



City Manager  
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<b>TRANSMITTAL MEMORANDUM</b>
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**TO:** The Honorable Mayor and City Council

**FROM:** Lacey G. Simpson, Acting City Manager

**DATE:** March 9, 2022

**RE:** **Approving Ordinance No. 22-1944 Authorizing a License and Lease Agreement Between the City of Ketchikan and First City Homeless Services for Property Located at 632 Park Avenue, Ketchikan, Alaska; Providing for Referendum Petitions; and Establishing an Effective Date**

The motion detailed below was prepared at the request of Acting Port & Harbors Director Mark Hilson, who asked that it be placed before the City Council for consideration at its meeting of March 17, 2022. If adopted, the motion provides for approving in first reading Ordinance No. 22-1944, which authorizes a license and lease agreement between the City and First City Homeless Services (FCHS) for the purpose of operating a 24-hour homeless shelter operation at 632 Park Avenue.

As the City Council is aware, the City has been undertaking the renovation of the Park Avenue facility for 24-hour homeless shelter operations. Ordinance No. 22-1944 and the associated License and Lease Agreement are attached and require little elaboration on the part of the City Manager's Office. The agreement will allow FCHS to occupy and operate the facility for an initial one-year period with the option to extend the agreement for successive one-year periods for a total of five years. The license portion of the agreement will allow FCHS to occupy and operate at 632 Park Avenue beginning April 1, 2022 with the lease to become effective April 17, 2022 upon passage in two readings by the City Council.

The Acting Port & Harbors Director and City Attorney Mitch Seaver will be attending the City Council meeting of March 17, 2022, in order to address any questions and/or concerns that Councilmembers may have.

A motion has been prepared for City Council consideration.

**RECOMMENDATION**

It is recommended the City Council adopt the motion approving in first reading Ordinance No. 22-1944 authorizing a license and lease agreement between the City of Ketchikan and First City Homeless Services for property located at 632 Park Avenue; providing for filing of referendum petitions; establishing an effective date; approving the License and Lease Agreement for property located at 632 Park Avenue between the City and First City Homeless Services; and authorizing the Acting City Manager to sign the agreement on behalf of the City Council.

**Recommended Motion:** I move the City Council approve in first reading Ordinance No. 22-1944 authorizing a license and lease agreement between the City of Ketchikan and First City Homeless Services for property located at 632 Park Avenue; providing for filing of referendum petitions; establish an effective date; approve the License and Lease Agreement for property located at 632 Park Avenue between the City and First City Homeless Services; and authorize the Acting City Manager to sign the agreement on behalf of the City Council.

## **MEMORANDUM**

**TO:** Lacey Simpson, Acting City Manager  
**CC:** Mitch Seaver, City Attorney  
**FROM:** Mark Hilson, P.E., Acting Port & Harbors Director  
**DATE:** March 8, 2022  
**SUBJECT:** **Ordinance No. 22-1944 – 632 Park Avenue – License and Lease Agreement between the City of Ketchikan and First City Homeless Services**

At the regular City Council meeting of September 2, 2021, Contract No. 21-14 was awarded to PK Builders to construct a 1280 square foot addition to the existing shelter located at 632 Park Avenue for the purpose of operating a 24 hour homeless shelter. Construction is nearing completion, and First City Homeless Services (FCHS) is preparing to occupy the building in order to begin shelter operations at this location. Attached for Council consideration is Ordinance No. 22-1944 which if approved by City Council would authorize an Agreement between the City and FCHS for FCHS to lease 632 Park Avenue. The Agreement provides for a one year term, with the option to extend the term for an additional one year period each year for a total of five years if all extension options are executed. If adopted, the Ordinance and the Lease portion of the Agreement would have an effective date of April 17, 2022. Included within the Agreement is a license that would allow FCHS to occupy the building and conduct operations sooner rather than waiting for the Ordinance (and Lease) effective date. We are shooting for FCHS to occupy the building on April 1.

### **RECOMMENDATION**

It is recommended that the City Council adopt a motion approving Ordinance No. 22-1944, authorizing a License and Lease Agreement between the City of Ketchikan and First City Homeless Services; providing for the filing of referendum petitions; providing for an effective date; approving the License and Lease Agreement; and authorizing the Acting City Manager to execute the License and Lease Agreement immediately on behalf of the City Council.

**Recommended Motion:** I move the City Council approve Ordinance No. 22-1944, authorize a license and lease agreement between the City of Ketchikan and First City Homeless Services; provide for the filing of referendum petitions; provide for an effective date; approve the License and Lease Agreement; and authorize the Acting City Manager to execute the License and Lease Agreement immediately on behalf of the City Council.

**THE CITY OF KETCHIKAN, ALASKA**

**ORDINANCE NO. 22-1944**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA; AUTHORIZING A LICENSE AND LEASE AGREEMENT BETWEEN THE CITY OF KETCHIKAN AND FIRST CITY HOMELESS SERVICES FOR PROPERTY LOCATED AT 632 PARK AVENUE, KETCHIKAN ALASKA; PROVIDING FOR THE FILING OF REFERENDUM PETITIONS; AND ESTABLISHING AN EFFECTIVE DATE.**

**BE IT ORDAINED** BY THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA, AS FOLLOWS:

**Section 1: Approval.** Pursuant to Charter Sections 5-16(a) and 5-17(a)(2) the Lease aspects of the License and Lease between First City Homeless Services, copies of which were available to be reviewed by the City Council at the March 17, 2022 City Council meeting is hereby exempted from all competitive bidding requirements, and authorized in accordance with Charter Section 5-17(a). Copies of said agreement are available for public inspection in the Offices of the City Clerk, 334 Front Street, Ketchikan Alaska.

**Section 2: Effective Date.** In accordance with Charter Section 5-17, if one or more referendum petitions with signatures are properly filed within one (1) month after passage and publication of this ordinance, this ordinance shall not go into effect until the petition or petitions are finally found to be illegal and/or insufficient, or, if any such petition is found legal and sufficient, until this ordinance is approved at an election by a majority of the qualified voters voting on the question. If no referendum petition with signatures is filed, this ordinance shall go into effect one (1) month after its passage and publication.

PASSED ON FIRST READING: \_\_\_\_\_

FINAL PASSAGE: \_\_\_\_\_

\_\_\_\_\_  
Dave Kiffer, Mayor

**ATTEST:**

\_\_\_\_\_  
Kim Stanker  
City Clerk

EFFECTIVE		DATE:	
ROLL CALL	YEA	NAY	ABSENT
BRADBERRY			
GAGE			
GASS			
FLORA			
KISTLER			
MAHTANI			
ZENGE			
MAYOR			

**632 PARK AVENUE  
LICENSE AND LEASE AGREEMENT**

**THIS LICENSE AND LEASE** is made on \_\_\_\_\_, 2022, by and between the **CITY OF KETCHIKAN, ALASKA**, a home rule, chartered municipality (“**Lessor**”), 334 Front Street, Ketchikan, Alaska, 99901, and **FIRST CITY HOMELESS SERVICES**, a non-profit corporation organized and existing under the laws of the State of Alaska, whose address is: Post Office Box 23095, Ketchikan, Alaska, 99901, hereinafter referred to as (“**Lessee**”)

**RECITALS**

(a) Lessor, City of Ketchikan, Alaska, is the owner of that certain parcel of real property located at 632 Park Avenue, Ketchikan, Alaska.

(b) Lessee is a non-profit corporation that was established for of providing services to the homeless population of Ketchikan.

**NOW, THEREFORE**, for and in consideration of the mutual terms, covenants, and conditions herein contained, the parties hereto agree as follows:

**Section 1: License and Lease of Premises.** Lessor hereby licenses and leases to Lessee and Lessee hereby leases, rents, and hires from Lessor, on and subject to all of the terms, covenants, and conditions herein set forth, real property located in the City of Ketchikan, Ketchikan Recording District, First Judicial District, State of Alaska, together with all buildings, structures, improvements, fixtures and equipment located thereon, more particularly described as follows:

Lot 25C, Water Warehouse Subdivision Lots 25A and 25B  
Consolidation Amending Plat 2009-15, Ketchikan Recording District,  
First Judicial District, Alaska

hereinafter referred to as the “**Leased Premises**”).

**Section 2: Term.** The term of the License and Lease are as follows:

(a) Lease Term. The term of the lease shall be for one year contingent on the passage of an ordinance authorizing the lease and commencing upon the effective date of that ordinance.

(b) License Term. The term of the license shall commence upon execution of this agreement by both parties. The license does not convey any real property interest in the Leased Premises and may be terminated by the Lessor upon 30 days prior written notice to Lessee.

**Section 3:**     **Rent**. In consideration of the obligations set forth in Section 4, no rent will be paid to Lessor.

**Section 4:**     **Use**. During the term of the lease granted herein, the Leased Premises shall be used by Lessee for the purpose of the continuous, licensed uninterrupted operation, and maintenance of the buildings owned by Lessor and utilized by Lessee for the operations of a 24-hour homeless shelter and activities incidental to the foregoing, and for no other purposes. Except as otherwise provided herein Lessee has the right and responsibility to control access to the Leased Premises.

**Section 5:**     **Hazardous Substances**. (a) Lessee shall not use or store Hazardous Substances on the Leased Premises except to the extent allowed by applicable law. Lessee shall indemnify, defend and hold Lessor harmless from and against any and all losses, fines, damages, clean-up expenses, penalties and other Claims of every kind which arise or result in any way from or are related to Lessee's use or storage of Hazardous Materials on the Leased Premises, whether or not such use or storage is in violation of applicable law.

(b) As used in this Section, the term "Hazardous Substance" shall mean any product, substance, chemical, material or waste whose presence, nature, and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials on the Leased Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment; (ii) regulated or monitored by any governmental authority; or (iii) a basis for liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. The term "Hazardous Substance" shall include, but not be limited to, asbestos-containing materials, hydrocarbons, petroleum, gasoline, crude oil, or any products, by-products or fractions thereof.

(c) All of Lessee's obligations under this paragraph shall survive termination of the lease.

**Section 6:**     **Extension of Term**. (a) The parties may by mutual agreements extend the Lease Term for an additional four (4) additional one (1) year terms, conditions, and provisions contained in this Lease ("Extended Term") (b) Lessee shall not assign its interest, or any portion

of its interest, in the option granted by this section without the prior written consent of the Lessor. Any attempted assignment shall be void and of no force or effect whatsoever.

**Section 7: Insurance.** (a) Lessee's Insurance. Lessee shall carry and maintain, during the entire term of the license and the lease hereof, at Lessee's sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided for and reasonably satisfactory to the Lessor:

(1) Liability Insurance. Broad form comprehensive general liability insurance with limits of not less than One Million Dollars (\$1,000,000.00), combined single limit, or such additional amounts as are sufficient to insure against the probable amounts of potential judgments insuring against any and all liability of Lessee with respect to the Leased Premises or arising out of the maintenance, use, or occupancy thereof. The Lessor shall be named as an additional insured on general liability insurance.

(2) Worker's Compensation — Employer's Liability Insurance. Worker's Compensation Insurance as required by the Alaska Worker's Compensation Act (AS 23.30) in the required statutory amounts and Employer's Liability Coverage for bodily injury by accident in the amount of One Million Dollars (\$1,000,000.00) each accident, for bodily injury by disease One Million Dollars (\$1,000,000.00) policy limit, and for bodily injury by disease One Million Dollars (\$1,000,000.00) each employee.

(b) Waiver of Subrogation. Each of the policies of insurance required by this agreement shall contain a clause or endorsement by which the insurance companies waive subrogation or consent to a waiver of right to recovery against the Lessor.

(c) Other Insurance Matters. All the insurance required under this Lease shall:

(1) be issued by an insurance company or companies authorized to do business in the State of Alaska and approved by the Lessor; and provided further, unless such requirement is waived by the Lessor, such company or companies shall in addition thereto be a member insurer included and covered under the Alaska Insurance Guarantee Association Act (Alaska Statutes, section 21.80.010, *et seq.*).

(2) Contain an endorsement requiring thirty (30) days' prior written notice from the insurance company to both Lessee and Lessor before cancellation or any change which would modify



or alter in such manner as to decrease the types or breadth of insurance coverage, or the amount of insurance coverage relating to the Leased Premises.

(3) A copy of a Certificate of Insurance shall be provided the Lessor not later than the commencement of the Lease Term.

**Section 8: Taxes.** Lessee shall pay before delinquency all taxes, assessments, license fees and other charges (“taxes”), if any, that are imposed, levied or assessed by the borough, city, state or other governmental body or agency on the Leased Premises on any personal property of Lessee and upon any improvements or alterations made to the Leased Premises by or on behalf of Lessee.

**Section 9: Condition of Leased Premises.** By entering into possession of Leased Premises Lessee acknowledges and agrees that **EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE LEASED PREMISES ARE BEING LEASED “AS-IS” IN THEIR PRESENT CONDITION AND STATE OF REPAIR, WITH NO EXPRESS OR IMPLIED REPRESENTATIONS, STATEMENTS, OR WARRANTIES BY LESSOR AS TO PHYSICAL CONDITIONS, QUALITY OF CONSTRUCTION, WORKMANSHIP, STATE OF REPAIR, OR FITNESS FOR ANY PARTICULAR PURPOSE ALL OF WHICH ARE SPECIFICALLY DISCLAIMED BY LESSOR. LESSOR MAKES NO WARRANTIES REGARDING THE LEASED PREMISES’ COMPLIANCE WITH LAW.**

**Section 10: Utilities and Services.** Lessee shall arrange for and pay any and all utilities and services to the Leased Premises, including electricity, telephone, alarm system monitoring, water, and garbage collection, at no cost or expense to Lessor.

**Section 11: Improvements.** (a) No structural improvements, alterations, or additions, and no modifications thereto, shall be made in, on, or about the Leased Premises by Lessee without the prior written consent of the City Manager and all such improvements, structures, alterations, additions, and work so consented to shall be accomplished in accordance with any conditions relating thereto and stated in writing by the City Manager. The City Manager will not unreasonably withhold permission for the requested improvements.

(b) In the event any improvements, alterations, or additions of a structural nature are erected or installed by Lessee, they shall at once become part of the realty, building, or land upon or within which they are erected and shall immediately become the property of, and title thereto shall vest in

Lessor, and shall be surrendered with the premises on expiration of the term or termination of this Lease, except that if Lessor has in writing given Lessee permission to construct such structural improvements, alterations, or additions only upon the condition that they be removed at the termination of this Lease or any Extended Term hereof, then such “conditional structural improvements” shall at the termination of this Lease or any Extended Term hereof, and in no event later than thirty (30) days after such date of expiration or termination, be removed at Lessee’s sole expense and the premises restored to its former condition.

(c) Notwithstanding any other provisions herein, Lessor shall have the right, at any time, to require the immediate removal of any improvements, structures, or alterations, or additions installed without the prior consent of Lessor.

(d) In the event the removal of any such installation or alterations damages any part or parts of the buildings, pavements, or other portion of the Leased Premises, Lessee shall immediately repair such damage and restore said damaged part or parts of said building, pavements, or premises to the satisfaction of Lessor’s City Manager, which such approval shall not be unreasonably withheld.

**Section 12: Repair and Maintenance.** Lessee shall, at its sole cost, maintain, or repair and replace all other parts of the Leased Premises which are not required to be maintained by Lessor, including, but not limited to, all interior finishes and fixtures such as paint, woodwork, cabinets, counter tops, tile, carpeting, ceiling tiles, acoustical panels, interior doors and hardware, faucets, handles, drinking fountains, sinks, toilets, toilet partitions, electric hand dryers, light fixtures, etc.; and Lessee’s improvements, trade fixtures and equipment; provided, however, that Lessor shall make any repairs necessitated by the act, omission or neglect of Lessor, or its agents, employees or contractors.

**Section 13: Right of Lessor to Enter, Inspect and Make Repairs.** (a) Lessor, through its authorized employees, agents, contractors, subcontractors, and other representatives, shall have the right, but not the duty, to enter upon any of the Leased Premises for any or all of the following purposes:

(1) to inspect such premises at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether Lessee has complied with and is complying with the terms and conditions of this Lease;

(2) to perform maintenance and make repairs and replacements in any case where Lessee is obligated by Section 12 of this document to do so and has failed after due notice so to do, in which event Lessee shall reimburse Lessor for the cost thereof promptly upon demand;

(3) to make any repairs and replacements in any case where Lessor is obligated so to do; and in any other case where Lessor, in its reasonable judgment, determines that it is necessary or desirable so to do in order to preserve the structural safety of such premises or the building in which they are located or to correct any condition likely to cause injury or damages to persons or property; and provided further, that the cost and expense of any repairs or maintenance to the Leased Premises, or other buildings, structures, improvements, or the mechanical or other equipment therein whether or not such was occasioned by the negligence or misuse by Lessee, its employees, agents, contractors, or representatives, its customers, invitees, or any person suffered to be on the premises by Lessee, shall, upon demand thereof by Lessor, be reimbursed to Lessor within ten (10) days thereafter.

(b) All entries made for any purpose enumerated in subparagraphs (1) through (3) above, shall, unless otherwise provided herein, be without abatement of rent, and Lessor may, for that purpose, erect scaffolding or use other necessary equipment and Lessee shall not claim, or be allowed, or be paid, any damages for such injury or inconvenience and any such claims are hereby expressly waived. Any undertakings by the Lessor must be made with consideration of the Lessee's provision of services to the extent of not causing any loss of business.

(c) No entry for any of the purposes authorized in this section by or on behalf of Lessor shall cause or constitute a termination of the letting hereof or be deemed to constitute a constructive or actual eviction or an interference with the possession or the quiet enjoyment of Lessee.

(d) In the event the actions taken by Lessor are as a result of events, damage, or destruction within the provisions of Section 15 [Damage or Destruction] of this Lease, the provisions of said Section 15 shall Control.

**Section 14: No Mechanics Liens.** Lessee covenants to keep the Leased Premises and all improvements thereon at all times during the term hereof free of mechanic's liens and any other liens, claims, or encumbrances which may be asserted by reason of any acts or work done by or at the instance or pursuant to the authority of Lessee, its agents or contractors, and to at all times protect fully and indemnify Lessor against any and all such liens, encumbrances, or claims and against all attorneys' fees and other costs and expenses growing out of or incurred by reason of or on account of any such liens,

encumbrances, or claims. Should Lessee fail to fully discharge any such liens, encumbrances, or claims, Lessor shall be entitled to pay or contest such lien at Lessee's sole cost and expense, including reasonable attorneys' fees and costs incurred by Lessor, unless Lessee shall, within fifteen (15) days from the date of written demand by Lessor, deposit with Lessor a sum of money equal to the full amount claimed pursuant to such lien, encumbrance, or claim, which sum shall be deposited or invested in accordance with Lessee's normal investment policy. If a lien or other claimant shall obtain a final judgment for all or a portion of his or her lien or claim, Lessor shall be entitled to use all or any portion of the funds deposited with Lessor in payment and satisfaction of such judgment. Any amount remaining unpaid shall be paid by Lessee, and any remaining balance together with the interest actually earned by Lessor, minus any attorneys' fees, costs, or expenses, shall be repaid to Lessee. All amounts so paid by Lessor from Lessor's funds, together with interest thereon at the rate provided in Section 26(j) hereof from the time of payment by Lessor until repayment by Lessee, shall be paid by Lessee to Lessor not later than fifteen (15) days after demand therefore and if not so paid shall continue to bear interest at the aforesaid rate, and Lessor may, at its option, treat the failure to pay any such liens, encumbrances, claims, or other amounts as herein specified, as a material breach and default of this Lease.

**Section 15: Damage to Premises.** (a) In the event the Leased Premises are damaged by fire or other casualty, the Lessor shall have the option either (a) to repair or restore such damage with this agreement continuing in full force and effect, or (b) give notice to Lessee at any time within thirty (30) days after such damage terminating this agreement as of a date to be specified in such notice. In the event of the giving of such notice, this agreement shall expire and all interest of Lessee in the Leased Premises shall terminate. The Lessor shall not be required to repair any injury or damage by fire or other cause, or to make any repairs or replacements of any property installed in the Leased Premises by Lessee.

(b) Notwithstanding any other provision herein, in the event of such damage, Lessee shall have the option to terminate this agreement if Lessee determines, in its sole discretion, that by reason of such damage, the Leased Premises is no longer suitable for Lessee's purposes.

**Section 16: Condemnation.** (a) Entire Taking. In the event that the entire Leased Premises are taken by eminent domain for public or quasi-public purposes, including a taking by inverse condemnation, this Lease shall terminate as of the date of such taking and the entire award shall be paid to Lessor. The date of taking shall be the date actual physical possession is taken by the condemning

agency. From this award (but in no event in excess of it, and from no other source) Lessor shall pay only to Lessee an amount equal to that part, if any, of the award which has been expressly computed and made for fixtures installed upon the Leased Premises which Lessee is expressly entitled to remove upon the termination of this Lease, plus the unamortized cost of any leasehold improvements taken which had been made at Lessee's expense, whether or not Lessee has the right to remove the same upon the termination of this Lease. Lessee agrees to and hereby waives any right to assert or claim any additional part of said total award other than the value of said fixtures taken, including any claim for bonus value of the lease or leasehold interest taken and expressly agrees the total award other than the value of said fixtures shall be paid to and retained by Lessor without deduction.

(b) Partial Taking. In the event that only a part of the Leased Premises are taken in such eminent domain proceedings, including a taking by inverse condemnation, this Lease shall automatically terminate as to the part taken, and the rent provided herein shall be adjusted for the remainder of the Leased Premises so that Lessee shall pay for the balance of the term rent in the same ratio to the rent herein reserved that the value of the part of the Leased Premises remaining after condemnation bears to the value of the Leased Premises as of the date of valuation in such condemnation action. The rental shall be so apportioned by negotiation and if negotiations are unsuccessful, application will be made to the Superior Court sitting in Ketchikan for a determination of the issue. Pending determination of the apportioned rent as aforesaid, Lessee shall pay the rent herein reserved at the time and in the manner provided without deduction, and upon the determination of the apportioned rent as aforesaid, Lessee shall be entitled to credit for all excess rental paid without interest. Further, in the event of such a partial taking, Lessee shall be paid from the award (but in no event in excess of it, or from any other source) an amount equal to that part, if any, of the award which has been expressly computed and made for any fixtures taken which Lessee is expressly entitled to remove upon the termination of this Lease, plus the unamortized cost of any leasehold improvements taken which had been made at Lessee's expense, whether or not Lessee has the right to remove the same upon the termination of this Lease.

**Section 17: Default and Remedies: Termination After Notice and a Reasonable Opportunity to Cure.**

(a) Defaults Involving Payment of Money and Insurance. In the event Lessee shall at any time (1) fail, neglect, or refuse to pay the rent or any part thereof as herein agreed, or (2) fail, neglect, or refuse to pay or apply when due any other sum or sums which may become due from or payable by Lessee hereunder, or (3) shall fail, neglect or refuse to maintain and/or pay for any insurance coverage, or apply the proceeds thereof, as required herein, and in the event such failure, neglect or

refusal shall continue after expiration of a period of ten (10) business days from and after written notice thereof is given by Lessor, this Lease and its option or any Extended Term thereof may be immediately terminated by Lessor without the necessity of any further notice or action by Lessor.

(b) Other Term Defaults. Should Lessee default in any obligation, not included within (a) above, imposed upon Lessee pursuant to the terms of this Lease, Lessor shall give Lessee notice in writing specifying the default with sufficient particularity so that Lessee can understand the nature of such default. Not later than ten (10) days after the date of such notice, Lessee shall provide Lessor with a notice in writing indicating that Lessee will within ten (10) days from the date of Lessee's notice commence specified actions designed to cure the alleged default and shall diligently pursue such actions to completion thereafter. In the event Lessee fails to timely provide the aforescribed notice to Lessor or should Lessee timely provide the notice and then fail to diligently pursue a cure of the alleged default, then this Lease and its option or any Extended Term hereof may thereupon be immediately terminated by Lessor without the necessity of any further notice or action by Lessor.

(c) Termination of License. Notwithstanding any provision to the contrary in this Section 17, Lessor may terminate the license under Section 2(b)

**Section 18: Surrender of Possession or Abandonment.** (a) At the expiration or termination of the tenancy created hereunder, whether by lapse of time or otherwise, Lessee agrees to surrender the Leased Premises in as good a condition and repair as received, reasonable wear and tear excepted.

(b) Upon the expiration of the tenancy hereby created, or relinquishment of possession of Lessee for any reason, Lessee shall promptly remove, and in any event not later than thirty (30) days after relinquishment of possession or demand for removal by Lessor, whichever first shall occur, all of Lessee's personal property from the Leased Premises and any fixtures or other improvements or alterations placed in or on the Leased Premises by Lessee and which Lessee is under this Lease entitled or required to remove and in addition thereto Lessee shall repair any damage occasioned by such removals, at Lessee's expense, and in default thereof, Lessor may effect such removal and/or repair and Lessee shall pay Lessor the cost thereof, with interest at the rate specified in Section 27(j) hereof from the date of payment by Lessor, until paid in full, plus any other damages caused thereby.

(c) Lessee shall not vacate or abandon the Leased Premises at any time during the term of this Lease and, in such event, title to any personal property, fixtures, or other improvements left on the

Leased Premises shall be deemed to be vested in Lessor and Lessee shall be deemed to have abandoned, waived and relinquished all right, title, claim, and interest therein to Lessor.

**Section 19: Holding Over.** If Lessee with Lessor's consent remains in possession of the premises after expiration or termination of the term, such possession by Lessee shall be deemed to be a month-to-month tenancy terminable on thirty (30) days' notice given at any time by either party with the Lessor's option to transfer all property, buildings, and contents thereof to Lessee after expiration or termination of the term. During any such month-to-month tenancy Lessee shall pay all rent required by this Lease pro-rated on a monthly basis, on or before the tenth (10th) day of the month for which such rent is due. All provisions of this Lease, except those above referenced to and those pertaining to the Lease Term and option to extend, shall apply to the month-to-month tenancy. If Lessee remains in possession without the consent of the Lessor, Lessee shall be a tenant, at sufferance only, however shall be responsible for payment of all the rents, fees, insurance premiums, charges, and compliance with all the terms and conditions of this Lease, in addition to any other damages otherwise suffered by reason thereof by Lessor.

**Section 20: Dissolution of Non-Profit.** In the event Lessee's agency is dissolved, Lessor shall have the right to repossess the Leased Premises within the process of law, as well as the right to sue for and recover all rents and other sums accrued up to the time of such termination, including damages arising out of any breach on the part of the Lessee.

**Section 21: Nondiscrimination and Affirmative Action.** Lessee agrees that it shall not discriminate in hiring employees or in making services available on the basis of race, creed, religion, color, sex, age, marital status, or national origin. Lessee further agrees that to the extent required by law it will comply with the affirmative action requirements of state, local and federal governments.

**Section 22: Lessor's Reservation of Rights.** The rights and privileges granted to Lessee in this Lease are the only rights and privileges herein granted to Lessee; and Lessee has no easements, rights or privileges, express or implied, other than those specifically herein granted by Lessor.

**Section 23: Assignment and Subletting.** (a) Lessee shall not assign this Lease or any part thereof, or the option to extend the Lease Term provided for in Section 6 hereof, without the prior written consent of the Lessor. Any such attempted assignment without the prior written consent of Lessor shall be void and of no force or effect and may, at the option of Lessor, be deemed a material breach and default and a basis for termination of this Lease.

(b) Lessee shall not sublet any portion of the Leased Premises without the prior written consent of Lessor.

(c) Consent given on one occasion shall not be construed as, or constitute waiver of the requirement of consent as to any subsequent or further assignment or subletting. In the event of assignment or subletting, Lessee shall remain liable and responsible for performance of all the terms, covenants, conditions, and provisions provided for in this Lease, including payment of rent and other charges herein provided, and Lessor may require any assignee or sublessee to affirmatively agree to perform all the terms and conditions of this Lease.

(d) Lessor consents to Lessee making space available for tour vendors and similar businesses for making sales and charging a fee for such use.

**Section 24: Subordination.** The Lessee acknowledges and agrees that this Lease, and all rights hereunder, shall be subject and subordinate to all prior exceptions, reservations, leases, licenses, easements, restrictions, and rights-of-way of record now existing in, on, to, over, or affecting the Leased Premises and Lessee hereby agrees not to violate any such exceptions, reservations, leases, licenses, easements, restrictions, or rights-of-way. Lessor makes no warranties or representations as to its title to the Leased Premises but leases only whatever interests it has in the Leased Premises.

**Section 25: Hold Harmless and Indemnity.** Lessee further specifically obligates itself to Lessor in the following respects, to-wit:

(a) To indemnify and appear and defend Lessor against and save Lessor, its elected and appointed officials and employees, harmless from any and all claims, damages, losses, costs and expenses, including reasonable attorneys' fees incurred, whether or not suit is filed, and for injuries to property, including loss of use and theft, injuries to persons, including death, and from any other claims, suits or liability arising out of or resulting from the use or occupation of the Leased Premises by Lessee, its officers, employees, agents, contractors, or subcontractors, representatives, customers, invitees, or by any persons suffered to be on the Leased Premises by Lessee, or caused in whole or in part by any act or omission of Lessee, or any of its officers, agents, employees, representatives, servants, or subcontractors, or anyone employed by them, or for whose acts Lessee may be liable, or by Lessee's customers, invitees, or any person on or about the Leased Premises, to the extent Lessee may be liable.



(b) To pay for all materials furnished, and all work and labor supplied, at the request or instance of Lessee in regard to the Leased Premises, and all sales, excise or other taxes, and to satisfy Lessor thereupon whenever demand is made, and to indemnify Lessor against and save it harmless from any and all claims, suits or liens therefor.

(d) To obtain and pay for all permits and licenses, and to comply with all laws, ordinances, and regulations bearing on work and the conduct thereof.

(e) Lessee, its successors and assigns, further agree to, and shall, appear and defend, and shall indemnify and hold Lessor, its elected and appointed officials, employees, agents, successors and assigns harmless against any of the foregoing claims or liabilities and shall pay any and all costs and expenses, including, but not limited to, court costs and attorneys' fees incurred by Lessor and said persons on account of such liabilities or claims. The failure of Lessor at anytime to enforce the provisions of this Lease concerning insurance coverage shall not constitute a waiver of those provisions nor in any respect reduce the obligation of Lessee to defend and to hold and save Lessor and said persons harmless with respect to any claims or items of injury or damage covered by this section.

**Section 26: Miscellaneous.** (a) Relationship of Parties. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither method of computation of rent nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

(b) Terminology. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

(c) Nonwaiver. No delay or omission of the right to exercise any power by either party shall impair any such right or power, or shall be construed as a waiver of any default or as acquiescence therein. One or more waivers of any covenant, term, or condition of this Lease by either party shall not be construed by the other party as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by either party to or any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

(d) Law Applicable. The laws of the State of Alaska shall govern the construction, validity, performance, and enforcement of this Lease. Venue as to any action, claim, or proceeding arising out of, or based upon this Lease, including, but not limited to, any action for declaratory or injunctive relief, shall be the appropriate Court sitting in the City of Ketchikan, First Judicial District, Alaska.

(e) Paragraph Headings. The headings of the several sections and subsections contained herein are for convenience only and do not define, limit, or construe the contents of such sections and subsections.

(f) Successors and Assigns. Except as otherwise provided herein, the covenants, agreements, and obligations herein contained shall extend to bind and inure to the benefit not only of the parties hereto but their respective personal representatives, heirs, successors and assigns.

(g) Compliance with Laws and Regulations. Lessee shall not use or occupy the Leased Premises for any unlawful purpose and shall, at Lessee's sole cost and expense, observe and comply with all of the requirements of all local, state, or federal laws, ordinances, or regulations now in force, or which may hereafter be in force, pertaining to Lessee or Lessee's use or occupancy of the Leased Premises.

(h) Notice of Claims or Damages. Lessee shall give prompt notice to Lessor, in case of fire or accidents on or about the Leased Premises, or of any defects therein.

(i) Terms Construed as Covenants and Conditions. Every term and each provision of this Lease performable by Lessee shall be construed to be both a covenant and a condition.

(j) Interest on Amount Unpaid. Except as otherwise provided herein, any sum not paid when due pursuant to the terms of this Lease shall thereafter bear interest at the rate of ten and one-half percent (10.5%) per annum from the date the same was payable.

(k) Time of the Essence. Time is of the essence of each term, condition, covenant, and provision of this Lease.

(l) Entire Agreement. Lessee acknowledges that it has read this entire Lease, has fully understood the provisions thereof, was satisfied therewith, and signed the same of its own free will. Lessee further acknowledges that any prior contracts, promises, representations, or agreements, between Lessee and Lessor, its officers, councilmen, mayor, employees, agents, and servants, relating to the lease

of the subject premises, are hereby extinguished; that there are no oral or written promises, representations, or agreements between Lessee and Lessor or the persons above referred to relating to the lease of the subject premises other than as set forth in this Lease, and that this Lease constitutes the entire and only agreement between Lessor. and Lessee relating to the lease of the subject premises.

(m) 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 to the other party at the address set forth above. Either party may change its address by notifying the other party of its change of address in writing. Notice shall be deemed to have been duly made and given when delivered if served personally, or upon mailing if mailed as provided in this section.

(n) Cooperation. Lessor and Lessee understand and acknowledge that in many instances the effective performance of this Lease by one party may require the cooperation of the other. Therefore, both parties agree that in such situations they shall cooperate with each other in good faith.

(o) Remedies Cumulative. Each of the rights and remedies of the parties hereto shall be construed as cumulative and to be in addition to any other rights or remedies that may now or hereafter be provided law or equity.

**WHEREFORE** the parties have entered into this Lease the date and year first above written at the City of Ketchikan, Alaska.

**LESSOR:**  
**CITY OF KETCHIKAN, ALASKA**

By: \_\_\_\_\_  
Lacey Simpson, Acting City Manager

**ATTEST:**

\_\_\_\_\_  
Kim Stanker, City Clerk

**LESSEE:**  
**FIRST CITY HOMELESS SERVICES**

By: \_\_\_\_\_

\_\_\_\_\_

STATE OF ALASKA )  
 ) ss:  
FIRST JUDICIAL DISTRICT )

**THIS IS TO CERTIFY** that on this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared **LACEY SIMPSON** and **KIM STANKER**, to me known to be the Acting City Manager and City Clerk of the **CITY OF KETCHIKAN, ALASKA**, a Municipal Corporation, the corporation which executed the above and foregoing instrument, and who on oath stated that they were duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said corporation, and that the seal affixed thereto is the corporate seal thereof, and acknowledged that they signed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

**WITNESS** my hand and official seal the day and year in this certificate above written.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires:\_\_\_\_\_

STATE OF ALASKA )  
 ) ss:  
FIRST JUDICIAL DISTRICT )

**THIS IS TO CERTIFY** that on this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the **PRESIDENT** and the **SECRETARY** of **FIRST CITY HOMELESS SERVICES**, an Alaska Corporation, the corporation which executed the above and foregoing instrument, and who on oath stated that they were duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said corporation, and that the seal affixed thereto is the corporate seal thereof, and acknowledged that they signed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

**WITNESS** my hand and official seal the day and year in this certificate above written.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires:\_\_\_\_\_

