

Presented by: The Manager
Introduced: 09/17/2018
Drafted by: R. Palmer III

RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2832

A Resolution Authorizing the Manager to Execute a Utility Easement with Rainforest Telecom, Inc. across City and Borough Property.

WHEREAS, the Manager received an application from Rainforest Telecom, Inc. requesting a utility easement across a fraction of Lot 1, U.S. Survey 3810, for power and communications cables servicing a communications tower which is located on the adjacent U.S. Forest Service property; and

WHEREAS, Rainforest Telecom, Inc. has applied for and received an easement from the U.S. Forest Service for the power and communications cable through their adjacent property for a twenty-year term; and

WHEREAS, Rainforest Telecom, Inc. owns and operates a communications tower on U.S. Forest Service property which is currently using solar and propane powered generators; and

WHEREAS, at its meeting on June 12, 2018, the Planning Commission recommended that the Assembly approve the easement to locate a power and communication cable across City and Borough property described as a fraction of Lot 1, U.S. Survey 3810; and

WHEREAS, the Lands Committee, at its meeting on August 27, 2018, unanimously passed a motion of support for the Assembly to grant this easement across City and Borough property; and

WHEREAS, an appraisal was completed on July 8, 2018, and Rainforest Telecom, Inc. has agreed to pay the City and Borough \$500.00 per year with the fee to be adjusted every five years based on the Anchorage Consumer Price Index.

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

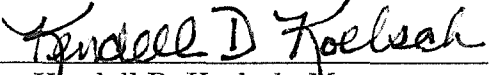
Section 1. Authorization. The Manager is authorized to negotiate and execute a utility easement substantially similar to Exhibit A. The easement shall be subject to the essential terms and conditions outlined in Section 2 below.

Section 2. Terms and Conditions.

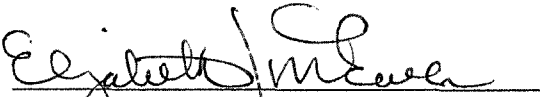
- 1) The grant of the easement is solely for power and communications purposes serving the communications tower located on U.S. Forest Service property.
- 2) This easement has a term of twenty years and will automatically terminate on June 30, 2038. Grantee shall have the option to renew the easement for up to one additional ten-year renewal period.
- 3) The easement is not exclusive, and the City and Borough reserves the right of public pedestrian access along the easement.
- 4) Rainforest Telecom, Inc. (Grantee) is responsible for any necessary construction and is responsible for any and all maintenance within the easement area.
- 5) The Grantee shall provide the City and Borough with as-built drawings showing the final location of the easement within 60 days of installation being completed.
- 6) The fair market value of the easement is \$500.00 per year with the fee to be adjusted every five years based on the Anchorage Consumer Price Index.
- 7) The Manager may include other terms and conditions deemed to be in the public interest.

Section 3. Effective Date. This resolution shall be effective immediately after its adoption.

Adopted this 17th day of September, 2018.


Kendell D. Koelsch, Mayor

Attest:


Elizabeth J. McEwen, Municipal Clerk

Rainforest Telecom, Inc. Utility Easement

PART I. PARTIES. This Easement is between the City and Borough of Juneau, Alaska, a municipal corporation in the State of Alaska, hereafter "CBJ," and Rainforest Telecom, Inc., a business corporation in the State of Alaska, hereafter "Grantee".

PART II. ADMINISTRATION. All communications about this easement shall be directed as follows, and any reliance on a communication with a person other than that listed below is at the party's own risk.

Grantor (CBJ):

City and Borough of Juneau

Attn: Lands and Resources Manager

155 S. Seward Street

Juneau, Alaska 99801

Phone: (907) 586-5252; Fax: (907) 586-5385

Email: Lands_Office@juneau.org

Grantee:

Rainforest Telecom, Inc.

Attn: Wade McKeown, President

Address: 3031 Clinton Dr., Suite 102

Juneau, AK 99801

Phone: (907) 523-2410

Email: wade@rainforesttelecom.com

PART III. DESCRIPTION. This easement is identified as the Rainforest Telecom, Inc. Utility Easement. The following appendices are attached and are considered a part of this agreement as well as anything incorporated by reference or attached to those appendices.

Appendix A: Easement Description & Additional Easement Provisions

PART IV. EXECUTION. The CBJ and Grantee agree and sign below. This is not effective until signed by the CBJ.

Grantor:

CITY AND BOROUGH OF JUNEAU

Date: _____

By: _____

Duncan Rorie Watt, Manager

City and Borough of Juneau

Approved as to content, Lands & Resources

Approved as to form, Law Department

By: _____

By: _____

CITY AND BOROUGH OF JUNEAU ACKNOWLEDGEMENT	
STATE OF ALASKA)
) ss:
FIRST JUDICIAL DISTRICT)
<p>THIS IS TO CERTIFY that on the ____ day of _____, 2018, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared DUNCAN RORIE WATT to me known to be the identical individual described in and who executed the foregoing instrument as the City and Borough Manager of the CITY AND BOROUGH OF JUNEAU, ALASKA, a municipal corporation which executed the above and foregoing instrument; who on oath stated that he was duly authorized to execute said instrument on behalf of said corporation; who acknowledged to me that he signed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.</p> <p>WITNESS my hand and official seal the day and year in the certificate first above written.</p> <div style="text-align: right;"><p>_____ Notary Public for the State of Alaska My Commission Expires: _____</p></div>	
(Seal)	

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Date: _____
By: _____
Wade McKeown, President
Rainforest Telecom, Inc.

STATE OF ALASKA)
) ss:
FIRST JUDICIAL DISTRICT)

WITNESS my hand and official seal the day and year in the certificate first above written.

Notary Public for the State of Alaska
My Commission Expires: _____

APPENDIX A: EASEMENT DESCRIPTION & SPECIFIC EASEMENT PROVISIONS

For the consideration herein, the parties agree to the following easement terms and conditions:

I. EASEMENT LOCATION

Grantor (CBJ) hereby conveys, subject to existing rights, a non-exclusive power and communications cable easement appurtenant across a fraction of Lot 1, U.S. Survey 3810, Juneau Recording District, First Judicial District, State of Alaska. The easement is generally depicted in Attachment I. The Grantee shall provide the City and Borough with an as-built survey showing the final location of the easement within 60 days of installation being completed.

II. AUTHORITY

This easement is entered into pursuant to the authority of the City and Borough of Juneau Code section 53.09.300 and Resolution No. 2832.

III. TERM

This easement has a term of 20 years and will automatically terminate on June 30, 2038. Grantee shall have the option to renew the easement for up to one additional ten-year renewal period.

IV. PAYMENT

Grantee shall make payment annually in advance. Payment is due at signing and annually thereafter on or before June 30th for the upcoming fiscal year. During the term and all renewal periods, the payment will be adjusted every five years based on the Anchorage Consumer Price Index.

For the first five-year period, the annual payment is \$500.00.

V. REVOCATION

The easement is revocable if the Grantee, or its successors and assigns, use the easement for purposes other than described in this instrument or if the Grantee, or its successors and assigns, abandons the easement for a period of more than five years. The CBJ shall provide Grantee written notice of revocation 30 days prior.

VI. AUTHORIZED USE

The easement is for the sole purpose of constructing, using, and maintaining a power and communications cable through the CBJ property to serve the communication tower located on the adjacent U.S. Forest Service Property. Upon termination of the easement, Grantee shall remove all related improvements associated with this easement.

VII. ADDITIONAL PROVISIONS

(a) **Non-Exclusivity.** This easement is not exclusive. The CBJ may grant other overlapping easements or uses.

(b) **Construction and Maintenance.** Grantee is solely responsible for any necessary construction and is responsible for any and all related maintenance within the easement area.

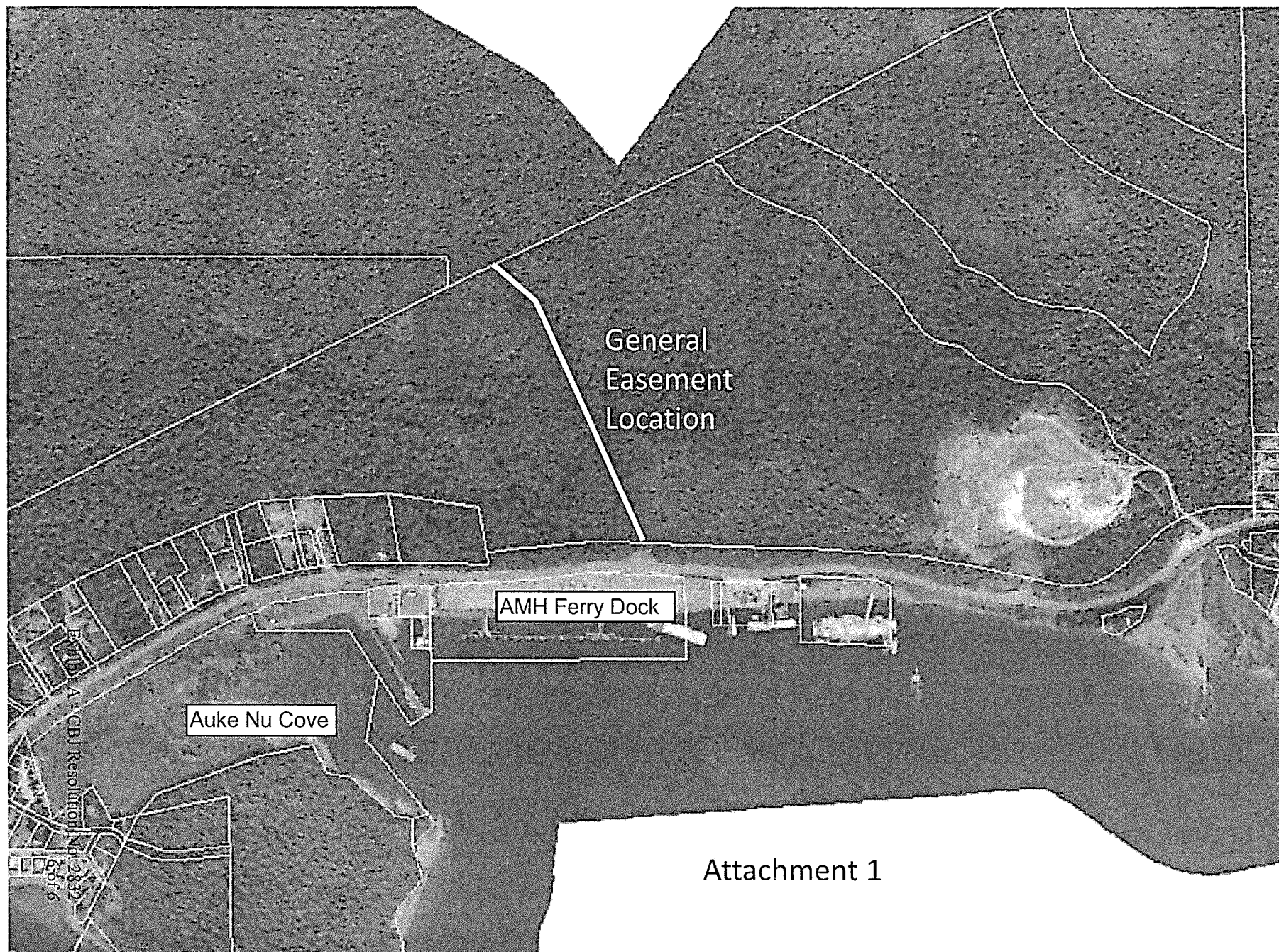
(c) **Pedestrian Access.** The CBJ reserves for the benefit of the public pedestrian access through, along, and across the easement.

(d) **Permitting.** The Grantee shall obtain all authorizations and permits required, if any.

(e) **Indemnification.** The Grantee—its heirs, beneficiaries, successors, and assigns— agrees to defend, indemnify, and hold harmless CBJ, its employees, volunteers, consultants, and insurers, with respect to any action, claim, or lawsuit arising out of or related to this easement, without limitation as to the amount of fees, and without limitation as to any damages, cost or expense resulting from settlement, judgment, or verdict, and includes the award of any attorneys' fees even if in excess of Alaska Civil Rule 82. This indemnification agreement applies to the fullest extent permitted by law and is in full force and effect whenever and wherever any action, claim, or lawsuit is initiated, filed, or otherwise brought against CBJ relating to this easement. The obligations of Grantee arise immediately upon actual or constructive notice of any action, claim, or lawsuit. CBJ shall notify Grantee in a timely manner of the need for indemnification, but such notice is not a condition precedent to Grantee's obligations and is waived where the Grantee has actual notice.

(g) **Governing Law.** The laws of the State of Alaska shall govern this agreement. The venue for any proceedings brought by either party to enforce the terms of this agreement shall be in the First Judicial District at Juneau, Alaska.

(h) **Integration and Modification.** This agreement, including all appendices, exhibits, and references, constitutes the entire agreement between parties. Any modification, amendment, or waiver of any provisions of this agreement shall not be effective, unless it is mutually agreed to in writing and signed by both parties.



Attachment 1