

Introduced By: Mayor Jerry Cleworth
Date: May 9, 2011

ORDINANCE NO. 5847, As Amended

**AN ORDINANCE AUTHORIZING LEASE OF THE "CHENA BUILDING"
FROM THE CITY TO THE EARLY COLLEGE OF ALASKA, INC**

WHEREAS, the City of Fairbanks is the owner of Lots 21 & 22, Block 13, Fairbanks Townsite, including the building thereon, located at 510 2nd Avenue, known as the Chena Building, as shown on attached "Exhibit A", and

WHEREAS, the Chena Building has been leased to the University of Alaska since 1993, which lease will expire on June 30, 2011, at which time the University will vacate the premises, and

WHEREAS, the Early College of Alaska Inc has expressed a desire to occupy and lease the Chena Building beginning July 1, 2011, and

WHEREAS, the Early College of Alaska, Inc., is an existing registered non-profit and proposed charter school dedicated to students in grades 9-12, providing rigorous academic instruction to prepare students for college and providing early college attendance, and

WHEREAS, the City administration has reviewed said Chena Building space and determined that same is not required for municipal purposes and can be leased to others, and

WHEREAS, Fairbanks General Code of Ordinances 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 sense of the City Council that lease of the premises described above for the purposes stated 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 Council for the purposes herein stated, providing for a 5-year lease term, and including rent escalators.

SECTION 2. That execution of said lease is contingent upon the Early College of Alaska obtaining final approval of its proposed charter by the State of Alaska before June 15, 2011.

SECTION 2. That the Mayor is hereby authorized and directed to execute said 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 Sec. 7-56 of the Fairbanks General Code.

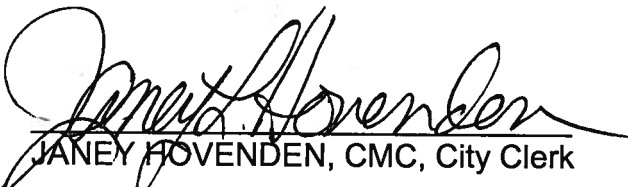
SECTION 3. That the effective date of this ordinance shall be the 28th day of May, 2011.



JERRY CLEWORTH, Mayor


AYES: Gatewood, Stiver, Bratcher, Matherly, Roberts
NAYS: None
ABSTAIN: None
ABSENT: Eberhart
ADOPTED: May 23, 2011

ATTEST:



JANEY HOVENDEN, CMC, City Clerk

APPROVED AS TO FORM:



PAUL EWERS, City Attorney

EXHIBIT 'B' TO ORDINANCE No. 5847
REAL ESTATE LEASE

THIS LEASE made this ____ day of _____, 2011, 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 EARLY COLLEGE OF ALASKA, INC., its agents or employees, with address of PO Box 82562 Fairbanks, Alaska 99708, hereinafter called "Lessee";

WITNESSETH:

WHEREAS, the City of Fairbanks, by Ordinance No. 5847, As Amended, 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, including land and buildings, 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:

- a. Land & Building

All of that certain building located at 514 Second Avenue, Fairbanks, Alaska, located on and including Lots 21 and 22, Block 13, Fairbanks Townsite, more commonly known as the "Chena Building", containing 19,500 square feet of above grade area and 7,200 square feet of basement area, more or less, hereinafter referred to as "premises", as indicated on attached Exhibit "B".

2. Parking. The following parking is made part of this Lease:

2.1 Parking Garage. Lessee shall have non-exclusive use of 36 parking spaces inside the Downtown Parking Garage, located at 201 Lacey Street. The Parking Garage is operated by the Fairbanks Parking Authority. Lessee shall observe the policies and regulations of the Parking Authority in use of the parking facility.

3. Term. The term of this Lease shall be for five (5) years, commencing on _____, 2011, and ending at midnight on _____ 2016.

4. Annual Funding Contingency. The Parties acknowledged that Lessee relies on and is subject to annual funding appropriation by the State of Alaska, which appropriation is not guaranteed. In the event funding is not appropriated, Lessee shall have the right to cancel this lease upon sixty days notice given to Lessor in writing.

5. Rent.

5.1 As compensation for use of the premises during the first year of this lease (months one through twelve, inclusive), Lessee shall pay:

- a. 100% of the utilities and maintenance expenses for the Premises, as set forth under Section 11, below; and
- b. The monthly cost of 36 spaces located in the Downtown Parking Garage and operated by the Parking Authority, at a monthly rate established by the Fairbanks Parking Authority, and as from time to time revised. Payment for said parking shall be made directly to the Parking Authority, 201 Lacey Street, Fairbanks, Alaska 99701.

5.2 As compensation for use of the premises during the second year (months thirteen through twenty-four, inclusive) of this lease, Lessee shall pay:

- a. 100% of the utilities and maintenance expenses for the Premises, as set forth under Section 11, below; and
- b. The monthly cost of 36 spaces located in the Downtown Parking Garage (payable to the Parking Authority), plus a monthly rent to the City in the amount of \$3,530.

5.3 As compensation for use of the premises during years three through five of this lease, Lessee shall pay:

- a. 100% of the utilities and maintenance expenses for the Premises, as set forth under Section 11, below, and;
- b. The monthly cost of 36 spaces located in the Downtown Parking Garage (payable to the Parking Authority), and;
- c. Revised rent: Within sixty (60) days prior to beginning of each of the third, fourth and fifth years, the Lessee shall meet with the City Mayor to review the rent for increase. Lessee shall disclose its financial capability and ability to fund such increase. If a rent increase cannot be mutually agreed, either party may terminate this lease upon sixty (60) days written notice to the other.

5.4 Other provisions of this section notwithstanding, if at any time during the term of this lease the Early College of Alaska student enrollment shall meet or exceed 150 students, Lessee shall immediately notify the Lessor, and be subject to rent review. This clause is intended to recognize that state educational funding increases when an enrollment of 150 students is achieved, and to recognize that the initial rent is below market rates. In no event shall the Lessee be required to pay a greater rent than fair market rent.

6. Renovation or Remodeling. Any Lessee renovations or modifications of the lease space shall first be submitted to the City Engineer for review and approval at his discretion. In addition, Building Department review and permitting may be required. Such review and approval shall not be required where renovations are of a cosmetic nature that do not involve safety, egress, or structural concerns. To the extent Lessee performs any major or structural repairs, including replacement of windows, energy efficiency upgrades, and the like, Lessor shall agree to an abatement of rent for the cost of such repairs, with the parties to agree as to whether the abatement shall be pro rata or lump sum.

7. Condition. Lessee has inspected the premises, is familiar with the physical condition and accepts the premises in its "as-is" condition.

8. Permitted Uses. Lessee shall use the premises for the nonprofit business of educational and development activities and necessary administrative office space.

8.1 Third Party Use. Lessee agrees to notify Lessor of any agreements made to allow agencies, groups, or organizations not affiliated with or necessary to implement the Permitted Use of Lessee to utilize the leased premises on an incidental basis. Lessor shall have the right to reject or restrict such agreements. In all events, such incidental third party use shall not exceed a period of ten days, unless otherwise approved under Section 14, Assignment and Sublease.

9. Prohibited Uses. Lessee shall not use or permit the use of the premises or any part thereof in violation of any applicable law, ordinance, or regulation.

10. Access and Security. Lessee shall control access and security at the premises, bearing responsibility for same.

11. Payment of Expenses Relating to the Premises.

11.1 Utilities. Lessee shall be responsible for payment of telephone, data and other cable services and other privately contracted services as required by the utility provider.

11.2 Maintenance. Lessee shall perform all interior maintenance associated with the leased premises proper, including but not limited to incidental replacement of light bulbs, window cleaning, routine repair of electrical and mechanical systems within the

lease area, and keeping the premises in a clean, safe condition. Lessee shall also maintain the sidewalks adjacent the leased premises, including snow removal. Lessee shall notify Lessor of hazards or safety concerns in the exterior common areas in a timely manner. In the event that Lessor performs maintenance or repair under this section, whether at its election or upon request of Lessee, Lessee shall repay Lessor for the actual costs of materials and labor expended for same.

Lessor shall perform exterior maintenance and major repair or replacement of infrastructure, including mechanical and electrical systems.

11.3 Janitorial and Garbage Collection. Janitorial and garbage service within the premises, if any, shall be provided by Lessee.

11.4 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.

12. Exculpation and Indemnity.

12.1 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 premises, including without limitation, inventory, equipment, fixtures, and employees' personal effects.

12.2 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, excluding exterior public areas.

12.3 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 and insuring against all liability of Lessee and its authorized representatives arising out of and in connection with Lessee's use or occupancy of the premises, excluding exterior public areas. All public liability insurance and property damage insurance shall insure performance by Lessee of the indemnity provisions provided herein. Lessor shall be named as an additional insured.

13. 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. Violation or breach under this section shall be determined at the sole discretion of the City Engineer.

14. 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.

15. 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.

16. 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.

17. Destruction. If during the Lease term, the premises are totally or partially destroyed from any cause, rendering the premises totally or partially inaccessible or unusable, Lessee, at its election, may either terminate this Lease or restore the premises. Lessor shall have no duty to repair or restore the premises, but shall abate the rent pro rata to reflect the decreased usage or utility of the premises. If lessee elects to restore the premises, Lessee will have one hundred eighty (180) days in which to complete the repairs. If Lessee elects not to repair the premises, this agreement will be terminated at the earlier of the notice of election or within sixty (60) days of the casualty, without further recourse for lease payments for the remainder of the term.

18. Right of Entry. Lessor, its agents and authorized employees, shall have the right to enter the leased premises to examine the same and to make repairs as Lessor may deem necessary or desirable during Lessee's business hours. All such entry shall be preceded by 24 hours advance notice to Lessee, except that immediate entry shall be allowed in event of emergency, as determined by the City Engineer.

19. Default. Failure to occupy and operate the premises for thirty (30) consecutive days, or failure to perform any provision of this Lease 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.

20. 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.

21. Effect of Prior Agreements. This lease supersedes and replaces any prior agreements between the Parties.

22. 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.

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

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

25. Captions. The captions of this Lease shall have no interpretive effect.

26. Singular and Plural. When required by the context of this Lease, the singular shall include the plural.

27. 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:
Early College of Alaska, Inc.

LESSOR:
City of Fairbanks


By: Steve Levey
Title: APC Chairperson

By: Jerry Cleworth
Title: Mayor

ATTEST:

APPROVED AS TO FORM:

Janey Hovenden, CMC
City Clerk



Paul Ewers
City Attorney

ACKNOWLEDGMENT

THIS IS TO CERTIFY that on this _____ day of _____, 2011, the undersigned, a Notary Public for the State of Alaska, duly commissioned and sworn as such, personally appeared JERRY CLEWORTH, and JANEY HOVENDEN, 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 _____, 2011.

Notary Public
My Commission Expires:_____

ACKNOWLEDGMENT

THIS IS TO CERTIFY that on this _____ day of _____, 2011, the undersigned, a Notary Public for the State of Alaska, duly commissioned and sworn as such, personally appeared _____, 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.

IN WITNESS, I have set my hand and affixed my official seal on this _____ day of _____, 2011.

Notary Public
My Commission Expires:_____