

**KENAI PENINSULA BOROUGH COOPERATIVE LEASE
WITH THE ALASKA DEPARTMENT OF NATURAL RESOURCES**

WHEREAS, the Kenai Peninsula Borough (hereinafter called "KPB") and the State of Alaska, Department of Natural Resources (hereinafter called "Lessee") are working in partnership to restore and protect the rivers, watersheds, marine, and other anadromous waters of the Kenai Peninsula, its fish and wildlife resources, 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 and shared services agreement 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 and Lessee desire to continue joint cost sharing of the annual operating and maintenance of the Kenai River Center Building; and

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

WHEREAS, KPB and Lessee have reached a consensus that the allocation of annual operating and maintenance costs should be based upon permanent full-time four-walled office space occupied by each party;

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 _____, 2020, the KPB, an Alaska municipal corporation whose address is 144 North Binkley Street, Soldotna, Alaska 99669, grants to Lessee, a department of the State of Alaska, whose address is 550 West 7th Avenue, Suite 1230, Anchorage, AK 99501, use of space as referenced in the Shared Service Agreement attached hereto and incorporated by reference, within the following described real property situated in the Kenai Recording District, Third Judicial District, State of Alaska, and described as follows:

A free-standing building known as the Kenai River Center Building, situated on Tract 1A, Soldotna Airport Property Funny River Road Realignment Addn Pt 1, Plat No. 2011-022, Kenai Recording District, 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 \$1.00 per annum for duration of this lease
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, watersheds, marine, and other anadromous waters of the Kenai Peninsula, 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, fenced parking, conference rooms, and meeting rooms. Shared use areas may also include primary work areas for any of the following types of personnel employed by Lessee or employed by another member of the Kenai River Center: administrative support, education and outreach, temporary, part time, or volunteer. Lessee and KPB 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 predict 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. KPB shall carry risk replacement cost property insurance on the building, including fixtures and equipment that are included as part of a building without regard for the type of tenant, such as the heating and cooling or air circulation systems, but excluding fixtures and equipment installed by the occupants for their unique use. To protect Lessee's financial interest in the building, KPB agrees to use the proceeds of said insurance to replace the loss of the fixtures covered by the insurance. The cost of the insurance and any loss, retention or deductible applied in the event of a loss shall be allocated to each party according to the shared services agreement. KPB and Lessee are individually responsible for carrying property insurance (through self-insurance or otherwise) for their own fixtures and equipment and individual personal property. 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. Whenever feasible and cost effective, separate metering of utilities or other direct accounting for services received or elective maintenance performed, shall be made available and Lessee and KPB shall pay directly to the service provider for the actual services each received. This may include: telephone services; hazardous waste disposal; and any utility costs, such as electrical or heating, that can be separately accounted for. However, nothing in this agreement prohibits joint procurement of services if the parties agree.
- f. Charges for utility and maintenance services for which direct metering or accounting is not available or is not economic, including the provision of services for shared facilities, shall be allocated to each party according to the Shared Services Agreement. These services may include water, septic/sewer, electrical, gas, garbage and trash removal; snow and ice removal; parking lot maintenance; landscaping; security system maintenance including outdoor lamp replacement; repair and maintenance of shared electronic equipment; routine janitorial service, including cleaning and light bulb changes; and routine periodic and preventive maintenance.

- g. Charges for major repair, replacement and renewal of the Kenai River Center building and associated improvements that are required to maintain the overall condition or integrity of the premises shall be allocated to each party according to the Shared Services Agreement. KPB has established a major repair and maintenance fund for the premises and periodic payments shall continue to be made into the fund by both parties for expected future repair, replacement and renewal of the building. Interest earned by the fund shall be a part of the fund. The parties shall contribute enough to the fund to provide for the estimated cost of repair and replacement of major building components (for example, flooring, roofing, or pavement) at the end of the component's expected life span. Payments to this fund shall continue on July 1, 2020 at the annual amount of ten thousand dollars (\$10,000.00) allocated to each party according to the Shared Services Agreement. Expenditures from this fund shall be approved jointly by designated representatives of Lessee and KPB, which approval shall not be unreasonably withheld. Payments made under this paragraph represent the amortized cost of reasonably anticipated major maintenance expenditures. Any cash balances accumulated as a result of this provision will be accounted for in a restricted borough account whose use is limited to major maintenance expenditures on this facility only. The parties by mutual agreement may alter the required contribution or use of accumulated balances. Except for expenditures to maintain the overall condition or integrity of the premises, any charges for renovations or modifications for the benefit of one party shall be assigned solely to the party benefiting.
- h. 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.
- i. 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.
- j. 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.
- k. 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.
- l. A shared services agreement is made and entered into as a part of this lease and is attached and incorporated hereto by reference. The shared services agreement establishes the allocation of costs to each party that are a part of this lease. The

shared service agreement shall describe the services and overheads that are being shared by agreement. Costs shall be summarized on a sheet supplemental to the shared services agreement, costs will be revised annually for budgetary and billing purposes in accordance with the terms of the shared services agreement. The parties shall develop billing and payment procedures by mutual agreement. Any amendment of the shared services agreement shall require approval by each party thereto.

6. Future Expansion and Reduction of Use.

- a. The design of the building and site shall identify the capability of future expansion for each party. Expansion of the building to provide additional space for Lessee or KPB or KRC operations shall require approval by the other parties, which shall not be unreasonably withheld. No party shall prevent, block or otherwise inhibit reasonable potential expansion of the premises for the other party without the consent of the other party. The party benefiting from the expansion shall bear the costs of expansion. If more than one party benefits from the expansion and agrees to the expansion, each party shall pay a proportionate share of the cost based upon the square footage added for the benefit of the party. Regardless of the source of funding for the expansion, KPB's legal status as owner and operator of the building shall be enlarged to include the expanded portion of the building.
- b. If for any reason, any party no longer needs all or part of its assigned space, the other parties shall have first right to the use of the space, subject to an equitable economic agreement. The re-allocation of space shall be allowed by mutual agreement of all parties and the shared services agreement shall be revised to reflect such re-allocation.

7. 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.

8. Indemnification and Hold Harmless.

- a. To the maximum extent permitted by law, subject to availability and appropriation of funds, Lessee shall indemnify, defend, save and hold the KPB, its elected and appointed officers, agents and employees, harmless from any and all claims,

demands, suits, or liability, including costs, expenses, and attorney fees, related to Lessee's use and occupancy of the Kenai River Center Building.

This defense and indemnification responsibility includes claims alleging acts or omissions by the KPB 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 claim arising from the sole negligence or willful misconduct of KPB, its agents, or employees.

If any portion of this clause is voided by law or court of competent jurisdiction, the remainder of the clause shall remain enforceable.

- b. To the maximum extent permitted by law, subject to availability and appropriation of funds by the KPB Assembly, KPB shall indemnify, defend, save and hold the Lessee, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability, including costs, expenses, and attorney fees, related to KPB's use and ownership of the Kenai River Center Building.

This defense and indemnification responsibility includes claims alleging acts or omissions by the Lessee or its agents which are said to have contributed to the losses, failure, violations, or damage. However, KPB shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of Lessee, its agents, or employees.

If any portion of this clause is voided by law or court of competent jurisdiction, the remainder of the clause shall remain enforceable.

9. **Assignment.** Lessee may not assign the lease without 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 establishes such modification.
10. **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.
11. **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.
12. **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.

13. **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.

14. **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 payments set forth in the shared services agreement for the following fiscal year.
- c. Unless the Assembly by resolution provides otherwise, this lease shall automatically terminate without penalty on June 30 of any year during which the Kenai Peninsula Borough assembly fails to appropriate funds sufficient to make the payments set forth in the shared services agreement for the following fiscal year.
- d. 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.

15. **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.

16. **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 99669-7599

LESSEE

State of Alaska
Department of Natural Resources
550 West 7th Avenue, Suite 1230
Anchorage, AK 99501

17. **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.
18. **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.
19. **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.
20. **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.
21. **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.
22. **Complete Agreement; Counterparts.** This lease agreement constitutes the full and final agreement of the parties. 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

KENAI PENINSULA BOROUGH

By: Charlie Pierce

Its: Mayor

Dated: _____

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Johni Blankenship,
Borough Clerk

Sean Kelley,
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____day of _____, 2020, 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: _____

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

By: Christopher Brooks

Its: Director Support Services

Dated: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Christopher Brooks, Director of Support Services for and on behalf of the State of Alaska, Department of Natural Resources.

Notary Public in and for Alaska
My commission expires: _____