



CITY & BOROUGH of YAKUTAT
 P.O. Box 160
 Yakutat, Alaska 99689
 Phone (907) 784-3323
 Fax (907) 784-3281

NOTICE

**City and Borough of Yakutat, Alaska
 Borough Assembly Special Meeting
 October 15, 2020 7:30 p.m. City Hall**

The Borough Assembly shall conduct a Special Meeting on
 Thursday, October 15, 2020 at 7:30 p.m. at the City Hall, to consider a Resolution of
 the Borough Assembly approving the lease of land to Yakutat Tlingit Tribe for
 construction and operation of residential structures to be utilized as temporary
 shelters for victims of domestic violence.

While the Meeting is open to the public, the public is strongly encouraged to
 participate using the teleconference number. Individuals who wish to provide written
 comments to the Borough Assembly under Agenda Item Audience Participation,
 please contact the Borough Clerk at 907-784-3323 ext. 104 or
 Email: admin@yakutatak.us no later than Thursday, October 15th at 4:30 p.m.

Teleconference Number: 1-800-528-2793

Code: 3182367

This Meeting will be aired on the local radio station KYKT 91.9 FM



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AGENDA

**City and Borough of Yakutat, Alaska
Borough Assembly Special Meeting
October 15, 2020 7:30 p.m. City Hall**

- 1. CALL TO ORDER:
- 2. ROLL CALL:
- 3. ADOPTION OF AGENDA:
- 4. AUDIENCE PARTICIPATION:
 - 4.1 IN PERSON PARTICIPATION
 - 4.2 PARTICIPATION BY WRITTEN COMMENT
 - 4.3 TELEPHONIC PARTICIPATION
- 5. HEARINGS, ORDINANCES AND RESOLUTIONS:

RESOLUTIONS:

- 5.1 RESOLUTION 20-345: A RESOLUTION OF THE BOROUGH ASSEMBLY APPROVING THE LEASE OF LAND TO YAKUTAT TLINGIT TRIBE FOR CONSTRUCTION AND OPERATION OF RESIDENTIAL STRUCTURES TO BE UTILIZED AS TEMPORARY SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE.

- 6. AUDIENCE PARTICIPATION:
 - 11.1 IN PERSON PARTICIPATION
 - 11.2 TELEPHONIC PARTICIPATION
- 7. ASSEMBLY MEMBERS COMMENTS:
- 8. ADJOURNMENT:

5.1

**CITY AND BOROUGH OF YAKUTAT, ALASKA
RESOLUTION 20-345**

A RESOLUTION OF THE BOROUGH ASSEMBLY APPROVING THE LEASE OF LAND TO YAKUTAT TLINGIT TRIBE FOR CONSTRUCTION AND OPERATION OF RESIDENTIAL STRUCTURES TO BE UTILIZED AS TEMPORARY SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE.

WHEREAS, Yakutat Tlingit Tribe (YTT) has secured funding through the United States Department of Justice, Office of Victims of Crime, to assist in improving and expanding services for victims of domestic violence (Grant Award #2019-VO-GX-0042); and

WHEREAS, the funding allows for the procurement of manufactured single or multi-family homes for use by domestic violence victims as temporary shelters; and

WHEREAS, YTT has requested to lease, for a term of 20 years, a parcel of Borough land for this use; and

WHEREAS, the parcel has been identified and assessed by the Borough Assessor; and

WHEREAS, the Assembly considered the lease previously, and approved it under Assembly Resolution 20-338; and

WHEREAS, since that approval, YTT has now requested a number of modifications to the lease agreement; and

WHEREAS, the Borough Assembly, under Chapter 7.20 and Section 7.16.060 of the Borough Code, hereby approves the modified lease of this parcel for this use, and determines that this use is for a public purpose and is advantageous to the Borough.

THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF YAKUTAT, ALASKA as follows:

SECTION 1: The lease of the following described Borough property to Yakutat Tlingit Tribe is hereby approved, on substantially the terms and conditions set out in the attached Lease Agreement.

A part of ASLS 87-133, Township 27 South, Range 34 East, Copper River Meridian Alaska, containing .63 acre more or less, described as follows:

Commencing at the Northeast Corner (1) of ASLS 87-133. thence S 18°02'33" E along the Easterly property line a distance of 125 feet, thence S 71°57'27" W a distance of 25 feet to the point of beginning, lease corner 1, thence S 71°57'27" W a distance of 125 feet to lease corner 2,

thence S 18°02'33" E a distance of 220 feet to lease corner 3, thence N 71°57'27" E a distance of 125 feet to lease corner 4, thence N 18°02'33" W a distance of 220 feet to the point of beginning.

SECTION 2: The Borough Manager is authorized to sign the Lease Agreement on behalf of the Borough.

PASSED AND APPROVED THIS _____ DAY OF _____ 2020.

Cindy L. Bremner, Mayor

ATTEST:

Alfredo Munoz, Jr.
Borough Clerk

Reso093a

CITY AND BOROUGH OF YAKUTAT
P.O. BOX 160
YAKUTAT, ALASKA 99689

LEASE AGREEMENT

This Lease Agreement (hereinafter "this agreement" or "this lease agreement") is made, effective as of the date of the last signature below, between the City and Borough of Yakutat, P.O. Box 160, Yakutat, Alaska, 99689, hereinafter referred to as "lessor", and Yakutat Tlingit Tribe, P.O. Box 418, Yakutat, Alaska 99689, hereinafter referred to as "lessee."

In consideration of the mutual promises contained in this agreement, the parties agree as follows:

1. Grant of Lease and Description of Leased Property.

A. Under the authority of CCBY Chapter 7.20, this lease is issued for the following described real property, hereinafter referred to as the "leased property", subject to all valid existing rights, easements, including public access easements, rights-of-way (including any section line right-of-way), reservations and exceptions, including those found in any patent or deed by which the lessor received the property, or other interests in the land in existence on the date of execution of this lease agreement:

A part of ASLS 87-133, Township 27 South, Range 34 East, Copper River Meridian Alaska, containing .63 acre more or less, described as follows:

Commencing at the Northeast Corner (1) of ASLS 87-133, thence S 18°02'33" E along the Easterly property line a distance of 125 feet, thence S 71°57'27" W a distance of 25 feet to the point of beginning, lease corner 1, thence S 71°57'27" W a distance of 125 feet to lease corner 2, thence S 18°02'33" E a distance of 220 feet to lease corner 3, thence N 71°57'27" E a distance of 125 feet to lease corner 4, thence N 18°02'33" W a distance of 220 feet to the point of beginning.

Subject to the terms and conditions set out herein, and any attachments hereto or matters incorporated herein, the lessor leases to lessee, and lessee leases from lessor, the leased property.

B. Lessee, at lessee's sole expense, shall cause to survey and prepare a recordable subdivision plat of the leased parcel, approved by the Borough. The survey

and plat shall comply with Borough Code, and any additional survey instructions issued by the lessor. The survey shall be completed and recorded within thirty (30) months of the effective date of this lease agreement.

2. Term of Lease. The term of this lease agreement is twenty (20) years, commencing on the 1st day of November, 2020 and ending at 12 o'clock midnight on the 31st day of October, 2040, unless sooner terminated under the terms of this agreement.

3. Lease Payment.

A. The lessee shall pay to the lessor in advance, without the necessity of any billing by the lessor, an annual payment of Five Thousand Five Hundred Dollars and No Cents (\$5,500.00), due on or before the 1st day of November of each year of the term, beginning November 1, 2020. For the purposes of this agreement, that amount is presumed to be the fair market rental value of the lease property for its intended purpose as a community program site.

The lease payment set out above is subject to optional adjustment by the lessor at five (5) year intervals, beginning at the commencement of the sixth year of the term (hereinafter referred to as an "adjustment date"), as set out in subsection (B) of this section 3. The compensation adjustment, if implemented by lessor, takes effect on the applicable adjustment date, regardless of whether the adjustment determination occurs before or after that date. Lessor may not make retroactive upward lease adjustments, though, for any lease periods greater than one year after before the adjustment is made. All reasonable costs of an adjustment, including reappraisal if required by the lessor, will be borne by the lessee. Lessor agrees to credit lessee for 50% of those costs through lease adjustments.

B. At an adjustment interval, the lessor may, at its discretion, adjust and increase the lease payment. As noted in subsection A, all lease adjustments shall be forward looking with a maximum of one year retroactivity. Should the lessor fail to make any lease adjustment at any five (5) year interval, then the relevant lease payment due shall continue subject to its then terms until such time as the lessor opts to pursue an adjustment. The lessee shall continue to make the relevant lease payment due until it receives notification from the lessor of a lease payment adjustment. The payment may be adjusted based upon an appraisal of the leased property, a review of lease rates for comparable properties, or upon any other methodology to be used by the lessor to establish the fair rental value of properties. The lessor may require the lessee to provide an acceptable current market appraisal of the leased property, with the appraiser and appraisal subject to the review and approval of lessor, and the cost of appraisal borne by the lessee. Lessor agrees to credit lessee for 50% of those costs through lease adjustments. The lessor may then adjust the lease payment based upon or in

conjunction with that appraisal. Adjustment of the lease payment is not limited to the appraised fair rental value of the leased property, but shall not be less than that amount.

4. Penalty/Interest on Delinquent Payments. Any payment due under this lease agreement shall be deemed in default and delinquent if not paid within fifteen (15) days of the due date. The sum of Two Hundred Fifty Dollars and No Cents (\$250.00), or interest at the annual rate of eight percent (8%) on the delinquent payment, whichever is greater, shall be assessed on any delinquent payment. Additionally, the lessee shall be responsible to lessor for any returned check fees or charges incurred by lessor as to any check or other payment of lessee on which the bank refuses payment.

5. Use of Leased Property. The leased property shall be used only for construction and operation of two 56' x 15' residential structures as temporary shelters for victims of domestic violence, and one 48' x 30' structure to be utilized as a domestic violence shelter office.

A. The lessee shall submit to lessor, and obtain lessor's prior approval of, a development plan setting forth the following:

i. a thorough description of any equipment, facilities or improvements to be constructed, installed or otherwise placed upon the leased property (and including those already existing on the property at the time of lease commencement), the use of each such item, and a precise map showing the placement of same;

ii. a plan for installation of utilities to the property;

iii. a plan for removal of refuse from the site;

iv. a plan for security at the premises; and

v. a plan for restoration and reclamation of the leased property to its original condition upon expiration or termination of the lease.

Such development plan, once approved, shall be considered a part of this lease agreement.

Approval of a development plan, or any revision to a plan, is not approval of any required zoning compliance permit, or consent to any particular use under the Zoning Code of the City and Borough of Yakutat. Lessee is required to separately apply for and obtain any necessary zoning permits and approvals from the City and Borough of Yakutat.

B. Lessee agrees that all development of, and improvements placed upon, the leased property by lessee shall be of good quality, using appropriate materials and

workmanship, and in compliance with all applicable building, fire and other applicable codes. Performance of development on the leased property, once started, shall be timely and efficiently completed to conclusion. Lessee shall be solely responsible for payment, and shall promptly and timely pay in full, all contractors, subcontractors, and other third parties for work performed in connection with lessee's development and improvements.

C. Any use or development of the leased property must be consistent and in compliance with the approved development plan, and lessee is prohibited from placing or installing any equipment or facilities, or constructing any improvements, on the leased property except for those specifically contained in the approved development plan, and only in the specific location approved and placed/installed/constructed in the manner provided. The lessee is responsible for any survey that may be necessary for accurate location. All such equipment, facilities and improvements shall be properly maintained, and safeguarded in a manner necessary to prevent said from becoming an attractive nuisance. Any use or development inconsistent with the approved development plan is a violation of this lease. Equipment, facilities or improvements placed or constructed on the leased property in violation of this provision are subject to an order of removal issued by lessor, failing which lessor may, at its discretion, suspend activities of the lessee on the leased property, terminate this lease agreement, and/or remove said equipment, facilities or improvements at lessee's expense.

D. This lease is for surface use only. The lessee may not, without lessor's written approval, utilize, sell or remove from the leased property any surface or subsurface material, including but not limited to, coal, oil, gas, timber, stone, mineral, rock, gravel, sand, peat moss, topsoil or similar material or matter.

E. Any proposed revision to the use of the leased property or the development plan must be submitted to, and approved in writing by, the lessor prior to any change by lessee in use or development.

F. Failure of the lessee to make substantial use of the leased property consistent with the approved development plan within two (2) years of lease inception, or any substantial abandonment or cessation of activities by lessee for one (1) year, will, in the lessor's discretion, constitute grounds for termination of the lease.

6. Disposition upon Termination or Expiration. Upon the expiration or other termination of this lease agreement, the lessee shall peacefully leave and deliver up all of the leased property in good, sanitary and marketable condition acceptable to the lessor. Unless otherwise agreed to by lessor, lessee shall, at lessee's sole expense, remove all property, equipment, facilities and improvements (excepting utility installations) from the leased property and restore the leased property to its original or otherwise agreed upon condition, in accordance with the restoration plan set forth in the approved development plan. If any of the lessee's property, equipment, facilities and

improvements are not removed in accordance with the restoration plan, title to it shall, at lessor's discretion, vest in lessor, the lessee may be required to pay rent on any such items left on the property and/or the items may be sold under the provisions of section 7.20.080 of the Borough Code. The lessee shall be liable to the lessor for any costs, expenses or damages arising out of the failure of lessee to comply with this provision or the provisions of the restoration plan.

7. Posted Notice. Lessee shall post a notification on the leased property, in a conspicuous location approved by lessor, that (a) states that the premises are occupied and operated by the Yakutat Tlingit Tribe, and (b) contains a contact number for lessee for inquiries. The notice shall be no less than 24" x 24" in size, with a correspondingly large font size, and shall be made of weatherproofed materials. Lessee shall maintain the notice in good condition and repair.

8. Repairs and Maintenance/No Waste or Injury/Sanitation.

A. The lessee shall, at lessee's sole cost and expense, keep and maintain the leased property and any facilities and improvements placed thereon in good condition and repair, excepting normal wear and tear, to ensure that the leased property and its value shall not in any way be diminished or impaired. The lessee shall take all necessary steps to avoid deterioration of any lessee facilities and improvements, or parts or systems thereof, through preventive and corrective measures, and shall promptly repair damage to such facilities and improvements or any portion of the premises.

B. The lessee shall not commit waste or injury upon the leased property, whether ameliorated or otherwise. The lessee shall be liable for all damages sustained by lessor due to waste or injury.

C. The lessee shall promptly remove and properly dispose of all refuse, waste materials, garbage, and other rubbish resulting from lessee's activities. Any temporary storage of same shall be performed by lessee in compliance with all applicable laws and so as to prevent the creation of a health or safety hazard, or the attraction of or access to same by wildlife or disease vectors.

D. The lessee shall comply with all regulations or ordinances of the City and Borough of Yakutat which are promulgated for the promotion of sanitation.

9. Compliance with Laws/Permits.

A. The lessee shall, in use and occupation of and activities on the leased property and at its sole expense, comply with all applicable federal, state and local laws, statutes, ordinances, regulations, and orders. The lessee shall also ensure compliance by its officers, agents, representatives, employees, contractors, guests and invitees.

B. The issuance of this lease does not relieve the lessee of responsibility for obtaining licenses or permits which may be required by duly authorized state, federal or local agencies having jurisdiction over the leased property or the approved use to be made of the leased property. Any necessary permits or licenses must be obtained prior to commencement of the permitted or licensed activity. The lessee may not permit any unlawful activity to be conducted on the leasehold.

C. The lessee shall pay prior to delinquency all taxes and assessments accruing against the leased property or improvements located thereon, or arising out of activities conducted on the leased property. If lessee fails to fully and timely collect and/or pay taxes due the City and Borough of Yakutat, the lessor may, at lessor's discretion and under section 24 of this lease agreement, suspend all activities of the lessee on the leased property and/or terminate this lease agreement. Resumption of suspended activities may be authorized, in writing, by the lessor after the tax payments in arrears, plus all penalty and interest imposed, have been fully paid.

10. Destruction of Boundary Markers. Any survey monuments and corners, and other survey markers, shall be protected against damage or destruction. The lessee shall promptly notify lessor of any damage to or destruction of such marker, and shall reestablish such marker, at the lessee's sole expense, in a manner approved by lessor.

11. Water Areas. All activities by lessee on the leased property must be conducted so as to avoid damage to any streams, lakes and other water areas and land and shores adjacent to them. Vegetation and other materials, including wastewater, may not be deposited into any waters. Any damage resulting from lessee's failure to properly perform these requirements shall be promptly corrected or repaired by the lessee, at lessee's sole expense, in a manner approved by the lessor.

12. Fire Protection. The lessee shall take all prudent precautions to prevent fires, and is responsible for the suppression, including all costs thereof, of all fires occurring either on the leased property, or outside of the leased property if resulting from or arising out of use or occupancy of the leased property under this lease agreement. The lessee shall comply with all laws, regulations and ordinances currently or hereafter promulgated by all governmental agencies responsible for fire protection in the area of the leased property.

13. Encumbrance of Leased Property. Except upon the prior written consent of lessor, lessee shall keep the leased property free and clear from any and all liens (including without limitation materialmen's or mechanics' liens), or any other claim or encumbrance arising out of any work performed, materials furnished, or obligations incurred by lessee. Lessee agrees to indemnify lessor and defend and hold it harmless from and against any such lien, claim, or encumbrance, or any suit, proceeding or action thereon, together with attorney fees and any costs or expenses incurred by

lessor in connection therewith. Lessee shall discharge and remove any liens, claims or encumbrances promptly, and in all cases within ten (10) days after notice from lessor, in order that lessor's title to the leased property shall be free of and from the effect of such liens, claims or encumbrances. In the event lessee does not so discharge any lien, claim or encumbrance, lessor may, but shall not be required to, do so, and all amounts paid shall be immediately due and owing from lessee. Before commencing or permitting any approved construction or work of alteration, addition or improvement at or to the leased property, lessee shall give lessor at least fifteen (15) days written notice of the commencement of such work.

14. Inspection. The lessor shall have, during regular business hours and upon twenty-four (24) hours notice, access to the leased property and any improvements for purposes of inspection. The lessee may be charged fees by lessor, at lessor's standard rate, for routine inspections of the leased property, inspections concerning potential non-compliance, and a final close-out inspection.

15. Supervision/Employees and Other Agents. The lessee shall maintain adequate supervision at all times at the leased property to ensure that the provisions of this lease agreement are enforced. The provisions of this lease agreement apply with equal force and effect to, and lessee is liable for any noncompliance caused by, any officer, agent, employee, representative, contractor, guest or invitee of lessee.

16. Land Alterations Due to Natural or Artificial Causes. The interest described in this lease, at the time of lease execution, constitutes the entire leased property. If, through natural or artificial causes, accretion or reliction of land occurs contiguous to the leased property, the lessee shall have no right to occupy or use the accreted or relicted land unless a separate lease is entered into with the lessor with respect to such lands.

17. Fuel and/or Hazardous Substances. The lessee shall not carry or store fuel, oil or any hazardous materials on the leased property without the prior written approval of lessor, and subject to such terms and conditions as the lessor, at its discretion, may establish. Any such established terms and conditions are incorporated herein by reference.

18. Indemnity.

A. The lessee shall indemnify, defend and hold harmless the lessor, and all employees, officials, representatives and agents of lessor, from:

i. all claims, demands, judgments, liabilities, penalties and costs (specifically including attorney fees incurred in investigating same) for loss, injury or damage, including but not limited to property damage, personal injury, wrongful death, and wage or employment claims, arising out of or in connection with the use or

occupancy of or activities conducted on the leased property by the lessee, or by any officer, employee, agent, representative, guest, invitee, or contractor of lessee, or otherwise in any way related to this lease agreement;

- ii. any fire or accident on the leased property;
- iii. any nuisance made or suffered on the leased property; and
- iv. any failure of the lessee to keep the leased property in a safe and lawful condition, consistent with all applicable laws, regulations, ordinances, statutes and orders.

B. All equipment, facilities, improvements, and other property whatsoever located on the leased property, are so located at the sole risk of the lessee, whether or not said property is owned by lessee or in lessee's possession or under lessee's control. Lessee will defend, indemnify and hold the lessor harmless from any claim of loss or damage to equipment, facilities, improvements, and other property by any cause whatsoever, including claims by third parties.

C. The obligations and provisions of this section 18 shall survive the expiration or termination of this lease.

19. Insurance.

A. Lessee shall, at lessee's sole expense, obtain and maintain in full force at all times during the term of this Agreement the following policies of insurance:

i. Commercial General Liability (CGL) Insurance, written on an occurrence form and not a claims-made form, insuring against injury, death and property damage, in the amount no less than Two Million Dollars (\$2,000,000) per occurrence;

ii. Commercial Automobile Liability Insurance, covering bodily injury and property damage, with adequate per occurrence limits satisfactory to lessor;

iii. Workers Compensation Insurance as required by state law, and if applicable, any other federal or state insurance requirements regarding lessee's activities; and

iv. Property Insurance, insuring lessee's property and improvements, in adequate amounts to insure the property's full value.

B. Lessor, and its officials, agents, representatives and employees, shall be an additional insured party on the CGL and automobile policies for liabilities connected

with the use and occupancy of or activities conducted by the lessee on the leased property or otherwise related to this lease agreement, and all insurers shall agree to waive all rights of subrogation against lessor, and its officials, agents, representatives and employees. All policies shall be written by insurance companies, and on forms, satisfactory to lessor.

C. Proof of compliance with the provisions of this section, including certificates of insurance, shall be provided to lessor at the time of original issuance and upon renewal thereof. The certificate must provide for a thirty (30) day prior notice to the lessor in the event of cancellation, nonrenewal or material change of conditions.

D. LESSEE SHALL CONSULT AT LEAST ANNUALLY WITH AN APPROPRIATE INSURANCE PROFESSIONAL, LICENSED TO TRANSACT THE BUSINESS OF INSURANCE UNDER ALASKA STATE LAW, TO DETERMINE WHAT TYPES AND LEVELS OF INSURANCE ARE ADEQUATE TO PROTECT THE LESSEE AND LESSOR RELATIVE TO THE LIABILITY EXPOSURES OF LESSEE'S ACTIVITIES ON THE LEASED PROPERTY. THE LESSOR HEREBY RESERVES THE RIGHT TO REQUIRE ADDITIONAL TYPES AND LEVELS OF INSURANCE IF IT DETERMINES, IN ITS DISCRETION, THAT IT IS REASONABLY NECESSARY TO PROTECT THE INTERESTS OF THE PARTIES. THIS INCLUDES INCREASING FROM TIME TO TIME THE REQUIRED COVERAGE LIMITS SET OUT IN PARAGRAPH A ABOVE.

E. In the event the lessee becomes aware of a claim against it relative to this lease agreement, the lessee shall notify and provide documentation and full disclosure of the claim to the lessor within twenty (20) days.

20. Environmental Compliance.

A. The lessee shall, at the lessee's own expense, comply with all existing and hereafter enacted environmental responsibility laws ("Environmental Laws"). The lessee shall, at the lessee's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Environmental Laws.

B. Should the Authority require that a remedial action plan be prepared and that remedial action be undertaken because of the presence of, or any disposal, release, spill, or discharge or threatened disposal, release, spill, or discharge of or contamination by, hazardous materials at the leased property that occurs or is discovered during the term of this lease or arises out of or in connection with the lessee's use or occupancy of the leased property, then the lessee shall, at the lessee's own expense, prepare and submit the required plans and financial assurances and carry out the approved plans.

C. At no expense to the lessor, the lessee shall promptly provide all information, and sign any documents, requested and required by the lessor to determine the applicability of the Environmental Laws to the leased property.

D. The lessee shall indemnify, defend, and hold harmless the lessor from all fines, penalties, suits, judgments, procedures, claims, demands, liabilities, settlements, and actions of any kind arising out of or in any way connected with the presence of or any disposal, release, spill, or discharge or any threatened disposal, release, spill, or discharge of, or contamination by, hazardous materials at the leased property that occurs or is discovered during the term of the lease agreement or arises out of or in connection with the lessee's use or occupancy of the leased property; and from all fines, penalties, suits, judgments, procedures, claims, demands, liabilities, settlements, and actions of any kind arising out of the lessee's failure to provide all information, make all submissions, and take all steps required by the Authority under the Environmental Laws or any other law concerning any spill, discharge, or contamination that occurs or is discovered during the term of this lease agreement or arises out of or in connection with the lessee's use or occupancy of the leased property.

E. The lessee agrees that it will not discharge or dispose of, or suffer the discharge or disposal of, any petroleum products, gasoline, hazardous chemicals, or hazardous materials into the atmosphere, ground, wastewater disposal system, sewer system, or any body of water.

F. In any court action or administrative proceeding, in addition to all other applicable presumptions, it shall be rebuttably presumed that any environmental contamination of the leased property (i) has been released on the leased property; (ii) has resulted from acts or omissions of the lessee or its agent, officer, employee, representative, guest, invitee, or contractor; and (iii) has occurred during the term of this lease. The lessee has the burden of rebutting the presumptions by clear and convincing evidence.

G. The obligations and provisions of this section 20 shall survive the expiration or termination of this lease.

H. As used in this lease, the term "hazardous materials" means any hazardous or toxic substances, material, or waste that is or becomes regulated by any municipal governmental authority, the State of Alaska, or the United States government.

21. No Warranties. The leased property is leased "AS IS, WHERE IS". THE LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES, NOR ASSUMES ANY LIABILITY WHATSOEVER, REGARDING THE CONDITION, QUALITY, PROFITABILITY, OR FITNESS FOR A PARTICULAR USE OF THE LEASED PROPERTY, INCLUDING BUT NOT LIMITED TO THE SOCIAL, ECONOMIC, OR ENVIRONMENTAL ASPECTS OF THE LEASED PROPERTY (INCLUDING WITHOUT

LIMITATION THE SOIL CONDITIONS, WATER CONDITIONS, WATER DRAINAGE, ACCESS, AND NATURAL OR ARTIFICIAL HAZARDS THAT MAY EXIST), AND ANY APPLICABLE STATUTORY OR OTHER WARRANTY IS EXPRESSLY DISCLAIMED BY LESSOR AND WAIVED BY LESSEE. The lessee represents that lessee has inspected the leased property, or has voluntarily declined to do so, and adequately determined that same is suitable for the use intended, and accepts all risks, obvious or hidden, arising from its possession, occupation and use. The lessor does not warrant or guarantee by its classification or zoning of land or approval of a development plan, that the leased property is suitable for use authorized under said classification, zoning or plan, or that utilization of the land for said use shall be appropriate or profitable.

22. Waiver or Forbearance. The receipt of rent or any other compensation by the lessor, with or without knowledge of any default on the part of the lessee, is not a waiver of any term or condition of this lease. No failure on the part of the lessor to enforce a term or condition of this lease, nor the waiver of any right under this lease by the lessor, unless in writing, will discharge or invalidate the application of such term or condition. No forbearance or written waiver affects the rights of the lessor to enforce any other term or condition, or the same term or condition in the event of any subsequent or continued default. The receipt of rent or any other compensation by the lessor after termination or any notice of default will not reinstate, continue, or extend this lease, or any manner impair the validity of any notice of default that may have been given prior to receipt of the rent or other compensation, unless specifically stated by the lessor in writing.

23. Prohibition of Transfer/Assignment. The lessee shall not transfer, assign or sublet any interest held under or acquired pursuant to this lease agreement, in whole or in part, or grant any security interest in same, without the lessor's prior written consent, said consent to be at lessor's sole discretion and upon such terms and conditions as established by lessor. Provided, that notwithstanding this section or anything else in this Agreement, Lessor expressly authorizes Lessee to sublease the Premises to the BIA or Indian Health Service under section 105(l) of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5324(l), this consent to sublease is not a consent to a further transfer, assignment or sublease by BIA or the Indian Health Service

24. Default, Termination and Suspension/Obligations Survive. Time is of the essence in this lease agreement.

A. The lessor may terminate this lease agreement, and lessee's rights hereunder, and/or take any other legal action it deems appropriate, if the lessee defaults on the performance of any term or condition of this lease agreement (including but not limited to failure to pay before delinquency any sum due), and the default is not remedied within thirty (30) days after the lessor issues written notice of such default to the lessee, or within any additional period the lessor allows for good cause. Such notice

of default may provide that upon the date specified in such notice, unless the default has been remedied, the lease shall expire automatically without further notice or action by the lessor and the lease agreement and all rights of the lessee under the lease shall terminate. Upon termination of the lease, the lessor shall have an immediate right to possession of the leased property and any possession by the lessee shall be unlawful, unless otherwise permitted by lessor; the lessor shall have the right to remove, without liability for any damage, all persons and property from the leased property. It is specifically agreed that no judicial action shall be necessary to terminate this lease and to allow the lessor to retake possession in the event of default by the lessee. No equipment, facilities, improvements or other property may be removed from the leased property while the lease is in default, or thereafter in the event of termination hereunder, except with the lessor's prior written consent. If the lease is terminated hereunder, all compensation paid by the lessee is forfeited to the lessor. The lessor is not liable for any expenditures made or undertaken by the lessee under this lease. The lessee shall be liable for any costs or fees, including attorney fees, reasonably incurred by the lessor related to the lessee's default or any subsequent termination. Any entry, re-entry, possession, repossession or dispossession by the lessor upon default and/or termination will not absolve, release or discharge the lessee, in whole or part, from any liability under this lease agreement, nor shall it be deemed an acceptance of a surrender of the lease.

B. The lessor may, at the lessor's option and following default, accelerate the unpaid lease payments for the remainder of the term of this lease agreement. The lessee shall also be liable for all costs, expenses and fees incurred by the lessor in lessor's efforts to re-let the leased property. The lessee's obligation to pay such accelerated rent, and said costs, expenses and fees, to the lessor survives termination of this lease.

C. If the lessee is in default of any term or condition of this lease agreement (including but not limited to failure to pay before delinquency any sum due), the lessor may suspend and otherwise shut down the lessee's activities immediately upon issuance of a written notice until corrective or remedial action, as specified by the lessor in its notice, is taken. If this correction or remedial action is not taken within thirty (30) days after issuance of the written notice, the lessor may terminate this agreement, with no further notice period required. The thirty (30) day notice period may be shortened in the event that the default presents a health or safety hazard or the default consists of lessee's failure to maintain any required insurance. If the lessee fails to take immediate corrective or remedial action when ordered to remedy unsafe or dangerous conditions or unwarranted damage to the leased property or to obtain required insurance, the lessor may, at its discretion, take such corrective or remedial action; any costs or expenses (including attorney fees) or damages incurred by the lessor as a result of corrective or remedial action taken by the lessor, or due to the lessee's failure to take corrective or remedial action, shall be the sole responsibility of lessee. Resumption of suspended activities may be authorized, in writing, by the lessor after corrective or

remedial action has been taken, and any costs, expenses and damages incurred by lessor have been paid by lessee in full.

D. The lessor, upon or at any time after giving written notice of default, may enter or re-enter the leased property, at its discretion, to remedy any default by the lessee or exercise any right given under this lease, all without the intervention of any court being required. The curing of such default shall not be deemed for any purposes to be for the benefit of the lessee.

E. No right or remedy conferred upon or reserved to the lessor in this lease, or existing in law or equity, is intended to be exclusive of any other right or remedy, and each and every right shall be cumulative. All obligations of the lessee set forth in this lease agreement, or any attachments hereto or matters incorporated herein, survive termination or expiration of this lease.

F. This agreement may be terminated by mutual agreement of the parties, on terms agreed to in writing and signed by both parties.

25. Condemnation of Leased Property or Improvements. If the whole or any part of the leased property is taken by any authorized body or person vested with the power of eminent domain, by negotiation, court action, or otherwise, the following provisions control:

A. Taking of the entire leased property. If all of the leased property is taken by condemnation, this lease and all rights of the lessee will immediately terminate, and the compensation will be adjusted so that it is due only until the date the lessee is required to surrender possession of the leased property. The lessor is entitled to all the condemnation proceeds, except that the lessee will be paid the portion of the proceeds attributable to the fair market value, as determined in the condemnation proceedings, of any structures taken that were placed on the condemned property by the lessee in accordance with the approved development plan.

B. Taking of substantial part of the leased property. If the taking is of a substantial part of the leased property, the following rules apply:

i. If the taking by condemnation reduces the ground area of the leased property by at least thirty percent (30%) reasonably determines that the taking materially affects the use being made by the lessee of the leased property, the lessee has the right to elect to terminate the lease by written notice to the lessor not later than One Hundred Eighty (180) days after the date of taking.

ii. If the lessee elects to terminate, the provisions in subsection A of this section govern the condemned portion of the leased property and the terms and conditions of this lease agreement govern disposal of the remainder of any equipment,

facilities, improvements and property placed on the leased property by lessee in accordance with the approved development plan.

iii. If the lessee does not elect to terminate, the lease continues and the lessor is entitled to the full condemnation proceeds except the portion attributable to the fair market value, as determined in the condemnation proceedings, of any structures taken that were placed on the condemned portion of the leased property by the lessee in accordance with the approved development plan. Compensation at the existing rate will terminate on the date the lessee is required to surrender possession of the condemned portion of the leased property, and compensation for the balance of the term will be adjusted by the lessor to reflect the taking.

C. Taking of insubstantial part of the leased property. If the taking by condemnation reduces the ground area of the leased property by less than thirty percent (30%) percent and the lessor reasonably determines that the taking is of such an insubstantial portion that the lessee's use of the leased property is not materially affected, the lessee may not elect to terminate the lease and the compensation provisions of subsection B(iii) of this section will govern.

26. Utility Easements.

A. The lessor expressly reserves the right, without compensation to lessee, or adjustment in lessee's lease payment, to grant surface, underground or overhead utility easements or rights-of-way in or upon the leased property, if the exercise of this right will not unreasonably interfere with lessee's use and occupancy of the leased property.

B. The lessor expressly reserves the right to grant other easements or rights-of-way across the leased property if it is determined in the best interests of the lessor to do so. Annual rentals may be adjusted, at lessor's discretion, to compensate lessee for loss of use caused by the granting of any such easement or right-of-way.

C. The lessor reserves an easement fifty (50) feet wide for public access along the mean high water line or ordinary high water mark for all water bodies which are bordering on or included within the leased property. No such public access easement may be obstructed, or otherwise rendered by the lessee incapable of reasonable use by the public for the purposes for which it is being reserved.

27. Notices. Any notice or demand required or authorized under this lease agreement shall be made in writing by personal delivery (in the case of the lessor, to the lessor's Borough Manager), or by certified mail, postage prepaid, to the parties at the addresses specified above (in the case of the lessor, addressed to the lessor's Borough Manager), or at a different address specified by either party in writing. If given by

certified mail, notice is deemed given when same is deposited into an appropriate receptacle of the United States Postal Service.

28. Governing Law/Waiver of Jury Trial/Jurisdiction. It is agreed that this lease agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Alaska. The parties waive any trial by jury, and consent to the jurisdiction of the courts of the State of Alaska, located in Juneau, Alaska.

29. Interpretation. Both parties have had the full and complete opportunity to seek the advise and assistance of counsel in connection with the execution of this agreement, and no rule favoring the interpretation of a written document urged by the non-drafting party shall apply in the event a dispute arises hereunder.

30. Attorney Fees. If either party shall bring an action for any relief against the other, declaratory or otherwise, arising out of this lease agreement, the losing party shall pay the successful party a reasonable sum for attorney fees in such action.

31. Counterparts. This lease agreement may be executed in counterparts and such counterparts exchanged by facsimile or email transmission. Each such counterpart shall be deemed an original but all counterparts shall constitute one and the same agreement.

32. Limited Waiver of Sovereign Immunity. Lessee is a federally recognized Indian Tribe. Lessee expressly, unequivocally and irrevocably ~~waives any~~ provides a limited waiver of its sovereign immunity from suit brought by lessor, its assignees or insurers, against lessee in the courts of Alaska with respect to this lease agreement, enforcement of its terms and provisions, and any related disputes. This waiver includes but is not limited to any action for money damages and/or injunctive or declaratory relief, and lessee agrees that it will not raise sovereign immunity as a defense in any such judicial action brought by lessor, its assignees or insurers, to enforce this lease agreement or resolve disputes arising thereunder. Lessee's governing body has approved this limited waiver by resolution.

33. Entire Agreement/Modifications. This lease agreement may not be modified or amended except by a document signed by both parties. This lease agreement, including all attachments and matters incorporated by reference, constitutes the entire agreement between the parties, and any prior understanding or representation of any kind preceding the date of this lease agreement shall not be binding on either party except to the extent contained or incorporated in this lease agreement.

[Signatures on following pages]

SIGNATURES

Lessor:

City and Borough of Yakutat

By: _____
Printed Name: Jon Erickson
Title: Borough Manager

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

On this day personally appeared Jon Erickson, to me known to be the Borough Manager of the City and Borough of Yakutat, and who executed the within and foregoing instrument, and acknowledged to me that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned, and under appropriate authority.

GIVEN UNDER MY HAND and OFFICIAL SEAL this ____ day of _____, 2020.

NOTARY PUBLIC in and for Alaska
My commission expires: _____

Lessee:

Yakutat Tlingit Tribe.

By: _____
Printed Name: _____
Title: _____

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

On this day personally appeared _____ [name of signatory], to me known to be the _____ [title] of Yakutat Tlingit Tribe, and who executed the within and foregoing instrument, and acknowledged to me that s/he signed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned, and under appropriate authority.

GIVEN UNDER MY HAND and OFFICIAL SEAL this ____ day of _____, 2020.

NOTARY PUBLIC in and for Alaska
My commission expires: _____

**CITY AND BOROUGH OF YAKUTAT, ALASKA
RESOLUTION 20-338**

A RESOLUTION OF THE BOROUGH ASSEMBLY APPROVING THE LEASE OF LAND TO YAKUTAT TLINGIT TRIBE FOR CONSTRUCTION AND OPERATION OF RESIDENTIAL STRUCTURES TO BE UTILIZED AS TEMPORARY SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE.

WHEREAS, Yakutat Tlingit Tribe (YTT) has secured funding through the United States Department of Justice, Office of Victims of Crime, to assist in improving and expanding services for victims of domestic violence (Grant Award #2019-VO-GX-0042); and

WHEREAS, the funding allows for the procurement of manufactured single or multi-family homes for use by domestic violence victims as temporary shelters; and

WHEREAS, YTT has requested to lease, for a term of 20 years, a parcel of Borough land for this use; and

WHEREAS, the parcel has been identified and assessed by the Borough Assessor; and

WHEREAS, the Borough Assembly, under Chapter 7.20 and Section 7.16.060 of the Borough Code, approves the lease of this parcel for this use, and determines that this use is for a public purpose and is advantageous to the Borough.

THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF YAKUTAT, ALASKA as follows:

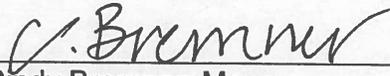
SECTION 1: The lease of the following described Borough property to Yakutat Tlingit Tribe is hereby approved, on substantially the terms and conditions set out in the attached Lease Agreement.

A part of ASLS 87-133, Township 27 South, Range 34 East, Copper River Meridian Alaska, containing .63 acre more or less, described as follows:

Commencing at the Northeast Corner (1) of ASLS 87-133. thence S 18°02'33" E along the Easterly property line a distance of 125 feet, thence S 71°57'27" W a distance of 25 feet to the point of beginning, lease corner 1, thence S 71°57'27" W a distance of 125 feet to lease corner 2, thence S 18°02'33" E a distance of 220 feet to lease corner 3, thence N 71°57'27" E a distance of 125 feet to lease corner 4, thence N 18°02'33" W a distance of 220 feet to the point of beginning.

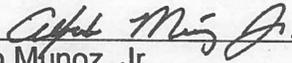
SECTION 2: The Borough Manager is authorized to sign the Lease Agreement on behalf of the Borough.

PASSED AND APPROVED THIS 6th DAY OF AUGUST, 2020.



Cindy Bremner, Mayor

ATTEST:



Alfredo Munoz, Jr.
Borough Clerk

Reso093

