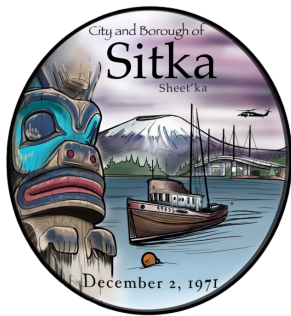


POSSIBLE MOTION

I MOVE TO approve the Operating Agreement between the City and Borough of Sitka and Highmark Marine Fabrication for Marine Vessel Haul Out and Shipyard Operations.




CITY AND BOROUGH OF SITKA

A COAST GUARD CITY

MEMORANDUM

To: Mayor Eisenbeisz and Assembly Members

From: John Leach, Municipal Administrator 

Date: August 5, 2025

Subject: Operating Agreement Between CBS and Highmark Marine Fabrication for Marine Vessel Haul-Out and Shipyard Operations

Background

Over the past several years, the Gary Paxton Industrial Park (GPIP) Board has actively explored options for operating a marine vessel haul-out and shipyard facility at GPIP. The Board determined that private sector operation was the preferred model and initiated a formal qualifications-based selection process.

On July 18, 2024, the GPIP Board approved the release of a Request for Qualifications (RFQ) seeking experienced firms or individuals capable of managing vessel lift operations, wash-down systems, vessel movements, and associated permitting and licensing requirements. The RFQ was released on July 25, 2024, with a submission deadline of September 17, 2024. A non-mandatory pre-proposal conference was held on August 7, 2024.

Two responses were received by the deadline. CBS and GPIP staff evaluated both submissions on September 20, 2024, and determined that only one proposal met the minimum qualifications of service. That qualified firm was invited to participate in the development of a detailed scope of work for inclusion in a formal Invitation to Bid (ITB).

Subsequent milestones in the ITB process included:

- December 17, 2024 – GPIP Board approved the draft scope of services.
- January 16, 2025 – GPIP Board recommended approval of the draft Operating Agreement and related ITB documents.
- January 28, 2025 – CBS Assembly authorized the release of the ITB.

A single proposal to the ITB was received on February 13, 2025, from Highmark Marine Fabrication, LLC (Highmark). The proposal was presented to the GPIP Board on February 20, 2025, followed by a detailed work session on March 13, 2025. After reviewing alternatives, the Board voted 3-2 to recommend acceptance of Highmark's proposal, excluding the warehouse space originally included in their bid.

However, Highmark subsequently informed staff that the inclusion of the warehouse was critical to their operational and financial model. The warehouse would serve as a retail shop for marine repair and fabrication supplies, which Highmark identified as essential for efficient and sustainable service delivery.

Recognizing the need to support a fully functional and consumer-accessible operation, the CBS Assembly authorized the Municipal Administrator on March 25, 2025, to enter into negotiations with Highmark, including the warehouse space as part of the agreement. The draft Operating Agreement and associated exhibits now before the Assembly are the result of those successful negotiations.

Analysis

The Operating Agreement between the CBS and Highmark establishes a clear and mutually beneficial arrangement for the private operation of the marine vessel haul-out and shipyard at the Gary Paxton Industrial Park. The agreement begins on August 13, 2025, and runs through June 30, 2030, with up to five automatic one-year renewal terms contingent upon satisfactory annual reviews and continued alignment with the public interest. Extensions beyond June 30, 2035, may occur by mutual written agreement between both parties.

Under the terms of the agreement, Highmark assumes full responsibility for the day-to-day operations of the haul-out and shipyard, including vessel lift and launch services, blocking, wash-down, dry dockage, hang time, and equipment rental. Highmark will also manage all administrative functions, including scheduling, customer service, recordkeeping, and billing. The company is granted exclusive use of specified equipment and facilities, including the 150-ton Marine Travelift, as well as a leased warehouse space, while non-exclusive areas such as restrooms and general yard space are shared in accordance with a facility use agreement maintained by CBS. Coordination of access to shared spaces ensures that Highmark's operations do not unreasonably impede other users, and Highmark is expected to accommodate compatible activities within the shipyard footprint.

The agreement does not include direct compensation to Highmark from CBS. Instead, Highmark retains all revenues generated through shipyard operations and services. In return, the company is required to pay CBS a monthly operations fee of \$2,000 from service profits, cover all utility costs associated with their operations, and pay market-rate rent for approximately 5,000 square feet of warehouse space at a rate of \$1.00 per square foot per month, plus applicable taxes. The agreement also establishes a process for cost-sharing major equipment repairs exceeding \$10,000, with CBS retaining responsibility for supplying parts and consumables for minor maintenance. CBS will also remain responsible for annual equipment inspections and certifications, environmental compliance reporting, major yard grading, and large-scale snow removal.

To protect CBS's interests and mitigate operational risks, Highmark is required to maintain robust insurance coverage, including commercial marine liability, umbrella liability, and limited pollution liability (sudden and accidental), with CBS named as an additional insured. The agreement includes strong indemnity language, prohibits unauthorized assignment, and outlines a structured process for resolving disputes and curing defaults. These provisions ensure that CBS is protected from financial exposure

while allowing for the continuity of shipyard services.

Overall, the agreement aligns with the City's broader goals to support economic development, promote maritime industry growth, and responsibly manage public assets. By leveraging private sector expertise and assuming no direct operating costs, CBS ensures a sustainable, community-serving operation while generating ongoing revenue through lease and service-related payments. The negotiated terms represent a well-balanced framework for establishing a viable, long-term shipyard operation under experienced private management.

Fiscal Note

The terms of the Operating Agreement provide a direct financial benefit to the CBS. Highmark will lease approximately 5,000 square feet of warehouse space at a rate of \$1.00 per square foot, generating approximately \$5,000 per month in lease revenue, plus applicable sales taxes. In addition to the lease payments, Highmark will make a \$2,000 monthly payment to CBS from the profits of its shipyard operations. Combined, these payments will result in approximately \$84,000 in direct annual revenue to the CBS.

Under the agreement, Highmark is also responsible for covering the full cost of its utility usage, including water, sewer, electricity, and fuel. This ensures that no ongoing utility expenses will be borne by CBS in support of the facility's operations.

Importantly, as part of the negotiation process, CBS's commitment to provide certain infrastructure and equipment—specifically a telehandler, pier railing and cleats, pier ladder, expanded lot grading, and electrical service pedestals—enabled Highmark to lower the customer-facing rates originally proposed. These reductions are reflected in the final fee schedule attached as Exhibit C to the agreement. Highmark had originally assumed it would need to procure these items independently, but CBS's investment in these core assets allowed for a more competitive and accessible pricing structure that benefits local vessel owners and supports broader use of the facility.

The financial structure of the agreement provides predictable, recurring revenue to the CBS while avoiding the operational costs typically associated with public management of such a facility.

Recommendation

I recommend that the Assembly approve the negotiated Operating Agreement between the City and Borough of Sitka and Highmark Marine Fabrication, LLC. This agreement represents a significant milestone in the development of a fully functional haul-out and shipyard facility at the Gary Paxton Industrial Park—an effort that reflects years of planning, public engagement, and diligent work by CBS staff and the GPIB Board.

Since the closure of Sitka's previous haul-out in 2021, the community has faced a critical infrastructure gap that has directly impacted the marine trades and vessel owners. This agreement takes a major step toward restoring that capacity and creating the foundation for a sustainable, locally-driven maritime industry. The partnership with Highmark positions the CBS to not only meet the immediate needs of vessel operators but also to pursue broader economic development opportunities tied to marine infrastructure and services.

The agreement has been reviewed by legal counsel, and all terms have been negotiated in good faith to protect the interests of the CBS while ensuring operational viability for the contractor. I respectfully request the Assembly's approval of the agreement and authorization to execute all related documents.

Encl: Operating Agreement (with all Exhibits) between CBS and Highmark

**OPERATING AGREEMENT
BETWEEN
CITY AND BOROUGH OF SITKA
AND
HIGHMARK MARINE FABRICATION, LLC
FOR MARINE VESSEL HAUL OUT AND SHIPYARD OPERATIONS**

The City and Borough of Sitka (“Owner”) desires the firm Highmark Marine Fabrication, LLC (“Shipyard Operator”) to Provide Marine Vessel Haul Out and Shipyard Operations. This Operating Agreement (“Agreement”) is made and entered into by and between Owner and Shipyard Operator in consideration of the mutual promises contained in this Agreement.

This Agreement also consists of:

Exhibit A – Scope of Services, Exclusive and Non-exclusive Use Facilities, and Government Furnished Equipment – dated 12 August May 2025

Exhibit B – GPIP Marine Vessel Haul Out and Shipyard Facility Use Agreement policy– dated 12 August 2025

Exhibit C – Fee Schedule for Shipyard Services, dated 12 August 2025 (2 pages)

Exhibit D – MOU between the State of Alaska and City and Borough of Sitka Management Plan for Sawmill Cove Industrial Park

Exhibit E – Lease for Real Property at Shipyard

SECTION 1. DEFINITIONS

For the purpose of this Agreement, the terms used in this Agreement shall have the following meaning:

- A. “Owner” shall mean the CITY AND BOROUGH OF SITKA.
- B. “Shipyard Operator” shall mean HIGHMARK MARINE FABRICATION, LLC, and any authorized agent acting for and/or on behalf of HIGHMARK MARINE FABRICATION, LLC.
- C. “Owner’s authorized representative” shall mean the person set forth in Section 12 of this Agreement.
- D. “Days” shall mean calendar days.

SECTION 2. TERM AND DURATION

This Agreement begins August 13, 2025 and ends June 30, 2030. It will be automatically extended for up to five (5) one-year renewal terms provided Shipyard Operator's performance is deemed acceptable and the terms of this Agreement are found to remain in the public interest following completion of an Annual Review by Owner. This Agreement may be extended beyond June 30, 2035 by the mutual written agreement of Owner and Shipyard Operator.

SECTION 3. FACILITIES

The Owner will make available to the Shipyard Operator certain equipment and adjacent property at the Gary Paxton Industrial Park ("GPIP"), as depicted in **Exhibit A** to the Agreement ("Scope and Facilities"). The Owner shall have the right to make additions, alterations, or improvements to the Facilities which do not impede Shipyard Operator's access to or use of the Facilities, except as required to perform necessary repairs to the Facilities.

SECTION 4. SCOPE OF SERVICES

The Shipyard Operator agrees to perform Shipyard Services (defined herein) at and using the Facilities as set out in the attached **Exhibit A** in a prompt, efficient, prudent, and economical manner including the provision of all clerical personnel, laborers, and supervision necessary to perform such Shipyard Services. The Shipyard Operator shall exercise independent judgment in performing its obligations and responsibilities under this Agreement in compliance with all OSHA regulations, including fire safety and confined space requirements.

A. Exclusive and Non-Exclusive Rights

1. Shipyard Operator shall have exclusive rights to use all Owner-Furnished Equipment listed in **Exhibit A** twenty-four (24) hours per day, seven (7) days per week and exclusive use of the leased property described in Exhibit E – Lease for Real Property at Shipyard.
2. Shipyard Operator shall have non-exclusive rights to use of all other Shipyard Facilities. Such use shall be coordinated with Owner. Shipyard Operator shall not unreasonably hinder use of other Facilities, including restroom facilities, by persons permitted by Owner to use other Facilities as governed by the Owner's "GPIP Marine Vessel Haul Out and Shipyard Facility Use Agreement" policy.
3. Shipyard Operator shall have first right of refusal to amend this Agreement to include any additional Phase 2 areas of the Shipyard.
4. Shipyard Operator shall have non-exclusive use of the restroom facilities in the real property it leases from Owner during normal business hours, as well as any restroom facility provided by Owner. Restroom cleaning and maintenance shall be provided by the Shipyard Operator.

5. Shipyard Operator shall have exclusive rights to operate Owner's Marine Travel Lift within the Shipyard, except that the Owner may allow, via separate contract, users of another marine travel lift to move boats to or from a designated location in or adjacent to the Shipyard. Users may also bring boat trailers into the Shipyard for the purpose of moving boats in or out of the Shipyard. Shipyard Operator will coordinate with users of private travel lifts or trailers to facilitate land-based movement of boats in and out of the Shipyard.

6. Shipyard Operator shall have non-exclusive rights to use Owner's real property at the Shipyard within the boundaries shown in **Exhibit A**. Shipyard Operator shall not unreasonably hinder use of Owner's real property at the Shipyard by persons permitted by Owner to enter and occupy Owner's real property at the Shipyard under Owner's "GPIP Marine Vessel Haul Out and Shipyard Facility Use Agreement" policy. Shipyard Operator shall allow and coordinate other use of the Shipyard by vessel owners to maximize use of the Shipyard for its intended purpose.

B. Services by Other Persons at Shipyard. A person other than Shipyard Operator may provide services at the Shipyard to vessel owners that do not require use of the Owner's Marine Travel Lift. Shipyard Operator shall coordinate use of the Shipyard by others.

C. Shipyard Services. For purposes of this Agreement, the term "Shipyard Services" means lifting, launching, blocking, washing, lay days, hang time, and other services provided to Shipyard customers at rates set by Owner performed by Shipyard Operator at the Shipyard, including any rate adjustments agreed upon in writing. Services provided by Shipyard Operator for ship repair or any business activity currently conducted by Shipyard Operator that is invoiced directly to the customer at rates set by Shipyard Operator are not Shipyard Services. Provision of utilities is a Shipyard Service. Provision of dry dockage space and on-site storage are Shipyard Services.

SECTION 5. PERFORMANCE/ANNUAL REVIEW

Shipyard Operator agrees to perform the work on a non-exclusive basis, when requested, as described in Exhibit A. On or before July 1 of each year during the initial or extended term of this Agreement, Owner shall provide Shipyard Operator a written statement of whether Shipyard Operator's performance during the previous calendar year has been acceptable and whether the terms of this Agreement have been found by Owner to remain in the public interest. If the Owner deems Shipyard Operator's performance unacceptable or determines that the terms of this Agreement do not remain in the public interest, Owner and Shipyard Operator shall negotiate in good faith for an amendment to the Agreement, effective on the anniversary date of the initial term. Disputes between the Operator and the Owner shall be resolved through the administrative appeals process, with the first level of appeal being heard by the Municipal Administrator and second level of appeal being heard by the State of Alaska's Officer of Administrative Hearings, with the cost being split evenly between the parties.

SECTION 6. SHIPYARD OPERATOR COMPENSATION

Shipyard Operator agrees that the Owner shall make \$0.00 in direct annual compensation payments for running Owner's Shipyard. As indirect compensation, Owner agrees Shipyard Operator may retain all payments made to Shipyard Operator for Shipyard Services and other services provided by Shipyard Operator to Shipyard users subject to Owner's Compensation required by Section 8 of this Agreement. Shipyard Operator is responsible for billing and collection of charges from vessel owners for Shipyard Services, provided that Shipyard Operator shall have sole discretion as to the implementation of any collection actions taken on any past-due balances and shall have no obligation to pursue any legal action in connection with its collection efforts. In the event Shipyard Operator determines that a debt is not collectible, Owner shall have the right to take an assignment of the claim and pursue whatever collection action it may deem appropriate.

SECTION 7. RATES

Maximum rates Shipyard Operator can invoice for use of Facilities and Shipyard Services as identified in the attached **Exhibit B** and may be changed only upon mutual agreement of the Owner and Shipyard Operator and upon approval of the Assembly of the City and Borough of Sitka. Shipyard Operator may, at its discretion, offer discounted rates below the set maximum, provided that such discounts are offered to all Shipyard users on a fair and equitable basis (such as seasonable discounts). Rates for other services provided by Shipyard Operator to vessel owners may be set by Shipyard Operator. All such sums shall be charged against the vessel or cargo and shall be collected by the Shipyard Operator, and a portion thereof remitted by the Shipyard Operator to the Owner as required by this Agreement.

SECTION 8. OWNER COMPENSATION

- A. Compensation Payment: On or before the first day of each month during the initial or any extended term hereof, Shipyard Operator shall pay Owner \$2,000.00 per month in compensation from the profits of its Shipyard Services.
- B. Utilities: Owner will invoice the Shipyard Operator monthly for all utility expenses. Such remittances shall be accompanied by appropriate itemized documentation.
- C. Lease Payment: Shipyard Operate shall also make monthly lease payments for the property located at Lot 4, in accordance with Exhibit E – Lease for Real Property at Shipyard

SECTION 9. OWNER RESPONSIBILITIES

- A. Owner shall provide all parts, materials, and consumables necessary for the maintenance, operation, and minor repairs of the Facilities, including all oil, oil filters, and coolant necessary to maintain the travel lift and other Owner provided equipment. Owner

will designate an employee knowledgeable in the maintenance routine of the Shipyard to help transition service documentation and schedules for the Facilities.

B. If any replacement equipment is necessary due to excessive maintenance costs or major repairs, Shipyard Operator and Owner will come to an agreement in writing regarding either the acquisition of new equipment or the use of Shipyard Operator equipment.

C. Owner will reimburse Shipyard Operator for all major repair work that falls outside general maintenance subject to prior approval in writing of the Municipal Administrator and Shipyard Operator on the scope and cost of the major repair work. For purposes of this Agreement, "major repair work" is repairs with estimated aggregate costs for the repair that exceed ten thousand dollars (\$10,000.00).

D. Owner will make available all utility connections, however, Shipyard Operator shall be responsible for all Shipyard utilities. This includes all water, sewer, electricity, and fuel necessary for the operation and maintenance of the Facilities. Owner shall not be held to be in breach of this Agreement for any disruption of Shipyard Operator's activities due to a planned or emergency interruption of utility services by the Owner. In the event of an interruption of service, Owner will provide notice of the interruption to the Shipyard Operator as soon as is reasonably practicable.

E. Owner shall be responsible for major Shipyard property grading and snow removal.

F. Owner will complete a Phase I environmental assessment within sixty (60) days of commencement of this Agreement.

G. Owner shall be responsible for preparing all annual environmental reports on the Shipyard wastewater system and submitting the reports to the State of Alaska Department of Environmental Conservation.

H. Owner shall be responsible for the 150-ton Marine Travel Lift Certification, including annual inspection with Kendrick Equipment, including any associated cost.

SECTION 10. RELATIONSHIP OF PARTIES

Shipyard Operator shall perform its obligations under this Agreement as an independent contractor of Owner. Owner may administer the Agreement and monitor Shipyard Operator's compliance with its obligations. Owner shall not supervise or direct Shipyard Operator other than as provided in this section.

SECTION 11. ASSIGNMENTS

Unless otherwise allowed by this Agreement or in writing by Owner, any assignment by Shipyard Operator of its interest in any part of this Agreement or any delegation of duties under

this Agreement shall be void, and any attempt by Shipyard Operator to assign any part of its interest or delegate duties under this Agreement shall give Owner the right immediately to terminate this Agreement without any liability for work performed.

The Owner reserves the right to approve all subcontractor contracts.

SECTION 12. DESIGNATION OF REPRESENTATIVE

The Parties agree that, for the purposes of this Agreement, the Owner shall be represented by and may act through the Municipal Administrator or such other person as he/she may designate in writing.

SECTION 13. DEFAULT AND TERMINATION

The Owner may declare a default hereunder and terminate this Agreement, in addition to exercising any other available remedy, upon the occurrence of any of the following:

- A. The failure of the Shipyard Operator to pay any sum of money due under this Agreement within ten (10) days after the due date.
- B. The failure of the Shipyard Operator to perform or observe any covenant or condition of this Agreement, other than a default in the payment of money, which is not cured within thirty (30) days after notice thereof from the Owner to the Shipyard Operator, unless the default is of a kind that may be cured, but not within such thirty (30)-day period, in which case no default shall be declared so long as the Shipyard Operator shall commence the curing of the default within such thirty (30)-day period and thereafter shall diligently and continuously prosecute the curing of same.
- C. The commencement of a case under any chapter of the Federal Bankruptcy Code by or against the Shipyard Operator, or the filing of a voluntary or involuntary petition proposing the adjudication of the Shipyard Operator as bankrupt or insolvent, or the reorganization of the Shipyard Operator, or arrangement by the Shipyard Operator with its creditors, unless the petition is filed or case commenced by a party other than the Shipyard Operator and is withdrawn or dismissed within ninety (90) days after the date of its filing.
- D. The admission in writing by the Shipyard Operator of its inability to pay its debts when due; the appointment of a receiver or trustee for the business or property of the Shipyard Operator, unless such appointment shall be vacated within ten (10) days after its entry; the Shipyard Operator making an assignment for the benefit of creditors; or the voluntary or involuntary dissolution of the Shipyard Operator.

SECTION 14. INSURANCE

- A. Shipyard Operator shall at all times during the term of this Agreement, maintain in good standing the insurance described in Subsection B. Before rendering any services

under this Agreement, Shipyard Operator shall furnish Owner with proof of insurance in accordance with Subsection B in a form acceptable to the Risk Manager for Owner; such proof of insurance shall be incorporated into this Agreement.

B. Type of coverage (may include umbrella):

1. Minimum Scope of Insurance

- a. Commercial Marine Liability
- b. Commercial Automobile Liability Insurance
- c. Umbrella Liability
- d. Pollution Liability (if not covered by umbrella liability policy)

2. Minimum Limits of Insurance Shipyard Operator shall maintain limits no less than:

a. Commercial Marine Liability: \$1,000,000 combined limit per occurrence for bodily injury and property damage claims. The general aggregate limit shall be \$2,000,000.

b. Commercial Auto Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

c. Umbrella Liability Insurance: The Shipyard Operator shall procure and maintain during the life of this Agreement umbrella liability insurance, not less than \$5,000,000 combined single limit per occurrence and aggregate for bodily injury and property damage claims arising from all operations related to this Agreement

d. Pollution Insurance (if not covered by umbrella liability policy): \$5,000,000 combined single limit per loss applicable to bodily injury, property damage, cleanup costs and defense. Coverage shall apply only to sudden and accidental pollution conditions. Shipyard Operator shall not be required to maintain coverage for gradual pollution conditions. Shipyard Operator shall be responsible for securing an annual environmental survey of the Shipyard Facility by the Alaska Department of Environmental Conservation, or another qualified regulatory authority as agreed by the Parties, to identify any gradual pollution issues (e.g. primary blasting media, paint chips, etc.). Shipyard Operator shall remediate any issues identified in such annual survey to the extent such issues are caused by the Shipyard Operator or its subcontractors, and such remediation shall be subject to the Shipyard Operator's indemnity obligations under Section 15 of this Agreement.

C. Other Insurance Provisions

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

1. Commercial Marine Liability and Automobile Liability, Umbrella, and

Pollution (if applicable).

a. The City and Borough of Sitka, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Shipyard Operator, products and completed operations of the Shipyard Operator, premises owned, occupied or used by the Shipyard Operator, or automobiles owned, leased, hired or borrowed by the Shipyard Operator. The coverage shall contain no special limitation on the scope of protection afforded to the City and Borough of Sitka, its officers, officials, employees and volunteers.

b. The Shipyard Operator's insurance coverage shall be primary insurance as respects the City and Borough of Sitka and its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City and Borough of Sitka, its administrators, officers, officials, employees and volunteers shall be excess of the Shipyard Operator's insurance and shall not contribute to it.

c. The Shipyard Operator's insurer shall agree to waive all rights of subrogation against the City and Borough of Sitka, its officers, officials, employees and volunteers for losses arising from work performed by the Shipyard Operator or any subcontractor for the City and Borough of Sitka.

2. Employer's Liability. The Shipyard Operator's insurer shall agree to waive all rights of subrogation against the City and Borough of Sitka, its Administrator, officers, officials, employees and volunteers for losses arising from work performed by the Shipyard Operator or any subcontractor for the City and Borough of Sitka.

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 thirty (30) days prior written notice for nonpayment of premium or fraud on the part of the Shipyard Operator or sixty (60) days prior written notice for any other reason by certified mail, return receipt requested, has been given to the City and Borough of Sitka. Such notice shall be mailed by the Shipyard Operator's insurer(s) to the attention of the Municipal Administrator for the City and Borough of Sitka.

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

E. Verification of Coverage. Shipyard Operator shall furnish the City and Borough of Sitka with approved 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 provided by the City and Borough of Sitka, or which meet industry standard (ACORD form). The City and Borough of Sitka reserves the right to require complete, certified copies of all required insurance policies, at any time.

SECTION 15. INDEMNITY

Shipyard Operator agrees to indemnify, defend, and hold the City and Borough of Sitka and its administrators, officers, agents, employees, volunteers and servants harmless from and against any and all claims, demands, actions, losses, expenses, and liabilities for, or related to, loss of or damage to property or injury to or death of any person relating to or arising or resulting in any way from the performance by the Shipyard Operator or any of its subcontractors under the Agreement, or the work or services provided or the condition or use thereof, excepting only such loss, damage, injury or death which results solely from the negligence or willful misconduct of the City and Borough of Sitka.

SECTION 16. COPYRIGHTS AND RIGHTS IN DATA

All documents produced under this Agreement are the property of Owner, including notes, drawings, reports and other technical information referred to as work products, except items which have pre-existing copyrights. Payments to Shipyard Operator for services include full compensation for all work products produced by Shipyard Operator and its subcontractors.

All such subject data furnished by Shipyard Operator pursuant to this Agreement are instruments of its services in respect to this particular project. It is understood that Shipyard Operator does not represent such subject data to be suitable for reuse on any other project or for any other purpose. If Owner reuses the subject data without Shipyard Operator's specific written verification of adaption, such reuse will be at the risk of Owner, without liability to Shipyard Operator. Any such verification of adaption requested in writing by Owner at Owner's sole option will entitle Shipyard Operator to further compensation at rates agreed upon by the Parties.

SECTION 17. RESPONSIBILITY OF SHIPYARD OPERATOR

At all times during Shipyard Operator's performance of services under this Agreement, Shipyard Operator shall possess and exercise the level of competence, knowledge and skill presently maintained by other practicing members of the profession in good standing in the same or similar localities.

SECTION 18. COMPLIANCE WITH APPLICABLE LAWS

Shipyard Operator shall, in the performance of the Agreement, comply with all applicable federal, state and local laws, ordinances, orders, rules and regulations applicable to its performance hereunder.

SECTION 19. NONDISCRIMINATION

A. Shipyard Operator may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The Shipyard Operator shall post in a conspicuous place, available to employees and applicants for employment, a notice setting out the provisions of this paragraph.

B. Shipyard Operator shall state, in all solicitations or advertisements for employees to work on jobs relating to this Agreement, that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood.

C. Shipyard Operator shall include the provisions of Subsection A in every subcontract or purchase order under this Agreement, so as to be binding upon every such subcontractor or vendor of Shipyard Operator under this Agreement.

D. Shipyard Operator shall comply with all applicable Federal, State and City laws concerning the prohibition of discrimination.

SECTION 20. RECORDS AND AUDIT

The Owner, in cooperation with the Shipyard Operator, agrees to maintain sufficient and accurate records and books of hauls and launches, including detailed hauling profiles of each vessel, complete date and time records, showing all direct labor hours expended and all costs incurred and the same shall be provided in a timely fashion to the Owner for its record keeping. Shipyard Operator shall maintain such records for a period at least equal to the period established by the City and Borough of Sitka records retention schedule or any subsequent amendment thereto following expiration or termination of this agreement.

SECTION 21. NOTICES

Any notice required pertaining to the subject matter of this Agreement shall be in writing and either personally delivered or mailed by prepaid, first class, registered or certified mail, return receipt requested, to the following addresses:

OWNER:

City and Borough of Sitka
Municipal Administrator
100 Lincoln Street
Sitka, AK 99835

SHIPYARD OPERATOR:

Highmark Marine Fabrication, LLC
2018 Mill Bay Road
Kodiak, AK 99615

SECTION 22. CLAIMS AND DISPUTES

If Shipyard Operator becomes aware, or reasonably should have become aware, of any act

or occurrence which may form the basis of a claim, Shipyard Operator shall immediately notify in writing Owner's authorized representative. If the matter cannot be resolved within seven (7) days, Shipyard Operator shall, within the next fourteen (14) days, submit a written notice of the claim to Owner. Shipyard Operator shall, in presenting the claim, include the facts and circumstances surrounding the claim, the specific relief requested including any additional compensation claimed and the basis upon which it was calculated, and the provisions of this Agreement under which the claim is made. This procedure covers all claims by Shipyard Operator for additional compensation or any extension of the time for performance or any dispute regarding a question of fact or interpretation of this Agreement. Shipyard Operator agrees that unless these written notices are provided, Shipyard Operator shall have no entitlement to additional time nor compensation for such act, event or condition.

SECTION 23. SUCCESSORS AND ASSIGNS

The Parties bind themselves, partners, successors, assigns and legal representatives to the other Party to this Agreement and to partners, successors, assigns and legal representatives of such other Party with respect to all covenants of this Agreement.

SECTION 24. PERMITS, LAWS AND TAXES

Shipyard Operator shall acquire and maintain in good standing all permits, licenses and other entitlement necessary to its performance under this Agreement. All actions taken by Shipyard Operator under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. Shipyard Operator shall pay all taxes pertaining to its performance under this Agreement.

SECTION 25. ATTORNEY'S FEES

In the event either party institutes any suit or action to enforce its right hereunder, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and costs in such suit or action and on any appeal therefrom.

SECTION 26. NON-WAIVER

The failure of either Party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part, or the right of such Party to enforce each and every provision.

SECTION 27. AMENDMENT

A. This Agreement shall only be amended, modified or changed by a written amendment, executed by authorized representatives of the Parties, and such amendment shall be attached to this Agreement as an appendix.

B. For the purposes of any amendment, modifications or change to the terms and

conditions of this Agreement, the only authorized representatives of the Parties are:

1. Cooper Curtis - For Shipyard Operator
2. John Leach, Municipal Administrator - For Owner

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

SECTION 28. SEVERABILITY

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

SECTION 29. JURISDICTION - CHOICE OF LAW

Any civil action rising from this Agreement shall be brought in the Alaska Superior Court at Sitka. The laws of the State of Alaska shall govern the rights and obligations of the Parties under this Agreement.

SECTION 30. INTEGRATION

This instrument and all exhibits, appendices and amendments embody the entire Agreement of the Parties. There are no promises, terms, conditions or obligations other than those contained in this Agreement. This Agreement shall supersede all previous communications, representations, or Agreements, either oral or written, between the Parties.

SECTION 31. FORCE MAJEURE

A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.

B. As used in this Agreement, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Agreement, including without limitation:

1. Any interruption, suspension or interference resulting solely from the act of Sitka or neglect of Sitka not otherwise governed by the terms of this Agreement.
2. Strikes or work stoppages.
3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, pandemics, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.

4. Order, action, or failure to act, by a court, administrative agencies or governmental officers other than Sitka.

DRAFT

IN WITNESS WHEREOF, the Parties have executed this Agreement, on the date and at the place shown below.

CITY AND BOROUGH OF SITKA, ALASKA

Date

By: John Leach
Its: Municipal Administrator

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2025, by John Leach, Municipal Administrator of the CITY AND BOROUGH OF SITKA, an Alaska home rule municipality, on behalf of the municipality.

Notary Public in and for the State of Alaska
My Commission Expires: _____

HIGHMARK MARINE FABRICATION, LLC

Date

By: Cooper Curtis
Its: President

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2025, by Cooper Curtis, President for the HIGHMARK MARINE FABRICATION, LLC, an Alaska corporation, on behalf of the corporation.

Notary Public in and for the State of Alaska
My Commission Expires: _____

Exhibit A: Scope of Services

1. 150-Ton Travelift Operation and Maintenance

- Contractor will provide a minimum of two certified and competent Marine Travelift operators to ensure 24/7 availability of lift and launch services.
- Contractor will prevent the discharge of any hazardous substances and follow all Environmental Laws regarding the handling and documentation of hazardous substances.
- Contractor will supply all routine and unexpected maintenance labor for the Marine Travelift, not to exceed an amount set by Contractor and the CBS during the contracting process. Contractor will submit all purchase orders, following Sitka General Code 4.15 (Procurement Policy), to the Municipal Administrator or designee for approval prior to procuring parts. Upon approval, Contractor will place the order and invoice the CBS for the exact purchase price, and freight cost incurred.
- Perform visual inspections of lift, strap, and cables prior to, and after, each use per the Marine Travelift operation and maintenance manual.
- Always use the highest level of safety precautions while operating the Travelift.
- Keep the straps and cables clean and free of debris that may cause premature deterioration.
- Always check all fluid levels before use and maintain proper fuel levels and oil levels.
- All lifts and launches shall not exceed the recommended loads as specified by Marine Travelift.
- Loads must be properly distributed per the Travelift operator's manual.
- Owner/operators of all vessels to be lifted must identify the known underwater fixtures, transducers, bearing and shaft locations and any other underwater appendages that may affect the strap placement. Contractor will take every precaution to ensure underwater appendages are not damaged, including requiring owners to sign a lift agreement if it is deemed necessary.

2. Lifting, Launching, and Blocking Operations

- Contractor will provide all labor to safely accomplish lifting, launching, and blocking operations within the GPIP Shipyard. This includes skilled laborers, equipment operators, divers, Travelift operators, mechanics, and other necessary personnel. Contractor will provide a minimum of two personnel during all Travelift operations and more when deemed necessary by the operator.
- Contractor shall record weight and other data on each vessel lifted. A photograph or notes regarding strap locations and underwater appendages, as well as displacement reading of Travelift gauges shall be recorded. Notes shall record each vessel's load, including water, fuel, freight, etc.
- Contractor will prevent the discharge of any hazardous substances and follow all Environmental Laws regarding the handling and documentation of hazardous substances.

3. Scheduling, Administration, Payments, Recordkeeping.

- Contractor will provide administrative staff to coordinate Shipyard scheduling, organization, payments, recordkeeping and management. Bookkeeping, lift records, and maintenance records will be available for review upon request.

4. GPIP Shipyard Facility and Equipment Maintenance

- Contractor will provide all labor to properly maintain and protect the City's Shipyard assets such as the washdown filtration system and the building at 4690 Sawmill Creek Road.
- Contractor will provide minor yard maintenance in the form of filling potholes and keeping the facility clean.
- Contractor will provide minor snow removal to keep the vessel pads and washdown pad clear of snow in the winter months. Contractor may request the assistance of the CBS Public Works Department in major snow removal and driveway maintenance via their grader/loader. This shared responsibility will help keep costs low for all involved parties.
- Parts and materials that are required for maintenance operations will be treated in the same manner as Travelift maintenance items. Contractor will submit all purchase orders, following Sitka General Code 4.15 (Procurement Policy), to the Municipal Administrator or designee for approval prior to ordering parts. Upon approval, Contractor will place the order and invoice the CBS for the exact purchase price and freight cost incurred.
- Contractor will prevent the discharge of any hazardous substances and follow all Environmental Laws regarding the handling and documentation of hazardous substances.

Facilities and Equipment

The CBS shall make the following Facilities and Equipment available for the Contractor's use.

- 2025 Marine Travelift Corp. Model 150TG
- Telehandler Model Genie GHT-844
- Snow removal equipment
- Pile Supported Pier
- Gravel vessel laydown area
- Washdown Filtration System including the concrete wash-down pad
- Building 4690 located at the GPIP, excluding the warehouse portion which Highmark shall rent from CBS
 - Water
 - Sanitary sewer
 - Electrical service
 - Boiler heating system
 - Restrooms
 - Utility room

Marine Vessel Haul Out and Shipyard Conceptual Diagrams

OPERATIONAL AND BOAT STAIL AREAS

ACCESS AREAS TO BE KEPT CLEAR



City and Borough of Sitka
DEPARTMENT OF PUBLIC WORKS
100 Lincoln Street • Sitka, Alaska 99835
Tel (907) 747-1804/FAX(907) 747-3158

DRAWN: JH

CHECKED: AA

DRAWING NAME: gp1p-diagram.dwg

SHEET NO. 1

SCALE: 1"=200'

DATE: 07.10.25

Draft Shipyard Layout



Draft

EXHIBIT B

GARY PAXTON INDUSTRIAL PARK (GPIP) MARINE VESSEL HAUL OUT AND SHIPYARD FACILITY USE AGREEMENT

THIS AGREEMENT IS INTENDED FOR OUR “DO-IT-YOURSELF” USERS - BOTH PRIVATE OWNERS AND BUSINESS VENDORS/CONTRACTORS USING THE FACILITY TO WORK ON VESSELS OWNED BY THIRD- PARTIES.

BY SIGNING THIS AGREEMENT, YOU ARE AGREEING TO ALL THE TERMS AND CONDITIONS DESCRIBED HEREIN, AND ARE AGREEING TO FULLY COMPLY WITH THE SAME. FAILURE TO DO SO WILL RESULT IN THE IMMEDIATE TERMINATION OF YOUR RIGHT TO USE THIS FACILITY.

A. BASIC YARD RULES AND REGULATIONS

1. ALL FACILITY USERS MUST BE APPROVED AND HAVE A WRITTEN GPIP FACILITY USE AGREEMENT ON FILE WITH THE CITY AND BOROUGH OF SITKA (“CBS”).

2. Vendors/Contractors – Individuals available for hire or contract labor are considered “Vendors” and must be on CBS's GPIP Approved Vendor List for certain activities (*) before they are allowed to work on any vessel at the GPIP Marine Vessel Haul Out and Shipyard Facility (“Facility”). This list is then provided to vessel owners and operators who wish to hire contractors or Vendors to perform work on their vessels at the Facility.

**Certain activities include, but are not limited to: welding, oxy-acetylene cutting, or any type of open flame work; boom truck or forklift operations; commercial spray painting; fiberglass work; and structural boat work.*

- a) The vessel owner or operator is solely responsible for contracting and payment for all services provided to the vessel while it is in the Facility.
- b) All Approved Vendors - To stay on the GPIP Approved Vendor List, all Vendors must annually complete the Vendor Agreement with CBS and pay a \$150 fee before providing services at the Facility.

3. Facility Users are entirely liable for any damage caused to their vessel(s), vessels in their care, vessels belonging to third parties, Facility property, and the environment by them, their contractors, or anyone else performing work on their vessels, whether compensated or not. The Shipyard Operator and/or the CBS specifically reserves the right to prevent or stop any work being performed by a Facility User that is determined, in their sole discretion, to pose a hazard to other individuals, vessels, or the environment.

4. **Proof of Insurance Coverage:** Before starting any vessel lift, maintenance, or repair activities at the Facility, Facility Users must provide the CBS with insurance certificates and/or policies that are acceptable to the CBS, as outlined in Section D below.
5. Vehicles should remain near the vessel or work site and clear of yard equipment. Yard equipment, including mobile boat lifts, hydraulic trailers, loaders, and forklifts, has the right of way. The speed limit for vehicles is TEN (10) miles per hour.
6. Children under 12 must be accompanied by an adult at all times.
7. Dogs must be confined or under leash control by owners.
8. Dumpsters are located in front of the GPIP Shipyard office. The receptacles are intended for small household items and debris. All garbage must be placed in garbage bags before being disposed of in the receptacles. Large items and hazardous waste are the responsibility of the vessel owner and should be taken to a landfill or another off-site location. If the owner does not have a vehicle, they must arrange for transportation to dispose of these items.
9. Cleanup of the area due to accidental spills or acts of nature (for example, but not limited to, wind storms) will have precedence over work. Stop the activity immediately to clean up, and then proceed with work.
10. Vessel owners must supply the required project tools.
11. Pre-arrange purchases, borrowing, or rentals of equipment like pressure washers and organize workers to help expedite the process.
12. Living or sleeping on vessels while in the Facility is not allowed without permission from the Shipyard Operator.
13. Any equipment supplied or provided by a Facility User must comply with all local, state, and federal laws and regulations.
14. Facility User agrees to comply with all local, state, and federal laws and regulations.

B. FACILITY USER REQUIRED BEST MANAGEMENT PRACTICES

The goal of the CBS is to ensure that the use of the Facility is at all times conducted in a safe and environmentally responsible manner. To achieve this goal, Facility Users must adhere to Best Management Practices (“BMPs”) at all times, which are designed to prevent or reduce the discharge of pollutants into surface or ground water.

If the Shipyard Operator and/or CBS determine, in their sole discretion, that the BMPs are not being followed, the project in question will be halted until it is confirmed that the

project complies with the BMPs.

1. General Practice BMPs

- a) You are responsible for the work area around your vessel or leased work areas and for the actions of anyone assisting you, be it family, crew, or contractors. Please keep your work area clean, safe, and orderly.
- b) Vessels entering the yard must be placed on a tarp. The vessel owner is responsible for providing tarps that are large enough for their vessel.
- c) You must tarp under the vessel to catch all debris and dust from activities such as sanding, grinding, scraping, painting, wood planing, or any other activity that may contaminate the soil.
- d) All project items must be kept on the tarp. Piling debris off the tarp will not be allowed. Oily or greasy items (for example, but not limited to, engines) must be on pallets and totally covered by a tarp to keep the rain off.
- e) Tarps must be swept, and debris deposited into the dumpster in garbage bags. Alternatively, you may dispose of the whole tarp after careful folding to contain all dust and debris. To avoid wind-blown debris and dust, you may need to sweep more often. It is recommended that you sweep and dispose of debris at the end of each operation and at the end of each day.
- f) All used sandpaper, cans, brushes, etc., must be cleaned up and deposited in the dumpster. We recommend doing this at the end of each day.
- g) All spray painting, sandblasting, and sanding must be contained using structures or drapes to reduce the spread of materials blown by the wind. The local air quality authority may impose additional requirements beyond these minimum standards. The Shipyard Operator will assess wind, natural and structural containment, and other factors to designate areas for sandblasting, paint, and petroleum product use in order to minimize impact on Facility Users and neighboring properties. Facility Users must only conduct such activities in areas designated by the Shipyard Operator, and shall tent as required by law.
- h) At times, windy conditions will delay some activities until containment can be effective.
- i) Airborne pollution is not permitted from any maintenance activity.

- j) Do not shift or move boat stands. Only the Shipyard Operator is allowed to move boat stands.
- k) Shipyard Operator and/or CBS invoices must be paid before launching a vessel.
- l) Facility User vehicles must be kept near the project site or outside the gate. No unattended vehicles are allowed.
- m) Facility Users shall comply with all fire mitigation, hot work, and confined space safety measures imposed by law. User also agrees to allow Operator to enter vessel for confined space safety compliance, and to mitigate hazards to health and life, as needed.

2. Boat Bottom Cleaning

- a) Pressure washing must only occur on the washdown pad and washdown water collection system. All other boat washing activities require prior approval from the Shipyard Operator. All wash water must be collected and put into the washdown water collection system.
- b) Clean up the wash-down area after pressure washing.

3. Sandblasting

- a) Projects being sandblasted will be controlled with structures or tarps to the maximum extent practical.
- b) The sandblasting site must be cleaned daily.
- c) Sandblasting material must be swept or vacuumed. Water will not be allowed to clean up sandblasting debris.
- d) All sandblasting material, new and used, must be kept off the ground and covered from rain to prevent it from being introduced into the environment.
- e) All sandblasting debris must be disposed of in accordance with all applicable local, State and Federal Regulations.

4. Paint Management

- a) The use of paints and solvents must be conducted in a manner that prevents these products from entering the soil or water in case of accidental spills.
- b) Drip pans, drop cloths, tarpaulins, or other protective devices shall be required for all paint mixing and solvent use operations.
- c) Paint cans shall be kept in drip pans with drop cloths or tarps underneath the drip pan.
- d) Paint and solvent spills shall be treated as oil spills and shall be prevented from reaching the ground, in order to avoid the spills reaching the storm drains and subsequently discharging into the water.

- e) Except as expressly authorized under AS 43.03.715(c), anti-fouling paints containing tributyltin (TBT) are prohibited from use on any vessel. Pursuant to the statutory exception, “slow-leaching TBT-based marine antifouling paint may be imported into and sold in the state. A slow-leaching TBT-based marine antifouling paint may be applied in the state only to aluminum vessel hulls and lower outboard drive units...”
- f) Empty cans must be allowed to dry and then thrown into the dumpster.
- g) Projects being spray painted will be controlled with structures or tarps to the maximum extent practical.

5. Toxic Materials Storage

- a) Solid chemicals, chemical solutions, paints, oils, solvents, acids, caustic solutions, and waste materials, including used batteries and their contents, shall be stored in a manner that will prevent the inadvertent entry of these materials into the water or onto the ground. Storage shall be in a manner that will prevent spillage by overfilling, tipping, or rupture.
- b) Keep all hazardous materials in the original container. Make sure the container labels remain in place. Keep the containers in areas where they will not get knocked over. Keep the containers in areas that have good ventilation.
- c) Keep all containers out of the reach of children.
- d) Incompatible or reactive materials shall be segregated and securely stored in separate areas that prevent the mixing of chemicals.
- e) Waste liquids and excess chemical products shall be stored under cover, such as tarps or roofed structures. When ready for disposal, these hazardous materials shall be taken to the CBS Scrapyard. They shall not be disposed of in dumpsters, sewers, or water.

6. Bilge Water and Waste Oil

- a) Bilge pumps must be turned off before being hauled out of the water. Boat owners who wish to pump bilges must contact the Shipyard Operator for assistance. The Shipyard Operator will decide if water can be discharged into the washdown water collection system; if not, the vessel owner will be responsible for collection and disposal in accordance with applicable local, State and Federal Regulations.

- b) No discharge of oil to the water or ground is permitted. The CBS has used oil tanks located in most harbors. Please use them to dispose of your waste oil only.
- c) In the event of an accidental discharge of oil into waters or onto land, the Shipyard Operator staff should be notified immediately.
- d) Cleanup efforts shall commence immediately and be completed as soon as possible, taking precedence over routine work, and shall include proper disposal of any spilled material and used cleanup materials.
- e) Drip pans or other protective devices shall be required for all petroleum product transfer operations to catch incidental spillage and drips from hoses, drums, or portable containers.
- f) Leaking connections, valves, pipes, hoses and equipment shall be repaired or replaced immediately. Hydraulic hoses and connections to deck gear seem especially vulnerable to accidental discharges.

C. INDEMNIFY/HOLD HARMLESS AGREEMENT

Facility User agrees to defend, pay on behalf of, indemnify, and hold harmless **the City and Borough of Sitka**, its elected and appointed officials, the Shipyard Operator, and their respective employees, contractors, volunteers, and others authorized to work on their behalf (collectively the "Indemnified Parties"), against any and all claims, demands, lawsuits, liabilities or losses, including costs and attorney fees connected therewith, and for any damages, claims, liabilities or demands which may be asserted, claimed or recovered against or from the Indemnified Parties, by reason of economic loss, person injury, including bodily injury or death, property damage, including loss of use thereof, and environmental damage or liabilities, which arises out of or is in any way connected or associated with the use of the Facility or property of the CBS by the Facility User, its employees, agents, or contractors.

It is specifically understood by the undersigned that neither the CBS or the Shipyard Operator is not responsible for any loss, damage, or injury arising out of work performed within the Facility or on any vessel brought to the Facility.

SIGNED: _____ **Date:** _____
IF SIGNING ON BEHALF OF A BUSINESS ORGANIZATION, THE USER MUST
SUPPLY PROOF OF AUTHORITY TO BIND THAT BUSINESS ORGANIZATION.

D. INSURANCE REQUIREMENTS

1. Facility Users other than Vendors agree to have a current marine insurance policy of a “named perils” or “all risks” type that fully insures the value of the vessel, plus liability. Hull and machinery coverage shall be sufficient to dispose of the vessel if abandoned, burned, or otherwise left on the Facility.
2. As a condition of acceptance on the GPIP Approved Vendor List, all Vendors engaged in certain activities* shall maintain, on file with the CBS, a current Certificate of Insurance to cover all services provided. All Vendors must carry a minimum of \$1,000,000 per incident and \$2,000,000 in aggregate liability insurance, and the CBS must be named as additional insured on all policies. Copies of the insurance policy must be on file with City and Borough of Sitka before work may begin.

**Certain activities include, but are not limited to: welding, oxy-acetylene cutting, or any type of open flame work; boom truck or forklift operations; commercial spray painting; fiberglass work; and structural boat work. By signing below, he or she certifies that he or she, or their business, holds the following insurance policies and that such policies comply with all applicable local, state, or federal laws:*

Proof of insurance must be provided prior to commencement of any work at the Facility.

BY MY SIGNATURE BELOW, I AM AGREEING TO ALL THE TERMS AND CONDITIONS DESCRIBED HEREIN AND AM AGREEING TO FULLY COMPLY WITH THE SAME. I UNDERSTAND THAT FAILURE TO DO SO WILL RESULT IN THE IMMEDIATE TERMINATION OF ANY RIGHT I MIGHT HAVE TO USE THIS FACILITY. I HEREBY ACKNOWLEDGE THAT I HAVE FULLY READ, UNDERSTAND, AND AGREE TO ABIDE BY THE GPIP MARINE VESSEL HAUL OUT AND SHIPYARD FACILITY USE AGREEMENT.

I further understand and acknowledge by my signature that the City and Borough of Sitka is not responsible for damage or loss to vessel or articles left in or attached to the vessel in case of fire, theft, accident, inclement weather or any other cause beyond its control.

Printed Name: _____

Signature: _____

Street Address: _____

City/ State/ Zip: _____

Phone number: _____

APPROVAL: THE CITY AND BOROUGH OF SITKA

APPROVED BY: _____ Date: _____

Exhibit C: Fee Schedule for Shipyard Services

CHARGE DETAILS	PRICE	UNIT A/B	UNIT A	UNIT B	TOTAL \$
Lift, Block, and Launch					
0' to 30'	\$19.50	/ft			\$0.00
31' to 40'	\$21.50	/ft			\$0.00
41' to 55'	\$23.50	/ft			\$0.00
55' and up	\$25.50	/ft			\$0.00
After hours surcharge	20%	total lift			\$0.00
Nonstandard Lift (operator and lift)	\$600.00	/hr			\$0.00
Travel strap set up	T,M&E	/T/M			\$0.00
Inspection Lift (includes 1 hour hang time free)	75% of lift per launch				\$0.00
Delay of Lift	\$150.00	/half hour			\$0.00
Reposition	50% of lift /launch				\$0.00
Environmental fee	\$1.7/ft	/ft			\$0.00
Dry Dockage Space					
1 to 14 days	\$1.80	/ft/day			\$0.00
15 to 28 days	\$1.00	/ft/day			\$0.00
Longterm (Active Work) >28 days	\$0.50	/ft/day			\$0.00
Longterm (Inactive Storage) >28 days	\$0.80	/ft/day			\$0.00
Hang Time					
Hang Time, on Wash Pad	\$100.00	/hr			\$0.00
Other than Wash Pad	\$175.00	/hr			\$0.00
On-site Storage					
Daily (first three days or portion thereof no charge)	\$0.05	/sq.ft/day			\$0.00
Minimum Charge	\$15.00				\$0.00
Vendor (must be preapproved with \$1 million liability coverage)					
Annual Vendor Fee	\$150.00	/yr			\$0.00
Per Vessel Vendor Fee (one-time use)	\$75.00	per vessel			\$0.00
Utilities (Includes Water)					
120v, 30 amp or actual kWh cost, whichever is greater	\$7.00	/day			\$0.00
208v, 50 amp or actual kWh cost, whichever is greater	\$15.00	/day			\$0.00
Equipment Rental					
Fork lift	\$94.00	/half hr			\$0.00
Pressure Washer	\$200.00	/day /unit			\$0.00
Stair (Scaffolding)	\$20.00	/day			\$0.00
Other	T, M & E*				
Waste Disposal					
Used Oil	Cost + 15%				\$0.00
Dumpster (5.5 yard)	\$315.00	per empty			\$0.00
Non-Hazardous Liquids (including oil bilge water)	Cost + 15%				\$0.00

Exhibit C: Fee Schedule for Shipyard Services

Hazardous	Cost + 15%				\$0.00
Other, e.g., Metals and Wood	Cost + 15%				\$0.00
55 Gallon Drums (Empty)	\$25	/drum			\$0.00
Wood Block Replacement	\$50	/unit			\$0.00

Labor (Shipyard Services)					
Employee-Straight Time	\$130.00	/hr/employee			\$0.00
Employee-Overtime	\$180.00	/hr/employee			\$0.00
Contract service provider (e.g. lift operator, etc)	Cost + 15%				\$0.00
Pressure Wash (and scrape if necessary)	T, M, & E*				
Scheduling Deposit (credited to lift or forfeited if the vessel is late or no show)	\$350.00				\$0.00
Environmental Tarp	\$350.00				\$0.00
Other Fees and Services	Cost + 15%				\$0.00

REVISED Memorandum of Understanding
Between the State of Alaska and the City and Borough of Sitka
Management Plan for Sawmill Cove Industrial Park
(Former APC Mill Site)
May 28, 2014

This revised Memorandum of Understanding (MOU) "Management Plan" is made between the State of Alaska (State) and the City and Borough of Sitka (CBS) to set forth measures for implementing recorded institutional controls and other long-term responsibilities for management of the former Alaska Pulp Corporation property located at what is now known as the Sawmill Cove Industrial Park. This revised MOU supersedes the April 28, 1999 MOU signed by Commissioner Michele Brown and Sitka Mayor Stan Filler.

This Management Plan describes how CBS and the State will work together to implement the recorded institutional controls and site management activities for the uplands area and navigation and dredging.

Introduction

From approximately 1995-1999, the State required intensive studies of the environmental conditions of the property and the larger areas affected by the operation of the former APC pulp mill (the Upland and Bay Operable Unit study areas) in consultation with the Sitka Tribe of Alaska, other agencies, and the public. This revised Management Plan specifies the remaining work to be done under a 1999 prospective purchaser agreement between the State and CBS for the former APC pulp mill property. The PPA limits CBS liability for existing contamination associated with the property in exchange for this work.

Uplands – Land Use, Future Construction Activities, and Management of Contaminated Soils or Other Contaminated Media

Restrictive Covenants – Two of the four restrictive covenants recorded by APC in 1997 were rescinded in 2005 to allow for unrestricted land use at the former developed mill site (AK Tidelands Patent No. 20 and U.S. Survey No. 2797). Two covenants remain in effect. Restrictive Covenant Sitka Plat 81-40 comprises 12.522 acres at Herring Cove. Restrictive Covenant U.S. Patent No. 1213671 comprises 143.87 acres adjacent to the former developed mill site. The remaining two restrictive covenants are effective until July 11, 2097, or until dioxins and furans are shown not to be present in concentrations exceeding site-specific, risk-based residential cleanup levels. The restrictive covenants disallow human habitation, schooling of children, hospital care, child care or any purpose necessitating around-the-clock residency by humans. Of its own accord or if requested by CBS, DEC will review information showing that these restrictions may be modified or lifted.

Reporting – If contaminated soils or other media that require special handling are encountered during construction activities, CBS or its tenants or contractors working on the Sawmill Cove Industrial Park property will promptly notify DEC's Contaminated Sites Program, Juneau office, and the CBS Public Works Director. These obligations exist in addition to any other notifications required by law. The Public Works Director or designee, who may be a qualified contractor, shall serve as the project manager for managing the material or taking any remedial actions.

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May 28, 2014

Site Management – The Public Works Director or designee will require the testing and proper treatment or disposal in accordance with applicable law and DEC regulations and guidance on the management of contaminated soils or other contaminated media. The Public Works Director or designee will promptly report the actions to be taken to DEC as required by applicable law.

DEC Approvals – DEC will process any approvals necessary for addressing existing contamination as part of the implementation of the amended Record of Decision and its institutional controls under applicable regulations and not as enforcement actions.

Sawmill Cove – Future Construction Activities and Vessel Management

Definitions:

1. Area of Concern – The Area of Concern (AOC) is an area in west Sawmill Cove approximately 100 acres in size. The boundary of the AOC begins approximately 2000 lineal feet southwest of outfall 001, extends 500 feet offshore along a southeast line, and follows a rough arc through western Sawmill Cove back to the shoreline approximately 1200 lineal feet north of outfall 001.
2. No Disturbance Zone – A No Disturbance Zone (NDZ) has been established within the AOC. The purposes of the NDZ are to minimize re-suspension of pulp residue and to ensure that no activity occurs that may compromise the ability of the area to achieve the natural recovery ecological management goals within the stated time frame. The NDZ is an area of tidal and submerged lands and overlying seas within the Area of Concern where toxicity is greatest and pulp residue thickest. The area encompasses approximately 6 acres of tidal and submerged lands extending to the southwest immediately offshore of outfall 001. The area is bounded by a perimeter that begins at a shoreward point 50' from the south end of the former pulp dock; extends approximately 425' into Sawmill Cove along a southeast line to the intersection of the – 100 foot contour; turns southwest for approximately 375' to the intersection of the – 120 foot contour; and turns due west for approximately 375' to a point shoreward.
3. Navigational Corridor – The Navigational Corridor is an area of tidal and submerged lands and overlying seas in the AOC bounded by a perimeter that begins at a shoreward point fifty feet (50') from the south end of the former pulp dock; parallels the end of the dock out to the minus sixty foot (–60') contour interval; follows the minus sixty foot (–60') contour to the north end of the Area of Concern boundary, and swings shoreward along the AOC boundary line.

Navigational Dredging - Navigational dredging on the west side of Sawmill Cove in the AOC should be limited to the Navigational Corridor unless extenuating circumstances prevail. Navigational dredging within the AOC does not include blasting of the outcrop of native rocky material in front of the former pulp dock that follows the depth contours to the southeast.

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May 28, 2014

Dredging actions that occur outside of the Navigation Corridor should be limited in scope and ancillary to in-water construction.

Dock Use and Future Expansion – Existing docks can be used as-is without any further regulatory action, subject only to berthing and dock expansion alternatives identified in the *Decision Framework for Managing Navigation in Sawmill Cove* (Exhibit 7, 1999 MOU). These alternatives are consistent with the remedy (natural recovery) and may be implemented through the normal permit process. Other berthing options are not necessarily precluded, but if proposed, they would have to be evaluated in the future for consistency with the remedy.

In-Water Construction – In-water construction in the AOC is allowed with appropriate precautions and best management practices, incorporated through the permitting process, to minimize disturbance or re-suspension of sediments. In-water construction in the AOC may include pilings, dolphins, docks, bulkheads, moorage and navigation aids, and other structures.

Vessel Management – Vessels are permitted to drop anchor in the AOC, excluding the NDZ and a 100' corridor designed to protect the wastewater discharge pipe that extends beyond the AOC. New single point mooring systems and navigation aids may be established, as needed. The NDZ boundaries and the pipeline corridor are depicted on the CBS Geographic Information System, viewable on-line at <http://www.cityofsitka.com/government/departments/planning/index.html>, and on NOAA charts.

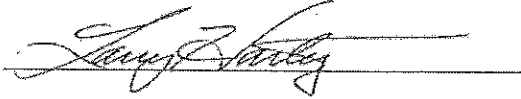
Approaching or departing vessels may traverse the NDZ as long as precautionary measures are taken to minimize disturbance of bottom sediments. To the extent that it is safe and practicable, the following standard operating procedures should be followed by personnel maneuvering approaching or departing vessels in the vicinity of the No Disturbance Zone:

- Approach the dock at as high an angle as possible.
- Minimize the use of the main propulsion system, thrusters, and tugs when over or near the NDZ or buffer zone.
- Use as low a “bell” (such as “dead slow” or the slowest revolutions per minute ordered) when berthing.

Dredging, expansion of moorage, and in-water construction are prohibited in the NDZ, except that CBS may repair, maintain, or remove existing facilities using best management practices to minimize disturbances with approval by DEC prior to the work.


The Sawmill Cove Industrial Park manager will provide each landowner and tenant with a signed copy of the revised Management Plan. The plan must be filed with the Sitka Recorder's Office for each affected parcel. DEC's Institutional Controls Unit, at DEC.ICUNIT@alaska.gov must be notified of each filing and furnished with a copy of the Notice of Restricted Area in Sawmill Cove.

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May 28, 2014



Larry Hartig, Commissioner
Department of Environmental Conservation

Date May 28, 2014



Mim McConnell, Mayor
City and Borough of Sitka

6/4/14
Date

**LEASE AGREEMENT
BETWEEN
CITY AND BOROUGH OF SITKA
AND
HIGHMARK MARINE FABRICATION, LLC
TABLE OF CONTENTS**

PREAMBLE.....	1
SPECIAL PROVISIONS	1
ARTICLE I: LEASE, TERM OF LEASE, AND TERMINATION OF LEASE.....	1
Section 1.1 Conveyance of Estate in Lease.....	1
Section 1.2 Option to Purchase.	1
Section 1.3 Disposition of Improvements and Lessee's Personal Property Following Term of Lease Agreement.....	2
Section 1.45 Covenants to Perform.	2
ARTICLE II: RENT AND OTHER OBLIGATIONS OF LESSEE	2
Section 2.1 Calculation & Method of Payment of Rent.....	2
Section 2.2 Property Tax Responsibility.....	3
ARTICLE III: RESTRICTIONS UPON USE OF SUBJECT PROPERTY	2
Section 3.1 Lessee's Obligations as to Improvement, Construction, Maintenance, Repair and Safety.....	2
Section 3.2 Rights of Access to Property.	3
Section 3.3 Additional Conditions of Leasing.	3
Section 3.4 Control of Rodents and Other Creatures on Subject Property.	5
Section 3.5 Control of Emission of Odors from Subject Property.	5
ARTICLE IV: POSSESSION AND CONSTRUCTION OF IMPROVEMENTS.....	5
Section 4.1 Lessee's Construction Obligations.....	5
ARTICLE V: UTILITY SERVICES & RATES.....	6
Section 5.1 Provision of Utility Services	6
Section 5.2 Lessor Not Limited Liability and Non-Liability	6
Section 5.3 Requirement Regarding Potable Water Services	7
ARTICLE VI: LIABILITY AND INDEMNIFICATION	7
Section 6.1 Liability of Lessee and Indemnification of Lessor.....	7
Section 6.2 Liability of Lessor and Indemnification of Lessee.....	8
Section 6.3 Reimbursement of Costs of Obtaining Possession.....	7
GENERAL PROVISIONS	8
ARTICLE VII: DEFINITIONS	8
Section 7.1 Defined Terms.	8
ARTICLE VIII: INSURANCE	9
Section 8.1 Insurance.....	9
Section 8.2 Notification of Claim, Loss, or Adjustment.	9
Section 8.3 Waiver of Subrogation.	9
ARTICLE IX: RESTRICTIONS REGARDING ASSIGNMENT, SUBLEASES, AND TRANSFERS OF SUBJECT PROPERTY	9

Section 9.1 Lessee Without Power to Assign Lease or Transfer or Encumber Subject Property.	10
Section 9.2 Limitations on Subleases.	10
ARTICLE X: USE AND PROTECTION OF THE SUBJECT PROPERTY	10
Section 10.1 Property As Is - Repairs.	10
Section 10.2 Compliance with Laws.	10
Section 10.3 Notification of City and Borough of Sitka's Public Works Director of Discovery of Contamination.	11
Section 10.4 Permits and Approvals for Activities	11
ARTICLE XI: LESSOR'S RIGHT TO PERFORM LESSEE'S COVENANTS; REIMBURSEMENT OF LESSOR FOR AMOUNTS SO EXPENDED.	11
SECTION 11.1 PERFORMANCE OF LESSEE'S COVENANTS TO PAY MONEY.	11
Section 11.2 Lessor's Right To Cure Lessee's Default.	11
Section 11.3 Reimbursement of Lessor and Lessee.	12
ARTICLE XII: DAMAGE OR DESTRUCTION.	12
Section 12.1 Repair and Replacement of Structures and Improvements Following Damage....	12
ARTICLE XIII: MECHANIC'S LIENS.	13
Section 13.1 Discharge of Mechanics' Liens.	13
ARTICLE XIV: LIEN FOR RENT AND OTHER CHARGES.	13
Section 14.1 Lien for Rent.	13
ARTICLE XV: DEFAULT PROVISIONS	13
Section 15.1 Events of Default.	13
Section 15.2 Assumption or Assignment of Lease to Bankruptcy Trustee.	14
Section 15.3 Remedies in Event of Default.	14
Section 15.4 Waivers and Surrenders To Be In Writing.	16
ARTICLE XVI: LESSOR'S TITLE AND LIEN.	16
Section 16.1 Lessor's Title and Lien Paramount.	16
Section 16.2 Lessee Not To Encumber Lessor's Interest.	16
ARTICLE XVII: REMEDIES CUMULATIVE	16
Section 17.1 Remedies Cumulative.	16
Section 17.2 Waiver of Remedies Not To Be Inferred.	17
Section 17.3 Right to Terminate Not Waived.	17
ARTICLE XVIII: SURRENDER AND HOLDING OVER.	17
Section 18.1 Surrender at End of Term.	17
Section 18.2 Rights Upon Holding Over.	17
ARTICLE XIX: MODIFICATION	18
Section 19.1 Modification.	18
ARTICLE XX: INVALIDITY OF PARTICULAR PROVISIONS	18
Section 20.1 Invalidity of Provisions.	18
ARTICLE XXI: APPLICABLE LAW AND VENUE	18
Section 21.1 Applicable Law.	18
ARTICLE XXII: NOTICES	18
Section 22.1 Manner of Mailing Notices.	18
Section 22.2 Notice to Leasehold Mortgagee and Secured Parties.	18
Section 22.3 Sufficiency of Service.	19
Section 22.4 When Notice Deemed Given or Received.	19

ARTICLE XXIII: MISCELLANEOUS PROVISIONS.....	19
Section 23.1 Captions.....	19
Section 23.2 Conditions and Covenants.....	19
Section 23.3 Entire Agreement.....	19
Section 23.4 Time of Essence as to Covenants of Lease Agreement.....	20
ARTICLE XXIV: COVENANTS TO BIND AND BENEFIT RESPECTIVE PARTIES AND TO RUN WITH THE SUBJECT PROPERTY	20
Section 24.1 Covenants to Run with the Subject Property.....	20
Section 24.2 Interest in Deposits Automatically Transferred.	20
ARTICLE XXV: ADDITIONAL GENERAL PROVISIONS.....	20
Section 25.1 Absence of Personal Liability.	20
Section 25.2 Lease Agreement Only Effective As Against Lessor Upon Approval.....	20
Section 25.3 Binding Effects and Attorneys Fees.	21
Section 25.4 Duplicate Originals.....	21
Section 25.5 Declaration of Termination.	21
Section 25.6 Authority.....	21

**LEASE AGREEMENT
BETWEEN
CITY AND BOROUGH OF SITKA
AND
HIGHMARK MARINE FABRICATION, LLC**

PREAMBLE

This Lease Agreement ("Lease Agreement") between City and Borough of Sitka and Highmark Marine Fabrication, LLC is effective upon execution of the Lease Agreement by both Parties, City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 ("Sitka" "or "Lessor") and Highmark Marine Fabrication, LLC, 2018 Mill Bay Road, Kodiak, Alaska 99615 ("Lessee").

SPECIAL PROVISIONS

ARTICLE I: LEASE, TERM OF LEASE, AND TERMINATION OF LEASE

Section 1.1 Conveyance of Estate in Lease

Lessor, for and in consideration of the covenants and agreements made by Lessee, does lease to Lessee, and Lessee leases from Lessor, the "Subject Property" or "Premises" as shown on Exhibit A of the Parties' Operating Agreement. The "Subject Property" is approximately 5000 square feet of warehouse space on the non-water-side portion of the building at the Block 4, Lot 4, of the GPIP. Lessee shall have exclusive use and possession of the Subject Property for uses authorized herein. The "Term" is for 5 (five) years, effective August 13, 2025, or such modified date as the Parties may agree in writing, intended to be consistent with the term of the Parties' Operating Agreement.

Section 1.2 Use of Property

Lessee agrees that the use of the Leased Premises shall be for activities related to Marine Vessel Servicing, including but not necessarily limited to the stocking and retailing of marine and fabrication supplies and materials deemed essential for anode renewal, coatings renewal, propulsion renewal, metal fabrication and welding, fiberglass work, and other frequent maintenance items common in marine repair. The Parties agree that any non-marine-related use of the Premises is prohibited.

Section 1.3 Disposition of Improvements and Lessee's Personal Property Following Term of Lease Agreement.

Lessee shall remove from the Subject Property any personal property or Improvements (defined herein) constructed, installed, or deposited on the Subject Property at the termination of this Lease Agreement, or any extension, unless Lessee makes a separate written agreement with Lessor to do otherwise. Any Improvements or personal property not removed after thirty (30) days have passed after termination of this Lease Agreement shall be deemed abandoned and at Lessor's option shall become the property of Lessor, and Lessee shall repay to Lessor any costs of removing such

Improvements or personal property from the Subject Property if Lessor does not exercise such option. Subject to Lessor's obligations under Subsection 3.1(a) below, Lessee agrees to leave Subject Property in a neat and clean condition at the end of the Term of the Lease Agreement.

Section 1.4 Covenants to Perform.

This Lease Agreement is made upon the above and the following terms and conditions, each of which the Party bound by such covenants and conditions agrees to perform, irrespective of whether the particular provision is in the form of a covenant, an agreement, a condition, a direction, or otherwise, and each Party agrees to provide the other Party with documents or further assurances as may be required to carry out the expressed intentions.

ARTICLE II: RENT AND OTHER OBLIGATIONS OF LESSEE

Section 2.1 Calculation and Method of Payment of Rent.

Notwithstanding any other provision of this Lease Agreement, on the Term start date set out in Article I, Lessee shall pay the full month Rent payment owed under this Lease Agreement, which shall be prorated if the date this Lease is executed is not the first day of the month. Subject to the provision in the previous sentence, Lessee shall pay each successive monthly installment of Rent on or before the first day of each calendar month throughout the Term of the Lease Agreement without the necessity of any billing by Lessor. Lessee will lease the Subject Property at the market rate of \$1.00 per square foot per month. City and Borough of Sitka sales tax is to be paid in addition to the stated Rent.

Section 2.2 Property Tax Responsibility.

Beginning on the Term start date, Lessee will be responsible to pay any property taxes, pro-rated by square foot, to City and Borough of Sitka for its possessory interest in the building, land, and equipment comprising the Subject Property to the extent taxable as determined by the Assessor, which is assessed as of January 1 of each calendar year.

ARTICLE III: RESTRICTIONS UPON USE OF SUBJECT PROPERTY

Section 3.1 Lessee's Obligations as to Improvement, Construction, Maintenance, Repair and Safety.

(a) Except as provided in this Lease Agreement, Lessee acknowledges the leasehold is in an "as is" condition. The Lessee shall not make any alterations, additions, or improvements (collectively "Improvements" as further defined herein) to the Premises unless it first receives Lessor's written consent. Such consent shall not be unreasonably withheld. All such Improvements consented to shall be made by qualified and licensed professionals in accordance with local, state, and federal laws and regulations.

Lessor reserves the right to expand or modify the Subject Property. In that event, Lessor and Lessee will work together to complete such expansion or modification in a manner that minimizes

disruption to Lessee's use of the Subject Property. Some anticipated disruptions could be operational disturbances from noise, dust and other construction activities.

(b) Lessee acknowledges that Lessor has made no representation or warranty with respect to Lessee's ability to obtain any permit, license, or approval.

(c) Lessee shall also use the Subject Property and any Improvements placed thereon only for lawful uses.

(d) Lessee shall not permit the accumulation of waste or refuse matter on the Subject Property, and Lessee shall not obstruct or permit the obstruction of the streets, sidewalks, access ways, or alleys adjoining the Subject Property except as may be permitted by Lessor or other municipal authorities having jurisdiction. Lessee shall do all things necessary during the Term of this Lease Agreement to remove any dangerous condition from time to time existing on the Subject Property as the result of the use by Lessee.

(e) Lessee may erect outdoor signage, at its expense, with the written permission of the City and Borough of Sitka Building Official, the Planning Director, and the Public Works Director. The style, size and physical placement location of the sign will be approved on a case-by-case basis.

Section 3.2 Rights of Access to Property.

(a) Lessor reserves for itself and any public utility company the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of opening, inspecting, repairing, replacing, reconstructing, maintaining, or servicing the public utilities, if any, located on the Subject Property, as well as for the purposes of constructing or installing new public utilities. Lessor also reserves for itself and the Alaska Department of Environmental Conservation the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of regulation and enforcement of this Lease Agreement. Lessor also reserves for itself the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of (1) inspection of all work being performed in connection with the construction of Improvements; (2) showing Subject Property for exhibiting Subject Property in connection with renting or leasing Subject Property in a matter that will not unreasonably interfere with Lessee's business; and (3) placing "For Sale" or "For Rent" signs on Subject Property. Lessee shall not charge for any of the access allowed in the situations described in this subsection.

(b) Lessee shall not construct any permanent Improvements over or within the boundary lines of any easement for public utilities without receiving the written prior consent of Lessor and any applicable utility company.

Section 3.3 Additional Conditions of Leasing.

Lessee recognizes and shall cause all beneficiaries of Lessee and all permitted successors in interest in or to any part of the Subject Property to recognize that:

- (a) Lessee will cooperate with the City and Borough of Sitka Public Works Department and will notify this Department of any maintenance deficiencies or of any equipment failures that require maintenance or repair. Lessee will be provided with a 24-hour telephone number to notify Lessor of any event that requires immediate response by Lessor.
- (b) Lease payments will be made in monthly installments in advance in cash or by check, bank draft or money order made available to the City and Borough of Sitka. Installments to be delivered or mailed to 100 Lincoln Street, Sitka, Alaska 99835, by or on the first day of each calendar month.
- (c) Lease payments shall become delinquent if not paid within ten (10) days after the due date. Delinquent payments are subject to a late charge of \$25 and interest accrued from the due date at 12% per annum.
- (d) The charges and fees paid by Lessee to Lessor must be separated according to the City and Borough of Sitka accounting standards.
- (e) Lessor will invoice if lease payments are delinquent. Lessor may also invoice if Lessee fails to make lease payment within 30 days of due date. Lessor at its option can terminate the Lease Agreement for Lessee's failure to make payment within 30 days of the due date.
- (f) Lessee covenants and agrees that, as it relates to use of the Premises, it will not, on the grounds of race, color or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal or State laws or regulations promulgated thereunder, and Lessee further grants the Lessor the right to take such action to enforce such covenant as it deems necessary or as it is directed pursuant to any Federal or State law or regulation.
- (g) Lessor may sell the Subject Property in the future and all agreements regarding the Subject Property, including this Lease Agreement, between Lessor and Lessee shall be completely transferable to the new owner. A transfer of the Subject Property to any such entity shall not create any restrictions upon use of the Subject Property in addition to those set forth in this Lease Agreement.
- (h) Lessor may, upon at least 10 days prior notice to Lessee, temporarily suspend the supply, if provided on the Subject Property, of water, wastewater service, electric power to perform routine maintenance and, in all events, subject to unavoidable delays. Such interruptions shall be of as short duration as necessary to perform such maintenance, and Lessor shall not be responsible for any such costs or expenses as a result of suspending such utilities.
- (i) Lessee will pay any applicable City and Borough of Sitka Fire Marshal fees and other building permit fees and property taxes and assessments on the Subject Property when due.
- (j) Lessee is responsible for taking any measures that Lessee deems necessary to provide security for its property. Lessor is not responsible for theft or vandalism.

(k) City and Borough of Sitka sales tax will apply to lease payments. Sales taxes will also apply to any utility services and will be calculated into each monthly billing from the City and Borough of Sitka. Sales tax rates, limits, exemptions, and exclusions are subject to change by the Assembly of the City and Borough of Sitka.

(l) In accordance with commercially reasonable standards and the Rules set forth in Exhibit B, Lessee shall not store hazardous or explosive materials on the Subject Property or on any property of GPIIP.

Section 3.4 Control of Rodents and Other Creatures on Subject Property.

Lessee shall take reasonable affirmative measures to ensure that its operations do not attract to the Subject Property or any portion of the GPIIP property any of the following creatures: rodents, vermin, insects, eagles, crows, ravens, seagulls, or bears.

Section 3.5 Control of Emission of Odors from Subject Property.

(a) Lessee shall take all reasonable measures to control odors on the Subject Property, including keeping the Subject Property clean at all times, maintaining any odor control equipment in working condition and operating properly, and utilizing the best technology reasonably available for such control.

(b) In the event of persistent odor complaints, the Administrator or his designee may require Lessee to take one or all of the following remedial actions at Lessee's expense:

- i. Assure that the Subject Property is clean;
- ii. Provide operation and maintenance records to the Board;
- iii. Install odor control equipment; and
- iv. Cease use of putrescible waste.

ARTICLE IV: POSSESSION AND CONSTRUCTION OF IMPROVEMENTS.

Section 4.1 Lessee's Construction Obligations.

If Lessor consents to any proposed Improvement by Lessee, Lessee shall bear the sole cost and expense of all building permits and shall construct such Improvements in compliance with all legal requirements. Construction of all Improvements on the Subject Property shall be performed in a first-class manner, of good quality and all work shall be performed diligently. The items to be purchased, constructed and/or developed in connection with any approved Improvements shall be those reasonably necessary to conduct Lessee's intended business operations on Subject Property.

(a) In addition to Section 3.1(b) of this Lease Agreement, Lessor, in its proprietary capacity only, agrees to cooperate reasonably with Lessee in its efforts to secure the requisite permits, licenses and approvals necessary for any approved Improvements. Notwithstanding the foregoing, Lessee acknowledges that Lessor has made no representation or warranty with respect to Lessee's ability to obtain any permit, license or approval (including a building permit) or to meet any other requirements for any Improvements. Nothing in this Lease Agreement is intended or shall be

construed to require that Lessor exercise its discretionary authority under its regulatory ordinances to facilitate any Improvements nor binds Lessor to do so. The Lessor will process applications for permits, licenses and approvals as if such application were made without any Lessor participation in such project and shall act in good faith with respect thereto.

(b) Approval by Lessor of any Improvement shall not constitute a representation or warranty by Lessor that such Improvement complies with any legal requirements and Lessor assumes no liability. Lessor has no obligation or duty to design, supervise the design, construct or supervise the construction of the Improvements. Lessor's approval of the construction plans, as provided below, is for the sole purpose of protecting its rights as the owner of the land on which the leasehold sits and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design, or any obligation on Lessor to insure that work or materials are in compliance with the construction plans or any building requirements imposed by a governmental agency. Lessor is under no obligation or duty, and disclaims any responsibility, to pay for the cost of construction of the Improvements or any other items, the cost of which shall at all times remain the sole liability of Lessee.

(c) Lessee covenants to indemnify, defend and hold harmless Lessor and its agents and employees from and against all claims and demands whatsoever for loss or damage including property damage, personal injury and wrongful death arising out of construction of the Improvements, any development or repairs made at any time on the Subject Property, the performance of this Lease Agreement by Lessee, its agents, employees, contractors, subcontractors or invitees, any incident, fire or other casualty in respect of the Subject Property, any failure by Lessee to keep the Subject Property, or any improvements on it, in a safe condition, and all other activities occurring on or at the Subject Property, provided such claims are not proximately caused by Lessor.

ARTICLE V: UTILITY SERVICES & RATES

Section 5.1 Provision of Utility Services

Lessee shall pay the cost for use of any utility services on the Subject Property, with monthly payments due upon billing by the City and Borough of Sitka.

Section 5.2 Lessor Limited Liability and Non-Liability.

Lessor shall not be liable for any failure of utility services, or for any injury or damages to person or property caused by or resulting from any natural disaster, natural condition, earthquake, hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain, or snows which may leak or flow from the street, sewer, or from any part of Subject Property, or leakage of sewer, or plumbing works therein, or from any other place. Lessor shall not be held responsible or liable for any claim or action due to or arising from any suspension of operation, breakage, unavoidable accident or injury of any kind occurring to, or caused by the sewer mains through any force majeure.

Section 5.3. Requirement Regarding Potable Water Services.

All potable water services will be metered and protected by approved backflow prevention in accordance with the Sitka General Code at Section 15.05.400.

ARTICLE VI: LIABILITY AND INDEMNIFICATION

Section 6.1 Liability of Lessee and Indemnification of Lessor.

Lessee agrees to indemnify, defend, and hold harmless Lessor against and from any and all claims by or on behalf of any person, firm, or corporation arising, other than due to acts or omissions of Lessor or pre-existing conditions, from the conduct or management of or from any work or thing whatsoever done in or about the Subject Property and structures and Improvements, including liability arising from products produced on the property by Lessee. Lessee also agrees to indemnify, defend, and hold Lessor harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessor, during the Term of this Lease Agreement from: (a) any condition of the Subject Property or Improvements placed on it by lessee; (b) any breach or default on the part of Lessee regarding any act or duty to be performed by Lessee pursuant to the terms of this Lease Agreement; (c) any act or negligence of Lessee or any of its agents, contractors, servants, employees or licensees; and (d) any accident, injury, death or damage caused to any person occurring during the Term of this Lease Agreement in or on the Subject Property. Lessee agrees to indemnify, defend, and hold harmless Lessor from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Lessor, in any claim or action or proceeding brought asserting claims of or asserting damages for any alleged act, negligence, omission, conduct, management, work, thing, breach, default, accident, injury, or damage described in the previous two sentences. The above agreements of indemnity are in addition to and not by way of limitation of any other covenants in this Lease Agreement to indemnify Lessor. The agreements of indemnity by Lessee do not apply to any claims of damage arising out of the failure of Lessor to perform acts or render services in its municipal capacity.

Section 6.2 Liability of Lessor and Indemnification of Lessee.

Except to the extent of liabilities arising from Lessee's acts or omissions, Lessor indemnifies, defends, and holds Lessee harmless for liabilities to the extent that they were incurred by reason of conditions existing on the site as of the date of execution of this Lease Agreement or by reasons of Lessor's acts or omissions. Lessor also agrees to indemnify, defend, and hold Lessee harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessee, during the Term of this Lease Agreement from (a) any condition of the Subject Property or Improvements placed on it by Lessor; (b) any breach or default on the part of the Lessor regarding any act or duty to be performed by Lessor pursuant to the terms of the Lease Agreement; (c) any act of negligence of Lessor or any of its agents, contractors, servants, employees, or licensees; and (d) any accident, injury, death, or damage caused to any person occurring during the Term of this Lease Agreement in or on the Subject Property. Lessor agrees to indemnify, defend, and hold harmless Lessee from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Lessee, in any claim or action or

proceeding brought asserting claims of or asserting damages for any alleged act, negligence, omission, conduct, management, work, thing, breach, default, accident, injury, or damage described in the previous two sentences. The above agreements of indemnity are in addition to and not by way of limitation of any other covenants in this Lease Agreement to indemnify Lessee.

Section 6.3 Reimbursement of Costs of Obtaining Possession.

Each Party agrees to pay and to indemnify the other Party prevailing in any dispute under this Lease Agreement for all costs and charges, including but not limited to, full reasonable attorney and legal fees lawfully incurred in enforcing any provision of this Lease Agreement including obtaining possession of the Subject Property and establishing the Lessor's title free and clear of this Lease Agreement upon expiration or earlier termination of this Lease Agreement.

GENERAL PROVISIONS

ARTICLE VII: DEFINITIONS

Section 7.1 Defined Terms.

For the purposes of this Lease Agreement, the following words shall have the meanings attributed to them in this Section:

- (a) “Event of Default” means the occurrence of any action specified in Section 15.1.
- (b) “Imposition” means all of the taxes, assessments, utility rates or charges, levies and other governmental charges, levied or assessed against the Subject Property, any part thereof, any right or interest therein or any rent and income received therefrom as well as sales taxes on rent.
- (c) “Improvements” or “improvements” means all improvements of any nature now or hereafter located upon the Land, as well as all apparatus and equipment necessary for the complete and comfortable use, occupancy, enjoyment and operation of the Subject Property, including any construction fencing or signage, excepting only in each case articles of personal property appurtenances and fixtures (including trade fixtures) owned by Lessee, Sublessees, or others, which can be removed without defacing or materially injuring the Improvements remaining on the Subject Property, from the Subject Property with the portion of the Subject Property from which such items are removed being returned to a condition at least as good as that existing on the date of this Lease Agreement. “Improvements” also includes fill, grading, asphalt, and other non-building land improvements.
- (d) “Personal Property” means tangible personal property owned or leased and used by the Lessee or any sublessee of the Lessee, in connection with and located upon the Subject Property.
- (e) “Premises” means the “Subject Property.”
- (f) “Rent” means the lease rate, which is the amount Lessee periodically owes and is obligated to pay Lessor as lease payments under this Lease Agreement for the use of the demise.

- (g) “Subject Property” is the area leased as shown on Exhibit A or elsewhere in the document.
- (h) “Sublessee” and “Sublease” -- any reference to “Sublessee” shall mean any subtenant, concessionaire, licensee, or occupant of space in or on the Subject Property holding by or through the Lessee; the term “Sublease” shall mean any lease, license, concession or other agreement for the use and occupancy of any part of the Subject Property made by any Person holding by or through the Lessee.
- (i) “Term” means the period of time Lessee rents or leases the Subject Property from Lessor.

ARTICLE VIII: INSURANCE

SECTION 8.1 INSURANCE.

Lessee shall maintain property damage and comprehensive general liability insurance in the amount of One Million dollars (\$1,000,000), on the Subject Property including Improvements. Lessor shall be named as an additional insured.

Section 8.2 Notification of Claim, Loss, or Adjustment.

Lessee shall advise Lessor of any claim, loss, adjustment, or negotiations and settlements involving any loss under all policies of the character described in Section 8.1.

Section 8.3 Waiver of Subrogation.

The Party insured (or so required) releases the other Party from any liability the other Party may have on account of the loss, cost, damage or expense to the extent of any amount recoverable by reason of insurance whenever: (i) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the Parties to this Lease Agreement, or anyone claiming under it in connection with the Subject Property or Improvements; and (ii) the Party is then covered in whole or in part by insurance with respect to loss, cost, damage or expense or is required under this Lease Agreement to be so insured.

In such coverage the Parties hold on or waives any right of subrogation which might otherwise exist in or accrue to any person on account of it, provided that the release of liability and waiver of the right of subrogation shall not be operative in any case where the effect is to invalidate the insurance coverage or increase its cost. In the case of increased cost, the other Party shall have the right, within thirty (30) days following written notice, to pay the increased cost keeping the release and waiver in full force and effect.

ARTICLE IX: RESTRICTIONS REGARDING ASSIGNMENT, SUBLEASES, AND TRANSFERS OF SUBJECT PROPERTY

Section 9.1 Lessee Without Power to Assign Lease or Transfer or Encumber Subject Property.

Lessee has no power under this Lease Agreement to assign the Lease Agreement or transfer the Subject Property, except with the approval of the GPIIP Board of Directors and the Sitka Assembly, which approval shall not be unreasonably withheld. Lessee has no power to encumber Subject Property or pledge its interest in Subject Property as collateral for a loan, mortgage, debt or liability.

Section 9.2 Limitations on Subleases.

Lessee shall not sublease the Subject Property or any portion of it except with the approval of the GPIIP Board of Directors and the Sitka Assembly, which approval shall not be unreasonably withheld. All subleases entered into demising all or any part of the Improvements or the Subject Property shall be expressly subject and subordinate to this Lease Agreement, including Exhibits A and B. Lessor's consent to a sublease of the Subject Property shall not release Lessee from its obligations under the Lease Agreement. Lessor's consent to a sublease shall not be deemed to give any consent to any subsequent subletting.

ARTICLE X: USE AND PROTECTION OF THE SUBJECT PROPERTY

SECTION 10.1 PROPERTY AS IS - REPAIRS.

Lessee acknowledges that it has examined the Subject Property and the present improvements including any public improvements presently located there and knows the condition of them and accepts them in their present condition and without any representations or warranties of any kind or nature whatsoever by Lessor as to their condition or as to the use or occupancy which may be made of them. Lessee assumes the sole responsibility for the condition of the Improvements located on the Subject Property. The foregoing shall not be deemed to relieve Lessor of its general municipal obligations, or of its obligations under Section 3.1.

Notwithstanding the foregoing, the Parties acknowledge that the Subject Property is currently covered with rock placed on the Subject Property during the recent Blue Lake hydroelectric project, which Lessor shall cause to be removed prior to the commencement of this Lease Agreement.

Section 10.2 Compliance with Laws.

Lessee shall throughout the Term of this Lease Agreement and any extension, at Lessee's sole expense, promptly comply with all the laws and ordinances and the orders, rules, regulations, and requirements of all federal, state, and municipal governments and appropriate departments, commissions, boards, and officers (whether or not the same require structural repairs or alterations) and all other legal requirements that may be applicable to the use of the Subject Property. Nothing in the foregoing sentence shall be deemed to relieve Lessor of its general obligations in its municipal capacity.

Section 10.3 Notification of City and Borough of Sitka's Public Works Director of Discovery of Contamination.

Lessee shall promptly notify the Public Works Director of the City and Borough of Sitka within 24 hours if any contaminated soils or other media that require special handling are encountered on the Subject Property.

Lessee shall be responsible for all clean-up costs associated with contamination of soils, of the Subject Property, adjoining property, and/or buildings, caused by or attributed to Lessee through its operations on the Subject Property. In the event of Lessee's failure to clean-up to applicable regulatory standards or to the satisfaction of the Public Works Director, Lessor may perform clean-up or contract for clean-up and all charges for such work shall be paid by Lessee.

Section 10.4 Permits and Approvals for Activities.

Lessee shall be responsible for obtaining all necessary permits and approvals for its activities unless otherwise specifically allowed by Lessor. Contemporaneously with making any application for permits to any public entity other than the City and Borough of Sitka, Lessee shall provide copies of all permit applications and associated plans and specifications to the Director of Public Works of the City and Borough of Sitka to facilitate review by departments of the City and Borough of Sitka. The City and Borough of Sitka is not obligated to comment on the permit applications and plans, and the result of any review by the City and Borough of Sitka does not affect Lessee's obligation to comply with any applicable laws.

ARTICLE XI: LESSOR'S RIGHT TO PERFORM LESSEE'S COVENANTS; REIMBURSEMENT OF LESSOR FOR AMOUNTS SO EXPENDED

SECTION 11.1 PERFORMANCE OF LESSEE'S COVENANTS TO PAY MONEY.

Lessee covenants that if it shall at any time default or shall fail to make any other payment (other than Rent) due and the failure shall continue for ten (10) days after written notice to Lessee, then Lessor may, but shall not be obligated so to do, and without further notice to or demand upon the Lessee and without releasing Lessee from any obligations of Lessee under this Lease Agreement, make any other payment in a manner and extent that Lessor may deem desirable.

Section 11.2 Lessor's Right To Cure Lessee's Default.

If there is a default involving the failure of Lessee to keep the Subject Property in good condition in accordance with the provisions of this Lease Agreement, to make any necessary renewals or replacements or to remove any dangerous condition in accordance with the requirements of this Lease Agreement or to take any other action required by the terms of this Lease Agreement, then Lessor shall have the right, but shall not be required, to make good any default of Lessee. Lessor shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business, or other damage of or to Lessee by reason of bringing materials, supplies and equipment on the Subject Property during the course of the work required to be done to make good such default, and the obligations of Lessee under this Lease Agreement shall remain unaffected by such work,

provided that Lessor uses reasonable care under the circumstances prevailing to avoid unnecessary inconvenience, annoyance, disturbance, loss of business, or other damage to Lessee.

Section 11.3 Reimbursement of Lessor and Lessee.

All sums advanced by Lessor pursuant to this Article and all necessary and incidental costs, expenses and attorney fees in connection with the performance of any acts, together with interest at the highest rate of interest allowed by law from the date of the making of advancements, shall be promptly payable by Lessee, in the respective amounts so advanced, to Lessor. This reimbursement shall be made on demand, or, at the option of Lessor, may be added to any rent then due or becoming due under this Lease Agreement and Lessee covenants to pay the sum or sums with interest, and Lessor shall have (in addition to any other right or remedy) the same rights and remedies in the event of the nonpayment by Lessee as in the case of default by Lessee in the payment of any installment of rent. Conversely, Lessee shall be entitled to receive from Lessor prompt payment or reimbursement on any sums due and owing from Lessor to Lessee, together with interest at the highest rate allowed by law. However, nothing contained in this Lease Agreement shall entitle Lessee to withhold any rent due to Lessor or to offset or credit any sums against Rent, except with respect to unpaid rental due from Lessor to Lessee under any sublease of building space to Lessor.

Article XII: Damage Or Destruction

Section 12.1 Repair and Replacement of Structures and Improvements Following Damage.

(a) If the Premises, other than those Improvements made by Lessee, shall be destroyed or so injured by any cause as to be unfit, in whole or in part, for occupancy and such destruction or injury could reasonably be repaired within ninety (90) days from the date of such damage or destruction, then Lessee shall not be entitled to surrender possession of the Premises, nor shall Lessee's liability to pay Rent under this Lease Agreement cease, without the mutual consent of the Parties; in case of any such destruction or injury, Lessor shall repair the same with all reasonable speed and shall complete such repairs within ninety (90) days from the date of such damage or destruction. If during such a period Lessee shall be unable to use all or any portion of the Premises, a proportionate allowance shall be made to Lessee from the Rent corresponding to the time during which and to the portion of the Premises of which Lessee shall be so deprived of the use.

(b) If such destruction or injury cannot reasonably be repaired within ninety (90) days from the date of such damage or destruction, Lessor shall notify Lessee within fifteen (15) days after the determination that restoration cannot be made in 90 days. If Lessor elects not to repair or rebuild, this Lease Agreement shall be terminated unless otherwise mutually agreed by the Parties. If Lessor elects to repair or rebuild, Lessor shall specify the time within which such repairs or reconstruction will be complete, and Lessee shall have the option, to be exercised within thirty (30) days after the receipt of such notice, to elect either to terminate this Lease Agreement and further liability hereunder, or to extend the Term of this Lease Agreement by a period of time equivalent to the time from the happening of such destruction or injury until the Premises are restored to their former condition. In the event Lessee elects to extend the Term of this Lease Agreement, Lessor shall restore the Premises to their former condition within the time specified in

the notice, and Lessee shall not be liable to pay Rent for the period from the time of such destruction or injury until the Premises are so restored to their former condition.

(c) The timeframes in this article may be modified by mutual agreement of the Parties.

ARTICLE XIII: MECHANIC'S LIENS

Section 13.1 Discharge of Mechanics' Liens.

Lessee shall neither suffer nor permit any mechanics' liens to be filed against the title to the Subject Property, nor against Lessee's interest in the property, nor against the Improvements by reason of work, labor, services or materials supplied or claimed to have been supplied to Lessee or anyone having a right to possession of the Subject Property or Improvements as a result of an agreement with or the assent of Lessee. If any mechanics' lien shall be filed against the Subject Property, including the Improvements, Lessee shall cause it to be discharged of record within thirty (30) days after the date that Lessee has knowledge of its filing. Lessee shall at all times have the right to contest any mechanics' liens and to post a lien release bond during the pendency of any action discharging the Subject Property from the effects of any mechanics' lien.

ARTICLE XIV: LIEN FOR RENT AND OTHER CHARGES

Section 14.1 Lien for Rent.

The whole amount of the Rent and each and every installment, and the amount of all taxes, assessments, water rates, insurance premiums and other charges and Impositions paid by Lessor under the provisions of this Lease Agreement, and all costs, attorney's fees and other expenses which may be incurred by Lessor in enforcing the provisions of this Lease Agreement or on account of any delinquency of Lessee in carrying out any of the provisions of this Lease Agreement, shall be and they are declared to constitute a valid and prior lien upon Lessee's Improvements to the Subject Property, and upon Lessee's leasehold estate, and may be enforced by equitable remedies including the appointment of a receiver.

ARTICLE XV: DEFAULT PROVISIONS

Section 15.1 Events of Default.

Each of the following events is defined as an "Event of Default":

- (a) The failure of the Lessee to pay any installment of Rent, or any other payments or deposits of money, or furnish receipts for deposits as required, when due and the continuance of the failure for a period of ten (10) days after notice in writing from Lessor to Lessee.
- (b) The failure of Lessee to perform any of the other covenants, conditions and agreements of this Lease Agreement including payment of taxes on the part of Lessee to be performed, and the continuance of the failure for a period of thirty (30) days after notice in writing (which notice shall specify the respects in which Lessor contends that Lessee has failed to perform any of the

covenants, conditions and agreements) from Lessor to Lessee unless, with respect to any default which cannot be cured within thirty (30) days, Lessee, or any person holding by, through or under Lessee, in good faith, promptly after receipt of written notice, shall have commenced and shall continue diligently and reasonably to prosecute all action necessary to cure the default within an additional sixty (60) days.

(c) The filing of an application by Lessee (the term, for this purpose, to include any approved transferee other than a sublessee of Lessee's interest in this Lease Agreement): (i) for a consent to the appointment of a receiver, trustee or liquidator of itself or all its assets; (ii) of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing of its inability to pay its debts as they come due; (iii) of a general assignment for the benefit of creditors; (iv) of an answer admitting the material allegations of, or its consenting to, or defaulting in answering, a petition filed against it in any bankruptcy proceeding.

(d) The entry of an order, judgment or decree by any court of competent jurisdiction, adjudicating Lessee as bankrupt, or appointing a receiver, trustee or liquidator of it or of its assets, and this order, judgment or decree continuing unstayed and in effect for any period of sixty (60) consecutive days, or if this Lease Agreement is taken under a writ of execution.

Section 15.2 Assumption or Assignment of Lease to Bankruptcy Trustee.

In the event that this Lease Agreement is assumed by or assigned to a trustee pursuant to the provisions of the bankruptcy reform Act of 1978 (referred to as "Bankruptcy Code") (11 U.S.C. § 101 *et seq.*), the trustee shall cure any default under this Lease Agreement and shall provide adequate assurances of future performance of this Lease Agreement as are required by the Bankruptcy Code (including but not limited to, the requirement of Code § 365(b)(1)) (referred to as "Adequate Assurances"), and if the trustee does not cure such defaults and provide such Adequate Assurances under the Bankruptcy Code within the applicable time periods provided by the Bankruptcy Code, then this Lease Agreement shall be deemed rejected automatically and Lessor shall have the right immediately to possession of the Subject Property immediately and shall be entitled to all remedies provided by the Bankruptcy Code for damages for breach or termination of this Lease Agreement.

Section 15.3 Remedies in Event of Default.

Lessor may treat any one or more of the Events of Default as a breach of this Lease Agreement and at its option, by serving written notice on Lessee and each Secured Party and Leasehold Mortgagee of whom Lessor has notice (such notice not to be effective unless served on each such person) of the Event of Default of which Lessor shall have received notice in writing, Lessor shall have, in addition to other remedies provided by law, one or more of the following remedies:

(a) Lessor may terminate this Lease Agreement and the Term created, in which event Lessor may repossess the entire Subject Property and Improvements, and be entitled to recover as damages a sum of money equal to the value, as of the date of termination of this Lease Agreement, of the Rent provided to be paid by Lessee for the balance of the stated term of this Lease Agreement less the fair rental value as of the date of termination of this Lease Agreement of the fee interest in

the Subject Property and Improvements for the period, and any other sum of money and damages due under the terms of this Lease Agreement to Lessor and Lessee. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

(b) Lessor may terminate Lessee's right of possession and may repossess the entire Subject Property and Improvements by forcible entry and detainer suit or otherwise, without demand or notice of any kind to Lessee (except as above expressly provided for) and without terminating this Lease Agreement, in which event Lessor may, but shall be under no obligation to do so, relet all or any part of the Subject Property for rent and upon terms as shall be satisfactory in the judgment reasonably exercised by Lessor (including the right to relet the Subject Property for a term greater or lesser than that remaining under the stated Term of this Lease Agreement and the right to relet the Subject Property as a part of a larger area and the right to change the use made of the Subject Property). For the purpose of reletting, Lessor may make any repairs, changes, alterations or additions in or to the Subject Property and Improvements that may be reasonably necessary or convenient in Lessor's judgment reasonably exercised; and if Lessor shall be unable, after a reasonable effort to do so, to relet the Subject Property, or if the Subject Property is relet and a sufficient sum shall not be realized from reletting after paying all of the costs and expenses of repairs, change, alterations and additions and the expense of reletting and the collection of the Rent accruing from it, to satisfy the rent above provided to be paid, then Lessee shall pay to Lessor as damages a sum equal to the amount of the Rent reserved in this Lease Agreement for the period or periods as and when payable pursuant to this Lease Agreement, or, if the Subject Property or any part of it has been relet, Lessee shall satisfy and pay any deficiency upon demand from time to time; and Lessee acknowledges that Lessor may file suit to recover any sums falling due under the terms of this Section from time to time and that any suit or recovery of any portion due Lessee shall be no defense to any subsequent action brought for any amount not reduced to judgment in favor of Lessor. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

(c) In the event of any breach or threatened breach by Lessee of any of the terms, covenants, agreements, provisions or conditions in this Lease Agreement, Lessor shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as through reentry, summary proceedings, and other remedies were not provided for in this Lease Agreement.

(d) Upon the termination of this Lease Agreement and the Term created, or upon the termination of Lessee's right of possession, whether by lapse of time or at the option of Lessor, Lessee will at once surrender possession of the Subject Property and dispose of personal property and Improvements as described in Section 1.4. If possession is not immediately surrendered, Lessor may reenter the Subject Property and Improvements and repossess itself of it as of its former estate and remove all persons and their personal property, if such can be done without using force. Lessor may at its option seek expedited consideration to obtain possession if Lessor determines that the Lease Agreement has terminated as described in the first sentence of this paragraph, and Lessee agrees not to oppose such expedited consideration.

(e) In the event that Lessee shall fail to make any payment required to be made provided for in this Lease Agreement or defaults in the performance of any other covenant or agreement which Lessee is required to perform under this Lease Agreement during the period when work provided

for in this Lease Agreement shall be in process or shall be required by the terms of this Lease Agreement to commence, Lessor may treat the default as a breach of this Lease Agreement and, in addition to the rights and remedies provided in this Article, but subject to the requirements of service of notice pursuant to this Lease Agreement, Lessor shall have the right to carry out or complete the work on behalf of Lessee without terminating this Lease Agreement.

Section 15.4 Waivers and Surrenders To Be In Writing.

No covenant or condition of this Lease Agreement shall be deemed to have been waived by Lessor unless the waiver be in writing, signed by Lessor or Lessor's agent duly authorized in writing and shall apply only with respect to the particular act or matter to which the consent is given and shall not relieve Lessee from the obligation, wherever required under this Lease Agreement, to obtain the consent of Lessor to any other act or matter.

ARTICLE XVI: LESSOR'S TITLE AND LIEN

Section 16.1 Lessor's Title and Lien Paramount.

Lessor has title to the Land, and Lessor's lien for Rent and other charges shall be paramount to all other liens.

Section 16.2 Lessee Not To Encumber Lessor's Interest.

Lessee shall have no right or power to and shall not in any way encumber the title of Lessor in and to the Subject Property. The fee-simple estate of Lessor in the Subject Property shall not be in any way subject to any claim by way of lien or otherwise, whether claimed by operation of law or by virtue of any express or implied lease or contract or other instrument made by Lessee, and any claim to the lien or otherwise upon the Subject Property arising from any act or omission of Lessee shall accrue only against the leasehold estate of Lessee in the Subject Property and Lessee's interest in the Improvements, and shall in all respects be subject to the paramount rights of Lessor in the Subject Property.

ARTICLE XVII: REMEDIES CUMULATIVE

Section 17.1 Remedies Cumulative.

No remedy conferred upon or reserved to Lessor shall be considered exclusive of any other remedy but shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or existing at law or in equity or by statute. Every power and remedy given by this Lease Agreement to Lessor may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by Lessor. No delay or omission of Lessor to exercise any right or power arising from any default shall impair any right or power, nor shall it be construed to be a waiver of any default or any acquiescence in it.

Section 17.2 Waiver of Remedies Not To Be Inferred.

No waiver of any breach of any of the covenants or conditions of this Lease Agreement shall be construed to be a waiver of any other breach or to be a waiver of, acquiescence in, or consent to any further or succeeding breach of it or similar covenant or condition.

Section 17.3 Right to Terminate Not Waived.

Neither the rights given to receive, sue for or distrain from any rent, moneys or other payments, or to enforce any of the terms of this Lease Agreement, or to prevent the breach or nonobservance of it, nor the exercise of any right or of any other right or remedy shall in any way impair or toll the right or power of Lessor to declare ended the Term granted and to terminate this Lease Agreement because of any event of default.

ARTICLE XVIII: SURRENDER AND HOLDING OVER

Section 18.1 Surrender at End of Term.

Lessee shall peaceably and quietly leave, surrender and deliver the entire Subject Property to Lessor at the termination of the Lease Agreement, subject to the provisions of Section 1.4, in good repair, order, and condition, environmentally clean and free of contaminants, reasonable use, wear and tear excepted, free and clear of any and all mortgages, liens, encumbrances, and claims. At the time of the surrender, Lessee shall also surrender any and all security deposits and rent advances of Sublessees to the extent of any amounts owing from Lessee to Lessor. If the Subject Property is not so surrendered, Lessee shall repay Lessor for all expenses which Lessor shall incur by reason of it, and in addition, Lessee shall indemnify, defend and hold harmless Lessor from and against all claims made by any succeeding Lessee against Lessor, founded upon delay occasioned by the failure of Lessee to surrender the Subject Property.

Section 18.2 Rights Upon Holding Over.

At the termination of this Lease Agreement, by lapse of time or otherwise, Lessee shall yield up immediately possession of the Land to Lessor and, failing to do so, agrees, at the option of Lessor, to pay to Lessor for the whole time such possession is withheld, a sum per day equal to one hundred and fifty percent (150%) times 1/30th of the aggregate of the Rent paid or payable to Lessor during the last month of the Term of the Lease Agreement the day before the termination of the Lease Agreement. The provisions of this Article shall not be held to be a waiver by Lessor of any right or reentry as set forth in this Lease Agreement, nor shall the receipt of a sum, or any other act in apparent affirmance of the tenancy, operate as a waiver of the right to terminate this Lease Agreement and the Term granted for the period still unexpired for any breach of Lessee under this Lease Agreement.

ARTICLE XIX: MODIFICATION

Section 19.1 Modification.

None of the covenants, terms or conditions of this Lease Agreement to be kept and performed by either Party to this Lease Agreement shall in any manner be waived, modified, changed or abandoned except by a written instrument duly signed, acknowledged, and delivered by both Lessor and Lessee.

ARTICLE XX: INVALIDITY OF PARTICULAR PROVISIONS

Section 20.1 Invalidity of Provisions.

If any provision of this Lease Agreement or the application of it to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease Agreement shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE XXI: APPLICABLE LAW AND VENUE

Section 21.1 Applicable Law.

This Lease Agreement shall be construed and enforced in accordance with the laws of the State of Alaska. The forum and venue for any action seeking to interpret, construe, or enforce this Lease Agreement shall be only in the Superior Court for the State of Alaska, First Judicial District, at Sitka, Alaska.

ARTICLE XXII: NOTICES

Section 22.1 Manner of Mailing Notices.

In every case where under any of the provisions of this Lease Agreement or otherwise it shall or may become necessary or desirable to make or give any declaration or notice of any kind to Lessor or Lessee, it shall be sufficient if a copy of any declaration or notice is sent by United States Post Office registered or certified mail, postage prepaid, return receipt requested, addressed: If to Lessor at: Municipal Administrator, City and Borough of Sitka, of 100 Lincoln Street, Sitka, Alaska 99835, with a copy to: Municipal Clerk at address listed above; and if to Lessee, at: the address set out in the Preamble. Each Party from time to time may change its address for the purpose of receiving declarations or notices by giving notice of the changed address, to become effective seven (7) days following the giving of notice.

Section 22.2 Notice to Leasehold Mortgagee and Secured Parties.

Lessor shall provide each Leasehold Mortgagee and Secured Party, who has so requested, copies of all notices from Lessor to Lessee relating to existing or potential default under, or other

noncompliance with the terms of this Lease Agreement. All notices, demands or requests which may be required to be given by Lessor or Lessee to any Leasehold Mortgagee and Secured Parties shall be sent in writing, by United States Post Office registered or certified mail or express mail, postage prepaid, return receipt requested, addressed to the Leasehold Mortgagee at a place as the Leasehold Mortgagee may from time to time designate in a written notice to Lessor and Lessee. Copies of all notices shall simultaneously be sent to the other of Lessor or Lessee, as the case may be.

Section 22.3 Sufficiency of Service.

Service of any demand or notice as in this Article provided shall be sufficient for all purposes.

Section 22.4 When Notice Deemed Given or Received.

Whenever a notice is required by this Lease Agreement to be given by any Party to the other Party or by any Party to a Leasehold Mortgagee, the notice shall be considered as having been given when a registered or certified notice is placed in the United States Post Office mail as provided by this Article and shall be deemed received on the third business day thereafter and for all purposes under this Lease Agreement of starting any time period after notice, the time period shall be conclusively deemed to have commenced three business days after the giving of notice and whether or not it is provided that a time period commences after notice is given or after notice is received.

ARTICLE XXIII: MISCELLANEOUS PROVISIONS

Section 23.1 Captions.

The captions of this Lease Agreement and the index preceding it are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease Agreement, nor in any way affect this Lease Agreement.

Section 23.2 Conditions and Covenants.

All the provisions of this Lease Agreement shall be deemed and construed to be "conditions" as well as "covenants," as though the words specifically expressing or importing covenants and conditions were used in each separate provision.

Section 23.3 Entire Agreement.

This Lease Agreement contains the entire agreement between the Parties and shall not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors or assigns in interest.

Section 23.4 Time of Essence as to Covenants of Lease Agreement.

Time is of the essence as to the covenants in this Lease Agreement.

**ARTICLE XXIV: COVENANTS TO BIND AND BENEFIT RESPECTIVE PARTIES AND TO RUN
WITH THE SUBJECT PROPERTY**

Section 24.1 Covenants to Run with the Subject Property.

All covenants, agreements, conditions and undertakings in this Lease Agreement shall extend and inure to the benefit of and be binding upon the successors and assigns of each of the Parties, the same as if they were in every case named and expressed, and they shall be construed as covenants running with the Subject Property. Wherever in this Lease Agreement reference is made to any of the Parties, it shall be held to include and apply to, wherever applicable, also the officers, directors, successors and assigns of each Party, the same as if in each and every case so expressed.

Section 24.2 Interest in Deposits Automatically Transferred.

The sale, conveyance or assignment of the interest of Lessee (pursuant to the terms of this Lease Agreement) or of Lessor in and to this Lease Agreement shall act automatically as a transfer to the assignee of Lessor or of Lessee, as the case may be, of its respective interest in any funds on deposit with and held by any Construction Lender and Lessor, and every subsequent sale, conveyance or assignment by any assignee of Lessor or of Lessee also shall act automatically as a transfer of their respective rights to the deposits with such Construction Lender and Lessor to the subsequent assignee.

ARTICLE XXV: ADDITIONAL GENERAL PROVISIONS

Section 25.1 Absence of Personal Liability.

No member, official, or employee of Lessor shall be personally liable to Lessee, its successors and assigns, or anyone claiming by, through or under Lessee or any successor in interest to the Subject Property, in the event of any default or breach by Lessor or for any amount which may become due to Lessee, its successors and assigns, or any successor in interest to the Subject Property, or on any obligation under the terms of this Lease Agreement.

No member, official, or employee of Lessee shall be personally liable to Lessor, its successors and assigns, or anyone claiming by, through, or under Lessor or any successor in interest to the Subject Property, except as stated herein, in the event of any default or breach by Lessee or for any amount which become due to Lessor, its successors and assigns, or any successor in interest to the Subject Property, or on any obligation under the terms of this Lease Agreement.

Section 25.2 Lease Agreement Only Effective As Against Lessor Upon Approval.

This Lease Agreement is effective as against Lessor only upon the approval of this Lease Agreement by the GPIIP Board of Directors, in accordance with the Sitka General Code at Chapter 2.38, and the Sitka Assembly and signed by the Municipal Administrator.

Section 25.3 Binding Effects and Attorney's Fees.

This Lease Agreement shall be binding up and inure to the benefit of the respective successors and assigns of the Parties. In the event of litigation over this Lease Agreement, the Parties agree that the prevailing Party shall receive full reasonable attorneys' fees.

Section 25.4 Duplicate Originals.

This Lease Agreement may be executed in any number of copies, each of which shall constitute an original of this Lease Agreement. The warranties, representations, agreements and undertakings shall not be deemed to have been made for the benefit of any person or entity, other than the Parties.

Section 25.5 Declaration of Termination.

With respect to Lessor's rights to obtain possession of the Subject Property or to revest title in itself with respect to the leasehold estate of the Lessee in the Subject Property, Lessor shall have the right to institute such actions or proceedings as it may deem desirable to effectuate its rights including, without limitation, the right to execute and record or file with the Recorder of Sitka Recording District, a written declaration of the termination of all rights and title of Lessee in the Subject Property, and the revesting of any title in Lessor as specifically provided in this Lease Agreement.

Section 25.6 Authority

Lessor and Lessee represent to each other that each has, and has exercised, the required corporate power and authority and has complied with all applicable legal requirements necessary to adopt, execute and deliver this Lease Agreement and perform its obligations. Both Parties also represent that this Lease Agreement has been duly executed and delivered by each and constitutes a valid and binding obligation of each enforceable in accordance with its terms, conditions, and provisions.

[SIGNATURES AND ACKNOWLEDGEMENTS ON NEXT PAGE]

CITY AND BOROUGH OF SITKA

Date

By: John Leach
Its: Municipal Administrator

STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by John Leach, Municipal Administrator of the CITY AND BOROUGH OF SITKA, an Alaska home rule municipality, on behalf of the municipality.

Notary Public in and for the State of Alaska
My commission expires: _____

HIGHMARK MARINE FABRICATION, LLC

Date

By: Cooper Curtis
Its: Managing Member

STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by Cooper Curtis, Managing Member of HIGHMARK MARINE FABRICATION, LLC, an Alaska limited liability company, on behalf of the company.

Notary Public in and for the State of Alaska
My commission expires: _____