



City of Bethel Port Commission Agenda

Regularly Scheduled Meeting
November 23, 2015 - 7 pm
City Council Chambers, City Hall, Bethel, AK



Commissioners

Alan Murphy
Chair
Term Expires 2015
(907)543-2805

Greg Roczicka
Vice-Chair
Term Expires 2017
(907)543-2903
groczicka@hotmail.com

Richard Pope
Port Commissioner
Term Expires 2017
(907)543-1900
bethelalaskapc@qci.net

Alisha Welch
Council Member
Term Expires 2017
(907)545-6026
arwelch@cityofbethel.net

Ex-Officio

Peter A. Williams,
Port Director
(907)545-4150
pwilliams@cityofbethel.net

Nathan Greydanus
Port Admin
(907)543-2310
ngreydanus@cityofbethel.net

Allen Wold
City Dock Attendant
(907)543-2310
awold@cityofbethel.net

- i. **CALL TO ORDER**
- ii. **ROLL CALL**
- iii. **PEOPLE TO BE HEARD**
- iv. **APPROVAL OF AGENDA**
- v. **APPROVAL OF MINUTES FROM THE REGULAR MEETINGS**
APPROVAL OF MINUTES FROM THE REGULAR MEETINGS APRIL 2015, AUGUST 2015,
SEPTEMBER 2015, OCTOBER 2015
- vi. **SPECIAL ORDER OF BUSINESS**
- vii. **DEPARTMENT HEAD COMMENTS**
- viii. **UNFINISHED BUSINESS**
AML's warehouse lease
Abandon Derelict Vessel Task Force (ADV)
- ix. **NEW BUSINESS**
- x. **COMMISSION MEMBER'S COMMENTS**
- xi. **ADJOURNMENT**

CITY OF
BETHEL

Peter Williams <pwilliams@cityofbethel.net>

Northland Lease

Leila Kimbrell <lkimbrell@akatty.com>

Wed, Apr 13, 2011 at 4:13 PM

To: Lee Foley <lfoley@cityofbethel.net>, Pete Williams <pwilliams@cityofbethel.net>

Cc: Lori Strickler <lstrickler@cityofbethel.net>

Good afternoon, Lee and Pete -

Pete asked our office to review the Northland Services warehouse lease as it is up for renewal and needs the rent and other terms revised. The new lease is attached for approval. You will note the attached form is substantially different in appearance from the old form of lease used for the past several years, however, the basic terms remain unchanged. New revised or additional provisions include language to address hazardous substances/materials, indemnification language, insurance provisions have been updated and strengthened.

Also, I spoke to Peter regarding this, but want to reiterate so you are also aware of the issue, Lee. The past practice for the Port appears to have been that the Port Director signs leases relating to Port facilities. Technically, this is not sufficient as it is the City Manager, upon Council approval, who has the authority to bind the City. If there are other leases or agreements that have been signed in this manner, we should revisit them to determine the validity of the documents.

To ensure the proper procedure is followed for authorization and approval of the renewal lease, the following must occur. This process is briefly summarized here and explained further below:

- 1) Receive recommendation for renewal from Port Commission (BMC 14.03.020)
- 2) Receive majority approval from Planning Commission for renewal (BMC 4.08.050(C))
- 3) Receive approval for and authorization for City Manager to execute renewal. (BMC 4.08.050(C))

An explanation of each step follows:

1) The Port Commission needs to provide a recommendation to the Council for approval of the renewal lease with Northland Services. (Note: If no quorum is available due to vacancies, the Rule of Necessity can be invoked to allow the Port Commission to proceed. I know that there were some vacancies a few weeks ago and am unaware if they have been filled. If so, this parenthetical is unnecessary.) BMC 14.03.020 provides in relevant part that the Commission must (i) Advise the city council with respect to the port facilities concerning the lease and use of real or personal property at the Port and (ii) review contracts prior to execution and monitor and periodically report to the city council concerning the status of all contracts executed with respect to the port facilities. (See, BMC 14.03.020(B) & (C).)

2 & 3) This lease is a renewal of the prior lease, set to expire May 31, 2010. The Code procedures for renewing a lease are set forth at BMC 4.08.050(c). As a renewal lease, the procedure appears relatively straightforward but it should go through the proper channels to ensure it is properly authorized and executed. All leases, including renewal of leases, must go through a 2-step process under the code: First, a majority vote of the planning commission is required and second, council must approve and authorize the City Manager to executed the lease. BMC 4.08 requires leases be approved by ordinance.

It will be best to consult with the City Clerk regarding the timing and preparation of ordinance to approve the renewal and what will be necessary from the Planning and Port Commissions.

Because the process necessary to follow to for this renewal will not likely be done prior to the expiration of the current lease, I recommend the City and Northland Services agree to continue the current lease from month-to-month until the renewal lease is approved by council. This should be done by a letter to Northland Services and their written acceptance. Otherwise, the current lease requires peaceable exit of

**CITY OF BETHEL PORT FACILITIES
RENEWAL OF LEASE AGREEMENT**

This Renewal of Lease Agreement ("Lease") entered into this 24th day of January 2013, is made by and between the City of Bethel, a municipal corporation organized under the laws of the State of Alaska, located at 300 State Highway, Bethel, Alaska, 99559, ("Lessor"), and Northland Services, a corporation organized under the laws of the State of Washington, whose physical address is ("Lessee"). This Lease is a renewal of the 2011 lease previously in effect between the parties which terminated on July 1, 2012.

TERMS

1. DESCRIPTION OF PREMISES. Lessor leases to Lessee the premises located at the Bethel City Dock, Bethel Recording District, Fourth Judicial District, State of Alaska, and described more particularly as follows:

The Old Northwest Navigation Warehouse with dimension of the warehouse being 80' long x 60' wide (hereinafter "demised premises").

2. TERM. The term of this Lease shall be forty (40) months, retroactive to July 1, 2012 ("Commencement Date") and terminating the last day of the month of October 31, 2015 (the "Termination Date").

3. RENT. Rent shall be payable at the rate of \$1,800.00 (US) per month for the first twenty (20) months. For the second twenty (20) months, rent shall be payable at the rate of \$2,000 (US) per month.

Rent shall be due and payable to Lessor on the first day of each month during the term of the Lease. If rent is not received by the 5th of each month, Lessee shall be in breach and Lessor shall have the right to charge a 5% interest for each day in which the Lease is due and/or to seek any and all remedies available to it by law, including, but not limited to, terminating this Lease Agreement.

4. USE OF PREMISES. The demised premises are to be used by Lessee for the purposes of handling and storing Lessee's LCL (less container load) freight. Lessee shall restrict its use of the demised premises to such purposes subject to the terms, conditions, and other restrictions contained in this Lease. Lessee shall not use or permit the use of the demised premises for any other purpose without the prior, express, and written consent of Lessor, or Lessor's authorized agent.

5. RESTRICTIONS ON USE.

A. Lessee shall not use the demised premises in any manner that will increase risks covered by insurance on the demised premises and result in an increase in the rate of insurance or a cancellation of any insurance policy, even if such use may be in furtherance of Lessee's business purposes.

Chapters 03, 08 and 09, as amended, and the City of Bethel Municipal Code ("BMC"), as now or at any time hereafter in effect.

6. WASTE, NUISANCE, OR UNLAWFUL ACTIVITY. Lessee shall not allow any waste or nuisance on the demised premises, or use or allow the demised premises to be used for any unlawful purpose.

7. UTILITIES. Lessee shall arrange and pay for all utilities furnished to the demised premises for the term of this Lease, including, but not limited to, electricity, gas, water, sewer, and telephone service.

8. REPAIRS AND MAINTENANCE. Lessee shall maintain the demised premises and keep them in good repair at Lessee's expense, except that side and rear exterior walls and the roof will be maintained in good condition by Lessor. Lessor shall also repair and maintain the premises, including all utilities, not otherwise damaged by Lessee or resulting from Lessee's neglect. Lessee and Lessor performed an inspection of the demised premises prior to Lessee's occupation thereof. (Refer to original contract between parties)

9. DELIVERY, ACCEPTANCE, AND SURRENDER OF PREMISES.

A. Lessor represents that the demised premises are in fit condition for use by Lessee.

B. Lessee shall surrender the demised premises on the Termination Date, or termination of this Contract if sooner than Termination Date, in the same condition as when Lessee took possession, allowing for reasonable use and wear, and damage by acts of God, including fires and storms. Before delivery, Lessee shall remove all business signs, equipment, structures and goods placed on the demised premises by Lessee and restore the demised premises to the same condition as when received.

10. PARTIAL DESTRUCTION OF PREMISES. Partial destruction of the demised premises shall not render this Lease void or voidable, nor terminate it except as specifically provided in this Lease. If the demised premises are partially destroyed during the term of this Lease, Lessor shall repair them within forty-five (45) days of the partial destruction or as soon thereafter as can be made in conformity with governmental laws and regulations. Written notice of the intention of Lessor to repair shall be given to Lessee within fifteen (15) days after any partial destruction. Rent will be reduced proportionately to the extent to which the repair operations interfere with the business conducted on the demised premises by Lessee. If the repairs cannot be made within the time specified above, Lessor shall have the option to make them within a reasonable time and continue this Lease in effect with a proportional rent rebate to Lessee as provided for in this Lease. If the repairs cannot be made in sixty (60) days, and if Lessor does not elect to make them within a reasonable time, either party shall have the option to terminate this Lease.

11. RIGHT OF ENTRY.

- D. Lessee agrees to maintain automobile liability insurance in the amount of one million dollars (\$1,000,000) for bodily injury and property damage.
- E. Lessee shall maintain and provide a certificate of coverage to the Lessor of any Workers' Compensation and employers' liability insurance as required by Alaska law.
- F. Lessee shall replace certificates, policies and endorsements for any insurance expiring prior to the termination of this Lease. Unless otherwise provided for in this Lease, Lessee shall maintain such insurance from the execution of this Lease until terminated and the demised premises fully restored.
- G. All certificates and endorsements for any insurance Lessee is required to provide under this section shall be submitted to Lessor and attached to Exhibit A of this Lease.

16. PROPERTY INSURANCE.

- A. Lessor may elect to obtain property insurance for the leased building protecting its own financial interests. Lessee shall not be named or added as a co-insured on such policy nor provided any coverage.
- B. All property belonging to Lessee or others that is in, on or adjacent to the leased premises shall be there at the risk of the Lessee or of such other person only. Lessor and its officers and employees shall not be liable for any loss or damage to such property.

17. ASSIGNMENT, SUBLEASE, OR LICENSE.

- A. Lessee shall not assign or sublease the demised premises, or any right or privilege connected with the demised premises, or allows any other person except agents and employees of Lessee to occupy the demised premises or any part of the demised premises without first obtaining the written consent of Lessor. Consent by Lessor shall not be consent to a subsequent assignment, sublease, or occupation by other persons.
- B. An unauthorized assignment, sublease, or license to occupy by Lessee shall be void and shall terminate this Lease at the option of Lessor.
- C. The interest of Lessee in this Lease is not assignable by operation of law without the prior written consent of Lessor.

18. BREACH. The failure of Lessee to comply with each term and condition of this Lease, the appointment of a receiver to take possession of the assets of Lessee, a general assignment for the benefit of the creditors of Lessee, or any action taken or allowed to be taken by Lessee under any bankruptcy act, shall constitute a breach of this Lease. Lessee shall have ten (10) days following receipt of written notice from Lessor of any breach to correct the conditions specified in the notice. If the corrections cannot be made within the ten (10) day period, Lessee shall have a reasonable time to correct the default if action is commenced by Lessee within ten (10) days after receipt of the notice and Lessee takes steps to correct the default as soon as reasonably practicable.

19. REMEDIES OF LESSOR FOR BREACH BY LESSEE.

parties.

32. NOTICES.

A. All notices, demands, or other writings that this Lease requires to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed as follows:

To Lessor:
City of Bethel
ATTN: City Manager
PO Box 1388
Bethel AK 99559-1388

To Lessee:
Northland Services
ATTN:
PO Box 24527
Seattle WA 98124

B. The address to which any notice, demand, or other writing may be given or made or sent to any party as above-provided may be changed by written notice given by such party as above-provided.

33. BINDING EFFECT.

This Lease shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties.

34. TIME OF THE ESSENCE. It is specifically declared and agreed that time is of the essence of this Lease.

35. PARAGRAPH HEADINGS.

The titles to the paragraphs of this Lease are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Lease.

36. AUTHORITY.

By signing this Lease, the undersigned represent that they are authorized to execute this Lease and bind the parties and their respective officers, directors, employees, agents, heirs, successors and assigns hereto, and that they have not assigned any claim covered by this release.

37. EFFECTIVE DATE.

This Lease shall take effect on the date of both parties have executed this Lease. In the event the Lease is executed in counterparts, the Effective Date shall be the date upon which the final party to this Lease signs below.

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**Exhibit A to the
City of Bethel Port Facilities
Renewal Lease Agreement**

Certificate of Insurance

The certificates of insurance required by Lessee pursuant to Section 16 of the Lease Agreement shall be attached hereto.