounding cruise ships. They see much higher passenger counts than Homer does, similar to Juneau and other Southeast communities, but news articles and documents from the Town of Bar Harbor are interesting to review.

The City and Borough of Juneau reached an agreement with CLIA (Cruise Lines International Association) to limit the number of ships to no more than five per day starting this year. An article in the Petersburg Pilot from January 2024 is titled: "*Wrangell assembly raises rates for lightering cruise passengers to shore.*" These are offered as references of conversations other municipalities have been having around cruise ship impact.



**Deep Water Dock:** Built in 1990, Secure Facility for regulated and un-regulated vessels, gated with heated guard station and restrooms. Latitude/ Longitude: 59 36' 25 North, 151 25' 40 West

**Dock Area:**

Secure Facility, gated with heated guard station and restrooms.

Berthing limits: ships to 800' LOA, 65,000 displacement tons

Outer face: 345'; inside berth face: 240'

Approach trestle 532 ft. by 24'

Breasting dolphins: 2 at south end placed at 150' and 300', 1 at north end placed at 150'

Mooring buoys: 1 at each end, beyond dolphins

Total berthing space on outer (east) face: 774' using dolphins; 820' with dolphins/buoys

Control Depth at outer face: -40' MLLW

Height of deck: +28' MLLW

Azimuth of pier: NW 340°

Fender spacing: 20 ft. on center - vertical and 6' camel fenders

Bollard/cleat spacing: 60 ft.

Deck surface: 18,160 sq. ft. Concrete

One 5 ton pedestal base crane on the inside berth

**Amenities:** Potable Water (fed by a 2" line with a variety of fittings, flow rate for the 1 ½ " fitting is 6,000 gph) , Garbage Disposal, and Laydown/Secured cargo storage (available upon request), Sewage Disposal, and Stevedoring Services are not provided by the harbor but are available by contractor (please contact the harbor for a vendor list)

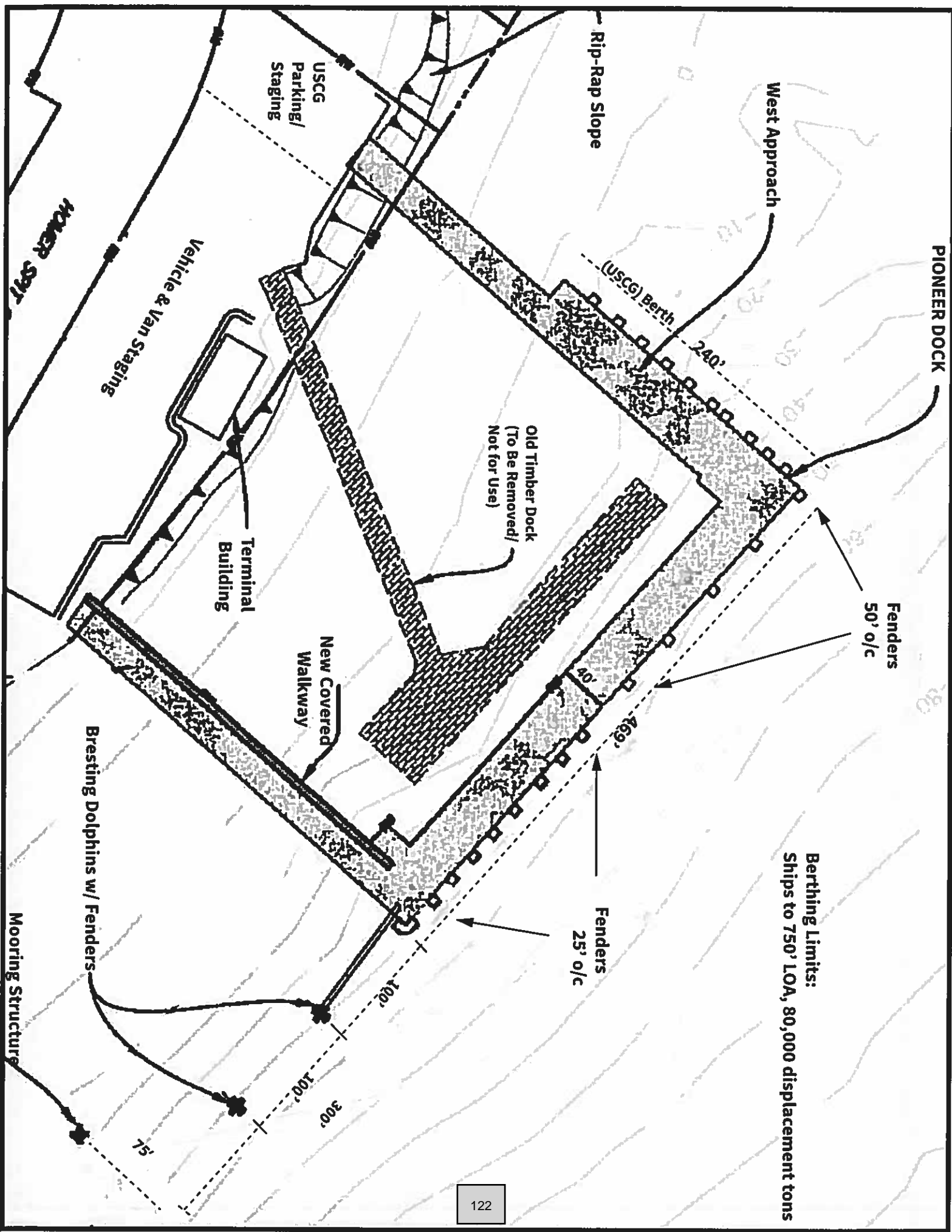
**Dock, Vehicle and Equipment Loads and Restrictions:**

Uniform Live Load:

Approach Trestle – 250 pounds per square foot

Dock – 500 pounds per square foot

Manitowoc 3900T Truck Crane- allowable crane pick : 3 counterweights-20 tons, 2 counterweights- 30 tons, 1 counterweight- 50 tons. Dock- is designed for up to a 30 ton forklift, Trestle- is designed for up to a 15 ton forklift. (Equipment provided by stevedoring services, contact contractor specifically for more info)



**PIONEER DOCK:** Built in 2001/2002, Secure Facility receives Regulated and Un-regulated vessels.

<u>Dock Outer Face</u>	Length: 469' Width: 40'
<u>Dock Elevation</u>	Edge of Deck: +32 MLLW
<u>Mudline Elevation</u>	North Corner: -51 MLLW, East Corner: -39MLLW

<u>East Trestle</u>	Length: 364' Width: 30'
<u>West Trestle</u>	Length: 445' Width: 28' and 46'

Berthing limits: ships to 750' LOA, 80,000 displacement tons

Outer face: 469' (preferential berthing for AMHS ferries)

U.S. Coast Guard berth (on northwest trestle) 240'

Breasting dolphins, 2 each, one at 100', one at 200' off southeast corner and on line with face of dock

Mooring dolphin, 1 each, at 300' SE and 75' back from the dock face

(Combination of 469' face and breasting/mooring dolphins provides for docking of ships up to 750' LOA)

Depth at outer face: -40 ft. MLLW

Height of deck: +32 ft. MLLW

Azimuth of pier: NW 315°

Fender spacing: 50 ft. on center (west end), 25 ft. on center (east end)

Allowable Fender Energy: 232 Ft-Kips/Fender

Bollard/cleat spacing: 75 ft. o/c

Deck surface: 18,600 sq. ft. Concrete

Amenities: Lights, Fencing, Water, Shore Power availability (60 amp, 480 volt 3-Phase, plug required = Arktite # AP40512), and Sewer connection (4" female camlock connector required, maximum flow rate 50 GPM). Laydown and secured cargo storage available upon request.

Uniform Live Load:

Dock and Trestle: 500 pounds per square foot

Pedestrian Walkway: 100 pounds per square foot

Allowable fender energy 232 Ft-Kips/Fender

Vehicle and Equipment Loads:

AASHTO HS25-44 Truck

45 Ton Forklift (Front Axle= 96,000 lb.)

140 Ton Truck Crane (233,000 lb. Max. Float Load Boomed Over Corner)



# MEMORANDUM

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## Port & Harbor Enterprise Fund Financial Policy

**Item Type:** Action Memorandum  
**Prepared For:** Port & Harbor Advisory Commission  
**Date:** April 14 2024  
**From:** Amy Woodruff, Administrative Supervisor  
**Through:** Bryan Hawkins, Port Director

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**Requested Action:** Review Resolution 24-046 and the example financial plans referenced in the backup materials for the Resolution. Provide comments to commission staff to consider in drafting a financial policy.

**Staff Recommendation:** Provide verbal feedback to staff at this meeting. Approve Casey Siekaniec to partner with the Port staff in developing and refining a draft financial policy.

**Background:**

Councilmembers Lord and Davis are the "Finance Champions" working to develop a draft financial plan for the City. They have asked Port Staff to develop a financial policy for the enterprise fund that addresses questions such as:

- How does the Port & Harbor budget for projects that were not forecasted during the budget process?
- How are the Harbor's different funds used? What is the minimum/maximum balance desired for each of those funds, and what happens when one of those values is reached?
- How does the Port & Harbor fund large capital projects?

After compiling your feedback at this meeting, staff will draft the Enterprise Fund financial policy and bring that complete draft back to the commission for your review and feedback, tentatively in September. Once you have completed a review of the draft document and an revisions have been completed, the Port & Harbor Enterprise Fund Financial Policy will come to City Council for review, discussion, and a vote.

Council champions can be available to help answer questions and liaison back to Council during this process, depending on its complexity.

**Staff Recommendation:** Provide verbal feedback to staff at this meeting. Approve Casey Siekaniec to partner with the Port staff in developing and refining a draft financial policy.

**Attachments:**

Resolution 24-046 and backup

**CITY OF HOMER  
HOMER, ALASKA**

Lord/Davis

**RESOLUTION 24-046**

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA,  
PROVIDING DIRECTION TO THE PORT AND HARBOR STAFF, PORT  
AND HARBOR ADVISORY COMMISSION AND THE FINANCE  
DEPARTMENT REGARDING THE DEVELOPMENT OF DRAFT  
FINANCIAL POLICIES FOR THE PORT AND HARBOR ENTERPRISE  
FUND.

WHEREAS, Sound Financial policies are an important tool for maintaining a financially  
healthy and sustainable operation and provide transparency with public funds; and

WHEREAS, The City of Homer maintains separate funds including but not limited to the  
General Fund, Utility Fund and the Port & Harbor Enterprise Fund; and

WHEREAS, The City Council developed and adopted the Utility Fund Financial Policy  
with the help of advisors in 2023 and has committed to developing similar policies for the  
General Fund and the Port & Harbor Enterprise Fund; and

WHEREAS, The Port & Harbor Advisory Commission provides the City Council with  
valuable advice on the Port & Harbor Enterprise operations.

NOW, THEREFORE, BE IT RESOLVED, Port and Harbor staff will draft Financial Policies  
for the Enterprise Fund that include, at a minimum:

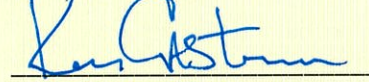
- Financial Goals
- Reserve Policies, including minimum and maximum balances and intent
- Policies for a balanced operating budget
- Policies for rate setting
- Debt policy

BE IT FURTHER RESOLVED, Staff will gather initial feedback from the Port and Harbor  
Advisory Commission prior to beginning work on policy drafting, and will provide the  
Commission with drafts for discussion and their feedback as needed until which time the  
Commission is ready to send the final draft to the Council.

BE IT FURTHER RESOLVED, The draft Enterprise Financial Policies will come back to Council for review no later than October 28, 2024.

PASSED AND ADOPTED by the Homer City Council this 22<sup>nd</sup> day of April, 2024.

CITY OF HOMER



KEN CASTNER, MAYOR

ATTEST:



RENEE KRAUSE, MMC, ACTING CITY CLERK

Fiscal Note: NA





# MEMORANDUM

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**Resolution 24-046, A Resolution of the City Council of Homer Alaska Providing Direction to the Port & Harbor Staff, The Port and Harbor Advisory Commission and The Finance Department regarding the Development of Draft Financial Policies for the Port and Harbor Enterprise Fund. Lord/Davis.**

**Item Type:** Backup Memorandum  
**Prepared For:** Mayor Castner and Homer City Council  
**CC:** Port & Harbor Staff  
Finance Department  
Port and Harbor Advisory Commission (PHAC)  
**Date:** April 22, 2024  
**From:** Councilmembers Lord and Davis  
**Through:** Melissa Jacobsen, Interim City Manager

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Resolution 23-120 provided direction for developing Fund-specific financial policies, using the Utility Fund as an example. We recognize that this resolution did not have sufficient direction for the Port and Harbor Enterprise Fund, and we are bringing forward another resolution that provides a more robust outline for this effort.

As “Finance Champions”, we will be working with City staff to draft a General Fund Financial Policy. There may be overlap between the three City funds in policy directives, and we will lean on staff to help us ensure we are staying on track.

We look forward to discussion with the Port and Harbor Advisory Commission during our joint worksession, and look forward to their feedback on this policy development.

We anticipate the following general schedule, appreciating that we are entering the busy season:

- Monday, April 15 - Joint worksession with City Council, general discussion on the proposed resolution and direction.
- Monday, April 22 - Council considers the financial policy resolution
- If passed, we anticipate staff will begin pulling together the pieces of a financial policy. The PHAC could include the topic at their April 24<sup>th</sup> meeting to provide additional feedback and thoughts to staff to consider in policy drafting.

- After initial feedback from PHAC, staff will draft Enterprise Fund financial policy and bring that complete draft back to the PHAC for their review and feedback (target date is September). Council champions can be available to help answer questions and liaison back to Council during this process, depending on its complexity.
- Once the PHAC has completed their review, the Port & Harbor Enterprise Fund Financial Policy would then come to City Council for review, discussion, and a vote.

Some resources may be helpful in this process, and we encourage everyone involved to review the City's Utility Fund Financial Policy (included) as well as:

MRSC Financial Policies Overview website and examples

<https://mrsc.org/explore-topics/finance/policies/financial-policies-overview>

GFOA Best Practices: Adopting Financial Policies

<https://www.gfoa.org/materials/adopting-financial-policies>

GFOA Best Practices: Working capital targets for enterprise funds

<https://www.gfoa.org/materials/working-capital-targets-for-enterprise-funds>

**Attachments:**

Resolution 23-120

City of Homer Utility Fund Financial Policy

**CITY OF HOMER  
HOMER, ALASKA**

Lord/Erickson/Mayor

**RESOLUTION 23-120**

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA  
PROVIDING DETAIL AND DIRECTION FOR WORKING WITH STAFF  
TO UPDATE FINANCIAL REPORTING TO THE COUNCIL AND  
DEVELOP A FINANCIAL PLAN FOR THE CITY.

WHEREAS, During the Council's 2021 strategic planning session, the concept of a "financial plan" was put at the top of the list of priorities, highlighting that a solid financial understanding and sideboards are paramount to responsible decision-making; and

WHEREAS, Homer City Code 3.05.12 lays out the requirement for the City to have a Complete financial plan which is defined as the budget: "The budget shall provide a complete financial plan of all City funds and activities for the next two fiscal years." ; and

WHEREAS, The City of Homer is organized as a municipality with a manager acting as the chief administrative officer, (AS 29.20.460); and

WHEREAS, As the chief administrator the manager shall make monthly financial reports and other reports on municipal finances and operations as required by the governing body, (AS 29.20.500); and

WHEREAS, Improving the consistency and timeliness of our monthly reporting is the Council's current priority; and

WHEREAS, The Mayor and Council have identified additional areas that need to be better understood and communicated pertaining to the City's finances to ensure transparency and prudent decision-making by the Council; and

WHEREAS, A "financial plan" for the purposes of these activities will be a report which outlines guidelines and expectations about: the budget document, monthly & quarterly financial reporting, Fund-specific financial policies, Citywide CARMA planning, procurement, and audit expectations; and

WHEREAS, We encourage open and respectful dialogue, questions from the public, and a problem-solving perspective as we work through these topics.

41 NOW, THEREFORE, BE IT RESOLVED that the Homer City Council establishes a financial  
42 plan workgroup with two members of Council, staff, and the Mayor to develop a draft plan for  
43 the Council's review by February 2024 which includes:

- 44 • A defined and agreed upon system, with approved templates, of regular financial  
45 reporting to the Council (i.e. monthly balance sheet for specified funds, budget to  
46 actuals, etc.)
- 47 • Using the Utility Fund as an example, complete financial policies for the General Fund  
48 and Enterprise Fund. We direct the Port and Harbor Commission to begin working with  
49 staff on a Financial Policy for the Enterprise Fund. This should include how we budget  
50 for projects that we don't anticipate during the budgeting process (reserve accounts!),  
51 how different funds are used and minimum/maximum amounts to target within those  
52 funds, how we fund large capital projects, etc.
- 53 • Citywide CARMA planning, in line with what Public Works has done for the Fleet, Roads,  
54 and Utility, exploring the potential of moving back to subaccounts within General  
55 CARMA to better track funding.
- 56 • A review of the audit process, an established goal for audit timeline, and our current  
57 audit contracts with recommendations for when we are off-target of our goals.
- 58 • An update to the City's Procurement Policy.

59  
60 BE IT FURTHER RESOLVED that the City will do a full review of Homer City Code Title 3  
61 in 2024 following Council review, feedback, and approval of the financial plan outlined above.


62  
63 PASSED AND ADOPTED by the Homer City Council this 23<sup>rd</sup> day of October, 2023.

64  
65 CITY OF HOMER

66 

67  
68 KEN CASTNER, MAYOR

69 ATTEST:

70 

71  
72 MELISSA JACOBSEN, MMC, CITY CLERK

73  
74 Fiscal note: N/A



1                                   **City of Homer Water and Sewer**  
2                                   **Water and Sewer Utility**  
3                                   **Financial/Rate Setting Policies**  
4                                   **Resolution 23-048(S)(A)**

5  
6  
7   **Introduction**

8   Financial policies are an important tool for maintaining a financially healthy and sustainable  
9   utilities while also maintaining required and/or mandated measures. The Government Finance  
10   Officers Association (GFOA), bond rating agencies, and other industry organizations (e.g., the  
11   American Water Works Association (AWWA), the Water Environment Federation (WEF))  
12   recommend written financial/rate setting policies to provide clear policy direction and guidance.

13  
14   The establishment of written financial policies is intended to:

- 15       • Institutionalize sound financial practices  
16       • Clarify strategic intent  
17       • Define boundaries  
18       • Promote long range strategic thinking  
19       • Manage risk  
20       • Adhere to established best practices

21  
22   **Financial Policy Goals and Objectives**

23   The goals of the City's financial policies are to:

- 24       1. Maintain sufficient revenues for operating and capital needs,  
25       2. Maintain sufficient reserves, and,  
26       3. Provide rate stability. Notwithstanding (1) and (2) above, rates will be set to provide  
27       rate/revenue stability and avoid major periodic increases.

28   A detailed set of financial policies have been adopted to establish consistency in utility financial  
29   planning and rate setting decision-making for the City Council and City management team.

30  
31   This framework provides recommendations that take into consideration the typical or median  
32   reserve levels for a "AAA" versus a "AA" rated utility. This framework will also enable the City  
33   Council to make more informed decisions in establishing the financial targets contained within  
34   the financial policies.

## Review and Discussion of the City's Financial/Rate Setting Policies

The Utility Financial Plan will take into consideration the following financial policies. The financial planning period will be for a minimum of five years to determine overall trends and impacts to reserves and rates over a long-term horizon. The Utility Financial Plan is an integral component of the City's approach to effectively managing the utilities at a sustainable level to support the service levels of the community.

### 1. Reserve Funds

Reserve funds shall be established for the City to properly account for the City's funds, but to also provide adequate reserve levels to address the different types of funding requirements of the City. The City's reserve policies shall be as follows:

**1.1 Operating Reserve** – The City's operating reserve is an unrestricted reserve. The minimum operating reserve shall be established at 90 Days of annual O&M expenses (approximately 25% of annual O&M for both the Water and Sewer Funds) as outlined in Exhibits 4 and 6 in the Utility Financial Planning models for water and sewer.

**1.2 Capital Reserve** – The City currently has two different capital reserves for the water and sewer utilities. The first is the Homer Accelerated Water and Sewer Program (HAWSP). HAWSP is funded through a portion of the voter approved sales tax and assessments levied on benefited properties. The second is the Capital Asset Repair and Maintenance Allowance (CARMA) Fund. CARMA is funded annually through a rate surcharge equal to 15% of water and sewer costs and collected through the water and sewer rates.

In general, HAWSP is intended to provide seed money to support expanded access to the City water and sewer system while CARMA is intended to support improvements, repairs, and replacements of the City's existing infrastructure, and may also be used for Capital Contingencies or Infrastructure Replacement. CARMA and HAWSP funds may be used jointly to fund a project where applicable. The development of the projection of CARMA and HAWSP funds is provided in Exhibits 8 and 9 respectively of the Utility Financial Plan.

**1.2.1 Homer Accelerated Water and Sewer Program (HAWSP)** – HAWSP will not be incorporated into this financial policy, as HAWSP has its own dedicated policy manual.

**1.2.2 Capital Asset Repair and Maintenance Allowance (CARMA) Fund** – The CARMA reserve was established to fund improvements, repairs, and replacements to the City's existing water and sewer systems. The level of CARMA funding can be adjusted by the City Council. "The amount of the CARMA funds shall be established by City Council in the biennial budget based on the projected maintenance and repair needs of the City." (Ordinance 19-35(S)(A)). CARMA is funded annually through a rate surcharge equal to 15% of budgeted water and sewer costs and collected through the water and sewer rates. Balance minimums and maximums are as follows: Water CARMA - minimum of \$500,000 and a maximum of \$1,500,000; Sewer CARMA - minimum of \$500,000 and a

maximum of \$1,500,000. Additionally, the CARMA accounts may be supplemented by transfers from the Utility Operations Fund Balance (with Council appropriation).

The intent of the City of Homer Water and Sewer CARMA Fund is “for appropriation and expenditure for equipment replacement, fleet replacement, engineering or planning services, major maintenance of city facilities, or any other purpose as identified and recommended by the City Manager and authorized by the City Council...and to extend the life and use of taxpayer funded assets, facilities and infrastructure.” (See Ordinance 19-35(S)(A)). The Water and Sewer Utilities - which operate independently - use CARMA Funds for improvements, repairs, and replacements to the City’s existing water and sewer systems. CARMA Funds may additionally be used for capital contingencies or infrastructure replacement and can be used in conjunction with HAWSP to jointly fund a project.

## 2. Balanced Operating Budget

**2.1 Self-Supporting** – The water and sewer utility shall be self-supporting, where current revenue fully funds current operating expenditures on an annual basis.

**2.2 Adequate Funding to Preserve System Assets** – The City’s assets shall be properly operated and maintained to provide for a long life. Annual operating expenditures will be budgeted and funded at a level that promotes the efficient operation of and preservation of assets through the asset’s useful life.

**2.3 Evaluation and Monitoring of Cost** – Costs will be monitored monthly to ensure the utility is operated in a cost effective and economically prudent manner and reported to the City Council on a quarterly basis.

**2.4 Positive Annual Net Income** – The City shall plan for annual net income (total revenue less O&M, taxes or transfers, debt service, and capital projects funded from rates) greater than or equal to zero (positive balance of funds).

**2.5 Strive for Rate Stability** – The City’s rates should be stable over time while generating sufficient revenue. As a part of the annual budgeting process, the City shall review the rates to confirm the adequacy of the current rates.

**2.6 Disposition of “One-Time” Revenue** – In instances of large one-time revenues (e.g., legal settlement), if not specifically earmarked, the funds will be transferred to an appropriate reserve(s) (operating, capital, or rate stabilization).

**2.7 Alternative Funding/Revenue Diversification** – To minimize overall rates, the City should explore alternative revenue sources such as grants and direct developer contributions.

**2.8 Fund Balance** – the Fund Balance is an accumulation of fiscal year net activity (revenues over expenditures). The Utility Operating Fund Balance is used when purchasing inventory items. These items will be expensed (pulled out of inventory) when utilized. It may also be used to replenish the CARMA accounts or “buy down” rates.

## 3. Establishing Rates and Fees

The City shall establish rates utilizing industry recognized “generally accepted” rate setting methodologies. This will provide the City with consistency in their ratemaking process, while also

establishing rates which are legally defensible. The City's policies on establishing the water and sewer rates and fees, and the general methodologies to be utilized, are as follows:

### 3.1 Revenue Requirement Analysis

The revenue requirement analysis provides a projection of the City's revenues and expenditures for a defined time period. The revenue requirement analysis shall provide the City Council with the information and cost-basis to determine the size and timing of any proposed rate adjustments. The City's revenue requirement analysis methodology shall consider the following:

- 3.1.1 The revenue requirement (financial plan) analysis will be developed from the current year's budget, as part of the budget process.
- 3.1.2 Revenue requirements will be established using the "cash basis" methodology. The "cash basis" methodology includes O&M expenses, and taxes/transfer payments. The revenue requirements may include a component for change in working capital/rate stabilization funds to manage reserve balances and mitigate rate impacts.
- 3.1.3 Costs shared across utilities shall be allocated to each utility based an equitable allocation method. These may include, but not be limited to, labor ratios, number of customers, revenues, usage etc. The allocation method should be whichever method most equitably allocates the specific cost.
- 3.1.4 Any wholesale increases imposed upon the City by a water supplier or wastewater treatment agency will be reviewed for financial/rate impacts.
- 3.1.5 The City's revenue requirement analysis shall fully incorporate the City's reserve and budgeting policies.
- 3.1.6 The City's goal is to project revenue requirements for a minimum of five years into the future.

### 3.2 Cost of Service Analysis

A cost of service analysis provides an equitable method to allocate the City's water and sewer revenue requirements to the customers utilizing the service. The City's cost of service analysis for the water utility shall use generally accepted cost of service methodologies as defined by the American Water Works Association (AWWA) and the analysis developed for the City's sewer utility shall use cost of service methodologies as defined by the Water Environment Federation (WEF). The City's water and sewer cost of service shall be developed to provide an equitable allocation of costs by taking into consideration a customer group's (e.g. residential, commercial) facility requirements and usage characteristics. The City's specific cost of service policies are as follows:

- 3.2.1 The cost of service shall be developed for a projected one-year time period or the period over which rates will be set, utilizing the revenue requirements as developed in 4.1.
- 3.2.2 The cost of service analysis shall be designed and developed to consider the unique and specific circumstances of the City's water and sewer system.
- 3.2.3 The City shall allocate costs to customer class of service based upon facility requirements and usage characteristics.
- 3.2.4 When necessary, the City may phase-in the cost of service results to transition

to fully-cost based rates.

### 3.3 Rate Design Analysis

The development of cost-based rate designs concludes the City's rate setting process. The development of rate designs utilizes the results from the revenue requirement and cost of service analysis to establish the target level of revenues for each customer class of service (rate schedule). The City's rate design analysis is primarily focused on the structure of the rates. The City's rate design analysis policies are as follows:

3.3.1 The City shall utilize the results of the revenue requirement analysis and cost of service analysis in the development of final proposed rate designs.

3.3.2 Rates shall be designed to collect the overall target level of revenues for each customer class of service.

3.3.3 The City's rate designs shall be reflective of the City Council's rate design goals and objectives, while also being reflective of the greater public purpose (e.g., economic development, conservation, etc.).

3.3.4 The City shall take into consideration both fixed and variable costs in the development of final proposed rates. The average unit costs calculated within the cost of service analysis provides the cost-information related to fixed and variable costs.

3.3.4 Bill comparisons shall be developed for all proposed rate designs to illustrate the general impacts to customers across a range of consumption.

3.3.5 In establishing the final water and sewer rates, the City's Council may take into consideration neighboring utility rates, but not to the financial detriment of the City.

### 3.4 Other Rate Setting Considerations

Provided below are other policies related to the City's rate setting process.

3.4.1 At a minimum, the City shall conduct a comprehensive rate study every five (5) years to update assumptions and determine financial sustainability.

# May 2024 Operations Report

Halibut season is ongoing and boats are delivering. Currently Copper River, Pac Star (E & E foods) and Fish Factory are taking deliveries. Ice Sales have slowed a bit.

In the news....

## Harbor Operations

- Landings at the Pioneer Dock and Deep Water Dock include: Aspen, Ann T. Cheramie, Kate Francis, Perseverance, Endeavour, Seven Seas Explorer, Seaborn Odyssey, and the ATB Aurora/Qamun.
- Shorebird Festival brought in slough of visitors, and Spit businesses have started opening their doors.
- The Marine Repair Facility has the Camai, Kona Kai, and Cape Caution.
- The fishing fleet started to return to the harbor in earnest. Officers have been working diligently on hotberthing to alleviate congestion in the transient areas, and solving stall conflicts.
- The first Harbor Assistants have been hired for the summer. Welcome aboard Brendon Tiffany, August Schneider, and April Bugg!
- Two additional Parking Enforcement Aides were hired. Welcome aboard Micah Mershon and Ethan Anderson!
- Parking lot delineation and striping have been laid down in the lot between ramps 3 and 5, and newly developed "Whale" on Outer Dock Rd.
- Staff assisted USACE biologists with a bottom survey in the area of the proposed Harbor expansion.
- Staff assisted a Coastal Navigation at the local college class by demonstrating operations at the Launch Ramp.

## Ice Plant

- Ice plant running strong, Ice sales have slowed.
- Ice plant personnel scraped and primed the east side shelter deck
- Crane #8 inoperable.. waiting for parts.
- Ongoing crane inspections and service happening this month.

- Ongoing fish dock Maintenance

### **Port Maintenance**

- Ongoing Float maintenance
- Ongoing Dock and Float inspections.
- Ongoing electric pedestal Maintenance
- Keeping up with recurring monthly work orders.
- Ongoing used oil collections.
- Eco Barge back in service
- System 1,2 and 5 Water on line
- System 4 water still off in repair mode
- Deep Water dock ladder maintenance

# Port & Harbor Monthly Statistical & Performance Report

For the Month of: **April 2024**

## Moorage Sales

	<u>2024</u>	<u>2023</u>
Daily Transient	172	132
Monthly Transient	115	101
Semi-Annual Transient	10	19
Annual Transient	7	9
Annual Reserved	14	1

## Grid Usage

1 Unit = 1 Grid Tide Use	<u>2024</u>	<u>2023</u>
Wood Grid	3	4
Steel Grid	0	0

## Services & Incidents

	<u>2024</u>	<u>2023</u>
Vessels Towed	0	1
Vessels Moved	25	10
Vessels Pumped	2	4
Vessels Sunk	0	0
Vessel Accidents	4	0
Vessel Impounds	1	0
Equipment Impounds	0	0
Vehicle Impounds	0	0
Property Damage	0	0
Pollution Incident	1	1
Fires Reported/Assists	0	0
EMT Assists	0	1
Police Assists	2	0
Public Assists	8	15
Thefts Reported	0	1

## Parking Passes

	<u>2024</u>	<u>2023</u>
Long-term Pass	22	15
Monthly Long-term Pass	2	0
Seasonal Pass	2	10

## Crane Hours

<u>2024</u>	<u>2023</u>
134.9	154.6

## Stall Wait List

No. on list at Month's End	<u>2024</u>	<u>2023</u>
20' Stall	1	10
24' Stall	36	53
32' Stall	177	187
32'A Stall	15	14
40' Stall	72	71
50' Stall	35	34
60' Stall	4	5
75' Stall	6	6
Total:	346	380

## Docking & Beach/Barge Use

1 Unit = 1 or 1/2 Day Use	<u>2024</u>	<u>2023</u>
Deep Water Dock	20	22
Pioneer Dock	7	14
Beach Landings	5	1
Barge Ramp	129	100

## Marine Repair Facility

	<u>2024</u>	<u>2023</u>
Vessels Hauled-Out	2	0
Year to Date Total	3	3
Vessels using facility uplands	3	6

## Wharfage (in short tons)

In Tons, Converted from Lb./Gal.	<u>2024</u>	<u>2023</u>
Seafood	572	618
Cargo/Other	600	114
Fuel	*	31,652

\* not available at time of report

## Ice Sales

	<u>2024</u>	<u>2023</u>
For the Month of April	259	125
Year to Date Total	403	262

## Difference between

<u>2023 YTD and 2024 YTD:</u>	<u>141 tons more</u>
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# City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Office of the City Manager

491 East Pioneer Avenue  
Homer, Alaska 99603

[citymanager@cityofhomer-ak.gov](mailto:citymanager@cityofhomer-ak.gov)

(p) 907-235-8121 x2222

(f) 907-235-3148

### Memorandum

TO: Mayor Castner and Homer City Council  
FROM: Melissa Jacobsen, Interim City Manager  
DATE: May 9, 2024  
SUBJECT: City Manager's Report for May 13, 2024 Council Meeting

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#### City Receives GFOA Budget Award

The Government Finance Officers Association (GFOA) has announced that the City of Homer has received GFOA's Distinguished Budget Presentation Award. The award represents a significant achievement by reflecting the City's commitment of the Governing Body and Staff to meeting the highest principles of governmental budgeting. To receive this award the City has satisfied nationally recognized guidelines for effective budget presentation. A budget document must be rated as proficient in four categories and in the fourteen mandatory criteria within those categories to receive the award. The four categories are designed to assess how the City's budget serves as a policy document, a financial plan, an operations guide, and a communications device. Congratulations to the City of Homer and their hard working Finance Team for this accomplishment.

#### Natural Gas to the HERC

When natural gas came to the City in 2015 the Homer Education and Recreation Complex (HERC) wasn't connected because its fate was unclear. Past Council's had taken actions to cease use of the building and later the location was being considered for the new Police Station. It has become apparent that the building lives on as it continues to serve the community for recreation purposes. Public Works has looked into the cost of upgrading the boiler at the HERC from oil to natural gas and has received an estimate of \$14,000 to make that conversion, in addition to the cost to connect with Enstar. It's estimated it will take 2 to 3 years to break even on costs and recognize a savings from the change.

#### FEMA BRIC Update

Council approved application for a FEMA Building Resilient Infrastructure and Communities (BRIC) Grant with Resolution 22-086. The purpose of the grant is for assistance in developing the plan and framework for creating a Building Division for the City. Funds will also be used to hire a Building Inspector to begin implementation of newly adopted International Building Code (IBC) 2021 for commercial and residential building projects. City Planner Foster has provided status update on this grant in a memorandum that's attached to this report.

#### EPA Award

It was reported out in March that the City of Homer was selected to win an award from the EPA's Drinking Water SRF AQUARIUS program. The AQUARIUS program recognizes exceptional projects funded by the Drinking Water State Revolving Loan Fund (DWSRF) in six different categories which include excellence in: innovative financing, system partnerships, community engagement, environmental and public health protection, creative solutions, and climate change mitigation and adaptation. The City received the excellence in climate change mitigation and adaptation award for our seawall Armor Rock project and was recognized at the Council of Infrastructure Financing Authorities (CIFA) Summit in Washington, DC on April 3, 2024. I was notified that the City had another opportunity to receive the award in person at the Alaska Water Wastewater Management Association (AWWMA) annual conference award luncheon in

Anchorage on May 8<sup>th</sup>. Water/Wastewater Superintendent Todd Cook attended the AWWMA's conference and received the award on behalf of the City.



### **Beluga Slough**

The City is still awaiting permits that will allow the work needed to open the mouth at the Beluga Slough and release the water that has collected there. This type of flooding is a natural event that occurs every two to three years after storm events create a storm berm that closes off the mouth. Historically the permitting has been handled by property owners who are impacted. As a result of this current event and conversations with affected property owners, the City has taken on acquiring the permitting that will allow us to coordinate with contractors who are equipped to do the necessary clearing. Going forward, we will do this work on the same schedule as the Mariner Slough as they are impacted by the same storm events.

The necessary permits and status are as follows:

- We have received permission from US Fish and Wildlife Preserve (letter granting support and access to their property provided it did not occur during the Shorebird Festival).
- We have a permit application into the US Army Corps Permit for dredging to occur under Dr. Bell's previously existing permit to conduct the dredging. (This is the longest approval timeline... maybe June or July from last correspondence).
- We have a permit application in for Alaska Fish and Game for Anadromous (salmon) Waters Permit (expected late May or June), and
- We have a permit application in for Alaska Fish and Game for Kachemak Bay Critical Habitat Area Permit (expected late May or June).

### **Attachments:**

- May Employee Anniversaries
- GFOA Press Release and Distinguished Budget Presentation Award
- Memorandum from City Planner Foster re: FEMA BRIC Grant update and attachments
- Homer's Energy Future Community Conversation Flyer



# City of Homer

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## Office of the City Manager

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(f) 907-235-3148

## Memorandum

TO: MAYOR CASTNER AND CITY COUNCIL  
FROM: Andrea Browning  
DATE: May 13, 2024  
SUBJECT: May Employee Anniversaries

---

I would like to take the time to thank the following employees for the dedication, commitment and service they have provided the City and taxpayers of Homer over the years.

<b>Pike Ainsworth</b>	<b>Port</b>	<b>16</b>	<b>Years</b>
<b>Mike Gilbert</b>	<b>Public Works</b>	<b>10</b>	<b>Years</b>
<b>Sean McGrorty</b>	<b>Port</b>	<b>8</b>	<b>Years</b>
<b>Ralph Skorski</b>	<b>Public Works</b>	<b>6</b>	<b>Years</b>
<b>Taylor Crowder</b>	<b>Police</b>	<b>3</b>	<b>Years</b>
<b>Susan Jeffres</b>	<b>Library</b>	<b>3</b>	<b>Years</b>
<b>Sean Love</b>	<b>Public Works</b>	<b>3</b>	<b>Years</b>
<b>Brenden Fuson</b>	<b>Port</b>	<b>1</b>	<b>Year</b>



GOVERNMENT FINANCE OFFICERS ASSOCIATION  
**NEWS RELEASE**

**FOR IMMEDIATE RELEASE**

4/26/2024

**For more information, contact:**  
**Technical Services Center**  
**Phone: (312) 977-9700**  
**Email: [budgetaward@gfoa.org](mailto:budgetaward@gfoa.org)**

(Chicago, Illinois)—Government Finance Officers Association is pleased to announce that **City of Homer, Alaska** received GFOA's Distinguished Budget Presentation Award for its budget.

The award represents a significant achievement by the entity. It reflects the commitment of the governing body and staff to meeting the highest principles of governmental budgeting. In order to receive the budget award, the entity had to satisfy nationally recognized guidelines for effective budget presentation. These guidelines are designed to assess how well an entity's budget serves as:

- a policy document
- a financial plan
- an operations guide
- a communications device

Budget documents must be rated "proficient" in all four categories, and in the fourteen mandatory criteria within those categories, to receive the award.

There are over 1,700 participants in the Budget Awards Program. The most recent Budget Award recipients, along with their corresponding budget documents, are posted quarterly on GFOA's website. Award recipients have pioneered efforts to improve the quality of budgeting and provide an excellent example for other governments throughout North America.

*Government Finance Officers Association (GFOA) advances excellence in government finance by providing best practices, professional development, resources, and practical research for more than 22,500 members and the communities they serve.*



GOVERNMENT FINANCE OFFICERS ASSOCIATION

*Distinguished  
Budget Presentation  
Award*

PRESENTED TO

**City of Homer  
Alaska**

For the Biennium Beginning

**July 01, 2023**

*Christopher P. Morrell*

**Executive Director**



# MEMORANDUM

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## FEMA BRIC Grant Application Status

**Item Type:** Memorandum  
**Prepared For:** Mayor Castner and Homer City Council  
**Date:** May 7, 2024  
**From:** Ryan Foster, AICP, City Planner  
**Through:** Melissa Jacobsen, Acting City Manager

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The purpose of this memorandum is to provide an update on the status of the City's Federal Emergency Management Agency (FEMA) Building Resilient Infrastructure and Communities Grant application. FEMA has identified the City of Homer's sub-application (SA) for further review and has received requests for information (RFIs) from FEMA Region 10. This will require the City of Homer to provide additional information for FEMA reviewers to determine if it is eligible for the funds to be awarded. Responses to the RFI questions are due to FEMA by May 19, 2024.

### FEMA BRIC Grant Application Background:

On November 28, 2022, per Resolution 22-086, the City Council authorized the City to apply for the FEMA BRIC grant to adopt and implement the latest International Building Code 2021 Edition. Building Safety and Code Enforcement was identified as a Council priority during the 2022 Visioning work session held in March at the Pratt Museum, with the goals of ensuring buildings in Homer are safe, that the City has a system for enforcing regulations, and allowing for a denser pattern of development in the future. Currently, Homer does not have an adopted building code and only commercial structures are reviewed by the State Fire Marshal for any kind of building code compliance. This is not a safe nor sustainable solution in the long term. We also have significant challenges with code enforcement without a Building Official or dedicated code enforcement staff member.

The FEMA BRIC grant program application by the City requested up to \$500,000 to provide funding and resources for adopting the International Building Code (IBC) 2021 Edition and implement the building code by creating a City of Homer Building Division staffed by a Building Official and Building Inspector. In hiring a consultant firm to adopt IBC 2021 and establishing a City of Homer Building Division to implement building codes, staff recommends a three-year process:

- Year 1 – Hire a consultant firm to adopt IBC 2021 Edition and create the plan/framework for creating a City of Homer Building Division

- Year 2 – Hire a Building Official to begin implementation of the newly adopted IBC 2021 Code for commercial building projects
- Year 3 – Hire a Building Inspector to complete the staffing of the Building Division and implement the IBC 2021 Code for residential building projects

What the BRIC program is: The BRIC program is designed to promote a national culture of preparedness and public safety through encouraging investments to protect the nation's communities and infrastructure and through strengthening national mitigation capabilities to foster resilience. The BRIC program seeks to fund effective and innovative projects that will reduce risk and increase resilience and serve as a catalyst to encourage the whole community to invest in and adopt policies related to mitigation. A 25% match is required by the City of Homer if awarded and the cost share may consist of cash, donated or third-party in-kind services, materials, or any combination thereof. Staff time and materials for the 25% match, up to \$125,000, would be spread over three years.

What Homer gets for a project:

1. Delivery of an adopted IBC 2021 Edition Building Code
2. Public and key stakeholder outreach to better inform, guide, and educate on IBC 2021 Codes
3. Presentation of the IBC 2021 Edition to the Planning and Zoning Commission, Economic Development Commission, and City Council public hearings for recommendation and approval
4. Detailed plan/framework for the creation of a City of Homer Building Division and its processes for enforcement
5. A Building Official for the first two years of implementation
6. A Building Inspector for the second year of implementation

What Homer receives when complete: A building code and Building Division that guides the future development of the City with a focus on public safety by ensuring buildings in Homer are safe and that the City has a system for enforcing regulations.

Attachment

Resolution 22-086

**CITY OF HOMER  
HOMER, ALASKA**

City Manager

**RESOLUTION 22-086**

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA,  
AUTHORIZING THE CITY TO APPLY FOR A FEMA BUILDING  
RESILIENT INFRASTRUCTURE & COMMUNITIES GRANT TO ADOPT  
AND IMPLEMENT INTERNATIONAL BUILDING CODE 2021 EDITION

WHEREAS, Building Safety and Code Enforcement was identified as a Council priority during the 2022 Visioning work session held in March at the Pratt Museum; and

WHEREAS, Homer does not have an adopted building code, and only commercial structures are reviewed by the State Fire Marshal for any kind of code compliance; and

WHEREAS, The Federal Emergency Management Agency (FEMA) administers the Building Resilient Infrastructure & Communities (BRIC) grant program to support states, local communities, tribes and territories as they undertake hazard mitigation projects, reducing the risks they face from disasters and natural hazards; and

WHEREAS, FEMA provides up to 75% matching funds for building resilient infrastructure and communities projects for up to three years; and

WHEREAS, The City of Homer is a qualified applicant for FEMA BRIC grant assistance for adopting and implementing building codes; and

WHEREAS, The City proposes to apply for up to \$500,000 in FEMA BRIC grant funds to adopt and implement International Building Code 2021 Edition over a total of three years; and

WHEREAS, The City proposes to match grant funds for up to \$125,000 of City staff time and materials to meet the grant match requirements of 25% over a total of three years; and

WHEREAS, The City of Homer intends to use these funds to hire a consultant firm to adopt the IBC 2021 Edition and develop the plan/framework for creating a City of Homer Building Division; and

WHEREAS, The City of Homer intends to use these funds to hire a Building Official to begin implementation of the newly adopted IBC 2021 Code for commercial building projects; and

WHEREAS, The City of Homer intends to use these funds to hire a Building Inspector to begin implementation of the newly adopted IBC 2021 Code for residential building projects; and

WHEREAS, After three years the City of Homer will have an established Building Division, with a Building Official and Building Inspector, enforcing IBC 2021 Edition building codes for both commercial and residential projects; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska, supports preparation and submission of a FEMA BRIC grant application for up to \$500,000 and authorizes the City Manager to submit the appropriate documents.

BE IT FURTHER RESOLVED that the City Council expresses its commitment to match grant funds with up to \$125,000 of City staff time and materials to meet the grant match requirements of 25%.

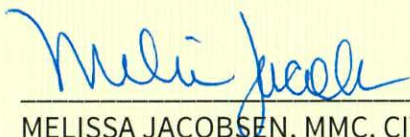
PASSED AND ADOPTED by the Homer City Council this 28<sup>th</sup> day of November, 2022.

CITY OF HOMER



KEN CASTNER, MAYOR

ATTEST:



MELISSA JACOBSEN, MMC, CITY CLERK

Fiscal Note: N/A



# CITY OF HOMER

## Comprehensive Plan Rewrite

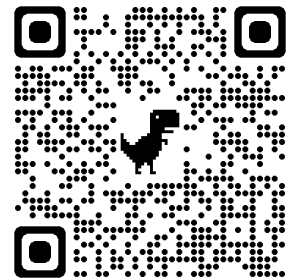


## 2024 Community Survey

Please visit [www.surveymonkey.com/r/HomerCompPlanRevCommSurvey](https://www.surveymonkey.com/r/HomerCompPlanRevCommSurvey) or scan the QR code below to participate in the 2024 Community Survey!

The information, ideas, and concerns you share will help shape future decisions about land use, transportation, public facilities and services, economic development, housing, and related infrastructure and programs in Homer over the next 20 years.

The survey is open to Homer area residents of all ages. Please share it widely with your Homer family, friends, neighbors, and co-workers. **Survey open until Friday, June 21, 2024.**



### Contact Information

- **City of Homer Planner:** Ryan Foster, [rfoster@ci.homer.ak.us](mailto:rfoster@ci.homer.ak.us), 907-299-8529
- **Project Consultant:** Shelly Wade, [shelly@agnewbeck.com](mailto:shelly@agnewbeck.com), 907-242-5326

### Resources

- **Project** website: [www.homercompplanupdate.com](https://www.homercompplanupdate.com)
- **City of Homer** on Facebook: [www.facebook.com/cityofhomerak](https://www.facebook.com/cityofhomerak)

# Homer's Energy Future: A Community Conversation

Wednesday, May 22 at 5:30

Kachemak Bay Campus

Yummy food provided

Guest Speakers on Building Efficiency, Municipal Renewable Projects,  
and Discussion of Opportunities for Homer

Hosted by Project Drawdown, Guiding Growth Homer, Kachemak Bay  
Conservation Society and Cook Inletkeeper and the City of Homer



# City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Administration

491 East Pioneer Avenue  
Homer, Alaska 99603

(p) 907-235-8121 x2222

(f) 907-235-3148

### NEWS RELEASE:

#### **Representative Peltola Selects Homer Harbor Critical Float Replacement Project for FY25 CPF Consideration**

May 15, 2024. While the number 13 is often considered unlucky, Monday, May 13 brought hopeful news for the City of Homer Critical Float Replacement Project. In a [Press Release from U.S. Representative Mary Sattler Peltola](#), the project was among the fifteen Community Project Funding (CPF) requests she submitted for Fiscal Year 2025.

The City of Homer is very grateful to Representative Mary Sattler Peltola for her support of the Homer Port & Harbor Critical Float Replacement project. By including it among her priority FY25 CPF requests, she has recognized the importance of sustaining the harbor's float systems, which support vital transportation connections and freight deliveries impacting vast expanses of Alaska.

Float systems 1 and 4 are between 37 and 60 years old, well past their engineered life, in critical to serious condition and need replacing. According to Representative Peltola's Disclosure & Federal Nexus Statement, the project "was selected as a priority because it will lead to improved safety and reliability of the movement of supplies through the harbor, and mitigate against inefficiencies if float systems need to be decommissioned." The CPF funding request, if eventually approved, would provide financial assistance to complete engineering design and environmental permitting and review, bringing the project to shovel-ready status.

CPF allows Members of Congress to request that federal funds be set aside for specific projects in their districts. Projects must align with an eligible federal funding account. Selected projects are forwarded to the appropriate Committee on Appropriations for funding consideration. The funding process follows the procedures for Appropriations bills that are crafted and considered by the respective House and Senate Appropriations Committees (late spring through summer), after which the House and Senate convene a conference committee to work out the differences of each of those bills. The bills must then be signed into law by the president.

The City has also submitted a FY24 Federal Port Infrastructure Development Program grant to the Maritime Administration for additional project support and looks forward to working with Representative Peltola and her staff as these funding requests make their way through review. We thank the Representative for championing this important project!



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### NEWS RELEASE:

#### **Homer Harbor Expansion General Investigation receives federal continuation funding in the U.S. Army Corps of Engineers FY 2024 Work Plan**

**May 16, 2024.** On March 9, 2024, President Biden signed into law the Consolidated Appropriations Act, 2024, Public Law 118-42, providing the US Army Corps of Engineers (USACE) Civil Works Program with \$8.681 billion in appropriations.

On May 13, 2024 the USACE released its Fiscal Year 2024 (FY24) Work Plan, detailing how those funds will be utilized. According to a May 13 [USACE News Release](#), the FY24 Work Plan allocates funding for “284 projects and studies across 50 states, four territories, and for multiple Tribes.”

We are pleased to report that the Homer Harbor Navigational Improvement General Investigation ranks among them, receiving \$800,000 to support the second year of study activities. [The FY24 USACE Work Plan can be accessed here](#). This funding, combined with the study's inclusion in the proposed FY25 Presidential budget, positions the federal share of the General Investigation study on a reliable path forward.

While the FY24 Work Plan funds are not immediately available to the USACE Alaska District, once received, the full USACE Project Development Team will reconvene to work on the study. In the interim, study activities over the summer will proceed at a reduced, but meaningful pace as planned. With remaining FY23 funds, the USACE is conducting environmental fieldwork, and the City will be conducting geophysical investigations as work-in-kind.

The City of Homer greatly appreciates the multi-level partnership support for the study and securing the FY24 Work Plan funds. We acknowledge Senator Lisa Murkowski for helping to secure funds to initiate the General Investigation, all members of Alaska’s Congressional Delegation, regional stakeholders and Homer’s citizens for their meaningful engagement with the study, our State legislators and leadership for support for State matching funds, as well as USACE leadership and the Alaska-District Project Development Team. We are working together towards sustainable solutions to meet the escalating demands of maritime transportation across the region. We look forward to the next steps in this essential study.

For more information about the Homer Harbor Navigational Improvements General Investigation and get involved go to <https://homerharborexansion.com/>.

#### **Contact:**

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[bhawkins@ci.homer.ak.us](mailto:bhawkins@ci.homer.ak.us)