

**Regular Meeting**  
**Tuesday, December 28, 2021**  
**6:00 p.m.**



**Unalaska City Hall**  
**Council Chambers**  
**43 Raven Way**

**Council Members**  
Thomas D. Bell  
Darin Nicholson  
Daneen Looby

**Council Members**  
Dennis M. Robinson  
Alejandro R. Tungul  
Shari Coleman

*To Provide a Sustainable Quality of Life  
Through Excellent Stewardship of Government*

## **UNALASKA CITY COUNCIL**

P. O. Box 610 • Unalaska, Alaska 99685  
Tel (907) 581-1251 • Fax (907) 581-1417 • [www.ci.unalaska.ak.us](http://www.ci.unalaska.ak.us)

**Mayor:** Vincent M. Tutiakoff Sr. **City Manager:** Erin Reinders  
**City Clerk:** Marjie Veeder, [mveeder@ci.unalaska.ak.us](mailto:mveeder@ci.unalaska.ak.us)

### **COUNCIL MEETING ATTENDANCE**

The community is encouraged to attend meetings of the City Council:

- In person at City Hall
- Online via ZOOM (link, meeting ID & password below)
- By telephone (toll and toll free numbers, meeting ID & password below)
- Listen on KUCB TV Channel 8 or Radio Station 89.7

### **PUBLIC COMMENT**

The Mayor and City Council value and encourage community input at meetings of the City Council. There is a time limit of 3 minutes per person, per topic. Options for public comment:

- In person
- By telephone or ZOOM - notify the City Clerk if you'd like to provide comment using ZOOM features (chat message or raise your hand); or \*9 by telephone to raise your hand; or you may notify the City Clerk during regular business hours in advance of the meeting
- Written comment is accepted up to one hour before the meeting begins by email, regular mail, fax or hand delivery to the City Clerk, and will be read during the meeting; include your name

**ZOOM MEETING LINK:** <https://us02web.zoom.us/j/85203975430>

**Meeting ID:** 852 0397 5430 / **Passcode:** 977526

**TELEPHONE: Meeting ID:** 852 0397 5430 / **Passcode:** 977526

Toll Free numbers: (833) 548-0276; or (833) 548-0282; or (877) 853-5247; or (888) 788-0099

Non Toll Free numbers: (253) 215-8782; or (346) 248-7799; or (669) 900-9128

## **AGENDA**

1. **Call to order**
2. **Roll call**
3. **Pledge of Allegiance**
4. **Recognition of Visitors**
5. **Announcement of Annual City Employee Awards**
  - a. Teamwork Award
  - b. Employee of the Year Award
6. **Adoption of Agenda**
7. **Approve Minutes of Previous Meeting:** [December 14, 2021](#)

8. **City Manager Report:** [December 28, 2021](#)
9. **Community Input & Announcements** *Members of the public may provide information to council; and make announcements of interest to the community. Three-minute time limit per person.*
10. **Public Comment on Agenda Items** *Time for members of the public to provide information to Council regarding items on the agenda. Members of the public may also speak when the issue comes up on the regular agenda by signing up with the City Clerk. Three-minute time limit per person.*
11. **Work Session** *Work sessions are for planning purposes, or studying and discussing issues before the Council.*
  - a. [Discussion: All Purpose Vehicle Usage on Roadways](#)
12. **Consent Agenda** *Approval of non-controversial and routine items, accomplished without debate and with a single motion and vote. Council members may request an item be moved to the regular agenda for discussion purposes.*
  - a. [Resolution 2021-78: Establishing dates for the Fiscal Year 2023 real property tax and business personal property tax collection effort](#)
  - b. [Resolution 2021-79: Acknowledging the closure and completion of various capital projects and purchases](#)
  - c. [Resolution 2021-82: Supporting full funding for the State of Alaska Municipal Harbor Facility Grant Program in the Fiscal Year 2023 State Capital Budget in the amount of \\$20,160,062](#)
13. **Regular Agenda** *Persons wishing to speak on regular agenda items must sign up with the City Clerk. Three-minute time limit per person.*
  - a. Unfinished Business
    - i. [Resolution 2021-76: Approving a 75-year Tideland Lease Agreement with LFS, Inc., for Unalaska Tidelands Survey 103 Tracts B and C](#)
    - ii. [Resolution 2021-76-S: Authorizing a 67-year lease of Unalaska Tidelands Survey 103 Tracts B and C to LFS, Inc., and authorizing termination of an existing lease of Tract C](#)
  - b. New Business
    - i. [Resolution 2021-80: Authorizing the City Manager to Execute an Addendum to the Pyramid Water Treatment Plant Micro Turbines Project Construction Agreement with Industrial Resources, Inc. to add the Construction of the Chlorine Upgrades Project to the Scope of Work at a Cost of \\$441,474.73](#)
    - ii. [Resolution 2021-81: Supporting the City's application to acquire tide and submerged land from the State of Alaska Department of Natural Resources for the expansion and remodel of the Robert Storrs Small Boat Harbor](#)
14. **Council Directives to City Manager**
15. **Community Input & Announcements** *Members of the public may provide information to council; and make announcements of interest to the community. Three-minute time limit per person.*
16. **Adjournment**

**Regular Meeting**  
**Tuesday, December 14, 2021**  
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### **MINUTES**

1. **Call to order.** Vice Mayor Robinson called the December 14 regular meeting of the Unalaska City Council to order at 6:00 p.m.  
  
Vice Mayor Robinson read the City of Unalaska Mission Statement: to provide a sustainable quality of life through excellent stewardship of government.
2. **Roll call.** The City Clerk called the roll. All Council Members were present, with Council Member Nicholson attending via ZOOM. Mayor Tutiakoff was absent. The Vice Mayor announced a quorum was established.
3. **Pledge of Allegiance.** Vice Mayor Robinson led the Pledge of Allegiance.
4. **Recognition of Visitors.** The City Manager recognized IFHS Clinic interim director Will Rogers. The Vice Mayor acknowledged that there were numerous community members in attendance.
5. **Awards**
  - a. The Vice Mayor presented City Employee Erin Enlow with a plaque honoring her 15 Years' service to the City of Unalaska.
  - b. The Vice Mayor presented a Community Extra Mile Award to community member Terry Warren; and recognized former IFHS Clinic Director Melanee Tiura, who's Community Extra Mile Award was presented on Friday, December 10, 2021 at City Hall.
6. **Adoption of Agenda.** Coleman made a motion to adopt the Agenda; Tungul seconded. There being no objection, motion adopted by consensus.
7. **Approve Minutes of Previous Meeting.** Tungul made a motion to approve the proposed minutes of the November 9, 2021 meeting; Looby seconded. There being no objection, the minutes were adopted by consensus.
8. **Reports**
  - a. Interim Finance Director Jim Sharpe reviewed the Financial Reports for October 2021 and responded to Council questions.

- b. The City Manager presented her report, highlighting the recent federal lobby trip and the expiration of the local emergency declaration at year end. City Manager responded to Council questions.
9. **Community Input & Announcements.** The Vice Mayor provided an opportunity for community input and announcements, which were made by:
- a. Roger Blakely announced upcoming PCR programs
  - b. Dustan Dickerson spoke in favor of allowing the emergency declaration to expire at year end
  - c. Estkarlen Magdaong announced a USAFV fundraising raffle
  - d. Charles Brooke spoke against fetal cell lines used in COVID vaccinations
  - e. The City Clerk reminded the community about upcoming deadlines for renewing businesses licenses (12/31/2021); submitting business personal property tax returns (3/1/2022); applying for senior citizen, disabled veteran and Fire/EMS volunteer real property tax exemptions (3/1/2022); and applying for senior citizen sales tax refunds (3/31/2022).

10. **Public Comment on Agenda Items** was provided by:

- a. Regarding Resolution 2021-78: Catherine Hazen, Victor Fisher, Estkarlen and Eddy Magdaong and M. Lynn Crane (via telephone). City Clerk read written comments submitted by Irena Adams, Murray Buttner, Jen Heller, Megan Sarnecki, Gilmar Tapaoan, Suzi Golodoff, Megan Dean, Abi Woodbridge and Jill Spetz.
- b. Resolution 2021-74: Frank Kelty (via ZOOM)

11. **Public Hearing**

- a. The Vice Mayor opened the Public Hearing on Ordinance 2021-16: Creating Budget Amendment #2 to the Fiscal Year 2022 Budget, establishing an E911 Special Revenue Fund with \$55,000 of surcharge revenue and appropriating \$55,000 for an Enhanced 911 Emergency Reporting System; Accepting \$139,000 from Alaska Energy Authority and appropriating \$139,000 in the Wind Power Development Project; and recognizing \$2,000,000 of private contributions from OCCP LLC and appropriating \$2,000,000 in the Makushin Geothermal Project. No public comment offered. Public Hearing closed.
- b. The Vice Mayor opened the Public Hearing on Ordinance 2021-17: Amending Unalaska Code of Ordinances § 13.24.090 Regulating Fireworks. No public comment offered. Public Hearing closed.
- c. The Vice Mayor opened the Public Hearing on Ordinance 2021-18: Amending UCO §3.44.060 "Recognized City Holidays" to add Juneteenth National Independence Day as an annual floating holiday beginning calendar year 2022 and make minor descriptive edits. No public comment offered. Public Hearing closed.

12. **Work Session.** Tungul made a motion to move into Work Session; Looby seconded. There being no objection, motion adopted by consensus.

7:19p.m. – Entered into Work Session

- a. Discussion: Request from the Qawalangin Tribe of Unalaska for exemption from City Sales Tax. The City Clerk introduced and reviewed the topic. Council discussion. City Clerk and City Attorney Charles Cacciola and responded to Council questions. Council provided direction to proceed with the “middle of the road” approach outlined in the Clerk’s memo, providing a limited exemption from sales tax for federally recognized tribal entities, with any commercial activities remaining taxable. This item will be brought forward at a future council meeting.
- b. Discussion: Management of Airport Long Term Parking. Port Director McLaughlin reviewed the topic with council. Council discussion. Ms. McLaughlin responded to Council questions. Council requested a base bid estimate and what that estimate looks like in reference to the overall airport operating budget. This item will be brought forward at a future council meeting.

Coleman made a motion to reconvene to Regular Session; Bell seconded; there being no objection, motion adopted by consensus. Reconvened to Regular Session.

8:00pm Vice Mayor Robinson announced a 10 minute break.

8:10p.m. – Back on the record.

13. **Consent Agenda.** Coleman moved to adopt the Consent Agenda; second by Tungul. Roll call vote: all council members voted in the affirmative. Motion passed unanimously 6-0 adopting the following items:

- a. Ordinance 2021-16 (2<sup>nd</sup> reading): Creating Budget Amendment #2 to the Fiscal Year 2022 Budget, establishing an E911 Special Revenue Fund with \$55,000 of surcharge revenue and appropriating \$55,000 for an Enhanced 911 Emergency Reporting System; Accepting \$139,000 from Alaska Energy Authority and appropriating \$139,000 in the Wind Power Development Project; and recognizing \$2,000,000 of private contributions from OCCP LLC and appropriating \$2,000,000 in the Makushin Geothermal Project
- b. Ordinance 2021-17 (2<sup>nd</sup> reading): Amending Unalaska Code of Ordinances § 13.24.090 Regulating Fireworks
- c. Ordinance 2021-18 (2<sup>nd</sup> reading): Amending UCO §3.44.060 “Recognized City Holidays” to add Juneteenth National Independence Day as an annual floating holiday beginning calendar year 2022 and make minor descriptive edits
- d. Resolution 2021-74: Adopting an alternative allocation method for the FY2022 Shared Fisheries Business Tax Program
- e. Resolution 2021-75: Establishing Community Wide COVID-19 Protective Measures

14. **Regular Agenda**

- a. Resolution 2021-78: Authorizing the City Manager to enter into an agreement with F & W Construction Company, Inc., to construct of the Library Improvements Project for \$6,514,196

Tungul moved to adopt Resolution 2021-78; second by Looby.

The City Manager introduced the resolution; PCR Director Roger Blakeley provided and an overview; followed by a comprehensive, historical review of the project provided by City Librarian Karen Kresh. Council discussion. F&W representative Robby Capps provided

information to council; and Mr. Blakely and Ms. Kresh responded to Council questions. Continued Council discussion. City Manager reviewed the alternatives set out in the Council memo. Public Works Director Cohenour responded to Council questions. Further Council discussion.

Roll call vote: Looby – yes; Bell – yes; Nicholson – no; Robinson – no; Tungul – yes; and Coleman – yes.

Motion passes 4 yes and 2 no.

- b. Resolution 2021-76: Approving a 75-year Tideland Lease Agreement with LFS, Inc., for Unalaska Tidelands Survey 103 Tracts B and C

Looby moved to adopt Resolution 2021-76; second by Coleman.

The City Manager introduced the resolution; Acting Planning Director Cameron Dean provided an overview. Council discussion. City Manager and Mr. Dean responded to Council questions. Continued Council discussion.

Council member Nicholson stated he is employed as the operations manager for Trident Seafoods and that Trident owns LFS, the applicant in this matter requesting tidelands lease from the City. Mr. Nicholson stated he has a conflict of interest and requested to abstain from a vote on this matter. Vice Mayor Robinson ruled that there is no conflict of interest, but will allow Mr. Nicholson to abstain from voting on this matter.

Coleman moved to postpone the motion to adopt Resolution 2021-76 to a time certain, specifically to the regular council meeting on December 28, 2021; second by Bell; Council discussion.

The Chair at this time took public comment on the main motion. Public comment provided by Barbara Kraft of Davis, Wright, Tremain; Shane Russell of LFS; Bill Shaishnikoff; and Travis Swangel.

Roll call vote on motion to postpone to a time certain: Coleman - yes; Bell - yes; Looby -yes; Tungul - no; and Robinson - yes.

Motion passes with 5 yes and 1 no vote.

Clerk Note: the main motion will be taken up at the City Council Meeting scheduled for December 28, 2021.

- c. Resolution 2021-77: Identifying the City of Unalaska's State Priorities for Fiscal Year 2022.

Coleman moved to adopt Resolution 2021-77; second by Looby.

The City Manager provided an overview. No comments from Council.

Roll call vote: all members voted in the affirmative; motion passed unanimously.

- d. Liquor License Application Review – Alaska Ship Supply. Council took no action. Clerk Note: by taking no action, no protest to the application to renew the liquor license in question will be lodged by the City of Unalaska.

15. **Council Directives to City Manager.** None.

16. **Community Input & Announcements.** The Mayor provided a final opportunity for community input and announcements. Charles Brooke requested to provide comment on the same topic he commented on earlier, 9(d) above. As this violates Council's Public Comment Policy, the Vice Mayor ruled the comment would not be taken.
17. **Adjournment.** Having completed all items on the agenda, the Vice Mayor adjourned the meeting at 10:36 p.m.

These minutes were approved by the Unalaska City Council on December 28, 2021.

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Marjie Veeder, CMC  
City Clerk

DRAFT



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## MEMORANDUM TO COUNCIL

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To: Mayor and City Council Members  
From: Erin Reinders, City Manager  
Date: December 28, 2021  
Re: City Manager Report

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**Upcoming Deadlines:** The following City deadlines are upcoming.

- December 31, 2021: Business License Renewal Deadline
- March 1, 2022: Business Personal Property Tax Return Deadline
- March 1, 2022: Senior Citizen Real, Disabled Veteran and Fire/EMS Volunteer Property Tax Exemption Application Deadline
- March 31, 2022: Senior Citizen Sales Tax Refund Application Deadline

**COVID-19 Update:** As of the drafting of this memo of we have no known active COVID-19 cases. However, on December 21, Karie Holtermann, the City's Lab Manager, reported that the viral load in the 24 hour sample at the plant ended earlier that day was positive for COVID-19. The sample from December 21 was 0.1 RNA Copies/mL. Viral copies are very low but the sample is once again positive, the first time in about a month. This information is found on the City's COVID Dashboard. According to the state's website, 74% of Aleutian West Census Area residents age 5 and up have received their first dose, 64% are fully vaccinated, and 15% have received their booster.

The last round of COVID-19 community wide protective measures, which Council has consistently adopted since March 2020, expire on December 31, 2021, when the local state of emergency to expires at the end of the year. The expiration of the state of emergency does not mean that COVID-19 is no longer with us. It continues to be a significant public health concern, but at this point we believe we have the tools in place to effectively respond. The Clinic continues to provide vaccinations, boosters and health care as necessary.

We have decided to retain one of the two isolation site buildings through the end of April 2022. This should get us through A-season and the uncertainties of the Omicron variant, and provide us this response tool if needed. The City will continue our increased sanitation efforts at the Airport, Community Center and Library. We will no longer have greeters at the airport to collect contact tracing information. At this point, the City will not report the number of cases, but the community's case data will be reported on the State of Alaska COVID website. However, IFHS Clinic is seeing if there is a less labor intensive way, compared to the past two years, to report the local case count moving forward. We plan to continue testing the wastewater influent as this is an important indicator for us all locally, and this information will be added to the City's COVID Dashboard. We will rely on IFHS Clinic to communicate to the City if the local health care system is at risk of becoming overloaded as a result of the COVID-19 pandemic. The Mayor and I plan to have a call every other week with the Interim CEO of the Clinic, starting on January 11, 2022. If an emergency declaration is necessary in 2022, the declaration can be made by the Mayor or City Manager, subject to ratification of the City Council.

As a reminder, the two following emergency City Manager orders related to Mayor and Council will also expire at the end of the year:

- (1) Suspend the provisions of UCO § 2.20.025(D) prohibiting the addition of action items by amending the council meeting agenda; and



- (2) Suspend the provisions of UCO § 2.20.075 regarding council member participation in meetings by teleconference. Copies attached.

**Fiscal Sustainability:** City Council had an in depth discussion with APCM and City Staff on October 26 regarding a permanent fund. Key direction provided by Council included a \$40 million starting amount, moderate growth allocation, and a plan to begin distribution at the three year point (starting in July of 2024). Staff met again with APCM on Monday, November 8, 2021 to discuss our next steps. Since that time we have received sample ordinances and resolutions from APCM. Our City Attorney has drafted documents for City Council's use specifically. Jim Sharpe and I have reviewed these documents and are working to determine a path forward. Will need some follow up discussion with APCM and the City Attorney. We are also looking to identify further work needed, such as identify a custodian for a new Permanent Fund. We will then bring related items to Council for consideration and action. We hope to have something before you in late January or early February. We have not forgotten about the Emergency Fund, and are working on outlining that path forward as well. The Permanent Fund does, however, require more steps to set up so we are starting with that.

**Airport Long Term Parking:** Port Director Peggy McLaughlin facilitated a discussion with Council about the airport long-term parking on December 14, 2021. As a result, the airport long-term parking is being further reviewed and a detailed discussion is being prepared for future Council meetings. Included will be overview of the airport financial status, potential rates for long-term parking, and other revenue opportunities to be considered in lieu of long-term parking fees or in conjunction with parking fees.

**Directives to the City Manager:** There are two outstanding directives, both progressing as outlined below.

- *Cost Benefit Analysis for Captains Bay Road Project (March 30, 2021). Progressing.* The directive reads, "Implement a cost-benefit analysis for the proposed road improvements and utility expansion for Captains Bay Road." A draft Cost-Benefit Analysis Report will be submitted to the City in mid-January. We will use this report to not only objectively define the benefit, but also define the project phases and scope for those phases.
- *Haystack Communications Site (July 27, 2021). Progressing.* The directive reads, "Start the process to terminate leases on Haystack for communications and work to upgrade and allow equal access to facilities for communications on Haystack with new leases." This directive was issued after public comment by OptimERA representatives at the City Council meeting. Available space (that is not already leased or has an easement across it) is limited on Haystack, and OptimERA had previously requested a lease agreement in a place that was leased to another entity. The Planning Department has reached out to some of the telecom companies to discuss future leasing and update information between the City and lease holders. OptimERA has applied for a new lease atop Haystack that will lease the site on which they already have an antenna located. The lease was reviewed by the City attorney and has been forwarded to OptimERA for their consideration. OptimERA confirmed receipt we are awaiting their comments or signature.

# NOTICE OF PROPOSED CHANGES TO THE REGULATIONS OF THE DEPARTMENT OF PUBLIC SAFETY

Dunleavy to allow ATVs & Other All-Purpose Vehicles on State Roads, starting Jan. 1

Tonight we will address...

1. Review Unalaska Code
2. Overview of Changes at State Level
3. Options for Council Consideration

# City of Unalaska Ordinance

## 14.08.020 OFF ROAD VEHICLE OPERATION

- ▶ It shall be unlawful to operate an off-road vehicle in the City of Unalaska:
  - ▶ (A) On private property owned by a person other than the driver without having the written consent of the owner of the property in the driver's possession.
  - ▶ (B) On public property which has not been officially designated as an area for off-road vehicle operation.
  - ▶ (C) On a sidewalk or trail designed and maintained for non-motorized travel.
  - ▶ (D) Repealed.
  - ▶ (E) In such a manner as to throw or scatter debris or other material onto:
    - ▶ (1) Any improved real property;
    - ▶ (2) Any sidewalk;
    - ▶ (3) Any paved driveway; or
    - ▶ (4) Any paved highway.

# City of Unalaska Ordinance

## 14.08.020 OFF ROAD VEHICLE OPERATION

### (continued)

- ▶ (F) On a highway, or sidewalk, unless such travel is necessary for the purpose of directly crossing, at approximately a ninety degree angle, from one area of lawful operation to another, after coming to a complete stop and yielding to all pedestrians or other traffic.
- ▶ (G) Between the hours of 10:00 p.m. and 8:00 a.m.
- ▶ (H) This section shall not apply to an employee of a municipal or state law enforcement agency while in the performance of the employee's official duties.

(Am. Ord. 2016-02, passed 2-23-16)

# OVERVIEW OF CHANGES TO AAC

- ▶ The State of Alaska is changing regulations to allow ATVs and Other All-Purpose Vehicles on roadways with limits of 45 mph or less
  - ▶ (1) 13 AAC 02.325 is proposed to be amended by adding a new subsection to allow a snowmobile or (since change to still prohibit) all-purpose vehicle on roads with maximum speed of 45 mph or less.
  - ▶ (2) 13 AAC 02.455 is proposed to be amended by removing “snowmobile” to remove the prohibition of use on roadways. (since change to still prohibit)
  - ▶ (3) 13 AAC 02.482 is proposed to be amended by adding a new subsection to allow municipalities to prohibit a snowmobile or (since change to still prohibit) all-purpose vehicles from using roadways.
  - ▶ (4) 13 AAC 04.400 is proposed to be amended by adding the term “all-purpose vehicle”.
  - ▶ (5) 13 AAC 04.010 proposed to be amended by defining “all-purpose vehicle”.

## 13 AAC 02.325. Special speed limitations

- ▶ (a) No person may drive a motor-driven cycle when lights are required to be turned on as prescribed under [13 AAC 04.010](#) at a speed greater than allowed by the intensity of the headlights as provided by [13 AAC 04.320](#).
- ▶ (b) No person may drive a vehicle which is towing a mobile home at a speed greater than 45 miles per hour.
- ▶ (c) No person may drive a vehicle equipped with lighted headlights described in [13 AAC 04.020\(g\)](#) at a speed greater than is reasonable and prudent under the conditions specified in [13 AAC 04.010](#).
- ▶ (d) No person may drive a vehicle at a speed in excess of 20 miles per hour when passing a marked public school or playground crosswalk that is posted with an official school, school crossing or speed-control sign. The speed zone at the crosswalk extends 300 feet in either direction from the marked crosswalk.
- ▶ (e) No person may drive a vehicle passing a school bus displaying alternately flashing yellow lights as provided in [13 AAC 04.097\(b\)](#) at a speed greater than 20 miles per hour.
- ▶ (f) No person may drive a vehicle or a combination of vehicles over a bridge or other elevated structure or through a tunnel or underpass constituting a part of a highway, ferry facility or city street at a rate of speed or with a gross weight or of a size which is greater than the maximum speed or maximum weight or size designated by an official traffic-control device.

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## 13 AAC 02.455. Operation on highways and other locations

- ▶ (a) A snowmobile or an off-highway vehicle may be driven on a roadway or shoulder of a highway only under the following circumstances:
  - ▶ (1) when crossing a highway as provided in (f) of this section, or when traversing a bridge or culvert on a highway, but then only by driving at the extreme right-hand edge of the bridge or culvert and only when the traverse can be completed with safety and without interfering with other traffic on the highway;
  - ▶ (2) when use of the highway by other motor vehicles is impossible because of snow or ice accumulation or other natural conditions or when the highway is posted or otherwise designated as being open to travel by off-highway vehicles;
  - ▶ (3) when highway driving is authorized by an authority having jurisdiction over the highway, but only in accordance with restrictions which may be imposed by that authority with regard to highway use; or
  - ▶ (4) when driven on the right-of-way of a highway which is not a controlled-access highway, outside the roadway or shoulder, and no closer than three feet from the nearest edge of the roadway; night driving may be only on the right-hand side of the highway and in the same direction as the highway motor vehicle traffic in the nearest lane of the roadway; no person may drive an off-highway vehicle within the area dividing the roadways of a divided highway,

## 13 AAC 02.455. Operation on highways and other locations

- ▶ (b) - (e) Repealed 6/28/79.
- ▶ (f) A snowmobile or an off-highway vehicle may make a direct crossing of a highway if
  - ▶ (1) the crossing is made approximately at a right angle to the highway and at a location where visibility along the highway in both directions is clear for a sufficient distance to assure safety, and the crossing can be completed safely and without interfering with other traffic on the highway; and
  - ▶ (2) the vehicle is brought to a complete stop before crossing the shoulder or roadway, and the driver yields the right-of-way to all traffic on the highway.
- ▶ (g) No snowmobile or other off-highway vehicle may cross or travel on a sidewalk, a location intended for pedestrian or other nonmotorized traffic, an alley, or a vehicular way or area which is not open to snowmobile or off-highway vehicle operation, except as provided in (f) of this section.

# OVERVIEW OF CHANGES TO AAC

- ▶ The State of Alaska is changing regulations to allow ATVs and Other All-Purpose Vehicles on roadways with limits of 45 mph or less
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  - ▶ (5) 13 AAC 04.010 proposed to be amended by defining “all-purpose vehicle”.

## 13 AAC 02.482. Limited use of vehicular ways and areas

- ▶ (a) No pedestrian, rider of a bicycle, or driver of a vehicle may travel on a vehicular way or area as defined in [13 AAC 40.010](#) when it is designated for use by a different mode of travel than that used by the pedestrian, rider of a bicycle, or driver of a vehicle.
- ▶ (b) A driver of a non-motorized vehicle traveling upon a vehicular way or area shall, regardless of whether an official traffic-control device is present, yield the right-of-way in the manner specified in sec. 130(c) of this chapter to any traffic using a roadway, driveway, or vehicular way or area on which motor vehicle traffic is authorized.

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  - ▶ (4) 13 AAC 04.400 is proposed to be amended by adding the term “all-purpose vehicle”.
  - ▶ (5) 13 AAC 04.010 proposed to be amended by defining “all-purpose vehicle”.

## 13 AAC 04.400. Lights and reflectors

- ▶ (a) A snowmobile or other off-highway vehicle which is driven during the times when lights are required by sec. 10 of this chapter must be equipped with at least one headlight, aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead under normal atmospheric conditions.
- ▶ (b) A snowmobile or other off-highway vehicle must be equipped with one red light, one stop-signal light and one red reflector, which must be mounted upon the rear or rear cowling of the vehicle. The lights must be visible from a distance of at least 1000 feet to the rear. The reflector must be visible from a distance of at least 600 feet to the rear when directly in front of the lawful lower beams of the headlights on a motor vehicle other than a snowmobile or an off-highway vehicle.

# OVERVIEW OF CHANGES TO AAC

- ▶ The State of Alaska is changing regulations to allow ATVs and Snowmobiles on roadways with limits of 45 mph or less
  - ▶ (1) 13 AAC 02.325 is proposed to be amended by adding a new subsection to allow a snowmobile or (since change to still prohibit) all-purpose vehicle on roads with maximum speed of 45 mph or less.
  - ▶ (2) 13 AAC 02.455 is proposed to be amended by removing “snowmobile” to remove the prohibition of use on roadways. (since change to still prohibit)
  - ▶ (3) 13 AAC 02.482 is proposed to be amended by adding a new subsection to allow municipalities to prohibit a snowmobile or (since change to still prohibit) all-purpose vehicles from using roadways.
  - ▶ (4) 13 AAC 04.400 is proposed to be amended by adding the term “all-purpose vehicle”.
  - ▶ (5) 13 AAC 04.010 proposed to be amended by defining “all-purpose vehicle”.



## 13 AAC 04.010. When lights are required

- ▶ (a) Every vehicle traveling on a highway or other vehicular way or area within the state must illuminate lights
  - ▶ (1) between one half hour after sunset and one half hour before sunrise; or
  - ▶ (2) at any other time when, because of insufficient light or other atmospheric conditions, persons or vehicles on the highway are not clearly discernible at a distance of 1000 feet.
- ▶ (b) Stop lights, turn signals, and other signaling devices must be illuminated as required by this chapter.
- ▶ (c) Every vehicle traveling on a highway or vehicular way or area must illuminate lights when traveling on any roadway that is posted with signs requiring the use of headlights.
- ▶ (d) For the purposes of (c) of this section, lights include low intensity headlights and daytime running lamp devices that meet the standards in 49 C.F.R. 571 (revised as of August 29, 1996), if the headlights are not otherwise required under (a)(1) or (2) of this section.

## Vehicles eligible under the new rules must follow certain guidelines:

- ▶ All-purpose vehicles must have a headlight, a rear-facing red light, a rear-facing red reflector and a rear-facing red brake light. The vehicle must have brakes, a muffler, carburetor and throttle.
- ▶ Drivers must have a valid driver's license and insurance but don't have to wear a helmet. Passengers need to wear helmets.
- ▶ If the vehicle has seatbelts, they must be used, and any vehicle with seatbelts must use a child seat when carrying a child young enough.
- ▶ The vehicle must be registered and have license plates.

# City Council Options

## Option 1:

### Keep Existing Ordinance

- ▶ May draft and present an Ordinance to add clarity (Draft attached)
- ▶ Off-Road vehicles are prohibited on public roadway
- ▶ Off-road vehicles are allowed on private property with limitations
  - ▶ Owner permission
  - ▶ Time restrictions

## Option 2:

### Adopt the SOA's New Approach

- ▶ Allow all-purpose vehicles to be driven on the roadway
  - ▶ (this new term is used to refer to off-road or ATV's)
- ▶ Allow ATV's to be driven on the roadway
- ▶ Maintain restriction for snowmobiles and hovercraft

CITY OF UNALASKA  
UNALASKA, ALASKA

ORDINANCE 2022-\_\_

AN ORDINANCE OF THE UNALASKA CITY COUNCIL AMENDING TITLE 14 OF THE UNALASKA CODE OF ORDINANCES REGULATING THE USE OFF-ROAD VEHICLES WITHIN CITY LIMITS

WHEREAS, beginning in 2022, state regulations will permit all-purpose vehicles to operate on public roadways where not prohibited by local law or ordinance; and

WHEREAS, the City has determined the safety of the citizens of Unalaska is best served by not allowing off-road or all-purpose vehicles on its roadways; and

WHEREAS, the City currently prohibits off-road vehicles; and

WHEREAS, limited amendments to the current Unalaska Code of Ordinances are necessary to remove ambiguity or potential conflict with the new state regulations.

NOW THEREFORE BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF UNALASKA, as follows:

**Section 1: Classification.** This is a Code Ordinance.

**Section 2:** Subsection 14.04.010(M) of the Unalaska Code of Ordinances is hereby amended to read as follows [~~striking through the deleted words and~~ underlining the new words]:

(M) “OFF ROAD VEHICLE” means any self-propelled vehicle designed primarily for recreational off-highway travel on land, snow or water, or on more than one type of terrain, steered by wheels, treads, skis, or any combination thereof, including vehicles commonly known as snow machines, all-terrain vehicles (ATVs), utility terrain vehicles (UTVs) or all-purpose vehicles (APVs). ~~means any vehicle that is being operated off a highway~~

**Section 3:** Subsection 14.08.020 (B) of the Unalaska Code of Ordinances is hereby amended to read as follows [~~the new words are~~ underlined]:

It shall be unlawful to operate an off-road vehicle in the City of Unalaska:

(B) On public property which has not been officially designated by the City as an area for off-road vehicle operation.

**Section 4: Effective Date.** This ordinance shall take effect upon adoption.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Vincent M. Tutiakoff, Sr.  
Mayor

ATTEST:

\_\_\_\_\_  
Marjie Veeder, CMC  
City Clerk

DRAFT

CITY OF UNALASKA  
UNALASKA, ALASKA

RESOLUTION 2021-78

A RESOLUTION ESTABLISHING DATES FOR THE FISCAL YEAR 2023 REAL PROPERTY TAX AND BUSINESS PERSONAL PROPERTY TAX COLLECTION EFFORT

WHEREAS, UCO 6.36.020 states that taxes become due and are delinquent on dates set yearly by resolution.

NOW THEREFORE, BE IT RESOLVED that the Unalaska City Council sets the following dates and deadlines for the FY23 real property tax and business personal property tax collection effort:

March 1, 2022	Deadline to file Business Personal Property Tax Return
March 25, 2022	Deadline to mail Real Property and Business Personal Property Regular, Supplemental and Involuntary Assessment Notices
April 25, 2022	Deadline for filing Appeals to the Board of Equalization
May 10, 2022	Board of Equalization meets
June 30, 2022	Deadline to mail Real Property and Business Personal Property Regular, Supplemental and Involuntary Tax Statements
August 22, 2022	First half payment due date for regular Real and Business Personal Property Tax rolls
August 22, 2022	Final payment due date for Supplemental and Involuntary Business Personal Property Tax rolls
August 23, 2022	Unpaid taxes become delinquent and subject to penalty and interest
October 20, 2022	Second half payment due date for regular Real and Business Personal Property Tax rolls
October 21, 2022	Unpaid taxes become delinquent and subject to penalty and interest

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on December 28, 2021.

\_\_\_\_\_  
Vincent M. Tutiakoff, Sr.  
Mayor

ATTEST:

\_\_\_\_\_  
Marjie Veeder, CMC  
City Clerk

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## MEMORANDUM TO COUNCIL

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To: Mayor and City Council Members  
From: Marjie Veeder, City Clerk  
Through: Erin Reinders, City Manager  
Date: December 28, 2021  
Re: Resolution 2021-78:

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**SUMMARY:** UCO 6.36.020 states that taxes become due and are delinquent on dates set yearly by resolution. Resolution 2021-78 accomplishes this objective, as well as setting other dates for the tax collection effort. Staff recommends approval.

**PREVIOUS COUNCIL ACTION:** Council addresses a similar resolution each year.

**BACKGROUND & DISCUSSION:** The resolution before you tonight is very similar to the resolutions adopted by council in the past, with the year changed to reflect 2022 and the due dates for first half and second half payments adjusted so that due dates don't fall on a weekend.

A substantive change made this year is moving back by five days the due dates for mailing assessment notices (March 25 rather than March 31) and the deadline for filing appeals to the Board of Equalization (April 25 rather than April 30). This change was made to provide our assessor additional time to investigate and respond to appeals before the Board of Equalization meeting on May 10.

**ALTERNATIVES:** Council could choose not to change the due dates for mailing of assessment notices or the deadline for appeals.

**FINANCIAL IMPLICATIONS:** None.

**LEGAL:** None.

**STAFF RECOMMENDATION:** Staff recommends adoption of Resolution 2021-78.

**PROPOSED MOTION:** I move to adopt Resolution 2021-78.

**CITY MANAGER COMMENTS:** I support Staff's recommendation.



CITY OF UNALASKA  
UNALASKA, ALASKA

RESOLUTION 2021-79

A RESOLUTION OF THE UNALASKA CITY COUNCIL ACKNOWLEDGING THE CLOSURE  
AND COMPLETION OF VARIOUS CAPITAL PROJECTS AND PURCHASES

WHEREAS, Unalaska City Code Section 6.12.050(B) states all appropriations lapse at the end of the budget year to the extent that they have not been expended or lawfully encumbered, except an appropriation for capital improvements or projects which shall not lapse until the purpose of the appropriation has been accomplished or abandoned; and

WHEREAS, the City of Unalaska has numerous capital projects and purchases which are deemed to be complete; and

WHEREAS, combined together, all projects deemed complete are under budget; and

WHEREAS, any unused monies in completed projects will be returned to the appropriate fund.

NOW THEREFORE BE IT RESOLVED that the Unalaska City Council acknowledges that the capital projects and purchases as outlined on the attached list are deemed complete for their intended purpose.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on December 28, 2021.

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Vincent M. Tutiakoff, Sr.  
Mayor

ATTEST:

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Marjie Veeder, CMC  
City Clerk

**Resolution 2021-79 Closing Completed/Abandoned Capital Projects**

Project Number	Governmental	Budget	Project Costs To Date	Under/(Over)	Return to General Fund	Return to Spec. Revenue Fund 1% Sales Tax	Return to Other	Return to Proprietary Fund
	<b>General Government</b>							
	<b>Public Safety</b>							
PS20A	ALS MANIKIN	143,000.00	105,804.15	37,195.85	\$37,195.85			
		<b>143,000.00</b>	<b>105,804.15</b>	<b>37,195.85</b>				
	<b>Enterprise Funds</b>							
	<b>Electric</b>							
EL19B	ELECTRIC ENERGY STORAGE SYSTEM	650,062.00	66,134.54	583,927.46			\$583,927.46	
EL22C	34.5kV SUBMARINE CABLE REPLACEMENT	60,000.00	-	60,000.00			\$60,000.00	
EL22E	POWERHOUSE COOLING WATER INLET CLEAN/EXT	40,000.00		40,000.00			\$40,000.00	
				-				
				-				
		<b>750,062.00</b>	<b>66,134.54</b>	<b>683,927.46</b>			<b>Total Electric</b>	<b>\$683,927.46</b>
	<b>Water</b>							
WA22B	ICY LAKE ROAD RECONSTRUCTION	100,000.00	8,250.00	91,750.00			\$91,750.00	
WA22C	MAINLINE & SERVICE VALVE MAINT. PROGRAM	100,000.00		100,000.00			\$100,000.00	
		<b>100,000.00</b>	<b>-</b>	<b>191,750.00</b>			<b>Total Water</b>	<b>\$191,750.00</b>
	<b>Solid Waste</b>							
SW22A	OIL SEPARATOR & LIFT STATION REPLACEMENT	971,100.00	-	971,100.00			\$971,100.00	
				-				
		<b>971,100.00</b>	<b>-</b>	<b>971,100.00</b>			<b>Total Solid Waste</b>	<b>\$971,100.00</b>
	<b>Housing</b>							
EH18A	LEAR RD DUPLEX KITCHEN/BATH RENO	400,000.00	261,600.26	138,399.74	\$138,399.74			
		<b>400,000.00</b>	<b>261,600.26</b>	<b>138,399.74</b>				
							<b>Total Proprietary</b>	<b>\$1,846,777.46</b>
	<b>City Total</b>	<b>2,364,162.00</b>	<b>433,538.95</b>	<b>2,022,373.05</b>	<b>\$175,595.59</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$1,846,777.46</b>

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## MEMORANDUM TO COUNCIL

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To: Mayor and City Council Members  
From: Jim Sharpe, Interim Finance Director  
Through: Erin Reinders, City Manager  
Date: December 28, 2021  
Re: Resolution 2021-79: Acknowledging the closure and completion of various capital projects and purchases

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**SUMMARY:** With adoption of this resolution, Council acknowledges that various capital projects and purchases are being closed out of the Capital Budget. Periodically staff reviews capital projects and if a project is complete or no longer feasible, staff makes a recommendation to close that project. This recommendation includes projects in several funds and the projects are listed by fund.

**PREVIOUS COUNCIL ACTION:** Council reviews and acknowledges the closure of various capital projects periodically.

**BACKGROUND:** UCO 6.12.050 (B) states that “All appropriations lapse at the end of the budget year to the extent that they have not been expended or lawfully encumbered, except an appropriation for capital improvements or projects which shall not lapse until the purpose of the appropriation has been accomplished or abandoned.”

**DISCUSSION:** Periodically, staff evaluates active capital projects to determine if the project is complete or should be closed for other reasons. The attached list includes eight projects recommended for closure. The list includes seven projects where abandonment is recommended. Those projects are listed below with additional information as to why the abandonment is recommended.

- **EL19B (Electric Energy Storage System):** Ormat Technologies has been selected as the technology provider for the Geothermal Power Plant. They have agreed to incorporate a voltage stabilization device (BESS, ESS or capacitor bank) as part of their plant design, eliminating the need for a separate installation by the City.
- **EL22C (34.5kV Submarine Cable Replacement):** The City has entered into a joint purchase agreement with OCCP to procure and install a submarine cable replacement. By combining our 1400 foot cable requirement with OCCP’s 19 mile cable purchase, the City can benefit from better pricing on both material and installation. This item is included in the Geothermal Project as Item #D3.
- **EL22E (Powerhouse Cooling Water Inlet Clean/Extension):** This item has been identified as critical before the City distribution network can be connected to geothermal power, and has been incorporated into the Geothermal Project for better tracking and controls as Item #G1.
- **WA22B (Icy Lake Road Reconstruction):** Engineering and Utilities staff took a hard look at the cost vs. benefits on this \$1.3 million price tag and decided this project is not justified in the current economic climate, and will seek other ways to achieve the needed operational controls at the reservoir without negatively impacting the watershed. Priority is right sizing capital expenditures to achieve revenue neutral goals for the Water Utility.

- **WA22C (Mainline & Service Valve Maintenance Program):** Project description specifies contractor labor and equipment to excavate and repair water service valves and mainline valves, with the Water Department assisting. Current plan is to shift more labor and equipment in-house, and fund this work out of the Operating budget.
- **SW22A (Oil Separator & Lift Station Replacement):** Engineering and Utilities staff evaluated this \$970,000 project with a goal of reducing the cost while still accomplishing the stated goals. Current plan calls for installation of a new Oil Water Separator (OWS) purchased with FY21 Operating budget with funds from FY22 Operating budget. Total cost should be in the \$100,000 range and will be consolidated for depreciation accounting. Other aspects of this project scope were deemed unnecessary at this time and will be deferred indefinitely.
- **EH18A (Lear Road Duplex Kitchen/Bath Reno):** This project was designed by an architect and publicly issued for bid with 3 contractors submitting bids. Pricing exceeded budget for all four units so only the two 3 bedroom units were completed. The remaining two 2 bedroom units will be completed by in-house maintenance staff through the operating budget when tenants move out and the units are vacant.

**ALTERNATIVES:** 1) Accept staff recommendations to close identified capital projects by adopting Resolution 2021-79; or 2) Leave one or more projects open for additional work.

**FINANCIAL IMPLICATIONS:** Unused monies will be returned to the appropriate funds, as follows:

General Fund	\$ 175,595.59
Electric Enterprise Fund	\$ 683,927.46
Water Enterprise Fund	\$ 191,750.00
Solid Waste Enterprise Fund	<u>\$ 971,100.00</u>
Total	\$2,022,373.05

**LEGAL:** None

**STAFF RECOMMENDATION:** Staff recommends approval.

**PROPOSED MOTION:** I move to adopt Resolution 2021-79.

**CITY MANAGER'S COMMENTS:** I support staff's recommendation.

CITY OF UNALASKA  
UNALASKA, ALASKA

RESOLUTION 2021-82

A RESOLUTION OF CITY OF UNALASKA SUPPORTING FULL FUNDING FOR THE STATE OF ALASKA MUNICIPAL HARBOR FACILITY GRANT PROGRAM IN THE FISCAL YEAR 2023 STATE CAPITAL BUDGET IN THE AMOUNT OF \$20,160,062

WHEREAS, the majority of the public boat harbors in Alaska were constructed by the State during the 1960s and 1970s; and

WHEREAS, these harbor facilities represent critical transportation links and are the transportation hubs for waterfront commerce and economic development in Alaskan coastal communities; and

WHEREAS, these harbor facilities are ports of refuge and areas for protection for ocean-going vessels and fishermen throughout the State of Alaska, especially in coastal Alaskan communities; and

WHEREAS, the State of Alaska over the past nearly 30 years has transferred ownership of most of these State-owned harbors, many of which were at or near the end of their service life at the time of transfer, to local municipalities; and

WHEREAS, the municipalities took over this important responsibility even though they knew that these same harbor facilities were in poor condition at the time of transfer due to the state's failure to keep up with deferred maintenance; and

WHEREAS, consequently, when local municipal harbormasters formulated their annual harbor facility budgets, they inherited a major financial burden that their local municipal governments could not afford; and

WHEREAS, in response to this financial burden, the Governor and the Alaska Legislature passed legislation in 2006, supported by the Alaska Association of Harbormasters and Port Administrators, to create the Municipal Harbor Facility Grant program (AS 29.60.800); and

WHEREAS, the Department of Transportation and Public Facilities utilizes a beneficial administrative process to review, score and rank applicants to the Municipal Harbor Facility Grant Program, since state funds may be limited; and

WHEREAS, for each harbor facility grant application, these municipalities have committed to invest 100% of the design and permitting costs and 50% of the construction cost; and

WHEREAS, the municipalities of the City of Valdez, City of Yakutat, City & Borough of Juneau, City & Borough of Sitka, City of Homer, Aleutians East Borough/City of Sand Point, and the Municipality of Anchorage have committed to contribute \$20,160,062 in local match funding for FY2023 towards harbor projects of significant importance locally as required in the Harbor Facility Grant Program; and

WHEREAS, completion of these harbor facility projects is dependent on the 50% match from the State of Alaska's Municipal Harbor Facility Grant Program; and

WHEREAS, during the last fifteen years the Municipal Harbor Facility Grant Program has only been fully funded twice; and

WHEREAS, a survey done by the Alaska Municipal League of Alaska's ports and harbors found that from the respondents, the backlog of projects necessary to repair and replace former State-owned harbors has increased to at least \$500,000,000; and

WHEREAS, over the past five years alone, municipal harbors have submitted \$70 million in capital project match requests, representing over \$116 million in shovel-ready capital projects that have received only \$20 million in funding through the Municipal Harbor Facility Grant program with zero funding in FY21 and half of the requested funding in FY22.

NOW THEREFORE BE IT RESOLVED that Unalaska City Council urges full funding in the amount of \$20,160,062 by the Governor and the Alaska Legislature for the State of Alaska's Municipal Harbor Facility Grant Program in the FY 2023 State Capital Budget in order to ensure enhanced safety and economic prosperity among Alaskan coastal communities.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on December 28, 2021.

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Vincent M. Tutiakoff, Sr.  
Mayor

ATTEST:

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Marjie Veeder, CMC  
City Clerk

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## MEMORANDUM TO COUNCIL

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To: Mayor and City Council Members  
From: Peggy McLaughlin, Port Director  
Through: Erin Reinders, City Manager  
Date: December 28, 2021  
Re: Resolution 2021-82: Supporting full funding for the State of Alaska Municipal Harbor Facility Grant Program in the Fiscal Year 2023 State Capital Budget in the amount of \$20,160,062

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**SUMMARY:** This Resolution is a resolution of support. The Alaska Association of Harbormasters and Port Administrators is asking that its membership solicit support from their municipal councils and assemblies to accompany the AAHPA's request to the Alaska State Legislature to continue funding the Harbor Facilities Grant Program. This program is not only vital to provide necessary services to mariners, but also has a cascading benefit for the economy through construction services and revenue streams for municipalities through harbor facility enhancements. This resolution, if passed, will become part of the packet of support provided to the Alaska State Legislature.

**PREVIOUS COUNCIL ACTION:** A Resolution of Support for the Harbor Facilities Grant Program is requested annually from the Unalaska City Council. The last resolution passed was Resolution 2019-05 on February 12, 2019.

**BACKGROUND:** In 2006, the State of Alaska established the Harbor Facility Grant Program to help fund the maintenance and replacement of aging harbor facilities, with an emphasis on facilities that were turned over to municipalities by the State.

**DISCUSSION:** The Harbor Facility Grant Program was established to support municipalities with repair, maintenance and replacement of aging harbor facilities. The harbor facilities that take priority are the facilities that were previously owned by the State of Alaska, but were turned over to municipalities. However, all harbor facilities are eligible to apply to this program.

This grant program represents no less than a 100% match to the State's contribution or 50% of the project and the municipality must fund all design and permitting, as well as uplands development. This program has been instrumental to the economic development of the State by providing safe and secure mooring locations for mariners that navigate in and around some 33,000 miles of coastline.

Unalaska benefited from this program in 2015 through the State contribution of \$1,570,000 for the replacement of the Discovery Float at Robert Storrs Harbor. We intend to reapply for this grant program in the future for the replacement and upgrades to Robert Storrs A and B Floats.

This program has allowed communities to build revenue streams through the development of harbor facilities which, without the State's contribution, would have been abandoned or demolished.



By passing this resolution, the City of Unalaska will be supporting not only the Harbor Facility Grant Program, but all other coastal communities that provide mariners, maritime industries and the State of Alaska with vital services.

The Alaska Association of Harbormasters and Port Administrators stands unified in seeking ongoing funding from the State of Alaska through this program, and we are asking our local councils and assemblies to support the Association in its endeavors to receive funding for this necessary infrastructure.

**ALTERNATIVES:**

- 1) Council could fully support Resolution 2021-82; or
- 2) Council could choose to not support Resolution 2021-82 as written; or
- 3) Council could offer up another Resolution in lieu of the resolution prepared by the Alaska Association of Harbormasters and Port Administrators.

**FINANCIAL IMPLICATIONS:** This Resolution implies no financial obligation to the City of Unalaska.

**LEGAL:** Not applicable.

**STAFF RECOMMENDATION:** Staff recommends approving this Resolution.

**PROPOSED MOTION:** I move to adopt Resolution 2021-82.

**CITY MANAGER'S COMMENTS:** I recommend approving this resolution as a show of support for the many necessary harbor improvement projects around the State, including those in Unalaska.

CITY OF UNALASKA  
UNALASKA, ALASKA

RESOLUTION 2021-76-S

A RESOLUTION OF THE UNALASKA CITY COUNCIL AUTHORIZING A 67-YEAR LEASE OF UNALASKA TIDELANDS SURVEY 103 TRACTS B AND C TO LFS, INC. AND AUTHORIZING TERMINATION OF AN EXISTING LEASE OF TRACT 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.; and

WHEREAS, Bill Shaishnikoff is also the owner of Bering Shai Marine, LLC, which currently holds UTS No. 103 Tract C pursuant to that certain Tidelands Lease Agreement by and between the City of Unalaska and Bering Shai Marine, LLC, dated October 7, 2013 ("Bering Shai Lease"); and

WHEREAS, the term of the Bering Shai Lease is through October 7, 2088; and

WHEREAS, Bering Shai Marine, LLC is selling its assets to LFS, Inc. (LFS) and desires to terminate the Bering Shai Lease so that the Tract C may be leased to LFS;

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

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;

WHEREAS, 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;

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 lease of Tracts B and C of Unalaska Tidelands Survey 103 for the remainder of the term of the Bering Shai Lease, approximately 67 years, 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 lease of UTS Tracts B and C to LFS with the term of said lease to run through October 7, 2088 in accordance with the terms and conditions of the Tidelands Lease Agreement attached hereto;

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

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on December 28, 2021.

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Vincent M. Tutiakoff, Sr.  
Mayor

ATTEST:

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Marjie Veeder, CMC  
City Clerk

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## MEMORANDUM TO COUNCIL

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To: Mayor and City Council Members  
From: Cameron Dean, Acting Planning Director  
Through: Erin Reinders, City Manager  
Date: December 28, 2021  
Re: Resolution 2021-76-S: Authorizing a 67-year lease of Unalaska Tidelands Survey 103 Tracts B and C to LFS, Inc., and authorizing termination of an existing lease of Tract C

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**SUMMARY:** This supplemental memo provides additional information in response to the discussion at the December 14 Council meeting. A substitute resolution is also provided. Staff recommends approval of Resolution 2021-76-S, authorizing the City Manager to negotiate the lease with LFS.

**PREVIOUS COUNCIL ACTION & BACKGROUND:** Staff presented a draft lease to City Council on December 14. Council had several questions, which are addressed in this memo, and postponed Resolution 2021-76 to December 28. Since that time Staff and our Attorney have been working to address these questions and have developed a substitute resolution, revised draft lease agreement, and this memo with additional information.

**DISCUSSION:** As a review, LFS applied to lease UTS 103 Tracts B and C, with combined acreage of about 14.26 acres (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 Marine from Bill Shaishnikoff. LFS seeks to acquire an existing Bering Shai 75-year lease, with 67 years remaining, for Tract C, which was approved in 2013; and to lease Tract B. Bering Shai added fill, constructed a ramp and created mooring space in this area. The referenced tracts are shown on the plat attached to this memo.

The revised lease has been drafted in accordance with Title 7 and Regulations for Tidelands Leasing, License, Exchange or Sale and in response to Council feedback. The area involved with this lease agreement has been surveyed, platted and recorded with the State Recorder's Office. Required permits are in the process of being obtained. The required proof of insurance and the lease bond have already been provided.

A substituent resolution 2021-76 (2021-76-S) has been drafted. This resolution authorizes lease of UTS Tracts B and C to LFS with the term of said lease to run through October 7, 2088 in accordance with the terms and conditions of the revised Tidelands Lease Agreement (included in Council Packet). The resolution also authorizes the City Manager to terminate the Bering Shai Lease.

When Council discussed this item at the meeting on December 14, there was specific interest in the Corps Permit, appraisal, cross access, and the lease term. These topics are reviewed below.

### ***US Army Corps of Engineers Permit***

A permit from the Corps of Engineers is required to fill or discharge material into waters of the United States. Council expressed concern that Bering Shai may have filled tidelands beyond the boundaries of its lease of Tract C.

Bering Shai received a permit in April 2013 for fill and construction within the tidelands divided into two phases, Phase I in Tract C and Phase II in Tract B. Present conditions appear consistent with the site plan presented in the permit.

However, while Bering Shai received a Corps permit for the complete project, it failed to acquire a lease from the City for Tract B before commencing work there.

### ***Appraisal***

Appraisals of Tracts B and C are in progress. Both tracts were appraised for a total value of \$227,000 in 2013 before Bering Shai's improvements. Until the appraisal is complete, we do not know the current value of the tidelands or of the improvements made by Bering Shai. We do know, however, that Bering Shai anticipated approximately an \$8.6 million investment for both phases in 2013. The rent will ultimately be set at 10% of the appraised value. For some added context, Bering Shai currently pays \$4,721 annually for Tract C.

City Council has the option of including the value of improvements to either parcel in the appraisal and annual rent for this new lease. Bering Shai only has a lease to Tract C and never leased Tract B. As LFS could seek reassignment of the Tract C lease, Staff does not recommend including the value of improvements there. However, because Bering Shai did not lease Tract B from the City before making improvements, Staff believes it would be appropriate to include their value in the appraisal. The revised draft lease takes this recommended approach.

### ***Cross Access***

The Captains Bay Road public right of way ends at OSI's facility north of Bering Shai. The road south of that point is private and passes through several different private properties with different owners. Despite the absence of any easement guaranteeing access through the uplands of any of those properties, the public has historically been allowed to use the road through Bering Shai to access the end of the bay. Negotiating access through Bering Shai's property would not solve all of the access issues in Captains Bay, but it would achieve an improvement over the status quo.

The tidelands have an easement separate from the road extending 50' below the mean high water line meant to facilitate access for the public between the uplands and water. The lease allows the City to install utilities in the tidelands.

Access through LFS's uplands may be addressed either through the planning and zoning process of the uplands or as a condition of the tideland lease. The uplands are currently a Native Allotment, and thus generally exempt from zoning. If LFS acquires them, they will revert to a Holding District, which prohibits most development. LFS will need to apply to rezone the uplands, as well as apply for building permits, in order to develop the property. City Council ultimately approves all zoning amendments.

Because the road traverses the uplands, not the tidelands, Staff recommends addressing cross access as part of that planning and zoning process. Therefore, the revised draft lease does not address uplands road access. Staff will work ensure that any access can accommodate future development in Captains Bay.

Alternatively, Council may decide to require access as part of the tideland lease.

**Lease Term**

LFS has requested a 75 year lease. The City Manager Regulations for Tidelands recommends lease terms of 30 years but allows longer terms if Council determines that it would benefit the public, by encouraging investment or if the improvements will outlast a 30 year lease.

Another option available to LFS would be seek reassignment of Bering Shai's remaining 67 year lease on Tract C. This would result in separate leases, potentially with different terms, for Tracts B & C. Improvements span both tracts, so treating both as a single lease is preferable to avoid issues in the future.

As a compromise, Staff recommends a 67 year term for both tracts to match the remaining time on Bering Shai's current lease. The revised draft lease requires LFS to invest at least \$5 million in capital expenditures in the tidelands within 25 years or the City may revoke the lease.

**ALTERNATIVES:** If Council finds that it is in the best interest of the City to reject Resolution 2021-76-S as is, it may reject the resolution altogether, or modify it in several ways including providing specific direction on the following:

- *Appraisal of Improvements:* City Council may decide to include the value of existing improvements in both tracts or neither of the tracts. It may also decide to postpone the resolution until the appraisal is complete.
- *Cross Access:* City Council may include a provision requiring access through the uplands to the tideland lease, rather than negotiating access as part of the planning and zoning process for the uplands.
- *Lease Term:* City Council may choose a lease term of 30 years (as is typical), rather than 67 years.

**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 rate will be updated every 5 years based on new appraisal of the leased tidelands excluding any future improvements made by LFS.

**LEGAL:** The form of the lease was reviewed by the city attorney. Should Council pass Resolution 2021-76-S, 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.

**STAFF RECOMMENDATION:** Staff recommends approval of Resolution 2021-76-S.

**PROPOSED MOTION:** I move to amend Resolution 2021-76 by substituting it in the entirety with Resolution 2021-76-S.

**CITY MANAGER COMMENTS:** I support Staff's recommendation and believe we have a sound approach to move forward on this.

**ATTACHMENTS:** In addition to this memo and Resolution 2021-76-S, the following are attached for informational purposes:

1. December 14, 2021 Meeting Materials
  - a. Resolution 2021-76
  - b. Staff Memo
  - c. Aerial photo and map showing UTS 103 Tracts B and C
  - d. Draft tideland Lease Agreement
2. Plat 2013-13 (UTS 103)
3. Revised Draft Tideland Lease Agreement

# Dec. 14 Meeting Documents

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.



# Dec. 14 Meeting Documents

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

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Vincent M. Tutiakoff, Sr.  
Mayor

ATTEST:

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Marjie Veeder, CMC  
City Clerk

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## MEMORANDUM TO COUNCIL

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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 Tideland Lease Agreement with LFS, Inc., for Unalaska Tidelands Survey 103 Tracts B and C

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**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.

# Dec. 14 Meeting Documents

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.

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**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



# Dec. 14 Meeting Documents

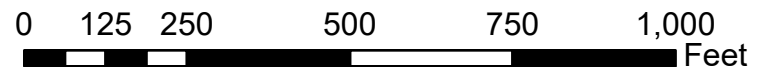


## Exhibit A

-  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.



# Dec. 14 Meeting Documents

## 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

# Dec. 14 Meeting Documents

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 10<sup>th</sup> 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 10<sup>th</sup> 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 (5<sup>th</sup>) 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

# Dec. 14 Meeting Documents

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



# Dec. 14 Meeting Documents

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

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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

# Dec. 14 Meeting Documents

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,

# Dec. 14 Meeting Documents

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

# Dec. 14 Meeting Documents

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

# Dec. 14 Meeting Documents

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



# Dec. 14 Meeting Documents

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

# Dec. 14 Meeting Documents

**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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# Dec. 14 Meeting Documents

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

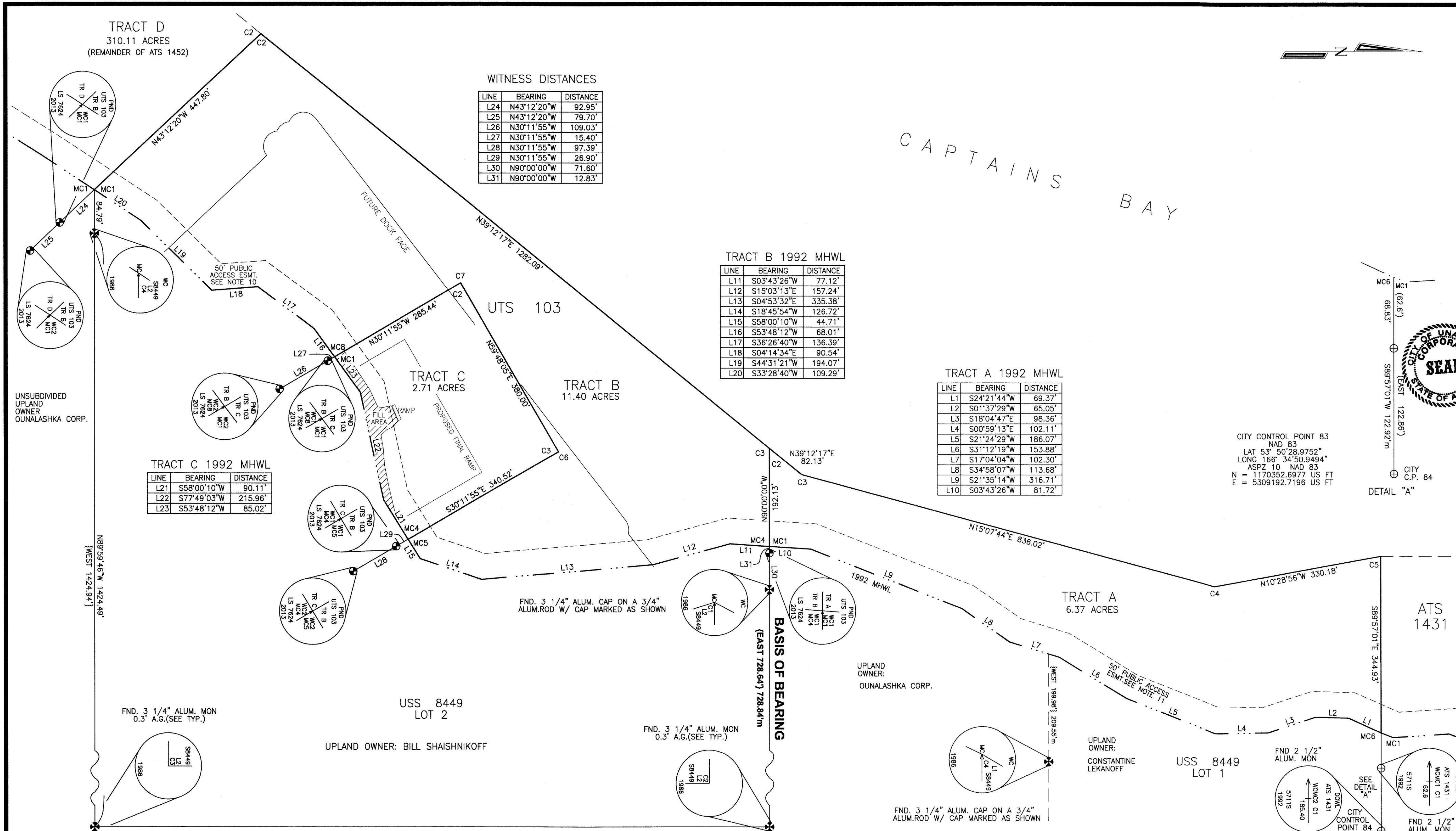
THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me appeared \_\_\_\_\_ to me known and known to me to be the person named in and who executed the Tidelands Lease Agreement and acknowledged voluntarily signing the same.

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: \_\_\_\_\_





WITNESS DISTANCES

LINE	BEARING	DISTANCE
L24	N43°12'20"W	92.95'
L25	N43°12'20"W	79.70'
L26	N30°11'55"W	109.03'
L27	N30°11'55"W	15.40'
L28	N30°11'55"W	97.39'
L29	N30°11'55"W	26.90'
L30	N90°00'00"W	71.60'
L31	N90°00'00"W	12.83'

TRACT B 1992 MHWL

LINE	BEARING	DISTANCE
L11	S03°43'26"W	77.12'
L12	S15°03'13"E	157.24'
L13	S04°53'32"E	335.38'
L14	S18°45'54"W	126.72'
L15	S58°00'10"W	44.71'
L16	S53°48'12"W	68.01'
L17	S36°26'40"W	136.39'
L18	S04°14'34"E	90.54'
L19	S44°31'21"W	194.07'
L20	S33°28'40"W	109.29'

TRACT A 1992 MHWL

LINE	BEARING	DISTANCE
L1	S24°21'44"W	69.37'
L2	S01°37'29"W	65.05'
L3	S18°04'47"E	98.36'
L4	S00°59'13"E	102.11'
L5	S21°24'29"W	186.07'
L6	S31°12'19"W	153.88'
L7	S17°04'04"W	102.30'
L8	S34°58'07"W	113.68'
L9	S21°35'14"W	316.71'
L10	S03°43'26"W	81.72'

TRACT C 1992 MHWL

LINE	BEARING	DISTANCE
L21	S58°00'10"W	90.11'
L22	S77°49'03"W	215.96'
L23	S53°48'12"W	85.02'

CERTIFICATE OF OWNERSHIP AND DEDICATION

I (WE) HEREBY CERTIFY THAT I AM (WE ARE) THE OWNER(S) OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I (WE) HEREBY ADOPT THIS PLAN OF SUBDIVISION AND DEDICATE ALL RIGHT OF WAYS AND PUBLIC AREAS TO THE PUBLIC, AND EASEMENTS TO THE USE SHOWN.

*Patrick Jordan* 8-21-2013  
 CHRIS HLADICK / CITY MANAGER  
 CITY OF UNALASKA  
 P.O. BOX 610  
 UNALASKA, AK 99685

NOTARY ACKNOWLEDGMENT FOR CITY OF UNALASKA

SUBSCRIBED AND SWORN TO BEFORE ME THIS 21st DAY OF August 2013.

*Kathleen B. Filande* April 01, 2016  
 NOTARY PUBLIC MY COMMISSION EXPIRES

TAX CERTIFICATE

I HEREBY ACKNOWLEDGE THAT NO TAX PAYMENTS ARE CURRENTLY DUE ON THE PROPERTY SHOWN HEREON.

*Elizabeth Mason* 8/21/2013  
 TAX OFFICIAL, CITY OF UNALASKA DATE

CITY APPROVAL

I HEREBY CERTIFY THAT THE SUBDIVISION PLAT SHOWN HEREON HAS BEEN FOUND TO COMPLY WITH THE REGULATIONS OF THE CITY OF UNALASKA, SAID PLAT HAS BEEN APPROVED BY THE CITY OF UNALASKA, ALASKA

*Elizabeth Mason* 8/21/2013  
 CITY CLERK DATE

*Christy Bellitt* 8/22/13  
 CHAIR OF THE PLATTING BOARD DATE

NOTARY ACKNOWLEDGMENT FOR

SUBSCRIBED AND SWORN TO BEFORE ME THIS 21st DAY OF August 2013.

*Kathleen B. Filande* April 01, 2016  
 NOTARY PUBLIC MY COMMISSION EXPIRES

NOTARY ACKNOWLEDGMENT FOR

SUBSCRIBED AND SWORN TO BEFORE ME THIS 2013.

*Marjorie V. Veeder* 9/20/2015  
 NOTARY PUBLIC MY COMMISSION EXPIRES

SURVEYORS CERTIFICATE

I HEREBY CERTIFY THAT I AM PROPERLY REGISTERED AND LICENSED TO PRACTICE LAND SURVEYING IN THE STATE OF ALASKA, THAT THIS DRAWING REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION, THAT THE MONUMENTS SHOWN HEREON ACTUALLY EXIST AS DESCRIBED, AND THAT ALL DIMENSIONS AND OTHER DETAILS ARE CORRECT TO THE NORMAL STANDARDS OF PRACTICE OF LAND SURVEYORS IN THE STATE OF ALASKA.

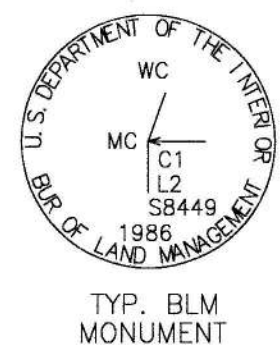
DATE 8-14-2013 REGISTRATION NO. LS 7624

*Maynard E. Taylor III*  
 REGISTERED LAND SURVEYOR



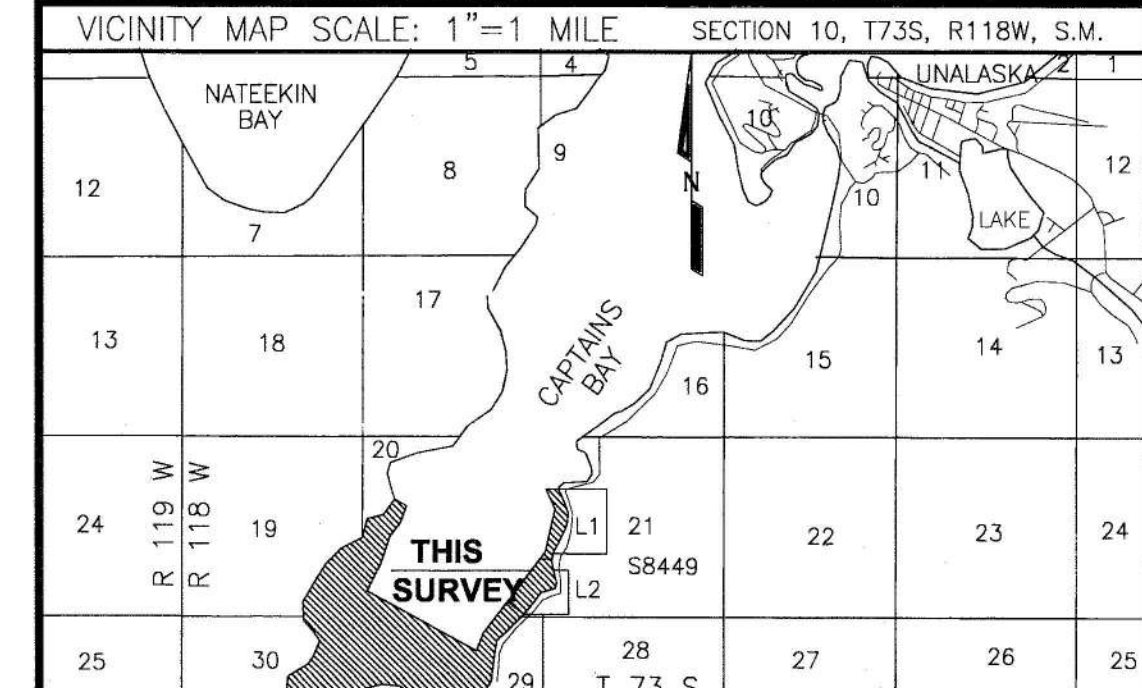
LEGEND

- ⊗ FOUND BLM 3 1/4" AL. MONUMENT
- ⊕ FOUND MONUMENT
- ⊙ SET 3 1/4" ALUMINUM MONUMENT
- ( ) RECORD INFORMATION ATS NO. 1452
- { } RECORD INFORMATION US SURVEY NO. 8449
- m MEASURED DIMENSION
- c COMPUTED DIMENSION



NOTES

- ALL RECORD INFORMATION SHOWN IS FROM THE PLAT OF ALASKA TIDELAND SURVEY No. 1452 (P 95-12), AND THE BUREAU OF LAND MANAGEMENT PLAT OF US SURVEY 8449 FILED APRIL 7, 1988. (SEE NOTE 2).
- BASIS OF BEARING FOR THIS SURVEY IS EAST AND IS BASED ON THE FOUND MONUMENTS FOR THE NORTH BOUNDARY OF LOT 2, US SURVEY 8449 AS SHOWN ON THE BUREAU OF LAND MANAGEMENT PLAT FILED APRIL 7, 1988.
- VERTICAL DATUM IS MEAN LOWER LOW WATER (MLLW = 0.00')
- BASIS OF VERTICAL DATUM FOR THIS SURVEY IS FROM THE N.O.A.A. BENCH MARK "No. 20 1974" ELEVATION 15.50' MLLW (SEE NOTE 3). THE BENCH MARK IS SET VERTICALLY IN THE EASTERN CORNER OF THE ALESKA BUNK HOUSE. FOR ADDITIONAL INFORMATION REFER TO THE PUBLISHED BENCH MARK SHEET FOR STATION 9462620 UNALASKA.
- NO LOCATION OF THE UNDERGROUND UTILITIES WAS PERFORMED FOR THIS PLAT.
- AS OF THE DATE OF SURVEY, ALL PUBLIC UTILITIES ARE PRESUMED TO BE LOCATED WITHIN THE RIGHT-OF-WAY OR HAVE DEDICATED EASEMENTS PROVIDED AND THE RIGHT-OF-WAYS ENCOMPASS THE TRAVELWAYS.
- NO ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION APPROVAL REQUIRED FOR THIS PLAT ACTION.
- DEVELOPERS MAY NOT ALTER EXISTING NATURAL DRAINAGE WITHOUT PROVIDING ALTERNATIVES AND/OR DRAINAGE EASEMENT.
- FIELD SURVEY PERFORMED MAY 18 - 20, 2013.
- ALL EASEMENTS FROM A FIXED POINT TO NAVIGABLE OR PUBLIC WATERS EXTEND TO THE WATER LINE, EXTENDING OR SHORTENING AS THE WATER ADVANCES OR RECEDES.
- UTS 103, TRACTS A,B, AND C ARE ZONED DEVELOPABLE TIDELANDS. TRACT D HAS PORTIONS ZONED DEVELOPABLE TIDELANDS AND OTHER PORTIONS ZONED SUBSISTENCE TIDELANDS.



PLAT OF  
**UNALASKA TIDELAND SURVEY 103**  
**TRACTS A, B, C AND D**  
 A REPLAT OF ALASKA TIDELAND SURVEY No. 1452  
 PLAT No. 95-12 ALEUTIAN ISLANDS RECORDING DISTRICT  
 LOCATED WITHIN  
 SECTION 19, 20, 21, 29 AND 30, T 73 S, R 118 W, SEWARD MERIDIAN  
 ALEUTIAN ISLANDS RECORDING DISTRICT  
 CONTAINING 330.59 ACRES MORE OR LESS

**P N D ENGINEERS, INC.** 1506 West 36th Avenue  
 Anchorage, Alaska 99503  
 Phone: 907.561.1011  
 Fax: 907.563.4220

Grid	N/A	Scale	1" = 100'	Date	7/10/13	Bk	DH 2013
Drawn	MT	File No.	2013-01	W.O. No.	PN&D 121062		
Checked by:	RI & MT			SHEET 1 OF 1			



# Updated Draft Lease for Dec. 28 Meeting

## RECORD IN ALEUTIAN ISLANDS RECORDING DISTRICT

CITY OF UNALASKA  
TIDELAND LEASE AGREEMENT  
UTS NO. 103 TRACTS B & C  
FOR CITY OWNED TIDELANDS

This Tidelands Lease Agreement (“Lease”) is made and entered into as of the Effective Date (as defined in paragraph 42, below), between the City of Unalaska, a first-class Alaska municipal corporation (“Lessor”), whose address is P.O. Box 610, Unalaska, Alaska 99685, and LFS, Inc. (“Lessee”), whose address is c/o Legal Dept., 5303 Shilshole Ave., NW, Seattle WA 98107.

WHEREAS, Bering Shai Marine, LLC currently leases UTS No. 103 Tract C pursuant to that certain Tidelands Lease Agreement UTS No. 103 Tract C by and between the City of Unalaska and Bering Shai Marine, LLC, dated October 7, 2013 (“Bering Shai Lease”); and

WHEREAS, Bering Shai Marine, LLC is selling its assets to LFS, Inc. and desires to terminate the Bering Shai Lease; and

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

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 parcels 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, Unalaska Tideland Survey 103, according to the official plat thereof recorded as Plat No. 2013-13, records of the Aleutian Islands Recording District, Third Judicial District, State of Alaska; and

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

# Updated Draft Lease for Dec. 28 Meeting

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 commence on the Effective Date and end on October 7<sup>th</sup>, 2088, 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 10<sup>th</sup> 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, which shall include the value of improvements thereon but exclude therefrom the value of Lessee Improvements. Appraised value shall be 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 10<sup>th</sup> 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. The cost of the initial appraisal used to calculate this lease rate will be paid for by the Lessor, and the Lessee shall reimburse the Lessor for one-half of such cost not more than thirty (30) days after receipt of an invoice from the Lessor. Rent for the final year of the term shall be prorated to reflect the partial year of occupancy.

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

Commencing at the end of the fifth year of the term, and continuing at the end of every five years thereafter the Parcel shall be reappraised. 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 be 10% of the appraised value of the appraised value of the tideland, which shall include the value of improvements thereon but exclude therefrom the value of Lessee Improvements. 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

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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. (a) The Lessee may make permanent improvements to the Parcel permitted by applicable law.

(b) The Lessee must within 90 days of completion of any 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 (“Lessee Improvements”). 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. Lessee Improvements shall also include those improvements on Tract C of the Parcel constructed by Bering Shai Marine, LLC during the term of and pursuant to the Bering Shai Lease.

(c) Within 25 years of the Effective Date of this Lease, Lessee shall provide, pursuant to the above paragraph, documentation evidencing Lessee’s expenditure of not less than five million dollars (\$5,000,000) in costs for improvements constructed by Lessee on the Parcel or this Lease may be revoked by Lessor.

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. (a) 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

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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.

(b) Subject to the requirements of subsection (a), above, consent to an assignment of this Lease to an Affiliate of Lessee may be given by Lessor's city manager without further consent or approval from Lessor's city council. For such assignment, Lessee shall give written notice. City shall have 60 days from the date of receipt of such notice to give its consent, reasonably refuse consent (with a reason for the refusal stated), or request more information. Should the City not provide one of the forgoing responses, in writing, within 60 days, it shall be deemed to have given its consent to the assignment to an Affiliate of Lessee. For the purpose of this paragraph, Affiliate of Lessee shall mean an entity controlled by Lessee, an entity controlling Lessee, or an entity controlled by an entity that controls Lessee.

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. Lessor assumes no responsibility for any possession, or claim of possession, of any person holding under the Bering Shai Lease following termination of such lease.

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 Parcel.

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.

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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 Lessee 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 Lessee 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

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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.



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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,

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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 Parcel to contain and clean up any hazardous substance that may reasonably be expected to be spilled on or about the Parcel.

(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

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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) Lessee Improvements, fixtures, machinery and equipment owned by Lessee shall be removed by Lessee from the Parcel within 60 days after the expiration or termination of this Lease; provided that such removal will not cause injury or damage to the Parcel, or if it does, Lessee shall indemnify Lessor for the full amount of such damage; and further provided that any Lessee

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Improvements, fixtures, machinery or equipment left on the Parcel by Lessee shall be in good, safe and tenable or operable condition; and further provided that Lessee shall not commit, create, leave or allow to exist on the Parcel 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 Parcel 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 Parcel 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 Parcel 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 one million dollars (\$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

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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 that 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.

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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.

42. Effective Date. This Lease shall be effective (the “Effective Date”) concurrent with the occurrence of last-occurring of the following events:

- (a) Authorization for this Lease by the City Council of the City of Unalaska;
- (b) Execution of the Lease by the parties; and
- (c) Termination of the Bering Shai Lease.

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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, INC.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me appeared \_\_\_\_\_ to me known and known to me to be the \_\_\_\_\_ of LFS, Inc., the corporation named in and who executed the Lease Agreement and acknowledged voluntarily signing the same with authority to do so on behalf of LFS, Inc.

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 OF UNALASKA

\_\_\_\_\_  
Erin Reinders  
City Manager

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me appeared \_\_\_\_\_ to me known and known to me to be the person named in and who executed the Lease Agreement on behalf of the City of Unalaska and acknowledged voluntarily signing the same with authority to do so on behalf of the City of Unalaska.

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 Alaska  
My Commission Expires: \_\_\_\_\_

CITY OF UNALASKA  
UNALASKA, ALASKA

RESOLUTION 2021-80

A RESOLUTION OF THE UNALASKA CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE AN ADDENDUM TO THE PYRAMID WATER TREATMENT PLANT MICRO TURBINES PROJECT CONSTRUCTION AGREEMENT WITH INDUSTRIAL RESOURCES, INC. TO ADD THE CONSTRUCTION OF THE CHLORINE UPGRADES PROJECT TO THE SCOPE OF WORK AT A COST OF \$441,474.73

WHEREAS, the Chlorine Upgrades Project is a component of the approved Capital and Major Maintenance Program; and

WHEREAS, the City of Unalaska has provided funding to construct the Project; and

WHEREAS, the City Council has determined, per Purchasing Policy 14-0803 Paragraph 1.e.i.2, that the use of competitive sealed bidding is neither practicable nor advantageous to the City with respect to the award of the Chlorine Upgrades Project; and

WHEREAS, Industrial Resources, Inc., an experienced and reputable contractor currently under contract with the City to construct the Pyramid Water Treatment Plant Micro Turbines Project, has submitted a quote to perform the construction of the Chlorine Upgrades Project; and

WHEREAS, the City Council has determined that awarding the construction of the Chlorine Upgrades Project to Industrial Resources, Inc. meets the criteria of Sole-Source Procurement per Purchasing Policy 14-0803 Paragraphs 1.h.1 through 1.h.3; and

WHEREAS, Industrial Resources, Inc. meets the criteria for contract award as established in UCO §6.24.060 AWARD OF CONTRACT TO LOWEST BIDDER; EXCEPTION.

NOW THEREFORE BE IT RESOLVED that the Unalaska City Council authorizes the City Manager to execute an Addendum to the Agreement with Industrial Resources, Inc. to add the construction of the Chlorine Upgrades Project to the scope of work at a cost of \$441,474.73.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on December, 28, 2021.

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Vincent M. Tutiakoff, Sr.  
Mayor

ATTEST:

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Marjie Veeder, CMC  
City Clerk



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## MEMORANDUM TO COUNCIL

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To: Mayor and City Council Members  
From: Tom Cohenour, Director of Public Works  
Bob Cummings, P.E., City Engineer  
Lori Gregory, DPW/DPU Administrative Operations Manager  
Through: Erin Reinders, City Manager  
Date: December 28, 2021  
Re: Resolution 2021-80: A Resolution of the Unalaska City Council Authorizing the City Manager to Execute an Addendum to the Pyramid Water Treatment Plant Micro Turbines Project Construction Agreement with Industrial Resources, Inc. to add the Construction of the Chlorine Upgrades Project to the Scope of Work at a Cost of \$441,474.73

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**SUMMARY:** Resolution 2021-80 will award the Chlorine Upgrades Project construction, which consists of integrating the Owner (City) - Furnished On-Site Sodium Hypochlorite Generation System into the Water Treatment Plant process controls, to Industrial Resources, Inc. ("IRI") via Contract Addendum #01. The cost of the work is \$441,474.73 and funding will come from the Project's budget, MUNIS Project WA21A, which contains \$606,478.21 as of this writing. Staff recommends approval.

**PREVIOUS COUNCIL ACTION:** The Chlorine Upgrades Project was funded at \$100,000 for Engineering Services via the FY2021 Capital Budget Ordinance 2020-10, passed and adopted on June 9, 2020. Ordinance 2021-09, a Budget Amendment passed on May 11, 2021, appropriated \$300,000 toward the procurement of the Owner-Furnished On-Site Sodium Hypochlorite Generation System. Resolution 2021-37, passed on May 25, 2021, approved the Procurement Agreement for the Owner-Furnished Equipment from PSI Water Technologies for \$288,000. Council awarded the construction of the Pyramid Water Treatment Plant Micro Turbines Project to IRI via Resolution 2020-48, adopted July 28, 2020.

**BACKGROUND:** This project was funded in order to move the Water Utility away from the hazardous and costly purchasing and shipping the chlorine gas used for potable water disinfection to on-site generation of liquid sodium hypochlorite (bleach), a much safer and cost-effective means. As part of the discussion surrounding the award of the Procurement Agreement for Owner Furnished Equipment, Staff pointed out the potential for not only achieving a cost savings by adding the installation work to IRI's Micro Turbine Project contract scope of work, but also the benefit of mitigating interruptions to Water Utility operations and bringing the equipment on-line earlier than if installed as a stand-alone project.

**DISCUSSION:** The use of competitive sealed bidding to award the construction of the Chlorine Upgrades Project is neither practicable nor advantageous to the City. IRI is already mobilized to the site for the PWTP Micro Turbines Project while any other contractor would incur, and pass these costs on to the City. Awarding the work to IRI will eliminate another layer of construction administration and inspection costs, and eliminate bid support and bid selection costs, saving the City tens of thousands of dollars. In addition to cost savings, there will be less interruption to Water Division operations and the advantage of more immediate improved water quality if the

work is performed by IRI. This rationale meets the criteria for Sole-Source Procurement as set out in Purchasing Policy 14-0803 Paragraphs 1.h.1 through 1.h.3.

UCO § 6.24.060 (A) sets out other considerations for contract award besides price. They include taking into account the ability, capacity and skill of the contractor, whether they can perform the contract within the time specified, without delay or interference, and the character, integrity, reputation, judgment, experience and efficiency of the contractor. Staff is confident that, by using a contractor intimately familiar with plant operations, any potential issues with the chlorination system, which could have vast repercussions to the community if the delivery of potable water is disrupted, will be diminished as much as possible.

IRI has provided a proposal for the work to be performed as a Time and Materials contract, setting out exactly what tasks will be performed and the cost for each, which provides full transparency. Contracting with IRI to construct the Chlorine Upgrades in tandem with the Micro Turbines will allow both Projects to progress seamlessly, without having two work crews sharing the space.

**ALTERNATIVES:** Council may elect to advertise for contractor bids to perform the construction of the Chlorine Upgrades Project.

**FINANCIAL IMPLICATIONS:** The Project's budget is able to fund this work with a surplus of over \$150,000 remaining after award.

**LEGAL:** N/A

**STAFF RECOMMENDATION:** Staff recommends approval of this resolution. Contracting with IRI to integrate the Chlorine Generation equipment into the process controls is the most efficient and cost effective way to complete this Project.

**PROPOSED MOTION:** I move to adopt Resolution 2021-80.

**CITY MANAGER COMMENTS:** I support staff's recommendation. This is a cost effective and time efficient way to complete the project and is in keeping with city code and policy.

**ATTACHMENTS:**

- Proposal from Industrial Resources, Inc.
- Addendum No. 01 Standard Form of Agreement
- Construction Agreement with IRI for the WTP Micro Turbines Project



12842 Highway 9  
Clearlake, WA 98235

**October 28, 2021**

Mr. Thomas Regan  
City of Unalaska  
P.O. Box 610  
Unalaska, AK 99685

DPW Project No. 17401  
PWTP Project  
Letter #: **IRI-003**

**Subject: CCO #3 On Site Chlorine Generation – Pricing Proposal**

Dear Mr. Regan:

Per the City's request, IRI has reviewed the 95% design package for the On-Site Sodium Hypochlorite Generation system. Our price proposal to perform the work as outline in the 95% design is \$441,474.73. Attached is an itemized cost breakdown for your use and consideration.

Please note, procurement of requirement equipment after NTP will be 13 to 15 weeks for pumps and 6 weeks for the expansion tank.

Please feel free to call me if you would like to discuss further.

Sincerely,

Fritz Lausier  
Industrial Resources

CC: Bob Cummings, Glenn Samms, Peter Rasco, Thomas Jordan  
File: PWTP SharePoint Site (Serial Letters)

**PYRAMID HYPOCHLORITE PROJECT  
CCO #3 - ON-SITE CHLORINE GENERATION**

	DESCRIPTION	QUANTITY UNIT		LABOR			MATERIAL		EQUIPMENT		SUBS		\$ TOTAL
				MH'S	\$/MH	L/COST	\$/UNIT	M/COST	\$/UNIT	E/COST	\$/UNIT	S/COST	
1	Site demolition - 3people @ 10hr days 3 days			120	\$95.00	11,400.00	0.00	0.00	0.00	0.00	0.00	0.00	11,400.00
2	concrete curb wall 18"x 4" 64" - 1.5 yds 4 people @ 10 hr/dy x 6 days (80 EA - 80 LBS BAGS)			240	\$95.00	22,800.00	0.00	0.00	0.00	0.00	0.00	0.00	22,800.00
3	set equipment 4 people @ 10hr days 5 days			200.0	\$95.00	19,000.00	0.00	0.00	0.00	0.00	0.00	0.00	19,000.00
4	pipe equipment - set pumps 4 people @ 10hr days 5 day			200	\$95.00	19,000.00	0.00	0.00	0.00	0.00	0.00	0.00	19,000.00
5	Travel Time 4 X 24			96	\$95.00	9,120.00	0.00	0.00	0.00	0.00	0.00	0.00	9,120.00
6	1 at 10 days project superintendent			80	\$95.00	7,600.00	0.00	0.00	0.00	0.00	0.00	0.00	7,600.00
7	Update O&M Manuals			15	\$95.00	1,425.00	0.00	0.00	0.00	0.00	0.00	0.00	1,425.00
	<b>MATERIALS</b>												
8	Tickets 4X	4	EA			0.00	1,500.00	6,000.00	0.00	0.00	0.00	0.00	6,000.00
9	1 Hotel Each Anchorage 4x 150 for travel delay	4	EA			0.00	150.00	600.00	0.00	0.00	0.00	0.00	600.00
10	1 ea AMTROL ASME 106 gal tank	1	EA			0.00	5,025.00	5,025.00	0.00	0.00	0.00	0.00	5,025.00
11	2ea GOULDS SV 120V TEFC # 1SV8FA3A60 pumps	2	EA			0.00	2,021.25	4,042.50	0.00	0.00	0.00	0.00	4,042.50
12	Concrete 80 bags	80	Bag			0.00	7.50	600.00	0.00	0.00	0.00	0.00	600.00
13	Wood for Forms	1	LS			0.00	1,500.00	1,500.00	0.00	0.00	0.00	0.00	1,500.00
14	misc. paint, fasteners, pipe and valves	1	LS			0.00	2,500.00	2,500.00	0.00	0.00	0.00	0.00	2,500.00
15	shipping 1 40' container Seattle to Dutch	1	LS			0.00	18,000.00	18,000.00	0.00	0.00	0.00	0.00	18,000.00
21	Misc Shipping	1	LS			0.00	1,500.00	1,500.00	0.00	0.00	0.00	0.00	1,500.00
12	housing for 4 people for 20 days 10% mkup	80	DAY			0.00	75.00	6,000.00	0.00	0.00	0.00	0.00	6,000.00
13	Per Diem 50 day each 4 x 20 days	80	DAY			0.00	50.00	4,000.00	0.00	0.00	0.00	0.00	4,000.00
14	Small Tools & Supplies	951	MHR			0.00	10.00	9,510.00	0.00	0.00	0.00	0.00	9,510.00
15	Minor Expensies (Cell, Expressage, Petty Cash)	951	MHR			0.00	4.00	3,804.00	0.00	0.00	0.00	0.00	3,804.00
	<b>EQUIPMENT</b>												
16	equipment - 1ea large extend all - 10days 2 weeks at 1000 O	2	wks			0.00	0.00	0.00	1,000.00	2,000.00	0.00	0.00	2,000.00
17	1ea small extendall - 10 days 2 weeks 2 weeks at 600 Owned	2	wks			0.00	0.00	0.00	600.00	1,200.00	0.00	0.00	1,200.00
18	1 ea scissor lift - 10 days 2 weeks 2 weeks at 400 each Own	2	wks			0.00	0.00	0.00	400.00	800.00	0.00	0.00	800.00
19	2 Pickup Truck 2 weeks at 300 week each Owned	4	wks			0.00	0.00	0.00	300.00	1,200.00	0.00	0.00	1,200.00
20	Jackhammer, tools Owned	1	LS			0.00	0.00	0.00	500.00	500.00	0.00	0.00	500.00
	<b>SUBCONTRACTOR</b>												
21	CETS	1	LS			0.00	0.00	0.00			204,900.00	204,900.00	204,900.00
22	Lausier Infrastructure	25	HR			0.00	0.00	0.00			175.00	4,375.00	4,375.00
23	KBA	1.0	LS			0.00	0.00	0.00			2,000.00	2,000.00	2,000.00
24	Mistras	1	LS			0.00	0.00	0.00			1,000.00	1,000.00	1,000.00
25	Bond	0.015	LS								371,401.50	5,571.02	5,571.02
	<b>NOTES</b>												
	Pumps are 13 to 15 weeks out once ordered												
	Expansion tank is 6 weeks out												
	Existing tooling left on site												
	<b>SUBTOTAL: DIRECT COST</b>			951		90,345.00		63,081.50		5,700.00		217,846.02	376,972.52
	FEE %					20%		20%		20%		15%	
	<b>SUBTOTAL: FEE</b>					18,069.00		12,616.30		1,140.00		32,676.90	64,502.20
	<b>TOTAL PRICE PROPOSAL</b>					108,414.00		75,697.80		6,840.00		250,522.93	441,474.73



**STANDARD FORM OF AGREEMENT  
BETWEEN THE OWNER AND CONTRACTOR**

THIS AGREEMENT is dated as of the 6<sup>th</sup> day of August in the year 2020, by and between the **CITY OF UNALASKA** (hereinafter called "OWNER") and **INDUSTRIAL RESOURCES, INC.** (hereinafter called "CONTRACTOR").

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article 1. WORK**

**CONTRACTOR** shall complete all work as specified or indicated in the Contract Documents. The work is generally described as follows:

The work will include, but not be limited to, furnishing all plant, labor, tools, equipment, and materials and performing all operations in connection with the **Pyramid Water Treatment Plant Micro Turbines Project**. The work The Work includes installing two water turbine generators to utilize the excess head pressure provided by the elevation of Icy Creek reservoir to create usable electricity. The existing Pyramid Water Treatment Plant (PWTP) will be reconfigured to allow hydroelectric power generation; which will be tied into the existing water plant main distribution panel (MDP) to allow for distribution to the water plant's electric power system. This work includes the associated piping, pumps, and appurtenances; electrical equipment, conductors, and raceways; SCADA control system modifications; equipment anchors and pipe supports; and all work necessary for a complete and operable hydropower system as detailed in the plan sheets issued for bid.

1. Project Location: Pyramid Water Treatment Plant, Unalaska, Alaska 99685
2. Owner: City of Unalaska, Department of Public Utilities

The Contract Documents, which comprise the entire agreement between OWNER and CONTRACTOR concerning the WORK, consist of the following:

- Construction Drawings (Plan Sheets)
- Technical Specifications
- Agreement
- State of Alaska Title 36 Wage Rate Requirements
- Instructions to Bidders
- Bid Forms
- Performance Bond
- Payment Bond
- General Conditions



- Supplementary Conditions
- Permits
- Addenda 1 through 2, inclusive.
- Change Orders which may be delivered or issued after the Effective Date of the Agreement and not attached hereto.

## Article 2. CONTRACT TIME

- 2.1 All construction must be accomplished in one of two discrete, defined windows of time between processing seasons during periods of low domestic water demand and flow. Two options are provided. The first allowable window is after October 1, 2020 and before December 1, 2020 (Substantial Completion) to correspond with a low flow period. With this scenario, all WORK shall be completed by December 15, 2020 (Final Completion). The second allowable window is after April 15, 2021, and before June 1, 2021 (Substantial Completion). With this scenario, all WORK shall be completed by June 15, 2021 (Final Completion). Contingent on successful submission of the Performance Bond, Payment Bond, and a Certificate of Insurance, the Owner will provide a Notice to Proceed no later than July 15, 2020. Besides staging and preparations, actual field Work is limited to only one of the windows defined above. Full shutdowns or outages are only allowed for limited periods in these construction windows as described below. Select work can be performed prior to the construction window if the CONTRACTOR'S work does not interfere with the operations of the Pyramid Water Treatment Plant and the City of Unalaska Departments of Public Works and Public Utilities are informed and agree to the scope.
- 2.2 The CONTRACTOR is allowed a maximum duration of five days (120 hours) per each shutdown (*Outage*) to the Plant. Notice of Outages must be presented to the OWNER forty-eight (48) hours prior and in writing. Outages must not exceed the maximum duration unless the OWNER extends the period in writing. A maximum of three (3) shutdowns or Outages is allowed.
- 2.3 The CONTRACTOR is allowed to leave the Water Treatment Plant in temporary duty configuration (*Temporary Configuration*) for a maximum duration of twenty-one (21) days (504 hours) inside of the selected WORK window. Temporary Configuration must not exceed the maximum duration unless the OWNER extends the period in writing.
- 2.4 Liquidated Damages. The OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that the OWNER will suffer financial loss if the WORK is not completed within the times specified above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. These losses include inconvenience to the City, administration and inspection costs, loss of efficiency, pumping costs, chemical costs, added operation and maintenance costs, and general inconvenience to the public. They also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the OWNER if the WORK is not completed on time. Accordingly, instead of requiring any such proof, the OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay the OWNER One Thousand, Five Hundred

Dollars (\$1,500.00) for each day that expires after the time specified for *Final Completion* and readiness for final payment. In addition, the CONTRACTOR shall pay the OWNER One Thousand, Five Hundred Dollars (\$1,500.00) for each day that expires after the allowable time specified above for *Outages, or Temporary Configuration*.

### **Article 3. CONTRACT PRICE**

- 3.1 The OWNER shall pay CONTRACTOR for completion of the work in accordance with the Contract Documents an amount equal to the sum of the Lump Sum prices for each separately identified and selected bid item (herein referred to as the "Contract Sum"). The Contract sum is based upon the Bid Items which are set forth in the Contract Documents and which are hereby accepted by the OWNER. T
- 3.2 The Contract Sum is agreed to be \$1,394,497 (One Million, Three Hundred Ninety Four Thousand, Four Hundred Ninety Seven Dollars).

### **Article 4. PAYMENT PROCEDURES**

CONTRACTOR shall submit Applications for Payment in accordance with Article 13 of the General Conditions. Applications for Payment will be processed by the OWNER as provided in the General Conditions.

- 4.1 Progress Payments. The OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about a day of the month mutually agreeable to the OWNER and CONTRACTOR as agreed to at the preconstruction conference. All progress payments will be on the basis of the progress of the work measured by the actual installed quantity of items, plus allowances for stockpiled materials.
  - 4.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as the OWNER shall determine, or the OWNER may withhold, in accordance with Article 13 (paragraph 13.8) of the General Conditions and the Supplemental Conditions.
    - a. Ninety percent of work completed.
    - b. Once 50 percent of the work is complete as determined by the OWNER, and if the character and progress of the work have been satisfactory to the OWNER, the OWNER, may determine that, as long as the character and progress of the work remain satisfactory to them, there will be no additional retainage on account of work completed; in which case, the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the work completed.
  - 4.1.2 Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 95 percent of the Contract Price, less such amounts as the OWNER shall determine, or the OWNER may withhold, in accordance with Article 13 of the General Conditions.



4.2 Final Payment. Upon final completion and acceptance of the work in accordance with the General Conditions; Affidavit of Payment of Debts and Claims; Affidavit of Release of Liens; and Receipt of Consent of Surety Company to Final Payment, the OWNER shall pay the remainder of the Contract Price as provided in said Article 13.

4.2.1 Deductions. The City may deduct from the amount of any payment made to Contractor any sums owed to City by Contractor including, but not limited to, past due sales tax, port and harbor fees, property tax, or rent. Before making any such deduction the City shall have provided Contractor written notice of the amount claimed by City to be due and owing from Contractor.

#### **Article 5. INTEREST ON RETAINAGE**

All retainage shall bear interest at the rate required by AS 36.90.250, if applicable.

#### **Article 6. CONTRACTOR'S REPRESENTATIONS**

In order to induce the OWNER to enter into this agreement, CONTRACTOR makes the following representations:

6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the work.

6.2 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies which pertain to the subsurface or physical conditions at or contiguous to the site or which otherwise may affect the cost, progress, performance, or furnishing of the work as CONTRACTOR considers necessary for the performance or furnishing of the work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies, or similar information or data are or will be required by CONTRACTOR for such purposes.

6.3 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies, or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.4 of the General Conditions.

- 6.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.
- 6.5 CONTRACTOR has given the OWNER written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by the OWNER is acceptable to CONTRACTOR.

**Article 7. MISCELLANEOUS**

- 7.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 7.2 The CONTRACTOR shall submit the Performance Bond, Labor and Material Payment Bonds, and Certification of Insurance and City of Unalaska business licenses and all Subcontractor City of Unalaska business licenses as required by the Contract Documents, prior to commencement of the Work. The Performance and Material Payment Bonds shall be in the amount of 100% of the contract bid price. **CONTRACTOR shall comply with all applicable State labor regulations, including State of Alaska Title 36, Public Contracts, otherwise known as the Little Davis-Bacon Act, and all labor regulations and minimum rates of pay contained therein.**
- 7.3 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 7.4 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.
- 7.5 Until CONTRACTOR receives notice from the City that Project records need to be preserved, CONTRACTOR shall preserve all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its subcontractors' or agents' possession or control, or that come into its or its subcontractors' or agents' possession or control that relate to the WORK.

**IN WITNESS WHEREOF**, The OWNER and CONTRACTOR have signed all counterparts of this Agreement. All portions of the Contract Documents have been signed or identified by the OWNER and CONTRACTOR.

This Agreement will be effective on August 6, 2020.



INDUSTRIAL RESOURCES, INC.

By: Peter Rasco  
Peter Rasco  
Vice President/General Manager

State of Washington )  
  ) ss.  
Skagit County )

The foregoing instrument was acknowledged before me on the 30 day of July, 2020, by Peter Rasco, the Vice President / General Manager of Industrial Resources, Inc., a Washington Corporation, on behalf of the corporation.

Margaret A Moore  
Notary Public, State of Washington  
My Commission Expires 9/12/23



CITY OF UNALASKA, ALASKA

By: Erin Reinders  
Erin Reinders, City Manager

State of Alaska )  
  ) ss.  
Third Judicial District )

The foregoing instrument was acknowledged before me on the 6th day of August, 2020, by Erin Reinders, City Manager for the City of Unalaska, a First Class Alaska Municipal Corporation, on behalf of the City of Unalaska.

Michelle Price  
Notary Public, State of Alaska  
My Commission Expires 10/21/23



CITY OF UNALASKA  
UNALASKA, ALASKA

RESOLUTION 2021-81

A RESOLUTION OF THE UNALASKA CITY COUNCIL SUPPORTING THE CITY'S APPLICATION TO ACQUIRE TIDE AND SUBMERGED LAND FROM THE STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES FOR THE EXPANSION AND REMODEL OF THE ROBERT STORRS SMALL BOAT HARBOR

WHEREAS, the City of Unalaska constructed the Robert Storrs Small Boat Harbor as a public facility intended to provide for small commercial and recreational craft moorage; and

WHEREAS, the Robert Storrs Small Boat Harbor currently extends from the shoreline on Pacesetter Way into ATS's 808 and 1360; and

WHEREAS, the City desires to re-design and expand the A & B Floats to provide more slips; and

WHEREAS, in order to extend the A & B Floats, the City will need to acquire an interest in certain lands and tidelands, which includes unsurveyed submerged lands currently owned by the State of Alaska; and

WHEREAS, the City of Unalaska will apply to the Commissioner of the Department of Natural Resources for conveyance of submerged lands adjacent to ATS 1360, which is owned by the City; and

WHEREAS, Alaska Statute 38.05.825 provides for the conveyance of state tidelands to municipalities; and

WHEREAS, the requested land is within and contiguous to the boundaries of the municipality; and

WHEREAS, the use of the land would not unreasonably interfere with navigation or public access; and

WHEREAS, the waterfront development is consistent and compatible with the 2015 Land Use Plan adopted by the City of Unalaska; and

WHEREAS, the land is required for the accomplishment of a public development previously approved by the Unalaska City Council in the Capital and Major Maintenance Program, namely the Robert Storrs Small Boat Harbor Improvements (A & B Floats) Project; and

WHEREAS, the City's Robert Storrs Small Boat Harbor Improvements Project meets the criteria set out in AS 38.05.825 for the conveyance of state tideland to the City of Unalaska, with the conveyance subject only to those restrictions required by law; and

WHEREAS, if the application is approved, the City will conduct a survey of the area to provide legal boundaries; and

WHEREAS, the Alaska Department of Natural Resources requires a supporting resolution from a community's governing body accompany an application for conveyance of tidelands;

NOW THEREFORE BE IT RESOLVED that the Unalaska City Council requests that the State of Alaska Department of Natural Resources approve the City's application to acquire the tidelands depicted in Exhibit A pursuant to AS 38.05.825.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on December 28, 2021.

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Vincent M. Tutiakoff, Sr  
Mayor

ATTEST:

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Marjie Veeder, CMC  
City Clerk

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## MEMORANDUM TO COUNCIL

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To: Mayor and City Council Members  
From: Peggy McLaughlin, Port Director  
Through: Erin Reinders, City Manager  
Date: December 28, 2021  
Re: Resolution 2021-81: Supporting the City's application to acquire tide and submerged land from the State of Alaska Department of Natural Resources for the expansion and remodel of the Robert Storrs Small Boat Harbor

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**SUMMARY:** Resolution 2021-81 is a resolution of support for the City of Unalaska to acquire additional tidelands from the State of Alaska. These tidelands are necessary for the City of Unalaska to replace the Robert Storrs Harbor A and B floats with the desired layout and additional slips. Staff recommends approval.

**PREVIOUS COUNCIL ACTION:** There have been no previous Council actions found in regard to the desired tidelands.

**BACKGROUND:** This resolution of support is needed as a part of the application process for additional tidelands from the State of Alaska for the Robert Storrs Harbor.

**DISCUSSION:** The Robert Storrs Harbor A and B Float Replacement Project has been a priority for several years. Council went through various discussions in 2012-2013 reviewing concept layouts for replacing the existing floats and expanding the number of slips.

In order to expand the harbor and reconfigure the floats, additional tidelands are required. The tidelands needed belong to the State of Alaska under the stewardship of the Department of Natural Resources. This resolution of support will be submitted with the City's application for the tidelands.

Before we proceed with additional design and permitting for A and B floats, the City needs to acquire the tidelands from the State of Alaska.

**ALTERNATIVES:**

- 1) Council could fully support Resolution 2021-81; or
- 2) Council could choose to not support Resolution 2021-81 as written; or
- 3) Council could postpone decision for further discussion.

**FINANCIAL IMPLICATIONS:** This Resolution implies no financial obligation to the City of Unalaska.

**LEGAL:** Not applicable.

**STAFF RECOMMENDATION:** Staff recommends approving this Resolution.

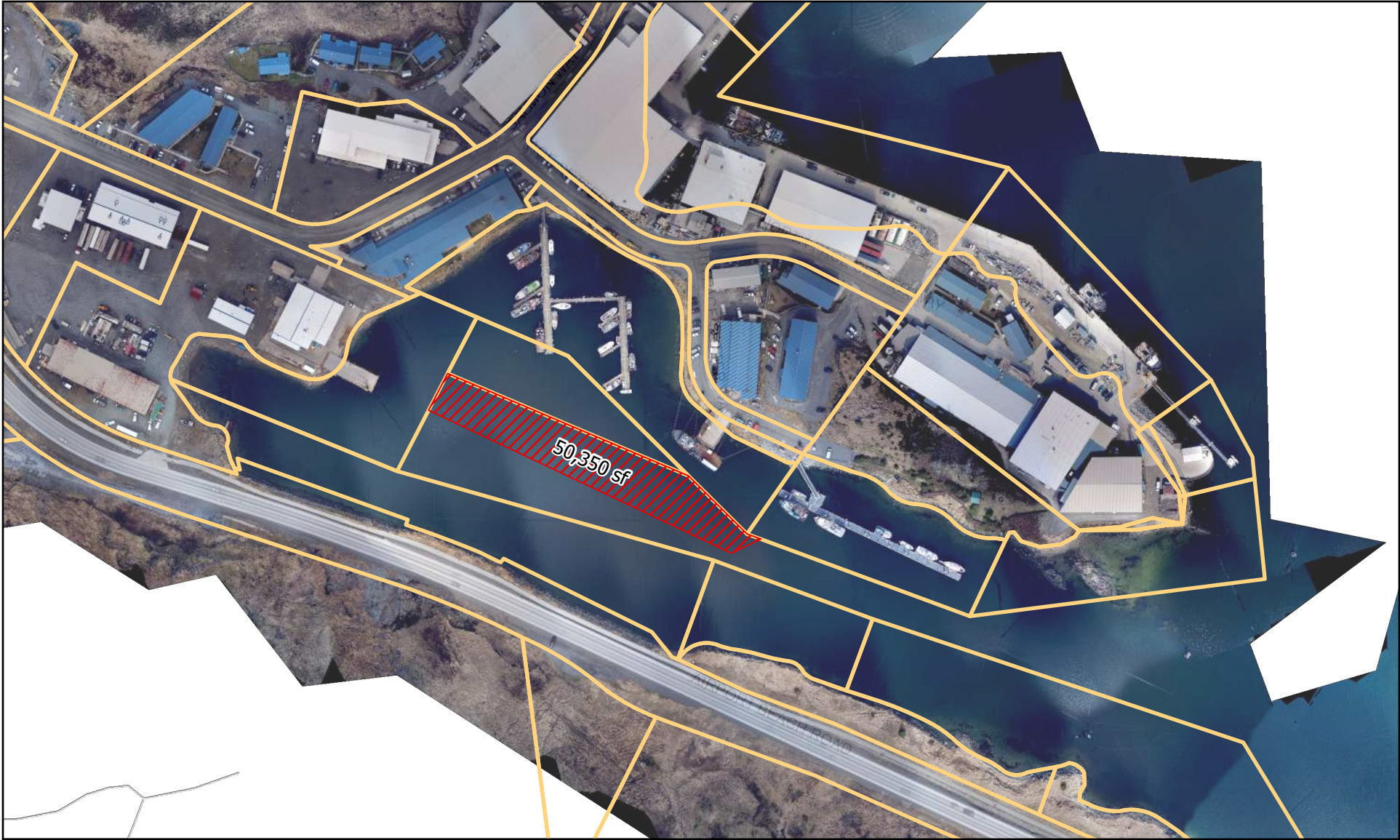
**PROPOSED MOTION:** I move to adopt Resolution 2021-81.



**CITY MANAGER'S COMMENTS:** I support Staff's recommendation. These tidelands are necessary for the Robert Storrs Harbor A and B Float Replacement Project.

**ATTACHMENTS:**

- Robert Storrs Harbor Tidelands Area Map
- Draft Application for Tideland Acquisition





-  Proposed New Tidelands
-  Parcel Boundaries

## Robert Storrs Small Boat Harbor



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 hereon. All data and materials Copyright © 2021. All Rights Reserved.





# STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES

## DIVISION OF MINING, LAND AND WATER

- Land Sales and Contract Administration  
550 W 7th Ave., Suite 640  
Anchorage, AK 99501-3576  
(907) 269-8594
- Northern Region  
3700 Airport Way  
Fairbanks, AK 99709  
(907) 451-2740
- Southcentral Region  
550 W 7th Ave., Suite 900C  
Anchorage, AK 99501-3577  
(907) 269-8552
- Southeast Region  
400 Willoughby, #400  
P.O. Box 111020  
Juneau, AK 99811-1020  
(907) 465-3400

### APPLICATION FOR PURCHASE OR LEASE OF STATE LAND

Date \_\_\_\_\_ ADL # (assigned by DNR) \_\_\_\_\_  
 Applicant's Name William Homka Doing business as City of Unalaska Planning Department  
 Mailing Address P.O. Box 610 43 Raven Way  
 City/State/Zip Unalaska, AK 99685 E-Mail planning@ci.unalaska.ak.us  
 Message Phone (907) 581 - 3100 Work Phone (907) 581-3100 Date of Birth \_\_\_\_\_

Is applicant a corporation qualified to do business in Alaska?  **yes**  **no**. Is the corporation in good standing with the State of Alaska, Dept. of Commerce and Economic Development?  **yes**  **no**.

Is applicant 18 years or older?  **yes**  **no**. Are you applying for a  **lease** or  **sale**?

What kind of lease or sale are you applying for?  **Tideland**;  **Public/Charitable Use**;  **Grazing**;  **Millsite**;  
 **Negotiated**;  **Competitive**;  **Non-Competitive**;  **Preference Right**.

If a lease, how many years are you applying for? \_\_\_\_\_ years. (55 years Max.)

Legal Description: Lot(s) \_\_\_\_\_ Block/Tract # \_\_\_\_\_ Survey/Subdivision \_\_\_\_\_

Other: a combined 50,350 square-foot portion of Sections 3 & 10, seaward side of ATS 1360, as attached in Attachment X.

Meridian Seward Township 73S, Range 118W, Section(s) 3 & 10 Acres 1.156

Municipality Unalaska LORAN Reading (optional) \_\_\_\_\_

Geographic Location: Amaknak Island, 166°33'13"W 53°52'41"N

What is the proposed use of and activity on the state land? Floating dock for recreational vessels

Are there any improvements on the land now?  **yes**  **no**. If yes, who owns the improvements, and what is the estimated value? \_\_\_\_\_

If yes, describe any existing improvements on the land. \_\_\_\_\_

Are there any improvements or construction planned?  **yes**  **no**. If yes, describe them and their estimated value.

The southernmost ends of piers of a floating dock system, total project cost estimated at \$ 7 Million. See Attachment X

State the proposed construction date: 7/1/2022; estimated completion date\*: 7/1/2023

Name and address of adjacent land owners and, if you are applying for tidelands, the name and address of the adjacent upland owners: No Adjacent Uplands.

Are you currently in default on, or in violation of, any purchase contract, lease, permit or other authorization issued by the department under 11 AAC?  **yes**  **no**. Within the past three years, has the department foreclosed or terminated any purchase contract, lease, permit or other authorization issued to you?  **yes**  **no**.

**Non-refundable application fee: See current Director's Order for applicable fees.**  
(Fee may be waived under 11 AAC 05.020.)

Date Stamp: \_\_\_\_\_

Is the land applied for subject to any existing leases or permits?  yes  no. If yes,  lease or  permit?

Name lease/permit is issued under: \_\_\_\_\_ ADL # \_\_\_\_\_

Do you think you qualify for a non-competitive lease or sale?  yes  no. If yes, under what provision of **AS 38.05?**

- AS 38.05.035(b)(2)** (to correct an error or omission);
- AS 38.05.035(b)(3)** (owner of bona fide improvements);
- AS 38.05.035(b)(5)** (occupied, or are the heir of someone who occupied the land before statehood);
- AS 38.05.035(b)(7)** (adjacent owner of remnant of state land, not adjoining other state land);
- AS 38.05.068 and .087** (U.S. Forest Service Permittee);
- AS 38.05.075(c)** (upland owner or lessee);
- AS 38.05.035(f)** (previous federal and state authorization, erected a building and used the land for business purposes);
- AS 38.05.102** (current long-term lessee or current shore fishery lessee);
- AS 38.05.255** (millsite lease for mine-related facilities);
- AS 38.05.810(a)\*** (government agency; tax-exempt, non-profit organization organized to operate a cemetery, solid waste facility, or other public facility; or a subdivision's nonprofit, tax-exempt homeowners' association);
- AS 38.05.810(b)-(d)** (non-profit corporation, association, club, or society operated for charitable, religious, scientific, or educational purposes, or for the promotion of social welfare, or a youth encampment);
- AS 38.05.810(e)** (licensed public utility or licensed common carrier);
- AS 38.05.810(f)** (non-profit cooperative organized under AS 10.25, or licensed public utility);
- AS 38.05.810(h)** (Alaska Aerospace Development Corporation);
- AS 38.05.810(i)** (port authority);
- AS 38.05.825** (municipality applying for eligible tidelands, or tidelands required for private development);
- other (please explain): \_\_\_\_\_

**If you have checked one of the above statutes, attach a statement detailing your qualifications under each requirement of that statute.**

Do you think you qualify to lease the land for less than fair market value?  yes  no. If yes, under what provision of **AS 38.05?**

- AS 38.05.097** (youth encampment or similar recreational purpose);  other (please explain).
- AS 38.05.098** (senior citizen discount for a residential lease);

Signature \_\_\_\_\_

Date \_\_\_\_\_

City of Unalaska

Planning Director

If applying on behalf of an agency, municipality, or organization, state which one

Title

NOTICE TO APPLICANT:

- \* For applications filed by a municipality under AS 38.05.810, if there is a remaining entitlement of the municipality under AS 29.65, land transferred under AS 38.05.810 shall be credited toward fulfillment of the entitlement.
- \* Construction may not commence until approval is granted by lessor.
- \* This application will not be considered unless it is accompanied by the appropriate filing fee and completed in full. THE FILING FEE WILL NOT BE REFUNDED NOR IS IT TRANSFERABLE. All checks are to be made payable to the Department of Natural Resources.
- \* Include a 1:63,360 USGS map showing location of proposed activities in relation to survey monumentation or fixed geographical features which fully illustrates your intended use, including the location of buildings and improvements and access points, labeled with all dimensions, and a development plan providing a complete list of proposed activities.
- \* The applicant may be required to deposit a sum of money sufficient to cover the estimated cost of survey, appraisal, and advertising. If the land is sold or leased to another party, the deposit will be returned to the applicant.
- \* The filing of this application and payment of the filing fee vests the applicant with no right or priority in the lands applied for. It is merely an expression of the desire to purchase or lease a parcel of land when and if it becomes available. Filing an application serves the purpose of notifying the state that an individual is interested in purchasing or leasing land. It is not a claim, nor does it in any way obligate the state to sell or lease land.
- \* If the application is for use in conjunction with a guide/outfitter operation, include proof of a guide/outfitter certification for the use area.
- \* If the application is for a commercial fish camp, include a copy of your limited entry permit or an interim-use salmon set net permit.
- \* If applying for a senior citizen discount, include form 102-1042.
- \* AS 38.05.035(a) authorizes the director to decide what information is needed to process an application for the sale or use of state land and resources. This information is made a part of the state public land records and becomes public information under AS 40.25.110 and 40.25.120 (unless the information qualifies for confidentiality under AS 38.05.035(a)(8) and confidentiality is requested, AS 43.05.230, or AS 45.48). Public information is open to inspection by you or any member of the public. A person who is the subject of the information may challenge its accuracy or completeness under AS 44.99.310, by giving a written description of the challenged information, the changes needed to correct it, and a name and address where the person can be reached. False statements made in an application for a benefit are punishable under AS 11.56.210. In submitting this form, the applicant agrees with the Department to use "electronic" means to conduct "transactions" (as those terms are used in the Uniform Electronic Transactions Act, AS 09.80.010 – AS 09.80.195) that relate to this form and that the Department need not retain the original paper form of this record: the department may retain this record as an electronic record and destroy the original.