

Introduced By: Mayor John Eberhart
Finance Committee October 18, 2016
Date: October 24, 2016

ORDINANCE NO. 6033

**AN ORDINANCE AUTHORIZING A LEASE TO THE
CHINOOK MONTESSORI CHARTER SCHOOL TO
BUILD A SKI TRAIL ON CITY PROPERTY ADJOINING
THE CITY FIRE TRAINING CENTER**

WHEREAS, the City owns Tract K of Alaska Survey 80-64, containing 21.25 acres, located on Thirtieth Avenue as shown on attached "Exhibit A"; and

WHEREAS, 14.7 acres of Tract K situated west of the Fire Training Center are vacant and available for interim use; and

WHEREAS, The Chinook Montessori Charter School, through the Mayor and the City's Finance Committee, has respectfully requested a lease of a portion of Tract K sufficient to construct a cross country ski loop for student fitness and skills; and

WHEREAS, the City administration has reviewed the request and has determined that the area is not presently needed for municipal purposes and can be leased to others; and

WHEREAS, the lease shall require that any future use or need by the City of the proposed area shall supersede the lease, causing lessee to adjust to new conditions as may be dictated by the City Engineer or to vacate the premises if such is deemed necessary in the sole discretion of the City; and

WHEREAS, Fairbanks General Code Section 70-44 provides that the City may lease to a non-profit organization without public sale and for less than market value, whenever in the judgment of the City Council it is advantageous to do so; and

WHEREAS, it is the finding of the City Council that a lease of the land to the Chinook Montessori Charter School is in the best interest of the community.

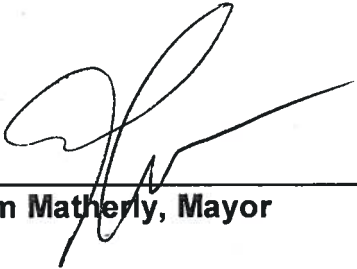
NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

SECTION 1. That a lease instrument substantially in the form shown on attached "Exhibit B" is hereby authorized by the City Council for the purposes herein stated, providing for a five-year lease term, with a five-year renewal to be determined at the discretion of the Mayor.

SECTION 2. That the Mayor is hereby authorized and directed to execute the lease on behalf of the City, and the City Clerk is authorized to attest and affix the City Seal to said instrument, the execution of which shall take place not less than thirty (30) days after the effective date of this

ordinance, as prescribed by Section 8.3 of the City Charter and Section 70-56 of the Fairbanks General Code.

SECTION 3. That the effective date of this ordinance shall be the 12th day of November 2016.



Jim Matherly, Mayor


AYES: Norum, Cleworth, Rogers, Huntington, Therrien, Pruhs
NAYS: None
ABSENT: None
ADOPTED: November 7, 2016

ATTEST:

APPROVED AS TO FORM:

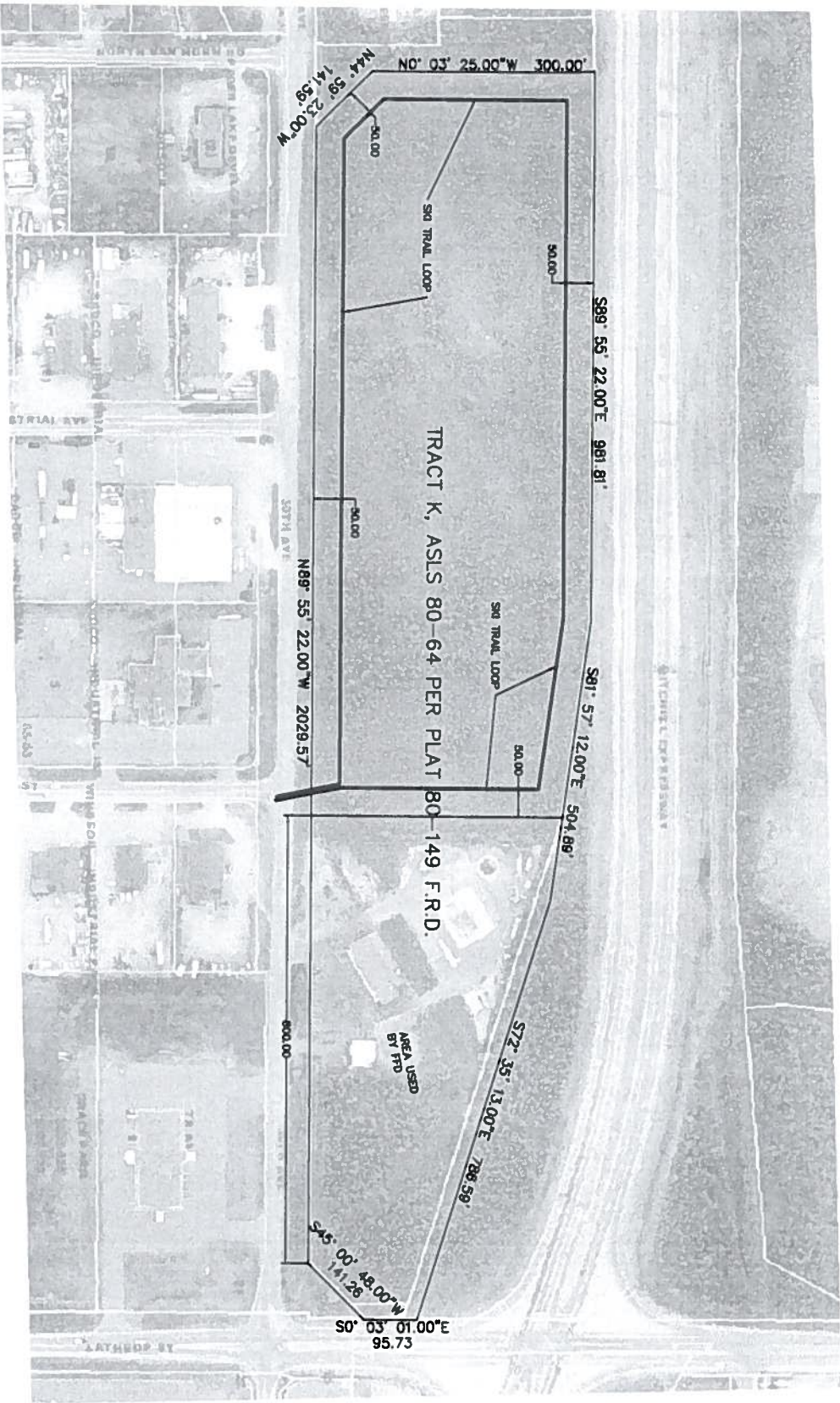


D. DANIELLE SNIDER, CMC, City Clerk



PAUL EWERS, City Attorney

EXHIBIT A



NOT TO SCALE

**EXHIBIT 'B' TO ORDINANCE NO. 6033
REAL ESTATE LEASE**

THIS LEASE effective the ____ day of December 2016, between THE CITY OF FAIRBANKS, a municipal corporation of the State of Alaska, with address of 800 Cushman Street, Fairbanks, Alaska, 99701, hereinafter called Lessor, and the CHINOOK MONTESORRI CHARTER SCHOOL, 3002 International Street, Fairbanks, Alaska 99709, hereinafter called Lessee;

WITNESSETH:

WHEREAS, the City of Fairbanks, by Ordinance No. 6033 authorized execution of this lease of City owned property identified below.

NOW THEREFORE, Lessor, in consideration of the rent hereinafter specified and of the mutual covenants and agreements herein expressed has leased and by these presents does lease that certain real property, of land only, described as follows:

1. Lease of Premises. The Lessor leases to Lessee, and Lessee leases from Lessor, the real property located at Fairbanks, Alaska, more particularly described as follows:

1.1 Premises. A portion of Tract K, Alaska Land Survey 80-64, Fairbanks, Alaska more particularly described as follows:

A strip of land 10 feet in width situated within the west 1,375 feet of Tract K such that said strip of land forms a loop around the perimeter of the parcel so described, and lying within this parcel such that fifty-foot buffer zone is maintained from the perimeter, as shown on attached "Exhibit A".

2. Term. The term of this Lease shall be for five years, commencing on December 7, 2016, and ending at midnight on December 6, 2021.

2.1 Renewal. This lease may be renewed for an additional five years upon expiration of the original term, provided that Lessee requests such renewal in writing and not less than forty-five days in advance of the termination date. Approval of this renewal request shall be at the sole discretion of the City Mayor.

3. Escape Cancellation. Lessee, upon ninety (90) days advance written notice delivered to the address of Lessor, may cancel and terminate this lease, surrendering the premises in a neat and clean condition.

Lessor, upon forty-eight four hours written notice to Lessee, may cancel this lease in the event that use of the property is required for other use by Lessor, or if the permitted use is deemed to be in conflict with Lessor use of its adjoining lands within said Tract K, all in the sole discretion of the City Engineer.

4. Rent. As compensation for use of the premises during the life of this lease and any extensions thereof, Lessee shall pay a nominal rental rate of \$1.00 per year, paid in advance of each year of this lease.

5. Condition. Lessee has inspected the premises, is familiar with the physical condition and accepts the premises in its "as-is" condition, with all of its benefits or its faults.

6. Permitted Uses. Lessee shall use the premises for purpose of establishing a cross country ski trail, to do all reasonable things necessary to establish the trail, and for its use and maintenance during the term of this lease.

7. Prohibited Uses. Lessee shall not use or permit the use of the premises or any part thereof in violation of any applicable law, ordinance, regulation, or provision of this Lease. At no time shall a minor child be upon the leased area without adult supervision.

8. Taxes. Lessor is a municipality of the State of Alaska and is therefore exempt from property taxes. If taxes are levied against the leased premises by a governmental body so long as Lessor remains the owner of record, any such taxes shall be paid by Lessee. Should taxes be levied against the property at such time as the record owner of the leased fee estate is a taxable entity, such owner shall be responsible for payment of taxes.

9. Exculpation and Indemnity.

9.1 Exculpation of Lessor. Lessor shall not be liable to Lessee for any damage to Lessee or Lessee's invited guests from any cause, specifically including but not limited to injury or loss arising from the intended use of cross-country skiing, acknowledged by the parties to be an inherently dangerous sport. The sole exception to this exculpation shall be a negligent act on part of the Lessor, but not including the condition of or any danger present upon the ski trails.

9.2 Indemnity. Lessee shall defend and hold the Lessor harmless from all damages arising out of any damage or injury to any person or property occurring in, about, or on the premises.

10. Proof of Insurance Required. The Lessee shall furnish the Lessor with a Certificate of Liability Insurance for Commercial General Liability and Workers' Compensation on a form and in an amount satisfactory to Lessor.

11. Prevention of Waste and Nuisance. Lessee shall not use the premises in any manner that will constitute waste, nuisance, or unreasonable annoyance to Lessor or the owners or occupants of adjacent properties. The property shall be kept neat and clean, free of debris or hazards. Violation or breach under this section shall be determined at the sole discretion of the City Engineer.

12. Assignment and Sublease. Lessee shall not assign its rights under this Lease or sublet all or any portion of the premises without the prior written consent of Lessor. Consent shall be at the sole discretion of Lessor.

13. Liens. Lessee shall keep the premises free from any liens, including without limitation those liens arising out of any work performed, materials furnished, or obligations incurred by Lessee.

14. Consultation with Attorney. Lessee acknowledges that it has the right to review this Lease and all other documents relating to the Lease with its own attorney. Each party electing to have this Lease reviewed by an attorney shall bear the costs and expenses so incurred.

15. Right of Entry. Lessor, its agents and authorized employees, shall have the right to enter the leased premises to examine the same during all hours.

16. Default. Failure to construct ski trails on the property or failure to use and maintain the ski trails for a full ski season, shall constitute default by Lessee of this Lease. Upon Lessee's default, Lessor shall give Lessee ten (30) days' notice to cure the default. No default notice shall be deemed a forfeiture or a termination of this Lease unless Lessor so elects in the notice.

17. Notice. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first class mail, addressed to the other party at the address set forth in the introductory paragraph of this Lease. Either party may change its address by notifying the other party of the change of address.

18. Attorney's Fees. If Lessor brings or maintains an action for enforcement of any of the covenants, terms or conditions of this Lease, Lessee shall pay all costs incurred by Lessor for such action including attorney's fees in the event Lessee is found to be at fault.

19. Time of the Essence. Time is of the essence of each provision of this Lease.

20. Successors. This Lease shall be binding on and inure to the benefit of the parties and their successors.

21. Severability. The unenforceability, invalidity, or illegality of any provision shall not render the other provisions unenforceable, invalid, or illegal.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first written above.

LESSEE:
Chinook Montessori Charter School

LESSOR:
City of Fairbanks

By:
Title: (authorized signer)

By:
Title: Mayor

ATTEST:

APPROVED AS TO FORM:

D. Danyielle Snider, CMC
City Clerk

Paul Ewers
City Attorney

(City seal)

ACKNOWLEDGMENT

THIS IS TO CERTIFY that on this _____ day of _____, 2016, the undersigned, a Notary Public for the State of Alaska, duly commissioned and sworn as such, personally appeared _____, and D. DANYIELLE SNIDER, and that they acknowledged before me that they executed the same for and on behalf of The City of Fairbanks and under the authority of said municipal corporation so granted by the City Council, as their free and voluntary act and deed of said corporation.

IN WITNESS, I have set my hand and affixed my official seal on this _____ day of _____, 2016.

Notary Public
My Commission Expires: _____

ACKNOWLEDGMENT

THIS IS TO CERTIFY that on this _____ day of _____, 2016, the undersigned, a Notary Public for the State of Alaska, duly commissioned and sworn as such, personally appeared _____, of the Chinook Montessori Charter School, to me known to be the person described in and who executed the foregoing instrument and acknowledged to me that she/ he signed the same freely and voluntarily for the uses and purposes therein mentioned, having authority to do so.

IN WITNESS, I have set my hand and affixed my official seal on this _____ day of _____, 2016.

Notary Public
My Commission Expires: _____