

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION NO. 2018-03

A RESOLUTION OF THE UNALASKA CITY COUNCIL APPROVING THE RENEWAL OF ATS 1447, A LONG TERM LEASE AGREEMENT BETWEEN THE CITY OF UNALASKA AND ICICLE SEAFOODS INC., FOR AN OUTFALL EASEMENT ON CITY OWNED TIDELANDS.

WHEREAS, the City of Unalaska is the owner of Alaska Tidelands Survey (ATS) 1447, Plat 94-13, Aleutian Island Recording District and;

WHEREAS, Icicle Seafoods, Inc. (Icicle) operates a seafood processing facility In Unalaska and;

WHEREAS, Icicle desires to renew its lease for a Category C Tidelands Easement per Unalaska Code of Ordinances Title 8, Section 8.12.140 and the City of Unalaska Tidelands Leasing Policy, for an area identified as measuring 15' wide by 405' in length, extending from Ballyhoo Road into the water, with an area of 6,075 square feet and;

WHEREAS, Icicle prepared a new survey of the area for inclusion with the lease agreement to indicate the location of the easement and outfall line and;

WHEREAS, Icicle and the City worked together to renegotiate an existing easement resulting in an increase of \$1,250 per year from \$1,000 annually to the city's required minimum of \$2,250 for areas less than one (1) acre and;

WHEREAS, Unalaska City Code requires Council to approve any long term lease agreement (defined as exceeding five years) which is the intent of this contract due to several renewal options totaling twenty years and;

WHEREAS, the annual rent is negotiated to be \$2,250, with reappraisal every five years, and payable to the City of Unalaska.


NOW THEREFORE BE IT RESOLVED THAT THE UNALASKA CITY COUNCIL approves a long term lease between the City of Unalaska and Icicle Seafoods Inc., for an initial term of five years with the option of three additional, consecutive lease renewals of five years each for a total of twenty years subject to other applicable terms as proffered within the lease agreement.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on January 9, 2018.



Frank Kelty, Mayor

ATTEST:



Marjie Veeder
City Clerk



MEMORANDUM TO COUNCIL

TO: MAYOR AND CITY COUNCIL MEMBERS
THRU: NANCY PETERSON, CITY MANAGER
FROM: BIL HOMKA, PLANNING DIRECTOR
DATE: JANUARY 5, 2018
RE: RESOLUTION 2018-03 APPROVAL OF A NEW LONG TERM LEASE AGREEMENT BETWEEN THE CITY OF UNALASKA AND THE ICICLE SEAFOODS CO. FOR A CATEGORY C EASEMENT IN THE CITY'S TIDELANDS FOR A DISCHARGE LINE (ATS 1447).

SUMMARY: The City of Unalaska administers developable tidelands pursuant to Unalaska Code of Ordinances (UCO) Title 8, Section 8.12.140 Developable Tidelands District. The attached resolution enables the city to enter into a long term lease (also referred to as a Right of Way Permit) with Icicle Seafoods Inc. (Icicle) of Seattle, Washington for a discharge outfall classified as a Tidelands Category C lease. The company's existing lease expired in November, 2017. The new lease period is for twenty (20) years via three reappraisal periods of five (5) years each. The new lease amount will increase from \$1,000 annually to \$2,250 annually.

PREVIOUS COUNCIL ACTION: 97-103 ATS 1447 was approved in November, 1997 and again in October 2007 by Unalaska City Council, each ten (10) year leases for an outfall/discharge line in the Tidelands. Subsequently known as ATS 1447, the lease amount was for \$1,000 annually.

BACKGROUND: Icicle presently has a discharge line in the city's tidelands. In June, 2017 Icicle contacted the Planning Department to request a new lease, stating the existing lease was due to expire in November 2017. Also, the existing line was recently replaced with a new line in the same (near same) location. Together with the city's legal counsel, Icicle and Planning worked together to obtain the required documentation to draft and present this lease to city council. The area is less than one (1) acre in size and thus qualifies for the minimum cost lease. This is in accordance with the city's Tidelands Lease Policy. The easement measures less than one acre in size, about 15' x 405'. The total area is 6,075 sq. ft. As required by the policy, the attached Exhibit 'A' was stamped by John Seggeser, a Registered Professional Land Surveyor, and indicates the location of the easement.

ALTERNATIVES: N/A

FINANCIAL IMPLICATIONS: The city could receive annual income of \$2,250 for five years totaling \$11,250. Provisions exist in the contract to adjust the rent after the first and subsequent five (5) year lease periods. If no changes are made to the lease value then the final amount collected after a 20 year lease would be \$ 45,000.

LEGAL: City Attorney, Brooks Chandler reviewed the lease.

STAFF RECOMMENDATION: Staff recommends the Council approve Resolution 2018-03, approving a five (5) year renewable lease agreement for a 1,600 square foot area of a city owned parcel located off E. Broadway for a total period not to exceed 20 years.

PROPOSED MOTION: "I move that the City Council approve Resolution 2018-03.

CITY MANAGER'S COMMENTS: I recommend approval of Resolution 2018-03.

Attachments

- Location Map
- Lease

LOCATION MAP



CITY OF UNALASKA
PRIVATE NON-EXCLUSIVE RIGHT-OF-WAY PERMIT
ATS No. 1447
FOR CITY OWNED TIDELANDS

THIS AGREEMENT is made and entered into this _____ day of _____, 2018 by and between the City of Unalaska, whose address is P. O. Box 610, Unalaska, AK 99685, Grantor, and Icicle Seafoods, Inc., whose address is 4019 21st Ave West, Seattle, WA 98199, Grantee.

In accordance with the provisions of the City of Unalaska Code of Ordinances Chapter 7.12, Grantee has filed for a private non-exclusive right-of-way permit for an outfall/intake line to be located within tide and submerged lands patented to the City of Unalaska

Whereas, it is understood and agreed by the Grantee that, as a condition to granting the right-of-way applied for, the land covered by the right-of-way shall be used for no purpose other than the location, construction, operation and maintenance of the said right-of-way, over and across the following City of Unalaska tide and submerged lands:

An outfall line from the Icicle Processing Facility into ATS 1447, as shown on the as built survey, attached as Exhibit A, and Plat 94-13.

This right-of-way permit shall run for a term of ____ years and shall expire on _____, _____, subject to the Special Stipulations attached as Exhibit B.

The Grantee, in the exercise of the rights and privileges granted by this permit, shall comply with all regulations established by the City of Unalaska and all other federal, state or City of Unalaska laws, regulations or ordinances applicable to the area herein granted.

Upon abandonment, termination, revocation or cancellation of this right-of-way permit, the Grantee shall within 90 days remove all structures and improvements from the right-of-way area, except those owned by the Grantor, and shall restore the area to the same or similar condition as the same was upon the issuance of this permit. Should the Grantee fail or refuse to remove said structures or improvements, within the time allotted, they shall revert to and become the property of the Grantor. However, the Grantee shall not be relieved of the cost of the removal of the structure, improvements and/or the cost of restoring the area, and Grantor may remove structures and restore the area at Grantee's cost. Provided however, that Grantor, in its discretion, may waive the requirements contained in this provision if it is determined to be in the best interest of the City of Unalaska to do so.

The Grantee shall utilize the lands subject to the right-of-way consistent with the purposes of the proposed use, as revealed by the application therefor, and shall maintain the premises in a neat and orderly manner and shall adopt and apply such safety measures as shall be necessary, proper and prudent with respect to the use to which the land is subjected.

Prior to any construction or development that will use, divert, obstruct, pollute or utilize any of the waters of the State, the Grantee shall first obtain approval therefor from the Commissioner of the Department of Fish and Game and the Corps of Engineers and file image copies therefor with the Grantor.

In case the necessity for the right-of-way shall no longer exist, or the Grantee should abandon or fail to use the same, then this permit shall terminate.

The City of Unalaska shall be forever wholly absolved from any liability for Grantee's damages resulting from this permit having been cancelled, forfeited or terminated prior to the expiration of the full time for which it was issued. Grantee shall indemnify and hold harmless Grantor and its employees for any claim or cause of action arising out of this permit, Grantee's use of the right-of-way, or any other right granted to Grantee hereunder, unless caused solely by the negligence of Grantor or its employees.

NOW THEREFORE, in accordance with the provisions of The City of Unalaska Code of Ordinances and the rules and regulations promulgated thereunder, and in accordance with the conditions heretofore set forth or attached hereto and made a part hereof, the Grantee is hereby authorized to locate, construct, operate and maintain said right-of-way over and across the lands herein described.

IN WITNESS WHEREOF, the City of Unalaska, as Grantor, acting through the City Manager or a lawfully designated representative, and the Grantee have caused this permit to be signed in duplicate, and have set their respective hands, agreeing to keep, observe, and perform the applicable ordinances, as amended, the rules and regulations promulgated thereunder, and the terms, conditions and provisions herein contained or attached, which on the Grantor's or Grantee's respective parts are to be kept, observed and performed.

CITY OF UNALASKA

ICICLE SEAFOODS, INC.

City Manager

STATE OF ALASKA)
) ss.
Municipality of Unalaska)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, City Manager for the City of Unalaska, a First Class Alaska Municipal Corporation, on behalf of the City of Unalaska.

Notary Public, State of Alaska
My Commission expires _____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, the _____ of Icicle Seafoods, Inc., a _____ Corporation, on behalf of the corporation. In witness whereof, I have hereunto set my hand and affixed my official seal the day and year above written.

Notary Public, State of _____
My Commission expires _____

EXHIBIT A
 Icicle Processing Facility into ATS 1447
 As built survey

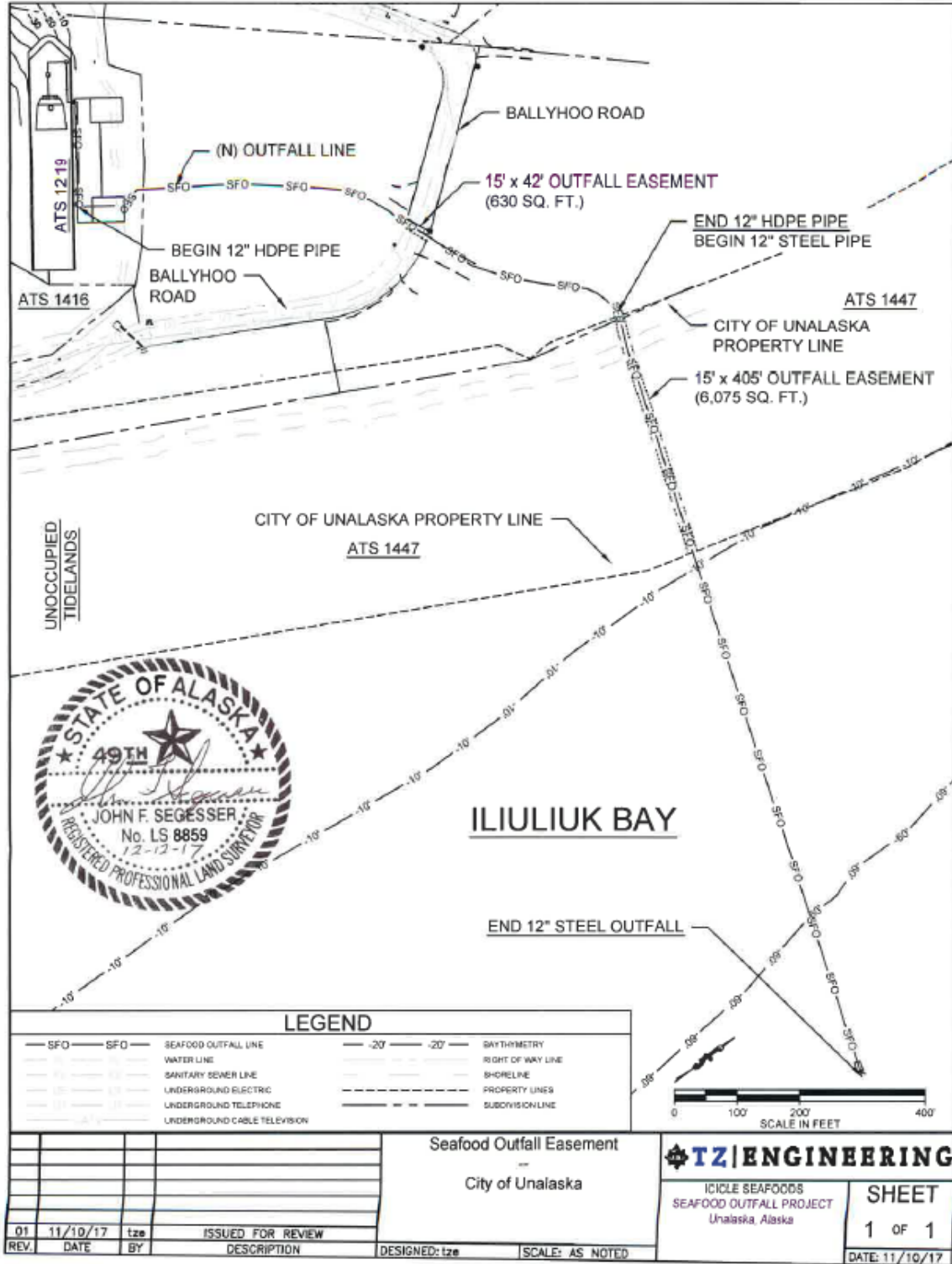


EXHIBIT B
Special Stipulations

PRIVATE NON-EXCLUSIVE
RIGHT-OF-WAY PERMIT
ATS No. 1447
FOR CITY OWNED TIDELANDS

This right-of-way permit shall run for a term of _____ years and shall expire on _____, 20__ subject to the Special Stipulations listed below:

1. The easement granted under this right-of-way is designated as a private non-exclusive. The City of Unalaska retains control of the easement and reserves the right to grant compatible easements within, overlapping, or adjacent to the subject easement area.
2. The annual rental fee is \$2,250.00 per year. The rental fee is payable on or before _____ of each year. Said rental fee is subject to periodic review and adjustment every 5 years during the term of the right-of-way.
3. The Alaska Constitution guarantees any citizen of the United States or resident of the state the right of access to navigable and public waters of the state. The Public Trust Doctrine further guarantees the public right to use navigable waters and the land beneath them for navigation, commerce, fishing, and other purposes.
4. This right-of-way is subject to the principles of the Public Trust Doctrine. The Grantor reserves the right to grant other interests to the subject lands consistent with the Public Trust Doctrine as long as said interests will not reasonably interfere with the use of the parcel by the permittee.
5. The grantor reserves the right to revoke this right-of-way if the subject lands are no longer used or needed for the operation of the use permitted. I have read and understand the foregoing stipulations and agree to comply with them.