



Haines Borough
Assembly Agenda Bill

Agenda Bill No.: 20-1025
Assembly Meeting Date: 6/29/20

Business Item Description:	Attachments:
Subject: Authorize Interim Manager to sign lease with Alaska Marine Lines for Roll-On/Roll-Off Facility	1. Ordinance 20-06-572 2. Proposed Lease Agreement
Originator: Borough Manager	
Originating Department: Administration	
Date Submitted: 5/29/20	

Full Title/Motion:
No motion necessary since Ordinance 20-06-572 is already scheduled for its second public hearing 6/23/20.

Administrative Recommendation:
This ordinance is recommended by the Borough Manager.

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required	Projected Impact to Future Operating Budgets
\$ 0	\$ 0	\$ 0	Lease approved by later ordinance

Comprehensive Plan Consistency Review:

Comp Plan Goals/Objectives: Objective 2B, Page 56-57	Consistent: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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Summary Statement:
The Haines Borough Assembly on 7/10/18 adopted Resolution 18-07-764 endorsing a Memorandum of Understanding with Alaska Marine Lines, Inc. for the lease of tidelands and uplands to support construction of a marine freight transfer facility in Lutak Inlet.

HBC 14.16.160 provides that the final lease terms are subject to approval by the assembly by ordinance. The attached draft has been reviewed by the Borough Attorney and the terms have been accepted by AML. The completion of this ordinance and the attached lease will allow AML to start construction on the Ro-Ro.

Proposed Lease attached.

Referral:

Referred to:	Referral Date:
Recommendation:	Meeting Date:

Assembly Action:

Meeting Date(s): 06/02/20, 06/09/20, 06/23/20	Public Hearing Date(s): 06/09/20, 06/23/20
	Postponed to Date:

**A NON-CODE ORDINANCE OF THE HAINES BOROUGH ASSEMBLY APPROVING
THE LUTAK LEASE AGREEMENT BETWEEN THE HAINES BOROUGH AND ALASKA
MARINE LINES, INC.**

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is for the specific purpose of approving a single agreement and shall not become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption. The lease attached hereto is effective as of July 1, 2020.

Section 4. Purpose. This ordinance approves the terms of the Lease and Preferential Use Agreement for Construction and Operation of Roll-On/Roll-Off Facility and Associated Upland Activities between the Haines Borough and Alaska Marine Lines, Inc.

Section 5. Authority. This ordinance is adopted under the authority granted the Assembly to approve negotiated leases by HBC 14.16.160.

Section 6. Approval. The attached Lease and Preferential Use Agreement for Construction and Operation of Roll-On/Roll-Off Facility and Associated Upland Activities between the Haines Borough and Alaska Marine Lines, Inc. is hereby approved. The interim manager and mayor are hereby authorized to take all such steps as may be necessary to finalize and sign the Lutak Land Lease on behalf of the Haines Borough.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS ___th
DAY OF JUNE, 2020.

ATTEST:

Janice Hill, Mayor

Aleka Fullerton, CMC, Borough Clerk

Date Introduced:
Date of First Public Hearing:
Date of Second Public Hearing:



Haines Borough

LEASE AND PREFERENTIAL USE AGREEMENT FOR CONSTRUCTION AND OPERATION OF ROLL-ON/ROLL-OFF FACILITY AND ASSOCIATED UPLAND ACTIVITIES

DATE: MAY 28, 2020

Between: Haines Borough, an Alaska municipal corporation ("*Landlord or Borough*")
103 Third Avenue S.
Haines, Alaska 99827

And: Alaska Marine Lines, Inc., a Washington corporation ("*Lessee*")
18000 International Blvd., Suite 800
Seattle, WA 98188

SECTION A. TIDELANDS

Landlord leases to Lessee and Lessee leases from Landlord a portion of tidelands real property within Tract A, ATS 1464, consisting of approximately one acre immediately northward of the Landlord-owned Lutak Dock at 2112 Lutak Road, Haines, Alaska and more particularly described on Exhibit 1 attached hereto ("the Tidelands Property" or "the Tidelands"), on the terms and conditions stated below.

A.1. TERM OF LEASE (HBC 14.16.080)

A.1.1 Original Term. The term of lease for the Tidelands shall be for a period of thirty (30) years commencing July 1, 2020 and expiring June 30, 2050, unless sooner terminated as hereinafter provided.

A. 1.2 Possession. Lessee's right to possession and obligations under this lease shall commence on the first day of the term.

A.1.3 Renewal Option. Any renewal preference granted the lessee is a privilege, and is neither a right nor bargained-for consideration. Lessee shall have the option to extend this lease for one (1) renewal term of five (5) years provided:

A.1.3.a. The Lessee or the Lessee's assignee makes written application therefor at least 90 days prior to expiration of the original term;

A.1.3.b. The Lessee is not in default under the lease;

A.1.3.c. The proposed use is compatible with this lease, current use classification and zoning provisions;

A.1.3.d. Mutually agreeable terms, consistent with the provisions of Borough code governing lease terms, are negotiated by the borough and Lessee and approved by the borough assembly.

A.2. RENT

A.2.1 Base Rent. Rent terms are governed by HBC 14.16.090 that sets base rates at \$500 or 10% of appraised value, whichever is more. The appraised value of the Tidelands per sq. ft. as determined by Integra Realty Resource of Seattle, WA of October 31, 2018 is \$2.00, or \$87,120 per acre.

A.2.2 Annual Rent payments. Lessee shall pay to Landlord as base rent **\$8,712** annually. Rent for the first year of the initial term of this lease is due and payable on or before the first day of the term. After the first year, annual rent is payable within 30 days of the anniversary of the first day of the term and annual rent may be paid in one payment on the anniversary date, or in two equal payments at the Lessee's option, in which case the first payment shall be due on the anniversary date and the second payment is due on or before the date that is six-months after the anniversary date. Annual Rent due may be increased or decreased as provided in A.2.4.below.

A.2.3 Additional Rent. Any/all property taxes, insurance costs and utility charges that Lessee may be required to pay by the terms of this lease shall be paid in addition to the annual rent .

A.2.4 Adjustment of Rent. The annual rental payable shall be subject to adjustment by the assembly on the fifth anniversary of the date of the lease and each anniversary date thereafter which is divisible by the number five. All adjusted rates shall be computed at 10 percent of the fair market value of the Tidelands (excluding the value of the Facility and any other Lessee improvements). Such value shall be determined by an appraisal conducted pursuant to Haines Borough Code. The new rental amount shall be effective at the beginning of the five-year interval to which it applies.

A.2.5 Renewal Rent. Annual rental for any renewal term shall be equal to the minimum annual rent required by the Haines Borough Code as a percentage of appraised value of the land at the commencement of the renewal term.

A.3. USE OF THE TIDELANDS PROPERTY

A.3.1 Compliance with Law. Lessee's use of the Tidelands Property shall conform to all ordinances of the borough, including any applicable zoning ordinance and with all state and federal regulations, rules, and laws, as the code or any such rules, regulations, or laws may affect the activity upon or associated with the Tidelands.

A.3.2 Permitted Use. The Tidelands Property shall be used exclusively for the purpose of constructing, operating and maintaining a roll-on, roll off cargo facility as further defined in Section A.3.3 below.

A.3.3 Improvements. Consistent with the Scope of Work attached as Exhibit 2, Lessee shall not later than two (2) years from the commencement of the term substantially complete construction on the Tidelands of a barge docking facility with roll-on/roll-off capability suitable for handling standard cargo containers and breakbulk freight ("the Facility") to Lessee's design specifications subject to Landlord's approval, which approval shall not be unreasonably withheld. Lessee may construct other improvements on the Tidelands that support construction, maintenance and operation of the Facility, with Landlord's prior written approval, which approval shall not be unreasonably withheld. All barge ramps and associated equipment are, and shall remain, the personal property of Lessee. Utilization or development for other than marine cargo

related uses, without written consent of Landlord, shall constitute a violation of the lease and subject the lease to cancellation at any time.

A.3.4 Public Use of Facility Lessee shall allow the public access to use the Facility subject always to Lessee's preferential use rights, pursuant to a market rate schedule of fees and charges to be adjusted periodically, as approved.

[End of Section A. Tidelands]

SECTION B. UPLANDS

Landlord leases to Lessee and Lessee leases from Landlord a portion of real property adjacent to the Tidelands consisting of approximately **one-half acre** (21,780 sq. ft.) , and more particularly described on Exhibit 3 attached hereto ("Uplands Property" or "Uplands"), on the terms and conditions stated below.

B.1. TERM OF LEASE (HBC 14.16.080)

B.1.1 Original Term. The term of lease for Uplands shall be for a period of ten (10) years commencing July 1, 2020, unless sooner terminated as hereinafter provided.

B.1.2 Possession. Lessee's right to possession and obligations under this lease shall commence on the first day of the term.

B.1.3 Renewal Option. Any renewal preference granted the Lessee is a privilege, and is neither a right nor bargained-for consideration. Lessee shall have options to extend this lease for five (5) successive renewal terms (each a "Renewal Term") of five (5) years provided:

B.1.3.a. The lessee or the lessee's assignee makes written application therefor at least 90 days prior to the expiration of the original term or Renewal Term;

B.1.3.b. The lessee is not in default under the lease;

B.1.3.c. The proposed use is compatible with the lease, current use classification and zoning provisions;

B.1.3.d. Mutually agreeable terms, consistent with the provisions of Borough code governing lease terms, are negotiated by the borough and Lessee and approved by the borough assembly.

B.2. RENT

B.2.1 Base Rent. Rent terms are governed by HBC 14.16.090 that sets base rates at \$500 or 10% of appraised value, whichever is more. The appraised value of the Uplands per sq. ft. as determined by Integra Realty Resource of Seattle, WA of October 31, 2018 is \$8.00, or \$348,480 per acre.

B.2.2 Annual Rent payments. Lessee shall pay to Landlord as base rent **for the first year of the term \$ 17,424** payable within 60 days of commencement of this lease. For each year thereafter annual rent may be paid in one payment on the anniversary date, or in two equal payments at the Lessee's option, in which case the first payment is due on the anniversary date, and the second

payment is due on or before the date that is six-months after the anniversary date. Annual rent due may be increased or decreased as provided in B.2.4 below.

B.2.3 Additional Rent. All insurance costs, property tax and utility charges that Lessee may be required to pay by the terms of this lease shall be paid in addition to the annual rent .

B.2.4 Adjustment of Rent. The annual rental payable pursuant to any lease issued under the provisions of this chapter shall be subject to adjustment by the assembly on the fifth anniversary of the date of the lease and each anniversary date thereafter which is divisible by the number five. All adjusted rates shall be computed at 10 percent on the fair market value of the land and improvements owned by the borough and leased thereunder. Such value shall be determined by an appraisal made by the assessor or land manager or a certified appraiser hired by the borough and reviewed by the assembly, whose decision is final. The new rental amount shall be effective at the beginning of the five-year interval to which it applies.

B.2.5 Adjustment of leased space. Upon advance written request of Lessee, the leased premises may be decreased, however the minimum uplands lease shall be 0.5 acre. Any decrease of space leased shall be effective no earlier than three (3) months after receipt of Lessee's written request. Lessee shall bear all survey costs associated with a decrease in the area leased. Subject to availability, and upon advance written request, Lessee may lease additional space immediately adjacent to the leased premises up to a maximum of one additional acre. Any increase in the leased premises shall be effective no earlier than three (3) months after receipt of Lessee's written request. The option to increase the area of the leased premises may not be exercised at any time after Landlord has provided notice of Landlord's intention to undertake reconstruction of the Lutak Dock. Rent shall be adjusted to equal no less than 10% of the most current appraised value of the additional acreage leased.

B.2.6 Renewal Rent. Annual rental for any renewal term shall be equal to the minimum annual rent required by the Haines Borough Code as a percentage of appraised value of the land at the commencement of the renewal term.

B.3. USE OF THE PROPERTY.

B.3.1 Public Access. Landlord expressly reserves the right to grant easements or rights-of-way across the leased premises, including but not limited to an easement to provide a safe traffic corridor to allow public access and use of Lutak Dock, if it is determined in the best interest of the Landlord to do so, provided such easements or rights-of-way shall not unreasonably interfere with LESSEE's use and occupancy of the leased premises (including Uplands and the Tidelands) as authorized by this lease. Lessee shall not unduly restrict nor impede passage of authorized persons on easements or traffic corridors identified in Exhibit 3.

B.3.2 Compliance with Law. Lessee shall conform to all applicable laws and regulations of any public authority affecting the Uplands Property and the use thereof and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use. Uplands shall be utilized for purposes within the scope of the land use classification, the terms of this lease, and in conformity with ordinances of the borough, including any applicable zoning ordinance.

B.3.3 Restrictions on Use. The Uplands shall be used for the exclusive purpose of handling and storing cargo containers and associated equipment, and breakbulk freight shipped and received in the course of operating and maintaining the Facility. Utilization or development by Lessee for other than the allowed uses, without the written consent of Landlord, shall constitute a violation of

the lease and subject the lease to cancellation after twenty (20) days' written notice to Lessee. If the default is of such a nature that it cannot be completely remedied within the 20- day period, Lessee shall be in compliance with this provision if Lessee begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

B.3.4 Improvements. Lessee may construct improvements on the Uplands Property, with Landlord's prior written approval, which approval shall not be unreasonably withheld. All improvements constructed by Lessee shall remain the property of Lessee, and may be removed at Lessee's expense upon termination of this Lease.

[End of Section B. Uplands]

SECTION C. PREFERENTIAL USE

Lessee vessels calling to load and discharge containerized cargo on a scheduled basis shall be entitled to preferential berthing rights at the Facility in accordance with the terms and conditions set forth in this Agreement.

C.1. PREFERENTIAL BERTHING RIGHTS

C1.1. Lessee shall have the preferential right to use the Facility for purposes of mooring, docking, and loading or discharging cargo on or from Lessee vessels, including ships, barges, or other watercraft which are owned, operated, or chartered by or for Lessee or any affiliated or related company, or which are used in connection with any Lessee freight operations, or a vessel owned or operated by an entity with which Lessee has a connecting carrier, consortium, or rationalization agreement, if, and to the extent that, said vessel is carrying cargo on Lessee's behalf (collectively "Lessee Vessel") provided that the Borough reserves the right to maintain access for all users of the Lutak Dry Storage Dock ("Lutak Dock) and the Facility via a public right-of-way across the Leased Premises and dock area adjacent to the Facility when a Lessee Vessel is not actively engaged in loading or unloading operations.

C1.2. The preferential right of use provided by this paragraph is defined to mean that Lessee shall be accorded the right, after furnishing a vessel schedule at least 12 hours in advance to the Borough Harbormaster, to berth a vessel at the Facility.

C1.3. Lessee agrees Delta Western fuel barges will have priority use of Lutak Dock berths. Lessee's vessels will be accommodated at Lutak as needed on a space available basis.

C1.4. Lessee agrees that during the term of this Agreement its Haines representative, will furnish the Borough Harbormaster with information as to the position, estimated time of arrival in Haines, and estimated port time of any Lessee vessel desiring to berth at the Facility or at Lutak Dock at least 12 hours in advance of the estimated time of arrival.

C.2. RESERVATION OF RIGHTS.

The Borough specifically reserves to itself and for non-Lessee vessels rights to use and occupy the Lutak Dock, or portions thereof, subject to the priorities of use accorded to Lessee under this lease agreement. The Borough agrees that it will issue tariffs governing the rates, charges, and conditions for the use of the Lutak Dock and the Facility by others, and shall assess reasonable rates and charges to users of the Facility.

C.3 BERTHING OF LESSEE VESSELS.

In addition preferential berthing for loading and unloading cargo as provided above, barges owned, chartered, or operated by or on behalf of Lessee shall be allowed to berth at the Facility while not engaged in cargo operations, unless the Borough Harbormaster requests their removal to allow the use of Lutak Dock by other vessels. In such event, the Borough Harbormaster will notify the vessel captain as early as possible of the time the vessel must clear the Facility.

SECTION D. TERMS GOVERNING A. B AND C.

These terms apply to both Tidelands and Uplands (collectively “the Property”).

D.1 RESTRICTIONS ON USE. The Property shall be used only for purposes within the scope of the land use classification of the Property, the terms of this lease, and in conformity with ordinances of the borough, including any applicable zoning ordinance. Use for any other purpose shall constitute a violation of the lease and subject the lease to cancellation after twenty (20) days’ written notice to Lessee. If the default is of such a nature that it cannot be completely remedied within the 20- day period, Lessee shall be in compliance with this provision if Lessee begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. Lessee’s use of the leased premises shall conform to all ordinances of the borough, including any applicable zoning ordinance.

D.2. TARIFF REVENUE

D.2.1 Lessee shall publish a tariff schedule of rates for dockage, wharfage, handling and storage and shall make the Facility available for public use in accordance with its published tariff.

D.2.2. Lessee shall pay Landlord discounted wharfage in accordance with Port of Haines Terminal Tariff, FMC No. 3 Wharfage Rates, as follows:

Remainder of Year 2020	100% Discount
Year 2021	100% Discount
Year 2022	75% Discount
Year 2023	50% Discount
Year 2024 and ongoing	25% Discount

Transshipped/transloaded cargo shall be subject to a single-move, one-time wharfage charge at the same rate.

D2.3. Lessee shall submit to the Borough within ten days of the end of each month a statement detailing the vessel dockage and cargo tonnage handled during the previous month.

D2.4 Lessee shall prepare or cause to be prepared bills of lading detailing all cargo loaded on or from each container on any Lessee Vessel using the Premises. Lessee shall preserve all bills of lading and other records evidencing Lessee’s use of the Premises for not less than three (3) years after expiration of this Agreement.

D2.5 Amounts payable by Lessee for facilities or services under this Agreement supersede any charges for the same facilities or services under the Tariff for the Port of Haines.

D.3 ENVIRONMENTAL

D.3.1 The term *Environmental Law* shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment or in any way regulating or controlling the handling, use, transportation, storage, possession, treatment or disposal of Hazardous Substances. The term *Hazardous Substance* shall mean any hazardous, toxic, ignitable, explosive, corrosive, reactive, carcinogenic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

D.3.2 Lessee shall not cause any Hazardous Substance to be located, used, spilled, leaked, disposed of, or otherwise released on or under the Property. Lessee may locate, store or use on the Uplands only those Hazardous Substances and in the quantities typically located, stored, transported or used in the prudent and safe operation of the uses permitted, including petroleum fuels. Lessee shall comply with all environmental laws and exercise a high degree of care in the use and handling of Hazardous Substances in transfer of cargo and maintenance of the facility.

D.3.3 Lessee shall immediately notify Landlord upon becoming aware of the following: (a) any spill, leak, disposal or other release of a Hazardous Substance on, under or adjacent to the Property required to be reported to the United States Coast Guard (“USCG”) or the State of Alaska Department of Environmental Conservation (“ADEC”) and shall provide Landlord with a copy of any written notification submitted to USCG or ADEC; (b) any notice or communication from a governmental agency or any other person relating to any Hazardous Substance on, under or adjacent to the Property; or (c) any violation of any Environmental Law with respect to the Property or Lessee’s activities on or in connection with the Property.

D.3.4 In the event of a spill, leak, disposal or other release of a Hazardous Substance on or under the Property caused by Lessee or any of its contractors, agents or employees or invitees, or the suspicion or threat of the same, Lessee shall: (a) immediately undertake all emergency response necessary to contain, clean up and remove the released Hazardous Substance; (b) promptly undertake investigatory, remedial removal and other response action necessary or appropriate to insure that any Hazardous Substances contamination is eliminated to Landlord’s reasonable satisfaction; and (c) provide Landlord copies of all correspondence with any governmental agency regarding the release (or threatened or suspected release) or the response action, and a detailed report documenting all such response action.

D.3.5 Upon expiration or sooner termination of this lease for any reason, unless otherwise agreed by Landlord, Lessee shall remove all Hazardous Substances and facilities used for the storage or handling of Hazardous Substances from the Property and shall restore the affected areas by repairing any damage caused by the installation or removal of the facilities.

D.3.6 Lessee shall indemnify, defend and hold harmless Landlord, its employees and agents and the respective successors and assigns of each of them from and against all claims, demands, liabilities, damages, fines, losses, costs (including without limitation the cost of any investigation, remedial, removal or other response action required by Environmental Law) and expenses (including without limitation attorney fees and expert fees in connection with any trial, appeal, petition for review or administrative proceeding) arising out of or in any way relating to the presence of Hazardous Substances on or under the Property by Lessee to the extent caused by Lessee or any of its contractors, agents or employees or invitees. Lessee’s obligations under this

section shall survive the expiration or termination of this lease for any reason. Landlord's rights under this section are in addition to and not in lieu of any other rights or remedies to which Landlord may be entitled under this lease or otherwise.

D.3.7 Landlord shall indemnify, defend and hold harmless Lessee, its employees and agents and the respective successors and assigns of each of them from and against all claims, demands, liabilities, damages, fines, losses, costs (including without limitation the cost of any investigation, remedial, removal or other response action required by Environmental Law) and expenses (including without limitation attorney fees and expert fees in connection with any trial, appeal, petition for review or administrative proceeding) arising out of or in any way relating to the use, treatment, storage, generation, transport, release, leak, spill, disposal or other handling of **Hazardous Substances** on or under the Property **prior to, or unrelated to, Lessee's or its contractors', agents' or employees' or invitees' activities** on the Property. Landlord's obligations under this section shall survive the expiration or termination of this lease for any reason. Lessee's rights under this section are in addition to and not in lieu of any other rights or remedies to which Lessee may be entitled under this lease or otherwise.

D.4 LIABILITY AND GENERAL INDEMNITY

D.4.1. Liens. Lessee shall pay as due all claims for work done on and for services rendered or material furnished to the Property, and shall keep the Property free from any liens. If Lessee fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Lessee's default.

D.4.2 Duty to Inspect. Lessee shall inspect the Property prior to commencement of the Original Term. Landlord agrees to provide reasonable access to the site during regular business hours for Lessee's inspection.

D.4.3 Assumption of Risk by Lessee. Lessee expressly assumes the risk of loss, damage, or injury arising from the existing conditions of the Property and the adjacent Lutak Dock facility. Lessee has reviewed a report detailing the condition of the Lutak Dock authored by PND Engineers in 2014 based on an inspection conducted by Echelon Engineering ("the Report") which report stated "it is the opinion of PND Engineers, Inc. that the structure has reached the end of its credible 60-year service life" and the Haines Lutak Dock Roll On Roll Off Ramp Condition Assessment Final Report of R&M Engineers dated January 2018 (R&M Report) which concludes "it is unlikely that the existing dock will remain usable for another 10 years. Localized failure can be expected at any time" and accepts all risk of loss or damage to Lessee's property and improvements associated with any failure of the Lutak Dock including resulting loss of use of the Property or improvements placed on the Property. Lessee acknowledges this Agreement does not obligate Landlord to repair, maintain or replace Lutak Dock. Lessee shall indemnify and defend Landlord from any third party claim, loss, or liability arising out of or related to any claim based on the Property or any hazardous condition of the Property, directly related to Lessee's activities, while in the possession or under the control of Lessee. However, Lessee assumes no responsibility for maintenance and repair of the Lutak Dock. This obligation shall survive the expiration or termination of this Lease Agreement.

D.4.4 No Warranty/No Representation. Landlord makes no representations with respect to the conditions of the Property or the adjacent Lutak Dock facility other than those contained in the Report. The parties hereto expressly agree that the risk that actual physical conditions at the Property or adjacent Lutak Dock facility are materially different from the expected physical conditions at the Property is borne solely by the Lessee.

D.4.5 Landlord's Indemnification. Landlord shall indemnify and defend Lessee from any claim, loss, or liability arising out of or related to any negligent activity of Landlord on the Property or any hazardous condition of the Property while in the possession or under the control of Landlord. This indemnification obligation does not apply to any claim, loss or liability arising out of or related to the current or future condition of the Lutak Dock or Landlord's maintenance and repair of the Lutak Dock.

D.4.6 Removal of Existing Structures and other work to be performed by Landlord. Landlord shall remove the existing structures (one 20' X 40' and one 16' X 32') and perform other work as identified in Exhibit 4 attached in coordination with AML.

D.5. INSURANCE

During the term of this lease Lessee shall carry, at Lessee's cost, (i) comprehensive general liability insurance with limits of not less than \$2,000,000 per occurrence covering all risks arising directly or indirectly out of Lessee's activities on or any condition of the Property, and covering claims of Landlord against Lessee under the indemnity obligations assumed by Lessee in this lease; (ii) property damage and fire insurance, if applicable, for the replacement value of any improvements on the Property and on Lessee's personal property located on the Property; and (iii) worker's compensation in accordance with applicable law as well as employer's liability coverage of not less than \$1,000,000, and, if applicable, long shore and harbor workers' coverage; (iv) pollution insurance, \$2,000,000 combined single limit per loss applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims. Coverage shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of petroleum products, smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials, or other irritants, contaminants, or pollutants. All of the required insurances (except for worker's compensation and USL&H) shall name Landlord as an additional insured and waive subrogation in favor of Landlord. AML's insurance coverage shall be primary insurance as respects Borough, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by Borough, its officers, officials, employees and volunteers shall be excess of AML's insurance and shall not contribute to it. Insurance is to be placed with reputable insurers qualified to do business in Alaska. Certificates evidencing such insurance and bearing endorsements requiring 30 days' written notice to Landlord prior to any decrease in limits or cancellation shall be furnished to Landlord upon request.

D.6. TAXES AND UTILITIES

D.6.1 Property Taxes. Lessee shall pay all real property taxes and special assessments levied against the Property.

D.6.2. Special Assessments. If an assessment for a public improvement is made against the Property, Landlord may elect to cause such assessment to be paid in installments, in which case all of the installments payable with respect to the lease term shall be treated the same as ad valorem real property taxes.

D.6.3. Contest of Taxes. Lessee shall be permitted to contest the amount of any property tax or assessment as provided for in Haines Borough Code.

D.6.4. Payment of Utilities Charges. Lessee shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Property, including, but not limited to, charges for fuel, water, sewer, gas, and electricity. If any utility services are provided by or through Landlord, charges to Lessee shall be comparable with prevailing rates for comparable services. If the charges are not separately metered or stated,

Landlord shall apportion the charges on an equitable basis, and Lessee shall pay its apportioned share on demand.

D.7 MAINTENANCE OF PREMISES

D.7.1 Lessee shall, at its own expense, provide all routine preventive maintenance, repairs, and replacements to any Lessee structures, including: any Lessee buildings, container cranes, container handling equipment, Lessee installed electric systems and equipment, and the container storage area. Lessee shall be responsible for obtaining its own janitorial services for Lessee facilities on the Premises, if any.

D.7.2 Snow Removal Lessee will provide all snow removal and de-icing of the Lessee leased areas at Lutak. Lessee shall keep the Premises clean, orderly, and free of rubbish. If Lessee fails to adequately remove snow, ice, or debris, the Borough may furnish the necessary equipment and manpower to provide this service in which event Lessee shall promptly pay the Borough's billings for such services.

D.7.3 Lessee shall provide the Borough Harbormaster a semi-annual maintenance and repair report on any single incident of damage or repair over ten thousand dollars (\$10,000).

D.7.4. Within thirty (30) days after each anniversary of the date of this lease agreement, Lessee and the Borough agree to inspect the Premises and prepare a report describing the condition of the Premises and specifying any items in need of repair. The party responsible for those repairs shall start those repairs within thirty (30) days after the report is prepared and shall promptly complete them.

D.8. EMINENT DOMAIN; DESTRUCTION, RECONSTRUCTION OF LUTAK DOCK

D.8.1 Partial Taking. If a portion of the Property is condemned, this lease shall continue on the following terms:

D.8.1.a Lessee shall be entitled to all of the proceeds of condemnation relating to improvements constructed by Lessee, and Landlord shall be entitled to all of the proceeds of condemnation relating to the unimproved Property and Lutak Dock.

D.8.1.b. After the date on which title vests in the condemning authority, the rent shall be reduced in proportion to the reduction in value of the Property as an economic unit on account of the partial taking. If Landlord and Lessee are unable to agree on the amount of the reduction of rent, the amount shall be determined as provided in Section D.13.

D.8.2. Total Taking. If a condemning authority takes all the Property or a portion sufficient to render the remaining Property reasonably unsuitable for the use that Lessee was then making of the Property, this lease shall terminate as of the date the title vests in the condemning authorities. Landlord shall be entitled to all the proceeds of condemnation, and Lessee shall have no claim against Landlord as a result of the condemnation.

D.8.3. Sale in Lieu of Condemnation. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated as a taking by condemnation.

D.8.4. Damage and Destruction. If the Property is damaged or destroyed so that Lessee is unable to occupy the Property for its permitted use, Landlord may terminate this lease effective as of the date of the damage or destruction by giving Lessee written notice within 5 days of the date of the damage or destruction.

D.8.5 Reconstruction of Lutak Dock. In the event the Borough embarks on a (re)construction project regarding Lutak Dock, Landlord shall provide Tenant at least 360 days written notice of Landlord's intent and the parties agree to negotiate any effects of such project on this lease. Landlord will take reasonable steps to minimize interference with Lessee's business operations on the Property. If Lutak Dock reconstruction does prevent Lessee from using the Property for marine cargo operations rent shall be abated during all such periods Lessee is unable to use the Property for marine cargo operations. Such rent abatement shall be Lessee's sole remedy for loss of use of the Property resulting from dock reconstruction.

D.9. ASSIGNMENT AND SUBLETTING

No part of the Property may be assigned, mortgaged, or subleased by Lessee without the prior written approval of the Borough Assembly, provided however, that Lessee may sublet or license use of portions of the Property to its affiliated companies and customers in the ordinary course of its business. In the event Landlord consents to an assignment at any time during this lease, Lessee shall continue to remain liable to Landlord under the terms of this lease, unless otherwise agreed in writing. Any assignment/sublease shall be in writing and be subject to the terms and conditions of the original lease and such further terms and conditions as the assembly may deem appropriate. In the event of Landlord approval, a copy of the sublease shall be filed with the clerk.

D.10. DEFAULT. The following shall be events of default:

D.10.1 Default in Rent. Failure of Lessee to pay any rent or other charge within ten (10) days after it is due.

D.10.2. Default in Other Covenants. Failure of Lessee to comply with any term or condition or fulfill any obligation of this lease (other than the payment of rent or other charges) within twenty (20) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 20-day period, Lessee shall be in compliance with this provision if Lessee begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

D.10.3. Insolvency. Insolvency of Lessee; an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within 10 days shall each constitute a default. If Lessee consists of two or more individuals or business entities, the events of default specified in this subsection shall apply to each individual unless within 10 days after an event of default occurs, the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If this lease has been assigned, the events of default specified shall apply only with respect to the entity then exercising the rights of Lessee under this lease.

D.10.4. Abandonment. Lessee's failure to occupy the Property for one or more of the purposes permitted under this lease, for at least thirty (30) days per year, unless such failure is excused under other provisions of this lease, shall constitute abandonment.

D.10.5. Failure to Comply with Code and Regulations. Failure to comply with all laws, regulations, and rules and laws described below shall constitute a violation of the lease.

D.10.5.a. The lessee shall comply with all regulations, rules, and the code of the borough, and with all state and federal regulations, rules, and laws, as the code or any such rules, regulations, or laws may affect the activity upon or associated with the Property.

D.10.5.b. The lessee shall comply with all provisions of the code which are promulgated for the promotion of sanitation, life safety, and public health. The leased premises shall be kept in a neat, clean, and sanitary condition, and every effort shall be made to prevent pollution.

D.10.5.c. Fire Protection. The lessee shall take all reasonable precautions to comply with provisions of state law and borough code applicable to the area wherein the leased premises are located. Failure to do so shall constitute a violation of the lease.

D.11. REMEDIES FOR DEFAULT

D.11.1. Termination. In the event of a default this lease may be terminated at the option of Landlord by written notice to Lessee. If the lease should be terminated because of any breach by the Lessee, the annual rental payment last made by the lessee shall be forfeited and retained by the Landlord.

D.11.2. Entry and Re-Entry. In the event the lease is terminated, or in the event that the Property, or any part thereof, are abandoned by the Lessee during the term, the Landlord or its agents, servants, or representatives may, immediately or any time thereafter, re-enter and resume possession of the Property or such part thereof, and remove all persons and property therefrom either by summary proceedings or by a suitable action or proceeding at law without being liable for any damages therefor. No re-entry by the Landlord shall be deemed an acceptance of a surrender of the lease.

D.11.3. Damages. In the event of termination or retaking of possession following default, Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term the loss of rental from the date of default until a new Lessee is, or with the exercise of reasonable efforts could have been, secured and paying rent.

D.11.4. Landlord's Right to Cure Defaults. If Lessee fails to perform any obligation under this lease, Landlord shall have the option to do so after ten (10) days' written notice to Lessee. All of Landlord's expenditures to correct the default shall be reimbursed by Lessee on demand. Such action by Landlord shall not waive any other remedies available to Landlord because of the default.

D.11.5. Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

D.12. CANCELLATION AND FORFEITURE

D.12.1 This lease may be canceled in whole or in part at any time, upon written agreement by the lessee and the borough assembly.

D.12.2 Any lease of lands used for an unlawful purpose may be terminated by the borough assembly.

D.12.3 If the Lessee shall default in the performance or observance of any of the lease terms, covenants, or stipulations, or the terms of this chapter, or any applicable ordinance of the borough, and said default continues for 30 calendar days after service of written notice by the Landlord on the Lessee without remedy by Lessee of the default, the assembly shall take such action as is necessary to protect the rights and the best interests of the Landlord, including the exercise of any or all rights after default permitted by the lease. No improvements may be removed by Lessee or any other person during any time the lessee is in default.

D.12.4 Failure to make substantial use of the leased premises, consistent with the proposed use, within one year shall, with the approval of the assembly, constitute grounds for cancellation. This time period may be extended by the assembly by resolution

D.13. EXPIRATION OF LEASE

D.13.1 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 borough the Property on the last day of the term of the lease.

D.13.2 Disposition of Improvements. All dock facilities, fill and other improvements constructed or purchased on the Property by Lessee may within 60 calendar days after the termination of the lease be removed by the lessee; provided, that the Borough Assembly may extend the time for removing such improvements in cases where hardship is proven. All periods of time granted Lessee to remove improvements are subject to Lessee's paying to the borough pro rata lease rentals for said periods. If any improvements and/or chattels are not removed within the time allowed, such improvements and/or chattels shall revert to, and absolute title shall vest in, the Landlord.

D.14. MISCELLANEOUS

D.14.1 Written Waiver. The receipt of rent by Landlord 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 Landlord to enforce any covenant or provision therein contained, nor any waiver of any right thereunder by Landlord unless in writing, shall discharge or invalidate such covenants or provisions or affect the right of Landlord to enforce the same in the event of any subsequent breach or default. The receipt by Landlord of any other sum of money after the termination, or after the giving by Landlord of any term demised, or after the giving by Landlord of any notice thereunder to effect such termination, shall not reinstate, continue, or extend the resultant term therein demised, unless so agreed to in writing and signed by the borough mayor.

D.14.2 Attorney Fees. If suit or any action is instituted in connection with any controversy arising out of this lease, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on

appeal.

D.14.3 Notice or Demand. Any notice or demand, which under the terms of this lease or under any statute must be given or made by the parties thereto, 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. mail enclosed in a registered or certified mail prepaid envelope addressed as herein provided.

D.14.4 Succession. Subject to the above-stated limitations on transfer of Lessee's interest, this lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

D.14.5 Entry for Inspection. The lessee shall allow an authorized representative of Landlord to enter the leased land at any reasonable time for the purposes of inspecting the land and improvements thereon.

D.14.6 Audit. Landlord shall have the right to audit Lessee's records and to require Lessee to prepare summaries or reports from its records to determine compliance with the payment terms of this Agreement.

D.14.7 Interest on Rent and Other Charges. Any rent or other payment required of Lessee by this lease shall, if not paid within twenty (20) days after it is due, bear interest at the rate of ten percent (10%) per annum from the due date until paid, as additional rent.

D.14.8 Proration of Rent. In the event of commencement or termination of this lease at a time other than the beginning or end of one of the specified rental periods, for a reason other than breach of Lessee, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Lessee or paid on its account; provided, however, that in the event that the lease should be terminated because of any breach by Lessee, as herein provided, the annual rental payment last made by Lessee shall be forfeited and retained by Landlord.

D.14.9 Time of Essence. Time is of the essence of the performance of each of Lessee's obligations under this lease.

D.14.10 Rights of Mortgagee or Lienholder. In the event of cancellation or forfeiture of a lease for cause, the holder of a properly recorded mortgage, conditional assignment, or collateral assignment shall be given a duplicate copy of any notice of default in the same manner as notice is given the Lessee; provided, that such mortgagee has given the borough clerk notice of such mortgage and the mortgagee's address.

D.14.11 Use of Material. All oil, gas and other minerals and all deposits of stone, earth or gravel valuable for extraction or utilization are reserved by the Landlord and shall not be removed from the Property. 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 borough assembly in writing.

D.14.12 Rights-of-Way. Landlord expressly reserves the right to grant easements or rights-of-way across the Property if it is determined in the best interest of the Landlord to do so. If Landlord grants an easement or right-of-way across any of the Property, 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 use.

D.14.13 Permits. Lessee shall make no temporary or permanent improvements on the Property of any kind without first obtaining all permits required by federal, state and local law.

D.14.14 No Warranty. Landlord does not warrant by its classification or leasing of the Property that the Property is suited for the use authorized under the lease and no guaranty is given or implied that it will be profitable to employ the Property to said use.

D.14.15 Applicable Law. This lease shall be governed, construed, performed, and enforced in accordance with the laws of the State of Alaska.

D.14.16 Exclusive Venue. Any lawsuit brought by either Landlord or Lessee to enforce, interpret, or apply this lease may only be brought in a court of competent jurisdiction in Juneau, Alaska, and Landlord and Lessee hereby consent to the exclusive jurisdiction and venue of such court.

D.14.17 Entire Agreement. This lease embodies the entire agreement and understanding between the parties and supersedes all prior agreements and understandings, written or oral, related to the subject matter of this lease.

D.14.18 Amendment. This lease may not be modified orally or in any manner other than by agreement in writing signed by all parties in interest or their successors in interest pursuant to resolution of the borough assembly.

D.14.19 Severability. In the event any provision, or any portion of any provision of this lease is held invalid, the other provisions of this lease and the remaining portion of said provision, shall not be affected thereby, and shall continue in full force and effect.

D.14.20 Relationship of Parties. Nothing contained in this lease shall be deemed or construed by the parties, or by any third person, to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Lessee.

D.14.21 Authority to Bind. The individuals signing this Lease on behalf of Landlord and Lessee represent and warrant that they are empowered and duly authorized to bind Landlord or Lessee to this Lease according to its terms.

D.14.22 Headings. Any headings used in this lease are for convenience only and do not define or limit the scope of this lease.

D.14.23 Counterparts. This lease may be executed in counterparts (including by electronic transmission), each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

D.15. MEDIATION

It is the intent of the parties that any unresolved dispute relating to or arising out of this lease be settled first by diligent and good faith negotiation. In the event the parties are not able to negotiate a settlement, the parties agree to make a diligent and good faith effort to mediate their dispute before a mutually acceptable mediator. Notice of demand for mediation must be made within a reasonable period of time

after the dispute or controversy has arisen and shall be in writing. If the non-demanding party fails to respond within 30 days of the demand or refuses to participate in mediation, the demanding party may proceed with pursuing arbitration.

IN WITNESS WHEREOF, the parties hereto have executed this lease the date and year first above written.

Landlord:
HAINES BOROUGH

Lessee:
ALASKA MARINE LINES, INC.

By _____
Its _____

By _____
Its _____

Attest:

By _____
Its _____

By _____
Its _____

Exhibit 1. Subject Tidelands Map

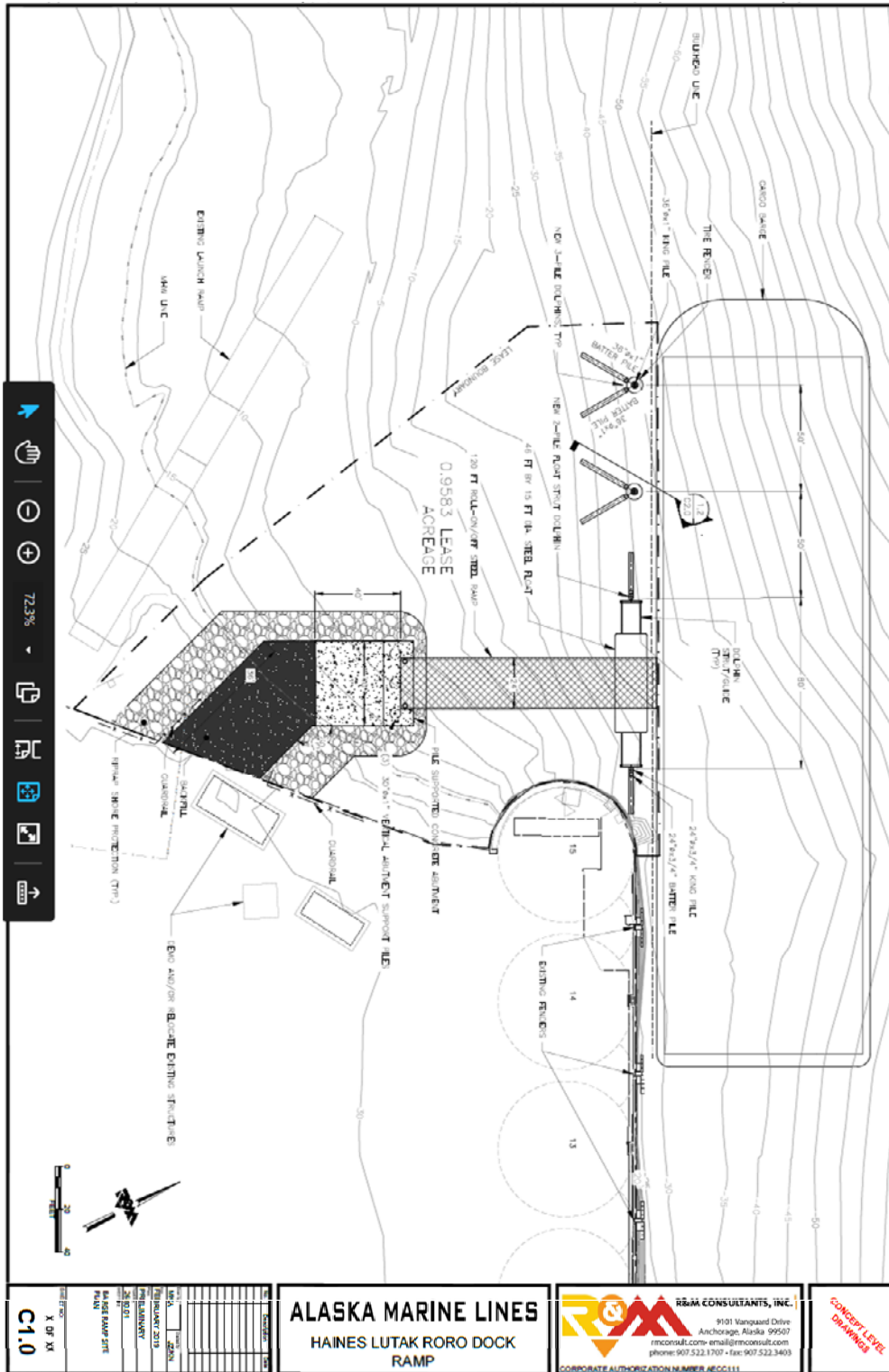
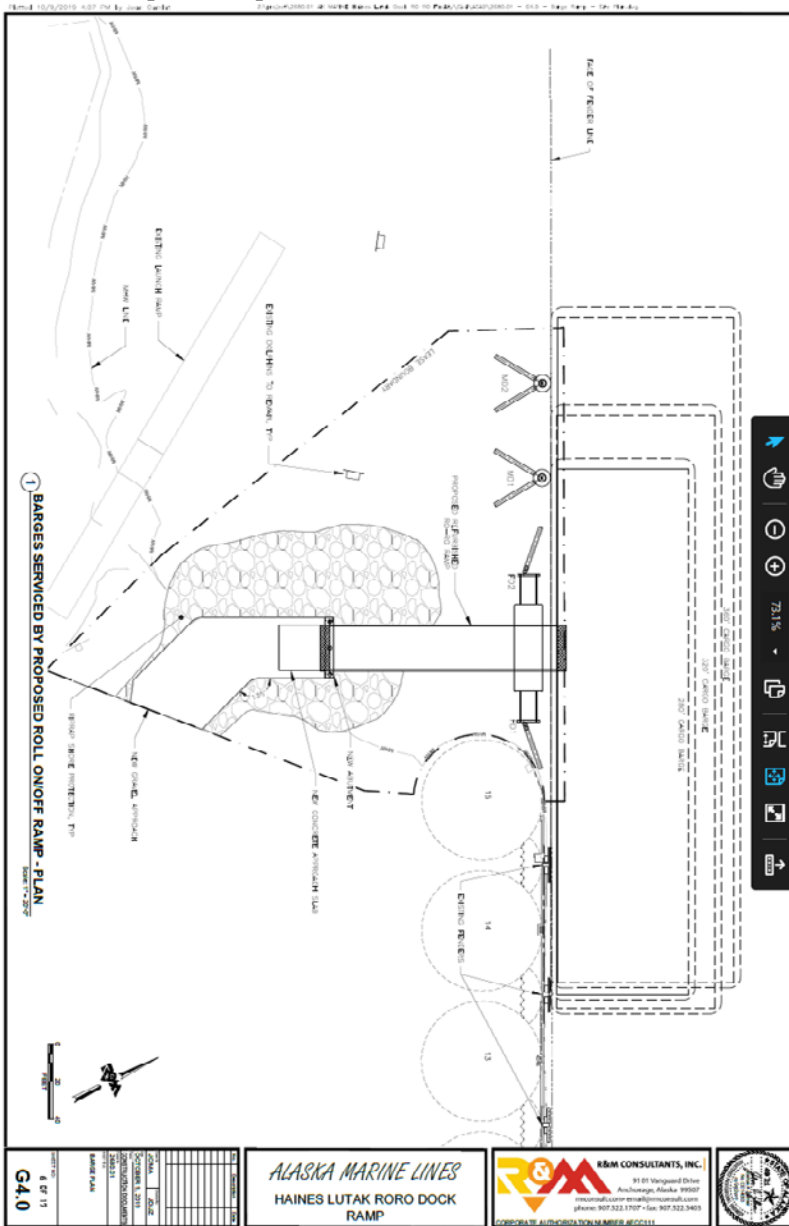


Exhibit 2. Proposed Improvements



ALASKA MARINE LINES
HAINES LUTAK RORO DOCK RAMP

R&M CONSULTANTS, INC.
 99 01 Wingland Drive
 Anchorage, Alaska 99507
 rmc@rmi.com or email@rmi.com
 phone: 907.522.1707 fax: 907.522.3400



Exhibit 3. Subject Uplands Diagram

Exhibit 4 - Work to be done by Landlord

Lutak Dock Work

Demo Garage & Concrete, Relocate Container	\$30,000
Yard Clean Up and Salvage	\$5,000
Remove Old RoRo	\$5,000
Remove Tower	\$10,000
New Electrical Sevice	\$50,000
Lighting & Security Camaras	\$25,000
Fence/Gate Removal and Installation	\$40,000
Water/Sewer	\$30,000
Launch Ramp Parking Dirt Work/Signs	\$25,000
Engineering Services/Survey	\$30,000
Security Barriers	\$10,000

Total - **260,000**