

Presented by: The Manager
Introduced: 04/01/2013
Drafted by: J.W. Hartle

RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2634(b)

A Resolution Authorizing the Port Director to Convey a Non-Exclusive Permanent Easement to the State of Alaska Department of Transportation and Public Facilities for Approximately 2,272 Square Feet of Municipal Property, Located at Lot 4, U.S. Survey 2664, 11755 Glacier Highway, to Facilitate the Construction of the Auke Bay Roundabout.

WHEREAS, the City and Borough owns Lot 4, U.S. Survey 2664, a parcel of land located at 11755 Glacier Highway; and

WHEREAS, the Alaska Department of Transportation and Public Facilities (ADOT) requests a permanent easement of approximately 2,272 square feet of municipal property in order to allow for the construction and maintenance of a driveway necessary to facilitate the construction of the Auke Bay Roundabout; and

WHEREAS, ADOT offers to secure the permanent easement at fair market value, as the desired conveyance is needed to allow ADOT to relocate the driveway to a residential lot being eliminated by the Roundabout; and

WHEREAS, ADOT intends to assign the easement to the residential property owner who will be benefitted by the driveway; and

WHEREAS, the Docks and Harbors Board is authorized under CBJ 85.02.060(a)(5) to administer tideland, submerged land, and other land under its jurisdiction, and any action required by CBJ Title 53 of the City Manager may be performed by the Port Director; and

WHEREAS, at its meeting on December 20, 2012, the Docks and Harbors Board adopted a motion in favor of granting an easement to ADOT; and

WHEREAS, at its meeting on January 8, 2013, the Planning Commission forwarded a recommendation of support to the Assembly; and

WHEREAS, at its meeting on January 14, 2013, the Assembly Lands Committee adopted a motion of support to the Assembly; and

WHEREAS, at its meeting on March 28, 2013, the Docks and Harbors Board reviewed and approved the presented March 6, 2013 appraisal from Horan & Company, LLC, valuing the property for \$86,522; and

WHEREAS, ADOT approved the appraisal and issued a Determination of Just Compensation in the amount of \$86,600.

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

Section 1. Authorization. The Port Director is authorized to convey on behalf of the City and Borough of Juneau (Grantor) a permanent easement to the Alaska Department of Transportation and Public Facilities (Grantee) of approximately 2,272 square feet of CBJ property, located on Lot 4, U.S. Survey 2664, to allow for the construction and maintenance of a driveway to serve Lot 3B, U.S. Survey 2664, necessary to facilitate the construction of the Auke Bay Roundabout; subject to the terms and conditions established herein:

Section 2. Terms and Conditions.

- (a) The easement shall be permanent.
- (b) The easement shall be revoked if property being served by the easement does not use the driveway for a period of five years.
- (c) The easement shall be used for the purpose of egress and ingress in service of the residence located on Lot 3B, U.S. Survey No. 2664.
- (d) Electric, telephone, water, and sewer lines may be located in the easement corridor.
- (e) The easement is not exclusive. The City and Borough may grant other, overlapping easements.
- (f) The purpose of the easement shall be for the construction, maintenance, and use of a driveway. Grantee shall be responsible for construction and maintenance of the improvements located within the easement. No other use is allowed, and no other improvements are authorized without the express written approval by the Grantor.
- (g) Grantee shall provide an as-built survey of the driveway once constructed, in accordance with City and Borough surveying standards.

- (h) The Grantee shall obtain all authorizations and permits necessary to construct the driveway.
- (i) The cost of the easement shall be at the fair market value of \$86,600, as determined by appraisal.
- (j) Grantee agrees to defend, indemnify, and save the City and Borough, its officers, agents and employees, with respect to any action, claim or lawsuit arising out of the use, occupancy, construction, and/or maintenance of the easement, due to the Grantee's negligence. The conveyance shall contain the following provision:

Grantee agrees to defend, indemnify, and save CBJ, its officers, agents and employees, with respect to any action, claim or lawsuit arising out of the use, occupancy, construction, and/or maintenance of the easement due to the Grantee's negligence. This agreement to defend, indemnify, and hold harmless is without limitation as to the amount of fees, and without limitation as to any damages resulting from settlement, judgment, or verdict, and includes the award of any attorney's fees even if in excess of the fees authorized by Alaska Civil Rule 82. The obligations of Grantee arise immediately upon notice to the CBJ of any action, claim or lawsuit. The CBJ shall notify Grantee in a timely manner of the need for defense or indemnification, but such notice is not a condition precedent to Grantee's obligations and may be waived where the Grantee has actual notice. This agreement applies, and is in full force and effect, whenever and wherever any action, claim or lawsuit is initiated, filed or otherwise brought against the CBJ.

The Grantor and Grantee recognize the Grantee's intent to assign this easement to the property owners at Lot 3B (according to the subdivision of U.S. Survey No. 2664 and Alaska Tidelands Survey No. 16, according to Plat 2003-15, Juneau Recording District, First Judicial District, State of Alaska) for ingress and egress to said lot. The assigned easement's provision requiring the property owner to hold harmless and indemnify the City and Borough of Juneau will supersede the indemnification requirements of this easement upon the recording of the assigned easement.

- (k) Assignment. Grantee may assign the easement to the owner of Lot 3B, U.S. Survey No. 2664, upon written approval by the Port Director and where the assigned easement contains a provision requiring the property owner to hold harmless and indemnify the City and Borough, to read as follows:

Indemnification. Grantee agrees to defend, indemnify, and save the City and Borough of Juneau (CBJ) and its officers, agents and employees, with respect to any action, claim or lawsuit arising out of the use, occupancy, construction, and/or maintenance of the easement, and any constructed improvements located

within the easement. This agreement to defend, indemnify, and hold harmless is without limitation as to the amount of fees, and without limitation as to any damages resulting from settlement, judgment, or verdict, and includes the award of any attorney's fees even if in excess of the fees authorized by Alaska Civil Rule 82. The obligations of Grantee arise immediately upon notice to the CBJ of any action, claim or lawsuit. The CBJ shall notify Grantee in a timely manner of the need for defense or indemnification, but such notice is not a condition precedent to Grantee's obligations and may be waived where the Grantee has actual notice. This agreement applies, and is in full force and effect, whenever and wherever any action, claim or lawsuit is initiated, filed or otherwise brought against the CBJ.

Notwithstanding the foregoing, the Grantee shall have no obligation to hold harmless and indemnify the State of Alaska and its officers, agents and employees (State) to the extent the State is determined to be liable for its own acts or omissions, except that to the maximum extent allowed by law, the Grantee shall hold the State harmless from and indemnify the State for liability, claims, or causes of action arising from an alleged defect in the design or construction of facilities located within the easement at the date of this grant, regardless of negligence or other fault, if such liability, claim, or cause of action arises out of an incident that occurs more than two years after the assignment of this easement to the Grantee.

- (l) The City and Borough retains the right to develop the property to allow for the dedication of a right-of-way.
- (m) The City and Borough reserves the right to use the easement for access, construction, maintenance, and utility purposes directly or indirectly relating to the Grantor's use of the remaining portion of Lot 4, U.S. Survey 2664.
- (n) Other Terms and Conditions. The Port Director is authorized to include other easement terms and conditions he finds to be in the public interest.

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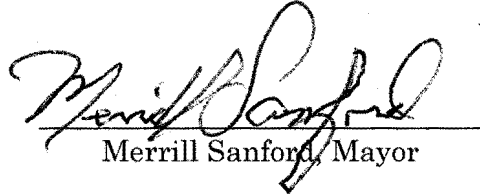
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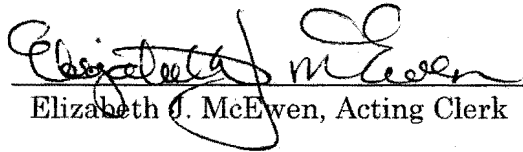
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Section 3. Effective Date. This resolution shall be effective immediately upon adoption.

Adopted this 1st day of April, 2013.


Merrill Sanford, Mayor

Attest:


Elizabeth J. McEwen, Acting Clerk