

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION NO. 2018-46

A RESOLUTION OF THE UNALASKA CITY COUNCIL APPROVING THE RENEWAL OF ATS 1444, ADL 72796, A LONG TERM LEASE AGREEMENT BETWEEN THE CITY OF UNALASKA AND UNISEA, INC., FOR AN OUTFALL EASEMENT ON CITY OWNED TIDELANDS

WHEREAS, the City of Unalaska is the owner of Alaska Tidelands Survey (ATS) 1444, Plat 94-5, Aleutian Island Recording District and;

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

WHEREAS, Unisea desires to renew its lease for a Category C Tidelands Easement per Unalaska Code of Ordinances Title 8, Section 8.12.170 and the City of Unalaska Tidelands Leasing Policy, for an area identified as measuring 10' wide by about 225' in length, within SW ¼ of Section 3, Township 73 South, Range 118 West, Seward Meridian, with an area of 2,247 square feet and

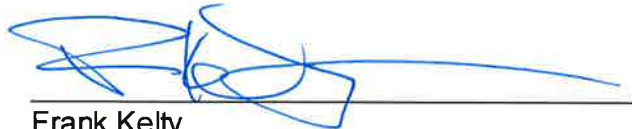
WHEREAS, Unisea and the City worked together to renegotiate an existing easement resulting in an increase of \$2,150 per year from \$100 annually to the city's required minimum of \$2,250 for areas less than one (1) acre and;

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 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 Unisea, Inc., for a term of twenty-five 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 July 24, 2018.



Frank Kelty
Mayor

ATTEST:



Marjie Veeder
City Clerk



MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Bil Homka, Planning Director
Through: Thomas Thomas, City Manager
Date: July 24, 2018
Re: Resolution 2018-46, a Resolution of the Unalaska City Council approving the renewal of ATS 1444, ADL 72796, a long term lease agreement between the City of Unalaska and Unisea, Inc., for an outfall easement on city owned tidelands

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 Unisea, Inc. of Redmond, Washington for a discharge outfall classified as a Tidelands Category C lease. The company's existing lease expired in December, 2016. The new lease period is for twenty-five (25) years. The new lease amount will increase from \$100 annually to \$2,250 annually.

PREVIOUS COUNCIL ACTION: The City Council endorsed the current City Manager Regulations for Tidelands Leasing, License, Exchange or Sale by passing Resolution 2012-28 on April 24, 2012.

BACKGROUND: Unisea, Inc. presently has a discharge line in the city's tidelands. The previous lease agreement was originally an agreement between the State of Alaska and Unisea, Inc. The State owned ATS 1444 when they made the agreement with Unisea in 1992. When the City obtained ownership of ATS 1444 in 1994, the City took over that existing lease. In July, 2018 Unisea, Inc. contacted the Planning Department to request a new lease, the old lease having expired in December, 2016. Together with the city's legal counsel, Unisea 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 10' x about 225'. The total area is 2,247 sq. ft. As required by the policy, the attached Exhibit 'A' was stamped by Terry P. Irwin, a Registered Professional Land Surveyor, and indicates the location of the easement. A new survey will be obtained by Unisea and provided to the City by no later than June 30, 2019. Prior to the City signing the agreement, Unisea will provide proof of insurance as required by the ROW agreement.

ALTERNATIVES: Not applicable.

FINANCIAL IMPLICATIONS: The city could receive annual income of \$2,250 for twenty-five years. 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 25 year lease would be \$ 56,250.

LEGAL: City Attorney, Charles Cacciola reviewed the lease.

STAFF RECOMMENDATION: Staff recommends the Council approve Resolution 2018-46, approving a twenty-five (25) year lease agreement for a 2,247 square foot area of a city owned tideland located off of Airport Beach Road for a total period not to exceed 25 years.

PROPOSED MOTION: I move to adopt Resolution 2018-46.

CITY MANAGER'S COMMENTS: I recommend adoption of Resolution 2018-46.

ATTACHMENTS:

- Location Map
- Lease

CITY OF UNALASKA
PRIVATE NON-EXCLUSIVE
RIGHT-OF-WAY AGREEMENT
ATS No. 1444, ADL 72796
FOR CITY OWNED TIDELANDS

THIS AGREEMENT made and entered into this _____ day of _____, 2018 by and between the City of Unalaska hereinafter referred to as the Grantor and Unisea, Inc., whose address is 15110 90th St., P.O. Box 97019, Redmond, WA 98073-0719, hereinafter referred to as the Permittee.

In accordance with the provisions of the City of Unalaska Code of Ordinances the Permittee 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 Permittee 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 in ATS 1444 which is 10 feet in width and running about 225 feet in length within SW ¼ of Section 3, Township 73 South, Range 118 West, Seward Meridian, Alaska containing 0.05 acres, more or less, as shown on Exhibit "A".

1. Term. This right-of-way permit shall run for a term of 25 years and shall expire on December 31, 2041 subject to the conditions listed below.
2. Non-Exclusive. The easement granted under this right-of-way is designated as private non-exclusive. The Grantor retains control of the easement and reserves the right to grant compatible easements within, overlapping or adjacent to the subject easement area.
3. Rent. The annual rental fee is \$2,250.00 per year. The rental fee is payable on or before December 31 of each year. Said rental fee is subject to periodic review and adjustment every 5 years during the term of the right-of-way.
4. Public Trust Doctrine. 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. 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 unreasonably interfere with the use of the parcel by the permittee.
5. Restricted to Proposed Use. The Permittee shall utilize the lands herein granted 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. In case the necessity for the right-of-way shall no longer exist, or the Permittee should abandon or fail to use the same, then this permit shall terminate.

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

7. Termination. Upon abandonment, termination, revocation or cancellation of this indenture, the Permittee shall within 90 days remove all structures and improvements from the area herein granted, 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 Permittee 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 permittee shall not be relieved of the cost of the removal of the structures, improvements and/or the cost of restoring the area. Provided further, however, that the Grantor, in its discretion, may alter or modify the requirements contained in this provision if it is to the best interest of Grantor to do so.

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

9. Limitation of Liability. The Grantor shall be forever wholly absolved from any liability for damages which might result to the Permittee herein on account of this permit having been cancelled, forfeited or terminated prior to the expiration of the full time for which it was issued.

10. Insurance.

(a) Insurance shall be placed with companies acceptable to the Grantor; such companies shall be licensed to do business in Alaska or shall be a surplus carrier approved by the State of Alaska, and shall be rated "A-" or better in Best's Key Rating Guide.

(b) Deductibles or Self-Insureds. Any deductibles or self-insured retentions must be declared to and approved by the Grantor. At the option of the Grantor, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Grantor, its administrator, officers, officials, employees, and volunteers; or Permittee shall provide a financial guarantee satisfactory to the Grantor guaranteeing payment of losses and related investigations, claim administration, and defense expense.

(c) Changes in Coverage and Cancellations. Each insurance policy required by this permit shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days prior written

notice for nonpayment of premium or 60 days prior written notice for any other reason, by certified mail, return receipt requested, has been given to the Grantor.

(d) Verification of Coverage. Prior to the commencement of this permit, Permittee shall furnish certificates of insurance, preferably on standard Acord insurance forms, to the Grantor evidencing that the insurance policy provisions required are in force. Acceptance by the Grantor of deficient evidence does not constitute a waiver of permit requirements. The Grantor reserves the right to request complete, certified copies of all required insurance policies.

(e) Minimum Scope of Insurance. Permittee shall procure and maintain throughout the life of this permit the following insurance at the amounts and coverages specified hereunder.

- Commercial General Liability: \$1,000,000 combined single limit per occurrence \$2,000,000 General Aggregate for bodily injury and property damage claims;
- Pollution Liability: \$2,000,000 site pollution coverage including third party Coverage
- Workers' Compensation as required by the State of Alaska, and
- Employers' Liability: coverage is to be in compliance with any other statutory obligations, whether State or Federal, pertaining to the compensation of injured employees assigned to work, including but not limited to Voluntary Compensation, Federal Longshoremen and Harbor Workers' Act Maritime and the Outer Continental Shelf's Land Act.

(f) Commercial General Liability and Pollution Liability. Permittee shall maintain limits no less than those specified herein for Commercial General and Pollution Liability. The Grantor, its administrator, officers, officials, employees and volunteers are to be covered as additional insureds. Permittee's insurance coverage shall be primary insurance as respects the Grantor, its administrator, officers, officials, employees and volunteers. All rights of subrogation must be waived against the Grantor, its administrator, officers, officials, employees and volunteers.

11. Survey. Lessee shall obtain, at Lessee's sole expense, a record of survey for the outfall line in ATS 1444, ADL 72796. The survey of outfall line shall be performed by a professional land surveyor registered in Alaska. Completed record of survey required shall be obtained and provided to the City not later than June 30, 2019.

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 Permittee herein

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 his lawfully designated representative, and otherwise being lawfully authorized, and the Permittee have caused this permit to be signed in duplicate, and have hereunto 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 Permittee's respective parts are to be kept, observed and performed.

GRANTOR

PERMITTEE

Thomas Thomas
City Manager, City of Unalaska

Tom Enlow
President, Unisea, Inc.

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, Tom Enlow, President of Unisea, Inc., an Alaska corporation, on behalf of the corporation.

Notary Public
State of _____
My Commission expires _____

STATE OF ALASKA)
) ss.
Third Judicial District)

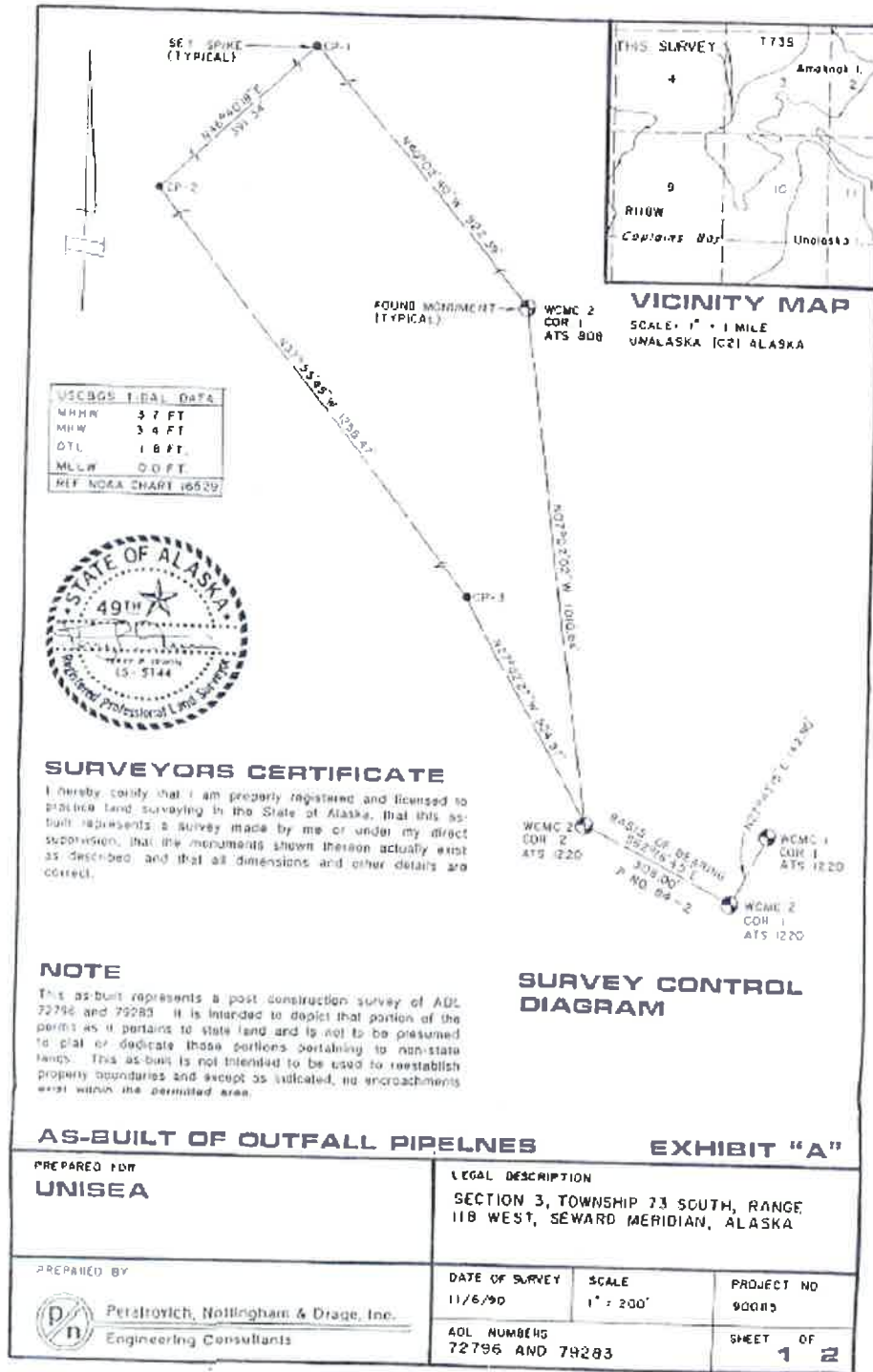
The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by THOMAS THOMAS, City Manager for the City of Unalaska, a First Class Alaska Municipal Corporation, on behalf of the City of Unalaska.

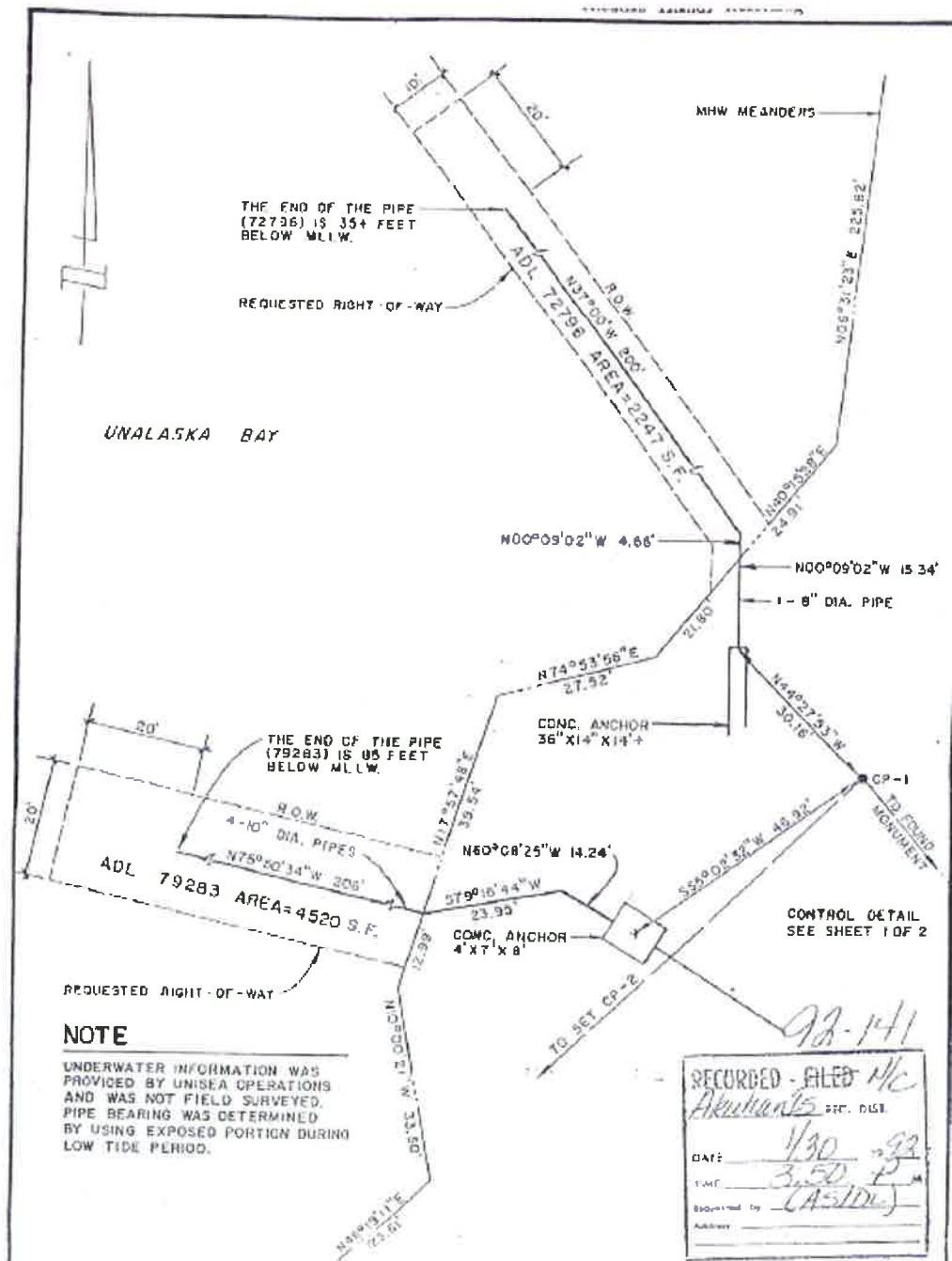
Notary Public
State of Alaska
My Commission expires _____

Return to:
City of Unalaska
P.O. Box 610
Unalaska, AK 99685

ATTACHMENT A

As Built Survey





AS-BUILT OF OUTFALL PIPELINES

EXHIBIT "A"

PREPARED FOR UNISEA		LEGAL DESCRIPTION SECTION 3, TOWNSHIP 73 SOUTH, RANGE 118 WEST, SEWARD MERIDIAN, ALASKA	
PREPARED BY Peratrovich, Nottingham & Drage, Inc. Engineering Consultants		DATE OF SURVEY 11/6/90	SCALE 1" = 20'
		PROJECT NO 90085	SHEET OF 2 2
		ADL NUMBERS 72796 AND 79283	