

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 2020-08

A RESOLUTION OF THE UNALASKA CITY COUNCIL APPROVING A LONG TERM LEASE AGREEMENT SITUATE IN ATS 1444, BETWEEN THE CITY OF UNALASKA AND BERING SELECT SEAFOODS LTD., 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, Bering Select Seafoods Ltd. (Bering Select) operates a fish oil processing facility In Unalaska; and

WHEREAS, Bering Select desires a 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 15' wide by 408' in length, extending from Airport Beach Road into the water, with an area of 6,120 square feet; and

WHEREAS, Bering Select will submit an as built survey of the area for inclusion with the lease agreement to indicate the location of the easement and outfall line; and

WHEREAS, the annual lease amount for Category C Tidelands, set by the Tidelands Leasing Policy, is \$2,250 per year, with reappraisal every five years, payable to the City of Unalaska; and

WHEREAS, Unalaska City Code requires Council to approve any long term lease agreement, defined as exceeding five years.

NOW THEREFORE BE IT RESOLVED THAT THE UNALASKA CITY COUNCIL approves a long term lease between the City of Unalaska and Bering Select Seafoods Ltd. for a term of fifteen (15) years, subject to the terms and conditions as set out in the lease agreement attached hereto.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on February 25, 2020.


Vincent M. Tutiakoff, Sr.
Mayor

ATTEST:


Marjie Veeder, CMC
City Clerk



MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: William Homka, Director, Planning Department
Through: Erin Reinders, City Manager
Date: February 25, 2020
Re: Resolution 2020-08, approving a long term lease agreement situate in ATS 1444, between the City of Unalaska and Bering Select Seafoods Ltd., 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. Resolution 2020-08 enables the city to enter into a long term lease (also referred to as a Right of Way Permit) with Bering Select's fish oil plant for a discharge outfall classified as a Tidelands Category C lease. The tidelands policy sets Category C leases at \$2,250 annually. Staff recommends approval.

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

BACKGROUND: Section 7.12.020 UCO requires the City Council to approve any lease of city property having a term greater than 5 years. The Regulations for Tidelands exist to promote long term investment in Unalaska's tidelands, but also lists several considerations in determining the actual term of the lease.

DISCUSSION: Tyler Zimmerman, TZ Engineering, submitted an application for a Tidelands Lease on behalf of Bering Select, Ltd., to lease an area within ATS 1444 that measures 15' x 408' (6,120 square feet). There is an existing outfall line that is proposed to be expanded to about 6,000 lineal feet. However the tideland limit is 408' and the subject of this lease. The balance, or approximately 5,600 lineal feet, extends toward Hog Island and serves to meet environmental purposes beyond the city's purview. The requested term is 15 years.

The application is being processed and the proposed lease has been drafted in accordance with the Title 7 and Regulations for Tidelands Leasing, License, Exchange or Sale. The area involved has been surveyed, platted and recorded with the State Recorder's Office. U.S. Army Corps of Engineers permits, and other required permits, are in the process of being obtained including any City permits required for work in the city right of way. The required proof of insurance and the lease bond will need to be provided before the lease can be signed. The applicant also requests approval to submit the legal description as an as built after the project has been completed to improve accuracy.

The City Manager Regulations for Category C leases require an initial cost of \$2,250 per year with the annual fee subject to periodic review and adjustment every five (5) years with a \$2,250 minimum annual rent.

ALTERNATIVES: Not applicable.

FINANCIAL IMPLICATIONS: The city will receive annual income of \$2,250 for fifteen 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 15 year lease would be \$33,750.

LEGAL: The City Attorney reviewed the lease.

STAFF RECOMMENDATION: Staff recommends Council approve Resolution 2020-08, approving a fifteen (15) year lease agreement for a 6,120 square foot area of a city owned tidelands located off of Airport Beach Road for a total period not to exceed 15 years.

CITY MANAGER COMMENTS: The Planning Department is processing this in accordance with code and policy associated with the leasing of tidelands. I support staff's recommendation.

ATTACHMENTS:

- Location Map
- Lease

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

THIS AGREEMENT is made and entered into this _____ day of _____, 2020, by and between the City of Unalaska, "Grantor", and Bering Select Seafoods Ltd. "Permittee", whose address is 641 W. Ewing Street, Seattle, WA 98119.

WHEREAS, in accordance with the provisions of City of Unalaska Code of Ordinances, the Permittee applied 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 as shown on the as-built-survey,
Attachment A.**

1. Term. This right-of-way permit shall run for a term of fifteen (15) years and shall expire on _____, 2035, subject to the conditions listed below.
2. Non-Exclusive. The easement granted under this right-of-way is designated as private and 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 _____ 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.

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 lawfully designated representative, and otherwise being lawfully authorized, and the Permittee, have caused this permit to be signed, 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
City of Unalaska

PERMITTEE
Bering Select Seafoods Ltd.

Erin Reinders
City Manager

(insert name)
(insert title)

STATE OF ALASKA)
) ss.
Third Judicial District)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Erin Reinders, 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 _____, 2020, by _____ (insert name), _____ (insert title) of Bering Select Ltd., a Washington corporation, on behalf of the corporation.

Notary Public
State of _____
My Commission expires _____

ATTACHMENT A
As Built Survey

(To be added after construction)

