

Mayor

James Kacsh

Council Members

Kristin Carpenter
Tim Joyce
David Allison
Bret Bradford
EJ Cheshier
David Reggiani
James Burton

City Manager

Randy Robertson

City Clerk

Susan Bourgeois

Deputy Clerk

Tina Hammer

Student Council

Sarah Hoepfner
Gabrielle Brown

**CITY COUNCIL PUBLIC HEARING
FEBRUARY 05, 2014 @ 7:15 PM
LIBRARY MEETING ROOM**

AGENDA

A. CALL TO ORDER

B. ROLL CALL

Mayor James Kacsh, Council members Kristin Carpenter, Tim Joyce, David Allison, Bret Bradford, EJ Cheshier, David Reggiani and James Burton

C. PUBLIC HEARING

1. Ordinance 1113..... (page 1)

An ordinance of the City Council of the City of Cordova, Alaska, authorizing a lease for a portion of Lot 2, Block 7A, Tidewater Development Park, Plat 93-2, specifically a building known as the Prince William Sound Science Center and the south west 50 feet of the dock to the Prince William Sound Science and Technology Institute, an Alaska nonprofit corporation, doing business as Prince William Sound Science Center for the operation of the Prince William Sound Science Center.

D. ADJOURNMENT

**If you have a disability that makes it difficult to attend city-sponsored functions,
You may contact 424-6200 for assistance.**

Randy Robertson

From: Andrew Smallwood <andrewsmallwoodfc@gmail.com>
Sent: Wednesday, January 29, 2014 10:42 AM
To: Randy Robertson
Subject: Re: Update

Randy,
Always impressed when I see you out working in the field!

My board authorised us to accept the lease as proposed so that can go forward. I will get you that formally in the next few days.

The board also authorised us to make an offer on the new fill so we can discuss that when we meet.

When would be convenient?

Andrew

A MEMO FROM SUSAN BOURGEOIS, CMC, CITY CLERK

DATE: January 16, 2014
TO: Mayor and City Council
SUBJECT: Ordinance 1113

The following ordinance was on the agenda for first reading on December 4, 2014. After Council received information from the City Manager in executive session regarding his negotiations with the PWSSC on this lease, Council referred the ordinance to staff hoping to see it back when there was agreement to the terms they directed the City Manager to negotiate. On January 15, the ordinance was ready for a first reading although the PWSSC Board of Directors would be meeting on January 24 so that their final approval could be relayed to their executive director and then to the City Manager only timely enough for second reading. Council opted to make a slight change on January 15 by adding a fourth whereas that was in the body of the lease, into the body of the ordinance itself so that Council's intent was more clear. This edit was deemed not significant and therefore, the ordinance is fit for public hearing, second reading and final approval tonight at the February 5, 2014 meeting.

Recommended motion: Move to adopt Ordinance 1113.

Required action: Majority roll call vote.

**CITY OF CORDOVA, ALASKA
ORDINANCE 1113**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CORDOVA, ALASKA,
AUTHORIZING A LEASE FOR A PORTION OF LOT 2, BLOCK 7A, TIDEWATER
DEVELOPMENT PARK, PLAT 93-2, SPECIFICALLY A BUILDING KNOWN AS THE
PRINCE WILLIAM SOUND SCIENCE CENTER AND THE SOUTH WEST 50 FEET OF
THE DOCK TO THE PRINCE WILLIAM SOUND SCIENCE AND TECHNOLOGY
INSTITUTE, AN ALASKA NONPROFIT CORPORATION, DOING BUSINESS AS
PRINCE WILLIAM SOUND SCIENCE CENTER FOR THE OPERATION OF THE
PRINCE WILLIAM SOUND SCIENCE CENTER**

WHEREAS, the City of Cordova and the Prince William Sound Science and Technology Institute d/b/a Prince William Sound Science Center have worked together to maintain the Prince William Sound Science Center located in Cordova, and operated by the Prince William Sound Science and Technology Institute, and both parties desire to enter the lease for eight years, effective January 1, 2014; and

WHEREAS, the Prince William Sound Science Center will be operated on a nonprofit basis; and

WHEREAS, it is in the public interest for the City of Cordova to make space available for the Prince William Sound Science Center under the terms and conditions provided in the lease referred to below.

WHEREAS, the Lessor intends to utilize this tract of land after the termination of this 8 year lease for expansion of the Cordova Small Boat Harbor facility.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Cordova, Alaska, that

Section 1. Notwithstanding anything to the contrary in Cordova City Code Chapter 5.22, the Council of the City of Cordova hereby authorizes the lease to the Prince William Sound Science and Technology Institute d/b/a Prince William Sound Science Center for a term of eight years, for a portion of Lot 2, Block 7A, Tidewater Development Park, Plat 93-2, specifically a building known as the Prince William Sound Science Center and the South West 50 feet of the dock.

Section 2. The form and content of the Lease between the City and the Prince William Sound Science and Technology Institute d/b/a Prince William Sound Science Center hereby are in all respects authorized, approved and confirmed, and the City Manager is authorized, empowered and directed to execute and deliver the Lease to the Prince William Sound Science and Technology Institute d/b/a Prince William Sound Science Center on behalf of the City, in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as they shall deem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions or deletions therein from the form and content of said document now before this meeting, and from and after the execution and delivery of said document, the City Manager is authorized, empowered and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply

with the provisions of the lease as executed.

Section 3. This ordinance shall be enacted in accordance with Section 2.13 of the Charter of the City of Cordova, Alaska, and published within ten (10) days after its passage.

Section 4. If one or more referendum petitions with signatures are properly filed within one (1) month after the passage and publication of this ordinance, the 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 the ordinance is approved in 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 30 days after its passage and publication.

1st reading: December 4, 2013 – was on agenda got referred to staff

Second 1st reading: January 15, 2014

2nd reading and public hearing: February 5, 2014

PASSED AND APPROVED THIS 5th DAY OF FEBRUARY, 2014.

Jim Kacsh, Mayor

ATTEST:

Susan Bourgeois, CMC, City Clerk

**CITY OF CORDOVA
Cordova, Alaska**

LEASE

THIS LEASE ("Lease") entered into by and between the **CITY OF CORDOVA**, an Alaska municipal corporation ("City"), and the **PRINCE WILLIAM SOUND SCIENCE AND TECHNOLOGY INSTITUTE**, an Alaska nonprofit corporation, doing business as Prince William Sound Science Center ("Lessee"), on ____ day of _____ 2013.

RECITALS

WHEREAS, City owns a tract of land and all improvements thereon in Cordova, Alaska;

WHEREAS, Lessee desires to lease a portion of that tract of land from City, and City desires to lease a portion of a tract of land to Lessee, on the terms and conditions set forth herein; and

WHEREAS, the Cordova City Council ("Council") has approved the Lease from City to Lessee in accordance with Cordova City Charter §5-17 and the Cordova Municipal Code Chapter 5.22 ("Code" or "CMC").

"WHEREAS, the Lessor intends to utilize this tract of land after the termination of this 8 year lease for expansion of the Cordova small boat harbor facility."

NOW, THEREFORE, in consideration of the premises and the mutual covenants of the parties hereto, it is agreed as follows:

1. LEASE OF PREMISES

The City hereby leases to Lessee that certain tract of land and the improvements located within the Cordova Recording District, Third Judicial District, State of Alaska, and within the City of Cordova, more particularly described as:

A portion of Lot 2, Block 7A, Tidewater Development Park, Plat 93-2, specifically a building known as the Prince William Sound Science Center and the South West 50 feet of the dock, as set forth in Exhibit A, incorporated herein by reference ("Premises").

2. LEASE TERM

A. Lease Term. The Lease Term shall be eight (8) years, commencing on **January 1, 2014** ("Commencement Date") and expiring on **December 31, 2021**, unless earlier terminated in accordance with the terms of this Lease.

B. Lease Termination The Lease may be terminated by either party at any time upon one hundred eighty (180) days written notice.

3. RENT

A. Base Rent. The monthly rent during the Lease Term shall be Six Hundred Fifty Dollars (\$650.00) ("Base Rent"). Base Rent is due on the first day of each calendar month during the Lease Term. Lessee shall pay Base Rent to the City in lawful money of the United States without abatement, deduction or set-off for any reason whatsoever, at the address provided for notice to the City set forth in Section 19.E of this Lease, or at any other place that the City may from time to time direct in writing. Base Rent shall be paid promptly when due without notice or demand therefor. The parties intend the Lease for Lot 2, Block 7A, Tidewater Development Park

Base Rent to be absolutely net to the City. All costs, expenses, and obligations of every kind and nature whatsoever in connection with or relating to the Premises shall be the obligation of, and shall be paid by, Lessee.

B. Additional Charges—Without limiting in any way Lessee's payment obligations, the City shall have the right, but not the obligation, at all times during the Lease term, to pay any charges levied or imposed upon the Premises that remain unpaid after the same have become due and payable, and the amount paid, plus the City's reasonable expenses, shall be Additional Rent due from Lessee to City, with interest thereon at the rate of ten percent (10%) per annum from the date of payment thereof by the City until repayment thereof by Lessee.

C. Late Penalty Provision. Rent not paid within ten (10) days after the due date shall be assessed a late charge of ten percent (10%) of the delinquent amount; such charge shall be considered liquidated damages and shall be due and payable as Additional Rent. In the event the late charge assessment above exceeds the maximum amount allowable by law, the amount assessed will be adjusted to the maximum amount allowable by law.

D. Security Deposit. Upon execution of this Lease, the City may require Lessee to deposit with the City an amount equal to two months' rent (the "Security Deposit"). The Security Deposit shall be held by the City as security for the faithful performance by Lessee of all of Lessee's obligations under this Lease. If Lessee fails to pay the Base Rent or a portion thereof, or otherwise defaults with respect to any provision of this Lease after notice and beyond the expiration of any applicable cure period, the City may use, apply, or retain all or any portion of the Security Deposit for:

- (i) the payment of any Rent, Additional Charges, or other sum in default;
- (ii) the payment of any other sum to which the City may become obligated by reason of Lessee's default; or
- (iii) to compensate the City for any loss or damage which the City may suffer thereby, including but not limited to any costs associated with moving and storage of Lessee's personal property (if any) remaining on the Premises beyond termination of the Lease.

The City may commingle the Security Deposit with funds held in the City's own accounts, including accounts in which the City keeps other security deposits. If Lessee performs all of its obligations under this Lease, the Security Deposit, or so much thereof as has not been used, applied, or retained by the City in accordance with this Section, shall be returned to Lessee, at the expiration of the Lease Term, and subject to Lessee relinquishing possession of the Premises, without payment of interest or other increment for its use, within 30 days after Lessee vacates the Premises.

4. USES AND CONDITION OF PREMISES

A. Authorized Uses. Use of the Premises shall be limited to Lessee's day to day operations and business. The Premises shall not, without the City's prior written consent, be used for any other purpose.

B. Repairs and Maintenance. Lessee must keep the interior of the building on the Premises in a neat and orderly state and the same condition as existed at the commencement of the Lease Term, reasonable wear and tear and damage by fire or other casualty excepted. Either party may, but neither party shall be required, to repair or maintain the foundation, pilings, roof, bearing walls, lines for general supply of electricity, water, sewer or other structural elements of the Premises.

C. Inspections. The City and its authorized representatives and agents shall have the right, but not the obligation, to enter the Premises at all reasonable times to inspect the use and condition of the Premises; to serve, post, or keep posted any notices required or allowed under the provisions of this Lease, including notices of non-responsibility for liens; and to do any act necessary for the safety or preservation of the Premises. The City shall not be liable in any manner for any inconvenience,

Lease for Lot 2, Block 7A, Tidewater Development Park

disturbance, loss of business, nuisance, or other damage arising out of the City's entry onto the Premises, except for damage resulting directly from the acts of the City or its authorized representatives or agents.

D. Compliance with Laws. Lessee shall maintain and repair the Premises in compliance with all applicable laws, regulations, ordinances, rules, orders, permits, licenses, and other authorizations. Lessee shall not use or permit the use of the Premises for any purpose prohibited by law or which would cause a cancellation or increase in premium of any insurance policy covering the Premises. Lessee shall not cause or permit any Hazardous Material (as defined in Section 8.B of this Lease) to be brought upon, kept, or used in, on or about the Premises except for such Hazardous Material as is necessary to conduct Lessee's authorized uses of the Premises. Any such Hazardous Material brought upon, kept, or used in, on, or about the Premises shall be used, kept, stored, and disposed of in a manner that complies with all environmental laws and regulations applicable to Hazardous Material. Lessee shall not cause or allow the release or discharge of any other materials or substances that are known to pose a hazard to the environment or human health.

E. Lessee's Acceptance of Premises. Lessee has inspected the Premises to its complete satisfaction and is familiar with its condition, and the City makes no representations or warranties with respect thereto, including but not limited to the condition of the Premises or its suitability or fitness for any use Lessee may make of the Premises. Lessee accepts the Premises AS IS, WHERE IS, WITH ALL FAULTS. No action or inaction by the Council, the City Manager, or any other officer, agent, or employee of the City relating to or in furtherance of the Lease shall be deemed to constitute an express or implied representation or warranty that the Premises, or any part thereof, is suitable or usable or any specific purpose whatsoever. Any such action or inaction shall be deemed to be and constitute performance of a discretionary policy and planning function only, and shall be immune and give no right of action as provided in Alaska Statute 09.65.070, or any amendment thereto.

F. Modifications and Alterations. The Lessee shall not modify or make structural alterations or changes to the Premises without the City's prior written consent, which shall not be unreasonably withheld.

5. ASSIGNMENTS AND SUBLETTING; SUBORDINATION

Lessee shall not assign or otherwise transfer this Lease or any interest herein or sublet the Premises or any portion thereof, or permit the occupancy of any part of the Premises by any other person or entity, without the City's prior written consent, which consent the City may withhold in its absolute discretion. The City shall not be required to subordinate this Lease or the City's interest in the Premises to the interest of any other person or entity.

6. OPERATIONS, MAINTENANCE, UTILITIES, TAXES AND ASSESSMENTS

Subject to the limitations stated in Section 4B, Lessee shall, at Lessee's sole cost and expense, be solely responsible for all operations, maintenance, utilities, taxes, and assessments on, for, and against the Premises. Lessee agrees to pay before delinquency all charges levied against the Premises, including: (i) electric, sewer, and water utility service; (ii) heating (iii) telephone, facsimile, and Internet service; (iv) trash collection (v) regular cleaning;; (vi) snow removal; (vii) insurance for all buildings, structures, equipment, and personal property on the Premises; (viii) property taxes; (ix) public improvements; and (x) license, excise fees, and occupation taxes covering the business conducted on the Premises.

7. LIENS

Lessee will suffer no lien or other encumbrance to attach to the Premises, including without limitation mechanic's or materialman's liens, sales tax liens under CMC § 5.40.125, or property tax liens under CMC § 5.36.260. If the City posts any notice of non-responsibility on the Premises, Lessee will ensure that the notice is maintained in a conspicuous place.

8. INDEMNIFICATION

A. General Indemnification. Lessee shall defend, indemnify, and hold the City and its authorized representatives, agents, officers, and employees harmless from and against any and all actions, suits, claims, demands, penalties, fines, judgments, liabilities, settlements, damages, or other costs or expenses (including, without limitation, attorneys' fees, court costs, litigation expenses, and consultant and expert fees) resulting from, arising out of, or related to Lessee's occupation or use of the Premises or the occupation or use of the Premises by Lessee's employees, agents, servants, customers, contractors, subcontractors, sub-lessees, or invitees, including but not limited to all claims and demands arising out of any labor performed, materials furnished, or obligations incurred in connection with any improvements, repairs, or alterations constructed or made on the Premises and the cost of defending against such claims, including reasonable attorney fees. In the event that such a lien is recorded against the Premises, Lessee shall, at Lessee's sole expense within ninety (90) days after being served with written notice thereof, protect the City against said lien by filing a lien release bond or causing the release of such lien.

B. Environmental Indemnification. Lessee has had full opportunity to examine the Premises for the presence of any Hazardous Material (as hereafter defined) and accepts the Premises AS IS, WHERE IS, WITH ALL FAULTS. Lessee releases the City and its authorized representatives, agents, officers, and employees from any and all actions, suits, claims, demands, penalties, fines, judgments, liabilities, settlements, damages, or other costs or expenses (including, without limitation, attorneys' fees, court costs, litigation expenses, and consultant and expert fees) arising during or after the Lease Term, that result from the use, keeping, storage, or disposal of Hazardous Material in, on or about the Premises by Lessee, or that arise out of or result from Lessee's occupancy or use of the Premises or the use or occupancy of the Premises by Lessee's employees, agents, servants, customers, contractors, subcontractors, sub-lessees, invitees, or authorized representatives. This release includes, without limitation, any and all costs incurred due to any investigation of the Premises or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision, or by law or regulation. Lessee agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of Hazardous Material generated, kept or brought on the Premises by Lessee, its employees, agents, servants, customers, contractors, subcontractors, sub-lessees, invitees or authorized representatives.

Lessee shall defend, indemnify, and hold the City and its authorized representatives, agents, officers, and employees harmless from and against any claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorney's fees, court costs, litigation expenses, and consultant and expert fees) of whatever kind or nature, known or unknown, contingent or otherwise, arising in whole or in part from or in any way related to (i) the presence, disposal, release, or threatened release of any such Hazardous Material which is on or from the Premises, soil, water, ground water, vegetation, buildings, personal property, persons, animals, or otherwise; (ii) any personal injury or property damage arising out of or related to such Hazardous Material; (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Material; and (iv) any violation of any laws applicable to such Hazardous Material; provided, however, that the acts giving rise to the claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses arise in whole or in part from the use of, operations on, or activities on the Premises by Lessee or its employees, agents, servants, customers, contractors, subcontractors, sub-lessees, invitees, or authorized representatives.

As used in this Lease, "Hazardous Material" means any substance which is toxic, ignitable, reactive, or corrosive or which is regulated by any federal, state, or local law or regulation, as now in force or as hereafter may be amended from time to time, relating to the protection of human health or the environment, as well as any judgments, orders, injunctions, awards, decrees, covenants, conditions, or other restrictions or standards relating to the same. Hazardous Material includes any and all material or substances that are defined as "hazardous waste," "extremely hazardous waste," or a "hazardous substance" under any such law or regulation.

9. INSURANCE

Lessee shall procure and maintain, at Lessee's sole cost and expense, the following insurance policies with a reputable insurance company or companies satisfactory to the City:

(1) Commercial general liability insurance in respect of the Premises and the conduct of Lessee's business and operations, naming the City as an additional insured, with minimum limits of liability of One Million Dollars (\$1,000,000.00) per accident or occurrence for bodily injury and death, and property damage for each occurrence;

(2) Property insurance, insuring against loss or damage by fire and such other risks as are customarily included in the broad form of extended coverage, in an amount of coverage not less than the replacement value of the improvements on the Premises, if any, and on such terms as are satisfactory to the City;

(3) Personal property insurance covering Lessee's trade fixtures, furnishings, equipment, and other items of personal property of Lessee located on the Premises; and

(4) Workers compensation insurance, and such other insurance as is required by law.

All insurance required under this Lease shall contain an endorsement requiring thirty (30) days' advance written notice to the City before cancellation or change in the coverage, scope, or amount of any policy. Prior to commencement of the Lease term, Lessee shall provide the City with proof of the insurance required by this Section 9.

10. REMOVAL OF PROPERTY

Upon expiration or earlier termination of this Lease, at the option of the City, Lessee shall remove from the Premises, at Lessee's sole expense, all property Lessee has placed or caused to be placed on the Premises. Lessee shall repair any damage to the Premises caused by such removal and return the Premises as near as possible to its original condition as existed before such installation or improvement. All below surface installations, including pilings driven by Lessee or otherwise, shall become the property of the City upon this Lease's termination. All Lessee property that is not promptly removed by Lessee pursuant to the City's request and in any event within ninety (90) days of the date of expiration or termination of this Lease may be removed, sold, destroyed, or otherwise disposed of in any manner deemed appropriate by the City, all at Lessee's sole expense. Lessee hereby agrees to pay the City for such reasonable net expenses incurred by the Lessor. Notwithstanding any provision to the contrary in this Lease, all petroleum, fuel, or chemical storage tanks installed in or on the Premises during the Lease Term shall remain the property of the Lessee and, upon expiration or earlier termination of the Lease and upon request of the City, Lessee shall remove any and all such tanks and any and all contaminated soil and other materials from the Premises, all at Lessee's sole expense.

11. DEFAULT AND REMEDIES

A. Default. The occurrence of any of the following shall constitute a default and a breach of this Lease by the Lessee:

(i) The failure to make payment when due of any installment of Base Rent, Additional Charges, or of any other sum herein specified to be paid by the Lessee;

(ii) The failure to pay any taxes or assessments due from the Lessee to the City and in any way related to this Lease, the Premises, any improvements, or the Lessee's activities or business conducted thereon, including but not limited to any real property, personal property, or sales taxes;

(iii) An assignment for the benefit of Lessee's creditors or the filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of adjudicating Lessee a bankrupt, or for extending the time for payment, adjustment, or satisfaction of Lessee's liabilities, or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency, unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervision are dismissed, vacated, or otherwise permanently stated or terminated within thirty (30) days after the assignment, filing or other initial event;

(iv) The appointment of a receiver or a debtor-in-possession to take possession of the Premises (or any portion thereof) or of Lessee's interest in the leasehold estate (or any portion thereof) or of Lessee's operations on the Premises (or any portion thereof) by reason of Lessee's insolvency;

(v) The abandonment or vacation of the Premises or any portion thereof;

(vi) Execution, levy, or attachment on Lessee's interest in this Lease or the Premises, or any portion thereof;

(vii) The breach or violation of any statutes, laws, regulations, rules, or ordinances of any kind applicable to Lessee's use or occupancy of the Premises; or

(viii) The failure to observe or perform any covenant, promise, agreement, obligation, or condition set forth in this Lease, other than the payment of rent, if such failure shall not be cured within ten (10) days after written notice has been given to Lessee. Notices given under this subsection shall specify the alleged breach and the applicable Lease provision and demand that the Lessee perform according to the terms of the Lease. No such notice shall be deemed a forfeiture or termination of this Lease unless the City expressly makes such election in the notice.

B. Remedies. If the Lessee breaches any provision of this Lease, in addition to all other rights and remedies the City has at law or in equity, the City may do one or more of the following:

(i) Distrain for rent due any of Lessee's personal property which comes into the City's possession. This remedy shall include the right of the City to dispose of Lessee's personal property in a commercially reasonable manner. Lessee agrees that compliance with the procedures set forth in the Alaska Uniform Commercial Code with respect to the sale of property shall be a commercially reasonable disposal.

(ii) Re-enter the Premises, take possession thereof, and remove all property from the Premises. The property may be removed and stored at Lessee's expense, all without service of notice or resort to legal process, which Lessee waives, and without the City becoming liable for any damage that may result unless the loss or damage is caused by the City's negligence in the removal or storage of the property. No re-entry by the City shall be deemed an acceptance of surrender of this Lease. No provision of this Lease shall be construed as an assumption by the City of a duty to re-enter and re-let the Premises upon Lessee's default. If Lessee does not immediately surrender possession of the Premises after termination by the City and upon demand by the City, the City may forthwith enter into and upon and repossess the Premises and expel Lessee without being deemed guilty in any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent or breach of covenant;

(iii) Declare this Lease terminated;

(iv) Recover, whether this Lease is terminated or not, reasonable attorney's fees and all other expenses incurred by the City by reason of the default or breach by Lessee;

(v) Recover an amount to be due immediately upon breach equal to the sum of all Base Rent, Additional Charges, and other payments for which Lessee is obligated under the Lease;

- (vi) Recover the costs of performing any duty of Lessee in this Lease;
- (vii) Collect any and all rents due or to become due from sublessees or other occupants of the Premises.

12. SUBSIDENCE

The City shall not be responsible for any washout, subsidence, avulsion, settling, or reliction to the Premises, or for any injury caused thereby to Lessee's or any sublessee's property, or that of any other person. The City is not obligated to replace, refill, or improve any part of the Premises during Lessee's occupancy in the event of such washout, subsidence, avulsion, settling, or reliction. Lessee shall not be responsible for any such event, and shall not be required to repair any damage resulting therefrom.

13. VACATION BY LESSEE

Upon the expiration or sooner termination of this Lease, Lessee shall peaceably vacate the Premises and the Premises shall be returned to the City by Lessee together with any alterations, additions, or improvements made after the Commencement Date, unless the City requests that they be removed from the Premises. Upon such vacation, Lessee shall remove from the Premises any items of personal property brought on to the Premises. Any such property not removed from the Premises within thirty (30) days of the expiration or termination of this Lease shall become the property of the City at no cost or charge to the City, and may be removed, sold, destroyed, or otherwise disposed of in any manner deemed appropriate by the City, all at Lessee's sole expense. Lessee hereby agrees to pay the City for such expenses.

14. RESERVATION OF RIGHTS

The City reserves the right to designate and grant rights-of-way and utility easements across the Premises without compensation to Lessee or any other party, including the right of ingress and egress to and from the Premises for the construction, operation, and maintenance of utilities and access, provided that Lessee shall be compensated for the taking or destruction of any improvements on the Premises. Lessee shall be responsible for requesting a rental adjustment to reflect any reduction in the value of the Premises.

15. SIGNS

No signs or other advertising symbols, canopies, or awnings shall be attached to or painted on or within the Premises without first obtaining the City Manager's approval; provided, however, that this prohibition shall not apply to standard, directional, informational, and identification signs of two square feet or less in size. At the termination of this Lease, or sooner, all such signs, advertising matter, symbols, canopies, or awnings, attached or painted by Lessee shall be removed from the Premises by Lessee at its own expense, and Lessee shall repair any damage or injury to the Premises, and correct any unsightly conditions caused by the maintenance or removal of said signs.

16. HOLDING OVER

If Lessee, with the City's written consent, remains in possession of the Premises after the expiration or termination of the Lease Term for any cause, or after the date in any notice given by the City to Lessee terminating this Lease, such holding over shall be deemed a tenancy from month to month at the same rental amount applicable immediately prior to such expiration or termination, subject to adjustment in accordance with CMC § 5.22.040(c) or such successor provision of the code then in effect, and shall be terminable on 30 days' written notice given at any time by either party. All other provisions of this Lease except those pertaining to term and rent shall apply to the month-to-month tenancy. If Lessee holds over without the City's express written consent, Lessee is deemed to be a Lessee at sufferance and

may be removed through a forcible entry and detainer proceeding without service on Lessee of a notice to quit.

17. EMINENT DOMAIN

If the whole or any part of the Premises shall be taken for any public or quasi-public use, under any statute or by right of eminent domain or private purchase in lieu thereof by a public body vested with the power of eminent domain, then the following provisions shall be operative.

A. Total Taking. If the Premises are totally taken by condemnation, this Lease shall terminate.

B. Partial Taking. If the Premises are partially taken by condemnation, and the remaining space is suitable for Lessee's uses, then this Lease shall continue and the rent as specified in Section 3 above shall be abated in a proportion equal to the ratio that the portion of the Premises taken bears to the total Premises leased hereunder.

C. Award. Upon condemnation, the parties shall share in the award to the extent that their interests, respectively, are depreciated, damaged, or destroyed by the condemnation.

18. COSTS

Lessee shall be liable to and shall pay the City for the fees and costs incurred by the City in connection with the preparation, operation, and enforcement of this Lease.

19. MISCELLANEOUS

A. Time Is of the Essence. Time is of the essence of this Lease and of each provision hereof.

B. Entire Agreement. This Lease represents the entire agreement between the parties with respect to the subject matter hereof, and may not be amended except in writing executed by the City and Lessee.

C. Governing Law and Venue. This Lease shall be subject to the provisions of the Code now or hereafter in effect. This Lease shall be governed by and construed in accordance with Alaska law and any action arising under this Lease shall be brought in a court of competent jurisdiction in Cordova, Alaska.

D. Relationship of Parties. Nothing in this Lease shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between Lessee and the City. Neither the method of computation of rent, nor any other provisions contained in this Lease, nor any acts of the parties shall be deemed to create any relationship between the City and Lessee other than the relationship of Lessee and landlord.

E. Notice. All notices hereunder may be hand-delivered or mailed. If mailed, they shall be sent by certified or registered mail to the following respective addresses:

TO CITY:

**City of Cordova
Attn: City Manager
P.O. Box 1210
Cordova, Alaska 99574**

TO LESSEE:

**Prince William Sound Science & Technology
Institute, d/b/a Prince William Sound Science
Center
Attn: President
P.O. Box 705**

Cordova, Alaska 99574

or to such other respective addresses as either party hereto may hereafter from time to time designate in advance in writing to the other party. Notices sent by mail shall be deemed to have been given when properly mailed, and the postmark affixed by the U.S. Post Office shall be conclusive evidence of the date of mailing. If hand-delivered, notice shall be deemed to have been made at the time of delivery.

F. Captions. Captions herein are for convenience and reference and shall not be used in construing the provisions of this Lease.

G. No Waiver of Breach. No failure by the City to insist upon the strict performance of any term, covenant, or condition of this Lease, or to exercise any right or remedy upon a breach thereof, shall constitute a waiver of any such breach or of such term, covenant, or condition. No waiver of any breach shall effect or alter this Lease, but each and every term, covenant, and condition of this Lease shall continue in full force and effect with respect to any other existing or subsequent breach.

H. Survival. No expiration or termination of this Lease shall expire or terminate any liability or obligation to perform which arose prior to the termination or expiration.

I. Partial Invalidity. If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

J. Successors and Assigns. The terms, covenants, and conditions in this Lease shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the City and Lessee.

K. Estoppel Certificates. Either party shall at any time and from time to time, upon not less than ten (10) days' prior written request by the other party, execute, acknowledge, and deliver to such party a statement certifying that this Lease is unamended and in full force and effect (or, if there has been any amendment, that the same is in full force and effect as amended and stating the amendments); that there are no defaults existing (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the rent and other charges have been paid in advance.

L. Recordation of Lease. The parties agree that this Lease shall not be recorded, but upon the request of either party, the other party will join the requesting party in executing a memorandum of lease in a form suitable for recording, and each party agrees that such memorandum shall be prepared and recorded at the requesting party's expense.

M. Authority. Lessee represents that Lessee is a nonprofit corporation duly organized, validly existing, and in good standing under the laws of the State of Alaska, and is duly authorized to do business in the State of Alaska, and that Lessee has all necessary power and is duly authorized to enter into this Lease and to carry out the obligations of Lessee hereunder. Prior to executing this Lease, the City may request that Lessee provide the City with a resolution of Lessee's Board of Directors authorizing Lessee to enter into this Lease and to carry out its obligations hereunder as set forth above, and authorizing and directing the officer of Lessee whose name and signature appear at the end of this Lease to execute this Lease on Lessee's behalf.

N. No Third Party Beneficiaries. Nothing in this Lease shall be interpreted or construed to create any rights or benefits to any parties not signatories or successors or permitted assigns of signatories to this Lease.

O. Interpretation. The language in all parts of this Lease shall in all cases be simply construed according to its fair meaning and not for or against the City or Lessee as both City and Lessee have had the assistance of attorneys in drafting and reviewing this Lease.

P. Counterparts. This Lease may be executed in counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

Q. Attorneys' Fees. In the event that the City shall bring any suit or action to enforce this Lease or any term or provision hereof, and shall prevail in such suit or action, Lessee agrees that Lessee shall pay the City's attorneys' fees, costs, and expenses incurred in connection with such suit or action.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed on the date first noted above.

CITY:

CITY OF CORDOVA
an Alaska municipal corporation

Dated: _____

By: _____
Its: City Manager

Attest: _____
City Clerk

LESSEE:

PRINCE WILLIAM SOUND SCIENCE AND TECHNOLOGY INSTITUTE
an Alaska nonprofit corporation d/b/a Prince William Sound Science Center

Dated: _____

By: _____
Its: _____

**Exhibit A
Diagram of Premises**

DRAFT