Port & Harbor Advisory Commission

Oil Response Training

April 25, 2018
Wednesday
5:00 P.M.

City Hall Cowles Council Chambers
491 E. Pioneer Avenue
Homer, Alaska 99603

PORT & HARBOR ADVISORY COMMISSION
491 E. PIONEER AVE.
HOMER, ALASKA

APRIL 25, 2018
WEDNESDAY, 5:00 P.M.
CITY HALL COWLES COUNCIL CHAMBERS

NOTICE OF MEETING
REGULAR MEETING AGENDA

1. CALL TO ORDER
2. APPROVAL OF THE AGENDA
3. PUBLIC COMMENT REGARDING ITEMS ON THE AGENDA *(Time Limit of 3 minutes for Items on the Agenda not scheduled for Public Hearing)*
4. RECONSIDERATION
5. APPROVAL OF MINUTES
   A. March 28, 2018 Regular Meeting Minutes — Page 5

6. VISITORS/PRESENTATIONS
7. STAFF & COUNCIL REPORT/COMMITTEE REPORTS/ BOROUGH REPORTS
   A. Port and Harbor Director's Report for April 2018 — Page 13

8. PUBLIC HEARING
9. PENDING BUSINESS
   A. Memorandum from City Clerk dated March 28, 2018 - Ordinance 18-16, Repealing Homer City Code Chapter 18.08 and the Homer Property Management Policies and Procedures Manual and Reenacting Chapter 18.08 Codifying Certain Lease Policy and Procedures — Page 17
      1. Memorandum from Harbormaster Hawkins dated March 21, 2018 — Page 35
      2. Memorandum 18-035 from City Attorney dated March 23, 2018 re Ordinance 18-16 — Page 37
      3. Redline Comparison of Current Homer City Code 18.08 — Page 47
      4. Current Ground Lease and Security Agreement Template — Page 66
      5. Current Property Management Policy and Procedures — Page 92

10. NEW BUSINESS
   A. Resolution 18-041, A Resolution of the Homer City Council Amending the Fee Schedule under Port and Harbor Department and Port of Homer Terminal Tariff No. 1 to add a Parking Fee for Vehicles and Trailers Utilizing the Small Boat Harbor Public Launch Ramp. — **Page** 119

11. INFORMATIONAL ITEMS

A. Memorandum 16-01 from Economic Development Advisory Commission re: Support for Business Development — Page 1**21**
B. Port & Harbor Monthly Statistical Report for March 2018 — Page 12**3**
C. Water/Sewer Bills Report for March 2018 — Page 12**4**
D. Crane and Ice Report — Page 12**5**
E. Deep Water Dock Report — Page 12**6**
F. Pioneer Dock Report — Page 12**7**
G. Dock Water Report — Page 12**8**
J. Commissioner Attendance at City Council Meetings 2018 — Page 12**9**

12. COMMENTS OF THE AUDIENCE
13. COMMENTS OF THE CITY STAFF
14. COMMENTS OF THE COUNCILMEMBER *(If one is assigned/present)*
15. COMMENTS OF THE CHAIR
16. COMMENTS OF THE COMMISSION

Session 18-03, a Regular Meeting of the Port and Harbor Advisory Commission was called to order by Chair Ulmer at 5:00 p.m. on March 28, 2018 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONER ULMER, ZIMMERMAN, CARROLL, DONICH, ZEISET, STOCKBURGER, HARTLEY

ABSENT: PORT DIRECTOR/ HARBORMASTER HAWKINS (EXCUSED)

STAFF: DEPUTY HARBORMASTER CLARKE
DEPUTY CITY CLERK SMITH
CITY MANAGER KOESTER
COUNCILMEMBER SMITH
COUNCIL MEMBER ERICKSON

APPROVAL OF THE AGENDA

STOCKBURGER/DONICH**-** MOVED TO APPROVE THE AGENDA AS WRITTEN

There was no discussion

VOTE. NON OBJECTION. UNANIMOUS CONSENT

Motion carried.

RECONSIDERATION

APPROVAL OF MINUTES

A. February 28, 2018 Regular Meeting Minutes

STOCKBURGER/DONICH- MOVED TO APPROVE THE MEETING MINUTES

There was no discussion

VOTE. NON OBJECTION. UNANIMOUS CONSENT

Motion carried.

VISITORS/PRESENTATIONS (10 minute time limit)

STAFF & COUNCIL REPORT/COMMITTEE REPORTS/ BOROUGH REPORTS

A. Port & Harbor Director’s Report for March 2018

Deputy Harbormaster Clarke reviewed the staff report and commented on the following topics:

- Met with Critical Habitat Plan Review Committee in regards to dredged materials for the East Harbor Expansion Project.

- Met with Matt Hakala of North Pacific Fisheries Association and discussed SB92- Derelict vessels.
- Met with Puffin Electric in regards to the English Bay Native Corporation dredging project in the barge basin
- Met with Paul Seaton and discussed HB386- Derelict vessels
- Met with AKDOT on the statewide transportation improvement program
- Continued to work with Annette Kord on a new software system for the Harbor Office
- Winter King Salmon Tournament was March 24th. There were 380 boats registered for the tournament and it was a success.
- On the 25th and 26th of March there was a major weather event that had 55 to 60 knot winds with gusts measured at 80 knots, which is a little over 90mph. There was no significant damage to the boats or harbor but a public service announcement was made via radio.
- Ice manufacturing is up and running and they have already sold 37 tons of ice.

The commission briefly discussed Overslope Development.

PUBLIC HEARING

PENDING BUSINESS

NEW BUSINESS

A. Ordinance 18-16 Repealing Homer City Code 18.08/Codification of Certain Lease Policies
   1. Memo to Port & Harbor Advisory Commission from City Attorney Wells through the City Manager and Redline Comparison of Existing Code Language and Proposed Language.
   2. Memo to Port & Harbor Advisory Commission from Harbormaster Hawkins
   3. Memo to Port & Harbor Advisory Commission from City Clerk

Commissioner Zeiset declared a conflict of interest, stating that he is a current lease holder on the Homer Spit. Deputy City Clerk Smith explained the conflict of interest procedure with the commission and briefly discussed the remuneration guidelines for conflicts of interest.

STOCKBURGER/DONICH- MOVED TO THAT THERE IS A POTENTIAL CONFLICT OF INTEREST

City Manager Koester went into further detail about financial conflict of interests and stated that the only monetary piece of this ordinance would be the removal of the CPI increase. She stated that she does not know if it would have any significant change to his lease.

Commissioner Zeiset stated that he does not believe his lease will have substantial financial gain or loss by this ordinance, but he just wanted to remain on the side of caution.

The Commission briefly discussed the potential of financial conflict of interest in regards to Commissioner Zeiset's leased property and agreed that there would not be a conflict of interest.

VOTE. NO: DONICH, ZIMMERMAN, ULMER, CARROLL, HARTLEY, STOCKBURGER. YES: UNANIMOUS CONSENT

Motion failed.

City Manager Koester reviewed Memorandum 18-035 from City Attorney Wells and commented on the following changes in the new lease process that is proposed by Ordinance 18-16:

- The purpose of this ordinance is to ensure greater City Council oversight and to involve the Port & Harbor Commission in the lease procedures.
- This ordinance will require a new lease to be approved by City Council via ordinance in the “notice to award” stage and in the “final lease” stage and will codify that the Port & Harbor Commission will review the lease before the final lease stage.
- Codification that leases may be discussed under executive session.
- Disbanding of the Lease Committee, instead City Manager and staff does the paperwork with City Council input and final approval.
- The addition of PHCC 18.08.005 “Purpose”, which will incorporate statements from the Lease Policy Manual.
- Certain definitions will be added in PHCC 18.08.010 and HCC 1808.020 “Lease Committee” will be removed.
- City Council will approve long-term leases for 5 years or more via ordinance and long term leases under 5 years via resolution.
- The Land Allocation Plan will be codified for advertising the properties available for leasing.
- The application process will be outlined in code and some current sections of HCC will be removed due to the City Manager negotiating the terms of the lease.
- The City Manager will have the ability, with Council approval, to rescind a notice to award when an applicant is unable to meet the terms of their proposal.
- A 5 year appraisal, as-built, and survey requirements will be incorporated into code.
- The City will change 10% sublease payment requirement to “no less than 10%” to provide the City flexibility.
- Assignments will be permitted by City Council, with recommendations from the Port & Harbor Commission.
- The Property Management Policy and Procedures Manual, Reconsideration, and Exceptions-Financial Transactions sections will be removed from city code.
- Exceptions for leasing to the Federal or State Government will be codified.
- Early termination requires the City Manager to notify the City Council at least 90 days before terminating the lease.
- The lease appraisal process is still required but generalized to afford the City flexibility in retaining the appraiser.
- The CPI requirement imposed upon the lease holder will be removed.

Commissioner Carroll asked if all of the lease holders would have to go through this process, or if it was just for new leases.

City Manager Koester clarified that it would be for any new leases.

Commissioner Zimmerman asked if default lease information is made public and if so, does the Commission have the option to review and make recommendations to Council.

City Manager Koester replied that if a lease is in default, they will be able to talk about it in executive session. She also explained that it is not written in code that the Commission will make recommendations on default leases, but she suggested that it may be something that the Commission discuss and recommend to Council.

Councilmember Smith stated their idea was to bring something forward that increased City Council involvement so that they can provide an extra layer of protection to the City Employees and so it allows Council to weigh in on leases that impact the City economically. He explained that staff has reviewed and made revisions to the ordinance and now they are looking for recommendations from the Port & Harbor Commission.

The Commission briefly discussed the possibility of selling some of the available land for lease.

Commissioner Zimmerman asked what a lease template is because it is stated all throughout the Memorandum.

City Manager Koester replied that the lease template is a base lease that has the standard terms and requirements for most leases. They amend the lease template based on the discussion during the negotiation period. She asked Deputy City Clerk Smith to make sure that there is a copy of the base lease in the next packet.

Councilmember Erickson stated that the most important part of the ordinance for her is the protection for the City Staff. She also requested that the Commission makes a recommendation specifically on the CPI requirement. She explained that the short term leases will remain the same to keep the flexibility within the City.

Commissioner Stockburger asked at when the City should decide to have a lease manager or develop a lease managing department.

Councilmember Erickson stated that she believes that a lease manager has been in a reoccurring discussion since 2008 or 2009, but nothing has ever materialized.

The Commission briefly discussed the fair market value of Spit properties.

Commissioner Carroll stated that it would be very helpful to have an example of the current and the proposed lease policies for the Commission to look at.

Chair Ulmer asked the Commission to continue to review the documents and come prepared to the next meeting to make recommendations to Council.

Councilmember Erickson and City Manager Koester were excused from the meeting at 6:45pm.

INFORMATIONAL ITEMS

A. Port & Harbor Monthly Statistical Report for February 2018
B. Water/Sewer Bills Report for February 2018
C. Crane and Ice Report
D. Deep Water Dock Report
E. Pioneer Dock Report
F. Dock Water Report
J. Commissioner Attendance at City Council Meetings 2018

The Commission reviewed and discussed the maintenance shut downs on the Crane and Ice Report.

COMMENTS OF THE AUDIENCE

Erik Velsko, city resident and owner of the boat Dangerous Cape, commented that they have been using the temporary haul out facility in Homer and just wanted to make sure that the Commission is aware that the current haul out facility is only a temporary fix. He explained that he had a conversation with Harbormaster Hawkins about the possibility of putting power stations in place of the generators that are constantly running. Harbormaster Hawkins explained to him that the haul out facility will most likely move when they decide to build a more permanent solution. Mr. Velsko stated that if we wait 10, 20, or 30 years, the boats will go elsewhere. The vendors in town are very good, but they don't have the facilities to make the repairs their vessels.

Commissioner Carroll asked if Mr. Velsko could compare his costs this winter with what it cost in Seward or other areas.

Mr. Velsko stated that the vendors in Homer are better than many other cities, but the issue they are facing now is getting the boats out of the water for repair. In his opinion, one of the most beneficial projects that the City could complete is a haul out facility for larger boats.

Commissioner Carroll stated that he has been pushing for this to happen for a long time. The most recent development he has found is with a company called ASCOM, which is putting major travel lift in on the west coast. ASCOM makes a travel lift that can go directly into the water to pick up or drop off boats, which takes the need for a dock out of the equation. He stated that he has been in contact with them to start to learn more about their pricing and different styles of lifts. People are already taking their boats to other places to get repairs done because Homer can't facilitate their needs.

Heath Smith, city resident, commented about the Port & Harbor Commission asking for 10% of the parking fines revenue. He stated that 10% of the parking revenue that the Commission has asked for is approximately 1,100 dollars. He cautioned the Commission about staring an argument over such a small amount of money. The City turned over all of the land leases to the Harbor, so they have do have a give and take relationship. He would like to see the relationship between the Harbor and the City stay friendly and to not take a dangerous turn into being a fight of finances.

Commissioner Stockburger asked how the Harbor can get an influx of capitol to do projects like the haul out facility.

Mr. Smith agreed that a large vessel haul out is something that absolutely has to be done. He suggested that the Commission should look into how the communities around Alaska funded their haul out facilities to see if the City of Homer can do something similar. He appreciates what the Port & Harbor is doing and he agrees that the Port & Harbor is the center of commerce and could help the City expand economically.

Commissioner Stockburger stated that there was a possibility brought up at tonight's meeting about selling land available to lease so that they have some money to look for grants. He suggested that this revenue could go directly towards a haul out facility.

Commissioner Zimmerman stated that he realizes the parking revenue is a very small amount. However, money only goes one way, from the enterprise fund to the general fund. The reason they wanted to bring this up is to set a precedent that money can go back into the enterprise fund and not flow just into the general fund.

Mr. Smith stated that there is a prime example of money going back into the enterprise fund with the land lease revenue.

Chair Ulmer asked Deputy City Clerk Smith add the Land Allocation Plan Map into the next meeting packet.

COMMENTS OF CITY STAFF
Deputy City Clerk Smith commented that the clerk's office is implementing a new procedure where the clerks will be switching between the Commissions/Boards quarterly. Renee will be clerking the Port & Harbor's meetings from April through July.

COMMENTS OF THE COUNCILMEMBER *(If one is assigned)*

COMMENTS OF THE CHAIR
Chair Ulmer stated that she will be in Puerto Rico during the next meeting, so she will be absent.

COMMENTS OF THE COMMISSION
Commissioner Stockburger stated that it would have been nice to have the Memorandums and Code changes prior to the meeting so that they could review them beforehand.

Commissioner Zeiset asked if the Commission could talk about the haul out facility, barge mooring, and travel lifts at next month's meeting to look at some funding options.

Deputy Harbormaster asked for clarification about which project they are talking about.

Commissioner Zeiset explained that he was referencing specifically the travel lift ideas in regards to fitting a need that is being missed.

Commissioner Hartley stated that he thinks the Commission should be careful when talking about selling the leased lands because that is an important flow of income to the Harbor.

Commissioner Zimmerman stated that there were some good points brought up at this meeting about selling leased lands to help pay for a haul out facility. He stated that he is not sure that he is totally in favor, but it would be worth looking into.

Commissioner Donich stated that he thinks there is a fine line of some properties that could be sold and some that should not be sold. He looks forward to looking at all of the options and furthering the discussion.

Commissioner Zimmerman asked if he should let the parking revenue discussion go or to keep pursuing it.

The general consensus of the Commission was to put a hold on the parking revenue discussion.

Commissioner Carroll commented that the lease policy discussion is a lot to wrap his head around and again suggested that they have some sort of example to help explain it better.

Commissioner Donich agreed with Commissioner Carroll.

ADJOURN

There being no further business to come before the Commission the meeting adjourned at 7:22 p.m. The next regular meeting is scheduled for Wednesday, April 25, 2018 at 5:00 p.m. at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

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HAYLEY SMITH, DEPUTY CITY CLERK

Approved:_______________________________________

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APRIL 2018 PORT & HARBOR STAFF REPORT

1. Administration

Staff met with:

- Katie Koester, City Manager and Brad Faulkner- lease
- Katie Koester, City Manager and Council member Smith- to discuss proposed changes to fee structure for trailer parking at load and launch ramp
- Jennifer Karnik, Alaska Clean Harbors program coordination- Homer Harbor as an Alaska Clean Harbor
- Alaska House of Representatives Finance Committee (teleconference)- testimony on derelict vessels bill (x2)
- Marine Exchange of Alaska- annual planned audit
- Northstar Staff- regarding uplands rental space
- Katrina Chambon, DEC- permitting/Large vessel haul out facility

2. Operations

The months of March and April brought about mild weather and the arrival of the recreational fleet. Load and launch ramp fee collection commenced on Sunday, April 1st per the terminal tariff.

The 25th annual Winter King Salmon tournament commenced on Saturday, March 24th with approximately 370 vessels and 1,300 anglers participating. There were no accidents or injuries associated with the event.

Construction of the boathouse pavilion located at ramp 2 is nearing completion. During the week of April 2nd, public works, port maintenance, and harbor operations collaborated in a parking lot improvement project between the Salty Dawg and the boathouse pavilion. Old timber delineation and vegetative boundaries were removed, the gravel surface was graded and compacted, new signage and delineation was installed yielding a new traffic and parking pattern for 70 vehicles.

The SERVS Alyeska commercial fishing vessel training and oil spill response drills were conducted beginning April 9th through April 14. Approximately 60 vessels participated with

300 crew members receiving their 24-hour HAZWOPER training and certification. On-water training commenced on April 13 & 14 simulating oil spill involving fishing vessels and the deployment of recovery and containment equipment.

The winter metered power program concluded on April 15th. During the peak of winter, approximately 60 vessels participated, seeking access to shore power electricity.

The following vessels conducted landings at the pioneer dock and deep water dock: Bob Franco, Pacific Wolf & DBL55, Kennicott, Perseverance, Endeavor & Barge 141, and Endurance.

Other notable events:

- On 3/17, a harbor officer removed a cod pot and its line/buoys that had been accidently deployed in the channel entrance of the harbor.
- On 3/21, operations staff collaborated with port maintenance in repairs to the wood grid.
- On 3/22, an extinguished vessel fire was report aboard a 28’ recreational vessel.
- On 3/23, operations staff assisted the Homer Chamber of Commerce harbor specific information during the winter king salmon tournament vessel/angler registration process.
- On 3/27 & 4/1, harbor officers responded to flooding recreational vessels with emergency dewatering pumps.
- On 4/7, a harbor officer responded to an EMS call involving an in-bound vessel with a 20 year old male suffering from a knife wound (accidental).
- On 4/9, operations and maintenance staff provided tug and skiff assists to several 100’ class commercial vessels while moving/shifting mooring locations.

3. <u>Ice Plant</u>

Summer dock activity is currently underway as tenders gear up and approximately a dozen boats have started fishing for Halibut and Sablefish. We are now open until 6:00 pm during the week and 5:00 pm on the weekends. In addition to the normal process of selling ice and operating the refrigeration system we

- Advertised for a new summer temp, as Chris has found full-time employment. Good luck Chris.
- Turned the water back onto the wood grid and the summertime spigots.
- Began annual crane maintenance.
- Installed latest generation high-efficiency LED kits in our compressor room lights.
- Replaced cracked fuel line on Wiggins forklift.
- Fine-tuned evaporator thermostats

- And finished numerous small repairs and painting projects inside the Ice Plant.

4. Port Maintenance

Highlights from Port Maintenance for the past month:

-Completed refurbishing another Fire Cart and put it into service on system 4.
-Added bird deterrents around the Deep Water Dock
-Assisted Operations move vessels around system 5
-Assisted HVFD move vehicles for extrication training
-Removed snow plows and emptied sander
-Assisted Parks with outhouse deployment
-Trouble shot and fixed electrical issues
-Worked with Operations and PW to improve parking lot between ramps 1 and 2
-Welcomed back Walt Swearingen for another summer!

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Memorandum

TO: CHAIR ULMER AND THE PORT & HARBOR ADVISORY COMMISSION
FROM: MELISSA JACOBSEN, CITY CLERK
DATE: MARCH 28, 2017
SUBJECT: CITY COUNCIL COMMENTS REGARDING ORDINANCE 18-16

At the March 27, 2018 the City Council introduced Ordinance 18-16 amending Homer City Code regarding lease policies and procedures.

While the Commission's input on the entire ordinance is requested, two Councilmembers highlighted areas they would like you to address in your discussion:

Councilmember Lord requested when the Port and Harbor Advisory Commission reviews the ordinance, they address the CPI requirement that is removed in this ordinance as there is a fiscal impact to the city. Her understanding is commercial leases generally have some sort of a CPI provision for working through inflation over time, and that's important as we have 15 and 20 year leases. The appraisals are valuable for fair market value and idea that we don't have any mark for inflation, over the course of a lease someone could potentially get hit with a really large increase if there's no CPI over time. It seems like a substantial thing to pull. She would like more feedback from the Commission regarding this.

Councilmember Venuti requested the Commission look at line 176 – 178 regarding the City Manager approving short term leases. She agrees with the change and would like the Commission's feedback. She also asked for their feedback regarding lines 550-553 regarding financing and extending lease terms. She thinks that has been an issue in the past.

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CITY OF HOMER
HOMER, ALASKA

Smith/Erickson

ORDINANCE 18-16

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA REPEALING HOMER CITY CODE CHAPTER 18.08 AND THE HOMER PROPERTY MANAGEMENT POLICIES AND PROCEDURES MANUAL AND REENACTING CHAPTER 18.08 CODIFYING CERTAIN LEASE POLICY AND PROCEDURES FROM THE POLICIES AND PROCEDURES MANUAL, CLARIFYING THE LAND ALLOCATION PROCESS, EXPANDING LEASE REVIEW TO INCLUDE RECOMMENDATIONS BY APPROPRIATE CITY COMMISSIONS, REMOVING REFERENCES TO THE LEASE COMMITTEE, REMOVING THE REQUIREMENT THAT ALL LEASES MAY BE INCREASED TO REFLECT INFLATION AS DETERMINED IN THE CONSUMER PRICE INDEX, AND EXPANDING COUNCIL'S ROLE BY REQUIRING COUNCIL APPROVAL PRIOR TO FINAL APPROVAL OF A LEASE, TERMINATION OF A LEASE OR TERMINATION OF LEASE NEGOTIATIONS.

WHEREAS, The City of Homer ("City") currently has a complex leasing policy that requires the City and applicants to comply with lengthy policies, procedures, and Homer City Code provisions as well as the terms of the request for proposal specific to a specific parcel; and

WHEREAS, It is in the City's best interest and the interest of lease applicants to streamline and simplify the leasing process by incorporating essential lease policy and procedures currently in the City's Property Management Policy and Procedures into the Homer City Code, the City's lease templates or specific lease agreements; and

WHEREAS, The City Council's approval of the essential terms of new long-term leases and not just the award of such leases increases Council's input and oversight, public input and transparency into the lease process; and

WHEREAS, The City Council's approval of the termination of negotiations or early termination of a lease for default also increases oversight, public input and transparency in the lease process,

NOW THEREFORE, The City of Homer Ordains:

Section 1: Chapter 18.08 "City Property Leases" is repealed and reenacted to read as follows:

Chapter 18.08

CITY PROPERTY LEASES

Sections:

18.08.005 Purpose.

The purpose of this chapter is to ensure that the lease of City-owned property maximizes the value of City assets and that the City awards leases that provide the highest and best use of City-owned property. It is the policy of the City to lease its property in a fair and nondiscriminatory way.

18.08.010 Definitions.

For the purpose of this chapter, the following words and phrases are defined as set forth in this section:

"Applicant" means a person applying to lease or acquire an interest in City-owned real property and includes bidders and proposers.

"Appraisal" means a valuation or estimation of value of property by an Alaska Certified General Real Estate Appraiser or an otherwise qualified appraiser selected by the City Manager.

"Assignment" means a transfer of a leasehold interest or rights to a leasehold interest, in its entirety, in City-owned real property.

"City Manager" means the City of Homer Manager or his or her designee

"Fair market rent" means the rental income that a public or private property would most likely command in the open market, indicated by the current rents paid for comparable space as of the date of the appraisal

"Irregularities" means deviations from the request for proposal that are not substantive in nature and/or involve typographical or scrivener errors that do not impact the integrity or responsiveness of the proposal.

"Long-term lease" means a written agreement granting exclusive possession or use of City-owned real property for more than one year.

"Short-term lease" means a written agreement granting exclusive possession or use of City-owned real property for one year or less.

"Surveyor" means a registered professional land surveyor.

18.08.020 Land Allocation Plan-property available for lease.

a. Unless dedicated or reserved to another purpose, all real property including tide, submerged or shorelands to which the City has a right, title and interest as owner or lessee, or to which the City may become entitled, may be leased as provided in this chapter. In the case of any conflict between this chapter and any regulations or other ordinances or State law specifically governing the leasing of City tide and submerged lands, the latter shall prevail.

b. The City administration shall maintain a list of all City-owned properties authorized for lease by Council. This list shall be adopted annually and contain the information required under this chapter. The list may be called the Land Allocation Plan and will be made available to the public at the City Clerk's office.

c. Council shall adopt a Land Allocation Plan that identifies:

i. City-owned property available for lease;

ii. The property description, lease rate, preferred length of the lease term for each available parcel; and

iii. Any requirements, preferences or restrictions regarding use and/or development.

d. Council may identify property in the Land Allocation Plan that is subject to competitive bidding. Property subject to competitive bidding in the Land Allocation Plan need only identify the property description in the Land Allocation Plan but all other terms required in subsection (c) of this section shall be identified in the request for proposal for such properties.

e. Prior to the adoption of the Land Allocation Plan, Council shall hold a work session. Commission members and City staff may provide recommendations to Council during the work session regarding City-owned property available for lease and the terms of such leases.

f. The City shall provide public notice of the adoption of the Land Allocation Plan and the City-owned real property available for lease no more than 60 days after its adoption.

g. All uses and activities on City-owned real property available for lease are subject to all applicable local, state, and federal laws and regulations.

h. The Council may restrict specific City-owned properties to certain uses or classes of use that serve the City's best interest.

18.08.030 Standardized leases.

a. The City Manager shall develop a standardized ground lease that contains provisions generally applicable to the lease of City-owned property and a standardized building lease that contains provisions generally applicable to the lease of space in City-owned buildings. The standard lease documents shall be reviewed by the City Attorney and approved by Council.

b. Lease terms may deviate from the standardized lease terms when the City Manager determines such deviations are reasonable and necessary to protect the City's best interests and Council approves the lease as required in HCC 18.08.040.

18.08.040 Council approval of leases.

a. All long-term leases for more than five years shall be approved by Council via ordinance. All long-term leases for five years or less shall be approved by Council via resolution.

b. The City Manager may execute short-term leases without Council approval when the City Manager determines that a short-term lease is in the best interest of the City and notifies the Council in writing of the short-term lease and its essential terms.

c. Short-term leases are not required to go through the competitive bidding process unless the short-term lease would result in the lease of City-owned property to the same lessee for more than one consecutive year.

d. Except as expressly provided in this chapter, property leased by the City from a third party that is available for sublease or the lease of space in City-owned buildings located on real property owned by a third party is exempt from this chapter.

18.08.045 Lease applications.

Except for property subject to competitive bidding under this chapter, persons interested in leasing City property may submit a lease application to the City Clerk. The City Manager shall consider all applications and determine if an application is complete and meets the criteria identified in the Land Allocation Plan. Applicants may be charged a fee for processing a lease application.

18.08.050 Requests for proposals-competitive bidding process.

a. The City Manager may issue a request for proposals to lease specific property identified in the Land Allocation Plan at any time after posting the notice required in HCC 18.08.020(d).

b. A request for proposal advertised by the City must identify the property description of the property available for lease, the time frame for the submission of requests for proposals, any preferred uses or industries, and the overall criteria the City intends to use to score and rank proposals.

c. The City Manager must obtain approval from the Council before requesting proposals to lease property not identified in the Land Allocation Plan as property available for lease.

18.08.060 Criteria for evaluating and approving proposals.

a. The Criteria for evaluating proposals shall include, but is not limited to, the following:

1. Compatibility with neighboring uses and consistency with applicable land use regulations including the Comprehensive Plan.

2. The development plan including all phases and timetables.

3. The proposed capital investment.

4. Experience of the applicant in the proposed business or venture.

5. Financial capability or backing of the applicant including credit history, prior lease history, assets that will be used to support the proposed development.

6. The number of employees anticipated.

7. The proposed rental rate.

8. Other financial impacts such as tax revenues, stimulation of related or spin-off economic development, or the value of improvements left behind upon termination of the lease.

9. Other long term social economic development.

10. The residency or licensure of the applicant in the City, Kenai Peninsula Borough, and/or the State of Alaska, as identified in the City's request for proposal and permitted under state and federal law.

b. Determination of rent shall take into consideration the following factors:

1. Appraisal or tax assessed valuation;

2. Highest and best use of land;

3. Development (existing and planned);

4. Economic development objectives;

5. The location of the property; and

6. Alternative valuation methodologies as negotiated by both parties.

18.08.065 Lease application and proposal documents.

Upon request by the City Manager or as required in a request for proposal, an applicant shall provide, at its sole expense, the following:

1. A Property Improvement Plan with information regarding planned improvements by lessee, including schedule for commencement and completion of proposed improvements.

2. A survey of the property subject to the proposed lease; and/or

3. If only a portion of a lot is to be leased, a subdivision plat.

18.08.070 Notice to award.

a. The City Manager shall consider all responses to the City's request for proposals that are timely and responsive. Untimely submissions shall be returned to the applicant without review and that applicant shall not be considered.

b. The City Manager may, in his or her sole discretion, and upon a determination that none of the proposals are in the City's best interest, recommend rejection of all proposals.

c. Upon a determination that a proposal is the most advantageous to the City, the City Manager shall recommend the proposal to Council for acceptance. If Council approves the recommendation, the City Manager shall issue a Notice to Award the lease to the successful applicant. The City Manager's recommendation shall be presented to Council in a written memorandum identifying the recommended winning applicant, the property description, the essential terms of the proposed lease, and the reasons the City Manager recommended the award.

d. The City Manager shall submit any recommendation for approval of a proposal under this chapter for property located on the Homer Spit or in the Marine Commercial or Marine Industrial zoning districts to the Port and Harbor Advisory Commission for review and comment prior to recommending a proposal to Council.

e. If the Council adopts the City Manager's recommendation, the City Manager shall negotiate with the winning applicant and present a final lease to the Council for approval. A Notice to Award is conditional upon the City Manager's successful negotiation of a final written lease consistent with the terms upon which the award was based.

f. The City Manager may, with Council approval, rescind a Notice to Award. A Notice to Award becomes void on the date the City Manager provides written notice to the applicant that the award has been rescinded.

g. The City Manager may rescind a Notice to Award at any time prior to the execution of a lease if an applicant can no longer meet the terms of the proposal.

h. If the City Manager rescinds a Notice to Award, the City Manager may negotiate with the next most responsive bidder and submit a new recommendation for award to Council and Council may approve the award of the proposal to that recommended bidder. If negotiations with the next most responsive bidder are unsuccessful, all bids must be rejected and a new request for proposal may be issued.

i. The Council may approve other bidding or proposal procedures or exceptions to these procedures via resolution.

18.08.075 Lease rental rates.

a. Except as otherwise provided in this section, all property shall be leased at no less than "fair market rent."

b. Payments of a higher than fair market rent resulting from an applicant's proposal is generally in the public interest and will help to establish fair market rent using current market forces.

c. The Council may establish a minimum rent or "asking price." It may set a minimum rent at an amount equal to or higher than the estimated "fair market rent" if it finds that it is in public interest to do so. It may set uniform rental rates for a class of similar properties that remain available for leasing after the conclusion of a competitive lease offering.

d. Except as provided in HCC 18.08.175, Council may approve a lease of City land for less than fair market rent only if the motion approving the lease contains a finding that the lease is for a valuable public purpose or use, and a statement identifying such public purpose or use.

e. The lease shall provide for payment of interest or a late fee for rent past due, and provide for recovery by the City of attorneys' fees and costs to the maximum extent allowed by law in the event the city is required to enforce the lease in court, and such additional provisions pertaining to defaults and remedies as the City Manager may determine to be in the City's interest.

18.08.080 Lease execution and final approval.

a. After a notice to award a lease is approved by Council or a lease application is approved by the City Manager, the City Manager is responsible for finalizing and executing the lease agreement with the successful applicant. After Council's approval of the Notice to Award but before Council approval under HCC 18.08.040, the City Manager may negotiate non-essential long-term lease terms and make changes necessary to clarify the terms of the long-term lease or correct clerical errors.

b. The City Manager has authority to negotiate all terms of short-term leases subject to the provisions of this chapter.

c. After a lease is executed by both parties, the City Manager shall draft and the City Clerk shall record a memorandum of lease. The Lessee is responsible for the recording fees.

18.080.090 Development and use.

a. All leases must require the lessee to comply with applicable zoning, parking, sign, flood, and other pertinent local ordinances and state and federal statutes and regulations.

b. Except as provided otherwise in the lease agreement, an as-built survey including elevations performed by a surveyor shall be provided to the City within six months of completion of permitted or required development or requirements under a lease. Each additional structure or significant improvement shall require an additional or updated as-built. All surveys are to be provided by the lessee at their expense.

c. Except as provided otherwise in the lease agreement, at the time each as-built is submitted, a statement of value including leaseholds and all improvements shall be provided. The Statement of Value shall be either a letter of opinion or appraisal completed by an appraiser.

d. All development requirements and performance standards contained in the lease shall be strictly enforced and if not complied with or negotiated for modification shall be cause for the lease to be terminated. Failure to enforce the terms of the lease shall not constitute waiver of any such term.

e. The City may require a lease of City-owned property to be secured by any means that meet the City's best interest, including without limitation, a security deposit, surety bond or guaranty.

18.08.100 Appraisal.

a. An appraisal of the fair market rent of the property will be required before the final approval of a lease and at the time of review and renewal.

b. The requirement of an appraisal may be waived at the discretion of the City Manager for short-term leases.

c. All leased properties shall be appraised every five years from the effective date of the lease.

d. Except as otherwise provided under this section or in a specific lease, lease rates shall be increased on the anniversary of the lease effective date to reflect property appraisal values. A lessee shall be notified of any increase in the appraised value of the property at least 30 days before the increased rental rate becomes effective.

e. In the event an appraisal reports a decrease in fair market rent, a lessee may petition or the City Manager may recommend to the Council a reduction in the lease rate. The Council may approve a reduction if it determines via resolution that such reduction corresponds with the appraised fair market rent and the reduction is in the City's best interest.

f. Each year, the City will select and retain an appraiser to appraise all leased parcels due for appraisals in that year. The City will have sole discretion to select the appraiser and shall bear the cost of the appraisal.

18.08.110 Options to renew.

a. Leases may contain no more than two options for renewal and each option must be for less than 25% of the length of the initial lease term.

b. A lessee may not exercise an option to renew unless the City Manager determines that the lessee is in full compliance with the terms of the lease at the time of renewal.

c. A lessee whose initial lease and all options have expired shall have no automatic right of further renewal or extensions.

18.08.120 Improvements.

a. Except as otherwise provided in the lease agreement, construction of improvements shall take place only after review and approval of the construction plans by the City Manager and only after all applicable permits and legal requirements are secured.

b. Any improvements not consistent with the lease agreement must be approved by Council via resolution and shall only be considered upon recommendation by the City Manager and after review by the Port and Harbor Commission, the Planning Commission, and any other advisory commission determined to be appropriate by the City Manager. Inconsistent improvements may be approved if the changes to the improvements promotes serves the City's best interest and/or when changes are necessary due to industry changes or a change in economic conditions within the city.

c. All improvements constructed upon leased property become the property of the City upon termination of the lease unless otherwise provided in the lease agreement or agreed to by the parties in writing.

d. Lessee shall be responsible for all municipal property taxes on the leasehold interest in the real property and improvements and sales taxes on the rent payments.

18.08.130 Lease renewal.

a. The Council, after reviewing a recommendation from the City Manager, may approve the renewal of a lease without requiring competitive bidding based upon the City Manager's recommendation and when Council finds that it is in the best interest of the City to enter into a new lease agreement with the current lessee without submitting the lease renewal to competitive bidding.

b. If the current lessee is interested in entering into a new lease agreement under this section, the lessee must issue a request for a new lease in writing to the City Manager at least 12 months prior to the expiration of the lease and submit a formal lease application for evaluation by the City Manager. The City Manager shall notify Council of new lease requests under this section. The City will review the application but is under no obligation to enter into a new lease.

c. If the Council approves the new lease without a competitive process, it must do so by resolution within six months of the date the lease application is filed with the City.

d. Council shall consider the following factors when determining whether to exempt a lease from competitive bidding under this subsection:

1. The lessee's past capital investment and binding commitment to future capital investment;

2. The lessee's financial condition and prior lease history;

3. The number of persons employed and the prospect for future employment;

4. Tax revenues and other financial benefits to the City anticipated in the future if the lease is renewed;

5. Consistency of the past use and intended future use with all applicable land use codes and regulations, the Comprehensive Plan, and Overall Economic Development Plan;

6. Other opportunities for use of the property that may provide greater benefit to the City; and,

7. Other social, policy, and economic considerations as determined by the Council.

18.08.140 Sublease.

a. City property may be subleased if expressly permitted in the lease agreement and approved in writing by Council.

b. Except as provided otherwise in the lease agreement, all subleases must be in writing and executed by the parties, and approved by Council after a recommendation is provided by the City Manager.

c. Approval must be granted prior to occupancy of the leased premises by the sub-tenant.

e. A lessee shall be assessed additional rent, equal to at least 10 percent of the current rent for the subleased area, upon approval of a sublease.

f. Subleasing shall not be used as a method to accomplish the transfer of interest in the entire leasehold.

g. All subleases must comply with all relevant federal, state, and local laws.

18.08.150 Early termination.

Except as provided otherwise in the lease agreement, Council shall approve the termination of a lease for failure to comply with the lease terms. The City Attorney shall be consulted prior to the termination of a long-term lease. The City Manager shall seek approval of termination from Council in executive session. The name of lessee and description of the leased property shall not be included in any public notices or documents circulated unless and until Council approves termination of the lease under this section. The City Manager shall notify a lessee in writing that Council will be considering termination of the lease in executive session and provide the date, time, and place of the executive session. Lessee may waive the right to confidentiality under this section and request that Council hold its discussion in public. This section shall not prevent the City from sending lessee or other parties with an interest in the lease notifications or correspondence related to the lease or lessee's compliance with its terms.

18.08.160 Assignment.

a. Except as provided in the lease agreement, Council must approve the assignment of a lease to another party.

b. Except as otherwise provided in this subsection and subject to the terms of the lease agreement, the City Manager must make a determination that a lessee is in full compliance with a lease before an assignment will be effective. The City Manager may enter into an agreement with an assignor or an assignee consenting to assignment conditional upon payment of any outstanding amount due under the lease no more than 90 after assignment.

c. Except as otherwise provided in a lease agreement, if the lessee is in good standing and eligible to assign the lease, the following procedures apply:

    1. The lessee shall file a written request for assignment and a new lease application to the City Manager;

    2. The City Manager shall review the request and assignment document(s) and determine whether the proposed assignee is qualified under this chapter and the assignment is in the City's best interests;

    3. The City Manager shall make a recommendation on the assignment to Council for final action; and

    4. The Council shall approve or deny the request for assignment via resolution.

    5. Assignment of long-term leases on the Homer Spit or within the Marine Commercial or Marine Industrial zoning districts shall be reviewed by the Port and

Harbor Advisory Commission prior to submission to Council for approval. Except as otherwise provided in a specific lease agreement, assignment of all other long-term leases shall be reviewed by the Homer Advisory Planning Commission for recommendations prior to Council approval.

d. The Council may approve assignment of a lease to a bank or other financial institutions for financing or other reasons if it determines the assignment is in the best interest of the City and upon recommendation by the City Manager.

e. Where a lessee intends to assign the lease as part of a sale of the business located on the lease lot, the person who intends to purchase the business may apply to extend the lease term to allow the continuation of the business and to secure financing for the purchase.

18.08.170 Insurance.

a. All lessees shall keep in force for the full term of the lease public liability insurance in the amount of not less than $1 Million coverage per occurrence for bodily injury, including death, and property damage. The City shall be named as an additional insured.

b. Lessees who intend to conduct activities which could potentially have significant risk of environmental contamination shall also obtain not less than $2 Million in Environmental Impact insurance and/or Environmental Clean-up Policy, or the equivalent subject to review and approval by the City Manager. The City shall be named as an additional insured. The City will determine on a case-by-case basis whether a lease of City property will involve a significant risk of environmental contamination due to the use of the property, the presence of hazardous materials, or the location of the property.

c. Certificates of Insurance showing the required insurance is in effect and identifying the City as an additional insured shall 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.

d. All insurance policies must be in effect for the duration of the lease term, or longer if stated in the lease, and the City must be notified of any changes to policies.

e. A lease agreement may require insurance requirements that exceed those required in this section.

18.08.175 Exception-leasing to government entities.

a. Except as otherwise prohibited by law, leases to federal or state government entities or political subdivisions or agencies of the State of Alaska or the United States may be, upon a finding by Council that it is in the best interest to do so, exempted from the requirements of this chapter.

b. The City may lease real property to the United States, the State of Alaska, a political subdivision of the State, or an agency of any of these entities, for consideration agreed upon between the parties for less than fair market rent if the Council determines that the lease or license is in the City's best interest.

18.08.180 Assessments – Capital improvement projects.

a. A lessee of City property shall pay all real property special assessments levied and assessed against the property to the full extent of installments billed during the term of the lease.

b. In the event the City completes a capital improvement project which directly benefits the leasehold property and no local improvement district is formed to pay the cost thereof, the City may, in its sole discretion, impose, and the lessee shall pay as additional rent, the leasehold property's proportionate share of the cost of the improvement. The amount of additional rent imposed annually by the City under this subsection shall not exceed the amount which would have been payable annually by the lessee if a local improvement district had been formed which provided for installment payments on a schedule and bearing interest at rates typical of other local improvement districts of the City for that type of capital improvement.

18.08.190 Connection to utilities.

A lessee of City real property shall connect to City utilities and bear all costs of connections and adhere to all applicable local, State and Federal regulations. Connections to newly installed City utilities shall be made as soon as possible after completion.

18.08.195 Processing and filing fees.

Fees for lease applications, lease fees, sublease and assignment fees, and other related fees shall be established by Council by resolution. Failure to pay fees owed may result in the rejection of a lease application or denial of renewal, assignment or sublease.

Section 2: This ordinance is of a permanent and general character and shall be included in the Homer City Code.

ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER THIS __ DAY OF ______, 2018.

CITY OF HOMER

____
BRYAN ZAK, MAYOR

ATTEST:

____
MELISSA JACOBSEN, MMC, CITY CLERK

YES:
NO:
ABSTAIN:
ABSENT:

First Reading:
Public Hearing:
Second Reading:
Effective Date:

Reviewed and approved as to form:

____
Mary K. Koester, City Manager

Date:__________________________

____
Holly Wells, City Attorney

Date:__________________________

Memorandum

TO: PORT AND HARBOR ADVISORY COMMISSION

FROM: BRYAN HAWKINS, PORT DIRECTOR / HARBORMASTER

DATE: MARCH 21, 2018

SUBJECT: PROPOSED ORDINANCE 18-XX REPEALING HCC CHAPTER 18.08

Council persons Smith and Erickson have been hard at work with our city attorney to sponsor an ordinance that will codify the cities lease policies into city code. I have met with the city manager and our attorney to discuss the changes and have made comments and suggestions to this work in progress legislation. As you can see it is a complete re-work of our existing policies turning them into code, and it takes time to compare the document to our existing policy and code in order to understand what it is that is trying to be accomplished.

As the commission is named as a review board for any lease located on the Homer Spit, your comments on this work are needed and valued. I suggest that it may take more than one meeting to work through this complex document before you may be ready to share your comments/wishes in a motion to council. However, your first read comments would be welcome and the clerk will be happy to record them so that we are sure to address them in the next meeting.

I will be out of the office until April 4th. Once I return I will be available to meet with you individually to help answer your questions on this or any other Port/Harbor related topic.

Thank you

MEMORANDUM 18-035

TO: HOMER CITY COUNCIL
CITY MANAGER KATIE KOESTER

FROM: HOLLY C. WELLS

RE: LEASE POLICY ORDINANCE

CLIENT: CITY OF HOMER

FILE NO.: 506742.24

DATE: MARCH 23, 2018

Introduction

City Council Member Smith and City Council Member Erickson recently requested revisions to the Homer City Code and review of the Homer Lease Policy and Procedures Manual ("Lease Policy Manual") in an effort to ensure that leases between the City of Homer ("City") and other entities were executed in a streamlined manner that was advantageous to the City and incentivized development. To this end, this memorandum provides a summary of the substantial changes proposed in Ordinance No. 18-08 (the "Ordinance") and the reasons underlying these changes.

Introduction

The City's overarching approach to the lease of City land has been a complex process, requiring City staff, potential lessees, and the City Council to navigate the lengthy Lease Policy Manual, the relevant Code provisions, and the request for proposal published by the City regarding the specific property at issue. In many cases, this labyrinth of governing principles and criteria made the lease negotiation and award process confusing and convoluted. The Ordinance proposes a lease process that is more individualized but also requires greater Council oversight and involvement.

Under the Ordinance, Council will approve the lease at two separate stages in the process, at the very least. To this end, Council approves the Notice to Award *and* the lease in its final form. Further, long-term leases for over five years must be approved via ordinance, which ensures a public hearing and two readings on the lease's approval. Council will be able to discuss terms in executive session and thus can be actively engaged in each individual lease, with the exception of leases for six months or less.

Council is also required to approve the lease templates, which is unchanged from the previous lease ordinances and policies.

With Council approval required before and after negotiations, each lease will have a level of oversight equivalent to that of an outside committee, except it will be Council weighing in. Another notable difference is that while the current policy manual provides many of the required provisions, these provisions will now be included only in the lease template and thus Council and the administration will have a greater ability to be flexible with individual lease terms to ensure that they are actually as advantageous to the City and its goals as possible.

Understanding the Proposed Changes

While the above provides a brief summary of the most substantial changes in the Ordinance, the following tables provide a much more detailed summary of the differences between the governing law in this area and the Code provisions proposed in the Ordinance. The first table shows the differences between existing Chapter 18.08 and the Ordinance. The second table shows the ways in which the Lease Policy Manual has been codified and identifies the policies and procedures that have been removed. For ease of reference, the current code is referred as HCC in Table 1 and proposed sections are identified as PHCC. In Table 2, the proposed Code is referred to as HCC since the comparison is between the Lease Policy Manual and the Ordinance. In addition to these tables, a redline comparison of existing HCC 18.08 with the Ordinance accompanies this memorandum.

Table 1

Current HCC Chapter 18.08	**The Ordinance**
No "Purpose" section	Add PHCC 18.08.005 "Purpose" This section incorporates statements of purpose in the Lease Policy Manual

HCC 18.08.010 Includes Definitions: Lease Property Manual, Sealed bid, and sublease. Sealed bid definition removed because RFP process is negotiation-based and so may need flexibility in process. Lease Property Manual rescinded so definition was unnecessary. Sublease definition unnecessary.	PHCC 18.08.010 Adds definitions: "appraiser" requiring an AK certified appraiser or other qualified professional selected by the City at the cost of the City. "fair market rent" definition added "City Manager" definition added to permit City Manager to delegate authority. "Irregularities" definition added to clarify RFP process and responsiveness. Removes Lease Property Manual, Sealed bid, and sublease definitions.
HCC 18.08.020 "Lease Committee"	Removed.
HCC 18.08.030 "Approval of Lease"	PHCC 18.08.030 "Standardized Leases" codifies lease template requirement and the requirement that the template is reviewed by Council. HCC 18.08.030 moved to PHCC 18.08.040 "Council Approval of Lease", which now expressly requires Council to approve long-term leases for 5 yrs. or more via ordinance & long-term leases under 5 yrs. via resolution. PHCC 18.08.070 requires Council approval of the Notice to Award and after negotiations as reiterated in PHCC 18.08.080.
HCC 18.08.040 (Property available for leasing)	Moved to PHCC 18.08.020 "Property available for leasing" to reorganize the Code to reflect the order of the leasing process. The Land Allocation Plan requirements from the Lease Policy Manual were incorporated into this section. Land Allocation process clarified to make clear that leases identified in Land Allocation Plan are leased by the completion of a lease application unless a competitive bidding process is expressly required by Council or used by the City Manager.
No lease application section currently in HCC 18.08	PHCC 18.08.045 "Lease application" codifies requirement that a lease application be completed to be eligible to lease City property identified in the Land Allocation Plan.

HCC 18.08.050 “Qualification of Applicants”	Removed. These requirements better suited for lease template and individual leases.
HCC 18.08.060 “Application to Lease”	Removed; Any such requirement is best included in an RFP or by policy. Fee schedule still affords application fee payment. PHCC 18.08.060 “Criteria for evaluating and approving proposals” added and incorporates criteria from Lease Policy Manual.
18.08.070 “Terms of Lease”	Removed. City Manager will negotiate terms of the lease at and as a result of the RFP tailored to the property at issue and subject to Council approval. PHCC 18.08.070(d) “Notice to award” provides the details of the Notice to award process and expands Council’s role in this process. Provides City Manager to rescind a notice to award where an applicant is unable to meet the terms of its proposal but otherwise now requires the City Manager to receive Council approval before rescinding an award.
HCC 18.08.080 “Appraisal” Requires appraisal when lease approved or renewed by a certified appraisal and permits “Lease Committee” to waive appraisal for short-term leases.	Moved to PHCC 18.08.100. Incorporates 5 yr. appraisal requirements from Lease Policy Manual. PHCC 18.08.080 “Lease execution and final approval” includes express final approval process for leases.
HCC 18.08.090 “Requirements of lease” Required plats and as-built surveys unless the Lease Committee waived the requirement.	PHCC 18.08.090 “Development and use” Incorporates as-built and survey requirements unless the specific lease agreement provides otherwise.
HCC 18.08.100 “Improvements”	Moved to PHCC 18.080.120 and incorporates obligations provided in the Lease Policy Manual. Language clarified.
HCC 18.08.110 “Lease Option”	Incorporated “option” requirements from Lease Policy Manual.

HCC 18.08.120 “Sublease”	Moved to PHCC 18.08.140. Lease Policy Manual incorporated into section and sublease process subject to terms of lease given the nature of some leases in the City, which involve routine subleases. Changed 10% sublease payment requirement to “no less than 10%” to provide the City flexibility.
HCC 18.08.130 “Assignment”	Moved to PHCC 18.08.160. Assignment permitted with Council approval but also as provided in a specific lease. Incorporated Lease Policy Manual requirements and the specific process for applying for an assignment. Now requires Commission recommendations regarding an assignment.
HCC 18.08.140 “Competitive Bidding”	Moved to PHCC 18.08.050. The new section permits the City Manager to issue RFPs regarding land identified by Council as available for lease in the Land Allocation Plan and incorporates relevant requirements from the Lease Policy Manual. Statements of the right to reject bids and others have been incorporated in PHCC 18.08.070 “Notice to Award.” This section also differentiates between the leases identified in the Land Allocation Plan for lease and the terms of lease that don’t require a separate RFP and recognizes Council’s authority to identify these properties and set the terms of lease during the Land Allocation process.
HCC 18.08.150 “Reconsideration”	Removed. Additional Council oversight during the process makes this provision burdensome.
HCC 18.08.160 “Property Management Policy and Procedures Manual”	Removed. No more manual.
HCC 18.08.170 Exceptions-Financial transactions.	Removed. This is unnecessary as the chapter permits Council to exempt a lease from the bidding process and the City Manager has to secure Council approval for leases not on the Lease Allocation Plan.
HCC 18.08.175 “Exception-Leasing to the Federal or State government”	Moved to PHCC 18.08.175 “Exception-Leasing to government entities” clarifies the language but retains the exemption.

HCC 18.08.180 “Assessments-Capital Improvement Projects”	Remains substantially unchanged.
HCC 18.08.190 “Connection to utilities”	Remains substantially unchanged.
HCC 18.08.200 “Fee Schedule”	Moved to PHCC 18.08.195 “Processing and filing fees” incorporates potential for denial of application or approval of lease due to unpaid fees.
HCC 18.08 Does not have a provision requiring Council approval for termination.	PHCC 18.08.050 ‘Early termination” requires the City Manager to notify the City Council at least 90 days before terminating a lease prior to the expiration of the lease term unless the lease provides otherwise.

Table 2

Lease Policy Manual	**The Ordinance**
Chapter 1 “Lease Policies/Goals, Purpose, and Responsibility”	General purpose statement located in proposed HCC 18.08.005. Responsibilities re: review and Council approval in HCC 18.08.040; 18.08.150 18.08.070(c)(f); and 18.08.080.
Chapter 2: Lease Committee	The Lease Committee was comprised of City Staff. Replaced references to Lease Committee with references to the City Manager and additional layers of Council oversight.
Chapter 3: Properties Available for Lease	Land Allocation Plan process codified at HCC 18.08.020.
Chapter 4: RFP Process/Competitive Bidding	HCC 18.08.050.

Chapter 5: Lease Application Process	Removed. A responsive lease proposal will be responsive based upon the RFP and not the lease application so this chapter is misleading. The City need not codify the existence or use of an application. The creation of an "application" process separate from the RFP, assignment or renewal process is confusing.
Chapter 6: Application/Proposal Evaluation Process	Application process has been removed. City may require lease application in the RFP requirements or, as applied to short term leases, as a matter of policy. The fees associated with the processing of an application is permitted in HCC 18.08.195.
Chapter 7: Lease Rental Rates	HCC 18.08.075; HCC 18.08.060
Chapter 8: Reconsideration	Removed. The lease process now involves Council approval when a Notice to Award is issued *and* prior to final approval of the lease itself. Council also approves the rescission of an award. These additional levels of review by Council negate the need for yet another point of review, which would make the lease process unduly burdensome for both City officials and applicants.
Chapter 9: Lease Implementation	HCC 18.08.030 (lease templates approved by Council); HCC 18.08.090 (As-built and development requirements); and 18.08.050-070 (RFP process and negotiations)
Chapter 10: Improvements	HCC 18.08.120
Chapter 11: Length of Leases/Options	HCC 18.08.110
Chapter Lease Rate Adjustments	HCC 18.08.100 (appraisal process still required but generalized requirements to afford City flexibility in retaining the appraiser. Qualifications of appraiser moved to definitions.) The CPI requirement imposed upon lessees was removed.

Chapter 13: Subleasing	HCC 18.08.140 (subleasing requirements retained payment requirement of 10% but added flexibility for City to charge more; Council approval retained but flexibility to exempt a sublease from such approval in the lease added.) Other more specific sublease terms more appropriate in Council approved lease template and individual RFPs and resulting leases.
Chapter 14: Assignment	HCC 18.08.060 (assignment still requires Council approval but flexibility codified that permits the City to deviate from the Code requirements in specific lease agreements. This change is justified by the additional layer of Council oversight added.) Additionally, assignment terms are more appropriately included in the Council approved lease template.
Chapter 15: Insurance	HCC 18.08.170 (more specific requirements are more appropriately included in the leases and in Council approved lease templates.)
Chapter 16: Hazardous Materials	Removed. Hazardous materials provisions are generally included in leases themselves as the terms depend heavily on the nature of the use.
Chapter 17: Performance Standards	HCC 18.08.090 (recognizes strict enforcement of performance standards in lease) Removed. Performance standards are generally included in leases themselves as the terms depend heavily on the nature of the use and performance negotiated. Also, these standards are incorporated into Council approved lease template.
Chapter 18: Conclusion of Lease	HCC 18.08.120 (codifies improvements become property of the City unless otherwise specified in writing but other specific requirements regarding improvements have been removed. Such provisions are more appropriate in specific leases and lease template.)

Conclusion

While this memorandum attempts to identify the changes between the existing Lease Policy and the proposed Lease Policy, the Ordinance presents significant changes to the structure of the City's process that is not easily capsulated in a memo. For this reason, I have also attached a redline version comparing current HCC Chapter 18.08 with the Ordinance. The redline document along with the above tables should provide the level of detail necessary to fully understand the Ordinance.

REDLINE COMPARISON OF EXISTING HCC 18.08 WITH PROPOSED HCC 18.08 IN ORDINANCE 18-16

Note to Readers: It is worth noting that, as a byproduct of redline comparisons, it often appears that entire sections have been repealed when the sections have only been renumbered or relocated. For this reason, I recommend reviewing the entire reenactment contemporaneously with the tables included in Memorandum 18-035.

Chapter 18.08

CITY PROPERTY LEASES

Sections:

18.08.005 Purpose.

The purpose of this chapter is to ensure that the lease of City-owned property maximizes the value of City assets and that the City awards leases that provide the highest and best use of City-owned property. It is the policy of the City to lease its property in a fair and nondiscriminatory way.

18.08.010 Definitions.

For the purpose of ~~the~~this chapter, the following words and phrases are defined as set forth in this section:

"Applicant" means a person applying to lease or ~~use~~acquire an interest in City-owned real property and includes bidders and proposers.

"Appraisal" means a valuation or estimation of value of property by ~~disinterested persons of suitable qualifications~~an Alaska Certified General Real Estate Appraiser or an otherwise qualified appraiser selected by the City Manager.

"Assignment" means a transfer of a leasehold interest or ~~making over~~rights to ~~another of the whole of any~~ a leasehold interest, in its entirety, in City-owned real property~~, real~~ .

"City Manager" means the City of Homer Manager or ~~personal, in possession~~his or ~~in action,~~ her designee

"Fair market rent" means the rental income that a public or private property would most likely command in the open market, indicated by the current rents paid for comparable space as of ~~any estate or right therein.~~the date of the appraisal

~~"Lease" means an~~

"Irregularities" means deviations from the request for proposal that are not substantive in nature and/or involve typographical or scrivener errors that do not impact the integrity or responsiveness of the proposal.

"Long-term lease" means a written agreement granting exclusive possession or use of City-owned real property for more than one year.

"Short-term lease" means a written agreement granting exclusive possession or use of City-owned real property for one year or less.

"Surveyor" means a registered professional land ~~and/or location for a specific period of time in accordance with specific terms~~surveyor.

~~"Property Management Policy and Procedures Manual" means the manual adopted pursuant to HCC.~~

~~"Sealed bid" or "sealed proposal" means a method of competitive bidding for a lease whereby~~

~~each party interested in leasing City property submits a proposal in a sealed envelope and all such proposals are opened at the same time. The proposal most favorable to the City is selected for negotiation for a lease.~~

~~"Sublease" means a lease or rental executed by the lessee of an estate to a third person, conveying the same estate or a portion of it, for a term equal to or shorter than that for which the lessee holds it.~~

18.08.020 ~~Lease Committee.~~

~~The City Council shall establish the formation of the Lease Committee and its duties by resolution as reflected in the Property Management Policy and Procedures Manual.~~

~~18.08.030 Approval of lease.~~

~~a. No lease shall be executed until the City Council has approved, with or without modifications, the Lease Committee's recommendation.~~

~~b. Except as provided in HCC 18.08.175, the City Council may approve a lease of City land for less than fair rental value only if the motion approving the lease contains a finding that the lease is for a compelling public purpose or use, and a statement of facts upon which the finding is based.~~

~~c. The City Council gives the City Manager the authority to execute short-term leases of six months or less pursuant to the Property Management Policy and Procedures Manual.~~

~~18.08.040 Property~~Land Allocation Plan-property available for ~~leasing~~lease.

a. Unless dedicated or reserved to another purpose, all real property including tide, submerged or shorelands to which the City has a right, title and interest as owner or lessee, or to which the City may become entitled, may be leased as provided in this chapter. In the case of any conflict between this chapter and any regulations or other ordinances or State law specifically governing the leasing of City tide and submerged lands, the latter shall prevail.

b. The City administration shall maintain a list of all City-owned properties authorized for lease by Council. This list shall be adopted annually and contain the information required under this chapter. The list may be called the Land Allocation Plan and will be made available to the public at the City Clerk's office.

c. Council shall adopt a Land Allocation Plan that identifies:

i. City-owned property available for lease;
ii. The property description, lease rate, preferred length of the lease term for each available parcel; and
iii. Any requirements, preferences or restrictions regarding use and/or development.

d. Council may identify property in the Land Allocation Plan that is subject to competitive bidding. Property subject to competitive bidding in the Land Allocation Plan need only identify the property description in the Land Allocation Plan but all other terms required in subsection (c) of this section shall be identified in the request for proposal for such properties.

e. Prior to the adoption of the Land Allocation Plan, Council shall hold a work session. Commission members and City staff may provide recommendations to Council during the work session regarding City-owned property available for lease and the terms of such leases.

f. The City shall provide public notice of the adoption of the Land Allocation Plan and the City-owned real property available for lease no more than 60 days after its adoption.

g. All uses and activities on City-owned real property available for lease are subject to all applicable local, state, and federal laws and regulations.

h. The Council may restrict specific City-owned properties to certain uses or classes of use that serve the City's best interest.

18.08.030 Standardized leases.

a. The City Manager shall develop a standardized ground lease that contains provisions generally applicable to the lease of City-owned property and a standardized building lease that contains provisions generally applicable to the lease of space in City-owned buildings. The standard lease documents shall be reviewed by the City Attorney and approved by Council.

b. Lease terms may deviate from the standardized lease terms when the City Manager determines such deviations are reasonable and necessary to protect the City's best interests and Council approves the lease as required in HCC 18.08.040.

18.08.040 Council approval of leases.

a. All long-term leases for more than five years shall be approved by Council via ordinance. All long-term leases for five years or less shall be approved by Council via resolution.

b. The City Manager may execute short-term leases without Council approval when the City Manager determines that a short-term lease is in the best interest of the City and notifies the Council in writing of the short-term lease and its essential terms.

c. Short-term leases are not required to go through the competitive bidding process unless the short-term lease would result in the lease of City-owned property to the same lessee for more than one consecutive year.

d. Except as expressly provided in this chapter, property leased by the City from a third party that is available for sublease or the lease of space in City-owned buildings located on real property owned by a third party is exempt from this chapter.

18.08.045 Lease applications.

Except for property subject to competitive bidding under this chapter, persons interested in leasing City property may submit a lease application to the City Clerk. The City Manager shall consider all applications and determine if an application is complete and meets the criteria identified in the Land Allocation Plan. Applicants may be charged a fee for processing a lease application.

18.08.050 ~~Qualification of applicants~~Requests for proposals-competitive bidding process.

~~An~~

a. The City Manager may issue a request for proposals to lease specific property identified in the Land Allocation Plan at any time after posting the notice required in HCC 18.08.020(d).

b. A request for proposal advertised by the City must identify the property description of the property available for lease, the time frame for the submission of requests for proposals, any preferred uses or industries, and the overall criteria the City intends to use to score and rank proposals.

c. The City Manager must obtain approval from the Council before requesting proposals to lease property not identified in the Land Allocation Plan as property available for lease.

18.08.060 Criteria for evaluating and approving proposals.

a. The Criteria for evaluating proposals shall include, but is not limited to, the following:

1. Compatibility with neighboring uses and consistency with applicable land use regulations including the Comprehensive Plan.

2. The development plan including all phases and timetables.

3. The proposed capital investment.

4. Experience of the applicant ~~for lease is qualified if~~ in the proposed business or venture.

~~1.~~5. Financial capability or backing of the applicant ~~is:~~including credit history, prior lease history, assets that will be used to support the proposed development.

6. ~~A natural person and is responsible, meaning~~The number of employees anticipated.

7. The proposed rental rate.

8. Other financial impacts such as tax revenues, stimulation of related or spin-off economic development, or the value of improvements left behind upon termination of the lease.

9. Other long term social economic development.

~~a.~~ The residency or licensure of the applicant ~~has sufficient skill, experience and financial capability to perform all the obligations of the lessee under the proposed lease; and~~

~~b. A person who is at least 19 years of age; or~~

~~c. A group, association or corporation which is authorized to conduct business under the laws of the~~ in the City, Kenai Peninsula Borough, and/or the State of Alaska~~.~~

~~18.08.060 Application to lease.~~

~~All prospective applicants for lease of City property shall file an application to lease with the City Clerk on a form available at the City Hall during regular business hours. No person may submit a bid or proposal on a City lease without having properly filed an application for lease in accordance with the guidelines incorporated in the Property Management Policy and Procedures Manual and paid all applicable fees.~~

~~18.08.070 Terms of lease.~~

~~a. The terms of a lease shall be recommended by the Lease Committee.~~

~~b. Terms of leases shall be negotiated taking into consideration the following factors:~~

~~1. Nature of the proposed use;~~

~~2. Type and cost of improvement to be placed upon the premises;~~

~~3. Period of time required to amortize the improvements;~~

~~4. Benefit to the City;~~

~~5. Whether improvements are consistent with the Comprehensive Plan, Homer zoning ordinances and other City codes;~~

~~6. Public needs and benefits;~~

~~7. Other factors deemed relevant by the Lease Committee; and~~

~~2.~~10. ~~Date of commencement and completion of improvements~~, as identified in the City's request for proposal and permitted under state and federal law.

~~a.~~b. Determination of rent shall take into consideration the following factors:

1. Appraisal or tax assessed valuation;

2. Highest and best use of land;

3. Development (existing and planned);

4. Economic development objectives;

5. The location of the property; and

6. Alternative valuation methodologies as negotiated by both parties.

~~c. All leases or memorandums of leases shall be recorded.~~

~~The lessee and the~~ 18.08.065 Lease ~~Committee may negotiate all lease terms except those~~ application and proposal documents.

~~d.~~ Upon request by the City Manager or as required ~~by law.~~

~~18.08.080 Appraisal.~~

~~a. An appraisal of the fair market value or fair rental value of the property will be required before the original approval of a lease and at the time of review and renewal. The appraisal can be made by an independent contractor or the Kenai Peninsula Borough Assessor as negotiated~~ in ~~the lease agreement.~~

~~b. The requirement of an appraisal may be waived at the discretion of the Lease Committee~~a request for ~~leases for six months or less.~~

~~18.08.090 Requirements of the lessee.~~

~~A proposed lessee~~ proposal, an applicant shall provide, at its sole expense, the following ~~unless waived by the Lease Committee in its discretion~~:

1. A Property Improvement Plan~~. The proposed lessee shall submit a property improvement plan that includes a~~ with information regarding planned improvements by lessee, including schedule for commencement and completion of proposed improvements.

~~Survey. The lessee shall submit a~~2. A survey of the ~~land~~property subject to the proposed lease ~~after Homer City Council approval of the lease.~~; and/or

~~Plat~~3. If only a portion of a lot is to be leased, ~~the lessee shall cause~~ a subdivision plat ~~to be filed in accordance with Kenai Peninsula Borough subdivision requirements within 90 days after Homer~~ .

18.08.070 Notice to award.

a. The City ~~Council approval of the lease~~Manager shall consider all responses to the City's request for proposals that are timely and responsive. Untimely submissions shall be returned to the applicant without review and that applicant shall not be considered.

b. The City Manager may, in his or her sole discretion, and upon a determination that none of the proposals are in the City's best interest, recommend rejection of all proposals.

c. Upon a determination that a proposal is the most advantageous to the City, the City Manager shall recommend the proposal to Council for acceptance. If Council approves the recommendation, the City Manager shall issue a Notice to Award the lease to the successful applicant. The City Manager's recommendation shall be presented to Council in a written memorandum identifying the recommended winning applicant, the property description, the essential terms of the proposed lease, and the reasons the City Manager recommended the award.

d. The City Manager shall submit any recommendation for approval of a proposal under this chapter for property located on the Homer Spit or in the Marine Commercial or Marine Industrial zoning districts to the Port and Harbor Advisory Commission for review and comment prior to recommending a proposal to Council.

e. If the Council adopts the City Manager's recommendation, the City Manager shall negotiate with the winning applicant and present a final lease to the Council for approval. A Notice to Award is conditional upon the City Manager's successful negotiation of a final written lease consistent with the terms upon which the award was based.

f. The City Manager may, with Council approval, rescind a Notice to Award. A Notice to Award becomes void on the date the City Manager provides written notice to the applicant that the award has been rescinded.

g. The City Manager may rescind a Notice to Award at any time prior to the execution of a lease if an applicant can no longer meet the terms of the proposal.

h. If the City Manager rescinds a Notice to Award, the City Manager may negotiate with the next most responsive bidder and submit a new recommendation for award to Council and Council may approve the award of the proposal to that recommended bidder. If negotiations with the next most responsive bidder are unsuccessful, all bids must be rejected and a new request for proposal may be issued.

i. The Council may approve other bidding or proposal procedures or exceptions to these procedures via resolution.

18.08.075 Lease rental rates.

a. Except as otherwise provided in this section, all property shall be leased at no less than “fair market rent.”

b. Payments of a higher than fair market rent resulting from an applicant’s proposal is generally in the public interest and will help to establish fair market rent using current market forces.

c. The Council may establish a minimum rent or “asking price.” It may set a minimum rent at an amount equal to or higher than the estimated “fair market rent” if it finds that it is in public interest to do so. It may set uniform rental rates for a class of similar properties that remain available for leasing after the conclusion of a competitive lease offering.

d. Except as provided in HCC 18.08.175, Council may approve a lease of City land for less than fair market rent only if the motion approving the lease contains a finding that the lease is for a valuable public purpose or use, and a statement identifying such public purpose or use.

e. The lease shall provide for payment of interest or a late fee for rent past due, and provide for recovery by the City of attorneys’ fees and costs to the maximum extent allowed by law in the event the city is required to enforce the lease in court, and such additional provisions pertaining to defaults and remedies as the City Manager may determine to be in the City’s interest.

18.08.080 Lease execution and final approval.

a. After a notice to award a lease is approved by Council or a lease application is approved by the City Manager, the City Manager is responsible for finalizing and executing the lease agreement with the successful applicant. After Council’s approval of the Notice to Award but before Council approval under HCC 18.08.040, the City Manager may negotiate non-essential long-term lease terms and make changes necessary to clarify the terms of the long-term lease or correct clerical errors.

b. The City Manager has authority to negotiate all terms of short-term leases subject to the provisions of this chapter.

c. After a lease is executed by both parties, the City Manager shall draft and the City Clerk shall record a memorandum of lease. The Lessee is responsible for the recording fees.

18.080.090 Development and use.

a. All leases must require the lessee to comply with applicable zoning, parking, sign, flood, and other pertinent local ordinances and state and federal statutes and regulations.

b. Except as provided otherwise in the lease agreement, an as-built survey including elevations performed by a surveyor shall be provided to the City within six months of completion of permitted or required development or requirements under a lease. Each additional structure or significant improvement shall require an additional or updated as-built. All surveys are to be provided by the lessee at their expense.

c. Except as provided otherwise in the lease agreement, at the time each as-built is submitted, a statement of value including leaseholds and all improvements shall be provided. The Statement of Value shall be either a letter of opinion or appraisal completed by an appraiser.

d. All development requirements and performance standards contained in the lease shall be strictly enforced and if not complied with or negotiated for modification shall be cause for the lease to be terminated. Failure to enforce the terms of the lease shall not constitute waiver of any such term.

e. The City may require a lease of City-owned property to be secured by any means that meet the City's best interest, including without limitation, a security deposit, surety bond or guaranty.

18.08.100 Appraisal.

a. An appraisal of the fair market rent of the property will be required before the final approval of a lease and at the time of review and renewal.

b. The requirement of an appraisal may be waived at the discretion of the City Manager for short-term leases.

c. All leased properties shall be appraised every five years from the effective date of the lease.

d. Except as otherwise provided under this section or in a specific lease, lease rates shall be increased on the anniversary of the lease effective date to reflect property appraisal values. A lessee shall be notified of any increase in the appraised value of the property at least 30 days before the increased rental rate becomes effective.

e. In the event an appraisal reports a decrease in fair market rent, a lessee may petition or the City Manager may recommend to the Council a reduction in the lease rate. The Council may approve a reduction if it determines via resolution that such reduction corresponds with the appraised fair market rent and the reduction is in the City's best interest.

f. Each year, the City will select and retain an appraiser to appraise all leased parcels due for appraisals in that year. The City will have sole discretion to select the appraiser and shall bear the cost of the appraisal.

18.08.110 Options to renew.

a. Leases may contain no more than two options for renewal and each option must be for less than 25% of the length of the initial lease term.

b. A lessee may not exercise an option to renew unless the City Manager determines that the lessee is in full compliance with the terms of the lease at the time of renewal.

c. A lessee whose initial lease and all options have expired shall have no automatic right of further renewal or extensions.

18.08.120 Improvements.

~~Construction of Improvements. Construction~~

a. Except as otherwise provided in the lease agreement, construction of improvements shall take place only after review and ~~–~~approval of the construction plans by the ~~Lease Committee for consistency with the lease agreement~~City Manager and only after all applicable permits and legal requirements are secured.

b. ~~Construction of Improvements Not Consistent with the Lease Agreement.~~ Any improvements not consistent with the lease agreement ~~shall~~must be ~~construed only after having been reviewed and~~ approved by Council via resolution and shall only be considered upon recommendation by the City ~~Council~~Manager and after review ~~and comment by the Lease Committee,~~by the Port and Harbor Commission, the Planning Commission, and any other advisory commission determined to be appropriate by the ~~Lease Committee.~~City Manager. Inconsistent improvements may be approved if the changes to the improvements promotes serves the City's best interest and/or when changes are necessary due to industry changes or a change in economic conditions within the city.

~~a. Removal of Improvements upon Termination. The City Council standards for removal of improvements are set by resolution, as reflected in the Property Management Policy and Procedures Manual.~~

~~18.08.110 Lease option.~~

~~The City may grant an option to lease property. The option shall contain the specific duration and terms as set forth in a request for proposal or as negotiated by the Lease Committee and approved by the City Council.~~

~~The City may charge a nonrefundable fee for the option and said fee may be equal to the fair rental value.~~

c. All improvements constructed upon leased property become the property of the City upon termination of the lease unless otherwise provided in the lease agreement or agreed to by the parties in writing.

d. Lessee shall be responsible for all municipal property taxes on the leasehold interest in the real property and improvements and sales taxes on the rent payments.

18.08.130 Lease renewal.

a. The Council, after reviewing a recommendation from the City Manager, may approve the renewal of a lease without requiring competitive bidding based upon the City Manager's recommendation and when Council finds that it is in the best interest of the City to enter into a new lease agreement with the current lessee without submitting the lease renewal to competitive bidding.

b. If the current lessee is interested in entering into a new lease agreement under this section, the lessee must issue a request for a new lease in writing to the City Manager at least 12 months prior to the expiration of the lease and submit a formal lease application for evaluation by the City Manager. The City Manager shall notify Council of new lease requests under this section. The City will review the application but is under no obligation to enter into a new lease.

c. If the Council approves the new lease without a competitive process, it must do so by resolution within six months of the date the lease application is filed with the City.

d. Council shall consider the following factors when determining whether to exempt a lease from competitive bidding under this subsection:

1. The lessee's past capital investment and binding commitment to future capital investment;

2. The lessee's financial condition and prior lease history;

3. The number of persons employed and the prospect for future employment;

4. Tax revenues and other financial benefits to the City anticipated in the future if the lease is renewed;

5. Consistency of the past use and intended future use with all applicable land use codes and regulations, the Comprehensive Plan, and Overall Economic Development Plan;

6. Other opportunities for use of the property that may provide greater benefit to the City; and,

7. Other social, policy, and economic considerations as determined by the Council.

18.08.~~120~~140 Sublease.

a. City property may be subleased ~~only~~ if expressly permitted in the lease agreement ~~so provides~~ and ~~only with the consent of the City~~approved in writing by Council.

b. ~~A sublease of City property shall be subject to Homer City Council approval and shall~~ Except as provided otherwise in the lease agreement, all subleases must be in writing and executed by the parties~~. Any amendments to a sublease shall also be in writing~~, and ~~subject to City~~ approved by Council ~~approval~~after a recommendation is provided by the City Manager.

~~b.~~c. Approval must be granted prior to ~~becoming effective~~occupancy of the leased premises by the sub-tenant.

~~c.~~e. A lessee shall be assessed additional rent, equal to at least 10 percent of the current rent for the subleased area, upon approval of a sublease.

~~18.08.130 Lease assignment.~~

~~A lessee may assign a lease to another party subject to approval by the City Council and the procedures set forth in the Property Management Policy and Procedures Manual.~~

~~18.08.140 Competitive bidding.~~

~~The Lease Committee or the City Council may elect to require the submission of sealed bids to lease City property or facilities. The competitive bidding process shall be administered by the Lease Committee. The apparent successful bidder shall be selected to negotiate the terms of a lease, but shall have no right to a lease or any other property right until a lease is successfully negotiated, approved by the City Council, and signed by the parties.~~

~~18.08.150 Reconsideration.~~

~~A lessee may request reconsideration by the Homer City Council of the terms of the lease within 15 days of City Council action on the lease. The reconsideration procedures set forth in the Property Management Policy and Procedures Manual shall be applied in the event of a reconsideration. [Ord. 92-10, 1992].~~

~~18.08.160 Property Management Policy and Procedures Manual.~~

~~a. The City Council shall adopt by resolution a Property Management Policy and Procedures Manual. Leasing and use permits of City land and facilities shall conform to the manual except to the extent it shall be in conflict with this code or any relevant ordinance later adopted, in which case the provisions of this code and later ordinances shall prevail over the provisions of the manual.~~

~~b. The Property Management Policy and Procedures Manual may be revised by City Council resolution.~~

~~c. A copy of the Property Management Policy and Procedures Manual shall be available to the public during normal working hours at City Hall.~~

~~18.08.170 Exceptions – Financing transactions.~~

~~The procedures set forth in this chapter do not apply to sales, purchases or leases entered into by the City as a part of a financing transaction in which the City is acquiring or disposing of municipal property for municipal purposes through the use of lease/leaseback arrangements or the lease/purchase mechanisms. The formal procedure with respect to these financing leases and the related purchase and sale of land and interests in land shall be by an ordinance of the City Council authorizing the financing transaction.~~

f. ~~18.08.175 Exception – Leasing to the Federal or State~~Subleasing shall not be used as a method to accomplish the transfer of interest in the entire leasehold.

g. All subleases must comply with all relevant federal, state, and local laws.

18.08.150 Early termination.

Except as provided otherwise in the lease agreement, Council shall approve the termination of a lease for failure to comply with the lease terms. The City Attorney shall be consulted prior to the termination of a long-term lease. The City Manager shall seek approval of termination from Council in executive session. The name of lessee and description of the leased property shall not be included in any public notices or documents circulated unless and until Council approves termination of the lease under this section. The City Manager shall notify a lessee in writing that Council will be considering termination of the lease in executive session and provide the date, time, and place of the executive session. Lessee may waive the right to confidentiality under this section and request that Council hold its discussion in public. This section shall not prevent the City from sending lessee or other parties with an interest in the lease notifications or correspondence related to the lease or lessee's compliance with its terms.

18.08.160 Assignment.

a. Except as provided in the lease agreement, Council must approve the assignment of a lease to another party.

b. Except as otherwise provided in this subsection and subject to the terms of the lease agreement, the City Manager must make a determination that a lessee is in full compliance with a lease before an assignment will be effective. The City Manager may enter into an agreement with an assignor or an assignee consenting to assignment conditional upon payment of any outstanding amount due under the lease no more than 90 after assignment.

c. Except as otherwise provided in a lease agreement, if the lessee is in good standing and eligible to assign the lease, the following procedures apply:

1. The lessee shall file a written request for assignment and a new lease application to the City Manager;

2. The City Manager shall review the request and assignment document(s) and determine whether the proposed assignee is qualified under this chapter and the assignment is in the City's best interests;

3. The City Manager shall make a recommendation on the assignment to Council for final action; and

4. The Council shall approve or deny the request for assignment via resolution.

5. Assignment of long-term leases on the Homer Spit or within the Marine Commercial or Marine Industrial zoning districts shall be reviewed by the Port and Harbor Advisory Commission prior to submission to Council for approval. Except as otherwise provided in a specific lease agreement, assignment of all other long-term leases shall be reviewed by the Homer Advisory Planning Commission for recommendations prior to Council approval.

d. The Council may approve assignment of a lease to a bank or other financial institutions for financing or other reasons if it determines the assignment is in the best interest of the City and upon recommendation by the City Manager.

e. Where a lessee intends to assign the lease as part of a sale of the business located on the lease lot, the person who intends to purchase the business may apply to extend the lease term to allow the continuation of the business and to secure financing for the purchase.

18.08.170 Insurance.

a. All lessees shall keep in force for the full term of the lease public liability insurance in the amount of not less than $1 Million coverage per occurrence for bodily injury, including death, and property damage. The City shall be named as an additional insured.

b. Lessees who intend to conduct activities which could potentially have significant risk of environmental contamination shall also obtain not less than $2 Million in Environmental Impact insurance and/or Environmental Clean-up Policy, or the equivalent subject to review and approval by the City Manager. The City shall be named as an additional insured. The City will determine on a case-by-case basis whether a lease of City property will involve a significant risk of environmental contamination due to the use of the property, the presence of hazardous materials, or the location of the property.

c. Certificates of Insurance showing the required insurance is in effect and identifying the City as an additional insured shall 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.

d. All insurance policies must be in effect for the duration of the lease term, or longer if stated in the lease, and the City must be notified of any changes to policies.

e. A lease agreement may require insurance requirements that exceed those required in this section.

18.08.175 Exception-leasing to government entities.

~~The City~~

a. Except as otherwise prohibited by law, leases to federal or state government entities or political subdivisions or agencies of the State of Alaska or the United States may ~~license or~~be, upon a finding by Council that it is in the best interest to do so, exempted from the requirements of this chapter.

~~a.~~b. The City may lease ~~any~~ real property to the United States, the State of Alaska, a political~~-~~ subdivision of the State, or an agency of any of these entities, for consideration agreed upon between the parties ~~without a competitive bidding process or otherwise complying with the provisions of HCC 18.08.140, if the City Council determines the transaction is advantageous to the City. Such a transaction may be for less than fair rental value and without an appraisal unless otherwise directed by the City Council. Respecting such a license or lease, the Homer City Council, in its discretion, may waive any other requirements of this chapter.~~for less than fair market rent if the Council determines that the lease or license is in the City's best interest.

18.08.180 Assessments – Capital improvement projects.

a. A lessee of City property shall pay all real property special assessments levied and assessed against the property to the full extent of installments ~~falling due~~billed during the term of the lease.

b. In the event the City completes a capital improvement project which directly benefits the leasehold property and no local improvement district is formed to pay the cost thereof, the City may, in its sole discretion, impose, and the lessee shall pay as additional rent, the leasehold property's proportionate share of the cost of the improvement. The amount of additional rent imposed annually by the City under this subsection shall not exceed the amount which would have been payable annually by the lessee if a local improvement district had been formed which provided for installment payments on a schedule and bearing interest at rates typical of other local improvement districts of the City for that type of capital improvement.

18.08.190 Connection to utilities.

A lessee of City real property shall connect to City utilities and bear all costs of connections and adhere to all applicable local, State and Federal regulations. Connections to newly installed City utilities shall be made as soon as possible after completion.

18.08.~~200 Fee schedule.~~

~~The~~195 Processing and filing fees.

Fees for lease applications, lease fees, sublease and assignment fees, and other related fees shall be established by ~~the City~~ Council ~~from time to time~~ by ~~means of a~~ resolution. Failure to pay fees owed may result in the rejection of a lease application or denial of renewal, assignment or sublease.

Section 2: This ordinance is of a permanent and general character and shall be included in the Homer City Code.

ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER THIS __ DAY OF APRIL, 2018.

CITY OF HOMER

____

BRYAN ZAK, MAYOR

ATTEST:

____

MELISSA JACOBSON, MMC, CITY CLERK

AYES:
NOES:
ABSTAIN:
ABSENT:

First Reading:
Public Hearing:
Second Reading:
Effective Date:

Reviewed and approved as to form:

Mary K. Koester, City Manager　　　　Holly Wells, City Attorney

Date: __________　　　　Date: __________

GROUND LEASE AND SECURITY AGREEMENT

GROUND LEASE AND SECURITY AGREEMENT ("Lease") dated as of _________ ____, 201__, between the CITY OF HOMER, an Alaska municipal corporation ("Landlord"), whose address is 491 East Pioneer Avenue, Homer, Alaska 99603, and _______________ a ________________ [state of organization] ______________________ [type of entity] ("Tenant"), whose address is ____.

OPTIONAL PARAGRAPH, APPLICABLE WHEN TENANT IS NOT A NATURAL PERSON

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** are a certificate of good standing issued by the state under whose laws Tenant is organized, and, if Tenant is a foreign entity, a certificate of authority issued by the State of Alaska. 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

WHEREAS, Tenant has made its own determination that its proposed development of the property will be economically feasible, and that the term for which it is leasing the property will be sufficient to amortize Tenant's investment in developing the leased property under Tenant's proposal.

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

(b) “Base Rent” is defined in Section 4.01.

(c) "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.

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

(e) "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%).

(f) "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.

(g) “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.

(h) “Extended Term” is defined in Section 3.02.

(i) “Five Year Rent Adjustment Date” is defined in Section 4.02(a).

(j) "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.

(k) "Landlord” means the City of Homer, Alaska.

(l) “Lease Policy” means the City of Homer Property Management Policy and Procedures, as adopted and amended from time to time by Council resolution.

(m) “Leasehold Mortgage” is defined in Section 13.01.

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

(o) “Qualified Mortgagee” is defined in Section 13.03.

(p) “Required Improvements” is defined in Section 6.02.

(q) “Tenant” means ____________________.

(r) “Term” is defined in Section 3.01.

1.02 Attachments. The following documents are attached hereto, and such documents, as well as all drawings and documents prepared pursuant thereto, 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" Required Improvements Floor Plan

Exhibit "G" Certificates of Insurance

Exhibit "H" 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 (“Property”):

> ***[must insert legal description]*,** Homer Recording District, State of Alaska, as depicted on **Exhibit C**, containing ____________ square feet, more or less, also known as Kenai Peninsula Borough Tax Parcel No. _________;

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." Landlord, its agents and employees make no 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.

OPTIONAL PARAGRAPH 2.03.__ APPLICABLE IF TENANT OBTAINS ENVIRONMENTAL ASSESSMENT.

2.03 Property Accepted "As Is;" Exception for Hazardous Substances.

(a) 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." Except as provided in subsection (b), Landlord, its agents and employees make no 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.

(b) Tenant shall obtain, at its own expense, a phase I environmental assessment of the Property as of the earlier of (i) the commencement of the Term, and (ii) Tenant's initial occupancy of the Property. If Landlord reasonably determines that the phase I environmental assessment is acceptable, Landlord will warrant that the condition of the Property as of the applicable date with regard to the presence of any Hazardous Substance is consistent with the results of the phase I environmental assessment.

2.04 No Subsurface Rights. This Lease confers no mineral rights or rights with regard to the subsurface of the Property below the level necessary for the uses of the Property permitted in this Lease.

ARTICLE 3. TERM

3.01 Lease Term. The term of this Lease is ____________ years, commencing on _________ ___ 201__, and ending on _________________ ___, 201___ ("Term").

3.02. Options to Extend Lease Term.

(a) Tenant has the option to extend the Term for _____ additional, consecutive ____ 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 the last day of the Term or current Extended Term, as the case may be;

(2) At the time Tenant exercises the option, and at all times thereafter until the Extended Term commences, Tenant is not materially in default of any term or condition of this Lease and has not made an assignment or subletting of this Lease or any interest in the Property except as permitted under this Lease; and

3) Tenant may exercise no more than one option to extend the Term during the Term or any Extended Term.

(b) Tenant's failure to exercise an option to extend the Term in strict compliance with all the requirements in Section 3.02(a) renders that option and all options as to subsequent Extended Terms null and void.

3.03 Lease Renewal.

(a) Tenant represents and warrants that it has determined that the duration of the Term, plus 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. 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 or the final Extended Term, including without limitation any option to renew this Lease, or any option to extend the Term other than as provided in Section 3.02.

(b) Not less than 12 months before the expiration of the Term or the final Extended Term, Tenant may apply to Landlord for a renewal of this Lease in the manner that a person then would apply for a new lease of the Property. In response to a timely application, the Council will determine whether to renew this Lease, and the term of any renewal, in its sole discretion. The Council is under no obligation to renew this Lease, or to renew this Lease for the term that Tenant requests. If the Council does not grant a timely application to renew this Lease, Tenant shall prepare to surrender possession of the Property as required by Section 3.04, and dispose of improvements on the Property as required by Section 6.08.

3.04 Surrender of Possession. Upon the expiration or earlier termination of the Term or the final Extended 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, and shall remove from the Property all personal property that was not present on the Property at the commencement of the Term. 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 or final Extended Term.

3.05 Holding Over. Tenant's continuing in possession of the Property after the expiration or earlier termination of the Term or final Extended 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.

ARTICLE 4. RENT, TAXES, ASSESSMENTS AND UTILITIES

4.01 Base Rent. Tenant shall pay to Landlord an initial annual rent of $_____________ ("Base Rent"). Base Rent is payable monthly in advance in installments of $___________, plus tax, on _____________ ___, 201_, and on the _____ 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.** Commencing January 1, _____, 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 improvements (other than utilities) made by tenants. The appraisal may be performed as part of an appraisal of other properties of Landlord that are comparable in location and value. The Base Rent will be adjusted effective ________ of the year of each appraisal (each such date is a "Five Year Rent Adjustment Date") to an amount equal to the greater of (i) the area of the Property in square feet, multiplied by the fair rental value per square foot determined by the appraisal, and (ii) the adjusted Base Rent in effect immediately before the Five Year Rent Adjustment Date. The rent 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 _____________, and on each _________ thereafter, excluding each Five Year Rent Adjustment Date (each such date being an "Annual Rent Adjustment Date"), by the increase or decrease, 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 or an Extended 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 or Extended Term by 10. If this Lease subsequently is extended or renewed, the part of the assessment that Tenant shall pay 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.

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 and refuse removal. Tenant shall be solely responsible for the cost of utility connections.

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. Without limiting the generality of the preceding sentence, Tenant shall pay for wharfage, crane use, ice, and other Port and Harbor services at the rates established by the City of Homer from time to time. Tenant shall provide the City of Homer with the information necessary to determine wharfage, crane use, ice and other Port and Harbor service charges, 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, 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 will hold the security deposit, and may comingle it with other funds of Landlord. 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 or Renewal Term. If Tenant has fully complied with all of its obligations under this Lease through the first five years of the Term, Landlord will remit to Tenant any balance of the security deposit, without interest, within 30 days after the expiration of the first five years of the Term.

OPTIONAL PARAGRAPH 4.08, APPLICABLE TO FISH PROCESSORS WITH ACCESS TO OUTFALL LINE

4.08 Outfall Line Connection Agreement. Tenant shall connect to the City of Homer fish processor outfall line. On or before the commencement of the Term of this Lease, Tenant shall enter into a Fish Processor Outfall Line Connection Agreement with Landlord, and thereafter at its own expense install and maintain a fish grinder as required by the Fish Processor Outfall Line Connection Agreement. Tenant shall comply with the terms of the Fish Processor Outfall Line Connection Agreement until the earlier to occur of (i) the expiration or earlier termination of the

Term and any Extended Term, and (ii) the date the City of Homer ceases to maintain the outfall line.

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 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 against environmental contamination or pollution; (3) all compensation payable to Tenant as a result of eminent domain proceedings or a transfer in lieu thereof; and (4) all rents from Tenant’s subletting of all or a part of the Property. Said lien and security interest will be in addition to Landlord's liens provided by law.

This Lease 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. Tenant shall execute, such financing statements and other instruments as Landlord may now or hereafter reasonably request to evidence the security interest. granted by Tenant.

ARTICLE 6. USE AND IMPROVEMENT OF PROPERTY

6.01 Use of Property. Tenant’s undertaking to use and improve the Property as described in Tenant’s proposal to Landlord is a material inducement to Landlord leasing the Property to Tenant. Tenant shall improve and use the Property in the manner described in Tenant’s proposal. Tenant’s proposed use of the Property is described in **Exhibit D.** Tenant shall not use or improve the Property for any purpose other than as described in Tenant’s proposal without Landlord’s written consent, which consent Landlord may withhold in its sole discretion.

6.02 Required Improvements. Tenant shall, at Tenant’s sole expense, construct, and at all times during the Term and any Renewal Term keep and maintain as the minimum development on the Property the following improvements (“Required Improvements”):

____
____
____
____
____

The Required Improvements also are depicted in the site plan and floor plans in **Exhibit E** and **Exhibit F**, respectively. 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 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 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. Landlord shall communicate approval or disapproval in the manner provided for notices, accompanying any disapproval with a statement of the grounds therefor. Tenant shall be responsible for complying with all laws governing the construction, notwithstanding Landlord's approval of preliminary plans and specifications under this paragraph.

(b) Not less than five 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 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 improvements that are not consistent with terms of this Lease is prohibited unless the improvements are authorized by an amendment to this Lease approved by the Council.

(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. 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 any Extended Terms and may be removed or replaced by Tenant, subject, however, to (i) Tenant's obligations concerning the Required Improvements in Section 6.02; and (ii) the designation of improvements in **Exhibit D** for transfer to Landlord and retention on the Property at the expiration of the Term or Extended Term as provided in Section 6.08(a).

6.08 Disposition of Improvements at End of Term.

(a) One year before the expiration of the Term or Extended Term, the Landlord and Tenant shall determine if the improvements designated in the proposed use of the Property described in the preceding lease agreement, are structurally sound and in good condition or are ineligible for transfer to Landlord and retention on the Property at the expiration of the Term or Extended Term. If the improvements are eligible to remain, 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. 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 improvements. If the improvements are ineligible, Tenant shall remove all improvements constructed by Tenant or other occupants of the Property under this Lease before the expiration of the Term or Extended Term.

(b) Tenant shall notify Landlord before commencing the removal of an improvement as required under Section 6.08(a), 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 or Extended Term. All salvage resulting from such work will belong to Tenant, who is responsible for its removal and lawful disposal.

(c) If Tenant fails to remove any improvements from the Property that Tenant is required to remove under Section 6.08(a), Tenant shall pay Landlord the costs that it incurs in removing and disposing of the improvements and repairing damages to the Property caused by such removal.

(d) If Landlord terminates this Lease because of a default by Tenant, all improvements on the Property become the property of Landlord, which may use or dispose of them in its sole discretion. If Landlord elects to remove any improvements, Tenant shall pay Landlord the costs that it 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.

7.02Repair 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. Tenant shall not be required to restore the Required Improvements under the following circumstances:

(1) If the cost of repairing or restoring the Required Improvements, net of any available insurance proceeds not reduced by applicable deductibles and coinsurance, exceeds 10% of the replacement cost of the Required Improvements, 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.

(3) If any damage or casualty to the Required Improvements occurs within three years before the end of the Term or any Renewal 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.

(c) Under no circumstance shall Landlord be under any obligation to use or advance any of its own funds to restore any Required Improvements.

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 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 Homer Spit garbage disposal facilities.

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.

OPTIONAL PARAGRAPH 7.__ APPLICABLE FOR USE OF FISH DOCK

7. Fish Dock Use Permit. Before using the City of Homer Fish Dock, Tenant shall obtain a City of Homer Fish Dock Use Permit. Tenant shall continue to have a current Fish Dock Use Permit in force until the earlier to occur of (i) the expiration or earlier termination of the Term and any Extended Term, and (ii) the date Tenant ceases to use the Fish Dock.

OPTIONAL PARAGRAPH 7.__ APPLICABLE FOR USE OF OTHER DOCKS

7. Terminal Use Permit. Before using City of Homer Docks other than the Fish Dock, Tenant shall obtain a City of Homer Terminal Use Permit. Tenant shall continue to have a current Terminal Use Permit in force until the earlier to occur of (i) the expiration or earlier termination of the Term and any Extended Term, and (ii) the date Tenant ceases to use City of Homer Docks other than the Fish Dock.

ARTICLE 8. ASSIGNMENT AND SUBLEASE

8.01 Consent Required for Assignment or Sublease. Tenant shall not assign or sublease its interest in this Lease or in the Property without first obtaining the written consent of the Council, which will not be withheld unreasonably. Any assignment or sublease without the consent of the Council will be voidable and, at Landlord's election, will constitute a default. Tenant shall request consent of the Council 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. Tenant shall be assessed additional rent, equal to 10% of the current Base Rent for the subleased area, but not upon a sublease of space within a building or other structure on the Property. 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 subject to Section 8.01. 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 subject to Section 8.01; 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 an assignment subject to Section 8.01. 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, 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 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. Landlord's insurance requirements shall specify 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) Tenant shall maintain in force at all times during the Term the following 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 also shall 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) 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. The policy shall include boiler and machinery coverage.

(c) During 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. The certificates of insurance shall be attached hereto as **Exhibit G.** 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 H** as Landlord may request.

[*ALTERNATIVE 9.04(b)(4)* — Optional provision waiving environmental insurance based on the authorized uses of Section 6.01.]

(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.

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 and any Renewal 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 any Extended 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 or final Extended 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 10 days after the due date.

(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 Section 12.01(a), which is not cured within 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 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) Terminate this lease by written notice to Tenant, upon which Tenant shall surrender possession and vacate the Property immediately, and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Property in such event with or without process of law and to repossess Landlord of the Property and 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, 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) By written notice declare Tenant's right to possession of the Property terminated without terminating this Lease, upon which Landlord will have all the rights to repossess the Property and remove Tenant and Tenant's property that are described Section 12.02(a).

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

(d) 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 or Renewal 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, and subject to all of the other provisions of Article 8. 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: __________________

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

____
____
____
____
Facsimile: ______________
Email: __________________

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 defendant 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.

[OPTIONAL SPECIAL PROVISIONS] **-- 14.20 prior lease amended and superseded**

14.20 Prior Lease. Landlord and Tenant are parties to a prior lease affecting the Property dated ____________, 19__, a memorandum of which has been recorded in the records of the Homer Recording District under Document No. _______ (the "Prior Lease"). This Lease replaces and supersedes the Prior Lease effective as of __________, 201_, 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:

CITY OF HOMER

By: ________________________________

Katie Koester, City Manager

Tenant:

TENANT NAME

____

(Name, Title)

ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on ______________, 201__, by Walt Wrede, City Manager of the City of Homer, an Alaska municipal corporation, on behalf of the City of Homer.

____

Notary Public in and for Alaska
My Commission Expires: _______________

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on __________________, 20_, by ____________________________________, as ____________________ (title) of _________________________________ (name of entity) on behalf of _________________________ (name of entity).

____

Notary Public in and for Alaska

My Commission Expires: _______________

CITY OF HOMER

PROPERTY MANAGEMENT
POLICY AND PROCEDURES

Table of Contents

CITY OF HOMER
PROPERTY MANAGEMENT
POLICIES AND PROCEDURES

CHAPTER 1: LEASE POLICIES / GOALS, PURPOSE, AND RESPONSIBILITY

1.1 GOALS AND PURPOSE

A. The property lease management policies contained herein are authorized by HCC 18.08 and are intended to provide guidance, clarity, and standardization for all leasing activities on City owned property.
B. It is the policy of the City of Homer to lease property when it is in the overall best interest of the City to do so. The City will seek to maximize the value of its assets and lease property for the highest and best use.
C. It is the policy of the City to implement its leasing program in a fair and nondiscriminatory manner. Opportunities for long term leases on City owned properties will be made available to the public through the RFP process described herein.
D. It is the policy of the City to lease property for a specific purpose or use. Leasing for the purpose of speculation and/or subleasing land will be discouraged.

1.2 RESPONSIBILITY

A. The Lease Committee described herein shall be responsible for reviewing this policy manual and making recommendations to the City Council as needed, advising the City Manager or designee as to terms, stipulations, and negotiating approach with respect to leases, evaluating lease applications, and making recommendation to the City Council regarding proposed leases.
B. The City Manager or designee is responsible for all lease negotiation activities and for implementing and administering the lease policies and procedures.
C. The City Council has responsibility for approving and adopting the lease policies and for final approval of all leases over six months in duration.

CHAPTER 2: LEASE COMMITTEE

2.1 POLICY

A. It is the policy of the City of Homer to establish and maintain a Lease Committee.

2.2 PROCEDURES

A. The City Manager shall establish a Lease Committee that will at a minimum, consist of the Finance Director, the City Planner, and the Port and Harbor Director. The Lease Committee may consult with other department heads such as the Fire Chief, Police Chief and Public Works Director, the City Attorney, or outside professionals as needed and appropriate.

B. The Lease Committee is responsible for:
   - Reviewing the Lease Policies and Procedures as needed and making recommendations to the City Council. Prior to making recommendations to the City Council on the Lease Policies and Procedures, the Lease Committee shall consult with and seek comments from the Port and Harbor Advisory Commission when the lease property is on land on the Homer Spit surrounding the Port and Harbor area.
   - Advising the City Manager or designee as to the terms, purposes, stipulations and negotiation approach to proposed leases
   - Reviewing all proposed leases and making recommendations to the City Council.

C. In all cases, the Lease Committee shall make recommendations that are consistent with this policy and procedures manual or make specific findings as to why a deviation is warranted and justified.

CHAPTER 3: PROPERTIES AVAILABLE FOR LEASE

3.1 POLICY

A. It is the policy of the City of Homer to provide property for lease through a fair, nondiscriminatory, and standardized process that the public can readily understand and support.
B. It is the policy of the City that public land shall be leased in a way that maximizes the value of City assets, promotes activities and uses that are in the overall best interest of the City**,** and are consistent with the Comprehensive Plan.

3.2 PROCEDURES

A. The Lease Committee shall maintain a list of all City properties that have been authorized for lease by the City Council. This list shall be made readily available to the public. The Lease Committee may also develop a list of additional properties, for City Council review, that it recommends should be made available for lease.
B. The City Council shall identify which City properties are available for lease through its annual land allocation workshop process which includes the Lease Committee, the Planning Commission, the Port and Harbor Commission, and the Parks and Recreation Commission.
C. All properties identified as available for lease by the City Council shall be subject to the lease policies and procedures contained herein.
D. All uses and activities on lands made available for lease are subject to the City Comprehensive Plan, zoning ordinances, flood ordinance, subdivision ordinance, and other applicable local, state, and federal laws and regulations.
E. The City Council may restrict specific City properties to certain uses or classes of use. Such properties will be available for leasing only such uses. The City Council has in the past restricted the use of lots immediately adjacent to the Fish Dock to activities directly related to commercial fishing. Similarly, it has restricted uses on lots adjacent to the Deep Water Dock to marine industrial uses with an emphasis on shipping and cargo handling. The purpose for these restrictions is to encourage growth in targeted economic sectors, to insure that the City receives the maximum benefits from the large investment the public has made in those docks, and to provide land for businesses that require close proximity to the docks in order to operate efficiently and profitably.

CITY OF HOMER
PROPERTY MANAGEMENT
POLICY AND PROCEDURES

CHAPTER 4: REQUEST FOR PROPOSALS (RFP)

4.1 POLICY

A. It is the policy of the City of Homer that a request for proposals, or a competitive bidding process be used for the leasing of City owned property. Exceptions to this policy may be made by the City Council as per section 10.2.E of these policies and/or under special or exceptional circumstances. The Council shall review recommendations of the Lease Committee and, if an exception is granted, adopt a resolution finding that it is in the public interest and approving the exception.

4.2 PROCEDURES

A. Properties that are available for lease will be advertised by the Lease Committee through the normal City of Homer public notice process a minimum of one time per year. The Lease Committee shall provide such notice within 60 days of the completion of the annual land allocation process and adoption by the Council of the Land Allocation Plan. The committee may advertise more frequently as needed and appropriate.
B. Requests for Proposals shall be solicited by the Lease Committee during a time frame identified in the advertisements and proposal submittal documents.
C. The criteria used to score and rank proposals shall include, but not necessarily be limited to, the criteria listed in the evaluation chapter herein.
D. The Lease Committee shall review, evaluate, score, and rank all responsive proposals and make recommendations to the Manager. If none of the responsive proposals is satisfactory, the Lease Committee may recommend against all of the proposals. The manager shall notify the City Council of the Committee’s recommendations.
E. The Lease Committee must obtain approval from the City Council before requesting proposals to lease property that is not on the approved list of properties available for lease.
F. The City Council may by resolution in particular cases approve other bidding or proposal procedures or exceptions to these procedures.

CHAPTER 5: LEASE APPLICATION PROCESS

5.1: POLICY

A. It is the policy of the City of Homer to provide for a streamlined, standardized, and easily understood lease application process. A full and complete application packet shall be provided to all applicants. Applicants must be qualified under Section 18.08.50 of the Homer City Code.
B. The City administration will provide for pre-application meetings with all potential applicants to provide relevant information on things like land use regulations, lease policies, the permitting process, and other relevant topics.

5.2 PROCEDURES

A. A responsive lease application / proposal shall include:
   1. A completed application form provided by the City
   2. Any applicable fees
   3. A clear and precise narrative description of the proposed use of the property
   4. A specific time schedule and benchmarks for development
   5. A proposed site plan drawn to scale that shows at a minimum property lines, easements, existing structures and other improvements, utilities, and the proposed development including all structures and their elevations, parking facilities, utilities, and other proposed improvements.
   6. Any other information that is directly pertinent to the proposal scoring criteria contained herein
   7. All other required attachments requested on the application form including, but not limited to, the following documentation: applicant information, plot plan, development plan, insurance, proposed subleases, environmental information, agency approvals and permits, fees, financial information, partnership and corporation statement, certificate of good standing issued by an entity’s state of domicile, and references**.**
   8. Any other information required by the solicitation or request for proposals.

CITY OF HOMER
PROPERTY MANAGEMENT
POLICY AND PROCEDURES

CHAPTER 6: APPLICATION / PROPOSAL EVALUATION PROCESS

6.1 POLICY

A. It is the policy of the City of Homer to provide for a fair, standardized and objective proposal evaluation process.

6.2 PROCEDURES

A. All lease proposals shall be evaluated and scored by the Lease Committee.
B. The Criteria for evaluating proposals shall include but is not limited to the following:
    1. Compatibility with neighboring uses and consistency with applicable land use regulations including the Comprehensive Plan.
    2. The development plan including all proposed phases and timetables.
    3. The proposed capital investment.
    4. Experience of the applicant in the proposed business or venture.
    5. Financial capability or backing of the applicant including credit history, prior lease history, assets that will be used to support the proposed development.
    6. The number of employees anticipated.
    7. The proposed rental rate.
    8. Other financial impacts such as tax revenues, stimulation of related ~~or~~ spin-off economic development, or the value of improvements left behind upon termination of the lease.
    9. Other long term social and economic development.
C. Lease Rental Rates
    1. The determination of lease rental rates is addressed in Chapter 7.
D. After evaluating and scoring the proposals, the Lease Committee shall make a recommendation on a successful bidder to the City Council. The recommendation shall be contained in the form of a memorandum from the City Manager to the City Council that appears on the consent calendar of a regular meeting agenda. If a recommendation to approve a proposal is adopted, the Manager or his designee shall finalize a lease document for presentation to Council for approval. If the Council approves the lease, it will not be executed until the period for reconsideration under section 8.3 passes.
E. Prior to submitting a recommendation from the Lease Committee to the City Council on a lease proposal or successful bidder when the lease property is on land on the Homer Spit surrounding the Port and Harbor area, the City Manager shall provide the recommendation to the Port and Harbor Advisory Commission for review and comment. The Commission may, at its discretion, provide

recommendations to the City Manager and to the City Council. After receiving the Commission recommendations, the City Manager may refer the matter back to the Lease Committee if appropriate and warranted.

F. Final approval of long term leases (more than six months) rests with the City Council. The Council shall either:
    1. Approve the proposed lease
    2. reject the proposed lease; or
    3. remand the unapproved lease to the Manager with comments

CITY OF HOMER
PROPERTY MANAGEMENT
POLICY AND PROCEDURES

CHAPTER 7: Lease Rental Rates

7.1 POLICY

It is the policy of the City of Homer to provide for a lease rental rate structure that stimulates business activity, promotes the best use of City land, and maximizes the value of City owned real property.

7.2 PROCEDURES

A. Lease Rental Rates Generally
  1. All property shall be leased at no less than "fair market rent". Fair market rent is defined as the rental income that a public and private property would most likely command in the open market; indicated by the current rents paid for comparable space as of the date of the appraisal.
  2. Payment of a higher than market rent resulting from an applicant's proposal is generally in the public interest and will help to establish fair market rent using current market forces.
  3. The City Council may establish a minimum rent or "asking price." It may set the minimum rent at an amount equal to or higher than the estimated "fair market rent" if it finds that it is in public interest to do so. It may set uniform rental rates for a class of similar properties that remain available for leasing after the conclusion of a competitive lease offering.
  4. The Council may approve a lease of City land for less than fair market rent, minimum rent, or uniform rental rate only if the motion approving the lease contains a finding that the lease is for a valuable public purpose or use, and a statement identifying such public purpose or use.

B. Rental Rate Determination: Lease rental rates shall be determined by periodic appraisals scheduled and paid for by the City.

CITY OF HOMER
PROPERTY MANAGEMENT
POLICY AND PROCEDURES

CHAPTER 8: RECONSIDERATION

8.1 POLICY

It is the policy of the City of Homer to provide for a reconsideration process so that a fully responsive bidder may seek remedies to actions by the City Council that he or she may believe are in error, unfair, or otherwise unsatisfactory. The reconsideration provisions apply only to final approval of a lease by the City Council.

8.2 RESPONSIBILITY

A. The City Council is responsible for hearing reconsiderations and for making the final determination on them.
B. The City Manager is responsible for providing all required staff support necessary to assist the Council in hearing and deciding reconsiderations.

8.3 PROCEDURE

A. A fully responsive bidder who believes that the City Council final action on the terms of a proposed lease is unsatisfactory may request a reconsideration.
B. Reconsideration Process:
    1. A written request for reconsideration must be filed by a fully responsive bidder with the City Clerk within 15 days of the City Council action which is to be reconsidered. Any decision for which reconsideration is not requested within that period shall become final.
    2. The City Clerk shall schedule the matter for reconsideration before the City Council at an appropriate regular meeting.
    3. The person requesting reconsideration and all parties involved in the Council action to be reconsidered, shall be notified by the Clerk of the reconsideration request and the date upon which the Council will reconsider. Such notice shall be given not less than 15 days prior the scheduled reconsideration.
    4. An electronic tape recording shall be kept of the entire reconsideration proceeding and typewritten minutes shall be prepared. The electronic tape recording shall be preserved according to the City's records retention policy at the time.
    5. The decision of the City Council on reconsideration shall be final. There shall be no appeal.

CHAPTER 9: LEASE IMPLEMENTATION

9.1 POLICY

It is the policy of the City of Homer that all leases shall be negotiated and administered in a fair, standardized, and professional manner that is consistent with the Homer City Code and these policies and procedures.

9.2 PROCEDURES

A. The Lease Committee and the City Manager shall develop a standardized ground lease document that contains standard provisions applicable to all ground leases. Similarly, the Lease Committee and the City Manager may develop one or more standardized building leases (as many as necessary to apply to each City building available for leasing) containing standard provisions applicable to all leases of space in a city building. The standard lease documents shall be reviewed by the City attorney and approved by the City Council. Standard lease documents provide the baseline requirements and conditions of all city leases. They are the starting point in negotiations and are subsequently structured and modified to meet the specifics of the development proposal with respect to things like term, lease rate, allowed uses, required insurance, and so on.

B. The terms and conditions of each lease shall be reviewed by the Lease Committee prior to execution. The committee shall make recommendations on terms and conditions to the Manager and the City Council.

C. The City Manager or designee is responsible for lease negotiations, including any negotiated changes in the standard lease terms. The Manager shall take into consideration the following when negotiating the terms of a lease:
    1. the nature of the proposed use
    2. the type and cost of the improvements to be placed on the property
    3. the period of time required to amortize the improvements
    4. the overall benefit to the City
    5. consistency with the Comprehensive Plan and all other relevant land use codes and regulations
    6. the public need and benefit
    7. the date of commencement and completion of improvements
    8. the value and usefulness of buildings, structures, and other permanent improvements that will remain on the City's land after termination of the lease.
    9. other factors deemed relevant by the Lease Committee or the City Manager.

D. The determination of lease rental rates is addressed in Chapter 7.

E. All leases and attachments, or in the direction of the City Manager a memorandum of lease, shall be recorded in the proper recording office by the Clerk's office. The Lessee is responsible for the recording fees.
F. All leases must require the lessee to comply with applicable zoning, parking, sign, flood, and other pertinent local ordinances and state and federal statutes and regulations.
G. If a lease is awarded, an as-built survey including elevations performed by an RPLS(Registered Professional Land Surveyor) shall be provided to the City within 6 months of completion of permitted or required development or requirements under the lease. Each additional structure or significant improvement shall require an additional or updated as-built except that the Manager may waive the RPLS requirement. The lessee will be required to subdivide and replat city owned parcels if the lease so requires. All surveys are to be provided by the lessee at his/her expense.
H. At the time each as-built is submitted, a statement of value including leaseholds and all improvements shall be provided. The Statement of Value shall be either a letter of opinion or appraisal completed by an Alaska Certified General Appraiser.
I. All development requirements and_performance standards contained in the lease shall be strictly enforced and if not complied with or negotiated for modification as per 10.2.B, shall be cause for the lease to be terminated.

CHAPTER 10: IMPROVEMENTS

10.1 POLICY

It is the policy of the City of Homer that all improvements installed, maintained, occupied, and used on leased City property shall be strictly monitored and shall be consistent with the terms and conditions of the lease and all other applicable codes and regulations.

10.2 IMPLEMENTATION

A. Construction of improvements on leased properties shall take place only after review and approval of the construction plans by the Lease Committee and all applicable permits and legal requirements are secured.
B. Construction of improvements that are not consistent with the lease agreement are prohibited unless they are approved by an amendment to the lease approved by the City Council. The amendment is subject to the same review process as initial leases.
C. All improvements constructed upon leased property become the property of the City upon termination of the lease unless otherwise provided in the lease, or agreed to by the parties in writing, the lessee shall on or before the lease termination date remove all improvements the lessee is authorized or required to remove and restore the property to the same condition it was in at the time the lease was executed by the lessee.
D. Lessee shall be responsible for all municipal property taxes on the leasehold interest in the real property and improvements and sales taxes on the rent payments.

CHAPTER 11: LENGTH OF LEASES / OPTIONS

11.1 POLICY

It is the policy of the City of Homer that the duration of all leases including all options shall be consistent with the provisions of Chapter 18.08 of the Homer City Code and the provisions of these policies and procedures.

11.2 PROCEDURES

A. The initial term of leases shall be related to a large degree upon the magnitude of the lessee's financial investment and the value and usefulness of improvements that lessee will make and leave on the property upon the termination of the lease. It shall also be related, to a lesser degree, upon lessee's financing and the reasonable amortization requirements of the lessee and financing agency. Generally speaking, the larger the investment, and the greater the value and usefulness of permanent improvements that will remain on the property after termination of the lease, the longer the lease period.
B. Leases that extend beyond 30 years (including all options) will be treated as exceptional and shall be evaluated on a case by case basis.
C. Leases shall contain no more than two options for renewal and each option shall be for no more than 25% of the length of the initial base term. The exercise of any option shall be dependent upon lessee not being in breach of any provisions of the lease at that time.
D. If the lease or the lessee's approved development plan provides for utilization of the lot for several months a year and the lessee installs improvements or infrastructure, occupies the lot (by persons or things), or does anything else that precludes or devalues utilization of the lot for the remainder of the year by the City or another party, the lessee shall pay either a premium rent for the months the parcel is actually in use or fair market rental for the entire lease year.
E. It is the policy of the City that equal opportunities should be provided to compete for leasing available public property. A lessee whose initial lease and all options have expired shall have no automatic right of further renewal or extension. In general, it is the policy of the City that the Lease Committee shall offer such properties to the public through the RFP/competitive bidding process described herein.
F. Lease Renewals: The City Council, after reviewing a recommendation from the Lease Committee, may elect to not require a competitive bidding process for a property whose lease has expired (including all options) if it finds that it is in the best interest of the City to enter into a new lease agreement with the current lessee. If the current lessee is interested in entering into a new lease agreement, he/she must indicate so in writing to the City Manager at least 12 months prior to

the expiration of the lease and submit a formal lease application/proposal for evaluation by the Lease Committee. The City will review the application but is under no obligation to enter into a new lease. If the Council chooses to approve such a new lease without a competitive process, it must approve such new lease by resolution within six months that includes a finding that it is in the public interest to do so, after consideration of relevant facts including, but not limited to, the following:

1. The lessee's past capital investment and binding commitment to future capital investment
2. The lessee's financial condition and prior lease history
3. The number of persons employed and the prospects for future employment
4. Tax revenues and other financial benefits to the City of Homer anticipated in the future if the lease is renewed.
5. Consistency of the past use and intended future use with all applicable land use codes and regulations, the Comprehensive Plan, and Overall Economic Development Plan
6. Other opportunities for use of the property that may provide greater benefits to the City of Homer.
7. Other social, policy, and economic considerations as determined by the Council

G. Short Term Leases

1. A short term lease of 6 months or less may be approved by the City Manager after review and recommendations by the Lease Committee.
2. Short term leases are not required to go through the competitive bidding/PFP process described herein
3. Short term leases shall not include renewable options and no consecutive short term leases for the same property to the same lessee may be issued without the approval of the City Council.
4. Applicants for short term leases must go through the formal application process described herein.
5. The City Manager will advise the Council through memorandum or the Manager's report of all short term leases.

H. At the expiration or termination of a lease the City may negotiate to reimburse the lessee for improvements at fair market value, and then issue a request for proposals offering the lot and improvements as a package.

CHAPTER 12: LEASE RATE ADJUSTMENTS

12.1 POLICY

It is the policy of the City of Homer to adjust lease rental rates from time to time in order to compensate for inflation, increases in the cost of living, and changing real estate market conditions.

12.2 PROCEDURES

A. All leased properties shall be appraised every fifth year. The appraisal shall be conducted by an Alaska Certified General Real estate Appraiser. Appraisals shall be subject to the following:
    1. The lease rate shall be adjusted upward based upon increased property appraisal values. This periodic adjustment compensates for changing market conditions in the area by determining the fair rental value. In the event that an appraisal reveals that fair market rent has declined, the lessee may petition the City for an amendment to the lease and reduction in the lease rate. The City is under no obligation to do so. Any reduction in lease rates must be approved by the City Council and the motion to do so must include a statement regarding why the action is in the public interest.
    2. During the month of January each year, the City will contract with an Alaska Certified General Real Estate Appraiser to appraise all leased parcels which are due for their five year appraisals in that year. The appraisals will be bundled and conducted at the same time under the same contract in order to reduce costs. The City will select the appraiser and bear the cost of the appraisal.
    3. The newly adjusted lease rate determined by the appraisal will take effect on the anniversary date of the lease.

B. In addition, all rental rates shall be adjusted annually based upon changes in the Anchorage Consumer Price Index (CPI). No CPI adjustments shall be made in the initial year of the lease or in any year in which an appraisal adjustment occurs.

CHAPTER 13: SUB-LEASES

13.1 POLICY

It is the policy of the City of Homer that City land should be leased for a specific use or purpose approved by the City. City land shall not be leased for the purpose of speculation. Individual business structures unrelated to the primary permitted use that are owned by the lessee or subtenants of the lessee shall be discouraged.

13.2 PROCEDURES

A. If a potential lessee intends to sub-lease City owned property, this intention shall be clearly stated and described in the original lease application and proposal.
B. In order for a sub-lease to be approved, the right to sub-lease, and the terms and conditions thereon, must be specifically included and stated in the underlying base lease.
C. All sub-leases must be in writing and executed by the parties. All sub-leases must approved by the City Council after a recommendation is provided by the City Manager and the Lease Committee. Approval must be granted prior to occupancy of the leased premises by the sub-tenant.
D. All amendments to sub-leases must be in writing and approved by the City Council prior to becoming effective.
E. Sub-leasing shall not be used as a method to accomplish the transfer of interest in the entire leasehold.
F. All sub-leases must comply with applicable zoning, parking, sign, flood, and other applicable local ordinances and state and federal statutes.
G. All sub-leases are subject to the base lease and all sub-tenants must comply with the relevant provisions of the base lease as identified by the Lease Committee. Sub leases of City land are subject to additional rent pursuant to HCC 18.08.120.
H. Sub-leasing within a building may be approved provided that the terms and conditions of such are clearly set out and described in the original base lease.
I. Partnerships: The City may consider and approve a lease and development plan that consists of two or more independent businesses that finance, construct, and occupy the same building or improvements. The businesses, business relationship, and proposed uses must be approved by the City in advance. Partnerships such as this are not considered to be a sub-lease.
J. Developers/Investors: The City may consider proposals from developers who wish to construct buildings and/or other improvements for the purpose of sub-leasing, if all tenants of the building or land are engaged in activities that are permitted by applicable zoning codes and restricted uses as approved by the Council in effect at the time. The lessee will be in violation of the lease if he/she sub-leases for uses other than those permitted by the lease.

13.3 PROCEDURES

A. If a lessee with an assignable lease wishes to assign, the City must first make a determination that the lessee is current and not in default with respect to lease payments, taxes, and other fees that may be owing, and in compliance with any other relevant terms and conditions of the base lease. If the lessee is in good standing and eligible to assign, the following procedures will apply.
B. The lessee shall request approval of lease assignment in written form and submit a lease assignment document(s) to the Lease Committee.
C. The Lease Committee shall review the request and assignment document(s), determine whether the proposed assignee is qualified under HCC 18.08.050, and meet with assignee to ascertain whether the assignment would be beneficial to the interests of the City.
D. The assignee shall submit a new lease application form complete with all attachments and proposals following the process described herein for lease applications, and submit it along with any applicable fees to the Lease Committee for review.
E. The Lease Committee shall review the application and proposal using the application evaluation criteria described herein.
F. The Lease Committee shall make a recommendation on the assignment to the City Council for final action.

CHAPTER 14: ASSIGNMENTS

14.1 POLICY

It is the policy of the City of Homer to incorporate an assignment provision into the lease document if that is requested by the lessee. Consent to an assignment request shall be conditioned upon receipt of all current and applicable payments and properly submitted documentation. The proposed assignee must also be acceptable to the City of Homer and commit to develop and use the property in a manner acceptable to the City.

14.2 DEFINITIONS

A. Assignable lease: A lease which contains a provision permitting its assignment by lessee.
B. Assignment: A transfer of interests or rights to property, real or personal, in possession or in action, or of any estate or right therein. The assignment of a lease is distinguishable from a sublease to the extent that in assigning, the lessee transfers his entire interest and estate in the premises, whereas, in a sublease, the sublessee acquires something less than the lessee's entire interest.

14.3 RESPONSIBILITY

A. The Lease Committee is responsible for reviewing assignment provisions that may be included in lease documents. The Lease Committee is also responsible for reviewing and making recommendations to the City Council on all requests to assign a City lease.
B. The City Council is the final authority on all requests to assign.
C. The City Council may approve assignment of a lease to banks or other financial institutions for financing or other reasons if it determines that to be in the best interest of the City.

14.4 ASSIGNMENT WITH SALE OF BUSINESS

Where a lessee intends to assign the lease as part of a sale of the business located on the lease lot, the person who intends to purchase the business may apply to extend the lease term to allow the continuation of the business and to secure financing for the purchase.

CITY OF HOMER
PROPERTY MANAGEMENT
POLICY AND PROCEDURES MANUAL

CHAPTER 15: INSURANCE

15.1 POLICY

It is the policy of the City of Homer to require lessees to carry general public liability insurance, environmental insurance if appropriate, workers compensation insurance, and any other insurance coverage determined to be necessary by the City in order to protect City assets and the public interest.

15.2 PROCEDURES

A. All lessees shall keep in force for the full term of the lease public liability insurance in the amount of not less than $1 million coverage per occurrence for bodily injury (including death) and property damage. The City of Homer shall be named as an additional insured.
B. Lessees who intend to conduct activities which could potentially have significant risk of environmental contamination shall also obtain not less than $2 million in environmental insurance (Environmental Impact Insurance and/or Environmental Clean-up Policy, or the equivalent subject to review and approval by the City Manager) with the City of Homer as an additional insured. Environmental Insurance for the purposes of City leasing procedures shall meet the standards of the Environmental Insurance Requirement document attached as Appendix A to these policies. The following procedures apply in determining whether a significant risk of environmental contamination is present:
    1. The City will determine on a case by case basis whether a lease of City property will involve a significant risk of environmental contamination due to the use of the property, the presence of hazardous materials, or the location of the property.
    2. If the City determines that a significant risk is present, the environmental insurance requirement shall apply.
    3. Recommendations by the Manager and Lease Committee on environmental insurance are subject to final approval by the Homer City Council through the lease approval process.
    4. The following are examples of uses that generally will not involve a significant risk of environmental contamination. This list is not exhaustive or all inclusive and is provided for illustrative purposes only: restaurants, retail/charter businesses, commercial fishing gear storage (provided the storage does not include fuels, lubricants, hydraulic fluids, and solvents, or machinery containing any of them, campgrounds, entertainment establishments, drinking establishments, and the ordinary use of commonly used household cleaning agents and office products.

5. The following are examples of uses that generally will involve a significant risk of environmental contamination. This list is not exhaustive and is provided for illustrative purposes only: a) Storage or processing of logs, chips & other wood products, b) sale, manufacture, distribution, fueling of equipment, or storage of petroleum products, c) repair shops involving the use of solvents, d) activities in the tidelands or in close proximity to environmentally sensitive areas, e) the use of drums to collect, transport, or store waste oil, solvents, or other hazardous materials, f) the use of hazardous materials in manufacturing or processing, g) storage of hazardous waste in quantities sufficient to trigger reporting obligations under the Resource Conservation and Recovery Act, h) outside use or storage of equipment with a risk of leaking fuels, lubricants, solvents or hydraulic fluid.

C. Certificates of Insurance showing the required insurance is in effect and identifying the City of Homer as an additional insured shall be provided to the City of Homer initially at the time a lease becomes effective and annually thereafter, and upon every change in insurance provider or insurance coverage.

D. All insurance policies must be in effect for the duration of the lease term, or longer if stated in the lease, and the City must be notified of any changes to policies.

CHAPTER 16: HAZARDOUS MATERIALS

16.1 POLICY

It is the policy of the City of Homer to require that all lessees on City owned property take the precautions necessary to protect city property and the surrounding environment from pollution and contamination. All leases of City property, whether they are subject to the Environmental Insurance Requirement or not, shall include terms which impose the minimum requirements for environmental protection set out below.

16.2 PROCEDURES

A. The lessee shall not allow hazardous materials to be used or kept on City property, except as specifically permitted or necessary for the lessee's lawful use and approved of the property.
B. The lessee's use of hazardous materials, if permitted, shall comply will all applicable laws and regulations.
C. The lessee shall not pollute or contaminate the environment with discharges, leaks, or emissions of hazardous materials.
D. The lessee shall be required to promptly notify the appropriate authorities and the City of any discharge or spill and to clean up the impacted area at lessee's own expense in compliance with applicable laws.
E. Lessee shall be fully liable for all damages, costs and expenses related to a violation of the terms of the lease with respect to the use, storage, cleanup, remediation, or disposal of hazardous materials.

CHAPTER 17: PERFORMANCE STANDARDS

17.1 POLICY

It is the policy of the City of Homer that leased properties and the improvements on them shall be maintained in a way that provides for the health and safety of the community, and is consistent with community values with respect to zoning, aesthetics, architecture, and other values as determined by the City Council.

17.2 PROCEDURES

A. All properties leased by the City are to be maintained in a proper, safe, clean, and orderly fashion taking into consideration its permitted use, surrounding, properties, zoning, and other applicable laws and regulations.
B. The City of Homer reserves the right to enter leased property and the structures thereon at all reasonable times. This includes regular annual inspections.
C. All commercial structures shall at all times be in compliance with applicable building, fire, mechanical, electrical and other regulations.
D. Applicable building code and fire marshal inspections must be performed and certified to the City upon completion of all renovations, remodels, and / or new construction.
E. Easements or Rights-of-Way on the leased parcel shall not be used in any way that interferes with the rights of the holders or any person(s) lawfully using the easement or right-of-way.
F. Easements or Rights-of-Way outside of the leased parcel and/or immediately adjacent to it shall not be used for storage, parking, or any other authorized uses.
G. Failure to comply with the performance standards listed in this section or any other provisions or stipulations contained in the lease are grounds for termination of the lease if the lessee does not rectify the problem after reasonable notice by the City.

CHAPTER 18: CONCLUSION OF LEASE

18.1 POLICY

It is the policy of the City of Homer to provide for a smooth transition and the restoration of City property at the time a lease expires.

18.2 PROCEDURE

A. Improvements constructed by the Lessee or sub-lessees shall be left in place unless removal is authorized or required by the provisions of the lease. If the lease authorizes or requires removal of improvements, they may be removed prior to the conclusion of the lease if doing so would not damage the leased property or adjoining properties. Removing improvements shall be coordinated with and approved by the City Manager prior to commencement of activities.
B. Unless otherwise agreed by the parties, when the lessee is authorized or required to remove improvements, the lessee shall remove all improvements made on the property by lessee prior to termination of the lease.
C. When authorized or required to remove improvements, if lessee fails to do so prior to the termination date of the lease, lessee shall forfeit the improvements to the City and shall receive no compensation therefore, or, at the City's election, pay to the City the costs incurred by the City in removing and disposing of the improvements.
D. Unless otherwise provided in the lease, or agreed to in writing by the parties, the lessee shall restore the property to the same condition it was in at the time the lease was executed by the lessee.
E. An environmental inspection (Phase I, plus further testing, including test holes if the need for such further testing is indicated by the Phase I inspection) shall be completed at the termination of the lease at the lessee's expense. Identified environmental problems shall be rectified by lessee at his/her expense.

CITY OF HOMER
HOMER, ALASKA

Smith

RESOLUTION 18-041

A RESOLUTION OF HOMER CITY COUNCIL AMENDING THE FEE SCHEDULE UNDER PORT AND HARBOR DEPARTMENT AND PORT OF HOMER TERMINAL TARIFF NO. 1 TO ADD A PARKING FEE FOR VEHICLES AND TRAILERS UTILIZING THE SMALL BOAT HARBOR PUBLIC LAUNCH RAMP.

WHEREAS, Land on the spit is a valuable resource; and

WHEREAS, Boat trailers require substantial use of this resource when parked; and

WHEREAS, It is common place for municipalities to charge for parking as a revenue source; and

WHEREAS, Boat trailer parking fees will increase the Port and Harbor Enterprise Fund, thus enabling it to achieve its financial goals and fund growth projects.

NOW, THEREFORE, BE IT RESOLVED that the Homer City Council amends the City of Homer Fee Schedule under Port and Harbor Department fees as follows:

PUBLIC LAUNCH RAMPS:
Vessels shall be charged $13.00 per day **plus a $5.00 per launch parking fee (parking fee is valid for 7 days following a launch)** to launch from the public launch ramps from April 1 through October 15. (Reserved stall lessees exempt for the boat assigned to and registered to the reserved stall only, not for other boats owned by the same individual.)

Vessel owners or operators may obtain a seasonal permit for $130.00 **plus a $50.00 parking fee** entitling a specific vessel and owner to launch from April 1 through October 15. (Reserved stall lessees exempt for the boat assigned to and registered to the reserved stall only, not for other boats owned by the same individual.)

BE IT FURTHER RESOLVED that the Port of Homer Terminal Tariff No. 1 is amended as follows:

RULE 34 – SMALL BOAT HARBOR PUBLIC LAUNCH RAMP
BOAT PUBLIC LAUNCH RAMP – The City owns and provides access to public launch ramps. The principal intended use of the LAUNCH RAMP is the launch and recovery of small, boats on trailers. An authorized subsidiary use is the incidental, noncommercial, loading or unloading of goods, supplies or materials. Rate for a single launch is $13.00 **plus a $5.00 per launch parking fee (parking fee is valid for 7 days following a launch)**; a season pass covering

April 1 to October 15 is $130.00 **plus a $50.00 parking fee**. The person who is obligated to pay the fee for using the load and launch ramp must make the ticket verifying payment available upon request, or display the seasonal permit on the port side of the permit holder's vessel. There is a $20.00 per hour fee for vessels that are left unattended on the Launch Ramp and are blocking ramps. Reserved stall holders are exempt from launch fees for the vessel assigned to and registered to the stall only, not for other boats owned by the same individual. At the Harbormaster's discretion, reasonable restrictions may be placed on the use of the public launch ramp.

PASSED AND ADOPTED by the Homer City Council this __ day of ___, 2018.

CITY OF HOMER

____

BRYAN ZAK, MAYOR

ATTEST:

____

MELISSA JACOBSEN, MMC, CITY CLERK

Fiscal note: Port and Harbor Parking fees

City of Homer
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(f) 907-235-3148

Memorandum 16-01

TO: Port & Harbor Advisory Commission

FROM: Karin Marks, Economic Development Advisory Commission Chair

THROUGH: Jenny Carroll, Special Projects & Communications Coordinator

DATE: March 23, 2018

SUBJECT: Staff Report to EDC

Dear Port & Harbor Advisory Commission

As the Chairman of the Economic Development Advisory Commission, I am taking this opportunity to pass on two outcomes of the Homer Business Retention and Expansion Survey concluded October 2017 that are within your particular scope of interest.

After compiling the survey information and information from personal interviews, the Commission based its broad take-away themes from the survey on the assumption that the more frequently an answer came up, the more value it had to the group of respondents. One of the short term action items selected from the list of ways the City can help local business is to "support efforts to develop the Barge Mooring/Large Vessel Haul-Out Repair Facility". Of the two long-term action items, one is to "support the large vessel harbor expansion with attention to competitive rates and multi-use Spit".

The EDC wants you to know not only the results from local businesses about these issues, but that the EDC wishes to support your efforts in these areas. We ask you to contact the EDC if you see areas where action from the EDC would help support these developments.

Homer has a relatively diverse economic base and the Homer Harbor and Spit is one of the large drivers. It is diverse site serving large and small businesses, maritime industry, tourism and recreation which has helped Homer in this time of economic instability. That diversity needs to be protected and grown at all levels throughout Homer. We look forward to hearing from you.

Karin Marks, Chair
Economic Development Advisory Commission

P.S. The summary report along with the full report may be found on the City of Homer's website at https://www.cityofhomer-ak.gov/economicdevelopment/2017-business-retention-expansion-survey-report.

Port & Harbor Monthly Statistical & Performance Report

For the Month of: **March 2018**

Moorage Sales

Moorage Sales	2018	2017
Daily Transient	174	138
Monthly Transient	76	80
Semi-Annual Transient	4	3
Annual Transient	4	2
Annual Reserved	23	16

Grid Usage

1 Unit = 1 Grid Tide Use	2018	2017
Wood Grid	6	6
Steel Grid	0	1

Services & Incidents

Services & Incidents	2018	2017
Vessels Towed	0	0
Vessels Moved	13	14
Vessels Pumped	1	1
Vessels Sunk	0	0
Vessel Accidents	0	0
Vessel Impounds	0	0
Equipment Impounds	2	0
Vehicle Impounds	0	0
Property Damage	0	0
Pollution Incident	2	0
Fires Reported/Assists	0	1
EMT Assists	2	1
Police Assists	0	1
Public Assists	7	16
Thefts Reported	0	0

Parking Passes

Parking Passes	2018	2017
Long-term Pass	11	3
Monthly Long-term Pass	0	0
Seasonal Pass	0	0

Crane Hours

Crane Hours	2018	2017
	235	144.9

Stall Wait List

No. on list at Month's End	2018	2017
20' Stall	16	28
24' Stall	43	30
32' Stall	76	61
40' Stall	33	33
50' Stall	26	23
60' Stall	4	4
75' Stall	3	4
Total:	201	183

Docking & Beach/Barge Use

1 Unit = 1 or 1/2 Day Use	2018	2017
Deep Water Dock	8	17
Pioneer Dock	5	10
Beach Landings	3	0
Barge Ramp	12	8

Marine Repair Facility

Marine Repair Facility	2018	2017
Vessels Hauled-Out	2	0
Year to Date Total	3	0

Wharfage (in short tons)

In Tons, Converted from Lb./Gal.	2018	2017
Seafood	160	526
Cargo/Other	264	202
Fuel	15,299	14,237

Ice Sales

Ice Sales	2018	2017
For the Month of March	52	18
Year to Date Total	52	18

Difference between 2017 YTD and 2018 YTD: ______

U:Office/Stats-Monthly/March 2018

Port & Harbor Water/Sewer Bills

Service Period: March , 2018 — Meter Reading Period:2/28/18-3/31/18

Meter Address - Location	Acct. #	Meter ID	Service/ Customer Charge	Water Charges	Sewer Charges	Total Charges	Previous Reading	Current Reading	Total Usage (gal)
810 FISH DOCK ROAD - Fish Grinder	1.0277.01	84810129	$9.50	$138.43	$0.00	$147.93	-	-	12,700
4244 HOMER SPIT RD - SBH & Ramp 2	1.0290.01	84872363	$19.00	$0.00	$0.00	$19.00	12,978,100	12,978,100	-
4166X HOMER SPIT RD - SBH & Ramp 4	1.0345.01	70291488	$19.00	$0.00	$0.00	$19.00	23,957,000	23,957,000	-
4166 HOMER SPIT RD- SBH Restrooms	1.0346.01	p.w.					-	-	
4171 FREIGHT DOCK RD - SBH & Ramp 6	1.0361.01	71145966	$19.00	$0.00	$0.00	$19.00	1,832,200	1,832,200	-
4690C HOMER SPIT RD - Pioneer Dock	1.0262.01	70315360	$19.00	$47.96	$0.00	$66.96	3,332,800	3,337,200	4,400
4690A HOMER SPIT RD - Pioneer Dock	1.0261.01	70315362	$19.00	$0.00	$0.00	$19.00	515,200	515,200	-
4666 FREIGHT DOCK RD - Deep Water Dock	1.0357.01	70564043	$19.00	$67.58	$0.00	$86.58	9,218,000	9,224,200	6,200
4448 HOMER SPIT RD - Steel Grid	1.0230.01	80394966	$9.50	$0.00	$0.00	$9.50	-	-	-
795 FISH DOCK ROAD - Fish Dock/Ice Plant	1.0180.01	70291512	$19.00	$362.97	$23.20	$405.17	868,072,300	868,105,600	33,300
4147 FREIGHT DOCK RD - SBH & Ramp 6 Restroom	1.4550.01	70315668	$19.00	$42.51	$90.48	$151.99	-	-	3,900
4147X FREIGHT DOCK RD - Ramp 6 Fish Cleaning	1.0457.01	80856895	$9.50	$334.63	$0.00	$344.13	184,000	184,000	30,700
4001 FREIGHT DOCK RD - L&L Ramp Restrooms	10.4550.01	70364713	$19.00	$27.25	$58.00	$104.25	-	-	2,500
4667 HOMER SPIT RD L - Port Maintenance	1.0109.01	70257255	$19.00	$16.35	$34.80	$70.15	-	-	1,500
4667 HOMER SPIT RD - Bldg Near Water Tank	1.0100.02	70315820	$9.50	$0.00	$0.00	$9.50	320,400	320,400	-
4667 FREIGHT DOCK RD - DWD Restroom	1.0495.01	84920900	$19.00	$14.17	$30.16	$63.33	-	-	1,300
4311 FREIGHT DOCK RD - Port & Harbor Office	5.1020.01	83912984	$19.00	$20.71	$29.83	$69.54	76,600	78,500	1,900
4000 HOMER SPIT RD - Ramp 5 Restroom	5.1250.01	86083228	$19.00	$134.07	$193.11	$346.18	-	-	12,300
4425 FREIGHT DOCK RD - Sys 5 & Ramp 8	5.1050.01	86094861	$19.00	$300.84	$0.00	$319.84	673,600	701,200	27,600
					Overall Charges:	$2,271.05		Overall Water Usage:	138,300

Water/Sewer Monthly Comparison CY 2013 to Current	2014		2015		2016		2017		2018	
January	$3,545.49	288,500	$2,526.35	183,700	$1,216.22	68,800	$2,142.85	122,300	$1,458.89	83,400
February	$4,042.38	322,400	$2,015.14	140,800	$1,891.14	122,500	$1,287.76	59,600	$2,500.97	144,800
March	$3,968.26	320,400	$3,339.49	253,700	$2,341.13	162,300	$4,076.62	292,100	$2,271.05	138,300
April	$5,792.92	452,200	$4,997.38	467,700	$3,532.78	256,700	$1,726.84	113,100		
May	$12,019.73	973,600	$6,982.27	541,900	$9,770.89	709,300	$7,807.49	413,000		
June	$13,396.30	1,106,200	$14,116.19	1,134,100	$21,628.74	1,800,700	$14,594.69	1,282,900		
July	$16,516.50	1,348,000	$12,038.01	919,900	$19,490.97	1,583,400	$15,450.93	1,152,500		
August	$15,883.21	1,279,500	$15,033.97	1,197,000	$22,468.25	2,189,100	$12,947.70	1,060,600		
September	$13,105.89	1,073,100	$15,661.07	1,307,300	$19,710.24	1,651,300	$11,419.68	968,000		
October	$3,874.68	266,000	$5,445.90	406,300	$8,887.32	708,200	$8,631.96	591,490		
November	$3,658.86	283,400	$1,917.85	106,100	$2,582.53	167,600	$1,852.34	176,000		
December	$1,748.09	111,900	$1,284.30	30,100	$1,154.76	44,900	$1,053.70	68,600		
YTD Total	$97,552.31	7,825,200	$85,357.92	6,688,600	$114,674.97	9,464,800	$82,992.56	6,300,190	$6,230.91	366,500

2018 Ice & Crane Report						
Date To	Crane Weekly	Crane Month	YTD Crane	Ice Weekly	Ice Month	YTD Ice
1/7/2018	17			shut down for maintenance		
1/14/2018	14.3			shut down for maintenance		
1/21/2018	18.2			shut down for maintenance		
1/28/2018	8.5			shut down for maintenance		
Jan Total		58	58		0	0
2/4/2018	17.8			shut down for maintenance		
2/11/2018	21.7			shut down for maintenance		
2/18/2018	42.6			shut down for maintenance		
2/25/2018	6.8			shut down for maintenance		
Feb Total		88.9	146.9		0	0
3/4/2018	18.7			shut down for maintenance		
3/11/2018	19.9			shut down for maintenance		
3/18/2018	11.2			0	0	
3/25/2018	12.7			30		
4/1/2018	25.6			22		
Mar Total		88.1	235		52	52
4/8/2018	18.5			10		
4/15/2018	26.3			23		
4/22/2018						
4/29/2018						
Apr Total		44.8	279.8		33	85
5/6/2018						
5/13/2018						
5/20/2018						
5/27/2018						
May Total		0	279.8		0	85
6/3/2018						
6/10/2018						
6/17/2018						
6/24/2018						
7/1/2018						
Jun Total		0	279.8		0	85
7/8/2018						
7/15/2018						
7/22/2018						
7/29/2018						
Jul Total		0	279.8		0	85
8/5/2018						
8/12/2018						
8/19/2018						
8/26/2018						
Aug Total		0	279.8		0	85
9/2/2018						
9/9/2018						
9/16/2018						
9/23/2018						
9/30/2018						
Sep Total		0	279.8		0	85
10/7/2018						
10/14/2018						
10/21/2018						
10/28/2018						
Oct Total		0	279.8		0	85
11/4/2018						
11/11/2018						
11/18/2018				shut down for maintenance		
11/25/2018				shut down for maintenance		
12/2/2018				shut down for maintenance		
Nov Total		0	279.8		0	85
12/9/2018				shut down for maintenance		
12/16/2018				shut down for maintenance		
12/23/2018				shut down for maintenance		
12/31/2018				shut down for maintenance		
Dec Total		0	279.8			

Deep Water Dock 2018

Date	Vessel	LOA	Times	Billed	$ Dock	Srv Chg
1/9	Perseverance	207	0930/1245	Cispri	788.00	52.00
1/12	Edward Itta barge	430	1700/	Olympic	1,490.00	52.00
1/12	Todd E Prophet, tugINSI	116	1710/	Olympic	506.00	52.00
1/13	Edward Itta barge	430		Olympic	1,490.00	
1/13	Todd E Prophet, tugINSI	116		Olympic	506.00	
1/14	Edward Itta barge	430		Olympic	1,490.00	
1/14	Todd E Prophet, tugINSI	116	/1950	Olympic	506.00	
1/14	Todd E Prophet, tugINSI	116	1950/	Olympic	chrg above	
1/15	Todd&Edward integrat	535	/0815	Olympic	2,154.00	
1/18	Pacific Wolf & DBL 55	395	800?/1700	Kirby Offshore	1,206.00	52.00
04/19/18				**Year to Date Totals:**	$10,136.00	$208.00

Pioneer Dock 2018

Date	Vessel	LOA	Times	Billed	$ Dock	Srv Chg
1/18	Perseverance	207	1200/1530	Cispri	788.00	52.00
1/19	Bob Franco	120	1310/1830	Olympic	506.00	52.00
1/24	Pacific Wolf & DBL 55	395	0015/1400	Kirby Offshore	1,206.00	52.00
2/23	Crystal Amaranto	416	0900/1500	AK Maritime	1,337.00	52.00
2/23	Pacific Wolf & DBL 55	395	1530/	Kirby Offshore	1,206.00	52.00
3/20	Perseverance	207	1045/1525	Cispri	788.00	52.00
3/21	Bob Franco	120	1000/1415	Olympic	506.00	52.00
3/23	Pacific Wolf	121	0845/1615	Kirby Offshore	506.00	52.00
3/28	Pacific Wolf & DBL 55	395	1000/1400	Kirby Offshore	1,206.00	52.00
04/19/18				**Year to Date Totals:**	**$8,049.00**	**$468.00**

Ferry Landings 2018

	Pioneer Dock	Deep Water Dock
January	20	0
February	23	0
March	0	0
April		0
May		0
June		0
July		0
August		0
September		
October		
November		
December		

Pioneer Dock - 2018 Water Usage

Date	Vessel	Beg. Read	End Read	Gal.	Charged	Conx Fee
1/23	Tustumena	3,309,450	3,318,600	9,150	$ 355.11	$ 102.00
1/27	Tustumena	3,318,625	3,332,868	14,243	$ 552.77	$ 102.00
2/27	Tustumena	3332810	3337200	4,390	$ 194.05	$ 102.00
3/23	Pacific Wolf	3337280	3339469	2,189	$ 194.05	$ 102.00
				-		
				-		
				-		
				-		
				-		
				-		
				-		

Deep Water Dock - 2018 Water Usage

Date	Vessel	Beg. Read	End Read	Gal.	Charged	Conx Fee
1/18	Pacific Wolf	9,180,000	9,183,180	3,180	$ 194.05	$ 102.00
1/18	Bob Franco	9,183,180	9,188,420	5,240	$ 203.36	$ 102.00
1/30	Bob Franco	9,188,400	9,215,000	26,600	$ 1,032.35	$ 102.00
2/9	Bob Franco	9,215,930	9,218,020	2,090	$ 194.05	$ 102.00
2/24	Bob Franco	9,218,000	9,221,400	3,400	$ 194.05	$ 102.00
3/2	Polar Bear	9,221,390	9,224,320	2,930	$ 194.05	$ 102.00
3/20	Bob Franco	9,224,300	9,228,550	4,250	$ 194.05	$ 102.00
				-		
				-		
				-		
				-		

2018 HOMER CITY COUNCIL MEETINGS
ADVISORY COMMISSIONS/ BOARD ATTENDANCE

Commissions are invited to report to the City Council at the Council's regular meetings under Item 8. Announcements/Presentations/Borough Report/Commission Reports. This is the Commission's opportunity to give Council a brief update on their work. Generally the Commissioner who will be reporting will attend one of the two meetings for the month they are scheduled to attend.

The following Meeting Dates for City Council for 2018 is as follows:

January 8, 22	
February 12, 26	Ulmer, Donich
March 12, 27	Zimmerman
April 9, 23	Hartley
May 14, 29	Carroll
June 11, 25	Ulmer
July 23	Carroll
August 13, 27	Zeiset
September 10, 24	Zeiset, Donich
October 8, 22	
November 26	Hartley
December 10	Zimmerman