

ORDINANCE NO. 6083, AS AMENDED

**AN ORDINANCE AUTHORIZING THE LEASE OF SPACE
IN CITY HALL TO FAST PLANNING, INC.**

WHEREAS, the City owns and maintains City Hall, located at 800 Cushman Street, also known as Block 104A, Fairbanks Townsite; and

WHEREAS, the City is a signatory to the Fairbanks Metropolitan Area Transportation System Inter-Governmental Operating Agreement and Memorandum of Understanding for Transportation and Air Quality Planning, along with the City of North Pole, the Fairbanks North Star Borough, and the State of Alaska; and

WHEREAS, the City has provided office space to the FMATS Coordinator's Office since 2007 under the Memorandum of Understanding for the Implementation of a Fairbanks Metropolitan Area Transportation System Coordinator's Office; and

WHEREAS, on July 19, 2018, FMATS reorganized as a non-profit corporation under the laws of the State of Alaska and is now named Fairbanks Area Surface Transportation Planning, Inc. ("FAST Planning"); and

WHEREAS, FAST Planning currently occupies three rooms on the second floor of City Hall – a private office for the executive director, a shared space for the transportation planner and the administrative assistant, and a conference room next door; and

WHEREAS, the City administration understands that the FAST Planning Policy Board may be interested in a lease of those three rooms to FAST Planning and has determined that they are currently not needed for municipal purposes; and

WHEREAS, Fairbanks General Code Section 70-41 authorizes the City to lease city owned real property and Section 70-42(b) specifies that any lease be made only by authority of ordinance; and

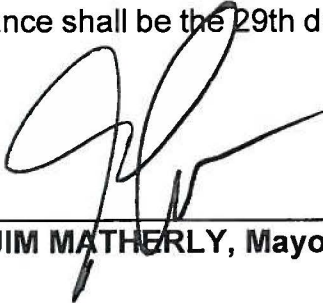
WHEREAS, it is the finding of the City Council that authorizing the lease of space in City Hall to FAST Planning is in the best interest of the community.

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 stated above, providing for a five-year lease term. **Other than the financial terms, the City administration is empowered to make changes to the terms of the lease with FMATS or its successor if agreeable to both parties.**

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 City Charter Sec. 8.3 and FGC Sec. 70-56.

SECTION 3. That the effective date of this ordinance shall be the 29th day of September 2018.



JIM MATHERLY, Mayor


AYES: Rogers, Pruhs, Bagwill, Huntington, Cleworth
NAYS: None
ABSENT: Therrien
ADOPTED: September 24, 2018

ATTEST:

APPROVED AS TO FORM:



D. DANYELLE SNIDER, CMC, City Clerk



PAUL EWERS, City Attorney

**EXHIBIT 'A' TO ORDINANCE NO. 6083, AS AMENDED
DRAFT REAL ESTATE LEASE, AS AMENDED**

THIS LEASE executed and effective this ____ day of _____, 2018, between THE CITY OF FAIRBANKS, a municipal corporation of the State of Alaska, with an address of 800 Cushman Street, Fairbanks, Alaska, 99701, hereinafter called Lessor, and FAST PLANNING, INC., an Alaska nonprofit corporation, with an address of 800 Cushman Street, Fairbanks, Alaska, 99701, hereinafter called Lessee;

WITNESSETH:

WHEREAS, the City of Fairbanks, by Ordinance No. 6083, 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, leases that certain real property, 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 800 Cushman Street, Fairbanks, Alaska, located within Block 104, Fairbanks Townsite, known as "City Hall," containing 1,122 square feet, comprised of the following identified building areas:

1.2 Three Rooms on the Second Floor, South. Comprising a private office for the executive director, a shared space for the transportation planner and the administrative assistant, and a **shared** conference room next door, **which schedule shall be maintained by FAST Planning.**

1.3 Common Areas. Lessee shall have access to such ancillary areas as restrooms, break rooms, elevators, and hallways, **and shall be permitted to use the Council Chambers for its public meetings when the space is not scheduled for city business and is otherwise available.**

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

2.1 Unreserved Parking. Lessee shall have incidental use of available "Permit Required" spaces in the parking lot east of City Hall and the City of Fairbanks Police Station, which is accessible from both Cushman Street and 10th Avenue.

3. Term. The term of this Lease is five (5) years, commencing on October 1, 2018, and ending at midnight on September 30, 2023.

4. Escape Cancellation. Lessee, upon 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.

5. Rent. As compensation for use of the premises during the life of this lease and any extensions thereof, Lessee shall pay monthly rent in the amount of \$1,450.00.

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

7. Permitted Uses. Lessee shall use the premises for the nonprofit business of surface transportation planning for the Fairbanks metropolitan area.

7.1 Third Party Use. Lessee agrees to notify Lessor of any agreements made to allow agencies, groups, or organizations to utilize the premises. Lessor shall have the right to reject or restrict such agreements.

8. 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.

9. Payment of Expenses Relating to the Premises.

9.1 Utilities. Lessor shall be responsible for the payment of all utilities.

9.2 Maintenance. Lessor shall perform all routine interior maintenance associated with the leased premises. Lessor maintains the roof and exterior walls of City Hall, including mechanical and electrical systems beyond the leased premises, and performs exterior maintenance and snow removal. Lessor maintains the sidewalk and grounds adjoining City Hall. Lessee shall notify Lessor of hazards or safety concerns in a timely manner.

9.3 Janitorial and Garbage Collection. Lessor shall provide janitorial and garbage service within the leased premises.

9.4 Taxes. Lessor is a municipality of the State of Alaska and therefore is exempt from property taxes. Should taxes be levied against City Hall at such time as the record owner of the property is a taxable entity, such owner shall be responsible for payment of taxes.

10. Exculpation and Indemnity.

10.1 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.

10.2 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.

10.3 Insurance. Lessee, at Lessee's sole expense, shall maintain general liability insurance including bodily injury and property damage insuring Lessee and its authorized representatives against claims arising out of and in connection with Lessee's use or occupancy of the premises. Minimum coverages shall be as follows:

\$1,000,000	each occurrence
\$1,000,000	personal and advertising injury
\$2,000,000	general aggregate
\$2,000,000	products and completed operations aggregate
\$1,000,000	damage to premises
\$ 5,000	medical expense

All policies shall insure performance by Lessee of the indemnity provisions called for in this Lease. Lessee shall provide Lessor with a Certificate of Insurance showing Lessor as an additional insured. The certificate shall provide for a 30 day written notice to Lessor in the event of cancellation or change of coverage.

10.4 Workers' Compensation. Lessee shall maintain at all times workers' compensation and employer's liability insurance and provide a Certificate of Insurance reflecting the minimum limits:

Workers' Compensation	statutory limit
Employer's Liability	\$100,000 bodily injury for each accident
	\$100,000 bodily injury by disease for each employee
	\$500,000 bodily injury disease aggregate

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

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. Destruction. If during the Lease term, the premises are totally or partially destroyed from any cause not the fault of the Lessee, 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. If Lessee elects to restore the premises, Lessee will have 120 days in which to complete the repairs, during which time rent will be abated or prorated. If Lessee elects not to repair the premises, this agreement will terminate.

16. Right of Entry. Lessor, its agents and authorized employees, shall have the right to enter the leased premises to examine it during Lessee's business hours and to make such repairs as Lessor may deem necessary or desirable. 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.

17. Default. Failure to occupy and operate the premises for 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 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.

18. 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.

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

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

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

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

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

24. 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:
FAST Planning, Inc.

LESSOR:
City of Fairbanks

By:
Title: Executive Director

By: James 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 _____ 2018, the undersigned, a Notary Public for the State of Alaska, duly commissioned and sworn as such, personally appeared JAMES 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 _____ 2018.

Notary Public
My Commission Expires: _____

ACKNOWLEDGMENT

THIS IS TO CERTIFY that on this ____ day of _____ 2018, the undersigned, a Notary Public for the State of Alaska, duly commissioned and sworn as such, personally appeared _____, of FAST Planning, Inc., 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 _____ 2018.

Notary Public
My Commission Expires: _____