ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2013-08(b)

An Ordinance Authorizing the Port Director to Negotiate and Execute a Lease With Harbor Enterprises, Inc., d/b/a Petro Marine, for Upland Areas at the Don Statter Harbor Facility, Including a License for Fuel Lines Extending Through City and Borough Property to Connect Fuel Storage Tanks to the Fuel Float.

WHEREAS, on March 1, 2001, a Fuel Dock Lease was executed by and between Deharts Auke Bay Store, Inc., d/b/a Deharts Marina and Petro Marine Services, with a termination date of March 14, 2006, and an option to extend; and

WHEREAS, on June 4, 2004 a lease addendum was executed between the parties extending the original Fuel Dock Lease until February 28, 2014; and

WHEREAS, on July 1, 2005, a Tri-Party Agreement was executed between the City and Borough, Deharts Marina, and Harbor Enterprises, Inc. d/b/a Petro Marine, with the City and Borough assuming the terms and conditions of the original Fuel Dock Lease and incorporating an Addendum dated July 1, 2005; and

WHEREAS, in 2005, the City and Borough purchased Deharts Marina; and

WHEREAS, the Addendum to the original Fuel Dock Lease, dated July 1, 2005, was executed between City and Borough, as successor to Deharts Auke Bay Store, Inc.,
d/b/a Deharts Marina and Harbor Enterprises, Inc., d/b/a Petro Marine Services, and
reconfirmed the initial term extended to end February 28, 2014, and amended the
option to extend to three (3) five-year terms, subject to renegotiation of the lease rate,
with the option to purchase/right of first refusal deleted, and new language added
recognizing Petro Marine’s use of a new fueling facility with consideration given for any
unamortized capital investment; and

WHEREAS, the Port Director recommended a new lease be approved, under the
terms and conditions in accordance with City and Borough ordinances and regulations
with Harbor Enterprises, Inc., d/b/a Petro Marine Services; and

WHEREAS, the Docks and Harbors Board at its November 30, 2012 regular meeting
approved a new fuel float lease at the Don Statter Harbor Facility with Harbor
Enterprises, Inc., d/b/a Petro Marine Services; and

WHEREAS, the parties now desire to enter into a new lease agreement as
recommended 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 procedure
and minimum terms and conditions as set forth in the ordinance; and
WHEREAS, as recommended and approved by the Docks and Harbors Board, the parties now desire to enter into a Fuel Dock Lease Agreement for the lease of the subject property hereinafter referred to as “the Leased Premises.”

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 on behalf of the City and Borough (LESSOR) to Harbor Enterprises, Inc., d/b/a Petro Marine Services (LESSEE), of the Leased Premises, containing approximately 1,100 square feet of City and Borough-owned uplands and will include a license allowing Lessee to run fuel lines through City and Borough property, including the City and Borough-owned floats, as generally depicted on “Exhibit 1. Leased Premises” attached 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 Lessees for the following purpose(s):

(1) The uplands area where the Lessee has its fuel storage tanks and associated equipment;

(2) A license extending from the fuel storage tank uplands to the Lessee’s fuel float in the harbor allowing the Lessee to install, maintain, and operate fuel lines, electrical lines, and communication lines;
(3) Authorization to attached Lessee’s fuel float to the end of City’s main float including the installation of piling required to stabilize the Lessee’s fuel float, provided such use does not interfere with the operation of the City’s facilities that are adjacent to the fuel dock.

(B) The lease shall be for a term of thirty-five years, beginning on the date the lease agreement is signed by the City and Borough, with one thirty-five year renewal option, subject to City and Borough approval of any renewal. Lessee shall exercise this option, if at all, by written notice given to the Lessor during the first six months of the last year of the underlying lease term.

(C) From the effective date through the initial seven years of this Lease, Lessee shall pay rent in the amount of $0.05 for each gallon of fuel sold at the facility, plus CBJ sales tax if applicable.

(D) On the first seven year anniversary and every seven year interval thereafter, the rent shall be reviewed and may be adjusted as \((1 + \text{The Anchorage CPI for the cumulative 5-year period immediately preceding the renewal as reported by the Alaska Department of Labor})\) multiplied by the rent currently in effect.

Lessee shall determine fuel sales from daily meter readings and keep records of these readings for a period of no less than one year from the date of the reading. The City may inspect, in the manner and at reasonable times it considers appropriate, Lessee’s daily meter reading records.

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

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

(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 2013.

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Merrill Sanford, Mayor

Attest:

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Elizabeth J. McEwen, Acting Clerk