

Introduced by: Mayor
Date: 06/01/99
Hearing: 07/13/99
Action: Enacted as Amended
Vote: 6 Yes, 0 No, 1 Absent, 1 Abstention

**KENAI PENINSULA BOROUGH
ORDINANCE 99-34**

**AN ORDINANCE AUTHORIZING A LEASE TO THE CITY OF HOMER OF
BUILDINGS COMPRISING THE FORMER HOMER INTERMEDIATE SCHOOL
AT OTHER THAN MARKET VALUE**

WHEREAS, the former Homer Intermediate School Facility is surplus to Borough needs and specifically is no longer needed or suitable for public school purposes; and

WHEREAS, Ordinance 98-42 authorized the conveyance of the former Homer Intermediate School Facility to the City of Homer at other than market value; and

WHEREAS, a quiet title action, replatting of the site, and underground storage tank removal must be completed before the former Homer Intermediate School buildings and underlying property can be conveyed to the City of Homer which could take over a year; and

WHEREAS, the Kenai Peninsula Borough will not incur any additional cost associated with renovation or remodel of interior or exterior of buildings; and

WHEREAS, the City of Homer has requested immediate possession of the facility for use by the Boys and Girls Club and for other city activities; and

WHEREAS, the KPBC Planning Commission at its regularly scheduled meeting of June 14, 1999 recommended enactment of the ordinance by unanimous consent.

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

SECTION 1. That the Assembly finds that leasing the former Homer Intermediate School buildings to the City of Homer is in the best interests of the public and borough. This finding is based on the following facts:

- a. The buildings will be used by the City of Homer for public purposes beneficial to the general public.

- b. The City of Homer is a local government within the Kenai Peninsula Borough providing services to borough residents.
- c. The former Homer Intermediate School buildings is surplus to borough needs.

SECTION 2. The Mayor is authorized, pursuant to KPB 17.10.100(I), Negotiated Sale or Lease, and KPB 17.10.140 (A) Short term lease, to negotiate the lease of buildings comprising the former Homer Intermediate School facility located on a portion of the E2 Section 19, T6S, R13W, S.M., Alaska (hereafter referred to as "buildings") to the City of Homer, subject to the lease conditions required by this ordinance and the applicable consistent provisions of KPB 17.10. The lease rental rate shall be \$1.00 per year. The authorization is for negotiation solely with the City of Homer. With the exception of removing an underground fuel tank which services the territorial school, the KPB shall make no repairs or improvements to the buildings as part of this lease agreement.

SECTION 3. Pursuant to KPB 17.10.230, that the Assembly authorizes an exception to the requirements of KPB 17.10.140 (A) Short term lease, (1)(2)(4)(5) based on the following findings:

- 1. That special circumstances or conditions exist:

FINDING: Special circumstances exist in that this is a lease to another government entity, City of Homer, for the purposes beneficial to the general public pending conveyance of the buildings and underlying property to the city.

- 2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter:

FINDING: An application and development plan is not necessary because the buildings are already authorized for conveyance to the City of Homer. Further, the City of Homer will be leasing the buildings in an "as is" condition without any requirements to further develop the site.

- 3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.

FINDING: This purpose of this lease is to allow the City of Homer to be located on the property for municipal purposes until the property can be conveyed by deed pursuant to Ordinance 98-42. The use of the property by the City of Homer for community purposes until title to the property can be

conveyed is compatible with site and adjacent school property.

SECTION 4. The mayor is authorized to sign any documents including a lease in substantially similar form to the draft lease attached as Attachment A necessary to effectuate this ordinance.

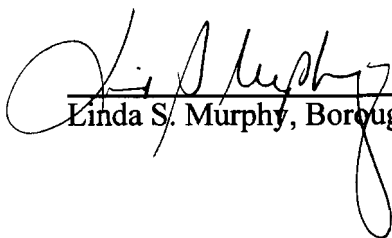
SECTION 5. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 13TH DAY OF JULY 1999.

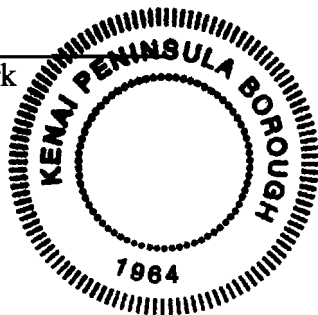


Ronald Wm. Drathman, Assembly President

ATTEST:



Linda S. Murphy, Borough Clerk



KENAI PENINSULA BOROUGH BUILDING LEASE WITH CITY OF HOMER

For good and valuable consideration, including the covenants and agreements contained herein, and pursuant to Ordinance 98-42, enacted September 1, 1998, the KENAI PENINSULA BOROUGH, an Alaska municipal corporation whose address is 144 North Binkley Street, Soldotna, Alaska 99669, (hereinafter called "KPB"), grants to the City of Homer, an Alaska municipal corporation whose address is 491 East Pioneer Avenue, Homer, Alaska 99603-7645 (hereinafter called "Lessee"), use of the following described buildings situated in the Homer Recording District, Third Judicial District, State of Alaska, and described as follows:

Space within two buildings located on a portion of the E½ Section 19, T6S, R12W, S.M., Alaska as follows: the first floor of the building known as the former Homer Intermediate School, and the building known as the Old Territorial School.

The purpose of this lease is to allow the City of Homer to use the buildings on the real property for municipal purposes until the underlying real property can be conveyed by deed pursuant to Ordinance 98-42.

TERMS AND CONDITIONS

1. **Lease Term.** This lease is for an initial term of one (1) year and may be renewed for an additional one (1) year increment, commencing May 1, 2000 and terminating April 30, 2001. Said renewal shall be exercised by written agreement between KPB Mayor or his/her designee and the authorized representative of the Lessee. Should the parties not exercise the lease renewal on or before the termination date, the lease shall terminate on April 30, 2000.
2. **Lease Rental.** Pursuant to KPB Ordinance _____ the annual Lease rental is \$1.00 per year for the term of the lease.
3. **Lessee's Covenants:**
 - a. **As-Is Condition.** Lessee agrees to accept the buildings in "as is" condition without any representations or warranties that the property is suitable or usable for Lessee's purposes, or any purpose. Lessee acknowledges that it had full opportunity to inspect the buildings using professionals and resources of its choice prior to entering this lease. Lessee is aware that there is the possibility of asbestos in the buildings.
 - b. **Maintenance Costs.** Lessee covenants to assume responsibility for all operating and maintenance costs associated with the buildings including but not limited to the following:
 - 1) Heat, water, gas, and electric utilities;

- 2) Maintenance and repair of sidewalks and parking lots which provide access to the buildings; and
 - 3) Building and fixture maintenance and repairs necessary or incidental to Lessee's uses.
- c. Assignment. Lessee may not sublease buildings without prior written consent of the KPB.
 - d. Waste. Lessee covenants that it shall not commit waste or injury within the buildings or on the underlying real property.
 - e. Safety. Lessee covenants that it shall be solely responsible for maintaining the premises in a safe and fit condition, including without limitation snow and ice removal from all improvements and areas on the site developed or used for vehicle and pedestrian traffic associated with the buildings.
 - f. Hazardous Materials and Hazardous Waste. Lessee covenants that it will not store, handle or dispose of hazardous waste on this site under lease from KPB pursuant to KPB 17.10.240(H).

Lessee shall comply with all applicable laws and regulations concerning hazardous chemicals and other hazardous materials, and shall properly store, transfer and use all hazardous chemicals and other hazardous materials and not create any environmental hazards on the site leased herein. In no event may Lessee utilize underground storage tanks for the storage or use of hazardous chemicals or other hazardous materials.

Should any hazardous chemicals or hazardous materials of any kind or nature whatsoever, or hazardous wastes be released upon the subject site during the term of this lease, Lessee shall IMMEDIATELY report such release to the KPB Planning Director or other appropriate KPB official and to any other agency as may be required by law, and Lessee shall, at its own cost, assess, contain and clean up such spilled materials in the most expedient manner allowable by law.

As used herein, "hazardous chemical" means a chemical that is a physical hazard or a health hazard.

As used herein, "hazardous material" means a material or substance determined by federal, state, or local law, to be a hazardous material or which poses a significant health and safety hazard.

As used herein, "hazardous waste" means a hazardous waste as identified by the Environmental Protection Agency, and any other hazardous waste as defined by the federal, state, or local law.

The covenants and obligations described in this article shall survive the termination of this lease.

- g. Compliance With Laws. The Lessee covenants to comply with all applicable federal, state, KPB and local laws and regulations, and acquire all necessary permits to conduct its activities on the site.
 - h. Authorized Signatory. Lessee covenants that the person executing this agreement is authorized to do so on behalf of the Lessee.
4. **Repairs**. The KPB shall not perform repairs, renovations, or maintenance of any kind for any purpose to the buildings or heating, water, electric or sewer/septic systems. The KPB is not responsible to repair damage caused by snow, earthquake, fire, or any other cause. Any such actions are the responsibility of Lessee.
5. **Easements and Rights-of-Way**. The buildings subject to this lease are located on real property subject to all easements, rights-of-way, covenants and restrictions of which Lessee has actual or constructive notice. KPB reserves and retains the right to grant additional easements for utility and public access purposes across the property and nothing herein contained shall prevent KPB from specifically reserving or granting such additional easements and rights-of-way across the property as may be deemed reasonable and necessary. All trails or roads existing at the time this Lease is executed shall be considered an easement for public use.

As the parties agree that this is a reserved right which is reflected in the annual lease rental, in the event that KPB grants future additional easements or rights-of-way across the property, it is agreed and understood that Lessee shall receive no payment or damages for such grant.

The Lessee has a nonexclusive right to use the parking lot associated with the buildings which are the subject of this lease.

6. **Inspections**. Lessee shall allow KPB, through its duly authorized representative, to enter and inspect the leased premises at any reasonable time, with or without advance notice to Lessee, to ensure compliance with the terms and conditions of this lease. KPB's right to enter and inspect shall be exercised at KPB's sole discretion and the reservation or exercise of this right, and any related action or inaction by KPB, shall not in any way impose any obligation whatsoever upon KPB, and shall not be construed as a waiver of any rights of KPB under this agreement.
7. **Indemnification and Hold Harmless**. The 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 of any nature, kind or character including costs, expenses, and attorneys fees. The lessee shall be responsible under this clause for any and all actions or claims of any character

resulting from lessee or lessee's officers, agents, employees, partners, attorney's suppliers, and sublessees' performance or failure to perform this agreement in any way whatsoever including but not limited to claims for

- a) personal injuries,
- b) death,
- c) economic loss,
- d) property damage,
- e) contract violations,
- f) violation of statutes, ordinances, constitutions, rules or regulations, or other laws, or
- g) any other kind of loss sustained by any person, or property arising from performance or failure to perform under this lease.

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 the 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.

8. **Insurance.** Lessee shall purchase at its own expense and maintain in force at all times during the term of this lease Commercial General Liability and Automobile Insurance. Policies to include bodily injury, personal injury, and property damage with respect to the property and the activities conducted by Lessee in which coverage shall not be less than \$1,000,000.00 per occurrence or such higher coverage as specified by KPB. The policy shall name the KPB as an additional insured.

Proof of Insurance: Lessee shall deliver to KPB certificates of insurance along with Lessee's signature on this lease. This insurance shall be primary and exclusive of any other insurance by KPB. Failure to provide the certificate of insurance required by this section, or a lapse in coverage, is a material breach of the lease terms entitling the KPB to terminate this lease.

9. **Cancellation by Mutual Agreement.** At any time that this Lease is in good standing it may be canceled in whole or in part upon mutual written agreement by the 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.

10. **Termination.**

- a. Termination for Cause. All terms and conditions of this lease are considered to be material and applicable to the use of the property under this Lease. In

the event of Lessee's default in the performance or observance of any of the agreement terms, conditions, covenants and stipulations thereto, and such default continues fourteen (14) calendar days after written notice of the default, KPB may terminate this lease, or take any legal action for damages or recovery of the property. No improvements may be removed during the time in which the lease is in default.

- b. Termination for Convenience of Either Party. Either party may terminate this agreement for convenience upon 30 days written notice to the other party.
 - c. Automatic Termination. This lease shall terminate without further action by either party upon conveyance by quitclaim deed of the buildings and underlying parcel.
 - d. Return of Property. Upon cancellation under Section 9 or termination of this Lease by either party, Lessee covenants and agrees to return the property to KPB in a neat, clean and sanitary condition, and to remove all items of personal property subject to the terms and conditions of paragraph 14 below, within 45 days. The KPB may bill Lessee for cost of removal of personal property not removed within 45 days.
 - e. Hazardous Substance Breach. In the event Lessee breaches any provisions prohibiting the release of hazardous chemicals, hazardous materials or hazardous waste upon the property, and fails to immediately terminate the operation causing such release upon notice from KPB, then KPB may immediately terminate this lease agreement without further notice to Lessee.
11. **Violation.** Violation of any of the terms of this lease may expose Lessee to appropriate legal action including forfeiture of lease/purchase interest, termination, or cancellation of its interest in accordance with state law.
12. **Notice of Default.** Notice of the default, where required, will be in writing and as provided in the Notice provision of this agreement.
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. **Removal or Reversion of Improvements Upon Termination of Lease.** Pursuant to Ordinance 98-42 the purpose of this lease is to allow the City of Homer to

manage the buildings located on the subject real property for municipal purposes until the real property known as the former Homer Intermediate School can be conveyed by deed. If the subject real property is not conveyed to the Lessee, improvements made by Lessee shall revert to the KPB. Lessee may remove property and/or chattels that is not permanently affixed to the structure.

15. **Lease to University of Alaska, Anchorage, Kenai Peninsula College.** This lease is subject to a lease between the KPB and the University of Alaska, Anchorage, Kenai Peninsula College (UAA) recorded at Book 0281 Pages 019-034, Homer Recording District. The lease to UAA is for the top floor of the main building of the former Homer Intermediate School. The lease to UAA specifies terms and conditions, including maintenance costs that are UAA's responsibility as sole lessee. Section 3.e. Maintenance Costs of the UAA lease states "as the sole occupant, Lessee covenants to pay the operating and routine maintenance costs associated with the site. Routine maintenance includes snowplowing, maintenance of lawns and grounds, roof, generator, and boiler (to include but not limited to items on Attachment A). *If there are additional users or lessees, costs will be prorated among the users.*" (Emphasis added)

It is the responsibility of the City of Homer to negotiate and agree to the proper pro-ration of costs associated with the maintenance and operation of the buildings. Failure to provide maintenance and repairs and pay costs as required by Section 3(b) may result in termination of this 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 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.

All notices shall be sent to both parties as follows:

LESSOR

Kenai Peninsula Borough
Planning Director
144 N. Binkley
Soldotna, AK 99669-7599

Lessee

City of Homer
City Manager
491 East Pioneer Avenue
Homer, AK 99603-7645

17. **Responsibility of Location.** It shall be the responsibility of the Lessee to properly locate itself and its improvements within the buildings subject to this lease.
18. **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.

19. **Non-Waiver Provision.** KPB's knowledge of any breach by Lessee, or of any default on the part of the Lessee in observance or performance of any of the conditions or covenants of this agreement, shall not be deemed to be a waiver of any provision of the lease. Failure of KPB to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of KPB to enforce the same in the event of any subsequent breach or default. The receipt by KPB of any payment of any other sum of money after notice of termination or after the termination of the lease for any reason, shall not reinstate, continue or extend the lease, 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 the payment fully satisfies the breach.

20. **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.

21. **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.

22. **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.

23. **Titles of Articles.** The titles of articles in this lease are for ease of reference and are not definitional nor limits the content of the articles.

24. **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.

CITY OF HOMER

KENAI PENINSULA BOROUGH

City Manager

Mike Navarre, Mayor

Dated: _____

Dated: _____

ATTEST:

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY:

Linda S. Murphy
Borough Clerk

Holly B. Montague
Assistant Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 1999, by Mike Navarre, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 1999, by _____, City Manager of the City of Homer, an Alaska Municipal Corporation.

Notary Public in and for Alaska
My commission expires: _____

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