

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 2019-42

A RESOLUTION OF THE UNALASKA CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENTER INTO AN EASEMENT AGREEMENT WITH BIDAR CORPORATION FOR THE PURPOSE OF LOCATING THE MARINEWAYS – UNISEA STORM WATER SEPARATOR

WHEREAS, the City requires an easement for a location where it will or has installed a storm water separator; and

WHEREAS, this location located near Gilman Way on Lot 2 of Plat 2002-7 AIRD is the desired location for a storm water separator per design and for maintenance purposes; and

WHEREAS, the size of this easement measures five feet (5') by eighteen feet (18'), and is specifically contained in a Legal Description attached as Exhibit B to the attached Easement Agreement; and

WHEREAS, the City shall pay a fixed fee in the amount of Four Hundred and Fifty Dollars (\$450.00) so the City may install, repair, maintain and remove a storm water separator and not for any other use per the Easement Agreement which is attached to this Resolution; and

WHEREAS, in consideration for this easement, the City shall reimburse Bidar Corporation for (a) a non-refundable administration fee of Two Hundred Dollars (\$200.00), and (b) if any, the actual attorney's fees and legal costs incurred by Bidar Corporation for the preparation of this easement up to a maximum of Fifteen Hundred Dollars (\$1,500.00). Such reimbursement obligation shall constitute an additional fee owed to Bidar Corporation under this easement.

NOW THEREFORE BE IT RESOLVED that the Unalaska City Council authorizes the City Manager to enter into an Easement Agreement with Bidar Corporation for the purposes of using said lease area to operate a storm water separator per the terms set forth in the Easement Agreement is attached to this Resolution.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on July 9, 2019.



Frank Kelty
Mayor

ATTEST:



Marjie Veeder
City Clerk



MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Bil Homka, Director, Planning Department
Through: Erin Reinders, City Manager
Date: July 9, 2019
Re: Resolution 2019-42, authorizing the City Manager to enter into an Easement Agreement with Bidar Corporation for the purpose of locating the Marineways – Unisea Storm Water Separator

SUMMARY: This memorandum serves as support for the Easement Agreement and Resolution 2019-42 authorizing said agreement, for a storm water separator to be installed on land owned by Bidar Corporation, which is affiliated with Ounalashka Corporation. Staff recommends approval.

PREVIOUS COUNCIL ACTION: None.

BACKGROUND: The Department of Public Utilities needs to install a storm water separator at this location, which is specifically outlined in the Easement Agreement and Legal Description attached to the agreement as Exhibit B. In exchange for the use of this easement the City agrees to pay Bidar a fixed fee of \$450 plus other expenses which are not to exceed \$1,700 (\$2,150 total).

DISCUSSION: Staff routed the Easement Agreement to the Department of Public Works, Department of Utilities, Finance Department, and Risk Management for review and comment. No comments were received as of June 28, 2019.

ALTERNATIVES: None

FINANCIAL IMPLICATIONS: A total cost of \$2,150 will be expended to obtain this easement for city infrastructure.

LEGAL: Not applicable.

STAFF RECOMMENDATION: Staff recommends Council adopt the resolution and authorize the City Manager to enter into the Easement Agreement.

PROPOSED MOTION: I move to adopt Resolution 2019-42.

CITY MANAGER COMMENTS: UCO Section 7.04.020 requires all acquisitions of any interest in real property, included in easements, to be approved by the City Council by resolution unless it is through a platting action. I support the acquisition of this easement.

ATTACHMENTS: Easement Agreement with Exhibits; and aerial depiction of easement location.

EASEMENT AGREEMENT

Bidar Corporation (“Grantor”), an Alaska corporation, the address of which is P.O. Box 149, Unalaska, Alaska 99685 and the City of Unalaska (“Grantee”), an Alaska municipal corporation, the address of which is P.O. Box, 610, Unalaska, Alaska 99685, have agreed, and hereby agree, as follows:

1. Easement Grant. Subject to the reverter in Section 9 below, Grantor hereby grants and conveys to Grantee, and Grantee hereby accepts without recourse to Grantor, the non-exclusive easement (“Easement”) that burdens the surface estate, but not the subsurface estate, of the real property located in the City of Unalaska, Aleutian Islands Recording District, Third Judicial District, State of Alaska and shown on the attached Exhibit A, and more specifically described in Exhibit B, which are incorporated by reference.

2. Use Limitation. The Easement shall be used by Grantee only to install, repair, maintain and remove a storm water separator (“Permitted Uses”) and not for any other use whatsoever.

3. Fee. In consideration for such Easement, Grantee shall pay Grantor a fixed fee (“Fee”) in the amount of Four Hundred and Fifty Dollars (\$450.00) for its use of the Easement, which is fair, valuable and sufficient under the circumstances. Such Fee shall be paid within thirty (30) days of Grantee’s execution of this Easement at Grantor’s address set forth above.

4. Reimbursement for Easement Preparation. Grantee shall reimburse Grantor for (a) a non-refundable administration fee of Two Hundred Dollars (\$200.00), and (b) if any, the actual attorney’s fees and legal costs incurred by Grantor for the preparation of this Easement up to a maximum of Fifteen Hundred Dollars (\$1,500.00). Such reimbursement obligation shall constitute an additional fee owed to Grantor under this Easement.

5. Grantor’s Option to Development. If at any time Grantor, in its sole and absolute discretion, decides that it wants to develop the real property upon which the Easement is located and/or any adjacent real property, Grantor shall provide written notice of such intent (“Notice”) to Grantee. Within thirty (30) days after receipt of such Notice, Grantee shall remove the separator, restore the property to the condition it was in prior to the date of this Easement Agreement, normal wear and tear excluded, vacate the Easement and move the separator to a new location which has been mutually agreed upon by the parties.

6. Interference. Grantor shall not unreasonably interfere with Grantee’s Permitted Uses of the Easement; and Grantee shall not unreasonably interfere with Grantor’s surface use of the

Easement, except when and to the limited extent necessary to engage in Grantee's Permitted Uses of the Easement.

7. No Representations or Warranties by Grantor; Release of Claims by Grantee. Grantor has made, and hereby makes, no warranties or representations, express or implied, regarding the title to, suitability or physical condition of the Easement. Grantee shall take and hereby takes the Easement **"as is"** and **"with all faults"** as to its title to and suitability and physical condition, including assuming all risks of environmental pollution (if any) associated therewith. Grantee shall release and hereby releases, with prejudice, Grantor, its affiliates, parents, subsidiaries, successors and assigns, and their respective shareholders, partners, officers, directors, managers, agents, representatives, employees and attorneys from and against any and all demands, claims, losses, damages, injuries, deaths, costs, fees, liabilities, obligations, awards and penalties, including actual reasonable costs and attorneys' fees, which are in any way based upon, arise out of, are connected with or result from the title to or suitability or physical condition of the Easement, including any environmental pollution associated therewith, regardless of the nature, type, scope, extent or amount thereof that has been or may be caused thereby or result therefrom.

8. Grantee's Indemnity. Grantee shall agree and hereby agrees, and its successors and assigns in and to the Easement (each an "Indemnitor") shall, by accepting, claiming and/or using the Easement, be deemed to have agreed to defend, indemnify and save harmless Grantor, its parents, subsidiaries, affiliates, successors and assigns, and their respective shareholders, partners, directors, officers, managers, agents, representatives, employees and attorneys (each an "Indemnitee") from and against any and all demands, claims, losses, damages, injuries, deaths, costs, fees, liabilities, obligations, awards and penalties, including actual reasonable costs and attorneys' fees, that in any way arise out of, are based upon, are connected with, or result from, in whole or in part, any actual or alleged acts or omissions in, on, about or with respect to the Easement by any such Indemnitor or any person using the Easement with the express or implied permission of any such Indemnitor. All such defense, indemnity and hold harmless obligations that are based upon occurrences prior to the termination of the Easement shall survive the termination of the Easement for any reason.

9. Automatic Reverter. In the event that Grantee (a) ceases to use the Easement for a period of ninety (90) days or more or (b) uses the Easement for other than the Permitted Uses for a period of thirty (30) days or more after Grantee receives notice from Grantor of its objection thereto, then all of Grantee's right, title and interest in and to the Easement shall automatically revert to Grantor, Grantee shall have no further right, title or interest in or to the Easement, and Grantee shall remove all of its structures, improvements and other properties from the Easement and restore it to its original condition.

10. Preservation of Archaeological/Cultural Resources.

10.1 Discovery of Archaeological or Cultural Resources. In the event that Grantee discovers any previously unknown Archaeological or Cultural Resources during the course of its use of the Easement, it shall: (a) notify Grantor, the Museum of the Aleutians, or its successor or assign, and any local, state or federal agency required to be notified under applicable law of the particulars of such discovery; (b) follow the Archeological Assessment procedures required by Applicable Law; and (c) cease all further uses of the easement that might damage or

adversely impact such Archaeological or Cultural Resources until they are assessed and preserved by the appropriate authority or person listed above.

9.2 Definitions. The term "Archaeological and Cultural Resources" means any of the following, in whole or in part: burial sites, human remains, funerary objects, sacred or religious objects, objects of cultural patrimony, pottery, basketry, vessels, utensils, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, clothing, blankets, furnishings, paintings, carvings, fossilized or non-fossilized paleontological specimens or any other archaeological, historical, cultural or sacred resource or object at least one hundred (100) years old or as defined under Applicable Law pertaining to historic preservation, archaeological preservation, or the preservation of Native American culture, religion or grave sites. Applicable Law shall include, without limitation, the following, as amended from time to time: (a) National Historic Preservation Act [16 U.S.C. Sections 407-407w-6]; (b) Archaeological Resources Protection Act [16 U.S.C. Section 470bb-407ll]; (c) Native American Graves Protection and Repatriation Act [25 U.S.C. Sections 3001-3113]; and (d) Alaska Historic Preservation Act [AS 41.35.010-380].

IN WITNESS WHEREOF, the parties have entered into and executed this Agreement, effective *nunc pro tunc* the 1st day of November, 2018 ("Effective Date").

GRANTOR:

BIDAR CORPORATION,
an Alaska corporation

Dated: _____, 2019

By _____
Christopher P. Salts, Sr.
Its Chief Executive Officer

GRANTEE:

CITY OF UNALASKA, an Alaska
municipal corporation

Dated: _____, 2019

By _____
Erin Reinders
Its City Manager

STATE OF ALASKA)
 : ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Christopher P. Salts, Sr., the Chief Executive Officer of Bidar Corporation, an Alaska corporation, on behalf of the corporation.

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
 : ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Erin Reinders, the City Manager of the City of Unalaska, an Alaska municipal corporation, on behalf of the corporation.

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

CONSENT BY PACIFIC STEVEDORING, INC. TO EASEMENT AGREEMENT

Pacific Stevedoring, Inc.

By: _____
 Name: _____
 Title: _____

Date: _____

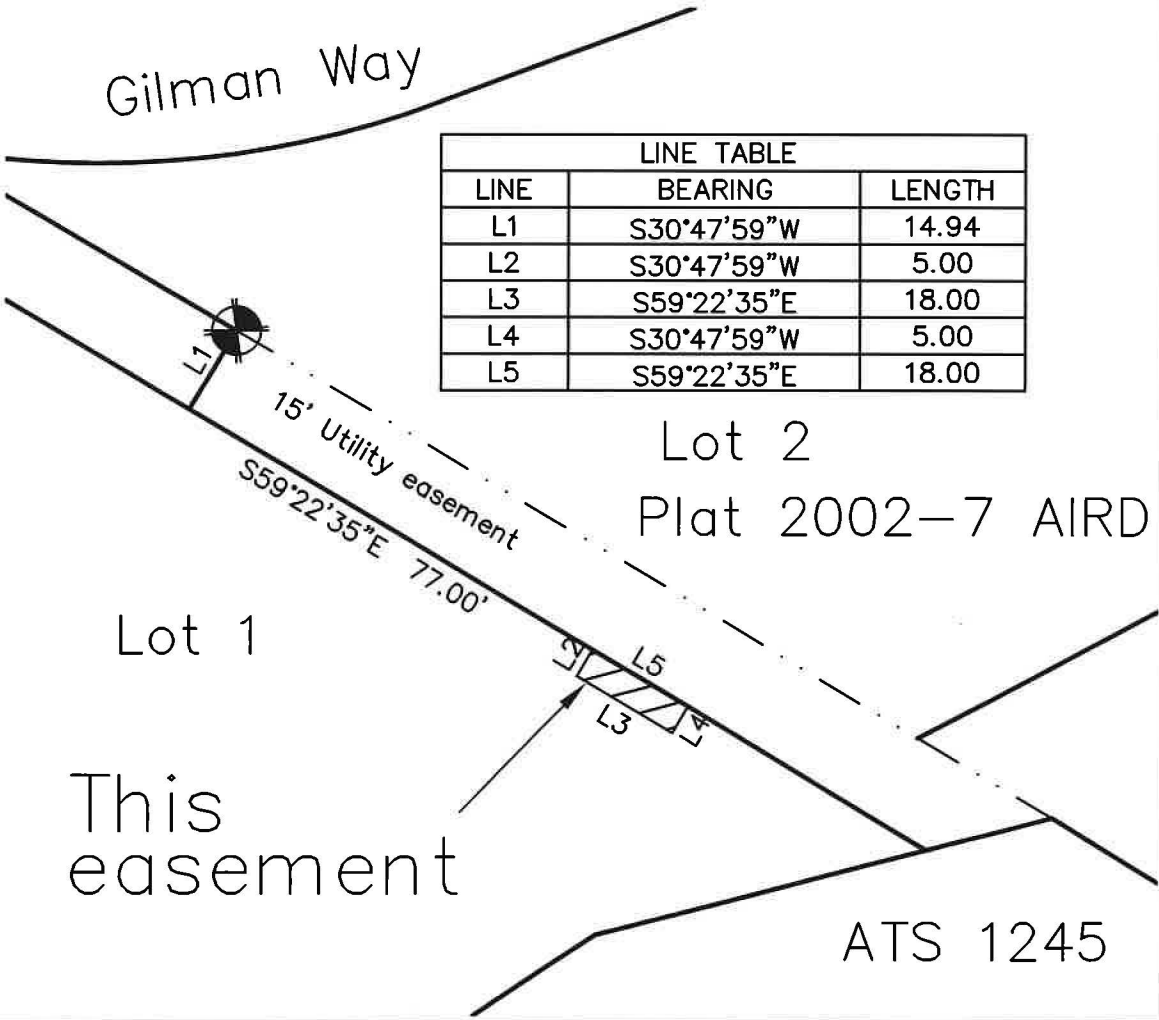
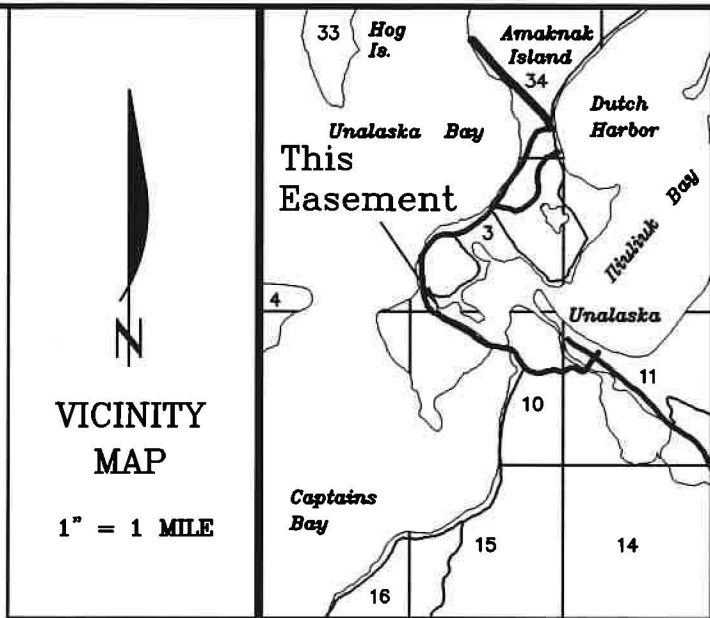
After recording in the Aleutian
Islands Recording District, return to:

Bidar Corporation
Attn: Christopher P. Salts, Sr.
Chief Executive Officer
P.O. Box 149
Unalaska, Alaska 99685

EXHIBIT A

Drawing of Easement

Exhibit A



LINE TABLE		
LINE	BEARING	LENGTH
L1	S30°47'59"W	14.94
L2	S30°47'59"W	5.00
L3	S59°22'35"E	18.00
L4	S30°47'59"W	5.00
L5	S59°22'35"E	18.00

EXHIBIT B

Legal Description

A 5 foot by 18 foot utility easement located within Lot 1 Marineways-Unisea Subdivision in the SW1/4 of protracted Section 3, T73S, R118W, Seward Meridian, in the Aleutian Islands Recording District, more particularly described as follows:

Beginning at the WCMC of Corner 1 ATS 808; thence S30°47'59"W 14.94 feet; thence, S59°22'35"E to the true point of beginning; thence S30°47'59"W 5.00 feet; thence, S59°22'35"E 18.00 feet; thence, N30°47'59"E 5.00 feet; thence, N59°22'35"W 18.00 feet to the true point of beginning. Containing 90 square feet.

Resolution 2019-42: Marineways - Unisea Stormwater Separator Easement

04-05-350-350

04-05-393-393

Harborview Bar and Liquor Store

Existing 15' Utility Easement

04-05-400-400

Approximate Location of This Easement

04-05-390-390

04-05-395-395

