



ADDENDUM NO. 1

Port of Skagway – Fuel Waterfront Lease Request for Proposal (RFP)

ADDENDUM NO.: ONE **CURRENT BID SUBMISSION DEADLINE:**
August 9, 2022
2:00 p.m. Local Time

PREVIOUS ADDENDA: NONE

ISSUED BY: Municipality of Skagway
P.O. Box 415
Skagway, Alaska 99840

DATE ADDENDUM ISSUED: July 26, 2022

The following corrections, changes, additions, deletions, revisions and/or clarifications, are hereby made a part of the documents for the Port of Skagway Fuel Waterfront Lease RFP dated May 6, 2022. In case of conflicts between this Addendum and previously issued documents, this Addendum shall take precedence. The following items of the RFP and Contract are modified as herein indicated. All other items remain the same.

AMENDMENTS TO RFP:

Project Contact and Technical Questions: Proposers shall familiarize themselves with this RFP and RFP response requirements. All questions or requests must be written and addressed to the Borough Manager at manager@skagway.org, no later than 4:00 p.m. on July 29, ~~July 26,~~ 2022.

Total number of pages contained within this Addendum: 1



ADDENDUM NO. 2

Port of Skagway – Fuel Waterfront Lease Request for Proposal (RFP)

ADDENDUM NO.: TWO

CURRENT BID SUBMISSION DEADLINE:

August 9, 2022

2:00 p.m. Local Time

PREVIOUS ADDENDA: ONE

ISSUED BY: Municipality of Skagway
P.O. Box 415
Skagway, Alaska 99840

DATE ADDENDUM ISSUED: **August 3, 2022**

The following corrections, changes, additions, deletions, revisions and/or clarifications, are hereby made a part of the documents for the Port of Skagway Fuel Waterfront Lease RFP dated May 6, 2022. In case of conflicts between this Addendum and previously issued documents, this Addendum shall take precedence. The following items of the RFP and Contract are modified as herein indicated. All other items remain the same. The Municipality will not respond to questions received after the deadline of July 29, 2022

CLARIFICATIONS:

1. Are there any current restrictions or waivers with respect to any environmental, health and safety, or transportation laws and regulations that apply to the property? If so, which of these will be transferred to the new tenant? Specifically, we are concerned with the Alaska DOT weight limit for fuel vehicles on Skagway roads and Highway 98 into Canada, and the EPA's daily throughput limit for gasoline and avgas for bulk gas plants and terminals.
 - The Municipality of Skagway (MOS) is the landowner and will come into title to all tenant improvements affixed to the land upon the expiration of the underlying master lease. The MOS is not the operator of the bulk fuel facilities on the property, and is not in a position to know or represent to a proposer whether there are restrictions or waivers in place to federal or state environmental, health and safety, or transportation laws and regulations that may concern the operation of the bulk fuel facilities.
 - Similarly, the MOS is not in a position to know or to represent to a proposer whether the Alaska DOT weight limit for fuel vehicles or the EPA's daily throughput limit for gasoline and avgas for bulk gas plants and terminals has been modified by restriction or waiver or what the specific process may be for transferring those to a new tenant.
 - The MOS recommends proposers contact the relevant federal and state agencies directly to determine whether any laws and regulations of concern have been modified by restriction or waiver and to determine the process for acquiring or transferring them to a new tenant. The MOS anticipates

responses to the RFP will offer suggestions based on such due diligence so the MOS and the proposer may most efficiently enter into a new lease.

2. If the current tenant is not the successful bidder, what is their obligation to remove or relinquish control of the existing infrastructure and when must it be achieved?
 - Tenant improvements now existing that are affixed to the land will become the property of Skagway upon the expiration of the existing master lease at midnight on Saturday, March 18, 2022, unless the present master-tenant or sub-tenant timely exercises a conditional right to remove any such improvements as provided in the master lease and sublease, respectively. Generally, tenant improvements affixed to the land (such as buildings, stations, and sheds) are considered tenant improvements that transfer with the land while items of personal property not affixed to the land (such as office supplies, vehicles and non-affixed tools) are not considered tenant improvements that transfer with the land.
 - There are limited rights of the sub-tenant and the master tenant to remove tenant improvements now existing. As a result, there is some present uncertainty as to what improvements will remain on the property.
 - Assuming that conditions to removal are satisfied, the current sub-tenant and master tenant have 60 days from the termination of the sub-lease and master-lease respectively, to remove the tenant improvements.
3. Will sub leasing be allowed?
 - The right to sublease must be requested in advance and approved by the assembly through a separate process.
4. What easements will be transferred to the new tenant? Specifically, we are interested in pipeline access to the marina.
 - As indicated in the RFP, “[i]n the event that the Property continues to be used as a fuel storage and transfer facility the Municipality intends to provide the successful proposer with the right to use and operate certain pipelines located outside of the Property. These rights of use will be the subject of negotiations between the Municipality and the successful proposer.
5. May the new tenant adjust setbacks on the property?
 - Setbacks only apply to the entire port of Skagway. There are no setbacks on individual lease parcels. The MOS anticipates responses to the RFP may offer suggestions if there are minor adjustments necessary to the lease parcels to accommodate a proposer’s efficient use of the lease parcels.

Total number of pages contained within this Addendum: 2



MUNICIPALITY OF SKAGWAY
PORT OF SKAGWAY
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**LEASE OF REAL PROPERTY
FOR FUEL FACILITY
LOCATED AT 198 TERMINAL WAY**

Request for Proposals
May 6, 2022

Project and Background

The Municipality of Skagway (MOS or Municipality) is requesting proposals from all qualified persons and entities to lease (as Lessee) certain waterfront real property for use as a fuel storage and transfer facility, located at 198 Terminal Way, Skagway, Alaska, and more particularly described as follows (Property):

Lease parcels 8 and 9 according to Appendix A within a portion of ATS #4, Skagway Recording District, First Judicial District, State of Alaska. If area or access is required outside of lease parcels 8 & 9 please identify that need in the proposal.

The Property is comprised of approximately 2.19 acres or 95,315 square feet and is depicted on the survey of the Property and surrounding area, attached as Appendix A. The Property is presently used for receiving fuel via barge, storing fuel, providing fuel locally, and providing for the transport of fuel between Skagway and the Yukon. The Municipality intends that such use of the Property continue in the future by the successful Proposer, but is willing to consider alternative uses.

The Property currently has improvements that allow it to be used as a fuel transfer and storage facility. The continued presence and use of these improvements are regulated by the current tideland lease and sublease, copies of which are attached as Appendix B. In the event that the Property continues to be used as a fuel storage and transfer facility MOS intends to provide the successful Proposer with the right to use and operate certain pipelines located outside of the Property.

The term of the lease of the Property will commence on or about March 19, 2023 following the expiration of the lease term of the presently effective Property lease, and the term will not exceed thirty-five (35) years.

The MOS objectives in issuing this RFP are to ensure:

- The best and highest use of the lease site to maximize revenues and return on investment.
- That the lease creates the greatest public benefit for the Skagway community including providing essential services at reasonable costs, business opportunities, and private sector

jobs by developing a strong, mutually beneficial working relationship with private industry;

- That the lease includes environmental and safety monitoring and compliance systems and enhancements to the area, where applicable; and
- That proposals conform to the Municipality's zoning code for the Waterfront District pursuant to SMC 19.06.080.

Proposal Requirements, Evaluation Criteria, and Selection Process

Scope of Proposal

The successful Proposer will negotiate and enter into a lease agreement with the Municipality that is consistent with Skagway Municipal Code (SMC), including Chapter 16.03, Lease of Lands. The minimum rent to be paid under the lease will be determined by appraisal at its market value within the six (6) months prior to the lease commencement date, subject to the provisions of SMC 16.02.010(C) and 16.03.160(B).

Deliverables for a successful proposal include:

- Operational plans for providing a fuel transfer station and bulk fuel storage, including quantities of fuel transported and provision for the receipt and delivery of fuel.
- Proposal of annual rent amount at or above the minimum appraised market value.
- Statement of qualifications and experience of Proposer to successfully construct and operate similar fuel transfer station and bulk fuel storage facilities.
- Statement of the financial fitness of Proposer to construct, maintain, and operate fuel transfer station and bulk fuel storage facilities.
- Quantification of fuel provided locally. The Municipality may provide flow-through tariff credits for the provision of home heating and/or vehicle fuel to the Skagway community.
- Acknowledgment of the ability to maintain insurance coverages as provided below.
- Assumption of the maintenance of the Property and improvements.
- Statement of ability to protect the Property, the environment, and the Skagway community by planned implementation of environmental testing, monitoring, and compliance systems and enhancements.
- Provision for security and stevedoring services.
- Provision for environmental bonding.
- Acknowledgement of the obligation to pay appropriate tariffs as detailed in Port of Skagway Tariff No. 2, a copy of which is attached as Appendix C.
- Acknowledgement of obligation to assume all environmental liabilities for the existing facilities and their future use, including but not limited to diesel and gasoline range organics (GRO).
- Acknowledgement of the obligation to comply with all federal, state, and municipal laws and regulations associated with the existing facilities and their future use as a fuel storage and transfer facility including, without limitation, any environmental laws and regulations concerning the site cleanup and remediation of any petroleum or other hazardous material contamination.

- Description and quantification of local investment, including jobs created and retained.

Proposals which do not address the items listed in this Scope of Proposal section may be considered incomplete and may be deemed non-responsive by the Municipality of Skagway in its sole discretion.

Deadline for Receipt of Proposals

Interested Proposers shall submit one original copy of the completed proposal in a sealed envelope marked “PROPOSAL FOR LEASE OF REAL PROPERTY LOCATED AT 198 TERMINAL WAY; [INSERT PROPOSER’S NAME]” no later than **2:00 p.m. on August 9, 2022** at the address listed above, or delivered directly to the Municipal Offices on 7th and Spring Street. Faxed or e-mailed proposals will not be accepted. Failure to meet the deadline will result in disqualification of the proposal from review. All proposals will be opened and recorded immediately after the deadline.

Qualifications

Pursuant to Skagway Municipal Code section 16.03.030(A), an applicant for a lease is qualified if the applicant:

- Is eighteen (18) years of age or over; or
- Is a group, association, partnership, or corporation which is authorized to conduct business under the laws of Alaska; or
- Is acting as an agent for another or has qualified by filing with the borough manager or his designee, prior to the time set for the disposition, a power of attorney or a letter of authorization creating such agency. The agent shall represent only one (1) principal, to the exclusion of themselves.

The execution of a lease by the Municipality does not relieve the Lessee of responsibility of obtaining licenses or permits as may be required by the Municipality or by any other governmental authority. Before a lease will be executed, the successful Proposer must obtain a valid Alaska business license and be licensed to do business in the State of Alaska in accordance with Alaska law and regulations. For more information on these licenses, contact the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, P.O. Box 110806, Juneau, Alaska 99811. Telephone (907) 465-2550. Proposer must also obtain a Business License from the Municipality of Skagway.

Lease Procedure Summary and Rent Provisions

1. Lease Procedure Summary

- The proposal will serve as the lease application and the starting point for negotiations, although not all terms are negotiable.
- The Municipality reserves the right to include additional terms and conditions during the course of lease negotiations.
- The filing of a proposal for a lease in response to this RFP, the selection of a successful proposal, or the negotiation of a lease with the Borough Manager shall give the Proposer

no right to a lease nor to the use of the land whatsoever until such time as a fully executed lease is in place. Only a fully executed lease between the Municipality and the successful Proposer will convey such right.

- The final terms of a negotiated lease are subject to approval by the Skagway Borough Assembly (including determinations after appeal, if any), unless the minimum essential terms and the authority of the Borough Manager to execute the lease are set forth in the ordinance authorizing negotiations.
- The Municipality reserves the right to require a guarantor on any lease, in the Municipality's sole discretion.

2. **Rent Provisions**

- The minimum rent to be paid under the lease will be determined by appraisal at its market value within the six (6) months prior to the lease commencement date, subject to the provisions of SMC 16.02(C).
- The annual rent payable shall be subject to adjustment at a minimum on the fifth anniversary of the lease and each five (5) year interval thereafter.
- The adjusted rent shall be based on market rent as determined by an appraisal, the expense of which shall be borne by the Lessee.
- The appraisal shall include any existing improvements, and improvements owned or made by the Municipality.
- The new market rent shall be effective on the beginning of the interval agreed upon in the lease.

Proposal Format and Content

1. **Title Page** (one page maximum) – At a minimum, the title page shall show the physical address of the Property proposed to be leased, the name, address, and telephone numbers of the Proposer, the name and telephone number of the Proposer's contact person, and the date.
2. **Letter of Transmittal** (one page maximum) – The transmittal letter shall identify the Property proposed to be leased; state the Proposer's willingness to negotiate in good faith and enter into a lease agreement with the Municipality consistent with Skagway Municipal Code, including Chapter 16.03, Lease of Lands; and, provide the name(s), title(s), address(es), and phone number(s) of the persons authorized to make representations for the Proposer. The letter shall be signed by an individual Proposer or a representative of an entity Proposer with the authority to bind the entity Proposer. By signature on its RFP proposal transmittal letter, a Proposer certifies that the Proposer is in compliance with: (1) the laws of the State of Alaska; (2) the applicable portion of the Federal Civil Rights Act of 1964; (3) the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government; and (4) all terms and conditions set out in the RFP. If any Proposer fails to comply with 1-4 of this paragraph, the Municipality reserves the right to disregard the RFP response, terminate any award, or consider the Proposer in default.
3. **Proposal Narrative** – The proposal narrative shall provide the following information:
 - Responses to each of the items set forth as the deliverables under the Scope of the Project section above.

- The purpose of the proposed lease, including proposed use of the Property;
 - The proposed term of the lease. In determining whether to grant a lease for the requested term, the nature, extent and cost of the improvements which the Proposer agrees as a condition of the lease to construct thereon, the value of the applicant's proposed use to the economy of the Municipality, and other relevant factors, will be considered. The term of any given lease shall depend upon the desirability of the proposed use, the amount of investment and improvements proposed to be made by the Lessee, and the nature of the improvements proposed with respect to the durability and time required to amortize the proposed investment;
 - Describe any Property improvements proposed to be removed/demolished and details regarding same. To the extent that any existing Property improvements are not proposed to be removed/demolished, describe the remaining useful life of any such existing improvements and provide support for such asserted remaining useful life;
 - The use, value and nature of improvements to be constructed;
 - The type of construction;
 - At a minimum, 35% designs for any new construction and/or structures to be placed on site;
 - Dates that construction is estimated to commence and be completed;
 - Whether the intended use complies with the zoning ordinance and comprehensive plan;
 - The financial ability of Proposer to successfully complete the proposal and operate the Property as proposed; and
 - Lessee shall provide as-builts of all construction within 60 days of final construction to the Borough Manager or designated representative.
4. **Proposer's Resources and Experience** – Proposer shall provide a statement setting forth (i) its size, resources, and business history, including number of employees and types of business in which respondent is engaged; (ii) experience in the type of business to be operated on the leased Property, with special note to any that is similar in ownership, service, and use; (iii) a list of the names, titles, and phone numbers of at least three references who are familiar with the Proposer's business.
5. **Application Filing Fee** - Proposer shall submit a \$100.00 non-refundable filing fee with the RFP proposal as required under Skagway Municipal Code section 16.03.030(B).

Deposits for Cost

Following the selection of the successful RFP Proposer, the Municipality will determine estimated costs required to handle the proposal, including but not limited to one (1) or more of the following: survey, appraisal, and advertising of the proposed lease of the area under proposal. Upon determination of the estimated costs, the Municipality shall notify the Proposer in writing of such costs, and a deposit thereof must be made by the successful RFP Proposer within thirty (30) calendar days after the notice is mailed. Failure of the successful RFP Proposer to pay the deposit shall result in the proposal being canceled. If the Municipality and the successful RFP Proposer are unable to successfully negotiate a written lease acceptable to all parties, all deposit money spent or encumbered for survey, appraisal, or advertising shall be forfeited, and the balance, if any, shall be returned to the Proposer. If the land lease area is leased to another, the latter shall be

required to pay actual costs of survey, appraisal, and advertising, and the original deposit shall be returned to the depositor. The lessee shall be required to pay any excess of costs over deposits, and where the deposit exceeds actual costs, the excess shall be credited to present or future rents under the lease. All survey, appraisal, and advertising shall be performed only under the control of the Municipality, and any such work done without such control will not be accepted by the Municipality.

Evaluation Criteria and Selection Process

The Municipality of Skagway reserves the right to reject any and all proposals submitted in the best interests of the Municipality and shall not be liable for any costs incurred by any Proposer in response to this solicitation or for any work done prior to the issuance of a notice to proceed.

A selection committee consisting of the Mayor, Borough Manager, Port Director, Ports and Harbors Advisory Board Assembly Member and Ports and Harbors Chair will evaluate the proposals and make a recommendation to the Skagway Borough Assembly. A selection committee substitute may be appointed in the absence of any of these or in the event of a conflict of interest. Evaluators may discuss factual knowledge of and may investigate Proposer’s prior work experience and performance, including projects referenced in the proposal and available written evaluations, and may contact listed references or other persons knowledgeable of a Proposer’s past performance. Factors such as overall experience, quality of past experience, and the ability to perform tasks proposed and to perform lease obligations may be addressed during the evaluation.

Proposals will be evaluated and scored in accordance with the following criteria:

A.	Proposal’s compliance with RFP requirements	Pass/Fail
B.	Overall quality of operational plan (including environmental and safety monitoring, and compliance systems and enhancements)	20 points
C.	Proposer’s ability to finance proposal to completion	20 points
D.	Proposed lease terms, including financial benefit to MOS	20 points
E.	Proposal that includes all deliverables	15 points
F.	Demonstration of Skagway community benefit and success as a community resource	15 points
G.	Development schedule	10 points
	Maximum Score:	100 points

General Conditions and Notices

Proposal Evaluation/Award: The Municipality reserves the right to reject any or all proposals received for any reason if it is in the best interest of the Municipality. The Municipality reserves the right to waive minor informalities and irregularities of proposals received if it is in the best interest of the Municipality. The Municipality reserves the right to not lease the Property, to lease the Property to any Proposer if negotiations with the initial successful Proposer fail, or to resolicit interest from potential Lessees in leasing the Property. Plans to lease the Property may be cancelled in whole or in part in the sole discretion of the Municipality.

Project Site: It is the sole responsibility of the Proposers to evaluate the Property and make their own technical assessment of the Property for determining the contents of its RFP response and the financial viability of the proposal. The Municipality will not make any accommodations if the Property conditions or other elements of the proposal are different from that assumed by the Proposer, or as believed to be by the Proposer, or as represented to the Proposer by any source. The Municipality specifically makes no representations as to the conditions of the Property or any improvements on the Property, and no Municipality employee, Assembly member, the Mayor, or any other representative of the Municipality has any actual or apparent authority to make any oral or written representations as to the conditions of the Property. The Municipality shall not allow later adjustments to the negotiated lease terms due to or as the result of weather or any other events of force majeure, except as expressly provided below. RFP Proposers are expected to be familiar with the potential extreme and challenging weather conditions in Skagway, Alaska, and the Municipality will assume all Proposers have considered weather in preparing their proposals. Extraordinary weather delays may be considered and addressed through lease modification in the sole discretion of the Municipality.

Project Contact and Technical Questions: Proposers shall familiarize themselves with this RFP and RFP response requirements. All questions or requests must be written and addressed to the Borough Manager at manager@skagway.org. All technical questions shall be in writing and directed to the Borough Manager at manager@skagway.org, no later than **4:00 p.m. on July 26, 2022.**

A non-mandatory RFP conference will be held **2:00 p.m. on July 19, 2022,** at **City Hall Assembly Chambers**. Proposers are encouraged to attend and ask questions at that time.

The Municipality's responses to questions, including any supplemental information, that significantly changes the content of this RFP will be made available to all persons and entities that have requested that they be provided with all of the Municipality's responses to questions regarding this RFP.

Submittal Deadline and Location: Proposers are responsible to assure physical delivery prior to the deadline. Only proposals received prior to the date and time, and received at the location specified, shall be considered. Faxed or emailed proposals will not be accepted.

Proposals to Remain Open: The Proposers shall guarantee and stand behind the proposal for a period of sixty (60) calendar days from the date of the proposal opening. The successful RFP Proposer shall negotiate with the Municipality in good faith the terms of a lease of the Property.

Proposer's Responsibility: Responding Proposers have the responsibility of understanding what is required by this solicitation. The Municipality shall not be held responsible for any firm's lack of understanding. Should a Proposer not understand any aspect of this solicitation, or require further explanation or clarification regarding the intent or requirements of this solicitation, it shall be the responsibility of such Proposer to seek guidance from the Municipality as indicated above. By submitting a proposal in response to this solicitation, a Proposer certifies that it has thoroughly

read and understands this solicitation in its entirety and has submitted the proposal in agreement with the terms and conditions of this Request for Proposals.

Addenda: The Municipality will make a reasonable effort to provide all addenda to known potential Proposers when issued. Addenda may be issued by any reasonable method such as by email and will be located at the borough website, www.skagway.org. It is the Proposer's responsibility to ensure receipt of all addenda. No claim or protest will be allowed based on the allegation that the Proposer did not receive all of the addenda.

Cost Incurred in Proposal Preparation: No lease or other contract shall be in effect until the Municipality executes a written agreement. The Municipality is not liable for any cost incurred by any Proposer in the response to this solicitation, including any work done, even in good faith, prior to the execution of a written agreement.

Proprietary Information: Proposers shall not include proprietary information in proposals if such information should not be disclosed to the public. Any language with a submittal purporting to render all or portions of a proposal confidential will be disregarded.

Minor Informalities: The Municipality reserves the right to waive any minor informality, negotiate changes, or reject any and all proposals and to not award the proposed lease, if it is in the Municipality's best interest. Minor informalities means matters of form rather than substance which are evident from the submittal, or are insignificant matters that have a negligible effect on price, quantity, quality, delivery, or contractual conditions and can be waived or corrected without prejudice to other Proposers.

Receipt and Proposal Opening: The Municipality must receive all proposals including any amendment or withdrawal prior to the deadline for submitting proposals. Any proposal, amendment, or withdrawal, which has not been actually physically received by the Municipality prior to the scheduled time for submitting proposals, shall not be considered. No responsibility shall be attached to any officer, employee, or agent of the Municipality for the premature opening of, or failure to open, a proposal improperly delivered, addressed or identified.

Until the approval of a lease by the Skagway Borough Assembly and the full execution of a lease, the Municipality reserves the right to reject any or all proposals, to waive technicalities, or to advertise for new proposals without liability against the Municipality. Receipt of proposals will be publicly acknowledged at the submittal deadline and location.

Rejection of Proposals: The Municipality reserves the right to reject any and all proposals. The Municipality reserves the right to reject the proposal of any Proposer who has previously failed to perform properly on any lease, other contract or project, or failed to complete any contract or project on time, or required amendments to its original scope of work to complete a project. The Municipality reserves the right to reject the proposal of any Proposer who is not, in the sole opinion of the Municipality, in a position to perform the proposed lease or whose proposal does not appear to assure full lease performance; and to reject a proposal as non-responsive where the Proposer fails to furnish the required documents, fails to complete the required documents in the manner

directed, makes unauthorized alterations to proposal documents, or otherwise fails to meet the requirements of an RFP response.

Non-Responsive Proposals: Proposals shall be considered non-responsive and may be rejected if there are unauthorized additions, conditional or alternative proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.

Award and Execution of Contract: All Proposers will be notified of the Municipality's selection of the successful RFP Proposer by e-mail or fax. No lease or other obligation of the Municipality shall be considered as effective until approved by the Skagway Borough Assembly and a written agreement is fully executed by both the Municipality and the successful Proposer.

Failure to Execute Lease: Failure of the successful RFP Proposer to execute and return to the Municipality the negotiated and approved lease and any other required lease documentation within seven (7) days after submission to the successful Proposer, will be, in the sole discretion of the Municipality, cause for the rejection of the award. Award may then be made to another RFP Proposer, or a lease RFP may be re-issued, in the sole discretion of the Borough Manager.

Ownership of Proposal Submittals: Once proposals are received, they become the property of the Municipality, and shall not be returned. Proposals may be withdrawn by submitting a written withdrawal request to the same address to which the proposal was submitted if the request is received by the Municipality no less than one (1) hour prior to the deadline for submitting proposals.

Proposers are Responsible to Assure Delivery Prior to Deadline: Only proposals received prior to the deadline date and time, and received at the location specified, will be considered. The Municipality is not responsible for any costs incurred in the preparation of proposals. The Municipality reserves the right to reject any or all proposals. The Municipality reserves the right to cancel the RFP, or delay the proposed lease process, or decide not to lease the Property, all in its sole discretion.

Interviews: The Municipality reserves the right to independently interview any Proposer. Any such interview will be scheduled at the convenience of the issuing office and will be limited to clarification to insure a mutual understanding of a proposal's contents.

Insurance & Indemnification: No lease shall be issued or continued unless there is presented to the Municipality of Skagway a certificate of insurance showing that the successful Proposer has obtained at least twenty million dollars (\$20,000,000.00) general liability insurance and two million (\$2,000,000.00) of professional liability errors and omissions insurance and professional pollution liability. Proof of such insurance shall be provided to the Municipality as a condition of entering the lease. Failure to maintain such insurance shall constitute a material breach of lease. The certificate of insurance must establish that the Municipality is named as an additional insured on such policy, and that the insurer thereof shall notify the Municipality twenty (20) days before the policy is canceled, or terminated. Additionally, the Proposer shall execute an instrument under the terms of which the Proposer will agree to indemnify, defend and hold harmless the Municipality of Skagway from any and all claims for injury or damage, including death, to persons

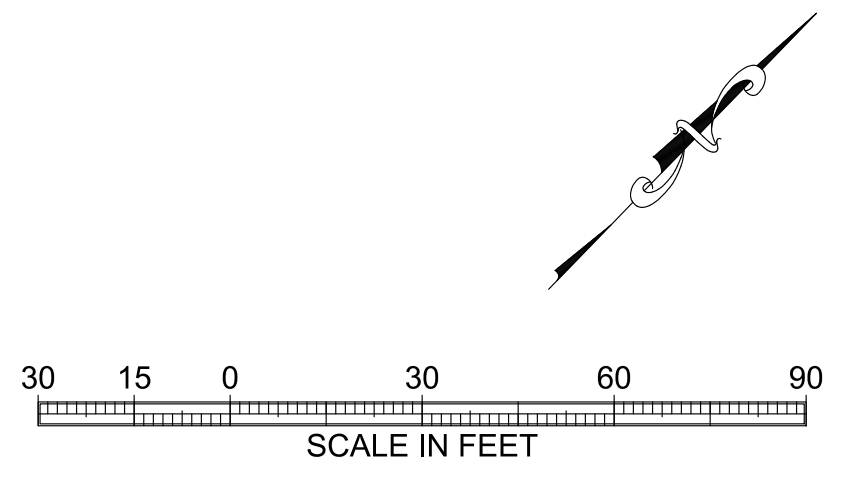
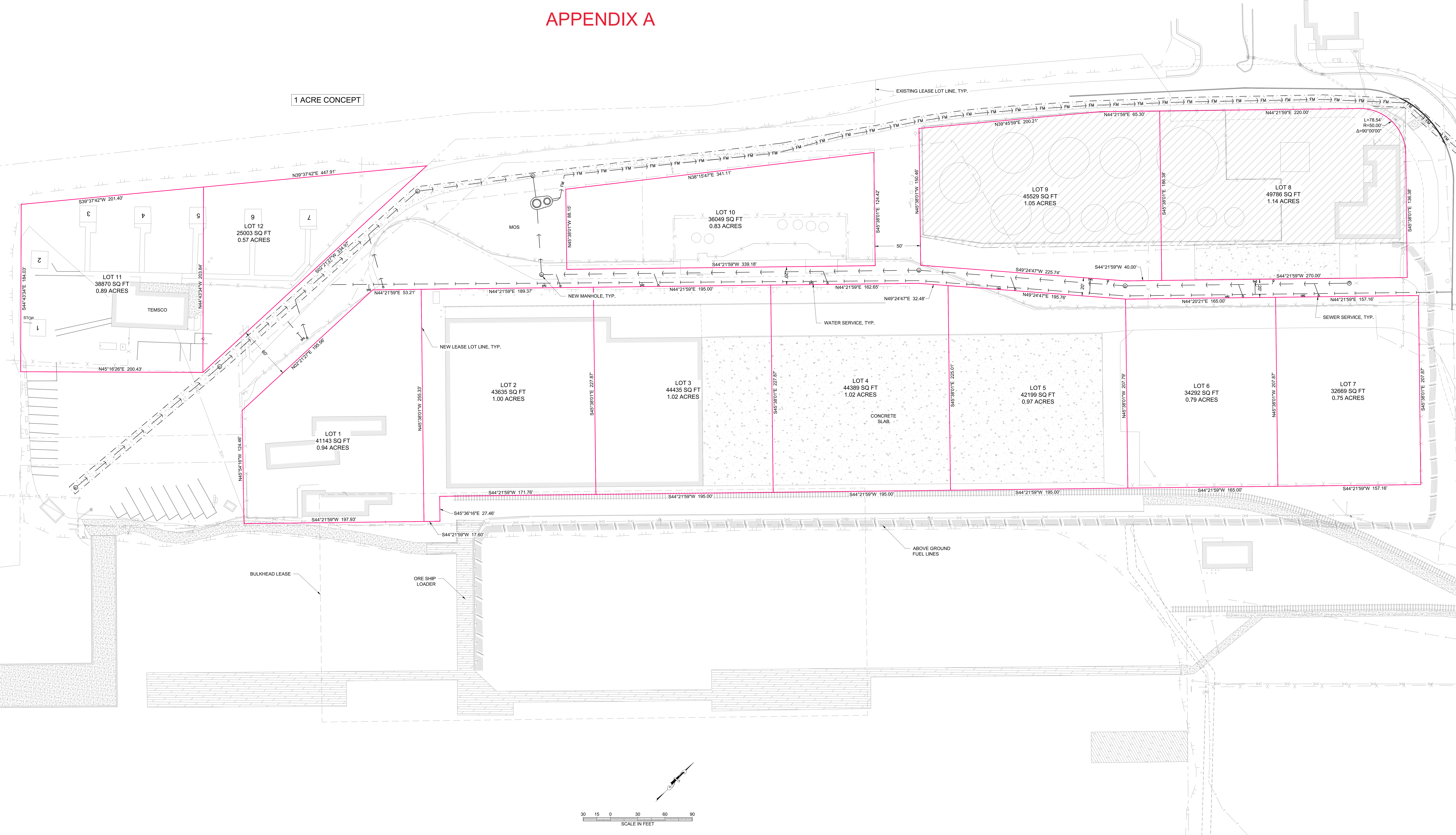
or property as a result of the successful Proposer's activities or the condition of the Property and pipelines used in conjunction therewith.

Proposer shall provide Worker's Compensation Insurance in compliance with the laws of the State of Alaska, AS 23.30et seq., and federal jurisdiction where the work is being performed.

The Municipality of Skagway is an equal opportunity employer.

APPENDIX A

1 ACRE CONCEPT



APPENDIX B

LEASE OF TIDELANDS

1
2 This lease made this 19th day of March,
3 1968, between the CITY OF SKAGWAY, hereinafter called "Lessor",
4 and PACIFIC AND ARCTIC RAILWAY AND NAVIGATION COMPANY, a corpora-
5 tion organized under the laws of West Virginia doing business
6 at Skagway, Alaska, hereinafter called the "Lessee",

7 WITNESSETH:

8 1. The lessor lets, leases and demises to the lessee
9 a tract of tidelands within and adjacent to the City of Skagway,
10 Alaska, particularly described as follows:

11 A portion of Alaska Tidelands Survey No. 4 owned
12 by and situated in the City of Skagway, Skagway
13 Recording District, First Judicial District, State
14 of Alaska, as appears by a plat attached hereto,
15 prepared by Tippetts-Abbett-McCarthy-Stratton,
16 Engineers and Architects of Seattle, Washington,
17 dated January 3, 1968, particularly described as
18 follows, to wit:

19 Commencing at Corner No. 1 which is meander Corner
20 No. 1 of U. S. Survey No. 435 and meander Corner
21 No. 6 of U. S. Survey No. 13;

22 Thence South 57° 32' East 504.58 feet to Corner
23 No. 2; thence South 23° 29' West 73.89 feet to
24 Corner No. 3; thence North 78° 52' West 137.58
25 feet to Corner No. 4; thence South 11° 08' West
26 195.00 feet to Corner No. 5; thence South 78°
27 52' East 94.88 feet to Corner No. 6; thence South
28 23° 29' West 473.12 feet to Corner No. 7; thence
29 North 47° 00' West 39.70 feet to Corner No. 8;
30 thence South 43° 00' West 508.00 feet to Corner
31 No. 9; thence South 51° 00' West 620.00 feet to
32 Corner No. 10; thence South 41° 09' 00" West
1003.46 feet to Corner No. 11; thence North 29°
15' 20" West 1160.59 feet to Corner No. 12; thence
North 39° 46' 46" East 2513.25 feet to Corner No.
13; thence South 45° 30' East 404.63 feet to
Corner No. 14; thence South 15° 37' East 222.76
feet to Corner No. 1, the place of beginning, a
total area of 70.226 acres.

2. This lease is for a term of Fifty-five (55) years,
commencing on the date hereof.

3. The lessee agrees to pay and the lessor agrees to
accept as rent for the use of said property and the privileges
granted under this lease, an annual rental of \$ 3,600.00,
payable for each calendar month, or fraction thereof on a

1 prorated basis, on or before the 10th day of the month; provided,
2 however, the annual rental shall be subject to adjustment by the
3 Council on the fifth anniversary of the date of this lease and
4 each anniversary date thereafter which is divisible by the number
5 Five (5), in the manner specified in Section 21 of Ordinance
6 No. 229 of the City of Skagway, as amended by Ordinance No. 243.
7 In the event the fair market value of the land and improvements
8 as determined under said section is not acceptable to lessee,
9 such value shall be subject to determination by the Superior
10 Court for the State of Alaska upon a petition being filed for
11 that purpose by the lessee.

12 4. It is agreed by the parties hereto that all of the
13 provisions of Article III of said Ordinance 229 as amended by
14 Ordinance No. 243, are hereby specifically made a part of
15 this lease by reference as if fully set forth herein. Any
16 amendments to said article or said ordinances made hereafter
17 shall not affect the terms of this lease. A copy of said
18 Article III and Ordinance No. 243 are attached hereto.

19 5. The lessee shall have the privilege of dredging a
20 deep water mooring basin for vessels and may make any and all
21 types of excavations on the premises. The lessee may raise the
22 surface of the land by placing fill thereon from such excavations
23 or dredging or from other sources. The lessee may place such
24 improvements and structures therein, thereon or over said lands
25 as it shall determine. The lessee may remove the existing break-
26 water dike providing the same is replaced in a location satis-
27 factory to the Corps of Engineers of the Department of the Army,
28 and providing the same meets the specifications required by said
29 agency. The lessee may remove, with the permission of the
30 Alaska Communications System, United States Air Force, the cables
31 owned by said agency. The lessee may make such changes as it
32 desires in the location of the outfall sewer which crosses such

1 property as is necessary or desirable for the development of
2 said lands by the lessee; provided, however, the lessee shall
3 provide an alternate outfall sewer in a location satisfactory to
4 the Council and which will be as satisfactory for the purposes
5 intended as the present sewer outfall. The lessee will provide
6 adequate drainage for the water flowing onto the land from a
7 culvert under the approach to the Alaska State Ferry Terminal
8 or from an alternate culvert to be constructed by lessee, so the
9 same will not flow into the Small Boat Harbor during freezing
10 weather unless the culvert is obstructed by ice or other obstruc-
11 tions. Any other property found on said tract may be removed by
12 the lessee and disposed of in such manner as the lessee shall
13 determine.

14 6. The lessee agrees to commence construction of one
15 or more of the facilities described in this paragraph within six
16 months from the date hereof and to complete within one year from
17 the date hereof the expenditure of not less than Five Hundred
18 Thousand Dollars (\$500,000) in the construction or partial con-
19 struction of one or more of the following, to wit:

- 20 A spur railroad line
- 21 A bulk mineral storage and handling facility
- 22 A dock and dolphins
- 23 A deep water basin at the face of the dock

24 Lessee agrees to complete all of said facilities at a cost of
25 not less than Two Million Dollars (\$2,000,000) within two years
26 from the date hereof. Lessee agrees that all improvements on
27 said lands other than the excavated basin for vessels and the
28 fill material placed upon said lands, shall be subject to taxa-
29 tion by lessor on the same basis as other property in the muni-
30 cipality. The excavated basin or basins created by dredging,
31 or otherwise, and the materials excavated therefrom and placed
32 upon said land shall be a part of the land at all times, shall
be owned by the lessor and shall be leased hereunder.

1 contained in a resolution adopted by the Council of said City
2 on the 19 day of March, 1968.

3
4 CITY OF SKAGWAY

5 By Edward Hanousek
Mayor

6
7 And By Lillian Litzenger
City Clerk

8
9 PACIFIC AND ARCTIC RAILWAY AND
10 NAVIGATION COMPANY

11 By A. P. Friesen
Vice President

12 And By J. G. Downey
Secretary

13 STATE OF ALASKA)
14) ss.
15 FIRST JUDICIAL DISTRICT)

16 THIS CERTIFIES that on this 19 day of March,
17 1968, before me, a Notary Public in and for the State of Alaska,
18 personally appeared ED HANOUSEK and LILLIAN LITZENBERGER to me
19 known and known to me to be the persons whose names are subscri-
20 bed to the foregoing instrument, and after being first duly
21 sworn according to law they stated to me under oath that they
22 are the Mayor and City Clerk, respectively, of the City of
23 Skagway, that they have been authorized by said City to execute
24 the foregoing instrument on its behalf and they executed the
25 same freely and voluntarily as the free act and deed of said City.

26 WITNESS my hand and official seal the day and year in
27 this certificate first above written.

28 EE Muhlke
Notary Public for Alaska
My commission expires: 19 Dec 71

29 DOMINION OF CANADA)
30) ss.
31 PROVINCE OF BRITISH COLUMBIA)

32 THIS CERTIFIES that before me, a Notary Public in and
for the Province of British Columbia, Canada, personally appeared
A. P. FRIESEN, to me known and known to me to be the person who
executed the foregoing instrument on behalf of Pacific and Arctic
Railway and Navigation Company. He acknowledged to me that he
executed the same freely and voluntarily on behalf of said cor-
poration. He stated to me under oath that he is the Vice
President of said corporation, has been authorized by the Board
of Directors of said corporation to execute said instrument on
its behalf and he has full power and authority to execute the same.

WITNESS my hand and official seal this 4th day of
April, 1968.

John S. Butterfield
Notary Public in and for the
Province of British Columbia,
Canada, residing at Vancouver

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STATE OF WASHINGTON)
)
COUNTY OF KING) ss.

THIS CERTIFIES that before me, a Notary Public in and for the State of Washington, County of King, personally appeared F. D. DOWNEY, to me known and known to me to be the person who executed the foregoing instrument on behalf of Pacific and Arctic Railway and Navigation Company. He acknowledged to me that he executed the same freely and voluntarily on behalf of said corporation. He stated to me under oath that he is the Secretary of said corporation, has been authorized by the Board of Directors of said corporation to execute said instrument on its behalf and he has full power and authority to execute the same.

WITNESS my hand and official seal this 21st day of March, 1968.

Marian Kellogg
Notary Public in and for the
State of Washington, County
of King.

LEASE OF REAL PROPERTY

This lease made this 1st day of August, 1969, between the CITY OF SKAGWAY, hereinafter called "Lessor", and PACIFIC AND ARCTIC RAILWAY AND NAVIGATION COMPANY, a corporation organized under the laws of West Virginia doing business at Skagway, Alaska, hereinafter called the "Lessee",

WITNESSETH:

1. The lessor lets, leases and demises to the lessee the following described real property, to wit:

Beginning at the intersection of the southwesterly extension of the southeast side of Broadway Street and the southeasterly extension of the northeast side of Front Street, in the City of Skagway, Alaska; thence southeasterly along the northeast side of Front Street extended 15.0 feet to the true point of beginning; thence southeasterly along the northeast side of Front Street 35.0 feet; thence at right angles northeasterly 100.0 feet; thence at right angles northwesterly 35.0 feet; thence at right angles southwesterly parallel to and 15 feet from the southeast side of Broadway Street extended 100.0 feet to the point of beginning; except for that portion of said lands in Alaska Tidelands Survey No. 4; situated in Amended U. S. Survey No. 13 in the City of Skagway, Skagway Recording District, First Judicial District, State of Alaska and being a portion of what is commonly known as Lot 7 in Block 45 of Skagway.

Beginning at the intersection of the southwesterly extension of the northwesterly side of Broadway Street and the southeasterly extension of the northeasterly side of Front Street, in the City of Skagway, Alaska; thence northwesterly along said side of Front Street extended 100.0 feet; thence at right angles northeasterly 100.0 feet; thence southeasterly at right angles 100.0 feet; thence southwesterly at right angles 100.0 feet to the place of beginning; situated in Amended U. S. Survey No. 13 in the City of Skagway, Skagway Recording District, First Judicial District, State of Alaska, and commonly known as Lots 11 and 12, Block 44 of the City of Skagway.

2. This lease is for a term commencing on the date

1 hereof and ending at midnight March 18, in the year 2023.

2 3. The lessee agrees to pay and the lessor agrees to
3 accept as rent for the use of said property and the privilege
4 granted under this lease, an annual rental of \$630.00, payable
5 for each calendar year, or a fraction thereof on a prorated
6 basis, within 30 days from the date hereof for that portion of
7 the year 1969 which is between the date hereof and the end of
8 said year and on or before the 30th day of January of each year
9 thereafter for such calendar year; provided, however, the
10 annual rental shall be subject to adjustment by the Council on
11 March 19, 1973 and each March 19th thereafter which is in a
12 year which is divisible by the number 5, in the manner specified
13 at this time in Section 21 of Ordinance No. 229 of the City of
14 Skagway, as amended by Ordinance No. 243. In the event the fair
15 market value of the land as determined under said section is not
16 acceptable to lessee, such value shall be subject to determi-
17 nation by the Superior Court for the State of Alaska upon a
18 petition being filed for that purpose by the lessee.

19 4. The lessee shall have the privilege of using said
20 lands for any purpose which is necessary or desirable to the
21 lessee in connection with its railroad and other transportation
22 operations. The lessee may place such improvements and
23 structures thereon as are needed in such operations and the same
24 may be removed by lessee within 30 days of the termination of
25 this lease. Said lands shall not be used for other purposes
26 without permission of lessor.

27 5. The lessee agrees that within 6 months from the date
28 hereof it will have constructed on each of said lots a railroad
29 track connecting its main line to the property of Skagway
30 Terminal Company on Alaska Tidelands Survey No. 4. Lessee agrees
31 that all improvements on said lands other than the fill material
32 placed thereon, shall be subject to taxation by lessor on the

1 same basis as other real property in a municipality. Any fill
2 material placed thereon shall be a part of the land at all
3 times, shall be owned by the lessor and shall be leased here-
4 under.

5 6. Lessee may terminate this lease at the end of any
6 annual period for which rent has been paid, by giving lessor
7 notice of termination in writing at least 60 days before the end
8 of such annual rental period.

9 7. So long as the lessee shall comply with all the terms
10 and conditions of this lease, the lessee may use such property
11 for the purposes above stated free of any interference or
12 hindrance by the lessor during the term of this lease. This
13 lease may be assigned or a portion of the land sublet only for
14 the purposes and uses permitted under Paragraph 4 hereof.

15 8. In the event of any such assignment of this lease, the
16 same shall enure to the benefit of, and be binding upon, the
17 lessee and such assignee. This lease shall also enure to the
18 benefit of, and be binding upon, any successor to the lessor.

19 9. The address of lessor is P. O. Box 415, Skagway,
20 Alaska, 99840, and the address of the lessee is P. O. Box 435,
21 Skagway, Alaska, 99840. Either party may change its address of
22 record by giving notice thereof in writing to the other party.
23 These addresses are those to which all notices are to be given
24 under this lease.

25 10. If the lessee shall default in the performance or ob-
26 servance of any of the lease terms, covenants, or stipulations,
27 or the terms of this ordinance, or any of the ordinances of the
28 City, and said default continues for 30 calendar days after
29 service of written notice by the City on lessee without remedy
30 by lessee of the default, the Council shall take such action as
31 is necessary to protect the rights and best interests of the
32 City, including the exercise of any or all rights after default

1 permitted by the lease. No improvements may be removed by
2 lessee or any other person during any time the lessee is in
3 default.

4 IN WITNESS WHEREOF, the parties hereto have caused this
5 instrument to be executed by their duly authorized officers as
6 of the day and year first above written. The officers of the
7 City of Skagway have executed this lease under an authorization
8 granted by motion adopted by the Council of said City on the
9 1st day of August, 1969.

10
11 CITY OF SKAGWAY

12 BY E. C. Hanousek
13 Mayor

14 And BY Fred Litzengerger
15 City Clerk

16 PACIFIC AND ARCTIC RAILWAY AND
17 NAVIGATION COMPANY

18 BY W. J. Jensen
19 President

20 STATE OF ALASKA)
21) ss.
22 FIRST JUDICIAL DISTRICT)

23 THIS CERTIFIES that on this 1 day of August,
24 1969, before me, a Notary Public in and for the State of Alaska,
25 personally appeared Edward Hanousek and Lillian
26 Litzengerger to me known and known to me to be the
27 persons whose names are subscribed to the foregoing instrument,
28 and after being first duly sworn according to law they stated to
29 me under oath that they are the Mayor and City Clerk, respec-
30 tively, of the City of Skagway, that they have been authorized
31 by said City to execute the foregoing instrument on its behalf
32 and they executed the same freely and voluntarily as the free
act and deed of said City.

WITNESS my hand and official seal the day and year in
this certificate first above written.

C. E. Madsen
Notary Public for Alaska
My commission expires:
19 Dec 71

1 DOMINION OF CANADA)
2) ss.
3 PROVINCE OF BRITISH COLUMBIA)

4 THIS CERTIFIES that before me, a Notary Public in and for
5 the Province of British Columbia, Canada, personally appeared
6 A. P. FRIESEN, to me known and known to me to be the person who
7 executed the foregoing instrument on behalf of Pacific and Arctic
8 Railway and Navigation Company. He acknowledged to me that he
9 executed the same freely and voluntarily on behalf of said cor-
10 poration. He stated to me under oath that he is the President
11 of said corporation, has been authorized by the Board of
12 Directors of said corporation to execute said instrument on its
13 behalf and he has full power and authority to execute the same.

14 WITNESS my hand and official seal this 23 day of
15 January, 1970 ~~1969~~

16 John S. Butterfield
17 Notary Public in and for the
18 Province of British Columbia,
19 Canada, residing at Vancouver.

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FAULKNER, BANFIELD, BOOCHEVER & DOOGAN
ROOM 201, 311 FRANKLIN ST. PHONE 588-2210
JUNEAU, ALASKA 99801

CITY OF SKAGWAY, ALASKA
ORDINANCE NO. 229

AN ORDINANCE PROVIDING REGULATIONS GOVERNING THE FILING AND PROCESSING OF APPLICATIONS FOR PREFERENCE RIGHTS, PUBLICATION OF NOTICES AND ADJUDICATION OF DISPUTES BETWEEN CLAIMANTS BY THE COUNCIL, AND PROVIDING FOR THE SALE AND LEASE OF TIDELANDS CONVEYED TO THE CITY WHERE NO PREFERENCE RIGHT HAS BEEN GRANTED OR EXERCISED, THE USE OF MATERIAL COMPRISING TIDELANDS NOT SOLD OR LEASED, AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SKAGWAY, ALASKA:

ARTICLE I

GENERAL

Section 1. Short Title. This ordinance shall be known as the “Skagway Tidelands Ordinance.”

Section 2. Declaration of Purpose and Intent. The purpose of this ordinance is to carry out the duty of the City as expressed in the Alaska Land Act, Article III, Sec. 5(3)h, as follows:

“h. Each municipal corporation receiving such conveyances (of tide and submerged land lying seaward of the city) shall by ordinance provide for reasonable regulations governing the filing and processing of applications, publication of notices and the adjudication of disputes between claimants by the governing body of the corporation. Any party aggrieved by its determination shall have a right of appeal to the Superior Court.”

The intent of the Council in enacting this ordinance is:

(a) To expedite granting conveyances to qualified occupants who are entitled to and who exercise their preference rights in accordance with the provisions of law and of this ordinance.

(b) To provide due process and sufficient notice to all parties who qualify as occupants of such lands and who are entitled to exercise preference rights, of applications filed, disputes and conflicting claims and of approved applications.

(c) To provide simple procedures by which occupants may exercise their preference rights.

(d) To equitably apportion the costs of administering and processing applications, hearing disputes, costs of appraisal, transfer, and survey among those who will benefit therefrom.

(e) To limit the issues to be determined by the Council in adjudication of disputes to rights conferred by the Alaska Land Act and this ordinance.

(f) To safeguard and protect the interests of the City and its citizens in tide and submerged lands conveyed to the City not subject to preference rights, or where preference rights were or will not be exercised in the time allowed by law, by providing for rules and regulations for the administration of such lands in the best interests of all of the residents of the City.

Section 3. Definitions and Classes of Preference Rights. For the purpose of this ordinance the terms defined herein shall have the meanings provided and rights defined unless the context requires otherwise:

(a) "Alaska" means the State of Alaska.

(b) "Assessor" means the Assessor of the City of Skagway, Alaska.

(c) "City" means the City of Skagway, Alaska.

(d) "City Engineer" means the City Engineer, or other City official designated to perform the functions herein assigned to the City Engineer.

(e) "Class I Preference Right" means the right extended to persons who occupied or developed tide or submerged lands seaward of a surveyed townsite on and prior to September 7, 1957, upon the execution by such persons of a waiver to the City and State of all rights such occupant may have had pursuant to Public Law 85-303. Upon execution of the waiver, such persons or their successor in interest, have the right to acquire such occupied or developed tide or submerged lands from the City for a consideration equal to the cost of surveying, transferring and conveying such lands.

(f) "Class II Preference Right" means the right extended to Class I preference right claimants who refuse to execute a waiver to the City of any rights such occupants may have acquired pursuant to Public Law 85-303. It shall be mandatory for the city to expeditiously honor the application from the occupant after the Secretary of the Army has submitted to the Secretary of the Interior and Governor of the State maps showing the pierhead line established by the Corps of Engineers with respect to the tract so granted.

(g) "Class III Preference Right" means the right extended to persons who occupied or developed tide or submerged lands after September 7, 1957, and who continued to occupy the same on January 3, 1959. Such persons, or their successors, have the right to acquire such occupied or developed tide or submerged lands for a consideration not to exceed the cost of appraisal, administering, transferring and surveying such lands, together with the appraised fair market value thereof, exclusive of any value from improvements or development, such as fill material, buildings or structures thereon.

(h) "Clerk" shall mean the Clerk of the City.

(i) "Council" means the Council of the City.

(j) "Director" means the Director of Lands, State of Alaska.

(k) "Director's Line" means a line seaward of the City, approved by the Director, with the concurrence of the Commissioner of Natural Resources, State of Alaska, seaward of all tide and submerged lands occupied or suitable for occupation and development without unreasonable interference with navigation.

(l) "Fair Market Value" means the highest price, described in terms of money, which the property would bring if exposed for sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used.

(m) "Fill" shall mean earth, gravel, rock, sand or other similar materials placed upon tide or contiguous submerged lands to a height above the mean high water line for the purpose of elevating the lands for a specific useful purpose. Earth, gravel, rock, sand or other similar materials placed on tide or contiguous submerged land solely for the purpose of spoils disposal shall not be considered fill unless such fill was used for a useful and beneficial purpose on and prior to January 3, 1959.

(n) "Harbor Line" means that line fixed by the Secretary of the Army which is the limit to which piers, wharves, bulkheads, or other work may be extended in navigable waters without further authorization (30 Stat. 1151; 33 U.S.C. 404).

(o) "Hearings Officer" means that City official employed to hear disputes between claimants, summarize the testimony, attempt to reach stipulations of fact between the parties, assemble the record of the dispute, and submit the same to the Council for determination.

(p) "Improvements" mean buildings, wharves, piers, dry docks, and other similar types of structures permanently fixed to the tide or contiguous submerged lands that were constructed and/or maintained by the applicant for business, commercial, recreation, residential, or other beneficial uses or purposes. Floats secured by guide piles used as floating wharves, where access is provided to the shore, shall be improvements within the meaning of this section. Fill material to the extent actually in place above the line of mean high tide on January 3, 1959, and actually utilized for beneficial purposes on January 3, 1959 by the applicant shall be considered a permanent improvement, but in no event shall fill be considered a permanent improvement when placed on the tidelands solely for the purpose of disposing of waste or spoils. Fill material not utilized for a beneficial purpose on and prior to January 3, 1959 and fill material not actually in place to above the line of mean high tide on January 3, 1959, shall not be the basis for an

application, nor shall it be included in any application for the exercise of preference rights hereunder.

(q) "Industrial and Commercial Lands" means tidelands chiefly valuable for industrial, manufacturing or commercial purposes.

(r) "Skagway" means the City of Skagway, Alaska.

(s) "Mayor" means the Mayor of the City of Skagway.

(t) "Mean High Tide" at any place subject to tidal influence shall be interpreted as the tidal datum plane derived from averaging all the high waters observed at that place over a period of 19 years. Mean high water line shall be interpreted as the intersection of the datum plane of mean high tide with the shore.

(u) "Mean Low Tide" shall be interpreted to be mean lower low water which is the mean of the lower of the two low waters of each day for a tidal cycle of 19 years.

(v) "Occupant" means any person as defined herein, or his successor in interest, who actually occupied for any business, residential, or other beneficial purpose, tide or submerged lands within Alaska Tidelands Survey No. 4, on or prior to January 3, 1959, with substantial permanent improvements. The holder of a permit of clearance in respect to interference of navigation, or of a special use permit from a government agency will not qualify as an "occupant" unless such entry on the land had, through exercise of reasonable diligence, resulted in actual occupancy and substantial permanent improvements. No person shall be considered an occupant by reason of having (a) placed a fish trap in position for operation or storage upon the tide, shore, or submerged land, (b) placed a setnet or piling therefor or any other device or facility for taking of fish, (c) placed pilings or dolphins for log storage or other moorage, (d) placed telephone, power or other transmission facilities, roads, trails or other improvements not requiring exclusive use or possession of tide or contiguous submerged lands, or (e) claimed the land by virtue of some form of constructive occupancy. Where land is occupied by a person other than the owner of the improvements thereon, the owner of the improvements shall, for the purposes of this ordinance, be considered the occupant of such lands.

(w) "Occupied or Developed" means the actual use, control and occupancy, but not necessarily residence, of the tide or submerged land by the establishment thereon of substantial permanent improvements.

(x) "Ordinance" means the Skagway Tidelands Ordinance.

(y) "Park and Recreation Lands" means tidelands chiefly valuable for public park and recreation use, including scenic overlooks.

(z) "Person" means any person, firm, corporation, cooperative association, partnership or other entity legally capable of owning land or any interest therein.

(aa) "Preference Right" subject to the classifications thereof herein established means the right of an occupant to acquire by grant, purchase, or otherwise, at the election of the occupant, except as otherwise limited or prescribed in this ordinance, any lot, piece, parcel or tract of tidelands or submerged land occupied or developed by such occupant on and prior to January 3, 1959.

(bb) "Pierhead Line" is a line fixed by the Corps of Engineers roughly parallel to the existing line of mean low tide at such distance offshore therefrom that said pierhead line shall encompass landward all stationary, man-made structures under the authority of Public Law 85-303 (48 USCA 455-455e).

(cc) "State" means the State of Alaska.

(dd) "Submerged Lands" means land covered by tidal waters between the line of mean low water and seaward to a distance of three geographic miles, in their natural state, without being affected by man-made structure, fill and so forth.

(ee) "Substantial Permanent Improvements" shall for the purposes of the Ordinance have the same meaning as Improvements as herein defined.

(ff) "Tidelands" means lands periodically covered by tidal waters between the elevations of mean high and mean low tides, without regard to artificial interference with tidal flows caused by man-made structures, breakwaters, fill and the like. When used in this ordinance it shall also include submerged lands conveyed by the State to the City.

(gg) "Tidelands Subdivision Plat" is that certain plat of subdivision of Alaska Tidelands Survey No. 4, prepared by Toner & Nordling, Registered Engineers, and entitled "Tidelands Addition to Skagway Townsite, Subdivision of ATS No. 4."

ARTICLE II

ACCEPTING THE STATE CONVEYANCE, APPROVING THE TIDELANDS SUBDIVISION PLAT, ESTABLISHING PROCEDURES FOR THE EXERCISE OF PREFERENCE RIGHTS, FILING AND PROCESSING OF APPLICATIONS, PUBLICATION OF NOTICES, ADJUDICATION OF DISPUTES, PROVIDING FOR PAYING COSTS OF SURVEY, APPRAISAL, TRANSFER, HEARING OF DISPUTES, AND PURCHASE OF LANDS SUBJECT TO CLASS III RIGHTS.

Section 1. Approval and Acceptance of State Conveyance. The conveyance by the State to the City, dated January 3, 1961, of tidelands and submerged lands lying seaward of the City is hereby approved and accepted.

Section 2. Approval and Adoption of Subdivision Plat. The Tidelands Subdivision Plat, hereinafter called Plat, is hereby approved and adopted as the official Tidelands Subdivision Plat of tide and submerged lands conveyed by the State to the City.

Section 3. Time and Places of Posting Plat. Said plat shall be posted for a period of not less than sixty days, commencing with the date following the date of final passage of this ordinance, in two public places in the City, namely (1) in the office of the Clerk, Municipal Building, City, and (2) Council Chambers.

Section 4. Publication of Notice of Posting Plat and Passage of Ordinance. The Clerk shall cause to be issued and published once a week for four weeks, in a newspaper of general circulation in the City, a notice of the posting of said plat containing the following statements: (1) time and places of posting, (2) the date of final passage and the effective date of this ordinance, and that the plat is the official Tidelands Subdivision Plat of the tide and submerged lands conveyed by the State to the City on January 3, 1961, (3) that any and all persons, having or claiming preference rights provided by law and as herein defined to any part or parts of the subdivided land embraced within the boundaries of said plat, who fail to apply to exercise such rights under the provisions of this ordinance within two years from and after November 16, 1963, which is hereby declared to be the date upon which applications therefor will be first accepted by the City, shall forfeit their preference rights provided by law and this ordinance, and, (4) that this ordinance was enacted to protect occupants having preference rights, to afford due process of law, to provide procedures for applying for exercise of preference rights, for hearing and adjudicating adverse claims, and for conveying title to occupants holding preference rights defined by law and this ordinance, and (5) that copies of this ordinance and application forms are available at the office of the Clerk of the City.

Section 5. Time in Which Applications Will be Accepted for Filing. Application forms, in substantially the form set forth in Section 20 will be accepted for filing on January 6, 1964, and for a period ending two calendar years thereafter at the close of business at 5:00 PM on January 6, 1966, after which no application forms will be furnished and after which no applications will be accepted for filing.

Section 6. Procedure for Filing Applications. Applications shall be submitted, and will be received for filing, only for the purpose of claiming preference rights herein defined to the tidelands conveyed by the State to the City.

(a) Application forms will be provided by the Clerk without charge at his office in the Municipal Building.

(b) Applications must be submitted in triplicate.

- (c) Applications not clearly legible nor properly completed and certified by the applicant will not be accepted for filing. Since the facts alleged may be used in hearings of disputes their truth must be certified. The facts alleged will also be the basis for the conveyance of valuable property. Willful and deliberate misstatements of fact will be equivalent to attempting to obtain property under false pretenses.
- (d) Applications may be delivered or mailed to the Clerk, Municipal Building, Skagway, Alaska, with the proper deposit computed according to the nature of the application made. Applications properly completed accompanied with the proper deposit will be stamped with the time and date of filing and signed by the person accepting the deposit. The triplicate copy will then be delivered to the applicant or mailed to him.
- (e) Any application for a deed based on an asserted right other than a preference right shall be rejected.
- (f) Any applications not waiving the Class II preference right shall be filed by the Clerk together with all others of like nature to await the official determination of the pierhead line. Thereafter such application shall be processed as applications under the Class II rights.
- (g) No single application based on more than one class of preference right, except an application for a single subdivided lot the claim of right to which is based on more than one class of preference right, nor any single application claiming title to two or more lots which are not contiguous, shall be accepted for filing. Such applications shall be rejected and delivered to the applicant, or mailed to him.

Section 7. Deposits for Costs Prerequisite to Filing. The application form will assist the applicant in determining the proper costs to advance, which will depend upon the nature of the right claimed. In all cases a filing fee of \$10.00 will be required. Survey costs depend upon the area claimed at the rate of _____ per square foot. If the area claimed is different from the lot as it appears on the plat, the applicant shall show the measurements of the additional or lesser area claimed and compute and pay the survey costs accordingly. Transfer costs will be the same in all cases. They cover the cost of time estimated to be required to examine, process and approve the application, as well as to prepare and execute the deed, publish notice, give notice of additional costs, if any, and give notice to applicant. In all cases transfer costs will be in the amount of \$35.00. Deposit for appraisal costs will be required in all cases of Class III preference rights, or where another asserted right is determined by the Council to be a Class III right. Appraisal costs will depend upon the area involved and the complexity of the appraisal sought. Where required as a deposit the minimum amount is \$25.00 but additional amounts not exceeding \$25.00 may be required prior to delivery of deed.

Section 8. Additional Costs in Certain Cases. Aside from deposits required at the time of filing applications, additional costs will be required to be paid prior to hearings where disputes require hearings, and for costs of land under a Class III right as well as appraisal thereof when a preference right sought to be exercised is determined to be a Class III right, as follows:

- (a) When the area claimed does not conform to the boundaries of a lot shown on the plat it is necessary to have a hearing to establish the validity of the right claimed. This requires notice to be given to adjacent occupants interested in the difference between the lands claimed and the lot as shown on the plat so that all parties in interest may be heard at the hearing.
- (b) When applications conflict with the same area or portions thereof it shall be necessary to conduct a hearing to determine the facts and the issue in question. Conflicting claims will be carefully scrutinized and each disputing party will bear the burden of proving facts sufficient to establish the validity of his claim.
- (c) The party filing an application conflicting with a claim previously filed shall be required to deposit hearings costs in the amount of \$25.00. If the conflict is not known at the time of filing the applicant shall be advised of the conflict as soon as it is known and of the need to deposit the hearing cost deposit.
- (d) The applicant who after hearing and determination by the Council is determined to have claimed the land of another shall be the party to bear the cost of the hearing. If such party did not deposit such costs no deed shall be delivered to him until the cost is paid. Where the depositor is the prevailing party the hearing cost deposited shall be refunded to him by the City.
- (e) When title by Class III preference right is claimed the applicant shall be required to deposit the appraised purchase price after appraisal has been made and the purchase price has been so determined. The same procedure will be applied when an application under another class of right is sought but it is determined that the only available right to the applicant is a Class III right.
- (f) When a preference right is sought to be exercised other than a Class III right and such right is determined to be a Class III right, then the applicant shall be required to deposit the estimated cost of appraising the property claimed.
- (g) The applicant who receives a deed from the City shall at his own cost pay for documentary stamps and the cost of recording the deed.

Section 9. Procedures for Processing Filed Applications. The Clerk shall cause the following procedures to be carried out:

- (a) All copies of applications accepted for filing shall be stamped with time and date of filing and an application number in chronological order of filing.
- (b) All original applications shall be filed in a permanent register and the names of the applicants entered in an alphabetical index which shall be a permanent part of such register.
- (c) The application register shall be available for public inspection during office hours of the Clerk except when in actual use for filing and indexing.
- (d) Certified copies of all applications shall be prepared for all persons upon request upon their paying \$1.00 per page for copies of said applications and any attachments forming a part thereof.
- (e) Processing of duplicate applications. The third copy of the application will be returned to the applicant as his record and as receipt for deposit made, or mailed to applicant. The second copy shall be the working file copy to be handled and processed as follows:
 - (1) Applications to exercise Class I preference rights having waivers attached and which apply for lands which conform to a lot or lots on the plat with respect to area and boundary locations and do not include any unoccupied and unimproved lot, or any lot occupied or improved by the City, shall be processed by the City Clerk. Applications to exercise Class I preference right which do not have waivers attached, irrespective of whether the lands applied for comply with the plat, shall be segregated for handling in the same manner as Class II preference right applications.
 - (2) Applications to exercise Class I preference rights having waives attached and which claim lands which do not conform to a lot or lots on the plat with respect to area and boundary locations shall be transmitted to the Haring Officer for processing as provided in Section 14.
 - (3) Applications to exercise Class II preference rights shall be segregated and kept with Class I preference right applications not having waivers attached. All such applications shall be held in abeyance by the City until such time as the pierhead line is established by the Corps of Engineers whereupon such applications shall be promptly honored and processed in the manner herein described for Class I preference right applications where waivers are attached.
 - (4) Applications to exercise Class III preference rights, and all applications determined in whole or in part to be Class III, shall be transmitted to the Assessor for appraisal as provided in Section 10.

(5) No applications which combine Class I, Class II and Class III, or any combination of such preference rights, will be accepted for filing. Any such application presented for filing shall be returned to the applicant for revision into two or more applications each of which will apply for land under only one type of preference right.

(6) Applications to exercise one class of preference right which in part conforms with one or more lots in the plat with respect to area and boundary locations, but do not wholly conform with the plat in such respects, shall be treated as if no part of the application so complies with the plat and shall be processed for contest hearing by the Hearing Officer.

Section 10. Appraisal by Assessor. All applications for Class III preference rights shall be transmitted to the Assessor for appraisal. The appraiser's report shall be prepared in four copies. One copy shall be mailed to the applicant, one copy kept by the appraiser and the other two attached to the copies of the application on file with the City. The appraiser will then return the copy of the application to the City Clerk for further processing.

Section 11. Processing of Approved Applications by Clerk. All applications which the Clerk is authorized to process shall be processed by the Clerk in the following manner. The Clerk shall ascertain if the deposit made by the applicant is sufficient to pay all known and estimated costs of survey, appraisal and transfer, (and purchase if of Class III) and if not, to advise the applicant that the remainder due must be deposited with the Clerk before further processing. If or when the deposit is sufficient to pay all such costs, the Clerk shall cause to be published once a week for two weeks in a newspaper of general circulation in the City, notice of the names of the applicant(s), the block and lot numbers or other description of the property claimed, according to plat designations, and if Class III, its appraised value, and that the City will issue to the applicant(s) its deed therefor within thirty days after the date of last publication, provided that before date of last publication no adverse application or claim has been filed with the City.

Section 12. Adverse Claims. At the end of said thirty day period of publication the Clerk shall note on the applications whether or not any adverse claims have been filed for the land described therein. If no adverse claim has been filed to an application it shall be processed by the Clerk as provided in Section 13. If an adverse claim has been filed to an application, it shall be processed for hearing. Objections and adverse claims to any application must be filed in four copies of the Clerk shall reject the same. One copy shall be returned to the person filing the objection or claim, with the time of filing endorsed thereon. One copy shall be mailed by the Clerk to the applicant with a notice that the Hearing Officer will set a date for a hearing thereon and notify the applicant and objector or adverse claimant of the time and date of such hearing.

Section 13. Deeds – Permanent Register. When all other processing has been completed, the Clerk shall then cause a deed to be prepared conveying the land to the applicant(s) from the

City and transmit the deed to the Mayor for execution. Notice shall then be sent to the applicant to take delivery of said deed at the office of the Clerk, who shall deliver the same to the applicant if all requirements have been met and all costs including purchase price, if required, have been paid. Duplicate originals of all executed deeds shall be kept in the office of the Clerk in a permanent register entitled "Wrangell Tidelands Deeds with permanent alphabetical index of grantees.

Section 14. Special Proceedings for Disputed Claims – Establishment of Office of Hearing Officer. There is hereby created, for the purpose of assisting the Council in performing its duties of adjudicating disputes between claimants of preference rights to tidelands, the office of Hearing Officer. He shall be appointed by the Council to serve without compensation other than an agreed part of the deposits made by claimants for hearing costs. His duty shall be to set disputes for hearing and hear the evidence under oath of the parties to the disputes. Proceedings shall be informally conducted and their object shall be to determine without delay the respective basis of the conflicting claims. Upon the submission of each dispute the Officer shall prepare a report consisting of a short summary of the conflicting claims and the evidence submitted in support thereof, together with his findings of fact and conclusions of law. This report shall be transmitted to the Council for consideration and adjudication. Copies thereof shall be mailed to all parties to the dispute.

Section 15. Proceedings for Determination by Council of all Disputes. Upon receipt of the working files in a disputed case and the report of the Hearing Officer, together with a copy of the notice of hearing served upon or mailed to all parties to the dispute, the Council shall set the dispute for hearing and final determination, and cause notice of hearing to be served on all parties. Upon the Council having heard the dispute it shall enter its decision thereon as quickly as possible, but not later than ten days after the matter is submitted. Aggrieved persons shall have the right of appeal to the Superior Court within thirty days after the ruling of the Council is rendered.

Section 16. Determination upon Stipulation of Facts. Wherever it is possible to reach an agreement between the parties at a hearing before the Hearing Officer a stipulation shall be prepared and agreed upon by the parties. Where this is done the Officer shall prepare his report, including his conclusions of law, and submit the report to the City Council for a hearing if necessary, and decision as provided in Section 15. Should it be determined by the City Council that the stipulation adversely affects the interest of the City or those of the third parties the dispute shall be returned to the Officer for further proceedings upon notice given.

Section 17. Objections and Adverse Claims. No objection or adverse claim to the granting of an application shall be accepted by the Clerk or filed unless filed by an applicant for lands described in such application. The filing date shall be endorsed on all copies and the third copy returned to the adverse claimant.

Section 18. Handling of Deposit and Purchase Funds. All funds received as deposits with applications for costs or for the purchase price for tidelands shall be deposited by the Clerk in the General Fund. Such deposits will be credited by the Clerk as follows:

- (a) Survey Costs – as a credit to disbursements made by the City for costs of preparing the Tidelands Subdivision Plat.
- (b) Transfer Costs – to Administrative Costs as deeds are issued.
- (c) Appraisal Costs – to Administrative Costs as earned, or as credit to appraisal costs incurred.
- (d) Hearing Costs – to Administrative Costs, Hearing Officer.
- (e) Purchase Costs of Class III lands shall be credited to a separate account in the General Fund to pay for improvements in tidelands areas consisting of fill, street, sidewalk and sewer improvements.

Section 19. Forfeiture of Preference Rights. Any occupant or owner or holder of preference rights as herein defined, who has not applied to the City for title thereto as herein provided, on or before two years after the date applications to exercise preference rights will be accepted for filing by the City under this ordinance, by a properly completed application duly filed with the Clerk and accompanied by the required deposit, shall have forfeited his right to assert his preference rights and acquire title to tidelands subject thereto from the City; and such tidelands and contiguous submerged lands subject to such unused preference rights shall thereafter be free and clear of all claims to preference rights and the City shall have no obligation to convey the same to any person or persons whomsoever, and said land shall then be and remain the property of the City and be subject to such disposition as this ordinance hereinafter provides in Article III.

Section 20. Forms. The Clerk shall cause to be printed application forms and other forms for use in processing the same in substantially the following form:

(a)

APPLICATION FOR
TIDELANDS PREFERENCE RIGHTS, NO. __

Name _____

Home Address _____

Post Office Address _____

1. Mark X to designate nature of Preference Right claimed.
Class I _____
Class II _____
Class III _____
2. If the Tidelands Subdivision Plat correctly shows the land applied for, describe as follows:
Lot _____ Block _____
3. If the Tidelands Plat does not correctly show land applied for, describe it by metes and bounds and attach plat of land applied for. (Use attachment if more space is required)
4. Were any of the improvements now on the land constructed or place there:
(a) Prior to September 7, 1957 YES _____ NO _____
(b) Between September 7, 1957
and January 3, 1959 YES _____ NO _____
5. State the nature and extent of the improvements constructed or placed during each of said periods and the location and area occupied by each.
6. If any of said improvements were constructed as replacements for previously existing improvements, explain fully:
7. To what beneficial purpose was fill used prior to (a) September 7, 1957; (b) January 3, 1959. Describe.
8. Was the beneficial use continued through January 3, 1959? Describe.

9. The plat is based on apparent use and improvements existing on January 3, 1959 as recognized by the Alaska Land Act. State any reason known to you why your claim does not correspond with the plat. (Use attachment if more space is required)

10. I offer Cash _____ Money Order _____ Cashier's Check _____ in the amount of \$_____ as deposit for the following costs:

		(Used by Clerk)
Filing fee	\$ _____	\$ _____
Survey costs (at rate of \$ _____ per sq ft)	\$ _____	\$ _____
Appraisal costs (Class III applications)	\$ <u>25.00</u>	\$ _____
Transfer costs (\$ _____ per lot)	\$ _____	\$ _____
Hearing costs (If claim adverse to prior application a deposit of \$25 for hearing and service notice is required)	\$ _____	\$ _____
Total deposit (does not include purchase price of land in Class III applications)	\$ _____	\$ _____

Deposit received by City by _____

Date of Application _____ 196_____

Date Application received by City _____ 196_____

Time filed _____

Certification

I, _____, the above named applicant or agent, hereby certify that all of the statements made in this application and attachments thereto, if any, are true and correct.

Print Name(s)

Signature(s)

(b)

WAIVER OF CLASS II PREFERENCE RIGHTS
(ATTACH TO EACH CLASS I APPLICATION)

I, _____,
the applicant in the application for Tideland Preference Rights, Application No. _____,
to which this waiver is attached, do hereby waive any and all preference rights of said applicant
to acquire tide or submerged land lying seaward of the City of Skagway, Alaska, to which
_____ now or may hereafter become entitled by reason of the provisions of Public
Law 85-303.

DATED this _____ day of _____, 196_____.

Print Name

Signature

(c)

ASSESSOR'S APPRAISAL

The undersigned appraiser does hereby certify that he has duly appraised the tide and/or submerged land described in the attached Application No. _____ of _____, without including in the hereinafter stated value any value for valuable improvements constructed or placed thereon prior to January 3, 1959, at its fair market value as follows:

Tideland _____ sq. ft. at \$ _____ per sq. ft.

\$ _____

DATED this _____ day of _____, 196 _____

SIGNED: _____

(d)

DETERMINATION OF ADVERSE CLAIM OR OBJECTION

Application No. _____

Adverse Claimants

1. _____
2. _____
3. _____
4. _____

Description of land according to Plat _____ Block _____ Lot _____
Other description:

Date of hearing _____

Notice given _____

Persons appearing:

Adverse claim or objection:

Determination.

Mayor

Attest:

City Clerk

ARTICLE III

RULES AND REGULATIONS GOVERNING THE ADMINISTRATION OF CITY OWNED TIDE AND SUBMERGED LANDS NOT SUBJECT TO PREFERENCE RIGHTS, OR WHERE PREFERENCE RIGHTS HAVE NOT BEEN EXERCISED.

Section 1. Lands Available for Leasing. All tide and submerged land within the limits of the City to which the City holds title and which the City Council has classified for leasing may be leased as hereinafter provided, for surface use only.

Section 2. Applications. All applications for lease of tidelands shall be filed with the City Clerk on forms provided by him and available at the Municipal Building. Only forms completed in full and accompanied by a \$10 filing fee will be accepted for filing. Filing fees are not refundable. With every application the applicant shall submit a development plan showing and stating (1) the purpose of the proposed lease (2) the use, value and nature of improvements to be constructed (3) the type of construction (4) the dates construction is estimated to commence and be completed (5) whether intended use complies with the zoning ordinance and comprehensive plan of the City.

Section 3. Deposits for Costs. All applications filed with the City Clerk will be forwarded to the City Engineer or other designated official to determine his estimate of costs required to handle the application, including but not limited to one or more of the following: survey, appraisal, and advertising of the proposed lease of the area under application. Upon determination of the estimated costs said official shall notify applicant in writing of such costs and a deposit thereof must be made within 30 calendar days after said notice is mailed. Failure of applicant to pay the deposit shall result in the application being cancelled. If the applicant does not accept a lease within 30 calendar days after it is offered to the applicant, all deposit money spent or encumbered for survey, appraisal or advertising shall be forfeited, and the balance, if any, shall be returned to the applicant. If the land applied for upon which deposit for costs is made is leased to another, the latter shall be required to pay actual costs of survey, appraisal and advertising, and the original deposit shall be returned to the depositor. The lessee shall be required to pay any excess of costs over deposits, and where the deposit exceeds actual costs, the excess shall be credited to present or future rents under the lease. All survey, appraisal and advertising shall be performed only under the control of the City, and any such work done without such control will not be accepted by the City.

Section 4. Rights Prior to Leasing. The filing of an application for a lease shall give the applicant no right to a lease or to the use of the land applied for. Any use not authorized by a lease shall constitute a trespass against the City.

Section 5. Classification Prior to Lease Required. Before accepting applications to lease tidelands the area involved shall have first been classified for leasing and for particular land uses and a land use plan of the area prepared and publicly posted in the office of the City Clerk for a

period of not less than ten calendar days. The land use plan shall be prepared and approved by the Council prior to posting. No lease shall be granted except for the particular use for which the tract is classified.

Section 6. Public Use. The lease of any City tidelands may be made to any State or Federal agency or political subdivision of the State for less than the appraised value, and for a consideration to be determined by the Council to be in the best interests of the City.

Section 7. Review. The classification of a tract of leased land may be changed only by the Council on application of the lessee. No renewal lease may be issued until the proposed renewal has been reviewed and approved by the Council.

Section 8. Term of Lease. Leases may be issued for a term of not less than 5 nor more than 55 years. The applicant shall state in his application the term desired. In determining whether to grant a lease for the requested term the Council shall consider the nature, extent and cost of the improvements which the applicant agrees, as a condition of the lease, to construct thereon, the value of the applicant's proposed use to the economy of the City and other relevant factors.

Section 9. Appraisal. No tidelands shall be leased, or a renewal lease issued therefor, unless the same has been appraised within six months prior to the date fixed for beginning of the term of the lease or renewal lease. No land shall be leased for an annual amount less than six (6%) percentum of the appraised value of the land and any improvements thereon owned by the City.

Upon the filing of an application for a lease of a parcel of classified tidelands and the deposit of the costs estimated by the City Clerk, the City Assessor shall cause the tract, and any improvements thereon owned by the City, to be appraised at their fair market value. The appraisal shall be transmitted by the Assessor to the Council which shall review the same and determine the appraised value of the tract and improvements thereon owned by the City. Facilities for supplying utility services shall not be considered as such improvements. The Council shall determine the annual rental as six (6%) percentum of the appraised value and shall determine any limitations, reservations, requirements or special conditions to be included in the lease. Each lease shall contain a requirement that the lessee construct improvements suitable for the use for which the land is classified of a specified minimum value within one year from the date of the lease. The applicant shall be notified of the amount of the minimum annual rental and the value of the improvements required to be constructed thereon.

Section 10. Payment of Annual Rentals. Unless the lease specified otherwise, annual rentals of \$250.00 and less shall be paid annually in advance, rentals of an amount between \$251.00 and \$500.00 shall be paid in two equal installments every six months, annual rentals of an amount between \$501.00 and \$1,000.00 shall be paid in advance every calendar quarter and annual rentals exceeding \$1,000.00 shall be paid in advance each calendar month.

Section 11. Leasing Procedure. Leases of land with an initial annual minimum rental of less than \$100.00 shall be issued by the Mayor after being so instructed by the Council and without the necessity of a public auction. All leases having a computed annual minimum rental of more than \$100.00 shall be offered at public auction. All public auctions of tidelands in the City shall be held in the Council Chambers, Municipal Building, by the Mayor, or in his absence, the City Clerk. At the completion of the auction of each tract of land said official shall indicate the apparent high bidder. The apparent high bidder shall thereupon deposit with said official the portion of the annual rental then due together with the unpaid costs of survey, appraisal and advertising. All payments must be made in case, money order, check or cashier's check, or any combination thereof within one hour.

Section 12. Preference Rights of Owners of Immediately Adjacent Upland. There is hereby granted to the owners of upland, a preference right with respect to such contiguous tide and submerged land as may lie seaward of such upland and within the sidelines of such upland extended seaward, insofar as is practicable without injury or damage to the rights of adjacent upland owners. The nature of the preference right hereby granted is to tender to the City the highest lease price determined under Section 11 of this Article, and thereby acquire the right to lease of the successful lease applicant, whether arrived at by public auction or negotiated lease. This right shall commence upon the lease price being thereby determined, and shall continue for ten days thereafter, whereupon, if not so exercised, the preference right granted herein shall expire. Upon such right being exercised as aforesaid, the person or persons exercising said right shall have an additional five days, excluding Saturdays and Sundays, within which to meet all of the qualifications and requirements of the original or successful applicant and pay to the City all of the required costs and deposits and lease rentals which shall be refunded to the original or successful applicant, whose right to lease has been acquired by the owner of the preference right herein granted.

Section 13. Public Notice. Public notice of lease of land is required to be given under the provisions of this ordinance. Thirty (30) days' notice shall be given by publishing notice thereof in a newspaper of general circulation published in the City once a week for three weeks prior to final action or public auction. The notice must contain a brief description of the land, its area and general location, proposed use, term, computed annual minimum rental, limitations if any, and time and place set for the lease auction, if auction if [sic] required, together with the name or names of the record owner or owners of the adjacent upland.

Section 14. Receipt of Bid. Upon deposit of the required sum by apparent high bidder, the official conducting the auction shall thereupon issue to the successful bidder a receipt for the required sum.

Section 15. Appeal. An aggrieved bidder may appeal the determination of the apparent high bidder to the Council, within five days (excluding Saturday and Sunday) following such determination. Such appeals must be in writing and contain a short statement of the grounds for

the appeal and verified under oath. The Council shall within 30 days of receipt of a timely appeal review the asserted grounds for appeal and rule thereon. The Council's decision shall be final, but without prejudice to any other right or rights the aggrieved bidder may have.

Section 16. Completion of Bid Requirements. Following the appeal period of the Council's ruling, the City Clerk shall notify the successful bidder that the City is prepared to issue an appropriate lease. The bidder shall be given 15 calendar days from the date of mailing the notice in which to remit to the City Clerk any bid balance or any other sums that may be due and sign the lease. Failure to do so shall result in forfeiture of any and all rights previously acquired in the proposed lease, and in addition, any moneys paid or deposited with the City shall be forfeited.

Section 17. Issuance of Lease. After expiration of the five day appeal period, or after the ruling on the appeal to the Council, the Mayor shall execute a lease containing such terms as the Council by its determination shall establish.

Section 18. Terms of Lease. All leases shall be issued on standard forms approved by the Council, but shall contain such limitations, reservations, requirements or special conditions as the Council has determined, including requirements for improvements of a specified value to be constructed or located on the land within the year from the date of the lease.

Section 19. Responsibility to Properly Locate on Leased Premises. It shall be the responsibility of the lessee to properly locate his improvements on the leased land within such one year period. It shall be unlawful to encroach on other lands of the City or on lands owned or leased by another, and violation shall constitute a misdemeanor.

Section 20. Lease Utilization. Leased tidelands shall be utilized for purposes within the scope of the land use classification, the terms of the lease, and in conformity with the ordinances of the City, including any zoning ordinance. Utilization or development for other than the allowed uses shall constitute a violation of the lease and subject the lease to cancellation at any time. The terms of this ordinance are made a part of all leases and any violation thereof shall be grounds for cancellation of any leases.

Section 21. Adjustment of Rental. The annual rental payable pursuant to any lease issued under the provisions of this ordinance shall be subject to adjustment by the Council on the fifth anniversary of the date of the lease and each anniversary date thereafter which is divisible by the number five. All adjusted rates shall be computed at _____ percentum of the fair market value of the land and improvements owned by the City and leased thereunder. Such value shall be determined by an appraisal made by the City Assessor and reviewed and determined by the Council as provided in Section 9 of Article IV.

Section 22. Subleasing. Any lessee may sublease lands or any part thereof leased to him hereunder, provided that the proposed lessee first obtains the approval of the City Council to

such sublease. Subleases shall be in writing and be subject to the terms and conditions of the original lease. A copy of the sublease shall be filed with the City Clerk.

Section 23. Assignments. Any lessee may assign the lease issued to him, provided, that the proposed assignment shall be first approved by the City Council. The assignee shall be subject to all of the provisions of the lease and the assignor shall not be relieved of his obligations thereunder.

Section 24. Modification. No lease may be modified orally or in any manner other than by an agreement in writing signed by all parties in interest or their successors interest.

Section 25. Cancellation – Forfeiture.

- (a) Leases in good standing may be cancelled in whole or in part, at any time, with mutual written agreement by lessee and the Council.
- (b) Any lease of lands used for an unlawful purpose may be terminated by the Council.
- (c) If lessee shall default in the performance or observance of any of the lease terms, covenants, or stipulations, or the terms of this ordinance, or any of the ordinances of the City, and said default continues for 30 calendar days after service of written notice by the City on lessee without remedy by lessee of the default, the City Council shall take such action as is necessary to protect the rights and best interests of the City, including the exercise of any or all rights after default permitted by the lease. No improvements may be removed by lessee or any other person during any time the lessee is in default.

Section 26. Notice or Demand. Any notice or demand, which under the terms of a lease or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address of record. However, either party may designate in writing such new or other address to which such notice or demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed delivered when deposited in a U. S. general or branch post office enclosed in a registered or certified mail prepaid wrapper or envelope addressed as hereinabove provided.

Section 27. Rights of Mortgagee or Lienholder. In the event of cancellation or forfeiture of a lease for cause, the holder of a properly recorded mortgage of the improvements on the land and every sublessee thereof, shall be given a duplicate copy of any notice of default in the same manner as notice is given the lessee, provided, such mortgagee or sublessee has given the City Clerk notice of such mortgage or sublease.

Section 28. Entry and Re-entry. In the event the lease is terminated, or in the event that the demised lands, or any part thereof, are abandoned by the lessee during the term, the lessor

or its agents, servants, or representative, may, immediately of any time thereafter, re-enter and resume possession of said lands or such part thereof, and remove all persons and property therefrom either by summary proceedings or by a suitable action of proceeding at law without being liable for any damages therefor. No re-entry by the lessor shall be deemed an acceptance of a surrender of the lease.

Section 29. In the event that a lease is terminated the Mayor may offer said lands for lease or other appropriate disposal pursuant to the provisions of this ordinance.

Section 30. Forfeiture of Rental. In the event that the lease should be terminated because of any breach by the lessee, as herein provided, the annual rental payment last made by the lessee shall be forfeited and retained by the lessor.

Section 31. Written Waiver. The receipt of rent by the lessor with knowledge of any breach of the lease by the lessee or of any default on the part of the lessee in observance or performance of any of the conditions or covenants of the lease, shall not be deemed to be a waiver of any provision of the lease. No failure on the part of the lessor to enforce any covenant or provision therein contained, nor any waiver of any right thereunder by the lessor unless in writing, shall discharge or invalidate such covenants or provisions or affect the right of the lessor to enforce the same in the event of any subsequent breach or default. The receipt, by the lessor of any rent of any other sum of money after the termination, in any manner, of the term demised, or after the giving by the lessor of any notice thereunder to effect such termination, shall not reinstate, continue, or extend the resultant term therein demised, or destroy, or in any manner impair the efficacy of any such notice or termination as may have been given thereunder by the lessor to the lessee prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by the lessor.

Section 32. Expiration of Lease. Unless the lease is renewed or sooner terminated as provided herein, the lessee shall peaceably and quietly leave, surrender and yield up unto the lessor all of the leased land on the last day of the term of the lease.

Section 33. Renewal of Lease. Upon the expiration of the term of any lease, or the cancellation of a lease by mutual consent of all parties thereto, the Council may grant a new lease to the lessee or his assignee who owns valuable improvements thereon, without offering said lease at auction, provided:

- (a) The lessee or his assignee makes written application therefor at least 60 days prior to such termination.
- (b) The lessee is not in default under the lease.
- (c) The use to which the land is to be put is compatible with the current use classification and zoning provisions of the City ordinances on that subject.

- (d) Mutually agreeable terms are negotiated by the Council and the prospective lessee.

Such lease shall be for an annual rental equal to the percentum of the appraised value of the land which is then being charged for new leases and shall be subject to adjustment on every fifth anniversary.

Section 34. Removal or Reversion of Improvements upon Termination of Lease. Improvements owned by a lessee may within 60 calendar days after the termination of the lease be removed by him; provided that the Mayor may extend the time for removing such improvements in cases where hardship is proven. The retiring lessee may, with the consent of the Mayor, sell his improvements to the succeeding lessee. All periods of time granted the lessees to remove improvements are subject to said lessees paying to the City pro rata lease rentals for said periods.

If any improvements and/or chattels are not removed within the time allowed, such improvements and/or chattels shall revert to, and absolute title shall vest, the City.

Section 35. Sanitation. The lessee shall comply with all ordinances of the City which are promulgated for the promotion of sanitation. The premises of the lease shall be kept in a neat, clean and sanitary condition and every effort shall be made to prevent the pollution of waters.

Section 36. Building and Zoning Codes. Leased lands shall be utilized only in accordance with the building and zoning ordinances and rules and regulations thereunder. Failure to do so shall constitute a violation of the lease.

Section 37. Fire Protection. The lessee will take all reasonable precaution to comply with all laws, regulations and rules promulgated by the City for fire protection within the area wherein the leased premises are located.

Section 38. Inspection. The lessee shall allow an authorized representative of the City to enter the leased land at any reasonable time for the purpose of inspecting the land and improvements thereon.

Section 39. Personal Use of Materials. All coal, oil, gas and other minerals and all deposits of stone, earth or gravel valuable for extraction or utilization, are reserved by lessor and shall not be removed from the land. The lessee shall not sell or remove for use elsewhere any timber, stone, gravel, peatmoss, topsoil, or any other material valuable for building or commercial purposes; provided, however, that material required for the development of the leasehold may be used, if its use is first approved by the Mayor.

Section 40. Restrictions and Reservations. The lease shall contain such restrictions and reservations as are necessary to protect the public interest.

Section 41. Sale of Certain Tide and Submerged Lands. When it is in the public interest the Council may by resolution authorize the sale of small tracts of tidelands and submerged lands, provided that no such tract shall be greater in area than 400 square feet, such tract is unsuitable for use as a public use area, and such tract cannot be leased. All sales of tidelands and submerged lands shall be public sales and shall be governed by the provisions of this Article, insofar as may be applicable. The assessed value of the property shall be stated in the notice required by Section 13 instead of the annual minimum rental. All sales shall be made for cash and the successful bidder must make payment in full at the time of the sale. The Council may provide additional requirement not inconsistent with this ordinance in the resolution authorizing such sale. Anything herein to the contrary notwithstanding, all such sales shall be subject to charter provisions.

ARTICLE IV

Tide and Submerged Land Materials Use and Disposal

Section 1. Any person, firm or corporation who without written authority from the City removes rock, gravel or other materials from the tide and submerged lands conveyed by the State to the City shall be deemed guilty of a misdemeanor.

Section 2. No deed or lease granted by the City to any person shall contain terms or be construed as granting any right to remove material from City tide and submerged lands, not to use any such material removed from such tide and submerged lands, after January 3, 1959.

ARTICLE V

Permits

Section 1. Permits for Five Years or Less. The Council may authorize the Mayor to grant permits to applicants and to issue such applicants permits for the use of tide and/or submerged lands for a period of not to exceed five years, without appraisal of the value of the land or public auction of the permit, for any purpose compatible with the land use classification of such lands and on such terms and for such tental [sic] as the Council shall determine. The provisions of Sections 2, 4, 5, 6, 7, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, and 40 or Article III hereof pertaining to leases, shall, insofar as may, however, be granted for the purpose of removing earth, stone or gravel from such lands, in which event the rental may be on a yardage basis and Sec. 39 of Article III shall not apply.

ARTICLE VI

Section 1. Penalties. Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding Three Hundred (\$300.00) Dollars or be imprisoned in the City Jail for a period of not to exceed thirty (30) days or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

Section 2. Severability Clause. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 3. Effective Date. This ordinance shall be published as is provided by the ordinances of the City for the publication of other ordinances and shall become effective on September 16, 1963.

PASSED AND APPROVED this 16th day of September, 1963.

First Reading August 22, 1963
Second Reading August 30, 1963
Third Reading September 16, 1963

CITY OF SKAGWAY, ALASKA

By Malcolm A. Moe [signature]
Mayor

ATTEST:

Lillian Litzenberger [signature]
City Clerk

CITY OF SKAGWAY, ALASKA

Ordinance No. 243

AN ORDINANCE AMENDING PORTIONS OF ARTICLE III OF ORDINANCE No. 229 OF THE CITY OF SKAGWAY, ALASKA, AN ORDINANCE GOVERNING THE DISPOSITION AND MANAGEMENT OF TIDELANDS

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SKAGWAY, ALASKA:

Section 1: The first paragraph of Section 9 of Article III of Ordinance No. 229 of the City of Skagway, Alaska, is amended to read as follows:

Section 9. Appraisal. No tidelands shall be leased, or a renewal lease issued therefor, unless the same has been appraised within six months prior to the date fixed for beginning of the term of the lease or renewal lease. No land shall be leased for an annual rent less than six (6%) percentum of the appraised value of the land and any improvements thereon made by the City.

Section 2: Section 13 of Article III of Ordinance No. 229 of the City of Skagway is amended to read as follows:

Section 13. Public Notice. Public notice of lease of land is required to be given under the provisions of this ordinance. Thirty (30) days' notice shall be given by publishing notice thereof in a newspaper of general circulation published in the City once a week for three weeks prior to final action or public auction. The notice must contain a brief description of the land, its area and general location, proposed use, term, computed annual minimum rental, limitations if any, and time and place set for the lease auction if auction is required, together with the name or names of the record owner or owners of the adjacent upland. In the event no newspaper is published in Skagway, Alaska in which such notice can be given once each week for three weeks, the notice required by this section may, in lieu thereof, be given by posting in three public places in the City of Skagway for such period of thirty days. One copy of the notice shall be posted in the office of the City Clerk.

Section 3: Section 18 of Article III of Ordinance No. 229 of the City of Skagway is amended to read as follows:

Section 18. Terms of Lease. All leases shall contain such limitations, reservations, requirements or special conditions as the Council has determined, including requirements for improvements of a specified value to be constructed or located on the land within one year from the date of the lease.

Section 4: Section 21 of Article III of Ordinance No. 229 of the City of Skagway is amended to read as follows:

Section 21. Adjustment of Rental. The annual rental payable pursuant to any lease issued under the provisions of this ordinance shall be subject to adjustment by the Council on the fifth anniversary of the date of the lease and each anniversary date thereafter which is divisible by the number five. All adjusted rates shall be computed at six percentum of the fair market value of the land, exclusive of any portion of said value created by expenditures by lessee or its predecessor lessee, but inclusive of any improvements thereon made by the lessor. Such value shall be determined by an appraisal made by the City Assessor and reviewed and determined by the Council as provided in Section 9 of Article III.

Section 5: Section 22 of Article III of Ordinance No. 229 of the City of Skagway is amended to read as follows:

Section 22. Subleasing. Any lessee may sublease lands or any part thereof leased to him hereunder, provided, that the proposed lessee first obtains the approval of the Council to such sublease. Subleases shall be in writing and be subject to the terms and conditions of the original lease. A copy of the sublease shall be filed with the City Clerk. Approvals of subleases shall not be unreasonably withheld.

Section 6: Section 23 of Article III Ordinance No. 229 of the City of Skagway is amended to read as follows:

Section 23. Assignments. Any lessee may assign the lease issued to him, provided, that the proposed assignment shall be first approved by the Council. The assignee shall be subject to all of the provisions of the lease and the assignor shall not be relieved of his obligations thereunder. Approvals of assignments shall not be unreasonably withheld.

Section 7: Section 25 of Article III of Ordinance No. 229 of the City of Skagway is amended to read as follows:

Section 25. Cancellation - Forfeiture.

(a) Leases in good standing may be cancelled in whole or in part, at any time, upon mutual written agreement by lessee and the Council. Any lease may provide the lease may be terminated by the lessee upon 60 days notice in writing to lessor before the end of an annual rental period.

(b) If the lessee shall default in the performance or observance of any of the lease terms, covenants, or stipulations, or the terms of this ordinance, or any of the ordinances of the City, and said default continues for 30 calendar days after service of written notice by the City on lessee without remedy by lessee of the default, the Council shall take such action as is necessary to protect the rights and best interests of the City, including the exercise of any or all rights after default permitted by the lease. No improvements may be removed by lessee or any other person during any time the lessee is in default.

Section 8: Section 39 of Article III of Ordinance No. 229 of the City of Skagway is amended to read as follows:

Section 39. Personal Use of Materials. All coal, oil, gas and other minerals and all deposits of stone, earth or gravel valuable for extraction or utilization, are reserved by lessor and shall not be removed from the land except with permission of the Council. The lessee shall not sell or remove for use elsewhere any timber, stone, gravel, peatmoss, topsoil, or any other material valuable for building or commercial purposes; provided, however, that material required for the development of the leasehold may be used, if its use is first approved by the ~~Mayor~~ Council.

PASSED and APPROVED by the Council of the City of Skagway this 5th day of February, 1968.

Edvard Horvath
Mayor

Frederic J. [Signature]
City Clerk

First reading January 25, 1968.

Second reading February 5, 1968.

Third meeting February 5, 1968.

APPENDIX C

**PORT OF SKAGWAY
OPERATED BY THE MUNICIPALITY OF SKAGWAY
TARIFF NO. 2**

Naming Rates, Charges, Rules and Regulations

for

Wharfage and Storage

at

The Port of Skagway, Alaska

Issued by:

**Municipality of Skagway
P.O. Box 415
Skagway, Alaska, 99840
Phone: (907) 983-2297
Fax: (907) 983-2151**

Revised: 11/18/2021

**Port of Skagway
Tariff No. 2**

ABBREVIATIONS:

BF	Board Feet	Lbs	Pounds
Cu Ft	Cubic Foot or Feet	LCL	Less than container load
CL	Container Load	MBF	1,000 Board Feet
CY	Cubic Yard	Min.	Minimum
CWT	Hundred Weight or 100 pounds	No.	Number or Numbers
FMC	Federal Marine Commission	NOS	Not Otherwise Specified
Ft	Foot or Feet	Pax.	Passengers
gal.	Gallon or gallons	Port	Port of Skagway
KD	knocked down	sf	Square Foot
Kg	kilograms	SU	Set up
Kw	Kilowatt	WT	Weight

SECTION 1

**RULES, REGULATIONS AND CHARGES FOR MISCELLANEOUS SERVICES
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**Port of Skagway
Tariff No. 2**

SECTION 2

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Tariff No. 2**

SECTION 3

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RULES, REGULATIONS AND CHARGES FOR MISCELLANEOUS SERVICES

SECTION 1

ITEM

TERMS OF MUNICIPAL /STATE AGREEMENTS INCORPORATED

100

All terms and conditions of the “Agreement for Construction and Maintenance of a Dock and Ferry Terminal for the Municipality of Skagway,” dated August 2, 1978, as amended January 6, 1981, which govern the management, operation, and use of the ferry and barge facility, are incorporated herein by reference, and have the same force and effect as if fully set forth herein.

A copy of Skagway Municipal Code (SMC) Title 12 relating to Harbors and Ports is available at the Harbormaster’s Office and City Hall (907-983-2297) for review during regular business hours or by written request to the Municipality of Skagway, P.O. Box 415, Skagway, Alaska 99840. This provides all lessees and users of the boat harbor and barge facility adequate notice of all legal duties contained in this title. (SMC 12.01.030)

PERMITS AND LICENSES

120

(A) The Municipality may grant permits for the non-exclusive use of the dock for mooring, for loading and discharging cargo, and for the loading and discharging of passengers and vehicles.

(B) **RESERVATIONS**

Requests for reservations and for mooring assignments or for use of storage space at municipal facilities shall be submitted to the harbormaster as far in advance as practicable, normally not less than five (5) working days, and shall be subject to confirmation forty-eight (48) hours in advance of expected arrival time.

(C) **MOORAGE NOT EXCLUSIVE**

Assignment to moorage is not exclusive, and shall include only the right to dock the vessel, to embark and disembark passengers and their luggage, and to assemble and distribute cargo over the dock and transfer bridge, subject to the provisions that such use shall not interfere with ferry operations. Moorage assignments are not transferable except with written consent of the borough manager or the harbormaster. Moorage assignments shall be revocable by the borough manager or

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harbormaster without compensation for costs incurred thereby to the vessel, upon written notice to the vessel except when otherwise provided in the assignment.

(D) USE OF THE MUNICIPALITY'S TRANSFER BRIDGE

All non-ferry-related traffic to and from the dock shall use the Municipality's transfer bridge. The Municipality grants to the state full use of the municipally-owned loading and unloading facility transfer bridge for ferry-related business at no cost to either the state or passengers and vehicles loading and unloading from a state-owned vessel. The Municipality additionally grants to the state the use of the structure of the Municipality's transfer bridge for carrying state-owned oil lines, water lines, and electric service lines at no cost.

MANIFESTS

140

All vessels granted permits to moor at the municipal dock, and all persons permitted to use the municipal transfer bridge or storage area, shall furnish to the Municipality a complete manifest certifying the tonnage of cargo, including weight of vehicle crossing the transfer bridge onto or from the dock, and the dimensions of materials or vehicles stored in the storage area.

OTHER SERVICES

180

(A) STEVEDORING

Vessels, overland carriers, or other persons granted permits to moor or to move cargo across the dock shall enter into their own contract arrangements for longshoring and stevedoring services. Insofar as is practicable, it is expected that locally based longshoring and stevedoring activities will be employed.

(B) ELECTRICITY, TELEPHONE AND FUEL SERVICES

Vessels using the dock shall enter into their own contract arrangements with commercial companies for the provision of electrical power, telephone, and fuel services.

ACCEPTANCE, RETENTION, OR DELIVERY OF FREIGHT CONDITIONAL 220

(A) RIGHT TO REFUSE CARGO, CONTAINERS, OR CHASSIS

Right is reserved by the Municipality without responsibility for demurrage, loss, or damage attaching, to refuse to accept, receive, or permit vessel to discharge:

- (1) Cargo, containers, or chassis for which previous arrangements for space have not been made by shipper, consignee, or vessel.
- (2) Cargo deemed extra offensive, perishable, or hazardous.

(B) RIGHT TO REMOVE, TRANSFER OR WAREHOUSE

Hazardous or offensive cargo or cargo which, by its nature, is liable to damage other cargo, is subject to immediate removal either from the premises or to other locations within said premises with all expense and risk of loss or damage for the account of owner, shipper, or consignee.

Cargo remaining on wharf or staging area after expiration of free time, as defined herein, and cargo shut out at clearance of vessel may be piled or re-piled to make space, transferred to other locations within the premises or, after appropriate notice, removed to public or private warehouse with all expense and risk of loss or damage for account of the owner, shipper, consignee, or vessel as responsibility may appear.

(C) RIGHT TO WITHHOLD DELIVERY OF FREIGHT

Right is reserved by the Municipality to withhold delivery of freight until all accrued charges and/or advances against said freight have been paid in full.

(D) RIGHT TO SELL FOR UNPAID CHARGES

Cargo on which unpaid charges have accrued may be sold to satisfy charges and costs, provided owner has been given notice to pay charges and to remove said cargo and has neglected or failed to comply.

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(E) EXPLOSIVES AND HAZARDOUS CARGO

The acceptance, handling or storage of explosives or excessively flammable material shall be subject to special arrangements with the Municipality and governed by rules and regulations of Federal, State and local authorities.

(F) OWNER'S RISK

Cargo which, because of its inherent nature is subject to deterioration, shrinkage, oxidation, wastage, and decay, and glass, liquids, and fragile articles will be accepted only at owner's risk for loss or damage that may occur despite accepted practices for the care of the cargo.

Cargo on open ground is at owner's risk for loss or damage.

Timber and log or lumber rafts, and all watercraft, if and when permitted to be moored in slips, at moorage dolphins, at wharves, or alongside vessels are at owner's risk for loss or damage.

TERMS, COLLECTION AND GUARANTEE OF CHARGES

240

(A) TERMS

Rental charges for use of the storage area shall be paid monthly. All toll charges for use of the municipal transfer bridge are due and payable upon receipt of invoice. Invoices become delinquent if not paid within thirty (30) days following the date on which the invoice was prepared. By using these facilities, the user enters into a contractual agreement with the Municipality to pay the municipal penalty of one percent (1%) per month on delinquent payments.

(B) RESPONSIBILITY FOR PAYMENTS

Owners, shippers, and consignees of any cargo or vehicles using the municipal transfer bridge or storage area shall be responsible to the Municipality for payment of municipal user charges. In the event of transshipments from one (1) carrier to another through Skagway, payment of user charges shall be guaranteed by the vessel, its owners or agents, using the dock facilities to discharge or take aboard the cargo or vehicle in question. Use of the dock by such vessel shall be deemed acceptance and acknowledgment of this responsibility by the vessel's owner and agents.

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(C) MINIMUM BILLING CHARGE

All invoices issued by the Municipality for any service or combination of services as provided in this tariff shall be subject to a minimum billing charge of five dollars (\$5.00) per invoice.

RESPONSIBILITY FOR LOSS, DAMAGE AND DELAY OF MERCHANDISE 260

(A) RESPONSIBILITY LIMITED

The Municipality will not be responsible for any loss, damage, or delay of merchandise which may arise from any cause beyond its direct authority and control, nor from any cause except for want of due diligence.

Further, the Municipality shall not be liable for any loss or damage caused by fire, frost, heat, dampness, leakage, the elements, wastage or decay; nor will it be liable for any loss, damage, or delay caused by insurrection, riot, strike, or labor stoppage, except to the extent that any of the aforesaid injury results from negligent acts or omissions of the city Municipality, its employees, or agents.

The Municipality will accept no responsibility for concealed damage nor for the condition or contents of containers, whether or not receipts issued to state.

(B) WAIVER OF DEMURRAGE CHARGES

The Municipality may waive demurrage charges when delay of removal of merchandise is caused by acts directly attributable to the Municipality, acts of God, civil disorder, insurrection, riot, strikes, labor stoppage, carrier equipment shortages, or governmental intervention.

(C) LIABILITY AND INDEMNIFICATION

- (1) Liability for Loss or Damage to Dock and Municipal Port Facilities. Any persons or vessel using the dock, transfer bridge, and storage area shall be strictly liable, without regard to negligence, for any loss of, or damage to municipal or state property incurred as a result of such use, and shall make such restoration or repair, or monetary compensation, as may be directed by the Municipality or state.

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- (2) Indemnification. The use of the Municipality's ferry/barge facility (the dock, transfer bridge, and storage area) by any person or vessel for any purpose constitutes an agreement between the Municipality and such user that the user agrees for itself, its successors and assigns, by operation of law or otherwise, to hold harmless the Municipality of Skagway and state of Alaska and assume full responsibility for, and to defend, pay, or otherwise settle any and all claims, demands, actions, or causes of damage or injury to any and all persons or property arising out of such use by the user. Such user further agrees to release and discharge the Municipality and state, including any department or agency thereof, their agents and successors, executors, administrators, or assigns, from any and all liability, claims, demands, actions, or causes of action, of every nature whatsoever arising out of such use by the user, and to indemnify and hold harmless the Municipality and state, including any department or agency thereof, their agents, successors of assigns, from any loss or damage suffered by reason of such use by the user.

SPECIFIC RATES PREVAIL

280

Rates provided by specific commodities shall prevail over any general NOS rate.

WEIGHT LIMITATION

290

The weight limit of the Skagway Transfer Bridge and Barge Facility Dock is 80 tons, gross. Track pressure for tracked equipment shall not exceed 1,500 pounds per square foot. No single unit of cargo or trailered combination of cargo is permitted to use the facility if it exceeds these weight limits.

DEFINITIONS

300

(A) **WHARFAGE**

Wharfage is the charge assessed against freight passing or conveyed over the municipal transfer bridge; it is the charge for use of the transfer bridge and does not include charges for any service.

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(B) STORAGE – FREE TIME

Free time is the specified number of days during which cargo, including vessels, containers, and miscellaneous items, may occupy space assigned to it within the staging area without being subject to demurrage or storage charges.

Free time shall not exceed: seven (7) days

Cargo occupying the staging area for more than seven (7) days is subject to storage charges for one (1) month. Occupation of the staging area for more than one (1) month shall be subject to additional storage charges prorated daily.

The following days shall not be included in the computation of free time:

- (1) Day(s) while vessel is loading and/or discharging cargo.
- (2) Days observed as holidays by the Municipality:

New Year's Day – January 1	Labor Day – 1 st Monday in September
Martin Luther King Jr. Day – 3 rd Monday in January	Alaska Day – October 18
Presidents' Day – 3 rd Monday in February	Veterans' Day – November 11
Seward's Day – Last Monday in March	Thanksgiving Day – 4 th Thursday in November
Memorial Day – Last Monday in May	Christmas Day – December 25
Independence Day – July 4	

(C) DEMURRAGE

Demurrage is the charge assessed against cargo which remains on municipal property after the expiration of the free time allowed. Demurrage shall be charged at the following rates:

Containers 20' or less in length: \$3.00/day
Containers more than 20': \$6.00/day
Non-containerized cargo: \$0.02/sf/day

(D) STORAGE

Storage is the charge assessed for pre-arranged use of space in the storage area after the expirations of free time.

- (1) When permitted by the harbormaster and such space is available, areas of storage space may be reserved for the storage of goods or articles for periods of not less than thirty (30) days, subject to the following conditions:

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- (a) No space will be rented the gross area of which is less than 250 square feet.
 - (b) Storage charges shall be for thirty (30) days minimum, with charges prorated on a per-day basis after the thirty (30) days.
- (2) Areas of storage spaces of not less than 20,000 square feet may be rented if the harbormaster determines there is space available and such storage will not interfere with other permitted storage or cargo movement. Storage space shall be rented for periods of not less than thirty (30) days at monthly rates based upon appraised value of the property involved. Such rental agreements shall be granted and administered under authority of SMC Title 16.

(E) LEASE OF STAGING AREA

Lease or permit arrangement may be made on specified areas within the staging area, provided such lease arrangement follow procedures as established by SMC Title 16.

(F) PASSENGER VESSEL FEE

In addition to other tariff provisions, the terms and conditions of this item apply. Charges are assessed to passenger vessels and cruise ships using municipal facilities. See exceptions.

Vessels of 125 passengers or less capacity \$225.00/vessel docking

Vessels of 126 passengers or more capacity \$1.00 per passenger

Exception No 1: When the trip covers a continuous cruise on a vessel, one fee only applies.

Exception No. 2: Personnel traveling free are exempted.

Exception No 3: This fee shall not apply to passenger operations at municipal facilities covered under lease or use agreements.

CHARGES FOR MISCELLANEOUS SERVICES

320

(A) FRESH WATER SERVICE

The charge for fresh water supplied to vessels shall be at the rate of four dollars and 86 cents (\$4.86) per 1,000 gallons. Hookup or disconnect, if needed, shall be charged at forty-one dollars and sixty-seven cents (\$41.67) per hookup or disconnect.

(B) REFUSE COLLECTION

The charge for taking off refuse from vessels shall be the following:

	<u>Ships, Vessels:</u>
Less than 125 passengers (per .5 hr).	\$400.77
More than 125 passengers (per .5 hr).	\$729.27

(C) SECURITY PROVISIONS

The charge for providing federally mandated security shall be \$30.00 per hour from 0600 to 2200. Security for hours between 2200 and 0600 shall be provided by the vessel. This charge is for one person in the security booth at the head of the transfer bridge.

(D) COMMERCIAL USE OF SMALL BOAT HARBOR

All commercial vessels, including but not limited to fishing charters and kayaks, shall pay the following rates per revenue passenger as a tariff for loading and unloading passengers at the Skagway Small Boat Harbor:

- (1) \$2.02 from April 1, 2022 through March 31, 2023.

If the vessel only loads passengers at the Harbor, or only unloads passengers at the Harbor, the fee shall be as follows per passenger:

- (1) \$1.01 from April 1, 2022 through March 31, 2023.

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(E) BARGE FEES FOR FERRY FLOAT

\$0.50 per foot per day or \$5.00 per foot per month (barge and tug length) for all barges loading or unloading at the Ferry Float, unless otherwise covered in a municipal staging area or lease.

(F) COMMERCIAL LAUNCH RAMP AT HARBOR

- (1) \$20.00 daily
- (2) \$300.00 annual

(G) ANNUAL MOORAGE – SMALL BOAT HARBOR

- (1) \$14.60 per foot from April 1, 2022 through March 31, 2023

(H) TRANSIENT MOORAGE – SMALL BOAT HARBOR

- (1) \$0.58 per foot per day and \$5.80 per foot per month from April 1, 2022 through March 31, 2023

(I) LONG-TERM STORAGE – SMALL BOAT HARBOR

- (1) \$0.21 per square foot per month; 250 square-foot minimum

(J) KAYAK STORAGE – SMALL BOAT HARBOR

- (1) \$7.50 per month per vessel

(K) LIVE-A-BOARD AT SMALL BOAT HARBOR

- (1) Single-family residential utility rate

(L) PRESSURE WASHER

- (1) \$27.00 per hour; one-hour minimum

(M) GRID FEE

- (1) \$15.00 per tide

(N) HAUL-OUT FEE – SMALL BOAT HARBOR

- (1) Clemar/Sealift

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- (a) \$210.00 round-trip: from water to stands and back
 - (b) \$155.00 round-trip: stay on trailer three hours maximum
 - (c) \$125.00 per hour; one-hour minimum yard move
- (2) With flatbed truck
- (a) \$65.00 per hour; one-hour minimum
- (O) BOAT LAUNCH RAMP FEE
- (1) \$10.00 per launch; includes all boats, kayaks, canoes, etc.;
 - or
 - (2) \$50.00 per year, per boat
- (P) WAITING LIST FEE – SMALL BOAT HARBOR
- (1) \$50.00 initial fee to be added to waiting list
 - (2) \$10.00 annual fee
- The waiting list fee will not be renewed automatically. Invoices will not be sent. It is the responsibility of the individual to contact the harbormaster if they wish to remain on the list, and pay the fee. Failure to do so will result in removal from the waiting list.
- (Q) HARBOR CRANE USE FEE
- (1) \$20.00 per hour with a 1/2-hour minimum; or
 - (2) \$50.00 annual fee
- (R) BOAT MAINTENANCE BUILDING
- (1) Bay Rental April 1 – September 30: \$32.00 per day
 - (2) Bay Rental October 1 – March 31: \$48.00 per day
 - (3) Cleaning deposit: \$500.00 per rental period
- (S) TRANSIENT ELECTRICAL RATES AT HARBOR
- (1) \$10.00 per day for 30 amp; and
 - (2) \$20.00 per day for 50 amp
- (T) SENIOR CITIZEN DISCOUNT

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15% discount will apply to annual moorage fees paid by residents of Skagway who are age 65 or older for personal pleasure craft.

WHARFAGE CHARGES AND COMMODITY RATES

SECTION 2 **ITEM**

WHARFAGE RATES **400**

Except as otherwise noted, rates named below are in dollars and cents per ton or 2,000 pounds. Rates apply to the amount of cargo transferred over the Skagway Transfer Bridge from a single docking of one vessel.

<u>COMMODITY:</u>	<u>WHARFAGE:</u>	
FREIGHT, NOS	2.00	410

BULK COMMODITIES, Dry NOS	1.40	420
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BULK COMPOUNDS, Viz: Cement, Lime, Plaster, Stucco: Soda Ash, Gypsum, Drilling Mud	1.40	430
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In lots of 100,000 lbs. or more

COMPOUNDS, CONTAINERIZED, Viz: Examples under Item 430	1.50	440
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In lots of 50,000 lbs. or less

CONTAINERIZED CARGO		450
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Apply charge for Freight, NOS, item 410 except when a specific Commodity rate is named, the specific commodity rate will apply.

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CONTAINERS, EMPTY, RETURNED		460
Up to 14 feet in length	2.80	
14 feet to 26 feet in length	5.00	
over 26 feet in length	6.00	

Rates are in dollars and cents per unit

EXPLOSIVES, HAZARDOUS CARGO	3.20	470
Material subject to Item 220 (E)		

IRON OR STEEL PRODUCTS, Viz:	2.00	480
Angles, Beams, Boilers, Blots, Construction Sections and Fittings, Chain, Channels, Cloth, Conduit, Culvert, Fencing, Fittings, (pipe), Concrete mesh, Nails, Nuts, Piling, Pipe, Plate, Sheet, Rivets, Spikes, Tanks K.D., Trusses, Washers, Wire rope, Zees.		

In lots of 20,000 lbs. or more

LOGS, PILING, POLES, wooden, per MBF, Scribners	2.15	490
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LUMBER, BUNDLED, per MBL	2.15	500
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MACHINERY	1.80	510
Not including wheeled or tracked vehicles		
In lots of 20,000 lbs. or more		

MACHINERY	2.20	520
Self-propelled, wheeled or tracked		
Refer to Item 290		

METAL PRODUCTS, unfinished, Viz:	1.60	530
Bars, Grinding balls, Ingots, Pigs, Slabs, Rods		

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PETROLEUM FUEL, Containerized In lots less than 50,000 lbs.	1.80	540
PETROLEUM PRODUCTS, Packaged In lots of 10,000 lbs. or more	1.80	550
PIPE, iron or steel, not less than 48" in diameter (not including culvert)		560
In lots of:		
0-100 tons	1.50	
100-200 tons	1.45	
200-300 tons	1.40	
300-400 tons	1.35	
400-500 tons	1.30	
500-600 tons	1.25	
600-700 tons	1.20	
700-800 tons	1.15	
800-900 tons	1.10	
900-1000 tons	1.05	
over 1000 tons	1.00	
TRAILERS, VANS, without wheels attached, sealed, containing merchandise		580
Up to 14' in length	3.00	
14' to 26' in length	1.70	
over 26' in length	1.70	
TRAILERS, VANS, wheeled sealed, containing merchandise when roll on-roll off	1.50	600
Empty, returned, each	8.50	
VEHICLES, other articles, exceeding 24' in length on own wheels or treads or with wheels or treads separate	2.20	620
Refer to Item 290		

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VEHICLES, other articles, Viz: Camper Trailers or House Trailers, on own wheels exceeding 24' in length; also Buildings or Houses, portable or fabricated, NOS, SU, or in SU sections	2.60	640
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MINIMUM CHARGE, on any single transfer, per ton	1.30	660
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SMALL BOAT HARBOR RULES AND REGULATIONS

SECTION 3

ITEM

SMALL BOAT HARBOR USE

670

(A) Access. The Small Boat Harbor shall be open to all on an equal basis. No special preference shall be granted to accommodate one (1) type of user over another. The extensions of the municipal streets and sidewalks and public access to the harbor shall be maintained at all times. Commercial enterprises or businesses shall not be permitted to conduct business of a permanent or continuing nature within the Small Boat Harbor, or from a vessel using the facilities. This shall not be construed as an absolute prohibition of any type of commercial transaction in the boat harbor on an occasional basis. A commercial fishing vessel or charter boat operator would not be considered a commercial business enterprise in this case since the business is essentially conducted elsewhere, and the Small Boat Harbor is merely a point for embarking and disembarking.

(B) Use of Harbor – Implied Agreement. The mooring or use or presence of any boat within the Small Boat Harbor shall constitute an agreement by the owner, operator, master or managing agent to conform to the provisions of this title.

CLASSIFICATION OF HARBOR AREAS

680

(A) Stalls. Numbered areas shall be set apart and designated for use of privately owned boats, both commercial and pleasure, upon the owners thereof having first made arrangements with the harbormaster and having paid the rent as hereinafter provided. Each stall shall be numbered in such a manner that its location can be readily determined. No property rights or rights to exclusive use are created by the renting of a mooring space; rather, the renter of a stall is granted only preferential berthing privileges for the use of the assigned moorage for so long as they have a vessel and pay their moorage fees.

(B) General Public Open Mooring. All float spaces and stalls except those reserved are designated general public open-mooring areas. The harbormaster may designate and mark stalls and spaces at other facilities as general public open-mooring areas. All such general public open-mooring areas shall be open to all members of the public for transient and other temporary use for mooring boats. No boat or boat owner shall have exclusive right to a general public open-mooring space or stall. Should any boat moored at such space or stall leave it for any purpose,

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it shall have no exclusive right to return to the same space or stall if upon return it is found that the space is occupied by another boat. To constitute a break in mooring, a boat must be absent from the boat harbor for not less than twenty-four (24) consecutive hours. The harbormaster may, at his discretion, deny to any boat the use of general public open mooring.

(C) Gridiron. The harbormaster may make uniform rules determining what types of vessels may use the gridiron, as well as allowable weight of any such vessels. No owner or operator shall occupy gridiron space except for such reasonable times as are required to accomplish bottom painting, repairs, and other customary gridiron uses. The use of the gridiron and the length of time during which it may be used shall be in the discretion of the harbormaster.

QUALIFICATIONS FOR USE OF HARBOR AREAS

690

(A) Safe Condition of Vessel. To qualify or remain qualified for space, a boat, except an approved boat shelter, must be seaworthy, must be equipped and maintained in accordance with subsection E of this section, and must have sufficient motive power to permit the boat to be maneuvered and controlled safely in and out of the boat harbor under wind and water conditions which are not unusual and do not constitute a hazard to small craft.

(B) Demonstration. Whenever the harbormaster has probable cause to believe that a boat is not qualified under the conditions of this section, they may require, upon seventy-two (72) hours' notice to the owner, operator, master or managing agent of any such boat, that such boat demonstrate that it is or remains qualified. An exception shall be made where repairs are being diligently pursued or where other extenuating circumstances prevent demonstration of qualification, but such exception shall be only for a reasonable time, considering the circumstances.

(C) Refusal of Mooring. The harbormaster may refuse mooring space to any boat which does not qualify; it shall be a condition of every rental agreement that any boat authorized to moor at a rental space in the boat harbor shall remain qualified so long as it remains in the boat harbor. The harbormaster may cancel the rental agreement for any mooring space which is occupied by a boat which is authorized to occupy such space, but which boat is not qualified in accordance with this section. Upon failure of a boat to qualify, the harbormaster may require, upon notice to the owner, operator, master, or managing agent of such boat, that the rental agreement has been canceled, that such boat be removed from the boat harbor within not less than one (1) week. Any such boat remaining after the time specified in the notice shall be subject to impoundment or removal as a nuisance.

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(D) Self-propelling Capability. Every boat must clear the boat harbor under its own power on at least three (3) occasions each year. Two (2) such occasions must not be less than three (3) months nor more than six (6) months apart. Failure to comply with this subsection shall raise a presumption that the boat is not qualified.

(E) Required Equipment. All watercraft or vessels shall carry the equipment required by any applicable United States laws or regulations, as now or hereafter amended, and shall be numbered or designated in accordance with any applicable United States laws or regulations as now or hereafter amended. In the absence of extenuating circumstances, failure of any boat or vessel within the boat harbor to comply with applicable United States laws or regulations shall be a violation of this title. Violations shall be reported to the U.S. Coast Guard.

(F) Commercial Use.

- (1) Commercial Operations. No moorage space shall be sublet or rented to any firm or individual for the purpose of conducting any commercially oriented business enterprises at the facilities; except that charter vessels, including aircraft, may pick up and discharge passengers at any space rented to such vessel or aircraft, but may not pick up or discharge cargo at any space or any other part of the facilities of the boat harbor except at spaces designated for such use.
- (2) Temporary Permit. The harbormaster may, at their discretion, grant a temporary permit to the owner, operator, master, or managing agent of a vessel moored in the boat harbor to conduct short-term and occasional commercially oriented activities at the vessel of such owner, operator, master, or managing agent, provided that such activities may not in any way interfere with the normal use of the boat harbor by other users of the facility. The borough assembly may, by resolution, set additional terms and conditions for the issuance of such permits. The issuance of a permit under this section shall not in any manner reduce or replace any other requirement for permits or licenses, but shall be in addition to such other permits or licenses.

(G) Size and Types of Vessels. No vessel with a length in excess of one hundred fifty (150) feet shall be allowed to enter the Small Boat Harbor except in an emergency. Under no circumstances shall excessively large vessels be allowed

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to secure to the float systems. Barges, boathouses, boat shelters, log rafts, scows, pile drivers, and other cumbersome floating structures shall not be permitted to secure to the floats unless specific provisions for accommodations are made and the harbormaster grants approval.

(H) Live-Aboards.

- (1) Watercraft used as a combination domicile and pleasure or commercial vessel shall not necessarily be prohibited from using the harbor, but owners shall be required to pay for garbage, water, and other harbor service commensurate with their increased usage of the facilities. All live-aboard watercraft shall meet the following criteria:
 - (a) Be powered by an inboard motor or an inboard outdrive, but not powered by an outboard motor alone;
 - (b) Be capable of "getting underway" at all times;
 - (c) Meet all U.S. Coast Guard requirements for safe navigation on the open roadstead;
 - (d) Contain adequate toilet facilities capable of meeting all U.S. Coast Guard and EPA standards for direct water discharge;
 - (e) Be a "watercraft," constructed and maintained for the primary purpose of navigating the waterways of Alaska, and not for the specific purpose of maintaining a permanent place of residence.
- (2) The harbormaster shall discourage use of the harbor by live-aboards where it is known that the watercraft will be or is being utilized as a permanent place of residence only.

(I) Aircraft. Aircraft normally shall be moored only at the float specifically provided and designated for use by floatplanes. Under no circumstances shall aircraft be permitted to secure to the float system as long as there is a shortage of space for the mooring of boats.

ALLOCATION OF STALLS

700

(A) Stalls -- Vessel Registration. All stalls and moorage shall be rented in the name of the renter or occupants on a preferential-usage basis, by a vessel owned

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by the renter and specifically designated on the rental agreement by name and/or Coast Guard registration number. No other vessel may occupy a stall or moorage so rented except on a temporary basis upon agreement of the renter and approval of the harbormaster.

(B) Preference Rights.

1. The renter of a stall or moorage shall have a preference for renewal of the rental so long as the renter owns a vessel, pays the prescribed fees, and complies with the provisions of this title. The sale by the renter of the vessel named in the moorage agreement constitutes termination of the moorage agreement unless the renter replaces the vessel with a boat of similar size, or demonstrates to the satisfaction of the harbormaster that the renter intends to replace the vessel within a reasonable period of time. The renter who sells the vessel designated in the moorage agreement may retain the moorage only if the renter acquires another vessel, and the renter shall not sub-rent or otherwise assign their interest in the berth to another person. The practice of selling the stall with the vessel is strictly prohibited. A berth so vacated shall be assigned by the harbormaster to the next person on the approved waiting list.
2. Preference in renting of stalls or alongside moorage on an annual basis shall be given to U.S. citizens or organizations owning the boat to be moored, or persons having permanent resident status from the U.S. Immigration and Naturalization Service. Foreign citizens may rent annual reserved moorage on an as-available basis, but shall not be entitled to automatic renewal; on the termination of the rental period, U.S. citizens and permanent residents on the waiting list shall have priority to rent the space.

(C) Maximum Utilization of Stalls. Stall assignments shall be made to ensure maximum usage of stall space. The harbormaster shall establish minimum and maximum boat lengths and maximum beams permitted for each type and size stall available. Stall assignments or uses not in compliance with established maximums and minimums shall not be made except in unusual or temporary situations, and only with the express approval of the harbormaster or the harbormaster's designee. No vessel may be assigned or use more than one (1) stall which is under the control or ownership of the municipality.

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(D) Seniority of Leases. A seniority list of stall renters shall be maintained by the harbormaster as a basis for reassignment of stalls to those wishing to improve their stall locations.

DUTIES OF BOAT OWNERS

710

(A) Application for Space. Every owner, master, operator, or managing agent desiring to moor at a stall or numbered mooring space shall apply to the harbormaster. No stall space shall be used until so assigned and the rental is paid as herein provided.

(B) Registration. Every owner, master, or managing agent of any boat using the mooring facilities of the boat harbor is hereby required to register their name, telephone number, post office, and street address, and the name and number of the boat, its length, its breadth, and registered tonnage, if any, with the harbormaster on forms to be provided for that purpose within four (4) hours after the boat enters and moors at any float in the boat harbor.

(C) Identification. If federal law, rule or regulation does not compel the numbering or other identification of any boat or vessel, the borough assembly shall determine by resolution how such boats shall be identified, and thereafter no such boat or vessel nor any other boat or vessel shall be allowed in the boat harbor unless it is properly identified. Failure by any owner, operator, or master to so identify any boat or vessel using the boat harbor shall be a violation of this title.

(D) Duties. In addition to the duties of registration and identification as herein provided, every owner, master, operator, or managing agent of any boat using the mooring or other facilities of the boat harbor shall be obliged to use due diligence in performing the following requirements:

1. Use all reasonable precautions in keeping the boat in their charge in a reasonably clean and sanitary condition, with special attention to pure water and sanitary toilets;
2. Use all reasonable precautions in keeping the boat in their charge free from fire hazards of any type or nature;
3. Use all reasonable effort and precautions in keeping the boat in their charge well-secured, securely moored with lines in reasonably fit condition, sufficiently pumped out at all times to keep the boat afloat, and to otherwise attend the needs of the boat to avoid need for attention by the harbormaster;

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4. Use adequate precautions to lock up and stow and otherwise safeguard all movable gear and tackle;
5. Promptly pay all charges and taxes assessed or levied according to law either against the boat or its owner, and all rental and charges for utilities requested and ordered for the boat;
6. Supply and use adequate fenders to safeguard floats and vessels from chafing and other damage.

RENTS, FEES, AND PENALTIES

720

(A) Basis.

- (1) As owner and operator of the small boat harbor, the Municipality is responsible for the funding of all costs of operation and maintenance of the facility. Accordingly, the borough assembly shall set the moorage fees at levels sufficient to:
 - (a) Provide adequate moorage rent of the small boat harbor;
 - (b) Satisfy all maintenance requirements, current and future;
 - (c) Retire any existing debt obligations;
 - (d) Provide for contingencies and emergencies;
 - (e) Provide adequate capital for replacement of facilities at the end of their useful life;
 - (f) Provide and operate electrical utilities, potable water, fire protection, harbormaster office and services, vehicle parking areas and sanitary facilities.
- (2) The schedule of fees for rental of annual moorage space and for monthly and daily transient moorage shall be reviewed annually by the borough assembly and adjusted by resolution as deemed appropriate. The moorage fee/stall rental fee shall be based upon length of the boat.

(B) Terms. All mooring and stall rentals, fees, and other charges for use of boat harbor facilities, terms of rental agreements, and procedures for applying for space and making rental payments, shall be established by the borough assembly by resolution. Failure of any boat owner, master, operator, or managing agent to

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register or pay mooring or service fees provided by this title shall be presumed to be an abandonment.

(C) **Rental Periods.** The leasing or rental of space in the boat harbor shall be based on a fiscal year running from April 1st through March 31st. Rents are not refundable, and are payable in advance for the full year. A new annual renter or lessee may be charged on a pro rata basis from the date of entry into the boat harbor to the next due date, and on a yearly basis thereafter. No other pro rata rates, fees, or charges are implied in this section. Transient moorage space shall be rented only on a daily basis or for one (1) month periods based upon calendar months. If the moorage/stall rental fees or other charges are not paid by the due date, the harbormaster may impound and/or confine the vessel or boat.

(D) **Billing Period.** Billing for annual rentals shall be mailed the first week of March, and payment is due and payable to the Municipality on or before April 10th.

(E) **Collection of Transient Moorage Fees.** Transient moorage fees for daily or monthly moorage space shall be paid to the harbormaster.

(F) **Penalties.** For violations of this section refer to SMC 1.20, General Penalty. Violations are subject to civil fines established by resolution.

PROHIBITED ACTS

730

(A) It is unlawful for any owner, master, operator, or managing agent or other person to commit any of the following acts:

- (1) To operate or cause to be operated any boat within the limit of the boat harbor in excess of five (5) miles per hour, but in no case shall the speed be in excess of that which causes a disturbing wake;
- (2) To operate or cause to be operated any boat in a reckless manner and in willful or wanton disregard for the safety of persons or property within the limits of the boat harbor;
- (3) To operate or cause to be operated any boat in a negligent manner likely to endanger the safety of persons or property within the limits of the boat harbor;

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- (4) To operate or to be in actual physical control of any boat when under the influence of intoxicating liquor or narcotic drugs;
- (5) To authorize or knowingly permit any boat to be operated by any person who is under the influence of intoxicating liquor or narcotic drugs;
- (6) To operate any boat in a manner which unreasonably or unnecessarily interferes with other watercraft or vessels, or with the free and proper navigation of the waterways of the boat harbor;
- (7) To authorize or knowingly permit any boat to be operated by any person who, by reason of physical or mental disability, is incapable of operating such boat under the prevailing circumstances;
- (8) To do or omit to do in or upon the boat harbor any act, if the doing or omission thereof unreasonably endangers or is likely to unreasonably endanger persons or property;
- (9) To violate any provision of this title, or any rule, regulation, order or posted sign made pursuant hereto;
- (10) To leave any boat, vessel, or floating structure moored at any of the harbor facilities unattended while any fire is burning thereon, unless such fire is in a range, stove, space heater, or furnace. The fuel flow to such range, stove, space heater, or furnace shall not be controlled by a drip valve carburetor, but rather a safe control of a type approved by the harbormaster. Any fire shall be deemed unattended unless the owner or operator is within one hundred feet (100') feet of the boat, or some person over the age of eighteen (18) years and capable of moving the boat or vessel is aboard or within one hundred feet (100') of the same;
- (11) To create or maintain any nuisance within the boat harbor or to conduct or carry on any unlawful business or occupation therein; and all of the provisions of municipal code defining offenses and prescribing penalties for the violation thereof are hereby expressly extended to the boat harbor;

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- (12) For any owner or person in charge of any dog or animal to allow or permit the dog or animal to run at large upon or to be tethered or restrained to any part of a float or dock, or to permit any dog to become or create a nuisance thereon. Only the dogs of owners of boats legally moored in the harbor, or the dogs of the guests of such boat owners, shall be permitted on the floats, but then only when on a leash and for such minimum time as is necessary to go between the boat and shore;
- (13) To deposit, place, or leave any cargo, merchandise, supplies, freight, articles, or things upon any float, ramp, decline, walk, or other public place in the boat harbor excepting at such places as may be designated as loading and unloading spaces by the harbormaster. Materials used in repairing or rebuilding boats shall not be stored on any float or dock;
- (14) To tap, connect, disconnect, interfere with, or tamper with any water outlet, water pipe, water connection, or any electrical wiring, electrical outlet, or electrical device of any kind, installed or maintained in the boat harbor, without first having obtained the permission of the harbormaster; or to interfere with or tamper with any wharf, float, gangplank, ramp, or any other facility of the boat harbor;
- (15) To write or post any written or printed matter or sign upon any bulletin board constructed or maintained by the Municipality in the boat harbor without first having obtained permission of the harbormaster;
- (16) To erect, place, post, or maintain any advertising matter, sign, or other printed matter other than legal notices on any part of the boat harbor facilities, without approval thereof first being obtained from the borough manager. All unauthorized advertising and signs shall be removed by the harbormaster;
- (17) To disregard, deface, remove, tamper with, or damage any sign or notice posted or erected by the harbormaster or by direction of the borough assembly relating to the use of the mooring areas or other uses of the boat harbor;

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- (18) To moor or anchor any boat, vessel, or other floating structure within two hundred feet (200') of any of the float, dock facilities, or entrances or exits of the boat harbor in such a manner as to obstruct access to the boat harbor or its float and dock facilities;
- (19) To install or secure to any float, dock, or stall, either permanently or temporarily, any bumper other than standardized, pre-molded rubber or vinyl bumpers of a commercial manufacture;
- (20) To conduct any commercially oriented business enterprise at the boat harbor facilities unless specifically authorized as provided in this section. Preparation and repair of a commercial fishing boat or its gear and the pickup and discharge of charter passengers by boats or aircraft renting space in the boat harbor is not conduct of a commercially oriented business within the meaning of this section;
- (21) To engage in the practice of private subleasing or "hot bunking" of an assigned mooring space. Any subleasing or "hot bunking" assignments shall be made only by the harbormaster, who shall collect the normal transient use fee therefor.

(B) No person under the age of sixteen (16) years shall be allowed on the dock and floats, or in the boat harbor, unless in the company and under the control of such person's parent or guardian or some other person over the age of eighteen (18) years, and for the time and place exercising the responsibilities of such person's parent or guardian. A person under the age of sixteen (16) years may apply to the harbormaster and for good cause shown may be granted a permit to go on the dock and floats or in the boat harbor without accompaniment. Such permit may be restricted and conditioned as, in the judgment of the harbormaster, is warranted by the circumstances. Such permit shall be revocable by the harbormaster if the permittee abuses the privilege of access to the boat harbor. Good cause for the purposes of this section shall consist of:

- 1. Care of boats;
- 2. Entering or exiting the harbor by boat;
- 3. Residence aboard a vessel legally in the boat harbor;
- 4. Employment requiring access to the boat harbor; or
- 5. Other legitimate and compelling reasons where denial of access would create an undue hardship on the person.

NUISANCES

740

(A) Derelicts. For the purpose of this policy and in the interest of the greatest use of the facilities of the boat harbor and the municipal waters by the general public, boats in the boat harbor and elsewhere on the municipal waters which are derelicts and unfit and unseaworthy, or which are maintained in such manner as to make them liable to sinking for lack of being pumped or other maintenance, or which have been declared unqualified by the harbormaster, or which are maintained in a manner as to constitute a fire hazard, and sunken boats, and boats in imminent danger of sinking, are hereby declared to be nuisances and subject to abatement and removal from the boat harbor, or other municipal waters, by the Municipality without liability of the Municipality for any damage done by virtue of the removal or for any of its consequences.

(B) Sunken or Obstructive Boats. When any vessel or watercraft or obstruction has been sunk or grounded, or has been delayed in such a manner as to stop or seriously interfere with or endanger navigation, moored boats, or any harbor vessels, the harbormaster may order the same immediately removed; and if the owner or other person in charge thereof after being so ordered does not proceed immediately with such removal the harbormaster may take immediate possession thereof and remove the same, using such methods as in their judgment will prevent unnecessary damage to such vessel or watercraft or obstruction. The expense incurred by the Municipality in such removal shall be paid by the owner, and in case of failure to pay the same the Municipality may maintain an action for the recovery thereof.

(C) Floating Objects. All vessels, watercraft, logs, piling, building material, scows, houseboats, or other articles of value found adrift in the municipal waters of the Municipality may be taken in charge by the harbormaster and may be subject to reclamation by the owner thereof on payment by the owner to the Municipality of any expenses incurred by the Municipality; and in case of failure to reclaim, may be sold or disposed of as abandoned property.

(D) Other Nuisances.

- (1) Refuse of all kinds, structures or pieces of any structure, dock sweepings, dead animals or parts thereof, timber, logs, piles, broomsticks, lumber, boxes, paint, empty containers, oil of any kind floating uncontrolled on the water, and all other substances or articles of a similar nature are hereby

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declared to be public nuisances, and it is unlawful for any person to throw or place, or cause or permit to be thrown or placed, any of the above-named articles or substances in the boat harbor or municipal water, or upon the shores thereof, or in such position that the same may or can be washed into the boat harbor or municipal waters, either by high tides, storms, floods, or otherwise. Nets, gear, and other material left on any float or dock for more than ninety-six (96) hours are hereby declared a nuisance.

- (2) Any person causing or permitting such nuisances shall remove the same; and upon their failure to do so, the same may be removed or caused to be removed by the harbormaster. When the harbormaster has authorized such nuisances to be removed or stored commercially, all costs of such commercial removal or storage shall be paid by and recoverable from the person creating the nuisance. The abatement of any such public nuisances shall not excuse the person responsible from any other applicable penalties provided by this title.

(E) Abatement or Disposal. Nuisances described under this section constituting a clear and present danger to the public health and welfare may be removed, impounded and disposed of by the Municipality. Other nuisances under subsection D of this section may be impounded, disposed of by destruction, private sale, or any other means deemed reasonable by the borough manager and, in the case of boats or other valuable property, procedures providing due process to the property owner. Such disposition is to be made without liability to the owner of the nuisance.

ABANDONED PROPERTY

750

(A) Any boat in the boat harbor or in any of the municipal waters which is abandoned may be impounded, removed, sold, or otherwise disposed of as provided herein. Failure of any boat owner, master, operator, or managing agent to register or pay moorage fees or service fees provided by this section shall be presumed to constitute an abandonment.

(B) Procedure for Impounded Boats.

- (1) Storage Charge. When the Municipality has impounded or removed any boat, the owner, master, operator, or managing

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agent thereof shall be subject to and liable for a storage charge set by the borough assembly by resolution, and shall be subject to and liable for all costs incurred by the Municipality by reason of the impounding or removal.

- (2) Notice to Owner. Immediately upon impounding or removing any boat, the Municipality shall cause to be posted in the harbormaster's office or bulletin board, the clerk's office, and on the bulletin board at the entrance of the United States Post Office, notice of such action taken by the Municipality. A copy of the notice shall be mailed by certified mail, return receipt requested, to the owner, master, or registered agent of the boat at their last known address, which address shall be the same as that furnished to the harbormaster. The notice shall contain the name and/or number of boat; the name and address, if known, of the owner, master, operator, or managing agent; the location of the boat; the reason for the boat's impoundment; and the opportunity for a hearing before the harbormaster no later than twenty (20) days following the postmark date of the mailed notice. For documented vessels, the same notice shall be mailed to any mortgage holder whose name and address are recorded with the U.S. Coast Guard.
- (3) Notice of Sale. Any boat impounded or removed shall be held by the Municipality for a period of not less than thirty (30) days, during which the Municipality shall publish in a newspaper of general circulation in the Municipality a notice describing the boat in general terms, its name and/or number, if any; the name and address of the owner, master, operator, or managing agent, if known; or if not known, shall state the location of the boat; and the intention of the Municipality to sell the same at public auction, on a day and at a place and time certain, for cash to the highest bidder unless the boat is sooner redeemed. At any time prior to the start of the auction, the owner, master, operator, or managing agent may redeem the boat by a cash payment of all municipal charges against the boat.
- (4) Sale. The minimum acceptable bid shall be a sum equal to the Municipality's charges against the boat. The proceeds of the sale shall be first applied to the costs of sale, then to moorage and service fees accrued, and the balance, if any,

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shall be held in trust by the Municipality for the owner of the boat to claim; and if not claimed within one (1) year, the balance shall be deposited into the boat harbor facilities fund. Upon the sale being made, the Municipality shall make and deliver its bill of sale, without warranty, conveying the boat to the buyer.

- (5) Other Disposition. If at the public sale there are no bidders for the boat, the Municipality may destroy, sell at private sale, or otherwise dispose of the boat. The disposition is to be made without liability to the owner, master, or lienholder of the boat.

NONLIABILITY OF MUNICIPALITY

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Any transient, or any lessee, or any renter using the boat harbor or appurtenant facilities agrees that the relationship between the Municipality and such transient, lessee, or renter is simply that of landlord and tenant. A transient, lessee, or renter using the boat harbor or any appurtenant facilities further agrees that the Municipality:

- (1) Does not accept any boat or aircraft for storage;
- (2) Shall not be held liable in any manner for the safekeeping or condition of the boat or aircraft;
- (3) Is not responsible as warehouseman;
- (4) Shall not be held responsible or liable for any damage or loss to or of the boat or aircraft, its tackle, gear, equipment, or property, either upon the boat or aircraft, or upon the premises of the boat harbor, and from any cause whatever; or for injury to the lessees or renters occasioned by any cause upon the premises of the boat harbor or adjacent thereto.