

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 2023-02

A RESOLUTION OF THE UNALASKA CITY COUNCIL APPROVING A 20-YEAR TIDELAND LEASE AGREEMENT BETWEEN THE CITY OF UNALASKA AND OFFSHORE SYSTEMS, INC., FOR A 2.288 ACRE PORTION OF ALASKA TIDELANDS SURVEY NO. 1432

WHEREAS, the City of Unalaska is the owner of Unalaska tideland 1432 Alaska Tideland Survey (ATS) No.1432, containing 4.99 acres, more or less, according to the survey plat recorded in the Aleutian Islands Recording District as Plat 92-34; and


WHEREAS, Offshore Systems Inc., desires to extend their lease of a portion of ATS 1432, containing about 2.288 acres for a period of 20 years to operate its existing marine facility; and

WHEREAS, Unalaska Code of Ordinances § 7.12.020 UCO requires City Council approval of any lease of City property having a term greater than 5 years; and

WHEREAS, the City Council has determined that a new 20-year lease is of benefit to the City as it promotes long-term, substantial, durable, and desirable investment in the City of Unalaska's tidelands and allows for an existing business to expand here.

NOW THEREFORE BE IT RESOLVED THAT THE UNALASKA CITY COUNCIL approves the tideland lease between the City of Unalaska and Offshore Systems, Inc. for a portion of ATS 1432, containing 2.288 acres, more or less, with the lease rate amount starting at 10% of the appraised value and reviewed every 5 years in accordance with the City Manager Regulations for Tideland Leasing.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on January 10, 2023.


Dennis M. Robinson
Mayor Pro Tem

ATTEST:


Marjie Veeder, CMC
City Clerk



MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: William Homka, Assistant City Manager
Through: Chris Hladick, City Manager
Date: January 10, 2023
Re: Ordinance 2023-02: Approving a 20-year Tideland Lease Agreement between the City of Unalaska and Offshore Systems, Inc., for a 2.288 acre portion of Alaska Tidelands Survey no. 1432

SUMMARY: A tideland lease between the City of Unalaska and Offshore Systems, Inc. (OSI) has been drafted and is being processed in accordance with City code and policies. City Council approval is required for the lease because the term is greater than five (5) years. Staff recommends approval of Resolution 2023-02.

PREVIOUS COUNCIL ACTION: OSI's initial lease began with the State of Alaska. The City acquired the tidelands and the lease which expired in 2005. City Council approved Resolution 2005-04 and renewed the lease for a 17-year period that expired in 2022.

BACKGROUND: OSI submitted two applications to renew tideland leases that expired in 2022. This lease application is for the 2.288-acre portion of City-owned tideland known as Alaska Tideland Survey 1432. City code requires the City to notify owners of adjacent uplands about applications; they have first preference and refusal right to lease the tidelands if they file development plans per Title 8 of City Code. A notice was mailed to the adjacent upland owner on September 1, 2022. The 90 day waiting period expired on December 5, 2022. No development interest was submitted during the notification's waiting period.

Pursuant to UCO 7.12.020, no lease shall exceed thirty (30) years unless the City Council determines the purpose of the lease, or the nature of improvements placed thereon, provide benefits to the city that warrant a longer lease term. City Council shall approve leases with terms greater than five years. Any renewal period or option to renew the lease period shall be included in the term of the lease in computing the five-year period of time.

DISCUSSION: OSI submitted an application to lease approximately 2.288 acres of ATS 1432 (Plat 92-34). These parcels contain the "Pot Dock" in Captains Bay.

Prior to the City signing the agreement, OSI will provide proof of insurance. All insurance requirements are identified in the lease agreement. Additionally, as described in the Regulations, a performance bond based on 5% of the estimated value of the existing improvements will need to be provided to the city prior to the signing the agreement.

Army Corps of Engineers, and other required permits will need to be obtained by OSI prior to any new development. Additionally, required building permits will need to be obtained from the Department of Public Works. No construction will be permitted by the City until documentation is provided to verify that these permits have been issued, as noted in the lease agreement.

The City Manager Regulations for Tidelands recommend lease terms of 30-years. This application seeks a 20 year term, however the lessee has the option of extensions up to a total of 30 years. Either party may, however, opt-out of the extension with a 60-day notice.

City regulations and policies establish the annual lease rate to be 10% of the property's value. MacSwain Associates, LLC appraised the property value at \$59,799.16 so the annual rent will be \$5,979.92. Tideland policies require reappraisal every five (5) years to determine if any rent adjustments are required. The 20 year value of this lease is \$119,598.40 plus any five year rate adjustments. The first payment will include the cost of the appraisal and any taxes resulting from the property rental.

ALTERNATIVES: If the City Council finds that it is not in the best interest of the City to approve Resolution 2023-02 as is, it may alternatively grant the lease agreement for less than 20 years, or reject the application for lease altogether.

FINANCIAL IMPLICATIONS: With approval the City will gain a total of \$119,598.40 over 20 years, plus additional rent with reappraisals, tax revenue and reimbursement for the cost of the initial appraisal.

LEGAL: The lease was developed in consultation with the City Attorney.

STAFF RECOMMENDATION: Staff recommends adoption of Resolution 2023-02.

PROPOSED MOTION: I move to adopt Resolution 2023-02.

CITY MANAGER COMMENTS: I support staff's recommendation.

ATTACHMENTS: Proposed lease

notice of termination 30 days prior to the termination together with payment of an early termination fee equal to 20% of the annual Rent for the year in which such notice is given multiplied by the number of full years then remaining in the Term.

2. Rent. The Lessee shall pay to the Lessor the following rent ("Rent") for the Parcel: equal annual payments, in advance, on or before the 10th day of the first month of the period of said rental term at the rate of five thousand nine hundred sixty dollars and seventy two cents (\$5,960.72) for the 2.288 Acre Parcel per annum, such annual rental payments to be subject to adjustment in accordance with Paragraph 3 of this Agreement.

The cost of the reappraisal used to calculate this lease rate was \$5,600, originally paid for by the City. The Lessee shall pay the Lessor the following reimbursement for the Initial Appraisal of the Parcel: on or before the 10th day of the first month of the period of said rental term at the rate of two thousand eight hundred dollars (\$2,800.00).

3. Adjustments to Rent. Rent due under this Agreement shall be adjusted upward or downward as follows:

The annual rent will typically be 10% of the appraised value of the tideland, including all previously existing improvements, as determined by an appraiser or based on the Fair Market Rent as established by an appraiser. Commencing at the end of the fifth (5th) year of the term, and continuing at the end of every five (5) years thereafter the Parcel, including any previously existing improvements included in this Lease Agreement, but excluding improvements made by Lessee, shall be reappraised by the City of Unalaska and the annual rent shall be adjusted accordingly. In some instances, a letter of opinion from an appraiser may be all that is warranted and may be considered every five years with a reappraisal every 10 years. Rent shall at no point be less than \$2,250 per acre with a \$2,250 minimum annual rent. The cost of subsequent reappraisals will be split equally between the City and the Lessee.

4. Payment of Rent. Rent payments shall be made payable to the City of Unalaska and delivered to the City of Unalaska Finance Department, P.O. Box 610, Unalaska, Alaska 99685, or to any other address which Lessor may designate in writing.
5. Interest on Delinquent Payments. All unpaid rents and fees shall accrue interest at the rate of ten and one-half per cent (10.5%) per annum beginning thirty (30) days after payment is due.
6. Use of Parcel. The Lessee shall use and occupy the Parcel in compliance with all applicable laws, regulations, ordinances and orders which a public authority has promulgated or may promulgate, including those of a building or zoning authority and those relating to pollution and sanitation control and those relating to City of Unalaska sales taxation . The Lessee shall not permit any unlawful occupation, business, or trade to be conducted on the Parcel. The Lessee shall properly locate itself and its improvements on the Parcel, and shall not commit waste of the Parcel, whether ameliorated or otherwise. Notwithstanding such laws, regulations, ordinances and orders, the Lessee shall maintain the Parcel in a reasonably neat and clean condition, and take all prudent precautions to prevent or suppress pollution of the ground, surface water, air, or land, and to

12. Agreement to Terms of Lease. The Lessor and the Lessee agree and recognize that each of the covenants and conditions in this Lease and any attachments thereto are merged and incorporated into this agreement and shall be binding upon themselves and upon their respective successors, successors in interest and assigns and shall inure to their benefit. The Lessor and the Lessee further agree and recognize that this Lease shall be conditioned upon satisfactory performance by the Lessor and the Lessee of all covenants and conditions contained herein.
13. Payment of Taxes and Assessments. The Lessee shall pay as additional rent all real property taxes and assessments lawfully levied upon the Parcel during the term of the Lease.
14. Utilities and Services. Lessee shall, at its expense, procure and timely pay for all services and utilities and hook-ups therefore which are necessary or appropriate for its operation or use of the Parcel.
15. Easements. Lessor reserves the right to make grants to third parties or reserve to the Lessor easements through, on or above the Parcel for the purpose of providing water, sewer or electric services to the Parcel or to adjacent properties, or for the purpose of providing reasonable public access to public waters, provided that no such easement or may be granted or reserved which unreasonably interferes with the Lessee's use of the Parcel.
16. Condemnation of Leasehold Improvements. If the whole or any part of the Parcel is taken by any authorized body or person vested with the power of eminent domain, by negotiation, court action, or otherwise, the following provisions control:
 - (a) If all of the Parcel is taken by condemnation, this Lease and all rights and obligations of the Lessee will immediately terminate, and the rent will be adjusted so that it is due only until the date the Lessee is required to surrender possession of the Parcel. The Lessor is entitled to all the condemnation proceeds, except that the Lessee will be paid the portion of the proceeds attributable to relocation costs or to improvements located on the Parcel.
 - (b) If the taking is of a substantial part of the Parcel, the following rules apply:
 - (1) If the taking reduces the ground area of the Parcel by at least 30 percent or materially affects the use being made by the Lessee of the Parcel, the Lessee has the right to elect to terminate or not to terminate this Lease by written notice to the Lessor not later than 180 days after the date of taking.
 - (2) If the Lessee elects to terminate this Lease, the provisions in (a) of this subsection govern the condemned portion of the Parcel and the terms of the Lease govern disposal of the remainder if any
 - (3) If the Lessee elects not to terminate, the Lease continues and the Lessor is entitled to the full condemnation proceeds, except the Lessee will be paid the portion attributable to relocation costs or to improvements located on Parcel. Except as it may be adjusted from time to time under the terms of this Lease, rent for the balance of the term will be equitably adjusted by the Lessor to reflect the taking.

have the right, after posting an adequate surety bond for the Lessee, as the obligee, issued by a corporation qualified to do business in Alaska and licensed to sell insurance in Alaska, or after posting for the Lessee, as the obligee, an adequate bond executed by one or more individual sureties approved by the Lessee and after due notice and an opportunity to be heard, to exercise rights granted to it for reasonable use of the surface required for the full enjoyment of the reserved subsurface rights which it holds. Each surety bond shall be sufficient in amount and security to secure the affected rights of the Lessee, and the Lessee and the Lessor or its subsurface lessee shall have the standing which may be necessary to seek a determination of the damages and losses which the Lessee may suffer, and the security appropriate to hold the Lessee harmless in relation thereto.

21. Appropriation or Disturbance of Waters. During the term of this Lease, the Lessee shall have the right to apply for an appropriation of ground or surface water on the Parcel in accordance with the Alaska Water Use Act. All water applied for and appropriated during the term of this Lease shall remain appurtenant to the Parcel during said term, and such water and water rights shall not be severed or transferred from the Parcel or any part thereof during said term without the prior consent of the Lessor. The Lessee's rights under any permit or certificate of appropriation shall revert to the Lessor upon termination of the Lease or forfeiture of the Lease for cause.
22. Acquisition of Rights or Interests. Any right or interest acquired during the term of this Lease and accruing to the benefit of the Parcel shall remain appurtenant to the Parcel during that term, and shall not be severed or transferred from the Parcel without the prior consent of the Lessor. In the event of termination or forfeiture of this Lease, any such right or interest shall revert to the Lessor along with the Parcel.
23. Land Alterations Due to Natural or Artificial Causes. The Parcel described herein shall constitute the entire Parcel of property to be leased by the Lessor to the Lessee pursuant to this agreement. If, through natural or artificial causes, accretion or reliction of land occurs on property contiguous to the Parcel that is owned by the Lessor, the Lessee shall have no right to occupy or use such contiguous property unless a separate lease is entered with the Lessor with respect to such property. The parties agree and stipulate that the rules of law usually applicable to accretion or reliction of land shall not apply to this Lease, nor to the Parcel leased hereunder, in order that the parties may give effect to the provision agreed upon herein.
24. Environmental Indemnification. If any hazardous substances are released or discharged on or from the Parcel to, on or about the Parcel or other properties, including, but not limited to, the surface or subsurface waters adjacent to the Parcel during the term of this Agreement, Lessee shall indemnify, defend, and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses, including, but not limited to, costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, or restorative work required by any federal or state agency due to the presence of hazardous substances in the soil or groundwater on or under the Parcel or other affected properties, whether such losses arise during or after the term of this Agreement, but only to the extent that such release or discharge is not caused by the fault of Lessor or its agents, representatives, contractors or employees.

- (c) Lessor's inspection rights identified in paragraph 24 specifically include the right to inspect the materials indicated as present and stored for purposes of responding to spills of hazardous substances on the Parcel.
29. Erosion Prevention. Lessee shall prevent unwarranted erosion of the Parcel that is caused by Lessee's use or occupancy of the Parcel. Any such erosion shall be repaired in a manner satisfactory to Lessor at Lessee's sole expense.
30. Waiver or Forbearance. The receipt of rent by the Lessor, with or without knowledge of any breach of the Lease by the Lessee, or of any default on the part of the Lessee in the observance or performance of any of the terms, conditions or covenants of this Lease, shall not be deemed to be a waiver of any provision of this Lease. No failure on the part of the Lessor to enforce a condition or covenant of this Lease, nor the waiver of any right hereunder by the Lessor, unless in writing, shall discharge or invalidate the application of such term or covenant; nor shall any forbearance or written waiver affect the right of the Lessor to enforce any term or covenant in the event of any subsequent breach or default. The receipt by the Lessor of rent or any other sum of money, or the termination in any manner of the Lease, or the giving by the Lessor of any notice hereunder to effect such termination, shall not reinstate, continue, or extend this Lease, nor destroy or in any manner or impair the validity of any such notice of termination which may have been given hereunder by the Lessor to the Lessee prior to the receipt of any such sum of money or other consideration, unless the contrary effect shall be expressed in writing and signed by the Lessor.
31. Bankruptcy. In the event Lessee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this Lease, Lessor shall have the right to declare this lease in default.
32. Breach and Remedies.
- (a) Time is of the essence of this Lease. If the Lessee shall materially breach any of the terms, covenants, conditions or stipulations contained in this Lease or attached hereto which are applicable to it, and said breach shall not be completely cured within 60 days after written notice of such breach has been served by the Lessor upon the Lessee and each holder of a security interest in the Lessee's interest under this Lease that has notified the Lessor of such security interest, the Lessee shall be subject to such legal rights and remedies as the Lessor shall have available to it under applicable law, including, but not limited to, the termination of this Lease; provided, however, that no improvements now upon the Parcel, or which may be placed thereon during the term of this Lease, may be removed therefrom during any time in which the Lessee may be in material breach of this Lease. In the event that this Lease is terminated by the Lessor for a material breach by the Lessee of this Lease, all rents paid by the Lessee shall be forfeited to and retained by the Lessor, not as a penalty, but as liquidated damages for such breach. The Lessor shall not be liable for any expenditures made by the Lessee or undertaken by the Lessee under this Lease prior to such termination.

35. Surrender of Leasehold. Upon the expiration or sooner termination of this Lease, the Lessee shall quietly and peaceably leave, surrender and yield up unto the Lessor all of the Parcel. In the event that Lessee remains in possession of the Parcel after the expiration of this Agreement with Lessor's permission, Lessee shall be deemed to be occupying the Property as a month-to-month tenant, subject to all of the terms and conditions of this Agreement and the law, to the extent that they may be applicable to a month-to-month tenant.
36. Required Insurance. The following insurance coverage is required to be furnished by the Lessee and is subject to annual review and adjustment by the Lessor, who may require reasonable increases in such coverage based on increased risks. Proof of the following coverage must be shown prior to execution of this Lease. A current certificate of insurance shall be submitted to the City each year.

The insurance policies must be written by a company or companies that are on the Alaska Division of Insurance's "admitted list" or "surplus lines insurance list". The broker/agent must be licensed to do business in the State and, if surplus lines insurance is provided, the broker must have a surplus broker license.

- (a) Comprehensive (Commercial) General Liability Insurance. Such insurance must have coverage limits of not less than \$1,000,000 combined single limits per occurrence and not less than two million dollars (\$2,000,000) aggregate limits and shall include premises operations, independent contractors, products/completed operations, broad form property damage, blanket contractual and personal injury endorsements.

The policies evidencing such coverage shall contain, or be endorsed to:

- (1) The Lessor, its officers, its agents and its employees are to be covered as additional insureds with respect to liability arising out of use of the Parcel or operations of the Lessee with respect to the Parcel.
- (2) The Lessee's insurance coverage shall be primary insurance with respect to the Lessor, its officers, agents, and employees. Any insurance or self-insurance maintained by the Lessor shall be excess of the Lessee's insurance and shall not contribute to it.
- (3) Coverage shall state that the Lessee's insurance shall apply separately to each insured against whom claim is made or suit brought except with the respect to the limits of insurer's liability.
- (4) That, as respects the interests of Lessor, such insurance shall (A) not be invalidated by any action or neglect of any person other than Lessor and (B) insure Lessor regardless of any misrepresentation, breach or non-observance of any warranty, declaration or condition contained in any applications by Lessee for, or policy evidencing, such insurance; and
- (5) That no such insurance shall be canceled or materially changed as respects the interests of Lessor on less than thirty days prior written notice to Lessor;

IN WITNESS WHEREOF the Lessor and the Lessee have caused these presents to be executed in duplicate, and have hereunto set their respective hands, agreeing to keep, observe and perform the terms, conditions and provisions herein contained or attached, which on the Lessor's or the Lessee's respective parts are to be kept, observed and performed.

Offshore Systems, Incorporated

THIS IS TO CERTIFY that on this _____ day of _____, 20__ before me appeared _____ to me known and known to me to be the person named in and who executed the Lease Agreement and acknowledged voluntarily signing the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

NOTARY PUBLIC in and for _____

My Commission Expires: _____

City Manager,
City of Unalaska

THIS IS TO CERTIFY that on this _____ day of _____, 20__, before me appeared _____ to me known and known to me to be the person named in and who executed the Lease Agreement and acknowledged voluntarily signing the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

NOTARY PUBLIC in and for _____

My Commission Expires: _____