

Introduced by: Mayor  
Date: 05/17/11  
Action: Adopted as Amended  
Vote: 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2011-049**

**A RESOLUTION AUTHORIZING THE LEASE OF 440 SQUARE FEET OF  
OFFICE SPACE IN THE SEAVIEW COMMUNITY PLAZA BUILDING, SEWARD,  
ALASKA, FOR THE SEWARD BEAR CREEK FLOOD SERVICE AREA FOR UP  
TO FIVE YEARS**

- WHEREAS,** the Seward Bear Creek Flood Service Area (SBCFSA) has leased office space for the purpose of providing flood protection services within the service area at its present location on Railway Avenue in Seward since 2004; and
- WHEREAS,** the proposed lease for office space in Seward was procured competitively through a request for quotes in accordance with borough purchasing code; and
- WHEREAS,** SeaView Community Services was the successful respondent with a quote of \$770/month or \$9,240/year, plus a 4 percent increases in years 3 and 5, for approximately 440 square feet of office space; and
- WHEREAS,** pursuant to KPB 17.10.040, assembly approval of the acquisition of interests in lands shall be by resolution upon receipt of a planning commission recommendation; and
- WHEREAS,** the SBCFSA Board at its regularly scheduled meeting of May 2, 2011, recommended approving the lease; and
- WHEREAS,** the KPB Planning Commission at its regularly scheduled meeting of May 9, 2011, recommended approval;

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

**SECTION 1.** That KPB is authorized to lease from SeaView Community Services real property located in the Seward Recording District, Third Judicial District, State of Alaska, more particularly described as follows:

Suite 123 containing approximately 440 square feet of office space in the SeaView Community Plaza Building, located at 302 Railway Avenue, situated on Lots 32A and 40A, Block 3, Seward Townsite Sea View Plaza Replat Subdivision, according to Plat No. 93-14, recorded in the Seward Recording District, Third Judicial District, State of Alaska

**SECTION 2.** That the purpose of the acquisition is for office space for flood protection services within the service area provided by the SBCFSA.

**SECTION 3.** That the monthly rental shall be \$770.00 for the initial one-year term of the lease. The lease shall automatically renew for up to four additional one-year periods for a total renewal of four years with 4 percent increases in years 3 and 5; unless either party gives written notice of the termination no later than 60 days prior to the end of the term or renewal term. The terms and conditions of the lease shall be substantially similar with those of the accompanying draft lease agreement and the terms and conditions of this resolution.

**SECTION 4.** That pursuant to KPB 17.10.080 (C), no land classification is proposed for this rental property.

**SECTION 5.** That expenditures for the lease will be charged to account number 259.21212.00000.43810.

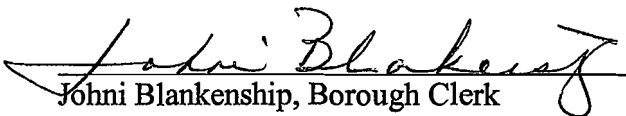
**SECTION 6.** That the mayor is authorized to execute all documents for a lease agreement substantially similar to the lease agreement submitted with this resolution and to make all agreements deemed necessary in accordance with this resolution.

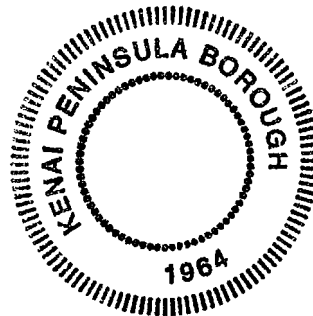
**SECTION 7.** this resolution takes effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 17TH DAY OF MAY, 2011.**

  
\_\_\_\_\_  
Gary Knopp, Assembly President

ATTEST:

  
Johni Blankenship, Borough Clerk



Yes: Haggerty, Johnson, McClure, Murphy, Pierce, Smith, Tauriainen, Knopp  
No: None  
Absent: Smalley

# LEASE

This lease, made this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between SEAVIEW COMMUNITY SERVICES (Lessor) and the KENAI PENINSULA BOROUGH (Lessee) pursuant to KPB Resolution 2011-\_\_\_\_\_.

## WITNESSETH:

1. **Premises.** Lessor, for and in consideration of the rents, covenants, and conditions hereinafter specified to be paid by Lessee, does hereby lease to Lessee, the real estate located in the Seward Recording District, Third Judicial District, State of Alaska, more particularly described as follows:

Suite 123 containing approximately 440 square feet of office space in the SeaView Community Plaza Building, located at 302 Railway Avenue, situated on Lots 32A and 40A, Block 3, Seward Townsite Sea View Plaza Replat Subdivision, according to Plat No. 93-14, recorded in the Seward Recording District, Third Judicial District, State of Alaska

for the purpose of providing office space for the Seward Bear Creek Flood Service Area.

2. **Term and Renewal.**

A. The initial term of this lease shall be for one year commencing on the 1st day of July 2011, through and including the 30<sup>th</sup> day of June 2012, unless sooner terminated.

B. This lease shall automatically renew for four additional terms of one year on July 1, 2012, 2013, 2014, and 2015 for a total lease periods of five (5) years, unless either party gives written notice of the termination no later than 60 days prior to the end of the term or renewal term. The provisions of this lease agreement shall apply to the renewal terms unless otherwise modified in writing by the parties.

3. **Rental.** In consideration of the rental of the premises by Lessor, the Lessee covenants to pay to the Lessor, as rental for the premises described in paragraph 1 above, the sum of Seven Hundred Seventy Dollars (\$770.00) per month, in advance, on the 1<sup>st</sup> day of each and every month. All payments, unless and until otherwise directed in writing by Lessor, or court order, shall be paid to the Lessor. The monthly rental rate shall remain the same in years one and two and shall increase 4 percent in years 3 and 5 if the lease is renewed as provided in this lease.

4. **Covenants of Lessee.** The Lessee hereby covenants and agrees:

A. **To pay rent:** The Lessee will pay the said rent specified at the time and in the manner set out in paragraph 3 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. Such consent shall not be unreasonably withheld by Lessor.
  - C. To permit Lessor to enter. Lessee shall allow the Lessor, on 24-hours written notice, at reasonable times, to enter, view the premises, and make any repairs, which Lessor may see fit to make, except that 24-hours notice is not necessary for emergency repairs. An employee or agent of Lessee for all Lessor entries onto the premises shall accompany Lessor unless this right is specifically waived in writing by the Lessee. Lessee may waive in writing the 24-hour notice requirement for Lessor's entry onto premises.
  - D. To yield up premises. At the expiration of the term of this lease, Lessee will peaceably yield up to the Lessor the premises, in good repair in all respects, reasonable use and wear and damage by fire and other casualties excepted.
  - E. Alterations. Lessee shall not, without the Lessor's prior written consent first obtained in each instance, make any alterations or additions in or about the leased premises. All permanent alterations or improvements made to the premises shall become the property of the Lessor and be surrendered as part of the leased premises upon the termination of this Lease.
  - F. Licenses and Permits. Lessee, at its own expense, shall obtain all licenses and permits required by governmental agencies having jurisdiction over the operation of its business.
  - G. Maintenance. Lessee, at its own expense, shall maintain the leased premises and appurtenances thereto in good repair, and in at least as good condition as that in which they are delivered, allowing for ordinary wear and tear. Lessee shall be responsible for the maintenance and all minor repairs to the interior of the leased premises.
  - H. Utilities and Service. Lessee shall pay for its own telephone communication utilities. Lessee shall also provide its own janitorial services at lease location. Lessor shall provide utilities and services as described in Section 5.
5. Lessor's Warranties. The Lessor covenants, guarantees and provides the following express warranties:
- A. No existing restrictions interfere with the Lessee permitted and intended use of the leased property;
  - B. Availability of adequate ingress and egress to leased property;
  - C. Lessor has sufficient interest in property to grant tenants this leasehold;
  - D. Lessee shall have quiet enjoyment of the premises;

- E. The property is fit for its intended use;
  - F. Any use, treatment, storage, or transportation of hazardous substances has been in compliance with all applicable federal, state and local laws. No hazardous substances have been released, discharged, spilled, leaked, disposed of, or omitted on, in, or under the premises. The premises are free of hazardous substances;
  - G. Lessor shall be responsible for all snow and ice removal from the roof and the adjacent parking area and sanding as necessary;
  - H. Lessor shall keep the structural supports, exterior walls, roof, plumbing and heating system in good order and repair;
  - I. Lessor shall provide electricity, heating energy, water and sewer, at its own cost and expense. Lessee shall provide all other utilities.
6. **Default by Lessor/Lessee.** Should either Lessee or Lessor 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. All rental hereunder shall abate during the period of any such default. Upon termination of this lease, Lessor shall refund to Lessee any unearned advance rental paid of lessee.
7. **Liability and Insurance.** Each party shall be responsible and liable for its own acts and omissions under this lease. Lessee agrees to carry \$500,000 liability insurance and \$50,000 fire legal liability insurance. The parties understand that lessee is currently self-insured in an amount of \$250,000 and has excess coverage. Lessee further understands that lessee is responsible for insuring its personal property and other belongings which are kept within its premises. Lessee shall not do anything or bring anything within the premises which shall increase the risk of fire or other loss to the premises.
8. **Permits, Law, and Taxes.** Lessor shall acquire and maintain in good standing all permits, licenses, and other entitlements necessary to the performance under this lease. All actions taken by the Lessor under this agreement shall comply with all applicable statutes, ordinances, rules, and regulations. Lessor shall pay all taxes that may be due and owing to a federal, state, or local taxing entity.
9. **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.
10. **Integration.** This document contains the entire 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.

11. **Modification.** The parties may mutually agree to modify the terms of this agreement. Any modifications shall be in writing executed by both parties.
12. **Subject to Annual Appropriation.** Unless the Kenai Peninsula Borough 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 fail to appropriate funds sufficient to make lease payments on the leased property for the following fiscal year.
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:  
 SeaView Community Services  
 Attn: Executive Director  
 PO Box 1045  
 Seward, AK 99664

Lessee:  
 Kenai Peninsula Borough  
 Attn: Planning Director  
 144 N. Binkley Street  
 Soldotna, AK 99669

LESSOR:

LESSEE:

\_\_\_\_\_  
 Bernie F. Jerriel, Jr.  
 Executive Director

\_\_\_\_\_  
 David R. Carey, Mayor  
 Kenai Peninsula Borough

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM  
 AND LEGAL SUFFICIENCY:

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

\_\_\_\_\_  
 Holly B. Montague  
 Deputy Borough Attorney

**NOTARY ACKNOWLEDGMENTS**

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011  
by **David R. Carey**, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation,  
for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for Alaska  
Commission expires: \_\_\_\_\_

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011  
by **Bernie F. Jerriel, Jr**, Executive Director SeaView Community Services.

\_\_\_\_\_  
Notary Public in and for Alaska  
Commission expires: \_\_\_\_\_