


SUBJECT: INFORM THE ASSEMBLY OF THE BOROUGH'S INTENT TO ENTER INTO A TEMPORARY LAND USE PERMIT FOR A FIVE-YEAR TERM WITH THE UNIVERSITY OF ALASKA FOR AN EXISTING SEISMIC RECORDING SYSTEM LOCATED ON BOROUGH OWNED LAND, KNOWN AS LOT 3A, GLACIER VIEW SCHOOL SITE, PLAT NO. 76-102, PALMER RECORDING DISTRICT, SEWARD MERIDIAN, ALASKA (MSB007591).

AGENDA OF: November 17, 2020

ASSEMBLY ACTION:

Presented to the Assembly

11-17-20 

MANAGER RECOMMENDATION: For information only.

APPROVED BY GEORGE HAYS, ACTING BOROUGH MANAGER:

George Hays

Route To:	Department/Individual	Initials	Remarks
	Originator	<i>HKM 10/27/2020</i>	
	Community Development Director	<i>EP 10/27/2020</i>	
	Finance Director	<i>CX</i>	
<i>for</i>	Borough Attorney	<i>DM 10/27/20</i>	
	Borough Clerk	<i>BAA for LRM 11-9-20</i>	

ATTACHMENT (S): Temporary Land Use Permit (14 pp)

SUMMARY STATEMENT:

As directed by Borough administration, this is to inform the Assembly of the Borough's intent to enter into a Temporary Land Use Permit for a five-year term with the University of Alaska. Pursuant to MSB 23.05.060, the Acting Borough Manager waived the application permit fees as it is in the best interest of the Borough and Alaskan residents. The request is for the use of a 20' by 20' area on Borough owned land, located at the Glacier View School Site property.

The University of Alaska Land Department request is to continue the use of an existing seismic recording system on the Glacier View School Site property funded by Incorporated Research Institutions for Seismology, for the Earth Scope USArray project. The Glacier View School principal executed the existing permit on March 6, 2016, with an extension until October 31, 2020.

The University of Alaska recognized the importance of the seismic monitoring stations located throughout Alaska. Therefore, the Earth Scope USArray project will transition up to 100 seismic stations to the University of Alaska for its integration of the seismic stations into the routine operations of the Alaska regional seismic network. This allows the University of Alaska and Alaska Earth Quake Center to continue its earthquake, volcano, and tsunami monitoring in Alaska providing valuable information to other agencies, the public, emergency managers, scientists, and engineers throughout Alaska.



Matanuska-Susitna Borough

COMMUNITY DEVELOPMENT DEPARTMENT LAND & RESOURCE MANAGEMENT DIVISION

TEMPORARY LAND USE PERMIT

SECTION 1. PARTIES.

The Matanuska-Susitna Borough (hereinafter called the "BOROUGH"), a municipal corporation organized and existing under the laws of the state of Alaska whose address is 350 East Dahlia Avenue, Palmer, Alaska 99645, hereby permits the University of Alaska, a corporation organized and existing under the laws of the state of Alaska, whose address is Post Office Box 755280, Fairbanks, Alaska 99775-5280, (hereinafter called the "PERMITTEE"), the use of Borough-owned land subject to the terms and conditions set forth herein.

SECTION 2. PERMIT.

This permit does not convey any interest in the Property. The permit authorizes the temporary use of the Property by the PERMITTEE only for the authorized activities and is subject to the conditions set forth in this permit.

SECTION 3. PROPERTY.

The PERMITTEE is authorized to use a portion of the real property described as follows:

Lot 3A, Glacier View School Site, Plat No. 76-102, recorded in the Palmer Recording District, Seward Meridian, Alaska, with the GPS Coordinates shown on the attached map as Exhibit A, (hereinafter called the "Property") that covers approximately a 20' X 20' area.

SECTION 4. ACTIVITIES.

- A. This permit authorizes the PERMITTEE the non-exclusive use of the Property at the location for the continued use of an existing seismic monitoring station that records earthquakes, tsunamis, and volcanic activities in Alaska that provides definitive earthquake information to the public, emergency managers, scientists, and engineers.
- B. This permit is issued to maintain and repair the existing seismic monitoring station. Commercial use or use of the property for personal gain is prohibited.
- C. All activities shall be conducted in a manner to minimize disturbance of the Property and not cause changes in the character of the land, or damage to the watercourses, shorelines, natural drainage patterns, or vegetation.

SECTION 5. PERMIT FEE.

Pursuant to MSB 23.05.060, Fees, and the seismic monitoring station data providing improved earthquake sources and accurate earthquake notification used by many Alaska agencies for hazardous monitoring of earthquakes, volcanos, and tsunami activities within the state, the permit fee and land use permit fee is waived during the term of Land Use Permit.

SECTION 6. PERMIT TERM.

This permit is valid for a five-year term from the date of execution by the BOROUGH. Reissuance is not automatic and at the end of the term. The BOROUGH will require the PERMITTEE to apply for a new permit.

The PERMIT Term and all obligations under this lease are subject to annual appropriations of funds by the University of Alaska. If annual appropriation of funds is not budgeted in the succeeding fiscal year, the PERMITTEE will give the Landlord thirty (30) days' notice and the PERMIT is terminated by mutual agreement, without default. The PERMITTEE will remove its equipment as stated in Section 18 of the PERMIT.

SECTION 7. CASH BOND.

Not required.

SECTION 8. INSURANCE REQUIREMENTS.

The University of Alaska operates as a self-insured entity. Attached as Exhibit B is the University of Alaska letter of self-insurance. The PERMITTEE shall maintain and in force at all times during the term of the permit, the minimum insurance General Liability coverage of not less than \$500,000 combined single limit per occurrence and the general aggregate limit of \$500,000 covering the premises in the Land Use Permit, Exhibit A. The University of Alaska shall maintain workers' compensation that shall be statutory as required by the State of Alaska.

SECTION 9. PERMIT CONDITIONS.

The following conditions apply to this permit:

- A. The PERMITTEE must meet the qualifications listed in MSB 23.10.090.
- B. The PERMITTEE hereby guarantees and assumes full and exclusive responsibility for all damages or losses to the property, fixtures, and equipment belonging to the BOROUGH if caused by PERMITTEE or its staff, agents, or guests during the term of the occupancy. Any and all repairs will be done by a properly licensed, bonded, and insured contractor preapproved by the BOROUGH.

- C. The PERMITTEE hereby guarantees and assumes full and exclusive responsibility for the safety of persons and property, without limitation, and members of the public engaged in activities with PERMITTEE at the Property. The BOROUGH is not responsible for any lost, stolen, or misplaced personal items or equipment of the PERMITTEE or invitees.
- D. No changes or modifications to the Borough land may be made, except as specifically authorized in writing by the BOROUGH.
- E. The condition of the Property at the end of this permit term shall be in at least equal or better condition as at the beginning of this permit term.
- F. The discharge of firearms is prohibited on the Property except for personal protection.
- G. The use of explosives, including fireworks, is strictly prohibited on the Property.
- H. Fuel Storage/Hazardous Materials
 - 1. The storage of petroleum products is prohibited on the Property.
 - 2. The use or storage of hazardous, toxic, or persistent chemicals is prohibited on the Property.
 - 3. The use of pesticides for mosquito abatement is prohibited on the Property unless specifically approved by the BOROUGH.
 - 4. Fuel spills or contamination of the water, land, or building will be controlled and recovered immediately by the PERMITTEE and reported to the BOROUGH and as required by law to the State of Alaska, Department of Environmental Conservation.
- I. Open fires are strictly prohibited on the Property. The PERMITTEE shall be prepared to control and suppress fires at all times. In the event of a fire, the PERMITTEE shall take immediate action to suppress uncontrolled fires on the Property and shall immediately report an uncontrolled fire to 1) appropriate fire officials, and 2) the BOROUGH.
- J. The PERMITTEE shall avoid damaging trees and natural vegetation.
- K. Bear conflict. The PERMITTEE shall take necessary precautions to minimize the likelihood of bear-caused property damage or human injury. Remove all food waste and garbage, at a minimum on a weekly basis, and store all food in a secure manner so as not to attract bears or other wildlife.

SECTION 10. STRUCTURES AND RESTRICTING ACCESS.

Other than the existing seismic monitoring station that occupies approximately 20' X 20' area, no permanent structures shall be erected on the Property by the PERMITTEE other than as specifically authorized in this permit, or by subsequent written amendment as then agreed. Prior to any construction, digging, or contouring, all utility and service lines will be located. Service lines may include gas, septic, water, telephone/communications, and electric. The PERMITTEE shall not place or install any gate or structure on any portion of the Property, or adjacent property controlled by the BOROUGH, that would restrict public use or access to public lands.

SECTION 11. SAFETY.

The PERMITTEE hereby guarantees and assumes full and exclusive responsible for the safety of all persons using the Property under this permit and agrees to provide all users with information regarding rules and regulations and other information pertaining to the Property and the permit.

SECTION 12. SITE CLEARING/CONTOURING/DISTURBANCE.

The PERMITTEE, except as already authorized by this permit, must obtain written authorization from the BOROUGH prior to any site clearing or contouring on the Property. All activities shall be conducted in a manner that will minimize disturbance of drainage systems, changing the character of, or polluting and silting of waterbodies and marshes, or disturbance of fish and wildlife resources. Due care shall be used to avoid excessive scarring or removal of ground vegetation cover. Any activity causing harm or disturbance beyond authorized use under this permit that is not restored immediately, is subject to corrective action as may be required by the BOROUGH. The Borough may prohibit the disturbance of vegetation within 300 feet of any waters located in specially designated areas except at designated crossings.

SECTION 13. SANITATION.

The PERMITTEE shall adhere to the following sanitation requirements:

- A. The Property shall be kept in a clean and sanitary condition, including all waste which shall be properly handled and disposed of in a manner to not adversely affect the land or infrastructure thereon, and every effort shall be made to prevent the pollution of any water, land, and building.
- B. Toilets and/or septic facilities shall be maintained in clean, working order and will be provided and maintained for staff or the public, as needed, in accordance with the State of Alaska, Department of Environmental Conservation, regulations, if applicable.
- D. Grey water may not be discharged on the ground.

- E. The burial of trash or animals is strictly prohibited. Trash, animal waste and disposal of deceased animals, if any, generated from the activities under the permit shall be removed and disposed of properly at an approved landfill or transfer site or a commercial waste management operator. Trash shall not be allowed to accumulate more than weekly and in any event shall be stored in such a manner as not to attract wildlife or become a nuisance.

SECTION 14. ACCESS.

All designated public travel routes must be kept open to traffic and may not be blocked or re-routed by the PERMITTEE, to include the thirty-three (33) feet wide section line easement on Borough-owned land located on the west boundary of the Property. Restriction of any public route is disallowed unless otherwise authorized in writing by the BOROUGH or other state or federal authority.

The PERMITTEE acknowledges the Matanuska-Susitna Borough School District has full management authority of the Property and controls the ingress and egress access to the Property site.

SECTION 15. INSPECTIONS.

- A. The PERMITTEE shall have a representative available to receive, on behalf of the PERMITTEE, any notices and instructions given by an authorized Borough administrator in regard to performance under this permit to take such action thereon as required by the terms of this permit.
- B. The PERMITTEE shall pay all travel costs associated with site inspections performed by the BOROUGH when the inspection is necessary due to a complaint or report that the PERMITTEE is in violation of permit terms or conditions. The inspection fee will be a minimum of fifty dollars (\$50).
- C. A final inspection of the Property shall be performed by the BOROUGH on or after the expiration date of the permit to determine the condition of the Property. The Property shall be cleared of all personal property, materials, equipment, and structures owned by the PERMITTEE, and waste that the PERMITTEE placed or caused to be placed on the Property. If materials, equipment, structures, or personal property are not removed by the expiration date, it may become the property of the BOROUGH and may be used or otherwise disposed of by the BOROUGH without obligation to the PERMITTEE.

SECTION 16. TERMINATION FOR CAUSE.

The BOROUGH may terminate this permit immediately with cause, which may result in a claim for damages by the BOROUGH and other civil or criminal penalties as applicable under the law. The term "cause" means any violation of permit conditions, or any violation of applicable

Borough Code, statutes, or regulations, or a situation in which a continuance of the activity poses a threat to the public health, safety, or welfare. If the permit is terminated for cause, the PERMITTEE shall have thirty days (30 days) to vacate the Property.

Termination of this permit for cause will disqualify the PERMITTEE from receiving a permit or lease from the BOROUGH for five (5) years (MSB 23.10.090).

SECTION 17. TERMINATION OR SUSPENSION FOR CONVENIENCE.

This permit may be suspended or terminated by the BOROUGH without cause for convenience. If this permit is terminated without cause, the PERMITTEE shall be given a minimum of 30 days' notice to vacate the Property.

SECTION 18. REMOVAL OF IMPROVEMENTS UPON TERMINATION OR EXPIRATION.

Upon notice of termination or thirty (30) days prior to expiration, any fixtures, improvements, and personal property belonging to the PERMITTEE shall be removed within the thirty (30) day timeframe.

If the fixtures, improvements, and personal property remain after termination or expiration, and an agreed upon extension is executed in writing, PERMITTEE shall pay to the BOROUGH \$50 per month from the termination date until the fixtures and improvements above and below ground and personal property are removed, including any concrete pads.

If the PERMITTEE fails to remove the fixtures, improvements, and personal property at the end of the thirty (30) days where no extension has been granted, or at the end of such other period authorized by the BOROUGH, PERMITTEE shall be in trespass and such fixtures, improvements, and personal property shall be deemed unauthorized and subject to removal by the BOROUGH.

If the PERMITTEE fails to perform after the termination or expiration of the permit, or any extension granted, the BOROUGH shall seek remedy for any expenses incurred for the PERMITTEE'S failure to perform.

SECTION 19. COMPATIBLE USES.

The BOROUGH reserves the right to permit other land use in the permit area, provided the BOROUGH determines that such use will not unduly impair the purpose or conditions of this permit.

SECTION 20. NO TRANSFER/SUBDIVIDING/ENCUMBER.

A. This permit may not be transferred or assigned.

B. No rights to sublease, subdivide, or encumber the Property have been granted to the PERMITTEE.

SECTION 21. DEFENSE AND INDEMNIFICATION.

The PERMITTEE, subject to a specific appropriation by the legislature for this purpose, shall indemnify, defend, and hold and save the BOROUGH, its elected and appointed officers, agents, and employees harmless from any and all claims, demands, suits, or liability of any nature, kind, or character, including costs, expenses, and attorney's fees, arising from PERMITTEE'S activities under this Permit. The PERMITTEE shall be responsible under this clause for any and all legal actions or claims of any character resulting from injury, death, economic loss, damages, violation of statutes, ordinances, constitutions, or other laws, rules, or regulations, contractual claims, or any other kind of loss, tangible or intangible, sustained by any person or property arising from the PERMITTEE's or PERMITTEE'S officers, agents, employees, partners, attorneys, suppliers, subcontractors, or volunteers performance or failure to perform this agreement in any way whatsoever. In the event that this obligation cannot be met within the parameters of limitations of PERMITTEE'S existing legislative appropriations, PERMITTEE will make a good faith effort to obtain sufficient legislative appropriations or other government authorization in accordance with *Zerbetz v. Alaska Energy Systems*, 708 P.2d 1270 (Alaska 1985) and *Pan-Alaska Const., Inc. v. State, Dep't of Admin.*, 1991 WL 11657746. This defense and indemnification responsibility includes claims alleging acts or omissions by the BOROUGH or its agents which are said to have contributed to the loss, failure, violation, or damages, but does not preclude application as of AS 09.17.080 to such claims. The PERMITTEE shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the BOROUGH, its agents, or its employees.

SECTION 22. PERMITS; LAWS.

The PERMITTEE shall acquire and maintain in good standing all permits, licenses, and other entitlement necessary to the performance under this permit. All actions taken by the PERMITTEE under this permit shall comply with all applicable statutes, ordinances, rules, and regulations.

SECTION 23. PROPERTY DAMAGE.

The PERMITTEE shall be liable for damage to any Borough-owned property resulting from the activities. Damages resulting from the activity shall be repaired or replaced by the PERMITTEE to its original condition and to the satisfaction of the BOROUGH.

SECTION 24. CULTURAL RESOURCES.

The PERMITTEE shall not disturb historic or prehistoric resources. Should historic or prehistoric sites or items be discovered on the Property, or on the adjacent Borough-owned land, the PERMITTEE shall notify the BOROUGH as soon as possible.

SECTION 25. SUITABILITY.

The BOROUGH does not represent or guarantee the safety, suitability, or condition of the Property for the PERMITTEE'S intended uses.

SECTION 26. SUPERVISION.

The PERMITTEE shall maintain adequate supervision to ensure that the terms and conditions of this permit and applicable federal, state and Borough laws, rules, and regulations are followed.

SECTION 27. MODIFICATIONS.

The parties may mutually agree to modify the terms of the permit. All modifications to the permit shall be incorporated by written amendments to this permit executed by both parties.

SECTION 28. JURISDICTION; CHOICE OF LAW.

Any civil action arising from this permit shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Palmer. The law of the state of Alaska shall govern the rights and obligations of the parties.

SECTION 29. NON-WAIVER.

The failure of the BOROUGH at any time to enforce a provision of this permit shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this permit or any part thereof, or the right of the BOROUGH thereafter to enforce each and every protection hereof.

SECTION 30. TITLES.

The titles of the sections in this permit are for identification purposes; they are not to be interpreted as limitations on the terms of the permit.

SECTION 31. FORCE MAJEURE.

Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof. Forces majeure include any interruption, suspension, or interference with the project caused by acts of God, acts of the public enemy, wars, blockades, insurrections, riots, and similar occurrences.

SECTION 32. PERMIT ADMINISTRATION.

- A. The Borough Manager has designated the Borough's Community Development Department Director as representative of the BOROUGH administering this permit.
- B. The PERMITTEE'S activities shall be administered, supervised, and directed by:

Name: Dian Siegfried, Property Manager, UAF, Land Management
Address: Post Office Box 755280, Fairbanks, Alaska 99775-5280
Email: dsiegfried@alaska.edu
Phone: 907.450.8133

In the event the individual named is unable to serve for any reason, the PERMITTEE shall provide written notification to the BOROUGH of their appointed successor. Any notices sent to the PERMITTEE shall be effective based on the most recent written notification of the PERMITTEE'S authorized representative received by the BOROUGH.

SECTION 33. SEVERABILITY.

If any section or clause of this permit is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of the permit shall remain in full force and effect.

SECTION 34. INTEGRATION.

This permit and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this permit shall supersede all previous communications, representations, or agreements, either oral or written, between the parties.

SECTION 35. NOTICES.

All notices shall be sent to both parties as follows:

MATANUSKA-SUSITNA BOROUGH

Land Management Division
Attn: Asset Manager
350 East Dahlia Avenue
Palmer, AK 99645

PERMITTEE

UA, Land Management
Attn: Dian Siegfried, Property Manager
Post Office Box 755280
Fairbanks, Alaska 99775-5280

SECTION 36. CONSTRUCTION.

The PERMITTEE acknowledges that the PERMITTEE has read and understands the terms of this permit, and has had the opportunity to review the same with counsel of their choice, and is executing this permit of their own free will.

PERMITTEE:
University of Alaska

Michelle Rizk, Date
Chief Strategy, Planning & Budget Officer

ACKNOWLEDGEMENT OF PERMITTEE

STATE OF ALASKA)
)ss.
Fourth Judicial District)

THIS IS TO CERTIFY that on this _____ day of _____, 2020, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared, Michelle Rizk, Chief Strategy, Planning & Budget Officer, of the University of Alaska, known to me to be the identical individual who executed the foregoing instrument, and they acknowledged before me that they executed the Temporary Land Use Permit as the free and voluntary act of said corporation, with full authority to do so and with full knowledge of its contents, for the uses and purposes therein mentioned.

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

[NOTARY SEAL]

Notary Public for State of Alaska
My commission expires: _____

Im 20-216

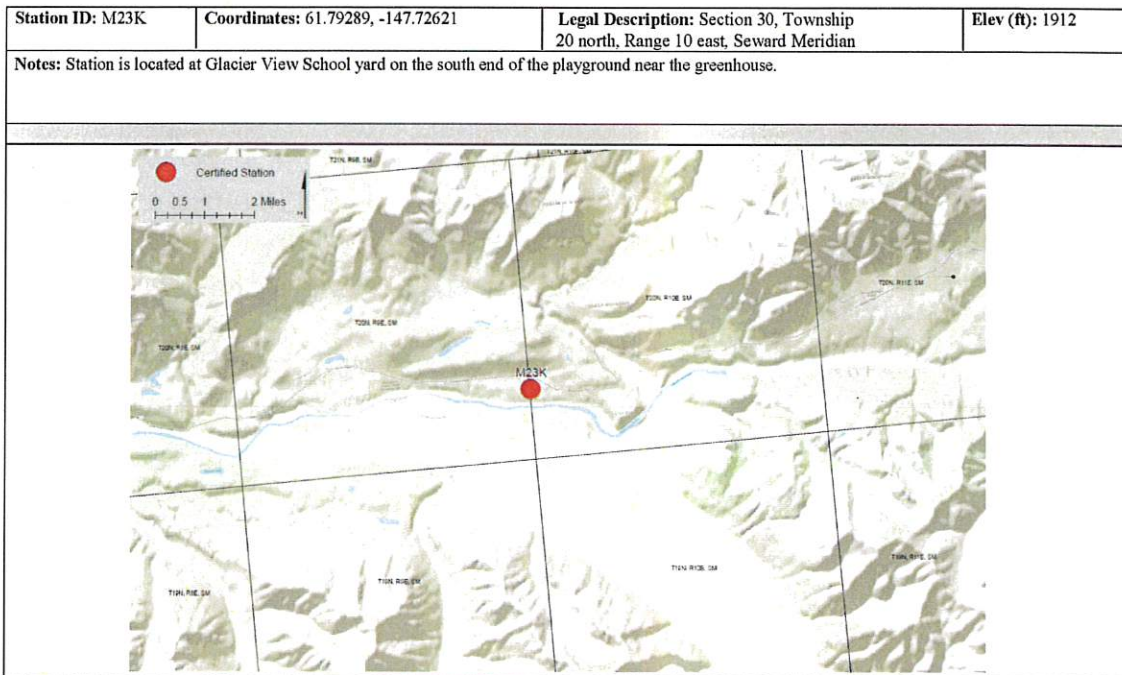
EXHIBIT A

LEGAL DESCRIPTION

Lot 3A, Glacier View School Site, Plat No. 76-102, recorded in the Palmer Recording District, Seward Meridian, Alaska, with the GPS Coordinates shown on the map as Exhibit A, (hereinafter called the "Property") that covers approximately a 20' X 20' area.



Station Report



Page 1 of 2

Im 20-216

North



West



East



South

EXHIBIT B

[INSERT LETTER OF SELF INSURANCE]