

Introduced by: Mayor  
Date: 02/02/21  
Hearing: 02/16/21  
Action: Enacted as Amended  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-05**

**AN ORDINANCE AUTHORIZING THE NEGOTIATED LEASE OF OFFICE SPACE  
AT THE WESTERN EMERGENCY SERVICE AREA FIRE DEPARTMENT,  
NINILCHIK STATION**

- WHEREAS,** at the October 6, 2020 regular borough election, affected voters approved the expansion of the Anchor Point Fire and Emergency Medical Service Area (APFEMS) to include the Ninilchik area pursuant to ordinance 2020-31; and
- WHEREAS,** the expansion was contingent not only on voter approval but also upon free and clear transfer by Ninilchik Emergency Services (NES) of title, ownership, and possession of all real and personal property located in or obtained for use at or by the Ninilchik Fire Department; and
- WHEREAS,** among the items to be transferred is the Ninilchik Fire Department building which has housed a 192 square foot (12' x 16') office in which NES conducts business and processes the billing for the Ninilchik Fire Department; and
- WHEREAS,** billing for services rendered by the Ninilchik Fire Department prior to the transfer will normally take up to a year to be completed; and
- WHEREAS,** NES has requested to retain use of the office space for a limited period of time in order to wrap up its business activities and reestablish itself; and
- WHEREAS,** the efforts of NES have been instrumental not only in maintaining and operating the Ninilchik Fire Department, but also in raising necessary funds for equipment and other needs of the department and the community; and
- WHEREAS,** the borough administration has determined there is no immediate need for the space;
- WHEREAS,** the Western Emergency Service Area Board at its regularly scheduled meeting of February 10, 2021 recommended approval by unanimous consent;

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

**SECTION 1.** That the assembly finds that leasing office space to Ninilchik Emergency Services pursuant to KPB 17.10.100(I) is in the best interest of the borough.

**SECTION 2.** That the provisions of KPB 17.10.080-.090 and KPB 17.10.110-.240 governing classification, disposition, and leasing of Borough lands and related natural resources shall not apply to this lease of office space.

**SECTION 3.** Based on the foregoing, the mayor is hereby authorized pursuant to KPB 17.10.100(I) to lease a 12' x 16' office inside the Ninilchik Fire Department (soon to be called the Western Emergency Service Area Ninilchik Station), being 192 sq. ft., Room 103, for the term of 18 months at the lease rate of \$10 for the entire term. The authorization is for lease solely to Ninilchik Emergency Services, which may not assign any rights to the space to any other person or entity.

**SECTION 4.** The mayor is authorized to execute a lease substantially similar in form to the lease form approved by the assembly.

**SECTION 5.** Ninilchik Emergency Services shall have 90 days from the time of enactment of this ordinance to execute the lease document.

**SECTION 6.** That rent shall be paid upon execution of the lease and shall be deposited in the WESA account number 209.36315.


**SECTION 7.** That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF FEBRUARY, 2021.**

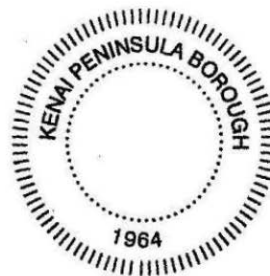


Brent Hibbert, Assembly President

ATTEST:



Jenni Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert  
No: None  
Absent: None

# LEASE

This lease agreement (hereinafter the "Lease"), is made and entered into February \_\_\_\_\_, 2021, by and between the Kenai Peninsula Borough, 144 N Binkley St, Soldotna, AK 99669 (hereinafter referred to as "Lessor") and Ninilchik Emergency Services, PO Box 39446, Ninilchik, Alaska 99639 (hereinafter referred to as "Lessee" or "NES").

1. **Premises.** Lessor, for and in consideration of the rents, covenants, and conditions of this Lease does hereby lease to Lessee the following property hereinafter referred to as the "Premises":

One 12' x 16' Office space, totaling 192 square feet, more or less, more particularly described as Room Number 103 at the Western Emergency Services Fire Department, Ninilchik, Alaska (the "Facility").

Lessee shall also have use of restrooms and parking spaces in the facility on the terms and conditions described below in this agreement

2. **Contract Documents.** As authorized by KPB Ordinance 2021-\_\_\_\_, this Lease is the final and complete understanding of the parties. The following exhibits and appendices are attached and are considered part of this Lease as well as anything incorporated by reference or attached to those exhibits or appendices:

Appendix A: Lease Provisions Required by KPB 17.10

Exhibit 1: Building Layout identifying rooms and designated space

**If in conflict, the Lease shall control.**

**If in conflict the order of precedence shall be: The Lease, Appendix A, Exhibit 1.**

3. **Rent.** In consideration of the Lease of the Premises by Lessor, Lessee covenants to pay to the Lessor as Rent the sum of ten dollars (\$10) for the duration of the lease term. Rent is due and payable in advance upon execution of the Lease Agreement.
4. **Term, Month-to-Month Extended Terms.** The Lease Term is approximately eighteen months commencing on February 17, 2021 and ending on August 31, 2022 and may not be extended without Assembly approval.

5. **Utilities, Maintenance, and Repairs.**

(a) Lessor Responsibilities. So long as the Lessee is in compliance with all Lease terms, including timely payment of Rent due, the Lessor shall be responsible for the following for the duration of the Lease:

- i. Utilities. Gas, electric, water, septic.
- ii. Grounds Maintenance. Grounds maintenance.
- iii. Major Repairs. Any major structural repairs of a permanent nature shall be performed by the Lessor.

(b) Lessee Responsibilities.

- i. 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.
- ii. Janitorial Service and Refuse. Lessee is responsible for its own janitorial or custodial services and required supplies directly related to the space rented and used. Lessee is responsible for the timely removal of its refuse from the premises.
- iii. Security. Lessee will be responsible for securing building upon entry and exit. Only persons designated in writing by the Western Emergency Services Area Fire Chief may be permitted to have a key to the facility and only a maximum of four (4) keys may be released to Lessee. Should Lessee lose any keys to the Facility itself, Lessee shall be fully responsible to Lessor for the cost of re-keying all of the locks to the Facility.
- iv. Minor maintenance and repairs. Lessee shall be responsible for minor and routine maintenance of the premises and maintain the premises in a good, neat and clean condition. Minor maintenance and repairs are those that do not cause alterations to building systems or structural components. For example, replacing accessible light bulbs

with like kind, using household cleaners (except on wood floors), rearranging furniture, and hanging items with non-structural fasteners would be considered minor maintenance and repairs.

- v. Snow Removal. Lessor shall be responsible for snow removal.
- vi. Furnishings, equipment, and supplies. Lessee is responsible for its own furnishing, equipment, and supplies. Furnishings supplied by Lessor are on an "as available basis".

6. **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 3 above.
- 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 Lease, Lessee will peaceably yield up to 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 written 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 Lessor's obligations under this Lease.
- G. Use of Premises. Lessee hereby covenants that the use of the Premises shall be for NES use only and for no other purpose except by written mutual agreement by Lessor.

7. **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.
8. **Default by Either Party.** Should either Lessor or Lessee 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. Upon termination of this Lease, no refund of any unearned advance rent paid by Lessee shall occur.
9. **Indemnification and Liability Insurance.**
- A. **Indemnification and Insurance**  
The Lessee shall indemnify and hold harmless the Lessor from any and all claims, liabilities, losses, damages, and charges, related to the use of the facilities subject of this Lease. Lessee shall provide proof of Commercial General Liability with minimum policy limits of \$1,000,000 per incident; Automobile Liability policy with minimum policy limits of \$1,000,000 per accident for bodily injury; and Worker's Compensation / Employer's Liability limits as required by law. The KPB is self-insured and will maintain insurance on the land and facility and maintain insurance covering its employees as required by law.  
  
The policies described above shall remain in force for the life of the Lease Agreement and must state that the coverage is primary and exclusive of any insurance carried by the KPB. The coverage required by this agreement shall list the KPB as additional insured. All policies and certificates of insurance shall provide that a written notice of any cancellation or modification will be delivered to Lessor at least 30 days prior to the effective date of such cancellation or modification.
  - B. **Proof of Insurance.** At the time of executing this Lease, and at the time of each renewal of insurance, Lessee shall deliver to the Lessor certificates of

insurance meeting the above criteria. At its option, the Borough may request copies of required policies and endorsements. Such copies shall be provided within (10) TEN CALENDAR DAYS of the Borough's request.

10. **Damage due to Causes beyond Control.** Lessee and Lessor agree that if a cause beyond control prevents occupation of the premises, no rent paid will be prorated 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 this Lease upon 14 days' written notice given in the manner set out in Section 17 of this Lease. 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 this Lease: 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 Lease. 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.
11. **Compliance with Laws.** Lessee agrees to comply with all applicable federal, state, borough and local laws and regulations.
12. **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.
13. **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 and the performance of either party hereto, are merged and integrated into the terms of this document.
14. **Interpretation and Enforcement.** This Lease 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 Lease 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.



- 15. **Counterparts; Electronic Signature.** This Lease may be executed in counterpart and may be executed by way of facsimile or electronic signature in compliance with AS 09.80, each of which when executed shall be considered an original and all of which together shall constitute one agreement.
- 16. **Severability.** If any section or clause of this Lease is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Lease shall remain in full force and effect.
- 17. **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  
 Attn: Legal Department  
 144 N. Binkley St.  
 Soldotna, Alaska 99669

LESSEE:  
 Ninilchik Emergency Services  
 Attn: President  
 PO Box 39446  
 Ninilchik, AK 99639

KENAI PENINSULA BOROUGH

NINILCHIK EMERGENCY SERVICES

\_\_\_\_\_  
 Charlie Pierce  
 KPB Mayor  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 Katherine Covey  
 President  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 Catherine Laky  
 Secretary  
 Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM  
 AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
 Johni Blankenship, Borough Clerk

\_\_\_\_\_  
 Patty Burley, Deputy Borough Attorney

**LESSEE NOTARY ACKNOWLEDGMENT**

STATE OF ALASKA            )  
  ) ss.  
THIRD JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of February 2021 by Katherine Covey, President of Ninilchik Emergency Services, for and on behalf of the Nonprofit Corporation.

\_\_\_\_\_  
Notary Public in and for \_\_\_\_\_  
My commission expires:\_\_\_\_\_

**NOTARY ACKNOWLEDGMENT**

STATE OF ALASKA            )  
  ) ss.  
THIRD JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of February 2021 by Catherine Laky, Secretary of Ninilchik Emergency Services, for and on behalf of the Nonprofit Corporation.

\_\_\_\_\_  
Notary Public in and for \_\_\_\_\_  
My commission expires:\_\_\_\_\_

**LESSOR NOTARY ACKNOWLEDGMENT**

STATE OF ALASKA            )  
  ) ss.  
THIRD JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me this \_\_\_ day of February 2021 by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska Municipal Corporation, for and on behalf of the Corporation.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires:\_\_\_\_\_

DRAFT

**APPENDIX A**  
**LEASE PROVISIONS REQUIRED BY KPB 17.10**

(1) **Accounts Current.** The Lessee shall not be delinquent in the payment of any tax, debt or obligation owed to the KPB prior to execution of the Agreement.

(2) **Assignment.** Lease may assign the lands upon which he has an agreement only if approved by the mayor or land management officer when applicable. Applications for assignment shall be made in writing on a form provided by the land management division. The assignment shall be approved if it is found that all interests of the borough are fully protected.

(3) **Breach of Agreement.** In the event of a default in the performance or observance of any of the Agreement terms or conditions, and such default continues thirty days after written notice of the default, the borough may cancel Agreement or take any legal action for damages or recovery of the property. No improvements may be removed during the time which the contract is in default.

(4) **Cancellation.** This Agreement may be cancelled at any time upon mutual written agreement of the parties.

(5) **Entry or Re-entry.** In the event the Agreement is terminated, canceled or forfeited, or in the event of abandonment of Leased Premises by Lessee during the Term, the KPB its agents, or representatives, may immediately enter or re-enter and resume possession of the Leased Premise. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the Agreement.

(6) **Fire Protection.** The Lessee shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the Property under Agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the Property is located.

(7) **Hazardous Waste.** The storage, handling and disposal of hazardous waste shall not be allowed on the Leased Premises.

(8) **Modification.** The Agreement may not be modified orally or in any manner other than by an agreement in writing signed by all parties or their respective successors in interest.

(9) **Notice.** Any notice or demand, which under the terms of the Agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

(10) **Notice of Default.** Notice of the default will be in writing as provided in paragraph 10 above.

(11) **Removal or Reversion of Improvements Upon Cancellation of Purchase Agreement or Lease.**

(a) Improvements on Leased Premises owned by Lessee shall, within thirty calendar days after the termination of the agreement, be removed by him; provided, such removal will not cause injury or damage to the land; and further provided, that the mayor or land management officer when applicable may extend the time for removing such improvements in cases where hardship is proven. The Lessee may, with the consent of the mayor or land management officer when applicable, dispose of its improvements to the Sublessee or Assignee, if applicable.

(b) If any improvements and/or chattels having an appraised value in excess of ten thousand dollars, as determined by a qualified appraiser, are not removed within the time allowed, such improvements and/or chattels shall, upon due notice to the Lessee be sold at public sale under the direction of the mayor and in accordance with the provisions of KPB Chapter 5. The proceeds of the sale shall inure to the former Lessee who placed such improvements and/or chattels on the lands, or his successors in interest, after paying to the borough all moneys due and owing and expenses incurred in making such a sale. In case there are no other bidders at any such sale, the mayor is authorized to bid, in the name of the borough, on such improvements and/or chattels. The bid money shall be taken from the fund to which said lands belong, and the fund shall receive all moneys or other value subsequently derived from the sale of leasing of such improvements and/or chattels. The borough shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of the purchase.

(c) If any improvements and/or chattels having an appraised value of ten thousand dollars or less, as determined by the mayor, are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in the borough. Upon request, the Lessee shall convey said improvements and/or chattels by appropriate instrument to the KPB.

(12) **Rental for Improvements or Chattels not Removed.** Any improvements and/or chattels belonging to the Lessee or placed on the Property and remaining upon the premises after the termination of the contract shall entitle the KPB to charge a reasonable rent therefor.

(13) **Re-rent.** In the event that the Agreement should be terminated, canceled, forfeited or abandoned, the KPB may offer said lands for lease or other appropriate disposal pursuant to the provisions of this chapter or other applicable regulations.

(14) **Responsibility for Location.** It shall be the responsibility of the Lessee to properly locate improvements on the Leased Premises.

(15) **Rights of Mortgage or Lienholder.** In the event of cancellation or forfeiture the Agreement for cause, the holder of a properly recorded mortgage, conditional assignment, or collateral assignment will have the option to acquire the lease for the unexpired term thereof, subject to the same terms and conditions as in the Agreement. Any party acquiring the lease agreement must meet the same requirements as the Lessee.

(16) **Sanitation.** The Lessee shall comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for the promotion of sanitation. The Leased Premises under the Agreement shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of the waters and lands.

(17) **Shore Land Public Access Easement.** As established by AS 38.05, borough lands sold or leased may be subject to a minimum 50-foot public access easement landward from the ordinary high water mark or mean high water mark.

(18) **Subleasing.** No lessee may sublease lands or any part thereof without written permission of the mayor or land management officer when applicable. A sublease shall be in writing and subject to the terms and conditions of the original lease.

(19) **Violation.** Violation of any provision KPB 17.10 or of the terms of the Agreement of may expose the Lessee to appropriate legal action including forfeiture of purchase interest, termination, or cancellation of its interest in accordance with state law.

(20) **Written Waiver.** The receipt of payment by the borough, regardless of knowledge of any breach of the purchase agreement by the purchaser, lessee or permittee, or of any default on the part of the purchaser, lessee or permittee in observance or performance of any of the conditions or covenants of the agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of the borough to enforce any covenant or provision therein contained shall not discharge or invalidate such covenants or provision or affect the right of the borough to enforce the same in the event of any subsequent breach or default. The receipt by the borough of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and payment fully satisfies the breach.