

Presented by: The Manager
Introduced: 04/02/2018
Drafted by: A. G. Mead

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-14

An Ordinance Authorizing the Manager to Lease a .05 Acre Fraction of Parcel JPD II Tract J1, Located at 6235 and 6255 Alaway Avenue, to the Federal Aviation Administration.

WHEREAS, the Federal Aviation Administration (FAA) has requested to renew its lease of certain City and Borough of Juneau (CBJ) parcels for the purpose of continuing to host FAA weather monitoring equipment; and

WHEREAS, the weather monitoring equipment provides data for local aviation conditions, including wind speeds, wind shear, and local turbulence around take-off and landing approach routes for the Juneau International Airport; and

WHEREAS, the weather monitoring equipment currently occupies approximately 2,269 square feet located on Parcel JPD II Tract J1 at the Juneau Police Department, 6235/6255 Alaway Avenue in Lemon Creek, and has been subject to previous lease agreements since 1997, with the most current lease having expired in June 2017; and

WHEREAS, the Juneau Police Department has expressed no concerns with a new lease for this equipment; and

WHEREAS, the FAA will be responsible for obtaining all the necessary permits at this location, as well as for all operation and maintenance of the weather monitoring equipment and facilities at this location; and

WHEREAS, CBJ 53.09.270(a) authorizes the lease of City and Borough land "to a state or federal agency for less than the market value provided the assembly approves the terms and conditions of such disposal by ordinance"; and

WHEREAS, the proposed terms and conditions of the lease are included as Attachment A to this ordinance; and

WHEREAS, pursuant to CBJ 53.09.270(c), the market value of the leased area to be granted to the FAA, as determined by the Manager, is \$489.89 annually; and

WHEREAS, on March 13, 2017, the Lands Committee passed a motion of support for the proposed no-cost lease to the FAA in order to ensure the continuation of the Juneau Airport Wind Systems program; and

WHEREAS, on June 13, 2017, the Planning Commission recommended adoption of the proposed lease to the FAA.

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

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

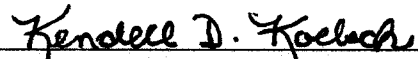
Section 2. Authorization to Lease. The Manager is authorized to lease a .05 Acre Fraction of Parcel JPD II Tract J1 at no cost to the United States Department of Transportation, Federal Aviation Administration (FAA) for existing monitoring equipment associated with the Juneau Airport Wind System (JAWS).

Section 3. Term. The lease shall be for a term of ten years, with the option of two ten-year renewal periods but shall be terminable by the lessor if, for any period or periods totaling more than 18 months, the property is not used for the authorized purpose.

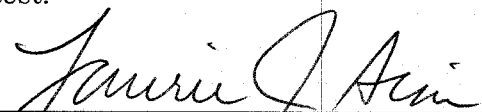
Section 4. Rent. This lease will be for no monetary cost, but the FAA shall be responsible for all operation and maintenance of the FAA-owned equipment and facilities located within the leased area.

Section 5. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 23rd day of April, 2018.


Kendell D. Koelsch, Mayor

Attest:


Laurie J. Sica, Municipal Clerk

LAND LEASE

Between

**THE UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

And

CITY & BOROUGH OF JUNEAU

Lease Number: DTFAWN-17-L-00154

THIS LEASE is hereby entered into by City & Borough of Juneau whose address is 155 S. Seward Street, Juneau, AK 99801 hereinafter referred to as the Lessor and the United States of America, herein after referred to as the Government. This lease shall become effective when it is fully executed by all parties. The terms and provisions of this lease, and the conditions herein, bind the Lessor and the Lessor's heirs, executors, administrators, successors, and assigns.

This lease supersedes Lease No. DTFA04-02-L-44529 and all other previous agreements between the parties for the leased property described in this document.

WITNESSETH: The parties hereto, for the consideration hereinafter mentioned covenant and agree as follows:

1. PREMISES (08/02) - The Lessor hereby leases to the Government the following described property, hereinafter referred to as the premises:

Juneau Airport Wind System (JAWS) FACILITY SITE

Legal description titled "Metes and Bounds Description" for Lemon Creek JAWS Lease Boundary, is hereby attached as "Exhibit A" and made a part of this lease. Real Estate drawing marked as "Exhibit B" is hereby attached and made a part of this lease.

- A. Together with a right-of-way for ingress to and egress from the premises for Government employees, their agents and assigns, a right-of-way for establishing and maintaining a pole line or pole lines for extending electric power and/or telecommunication lines to the premises; and a right-of-way for subsurface power, communication and/or water lines to the premises; all rights-of-way to be over said lands and adjoining lands of the Lessor, and unless herein described

otherwise, to be by routes reasonably determined to be the most convenient to the Government.

- B. And the right of grading, conditioning, and installing drainage facilities, and seeding the soil of the premises, and the removal of all obstructions from the premises which may constitute a hindrance to the establishment and maintenance of Government facilities.
 - C. And the right to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased, which alterations, fixtures, additions, structures or signs so placed in or upon, or attached to the said premises shall be and remain the property of the Government.
2. TERM - To have and to hold, for the term commencing on the date this agreement is executed, and continuing through April 30, 2027 inclusive, PROVIDED that adequate appropriations are available from year to year for the payment of rentals. The Government shall have two (2) options to renew this lease for a period of ten (10) years.
 3. CONSIDERATION (NO COST) (AUG-02) - The Government shall pay the Lessor no monetary consideration in the form of rental, it being mutually agreed that the rights extended to the Government herein are in consideration of the obligations assumed by the Government in its establishment, operation and maintenance of facilities upon the premises hereby leased.
 4. HOLDOVER (10/13) – If, after the expiration of the lease, the Government shall retain possession of the premises, the lease shall continue in force and effect on a month-to-month basis. Rent shall be paid in accordance with the terms of the lease, in arrears on a prorated basis, at the rate paid during the lease term. This period shall continue until the Government shall have signed a new lease with the Lessor, acquire the property in fee or vacated the premises.
 5. CANCELLATION (08/02) - The Government may terminate this lease, in whole or in part, if the Real Estate Contracting Officer (RECO) determines that a termination is in the best interest of the Government. The RECO shall terminate by delivering to the Lessor a written notice specifying the effective date of the termination. The termination notice shall be delivered by certified mail return receipt requested and mailed at least 30 days before the effective termination date.

The Lessor may terminate this lease, in whole or in part, if the Government defaults on its covenants under this lease and fails to cure within 30 days upon receiving notice from the Lessor. The Lessor may further terminate this lease if, for any period or periods totaling more than 18 months, the property is not used for the authorized purpose under this lease.

6. RESTORATION - The Government shall surrender possession of the premises upon the date of expiration or termination of this lease. If the Lessor provides written notice, prior to the date of expiration or termination, requesting restoration of the premises, the Government at its option shall within ninety (90) days after such expiration or termination, or within such additional time as may be mutually agreed upon, either:

- (a) Restore the premises to as good condition as that existing at the time of the Government's initial entry upon the premises under this lease or any preceding lease (changes to the premises in accordance with paragraph 1(a), 1(b) and 1(c) above, ordinary wear and tear, damage by natural elements and by circumstances over which the Government has no control, excepted) or,
 - (b) Make an equitable adjustment in the lease amount for the cost of such restoration of the premises or the diminution of the value of the premises if unrestored, whichever is less. Should a mutually acceptable settlement be made hereunder, the parties shall enter into a supplemental agreement hereto effecting such agreement. (10/96)
7. QUIET ENJOYMENT (10/96) - The Lessor warrants that they have good and valid title to the premises, and rights of ingress and egress, and warrants and covenants to defend the Government's use and enjoyment of said premises against third party claims.
8. SUBORDINATION, NONDISTURBANCE AND ATTORNMENT (07/14) –
- A. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Based on a written demand received by the RECO, the Government will review and, if acceptable, execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.
 - B. No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this lease so long as the Government is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.
 - C. In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such

purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the RECO and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

- D. None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

9. NOTIFICATION OF CHANGE IN OWNERSHIP OR CONTROL OF LAND (10/14) –

If the Lessor sells, dies or becomes incapacitated, or otherwise conveys to another party or parties any interest in the aforesaid land, rights of way thereto, and any areas affecting the premises, the Government shall be notified in writing of any such transfer or conveyance within 30 calendar days after completion of the "change in property rights". Concurrent with the written notification, the Lessor or Lessor's heirs, representatives, assignees, or trustees shall provide the Government copies of the associated legal document(s) (acceptable to local authorities) for transferring and/or conveying the property rights.

10. LESSORS SUCCESSORS (10/96) - The terms and provisions of this lease and the conditions herein bind the Lessor and the Lessor's heirs, executors, administrators, successors, and assigns.

11. CONTRACT DISPUTES (11/03) -

- A. All lease disputes arising under or related to this lease shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A Lessor may seek review of a final FAA decision only after its administrative remedies have been exhausted.
- B. All Lease Disputes shall be in writing and shall be filed at the following address:

Office of Dispute Resolution for Acquisition, AGC-70
Federal Aviation Administration
800 Independence Avenue, SW
Room 323
Washington, DC 20591
Telephone: (202) 267-3290
Facsimile: (202) 267-3720

- C. A lease dispute against the FAA shall be filed with the ODRA within two (2) years of the accrual of the lease claim involved. A lease dispute is considered to be filed on the date it is received by the ODRA.
 - D. The full text of the Contract Disputes clause is incorporated by reference. Upon request the full text will be provided by the RECO.
12. ANTI-KICKBACK (7/14) - The Anti-Kickback Act of 1986 (41 U.S.C. § 8701 et seq.), prohibits any person from:
- A. Providing or attempting to provide or offering to provide any kickback;
 - B. Soliciting, accepting, or attempting to accept any kickback; or
 - C. Including, directly or indirectly, the amount of any kickback in the lease price charged by a prime Lessor to the United States Government or in the lease price charged by a sublessor to a prime Lessor or higher tier sublessor.
13. ASSIGNMENT OF CLAIMS (10/96) - Pursuant to the Assignment of Claims Act, as amended, 31 U.S.C. § 3727, 41 U.S.C. § 6305 the Lessor may assign his rights to be paid under this lease.
14. COVENANT AGAINST CONTINGENT FEES (08/02) - The Lessor warrants that no person or agency has been employed or retained to solicit or obtain this lease upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this lease without liability or, in its discretion, to deduct from the lease price or consideration, or otherwise recover the full amount of the contingent fee.
15. OFFICIALS NOT TO BENEFIT (10/96) - No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this lease, or to any benefit arising from it. However, this clause does not apply to this lease to the extent that this lease is made with a corporation for the corporation's general benefit.
16. EXAMINATION OF RECORDS (08/02) - The Comptroller General of the United States, the Administrator of FAA or a duly authorized representative from either shall, until 3 years after final payment under this lease have access to and the right to examine any of the Lessor's directly pertinent books, documents, paper, or other records involving transactions related to this lease.
17. NOTICES - All notices/correspondence shall be in writing, reference the Lease number, and be addressed as follows:

To the Lessor:
City & Borough of Juneau
155 S. Seward Street
Juneau, AK 99801

To the Government:
DOT / Federal Aviation Administration
Real Estate & Utilities Group
222 W. 7th, #14
Anchorage, AK 99513-7587

18. LEASE PROVISIONS OF LESSOR –

- (a) Responsibility to Properly Locate on Lease Premise (CBJ 53.20.160). It shall be the responsibility of the Government to properly locate Government's improvements on the Leased Premises and failure to so locate shall render the Government liable as provided by law.
- (b) Approval of Other Authorities (CBJ 53.20.180). The issuance by the Lessor of this lease under the provisions of this title does not relieve the Government of the responsibility of obtaining licenses or permits as may be required by the Lessor or by duly authorized state or federal agencies.
- (c) Other Terms and Conditions of Lessor (CBJ 53.20.109)
 - a. Lease Utilization. The leased lands shall be utilized only for purposes within the scope of the application and the terms of the lease, and in conformity with applicable local, state and federal laws and regulations. Utilization or development for other than the allowed uses shall constitute a violation of the lease and subject the lease to cancellation at any time.
- (d) Modification. The lease may be modified only by an agreement in writing signed by all parties in interest or their successor in interest.

IN WITNESS WHEREOF, the parties hereto have signed their names.

LESSOR:

_____	_____
Duncan Rorie Watt, City Manager	Date
_____	_____

UNITED STATES OF AMERICA:

_____	_____
Alice L. Salzman	Date
Real Estate Contracting Officer	
_____	_____

EXHIBIT A

METES AND BOUNDS DESCRIPTION (LEMON CREEK J.A.W.S. LEASE BOUNDARY)

A CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED WITHIN, JPD SUBDIVISION, WITHIN SURVEY NO. 2121, PROTRACTED SECTION 34, T.40S., R66E., C.R.M., CITY AND BOROUGH OF JUNEAU, FIRST JUDICIAL DISTRICT, STATE OF ALASKA BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS;

BEGINNING AT THE SOUTHWEST CORNER OF THIS DESCRIPTION, FROM WHICH U.S.G.S. TRIANGULATION STATION "EDDIE" BEARS $N88^{\circ}19'15''W-11,468.53'$; THENCE ALONG THE WEST BOUNDARY OF THIS DESCRIPTION $N0^{\circ}41'30''E-49.03'$ TO THE NORTHWEST CORNER, FROM WHICH THE PROTRACTED QUARTER CORNER OF SECTIONS 33 AND 34, T.40S., R66E., C.R.M. BEARS $N14^{\circ}12'15''W-800.53'$; THENCE ALONG THE NORTH BOUNDARY OF THIS DESCRIPTION $S87^{\circ}29'30''E-47.68'$ TO THE NORTHEAST CORNER; THENCE ALONG THE EAST BOUNDARY OF THIS DESCRIPTION $S2^{\circ}30'30''W-47.75'$ TO THE SOUTHEAST CORNER; THENCE ALONG THE SOUTH BOUNDARY OF THIS DESCRIPTION $N89^{\circ}02'45''W-46.14'$ TO THE TRUE POINT AND PLACE OF BEGINNING.

CONTAINING 2,269 SQUARE FEET (0.05 ACRES), MORE OR LESS.

