

Kachemak Emergency Service Area

Board Meeting Draft Agenda

Thursday – April 24, 2025

Regular Board Meeting 6:00 PM

Station 1- 53048 Ashwood Ave

(Available Via Zoom)

Zoom Link:

<https://yourkpb.zoom.us/j/88426095491?pwd=TveaGBHzCN8KiLfinS3leqbA9eil6h.1>

Meeting ID: 884 2609 5491

Passcode: 015335

- A. Call to Order**
- B. Roll Call**
- C. Pledge of Allegiance**
- D. Public Comments**
- E. Correspondence**
- F. Approval of Agenda**
- G. Approval of Minutes, Regular Board Meeting March 20, 2025**
- H. Chief's Report**
- I. Unfinished Business:**
 - a. Bylaws review**
 - b.**
- J. New Business**
 - a. Skyline Towers Lease Agreement**
- K. Comments of the Audience**
- L. Board Comments, Announcements, Future Agenda Items**
- M. Date and Time of Next Meeting**
- N. Adjournment**

COMMUNICATIONS SITE LEASE AGREEMENT

This Communications Site Lease Agreement (Agreement) is entered into by Skyline Towers, LLC, an Alaska limited liability corporation, whose mailing address is P.O. Box 2145, Homer, Alaska 99603 (Lessor), and the Kenai Peninsula Borough, an Alaska municipal corporation, whose mailing address is 144 North Binkley Street, Soldotna, Alaska 99669 (Lessee or KPB) (together, the Parties). The Effective Date of this Agreement is the date KPB executes the Agreement.

PART I. BACKGROUND, AUTHORIZED CONTACT, AND CONTRACT DOCUMENTS

1. Background. Lessor owns certain real property located in the Kenai Peninsula Borough, in the State of Alaska, that is more particularly described in Exhibit 1 attached hereto (the Property). For good and valuable consideration, the Parties agree that Lessor will grant KPB the right to use a portion of the Property, the Leased Premises as defined in Section 4, "Description of Property", in accordance with the terms of this Agreement.

2. Authorized Contacts. All communications about this Agreement must be directed as follows, and any reliance on a communication with a person other than who is listed below is at the Party's own risk.

LESSOR

Name: Skyline Towers, LLC
Attn: Mark and Laura Zeiset, Owners
P.O. Box 2145
Homer, AK 99603

LESSEE

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

3. Contract Documents. As authorized by KPB Ordinance 2025-____, this Agreement is the final and complete understanding of the Parties. The following Exhibits are attached and are considered part of this Agreement as well as anything incorporated by reference or attached to those Exhibits:

Exhibit 1: Description of the "Property" and the "Leased Premises"

Exhibit 2: Leased Premises site sketch

If in conflict, the order of precedence will be: the Agreement, Exhibit 1, then Exhibit 2.

PART II. LEASE DESCRIPTION AND TERMS

4. DESCRIPTION OF PROPERTY.

(a) Subject to the terms and conditions of this Agreement, Lessor hereby grants KPB an exclusive option to lease the following generally described space:

Site Name: Skyline Towers Communications Site. KPB's co-located use of the existing tower structure and improvements on the Property, as described and depicted on Exhibit 1 and Exhibit 2 attached hereto (the Leased Premises), for the placement of the Communications Facilities as defined in Section 8, "Use".

(b) The Leased Premises description may be adjusted by mutual written agreement of the Parties, subject to the condition that the adjusted description may not conflict with the predominant use of the Property, and may not impair or constrict public ingress or egress to the Property and related compatible uses.

5. TERM.

(a) The initial term will be five (5) years (the Initial Term), commencing on the Effective Date.

(b) KPB will have the option to extend the term of this Agreement for four (4) successive terms of five (5) years each (each, a Renewal Term). Each Renewal Term will commence automatically, unless KPB delivers written notice to Lessor, not less than thirty (30) days prior to the end of the then-current Term, of KPB's intent not to renew. For purposes of this Agreement, "Term" includes the Initial Term and any applicable Renewal Term(s).

(c) Should KPB or any assignee, sublessee, or licensee of KPB hold over the Leased Premises or any part thereof after the expiration of this Agreement, such holdover will constitute and be construed as a tenancy from month-to-month only, but otherwise upon the same terms and conditions.

6. TERMINATION.

This Agreement may be terminated, without penalty or further liability, as follows:

(a) by Lessor upon written notice to KPB, if KPB is in breach of any term of this Agreement and fails to cure the breach within thirty (30) days of the date a notice of breach is sent to KPB.

(b) by KPB upon sixty (60) days' prior written notice to Lessor for any reason or no reason, so long as KPB pays Lessor a termination fee equal to six (6) months' Rent, at the then-current rate, or the remaining Rent due under the current Term until such Term expires, whichever is less, and subject to removal requirements contained within Section 10, "Equipment, Fixtures, and Removal". No such termination fee will be payable on account of the termination of this Agreement by KPB under any termination provision contained in any other Section of this Agreement.

7. RENT. Beginning on the Effective Date, KPB must pay Lessor a monthly rent payment of One Hundred Dollars and No/100 (\$100.00) plus a monthly Homer Electric Association (HEA) cost of One Hundred Sixty Dollars and No/100 (\$160.00) (Rent), at the address set forth in Section 2, "Authorized Contacts", on or before the fifth (5th) day of each calendar month in which Rent is due, in advance. Rent will be prorated for any partial month. On each anniversary of the Effective Date, Rent will adjust annually by not more than three percent (3%) over the prior year's Rent amount to account for any Lessor-documented increases in the electric cost portion of the Rent. Lessor will submit documentation for increases in the electric cost portion of the Rent at least one month prior to the anniversary of the Effective Date.

8. USE. The Leased Premises are being leased for the purpose of KPB's co-located use of the existing tower structure and improvements on the Property related to the Kachemak Emergency Service Area, Office of Emergency Management, or other emergency service or KPB needs, including operating and maintaining radio or communications transmitting and receiving equipment, antennas, dishes, mounting structures, steel container for storage, and structure housing an emergency generator, as described and depicted on Exhibit 1 and Exhibit 2 attached hereto (collectively, the Communications Facilities). Subject to the foregoing, KPB may make any improvement, alteration, or modification to the Leased Premises as are deemed appropriate by KPB for the permitted use herein. KPB will have the right to clear the Leased Premises

of any trees, vegetation, or undergrowth which interferes with KPB's use of the Leased Premises for the intended purposes.

9. ACCESS, MAINTENANCE, AND UTILITIES.

(a) Access. During the Term, KPB and its guests, agents, customers, lessees, sublessees, and assigns will have the unrestricted right to use, and will have free and unfettered access to, the Property and the Leased Premises seven (7) days a week, twenty-four (24) hours a day. If there are utilities already existing on the Leased Premises or the Property which serve the Leased Premises, KPB may utilize such utilities and services.

(b) Maintenance. KPB will keep and maintain the Leased Premises in good condition.

(c) Utilities. As part of the Rent, KPB will have access to the use of an existing electric utility located at the Property. If power consumption of KPB's use exceeds the existing capacities of the electric utility, KPB will be solely responsible for installing additional electric utilities and separate meters for utility use and payment, as applicable, and will no longer be allowed to connect to or use Lessor's electrical utility without prior written approval, which will not be unreasonably withheld, conditioned, or delayed. Once KPB is no longer connected to Lessor's electrical utility, Rent will be reduced to a monthly rent payment of One Hundred Dollars and No/100 (\$100.00), and the three percent (3%) annual adjustment contained within Section 7, "Rent", will be eliminated.

10. EQUIPMENT, FIXTURES, AND REMOVAL. The Communication Facilities will at all times be the personal property of KPB or its sublessees and licensees, as applicable. KPB or its customers will have the right to erect, install, maintain, and operate on the Leased Premises such equipment, structures, fixtures, signs, and personal property as KPB may deem necessary or appropriate, and such property, including the Communications Facilities and other equipment, structures, fixtures, signs, and personal property currently on the Leased Premises, will not be deemed to be part of the Leased Premises, but will remain the property of KPB or its customers. Unless otherwise agreed to in writing by the Parties, within ninety (90) days after the expiration or earlier termination of this Agreement, or upon cessation, abandonment, or non-use of the Leased Premises for a period of six (6) consecutive months (the Removal Period), KPB must remove its improvements and restore the Leased Premises to grade in a natural condition free of contamination, reasonable wear and tear excepted, and perform all obligations under this Agreement during the Removal Period, including without limitation, the payment of Rent on a prorated per diem basis, at the rate in effect upon the expiration or termination of this Agreement. Any personal property not so removed will be deemed abandoned and may be removed and disposed of by Lessor in such manner as Lessor may determine, without any obligation on the part of Lessor to account to KPB for any proceeds therefrom. Time is of the essence.

11. COVENANTS, WARRANTIES AND REPRESENTATIONS.

(a) Lessor represents and warrants that Lessor is the owner in fee simple of the Property, free and clear of all liens and encumbrances except as to those which may have been disclosed to KPB in writing prior to the execution hereof, and that Lessor alone has full right to lease the Leased Premises for the Term.

(b) Lessor may not do or knowingly permit anything during the Term that will unreasonably interfere with or negate KPB's quiet enjoyment and use of the Leased Premises or cause KPB's use of the Leased Premises to be in nonconformance with applicable local, state, or federal laws.

(c) To the best of Lessor's knowledge, Lessor has complied with, and will comply with, all laws with

respect to the Property. No asbestos-containing thermal insulation or products containing PCB, formaldehyde, chlordane, heptachlor, or other hazardous materials have been placed on or in the Property by Lessor or, to the knowledge of Lessor, by any prior owner or user of the Property. To the knowledge of Lessor, there has been no release of or contamination by hazardous materials on the Property.

(d) Subject to Section 9, "Access, Maintenance, and Utilities", KPB will have access to the electric utility required for the operation of KPB's improvements on the Leased Premises that are existing on the Property.

(e) Each Party hereto warrants and represents that it has the necessary power and authority to enter into and perform its respective obligations under this Agreement. Nothing in this Agreement, including such cooperation, will be construed as creating a partnership between the Parties.

12. NON-EXCLUSIVITY. Lessor acknowledges and agrees that, except as may be disclosed to KPB in writing prior to the execution hereof, there are no prior existing rights, uses, or authorization granted to third parties or retained by Lessor to locate improvements below grade or in proximity to the Leased Premises. Upon at least sixty (60) days prior written notice to KPB, Lessor reserves the right to grant further or additional rights or authorization to locate improvements below grade or in proximity to the Leased Premises to the extent such rights or authorizations do not unreasonably interfere with KPB's equipment or operations.

13. KPB RESPONSIBILITIES. In addition to other responsibilities under this Agreement, KPB has the following responsibilities and agrees that KPB will comply with all applicable federal, state, and local laws or regulations, including relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, permitting, construction, operation and maintenance of any facility, improvement or equipment on the Leased Premises.

14. INDEMNIFICATION.

Lessor agrees to defend, indemnify, and hold harmless KPB, its employees, public officials, and volunteers, with respect to any action claim or lawsuit arising out of (1) a breach of this Agreement or (2) the use and occupancy of the Leased Premises or the Property by KPB. This agreement to defend, indemnify, and hold harmless includes all losses and liabilities without limitation as to any damages resulting from judgment, or verdict, and includes the award of any attorney's fees even if in excess of Alaska Civil Rule 82. The obligations of Lessor arise immediately upon notice to Lessor of any action, claim, or lawsuit. KPB will notify Lessor in a timely manner of the need for indemnification but such notice is not a condition precedent to Lessor's obligation and may be waived where Lessor has actual notice. This agreement applies and is in full force and effect whenever and wherever any action, claim, or lawsuit is initiated, filed, or otherwise brought against KPB relating to KPB's use and occupancy of the Leased Premises or the Property. Notwithstanding the foregoing, Lessor's duty to indemnify, defend, and hold harmless KPB as set forth above will not apply to the extent a claim arises from the negligence or willful misconduct of KPB, its employees, public officials, and volunteers.

15. INSPECTION. Lessor reserves the right to enter upon and inspect the Leased Premises at any time to assure compliance with the conditions of this Agreement.

16. FORCE MAJEURE. The time for performance by Lessor or KPB of any term, provision, or covenant of this Agreement will be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, material or labor restrictions by governmental authority, and any other cause not

within the control of Lessor or KPB, as the case may be.

17. DEFAULT. The failure of KPB or Lessor to perform any of the covenants of this Agreement will constitute a default. The non-defaulting Party must give the other written notice of such default, and the defaulting Party must cure such default within thirty (30) days after receipt of such notice. In the event any such default cannot reasonably be cured within such thirty (30) day period, the defaulting Party must provide prompt notice of inability to cure and provide a plan to cure the default within the time frame provided. The time for curing a default will be extended for such period of time as may be necessary and reasonable; however, in no event will this extension of time to cure be in excess of ninety (90) days, unless agreed upon in writing by the non-defaulting Party.

18. REMEDIES. Should the defaulting Party fail to cure a default under this Agreement, the non-defaulting Party will have all remedies available either at law or in equity, including the right to terminate this Agreement.

19. MISCELLANEOUS.

(a) **Survival.** If any term of this Agreement is found to be void or invalid, such invalidity will not affect the remaining terms of this Agreement, which will continue in full force and effect.

(b) **Non-waiver.** Failure of a Party to insist on strict performance of any of the conditions or provisions of this Agreement, or failure to exercise any of a Party's rights hereunder, will not waive such rights.

(c) **Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of Alaska, without regard to conflict of law principles. Any lawsuits filed in connection with this Agreement must be filed and prosecuted in the Third Judicial District, State of Alaska, at Kenai, Alaska.

(d) **Bind and Benefit.** This Agreement is binding upon and will inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

(e) **W-9.** As a condition precedent to payment, Lessor agrees to provide KPB with a complete IRS Form W-9, or its equivalent, upon execution of this Agreement.

(f) **Counterparts.** This Agreement may be executed in counterpart, each of which when so executed and delivered will be considered an original and all of which when taken together will constitute one and the same instrument.

(g) **Entire Agreement.** This Agreement and its Exhibits constitute the entire agreement and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

[SIGNATURES BEGIN ON NEXT PAGE]

PART III. EXECUTION

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

LESSEE: Kenai Peninsula Borough
an Alaska municipal corporation

LESSOR: Skyline Towers, LLC
an Alaska limited liability corporation

By: _____
Peter A. Micciche, Borough Mayor

Date: _____

ATTEST:

Michele Turner CMC, Borough Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

A. Walker Steinhage, Deputy Borough Attorney

Date: _____

By: _____

Print Name: _____

Its: _____

Date: _____

By: _____

Print Name: _____

Its: _____

Date: _____

LESSOR ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

On the _____ day of _____, before me personally appeared _____,
and acknowledged under oath that he/she is the _____ of Skyline Towers, LLC, the
Lessor named in the attached instrument, and as such was authorized to execute this instrument on behalf of
the Lessor.

Notary Public for State of _____
My commission expires: _____

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

On the _____ day of _____, before me personally appeared _____,
and acknowledged under oath that he/she is the _____ of Skyline Towers, LLC, the
Lessor named in the attached instrument, and as such was authorized to execute this instrument on behalf of
the Lessor.

Notary Public for State of _____
My commission expires: _____

LESSEE ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing was acknowledged before me this _____ day of _____, 20____, by Peter
A. Micciche, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of
the corporation.

Notary Public for State of Alaska
My commission expires: _____

EXHIBIT 1

DESCRIPTION OF PROPERTY AND LEASED PREMISES

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The Property is legally described as follows:

Township 06 South, Range 13 West

Section 02: E1/2W1/2W1/2NE1/4NE1/4 lying south of Skyline Drive

Address: 61115 Skyline Drive, Homer, AK 99603

Tax Parcel ID: 17406108

The Leased Premises are described as follows:

Site Name: Skyline Towers Communications Site

Co-located use of the existing tower structure and improvements on the Property, and the other Communications Facilities defined in Section 8, "Use", of the Agreement.

EXHIBIT 2

LEASED PREMISES

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The Leased Premises are depicted as follows:

