



# City of Valdez

212 Chenega Ave.  
Valdez, AK 99686

## Meeting Agenda

### Ports and Harbor Commission

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Monday, October 1, 2018

7:00 PM

Council Chambers

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#### Regular Meeting

#### REGULAR AGENDA - 7:00 PM

I. CALL TO ORDER

II. ROLL CALL

III. PUBLIC BUSINESS FROM THE FLOOR

IV. NEW BUSINESS

1. [Discussion Item: Maintain Sublease Rates at the Valdez Pioneer Field Airport Terminal Building, Resolution 10-60 Naming Sublease Rates and Fees](#)  
**Attachments:** [Airport Rate Worksheet 2018-2019](#)  
[Airport Space Use 2018-2019](#)
  
2. [Discussion Item: Lease Amendment No. 3 of a Lease with Silver Bay Seafoods, LLC for Parcel 4, a 23,797.5 square foot Portion of USS 495 Tidelands](#)  
**Attachments:** [Original Silver Bay Lease](#)  
[Letter of Intention to Renew](#)  
[Silver Bay Lease Area](#)  
[Silver Bay Lease Amendment](#)
  
3. [Discussion Item: Lease Amendment No. 3 for a Lease with Peter Pan Seafoods, Inc. for a 39,376 square foot Portion of USS 495 Tidelands.](#)  
**Attachments:** [Original Peter Pan Lease](#)  
[Letter of Intent to Exercise Lease Renewal](#)  
[Peter Pan Lease Area](#)  
[Peter Pan Lease Amendment](#)

V. REPORTS

1. [Ports & Harbor Staff Report](#)

**Attachments:**

[Ports & Harbor Staff Report](#)

[RFQ Comprehensive Waterfront Master Plan](#)

[RFQ Comprehensive Waterfront Master Plan - Addendum 1](#)

[Old Town Abandoned Equipment Letter Jim Gifford](#)

[Old Town Abandoned Equipment Sept 2018](#)

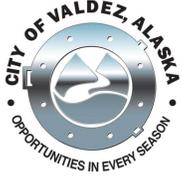
2. [Harbor Expansion Construction Report](#)

**Attachments:**

[August Construction Report](#)

VI. COMMISSION BUSINESS FROM THE FLOOR

VII. ADJOURNMENT



## Legislation Text

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**File #:** 18-0334, **Version:** 1

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**ITEM TITLE:**

Discussion Item: Maintain Sublease Rates at the Valdez Pioneer Field Airport Terminal Building, Resolution 10-60 Naming Sublease Rates and Fees

**SUBMITTED BY:** Jenessa Ables, Port Operations Manager

**FISCAL NOTES:**

Expenditure Required: N/A

Unencumbered Balance: N/A

Funding Source: N/A

**RECOMMENDATION:**

Discussion item only.

**SUMMARY STATEMENT:**

In 2010 City Council approved Resolution No. 10-60, increasing the Airport rental rate 5% per year for the 3-year period of 2011, 2012, and 2013. There has not been a rate increase since 2013. The Ports & Harbor Commission has continued to review the Airport rental rate each year and elected to hold rates due to ongoing construction projects, and most recently, City wide space use analysis and long-term planning efforts.

In 2017, the Ports & Harbor Commission unanimously approved a recommendation to City Council to increase the Airport rental rate to \$1.90 per square foot with determining factors as follows:

- Proposed incremental increase remains within or above local per square foot rental range, non-competitive.
- Increased State of Alaska rental rate, effective September 1, 2017.
- Increased utility costs.
- Substantial upgrades completed at the Airport since last rate increase:

Airport Roof Replacement

Airport Door Replacement

Airport ADA Restroom and Waterline Upgrades

Addition of free public wireless internet throughout terminal building

Addition of standard television service in waiting areas

Installation of upgraded Public Announcement System for aviation use tenants

This recommendation to approve an increase to Airport rental rates *failed to gain approval* by City Council on September 5, 2017.

Based on Port Staff understanding of current City Council goals and priorities, **we have opted to recommend that the Airport rental rate be held at \$1.81 per square foot until up for review in 2019.** This is in large part due to the amount of real estate that City Departments are currently occupying in the Airport terminal building which translates to some cost-savings for the City.

Airport Rates Worksheet - Increase Columns Recommended in 2017 and Failed at City Council  
2018-2019

| LESSEE  | SQUARE FOOTAGE  | 2018 MONTHLY RENTAL CHARGE | 2018 BUDGET RENTAL REVENUE | 2018 ANTICIPATED RENTAL REVENUE | 2018 CITY USE OFFICE NOT BILLED | 2019 ANTICIPATED RENTAL REVENUE @ \$1.81/sq. ft. RECOMMENDED HOLD | REVENUE AT \$1.90/sq. ft. 5% increase (0.09/sq. ft. increase) NOT RECOMMENDED | REVENUE AT \$1.99/sq. ft. 10% increase (0.18/sq. ft. increase) NOT RECOMMENDED | REVENUE AT \$2.08/sq. ft. 15% increase (0.27/sq. ft. increase) NOT RECOMMENDED |
|---|-----------------|----------------------------|----------------------------|---------------------------------|---------------------------------|---|---|--|--|
| City of Valdez Finance Dept.                    | 1778.00         | \$3,218.18                 |                            |                                 | \$38,618.16                     |   |   |  |  |
| City of Valdez Fire Dept.                       | 2048.00         | \$3,706.88                 |                            |                                 | \$44,482.56                     |   |   |  |  |
| City of Valdez Engineering Dept.                | 2326.00         | \$4,210.06                 |                            |                                 | \$50,520.72                     |   |   |  |  |
| City of Valdez Port Dept.                       | 768.00          | \$1,390.08                 |                            |                                 | \$16,680.96                     |   |   |  |  |
| City of Valdez Economic Development Dept.       | 1560.00         | \$2,808.00                 |                            |                                 | \$33,696.00                     |   |   |  |  |
| Civil Air Patrol                                | 1029.60         |                            | \$1.00                     | \$1.00                          |                                 | \$1.00  | \$1.00  | \$1.00   | \$1.00   |
| Dean Cummins' H2O Guides                        | 615.00          | \$1,113.15                 | \$13,357.80                | \$13,357.80                     |                                 | \$13,357.80   | \$14,022.00   | \$14,686.20  | \$15,350.40  |
| ERA Aviation, Inc.                              | 2912.00         | \$5,270.72                 | \$63,248.64                | \$63,248.64                     |                                 | \$63,248.64   | \$66,393.60   | \$69,538.56  | \$72,683.52  |
| Federal Aviation Administration                 | 21.20           | \$38.33                    | \$459.96                   | \$459.96                        |                                 | \$459.96  | \$482.90  | \$505.78   | \$528.65   |
| Federal Aviation Administration                 | 271.00          | \$490.51                   | \$5,886.12                 | \$5,886.12                      |                                 | \$5,886.12  | \$6,178.80  | \$6,471.48   | \$6,764.16   |
| Jeff Johnson & Linda Brandenburg                | 184.00          | \$333.04                   | \$3,996.48                 | \$3,996.48                      |                                 | \$3,996.48  | \$4,195.20  | \$4,393.92   | \$4,592.64   |
| The Landing Lights                              | 568.00          | \$1,028.08                 | \$19,873.80                | \$12,965.03                     |                                 | \$12,336.96   | \$12,950.40   | \$13,563.84  | \$14,177.28  |
| Valdez Expediting, Inc.                         | 176.00          | \$318.56                   | \$3,822.72                 | \$3,822.72                      |                                 | \$3,822.72  | \$4,012.80  | \$4,202.88   | \$4,392.96   |
| Valdez U-Drive                                  | 184.00          | \$333.04                   | \$3,996.48                 | \$3,996.48                      |                                 | \$3,996.48  | \$4,195.20  | \$4,393.92   | \$4,592.64   |
| Vertical Solutions LLC                          | 265.00          | \$479.65                   | \$5,755.80                 | \$5,755.80                      |                                 | \$5,755.80  | \$6,042.00  | \$6,328.20   | \$6,614.40   |
| Vertical Solutions LLC                          | 456.00          | \$825.36                   | \$9,904.32                 | \$9,904.32                      |                                 | \$9,904.32  | \$10,396.80   | \$10,889.28  | \$11,381.76  |
| Wrangell Mountain Technical Services            | 10.00           | \$18.10                    | \$217.20                   | \$217.20                        |                                 | \$217.20  | \$228.00  | \$238.80   | \$249.60   |
| <b>TOTAL OF ALL PROPERTY SUBLEASES</b>          | <b>15171.80</b> | <b>\$25,581.74</b>         | <b>\$130,520.32</b>        | <b>\$123,611.55</b>             | <b>\$183,998.40</b>             | <b>\$122,983.48</b>   | <b>\$129,098.70</b>   | <b>\$135,213.86</b>  | <b>\$141,329.01</b>  |
| <b>Vending Subleases:</b>                       |                 |                            |                            |                                 |                                 |   |   |  |  |
| Seed Media                                      | 30.00           | \$54.30                    | \$651.60                   | \$651.60                        |                                 | \$651.60  | \$684.00  | \$716.40   | \$748.80   |
| <b>TOTAL OF ALL VENDING SUBLEASES</b>           | <b>30.00</b>    | <b>\$54.30</b>             | <b>\$651.60</b>            | <b>\$651.60</b>                 |                                 | <b>\$651.60</b>   | <b>\$684.00</b>   | <b>\$716.40</b>  | <b>\$748.80</b>  |
| <b>TOTAL OF ALL SUBLEASES</b>                   | <b>15201.80</b> | <b>\$25,636.04</b>         | <b>\$131,171.92</b>        | <b>\$124,263.15</b>             | <b>\$183,998.40</b>             | <b>\$123,635.08</b>   | <b>\$129,782.70</b>   | <b>\$135,930.26</b>  | <b>\$142,077.81</b>  |
| <b>Interest Income</b>                          |                 |                            | \$2,000.00                 | \$1,500.00                      |                                 | \$2,000.00  |   |  |  |
| <b>Interest Charges on A/R and CI</b>           |                 |                            |                            | \$1,500.00                      |                                 |   |   |  |  |
| <b>TOTAL PROJECTED REVENUE</b>                  |                 | <b>\$22,846.14</b>         | <b>\$133,171.92</b>        | <b>\$127,263.15</b>             | <b>\$183,998.40</b>             | <b>\$125,635.08</b>   | <b>\$129,782.70</b>   | <b>\$135,930.26</b>  | <b>\$142,077.81</b>  |
| <b>TOTAL PROJECTED EXPENSES*</b>                |                 |                            | \$375,118.00               | \$375,118.00                    |                                 | \$375,118.00  | \$375,118.00  | \$375,118.00   | \$375,118.00   |
| <b>Projected Transfer from General Fund</b>     |                 |                            | <b>-\$241,946.08</b>       | <b>-\$247,854.85</b>            |                                 | <b>-\$249,482.92</b>  | <b>-\$245,335.30</b>  | <b>-\$239,187.74</b>   | <b>-\$233,040.19</b>   |
| <i>Projected Utility Expenses (Broken Out)*</i> |                 |                            | \$117,000.00               | \$117,000.00                    |                                 | \$117,000.00  | \$117,000.00  | \$117,000.00   | \$117,000.00   |

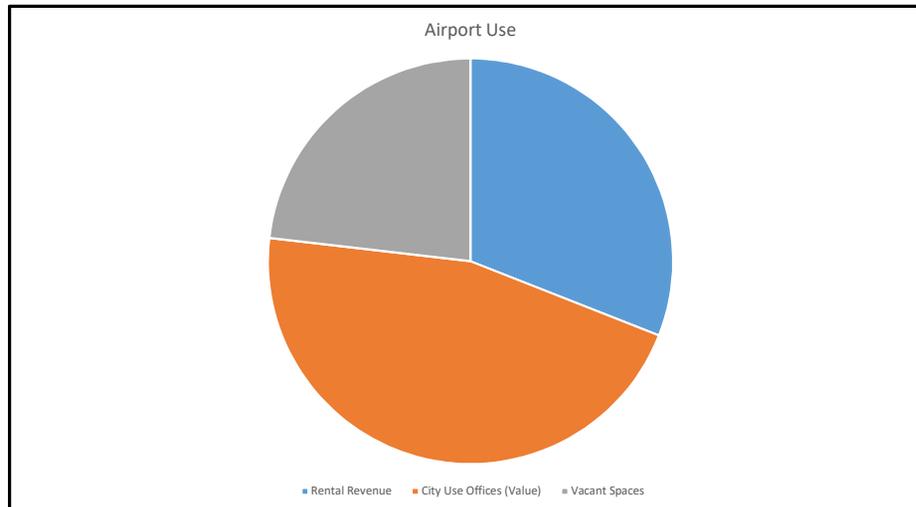
Resolution No. 10-60 Rates - 2011 - \$1.64, 2012 - \$1.72, 2013 - \$1.81, 2014 - 2018 - \$1.81

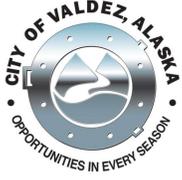
\*2019 columns contain placeholder estimates based on 2018 projected expenses and utilities.

**VALDEZ PIONEER FIELD SUBLEASES**  
**Building Use Comparison**  
**August, 2018**

| LESSEE                                    | SQUARE FOOTAGE  | POTENTIAL MONTHLY RENT | POTENTIAL ANNUAL RENT | 2018 ANTICIPATED RENTAL REVENUE @ \$1.81/sq. ft. | AVIATION RENT      | AVIATION SQ. FOOTAGE | NON-AVIATION RENT  | NON-AVIATION SQ. FOOTAGE | 2018 CITY USE OFFICES NOT BILLED | CITY SQ. FOOTAGE | UNCOLLECTED RENT FROM VACANT OFFICE SPACE | VACANT OFFICE SPACE SQ. FOOTAGE |
|---|-----------------|------------------------|-----------------------|--|--------------------|----------------------|--------------------|--------------------------|----------------------------------|------------------|---|---------------------------------|
| City of Valdez Finance Dept.              | 1,778.0         | \$3,218.18             | \$38,618.16           |  |                    |                      |                    |                          | \$38,618.16                      | 1,778.0          |   |                                 |
| City of Valdez Fire Dept.                 | 2,048.0         | \$3,706.88             | \$44,482.56           |  |                    |                      |                    |                          | \$44,482.56                      | 2,048.0          |   |                                 |
| City of Valdez Engineering Dept.          | 2,326.0         | \$4,210.06             | \$50,520.72           |  |                    |                      |                    |                          | \$50,520.72                      | 2,326.0          |   |                                 |
| City of Valdez Port Dept.                 | 768.0           | \$1,390.08             | \$16,680.96           |  |                    |                      |                    |                          | \$16,680.96                      | 768.0            |   |                                 |
| City of Valdez Economic Development Dept. | 1,560.0         | \$2,808.00             | \$33,696.00           |  |                    |                      |                    |                          | \$33,696.00                      | 1,560.0          |   |                                 |
| Civil Air Patrol                          | 1,029.6         | \$1,863.58             | \$22,362.96           | \$1.00   | \$1.00             | 1,029.6              |                    |                          |                                  |                  |   |                                 |
| Dean Cummings' H2O Guides                 | 615.0           | \$1,113.15             | \$13,357.80           | \$13,357.80                                      | \$13,357.80        | 615.0                |                    |                          |                                  |                  |   |                                 |
| ERA Aviation, Inc./RAVN                   | 2,912.0         | \$5,270.72             | \$63,248.64           | \$63,248.64                                      | \$63,248.64        | 2,912.0              |                    |                          |                                  |                  |   |                                 |
| Federal Aviation Administration           | 21.2            | \$38.33                | \$459.96              | \$459.96   | \$459.96           | 21.2                 |                    |                          |                                  |                  |   |                                 |
| Federal Aviation Administration           | 271.0           | \$490.51               | \$5,886.12            | \$5,886.12                                       | \$5,886.12         | 271.0                |                    |                          |                                  |                  |   |                                 |
| Jeff Johnson & Linda Brandenburg          | 184.0           | \$333.04               | \$3,996.48            | \$3,996.48                                       |                    |                      | \$3,996.48         | 184.0                    |                                  |                  |   |                                 |
| The Landing Lights                        | 568.0           | \$1,028.08             | \$12,965.03           | \$12,965.03                                      |                    |                      | \$12,336.96        | 568.0                    |                                  |                  |   |                                 |
| Seed Media                                | 30.0            | \$54.30                | \$651.60              | \$651.60   |                    |                      | \$651.60           | 30.0                     |                                  |                  |   |                                 |
| Valdez Expediting, Inc.                   | 176.0           | \$318.56               | \$3,822.72            | \$3,822.72                                       |                    |                      | \$3,822.72         | 176.0                    |                                  |                  |   |                                 |
| Valdez U-Drive                            | 184.0           | \$333.04               | \$3,996.48            | \$3,996.48                                       |                    |                      | \$3,996.48         | 184.0                    |                                  |                  |   |                                 |
| Vertical Solutions, LLC                   | 265.0           | \$479.65               | \$5,755.80            | \$5,755.80                                       | \$5,755.80         | 265.0                |                    |                          |                                  |                  |   |                                 |
| Vertical Solutions, LLC                   | 456.0           | \$825.36               | \$9,904.32            | \$9,904.32                                       | \$9,904.32         | 456.0                |                    |                          |                                  |                  |   |                                 |
| Wrangell Mountain Technical Services      | 10.0            | \$18.10                | \$217.20              | \$217.20   |                    |                      | \$217.20           | 10.0                     |                                  |                  |   |                                 |
| Vacant Office Space - Old Whitney Museum  | 4,280.0         | \$7,746.80             | \$92,961.60           |  |                    |                      |                    |                          |                                  |                  | \$92,961.60                               | 4,280.0                         |
| <b>TOTAL ALL SUBLEASES</b>                | <b>19,481.8</b> | <b>\$35,246.42</b>     | <b>\$423,585.11</b>   | <b>\$124,263.15</b>                              | <b>\$98,613.64</b> | <b>5,569.8</b>       | <b>\$25,021.44</b> | <b>1,152.0</b>           | <b>\$183,998.40</b>              | <b>8,480.0</b>   | <b>\$92,961.60</b>                        | <b>4,280.0</b>                  |

Rental Revenue                   \$ 124,263.15  
City Use Offices (Value)       \$ 183,998.40  
Vacant Spaces                    \$ 92,961.60





## Legislation Text

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**File #:** 18-0335, **Version:** 1

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**ITEM TITLE:**

Discussion Item: Lease Amendment No. 3 of the Lease with Silver Bay Seafoods, LLC for Parcel 4, a 23,797.5 square foot Portion of USS 495 Tidelands

**SUBMITTED BY:** Nicole LeRoy, Planning Technician

**FISCAL NOTES:**

Expenditure Required: N/A  
Unencumbered Balance: N/A  
Funding Source: N/A

**RECOMMENDATION:**

File and save

**SUMMARY STATEMENT:**

On November 6, 2002, the City of Valdez entered into a lease for Parcel 4, a 23,797.5 square foot portion of USS 495 Tidelands, with Sea Hawk Seafoods, Inc. for twelve years, commencing on December 1, 2001 and ending on the last day of November, 2013 with six, five-year renewal options.

Resolution #09-39, dated August 12, 2009, authorized consent to assignment of leasehold interest for the lease from Sea Hawk Seafoods, Inc. to PS Acquisitions. PS Acquisitions was renamed Northern Reach Seafoods. On February 1, 2010, Resolution #10-05 authorized consent to the assignment of the Lease from Northern Reach Seafoods to Silver Bay Seafoods, LLC.

Resolution #13-59 authorized the City Manager or designee to negotiate lease renewal option one of six five-year options, commencing on December 1, 2013 and ending the last day of November 2018.

Silver Bay Seafoods, LLC approached Community Development staff with intention to exercise the second of six, five-year renewal options. The Lease is scheduled to expire on the last day of November, 2018 with five five-year renewal options remaining.

Valdez Municipal Code 4.08.100 states that the LESSEE "shall be required to pay for any and all survey, appraisal or other costs incurred in connection with the application and lease process."

Paragraph 1.05 of the Lease states there is no appraisal fee to be paid by the Lessee under the

lease. This is in violation of Valdez Municipal Code 4.08.100 which requires the Lessee to bear such costs.

Staff will be bringing this item before City Council as a resolution to authorize the City Manager or her designee to negotiate said lease renewal exercising renewal option number two of six five-year options for the period commencing December 1, 2018 and ending the last day of November 2023. The amendment will also alter Paragraph 1.05 of the Lease to require the Lessee to pay for appraisals required under the lease for the purposes of determining fair rental value. All other terms, covenants, and conditions of said lease, and amendments, shall remain in full force and effect.

Pending Council approval, Community Development staff will work with the City Attorney and Silver Bay Seafoods, LLC to execute Lease Amendment No. 3 detailing the above terms.

TIDELANDS LEASE

THIS LEASE is made this 6<sup>th</sup> day of November, 2002, between the CITY OF VALDEZ, a municipal corporation organized under the laws of the State of Alaska, whose address is P.O. Box 307, Valdez, Alaska 99686 hereinafter referred to as "LESSOR", and **Sea Hawk Seafoods, Inc.** (a corporation) whose address is Fishermen's Center Bldg., 1900 W. Nickerson Street #205, Seattle, Washington 98119, hereinafter referred to as "LESSEE".

LESSOR and LESSEE agree as follows:

I - PROPERTY

1.01. Property. LESSOR leases to LESSEE and LESSEE leases from LESSOR the property outlined in red in Exhibit "A" attached hereto, it being described as:

23,797.5 sq. ft, a Portion of USS 495 Tidelands  
(See Exhibit A)

(hereinafter referred to as the "Property"), for the term, the rent, and subject to the covenants and conditions hereinafter provided.

1.02. Quiet Enjoyment, Restrictions, Easements, Etc. LESSOR covenants and agrees that LESSEE, upon paying the rent and other charges herein provided for and observing and keeping the covenants, conditions and terms of this Lease on LESSEE's part to be kept or performed, shall lawfully and quietly hold, occupy and enjoy the Property during the term of this Lease without hindrance or molestation, subject, however, to the rights and reservations expressed in the U. S. Patent to the Property, the State of Alaska Patent to the Property, existing easements for roads, gas, electric, water, sewer and other utility lines, restrictions of record and to encroachments ascertained by physical inspection of the Property.

1.03. Property Accepted "As Is". LESSEE acknowledges that it has inspected the Property and accepts the same "as is" and without reliance on any representations or warranties of LESSOR, its agents, servants, or employees, as to the physical condition of the Property, including, but not limited to, subsurface and soil conditions, or as to its fitness or habitability or for any particular purpose, or otherwise.

1.04. No Subsurface Rights. This Lease confers no mineral rights or rights with regard to the subsurface of the land below the level necessary for the use of the Property as stated in this Lease. LESSOR makes no warranty or representation, as whether the Property is open or closed to mineral claims or leases under state or federal law.

1.05 Appraisal. There is no appraisal fee.

1.06 Survey. Not required.

## II - TERM

2.01. Lease Term. The term of this Lease shall be twelve (12) years, commencing on December 1, 2001, and ending on the last day of November, 2013, with 6 five-year options to renew.

2.02 Preference Rights to Re-Lease. LESSEE shall upon expiration of this lease be allowed a preference right to re-lease the Property if all of the other factors are substantially equivalent and; provided the LESSEE is not in breach or default of any of the terms or conditions of the Lease, unless it shall be determined by LESSOR that the renewal of such lease is not in the best interests of LESSOR. LESSOR'S request to re-lease will not be unreasonably withheld.

2.03. Application to Re-lease. If, at the expiration of this Lease, the LESSEE desires to re-lease the Property, LESSEE shall, not sooner than ninety calendar days and not later than sixty calendar days prior to the expiration, make application to re-lease the Property. The re-lease application shall certify the character and value of all improvements placed by LESSEE on the Property, the purpose and lengths for which the re-lease is desired, and any other information that LESSOR may require. Applications to re-lease shall be submitted to the same application review as new applications for lease, pursuant to Sec. 14.04 of the Valdez City Code as may be amended from time to time.

2.04. Hold-Over. If LESSEE shall holdover after the expiration of the term of this Lease such tenancy shall be from month to month, subject to all the terms, covenants and conditions of this Lease.

2.05. Surrender of Possession. Upon expiration of the term of this Lease, whether by lapse of time or otherwise, LESSEE shall promptly and peaceably surrender the Property, and all buildings and improvements thereon, except as provided in Article XVII of this Lease, and LESSEE agrees to execute, acknowledge and deliver to LESSOR a proper instrument in writing, releasing and quitclaiming to LESSOR all right, title and interest of LESSEE in and to the Property and all such improvements thereon.

## III - RENT, TAXES, ASSESSMENTS AND UTILITIES

3.01. Rent. The LESSEE agrees to pay to LESSOR an annual rent of ten percent (10%) of the appraised value of the Property, with equal monthly installment payments to be made not later than the first day of each month. Rent for any partial year shall be prorated at the rate of 1/12th of the annual rent per month or portion thereof. For the first five (5) years, the appraised value is agreed to be **Fourteen Thousand Two Hundred Seventy-eight dollars and fifty cents (\$14,278.50)** resulting in an annual rent of **One Thousand Four Hundred Twenty-seven dollars and eighty-five cents (\$1,427.85)** per year. Rent shall be payable at the office of the City Manager, P. O. Box 307, Valdez, Alaska, 99686, or at such other place as LESSOR may designate in writing. Delinquent rent shall bear interest at the maximum rate of interest allowed per annum.

3.02 Adjustment of Rent. The Property will be reappraised and the annual rent accordingly adjusted every five (5) years during the term of this Lease. Such appraisal will be based on the value of the Property and shall not include the value of buildings or improvements placed on the Property by LESSEE. The appraised value of the Property for the purposes of determining the annual rental shall be the most recent tax assessment valuation according to the tax rolls of the City of Valdez. In no event, however, shall the annual rent be less than the original annual rent set forth in paragraph 3.01. Nothing in this paragraph shall prevent the annual reassessment of the leased premises for tax purposes to determine its true value as provided by law.

3.03. LESSEE to Pay Taxes. LESSEE agrees to pay prior to delinquency and directly to the taxing authorities in which the Property is located all real property taxes levied or assessed upon or against the Property and improvements thereon during the term of this Lease. LESSEE further agrees to pay prior to delinquency and directly to the taxing authorities in which the Property is located all personal property taxes on personal property situated on the Property and placed thereon by LESSEE, its agents, authorized representatives, or employees. LESSEE further agrees to pay prior to delinquency any other taxes for which it may be liable. LESSEE shall, within thirty (30) days after any such tax, assessment or other charge, whether or not constituting a lien on the Property, shall become due and payable, produce and exhibit to LESSOR satisfactory evidence or payment thereof.

3.04. LESSEE to Pay Assessments. LESSEE during the term of this Lease agrees to pay directly to the public authorities charged with collection thereof any and all assessments levied on the Property for any part or all of the costs of any public work or improvement assessed according to benefit found by the levying authority to accrue therefrom to the Property, provided, however, that if an option is given to pay such assessment(s) in installments, LESSEE may elect to pay the same in installments, and in such case LESSEE shall be liable only for such installments as shall accrue during the term of this Lease. LESSOR warrants and represents that there are currently no outstanding assessments levied on the Property for any part or all of the cost of any public work or improvement constructed by LESSOR.

3.05. Proration of Taxes and Assessments. If LESSEE's obligation to pay taxes or assessments commences or ends during a tax year, such obligation shall be prorated between LESSOR and LESSEE.

3.06. Contest. LESSEE shall have the right to contest any taxes or assessments, which LESSEE is obligated to pay under paragraphs 3.03 or 3.04 of this Lease. Such proceedings shall, if instituted, be conducted promptly at LESSEE's own expense and free from all expense to LESSOR. Before instituting any such proceedings, LESSEE shall pay under protest any such taxes or assessments, or shall furnish to LESSOR a surety bond written by a company acceptable to LESSOR or other security acceptable to LESSOR, sufficient to cover the amount of such taxes or assessments, with interest for the period which such proceedings may reasonably be expected to take, and costs, securing the payment of such taxes or assessments, interest and costs in connection therewith when finally determined. Notwithstanding the furnishing of any such bond or security, LESSEE shall pay any such taxes or assessments at least thirty (30) days before the time when the Property or any part

thereof, might be forfeited. The proceedings referred to in this paragraph 3.06 shall include appropriate appeals from any order or judgments therein, but all such proceedings shall be begun as soon as reasonably possible after the imposition or assessment of any such taxes or assessments and shall be prosecuted to final adjudication promptly. In the event of any reduction, cancellation or discharge, LESSEE shall pay the amount that shall be finally levied or assessed against the Property or adjudicated to be due and payable, and, if there shall be any refund payable by the governmental authority with respect thereto, LESSEE shall be entitled to receive and retain the same, subject, however, to apportionment as provided in paragraph 3.05 of this Lease. LESSOR, at LESSOR's option, may, but shall not be obligated to, at LESSOR's own expense contest any such taxes or assessments, which shall not be contested as set forth above, and, unless LESSEE shall promptly join with LESSOR in such contest and pay all costs and attorneys fees of LESSOR therein, LESSOR shall be entitled to receive and retain any refund payable by any governmental authority with respect thereof.

3.07. LESSEE to Pay Utility Charges. LESSEE shall pay or cause to be paid all charges for gas, oil, electricity, water, sewer, heat, snow removal, refuse removal and any and all other utilities or services used upon the Property throughout the term of this Lease, including any connection fees.

3.08. Additional Rent and LESSOR's Right to Cure LESSEE's Default. All costs and expenses which LESSEE assumes or agrees to pay pursuant to this Lease shall, at LESSOR's election, be treated as additional rent, and, in the event of nonpayment, LESSOR shall have all rights and remedies provided in this Lease in the case of nonpayment of rent or of a breach of condition, at LESSOR's election. If LESSEE shall default in making any payment required to be made by LESSEE or shall default in performance of any term, covenant or condition of this Lease on the part of LESSEE to be kept, performed or observed which shall involve the expenditure of money by LESSEE, LESSOR at LESSOR's option may, but shall not be obligated to, make such payment, or, on behalf of LESSEE, expend such sum as may be necessary to keep, perform or observe such term, covenant or condition, and any and all sums so expended by LESSOR, with interest thereon at the maximum allowable rate of interest per year from the date of such expenditure until repaid, shall be, and shall be deemed to be, additional rent and shall be repaid by LESSEE to LESSOR, on demand, provided, however, that no such payment or expenditure by LESSOR shall be deemed a waiver of LESSEE's default, nor shall it affect any remedy of LESSOR by reason of such default.

#### IV - USE

4.01. Use. LESSEE acknowledges that the Property is being leased for a dock to be used for fish processing related business and that the property be used only for those purposes. Vessel traffic at the dock is allowed only in conjunction with activities related to fish processing so long as such traffic at the dock does not interfere with the safe movement of traffic in the small boat harbor. Should a vessel be moored at LESSEE's dock that extends beyond said lease area, and LESSOR deems the location of the vessel is an impediment to other vessel navigation in the Small Boat Harbor, LESSOR may require LESSEE to remove the vessel. LESSEE shall not conduct any illegal activities on the Property or maintain any nuisances on the Property.

## V – IMPROVEMENTS

5.01. Notice of Construction. **No improvements may be made to the property without first obtaining a permit from the Alaska Corps of Engineers and any other permits required by other city, state and/or federal agencies.** After obtaining the appropriate permits, LESSEE shall give LESSOR no less than five (5) days written notice prior to the commencement of any construction, alteration or repairs requiring a building permit of any improvements constructed or made by LESSEE on the Property so that LESSOR may, if it so elects, give notice of nonresponsibility pursuant to AS 34.35, as enacted or hereafter amended.

5.02. Development Requirements. At a minimum, LESSEE must operate a dock in conjunction with the leased premises. Any development, intent to develop or use of the Property by LESSEE that is not in concert with the use of the Property as outlined in Section 4.01 must be approved by the LESSOR and may constitute grounds for termination of this Lease, or cause a new lease to be negotiated between LESSEE and LESSOR.

5.03. LESSEE'S Ownership of Buildings and Improvements. It is expressly understood and agreed that any and all buildings and improvements of any nature whatsoever constructed or maintained on the Property by LESSEE shall be and remain the property of LESSEE and may be removed or replaced by LESSEE at any time during the term of this Lease, subject, however, to paragraph 17.01 of this lease.

5.04 Construction Prerequisites. No construction shall be commenced unless the following events have occurred:

- (a) LESSEE shall furnish to LESSOR certificates of insurance in the amounts and for the purposes specified in Article X.
- (b) LESSEE shall from time to time deliver to LESSOR satisfactory proof that worker's compensation insurance has been procured to cover all persons employed in connection with the construction. Notice of any deficiency in this area to LESSEE will be cured immediately and no work will be performed on the project until the LESSOR has satisfactory proof that proper worker's compensation insurance is in place.
- (c) LESSEE shall obtain all necessary city, state, federal or other required building permits.

## VI - TRADE FIXTURES

6.01. LESSEE's Ownership of Trade Fixtures, Machinery and Equipment. It is expressly understood and agreed that any and all trade fixtures (including electrical fixtures), machinery, equipment of any nature whatsoever and other personal property of LESSEE at any time placed or

maintained upon the Property by LESSEE shall be and remain property of the LESSEE and may be removed or replaced at any time during the term of this Lease.

## VII - ASSIGNMENT AND SUBLETTING

7.01. Assignment Without Consent Generally Prohibited. LESSEE shall not voluntarily assign or encumber its interest in this Lease or in the Property, or sublet all or any part of the Property, or allow any other person or entity (except LESSEE's authorized representatives) to occupy or use all or any part of the Property without first obtaining LESSOR's consent. Any assignment, encumbrance or sublease without LESSOR's consent shall be voidable and, at LESSOR's election, shall constitute default. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph. If LESSEE is a partnership, a withdrawal or change, voluntary, involuntary or by operation of law, of any partner or partners owning fifty percent (50%) or more of the partnership, or the dissolution of the partnership, shall be deemed a voluntary assignment. If LESSEE is a corporation, any dissolution, merger, consolidation or other reorganization of LESSEE, or the sale or other transfer of a controlling percentage of the capital stock of LESSEE, or the sale of fifty-one percent (51%) of the value of the assets of LESSEE, shall be deemed a voluntary assignment. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least fifty-one percent (51%) of the total combined voting power of all classes of LESSEE's capital stock issued, outstanding and entitled to vote for the election of directors. As to a corporation the stock of which is traded through an exchange or over the counter, a sale or other transfer of a controlling percentage of the capital stock of such a LESSEE corporation will not be deemed to be a voluntary assignment. Any assignment affected pursuant to this paragraph 7.01 shall require the assignee to assume the Lessee's obligations hereunder. LESSEE shall promptly deliver to LESSOR a copy of any assignment instrument. Any assignment shall not release the Lessee from liability hereunder. LESSOR'S consent of assignment will not be unreasonably withheld.

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

7.03. Costs of LESSOR's Consent to Be Borne by LESSEE. LESSEE agrees to pay to LESSOR, on demand, reasonable costs, including attorney's fees, incurred by LESSOR in connection with any request by LESSEE for LESSOR to consent to any assignment or subletting by LESSEE.

## VIII - LIENS

8.01. Prohibition of Liens. LESSEE shall not suffer or permit any liens, including without limitation, mechanic's or materialman's liens, to be recorded against the Property. If any such liens

shall be recorded against the Property, LESSEE shall cause the same to be removed, or, in the alternative, if LESSEE in good faith desires to contest the same, LESSEE shall be privileged to do so, but in such case LESSEE hereby agrees to indemnify and save LESSOR harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure of such liens, cause the same to be discharged and removed prior to any attempt at execution of such judgment. Nothing contained in this Lease shall be construed to be a waiver of the provisions of A.S 09.38.015(c), as may be amended from time to time.

#### IX - INDEMNITY

9.01. Indemnity. Except for claims arising solely out of acts or omissions of LESSOR, its agents, authorized representatives, employees or contractors, LESSEE agrees to protect, defend, indemnify and hold LESSOR harmless from and against any and all liability arising from acts or omissions of any person and of any nature whatsoever occurring on or relating to the Property, causing injury to, or death of persons, or loss of, or damage to, property, and from any expense, including attorneys fees, incident to the defense of and by LESSOR therefrom. If any action or proceeding is brought against LESSOR by reason of any such occurrences, LESSOR shall promptly notify LESSEE in writing of such action or proceeding.

#### X - INSURANCE

10.01. Liability Insurance. LESSEE, during the term of this Lease, shall carry at its expense comprehensive general liability insurance covering the Property in an amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit to protect against liability for personal injury, death or property damage which might arise from the construction occupancy or use of the Property and the operations conducted on it. Said insurance shall insure performance by LESSEE of the indemnity provisions of paragraph 9.01. LESSOR may increase the amount of insurance required at five (5) year intervals. LESSOR agrees that any such increase shall be reasonable.

10.02. Named Insured, Notice to LESSOR, and Waiver of Subrogation. All insurance policies required to be maintained by LESSEE under paragraph 10.01 shall name LESSOR, and its officers, employees and agents, as additional insured. All policies issued under paragraph 10.01 shall contain an agreement by the insurers that such policies shall not be canceled without at least twenty (20) days' prior written notice to LESSOR, and certificates or copies of all such insurance policies shall be furnished to LESSOR promptly after the issuance thereof. All policies issued under paragraph 10.01 shall contain a waiver of any subrogation rights any insurer might have against LESSOR.

10.03. Fire and Extended Coverage Insurance. LESSEE may at its own expense and in its own name obtain insurance against loss or damage by fire and such other risks as it determines to cover equipment, inventory, fixtures, personal property and by LESSEE subsequent to LESSEE's taking possession of the Property under this Lease.

## XI - CARE OF PROPERTY

11.01. Care of the Property. LESSEE at its own cost and expense shall keep the Property and all buildings and improvements, which at any time may be situated, thereon in good condition and repair during the term of this Lease, ordinary wear and tear excepted. The Property shall always be kept by LESSEE neat, clean and free of litter. Vehicles, equipment, supplies, materials or other items of personal property shall be stored on the property in a neat, orderly, and safe manner. LESSOR reserves the right to cause LESSEE to change the manner of storage if potential for hazard or public nuisance is found. Nothing in this subsection shall prevent the temporary placement of building materials and equipment necessary for the construction of the structures identified in the Lease in the areas where the structures are to be constructed, nor shall this section be applicable to general parking for guests and employees.

11.02 Restoration or Removal of Damaged Buildings and Improvements. In the event any buildings or improvements situated on the Property by LESSEE are damaged or destroyed by fire or other casualty, LESSEE shall at LESSEE'S expense restore the same to good and tenable conditions or shall remove the same as soon as is reasonably possible, but in no event shall the period of restoration exceed eighteen (18) months nor shall the period of removal exceed forth-five (45) days.

11.03. Access Rights of LESSOR. LESSOR, its agents, authorized representatives or employees, shall have the right to enter into and upon the Property and all buildings or improvements situated thereon upon 24 hour notice to LESSEE and during normal business hours (defined as 9:00 a.m. to 5:00 p.m. Monday through Friday except for holidays as defined in paragraph 15.05 of this Lease) for the purpose of inspecting the Property and all buildings or improvements situated thereon for compliance with the terms of this Lease.

11.04. Nuisances Prohibited. LESSEE shall immediately remove from the Property any abandoned or junk vehicles, improvements, equipment, machinery or fixtures. LESSEE shall not permit any nuisance or public nuisance to exist or to be created or maintained on the Property. LESSEE agrees that any nuisance or public nuisance as defined by the Valdez City Code, or any other code or regulations incorporated therein or otherwise adopted by ordinance or resolution of the City of Valdez, may, after five (5) days written notice to LESSEE, be removed by LESSOR without LESSEE's further permission, with use of force if necessary, and without incurring any civil or criminal liability therefor, all the costs of such removal to be paid by LESSEE to LESSOR as additional rent under the terms of this Lease. This paragraph shall not be construed as any limitation on any other legal rights or remedies available to the City of Valdez to abate any nuisance or to prosecute any violation of the Valdez City Code.

## XII - LAWS

12.01. Compliance with Laws. LESSEE shall comply with all applicable laws, ordinances and regulations of duly constituted public authorities now or hereafter in any manner affecting

LESSEE's activities on the Property or any buildings or other improvements which may be situated thereon, whether or not any such laws, ordinances or regulations which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same.

### XIII - CONDEMNATION

13.01. Condemnation. In the event the Property, or any part thereof or interest therein, shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of LESSOR and LESSEE in the award or consideration for such transfer and the effect of the taking or transfer upon this Lease shall be as provided in this Paragraph 13.

13.02. Total Taking. If all of the Property is taken or so transferred, this Lease and all the right, title and interest thereunder of LESSEE shall cease on the date title to the Property vests in the condemning authority. Subject to the removal provisions in Article XVII if applicable.

13.03. Partial Taking - Termination of Lease. In the event the taking or transfer of part of the Property leaves the remainder of the Property in such location, or in such form, shape or reduced size, or so inaccessible as to be not effectively and practicably usable in the opinion of LESSEE for the purpose of operation thereon of LESSEE's business, then this Lease and all of the right, title and interest thereunder of LESSEE shall cease on the date title to the Property vests in the condemning authority, and the condemning authority enters into possession. Subject to the removal provisions of Article XVII if applicable.

13.04. Partial Taking - Continuation of Lease. In the event the taking or transfer of a part of the Property leaves the remainder of the Property in such location and in such form, shape or size, or so accessible as to be effectively and practicably unusable in the opinion of LESSEE for the purpose of operation thereon of LESSEE's business, this Lease shall terminate and end as to the portion of the Property so taken or transferred as of the date title to such portion vests in the condemning authority and the condemning authority enters into possession, but shall continue in full force and effect as to the portion of the Property not so taken or transferred. If there is a partial taking and this Lease is not terminated, then the annual rent payable under this Lease shall abate for the portion of the Property taken in the proportion that such portion bears to all of the Property.

13.05. Compensation. Compensation received or payable as a result of eminent domain proceedings or a transfer in lieu thereof shall belong to LESSOR, if such compensation be awarded or paid as compensation for diminution in value of the leasehold or of the fee, and LESSEE shall make no claim against LESSOR for damages for termination of the leasehold or interference with LESSEE's business unless LESSOR is the condemning authority or responsible for the condemnation. Compensation received or payable as a result of eminent domain proceedings or a transfer in lieu thereof shall belong to LESSEE, if such compensation be awarded or paid as compensation for LESSEE'S moving expenses, for interference with LESSEE'S business, and for damages relating to any trade fixtures, machinery or equipment owned the LESSEE. Upon award each party shall be

responsible for a pro-rata share of the attorney's fees incurred in direct proportion to the total amount recovered for their respective losses.

#### XIV - DEFAULT

14.01. Default. Each of the following events shall be deemed an event of default by the LESSEE under this Lease and a breach of the terms, covenants and conditions of this Lease:

- (a) Failure to perform as required and when required any of the development requirements contained in paragraph 5.02 of this Lease.
- (b) A default in the payment of the rent and additional sums due under this Lease, or any part thereof, for a period of fifteen (15) days from the due date for the payment of such rent or additional sums.
- (c) A default in the performance of any other term, covenant or condition on the part of the LESSEE to be kept, performed or observed for a period of thirty (30) days after LESSOR gives to LESSEE a written notice specifying the particular default or defaults; provided, however, that any default on the part of LESSEE in the performance of work or acts required by him to be done, or conditions to be modified, shall be deemed to be cured if steps shall have been taken promptly by LESSEE to rectify the same and shall be prosecuted to completion with diligence and continuity.
- (d) The making by LESSEE of an assignment for the benefit of creditors, unless given written consent by LESSOR.
- (e) The appointment of a receiver by a court of competent jurisdiction for LESSEE's business.
- (f) The levy upon under execution or attachment by process of law of the leasehold interest of LESSEE in the Property if not cured within thirty (30) days.
- (g) The use of the Property or buildings and improvements thereon for purposes other than those enumerated herein, to which LESSOR has not given its written consent.
- (h) The abandonment of the Property by LESSEE.

14.02. LESSOR's Remedies. In the event of any default by LESSEE as recited in paragraph 14.01 of this Lease, LESSOR shall have all of the below enumerated rights and remedies, all in addition to any rights and remedies that LESSOR may be given by statute, common law or otherwise. All rights of LESSOR shall be cumulative, and none shall exclude any other right or remedy. LESSOR's rights and remedies include the following:

(a) LESSOR may declare the term of this Lease ended by written notice to LESSEE. Upon termination of this Lease, LESSEE shall surrender possession and vacate the Property immediately, and deliver possession thereof to LESSOR, and LESSEE hereby grants to LESSOR full and free license to enter into and upon the Property in such event with or without process of law and to repossess LESSOR of the Property and to expel or remove LESSEE and any others who may be occupying or within the Property and to remove any and all property therefrom, using such force as may be necessary, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing LESSOR's right to rent or any other right given to LESSOR hereunder or by operation of law. Subject to LESSEE'S rights under article XVII.

(b) LESSOR may by written notice declare LESSEE's right to possession of the Property terminated without terminating this Lease. Upon such termination of LESSEE's right to possession, LESSOR shall have all the rights to repossess the Property and remove LESSEE and LESSEE's property that are enumerated in paragraph 14.02(a), subject to LESSEE'S rights under Article XVII. Should LESSOR elect to terminate LESSEE'S right to possession without terminating this Lease, LESSEE shall have the right to re-possession upon cure of the default or upon written waive by the LESSOR of the default claimed.

(c) LESSOR may relet the Property in whole or in part for any period equal to or greater or less than the remainder of the term of this Lease, for any sum which LESSOR may deem reasonable, except as provided in (e) of this paragraph, subject to the applicable sections of Chapter 4.08 of The Valdez Municipal Code and LESSEE'S rights under Article XVII. Any sums collected shall be credited to any indebtedness of LESSEE pursuant to the conditions described in 14.02 (e) (ii).

(d) LESSOR may collect any and all rents due or to become due from subtenants or other occupants of the Property. Any sums collected shall be credited to any indebtedness of LESSEE pursuant to the conditions described in 14.02 (e) (ii) with any excess amounts being paid to LESSEE.

(e) LESSOR may recover, whether this Lease be terminated or not, from LESSEE, damages provided for below consisting of items (i), and (ii), or, in lieu of (ii), item (iii);

(i) actual attorney's fees and other expenses incurred by LESSOR by reason of the breach or default by LESSEE; and

(ii) an amount equal to the amount of all rent and additional sums reserved under this Lease, less the net rent, if any, collected by LESSOR on reletting the Property and less any amounts recovered from the sale of attached personal property or improvements on the Property, which shall be due and payable by LESSEE to LESSOR on the several days on which the rent and additional sums reserved in this Lease would have become due and payable; that is to say, upon each of such days

LESSEE shall pay to LESSOR the amount of deficiency then existing. Such net rent collected on reletting by LESSOR shall be computed by deducting from the gross rent collected all expenses incurred by LESSOR in connection with the reletting of the Property, or any part thereof, including broker's commission and the cost of removing any improvements made by LESSEE in order to return the property to its pre-rent condition, however, LESSOR must take diligent effort in reletting the Property to obtain a rental rate as close to or above that required of LESSEE under this Lease or else LESSOR will not have access to the remedy set out in this subparagraph 14.01(e)(ii); or

(iii) an amount to be due immediately on breach, equal to the difference between the rent and the fair and reasonable rental value of the Property for the same period. In the computation of such damages the difference between any installment of rent thereafter becoming due and the fair and reasonable value of the Property for the period for which such installment was payable shall be discounted to the date of such breach at the rate of eight percent (8%) per year.

(f) Reentry or reletting of the Property, or any part thereof, shall not be deemed a termination of this Lease, unless expressly declared to be so by LESSOR.

(g) If this Lease shall be deemed terminated, LESSEE's liabilities shall survive and LESSEE shall be liable for damages as provided in this paragraph 14.02.

#### XV - GENERAL PROVISIONS

15.01. Estoppel Certificates. Either party shall at any time and from time to time upon not less than thirty (30) days' prior written request by the other party, execute, acknowledge and deliver to such party, or to its designee, a statement in writing certifying that this Lease is unamended and in full force and effect (or, if there has been any amendment thereof, that the same is in full force and effect as amended and stating the amendment or amendments), that there are no defaults existing, (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the rent and other charges have been paid in advance.

15.02. Conditions and Covenants. All the provisions of this Lease shall be deemed as running with the land, and shall be construed to be "conditions" as well as "covenants", as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

15.03. No Waiver of Breach. No failure by either LESSOR or LESSEE to insist upon the strict performance by the other of any term, covenant or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such terms, covenants or conditions. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

15.04. Time of Essence. Time is of the essence of this Lease and of each provision.

15.05. Computation of Time. The time in which any act provided by this Lease is to be done is computed by excluding the first (1st) day and including the last, unless the last day is a Saturday, Sunday or a holiday, and then it is also excluded. The term "holiday" shall mean all holidays as defined by the statutes of Alaska.

15.06. Successors in Interest. Each and all of the terms, covenants and conditions in this Lease shall inure to the benefit of and shall be binding upon the successors in interest of LESSOR and LESSEE.

15.07. Entire Agreement. This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agreement, statement or promise made by any party which is not contained in this Lease shall be binding or valid.

15.08. Governing Law. This Lease shall be governed by, construed and enforced in accordance with the laws of the State of Alaska.

15.09. Partial Invalidity. If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated, unless such provisions are considered by LESSEE to be integral to LESSEE's use of the Property for the purposes stated herein in which case LESSEE will have the authority to terminate this Lease upon thirty (30) days' written notice to LESSOR.

15.10. Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between LESSOR and LESSEE; and neither the method of computation of rent, nor any other provision contained in this Lease nor any acts of the parties, shall be deemed to create any relationship between LESSOR and LESSEE other than the relationship of LESSOR and LESSEE.

15.11. Interpretation. The language in all parts of this Lease shall in all cases be simply construed according to its fair meaning and not for or against LESSOR or LESSEE as both LESSOR and LESSEE have had opportunity for the assistance of attorneys in drafting and reviewing this Lease.

15.12. Number and Gender. In this Lease, the neuter gender includes the masculine and the feminine, and the singular number includes the plural; the word "person" includes corporation, partnership, firm or association wherever the context so requires.

15.13. Mandatory and Permissive. "Shall", "will" and "agrees" are mandatory; "may" is permissive.

15.14. Captions. Captions of the paragraphs of this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

15.15. Amendment. This Lease is not subject to amendment except in writing executed by all parties hereto.

15.16. Delivery of Notices - Method and Time. All notices, demands or requests from one party to another shall be delivered in person or be sent by mail, certified or registered, postage prepaid, to the addresses stated in paragraph 15.17 and shall be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.

15.17. Notices. All notices, demands and requests from LESSEE to LESSOR shall be given to LESSOR at the following address:

City Manager  
City of Valdez  
P. O. Box 307  
Valdez, Alaska 99686

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

Terry Bertson, President  
Sea Hawk Seafoods, Inc.  
Fishermen's Center Bldg.  
1900 W. Nickerson Street #205  
Seattle, WA 98119

15.18. Change of Address or Agent. Each party shall have the right, from time to time, to designate a different address or different agent for service of process by notice given in conformity with paragraph 15.16.

15.19. Furnishing of Information. LESSEE shall provide LESSOR with copies of articles of incorporation and bylaws, partnership agreements, joint venture agreements or other documents which shall define the manner of organization and the ownership of any business or activities to be conducted upon the Property, together with all future amendments thereto. LESSEE and LESSEE'S assignee or sublessee shall also provide the same information regarding any assignee or sublessee of LESSEE.

15.20. Recordation. This Lease or a memorandum thereof may be recorded by LESSEE at LESSEE's expense with the Valdez Recorder's Office.

## XVI - LESSOR'S LIEN

16.01. LESSOR's Lien and Security Interest. LESSOR shall have a lien on, and LESSEE hereby grants LESSOR a security interest on, improvements, equipment and fixtures, which are or may be put on the premises by LESSEE, to secure the payment of the rent and additional sums reserved under this Lease. If LESSEE shall default in the payment of such rent, LESSOR may, at its option, without notice or demand, take possession of and sell such property in accordance with the Uniform Commercial Code of Alaska. LESSOR shall apply the proceeds of sale as follows:

- (a) To the expense of sale, including all costs, fees and expenses of LESSOR and LESSOR's reasonable attorney's fees in connection with such sale;
- (b) To the payment of such rent; and
- (c) The surplus, if any, to LESSEE.

## XVII - OWNERSHIP OF IMPROVEMENTS AND FIXTURES ON TERMINATION

17.01. LESSEE May Remove Improvements, Fixtures, Machinery and Equipment. Improvements, fixtures, machinery and equipment owned by LESSEE may be removed by LESSEE from the Property within sixty (60) days after the expiration or termination of this Lease; provided that such removal will not cause injury or damage to the Property, or if it does, LESSEE shall indemnify LESSOR for the full amount of such damage; and further provided that any improvements, fixtures, machinery or equipment left on the Property by LESSEE shall be in good, safe and tenable or operable condition; and further provided that LESSEE shall not commit, create, leave or allow to exist on the Property any nuisance or public nuisance. The LESSOR may extend the time for such removal in case hardship is shown to LESSOR's satisfaction, provided application for extension has been made in writing and received by LESSOR within said sixty (60) day period.

17.02. Property Not Removed. Any buildings, improvements, fixtures, machinery, equipment or other items of real or personal property, which are not removed from the Property within the time allowed in paragraph 17.01 of this Lease, shall immediately become the property of LESSOR and title thereto shall vest in LESSOR without further action on the part of LESSEE or LESSOR. LESSOR may use, sell, destroy, or otherwise dispose of any such property in any matter that it sees fit, without further obligation to LESSEE.

## XVIII - NONDISCRIMINATION

18.01. LESSEE Will Not Discriminate. LESSEE agrees that in its use and occupancy of the Property it will not, on the grounds of race, color, religion, national origin, ancestry, marital status, age, disability or sex, discriminate or permit discrimination against any prospective occupant, patron, customer, employee, applicant for employment or other person or group of persons in any manner prohibited by federal, state or local law or regulations promulgated thereunder.

## XIX - HAZARDOUS MATERIALS

19.01 Condition of Property. LESSEE has had full opportunity to visually examine the Property for the presence of any Hazardous Material. LESSOR states that it is unaware of any current or past problems with the Property. LESSEE acknowledges that LESSOR, its agents, authorized representatives or employees have made no representations as to the physical conditions of the Property, including but not limited to the subsurface and soil conditions. LESSEE accepts the Property in an "as is" condition. LESSEE does not accept or assume responsibility or liability for pre-existing subsurface and/or soil conditions, including, but not limited to Hazardous Materials and/or Environmental contamination that is unknown and/or undisclosed to LESSEE at the time of execution of this Lease.

19.02 Release of LESSOR. Any other provision of this Lease to the contrary notwithstanding, LESSEE releases LESSOR from any and all claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs or expenses (including, without limitation, a decrease in the value of the Property, damages due to loss or restriction of usable space, and attorneys' fees, court costs, litigation expenses, and consultant and expert fees) arising, during or after the term of this Lease, and resulting from LESSEE'S use, keeping, storage or disposal of Hazardous Material on the Property. This release includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or political subdivision or by law, relating to LESSEE'S use, keeping, storage or disposal of Hazardous Materials on the Property.

19.03. Use of Hazardous Materials on the Property.

- (a) LESSEE shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Property by LESSEE or its authorized representatives or invitees, except for such Hazardous Material as is necessary or useful to LESSEE's use of the Property.
- (b) Any Hazardous Material permitted on the Property as provided in this paragraph, and all containers therefor, shall be used, kept, stored and disposed of in a manner that complies with all laws or regulations applicable to any such Hazardous Material.
- (c) LESSEE shall not discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system or any body of water, if such material (as reasonably determined by the LESSOR, or any governmental authority) does or may, pollute or contaminate the same, or may adversely affect (a) the health, welfare or safety of persons, whether located on the Property or elsewhere, or (b) the condition, use or enjoyment of the Property or any other real or personal property.
- (d) LESSEE hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage and disposal of Hazardous Material kept on the Property by the LESSEE, its authorized representatives and invitees, and the LESSEE shall give immediate notice to

the LESSOR of any violation or potential violation of the provisions of subparagraphs 19.03 (a), (b) and (c).

19.04 Indemnification of Lessor. LESSEE agrees to forever protect, defend, indemnify and hold harmless LESSOR from and against any and all losses, claims, investigations, assertions, liens, demands and causes of action of every kind and character (including without limitation any assertions or claims made against LESSOR, LESSEE or third parties, by government agencies or third parties, alleging the release or threatened release of hazardous substances or environmental contamination of any kind on or in connection with the Property) and all costs thereof (including without limitation costs of removal action, remedial action, other "response costs" as that term is defined under applicable federal and state law, attorney's fees, penalties, damages, interest and administrative/court costs incurred by LESSOR in response to and defense of same) arising in favor of any party, including LESSOR, and arising from or connected with LESSEE'S activities under this LEASE or LESSEE'S use of or presence on the Property, whether such activities, use or presence are those of LESSEE or LESSEE'S agents, sub-contractors or other representatives. LESSEE acknowledges that this indemnification clause shall survive termination of this Lease, and that it applies regardless of the basis of liability alleged by or against any party, including strict liability under AS 46.03.822 or federal law. LESSEE'S obligations under this section may be discharged; however, by performance of whatever degree of site investigation for environmental contamination (in LESSOR'S sole discretion) is necessary to render the Property suitable for LESSOR to release LESSEE from these obligations, which release must be granted in writing by LESSOR.

19.05. Hazardous Material Defined. Hazardous Material/Substance is any substance which is toxic, ignitable, reactive, or corrosive and which is regulated by any local government, the State of Alaska, or the United States government. Hazardous Material includes any and all material or substances which are defined as "hazardous waste", "extremely hazardous waste" or a "hazardous substance" pursuant to local, state or federal law, including without limitation, the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder. "Hazardous Material" includes but is not restricted to asbestos, polychlorobiphenyls ("PCB's") and petroleum and petroleum products.

19.06. Liability for Releases. Liability of Releases/Threatened Releases of Hazardous Materials: LESSOR-LESSEE Relationship Confirmed LESSEE agrees that at all times while this Lease is in effect, for purposes of potential liability under AS 46.03.822:

- (1) LESSEE, not LESSOR, shall be deemed the owner of and person having control over any hazardous substances used by LESSEE or on the property for business reasons of LESSEE; and

- (2) LESSEE, not LESSOR, shall be deemed the owner of the possessory interest under this Lease, and the operator of the property as a facility under AS 46.03.822(a)(2); and
- (3) LESSEE, not LESSOR, shall be deemed the generator, transporter, or both, of any hazardous substances generated or transported by LESSEE in connection with the enjoyment of its rights under this Lease.

For purposes of this section, "LESSEE" shall include LESSEE's agents, employees, sub-contractors, subsidiaries, affiliates and representatives of any kind.

19.07 Compliance With Environmental Laws. Lessee covenants full compliance with any applicable federal, state or local environmental statute, regulation, or ordinance presently in effect or that may be amended or effective in the future, including without limitation:

AS 46.03.822

The Solid Waste Disposal Act, the Hazardous and Solid Waste Amendments of 1984, and the Federal Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. # 6901 et seq.

The Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. # 8591 et seq.

The Hazardous Materials Transportation Act

The Clean Air Act, 41 U.S.C. # 7401-7626

The Federal Water Pollution Control Act, and the Federal Clean Water Act, 33 U.S.C. # 1257 et seq.

The Federal Insecticide, Fungicide and Rodenticide Act, and the Federal Pesticide Act of 1978, 7 U.S.C. Paragraph 13 et seq.

The Toxic Substances Control Act (TSCA), 15 U.S.C. # 2601 et seq.

The Safe Drinking Water Act, 15 U.S.C. # 300 et seq.

The Alaska Environmental Conservation Act, AS 46.03 et seq.

The Alaska Oil Pollution Control Act, AS 46.04 et seq.

The Alaska Oil & Hazardous Substance Release Act, AS 46.08 et seq.

The Alaska Hazardous Substance Release Control Act, AS 46.09 et seq.

Valdez City Code

The Coastal Zone Management Act and the Valdez CMP

MSHA and OSHA

At LESSOR's recommendation, LESSEE has investigated the Property for potential environmental contamination, which may have occurred before the date of this Lease; LESSEE accepts the Property in its current environmental condition. After such investigation, LESSEE agrees that the Property:

- (a) has not been subject to the use, generation, manufacture, storage, treatment, disposal, release or threatened release of hazardous substances.
- (b) has not been subject to any actual or threatened assertions, claims or litigation of any kind by government agencies or other persons relating to such matters.

LESSEE authorizes LESSOR to enter upon the Property to make such inspections and tests as LESSOR may deem appropriate to determine compliance with this Lease; any such investigations or tests shall be for LESSOR's purposes only, and shall not be construed to create any responsibility or liability on LESSOR's part to LESSEE or any person.

LESSEE hereby releases and freely waives any future claims against LESSOR for contribution or indemnity (whether under AS 46.03.822, other state law, or federal law) in the event LESSEE incurs or becomes liable for response costs, damages or costs of any kind because of the release, threatened release or presence of hazardous substances on or about the Property.

LESSEE specifically agrees to report all releases, threatened releases, discharges, spills or disposal of hazardous substances, in whatever quantity, immediately to the appropriate regulatory authorities and simultaneously to LESSOR, and to keep LESSOR fully informed of any communication between LESSEE and any person or agency concerning potential environmental contamination and hazardous substances.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the dates hereinbelow set forth.

LESSOR:

CITY OF VALDEZ

Date: Nov. 6, 2002

By: *Bert L. Cottle*  
Bert L. Cottle, Mayor



Attest: *Carmel M. Dygman*, Deputy for:  
Sheri Pierce, City Clerk

LESSEE:  
Sea Hawk Seafoods, Inc.

Date: 10/21/02

By: *T. Robertson*

APPROVED AS TO FORM:

WALKER, WALKER & ASSOCIATES  
Attorneys for City of Valdez

By: *William M. Walker*  
William M. Walker

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 21<sup>st</sup> day of October, 2002, before me, the undersigned, a Notary Public in and for the State of ~~Alaska~~, <sup>Washington</sup> personally appeared TR Bertson, known to me and to me known to be the individual named in and who executed the foregoing document, as his free and voluntary act for the uses and purposes therein set forth.

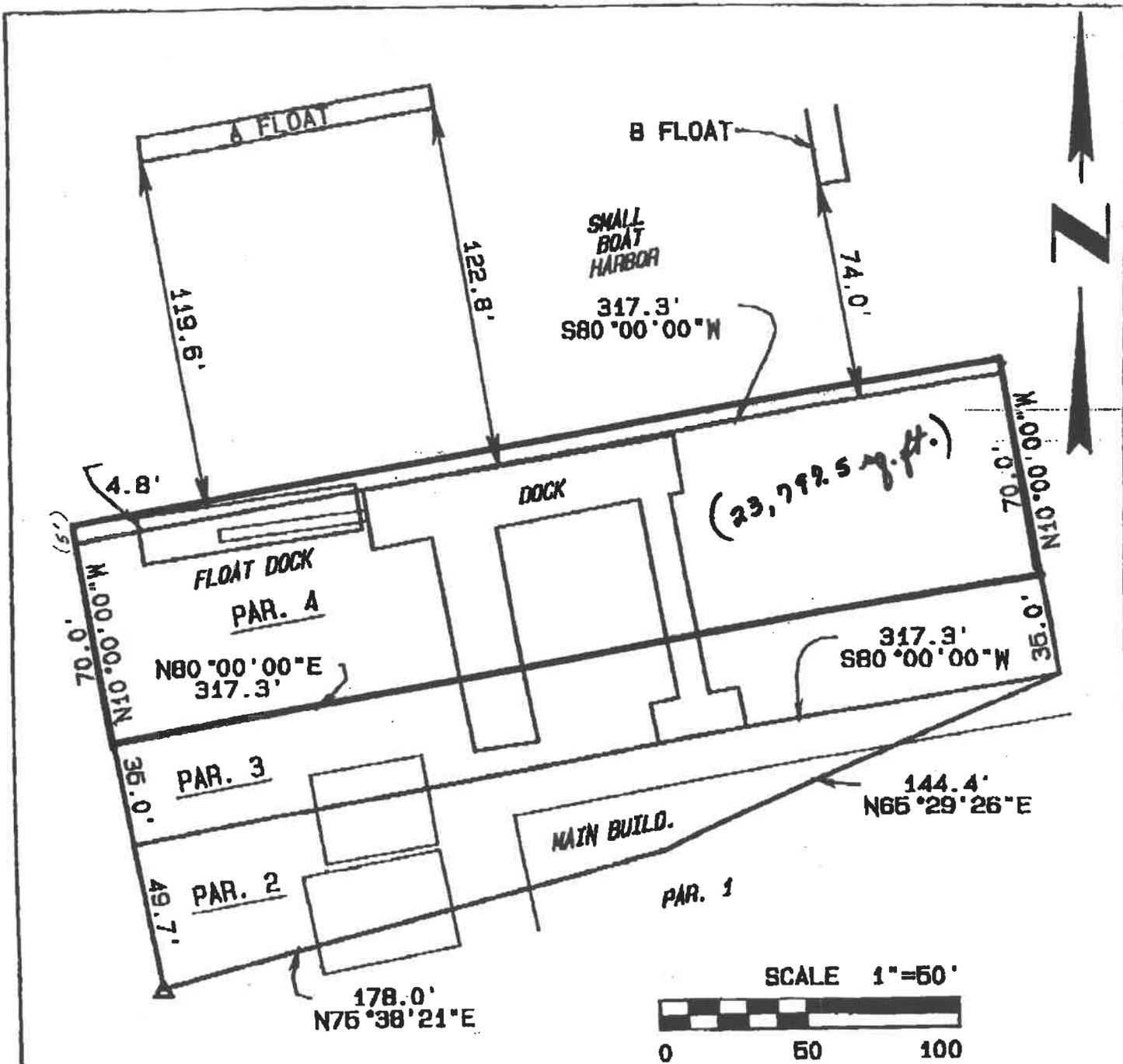
WITNESS my hand and notarial seal the day and year first hereinabove written.



Kathleen M Petruzzelli  
Notary Public in and for ~~Alaska~~ <sup>Washington</sup> &  
My Commission Expires: 1-30-05

**EXHIBIT A**

See attached map!



REF: PLAT #86-4 VALDEZ RECORDING DISTRICT.



SEAHAWK LEASE  
 ASBUILT PARCELS 2, 3, & 4.

DATE OF SURVEY SEPT. 17, 2000

PREPARED FOR: ALAN SORUM, HARBORMASTER  
 PO BOX 307  
 VALDEZ, ALASKA 99686

Nicole:

This confirms that we intend to renew the lease, utilizing the renewal option, with the City of Valdez related to Parcel 4 of USS 495 Tidelands, consisting of 23,797.5 square feet. This is the 2<sup>nd</sup> of 6 five-year renewal options under the lease. This option period will run from December 1, 2018 through November 30, 2023.

I understand that the renewal will be presented to the City Council for approval at the Council's next scheduled meeting on Tuesday, September 18, 2018 at 7:00 pm.

Please let me know if you need anything else from Silver Bay to move forward with the renewal.

Kind regards,  
Joe Misenti

Joe Misenti | Silver Bay Seafoods LLC  
General Counsel  
4039 21<sup>st</sup> Ave. W, Suite 201 | Seattle, WA 98199  
Direct: 206.693.3158 ext. 33  
Cell: 206.384.8081  
Email: [joe.misenti@silverbayseafoods.com](mailto:joe.misenti@silverbayseafoods.com) | Website: [www.silverbayseafoods.com](http://www.silverbayseafoods.com)





**LEASE AMENDMENT NO. 3**  
**CITY OF VALDEZ**  
**AND**  
**SILVER BAY SEAFOODS, LLC**

THIS LEASE AMENDMENT NO. 3 is made between the City of Valdez, a municipal corporation organized under the laws of the State of Alaska whose address is P.O. Box 307, Valdez, Alaska 99686 is hereinafter referred to as LESSOR, and, Silver Bay Seafoods, LLC, whose address is 208 Lake Street, Suite 2E, Sitka, Alaska 99835 hereinafter referred to as LESSEE.

WHEREAS, the City of Valdez entered into a lease for Parcel 4, 23,797.5 square foot portion of USS 495 Tidelands, with Sea Hawk Seafoods, Inc. on November 6, 2002 for twelve (12) years, commencing on December 1, 2001 and ending on the last day of November, 2013 with six (6) five (5) year renewal options; and

WHEREAS, Resolution #09-39, dated August 12, 2009, where the Valdez City Council approved an assignment of leasehold interest from the Sea Hawk Seafoods to PS Acquisitions; and

WHEREAS, a Special Warranty Deed date January 20,2010 and recorded January 28, 2010, Document No. 2010-000067-0 of the Valdez Recording District by Northern Reach Seafoods (Grantor), formerly known as PS Acquisition, LLC grants and conveys to Silver Bay Seafoods, LLC all of the Grantor's right, title and interest in real property; and

WHEREAS, Resolution #10-05, dated February 1, 2010, where the Valdez City Council approved assignment of leasehold interest for Parcel 4, USS 495 Tidelands from PS Acquisition, LLC to Silver Bay Seafoods, LLC; and

WHEREAS, Resolution #13-59, dated November 25<sup>th</sup>, 2013, where the Valdez City Council authorized the City Manager or his designee to negotiate lease renewal option one (1) of six (6) five (5) year options to renew; and

WHEREAS, Lease Amendment No. 2, dated December 27<sup>th</sup>, 2013, was signed and executed exercising the first of six (6) five (5) year renewal options commencing December 1, 2013 and ending the last day of November 2018; and

WHEREAS, Silver Bay Seafoods, LLC has approached Community Development staff with intention to exercise the second of six (6), five (5) year renewal options; and

WHEREAS, the Lease is scheduled to expire on the last day of November, 2018 with four (4) five (5) year options to renew remaining; and

WHEREAS, Valdez Municipal Code 4.08.100 states that the LESSEE “shall be required to pay for any and all survey, appraisal or other costs incurred in connection with the application and lease process.”

NOW, THEREFORE, LESSOR and LESSEE agree as follows:

Section 1. The City Council of the City of Valdez, Alaska authorizes Amendment No. 3 of the Lease with Silver Bay Seafoods, LLC, authorizing the City Manager or her designee to negotiate said lease renewal exercising lease renewal option number two (2) of six (6) five (5) year options to renew for the period commencing December 1, 2018 and ending the last day of November 2023.

Section 2. Paragraph 1.05 of the Lease dated December 1st, 2001 between the City of Valdez and Silver Bay Seafoods, LLC for a Parcel 4, a 23,797.5 square foot portion of USS 495 Tidelands is amended as follows:

“The LESSEE is responsible for paying the cost of appraisal of the Property for the purposes of determining fair rental value.”

Section 3. All other terms, covenants, and conditions of said lease, and amendments, shall remain in full force and effect.

Section 4. This resolution goes into effect immediately upon passage and approval.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of this 2nd day of October, 2018

LESSOR:

CITY OF VALDEZ

An Alaskan Municipal Corporation

By: \_\_\_\_\_  
Jeremy O'Neil, Mayor

Attest: \_\_\_\_\_  
Sheri L. Pierce, MMC, City Clerk

LESSEE:

Silver Bay Seafoods, LLC

By: \_\_\_\_\_  
Larsen Mettler, Chief Financial Officer

APPROVED AS TO FORM:

BRENA, BELL AND CLARKSON  
Attorneys for City of Valdez

By: \_\_\_\_\_  
Jake W. Staser



## Legislation Text

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**File #:** 18-0336, **Version:** 1

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**ITEM TITLE:**

Discussion Item: Lease Amendment No. 3 for a Lease with Peter Pan Seafoods, Inc. for a 39,376 square foot Portion of USS 495 Tidelands.

**SUBMITTED BY:** Nicole LeRoy, Planning Technician

**FISCAL NOTES:**

Expenditure Required: N/A  
Unencumbered Balance: N/A  
Funding Source: N/A

**RECOMMENDATION:**

File and save

**SUMMARY STATEMENT:**

In December of 2001, the City of Valdez entered into a lease for a 39,376 square foot portion of USS 495 Tidelands, with Peter Pan Seafoods, Inc. on October 1, 2002 for twelve years, commencing on December 1, 2001 and ending on the last day of November, 2013 with six five-year renewal options.

In December of 2013, Lease Amendment No. 2 was signed and executed exercising the first of six five-year renewal options December 1, 2013 and ending the last day of November 2018.

The lease is set to expire in November of 2018 and Peter Pan Seafoods, Inc. approached Community Development staff with the intention to exercise their second of six five-year renewal options, extending the lease to the last day of November 2023.

Valdez Municipal Code 4.08.100 states that the LESSEE "shall be required to pay for any and all survey, appraisal or other costs incurred in connection with the application and lease process."

Paragraph 1.05 of the Lease states there is no appraisal fee to be paid by the Lessee under the lease. This is in violation of Valdez Municipal Code 4.08.100 which requires that the Lessee bear such costs.

Council approval will authorize the City Manager or her designee to negotiate said lease renewal exercising renewal option number two of six five-year options for the period commencing December 1, 2018 and ending the last day of November 2023. It will also amend Paragraph 1.05 of the Lease to require the Lessee to pay for appraisals required under the lease for the purposes of determining fair rental value. All other terms, covenants, and conditions of said lease, and amendments, shall remain in full force and effect.

Pending Council approval, Community Development staff will work with the City Attorney and Peter Pan

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**File #:** 18-0336, **Version:** 1

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Seafoods, Inc. to execute Lease Amendment No. 3 detailing the terms above.

TIDELANDS LEASE

THIS LEASE is made this 1<sup>ST</sup> day of OCTOBER, 2002, between the CITY OF VALDEZ, a municipal corporation organized under the laws of the State of Alaska, whose address is P.O. Box 307, Valdez, Alaska 99686 hereinafter referred to as "LESSOR", and Peter Pan Seafoods, Inc. (a corporation) whose address is 2200 Sixth Avenue, Suite 1000 Seattle, Washington 98121-1820, hereinafter referred to as "LESSEE".

LESSOR and LESSEE agree as follows:

I – PROPERTY

1.01. Property. LESSOR leases to LESSEE and LESSEE leases from LESSOR the property outlined in red in Exhibit "A" attached hereto, it being described as:

39,376 sq. ft, a Portion of USS 495 Tidelands  
(See Exhibit A)

(hereinafter referred to as the "Property"), for the term, the rent, and subject to the covenants and conditions hereinafter provided.

1.02. Quiet Enjoyment, Restrictions, Easements, Etc. LESSOR covenants and agrees that LESSEE, upon paying the rent and other charges herein provided for and observing and keeping the covenants, conditions and terms of this Lease on LESSEE's part to be kept or performed, shall lawfully and quietly hold, occupy and enjoy the Property during the term of this Lease without hindrance or molestation, subject, however, to the rights and reservations expressed in the U. S. Patent to the Property, the State of Alaska Patent to the Property, existing easements for roads, gas, electric, water, sewer and other utility lines, restrictions of record and to encroachments ascertained by physical inspection of the Property.

1.03. Property Accepted "As Is". LESSEE acknowledges that it has inspected the Property and accepts the same "as is" and without reliance on any representations or warranties of LESSOR, its agents, servants, or employees, as to the physical condition of the Property, including, but not limited to, subsurface and soil conditions, or as to its fitness or habitability or for any particular purpose, or otherwise.

1.04. No Subsurface Rights. This Lease confers no mineral rights or rights with regard to the subsurface of the land below the level necessary for the use of the Property as stated in this Lease. LESSOR makes no warranty or representation, as whether the Property is open or closed to mineral claims or leases under state or federal law.

1.05 Appraisal. There is no appraisal fee.

1.06 Survey. Not required.

## II - TERM

2.01. Lease Term. The term of this Lease shall be twelve (12) years, commencing on December 1, 2001, and ending on the last day of November, 2013, with 6 five-year options to renew.

2.02 Preference Rights to Re-Lease. LESSEE shall upon expiration of this lease be allowed a preference right to re-lease the Property if all of the other factors are substantially equivalent and; provided the LESSEE is not in breach or default of any of the terms or conditions of the Lease, unless it shall be determined by LESSOR that the renewal of such lease is not in the best interests of LESSOR. LESSOR'S request to re-lease will not be unreasonably withheld.

2.03. Application to Re-lease. If, at the expiration of this Lease, the LESSEE desires to re-lease the Property, LESSEE shall, not sooner than ninety calendar days and not later than sixty calendar days prior to the expiration, make application to re-lease the Property. The re-lease application shall certify the character and value of all improvements placed by LESSEE on the Property, the purpose and lengths for which the re-lease is desired, and any other information that LESSOR may require. Applications to re-lease shall be submitted to the same application review as new applications for lease, pursuant to Sec. 14.04 of the Valdez City Code as may be amended from time to time.

2.04. Hold-Over. If LESSEE shall holdover after the expiration of the term of this Lease such tenancy shall be from month to month, subject to all the terms, covenants and conditions of this Lease.

2.05. Surrender of Possession. Upon expiration of the term of this Lease, whether by lapse of time or otherwise, LESSEE shall promptly and peaceably surrender the Property, and all buildings and improvements thereon, except as provided in Article XVII of this Lease, and LESSEE agrees to execute, acknowledge and deliver to LESSOR a proper instrument in writing, releasing and quitclaiming to LESSOR all right, title and interest of LESSEE in and to the Property and all such improvements thereon.

## III - RENT, TAXES, ASSESSMENTS AND UTILITIES

3.01. Rent. The LESSEE agrees to pay to LESSOR an annual rent of ten percent (10%) of the appraised value of the Property, with equal monthly installment payments to be made not later than the first day of each month. Rent for any partial year shall be prorated at the rate of 1/12th of the annual rent per month or portion thereof. For the first five (5) years, the appraised value is agreed to be **Twenty-three Thousand Six Hundred Twenty-five dollars (\$23,625.00)** resulting in an annual rent of **Two Thousand Three Hundred Sixty-two Dollars and fifty cents (\$2362.50)** per year. Rent shall be payable at the office of the City Manager, P. O. Box 307, Valdez, Alaska, 99686,

or at such other place as LESSOR may designate in writing. Delinquent rent shall bear interest at the maximum rate of interest allowed per annum.

3.02 Adjustment of Rent. The Property will be reappraised and the annual rent accordingly adjusted every five (5) years during the term of this Lease. Such appraisal will be based on the value of the Property and shall not include the value of buildings or improvements placed on the Property by LESSEE. The appraised value of the Property for the purposes of determining the annual rental shall be the most recent tax assessment valuation according to the tax rolls of the City of Valdez. In no event, however, shall the annual rent be less than the original annual rent set forth in paragraph 3.01. Nothing in this paragraph shall prevent the annual reassessment of the leased premises for tax purposes to determine its true value as provided by law.

3.03. LESSEE to Pay Taxes. LESSEE agrees to pay prior to delinquency and directly to the taxing authorities in which the Property is located all real property taxes levied or assessed upon or against the Property and improvements thereon during the term of this Lease. LESSEE further agrees to pay prior to delinquency and directly to the taxing authorities in which the Property is located all personal property taxes on personal property situated on the Property and placed thereon by LESSEE, its agents, authorized representatives, or employees. LESSEE further agrees to pay prior to delinquency any other taxes for which it may be liable. LESSEE shall, within thirty (30) days after any such tax, assessment or other charge, whether or not constituting a lien on the Property, shall become due and payable, produce and exhibit to LESSOR satisfactory evidence or payment thereof.

3.04. LESSEE to Pay Assessments. LESSEE during the term of this Lease agrees to pay directly to the public authorities charged with collection thereof any and all assessments levied on the Property for any part or all of the costs of any public work or improvement assessed according to benefit found by the levying authority to accrue therefrom to the Property, provided, however, that if an option is given to pay such assessment(s) in installments, LESSEE may elect to pay the same in installments, and in such case LESSEE shall be liable only for such installments as shall accrue during the term of this Lease. LESSOR warrants and represents that there are currently no outstanding assessments levied on the Property for any part or all of the cost of any public work or improvement constructed by LESSOR.

3.05. Proration of Taxes and Assessments. If LESSEE's obligation to pay taxes or assessments commences or ends during a tax year, such obligation shall be prorated between LESSOR and LESSEE.

3.06. Contest. LESSEE shall have the right to contest any taxes or assessments, which LESSEE is obligated to pay under paragraphs 3.03 or 3.04 of this Lease. Such proceedings shall, if instituted, be conducted promptly at LESSEE's own expense and free from all expense to LESSOR. Before instituting any such proceedings, LESSEE shall pay under protest any such taxes or assessments, or shall furnish to LESSOR a surety bond written by a company acceptable to LESSOR or other security acceptable to LESSOR, sufficient to cover the amount of such taxes or assessments, with interest for the period which such proceedings may reasonably be expected to take, and costs,

securing the payment of such taxes or assessments, interest and costs in connection therewith when finally determined. Notwithstanding the furnishing of any such bond or security, LESSEE shall pay any such taxes or assessments at least thirty (30) days before the time when the Property or any part thereof, might be forfeited. The proceedings referred to in this paragraph 3.06 shall include appropriate appeals from any order or judgments therein, but all such proceedings shall be begun as soon as reasonably possible after the imposition or assessment of any such taxes or assessments and shall be prosecuted to final adjudication promptly. In the event of any reduction, cancellation or discharge, LESSEE shall pay the amount that shall be finally levied or assessed against the Property or adjudicated to be due and payable, and, if there shall be any refund payable by the governmental authority with respect thereto, LESSEE shall be entitled to receive and retain the same, subject, however, to apportionment as provided in paragraph 3.05 of this Lease. LESSOR, at LESSOR's option, may, but shall not be obligated to, at LESSOR's own expense contest any such taxes or assessments, which shall not be contested as set forth above, and, unless LESSEE shall promptly join with LESSOR in such contest and pay all costs and attorneys fees of LESSOR therein, LESSOR shall be entitled to receive and retain any refund payable by any governmental authority with respect thereof.

3.07. LESSEE to Pay Utility Charges. LESSEE shall pay or cause to be paid all charges for gas, oil, electricity, water, sewer, heat, snow removal, refuse removal and any and all other utilities or services used upon the Property throughout the term of this Lease, including any connection fees.

3.08. Additional Rent and LESSOR's Right to Cure LESSEE's Default. All costs and expenses which LESSEE assumes or agrees to pay pursuant to this Lease shall, at LESSOR's election, be treated as additional rent, and, in the event of nonpayment, LESSOR shall have all rights and remedies provided in this Lease in the case of nonpayment of rent or of a breach of condition, at LESSOR's election. If LESSEE shall default in making any payment required to be made by LESSEE or shall default in performance of any term, covenant or condition of this Lease on the part of LESSEE to be kept, performed or observed which shall involve the expenditure of money by LESSEE, LESSOR at LESSOR's option may, but shall not be obligated to, make such payment, or, on behalf of LESSEE, expend such sum as may be necessary to keep, perform or observe such term, covenant or condition, and any and all sums so expended by LESSOR, with interest thereon at the maximum allowable rate of interest per year from the date of such expenditure until repaid, shall be, and shall be deemed to be, additional rent and shall be repaid by LESSEE to LESSOR, on demand, provided, however, that no such payment or expenditure by LESSOR shall be deemed a waiver of LESSEE's default, nor shall it affect any remedy of LESSOR by reason of such default.

#### IV - USE

4.01. Use. LESSEE acknowledges that the Property is being leased for a dock to be used for fish processing related business and that the property be used only for those purposes. Vessel traffic at the dock is allowed only in conjunction activities related to fish processing so long as such traffic at the dock does not interfere with the safe movement of traffic in the small boat harbor. Should a vessel be moored at LESSEE's dock that extends beyond said lease area, and LESSOR

deems the location of the vessel is an impediment to other vessel navigation in the Small Boat Harbor, LESSOR may require LESSEE to remove the vessel. LESSEE shall not conduct any illegal activities on the Property or maintain any nuisances on the Property.

## V – IMPROVEMENTS

5.01. Notice of Construction. **No improvements may be made to the property without first obtaining a permit from the Alaska Corps of Engineers and any other permits required by other city, state and/or federal agencies.** After obtaining the appropriate permits, LESSEE shall give LESSOR no less than five (5) days written notice prior to the commencement of any construction, alteration or repair requiring a building permit of any improvements constructed or made by LESSEE on the Property so that LESSOR may, if it so elects, give notice of nonresponsibility pursuant to AS 34.35, as enacted or hereafter amended.

5.02. Development Requirements. At a minimum, LESSEE must operate a dock in conjunction with the leased premises. Any development, intent to develop or use of the Property by LESSEE that is not in concert with the use of the Property as outlined in Section 4.01 must be approved by the LESSOR and may constitute grounds for termination of this Lease, or cause a new lease to be negotiated between LESSEE and LESSOR.

5.03. LESSEE’S Ownership of Buildings and Improvements. It is expressly understood and agreed that any and all buildings and improvements of any nature whatsoever constructed or maintained on the Property by LESSEE shall be and remain the property of LESSEE and may be removed or replaced by LESSEE at any time during the term of this Lease, subject, however, to paragraph 17.01 of this lease.

5.04 Construction Prerequisites. No construction shall be commenced unless the following events have occurred:

- (a) LESSEE shall furnish to LESSOR certificates of insurance in the amounts and for the purposes specified in Article X.
- (b) LESSEE shall from time to time deliver to LESSOR satisfactory proof that worker’s compensation insurance has been procured to cover all persons employed in connection with the construction. Notice of any deficiency in this area to LESSEE will be cured immediately and no work will be performed on the project until the LESSOR has satisfactory proof that proper worker’s compensation insurance is in place.
- (c) LESSEE shall obtain all necessary city, state, federal or other required building permits.

## VI - TRADE FIXTURES

6.01. LESSEE's Ownership of Trade Fixtures, Machinery and Equipment. It is expressly understood and agreed that any and all trade fixtures (including electrical fixtures), machinery, equipment of any nature whatsoever and other personal property of LESSEE at any time placed or maintained upon the Property by LESSEE shall be and remain property of the LESSEE and may be removed or replaced at any time during the term of this Lease.

## VII - ASSIGNMENT AND SUBLETTING

7.01. Assignment Without Consent Generally Prohibited. LESSEE shall not voluntarily assign or encumber its interest in this Lease or in the Property, or sublet all or any part of the Property, or allow any other person or entity (except LESSEE's authorized representatives) to occupy or use all or any part of the Property without first obtaining LESSOR's consent. Any assignment, encumbrance or sublease without LESSOR's consent shall be voidable and, at LESSOR's election, shall constitute default. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph. If LESSEE is a partnership, a withdrawal or change, voluntary, involuntary or by operation of law, of any partner or partners owning fifty percent (50%) or more of the partnership, or the dissolution of the partnership, shall be deemed a voluntary assignment. If LESSEE is a corporation, any dissolution, merger, consolidation or other reorganization of LESSEE, or the sale or other transfer of a controlling percentage of the capital stock of LESSEE, or the sale of fifty-one percent (51%) of the value of the assets of LESSEE, shall be deemed a voluntary assignment. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least fifty-one percent (51%) of the total combined voting power of all classes of LESSEE's capital stock issued, outstanding and entitled to vote for the election of directors. As to a corporation the stock of which is traded through an exchange or over the counter, a sale or other transfer of a controlling percentage of the capital stock of such a LESSEE corporation will not be deemed to be a voluntary assignment. Any assignment affected pursuant to this paragraph 7.01 shall require the assignee to assume the Lessee's obligations hereunder. LESSEE shall promptly deliver to LESSOR a copy of any assignment instrument. Any assignment shall not release the Lessee from liability hereunder. LESSOR'S consent of assignment will not be unreasonably withheld.

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

7.03. Costs of LESSOR's Consent to Be Borne by LESSEE. LESSEE agrees to pay to LESSOR, on demand, reasonable costs, including attorney's fees, incurred by LESSOR in connection with any request by LESSEE for LESSOR to consent to any assignment or subletting by LESSEE.

## VIII - LIENS

8.01. Prohibition of Liens. LESSEE shall not suffer or permit any liens, including without limitation, mechanic's or materialman's liens, to be recorded against the Property. If any such liens shall be recorded against the Property, LESSEE shall cause the same to be removed, or, in the alternative, if LESSEE in good faith desires to contest the same, LESSEE shall be privileged to do so, but in such case LESSEE hereby agrees to indemnify and save LESSOR harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure of such liens, cause the same to be discharged and removed prior to any attempt at execution of such judgment. Nothing contained in this Lease shall be construed to be a waiver of the provisions of A.S 09.38.015(c), as may be amended from time to time.

## IX - INDEMNITY

9.01. Indemnity. Except for claims arising solely out of acts or omissions of LESSOR, its agents, authorized representatives, employees or contractors, LESSEE agrees to protect, defend, indemnify and hold LESSOR harmless from and against any and all liability arising from acts or omissions of any person and of any nature whatsoever occurring on or relating to the Property, causing injury to, or death of persons, or loss of, or damage to, property, and from any expense, including attorneys fees, incident to the defense of and by LESSOR therefrom. If any action or proceeding is brought against LESSOR by reason of any such occurrences, LESSOR shall promptly notify LESSEE in writing of such action or proceeding.

## X - INSURANCE

10.01. Liability Insurance. LESSEE, during the term of this Lease, shall carry at its expense comprehensive general liability insurance covering the Property in an amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit to protect against liability for personal injury, death or property damage which might arise from the construction occupancy or use of the Property and the operations conducted on it. Said insurance shall insure performance by LESSEE of the indemnity provisions of paragraph 9.01. LESSOR may increase the amount of insurance required at five (5) year intervals. LESSOR agrees that any such increase shall be reasonable.

10.02. Named Insured, Notice to LESSOR, and Waiver of Subrogation. All insurance policies required to be maintained by LESSEE under paragraph 10.01 shall name LESSOR, and its officers, employees and agents, as additional insured. All policies issued under paragraph 10.01 shall contain an agreement by the insurers that such policies shall not be canceled without at least twenty (20) days' prior written notice to LESSOR, and certificates or copies of all such insurance policies shall be furnished to LESSOR promptly after the issuance thereof. All policies issued under paragraph 10.01 shall contain a waiver of any subrogation rights any insurer might have against LESSOR.

10.03. Fire and Extended Coverage Insurance. LESSEE may at its own expense and in its own name obtain insurance against loss or damage by fire and such other risks as it determines to cover equipment, inventory, fixtures, personal property and by LESSEE subsequent to LESSEE's taking possession of the Property under this Lease.

## XI - CARE OF PROPERTY

11.01. Care of the Property. LESSEE at its own cost and expense shall keep the Property and all buildings and improvements, which at any time may be situated, thereon in good condition and repair during the term of this Lease, ordinary wear and tear excepted. The Property shall always be kept by LESSEE neat, clean and free of litter. Vehicles, equipment, supplies, materials or other items of personal property shall be stored on the property in a neat, orderly, and safe manner. LESSOR reserves the right to cause LESSEE to change the manner of storage if potential for hazard or public nuisance is found. Nothing in this subsection shall prevent the temporary placement of building materials and equipment necessary for the construction of the structures identified in the Lease in the areas where the structures are to be constructed, nor shall this section be applicable to general parking for guests and employees.

11.02 Restoration or Removal of Damaged Buildings and Improvements. In the event any buildings or improvements situated on the Property by LESSEE are damaged or destroyed by fire or other casualty, LESSEE shall at LESSEE'S expense restore the same to good and tenantable conditions or shall remove the same as soon as is reasonably possible, but in no event shall the period of restoration exceed eighteen (18) months nor shall the period of removal exceed forth-five (45) days.

11.03. Access Rights of LESSOR. LESSOR, its agents, authorized representatives or employees, shall have the right to enter into and upon the Property and all buildings or improvements situated thereon upon 24 hour notice to LESSEE and during normal business hours (defined as 9:00 a.m. to 5:00 p.m. Monday through Friday except for holidays as defined in paragraph 15.05 of this Lease) for the purpose of inspecting the Property and all buildings or improvements situated thereon for compliance with the terms of this Lease.

11.04. Nuisances Prohibited. LESSEE shall immediately remove from the Property any abandoned or junk vehicles, improvements, equipment, machinery or fixtures. LESSEE shall not permit any nuisance or public nuisance to exist or to be created or maintained on the Property. LESSEE agrees that any nuisance or public nuisance as defined by the Valdez City Code, or any other code or regulations incorporated therein or otherwise adopted by ordinance or resolution of the City of Valdez, may, after five (5) days written notice to LESSEE, be removed by LESSOR without LESSEE's further permission, with use of force if necessary, and without incurring any civil or criminal liability therefor, all the costs of such removal to be paid by LESSEE to LESSOR as additional rent under the terms of this Lease. This paragraph shall not be construed as any limitation

on any other legal rights or remedies available to the City of Valdez to abate any nuisance or to prosecute any violation of the Valdez City Code.

## XII - LAWS

12.01. Compliance with Laws. LESSEE shall comply with all applicable laws, ordinances and regulations of duly constituted public authorities now or hereafter in any manner affecting LESSEE's activities on the Property or any buildings or other improvements which may be situated thereon, whether or not any such laws, ordinances or regulations which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same.

## XIII - CONDEMNATION

13.01. Condemnation. In the event the Property, or any part thereof or interest therein, shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of LESSOR and LESSEE in the award or consideration for such transfer and the effect of the taking or transfer upon this Lease shall be as provided in this Paragraph 13.

13.02. Total Taking. If all of the Property is taken or so transferred, this Lease and all the right, title and interest thereunder of LESSEE shall cease on the date title to the Property vests in the condemning authority. Subject to the removal provisions in Article XVII if applicable.

13.03. Partial Taking - Termination of Lease. In the event the taking or transfer of part of the Property leaves the remainder of the Property in such location, or in such form, shape or reduced size, or so inaccessible as to be not effectively and practicably usable in the opinion of LESSEE for the purpose of operation thereon of LESSEE's business, then this Lease and all of the right, title and interest thereunder of LESSEE shall cease on the date title to the Property vests in the condemning authority, and the condemning authority enters into possession. Subject to the removal provisions of Article XVII if applicable.

13.04. Partial Taking - Continuation of Lease. In the event the taking or transfer of a part of the Property leaves the remainder of the Property in such location and in such form, shape or size, or so accessible as to be effectively and practicably unusable in the opinion of LESSEE for the purpose of operation thereon of LESSEE's business, this Lease shall terminate and end as to the portion of the Property so taken or transferred as of the date title to such portion vests in the condemning authority and the condemning authority enters into possession, but shall continue in full force and effect as to the portion of the Property not so taken or transferred. If there is a partial taking and this Lease is not terminated, then the annual rent payable under this Lease shall abate for the portion of the Property taken in the proportion that such portion bears to all of the Property.

13.05. Compensation. Compensation received or payable as a result of eminent domain proceedings or a transfer in lieu thereof shall belong to LESSOR, if such compensation be awarded or

paid as compensation for diminution in value of the leasehold or of the fee, and LESSEE shall make no claim against LESSOR for damages for termination of the leasehold or interference with LESSEE's business unless LESSOR is the condemning authority or responsible for the condemnation.

Compensation received or payable as a result of eminent domain proceedings or a transfer in lieu thereof shall belong to LESSEE, if such compensation be awarded or paid as compensation for LESSEE'S moving expenses, for interference with LESSEE'S business, and for damages relating to any trade fixtures, machinery or equipment owned the LESSEE. Upon award each party shall be responsible for a pro-rata share of the attorney's fees incurred in direct proportion to the total amount recovered for their respective losses.

#### XIV - DEFAULT

14.01. Default. Each of the following events shall be deemed an event of default by the LESSEE under this Lease and a breach of the terms, covenants and conditions of this Lease:

- (a) Failure to perform as required and when required any of the development requirements contained in paragraph 5.02 of this Lease.
- (b) A default in the payment of the rent and additional sums due under this Lease, or any part thereof, for a period of fifteen (15) days from the due date for the payment of such rent or additional sums.
- (c) A default in the performance of any other term, covenant or condition on the part of the LESSEE to be kept, performed or observed for a period of thirty (30) days after LESSOR gives to LESSEE a written notice specifying the particular default or defaults; provided, however, that any default on the part of LESSEE in the performance of work or acts required by him to be done, or conditions to be modified, shall be deemed to be cured if steps shall have been taken promptly by LESSEE to rectify the same and shall be prosecuted to completion with diligence and continuity.
- (d) The making by LESSEE of an assignment for the benefit of creditors, unless given written consent by LESSOR.
- (e) The appointment of a receiver by a court of competent jurisdiction for LESSEE's business.
- (f) The levy upon under execution or attachment by process of law of the leasehold interest of LESSEE in the Property if not cured within thirty (30) days.
- (g) The use of the Property or buildings and improvements thereon for purposes other than those enumerated herein, to which LESSOR has not given its written consent.
- (h) The abandonment of the Property by LESSEE.

14.02. LESSOR's Remedies. In the event of any default by LESSEE as recited in paragraph 14.01 of this Lease, LESSOR shall have all of the below enumerated rights and remedies, all in addition to any rights and remedies that LESSOR may be given by statute, common law or otherwise. All rights of LESSOR shall be cumulative, and none shall exclude any other right or remedy. LESSOR's rights and remedies include the following:

(a) LESSOR may declare the term of this Lease ended by written notice to LESSEE. Upon termination of this Lease, LESSEE shall surrender possession and vacate the Property immediately, and deliver possession thereof to LESSOR, and LESSEE hereby grants to LESSOR full and free license to enter into and upon the Property in such event with or without process of law and to repossess LESSOR of the Property and to expel or remove LESSEE and any others who may be occupying or within the Property and to remove any and all property therefrom, using such force as may be necessary, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing LESSOR's right to rent or any other right given to LESSOR hereunder or by operation of law. Subject to LESSEE'S rights under article XVII.

(b) LESSOR may by written notice declare LESSEE's right to possession of the Property terminated without terminating this Lease. Upon such termination of LESSEE's right to possession, LESSOR shall have all the rights to repossess the Property and remove LESSEE and LESSEE's property that are enumerated in paragraph 14.02(a), subject to LESSEE'S rights under Article XVII. Should LESSOR elect to terminate LESSEE'S right to possession without terminating this Lease, LESSEE shall have the right to re-possession upon cure of the default or upon written waive by the LESSOR of the default claimed.

(c) LESSOR may relet the Property in whole or in part for any period equal to or greater or less than the remainder of the term of this Lease, for any sum which LESSOR may deem reasonable, except as provided in (e) of this paragraph, subject to the applicable sections of Chapter 4.08 of The Valdez Municipal Code and LESSEE'S rights under Article XVII. Any sums collected shall be credited to any indebtedness of LESSEE pursuant to the conditions described in 14.02 (e) (ii).

(d) LESSOR may collect any and all rents due or to become due from subtenants or other occupants of the Property. Any sums collected shall be credited to any indebtedness of LESSEE pursuant to the conditions described in 14.02 (e) (ii) with any excess amounts being paid to LESSEE.

(e) LESSOR may recover, whether this Lease be terminated or not, from LESSEE, damages provided for below consisting of items (i), and (ii), or, in lieu of (ii), item (iii);

(i) actual attorney's fees and other expenses incurred by LESSOR by reason of the breach or default by LESSEE; and

(ii) an amount equal to the amount of all rent and additional sums reserved under this Lease, less the net rent, if any, collected by LESSOR on reletting the Property and less any amounts recovered from the sale of attached personal property or improvements on the Property, which shall be due and payable by LESSEE to LESSOR on the several days on which the rent and additional sums reserved in this Lease would have become due and payable; that is to say, upon each of such days LESSEE shall pay to LESSOR the amount of deficiency then existing. Such net rent collected on reletting by LESSOR shall be computed by deducting from the gross rent collected all expenses incurred by LESSOR in connection with the reletting of the Property, or any part thereof, including broker's commission and the cost of removing any improvements made by LESSEE in order to return the property to its pre-rent condition, however, LESSOR must take diligent effort in reletting the Property to obtain a rental rate as close to or above that required of LESSEE under this Lease or else LESSOR will not have access to the remedy set out in this subparagraph 14.01(e)(ii); or

(iii) an amount to be due immediately on breach, equal to the difference between the rent and the fair and reasonable rental value of the Property for the same period. In the computation of such damages the difference between any installment of rent thereafter becoming due and the fair and reasonable value of the Property for the period for which such installment was payable shall be discounted to the date of such breach at the rate of eight percent (8%) per year.

(f) Reentry or reletting of the Property, or any part thereof, shall not be deemed a termination of this Lease, unless expressly declared to be so by LESSOR.

(g) If this Lease shall be deemed terminated, LESSEE's liabilities shall survive and LESSEE shall be liable for damages as provided in this paragraph 14.02.

#### XV - GENERAL PROVISIONS

15.01. Estoppel Certificates. Either party shall at any time and from time to time upon not less than thirty (30) days' prior written request by the other party, execute, acknowledge and deliver to such party, or to its designee, a statement in writing certifying that this Lease is unamended and in full force and effect (or, if there has been any amendment thereof, that the same is in full force and effect as amended and stating the amendment or amendments), that there are no defaults existing, (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the rent and other charges have been paid in advance.

15.02. Conditions and Covenants. All the provisions of this Lease shall be deemed as running with the land, and shall be construed to be "conditions" as well as "covenants", as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

15.03. No Waiver of Breach. No failure by either LESSOR or LESSEE to insist upon the strict performance by the other of any term, covenant or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such terms, covenants or conditions. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

15.04. Time of Essence. Time is of the essence of this Lease and of each provision.

15.05. Computation of Time. The time in which any act provided by this Lease is to be done is computed by excluding the first (1st) day and including the last, unless the last day is a Saturday, Sunday or a holiday, and then it is also excluded. The term "holiday" shall mean all holidays as defined by the statutes of Alaska.

15.06. Successors in Interest. Each and all of the terms, covenants and conditions in this Lease shall inure to the benefit of and shall be binding upon the successors in interest of LESSOR and LESSEE.

15.07. Entire Agreement. This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agreement, statement or promise made by any party which is not contained in this Lease shall be binding or valid.

15.08. Governing Law. This Lease shall be governed by, construed and enforced in accordance with the laws of the State of Alaska.

15.09. Partial Invalidity. If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated, unless such provisions are considered by LESSEE to be integral to LESSEE's use of the Property for the purposes stated herein in which case LESSEE will have the authority to terminate this Lease upon thirty (30) days' written notice to LESSOR.

15.10. Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between LESSOR and LESSEE; and neither the method of computation of rent, nor any other provision contained in this Lease nor any acts of the parties, shall be deemed to create any relationship between LESSOR and LESSEE other than the relationship of LESSOR and LESSEE.

15.11. Interpretation. The language in all parts of this Lease shall in all cases be simply construed according to its fair meaning and not for or against LESSOR or LESSEE as both LESSOR and LESSEE have had opportunity for the assistance of attorneys in drafting and reviewing this Lease.

15.12. Number and Gender. In this Lease, the neuter gender includes the masculine and the feminine, and the singular number includes the plural; the word "person" includes corporation, partnership, firm or association wherever the context so requires.

15.13. Mandatory and Permissive. "Shall", "will" and "agrees" are mandatory; "may" is permissive.

15.14. Captions. Captions of the paragraphs of this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

15.15. Amendment. This Lease is not subject to amendment except in writing executed by all parties hereto.

15.16. Delivery of Notices - Method and Time. All notices, demands or requests from one party to another shall be delivered in person or be sent by mail, certified or registered, postage prepaid, to the addresses stated in paragraph 15.17 and shall be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.

15.17. Notices. All notices, demands and requests from LESSEE to LESSOR shall be given to LESSOR at the following address:

City Manager  
City of Valdez  
P. O. Box 307  
Valdez, Alaska 99686

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

Peter Pan Seafoods, Inc.  
2200 Sixth Avenue, Suite 1000  
Seattle, Washington 98121-1820

15.18. Change of Address or Agent. Each party shall have the right, from time to time, to designate a different address or different agent for service of process by notice given in conformity with paragraph 15.16.

15.19. Furnishing of Information. LESSEE shall provide LESSOR with copies of articles of incorporation and bylaws, partnership agreements, joint venture agreements or other documents which shall define the manner of organization and the ownership of any business or activities to be conducted upon the Property, together with all future amendments thereto. LESSEE and LESSEE'S assignee or sublessee shall also provide the same information regarding any assignee or sublessee of LESSEE.

15.20. Recordation. This Lease or a memorandum thereof may be recorded by LESSEE at LESSEE's expense with the Valdez Recorder's Office.

#### XVI - LESSOR'S LIEN

16.01. LESSOR's Lien and Security Interest. LESSOR shall have a lien on, and LESSEE hereby grants LESSOR a security interest on, improvements, equipment and fixtures, which are or may be put on the premises by LESSEE, to secure the payment of the rent and additional sums reserved under this Lease. If LESSEE shall default in the payment of such rent, LESSOR may, at its option, without notice or demand, take possession of and sell such property in accordance with the Uniform Commercial Code of Alaska. LESSOR shall apply the proceeds of sale as follows:

- (a) To the expense of sale, including all costs, fees and expenses of LESSOR and LESSOR's reasonable attorney's fees in connection with such sale;
- (b) To the payment of such rent; and
- (c) The surplus, if any, to LESSEE.

#### XVII - OWNERSHIP OF IMPROVEMENTS AND FIXTURES ON TERMINATION

17.01. LESSEE May Remove Improvements, Fixtures, Machinery and Equipment. Improvements, fixtures, machinery and equipment owned by LESSEE may be removed by LESSEE from the Property within sixty (60) days after the expiration or termination of this Lease; provided that such removal will not cause injury or damage to the Property, or if it does, LESSEE shall indemnify LESSOR for the full amount of such damage; and further provided that any improvements, fixtures, machinery or equipment left on the Property by LESSEE shall be in good, safe and tenable or operable condition; and further provided that LESSEE shall not commit, create, leave or allow to exist on the Property any nuisance or public nuisance. The LESSOR may extend the time for such removal in case hardship is shown to LESSOR's satisfaction, provided application for extension has been made in writing and received by LESSOR within said sixty (60) day period.

17.02. Property Not Removed. Any buildings, improvements, fixtures, machinery, equipment or other items of real or personal property, which are not removed from the Property within the time allowed in paragraph 17.01 of this Lease, shall immediately become the property of LESSOR and title thereto shall vest in LESSOR without further action on the part of LESSEE or LESSOR. LESSOR may use, sell, destroy, or otherwise dispose of any such property in any matter that it sees fit, without further obligation to LESSEE.

#### XVIII - NONDISCRIMINATION

18.01. LESSEE Will Not Discriminate. LESSEE agrees that in its use and occupancy of the Property it will not, on the grounds of race, color, religion, national origin, ancestry, marital status, age, disability or sex, discriminate or permit discrimination against any prospective occupant, patron,

customer, employee, applicant for employment or other person or group of persons in any manner prohibited by federal, state or local law or regulations promulgated thereunder.

### XIX - HAZARDOUS MATERIALS

19.01 Condition of Property. LESSEE has had full opportunity to visually examine the Property for the presence of any Hazardous Material. LESSOR states that it is unaware of any current or past problems with the Property. LESSEE acknowledges that LESSOR, its agents, authorized representatives or employees have made no representations as to the physical conditions of the Property, including but not limited to the subsurface and soil conditions. LESSEE accepts the Property in an "as is" condition. LESSEE does not accept or assume responsibility or liability for pre-existing subsurface and/or soil conditions, including, but not limited to Hazardous Materials and/or Environmental contamination that is unknown and/or undisclosed to LESSEE at the time of execution of this Lease.

19.02 Release of LESSOR. Any other provision of this Lease to the contrary notwithstanding, LESSEE releases LESSOR from any and all claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs or expenses (including, without limitation, a decrease in the value of the Property, damages due to loss or restriction of usable space, and attorneys' fees, court costs, litigation expenses, and consultant and expert fees) arising, during or after the term of this Lease, and resulting from LESSEE'S use, keeping, storage or disposal of Hazardous Material on the Property. This release includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or political subdivision or by law, relating to LESSEE'S use, keeping, storage or disposal of Hazardous Materials on the Property.

19.03. Use of Hazardous Materials on the Property.

(a) LESSEE shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Property by LESSEE or its authorized representatives or invitees, except for such Hazardous Material as is necessary or useful to LESSEE's use of the Property.

(b) Any Hazardous Material permitted on the Property as provided in this paragraph, and all containers therefor, shall be used, kept, stored and disposed of in a manner that complies with all laws or regulations applicable to any such Hazardous Material.

(c) LESSEE shall not discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system or any body of water, if such material (as reasonably determined by the LESSOR, or any governmental authority) does or may, pollute or contaminate the same, or may adversely affect (a) the health, welfare or safety of persons, whether located on the Property or elsewhere, or (b) the condition, use or enjoyment of the Property or any other real or personal property.

(d) LESSEE hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage and disposal of Hazardous Material kept on the Property by the LESSEE, its authorized representatives and invitees, and the LESSEE shall give immediate notice to the LESSOR of any violation or potential violation of the provisions of subparagraphs 19.03 (a), (b) and (c).

19.04 Indemnification of Lessor. LESSEE agrees to forever protect, defend, indemnify and hold harmless LESSOR from and against any and all losses, claims, investigations, assertions, liens, demands and causes of action of every kind and character (including without limitation any assertions or claims made against LESSOR, LESSEE or third parties, by government agencies or third parties, alleging the release or threatened release of hazardous substances or environmental contamination of any kind on or in connection with the Property) and all costs thereof (including without limitation costs of removal action, remedial action, other "response costs" as that term is defined under applicable federal and state law, attorney's fees, penalties, damages, interest and administrative/court costs incurred by LESSOR in response to and defense of same) arising in favor of any party, including LESSOR, and arising from or connected with LESSEE'S activities under this LEASE or LESSEE'S use of or presence on the Property, whether such activities, use or presence are those of LESSEE or LESSEE'S agents, sub-contractors or other representatives. LESSEE acknowledges that this indemnification clause shall survive termination of this Lease, and that it applies regardless of the basis of liability alleged by or against any party, including strict liability under AS 46.03.822 or federal law. LESSEE'S obligations under this section may be discharged; however, by performance of whatever degree of site investigation for environmental contamination (in LESSOR'S sole discretion) is necessary to render the Property suitable for LESSOR to release LESSEE from these obligations, which release must be granted in writing by LESSOR.

19.05. Hazardous Material Defined. Hazardous Material/Substance is any substance which is toxic, ignitable, reactive, or corrosive and which is regulated by any local government, the State of Alaska, or the United States government. Hazardous Material includes any and all material or substances which are defined as "hazardous waste", "extremely hazardous waste" or a "hazardous substance" pursuant to local, state or federal law, including without limitation, the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder. "Hazardous Material" includes but is not restricted to asbestos, polychlorobiphenyls ("PCB's") and petroleum and petroleum products.

19.06. Liability for Releases. Liability of Releases/Threatened Releases of Hazardous Materials: LESSOR-LESSEE Relationship Confirmed LESSEE agrees that at all times while this Lease is in effect, for purposes of potential liability under AS 46.03.822:

- (1) LESSEE, not LESSOR, shall be deemed the owner of and person having control over any hazardous substances used by LESSEE or on the property for business reasons of LESSEE; and

- (2) LESSEE, not LESSOR, shall be deemed the owner of the possessory interest under this Lease, and the operator of the property as a facility under AS 46.03.822(a)(2); and
- (3) LESSEE, not LESSOR, shall be deemed the generator, transporter, or both, of any hazardous substances generated or transported by LESSEE in connection with the enjoyment of its rights under this Lease.

For purposes of this section, "LESSEE" shall include LESSEE's agents, employees, sub-contractors, subsidiaries, affiliates and representatives of any kind.

19.07 Compliance With Environmental Laws. Lessee covenants full compliance with any applicable federal, state or local environmental statute, regulation, or ordinance presently in effect or that may be amended or effective in the future, including without limitation:

AS 46.03.822

The Solid Waste Disposal Act, the Hazardous and Solid Waste Amendments of 1984, and the Federal Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. # 6901 et seq.

The Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. # 8591 et seq.

The Hazardous Materials Transportation Act

The Clean Air Act, 41 U.S.C. # 7401-7626

The Federal Water Pollution Control Act, and the Federal Clean Water Act, 33 U.S.C. # 1257 et seq.

The Federal Insecticide, Fungicide and Rodenticide Act, and the Federal Pesticide Act of 1978, 7 U.S.C. Paragraph 13 et seq.

The Toxic Substances Control Act (TSCA), 15 U.S.C. # 2601 et seq.

The Safe Drinking Water Act, 15 U.S.C. # 300 et seq.

The Alaska Environmental Conservation Act, AS 46.03 et seq.

The Alaska Oil Pollution Control Act, AS 46.04 et seq.

The Alaska Oil & Hazardous Substance Release Act, AS 46.08 et seq.

The Alaska Hazardous Substance Release Control Act, AS 46.09 et seq.

Valdez City Code

The Coastal Zone Management Act and the Valdez CMP

MSHA and OSHA

At LESSOR's recommendation, LESSEE has investigated the Property for potential environmental contamination, which may have occurred before the date of this Lease; LESSEE accepts the Property in its current environmental condition. After such investigation, LESSEE agrees that the Property:

- (a) has not been subject to the use, generation, manufacture, storage, treatment, disposal, release or threatened release of hazardous substances.
- (b) has not been subject to any actual or threatened assertions, claims or litigation of any kind by government agencies or other persons relating to such matters.

LESSEE authorizes LESSOR to enter upon the Property to make such inspections and tests, as LESSOR may deem appropriate to determine compliance with this Lease; any such investigations or tests shall be for LESSOR's purposes only, and shall not be construed to create any responsibility or liability on LESSOR's part to LESSEE or any person.

LESSEE hereby releases and freely waives any future claims against LESSOR for contribution or indemnity (whether under AS 46.03.822, other state law, or federal law) in the event LESSEE incurs or becomes liable for response costs, damages or costs of any kind because of the release, threatened release or presence of hazardous substances on or about the Property.

LESSEE specifically agrees to report all releases, threatened releases, discharges, spills or disposal of hazardous substances, in whatever quantity, immediately to the appropriate regulatory authorities and simultaneously to LESSOR, and to keep LESSOR fully informed of any communication between LESSEE and any person or agency concerning potential environmental contamination and hazardous substances.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the dates hereinbelow set forth.

LESSOR:

CITY OF VALDEZ

Date: 10/10/02

By:   
Bert L. Cottle, Mayor

Attest:   
Sheri Pierce, City Clerk

LESSEE:  
Peter Pan Seafoods, Inc.

Date: Oct. 1, 2002

By: 

APPROVED AS TO FORM:  
  
WALKER, WALKER & ASSOCIATES  
Attorneys for City of Valdez

By:   
William M. Walker

STATE OF ~~ALASKA~~ <sup>Washington</sup> )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 1st day of October, 2002, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Clyde Sterling, known to me and to me known to be the individual named in and who executed the foregoing document, as his free and voluntary act for the uses and purposes therein set forth.

WITNESS my hand and notarial seal the day and year first hereinabove written.

Mary Lee Hazel  
Notary Public in and for Alaska Washington  
My Commission Expires: April 10, 2003



**EXHIBIT A**

See attached map!





September 1<sup>st</sup>, 2018

3015 112TH AVENUE NE, SUITE 100  
BELLEVUE, WA 98004-8001  
206.728.6000  
OPERATION FAX 206.441.9090  
SALES FAX 206.728.1855

Nicole Leroy  
Planning Technician  
City of Valdez, AK  
212 Chenega Ave.  
Valdez, AK 99686

**RE: Renewal of Lease between the City of Valdez and Peter Pan Seafoods for a 39,376 sq. ft. portion of US 495 tidelands.**

Peter Pan Seafoods, Inc. currently has multiple long term property leases with the City of Valdez for its seafood processing operations. In addition, we have a short term (5 years) lease on a 39,376 sq. ft. portion of US495 tideland that expires November 30, 2018. This is described as: 39,376 sq. ft. a portion of US 495 tideland. As of this writing we are requesting to exercise renewal option 2 of 6, 5 year option to renew the lease spanning from December 1<sup>st</sup>, 2018 to November 30<sup>th</sup>, 2023.

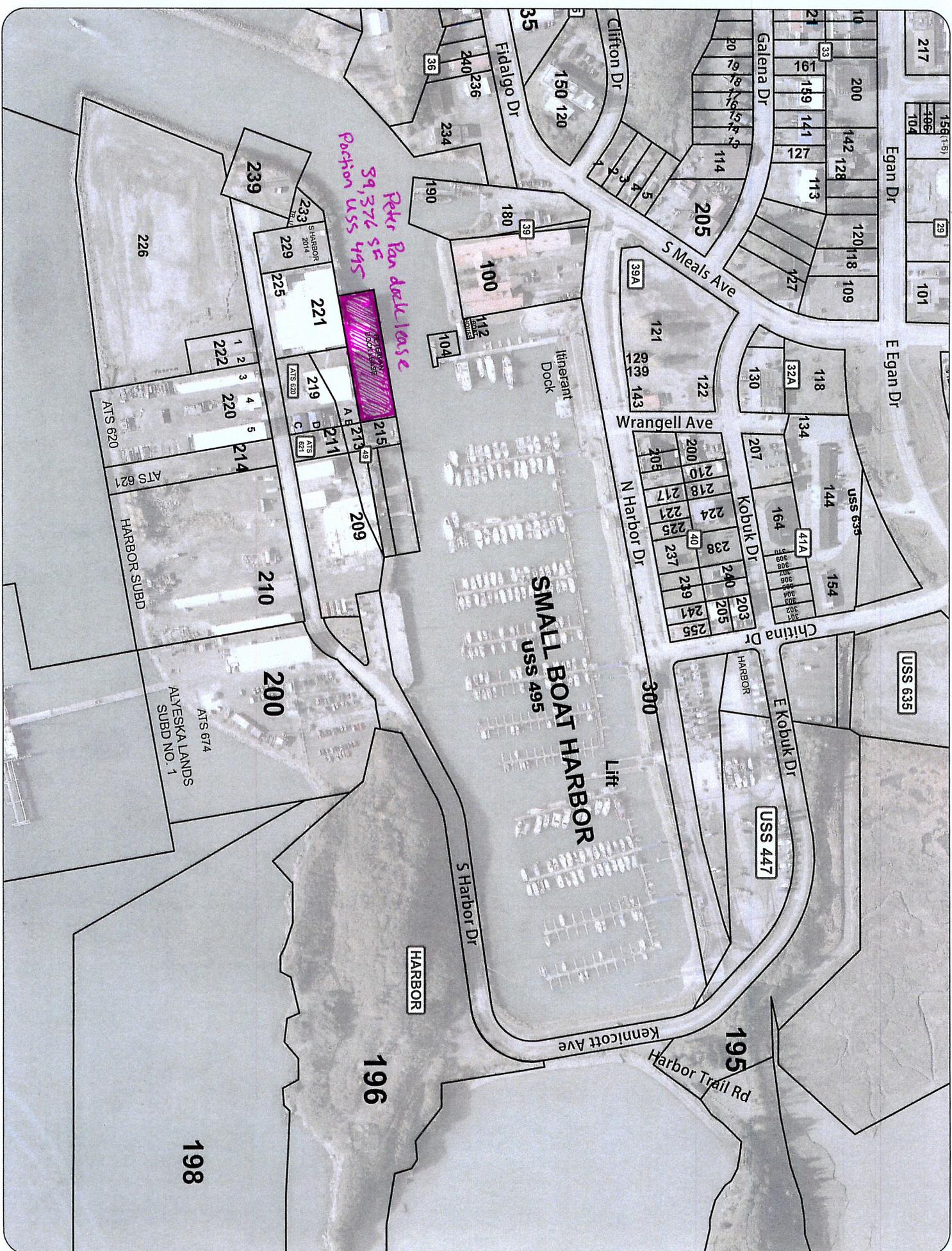
The tideland lease was originally put in place to provide us with an area to provide vessel moorage at the existing floating dock. This activity has been consistent throughout the term of the lease and we anticipate it continuing into the future. In addition, this property is attractive to us as the best location to provide this opportunity to our fleet.

I am confident that we have been good stewards of the property and have complied with all conditions laid out in the current lease. We still have a strong interest in acquiring a long-term lease on this site to match up with our other properties leased from the City if that is at all possible. Thank you for your consideration and as always, I look forward to working with you and the City on this.

Sincerely,

A handwritten signature in black ink, appearing to read "Colby Boulton". The signature is fluid and cursive, with a large initial "C" and "B".

**Colby Boulton**  
*Plant Manager*  
*Peter Pan Seafoods, Inc*  
*Cell (425) 418-7437*  
*Valdez (907) 835-2080*  
*Fax (206) 770-2686*  
*[www.ppsf.com](http://www.ppsf.com)*



SMALL BOAT HARBOR  
 USS 495

USS 447

USS 635

USS 634

USS 633

USS 632

USS 631

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**LEASE AMENDMENT NO.3**  
**CITY OF VALDEZ**  
**AND**  
**PETER PAN SEAFOODS, INC**

THIS LEASE AMENDMENT NO. 3 is made between the City of Valdez, a municipal corporation organized under the laws of the State of Alaska whose address is P.O. Box 307, Valdez, Alaska 99686 is hereinafter referred to as LESSOR, and, Peter Pan Seafoods, Inc. whose address is 220 6<sup>th</sup> Ave., Seattle, Washington 98121-1820 hereinafter referred to as LESSEE.

WHEREAS, the City of Valdez entered into a lease for a 39,376 square foot portion of USS 495 Tidelands with Peter Pan Seafoods, Inc. on October 1, 2002 for twelve (12) years, commencing on December 1, 2001 and ending on the last day of November, 2013 with six (6) five (5) year renewal options; and

WHEREAS, a Memorandum of Lease for Recordation was executed on January 28, 2004, Document No. 2004-000-100-0 of the Valdez Recording District; and

WHEREAS, Lease Amendment No. 1, dated September 18, 2012, was signed and recorded amending language in Section 3.02 Adjustment of Rent; and

WHEREAS, Lease Amendment No. 2, dated November 20, 2013 was signed and executed exercising the first of six (6) five (5) year renewal options commencing December 1, 2013 and ending the last day of November 2018; and

WHEREAS, the lease is set to expire the last day of November, 2018 with an additional five (5), five (5) year renewal options; and

WHEREAS, Peter Pan Seafoods, Inc. has approached Community Development staff with intention to exercise the second of six (6), five (5) year renewal options; and

WHEREAS, Valdez Municipal Code 4.08.100 states that the LESSEE "shall be required to pay for any and all survey, appraisal or other costs incurred in connection with the application and lease process."

NOW, THEREFORE, LESSOR and LESSEE agree as follows:

Section 1. The City Council of the City of Valdez, Alaska authorizes Amendment No. 3 of the Lease with Peter Pan Seafoods, Inc., authorizing the City Manager or her designee to negotiate said lease renewal exercising renewal option number two (2) of six (6) five (5) year options for the period commencing December 1, 2018 and ending the last day of November 2023.

Section 2. Paragraph 1.05 of the lease dated October 1st, 2002 between the City of Valdez and Peter Pan Seafoods, LLC for approximately 39,376 square foot portion of USS 495 Tidelands is amended as follows:

“The LESSEE is responsible for paying the cost of appraisal of the Property for the purposes of determining fair rental value.”

Section 3. All other terms, covenants, and conditions of said lease, and amendments, shall remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of this 2nd day of October 2018.

LESSOR:

CITY OF VALDEZ

An Alaskan Municipal Corporation

By: \_\_\_\_\_  
Jeremy O’Neil, Mayor

Attest: \_\_\_\_\_  
Sheri L. Pierce, MMC, City Clerk

LESSEE:

Peter Pan Seafoods, Inc.

By: \_\_\_\_\_  
Barry D. Collier, President/CEO

APPROVED AS TO FORM:

BRENA, BELL AND CLARKSON  
Attorneys for City of Valdez

By: \_\_\_\_\_  
Jake W. Staser



Legislation Text

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**File #:** 18-0337, **Version:** 1

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**ITEM TITLE:**

Ports & Harbor Staff Report - Forwarded to City Council

**SUBMITTED BY:** Jenessa Ables, Port Operations Manager

**FISCAL NOTES:**

Expenditure Required: N/A

Unencumbered Balance: N/A

Funding Source: N/A

**RECOMMENDATION:**

Receive and file.

**SUMMARY STATEMENT:**

**Attached:**

- Ports & Harbor Director and Staff Report
- RFQ Comprehensive Waterfront Master Plan *and Addendum 1*
- Old Town Abandoned Equipment Letter and Photos

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# Ports & Harbor Director and Staff Report

September 28, 2018

*© Jeremy Talbott*

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## General

### Comprehensive Waterfront Master Plan RFQ (Attached)

- Posted Sept. 19<sup>th</sup>
- Closing Oct. 15<sup>th</sup>

### Ports & Harbors Budget

- Submitted to City Finance Department for review. Sept. 14<sup>th</sup>
- Reviewed by City Manager Sept. 25<sup>th</sup>
- City Council Discussion October 31<sup>st</sup>

## Port Operations

- Twice annual munitions move was completed September 25. Thank you to stevedores, Port staff and Police Department for their professionalism and service throughout this operation.
- Port is continuing to hone public outreach efforts regarding 2019 cruise ship schedule.

## Port Projects

- VCT Security Gate project is still ongoing. Permanent fencing will go in October 3<sup>rd</sup> and IT is working to convert the user database as seamlessly as possible.
- Capital Facilities will be putting the Kelsey Dock re-decking project out to bid shortly.
- The Port of Valdez has been awarded federal Port Security Grant Program funding in the amount of \$326,000+ for security cameras at the Valdez Container Terminal and John Thomas Kelsey Municipal Dock and uplands. The grant requires a 25% match of City funds and will appear on a City Council agenda in October for finalization. The project is slated to take place in 2019 and must be complete by September 1, 2020.

## Port Ransomware 2018

- 
- VCT TWIC registration is still out of commission. Estimated date of recovery not yet provided by IT.
  - Port is still operating without billing software and has no visibility of customer account information. For a handful of customers in dire need, invoices are being created in Word Document software and then will need to be re-entered and reconciled in billing software once up and running.
  - Port still does not have any access to files, including subleases, operating agreements, historical drawings, or other reference materials. Please be patient.
  - Port lost all Outlook Contact information during the ransomware event and it will not be recovered. In the event any issue appears unaddressed, please reach out to staff with contact info.
  - Port Maintenance is still operating without computers, hindering documentation and coordination efforts. Port Administrative Assistant is working diligently to compile maintenance statistics and costs for presentation to City Council during budget review.

### Port Travel & Training

- Jeremy and Jenessa will be attending the Alaska Travel Industry Association convention in Fairbanks October 8-11 where Viking, Holland America, and other cruise lines will be in attendance.
- Jenessa will be attending her final training with the International Association of Maritime Port Executives October 17-18. Completion provides certificate of Accredited Maritime Port Executive.

### Harbor Operations

- Harbor is starting to ramp down for the season. However, with the weather having been so nice this past month, we still do see people out using the launch ramp and cleaning fish.
- Winterization of the Harbor is on schedule. The water will likely be turned off at the Tour Dock and H-K Floats by October 15.
- Our upland yard is starting to fill up for winter storage and we still have about 10 boats that have yet to haul out for the season.

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## Harbor Ransomware 2018

- Harbor re-iterates Port information regarding operating without billing software. We do not have access to customer account information but are in the slow process of transferring all customer billing to word documents to hopefully have July and August's billing out by the end of September/early October. All of our customers have been very understanding, but we know we need to get invoicing out so no one is hit with the last 6 months on top of annual moorage in January. We are hopeful to have new marine software up and running no later than the end of November. (At least we finally have computers to work from!!)
- Harbor as well as the Port still does not have any access to files or other reference materials and the same applies to our Outlook Contact information.

## Harbor Travel & Training

- Jeremy Attended the Pacific Coast Congress of Harbormasters and Port Administrators Conference in Homer, Alaska Sept. 10<sup>th</sup> - 14<sup>th</sup>.
- AJ will be attending the annual AAHPA (Alaska Association of Harbormasters & Port Administrators) conference in Seward from Oct. 8-12.
- Sarah will be out of the office from Oct. 16-27<sup>th</sup>. Please contact her prior to this should you need anything before her absence.

## Harbor Construction

- New Harbor is coming along nicely. If you haven't been over to see some of the newly installed floats, please schedule with myself, Jeremy and Ron for a tour.
- On September 26th, we did the final walk through for the upland buildings. Nate Duvall, Ron Rozak, Stan Porritt, Dave (F&W Representative), Jay Yunker, Jeremy Talbott and myself were all present. After all was said and done, we gave the contractors back a punch list of about two dozen corrective actions that needed to take place. If you would like specifics on those items, please let Jeremy or myself know.



# City of Valdez

## Request for Qualifications

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**Date: September 19, 2018**

**Project: Comprehensive Waterfront Master Plan**

**Project Number: 18-PH002**

### Overview

*The purpose of this document is to solicit qualifications from professional consultants to develop project engineering, economic feasibility, conceptual plans, cost estimating, and related professional services for the development of a Comprehensive Waterfront Master Plan for the City of Valdez.*

*Primary areas of focus and detail will include;*

- *The existing Small Boat Harbor uplands*
- *North Harbor Drive*
- *New Commercial Boat Harbor Uplands.*
- *Sea Otter Property at the end of South Harbor Drive.*
- *The Valdez Container Terminal*
- *The old Valdez Town Site.*
- *Economic feasibility for a Marine Industrial Trade Park, and Marine Dry Stacking Facility*

*Recognizing often-times competing interests between industry, and tourism or between long-time residents, newcomers, and tourists, the selected firm will be challenged through the master planning process, to balance said interests for the betterment and long-term viability of the community.*

*Through the master planning process, the City seeks to identify opportunities to improve commercial fisheries and other water-dependent use so industries that currently exist on the waterfront area may continue and expand into the future; encourage uses and activities enhancing the Valdez waterfront. The City seeks to enhance the pedestrian and bicycle connectivity of the waterfront to the City's other distinct commercial area - downtown main streets.*

### **Project Goals**

*The Waterfront Master Plan will support the vision and implementation strategies from community, staff, and stakeholder input. Additionally, the finished project will include an Action Plan with strategies to achieve said priorities.*

*The Waterfront master plan shall examine what forms of new development might occur in the future in keeping with the community character and environmental conditions. The City of Valdez needs to ensure the long-term viability of commercial fishing enterprise, commercial business, parking and infrastructure of the working waterfront; including affordable slips and docking space, water access (depth), freight vehicle access, loading, storage, wharf condition, maintenance and repair, support diverse economic opportunities and increasing visitor traffic to the waterfront to benefit the City.*

*Preserving public access to the waterfront is a key component of City future planning goals. The waterfront is the gateway to Prince William Sound and steps are needed to preserve and improve the economic and aesthetic conditions of these areas.*

*Requirements for Statement of Qualifications*

### **Requirements for Statement of Qualifications**

*The firm that submits a statement of qualifications must be licensed to do business in the State of Alaska, and all responsible personnel must have appropriate Alaskan licenses to conduct the tasks identified in the proposal. The City of Valdez assumes no obligation by accepting a proposal. The City of Valdez may or may not choose to interview the top ranked firms before selecting the best firm for price negotiations. The statement of qualifications shall be evaluated on the following:*

- A detailed description of at least three similar ocean community Waterfront Master Planning projects (with references and photographs) that your firm has accomplished in the past ten years. Alaskan projects will be given higher consideration. Consultant's experience.*
- A list of personnel that will be working on the project with license numbers, contact numbers, project histories, and resumes. Project manager and team general experience and qualifications.*

- *A detailed description of the project manager and team member's individual experience and experience working together on previous similar projects. Project manager and team specific experience.*
- *A detailed description of how the firm anticipates accomplishing the project listing personnel and specific activities. Project understanding and approach.*

### **Selection Process**

*The Ports and Harbor Director will evaluate submissions and determine the firm most advantageous to the City based upon the criteria set forth below. The City reserves the right to divide the project scopes or otherwise award to firms however it deems to be most advantageous in accordance with City procurement requirements.*

### **Scope of Work and Tasks**

*Scope includes development of a waterfront master plan, cost estimation, economic feasibility for key elements and action plan strategies. The selected consultant will work closely with the Ports & Harbor Commission and appointed Waterfront Planning Committee, formed by the City Council, community stakeholder groups, and local businesses. The selected consultant will work with the stakeholder groups and help build consensus-based solutions to identified challenges.*

*The Consultant will conduct the following minimum tasks:*

- *Project Meetings.*
  - *The Consultant is expected to meet regularly with project staff and partners to discuss project progress and direction.*
- *Public Engagement and Communications.*
  - *The community engagement process requires that the Consultant actively collaborate in public outreach and engagement. The Consultant is expected to work with the project team, staff, and local business and industry.*
- *Existing Document Review.*
  - *The Consultant will research and develop materials for the Plan, including but not limited to: - A baseline review of existing plans and relevant information, including the existing Comprehensive Plan and previous Waterfront Master Plans, codes and policies, demographic and census data, and other information relevant to the required plan elements.*

*The City strongly encourages bidders to expand on these tasks, to provide detail on how they are to be accomplished. Proposals should recommend which tasks require greater emphasis, and suggest additional tasks not identified in this RFQ that may be necessary or beneficial.*

#### ***Deliverables (After award of Contract)***

- *Load Capacity Ratings for the John Thomas Municipal Dock and the Valdez Container Dock Float and bridges.*
- *Fourteen (14) hard copies of the draft Waterfront Master Plan;*
- *Fourteen (14) hard copies of the final Waterfront Master Plan;*
- *Digital copies of final Waterfront Master Plan (in PDF and MS Word);*
- *Digital copies (in an agreed upon format) of all presentation and meeting material which will be posted on the City of Valdez webpage;*
- *Meeting summaries for all meetings and workshops, including written records of all public comments;*
- *GIS layers/shape files of all completed mapping work;*
- *Digital copies (in an agreed upon format) of all photographs and graphic renderings created for both the Waterfront Master plan, and/or during the Master Planning Process.*

#### ***Submissions and Inquiries***

*Valdez encourages disadvantaged, minority and women-owned consultant firms to respond.*

*Statement of Qualifications are limited to 12 pages, excluding dividers and front and back covers.*

*Submit Six (6) hard copies and one electronic copy of your Statement of Qualifications to:*

*City of Valdez, Ports & Harbor Director*

*Jeremy Talbott*

*PO Box 307*

*Valdez, AK 99686*

*[jtalbott@valdezak.gov](mailto:jtalbott@valdezak.gov)*

*Proposals will be accepted until 4:0pm local time, October 15, 2018.*

*Any questions regarding this project should be directed to Jeremy Talbott, Ports & Harbor Director, at [jtalbott@valdezak.gov](mailto:jtalbott@valdezak.gov)*



**CITY OF VALDEZ**  
**Project Title: Comprehensive Waterfront Master Plan**  
**Project No.: 18-PH002**

**TO: All Recipients**

**DATE: September 24, 2018**

**SUBJECT: Addendum No.1**

This two (2) page Addendum makes the following changes and/or clarifications to the RFQ:

**Questions:**

**Question #1:** Does the 12-page proposal limit include a cover letter and resumes? We had anticipated providing brief introductions to team members in the main body of the proposal and appending full resumes.

- **Response:** *The twelve (12) pages encompass the body of the proposal. Cover letter, dividers, front and back covers do not count toward the 12 pages. You are welcome to add full resumes in an appendix but must be limited to one page per individual. Please be concise and use the 12 pages to illustrate how your firm can provide value to the City of Valdez.*

**Question #2:** Please clarify what you would like to see in response to these two bullet points, particularly the highlighted criteria.

- *A list of personnel that will be working on the project with license numbers, contact numbers, project histories, and resumes. Project manager and team general experience and qualifications.*
- *A detailed description of the project manager and team member's individual experience and experience working together on previous similar projects. Project manager and team specific experience.*

Does the first refer to general professional experience/qualifications while the second is calling for experience working together on specific waterfront planning projects?

In the first item, is "team" experience intended to mean individual members or the firms that make up our team?

- **Response:** *Correct. We are looking for individual credentials followed by examples of similar master planning efforts. We are looking to select the best team with a proven track record of successful waterfront master planning. We would like to see examples of where your teams have triumphed and made significant impacts to communities after plan implementation. "Team" may incorporate in-house members and outside consultants as needed.*

*For the Project manager we are looking for you to identify the single point of contact for the project. Who will interface with the City and public on this effort?*

**Question #3:** Will individual sections be weighted for evaluation?

- **Response:** *No, each proposal will be evaluated in its entirety and the overall impression and qualifications will be the basis for selection.*

**End of Addendum**

September 10, 2018

Rochelle Rollenhagen  
Director, Community Development  
City of Valdez  
PO Box 307  
Valdez Alaska 99686

RE: Equipment Parked in Tidal Zone at Old Town.

Ms. Rollenhagen,

I am writing to you today in regards to the heavy equipment parked in the active tidal zone, at the Old Valdez Town Site, between Alaska Avenue and Broadway Avenue, West of McKinley Street. It seems inappropriate to have this equipment parked and stored in the active tidal zone.

The equipment consists of two large tanker trailers (appear to be fuel tanker trailers), two older excavators, older front end loader and other heavy equipment parts and trailers. In moving the equipment to its current location the native tidal zone vegetation has been disturbed. The older equipment appears to be leaking or oozing grease and petroleum products, seeping from some of the equipment, wheel axials and some of the hydraulic lines on the equipment appear to be wrapped with rags.

I observed the equipment which appeared that it was being unloaded from a landing craft on July 6, 2018. I believe it was the vessel Helenka B. I took a number of photos from that date and have visited the site weekly since then. It appears that there is activity at the site and observed today that some of the equipment has been moved, rearranged, over that past week.

I file this letter of concern and complaint in regards to this equipment parked in its current location, not only in the active tidal zone, but also for the disrespect to the historical significance, so close to those who lost their lives, so very near this spot on March 27, 1964.

I have attached photos, taken on the date I believe the equipment arrived (July 6, 2018) and to date. Also information on the Helenka B, owned by Alaskan Coastal Freight.

Thank you,



Jim Gifford  
PO Box 1253  
Valdez, Alaska 99686



20180706\_125042 July 6, 2018, Helenka B in background



20180706\_125046 July 6, 2018, Helenka B in background



20180811\_150918



20180811\_150107



20180910\_094145 September 9, 2018



Legislation Text

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**File #:** 18-0338, **Version:** 1

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**ITEM TITLE:**

Harbor Expansion Construction Report

**SUBMITTED BY:** Jenessa Ables, Port Operations Manager

**FISCAL NOTES:**

Expenditure Required: N/A

Unencumbered Balance: N/A

Funding Source: N/A

**RECOMMENDATION:**

Receive and file.

**SUMMARY STATEMENT:**

Harbor Expansion Project construction report. Capital Facilities Director to present.

AUGUST 2018



© Gary Minish

# VALDEZ NEW BOAT HARBOR

## CONSTRUCTION

### Phase 2 Uplands Facilities and Inner Harbor Facilities

Uplands facilities work primarily focused on finishing the Warehouse Building, installing sidewalks around the three buildings, paving the access driveways, pathways and parking lots, planting trees, spreading topsoil and seeding.

Pacific Pile and Marine (PPM) finished drilling and blasting and continued breaking high areas of bedrock with a large hydraulic hammer. Dredging was completed in the Mooring Basin and approximately half finished in the Drive Down Float Basin. Current progress indicates the dredging might finish by late-September.

Two barges with pile driving equipment, piling and floats for the West mooring basin arrived in Valdez on August 8. After dredging the remaining rock, surveying the dredged area, assembling head floats and installing temporary template piling, PPM started drilling and installing piling for the west head floats. Drive-down float modules, transfer bridge and related items have been fabricated and are stored at Seattle area facilities. PPM anticipates that the mooring floats and bridge will be loaded on a barge and towed to Valdez in early October.

## PROJECT ACHIEVEMENTS

- Delivered barges with equipment and materials; started driving piles and installing floats for West basin
- Finished assembly of drive-down float components at Seattle area shops
- Finished blasting and dredging all the bedrock at the West basin
- Finished blasting and dredged half the bedrock at the East basin
- Placed concrete sidewalks at East Restroom, Bilge Building and Warehouse Building
- Placed topsoil, seed and trees
- Paved driveways, pathways and parking areas except for abutment area at Drive-Down bridge



Breaking and excavating rock for dredging and disposing



Spreading asphalt for parking area near Warehouse Building

# AUGUST 2018 PROJECT UPDATE (CONT.)

## DESIGN TEAM - CONSTRUCTION SUPPORT

R&M continued reviewing some submittals, responded to Requests for Information (RFIs), clarifications of construction documents and conflicts in the field, performed Special Inspections and observations of building and site work, observations of drilling, dredging, and installing piling and floats.

## USACE NAVIGATION IMPROVEMENTS

The USACE is administering the Western Marine Construction (WMC) contract for dredging the navigation channel and float basin and construction of the breakwaters. The USACE is reportedly working toward fiscal closeout of their contract with WMC. Arcadis and the City will continue coordinating with USACE for closeout of the City's contract with USACE.

## FUTURE MILESTONES

- Commission and test the Bilge Treatment Building equipment
- Commission and test all systems for the Warehouse Building
- Apply striping and markings on asphalt pavement
- Install landscape boulders, benches, architectural concrete panels, signs, flagpole, picnic canopies
- Perform Substantial Completion inspections for Uplands Facilities
- Finish breaking and dredging bedrock and surveying the Drive-Down Float Basin
- Submit Rock Anchor Pile Installation Plan for Drive-Down Bridge Mooring Frame
- Install Gangway #1 and start installing electrical and mechanical systems on mooring floats
- Closeout City's contract with USACE for the dredging and breakwater work



Aerial view after paving and landscaping. Large barge with piling and floats and pile driving barge with crane is unloading gangways and equipment to Uplands. Dredge equipment and bottom dump barge (upper left) are removing the final portion of bedrock in the Mooring Basin. (J. Talbott)

## PROJECT TEAM

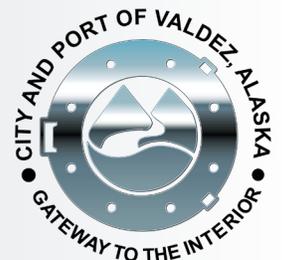
Nate Duval, Capital Facilities Project Manager, City of Valdez || 907.835.5478 ext. 1

Ronnie Barcak, Project Manager, USACE || 907.753.5755

Kim Nielsen, Group Manager, Waterfront Engineering, R&M Consultants || 907.646.9602

Andy Romine, Project Manager, Pacific Pile and Marine || 907.360.4580

Ron Rozak, Construction Manager, Arcadis || 907.382.2933





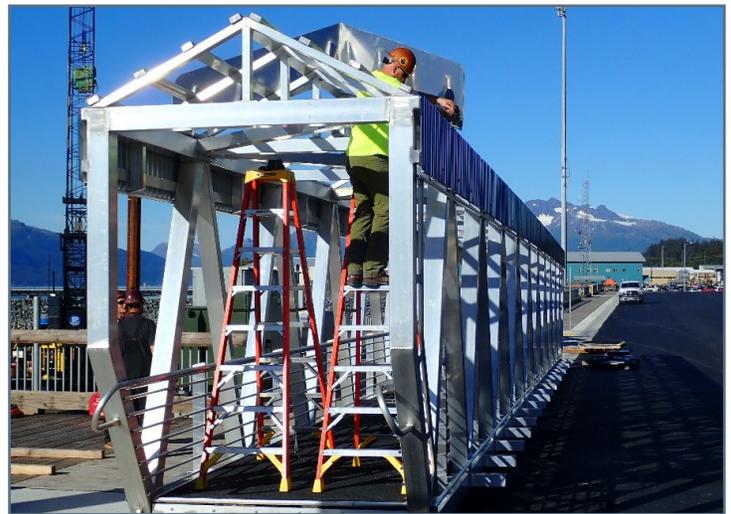
Crane lifting a pile from materials barge for installing on the west end of the head floats



Temporary pile (left) maintains position of floats while drilling 10 feet into bedrock to install the first mooring pile for the head floats



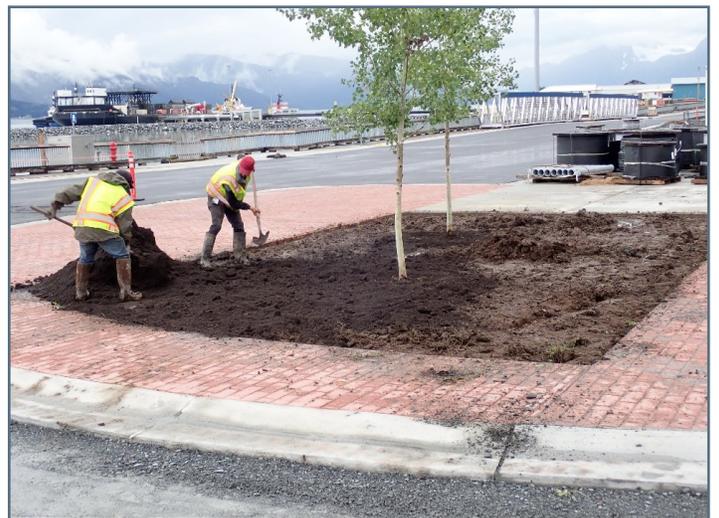
Piling installed for west portion of the head floats required drilling 10 feet into bedrock to create a "socket" for the piling



Installing canopy, then side panels, on Gangway #1



Wood wind screen and sidewalks installed at East Restroom



Spreading topsoil after planting trees east of Warehouse building

# PROJECT SCHEDULE

| Task  | 2016 | 2017 |    |    |    | 2018 |    |    |    | 2019 |    |    |     |
|---|------|------|----|----|----|------|----|----|----|------|----|----|-----|
|   | Q4   | Q1   | Q2 | Q3 | Q4 | Q1   | Q2 | Q3 | Q4 | Q1   | Q2 | Q3 | Q4  |
| <b>CITY OF VALDEZ WORK</b>  |      |      |    |    |    |      |    |    |    |      |    |    |     |
| <b>Phase 1 Uplands</b> (Civil work except paving)                       | ■    |      |    |    |    |      |    |    |    |      |    |    |     |
| <b>Phase 2 *</b>  |      |      |    |    |    |      |    |    |    |      |    |    | *** |
| <b>Design/Bid/Award/NTP</b>   | ■    | ■    | ■  |    |    |      |    |    |    |      |    |    |     |
| <b>Mooring Floats</b>   |      |      |    |    |    |      |    |    |    |      |    |    |     |
| Fabrication/Delivery  |      |      | ■  | ■  | ■  | ■    | ■  | ■  | ■  |      |    |    |     |
| On-site Construction  |      |      |    |    |    |      |    | ■  | ■  | ■    | ■  | ■  | ■   |
| <b>Drive Down Float</b>   |      |      |    |    |    |      |    |    |    |      |    |    |     |
| Fabrication/Delivery  |      |      | ■  | ■  | ■  | ■    | ■  | ■  | ■  |      |    |    |     |
| On-site Construction  |      |      |    |    |    |      |    | ■  | ■  | ■    | ■  | ■  | ■   |
| <b>In-water Rock Removal</b>  |      |      |    |    |    |      |    |    |    |      |    |    |     |
| West Rock   |      |      |    |    |    |      |    | ■  | ■  | ■    | ■  | ■  | ■   |
| East Rock   |      |      |    |    |    |      |    | ■  | ■  | ■    | ■  | ■  | ■   |
| <b>Uplands Facilities</b> (Warehouse, East Restroom, Bilge Water Bldg.) |      |      |    |    |    |      |    |    |    |      |    |    |     |
| Fabrication/Delivery  |      |      | ■  | ■  | ■  | ■    | ■  | ■  | ■  |      |    |    |     |
| On-site Construction  |      |      |    |    | ■  | ■    | ■  | ■  | ■  | ■    | ■  | ■  | ■   |
| Paving/Landscaping  |      |      |    |    |    |      |    | ■  | ■  | ■    | ■  | ■  | ■   |
| <b>Master Waterfront Plan</b> (To be determined)                        |      |      |    |    |    |      |    |    |    |      |    |    |     |
| <b>Phase 3 Future Facilities</b> (To be determined with Master Plan)    |      |      |    |    |    |      |    |    |    |      |    |    |     |
| Launch Ramp, Fish Cleaning Station, Wash-Down Pad, W. Restroom          |      |      |    |    |    |      |    |    |    |      |    |    |     |
| <b>CORPS OF ENGINEERS (USACE) WORK</b>                                  |      |      |    |    |    |      |    |    |    |      |    |    |     |
| <b>Harbor Dredging and Breakwater Construction**</b>                    | ■    |      | ■  | ■  | ■  | ■    | ■  | ■  | ■  |      |    |    |     |

\*Solid lines reflect PPM's August 2018 schedule update. \*\* WMC finished dredging and breakwater; contract closeout continues.

\*\*\* Contract requires Phase 2 work to be completed by October 1, 2019.

# BUDGET SUMMARY

| Description                                   | Original Budget | Revised Budget | Committed     | Expenditures 8/31/18 | % Spent | Estimate at Completion |
|---|-----------------|----------------|---------------|----------------------|---------|------------------------|
| <b>DESIGN</b>                                 | \$ 2,451,971    | \$ 3,659,047   | \$ 3,659,047  | \$ 3,201,356         | 87%     | \$ 3,659,047           |
| Design  | \$ 1,851,971    | \$ 2,215,983   | \$ 2,215,983  | \$ 2,231,917         | 101%    | \$ 2,231,917           |
| Design Team Services During Construction      | \$ 600,000      | \$ 1,443,064   | \$ 1,443,064  | \$ 969,439           | 67%     | \$ 1,427,130           |
| <b>PROJECT MANAGEMENT</b>                     | \$ 2,340,548    | \$ 2,919,405   | \$ 2,919,405  | \$ 2,547,572         | 87%     | \$ 2,919,405           |
| Project Management                            | \$ 1,740,548    | \$ 2,547,868   | \$ 2,547,868  | \$ 2,176,035         | 85%     | \$ 2,547,868           |
| Inspection/Testing                            | \$ 600,000      | \$ 371,537     | \$ 371,537    | \$ 371,537           | 100%    | \$ 371,537             |
| <b>USACE CONSTRUCTION - CITY PORTION</b>      | \$ 9,345,453    | \$ 7,645,453   | \$ 7,525,453  | \$ 5,141,258         | 67%     | \$ 7,525,453           |
| Initial Basin                                 | \$ 7,145,453    | \$ 7,145,453   | \$ 7,145,453  | \$ 4,761,258         | 67%     | \$ 7,145,453           |
| Other Basin Modifications                     | \$ 2,200,000    | \$ 500,000     | \$ 380,000    | \$ 380,000           | 76%     | \$ 380,000             |
| <b>CITY CONSTRUCTION</b>                      | \$ 39,023,904   | \$ 44,715,844  | \$ 44,638,679 | \$ 33,900,097        | 76%     | \$ 44,715,844          |
| Phase 1 Uplands                               | \$ 19,013,040   | \$ 19,191,437  | \$ 19,191,437 | \$ 19,191,437        | 100%    | \$ 19,191,437          |
| Phase 2 Base/Drivedown Floats, Uplands Fac.   | \$ 8,976,100    | \$ 25,067,928  | \$ 25,067,928 | \$ 14,391,448        | 57%     | \$ 25,067,928          |
| Upland Facilities (with Phase 2)              | \$ 4,046,643    | \$ -           | \$ -          | \$ -                 | 0%      | \$ -                   |
| Drive Down Float (with Phase 2)               | \$ 4,951,721    | \$ -           | \$ -          | \$ -                 | 0%      | \$ -                   |
| Drive-Down Float In-water Mods (with Phase 2) | \$ 1,342,500    | \$ -           | \$ -          | \$ -                 | 0%      | \$ -                   |
| Hotel Hill Clearing                           | \$ 64,900       | \$ 64,900      | \$ 64,900     | \$ 64,900            | 100%    | \$ 64,900              |
| Fish Cleaning                                 | \$ 324,000      | \$ -           | \$ -          | \$ -                 | 0%      | \$ -                   |
| Electric Primary                              | \$ 225,000      | \$ 311,579     | \$ 311,579    | \$ 252,312           | 81%     | \$ 311,579             |
| CCTV/Security/Head End Equipment              | \$ 80,000       | \$ 80,000      | \$ 2,834      | \$ -                 | 0%      | \$ 80,000              |
| <b>ADMINISTRATION</b>                         | \$ 60,000       | \$ 100,000     | \$ 99,245     | \$ 92,165            | 92%     | \$ 100,000             |
| FFE   | \$ 100,000      | \$ 100,000     | \$ -          | \$ -                 | 0%      | \$ 100,000             |
| <b>CONTINGENCY (@ 15% original budget)</b>    | \$ 7,998,281    | \$ 2,180,408   |               |                      |         | \$ 2,300,408           |
| <b>TOTAL CITY FUNDED</b>                      | \$ 61,320,158   | \$ 61,320,158  | \$ 58,841,829 | \$ 44,882,449        | 73%     | \$ 61,320,158          |
| <b>USACE FUNDED**</b>                         | \$ 21,277,761   | \$ 21,277,761  | \$ 21,277,761 | \$ 20,558,716        | 97%     | \$ 21,277,761          |
| <b>TOTAL CITY/USACE FUNDING</b>               | \$ 82,597,919   | \$ 82,597,919  | \$ 80,119,590 | \$ 65,441,165        | 79%     | \$ 82,597,919          |

\* Data includes expenses from 5/22/14 which is the start of Bond eligible costs authorized by COV Resolution 14-33. \$254,321.77 in R&M expenses and other costs are not included.

\*\* Reconciliation with USACE is in process; updates are anticipated.