

20



PERPETUAL AIRPORT LEASE

THIS LEASE is entered into this 23rd day of January, 201~~7~~⁸, by and between the City of Kivalina, an Alaska Municipal Corporation (hereinafter CITY), the Lessor, and the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES (hereinafter STATE), the Lessee, acting as the appropriate STATE agency for the construction, operation and maintenance of State airports.

1. In consideration of the rent to be paid and the mutual agreements and covenants contained herein, the sufficiency of which is hereby acknowledge, the Lessor does hereby grant and lease to Lessee the exclusive right and privilege of constructing, maintaining and operating an airport on the follow described premises, to wit:

The surface estate of that certain real property lying and being within Protracted Section 17, Township 27 North, Range 26 West, Kateel River Meridian, located in the Kotzebue Recording District, Second Judicial District at Kivalina, Alaska, and more particularly described as Tract III within the Exhibits A and B attached hereto and by this reference made a part hereof. Said property aggregating approximately 7.596 acres, more or less, together with the right to construct and maintain all buildings or other improvements necessary as an airport for the accommodation of the public.

2. For and in consideration of the foregoing, Lessee hereby agrees:
 - a. To operate, equip and maintain a public airport facility on the premises in accordance with State standards for airports of the same class and the requirements of the Federal Aviation Administration.
 - b. To pay, a one time, non-refundable lump sum in the amount of Ten Thousand and NO/00 DOLLARS (\$10,000.00) to the Lessor for this Lease upon the execution of this Lease by the parties; this amount representing rental payment in full for the entire perpetual term of the Lease.
 - c. To provide all utilities, services and maintenance (including snow removal) necessary for the State's use of the premises at no cost to the Lessor. The STATE, in its sole and exclusive discretion, will determine the appropriate and necessary level of maintenance.

3. Lessee has the right to use the surface estate for all airport purposes including the right to construct and maintain all buildings or other improvements necessary for a public airport. Lessee has the right to sublease airport property consistent with the provisions of 17 AAC 40 and consistent with the construction of and/or maintenance of an airport as described in Paragraph 1.
4. The parties agree to notify each other promptly of any claim, demand, or lawsuit arising out of or affecting the Lessee's occupation of use of the Premises. Both parties will fully cooperate in the investigation and litigation of any claim, demand or lawsuit affecting the premises. Notices will be hand delivered or sent by registered or certified mail to the appropriate party at the addresses listed below. Either party must notify the other in writing of any change in address:

Lessor: Mayor
City of Kivalina
PO Box 50079
Kivalina, AK 99750

Lessee: Regional Director
State of Alaska
DOT & PF
2301 Peger Road
Fairbanks, AK 99709-5399

5. The Lessor warrants that there are no liens, encumbrances, charges or claims affecting the surface estate of the land conveyed herein which were created by or are a result of any action taken by the CITY.
6. This lease may be terminated by the mutual consent of both parties. This section shall not be construed as limiting the discretion of the STATE to abandon the airport pursuant to Paragraph 7 of this Lease and applicable provisions of Alaska Statutes and/or the Administrative Code.
7. **This Lease is for a perpetual term and will not be cancelled or terminated unless Lessee officially abandons the airport,** in writing, pursuant to provisions of Alaska Statutes and/or the Alaska Administrative Code. Upon the official abandonment of said airport, the Lessee, its successors and assigns, shall deliver to the Lessor a statutory quitclaim deed to all the rights granted to Lessee by this instrument. Lessee shall have one year from the date of abandonment to remove any and all improvements constructed or placed by the Lessee on the premises. Sublessees of the Lessee shall have the period of time permitted by their sublease agreements in which to remove improvements constructed or placed by the sublessees on the premises. Title to any improvements or other property not removed from the premises within one year following the abandonment of the airport will vest in the Lessor or its successor municipality.

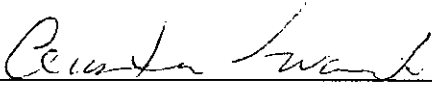


8. At no expense to the Lessor, the Lessee will conduct all activities authorized by this Lease in compliance with all Federal, State and local laws, ordinances, rules, and regulations now or hereinafter enforced which apply to the activities authorized herein by the Lessor for the use, care, operation, maintenance, and protection of the airport, including but not limited to, matters of health, safety, sanitation, and pollution. The acquisition of any necessary licenses or permits and payment of any taxes and special assessments will be the responsibility of the Lessee or its sublessees and not that of the Lessor or any successor municipality.
9. The Lessee covenants and agrees that discrimination on the grounds of race, color, religion, national origin, ancestry, age, marital status, or sex will not be permitted as affects these premises in any manner against any patron, employee, applicant for employment or other person or group of persons in any manner prohibited by Federal or State law. The Lessee recognizes the right of the Lessor to take any action necessary to enforce this covenant pursuant to any Federal or State law.
10. All covenants and provisions of this Lease extend to and bind the legal representatives, successors, sublessees, and assigns of the parties. The Lessor agrees not to assign this Lease without the consent of the Lessee to any part other than a legally constituted municipal successor in interest which may be incorporated in the future. Lessee agrees not to assign this Lease of the Lessor to any party other than a legally constituted department or other entity of the State of Alaska or legally constituted municipal successor in interest.
11. If any provisions or covenant of this Lease is declared to be invalid by a court of competent jurisdiction, the remaining provisions and covenants will continue in full force and effect.
12. This Lease sets forth all the terms, conditions, and agreements of the parties and supersedes any previous understanding or agreements regarding the premises whether oral or written. No modification or amendment of this Lease is effective unless in writing and signed by both parties.
13. The effective date of this Lease will be the date this Lease has been signed by both parties and will replace the Airport Lease dated July 10, 2001.
14. The following attachment are part of this Lease:
 - Exhibit A: Metes and Bounds Description
 - Exhibit B: Property Plan
 - Exhibit C: Resolution of Approval

IN WITNESS WHEREOF the parties hereto have executed this Instrument as of the date first hereinabove set forth.



City of Kivalina
An Alaska Municipal Corporation

By: 
Austin Swan, Honorable Mayor



ACKNOWLEDGEMENT

STATE OF ALASKA)
 : ss
2nd JUDICIAL DISTRICT)

On this 8th day of JANUARY, 2018, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Austin Swan, Mayor of the City of Kivalina, an Alaska Municipal Corporation, known to me to be the identical individual who executed the foregoing instrument, and he acknowledged to me that he executed the same as the free and voluntary act of said company, with full authority to do so and with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

[NOTARY SEAL]

MARILYN SWAN
Notary Public, State of Alaska
Commission # 161225010
My Commission Expires
December 25, 2020

[Signature]
Notary Public in and for the State of Alaska
My Commission Expires: 12-25-2020

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, Grantee herein, acting by and through its Commissioner, hereby accepts for public purposes the real property, or interest therein, described in this instrument and consents to the recordation thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 23^d day of January, 2018.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

By: [Signature]
Martin D. Shurr, Chief, Right of Way
For the Commissioner

Filed for Record at the Request of and Return to:
State of Alaska
DOT&PF – Right of Way Dept.
2301 Peger Road, MS 2553
Fairbanks, AK 99709-5399
State Business-No Charge

Project #63872 / Kivalina Erosion Control



EXHIBIT A
LEGAL DESCRIPTION
TRACT III

That certain real property lying and being within Protracted Section 17, Township 27 North, Range 26 West, Kateel River Meridian located in the Kotzebue Recording District, Fourth Judicial District, Kivalina, Alaska and more particularly described as follows:

Commencing at Brass Cap monumented W.C.M.C. No. 2, U.S. Survey 3776, the **“True Point of Beginning”**;

Thence proceed S 43°35'00” W along the northern boundary of said survey a distance of 113.20 feet, more or less, to a point on the line of mean high tide of the Chukchi Sea;

Thence in a northwesterly direction along the meanders of the line of mean high tide of the Chukchi Sea a distance of 1020.00 feet, more or less, to a point;

Thence N 47°00'00” E along a line perpendicular to the proposed runway centerline a distance of 277.00 feet, more or less, to a point on the meander line of the line of mean high water of the west bank of the Kivalina Lagoon (Corwin Lagoon);

Thence in a southeasterly direction along the meanders of the line of mean high water of the Kivalina Lagoon a distance of 1010.00 feet, more or less to M.C. No. 3, U.S. Survey 3776;

Thence S 43° 35'00” W a distance of 99.00 feet to Brass Cap monumented W.C.M.C. No. 3 of said survey;

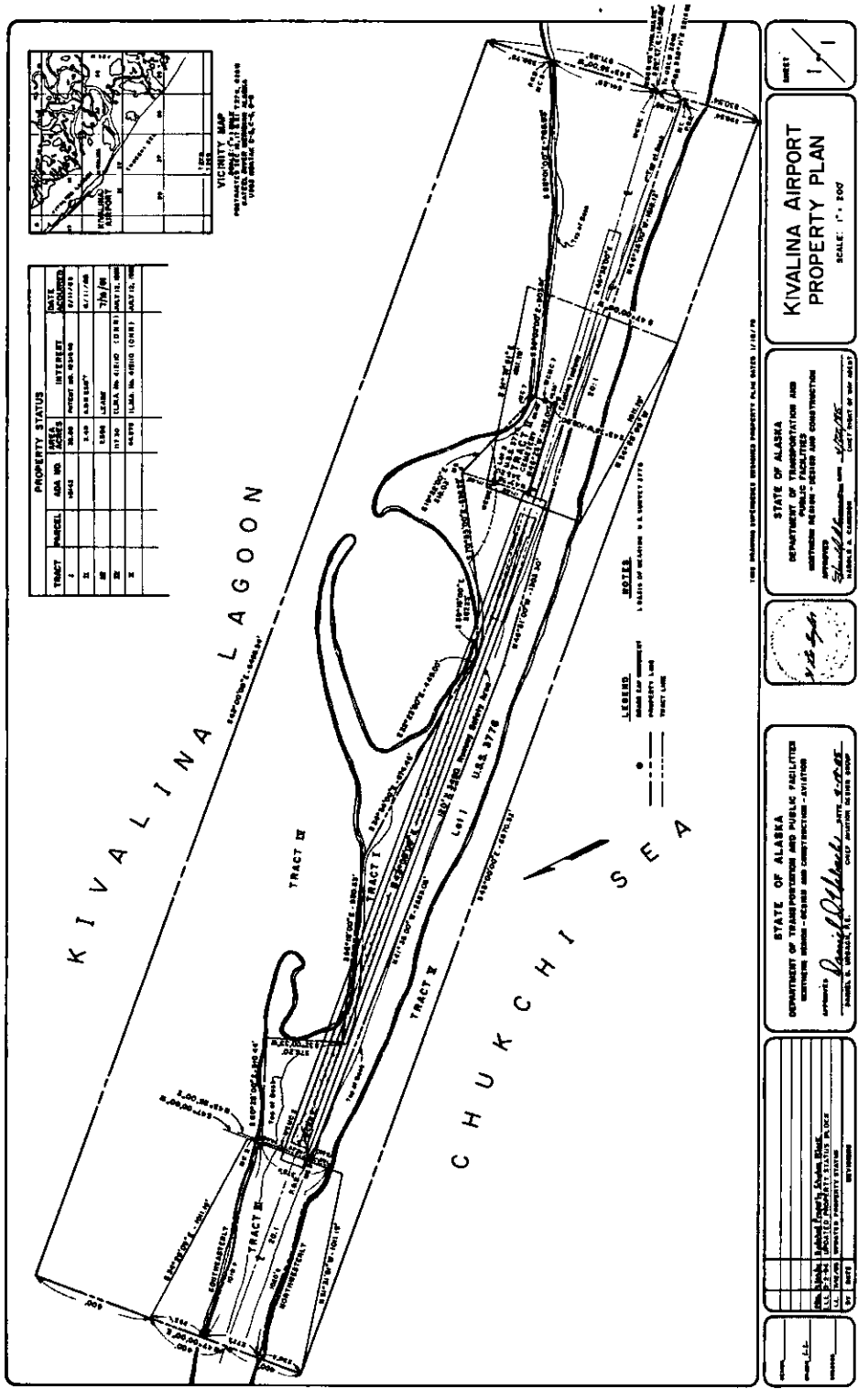
Thence continue along said bearing a distance of 145.20 feet, more or less to W.C.M.C. No. 2 of said survey and the **“True Point of Beginning”**.

Said real property having an area of 7.596 acres, more or less, and depicted as Tract III on the Exhibit B attached hereto and made a part hereof.

(Basis of bearing is U.S. Survey 3776. It is understood that all bearings and distances are computed for this description and shall be corrected if necessary at such time as a survey is completed.)



EXHIBIT B



Kivalina City Council

RESOLUTION 17-09

A RESOLUTION OF THE CITY OF KIVALINA TO ACCEPT THE CONDITIONS OF LEASE FOR A PORTION OF THE AIRPORT FOR THE DEPARTMENT OF TRANSPORTATION (DOT)

WHEREAS, the City of Kivalina, an Alaska Municipal Corporation (hereinafter CITY), is the Municipal Corporation for the community of Kivalina, whose mailing address is PO Box 50079, Kivalina, Alaska; and

WHEREAS, the City of Kivalina received title to those lands, and subsequently leased a portion of the airport to the STATE; and

WHEREAS, the State of Alaska, Department of Transportation and Public Facilities (hereinafter STATE) intends to improve, operate and maintain the existing airport for the benefit of the community of Kivalina with the use of Federal and State funds; and

WHEREAS, the State must have certain and sufficient title interests in the airport lands and approach areas in order to obtain and expend federal and state funds for the project; and

WHEREAS, the City has reviewed the terms and conditions of the proposed Perpetual Airport Lease by and between the State and the CITY and finds it to be in the best interests of the community of Kivalina;

NOW THEREFORE, BE IT RESOLVED:


1. That the Kivalina City Council has held a meeting in accordance with its bylaws for the purposes of carrying out its responsibilities relative to the Kivalina Airport land conveyance;
2. That the City has reviewed the terms and conditions of the proposed documents, by and between the City of Kivalina and the State, for the Kivalina Airport and finds them to be in the best interest of the community of Kivalina.
3. That Austin Swan, Mayor for the City of Kivalina, his successors in interest or assigns, are hereby authorized, directed and empowered to negotiate and execute on behalf of and as the free act and deed of the city, all documents as may be necessary from time to time to convey the required airport interests in the lands to the STATE.


ADOPTED and DATED at a meeting held at Kivalina, Alaska this 1st day of December, 2017, at which a quorum was present and voting in accordance with said bylaws of the Kivalina City Council.

(Seal) CITY OF KIVALINA



ATTEST:


Marilyn Swan, City Clerk


Austin Swan Sr., Mayor