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**CITY OF PORT LAVACA**

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**PORT COMMISSION MEETING: JUNE 8, 2021**

**DATE:** 6.03.2021

**TO:** PORT COMMISSION

**CC:** JIM RUDELLAT, HARBOR MASTER

**FROM:** JODY WEAVER, INTERIM CITY MANAGER

**SUBJECT: CONSIDER AMENDMENT TO CURRENT AND STANDARD LEASE DOCUMENT OF THE SECTION ENTITLED DELINQUENT PAYMENTS.**

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*This item was tabled from the May meeting.*

At present we have 4 tenants that pay Monthly Tariffs: Helena, Equalizer, Prestige and Miller's Seafood. All have had difficulty in submitting their tariff payments on or before the 10<sup>th</sup> of each month. Recently Helena has established a procedure specifically for and unique to the City of Port Lavaca so they are generally able to get the payment in by the 10<sup>th</sup>.

*Current Standard Lease Language (in Helena Lease)*

**Section 5.03. Wharfage Rates and Changes/Monthly Reporting Requirement.** *All applicable provisions of City's Tariff and/or applicable wharfage rates shall apply to the activities of Tenant undertaken on the Leased Premises, unless otherwise excepted herein. Tenant shall install and at all times properly maintain all suitable equipment and instrumentation for determining the quantity of the products and commodities moved over, through or across any facility located at the City's Facilities, and on the 1st day of each calendar month, Tenant shall furnish to City a written report of such movements of all property, commodities and products, inclusive of descriptions of the quantities and kind, during the preceding calendar month. City and its representatives, employees, agents, and designated assigns shall have access at all reasonable times for inspection of all such equipment and instrumentation used in determining the quantities and character of such commodities and property. Tenant shall also keep and maintain records of each vehicle, rail car, barge, or vessel loaded or unloaded at the City's Facilities and shall furnish City with a written report of such monthly use on the 1st day of each succeeding calendar month.*

**Section 5.05. Delinquent Payments.** *All Rent and other payments required of Tenant hereunder which are not paid by the tenth of the month shall be assessed a charge of ten percent (10%) of the rent then due per month of delinquency. In no event, however, shall the charges permitted under this Section or elsewhere in this Lease, to the extent any or all of the same are considered to be interest under applicable law, exceed the maximum rate of interest allowable under applicable law.*

Note the exact language in our existing leases that have not been recently revised is a bit different, but still specifies that payments received after the 10<sup>th</sup> of the month are charged a 10% per annum late fee from the date due until the date paid.

As you are aware, the City no longer sends out a monthly written notice. The Rent is a consistent monthly amount that is established in the lease document and amended by written notice, so there is no need for the City to send an invoice each month. Other than the Dockage Tariff, which is based upon a fixed linear footage of dock length established in the lease, the tariffs payments change each month, depending upon the number of sacks/tons/barrels/days/days etc. as applicable for each tariff.

To provide adequate time for our tenants to collect and process the information needed to determine and pay the tariff dollars owed, I am recommending the following amendment be made to the standard lease document and other applicable current leases. This amendment makes it clear that the City will not be sending a monthly invoice, that the rent and dock tariff is due on the 1<sup>st</sup>, and the other tariff charges and supporting documentation will be due on the 25<sup>th</sup>.

This proposed revision is being made in response to conversations I have had with our 4 tenants and listening to their concerns.

PROPOSED REVISIONS REGARDING PAYMENT DUE DATES:

**Section 5.03. Wharfage Rates and Changes/Monthly Reporting Requirement.**

All applicable provisions of City's Tariff and/or applicable wharfage rates shall apply to the activities of Tenant undertaken on the Leased Premises, unless otherwise excepted herein. Tenant shall install and at all times properly maintain all suitable equipment and instrumentation for determining the quantity of the products and commodities moved over, through or across any facility located at the City's Facilities. **On or before the 25<sup>th</sup> of each month**, Tenant shall furnish to City a written report of such movements of all property, commodities and products, inclusive of descriptions of the quantities and kind, which occurred during the preceding calendar month. City and its representatives, employees, agents, and designated assigns shall have access at all reasonable times for inspection of all such equipment and instrumentation used in determining the quantities and character of such commodities and property. Tenant shall also keep and maintain records of each vehicle, barge, or vessel loaded or unloaded at the City's Facilities and shall furnish City with a written report of such monthly use on or before the 25<sup>th</sup> day of each succeeding calendar month.

**Section 5.05. Delinquent Payments.** **The City of Port Lavaca is under no obligation to send an invoice or monthly Notice for Rent or Tariffs Due. All Rent and any Dock Tariffs which are established in the leased for a fixed amount of dock space are due on the 1<sup>st</sup> of each month. All other tariffs and/or other payments required of Tenant hereunder are due by the 25<sup>th</sup> of the month following the month when the charges are incurred. All Rent and other payments required of Tenant hereunder, which are not paid by the due date cited above, shall bear interest at ten percent (10%) per annum from the date due until the date paid.** In no event, however, shall the charges permitted under this Section or elsewhere in this Lease, to the extent any or all of the same are considered to be interest under applicable law, exceed the maximum rate of interest allowable under applicable law.