

CLERK'S OFFICE
APPROVED

Submitted by: Chair of the Assembly at the
Request of the Mayor

Prepared by: Port of Anchorage

For reading: September 27, 2011

Date: 10-11-11 ANCHORAGE, ALASKA
AO NO. 2011-98

1 AN ORDINANCE AUTHORIZING A CONSOLIDATED AMENDMENT OF THE
2 PREFERENTIAL USAGE AGREEMENT, LEASES AND PERMITS BETWEEN THE
3 MUNICIPALITY OF ANCHORAGE / PORT OF ANCHORAGE AND HORIZON
4 LINES OF ALASKA, LLC.
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8 WHEREAS, the Municipality of Anchorage through its department the Port of
9 Anchorage (Anchorage) and Horizon Lines of Alaska, LLC (Horizon) entered into a
10 Preferential Usage Agreement (PUA), six Leases and two Revocable Use Permits
11 (Permits); and,
12

13 WHEREAS, Anchorage and Horizon have mutually agreed to extend the term of the
14 PUA, Leases and Permits from January 1, 2011 to December 31, 2015, pursuant to
15 an exercised renewal option by Horizon; and,
16

17 WHEREAS, AMC section 25.30.020 requires disposal of Municipal land shall be by
18 ordinance only; now, therefore,
19

20 THE ANCHORAGE ASSEMBLY ORDAINS:
21

22 **Section 1.** The Municipality of Anchorage is authorized to extend the term of the
23 existing PUA, Leases and Permits between the Municipality of Anchorage and
24 Horizon Lines of Alaska, LLC as summarized in accompanying Assembly
25 Memorandum, submitted with this ordinance.
26

27 **Section 2.** The Municipality of Anchorage is authorized to extend the square
28 footage of the Permit on the South Transit Area and add square footage from Transit
29 Area "A."
30

31 **Section 3.** This ordinance shall take effect immediately upon passage and
32 approval.
33

34 PASSED AND APPROVED by the Anchorage Assembly this 11th day of
35 October, 2011.
36

37 Darbi Alexander
38 Chair

39 ATTEST:

40 Salma S. Bunt
41
42 Municipal Clerk

MUNICIPALITY OF ANCHORAGE
Summary of Economic Effects -- Utilities

AO Number: 2011-98

Title: AN ORDINANCE AUTHORIZING A CONSOLIDATED AMENDMENT OF THE PREFERENTIAL USAGE AGREEMENT, LEASES AND PERMITS BETWEEN THE MUNICIPALITY OF ANCHORAGE / PORT OF ANCHORAGE AND HORIZON LINES OF ALASKA, LLC.

Sponsor: Mayor
 Preparing Agency: Port of Anchorage
 Others Impacted: None

CHANGES IN REVENUES AND EXPENSES:	(In Thousands of Dollars)				
	FY11	FY12	FY13	FY14	FY15
Operating Revenues:					
9571 Industrial Park Lease	\$ 16.8	\$ 67.4	\$ 67.4	\$ 67.4	\$ 67.4
TOTAL OPERATING REVENUES	\$ 16.8	\$ 67.4	\$ 67.4	\$ 67.4	\$ 67.4
Operating Expenses:					
	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL OPERATING EXPENSES	\$ -	\$ -	\$ -	\$ -	\$ -
Non-Operating Revenues:					
TOTAL NON-OPERATING REVENUES	\$ -	\$ -	\$ -	\$ -	\$ -
Non-Operating Expenses:					
TOTAL NON-OPERATING EXPENSES	\$ -	\$ -	\$ -	\$ -	\$ -
NET INCOME (REGULATED)	\$ 16.8	\$ 67.4	\$ 67.4	\$ 67.4	\$ 67.4
POSITIONS: FT/PT and Temp	0	0	0	0	0

PUBLIC SECTOR ECONOMIC EFFECTS:

The consolidated amendment of PUA, Leases and Permits at the Port of Anchorage to Horizon Lines of Alaska, LLC, will provide the Port of Anchorage with additional rental revenue of \$67,406 per year for the next five years.

SUMMARY OF ECONOMIC EFFECTS

PRIVATE SECTOR ECONOMIC EFFECTS:

None

Prepared by: Steve Ribuffo, Deputy Port Director
 Validated by OMB: _____
 Approved by: _____

Telephone: 343-6200
 Date: _____
 Date: _____

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 522-2011

Meeting Date: September 27, 2011

1 From: MAYOR

2
3 Subject: AN ORDINANCE AUTHORIZING A CONSOLIDATED AMENDMENT OF
4 THE PREFERENTIAL USAGE AGREEMENT, LEASES AND PERMITS
5 BETWEEN THE MUNICIPALITY OF ANCHORAGE / PORT OF
6 ANCHORAGE AND HORIZON LINES OF ALASKA, LLC.
7

8 The Municipality of Anchorage through its department the Port of Anchorage
9 (Anchorage) and Horizon Lines of Alaska, LLC (Horizon), previously known as Sea-
10 Land Services, Inc., entered into a Preferential Usage Agreement (PUA) on December
11 1, 1985. The PUA contains an initial five (5) year term, ending December 31, 1990,
12 with five (5) renewal option periods of five (5) years each. Horizon has given
13 Anchorage any required notice to extend the terms of the PUA for the fifth and final
14 period to December 31, 2015.
15

16 Anchorage and Horizon entered into Leases of various dates, as amended collectively
17 by Amendment to Lease dated September 8, 1996 for Lots 4A, 4A-1, 5D-1, 5F-1, 6C-1
18 and 6D-1 via Assembly Ordinance 2006-68 approved May 16, 2006 to a new
19 expiration date of December 31, 2010. The Leases have at minimum one more five
20 (5) year renewal option. Horizon has given Anchorage any required notice to extend
21 the terms of the Lease to December 31, 2015.
22

23 Anchorage and Horizon entered into two Revocable Use Permits (Permits) for a two
24 year term terminating December 31, 2010. One is for 37,680 square feet of a portion
25 of Tidewater Road. The other for 93,012 square feet of a portion of the South Transit
26 Area. Anchorage has been approached by a third party in need of a building site in the
27 South Transit Area. Consequently, and because Horizon is in need of additional
28 marshalling area, Anchorage and Horizon have mutually agreed to reconfigure
29 Horizon's footprint and increase the South Transit Area by 58,839 square feet and add
30 an additional 14,429 square feet of available space in Transit Area "A" for a total of
31 166,280 square feet. The net effect is an increase of slightly over \$67,000 in annual
32 revenue. Horizon has given Anchorage any required notice to extend the terms of the
33 Permits to December 31, 2015.
34

35 Except for the increase in square footage for the South Transit Area and the addition
36 of Transit Area "A," the terms and conditions of the PUA, Leases and Permits remain
37 unchanged pending a thorough review prior to their termination on December 31,
38 2015.
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40 Services provided
41 by Lessee: Utilities and maintenance of premises.

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Other terms and
Conditions: As negotiated between Horizon and the Municipality.

THE ADMINISTRATION RECOMMENDS APPROVAL OF THE ORDINANCE
AUTHORIZING A CONSOLIDATED AMENDMENT OF THE PREFERENTIAL USAGE
AGREEMENT, LEASES AND PERMITS BETWEEN THE MUNICIPALITY OF
ANCHORAGE / PORT OF ANCHORAGE AND HORIZON LINES OF ALASKA, LLC.

Prepared by: Port of Anchorage

Approved by: William J. Sheffield, Director, Port of Anchorage
Concur: Lucinda Mahoney, CFO
Concur: Dennis A. Wheeler, Municipal Attorney
Concur: George J. Vakalis, Municipal Manager
Respectfully submitted: Daniel A. Sullivan, Mayor

CONSOLIDATED AMENDMENT
to
PREFERENTIAL USAGE AGREEMENT
and
LEASES
and
REVOCABLE USE PERMITS
(Horizon Lines of Alaska, LLC)

THIS AMENDMENT is entered effective January 1, 2011, by and between the MUNICIPALITY OF ANCHORAGE, an Alaska municipal corporation (“Anchorage”); and HORIZON LINES OF ALASKA, LLC, a Delaware corporation, as successor-in-interest to CSX Lines, LLC (“CSXL”) and CSX Lines of Alaska, LLC (“CSXLA”), as successors-in-interest to Sea-Land Service, Inc. (“Sea-Land”) (hereinafter collectively called “HORIZON”).

WHEREAS on December 1, 1985, Anchorage and Horizon entered into a Preferential Use Agreement, as extended for four additional five-year terms through December 31, 2010 (“PUA”);

WHEREAS on November 7, 1986, Anchorage and Horizon entered into a Crane Agreement (“Crane Agreement”) to enhance the vessel and container handling capacity of the Municipal Terminal by, *inter alia*, adding a Mitsubishi container crane and upgrading two (2) Paceco container cranes (collectively, the “Cranes”);

WHEREAS Anchorage and Horizon entered into Leases of various dates, as amended collectively by Amendment to Lease dated September 8, 1986, for the following described real property:

Lots 4A and 4A-1, PORT OF ANCHORAGE SUBDIVISION, according to Plat No. 71-32, Anchorage Recording District, State of Alaska; and

Lots 5D-1, 5F-1, 6C-1 and 6D-1, PORT OF ANCHORAGE SUBDIVISION, according to Plat No. 76-193;

all situated in the Anchorage Recording District, Third Judicial District, State of Alaska (collectively, the “Leases”);

WHEREAS Anchorage and Horizon entered into two Revocable Use Permits, one dated August 1, 2005, and the other dated February 1, 2007, as amended, for the following described real properties:

A portion of the South Transit Area of the PORT OF ANCHORAGE SUBDIVISION, according to Plat No. 71-32, containing 93,012 square feet; and

A portion of Tidewater Road of the PORT OF ANCHORAGE SUBDIVISION, according to Plat No. 71-32, containing 37,680 square feet;

respectively, both situated in the aforementioned recording district;

WHEREAS on September 5, 2002, Anchorage consented to the assignment and assumption of all contractual agreements of Sea-Land and CSXL by CSXLA under the terms and conditions of that certain Consent to General Assignment and Assumption, Sea-Land Service, Inc. and CSX Lines, LLC to CSX Lines of Alaska, LLC;

WHEREAS effective February 24, 2003, CSXLA changed its name to Horizon Lines of Alaska, LLC;

WHEREAS Anchorage provided Horizon preferential rights to use the Cranes for a period of twenty years, subject to extension "for a term concurrent with the term of the PUA," according to paragraph IV.A.7 of the Crane Agreement;

WHEREAS Horizon has given Anchorage any required notice to extend the terms of the PUA, Leases, Revocable Use Permits and preferential rights to use the Cranes; and

WHEREAS the parties desire to amend the PUA, Leases and Revocable Use Permits according to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration for the parties' mutual undertakings, and other good and valuable consideration, the parties agree as follows:

1. **Extension of Terms.** The terms of the PUA, Leases and Revocable Use Permits are extended to December 31, 2015.

2. **Amendment of PUA.**

a. Article 1 of the PUA is amended to add new section G as follows:

G. Anchorage grants Horizon preferential rights to use the Cranes subject to the following terms and conditions:

1. Anchorage waives the following:

a. Any preferential use fee referred to in subsection IV.A of the Crane Agreement; and

b. Any equipment rental referred to in Item 205 of the Port of Anchorage Terminal Tariff No. 7, as may be amended.

2. Horizon shall maintain the Cranes in good operating condition. Horizon shall be responsible for and pay all expenses for the operation of the Cranes, including operating, labor, maintenance, servicing, fuel and utility expenses. Horizon's use and operation of the Cranes shall be subject to the published

rules and regulations of general application contained in the Port tariffs. Horizon agrees at all times to provide competent crane operators and maintenance personnel and shall remove any unqualified personnel upon written request of Anchorage. Anchorage shall maintain the dock structure in good condition, so as to support the operation of the Cranes, provided, however, Anchorage shall not be obligated to repair any damage to the dock or transit shed which is caused by the acts or omissions of Horizon, its employees, agents, invitees or crane operators.

3. Horizon shall reimburse Anchorage for insurance coverage for damage or loss of the Cranes in the amount of ONE HUNDRED FORTY DOLLARS (\$140.00) per month, or such other amounts from time to time reasonably determined by Anchorage's risk manager to cover the cost of such insurance.
4. Horizon shall allow Anchorage to have access to its crane maintenance program records. Anchorage may inspect the Cranes at any reasonable time to determine that the Cranes are being properly maintained. If Anchorage determines that the Cranes are not being properly maintained, Horizon shall implement any changes required by Anchorage.
5. If this agreement should terminate for any reason other than the loss of the Cranes, Horizon shall warrant to Anchorage that the Cranes are in good repair and free of any major deficiencies, ordinary wear and tear excepted.
6. The preferential use hereby granted applies to the loading and unloading of Horizon container marine transport vessels, and Anchorage shall have the right and option to secondary use of the Cranes at any time it is not being used by Horizon, if Anchorage's secondary use shall not unreasonably interfere with the operations of Horizon. For secondary use of the Cranes, Anchorage shall pay to Horizon the full Port terminal tariff crane rental charge. This payment is intended to reimburse Horizon for its costs for maintenance, electricity and crane costs due to the use of the Cranes by secondary users. During secondary use, Horizon shall provide maintenance and repairs, fuel and utilities. Horizon further agrees to provide a list of experienced crane operators from which a secondary user may select persons it wishes to employ as operators.
7. Horizon shall have the right to approve or disapprove of the proposed secondary use only in respect to whether it is safe and within the capacity of the Cranes and whether the proposed secondary use will unreasonably interfere with the operations of Horizon. The approval by Horizon of the proposed secondary use shall not be unreasonably withheld. Any modifications of the Cranes for the proposed secondary use will be submitted to Horizon in advance, and must be approved by Horizon, provided, however, that such approval will not be unreasonably withheld.

b. The first paragraph of Article 6 of the PUA is amended to add “including its operation and maintenance of the Cranes” after “thereon,” in the 6th line thereof.

3. **Amendment of Revocable Use Permit.** Revocable Use Permit dated August 1, 2005, is amended to add Fifty-Eight Thousand Eight Hundred Thirty-Nine (58,839) square feet of the South Transit Area and Fourteen Thousand Four Hundred Twenty-Nine (14,429) square feet of Transit Area “A” to the existing Ninety-Three Thousand Twelve (93,012) square feet, for a total of One Hundred Sixty-Six Thousand Two Hundred Eighty (166,280) square feet, all as depicted on Exhibit A attached hereto.

4. **Amendment of Leases.** Rental payments set forth below shall be payable in advance in equal monthly installments effective January 1, 2011, and continuing through and including December 1, 2015:

Lot 4A – Monthly rent of EIGHTEEN THOUSAND FOUR HUNDRED FORTY DOLLARS (\$18,440);

Lot 4A-1 – Monthly rent of FIVE THOUSAND EIGHT HUNDRED FORTY-NINE DOLLARS (\$5,849);

Lot 5D-1 – Monthly rent of TWENTY THOUSAND SIX HUNDRED SIXTY-ONE DOLLARS (\$20,661);

Lot 5F-1 – Monthly rent of ELEVEN THOUSAND THREE HUNDRED NINETEEN DOLLARS (\$11,319);

Lot 6C-1 – Monthly rent of THIRTY-THREE THOUSAND EIGHT HUNDRED FOUR DOLLARS (\$33,804);

Lot 6D-1 – Monthly rent of TWENTY-FOUR THOUSAND TWO HUNDRED EIGHTY-ONE DOLLARS (\$24,281);

South Transit Area and Transit Area “A” – Monthly rent of TWELVE THOUSAND SEVEN HUNDRED FORTY-EIGHT DOLLARS (\$12,748); and

Tidewater Road – Monthly rent of THREE THOUSAND FOURTEEN DOLLARS (\$3,014);

5. **Ratification of Remaining Terms.** Except as expressly referred to herein, all terms and conditions of the PUA, Leases and Revocable Use Permits are hereby ratified and shall remain in full force and effect and binding upon the parties.

6. **Effective Date.** This Amendment is effective as of January 1, 2011.

MUNICIPALITY OF ANCHORAGE

HORIZON LINES OF ALASKA, LLC

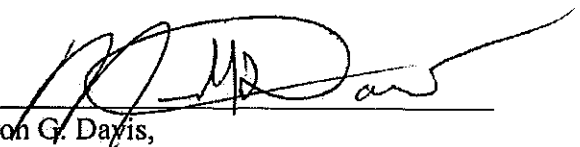
Consolidated Amendment – Preferential Usage Agreement – Leases – Revocable Use Permits

Page 4 of 6

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George J. Vakalis, Municipal Manager



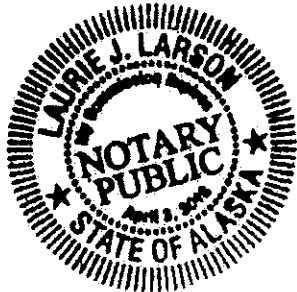
Marion G. Davis,
Vice President and General Manager


RECOMMENDED FOR APPROVAL:

William J. Sheffield, Port Director

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 31st day of August, 2011, by Marion G. Davis, Vice President and General Manager of HORIZON LINES OF ALASKA, LLC, a Delaware limited liability company, on behalf of the company.





NOTARY PUBLIC IN AND FOR ALASKA
My Commission Expires: April 3, 2013

