

Introduced by: Mayor Matherly
Date: November 20, 2017

ORDINANCE NO. 6067, AS AMENDED

**AN ORDINANCE APPROVING AMENDMENTS TO THE 1997
WASTEWATER TREATMENT PLANT LEASE AGREEMENT BETWEEN
THE CITY OF FAIRBANKS AND GOLDEN HEART UTILITIES**

WHEREAS, the City and Golden Heart Utilities, Inc. (GHU), entered into a lease in October of 1997 under which GHU leased the Wastewater Treatment Plant (WWTP), including the land, located at 4247 Peger Road in Fairbanks; and

WHEREAS, the City and GHU mutually desire to amend that lease to extend the original term and to modify the terms addressing GHU's option to purchase.

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

SECTION 1. That the Mayor is authorized and directed to execute Lease Amendment No. 1 (Attachment "A" to this ordinance) to the 1997 Lease Agreement with Golden Heart Utilities, Inc., the execution of which shall not take place less than 30 days from the effective date of this ordinance, as prescribed by City Charter Sec. 8.3 and FGC Sec. 70-56.

SECTION 2. That the effective date of this Ordinance shall be the 9th day of December 2017.



Jim Matherly, City Mayor

AYES: Cleworth, Pruhs, Rogers, Bagwill, Therrien
NAYS: None
ABSENT: Huntington
ADOPTED: December 4, 2017

ATTEST:

APPROVED AS TO FORM:



D. Danyielle Snider, CMC, City Clerk



Paul J. Ewers, City Attorney

LEASE AMENDMENT NO. 1

(Modification of the Lease Dated the 6th Day of October, 1997)

This Lease Amendment No. 1, entered into by the City of Fairbanks, 800 Cushman Street, Fairbanks, Alaska 99701 (the "City") and Golden Heart Utilities, Inc., 3691 Cameron Street, Suite 201, Fairbanks, Alaska 99708 ("GHU"),

RECITALS

(1) The City and GHU entered into a lease dated October 6, 1997, under which GHU leases the Wastewater Treatment Plant, including land located at 4247 Peger Road, Fairbanks, Alaska (the "Lease").

(2) The City and GHU mutually desire to amend said Lease, and do hereby enter into this Amendment No.1 for the purposes stated below.

NOW THEREFORE:

A. Lease Paragraph 1; Premises, Term, and Rent:

Subparagraph (b): The original Lease termination date is October 6, 2027. GHU may extend the lease for up to twenty-five years from said date. GHU may exercise this lease extension(s), first having given written notice to the City six months in advance of such exercise.

Subparagraph (c): The current annual rent of \$396,900.00 shall remain unchanged for the duration of the lease, including any lease extension(s).

B. Lease Paragraph 5; Option to Purchase:

Subparagraph (a):

(a.1) The term of the Option shall not expire, but shall continue as a right of GHU through the end of the Lease term, or any extension(s) thereof. GHU may exercise its Option to Purchase at any time, first having given written notice to the City.

(a.2) Purchase Price at Time of Exercise. From October 6, 2017 through October 6, 2027, the purchase price is fixed at \$5,200,000.00. If the option is not exercised by October 6, 2027, the purchase price shall be reduced at the end of each subsequent year by 5%, but never less than \$400,000, the unimproved land value, hereby agreed and established.

(a.3) Credit Toward Purchase Price. A credit is hereby established in favor of GHU in the amount of \$4,000,000.00, to be applied against the purchase price at time of exercise. The credit is valid through October 6, 2030. This credit is fixed and shall remain available to GHU at any such time as GHU may elect to exercise its option to purchase on or before October 6, 2030. After October 6, 2030, the net purchase price shall be \$400,000, the agreed and established unimproved land value. This credit does not apply to the agreed unimproved land value stated in Subparagraph a.2.

Subparagraph (b): [reserved]

- C. Future Financial Assistance. The City previously provided financial assistance to GHU in the form of pass-through low interest loans and grants not otherwise available to GHU. The City will continue to seek such funds as and when available from State or Federal sources for the benefit of GHU's ratepayers.
- D. Terms Unaffected. Except as set forth in this Amendment, the original Lease is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this Amendment and the Lease, the terms of this Amendment will prevail.
- E. Succession: This agreement, while in force, shall be binding upon the heirs, successors or assigns of the parties hereto.

LESSEE
Golden Heart Utilities, Inc.

LESSOR
City of Fairbanks

By: Oran Paul
Title: President

By: Jim Matherly
Title: Mayor

ATTEST:

APPROVED AS TO FORM:

D. Danyielle Snider, CMC
City Clerk

Paul Ewers
City Attorney

ACKNOWLEDGMENT

THIS IS TO CERTIFY that on this _____ day of _____ 2017 the undersigned, a Notary Public for the State of Alaska, duly commissioned and sworn as such, personally appeared **JIM MATHERLY** 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 _____, 2017.

Notary Public

My Commission Expires: _____

ACKNOWLEDGMENT

State of Alaska)

) ss

Fourth Judicial District)

THIS IS TO CERTIFY that on this _____ day _____ 2017 before me, the undersigned, a NOTARY PUBLIC in and for the State of Alaska, personally appeared **ORAN PAUL** of Golden Heart Utilities, Inc. and that he acknowledged before me that he executed the same on behalf of said entity, with authority to do so.

IN WITNESS, I have set my hand and affixed my official seal on this _____ day of _____, 2017.

Notary Public

My Commission Expires: _____