



RESOLUTION 2023-02

Renewal of Community Center Use Agreement with North Star Council on Aging

WHEREAS, City Ordinance §5.15.070 authorizes the City to enter into leases of real property for less than fair rental value and City Ordinance §5.15.050 authorizes the City to negotiate leases where the fair rental value is less than \$24,000.00 per year and the term is less than five years; and

WHEREAS, the City's formal procedures for disposition of property by sale or lease may be waived if the City Council finds that a particular disposition will be of public interest; and

WHEREAS, North Star Council on Aging ("NSCA") is an Alaska nonprofit corporation whose mission is to meet the needs of elderly citizens by providing services that enhance and promote quality of life, self-determination, independent living, and dignity; and

WHEREAS, NSCA seeks to continue to lease office space in the Delta Junction Community Center / Senior Center to continue making its services available in Delta; and

WHEREAS, the City and NSCA negotiated a mutually acceptable lease in 2020 that meets the requirements of City ordinances and the needs of NSCA.

NOW, THEREFORE, THE CITY COUNCIL RESOLVES THAT:

- 1. The City agrees to enter into a lease of a portion of the Delta Junction Community Center / Senior Center on substantially the terms and conditions described in the attached lease.
- 2. The Mayor is authorized to execute the lease on behalf of the City.
- 3. This resolution shall take effect immediately upon adoption.

ADOPTED by the City Council of the City of Delta Junction, Alaska this 16th day of May, 2023 by an affirmative vote.

CITY OF DELTA JUNCTION, ALASKA

JW Musgrove, Mayor

	YES	NO	ABSENT	ABSTAIN
Seat A: Dove				
Seat B: Rawson				
Seat C: Prestegard				
Seat D: Zarembo				
Seat E: Musgrove				
Seat F: Hallgren				
Seat G: Riesner				

ATTEST

Pat White, City Clerk

**COMMERCIAL LEASE
(Portion of Community Center, Delta Junction)**

CITY OF DELTA JUNCTION, ALASKA
P.O. Box 229
Delta Junction, Alaska 99737

referred to as “City” or “the Lessor” in this agreement, and

NORTH STAR COUNCIL ON AGING
an Alaska nonprofit corporation

Delta Junction, Alaska, Alaska 99737

referred to as “North Star” or “the Lessee” in this agreement, recite and declare that:

RECITALS

This lease is made with reference to the following facts and objectives:

A. The Lessor is a general law municipality that owns the real property and improvements to real property located at Delta Junction, Alaska 99737, formally described in Exhibit A to this Lease, Legal Description. The property is referred to in this Lease as "the Premises."

B. The Lessee is an Alaska nonprofit corporation whose mission is to meet the needs of older adults by providing services which enhance and promote quality of life, self-determination, independent living, and dignity.

C. The Lessee desires to lease a portion of the Premises, together with rights in ingress and egress, from Lessor pursuant to the provisions stated in this lease, for the purpose of supporting that mission in the Deltana area.

D. The Lessor is willing to grant to the Lessee a lease of a portion of the Premises on the terms and conditions set out in this agreement.

E. The Lessor may enter into this Lease under authority of City Ordinance §5.15.070 for less than fair market value because Lessee is a nonprofit organization and the mission of the Lessee is of value to the City and its citizens.

NOW, THEREFORE, in consideration of those recitals, and for other good and sufficient consideration, receipt of which is acknowledged, the Lessor and the Lessee agree that:

1. **Lease.** The Lessor leases to the Lessee and the Lessee leases from the Lessor, for the rent and according to the other terms and conditions of this agreement approximately two hundred (200) square feet of the Premises to include an office, as shown in Exhibit B, for the purpose specified above.

2. **Term.** This shall be a three (3) year lease, to commence May 16, 2023 and expire May 16, 2026.

3. **Rent; Assessments; Short payment.** The Lessee shall pay to the Lessor as minimum monthly rent, without deduction or setoff (except as specified in Paragraph 16 or as otherwise set forth herein), and without prior notice on demand, the sum of \$0.

3.1. The Lessor waives any immediate requirement of a security deposit for the performance of this Lease during the Term.

4. **Condition of Premises.** By entry hereunder, the Lessee accepts the Premises as being in good and sanitary order, condition, appearance and repair and agrees on the last day of the Term, or sooner termination of this Lease, to surrender to Lessor the Premises and appurtenances in the same condition as when received, reasonable use and wear thereof excepted, and to remove the Lessee's trade fixtures, machinery and equipment and those of its suppliers at its own cost, and to repair any damage caused by such removal. Lessee has examined the Premises and accepts the same "AS IS."

4.1. The Lessee acknowledges that there are other persons using the Premises and storing equipment on the Premises, that those persons enjoy right of storage, ingress and egress similar to those of the Lessee, and that the Lessee has an affirmative duty to cooperate with those other persons to accommodate their mutual interests.

5. **Subsurface and Airspace Rights.** This lease confers no rights either with regard to the subsurface of the land below the Premises or with regard to airspace above the Premises.

6. **Acceptance of Premises.** Except as provided in Paragraph 5 and the exhibit thereto, the Lessee's taking possession of the Premises shall constitute the Lessee's acknowledgment that the Premises are in good condition.

7. **Limitations on Use.**

7.1. The Lessee shall not do, bring or keep anything in or about the Premises that will cause a cancellation of any insurance covering the Premises.

7.2. The Lessee shall comply with all applicable laws of the United States and the State of Alaska, and the ordinances of the City of Delta Junction in the Lessee's use of the Premises. However, the Lessee shall not be obligated to comply with any law that requires alterations or restoration of the Premises unless the alterations or restoration are

required as a result of the Lessee's particular use of the Premises at the time or any improvements to the Premises by the Lessee.

7.3. The Lessee shall not use the Premises in any manner that will constitute waste or nuisance, or unreasonable annoyance to persons occupying or using property adjoining the Premises.

7.4. To the extent that the nature of the Lessee's business requires the storage of dangerous, hazardous or controlled materials and substances in or on the Lessee's equipment, the Lessee shall comply with all applicable federal, state and municipal laws, ordinances and regulations with regard to those materials and substances.

8. **Maintenance.** The Lessee shall keep and maintain its portion of the Premises in good condition for the Term of the Lease. The Lessee and the Lessor allocate the duty to maintain and repair the Premises among themselves as follows:

8.1. The Lessee shall be responsible for all janitorial, cleaning and maintenance of its portion of the Premises except as provided in this section.

8.2. The Lessor shall bear all other costs associated with maintenance and repair of the Premises.

9. **Alterations.** The Lessee shall not make any material alterations to the Premises without the consent of the Lessor. Any alterations made shall remain on and be surrendered with the Premises on expiration or termination of the Term, except that the Lessor may elect within thirty (30) days before expiration of the Term, or within five (5) days after termination of the Term, to require the Lessee to remove any alterations that the Lessee has made to the Premises. If the Lessor so elects, the Lessee at its cost shall restore the Premises to the condition designated by the Lessor in its election, before the last day of the Term, or within thirty (30) days after notice of election is given, whichever is later. The Lessee shall pay all costs of construction done by it or caused to be done on the Premises, and shall keep the Premises free and clear of liens resulting from construction done by or for it.

10. **Utilities.** The Lessor shall at its cost furnish to the Premises those quantities of water, electricity and heat as required by Lessee's use. The Lessor shall not be liable for failure to furnish utilities or services to the Premises, but in case of such failure Lessor shall cooperate with the Lessee in taking reasonable steps to restore the interrupted utilities and services.

11. **Janitorial and Snow Removal Service.** The Lessor shall arrange for any janitorial services and snow removal service for the Premises, subject to the Lessee's duty to maintain its portion of the Premises at the Lessee's cost under Paragraph 9.

12. **Indemnity and Exculpation; Insurance.**

12.1. Except as provided in Section 12.3, the Lessor shall not be liable to Lessee for any damage to Lessee or Lessee's property from any cause, including, without

limitation, loss of income and the expenses of substitute rental space. The Lessee waives all claims against the Lessor for damage or injury to person or property arising for any reason, except as specified in Section 12.3.

12.2. Except as provided in Section 12.3, the Lessee shall indemnify, defend, and hold harmless the Lessor from all liability arising out of any damage or injury to any person or property occurring in, on or about the Premises.

12.3. The Lessor shall be liable to Lessee for damages resulting solely from the negligent or intentional acts or omissions of the Lessor or its authorized representatives. The Lessor shall hold Lessee harmless from all damages arising out of any damage resulting from the negligent acts or omissions of Lessor or its authorized representatives.

12.4. A party's obligation under this Section to indemnify or hold the other party harmless shall be limited to the sum that exceeds the amount of insurance proceeds, if any, received by the party being indemnified or held harmless.

12.5. The Lessee shall maintain casualty insurance in an amount not less than the then-current replacement value of the improvements to the Premises for the Term and any Extended Term of the Lease. The Lessee shall maintain comprehensive general liability insurance in amounts not less than \$1,000,000 per occurrence and \$2,000,000 cumulative coverage for the Term and any Extended Term of the Lease. The Lessee shall bear the cost of all premiums and charges associated with the insurance coverages described in this subsection. The Lessor shall be named as an additional insured under the policies of insurance. All comprehensive general liability insurance and property damage insurance shall insure performance by Lessee of the indemnity provisions of Section 12.2 and both the Lessor and the Lessee shall be named as co-insureds. The Lessee shall provide the City with proof of insurance annually.

12.6. The Lessee at its cost may maintain insurance coverages on its personal property and improvements to the Premises.

12.7. The parties release each other, and their respective authorized representatives, from any claims for damage to any person or to the Premises and to the fixtures, personal property, the Lessee's improvements and alterations of the Lessor or the Lessee in or on the Premises that are caused by or result from risks insured against under any insurance policies carried by the parties and in force at the time of any such damage. This release applies only to the damage that is covered by such insurance, and not to the damage, if any, in excess of such coverage. Each party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party, in connection with any damage covered by any policy. Neither party shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy required by this lease. If an insurance policy cannot be obtained with a waiver of subrogation, or is obtainable only by the payment of an additional premium charge above that charged by insurance companies issuing policies without subrogation, the party undertaking to obtain the

insurance shall notify the other party of this fact. The other party shall have a period of ten (10) days after receiving the notice either to place the insurance with a company that is reasonably satisfactory to the other party and that will carry the insurance with a waiver of subrogation, or to agree to pay the additional premium if such a policy is obtainable at additional cost. If the insurance cannot be obtained or the party in whose favor a waiver of subrogation is desired refuses to pay the additional premium charged, the other party is relieved of the obligation to obtain a waiver of subrogation rights with respect to the particular insurance involved.

12.8. All insurance required under this lease shall contain an endorsement requiring thirty (30) days' written notice from the insurance company to both parties before cancellation or reductions in or modifications of the coverage, scope or amount of any policy.

13. **Destruction.** If, during the term, the Premises are totally or partially destroyed from any cause, rendering the Premises totally or partially inaccessible or unusable, Lessor shall, subject to the provision below regarding partial destruction, restore the Premises to substantially the same condition as it was in immediately before destruction, if the restoration can be made under the existing laws and can be completed within one hundred twenty (120) working days after the date of the destruction. Except as provided in this Section, such destruction shall not terminate this lease.

13.1. If the restoration cannot be made in the time stated in this Paragraph 13, then within fifteen (15) days after the parties determine that the restoration cannot be made in the time stated in this paragraph, the Lessee may terminate this lease immediately by giving notice to the Lessor. If the Lessee fails to terminate this lease and if restoration is permitted under the existing laws, the Lessor, at its election, can either terminate this lease or restore the Premises within a reasonable time and this lease shall continue in full force and effect. If the existing laws do not permit the restoration, either party can terminate this lease immediately by giving notice to the other party.

13.2. If there is destruction of the Premises from any risk that exceeds 33 1/3% of the replacement value of the Premises, the Lessor may elect to terminate this lease whether or not the Premises are destroyed.

13.3. In the case of destruction there shall be an abatement between the date of destruction and the date of completion of restoration, based on the extent to which the destruction interferes with the Lessee's use of the Premises.

13.4. In the event that weather conditions make repair or restoration of the Premises under this Paragraph commercially impracticable, then the Lessor, not later than fifteen (15) days after the casualty, may submit a plan of repair or restoration under which required repairs or restoration will be performed at the earliest reasonable time, and in any event not later than July 15 of the year following the casualty. The Lessee shall have ten days to accept or reject any plan

of repair or restoration, except that the Lessee's approval may not be unreasonably withheld.

14. Condemnation.

14.1. If all of the Premises is taken or condemned for a public or quasi-public use, this Lease shall terminate as of the date title to the condemned real estate vests in the condemnor.

14.2. If less than the entire Premises is taken or condemned for a public or quasi-public use and the nature and extent of such taking or condemnation are such that the Lessee's business cannot be continued, then this lease shall terminate thirty (30) days after the Lessee gives the Lessor notice of its election to terminate this lease. Such notice must be given within sixty (60) days after the date the condemnor takes possession of the condemned real estate.

14.3. The Lessor and the Lessee shall each be free to assert and make their own claims in any condemnation action. The Lessee's claim shall be limited to the rights of the Lessee under this Lease at the date of the taking.

15. Assignment. The Lessee shall not voluntarily assign or encumber its interest in this lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity (except the Lessee's authorized representatives) to occupy or use all or any part of the Premises, without first obtaining the written consent of the Lessor. The Lessor may withhold consent with or without cause.

15.1. Any assignment, encumbrance or sublease without such consent shall be voidable and, at the Lessor's election, shall constitute a default. No consent to any assignment, encumbrance or sublease shall constitute a further waiver of the provisions of this paragraph. The provisions of this paragraph notwithstanding, the Lessee may without the consent of the Lessor sublease to or assign its interests under this lease to any entity wholly owned by the Lessee. Such sublease or assignment shall not relieve the Lessee of its obligations under this lease.

15.2. No interest of the Lessee in this lease shall be assignable by operation of law, including, without limitation, the transfer of this lease by testacy or intestacy. Each of the following acts shall be considered an assignment by operation of law:

(i) If the Lessee is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which the Lessee is the bankrupt.

(ii) If a writ of attachment or execution is levied on this lease.

(iii) If, in any proceeding or action to which the Lessee is a party, a receiver is appointed with authority to take possession of the Premises.

An assignment by operation of law shall constitute a default by the Lessee and the Lessor shall have the right to elect to terminate this lease, in which case this lease shall not be treated as an asset of the Lessee.

15.3. Notwithstanding anything else contained in this agreement, an assignment or sublease between co-Lessees shall not constitute a breach of this agreement or a default under its terms. No assignment or sublease between the Lessee and shareholders owning fifty-one percent (51.00%) or more of the issued and outstanding shares of the Lessee shall constitute a breach of this Lease or a default hereunder.

16. **Default.**

16.1. The occurrence of any of the following shall constitute a default by the Lessee:

(i) Abandonment or vacation of the Premises.

(ii) Failure to perform any other provision of this lease if the failure to perform is not cured within fifteen (15) days after notice has been given to Lessee. If the default cannot reasonably be cured within fifteen (15) days, Lessee shall not be in default of this lease if Lessee either commences to cure the default within the fifteen (15) day period and diligently and in good faith continues efforts to cure the default, or, where weather or other conditions do not permit cure, submits to the Lessor within the fifteen (15) day deadline a reasonable plan to cure the default when weather or other conditions are suitable.

16.2. Notices given under this Section shall specify the alleged default and the applicable lease provisions, and shall demand that Lessee perform the provisions of this lease within the applicable period of time, or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this lease unless Lessor so elects in the notice.

16.3. The Lessor shall have the following remedies if the Lessee commits a default. These remedies are not exclusive; they are not cumulative and in addition to any remedies now or later allowed by law:

(i) The Lessor may continue this lease in full force and effect, and the lease will continue in effect as long as the Lessor does not terminate the Lessee's right to possession. During the period the Lessee is in default, the Lessor may enter the Premises and re-let it, or any part of it, to third parties for the Lessee's account. The Lessee shall be liable immediately to

the Lessor for all costs the Lessor incurs in reletting the Premises, including, without limitation, brokers' commissions, advertising costs, expenses of remodeling the Premises required by the reletting, and like costs. Reletting may be for a period shorter or longer than the remaining term of this lease. No act by the Lessor allowed by this paragraph shall terminate this lease unless the Lessor notifies the Lessee that the Lessor elects to terminate this lease. After the Lessee's default and for as long as the Lessor does not terminate the Lessee's right to possession of the Premises, if the Lessee obtains the Lessor's consent, the Lessee shall have the right to assign or sublet its interest in this lease, but the Lessee shall not be released from liability.

(ii) The Lessor may terminate the Lessee's right to possession of the Premises at any time. No act by the Lessor other than giving notice to the Lessee shall terminate this lease. Acts of maintenance or repair, efforts to relet the Premises, or the appointment of a receiver on the Lessor's initiative to protect the Lessor's interest under this lease shall not constitute a termination of the Lessee's right to possession. On termination, the Lessor has the right to recover from the Lessee:

(a) Any other amount, including actual, reasonable attorneys' fees and court costs necessary to compensate the Lessor for all detriment proximately caused by the Lessee's default.

16.4. The occurrence of any of the following shall constitute a default by the Lessor:

(i) A breach of the warranty of quiet enjoyment by the Lessor.

(ii) A failure by the Lessor to make structural repairs required under Section 13.

(iii) The failure by the Lessor to perform any other provision of this Lease if the failure to perform is not cured within fifteen (15) days after notice has been given to Lessor. If the default cannot reasonably be cured within fifteen (15) days, Lessor shall not be in default of this lease if Lessor either commences to cure the default within the fifteen (15) day period and diligently and in good faith continues efforts to cure the default, or, where weather or other conditions do not permit cure, submits to the Lessee within the fifteen (15) day deadline a reasonable plan to cure the default when weather or other conditions are suitable, provided that the failure to promptly cure the structural problem does not substantially impair the value of the Premises to the Lessee.

A default by the Lessor shall give the Lessee such rights as may be afforded to it under the laws of the State of Alaska.

17. **Entry.** The Lessor and its authorized representatives shall have the right to enter the Premises at all reasonable times to determine whether the Premises are in good condition and whether the Lessee is complying with its obligations under this lease. The Lessor shall conduct its activities in the Premises as allowed in this paragraph in a manner that will cause the least possible inconvenience, annoyance or disturbance to Lessee.

18. **Waiver.** No delay or omission in the exercise of any right or remedy of the Lessor on any default by the Lessee shall impair such right or remedy or be construed as a waiver. No act or conduct of the Lessor, including, without limitation, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by the Lessee before the expiration of the term. Only a notice from the Lessor to the Lessee shall constitute acceptance of the surrender of the Premises and accomplish a termination of the lease. The consent to or approval of any act by the Lessee requiring the consent or approval of the Lessor shall not be deemed to waive or render unnecessary consent to or approval of any subsequent act by the Lessee. Any waiver by the Lessor of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the lease.

19. **Attorney's Fees.** The Lessor and the Lessee shall each bear their own costs and attorney's fees incurred in preparation of this lease. In the event of a dispute regarding the terms of this lease, the prevailing party shall be entitled to recover its reasonable costs and attorney's fees, in addition to such other relief as may be available under this lease.

20. **Surrender of Premises.** On expiration of the term or extended term, the Lessee shall surrender to the Lessor the Premises in good condition, reasonable wear and tear excepted.

20.1. The Lessee shall remove all its personal property and perform all restoration made necessary by the removal of any alterations or the Lessee's personal property, as provided in Section 10 within ten (10) days after termination.

20.2. If the Lessee fails to surrender the Premises to the Lessor upon expiration of the term or extended term as required by this paragraph, the Lessee shall hold the Lessor harmless from all damages resulting from the Lessee's failure to surrender the Premises, including, without limitation, claims made by a succeeding tenant resulting from the Lessee's failure to surrender the Premises.

21. **Holding Over.** If the Lessee, with the Lessor's consent, remains in possession of the Premises after expiration or termination of the term or extended term, or after the date in any notice given by the Lessor to the Lessee terminating this lease, such possession by the Lessee shall be deemed to be a month-to-month tenancy terminable on thirty (30) days' notice given at any time by either party. All provisions of this lease except those pertaining to term and the option to extend shall apply to the month-to-month tenancy.

22. **Lessee's Right to Terminate.** If the laws of any government body prohibit Lessee from using the Premises as provided herein, the Lessee may elect to terminate this lease on written notice being given to the Lessor within sixty (60) days after the Lessee has learned

that its use of the Premises will be prohibited. Such written notice shall include proof of the time on which and the manner in which the Lessee learned of the prohibition.

23. **Corporate Authority.** If the Lessee is a corporation, it shall supply the Lessor with a corporate resolution of its board of directors authorizing the execution of this lease and naming the officer or officers who are authorized to execute this lease on behalf of the corporation.

24. **Successors.** This lease shall be binding on and inure to the benefit of the parties and their successors-in-interest.

25. **Exhibits.** All exhibits referred to are attached to this lease and incorporated by reference.

26. **Joint and Several Obligations.** "Party" shall mean the Lessor or the Lessee; and if more than one person or entity is the Lessor or the Lessee, the obligations imposed on that party shall be joint and several.

27. **Severability.** The unenforceability, invalidity or illegality of any provision shall not render the other provisions of this lease unenforceable, invalid or illegal.

IN WITNESS WHEREOF, we have signed this agreement, this ___ day of May, 2023.

CITY OF DELTA JUNCTION, ALASKA

NORTH STAR COUNCIL ON AGING

Lessor by: _____
JW Musgrove, Mayor
Delta Junction, AK

Lessee by: _____
Darlene Supplee, Exec. Director
Fairbanks, AK

STATE OF ALASKA)
) :ss
FOURTH JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ___ day of May, 2023 by JW Musgrove, Mayor of CITY OF DELTA JUNCTION, ALASKA, an Alaska general law municipality, Lessor, on behalf of the municipality.

Notary Public for Alaska _____
My commission expires: _____

STATE OF ALASKA)
) :ss
FOURTH JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ___ day of May, 2023 by Darlene Supplee, Executive Director of NORTH STAR COUNCIL ON AGING, an Alaska nonprofit corporation, Lessee, on behalf of the corporation.

Notary Public for Alaska _____
My commission expires: _____

CITY OF DELTA JUNCTION, ALASKA – NORTH STAR COUNCIL ON AGING

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

DELTA JUNCTION COMMUNITY CENTER

PHYSICAL ADDRESS:

2287 Deborah Street
Delta Junction, Alaska 99737

LEGAL DESCRIPTION:

Block 10, Delta Junction Townsite, North Addition, Recorded as ASLS# 89-182;
T.10S, R.10E, Section 14, all of which is located in the Fairbanks Recording District,
Fourth Judicial District, State of Alaska.

CITY OF DELTA JUNCTION, ALASKA – NORTH STAR COUNCIL ON AGING

EXHIBIT B

DRAWING SHOWING LESSEE PORTION OF PREMISES

