ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2012-18

An Ordinance Authorizing the Port Director to Negotiate and Execute a Lease of Alaska Tidelands Survey No. 893, Located at Approximately 3890 North Douglas Highway, to Juneau Alaska Communications, LLC.

WHEREAS, the State of Alaska conveyed Alaska Tidelands Survey No. 893 to the City and Borough in 2001, with the administration of an existing lease for ATS 893 transferred by the State to the City and Borough on February 8, 2001; and

WHEREAS, at the time of the conveyance, the holder of the existing lease between it and the State for ATS 893 was Alaska-Juneau Communications, Inc., having been assigned the original 1986 lease by KINY and Associates in 1994, (and who then assigned the lease to Juneau Alaska Communications, LLC, the current applicant, in 2008), was already using ATS 893 as the location of a radio tower, as it had been used for many years; and

WHEREAS, the lease between Juneau Alaska Communications, LLC and the State of Alaska, assumed by the City and Borough, expired on February 27, 2011; and

WHEREAS, Juneau Alaska Communications, LLC expressed its wish to renew its lease and has accordingly continued to remit annual lease payments to the City and Borough, with its most recent payment being received on January 26, 2012; and

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WHEREAS, the Port Director recommended that the lease renewal constitute a new lease with the City and Borough under terms and conditions in accordance with City and Borough ordinances and regulations with Juneau Alaska Communications, LLC paying the appropriate fair market value rental rate for its continued use of ATS 893; and

WHEREAS, it is the intent of the Docks and Harbors Board and Juneau Alaska Communications, LLC that the new lease agreement memorialize the intent and conduct of the parties where Juneau Alaska Communications, LLC remained the responsible leaseholder of ATS 893 despite the fact that a new lease document with the City and Borough was not signed when the underlying original lease expired; and

WHEREAS, in accordance with the appraisal report, the Port Director recommended an annual rental rate of $2,170.95, which was approved by the Docks and Harbors Board on January 26, 2012; and

WHEREAS, the parties now desire to enter into a lease agreement for ATS 893, as recommended and approved by the Docks and Harbors Board; and

WHEREAS, the Board is authorized in CBJ 85.02.060(a)(5) to lease lands as provided in CBJ Chapter 53.20, and any action required by CBJ Title 53 of the City Manager may be performed by the Port Director; and

WHEREAS, CBJ 53.20.020 authorizes the lease of lands owned by the City and Borough, including tidelands and submerged lands, by ordinance under such procedures
and minimum terms and conditions as set forth in the ordinance.

NOW, THEREFORE, BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Authorization to Lease. The Port Director is authorized to negotiate and execute a lease to Juneau Alaska Communications, LLC, of Alaska Tidelands Survey No. 893, Juneau Recording District, First Judicial District, State of Alaska, containing approximately 0.3323 acres (14,461.92 square feet) of property, as shown on Exhibit A to this ordinance.

Section 3. Minimum Essential Terms and Conditions. The lease is subject to the following minimum essential terms and conditions:

(A) The leased property shall be used by Lessee for radio tower operations.

(B) The lease shall be for a term of thirty-five years, beginning February 27, 2011, with one thirty-five year renewal option, subject to City and Borough approval of any renewal.

(C) The annual lease payment for the first year of the initial five-year period (February 27, 2011 - February 27, 2012) shall be $1,250.00, plus sales tax. The annual lease payment for the remainder of the initial five-year period (February 2012 - 2016) shall be $2,179.95 per year ($0.15 per square foot), plus sales tax. Annual rent under
this lease agreement shall be due on February 1.

(D) Beginning with the first year after the initial five-year period of the term of this lease agreement, the Port Director will re-evaluate and adjust the annual lease payment for the leased property, equipment, and improvements for the next five-year period of the term in accordance with CBJ 53.20.190(2). The new annual lease payment amount shall be paid retroactively to the beginning of the lease payment adjustment period.

(E) Lessee shall be responsible for obtaining all necessary permits and approvals for any further development of the leased property or improvements. In addition, Lessee is required to obtain approval of its development plans from the City and Borough Docks and Harbors Board prior to any further development of the leased property or improvements.

(F) Lessee shall indemnify, defend, and hold harmless the City and Borough and its officers, agents, and employees for any claims related to or arising out of Lessee's use, operation, development, or maintenance of the leased property, equipment, and improvements, and any further development of the leased property or improvements by Lessee.

(G) The lease shall include all provisions of the standard City and Borough land lease form not in conflict with this ordinance, and any other provisions that the Port Director determines to be in the public interest.
Section 4. Execution. The lease authorized by this ordinance may be enforced according to its terms notwithstanding any procedural or substantive deviations or differences from CBJ Title 53.

Section 5. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this day of 2012.

Bruce Botelho, Mayor

Attest:

Laurie J. Sica, Clerk