MATANUSKA-SUSITNA BOROUGH INFORMATION MEMORANDUM IM No. 18-037

SUBJECT: ASSEMBLY APPROVAL AUTHORIZING THE MANAGER TO ENTER INTO A LEASE AT PORT MACKENZIE WITH ERIC OIEN, DENALI TIMBER MANAGEMENT, LLC, FOR A PERIOD OF FIVE YEARS.

AGENDA OF: March 27, 2018

ASSEMBLY ACTION:
OR 18-019 Public Hearing held (4/3, 4/17) Amended. Adopted w/ ASB members McKee & Sykes Opposed @ 4/17/18 RM

MANAGER RECOMMENDATION: Introduce and set for public hearing.

APPROVED BY JOHN MOOSEY, BOROUGH MANAGER: ____________

Route To:	Department/Individual	Initials	Remarks
	Originator	JMM	
	Port Operations Manager	TMO	
	Finance Director	CJ	
	Borough Attorney		
	Borough Clerk		

ATTACHMENT(S): Fiscal Note: YES __X__ NO _____
Proposed Dockside Lease (___ pp)
Ordinance Serial No. 18-019 (2 pp)

SUMMARY STATEMENT:
Mr. Eric Oien, Denali Timber Management, LLC proposed a log export operation based out of Port MacKenzie which requires leasing dockside acreage.

Basic details of the lease include:
1) A lease area containing eight (8) acres dockside
2) A term of five years
3) An exclusive franchise to export ~~short,~~ round logs (approximately eight (8) feet in length)
4) A condition that allows the MSB to relocate Denali Timber Management if a multi-billion-dollar project requires the use of Port MacKenzie

Estimated annual revenues of $960,000 would be paid to the Borough:

1) $334,500 generated by lease of eight acres
2) $467,500 generated by wharfage fees
3) $158,000 generated by dockage fees

RECOMMENDATION OF ADMINISTRATION:

Assembly approval authorizing the manager to enter into a lease agreement with Eric Oien, Denali Timber Management, LLC.

MATANUSKA-SUSITNA BOROUGH
FISCAL NOTE

Agenda Date: March 20, 2018

SUBJECT: Assembly approval authorizing the manager to enter into a lease at Port MacKenzie with Eric Oien, Denali Timber Management, LLC, for a period of five years.

ORIGINATOR:

FISCAL ACTION (TO BE COMPLETED BY FINANCE)	FISCAL IMPACT YES NO
AMOUNT REQUESTED $960,000 *	FUNDING SOURCE Land lease & port fee revenue
FROM ACCOUNT #	PROJECT #
TO ACCOUNT: 520.000.000.3xx xxx	PROJECT #
VERIFIED BY: Barbara Bauman	CERTIFIED BY:
DATE: 3/8/18	DATE:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023
Personnel Services						
Travel						
Contractual						
Supplies						
Equipment						
Land/Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING						
CAPITAL						
REVENUE		960 *	960 *	960 *	960 *	960 *

FUNDING: (Thousands of Dollars)

General Fund						
State/Federal Funds						
Other		960 *	960 *	960 *	960 *	960 *
TOTAL		960 *	960 *	960 *	960 *	960 *

POSITIONS:

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary) * Estimated annual income

PREPARED BY: ____________________ PHONE: ____________________

DEPARTMENT: ____________________ DATE: 3/8/18

APPROVED BY: Cheyenne Heindel DATE: ____________________

IM No. 18-037
Ordinance Serial No. 18-019

Matanuska-Susitna Borough
Port MacKenzie
350 East Dahlia Avenue • Palmer, AK 99645
Phone (907) 861-7799• Fax (907) 861-8669

DOCKSIDE LEASE AND LIMITED EXCLUSIVE COMMODITY FRANCHISE AGREEMENT

THIS LEASE FOR DOCKSIDE ACREAGE AND LIMITED EXCLUSIVE COMMODITY FRANCHISE AGREEMENT AT PORT MACKENZIE (the "Lease") is entered into this ____ day of ______________, 20___ by and between:

MATANUSKA SUSITNA BOROUGH (hereinafter "MSB"), a municipal corporation formed under the laws of the State of Alaska, whose mailing address is 350 E. Dahlia Avenue, Palmer, Alaska 99645; and **Denali Timber Management, LLC** (hereinafter "DTM"); whose mailing address is P.O. Box 81, Cinebar, Washington 98533.

Section 1. Subject Matter.

1.1 Dockside Lease. MSB desires to lease to DTM, and DTM desires to lease from MSB, eight acres on the Port MacKenzie dock located within the Waterfront Dependent District (WDD) of Port MacKenzie, more specifically described and depicted on **Exhibit A** attached to and for all purposes made a part of this Lease.

1.2 Limited Exclusive Commodity Franchise. **To the extent that DTM is granted rights to the barge dock or the deep draft dock**, and subject to the terms and conditions of this Agreement, DTM is granted a limited exclusive commodity franchise to ship round logs from a Port MacKenzie dock to a Pacific Rim country in Asia during the first three (3) years of the Term to the extent permitted under all applicable law. "Round logs" means timber that has not been processed other than being de-barked. The following are Pacific Rim countries per this agreement: Japan, Brunei, East Timor, Malaysia, Indonesia, Philippines, Russia, Cambodia, Singapore, China, South Korea, Thailand, Taiwan, Vietnam, and North Korea.

This limited exclusive commodity franchise means the MSB agrees it will not knowingly or intentionally enter into an agreement with another entity to use a Port MacKenzie dock to ship round logs to a Pacific Rim country in Asia during the first three (3) years of the Term.

No additional exclusivities are granted to DTM. The limited exclusive commodity franchise does not preclude third-parties from utilizing Port MacKenzie to ship round logs of any length to the United States or other world markets outside Asian Pacific Rim countries.

This limited exclusive commodity franchise does not preclude third-parties from shipping lumber, wood products, etc. from Port MacKenzie to world markets.

DTM acknowledges and agrees this grant of a limited exclusive franchise does not give DTM use of the barge dock, deep-draft dock or any other property, facilities or equipment. See section 2.3.

1.3 Material Inducements.

1.3.1 The parties desire to adopt this Lease as a complete and final statement of all of the promises, covenants, terms and conditions in effect and binding between them.

1.3.2 MSB is entering into this Lease as land owner, exercising its power to manage its own lands under Alaska Statute 29.35.010(8), and the applicable provisions of the Matanuska–Susitna Borough Code ("MSB Code") Section 1.10.010(A)(9), Title 18, Title 23 and Ordinance Serial No._____approving the execution of this lease. The Matanuska-Susitna Borough, Port MacKenzie Department is responsible for management of this Port borough–owned real property, management, oversight, and enforcement within the WDD.

1.3.3 In so acting, MSB is not waiving, and MSB is explicitly reserving unto itself, all of its governmental authority, sovereignty and power to enact and enforce laws and regulations governing land use and development, or the conduct of any business or activity, anywhere within the Borough, including the Port MacKenzie District. Nothing in this Lease shall waive or otherwise diminish MSB's governmental authority, sovereignty and power with respect to leased land or DTM's use or occupancy of it.

1.3.4 As a material inducement to this lease, the Matanuska-Susitna Borough cannot, and does not, through this Lease, make any express or implied representations, warranties or guarantees as to the future results of any land use permits, applications, tax rates, tax exemptions or proposals which are governed by Matanuska-Susitna Borough Code. **As a material inducement for the Borough to enter into this lease, the Matanuska-Susitna Borough cannot and does not through this Lease make any express or implied representations, warranties or guarantees as to the future results or management of any Timber Sale Contract for the Chijuk Creek Forest Management Unit or any other Borough timber sale.**

1.3.5 The reservations contained in sections 1.3.3 and 1.3.4 above, and the terms of Section 8 below are part of the material inducement for the Matanuska-Susitna Borough to enter into this Lease. But for these terms, the Matanuska-Susitna Borough would not enter this Lease.

Section 2. Premises Leased.

2.1 Leased Premises. MSB, reserving the rights above, for and in consideration of the rents, covenants, conditions and terms hereinafter specified to be paid, performed and observed by DTM, leases to DTM, and DTM leases from MSB, land situated in the WDD area of Port MacKenzie District. The leased land is more particularly described and depicted on **Exhibit A.** The leased land, together with all rights, easements, privileges and appurtenances attaching or belonging to the described land, is referred to hereafter as the "Leased Premises."

2.2 Reservation of Minerals and Resources. All oil, gas, coal, other hydrocarbons, geothermal resources, rock, sand, gravel, peat, timber, and minerals of whatever nature on, in or under the above-described land are excluded from the Leased Premises and reserved to MSB. If MSB mines and/or extracts any of the reserved minerals or resources, MSB agrees that the mining and/or extraction shall not interfere with Lessee's business and activities on the Leased Premises or its access to the Leased Premises.

2.3 Docks/Port Terminal Building Rights Excluded. **Nothing in this Lease grants DTM any rights in or access to the barge dock, the deep-draft dock, or to the Port Terminal building, or uses other than the leased premises itself** (Exhibit A.) DTM must obtain a facility permit from the Land and Resource Management Division for use of the Port Terminal Building within the barge dock area. DTM must separately submit a berthing application and a terminal operator application to obtain use of the barge dock or deep-draft dock. It must obtain approval of the applications and comply with all applicable Port MacKenzie Terminal Tariff No. 2 (hereinafter "tariff") requirements for dockage, wharfage, and any other requirements governing dock usage to use the barge dock or deep draft dock.

Section 3. Term.

3.1 Term Defined. Whenever used in this Lease, the word "Term" shall mean and include both the Initial Term and any Renewal Term(s).

3.2 Lease Term. This Lease shall be and continue in full force and effect for an initial term of five (5) years (the "Initial Term") commencing as of________________, and expiring at 11:59 p.m. on________________, unless earlier terminated, as provided in this Lease.

3.3 DTM's Option for Early Termination. So long as DTM is not in default under the Lease and is still in possession of the Leased Premises, DTM shall have the right to terminate the Lease at any time between the twenty-fourth (24th) and fifty-seventh (57th) months of the Lease by providing MSB with ninety (90) days advance written notice. Simultaneously with delivery of the early termination notice, Tenant shall pay an early termination fee of ten thousand dollars ($10,000.00). If DTM exercises the option hereunder the Lease, including the limited exclusive commodity franchise right, shall terminate as of the last day of the applicable month, whereupon rights and obligations will continue as stipulated for any other type of termination.

In the event the Borough's deep draft dock is rendered unusable by an unforeseen catastrophic event, act of God, or failure of the underlying structure for any reason DTM will have the right to terminate the lease without penalty following 30 days written notice.

3.4 Option to Renew. DTM may apply to renew this Lease for one (1) additional period of up to five (5) years (the "Renewal Term"). Approval of the Renewal Term is at the sole discretion of the MSB Assembly. To effectively exercise an option to renew, DTM must not be in default of any of its obligations at the time of the exercise or at the time of the commencement of any Renewal Term. DTM must give MSB written notice of the exercise of an option to renew no later than one hundred eighty (180) days prior to the expiration of the Initial Term or the preceding Renewal Term, as the case may be. Time is of the essence in giving written notice of the exercise of an option to renew; the options to renew shall lapse and be void if DTM fails to give timely notice of their exercise. During the Renewal Term(s), all of the provisions of this Lease shall remain in full force and effect, except that the rent DTM shall pay to MSB shall be adjusted as is provided for below.

3.5 Borough's Right to Early Termination and Limitation of Liability. DTM recognizes the Borough's need to foster economic development at Port MacKenzie, and that the Borough may have subsequent projects at Port MacKenzie that need to utilize DTM's leasehold area before the end of this Lease. As a material inducement for the Borough to enter into this Lease with DTM, the Borough shall have the right in its sole discretion to terminate the Lease, for any reason whatsoever, by providing DTM 90 days written notice of termination under this provision. This is in addition to the MSB's rights and remedies relating to default in Section 12 of this Lease.

The parties recognize that the Borough's early termination of this Lease including any the limited exclusive commodity franchise right that remains, will likely cause DTM to relocate and could cause DTM to incur increased land rent costs, loss of certain exclusive shipping/franchise or transportation rights, increased shipping and/or transportation costs, business interruption and loss, attorney's fees, as well as other associated costs with DTM's relocation that results from the Borough terminating the leasehold. To compensate DTM for the costs associated with the relocation and loss of the limited exclusive commodity franchise, the Borough will pay DTM the following:

(1) If the agreement is terminated within the first year after the parties enter into the lease: $750,000;
(2) If the agreement is terminated within the second year after the parties enter into the lease: $600,000;
(3) If the agreement is terminated within the third year after the parties enter into the lease: $450,000;
(4) If the agreement is terminated anytime thereafter, there is no payment due from the Borough.

Any payment due under this provision is subject to the Borough Assembly's appropriation for that purpose. Any sum due will be credited to DTM's rent payments for any subsequent months it occupies the property, with any remaining balance due to DTM to be paid to DTM within 30 days of its surrender of the lease, upon appropriation.

The parties understand that the purpose of the above payment to DTM is to limit the Borough's liability for any and all claims DTM could assert for the Borough exercising its above right to terminate DTM. To the maximum extent allowed by law, any and all claims DTM could assert against the Borough is limited to the above payment for the particular year of the lease.

Within 30 days of the Borough's notice of termination under this provision, the Borough will identify its available Port MacKenzie properties for lease (if any), identify whether its deep draft or barge dock may be available for use, and provide DTM a list of properties or docks that may be available. This provision does not further obligate the Borough relating to other Port MacKenzie properties or docks in any way including, but not limited to, entering into any additional leases or permits for use.

Section 4. Rent.

4.1 Basic Rent. DTM shall pay the following rent (the "Basic Rent") to MSB, without deduction and without prior notice or demand. Although stated as an annual rent, the Basic Rent may be paid in equal monthly installments. The monthly installments shall be paid in advance on or before the first day of each calendar month during the Term, with partial periods prorated on a daily basis. The Basic Rent shall be as follows:

4.1.1 Eight cents a square foot will be paid for each of the eight (8) acres comprising the leased premises at a total annual cost of three hundred and thirty-four thousand, five hundred and forty dollars and eighty cents ($334,540.80) or twenty-seven thousand, eight hundred and seventy-eight dollars and forty cents ($27,878.40) a month.

4.1.2 At the commencement of any Renewal Term (if DTM exercises any available option to renew and the MSB approves the renewal), the Basic Rent shall be renegotiated between the MSB and the DTM.

4.2 Net Rent Intended. The Basic Rent provided for under this Lease shall be absolutely net to MSB so that this Lease shall yield, net to MSB, the rent specified during the Term of this Lease, not reduced in any way by any costs, expenses, taxes, assessments and/or obligations relating to DTM's use or occupancy of the Leased Premises, which may arise or become due during the Lease Term, except as otherwise expressly provided in this Lease.

The Basic Rent does not include any tariffs, fees etc. related to the use of the barge dock or deep draft dock.

4.3 Place of Rent Payment. All payments of Basic Rent shall be delivered to the following address, accompanied by a reference to the MSB Lease Number shown on the front page of this Lease, unless MSB gives DTM written notice of a different address for rent payments:

Matanuska Susitna Borough
Port MacKenzie
350 East Dahlia Avenue
Palmer, Alaska 99645

4.4 Payments shall be effective on the date of MSB's actual receipt.

4.5 Late Payment. Any payment of Basic Rent not made within ten (10) days after the date it is due shall be assessed a late fee of $500.00. The late fee is not a penalty but is intended to compensate MSB for the additional costs MSB will incur as a result of the late payment, the exact amount of such additional costs being extremely difficult and impracticable to ascertain

Section 5. Deleted.

Section 6. Security Deposit.

6.1 Deposit as Security for DTM's Performance. MSB requires a security deposit that DTM shall pay to MSB at the execution of this Lease. The security deposit is in the amount of Ten Thousand dollars ($10,000.00). This deposit is security for DTM's full and faithful performance of all its obligations under this Lease. The security deposit shall be returned to DTM within sixty (60) days after the expiration of this Lease if DTM has fully and faithfully performed all the covenants and terms of this Lease that DTM is obligated to perform. If DTM fails to fully perform all its obligations, MSB, at its sole option, may apply the security deposit against any costs or damages resulting from DTM's failure to perform. In the event all or part of the security deposit is so applied, DTM shall, within ten (10) days of MSB's demand, pay to MSB the amount necessary to replenish the security deposit to its original amount.

6.2 Deposit Transferable. In the event of a sale or transfer of MSB's fee title in the Leased Premises, MSB shall have the right to transfer the security deposit to the purchaser or transferee under the terms of this Lease. With MSB's transfer of the security deposit to the purchaser or transferee and the written assumption of the Lease by the purchaser or transferee, MSB shall be automatically released from all liability for the return of the security deposit to DTM.

6.3 Rights Regarding Deposit. MSB's obligations with respect to the security deposit are those of a debtor and not a trustee. MSB can commingle the security deposit with MSB's general funds or the deposits of other tenants. MSB shall not be required to pay DTM any interest on the security deposit. DTM may not assign or encumber the money deposited as security, and neither MSB nor its successors or assigns shall be bound by any such purported assignments or encumbrances.

Section 7. Condition of Leased Premises at Commencement; Delivery of Possession.

7.1 Accepted in Present Condition. DTM acknowledges that it has had an opportunity to inspect the Leased Premises and conduct any studies or assessments of the Leased Premises that DTM desired prior to entering into this Lease. DTM accepts the Leased Premises "AS IS" and "WITH ALL FAULTS." MSB shall have no obligation to install, construct or pay for any improvements of any kind or nature on the Leased Premises for DTM's benefit at or prior to the commencement of the Term.

7.2 No Representations or Warranties.

Dockside Area

7.2.1 MSB is making no representation or warranty, express or implied, regarding the Leased Premises or their suitability for DTM's purposes. Without limiting the foregoing, DTM specifically acknowledges that MSB has not warranted or made any representation regarding the social, economic, or environmental aspects of the Leased Premises, or the acreage, soil conditions, utility services, water drainage, physical access, availability of wood supplies now or in the future, natural or artificial hazards that may or may not exist, or the merchantability, suitability or profitability for any use or purpose.

7.2.2 DTM shall accept use of the condition of the Leased premises "as is" and waives any and all claims, whether legal, equitable or otherwise, against the MSB with respect thereto. The MSB assumes no liability with respect to, and makes no representation or warranty, whether express or implied, regarding the fitness or adequacy of any portion of Leased area or any particular purpose or for the uses contemplated or proposed by DTM or for the potential for economic success of the operations to be undertaken by DTM.

7.3 No Liability. MSB shall have no liability to DTM, or to DTM's employees, agents or contractors, or to anyone claiming by, under or through DTM, regarding the physical condition of the Leased Premises any time during the Term. MSB has no responsibility for any subsurface conditions, whether known or unknown, natural or man-made, to DTM, specifically including any adverse soil conditions and any washout, subsidence, avulsion, reliction or settling that may occur to Leased Premises. In consideration for MSB entering into this Lease, DTM is expressly assuming the risk of any latent or patent defects or deficiencies in, on or under the Leased Premises, whether the same now exist or arise hereafter. In no event shall DTM be entitled to any damages whatsoever against MSB with respect to the physical condition of the Leased Premises, including, but not limited to, actual, special, consequential, lost-profits, or any other category of damages.

Barge Dock or Deep Draft Dock

7.4 To the extent DTM obtains the rights to use or access to the barge dock or the deep-draft dock, the Borough is making no representation or warranty, express or implied, regarding the condition of the Barge Dock or Deep Draft Dock or their suitability for DTM's purposes. Without limiting the foregoing, DTM specifically acknowledges that MSB has not warranted or made any representation regarding any aspect of the condition of the Barge Dock or Deep Draft Dock, including but not limited to physical access, natural or artificial hazards that may or may not exist, or the merchantability, suitability or profitability for any use or purpose.

7.4.1 To the extent DTM obtains the rights to use or access to the barge dock or the deep-draft dock, DTM shall accept use of the condition of the existing barge dock and deep-draft dock "as is" and waives any and all claims, whether legal, equitable or otherwise, against the MSB with respect thereto. The MSB assumes no liability with respect to, and makes no representation or warranty, whether express or implied, regarding the fitness or adequacy of any portion of the existing barge dock or deep-draft dock or any particular purpose or for the uses contemplated or proposed by DTM or for the potential for economic success of the operations to be undertaken by DTM.

7.5 No Liability. MSB shall have no liability to DTM, or to DTM's employees, agents or contractors, or to anyone claiming by, under or through DTM, regarding the physical condition of the barge dock or deep-water dock any time during the Term. MSB has no responsibility for any subsurface conditions, whether known or unknown, natural or man-made, to DTM, specifically including any adverse soil conditions and any washout, subsidence, avulsion, reliction or settling that may occur to. In consideration for MSB entering into this Lease, DTM is expressly assuming the risk of any latent or patent defects or deficiencies in, on or under the barge dock or deep-water dock, whether the same now exist or arise hereafter. In no event shall DTM be entitled to any damages whatsoever against MSB with respect to the physical condition of the barge dock or deep-water dock, including, but not limited to, actual, special, consequential, lost-profits, or any other category of damages.

7.6 Delivery of Possession. MSB shall deliver possession of the Leased Premises to DTM on the commencement date of the Initial Term. However, if MSB is not able to deliver possession on that date for any reason (whether the cause is beyond MSB's reasonable control or not), this Lease shall not be then void or voidable, nor shall MSB be liable to DTM for any loss or damage resulting from the failure to deliver possession. In that event, the commencement of the Initial Term shall be delayed until MSB is able to deliver possession of the Leased Premises to DTM, and the rent payable under this Lease shall be abated during the period of delay in the delivery of possession. In addition, the Initial Term of this Lease shall be extended to equal the period of delay in the delivery of possession so that DTM has the benefit of the Leased Premises for the full period of time provided for in this Lease. If the delay in delivering possession extends beyond one hundred twenty (120) days, then DTM may cancel this Lease upon giving written notice of cancellation to MSB, so long as DTM has not taken possession of the Leased Premises as of the date of giving notice of cancellation. Cancellation shall be DTM's sole and exclusive remedy in the event of a delay in the possession beyond sixty (60) days. Upon such a cancellation, MSB shall refund any security deposit to DTM, both MSB and DTM shall be excused from all their obligations under this Lease, and neither MSB nor DTM shall have other or further liability with respect to this Lease or the transaction contemplated by this Lease.

Section 8. Governmental Authority Retained.

8.1 No Waiver of Governmental Power. Nothing in this Lease is intended to, or shall have the effect of, waiving or releasing any power or authority that MSB has as a governmental body. MSB has not promised or represented that it will exercise or not exercise its governmental power or authority in any way for the benefit of DTM or DTM's interests or the Leased Premises. DTM also specifically acknowledges that, regardless of the title or position that a person holds with MSB, no person acting or purporting to on MSB's behalf has the authority to waive or release the MSB's power or authority to act as a local government of the State of Alaska.

8.2 DTM and Leased Premises Subject to MSB Code. DTM and DTM's use and occupancy of the Leased Premises shall at all times be subject to the applicable provisions of the MSB Code, as the MSB Code may be amended from time to time. MSB has not promised or represented that no new provisions will be added to the MSB Code, or that no existing provisions will be revised or repealed in any way. MSB likewise has not promised or represented that any provisions of the MSB Code will be relaxed or not enforced for DTM's benefit. Without limiting the foregoing, DTM specifically acknowledges and agrees that:

(1) the Leased Premises are subject to all applicable land use provisions of the MSB Code, including Titles 8, 17, 18, 23, and 43, and any additions to or amendments of those provisions; and

(2) the Leased Premises and DTM's use of the Leased Premises are subject to all applicable building, fire, health, safety and environmental provisions of the MSB Code, as they presently exist or as may be hereafter adopted; and

(3) DTM shall be responsible, at its sole expense, for obtaining and complying with all permits, licenses and government authorizations and approvals, and any applicable filings in conjunction with the DTM operations and use of the leased premises including but not limited to Federal Maritime Commission approvals.

(4) To use the barge dock or deep-water dock, DTM must submit a berthing application and a terminal operator application for approval, and comply with the Port MacKenzie Terminal Tariff No. 2.

Section 9. Improvements.

9.1 Right to Improve. DTM, when not in default of its obligations under this Lease, shall have the following rights, during the Term, to the extent DTM deems advisable, subject however to the satisfaction of the other requirements of this Lease and, when specified, subject to the condition that MSB's prior approval be obtained:

(1) To construct, place, or install on the Leased Premises, buildings, structures, fill, paving, landscaping, and other improvements (each an "Improvement" and collectively the "Improvements"); and

(2) To make such alterations, additions and repairs to the Leased Premises as DTM may desire.

All Improvements that DTM constructs, places or installs on the Leased Premises shall remain DTM's separate property for the duration of the Term of this Lease except as provided for in Section 13.6.1.

9.2 Site Work. Prior to the commencement of any site work on the Leased Premises (including any gravel use grading or driveway placement), DTM must provide MSB a site plan and technical drawings. The site plan is required to be signed and sealed by an Alaskan registered professional land surveyor, civil engineer, architect, or landscape architect.

9.3 Deleted.

9.4 Utilities. If DTM requires any utility service at the Leased Premises that are not already available on the commencement date of the Term, DTM shall pay for all the costs of bringing and installing utility services to and on the Leased Premises (including electric, telephone, gas, cable, water, solid waste and sewage disposal). DTM shall obtain MSB's prior written approval with respect to the location of any utility services on the Leased Premises which approval shall be given within forty-five (45) working days or MSB shall provide the reasons for the failure to approve in writing, and if MSB fails to timely respond to the proposed location of any utility services shall be deemed approved.

9.5 Amendments to Plans. In performing any work on the Leased Premises, DTM shall not deviate from MSB's approved site plan and Port Development Permit. Any deviation from the approved or issued plans and permits shall require MSB's prior written authorization and, where appropriate, a signed amendment to this Lease or the governing standards or permits.

9.6 Liens. DTM shall not permit any mechanics', laborers' or materialmen's liens to stand against the Leased Premises or any Improvements for any labor, materials or equipment furnished to DTM or claimed to have been furnished to DTM or to DTM's agents, or contractors in connection with work of any character performed or claimed to have been performed on the Leased Premises or Improvements by or at the direction or sufferance of DTM. DTM, however, shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of a lien contest, DTM shall give MSB such reasonable security as MSB may demand to insure payment of the lien or claimed lien and prevent the sale or foreclosure of the Leased Premises or Improvements. The security need not exceed one and one-half times the amount of the lien or DTM may record the bond contemplated by AS 34.35.072. In any lien contest proceedings, DTM shall immediately pay any judgment rendered with all proper costs and charges and shall have the lien released or judgment satisfied at DTM's own expense.

Section 10. Use and Occupancy.

10.1 Quiet Enjoyment. Upon DTM's timely payment of all of rents and other sums required to be paid by DTM under this Lease, and upon DTM's full and faithful observance and performance of all of its obligations contained in this Lease, and so long as such observance and performance continues, DTM shall peaceably hold and enjoy the Leased Premises during the Term without hindrance or interruption by MSB or anyone lawfully claiming by, through or under MSB.

10.2 Use of Leased Premises. DTM specifically agrees that, for the Term, it shall use the Leased Premises for no purpose other than, logistical support and log laydown area, marine terminal operator services, and related office areas. Any change in use will require the prior written approval of MSB which may be granted or withheld in MSB's sole and absolute discretion.

10.3 Repair and Maintenance. DTM shall, at DTM's expense and without notice from MSB at all times during the Term, keep the Leased Premises and all Improvements now existing or hereafter built on the Leased Premises (including but not limited to exterior building walls, windows, doors, fences, signs, landscaping and yard areas, refuse disposal equipment and facilities, pavement, curbs, gutters, exterior lighting, and drainage facilities), in good order, condition, maintenance, operability, and repair and of a neat, clean, appearance reasonably satisfactory to MSB.

10.4 Contractors and Subcontractors. Upon approval by MSB, DTM shall be permitted to utilize contractors/subcontractors (hereinafter "Subcontractors") for any work performed on the Lease Premises including contract shippers, provided such Subcontractors comply with all terms and conditions of this agreement and applicable laws.

Subcontractors shall have in place at all times all insurance as required by law, and other appropriate insurance at a level commensurate with activities to be performed; copies of the same shall be provided to the MSB prior to any work being performed by Subcontractor. Both DTM and the MSB shall be named as additional insureds under such insurance policies and with respect to any workman's compensation insurance, such policies shall contain a waiver of subrogation clause in favor of the MSB and DTM.

The Subcontractor must hold all licenses required under federal and Alaska state law - including without limitation a general specialty contractor's license, as appropriate, and state any required local business licenses, and such licenses are current and in good standing.

Use of Subcontractors will in no way relieve DTM or the Guarantor of any obligations under this agreement.

DTM shall, in any contract or agreement with Subcontractors performing work on the

Lease Premises require that all -indemnities and waivers of subrogation it obtains, and that any stipulation to be named as an additional insured it obtains, also be extended to waive rights of subrogation against the MSB and to add it as an additional named indemnities and as additional insured.

10.5 Compliance with Laws. DTM, at all times during the Term, at its own expense, and with all due diligence, shall observe and comply with all laws, ordinances, rules, and regulations that are now in effect or that may later be adopted by any governmental authority (including MSB), and that may be applicable to the Leased Premises or any Improvement on it or any use of it.

10.6 Authorized Representative. Immediately after the execution of this Lease, DTM shall provide MSB with the name and contact information (including cell phone number and e-mail address) for DTM's principal point of contact for DTM's operations on the Leased Premises. MSB shall be entitled to directly communicate with the named individual for all matters under this Lease. DTM shall promptly notify MSB of any change in the person acting as DTM's Authorized Representative for the Leased Premises.

10.7 Supervision. DTM shall maintain reasonable and adequate on-site supervision of the Leased Premises to insure that the terms and conditions of this Lease and all applicable federal, state and borough laws, rules, and regulations governing operations within the Leased Premises are enforced.

10.8 Signage. DTM shall not place on the Leased Premises any signage that is unrelated to any business DTM is operating on the Leased Premises. DTM's signage for its business shall be limited to one sign visible from the roadway, which must not exceed thirty-six inches (36") in height and seventy-two inches (72") in length. No electioneering or campaign signs of any kind shall be placed upon the Leased Premises.

10.9 Utilities.

10.9.1 DTM shall pay for all utility services consumed or used on the Leased Premises.

10.9.2 If DTM uses the high-mast lights in the conduct of their operations they will pay the electric bill at current market rate for the hours utilized.

10.9.3 DTM is responsible for providing their own communications services.

10.9.4 DTM is responsible to provide on-site Port-A-Johns for their use.

10.10 Waste and Wrongful Use. DTM shall not commit or suffer any strip or waste of the Leased Premises, or engage in any unlawful activity, or engage in any unauthorized activity that is unsafe, results in any public or private nuisance thereon, or adversely affects the value, character or utility of MSB's surrounding property.

10.11 Setbacks. DTM shall observe all setback lines applicable to the Leased Premises and shall not construct or maintain any building or other structure whatever between any road or other specified rights-of-way boundary of the Leased Premises and any setback along such boundary, except as allowed by law. MSB reserves the right to make use of, and to grant utility or railroad easements and other rights to third parties in, the setback areas of the Leased Premises.

10.12 Inspection and Repair by MSB. DTM shall repair, maintain and make good all conditions required under the provisions of this Lease, permit requirements and applicable laws within a time frame provided for curing a default under the terms of this Lease. In the event of an emergency, MSB's notice may be verbally given and followed after-the-fact by written notice. If DTM refuses or neglects to provide reasonable and necessary repairs or maintenance for the Leased Premises as required under the terms of this Lease to the reasonable satisfaction of MSB after written demand, then MSB, without prejudice to any other right or remedy it has under this Lease or otherwise, may perform such reasonable and necessary maintenance work or make such repairs without liability to DTM for any loss or damage that may accrue to DTM's merchandise or other property or DTM's business by reason thereof. Upon completion of any such repair or maintenance, and no later than thirty (30) days after presentation of an invoice therefore, DTM shall pay as additional rent MSB's reasonable costs for making such necessary repairs or performing such maintenance, plus fifteen percent (15%) of the repair cost to cover MSB's overhead.

10.13 Facility Access. To the extent DTM is granted access to the barge dock or deep draft dock, access to the deep-draft dock, the barge dock, the conveyor or other port facilities and equipment may not be blocked by DTM, except during active vessel loading.

10.14 Security. DTM shall be responsible to provide adequate security with respect to DTM operations as well as complying with all Home Land Security and United States Coast Guard Requirements to include all DTM employees and subcontractor employees working on the Leased Premises possessing a TWIC card while foreign vessels are in port.

Section 11. Taxes and Assessments.

11.1 Property taxes and Assessments. DTM shall pay all real property taxes, assessments, special assessments or other charges of every description for which the Leased Premises, or any Improvement thereon or any use thereof, are now or during the Term may be assessed or become liable, whether made by governmental authority or by any public utility or community service company, and whether assessed to or payable by MSB or DTM, subject to DTM's option to pay in installments where installment payments are permitted. If such tax or assessment is payable by MSB, DTM shall reimburse MSB within thirty (30) days after DTM's receipt of a copy of MSB's receipt for the payment. Payments of real property taxes and assessments due during the first and last years of the Term shall be prorated as of the dates the Term begins and ends. Upon MSB's request, DTM shall promptly provide to MSB true and complete copies of receipts for such real property taxes and assessments evidencing their timely payment.

11.2 New Taxes, Assessments and Charges. If at any time during the Term any new or additional taxes, assessments or any other charges not existing on the effective date of this

Lease are assessed against the Leased Premises, or any Improvement thereon, DTM shall pay before they become delinquent, all of such new taxes, assessments and charges.

11.3 Contesting Taxes. Nothing contained in this Lease will prevent DTM from contesting in good faith the validity or the amount of such real property taxes or assessments by appropriate proceedings commenced before such real property taxes or assessments become delinquent; provided, however, that DTM will give written notice to MSB of DTM's intention to do so. DTM shall not be deemed in default under this Lease because of its failure to pay any property taxes or assessments when the taxes or assessments are subject to a pending appeal.

11.4 Installment Payments. If there is an option given to pay assessments or special assessments in installments, DTM may elect to pay for such installments as shall accrue during the Term of this Lease. As to permitted installment payments for which at least the first installment fell due before commencement of the Term, DTM shall pay all installments falling due during the Term and MSB shall reimburse DTM within thirty (30) days for any amount greater than DTM's prorated portion of the installment.

Section 12. Hazardous Materials and Environmental Matters.

12.1 Observance of Environmental Laws. DTM must, at its own expense, comply with all laws, ordinances, regulations and administrative agency or court orders relating to health, safety, noise, environmental protection, waste disposal, hazardous or toxic materials, and water and air quality. In the event any discharge, leakage, spillage, emission or pollution of any type occurs upon or from the Leased Premises during the Term or any holdover thereafter, DTM shall immediately notify MSB and shall, at DTM's own expense, clean and restore the Leased Premises to the reasonable satisfaction of MSB and any governmental body or court having jurisdiction of the matter. **Under no circumstance shall any hazardous material be improperly stored or disposed of on the Leased Premises by DTM.**

12.2 Hazardous Materials on Leased Premises. DTM shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Leased Premises by DTM, its agents, employees, contractors or invitees without the prior written consent of MSB, which MSB shall not unreasonably withhold as long as DTM demonstrates to MSB's reasonable satisfaction that such Hazardous Material is necessary or useful to DTM's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Materials.

12.3. Disclosure. At the beginning of the Initial Term of this Lease and on July 1 of each year thereafter, including the year in which this Lease expires or is terminated, DTM shall inventory and disclose an inventory list to MSB with the names and amounts of all Hazardous Materials or any combination thereof that were stored or used on the Leased Premises, or that DTM intends to store or use on the Leased Premises. DTM shall keep an updated inventory list at all times and disclose to the MSB any types of changes to the inventory list throughout the year.

12.4 Environmental Control Measures. As a part of the development of the Leased Premises, DTM shall provide to MSB, for MSB's review and approval, a Hazardous Materials control plan. The control plan shall specify the materials, equipment and procedures that DTM will utilize in handling Hazardous Materials and in seeking to prevent and respond to any spill, release, or discharge of Hazardous Materials. All containers on the Leased Premises holding Hazardous Materials (e.g. tanks, drums, supply sources for equipment) shall be marked with the contents and DTM's name. DTM shall install and maintain secondary containment or a surface liner under all container and vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fueling or other transfers of Hazardous Materials. For this purpose, "secondary containment" means an impermeable diked area or portable impermeable containment structure capable of containing one hundred ten percent (110%) of the volume of the largest container; and "surface liner" means any safe, non-permeable containment designed to catch and hold fluids for the purpose of preventing spills and sized to accommodate a worst-case spill risk. DTM shall keep at hand during all fueling and all transfers of Hazardous Materials appropriate spill response equipment to respond to a spill.

12.5 Environmental Indemnity. DTM shall indemnify and defend MSB against all liability, cost and expense (including, without limitation, any fines, penalties, diminution in value of the Leased Premises, assessment and clean-up costs, judgments, litigation costs and attorneys' fees) incurred by or levied against MSB as a result of DTM's breach of this Section 12 or as a result of any discharge, leakage, spillage, emission or pollution on or discharged from the Leased Premises, without regard to whether such liability, cost or expense arises during or after the Term of this Lease; provided, however, that DTM shall not be required to indemnify MSB under this Section 12.5 if the parties agree or a court of competent jurisdiction determines that such liability, cost or expense is caused directly and solely by the active negligence of MSB. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

12.6 "Hazardous Material" Defined. For purposes of this Lease, the term "Hazardous Material" means any hazardous or toxic substances, material or waste, including but not limited to: (1) oil, petroleum products and byproducts, gasoline, diesel fuel, stove oil, kerosene and other hydrocarbons; (2) those substances, materials and wastes listed in the U.S. Department of Transportation Hazardous Materials Table (49 CFR § 172.101) or by the U.S. Environmental Protection Agency as hazardous substances (40 CFR Part 302), and amendments thereto; (3) all materials the release of which must be reported under Title 46 of the Alaska Statutes; and (4) any such other substances, materials and wastes that are or become regulated under any applicable local, state or federal law.

12.7 Environmental Assessments and Testing. Either prior to or within three months after the date this Lease is executed, DTM, at its sole cost, shall obtain a Phase I environmental site assessment of the Leased Premises from a professional engineering firm that is acceptable to MSB. The Phase I environment assessment shall be provided to MSB upon completion and it shall be used to establish the baseline for the condition of the Leased Premises at the commencement of the Term.

Thereafter during the Term, DTM, upon MSB's periodic request (which shall not occur any more frequently than once every five years), shall have environmental site assessments (Phase I and/or Phase II, as MSB reasonably directs) performed on the Leased Premises by a professional engineering firm reasonably acceptable to MSB to determine the condition of the Leased Premises with respect to any contamination. DTM shall pay for the cost of all such environmental assessments. DTM shall provide MSB with copies of the reports of all environmental assessments as they are completed.

In addition, DTM shall be responsible for all reasonable costs and expenses associated with the performance of environmental testing of the Leased Premises, which may be required in MSB's reasonable discretion, upon the expiration or other termination of this Lease, subject to DTM's reasonable approval of the scope of the testing. Such environmental testing, conducted by an engineering firm acceptable to MSB and approved by DTM, shall be the basis for determining the extent of any environmental impairment caused by the DTM's use and occupancy of the Leased Premises

12.8 MSB's Environmental Expenses. In the event MSB shall make any expenditures or incur any obligations for the payment of money in connection with this Section 12 including, but not limited to, reasonable attorneys' fees for instituting, prosecuting or defending any action or proceeding, such sums paid, obligations incurred and costs, all with interest at the rate of ten and one-half percent (10.5%) per annum, shall be deemed to be additional rent due under this Lease and shall be paid by DTM to MSB within thirty (30) days of the receipt by DTM of an invoice with supporting receipts from MSB. Notwithstanding the above, DTM shall not be responsible for any attorney fees of MSB in any action or proceeding by third parties against MSB unless MSB first tenders defense of such action to DTM and DTM fails or refuses to accept such tender of defense.

12.9 Environmental Insurance. In addition to the insurance DTM is required to provide under Section 14 below, DTM shall obtain, pay for and keep in effect throughout the Term insurance coverage against environmental pollution or contamination as are specified on **Exhibit B**. DTM shall provide proof of such insurance in accordance with Section 14.5 below.

Section 13. Default and Remedies.

13.1 Events of Default. Each of the following events shall be a default by DTM and breach of this Lease:

13.1.1 Failure to Perform Lease Obligations. DTM's abandonment or surrender of the Leased Premises or of the leasehold estate, or failure or refusal to pay when due any installment of Basic Rent or additional rent or any other sum required by this Lease to be paid by DTM, or to perform as required by any other obligation, covenant or condition of this Lease.

13.1.2 Failure to Perform Permit. DTM's failure to perform any obligation, covenant or condition imposed under any permit or license issued in connection with this Lease, specifically including but not limited to the Port MacKenzie Development Permit.

13.1.3 Appointment of Receiver. The appointment of a receiver or trustee to take possession of the Leased Premises or improvements or of the DTM's interest in the leasehold estate or of DTM's operations on the Leased Premises for any reason.

13.1.4 Insolvency, Bankruptcy. An assignment by DTM for the benefit of creditors or the filing of a voluntary or involuntary petition by or against DTM under any provision of the U. S. Bankruptcy Code.

13.2 Notice. As a precondition to pursuing any remedy for an alleged default by DTM after expiration of any applicable cure period, MSB shall, before pursuing any remedy, give notice of the default to DTM. Each notice of default shall state the alleged event of default and the cure or intended remedy, but the identification of the intended remedy shall not limit MSB's right to seek or use any other available remedy not identified in the notice. MSB shall give notice of default to DTM at its address for notices specified in this Lease. Notice shall be by personal delivery or by mailing by certified mail (return receipt requested) to DTM.

13.3 DTM's Right to Cure Defaults. DTM shall have the right to cure any default as provided below:

13.3.1 Payment Default. If the alleged default is nonpayment of rent, taxes, or other sums to be paid by DTM under this Lease, DTM shall have thirty (30) days after the notice is given to cure the default.

13.3.2 Immediate Correction. If, in the reasonable opinion of MSB, the alleged default substantially endangers either the person or property of MSB or a third party, or human health or the environment, DTM shall commence curing the default immediately upon receipt of the notice and complete the cure within such reasonable time period as is imposed by MSB or any governmental body having jurisdiction in the matter.

13.3.3 Other Default. For the cure of any other default, DTM shall promptly and diligently commence curing the default and shall have sixty (60) days after notice is received by DTM to complete the cure, and so long thereafter as DTM continues to diligently cure the default, but in no event longer than one hundred twenty (120) days after receipt of notice

13.4 Nonwaiver. MSB's acceptance of any rents, whether Basic Rent or additional rent, shall not be deemed to be a waiver of any breach by DTM of any of its covenants or obligations contained in this Lease or of the right of MSB to reenter the Leased Premises or to declare a forfeiture for any such breach. Waiver by MSB of any breach by DTM shall not operate to extinguish the covenant the breach of which is so waived, nor be deemed to be a waiver of the right of MSB to declare a forfeiture for any other breach thereof or of any other covenant.

13.5 Right of MSB to Protect Against Default. If DTM fails to observe or perform any of its obligations contained in this Lease, MSB, after giving the notices required in Section 13.3 and expiration of the applicable cure period, at any time thereafter and without notice, shall have the right, but not the obligation, to observe or perform the same for the account and at the expense of DTM, and shall not be liable to DTM or anyone claiming by, through or under it for any loss or damage by reason thereof to the occupancy, business, or property of any of them, All reasonable costs and expenses paid or incurred by MSB in observing or performing such covenant shall constitute additional rent that DTM shall pay to MSB with thirty (30) calendar days of DTM's receipt of an invoice therefore.

13.6 MSB's Remedies. If any default by DTM shall continue uncured, following notice of default as required by this Lease, for the cure period applicable to the default under Section 13.3 of this Lease, MSB shall have the following remedies in addition to all other rights and remedies provided by law or equity or other provisions of this Lease, to which MSB may resort cumulatively or in the alternative. The election of one remedy for any one default shall not foreclose an election of any other remedy for another default or for the same default at a later time.

13.6.1 Termination. In case of DTM's default MSB may, at MSB's election, terminate this Lease by giving DTM notice of termination. On the giving of the notice, all DTMs' rights in the Leased Premises and in all Improvements thereon *and* its limited exclusive commodity franchise shall terminate. Promptly after notice of termination, DTM shall surrender and vacate the Leased Premises and all Improvements, and MSB may reenter and take possession of the Leased Premises and all remaining Improvements and eject all parties in possession, or eject some and not others, or eject none. Termination under this Section 13.6.1 shall not relieve DTM, or any of its guarantors, insurers, or sureties, from the obligation to make payment of any sum then due to MSB or from any claim for damages previously accrued or then accruing against DTM.

13.6.2 Re-entry Without Termination. MSB may, at MSB's election, reenter the Leased Premises, and, without terminating this Lease, at any time and from time to time relet the Leased Premises and Improvements, or any part or parts of them, for the account and in the name of DTM or otherwise. MSB may, at MSB's election, eject all persons or eject some and not others or eject none. Any reletting may be for the remainder of the Term or for a longer or shorter term. MSB may execute any leases made under this provision either in MSB's name or in DTM's name, and MSB shall be entitled to all rents from the use, operation, or occupancy of the Leased Premises or Improvements or both. MSB shall apply all rents from reletting as provided in Section 13.7 of this Lease. DTM shall nevertheless pay to MSB on the due dates specified in this Lease, the equivalent of all sums required of DTM under this Lease, plus MSB's expenses, less the proceeds of any reletting. No act by or on behalf of MSB under this provision shall constitute an acceptance of a surrender or a termination of this Lease unless MSB gives DTM specific notice of acceptance of a surrender or termination.

13.6.3 Recovery of Rent. MSB shall be entitled, at MSB's election, to each installment of rent or to any combination of installments for any period before termination, plus late charges and interest at the rate of eight percent (8%) per annum from the due date of each installment or the maximum rate allowed by law, whichever is greater. If MSB elects to relet the Leased Premises without terminating this Lease, the proceeds of such reletting shall be applied, when received, as provided in Section 13.7 of this Lease.

13.6.4 DTM's Property. MSB may, at MSB's election, use DTM's personal property and trade fixtures on the Leased Premises, or any of such property and fixtures, without compensation and without liability for use or damage, or store them for the account and at the cost of DTM; provided however, in the event of a termination other than at the expiration of the term of the Lease, DTM shall have ten (10) working days to remove DTM's personal property after the termination of the Lease.

13.6.5 Damages. MSB shall also be entitled, at MSB's election, to damages as follows: (1) all amounts that would have fallen due as rent between the time of termination and the time the property is relet, if it is relet; provided that MSB shall exert reasonable efforts to relet the property at prevailing market value; and (2) the amount, if any, by which the Basic Rent under this Lease exceed the rents under any subsequent lease upon reletting calculated over the Term; and (3) all reasonable administrative, marketing, brokerage, repair, cleaning and similar costs incurred by MSB and necessary to reletting the Leased Premises or placing it in reasonable marketable condition.

13.7 Application of Sums Collected by MSB. MSB shall apply all proceeds of reletting as follows: first, to the payment of reasonable expenses (including attorneys' fees and brokers' commissions or both) paid or incurred by or on behalf of MSB in recovering possession, placing the Leased Premises and Improvements in reasonable condition, and reasonable and necessary costs for preparing or altering the Leased Premises or Improvements for reletting; second, to the reasonable expense of securing new tenants; third, to the fulfillment of DTM's covenants and obligations to the end of the Lease Term; and fourth, to DTM.

Section 14. Insurance

14.1 Duration and Requirement. During the entire Term, DTM shall keep in full force and affect a policy or policies of liability insurance, property insurance, environmental insurance, worker's compensation, and other applicable insurance that include coverages reasonably acceptable to MSB as are specified and attached on **Exhibit B** of this Lease with respect to the Leased Premises and the business operated by DTM. Required policies shall include, but not be limited to, workers' compensation, liability insurance and property insurance.

14.2 Workers' Compensation. DTM shall ensure that, with respect to all personnel performing work on the Leased Premises, DTM maintains in effect at all times during the term of this

Lease, coverage or insurance in accordance with the applicable laws relating to workers' compensation and employer's liability insurance.

14.3 Liability Insurance. DTM shall keep in full force and effect a policy or policies of general liability insurance that includes bodily injury, property damage, and personal injury coverages reasonably acceptable to MSB with respect to the Leased Premises and the business operated by DTM. The policy or policies purchased pursuant to this Section 14.2 shall name both MSB and DTM as insureds, with respect to the Leased Premises and the business operated by DTM on the Leased Premises.

14.4 Property Insurance. DTM shall keep all Improvements now or hereafter erected or placed on the Leased Premises insured against loss or damage on an all risk basis in an amount equal to the full replacement cost of all such Improvements and shall pay all premiums thereon at the time and place the same are payable. Every policy shall be made payable in case of loss or damage to DTM and MSB jointly and shall be distributed according to their interests in the Improvements unless otherwise specified by this Section 14. All compensation, indemnity or other monies paid on account of any loss or damage, other than rental value insurance, shall with all convenient speed be paid out in rebuilding, repairing or otherwise reinstating the same Improvements or in constructing different Improvements, unless DTM exercises its option not to rebuild under Section 16.1.4 of this Lease.

14.5 Policy Provisions. Each policy of comprehensive general liability or property insurance described in Sections 14.2 and 14.3 of this Lease shall:

(1) Provide that the liability of the insurer shall not be affected by, and that the insurer shall not claim, any right of setoff, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for MSB, DTM, or any person claiming by, through, or under any of them;

(2) Provide that such policy requires thirty (30) days notice to MSB of any proposed cancellation, expiration, or change in material terms thereof and that such policy may not be canceled, whether or not requested by DTM, unless the insurer first gives not less than thirty (30) days' prior written notice thereof to MSB; and

(3) Contain a waiver by the insurer of any right of subrogation to proceed against MSB or against any person claiming by, through, or under MSB,

14.6 Proof of Insurance. DTM shall deliver to MSB certificates of insurance on or before the commencement date of the Initial Term of this Lease or at such other date as agreed to in writing by MSB. Additionally, DTM shall deliver to MSB copies of the policy or policies of insurance, certificates of insurance, or copies of endorsements.

Section 15. General Indemnification and Recovery of Costs.

15.1 DTM's Indemnity Obligation. DTM shall indemnify MSB, its elected and appointed officials and officers, agents, and employees from and against any and all claims arising from (1) DTM's use of the Leased Premises, or from the conduct of DTM's business, or from any activity, work or things done, permitted or suffered by DTM in or about the Leased Premises or elsewhere; (2) any breach or default in the performance of any obligation on DTM's part to be performed under the terms of this Lease; (3) any conduct of DTM, or any of DTM's agents, contractors, customers, employees, or any person claiming by, through or under DTM; and (4) any accident on or in connection with the Leased Premises, or any fire thereon, or any nuisance made or suffered thereon. DTM shall further indemnify MSB from and against all reasonable costs, attorneys' fees, expenses and liabilities incurred in the defense of any proceeding brought against MSB by reason of any such claim. DTM, upon notice from MSB, shall defend any of the above- described claims at DTM's expense by counsel reasonably satisfactory to MSB. DTM, as a material part of the consideration to MSB, hereby assumes all risk of damage to or destruction of property or injury to or death of persons, in, upon or about the Leased Premises, arising from any cause and DTM hereby waives all claims in respect thereof against MSB. The provisions of this Section 15.1 shall not apply if the parties agree or a court of competent jurisdiction determines that such claims or liabilities are caused by the sole negligence of MSB.

15.2 Costs and Expenses of MSB. DTM shall pay to MSB all costs and expenses, including reasonable attorneys' fees, which are (1) paid or incurred by MSB but are required to be paid by DTM under any provision of this Lease; (2) paid or incurred by MSB in enforcing any covenant of DTM contained in this Lease, in protecting itself against or remedying any breach thereof, in recovering possession of the Leased Premises or any part thereof, or in collecting or causing to be paid any delinquent rents, real property taxes, assessments, or rates; (3) incurred by MSB in reviewing any matter for which MSB's approval is sought and in processing such approval; or (4) incurred by MSB in connection with any action in any respect related to this Lease, the Leased Premises, or DTM's actions or omissions on the Leased Premises, other than a condemnation action filed by or against DTM, to and in which MSB is made a party but not adjudicated to be at fault. The term "costs and expenses" as used in this Lease shall include but not be limited to all of MSB's out-of-pocket expenditures attributable to the matter involved. Except as otherwise expressly provided in this Lease, all costs and expenses of MSB shall be payable by DTM to MSB within thirty (30) days after receipt of invoices therefore and shall bear interest from the date which is thirty (30) days after the date of such receipt at the rate of ten and one-half (10.5 %) per annum. Such obligations and interest shall constitute additional rent due and payable under this Lease.

15.3 Other Indemnity and Cost Provisions Not Affected. The provisions of Section 15.1 regarding indemnity and the provisions of Section 15.2 regarding costs are intended to supplement, not supersede, the other provisions of this Lease that concern DTM's indemnity obligations and DTM's obligations to pay for MSB's costs. DTM shall fulfill all the indemnity and cost payment obligations owed to MSB under any of the provisions of this Lease.

Section 16. Damage or Destruction to Improvements.

16.1 Responsibility upon Damage to or Destruction of Property. In the event a building or any other Improvement situated on the Leased Premises is destroyed or damaged by fire or other casualty, DTM shall comply in full with one of the following conditions within ninety (90) days of such destruction or damage (or within such other time period as is mutually agreed to in writing):

16.1.1 Restore to Same Condition. DTM may repair, rebuild, or otherwise reinstate the damaged Improvement(s) in a good and substantial manner and in substantially the same form as it previously existed. In such event, the Lease shall continue in full force and effect without abatement of rents.

16.1.2 Rebuild to Different Condition. DTM may repair, rebuild or otherwise reinstate the damaged Improvement(s) in a manner and style different from the previously existing Improvement(s), so long as the plans therefore are approved by MSB as required under this Lease. In such event, the Lease shall continue in full force and effect without abatement of rents.

16.1.3 Clear Property. DTM may remove the damaged Improvement(s), in which event DTM must also place the Leased Premises in the condition specified in Section 18.2 of this Lease. In that event, the Lease shall continue in full force and effect without abatement of rents.

16.1.4 Last of Term. If the casualty occurs to the main building(s) or principal structure(s) on the Leased Premises and the casualty occurs within the last five years of the Initial Term, or during any Renewal Term, DTM may elect to terminate the Lease by (1) giving written notice to MSB of its intention to terminate, (2) removing the damaged Improvement(s) and placing the Leased Premises in the condition specified in Section 18.2, and (3) paying to MSB the total amount of rents to come due during the remaining Term of the Lease, applying the rental rate then in effect to the remainder of the Lease Term.

Section 17. Eminent Domain.

17.1 Definition. The terms "taking" and "to take" (in any of their forms) as used in this Section 17 refer to any competent authority (including MSB) acquiring by the power of eminent domain, including inverse condemnation, all or any part of the Leased Premises or an interest in the Leased Premises, at any time during the Term. The transfer of title effectuating the taking may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation in avoidance of an exercise of eminent domain, whether made before or while condemnation proceedings are pending. The time of taking shall be determined by application of Alaska law.

17.2 Complete Taking. In the event of a taking of all or materially all of the Leased Premises, this Lease, including the limited exclusive commodity franchise shall terminate on the earlier of the vesting of title in, or the taking of possession by, the condemner.

17.3 Partial Taking. Subject to the exception set out in Section 17.4 below, if less than materially all of the Leased Premises are taken (a "partial taking"), this Lease shall continue in effect unless the partial taking renders the remainder of the Leased Premises unsuitable for the purposes for which DTM's Improvements were designed, in which event DTM, upon sixty (60) day's written notice to MSB may terminate this Lease. If no termination occurs, except as to the portion so taken or condemned, the rent to be paid by DTM shall thereafter be reduced by the same ratio as the value of the portion of the Leased Premises so taken bears to the value of the Leased Premises before the taking. If no portion of the net usable area of the Leased Premises is taken, or if the portion thereof so taken is subterranean or aerial and does not interfere with the use of the surface, then DTM shall not be entitled to any adjustment of rent under this Section 17.3.

17.4 Partial Taking in Last of Term. If a partial taking renders the remaining Leased Premises unsuitable for the purposes for which DTM's Improvements were designed or occurs during the last five (5) years of the Initial Term of this Lease or any Renewal Term, then DTM, upon sixty (60) days' written notice to MSB and compliance with Section 18 of this Lease, and subject to the rights of any Qualified Mortgagee, may terminate this Lease after vesting of title in the condemner or taking of possession by the condemner. If DTM does so, the rent and other charges under this Lease shall be apportioned as of the date of termination.

17.5 Disposition of Proceeds on Total Taking. In the event of a total taking, the rights of MSB and DTM to share in the net proceeds of any and all awards for land, buildings, or other Improvements and damages shall be in the following order of priority:

17.5.1 To MSB, a sum equal to the fair market value of the fee simple interest in the Leased Premises unencumbered by this Lease or any sublease, and including MSB's Improvements and excluding DTM's Improvements.

17.5.2 To DTM, a sum representing the fair market value of DTM's Improvements, and a sum representing its limited exclusive commodity franchise (if any). In no event shall DTM be entitled to any claim for its leasehold interest, and any compensation therefore is hereby assigned to MSB.

17.5.3 To MSB, the balance of the award, excluding interest. Interest shall be allocated between the parties in proportion to their respective shares of the total award provided above. If the value of such respective interests of MSB and DTM have been separately determined in such condemnation proceeding, the values so determined shall be conclusive upon MSB and DTM. If such values have not been so determined, they may be fixed by agreement between MSB and DTM, or if the parties cannot agree, then by the Superior Court for the State of Alaska, Third Judicial District at Palmer.

17.6 Disposition of Proceeds on Partial Taking. In the event of a partial taking, Basic Rents shall be abated as provided in Section 17.3 and the net proceeds of the award shall be divided between MSB and DTM as follows:

17.6.1 To MSB, a sum representing the fair market value of the fee simple interest of the part or parts of the Leased Premises so taken, unencumbered by this Lease, including MSB's Improvements and excluding DTM's Improvements; plus, an amount representing consequential damages to the part or parts of the land remaining after such taking, considered as if vacant and unimproved.

17.6.2 To DTM, the balance of the award, which shall be applied by DTM first to restoration of DTM's Improvements as nearly as reasonably possible to their condition before such taking, unless DTM terminates this Lease as provided in Section 17.4 above.

17.7 Rights on Termination. Notwithstanding anything in this Lease to the contrary, if DTM exercises its right to terminate the Lease under Sections 17.3 or 17.4 above, the award balance that is attributable to DTM's Improvements, other than the principal balance (if any) and other proper charges due a Qualified Mortgagee, shall belong to MSB, free of any claim of DTM. In no event shall DTM be entitled to any compensation for its Improvements if the taking occurs after expiration of the Term or termination of this Lease.

17.8 Temporary Taking. If the whole or any part of the Leased Premises, or of DTM's interest under this Lease, is taken by any competent authority (including MSB) for its temporary use or occupancy, this Lease shall not terminate by reason thereof and DTM shall continue to pay all rental payments and other charges payable by DTM hereunder, and to perform all other terms, covenants, and conditions contained in this Lease, except to the extent DTM is prevented from so doing by the terms of the order of the taking authority. In the event of a temporary taking, DTM shall be entitled to receive the entire amount of the award and if the award includes physical damages to the underlying land, then DTM and shall use so more or all of the award for physical damages to the Leased Premises excluding the value of DTM's Improvements, to restore the Leased Premises excluding the value of DTM's Improvements as nearly as may be reasonably possible to the condition in which they existed immediately prior to such taking; provided, however, that if the period of temporary use or occupancy extends beyond the expiration of the Term, the award shall be apportioned between MSB and DTM as of said date of expiration, after MSB shall have received the entire portion of the award attributable to physical damage to the Leased Premises (excluding DTM's Improvements) and to the restoration thereof to the condition existing immediately prior to the taking or condemnation. Upon expiration of the temporary taking occurring after expiration of the Term of the Lease, DTM shall have the rights and obligations provided in Section 18, including but not limited to removal of DTM's Improvements within a reasonable time to be negotiated by MSB and DTM.

Section 18. Duties at Termination or Expiration

18.1 Surrender of Leased Premises. Upon expiration or early termination of this Lease, DTM shall surrender to MSB the possession of the Leased Premises. DTM shall leave the surrendered Leased Premises and any Improvements in a clean and leasable condition. If DTM fails to surrender the Leased Premises at expiration or termination, DTM shall defend and indemnify MSB from all liability and expense resulting from the delay or failure to surrender, including but not limited to claims made by any succeeding tenant founded on or resulting from DTM's failure to surrender. In the event of failure or refusal of DTM to surrender possession of the Leased Premises, MSB shall have the right to reenter the Leased Premises and remove therefrom DTM or any person, firm or corporation claiming by, through or under DTM and to obtain damages for trespass from DTM.

18.2 Removal of Improvements upon Termination. Upon the expiration or termination of this Lease or any extension thereof, including termination resulting from DTM's breach ("termination"), DTM shall leave the Leased Premises in a reasonably clean and leasable condition, which shall include removal of all Improvements if MSB at the time construction of the Improvements were initially approved by MSB expressly and in writing advised DTM that specified Improvements were required to be removed by DTM at termination, in which event DTM's rights shall continue in the Improvements required to be removed, and the foundations and footings to any Improvements, personal property, trash, vehicles, and equipment, except as noted in Section 18.3 below. Any excavation on the property, including reasonable excavation to remove DTM's Improvements, shall be filled and compacted with material approved by MSB.

18.3 MSB's Option. MSB may, at its option, allow DTM to leave some or all of DTM's Improvements on the Leased Premises upon termination. If MSB so elects, such Improvements shall become the property of MSB upon termination and MSB shall have no obligation to compensate DTM for the same.

18.4 MSB's Improvements. Any improvements owned by MSB at the commencement of this Lease, or added to the Leased Premises by MSB after execution of this Lease, shall not be removed by DTM.

18.5 Abandonment of DTM's Property. All property that DTM is not required or allowed to leave on the Leased Premises shall, on the tenth (10th) day following termination, be conclusively deemed abandoned. Abandoned property shall, at the election of MSB, become the property of MSB or be destroyed or removed by MSB.

18.6 Liability for Cleanup Expenses. DTM shall be liable for all reasonable costs and expenses incurred by MSB to remove or destroy abandoned property and Improvements not required or allowed to be left on the Leased Premises, and for the removal of trash or other debris left thereon. In addition, nothing in this Lease shall relieve DTM of any obligation or liability for removal of Hazardous Materials or inappropriate fill material placed on the Leased Premises during the term of the Lease, regardless of when such Hazardous Materials or inappropriate fill material is discovered, provided that MSB timely notifies DTM within thirty (30) days after such discovery.

Section 19. Assignments, Subleasing and Mortgages.

19.1 Limitations on Transfer. DTM shall not voluntarily or by operation of law allow the assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of DTM's interest in this Lease or in the Leased Premises, except in strict compliance with this Section 19. Any attempted assignment, transfer, mortgage, encumbrance or subletting without such compliance shall be void, and shall constitute a breach of this Lease.

19.2 DTM's Right to Assign or Sublease. DTM may have the right to assign, sublease or otherwise transfer DTM's interest in this Lease and the estate created by this Lease only upon receiving prior written consent of the MSB and not otherwise. MSB may grant or withhold its consent in its sole and absolute discretion.

19.3 Request for Consent to Assignment or Sublease. To request MSB's approval of any assignment, sublease or other transfer, DTM shall give MSB reasonable notice of the proposed assignment with appropriate documentation regarding the proposed assignee or subtenant, including (1) an application to assign that is accompanied by appropriate application fees and a certified financial statement prepared independently and in accordance with generally accepted accounting principles fairly representing the existing financial condition of the proposed assignee or subtenant, (2) the proposed assignee's or subtenant's prior year's income tax return, (3) the proposed assignee's or subtenant's business or operations plan for the Leased Premises; and (4) any other or further information MSB shall reasonably request. DTM shall also pay MSB the costs and fees MSB estimates it will incur in evaluating and investigating the proposed assignee's or subtenant's qualifications, which costs and fees shall not exceed two thousand dollars ($2,000).

19.4 Liability on Assignment or Sublease. No assignment or sublease, even if the assignment or sublease is made with MSB's consent, shall operate to relieve DTM of any obligations under this Lease, whether the same arise before or after the effective date of the assignment or subleasing. Upon assignment, the assignee shall assume all rights and obligations of DTM under this Lease, including unsatisfied obligations to cure any delinquency in rent or other charges under this Lease or to perform any repairs or other work or action required by MSB before the assignment.

19.5 Mortgage of Leasehold Interest. DTM shall have the right at any time, and from time to time, to subject the leasehold estate and any or all of DTM's Improvements situated on the Leased Premises to one or more mortgages, deeds of trust or assignments as security for a loan or loans or other obligation of DTM (each of which is a "Leasehold Mortgage"), provided that:

(1) Subordination. Any Leasehold Mortgage and all rights acquired under it shall be subject and subordinate to each and all the covenants, conditions, and restrictions stated in this Lease, and to all rights and interests of MSB. **Under no**

circumstances will MSB's fee simple interest in the Leased Premises, or MSB's rights under this Lease or its reversionary interest, ever be subject to or subordinate to the lien or encumbrance of any Leasehold Mortgage. With respect to MSB's interests, this Lease is specifically intended to be only an unsubordinated ground lease.

(2) Notice to MSB. DTM shall give MSB prior notice of any such Leasehold Mortgage, and shall accompany the notice with a true copy of the note and the Leasehold Mortgage as proposed for execution. Upon MSB's written consent to the Leasehold Mortgage and upon execution of the Leasehold Mortgage by all parties, the mortgagee shall become a Qualified Mortgagee as that term is used in this Lease.

19.6 Notice of Default and Opportunity to Cure. Upon any default on any of the terms of the Lease by DTM, MSB, in addition to notifying DTM pursuant to Section 13.2, shall also notify each Qualified Mortgagee of the default. Upon receipt of a written notice of default, any such Qualified Mortgagee shall have the length of time set forth in Section 13.3 of this Lease to cure the default. MSB shall accept any cure provided by a Qualified Mortgagee whether the cure is tendered in the name of or on behalf of DTM or the Qualified Mortgagee.

19.7 Possession by Mortgagee. A Qualified Mortgagee may take possession of the Leased Premises and vest in the interest of DTM in the Lease upon the performance of the following conditions:

19.7.1 The payment to MSB of any and all sums due to MSB under the Lease, including but not limited to accrued unpaid Basic Rent and additional rent;

19.7.2 The sending of a written notice to MSB and DTM of the Qualified Mortgagee's intent to take possession of the Leased Premises and assume the Lease; and

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

19.8 No Liability of Mortgagee Without Possession. A Qualified Mortgagee shall have no liability or obligation under the Lease unless and until it sends to MSB the written notice described in Section 19.7(2) above. Nothing in this Lease nor in the taking of possession of the Leased Premises and assumption of the Lease by a Qualified Mortgagee or a subsequent assignee shall relieve DTM of any duty or liability to MSB under the Lease.

19.9 Subsequent Transfer. In the event a Qualified Mortgagee forecloses the Leasehold Mortgage, any subsequent assignee or transferee of the leasehold estate proposed by the Qualified Mortgagee must be approved by MSB, whose discretion in the matter shall be complete.

Section 20. General Provisions.

20.1 MSB's Right to Entry, Inspection and Repair. MSB or its authorized agents may enter and inspect the Leased Premises at any time during regular business hours, with or without the presence of DTM or its authorized representative, after giving twenty-four (24) hours' advance notice to DTM of such inspection, and shall be accompanied by a representative of DTM except in the event of an emergency. MSB is specifically authorized to enter the Leased Premises for the purposes of posting notices of non-responsibility for any construction work DTM undertakes. MSB's right to inspect shall include, but not be limited to, conducting reasonable tests for environmental contamination. All inspections will be conducted in a manner that does not unreasonably interfere with the operation of DTM's business. In the event of an emergency, MSB may enter and inspect the Leased Premises on reasonable notice under the circumstances (including no notice to DTM if the circumstances reasonably warrant) and make such repairs or institute such measures, on the account and at the expense of DTM, as may be necessary to avert or terminate the emergency. An emergency is any action, event, or condition, either extant or imminent, that threatens significant damage to property or injury to persons on or near the Leased Premises, including but is not limited to flood, fire, explosion, earthquake, uncontrolled or dangerous discharge or release of water or other fluids, unauthorized or illegal placement of hazardous or toxic materials on the Leased Premises, and shifting, settling or loss of earth or support on the Leased Premises.

20.2 Notices. Any notice to MSB or DTM required or permitted under this Lease shall be given in writing, mailed by express or certified mail, return receipt requested, and addressed to such party at its mailing address specified on the first page of this Lease, or at such other address as may be specified by the party in writing. In the alternative, any notice may be delivered personally within the State of Alaska to the party. Except as otherwise expressly provided in this Lease, any notice shall be conclusively deemed to have been given upon personal delivery or one working day after the date of mailing. If at any time during the Term DTM is more than one person or entity, any notice given by MSB to any of them shall constitute notice to all of them, and any agreement or approval with or in favor of MSB made or given by any of them shall bind all of them.

20.3 Time of the Essence. Time is of the essence in the full and faithful observance and performance of all the obligations and covenants contained in this Lease.

20.4 Disputes; Forum Selection; Attorneys' Fees; Choice of Law. MSB and DTM shall attempt to resolve any dispute through non-binding mediation prior to litigation. Any litigation arising out of this Lease or related to it shall only be brought in the Superior Court for the State of Alaska, Third Judicial District at Palmer, and not elsewhere, and the laws of the State of Alaska shall apply. MSB and DTM consent to the jurisdiction of such court. In any litigation, the prevailing party shall be entitled to an award of its reasonable attorneys' fees pursuant to the Civil Rules in addition to any other relief the court grants. **The parties specifically agree that this is not a maritime lease and maritime and/or admiralty law shall not apply to any aspect of this lease or any dispute thereunder.**

20.5 MSB's Conveyance. MSB retains the absolute and unconditional right to convey its fee title in the Leased Premises, or an interest or estate therein.

20.6 Integration and Amendments. This Lease, the exhibits to it, and the provisions of the permits and licenses incorporated under it, contain and state the complete and final understanding of every agreement and representation made by or on behalf of MSB and DTM with respect to the Leased Premises. No implied covenant or prior oral or written agreement shall be held to vary or supplement the provisions of this Lease. Any modification of any provision of this Lease shall only be effective when it is made in a writing that specifically states it is an amendment of this Lease and that is signed by authorized representatives of both parties. DTM acknowledges that only the Borough Manager and no representative of MSB is authorized to modify this Lease unless the provisions of the MSB Code are satisfied, including, where necessary, the approval of the Matanuska-Susitna Borough Assembly which is not and cannot be guaranteed.

20.7 Severability. If any provision of this Lease is held to be void or otherwise unenforceable, the remaining provisions of this Lease shall remain in full force and effect.

20.8 Holdover Tenancy. Unless otherwise amended by MSB, this Lease does not provide for any hold-over tenancy rights by DTM. If DTM remains in possession of the Leased Premises after expiration of the Term without the execution of a new lease or an extension of this Lease, or an amendment of this Lease, and if no notice of termination has been delivered by MSB to DTM, DTM shall be deemed to occupy the Leased Premises only as a tenant at will, from month-to-month, upon and subject to all of the provisions of this Lease which may be applicable to a month-to-month tenancy; provided, however, that the Basic Rent payable to the MSB during the any holdover tenancy shall be three hundred percent (300%) of the rental rate in effect immediately prior to expiration of the Term.

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

20.10 Recordation of Lease. This Lease shall be recorded, along with all Exhibits and attachments therefrom, and which recording expense shall be borne by DTM.

20.11 Discriminatory Acts Prohibited. DTM, in its use and occupancy of the Leased Premises, shall not discriminate against any person or class of persons by reason of sex, race, color, creed, or national origin and shall comply with all federal regulations and laws in regard to discrimination.

20.12 Section Headings. The section headings in this Lease are for conveniences only and have no other significance.

20.13 Authority. The Borough's Authorized Representative for purposes of this lease shall be only the following, or their Attorney, and no others unless the Borough notifies DTM in writing of an additional or substitute Authorized Representative:

John Moosey Borough Manager 350 E. Dahlia Palmer, AK 99645 (907) 861-8689	Therese Dolan Port Operations Manager 350 E. Dahlia Palmer, AK 99645 (907) 861-7864

DTM's Authorized Representative for purposes of this lease shall be only the following, or their Attorney, and no others unless the DTM notifies the Borough in writing of an additional or substitute Authorized Representative:

Eric Oien
P.O. Box 81
Cinebar, Washington 98533
(360) 880-1003

20.14 Binding Effect. This Lease shall be binding upon and shall inure to the benefit of MSB and DTM and their respective successors and assigns.

IN WITNESS WHEREOF, MSB and DTM have duly executed and acknowledged this Lease for Port District Uplands on the dates indicated below.

MATANUSKA-SUSITNA BOROUGH

Date: ____________________

____
John Moosey, Borough Manager

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this __________ day of __________________, 2018, by John Moosey, the Manager of MATANUSKA-SUSITNA BOROUGH, on behalf of the municipal corporation.

____
Notary Public in and for Alaska
My Commission Expires: ____________

DENALI TIMBER MANAGEMENT, LLC

Date: ____________________

____
Eric Oien, President

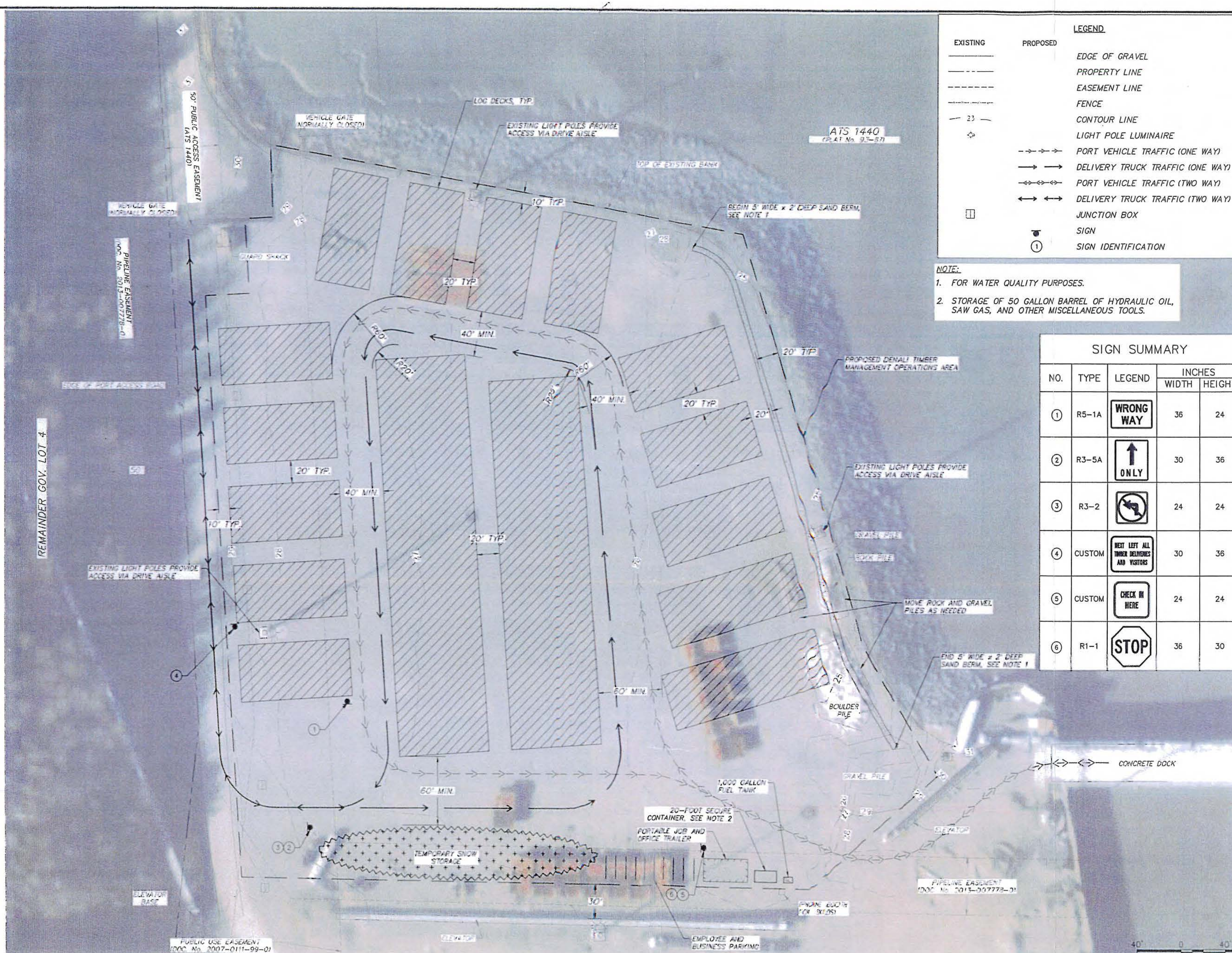
STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ________ day of ____________________, 2018, by Eric Oien, the President of **DENALI TIMBER MANAGEMENT, LLC**, on behalf of the limited liability corporation.

____
Notary Public in and for Alaska
My Commission Expires: ____________

EXHIBIT A

SITE PLAN
(See diagram)



LEGEND

EXISTING	PROPOSED	
		EDGE OF GRAVEL
		PROPERTY LINE
		EASEMENT LINE
		FENCE
— 23 —		CONTOUR LINE
		LIGHT POLE LUMINAIRE
		PORT VEHICLE TRAFFIC (ONE WAY)
		DELIVERY TRUCK TRAFFIC (ONE WAY)
		PORT VEHICLE TRAFFIC (TWO WAY)
		DELIVERY TRUCK TRAFFIC (TWO WAY)
		JUNCTION BOX
		SIGN
		SIGN IDENTIFICATION

NOTE:

1. FOR WATER QUALITY PURPOSES.
2. STORAGE OF 50 GALLON BARREL OF HYDRAULIC OIL, SAW GAS, AND OTHER MISCELLANEOUS TOOLS.

SIGN SUMMARY

NO.	TYPE	LEGEND	INCHES	
			WIDTH	HEIGHT
1	R5-1A	WRONG WAY	36	24
2	R3-5A	ONLY	30	36
3	R3-2		24	24
4	CUSTOM	NEXT LEFT ALL TIMBER DELIVERIES AND VISITORS	30	36
5	CUSTOM	CHECK IN HERE	24	24
6	R1-1	STOP	36	30

CRW ENGINEERING GROUP, LLC
3940 ARCTIC BLVD. SUITE 300
ANCHORAGE, ALASKA 99503
PHONE: (907) 562-3252
#AECL882-AK

PROJECT NO.	CITY GRID	WATER GRID	SEWER GRID
47201.00	-	-	-

PORT MACKENZIE LOG TRANSFER SITE

SITE PLAN

DENALI TIMBER MANAGEMENT, LLC

PROJECT NO: 47201.00

DATE: 2/2018

STATUS: PRELIMINARY

REV	DATE	DESCRIPTION	REVISION	BY

SCALE HOR. 1"=40' VER. NA

DESIGNED BY MKS

DRAWN BY CMK

CHECKED BY MKS

APPROVED BY MKS

SHEET NO. 1

IM18-037
OR18-019

32A

File: J:\JobsData\47201.00 Port MacKenzie Log Transfer Site\00 CADD\01 Working Set\01 Civil\47201.00 Site Plan.dwg PLOT DATE: 2/23/2018 2:32 PM

EXHIBIT B

INSURANCE

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of the Agreement to create in the public or any member thereof a third party benefit hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

It is highly recommended that DTM confer with their respective insurance companies or brokers to determine if their insurance program complies with the Lessors' Insurance requirements.

DTM shall procure and maintain the following insurance:

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services office form number CG 0001 (Edition 10/01) covering Commercial General Liability.
2. Insurance Services office form number CA 0001 (Edition 10/99) covering Automobile Liability, symbol 1 "any auto."
3. Worker's Compensation insurance as required by the State of Alaska and Employers Liability Insurance.
4. Builders risk for any leasehold development to cover:
   a. building materials (installed and uninstalled) and supplies on the job site, in storage, and in transit;
   b. temporary structures, foundations, and excavation sites;
   c. equipment, scaffolding, and fences;
   d. theft, flood, sinkholes, fire, earthquakes, and other weather-related damage; and
   e. design error, faulty workmanship, changes in laws;
5. Environmental/Pollution Liability insurance to cover any activities arising out of the DTM's operations.

B. Minimum Limits of Insurance

DTM shall maintain limits no less than:

1. General Liability:

$5,000,000 combined single limit per occurrence for bodily injury, property damage, personal injury, and advertising injury. The general aggregate limit shall be $5,000,000 minimum. The general aggregate limits shall apply separately to each project and shall include, but not be limited to:

Premises and Operating Liability
Products/Complete Operations Liability
Blanket Contractual Liability
Personal and Advertising Injury Liability
Broad Form Property Damage
Fire Legal Liability
Independent Contractors Liability

General liability insurance shall be maintained in effect throughout the term of the Agreement.

If the general liability insurance is written on a claim made form, the DTM shall provide insurance for a period of two years after termination or expiration of this Agreement. The policy(s) shall evidence a retroactive date, no later than the beginning of this Agreement.

2. Auto Liability:

$5,000,000 combined single limit per accident for bodily injury and property damage, including Hired and Non-Owned coverage.

3. Worker's Compensation and Employers Liability:

Worker's Compensation shall be statutory as required by the State of Alaska. Employer's liability shall be endorsed to the following minimum limits:

Bodily injury by Accident -	$1,000,000 each accident
Bodily injury by Disease -	$1,000,000 each employee
Bodily injury by Disease -	$1,000,000 policy limit

4. Builders risk: See requirements under Section 4, Page 1 of Exhibit C, Page 33 of lease. Minimum would be determined by cost of project. This insurance may be provided by the DTM or DTM's contractor.

5. Excess Liability:

In order to meet the required minimum limits of insurance it is permissible for the DTM/Permittee/Manager to combine an excess liability or umbrella policy with the general liability, auto liability or employer's liability. In the instance where the DTM/ Permittee/ Manager purchases an excess liability or umbrella policy the occurrence limit and the aggregate limit may be of the same amount.

C. Deductibles and Self-Insured Retention

Prior to occupancy, any deductible or self-insured retention must be declared and approved by the MSB. DTM/Permittee/Manager may be requested to demonstrate how the deductible or self-insured retention will be funded in the event of a claim. At the option of the MSB, the DTM shall reduce or eliminate such deductibles or self-insured retention as respects the MSB, its officers, officials, employees and volunteers; or the DTM/Permittee/Manager shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability, Automobile Liability

a. The MSB, its Administrator, officers, officials, employees, and volunteers shall be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the DTM; products and completed operations of the DTM/Permittee/Manager; premises owned, occupied or used by the DTM/ Permittee/ Manager or automobiles owned, leased, hired or borrowed by the DTM. The coverage shall contain no special limitation on the scope of protection afforded to the MSB, its Administrator, officers, officials, employees, and volunteers.

b. DTM insurance coverage shall be primary insurance as respects the MSB, its Administrator, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the MSB, it's Administrator, officers, officials, employees, and volunteers shall be excess of the DTM/Permittee/Manager insurance and shall not contribute to it.

c. DTM insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Worker's Compensation and Employer's Liability

The insurer shall agree to waive all rights of subrogation against the MSB, its Administrator, officers, officials, employees, and volunteers for losses arising from work performed by the DTM or any subcontractor of the DTM in relation to this Agreement.

3. All Insurance

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days prior written notice for nonpayment of premium or fraud on the part of the DTM or 60 days prior written notice for any other reason by certified mail, return receipt requested, has been given to the MSB. ***Such notice shall be mailed to the attention of the Lessors' Land and Resource Management Division.***

E. Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A-VII.

F. Verification of Coverage

DTM shall furnish the MSB with certificates of insurance and with certified copies of all endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms acceptable to the MSB. All certificates are to be received and approved by the MSB before occupancy commences. The MSB reserves the right to require complete, copies of all required insurance policies, at any time, but not more frequently than on renewal dates or annually.

G. Rights of Subrogation

All insurance policies shall waive their rights of subrogation against the MSB.

H. Subcontractors

DTM shall include all subcontractors and as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all requirements stated herein.

I. Lapse in Insurance Coverage

A lapse in insurance coverage, any change that restricts, reduces insurance provided, or changes name of insured without MSB approval is a material breach of this agreement, which may result in immediate termination of the agreement.

EXHIBIT C

TARIFF

Port MacKenzie

TERMINAL TARIFF

• 350 E. Dahlia Ave., Palmer, Alaska, 99645 • Telephone (907) 746-7414 • Fax (907) 745-1248

IM 18-037
OR 18-019

MATANUSKA-SUSITNA BOROUGH
PORT MACKENZIE TERMINAL TARIFF NO. 2

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- (b) *Monthly Dockage Rates*
- *(c)* *Annual Rate Adjustment of 3%*

420 HANDLING, LOADING, AND UNLOADING

PREFACE

The purpose of this document is to provide, in a complete but condensed format for public review, the terms, conditions, rules, regulations, charges, and rates comprising the Mat-Su Borough (MSB) Port Tariff, as received and approved from time to time by the MSB Port Commission. This document comprises the Mat-Su Borough Port Tariff No. 2.

Tariff Revisions

The MSB Port Tariff may be revised in whole or in part from time to time. Upon such revision, the amended page(s) will show the date of revision in the lower left corner. Requests for missing pages or additional copies of the Tariff may be directed to the MSB Port Director.

Forms

All forms referenced in this document are attached as exhibits, and copies may be obtained from the Port Director's office.

Explanation of Abbreviations and Characters That May Appear in Tariff

b.m.	board measure	min.	minimum
bbl.	barrel (42 gallons)	misc.	miscellaneous
bdl.	bundle	MSB	Matanuska-Susitna Borough
c.l.	carload	m.t.	metric ton
crt.	crate	no.	number
cs.	case	N.O.S.	not otherwise specified herein
ctn.	carton	par	paragraph
cu.ft.	cubic foot or feet	pkg.	package
dkg	dockage	sq. ft.	square foot or feet
ea.	each	stg.	storage
f.f.	folded flat	s.u.	set up
F.M.C.	Federal Maritime Commission	term'l	terminal
gals.	gallons	unldg	unloading
hdlg.	handling	U.S.	United Stated of America
inc.	including, inclusive or incorporated	viz.	videlicet (examples, lists)
k.d.	knocked down	w/m	weight ton of 2,000 lbs. or cubic ton of 40 cubic feet
k.d.f.	knocked down flat		
l.c.l.	less than carload	w/r	warehouse receipt
ldg.	loading	wt	weight
lgth.	Length	w.t.	weight ton of 2,000 lbs.
m.b.m.	1,000 ft. board measure	yd.	Yard
meas.	measurement		

Notice to Public

This tariff is published and filed as required by law and is, therefor, notice to the public, shippers, consignees and carriers that the rates, rules and charges apply to all traffic for which contract rates have not been arranged.

In addition to this Port Tariff, the public, shippers, consignees and carriers using MSB facilities should consult and be aware that the MSB Code of Ordinances, including but not limited to Chapter 8.45 (Building and Construction), Chapter 8.45.010(5) Adoption of Uniform Fire Code, Chapter 11.30 (Utility Permits) and Chapter 1.10.125 (Ports, Harbors and Wharves), all as amended, apply and govern where not specifically provided otherwise in this tariff.

SECTION I – GENERAL RULES AND REGULATIONS

100 DEFINITIONS –GENERAL

(a) *General Terms.* Unless provided otherwise in this tariff, applicable definitions set forth in 46 CFR§ 525.1(c) shall control.

(b) *MSB Docks.* The MSB docks include all docks, floats, slips, wharves, ramps, piers, bulkheads, dolphins and sea walls owned or operated by MSB.

(c) *Float: Float System.* Those portions of the MSB docks that rise and fall with the tide, including the pilings, ramps, ladders and utility connections.

(d) *Holidays.* In this tariff, whenever reference is made to holidays, the following days are included: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, the day immediately following Thanksgiving Day, and Christmas Day. When a holiday falls on a Saturday, the preceding Friday shall be considered a holiday and, when a holiday falls on a Sunday, the following Monday will be considered a holiday for the purposes of this tariff.

(e) *Lease Holder.* A person or business that has a valid lease issued by the MSB.

(f) *Permit Holder.* A person or business that has a valid terminal use permit.

(g) *Point of Rest.* Point of rest is defined as that area on the dock which is assigned for the receipt of inbound cargo from the vessel and from which inbound cargo may be delivered to the consignee and that area which is assigned for the receipt of outbound cargo from shippers for vessel loading.

(h) *Port MacKenzie.* All lands designated in the Point MacKenzie Port District (MSB 18.02.020) including the dock, submerged lands, tidelands, and upland sections.

(i) *Terminal Facilities.* Terminal facilities include all docks and associated equipment, offices, warehouses, storage space, roads, paved areas, water banks and shorelines under the management and control of the MSB within the Port District (MSB 18.02.020).

(j) *Vessel.* In this tariff, whenever reference is made to a "vessel", the term shall mean any ship or barge, self-propelled or other than self-propelled.

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(k) *Dockage.* Dockage is the charge assessed to a vessel for berthing at a dock, ferry terminal, wharf, pier, bulkhead structure, or bank, for mooring to a vessel so berthed, or landing at a ramp. (Sometimes identified as "moorage".)

(l) *Handling.* Handling means the service of physically moving cargo between point of rest and any place on the terminal facility other than the end of a ship's tackle.

(m) *Loading and Unloading.* Loading and unloading means the service of loading or unloading cargo between any place on the terminal and railroad cars, trucks, lighters, barges or any other means of conveyance to or from the terminal facility.

(n) *Wharfage.* Wharfage is the charge assessed against any freight placed in a transit shed or on a dock, or passing through or over a dock; or transferred between vessels; or loaded to or unloaded from a vessel at a dock, wharf, pier, ferry terminal, or bank (or from a vessel moored to another vessel so berthed) regardless of whether or not the dock is used. Wharfage is solely the charge for use of a dock and does not include handling, sorting, and piling of freight or charges for any other services.

(o) *Demurrage.* A charge assessed against cargo remaining in or on terminal facilities after the expiration of free time, unless arrangements have been made for storage.

(p) *Free Time.* The specified period during which cargo may occupy space assigned to it on terminal property, free of wharf demurrage or terminal storage charges, immediately prior to the loading or subsequent to the discharge of such cargo on or off a vessel.

120 APPLICATION OF TARIFF

(a) *General Application of Tariff.* Use of the waterways and facilities under the jurisdiction of the Port Commission shall constitute a consent to the terms and conditions of this tariff, and shall evidence an agreement on the part of all vessels, their owners or agents, and other users of the waterways and facilities to pay all charges specified, and to be governed by all rules and regulations contained therein.

(b) *Tariff Effective.* Rates, charges, rules and regulations named in this tariff and any additions, revisions, or supplements thereto shall apply to all vessels or users and to all freight received at facilities subject to this tariff on and after revisions, or supplements thereto. Unless otherwise specified, all transit freight received at terminals and undelivered prior to effective dates of tariff, revisions, or supplements thereto, shall be charged the rates in effect on the date such freight was received until entire lot or shipment has been withdrawn.

(c) *Acceptance of Tariff.* Use of the docks and terminal facilities of the MSB shall be deemed an acceptance of this tariff and the terms and conditions named herein.

(d) *Reservation of Agreement Rights.* Right is reserved by the MSB to enter into agreements with carriers, shippers, consignees and/or their agents concerning rates and services, providing such agreements are consistent with existing local, state and federal law governing the civil and business relations of all parties concerned. Such agreements may include granting credits for fees ordinarily chargeable pursuant to this tariff, in exchange for the construction or modification by the other party, of improvements to port facilities.

(e) *Compliance with Conditions of Docking and Facility Use.* Use of MSB docks and terminal facilities and the acceptance of services shall conform to conditions of docking and facility use set forth herein.

(f) *Access to Records.* All vessels, and all other users of the facilities and waterways, shall be required to permit access to manifests of cargo and all other documents by the Port Director or his designee for the purpose of audit for ascertaining the correctness of reports filed and the assessment of published charges. Any such information so acquired shall not be disclosed to any person other than a member of the Port Commission or MSB staff in carrying out official duties required by law, unless a formal request is received under the Freedom of Information Act and a legal determination is made which requires the release of this information.

140 APPLICATION OF RATES

(a) Except as otherwise provided herein, rates apply per 2,000 lbs., or per 40 cubic feet as rated by ocean carrier, or per 1,000 feet board measure, or 42 gallons per barrel of bulk petroleum products corrected to 60 degrees F. net, or 376 lbs. per barrel of bulk cement.

(b) Rates provided for commodities herein are specific and may not be applied by analogy. If rates are not provided for specific commodities, rates to be applied are those established for "Freight N.O.S." (Not Otherwise Specified), unless written agreements are approved by the Port Commission in advance of receipt of shipment.

160 INSURANCE

(a) Rates named in this tariff do not include insurance of any kind. The MSB shall be under no obligation to provide any insurance of any type for any vessel, cargo, or liability arising out of use of the MSB docks or terminal facilities. If the MSB does acquire any such insurance, the charges for that insurance shall be in addition to fees described in this tariff.

(b) Every party shall obtain, and shall maintain, the following coverage:

(1) Workman's Compensation Insurance (including Social Security, Unemployment, and Longshoremen and Harbor Workers Act coverage) required under all applicable Federal and State statutes and municipal ordinances for all the party's employees performing its work, in amounts established by state of federal law, and Employer's Liability Insurance (including liability under the Jones Act) in the amount of not less than $1 Million (1,000,000.00).

(2) Comprehensive General Liability Insurance (including coverage for automobile liability, broad form contractual liability and property in the insured's care, custody, and control) against claims for bodily injury, death, or property damage occurring on, in or about any vessels being loaded by a party, or the premises of the Port, and the adjoining areas, with limits as to bodily injury or death and property damage of not less than $5 Million ($5,000,000.00) for each occurrence.

(3) All operator vehicles, and heavy equipment operating in the Port District must have valid and current licenses and insurance as described in their Subsection 160. All vehicle and heavy equipment operators must be fully trained, qualified, and licensed.

(c) Every party shall submit to the Port certificates of insurance evidencing the foregoing coverage and naming the Port as an additional named insured, with the provision that such coverage will not extend to actions resulting from the Port's negligence.

(d) The required insurance policy or policies shall contain an endorsement that the insurance company will not cancel, non-renew, or reduce such insurance coverage, except in the application of any aggregate limit, without first giving the Port Director thirty (30) days prior written notice by certified or registered mail of its intent to so cancel, non-renew, or reduce coverage. The insurance coverage required shall be placed with a responsible insurance company or companies eligible to do business in the state of Alaska and acceptable to the

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Port Director, and if rated in the current A.M. Best Company Guide, having a Policyholder's rating of A- or better. Licensee shall furnish proof of the insurance coverage required on a Certificate of Insurance form, signed by an authorized representative of the insurance company or companies shown on the Certificate. In addition to the foregoing, the Port Director may, but shall have no duty to, obtain proof of insurance directly from the insurance companies shown on the Certificate.

180 RESPONSIBILITY FOR CHARGES, COLLECTION, AND GUARANTEE OF CHARGES

(a) *Responsibility for Charges.* The vessel, its owner or agents, shippers or consignees and owner of the cargo on the vessel shall be jointly and severally responsible for payment of charges named herein and such payment responsibility applies without regard to the provisions of bills of lading, charter party agreements, vessel repair, contracts or other conflicting provisions.

(b) *Prepayment, Time of Prepayment, Acceptable Security, Refund of Excess.* All charges for services rendered by the MSB for the use of docks and other terminal facilities are due and payable in advance of such services or use, as follows.

(1) For all charges attributable to the vessel from its owners or agents before a vessel commences its loading or discharging.

(2) For all charges attributable to the cargo from a vessel owner, charterer, shipper or consignee before the cargo leaves the MSB docks or terminal facilities.

A cash deposit or acceptable security in an amount equal to 100 percent of the estimated applicable charges shall be required to be posted with the MSB **seven (7) days** prior to the vessel's scheduled arrival, or at such other time as may be authorized or directed by the Port Director, but in all cases in advance of actual services rendered. Wherever a cash deposit has been posted, any excess thereof, after satisfaction of all applicable terminal charges, shall be promptly refunded by the MSB to the posting party.

(c) *Waiver of Prepayment Requirement.* The Port Director, in his/her sole discretion, may waive the cash-in-advance requirement as to all or any category or categories of anticipated charges when the party responsible for such charges has been identified to the satisfaction of the Port Director and

(1) That party responsible has established credit worthiness acceptable to the Port Director; or

(2) Adequate security, acceptable to the Port Director, has been posted; or

(3) The agent requesting terminal services or use, or any other entity acceptable to the Port Director as credit worthy, has personally accepted financial responsibility for the applicable charges.

The MSB retains the right, in its sole discretion, to determine whether a responsible party or an agent is credit worthy, and to waive the cash-in-advance requirement. The MSB may establish guidelines for determining whether a responsible party or an agent is credit worthy. Compliance with these guidelines does not create a right to waiver of the cash-in-advance requirement.

(d) *Charges on Delinquent Accounts.* All invoices, except for damages to MSB property, will be declared delinquent thirty (30) days after the date of the invoice and will be charged interest at the rate of 1 percent per month from the date of the invoice. All extra expenses, including legal expenses, litigation costs, or costs of agents employed to effect collection shall also be assessed to, and payable by such accounts.

(e) *Right to Sell for Unpaid Charges.* Freight on which unpaid charges and advances have accrued may be sold to satisfy such charges and costs. Freight of a perishable nature, or of a nature liable to damage other freight may be sold by the Port at public or private sale without advertising, provided owner has been given proper notice to pay charges and to remove said freight, and has neglected or failed to comply. If consignee's representative cannot be reached by the Port Director after three (3) attempts on three (3) separate days demurrage may begin. Thirty (30) days after written notification has been sent to consignee, cargo or stored items shall become property of Port MacKenzie and may be disposed of immediately. All costs associated with the handling of such items will be billed to the consignee on a time and materials basis.

200 LIABILITY FOR LOSS OR DAMAGE AND INDEMNITY

(a) *Responsibility Limited.*

(1) Generally, no persons other than employees of the holders of authorized Terminal Operator Permits (Exhibit A) shall be permitted to perform any services on the docks, or in any other terminal facility of the MSB, except upon written authorization of the Port Director. Permit holders shall be required to obtain any necessary Terminal Operator Permits prior to performing any services on any other terminal facility of the MSB, except upon written authorization of the Port Director. The MSB, its employees and agents shall not be liable for the injury of persons on the MSB docks or terminal facilities, nor shall they be liable for any loss, damage, or theft occasioned by such persons' presence on the MSB docks or terminal facilities, except that the MSB shall be liable for any portion of loss or damage that is directly caused by its own negligence.

(2) The MSB, its employees and agents are not responsible for loss or damage caused by fire, frost, heat, dampness, leakage, weather damage, evaporation, natural shrinkage, wastage or decay; animals, rats, mice or other rodents; moths, weevils or other insects; leakage or discharge from fire protection systems; collapse of buildings or structures; breakdown of plant protection systems; breakdown of plant or machinery or equipment; or by floats, logs, piling or camel logs required in breasting vessels away from a wharf; nor will they be answerable for any loss or damage or delay arising from insurrection, shortage of labor, combinations, riots or strikes of any person in their employ or in the service of others, or from any consequences arising therefrom, except that the MSB shall be liable for any portion of loss or damage that is directly caused by its own negligence.

(b) *Indemnity.*

(1) Neither the Mat-Su Borough (the "Borough") nor the Port Commission, nor their agents, servants, or employees, shall be liable for any injury, loss or damage to any persons or property on or about the premises from any cause of whatsoever nature, unless such loss or damage be caused by failure of the Borough or Port Commission to exercise the ordinary care and diligence required of it by law. All vessels, their owners, charterers and their agents, and all other users of the facilities of the Borough and Port Commission shall have save and hold the Borough and Port Commission harmless and indemnify the Borough and Port Commission against any liability for any injury or death, to any person or

persons or damage to property (including, but not limited to, expenses of damage to or repair or replacement of Borough and Port Commission facilities) arising from any acts, omission, neglect or default of vessels, their owners, charterers and their agents, and all other users of the facilities of the Borough and Port Commission, or arising from any act, omission, neglect or default of any agents, servants, employees, licensees, invitees of vessels, their owners, charterers and their agents, and all other users of the facilities of the Borough and Port commission. When used in this paragraph, the term user shall include, but not be limited to, tug boats, tug boat operators, pilots, or any other parties.

(2) All vessels, their owners, charters and their agents, and all other users of the facilities of the Borough and Port Commission further covenant and agree to indemnify and hold the Borough and Port Commission harmless from any loss, cost or expense whatsoever directly or indirectly resulting or occasioned to, or imposed upon the borough and Port Commission by injury to or destruction of life or property resulting from the negligent act or acts or an omission or omissions of vessels, their owners, charterers and their agents, and all other users of the Borough and Port Commission facilities (including, but limited to, its agents, servants, employees, independent contractors, invitees, and licensees) or (2) by damage to or destruction of any Borough and Port Commission facility or any part thereof, or the abutting real property caused by or attributable to the negligent act or acts or an omission or omissions of vessels, their owners, charterers and their agents, and all other users of the Port Commission facilities (including, but limited to, their agents, servants, employees, contractors, invitees and licensees or caused by or attributable to the user's failure to perform any obligations to the Borough and Port Commission obligations of the vessels, their owners, charterers and their agents, and all other users of the facilities of the Borough and Port Commission under this subparagraph shall not only cover the losses and damages assessed or incurred but also such costs and expenses as those incurred in preparation for litigation or in settling or disposing of threats of litigation, including such items as attorney fees, the employment of expert witnesses and the fees and charges paid to them, court costs and all of such costs and expenses incurred in preparation for trial, and the trial of the case or cases; and the appeal or appeals thereof. The Port Commission may detain any vessel or other watercraft responsible for damage to the facilities, until sufficient security satisfactory to the Port commission has been posted for the amount of the damage. Nothing contained herein shall be deemed to exculpate or relieve the Port Commission from liability from the negligence of the Port Commission, its members, officers, employees or agents.

(c) *Owner's Risk.* All of the following shall be at the owner's risk except for those damages caused by the MSB's own negligence:

(1) Glass, liquids and fragile articles will be accepted only at owner's risk for breakage, leakage or chafing.

(2) Freight on open ground is at owner's risk for loss or damage.

(3) Freight subject to freezing will be accepted only at owner's risk.

(4) All watercraft, if and when permitted by the Port Director or his authorized agent to be moored at docks or alongside of vessels, are at owner's risk for loss or damage.

(5) Vessels approaching or departing berths when passing in and out of federal and state channels, over submerged lands outside of immediate terminal berths, do so at their own risk and shall not hold the Port or the Matanuska-Susitna Borough responsible for any vessel damage or casualty during such transit.

220 RIGHTS OF THE MAT-SU BOROUGH

Without in any way limiting the general authority of the MSB, the Borough shall have the following powers:

(a) *Access to Port Facilities.* The MSB shall at all times have the right to refuse access to any MSB dock or terminal facility by any person or vessel or to remove any vessel, person or cargo at any time from any MSB dock or terminal facility. This right shall be reserved at all times to the MSB without responsibility for demurrage, loss or damage when:

(1) Previous arrangements for use, space, receiving or unloading have not been made with the Port Director;

(2) The vessel is unsafe or hazardous and may pose a risk to life or property;

(3) The value of the vessel, in the opinion of the Port Director, is less than the probable service charges and other charges related to its use of the MSB dock or terminal facilities;

(4) During periods of congestion, or in cases of emergency, when, in the judgment of the Port Director, the circumstances then prevailing or likely to occur will prevent the MSB dock or terminal facilities, or any portion of them, from providing customary services to the public.

(b) *Right to Refuse Cargo.* In his discretion, the Port Director shall at all times have the right to refuse to accept, receive or unload, or permit a vessel to discharge:

(1) Cargo for which pervious arrangements for space, receiving, unloading or handling has not been made with the Port Director by the shipper, consignee or vessel.

(2) Cargo not suitably packed for safe transportation.

(3) Cargo deemed by the Port Director, in the reasonable exercise of his discretion, to be offensive, perishable or hazardous. Hazardous cargo must have been prepared for shipment in accordance with the applicable Department of Transportation regulations (including 49 CFR Parts 171-179).

(4) Cargo, the value of which may, in the opinion of the Port Director, be less than the probable service charges and other charges related to it.

(5) Cargo, during a period of congestion, or in cases of emergency, when, in the judgment of the Port Director, the circumstances then prevailing or likely to occur will prevent the MSB docks or terminal facilities, or any portion of them, from providing customary service to the public.

(c) *Right to Schedule Vessels and Cargo.*

(1) In his/her discretion, the Port Director shall at all times have the right to schedule access to any port facility by person or vessel or to remove any vessel, person or cargo at any time from any MSB dock or terminal facility, in order to provide for efficient operation of the MSB docks or terminal facilities and promote the objectives of the MSB Code.

(2) When a working vessel is required to vacate an assigned berth for the purpose of making way for another vessel at the direction of the Port Director, and subsequently returns to that berth to complete loading or discharging of cargo, dockage charges will be assessed on the total time the vessel actually occupies that berth.

(d) *Right to Remove, Transfer, or Warehouse Cargo.*

(1) *Hazardous or Offensive Cargo.* In his discretion, the Port Director shall at all times have the right to immediately remove all hazardous or offensive cargo, or cargo which by its nature is liable to damage other cargo or MSB dock or terminal facilities. The cargo may be removed from its present location to any other location with all expenses and risk of loss or damage to be the responsibility of the owner, shipper or consignee.

(2) *Cargo beyond free time.* Any cargo remaining on MSB dock or terminal facilities, after expiration of any applicable free time, may be removed to public or private warehouses, and all expense of removal and risk of loss or damage shall be the responsibility of the owner, shipper, consignee or vessel as responsibility may appear on shipping documents, manifests or other sources.

(e) *Right to Withhold Delivery of Freight.* Right is reserved by the MSB to withhold delivery of freight until all accrued charges and/or advances against said freight have been paid in full. At the Port Director's discretion, any or all of such freight may be placed in public or private warehouses or open storage areas, and all cost of removal and subsequent handling and storage shall be the responsibility of the owner of the freight.

(f) *Right to Sell for Unpaid Charges.* Freight on which unpaid terminal charges have accrued may be sold to satisfy such charges and costs, provided such sale has been publicly advertised. Freight of a perishable nature or of a nature liable to damage other freight may be sold at public or private sale without advertising, provided the owner has been given proper notice to pay charges and to remove said freight and has neglected or failed to do so within a prescribed reasonable time.

(g) *Explosives.* The MSB shall not allow the acceptance, handling or storage of explosives within the confines of the Port without prior arrangement with the Port Director and as governed by rules and regulations of federal, state and local authorities.

(h) *Right to Remove, Transfer, or Rearrange Vessels.*

(1) *Hazardous Vessels or Vessels with Hazardous Cargo.* In his discretion, the Port Director shall at all times have the right to immediately remove any hazardous or offensive vessel, or any vessel containing hazardous cargo, or any vessel containing cargo which by its nature is liable to damage other vessels or other cargo or port facilities. The vessel may be removed from its present location to any other location, and all expenses and risk of loss or damage shall be the responsibility of the owner, shipper or consignee.

(2) *Vessel Beyond Free Time.* Any vessel remaining at MSB dock or terminal facilities after expiration of any applicable free time may be removed to any other public or private facility, and all expenses of removal and risk of loss or damage shall be the responsibility of the owner, shipper, consignee or vessel.

(3) *Movement of Vessels to Reduce Congestion or Maximize Services.* In his discretion, the Port Director shall at all times have the right to move or rearrange any vessel from its present location to any other location in order to reduce congestion at the dock or to prevent disruption of customary services to the public.

(i) *Right to Remove Materials or Equipment from MSB Dock or Terminal Facilities.* Any materials, equipment, trash or other items left on or about any MSB dock or terminal facility may be removed by the Port Director at any time, and all expense of removal and risk of loss or damage shall be the responsibility of the vessel that last occupied the facility or the owner, shipper or consignee of the vessel as responsibility may appear on shipping documents, manifests or other sources.

240 REQUESTS, COMPLAINTS, CORRESPONDENCE, WEB SITE, AND LOCATION

(a) Requests and complaints may be made by any shipper, vessel or vessel agent by filing a written statement with the Port Director, Mat-Su Borough, 350 E. Dahlia Ave., Palmer, Alaska 99645. Correspondence pertaining to the Port should be addressed to: Port Director, Mat-Su Borough, 350 E. Dahlia Avenue, Palmer, Alaska 99645. The Port Director can be reached at (907) 861-7798, (907) 354-7414 (cell).

(b) The web site for Port MacKenzie is www.portmackenzie.com.

(c) Port MacKenzie is located in Upper Cook Inlet approximately two nautical miles northwest of the Port of Anchorage. The mid-point of the face of the barge dock is located at latitude 61° 16' 5.16" north and longitude 149° 55' 1.20" west, and the mid-point of the 1,200' long deep-draft dock is latitude 61° 16' 7.04" north and longitude 149° 54' 52.03" west.

260 DELAYS – NO WAIVER OF CHARGES

Delays which may be occasioned in loading, unloading, receiving or delivering freight or dockage of vessels as a result of harbor congestion, equipment failure or breakdown, or of combinations, riots or strikes of any persons in the employ of the MSB or others, or arising from any other cause not reasonably within the control of the MSB, will not excuse the owners, shippers, consignees or carriers of the freight or vessel, or the permit holder, from full service, wharf demurrage, moorage or other charges or expenses which may be incurred under conditions stated herein.

280 MANIFESTS REQUIRED OF VESSELS

(a) Masters, owners, agents or operators of vessels are required to furnish the MSB with complete copies of vessels' manifests showing names of consignees or consignors and the weights or measurements of all freight loaded or discharged at the docks or terminal facilities of the MSB. Such manifests must be **certified as correct by an authorized official of the company** and must also designate the basis of weight or measurement on which ocean freight was assessed. In lieu of manifests, freight bills containing all information as required above may be accepted, as determined by the Port Director.

(b) *Ship's Documents.* The Port Director may require masters, owners, agents, operator and/or permit holders to execute a Vessel Dockage/Berthing Application (Exhibit B) containing descriptions of the following items: (i) fuel; (ii) ballast; (iii) water and (iv) cargo.

300 SAFETY, SANITATION, AND HOUSEKEEPING

(a) *Safety and Sanitation.* All users of MSB docks and terminal facilities shall exercise due care for the protection of life and property and the protection of the public from injury or damage.

(1) Additional safety and sanitation rules applicable to docks and terminal facilities should be consulted. Portions of the MSB Code of Ordinances of particular relevance include Chapter 8.45 (Building & Construction), Chapter 8.45.010(5) (Adoption of Uniform Fire Code), Chapter 11.30 (Utility Permits), Chapter 1.10.125 (Ports, Harbors & Wharves).

(2) All safety and sanitation laws, regulations and policies of the Mat-Su Borough, the State of Alaska, and the United States of America, including those adopted by international treaty, apply to MSB docks and terminal facilities. All users, including shippers, permit holders, vessels and consignees, are hereby warned that the party or parties responsible for infractions of such laws, regulations or policies will be subject to and responsible for any penalties that may result from their violation of those laws, regulations or policies.

(b) *Notice of Hazardous Cargo and Permit Requirements.* Notice shall be given to the Port Director of any vessel carrying cargo which is hazardous, extremely flammable, corrosive, explosive or otherwise poses a significant risk of harm to property or persons, at least six (6) days prior to landing or use of docks. The Port Director, at his sole discretion, may issue a permit for dock use if he finds that sufficient precautions have been taken to minimize any potential risks presented by such cargo.

(c) *Responsibility for Housekeeping.* Users of docks and other terminal facilities will be required to maintain same in an orderly manner as directed by the Port Director. If user does not properly clean property used, the Port Director shall order the work performed, and user will be billed for the services.

(d) *Smoking prohibited.* No smoking shall be allowed on any wharf, pier, or in any facility, warehouse or transit shed, except in approved areas specifically designated for that purpose. Persons violating this rule may be barred, at the discretion of the Port Director, from the further use of any wharf or facility, and, in addition, shall be subject to prosecution under applicable federal, state and borough laws.

(e) *Waste Oil and Petroleum Products.* All waste oil and petroleum products must be properly disposed of by the vessel/owner. There shall be no storage, even of a temporary nature, of waste oil or petroleum products on MSB docks or terminal facilities. Any vessel/owner/agent storing or disposing of waste oil in an inappropriate or illegal manner may be barred from further use of the MSB docks and/or penalized according to the provisions of federal, state and local law. Waste oil may be accepted by the Port Director upon prior arrangement by written approval on a case-by-case basis.

(f) *Manning of Mooring Lines.* Due to tidal extremes in excess of 40 feet in Cook Inlet, any vessel moored at the Port MacKenzie dock facilities must be manned at all times (24 hours/day) so that mooring lines can be loosened or tightened as appropriate. In the case of barges without adequate protective quarters, the observer may be located on the towing vessel immediately adjacent to the barge. If the towing vessel must depart the immediate dock area, an observer must remain on the barge to tend mooring lines.

(g) *Safety Vessels.* Users of docks and other terminal facilities involving the hazardous loading or off-loading of materials, such as houses and other material where workers could slip and fall into the water, are required to have a manned and powered safety vessel in the water immediately adjacent to the work area during the entire loading/off-loading operation. If the Port Director determines that the safety vessel is inadequate for rescue operations, he may direct that a more suitable vessel be employed.

320 RESPONSIBILITY FOR PROPERTY DAMAGE

Users, including permit holders, damaging MSB docks, terminal facilities, or any other property of the MSB will be responsible for the cost of repairs. Should the repairs be undertaken by the MSB, the user or permit holder will be billed at cost, including overhead.

340 BULK PETROLEUM PRODUCTS

(a) *Application of Tariff.* Except as otherwise provided in this section, the rates, rules and regulations published in other sections of this tariff apply to vessels, shippers and consignees of bulk petroleum products. No bulk products will be allowed to load or discharge to/from vessels at Port MacKenzie without a spill prevention plan approved by the Port Commission which includes a detailed cleanup plan, a list of cleanup equipment/supplies, a trained staff and response team, and an appropriate level of bonding as determined by the Port Commission.

(b) *Clearing and Heating Petroleum Lines.* Shippers, consignees or vessels and persons in charge thereof are responsible for providing steam or other heating means to assure the proper flow of asphalt and other petroleum products requiring heat. Shippers, consignees or vessels and person in charge thereof will be responsible for clearing all petroleum products from lines located on or adjacent to any terminal facility after a vessel completes loading or discharging unless otherwise authorized by the Port Director. In the event the MSB performs any of the above named services, the shipper, consignee, or vessel will be billed at cost plus 15 percent overhead.

(c) *Regulations Governing Petroleum Products.* The transfer of bulk petroleum products shall be made in compliance with MSB Code provisions, including Chapter 1.10.125 (Adoption of Uniform Fire Code), as well as other local, state and federal laws, rules or regulations.

(d) *Clean Up.* Flammable liquids and all hydrocarbons leaked or spilled on wharves shall be cleaned up immediately. Vessels or consignees shall remove temporary lines immediately upon completion of receipt or discharge of flammable liquids. Spillage from disconnected lines shall be cleaned up immediately by vessel or consignee.

360 HAZMAT

(a) Neither Class 1 (explosives nor Class 7 (radioactive) hazardous may remain on the terminal beyond what is necessary to transfer the cargo from the vessel or to the vessel.

(b) Shippers of dangerous cargos are required to comply with all the requirements in the tariff; as well as for procuring all permits required in accordance with federal code, state statutes and regulations, and local ordinances.

(c) Shippers must present necessary permits from proper authorities.

SECTION II – SERVICES AND CHARGES

380 DOCKAGE

(a) No vessel will be permitted to berth at the MSB dock, pier, or shoreside within the Port District without having been granted permission by the Port Director.

(b) Vessels docking or departing the MSB dock must use sufficient tugs so that vessels can be docked or removed in a safe manner. Docking speed shall not exceed fifteen feet per minute, unless approved by the Port Director. Priority will be given to vessels to load and unload commercial freight over vessels merely berthing at the dock.

(1) *Dockage Period.* Dockage shall commence when a vessel is made fast to a dock or is moored to another vessel so berthed, and shall continue until such vessel is completely freed from and has vacated the berth. No deductions will be made for Sundays or holidays.

(2) *Basis for Computing Charges.* Dockage charges will be assessed on the overall length of the vessel. Overall length shall be construed to mean the linear distance, expressed in feet, from the most forward point at the stem to the aftermost part of the stern of the vessel, measured parallel to the base line of the vessel. For dockage billing purposes, overall length of the vessel as published in "Lloyd's Register of Shipping" will be used. If no such figure appears in "Lloyd's Register", the MSB reserves the right to:

- Obtain the overall length from the vessel's register, or
- Measure the vessel.

(c) *Vessels Docked to Repair, Shore, Outfit or Fumigate.* Full dockage will be charged if and when a vessel is permitted to make repairs or alterations, shore for special freight, outfit, store or fumigate while docked at a MSB dock or terminal facility.

(e) *Preference to Reserved Dock Use.* A vessel may be permitted to berth at a dock or terminal facility of the MSB without having first made written application for a berth assignment and without such an assignment having been granted. However, priority will be given to MSB dock use reserved in advance with the Port Director. Further, any vessel seeking a berth at a MSB dock for a period longer than six (6) hours must complete, within twenty-four hours of arrival at the dock, a Vessel Dockage/Berthing Application (Exhibit B) or have a current copy of same on file in the office of the Port Director. Any vessel planning to remain at a MSB dock for a period of less than six (6) hours must notify the Port Director's office of such plan prior to arrival at the dock. A vessel or vessel agent may secure reserved dock space under the following conditions:

(1) Request for reservation is made on a Vessel Dockage/Berthing Application indicating length of berth and date(s) requested.

(2) Reservation request must be received by the Port Director a minimum of seven (7) days prior to anticipated vessel arrival.

(3) The vessel agent or other person requesting a berth ("berthing agent") must provide, as may be requested by the Port Director as a part of the berthing process, to the extent of his knowledge, all information called for by any Supplement to Vessel Dockage/Berthing Application or any other information respecting the vessel including, but not limited to, its estimated arrival and departure, amount(s) and type(s) of cargo to be loaded/discharged, estimate of amount of each category of port charges, as enumerated, and party responsible therefor. The submission of this form, signed by the berthing agent, shall constitute the berthing agent's certification as to the accuracy of the information therein supplied, based upon and to the extent of information made available to the berthing agent at the time of submission; and the berthing agent shall be held personally liable to the MSB for any financial loss suffered by the MSB as a result of the agent's failure to so report accurately.

Should the berthing agent, subsequent to submission of this form, receive information which materially differs from the information previously provided, and which information the agent reasonably believes is not equally known to the Port Director, he shall immediately notify the Port Director and, if requested by the Port Director, promptly file an amended Vessel Dockage/Berthing Application with the Port Director.

(4) The Port Director will determine availability of dock space on the dates requested. Should scheduling conflicts be found, the Port Director shall mediate a resolution which will attempt to minimize negative impacts on both (or all) parties.

(5) Full dockage fees are payable to the MSB at the time of reservation. Prepaid dockage fees will be non-refundable unless a written cancellation is received by the Port Director a minimum of six (6) days prior to scheduled vessel arrival. (See also Subsection, 180, Responsibility for Charges, Collection and Guarantee of Charges.)

(6) All estimates of dockage charges are subject to approval and/or adjustment by the Port Director. The Port Director shall promptly, after receipt of said estimate, advise the berthing agent as to (1) its approval or adjusted estimate of dockage charges, and (2) whether posting of cash or security is required for any one or more categories of such charges and the amount thereof.

(7) An agreement is made to work continuously utilizing not less than day and early night shifts (first and second shift) and multiple longshore gangs, cranes, and equipment to the fullest extent available in accordance with circumstances then prevailing, unless an alternate work schedule is approved by the Port Director in writing.

(8) In addition to the terms for dockage reservation and establishment of financial responsibility as set forth herein, requests for dockage/berthing reservation shall otherwise be in accordance with all local rules and regulations established by the MSB.

(a) *Dockage May Be Granted Before Payment.* For safety or other reasons, the MSB in some circumstances, may grant a vessel temporary dockage before the owner or agent has paid all applicable charges or otherwise complied with all applicable tariff provisions or conditions of dockage. In such circumstances, the vessel may unload its cargo only if (1) the Port Director determines that dockage space is available, and (2) the owner or agent agrees to pay all applicable charges by the close of business the first week day after arrival, and the owner or agent complies with all other applicable tariff provisions and conditions of dockage. If no dockage is available, or the vessel owner or agent does not pay all applicable charges and comply with other applicable provisions, the vessel may not unload its cargo and shall sail on the next tide. The vessel shall be assessed appropriate fees as set forth in this tariff.

(b) *Charges on Vessel Shifting.* When a vessel is shifted directly from one part of a dock to another, the total time at such berths will be considered together when computing the dockage charge.

(c) *Charges to Assisting Vessels*. A single vessel, when actively engaged as a tugboat assisting and made fast outboard of a vessel loading or discharging cargo, will be accorded free dockage.

NOTE: Tug boats leaving a tended vessel for the purpose of assisting any other vessel shall have waived its right to free dockage for the entire period of berthing by its tended vessel.

(d) *Notice of Hazardous Cargo and Permit Requirement.* Notice shall be given to the Port Director of any vessel carrying cargo which is hazardous, extremely flammable, corrosive, explosive, or otherwise possesses a significant risk of harm
to property or persons at least forty-eight (48) hours prior to landing or use of docks. The Port Director, at his sole discretion, may issue a permit for dock use if he finds that sufficient precautions have been taken to minimize any potential risks presented by such cargo.

(e) Dockside Lay Time. Dockside lay time may be allowed as scheduling permits. However, all vessels must be removed from dockside within three (3) hours of receiving notice from the Port Director or his agents.

(f) *24*-HOUR TENDING REQUIREMENT: Due to the extreme tidal range (-6' MLLW to +35' MHHW) and strong currents (6+ knots) in the Knik Arm of Upper Cook Inlet, 24-hour mooring line tending is <u>mandatory</u> for all vessels moored at the Port. Port MacKenzie does <u>not</u> perform line handling services. These services must be arranged with a Port approved Terminal Operator.

(g) *Conditions for Conducting Welding and Hotwork:*

(1) The facility operator must ensure that all welding or hotwork conducted at the facility meets the requirements of this section. Each Operator of a vessel moored to the facility must ensure that all welding or hotwork conducted at the facility meets the requirements of this section and 33 CFR 126.

(2) The COTP may require an operator of a facility or a vessel moored at the facility to notify the COPT before conducting welding or hotwork. Regardless of whether or not the COPT required notice, the facility operator must notify the COPT before conducting welding or hotwork on a vessel when containerized dangerous cargo is located within the distances listed in paragraph (g.) (6) of this section.

(3) Before conducting any welding or hotwork, flammable vapors, liquids, or solids must be completely removed from any container, pipe, or transfer line being worked on.

(4) Before conducting welding or hotwork on tanks, tanks used for storage of flammable or combustible substances must be tested and certified gas free.

(5) All welding and hotwork must be conducted according to NFPA 51B. (Incorporated by reference, see 33 CFR 126.5.)

(6) Welding or hotwork is prohibited during gas freeing operations within 30.5 meters (100 feet) of bulk cargo operations involving flammable or combustible materials, within 30.5 meters (100 feet) of fueling operations, within 30.5 meters (100 feet) of explosives, or within 15.25 meters (50 feet) of other hazardous materials.

(7) If the welding or hotwork is on the boundary of a compartment (i.e., bulkhead, wall or deck), a fire watch, in addition to that called for in NFPA 51B, must be stationed in the adjoining compartment.

(8) Personnel on fire watch must have no other duties except to watch for the presence of fire and to prevent the development of hazardous conditions.

(9) All safety precautions in relation to purging, inerting or venting for all hotwork on containers must be followed.

(10) All local laws and ordinances must be followed.

(11) If a fire or other hazard occurs, all cutting, welding or other hotwork equipment must be shut down immediately.

DOCKAGE RATES

(a) *Daily Dockage Rate.* The charge for dockage is as follows except as otherwise provided:

Overall Length of Vessel	Daily Charge Per Foot
Up to 199'	$2.00
200' – 249'	$2.33
250' – 299'	$2.67
300' – 349	$3.00
350' – 399	$3.33
400' – 449	$3.67
450' – 499'	$4.00
500' – 549'	$4.33
550' – 599	$4.67
600' – 649'	$5.00
650' – 699'	$5.33
700' – 749'	$5.67
750' – 799'	$6.00
800' – 849'	$6.33
850' – 899'	$6.67
900' & Over	$7.00

NOTE: Daily charge is for any period of twenty-four (24) hours. However, in computing dockage charges for any period of dockage less than twelve (12) hours, dockage charges at one-half (1/2) of one full day's dockage shall be assessed. For any dockage period greater that twelve (12) hours and less than twenty-four (24) hours, a full day's dockage shall be assessed.

(b) *Monthly Dockage Rate.* A negotiated monthly dockage rate may be granted as follows:

(1) *Tug Operators.* Vessels employed in the business of providing tug services to vessels calling at any dock or terminal facility of the MSB may apply to the Port Director for monthly dockage rates.

(2) *Other Vessels.* Vessels requiring long-term dockage may apply to the Port Director for dockage on a space available basis providing carriers loading or unloading commercial freight are given priority.

(c) All dockage rates are subject to an automatic 3% increase each calendar year (CY) after 2018.

420 HANDLING, LOADING AND UNLOADING

Handling, loading, and unloading services may be provided by independent agents at all terminal facilities covered by this tariff. The shipper, vessel owner, or agent is responsible for determining who will be utilized to load, and/or unload, or otherwise handle cargo at the MSB terminal facilities. Completion of a Terminal Operator Permit (Exhibit A) is required for any qualified agent desiring to provide longshore services at the terminal facilities of the MSB.

440 LABOR AND SERVICE CHARGES

A labor and service charge is assessed, in addition to any other charges set forth in this tariff, for all labor performed by MSB personnel and for specific services provided by the MSB or its agents. Service charges do not include charges for dockage, wharfage, wharf demurrage or handling.

(a) *Special Services.*

(1) Except where otherwise required by law, the Port Director has the authority to refuse to provide or to arrange for the provision of special services.

(2) Special services, including waste, bulk oil, or garbage disposal shall be billed at the MSB's actual cost (including MSB labor, equipment, mileage, and other costs). A flat fee of $100.00 shall be charged for services arranged by the MSB, but provided by others. Special services shall not include the taking or handling of sewage of any kind. Sewage disposal must be accomplished by the vessel owner or his agent pursuant to federal, state and local (MSB) laws, codes and ordinances.

(b) *Miscellaneous Charges.*

(1) Dishonored check fee $100.00

(2) Deposit $100.00

460 PASSENGER FEES

(a) In addition to other provisions, the terms and conditions of this item apply and charges are assessed to passenger vessels and cruise ships or other vessels carrying passengers for compensation.

(1) Passengers embarking from dock to vessel (each) $1.00

(2) Passengers debarking from vessel to dock (each)..............................$1.00

(b) Passengers commuting on a vessel contracted by a company for the express purpose of working within the MSB Port District will be exempt from the above fees.

480 SEARCH AND RESCUE FEES

In addition to other tariff provisions, when the MSB utilizes borough equipment and personnel to provide search and rescue assistance (such as towing and rescue), users of those services will be charged ONE HUNDRED TWENTY-FIVE DOLLARS ($125.00) per hour for the first hour, or any part thereof, and any services beyond the first hour at 150 percent of the MSB's actual costs, including borough labor costs.

500 WHARFAGE

(a) *Application of Charges.* Charges will be assessed on the basis of weight or measurement as manifested by the vessel, whichever creates the greater value. Wharfage rates named in this tariff will be charged for all merchandise received over the docks of the MSB and will be in addition to all other charges made under the provisions of this tariff, EXCEPT:

(1) Trans-shipped Cargo:

a) Inbound cargo discharged and then processed at the Port which is reloaded onto a vessel shall be assessed full wharfage for the inbound cargo and no wharfage for the outbound cargo.

i. Processed means a product that is significantly altered to change its monetary value (value added) or physically changed in such a way that its primary use has been changed.

ii. Processed does not mean combining inbound cargo with another or with other products that were not received as inbound cargo to produce new product(s) for export.

b) Inbound cargo discharged and then stored/warehoused in the Port District which is reloaded onto a vessel shall be assessed full wharfage for the inbound cargo and one-half wharfage for the outbound cargo."

c) No wharfage shall be charged to ship's gear, such as strongbacks, lines, hatch covers, waling boards, etc., placed on wharf during unloading operations. Fuel handling over wharf will not be considered as ship's stores and will be subject to wharfage and other charges that may be incurred

(2) Overside. One-half of wharfage named herein will be charged to merchandise discharged or loaded overside of vessel directly to or from another vessel or to the water when the vessel is berthed at a dock.

(3) Overside. One-half of wharfage named herein will be charged to merchandise discharged or loaded overside of vessel directly to or from another vessel or to the water when the vessel is berthed at a dock.

(4) Overstowed. Overstowed cargo destined for discharging at another port will be exempt of wharfage charges, provided that such cargo is not removed from the wharf prior to reloading to the vessel.

520 WHARFAGE RATES

(a) *Schedule of Standard Rates.* Except as otherwise specifically provided, rates are in dollars per ton of 2,000 pounds or per 40 cubic feet.

Commodity — **Wharfage Rate**

Freight, N.O.S. $3.25/ton

**Bulk Commodities $2.75/ton
i.e. Grain, Peat, Rock, Gravel, Salt, Sand, and Dry, N.O.S. ....

**Cement $2.75/ton
Natural or portland; Drillers Mud; Fireclay; Lime, slaked; Lime, hydrated or quick; Plaster; Magnesite; Gypsum; Sand; Stucco; separate or combined in bulk through hoses to or from mobile bulk carriers, in 5 ply paper bags or super sacks.

**Coal (bulk) $2.75/ton

* Explosives & Ammunition
Powder, Gun or Blasting; Blasting Agents;
Blasting Caps; Dynamite; High Explosives,
N.O.S.; Explosive Ammunition other than
small arms ammunition $15.00/ton

NOTE: Written permission of the Port Director must be obtained prior to any movement of merchandise named in this item over the MSB Terminal Facilities

NO DEMURRAGE ALLOWED FOR EXPLOSIVES AND AMUNITION.

**Livestock
Horses, cattle, hogs, sheep, goats, and N.O.S. ....$10.00/per head
(Volume discounts may be negotiated.)

Iron or Steel Articles, Viz: $4.00/ton
Angles; Bars; Beams; Channels; Joists;
Piling; Pipe; Steel, cast or wrought:
Structural; Tanks; Trusses

*Scrap Metal, Viz: $4.50/ton
Clean Cubes (no oil, grease, asbestos or other contaminates)
Dirty (in sealed metal Skip Boxes only)

NOTE: NO DEMMURAGE ALLOWED FOR SCRAP METAL.

**Petroleum or Petroleum Products Viz:

Inbound/Outbound .... $.15/bbl
Liquids, Petroleum or Petroleum Products, N.O.S., in bulk, discharged or loaded direct from or to vessels' tanks to or from storage tanks, per bbl.
(Subject to Note 1)

Fuel ....$.017/gal
Liquids, Petroleum or Petroleum Products, N.O.S., in bulk, discharged or loaded between motor freight tank vehicles or railroad tank cars and vessels' tanks, storage tanks, or at truck rack, per gallon.

NOTE 1: All petroleum transferring operations are subject to rules governing HAZMAT products. See Item 350.

**Timber & Timber Products on Ships at Deep-Draft Dock $2.75/ton
i.e. Chips, Logs, Lumber, Pellets

NOTE 2: Where cargo is manifested by weight, 2,240 lbs. shall be considered M.B.M.

Vans or Containers

Freight; rigid, non-disposable, dry cargo, insulated, refrigerated, flat rack, liquid tank, or open top container, with or without wheels or chassis attached, containing dry bulk commodities or merchandise, except containing powder, gun or blasting, or other articles as described under Explosives & Ammunition $2.75/ton
(Subject to Notes 3 and 4 below)
Empties returning.. $10.00/ea
(Subject to Note 1 below)

NOTE 3: May include unit for refrigeration or heating of merchandise.

NOTE 4: Charge applies to net weight of contents of vans or containers, inbound or outbound.

Vehicles and other articles, empty, self-propelled or non-self-propelled:

Automobiles:... $10.00/ton
including pickups with or without Camper bodies attached, chassis,
freight trailers, freight semi-trailers, camper bodies
Agricultural, earth-moving or materials handling Equipment..... $10.00/ton
(Including: cranes, graders, loaders, fork lifts, water trucks, dump trucks or any other heavy equipment)

Trailers, house or vacation homes or buildings,
Mobile or modular. $9.00/ton

NOTE 5: Volume discounts may be negotiated.

(b) All wharfage rates are subject to an automatic 3% increase each calendar year (CY) after 2017.

540 WHARF DEMURRAGE

(a) *Description of Charge.* A charge will be assessed against cargo remaining in or on terminal facilities after the expiration of free time, unless arrangements have been made for storage. The goal of the Port Commission is to manage its facilities to foster economic growth and expansion of the existing cargo base, and the facilities are for storage, loading and/or handling of import, export, coastwise, intercoastal and local cargoes. The Port commission reserves the right to control and assign space for storage, unloading and/or handling of all cargoes on and/or in these facilities so as to accomplish this goal.

(b) *Calculation of Free Time.* Free time is calculated exclusive of Saturdays, Sundays or holidays. Free time starts at 7:00 a.m. after freight is received or unloaded onto wharf from car or truck or, in the case of freight received from vessel, at 7:00 a.m. after completion of vessel's discharge. On outbound traffic, the day or days vessel is loading are not included in the computation. On inbound traffic from vessel, delivery of which is made after the allotted free time, the day freight is loaded out or delivered to truck or car is to be included in the computation as a storage day.

When freight is transshipped between vessels and involves application of both a long and a short time period, the longer period shall be allowed, but not the aggregate of any two free time periods.

(c) *Free time.* Free time of five days will be allowed on all inbound traffic. Free time of ten days will be allowed on all outbound traffic.

(d) *Rates.* After expiration of applicable free time, wharf demurrage for all freight will be assessed at $.12 per square foot per month or $.004 per square foot per day.

(e) *Lay-Down Areas.* All cargo is expected to vacate MSB docks, and wharves as soon upon arrival as possible. Cargo is not to be stored on MSB docks and wharves awaiting pick up by vessels unless prior arrangements are made with the Port Director. The Port Director shall have the discretion to refuse all cargo activities and/or lay-down, either inbound or outbound. Cargo that is allowed to wait for "beyond" transportation shall adhere to the following rules:

(1) Cargo may not be placed on the MSB docks, terminal facilities, or upland areas except in the designated lay-down areas.

(2) Cargo and freight not placed in a designated lay-down area must be immediately removed from a MSB dock or terminal facility upon order of the Port Director.

(3) A vessel, shipper or consignee who refuses to move cargo on demand will be assessed wharf demurrage at five times its applicable rate, starting at the time other vessel, shipper or consignee is noticed to move the cargo.

(4) In addition, the Port Director may, in his discretion, move cargo or freight, and any expense or damages, including damage to cargo or freight during such movement, shall be charged to the vessel, shipper or consignee, except for damages caused by the MSB's own negligence.

560 TERMINAL STORAGE RATE

(a) *Terminal Storage.* Storage charges for cargoes or equipment on the barge dock, expanded barge dock, trestle or deep-draft dock will be assessed as follows:

(1) Storage rate per square foot per month.................................$.12
(rounded to the nearest day or part of a day at $.004 per sq. ft. per day)

(2) Long-term discounts may be negotiated with the Port Director.

(3) Companies loading commodities or vessels at Port MacKenzie are required to stockpile enough material on the docks or uplands within the Port District before the vessel arrives at its berth so that the vessel can be continually loaded. Companies that delay around the clock loading by trucking additional material to the port while the ship is at berth may be required by the Port Director to depart the berth to accommodate another scheduled vessel. The vessel that was directed to depart the berth will then be allowed to re-berth to complete its load at the direction of the Port Director. In such instances, the Port will not be liable for any associated costs.

(4) For dockage billing purposes, overall length of the vessel as published in "Lloyd's Register of Shipping" will be used. If no such figure appears in "Lloyd's Register", the MSB reserves the right to:

- Obtain the overall length from the vessel's register, or
- Measure the vessel.

(b) *Vessels Docked to Repair, Shore, Outfit or Fumigate.* Full dockage will be charged if and when a vessel is permitted to make repairs or alterations, shore for special freight, outfit, store or fumigate while docked at a MSB dock or terminal facility.

Exhibit A

Terminal Operator Permit

IM 18-037
OR 18-019

REVOCABLE TERMINAL OPERATOR PERMIT
PORT MACKENZIE
MATANUSKA-SUSITNA BOROUGH

THIS AGREEMENT made and entered into this ________ day of __________________, 20___, by and between the MATANUSKA-SUSITNA BOROUGH (MSB) and __________________(OPERATOR).

WHEREAS, the MSB holds legal interest in the titles to the land and facilities comprising Port MacKenzie and provides certain marine terminals suitable for performing marine related services at Port MacKenzie;

WHEREAS, OPERATOR desires to perform Terminal Operator and/or marine vessel related services at Port MacKenzie as identified in Section 5.A.

NOW, THEREFORE, the parties agree as follows:

Section 1. Permit Definitions.

A. "Bulk Cargo" means cargo that is loaded or unloaded at the municipal terminals and transported in bulk without mark or count in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and is, therefore, subject to the requirements of this part.

B. "Carloading or Unloading" is the service performed to load cargo from wharf premises or other such terminal premises designated by the Port Director or his/her authorized representative to be used for such purposes, to or from railroad cars or trucks, trailers, semi-trailers from or to wharf premises or other terminal premises.

C. "Cargo-handling services" means any act of car loading or unloading, direct loading or unloading, handling or storing of cargo.

D. "Check" or "Checking" means the inspection of cargo to determine its quantity, condition, or destination, the consignee's identity, and the accuracy of billing.

E. "Commercial Fish Operations" means the act of loading, unloading, storing, and transportation of fish product from dock, wharf, pier or any other structure owned/leased by Port MacKenzie.

F. "Container" means a demountable and reusable freight-carrying unit designed to be transported by different modes of transportation and having construction, fittings, and fastenings able to withstand, without permanent distortion or additional exterior packaging or containment, the normal stresses that apply on continuous all-water and intermodal transportation. The term includes dry cargo, ventilated, insulated, refrigerated, flat rack, vehicle rack, liquid tank, and open-top containers without chassis, but does not include crates, boxes or pallets.

G. "Direct Loading or Unloading" means the service accorded to cargo in transferring cargo by ship's tackle or terminal's tackle between ship and open top railroad cars, vehicles, pipeline, or water, raft, barge, lighter, or other waterborne vessels; or open top trucks, trailer beds or bodies, which are spotted within reach of ship's manifolds, tackle or terminal's tackle.

H. "Dockage" is the charge assessed to a vessel for docking at a wharf, dock, pier or other facility, or for mooring to a vessel so docked.

I. "Dunnage" means loose wood or packing material used in a ship's hold for protecting cargo from damage during transport and specified items approved by the Port MacKenzie Port Commission in the Port MacKenzie Terminal Tariff.

J. "General Cargo Operations" means service accorded to cargo in transferring cargo by ship's tackle or terminal's tackle between ship and open top railroad cars or water craft, barge, lighter, or other waterborne vessels, or open top trucks, trailer beds or bodies, which are spotted within reach of ship's tackle or terminal's tackle.

K. "Handling" means the service accorded to cargo movement from end of ship's tackle or terminal's tackle to the first place of rest on the wharf or other terminal premises designated by the Port Director or his authorized representative to be used as the first place of rest, or from such first place of rest on the wharf or other such terminal premises to a place within reach of ship's tackle or terminal's tackle.

L. "Holidays" Whenever in this Permit reference is made to holidays the following days are included: New Year's Day, Martin Luther King Day, President's Day, Seward's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day After Thanksgiving, Christmas Day, and every other day appointed by the President of the United States of America and/or the Governor of Alaska. In the event that one of the above mentioned holidays occurs on Saturday, the previous Friday will be considered a holiday for the purpose of this Permit. In the event that one of the above mentioned holidays occurs on Sunday, the following Monday will be considered a holiday for the purpose of this Permit.

M. "Industrial Park" means those parcels of real property adjacent to the Dock/Terminal which organizations with business interests at the Port may lease/rent from the MSB.

N. "Marine Bulk Petroleum Tank Vessel and Barge Loading" means the transfer of any bulk petroleum product to any ship, tanker, barge or vessel from the Port MacKenzie Petroleum Oil Lubricants (POL) facilities.

O. "Marine Tanker Vessel Discharge" means any ship, tanker, barge or vessel operation that discharges petroleum product inbound across the Petroleum Oil Lubricants (POL) facilities.

P. "Motor Vehicle" means a wheeled vehicle whose primary purpose is ordinarily the non-commercial transportation of passengers, including an automobile, pickup truck, minivan, or sport utility vehicle.

Q. "MSB Docks" means the gravel dock surface, access trestles, concrete operating wharves, and any equipment which is permanently affixed thereto.

R. "MSB Terminal" means the MSB Docks, Petroleum Terminals, Transit Areas and their associated facilities, such as access roads, railroad tracks and the adjacent storage areas necessary to conduct normal day-to-day dock or cargo handling operations.

S. "Borough" means the Matanuska-Susitna Borough.

T. "Non-Operating Port" means a landlord port with all port facilities generally leased, rented or preferentially assigned with the lessee, rental Operator or assignee responsible for operating the facilities.

U. "Operating Ports" generally provide all port services except stevedoring with their own employees including, but not limited to, loading and unloading of rail cars and trucks and the operation of container terminals, grain elevators, and other bulk terminal operations.

V. "Passenger" means an individual embarking/disembarking across Port piers who travels on a ship or vessel by virtue of a contract with the carrier, and who is paying a fare.

W. "Passenger Operations" means providing or contracting services at Port MacKenzie necessary for one who travels on a ship or vessel by virtue of a contract with the carrier, and who is paying a fare.

X. "Petroleum Terminals" means the petroleum terminals of Port MacKenzie which are the steel and concrete breasting platforms, pipe racks, walkways, dolphins, and appurtenant structures located to the west of the MSB dock.

Y. "Petroleum Valve Yard" means the Port's petroleum manifold system, including any transfer pipelines and valves contained therein, its related facilities and walkways.

Z. "Port MacKenzie" means the Port MacKenzie District as defined by the current Port MacKenzie Special Use District (SPUD) document, tidelands which have been transferred to the

MSB, and tidal waters within the boundary limits of the MSB, exclusive of those areas which are within the exclusive jurisdiction of either the State or the United States.

AA. "Port Director" means the Director of Port MacKenzie, the Port Director's designee or the Port Operations Manager.

BB. "Terminal Operator" means a person engaged in the United States or a commonwealth, territory, or possession thereof, in the business of furnishing terminal services in connection with a common carrier, or in connection with a common carrier and a water carrier subject to Subchapter II of Chapter 135 of Title 49, United States Code. A marine terminal operator includes, but is not limited to, common carriers who perform port terminal services.

CC. "Transshipment" means the transfer of cargo goods arriving and unloaded at the wharf, from the vessel stipulated in the contract of affreightment, for further shipment to its ultimate destination on and by terms of a through bill of lading, to another vessel before the place of destination has been reached. To qualify, transshipped cargo goods shall not leave the boundaries of the Port MacKenzie District, and the originating seal must remain unbroken.

DD. "Vessel" means ships or crafts of all types, in excess of 40'LOA (length over all), including but not limited to the following: motor ships, steam ships, canal boats, tugs, barges, sailing vessels, motor boats, and every structure adapted to be navigated from place to place for the transportation of property and persons by any means.

EE. "Vessel Owner" means the actual or registered owner, charterer, master, agent, person in navigational control or person responsible for the operation of the vessel.

FF. "Vessel Servicing" means tug boat assistance and/or providing commodities to vessels.

GG. "Wharfage" means the charge assessed against any freight, cargo, goods placed in transit shed or on a wharf, or passing through, over or under a wharf or MSB terminal; or transferred between vessels, or loaded to or unloaded from a vessel at a wharf, regardless of whether or not a wharf is used. Wharfage is solely the charge for use of wharf and does not include handling, sorting, piling of freight or charges for any other services.

Section 2. Term.

The Operator may operate the MSB Terminals and Petroleum Valve Yard Facility at Port MacKenzie in accordance with this Permit commencing on the date the Permit is entered into and ending on December 31st of each year subject to the terms and conditions of this Agreement and the Port MacKenzie Terminal Tariff. Unless otherwise terminated or suspended, the Operators may apply for a new Agreement each year for a one (1) year term, upon mutual agreement by execution of a new Revocable Terminal Operator Permit.

Section 3. Notices.

Any notice provided for herein shall be given in writing and transmitted by personal delivery or prepaid first class registered or certified mail to the parties at the following addresses:

MSB: Port Director Port MacKenzie 350 E. Dahlia Ave. Palmer, Alaska 99645-6488	Operator/Company: Attn: Address:

Section 4. Responsibilities of Port.

During the term of this Permit, Port MacKenzie, owned by the MSB, a non-operator, will:

A. Use its best efforts to provide Dock and Terminal facilities at the Port upon which the Operator may conduct Terminal Operator and marine services as set forth in Section 5.A;

B. Designate areas consistent with Port operation in which the Operator may park and locate equipment related to its activities at the Port;

C. Maintain utility connections at the MSB Terminal;

D. Reasonably provide for the removal of snow and ice from the dock and trestles; and

E. Provide such equipment and facilities for use or operation by the Operator as the Port Director determines to be available at the time requested by the Operator. Such equipment and facilities shall be provided at the tariff rates established in the current Port MacKenzie Terminal Tariff.

Note 1: Certain Holidays observed by the MSB may delay the providing of certain services and responsibilities beyond the Port's control.

Section 5. Responsibilities of Operator.

GENERAL PROVISIONS

During the term of this Permit, the Operator shall:

A. Makes application for the non-exclusive right to perform only those Terminal Operator/marine services expressly identified and initialed below:

____ 1. Marine tanker vessel petroleum loading operations. (see Note 1 under Section 5.N)

____ 2. Marine tanker vessel petroleum discharge operations.

____ 3. General cargo handling operations.
____ 4. Dry bulk cargo handling operations.
____ 5. Vessel servicing.
____ 6. Passenger operations.

B. Furnish all equipment, supplies, and dunnage necessary to perform its private or common carrier services under this Permit as indicated above. The Operator shall only allow persons certified by the United States Coast Guard (USCG) to operate any POL terminal facility supplied by the Port for the Operator's use pursuant to Section 4.E. The Operator providing services listed in Section 5.A.1 and 2, shall maintain a current list of operators certified by the USCG with the Port Director.

C. Ensure that Port furnished equipment and facilities are not altered or modified while in use/under the custody of Operator, unless authorized by the Port Director.

D. Store cargo/transship cargo only in those areas designated by the Port Director for that purpose and in a manner approved by the Port Director.

E. At all times other than those when the Operator is actually servicing a vessel, keep all Port facilities it uses pursuant to this Permit clean and clear of its personnel, equipment, cargo, debris, dunnage, and other material. If the Port Director determines that the Operator has failed to perform as required by this Subsection, the Port Director may either (1) direct the Operator to secure a labor force to so perform at the sole expense of the Operator and the Operator shall do so immediately, or (2) directly arrange for such performance at the sole expense of the Operator and the Operator shall pay those expenses plus 15% administrative overhead costs before performing further services pursuant to this Permit.

F. At its option and providing space is available, the Operator may leave its business equipment, motor vehicles or its employee's vehicles only in those areas designated by the Port Director for such purposes. The Operator assumes the risk for any damage that may be sustained by such equipment or vehicles at the Port.

G. Be responsible for providing the proper equipment (i.e. gangways, ladders, safety nets, etc.) necessary for safely embarking/debarking from vessel(s) under this Permit.

H. Upon completion of any work performed under this Permit, secure and lock all overhead and personnel doors of all Port buildings, gates, and facilities they have entered.

I. If the Operator offers services for public hire, supply the Port Director with three (3) copies of its current cargo-handling rates and charges upon execution of this Permit. The Operator shall give written notice to the Port of any changes within a reasonable time before the effective date of such change. The Port shall quote the rate and charges on file pursuant to this Section in response to inquiries from the public.

J. Not enlist the service of any employee of the MSB (Port) in its performance under this Permit, under any circumstances, unless authorized by the Port Director. The Operator shall have absolute control of and responsibility for the actions of its employees.

K. Annual Terminal Operator Permit fees shall be prepaid for the permit period ending December 31st of each year by application for each service category(s) 1-6 in the amounts identified below for the services described in Section 5.A. Permit applicants seeking to provide one or more of the listed services shall pay fees according to the following schedule unless the total services fees are more than $15,000. In such case, a maximum Permit fee of $15,000 shall apply. Permit fees shall be refunded based upon Port MacKenzie Terminal Tariff charges invoiced to the Terminal Operator Permit Holder each calendar year. The Port Director may waive permit fees for companies with approved leases within the Port District. The Port Director or Borough Manager may approve applying funds already received for permit fees, from new companies starting long-term operations late in a calendar year, to the next calendar year on a case by case basis when deemed in the best interest of fairness. Anyone utilizing the ramp on the south end of the barge dock, or loading/off-loading a crane at the face of the barge dock, may do so after obtaining a Terminal Operator Permit issued by the Port Director at no charge. This will ensure the user has the required insurance in place as stipulated in Section 23 A, B and C. The Port Director may approve a single, non-refundable Terminal Operator fee of $3000.00 per vessel in lieu of the fees listed in the following schedule:

	Service Category	
1.	Marine vessel tanker petroleum loading operations (see N. 1.and 2. below)	$ 5,000
2.	Marine vessel tanker petroleum discharge operations (see N. 1. and 2. below)	$10,000
3.	General cargo handling operations	$10,000
4.	Dry bulk cargo handling operations	$10,000
5.	Vessel servicing	$ 1,000
6.	Passenger operations	$ 3,000

PASSENGER PROVISIONS

L. If the Operator is in passenger-type operations or offers services for public hire, shall provide the Port Director with an operations plan for approval by the Port Director prior to commencing operations.

M. Whenever a Passenger Ship is at berth at Port MacKenzie, Operators shall provide and be in compliance with the USCG Passenger Ship Terminal Security Plan to include all required security personnel and equipment necessary to protect passengers, vessel and Port MacKenzie marine facilities. A copy of the Operator's Passenger Ship Terminal Security Plan shall be submitted to the Port fourteen (14) days prior to the arrival of the vessel. Port MacKenzie will assist the Operator as necessary to isolate and secure the designated passenger ship terminal when requested.

PETROLEUM PROVISIONS

N. In accordance with Petroleum Terminal transfer operations requirements:

1. Provide a copy of Operator's current Petroleum Operations Manual examined and approved by the USCG.
2. Provide the Port with a copy of Operator's current, USCG approved Fuel Oil Spill Contingency Plan.
3. Comply with minimum fuel oil spill containment equipment as specified by USCG (33 CFR 154.545). Equipment will be maintained, on site, during fuel oil transfer.
4. Comply with all applicable federal, state, and local regulations and requirements.
5. Provide the Port and USCG with a current written list of designated, qualified facility operators to act as person(s)-in-charge of fuel oil transfer operations at the Port's facilities.
6. Complete applicable Vessel Berthing Application prior to any petroleum cargo transfer operations.
7. Complete applicable Petroleum Facility Temporary Custody Acceptance and Inspection Agreement document(s) prior to any petroleum cargo transfer operations.

Note 1: Special Clean Air Act Permitting authorization and procedures are required in order to conduct marine bulk petroleum tank vessel and barge loading operations. Operators loading products at Port MacKenzie shall have an approved and separate Marine Tanker Vessel Loading Operator Agreement with the MSB prior to conducting those operations. A separate and non-reimbursable Marine Tanker Vessel Loading Operator Agreement fee ($250.00) will be charged, in addition to those listed in this section, General Provisions, Paragraph K above.

Section 6. Cooperation.

This Permit is a nonexclusive authority for the Operator to conduct operations at Port MacKenzie. The Operator understands that similar authority may be held by others. The Operator shall cooperate with all other persons authorized to operate at the Port. The Port Director may order the Operator to schedule or reschedule its activities so as to accommodate the operations of other operators and the Operator shall comply with such an order.

Section 7. Checking Services.

A. The Operator shall check all cargo which it loads, unloads, or handles and prepare all over, short and damage reports as may be required by a shipper, carrier or consignee.

B. The Operator shall be solely responsible for all apparent damage or pilferage suffered by cargo checked by the Operator and not recited in shipside, exception, final over, short, damage or unloading reports, except for such damage as may be caused by the negligent act of a Port employee.

C. The Operator shall be solely liable for all errors in its delivery of cargo as a result of improper checking or completion of any report listed in Paragraph B of this Section 7.

Section 8. Facility Damage.

A. The Operator may not deface, damage, destroy or alter any portion of the Port facility or equipment. Should this occur, the facility damage must be immediately reported to the Port. If approval for Operator to correct the damage is obtained, the Operator may repair or replace such damage, destruction or alteration at Operator's own expense and by means of Operator's work force if Operator pledges to do so within twenty-four (24) hours after the incident. Operator shall propose a schedule of performance satisfactory to the Port Director. If the Operator fails to give timely notice to the Port Director as required by this Section, Operator shall no longer have the right to repair or replace such damage, destruction or alteration and the Port may proceed to so perform. The Operator shall pay the Port for the cost of repair or replacement of damaged facilities including fifteen (15%) percent administrative overhead costs within forty-five (45) days after presentation of a bill by the Port. The Operator shall pay any bill submitted in accordance with this Section before performing further services under this Permit.

B. The Operator shall give immediate verbal notice to the Port Director if Operator should become aware of defacement, damage, alteration or destruction to any part of the Port facility by any party. The Operator shall also submit written notice of such an event to the Port Director as soon as possible.

Section 9. Services at Port.

The Operator shall use its best efforts to provide services which are better than or equal to those at other ports in Southcentral Alaska, at the lowest possible price.

Section 10. Nondiscrimination.

A. In performing its duties under this Permit, the Operator may not discriminate against any person on the basis of race, creed, color, religion, national origin, age, sex, marital status, physical or mental handicap.

B. The Operator shall comply with all applicable federal, state and borough laws and ordinances concerning the prohibition of discrimination while conducting permitted activities at the Port.

Section 11. Permits, Laws and Taxes.

A. The Operator shall acquire and maintain in good standing all applicable federal, state and local permits, licenses and other entitlements necessary. All actions taken by the Operator under this Permit shall comply with all applicable statutes, ordinances, rules and regulations. The Operator shall pay all taxes pertaining to its performance under this Permit.

B. The Operator shall observe all applicable rules and regulations, whether or not they are posted, including but not limited to the Port MacKenzie Terminal Tariff, signs posted at the Port (including "No Smoking" and "No Parking" signs at the MSB Terminal) and all applicable USCG Safety Requirements.

Section 12. Non-Waiver.

The failure of the MSB at any time to enforce a provision of this Permit shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Permit or any part hereof, or the right of the MSB thereafter to enforce each and every provision hereof.

Section 13. Assignments.

Except insofar as this Permit specifically permits assignments and those permitted assignments must have prior consent of the MSB, any assignment by the Operator of its interest in any part of this Permit or any delegation of duties under this Permit shall be void, and any attempt by the Operator to assign any part of its interest or delegate duties under this Permit shall give the MSB the right immediately to terminate this Permit without any liability.

Section 14. Amendment.

A. This Permit shall only be amended, modified or changed in writing, executed by authorized representatives of the parties, with the same formality as this Permit was executed and such writing shall be attached to this Permit as an appendix.

B. For the purposes of any amendment, modification or change to the terms and conditions of this Permit, the only authorized representatives of the parties are:

Operator: ______________________________

Title: ______________________________

MSB: ________________________________

Title: ________________________________

C. Any attempt to amend, modify or change this Permit by either an unauthorized representative or unauthorized means shall be void.

Section 15. Jurisdiction; Choice of Law.

Any civil action rising from this Permit shall be brought in the Superior Court for the Third Judicial District of the state of Alaska at Palmer. The law of the state of Alaska shall govern the rights and obligations of the parties under this Permit.

Section 16. Severability.

Any provision of this Permit decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Permit.

Section 17. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Permit shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 18. Indemnification.

Operator covenants to and shall defend, indemnify and hold the MSB harmless from and against any and all demands, claims, causes of action (whether in action for damages, indemnity, contribution, government cost recovery or otherwise), actions, damages, fines, penalties, judgments, costs and expenses (including, without limitation, the MSB's and the Operator's costs of defense, settlement, and reasonable attorneys' fees), charges, forfeitures, liens, liabilities or losses of any nature and kind whatsoever for injury or damage to persons or property occurring within or upon the premises, unless caused by or resulting from the negligence of the MSB or the MSB's agents, servants or employees in the operation or maintenance of the premises. Except as otherwise provided in this Section, the MSB is to be free from liability and claims for damages by reason of any injury to any person or persons, including Operator, its agents, employees, permittees or contractors, or property of any kind whatsoever and to whosoever belonging, including Operator's, resulting from any cause or causes whatsoever while in, upon, or in any way connected with the premises during the term of this Permit, or any use or occupancy hereunder. Operator covenants to indemnify and save harmless the MSB from all liability, loss, costs (including Operator's or MSB's attorney's fees) and obligations on account of or arising out of any such injuries or losses, however occurring, including any acts, negligent or otherwise, by the agents, invitees, guests, independent contractors, employees or servants of Operator and Operator agrees to defend the MSB at Operator's own cost (including attorney's fees) against all such claims, actions and suits brought against the MSB.

Section 19. Risk of Loss.

The Operator agrees that any equipment, cargo, vehicle or other material of any kind which is authorized to be stored or placed at the Port is so stored and placed at the sole risk of the Operator. In the event that any such equipment, cargo, vehicles or other material is damaged or destroyed by any cause other than the wrongful misconduct of the MSB, the Operator shall not seek compensation or restitution of any kind from the MSB.

Section 20. Permit Administration.

The Port Director/Port Operations Manager shall administer this Permit on behalf of the MSB.

Section 21. Termination.

Either the MSB or the Operator may terminate this Permit for any reason by notifying the other party in writing at least twenty (20) days before the date upon which the termination is to be effective.

Section 22. Factual Operational Disputes.

In the event of a factual operational dispute as to daily operations between the parties under this Permit, the Port Director/Port Operations Manager shall reduce his position to a written decision and serve a copy thereof upon the Operator. The Operator may appeal the decision by written application to the Port Commission within thirty (30) days after receiving the Port Director's decision. While the appeal is pending, the Operator shall abide by the decision of the Port Director. The decision of the Port Commission shall be final and binding on all parties.

Section 23. Insurance.

A. During the term of this Permit, the Operator shall continually and without interruption maintain in good standing insurance described in Subsection B. of this Section or self-insurance satisfactory to the MSB. Prior to its performance pursuant to this Permit, the Operator shall furnish the Port Director a certificate of insurance in accordance with Subsection B. of this Section.

B. The Operator shall :

1. General Liability: At least as broad as ISO CG 0001 (Edition 4/13)

$2,000,000 Combined Single Limit per occurrence for bodily injury, property damage, personal and advertising injury. The general aggregate limit shall be a minimum of $5,000,000

2. Auto Liability: At least as broad as ISO CA 0001 (Edition 10/13)

$1,000,000 Combined Single Limit
Including Hired & Non-owned covererage

3. Worker's Compensation and Employer's Liability Insurance, including Longshore and Harbor Worker's coverage as required by state and/or federal statute.

4. Terminal Operators Liability including Stevedoring and Wharfingers' $5,000,000
5. Petroleum transfer operations require evidence of insurance in the amount of $10,000,000. Dangerous, hazardous or explosive cargo movements require advance notification to the Port Director and approval of the Borough Manager concerning adequacy of Operator's insurance.
6. Excess Liability:

In order to meet the required minimum limits of insurance it is permissible for the Operator to combine an excess liability or umbrella policy. Burden is on the Operator to demonstrate that Excess/Umbrella policy attaches to underlying coverage in order to reach minimum limits.

7. On or to the insurance coverages required of Operator under the provisions of Subsections 1., 2., 4., and5., above, of Section 23.B., Operator shall cause the MSB to be named and listed upon the policies as an additional insured. All such insurance policies shall be non-assessable and shall contain language, to the extent commercially obtainable, to the effect that (a) any loss shall be payable notwithstanding any act or negligence of the MSB that might otherwise result in a forfeiture of the insurance and (b) the policies are primary and non-contributing with any insurance that may be carried by or available to the MSB.
8. Deductibles and Self-Insured Retention

Deductibles and Self-Insured retentions are the sole responsibility of the Operator. Operator may be requested to demonstrate how the deductible or self-insured retention will be funded in the event of a claim. At the option of the MSB, the Operator shall reduce or eliminate such deductibles or the Operator shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A-VII.

C. The insurance obtained pursuant to this Section shall provide for written notice of any termination, cancellation or expiration of the insurance to be delivered to the Port Director no less than thirty (30) days before the effective date thereof.

Section 24. Force Majeure and Delay Damages.

A. Force majeure is an act or event of substantial magnitude, beyond the control of the Operator and/or the MSB, which delays or hinders the Operator's activity at the Port pursuant to this Permit, including without limitation:

1. Strike or work stoppages.

2. Any interruption, suspension or interference with the Operator's activities caused by acts of God, or acts of the public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.

3. Order of a court, administrative agency or governmental officer other than MSB officers.

4. Suspension, termination or interruption of governmental licenses, consents, authorizations or approvals.

B. No claim for costs may be allowed the Operator for delay or hindrance of its activities under this Permit caused by third parties.

Section 25. Fire Prevention.

The Operator shall keep fire lanes clear and maintain fire control equipment in a readily accessible location.

Section 26. Hazardous Materials.

Operator may cause or permit hazardous material, lawful, necessary and useful to Operator's business, to be used, kept and stored in a manner that complies with all laws regulating any hazardous material so brought upon, used or kept in or about the premises. If Operator breaches the obligations stated in the preceding sentence, or if the presence of hazardous material on the premises caused or permitted by Operator results in contamination of the premises, or if contamination of the premises by hazardous material otherwise occurs for which Operator is legally liable to the MSB for damage resulting therefrom, the Operator shall indemnify, defend, and hold the MSB harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the premises and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Permit term as a result of such contamination. This indemnification of the MSB by the Operator includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of hazardous material present in the soil or groundwater on or under the premises. Without limiting the foregoing, and in addition to all the rights of indemnity set forth in Paragraph 18 of the Permit, if the presence of any hazardous material on the premises caused or permitted by Operator results in any contamination of the premises, Operator shall promptly take all actions on its sole expense as are necessary to return the premises to the condition existing prior to the introduction of any such hazardous material to the premises; provided that MSB's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the premises. As used herein, the term "hazardous material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Alaska or the United States Government.

The duties set forth in this Paragraph 26 shall survive the expiration or termination of this Permit.

IN WITNESS WHEREOF, the Parties have executed this Permit on the date first hereinabove written.

MATANUSKA-SUSITNA BOROUGH	COMPANY
______________________________	______________________________
Name: ________________________	Name: ________________________
Title: ________________________	Title: ________________________
Date: ________________________	Date: ________________________
ATTEST:	RECOMMENDED FOR APPROVAL

Name:______________________________	Name:______________________________
Borough Clerk Date: ______________________________	Port Operations Manager Date: ______________________________

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of ________________, 20___, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared ______ to me known to be the identical individual named in and who executed the foregoing instrument, and acknowledged to me that he/she has signed the same freely and voluntarily for the uses and purposes therein stated and that he/she has the authority to execute this agreement on behalf of__________________(OPERATOR).

WITNESS my hand and notarial seal the day and year last written.

____
Notary Public in and for Alaska
My commission expires: ________________

Exhibit B

Berthing Application

IM 18-037
OR 18-019

PORT MACKENZIE

VESSEL DOCKAGE/BERTHING APPLICATION

for

GENERAL CARGO TRANSFER or NON-CARGO BERTHING

(See notes and Conditions)

(Please type or print)

A Port MacKenzie Terminal Operator Permit Holder (TOP) or Non-Cargo Applicant must complete the Berthing Application items applicable to the type of activity being performed. Requests will not be accepted if not complete and signed Pursuant to the Conditions of Berthing and the current Port MacKenzie Terminal Tariff, the Applicant, as owner or as an authorized agent hereby seeks the arrangement of a berthing facility on behalf of the below named vessel. The Applicant further attests to the accuracy of the information provided and will be the party responsible for payment of all port charges assessed to the vessel.

Applicant: ______________________ Authorized Rep: ______________________
(General TOP Holder or Non-TOP Holder) (Authorized Signature)

Name: ______________________ On: ______________________
(Authorized Individual/Title) (Date)

Vessel Owner: ______________________

Vessel: ______________________ Operated by: ______________________
(Name) (Company)

Vessel Origin: ______________________ Vessel Destination: ______________________

ETA: ____________ ETD: ____________ Vessel LOA: ____________

NOTES AND CONDITIONS

No vessel will be permitted to berth at a wharf or terminal facility of Port MacKenzie for more than six hours without having first made application for a berth assignment and without such an assignment having been granted by the Port. This application is subject to the Regulations, Rules, and terms of the current Port MacKenzie Terminal Tariff and to the timely filing of the acceptance of Financial Responsibility provided and incorporated herewith to this Vessel Berthing Application. This Application also requires 100 percent of all estimated fees in advance of docking unless approved in advance by the Port Director/Operations Manager for companies with established leases in the Port District. A Terminal Operator Permit must be obtained for any transfer of cargo and/or passengers. If Port MacKenzie adjusts the estimate of Port charges, the Applicant shall attach a copy of the Port's adjustment advisory and shall prepay 100 percent of the adjusted Port charges.

NON-CARGO VESSEL BERTHING APPLICANT

The non-Cargo Berthing Applicant and vessel owners, operators, or agents not engaged in cargo activities requesting a Vessel Berthing Application shall provide proof of:

A. Insurance in force and good standing for the vessel.

B. Comprehensive liability coverage with limits of at least $2,000,000 covering Bodily Injury and Property Damage coving all Property whether or not in the care, custody, or control of the Applicant. Insurance policy shall name the Matanuska-Susitna Borough as Additional Insured.

Standard Worker's Compensation, Social Security, Unemployment, Employer's Liability Insurance, and Longshore and Harbor Worker's Compensation Insurance as may be required by state or federal law.

VESSEL/DOCKAGE BERTHING APPLICATION

(Please Type or print)

SECTION A. GENERAL CARGO ACTIVITIES (Must be completed by Terminal Operation Permit Holder Only)

Discharge: ________________ Cargo: ______________ Recipient of Cargo: ______________________
(Type of Cargo) (Quantity) (Terminal Operator Permit Holder)

Loading: ________________ Cargo: ______________ Supplier of Cargo: ______________________
(Type of Cargo) (Quantity) (Terminal Operator Permit Holder)

NOTE: Separate submission of this document is required by each Applicant when the cargo is a split between more than one Applicant.

Estimate Port Charges below:

A. Dockage $ ____________________________

B. Wharfage $ ____________________________

C. Security & Port-a-John (Rates from Port Dir./Operations Manager) $ ________________

D. Uplands Storage $ ____________________________

E. Other (list specific details) $ ____________________________

SECTION B. NON-CARGO ACTIVITIES (Must be completed by non-cargo activity vessel applicant)

Non-cargo Applicant not engaged in cargo activities requesting application for assignment of berth must submit an application 14 days in advance or as far in advance of the arrival of the vessel as possible. The application must be completed in its entirety and must specify arrival and departure dates. The non-cargo vessel operator must provide the detailed nature of the in port activities to be conducted during the vessel call at Port MacKenzie.

Estimate Port Charges below:

A. Dockage $ ____________________________

B. Other (list specific details) $ ______________________

ACCEPTANCE OF FINANCIAL RESPONSIBILTY FOR PAYMENT

In connection with the Vessel Berthing Application dated ________________, 20___, the undersigned hereby accepts responsibility on its own behalf, for payment of the Port charges assessed in accordance with the Port MacKenzie Terminal Tariff #2, dated XXX XX, 2017, and the attached Conditions of Berthing.

______________________ By: ______________________
(Name of Company) (Authorized Signature/Title)

Date: ______________________ SSAN: ______________________

FOR PORT USE ONLY

Application Received – Time/Date: ______________ Approved – Time/Date: ______________

Berth Assigned: ______________________ Assigned/Approved by: ______________________
(Port Director/Operations Manager)

Date: ______________________

CONDITIONS OF BERTHING

In accordance with the rules of the Federal Maritime Commission, and subject to the provisions of the Port MacKenzie Terminal Tariff #2, including but not limited to Tariff Subsection 360, all applications for vessel berthing shall be made in the form specified by the Port, and shall require the timely filing of the financial responsibility information called for by the Vessel Dockage/Berthing Application, completed in accordance with, and otherwise governed by, the additional terms and conditions set forth below:

Unless waived pursuant to the following paragraph, terms of payment for all application Port charges shall be paid in advance. A cash deposit or acceptable security in an amount equal to 100 percent of the estimated applicable charges will be required to be posted with the Port a minimum of six days prior to the vessel's scheduled arrival, or at such time as may by authorized or directed by the Port Director/Operations Manager, but in all cases in advance of actual services rendered. In any case in which a deposit has been posted, any excess thereof, after satisfaction of all applicable port charges, shall be promptly refunded by the Port to the party posting same.

The Port Director/Operations Manager may waive the requirement of payment in advance as to all or any of its anticipated port charges when the party responsible for such charges has identified themselves to the satisfaction of the Port, and:

1. That party responsible has an established lease within the Port District and has established credit worthiness acceptable to the Port Director/Operations Manager; or
2. Adequate security, acceptable to the Port Director/Operations Manager, in an amount equal to 100 percent of the applicable estimated charges, has been posted; or

3. The Berthing Applicant/Terminal Operator Permit Holder requesting the berth, or another entity, in each case acceptable to the Port Director/Operations Manager as credit worthy, has personally accepted financial responsibility in writing with notarized signature for the applicable charges.

The Terminal Operator Permit Holder or the Berthing Applicant requesting a berth shall, as a part of the berthing process, provide all information called for by the Vessel Berthing Application respecting the vessel, its estimated arrival and departure, amount(s) and type(s) of cargo to be loaded/discharged. The submission of this form, signed by the Applicant/Terminal Operator Permit Holder, shall constitute the Applicant attestation as to the accuracy of the information therein. The Berthing Applicant shall be held personally liable to the Port for any financial loss suffered by the Port as a result of the applicant's failure to so report accurately.

Applicant shall submit all shipping documentation, bills of lading, manifests, and waybills at least 24 hours before arrival at the dock. If the vessel is to arrive on a Saturday, Sunday, or holiday, Applicant shall submit this documentation by 1:30 PM of the last business day before docking and unloading.

Berth assignments are non-transferable, conditional permits, revocable without notice, which may be issued at the sole discretion of Port MacKenzie to the owners, agents, or operators of vessels for the use of a specific berth by a specific vessel for a specific time period.

Berth assignments made the Port are subject to alteration and revocation under the following conditions:

1. Vessel may be ordered to vacate when the Port Director, at his or her sole discretion, determines the berth is required for a vessel desiring to load or discharge cargo.
2. Any vessels experiencing delays for any reason in cargo loading or discharging operations may be ordered to vacate the berth at the sole discretion of the Port Director/Operations Manager.
3. Whenever the Port Director/Operations Manager determines that a congested condition exists, any vessel at berth may be required to work around the clock. Should there be a refusal to comply, the Port Director/Operations Manager may order the vessel to vacate the berth.
4. All costs of additional or overtime labor, or equipment, pilotage, tug-hire, linesmen, or costs of any other description arising from the requirement of the Port Director/Operations Manager under these rules shall be for the vessel's account.

Should the Berthing Applicant/Terminal Operator Permit Holder, subsequent to submission of its Berthing Application, receive information which materially differs from the information previously provided, and which information the applicant reasonably believes is not equally known to the Port, it shall immediately notify the Port Director/Operations Manager and promptly amend the Vessel Dockage/Berthing Application with the Port.

All estimates of port charges are subject to approval and/or adjustment by the Port Director/Operations Manager.

After receipt of a completed Vessel Dockage/Berthing Application, the Port Director/Operations Manager will advise the berthing applicant as to (1) the Port's approval of adjusted estimate of port charges, and (2) whether posting of cash or security is required for any charges and the amount thereof.

In addition to the terms for berth reservation and establishment of financial responsibility as set forth herein, requests for berth reservation and assignments of berth shall otherwise be in accordance with all local rules and regulations established by the Port.

The Port Director/Operations Manager retains the right in his or her sole discretion to determine whether a responsible Applicant is credit worthy, and to waive the payment in advance requirement. The Port Director/Operations Manager may establish guidelines for determining whether a responsible Applicant is credit worthy. Compliance with these guidelines does not create a right to waiver of the payment in advance requirement.

For safety or other reasons, the Port Director/Operations Manager in some circumstances may grant a vessel a temporary berth before the Applicant has paid all applicable charges or complied with all applicable tariff provisions or Conditions of Berthing. In such circumstances, the vessel may discharge/load its cargo only if (1) the Port Director/Operations Manager determines that a regular berth is available, and (2) the berthing applicant pays all applicable charges and complies with all applicable tariff provisions and Conditions of Berthing. If no regular berth is available for the vessel berthing, or the Applicant does not pay all applicable charges and comply with applicable provisions, the vessel may not discharge/load its cargo and shall sail on the next high slack or ebb tide. The vessel shall be assessed appropriate fees as set forth in the tariff.