

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 2021-76

A RESOLUTION OF THE UNALASKA CITY COUNCIL APPROVING A 75-YEAR TIDELAND LEASE AGREEMENT WITH LFS INC. FOR UNALASKA TIDELANDS SURVEY 103 TRACTS B AND C

WHEREAS, the City of Unalaska is the owner of Unalaska Tideland Survey (UTS) 103 Tracts B and C, both of which are a portion of former Alaska Tideland Survey (ATS) 1452; and

WHEREAS, Bill Shaishnikoff is the owner of the uplands adjacent to Tracts B and C of UTS 103, and is in the process of selling these uplands to LFS INC (LFS); and

WHEREAS, Bering Shai Marine, LLC is selling its assets to LFS and desires to terminate its present lease with the City for UTS 103 Tract C ("Bering Shai Lease"); and

WHEREAS, LFS has applied to lease Tract B and Tract C of UTS 103; and

WHEREAS, UCO § 7.12.020 grants the owner of upland property adjacent to tide and submerged land a preference for lease of such submerged lands; and

WHEREAS, Bill Shaishnikoff, as owner of the uplands adjacent to Tracts B and C is in the process of selling such tidelands to LFS and has given his written support of the LFS application to lease Tract C and Tract B; and

WHEREAS UCO § 7.12.020 requires City Council approval of any lease of City property having a term greater than 5 years and that no lease shall be for a term of more than thirty years unless the City Council determines from the purpose of the lease or the nature of improvements which may be placed thereon that a longer term would benefit the City; and

WHEREAS, a 75-year lease of Tracts B and C of Unalaska Tidelands Survey 103 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 its practices in our community.

NOW THEREFORE BE IT RESOLVED THAT THE UNALASKA CITY COUNCIL authorizes a 75-year lease of UTS Tracts B and C, with an annual rent based on ten percent of the appraised value of the tidelands to LFS; and

BE IT FURTHER RESOLVED THAT THE UNALASKA CITY COUNCIL authorizes the City Manager to consent to assignment of the Bering Shai Lease to LFS and, with consent of the lessee, to terminate such lease in order to effect the tidelands lease authorized by this resolution; and

BE IT FURTHER RESOLVED THAT THE UNALASKA CITY COUNCIL authorizes the City Manager to further negotiate and enter into the lease authorized hereby in accordance with the City Manager Regulations for Tideland Leasing, and to take other action reasonable and proper to the issuance of such lease and termination of the Bering Shai Lease.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on December 14, 2021.

Vincent M. Tutiakoff, Sr.
Mayor

ATTEST:

Marjie Veeder, CMC
City Clerk

MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: William Homka, Planning Director
Through: Erin Reinders, City Manager
Date: December 14, 2021
Re: Resolution 2021-76: Approving a 75-year Tidelands Lease Agreement with LFS, Inc., for Unalaska Tidelands Survey 103 Tracts B and C

SUMMARY: A tidelands lease between the City of Unalaska and LFS, Inc., (LFS) has been drafted and is being processed in accordance with City Code and regulations. City Council approval is required for the lease because the term is greater than 5 years. Before Council can approve a lease with a term exceeding 30 years, it must also find that the lease or the nature of improvements which may be placed thereon would benefit the City. Staff recommends approval of Resolution 2021-76.

PREVIOUS COUNCIL ACTION: The current City Manager Regulations for Tidelands were endorsed by the City Council on April 24, 2012. Council approved a tidelands lease for Tract C of Unalaska Tidelands Survey 103 in 2013 for Bering Shai, LLC for a term of 75 years, which was subsequently entered into by the City and Bering Shai.

BACKGROUND: UCO Section 7.12.020 requires Council approval of any lease of city property having a term of greater than 5 years, and allows for lease terms of greater than 30 years if the Council determines that a longer lease is of benefit to the City. The City Manager Regulations for Tidelands leasing recommends 30 year leases in order to promote long term investment in Unalaska's tidelands, but also lists several considerations in determining the actual term of the lease.

DISCUSSION: LFS submitted an application to lease UTS 103 Tracts B and C, with combined acreage of approximately 14.26 acres from Tract B (11.55 acres) and Tract C (2.71 acres) on Captains Bay Road. LFS is acquiring the quarry property formerly operated as Bering Shai from Bill Shaishnikoff. LFS seeks to acquire an existing Bering Shai 75-year tidelands lease for Tract C approved in 2013 and to lease Tract B to expand their business operations. Improvements made by Bering Shai added fill, constructed a ramp and created mooring space. The referenced tracts are shown on the attached aerial photo. Future phases of Bering Shai's development plans included a marine terminal facility encompassing Tracts C and B of UTS 103 as well as the uplands. These are appropriate uses of these tidelands, allowing for business expansion in a cost effective manner consistent with zoning district requirements. LFS appears to be carrying the plans forward in asking for a lease of Tract B. Bill Shaishnikoff, owner of the adjacent uplands, has given his written support of the LFS application to lease UTS 103 Tracts B and C.

The attached lease agreement has been drafted in accordance with the Title 7 and Regulations for Tidelands Leasing, License, Exchange or Sale. The area involved with this lease agreement has been surveyed, platted and recorded with the State Recorder's Office. Army Corps of Engineers, and other required permits, are in the process of being obtained and City building permits have already been granted. The required proof of insurance and the lease bond have been provided.

The City Manager Regulations for Tidelands suggest a maximum of a 30-year lease, but also identify the following considerations when determining the actual lease term: the desirability of the proposed use, the proposed investment in improvements, durability of improvements, public benefit and other relevant factors. To this end, LFS is pursuing ownership of the uplands in conjunction with acquiring the existing tidelands lease, requesting additional leasable tidelands in Tract B, and seeks a lease term of 75 years.

The Bering Shai 75-year tidelands lease for this area allowed for a marine terminal facility with a focus on oil and freight industries, including temporary barge load out facility and heavy duty access ramp on Tract C to be followed in future years by additional fill for work space and a 1,175 foot long open cell sheet pile dock on Tract B and C. The anticipated financial investment throughout these phases was estimated to be approximately \$8.6 million in 2013. Such improvements in this location help to diversify Unalaska's economy in a location where new industry will not interfere with the operations established by the fishing industry. These substantial, durable, and desirable improvements are anticipated to far outlast the typical 30 year tideland lease.

With these considerations and considering that the Bering Shai lease for Tract C is for 75 years, staff finds it would be in the best interest of the City, the applicant, and the public to grant a similar lease term of 75 years to LFS. At the end of the term, LFS would need to then reapply for a lease under the most current City Manager Regulations for Tidelands at that time.

The applicant, LFS, has emphasized the importance to it of concluding the acquisition and transfer of Bering Shai assets, leases and operations by the end of the 2021 calendar year. Because LFS has not yet acquired the uplands or the 2013 Bering Shai tidelands lease, this transaction is somewhat more complex than simply issuing a tidelands lease. Staff is working closely with LFS to accomplish this goal, but it means that Council is asked to approve the proposed lease, and assignment of the Bering Shai lease to LFS without final versions of the applicable lease and/or assignment agreements.

Before the proposed tideland lease of both Tract B and Tract C to LFS can be issued, the existing 2013 Bering Shai tidelands lease needs to be terminated or otherwise merged into the new lease agreement. Planning is working with the city attorney to determine whether Bering Shai needs to first, with the City's consent, assign its interest in the 2013 lease to LFS or if it makes more sense for the parties to agree to termination of the 2013 Bering Shai tidelands lease concurrent with the effective date of the proposed lease of Tract B and Tract C LFS.

An appraisal of the tideland is currently being prepared but is not ready at this time. The annual lease rate will be set as 10% of the appraised value of the tidelands per the City Manager Tidelands Policy. The 75-year term on this lease allows for an existing business to expand their current operations within our community, through desirable, substantial and durable improvements, which is of benefit to the City.

Thus, if Council finds that it is in the best interest of the City to grant a 75-year lease for Tracts B and C of UTS 103, it is asked to authorize such lease in the general form of the City of Unalaska Tideland Lease Agreement submitted with Resolution 2021-76, while also granting the City Manager discretion to make further changes to the proposed lease agreement to facilitate the assignment and/or termination of the Bering Shai lease.

ALTERNATIVES: If Council finds that it is in the best interest of the City to reject Resolution 2021-76 as is, it may alternatively grant the lease agreement for less than 75 years (such as for the typical 30-year term), or reject the application for lease altogether.

FINANCIAL IMPLICATIONS: The initial annual rent for the 14.26 acres contained in Tracts B and C shall be 10% of the appraised value. A precise figure will not be known until the appraisal report, with the applicant to bear the cost thereof, is received. As described in the proposed lease agreement, the incremental rate increases will be 3% per annum or based on new appraisal of the leased tidelands. The appraisal will not consider the value of improvements that the lease holder has constructed. The lease and the contemplated improvements and expansion of commercial activity present the potential for increased property tax revenue, but these amounts are too speculative to quantify.

LEGAL: The form of the lease was reviewed by the city attorney. Should Council approve Resolution 2021-76, the city attorney will advise the manager on further revisions to the proposed lease, or other such instruments, as are reasonably necessary to address the existing Bering Shai lease and to accommodate the applicant's goal of concluding the lease agreement prior to the end of the calendar year.

STAFF RECOMMENDATION: Staff recommends adoption of Resolution 2021-76.

PROPOSED MOTION: I move to adopt Resolution 2021-76.

CITY MANAGER COMMENTS: Recommend moving forward to finalize the tidelands lease agreement, with a 75-year term.

ATTACHMENTS:

1. Aerial photo and map showing UTS 103 Tracts B and C
2. Draft Tidelands Lease Agreement

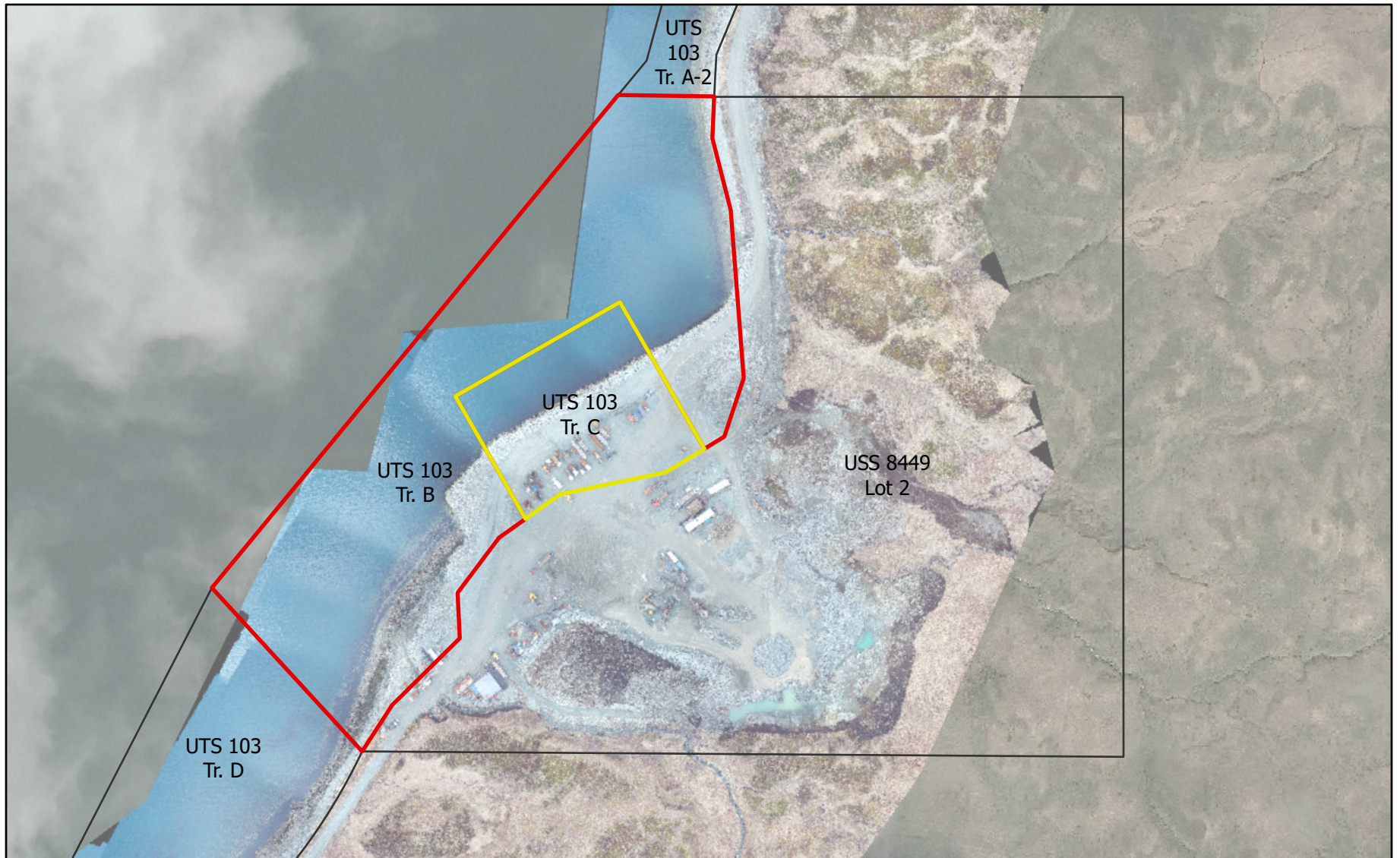
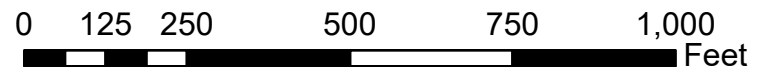


Exhibit A

- Original Lease (Tract C)
- Additional New Lease (Tract B)
- Parcel Boundary



Maps and associated information have been created or purchased by the City of Unalaska and were compiled from the most authentic data available. The City is not responsible for any errors or omissions contained herein. All data and materials Copyright © 2021. All Rights Reserved.



RECORD IN ALEUTIAN ISLANDS RECORDING DISTRICT

CITY OF UNALASKA
TIDELAND LEASE AGREEMENT
UTS No. 103 Tract C
FOR CITY OWNED TIDELANDS

This Tidelands Lease Agreement (“Lease”) is made and entered into this ___ day of _____, 2021, between the City of Unalaska, a first-class Alaska municipal corporation (“Lessor”), whose address is P.O. Box 610, Unalaska, Alaska 99685, and L.F.S., Inc. (“Lessee”), whose address is c/o Legal Dept., 5303 Shilshole Ave. NW, Seattle WA 98107.

NOW THEREFORE, the Lessor and the Lessee, in consideration of the mutual covenants and conditions stated in this Lease, agree as follows:

Leased Premises. The Lessor hereby leases to the Lessee, and the Lessee hereby leases from the Lessor, the following parcel of land (collectively “Parcel”), which are situated in the State of Alaska, identified as follows:

Tract B of the Unalaska Tideland Survey 103, comprised of 11.40 acres, more or less, according to Plat No. 2013-13, records of the Aleutian Island Recording District, Third Judicial District, State of Alaska;

Tract C of the Unalaska Tideland Survey 103, comprised of 2.71 acres, more or less, according to Plat No. 2013-13, records of the Aleutian Island Recording District, Third Judicial District, State of Alaska;

EXCEPTING AND RESERVING THEREFROM, to the Lessor and its assigns during the term of this Lease, the following specific interests, which shall be in addition to and not in derogation of any general reservations to the Lessor which may be stated elsewhere in this Lease:

- A. Easements, rights of way and reservations of record.
- B. All reservations contained in the Patent No. 375, recorded at Book 42, Page 444, records of the Aleutian Island Recording District, Third Judicial District, State of Alaska.
- C. The rights of the public to access tidelands under the Alaska Constitution.
- D. The rights of the public to access tidelands under the Public Trust Doctrine

1. Term. The term of this Lease shall be for a period of 75 years, commencing on the ____ day of _____, 2022 and ending on the ____ day of _____, 2097, unless sooner terminated as herein provided.

2. Rent. (a) The Lessee shall pay to the Lessor rent ("Rent") for the Parcel in equal annual payments, in advance, on or before the 10th day of the first month of the period of said rental term.

(b) The Rent for the first year of the term shall be 10% of the appraised value of the tideland, including all previously existing improvements, as determined by an appraiser, with such appraiser selected by Lessor subject to Lessee's consent. Notwithstanding the requirement that annual Rent payments be made in advance, on or before the 10th day of the first month of the period of said rental term, Rent for the first year shall be due within 30 days of Lessor's written demand, which shall be made upon Lessor's receipt of the appraisal report. Such demand shall also include demand for the costs of appraisal, which shall be paid by Lessee within 30 days of demand.

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

The annual rent is typically 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 Lessor. 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 the Rent for the first year of the term. 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 prevent erosion or destruction of the land.

7. Improvements. The Lessee may make permanent improvements to the Parcel permitted by applicable law. Improvements shall be made to the leased tideland within 2 years of the signing of the

lease, or lease may be revoked. The Lessee must within 90 days of completion of any such improvements including, but not limited to, structural improvements, clearing, leveling, excavation, and backfill, file with the Lessor adequate and reasonable documentation of such improvements, setting forth all applicable costs and quantities. Failure to provide such documentation may result in a loss of credit to the Lessee for such improvements when the original condition of the Parcel is determined for reappraisal purposes under Paragraph 3 hereof.

8. Encumbrance of Parcel. The Lessee, during the term of this Lease, shall not encumber or cloud the Lessor's reversionary interest in the Parcel, without the prior written consent of the Lessor, which shall not be unreasonably withheld; and any such act or omission, without the prior written consent of the Lessor, shall be voidable by the Lessor.

9. Notices of Non-responsibility and Completion. Prior to commencing any improvements on the Premises costing more than twenty thousand dollars (\$20,000.00), individually or in the aggregate, Lessee shall obtain from Lessor and duly post and record an appropriate notice of Lessor's non-responsibility for such Improvements, pursuant to the requirements of AS 34.35.065 or its successor. Lessee shall, upon the completion of any improvements to the Property, promptly give and record an appropriate notice of completion respecting all such Improvements, pursuant to the requirements of AS 34.35.071 or its successor.

10. Assignment of Lease and Sublease of Parcel. The Lessee may not assign this Lease or sublet the Parcel, without the prior written consent of the Lessor, which shall not be unreasonably withheld. No assignment of this Lease shall be approved until the assignee agrees to be subject to and governed by the provisions of this Lease in the same manner as the original Lessee to the extent that they may be applicable to the sublease except for the payment of Rent and other monetary obligations. No such assignment or sublease will be effective until approved by the Lessor in writing or shall annul the Lessee's obligation to pay the rent herein required for the full term of this Lease. Except as permitted by the Lessor, no subdivision of the Lessee's leasehold interest, including any exposed airspace thereon, shall occur.

11. Denial of Warranty Regarding Conditions. The Lessor neither makes any warranty, express or implied, nor assumes any liability whatsoever, regarding the natural, social, economic, or environmental conditions of the Parcel, including, without limitation, the soil, water and drainage conditions, natural or artificial hazards, and the profitability or fitness of the Parcel for any use.

Lessee represents and warrants that it has independently inspected the Parcel and made all tests, investigations and observations necessary to satisfy itself of the condition of the Parcel. Lessee shall and is relying solely on such independent inspection, tests, investigations and observations in making this Lease. Lessee accepts and shall be responsible for any risk of harm to any person and property, including but not limited to, employees of Lessee, from any latent defects in the Property.

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 Lease 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.
- (c) If the taking by condemnation reduces the ground area of the Parcel by less than 30 percent and the Lessee's use of the Parcel is not materially affected, the provisions of (b)(3) of this subsection will govern.

17. Access. The Lessor makes no representations or warranty that it will construct or maintain

access to the Parcel.

18. Valid Existing Rights. This Lease is entered into and made subject to all valid existing rights, including easements, rights-of-way, reservations, or other interests in land of record on the date of execution of this Lease.

19. Inspection. The Lessor shall have reasonable access to the Parcel for purposes of inspection regarding the faithful performance by the Lessee of the covenants and conditions of this Lease and for the performance of other lawful requirements.

20. Mineral Reservations. The Lessor hereby expressly saves, excepts, and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals (other than sand, gravel and rock), fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals (other than sand, gravel and rock), fissionable materials, geothermal resources, and fossils. The Lessor also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, drilling and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals (other than sand, gravel and rock), fissionable materials, geothermal resources, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, power lines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes, hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.

Provided, however, that no rights reserved hereunder shall be exercised by the Lessor or its subsurface lessees, until provision has been made by the Lessor or its subsurface lessees to pay to the Lessee of the land upon which the rights are herein reserved, full payment for all damages and losses sustained by said Lessee by reason of entering upon said land; and provided further that, if the Lessee for any cause whatever refuses or neglects to accept such damage or loss payment, the Lessor or its subsurface lessees, or any applicant for a subsurface lease, contract or option from the Lessor or its subsurface lessee for the purpose of exploring for or extracting valuable minerals (other than sand, gravel and rock), coal, petroleum, natural gas, or geothermal resources shall 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 Lease. 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 Lease, 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 Lease, 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.

25. Lease Subject to Public Trust. This Lease is subject to the principles of the Public Trust Doctrine.

26. Hazardous Substances. Lessor represents and warrants to Lessee that, to the best of its information, knowledge and belief, no hazardous substances have been released, discharged or spilled on the Parcel; however, Lessor does not represent, warrant or guarantee that this is necessarily the case. Otherwise, Lessor has made no express or implied representations or warranties to Lessee with respect to the release, discharge or spillage of any hazardous substances in, on or about the Parcel. Lessee hereby releases and discharges Lessor, its affiliates and all of their respective past, present and future officials, employees, agents, attorneys, insurers and representatives, with prejudice, from any and all claims,

obligations or liabilities which have arisen, resulted from or are based upon, or may in the future arise out of, result from or be based upon, in whole or in part, the past release, discharge or spill of any hazardous substances or other environmental pollution in, on or about the Parcel, regardless of whether such claim, obligation or liability, or the type or extent thereof, is now known or foreseeable; provided, however, that such release and discharge shall be inapplicable to claims, obligations and liabilities that are based upon a material breach of the representations and warranties made by Lessor in this Lease.

27. Definition of Hazardous Substance. Hazardous substance, as such term is used in this Lease, includes: (a) (1) crude oil, (2) petroleum, (3) diesel fuel, (4) marine fuel, (5) heating oil, (6) gasoline, (7) motor oil, (8) kerosene, (9) aviation fuel, (10) other petroleum products, additions and derivatives, (11) urea formaldehyde foam insulation, (12) asbestos, and (13) polychlorinated biphenyls; and (b) any other (1) pollutant, (2) contaminant or (3) toxic, flammable, explosive, radioactive, noxious, hazardous, extremely hazardous, dangerous or potentially dangerous waste, material or substance, the response to which or the remediation or removal of which is required, or the manufacture, preparation, production, use, maintenance, treatment, storage, transfer, disposal, handling, processing or ownership of which is restricted, prohibited, regulated or penalized by any federal or state law or regulation as now or hereafter in effect.

28. Spill Prevention. Any fuel or oil stored on the Parcel shall be stored so as to prevent the discharge thereof from entering any ground or surface waters. Lessee shall promptly clean or mop up any fuel or oil spilled on or about the Parcel. If Lessee's use of the Parcel results in hazardous substances being on or about the Parcel, Lessee shall:

- (a) Have materials and equipment available on the Parcel at all times sufficient to contain and clean up any hazardous substance that may reasonably be expected to be spilled on or about the Parcel. A list of said material and equipment shall be provided to Lessor for approval at the request of Lessor which approval shall not be unreasonably withheld. Lessee shall comply with all reasonable requests of Lessor regarding the amount and type of equipment and material to be kept available on the Property to contain and clean up any hazardous substance that may reasonably be expected to be spilled on or about the Property.
- (b) Prior to commencing operations from any improvement on the Parcel for which a DEC-approved Spill Contingency Plan is required, Lessee shall provide evidence of the existence of such an approved plan in a form acceptable to Lessor.
- (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.
- (b) If the Lessee fails to completely cure a material breach of this Lease by it within the time allowed in (a) of this paragraph, any holder of a security interest in the Lessee's interest under this Lease who has notified the Lessor of such security interest may cure or remedy such breach if the breach can be cured by the payment of money or, if this cannot be done, by performing, or undertaking in writing to perform, the Lessee's obligations which are the subject of such breach that are capable of performance by the holder. The holder shall act within 60 days from the date of receipt of notice under (a) of this paragraph, or within any additional period which the Lessor may allow for good cause.
- (c) In the event that this Lease is terminated, or in the event that the Parcel is abandoned by the Lessee during the term of this Lease, the Lessor may immediately, or at any time

thereafter, enter or reenter and take possession of such Parcel and without liability for any damage therefore, remove all persons and personal properties therefrom, either by summary proceedings or by suitable action at law; provided, however, that the words “enter” and “re-enter” as used herein are not restricted to their technical legal meaning. Any entry or re-entry, possession, repossession, or dispossession by the Lessor, whether taken by summary proceedings or otherwise, shall not be deemed to absolve, relieve, release or discharge the Lessee, either in whole or part, for any monetary liability under the Lease.

33. Disposition of Improvements and Personality After Termination:

- (a) Improvements, fixtures, machinery and equipment owned by lessee shall be removed by lessee from the Property within sixty (60) days after the expiration or termination of this Lease; provided that such removal will not cause injury or damage to the Property, or if it does, Lessee shall indemnify Lessor for the full amount of such damage; and further provided that any improvements, fixtures, machinery or equipment left on the Property by Lessee shall be in good, safe and tenantable or operable condition; and further provided that Lessee shall not commit, create, leave or allow to exist on the Property any nuisance or public nuisance. The Lessor may extend the time for such removal in case hardship is shown to Lessor’s satisfaction, provided application for extension has been made in writing and received by Lessor within said sixty (60) day period.
- (b) Any buildings, improvements, fixtures, machinery, equipment or other items of real or personal property, which are not removed from the Property within the time allowed in paragraph 33 (a) of this Lease, shall immediately become the property of Lessor and title thereto shall vest in Lessor without further action on the part of Lessee or Lessor. Lessor may use, sell, destroy, or otherwise dispose of any such property in any matter that it sees fit, without further obligation to Lessee.

34. Indemnification. To the fullest extent allowed by law, Lessee shall defend, indemnify and hold harmless Lessor from and against all claims and demands for loss or damage, including property damage, personal injury, wrongful death, and wage or employment claims arising out of or in connection with the use or occupancy of the Parcel by Lessee or by any other person holding under Lessee from any accident or fire on the Parcel and from any nuisances made or suffered thereon; and from any failure by Lessee to keep the Property in a safe and lawful condition except to the extent that such claims or demands are caused by the fault of Lessor or its agents, representatives, employees or contractors.

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 Lease 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 Lease 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 and to adjust for inflation. Proof of the following coverage must be shown prior to execution of this Lease. A current certificate of insurance shall be

submitted to the Lessor 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;

- (b) Workers' Compensation and the Employer's Liability Coverage. The Lessee shall be covered with workers compensation insurance and employer's liability insurance in the required statutory amounts.

37. Notices. All notices required or permitted under this Lease shall be personally delivered or sent by certified mail, postage prepaid, to the parties at the following addresses:

To Lessor: City of Unalaska
P.O. Box 610
Unalaska, Alaska 99685

To Lessee: LFS Inc.
c/o Legal Dept.
5303 Shilshole Ave. NW
Seattle, WA 98107

Any notice or demand which must be given or made by the Lessor or the Lessee shall be in writing and shall be complete if personally delivered or sent by United States certified mail to the address shown in the Lease, or to such other address as each of the parties may designate in writing from time to time. A copy of any such notice shall be forwarded to the Lessor, and to the holder of any security interest in the Lessee's interest in the Lease has properly given notice of its security interest in the Lease to the Lessor.

38. Integration and Modification. This Lease, including all attachments and documents which by reference are incorporated herein or made a part hereof, contains the entire agreement between the parties hereto.

39. Amendments. This Lease may not be modified or amended except by a document signed by both parties hereto, and any purported amendment or modification shall be without legal effect until reduced to writing and signed by both parties hereto.

40. Severability of Clauses of Lease Agreement. If any clause, or provision, herein contained, shall be adjudged to be invalid or unenforceable, it shall not affect the validity or enforceability of any other clause or provision of this Lease or give any cause of action in favor of either party as against the other.

41. Applicable Law. This Lease shall be governed by the laws of the State of Alaska. The venue for any dispute between the parties shall lie exclusively with the courts for the Third Judicial District for the State of Alaska at Anchorage, or, alternatively, with the United States District Court for the District of Alaska at Anchorage, unless a nonwaivable federal or Alaska law should require to the contrary.

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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.

LFS, LLC

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 Tidelands 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 Tidelands 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: _____