

Introduced by: Mayor
Date: 03/14/23
Action: Adopted
Vote: 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2023-028**

A RESOLUTION AUTHORIZING THE BOROUGH TO ENTER INTO A TWO-YEAR LEASE AGREEMENT WITH A MONTH-TO-MONTH RENEWAL OPTION WITH TKC, LLC, FOR THE OCCUPANCY OF COMMERCIAL OFFICE SPACE NECESSARY FOR DAILY OPERATIONS OF THE KENAI PENINSULA BOROUGH RISK MANAGEMENT DEPARTMENT

- WHEREAS,** the Borough Risk Management Department (“Risk”) has been displaced from its current location on the Borough Administration Campus because it is unsafe for occupancy due to significant structural problems; and
- WHEREAS,** an extensive internal review of existing office spaces was conducted of Borough-owned and managed facilities in the Soldotna area; and
- WHEREAS,** no existing Borough-owned or managed office spaces were identified as being suitable to meet Risk’s needs; and
- WHEREAS,** Land Management was retained to assist in locating private commercial office space available for lease to satisfy Risk’s needs through a real property need questionnaire; and
- WHEREAS,** after review of eight available properties, TKC, LLC’s commercial office space located at 170 North Birch Street, Suite 103 in Soldotna, containing approximately 1,190 square feet at a monthly rate of \$2,300 (or annual rate of \$27,600) was identified as a property meeting Risk’s requirements; and
- WHEREAS,** pursuant to KPB 17.10.040, assembly approval of the acquisition of interests in lands must be by resolution upon receipt of a planning commission recommendation; and
- WHEREAS,** there are limited commercial office spaces available in the Soldotna area that meet Risk’s requirements; accordingly, it is necessary to secure the lease on an expedited basis while the office space is available; and
- WHEREAS,** due to the expedited timeline necessary to secure the lease, and temporary nature of the lease, an exception to the Planning Commission recommendation has been requested; and

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Borough is authorized to lease from TKC, LLC, the real property located in the Kenai Recording District, Third Judicial District, State of Alaska, more particularly described as follows:

Suite 130, containing approximately 1,190 square feet of office space located at 170 N. Birch Street, Soldotna, AK, 99669, being situated on Lot 12A, Block 6, Soldotna Junction Subdivision Indcom Replat, Seward Meridian, Kenai Recording District, State of Alaska.

SECTION 2. That the purpose of the acquisition is for office space necessary for daily operations of the Kenai Peninsula Borough Risk Management Department.

SECTION 3. That the monthly rental will be \$2,300 for the initial two-year term of the lease. The lease will automatically renew on a month-to-month basis for a period up to one year, subject to a 4% increase in the third year; unless either party gives written notice of termination no later than sixty days prior to the end of the term or renewal term. The terms and conditions of the lease will be substantially similar to those of the accompanying draft lease agreement and the terms and conditions of this resolution.

SECTION 4. That no land classification is proposed for this leased property.

SECTION 5. That expenditures for the lease will be charged to account number 700-11234-00000-43810.

SECTION 6. That the assembly makes an exception to KPB 17.10.040(A) requiring a planning commission recommendation prior to assembly approval. This exception is based on the following findings of fact pursuant to KPB 17.10.230:

1. Special circumstances or conditions exist.
 - A. Risk's regular office space is unsafe for occupancy due to significant structural problems
 - B. An expedited timeframe is required to secure operating space for Risk because there are limited commercial office spaces available in the Soldotna area that meet Risk's requirements.
 - C. The lease is temporary in nature.

2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of KPB Chapter 17.10.

A. Starting in 2018, Risk lacked permanent offices. Risk personnel then were required to move multiple times until the fall of 2022, when Risk moved into its current offices, only to be displaced again because those offices became unsafe for occupancy due to significant structural problems.

B. Since Risk's displacement about ninety days ago, the current members of Risk are unable to work in the same location. Presently, the Risk Manager is housed in the Mayor's Office suite, the Safety Manager is housed in Information Technology, and the Environmental Compliance Manager and Administrative Assistant are working from home. Further, Risk is preparing to hire two more members, with no space to house them presently available.

C. Risk has an overdue and necessary need for consolidated office space where all members of Risk are able to work together and collaborate in order to most effectively accomplish its mission. Shared office space is critical for efficiency and productivity, as well as the preservation and enjoyment of a collegial teamwork environment.

D. This is the most practical manner of complying with the intent of KPB Chapter 17.10.

3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.

A. The procurement of the space was conducted on the open market.

B. The proposed use is allowable by zoning and consistent with uses in the area.

SECTION 7. That the mayor is authorized to execute all documents for a lease agreement substantially similar to the draft lease agreement submitted with this resolution and to make all agreements deemed necessary in accordance with this resolution.

SECTION 8. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 14TH DAY OF MARCH, 2023.

Brent Johnson
Brent Johnson, Assembly President

ATTEST:

Michele Turner
Michele Turner, CMC, Acting Borough Clerk



Yes: Chesley, Cox, Ecklund, Elam, Hibbert, Ribbens, Tupper, Johnson
No: None
Absent: Derkevorkian

LEASE

This Lease, made this _____ day of March, 2023, is by and between TKC, LLC, (“Lessor”) and the KENAI PENINSULA BOROUGH (“Lessee”) pursuant to KPB Resolution 2023-_____ (together, the “Parties”).

WITNESSETH:

1. **Premises.** Lessor, for and in consideration of the rents, covenants, and conditions hereinafter specified to be paid by Lessee, does hereby lease to Lessee, the real estate located in the Kenai Recording District, Third Judicial District, State of Alaska, more particularly described as follows:

Suite 130, containing approximately 1,190 square feet of office space located at 170N. Birch Street, Soldotna, AK, 99669, being situated on Lot 12A, Block 6, Soldotna Junction Subdivision Indcom Replat, Seward Meridian, Kenai Recording District, State of Alaska (the “Premises”).

for the purpose of providing office space for the Kenai Peninsula Borough Risk Department (“Risk”).

2. **Term.** The initial term of this Lease will be for one year commencing on the 15th day of March, 2023, through and including the 30th day of March 2025, unless sooner terminated.

The Lessee will have the option to renew this Lease on a month-to-month basis for an additional one-year term.

3. **Rental.** In consideration of the rental of the Premises by Lessor, the Lessee covenants to pay to the Lessor, as rental for the Premises described in Paragraph 1 above, the sum of two thousand three hundred dollars (\$2,300.00) per month, in advance, on the first day of each and every month. All payments, unless and until otherwise directed in writing by Lessor, will be paid to the Lessor. The monthly rental rate will remain the same in first and second years.

4. **Covenants of Lessee.** The Lessee hereby covenants and agrees:

A. **To pay rent:** The Lessee will pay the rent specified at the times and in the manner set out in Paragraph 3 herein, except only in the case of fire or other casualty as herein provided.

B. **Not to assign.** Lessee will not assign, sublet or part with the possession of all or any part of the Premises without the prior written consent of the Lessor. Such consent will not be unreasonably withheld by Lessor.

- C. To permit Lessor to enter. Lessee will allow the Lessor, on written notice at least twenty-four hours before and at a reasonable time, to enter, view and/or make any repairs to the Premises which Lessor may see fit to make, except that twenty-four-hours' notice is not necessary for emergency repairs. An employee or agent of Lessee for all Lessor entries onto the Premises will accompany Lessor unless this right is specifically waived in writing by the Lessee. Lessee may waive in writing the twenty-four-hour notice requirement for Lessor's entry onto the Premises.
 - D. To yield up Premises. At the expiration of the term of this Lease, Lessee will peaceably yield to the Lessor the Premises, in good repair in all respects, reasonable use and wear and damage by fire and other casualties excepted.
 - E. Alterations. Lessee will not, without the Lessor's prior written consent first obtained in each instance, make any alterations or additions in or about the Premises. All permanent alterations or improvements made to the Premises will become the property of the Lessor and be surrendered as part of the Premises upon the termination of this Lease.
 - F. Licenses and Permits. Lessee, at its own expense, will obtain all licenses and permits required by governmental agencies having jurisdiction over the operation of its business.
 - G. Maintenance. Lessee, at its own expense, will maintain the Premises and appurtenances thereto in good repair, and in at least as good condition as that in which they are delivered, allowing for ordinary wear and tear. Lessee will be responsible for the maintenance and all minor repairs to the interior of the Premises.
 - H. Utilities and Service. Lessee will pay for its own telephone and internet utilities. Lessee will also provide its own janitorial services for the Premises. Lessor shall provide all other utilities and services as described in Paragraph 5.
5. **Lessor's Warranties.** The Lessor covenants, guarantees and provides the following express warranties:
- A. No existing restrictions interfere with the Lessee's permitted and intended use of the leased property;
 - B. Availability of adequate ingress and egress to Premises;
 - C. Lessor has sufficient interest in the Premises to grant tenants this leasehold;
 - D. Lessee will have quiet enjoyment of the Premises;
 - E. The Premises is fit for its intended use;
 - F. Any use, treatment, storage, or transportation of hazardous substances has been in compliance with all applicable federal, state and local laws. No hazardous

substances have been released, discharged, spilled, leaked, disposed of, or omitted on, in, or under the Premises. The Premises are free of hazardous substances;

- G. Lessor will be responsible for all snow and ice removal from the roof and the adjacent parking area and sanding as necessary;
 - H. Lessor will keep the structural supports, exterior walls, roof, plumbing and heating system in good order and repair; and
 - I. Lessor will provide electricity, heating energy, water and sewer, and exterior / common area maintenance at its own cost and expense. Lessee will be responsible for phone and internet utilities only.
6. **Default by Lessor/Lessee.** Should either Lessee or Lessor default in the performance of the obligations of any covenants of this Lease and fail to fully remedy such default within thirty days after written notice by the non-defaulting party, then the Lease may be terminated by written notice to the defaulting party. All rental hereunder will abate during the period of any such default. Upon termination of this Lease, Lessor will refund to Lessee any unearned advance rental paid of lessee.
7. **Liability and Insurance.** Each Party is responsible and liable for its own acts and omissions under this Lease. Lessee agrees to carry \$500,000 liability insurance and \$50,000 fire legal liability insurance. Lessee further understands that it will be insured, if it so desires, for its personal property and other belongings which are kept within its premises. Lessee will not do anything or bring anything within the premises which shall increase the risk of fire or other loss to the premises.
8. **Permits, Law, and Taxes.** Lessor will acquire and maintain in good standing all permits, licenses, and other entitlements necessary to the performance under this Lease. All actions taken by the Lessor under this Lease will comply with all applicable statutes, ordinances, rules, and regulations. Lessor will pay all taxes that may be due and owing to a federal, state, or local taxing entity.
9. **No Waiver.** No assent, expressed or implied, by either Party to any breach of either Party's covenants will be deemed to be a waiver of any succeeding breach of the same covenants, nor will any forbearance by either Party to seek a remedy for any breach be deemed a waiver by that Party of its rights or remedies with respect to such breach.
10. **Integration.** This document contains the entire agreement of the Parties hereto. All negotiations, statements, representations, guarantees, warranties, and assurances, whether oral or written, which are in any way related to the subject matter of this Lease and the performance of either Party hereto, are merged and integrated into the terms of this document.
11. **Modification.** The Parties may mutually agree to modify the terms of this Lease. Any modifications will be in writing executed by both the Parties.

- 12. **Renewal.** This Lease will automatically renew for an additional period of one year on the same terms as this Lease and subject to a 4% rent increase for that third year, unless either Party gives written notice of termination no later than sixty days prior to the end of the term or renewal term.
- 13. **Subject to Annual Appropriation.** Unless the Kenai Peninsula Borough Assembly by resolution provides otherwise, this Lease will automatically terminate without penalty on June 30 of any year during which the Kenai Peninsula Borough Assembly fails to appropriate funds sufficient to make lease payments on the Premises for the following fiscal year.
- 14. **Interpretation and Enforcement.** This Lease has been drafted following negotiations between the Parties. It will be construed according to the fair intent of the language as a whole, not for or against either Party. The interpretation and enforcement of this Lease will be governed by the laws of the State of Alaska. The venue for any lawsuit arising under this Lease is the Third Judicial District at Kenai, Alaska.

The titles of the paragraphs in this Lease are not to be construed as limitations or definitions but are for identification purposes only.

- 15. **Severability.** If part of this Lease is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Lease will remain in full force and effect.
- 16. **Notice.** Whenever notice is required hereunder, it will be addressed as follows until written notice of change of address is given to the other party:

Lessor:
 TKC, LLC
 Attn:
 PO Box 10658
 Bakersfield, CA93389

Lessee:
 Kenai Peninsula Borough
 Attn: Land Management
 144 N. Binkley Street
 Soldotna, AK 99669

LESSOR:

LESSEE:

 _____,

 Peter Micciche, Mayor
 Kenai Peninsula Borough

Date: _____

Date: _____

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Michele Turner, CMC
Acting Borough Clerk

A. Walker Steinhage
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023 by **Peter Micciche**, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
Commission expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023 by _____, _____ of TKC, LLC.

Notary Public in and for Alaska
Commission expires: _____