

SUBLEASE, EASEMENT AND PREFERENTIAL USE AGREEMENT

RECEIVED

This Sublease, Easement and Preferential Use Agreement ("Agreement") is dated October 3, 1990 and is made between the City of Unalaska ("City") and Harbor Enterprises, Inc. d/b/a Petro Marine Services, an Alaska corporation ("Petro Marine"). The City and Petro Marine are collectively referred to as "the parties".

NOV 15 1990
FEDERAL MARITIME COMMISSION
THE SECRETAR

PREAMBLE

The Unalaska City Council determined that it would be in the City's best interest to extend the Ballyhoo Dock and lease space on the dock and adjacent uplands to entities that would move a substantial amount of cargo across the dock and support the vessels using the dock. In Resolution 89-24, the Unalaska City Council authorized the City Manager to request proposals and negotiate agreements that would allow the expansion of the Ballyhoo Dock and adjacent uplands for purposes beneficial to the City and complementary to its existing uses. The Unalaska City Council has further authorized the conveyance of the Ballyhoo Dock facility to the Alaska Industrial Development and Export Authority ("Authority") which has agreed to lease the Ballyhoo Dock facility back to the City pursuant to a Lease and Construction Management Agreement dated _____, 1990 ("Lease"). The Authority has further agreed to issue its bonds to provide funds for the expansion and improvement of the Ballyhoo Dock facility, to be named the City of Unalaska Marine Center, with the rent to be paid by the City under the Lease to be sufficient to repay said bonds and to pay any

expenses incurred by the Authority. The Lease provides that the City may, with the consent of the Authority, sublease a portion of the City of Unalaska Marine Center. This Agreement is such a sublease. The parties are making this agreement to allow Petro Marine to construct a warehouse and repair facility at its own expense and provide fuel service to the City of Unalaska Marine Center. This agreement supercedes the Easement Agreement dated April 22, 1987 and amends the Fuel Sales Franchise Agreement dated April 21, 1987 between the parties.

For and in consideration of the mutual promises and stipulations contained in this Agreement, the parties agree as follows:

I. LEASE

A. The City leases to Petro Marine, including its affiliates and subsidiary companies, to use and occupy subject to the terms of this Agreement, approximately two acres at the City of Unalaska Marine Center. The area which is to be leased by Petro Marine under this Agreement is described as:

That portion of Tract A, Ballyhoo Dock Subdivision Addition No. 1, according to the official plat thereof, file under Plat No. P 88-10, of the Aleutian Island Recording District, State of Alaska, more particularly described as follows:

Commencing at 5/8-inch rebar with marked aluminum cap located at the intersection of the north boundary of Dutch Harbor Road, and the westerly boundary of Tract A Ballyhoo Dock Subdivision Addition No. 1; thence N47°13'28"E along the northerly boundary of Dutch Harbor road, a distance of 465.29 feet to the southeasterly corner of the Petro Fuel parcel, and the

True Point of Beginning for this description; thence N43°41'34"W a distance of 82.05 feet; thence N46°19'25"E a distance of 345.00 feet; thence N12°03'19"W a distance of 46.00 feet; thence N46°48'35"E a distance of 431.56 feet; thence N554°22'49"E a distance of 131.50 feet; to the northerly boundary of Dutch Harbor Road right-of-way; thence S46°54'04"W along said right-of-way a distance of 260.15 feet; thence continuing along said right-of-way S47°13'28"W a distance of 565.00 feet to the true point of beginning; containing 2.04 acres, more or less and all according to the above-referenced plat.

The City shall provide Petro Marine with a survey of the site prepared and certified by a licensed land surveyor.

B. This area is described in this Agreement as "Leased Premises". The attached Exhibit "A" illustrates the Leased Premises.

II. EASEMENT

A. The City grants to Petro Marine a non-exclusive easement ("Easement") in the area illustrated in the attached Exhibit "B". Petro Marine will be provided with an "as built" survey of the easement after the project is completed. The Easement may be used solely for the construction, maintenance and use of a hydrant fueling system to serve vessels at the City of Unalaska Marine Center.

B. Petro Marine will install the hydrant fueling system at its own expense in the Easement so that vehicles can safely travel over the Easement.

C. The City may not grant any other entities the right to use Petro Marine's hydrant fueling system without Petro Marine's

consent. However, the City may grant to other entities the right to cross the Easement or to install equipment or fixtures or other improvements in the Easement that do not interfere with access to Petro Marine's Easement.

III PREFERENTIAL USE AGREEMENT

A. The City grants to vessels calling to load and discharge fuel owned by or consigned to Petro Marine on a scheduled basis the preferential use of four hundred (400) feet of dock at the City of Unalaska Marine Center as it now exists or may be extended in the future. The area to which this agreement applies is illustrated in the attached Exhibit "C". Petro Marine shall notify the City as soon as practicable, and at least 24 hours in advance, of the berthing of such vessels. The City will use its best efforts to accommodate Petro Marine's berthing requirements.

B. The City grants to Petro Marine a preference to continue to occupy the space in the City's warehouse that Petro Marine obtained the right to occupy under the Easement Agreement dated April 22, 1987, that is superceded by this Agreement. If the existing warehouse is removed or demolished in connection with the development of the City of Unalaska Marine Center, the City agrees to use its best efforts to provide comparable space to Petro Marine.

IV. PAYMENTS

A. In partial consideration of the Lease granted under Article I, the Easement granted in Article II and the Preferential Use Agreement granted in Article III, Petro Marine shall pay to the

Authority, or a designee appointed by the Authority, for the benefit of the City \$13,750 per month on the first day of each month for the use of the areas illustrated in Exhibits "A" and "B".

B. Payments made under this Agreement do not reduce or modify the liability of Petro Marine for dockage, demurrage, or other fees or charges set out in the general tariff of the City applicable to the Ballyhoo Dock. All payments due under this paragraph are to be made to the City.

C. All amounts due under this Agreement that are not paid when due shall bear interest at the rate of 1.5% per month for as long as the delinquency continues.

D. Paragraph 4 of the Fuel Sales Franchise Agreement is modified so that Petro Marine shall pay the City a fee of \$.0080 per gallon of fuel delivered to the Premises by Petro Marine, this fee shall be due no more than forty-five days after the fuel is delivered to the Premises. The fuel fee will be increased by eight percent (8%) every three years.

E. Petro Marine shall pay fifty five cents (\$.55) per square foot per month for all space occupied in the City's warehouse.

V. TERM OF AGREEMENT

A. This Agreement shall become effective on the day it is filed with the Federal Maritime Commission (the "Initial Term").

B. The payment obligations described in Article IV above shall begin on the date that Petro Marine may beneficially occupy the Leased Premises and Easement. Beneficial occupancy will occur

on the earlier of the date on which Petro Marine accepts the Leased Premises and Easement under Article VI, below or the date which is 30 days after the City notifies Petro Marine that the site(s) are available to Petro Marine for construction.

C. This Agreement shall terminate at midnight on the date which is eighteen years after the Agreement becomes effective.

D. The parties agree that Petro Marine has the option to extend the term of this Agreement for two additional terms of ten years beyond the Initial term. To exercise this option, Petro Marine must give the City at least ninety days written notice prior to the end of the preceding term.

E. The Fuel Sales Franchise Agreement is hereby amended to make its term coextensive with the term of this Agreement.

VI. CONDITION OF AREA

A. The City will provide a space estimated at 120 by 420 feet suitable for the construction of a warehouse by Petro Marine within the Leased Premises described in Exhibit "A".

B. The City will provide a space estimated at 40 by 75 feet suitable for the construction of a repair shop or additional tankage by Petro Marine within the Leased Premises described in Exhibit "A".

C. Petro Marine shall have the right to inspect these sites and must accept each before beginning construction of the warehouse, repair shop and hydrant fueling system, such acceptance not to be unreasonably withheld.

VII. USE OF AREA

A. Petro Marine shall not use the Leased Premises or Easement or any facilities on the City of Unalaska Marine Center for any unlawful purposes.

B. Petro Marine agrees not to discontinue its operations on the Leased Premises or Easement or to abandon them during the term of this Agreement. Petro Marine's obligations under this Agreement, including the obligation under Paragraph IV.A. to make payments directly to the Authority or its designee, shall not be reduced by abandonment or discontinuance of operations.

C. Petro Marine shall use the area affected by this Agreement for bulk sales of marine fuels, and to provide warehousing services for marine transportation and related industries. Petro Marine shall have control over the employees who service vessels purchasing fuel from the Leased Premises. Petro Marine may construct and use a warehouse and hydrant fueling system at its own expense and may add an additional tank and repair shop to its existing fuel storage facility at its own expense. Paragraph 2 of the Fuel Sales Franchise Agreement is amended to authorize Petro Marine to sell gasoline as well as marine fuel and related marine products to the public.

D. Petro Marine is entitled to quiet enjoyment of the Leased Premises under this Agreement provided that Petro Marine is not in breach of any of the terms of this Agreement.

VIII. MAINTENANCE AND REPAIR OF LEASE PREMISES AND EASEMENT.

A. The City shall make any repairs at its own expense to the paved surfaces, line striping, common roadways, underground utilities, or general terminal lighting made necessary by the normal use of the Leased Premises and Easement. If any damage is caused to the Leased Premises or Easement by Petro Marine, its agents or employees that damage shall be repaired by Petro Marine at its own expense. All structural repairs not caused by Petro Marine shall be the City's responsibility.

B. Petro Marine shall, at its own expense, keep the Leased Premises and Easement clean, orderly and free of rubbish.

C. Within ten days of each anniversary date of this Agreement, Petro Marine and the City agree to inspect the Leased Premises and prepare a report describing the condition of the Leased Premises and Easement and specifying any items in need of repair. The party responsible for those repairs shall start them within thirty days after the report is prepared and shall promptly complete them.

D. If the Leased Premises and/or Easement are at any time during the term of this Agreement damaged or destroyed by fire or other casualty, however caused, the City may apply all collectable insurance proceeds to repair, rebuild, replace and restore the Leased Premises and Easement to a condition comparable to that which existed immediately prior to the fire or other casualty if the City and the Authority decide to rebuild the City of Unalaska Marine

Center. The payments in Article IV above, except for payments pursuant to Paragraph IV.A., shall be abated in proportion to the extent that the Leased Premises and Easement are not usable by Petro Marine during the time those areas are not repaired or restored.

IX. INDEMNITY

A. Petro Marine shall be solely responsible for all risks associated with its use of the Leased Premises and Easement. Petro Marine agrees to defend and hold harmless the City and the Authority for all claims for damages suffered or alleged to be suffered as the result of Petro Marine's activities, whether under this Agreement or not, in or about the Leased Premises and Easement. Petro Marine agrees to bear all risks associated with its activities and indemnify and hold the City and the Authority harmless from those risks. The City shall be responsible for all risks associated with its own negligence.

B. This obligation to indemnify shall continue beyond the term of this Agreement.

C. This indemnity provision includes all environmental damage that results from Petro Marine's operations under this Agreement.

X. REMEDIES

A. If Petro Marine is in material default under any provision of this Agreement for a period of sixty days after the City delivers written notice of that default to Petro Marine, the City may terminate this Agreement. If default occurs, the City may at its discretion reenter the Leased Premises by summary proceedings or

otherwise, expel Petro Marine from the area and remove all Petro Marine property, at Petro Marine's expense. The City or the Authority may re-lease the Leased Premises and Easement at the best possible rental rate obtainable and receive the fees. Petro Marine shall remain liable for the equivalent of all payments due under this Agreement unless released from that obligation by the City and the Authority after payment is received for re-leasing the Leased Premises and Easement and the reasonable cost of obtaining possession of the Lease Premises and Easement (including attorney's fees) and any repairs or alterations necessary to prepare for re-lease are deducted from all payments received.

B. If Petro Marine shall be adjudicated bankrupt, or if Petro Marine shall make a general assignment for the benefit of creditors, or if in any proceeding based on the insolvency of Petro Marine a receiver of Petro Marine property is appointed, then the City may terminate this Agreement by giving notice to Petro Marine of its intention to do so. However, neither bankruptcy, insolvency or an assignment for the benefit of creditors nor the appointment of a receiver shall affect this Agreement or permit its termination provided that the covenants on the part of Petro Marine to be performed under this Agreement are performed by Petro Marine, a receiver or a trustee in bankruptcy.

XI. UTILITIES

A. Petro Marine shall provide the City with written notice of its requirements for utility service.

B. During the term of this Agreement, Petro Marine shall pay the City or other providers directly for all utility bills and accounts for utility services used or consumed by Petro Marine in the Leased Premises or Easement.

XII. INSURANCE

A. While this Agreement is effective, Petro Marine shall carry and keep in force, liability insurance covering the City and the Authority for its operations under this Agreement for not less than \$2,500,000 in the aggregate for injury or death to persons and \$2,500,000 in the aggregate for property damages. Petro Marine shall maintain pollution coverage insurance to cover all claims resulting from the discharges of fuel into the water, soil or air. This insurance shall include an accidental pollution extension.

B. While this Agreement is effective the City shall keep in force sufficient fire and extended coverage insurance to insure against loss or damage that may occur to the Leased Premises or Easement. Petro Marine understands that the City's insurance will not cover physical damage, theft or other loss of Petro Marine's warehouse, hydrant fueling system or any cargo, containers, or equipment stored in the Leased Premises or in the City's warehouse occupied by Petro Marine pursuant to Paragraph III.B. Petro Marine will carry all insurance it deems necessary to protect its cargo, containers or equipment. In addition, the City will carry and keep in force, liability insurance to adequately cover the City's operations under this Agreement.

C. Either party may provide for the foregoing required insurance coverage under a blanket policy affecting the Lease Premises and Easement and other areas leased or owned.

D. Petro Marine shall provide statutory Alaska Worker's Compensation including \$1,000,000 Employer's Liability shall also be provided.

E. Petro Marine shall provide insurance in the amount of five million dollars (\$5,000,000) or the amount required by the State of Alaska, whichever is greater, to cover the cost of all environmental damage that may result from its operations under this Agreement.

F. Within ten days after the effective date of this Agreement, each party shall furnish to the other sufficient evidence of insurance. All insurance required under this Agreement shall contain a provision that it can be cancelled only after thirty days written notice to the other party and to the Authority.

XIII. RIGHT OF INSPECTION

A. The City shall have the right to inspect the Leased Premises upon reasonable notice to Petro Marine to ensure compliance with the terms of this Agreement.

B. The City shall have the right to audit Petro Marine's records to determine compliance with the payment terms of this Agreement. If this Agreement is assigned to a third party, that third party shall not have the right to directly inspect Petro Marine's records but may hire a certified public accountant to audit the records, at the third party's expense, to determine if Petro

Marine is accurately fulfilling its reporting obligations under this Agreement. The audit shall remain confidential.

XIV. TAX CREDITS

A. Petro Marine waives any rights it may have to claim depreciation or investment credits which may be allowable under the Internal Revenue Code of 1986, as amended for payments made under this Agreement or for funds used by the City or the Authority to improve the Leased Premises or Easement. Petro Marine shall have the right to claim depreciation and investment tax credits for the improvements made to the Leased Premises and Easement at its expense. This waiver is binding on Petro Marine and its successors and assigns.

XV. ASSIGNMENT OF RIGHTS

A. Petro Marine may not assign or sublease any rights or interests under this Agreement without the prior written consent of the City and the Authority. That consent shall not be unreasonably withheld.

XVI. SEVERABILITY

A. If any part, term or provision of this Agreement is declared null or unenforceable by a court of competent jurisdiction, the validity and enforceability of the rest of this Agreement shall not be affected.

XVII. WAIVERS

A. No waiver by Petro Marine or the City of any covenant or condition of this Agreement shall be construed as a waiver of any

other covenant or condition, nor shall the waiver of one breach be considered as a waiver of any other breach.

XVIII. FEDERAL MARITIME COMMISSION REVIEW

A. This Agreement shall be filed with the Federal Maritime Commission pursuant to Title 46, Code of Federal Regulations. The Agreement shall become effective on the date determined by the Federal Maritime Commission. The Federal Maritime Commission shall be promptly notified of any modification of, amendment to or termination of this Agreement for any reason other than its expiration. Petro Marine shall submit to the Federal Maritime Commission all documents required under this Article and shall reimburse the City for the City's costs in submitting all required documents.

XIX. SURRENDER

A. Petro Marine agrees that the Leased Premises and Easement shall not be subject to any liens, charges or encumbrances (provided that Petro Marine may grant a security interest in the Leased Premises or Easement to Key Bank of Alaska in connection with Key Bank of Alaska's providing financing to Petro Marine for construction of this warehouse described herein as long as such security interest in Key Bank of Alaska is subrogated to the interests of the Authority and the City), and agrees that at the expiration of this Agreement it will deliver to the City or its designee, the Leased Premises and Easement in good condition (ordinary wear and tear excepted) and without liens, charges or

encumbrances.

B. The City agrees that, upon termination of this Agreement other than by the default of Petro Marine, it will purchase from Petro Marine the major improvements made by Petro Marine or allow their removal. Prior to the termination of this Agreement, the parties agree to negotiate with each other to establish the fair market value of the improvements to be purchased. If the parties are unable to agree on the fair market value of the improvements, they will jointly hire an appraiser to establish the fair market value.

XX. SPECIFIC PERFORMANCE

It is agreed that one of the remedies for breach of this Agreement is specific performance.

XXI. MODIFICATIONS AND NOTICES

A. No modification of this Agreement shall be effective unless submitted in writing and agreed to by the parties in writing and consented to by the Authority. No modification of one provision of this Agreement shall be considered a waiver, breach or cancellation of any other provisions.

B. All notices required to be given under this Agreement shall be effective on the date of receipt and shall be mailed to the parties and the Authority at the following addresses: Petro Marine Service, Inc., 1600 A Steet, Suite 307, Anchorage, Alaska 99503; City Manager, City of Unalaska, P.O. Box 89, Unalaska, Alaska 99685; Executive Director, Alaska Industrial Development and Export

Authority, 480 West Tudor Road, Anchorage, Alaska 99503-6690.

XXII. ARBITRATION

The parties agree to attempt to resolve all differences between themselves, and then to submit all claims and disputes arising under this Agreement to binding arbitration under the commercial arbitration procedures of the American Arbitration Association. Petro Marine acknowledges and agrees that the payments due under Paragraph IV.A. shall be made, notwithstanding any dispute over the interpretation of this Agreement and unless or until court of competent jurisdiction determines otherwise.

XXIII. ANTI-DISCRIMINATION

During the performance of this Agreement, Petro Marine agrees:

A. In connection with its performance under this Agreement including construction, maintenance and operation of or on the Leased Premises and Easement, Petro Marine will not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex or national origin.

B. Petro Marine and its employees shall not discriminate, by segregation or otherwise, against any person on the basis of race, color, ancestry, religion, sex or nationality by curtailing or refusing to furnish accommodations, facilities, services or use privileges offered to the public generally.

C. Petro Marine shall include and require compliance with the above non-discrimination provisions in any subletting or subcontract made with respect to construction or maintenance operations under

this Agreement.

XXIV. ALASKA LAW

The parties agree that this Agreement was entered into in the State of Alaska and that Alaska law will govern its interpretation and application.

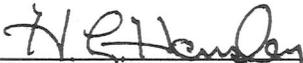
XXV. BINDING ON SUCCESSORS AND ASSIGNS

A. All provisions of this Agreement shall inure to the benefit of and be binding on the parties, their successors and assigns.

B. This Agreement shall continue in force and effect if the Authority terminates the Lease with the City and re-enters the property which is the subject of that Lease of which the Leased Premises and the Easement are a part.

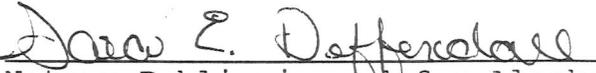
C. This Agreement shall continue in force and effect if the City fully satisfies its financial obligation to the Authority and becomes the owner of the City of Unalaska Marine Center.

DATED as written on the first page of this Agreement.



City of Unalaska
Herv Hensley, Manager

SUBSCRIBED AND SWORN TO before me this 2nd day of October, 1990, at Unalaska, Alaska.

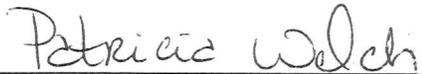


Notary Public in and for Alaska
My Commission expires: 8/29/94



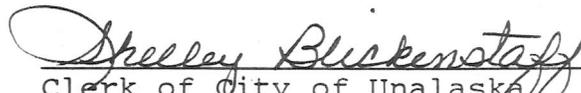
Petro Marine Service, Inc.
SR VP Marketing

SUBSCRIBED AND SWORN TO before me this 2nd day of October,
1990, at Anchorage, Alaska.

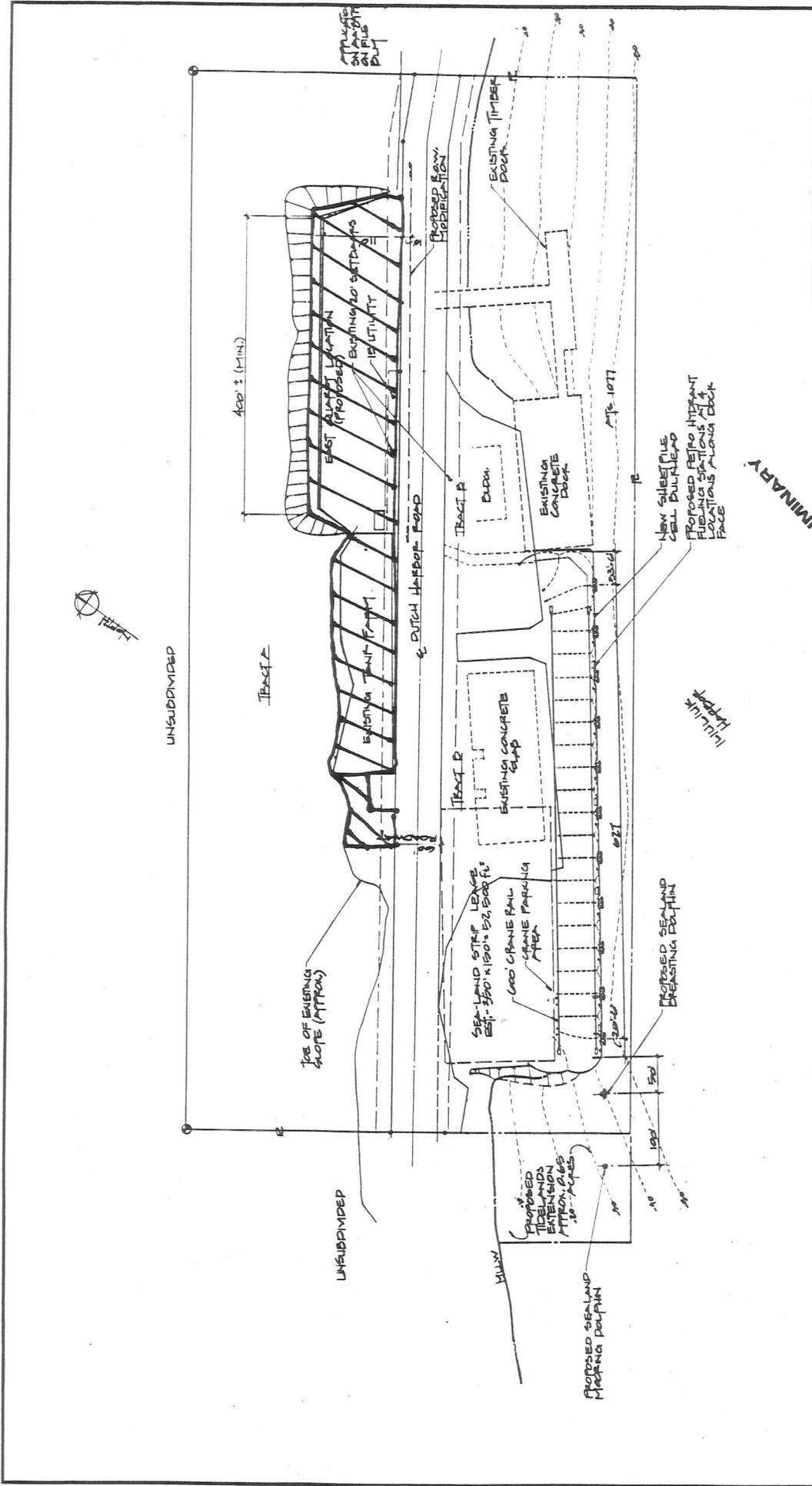


Notary Public in and for Alaska
My Commission expires: 1-31-94

This Agreement has been approved by the City Council of the
City of Unalaska.



Clerk of City of Unalaska



**CITY OF UNALASKA
BALLYHOO PORT
IMPROVEMENT PROJECT**

Peratrovich, Nottingham & Drage, Inc.
Engineering Consultants
1600 West 30th Avenue,
Anchorage, Alaska 99503
(907) 581-1011

Prepared by: CDE
Checked by: CNE
Project No.: 21020

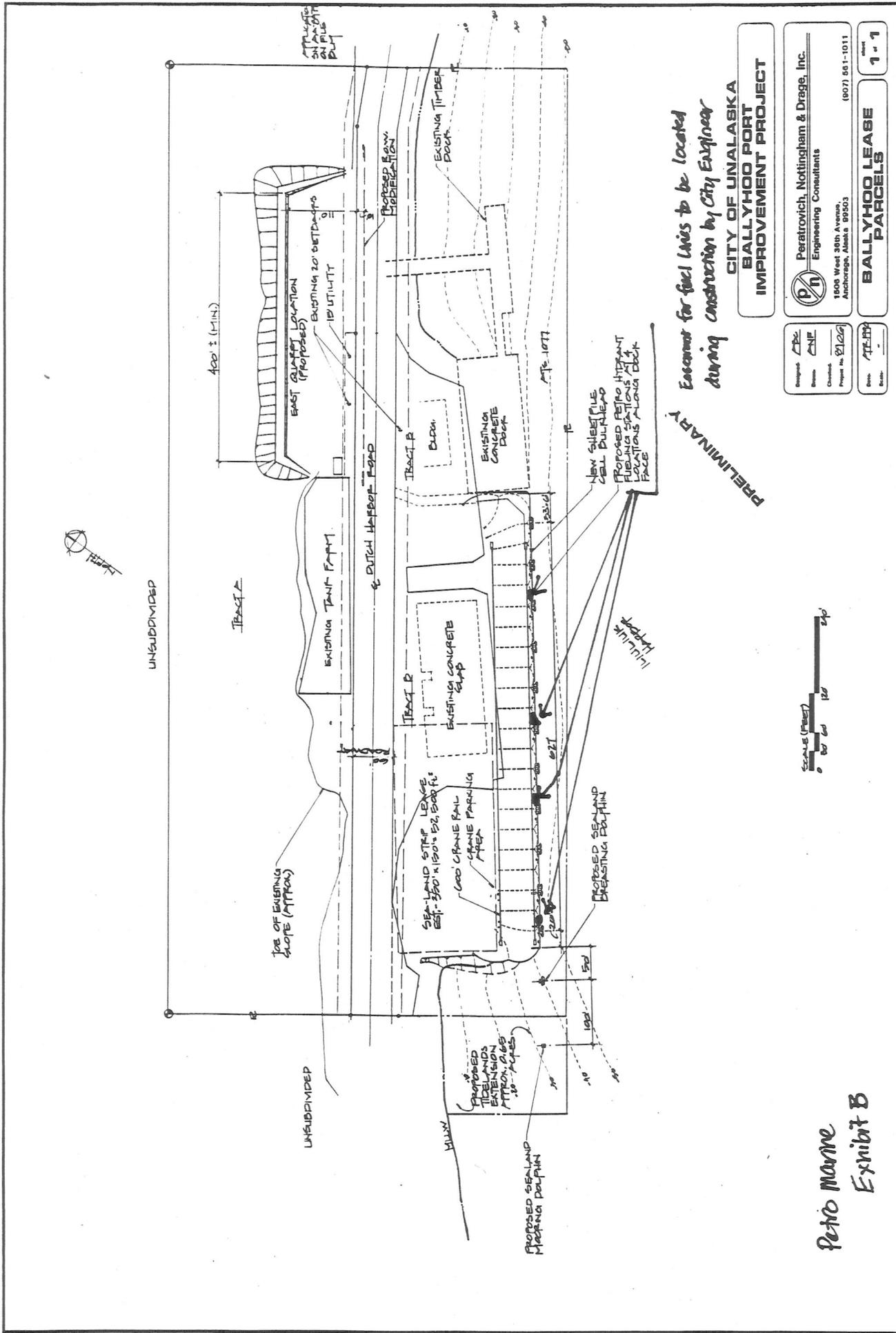
**BALLYHOO LEASE
PARCELS**

Date: 11/19/07
Sheet: 1-1

PRELIMINARY



*Petro Marine
Exhibit A*



Preliminary
 Escrow for fuel lines to be located during construction by City Engineer

CITY OF UNALASKA
 BALLYHOO PORT
 IMPROVEMENT PROJECT


 Peratrovich, Nottingham & Drage, Inc.
 Engineering Consultants
 1808 West 38th Avenue,
 Anchorage, Alaska 99503
 (907) 561-1011

BALLYHOO LEASE
 PARCELS
 1-1

Petro Marine
 Exhibit B

