

Harbor Management Agreement

ALEUTIANS EAST BOROUGH, ALASKA
&
CITY OF SAND POINT

HARBOR MANAGEMENT AGREEMENT

This 1st day of June, 2005, the Aleutians East Borough, hereafter called the "Borough" whose address is P.O. Box 349, Sand Point, Alaska 99661, and the City of Sand Point, Alaska, hereinafter called the "City," whose address is P.O. Box 249, Sand Point, Alaska 99661 do enter this Harbor Management Agreement, hereinafter called "Agreement," of 14 pages, including signature pages, and agree as follows:

A. BASIC PROVISIONS

PREMISES

1. The City agrees to manage and operate the following described marine facilities owned by the Borough, known as the New Sand Point Harbor and hereinafter referred to as the "Harbor" located at Sand Point, Alaska, in the Aleutian Islands Recording District, Third Judicial District, Alaska:

All that property consisting of a breakwater and certain docks, floats, approaches, and appurtenant marine facilities located at Sand Point, Alaska in the Aleutian Islands Recording District, State of Alaska as further depicted in Exhibit A attached hereto.

TERM

2. The term of this Agreement is twenty-nine (29) years from the first day of June 2005 through the last of May 2034.

B. GENERAL COVENANTS

OPERATION AS PUBLIC FACILITIES

1. The City hereby agrees to manage and operate the harbor for the use and benefit of the public; to make all Harbor facilities and services available to all members of the public on the same basis and on fair and reasonable terms and without discrimination. Unless otherwise directed by the Borough or required by state and federal law, all state and federal or other publicly owned or operated vessels shall receive no special preference for berthing space at or use of the Harbor. Said vessels shall use the Harbor under the same conditions and at the same rates as those specified for the general public.

MAINTENANCE AND REPAIR

2. The City hereby agrees to continuously maintain the Harbor in a good state of repair, at no cost to the Borough. Provided, however, that all necessary "major repairs" not caused by any action, neglect or negligence of the City shall be undertaken and completed by the Borough, at Borough expense or with funds from the account established pursuant to paragraph 7(d) of this Agreement, subject to the appropriation of sufficient funds for that purpose. The City shall be responsible for all minor repairs and routine preventative maintenance.
 - a. The term "major repair" as used herein is defined as any maintenance or repair having a cost for a single maintenance or repair operation that exceeds twenty-five thousand dollars (\$25,000).
 - b. The terms "minor repair and routine preventative maintenance" as used herein is defined as routine maintenance and repair having a cost for a single maintenance or repair operation of twenty-five thousand (\$25,000) or less, and generally includes the following:
 - (1) Replacement of damaged flotation material.
 - (2) Replacement of damaged decking or other structural members.
 - (3) Repair of electrical utilities and water and fuel systems.
 - (4) Replacement of broken or damaged piling and fenders.
 - (5) Replacement of eroded bank and breakwater protection or fill material.
 - (6) Repair of all structural and non-structural damage caused through impact or collision by vessels using the facilities.
 - c. The Borough shall have the right to require the City to perform maintenance and repair in the event any inspection of the Harbor by the Borough reveals a failure by the City to adequately maintain Harbor facilities. The City shall accomplish such corrective maintenance or repair work within a reasonable period of time as determined by the Borough. The City shall perform, at its own expense, all major repair or rehabilitation that could have been avoided but for the City deferring minor repairs or routine maintenance.
 - d. Notwithstanding the other provisions of this paragraph B2, the City shall not be required to spend more than \$25,000 in any one City fiscal year for all minor repairs and routine preventative maintenance. Routine preventative maintenance includes only those activities that are for the purpose of preserving or restoring the condition of the Harbor. The City shall notify the Borough in a

timely manner if the City anticipates that minor repair and routine preventative maintenance expenditures will exceed \$25,000 during the remainder of any City fiscal year.

HARBOR UPKEEP

3. The City agrees to maintain the Harbor in a clean and orderly manner at all times. Derelict or abandoned vessels shall not be allowed to occupy moorage space. Oil drums, nets, fishing gear, skiffs, garbage cans or unsightly debris may not be stored on the Harbor.

LIABILITY

4. The City shall indemnify, defend, and hold the Borough, its officers, employees and agents harmless from any liability, action, claim, suit, loss, property damage, or personal injury of whatever kind resulting from or arising out of any act of commission or omission by the City, its agents, employees, or officers arising from the City's management, operation, maintenance or other activity with respect to the Harbor.

HARBOR ORDINANCES, HARBORMASTER

5. The City shall employ appropriate personnel and promulgate such ordinances, resolutions or regulations as may be necessary to provide safe, orderly operation and management of the Harbor. Ordinances, resolutions and regulations shall be in conformance with all of the terms and conditions contained herein, and shall be consistent with applicable ordinances and resolutions of the Borough. The applicable provisions of a Borough ordinance, resolution or regulation with respect to the Harbor shall supersede the provision of any ordinance, resolution or regulation of the City that is inconsistent therewith, notwithstanding the date the Borough ordinance is adopted. City and Borough agree that as of the date of this Agreement: (1) Title 11 of the Sand Point Code of Ordinances complies with City's obligations under this paragraph 5 and; (2) No provisions of any Borough ordinance is inconsistent with or supersedes Title 11 of the Sand Point Code of Ordinances.

HARBOR USE AGREEMENTS

6. The City may enter into such agreements for the berthing, use and management of the Harbor as are necessary and appropriate;
 - a. provided, no agreement of any nature with respect to the Harbor is valid or binding upon the City or of the Borough to the extent such agreement is contrary to this Agreement or to any ordinance or resolution of the City or the Borough adopted prior to the effective date of such agreement between the City and a third party. The authority of the City to enter into agreements with third parties with respect to the use of the Harbor is derived solely from this

Agreement and any agreement of any nature between the City and a third party is subject to the terms, conditions and limitations of this Agreement; further, any agreement or the provisions thereof that are inconsistent or in conflict with or are prohibited under this Agreement are voidable in the sole discretion of the Borough. The City shall be liable to the Borough for all damages or losses to the Borough arising out of agreements or provisions thereof between the City and a third party that are inconsistent, in conflict with, or prohibited by this Agreement.

- b. The Harbor was financed, in part, with the proceeds of a tax-exempt bond issued by the Aleutians East Borough. Any management, Harbor use or other agreement that would, alone or in combination with one or more other agreements of the City with respect to the Harbor, adversely affect the tax exempt status of said bonds, is, to such extent, void *ab initio* and unenforceable. Further, if bond counsel to the Aleutians East Borough determines that any provision of this Agreement would adversely affect the tax exempt status of such bonds or that it permits or contemplates agreements between the City and third parties that would adversely affect the tax exempt status of such bonds, such minimum amendments to the agreement as may be necessary to preserve the tax exempt status of said bonds, as determined by bond counsel for the Aleutians East Borough, are deemed to have been made as if contained in this Agreement upon the date of execution of this Agreement shall be provided to the City in writing and shall, if not materially altering the financial obligations of the City hereunder, be deemed to have been made as if contained in this Agreement at the date of execution of this Agreement. A lease or of long term use agreement between the City and a third party user of the Harbor, and any lease or Harbor operating or management agreement between the City and any third party is void and unenforceable unless in writing and approved by the Borough and the Borough bond counsel prior to its execution.

REVENUES, EXPENSES, FUNDS AND ACCOUNTS

7. The City shall establish a tariff, and shall collect a fee or charge, for all uses of the Harbor.
 - a. The City shall include, but not be limited to, fees or charges for moorage, demurrage, wharfage, and services to a vessel. The tariff and all changes thereto shall be filed by the City if filing is required by state and federal law. City and Borough acknowledge that as of the date of this Agreement such filing is not required by either state or federal law.
 - b. The fees charged by the City shall be established at a level sufficient to:

- (1) Meet the expenses of adequate management and administration of the Harbor.
 - (2) Satisfy all minor repair and routine maintenance requirements, present and future, as defined in Paragraph (2)b.
 - (3) Provide for contingencies and emergencies.
 - (4) Provide the funds required for the major rehabilitation and repair account.
 - (5) Provide and maintain a harbormaster office, parking area improvements, and sanitary facilities unless any of the foregoing are waived by the Borough, and, as may be required by state or federal agencies, oily waste disposal tanks, connection to vessel pump out stations for sewage disposal and other waste disposal facilities or services, and trash collection facilities.
- c. All fees, charges, rates, reimbursements, or other amounts received by the City for moorage within the Harbor shall be deposited in a special fund known as the Harbor Fund established by the City. Said fund shall be separate and distinct from other funds of the City (including those established for the operation of other City docks, harbors or other marine facilities) and shall be used exclusively for the administration, operation, maintenance, repair, rehabilitation, and improvement of the Harbor by the City, and to meet reserve requirements and Borough debt service, if any, secured by revenues of the Harbor. The City shall annually appropriate to such fund all anticipated and actual Harbor receipts and prior year Harbor Fund balances.
- d. The City shall establish a major repair and rehabilitation account with the Harbor Fund established under Paragraph 7(c).
- (1) For the purpose of this subparagraph 7(d), "year-end Harbor Fund balance" is the unreserved year-end balance of the Harbor Fund not appropriated for reasonable Harbor operating costs, including Borough debt service, if any, reserved and a reasonable contingency amount. The year-end Harbor Fund balance shall lapse to and be deposited in the major repair and rehabilitation account. It is the purpose of this subparagraph 7(d)(1) to ensure that all Harbor revenues that are not reasonably required for the operation, maintenance and minor repair of the Harbor be accumulated in the major repair and replacement account for use, as may be designated by the Borough, for major repairs or rehabilitation of the Harbor and

the construction of additions or improvements to the Harbor. Provided, the Borough may release funds from this account to the City for Harbor operating expenses if the Assembly determines that such a release is necessary in order to meet unusual and unanticipated Harbor operating expenses incurred or to be incurred by the City.

- (2) The City shall hold monies in the account, in trust for the Borough; provided, in order to ensure that such monies are immediately available for emergency or other needs, the City shall annually appropriate the anticipated maximum balance of the account (including the anticipated deposit of the year end Harbor Fund balance) as part of its annual budget appropriation. The City shall make major repairs or improvements to the Harbor from the funds in the major repair and rehabilitation account only when specifically directed by the Borough or shall pay over to the Borough from said account so much as the Borough determines is required to perform major repairs, rehabilitation or improvements on the Harbor. Upon authorization by the Borough, the City may accomplish, by contract or with it's own forces, such major repair, rehabilitation or improvements as are required and may withdraw from said account amounts up to a maximum specifically authorized by the Borough for such work. Upon termination of this agreement, the City shall promptly pay over to the Borough all funds held in trust in said account for the Borough.
- e. The City shall keep complete financial records in accordance with generally accepted accounting practices, reflecting all revenue derived by the City from the Harbor as well as all funds expended by the City for the maintenance and operation of the Harbor. The right is hereby reserved to the Borough to examine said financial records at any time during normal business hours. In addition, the right is hereby reserved to the Borough to require the City to submit an annual audit or summary of Harbor Fund income and expenses (including reserves).
- f. City and Borough agree that as of the date of this Agreement, Title 11 of the Sand Point Code of Ordinances complies with the obligations of subparagraphs (a) and (b) of this paragraph.

PROHIBITED MOORAGE

8. The City shall not permit moorage of vessels that might overstress or otherwise damage the Harbor facilities.

IMPROVEMENTS

9. Any permanent improvement, development or structure proposed by the City or a third party to be constructed or placed within the Harbor, whether upon or separate from an existing facility or improvement in the Harbor, must be approved in writing by the Borough prior to construction or placement.

OWNERSHIP OF IMPROVEMENTS

10. All improvements made in or to the Harbor and all fixtures added to and incorporated into the use of the Harbor shall become the property of the Borough upon their construction, addition to or incorporation into the Harbor unless the City and the Borough agree otherwise in writing.

OPERATOR PROVIDED UTILITIES AND WATER SYSTEM

11. Where electrical facilities or electrical, fuel or water distribution systems are not provided by the Borough, the City may install with its own personnel with prior approval of the Borough, or have installed by a competent contractor, adequate lighting and power, fuel and water distribution systems. Under no circumstances may the City alter or modify existing Harbor facilities for the purpose of installing electrical utilities, fuel or water systems without first obtaining specific written approval from the Borough. The Borough will either furnish or approve minimum design standards to accomplish the work. Prior to the installation of any power in or to the Harbor, whether to power permanent fixtures or equipment or for distribution to vessels, the City shall provide for the design of the system by an engineer with recognized experience in the design of electrical systems for marinas and docks that may be affected by electrolysis. The Borough may require a review of the design by a second engineer or a consultant before approving the project.

FUEL AND HAZARDOUS MATERIAL HANDLING

12. If fuel or any other hazardous materials are handled in the Harbor, the City shall insure that only properly trained personnel handle such fuel or materials and that adequate procedures are followed for safely storing, dispensing, and otherwise handling fuel or hazardous materials in accordance with the most current edition of the National Fire Protection Code and all applicable federal, state, and local laws and regulations, in particular, applicable United States Coast Guard regulations. The City shall ensure that all necessary permits, operations manuals, and other authorizations are issued and are in place before permitting the handling of fuel or other hazardous materials and may require the shipper or handler to obtain such permits and authorizations and to bear all or any part of the expense of obtaining such permits or authorizations and any additions or changes to the Harbor facilities that are needed to comply. Such additions or changes to the Harbor facilities must be approved by the City and the Borough.

ENVIRONMENTAL POLLUTION

13. In the event of a spill or the discharge of a petroleum product or hazardous material at the Harbor, the City shall immediately report the spill or discharge to the appropriate authorities and to the Borough, act promptly to contain the spill or discharge, repair any damage, remove the petroleum product or hazardous material and clean up the affected area, restore the Harbor and affected waters to a safe condition and otherwise comply with the applicable provisions of state and federal law.

TERMINATION OF AGREEMENT

14. The Borough may cancel this Agreement by giving the City ninety (90) days advance written notice upon the failure of the City to perform, keep and observe any of the terms, covenants, and conditions contained in this Agreement, provided;
 - a. The deficiency is not cured by the City within said ninety (90) day period.
 - b. The City may terminate this Agreement at any time by notifying the Borough in writing at least six (6) months prior to the effective date of such termination.
 - c. The Borough may terminate this Agreement at any time by notifying the City in writing at least twelve (12) months prior to the effective date of such termination.
 - d. Upon termination or cancellation of this Agreement for any reason, the City shall, on the effective date of such termination or cancellation, transmit all amounts received that would have been required by paragraph 7.c. of the Agreement to be deposited in the Harbor Fund; provided, if, for the fiscal year in which the termination or cancellation occurs, the City has contributed to the Harbor Fund from unrestricted other local revenues, the City may retain a portion of such other revenues prorated for time from the beginning of the year. The cancellation or termination of this Agreement for any reason shall constitute and shall have the effect of an assignment to the Borough of all accounts receivable and causes of action of the City with respect to the Harbor and its operation effective on the effective date of the termination or cancellation. All reasonable obligations of the City incurred with respect to the Harbor and its operation prior to the effective date of the termination or cancellation shall be reimbursed by the Borough upon demand and proof of payment by the City, provided, the Borough may assume direct liability for City obligations specifically identified in writing by the Borough for such treatment.

HARBOR MANAGEMENT AGREEMENT

- e. Upon termination or cancellation of this Agreement, the City shall immediately turn over to the Borough all plans, records, agreements, and other documents relating to the Harbor and its operation under this Agreement and shall make available to the Borough and its agents all records of the City that may directly or indirectly affect or reveal the financing of the Harbor operation by the City.
- f. Termination or cancellation of this Agreement does not affect the undischarged obligation of one party to this Agreement to the other.

RENEWAL

- 15. The City may renew this Agreement by filing a written renewal application with the Borough at least sixty (60) days before the expiration of this Agreement. This filing of an application that fully conforms to the requirements stated herein will operate to extend the term of this Agreement on a month to month basis until the earlier of the date;
 - a. A new agreement is executed by both parties, or
 - b. The application is rejected by the Borough in writing, stating the reasons for the rejection.

DISCRIMINATION

- 16. The City covenants and agrees that discrimination on the basis of race, color, religion, national origin, ancestry, age, or sex will not be permitted against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or state law. The City recognizes the right of the Borough to take any action necessary to enforce this covenant, including actions required pursuant to any federal or state law.

EXISTING CONDITIONS

- 17. The City has examined the preliminary plans for the Harbor and acknowledges that the Borough has made no representation concerning final arrangement or neither layout of the Harbor nor the completion date of any phase or part of the Harbor.

SUBJECT TO LAWS

- 18.
 - a. This agreement is issued subject to all the provisions and requirements of the agreement and the ordinances, resolutions and regulations of the Borough relating to the use and management of Borough owned marine facilities.

- b. The City shall conduct all operations or of the Harbor in compliance with all federal, state, and local laws, ordinances, rules and regulations now or hereafter in force, which may be applicable to such operations.

INSURANCE

19.

- a. The City shall maintain harbor keepers liability insurance in an amount not less than \$2,250,000 per occurrence and shall name the Borough as an additional insured, provided, the Borough, its employees, agents and officers may not be disabled from recovering under said policy for otherwise covered acts of the City.
- b. Unless a lesser coverage is authorized by the Borough, the City shall maintain property damage insurance on the Harbor in an amount of \$100,000 with a deductible of not more that \$5,000. The policy shall name the Borough as owner of the Harbor and shall be for the benefit of the Borough.
- c. The City shall provide the Borough with a copy of each policy or a certificate of insurance satisfactory to the Borough showing the amounts and type of insurance provided. The certificate shall state the coverage provided to the Borough and shall provide that no policy may be terminated, cancelled, or permitted to expire with respect to coverage provided to the Borough except upon at least thirty (30) days written notice actually delivered or mailed to the Borough.
- d. The City shall provide and maintain, for all employees and contractors of the City engaged in work on or with respect to the Harbor, Workers' Compensation Insurance as required by AS 23.30, shall promptly make all employer contributions required by AS 23.20, and shall provide insurance coverage for employees covered by the U.S. Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et. seq.). The City shall indemnify the Borough for all costs, expenses, and liability of the Borough arising in any manner from the failure of the City to provide the insurance or make the contributions identified in the preceding sentence.

LIENS

- 20. The City shall keep the Harbor free of all liens, pay all costs for labor and materials arising out of any construction, improvements or repairs by the City or a third party on the Harbor, and hold the Borough harmless from liability for any such liens, including costs and attorney fees.

NO WAIVER

21. The failure of the Borough or City to insist in any one or more instances upon the strict performance by the Borough or City of any provision or covenant in this agreement may not be considered a waiver or relinquishment for the future, but the provision or covenant will continue in full force. The waiver by the Borough or City of any provision or covenant in this agreement cannot be enforced or relied upon unless the waiver is in writing signed on behalf of the Borough or City.

MODIFICATION

22. The Borough may modify this agreement to meet the revised requirements of federal or state grants or to conform to the requirements of any bond covenant to which the Borough is party. Provided, that except as provided in paragraph 6.c., a modification may not reduce the rights granted the City by this agreement nor cause the City financial loss to its general fund.

VALIDITY OF PARTS

23. If any provision or covenant of this agreement is declared to be invalid by a court of competent jurisdiction, the remaining covenants and provisions will continue in full force.

INTERRELATIONSHIP OF PROVISIONS

24. The basic provisions, general covenants, special covenants, supplements, addenda, and drawings attached as exhibits are essential parts of this agreement and are intended to be cooperative and to describe the respective rights and obligations of the parties to this Agreement. In case of a discrepancy, figured dimensions govern over scaled dimensions unless obviously incorrect. Special covenants govern over basic provisions, both of which govern over general covenants.

NATURAL DISASTERS

25. In the event any cause which is not due to the fault or negligence of either the City or the Borough renders the Harbor unusable and makes the performance of this Agreement impossible, this Agreement may be terminated by either party upon thirty (30) days written notice to the other party. Causes include, but are not limited to, acts of God or the public enemy, acts of the United States or the State of Alaska, fires, floods, or strikes.

NOTICES

HARBOR MANAGEMENT AGREEMENT

26. Any notice required by this agreement must be hand delivered or sent by registered or certified mail to the appropriate party at the address set forth on page one of this Agreement or to any other address that the parties subsequently designate in writing.

INTEGRATION, MERGER AND AMENDMENT

27. This Agreement sets forth all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the Harbor whether oral or written. Except as otherwise specifically provided in this Agreement no modification or amendment of this Agreement is effective unless in writing and signed by both parties.

NATIONAL OR STATE EMERGENCY

28. In case of any national emergency declared by the federal government, or any state emergency declared by the State of Alaska, the City may not hold the Borough liable for any inability to perform any part of this Agreement as a result of the national or state emergency.

APPROVAL BY BOROUGH

29. Any approvals required of the Borough by this Agreement will not be unreasonably withheld.

INGRESS, EGRESS, INSPECTION

30. The Borough reserves the right of ingress to and egress from the Harbor and the right to enter any part of the Harbor, including all improvements thereon, for the purpose of inspection at any reasonable time. Except in the case of an emergency, all inspections will be coordinated with the City.

U. C SPECIAL COVENANTS

1. This Agreement becomes effective on the date set out in paragraph A2; provided, no term of the Agreement except this paragraph C1 creates an and enforceable right in either party until the Borough has provided written notice to the City that the Harbor, including the docks and other facilities and improvements, are substantially complete and available for use. All revenues arising out of the rental or use of property constructed or improved with the proceeds of the Borough's general obligation bond under the Project Cooperation Agreement between the Borough and U.S. Department of the Army for the construction of breakwaters and the dredging of the new harbor in the City are revenues of the City under this agreement and, if paid to the Borough, will be received and held by the Borough in trust for the City.
2. The City and the Borough enter into this Agreement in the contemplation of

- a. the completion of the new harbor to be constructed under the Project Cooperation Agreement between the Borough and U.S. Department of Army, and
- b. the separate and subsequent construction by the Borough of docks, floats and other marine facilities and improvements (the Docks and Floats) within the new harbor.

If the Borough constructs the Docks and Floats from revenues other than borrowed funds, then this Agreement remains in full force and effect in accordance with its terms. If the Borough borrows all or part of the funds necessary to finance the construction of the Dock and Floats, and it is necessary for the Borough to pledge the revenues of the Docks and Floats to secure the loan, then the following provisions of this Paragraph C2 shall be in effect and shall supersede and govern to the extent such following provisions are in conflict with any other provisions of this Agreement:

- c. The Borough shall have the authority to establish all tariffs, fees, and other charges for use of the Docks and Floats. The Borough shall consult with the City to determine the rates necessary to meet the City operating and other expenses of the Harbor plus the revenues required to meet debt service payments on the Borough loan and such other reserve and coverage requirements as are set out in the loan agreement, bond and other documents governing the loan to the Borough (the Loan Documents) for the construction of the Docks and Floats. The tariffs, fees and charges established by the Borough, may not be less, individually, than the amount requested by the City, but may be more than the amount requested by the City if the Borough determines that the estimated revenues from all tariffs, fees and charges for Docks and Float use will not be sufficient to meet the requirements of the Loan Documents and all other revenue needs of the Harbor. If the Borough determines that revenues from the Docks Floats must be increased to meet to the requirements of the Loan Documents, the Borough will give substantial consideration to the preferences of the City for the distribution of the increase among the Harbor tariffs, fees, and other charges.
- d. The City will continue to bill, collect and enforce the harbor tariffs, fees and charges; provided, however, it shall establish a Docks and Floats debt service trust account (the Debt Service Trust Account) into which it shall deposit so much of the revenues from the Docks and Floats operation as are required under the terms of the Loan Documents. The funds required to be deposited to the Debt Service Trust Account are funds of the Borough immediately upon their receipt by the City and shall be paid over to the Borough from said account immediately upon request of the Borough or shall be paid over to the Borough at such regularly scheduled times as the Borough or the Loan Documents require. If the Borough's lender so requires, either as a condition of the loan, or upon determining, after

making the loan, that the collection rate of the City is inadequate with respect to Harbor accounts, the Borough may assume all or any part of the billing and collection function for the Harbor accounts and shall, monthly, pay over to the City the revenues collected less amounts required for billing and collection administration, debt service, reserves and coverage required by the Loan Documents. If the City fails to fully and timely pay over to the Borough the funds required to be paid from the Debt Service Trust Account, the Borough may immediately terminate this Agreement. The Borough may pledge and assign to its lender the Borough's rights to funds required to be deposited in the Debt Service Trust Account.

- e. The City shall vigorously pursue the collection of tariffs, fees and other charges arising out of use of the Docks and Floats in order to ensure timely funding of the amounts to be paid into the Debt Service Trust Account.
 - f. If the Borough's lender requires fiscal or operational provisions that cannot be made within the scope of the authority reserved to the Borough under this Paragraph C2, and the City is unwilling to agree to the required new or different provisions, either party to this Agreement may immediately terminate the Agreement.
3. It is the intent of the parties that upon the termination of this Agreement pursuant to Paragraph A2, or upon the discharge of the 2003 Series E general obligation bonds issued for the construction of the new harbor, any bonds issued to refund the 2003 bonds, and any bonds or other Borough obligations issued to fund any part of the cost of the Docks and Floats, the City and the Borough will explore the transfer of the Harbor to the City.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year stated in the acknowledgments below.

(SEAL)

CITY OF SAND POINT

By: Glen Gardner Jr

Title: Mayor

ALEUTIANS EAST BOROUGH

By: Robert J. Foster

Title: Administrator