

Vote: Holler, Larson, Massie, Menard, Metiva and Woodruff in favor

**CITY OF WASILLA
ORDINANCE SERIAL NO. 08-42**

AN ORDINANCE OF THE WASILLA CITY COUNCIL AUTHORIZING THE CITY OF WASILLA TO ENTER INTO A LEASE OF CITY LAND WITH THE ALASKA LIVE STEAMERS.

WHEREAS, The Alaska Live Steamers needs to be relocated off the Wasilla Airport property to avoid conflict with future airport projects, and

WHEREAS, The Alaska Live Steamers wish to lease approximately 20 acres of City land near Lake Lucille Park in the amount of \$1,200.00 per year; and

WHEREAS, The Alaska Live Steamers is a non-profit organization and beneficial industry to the City of Wasilla that promotes the railroad tradition which the City was founded upon.

- * **Section 1. Classification.** This is a non-code ordinance.
- * **Section 2. Purpose.** To lease 20 acres of City land located within Section 16, Township 17 North Range 1 West, Seward Meridian Alaska.
- * **Section 3. Enactment.** The City Council authorizes the Mayor to negotiate and execute a lease of approximately 20 acres of City land to include, but not limited to, the following conditions:
 1. Term: 10 years, with the option to renew at the end of each term.
 2. Rents: \$1,200 per year.

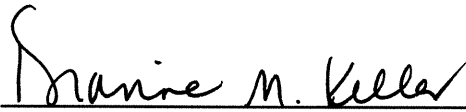
3. Development: The tenant shall, at its sole expense, develop the property in accordance with the provisions of Wasilla Municipal Code Title 16 Land Development Code and other applicable codes and regulations.

4. Maintenance: The tenant shall be responsible, at its sole expense, maintain and repair improvements to the property.

5. Use: The property shall be used for the sole purpose of operating and maintaining a model train in a park-like setting that is available to the public for rides during summer months.

* **Section 4. Effective Date.** This ordinance shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council on August 25, 2008.

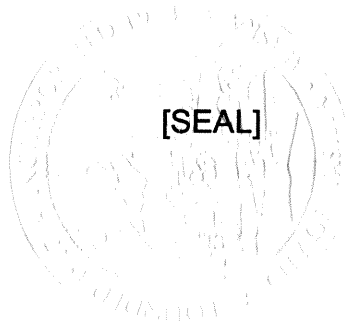


DIANNE M. KELLER, Mayor

ATTEST:



KRISTIE L. SMITHERS, MMC
City Clerk





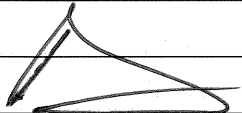
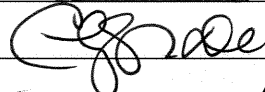


**CITY OF WASILLA
LEGISLATION STAFF REPORT**

RE: ORDINANCE SERIAL NO. 08-42

AN ORDINANCE OF THE WASILLA CITY COUNCIL AUTHORIZING THE CITY OF WASILLA TO ENTER INTO A LEASE OF CITY LAND WITH THE ALASKA LIVE STEAMERS.

Agenda of: August 11, 2008 Introduction
Originator: Public Works Director

Date: July 31, 2008

Route to:	Department	Signature/Date
	Police Chief Youth Court, Dispatch, Code Compliance	
	Culture and Recreation Services Director Library, Museum, Sports Complex	
X	Public Works Director Facility Maintenance, Utility, Roads & Airport	 7/31/08
X	Chief Financial Officer Finance, Risk Management, Purchasing & MIS	 7/31/08
X	Deputy Administrator Planning, Economic Development, Human Resources	
X	City Clerk	

REVIEWED BY MAYOR DIANNE M. KELLER:  8/1/08

FISCAL IMPACT: yes or no Funds Available yes no

Account number/name:

Attachments: PCM No. 08-07, Parcel Map, & Purchasing Officer Assessment

SUMMARY STATEMENT: The Alaska Live Steamers have been located at the Wasilla Airport for 15 years. As the airport continues to develop, the Alaska Live Steamers will need to be relocated. This is due to the fact that the Federal Aviation Administration will not authorize the permanent use of airport property for this type of use. The Public Works Department is proposing to use a portion of City property that was originally purchased for a storm drain system. The final storm drain system was built in Iditapark, and this parcel is not needed for the storm drain.

RECOMMENDED ACTION: To adopt Ordinance Serial No. 08-42 that authorizes the lease of City Land to the Alaska Live Steamers.



	<input checked="" type="checkbox"/> <i>Approved</i>	<input type="checkbox"/> <i>Denied</i>
Action taken	None	None
Other:		
Date of Commission Action:	7/8/2008	
Verified by:		

WASILLA CITY PLANNING COMMISSION

PCM No. 08-07

TITLE: A RESOLUTION OF THE WASILLA PLANNING COMMISSION RECOMMENDING APPROVAL OF A CITY LEASE TO THE ALASKA LIVE STEAMERS.

MEETING DATE: July 8, 2008

REQUESTED BY: Public Works Director/Airport Manager

PREPARED BY: Public Works Director/Airport Manager

DATE PREPARED: July 3, 2008

SUMMARY STATEMENT:

In 2007, the Planning Commission recommended approval for the sale of City property to the Alaska Live Steamers to allow for the relocation of the Live Steamers Train Park off Wasilla Airport property. As was discussed, the City allowed the use of airport property for the Live Steamers Train Park. However, FAA will not allow the Live Steamers on the airport as a permanent facility.

The administration identified City Parcel A6 last year as a potential permanent site for the Live Steamers. Upon recommendation from the Planning Commission, a request for sale was presented for City Council approval. The City Council was concerned that if the property was sold to the Live Steamers and the Live Steamers were to dissolve, then the property could be sold for private development.

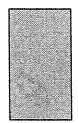
To address this concern, the administration is now proposing a long-term lease of the parcel to the Live Steamers. This parcel is located next to Lake Lucille Park and the administration believes this to be a suitable location for the train park. This also addresses the long term need to move the Live Steamers off airport property.

LIVE STEAMERS N 1/2 of MSB TAX PARCEL A-6

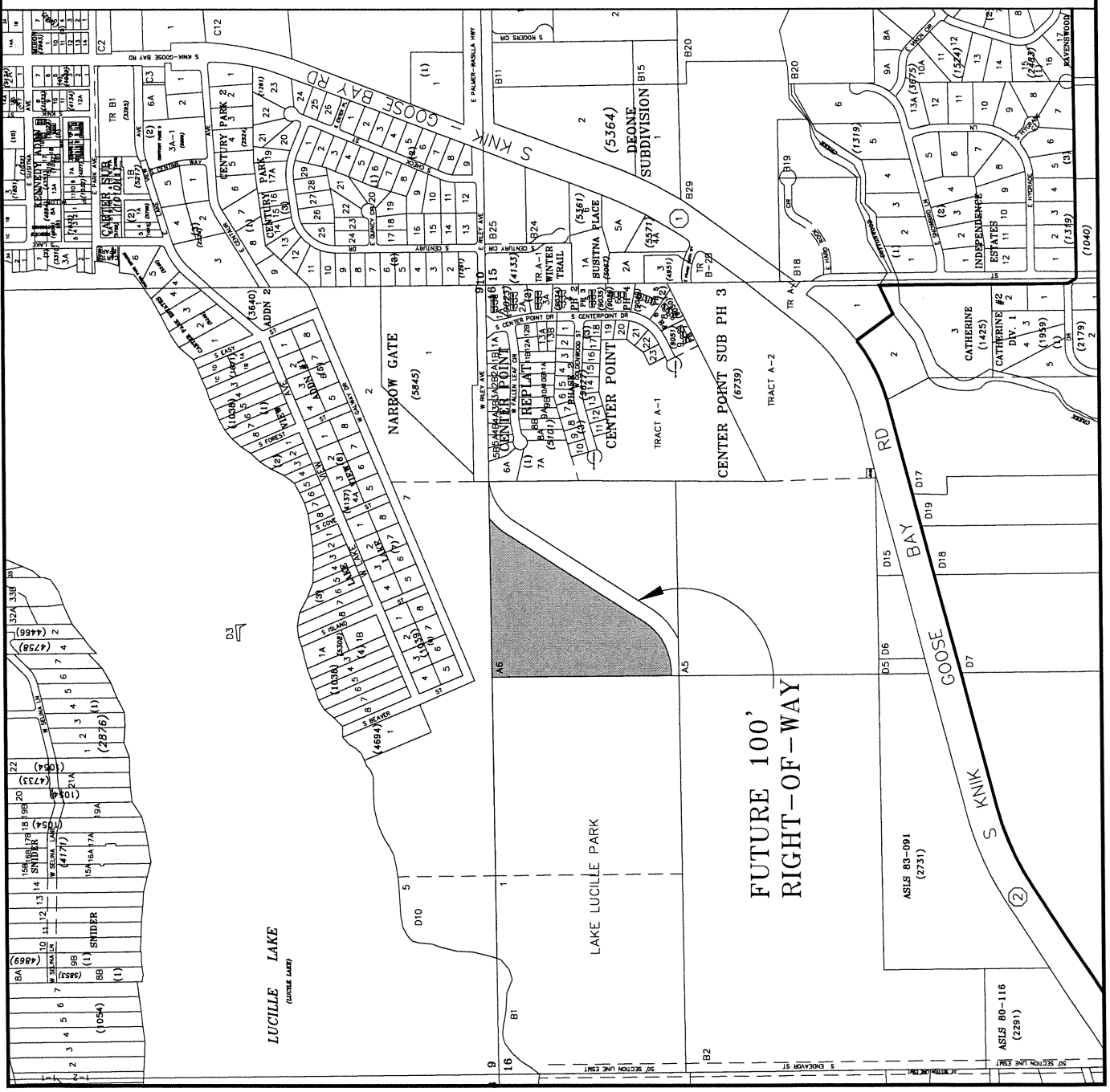
Approximately 20-acres in size,
located within Section 16,
Township 17 North, Range 01
West, Seward Meridian, AK.



KEY



SUBJECT PARCEL



FUTURE 100'
RIGHT-OF-WAY

LUCILLE LAKE
(LUCILLE LAKE)

ASLS 85-091
(2751)

ASLS 80-116
(2291)

GROUND LEASE

THIS GROUND LEASE (the "Lease") is made this ____ day of _____, 2008, by and between CITY OF WASILLA, An Alaska municipal corporation("Lessor"), whose address is 290 E. Herning Avenue, Wasilla, Alaska, 99654, and ALASKA LIVE STEAMERS, INC., an Alaska nonprofit corporation("Lessee"), whose address is Post Office Box 872002, Wasilla, Alaska 99687.

RECITALS

WHEREAS, Lessor has permitted Lessee to operate its live steam railroad facility on property of Lessor located at the Wasilla Municipal Airport; and

WHEREAS, Lessee must relocate its live steam railroad facility, as parts of the property that it presently occupies are required for the expansion of the Wasilla Municipal Airport; and

WHEREAS, it is in the public interest that Lessee continue to operate its live steam railroad facility in the City of Wasilla ("City"); and

WHEREAS, the City owns the property described in Section 1 of this Lease ("Premises") that Lessee has determined would provide a suitable site for the relocation of its live steam railroad facility, and Lessor is willing to lease the Premises to Lessee provided that Lessee uses the Premises for that purpose; and

WHEREAS, the proposed use of the Premises is for a worthwhile public service; there will be no discrimination in providing the service, and the use will be nonprofit;

NOW, THEREFORE, in consideration of the foregoing Recitals (which are incorporated herein by this reference), the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. Premises. Lessor, for and in consideration of the rents, covenants and conditions hereinafter specified to be paid, performed and observed by Lessee, does hereby let, lease and demise to Lessee, and Lessee does hereby lease from Lessor, the property located in the Palmer Recording District, Third Judicial District, State of Alaska, more particularly described as follows:

a portion of Tax Parcel A6 ("Tax Parcel A6"), located in Section 16, Township 17 North, Range 1 West, Seward Meridian, in the Palmer Recording District, Third Judicial District, State of Alaska, located northwest of a right-of-way to be reserved by Lessor across Tax Parcel A6, from its southwest corner to its northeast corner. The property so described, excluding all buildings, structures, fixtures and other similar improvements located thereon at any time during the Term (as hereinafter defined) is hereinafter referred to as the "Premises" or the "Leased Premises."

2. Term.

a. Initial Term. Subject to the Lessee's right to extend the Lease as set forth in this Lease, the initial term of this Lease shall be for ten (10) years (the "Initial Term"), and shall commence upon the 1st day of April, 2009 (the "Lease Commencement Date") and expire on the 31st day of March, 2019 (the "Lease Expiration Date").

b. Options to Extend. Lessee shall have the option to extend this Lease for two additional ten (10) year terms commencing on the expiration of the Initial Term ("Extended Term"). Lessor shall have the option to adjust the rent for the Extended Term. In order to exercise the option to extend, Lessee must not be in default and must give Lessor written notice of its election to extend. Any notice to extend the Lease will not be delivered to Lessor more than two (2) years in advance and not less than six (6) months prior to the expiration of the Initial Term. All the terms and conditions of this Lease shall apply during the Extended Term, provided, however, that no additional options to extend shall be created by Lessee's election to extend this Lease. Both the Initial Term and Extended Term shall be referred to collectively as the Lease Term throughout this Lease.

3. Rent. Beginning on the Lease Commencement Date, and continuing on the first day of April each year thereafter, Lessee shall pay Lessor rent in the amount of One Thousand Two Hundred Dollars (\$1,200.00) per year ("Base Rent"). Base Rent shall be paid at the address set forth in Section 24 of this Lease, or such other place as Lessor may designate in writing from time to time. All Base Rent shall be paid without prior demand or notice and without any deduction or offset whatsoever. All Base Rent shall be paid in lawful currency of the United States of America.

4. Late Payment. Lessee acknowledges that late payment by Lessee to Lessor of any Rent or other sums due under this Lease will cause Lessor to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to ascertain. Therefore, if any rent or additional sum due from Lessee is not received within ten (10) calendar days of the date when it is due, Lessee shall pay to Lessor as a late charge an additional sum equal to five-percent (5%) of such overdue payment. Lessor and Lessee hereby agree that such late charge is not a penalty and that it

represents a fair and reasonable estimate of the costs that Lessor will incur by reason of such late payment. In addition, all such delinquent Base Rent or other additional sum due under this Lease, plus the late charge, shall bear interest at the highest permitted rate under AS 45.45.010. Lessee shall also pay to Lessor a handling charge of \$25.00 for any payments of any kind that are returned for insufficient funds.

5. Utilities. Lessee shall pay all costs of electricity, water and other utilities used on or associated with the Premises.

6. Taxes. Lessee shall pay all real and personal property taxes associated with or attributed to Lessee's leasehold interest or personal property on the Premises.

7. Lessee's Acceptance of Premises. Lessee acknowledges having inspected or having been given the full opportunity to inspect the Premises and the improvements, equipment and other personal property thereon, and hereby accepts the same in their present condition. No representation, statement or warranty, express or implied, has been made by or on behalf of Lessor as to the condition of the foregoing, or as to the use that may be made of it. In no event shall Lessor be liable for any defect or condition, present or future, in or on the Premises or the improvements, equipment and other personal property thereon, for any claims or damages arising therefrom, or for any limitation, present or future, on the use thereof.

8. Use by Lessee. Lessee shall utilize the Premises solely to operate its live steam railroad facility and to conduct activities directly related to the operation of this facility. Lessee shall remain a nonprofit organization. Lessee shall abide by all applicable federal, state and local statutes, regulations and ordinances, and shall not cause or permit any nuisance or similar offensive use on the Premises.

9. Right to Enter and Inspect. Lessor shall have the right, at reasonable times, to enter the Premises to inspect same.

10. Care of Premises. Lessee will keep the Premises neat and clean and in a sanitary condition, and will at all times preserve it, and upon termination of this Lease will surrender the Premises, in as good a condition and repair as it is now or may hereafter be put into, reasonable use and wear and tear excepted. If Lessee fails to keep and preserve the property in said condition and state of repair, Lessor may, at its option, put or cause the same to be put into the condition and state of repair agreed upon, and in such case Lessee shall be liable for the full cost thereof.

11. Lessorship of Improvements. All improvements shall be and remain the property of Lessee or its assigns. Upon the expiration or termination of the Lease, Lessee or its assigns shall have the obligation to remove all such improvements and restore the Leased Premises within one hundred twenty (120) days following such expiration or

termination, unless it is otherwise agreed by Lessor in writing that such improvements shall become the property of the Lessor.

12. Additional Improvements. Lessee shall not construct or place any improvements or structures on the Leased Premises without first obtaining prior written consent from the City Administration except the relocation of its current facilities identified in the development plan attached and incorporated herein as Exhibit A. In consenting to such other improvements or structures, Lessor may impose conditions and restrictions deemed reasonably necessary by Lessor to protect its interests.

13. No Encumbrances. Except as otherwise expressly provided herein, during the Term of this Lease, Lessee shall not encumber or cloud Lessor's title to the Leased Premises or any portion thereof, nor enter into any lease, easement, or other obligation of Lessor's title without the prior written consent of Lessor; and any such act or omission, without the prior written consent of Lessor, shall be void against Lessor.

14. Assignment. This Lease may not be assigned, nor may the Premises be sublet without the advance written consent of Lessor. Lessor may refuse its consent to any proposed sublease without the necessity of an explanation or statement of reasons.

15. Insurance.

a. Lessee shall obtain and maintain in full force and effect during the term of this Lease, and any renewals or extensions hereof, adequate insurance to protect both Lessor and Lessee against comprehensive public liability, products liability and property damage. At a minimum, such policies of insurance shall cover the following risks:

(i) Commercial general liability insurance written on an occurrence (as opposed to a claims made) basis with minimum limits of liability in an amount of not less than One Million Dollars (\$1,000,000) general aggregate limit for personal injury or death, property damage (including water damage and sprinkler leakage) and premises liability, which insurance shall contain a contractual liability endorsement covering the matters set forth herein; and

(ii) Workers' compensation insurance covering all of Lessee's employees, which insurance shall contain an express waiver of any right of subrogation against Lessor.

b. All policies of liability insurance to be obtained and furnished by Lessee hereunder shall list Lessor as an additional insured. All such policies of insurance shall be issued by a financially responsible company or companies authorized to issue such policy or policies and licensed to do business in Alaska, and shall contain endorsements providing that any such insurance shall not be subject to cancellation, termination or material change except after ten (10) days' prior written notice by registered mail to Lessor by the insurance company.

c. The original policy or policies, or duly-executed certificates for the same, stating that the insurance carrier shall give Lessor ten (10) days' written notice prior to cancellation, material alteration or failure to renew, together with satisfactory evidence of payment of the premium therefor, shall be delivered to Lessor on or before the occupancy date of this Lease and, upon renewal of such policies, not less than ten (10) days prior to the expiration of the term of any such coverage. The minimum limits of any insurance coverage required hereunder to be carried by Lessee shall not otherwise limit Lessee's liability under this Lease.

16. Indemnification. Lessor shall not be liable for any injury or death to any person or for any loss or damage to any property or for any other loss or damage on or about the Premises from any cause whatsoever. Lessee assumes liability for and agrees to indemnify, save and hold Lessor harmless from any and all claims arising out of its use of the Premises, and any operations necessary or incidental thereto, including claims for damage, death or injury to any person, persons or property arising from any act or omission of, or the use, possession or occupancy of the Premises by Lessee, its officers, employees, agents, invitees, visitors or other persons. Lessee's obligation of indemnification shall extend to and encompass costs and reasonable attorneys' fees associated with the defense of any such claim or action.

17. Mechanic's Liens. If any mechanic's lien or other lien or charge shall be filed or made against the Leased Premises or any part thereof, then Lessee, at its cost and expense, within thirty (30) days after such lien or charge shall have been filed or made, shall cause the same to be canceled and discharged of record by payment thereof or filing a bond or otherwise, and shall also defend any action, suit or proceeding brought to enforce such lien or charge, and shall pay any damages, costs and expenses, including attorney's fees, suffered or incurred therein by Lessor, and shall satisfy and discharge any judgment entered therein within thirty (30) days from the entering of such judgment by payment thereof or filing of a bond, or otherwise.

18. Default and Termination. Should Lessee fail to perform any of Lessee's obligations hereunder, Lessor may terminate this Lease upon thirty (30) days' notice to Lessee unless the default is cured to the reasonable satisfaction of Lessor within said 30-day period or, in the case of a default which cannot with due diligence be cured within a 30-day period, Lessee promptly commences within said 30-day period and diligently

and continuously prosecutes to completion all steps necessary to cure the default to the reasonable satisfaction of Lessor. Lessee shall have a period of one hundred twenty (120) days after termination or expiration of this Lease to remove its trade fixtures, personal property, and equipment from the Premises; rent shall be prorated to the date of removal. Any of Lessee's property remaining on the Premises one hundred twenty (120) days after termination or expiration may be disposed of by Lessor and Lessee hereby expressly waives any claims, damages or causes of action arising out of such disposal, and agrees to indemnify and hold Lessor harmless from any and all such claims asserted by third parties. Notwithstanding such termination, Lessor shall be entitled to rent for the full calendar month in which the termination takes effect. For the purposes of this section, notices shall be deemed given when mailed or otherwise delivered.

19. Holdover. Lessee holds over beyond the expiration of the Lease Term of the Lease and the Lease Term has not been extended or renewed in writing, such holding over shall constitute a tenancy from month-to-month on the same terms and conditions set forth in this Lease.

20. Environmental Requirements. In furtherance, and not in limitation, of the foregoing, Lessee must, at its own expense, comply with all laws, ordinances, regulations and administrative agency or court orders, including but not limited to those relating to health, safety, noise, environmental protection, waste disposal, Hazardous Substances, and water and air quality. "Hazardous Substances" shall be interpreted broadly to include, but not be limited to, any material or substance that is defined or classified under federal, state or local laws as (a) "hazardous substance" pursuant to §101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 (14) or §311 of the Federal Water Pollution Control Act, 33 U.S.C. §1321, each as now or hereafter amended; (b) a "hazardous waste" pursuant to §1004 or §3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §6903, 42 U.S.C. §691, as now or hereafter amended; (c) a toxic pollutant under §307(1)(a) of the Federal Water Pollution Control Act, 33 U.S.C. §1317(1)(a); (d) a "hazardous air pollutant" under §112 of the Clean Air Act, 42 U.S.C. §7412, as now or hereafter amended; (e) a "hazardous material" under the Hazardous Material Transportation Act, 49 U.S.C. §1802(2), as now, or hereafter amended; (f) toxic or hazardous substances pursuant to regulations promulgated now or hereafter under the aforementioned laws, or (g) presenting a risk to human health or the environment under other applicable federal, state or local laws, ordinances, or regulations, as now, or as may be passed or promulgated in the future. In the event any discharge, leakage, spillage, emission or pollution of any type occurs upon or from the Leased Premises during the Lease Term or any holdover thereafter, Lessee, at its own expense, must clean and restore the Leased Premises to the satisfaction of Lessor and any governmental body or court having jurisdiction of the matter.

21. Exclusive Liability. Lessee agrees to indemnify, hold harmless and defend Lessor against all liability, cost and expense (including, without limitation, any fines, penalties, clean-up costs, judgments, litigation costs and attorney's fees) incurred by or levied against Lessor as a result of Lessee's breach of sections 20 and 21 of this Lease, or as a result of any discharge, leakage, spillage, emission or pollution on or discharged from the Leased Premises, without regard to whether such liability, cost or expense arises during or after the Lease Term; provided, however, that Lessee shall not be required to indemnify Lessor under sections 20 and 21 of this Lease if the parties agree or a court of competent jurisdiction determines that such liability, cost or expense is caused directly and solely by the active gross negligence of Lessor or is attributable solely to events that occurred prior to Lessee taking possession of the Leased Premises. Lessee shall pay all amounts owed Lessor under sections 20 and 21 of this Lease within sixty (60) days after any such amount becomes due.

22. Notification. Lessee agrees to immediately notify Lessor if Lessee becomes aware of (i) any Hazardous Substances or other environmental problem or liability with respect to the Leased Premises, or (ii) any lien, action, or notice resulting from violation of any of the laws, regulations, ordinances, or other environmental laws.

23. Nonwaiver. The failure of Lessor to insist upon the strict performance of any of the provisions of this Lease shall not be construed as a waiver or relinquishment of any such breach, or any other provision of this Lease, and the same shall remain in full force and effect.

24. Notices. Notice shall be sufficiently given according to the terms of this Lease when mailed via first class mail, postage prepaid, to the parties at the addresses set forth below, or at such other address as a party designates in writing:

City of Wasilla
290 E. Herning Ave.
Wasilla, AK 99654
ATTN: _____

Alaska Live Steamers, Inc.
Post Office Box 872002
Wasilla, AK 99687
ATTN: _____

25. Modification. No modification or amendment of this Lease shall be binding unless made in writing and signed by the parties.

26. Binding Effect. This Lease shall be binding upon the parties and their respective successors and assigns.

27. Severability. If a court of competent jurisdiction finds any provision of this Lease to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other person(s) or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Lease in all other respects shall remain valid and enforceable.

28. Entire Agreement. This Lease contains the entire agreement between the parties as of this date, and supersedes all prior written or oral agreements regarding this subject matter.

29. Governing Law. This Lease shall be governed and construed by the laws of the State of Alaska.

30. Attorneys' Fees and Costs. If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party its full reasonable attorneys' fees and costs.

31. Construction of Agreement. The rule of construction that an instrument shall be construed more strictly against the party who drafted the same shall not apply to this Lease since both parties have had legal counsel available or have had the opportunity to seek independent advice.

IN WITNESS WHEREOF, Lessor and Lessee have hereunto set their hands and seals, the day and year first above written.

LESSOR:

LESSEE:

CITY OF WASILLA

ALASKA LIVE STEAMERS, INC.

By: _____
Dianne M. Keller, Mayor

By: _____
Name: _____
Title: _____

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by DIANNE M. KELLER, Mayor of the CITY OF WASILLA, an Alaska municipal corporation, on behalf of the City.

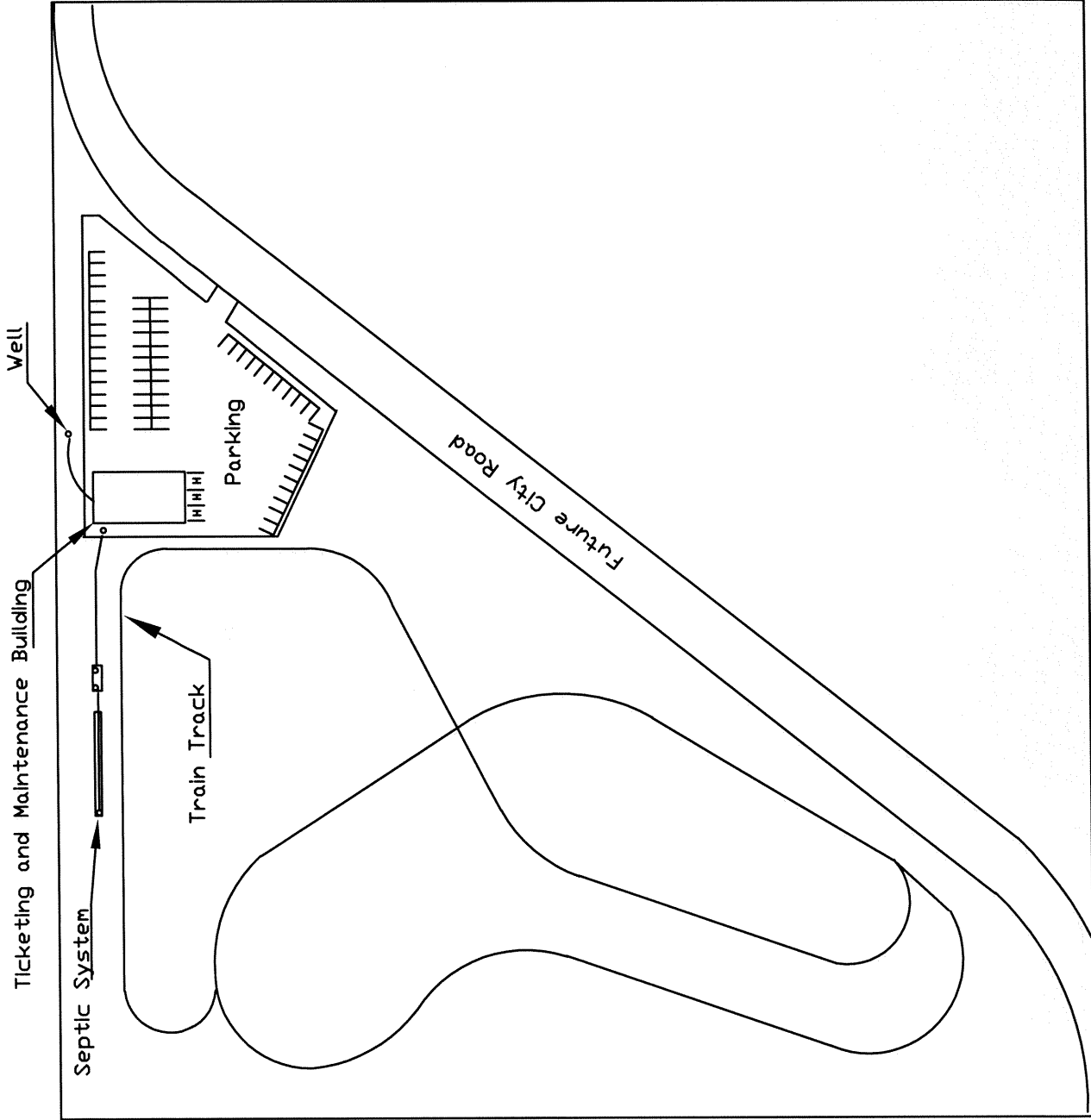
Notary Public for Alaska
My Commission expires: _____

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____, _____ of ALASKA LIVE STEAMERS, INC., an Alaska nonprofit corporation, on behalf of the corporation.

Notary Public for Alaska
My Commission expires: _____

EXHIBIT A



Alaska Live Steamers Development Plan
Tax Parcel A6 Section 16 T17N R1W S.M.

Archie Giddings

From: William A. Miller
Sent: Wednesday, July 23, 2008 4:33 PM
To: Archie Giddings
Subject: Alaska Live Steamers lease fee
Attachments: SCAN1928_000.pdf

Archie, I've reviewed the existing leases the City of Wasilla has with various non-profits, and the lease that closest resembles the Live Steamers property is 231 and 235 W. Swanson which is the current location of Valley Performing Arts (VPA). The lease executed with VPA back in 1994 is a thirty (30) year lease with an option to renew for an additional ten (10) years. The annual lease fee is \$100 per year and the amount of space leased is 1.67 acres based upon information from the Matanuska-Susitna Borough (see attached).

You proposed leasing twenty (20) acres of land to Alaska Live Steamers (ALS) and based upon the following calculations:

$VPN = \$100 \text{ per year divided by } 1.67 \text{ acres equals } \$59.88 \text{ per acre per year}$

$ALS = 20 \text{ acres} \times \$59.88 \text{ per acre} = \$1197.60 \text{ per year lease fee}$

Granted, one could make the argument that the ALS proposed property is unimproved acreage whereas the VPN leased property was improved with structures thus the ALS lease should be worth less. However, conventional wisdom would dictate that both properties are being leased well below market value due to the fact the City is leasing the property to non-profits in accordance with WMC 5.32.110.A.2. thus to make a distinction between the two properties would not be a fair representation.

William A. Miller
Purchasing/Contracting Officer

City of Wasilla
290 E. Herning Avenue
Wasilla, AK 99654-7091

Phone: (907) 373-9047
Fax: (907) 373-9011