

AGENDA

FOR THE SPECIAL MEETING
OF THE CITY COUNCIL FOR
THE CITY OF THORNE BAY, ALASKA

MONDAY, OCTOBER 12, 2020

TIME: 6:30 p.m.

LOCATION: TELECONFERENCE/VIDEO CONFERENCING LINE

+1-408-418-9388 United States Toll

Meeting Weblink:

<https://cityofthornebay.my.webex.com/cityofthornebay.my/j.php?MTID=m46e2da92b3ec18c7eb826fe78e08568b>

Meeting number (access code): 126 437 6697

Meeting password: QfFpZM3BT32 (73379632 from phones and video systems)

1) **CALL TO ORDER:**

2) **PLEDGE TO FLAG:**

3) **ROLL CALL:**

4) **APPROVAL OF AGENDA:**

5) **MAYOR'S REPORT:**

6) **ADMINISTRATIVE REPORTS:**

a) City Administrator:

b) City Clerk Report:

i. Notice of Community Development Block Grant for Thorne Bay

7) **PUBLIC COMMENTS:**

9) **COUNCIL COMMENTS:**

10) **CONSENT AGENDA:**

a) **MINUTES:**

1. Minutes for the September 1, 2020, Special City Council Meeting, discussion and action item:

2. Minutes for the September 15, 2020, Regular City Council Meeting, discussion and action item:

11) **NEW BUSINESS:**

a) Certifying the Results of the 2020 Regular Municipal Election, discussion and action item:

b) Renewal of SISD Lease renewal for use of City Tidelands for placement and operations of a restaurant, discussion and action item:

c) Appointing Election Judges for the November 3rd 2020 Mayoral Election, discussion and action item:

12) **ORDINANCE FOR PUBLIC HEARING:**

a) **Ordinance 20-10-06-01** amending Title 2 – Administration and Personnel, Chapter 2.56, City Property, Amending 190 Lands Available for Leasing- Classification of Lands, discussion and action item:

13) EXPENDITURES EXCEEDING \$2,000.00:

- a) Expense of \$77,321.44 to Stryker for EMS Supplies discussion and action item:

14) CONTINUATION OF PUBLIC COMMENT:

15) CONTINUATION OF COUNCIL COMMENT:

16) ADJOURNMENT:

More ways to join

Join by video system

Dial 1264376697@webex.com

You can also dial 173.243.2.68 and enter your meeting number.

Join by phone

+1-408-418-9388 United States Toll

Access code: 126 437 6697

[Global call-in numbers](#)

MINUTES
FOR THE REGULAR
MEETING OF THE CITY COUNCIL
TUESDAY, SEPTEMBER 1, 2020
PARTICIPATE VIA WEBEX USING
THE INFORMATION BELOW:

6:30 PM Tuesday, September 1, 2020

1) CALL TO ORDER:

Mayor burger called the meeting to order at 6:33 p.m.

2) PLEDGE TO THE FLAG:

Audience and council stood for the pledge to the flag.

3) ROLL CALL:

Those in attendance were:

Hert, Rhodes, Stram, Longbotham, Burger, McDonald & Edenfield

4) APPROVAL OF AGENDA:

Burger moved to approve the agenda. Stram seconded the motion. There was no further discussion.

MOTION: Move to approve the agenda

F/S: Burger/Stram

YEAS: Edenfield, Burger, Hert, Longbotham, Rhodes, Stram, McDonald

NAYS: None

STATUS: Motion Passed.

5) MAYOR REPORT:

Mayor Burger reminded everyone of COVID-19 Safety precautions. Social Distance, Proper Hygiene.

6) ADMINISTRATIVE REPORTS:

a) City Administrator

Administrator provided a report.

b) City Clerk

Council seats:

2-vacant. Last day to file is Friday, September 4th at 12 noon.

Election day is October 6th

Absentee Voting will begin September 8th and last until October 5th

7) PUBLIC COMMENTS:

Priscilla Goulding discussed concerns regarding the City using CARES funding for Capital Improvement projects.

Thom Cunningham commented on the following:

- Apologize for my comment last week about meeting with a city official, I wasn't trying to call anyone out, I just meant that with so many special meetings, it is hard for everyone to be aware of them, especially those who live on South Thorne Bay
- On the bid for the construction, I have been researching and found that the city could put a clause on the bid that required the company to provide local hiring.

Wes Craske commented on the following:

- Here to answer any questions that anyone may have. We have rounded up a good crew to put the playground equipment up.
- The drawing you received on the Davidson Landing construction is the most accurate of what we will be moving forward with.

8) COUNCIL COMMENTS:

Rhodes commented on the following:

- Have we come down to a hard number to allocate?
- Do we feel confident that we could allocate this money now, or should we wait and get a better idea of what the needs are?
- With what Priscilla said, I expected this. I didn't expect the state to provide much guidance. We are walking a tight pier and understand, but I don't expect that we will ever get a tight response, the state doesn't have that authority.
- I am confident that the plan we have now, they Treasury or OMB will not come after us...

Carter comments:

- Regarding budget for Davidson Construction. We do not have a solid budget so we are aiming at the higher end now. However, if the City did not move forward with QT Facility, those funds could be reallocated. Right now we don't have anywhere to park the ambulance.

Hert commented on the following:

- A little confused here, if we cannot use for capital gain then we really cannot move forward on a community center or clinic.

Stram commented on the following:

- Think we should back off this quarantine facility for now. We do not want to get stuck with this large expense or building that we may not be able to use.

Edenfield commented on the following:

- I have a couple of questions on the southside facility? I have not seen a list of who is done anything on that. Who is drawing, are they licensed? If community building, it has to have certain requirements.

McDonald commented on the following:

- With what is happening with the state not giving us the guidance and answers we need; I don't want to see us get stuck paying the money back.

Burger commented on the following:

- With everything we have heard, I would propose the council redirect those funds to medical facilities, EMS crew, etc. Right now, it may be next year or 20 years before we would use that quarantine facility. Since we cannot use for something, we cannot generate revenue out of, it is a good idea to scrap.

Stram commented on the following:

- The upkeep on a building on that even small, would be a big expense to us.
- Sadly, the government has done this before. The government is not going to go to each community to approve each project. Feel like this is kind of a "Boon doggle"

Hert commented on the following:

- With all that being said, will us purchasing ambulance backfire since we plan to use those and later down the road bill for EMS expenses?
- About Davidson, will that hit the grey area??

Les Carter:

- Ambulance is a validated use
- Davidson Landing is an existing building used to house emergency equipment

Rhodes commented the following:

- Agree with Jon. We will not get any reassurances; the new plan is less risky.
- I am comfortable with plan B. I feel for PK, CBC and Back Country who have stuck with us the entire time.

9) CONSENT AGENDA:

a) APPROVAL OF MINUTES:

1. Approving the minutes of the August 17, 2020, Regular City Council Meeting, discussion and action item:
2. Approving the minutes of the August 4, 2020, Regular City Council Meeting, discussion and action item:

3. Approving the minutes of the July 30, 2020, Special City Council Meeting, discussion and action item:

Burger moved to approve the consent agenda. Rhodes seconded the motion. There was no further discussion.

MOTION: Move to approve the consent agenda
F/S: Burger/Rhodes
YEAS: Edenfield, Burger, Hert, Longbotham, Rhodes, Stram, McDonald
NAYS: None
STATUS: Motion Passed.

10) NEW BUSINESS:

a) Review and approval of design footprint for the construction of 2-Quarantine Rooms & clinic facility from PK Builders, discussion and action item:

Burger moved to approve the design and footprint for the construction of 2-quarantine facilities. McDonald seconded the motion. Stram stated he looked over the last drawing, and like it and if we were able to proceed with funding, I would vote to approve. Since we will not be able confirm the funds, I have to vote down.

MOTION: Move to approve the design and footprint for the construction of 2-quarantine facilities
F/S: Burger/McDonald
YEAS: None
NAYS: Edenfield, Burger, Hert, Longbotham, Rhodes, Stram, McDonald
STATUS: Motion Failed.

11) EXPENDITURES EXCEEDING \$2,000.00:

a) Authorizing the expenditure not to exceed \$7,500.00, from the Community Development Fund Savings Account, to go towards the construction of a community center at Davidson Landing, discussion and action item:

Longbotham stated he did not feel comfortable approving this expense without approved engineered drawings.

Stram stated the \$7,500 is entirely community development funding and so we wouldn't have to worry about giving the money back. If we were approved for CARES funding to assist, that could cover the \$7,500.00.

Edenfield commented on the following:

- Choose to vote this down because have not seen anything on paper or anything in black and white, nothing close to a budget.

Rhodes commented on the following:

- Regarding the \$7,500, we could certainly proceed. Harvey brought up at August 17th meeting

Longbotham commented on the following:

- I think we should move forward and approve so we can get some engineered drawings and move forward

Edenfield commented on the following:

- I thought the engineers were to be volunteers

Stram commented on the following:

- Some of the improvements would not need to be engineered, such as the planters, etc. Some of the money could be spent to purchase some of these expenses but still need the plans to be engineered.

MOTION: Move to approve the expenditure not to exceed \$7,500.00, from the Community Development Fund Savings Account, to go towards the construction of a community center at Davidson Landing

F/S: Burger/Stram

YEAS: Burger, Hert, Longbotham, Rhodes and Stram

NAYS: Edenfield, McDonald

STATUS: Motion Passed.

12)CONTINUATION OF PUBLIC COMMENTS:

Thom Cunningham commented on the following:

- I did actually submit a plan for a beam, and I did price what it would cost for a plan, I would put my plan up against any engineered plans.
- An issue that could come up is if CARES does kick in than all volunteering goes out the window with needing engineers and certified plans
- Could we use the CARES for only the building the storage for fire truck and ambulance and then the \$7,500 for the other beautification?

13)CONTINUATION OF COUNCIL COMMENTS:

Longbotham commented on the following:

- The concern I have is a building that will have public use will need engineer certification, and that would not be a volunteer that could do

Hert commented on the following:

- Concern with a separate building for fire and ambulance is we are right back to the beginning with where we were with

McDonald commented on the following:

- Will be resigning and will submit written resignation to the office in the morning

Hert, Longbotham, Rhodes, Stram

- Thank McDonald for decades of service to the City. One of the longest terms of a councilmember.

14) ADJOURNMENT:

Mayor Burger adjourned at 7:40 p.m.

Lee Burger, Mayor

ATTEST:

Teri Feibel, CMC

MINUTES
FOR THE REGULAR MEETING
OF THE CITY COUNCIL FOR
THE CITY OF THORNE BAY, ALASKA
TUESDAY, SEPTEMBER 15, 2020
TIME: 6:30 p.m.

1) CALL TO ORDER:

Mayor burger called the meeting to order at 6:33 p.m.

2) PLEDGE TO THE FLAG:

Audience and council stood for the pledge to the flag.

3) ROLL CALL: (All in attendance)

Those present were:

Hert, Rhodes, Stram, Longbotham, Burger, Edenfield

4) APPROVAL OF AGENDA:

Burger moved to approve the agenda. Stram seconded the motion. There was no further discussion.

MOTION: Move to approve the agenda.

F/S: Burger/Rhodes

YEAS: Edenfield, Burger, Hert, Longbotham, Rhodes, Stram

NAYS: None

STATUS: Motion Passed.

5) MAYOR'S REPORT:

Burger reported on the following:

- COVID Update and encouraged the public to continue with proper hygiene and social distancing.

6) ADMINISTRATIVE REPORTS:

a) City Administrator:

Les Carter reported the following:

- Welcome Jason Jennings to the Solid Waste Facility
- Spoke with OVK0 they asked we slow down to avoid wash boarding. Use 4wd if you have ability to.
- Two new vehicles have arrived

- New Backhoe soon from Anchorage
- Last Friday had an accident with multiple casualties.
- We need to move forward with EMT's and responders. We need residents to volunteer

b) City Clerk Report:

Teri Feibel reported on the following:

- Election Official Correction: Cherish Carter, Laura Jennings and Sue Edson
- Ordinance on Agenda – Review with attorney today and amendments proposed. Will discuss later.

July 1, 2020 - Sep 14, 2020

Income

GRANT INCOME 355,341.02

Total Income 355,341.02

Gross Profit 355,341.02

Expense

CARES Grant Expenses

Residential Utility Relief Gran 12,500.00

Small Business Grant Expense 35,500.00

Total CARES Grant Expenses 48,000.00

FEES / PERMITS / license EXPENSE

Advertising and Promotion 384.00

Fees Permits & Licensing Exp 145.00

Total FEES / PERMITS / LICENSE EXPENSE 529.00

CONTRACT SERVICES

Contract Labor 4,961.25

Legal Services 67.50

Total CONTRACT SERVICES 5,028.75

VEHICLE & EQUIPMENT EXPENSES

Equip Repairs and Maintenance 1,125.20

Cellular Booster for Emergency Vehicles 4,730.00

Total VEHICLE & EQUIPMENT EXPENSES 5,855.20

MATERIALS & SUPPLIES

Materials & Supplies 2,341.58

Furniture & Equipment 423.20

Communications 3,782.04

Radios 13,500.00

Total MATERIALS & SUPPLIES 20,046.82

PAYROLL EXPENSES

Health Insurance 2,733.04

HSA Resources	1,125.10
Life Insurance	29.38
PERS	3,456.41
PAYROLL EXPENSES - Other	31,960.14
Total PAYROLL EXPENSES	39,304.07
TRAVEL & TRAINING	
Mileage Reimbursement	55.00
Total TRAVEL & TRAINING	55.00
OPERATING EXPENSES	
Postage and Freight	692.46
Bldg/Grnd Maint Repair	49.95
Total OPERATING EXPENSES	742.41
Reimbursed Expense	22.59
Total Expense	119,583.84
REMAINING GRANT FUND:	235,757.18
PERCENTAGE SPENT:	51%

CITY OF THORNE BAY CARES SPENDING PLAN – 9.14.2020

EMS – \$169,520

- **Personnel - \$44,145** -costs for new coordinator position and increased stipends for dispatch and EMT's through Dec. 30, 2020. (Starting Jan 1, the city's general fund budget will assume these costs.)
- **Coordinator position salary** and benefits budgeted for 6 months. Reduce by 2 months (July and Aug.)- savings of \$11,680.
- **Equipment \$162,342.52**– Stryker gurney - \$2500 - \$15,000
<https://www.serems.org/ems-links/ambulance-medical-supplies/>
- **Ambulance – 2**
- **Boat motors** – check with Chet, Bay View??
- **Supplies for MMRS tent** – Chaundell getting us a list
- **Supplies – \$110,375** restock critical supplies to ensure preparedness for any future surge of the pandemic.
- **Travel and Training** – expenses to increase the skills of EMS workers, both paid and un-paid. \$15,000
- **Employee wages and grant management – \$61,672**
Money to cover employee expenses for work done specifically to alleviate and diminish the pandemic.
- **Grant management dollars**, \$24,000, were reduced to \$10,000 as it is anticipated the number of hours first allotted won't be necessary.
- **Grants to small businesses and non-profits** -original \$89,500 reduced to \$40,000
In the 1st round, the city received 11 applications, so another round was advertised and four more were received. Actual cost - \$32,750

- **Utility and Moorage Relief to residents** – original \$70,000 reduced to \$12,500
The city mailed applications to residents and received few returns. A 2nd round was advertised with an Aug. 21 deadline and 40 more applications were received, all of which were funded. Actual cost - \$12,250
- **Repair and Expand Davidson Landing Facility**- original \$70,800 reduced to \$10,800
Davidson Landing will be upgraded as an 'incident command center' for south Thorne Bay
- **Communications/Telework capabilities** – \$14,000??? A new command center will be set up at Davidson Landing (Thorne Bay's south side). New radios will be purchased to replace old, outdated ones.
 - Tablets will be purchased for council members who must attend meetings virtually.
- **Food Bank delivery – reimburse mileage \$150** (goes through December so will need more than we thought)

Amount of grant \$573,859.52

➤ **BANKING INFORMATION:**

Account	Name	Actual Balance
TFCU	<u>HEALTH PREMIUM</u>	\$35,055.77
TFCU	<u>OCCUPANCY GEN.</u>	\$6,298.86
TFCU	<u>40% SALES TAX</u>	\$113,028.86
TFCU	<u>OCC TAX EMS/FIR</u>	\$13,498.29
TFCU	<u>OCC TAX TOURISM</u>	\$9,209.59
TFCU	<u>OCC TAX PARKS</u>	\$9,553.39
TFCU	<u>OCC TAX HARBOR</u>	\$20,180.31
TFCU	<u>WATER UTL R&R</u>	\$16,290.22
TFCU	<u>SEWER UTL R&R</u>	\$14,647.40
TFCU	<u>SOLID WASTE R&R</u>	\$13,980.75
TFCU	<u>CHECKING</u>	\$398,982.13
TFCU	<u>60% SALES TAX</u>	\$98,076.83

Account	Name	Actual Balance
TFCU	<u>HARBOR</u>	\$79,981.64
TFCU	ACCOUNT TOTALS	\$828,784.04

Account	Name	Actual Balance
FIRST BANK	FIRST BANK CHECKING	\$37,811.67

WELLS FARGO INVESTMENT: Asset Class	Market Value
<u>Mutual Funds</u>	\$620,483.17
<u>Fixed Income</u>	\$304,600.00
<u>Cash/Cash Alternatives</u>	\$111,472.39
TOTAL INVESTMENT BALANCES	\$1,036,555.56

7) PUBLIC COMMENTS:

Sean Kaer commented on the following:

- Will the council be considering Shannon Bosdell as the EMS Coordinator?
 - Les Carter – Yes
- Multiple times I know the council have had applications in and have not been reviewed.... I have put in and not been interviewed.

8) COUNCIL COMMENTS:

Eric Rhodes commented on the following:

- Large tragedy in the community and huge condolences and thoughts out to the family

Roger Longbotham commented on the following:

- Same as Eric, condolences and thoughts for both families involved

9) CONSENT AGENDA:

A.) MINUTES:

1. Minutes for the August 26, 2020, Special City Council Meeting, discussion and action item:

2. Minutes for the July 21, 2020, Regular City Council Meeting, discussion and action item:

Burger moved to approve Minutes of August 26, and July 21st, 2020, City Council Meeting. Edenfield seconded the motion.

MOTION: Move to approve Minutes of August 26, and July 21st, 2020, City Council Meeting
F/S: Burger/Edenfield
YEAS: Edenfield, Burger, Hert, Longbotham, Rhodes & Stram
NAYS: None
STATUS: Motion Passed.

10) NEW BUSINESS:

- a. Presentation from Carol Fletcher, IGAP Coordinator Organized Village of Kasaan, regarding Solid Waste Management & Recycling, discussion item:

Carol Fletcher explained the recycling program. 18 households to participate. City Clerk Feibel volunteered. Vice Mayor Rhodes Volunteered.

- b. Appointing Cherish Carter, Laura Jennings and Sue Edson as Election workers for the October 6, 2020, Regular Municipal Election, discussion and action item:

Burger moved to appoint Cherish Carter, Laura Jennings and Sue Edson as Election Workers for the October 6, 2020, Regular Municipal Election. Longbotham seconded the motion. Longbotham commented that the recall election we missed 26 ballots and make sure that all are counted, and we don't have the error that happened last time. Rhodes thanked the judges willing to serve.

MOTION: Move to appoint Cherish Carter, Laura Jennings and Sue Edson as Election Officials for the October 6, 2020, Regular Election.
F/S: Burger/Longbotham
YEAS: Edenfield, Burger, Hert, Longbotham, Rhodes, Stram,
NAYS: None
STATUS: Motion Passed.

- c. Lease of City Property, discussion of rates and availability of land, discussion and action item:

Rhodes explained that we would maintain current leases and then re-evaluate the lots coming available. We would want to discuss what would be considered by the Council for the specific locations.

- d. Authorizing a donation to Airlift Northwest to assist in mitigating the expense of keeping the PC 12 turboprop medevac aircraft in Southeast AK, discussion and action item:

Burger moved to donate \$2,000.00. Rhodes seconded the motion. Edenfield requested we consider \$5,000.00, half of what the other communities have donated. Edenfield Move to amend the amount to \$5,000.00. Rhodes seconded the motion.

MOTION: Move to donate \$5,000.00 to Airlift Northwest
F/S: Edenfield/Rhodes
YEAS: Edenfield, Burger, Hert, Longbotham, Rhodes & Stram
NAYS: None
STATUS: Motion Passed.

- e. Appointing Shannon Bosdell as the EMS Coordinator for the City of Thorne Bay, discussion and action item:

Burger moved to appoint Shannon Bosdell as the EMS Coordinator. Rhodes seconded the motion.

Rhodes commented that he would like to see Shannon as an Interim Coordinator because right now he is already spread thin. He is needed all across the Island and this would be thinning him out more than he is already.

Hert commented that he did not agree with Shannon as a Coordinator. We don't need to have him on the phone calling people when he should be responding to the call.

Rhodes amended the motion to appoint Shannon Bosdell as the Interim Coordinator until the City could appoint a fulltime Coordinator.

MOTION: Move to appoint Shannon Bosdell as the EMS Coordinator
F/S: Burger/Rhodes
YEAS: Edenfield, Burger, Hert, Longbotham & Rhodes
NAYS: Stram
STATUS: Motion Passed.

11) ORDINANCE FOR INTRODUCTION:

- a. Ordinance 20-10-06-01 amending Title 2 – Administration and Personnel, Chapter 2.56, City Property, Amending 190 Lands Available for Leasing- Classification of Lands, discussion and action item:

Burger moved to approve Ordinance 20-10-12-01. Rhodes seconded the motion.

MOTION: Move to approve Ordinance 20-10-12-01
F/S: Burger/Rhodes
YEAS: Edenfield, Burger, Longbotham, Rhodes & Stram
NAYS: Hert
STATUS: Motion Passed.

12) EXPENDITURES EXCEEDING \$2,000.00:

- a. Authorizing the expenditure of CARES funding for the purchase of two ambulances and one fire truck, discussion and action item:

Burger moved to approve the purchase of two new ambulances and associated equipment with those two ambulances. Rhodes seconded the motion.

MOTION: Move to approve the purchase of two new ambulances and associated equipment with those two ambulances
F/S: Burger/Rhodes
YEAS: Edenfield, Burger, Hert, Longbotham, Rhodes & Stram
NAYS: None
STATUS: Motion Passed.

13) CONTINUATION OF PUBLIC COMMENT:

Thom Cunningham commented on the following:

- Would there be money left over for a bridge fire truck for Southside
- Appreciate work done with this but wasted time with quarantine facility and should have had a plan A and plan B made ahead of time to avoid this.
- Look for other grants that would provide for a fire truck and storage on Southside.
- As far as rumors and accusations regarding VPSO's, we should look at the facts and find the facts....VPSO Program does a fairly good job vetting applicant.

14) CONTINUATION OF COUNCIL COMMENT:

Edenfield commented on following:

- Thanked all in the community who helped on Friday. Many people stepped up behind the scenes and helped out.

Burger commented on the following:

- Agreed with Edenfield's comment, Thorne Bay is a wonderful community and it was a First-Class job in responding.

Stram commented on the following:

- As far as EMS coordinator, that is an important position and I want to see the City look into all background and get a good

Hert commented on the following:

- Agree with what Stram stated. We need to look for EMS Coordinator who can fully take on that EMS position. Will take a lot of a person's time and energy. Cannot drop ball on this one, need to push forward.

15) ADJOURNMENT:

Burger adjourned the meeting at 7:55 p.m.

Lee Burger, Mayor

ATTEST:

Teri Feibel, CMC

THIS AGREEMENT of Lease is made effective this 1st day of **November 1, 2020**, by and between the City of Thorne Bay, an Alaska municipal corporation, P.O. Box 19110, Thorne Bay, Alaska 99919 (hereinafter called the City or Lessor), and Southeast Island School District (SISD) of PO Box 19569, Alaska 99919, hereinafter referred to as (Lessee).

1. **Leased Premises.** The City of Thorne Bay hereby leases to Lessee the following described municipal land ("Premises"), situated in the City of Thorne Bay, First Judicial District, State of Alaska, described as follows:
 - a. City owned municipal land, located easterly of the City owned boat launch facility as shown on the attached map within the corporate boundaries of the City of Thorne Bay.
 - b. In additions to the terms and conditions contained in all of the sections of this Lease, the provisions of Title 2, Article III of the Thorne Bay Municipal Code shall apply to the terms and conditions of this Lease Agreement unless otherwise amended in this Lease.

2. **Term.** The term of this Lease shall be for a **one (1) year term** commencing **November 1, 2020 and terminating October 31, 2021**. The lease shall terminate automatically on the expiration of the first year, unless the Lessor and Lessee have executed a new lease for a new term, or agreed to an extension of this lease in writing. Absent an approved Lease Agreement, the Lessee shall vacate the Premises on or before the ending date of this Lease Agreement by removing all structures thereon. If the City and Lessee enter a new lease, or an extension of this Lease, the monthly lease payment shall be reviewed and adjusted in accordance with the provisions of Section 2.56.210 of Title 2, Article III of the Thorne Bay Municipal Code.

3. **Occupancy.** Lessee was granted occupancy of the Premises on or about October 31, 2014. Lessee will be granted continued occupancy of premises upon signature of this lease renewal.

4. **Rent.** This is a triple-net Lease with Lessee responsible for rent and taxes as defined herein. Lessee agrees to pay to Lessor rent, on or before the first day of each calendar month, payable to Lessor and mailed to City of Thorne Bay, PO Box 99110, Thorne Bay, Alaska 99919. Payments received after the 10th day of the month will be subject to a 10% late charge.
 - a) **Rental Rate.** Lessor will pay rent at the rate of \$300.00 per month.
 - a) ~~**Rental Rate.** Lessor will pay rent at the rate of **\$300.00 per month**, for the months of June 2020, through October 31, 2020.~~
 - b) ~~**Reduced Rental Rate:** Lessor will pay a reduced rental rate of **\$150.00 per month**, for the months of November 2020, through May 31, 2021~~

5. **Purchase.** Lessee is the owner of the modular building and equipment, personal property, and inventory.

6. **Annual Rent Adjustment.** The parties agree that if the Lessor and Lessee execute a new lease for a new term or agreed to an extension of this lease in writing the monthly rent shall be subject to adjustment mutually agreed upon by both parties. Under no circumstances shall the rental price be decreased from the amount charged at the outset of this Lease until the rent amount charged at the outset of this Lease has been paid for twelve (12) months.

7. **Sales and Property Taxes.**
 - a. Lessee shall pay, in addition to the rentals specified in Paragraph 4 above, any sums required to be paid under the sales tax, personal property tax, special assessments and/or real property laws that may be in force from time to time within the City of Thorne Bay, Alaska. The amounts for sales tax, special assessments and personal property taxes shall be payable at least ten (10) days prior to delinquency. Proof of the payment of Sales Taxes shall be provided to the Lessor on a monthly basis. Real property taxes for the year [insert year] on [insert year] actual taxable amount shall be prorated monthly over a nine-month period with one ninth of the annual estimated real property taxes paid by Lessee to Lessor at the time Lessee makes its monthly rent payments for May through September [insert date]. If the real property taxes for [insert date] are increased above the [insert date] real property taxes assessed by the City of Thorne Bay, once the new tax assessment has been determined Lessee will make arrangements with Lessor to increase the required prorate monthly payment to assure that the total real property tax payment has been paid to Lessor by September 1st of the following year to assure that Lessor has received from Lessee the required annual real property tax payment. Thereafter the property taxes will be prorated over a twelve-month period based on projected property taxes due and owing. Nonpayment of sales taxes, assessments and/or real property taxes shall be enforceable in the same manner as nonpayment of rent.
 - b. Lessee shall be responsible for and pay all personal property taxes applicable to the personal property owned by Lessee and located on the leased Premises.

8. **Deposits.** Lessee shall deposit with the City an amount equal to N/A. Upon termination of the Lease the Lessee shall vacate the premise leaving it in the same clean condition as presented at the time the Lease was entered. If the Premises are in need of cleaning, repairs or the Lessee is in default in payments the deposit shall be used to offset such costs. In the event the Premises are clean and in need of no repairs the deposit will be refunded in full.

9. **Use.** Lessee shall use the leased premises for the purposed of maintaining and operating a restaurant owned by the Southeast Island School District with indoor and outdoor seating open to the general public. Uses to also include other structures or facilities added to or adjacent to

the restaurant for the purpose of display or sale of items associated with Southeast Island School District, or the maintaining and operating of the restaurant. The leased premises shall not be used for any other purposes without the prior written consent of Lessor.

10. **Permits and Compliance with Law.** Lessee shall obtain all necessary local, state and federal permits necessary for the operation of Lessee's business and shall comply with all local, state and federal laws, rules and regulations. Failure to comply with any requirements of this section shall constitute a material breach of and a default of the Lease Agreement resulting in the Lessor's option to terminate the Lease Agreement, in the sole discretion of the Lessor. Upon termination due to a breach or default under this section, the Lessee shall vacate the premise immediately.

11. **Acceptance of the Leased Property by Lessee.** Lessee acknowledges that it/he/she has thoroughly examined the leased premises. Lessee accepts the leased premises in their "AS IS" condition. The Lessor shall not be required to perform any work to prepare leased premises for the Lessee. Lessee's taking possession of leased premises shall be conclusive evidence against the Lessee that, at the time possession was taken, leased premises were in good and satisfactory condition. Lessee has not relied upon any representations or statements of the Lessor or its representatives or agents regarding the condition of leased premises or their suitability for Lessee's uses under this Lease.

a. Lessee specifically acknowledges that Lessee has had access to the water reports related to the City of Thorne Bay water system and Lessee has reviewed those reports to the extent deemed necessary by the Lessee before determining to enter this Lease. Lessee admits and acknowledges that Lessee is fully aware that the City of Thorne Bay water system is not in full compliance with EPA and ADEC water quality standards. Lessee acknowledges that the City of Thorne Bay has no obligation whatsoever to comply with the EPA or ADEC water quality standards as a condition of this Lease. The decision to enter this Lease and operate the restaurant on the premises and to use and serve City water, or to use or serve some other water source, is solely that of the Lessee, and Lessee takes full responsibility to the fullest extent of the law for the water source it chooses to use in the operation of the restaurant. Lessee acknowledges that it/he/she has no cause of action of any kind or any nature, including any administrative proceedings or complaints, against the City of Thorne Bay based on any allegation or claim related to the water quality of the City of Thorne Bay water system.

12. **Insurance.**

a. **Liability Insurance.** During the term of this Lease, Lessee shall, at Lessee's own expense, maintain and keep in force adequate insurance to protect both the Lessor and Lessee against comprehensive liability, personal injury, including death, property damage, including as to any equipment or improvements, fire, and extended coverage claims. Lessee shall maintain insurance

in amounts not less than comprehensive general liability insurance with minimum limits of \$1,000,000, with minimum limits of \$1,000,000 per individual and \$1,000,000 per accident. Lessor shall be named as an additional insured on all policies. Proof of Insurance shall be provided to Lessor within thirty (30) days after the parties have executed this lease and prior to public use of the premises. Lessor shall be notified at least thirty (30) days before the cancellation or termination of any policy. Failure to place and maintain insurance in compliance with this section constitutes an immediate, material breach of and default of the Lease. Failure of the Lessee to provide the Certificate of Insurance showing the City of Thorne Bay as an additional insured within thirty (30) days of the signing of this Lease by the Lessee shall constitute a material breach and a default on the lease and the City shall have the right to immediately terminate the lease and pursue any other remedies allowable by law to remove the Lessee from the premises.

- b. **Property Insurance.** During the term of this Lease, Lessee shall at all times carry upon any property belonging to Lessee and placed, erected or installed in, on or upon the Premises, fire and casualty insurance protecting against loss, damage or destruction caused by wind, fire, lightning, explosion, vandalism, malicious mischief, or such other casualties and such other risks as may be provided by extended coverage. Any such insurance shall name Lessor as an additional insured or contain such other provisions as may be needed to preclude any subrogation claims by the insurers against Lessor. Any such insurance shall be endorsed to require at least thirty (30) days' notice to Lessor prior to cancellation. Lessee shall also be responsible for providing Lessee's own personal property/inventory insurance coverage. Lessor will not be providing any insurance for the protection of Lessee, Lessee's loss of business, personal injury or property damage claims or content coverage. Lessee is responsible for providing any and all of its own insurance coverage. Lessee shall store its property in and shall occupy leased premises at its own risk, and releases the Lessor, to the full extent permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury or property damage.
- c. **Workers' Compensation Insurance.** Lessee shall maintain Worker's Compensation Insurance in compliance with the laws of the State of Alaska, AS 23.30 et seq., and federal jurisdiction where the work is being performed.
- d. **Fire Insurance.** During the term of this Lease, Lessor shall maintain fire and extended coverage insurance on the building structures, solely for Lessor's benefit.
- e. **Insurance Policy Requirements.** All policies of insurance shall be issued by and maintained in responsible insurance companies selected by Lessee, organized under the laws of one of the states of the United States or The Underwriters at Lloyd's of London, authorized under the laws of the State of Alaska to assume the risks covered thereby, and rated at least "A" by A.M. Best Company, Inc. or Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, Inc. Lessee will deposit annually with Lessor policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Each policy shall contain a provision that the insurer shall not cancel nor modify it without giving written notice to Lessor and Lessee at least 30 days before the cancellation, non-renewal or modification becomes effective.

13. **Improvements to Real Property.** There shall be no improvements, alterations or modifications on the Premises without the prior review and written approval of all plans by Lessor. Any alteration, addition or improvement approved by Lessor shall be performed in a good and workmanlike manner and by competent craftsmen. All alterations, additions and improvements shall comply with all federal, state and local governmental statutes, ordinances, laws, codes and regulations affecting the leased Premises and the use thereof. Lessee is required to obtain building permit authorization from the Lessor for construction of any and all structures placed on the lease area.
14. **Leasehold Improvements.** All signs or symbols placed on or about the leased premises shall be subject to Lessor's prior written approval. With prior written consent of Lessor, Lessee may make alterations and improvements on or to the leased premises, at Lessee's sole cost and expense. All fixtures, buildings and/or equipment of whatsoever nature which shall have been installed on the Premises by the Lessee, whether permanently affixed or otherwise, shall be the property of Lessee, and shall be removed by Lessee at the expiration or termination of this Lease. at Lessee's sole cost and expense, in the sole discretion of the Lessor unless Lessor and Lessee mutually agree to improvements remaining on leased premise. Any of Lessee's improvements remaining on the leased premises longer than thirty (30) days after termination or expiration of the lease shall become the property of the Lessor.
15. **Termination of Lease.** If Lessee vacates the leased Premises prior to the end of the Lease term, Lessee shall be responsible for continuation of Lease payments until the Lease expires at the end of the Lease term, or Lessor and Lessee mutually agree to terminate Lessee's Lease obligation.
16. **Quiet Enjoyment.** If Lessee performs and fulfills all the covenants and conditions herein contained, Lessee shall quietly enjoy the Premises during the term of this Lease and any extensions thereof.
17. **Destruction of Premises.**
- a. A. In the event the Premises or any substantial portion thereof shall be damaged by fire, wind, flood, earthquake or other casualty, and it reasonably appears that repair cannot be effected so as to permit re-occupancy within thirty (30) days from the date of casualty, either party at its option, may by written notice mailed within ten (10) days from the date of such casualty elect to terminate this Lease, effective as of the date of such casualty. If neither party shall so elect to terminate this Lease, Lessee's liability for rent shall abate in proportion to that portion of the Premises rendered unfit for Lessee's operation by reason of such casualty until such time as repairs are completed; provided, however, that if repair work

progresses in stages and results in rendering portions of the Premises fit for utilization by Lessee from time to time, the abatement of rent shall be reduced proportionately as repairs to portions of the demised Premises are completed.

- b. In the event that less than a substantial portion of the demised Premises are damaged by fire, wind, flood, earthquake or other casualty, this Lease shall not end, but the rent shall be abated in accordance with the provisions contained in subparagraph (a) above, during any period in which repairs are being performed.
- c. As used in this paragraph, the term "substantial portion" means damage depriving Lessee of use of fifty percent (50%) or more of the Premises.
- d. Notwithstanding subparagraphs (a) and (b) above, this Lease shall not end nor shall any abatement of rent occur if the damage or destruction of the Premises is caused by any act or omission on the part of Lessee, its agents, invitees or licensees.

18. **Government Requirement.** The Lessee shall comply with all federal, state and municipal laws, ordinances, regulations, or orders, and all court orders and administrative orders.

19. **Assignments and Subleases.** Lessee shall not assign the Lease or any interest in the lease for any purpose and shall not sublet the Premises or any part thereof and shall not permit any person to occupy or use the Premises except upon Lessor's written consent. The lessor may consent to the lessee subletting the property in exhibit "a" to allow for the operation of a restaurant. Any unapproved assignment or sublease shall be void. Lessor reserves the right to withhold consent.

20. **Liens.** Lessee shall not do or permit anything causing the Premises to be encumbered by any lien and shall, whenever and as often as such lien is claimed against the Premises purporting to be for labor or materials furnished to Lessee or otherwise being based on a claim against Lessee, discharge the same within ten (10) days or Lessee shall post with Lessor a bond in an amount and with sureties which are satisfactory to Lessor guaranteeing that said lien will be removed. Notice is hereby given that Lessor shall not be liable for any labor or materials furnished to Lessee upon credit and that no mechanic's lien for such labor or material or other lien shall be attached to the interest of Lessor in the Premises.

21. **Entry of Lessor.** Lessor shall be privileged at any time to inspect the Premises, and during the six-month period next preceding the expiration of the term thereof, shall be privileged, together with brokers and prospective Lessees, to inspect the Premises. If, at reasonable hours, admission to the Premises for the stated purposes cannot be obtained, or if at any time Lessor shall deem admission necessary for the benefit of Lessee, Lessor may, but is not obligated to, enter the Premises by means of a master key or other peaceable manner.

22. Waiver and Indemnification.

- a. **Waiver.** The City of Thorne Bay shall not be liable to Lessee and Lessee hereby waives all claims against Lessor, in their capacity as the Lessor under this Lease, for any injury, illness, or death of any person or damage to any property in or about the Premises or real property caused by any act or omission of Lessee, its agents, or employees.
- b. **Indemnification.** Lessee agrees to protect, defend, indemnify, and hold the City of Thorne Bay and its mayor, council members, agents and employees, harmless from and against any and all claims, damages, actions, administrative proceedings, liability, loss, or expense (including reasonable attorneys' fees), of any kind and any nature, incurred in connection with or arising from any injury, illness, or death to any person or damage to any property or from any other cause whatsoever occurring in on or about the Premises or real property or any part thereof arising at any time and from any cause whatsoever in the Lessee's use of the Premises. In case any action or proceeding is brought against Lessor by reason of any such claim or liability, Lessee shall defend any and all suits that may be brought, and claims which may be made, against Lessor, at Lessee's sole cost and expense.
- c. The Lessor shall not be responsible or liable for any injury, loss or damage to any person or to any property of Lessee or other person caused by or resulting from the elements, frosting, breakage, leakage, steam, snow, ice, running water, or the overflow of sewage, in any part of leased premises or surrounding area used by or in support of restaurant operations. The Lessor shall not be responsible for any injury or damage caused by or resulting from acts of God or Mother Nature.
- d. Lessee shall defend, indemnify and hold the City and its mayor, council members, employees and agents harmless from any and all civil or criminal liabilities or penalties, including costs of defense, resulting from or arising out of or related to in any way Lessee's noncompliance with any term or provision of this Lease, which the noncompliance causes environmental or water quality damage, spill or other environmental related event, or civil or criminal penalties or sanctions to be incurred or alleged.

23. **Building Containing Premises/Grounds.** Lessee shall maintain the leased premises at Lessee's sole cost and expense and at all times keep the leased premises neat, clean and in a sanitary condition. Lessee shall keep and use the leased premises in accordance with applicable laws, ordinances, rules, regulations and requirements of all governmental authorities. Lessee shall permit no waste, damage or injury to the leased premises.

24. **Hazardous Substances.** Lessee shall not use the leased Premises in a manner that violates any federal, state or local law, regulation, or ordinance, including, but not limited to, any such law, regulation or ordinance pertaining to air and water quality, the handling, transportation, storage, treatment, usage or disposal of Hazardous Substances. "Hazardous Substances" shall

be interpreted broadly and include, but not be limited to, any material or substance that is defined or classified under federal, state or local laws as (a) "hazardous substance" pursuant to § 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 (14) or § 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, each as now or hereafter amended; (b) a "hazardous waste" pursuant to § 1004 or § 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6903, 42 U.S.C. § 691, as now or hereafter amended; (c) a toxic pollutant under § 307(l)(a) of the Federal Water Pollution Control Act, 33 U.S.C. § 1317(l)(a); (d) a "hazardous air pollutant" under § 112 of the Clean Air Act, 42 U.S.C. § 7412, as now or hereafter amended; (e) a "hazardous material" under the Hazardous Material Transportation Act, 49 U.S.C. § 1802(2), as now, or hereafter amended; (f) toxic or hazardous substances pursuant to regulations promulgated now or hereafter under the aforementioned laws; or (g) presenting a risk to human health or the environment under other applicable federal, state or local laws, ordinances, or regulations, as now, or as may be passed or promulgated in the future.

Lessee agrees to immediately notify Lessor if Lessee becomes aware of

- i. any Hazardous Substances or other environmental problem or liability with respect to the Premises or real property, or
- ii. any lien, action, or notice resulting from violation of any of the laws, regulations, ordinances, or other environmental laws.

It shall be Lessee's sole responsibility to pay for any and all remediation resulting from any contamination caused by Lessee or resulting from Lessee's use of the Premises. Lessee agrees to defend, indemnify and hold Lessor harmless from any liability, including costs and actual attorney's fees, associated with remediation of any hazardous waste identified on the subject property resulting from any use of the Premises by the Lessee.

25. **Utilities.** Lessee shall be responsible for utilities associated with the Premises, including but not limited to electricity, heat, water, sewer, telephone and refuse disposal. Lessee agrees to pay, and keep current, ALL charges, including deposits, for all utilities, including but not limited to water, sewer, refuse collection, electricity, propane, fuel oil and telephone. Failure to do so will result in the utility being shut off. If the City shuts off any of the utilities, such action shall constitute a material breach of the Lease and the Lessor shall have the immediate right to terminate the lease upon the shutoff, in the sole discretion of the Lessor. Absent an approved Lease Agreement, the Lessee shall vacate the premise immediately upon the shutoff of any utility.

26. **Signs.** Lessee will pay for exterior signage for Lessee's business. All signage must be consistent with any ordinances of the City related to signage.

27. **Default.** Any of the following shall constitute a default hereunder by Lessee:

- A. Failure to perform the covenants contained in this Lease for the payment of rent;
- B. Failure to perform or fulfill any other covenant or condition contained in this Lease;
- C. Dissolution, other termination of existence, or insolvency, in any sense, of Lessee;
- D. The shut off of utilities;
- E. The filing of a petition by or against Lessee for adjudication as a bankrupt, or for reorganization or arrangement within the meaning of the Bankruptcy Act;
- F. The dissolution or the commencement of any action or proceeding for the dissolution or liquidation of the Lessee or for the appointment of a receiver or trustee of leased premises of the Lessee;
- G. The taking possession of leased premises of the Lessee by any governmental officer of agency pursuant to statutory authority for the dissolution or liquidation of the Lessee;
- H. The making by the Lessee of an assignment for the benefit of creditors;
- I. Lessee vacates or abandons the leased premises; and
- J. A failure that continues for five (5) days or more to have the Lessor named as an additional insured as required under paragraph 12, and Lessee fails to cure such default within ten (10) days after receipt of a written notice has been received by Lessee specifying such failure to name the City as an additional insured.

The specification of events constituting default by the Lessee in this Section are in addition to any defaults specified in the Thorne Bay Municipal Code. Failure to perform a covenant or fulfill a condition contained in this Lease shall constitute a default for purposes of this paragraph, regardless of whether other consequences of such failure are provided for herein, as in the case where an assignment without consent is void.

28. **Lessor's Remedies on Default.** All rights and remedies of the Lessor enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law. In addition to the other remedies in this Lease provided, the Lessor shall be entitled to the restraint by injunction of the violation or attempted violation of any of the covenants, agreements or conditions of this Lease. Lessor's remedies are as follows:

In the event of any default of the Lessee, the Lessor shall have the following rights and remedies – all in addition to any rights or remedies that may be given to the Lessor by statute, common law, or under Thorne Bay Municipal Code.

- a. If Lessee defaults in the payment of the rent reserved in this Lease, and such default continues for ten (10) days after written notice, or if Lessee defaults in the prompt and full performance of any other provision of this Lease and such default continues for thirty (30) days after notice, or if the leasehold interest of Lessee be levied upon under execution or be attached by process of law, or if Lessee abandons the Property, then, in any such events, Lessee shall be in default under this Lease and Lessor may, at its election, either terminate this Lease and Lessee's right to possession of the Premises or, without terminating this Lease, endeavor to relet the Premises. Nothing herein shall be construed

so as to relieve Lessee of any obligation including payment of the rent reserved in this Lease.

- b. Re-enter leased premises and take possession thereof, remove all persons therefrom, and remove Lessee's property therefrom and store it in a public warehouse or elsewhere at the cost of Lessee, all without service of notice or resort to legal process (all of which Lessee expressly waives) and without becoming liable for trespass, forcible entry, detainer, or other tort or for any loss or damage which may be occasioned thereby;
- c. Declare the Term ended;
- d. Re-let leased premises in whole or in part for any period equal to or greater, or less, than the remainder of the Term for any sum which is commercially reasonable;
- e. Collect all reasonable damages, costs and expenses that the Lessor may incur by reason of default by Lessee, together with interest calculated at the rate of ten percent (10%) per annum;
- f. If Lessee abandons the Premises or Lessor otherwise becomes entitled so to elect, and Lessor elects, without terminating this Lease, to endeavor to relet the Premises, Lessor may, at Lessor's option, enter into the Premises, remove Lessee's signs and other evidence of tenancy, and take and hold possession thereof as provided in subparagraph (ii) of this paragraph, without such entry and possession terminating this Lease or releasing Lessee, in whole or in part, from Lessee's obligation to pay the rent hereunder for the full term as hereinafter provided. Upon and after entry into possession without termination of this Lease, Lessor may relet the Premises or any part thereof for the account of Lessee to any person, firm or corporation other than Lessee for such rent, for such time and upon such terms as Lessor shall determine to be reasonable. In any such case, Lessor may make repairs, alterations and additions in or to the Premises, and redecorate the same to the extent deemed by Lessor necessary or desirable, and Lessee shall, upon demand, pay the cost thereof, together with Lessor's expenses of the reletting including, without limitation, broker's commissions and advertising expenses. If the consideration collected by Lessor upon any such reletting for Lessee's account is not sufficient to pay yearly the full amount of the rent reserved in this Lease, together with the cost of repairs, alterations, additions, redecorating and Lessor's expenses, Lessee shall pay to Lessor the amount of each yearly deficiency upon demand.
- g. If Lessor elects to terminate this Lease in any of the contingencies specified in this paragraph, it being understood that Lessor may elect to terminate the Lease after, and notwithstanding its election to terminate Lessee's right to possession as provided in subparagraph (i) of this paragraph, Lessor shall forthwith, upon such termination, be entitled to recover as damages, and not as a penalty, an amount equal to the then present value of the rent reserved in this Lease for the residue of the term of this Lease, less the present value of the fair rental value of the Premises for the residue of the term of this Lease.

- h. Lessee agrees that if it shall, at any time, fail to make any payment or perform any other act on its part to be made or performed under this Lease, Lessor may, but shall not be obligated to, after ten (10) days prior written notice and without waiving, or releasing Lessee from any obligation under this Lease, make such payment or perform such other act to the extent Lessor may deem desirable, and in connection therewith to pay expenses and employ counsel. Lessee agrees to pay a reasonable attorney's fee if legal action is required to enforce performance by Lessee of any condition, obligation or requirement thereunder. All sums so paid by Lessor and all expenses in connection therewith, together with interest thereon at the current maximum legal rate of interest from the date of payment to the date of repayment, shall be deemed additional rent hereunder and payable at the time of any installment of rent thereafter becoming due, and Lessor shall have the same rights and remedies for the non-payment thereof, or of any other additional rent, as in the case of default in the payment of rent.
29. **Lessor's Remedies.** In the event of default hereunder by Lessee, Lessor shall have all the rights and remedies afforded by law, which shall be cumulative and may be exercised separately or concurrently.
30. **Waiver.** Except to the extent that a party may have otherwise agreed in writing, no waiver by a party of any breach by the other party of any of its obligations, agreements or covenants hereunder shall be deemed to be a waiver of any subsequent breach of the same or any other covenant, agreement or obligation. Nor shall any forbearance by a party to seek a remedy for any breach of the other party be deemed a waiver of its rights or remedies with respect to such breach.
31. **Changes.** No modifications, amendments, deletions, additions or alterations of the Lease Agreement shall be effective unless in writing and signed by Lessor and Lessee and such representatives of the Lessor and Lessee are authorized to make such changes.
32. **Joint Product.** The language set out in this Lease represents the joint product of the parties and shall not be construed against one party in favor of the other. Each party hereto has had the option of seeking the advice of legal counsel in the drafting of this Lease, and the rule of construction favoring construction against the drafter shall not apply. Lessee acknowledges and agrees that Lessee has not received any legal advice from the Lessor's attorney or from anyone associated with the Lessor.
33. **Authority.** The parties and their undersigned representatives warrant that they have full authority to enter into this Lease Agreement and to execute this Lease Agreement.
34. **Surrender of Leased Premises.** Upon termination of this Lease Agreement, Lessee agrees to peacefully quit and surrender the leased premises without notice, remove all of Lessee's

buildings, equipment and personal property and leave the leased premises neat and clean. The Lessor, may through mutual agreement with Lessee, allow Lessee to leave all buildings, equipment and personal property on the Premise.

35. **Governing Law, Jurisdiction and Venue.** The laws of the State of Alaska shall govern the construction, interpretation and validity of this Lease. The Superior Court for the State of Alaska, First Judicial District at Craig, Alaska, shall be the exclusive jurisdiction and venue for any action of any kind and any nature arising out of or related in any way to this Lease and to the use of the Premises by the Lessee. Lessee specifically waives any right or opportunity to request a change of venue for trial from Craig, Alaska pursuant to A.S. 22.10.040.
36. **Acknowledgment by Lessee.** Lessee acknowledges that Lessee has had a full opportunity to consult with attorneys of Lessee's choice before signing this Agreement. Lessee acknowledges that Lessee is not relying on any statements or representations made by any employees, representatives, officers, consultants, the Mayor, or Council members of the City in entering this Lease. Lessee further acknowledges that Lessee has not received and is not relying on any legal advice or representations by the City attorney.
37. **General.**
- a. The provisions of this Lease shall bind and inure to the benefit of the successors, devisees, legatees, heirs, distributes, representatives, and assigns of the parties. This provision does not limit in any way the Lessor's sole discretion as to any subletting or assignment of the Premises.
 - b. This Lease contains all of the covenants, promises, agreements, conditions and understanding, either oral or written, between the parties. No subsequent alteration change or amendment to this Lease shall be binding upon the parties unless reduced to writing and signed by them. This Lease supersedes all previous agreements or discussions or negotiations, whether orally or in writing, between the parties.
38. **Notice.** Any notice required to be given by either party to the other shall be deposited in the United States mail, postage prepaid, addressed to Lessor at P.O. Box 19110, Thorne Bay, Alaska 99919, or the Lessee at, PO Box 19569, or at such other address as either party may designate in writing to the other.

DATED this ____ day of ____ 2020.

LESSOR:
THE CITY OF THORNE BAY

LESSEE:
SISD

By _____
Mayor

By _____
Sherri Becker, Superintendent

STATE OF ALASKA)
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ 2020, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared _____, to me known and known to me to be the person named in and who executed the within and foregoing document, and he acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

Notary Public, State of Alaska
My commission expires:

THIS IS TO CERTIFY that on this ____ day of October 2020, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared _____, to me known and known to me to be the person named in and who executed the within and foregoing document, and he acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

Notary Public, State of Alaska
My commission expires:



**CITY OF THORNE BAY
ORDINANCE 20-10-12-01**

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF THORNE BAY, ALASKA, AMENDING TITLE 2-ADMINISTRATION AND PERSONNEL; CHAPTER 2.56-CITY PROPERTY, ARTICLE III - LONG TERM LEASE OR SHORT TERM LEASE OF CITY OWNED REAL PROPERTY; SECTION 2.56.190-LANDS AVAILABLE FOR LEASING-CLASSIFICATION OF LAND; ADDING SUBSECTION F-TIDELAND LEASE

BE IT ENACTED BY THE CITY COUNCIL FOR THE CITY OF THORNE BAY, ALASKA

Section 1. Classification. This ordinance is of a general and permanent nature, the chapter and section hereby amended shall be added to the Thorne Bay Municipal Code.

Section 2. Severability. If any provisions of this ordinance or any application thereof to any person or circumstances is held invalid, the circumstances shall not be affected thereby.

Section 3. Amendment of Section. The title and chapters of Title 2 – Administration and Personnel, Chapter 2.56.190-Lands available for leasing-classification of lands; is hereby amended and added to the Thorne Bay Municipal Code.

Section 4. Effective Date. This ordinance shall become effective upon adoption.

PASSED AND APPROVED October 12, 2020

Lee Q. Burger, Mayor

ATTEST:

Teri Feibel, CMC

[Introduction: September 15, 2020]
[Public Hearing: October 12, 2020]

ARTICLE III. LONG TERM LEASE OR SHORT-TERM LEASE OF CITY- OWNED REAL PROPERTY

2.56.190 LANDS AVAILABLE FOR LEASING-CLASSIFICATION OF LANDS.

- A. All lands and interest in land owned by the city, including tide and submerged lands, may be leased or rented as hereinafter provided. Thorne Bay RV Park, Thorne Bay Harbor Facilities, Parking and other service rented by the day, week, month or year are regulated in other sections of the Thorne Bay Municipal Code.
- B. Before accepting applications to lease lands, the city shall have zoned by ordinance or otherwise classified the lands in question for leasing and for particular land uses. No lease shall be granted except for the particular uses for which the tract is zoned or classified. The classification of a tract of leased land may be changed by ordinance after consideration by the City.
- C. No city-owned property shall be leased or otherwise developed prior to the assignment of a particular zone or the repeal of the reserved use classification.
- D. **Long Term Lease.** A long-term lease herein referred to as "Lease" may not exceed 30 years. ~~A renewal option exercisable at the discretion of the lessee with approval of the city council may extend a long term lease, for an additional period of time, not to exceed 30 years. Long term leases are subject to terms set forth in Article III.~~
- E. **Short Term Lease.** A short-term lease herein referred to as "Rental Agreement" may not exceed 5 years. ~~A renewal option exercisable at the discretion of the lessee with approval of the city council may extend a short term lease for additional periods of time not to exceed 5 years.~~ The City may in its discretion require amendments or revisions to the lease as a condition of approval for extension. Short term leases are subject to the specific short-term lease terms set forth in Article III.
- F. **TIDELAND LEASE. TIDELAND LEASES MAY NOT EXCEED 99 YEARS. A TIDELAND LEASE HEREIN REFERRED TO AS "MUNICIPAL TIDELAND LEASE" MAY NOT EXCEED 99 YEARS. A RENEWAL OPTION EXERCISABLE AT THE DISCRETION OF THE LESSEE WITH APPROVAL OF THE CITY COUNCIL MAY EXTEND A TIDELAND LEASE, FOR AN ADDITIONAL PERIOD OF TIME, NOT TO EXCEED 99 YEARS. LONG TERM LEASES ARE SUBJECT TO TERMS SET FORTH IN ARTICLE III.**

(Ord. 16-03-01-02)

2.56.200 LEVELS OF APPROVAL REQUIRED.

- A. Except as provided in subsection B and C, leases of city-owned property shall be authorized by non-code ordinance.

- B. Leases valued at ten thousand dollars or less and for a lease term (including the lessee’s rights of renewal) of 5 years or less, and involving two acres or less, may be authorized by the council by resolution.
- C. All short-term leases or rental agreements may be authorized by the city council.

2.56.210 RENT.

- A. **Rent for short term leases** and lands leased for public use, shall be derived through negotiations with the City based on the best interest of the city. All monthly or annual rents or lease payments shall be reviewed and adjusted, at a minimum, every five (5) years unless provisions provide for automatic adjustments to the rent or lease payments.
- B. **Public Use.** City lands may be leased or rented to any state or federal agency or political subdivision of the state or to a nonprofit organization and for a consideration determined by the council to be in the best interest of the city.
- C. **Appraisal.** With the exception of the public uses described in paragraph B of this section, the City Council may determine it is in the best interest of the City, that prior to leasing of land, or renewal of a lease that the land be appraised according to Municipal Code, but the council is not required to obtain an appraisal.
- D. **Short Term Leases.** With the exception of the public uses described in paragraph B of this section, all lands leased through a short-term lease “rental agreement”, or a renewal lease issued therefore, shall be negotiated by the city and approved by the city council. (Ord. 16-03-01-02)

2.56.220 TERM OF LEASES.

- A. Any Long-Term Lease will be negotiated between the applicant and the city and be for a term not to exceed 30 years with the option of renewal, in the sole discretion of the City, for a period not to exceed 30-year increments and with such revisions and amendments as deemed by the City in the best interest of the City. The applicant shall state in the application the term desired. In determining whether to grant a lease for the requested term, the council shall consider the nature, extent and cost of the improvements which the applicant agrees as a condition of the lease to construct and the value of the other relevant factors. The term of any given lease shall depend upon the desirability of the proposed use, the amount of investment and improvements proposed to be made by the lessee, and the nature of the improvements proposed with

respect to the durability and time required to amortize the proposed investment. ~~A renewal option exercisable at the discretion of the lessee, with approval of the council, shall be considered in determining the term of the lease for purposes of this subsection~~

- ~~B.~~ Any Short-Term Lease will be negotiated between the applicant and the city and be for a term not to exceed 5 years with the option of renewal in the sole discretion of the City, for periods not to exceed 5 years and with such revisions and amendments as deemed by the City in the best interests of the City. The applicant shall state in the application the term desired. In determining whether to grant an agreement for the requested term, the council shall consider the nature, extent and cost of the improvements which the applicant agrees as a condition of the rent to construct and the value of other relevant factors. The term of any given rental agreement shall depend upon the desirability of the proposed use, the amount of investment and improvements proposed to be made by the renter, and the nature of the improvements proposed with respect to the durability and time required to amortize the proposed investment. ~~A renewal option exercisable at the discretion of the lessee with approval of the Council, shall be considered in determining the term of the rental agreement for purposes of this subsection.~~
- C. ANY MUNICIPAL TIDELAND LEASE WILL BE NEGOTIATED BETWEEN THE APPLICANT AND THE CITY AND BE FOR A TERM NOT TO EXCEED 99 YEARS WITH THE OPTION OF RENEWAL, IN THE SOLE DISCRETION OF THE CITY, FOR A PERIOD NOT TO EXCEED 99-YEAR INCREMENTS AND WITH SUCH REVISIONS AND AMENDMENTS AS DEEMED BY THE CITY IN THE BEST INTEREST OF THE CITY. THE APPLICANT SHALL STATE IN THE APPLICATION THE TERM DESIRED. IN DETERMINING WHETHER TO GRANT A LEASE FOR THE REQUESTED TERM, THE COUNCIL SHALL CONSIDER THE NATURE, EXTENT AND COST OF THE IMPROVEMENTS WHICH THE APPLICANT AGREES AS A CONDITION OF THE LEASE TO CONSTRUCT AND THE VALUE OF THE OTHER RELEVANT FACTORS. THE TERM OF ANY GIVEN LEASE SHALL DEPEND UPON THE DESIRABILITY OF THE PROPOSED USE, THE AMOUNT OF INVESTMENT AND IMPROVEMENTS PROPOSED TO BE MADE BY THE LESSEE, AND THE NATURE OF THE IMPROVEMENTS PROPOSED WITH RESPECT TO THE DURABILITY AND TIME REQUIRED TO AMORTIZE THE PROPOSED INVESTMENT. ~~A RENEWAL OPTION EXERCISABLE AT THE DISCRETION OF THE LESSEE, WITH APPROVAL OF THE COUNCIL, SHALL BE CONSIDERED IN DETERMINING THE TERM OF THE LEASE FOR PURPOSES OF THIS SUBSECTION.~~ (Ord. 16-03-01-02)

2.56.230 PUBLIC NOTICE.

Public Notice for competitive leasing shall be given as stated in Section 2.56.230 of the Thorne Bay Municipal Code. A Thirty-day notice shall be given by posting notice thereof in three public places and by publication in a newspaper of general circulation twice. The notice must contain the name of the applicant, a brief description of the land, its area and general location, proposed use, term, computed annual minimum rent, limitations if any, a declaration stating the particular method of disposal to be used and the time and place set for a hearing on the proposed lease.

(Ord. 16-03-01-02)

2.56.240 LEASING LAND - NEGOTIATED OR COMPETITIVE

- A. Negotiated leasing may be conducted with a single prospective lessee or renter through the use of resolution.
- B. Competitive leasing may be conducted if determined by the City, though a non-code ordinance and competitive bidding requirements.

(Ord. 16-03-01-02)

2.56.250 APPLICATIONS, FEES, TERMS, AND PAYMENTS FOR COMPETITIVE BIDDING.

Unless otherwise provided by the council in the ordinance or resolution authorizing the lease of specific lands, the following procedures shall be followed for competitive bidding:

- A. **Qualifications of applicants or bidders.** An applicant or bidder for a lease is qualified if the applicant or bidder:
 - 1. Is eighteen years or age or over;
 - 2. Is a group, association, partnership or corporation which is authorized to conduct business in the State of Alaska; or
 - 3. Is acting as an agent for another meeting one of the above criteria and has qualified by filing with the administrator or his designee, prior to the time set for the disposition, a power of attorney or a letter of authorization creating such agency. The agent shall represent only one principal, to the exclusion of himself.
- B. **Applications for lease.** All applications for lease of lands shall be filed with the City Clerk on forms provided by the city. Only forms completed in full and

accompanied by a one hundred dollar (\$100.00) nonrefundable filing fee will be required for filing. Applications that qualify as a public use as defined in 2.56.210 (B) may be exempted from the filing fee. With every application the applicant shall submit a development plan showing and stating:

1. The purpose of the proposed lease;
2. The use, value and nature of improvements to be constructed;
3. The type of construction;
4. Dates construction is estimated to commence and be completed; and
5. Whether the intended use complies with the zoning and the Thorne Bay land use code.

C. **Deposits for Cost.** All applications filed with the city clerk will be forwarded to the administrator to determine estimated costs required to handle the application, including, but not limited to one or more of the following: survey, appraisal, and advertising of the proposed lease of the area under application. Upon determination of the estimated costs, the administrator shall notify the applicant in writing of such costs, and a deposit must be made within thirty calendar days after the notice is mailed. Failure of the applicant to pay the deposit shall result in the application being cancelled. If the applicant does not accept a lease within thirty-calendar days after it is offered to the applicant, all deposit money spent or encumbered for survey, appraisal or advertising shall be forfeited, and the balance, if any, shall be returned to the applicant. If the land applied for is leased to another, the latter shall be required to pay actual costs of survey, appraisal and advertising, and the original deposit shall be returned to the depositor. The lessee shall be required to pay any excess of costs over deposits, and where the deposit exceeds actual costs, the excess shall be credited to present or future rents under the lease. All survey, appraisal and advertising shall be performed only under the control of the city, and any such work done without such control will not be accepted by the city. Those applications defined as a public use in 2.56.210 may be exempted from the requirements of this subsection.

(Ord. 16-03-01-02)

2.56.260 COMPETITIVE BIDDING -- APPEALS.

A. **Where competitive bidding is used,** the city may either require written sealed bids stating the annual rental amount offered or hold an auction on the rent amount. Only applicants who have completed the application requirements to the city's satisfaction (including submittal of a development plan and the deposits for cost) shall be qualified to bid. The City may base its award of lease

on a combination of factors (including the development plan and the extent to which the proposed project will meet community needs) rather than solely upon rental amount bid. The city reserves the right to reject all bids and return the deposits to the applicants.

- B. **Appeal.** In cases involving competitive bidding, an aggrieved bidder may appeal the determination of the winning bid to the council with five days (excluding Saturday and Sunday) following such determination. Such appeals must be in writing, signed and notarized and contain a complete statement of the grounds for appeal. The council shall within thirty days after receipt of a timely appeal review the asserted grounds for appeal and rule on the appeal. The council's decision shall be final.
- C. **Lease to Successful Bidder.** Following the appeal period or the council's ruling, the city administrator shall notify the successful bidder that the city is prepared to issue the lease. The bidder shall be given thirty calendar days from date of mailing the notice in which to remit to the city clerk any bid balance. Failure to do so shall result in forfeiture of any and all rights previously acquired in the proposed lease, and in addition, any monies paid or deposited with the city shall be forfeited.
- D. **Issuance of Lease.** After expiration of the appeal period, or after the ruling on the appeal to the council, the administrator shall cause a lease to be issued and executed containing such terms as the council shall have established.

(Ord. 16-03-01-02)

2.56.270 NEGOTIATED LEASES.

The city administrator may commence negotiations with a single prospective lessee for the lease of city land. The final terms of a negotiated lease are subject to approval by the council through a resolution for short term lease and non-code ordinance for a long-term lease. The negotiated lease may not be executed until the effective date of the ordinance or resolution.

(Ord. 16-03-01-02)

2.56.280 RIGHTS PRIOR TO LEASING.

- A. The filing of an application for a short or long-term lease shall give the applicant no right to a lease nor to the use of the land applied for.
- B. Any use of city-owned property not authorized by a short or long-term lease shall constitute a trespass against the city.

2.56.320 TERMS AND CONDITIONS OF LONG-TERM LEASES AND SHORT-TERM LEASES (RENTAL AGREEMENTS).

In addition to other applicable provisions of this code, the terms, conditions and covenants following as subsections

- A. (A) through (W) of this section shall govern all long term leases and may govern short term leases (rental agreements) made under the provisions of this chapter and shall be as a matter of law incorporated in all such leases of land made, or issued by the city unless the council by resolution provides otherwise as to a specific lease, and are incorporated as though set out in full in the lease. Each lease shall contain such additional provisions as the council deems necessary to protect the public interest. Violation by the lessee of any duty of lessee's contained in subsections A through V shall be grounds for the city's termination of the lease, if, following written notice to lessee of lessee's breach, lessee has not in thirty days entirely remedied the breach to the city's satisfaction. All long term and short-term leases shall be reviewed every five years throughout the life of all leases. Additions, modifications, adjustments or changes may be made to all leases at the time of review.
- B. **Lease Utilization.** Leased lands shall be utilized only for purposes within the scope of the applicable land use classification or zoning and the terms of the lease, and in conformity with the ordinances of the city, Federal and State Laws and Regulations. Utilization or development for other than the allowed uses shall constitute a violation of the lease and subject the lease to termination or cancellation by the city at any time.
- C. **Adjustment of Rent for long term or short-term leases.** The annual rent payable pursuant to any lease becomes subject to adjustment by the council on the fifth anniversary of the date of the lease and at each five-year interval thereafter unless specified otherwise in the lease. The process upon which rents may be adjusted by the City Council will be determined prior to finalizing any lease.
- D. **Subleasing.** The lessee may sublease lands, or any part thereof leased to him hereunder, provided that the lessee obtains the approval of the council to such sublease. Leases not having improvements thereon shall not be sublet. Subleases shall be in writing, and subject to the terms and conditions of the original lease and such further terms and conditions, as the council may deem proper including adjustments to rents and conditions. A copy of the sublease shall be filed with the city administrator.

E. **Assignments.** The lessee shall not assign the lease without prior approval of the City Council, which may impose terms and conditions on the assignment. The assignee shall be subject to all of the provisions of the original lease, and the assignor shall not be relieved of his obligations there under. A copy of any assignment shall be filed with the city administrator. The City Council will not approve an assignment to an LLC unless all the members of the LLC sign a personal guarantee for performance of the lease terms and conditions.

F. **Modification.** Any modification or amendment of a lease shall be in writing, signed by both the city and the lessee. Modification of any lease does not require authorization by ordinance or resolution where the lease was negotiated with a single prospective lessee.

G. **Cancellation and Forfeiture.**

1. Leases in good standing may be cancelled in whole, or in part, at any time, upon mutual written agreement by lessee and the council. Any lease may, at the council's option, include a term providing that the lease may be terminated by the lessee upon ninety days' notice in writing to the city before the end of an annual rental period unless stated otherwise in the lease.
2. If the lessee defaults in the performance or observance of any of the lease terms, covenants or stipulations, or any applicable term of this chapter, or any portion of the city code as applied to the property in question, the lessee is automatically in default on the lease by operation of law. Incurring debt with the City shall not constitute a default. If such default continues for thirty calendar days after service upon lessee of written notice of default by the city without remedy of lessee of the default, the council shall take such action as is necessary to protect the rights and best interests of the city, including the exercise of any or all rights after default permitted by the lease. Lessee shall not remove any improvements during the time the lessee is in default.
3. The city may terminate or cancel the lease if the land is used for any unlawful purpose.
4. Failure to make substantial use of the land, consistent with the proposed use, within one year shall with the approval of the council constitute grounds for termination or cancellation. This time period may be extended by the council by resolution or by council authorization to the administrator.

H. **Site contamination Prohibited-Environmental Compliance Required.**

1. Any violation, at the site of the leased land, by lessee, or by a third-party present upon the land with lessee's permission, of an environmental statute or regulation of the city, state or federal governments shall be grounds for immediate termination of the lease by the city, at the city's sole discretion. By entering into the lease, the lessee agrees not to make any claim for monetary damages against the city for lease termination or cancellation pursuant to this subsection.
 2. The lessee shall at all times manage lessee's activities upon the leased lands, and the activities of third parties present with lessee's permission, so as to positively prevent any and all contamination of the site which would violate any Federal or State statute or regulation, which could subject the city to an enforcement action or any administrative proceeding by a state or federal agency, or which could subject the city to statutory or common law liability, diminish the value of the land, or cause city expenditures for response costs or remediation costs caused by a hazardous substances release, discharge, or spill. The City shall have the right to inspect or otherwise enter on to the leased premises during the term of the lease to assure lessee's compliance with federal and State Environmental Laws and Regulations.
 3. By entering into the lease, the lessee agrees to defend and indemnify the city from and against any and all claims of any kind and any nature, including death, by third parties (including governmental entities and industry pollution-based claims) brought against city arising out of or relating to in any way the use of the leased premises by the lessee or anyone on the leased premises by invitation or authorization of the lessee. This obligation to defend and indemnify the City shall extend beyond the term of the lease to any claim or action occurring during the term of the lease.
 4. By entering into the lease, the lessee agrees to reimburse the city for any and all expenses reasonably incurred by the city (including any response, remediation or site cleanup costs) because of activities on the land during the period of lessee's lease, including the City's attorney's fees.
- I. **Rights of Mortgagee or Lien holder.** In the event of cancellation or forfeiture of a lease for cause, the holder of a properly recorded mortgage of the improvements on the land shall be given a duplicate copy of any notice of default in the same manner as notice is given the lessee, provided such mortgagee has given the city clerk notice of such mortgage and the mortgagee's address.
 - J. **Payment of Annual Rentals.** Unless otherwise provided by the council by ordinance or resolution, all rent, and lease payments shall be due and payable on

the first of the month. Payments not made by the 10th of the month shall be considered delinquent.

- K. **Entry and Re-entry.** In the event the lease is terminated, or in the event that the demised lands, or any part thereof, are abandoned by the lessee during the term,
 - 1. The city or its agent or representative may, immediately or any time thereafter, reenter and resume possession of such lands or such part thereof and remove all persons and property there from either by summary proceedings or by a suitable action or proceeding at law without being liable for any damages, therefore. No reentry by the city shall be deemed an acceptance of a surrender of the lease.
- L. **Re-Lease.** In the event that a lease is terminated, the city council may offer the lands for lease or other appropriate disposal pursuant to the provisions of this Chapter.
- M. **Forfeiture of Rental.** In the event that the lessee terminates the lease because of any breach, the rental payment last made by the lessee shall be forfeited and retained by the city.
- N. **Written Waiver.** The receipt of rent by the city with knowledge of any breach of the lease by the lessee, or of any default on the part of the lessee in observance or performance of any of the conditions or covenants of the lease, shall not be deemed to be a waiver of any provision of the lease. No failure on the part of the city to enforce any covenant or provision of the lease, nor any waiver of any right thereunder by the city unless in writing, shall discharge or invalidate such covenants or provisions or affect the right of the city to enforce the same in the event of any subsequent breach or default. The receipt by the city of any other sum of money after the termination in any manner, of the term demised, or after the giving by the city of any notice thereunder to effect such termination, shall not reinstate, continue or extend the resultant term therein demised, or destroy, or in any manner impair the efficiency of any such notice or termination as may have been given thereunder by the city to the lessee prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by the city administrator.
- O. **Expiration of Lease.** Unless the lease is renewed or sooner terminated, as provided herein, the lessee shall peaceably and quietly leave, surrender and yield up unto the Lessor all of the leased land on the last day of the term of the lease.
- P. **Renewal of Lease.**

- i. Upon the expiration of the term of any lease, or the cancellation of a lease by mutual consent of all parties, thereto, the council may grant a new lease to the lessee or his assignee who owns valuable improvements thereon, provided:
- ii. The lessee or his assignee makes written application at least ninety days prior to such termination;
- iii. The lessee is not in default under the lease;
- iv. The use to which the land is to be put is compatible with the current use classification (or with such new classification as the council may adopt effective at the end of the current lease term) or with the applicable zoning provisions;
- v. The lessee's improvements on the leased land are in compliance with applicable building codes, fire and safety codes;
- vi. The lessee has complied with all requirements of the lease, particularly including the provisions of subsection G of this section, and there are no outstanding and unresolved environmental enforcement actions or proceedings or notice of violation pertaining to the leased premises;
- vii. The lessee is current in all monetary obligations to the city, including property taxes, sales taxes, utility bills, and rents for any other lands leased from the city; and
- viii. Mutually agreeable terms, consistent with the provisions of this chapter governing lease terms, are negotiated by the city and the prospective lessee.
 - 1. Such lease shall be for an annual rent equal to the value of the land which is then being charged for new leases or a consideration is determined by the council to be in the best interest of the city and shall be subject to adjustment on every fifth anniversary.
 - 2. Any renewal preference granted the lessee is a privilege and is neither a right nor bargained for consideration.

Q. Removal or Reversion of Improvements upon Termination of Lease.

Improvements owned by a lessee may within thirty calendar days after the termination of the lease be removed by the lessee, provided, such removal will not cause injury or damage to the lands or improvements of the City; and further provided that the city council may extend the time for removing such improvements in cases where actual hardship is Established to the satisfaction of the City Council. All periods of time granted the lessee to remove improvements, are subject to the lessee paying to the city pro rata lease rentals for such periods.

If any improvements and/or personal property are not removed within the time allowed, such improvements and/or personal property shall revert to, and absolute title shall vest in, the city, without further notice to the lessee.

- R. **Inspection.** The lessee shall allow an authorized representative of the city to enter the leased land at any reasonable time for the purposes of inspecting the land and improvements thereon. Upon the city's request, the lessee shall permit an authorized representative of the Alaska Department of Environmental Conservation (ADEC) to make an environmental audit of the leased premises. Notwithstanding any confidentiality provisions in federal or state law, by entering into the lease, the lessee agrees that the results of any environmental audit of the premises made by or at the order of any state or federal agency shall be made available to the city as landowner.
- S. **Use of Material.** All coal, oil, gas and other minerals, and all deposits of stone, earth or gravel valuable for extraction or utilization, are reserved by the city and shall not be removed from the land except with written permission of the council. The lessee shall not sell or remove for use elsewhere any timber, stone, gravel, peat moss, topsoil, or any other material valuable for building or commercial purposes; provided, however, that material required for the development of the leasehold may be used, if its use is first approved by the council in writing.
- T. **Rights-of-way.** The lessor expressly reserves the right to grant easements or right-of-way across leased land if it is determined in the best interest of the city to do so. If the lessor grants an easement or right-of-way across any of the leased land, the lessee shall be entitled to damages for all lessee-owned improvements destroyed or damaged. Damages shall be limited to improvements only and loss shall be determined by fair market value. Annual rentals may be adjusted to compensate the lessee for the loss of uses.
- U. **Warranty.** The city does not warrant by its zoning, classification or leasing of land that the land is ideally suited for the use authorized under the zoning, classification or lease, and no guaranty is given or implied that it will be profitable to employ the land for any use.
- V. **Notice or Demand.** Any notice or demand, which under the terms of a lease or under any statute must be given or made by the parties shall be in writing and be given or made by registered or certified mail, addressed to the other party at the address of record. However, either party may designate in writing such new or other address to which such notice or demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed delivered when deposited in the U.S. mails enclosed in a registered or certified mail prepaid

envelope addressed as herein provided. Email shall not constitute proper notice under this section.

W. **Additional Lease Terms.** Any lease shall contain such additional limitations, reservations, requirements or special conditions as the council may determine to protect the city's interest, including (without limitation) requirements (a) for improvements of a specified kind and value to be constructed or located on the land by the lessee within a specified time period, (b) for the lessee to complete the improvements set forth in the development plan submitted with the lease application within a specified time period, or (c) requirements that the lessee defend and indemnify the city against the third party claims for personal injury or property damage arising from lessee's occupancy of or use of the land, and provide liability insurance in an amount determined by the city and requiring that the city be named as an additional insured.