

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 2022-02

A RESOLUTION OF THE UNALASKA CITY COUNCIL CONSENTING TO THE ASSIGNMENT OF A CATEGORY C OUTFALL LEASE FROM ICICLE SEAFOODS, INC. TO WESTWARD SEAFOODS, INC.

WHEREAS, in accordance with Resolution 2018-03, the City issued to Icicle Seafoods, Inc. (hereafter Icicle) a 20-year lease agreement for a Category C Easement in the City's Tidelands for a discharge line (hereafter the Permit); and

WHEREAS, Icicle is selling certain Unalaska-based assets to Westward Seafoods, Inc., an Alaska corporation (hereafter Westward); and

WHEREAS, pursuant to Unalaska Code of Ordinances § 7.12.060, assignment of the Permit is effective only upon approval in writing by the City; and

WHEREAS, Westward applied for the City's written consent to assignment of the Permit; and

WHEREAS, Icicle and Westward furnished the City with their executed Assignment and Assumption of Private Non-Exclusive Right-of-Way Permit ATS No. 1447 for City Owned Tideland (hereafter Assignment Agreement); and

WHEREAS, the Assignment Agreement and Westward's application for consent to assignment are in order.

NOW THEREFORE BE IT RESOLVED that the Unalaska City Council hereby consents to Icicle's assignment of the Permit to Westward Seafoods, Inc.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on January 11, 2022.

Vincent M. Tutiakoff, Sr.
Mayor

ATTEST

Marjie Veeder, CMC
City Clerk

MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: William Homka, Planning Director
Through: Erin Reinders, City Manager
Date: January 11, 2022
Re: Resolution 2022-02, Consenting to the Assignment of a Category C Outfall Lease from Icicle Seafoods, Inc., to Westward Seafoods, Inc.

SUMMARY: The City of Unalaska administers developable tidelands pursuant to Unalaska Code of Ordinances (UCO) Title 8, Section 8.12.140 Developable Tidelands District. It also has a Tidelands Lease Policy that assists with the application and review requirements for establishing and renewing tideland leases. The policy includes direction as to establishment of annual rents, which in this case is a Category C lease for an area under one acre, so the initial rent required is \$2,250 annually.

The Planning Department processes tideland lease applications and has prepared Resolution 2022-02, which consents to the assignment of a tidelands lease (also referred to as a Right of Way Permit) in ATS 1447 from Icicle Seafoods, Inc., to Westward Seafoods, Inc., for a discharge outfall line. Westward is acquiring the lease area from Icicle, for which the City approved renewal of a similar lease in 2018. Staff recommends approval.

PREVIOUS COUNCIL ACTION:

- Resolution 1997-103. ATS 1447 was approved in November of 1997 and again in October 2007 by Unalaska City Council, each ten (10) year leases for an outfall/discharge line in the Tidelands. The lease amount was for \$1,000 annually.
- Resolution 2018-03. Approval of a new long term (20 year) lease agreement between the City and Icicle Seafoods, Inc., for a Category C Easement in the City's Tidelands for a discharge line (ATS 1447). Lease amount increased from \$1,000 annually to \$2,250 annually per the updated Tidelands Lease Policy.

BACKGROUND: Icicle presently has a discharge line in the City's tidelands. In June of 2017 Icicle requested a new lease, stating the existing lease was due to expire in November 2017. Also, the existing line was replaced with a new line in the same (or near same) location. City Council approved Resolution 2018-03 authorizing a new lease for a total area of 6,075 sq. ft. which is less than one (1) acre in size and qualified for the minimum cost lease of \$2,250 annually per the City's Tidelands Lease Policy. The easement measures about 15' x 405'. The required exhibit indicating the easement's location was prepared and stamped by John Seggeser, a Registered Professional Land Surveyor in the State of Alaska.

DISCUSSION: Icicle is transferring ownership of its operation at the Northern Victor to Westward. The City's Tidelands Lease Policy requires any changes or transfers of lease ownership to be approved by City Council.

Business transactions are often kept as quiet as possible until the purchase is complete. This is the situation here. City staff learned the identity of the purchaser on December 21, 2021. Staff,

with assistance from the City Attorney, worked as expeditiously as possible to assist the companies, so that their experience is as supportive and positive as possible.

The transfer or issuance of a new lease requires approval by City Council. Icicle has a 20 year lease expiring in 2038. All the infrastructure is currently in place for the outfall line, both on land and in the tideland. The lease amount is set at \$2,250 annually per City Tidelands Lease Policy because the area consists of less than one acre. The application included proof of insurance. Both Westward and Icicle have signed the attached assignment and assumption of Icicle's existing permit for ATS 1447. Staff recommends consenting to reassign Icicle's permit to Westward at the present rate of \$2,250 annually.

ALTERNATIVES: Council could approve or disapprove this resolution, however if Council disapproved this action we would need to seek guidance from our legal team to ensure sound rationale.

FINANCIAL IMPLICATIONS: This will allow for the \$2,250 annual payment to continue for the remainder of the existing lease, ending in 2038.

LEGAL: Staff has worked in concert with the City Attorney on this item, and in the drafting on the agreement.

STAFF RECOMMENDATION: Staff recommends City Council adopt Resolution 2022-02.

PROPOSED MOTION: I move to adopt Resolution 2022-02.

CITY MANAGER COMMENTS: I support Staff's recommendation.

ATTACHMENTS: ATS 1447 Assignment, with attached original permit

**ASSIGNMENT AND ASSUMPTION OF PRIVATE NON-EXCLUSIVE
RIGHT-OF-WAY PERMIT ATS No. 1447 FOR CITY OWNED TIDELANDS**

This ASSIGNMENT AND ASSUMPTION OF PRIVATE NON-EXCLUSIVE RIGHT-OF-WAY PERMIT ATS No. 1447 FOR CITY OWNED TIDELANDS (this "Assignment") has been executed and delivered by (a) Icicle Seafoods, Inc. ("Assignor"), an Alaska corporation, the address of which is 641 W. Ewing Street, Seattle, WA 98119, and (b) Westward Seafoods, Inc. ("Assignee"), an Alaska corporation, the address of which is 3015 112th Ave NE, Suite 100, Bellevue, WA 98004.

WHEREAS, Assignor, as the Grantee, and the City of Unalaska ("City"), an Alaska municipal corporation, as the Grantor, are parties to that certain unrecorded Private Non-Exclusive Right-of-Way Permit ATS No. 1447 for City Owned Tidelands ("Permit"), dated as of January 1, 2018, a copy of which is attached as Exhibit A.

WHEREAS, such Permit authorizes Assignor to install an outfall line on a 630 square foot portion of Ballyhoo Road and on a 6,075 square foot portion of ATS 1447, Plat No. 94-13, records of the Aleutian Islands Recording District, Third Judicial District, State of Alaska at the location depicted on page 3 of the Permit.

WHEREAS, Assignor and Assignee, and related parties, have entered or will enter into a confidential Asset Purchase Agreement ("APA") pursuant to which Assignor shall sell certain assets to Assignee and assign all of Assignor's rights, title and interest in and to the Permit and other third party agreements to Assignee and Assignee shall assume all of the unperformed and future obligations and unsatisfied liabilities of Assignor under the Permit related to Assignor's use of the property described in the Permit.

WHEREAS, pursuant to UCO 7.12.060, assignment of the Permit is effective only upon approval in writing by the City.

NOW, THEREFORE, for good, valuable and sufficient consideration, the parties agree that, effective as of the Effective Date:

1. Assignor unconditionally and irrevocably assigns to Assignee all of Assignor's right, duties and obligations in and to the Permit.

2. Assignee unconditionally and irrevocably assumes and agrees to fully, faithfully and timely perform and discharge all of Assignor's unperformed and future obligations, and satisfy all of Assignor's unsatisfied liabilities, under and with respect to the Permit.

3. Assignee warrants and represents to Assignor that (a) it has inspected the outfall line and property described in the Permit, (b) the outfall line and property are in good condition and repair, and (c) Assignee accepts the Permit, the rights, duties and obligation described in the Permit, and the outfall line **AS IS** and **WITH ALL FAULTS**.

4. Nothing in this Assignment is intended to or shall limit or restrict any rights or obligations that Assignee or Assignor may have under the terms of the APA.

5. This instrument shall be effective on the date (the "Effective Date") that is the later of (i) Closing (as defined in the APA), or (ii) receipt of written consent of the City.


Effective Date: _____, 2022.

[signatures on following page]

ASSIGNOR:

ICICLE SEAFOODS, INC.,
an Alaska corporation

DATED: January 4, 2022.

By: 
Name: Rodney Gould
Its: Secretary

ASSIGNEE:

WESTWARD SEAFOODS, INC.,
an Alaska corporation

DATED: _____, 2022.

By: _____
Name: _____
Its: _____

CONSENT OF CITY OF UNALASKA

Pursuant to Resolution No. 2022- ____, the City of Unalaska hereby consents to the above-described Assignment.

By: _____
Name: Erin Reinders
Title: City Manager
Date: January __, 2022

ASSIGNOR:

ICICLE SEAFOODS, INC.,
an Alaska corporation

DATED: _____, 2022.

By: _____
Name: _____
Its: _____

ASSIGNEE:

WESTWARD SEAFOODS, INC.,
an Alaska corporation

DATED: January 4, 2022.

By: [Signature]
Name: Mark J. Habason
Its: President

CONSENT OF CITY OF UNALASKA

Pursuant to Resolution No. 2022- ____, the City of Unalaska hereby consents to the above-described Assignment.

By: _____
Name: Erin Reinders
Title: City Manager
Date: January __, 2022

EXHIBIT A
Copy of Permit

Assignment and Assumption of Private Non-Exclusive Right-of-Way Permit ATS No. 1447 for
City Owned Tidelands
Page 4

4861-4117-8120v.3 0115025-000004

CITY OF UNALASKA
PRIVATE NON-EXCLUSIVE RIGHT-OF-WAY PERMIT
ATS No. 1447
FOR CITY OWNED TIDELANDS

THIS AGREEMENT is made and entered into this 1st day of JANUARY, 2018 by and between the City of Unalaska, whose address is P. O. Box 610, Unalaska, AK 99685, Grantor, and Icicle Seafoods, Inc., whose address is 4019 21st Ave West, Seattle, WA 98199, Grantee.

In accordance with the provisions of the City of Unalaska Code of Ordinances Chapter 7.12, Grantee has filed for a private non-exclusive right-of-way permit for an outfall/intake line to be located within tide and submerged lands patented to the City of Unalaska

Whereas, it is understood and agreed by the Grantee that, as a condition to granting the right-of-way applied for, the land covered by the right-of-way shall be used for no purpose other than the location, construction, operation and maintenance of the said right-of-way, over and across the following City of Unalaska tide and submerged lands:

An outfall line from the Icicle Processing Facility into ATS 1447, as shown on the as built survey, attached as Exhibit A, and Plat 94-13.

This right-of-way permit shall run for a term of 20 years and shall expire on JANUARY 1, 2038, subject to the Special Stipulations attached as Exhibit B.

The Grantee, in the exercise of the rights and privileges granted by this permit, shall comply with all regulations established by the City of Unalaska and all other federal, state or City of Unalaska laws, regulations or ordinances applicable to the area herein granted.

Upon abandonment, termination, revocation or cancellation of this right-of-way permit, the Grantee shall within 90 days remove all structures and improvements from the right-of-way area, except those owned by the Grantor, and shall restore the area to the same or similar condition as the same was upon the issuance of this permit. Should the Grantee fail or refuse to remove said structures or improvements, within the time allotted, they shall revert to and become the property of the Grantor. However, the Grantee shall not be relieved of the cost of the removal of the structure, improvements and/or the cost of restoring the area, and Grantor may remove structures and restore the area at Grantee's cost. Provided however, that Grantor, in its discretion, may waive the requirements contained in this provision if it is determined to be in the best interest of the City of Unalaska to do so.

The Grantee shall utilize the lands subject to the right-of-way consistent with the purposes of the proposed use, as revealed by the application therefor, and shall maintain the premises in a neat and orderly manner and shall adopt and apply such safety measures as shall be necessary, proper and prudent with respect to the use to which the land is subjected.


Prior to any construction or development that will use, divert, obstruct, pollute or utilize any of the waters of the State, the Grantee shall first obtain approval therefor from the Commissioner of the Department of Fish and Game and the Corps of Engineers and file image copies therefor with the Grantor.

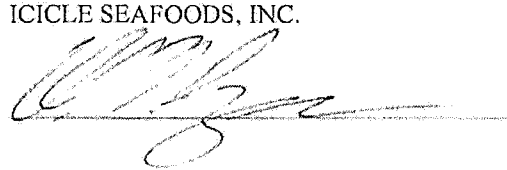
In case the necessity for the right-of-way shall no longer exist, or the Grantee should abandon or fail to use the same, then this permit shall terminate.

The City of Unalaska shall be forever wholly absolved from any liability for Grantee's damages resulting from this permit having been cancelled, forfeited or terminated prior to the expiration of the full time for which it was issued. Grantee shall indemnify and hold harmless Grantor and its employees for any claim or cause of action arising out of this permit, Grantee's use of the right-of-way, or any other right granted to Grantee hereunder, unless caused solely by the negligence of Grantor or its employees.

NOW THEREFORE, in accordance with the provisions of The City of Unalaska Code of Ordinances and the rules and regulations promulgated thereunder, and in accordance with the conditions heretofore set forth or attached hereto and made a part hereof, the Grantee is hereby authorized to locate, construct, operate and maintain said right-of-way over and across the lands herein described.

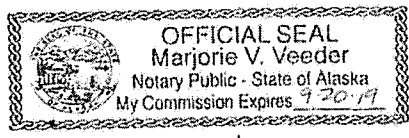
IN WITNESS WHEREOF, the City of Unalaska, as Grantor, acting through the City Manager or a lawfully designated representative, and the Grantee have caused this permit to be signed in duplicate, and have set their respective hands, agreeing to keep, observe, and perform the applicable ordinances, as amended, the rules and regulations promulgated thereunder, and the terms, conditions and provisions herein contained or attached, which on the Grantor's or Grantee's respective parts are to be kept, observed and performed.

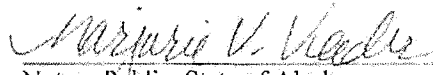
CITY OF UNALASKA

City Manager

ICICLE SEAFOODS, INC.


STATE OF ALASKA)
) ss.
Municipality of Unalaska)

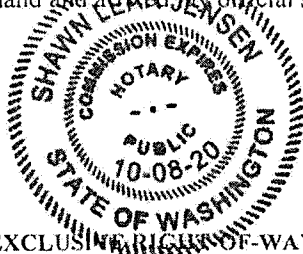
The foregoing instrument was acknowledged before me this 22 day of January, 2018, by Nancy M. Peterson City Manager for the City of Unalaska, a First Class Alaska Municipal Corporation, on behalf of the City of Unalaska.




Notary Public, State of Alaska
My Commission expires 9-20-2019

STATE OF Washington)
) ss.
County of King)

The foregoing instrument was acknowledged before me this 11th day of January, 2018, by Christopher Pugmire, the General Manager, West AK of ICICLE Seafoods, Inc., a Alaska Corporation, on behalf of the corporation. In witness whereof, I have hereunto set my hand and ~~affixed~~ official seal the day and year above written.



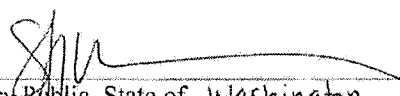

Notary Public, State of Washington
My Commission expires 10/08/20

EXHIBIT A
 Icicle Processing Facility into ATS 1447
 As built survey

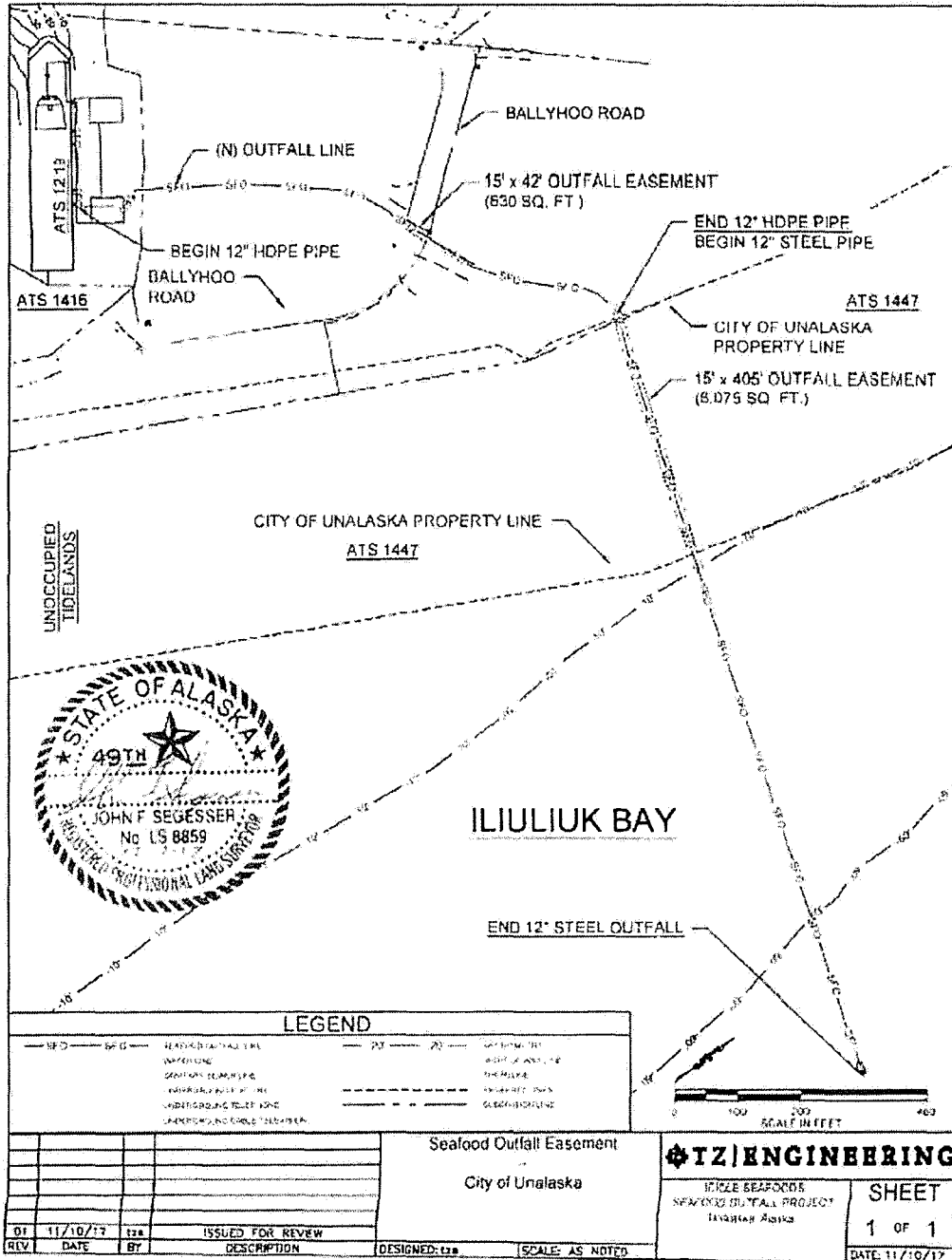


EXHIBIT B
Special Stipulations

PRIVATE NON-EXCLUSIVE
RIGHT-OF-WAY PERMIT
ATS No. 1447
FOR CITY OWNED TIDELANDS

This right-of-way permit shall run for a term of _____ years and shall expire on _____, 20__ subject to the Special Stipulations listed below:

1. The easement granted under this right-of-way is designated as a private non-exclusive. The City of Unalaska retains control of the easement and reserves the right to grant compatible easements within, overlapping, or adjacent to the subject easement area.
2. The annual rental fee is \$2,250.00 per year. The rental fee is payable on or before JANUARY 1 of each year. Said rental fee is subject to periodic review and adjustment every 5 years during the term of the right-of-way.
3. The Alaska Constitution guarantees any citizen of the United States or resident of the state the right of access to navigable and public waters of the state. The Public Trust Doctrine further guarantees the public right to use navigable waters and the land beneath them for navigation, commerce, fishing, and other purposes.
4. This right-of-way is subject to the principles of the Public Trust Doctrine. The Grantor reserves the right to grant other interests to the subject lands consistent with the Public Trust Doctrine as long as said interests will not reasonably interfere with the use of the parcel by the permittee.
5. The grantor reserves the right to revoke this right-of-way if the subject lands are no longer used or needed for the operation of the use permitted. I have read and understand the foregoing stipulations and agree to comply with them.