

City and Borough of Sitka and Hanson Maritime Company
Term Sheet
Utility Dock Transaction
August 1, 2019

The term sheet (*Term Sheet*) outlines the general terms and conditions upon which the City and Borough of Sitka, in conjunction with the Gary Paxton Industrial Park board of directors (collectively, *CBS* or *Seller*), agree to enter into a purchase and sale agreement (*Agreement*) with Hanson Maritime Company, (*Hanson* or *Purchaser*) for certain real property and development rights referred to as the *Utility Dock* property situated within the Gary Paxton Industrial Park (*GPIP*), and leasehold interest in adjoining tidelands, herein referred to as the *Tidelands*. For purposes of this Term Sheet, the Utility Dock and Tidelands are collectively referred to as the *Property*.

The general terms and conditions of the contemplated definitive Agreement are as follows:

Overview: Hanson agrees to purchase the Utility Dock and lease the Tidelands from CBS subject to the terms and conditions set forth in this Term Sheet, and subject to the terms and conditions of a definitive Agreement to be prepared by the CBS, which shall be binding on execution by CBS and Hanson. Hanson further acknowledges the unique nature of the contemplated transaction entails accepting title and possession of the Utility Dock in a dilapidated and dangerous condition, with the accompanying obligation to reconstruct the Utility Dock to a safe and functional condition over a term of years. Hanson's use of the Property shall at all times be subject to easements and restrictive covenants in favor of the CBS adjoining properties which may limit, obstruct, interfere, and prevent Hanson's use and possession of the Tidelands and Utility Dock.

Parties:

Seller: The City and Borough of Sitka, Alaska, an incorporated Alaska municipality, of 100 Lincoln Street, Sitka, Alaska 99835.

Purchaser: Hanson Maritime Company, an Alaska corporation, of Post Office Box 2594, Sitka, Alaska 99835; Lee Hanson, sole shareholder, holding 100% of all issued and outstanding shares of common capital stock.

Property: Approximately 30,800 square feet of un-subdivided tidelands and uplands situated within Lot 9a of the GPIP, shown for purposes of illustration only on the plat attached hereto as **Appendix A**, which was made part of the Request for Proposals by the GPIP Board for the purchase of the Utility Dock, and for purposes of this Term Sheet has been modified to show the intended location of the mooring easement. The properties subject to this Term Sheet include an area of approximately 200' x 85' that encompasses the Utility Dock and related property, together with Tidelands consisting of an area of 230' x 60' as each property is shown on **Appendix A**. The subdivision of the Tidelands and Utility Dock properties is a condition precedent to closing this transaction, making the exact dimensions subject to the CBS administrative subdivision process and the terms and conditions of this Agreement. The parties to the Term Sheet agree that all cost incurred in the subdivision process shall be shared equally between the parties. Upon Hanson's and the CBS Assembly's acceptance of this Term Sheet, the CBS will commence the subdivision process, subject to Hanson's concurrent cooperation, participation and approval. The conveyance of the Utility Dock to Hanson shall be subject to and encumbered by a perpetual easements, restrictive covenants, and waiver and release of which shall consist of, but not be limited to:

Mooring Easement. Prior to closing CBS will create a perpetual mooring easement (*Easements*) within the Tidelands as shown on **Appendix A** as the "*Mooring Easement*." The purpose of the Easement is to enable the CBS, or its assignee, to construct, manage and operate cruise ship

berthing/moorage dolphins and other improvements that are appurtenant to the adjacent "Cruise Ship Berth" as shown on **Appendix A**; and to enable mooring lines to extend across the Tidelands from a cruise ship moored at the Cruise Ship Berth to a mooring dolphin to be located adjacent to the Property, as illustrated in **Appendix A**. Although CBS has no immediate plans to construct the Cruise Ship Berth, CBS, or its assignee, shall at all times have the right to construct permanent structures and improvements within the Easement to enable the mooring of vessels at the Cruise Ship Berth, including, breasting and mooring dolphins and piling, catwalks, and related appurtenances. Hanson acknowledges and accepts that the construction of permanent structures, e.g., breasting and mooring dolphins/piling within the Easement will obstruct and interfere with vessel ingress and egress of the Tidelands.

Restrict Covenants. The Property shall be subject to restrict covenants. The restrict covenants shall serve three purposes: (i) limit, restrict, and prohibit vessel ingress and egress to the Utility Dock should a barge and vessel haulout ramp, referred to herein as the "Vessel Ramp" as shown on **Appendix A**; (ii) to limit, restrict, and prohibit vessel ingress and egress to the Tidelands during berthing of a cruise ship at the Cruise Ship Berth; and, (iii) waiver by Hanson, its successors and assigns to seek economic damages under the doctrine of inverse condemnation, or similar type cause of action, arising from CBS's operation and management of the Vessel Ramp and Cruise Ship Berth. The planning of the Vessel Ramp is currently in the inception stage, with no assurance it will be constructed anytime in the immediate future. However, Hanson acknowledges that if constructed, operation of the Vessel Ramp will most probably interfere with and restrict Hanson's use of the Tidelands and Utility Dock. CBS and Hanson will negotiate and enter into a Tideland Use Agreement prior to closing, that will establish guidelines and notice requirements to minimize CBS interference with vessel use and operations within the Tidelands during use of the Vessel Ramp and Cruise Ship Berth.

Waiver of Rights of Taking. Hanson agrees as a material term of the Agreement, to waive any and all future rights under the doctrine of inverse condemnation and right to just compensation for damages that Hanson, its successor or assigns may be deprived of all or substantially all economically beneficial use of the Property by the CBS and/or GPIP's direct action or inaction, or prove the CBS's action substantially impacted the value of the Property as related directly or indirectly from construction, use, management, and operation of the Vessel Ramp and/or Cruise Ship Berth. This waiver of rights shall apply to the third-party users of the Vessel Ramp and/or Cruise Ship Berth, who for purposes of the Agreement, shall be constitute third party beneficiaries of this waiver.

Non-Exclusive Access Easement. CBS/GPIP shall grant Hanson a non-exclusive access from the platted right-of-way shown on **Appendix A** to the Utility Dock, that shall be executed prior to closing, and shall run with the land.

Condition of Property: The Property shall be transferred to Hanson subject to the Property's **AS IS WHERE IS** condition. The definitive Agreement shall provide that Hanson accepts the disclaimers of CBS, together with all faults and defects in the Property, whether now known, or later discovered. Hanson must as a condition of the definitive Agreement accept the CBS disclaimers of expressed and implied warranties and representatives concerning or regarding the condition of the Property including, but not limited to the structural integrity of the dock and related improvements, the suitability of the Property for Hanson's intended uses, the cost to repair, reconstruct, replace the Utility Dock, which Hanson acknowledges by its execution of this Term Sheet, is in dilapidated and unusable condition, profitability of the Property, the environmental condition of the Property, whether known or unknown and later discovered, and any favorable tax consequences of the Property upon transfer to Hanson. The definitive Agreement will include Hanson's acknowledgement that the Property was condemned due to its deplorable and dangerous condition, and further acknowledge that Hanson has had ample and sufficient opportunity to inspect the Property and conduct all tests of the land and improvements;

and, must agree under the terms of the Agreement, to assume all risks of loss, damage and injury to persons or property arising from or relating to the structural or environmental condition of the Property whether such conditions are known unknown, and agree to indemnify and hold CBS harmless therefrom. Standard provisions for the disclaimer of expressed and implied warranties regarding the condition of the Property incorporating the above concepts and provisions shall be made part of the Agreement.

Consideration: Transfer of the Utility Dock and lease of the Tidelands to Hanson will be structured for drafting purposes as a non-monetary transaction. CBS will transfer the fee interest in the Utility Dock to Hanson, subject to the easements, restrictive covenants and other exceptions presently on title, that will enable the CBS to make improvements and allow third-party marine-related use and entry of the Tidelands for the benefit of the adjoining properties. In consideration for the transfer and lease of the Property, Hanson will agree to (i) reconstruct the Utility Dock over a term of years to a safe and functional condition consistent with engineering and industry standards subject to the administrative review and approval by the CBS Building Department; (ii) accept the Property in its **AS IS** condition, including, but not limited to the condition of all improvements and the environmental condition of the Property; (iii) accept the Property subject to restrictive covenants and easements that could restrict Hanson's use of the Property, from time to time; (iv) incur all costs to reconstruct the Utility Dock to a safe and functional condition; (v) indemnify CBS against any and all tort and statutory claims related to the use and condition of the Property, including state and/or federal claims related to the environmental condition of the property under all applicable environmental law; (vi) procure liability and wharfingers insurance coverage with limits of not less than \$5,000,000 single occurrence, and \$10,000,000 in the aggregate, to which the CBS is a named additional insured; and, (vii) cooperate with the CBS to develop a comprehensive use/operation agreement to enable use of the Tidelands by third-parties. In further consideration of the non-monetary nature of the transaction, Hanson shall hire a qualified environmental engineer to conduct a Phase I environmental assessment (EA) of the Utility Dock and Tidelands. The EA shall be paid for by Hanson, and upon completion, copy of the EA shall be delivered to the CBS and Hanson. In the event the EA identifies an actionable condition requiring a Phase II environmental assessment and Alaska Department of Environmental Conservation or Environmental Protection Agency approved work plan for cleanup and remediation, in such event, either party can give five (5) days written notice to terminate this Term Sheet.

CBS/GPIP Approval: Hanson expressly acknowledges that it is executing this Term Sheet prior to authorization by the CBS being first given by either the CBS Assembly or the GPIP Board. Hanson acknowledges that its execution of this Term Sheet as aforesaid shall constitute an irrevocable offer to the CBS that Hanson will be bound by the terms of this Term Sheet as of the effective date stated herein; and that such irrevocable offer shall be in full force and effect unless and until deemed to have ended pursuant to the paragraph immediately following; and that Hanson will cooperate in the drafting of the terms and conditions of a definitive Agreement that meet the intent and spirit of the Term Sheet. Hanson agrees that CBS and GPIP may rely on such irrevocable offer to proceed to obtain authorization from their respective governing body as required for the execution of this Term Sheet by the CBS. It is expressly acknowledged and agreed that neither Hanson's execution of this Term Sheet shall constitute an obligation on either the CBS or GPIP that assures the approval of this Term Sheet or that authorization will be given by either body authorizing the execution of the Term Sheet. This Term Sheet shall not be binding on either the CBS or GPIP until duly executed by an authorized person designed by the CBS Assembly to execute this instrument after passage and adoption of a motion by the CBS Assembly that expressly approves the terms stated herein, and designates the person authorized to execute this Term Sheet on behalf of the CBS and GPIP.

In the event the CBS has not obtained authorization and approval of this Term Sheet from its Assembly before September 1, 2019, then, in such event, Hanson shall be deemed to be released from its irrevocable offer as stated in the preceding paragraph above, and the execution of this Term

Sheet shall thereupon be deemed null and void ab initio and neither the CBS, GPIP or Hanson shall have any rights or obligations hereunder or thereunder.

Land Development and other Approvals: The closing of this transaction will not be contingent upon Hanson's receipt or approval of any building or zoning permit, zoning waivers, modifications or other approvals Hanson may deem necessary to develop, improve, renovate, reconstruct use or operate the Property. Hanson assumes all risk in securing such municipal, state and federal authority post-closing.

Indemnification of CBS and GPIP: Hanson shall assume liability for, and indemnify, defend and hold harmless CBS, its members, managers and employees, from and against any and all claims, demands, suits, liabilities, obligations, losses, damages, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees) of whatsoever kind and nature, whether or not arising in tort (all of which are referred to collectively as *Claims*), which may be asserted against CBS by reason of any injury to or death of any person or persons, or by reason of loss of or damage to the surrounding properties owned by CBS and third-parties or the personal property of any person or entity which occurs after Closing and which Claims arise out of or are in any way connected with the ownership, management, possession, control, maintenance, repair, modification, use, or operation of the Property; **provided, however, that the foregoing indemnity shall not apply to injury, death, loss or damage that occurs prior to Closing.**

Due Diligence; Documentation: Hanson shall have thirty (30) days following the CBS Assembly's approval of this Term Sheet to conduct standard due diligence, herein referred to as the "*Diligence Period*." Concurrent with the Diligence Period, Hanson and CBS shall draft and finalize the transaction documents which may include, but are not intended to be limited to:

- Purchase and Sale Agreement
- Application for Subdivision of Utility Dock and Tidelands
- Mooring Easement
- Non-Exclusive Access Easement
- Restrictive Covenants
- Tideland Lease Agreement
- Deed of Trust
- Quitclaim Deed
- Operating and Use Agreement
- Any other document necessary or agreed upon to effectuate this transaction.

Termination: The CBS and Hanson will proceed in good faith to enter into the Purchase and Sale Agreement on or before the expiration of the Diligence Period. If the CBS and Hanson have not executed the Agreement by that date, either party hereto shall have the option to terminate this Term Sheet and neither party will have any further obligation to the other.

Conditions Precedent: CBS and Hanson agree that the following constitute the conditions precedent must be fully satisfied prior to closing:

- The Documentation referenced above, including the Purchase and Sale Agreement, are signature-ready with agreement of the parties to all of the terms, conditions, and obligations stated in each document.
- The subdivision process to subdivide the Utility Dock and Tidelands from Lot 9a shall have been completed with the recording of a final plat.
- Completion of Phase I environmental site assessment and receipt of report by Hanson and CBS.
- Preliminary Commitment for Title Insurance, evidencing clear title to the Utility Dock,

subject to the exceptions of record, together with such accepted encumbrances, easements and restrictive covenants as identified in this Term Sheet.

Closing of Transaction: The closing of this transaction shall occur within thirty (30) days following the expiration of the Diligence Period, unless sooner agreed by the parties; and satisfactory completion of the conditions precedent to closing. The closing shall occur at the office of Alaska Escrow & Title Insurance Agency, located at 315 Seward Street, Suite B, Sitka, Alaska 99835. The City shall be responsible for the closing costs, including document preparation, recording fees, owners standard title insurance coverage for the Utility Dock, escrow closing fees, and other standard closing costs that may be incurred.

Counterparts: This Term Sheet may be executed in one or more counterparts, each counterpart for all purposes being deemed an original, and all such counterparts shall together constitute one and the same agreement.

Effective Date: This Term Sheet shall be effective that date on which it is fully executed by both parties.

Hanson Maritime Co.

Date: _____

Lee Hanson, President

City and Borough of Sitka

Date: _____

Dave Miller, Interim Municipal Administrator

