

Introduced by: City Manager Baird
Date: November 29, 2005
Public Hearing: ~~November 29, 2005~~ December 13, 2005 SM
Action: Passed
Vote: 6-0

CITY OF BETHEL, ALASKA

ORDINANCE #05-20

AN ORDINANCE AUTHORIZING THE ACQUISITION OF LOT 2A, BLOCK 19, UNITED STATES SURVEY NO. 3230 A/B, FROM CROWLEY MARINE CORPORATION

WHEREAS the property located at Lot 2A, Block 19, United States Survey No. 3230 A/B, is located on the Bethel City Dock between parcels of land already owned by the City;

WHEREAS the City wishes to acquire the Parcel to secure ownership of property based on the City Dock and for possible future development, and therefore, the acquisition is in the public interest;

BE IT ORDAINED by the City Council of Bethel, Alaska that:

SECTION 1. Classification. This ordinance is not permanent in nature and shall not be placed in the Bethel Municipal Code.

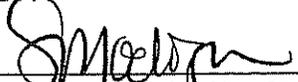
SECTION 2. Authorization of Acquisition. In accordance with Section 4.08.020(A) of the Bethel Municipal Code, the City Council hereby authorizes the acquisition of the Parcel in accordance with the Purchase and Sale Agreement ("PSA") attached to this Ordinance as *ATTACHMENT A*, and authorizes the City Manager to execute the PSA.

SECTION 4. Name. In accordance with Section 4.08.020(B) of the Bethel Municipal Code, the Parcel property shall be held in the name of the "City of Bethel."

SECTION 5. Effective Date. This ordinance shall become effective immediately.

PASSED AND APPROVED THIS 13th DAY OF DECEMBER 2005, BY A VOTE OF 6 IN FAVOR AND 0 OPPOSED.

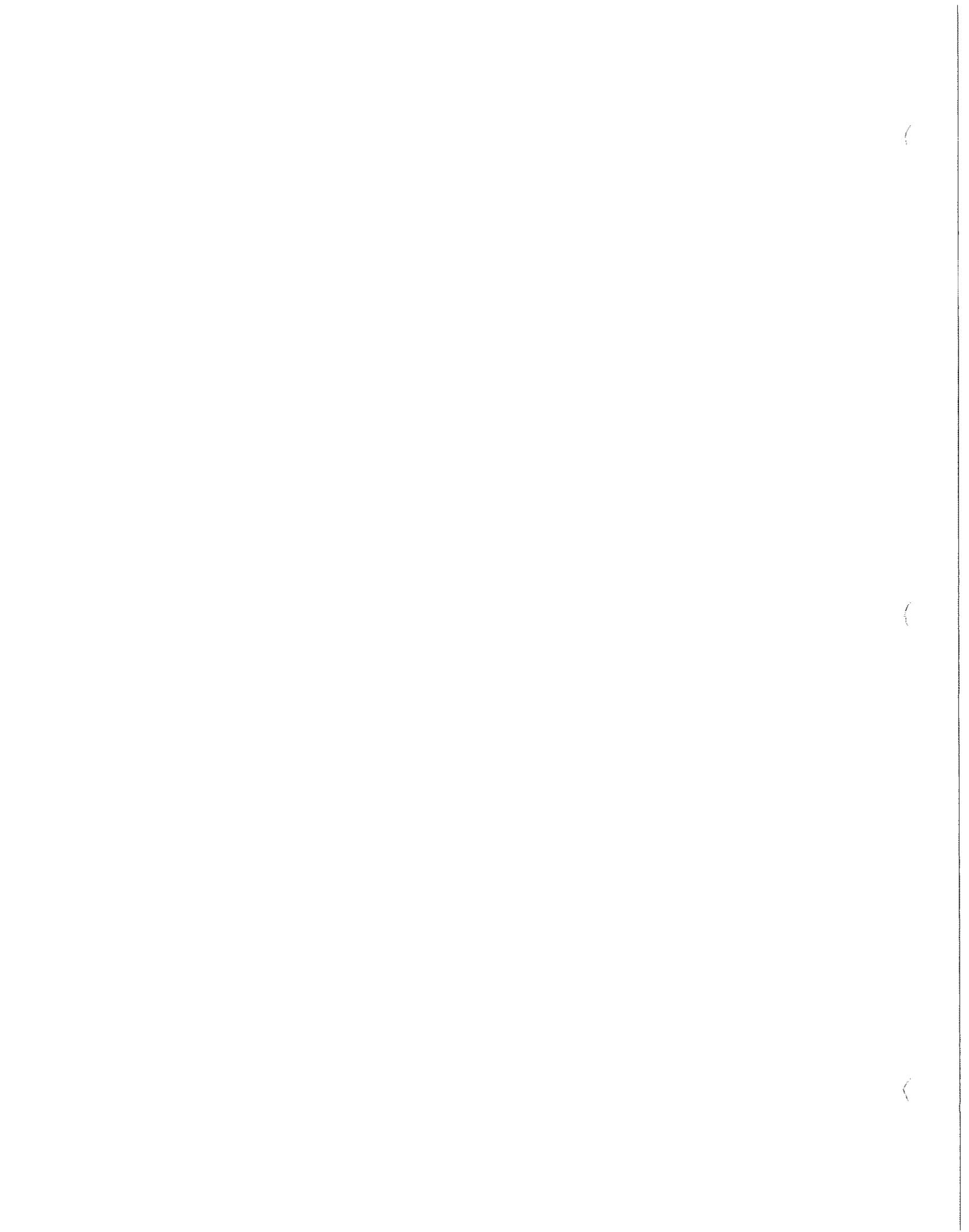
ATTEST:



Sandra Modigh, City Clerk



R. Thor Williams, Mayor



AGREEMENT OF PURCHASE AND SALE OF REAL ESTATE

Lot 2A, Block 19, U.S. Survey No. 3230 A & B
Bethel, Alaska

This Agreement of Purchase and Sale of Real Estate shall supersede any and all previous offers and counter-offers, either oral or written. If this Agreement is not signed by all parties, it shall not represent a binding agreement between the parties, or an offer to buy or sell by either party.

THIS AGREEMENT OF PURCHASE AND SALE OF REAL ESTATE (the "Agreement") is made and entered into by and between the CITY OF BETHEL, an Alaska municipal corporation ("BETHEL") as Buyer, and CROWLEY MARINE SERVICES, INC., SUCCESSOR BY MERGER TO CROWLEY CONSTRUCTORS, INC., SUCCESSOR BY MERGER TO PACIFIC ALASKA FUEL SERVICES, INC., a Delaware corporation ("SELLER"), as Seller. For purposes of this Agreement, the effective date of this Agreement ("*Effective Date*") shall be the last date of execution of this Agreement by the parties.

1. ***The Property.*** Subject to the terms and conditions of this Agreement, SELLER agrees to sell to BETHEL, and BETHEL agrees to purchase from SELLER, the following described unimproved real property: Lot 2A, Block 19, U.S. Survey No. 3230 A & B, Townsite of Bethel, Alaska according to the official plat thereof, filed under Plat No. 80-3, Records of the Bethel Recording District, Fourth Judicial District, State of Alaska (the "*Property*").

2. ***Purchase Price and Terms of Payment.*** The purchase price for the Property (the "*Purchase Price*") shall be FORTY FIVE THOUSAND DOLLARS (\$45,000.00). The Purchase Price shall be paid as follows: cash, bank cashier's check or by wire transfer at Closing. The Purchase Price shall be subject to prorations and adjustments as provided for in this Agreement.

3. ***Evidence of Title/Title Contingency.*** SELLER shall order a preliminary title insurance commitment (the "*Title Commitment*") from the Title Company. BETHEL shall have fifteen (15) days from the Effective Date (the "*Title Review Period*") to review the state of title to the Property, including the ALTA survey referenced below. Prior to the end of the Title Review Period, BETHEL shall deliver written notice to SELLER of any objections or defects to title noted in the Title Commitment or ALTA survey to which BETHEL objects (the "*Title Objections*"). BETHEL will be deemed to have waived his rights to object to any title objections or defects if he fails to give SELLER timely notice of such other Title Objections. Any exceptions or defects to title to which BETHEL does not timely object during the Title Review Period shall be deemed to be "*Permitted Exceptions.*" SELLER shall have until the Closing to

remove or otherwise render acceptable the Title Objections or to decline to correct such Title Objections, provided, that, SELLER shall notify BETHEL in writing within **five (5) days** of the receipt of BETHEL's Title Objections letter which Title Objections SELLER will remove prior to or at Closing. If SELLER shall not correct or remove the Title Objections on or before the Closing, then BETHEL shall either (i) waive such uncured objections and accept title to the Property subject to such uncured objections (which shall be deemed to be included as Permitted Exceptions at that point) without adjustment to the Purchase Price; (ii) negotiate a new and lower Purchase Price based on such uncured objections; or (iii) terminate this Agreement by written notice to SELLER, whereupon neither BETHEL nor SELLER will thereafter have any further obligations or liabilities under this Agreement. SELLER acknowledges that BETHEL may elect to obtain an ALTA extended coverage owner's title policy as opposed to an ALTA standard coverage owner's policy, which requires an ALTA Survey. In the event BETHEL makes such election and the ALTA survey cannot be timely completed to accommodate the Title Review Period, the Title Review Period shall then be extended for a **ten (10) business day** period following BETHEL's receipt of the ALTA survey and the other deadlines, including Closing, shall be adjusted accordingly. At Closing, SELLER shall convey fee simple, marketable title to the Property to BETHEL by Statutory Warranty Deed, subject only to the Permitted Exceptions. SELLER shall also cause the Title Company to issue the standard or ALTA extended owner's policy of title insurance, as the case may be, at Closing in a policy amount equal to the Purchase Price, subject to the Permitted Exceptions, and including the endorsements required by BETHEL. SELLER shall pay the premium amount related to a standard owner's title policy, and BETHEL shall pay the additional premium cost related to the ALTA extended owner's policy, the costs for the ALTA survey and the endorsements requested by BETHEL. The statutory warranty deed to be delivered at Closing shall include all Permitted Exceptions.

4. **Absence of SELLER's Warranties and Representations.** The Property is being sold "AS IS - WHERE IS" without warranties or representations or any kind whatsoever (except for the warranty of title to be given in the warranty deed), expressed or implied, including, without limitation, zoning and environmental matters.

In addition, effective at Closing, BETHEL is deemed to have made the following representation which, notwithstanding any other provision hereof, shall survive Closing:

BETHEL acknowledges for BETHEL and BETHEL's successors and assignees (i) that BETHEL has been given a reasonable opportunity to inspect and investigate the Property and all matters relating thereto, either independently or through agents and experts of BETHEL's choosing and (ii) that BETHEL is acquiring the Property based upon BETHEL's own investigation and inspection thereof, and (iii) that notwithstanding any other provision, the provisions of this Section shall survive Closing and shall not be merged therein. SELLER and BETHEL agree that the Property shall be sold and that BETHEL shall accept possession of the Property on the Closing Date "AS IS, WHERE IS, WITH ALL FAULTS" with no right of set-off

or reduction in the Purchase Price, that such sale shall be without representation or warranty of any kind, express or implied, including, without limitation, warranty of income, zoning, environmental, potential, expenses, uses, merchantability or fitness for a particular purpose, and SELLER does hereby disclaim and renounce any such other representation or warranty. BETHEL specifically acknowledges that BETHEL is not relying on any representations or warranties of any kind whatsoever, express or implied, from SELLER or SELLER's agents as to any matter concerning the Property, including without limitation: (1) the condition or safety of the Property or any improvements thereon, soils and geology including hazardous materials, lot size, or suitability of the Property or its improvements for a particular purpose; (2) whether the Property is in compliance with applicable city, state or federal statutes, codes or ordinances. BETHEL further acknowledges and agrees that it is relying solely upon its own inspection of the Property and not upon any representations made to it by SELLER, its officers, directors, contractors, brokers, managers, agents or employees nor any person whomsoever. Any reports, repairs or work required by BETHEL are to be the sole responsibility of BETHEL and BETHEL agrees that there is no obligation on the part of SELLER to make any changes, alterations, or repair to the Property, and, as of the end of the Due Diligence Period defined below, BETHEL acknowledges that BETHEL has completed its due diligence with respect to the Property to its satisfaction. BETHEL is solely responsible for obtaining any approval, permit or utility service necessary for development, transfer or occupancy of the Property, all at BETHEL's sole cost and expense.

5. City Council Approval. BETHEL's obligation to close this transaction is subject to approval of the purchase and this Agreement by ordinance. BETHEL shall present the ordinance and this Agreement to the Bethel City Council as soon as possible. If not approved by the Bethel City Council, BETHEL may terminate this Agreement on written notice to SELLER, whereupon neither party shall have any further liability or obligation to the other under this Agreement.

6. BETHEL's Due Diligence.

(a) BETHEL's obligation to consummate the transaction contemplated by this Agreement and to close on the purchase of the Property is conditioned upon satisfaction, in the sole and absolute discretion of BETHEL, of the following:

(i) The condition of the Property meets with the approval of BETHEL, in BETHEL's sole and absolute discretion. BETHEL and any authorized representative of BETHEL will have the right to inspect the Property and are hereby granted access to do the same (including for purposes of the ALTA survey). Such inspections may include, but shall not be limited to, an inspection for evidence of Hazardous Substances, inspections of the improvements on the Property, geotechnical review, planning and zoning review, and architectural reviews. All such inspections shall be at BETHEL's sole expense.

Such inspections by BETHEL or BETHEL's representatives are to be conducted in such a manner as not to physically damage any part of the Property to the greatest extent possible. BETHEL shall indemnify, defend and hold SELLER harmless from any and all liability directly or indirectly resulting from or otherwise arising out of or in connection with the activities of BETHEL or its employees, agents, consultants or other representatives during its due diligence assessment of the Property. Further, in the event BETHEL's due diligence activity results in the disturbance of the soil or any improvements on the Property, BETHEL shall, at its sole cost and expense, restore the Property to its condition as it existed at the time of the beginning of the Due Diligence Period. With respect to the Due Diligence, BETHEL and any of its consultants shall have SELLER named as an additional insured under their liability insurance policy to cover SELLER during the inspections. The indemnity set out in this section shall survive the termination of this Agreement and Closing.

(ii) Any other issue related to the Property, including without limitation, proposed uses of the Property, are acceptable to BETHEL, in BETHEL's sole and absolute discretion.

(iii) SELLER shall furnish to BETHEL, within **three (3) business days of the Effective Date** copies of any appraisals, soils and environmental reports, structural reports or any other reports which discuss the physical condition of the Property, and all other information pertinent to the title, ownership and operation of the Property.

(b) BETHEL will have **thirty (30) days** to conduct the foregoing due diligence, which **thirty (30) day** period shall commence the day after the Effective Date, and end **thirty (30) days** thereafter at 5:00 p.m. Alaska time (the "**Due Diligence Period**"), and to make a final determination on the foregoing contingencies and to determine if, in the sole and absolute discretion of BETHEL, BETHEL elects not to proceed with the transaction contemplated by this Agreement. If in BETHEL's sole and absolute discretion, any of the said contingency provisions are not favorably resolved or acceptable to BETHEL, BETHEL will so notify SELLER of such negative determination in writing prior to the expiration of the Due Diligence Period, in which case this Agreement will be terminated and become null and void and of no further force or effect. In the absence of any such timely notification, the foregoing contingency provisions will be deemed to be favorably resolved. BETHEL will have the right to waive any or all contingency provisions within the time provided and to then proceed with Closing as herein stated.

7. **Damage to Property.** SELLER agrees to give BETHEL prompt notice of any fire or other casualty affecting the Property between the Effective Date and the Closing Date or of any actual or threatened taking or condemnation of all or any portion of the Property. If prior to the Closing there occurs (i) material damage to the Property caused by fire or other

casualty; or (ii) the taking or condemnation of all or any portion of the Property; then, in any such event, BETHEL may, at BETHEL's option:

(a) Terminate this Agreement by written notice to SELLER within **ten (10) days** after BETHEL has received the notice referred to above or at the Closing, whichever is earlier, whereupon neither BETHEL nor SELLER will have any further obligations or liabilities under this Agreement; or

(b) Proceeding with Closing, in which case BETHEL will be entitled to any insurance proceeds or condemnation award which may be payable on account of such occurrence, which shall be assigned to BETHEL at Closing.

8. **Time and Place for Closing.** The closing of the transaction contemplated by this Agreement (the "**Closing**") shall occur **within twenty (20) days of the expiration or earlier waiver of the various contingency provisions herein** on a date mutually agreed to by the parties. This date may be extended by mutual written consent of the parties. The actual date on which the Closing occurs is herein referred to as the "**Closing Date.**" The Closing of this transaction will take place at a location agreed to by the parties and the Title Company, and the parties hereby appoint the Title Company as their escrow and closing agent for the purpose of closing this transaction. Time is of the essence with respect to the Closing.

9. **Closing.**

(a) **At Closing, SELLER will:**

(i) Execute and deliver to BETHEL a Statutory Warranty Deed, subject only to the Permitted Exceptions.

(ii) Deliver to the Title Company such evidence of the authority and capacity of SELLER as the Title Company may require.

(iii) Deliver to BETHEL or BETHEL's designated agent possession of the Property.

(iv) Cause to be issued to BETHEL by the Title Company the title policy referenced in Section 3.

(v) Provide the Title Company with any ALTA Lien Affidavits required in conjunction with any ALTA title policy.

(vi) Execute and deliver to BETHEL an IRS FIRPTA Certification.

(vii) Execute and deliver such other instruments and documents as may reasonably be required by the Title Company to close the transaction, including without limitation, settlement statements and escrow instructions.

(b) At Closing, BETHEL will:

(i) Deliver to the Title Company such evidence of the authority and capacity of BETHEL as the Title Company may reasonably require.

(ii) Deliver to the Title Company the balance of the Purchase Price.

(iii) Execute and deliver such other instruments and documents as may reasonably be required by the Title Company to close the transaction, including without limitation, settlement statements and escrow instructions.

(c) SELLER will pay:

(i) The cost of the standard owner's title policy.

(ii) SELLER's attorney's fees.

(iii) One-half of the escrow closing fee of the Title Company

(iv) One-half of the recording fees for the Statutory Warranty Deed and any other documents to be recorded to close this transaction.

(d) BETHEL will pay:

(i) Any costs related to (A) the additional policy premium amount for converting the standard owners title policy to the ALTA extended owners policy; (B) the ALTA survey; and (C) for any endorsements desired by BETHEL.

(ii) BETHEL's attorney's fees.

(iii) One-half of the escrow closing fee of the Title Company.

(iv) Any costs related to BETHEL's due diligence investigation.

(v) One-half of the recording fees for the Statutory Warranty Deed and any other documents to be recorded to close this transaction, and the entire cost for recording any encumbrances placed on the Property by BETHEL for purposes of financing the purchase of the Property.

(vi) Any costs related to BETHEL's bank financing.

(e) The following items will be prorated to the Closing Date based upon actual days involved: (i) current real property taxes and assessments, if any. If the tax figures for the current year are not available on the Closing Date, an estimated, tentative proration of taxes will be made using tax figures from the preceding year and when actual tax figures are available an adjustment will be made within ten (10) days from the delivery of written notice by either party.

10. Termination, Defaults and Remedies.

(a) Default by SELLER. SELLER will be in default hereunder upon the occurrence of any of the following events:

(i) SELLER fails to materially meet, comply with, or perform any covenant, agreement or obligation required on SELLER's part within the time limits and in the manner required in this Agreement, for any reason other than a default by BETHEL hereunder.

(ii) SELLER fails to deliver at the Closing any items required of SELLER in Section 9(a), (c) or (e) of this Agreement.

In the event of a default by SELLER hereunder, BETHEL may, at BETHEL's option, terminate this Agreement by written notice delivered to SELLER at or prior to the Closing. In the alternative, BETHEL may seek to enforce specific performance of this Agreement by SELLER.

(b) Default by BETHEL. BETHEL will be in default hereunder upon the occurrence of any of the following events:

(i) BETHEL fails to materially meet, comply with, or perform any covenant, agreement or obligation required on BETHEL's part within the time limits and in the manner required in this Agreement, for any reason other than a default by SELLER hereunder.

(ii) BETHEL fails to deliver at the Closing any items required of BETHEL in Section 9(b), (d) or (e) of this Agreement.

In such event, SELLER may terminate this Agreement and neither party shall have any further obligation or liability to the other hereunder. In the alternative, SELLER may seek to enforce specific performance of this Agreement by BETHEL.

11. **Notices.** Any notice or communication which may be or is required to be given pursuant to the terms of this Agreement shall be in writing, and any such notice or communication will be deemed to have been given if and when delivered or mailed (or in the event the delivery or mailing is refused by the addressee) to any such party by commercial overnight courier, personal delivery, facsimile, or certified mail, return receipt requested, addressed to such party at such party's address as provided below or such other address as either party may designate by notice similarly sent. Notice by mail is effective **three (3) days** after the date such notice is deposited in the mail. Notice given by commercial overnight courier or personal delivery is effective upon receipt. Notice given by facsimile is effective upon confirmation of successful transmission by the transmitting machine. Any party or additional notice party may change their notice address by providing notice to the other party as herein provided above.

If to the BETHEL:

City of Bethel
Heath Martin, Port Director

Bethel, Alaska 99____
Facsimile: (907) 543-2311

If to SELLER:

Crowley Marine Services
Craig N. Tonga, Vice President
3835 C Street, Suite 408
Anchorage, Alaska 99503-2639
Facsimile: (907) 257-2828

With Copies To (which shall not constitute requisite notice):

Glen Price
Landye Bennett Blumstein LLP
1981 E. Palmer-Wasilla Highway, Suite 220
Wasilla, Alaska 99654
Facsimile: (907) 7376-5979

12. **Assignment.** Neither party shall have any right to transfer or assign this Agreement, and any transfer or assignment in violation hereof shall be null and void and of no force or effect.

13. **Entire Agreement/Binding Effect.** All prior oral and written understandings are merged herein, and no provision hereof may be waived except in writing signed by the party to be charged with such waiver. Any amendment to this Agreement must be executed in writing by both BETHEL and SELLER. This Agreement shall not be construed more strongly against one party than the other. The captions in this Agreement are for the convenience of the parties only and shall contain no independent significance. This Agreement shall be governed by the laws of the State of Alaska, and venue for any lawsuit shall be in the Alaska Superior Court in Anchorage. In the event suit or action is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, the prevailing party shall be entitled to recover from the other party such sums as the court may adjudge reasonable attorneys' fees at trial, on any appeal, and on any petition for review. Both BETHEL and SELLER acknowledge that they have had the opportunity, if each party so desired, for the assistance of counsel in the preparation and review of this Agreement. The parties acknowledge and agree that Glen Price, Landye Bennett Blumstein LLP has solely represented SELLER in this transaction at it has not provided any advice to BETHEL. The covenants herein will bind and inure to the benefit of the successors and permitted assigns of the respective parties.

14. **Brokers.** The parties acknowledge and agree neither party has had any broker/licensee in this transaction, representing that party, and such party shall indemnify, defend and hold harmless the other for any breach of the foregoing, which obligation shall survive Closing and the Closing documents delivered hereunder.

15. **Counterparts and Facsimile Signatures.** This Agreement may be executed in one or more counterparts, including by facsimile signature, each of which shall be deemed an original, but all of which shall constitute but one and the same agreement, notwithstanding the fact that all parties are not signatories to the original or the same counterpart.

16. **Time.** Time is of the essence under this Agreement. In the event any deadline or contingency termination falls on a Saturday, Sunday or state or federal holiday, the deadline or contingency shall be extended to the first business day following the Saturday, Sunday or state or federal holiday.

DATED as of the Effective Date.

SELLER:
Crowley Marine Services

BETHEL:
City of Bethel

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____