

Kenai Peninsula Borough
Legal Department

MEMORANDUM

TO: Wayne Ogle, Assembly President
Kenai Peninsula Borough Assembly members

THRU: Charlie Pierce, Mayor *CP*
Max Best, Planning Director *MB*

FROM: Colette Thompson, Borough Attorney *CT*
Marcus Mueller, Land Management Officer *MM*
Rachel Parra, NPRSA Recreation Director *RP*

DATE: February 20, 2018

RE: Ordinance 2018-10, Authorizing the Negotiated Lease of Office and Meeting Space at the Nikiski Community Recreation Center (Mayor)

Please substitute the accompanying lease agreement for the one in the packet. After introduction of this ordinance the Alaska Gasline Development Corporation's ("AGDC") attorney requested that the borough revise the paragraph which required the AGDC to indemnify and hold harmless the borough from any claims or demands for liability relating to its use of the premises. This was because the AGDC is a public corporation of the State of Alaska, which means that it cannot legally obligate state funds without an appropriation for that purpose.

The lease in the assembly packet contains standard language including an indemnification clause. The revised lease agreement provides that the indemnification requirement is subject to the appropriation of available funds for that purpose and is agreeable to the AGDC. Please substitute this revised lease agreement for the one previously provided for your approval.

Thank you for your consideration.

LEASE

This AGREEMENT, made and entered into this _____ day of _____ 2018, by and between the Kenai Peninsula Borough, 144 N Binkley St, Soldotna, AK 99669, hereinafter referred to as "LESSOR" and Alaska Gasline Development Corporation ("AGDC"), 3201 C Street, Suite 200, Anchorage, AK 99503, hereinafter referred to as "LESSEE";

WITNESSETH:

1. **Premises.** LESSOR, for and in consideration of the rents, covenants, and conditions hereinafter specified does hereby lease to LESSEE the following property hereinafter referred to as "PREMISES":

A 462 square foot room more particularly described as Room #1, Nikiski Community Recreation Center, 50097 Kenai Spur Highway, situated on Tract A, according to Plat No.1362, records of the Kenai Recording District, Third Judicial District, State of Alaska.

LESSEE shall also have common use of public restrooms and parking space.

2. **Rent for Office Space.** In consideration of the lease of the premises by LESSOR, LESSEE covenants to pay to the LESSOR as rental for the premises described in paragraph 1 above, the sum of \$1252.02 per month. Rent is due and payable in advance, on or before the 1st day of the month. Rent shall remain the same for the life of the lease.

Rent for Additional Rooms. The LESSEE agrees to pay the rental rate as listed for additional rental space in the facility. Advanced scheduling of these areas is required and must be reserved through the North Peninsula Recreation Service Area ("NPRSA") staff.

Rental Rates for Training & Conference Rooms/Gymnasium/Banquet Room:

\$30/hr or \$175/ 8hrs

\$50/hr or \$225/ 8hrs (with Kitchen)

Additional fees apply for technology support/accessories/equipment

3. **Term, Month-to-Month Extended Terms.** The lease term is six (6) months commencing on the ___ day of _____, 2018 and ending on the ___ day of _____, 2018 and may be extended month-to-month thereafter upon mutual agreement of the parties provided however that either LESSEE or LESSOR may cancel extended terms of this Agreement without cause by delivering written notice to the other party not less than 28 days in advance of the date of cancellation. Such written notice shall specify the date of cancellation. Rents for a partial last month shall be prorated to the actual number of days in the partial term at \$75.00 per day. LESSEE and LESSOR acknowledge that six to twelve months is the anticipated life of this AGREEMENT.

4. **Services.**

- A. **Utilities/Snow Removal.** Gas, electric, water, septic, refuse and snow removal shall be provided by LESSOR for the duration of this lease.
- B. **Grounds Maintenance.** Grounds maintenance shall be provided by LESSOR for the duration of this lease
- C. **Phone/ Network.** Phone and Network service is the responsibility of the LESSEE. Phone accounts, network servers, and internet connections shall be established and paid for by LESSEE at the option of the LESSEE. The LESSEE is required to coordinate installation with the LESSOR. The LESSOR reserves the right to request that the LESSEE must properly secure any wireless network provisions.
- D. **Janitorial Service.** LESSEE is responsible for its own janitorial or custodial services.
- E. **Security.** LESSEE will be responsible for securing office space. LESSEE will be responsible for securing building and alarm system if operating outside of the community center normal operating hours.

5. **Covenants of LESSEE.** LESSEE hereby covenants and agrees:

- A. **To pay rent:** LESSEE will pay the rent specified at the times and in the manner set out in paragraph 2 herein, except only in the case of fire or other casualty as herein provided.
- B. **Not to assign.** LESSEE shall not assign, sublet or part with the possession of all or any part of the leased premises without the prior written consent of the LESSOR.
- C. **To permit LESSOR to enter.** LESSOR is granted free access to premises at all times for inspection, maintenance, or repair.
- D. **To yield up premises.** At the expiration or cancellation of this Agreement, LESSEE will peaceably yield up to the LESSOR the premises, in good repair in all respects, reasonable use and wear excepted.
- E. **Alterations.** LESSEE may not alter the premises without first obtaining prior approval of LESSOR. Any approved fixtures installed by LESSEE shall become property of the LESSOR unless otherwise agreed to in advance.
- F. **Acceptance of Premises.** LESSEE has examined and knows the condition of the premises and accepts the same "as is", subject to the LESSOR's obligations under this lease.

- G. Use of Premises. LESSEE hereby covenants that the use of the premises shall be for professional use (office/conference/meetings) only and for no other purpose except by written mutual agreement by LESSOR.
6. **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 premises;
 - B. There is availability of adequate ingress and egress to the premises;
 - C. LESSOR has sufficient interest in the property to grant LESSEE this leasehold;
 - D. LESSOR shall be responsible for maintaining the premises in good repair.
7. **Default by Either Party.** Should either LESSOR or LESSEE default in the performance of the obligations of any covenants of this Agreement and fail to fully remedy such default within thirty days after written notice by the non-defaulting party, then the Agreement may be terminated by written notice to the defaulting party. Upon termination of this Agreement, LESSOR shall refund to LESSEE any unearned advance rent paid by LESSEE.
8. **Indemnification and Liability Insurance.**
- a. **Indemnification and Hold Harmless.** Subject to the appropriation of available funds for this purpose, LESSEE shall indemnify, defend, save and hold LESSOR, 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 fees resulting from LESSEE'S performance or failure to perform in accord with the terms of this Agreement in any way whatsoever. The LESSEE shall be responsible under this clause for any and all claims of any character resulting from LESSEE or LESSEE'S officers, agents, employees, partners, attorneys, suppliers, and subcontractor's performance or failure to perform this Agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by LESSOR or its agents, which are said to have contributed to the losses, failure, violations, or damage. However, LESSEE shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of LESSOR, its agents, or employees.
 - b. **Liability Insurance.** LESSEE shall purchase at its own expense and maintain in force at all times during the term of this Lease Comprehensive General Liability Insurance, which shall include bodily injury, personal injury, and property damage with respect to the property and the activities conducted by the LESSEE in which the coverage shall not be less than \$1,000,000 per occurrence. The policy purchased shall name LESSEE as the insured and list LESSOR as an additional

insured, shall be primary and exclusive of any coverage carried by LESSOR, and shall also require the insurer to provide LESSOR with thirty (30) days or more advance written notice of any pending cancellation or change in coverage. LESSEE may submit a letter of self-insurance with proper backing demonstrating coverage that exceeds the above standards.

- c. **Proof of Insurance.** At the time of executing this Agreement, and at the time of each renewal of insurance, LESSEE shall deliver to the North Peninsula Recreation Service Area Director certificates of insurance meeting the above criteria.

9. **Damage due to Causes beyond Control.** LESSEE and LESSOR agree that if a cause beyond control prevents occupation of the premises, any rent paid shall be prorated daily for the days LESSEE is unable to occupy the premises. If the “cause beyond control” lasts for more than 30 days, LESSEE or LESSOR shall have the right to terminate the lease agreement upon 14 days’ written notice given in the manner set out in Section 15 of this lease agreement. The phrase “cause or causes beyond control,” as used in this section, means any one or more of the following causes which are not attributable to the fault or negligence of the LESSEE or LESSOR and which prevent performance of the lease agreement: fire, explosions, floods, earthquakes, other acts of God, war, orders or law of duly constituted public authorities, and other major uncontrollable and unavoidable events, all of the foregoing which must actually prevent LESSEE or LESSOR from performing the terms of this agreement. Events which are particular to either party, including but not limited to financial difficulties, are not causes beyond the control of either the LESSEE or LESSOR. The borough will determine whether an event constitutes a cause beyond control in accordance with the definition set forth in this section.

10. **Compliance With Laws.** LESSEE agrees to comply with all applicable federal, state, borough and local laws and regulations.

11. **No Waiver.** No assent, expressed or implied, by either party to any breach of either party’s covenants shall be deemed to be a waiver of any succeeding breach of the same covenants, nor shall any forbearance by a 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.

12. **Integration.** This document contains the entire lease 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 agreement and the performance of either party hereto, are merged and integrated into the terms of this document.

13. **Interpretation and Enforcement.** This agreement has been drafted following negotiations between the parties. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The interpretation and enforcement of this agreement shall be governed by the laws of the State of Alaska. The titles of sections in this agreement are not to be construed as limitations or definitions but are for identification purposes only.

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

LESSOR:
 Kenai Peninsula Borough
 Rachel Parra, NPRSA Director
 144 N. Binkley Street
 Soldotna, Alaska 99669

LESSEE:
 Alaska Gasline Development Corporation
 Keith Meyer, AGDC President
 3201 C. Street, Suite 200
 Anchorage, Alaska 99503

ALASKA GASLINE DEVELOPMENT CORPORATION

KENAI PENINSULA BOROUGH

 Keith Meyer
 AGDC President

 Charlie Pierce
 KPB Mayor

Date: _____

Date: _____

ATTEST:

APPROVED AS TO FORM
 AND LEGAL SUFFICIENCY:

 Johni Blankenship, Borough Clerk

 Holly Montague
 KPB Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
 THIRD JUDICIAL DISTRICT)

