

SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Josett Banks, et al.,

Appellants,

v.

Municipality of Anchorage,

Appellee.

No. 3AN-23-06779-CI

Joene Atoruk, et al.,

Appellants,

v.

Municipality of Anchorage,

Appellee.

No. 3AN-23-07037-CI

REPLY IN SUPPORT OF MOTION TO CONSOLIDATE APPEALS

The Municipality of Anchorage’s response in opposition fails to demonstrate that the Court should deny Appellants’ August 10 Motion to Consolidate Appeals.¹ First, the Municipality’s concessions—

¹ Appellants file this Reply pursuant to Alaska Rule of Civil Procedure 77(d) in the event the court shares Appellee’s apparent understanding that the Civil Rules—and not the Appellate Rules—govern this motion. In the alternative, if the court holds that Appellate Rule 503(d) governs, Appellee’s Response in Opposition was untimely filed. Appellants would then ask the court to consider or disregard this Reply at its discretion, notwithstanding the lack of an order for Appellants to file one pursuant to Rule 503(d).

especially its admission that the same body of law governs both appeals—support granting Appellants’ motion. Second, its arguments fail to overcome Appellants’ showing that consolidating the two appeals is in the interest of practicality, efficiency, and consistency.

Points conceded by the Municipality support granting Appellants’ motion

Anchorage agrees that Alaska Civil Rule 42(a) is the relevant standard for considering the motion, and that resolving both appeals will depend on the same body of law.² This concession should end the Court’s inquiry, since the rule allows cases to be consolidated when they involve “a common question of fact **or** law” (emphasis added).³ Although the Municipality implicitly argues that the rule requires a showing that consolidation is appropriate only when cases involve a common question of fact **and** law, that is not so based on the plain text of the Rule. It is within the court’s discretion to grant Appellants’ motion based upon commonalities of law alone, and it should do so here.

² MOA’s Resp. in Opp. at 2.

³ Alaska Civil Rule 42(a) provides that “[w]hen actions involving a common question of law or fact are pending before the court, . . . it may order all the actions consolidated.”

The commonalities of law here are overwhelming, and it makes the most sense for one judge to decide the complex constitutional questions posed by the appeals, rather than ask the Court and parties to shoulder the burdens of multiple, duplicative actions asking for legal rulings on the same body of law, risking inconsistent legal decisions by separate decisionmakers. The Municipality concedes that commonalities of law will control the outcome of both appeals.⁴ Appellants agree. Consolidation is warranted where the same body of unsettled law will apply to both appeals.

Consolidation also is factually appropriate. Anchorage concedes that it would be appropriate to consolidate the appeals if it “had issued criminal or civil citations” punishing the status of homelessness by citing unhoused appellants for camping outside when they have nowhere else to go.⁵ But a criminal sanction is built into the Anchorage Municipal Code’s abatement enforcement mechanisms. It provides that at “the time removal is to begin, if any individuals are present . . . [t]he individuals shall be given at least 20 minutes to gather their personal

⁴ MOA’s Resp. in Opp. at 1 (“[T]he same body of jurisprudence will be applied to both cases.”).

⁵ *Id.* at 3.

property and disperse from the area.”⁶ Failure to abide by any such order to disburse would violate the Code’s criminal prohibition against trespass, which provides that a “person commits the crime of criminal trespass if the person . . . [k]nowingly enters or remains on public premises or property . . . after the person has been requested to leave by someone with the apparent authority to do so.”⁷ The threat built into abatement notices cannot be clearer: Either remove yourself and the belongings you require to sustain your life by a date certain— notwithstanding that the Municipality will not provide you with an alternative place to go—or your belongings will be seized and you will be subject to criminal sanction. Otherwise, the abatement notices would carry no force at all and could be readily ignored. This threat is in keeping with Appellants’ experiences, as noted in Atoruk’s Motion for Stay Pending Appeal.⁸ There, at least one appellant stated under

⁶ AMC 15.20.020.B.15.g.i.

⁷ AMC 8.45.010.A.3.b.

⁸ Appellants in *Atoruk, et al., v. Municipality of Anchorage*, No. 3AN-23-07037-CI, filed a Motion for Stay Pending Appeal with their initial Joint Appeal from Administrative Agency; it was subsequently withdrawn voluntarily. The Mot. for Stay and its exhibits are attached as Banks’ Exhibit A.

oath that they were threatened with arrest if they failed to abate their campsite.⁹

By the Municipality’s own admission and according to sworn statements, therefore, criminal citation is baked into the city’s abatement regime; therefore, consolidation is appropriate based both on commonalities of fact and law.

Both appeals share relevant facts; minor nuances distinguishing them will aid the Court’s analysis

The most relevant facts are common to both appeals: the appellants are indigent, homeless Anchorage residents; they need somewhere to rest, protect themselves from the elements, and be alive; the city lacks enough indoor shelter space to meet these residents’ needs; and the Municipality itself created this situation when it opted to close the city’s only available low-barrier, walk-in shelter—the Sullivan Arena—earlier this spring.¹⁰

Furthermore, both appeals arise from a common, city-wide scheme initiated by the Municipality in late June and early July, in an

⁹ Affidavit of Sione Lima, Banks’ Exhibit A at 43 (“I have spoken with Anchorage police officers who told me that if I do not leave my campsite, I will be arrested.”).

¹⁰ See, e.g., Georgina Fernandez, *Vulnerable clients evicted from Sullivan Arena unsure where they will go next*, Alaska’s News Source (May 31, 2023), <https://www.alaskasnewsresource.com/2023/06/01/vulnerable-clients-evicted-sullivan-arena-unsure-where-they-will-go-next> (last visited Aug. 28, 2023).

apparent attempt to close off vast areas of public land from “nuisance” campsites.¹¹ It initiated this plan notwithstanding that the emergence of such campsites was a foreseeable consequence of its own decision to cease use of the Sullivan Arena as a shelter for the second spring in a row. What Anchorage characterizes as “radically” different facts are, in fact, minute details within a broader context—a common context and orchestrated plan by the city to punish its homeless residents that injured the Appellants in both appeals within a narrow period of time. It is both appropriate and feasible for the Court to consider this broader context in adjudicating Appellants’ cases. Indeed, the Court is more likely to come to a more nuanced, legally sound decision by considering more facts and more context, not less.

Consolidation will not impede the resolution of any future motions to dismiss

Finally, the Municipality asserts that it intends to move for dismissal: in one case for mootness, and in both cases for lack of subject matter jurisdiction. Without delving into the merits or counterarguments as to any such future motions that have yet to be

¹¹ See Banks’ Exh. A at 80–85 (exhibits from the *Atoruk* Mot. for Stay showing, in addition to the respective Notices of Zone Abatement presently subject to appeal, “Closed to the Public” signs purporting to close greenbelt areas spanning the Chester Creek greenbelt from Westchester Lagoon to Lake Otis Boulevard).

filed—which would be premature—Appellants note that consolidation would not impede the Court’s ability to decide either. It could be accomplished through routine motions work. Specifically, the Court would remain free to consider a motion to dismiss for mootness based on one set of facts and applied to a subset of consolidated appellants. And while it would be premature to pre-judge a yet-to-be-filed motion, Appellants would note that while both appeals technically are moot—because the 10-day advance notice of an abatement under the Municipal Code is too short to allow full merits litigation before a noticed abatement takes place or is withdrawn by the city—they also appear to satisfy one or more exceptions to the mootness doctrine because of the importance to the public of the legal issues and the inherently short timeline of abatement notices. Thus, mootness is unlikely to constitute a litigation barrier here. Similarly, a motion to dismiss for lack of subject matter jurisdiction would almost certainly present the same fundamental arguments and counterarguments, again making consolidated consideration more favorable, not less. There is no benefit to having two different judges conduct separate proceedings and ultimately render separate decisions on legal questions such as jurisdiction, mootness, and the meaning of the Alaska Constitution in appeals that are so closely related factually and legally.

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REPLY IN SUPPORT OF MOTION TO CONSOLIDATE APPEALS

Conclusion

For these reasons, the Court should grant the motion to consolidate the appeals and proceed with both appeals in No. 3AN-23-06779-CI.

Dated: August 28, 2023

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CERTIFICATE OF SERVICE

On August 28, 2023, a true and correct copy of this Reply in Support of Motion to Consolidate Appeals was sent via email to:

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SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Joene Atoruk, Heather Wolfe
Aragon, Leonly Fratis III,
Seone Lima, Darrell Dean
Miller, Beulah Moto, Lillian
Sheakley, Gregory Michael
Smith, Tracy Lynn Thompson,
Della L. Tunkle, Larry C.
Tunley, Brian Keith Vaughan,
and Lucille Jane Williams,

Appellants

v.

Municipality of Anchorage,

Appellee

No. 3AN-23-_____CI

Motion for Stay Pending Appeal

Appellants in this administrative agency appeal are homeless persons living in the Municipality of Anchorage. Their appeals arise in the midst of a homelessness crisis in Anchorage. For years, the Municipality of Anchorage (the "Municipality") has failed to adequately invest in affordable housing and sufficient and adequate shelter, forcing its most vulnerable residents to set up tents and other makeshift structures in public parks and greenbelts just to survive. Rather than addressing the underlying structural problems and devoting sufficient resources to create long-term solutions to

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homelessness, the City has moved in the opposite direction. It has shuttered its only low-barrier shelter option, leaving a vastly insufficient number of shelter beds available in the city, and is embarking on a citywide campaign to criminalize homelessness in violation of the constitutional rights of unhoused people in the Municipality.

Under well-settled Ninth Circuit federal constitutional law, it violates the Eighth Amendment's prohibition on cruel and unusual punishment for municipalities to punish unhoused individuals for existing, sleeping, or camping in public spaces when there are not sufficient indoor shelter options available. Flouting these constitutional principles, the Municipality has issued abatement notices stating that it plans to abate the areas where appellants are camping on July 2, 2023. Abatement means that the city would force appellants to leave their homes and seize their belongings. To ensure compliance with these abatement orders, Anchorage Police Department officers have threatened arrest if a camper refuses to leave.

At the same time it is abating existing camping areas, the Municipality has posted notices that other public park areas are now "closed to the public." These enforcement efforts combine to criminalize

the status of homelessness, leaving campers with nowhere they can go without breaking the law. Because Appellants will suffer irreparable harm if the Municipality proceeds with its abatement plans and are likely to succeed on the merits of their claims that the abatements are unconstitutional, this Court should issue a stay pending appeal, preserving the status quo until it can decide the appeal on its merits.

Statement of Facts

Appellants are homeless, indigent residents of Anchorage.¹ Because they do not have access to housing or indoor shelter, Appellants are by necessity currently camping in public parks and greenbelt areas within the Municipality.² Appellants do not have any other options. They cannot afford to buy or rent apartments or homes, and the Municipality has closed its Sullivan Arena emergency cold weather homeless shelter without a backup shelter plan, leaving almost no available low-barrier shelter beds in the city.³ Appellants

¹ Exhibit A (Affidavits of H. Wafe Aragon; L. Sheakley; L. Sione; G. Smith; T. Thompson; D. Tukle; L. Tunley; L. Williams; and B. Vaughan) at ¶¶ 4, 6.

² Exhibit A at ¶¶ 4-6.

³ Exhibit A at ¶¶ 4-6, 12-13.

literally do not have anywhere else to go besides living as campers in public parks in the city.⁴

Appellants are clustered in two areas that have each been noticed for “abatement” by the Municipality of Anchorage on June 22, 2023, near Davis Park in east Anchorage.⁵ According to the city’s notices of abatement, campers in the area must leave within ten days, and personal property left in the area will be confiscated and either stored for 30 days or destroyed.⁶ The Municipality did not offer Appellants any housing or shelter, did not inform them of any alternative location they could go to and be spared further abatement proceedings, and did not offer Appellants any assistance to transport them and their belongings to another place.⁷

The appellants are not alone: As of May 2023, there were approximately 1,581 “chronically homeless” people in Anchorage.⁸ This

⁴ Exhibit A at ¶¶ 4-6, 12-13.

⁵ Exhibit A at ¶ 4; Exhibit B (June 22, 2023 Notice of Zone Abatement/Campsite Clean Up, McCarey to Boniface, Mt. View to Glenn Highway); Exhibit C ((June 22, 2023 Notice of Zone Abatement/Campsite Clean Up, Davis Park, N. Pine Street To McPhee Ave. to Mt. View Drive).

⁶ Exhibit B; Exhibit C.

⁷ Exhibit A at ¶¶ 7, 12-14.

⁸ See Institute for Community Alliances, Anchorage Coalition to End Homelessness, “Alaska Communities Dashboard - Demographics *Atoruk et al. v. Municipality of Anchorage*”
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number only includes individuals over 18 and unaccompanied minors, so the true count is likely even higher.⁹

Most of these numerous unhoused Anchorage residents have nowhere to sleep indoors today in Anchorage. Rather than redoubling its efforts to provide housing, shelter, and services to address the root causes of homelessness and assist people in transitioning into long-term solutions, the Municipality has moved in the other direction, essentially throwing up its hands and deciding not to be part of the solution. The Municipality last month shuttered its only low barrier shelter at the Sullivan Arena, evicting people without giving them anywhere else to go.¹⁰ Today, the Municipality's own data show that there are *zero* available indoor beds for adults in Anchorage.¹¹

With no housing, no shelter, and no help from the Municipality, the Appellants and other homeless Anchorage residents, by necessity,

from the Alaska Homeless Management Information System" available at <https://icalliances.org/alaska-communities-dashboard> (last visited June 27, 2023).

⁹ *Id.*

¹⁰ E.g., <https://www.alaskasnewsresource.com/2023/06/01/vulnerable-clients-evicted-sullivan-arena-unsure-where-they-will-go-next/> (last visited June 27, 2023).

¹¹ Municipality of Anchorage Shelter Occupancy Overview, available at <https://experience.arcgis.com/experience/d6f142677f5c485fb58c5aa25af9838c> (last visited June 27, 2023).

are camping in public spaces and greenbelts.¹² Not content with closing its shelter and forcing people to sleep outside, however, the Municipality now appears to be embarking on a city-wide campaign to abate homeless campsites and prevent unhoused people from finding other places to sleep, leaving unhoused people at a loss as to where they can go to sleep, rest, and be alive that satisfies the Municipality's whims. In the last several weeks, the city has noticed abatements in at least three different parks and greenbelts.¹³ It has also begun posting signs stating that other public greenbelt areas are "closed to the public."¹⁴ These notices purport to close greenbelt areas spanning the Chester Creek greenbelt from Westchester Lagoon to Lake Otis Boulevard.¹⁵ Under the terms of the notices, these areas are now closed

¹² Exhibit A at ¶¶ 4-6, 12-13.

¹³ Exhibit B; Exhibit C; Exhibit D (May 24, 2023 Notice of Zone Abatement/Campsite Clean Up for the zoned area defined as "Loussac Library, Cuddy Park, & Old Archive Site: 36th Ave. to S. Municipal Property Line/Denali to B St).

¹⁴ Exhibit E ("Closed to the Public, No Camping!" sign showing closures along Chester Creek from Spenard to C. St.); Exhibit F ("Closed to the Public" sign showing closures near Westchester Lagoon); Exhibit G ("Closed to the Public" sign showing closures from Seward Highway to Lake Otis).

¹⁵ Exhibit E; Exhibit F; Exhibit G.

to all public uses other than moving through the areas on paved trails.¹⁶

Legal Standards for Issuance of a Stay

Under the Anchorage Municipal Code, the Municipality's notice of campsite abatement is a final, appealable administrative decision that can be appealed to superior court, as Appellants here have done.¹⁷

A stay of an underlying administrative judgment is not automatic in civil agency appeals like this one. Where the underlying judgment is monetary in nature, the appellant can secure a stay pending appeal by posting a supersedeas bond.¹⁸ Where, as here, the administrative decision on appeal is not monetary, "the superior court has discretion to grant a stay."¹⁹ The court's discretion is guided by the public interest, using the same balancing test that applies to preliminary injunctions.²⁰

The moving party's burden depends on the nature of the threatened injury. A party may obtain a stay pending appeal by meeting

¹⁶ Exhibit E; Exhibit F; Exhibit G.

¹⁷ AMC 15.20.020.B.15.e.

¹⁸ Alaska Appellate Rule 603(a)(2); *Keane v. Local Boundary Comm'n*, 893 P.2d 1239, 1249 (Alaska 1995).

¹⁹ *Keane*, 893 P.2d at 1249.

²⁰ *Id.*; *State, Div. of Elections v. Metcalf*, 110 P.3d 976, 978 (Alaska 2005).

either the “balance of hardships” standard, or the “probable success on the merits” standard; which test should be applied “depends on the nature of the threatened injury.”²¹ Where the moving party “faces the danger of ‘irreparable harm and if the opposing party is adequately protected,” the court applies a “balance of hardships” approach under which the movant “must raise serious and substantial questions going to the merits of the case; that is, the issues raised cannot be ‘frivolous or obviously without merit.’”²² But when the threatened harm to the party seeking a stay “is less than irreparable or if the opposing party cannot be adequately protected, then we demand of the [moving party] the heightened standard of a ‘clear showing of probable success on the merits.’”²³

Appellants here face irreparable harm and also can make a strong showing of probable success on the merits; they are therefore entitled to a stay pending appeal under either standard.

Arguments

²¹ *Metcalfe*, 110 P.3d at 978 (citing *State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270, 1273 (Alaska 1992) and *A.J. Indus., Inc.*, 470 P.2d at 540).

²² *Metcalfe*, 110 P.3d at 978.

²³ *Id.*

I. This Court has Appellate Jurisdiction over Appellants' Constitutional Defenses to the Abatement Notices.

Appellants are asserting constitutional defenses to the Municipality's abatement notices, arguing, among other things, that campsite abatement in Anchorage at the present time violates the Eighth Amendment to the United States Constitution's prohibition on cruel and unusual punishment. A threshold question is whether this issue lies within the superior court's appellate jurisdiction. The Municipality likely will argue that this Court cannot consider the constitutional defense, but this argument is wrong. When the Court reaches the merits of the appeal, it can and should consider Appellants' constitutional defenses.

The superior court is a court of general jurisdiction, empowered to consider constitutional claims and defenses and to issue all forms of relief necessary to effectuate its jurisdiction.²⁴ It has administrative agency appellate jurisdiction over "all matters appealed to it from . . . [an] administrative agency when appeal is provided by law."²⁵ Under the Anchorage Municipal Code, the Municipality's notice of campsite

²⁴ AS 22.10.020

²⁵ AS 22.10.020(d).

abatement is a final, appealable administrative decision that can be appealed to superior court.²⁶ Through this provision, Anchorage Assembly has provided appeal rights for directly to superior court, invoking the court's general jurisdiction. Notably, the campsite abatement statutory scheme does *not* provide for administrative proceedings before Anchorage's Office of Administrative Hearings, an administrative hearings office with limited jurisdiction that does not include constitutional claims.²⁷ Instead, the code directs that appeals be taken directly to superior court—suggesting that the Assembly intended to guarantee abatement appellants the full benefit of meaningful appeal proceedings within the full extent of the Superior Court's broad jurisdiction. It would frustrate the statutory purpose and violate due process to deny appellants access to the superior court's broad jurisdiction when the municipal code specifically provides for it.

At the Municipality's urging, two superior courts have taken the opposite view, finding no subject matter jurisdiction to hear pro se litigants' constitutional defenses to abatement in abatement appeals. But their reasoning is incorrect. In *Vaughan v. Municipality of*

²⁶

²⁷ AMC 14.20.020.A (describing limited jurisdiction of municipal hearings officers).

Anchorage,²⁸ the superior court found that its appellate jurisdiction was extremely narrow, such that it could only adjudicate issues related to the adequacy of the “posted notice” of abatement—the document that the Anchorage Municipal Code defines as the final underlying administrative decision.²⁹ Another superior court later adopted its reasoning without additional analysis.³⁰ On this view, no litigant facing abatement could ever raise substantive issues related to the abatement itself on appeal—only the facial adequacy of the posted notice, and the “process surrounding notice and whether the Municipality posted notice and instituted campsite abatement proceedings in accordance with the law” could be litigated.³¹ The *Vaughan* court believed that this conclusion was mandated under the municipal code’s language specifying that “[a]posted notice of campsite abatement is a final administrative decision and appeals shall be to the superior court within 30 days from the date the notice of campsite abatement is posted,” because this language only mentions the notice

²⁸ No. 3AN-21-07931CI.

²⁹ Order Dismissing Appeal for Lack of Subject Matter Jurisdiction (June 16, 2022), No. 3AN-21-07931CI, at 2-4.

³⁰ *Smith, et al v. MOA*, No. 3AN-22-06805CI.

³¹ Order Dismissing Appeal, *supra* note 30, at 5.

of abatement, not the subsequent abatement itself.³² The court also reasoned that the appellate court did not have the information it needed to conduct a legal analysis, since the code does not provide for administrative hearings regarding abatement at the municipal level that would generate a traditional appellate record.³³

But this reasoning is both illogical and inconsistent with Alaska law. The code's statutory language allows appeals to superior court from the abatement notice so that litigants have time before the abatement occurs to make full legal arguments about its infirmities before a court of general jurisdiction with the authority to hear those claims—not to entirely prevent litigation of those issues. Reading the code to prevent any examination of the substantive infirmities in a noticed abatement appeal renders the code's appellate process so illusory as to violate due process.

Furthermore, the threat of abatement cannot be cleaved from the abatement itself. In practice, the notice of a potential abatement achieves most of the government's aims—and inexorably will lead to the same harms to Appellants. For unhoused Anchorage residents, the

³² *Id.* at 2-4 (citing AMC 15.20.020.B.15.e).

³³ *Id.* at 5-6.

harms of government-conducted abatement can be seriously deleterious. Campers are given but “20 minutes to gather their personal property and disperse from the area.”³⁴ Government-conducted abatement is accompanied by a strong show of force, including Anchorage Police Department officers prepared to enforce trespass, disorderly conduct, resisting or interfering with a peace officer, or other laws as needed. Unavoidably under such conditions, the loss of important belongings is a high risk.

Understandably, therefore, most unhoused residents whose campsites have been noticed for abatement choose to leave the area and collect their belongings before the government’s deadline— notwithstanding that doing so is still attended by a serious risk of loss.³⁵ In effect, the *threat* of abatement does most of the work for the government. Because threatening abatement is threatening a constitutionally impermissible enforcement action, therefore, the notices themselves are constitutionally impermissible. To decide

³⁴ AMC 15.20.020.B.15.g.i.

³⁵ **SOMEONE’S AFFIDAVIT** “If I have to leave my site, I will very likely lose some of the things I depend on for shelter and warmth, or that have personal meaning to me.”

otherwise would be to empower the Municipality to achieve its ends by posting abatement notices it has no intention of enforcing.

Nor does the lack of an administrative record justify refusing to hear the appellants' claims. It is true that the unusual structure of abatement appeals typically will not generate a traditional appellate record to review, because the code does not provide for any adversary proceedings at the administrative level. But under well settled Alaska Supreme Court case law, the remedy for an insufficient administrative process is a trial de novo in the superior court so that the parties have an opportunity to litigate and develop an adequate record for appellate review—not dismissal of the claims. "Although a court normally reviews an agency's decision on the record, we have upheld or directed application of de novo review where the agency record is inadequate; where the agency's procedures are inadequate or do not otherwise afford due process; or where the agency . . . excluded important evidence in its decision-making process."³⁶ The trial de novo preserves the litigant's due process rights to a full and fair hearing while also

³⁶ *Yost v. State, Div. of Corps., Bus. And Pro. Licensing*, 234 P.3d 1264, 1274 (Alaska 2010) (internal quotes omitted) (quoting *South Anchorage Concerned Coal., Inc. v. Municipality of Anchorage Bd. of Adjustment*, 172 P.3d 774, 778 (Alaska 2007)).

allowing development of a complete record that the appellate court can review.

Thus, in *Yost v. State, Division of Corporations, Business and Professional Licensing*,³⁷ the court held that due process required a trial de novo where the administrative proceedings below did not extend to a critical issue on appeal. Because the appellant did not have the opportunity to litigate a fundamental aspect of her claims below, the administrative proceedings violated her due process rights by denying her an opportunity to be heard on that issue. “Dr. Yost had the right to a trial de novo on the issue of a condition precedent because the administrative proceedings . . . did not afford her due process on this outcome-determinative issue. The administrative proceeding lacked important hallmarks of procedural due process, such as notice and an opportunity to be heard. This is, of course, because there was no agency proceeding which considered” the question.³⁸

The same is true here. The lack of adequate agency proceedings violates abatement appellants’ due process rights by denying them the opportunity for notice, an opportunity to be heard, and a full and fair

³⁷ 234 P.3d 1264 (Alaska 2010).

³⁸ *Id.* at 1275 (citing cases) (citations omitted).

hearing on the substance of their claims. Dismissing those claims on appeal would compound those due process problems. The Alaska Supreme Court has instead directed that the appellate court must *fix* the due process infirmities by affording adequate process at the superior court level. For this reason, this Court cannot simply dismiss the claims because there is an insufficient appellate record.

Yost reveals another reason why it would be error to find that this Court lacks subject matter jurisdiction over Appellants' constitutional claims. The *Vaughan* court suggested that the proper course of action was for abatement appellants to instead file an original civil action instead of an appeal.³⁹ But Alaska law views agency appeals functionally, and civil actions that, at their core, seek to challenge an administrative action are properly converted into agency appeals. Dr. Yost initially filed a superior court action, not an appeal. But the court determined that her claim was functionally an administrative appeal, and converted it to one. The Alaska Supreme Court agreed, because "[h]owever denominated, a claim is functionally an administrative appeal if it requires the court to consider the

³⁹ Order Dismissing Appeal, *supra* note 30, at 4.

propriety of an agency determination.”⁴⁰ If “a court could not grant the relief requested without reversing the prior agency determination, the claim should be treated as an administrative appeal.”⁴¹ This is the case here. Thus, if the Appellants filed an original action in superior court seeking relief in the form of holding the abatement invalid, the court could not grant that relief without reversing the agency’s determination that abatement was appropriate and noticing it. The action would properly then be converted into an administrative appeal. Accepting the Municipality’s argument that the appellate court lacks subject matter jurisdiction over that administrative appeal thus would leave an entire class of appellants with no remedy in Alaska’s courts. This Kafkaesque situation would deny the Appellants’ due process rights and contravene the legislature’s direction that abatement appellants can have their claims heard in superior court.

For all these reasons, this Court has subject matter over all the claims in this appeal. It should consider and grant the motion for stay pending appeal.

⁴⁰ *Id.* at 1273 (quoting *Haynes v. State, Commercial Fisheries Entry Comm’n*, 746 P.2d 892, 893 (Alaska 1987)) and citing numerous additional cases).

⁴¹ *Yost*, 234 P.3d at 1273.

II. The Municipality's Abatement Notices Violate the Cruel and Unusual Punishment Clause of the United States Constitution.

The first step in applying the injunction/stay standard is consideration of the merits of the Appellants' claims. Because the Municipality's abatement notices are unconstitutional under clear and well-settled federal law, the Court should find that Appellants are likely to succeed on the merits of their claims, favoring issuance of the stay.

Appellants assert a federal constitutional challenge to the abatement of their campsites. *Martin v. Boise*⁴² and *Johnson v. City of Grants Pass*⁴³ are recent, on-point federal decisions holding that the Eighth Amendment's ban on cruel and unusual punishment prevents cities from punishing unhoused individuals for existing, sleeping, or camping in public spaces when there are not sufficient indoor shelter options available to them. These authorities establish that Appellants are likely to succeed on the merits of their federal Eighth Amendment claim.

⁴² 920 F. 3d 584 (9th Cir. 2019).

⁴³ 50 F.4th 787 (9th Cir 2022).

Martin considered the constitutionality of an ordinance that criminalized sleeping outdoors on public property. Proceeding from the principle that “the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one's status or being,”⁴⁴ the court reasoned that sitting, lying, and sleeping were essential and unavoidable human necessities, not choices that could constitutionally be punished.⁴⁵ Cities may not punish people for the *status* of being homeless; thus, neither may they punish persons who are involuntarily homeless for the acts of sleeping, sitting, and lying down in public. The *Martin* court explained that “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.”⁴⁶ Application of this federal case law turns on whether a jurisdiction has sufficient indoor shelter space: “so long as there is a greater number of homeless individuals in jurisdictions than the number of available beds

⁴⁴ *Martin*, 920 F.3d 584, 616 (9th Cir. 2019) (quoting *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006), *vacated*, 505 F.3d 1006 (9th Cir. 2007)).

⁴⁵ *Martin*, 920 F.3d at 616-17.

⁴⁶ *Id.* at 617.

[in shelters], the jurisdiction cannot prosecute homeless individuals for involuntarily sitting, lying, and sleeping in public.”⁴⁷

For purposes of determining shelter availability, *Martin* explains that to qualify as available indoor shelter, a shelter setting must be “practically available” to unhoused individuals.⁴⁸ Shelters that have explicit religious content and programming, for example, are not “practically available” to the homeless population because municipalities may not “coerce an individual to attend religion-based treatment programs consistently with the Establishment Clause of the First Amendment.”⁴⁹ Practically available shelter is generally available to everyone, does not have a religious orientation or content, and does not have specific entry requirements that the general population cannot meet.

In *Johnson*, the court reaffirmed and extended *Martin*’s holding to civil sanctions, finding that *Martin* applies to civil citations where, as here, the civil and criminal punishments are closely intertwined.⁵⁰ It also held that cities may not ban campers from possessing survival

⁴⁷ *Id.* (citation omitted).

⁴⁸ *Id.* at 618.

⁴⁹ *Id.* at 609-10.

⁵⁰ *Johnson v. City of Grants Pass*, 50 F.4th 787, 813 (9th Cir. 2022).

items like bedding and tents, because the Eighth Amendment's protections extend not only to sleeping itself, but also to a camper's ability to have and use "the most rudimentary forms of protection from the elements."⁵¹

There can be no reasonable dispute that "there is a greater number of homeless individuals . . . than the number of available beds" in the Municipality today. The Appellants before the Court have been ordered to leave their camping areas—but they are not aware of any indoor shelter available to them, and have not been given any information about where they can safely go.⁵² They have not been offered any indoor shelter or housing options where they can sleep or store their belongings if they are forced to vacate their camping areas, nor any transportation assistance to relocate with their property.⁵³

The Municipality's own data confirms that Anchorage's available indoor shelter space falls far short of meeting the needs of its homeless residents. In a stark indication of the magnitude of the problem and the failure of the Municipality's homelessness response, the city

⁵¹ *Id.* at 808-09.

⁵² Exhibit A ¶¶ 12-14.

⁵³ Exhibit A ¶¶ 12-14.

currently has *no* available indoor shelter beds. The city maintains a homelessness database that tracks shelter availability in the Municipality.⁵⁴ The dashboard shows that there are currently zero available shelter beds for adults anywhere in the city.⁵⁵ It also contains historical data showing that since the closure of the Sullivan Arena as a mass, congregate emergency shelter this the spring, sufficient low-barrier shelter space has not been available to homeless residents.⁵⁶ Every single shelter facility open to adults listed on the Municipality's dashboard is currently completely full or overfull.⁵⁷ Further, none of the listed shelter environments qualify as low-barrier shelter that is practically available to plaintiffs under *Martin*; all are religious or family shelters.⁵⁸ The factual predicate of *Martin*—the lack of sufficient available shelter beds for the unhoused population in Anchorage—is met.

⁵⁴ Municipality of Anchorage Shelter Occupancy Overview, available at <https://experience.arcgis.com/experience/d6f142677f5c485fb58c5aa25af9838c> (last visited June 27, 2023).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

The Municipality has previously recognized that it must follow federal law and cannot constitutionally perform campsite abatements in Anchorage when there is no available indoor shelter. At the February 15, 2023 meeting of the Municipality's Committee on Housing and Homelessness, the Municipality's Homeless Coordinator Alexis Johnson stated on the record that in the absence of indoor shelter options, "under *Martin v. Boise* we cannot abate other camping areas such as the Chester Creek greenbelt or Davis Park . . . we will not be able to abate other spaces."⁵⁹ Since the Municipality's acknowledgement of the governing law in February, things have only gotten worse for Anchorage's unhoused population with the closure of the Sullivan shelter. It therefore remains true today that the city may not constitutionally abate encampments in Anchorage—but the Municipality has reversed course, and is now attempting to do exactly that.

Nor are the Municipality's newly aggressive abatement efforts limited to one isolated park or area of the city, undercutting any

⁵⁹ Municipality Committee on Housing and Homelessness Meeting (Feb. 15, 2023), available at <https://www.youtube.com/watch?v=7PmGZjMv1mI&t=1648s>. The pertinent comments begin at 26:20.

argument that the Davis Park area has a unique public safety problem justifying abatement. Instead, the Municipality is in the midst of a widespread abatement effort all across town. In the last several weeks, the city has noticed abatements in at least ____ different park areas,⁶⁰ and announced its intent to “clean up” another homeless encampment.⁶¹ It has also begun posting signs stating that other public parks and greenbelt areas are “closed to the public.”⁶² Although the legal authority supporting these sudden closures of public lands is unclear, these notices purport to bar the public from all public uses of the Chester Creek greenbelt all the way from Westchester Lagoon to Lake Otis Boulevard, with the exception of moving through the area on paved trails.⁶³

If left unchecked, the Municipality would be emboldened to continue such notice and enforcement efforts until there is effectively no safe, Eighth Amendment harbor for unhoused individuals in

⁶⁰ Exhibit B; Exhibit C; Exhibit D.

⁶¹ See Mayor Bronson Issues Statement Regarding 3d and Ingra Homeless Camps (June 26, 2023), available at <https://www.muni.org/Departments/Mayor/PressReleases/Pages/Mayor-Bronson-Issues-Statement-Regarding-3rd-and-Ingra-Homeless-Camps.aspx> (last visited June 27, 2023).

⁶² Exhibit E; Exhibit F; Exhibit G.

⁶³ Exhibit E; Exhibit F; Exhibit G.

Anchorage. The Municipality wants to force Appellants to vacate their current camping areas, but rather than offering them any substitute lodging or camping options, it is trying to close down other public spaces so that the newly displaced campers have nowhere to go.

Appellants do not know where they are supposed to go, or where they could now camp safely that would not be subject to current and further enforcement and abatement efforts.⁶⁴ These coordinated city-wide crackdowns reasonably suggest to Appellants that they will be subject to an endless series of abatement efforts, constantly forced to relocate and losing more of their possessions each time, unless the Court steps in to secure their rights: "I am worried that if I move to another site, the Municipality will just abate that site and I will have to move all over again."⁶⁵

Appellants also have good reason to fear that they will be arrested, fined, or otherwise punished if they do not comply with the abatement notices. One Appellant has provided sworn testimony that he was threatened with arrest by the Anchorage Police if he declined to abate,⁶⁶ others have been threatened with trespass or arrest in

⁶⁴ Exhibit A at ¶¶ 10-12, 16.

⁶⁵ Exhibit A at ¶ 16.

⁶⁶ Exhibit A (Affidavit of L. Sione at ¶ 20).

connection with prior abatement efforts. Further, the Anchorage Municipal Code justifies campsite abatement under its public nuisance code, which provides that violators are subject to monetary fines that escalate with each offense,⁶⁷ penalties of up to \$2000 per violation,⁶⁸ and are liable to the Municipality for both monetary damages connected with the code violation and the costs of the city's abatement efforts.⁶⁹ The city's abatement efforts are therefore firmly rooted in fines, penalties, and criminal trespass sanctions, establishing the punishment prong of the Eighth Amendment inquiry.

Campers are also punished when the Municipality seizes personal property, and destroys some of it, in connection with an abatement—also violating Appellants' right protected by the Fourth and Fourteenth Amendments and their analogues in the Alaska Constitution. The abatement notices threaten that "[a]ny personal property in or around this zone at the end of 10 days shall be removed and disposed of as waste."⁷⁰ Although the Municipality may store some belongings during the pendency of an appeal, this is no help to campers

⁶⁷ AMC 15.20.130.A.4-5; AMC 14.60.030.

⁶⁸ AMC 15.20.130.A.6.

⁶⁹ AMC 15.20.130.A.2-3.

⁷⁰ Exhibit B; Exhibit C.

who have no indoor shelter options and must live outside in Anchorage's unpredictable and often cold and wet weather conditions. In the absence of indoor shelter, the seizure of personal belongings such as tents, sleeping bags, and warm clothing leaves vulnerable homeless persons materially worse off than they were before.⁷¹ Citations, arrests, orders to "move along" under threat of citation and arrest, and property destruction in response to involuntary homelessness—without first providing viable access to shelter—have each been found to be actionable as unconstitutional punishment under the Eighth Amendment.⁷²

Beyond the Municipality's enforcement campaign in the clear absence of sufficient shelter beds—which alone establishes a violation

⁷¹ Exhibit A at ¶¶ 18-19.

⁷² See *Martin*, 920 F.3d at 617-18 (citations identified as impermissible punishment); *Cobine v. City of Eureka*, 250 F. Supp. 3d 423, 428, 432 (N.D. Cal. 2017) (denying motion to dismiss Eighth Amendment claim where "Notice to Vacate" identified that homeless individuals would be prosecuted for refusing to leave the area); *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006) (unhoused individuals "suffer[ing] the loss of their personal property" at the hands of law enforcement was a "preconviction harm" that established standing for Eighth Amendment claim), *vacated by settlement*, 505 F.3d 1006 (9th Cir. 2007); *Phillips v. City of Cincinnati*, 479 F. Supp. 3d 611, 654-55 (S.D. Ohio 2020) (Eighth Amendment claim proper where "Plaintiffs alleg[ing] they do not have access to permanent shelter" were "forced to move multiple times under threat of arrest by police").

of *Martin*—the City’s criminalization of homelessness also violates the Eighth Amendment’s core protection against punishing conduct that is involuntary.⁷³ This principle animates *Martin*’s requirement that “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.”⁷⁴

Unhoused individuals in Anchorage today have no such choice. The Municipality has closed its only low-barrier shelter and there are no available shelter indoor beds for adults in the city, and it is trying to prevent access to green spaces. This reality means that unhoused individuals genuinely cannot access shelter, and therefore have no choice but to sleep outdoors.

This is the end of the constitutional inquiry. The Municipality is criminalizing the status of homelessness in clear violation of *Martin*’s express holding. The Appellants are likely to succeed on the merits of their Eighth Amendment Claim; they certainly have raised serious and

⁷³ See *Robinson v. California*, 370 U.S. 660, 666 (1962) (striking down a statute “which makes the ‘status’ of narcotic addiction a criminal offense”); *Powell v. Texas*, 392 U.S. 514, 550 n.2 (1968) (White, J., concurring) (“[t]he proper subject of inquiry is whether volitional acts brought about” the condition that is criminalized).

⁷⁴ *Martin*, 920 F.3d at 617.

substantial questions as to the merits. This Court should grant the stay.

III. Appellants Will Suffer Irreparable Harm in Absence of a Stay.

The equitable factors in the preliminary injunction balancing test also strongly favor issuance of a stay pending appeal. Appellants are among the most vulnerable residents of Anchorage. They are sleeping outside because they have no other options; rather than making a real attempt to address homelessness and its underlying causes, the Municipality instead proposes to punish them for being homeless by rousting them from their homes, confiscating their personal property, and leaving them in the untenable position of having nowhere to go where they will not be subject to continuing abatement efforts.

Numerous appellants have explained how they will be materially worse off if they are forced to leave their camping areas: "I rely on my personal belongings – such as a tent, warm clothing, and pallets – to protect me from the elements and to provide as much safety and privacy as possible. If I am forced to move from my campsite and the Municipality takes my belongings—even if the Municipality stores instead of destroys my belongings—it will be even more difficult for me to stay warm, dry, and safe. I will be much worse off than I am right

now.”⁷⁵ Similarly, the Appellees camp together with others for safety from the elements, wildlife, and other people; if forced to move, they may need to camp in less safe areas.⁷⁶ These are life and death questions. This is irreparable harm under any standard. Federal law confirms that the nature of this deprivation and the unhoused individual Appellants’ particular vulnerability tips the balance of equities sharply in their favor.⁷⁷

Finally, the Municipality will be adequately protected if the stay issues. The city has many other tools at its disposal to address any specific problems occurring at the Davis Park sites that do not involve

⁷⁵ Exhibit A at ¶¶ 18-19.

⁷⁶ Exhibit A at ¶¶ 18-19.

⁷⁷ See *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury’”); *Sausalito/Marin Cnty. Chapter of California Homeless Union v. City of Sausalito*, 522 F. Supp. 3d 648, 658 (N.D. Cal. 2021) (holding that a ban on day camping would pose a risk to unhoused plaintiffs’ health and safety such that the balance of equities “tip[] decidedly in Plaintiffs’ favor”); *Price v. City of Stockton, Cal.*, 394 F. Supp. 2d 1256, 1268-69 (E.D. Cal. 2005) (stating that the harm unhoused plaintiffs would face by being forced to vacate SROs would “work[] a profound hardship” that would “far outweigh[]” any hardship defendants might suffer); *Garcia v. City of Los Angeles*, 481 F. Supp. 3d 1031, 1051 (C.D. Cal. 2020), *aff’d*, 11 F.4th 1113 (9th Cir. 2021) (holding that, where a city took or destroyed personal property from homeless individuals during cleanups, the “balance of the equities and the public interest tip[ped] sharply in Plaintiffs’ favor”).

forcing all the unhoused residents of the area to leave their homes. For example, if individuals are improperly and illegally entering military land adjacent to the abatement cite, the Municipality can and should handle those problems on an individual basis—not punish all campers for the lawbreaking of isolated individuals.

Nor may the Municipality justify its abatement efforts on the basis that camping is inconsistent with its lease of military land on one of the Davis Park cites. The lease of this area was in place well before the city made a conscious choice to close the Sullivan Arena shelter,⁷⁸ and the Municipality was aware that if it closed the shelter, it could not constitutionally perform abatements in this area.⁷⁹ Nevertheless, the city went forward with the closure of the shelter. If in fact there are land use conflicts here, the Municipality itself created them when it made a conscious, tactical choice to not offer shelter in the city, knowing that a consequence of that decision would be that it could not abate Davis Park. It may not now claim that it has no choice but to

⁷⁸ Exhibit H (Department of the Air Force Lease to Municipality of Anchorage at Joint Base Elmendorf – Richardson JBER Alaska) at 5 (stating that lease term began Dec. 23, 2016).

⁷⁹ Municipality Committee on Housing and Homelessness Meeting (Feb. 15, 2023), available at <https://www.youtube.com/watch?v=7PmGZjMv1mI&t=1648s> at 26:20 (last visited June 26, 2023).

violate the constitutional rights of the campers. Furthermore, the lease explicitly requires the Municipality to follow federal law on the leased lands at the Municipality's "sole cost and expense";⁸⁰ this agreement therefore cannot be a justification for violating the Eighth Amendment.

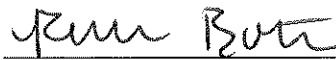
Finally, the overall context of the Municipality's current crackdown on unhoused campers across the city—with noticed abatements, clean-ups, and closures of public lands all across town—undermines any claim that the city's abatement efforts are motivated solely by land use conflicts in Davis Park. Instead, this abatement is part of a troubling pattern of the city's newly aggressive attempts to punish Anchorage's homeless. The constitutional and personal health and safety interests of vulnerable, unhoused persons far outweigh the city's interests in avoiding the consequences of its own choices.

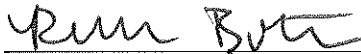
For all these reasons, this Court should grant the stay pending appeal, allowing Appellants to remain undisturbed in their campsites until the Court can adjudicate the parties' rights and interests on the merits.

⁸⁰ Exhibit H at 7; *see also id.* at 15, 24.

Dated: June 28, 2023

American Civil Liberties Union of Alaska
Foundation


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CERTIFICATE OF SERVICE

On June 28, 2023, a true and correct copy of this Motion for Stay

Pending Appeal were sent via email to:

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

AFFIDAVIT

I, Heather A Wate Aragon, declare under penalty
of perjury:

1. My name is Heather A Wate Aragon. I have
personal knowledge of all facts contained in this affidavit.

2. I am at least 21 years old and am competent to attest to the
facts in this affidavit.

3. I am a resident of Anchorage, Alaska.

4. I am currently homeless. I camp outside full time. I live in

Davis Park

5. I have been living without shelter or housing, off and on, since
approximately 18 years old

6. I am living outside because I do not have anywhere else to go.
I do not have a house or apartment, and I cannot afford to rent or buy
one. I am not aware of any currently available indoor shelter options in
the Municipality where I could stay and have a roof over my head.

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AFFIDAVIT

Case No. 3AN-23-_____-CI

Exhibit A

Page 1 of 5

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7. On June 22, 2023, the Municipality of Anchorage put up signs near my campsite telling me that I had to move myself and all of my belongings within 10 days.

8. Before the Municipality put up the signs, I was not informed that there might be an abatement of the area I live in.

9. I have not been given the chance to ask a Municipal officer if I might be able to stay here or to request a hearing.

10. The Municipality has not informed me of any specific reasons that my campsite was chosen for abatement, any actions I can take to stop the abatement, or anything I could have done to prevent it.

11. Because the Municipality has not told me what I could have done to prevent the abatement, I do not know what I could do to prevent any future abatements at any other sites.

12. The Municipality has not informed me of where I should go after leaving my campsite. I am not aware of any indoor shelter beds that are available right now in the Municipality. No one from the Municipality has offered me any indoor shelter or housing options where I could safely sleep or store my belongings. I am not sure where the Municipality wants me to go.

13. My understanding is there is nowhere for me to go for safe inside shelter right now, so camping outside is my only option.

AFFIDAVIT

Case No. 3AN-23-_____-CI

Exhibit A

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14. The Municipality has not told me about any transportation options to get me or my belongings to another location.

15. If I have to leave my site, I will very likely lose some of the things I depend on for shelter and warmth, or that have personal meaning to me.

16. I am worried that if I move to another site, the Municipality will just abate that site and I will have to move all over again.

17. If I do not abate my site, I am concerned that the Municipality will cite me for trespassing, arrest me, or take some other action to punish me.

18. It is difficult to live outdoors. The weather in Anchorage is unpredictable and can be wet, cold, and windy, even in summer. I rely on my personal belongings – such as a tent, warm clothing, and pallets – to protect me from the elements and to provide as much safety and privacy as possible. If I am forced to move from my campsite and the Municipality takes my belongings—even if the Municipality stores instead of destroys my belongings—it will be even more difficult for me to stay warm, dry, and safe. I will be much worse off than I am right now.

19. I choose to live among other people who also have nowhere else to go for safety reasons and for community. By camping together,

AFFIDAVIT

Case No. 3AN-23-_____ -CI

Exhibit A

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we are safer from the elements, wildlife, and other people than we otherwise would be.

20. The following statements apply to me:

 A I have spoken with Anchorage police officers who told me told me that if I do not leave my campsite, they will cite me for trespassing.

 I have spoken with Anchorage police officers who told me told me that if I do not leave my campsite, I will be arrested.

 I have been at this location October 26 Since.

 Before living here, I had my own apartment in my name, but what lead me out here was not having help for D.V.
 another campsite that was abated.

 the Sullivan Arena for days / weeks /

months. I cannot stay at the Sullivan Arena now because the Municipality has closed it down as a shelter.

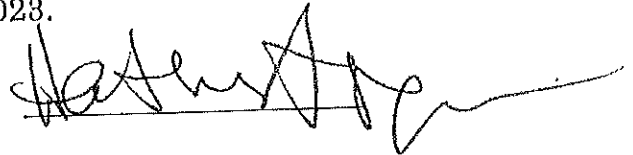
 ★ While camping in my current location, I am receiving social services, food, access to restroom facilities, and/or other resources in the area around where I am camping. If I am forced to leave this site, I will no longer have access to those services—or will have a

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significantly more difficult time accessing those services—which
will be bad for me.

21. I certify under penalty of perjury that the foregoing is true and
that a notary public or other official empowered to administer oaths is
unavailable to me.

EXECUTED this 26 day of June, 2023.



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AFFIDAVIT

Case No. 3AN-23-_____-CI

Exhibit A

Page 5 of 5

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

AFFIDAVIT

I, Rione F. Lima, declare under penalty
of perjury:

1. My name is Rione F. Lima. I have
personal knowledge of all facts contained in this affidavit.

2. I am at least 21 years old and am competent to attest to the
facts in this affidavit.

3. I am a resident of Anchorage, Alaska.

4. I am currently homeless. I camp outside full time. I live at

Dave Park

5. I have been living without shelter or housing, off and on, since
approximately 10 years

6. I am living outside because I do not have anywhere else to go.
I do not have a house or apartment, and I cannot afford to rent or buy
one. I am not aware of any currently available indoor shelter options in
the Municipality where I could stay and have a roof over my head.

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AFFIDAVIT

Case No. 3AN-23-_____-CI

Exhibit A

Page 1 of 5

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7. On June 22, 2023, the Municipality of Anchorage put up signs near my campsite telling me that I had to move myself and all of my belongings within 10 days.

8. Before the Municipality put up the signs, I was not informed that there might be an abatement of the area I live in.

9. I have not been given the chance to ask a Municipal officer if I might be able to stay here or to request a hearing.

10. The Municipality has not informed me of any specific reasons that my campsite was chosen for abatement, any actions I can take to stop the abatement, or anything I could have done to prevent it.

11. Because the Municipality has not told me what I could have done to prevent the abatement, I do not know what I could do to prevent any future abatements at any other sites.

12. The Municipality has not informed me of where I should go after leaving my campsite. I am not aware of any indoor shelter beds that are available right now in the Municipality. No one from the Municipality has offered me any indoor shelter or housing options where I could safely sleep or store my belongings. I am not sure where the Municipality wants me to go.

13. My understanding is there is nowhere for me to go for safe inside shelter right now, so camping outside is my only option.

AFFIDAVIT

Case No. 3AN-23-_____-CI

Exhibit A

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14. The Municipality has not told me about any transportation options to get me or my belongings to another location.

15. If I have to leave my site, I will very likely lose some of the things I depend on for shelter and warmth, or that have personal meaning to me.

16. I am worried that if I move to another site, the Municipality will just abate that site and I will have to move all over again.

17. If I do not abate my site, I am concerned that the Municipality will cite me for trespassing, arrest me, or take some other action to punish me.

18. It is difficult to live outdoors. The weather in Anchorage is unpredictable and can be wet, cold, and windy, even in summer. I rely on my personal belongings — such as a tent, warm clothing, and pallets — to protect me from the elements and to provide as much safety and privacy as possible. If I am forced to move from my campsite and the Municipality takes my belongings—even if the Municipality stores instead of destroys my belongings—it will be even more difficult for me to stay warm, dry, and safe. I will be much worse off than I am right now.

19. I choose to live among other people who also have nowhere else to go for safety reasons and for community. By camping together,

AFFIDAVIT

Case No. 3AN-28-_____-CI

Exhibit A

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we are safer from the elements, wildlife, and other people than we otherwise would be.

20. The following statements apply to me:

 I have spoken with Anchorage police officers who told me told me that if I do not leave my campsite, they will cite me for trespassing.

✓ I have spoken with Anchorage police officers who told me told me that if I do not leave my campsite, I will be arrested.

✓ I have been at this location for 24 days/weeks/months.

✓ Before living here, I was at

✓ another campsite that was abated.

 the Sullivan Arena for days / weeks /

months. I cannot stay at the Sullivan Arena now

because the Municipality has closed it down as a shelter.

✓ While camping in my current location, I am receiving social services, food, access to restroom facilities, and/or other resources in the area around where I am camping. If I am forced to leave this site, I will no longer have access to those services—or will have a

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AFFIDAVIT

Case No. 3AN-23- -CI

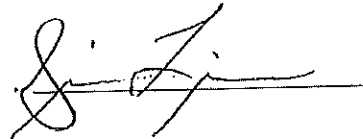
Exhibit A

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significantly more difficult time accessing those services—which
will be bad for me.

21. I certify under penalty of perjury that the foregoing is true and
that a notary public or other official empowered to administer oaths is
unavailable to me.

EXECUTED this 26 day of June, 2023.


SIONE LIMA

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

AFFIDAVIT

I, Lillian Sheakley, declare under penalty
of perjury:

1. My name is Lillian Sheakley. I have
personal knowledge of all facts contained in this affidavit.

2. I am at least 21 years old and am competent to attest to the
facts in this affidavit.

3. I am a resident of Anchorage, Alaska.

4. I am currently homeless. I camp outside full time. I live at

Davis Park.

5. I have been living without shelter or housing, off and on, since
approximately 2015.

6. I am living outside because I do not have anywhere else to go.
I do not have a house or apartment, and I cannot afford to rent or buy
one. I am not aware of any currently available indoor shelter options in
the Municipality where I could stay and have a roof over my head.

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AFFIDAVIT

Case No. 3AN-28-_____-CI

Exhibit A

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7. On June 22, 2023, the Municipality of Anchorage put up signs near my campsite telling me that I had to move myself and all of my belongings within 10 days.

8. Before the Municipality put up the signs, I was not informed that there might be an abatement of the area I live in.

9. I have not been given the chance to ask a Municipal officer if I might be able to stay here or to request a hearing.

10. The Municipality has not informed me of any specific reasons that my campsite was chosen for abatement, any actions I can take to stop the abatement, or anything I could have done to prevent it.

11. Because the Municipality has not told me what I could have done to prevent the abatement, I do not know what I could do to prevent any future abatements at any other sites.

12. The Municipality has not informed me of where I should go after leaving my campsite. I am not aware of any indoor shelter beds that are available right now in the Municipality. No one from the Municipality has offered me any indoor shelter or housing options where I could safely sleep or store my belongings. I am not sure where the Municipality wants me to go.

13. My understanding is there is nowhere for me to go for safe inside shelter right now, so camping outside is my only option.

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Case No. 3AN-23-_____-CI

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14. The Municipality has not told me about any transportation options to get me or my belongings to another location.

15. If I have to leave my site, I will very likely lose some of the things I depend on for shelter and warmth, or that have personal meaning to me.

16. I am worried that if I move to another site, the Municipality will just abate that site and I will have to move all over again.

17. If I do not abate my site, I am concerned that the Municipality will cite me for trespassing, arrest me, or take some other action to punish me.

18. It is difficult to live outdoors. The weather in Anchorage is unpredictable and can be wet, cold, and windy, even in summer. I rely on my personal belongings – such as a tent, warm clothing, and pallets – to protect me from the elements and to provide as much safety and privacy as possible. If I am forced to move from my campsite and the Municipality takes my belongings—even if the Municipality stores instead of destroys my belongings—it will be even more difficult for me to stay warm, dry, and safe. I will be much worse off than I am right now.

19. I choose to live among other people who also have nowhere else to go for safety reasons and for community. By camping together,

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Case No. 3AN-23-_____-CI

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we are safer from the elements, wildlife, and other people than we otherwise would be.

20. The following statements apply to me:

_____ I have spoken with Anchorage police officers who told me told me that if I do not leave my campsite, they will cite me for trespassing.

_____ I have spoken with Anchorage police officers who told me told me that if I do not leave my campsite, I will be arrested.

☒ I have been at this location for 24 days/weeks/months.

☒ Before living here, I was at

☒ another campsite that was abated.

☒ the Sullivan Arena for 1 days / weeks /

0 months. I cannot stay at the Sullivan Arena now

because the Municipality has closed it down as a shelter.

☒ While camping in my current location, I am receiving social services, food, access to restroom facilities, and/or other resources in the area around where I am camping. If I am forced to leave this site, I will no longer have access to those services—or will have a

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significantly more difficult time accessing those services—which
will be bad for me.

21. I certify under penalty of perjury that the foregoing is true and
that a notary public or other official empowered to administer oaths is
unavailable to me.

EXECUTED this 26 day of June, 2023.

Lillian Shadkey

AFFIDAVIT

Case No. 3AN-28-_____ -CI

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

AFFIDAVIT

I, GREGORY MICHAEL SMITH, declare under penalty
of perjury:

1. My name is Gregory Smith. I have
personal knowledge of all facts contained in this affidavit.

2. I am at least 21 years old and am competent to attest to the
facts in this affidavit.

3. I am a resident of Anchorage, Alaska.

4. I am currently homeless. I camp outside full time. I live ~~at~~ in
the woods between Mt View Drive and the Municipal Snow Dump
across Mountain View Drive from Davis Park — on federal land.

5. I have been living without shelter or housing, off and on, since
approximately 7 or 8 years ago.

6. I am living outside because I do not have anywhere else to go.
I do not have a house or apartment, and I cannot afford to rent or buy
one. I am not aware of any currently available indoor shelter options in
the Municipality where I could stay and have a roof over my head.

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AFFIDAVIT

Case No. 3AN-23-_____-CI

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7. On June 22, 2023, the Municipality of Anchorage put up signs near my campsite telling me that I had to move myself and all of my belongings within 10 days.

8. Before the Municipality put up the signs, I was not informed that there might be an abatement of the area I live in.

9. I have not been given the chance to ask a Municipal officer if I might be able to stay here or to request a hearing.

10. The Municipality has not informed me of any specific reasons that my campsite was chosen for abatement, any actions I can take to stop the abatement, or anything I could have done to prevent it.

11. Because the Municipality has not told me what I could have done to prevent the abatement, I do not know what I could do to prevent any future abatements at any other sites.

12. The Municipality has not informed me of where I should go after leaving my campsite. I am not aware of any indoor shelter beds that are available right now in the Municipality. No one from the Municipality has offered me any indoor shelter or housing options where I could safely sleep or store my belongings. I am not sure where the Municipality wants me to go.

13. My understanding is there is nowhere for me to go for safe inside shelter right now, so camping outside is my only option.

AFFIDAVIT

Case No. 3AN-23-_____-CI

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Page 2 of 5

14. The Municipality has not told me about any transportation options to get me or my belongings to another location.

15. If I have to leave my site, I will very likely lose some of the things I depend on for shelter and warmth, or that have personal meaning to me.

16. I am worried that if I move to another site, the Municipality will just abate that site and I will have to move all over again.

17. If I do not abate my site, I am concerned that the Municipality will cite me for trespassing, arrest me, or take some other action to punish me.

18. It is difficult to live outdoors. The weather in Anchorage is unpredictable and can be wet, cold, and windy, even in summer. I rely on my personal belongings — such as a tent, warm clothing, and pallets — to protect me from the elements and to provide as much safety and privacy as possible. If I am forced to move from my campsite and the Municipality takes my belongings—even if the Municipality stores instead of destroys my belongings—it will be even more difficult for me to stay warm, dry, and safe. I will be much worse off than I am right now.

19. I choose to live among other people who also have nowhere else to go for safety reasons and for community. By camping together,

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we are safer from the elements, wildlife, and other people than we otherwise would be.

20. The following statements apply to me:

_____ I have spoken with Anchorage police officers who told me told me that if I do not leave my campsite, they will cite me for trespassing.

_____ I have spoken with Anchorage police officers who told me told me that if I do not leave my campsite, I will be arrested.

X I have been at this location for about 12 days/weeks/months.

X Before living here, I was at

X another campsite that was abated.

_____ the Sullivan Arena for _____ days / weeks /

months. I cannot stay at the Sullivan Arena now

because the Municipality has closed it down as a shelter.

X While camping in my current location, I am receiving social services, food, access to restroom facilities, and/or other resources in the area around where I am camping. If I am forced to leave this site, I will no longer have access to those services—or will have a

AFFIDAVIT

Case No. 9AN-23-_____-CI

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significantly more difficult time accessing those services—which
will be bad for me.

21. I certify under penalty of perjury that the foregoing is true and
that a notary public or other official empowered to administer oaths is
unavailable to me.

EXECUTED this 26th day of June, 2023.



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Case No. 3AN-23-_____-CI

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

AFFIDAVIT

I, Tracy Thompson Lynn Thompson, declare under penalty
of perjury:

1. My name is Tracy Lynn Thompson ^{D.O.B: 06/02/68}. I have
personal knowledge of all facts contained in this affidavit.

2. I am at least 21 years old and am competent to attest to the
facts in this affidavit.

3. I am a resident of Anchorage, Alaska.

4. I am currently homeless. I camp outside full time. I live at
between Mt. View Road and the Snow Dump, across Mt. View Road
from Davis Park

5. I have been living without shelter or housing, off and on, since
approximately April 2023

6. I am living outside because I do not have anywhere else to go.
I do not have a house or apartment, and I cannot afford to rent or buy
one. I am not aware of any currently available indoor shelter options in
the Municipality where I could stay and have a roof over my head.

AFFIDAVIT

Case No. 3AN-23-_____-CI

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7. On June 22, 2023, the Municipality of Anchorage put up signs near my campsite telling me that I had to move myself and all of my belongings within 10 days.

8. Before the Municipality put up the signs, I was not informed that there might be an abatement of the area I live in.

9. I have not been given the chance to ask a Municipal officer if I might be able to stay here or to request a hearing.

10. The Municipality has not informed me of any specific reasons that my campsite was chosen for abatement, any actions I can take to stop the abatement, or anything I could have done to prevent it.

11. Because the Municipality has not told me what I could have done to prevent the abatement, I do not know what I could do to prevent any future abatements at any other sites.

12. The Municipality has not informed me of where I should go after leaving my campsite. I am not aware of any indoor shelter beds that are available right now in the Municipality. No one from the Municipality has offered me any indoor shelter or housing options where I could safely sleep or store my belongings. I am not sure where the Municipality wants me to go.

13. My understanding is there is nowhere for me to go for safe inside shelter right now, so camping outside is my only option.

AFFIDAVIT

Case No. 8AN-23-_____-CI

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14. The Municipality has not told me about any transportation options to get me or my belongings to another location.

15. If I have to leave my site, I will very likely lose some of the things I depend on for shelter and warmth, or that have personal meaning to me.

16. I am worried that if I move to another site, the Municipality will just abate that site and I will have to move all over again.

17. If I do not abate my site, I am concerned that the Municipality will cite me for trespassing, arrest me, or take some other action to punish me.

18. It is difficult to live outdoors. The weather in Anchorage is unpredictable and can be wet, cold, and windy, even in summer. I rely on my personal belongings — such as a tent, warm clothing, and pallets — to protect me from the elements and to provide as much safety and privacy as possible. If I am forced to move from my campsite and the Municipality takes my belongings—even if the Municipality stores instead of destroys my belongings—it will be even more difficult for me to stay warm, dry, and safe. I will be much worse off than I am right now.

19. I choose to live among other people who also have nowhere else to go for safety reasons and for community. By camping together,

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we are safer from the elements, wildlife, and other people than we otherwise would be.

20. The following statements apply to me:

 I have spoken with Anchorage police officers who told me told me that if I do not leave my campsite, they will cite me for trespassing.

 I have spoken with Anchorage police officers who told me told me that if I do not leave my campsite, I will be arrested.

✓ I have been at this location for 2 days/~~weeks~~/months.

✓ Before living here, I was at

 another campsite that was abated.

✓ B.F.S. / Complex Care (Catholic Social Services)
the Sullivan Arena for 3 days / weeks /

months. I cannot stay at the Sullivan Arena now

because the Municipality has closed it down as a shelter.

✓ While camping in my current location, I am receiving social services, food, access to restroom facilities, and/or other resources in the area around where I am camping. If I am forced to leave this site, I will no longer have access to those services—or will have a

AFFIDAVIT

Case No. 3AN-23-_____-CI

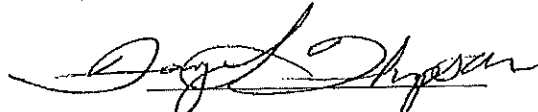
Exhibit A

Page 4 of 6

significantly more difficult time accessing those services—which
will be bad for me.

21. I certify under penalty of perjury that the foregoing is true and
that a notary public or other official empowered to administer oaths is
unavailable to me.

EXECUTED this 26 day of June, 2023.


Tracy Lynn Thompson
D.O.B. 06.02.1968

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

AFFIDAVIT

I, Della L Tuckle, declare under penalty
of perjury:

1. My name is Della L Tuckle. I have
personal knowledge of all facts contained in this affidavit.

2. I am at least 21 years old and am competent to attest to the
facts in this affidavit.

3. I am a resident of Anchorage, Alaska.

4. I am currently homeless. I camp outside full time. I live at
between the show dump and Mountain View Road
Drive

5. I have been living without shelter or housing, off and on, since
approximately 10 YEARS

6. I am living outside because I do not have anywhere else to go.
I do not have a house or apartment, and I cannot afford to rent or buy
one. I am not aware of any currently available indoor shelter options in
the Municipality where I could stay and have a roof over my head.

AFFIDAVIT

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7. On June 22, 2023, the Municipality of Anchorage put up signs near my campsite telling me that I had to move myself and all of my belongings within 10 days.

8. Before the Municipality put up the signs, I was not informed that there might be an abatement of the area I live in.

9. I have not been given the chance to ask a Municipal officer if I might be able to stay here or to request a hearing.

10. The Municipality has not informed me of any specific reasons that my campsite was chosen for abatement, any actions I can take to stop the abatement, or anything I could have done to prevent it.

11. Because the Municipality has not told me what I could have done to prevent the abatement, I do not know what I could do to prevent any future abatements at any other sites.

12. The Municipality has not informed me of where I should go after leaving my campsite. I am not aware of any indoor shelter beds that are available right now in the Municipality. No one from the Municipality has offered me any indoor shelter or housing options where I could safely sleep or store my belongings. I am not sure where the Municipality wants me to go.

13. My understanding is there is nowhere for me to go for safe inside shelter right now, so camping outside is my only option.

AFFIDAVIT

Case No. 3AN-28-_____-CI

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14. The Municipality has not told me about any transportation options to get me or my belongings to another location.

15. If I have to leave my site, I will very likely lose some of the things I depend on for shelter and warmth, or that have personal meaning to me.

16. I am worried that if I move to another site, the Municipality will just abate that site and I will have to move all over again.

17. If I do not abate my site, I am concerned that the Municipality will cite me for trespassing, arrest me, or take some other action to punish me.

18. It is difficult to live outdoors. The weather in Anchorage is unpredictable and can be wet, cold, and windy, even in summer. I rely on my personal belongings – such as a tent, warm clothing, and pallets – to protect me from the elements and to provide as much safety and privacy as possible. If I am forced to move from my campsite and the Municipality takes my belongings—even if the Municipality stores instead of destroys my belongings—it will be even more difficult for me to stay warm, dry, and safe. I will be much worse off than I am right now.

19. I choose to live among other people who also have nowhere else to go for safety reasons and for community. By camping together,

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we are safer from the elements, wildlife, and other people than we otherwise would be.

20. The following statements apply to me:

 I have spoken with Anchorage police officers who told me told me that if I do not leave my campsite, they will cite me for trespassing.

 I have spoken with Anchorage police officers who told me told me that if I do not leave my campsite, I will be arrested.

YES I have been at this location for 12 days/weeks/months

 Before living here, I was at

✓ another campsite that was abated.

OLD NO X the Sullivan Arena for ✓ days / weeks /

months. I cannot stay at the Sullivan Arena now

because the Municipality has closed it down as a shelter.

✓ While camping in my current location, I am receiving social services, food, access to restroom facilities, and/or other resources in the area around where I am camping. If I am forced to leave this site, I will no longer have access to those services—or will have a

AFFIDAVIT

Case No. 3AN-28-_____-CI

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significantly more difficult time accessing those services—which
will be bad for me.

21. I certify under penalty of perjury that the foregoing is true and
that a notary public or other official empowered to administer oaths is
unavailable to me.

EXECUTED this 26th day of June, 2023.

Della Stetsko

AFFIDAVIT

Case No. 3AN-23-_____ -CI

Exhibit A

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

AFFIDAVIT

I, LARRY C. TUNLEY, declare under penalty
of perjury:

1. My name is Larry Tunley. I have
personal knowledge of all facts contained in this affidavit.
2. I am at least 21 years old and am competent to attest to the
facts in this affidavit.
3. I am a resident of Anchorage, Alaska.
4. I am currently homeless. I camp outside full time. I live ~~at~~ in
the woods between Mt. View Drive and the Municipal Snow Dump across Mountain
View Drive from Davis Park
5. I have been living without shelter or housing, off and on, since
approximately 7 years ago.
6. I am living outside because I do not have anywhere else to go.
I do not have a house or apartment, and I cannot afford to rent or buy
one. I am not aware of any currently available indoor shelter options in
the Municipality where I could stay and have a roof over my head.

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7. On June 22, 2023, the Municipality of Anchorage put up signs near my campsite telling me that I had to move myself and all of my belongings within 10 days.

8. Before the Municipality put up the signs, I was not informed that there might be an abatement of the area I live in.

9. I have not been given the chance to ask a Municipal officer if I might be able to stay here or to request a hearing.

10. The Municipality has not informed me of any specific reasons that my campsite was chosen for abatement, any actions I can take to stop the abatement, or anything I could have done to prevent it.

11. Because the Municipality has not told me what I could have done to prevent the abatement, I do not know what I could do to prevent any future abatements at any other sites.

12. The Municipality has not informed me of where I should go after leaving my campsite. I am not aware of any indoor shelter beds that are available right now in the Municipality. No one from the Municipality has offered me any indoor shelter or housing options where I could safely sleep or store my belongings. I am not sure where the Municipality wants me to go.

13. My understanding is there is nowhere for me to go for safe inside shelter right now, so camping outside is my only option.

14. The Municipality has not told me about any transportation options to get me or my belongings to another location.

15. If I have to leave my site, I will very likely lose some of the things I depend on for shelter and warmth, or that have personal meaning to me.

16. I am worried that if I move to another site, the Municipality will just abate that site and I will have to move all over again.

17. If I do not abate my site, I am concerned that the Municipality will cite me for trespassing, arrest me, or take some other action to punish me.

18. It is difficult to live outdoors. The weather in Anchorage is unpredictable and can be wet, cold, and windy, even in summer. I rely on my personal belongings — such as a tent, warm clothing, and pallets — to protect me from the elements and to provide as much safety and privacy as possible. If I am forced to move from my campsite and the Municipality takes my belongings—even if the Municipality stores instead of destroys my belongings—it will be even more difficult for me to stay warm, dry, and safe. I will be much worse off than I am right now.

19. I choose to live among other people who also have nowhere else to go for safety reasons and for community. By camping together,

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we are safer from the elements, wildlife, and other people than we otherwise would be.

20. The following statements apply to me:

_____ I have spoken with Anchorage police officers who told me told me that if I do not leave my campsite, they will cite me for trespassing.

_____ I have spoken with Anchorage police officers who told me told me that if I do not leave my campsite, I will be arrested.

X I have been at this location for ≈ 12 days/weeks/months.

X Before living here, I was at

X another campsite that was abated.

_____ the Sullivan Arena for _____ days / weeks / months. I cannot stay at the Sullivan Arena now

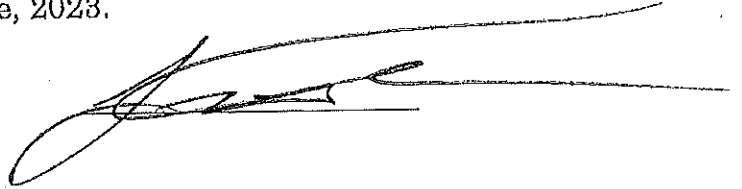
because the Municipality has closed it down as a shelter.

X While camping in my current location, I am receiving social services, food, access to restroom facilities, and/or other resources in the area around where I am camping. If I am forced to leave this site, I will no longer have access to those services—or will have a

significantly more difficult time accessing those services—which
will be bad for me.

21. I certify under penalty of perjury that the foregoing is true and
that a notary public or other official empowered to administer oaths is
unavailable to me.

EXECUTED this 26th day of June, 2023.

A handwritten signature in black ink, appearing to be "J. Banks", written over a horizontal line.

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AFFIDAVIT

Case No. 3AN-23-_____-CI

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

AFFIDAVIT

I, BRIAN KEITH VAUGHAN, declare under penalty
of perjury:

1. My name is Brian Vaughan. I have
personal knowledge of all facts contained in this affidavit.
2. I am at least 21 years old and am competent to attest to the
facts in this affidavit.
3. I am a resident of Anchorage, Alaska.
4. I am currently homeless. I camp outside full time. I live at
the woods between Mt View Drive and the snow dump, across Mt. View
Drive from Davis park - on federal land.
5. I have been living without shelter or housing, off and on, since
approximately 2015.
6. I am living outside because I do not have anywhere else to go.
I do not have a house or apartment, and I cannot afford to rent or buy
one. I am not aware of any currently available indoor shelter options in
the Municipality where I could stay and have a roof over my head.

AFFIDAVIT

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Anchorage, Alaska 99508
TEL: 907.258.0044
FAX: 907.263.2016
EMAIL: courtfilings@acluak.org

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.263.2016
EMAIL: conffilings@acluak.org

7. On June 22, 2023, the Municipality of Anchorage put up signs near my campsite telling me that I had to move myself and all of my belongings within 10 days.

8. Before the Municipality put up the signs, I was not informed that there might be an abatement of the area I live in.

9. I have not been given the chance to ask a Municipal officer if I might be able to stay here or to request a hearing.

10. The Municipality has not informed me of any specific reasons that my campsite was chosen for abatement, any actions I can take to stop the abatement, or anything I could have done to prevent it.

11. Because the Municipality has not told me what I could have done to prevent the abatement, I do not know what I could do to prevent any future abatements at any other sites.

12. The Municipality has not informed me of where I should go after leaving my campsite. I am not aware of any indoor shelter beds that are available right now in the Municipality. No one from the Municipality has offered me any indoor shelter or housing options where I could safely sleep or store my belongings. I am not sure where the Municipality wants me to go.

13. My understanding is there is nowhere for me to go for safe inside shelter right now, so camping outside is my only option.

AFFIDAVIT

Case No. 3AN-23-_____-CI

Exhibit A
Page 2 of 5

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Anchorage, Alaska 99503
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14. The Municipality has not told me about any transportation options to get me or my belongings to another location.

15. If I have to leave my site, I will very likely lose some of the things I depend on for shelter and warmth, or that have personal meaning to me.

16. I am worried that if I move to another site, the Municipality will just abate that site and I will have to move all over again.

17. If I do not abate my site, I am concerned that the Municipality will cite me for trespassing, arrest me, or take some other action to punish me.

18. It is difficult to live outdoors. The weather in Anchorage is unpredictable and can be wet, cold, and windy, even in summer. I rely on my personal belongings — such as a tent, warm clothing, and pallets — to protect me from the elements and to provide as much safety and privacy as possible. If I am forced to move from my campsite and the Municipality takes my belongings—even if the Municipality stores instead of destroys my belongings—it will be even more difficult for me to stay warm, dry, and safe. I will be much worse off than I am right now.

19. I choose to live among other people who also have nowhere else to go for safety reasons and for community. By camping together,

AFFIDAVIT

Case No. 3AN-23-_____-CI

Exhibit A

Page 3 of 5

we are safer from the elements, wildlife, and other people than we otherwise would be.

20. The following statements apply to me:

_____ I have spoken with Anchorage police officers who told me told me that if I do not leave my campsite, they will cite me for trespassing.

_____ I have spoken with Anchorage police officers who told me told me that if I do not leave my campsite, I will be arrested.

X I have been at this location for ≈ 12 days/weeks/months.

X Before living here, I was at

X another campsite that was abated.

_____ the Sullivan Arena for _____ days / weeks / months. I cannot stay at the Sullivan Arena now

because the Municipality has closed it down as a shelter.

X While camping in my current location, I am receiving social services, food, access to restroom facilities, and/or other resources in the area around where I am camping. If I am forced to leave this site, I will no longer have access to those services—or will have a

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significantly more difficult time accessing those services—which
will be bad for me.

21. I certify under penalty of perjury that the foregoing is true and
that a notary public or other official empowered to administer oaths is
unavailable to me.

EXECUTED this 26th day of June, 2023.

B. K. Vaughn

AFFIDAVIT

Case No. 3AN-23-_____ -CI

Exhibit A

Page 5 of 5

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

AFFIDAVIT

I, LUCILLE JANE WILLIAMS, declare under penalty
of perjury:

1. My name is Lucille Williams. I have
personal knowledge of all facts contained in this affidavit.
2. I am at least 21 years old and am competent to attest to the
facts in this affidavit.
3. I am a resident of Anchorage, Alaska.
4. I am currently homeless. I camp outside full time. I live ~~at~~ in the
woods between Mt. View Drive and the Municipal Snow Dump across Mountain
View Drive from Davis Park
5. I have been living without shelter or housing, off and on, since
approximately 7 OR 8 years ago.
6. I am living outside because I do not have anywhere else to go.
I do not have a house or apartment, and I cannot afford to rent or buy
one. I am not aware of any currently available indoor shelter options in
the Municipality where I could stay and have a roof over my head.

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AFFIDAVIT

Case No. 3AN-23-_____-CI

Exhibit A

Page 1 of 5

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AFFIDAVIT

Case No. 3AN-23-_____-CI

Exhibit A
Page 2 of 5

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AFFIDAVIT

Case No. 3AN-23-_____-CI

Exhibit A

Page 8 of 5

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X another campsite that was abated.

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because the Municipality has closed it down as a shelter.

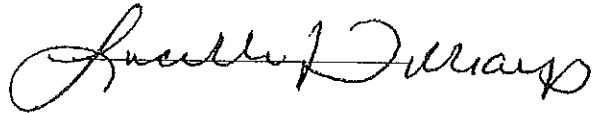
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significantly more difficult time accessing those services—which
will be bad for me.

21. I certify under penalty of perjury that the foregoing is true and
that a notary public or other official empowered to administer oaths is
unavailable to me.

EXECUTED this 20th day of June, 2023.



AFFIDAVIT

Case No. 8AN-23-_____.CI

Exhibit A

Page 5 of 5

Notice of Zone Abatement / Campsite Clean Up

This is not a legal area for storage or shelter. Any personal property in or around this zone at the end of 10 days shall be removed and disposed of as waste. **AMC 15.20.020B.15.**



ASSISTANCE:

For outreach and housing support, please call 211.

STORAGE:

Personal property placed in this posted zone after notices were posted shall be stored for 30 days after posting date. Personal items must be in fair and usable condition to be eligible for storage (including tents, sleeping bags, toiletries, medication, personal papers and identification, shoes and clothing). Stored property may be recovered by calling (907) 343-4721. Materials including junk, litter, garbage, pallets, and cardboard and items that are spoiled, mildewed, or contaminated with human, biological, or hazardous waste will not be stored and will be disposed of as waste.

APPEAL RIGHTS:

This notice serves as a final decision of the Municipality of Anchorage that this posted zone/campsite is subject to abatement. You may appeal this decision to the Alaska Superior Court within 30 days of the posting date. Written notice to the Municipal Attorney's Office of an intent to appeal is also sufficient notice. If the Municipality is able to confirm that either an appeal or intent was timely received, that person's property shall be stored as described above.

Alaska Superior Court
825 West 4th. Avenue
Anchorage AK 99501

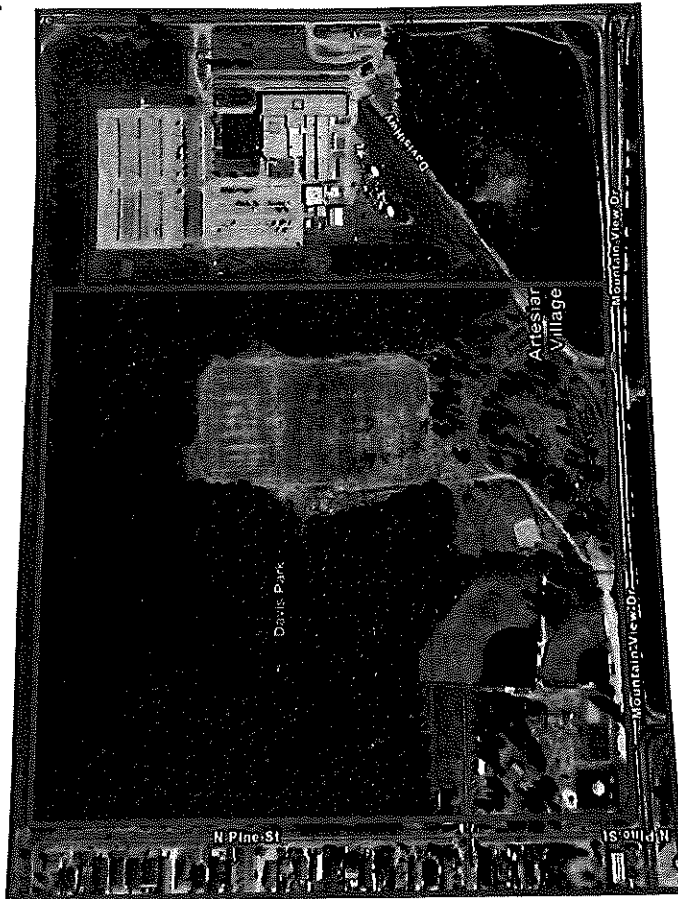
Municipal Attorney's Office
632 West 6th. Avenue, Suite 730
Anchorage AK 99501

Exhibit B

| Posting Date: | Location: |
|---------------|---|
| 6-22-23 | MCCAREY TO BONIFACE, MT. VIEW TO GLENN HWY |

Notice of Zone Abatement / Campsite Clean Up

This is not a legal area for storage or shelter. Any personal property in or around this zone at the end of 10 days shall be removed and disposed of as waste. **AMC 15.20.020B.15.**



ASSISTANCE:

For outreach and housing support, please call 211.

STORAGE:

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Alaska Superior Court
825 West 4th. Avenue
Anchorage AK 99501

Municipal Attorney's Office
632 West 6th. Avenue, Suite 730
Anchorage AK 99501

Exhibit C

3-041 Ver. 06-20 Davis Park

| Posting Date: | Location: |
|---------------|--|
| 6-23-23 | DAVIS PARK, N. PINE STREET TO MCPHEE AVE. TO MT. VIEW DRIVE |

Zone Abatement / Campsite Clean Up

Area is closing to camping. Personal property in or around the posted zone at the end of 10 days shall be removed and disposed of. AMC 15.20.020B, 15.b.v.

ASSISTANCE:

For outreach and housing support, please call 211.

STORAGE:

Personal property placed in this posted zone after notices were posted shall be stored for 30 days after posting date. Personal items must be in fair and usable condition to be eligible for storage (including tents, sleeping bags, toiletries, medication, personal papers and identification, shoes and clothing). Stored property may be recovered by calling (907) 343-4721. Materials including junk, litter, garbage, pallets, and cardboard and items that are spoiled, mildewed, or contaminated with human, biological, or hazardous waste will not be stored and will be disposed of as waste.

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Alaska Superior Court
825 West 4th Avenue
Anchorage AK 99501

Municipal Attorney's Office
632 West 6th Avenue, Suite 730
Anchorage AK 99501

Exhibit D

Location of Zoned Area:

LOUSSAC LIBRARY, CUDDY PARK,
& OLD ARCHIVE SITE:
26TH AVE. TO S. MUNICIPAL
PROPERTY LINE / DENALI TO B ST.

Posting Date:

5/24/23

CLOSED TO THE PUBLIC

NO CAMPING!



Personal property left in this area is subject to removal without additional notice. Items may be disposed of after 30 days of storage, in accordance with AMC 15.20.020B.15.c.

To claim stored property,
call 907-343-4721.

Paved multi-use trails will remain
open for persons moving through this area.

For more information:
closureinfo@anchorageak.gov

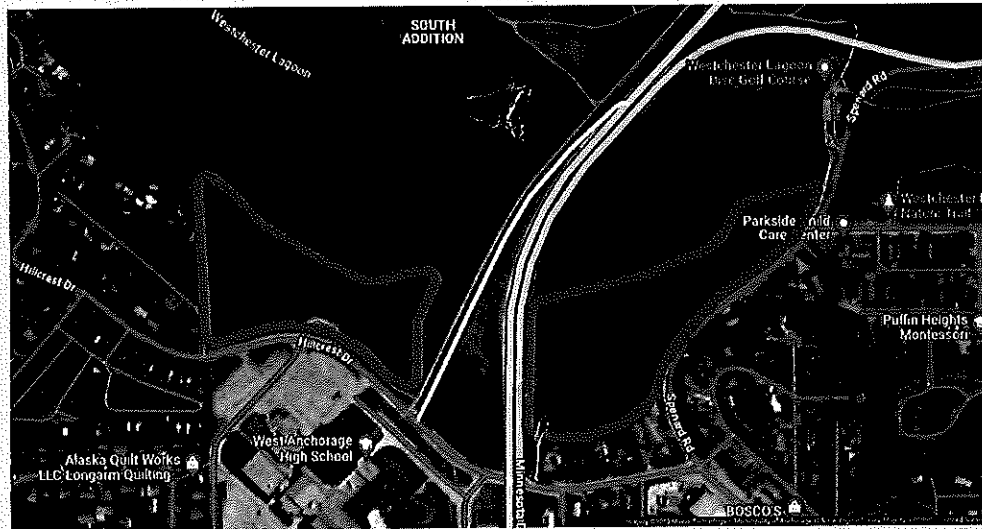


2-23-23
Date Posted



51-053 v 06, 23

CLOSED TO THE PUBLIC



Personal property left in this area is subject to removal without additional notice. Items may be disposed of after 30 days of storage, in accordance with AMC 15.20.020B.15.c.

To claim stored property,
call 907-343-4721.

Paved multi-use trails will remain
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For more information:
closureinfo@anchorageak.gov

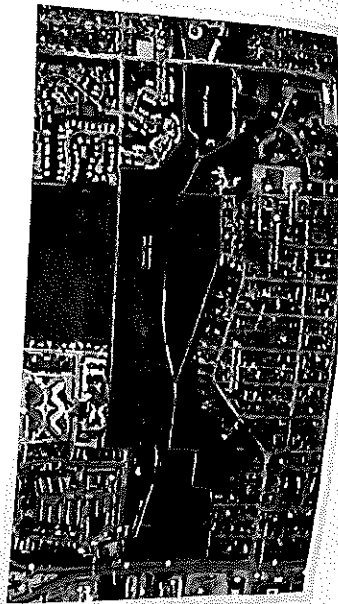


6-23-23

Date Posted Exhibit F



CLOSED TO THE PUBLIC



Personal property left in this area is subject to removal without additional notice. Items may be disposed of after 30 days of storage, in accordance with AMC 15.20.020B.15.c.

To claim stored property,
call 907-343-4721.

Paved multi-use trails will remain open
for persons moving through this area.

For more information:
closureinfo@anchorageak.gov



06/13/22
Date Posted

Exhibit G

DEPARTMENT OF THE AIR FORCE
LEASE TO

Municipality of Anchorage

AT

Joint Base Elmendorf – Richardson

JBER, Alaska
(hereinafter referred to as the “Installation”)

Form approved by
SAF/GCN 2 Apr 15
Previous versions are obsolete

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LIST OF EXHIBITS

| | |
|-----------|--|
| Exhibit A | Map of Leased Premises |
| Exhibit B | Legal Description of Leased Premises |
| Exhibit C | Non-Exclusive List of Outgrants |
| Exhibit D | Physical Condition Report |
| Exhibit E | Environmental Baseline Survey/Environmental Baseline Survey Waiver |
| Exhibit H | Areas of Special Notice |

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DEPARTMENT OF THE AIR FORCE

LEASE OF PROPERTY

AT Joint Base Elmendorf-Richardson, Alaska

PREAMBLE

THIS LEASE OF PROPERTY ("Lease") is made by and between THE UNITED STATES OF AMERICA, acting by and through THE SECRETARY OF THE AIR FORCE (the "Secretary" or the "Government") and **Municipality of Anchorage**, a **Municipality** created under the laws of the state of **Alaska**, with offices located at **PO Box 196650 Anchorage, AK 99519-6650** ("Lessee"). The Government and the Lessee may sometimes be referred to jointly as the "Parties," and each separately may be referred to as a "Party."

RECITAL

The Secretary, under authority contained in 10 U.S.C. § 2667, has determined that: (i) the Leased Premises are not excess property as defined by the Federal Property and Administration Services Act of 1949, as amended (40 U.S.C. § 102(e)), and are not at this time needed for other public use; (ii) a lease of the Leased Premises is advantageous to the United States; and (iii) a lease of the Leased Premises on the terms set forth in this Lease is in the public interest.

NOW, THEREFORE, the Government, by virtue of the authority conferred by law, for the consideration set out below, hereby leases to the Lessee and the Lessee agrees to lease the real property as more specifically shown on the map in Exhibit A and described by legal description in Exhibit B to this Lease (the "Leased Premises"), which consists of **more or less, 66.20 acres of land** for the purpose of a **Community Park and Gardens** consist of **Parcel A** is for **4.68 acres, more or less** and **Parcel B** is for **61.52 acres more or less** to be used for **cross-country skiing, nature, hiking and bike trails, picnicking, gardening, outdoor education and interpretation and non-spectator sports.**

AND GRANTS TO LESSEE the right to gain access to the Leased Premises through a route or routes designated from time to time by the Government including use of (i) streets, driveways, sidewalks, and walkways on the Installation for purposes of pedestrian and vehicular ingress and egress to and from the Leased Premises which lead to the Leased Premises. The Government reserves the right to change, modify, eliminate, or temporarily close any portion or portions of streets, driveways, sidewalks, walkways, and internal portions of the area. Provided, however, the Government agrees that it will not change, modify, eliminate, or temporarily close such streets, driveways, sidewalks,

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walkways, and internal portions of the area in a manner that unreasonably interferes with Lessee's use or value of the Leased Premises under this Lease.

RESERVING, HOWEVER, unto the Government general access over, under, across, and through the Leased Premises for the purpose of accessing, using, operating, and maintaining any Government real or personal property, facilities, fixtures, equipment, utilities, or the like located on, beneath, or adjacent to the Leased Premises.

BASIC TERMS

THIS LEASE is granted subject to the following conditions:

1. TERM

1.1. Term. The term of this Lease shall be **25 years** commencing **23 December 2016** ("Term Beginning Date") and ending **22 December 2041** ("Term Expiration Date") unless sooner terminated. The period from the Term Beginning Date through the Term Expiration Date shall be referred to as the "Lease Term." Lessee acknowledges they have maintained a continuous presence on the "Leased Premises" since 31 August 1978

1.2. Delivery of Possession. The Government shall deliver and the Lessee shall accept possession of the Leased Premises on the Term Beginning Date.

2. RENT

2.1. Base Rent. Based on the Approval of National Defense Authorization Act for Fiscal year 2017, S. 2943 Page 766-767; SEC. 2823, the Government shall receive **ZERO** rent ("Base Rent") per annum. The consideration for this Lease shall be the operation, maintenance, repair and protection of the Leased Premises in accordance with the terms and conditions of this Lease. All payments which may be due from this Lease shall be made payable to the Treasurer of the United States Special Funds Receipts Account **9751895700** and forwarded by the Lessee directly to:

673 CES/CEIAP
724 Postal Service Loop #4500
JBER, AK 99505-4500

2.2. Annual Base Rent Increase. Beginning on the first anniversary of the Term Beginning Date and continuing on each anniversary of the Term Beginning Date thereafter, the amount of the Base Rent shall be increased by zero (0) percent.

2.3. Late Charges and Default Interest. If any installment of Rent is not paid within ten (10) business days after its due date, then such arrearage shall, consistent with the Debt Collection Act of 1982 (31 U.S.C. § 3717), (i) bear 5% interest from the due date

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for amounts past due to the federal government until paid in full; (ii) include an administrative charge to cover the costs of processing and handling delinquent debts; and (iii) include an assessment of an additional 5% penalty charge on any portion of a debt that is more than 90 days past due.

2.4. Rent Payments. All Rent shall be paid without deduction, offset, prior notice, or demand as directed pursuant to this Lease.

3. CORRESPONDENCE

3.1. Notices. Whenever the Government or the Lessee shall desire to give or serve upon the other, a notice or other communication shall be sent to the regular mailing address for the parties specified below.

If to the Lessee:

**Municipality of Anchorage
Administration Department
Davis Park and McPhee Gardens
P.O. Box 196650
Anchorage, AK 9951-6650**

With a copy to:

**Municipality of Anchorage
Legal Administration
P.O. Box 196650
Anchorage, AK 9951-6650**

If to the Government:

**DEPARTMENT OF THE AIR FORCE
673 CES/CEIAP
724 Postal Service Loop #4500
JBER, AK 99505-4500**

With a copy to:

**DEPARTMENT OF THE AIR FORCE
AFCEC/CIT
2261 Hughes Ave, STE 155
JBSA Lackland, TX 78236-9821**

4. USE OF LEASED PREMISES

4.1. Permitted Uses. The Leased Premises shall be used for cross-country skiing, nature, hiking and bike trails, picnicking, gardening, outdoor education and interpretation and non-spectator sports and for no other purposes, subject, however, to

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all applicable provisions of this Lease. Lessee's use of the Leased Premises shall comply, at Lessee's sole cost and expense, with all Applicable Laws (hereinafter defined). The Lessee shall not use or occupy the Leased Premises in any manner that is unlawful, dangerous, or that results in waste, unreasonable annoyance, or a nuisance to the Government.

4.2. Government Right of Access. Any agency of the United States, its officers, agents, employees, contractors, and subcontractors may enter upon the Leased Premises at all times for any purposes not inconsistent with the Lessee's quiet use and enjoyment thereof under this Lease, including but not limited to confirming compliance by the Lessee with the terms of this Lease. The Government normally will enter the Leased Premises during regular business hours and give the Lessee at least twenty four (24) hours prior notice of its intention to do so, unless it determines the entry is required for safety, environmental, operations, or mission security purposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof.

5. DEFAULT, REMEDIES, AND TERMINATION

5.1. Events of Default. Any one or more of the following shall constitute an event of default ("Event of Default") under this Lease by the Lessee:

5.1.1. Lessee's failure to comply with any provision of this Lease, where such failure to comply continues for thirty (30) days after delivery of written notice thereof by the Government to the Lessee. If, however, such default is not reasonably susceptible to cure within such thirty (30) day period, the Lessee shall have such longer period as may be approved in writing in advance by the Government, which approval shall not be unreasonably withheld, conditioned or denied, to cure such default so long as the Lessee commences curing such default within the initial thirty (30) day period and diligently prosecutes such cure to completion in accordance with a schedule approved in writing by the Government, which approval shall not be unreasonably withheld, conditioned or denied.

5.1.2. Lessee's failure to pay Rent, when due and such failure remains uncured for a period of ten (10) days after written notice to the Lessee by the Government of the Lessee's failure to pay.

5.2. Excusable Delay. No Event of Default shall be deemed to have occurred for any period of time during which an "Excusable Delay," as defined in Paragraph 22.16, exists or the Lessee and the Government are attempting to resolve a dispute about an alleged default as provided in Paragraphs 5.1 or 5.2. For an Excusable Delay, the Lessee's period for cure shall be tolled for the period of time that the Excusable Delay exists. For a dispute, if, pursuant to the dispute resolution procedures set forth in Paragraph 5.5, a default is determined to have occurred, the Lessee's period for cure shall not begin until

the day after the final decision on the dispute is issued, and such default shall not become an Event of Default until any applicable cure period has expired.

5.3. Termination. This Lease may be terminated as follows:

5.3.1. The Government may terminate this Lease without cost or liability to the Government upon written notice to the Lessee that an Event of Default exists and remains uncured in accordance with the terms and conditions of Paragraph 5.1. Such notice shall be referred to as a "Default Termination Notice" and shall be effective as of the date specified therein, which shall be at least five (5) but not more than thirty (30) days after its receipt by the Lessee.

5.3.2. Either the Government or the Lessee may terminate this Lease upon written notice to the other Party in the event of extensive damage or destruction of all or part of the Leased Premises.

5.3.3. The Secretary of the Air Force may terminate this Lease at will.

5.4. Lessee Waiver of Suits and Claims. The Lessee hereby waives any claims or suits against the Government arising out of any termination of this Lease pursuant to Paragraph 5.3.

5.5. Disputes.

5.5.1. Except as otherwise provided in this Lease, any dispute between the Government and the Lessee arising under or related to this Lease involving \$10,000 (exclusive of interest) or less shall be decided by the Air Force Civil Engineer Center (AFCEC) Director ("Director") of the Installations Directorate (AFCEC/CI). The Director shall reduce his or her decision to writing and mail or otherwise furnish a copy to the Lessee. With respect to any such dispute, the Lessee agrees that the decision of the Director shall be final and conclusive and shall not be appealable or otherwise subject to challenge.

5.5.2. The Lessee and the Government agree that the following procedures constitute the administrative procedures that must be exhausted with respect to any dispute arising under or related to this Lease involving more than \$10,000 (exclusive of interest) before the Lessee or the Government may pursue any other remedy that is available to it pursuant to this Lease or law.

5.5.2.1. Any dispute involving more than \$10,000 (exclusive of interest) shall be decided by the Director of AFCEC/CI. The Director shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Lessee. The decision of the Director shall be final and conclusive unless, within thirty (30) calendar days from the date of receipt of the decision, the Lessee appeals the decision, by certified mail, to the Deputy Assistant

Secretary of the Air Force for Environment, Safety, and Infrastructure (SAF/IEE) and delivers a copy of its appeal to the Director by certified mail.

5.5.2.2. SAF/IEE shall render a decision by a date mutually agreed upon by the Parties. Either Party shall have the right to appeal the decision of SAF/IEE or his or her authorized representative to a court of competent jurisdiction in a timely manner; otherwise, the decision of SAF/IEE shall be final.

OPERATION OF THE PREMISES

6. EASEMENTS AND RIGHTS OF WAY

6.1. Lease Subject to Existing Easements. This Lease shall be subject to all existing easements, rights in the nature of easements, rights of way, licenses, and other property rights and interests (collectively, "Outgrants"), whether of public record or not, for any purpose with respect to the Leased Premises. A non-exclusive list of the Outgrants is attached as Exhibit C hereto. The Government shall have the right to reserve unto itself, or to grant to third parties, additional Outgrants. However, any such additional Outgrants shall not unreasonably interfere with the Lessee's use under this Lease or the value of the Leased Premises.

7. CONDITION OF LEASED PREMISES

7.1. Condition of Premises. The Lessee has inspected, knows, and accepts the condition and state of repair of the Leased Premises. It is understood and agreed that the Leased Premises are leased in an "as-is, where-is" condition, without any representation or warranty by the Government concerning their condition, and without obligation on the part of the Government to make any alterations, repairs, or additions.

7.2. Physical Condition Report. A physical condition report ("PCR") has been jointly prepared and signed by representatives of the Government and the Lessee and is attached as Exhibit D hereto. The PCR sets forth the agreed physical appearance and condition of the Leased Premises on the Term Beginning Date as determined from a joint inspection by the Parties. A separate PCR for the Leased Premises will be prepared by the Government, within ten (10) days after the expiration or earlier termination of this Lease ("Final PCR"). The Final PCR will be used by the Government to determine whether the Lessee has fulfilled its obligations to maintain and restore the Leased Premises under this Lease, including without limitation, Paragraph 13 and Paragraph 16.

8. MAINTENANCE OF LEASED PREMISES

8.1. Maintenance of Leased Premises. The Lessee, at no expense to the Government, shall at all times preserve, maintain, repair, and manage the Leased Premises, Leased

Premises Improvements, and Lessee Equipment in an acceptable, safe, and sanitary condition in accordance with this Lease.

8.2. Damage to Government Property. If the Lessee damages or destroys any real or personal property of the Government, then the Lessee shall promptly repair or replace such real or personal property to the reasonable satisfaction of the Government. In lieu of such repair or replacement, the Lessee shall, if so required by the Government, pay to the Government money in an amount sufficient to compensate for the loss sustained by the Government by reason of damage or destruction of Government property, including natural resources.

9. TAXES

9.1. Lessee Payment of Taxes. The Lessee shall pay to the proper authority, when and as the same become due and payable, all taxes, assessments, and similar charges which, at any time during the term of this Lease may be imposed on the Lessee or the Leased Premises.

10. INSURANCE

10.1. Risk of Loss. The Grantee shall, in any event and without prejudice to any other rights of the Government, bear all risk of loss or damage or destruction to the Premises, including any buildings, improvements, fixtures, or other property thereon, arising from any causes whatsoever, with or without fault by the Government; provided, however, the Government shall not be relieved of responsibility for loss or damage that is solely the result of the gross negligence or willful misconduct of the Government to the extent such loss or damage is not covered by coverage of insurance required under this Lease.

10.2. Insurance Coverage. During the entire period this Lease shall be in effect, the Grantee, at no expense to the Government, will carry and maintain, and as appropriate, require any contractor performing work on the Premises to carry and maintain, the following at no expense to the Government, the following insurance coverages:

10.2.1. Property insurance coverage against loss or damage by open perils or its equivalent, including fire, in an amount not less than One Hundred Percent (100%) of the full replacement cost of the buildings, building improvements, improvements to the land, fixtures, and personal property on the Premises. The policies of insurance carried in accordance with this Condition shall contain a "Replacement Cost Endorsement." Such full replacement cost shall be determined from time to time, upon the written request of the Government or the Grantee, but not more frequently than once in any twenty-four (24) consecutive calendar month period (except in the event of substantial changes or alterations to the Premises undertaken by the Grantee as permitted under the provisions of the Lease).

10.2.1.1. If the Premises are located in an area that is prone to suffer property loss and damage from earthquake, flood, windstorm, or rainstorm, a special risks or perils endorsement from a commercial insurer or from a State or Federal program, in such amounts and with such limitations and retentions satisfactory to the Government.

10.2.2. Commercial general liability insurance, on an occurrence basis, insuring against claims for bodily injury, death and property damage, occurring upon, in or about the Premises, including any building thereon and sidewalks, streets, passageways and interior space used to access the Premises. Such insurance must be effective at all times throughout the Lease Term, with limits of not less than single limit minimum coverage of \$5 million each occurrence and \$10 million aggregate, and include coverage for fire, legal liability, and medical payments. This coverage may be provided under primary liability and umbrella excess liability policies,

10.2.2.1. An ISO business auto policy or its equivalent, covering bodily injury, death and property damage arising from covered auto Symbol 1 ("any auto") or its equivalent, with limits of at least \$5 million each occurrence. All liability policies shall be primary and non-contributory to any insurance maintained by the Government.

10.2.3. If there is an airport operator on the Premises, airport operator's liability insurance, including, but not limited to, insurance against contractual liability assumed under this Lease by the Grantee, with respect to claims or causes of action arising in connection with use of the Premises and improvements thereon as an airfield or airport, affording protection with limits of liability of \$100 million.

10.2.4. If and to the extent required by law, Workers' compensation or similar insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against the Government or the Grantee, in form and amounts required by law (statutory limits), and employers' liability, with limits of \$5 million each coverage and policy limit.

10.3. General Requirements. All insurance required by this Lease shall be: (i) effected under valid and enforceable policies, in such forms and amounts required under this Lease; (ii) underwritten by insurers authorized to underwrite insurance in the State where the Premises are located, and must have a rating of at least B+ by the most recent edition of *Best's Key Rating Guide*; (iii) provide that no reduction in amount or material change in coverage thereof shall be effective until at least sixty (60) days after receipt by the Government of written notice thereof; (iv) provide that any cancellation of insurance coverage based on nonpayment of the premium shall be effective only upon ten (10) days' written notice to the Government; (v) provide that the insurer shall have no right of subrogation against the Government; and (vi) be reasonably satisfactory to the Government in all other respects. The Government shall appear in all policies as **United States Air Force, 673rd CES/CEIAP, 724 Quartermaster Rd, JBER, AK 99505-4500, 907-384-0960**. In no circumstance will the Grantee be entitled to assign to any third

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party rights of action that the Grantee may have against the Government. The Grantee understands and agrees that cancellation of any insurance coverage required to be carried and maintained by the Grantee or contractor under this Lease will constitute a failure to comply with the terms of the Lease, and the Government shall have the right to terminate the Lease upon receipt of any such cancellation notice, but only if the Grantee fails to cure such noncompliance to the extent allowed.

10.4. Commercial general liability and business auto liability insurance required pursuant to this agreement shall be maintained for the limits specified, and shall provide coverage for the mutual benefit of the Grantee and the Government as an additional insured with equal standing with the named insured for purposes of submitting claims directly with the insurer. Property policies will provide for the Government as a loss payee to the same coverage as the named insured.

10.5. Evidence of Insurance. The Grantee shall deliver or cause to be delivered upon execution of this Lease (and thereafter not less than fifteen (15) days prior to the expiration date of each policy furnished pursuant to this Lease), at the Government's option, a certified copy of each policy of insurance required by this Lease, or a certificate of insurance evidencing the insurance and conditions relating thereto required by this Lease, in a form acceptable to the Government, and including such endorsements necessary.

10.6. Damage or Destruction of Premises. In the event all or part of the Premises is damaged (except *de minimis* damage) or destroyed, the Grantee shall promptly give notice thereof to the Government and the Parties shall proceed as follows:

10.6.1. In the event that the Government in consultation with the Grantee determines that the magnitude of damage is so extensive that the Premises cannot be used by the Grantee for its operations and the repairs, rebuilding, or replacement of the Premises cannot reasonably be expected to be substantially completed within three (3) months of the occurrence of the casualty ("Extensive Damage or Destruction of Premises"), either Party may terminate this Lease as provided herein. If this Lease is terminated, any insurance proceeds received as a result of any casualty loss to the Premises shall be applied to the restoration of the Premises prior to being afforded to the Grantee.

10.6.2. In the event that the Government in consultation with the Grantee shall determine that Extensive Damage or Destruction of the Premises has not occurred, neither Party shall have the right to terminate this Lease. The Grantee shall, as soon as reasonably practicable after the casualty, restore the Premises as nearly as possible to the condition that existed immediately prior to such loss or damage. Any insurance proceeds received as a result of any casualty loss to the Premises shall be applied first to restoring the damaged area and removing any related debris to the reasonable satisfaction of the Government and second, to repairing, rebuilding, and/or replacing the Premises to the

reasonable satisfaction of the Government.

10.6.3. Notwithstanding any other provision of this Lease, the Grantee may, with the prior consent of the Government, self-insure any risk for which insurance coverage is required under this Lease; provided, however, that if the Grantee's statutory limits of liability or other impediments to the assumption of liability are less than the limits of insurance required in this Lease, the Grantee shall obtain commercial coverage which is sufficient in amount and nature to satisfy the insurance requirements of this Lease when added to any such self-insurance. In order to obtain the consent of the Government to self-insure, the Grantee shall provide the Government with a writing setting forth the limitations and impediments, if any, to which the Grantee's self-insurance is subject, the Grantee's source of funds to pay any claim from any risk for which insurance is required under this Lease, and any other information which the Government may require to assess the Grantee's request. If commercial insurance is required for any purpose, the total amount of commercial insurance and self-insurance shall meet the dollar limitations provided in this Lease.

11. ALTERATIONS

11.1. Leased Premises Improvements. Lessee shall, at its sole cost and expense, undertake, construct, repair or replace Leased Premises Improvements. Improvements must be pre-approved by the installation commander or his designee, whose approval will not be unreasonably withheld. Improvements must comply with all applicable federal and state law and regulations.

11.2. Government Approval of Certain Construction Related Matters. All matters of ingress, egress, contractor haul routes, construction activity, and disposition of excavated material in connection with this Lease shall be approved in advance by the Government.

11.3. Lessee Installation of Machinery, Lessee Equipment and Removable Fixtures. During the Lease Term, the Lessee shall have the right at its sole cost and expense, to install such of its own machinery and equipment, to make improvements, and to attach such removable fixtures including but not limited to Lessee Equipment in, on, below or upon the Leased Premises as may be necessary for its use of the Leased Premises pursuant to this Lease; and to remove such machinery, Lessee Equipment, minor improvements, and removable fixtures at any time prior to the expiration or earlier termination by the Lessee of this Lease. In the event of termination of this Lease by the Government, and pursuant to Paragraph 5, the Lessee shall have a reasonable period of time following the effective termination date to remove such property including Lessee Equipment.

11.3.1. The installation of Lessee Equipment shall be done in accordance with existing federal, State, and local codes, including the National Electrical Code and other codes

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that directly relate to the construction, installation, operation and maintenance of communication equipment. If codes differ, the more stringent code shall apply.

11.4. Title to Leased Premises Improvements and Lessee Equipment. Subject to Paragraph 13, title to all Leased Premises Improvements and Lessee Equipment shall be vested in the Lessee throughout the Lease Term.

11.5. Airfield Construction. Any new construction or alteration shall comply with any applicable Air Force requirements, such as clear zones.

12. COSTS OF UTILITIES/SERVICES

12.1. Utilities and Services. The Lessee shall be responsible for all utilities, janitorial services, refuse collection, and building and grounds maintenance of the Leased Premises without cost to the Government.

13. RESTORATION

13.1. Lessee's Removal Obligation. No later than sixty (60) days after the Lease Termination Date, the Lessee shall remove all of the Leased Premises Improvements, Lessee Equipment, and any personal property from the Leased Premises and restore the Leased Premises to the reasonable satisfaction of the Government.

13.2. Government Restoration of Leased Premises. If (i) the Lessee fails, refuses, or neglects to satisfy its removal and restoration obligations pursuant to this Paragraph 13, The remaining Lessee Equipment and all Leased Premises Improvements shall at the option of the Government either become property of the Government and/or be removed or destroyed by the Government and the Premises restored at the expense of the Lessee. No claim for damages against the Government, its officers, employees, agents, or contractors shall be created by or accrue on account of such removal and/or destruction and restoration work pursuant to this Paragraph. The Lessee shall reimburse the Government for any expenses it incurs to restore the Leased Premises to the condition required by this Paragraph 13 within thirty (30) days after the Government provides written notice to Lessee of the reimbursement amount together with reasonable documentary support for the requested reimbursement amount.

CHANGES IN OWNERSHIP OR CONTROL

14. TRANSFER OR ASSIGNMENT

14.1. Right to Assign. The Lessee shall not assign this Lease or any interest therein in any property on the Leased Premises without the prior written consent of the Government.

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14.1.1. Any assignment granted by the Lessee shall be consistent with all of the terms and conditions of this Lease and shall terminate immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of the Government to the Lessee or any assignee. Under any assignment made, with or without consent, the assignee shall be deemed to have assumed all of the obligations of the Lessee under this Lease. No assignment shall relieve the Lessee of any of its obligations hereunder including its obligation to pay Rent.

15. LIENS AND MORTGAGES

15.1. Prohibition Against Lessee Mortgage of Leased Premises. The Lessee shall not: (i) engage in any financing or other transaction creating any mortgage or security interest upon the Leased Premises; (ii) place or suffer to be placed upon the Leased Premises any lien or other encumbrance; (iii) suffer any levy or attachment to be made on the Lessee's interests in the Leased Premises; or (iv) pledge, mortgage, assign, encumber, or otherwise grant a security interest in the Leased Premises or the rents, issues, profits, or other income of the Leased Premises.

ENVIRONMENT

16. ENVIRONMENTAL PROTECTION

16.1. Compliance with Applicable Laws. The Lessee shall comply with all Applicable Laws that are or may become applicable to Lessee's activities on the Leased Premises.

16.2. Environmental Permits. The Lessee shall obtain at its sole cost and expense any environmental and other necessary permits required for its operations under this Lease, independent of any existing permits.

16.3. Indemnification. The Lessee shall indemnify, defend, save, and hold harmless the Government from any claims for damages, response, remediation, or other costs, expenses, liabilities, fines, or penalties resulting in any way from releases, discharges, emissions, spills, storage, handling, disposal, or any other acts or omissions by the Lessee, its officers, agents, employees, contractors, subcontractors, or any Sublessees or licensees, or the invitees of any of them, giving rise to Government liability, civil or criminal, or responsibility under Applicable Laws.

16.3.1. This Paragraph 16.3 shall survive the expiration or termination of this Lease, and the Lessee's obligations under this Paragraph 16.3 shall apply whenever the Government incurs costs or liabilities of the types described in this Paragraph 16.

16.4. Government Caused Environmental Damage. Notwithstanding any other provision of this Lease to the contrary, and except as provided in this Paragraph 16, the Lessee, as between the Parties, does not assume any liability (including liability to third

parties) or responsibility for environmental impacts and damage caused by the Government.

16.4.1. This Paragraph 16 does not relieve the Lessee of any obligation or liability the Lessee might have or acquire with regard to third parties or regulatory authorities by operation of law.

16.4.2. This Paragraph 16 shall survive the expiration or termination of this Lease.

16.5. Records Maintenance and Accessibility. The Government's rights under this Lease specifically include the right for Government officials to inspect the Leased Premises, upon reasonable notice as provided under Paragraph 4.3, for compliance with Applicable Laws, including environmental laws, rules, regulations, and standards. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. Violations identified by the Government will be reported to the Lessee and to appropriate regulatory agencies, as required by Applicable Law. The Lessee will be liable for the payment of any fines and penalties that may be imposed as a result of the actions or omissions of the Lessee.

16.6. Lessee Response Plan. The Lessee shall comply with all base plans and regulations for responding to hazardous waste, fuel, and other chemical spills.

16.7. Pesticide Management. Any pesticide use will require prior Government approval.

16.8. Compliance with Water Conservation Policy. The Lessee will comply with the Installation water conservation policy, as amended from time to time (to the extent that such policy exists and the Lessee receives copies thereof), from the Term Beginning Date through the Term Expiration Date.

16.9. Protection of Environment and Natural Resources. The Lessee will use all reasonable means available to protect environmental and natural resources, consistent with Applicable Laws and this Lease. Where damage nevertheless occurs, arising from the Lessee's activities, the Lessee shall be fully liable for any such damage.

16.10. Pesticides and Pesticide Related Chemicals in Soil. The Lessee acknowledges that the surface soil on the Leased Premises may contain elevated levels of pesticides and pesticide-related chemicals applied in the normal course of maintaining the Leased Premises. The Lessee shall manage all such soil on the Leased Premises in accordance with the requirements of any Applicable Laws. The Government will not be responsible for injury or death of any person affected by such soil conditions whether the person is warned or not.

17. ASBESTOS-CONTAINING MATERIALS AND LEAD-BASED PAINT

17.1. ASBESTOS-CONTAINING MATERIALS (ACM). The Lessee is warned that the Leased Premises may contain current and former improvements, such as buildings, facilities, equipment, and pipelines, above and/or below the ground, that may contain ACM. The Government is not responsible for any handling, removal or containment of asbestos or ACM, or to the extent consistent with applicable law, for any liability related thereto.

17.2. LEAD-BASED PAINT (LBP). The Lessee recognizes and acknowledges that LBP materials may be present on exterior and interior surfaces of facilities within the Leased Premises or in the soil. The Lessee will be responsible at its sole cost and expense for the management, maintenance, removal and disposal of all LBP either located in or attributable to the Leased Premises Improvements. Removal and disposal of LBP must be carried out in compliance with all Applicable Laws.

18. SAFETY, HAZARDOUS MATERIALS, AND WASTE MANAGEMENT

18.1. Compliance With Health and Safety Plan. The Lessee agrees to comply with the provisions of any health or safety plan in effect under the IRP (to the extent the Lessee has received notice thereof), or any hazardous substance remediation or response agreement of the Government with environmental regulatory authorities (to the extent the Lessee receives notice thereof if the agreement is not of public record) during the course of any of the response or remedial actions described in Paragraph 20.3. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Lessee. The Lessee and any assignees, licensees, or invitees shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof, except to the extent permitted under federal law, including the Federal Tort Claims Act.

18.2. Occupational Safety and Health. The Lessee must comply with all Applicable Laws relating to occupational safety and health, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes.

19. HISTORIC PRESERVATION

19.1. The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the Leased Premises, the Lessee shall immediately notify the Government and protect the site and the material from further disturbance until the Government gives clearance to proceed.

20. INSTALLATION RESTORATION PROGRAM (IRP)

20.1. IRP Records. On or before the Term Beginning Date, the Government shall provide the Lessee access to the IRP records applicable to the Leased Premises, if any, and thereafter shall provide to the Lessee a copy of any amendments to or restatements of the IRP records affecting the Leased Premises. The Lessee expressly acknowledges that it fully understands the potential for some or all of the response actions to be undertaken with respect to the IRP may impact the Lessee's quiet use and enjoyment of the Leased Premises. The Lessee agrees that notwithstanding any other provision of this Lease, the Government shall have no liability to the Lessee or its Sublessees should implementation of the IRP or other hazardous waste cleanup requirements, whether imposed by law, regulatory agencies, or the Government or the Department of Defense, interfere with the Lessee's or its Sublessee's use of the Leased Premises. The Lessee shall have no claim or cause of action against the United States, or any officer, agent, employee, contractor, or subcontractor thereof, on account of any such interference, whether due to entry, performance of remedial or removal investigations, or exercise of any right with respect to the IRP or under this Lease or otherwise.

20.2. Government Right of Entry. The Government and its officers, agents, employees, contractors, and subcontractors shall have the right, upon reasonable notice to the Lessee, to enter upon the Leased Premises for the purposes enumerated in this Paragraph.

20.2.1. To conduct investigations and surveys, including, where necessary, drilling, soil and water samplings, testpitting, testing soil borings, and other activities related to the IRP;

20.2.2. To inspect field activities of the Government and its contractors and subcontractors in implementing the IRP;

20.2.3. To conduct any test or survey related to the implementation of the IRP or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or the State Environmental Office by the Government relating to such conditions; and

20.2.4. To construct, operate, maintain, or undertake any other response or remedial action as required or necessary under the IRP, including, but not limited to, monitoring wells, pumping wells, and treatment facilities. Any investigations and surveys, drilling, testpitting, test soil borings, and other activities undertaken pursuant to this Subparagraph 20.2.4 shall be conducted in a manner that is as inconspicuous as practicable. Any monitoring wells, pumping wells, and treatment facilities required pursuant to this Paragraph 20.2.4 shall be designed and installed to be as inconspicuous as practicable. The Government shall attempt to minimize any interference with the Lessee's quiet use and enjoyment of the Leased Premises arising as the result of such wells and treatment

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facilities. The Government shall, subject to the availability of appropriations therefor, repair any damage caused by its exercise of the rights in this Paragraph.

20.3. ACCESS FOR RESTORATION

20.3.1. Nothing in this Lease shall be interpreted as interfering with or otherwise limiting the right of the Air Force and its duly authorized officers, employees, contractors of any tier, agents, and invitees to enter upon the Premises for the purposes enumerated in Paragraph 20.3 and for such other purposes as are consistent with the provisions of an Federal Facility Agreement (FFA) or required to implement the IRP conducted under the provisions of 10 U.S.C. §§ 2701-2705. The Lessee shall provide reasonable assistance to the Air Force to ensure Air Force's activities under this Paragraph 20.3 do not damage property of the Lessee on the Premises.

20.3.2. The USEPA and state of *Alaska*, including their subordinate political units, and their duly authorized officers, employees, contractors of any tier, and agents may, upon reasonable notice to the Lessee and with Air Force's consent, enter upon the Premises for the purposes enumerated in Paragraph 20.3 and for such other purposes as are consistent with the provisions of an FFA. The Lessee shall provide reasonable assistance to USEPA and the State to ensure their activities under this Paragraph 20.3 do not damage property of the Lessee on the Premises.

21. ENVIRONMENTAL BASELINE SURVEY/CONDITION OF PROPERTY

21.1. An Environmental Baseline Survey ("EBS") for the Leased Premises dated **16 June 2017** has been delivered to the Lessee and is attached as **Exhibit E and E.1 Environmental Use Restrictions** hereto. The EBS sets forth those environmental conditions and matters on and affecting the Leased Premises on the Term Beginning Date as determined from the records and analyses reflected therein. The EBS is not, and shall not constitute, a representation or warranty on the part of the Government regarding the environmental or physical condition of the Leased Premises, and the Government shall have no liability in connection with the accuracy or completeness thereof. In this regard the Lessee acknowledges and agrees that the Lessee has relied, and shall rely, entirely on its own investigation of the Leased Premises in determining whether to enter into this Lease. A separate EBS for the Leased Premises shall be prepared by the Government, after the expiration or earlier termination of this Lease ("Final EBS"). Such Final EBS shall document the environmental conditions and matters on and affecting the Leased Premises on the Term Expiration Date as determined from the records and analyses reflected therein. The Final EBS will be used by the Government to determine whether the Lessee has fulfilled its obligations to maintain and restore the Leased Premises under this Lease including, without limitation, Paragraph 13 and Paragraph 16.

GENERAL PROVISIONS

22. GENERAL PROVISIONS

22.1. Covenant Against Contingent Fees. The Lessee warrants that it has not employed or retained any person or agency to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul this Lease without liability or in its discretion to recover from the Lessee the amount of such commission, percentage, brokerage, or contingent fee, in addition to the consideration herewith set forth. This warranty shall not apply to commissions payable by the Lessee on the Lease secured or made through bona fide established commercial agencies retained by the Lessee for the purpose of doing business. "Bona fide established commercial agencies" has been construed to include licensed real estate brokers engaged in the business generally.

22.2. Officials Not to Benefit. No Member of, or Delegate to the Congress, or resident commissioner, shall be admitted to any part or share of this Lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Lease if made with a corporation for its general benefit.

22.3. Facility Nondiscrimination. As used only in this Condition, the term "Facility" means lodgings, stores, shops, restaurants, cafeterias, restrooms, and any other facility of a public nature in any building covered by, or built on land covered by, this Lease.

22.3.1. The Lessee agrees that it will not discriminate against any person because of race, color, religion, sex, or national origin in furnishing, or by refusing to furnish, to such person or persons the use of any Facility, including any and all services, privileges, accommodations, and activities provided on the Leased Premises. This does not require the furnishing to the general public the use of any Facility customarily furnished by the Lessee solely for use by their guests and invitees.

22.3.2. The Parties agree that in the event of the Lessee's noncompliance, the Government may take appropriate action to enforce compliance, and may terminate this Lease for default and breach as provided in Paragraph 6, or may pursue such other remedies as may be provided by law.

22.4. Gratuities.

22.4.1. The Government may, by written notice to the Lessee, terminate this Lease if, after notice and hearing, the Secretary of the Air Force or a designee determines that the Lessee, or any agent or representative of the Lessee, offered or gave a gratuity (e.g., an entertainment or gift) to any officer, official, or employee of the Government and intended, by the gratuity, to obtain a lease or other agreement or favorable treatment

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under a lease or other agreement, except for gifts or benefits of nominal value offered to tenants of the Leased Premises in the ordinary course of business.

22.4.2. The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

22.4.3. If this Lease is terminated under Paragraph 22.4.1, the Government shall be entitled to pursue the same remedies against the Lessee as in a breach of this Lease by the Lessee, and in addition to any other damages provided by law, to exemplary damages of not fewer than three (3), or more than ten (10), times the cost incurred by the Lessee in giving gratuities to the person concerned, as determined by the Government.

22.4.4. The rights and remedies of the Government provided in this Paragraph shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Lease.

22.5. No Joint Venture. Nothing contained in this Lease will make, or shall be construed to make, the Parties partners or joint venturers with each other, it being understood and agreed that the only relationship between the Government and the Lessee under this Lease is that of landlord and tenant. Nothing in this Lease will render, or be construed to render, either of the Parties liable to any third party for the debts or obligations of the other Party.

22.6. Records and Books of Account. The Lessee agrees that the Secretary of the Air Force, the Comptroller General of the United States, or the Auditor General of the United States Air Force, or any of their duly authorized representatives, shall, until the expiration of three (3) years after the expiration or earlier termination of this Lease, have access to, and the right to examine, any directly pertinent books, documents, papers, and records of the Lessee involving transactions related to this Lease.

22.7. Remedies Cumulative; Failure of Government to Insist on Compliance. The specified remedies to which the Government may resort under the terms of this Lease are distinct, separate, and cumulative, and are not intended to be exclusive of any other remedies or means of redress to which the Government may be lawfully entitled in case of any breach or threatened breach by the Lessee of any provisions of this Lease. The failure of the Government to insist on any one or more instances upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be construed as a waiver or a relinquishment of the Government's right to the future performance of any such terms, covenants, or conditions, but the obligations of the Lessee with respect to such future performance shall continue in full force and effect. No waiver by the Government of any provisions of this Lease shall be deemed to have been made unless expressed in writing and signed by an authorized representative of the Government.

22.8. Counterparts. This Lease is executed in three (3) counterparts, each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

22.9. Personal Pronouns. All personal pronouns used in this Lease, whether used in the masculine, feminine, or neuter gender, will include all other genders.

22.10. Partial Invalidity. If any term or provision of this Lease, or the application of the term or provision to any person or circumstance, is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of the term or provision to persons or circumstances other than those for which the term or provision is held invalid or unenforceable, will not be affected by the application, and each remaining term or provision of this Lease will be valid and will be enforced to the fullest extent permitted by law.

22.11. Interpretation of Lease. The Parties and their legal counsel have participated fully in the negotiation and drafting of this Lease. This Lease has been prepared by the Parties equally, and should be interpreted according to its terms. No inference shall be drawn that this Lease was prepared by, or is the product of, either Party.

22.12. Identification of Government Agencies, Statutes, Programs and Forms. Any reference in this Lease, by name or number, to a government department, agency, statute, regulation, program, or form shall include any successor or similar department, agency, statute, regulation, program, or form.

22.13. Approvals. Any approval or consent of the Parties required for any matter under this Lease shall be in writing and shall not be unreasonably withheld, conditioned or denied unless otherwise indicated in this Lease.

22.14. Third-Party Beneficiaries. There shall be no third-party beneficiaries of this Lease and none of the provisions of this Lease shall be for the benefit of, or enforceable by, any creditors of the Lessee.

22.15. No Individual Liability of Government Officials. No covenant or agreement contained in this Lease shall be deemed to be the covenant or agreement of any individual officer, agent, employee, or representative of the Government, in his or her individual capacity, and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Lease, whether by virtue of any constitution, statute, or rule of law, or by the enforcement of any assessment or penalty, or otherwise.

22.16. Excusable Delays. The Government and Lessee shall be excused from performing an obligation or undertaking provided for in this Lease, and the period for the performance of any such obligation or undertaking shall be extended for a period

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equivalent to the period of such delay, so long as such performance is prevented or unavoidably delayed, retarded, or hindered by an act of God; fire; earthquake; flood; explosion; war; invasion; insurrection; riot; mob; violence; sabotage; act of terrorism; inability to procure or a general shortage of, labor, equipment, facilities, materials, or supplies in the open market; failure or unavailability of transportation, strike, lockout, action of labor unions; a taking by eminent domain, requisition, laws, orders of government, or of civil, military, or naval authorities (but only such orders of a general nature pertaining to the Leased Premises and comparable properties in the state of **Alaska**; governmental restrictions (including, without limitation, access restrictions imposed by the Government and arising without fault or negligence on the part of the Lessee that significantly hinder the Lessee's ability to access the Leased Premises and perform its obligations under the Development Plan in a timely manner); required environmental remediation; or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control, and without the fault or negligence of, the Government or the Lessee, as the case may be, and/or any of their respective officers, agents, servants, employees, and/or any others who may be on the Leased Premises at the invitation of the Lessee, or the invitation of any of the aforementioned persons, specifically excluding, however, delays for adjustments of insurance and delays due to shortage or unavailability of funds (collectively, "Excusable Delays"). Nothing contained in this Paragraph 22.16 shall excuse the Lessee from the performance or satisfaction of an obligation under this Lease that is not prevented or delayed by the act or occurrence giving rise to an Excusable Delay.

23. SPECIAL PROVISIONS

Reserved

24. RIGHTS NOT IMPAIRED

24.1. Rights Not Impaired. Nothing contained in this Lease shall be construed to diminish, limit, or restrict any right, prerogative, or authority of the Government over the Leased Premises relating to the security or mission of the Installation, the health, welfare, safety, or security of persons on the Installation, or the maintenance of good order and discipline on the Installation, as established in law, regulation, or military custom.

24.2. Installation Access. The Lessee acknowledges that it understands that the Installation is an operating military Installation that could remain closed to the public and accepts that the Lessee's operations may from time to time be restricted temporarily or permanently due to the needs of national defense. Access on the Installation may also be restricted due to inclement weather and natural disasters. The Lessee further acknowledges that the Government strictly enforces federal laws and Air Force regulations concerning controlled substances (drugs) and that personnel, vehicles, supplies, and equipment entering the Installation are subject to search and seizure under 18 U.S.C. § 1382. The Government will use reasonable diligence in permitting the

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Lessee access to the Leased Premises at all times, subject to the provisions of this paragraph. Notwithstanding the foregoing, the Lessee agrees the Government will not be responsible for lost time or costs incurred due to interference, delays in entry, temporary loss of access, barring of individual employees from the base under federal laws authorizing such actions, limitation, or withdrawal of an employee's on-base driving privileges, or any other security action that may cause employees to be late to, or unavailable at, their work stations, or delay arrival of parts and supplies. The Government retains the right to refuse access to the Leased Premises by the Lessee Parties. The Lessee, its assignees, employees, and invitees fully agree to abide with all access restrictions imposed by the Government in the interest of national defense.

24.3. Permanent Removal and Disbarment. Notwithstanding anything contained in this Lease to the contrary, the Government has the right at all times to order the permanent removal and disbarment of anyone from the Installation, including but not limited to assignees, if it believes, in its sole discretion, that the continued presence on the Installation of that person represents a threat to the security or mission of the Installation, poses a threat to the health, welfare, safety, or security of persons occupying the Installation, or compromises good order and/or discipline on the Installation.

24.4. No Diminishment of Rights. Except as provided in Paragraph 24.1, nothing in this Lease shall be construed to diminish, limit, or restrict any right of the Lessee under this Lease.

25. APPLICABLE LAWS

25.1. Compliance With Applicable Laws. The Lessee shall comply, at its sole cost and expense (except for matters for which the Government remains obligated hereunder pursuant to Paragraph 16), with all Applicable Laws including without limitation, those regarding construction, demolition, maintenance, operation, sanitation, licenses, or permits to do business, protection of the environment, pollution control and abatement, occupational safety and health, and all other related matters. The Lessee shall be responsible for determining whether it is subject to local building codes or building permit requirements, and for compliance with them to the extent they are applicable.

25.1.1. "Applicable Laws" means, collectively, all present and future laws, ordinances, rules, requirements, regulations, and orders of the United States, the State where the Leased Premises is located and any other public or quasi-public federal, State, or local authority, and/or any department or agency thereof, having jurisdiction over the Project ("Project" means, collectively, the Leased Premises and the Leased Premises Improvements) and relating to the Project or imposing any duty upon the Lessee with respect to the use, occupation, or alteration of the Project during the Lease Term.

25.2. Permits, Licenses and Approvals. The Lessee will be responsible for and obtain, at its sole expense, prior to the commencement of construction and demolition, and upon

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completion of the building of Leased Premises Improvements, any approvals, permits, or licenses that may be necessary to construct, occupy, and operate the Lessee Improvements and Lessee Equipment in compliance with all Applicable Laws.

25.3. No Waiver of Sovereign Immunity. Nothing in this Lease shall be construed to constitute a waiver of federal supremacy or federal sovereign immunity. Only laws and regulations applicable to the Leased Premises under the Constitution and statutes of the United States are covered by this Paragraph. The United States presently exercises concurrent federal jurisdiction over the Leased Premises.

25.4. Lessee Responsibility for Compliance. Responsibility for compliance as specified in this Paragraph 25 rests exclusively with the Lessee. The Government assumes no enforcement or supervisory responsibility, except with respect to matters committed to its jurisdiction and authority. The Lessee shall be liable for all costs associated with compliance, defense of enforcement actions or suits, payment of fines, penalties, or other sanctions and remedial costs related to the Lessee's use and occupation of the Leased Premises.

25.5. Lessee Right to Contest. The Lessee shall have the right to contest by appropriate proceedings diligently conducted in good faith, without cost or expense to the Government, the validity or application of any law, ordinance, order, rule, regulation, or requirement of the nature referred to in this Paragraph 25. The Government shall not be required to join in or assist the Lessee in any such proceedings.

26. AVAILABILITY OF FUNDS

26.1. The obligations of any Party to this Lease or of any transferee of the Lease shall be subject to the availability of appropriated funds for any such obligation, unless such Party or transferee is a non-appropriated fund instrumentality of the United States. No appropriated funds are obligated by this Lease.

27. CONGRESSIONAL REPORTING

This Lease is not subject to 10 U.S.C. § 2662.

28. AMENDMENTS

28.1. Amendments. This Lease may be amended at any time by mutual agreement of the Parties in writing and signed by a duly authorized representative of each of the respective Parties. Amendments to this Lease executed on behalf of the Government must be signed at the level of the Director or higher. Such amendments may include, but are not limited to, extensions of the Lease Termination Date.

29. GENERAL INDEMNIFICATION BY LESSEE

29.1. No Government Liability. Except as otherwise provided in this Lease, the Government shall not be responsible for damage to property or injuries or death to persons that may arise from, or be attributable or incident to, the condition or state or repair of the Leased Premises, or the use and occupation of the Leased Premises, or for damages to the property of the Lessee, or injuries or death of the Lessee's officers, agents, servants, employees, or others who may be on the Leased Premises at their invitation or the invitation of any one of them.

29.2. Lessee Liability. Except as otherwise provided in this Lease, the Lessee agrees to assume all risks of loss or damage to property and injury or death to persons by reason of, or incident to, the possession and/or use of the Leased Premises by the Lessee, the Lessee's officers, agents, servants, employees, or others (excluding those employees or agents of the Government who are on the Leased Premises for the purpose of performing official duties) who may be on the Leased Premises at their invitation or the invitation of any one of them (the "Lessee Parties"), or the activities conducted by or on behalf of the Lessee Parties under this Lease. The Lessee expressly waives all claims against the Government for any such loss, damage, bodily injury, or death caused by, or occurring as a consequence of, such possession and/or use of the Leased Premises by the Lessee Parties, or the conduct of activities or the performance of responsibilities under this Lease. The Lessee further agrees, to the extent permitted by Applicable Laws, to indemnify, save, and hold harmless the Government, its officers, agents, and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs, and attorneys' fees arising out of, claimed on account of, or in any manner predicated upon, bodily injury, death, or property damage resulting from, related to, caused by, or arising out of the possession and/or use of any portion of the Leased Premises, or any activities conducted or services furnished by or on behalf of the Lessee Parties in connection with, or pursuant, to this Lease, and all claims for damages against the Government arising out of, or related to, the Lease. The agreements of Lessee contained in this Paragraph 29.2 do not extend to claims caused by the gross negligence or willful misconduct of officers, agents, contractors, or employees of the United States without contributory fault on the part of any other person, firm, or corporation. The Government will give the Lessee notice of any claim against it covered by this indemnity as soon as practicable after learning of it.

30. ENTIRE AGREEMENT

30.1. It is expressly agreed that this written instrument, together with the provisions of other documents that are expressly incorporated by reference by the terms of this Lease, embodies the entire agreement between the Parties regarding the use of the Leased Premises by the Lessee. In the event of any inconsistency between the terms of this Lease and of any provision that has been incorporated by reference, the terms of this Lease shall govern. There are no understandings or agreements, verbal or otherwise,

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between the Parties except as expressly set forth in this Lease. This instrument may only be modified or amended by mutual agreement of the Parties in writing and signed by each of the Parties.

31. CONDITION AND PARAGRAPH HEADINGS

31.1. The brief headings or titles preceding each Paragraph are merely for purposes of identification, convenience, and ease of reference, and will be completely disregarded in the construction and interpretation of this Lease.

32. STATUTORY AND REGULATORY REFERENCES

32.1. Any reference to a statute or regulation in this Lease shall be interpreted as being a reference to the statute or regulation as it has been or may be amended from time to time.

33. PRIOR AGREEMENTS

33.1. This Lease supersedes all prior agreements, if any, to the Lessee for the Premises, but does not terminate any obligations of the Lessee under such prior Leases that may by their terms survive the termination or expiration of those Leases, except to the extent such obligations are inconsistent with this Lease.

34. LIST OF EXHIBITS

LIST OF EXHIBITS

| | |
|-----------|--|
| Exhibit A | Map of Leased Premises |
| Exhibit B | Legal Description of Leased Premises |
| Exhibit C | Non-Exclusive List of Outgrants |
| Exhibit D | Physical Condition Report |
| Exhibit E | Environmental Baseline Survey/Environmental Baseline Survey Waiver |
| Exhibit H | Areas of Special Notice |

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IN WITNESS WHEREOF, the United States of America has executed this Lease
effective as of 12 Nov 17.

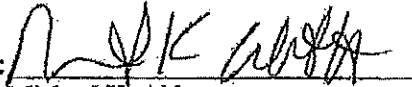
THE UNITED STATES OF AMERICA,
acting by and through the Secretary of the
Air Force


JENNIFER L. MILLER, SES

Deputy Assistant Secretary of the Air Force
(Installations)

THIS LEASE is also executed by the Lessee as of this 18 day of May, 2017

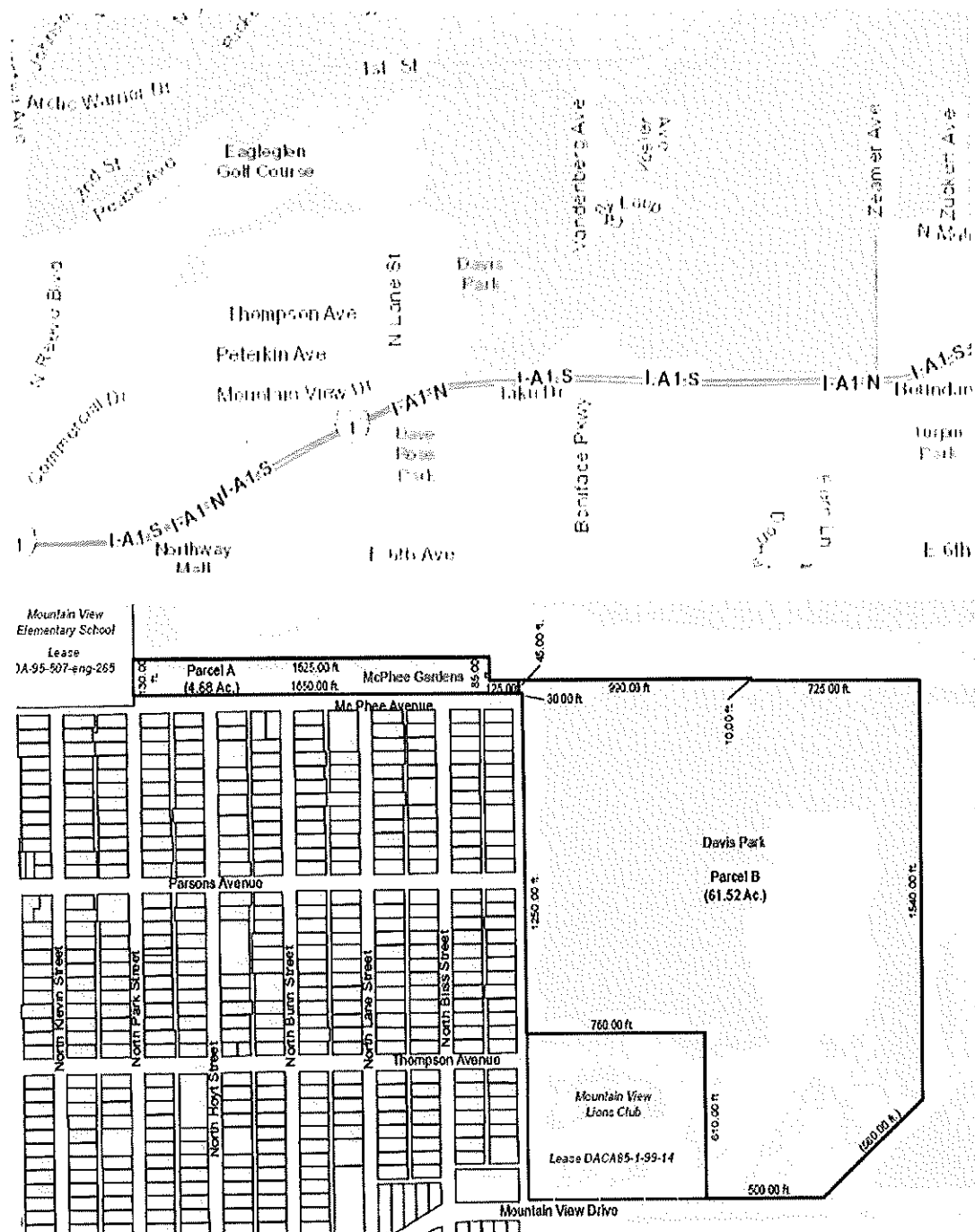
Municipality of Anchorage

By: 

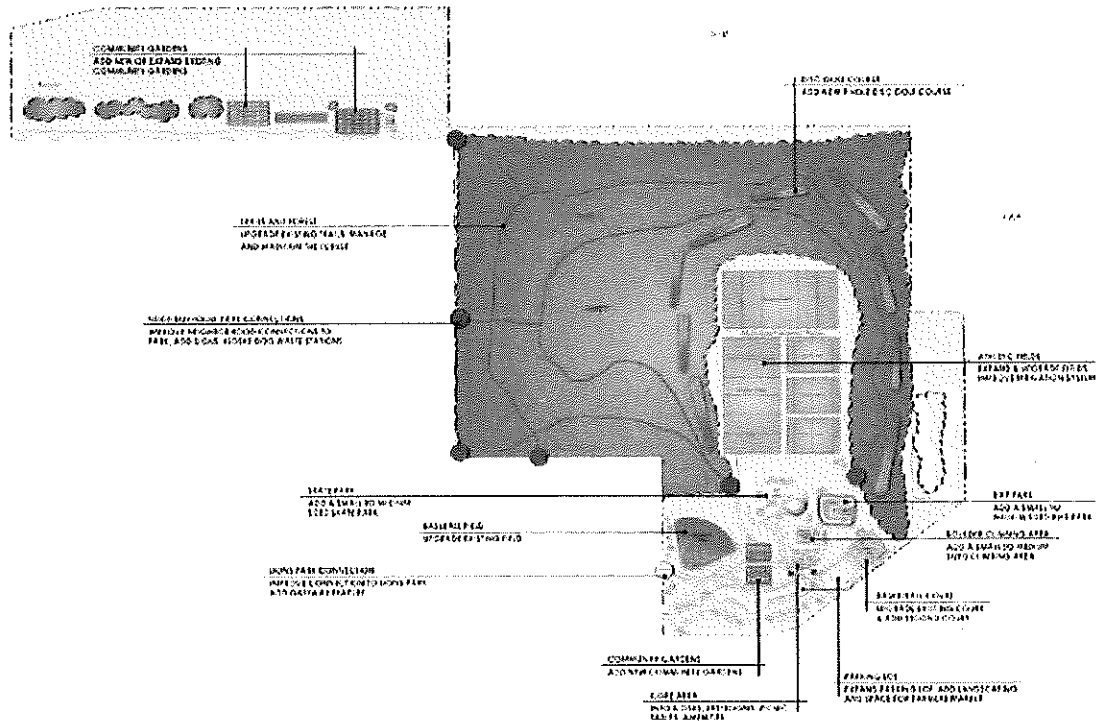
Michael K. Abbott
Municipal Manager

EXHIBIT A

MAP OF LEASED PREMISES



MOA's Master Plan, JBER Installation Commander approval required



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EXHIBIT B

LEGAL DESCRIPTION OF LEASED PREMISES

PARCEL A

To be used for cross-country skiing, nature, hiking, bike trails, and community gardens, and described as:

Commencing at the center of Section 10, Township 13 North, Range 3 West of the Seward Meridian,
Third Judicial District, State of Alaska;

Thence North, along the north-south centerline of said Section 10, a distance of 30.00 feet to the TRUE
POINT OF BEGINNING:

Thence West, along a line 30.00 feet north and parallel with the east-west centerline of said section, a
distance of 1650.00 feet to the east boundary of Mountain View Elementary School Lease DA-95-507-
eng-265;

Thence North, along said east boundary, a distance of 130.00 feet;

Thence East, a distance of 1525.00 feet;

Thence South, a distance of 85.00 feet;

Thence East, a distance of 125.00 feet to the north-south centerline of said section;

Thence South, along said north-south centerline, a distance of 45.00 feet to the point of beginning.

Contains 4.68 acres, more or less, as shown on Exhibit B.

PARCEL B

To be used for cross-country skiing, nature, hiking, and bike trails, picnicking, outdoor education and interpretation, and non-spectator sports, and described as:

Commencing at the center of Section 10, Township 13 North, Range 3 West of the Seward Meridian, Third Judicial District, State of Alaska:

Thence North, along the north-south centerline of said section, a distance of 30.00 feet to a point on the north boundary line of McPhee Street and the TRUE POINT OF BEGINNING;

Thence continuing North, along said north-south centerline, a distance of 45.00 feet;

Thence East, along a line 75.00 feet north and parallel to the east-west centerline of said section, a distance of 990.00 feet;

Thence South, a distance of 10.00 feet;

Thence East, a distance of 725.00 feet;

Thence South, a distance of 1540.00 feet to the northerly right-of-way line of the Davis Highway;

Thence southwesterly, along said right-of-way to a point which bears East, a distance of 500.00 feet from the southeast corner of Air Force Lease No. DACA85-1-97-36 to Mountain View Lions Club;

Thence West, along said right-of-way for a distance of 500.00 feet to said southeast corner;

Thence North, along the east boundary line of said Air Force Lease, a distance of 610.00 feet to the northeast corner thereof;

Thence West, along the north boundary line of said Air Force Lease a distance of 760.00 feet to the east right-of-way line of Pine Street;

Thence North, along said east right-of-way line, a distance of 1250.00 feet to a point on the north right-of-way line of McPhee Street being 30.00 feet north of the east-west, centerline of said section;

Thence West, along the north right-of-way line of said McPhee Street, a distance of 30.00 feet to the point of beginning.

Contains 61.52 acres, more or less, as shown on Exhibit B.

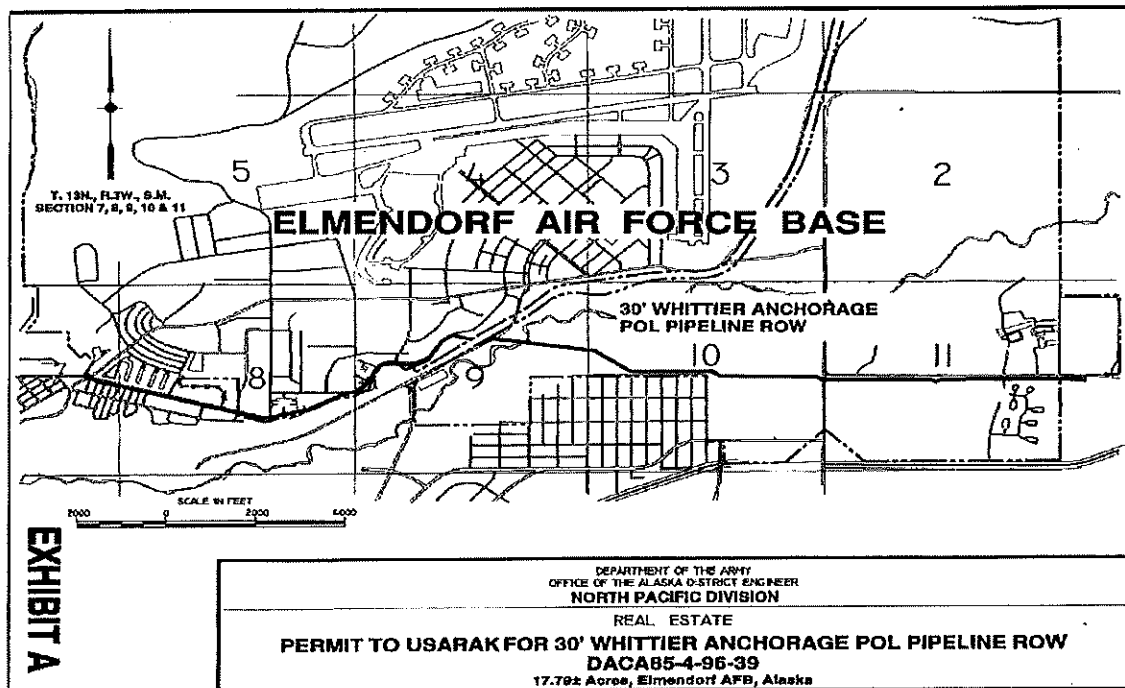
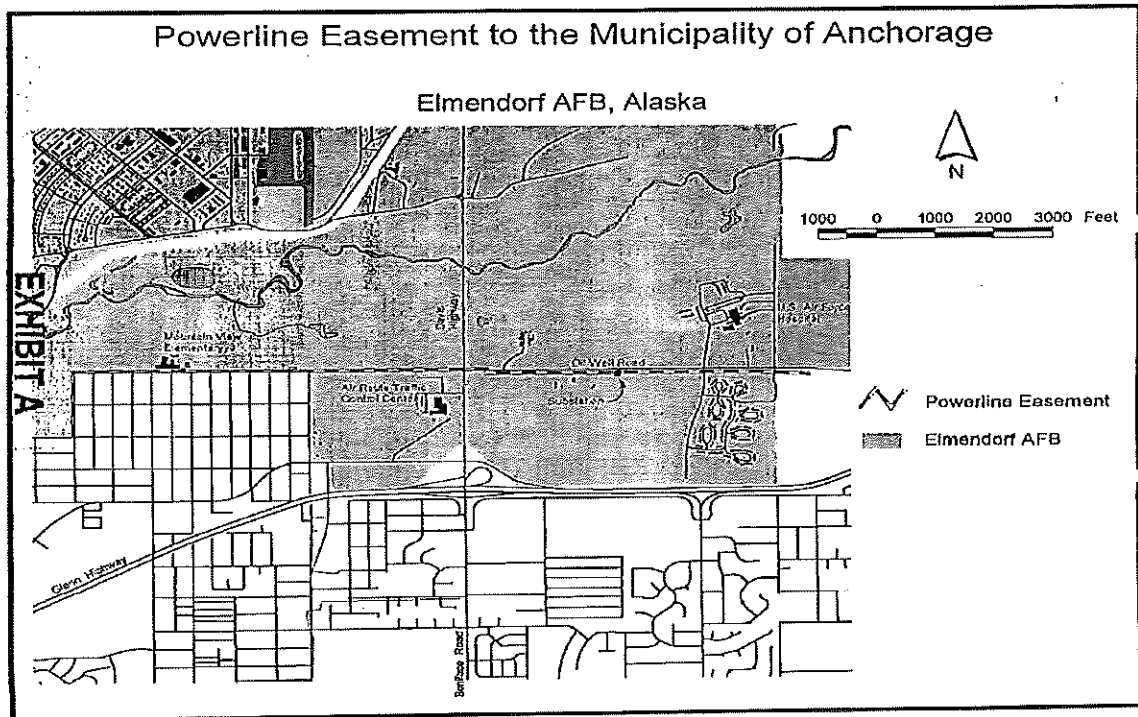
EXHIBIT C

NON-EXCLUSIVE LIST OF OUTGRANTS

ML&P DACA85-2-3-98- In blue
Enstar DACA85-4-96-39- In Purple
Base Asset are listed- In Red



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EXHIBIT D**PHYSICAL CONDITION REPORT**As of **1 June 2017**

This is to confirm that the undersigned, as the Lessee of the Leased Premises pursuant to that certain Lease of Property dated as of the date first set forth above by and between the Secretary of the Air Force (the "Government"), and the undersigned, which Leased Premises consists of **more or less 66.20 Acres of land**, has inspected the Leased Premises and all environmental reports concerning the Leased Premises provided to the undersigned by the Government, is familiar with the condition and characteristics of the Leased Premises and agrees, except as otherwise expressly provided in the Lease of Property, to accept the Leased Premises in "as-is, where-is" condition, without any representation or warranty by the Government concerning the condition of the Leased Premises and without obligation on the part of the Government to make any alterations, repairs, additions, or improvements to the Leased Premises all in accordance with and subject to the terms of the aforementioned Lease of Property. Except as otherwise defined in this Acknowledgement, the terms used herein shall have the same meanings as set forth in the Leased Property.

Lessee:

By: 

Name: Michael K. Abbott

Title: Municipal Manager

Government:

By: 

Name: David M Crandall

Title: Real Property Specialist

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EXHIBIT E

ENVIRONMENTAL BASELINE SURVEY (EBS)/EBS WAIVER

ENVIRONMENTAL BASELINE SURVEY WAIVER

DAVIS PARK AND LAND

JOINT BASE ELMENDORF RICHARDSON, ALASKA

Description of Proposed Action: Renewal of lease DACA 85-1-99-14, to allow the Municipality of Anchorage (MOA) continued use of two parcels of land for recreational purposes outside the fenced boundary of Joint Base Elmendorf-Richardson, AK. The original lease was issued 8 June 1999 and incorporated a larger plot of land than will be conveyed under the new lease. A map showing the parcels of land considered for lease is attached. Results of this review determined that there are no known or apparent environmental concerns from continued use of these parcels of land by the MOA.

Findings of Eligibility for an Environmental Baseline Survey Waiver: This real estate transaction qualifies for an environmental baseline survey (EBS) waiver for the following reasons:

- a. The condition of the property will not create health and safety risks when used as intended.
- b. The allowable activities will not introduce hazardous materials or petroleum products on the property.
- c. No material alteration or change in the physical condition of the property will occur if the property is held by the Air Force, such that the Air Force could be deemed an owner or operator of the facility under CERCLA.
- d. There are no underground or aboveground storage tanks located on the property.

Conclusion: Based upon the guidelines of Air Force Instruction 32-7066, Environmental Baseline Surveys in Real Estate Transactions, it has been determined that this real estate transaction meets the requirements for an EBS Waiver. Therefore, an EBS is not required for this action, and a waiver is granted. This waiver will be incorporated into the administrative record for this real estate transaction.

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477393
93 Date: 2017.06.16 08:34:05
-08'00'

Mark A. Priksat, PhD
Chief, 673 CEI

16 June 2017

Date

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Exhibit H Areas of Special Notice

This Exhibit H, along with all other exhibits attached to this Lease, is attached to and made a part of the Lease.

1. The Lessee shall construct no facility of any nature, above or below ground within the boundary of the Leased Premises without prior coordination with and written approval of the Joint Base Elmendorf-Richardson Installation Commander (Commander).
2. Lessee shall in no way disturb existing utilities, above or underground which many traverse or lie within the boundary of the Leased Premises.
3. Use of the Leased Premises will be limited to public sporting events (bike trails, picnicking, outdoor education/interpretation, ball games, skiing, sledding, school associated programs, hiking trails, and non-spectator sports, etc.) as provided in Paragraph 4.1 of this Lease.
4. Lessee shall neither transfer nor assign this Lease or any property on the Leased Premises, nor sublet the Leased Premises or any part thereof or any property thereon, nor grant any interest, privilege or license whatsoever in connection with the Lease without the written permission from the Commander.
5. Lessee shall obtain written approval from the Commander prior to conducting any fund raising activity or special events that are reasonably expected to assemble more than 500 people on the Leased Premises.
6. Under terms of the Lease, Lessee is prohibited from constructing any facility, removing trees, or perform and performing excavation/backfill, or any other change to the premises without the prior written consent of the Commander.
7. The use of the Leased Premises is subject to existing utility rights-of-way and any future utility rights-of-way granted by the Government.
8. Lessee's use of the Leased Premises as set forth in Paragraph 4.1 shall cause no adverse impact on the base mission.
9. Large recurring events should be planned 12 months in advance through Parks and Rec coordination but some political events are less timely. Airfield management receives exercise schedules 1 1/2 years prior and conduct schedulers meeting every 3 weeks, plan in advance with Air traffic control for special events requiring air traffic rescheduling.

Any new construction in the area will require filing an FAA Form 7460-1 to the FAA per CFR Title 14 Part 77.9. This will address height limitations as well as other impacts to flying.

Land use is limited to park and recreational activities identified under current Standard Land Use Code Manual item 74 and 76 with the following exceptions determined by the Air Force AFI32-7063, Attachment 2:

1. Facilities must be low intensity, and provide no playgrounds, etc. Facilities such as club houses, meeting places, auditoriums, large classes, etc., are not permitted without the Commander's written consent.

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2. Outside events should normally be limited to assemblies of not more than 25 people an acre in APZ I
3. Maximum Floor Area Ratio of 0.11 in APZ I
4. Surface height is restricted to 30' Above Ground Level (AGL)

Davis Park Restrictions on Development, Management and Use of Air Force Leased Land

1. Lessee acknowledges that it is aware that the Leased Premises for use as a public recreational park, is situated within an Accident Potential Zone 1 (APZ 1); that the APZ 1 is related to military aircraft use of the North-South runway of Joint Base Elmendorf-Richardson (JBER); that the Department of the Air Force intends to continue using the JBER North-South runway for the foreseeable future; and that operational use of the North-South runway could increase at some point in the foreseeable future. Lessee also acknowledges the inherent risks of maintaining a public park within an area having an elevated risk of an aircraft accident. Lessee also recognizes that the risk of significant injury or loss of life can be greatly reduced through proper management and use of the Leased Premises to use as Davis Park. Towards this end, Lessee agrees to the following conditions:

A. Davis Park is designed for low-volume, outdoor recreational activities. Established activities and recreational amenities are designed to accommodate a maximum daily usage of 1,500 individuals, or approximately 25 individuals per square acre. This Lease is conditioned on park usage remaining at its current occupancy and use level. Lessee may maintain current recreational facilities and park amenities, but any additional development requires written approval by the Commander in advance.

B. To ensure against hazards to aircraft, no equipment or structure of any type may be installed or constructed on the Leased Premises with a height of more than thirty (30) feet AGL. In addition, the flying of kites, operation of model rockets, projectile, or the operation of remotely piloted devices is prohibited on the Leased Premises. Neither Lessee, nor any of its invitees, may tether lighter than air vessels (such as balloons) at the Leased Premises.

C. Fireworks, explosives and other pyrotechnics are prohibited at the Leased Premises. Laser pointers and other items containing visible laser devices are prohibited at the Leased Premises.

D. Lessee shall ensure that all installed lighting fixtures are designed and installed to ensure light is cast downwards to prevent interference of aircraft crews operating under visual flight rules. Light must be off-white and be distinctly different in spectrum from light used for airfield marking and aviation.

E. Electronic equipment with the capability of transmitting electronic signals, of any frequency or modulation, greater than five watts, is prohibited at the Leased Premises.

2. As a condition for the Government granting Lessee use of the Leased Premises, Lessee agrees to the following conditions:

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A. Lessee shall take reasonable measures to manage Davis Park to ensure prohibited activities set forth in Section 1 of this Lease provision do not occur on the Leased Premises; and Lessee shall use reasonable means within its authority to enforce said prohibitions. Lessee will post and maintain at all time signs of prohibited activities within the Leased Premises.

B. Lessee acknowledges that the vegetative resources on the Leased Premises are important to the community enjoyment of Davis Park. Lessee shall manage and maintain vegetative resources. Lessee shall: (i) not remove trees older than 20 years without permission of the Commander or designee, unless the tree presents an imminent safety hazard; (ii) keep the grass and bushes trimmed; (iii) reseed areas with unintended bare spots; (iv) regularly collect and dispose of trash and debris and maintain trash receptacles at convenient locations throughout the park; and (v) monitor ballfields and other open areas with grass height of less than 7" for bird activity during spring and autumn migration periods.

C. Lessee and the State of Alaska have concurrent criminal and civil jurisdiction over the Leased Premises. Lessee shall serve as first responder for all instances of criminal conduct, injuries and emergencies that may occur within the Leased Premises.

3. Advance permission from the Commander is needed in the event Lessee plans to use Davis Park as the venue for a special community event likely to draw crowds in excess of the 1500 person occupancy limit. Such events require temporary changes to aircraft operations. Requests must be submitted to the 673 Air Base Wing Public Affairs Office by Lessee no later than 180 days before the date of the proposed special community event.