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**CITY OF WHITTIER, ALASKA
RESOLUTION # 040-2021**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, ALASKA, APPROVING THE ASSIGNMENT OF THE LEASE BETWEEN THE CITY OF WHITTIER AND WHITTIER DOCK ENTERPRISES, A WHOLLY OWNED SUBSIDIARY OF FRANKLIN DOCK ENTERPRISES, TO PRINCESS CRUISES LINES, LTD, SUBJECT TO AND CONDITIONAL UPON FURTHER AMENDMENTS TO AND RESTATEMENT OF THE TERMS OF THE LEASE, AND APPROVING THE ESSENTIAL TERMS OF A SECOND AMENDED AND RESTATED TIDELANDS LEASE WITH PRINCESS CRUISE LINES, LTD, INTENDED TO AMEND AND RESTATE THE LEASE WITH WHITTIER DOCK ENTERPRISES, AND AUTHORIZING THE CITY MANAGER TO ENTER INTO ALL NECESSARY AGREEMENTS WITH THE PARTIES INCORPORATING THE ESSENTIAL TERMS APPROVED IN THIS RESOLUTION

WHEREAS, effective April 24, 2003, Passage Canal Development LLC, an Alaska limited liability company (“PCD”), the predecessor to Whittier Dock Enterprises (“WDE” or “Tenant), entered into a Tidelands Lease Agreement - Cruise Parcel (Amended and Restated 2003) with the City as “Landlord”, for the lease of certain City owned land commonly known as the “Cruise Parcel” and described as the “Leasehold Premises”; and

WHEREAS, effective April 24, 2003, City and PCD entered into an Amendment to Tidelands Lease Agreement - Cruise Parcel (Amended and Restated 2003) (the “First Amendment”); and

WHEREAS, effective April 29, 2003, PCD assigned to WDE its leasehold interest under the Tidelands Lease Agreement - Cruise Parcel (Amended and Restated 2003) pursuant to an Assignment of Lease for which the City executed a Consent to Assignment dated May 4, 2003; and

WHEREAS, effective May 20, 2003, the City and WDE entered into a Second Amendment to Tidelands Lease Agreement – Cruise Parcel (Amended and Restated 2003) (the “Second Amendment”); and,

WHEREAS, the City, WDE, and Franklin Dock Enterprises, as the parent and successor in interest to WDE, entered into a Third Amendment to Tidelands Lease Agreement – Cruise Parcel (Amended and Restated 2003) (the “Third Amendment”), solely for the purpose of correcting the legal description of the Leasehold Premises (the Tidelands Lease Agreement – Cruise Parcel (Amended and Restated 2003), together with the First Amendment, Second Amendment and Third Amendment are hereinafter referred to as the “Original Lease”); and

WHEREAS, the term of the Original Lease concludes on October 1, 2033, with the tenant having a right and option to renew the Original Lease for an additional thirty-five (35) year term. The Original Lease contemplates a further thirty-five (35) year extension of the term of the lease, subject to mutual agreement of the parties; and

WHEREAS, Princess Cruise Lines, Ltd. (“Princess” or “New Tenant”), has entered into an agreement to purchase certain assets of WDE, including, without limitation, the Original Lease; and

WHEREAS, part of the transaction requires Council approval relative to the assignment of the Original Lease from WDE to Princess; and

WHEREAS, in connection with the request to assign the Original Lease, the City engaged in a review of the uses being proposed by Princess for the Leasehold Premises, and it appears to the City that Princess intends to operate the Leasehold Premises in a manner that is similar, albeit not identical to, the current cruise ship terminal operations, specifically, as a cruise ship dock and cruise terminal facility; and

WHEREAS, in connection with the request to assign the Original Lease, the City also undertook a review of the terms of the Original Lease, was able to negotiate certain terms with Princess that are more favorable to the City, and which will be incorporated into an amendment and restatement of the Original Lease, and which, include, among other things: (1) an increase in the annual minimum rental rate, which will be based on the number of cruise ship dockings per week during the summer, and which will be \$80,000 for up to three ships per week; (2) additional rent of \$20,000 for each ship in excess of three scheduled cruise ships per week; (3) annual rental rate increases based on changes in the consumer price index, not to exceed 2% per year; (4) a \$2,500 fee for each non-routine dockings during the year; (5) Princess will maintain all required insurance coverages for the term of the lease and will keep the Leasehold Premises in good condition and make all necessary repairs to keep the facility in as good condition as it is at the point of assumption of the Original Lease, normal wear and tear excepted; and (6) Princess will retain local management responsible for business operations on the Leasehold Premises, with the authority to make necessary and appropriate business and management decisions insofar as those decisions relate to the relationship with the City under the lease; and

WHEREAS, at the expiration or earlier termination of the lease, the improvements on the Leasehold Premises shall become the property of the City, all as provided in the lease; and

WHEREAS, the City acknowledges that Princess intends to make additional improvements, including the installation of shore power facilities where appropriate, to meet their own goal of reducing carbon emissions, which will provide incidental benefits to the City; and

WHEREAS, in order for the transaction to proceed, the parties will require the execution of an assignment of the Original Lease to Princess, a consent to assignment by the City, and the amendment and restatement of the lease, and the recording of a memorandum of the amended and restated lease; and

WHEREAS, under the terms of the proposed assignment, FDE, on behalf of WDE and itself, agrees to defend, indemnify and hold the City harmless from any and all obligations, claims, demands, losses, damages, costs, charges and liabilities, arising under or related to the Original Lease prior to the effective date of the assignment of lease to Princess; and

WHEREAS, the Whittier City Council hereby finds that the public interest is best served by allowing for a lease having a term of longer than twenty (20) years based on the purpose of the lease for use in operating and managing a cruise ship terminal and dock facility, and the positive economic contribution of this activity to the community, as well as the specific nature and value of the property improvements placed on the Leasehold Premises, which will revert to the City at the conclusion of the amended and restated ease.

NOW, THEREFORE, the Whittier City Council hereby resolves that:

Section 1. Whittier City Council hereby approves a lease assignment from WDE to Princess, subject to and conditional upon the following essential terms:

Term A: The Original Lease shall be amended in accordance with terms and conditions set forth in the Second Amended and Restated Tidelands Lease – Cruise Parcel (2021), with the same essential terms as presented to Council.

Term B: The parties agree to execute lease assignment having the same essential terms as presented to Council.

Term C: Princess agree to record, at its own cost and expense, a Memorandum of Lease for the Second Amended and Restated Tidelands Lease – Cruise Parcel (2021) with the same essential terms as presented to Council.

Term D: Rent for the Leasehold Premises shall be set at a minimum annual rent of \$80,000 for up to three ships per week, with additional rent of \$20,000 for each ship in excess of three scheduled cruise ships per week, subject to annual CPI increases not to exceed 2%, plus the City shall be able to collect docking fees from Princess, in the amount of \$2,500.00, for each non-routine docking.

Section 2. Whittier City Council’s approval of the assignment of the Original Lease is subject to and conditional upon the adoption of the essential terms in Section 1 of this Resolution.

Section 3. The form of the proposed amended and restated lease presented to City Council is hereby approved, the City Council hereby declaring a public interest finding based on the purpose of the amended and restated lease insofar as it contributes significantly to increased economic activity of the City, and due to the significant value of dock and cruise terminal facility infrastructure on City land, in accordance with Whittier Municipal Code § 3.36.320 - Terms of Lease, as the same may be amended or renumbered from time to time.

CITY OF WHITTIER, ALASKA


RESOLUTION # 040-2021

Page | 4

Section 4. This Resolution shall be effective immediately upon adoption.

PASSED AND APPROVED by a duly constituted quorum of the Whittier City Council on this 16th day of November, 2021.

THE CITY OF WHITTIER, ALASKA



Dave Dickason, Mayor

AYES: Blair, Pinqouch, McCord, Denmark, Wagner, Shen, Dickason

NAYS: None

ABSENT: None

ABSTAIN: None

ATTEST:



Jackie C. Wilde

Assistant City Manager/ Acting City Clerk