

By: Public Works Department
Adopted: January 14, 2019
Yes: Burney, Dryden, Graham, Harvey, Ledford, O'Barr
No: None
Absent: None

**City of Wasilla
Resolution Serial No. 19-04**

A Resolution Of The Wasilla City Council Authorizing A 10-Year Lease Renewal For The Alaska Live Steamers On Tract A, Riley Subdivision.

WHEREAS, the Alaska Live Steamers, Inc. is currently leasing Tract A, Riley Subdivision under an initial 10-year term; and

WHEREAS, the lease provides for the option of two additional 10-year terms that the lease can be extended; and

WHEREAS, the Alaska Live Steamers have successfully developed the property under their initial 10-year lease term, operating and maintaining a model train park that is available to the public for rides during summer months; and

WHEREAS, Wasilla Municipal Code 5.32.090(C) allows for the renewal of City leases subject to recommendation of approval by the Planning Commission and approval of the City Council; and

WHEREAS, the Wasilla Planning Commission recommended approval of the Alaska Live Steamers lease renewal through the adoption of Resolution Serial No. 18-20 on December 11, 2018.

NOW, THEREFORE BE IT RESOLVED, that the Wasilla City Council authorizes a 10-year lease renewal for the Alaska Live Steamers on Tract A, Riley Subdivision.

ADOPTED by the Wasilla City Council on January 14, 2019.


BERT L. COTTLE, Mayor

ATTEST:


JAMIE NEWMAN, MMC, City Clerk


[SEAL]

CITY COUNCIL LEGISLATION STAFF REPORT**Resolution Serial No. 19-04: Authorizing A 10-Year Lease Renewal For The Alaska Live Steamers On Tract A, Riley Subdivision.**


Originator: Public Works Director

Date: January 2, 2019

Agenda of: January 14, 2019

| Route to: | Department Head | Signature | Date |
|-----------|-----------------------|--|--------|
| X | Public Works Director |  | 1/2/19 |
| X | Finance Director |  | 1-2-19 |
| X | Deputy Administrator |  | 1/2/19 |
| X | City Clerk |  | 1/3/19 |

Reviewed by Mayor Bert L. Cottle:

 1/5/2019**Fiscal Impact:** yes \$1,200.00 Annual Revenue**Attachments:** Resolution Serial No. 19-04 (2 pages)

Planning Commission Resolution Serial No. 18-20 (1 page)

Lease and Attachments (13 pages)

Summary Statement: This resolution authorizes a 10-year lease renewal for the Alaska Live Steamers, Inc. on Tract A, Riley Subdivision to continue operating their model train park. This organization has successfully developed the 20-acre parcel under their initial 10-year lease term, and they are requesting a lease renewal under the terms and conditions of the lease. The administration supports this lease renewal.

Recommended Action: Adopt resolution.

By: Public Works
Public Hearing: 12/11/18
Adopted: 12/11/18

**WASILLA PLANNING COMMISSION
RESOLUTION SERIAL NO. 18-20**

A RESOLUTION OF THE WASILLA PLANNING COMMISSION RECOMMENDING APPROVAL OF A 10-YEAR LEASE RENEWAL FOR THE ALASKA LIVE STEAMERS ON TRACT A, RILEY SUBDIVISION; GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE W. RILEY AVENUE AND S. ISLAND STREET INTERSECTION.

WHEREAS, the Alaska Live Steamers, Inc. is currently leasing Tract A, Riley Subdivision under an initial 10-year term; and

WHEREAS, the lease provides for the option of two additional 10-year terms that the lease can be extended; and

WHEREAS, the Alaska Live Steamers have successfully developed the property under their initial 10-year lease term, operating and maintaining a model train park that is available to the public for rides during summer months; and

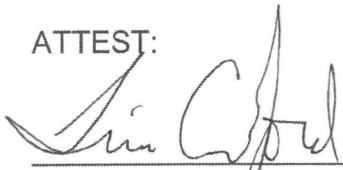
WHEREAS, Wasilla Municipal Code 5.32.090.C allows for the renewal of City leases subject to recommendation of approval by the Planning Commission and approval of the City Council.

NOW, THEREFORE BE IT RESOLVED, that the Wasilla Planning Commission recommends approval to the City Council of a 10-year lease renewal for the Alaska Live Steamers on Tract A, Riley Subdivision in accordance with Wasilla Municipal Code 5.32.090.C.

ADOPTED by the Wasilla Planning Commission on December 11, 2018.

APPROVED:

ATTEST:



Tina Crawford, City Planner



Brian Mayer, Vice-Chair

12/11/18

Date

VOTE: Passed Unanimously

GROUND LEASE

THIS GROUND LEASE (the "Lease") is made this 1st day of AUGUST, 2009, 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 870191, 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 August, 2009 (the "Lease Commencement Date") and expire on the 31st day of July, 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 not to exceed 125 percent of the consumer price index. 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 one (1) month 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. The Lessee may seek future 10 year options beyond the 30 year term described above.

3. Rent. Beginning on the Lease Commencement Date, and continuing on the first day of September 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 (30) 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

Alaska Live Steamers, Inc.
Post Office Box 870191
Wasilla, AK 99687

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:

Verne E. Rupright

By:

Steven Katkus

Title: President

STATE OF ALASKA)

THIRD JUDICIAL DISTRICT)

) ss:

Cherish Kight - Cherish Klingbeil - VP
Staff CA Steven Carrington Sec/Treas.

The foregoing instrument was acknowledged before me this 5 day of August, 2009, by VERNE E. RUPRIGHT, Mayor of the CITY OF WASILLA, an Alaska municipal corporation, on behalf of the City. ALASKA LIVE STEAMERS, INC. A NON PROFIT CORPORATION,



Lynda L Hill

Notary Public for Alaska

My Commission expires: 7/27/2011

ON BEHALF OF THE CORPORATION.

STATE OF ALASKA)

THIRD JUDICIAL DISTRICT)

) ss:

The foregoing instrument was acknowledged before me this 12 day of Aug, 2009, by MAYOR VERNE RUPRIGHT of ALASKA LIVE STEAMERS, INC., an Alaska nonprofit corporation, on behalf of the corporation. AN ALASKAN MUNICIPAL CORPORATION



Mary J. Bixby

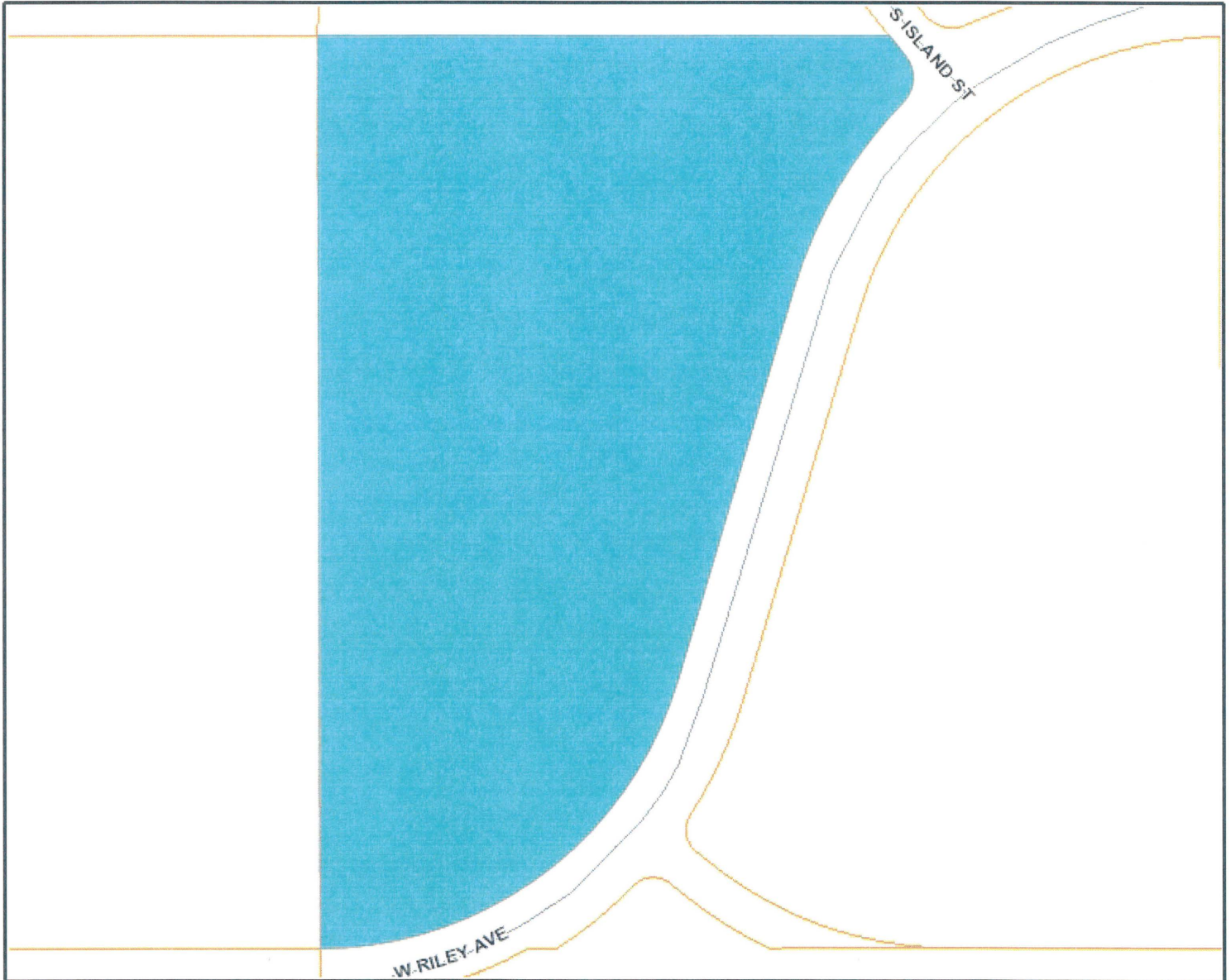
Notary Public for Alaska

My Commission expires: 5-18-13

ON BEHALF OF THE CITY.



Matanuska-Susitna Borough Land Information Parcel Report



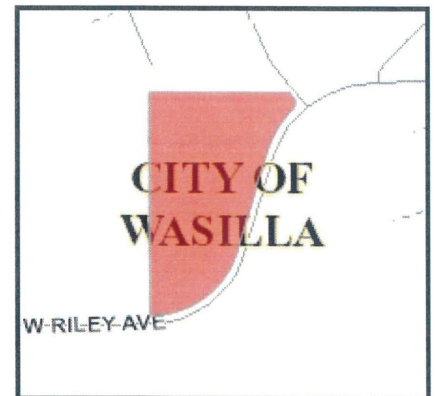
Selected parcel highlighted

Account ID: 7026000T00A

Owner(s): WASILLA CITY OF

General Owner: CITY

Legal Description: RILEY TRACT A



Parcel location within Matanuska-Susitna Borough



Alaska Central Railroad

ALASKA LIVE STEAMERS Inc.

Museum

1300 S. Island St.

907-373 -6412

City of Wasilla, Alaska
290 E. Hering Avenue
Wasilla, Alaska 99687

City of Wasilla:

This letter is to inform you of the intension of Alaska Live Steamers to extend the lease on the property located at 1300 S Island St. Wasilla, Alaska 99654. Our current lease will end on 31st day of July 2019. This request is made under the terms set by Ground Lease agreement dated 1 August, 2009.

Thank you

A handwritten signature in blue ink that reads 'Cherish Klingbeil'.

Cherish Klingbeil

Vice-president Alaska Live Steamers

November 9, 2018

VLG



