

ORDINANCE NO. 6073, AS AMENDED

**AN ORDINANCE AUTHORIZING THE LEASE OF GOLDEN HEART
PLAZA TO FESTIVAL FAIRBANKS**

WHEREAS, the City of Fairbanks is the owner of Lots 3 and 4, Block 4, Fairbanks Townsite, also known as "Golden Heart Plaza," and the improvements thereon, as shown on attached "Exhibit A" Real Estate Lease, and

WHEREAS, Festival Fairbanks, a not-for-profit community agency, has for many years promoted the public use, management, and maintenance of Golden Heart Plaza, all of which benefits the City of Fairbanks, its residents, and visitors; and

WHEREAS, management of the Property by Festival Fairbanks is deemed consistent with the provisions of Fairbanks General Code, Section 70, Article III, "Golden Heart Plaza"; and

WHEREAS, lease of the Property to Festival Fairbanks will provide the basic rights necessary for it to effectively and legally manage the Plaza; and

WHEREAS, Festival Fairbanks has requested a lease for the management purposes stated above; and

WHEREAS, Fairbanks General Code Section 70-44 provides that the City may lease without public offering whenever the lessee is a not-for-profit organization; and

WHEREAS, the lease of the Property described above is in the best interest of the community.

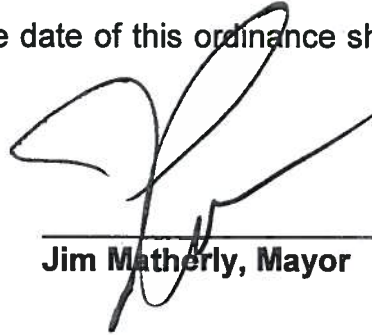
NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

SECTION 1. That a lease instrument substantially in the form shown in attached "Exhibit A" is hereby authorized by Council for the purposes herein stated, providing for an initial ~~two~~**three**-year lease term with a one-year extension at the discretion of the City Mayor.

SECTION 2. That the Mayor is 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 30 days after the effective date of this ordinance, as prescribed by section 8.3 of the City Charter and Sec. 70-56 of the Fairbanks General Code.

Introduced By: Mayor Matherly
Date: March 19, 2018

SECTION 3. That the effective date of this ordinance shall be the 14th day of April 2018.




Jim Matherly, Mayor

AYES: Rogers, Bagwill, Therrien, Pruhs, Cleworth, Huntington
NAYS: None
ABSENT: None
ADOPTED: April 9, 2018

ATTEST:

APPROVED AS TO FORM:



DANYIELLE SNIDER, CMC, City Clerk



FOR

PAUL EWERS, City Attorney

EXHIBIT "A" to ORDINANCE NO. 6073

REAL ESTATE LEASE

THIS LEASE, made and effective as of the ____ day of _____ 2018, by 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 FESTIVAL FAIRBANKS, INC., with address of 514 Second Avenue, Fairbanks, Alaska 99701, hereinafter called Lessee.

WHEREAS, the City of Fairbanks, as trustee for the public, and pursuant to Ordinance 6073, hereby authorizes lease of the property described below, under the conditions stated.

NOW THEREFORE, Lessor and Lessee, in consideration of the rent specified and of the mutual covenants and agreements expressed herein, agree as follows:

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

Lots 3 and 4, Block 4, Fairbanks Townsite, also known as "Golden Heart Plaza", and the improvements thereon, as shown on the attached "Lease Exhibit 1 of 1".

2. **Term.** The term of this Lease shall be for three years, beginning _____ 2018 and ending _____, 2021.
3. **Option.** This lease may be renewed for one additional year, at the sole discretion of the Mayor.
4. **Use.** Lessee shall use the Property in compliance with Fairbanks General Code of Ordinances Sections 70-96 through 70-99, "Golden Heart Plaza."
5. **Rent.** As compensation for use of the Property during the life of this lease, Lessee shall pay the sum of One Dollar (\$1.00) per year, paid in advance. Payments will be made at Lessor's Office of the City Clerk, 800 Cushman Street, Fairbanks, Alaska 99701.
6. **Prohibited Uses.** Lessee shall not use or permit the use of the Property or any part thereof in violation of any applicable law, ordinance, or regulation.
7. **Maintenance and Expenses.** Lessee shall perform routine cleaning associated with the leased Property proper, keeping the Property in a clean, safe condition, free of litter and debris. Lessee shall notify Lessor of hazards or safety concerns on or about the Property in a timely manner. Lessor shall provide repairs or alterations as it deems necessary, at its expense.
8. **Termination.** In the event of Lessor's sale or redevelopment of the property, Lessee's rights hereunder shall terminate, and Lessee shall vacate within 60 days of written notice.

9. Exculpation and Indemnity.

- a. **Exculpation of Lessor:** Lessor shall not be liable to Lessee for any damage to Lessee or Lessee's property from any cause. Lessee shall bear all risk of loss as to all personal property of the Lessee stored or remaining on or near the Property, including without limitation, inventory, equipment, fixtures, and employees' personal effects.
- b. **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 Property.
- c. **Public Liability and Damage Insurance:** Lessee at its sole cost shall at all times maintain public liability and damage insurance with a single combined liability limit of \$1,000,000, insuring against all liability of Lessee and its authorized representatives arising out of and in connection with Lessee's use or occupancy of the Property.

All public liability insurance and property damage insurance will insure performance by Lessee of the indemnity provisions provided herein. Lessor shall be named as an additional insured.

10. Prevention of Waste and Nuisance. Lessee shall not use the Property in any manner that will constitute waste, nuisance, or unreasonable annoyance to Lessor or the owners or occupants of adjacent properties. Violation or breach under this section shall be determined at the sole discretion of the City Mayor.
11. Assignment and Sublease. Lessee shall not assign or sublet its rights under this Lease without written consent of Lessor, which consent shall be at Lessor's sole discretion.
12. Liens. Lessee shall keep the Property free from any liens, including without limitation those liens arising out of any work performed, materials furnished, or obligations incurred by Lessee.
13. 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.
14. Right of Entry. Lessor and its agents and authorized employees, shall have the right to enter the rented Property to examine it and to make repairs, alterations, improvements, or additions, as Lessor may deem necessary or desirable during Lessee's business hours. All such entry shall be preceded by 72-hour advance notice to Lessee, except that immediate entry will be allowed in event of emergency, as determined by the City Engineer.
15. Default. Failure to occupy and operate the Property for two consecutive weekends or failure to perform any provision of this Lease shall constitute default by Lessee. Upon Lessee's

default, Lessor shall give Lessee 10 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.

16. 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 must 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.
17. 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.
18. Time of Essence. Time is of the essence of each provision of this Lease.
19. Successors. This Lease shall be binding on the parties and their successors.
20. Severability. The unenforceability, invalidity, or illegality of any provision will not render the other provisions unenforceable, invalid, or illegal.

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

FESTIVAL FAIRBANKS, INC.

CITY OF FAIRBANKS, ALASKA

Julie Jones
Executive Director

Jim Matherly
Mayor

ATTEST:

(CITY SEAL)

D. Danyielle Snider, CMC, City Clerk

ACKNOWLEDGMENT

State of Alaska)
) ss
Fourth Judicial District)

THIS IS TO CERTIFY that on this _____ day of _____ 2018 before me, the undersigned, a NOTARY PUBLIC in and for the State of Alaska, personally appeared **Jim Matherly**, the Mayor of the City of Fairbanks, and **D. Danyielle Snider**, the City Clerk of the City of Fairbanks, the municipal corporation named in the foregoing instrument, and that they acknowledged before me that they executed the same for and on behalf of said municipal corporation. IN WITNESS, I have set my hand and seal.

NOTARY PUBLIC:
Commission Expires:

ACKNOWLEDGMENT

State of Alaska)
) ss
Fourth Judicial District)

THIS IS TO CERTIFY that on this _____ day of _____ 2018 before me, the undersigned, a NOTARY PUBLIC in and for the State of Alaska, personally appeared **Julie Jones** of Festival Fairbanks, Inc., the Corporation named above, and she acknowledged to me that she executed the same for and on behalf of said Corporation as the Executive Director, under authority of said Corporation so granted by the Board of Directors, as the free and voluntary act and deed of said Corporation. IN WITNESS WHEREOF I have set my hand and seal the day.

NOTARY PUBLIC:
Commission Expires:

Return to:
Patrick Smith
City of Fairbanks
800 Cushman Street Fairbanks, Alaska 99701