

**KENAI PENINSULA BOROUGH LEASE
WITH THE ALASKA DEPARTMENT OF ADMINISTRATION**

WHEREAS, the Kenai Peninsula Borough (hereinafter called "KPB") and the State of Alaska, Department of Administration, on behalf of the Department of Natural Resources (hereinafter called "Lessee") are working in partnership to restore and protect the rivers of the Kenai Peninsula by providing multi-agency permitting, information and education at a single location known as the "Kenai River Center Building"; and

WHEREAS, KPB and Lessee have shared space and services in the Kenai River Center Building since it was constructed in 2000 and have operated under a cooperative lease arrangement since 2005; and

WHEREAS, KPB and Lessee desire to continue sharing space at the Kenai River Center Building in a multi-agency environment for the purpose of providing joint permitting, information and educational services to the Kenai Peninsula; and

WHEREAS, KPB owns the Kenai River Center Building and the underlying real property; and

NOW, THEREFORE, KPB and Lessee enter into the following agreement:

TERMS AND CONDITIONS

1. Consideration/Parties/Premises.

For good and valuable consideration including the covenants and agreements contained herein, and pursuant to Ordinance 2020-___, enacted March ___, 2021, the KPB, an Alaska municipal corporation whose address is 144 North Binkley Street, Soldotna, Alaska 99669, grants to Lessee, State of Alaska, Department of Administration, whose address is 550 West 7th Avenue, Suite 200, Anchorage, Alaska 99501, on behalf of the Alaska Department of Natural Resources, use of professional office space at the following described real property situated in the Kenai Recording District, Third Judicial District, State of Alaska, and described as follows:

Room 106 within the Kenai River Center Building, located at 514
Funny River Road, Soldotna, Alaska.

This lease additionally provides full use and enjoyment of proportionately allocated shared use areas upon and within the described premises, along with available staff and visitor parking, with all respective appurtenances unto the Lessee for the duration of the lease.

2. Lease Term. This lease is for an initial term of five (5) years and may be renewed for two (2) additional terms in five (5) year increments for a total renewal options of ten (10) years, commencing July 1, 2020 and terminating June 30, 2035. This lease shall automatically renew unless the Lessee notifies KPB in writing of

Lessee's intention not to renew this lease at least 90 days prior to the expiration of the existing term.

3. **Lease Rental.** The lease rental is One Thousand One Hundred Dollars & 00/100 (\$1,100.00) per month for the initial 5-year term of this lease. The lease rental shall be adjusted at each renewal to the then-prevailing market rate.

4. **Definitions.**

a. For the purpose of this lease the term "Kenai River Center Building" shall mean the entire premises subject to this lease, including the physical structure, the leased office space, shared use areas, storage facilities, parking areas, grounds, and other associated amenities.

b. For the purpose of this lease the term "Kenai River Center" (KRC) shall mean the collection of agencies and personnel who cooperate to provide permitting, information, and/or education for the protection of the rivers of the Kenai Peninsula, its watersheds, and its fish and wildlife resources.

c. For the purpose of this lease "shared use areas" include all common areas and facilities such as storage and locker areas, shared parking, conference rooms, and meeting rooms. Shared use areas may also include primary areas for administrative support, education and outreach, temporary, part time part time staff, or volunteers. Lessee and KPBA agree that establishment of a primary use of a shared use area shall be reasonably allowed, provided that such primary use of a shared use area is to the benefit of the Kenai River Center's mission and also provided that such primary use does not prevent the reasonable use by another due to conflict with design. Primary work areas and other primary uses within shared use areas may be moved, rearranged, extinguished or otherwise modified to provide maximum efficiency of design, over time, of a shared use area.

5. **Management, Operation and Maintenance.**

a. Both parties shall use and occupy said premises in a careful and proper manner so that they remain in as good condition as when constructed, except for reasonable wear and tear and/or loss or damage caused by fire, explosions, earthquakes, acts of God, or other casualty during the continuance of this agreement.

b. Neither party shall use or occupy the premises for any unlawful purpose. Neither party shall use the premises, or allow the same to be used or occupied, for any purpose or business that would present a danger to the premises or its occupants. Both parties shall keep the premises free of structural or mechanical hazards. Both parties shall comply with all Borough ordinances, State and federal statutes and regulations, and case law applicable to their occupation or use of the premises.

c. KPBA and Lessee are individually responsible for carrying property insurance (through self-insurance or otherwise) for their own fixtures and equipment and

individual property interests. Lessee and KPB are individually responsible for carrying liability insurance (through self-insurance or otherwise) covering liability for personal injury and any other loss.

- d. The proposed use of the premises is for a joint Lessee and KPB public permitting center and for related services. Since compatibility between uses must be maintained Lessee shall not change the general framework of occupying agency personnel or the use of said premises, nor any part thereof, without the written consent of the other parties, provided however such consent shall not be unreasonably withheld.
- e. Lessee may, at its sole cost, make minor renovations or modifications which it deems beneficial upon written approval of KPB.
- f. KPB shall have the obligation and responsibility to maintain and repair the premises as described in the paragraphs above, but may subcontract for all or part of the services. The areas of the building used by either party shall be maintained at an equal level. Lessee shall pay to KPB Lessee's share of all reasonable costs incurred by KPB as described above.
- g. KPB shall, in any contracts or agreements with contractors or subcontractors performing maintenance work at the premises after construction, require that all indemnities and waivers of subrogation it obtains and that any stipulation to be named as an additional insured it obtains, also be extended to waive rights of subrogation against the Lessee and to add the Lessee as an additional named indemnitee and as additional insured.
- h. Fixtures installed in the premises by Lessee remain the property of Lessee and may be removed by Lessee provided it repairs at Lessee's expense any injury to the premises.
- i. Lessee shall permit KPB staff to enter the premises at all reasonable times to examine the conditions of the same. KPB shall make every effort to not disrupt services and shall provide as much notice as possible prior to entry.

6. Dispute resolution.

- a. Procedures for building management and maintenance decisions and dispute resolution will be jointly developed by the parties and amended as appropriate by agreement of the parties. The parties will jointly develop schedules for periodic maintenance. Charges for these services shall be allocated to each party as in paragraph (e) or (f) of section 5 above.
- b. If disputes cannot be resolved by mutual agreement of the parties, the parties shall undergo mediation with a mediator chosen by mutual agreement of the parties. If disputes are not resolved through mediation, then the parties may submit to binding arbitration.

7. **Assignment.** Lessee may not assign the lease except with written approval by KPB upon a finding by KPB that such assignment is consistent with the KRC's mission and a finding that such assignment is in the best interest of KPB. The assignee should be bound by the terms and conditions of this lease, except, at KPB's benefit and sole option, this agreement may be subject to modification upon assignment provided such assignment is on a form that that establishes such modification.
8. **Amendment.** The parties hereto may amend any term of this agreement, by written agreement signed by both parties. If an amendment to this agreement would cause a material effect to any other party of the shared service agreement, a letter of non-objection from that party must be obtained to effectuate such amendment.
9. **Liens and Mortgages.** Lessee shall not cause or allow any liens of any kind or nature whatsoever to attach to the property during the term of this lease.
10. **Violation.** Violation of any of the terms of this lease may expose Lessee to appropriate legal action including forfeiture of lease interest, termination, or cancellation of its interest in accordance with state law.
11. **Breach and Remedies**
- a. **By Lessor.** If KPB breaches this agreement by failing to comply with any of the terms and conditions herein and has not cured the breach within sixty (60) days of receipt of written notice thereof from Lessee, Lessee may terminate this lease.
 - b. **By Lessee.** If Lessee breaches this agreement by failing to comply with any of the terms and conditions herein and has not cured the breach within sixty (60) days of receipt of written notice thereof from KPB, KPB may terminate this lease.
12. **Termination**
- a. Either of the parties hereto may for the following reasons terminate this agreement by giving the other ninety (90) days' prior notice in writing. Grounds for such termination are:
 1. A breach of any of the terms and conditions herein contained when such breach is not cured as herein provided; or
 2. When and if the Lessee, because of conditions beyond its control, is unable to adequately staff the leased facilities
 - b. Unless the State Legislature provides otherwise, this lease shall automatically terminate without penalty on June 30 of any year during which the State Legislature fails to appropriate funds sufficient to make lease payments for the following fiscal year.

c. At any time that this lease is in good standing it may be canceled in whole or in part upon mutual written agreement by Lessee and the KPB Mayor. This lease is subject to cancellation in whole or in part if improperly issued through error in procedure or if a mutual mistake is made with respect to material facts.

13. Entry or Re-entry. In the event that the Lease is terminated, canceled or forfeited, or in the event that the demised buildings or any part thereof, should be abandoned by the Lessee during the agreement term, KPB or its agents, servants or representative, may immediately or any time thereafter, enter or re-enter and resume possession of said buildings or such part thereof, and remove all persons and property therefrom either without judicial action where appropriate, by summary proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefor. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the lease.

14. Notice. Any notice or demand, which under the terms of this Lease 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 this Lease. 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 addresser.

All notices shall be sent to both parties as follows:

LESSOR

Kenai Peninsula Borough
Planning Director
144 N. Binkley Street
Soldotna, AK 99669-7299

LESSEE

State of Alaska
Department of Administration, 11
550 West 7th, Suite 200
Anchorage, AK 99501

15. Waiver. The waiver by a party hereto of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant or condition herein contained.

16. Jurisdiction. Any suits filed in connection with the terms and conditions of this lease, and of the rights and duties of the parties, shall be filed and litigated in the trial courts of the State of Alaska, Third Judicial District at Kenai, and shall be governed by Alaska law.

17. Severability Clause. Should any provision of this lease fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of this lease or constitute any cause of action in favor of either party as against the other.

- 18. **Binding Effect.** It is agreed that all covenants, terms and conditions of this lease shall be binding upon the successors, heirs and assigns of the original parties hereto.
- 19. **Titles of Articles.** The titles of articles in this lease are for ease of reference and are not definitional nor limit the content of the articles.
- 20. **Full and Final Agreement.** This lease agreement constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This lease may not be modified orally, or in any manner other than by an agreement in writing and signed by both parties or their respective successors in interest. Lessee avers and warrants that no representations not contained within this lease have been made with the intention of inducing execution of this agreement.

STATE OF ALASKA
 DEPARTMENT OF ADMINISTRATION
 on behalf of the Department of
 Natural Resources

KENAI PENINSULA BOROUGH

 Rashaad Esters, Contracting Officer III

 Charlie Pierce, Mayor

Dated: _____

Dated: _____

ATTEST:

APPROVED AS TO FORM
 AND LEGAL SUFFICIENCY:

 Johni Blankenship,
 Borough Clerk

 Sean Kelley,
 Deputy Borough Attorney

DRAFT

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____ 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: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this __ __ day of _____, 20__ by Washaad Esters, the Contracting Officer III for the State of Alaska Department of Administration, for and on behalf of the State of Alaska, Department of Natural Resources.

Notary Public in and for Alaska
My commission expires: With Office

DRAFT