

**ASSEMBLY STANDING COMMITTEE
LANDS, HOUSING & ECONOMIC DEVELOPMENT COMMITTEE
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

March 7, 2022, 5:00 PM.

Assembly Chambers & Zoom Webinar

5:00pm: Assembly Lands Housing and Economic Development Committee

<https://juneau.zoom.us/j/94215342992> or 1-253-215-8782 Webinar ID: 942 1534 2992

AGENDA

I. CALL TO ORDER

II. LAND ACKNOWLEDGEMENT

III. ROLL CALL

IV. APPROVAL OF AGENDA

V. APPROVAL OF MINUTES

A. February 14, 2022 Minutes

VI. PUBLIC PARTICIPATION

The LHED Committee follows COVID protocols in accordance with CDC guidelines, CBJ ordinances & resolutions, and COVID mitigation strategies at the time of a meeting. Assembly members meet in-person, to the extent possible. **The public is recommended – but not required – to mask at meetings. The public may participate in person or via Zoom webinar.** Testimony time will be limited by the Chair based on the number of participants. *Members of the public that want to provide oral testimony via remote participation must notify the Municipal Clerk prior to 4pm the day of the meeting by calling 907-586-5278. For in-person participation at the meeting, a sign-up sheet will be made available at the back of the Chambers and advance sign-up is not required.* Members of the public are encouraged to send their comments in advance of the meeting to BoroughAssembly@juneau.org.

When attending the zoom webinar [login info listed at top of agenda] to speak on an item up for public hearing or a non-agenda item please hit the 'raise hand' button if participating via a computer/tablet; if participating by phone press *9 on your phone; this will place a 'raised hand' icon next to your phone number and will add you to the queue.

VII. AGENDA TOPICS

A. BRH Purchase of Family Practice Building

B. Amendment to 2019 CBJ/CLIAA Settlement Agreement

C. Visitor Industry Task Force Implementation Update

VIII COMMITTEE MEMBER / LIAISON COMMENTS AND QUESTIONS

IX. STANDING COMMITTEE TOPIC

A. 2022 LHED Committee Goals

X. NEXT MEETING DATE - April 11, 2022

XI. ADJOURNMENT

ADA accommodations available upon request: Please contact the Clerk's office 36 hours prior to any meeting so arrangements can be made for closed captioning or sign language interpreter services depending on the meeting format. The Clerk's office telephone number is 586-5278, TDD 586-5351, e-mail: city.clerk@juneau.org

**ASSEMBLY STANDING COMMITTEE MINUTES
LANDS HOUSING AND ECONOMIC DEVELOPMENT COMMITTEE
THE CITY AND BOROUGH OF JUNEAU, ALASKA
February 14, 2022, 5:00 P.M.**

I. CALL TO ORDER

II. LAND ACKNOWLEDGEMENT

III. ROLL CALL - Chair Hale called the meeting to order at 5:00 pm.

Members Present: Chair Michelle Hale, Greg Smith, Wade Bryson,

Members Absent: Wááhlaal Gíidaak

Liaisons Present: Chris Mertl, Parks and Recreation; Lacey Derr, Docks and Harbors; Mandy Cole, Planning Commission

Staff Present: Dan Bleidorn, Lands Manager; Roxie Duckworth, Lands & Resources Specialist; Jill Maclean, CDD Director

IV. APPROVAL OF AGENDA – The agenda was approved as presented.

V. APPROVAL OF MINUTES – January 24, 2022 Draft Minutes were approved as presented.

VI. PUBLIC PARTICIPATION - No public participation.

VII. AGENDA TOPICS

A. Franklin Foods Request to Purchase City Property at 139 S. Franklin St.

Mr. Bleidorn discussed this topic. Mr. Smith commented that this property is that it is downtown and putting in housing downtown is an important factor in my consideration when I've spoken with Mr. McCasland. I've seen plans that show him putting housing on this, not necessarily on this piece of property, but as part of his overall project. That's one reason that I'm supportive of this.

Mr. Bryson commented that he has had the same concerns as Mr. Smith, in that there is little available buildable land and in the conversation with Mr. McCasland, he has indicated that at some point he was building housing there so that moves towards that project. I was concerned that we might not be charging enough for the land as property assessment values have been going up and this land priced out at \$41.93 a square foot, which is above most of the land that I've seen for sales around \$20 or less. Having the last piece of buildable land in the middle of downtown, he's paying double what you would pay in the Valley, so that does seem appropriate and I can support this.

Mr. Mertl commented that the PRAC did approve the disposal and one of the concerns of the PRAC and the Department, was the disposal of parkland is not necessarily in the best interest of the public, especially when the funds received from those go into the general fund and that money and land is lost for future park use. One thing that they wanted to have me bring up for clarity is that as we're seeing more and more requests for parkland disposal that there is some system that the money or the revenues generated from the disposal of parkland goes into a parkland fund that can be used for taking land and putting it into a new service or new land so that we're actually not losing that land or those facilities that really are in the best interest of the public. Mr. Bleidorn replied that the funds from this land sale would go into the land fund and not the general fund. This way the money can be used to acquire future properties, so if Parks is looking to acquire property, that money would come through the lands fund. This doesn't go to the general fund so I just wanted to make that clear.

Mr. Bryson commented that Mr. Mertl will be pleased to hear at the Public Works and Facility meeting, this morning, we authorized half a million dollars to be move forward to the Assembly for park deferred maintenance. It got its own line item to upgrade and update three parks that were mentioned earlier, Juneau loves its parks, it might not always be as straightforward, but we are taking care of the parks.

Staff request that the Lands, Housing and Economic Development Committee forward this application to the Assembly with a motion of support for disposal of City property to Franklin Foods LLC for fair market value as determined by appraisal. Motion passed, no objections.

B. Ord. 2022-04 An Ordinance Amending the Parking Requirements of the Land Use Code.

Ms. Maclean discussed this topic. The Assembly had asked CDD to look at downtown parking spurring off of the Archipelago development and the variants that they tried to have granted for their development. Staff has been working hard with the Planning Commission and the Title 49 Committee and have a solid ordinance that addresses many of the challenges. If you'll recall, we had a Parking District 1, where required parking was reduced by 60% and just outside of that we had a Parking District 2, where your required parking was reduced by 30%. Incorporating both of those zones was the fee-in-lieu map where, if you couldn't provide the required parking you could pay a fee-in-lieu which would change with the state income, with the index for to gauge what that fee would be year year-to-year. Around this same time, we had proposed in the Assembly adopted parking waivers. If you are outside of those three districts, you can apply for a parking waiver, rather than a variance. It was a much lower threshold to get that waiver, most of the time we've seen the waivers use for accessory apartments, occasionally some other commercial development and they've been hugely successful.

Looking at that, what we had before us, and working with the Commission, what we're proposing and what the Commission is recommending for approval is doing away with PD1, PD2 and the fee-in-lieu maps, creating one new map called the Town Center Parking Area, and within that area, your parking is reduced by 60%, so no more 60 and 30, it's all 60%. Within that same mapped boundary you can still apply for fee-in-lieu but one of the big differences is that prior to this, or currently on the books today, you cannot get a waiver if you're inside those parking districts. What's being proposed within these districts, you get a 60% reduction right off the top, and then you can apply for a waiver if you still believe that you don't need that parking. If you still need even more of a reduction, you can then pay fee-in-lieu and rather than having the fee-in-lieu be a fluid number that is increasing, over time, the Commission had recommended that it just be a straight fee of \$10,000 per space that you were looking to reduce from. Beyond these options, you still have joint parking and shared parking options, as we have currently in code. But you could then still apply for a variance if you thought you had the grounds for it.

While conducting the research and working with law, we started looking at the ADA regulations, those are federal and we have to abide by them. If you require any parking whatsoever, you can reduce all of it, but you can never reduce the ADA that is required to go along with it. Knowing that we went back to the books went back to title 49 and the Commission, and came up with a core area, more or less the real historic district, such as Franklin and Front Street, that area on the map in your packet. This is the area that in order to provide any parking you pretty much have to tear down buildings, which is not the intent that any of us have, to raise the historic district. In this very tight court area where you simply cannot provide any parking on site, where the buildings are basically building-to-building, we're proposing zero parking which means you aren't required to provide the ADA parking. We do have on-street and garage ADA parking and some others throughout downtown, which is why it's quite tight it ends of right before the Marine View building and goes up the hill, but it's intended for the for the buildings and the properties that simply cannot provide any parking at all on their site without taking down the building. The Commission also took time to go through the parking requirements for each use and that table that's in the land use code. They tried to work down and fine tune what those numbers should be to get it as low as possible when the 60% reduction was applied. The other thing of note, the

next item on your agenda, but they go hand in hand, when we were working on the parking code, we also realized that this impacted the on-street vendors and so that's address this evening.

Mr. Bryson commented about the Archipelago lot, he was hoping that the no parking would have been extended down two more blocks, so that the proposed Archipelago project might have a chance if it was included in a no parking area. Mr. Bryson asked if that was that discussed and what was the reason why the line was drawn where was at the Marine View. How much would it mess things up to go two block south and if Director Maclean could elaborate on the no parking area and the Archipelago lot and how they relate to each other. Ms. Maclean replied that the Planning Commission and Title 49 discussed this and it came up a number of different times. In general, not just for the Archipelago lot, but it's whenever we make code or the decisions they're based on, the findings and what's reasonable for all property owners. If you're giving special treatment there should be a strong reason why. When we look at downtown the Commission was quite diligent in looking at the areas where parking on site truly couldn't be provided and that's where the zero parking map was drawn from. It's where those historic buildings are built from property line to property line, and you can't provide ADA on site. There was discussion on the Archipelago lot and Second and Franklin because of those difficulties. Because they can provide some parking on site, if I recall correctly, the Archipelago had about six to nine spaces and because they could easily provide at least the ADA spaces, they were excluded from the zero parking area. The other thing I would add is that we did reach out to the Archipelago developers and we also reached out to Eagle Rock Ventures, they were looking at Second and Franklin and neither attended the public hearing. I believe Eagle Rock's comment was just generally that it should be zero parking for all of downtown and I can't recall that Archipelago gave any specific comments, just to say that they would not be commenting because they did not have development plans at this time.

Mr. Smith asked about page 40 of the packet, that overlays the new town Center parking area, the no parking required area, and then the PD1 and PD2. He wanted to know what the Commission's decision was to not include that square area, essentially, to have now that no parking required area, to go on Ferry Way and then South Franklin and not wrapped around that that corner. The reason for asking is that area used to be PD1, but now it's not included in the no parking required area. Ms. Maclean replied that the PD1, PD2, and the fee-in-lieu that are currently in place are incorporated into the new Town Center parking area. That area has been enlarged in certain places, near Coppa, and heading north. Those are still in the Town Center parking area, they didn't get a 60% reduction right off the top, but again they're not in the zero parking area because their lots aren't completely built from property line to property line so they can provide at least the ADA parking spaces on site and potentially more than that. Mr. Smith commented that it seems kind of incongruous to just have that corner not be included in the no parking required area, based on how the four different type of parking zones are overlaid. It just seems like an outlier and my understanding of that corner, is that it is pretty built out. I guess there's a parking lot behind the old Taqueria building, something I may evaluate as we go forward.

Mr. Bryson asked how many spaces will the new City Hall require under this new parking ordinance, whether it's a built at the 450 Whittier or on top of the parking garage, do we have any numbers for that. Ms. Maclean replied offhand, she does not know how many parking spaces a new City Hall will require, but happy to follow up.

Mr. Smith asked if there was any discussion to have less parking requirements with residential development versus commercial. Ms. Maclean replied that on page 21 or 22 of the packet, the table for parking spaces, there is one column for use, space is required in all other areas, with spaces required in

the Town Center parking area. For instance, for single family duplex if you're anywhere else in the borough, it is two per dwelling unit, but when you're in the Town Center parking area it's one per dwelling unit for a single family home. When it comes to multifamily units it's even more reduced because it's one per bedroom throughout the borough but in the Town Center parking area downtown it would be 0.4 spaces per bedroom. The table illustrates the number of spaces required.

Mr. Smith commented that in the Town Center, would we be willing to reduce the parking based on bedrooms, how that calculation is done. For example, the Second Street lot, if there was consideration or if that was being put into residential, having no parking requirements versus if it were in commercial then having parking requirements. I can understand that the calculation for parking requirements, based on use and some of those factors, I was thinking something for instance of development at that Second and Franklin lot if it might be a residential development, to have very low or no parking requirements. If it were commercial to have some parking requirements to incentivize residential development versus just purely commercial. Just an idea, knowing that we want to encourage housing downtown. Ms. Maclean replied that the Assembly could do that, and when the Commission worked through this, their line of thinking was, what is the minimum, where is the sweet spot that balances between incentivizing development but ensuring that there's enough parking downtown and then also being aware of the impact to the residential neighborhoods up the hill and if you don't provide parking in the Town Center then will people impact the neighborhoods with their parking. I believe the Commission was trying to find that balance of what's enough to require but not too much that it's a detriment to development.

Mr. Mertl agrees that cutting out around Marine View and Ferry Way seems inconsistent in terms of the general layout of the no parking area. Has there been any thought or desired outcomes that have a higher density housing that are outside of the no parking zone. Follow up question, how that affects the housing units along Gastineau Avenue, because that seems somewhat inconsistent and I guess I'm just looking for the rationale and maybe I don't have enough understanding. Ms. Maclean replied that when the Planning Commission looked at parking in general and this downtown parking, zero parking wasn't considered. When we came to the challenge of addressing ADA parking spaces, it became a reality that that we realized, we needed to somehow address the specific area again, where the buildings simply just take up the entire lot, how do we make it possible for them to be redeveloped or reuse if they if they cannot provide ADA on site. The Commission strived to look at this, and it's a big jump from where we've been to go to zero parking. The intention of the Commission was to keep this as narrow as possible to address the ADA issue, while still being balanced with, why does everyone else have to provide parking. It's coming back to trying to balance the needs and wants of everyone.

Commissioner Cole commented that the idea of no parking zones downtown is scary to a lot of people, and we were absolutely trying to walk this in to introduce the idea to really move forward the kind of commercial and housing potential of the downtown core without blowing up the issue so that everyone felt very uncomfortable. The entire Commission was divided, I happen to be on a no parking side of the fence and also wanted to include Second in Franklin in the no parking area. The rest of the Commission has more experience than I do and was trying to balance the years' worth of parking complaints and woes that exists downtown with some forward progress. The idea that it's not a fully formed progressive agenda, it is the first step toward, maybe thinking a little bit differently about parking downtown.

Chair Hale had a question that was related to Mr. Bryson's comment about the Archipelago lot and didn't realize it was included in the Town Center parking area, is that reduced parking? Ms. Maclean nodded in confirmation.

Mr. Bryson, moved to amend the motion, to move the dotted line that goes up the Ferry Way on the map, to move it down three blocks to include the Archipelago lot, stretching the map out.

Mr. Bryson spoke on his amendment, that he took the Ferry Way dotted line and in stretched it down South Franklin to include the Archipelago lot. While I completely understood Director MacLean's response and I understood the thought process behind the Planning Commission's decision to balance no parking with the fairness of the rest of the community, we have a different situation here. We had a land trade between the City and a private developer. The City got to develop their lot and got to use the Archipelago lot as a staging area. We don't know if there was a cost to that because the next plan was going to be that the Archipelago lot would build and they would use the City's land. We had this trade, it was moving right along until we ran into the Planning Commission and parking the waivers. The parking-in-lieu of, I wanted to say was a \$20 million project, that was completely designed to absorb tourism traffic, it was going to be a way to help deal with some of the higher volumes of tourists and traffic, but because we did not have parking solutions they said no. We have been asking for development and asking to help with the tourism, we have an opportunity here to correct a wrong and by putting that piece of land into a no parking. A no parking required area allows for the trade in its original desire to come forth. They showed an artist's rendition that had the Archipelago lot fully developed with the City parking lot, the 18 passenger shuttle parking lot. The City got to build theirs, and they have no parking requirements, even though they have dozens of people working there each day. So I thought that if we included that as the Assembly would be helping move development forward.

Mr. Mertl commented on the amendment that he believes in the Planning Commission, that they're going to do the best work that they can. I just have heartache when another Commission, as things move up the food chain, starts making spot changes to reflect one or two pieces of property, I fully understand where Mr. Bryson's coming I was involved in the Archipelago design property, I understand the challenges. But then I'm afraid that we're going to get pushed back from other people on the waterfront saying they want the same rights and privileges. I like the cleanliness of drawing lines along road so it's either on the upland side or the water side of Franklin Street. I get a little bit of heartache around Ferry Way and South Franklin not picking up that little corner that's notched out but for me that's just my personal take is that we want to make clean lines and make sure that everybody is being treated equally. I think the Planning Commission the Planning Department know this better than anybody else, and I have faith, but I do understand Mr. Bryson where you're coming from, and I do understand the challenges I'm just afraid of the ripple effect this may potentially have, thank you.

Chair Hale objected to the motion and spoke to her objection. Director Maclean and Commissioner Cole had clear explanations as to why the no parking zone area was arrived at. Originally there was the no parking area, and that area was arrived at, as I understand it, because if there is any parking at that location, it has to be ADA parking. The City provides ADA parking, so there is ADA parking and those buildings, as Director Maclean explained, would have to be torn down in order to provide pieces of them for that one ADA parking space. As I understand it, there is there are avenues, even beyond just the 60% waiver or whatever waiver if someone can demonstrate why they don't need parking. And I agree with Mr. Mertl that keeping it clean and following the logic that the Title 49 Committee, CDD and the Planning Commission used when we work very hard on this parking ordinance.

Amendment to the motion passes with 2:1 vote, Mr. Bryson and Mr. Smith voting in favor and Chair Hale voting against.

Motion passed that the parking recommendations to the full Assembly as amended. No objections.

[Clerk's Note: It was discovered after the fact that it takes 3 votes to pass a motion along. There was an erroneous ruling to pass this motion that went to Assembly meeting on February 28, 2022 and then forwarded to COW for the March 7, 2022 meeting.]

C. Ord. 2022-11 An Ordinance Amending the Street Vending Requirements of Title 62 Regarding Parking.

Ms. Maclean discussed this topic. Staff have been working through the changes to the parking code and with assistance, we realized that it would impact Chapter 62, which we don't often do too much work in, at least not the Planning Division side of Community Development. We do have street vendors that are permissible in the areas that use the PD1 and PD2 maps. Since the PD1 and PD2 will no longer be part of code, then we also need to update Chapter 62 to be consistent. We are recommending that similar to what exists today, there would be no vending carts allowed in on-street parking spaces. Currently they are not allowed in PD2 and we would be changing that to the no parking required area, or the zero parking area. Vending carts can park in parking spaces currently in the PD1 district and we're proposing to change that to the Town Center parking area. Switching it to be consistent and still keeping them permissible, but just in the map boundary area that most closely relates to what's on the books today.

Mr. Smith move ordinance 2022-11 for introduction to the assembly. Motion passed.

VIII. INFORMATION ITEMS

A. Community Development Department information

Ms. Maclean discussed this topic and wanted to take the opportunity to get the memo to the committee and was happy to discuss it at another meeting, if desired. Staff is still working on the other permit numbers that Committee has asked for and will present once completed.

IX. STAFF REPORTS – Household Hazardous Waste Facility Disposal Verbal Update

Mr. Bleidorn gave a quick update. Staff is continuing to work with Alaska Brewing Company, who is the adjacent property owner acquiring this property from the City. The Assembly process was complete and we were scheduled to finalize in 2020 but with Covid the City may have wanted to use that site at times between then and now. We are working with the applicant to acquire it and we expect it to be finished in April. It's moving right along, we need nothing from the Committee or the Assembly at this time, since we already have the ordinance adopted, but just wanted to remind you all that that's taking place and staff are working actively to dispose of that property.

X. COMMITTEE MEMBER/LIAISON COMMENTS AND QUESTIONS - None

XI. NEXT MEETING DATE – March 7, 2022

XII. ADJOURNMENT - Chair Hale adjourned the meeting at 5:48 PM.

MEMORANDUM

CITY/BOROUGH OF JUNEAU

Lands and Resources Office
155 S. Seward St., Juneau, Alaska 99801
Dan.Bleidorn@juneau.org
(907) 586-5252

TO: Michelle Hale, Chair of the Assembly Lands Housing and Economic Development Committee

FROM: Dan Bleidorn, Lands and Resources Manager *Daniel Bleidorn*

SUBJECT: BHR Request to Appropriate Funds to Purchase 10301 Glacier Hwy

DATE: March 2, 2022

In early 2021, the owners of 10301 Glacier Hwy approached Bartlett Regional Hospital to inquire about the Hospital's interest in acquisition of this building and land. The property consists of a 10,550 Square foot building on a 2 acre lot and is currently being utilized for medical related services. In order to acquire this property the Assembly must first appropriate the funds.

53.04.020 - Acquisition by purchase or eminent domain.

(a) Upon the appropriation of funds for the purpose, the manager may acquire real property or an interest therein at a price the manager determines does not exceed fair market value. The manager may acquire such property through negotiation or eminent domain, including the use of a declaration of taking. Except upon the determination of a court or the master in an eminent domain proceeding, or upon the approval of the assembly by motion, the manager may not acquire property under this section at a price, which is higher than fair market value of the property. (b) Real property shall be acquired and held in the name of "the City and Borough of Juneau."

The City and BRH hired Julie Dinneen Company in July 2021 to determine the fair market value of this property. The market value for an as-is sale was determined to be \$2,409,000. There are three leases currently occupying the building. Either party can terminate two leases within 90 days. The third lease expires in September of 2023. If the City acquires this building, a lease rate appraisal will be completed to determine future lease rates if any lessees remain after acquisition.

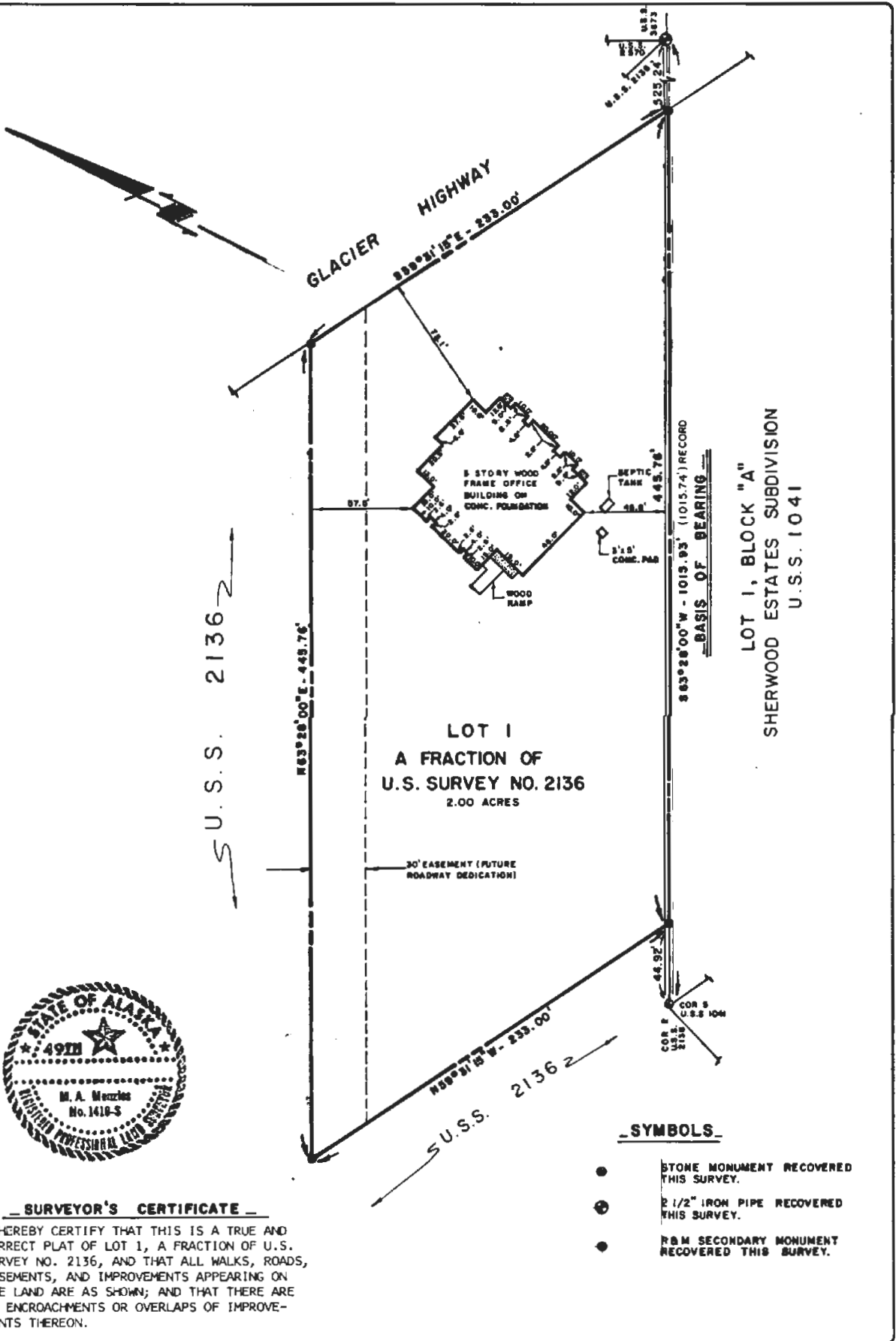
At the February 22, 2022 meeting, the BRH Board of Directors passed a motion that the board authorize the CEO to sign a purchase and sales agreement for the fair market value and authorize expenditures up to \$50,000 for inspections, surveying, appraisal and similar tasks for the Family Practice, LLC Building located at 10301 Glacier Highway. The purchase

and sales agreement allows for BRH to access the property to complete inspections and outlines terms and conditions, which are contingent on the Assembly, appropriating the funding to purchase the property.

Staff request that the Lands, Housing and Economic Development Committee pass a motion of support to appropriate funds for the acquisition of 10301 Glacier Hwy to the full Assembly.

Attachments:

1. As-built 1984
2. Appraisal Excerpt
3. Family Practice Building Purchase White Paper
4. 02 18 2022 BRH / Assembly Joint Committee Meeting Minutes
5. 02 22 2022 BRH Board Meeting Minutes Draft
6. Purchase and Sales Agreement



DES:
CKD:
DWN: J.S.
CKD: M.A.M.
APPD:

R&M
R&M CONSULTANTS, INC.
CONSULTING ENGINEERS PLANNERS ARCHITECTS

AN "AS-BUILT" SURVEY PLAT
OF LOT 1
A FRACTION OF U.S.S. 2136
CITY & BOROUGH OF JUNEAU, ALASKA

DWG. NO.	129-1
SCALE:	1"=50'
DATE:	10/1/84
PROJ. NO.	333129
GRID:	FILE

**MARKET VALUE APPRAISAL
MEDICAL CLINIC
10301 GLACIER HIGHWAY
JUNEAU, ALASKA
JCD FILE #21-25**

As of July 20, 2021

PREPARED FOR:

**Dan Bleidorn
Lands and Resources Manager
Division of Lands and Resources
City and Borough of Juneau
155 South Seward Street
Juneau, Alaska 99801**

BY:

**JULIE DINNEEN COMPANY
Julie C. Dinneen, MAI
302 W. Chester Street
Lafayette, CO. 80026**

JULIE DINNEEN COMPANY
REAL ESTATE APPRAISALS

October 4, 2021

Dan Bleidorn
Lands and Resources Manager
Division of Lands and Resources
City and Borough of Juneau
155 South Seward Street
Juneau, Alaska 99801

RE: Market Value of 10301 Glacier Highway, Juneau. JDC File #21-25

Dear Mr. Bleidorn:

At your request, I have completed an appraisal of the above referenced real estate which is in Juneau. This report has been completed in conformance with the appraisal reporting standards formulated by the Uniform Standards of Professional Practice (USPAP) as formulated by the Appraisal Foundation.

This appraisal reflects the fee simple interest in the subject property. This reflects a hypothetical condition, as there is a lease in the building that expires in September of 2023. The letter of engagement states that "there are short term leases in effect on the premises. These were designed to give the City of Juneau flexibility in building use, either to retain the doctors as tenants or to re-tenant the space for other uses. These short-term leases should not have a negative impact on value". In this report, market rent is applied to this lease.

Based upon my research and analysis, I have formed the opinion that the market value of the fee interest in the subject property, in as-is condition, is as follows:

Summary of Value Conclusions

Medical Clinic	\$2,325,000
Excess Land	\$84,000
Total	\$2,409,000

Respectfully Submitted,


Julie C. Dinneen, MAI

302 W. CHESTER STREET, LAFAYETTE, CO. 80026
(303) 579-3589

Bartlett Regional Hospital

3260 Hospital Drive, Juneau, Alaska 99801

907.796.8900

www.bartletthospital.org

DATE: March 1, 2022
TO: BRH & Assembly Joint Committee
FROM: BRH Board President Kenny Solomon-Gross and Finance Chair Deborah Johnston
RE: Purchase of Family Practice Building

GOALS:

Short-Term: Community Stability & Investment Opportunity

Ensure BRH has enough land to expand into because the existing BRH campus is nearing capacity.

Provide strategic investment opportunities through the existing rental revenue stream, knowing that all leases and financial arrangements of the existing tenants will need to be analyzed for compliance with federal health care regulatory requirements before closing.

Mid-Range: Expand Specialty Service Providers

Provide the opportunity to expand specialty services by offering a space to specialty providers not currently serving the community and relocating select, well-established BRH specialty services in the future.

Long-Term: Potential for Physical Growth

Expand our footprint locations allowing BRH to overcome current space restrictions on campus due to growth in services areas and thereby establish a greater physical presence in the Juneau community. The property's flat, useable land offers ample opportunity for future building expansion, providing further square footage for operations.

HOW:

The Family Practice Building located in the valley houses multiple established medical practices.

Purchasing the building gives BRH more exposure to the patient population we currently serve. Our population finds it convenient to access services with other healthcare providers who have locations, or plan to open them, in the valley. We want to provide easy access to specialty care practitioners and offer the same level of care delivery at a location closer to patients' homes.

At a purchase price of \$2.4 million (appraised value), the property would provide an investment opportunity, providing a better return annually (6.8% or \$165,000, see attachment) than the 1% return currently being realized. Based on first-year projections, the subsequent two-year projections have a 3% conservative growth rate added to their gross revenue and expenses that shows a healthy bottom line.

WHY:

BRH has one central location with no additional ownership of physical sites in Juneau, limiting the scope of practice and making it hard for our team to accommodate the demand for services that we provide. Our current needs are not being met due to a lack of available space, limiting our future strategic needs to deliver care to a broader patient population.

ATTACHMENT

\$165,000 net operating income / \$2,400,000 purchase price = 6.8% annual return on investment

CAPITALIZATION OF NET INCOME				
Family Physicians Practice	6,800 SF	\$	2.65	\$ 216,240
Dr. Raster	1,000 SF	\$	2.50	\$ 30,000
Chiropractic First	1,550 SF	\$	2.50	\$ 46,500
Gross Revenue	9,350 SF			\$ 292,740
Stabilized Vacancy & Credit Loss	5%			\$ (14,637)
Gross Effective Income				\$ 278,103
EXPENSES	10,640 sf GBA			
Professional Management	5%			\$ (13,905)
Administration	\$ 0.35 SF			(3,724)
Utilities	\$3.40 SF			(36,176)
Building Maintenance & Upkeep	\$ 2.50 SF			(26,600)
Insurance	\$ 0.64 SF			(6,810)
Real Estate Taxes	\$ 2.00 SF			(21,280)
Reserve Allowance	\$ 0.45 SF			(4,788)
Total Expenses				\$ (113,283)
Net Operating Income				\$ 164,820
Capitalization Rate				7%
Indicated Value				\$ 2,354,575
Rounded				\$ 2,355,000

Excerpt above from page 61 of Market Value Appraisal, Medical Clinic, 10301 Glacier Highway, Juneau, Alaska, prepared for Division of Lands and Resources, City and Borough of Juneau, by Julie Dinneen Company on July 20, 2021

Bartlett Regional Hospital

Minutes

BRH and ASSEMBLY JOINT COMMITTEE MEETING

February 18, 2022 – 12:00 p.m.

Zoom videoconference

CALL TO ORDER – Meeting called to order at 12:03 p.m. by Alicia Hughes-Skandijs, Chair.

BRH BOARD AND COMMITTEE MEMBERS* PRESENT

Kenny Solomon-Gross, President*	Mark Johnson, Secretary	Deb Johnston*	Lance Stevens*
Hal Geiger	Rosemary Hagevig	Jerel Humphrey, BRH Interim CEO	

CBJ ASSEMBLY COMMITTEE MEMBERS PRESENT

Alicia Hughes-Skandijs*	Beth Weldon, Mayor*	Christine Woll*
-------------------------	---------------------	-----------------

ALSO PRESENT

Kim McDowell, CCO BRH	Rorie Watt, City Manager	Loren Jones, CBJ
Dallas Hargrave, HR Director	Karen Forrest, Interim CBHO BRH	Jeff Rogers, CBJ Finance Director
Sherri Layne, Asst CBJ Attorney	Robert Palmer, CBJ Attorney	Megan Rinkenberger, Exec Asst BRH
Dan Bleidorn, Lands & Res Mgr	Beth McEwen, City Clerk	Erin Hardin, Marketing Dir. BRH
Beth Mow, Contracts Admin BRH	Suzette Nelson, Exec Asst BRH	Lyndsey Brollini, KTOO

PUBLIC PARTICIPATION – None

EXISTING PROPERTY CONSIDERATIONS

Mr. Watt encouraged looking at current campus uses to see if efficiency of current property can be maximized. He suggested considering a parking structure instead of the current space that the parking lots take up, and removing part of the hill side to expand current footprint outward, even if just enough for a single row of parking spaces, but recognized that this option could be costly.

FAMILY PRACTICE BUILDING PURCHASE

The primary intention of BRH in purchasing this building and surrounding land is supportive, so that current tenants have reassurance that they can continue to occupy the space, at least in the short term. There has been no discussion of removing the current tenants, but the purchase would allow for expansion of medical needs over time. The purchase has been vetted by the attorneys to ensure no favoritism with BRH-associated providers. This is one of a list of properties to investigate as they become available, but it is the only one currently available. Another reason for the purchase is the available flat land surrounding the building. BRH will not be paying over the appraised price.

Currently there are three leaseholders occupying the space. Two of those leases were up in December, and were renewed on a month-to-month basis, with a 60-day notice option from either party. The third lease has an additional year left on it. If one of the two lease holders that are currently on a month-to-month basis decides to vacate, BRH could use the space for other recruited independent providers, but that is not the immediate intention.

Mayor Weldon asked about the condition of the building and anticipated maintenance costs had been investigated. No building inspections have been conducted yet. Once there is a signed purchase agreement, BRH would have the authority to go forward with the evaluation. The building was built in 1984. There will be an action item presented at the upcoming

BRH BOD Meeting to vote on the purchase of the Family Practice building. With this support, BRH can move forward with the due diligence before bringing it to the Assembly for a purchase recommendation.

The existing property recommendations from Mr. Watt will be moved forward for exploration, and Mr. Solomon-Gross will put them on the Planning Committee's agenda for their next meeting.

BOARD COMMENTS AND QUESTIONS – None

ADJOURNMENT: 12:33 p.m.

DRAFT

Draft 2/22/22 minutes BRH BOARD of DIRECTORS MEETING:

BRH & Assembly Joint Committee – Draft minutes from the February 18th meeting in the packet. Mr. Solomon-Gross reported that considerations for existing properties were discussed and will be discussed at the Planning Committee meeting. Excavation and parking garage options will be expensive projects so must be thoroughly vetted by planning and finance. There had been extensive discussion about the purchase of the Family Practice Physicians building. Committee members from the assembly and the board are in favor of moving ahead. ***MOTION by Mr. Stevens that the board authorize the CEO to sign a purchase and sales agreement for the fair market value and authorize expenditures up to \$50,000 for inspections, surveying, appraisal and similar tasks for the Family Practice, LLC Building located at 10301 Glacier Highway. Ms. Knapp seconded.*** Mr. Johnson expressed concern about the month to month leases of current tenants. He also noted the property has been on the market for 3 years and is designed as a health clinic. Any other purpose would require major renovations. Dr. Jones supports moving ahead. Mr. Geiger noted that this has been discussed extensively and supports moving ahead. Ms. Young noted that all discussions about this have been held in executive session and she does not support moving ahead. There are a lot of unknowns in the future in regards to inflation. BRH has a lot of projects in progress and doesn't want to lose resources. Ms. Hagevig is in favor of moving ahead, the issues have been dealt with and have been thoroughly vetted. Mr. Johnson disagrees and raised the issue of possibly having to have a Certificate of Need (CON) depending on what BRH uses the building for. Ms. Knapp expressed her support of moving forward. There is flat land that can be built upon in the future and it's a good investment that supports existing practices in the community. Mr. Solomon-Gross stated that it has been vetted by CBJ Lands, the attorneys and the BRH and Assembly Joint Committee. Roll call vote taken. **MOTION approved by a 6-2 vote.** (Mr. Solomon-Gross, Ms. Hagevig, Ms. Knapp, Mr. Geiger, Mr. Stevens and Dr. Jones voted yes. Mr. Johnson and Ms. Young voted no.)

AGREEMENT TO PURCHASE AND EARNEST MONEY RECEIPT

This Agreement to Purchase and Earnest Money Receipt ("Agreement") describes the terms and conditions of sale of the below-described real property and shall be effective as of the latest of the dates on which this Agreement is signed by representatives of Buyer and Seller, as indicated on the signature page(s) below (the "Effective Date"). This is a legally binding contract. Read carefully before signing. If not understood, seek competent legal advice. The Parties must clearly checkmark the boxes that apply to this Agreement, initial, and sign where indicated.

SELLER: Family Practice Building LLC.

BUYER: The City and Borough of Juneau

Seller agrees to sell and Buyer agrees to buy, on the terms and conditions herein, the following described real property having a street address of: 10301 Glacier Hwy Juneau Alaska 99801
For Property known as: US Survey 2136 Lot 1, Juneau Recording District, First Judicial District, State of Alaska, (herein, the "Property")as more particularly described on Exhibit A attached hereto.

1. PURCHASE AGREEMENT TERMS

- 1.1. Purchase Price to be: \$ 2,400,000
- 1.2. Purchase is contingent on the Buyer’s governing body, the CBJ Assembly, appropriating funds for the purchase as required under CBJ 53.04.020 during the Inspection Period. Failure of the CBJ Assembly to appropriate funds during the Inspection Period will terminate this agreement without further penalty to Buyer and will not be considered a breach of this agreement; provided, however, Buyer agrees to apply immediately after the Effective Date for and diligently and in good faith pursue the appropriation of the funds for the purchase.
- 1.3 Earnest Money shall be in the amount of \$ 30,000.00 in the form of ☐ Cashier’s Check ☐ Personal Check ☐ Promissory Note; or ☒ wire transfer. Buyer shall deposit the earnest money within ten (10) business days in the Trust Account of the Title Company, which shall hold earnest money in trust pursuant to a separate escrow agreement, if such escrow agreement is required by the Title Company.
- 1.4. All Cash Offer ☐ NO ☒ YES if YES, BUYER agrees to supply SELLER within the Inspection Period evidence of appropriation of sufficient funds and/or proceeds necessary to close the transaction.
- 1.5 Title/Escrow Company: _____
Address: _____ Attn: _____ Lender: None
- 1.6. The consummation of the transaction contemplated by this Agreement (the “Closing”) shall be on or before fifteen (15) days after the expiration of the Inspection Period. "Closing Date" is defined as: The day that the deed is recorded to transfer right, title and interest to the property to Buyer and consideration is paid to Seller.

- At Closing, Seller shall deliver to Buyer the following documents:
- (a) A special warranty deed (the “Special Warranty Deed”), conveying title to the Property to Buyer in fee simple, free and clear of all liens and encumbrances whatsoever, except for the Permitted Exceptions (as hereinafter defined), and warranting the title to the Property against the lawful claims of all persons claiming by, through or under Seller, but no further or otherwise.
 - (b) An affidavit complying with Section 1445(b)(2) of the Internal Revenue Code of 1986.
 - (c) Such other documents as are consistent with the terms of this Agreement and reasonably required to close the transaction contemplated by this Agreement.

At Closing, Buyer shall deliver to Seller the following documents:

_____ Buyer's initials	_____ Date	_____ Buyer's initials	_____ Date	_____ Seller's initials	_____ Date	_____ Seller's initials	_____ Date
---------------------------	---------------	---------------------------	---------------	----------------------------	---------------	----------------------------	---------------

- (a) The Purchase Price in immediately available funds.
- (b) Such other documents as are consistent with the terms of this Agreement and reasonably required to close the transaction contemplated by this Agreement.

1.7. Possession: shall be ☒ On delivery or recording of the deed, subject to existing leases or ☐ Subject to occupancy agreement.

2. CLOSING COSTS Closing fees and costs shall be paid by the parties on the Closing Date, as follows:

☒ Seller and Buyer shall split the escrow closing fee and recording fee equally.
Buyer shall be responsible for all fees and costs related to any endorsements to the Owner's Title Insurance requested by Buyer, the Buyer's loan including, but not limited to, the Loan Origination Fee, Appraisal, Document Prep, ALTA Title Insurance, tax service fee, and Flood Research fee, unless otherwise required by applicable FHA or VA regulations. Seller shall provide an existing As Built Survey, if one is in Seller's possession or reasonable control. Seller shall pay Owner's Title Insurance and if applicable and any Assessments and/or Liens against the Property. Each party shall bear its own legal fees and costs, and any other closing costs shall be paid by the parties in equal shares.

3. CONTINGENCIES The contingencies listed below or on attached addendum shall be deemed to have been released, waived, or satisfied, and this Agreement shall continue to the Closing Date, unless, by the date specified for each contingency ("Release Date") the Party requesting that contingency has notified the other Party in writing that the contingency is not released, waived, or satisfied. If a Party has notified the other Party prior to the release date that a contingency is not released, waived, or satisfied, this Agreement is terminated, and earnest money will be returned to the buyer, unless the Parties negotiate other terms or conditions. Buyer shall provide Seller, at no cost, copies of all reports and documents regarding the Property obtained as a result of the below described contingencies within five (5) days of receipt.

3.1 Title Contingency.

Seller shall order promptly after the Effective Date and provide Buyer with a preliminary title report (the "Title Commitment") for the Property. This Agreement is contingent upon Buyer's receipt and approval (to Buyer's satisfaction, subject to the terms of this Section 3.1 of the Title Commitment. Release Date: Buyer will have ten (10) days from receipt of the Title Commitment to raise objections by written notice thereof (the "Title Defect Notice") from Buyer to Seller.

If Buyer timely delivers the Title Defect Notice to Seller, Seller, at Seller's expense, will have the option, but not the obligation, within thirty (30) days from receipt of Buyer's Title Defect Notice to remove the title defects and encumbrances set forth in the Title Defect Notice, with the exception of any deeds of trust, mortgages, mechanic's or materialmen's liens (arising by or through Seller), tax liens and judgment liens, which Seller shall remove at or prior to the Closing. If the Seller is unable or elects not to correct the defects and encumbrances set forth in the Title Defect Notice within such thirty (30) day period, the Buyer shall elect (at Buyer's sole option) by written notice (the "Title Election Notice") to Seller within ten (10) business days after receipt of Seller's election not to correct such defects and encumbrances either (i) to accept title subject to the defects and encumbrances which are not cured and proceed to Closing without reduction of the Purchase Price in which event such defects and encumbrances shall become Permitted Exceptions, or (ii) to terminate this Agreement whereupon all earnest money paid by Buyer will be immediately returned to Buyer, in such event, Seller will be liable for any cancellation fee for the Title Commitment. Buyer's failure to deliver the Title Election Notice within such ten (10) business days, shall conclusively be deemed to be Buyer's election to accept title subject to the defects and encumbrances which are not cured and proceed to Closing without reduction of the Purchase Price.

"Permitted Exceptions" is defined as: (1) general and special taxes, including special assessments and personal property taxes, if any, a lien not delinquent, for the fiscal year including the Closing Date; (2) exceptions on record, including, without limitation, those shown on the Title Commitment except those matters which Seller has agreed in writing to cause to be removed at or before Closing; (3) matters arising by or under Buyer, (4) all matters on an ALTA survey if Buyer obtains such, at its sole cost and expense, or that would be disclosed by an ALTA survey of the Property if Buyer elects not to obtain such, (5) existing zoning restrictions promulgated by the applicable governmental authorities and affecting the Property as of the Effective Date, and (6) existing leases.

3.2 Inspection Contingency.

Buyer ☒ **is not waiving** the inspection contingency and is entitled to inspect the Property as described in the Inspection Agreement Addendum.

4. REPRESENTATIONS AND WARRANTIES

4.1. Title. The Seller shall convey title by Special Warranty Deed. Title shall be, at closing date, free and clear of all liens and encumbrances, except Permitted Exceptions.

4.2. Condition of the Property. Buyer represents and warrants to Seller and Licensee(s) associated with this Agreement that Buyer is completing Buyer's own independent due diligence, inspections and investigations of the Property, and of matters listed as Contingencies and Disclosures, in

_____ Buyer's initials	_____ Date	_____ Buyer's initials	_____ Date	_____ Seller's initials	_____ Date	_____ Seller's initials	_____ Date
---------------------------	---------------	---------------------------	---------------	----------------------------	---------------	----------------------------	---------------

Paragraphs 3.3 and 6 of this Agreement, respectively, unless waived, and that the decision to purchase is not based upon any representations or warranties of Seller or any Licensee(s) associated with this Agreement, expressed or implied (which includes, but is not limited to the property's square footage, septic system, latent defects, plumbing, heating, electrical systems, fixtures, appliances, roof, sewer, soil conditions, foundation, structural conditions, insulation, and compliance with state, federal and municipal law), but solely upon the independent due diligence, investigations and inspections of Buyer.

4.3. Damage or Destruction. Seller agrees, in the event that the Property is destroyed or materially damaged prior to the Closing Date, the earnest money shall be returned to the Buyer and this Agreement is terminated, unless the Parties agree otherwise in writing. Any insurance or utilities prepaid by Buyer will be reimbursed by Seller, but Seller shall not reimburse Buyer for other costs incurred, including costs related to appraisal and inspection.

4.4. Representations of Funds. Subject to Section 1.2 above (appropriation by CBJ Assembly), the Parties represent and warrant that they have sufficient funds to comply with the terms and conditions of this Agreement and are not relying on any contingent source of funds Buyer shall establish tax and insurance reserves, as appropriate. If Buyer neglects or refuses to comply with any of the conditions, to make all required payments promptly, Buyer becomes unable to qualify for financing, fails to provide lender with necessary information to process an application, lacks sufficient funds to close, or otherwise fails to comply with this agreement, then the earnest money and additional earnest money, if any, shall be forfeited to Seller.

4.5. Use and Operation of the Property. Seller represents and warrants to Buyer, as of the Effective Date of this Agreement through the Closing Date, the Property will be used, operated and managed by the Seller in a manner consistent with the way the Property is currently being used, operated and managed. Seller will not execute or modify any existing lease or other agreement regarding the Property, without first obtaining the written consent of Buyer.

5. DISCLOSURES

5.1. Environmental and Regulatory. To the actual knowledge of Seller, and except as expressly disclosed in writing to the Buyer by the Seller on or before ten (10) days after the Effective Date, Seller represents and warrants to Buyer that there has been no release of Hazardous Substances, as defined in this Section, in on, onto, under, or from the Property prior to the Closing Date, there are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, there is no pending or written notice of a threatened litigation affecting, involving, or relating to the Property or any portion thereof; and no civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no written notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law applicable to the Property or its use.

"Hazardous Substances" shall include pollutants or substances defined as hazardous waste, hazardous substances, hazardous materials, pollutants, contaminants, or toxic substances in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9601 et seq., as amended; in the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499), as amended; in the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., as amended; in the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., as amended; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., as amended; the Clean Water Act, 33 U.S.C. § 1251 et seq., as amended; or the Alaska hazardous substance liability law (A.S. 46.03.822).

Each of the representations and warranties of Seller contained in this Agreement or any documents executed pursuant hereto or in connection herewith shall survive for a period of six (6) months following the Closing Date (the "Survival Period"). Any claim which Buyer may have against Seller for a breach of any such representation or warranty, whether such breach is known or unknown, which is not specifically asserted by written notice to Seller within the Survival Period shall not be valid or effective, and it shall be deemed released and Seller shall have no liability with respect thereto.

6. REQUESTED FOR & DISCLOSURES OF INFORMATION

Disclosure of Information. Upon written request, Seller shall deliver to Buyer the following information and documents regarding the Property to the extent they exist and are in Seller's possession: building plans, as-built survey, copies of leases, and operating statements for the building for the year of 2021 inspection reports, and service contracts, if any. Prior to procurement and disclosure, it is the disclosing Parties' duty and obligation to redact personal information from documents. Buyer and Seller agree that all such information and documents are provided in good faith without representation or warranty, express or implied, and no responsibility is or will be accepted by the disclosing Party as to the accuracy and completeness of the information and documents.

7. DEFAULT

Failure to comply with any terms or conditions of this Agreement, shall be default or breach, and Buyer and Seller will have the following remedies.

_____ Buyer's initials	_____ Date	_____ Buyer's initials	_____ Date	_____ Seller's initials	_____ Date	_____ Seller's initials	_____ Date
---------------------------	---------------	---------------------------	---------------	----------------------------	---------------	----------------------------	---------------

7.1. If Buyer fails to comply with the terms and conditions of this Agreement and/or complete the purchase of the Property, Seller may:(1) terminate this Agreement and the earnest money may be forfeited by Buyer and paid to Seller, but only if Buyer breaches this Agreement; or (2) demand Buyer reimburse all costs and fees incurred by Seller relating to this Agreement. These are the only remedies for breach of this agreement and are liquidated damages. Seller may not seek additional damages or specific enforcement of this Agreement.

7.2 If Seller fails to comply with the terms and conditions of this Agreement and/or complete the sale of the Property, Buyer may do any of the following: (1) terminate this Agreement and the earnest money shall be returned to the Buyer but only if Seller breaches this Agreement; and (2) demand Seller reimburse all costs and fees incurred by Buyer relating to this Agreement. These are the only remedies for breach of this agreement and are liquidated damages. The buyer may not seek additional damages or specific enforcement of this Agreement.

8. EARNEST MONEY DISPOSITON

If Buyer or Seller is in default or breach, earnest money may not be released or paid to Buyer or Seller unless the Parties sign a Termination of Agreement to Purchase with Release of Earnest Money Addendum. If a dispute arises, prior to release or payment of the earnest money, the title company holding the earnest money shall retain the money until one of the following occurs:

(1) A written release is executed by Buyer and Seller agreeing to disbursement of the earnestmoney.

-OR-

(2) A legal action is filed regarding the Agreement and/or release and distribution of the earnest money, at which time the earnest money shall be deposited with the Superior/District Court Clerk where the legal action is filed.

-OR-

(3) Ninety (90) days have passed since the effective date of the Termination Agreement and the Parties have not exercised options (1) or (2), at which time title company must release or pay the earnest money to Buyer or Seller. Title Company must release or pay the earnest money no less than ninety (90) days and no more than one hundred eighty (180) days after the effective date of the Termination Agreement. Fifteen (15) days prior to release or payment under option (3), title company must send the Parties written notice, at the Parties address described in the Termination Agreement, of the release.

9. CLOSING

9.1. Condition of Property on Closing Date. Buyer acknowledges that Buyer has the right to, and was advised to, conduct a pre-closing walkthrough. At day and time of closing, the Property shall be in substantially the same condition as on the Effective Date, with the exception of normal wear and tear.

9.2. Proration of Taxes. As applicable, for the current year and month, Buyer and Seller agree to prorate taxes, water and sewer system charges, as of the Closing Date unless otherwise agreed in writing by Buyer and Seller.

9.3. Fuel. Buyer shall pay Seller for all fuel and/or propane an amount equal to the fuel's value within five {5} days of the Closing Date.

9.4. Utilities. Buyer shall be responsible for transferring all utilities into its name effective on the Closing Date.

9.5. Extension of Closing Date. A fourteen {14} day extension of the Closing Date shall not be unreasonably withheld by the Parties. The Parties shall not be liable to each other for costs incurred as a result of a 14-day extension of the Closing Date. Any additional extension beyond the above-referenced fourteen {14} days must be agreed to in writing by Buyer and Seller.

9.6. Access to Property. On the Closing Date, unless otherwise agreed to in writing, Seller shall furnish to Buyer all keys, alarm/security codes, to Buyer.

10. MISCELLANEOUS TERMS AND CONDITIONS

10.1. Time is the essence as to the terms and conditions of this Agreement.

10.2. Buyer's rights under this Agreement are not assignable without the Seller's express written consent.

10.3. If an action or proceeding is brought in connection with this Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorney's fees, court costs, and other reasonable fees and costs incurred in that action or proceeding (whether at trial, on appeal, and/or in bankruptcy or similar proceeding) and in enforcing any judgement rendered thereon, in addition to any other relief to which it may

_____ Buyer's initials	_____ Date	_____ Buyer's initials	_____ Date	_____ Seller's initials	_____ Date	_____ Seller's initials	_____ Date
---------------------------	---------------	---------------------------	---------------	----------------------------	---------------	----------------------------	---------------

otherwise be entitled. For purposes of this Agreement, the prevailing Party means the Party who succeeds either affirmatively or defensively under claims having the greater value or importance, as decided by the court.

- 10.4. The Parties agree that a facsimile, digital, or scanned copy of this Agreement which contains the Parties' signatures may be used as the original. Parties acknowledge that digital or facsimile signatures have the same legal effect as a "wet" signature.
- 10.5. This Agreement, together with any attached exhibits and any addenda or amendments signed by the Parties, shall constitute the entire agreement between Seller and Buyer, and supersedes any other written or oral agreements between Seller and Buyer. This Agreement can be modified only in writing, signed by the Seller and Buyer.
- 10.6. A copy of this Agreement may be executed by each individual/ entity separately, and when each has executed a copy thereof, such copies, taken together, shall be deemed to be a full and complete agreement between the Parties.
- 10.7. Headings preceding the text of the paragraphs and subparagraphs in this Agreement are inserted solely for convenience or reference and shall not constitute a part of this Agreement, nor shall they affect the terms and conditions of this Agreement.
- 10.8. All documents and addendums signed by the Parties that are referred in this Agreement, attached to this Agreement, or specifically referenced or labeled as part of this Agreement, shall be incorporated in and be a part of this Agreement.
- 10.9. This Agreement shall be governed by Alaska law.
- 10.10. The terms and conditions of this agreement and any addendums and counter offers shall survive and extend beyond the closing of this Agreement, except to the extent expressly set forth herein otherwise or to the contrary.
- 10.11. Buyer and Seller acknowledge and agree that they have been advised and have had a reasonable opportunity to obtain or have obtained independent legal and tax advice from a licensed and certified attorney, tax attorney and accountant regarding the legal and tax consequences of this Agreement, that they have read and fully understand the terms and conditions of this Agreement, and that the terms and conditions of this Agreement are reasonable.
- 10.12. Buyer and Seller are to comply in all aspects of the Foreign Investment in Real Estate Tax Act Section 1445 which requires the Closing Agent to withhold and pay to the IRS a required amount if Seller is "a foreign person" unless exempt from FIRPTA. A "foreign person" is identified within the Foreign Investment in Real Estate Tax Act.
- 10.13 If Buyer or Seller makes this transaction part of an IRC 1031 Exchange, there will be no cost or liability to the other Party. Both Parties agree to execute any and all documents necessary for Exchange and understand that the Party completing this exchange may assign this Agreement to Purchase to a qualified intermediary for the purposes of completing the exchange.
- 10.14. In this Agreement and all related documents and addendums, unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and feminine.
- 10.15. Any notices, requests or other communications required or permitted to be given hereunder shall be in writing and shall be delivered (i) by hand, (ii) by a widely recognized national overnight courier service, (iii) by electronic mail or (iv) mailed by first class United States mail, postage prepaid and addressed to each party at its address as set forth on the signature page. Any such notice, request or other communication shall be considered given or delivered, as the case may be, (a) on the date of delivery, if delivered in person or by electronic mail (provided no email automatic bounceback is received and such email notice is sent prior to 5:00 p.m. on a business day; if after 5:00 p.m. then shall be deemed received on the next business day); (b) on the next Business Day following the date sent by commercial overnight courier; or (c) on the date of delivery or refusal if sent by first class U.S. Mail. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request or other communication. By giving at least five (5) days prior written notice thereof, any party may from time to time at any time change its mailing address hereunder.
- 10.16. BUYER AND SELLER EACH HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY DISPUTE ARISING OUT OF THIS AGREEMENT.
- 10.17. If the time period or date by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires or occurs on a day that is not a business day, then such time period or date shall be automatically extended through the close of business on the next succeeding day which is a business day. As used herein, the term "business day" means a day other than a Saturday or a Sunday, or a day on which banking institutions in the State of Alaska are authorized or obligated by law or executive order to be closed.
- 10.18. Seller and Purchaser mutually represent and warrant to each other that they have not dealt, and will not deal, with any real estate broker or sales representative in connection with this proposed transaction, except for Carlton Smith with Carlton Smith Company (the "Broker"), broker for Seller. Seller shall pay Broker a commission pursuant to a separate agreement. This Section 10.19 shall survive the Closing or any termination of this Agreement.

[SIGNATURES ON NEXT PAGE]

_____ Buyer's initials	_____ Date	_____ Buyer's initials	_____ Date	_____ Seller's initials	_____ Date	_____ Seller's initials	_____ Date
---------------------------	---------------	---------------------------	---------------	----------------------------	---------------	----------------------------	---------------

BUYER'S OFFER of Agreement to Purchase and Earnest Money Receipt

Buyer is authorized to sign, understands that this is a legally binding document, and acknowledges and agrees to the terms and conditions of this Agreement.

Date and Time:_____

Buyer Signature:_____

Printed Legal Name: _____

Address: _____

Phone: _____ Email: _____

Date and Time:_____

Buyer Signature:_____

Printed Legal Name: _____

Address: _____

Phone: _____ Email: _____

Seller's Acceptance of Agreement to Purchase and Earnest Money Receipt or Counter Offer

Seller is authorized to sign and understands that this is a legally binding document. **Initial only one** of the following:

- ☐/_____ Seller agrees to sell the Property on the terms and conditions of this Agreement.
- ☐/_____ Seller agrees to sell the Property, subject to the acceptance by Buyer and Seller of the attached Counter Offer which amends certain terms and conditions of this Agreement.

(Note: Seller must initial and sign this Agreement and the attached Counter Offer for this Agreement and the counter offer to be effective.)

Date and Time:_____

Seller Signature:_____

Printed Legal Name: _____

Address: _____

Phone: _____ Email: _____

Date and Time:_____

Seller Signature:_____

Printed Legal Name: _____

Address: _____

Phone: _____ Email: _____

Buyer's initials

Date

Buyer's initials

Date

Seller's initials

Date

Seller's initials

Date

4820-7455-1540v3

Exhibit A
Legal Description

USS 2136 Lot 1

_____ Buyer's initials	_____ Date	_____ Buyer's initials	_____ Date	_____ Seller's initials	_____ Date	_____ Seller's initials	_____ Date
---------------------------	---------------	---------------------------	---------------	----------------------------	---------------	----------------------------	---------------

INSPECTION ADDENDUM

This Inspection Addendum is incorporated and a part of the Parties' Agreement to Purchase and Earnest Money Receipt ("Agreement") dated: _____

SELLER: Family Practice Building LLC.

BUYER: The City and Borough of Juneau

For the following property (the "Property"): 10301 Glacier Hwy Juneau Alaska 99801

Closing is contingent on Buyer obtaining a satisfactory inspection of the Property during the Inspection Period. However, Closing is not contingent on items of routine maintenance and/or a cosmetic nature and if Buyer fails to terminate the Agreement on or before the expiration of the Inspection Period, then Buyer shall conclusively be deemed to have waived this inspection contingency.

1. RIGHT TO INSPECT

Buyer will have 60 days (the "Inspection Period") after the Effective Date to have the Property inspected and complete all due diligence. Buyer will pay for all inspections. Inspections may be done only by licensed professionals. Buyer may have any inspections done that Buyer considers appropriate, such as: Phase I Environmental Survey, geotechnical, structural, foundation, roof, flooring, HVAC system, electrical, plumbing, appliances, exterior, insulation, drainage, windows, well and septic systems, paint, and radon. Buyer and Seller may be present during any inspections, and Buyer will give Seller reasonable advance notice of the date and time of the inspection(s). Buyer may not do intrusive or invasive testing without Seller's written consent.

2. DUTIES OF BUYER AND SELLER

Buyer and Buyer's inspector may enter the Property to conduct inspections. Buyer will hold Seller and Licensee(s) harmless from all liability associated with entering the Property and conducting inspections, including claims for injury or property damage. Buyer will repair and restore any damage caused to the Property by the inspection, which does not include any remediation of any deficiencies discovered as the result of the inspection. Seller will make the Property accessible for inspections, subject to limitations of existing leases, if any, and will have utilities for the Property in service during inspections. Seller will provide access to all areas of the Property, subject to limitations of existing leases, if any.

Prior to entering upon the Property for any reason, Buyer shall provide to Seller evidence, which evidence shall confirm that Seller is named as an additional insured, that Buyer maintains general liability insurance coverage, including Buyer's contractual liability covering its obligations to Seller pursuant to this Inspection Addendum, in an amount not less than \$2,000,000 combined single limit, insuring Buyer and Seller, as additional insureds, against any injuries or damages to persons or property that may result from or are related to (i) Buyer's and/or Buyer's representatives, agents, contractors entry upon the Property, (ii) any investigations or other activities conducted thereon, and/or (iii) any and all other activities undertaken by Buyer and/or Buyer's representatives, all of which insurance shall be on an "occurrence form" and otherwise in such forms acceptable to Seller and with an insurance company acceptable to Seller, and deliver a copy of an ACORD insurance certificate evidencing such coverage prior to the first entry on the Property. The indemnities of this Inspection Addendum shall survive the Closing or the termination of this Agreement. In the event that this Agreement is terminated, other than as a result of a breach by Seller, Buyer shall provide a copy of all appraisals, inspection, engineering and environmental reports it has received with respect to the Property to Seller at no charge.

3. INSPECTIONS AND SURVEY

All due diligence, inspections, environmental survey, and hazardous material inspection reports must be completed within the Inspection Period defined above. If Buyer shall, for any reason or no reason, in Buyer's sole discretion, elect not to purchase the Property, then Purchaser shall be entitled to terminate the Agreement by delivering a "Termination Notice" to Seller at or before 5:00 p.m. local time on the last day of the Inspection Period. If Buyer's written termination is timely made, then the Earnest Money shall be returned to Buyer and thereafter neither Party shall have any further obligations or liabilities to the other hereunder except for those that expressly survive termination of the Agreement. If Purchaser fails to timely deliver the Termination Notice, then, except as otherwise provided in the Agreement, the Earnest Money shall thereafter be non-refundable (except for the willful refusal of Seller to close the sale of the Property), but shall be credited to the Purchase Price at Closing, and Buyer's right to terminate the Agreement pursuant to this Inspection Addendum shall be of no further force or effect.

4. REPAIRS, CORRECTIONS AND MODIFICATIONS TO THE PROPERTY

If Buyer requests repairs, corrections or modifications, and is in compliance with the Agreement, Seller will have seven (7) days to respond to Buyer's request, and (1) agree, (2) negotiate further, or (3) terminate the Agreement. If Seller does not timely respond or, within five (5) days of Seller's response, Buyer and Seller are unable to reach an agreement regarding Buyer's proposed repairs, corrections and modifications, and Buyer is in compliance with the Agreement, the Agreement will terminate, and the earnest money will be refunded to Buyer.

_____ Buyer's initials	_____ Date	_____ Buyer's initials	_____ Date	_____ Seller's initials	_____ Date	_____ Seller's initials	_____ Date
---------------------------	---------------	---------------------------	---------------	----------------------------	---------------	----------------------------	---------------

5. REPRESENTATIONS AND WARRANTIES

Buyer represents that Buyer is completing Buyer's own independent due diligence, inspections and investigations of the Property, and of matters listed as Contingencies and Disclosures, in Paragraphs 3.3 and 6 of the Agreement, respectively, unless waived, and that the decision to purchase is not based upon any representations or warranties of Seller or any Licensee(s) associated with the Agreement, expressed or implied (which includes, but is not limited to the Property's square footage, septic system, latent defects, plumbing, heating, electrical systems, fixtures, appliances, roof, sewer, soil conditions, foundation, structural conditions, insulation, and compliance with state, federal and municipal law), but solely upon the independent investigations and inspections of Buyer or Buyer's inspector.

Buyer represents and warrants that Buyer is choosing and hiring any and all inspectors, described in Paragraph 1 of this Inspection Agreement, and the decision to hire an inspector is not based upon any representations or warranties of Seller or any Licensee(s) associated with the Agreement, expressed or implied, but solely upon the independent due diligence, investigation, and evaluation of Buyer.

Buyer's selection of qualified professional(s) is subject to Seller's approval prior to inspection. Such approval will not be unreasonably withheld. Buyer requests approval of any of the following:

All other terms and conditions of the Purchase Agreement remain in full force and effect.

City and Borough of Juneau

Date and Time

Seller

Date and Time

Buyer's initials

Date

Buyer's initials

Date

Seller's initials

Date

Seller's initials

Date



MEMORANDUM

DATE: March 1, 2022

TO: Assembly Lands Housing and Economic Development Committee

FROM: Alexandra Pierce, Tourism Manager

SUBJECT: CBJ/CLIA Settlement Agreement Amendment 1

The Memorandum of Agreement (MOA) signed in 2019 between Cruise Lines International Association (CLIA) and CBJ was the result of legal action between CBJ and CLIA over collection and use of marine passenger fees (MPF). Under the agreement, MPF may be used for activities that support the visitor industry within a mapped area in proximity to the waterfront (Zone A). Within the area just beyond the waterfront (Zone B), use of fees is negotiated by CBJ and CLIAA. Amendment 1 adds language to allow CBJ to fund Centennial Hall renovation with MPF up to \$10 million over five years.

Approval and signature of this agreement paves the way for the first of several MOAs between CBJ and CLIA that focus on cruise operations and community goals. The first MOA includes the option for CBJ to use MPF to help fund the Capital Civic Center project.

Suggested motion: *I move that the committee accepts and supports the proposed Amendment 1 to the 2019 MOA between CBJ and CLIA.*

Attachments:

Attachment A: 2019 Memorandum Agreement with Amendment 1

Attachment B: Maritime Industry Zones Map

MEMORANDUM OF AGREEMENT (AMENDMENT 1)

This Memorandum of Agreement (hereinafter, the “Agreement”) is made and entered into effective as of March____2019, by and between Cruise Lines International Association Alaska and Cruise Lines International Association (“Plaintiffs or CLIA”), on the one hand and The City and Borough of Juneau, Alaska and Rorie Watt (hereinafter “CBJ” and “Watt” respectively and collectively “Defendants”), on the other hand (Plaintiffs and Defendants may sometimes be referred to hereinafter collectively as the “Parties,” or any one of them individually, a “Party”) and reflects amendments agreed to on DecemberJanuary , 2022+in accordance with Paragraph 3 d, below.

RECITALS

A. WHEREAS, on or about April 13, 2016, Plaintiff filed an action in the United States District Court for the District of Alaska entitled Cruise Lines International Association Alaska and Cruise Lines International Association v. The City and Borough of Juneau, Alaska and Rorie Watt, bearing case number 1:16-cv-0008-HRH (the "Action"). In the Action, Plaintiffs challenged two fees imposed on vessels by the CBJ (the Marine Passenger Fee (MPF) a \$5-per passenger fee and the Port Development Fee (PDF) a \$3-per passenger fee, collectively referred to as “Fees”) that enter CBJ public or private docks, alleging the Fees were either facially unconstitutional or being expended by CBJ in an unconstitutional manner. Defendants disputed the Plaintiffs’ claims made in the Action, and generally and specifically disputed that the Fees were unconstitutional or unlawful, while asserting that CBJ’s use of the Fees was proper in all respects.

B. WHEREAS, Plaintiffs and Defendants filed cross motions for summary judgement and Defendants filed a motion to determine the law of the case. After oral argument the United States District Court Judge, Hon. H. Russel Holland, issued an Order on December 6, 2018 (“MSJ Order”) holding the Fees are permissible under the Tonnage Clause (“Tonnage Clause”) of the United States Constitution and the Rivers and Harbors Appropriation Act of 1899 (RHAA) codified at 33 U.S.C. section 5; provided said Fees are used for services to a vessel or rendered to facilitate the marine enterprise/operations of the vessel and not for services that only benefit passengers. While Judge Holland’s rulings clarified the law, they leave the parties discretion to amicably apply the Court Rulings. Thereafter, on January 25, 2019, Judge Holland entered a Final Judgement in the Action affirming the holding of the MSJ Order (MSJ Order and Final Judgement collectively referred to as “Court Rulings”).

C. WHEREAS, it is the desire of the Parties hereto to abide by this Agreement and resolve the Disputes raised by the Parties in the Action in a manner consistent with the terms of the MSJ Order and in compliance with the Final Judgement, unless the underlying legal authority changes. The parties agree that amicable resolution of the issues is better than continued litigation. This Agreement shall further set forth the terms and conditions of the Parties continuing relationship based on the terms of the MSJ Order and Final Judgment and under which Fees, if

any, will be collected and expended. The MSJ Order and Final Judgment shall be subject to the good faith interpretation of the Parties for certain projects. The Parties wish to avoid the costs and the expenditure of resources in pursuing and defending continued litigation pertaining to the various claims and/or defenses raised in the Action. The Parties agree that the terms and conditions set forth in this Agreement are intended to be fully enforceable.

D. WHEREAS, other communities in Southeast Alaska are concerned about the impact of the Court Rulings on their communities and have voluntarily offered the CBJ monetary support to appeal the Court Rulings, and as such, any amicable resolution between CBJ and CLIA must be practical, not harmful to other communities in Southeast, and should acknowledge each community must exercise local control in its decision making because each community has unique approaches and issues. The Parties also acknowledge that CBJ's Marine Passenger Fee and Port Development Fee are fees imposed upon a vessel, and not fees imposed upon a passenger like the State Commercial Passenger Vessel excise tax (A.S. 43.52.200 et. seq). The Parties agree that the State Commercial Passenger Vessel excise tax was not litigated or an issue in the Action. The State of Alaska and a predecessor of CLIA settled a dispute involving the State Commercial Passenger Vessel excise tax in 2010 resulting from No. 3:09-cv-00015-TMB, United States District Court for the District of Alaska.

E. WHEREAS, CBJ acknowledges that the construction of the western seawalk project from Gold Creek to Overstreet Park may or may not have survived legal challenge and that because CLIA chose not to seek an injunction for this part of the construction, this project was not delayed and was successfully constructed; and while CLIA acknowledges that the western seawalk project may or may not have survived a legal challenge, CLIA also acknowledges the entire seawalk has been a part of CBJ's Long Range Waterfront Plan for more than 10 years, the project has the support of the Juneau public and such public support is instrumental and necessary to the development of the Juneau waterfront and the growth of the cruise industry.

F. WHEREAS, the Parties shall engage in annual meetings to discuss their respective issues and positions, regarding major development projects, as early as possible. For example, during the 2019 consultations with the City Manager, CLIA did not object to the CBJ using fees, subject to Assembly appropriation, imposed on a vessel or passenger to lease space away from the downtown Juneau area to temporarily stage containers during the cruise season to enable vessels to efficiently unload, load, and timely depart instead of having containers trucked through the Maritime Industry Zone during peak periods, and does not object to the use of an amount not to exceed \$10 million in fees over no longer than a five year period to support renovations/improvements/additions to the Juneau Centennial Center.

G. WHEREAS, the Parties affirm that nothing in this Agreement is an attempt to interfere with the Assembly's responsibility to govern the affairs of the City and Borough of Juneau but is provided to the Assembly as best practices pertaining to the collection and appropriation of Passenger fees so that future disputes may be avoided.

NOW, THEREFORE, for valid and binding consideration acknowledged by the Parties,
the Parties hereby agree as follows:

DEFINITIONS

A. The term "Cruise Lines International Association" shall include its Members calling in Juneau, Alaska, specifically and without limitation to include: Carnival Cruise Lines, Crystal Cruises, Disney Cruise Lines, Holland America Line, Norwegian Cruise Line, Oceana Cruises, Princess Cruises, Regent Seven Seas Cruises, Royal Caribbean International and Silverseas Cruises and any person or entity, past or present, acting on behalf of any of the foregoing, including, but not limited to, each of their present and former agents, representatives, owners, officers, executives, partners, directors, employees, insurers and/or attorneys.

B. The term "Cruise Lines International Association Alaska" (together with Cruise Lines International Association, "CLIA") shall also include CLIA Northwest & Canada and any person or entity, past or present, acting on behalf of any of the foregoing, including, but not limited to, each of their present and former agents, representatives, owners, officers, executives, partners, directors, employees, insurers and/or attorneys.

C. The term "The City and Borough of Juneau, Alaska" shall include any person or entity, past or present, acting on its behalf, in the collection and expenditure of those certain Fees collected from cruise vessels calling at the docks and local waters within the jurisdiction of CBJ, including, but not limited to, each of their present and former members, representatives, officers, executives, partners, directors, employees, insurers and/or attorneys, but not individual Assemblymembers.

D. The term "Rorie Watt" shall include Mr. Watt in his official capacity as City Manager of Juneau, Alaska and any person or entity, past, present or future, acting in the official capacity as City Manager of Juneau, Alaska, including, but not limited to, each of their successors, assigns, representatives, officers, executives, partners, directors, employees, insurers and/or attorneys.

E. The term "Dispute(s)" shall be defined as all claims, defenses and/or allegations arising out of and in any way connected with the pleadings filed in the Action. The term shall not include future business dealings with respect to the collection and expenditure of Fees, except as otherwise agreed in this Agreement.

F. The term "Marine Passenger Fee" ("MPF") shall mean that certain five U.S. dollar (US\$5.00) per passenger fee assessed on certain passenger vessels as codified by CBJ Code Sections 69.20.030 and 69.20.040.

G. The term "Port Development Fee" ("PDF") shall mean that certain three U.S. dollar (US\$ 3.00) per passenger fee assessed on vessels carrying passengers for compensation on port calls in the City and Borough of Juneau pursuant to Resolution 2552 (2010).

H. The term "Motion for Summary Judgment Order" ("MSJ Order") is defined above. The terms of the MSJ are incorporated herein by this and any other reference. The MSJ Order is attached hereto as Exhibit A.

I. The term "Final Judgment" refers to that certain Judgment In A Civil Case filed by the United States District Court Judge for the District of Alaska, Hon. H. Russel Holland, on January 25, 2019, and entered in the Action at Docket No. 217; the terms of which are incorporated herein by this and any other reference. The Final Judgment is attached hereto as Exhibit B.

J. The term "Maritime Industry Zone" shall refer to that certain map attached hereto as Exhibit D.

K. The term "Effective Date" shall be defined as the date of full execution of this Agreement by both parties.

AGREEMENTS

1. **Incorporation.** This Agreement hereby incorporates the Recitals and Definitions stated above.
2. **Operational Services Budget.** Attached as Exhibit C to this Agreement and incorporated herein by this reference is a true and correct copy of the CBJ FY 2019 Budgeted MPFs expenditures. The Parties acknowledge the allocation of Fees stated therein and, for purposes of this Agreement, CLIA does not object to each of the line item expenditures for FY 2019. With respect to the allocation of Fees for General Government Services in the successive years following FY 2019 governed by this Agreement, the Parties agree that in lieu of a line item allocation for General Government Services, CBJ will obtain a cost allocation study of said General Government Services and will allocate Fees based on the results of the future study effective FY2021 (July 1, 2020). The Parties understand and agree the intent of procuring an audit under this paragraph is that the cost of operational services will not vary significantly (+/- ten percent) from historical allocations for operational services. The parties agree that from time to time inflationary adjustments will likely be necessary.
3. **Agreed Use of Fees in Maritime Industry Zone.** The Parties acknowledge and agree to the collection and expenditure of Fees in the Maritime Industry Zone. The

Parties attach hereto as Exhibit D an area map of downtown Juneau wherein CBJ provides (Zone A) or could provide (Zone B) the infrastructure for cruise vessels, the support services for such vessels while in port, and infrastructure and services that further the marine enterprise/operation of such vessels, including:
dockage, lightering, ship to shore infrastructure including utilities and debt service, ship to ship infrastructure including debt service, seawalks, restrooms, signage/wayfinding, motor coach staging, passenger queuing, terminal or emergency assembly facilities, access
and parking facilities for vehicles serving a vessel, and any infrastructure required or recommended by the Department of Homeland Security (i.e. USCG and USCBP). The following expenditures are agreed to by the Parties:

Commented [LK1]: This language has been moved here from 3 b with change highlighted in yellow.

- a. Debt service on the Cruise Ship Berth Enhancement project (commonly known as 16B) and the planning, design and construction necessary to improve private and public cruise ship docks. The cost of acquiring land, tidelands, and easements required for the construction of capital improvements would be considered eligible project costs. For purposes of this Agreement, CLIA does not object to Fee expenditures for those purposes.
- b. For the purposes of this Agreement, CLIA does not object to Capital improvements within Zone A of the Maritime Industry Zone that further the marine enterprise/operation of vessels as described aboveincluding:
dockage, lightering, ship to shore infrastructure including utilities and debt service, ship to ship infrastructure including debt service, seawalks, restrooms, signage/wayfinding, motor coach staging, passenger queuing facilities, access
and parking facilities for vehicles serving a vessel, and any infrastructure required or recommended by the Department of Homeland Security (i.e. USCG and USCBP). The Parties agree to the expenditure of Fees for this infrastructure in Zone A and acknowledge that the CBJ may need to expand or change such services and infrastructure in Zone A due to a change in circumstances, such as changes in vessel size, scheduling, and demands for such services or infrastructure by the changes in circumstance. The cost of acquiring land, tidelands, and easements required for the construction of capital improvements would be considered eligible project costs. For purposes of this Agreement, CLIA does not object to Fee expenditures for those purposes.

- c. Operational Services provided within Zone A pursuant to Paragraph 2, including but not limited to the following services that the CBJ provided in 2018 to CLIA, its passengers or crew: dockage, lightering, restroom maintenance, crossing guards, police/security patrols and infrastructure, fire and emergency medical service, weather monitoring, tug assist, trash collection and disposal, and any service required or recommended by the

3530 Department of Homeland Security (i.e. USCG and USCBP). The Parties agree
 3631 to the expenditure of Fees for these services in Zone A and acknowledge that
 3732 the CBJ may need to expand or change such services and infrastructure in
 3833 Zone A due to a change in circumstances, such as changes in vessel size,
 3934 scheduling, and demands for such services or infrastructure by the changes in
 4035 circumstance. For purposes of this Agreement, CLIA does not object to Fee
 4136 expenditures for those purposes.

- 1
 - 2
 - 3
 - 4
 - 5
 - 6
- d. For proposed capital improvements or operational services within Zone B, the parties agree to discuss these ideas at the annual meeting. CLIA does not object to a Fee expenditure in Zone B of an amount not to exceed \$10 million (\$10,000,000), over no longer than a five year period, for the Centennial Hall Expansion Project (also known as the “Centennial Civic Center”).
- e. The Parties agree that expenditure of Fees outside of Zones A and B may be necessary. In such case, the parties shall discuss such ideas in accordance with paragraph 7.

- 6
 - 7
 - 8
 - 9
 - 10
 - 11
 - 12
 - 13
 - 14
 - 15
 - 16
 - 17
 - 18
 - 19
 - 20
 - 21
 - 22
 - 23
 - 24
 - 25
 - 26
 - 27
 - 28
 - 29
 - 30
 - 31
 - 32
 - 33
 - 34
 - 35
 - 36
 - 37
 - 38
 - 39
 - 40
4. **Statter Harbor Improvement Project.** CBJ has developed construction plans for improvements to Statter Harbor that will promote marine commerce in the area and provide services to vessels. CLIA contends the full scope of construction of the Statter Harbor Project may be beyond the scope of permissible expenditure of Fees set forth in the MSJ Order, but for purposes of this Agreement, CLIA does not object to a Fee expenditure up to seventy-five percent (75%) of a total project budget not to exceed twelve million four hundred thousand dollars (US\$12,400,000.) CBJ agrees to finance the remainder of the Statter Harbor Project construction through other funding sources.
5. **Attorney's Fees.** Both Parties shall be reimbursed for their respective attorney's fees incurred litigating the Disputes brought in the Action. The Parties agree that CBJ shall cause one million five hundred thousand dollars (\$1,500,000) to be paid from the MPF collected from CLIA Members to partially reimburse CLIA for its attorney's fees incurred in the Action. The Parties acknowledge that CBJ incurred approximately Eight Hundred Thousand (\$800,000) in legal fees defending the Action and prior to the Effective Date of this Agreement has used approximately Three Hundred and Fifty Thousand Dollars (\$350,000) from MPF collected from CLIA Members. The Parties agree that CBJ may cause the remaining Four Hundred and Fifty Thousand Dollars (\$450,000) to be paid from the MPF collected from CLIA Members and use those funds as an "other funding source" in accordance with paragraph 5. Payment to CLIA shall be made on or shortly after March 22, 2019. The Parties acknowledge that the CBJ has initially provided the \$1.95M payments from FY2019 general funds (Ord. 2018-11(AF)); For purposes of this Agreement, CLIA does not object to the CBJ reimbursing the \$1.95M payments of general funds with FY20 MPF funds (Ord. 2019-14). Neither payment shall be deemed or constitute an admission of liability or wrongdoing by either Party nor shall either Party be considered the prevailing party.
6. **Public Records.** CBJ shall keep true and accurate records, sufficient to determine the amount of Fees collected and the appropriation, allocation and expenditure of said Fees during any Fiscal Year wherein Fees are collected from CLIA. Consistent with Alaska public records laws (e.g. A.S. 40.25.110 and CBJC 01.70), these records shall be maintained and open to inspection at CLIA's expense at reasonable intervals by an

independent auditor during regular business hours of CBJ. All audit expenses shall be considered costs recoverable to the prevailing party in any dispute resolution initiated pursuant to Paragraph 9.

7. **Annual Consultation.** Guided by the timelines in CBJC 69.20.120(b) (March 14, 2019), the Parties agree for each and every Fiscal Year, the Parties shall endeavor to meet in person to discuss in good-faith any new proposed projects and services for which Fees are sought to be expended in the following Fiscal Year with the ultimate decision resting with the Assembly.
8. **Amount of Fees.** CBJ acknowledges and agrees the MPF should remain at \$5.00 per passenger and the PDF should remain at \$3.00 per passenger for at least the next three years from the Effective date. However, if an Assembly determines otherwise during the next three years, the parties agree to meet and discuss consistent with paragraph 7. If there is any change to the State Commercial Passenger Vessel statutes (A.S. 43.52.200-295) during the three year period, then the intent of this section is null and void.
9. **Dispute Resolution.** In the event of any dispute, claim, question, or disagreement arising out of or relating to this Agreement or the annual project planning meeting or any breach thereof, including any claims relating to collection and expenditure of the Fees, the Parties hereto shall use their best efforts to settle such disputes, claims, questions or disagreements through direct discussions and, if the matter cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by non-binding mediation, before resorting to litigation. The parties agree that upon notice to the other demanding mediation, the statute of limitations for the matter is tolled. If the parties cannot reach a resolution through mediation, then either party may file their claim in the United States District Court for the District of Alaska, which shall be the sole and exclusive forum for resolving such matters. The Parties agree that all claims shall be filed and adjudicated in the United States District Court for the District of Alaska. The intent of this paragraph is to provide a process to resolve only justiciable issues that the CBJ has undertaken or is reasonably certain to undertake with Fees; This paragraph is not intended to limit or compel the legislative discretion of the Assembly.
10. **Cost of Enforcement.** In the event that either party shall institute any action (whether mediation and/or court litigation), at law or in equity, against the other party to enforce or interpret any provision(s) of the this Agreement, or for breach hereof or default hereunder, the prevailing party shall be entitled to reasonable legal fees and costs, and such other relief to which it may be entitled, for the enforcement of any of its rights hereunder consistent with Alaska Civil Rule 79 and 82.

- 1
2 11. **Complete Agreement.** This Amended Memorandum of Agreement represents the
complete
3 and exclusive agreement by and between the Parties and supersedes all prior and
4 contemporaneous promises and agreements of any kind relating to the resolution of
5 the Disputes, as well as all negotiations and discussions between the Parties hereto
6 and/or their respective legal counsel with respect to the subject matters covered
7 hereby. No other agreements, covenants, representations or warranties, express or
8 implied, oral or written, have been made by any of the Parties hereto concerning the
9 subject matter hereof. This is an integrated agreement.
10
- 11 12. **Term of Agreement.** The term of this Agreement shall be ten years from the
12 effective date with automatic ten year renewals unless either Party provides written
13 notice to the other, sixty days prior to the renewal date, to terminate this Agreement.
14
- 15 13. **Successors and Assigns.** All of the terms and provisions of the Agreement shall be
16 binding upon and inure to the benefit of and be enforceable by the respective successors
17 and assigns of the Parties.
18
- 19 14. **Governing Law.** This Agreement, the rights and obligations of the parties hereto, and
20 any claims or disputes relating thereto, shall be governed by and construed in
21 accordance with the laws of the United States of America and the State of Alaska.
22
- 23 15. **Waiver of Breach.** No waiver of any breach of any term or provision of this
24 Agreement shall be construed to be, or shall be, a waiver of any other breach of this
25 Agreement. No waiver shall be binding unless in writing and signed by the party
26 waiving the breach.
27
- 28 16. **No Admission of Liability:** The Parties agree that the execution of this Agreement is
29 done solely for the purposes of compromise, and to eliminate the burden and expense
30 of further litigation, and does not constitute, and shall not be construed as, an
31 admission of liability, wrongdoing, fault or as evidence with respect thereto, by any
32 Party, on account of any claims or matters arising between CLIA on the one side and
33 the CBJ on the other side raised in the Action. The Parties further agree that this
34 Agreement shall not be offered or received against any of the Parties as evidence of a
35 presumption, concession or admission with respect to any liability, fault or
36 wrongdoing, other than such proceedings as may be necessary to effectuate the terms
37 of this Agreement, the MSJ Order and Final Judgment. The parties acknowledge and
38 agree that nothing in this Agreement is intended to prohibit disclosure by CLIA
39 Members to their passengers and guests of Fees paid to CBJ pursuant to this

agreement or to prohibit CLIA Members from continuing to assess passengers/guests for reimbursement of fees paid to CBJ.

17. **Third party claims.** In the event that a third-party files a claim or lawsuit against the CBJ resulting from or related to this Agreement and/or the collection and expenditure of the Fees, CLIA shall have no obligation to defend or indemnify the CBJ for such claim and/or lawsuit. CLIA's agreements and/or cooperation with respect to the CBJ's collection and expenditure of Fees, does not bind the CBJ in any manner to collect and expend the Fees nor does CLIA have any responsibility for the expenditure of the Fees once the Fees are collected from CLIA Members.

18. **Notice.** Any notice required to be given pursuant to this Agreement shall be deemed to have been sufficiently given either when served personally or when served by first-class mail addressed to the other Parties.

a. Notice to CLIA shall be effective only when addressed to:

~~President~~Chairman, CLIA Alaska
360 K Street Suite 300
Anchorage, AK 99501

with copy to:

President, CLIA
1201 F Street NW
Suite 250
Washington, DC 20004

b. Notice to CBJ shall be effective only when addressed to:

City and Borough of Juneau
c/o City Manager
155 S. Seward St
Juneau, AK 99801

19. **Mutual Drafters.** All Parties have cooperated in the drafting and preparation of this Agreement. Hence, this Agreement shall not be construed against any party on the basis that the party was the drafter.

20. **Severability.** If any provision of this Agreement shall be held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force and effect, but the illegality or unenforceability of such provision shall have

no effect upon and shall not impair the enforceability of any other provision of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Agreement.

Cruise Lines International Association Alaska

By: _____

Its: _____

Dated: _____

Cruise Lines International Association

By: _____

Its: _____

Dated: _____

The City and Borough of Juneau

By: _____

Its: _____

Dated: _____

Rorie Watt

By: _____

Dated: _____



Maritime Industry Zones

0 500 1,000 2,000 Feet

Tourism Management Implementation (2019 -)			
Action	Status	Type	Notes
2019			
Created Visitor Industry Task Force	Complete	Personnel	Mayor established task force
2020			
Require all commercial use permittees to be TBMP members in good standing (+ WhaleSense if applicable)	Complete	Policy	Policy implemented
Stagger ship arrival times by 30 minutes	Complete	Partner Agreement	Achieved through scheduling
Do not introduce a hard numerical cap on ship scheduling, use other management measures	In progress	Policy	Discussing and researching legislative and negotiated options
2021			
Establish a central tourism management function	Complete	Personnel	Tourism position created
Engage a third party contractor to complete a public survey on visitor impacts	Complete	Contracted Service	2021 Survey complete
Limit Parks & Rec commercial use permits to determine facility capacity and impacts	Complete	Policy	Facility capacity evaluated in permitting decisions
No cruise ships of any size in Auke Bay	Complete	Policy	No small cruise ships in city-owned Auke Bay facilities
Focus pedestrian flows to crosswalks and desired destinations	In progress	Capital Projects	Stanchions, wayfinding signage
More transparency for schedules and passenger counts, release 2 years in advance or upon creation	In progress	Partner Agreement	2023 already out
Do not do a full update of the LRWP	In progress	Policy	LRWP Amendment process initiated
2022			
Minimize and consolidate vehicle turning movements	Complete	Partner agreement	Addressed through TBMP and infrastructure
Minimize required stops for vehicles	Complete	Partner agreement	Addressed through TBMP, crossing guards, stanchions
CBJ Law to research how other US communities have identified limitations on visitor numbers	In progress	Policy	CBJ Law conducting research, staff have also notified CLIAA of intent to negotiate or legislate limit
Incentivize environmental best management practices through local award programs	In progress	Partner agreement	Working with Travel Juneau
Recognize partners participating in AITA "Adventure Green Alaska" program	In progress	Partner agreement	Working with Travel Juneau
Engage a third party contractor to complete a public survey on visitor impacts	In progress	Personnel	Budgeted for a 2022 survey in MPF
Expand pedestrian stanchions	In progress	Capital Projects	Planned for installation in 2022
Complete Blueprint Downtown and address land use, zoning & incentivizing business development downtown	In progress	Personnel	Going out for public review soon
Require CLAA to assign shore power configured ships to electrified docks	In progress	Partner agreement	Some minor shuffling this summer, negotiations ongoing.
Limit expansion of downtown dock infrastructure to allow for no more than one larger ship	In progress	Ordinance/Partner Agmt	LRWP amendment and CBJ Law research underway
Prohibit anchoring if an additional dock is constructed	In progress	Ordinance/Partner Agmt	LRWP amendment and CBJ Law research underway
Improve pedestrian access between seawalk and South Franklin	In progress	Capital Projects	Several projects for 2022
Consider collecting data on the effects of hot berthing	In progress	Personnel	Asked about hot berthing in 2021 survey, staff to determine additional data to collect
Turn off large LED screens while in port	In progress	Partner agreement	Working with CLIAA
Minimize, eliminate ship waste in landfill	In progress	Partner agreement	Working with CLIAA
Evaluate schedule change requests for weather, etc. review with CBJ for community impact	In progress	Partner agreement	Staff currently notified
CLIA/CLAA scheduling to minimize congestion, strategically assign ship berths based on ship size	Not started		
Determine community goals re: emissions, shore power, congestion mitigation, etc. Develop and implement action plan	Not started		
Research and implement permitting system for whale watching operators	Not started		
Continue to charge commercial use fees and review and revise as appropriate	Not started		
Assess tour permitting for streets and sidewalks and develop regulations if feasible	Not started		

*Hashed rows are those impacted by Subport development

Assembly Goals 2022

Assembly Goals set at
December 4, 2021 retreat

1. Housing - Assure adequate and affordable housing for all CBJ residents

AA*	Implementing Actions	Responsibility	Notes:
A	P	Revise and improve Title 49 to facilitate housing	Assembly, Planning Commission, Manager's Office, CDD
B	P/F	Implement projects & strategies that advance the goals of the Housing Action Plan	Assembly, Manager's Office
C	P/F/O	Continue a robust use of the Affordable Housing Fund and its sustainability	Assembly, Manager's Office
D	P/F	Reduce barriers to downtown housing development	Assembly, Manager's Office, CDD

2. Economic Development - Assure Juneau has a vibrant, diverse local economy

AA*	Implementing Actions	Responsibility	Notes:
A	F/O	Update the Comprehensive Plan	Assembly, Planning Commission, Manager's Office, CDD
B	O	Adopt and implement strategies developed by the Visitor Industry Task Force to mitigate impacts & increase economic benefits of tourism	Assembly, Manager's Office, Docks & Harbors
C	P/F/O	Examine options for a tourism governing structure that mitigates impacts & increases economic benefits of tourism	Assembly, Manager's Office, Docks & Harbors
D	P/F/O/S	Implement project strategy for Juneau Economic Plan, including revitalizing downtown, with regular updates	Assembly, Manager's Office
E	F	Explore financing for the Capital Civic Center	Assembly, Manager's Office, Finance
F	P/F/S	Support Eaglecrest Summer Operations Task Force & self-sufficiency of Eaglecrest	Assembly, Manager's Office, Eaglecrest
G	P/F	Pursue and plan for West Douglas and Channel Crossing	Assembly, CDD, Planning Commission, Manager's Office

3. Sustainable Budget and Organization - Assure CBJ is able to deliver services in a cost efficient and effective manner that meets the needs of the community

AA*	Implementing Actions	Responsibility	Notes:
A	P/F	Develop strategy for fund balance and protect restricted budget reserve	Assembly, Manager's Office, Finance
B	P/F	Continue to evaluate sales tax structure including equity and evaluate removing sales tax on food	Assembly, Manager's Office, Finance
C	P	Long term strategic planning for CIPs	Assembly, Manager's Office, EPW
D	P/F	Reduce mil rate as appropriate	Assembly, Manager's Office, Finance
E	F/O	Allocate resources to implement Assembly goals	Assembly, Manager's Office, Finance
F	F/O	Maintain Assembly focus on deferred maintenance including BRH and JSD.	Assembly, Manager's Office, EPW, all operating departments with facilities

*Assembly Action to Move Forward: P = Policy Development, F = Funding, S = Support, O = Operational Issue

Assembly Goals 2022

Assembly Goals set at
December 4, 2021 retreat

4. Community, Wellness, and Public Safety - Juneau is safe and welcoming for all citizens

	AA*	Implementing Actions	Responsibility	Notes:
A	P/O/S	Acknowledge and honor Juneau's indigenous culture, place names, naming policy, and recognize Elizabeth Peratrovich Day	Assembly, Manager's Office	
B	P/S	Explore government to government relations with tribes	Assembly, Manager's Office	
C	P/F/O	Examine social service funding levels and process	Assembly, Manager's Office	

5. Sustainable Community - Juneau will maintain a resilient social, economic, and environmental habitat for existing population and future generations.

	AA*	Implementing Actions	Responsibility	Notes:
A	P/O	Develop a zero waste or waste reduction plan	Assembly, Manager's Office, EPW, Finance	
B	P/O	Develop strategy to measure, track and reduce energy consumption.	Assembly, Manager's Office, all departments	
C	P/O/F	Implement projects and strategies that advance the goal of reliance on 80% of renewable energy sources by 2045	Assembly, Manager's Office, all departments	
D	P/F	Develop a climate change adaptation plan	Assembly, Manager's Office	
E	P/O/F	Develop strategy to reduce abandoned/junked vehicles	Assembly, Manager's Office, EPW, Law, P&R, D&H	

*Assembly Action to Move Forward: P = Policy Development, F = Funding , S = Support, O = Operational Issue