

Presented by: The Manager
Presented: 04/27/2020
Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Ordinance Serial No. 2020-18

An Ordinance Authorizing the Manager to Execute a Lease Agreement with AJT Mining Properties, Inc. for a Campground near Downtown Juneau.

WHEREAS, on March 26, 2020, Emergency Ordinance 2020-17 was adopted, which temporarily authorized the Manager to execute a lease with AJT Mining Properties, Inc. to relocate the Thane Campground to the Mill Campground site; and

WHEREAS, Emergency Ordinance 2020-17 expires in 180 days, and a subsequent ordinance is necessary to extend the Manager's lease authority beyond 180 days; and

WHEREAS, the CBJ has leased real property from AJT Mining Properties, Inc. ("AJT") for over 20 years for use as a campground for those in need of living accommodations during the temperate summer months, most commonly known as the Thane Campground; and

WHEREAS, the new location, provided for in Exhibit B, is slightly closer to downtown and provides better access to users, allows for vehicle access, and is more open, providing safer access to Juneau Police Department officers, park staff, and emergency responders; and

WHEREAS, AJT has offered to continue leasing its property to the CBJ for a nominal value of \$1.00 during the term of the lease; and

WHEREAS, given the contemplated use of the premises, AJT requires the CBJ to indemnify it against any action, claim, or lawsuit arising out of the CBJ's use and occupancy of AJT's property; and

WHEREAS, this indemnity provision has been in place since the CBJ originally leased AJT's property at the Thane Campground and reads as follows:

Lessee agrees to defend, indemnify, and save Lessor, its employees and insurers, with respect to any action, claim, or lawsuit arising out of the use and occupancy of the Leased Premises by Lessee. This agreement to defend, indemnify, and hold harmless is without limitation as to the amount of fees, and without limitation as to any damages resulting from settlement, judgment, or verdict, and includes the award of any attorneys' fees even if in excess of Alaska Civil Rule 82. The obligations of Lessee arise immediately upon notice to the Lessor of any action, claim, or lawsuit. Lessor agrees to provide Lessee written notice of any action,

claim or lawsuit in a timely manner. This agreement applies and is in full force and effect whenever and wherever any action, claim, or lawsuit is initiated, filed, or otherwise brought against Lessor.

WHEREAS, pursuant to CBJ Charter 9.13(a) and its prohibition against payment being made or an obligation being incurred without an appropriation, the CBJ is generally prohibited from agreeing to indemnify; and

WHEREAS, CBJ Charter 9.13(c) carves out an exception to that general prohibition:

Notwithstanding Section 9.13(a) of this Charter, the assembly by ordinance may require payment of funds from appropriations of a later fiscal year or of more than one year for any contract, lease or note or bond obligation, or federal or state grant, or any other federal or state program that the municipality may not otherwise participate in.

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

Section 1. Classification. This is a non-code ordinance.

Section 2. Authority to Lease. Pursuant to CBJ Charter 9.13(c), the Manager is authorized to execute the lease agreement provided for in Exhibit A and agree, on behalf of the CBJ, to indemnify AJT Mining Properties, Inc. to the extent required by law.

Section 3. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 18th day of May, 2020.



Beth A. Weldon, Mayor

Attest:



Elizabeth J. McEwen, Municipal Clerk

CAMPGROUND LEASE AGREEMENT
AJT MINING PROPERTIES, INC. / CITY AND BOROUGH OF JUNEAU

THIS LEASE is by and between AJT Mining Properties, Inc., an Alaska corporation, whose address is 5601 Tongard Court, Juneau, AK 99801 ("Lessor,") and the City and Borough of Juneau, Alaska an Alaska municipal corporation, 155 S. Seward St., Juneau, AK 99801 ("Lessee.")

1. AUTHORITY. This lease is entered into by the City and Borough of Juneau manager pursuant to the authority of the City and Borough of Juneau Code, Chapter 53.04.010 "Leases."

2. LEASED PREMISES. The Leased Premises is a portion of tax parcels numbered 1C1001070102 and 3M0000CTU010 encompassing an area approximately one-half acre in size shown on Attachment A, which is incorporated by this reference.

3. TERM. The term of this lease shall be one (1) year, beginning April 1, 2020, and ending on March 31, 2021.

a. In the event that Lessee holds over and remains in possession of the Leased Premises after the expiration date of this agreement without written renewal thereof, a month to month tenancy shall be created until the lease is terminated upon one month's written notice by either party or under the terms provided under Section 6(f). During any period of holding over, all terms and conditions of this lease agreement, and any amendments, will apply.

4. RENT. The rent shall be one dollar and other valuable consideration for the entire term of this lease, receipt of which is acknowledged upon the execution of this document.

5. USE OF PREMISES. The Leased Premises shall be used by Lessee for the establishment of a campground for the public; no other use is allowed without prior written consent of Lessor. The purpose of the campground is to provide campsites with proper facilities to the public for seasonal housing during the temperate months of the year. The purpose is not to provide a recreational opportunity to the public, but to serve an observed need for living accommodation. It is hoped that this will reduce or eliminate the undesirable effects caused by people camping on unimproved public and private property, both in the general area of the campground as well as elsewhere in the city and borough. The undesirable effects include a lack of sanitary facilities for human wastes, garbage and trash. In addition to the unsanitary conditions, such practices attract bears and other wildlife and are unpermitted by the private property owners. Lessee's failure to operate or to provide for the operation of a campground during the summer months shall be considered a material breach of this agreement.

The parties envision that the Leased Premises will be improved to provide 17-20 tent platforms, a covered area for picnic tables, lockable storage lockers, a portable sanitary unit, potable water tanks, a firepit, a sign at the entrance of the road, and path around the locked gate. Site preparation may include clearing of trees and removal of stumps to open views to the tent platform sites for safety of users and staff.

6. SPECIAL CONDITIONS. The following conditions apply to this lease:

a. Campground Improvements. Lessee shall improve the Leased Premises to provide a portable sanitary unit, a firepit, and secure food storage to users of the campground. Lessee shall also provide firewood to be used in the firepit in a sufficient quantity to prevent users from cutting firewood from the Leased Premises and surrounding area. Lessee may make other improvements at its own expense to the site to accomplish the approved use, including, but not limited to, grading, construction of a road, parking, common facilities and campsites.

b. Electrical facilities located on Leased Premises.

i. Located on the Leased Premises are certain improvements used in the transmission of electrical power such as towers and aerial power lines and cables ("electrical facilities.") These electrical facilities are owned and operated by Alaska Electric Light & Power, Inc. (AEL&P) on the leased premises pursuant to the permission of Lessor. AEL&P is not a party to this agreement but is a third-party permittee of Lessor.

ii. Lessee takes the Leased Premises subject to the electrical facilities and all reasonably related future uses. Lessee shall allow AEL&P or other third-party permittees of Lessor to enter the Leased Premises at any time to inspect, maintain or repair the electrical facilities located on or above the Leased Premises. Lessor shall require such third parties to make reasonable efforts to avoid conflict with Lessee's use of the Leased Premises.

iii. Lessor shall keep the electrical facilities located on and above the Leased Premises in good condition.

iv. The towers located on the Leased Premises provide support for and access to electrical lines. Although the towers are designed to deter easy access to the lines, and are posted with warning signs, it is not possible to prevent unpermitted access. Climbing on the towers or coming into contact with the related electrical facilities is extremely dangerous. Lessee takes the Leased Premises as is and assumes the risk that persons on Leased Premises might trespass on the towers or other electrical facilities and suffer damage to themselves, others, or damage the electrical facility, and releases the Lessor from liability for such damages.

v. The indemnification provisions of section 6.h. of this lease shall apply to any claims against Lessor by a third party for damages relating to the electrical facilities so long as those facilities are maintained in good condition by Lessor or its permittees. This does not apply to Lessor's own employees or permittees.

c. Assignment and subletting. No assignment or subletting of any of Lessee's interest shall be permitted. Any attempt to assign or sublet this lease shall be a material breach. However, Lessee may permit another entity to construct, operate or manage the Leased Premises for the permitted uses.

d. Property taxes. As partial consideration for this lease, Lessee shall reimburse the Lessor upon receipt of an invoice for its pro-rata share of increased property taxes. The amount of reimbursement shall be determined using the assessed valuation of the property within which the Leased Premises is located as the baseline value, and the square acreage of the Leased Premises

compared to the square acreage of the property being assessed shall determine Lessee's pro-rata share. Lessee shall reimburse Lessor for any difference in property taxes due to an increase in valuation over the base value. This shall include increases in valuation due to Lessee's improvements to the Leased Premises or for any other reason.

e. Termination for convenience. Lessor may terminate this lease for its own convenience without penalty. Written notice of termination shall be not less than 90 days in advance of the effective date, but if such notice is delivered after January of any calendar year, then it shall not be effective until the end of the operational year of the campground. Lessee acknowledges that Lessor may need to develop or lease the property for development and acknowledges that Lessor's right to terminate the lease for convenience includes, but is not limited to, a right to terminate for such development.

f. Termination due to non-appropriation. As required by CBJ 53.04.010, this lease shall terminate on June 30th of any year during which the assembly of the City and Borough of Juneau fails to appropriate sufficient funds for the lease of the subject property during the following fiscal year. Such termination shall be without penalty.

g. Relationship with third parties. The rights and responsibilities of this agreement are between Lessor and Lessee. Each party to this agreement is responsible only to the other for the actions or omissions of their third-party permittees which relate to a term or condition of this agreement.

h. Indemnification. Lessee agrees to defend, indemnify, and save Lessor, its employees and insurers, with respect to any action, claim, or lawsuit arising out of the use and occupancy of the Leased Premises by Lessee. This agreement to defend, indemnify, and hold harmless is without limitation as to the amount of fees, and without limitation as to any damages resulting from settlement, judgment, or verdict, and includes the award of any attorneys' fees even if in excess of Alaska Civil Rule 82. The obligations of Lessee arise immediately upon notice to the Lessor of any action, claim, or lawsuit. Lessor agrees to provide Lessee written notice of any action, claim or lawsuit in a timely manner. This agreement applies and is in full force and effect whenever and wherever any action, claim, or lawsuit is initiated, filed, or otherwise brought against Lessor.

i. Insurance. Lessee shall, during the entire term of this lease, keep in full force and effect the following insurance: a) General Liability insurance with bodily injury and property damage of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate, b) Automobile Liability insurance with bodily injury and property damage limits of \$1,000,000 for each accident, and c) Workers' Compensation insurance in accordance with statutory requirements and Employer's Liability Insurance with a limit of \$500,000 per occurrence for bodily injury. Lessee shall not allow any agent or contractor of Lessee to take any action related to the Leased Premises unless the agent or contractor maintains, at any time it is acting in relation to the Leased Premises, the types and levels of insurance required above for Lessee. The policy shall name Lessor as an additional insured and shall contain a clause that the insurer will not cancel or change the insurance without first giving Lessor thirty-one (31) days' prior written notice. Lessee shall provide Lessor with a certificate of insurance on a form to be provided by the Lessor prior to the commencement date of this lease; or if this lease is signed subsequent to its commencement, then Lessee shall

deliver the certificate of insurance to Lessor simultaneously with execution of this lease. Lessee understands that Lessor carries no fire insurance on the Leased Premises or improvements located thereon belonging to Lessee, and that it is Lessee's obligation to obtain adequate fire insurance for protection of Lessee's buildings, fixtures, or personal property located on the Leased Premises.

j. Efforts to prevent unpermitted camping on Lessor's surrounding property. Lessee shall attempt to prevent people from camping on Lessor's properties surrounding the Leased Premises.

k. Closing of Thane Campground. As a condition this lease, Lessee shall close the Thane Campground leased under agreement dated April 23, 1999, as amended, in a manner that will minimize use by campers yet leave the site intact so that it could be used in the future if needed by Lessor.

l. Prevention of Visual Nuisance. Lessee acknowledges that Goldbelt Inc. is a neighbor, and tourists on Goldbelt Inc.'s tramway will see the campground. Lessor shall maintain the Leased Premises in an orderly and clean manner and shall prevent it from becoming a visual nuisance.

m. On-Site Management. Lessee shall operate the campground according to the management plan in Attachment B, which is incorporated by this reference.

n. General Coordination of Efforts. Lessee shall communicate with Lessor and coordinate efforts with Lessor regarding fulfilling the conditions of the lease, enforcement of facility rules, and management of the Leased Premises. Lessee's employees shall communicate and coordinate with Lessor's watchman, currently Floyd Branson, to ensure both parties are aware of issues and problems arising in and around the Leased Premises throughout the season.

o. Access Gate. Lessee may use the gate at S. Franklin Street/Thane Road for vehicular access to the Leased Premises. Lessee shall provide a lock and lock the gate at any time that it is not actively passing an authorized vehicle through the gate and shall not allow anyone other than its employees, contractors, and agents, acting in the scope of their employment, contract, or agency, to pass a vehicle through the gate or operate a vehicle upon the Leased Premises.

7. GENERAL CONDITIONS.

a. Taxes, Assessments, and Liens. During the term of this lease Lessee shall promptly pay or otherwise cause to be discharged, any claim resulting or likely to result in a lien, against the Leased Premises or the improvements placed thereon.

b. Easements. Lessee shall place no building or structure over any portion of the Leased Premises where the same has been set aside or reserved for easements.

c. Encumbrance of Parcel. The Lessee shall not encumber or cloud the Lessor's title to the Leased Premises or enter into any lease, easement, or other obligation of the Lessor's title without the prior written consent of the Lessor; and any such act or omission, without the prior written consent of the Lessor, shall be void against the Lessor and may be considered a material breach of this lease.

d. Valid Existing Rights. This lease is entered into and made subject to all existing rights, including easements, rights-of-way, reservations, or other interests in land in existence, on the date of execution of this lease.

e. Responsibility to Properly Locate on Leased Premises. It shall be the responsibility of the Lessee to properly locate Lessee and Lessee's improvements on the Leased Premises and failure to so locate shall render the Lessee liable as provided by law.

f. Expiration of Lease. Unless the lease is renewed or sooner terminated as provided herein, the lessee shall peaceably and quietly leave, surrender and yield up unto the lessor all the leased land on the last day of the term of the lease.

g. Removal of improvements upon expiration or termination. Lessee shall remove all improvements to the Leased Premises upon expiration or termination of this lease. Lessee is not required to restore the premises to its original condition, and any improvements or fixtures that cannot be removed without damage to the real property may remain. Lessor is not required to pay Lessee for the value of any improvements to or on the premises at the end of the lease.

h. Inspection. Lessee shall allow an authorized representative of the lessor to enter the Leased Premises for inspection at any reasonable time.

i. Entire Agreement, Amendments. This document, including exhibits and attachments, contains the entire agreement between the parties and may not be modified except in writing. There are no oral promises, representations, or warranties between the parties regarding any matter or thing connected with or related to the matters and things which are the subject of this lease.

j. Trespass and Eviction. Lessee shall prevent and promptly stop unauthorized use and presence upon the Leased Premises related to the public campground. Lessor authorizes Lessee to address unauthorized use or presence upon the Leased Premises related to the public campground, including by pursuing criminal trespass charges and maintaining a forcible entry and detainer or other civil action.

8. DEFAULT

a. Lessee is in default in the following events:

i. The occurrence of an event that is deemed as a material breach under the terms of this lease, including failure to operate a campground, encumbrance of the Leased Premises, and assignment or sublet of the Leased Premises, voluntarily or involuntarily, without Lessor's written consent;

ii. Lessee fails to comply with any other provision of this lease and does not cure that failure within thirty (30) days after written notice from by Lessor specifying the failure; and

b. If Lessee defaults, Lessor may terminate this lease and end Lessee's right to possession of the Leased Premises. If Lessor terminates this lease, Lessee will immediately vacate and cause its users to vacate the Leased Premises upon demand. If Lessee and its users do not

immediately vacate the Leased Premises upon demand, Lessee will be liable for Lessor's actual costs and fees to evict Lessee and Lessee's users.

c. If Lessee defaults, Lessor may choose to cure the default and charge Lessee. Lessee will reimburse Lessor for the actual cost to cure the default, including attorneys' fees and incidental costs. Lessee must reimburse Lessor within thirty (30) days of written demand. This remedy is in addition to Lessor's other remedies in the event of default and does not waive any of Lessor's other rights in the event of default.

d. If Lessor breaches a provision of this lease, Lessor will have thirty (30) days after written notice from Lessee of the default in which to either cure the default completely or start diligent work to cure it. If Lessor fails to cure or start curing the default within thirty days, Lessee may terminate the lease.

e. The parties' rights under this lease in the event of default are in addition to any other rights that the parties may have under state statutory or common law. The remedies in this lease and at law are cumulative, not exclusive.

IN WITNESS WHEREOF, the Lessor and Lessee agree and sign on the dates below. The persons signing below represent that they are authorized to execute this agreement on behalf of Lessor and Lessee, respectively.

Lessor:

AJT MINING PROPERTIES, INC.

Lessee:

THE CITY AND BOROUGH OF JUNEAU

By: _____

Title: _____

By: _____

Title: _____

Downtown Summer Shelter Vicinity Map



