

ORDINANCE SERIAL NO. 13-07

AN ORDINANCE AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE A TIDELANDS LEASE WITHIN, ALASKA TIDELANDS SURVEY NO. 1161, FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF A DOCK AT FALSE PASS HARBOR.

WHEREAS, Bering Pacific Seafoods, LLC, ("BPS") has requested that the Aleutians East Borough ("Borough") lease approximately 6,720 *square feet* of the Borough's tidelands within Alaska Tidelands Survey No. 1611, at False Pass Harbor, as generally depicted on the attached Exhibit "A"; and

WHEREAS, the State of Alaska granted to the Borough Tidelands Patent No. 425, which conveyed to the Borough those tidelands lying seaward of the mean high tide line of Unimak Island, situated in the Aleutians Islands Recording District on June 2, 2004; and

WHEREAS, the tidelands are legally described as: ALASKA TIDELAND SURVEY NO. 1611, CONTAINING 34.86 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT RECORDED IN THE ALEUTIANS ISLANDS RECORDING DISTRICT ON APRIL 7, 2003, AS PLAT 2003-2; and

WHEREAS, BPS has expressed its desire to enter an agreement with the Borough for the lease of these tidelands for the purpose of constructing, operating and maintaining of a dock and related marine activities; and

WHEREAS, AEBMC Sec. 50.10.060 provides that "[d]isposal of real property may be by sealed bids, outcry auction, lottery, first-come, first-served, negotiation, or such other method as the assembly may provide in the resolution authorizing the disposal"; and

WHEREAS, AEBMC 50.10.100(7) provides that "Real Property" includes interests in real property as well as rights to real property, and includes, but is not limited to, leases, easements, security interests, licenses, permits and options."; and

WHEREAS, AEBMC Sec. 50.10.050 provides for the disposal of real property owned by the Borough mandating that the disposal of real property not covered by other sections within chapter 50.10 “must be authorized by ordinance and must contain” the following:

- (1) a description of the property,
- (2) a finding and the facts that supports the finding that the property or interest is no longer required for a public purpose if the property or interest is or was used for a government purpose,
- (3) the type of interest to be disposed of if less than a fee interest,
- (4) conditions and reservations that are to be imposed upon the property,
- (5) the fair market value of the property,
- (6) the minimum disposal price of the real property,
- (7) the method of disposal, including time, place and dates when relevant,
- (8) special conditions for the disposal, including, when relevant, special qualifications of purchasers and purchase terms, and
- (9) a finding and the facts supporting the finding of the public benefits to be derived if the disposal is to be for less than market value; and

WHEREAS, AEBMC Sec. 50.10.070(a) provides that “[u]nless otherwise provided in the resolution authorizing the disposal, the disposal shall be at not less than the fair market value as determined by a fee appraisal, by the borough’s assessor’s valuation, or by such reasonable estimates as the mayor or assembly, as appropriate, finds to be reliable or appropriate under the circumstances; and

WHEREAS, AEBMC Sec. 50.10.070(c) provides that “[u]ses and purposes that may justify a disposal at less that market value include, but are not limited to” . . . “(3) use that promotes economic development”; and

WHEREAS, the Assembly finds that the lease of the property to BPS is in the best interest of the Borough, and will promote economic development within the Borough; and

WHEREAS, AEBMC Sec. 2.16.020 provides that “[t]he Mayor shall... (A) Direct and supervise the business of the borough to assure that all ordinances and resolutions are executed; and

WHEREAS, AEBMC Sec. 50.10.090 provides that “[t]he mayor may establish procedures and forms for the processing of requests, applications and disposals under this chapter.

NOW THEREFORE, BE IT ENACTED:

Section 1. Classification. This is a non-code ordinance.

Section 2. Authorization to Lease. Based upon the above findings, the Mayor is authorized to negotiate and execute a lease of approximately 6,720 *square feet* of the tidelands located within Alaska Tidelands Survey No. 1611, Aleutian Islands Recording District, as generally depicted on Exhibit "A" with the final square footage to be established when the as-built survey and legal description of the leased property is submitted to and approved by the Borough.

Section 3. Minimum Essential Terms and Conditions. The lease is subject to the following minimum essential terms and conditions:

- (a) The lease shall be subject to the terms and conditions of the Patent or Deed from the state of Alaska, and subject to any littoral rights and any rights of the public under the Public Trust Doctrine.
- (b) The leased property shall be used for by BPS for the construction, operation, and maintenance of a dock and related marine activities. BPS is required to obtain approval of its construction plans from the Borough as well as meet any other state, federal, or other permit requirements prior to the start of any construction;
- (c) BPS shall provide the Borough with an as-built survey showing the exact boundaries and a legal description of the leased property no later than 45 days after the completion of construction of the dock. Upon acceptance of the as-built and legal description by the Borough the survey and legal description shall replace the description of the leased property set out in Section 2 above and a new exhibit depicting the leased property shall be attached to the lease agreement, and the agreement shall be deemed amended accordingly;
- (d) The lease shall be for an initial term of thirty-five years with one thirty-five year renewal option;
- (e) The annual lease payment for the first five-year period of the lease term shall be \$3,360.00 per year (based on \$.50 per square foot), plus tax; provided that this initial annual lease payment amount will be adjusted to reflect the final square footage of the leased property at the lease rate of \$.50 per square foot or amount determined by the Mayor as per Section 2 of this Ordinance, as determined by the as-built survey and legal description required to be submitted to the Borough by BPS within 45 days after completion of construction as provided in subsection (c) of this section; this lease payment adjustment will be applied prospectively starting with the first annual lease payment to be made following the determination of the final square footage of the leased property;
- (f) Beginning with the first year after the initial five-year period of the term of the lease, the Borough Administrator will re-evaluate and adjust the annual lease payment for the leased property for the next five-year

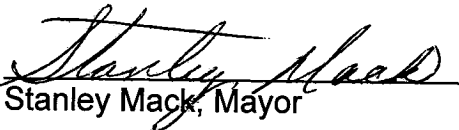
period of the term, and then every five years thereafter. The new annual lease payment amount shall be paid retroactively to the beginning of the lease payment adjustment period. BPS shall pay all appraisal costs associated with re-evaluating and making adjustment to the annual lease payment. See Appendix A, Section 9.

- (g) BPS shall be responsible for obtaining all necessary permits and approvals for its development of the leased property;
- (h) BPS shall indemnify, defend, and hold harmless the Borough for any claims related to or arising out of the BPS development or use of the leased property; and
- (i) The lease shall include all provisions of Borough Code of Ordinances not in conflict with this ordinance; and any other provisions that the Borough Administrator determines to be in the public interest.

Section 4. Effectiveness. This Ordinance shall take effect upon adoption by the Aleutians East Borough Assembly.


INTRODUCED: April 22, 2013

ADOPTED: May 30, 2013


Stanley Mack, Mayor

Date: 6/11/13

ATTEST:


Borough Clerk

Date: 6/11/13