


MEMORANDUM

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TO: The Honorable Mayor & City Council

FROM: Lacey G. Simpson, Assistant City Manager Initials: 

DATE: March 29, 2023 File #: MGR23-173

RE: **Awards for Contract No. 23-10 – 2023 Port Dock Vendor Lease Program Award**

The below motion was prepared for City Council consideration at its meeting of April 6, 2023. The City has advertised for and received sealed bids for Contract No. 23-10 – 2023 Port Dock Vendor Lease Program. Five bids were received and were publicly opened on March 22, 2023 at 10:15 a.m. in the City Clerk's Office.

As the City Council expressed on several occasions a desire to review and update the Port Dock Vendor Lease Program agreement in use for well over a decade, staff terminated the 2022-2024 Port Dock Vendor Lease Program agreements that had been awarded at the City Council meeting of April 7, 2022 following the conclusion of the 2022 cruise season. At its meeting of January 19, 2023, the City Council provided direction and feedback on a revised lease agreement as drafted and presented by staff. Staff incorporated the City Council's amendments and released the agreement for competitive sealed bids on February 20, 2023.

Staff is recommending acceptance of the bids received for the 2023 operational period of April 15 through October 31, 2023:

<u>Bidder</u>	<u>Bid Amount Per Season</u>
Northern Tours	\$62,750.00
Venture Travel, LLC d/b/a Taquan Air	\$58,750.00
Sourdough Tours	\$46,000.00
KetchiTour, LLC	\$43,330.35
Dolly's Enterprises, LLC	\$10,700.00

A Notice of Intent to Award was issued on March 23, 2023.

A motion has been prepared for City Council consideration.

**Recommended Motion:** I move that the City Council authorize the City Manager to enter into agreements for Contract No. 23-10, 2023 Port Dock Vendor Lease Program as detailed in the Assistant City Manager's report dated March 29, 2023, and direct the City Manager to execute the contract documents on behalf of the City Council.

<b>BIDDER'S LIST</b>	<b>Contract No. 23-10</b>	<b>Bid Open Date:</b> March 22, 2023
<b>Bid Name:</b> Dock Vendor Program		<b>Bid Open Time:</b> 10:15 a.m.

COMPANY NAME		Local Bidder	Non-Collusion	Bid Bond	Addendum	Local Empl	BID AMOUNT (USD)
1.	Dolly's Enterprises, LLC	X	X	n/a	-	X	\$10,700.00
2.	KetchiTour, LLC	X	X	n/a	-	X	\$43,330.35
3.	Sourdough Tours	X	X	n/a	-	X	\$46,000.00
4.	Northern Tours	X	X	n/a	-	X	\$62,750.00
5.	Venture Travel, LLC d/b/a Taquan Air	X	X	n/a	-	X	\$58,750.00
6.							
7.							
8.							
9.							
10.							

Prepared by: Kim Stanker  
Opened in: Council Chambers

**AGREEMENT FOR  
2023 PORT DOCK VENDOR LEASE PROGRAM, Contract No. 23-10\_\_**

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the **CITY OF KETCHIKAN**, a municipal corporation, 334 Front Street, Ketchikan, Alaska 99901, hereinafter called "**CITY**," and \_\_\_\_\_ of \_\_\_\_\_ [address], licensed and qualified to do business within the State of Alaska, hereinafter called "**DOCK VENDOR**."

**NOW, THEREFORE**, for and in consideration of the terms, covenants, conditions, and provisions contained herein, and attached and incorporated herein and made a part hereof, the parties hereto agree as follows:

**Section 1: Dock Vendor Program.** The Dock Vendor Program authorizes up to six **DOCK VENDORS** to sell tours on the City's Port between April 15<sup>th</sup> and October 31<sup>st</sup>. The anticipated locations of the **DOCK VENDOR** booths for the 2023 season are shown in Exhibit A.

**Section 2: Dock Vendor.** **DOCK VENDOR** shall be a commercial business, licensed in the State of Alaska, authorized by the **CITY** and State of Alaska to sell tours on the City's Port. Unless otherwise authorized in writing by the city manager, no other service other than the selling of tours will be allowed.

**Section 3: Leased Premises.** The **CITY** leases to **DOCK VENDOR** and **DOCK VENDOR** takes and leases from the **CITY**, subject to all terms and conditions set forth and on a non-exclusive basis, those areas numbered in Exhibit A as Dock Vendor Booths 1-6 (hereinafter referred to as "Leased Areas"). The Leased Area is defined as the 6 foot by 5.5 foot Dock Vendor Booth plus an area designated outside the booth encompassing a six foot area beyond the perimeter of the booth depending on the location of adjacent booths, structures, sidewalks and vehicle access lanes. The city manager or designee will establish the allowed perimeter at the location of each Dock Vendor Booth. The city manager, at the manager's sole discretion, may increase or decrease the size of any Leased Area, will designate the location of any Leased Area and may relocate any Leased Area to another location on the City's dock facility.

**Section 4: Contract Documents.** This Agreement and the component parts of this Agreement consist of the following documents, all of which are congruent parts of this Agreement and incorporation herein as set forth in full:

- (a) Advertisement
- (b) Notice to Businesses Inviting Bids
- (c) Information for Bidders
- (d) Bid Proposal as Accepted
- (e) Non-Collusion Affidavit

**Section 5: Rent.** **DOCK VENDOR** shall pay to the **CITY** seasonal rent in the amount of \$\_\_\_\_\_ for **DOCK VENDOR's** right to use the Port Facility, April 15<sup>th</sup> through October 31<sup>st</sup>. **DOCK VENDOR** shall not have access or utilize the Leased Areas until each rent installment owing the **CITY** has been paid in full.

**Section 6: Payments.** **DOCK VENDOR** shall pay the **CITY** rent in five installments of \$\_\_\_\_\_ each due on April 15, June 1, July 1, August 1 and September 1, 2023. The amount of rent is not subject to negotiation during the term of this Agreement. Rent will not be refunded except when this Agreement is suspended or terminated by the City under Section 11(a). Failure by the **DOCK VENDOR** to make timely payments shall cause a breach in this Agreement and the **OWNER** reserves the right to refuse use of the **DOCK VENDOR'S** assigned booth until all past due rent is paid in full.

**Section 7: Financial/Management Interest in One Dock Vendor Booth.** The City has up to a maximum of six Tour Operator booths available for the Port Dock Vendor Lease Program. No persons, firms, or corporations shall be allowed to make, or file, more than one bid or be interested in more than one of the six booths. **DOCK VENDOR** shall not have a financial interest in or be involved in the management of more than one of the leases to be awarded. The exchange or sharing of vehicles, advertisements, other assets, employees and other business expenses shall, for the purpose of this Agreement, be considered a financial and/or management interest in more than one Dock Vendor business and shall not be allowed within the Leased Areas.

**Section 8: Term of Agreement.** This Agreement shall commence upon execution by both parties and end October 31<sup>st</sup>, 2023.

**Section 9: Dock Vendor Representative.** **DOCK VENDOR** shall maintain a place of business under the name on the Alaska business license within the boundaries of the Ketchikan Gateway Borough. **DOCK VENDOR** shall maintain a year round mailing address within the Ketchikan Gateway Borough. **DOCK VENDOR** shall designate a single individual by physical address, mailing address and phone number within the Ketchikan Gateway Borough upon whom service of notices and legal proceedings may be made as set forth in Section 10.

**Section 10: Notice.** Any notice, demand, request, consent, approval, communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail to the other party at the address set forth below with a copy thereof delivered to the city manager. Either party may change its address by notifying the other party of its change of address in writing. Notice shall be deemed to have been duly made and given when delivered if served personally, or three business days after mailing if mailed as provided in this section.

**CITY:**

City of Ketchikan  
334 Front Street  
Ketchikan, Alaska 99901  
ATTN: City Manager

**COPY TO:**

Port & Harbors  
2933 Tongass Avenue  
Ketchikan, Alaska 99901  
ATTN: Port & Harbors Director

**DOCK VENDOR:**

Name: \_\_\_\_\_

Physical Location: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**DOCK VENDOR** must notify the Port Director in writing no less than 10 days before there is a change in the name, physical address, mailing address or phone number of the person designated above. Failure to timely notify the Port Director shall be considered a violation of this Agreement.

**Section 11: Early Termination and Suspension of Use** (a) The **CITY** may suspend or terminate a **DOCK VENDOR'S** use of the Leased Areas in the event that the dock facilities or Leased Areas are damaged, unsafe, in need of maintenance, repair, remodeling or improvement or are needed for public purposes.

(b) In addition, the **CITY** may, upon 15 days' written notice, terminate this Agreement in the event the **DOCK VENDOR**, its employees, officers, agents, affiliate or invitees violate any of the terms and condition of this Agreement or violate any ordinance, law or rules or regulation relating to the use of the Leased Areas or the Port of Ketchikan.

**Section 12: Suspension for Cause.** The City may, upon 24 hours prior written notice, suspend or restrict **DOCK VENDOR'S** rights to use the Leased Area if **DOCK VENDOR**, its employees, officers, agents, affiliates or invitees violate the terms and conditions of this Agreement. The length of any suspension or restriction shall be determined based on the severity of the conduct and **DOCK VENDOR'S** prior performance under the terms of this Agreement. In general, a written warning containing an explanation of the violation shall be given to the **DOCK VENDOR** for a first violation, **DOCK VENDOR'S** rights will be suspended for five days for a second violation, and suspended for 30 days for a third violation. A fourth violation will normally result in a suspension of **DOCK VENDOR'S** rights pending termination of this Agreement in accordance with Section 11(b) above. **DOCK VENDOR** shall remain liable for rent due the **CITY** during any

period of suspension.

**Section 13: Failure to Operate.** If **DOCK VENDOR** fails to conduct business on the Leased Area for 15 consecutive days, without the prior written permission of the City Manager, **DOCK VENDOR** shall be deemed abandoned and terminated this Agreement.

**Section 14: No Administrative Appeal.** Actions taken by the City under the provisions of this Agreement, including but not limited to those Sections under 11 through 13 are not subject to any administrative appeal.

**Section 15: Insurance.** (a) **DOCK VENDOR'S Insurance.** **DOCK VENDOR** shall carry and maintain, during the entire term of this Agreement, the following types insurance, in the amounts specified and in the form hereinafter provided for and reasonably satisfactory to the **CITY**:

(1) **Liability Insurance.** Broad form comprehensive general liability insurance with limits of not less than One Million Dollars (\$1,000,000.00), combined single limit. The policy shall name the **CITY** and its officers, agents and employees as additional named insureds. The policy shall not contain any-self-insured retention on deductible in excess of one thousand dollars (\$1,000.00).

(2) **Worker's Compensation — Employer's Liability Insurance.** Worker's Compensation Insurance as required by the Alaska Worker's Compensation Act (AS 23.30) in the required statutory amounts and Employer's Liability Coverage for bodily injury by accident in the amount of One Million Dollars (\$1,000,000.00) each accident, for bodily injury by disease One Million Dollars (\$1,000,000.00) policy limit, and for bodily injury by disease One Million Dollars (\$1,000,000.00) each employee.

(b) **Waiver of Subrogation.** Each of the policies of insurance required by this agreement shall contain a clause or endorsement by which the insurance companies waive subrogation or consent to a waiver of right to recovery against the **CITY**.

(c) **Other Insurance Matters.** All the insurance required under this Lease shall:

(1) be issued by an insurance company or companies authorized to do business in the State of Alaska and approved by the Lessor; and provided further, unless such requirement is waived by the **CITY**, such company or companies shall in addition thereto be a member insurer included and covered under the Alaska Insurance Guarantee Association Act (Alaska Statutes, section 21.80.010, *et seq.*).

(2) Contain an endorsement requiring thirty (30) days prior written notice from the

insurance company to both **DOCK VENDOR** and **CITY** before cancellation or any change which would modify or alter in such manner as to decrease the types or breadth of insurance coverage, or the amount of insurance coverage.

- (3) A copy of a Certificate of Insurance shall be provided the **CITY** not later than the commencement of this Agreement.

**Section 16: Indemnification.** **DOCK VENDOR** shall indemnify, defend and hold harmless, the **CITY**, its employees, officers, agents, and contractors from and against any and all loss, damage, cost, expenses, injuries, deaths, and claims arising from or relating to any act or omission of **DOCK VENDOR**, its agents, officers, employees, invitees, customers, affiliates or contractor. **DOCK VENDOR** shall be responsible for the entire cost of repairing, remodeling, rebuilding, or restoring any damage to City facilities or property arising from or related to the acts or omissions of **DOCK VENDOR**, its officers, employees, invitees, agents, customers, employees, affiliates or contractors.

**Section 17: No Warranties or Representations.** The **CITY** makes no warranties or representations as to the condition, suitability or stability of Leased Areas or of the pilings, decks, booths, and supports of Leased Areas. **DOCK VENDOR** shall take Leased Areas and their pilings, decks, booths, and supports in as-is condition. The **CITY** makes no warranties or representations as to the existence, condition or suitability of any utility, street, pilings, deck, supports, access ways or docks which are adjacent to the Leased Areas or which may be used for access to or from the Leased Areas. The **CITY** shall have no duty to maintain, repair or replace any utility, streets, pilings, docks, decks, supports, booth or access ways. The **CITY** makes no warranties or representations that the Leased Areas are or will be suitable or profitable for the **DOCK VENDOR'S** intended uses. The **CITY** may at any time and without notice or liability, close or restrict use of any street, docks, access ways or dock space. Nothing in the Agreement shall be deemed to limit the **CITY'S** right to permit any other use of the dock facility and nothing shall grant **DOCK VENDOR** any exclusive rights to use dock facilities. The **CITY** may permit other tour sales, solicitation and advertising or other activities on City dock facilities or on other City property. The **CITY** shall have no duty to **DOCK VENDOR** to enforce the provisions of City ordinances which prohibit or limit sales or solicitation on City dock facilities or other property or to enforce any other ordinances, laws, rules or regulations including, but not limited to, those which affect the use of dock facilities, streets, sidewalks or other public facilities. The **CITY** shall have no obligation to **DOCK VENDOR** to enforce the provisions of this Agreement or any other agreement against the **DOCK VENDOR**.

**Section 18: Limitation of Damages.** Under no circumstances shall the **CITY** be liable to **DOCK VENDOR** for any damages, losses, or cost of any sort arising from or related to this Agreement, Leased Areas, the dock facilities; **DOCK VENDOR'S** business; or the termination or breach of this Agreement by the **CITY**, which are in excess of the rent paid under the Agreement by the **DOCK VENDOR** prior to the date of the damage, loss, or cost. The **CITY**, shall have no liability to **DOCK VENDOR** for lost revenue, earnings, business opportunities or profits, regardless of whether such



losses are caused by the intentional or unintentional acts or omissions of the **CITY**, its officers, agents, contractors, lessees or permittees.

**Section 19: Non-exclusive Use – Parity of Leases.** The **CITY** and **DOCK VENDOR** agree that **DOCK VENDOR** will share the occupancy and use of the Leased Areas with other **DOCK VENDORS** on the rotational basis set forth in Section 20. At no time will more than six agreements (including this Agreement) be granted by the **CITY** for the Leased Areas. This Agreement shall not give **DOCK VENDOR** any priority over other **DOCK VENDORS** of the Leased Areas, or any rights greater than those of other lessees. In the event of a dispute between **DOCK VENDOR** and another Dock Vendor(s) concerning the occupancy or use of the Leased Areas or concerning activities of either on City property, the decision of the city manager concerning the dispute will be final. This Agreement shall be interpreted in such a manner as to avoid conflict with other Agreements of the Leased Areas. This Agreement is intended to be part of a plan to assign the use of Leased Areas equally among six Dock Vendors and to avoid disputes among them.

**Section 20: Rotational Occupancy.** **DOCK VENDOR** shall rotate its occupancy and use of each Leased Area on a weekly basis over a six-week period with each Dock Vendor allowed to occupy and use each of the six Leased Areas for one week during each six-week period. **DOCK VENDOR** shall not occupy or use any one Leased Area for more than one week in every six weeks, and shall not return to any one Leased Area until rotating through all five of the other Leased Areas for one week each. **DOCK VENDOR** shall not trade days or weeks of occupancy at any Leased Area with other Dock Vendor(s). During the week that **DOCK VENDOR** occupies and uses a particular Leased Area, **DOCK VENDOR** shall have the exclusive right to sell tours and to advertise from that Leased Area. The **DOCK VENDOR** shall not permit another Dock Vendor(s) under the Dock Vendor Program to use or occupy the Leased Area for that week. If **DOCK VENDOR** temporarily closes their business, the Leased Area which **DOCK VENDOR** would otherwise use and occupy during that week shall remain vacant and unused and **DOCK VENDOR** will retain their place in the order of rotation. The city manager shall determine the order of rotation, the days on which a week begins and the day it ends, and each year's first week assignment of Leased Areas. Before closing business at the end of each week, **DOCK VENDOR** shall remove all signs, advertising, brochures and other property belonging to **DOCK VENDOR** from the Leased Area and shall make that Leased Area clean and ready for use by another **DOCK VENDOR** on the following day.

**Section 21: Seasonal Use.** The uses permitted under this Lease shall be permitted only from April 15<sup>th</sup> to October 31<sup>st</sup> of each year unless a longer period is permitted by the city manager. **DOCK VENDOR** shall remove all of its property from the Leased Areas by October 31<sup>st</sup> of each year unless otherwise permitted by the city manager. During the period from November 1<sup>st</sup> through April 14<sup>th</sup> of each year, **DOCK VENDOR** shall have no rights to the Leased Areas except as the City Manager may permit, and the City may use the Leased Areas or permit the use of the Leased Areas as it determines.

**Section 22: New Lessees.** In the event that any other Dock Vendor of the Leased Areas terminates its Agreement(s) or in the event the **CITY** terminates any other Dock Vendor Agreement, the **CITY** may:

(a) Reduce the number of Leased Areas by the number of Dock Vendors who terminate or who are terminated; or

(b) Enter into an Agreement for the Leased Areas to a new Dock Vendor who will then occupy and use the Leased Areas on those days which the terminated Dock Vendor would otherwise have used and occupied them and who will then have equal rights with **DOCK VENDOR** to the use and occupancy of the Leased Areas.

**Section 23: Vehicles.** Nothing in this Agreement shall give the **DOCK VENDOR** the right to park vehicles on the Leased Areas or anywhere else on City property. **DOCK VENDOR** shall have no exclusive rights to any loading zones, driveways or walkways. **DOCK VENDOR** shall obtain a motor vehicle port access pass under KMC 13.08.155 if Lessee desires to operate vehicles over City port property.

**Section 24: Facilities.** No facilities or equipment shall be placed upon Leased Areas without the prior approval of the city manager. No permanent improvement to Leased Areas will be made. All of **DOCK VENDOR'S** facilities and equipment shall be designed and built in such a manner as to be readily removable on a daily basis.

**Section 25: Utilities.** **DOCK VENDOR** shall be responsible for the proper installation and connection of any utilities and shall pay the full cost of installation and use of utilities. Utility installation and connection shall be of a quick-disconnect design and must be approved by the City prior to installation.

**Section 26: Dock Vendor's Booths.** The **CITY** shall provide booths from which all occupation and use under this Agreement will occur. The **CITY** has no obligation to maintain, repair, or replace damage to the booth which results from acts or omissions of **DOCK VENDOR**, its agents, officers, employees, invitees or customers, affiliates or contractors. For the 2023 season the City intends to provide the same booths utilized during the 2022 season.

**Section 27: Cleanup.** **DOCK VENDOR** shall keep Leased Areas clean, sanitary, and in good conditions, and shall immediately repair or replace any damage caused by **DOCK VENDOR**.

**Section 28: Tour Sales.** Tour Sales are subject to the following:

( a ) The Leased Areas may only be used for the sale of tours including bus tours, charter fishing tours, flight seeing, kayaking and other tours. No other goods or services may be sold on the Leased Areas, and no other solicitation shall occur in the Leased Areas except as approved by the city manager.

(b) Within the Leased Area, **DOCK VENDOR** shall not sell, permit to be sold or broker, tours other than those owned and operated by the **DOCK VENDOR** except for no more than two tour operators who do not hold a dock vendor lease.

(c) **DOCK VENDOR** shall provide the Port Director with a list of all tours sold from the Dock Vendor Booth in the Leased Areas.

(d) No services other than the selling of tours are allowed. The sale of goods is not permitted.

**Section 29: Dock Vendor Behavior.** **DOCK VENDOR** shall conduct its operations as follows:

- (a) **DOCK VENDOR**, its employees and agents shall conduct themselves in a manner that is not offensive to the public.
- (b) All activities to sell, promote or advertise tours by the **DOCK VENDOR**, its employees or agents, including but not limited to verbal solicitation, verbal advertising or the sale of a tour shall occur within the Leased Area. All sales or potential sales shall be predicated upon the inquiring of a potential buyer of a tour, **DOCK VENDOR** shall not verbally solicit, verbally promote or verbally advertise tours until after a potential buyer inquires about a tour. Verbal greeting is allowed but verbal solicitation is prohibited until the person enters the Leased Area. Verbal solicitation to the general public is prohibited.
- (c) **DOCK VENDOR** is prohibited from slandering, disparaging or otherwise doing harm to another tour operator or business for the purpose of promoting or selling their own tour.
- (d) **DOCK VENDOR** shall not engage in disruptive behavior or interfere verbally or nonverbally with the active operations of other sales booths. This includes slandering, disparaging or otherwise doing harm to another tour operator's business for the purpose of promoting or selling their own tour.
- (e) **DOCK VENDOR** and its agents and employees shall ensure that all verbal interactions with others, including boarding announcements, are conducted without shouting or the use of speakers, megaphones or other voice amplification will be allowed.
- (f) **DOCK VENDOR** is prohibited from playing music in the Leased Area.

**Section 30. Signage and Advertising.** Signage and advertising is subject to the following:

- (a) **DOCK VENDOR** may display up to four large signs on a single booth provided the signs do not exceed ten (10) square feet per sign.
- (b) Signs must be flush-mounted and not extend beyond the profile of the booth.
- (c) **DOCK VENDOR** may also display a single one-foot by one-foot hand-held sign.
- (d) No free standing or sandwich board signs are permitted.
- (e) **DOCK VENDOR** shall not have animals within the Leased Area other than those allowed under the Americans with Disabilities Act.
- (f) No flags, props, banners or non-rigid signs are permitted.
- (g) No signs shall advertise any other business, service or product, other than those tours owned and operated by the **DOCK VENDOR**.
- (h) No signs or articles of clothing will be allowed to display the price of a tour, including any

signs on the outside or inside of vehicles that would be visible to the public.

- (i) Signs shall advertise only the services that are sold on the Leased Area.
- (j) Written information may only be given to interested persons upon request.

**Section 31: Staffing of Booths.** Staffing of **DOCK VENDOR** booths is subject to the following:

(a) There will be no limitations on the number of personnel allowed within the interior of the booths other than those that may be imposed by the City's Fire Marshal. No more than two (2) personnel shall be allowed to sell, broker, refer, advertise or otherwise promote tours outside the **DOCK VENDOR** Booth within the Leased Area at any one time. This includes the **DOCK VENDOR** and any employees. The city manager reserves the right to reduce the number of personnel allowed to sell, broker, refer, advertise or otherwise promote tours outside the booth to one or zero if deemed necessary due to Port operational or security issues or the habitual disregard for the terms and conditions of this agreement by the **DOCK VENDOR**.

(b) By April 15<sup>th</sup> of each year, the **DOCK VENDOR** shall provide the City Manager with a list of all employees who will sell or provide services from the Leased Area. The **DOCK VENDOR** shall notify the city manager in advance of the names of any employees who will be hired after April 15<sup>th</sup> of each year. The city manager shall, within fifteen days of receiving the list of names, either approve or reject any or all of the employees. Any employee who has not been approved by the city manager or who has been rejected by the city manager shall not sell or provide services on the Leased Area. The **DOCK VENDOR** shall provide certified payroll on not less than a monthly basis, as well as payroll tax and other information to the city manager for the purpose of determining whether a person is an employee of the **DOCK VENDOR**. The city manager or their designee may at any time request information from the **DOCK VENDOR** in order to establish whether an individual selling or providing services on behalf of the **DOCK VENDOR** is an employee of the **DOCK VENDOR**.

(c) All **DOCK VENDOR'S** and their employees and agents must wear an identification tag (provided by the **CITY**) with their first and last name and the **DOCK VENDOR** they work for printed on the tag.

(d) Each **DOCK VENDOR** shall display a placard (provided by the **CITY**) identifying the **DOCK VENDOR** occupying the booth.

(e) In any one week in which a **DOCK VENDOR** occupies a Leased Area, an individual shall not be employed by or serve as a contractor or an agent of another **DOCK VENDOR**.

**Section 32: Tour Restrictions.** **DOCK VENDOR** shall ensure that their vehicles, employees or passengers will not utilize the parking lots or the CITY's harbor facilities at Mountain Point or Hole-In-The Wall for any purpose except the transfer of passengers to or from a charter vessel tour.

**Section 33: City Rules and Inspection.** The city manager may establish reasonable rules for

the use and occupation of the Leased Areas and dock facilities by giving at least 7 days prior written notice to **DOCK VENDOR**. The city manager or designee may at any time inspect the Leased Areas and all facilities, equipment and utilities located on the Leased Areas.

**Section 34: Mandatory Meetings.** **DOCK VENDOR** or its representative shall attend the preseason **DOCK VENDOR** meeting. Those **DOCK VENDORS** that operate vehicles on the Port, or their representative shall also attend a preseason Port Access Pass meeting.

**Section 35: Preseason Inspection.** **DOCK VENDOR** or its representative shall participate in a preseason booth set-up inspection by Port and Harbors staff prior to the sale of any tours.

**Section 36: No Subleasing or Assignment.** This Agreement is non-transferable. The **DOCK VENDOR** must maintain at least 51% ownership of the business during the term of the Agreement or the Agreement will be subject to early termination. No subleasing will be permitted. **DOCK VENDOR** may not assign or otherwise transfer any rights or interests under this Agreement. Only the **DOCK VENDOR** or its agents or employees may sell, broker, refer, advertise or otherwise promote tours within the Leased Area. This prohibition on subleasing, assignment, sales and solicitation shall apply even if the sub lessee, assignee, or persons selling or soliciting is another **DOCK VENDOR** or its employees.

**Section 37: Compliance with Zoning Permit.** In addition to all other requirements of this Lease, **DOCK VENDOR** shall comply with all requirements of any Zoning Permits issued to the **CITY** by the Ketchikan Gateway Borough relating to the Dock Vendor booths.

**Section 38: City Manager Designee.** The city manager may grant the Port and Harbors Director or other city employee the authority to take any action under this Agreement.

**Section 39: Relationship of Parties.** Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the **CITY** and **DOCK VENDOR**, it being understood and agreed that neither method of computation of rent nor any other provision contained herein, nor any acts of the **CITY** and **DOCK VENDOR** hereto, shall be deemed to create any relationship between the **CITY** and **DOCK VENDOR** other than the relationship of landlord and tenant.

**Section 40: Non-waiver.** No delay or omission of the right to exercise any power by the **CITY** or **DOCK VENDOR** shall impair any such right or power, or shall be construed as a waiver of any default or as acquiescence therein. One or more waivers of any covenant, term or conditions of the Agreement shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. Consent or approval of any act by the other party of a nature requiring consent or approval shall not be deemed waived or render unnecessary consent to or approval of any subsequent similar act. The receipt and acceptance by the **CITY** of rental payments as they become due from **DOCK VENDOR** where the **CITY** has knowledge of the existence of a breach of a term or condition of this

Agreement by **DOCK VENDOR**, or after the **CITY** has served notice, commenced and action, or obtained a final judgment for a breach of this Agreement by **DOCK VENDOR**, shall not be construed as a waiver of the breach by the **CITY** and shall not operate to prejudice, waive, or affect any right or remedy that the **CITY** may have under this Agreement or by operation of law, as to that breach or any future breach of the same or of a different nature.

**Section 41: Law Applicable.** The laws of the State of Alaska shall govern the construction, validity, performance and enforcement of the Agreement. Venue as to any action, claim, or proceeding arising out of, or based upon this Agreement, including, but not limited to, any action for declaratory or injunctive relief, shall be the appropriate court sitting in the City of Ketchikan, First Judicial District, Alaska.

**Section 42: Terms Construed as Covenants and Conditions.** Every term and each provision of this Agreement performable by either party shall be construed to be both a covenant and a condition.

**Section 43: Time of the Essence.** Time is of the essence of each term, condition, covenant and provision of this Agreement.

**Section 44: Cumulative Remedies.** The remedies available under this Agreement are cumulative and non-exclusive and in addition to all other remedies available in law or inequity including, but not limited to issuing citations or notices of violations under KMC Sections 13.09.025(e) and (g). The election of a party of one remedy shall not ban that party from simultaneously or subsequently pursuing any other remedy.

**Section 45: Entire Agreement.** The **CITY** and **DOCK VENDOR** acknowledges that each has read this entire Agreement, has fully understood the provisions thereof, was satisfied therewith, and signed the same of their own free will. The **CITY** and **DOCK VENDOR** further acknowledge that any prior contracts, promises, representations, or agreements between **CITY** and **DOCK VENDOR**, its employees, agents, and servants, relating to the lease of the subject premises, are hereby extinguished; that there are no oral or written promises, representations or agreements between the **CITY** and **DOCK VENDOR**, or the persons above referred to relating to the lease of the subject premises; and that this Agreement constitutes the entire and only agreement between the **CITY** and **DOCK VENDOR** relating to the lease of the subject premises.

**Section 46: Severability.** In the event any provisions of the Agreement are adjudicated or held to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first above written.

**OWNER**

**CITY OF KETCHIKAN**

By: \_\_\_\_\_  
Delilah Walsh, City Manager

**ATTEST:**

\_\_\_\_\_  
Kim Stanker, City Clerk

**BUSINESS:**

\_\_\_\_\_  
(Name of Business)

By: \_\_\_\_\_  
(Signature of authorized officer)

\_\_\_\_\_  
(Title of person signing)



**CITY ACKNOWLEDGMENT**

STATE OF ALASKA                    )  
  ) ss.  
FIRST JUDICIAL DISTRICT )

**THIS IS TO CERTIFY** that on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared **DELILAH WALSH** and **KIM STANKER** to me known to be the **City Manager** and the **City Clerk** of the **CITY OF KETCHIKAN**, a municipal corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said corporation; who acknowledged to me that they signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in the certificate first above written.

\_\_\_\_\_  
**NOTARY PUBLIC FOR ALASKA**

My Commission Expires: \_\_\_\_\_



**STATE OF ALASKA                 )**  
**) ss.**  
**FIRST JUDICIAL DISTRICT )**

**WITNESS** my hand and official seal the day and year in this certificate above written.

My Commission Expires: \_\_\_\_\_

**INDIVIDUAL ACKNOWLEDGMENT**

STATE OF ALASKA            )  
  ) ss.  
FIRST JUDICIAL DISTRICT )

**THIS IS TO CERTIFY** that on this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared \_\_\_\_\_ to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged to me that he/she signed and sealed the same freely and voluntarily for the uses and purposes therein mentioned.

**WITNESS** my hand and official seal the day and year in this certificate above written.

\_\_\_\_\_  
**NOTARY PUBLIC FOR ALASKA**

My Commission Expires:\_\_\_\_\_

STATE OF ALASKA )  
 ) ss.  
FIRST JUDICIAL DISTRICT )

to me known to be the \_\_\_\_\_ of \_\_\_\_\_, LLC,  
(manager or member)

**WITNESS** my hand and official seal the day and year in this certificate above written.

My Commission Expires:\_\_\_\_\_