

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 2023-05

A RESOLUTION OF THE UNALASKA CITY COUNCIL AUTHORIZING THE CITY MANAGER TO SIGN A SETTLEMENT AGREEMENT WITH JACOBS ENGINEERING GROUP, INC. TO RESOLVE CITY OF UNALASKA vs. JACOBS ENGINEERING GROUP, INC.

WHEREAS, on or about April 21, 1987 the City of Unalaska and Sverdrup Corporation entered into a Lease of Lot 1, Block 6 USS 4988 Aleutian Islands Recording District, Third Judicial District, State of Alaska (“the Property”); and

WHEREAS, the City exercised an option to purchase the Property contained in the Lease, however, no deed was issued to the City and;

WHEREAS, in order to establish City ownership of the Property the City sued Jacobs Engineering Group, Inc., (“Jacobs”) the successor in interest to Sverdrup, in the Superior Court of the State of Alaska, Third Judicial District at Unalaska, Case No. 3UN-22-00017 CI (the “Suit”); and

WHEREAS, the City and Jacobs negotiated in good faith resulting in a proposed Settlement Agreement whereby Jacobs will sign a deed conveying its interest in the Property to the City and both Jacobs and the City release each other from other claims; and

WHEREAS, the City Attorney and City Manager recommend the City Council approve the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT the Unalaska City Council authorizes the City Manager to sign the Settlement Agreement between the City of Unalaska and Jacobs Engineering Group, Inc.

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

Vincent M. Tutiakoff, Sr.
Mayor

ATTEST:

Marjie Veeder, CMC
City Clerk

MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Marjie Veeder, City Clerk
Through: Chris Hladick, City Manager
Date: January 10, 2023
Re: Resolution 2023-05: Authorizing the City Manager to sign a Settlement Agreement with Jacobs Engineering Group, Inc. to resolve City of Unalaska vs. Jacobs Engineering Group, Inc.

SUMMARY: In an effort to gain clear title to the Public Safety property located at 29 Safety Way, the City filed a quiet title action against Jacobs Engineering. This was necessary due to an oversight in 1992 when the City paid off the underlying debt and exercised an option to purchase the property. A deed should have been recorded conveying the property to the City at that time, but was not. The City Attorney filed a quiet title action, and negotiated with Jacobs Engineering to resolve the matter. The City Attorney recommends executing the attached Settlement Agreement and Resolution 2023-05 authorizes the City Manager to do so.

PREVIOUS COUNCIL ACTION: In 1987 council passed several resolutions related to the property in question -- negotiations with the construction company, approving the agreement and the terms of the lease. In 1992 council authorized pay-off of the debt related to the property. In 2021 Council authorized a quiet title action against Jacobs Engineering.

BACKGROUND AND DISCUSSION: In 1987 the City entered into an agreement with Sverdrup Corporation for the construction of the Unalaska Public Safety Building, with financing through a lease purchase agreement. Sverdrup purchased the property, constructed the building and leased it back to the City. The agreement with Sverdrup gave the City the option to purchase the property. The City exercised this option and in 1992 paid off the debt. The final step in the process was not completed – a deed transferring ownership of record to the City. Sverdrup Corporation has changed hands several times and the successor in interest is Jacobs Engineering Group. The City Attorney attempted to resolve this matter informally with Jacobs, but a quiet title action was necessary to get their attention and resolve the matter. The proposed Settlement Agreement indicates Jacobs will sign a deed conveying its interest in the property to the City; the City will dismiss the lawsuit; both Jacobs and the City will release each other from any other related claims; and the parties will cover their own costs and attorney fees.

ALTERNATIVES: Council may choose not to adopt Resolution 2023-05, but this is not recommended. No action means the cloud on the City's title to the property will continue.

FINANCIAL IMPLICATIONS: The city has incurred attorney fees and costs related to this matter. The proposed settlement agreement states both parties agree to pay their own costs, fees and expenses, including attorney fees. The City is giving up a right to collect the court filing fee, the cost of certified mailing of the complaint and a portion of attorney fees for writing the quiet title complaint. The City Attorney estimated recoverable fees at \$250 and state it is fairly standard when a case is resolved this early on for each side to pay its own costs and legal fees.

LEGAL: Staff has been working with the City Attorney on this issue since 2018. The City Attorney prepared Resolution 2023-05 and recommends Council adopt the resolution authorizing the city manager to sign the Settlement Agreement.

STAFF RECOMMENDATION: Staff recommends adoption of adoption of Resolution 2023-05 to settle the quiet title suit and gain clear title to the Public Safety property.

PROPOSED MOTION: I move to adopt Resolution 2023-05.

CITY MANAGER COMMENTS: I support adoption of Resolution 2023-05 in order to finally resolve this matter.

ATTACHMENT: Proposed Settlement Agreement

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered as of the date on which it has been fully executed, by and between the City of Unalaska, Alaska (“City”) and Jacobs Engineering Group Inc., successor in interest to Sverdrup Corporation (“Jacobs”), and collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, the City filed a Complaint to Quiet Title against Jacobs, captioned as *City of Unalaska v. Jacobs Engineering Group, Inc. as successor in interest to Sverdrup Corporation*, in the Superior Court for the State of Alaska, Third Judicial District at Unalaska, Case No. 3UN-22-17 CI, asserting causes of action for quiet title and specific performance (the “Litigation”), related to property located at Lot One (1), Block Six (6) U.S. Survey No. 4988, UNALASKA TOWNSITE, records of the Aleutian Islands Recording District, Third Judicial District, State of Alaska (the “Property”) and requesting that the Court: enter judgment quieting title to the Property in the City; enter judgment ordering Jacobs to execute and record a quitclaim deed conveying the Property to the City; award the City attorney’s fees, costs, and prejudgment interest; and award the City such other relief as the Court deems equitable, just, or proper under the circumstances (the “Requested Relief”);

WHEREAS, the Parties wish to resolve all of their claims, causes of action, and disputes in connection with the Property, the Litigation, and the Requested Relief identified above.

NOW THEREFORE, in consideration of the mutual covenants, promises, conditions and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals Part of Agreement. The Recitals above are a material part of this Agreement, and are incorporated as if set forth in full herein.
2. Quitclaim Deed. Within 10 business days of the full and complete execution of this Agreement, Jacobs shall execute and record a quitclaim deed conveying the Property to the City in the form of quitclaim deed (the “Quitclaim Deed”) attached hereto as Exhibit 1.
3. Dismissal of the Litigation. Within 10 business days of Jacobs recording the Quitclaim Deed, counsel for the City shall cause to be filed promptly with the Court all documents necessary to dismiss with prejudice the Litigation. Each party shall bear its own attorney’s fees and costs in connection with the Litigation.
4. Release by the City. Upon execution of this Agreement and conditioned upon Jacobs’ execution and recording of the Quitclaim Deed as required in Section 2 above, the City and its officers, directors, employees, associates, consultants, elected officials, appointed officials, councilors and council members, political subdivisions, agents, representatives, insurers, sureties, attorneys, governing bodies, and affiliated or parent entities and their shareholders, officers, directors, employees, agents, representatives, and their respective successors, heirs and assigns, do hereby release, acquit and forever discharge Jacobs and all of its past, present, and future shareholders, officers, directors, managers, members, associates, employees, agents, representatives, consultants, attorneys, insurers, sureties, and all heirs and assigns; and all of

Jacobs's past, present, and future companies, affiliate companies, subsidiaries, divisions, and partners and their shareholders, officers, directors, employees, agents, representatives, consultants, attorneys, insurers, and sureties, and their respective successors, heirs and assigns from any and all actions, suits, litigations, debts, demands, accounts, claims, reckonings, bonds, bills, liabilities, controversies, damages, judgments, and causes of action, whether known or unknown, in law or in equity, which the City now has or ever has had by reason of any matter, cause or thing, which in any way relate directly or indirectly to the Litigation, the Property, and/or the Requested Relief (the "Released Claims").

5. No Assignment. The City represents and agrees that it has not transferred or assigned to any other person or entity any of the Released Claims discharged by this Agreement.

6. Due Diligence Investigation/Unknown Claims. The City has had an opportunity to investigate the claims and allegations. The City nevertheless understands and accepts that the facts may hereafter turn out to be other than, or different from, the facts now known or believed by the City to be true. The City therefore accepts and assumes all risk of facts turning out to be different, and all risks that the claims in the Litigation could be great, different, or more extensive than now known, anticipated, or expected. In spite of that risk, the City agrees that this Agreement shall be and remains in all respects effective and not subject to termination or rescission by virtue of any such mistake, change, or difference in facts. The City further agrees to waive and relinquish all rights it has or may have under any statute or legal decision providing that a general release does not extend to claims not known or suspected to exist at the time of executing the Agreement, which if known by the City might have materially affected this Agreement. The City further waives any claim for fraud in the inducement of this Agreement.

7. Covenant Not to Sue. The Parties covenant not to sue the other, and agree that they will not bring, commence, institute, maintain, prosecute, or voluntarily aid any action at law or in equity, or otherwise prosecute or sue each other or their past, present, and future shareholders, officers, directors, managers, elected officials, appointed officials, councilors and council members, political subdivisions, members, associates, employees, agents, representatives, consultants, attorneys, insurers, sureties, and all heirs and assigns; and all of their past, present, and future companies, affiliate companies, subsidiaries, divisions, and partners and their shareholders, officers, directors, employees, agents, representatives, consultants, attorneys, insurers, and sureties, and their respective successors, heirs and assigns, either affirmatively or by way of cross-complaint, defense, or counterclaim, or in any other manner with respect to the Released Claims.

8. No Admission of Liability. The Parties understand and agree that this Agreement is made solely in settlement of disputed claims and is not as an admission of liability for any claim or potential claim asserted by the Parties against each other, which liability the Parties expressly deny.

9. Full Compromise and Settlement of Claims with Advice of Counsel. The Parties represent and agree that they have each: (a) had the opportunity to review this Agreement with legal counsel; (b) carefully read and fully understand all of the provisions of this Agreement; and (c) voluntarily signed this Agreement for the purpose of agreeing to the terms described in it.

10. Attorneys' Fees. The Parties agree that each Party shall pay its own costs, fees, and expenses, including attorneys' fees, in connection with the Litigation, the Property, the Requested

Relief, the Released Claims and in connection with the negotiation, drafting, and execution of this Agreement.

11. Severability. If any provision of this Agreement is found to be illegal or unenforceable, all other provisions will remain in full force and effect.

12. Entire Agreement. This Agreement is a complete integration and represents the entire settlement agreement among the Parties relating to the subject matter hereof. This Agreement supersedes all other existing agreements, written or oral, between the Parties concerning the subject matter of the Litigation, the Property, and the Requested Relief. There are no promises, statements, covenants, representations, or warranties, expressed or implied, oral or written, about the subject matter of this Agreement that are not contained herein. This Agreement may not be modified in any manner except by an instrument in writing signed by the Parties.

13. No Default in Litigation. The City agrees that Jacobs is not and shall not be found in default in the Litigation, regardless of whether this Agreement is fully executed prior to December 1, 2022.

14. Authority to Execute. The signatories represent that they have the power to execute this Agreement on behalf of their respective parties.

15. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the respective successors, heirs and assigns of the Parties hereto.

16. Execution in Counterparts. This Agreement may be executed in counterparts by each signatory, which counterparts may be delivered via facsimile or electronic mail, and when each party has done so, such will have the same force and legal effect as if each had signed the same document.

17. Interpretation. This Parties agree that they have collaborated on the contents of this Agreement and further agree that no rule of construction to the effect that an agreement can or should be construed against a drafting party may be applied in interpreting this Agreement.

18. Governing Law. The laws of Alaska shall govern the provisions of this Agreement without giving effect to any conflicts of law principles requiring application of the laws of another jurisdiction.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have duly executed this Agreement.

THE CITY OF UNALASKA, ALASKA

By: _____

Title: _____

Date: _____

JACOBS ENGINEERING GROUP INC.

By:  _____

Title: SVP, General Counsel & Corporate Secretary

Date: 12/12/2022 _____

Exhibit 1

