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Presented by: The Manager
Introduced:
Drafted by: J.W. Hartle

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA
Serial No. 2010-02

An Ordinance Authorizing the Port Director to Negotiate and Execute a Lease to Alaska Glacier Seafoods of a Portion of Alaska Tidelands Survey No. 357, Located Near the Auke Bay Loading Facility, and to Accept Conveyance from Alaska Glacier Seafoods of a Perpetual Easement Located Adjacent to the Lease Premises.

WHEREAS, as part of the construction of the uplands portion of the Auke Bay Loading Facility, the City and Borough (CBJ) placed fill along a two foot edge of Alaska Glacier Seafoods' (AGS) property adjacent to AGS's existing retaining wall; and

WHEREAS, this fill placement on AGS's property was done with the prior approval of AGS and allowed CBJ to maximize the uplands area and avoid the cost of constructing another retaining wall; and

WHEREAS, the parties agreed to pursue the conveyance of an easement from AGS to CBJ for the use of this portion of AGS's property for fill placement and maintenance; and

WHEREAS, AGS also expressed an interest in leasing a portion of the newly constructed uplands for future expansion of its seafood processing operations; and

WHEREAS, the Docks and Harbors Department has determined that a lease to AGS of approximately 8,698 square feet (0.2 acres) of the uplands would not interfere with the operations of the Auke Bay Loading Facility; and

WHEREAS, AGS has indicated that the proposed lease area would allow it to expand its seafood processing operations in Juneau; and

1 WHEREAS, the Docks and Harbors Department retained a certified appraiser to
2 perform an appraisal of (1) the market value of the easement, and (2) the market rent
3 value of the proposed lease area;

4 WHEREAS, based on the appraisal, the parties have negotiated a reciprocal
5 transaction whereby CBJ and AGS will trade a perpetual easement from AGS for a
6 lease to AGS of a portion of the adjacent filled uplands, as follows: AGS will convey a
7 perpetual easement to CBJ; CBJ will lease approximately 8,698 square feet of the
8 uplands area to AGS for a term of 35 years; in lieu of CBJ making direct payment to
9 AGS for the easement, CBJ will provide a 25-year lease rent credit to AGS for the initial
10 25 years of the lease for the uplands area; and

11 WHEREAS, the appraisal indicates that the present value of the annual rent credit
12 over 25 years is approximately equal to the present value of the perpetual easement if
13 the rent credit is taken to its term of 25 years, and thus the transaction is a fair market
14 value trade; and

15 WHEREAS, the parties now desire to proceed with the easement and lease
16 transactions as set out in this ordinance;

17 WHEREAS, the Docks and Harbors Board reviewed the easement and lease
18 proposals at its meeting on November 5, 2009, and recommended approval by the
19 Assembly; and

20 WHEREAS, the Assembly Lands Committee reviewed the easement and lease
21 proposals at its meeting on January 11, 2010, and recommended this ordinance be
22 forwarded to the Assembly for action.

23 NOW, THEREFORE, BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF
24 JUNEAU, ALASKA:

25 **Section 1. Classification.** This ordinance is a noncode ordinance.

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1 **Section 2. Authorization to Lease.** The Port Director is authorized to
2 negotiate and execute a lease to Alaska Glacier Seafoods, Inc., of a portion of Alaska
3 Tidelands Survey No. 357, Juneau Recording District, First Judicial District, State of
4 Alaska, containing approximately 8,698 square feet (0.2 acres) of property, as shown on
5 Exhibit A to this ordinance.

6 **Section 3. Authorization to Accept Conveyance of Perpetual Easement.**
7 The Port Director is authorized to negotiate and accept the conveyance from AGS of a
8 perpetual easement of a portion of Alaska Tidelands Survey 357, containing 377.78
9 square feet (0.0018 acres), more or less, as shown on Exhibit B to this ordinance. The
10 purpose of the easement shall be for the placement and maintenance of fill by CBJ to
11 facilitate uplands development at the Auke Bay Loading Facility. As consideration for
12 conveyance of the easement, CBJ will provide a 25-year lease rent credit to AGS for the
13 lease authorized in Section 2 above and further described in Section 4 below.

14 **Section 4. Minimum Essential Terms and Conditions of Lease.** The lease
15 authorized in Section 2 is subject to the following minimum essential terms and
16 conditions:

17 (A) The leased property shall be used by Lessee for expansion of its seafood
18 processing operations.

19 (B) The lease shall be for a term of 35 years with one 35 year renewal option.

20 (C) The annual lease rent payment for the first 25 years of the term will be
21 handled by means of a 25-year lease rent credit granted to AGS by CBJ as consideration
22 for the conveyance of the easement described in Section 3. Beginning with the first year
23 after the initial 25 years of the term, the Port Director will re-evaluate and adjust the
24 annual lease rent payment for the leased property to reflect the then-current market
25 rent for the next five-year period of the term, and again thereafter every five-year

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1 period of the term, in accordance with CBJ 53.20.190(2). The new annual lease
2 payment amount shall be paid retroactively to the beginning of the lease payment
3 adjustment period. Lessee shall pay all appraisal costs associated with re-evaluating
4 and making adjustments to the annual lease payment.

5 (D) The parties agree that if the lease is terminated prior to the end of the 25 year
6 rent credit period, the parties will negotiate the terms of any further consideration, to
7 be accounted for by an appropriate credit or otherwise, for the perpetual easement,
8 taking into consideration the value of the rent credit received by Lessee to the date of
9 termination, the facts and circumstances of the termination of the lease, and any other
10 relevant factors; the parties agree that they will jointly engage a professional appraiser,
11 the cost for which will be shared equally by the parties, to assist them in determining
12 fair and reasonable terms under this subsection.

13 (E) Lessee shall be responsible for obtaining all necessary permits and approvals
14 for any development of the leased property or improvements. In addition, Lessee is
15 required to obtain approval of its development plans and any improvements from the
16 Docks and Harbors Board prior to development of the leased property or improvements.

17 (F) Lessee shall install a fence or other physical barrier between the leased
18 property and the Auke Bay Loading Facility, and Lessee shall not use the Loading
19 Facility to access the leased property. Lessee must obtain approval from the Docks and
20 Harbors Board prior to installation of the fence or other barrier.

21 (G) Lessee shall be responsible for moving and/or relocating any utilities located
22 on the leased property in accordance with applicable codes, and must obtain approval
23 from the Docks and Harbors Board, and any public or private utility responsible for the
24 utility at issue, prior to moving or relocating a utility.

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1 (H) Lessee shall indemnify, defend, and hold harmless CBJ and its officers and
2 employees for any claims related to or arising out of Lessee's use, operation, or
3 maintenance of the leased property, equipment, and improvements, or any further
4 development of the leased property or improvements by Lessee.

5 (I) The lease shall include all provisions of the standard CBJ land lease form not
6 in conflict with this ordinance, and any other provisions that the Port Director
7 determines to be in the public interest.

8 **Section 5. Execution.** The lease and acceptance of easement conveyance
9 authorized by this ordinance may be enforced according to their terms notwithstanding
10 any procedural or substantive deviations or differences from CBJ Title 53.

11 **Section 6. Effective Date.** This ordinance shall be effective 30 days after its
12 adoption.

13 Adopted this day of 2010.

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Bruce Botelho, Mayor

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Attest:

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Laurie J. Sica, Clerk

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