



KENAI PENINSULA BOROUGH

Planning Department • Land Management Division
144 North Binkley Street • Soldotna, Alaska 99669-7520
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JOHN J. WILLIAMS
BOROUGH MAYOR

MEMORANDUM

Agenda Item N.5

TO: Grace Merkes, Assembly President
Kenai Peninsula Borough Assembly Members

Committee Finance

THRU: John J. Williams, Mayor *BBW for Mayor*
Max Best, Planning Director *MIB/MB*

Page Number 141

FROM: *MA* Marcus A Mueller, Land Management Officer

DATE: April 1, 2008

SUBJECT: ITEM N. 5. PAGE 141
Amendment to Ordinance 2008-07 Authorizing the Negotiated Lease of
Office Space at the Former Nikiski Elementary School Building

Land Management, after consulting with Lockheed Martin concerning the proposed lease agreement, offers the following amendment to Ordinance 2008-07 for your consideration which would modify the initial term from 6 months to 7 months:

AMEND SECTION 3 AS FOLLOWS:

SECTION 3. Based on the foregoing, the mayor is hereby authorized pursuant to KPB 17.10.100 (I) to lease one classroom with common use of one bathroom and parking to Lockheed Martin for an initial term of [6 MONTHS] 7 months, with month-to-month extension thereafter, at monthly rental of \$1,500. The authorization is for lease solely to Lockheed Martin, and it may not assign any rights to negotiate or enter an agreement for lease to any other person or entity. Once entered, the lease may be assigned or subleased pursuant to the terms of the lease agreement.

Additionally, attached is a revised lease which reflects the proposed 7 month term and additionally makes several minor revisions which are underlined. Two new provisions, Section 6 (E) and 6 (F), have been inserted into the proposed lease; these relate to environmental conditions and American's with Disabilities Act compliance, respectively.

**DRAFT
LEASE**

This AGREEMENT, made and entered into this _____ day of _____ 2008, by and between the Kenai Peninsula Borough, 144 N Binkley St, Soldotna, AK 99669, hereinafter referred to as "LESSOR" and Lockheed Martin Corporation Properties, Inc., 100 South Charles St., Suite 1400, Baltimore, Maryland, 21015, hereinafter referred to as "LESSEE";

WITNESSETH:

1. **Premises.** LESSOR, for and in consideration of the rents, covenants, and conditions hereinafter specified does hereby lease to LESSEE the following property hereinafter referred to as "PREMISES":

A 941 square foot classroom more particularly described as Room #17, Former Nikiski Elementary School Building, 50097 Kenai Spur Highway, situated on Tract A, North Kenai School Site Subdivision, according to Plat No.1362, records of the Kenai Recording District, Third Judicial District, State of Alaska.

LESSEE shall also have common use of one public bathroom and parking space for up to 10 vehicles as depicted on Exhibit A attached hereto and incorporated by reference.

2. **Rent.** In consideration of the lease of the premises by LESSOR, LESSEE covenants to pay to the LESSOR as rental for the premises described in paragraph 1 above, the sum of \$1,500.00 per month. Rent is due and payable in advance, on or before the 1st day of the month. Rent shall remain the same for the life of the lease and any renewal provided thereby.
3. **Term, Month-to-Month Extended Terms.** The lease term is 7 months commencing on the _____ day of _____, 2008 and ending on the _____ day of _____, 2008 and may be extended month-to-month thereafter upon mutual agreement of the parties provided however that either LESSEE or LESSOR may cancel any extended terms of this Agreement without cause by delivering written notice to the other party not less than 28 days in advance of the date of cancellation. Such written notice shall specify the date of cancellation. Rents for a partial last month shall be prorated to the actual number of days in the partial term at \$50.00 per day. LESSEE and LESSOR acknowledge that eight to ten months is the anticipated life of this AGREEMENT.
4. **Services.**
 - A. **Utilities.** Heat, electric and water utilities shall be provided by LESSOR for the duration of this lease.

- B. Snow Removal. Snow removal on the parking lot shall be provided by LESSOR; however, snow removal along the entrance way is the responsibility of the LESSEE.
 - C. Phone/ Network. Phone and Network service is the responsibility of the LESSEE. LESSOR shall grant access to existing phone and LAN ports; however, phone accounts, network servers, and Internet connections shall be established and paid for by LESSEE at the option of the LESSEE.
 - D. Janitorial Service. LESSEE is responsible for its own janitorial or custodial services.
5. **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 2 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.
 - 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 Agreement, LESSEE will peaceably yield up to the 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 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 the LESSOR's obligations under this lease.
 - G. Use of Premises. LESSEE hereby covenants that the use of the premises shall be for commercial, retail or professional use only and for no other purpose except by written mutual agreement by LESSOR.
6. **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 at all times.
 - E. LESSOR represents and warrants that, to the best of LESSOR's knowledge, no Environmental Conditions exist on the premises other than asbestos containing materials as disclosed by report. Environmental conditions means any regulated condition under Environmental Laws including, but not limited to, the presence of PCBs, asbestos and asbestos containing materials, radon, underground storage tanks, mold or poor air quality, including, without limitation, the presence of chlorofluorocarbons. A material Environmental Condition means the presence of an Environmental Condition in excess of legally permitted maximum thresholds or for which some type of notification, investigation or remediation is required under Environmental Laws. Environmental Laws means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601-9657 (and any similar successor laws or regulations); the Clean Air Amendments of 1990 (and any similar successor laws or regulations); or any other federal state, county, local, or municipal law, ordinance, code, judgments, decrees, licenses, injunction or regulation related to Environmental Conditions.
 - F. LESSOR shall deliver the Premises to LESSEE in compliance in all material respect with Title III of the Americans With Disabilities Act of 1990, any laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines, promulgated under such laws, as amended from time to time (the "Disabilities Acts"). If a non-compliance with said warranty exists LESSOR shall, after receipt of written notice from LESSEE setting forth with specificity the nature and extent of such non-compliance, rectify same at LESSOR'S expense and not includable in Operating Expenses. LESSOR shall be responsible for causing the common areas of the Building (including, without limitation, all restrooms and parking areas) to comply with the Disabilities Acts. LESSOR hereby agrees to bring restrooms up to code. Changes include combining two smaller stalls into 1 larger stall, adding handicap bars, and adding covers to the pipes underneath the sink.
7. **Default by Either Party.** Should either LESSOR or LESSEE default in the performance of the obligations of any covenants of this Agreement and fail to fully remedy such default within thirty days after written notice by the non-defaulting party, then the Agreement may be terminated by written notice to the defaulting party. All rent hereunder shall abate during the period of any such default. Upon termination of this Agreement, LESSOR shall refund to LESSEE any unearned advance rent paid by LESSEE.

8. **Indemnification and Liability Insurance.**

- a. **Indemnification and Hold Harmless.** LESSEE shall indemnify, defend, save and hold LESSOR, 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 resulting from LESSEE'S performance or failure to perform in accord with the terms of this Agreement in any way whatsoever. The LESSEE shall be responsible under this clause for any and all claims of any character resulting from LESSEE or LESSEE'S officers, agents, employees, partners, attorneys, suppliers, and subcontractors performance or failure to perform this Agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by LESSOR 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 claims arising from the sole negligence or willful misconduct of LESSOR, its agents, or employees.
- b. **Liability Insurance.** LESSEE shall purchase at its own expense and maintain in force at all times during the term of this Lease Comprehensive General Liability Insurance, which shall include bodily injury, personal injury, and property damage with respect to the property and the activities conducted by the LESSEE in which the coverage shall not be less than \$1,000,000 per occurrence. The policy purchased shall name LESSEE as the insured and list LESSOR as an additional insured, shall be primary and exclusive of any coverage carried by LESSOR, and shall also require the insurer to provide LESSOR with thirty (30) days or more advance written notice of any pending cancellation or change in coverage. LESSEE may submit a letter of self-insurance with proper backing demonstrating coverage that exceeds the above standards.
- c. **Proof of Insurance.** At the time of executing this Agreement, and at the time of each renewal of insurance, LESSEE shall deliver to the KPB Planning Director certificates of insurance meeting the above criteria.

9. **Damage due to Causes beyond Control.** LESSEE and LESSOR agree that if a cause beyond control prevents occupation of the premises, any rent paid shall be prorated daily 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 the lease agreement upon 14 days' written notice given in the manner set out in Section 17 of this lease agreement. 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 the lease agreement: 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 agreement. 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. The borough will determine whether an event constitutes a cause beyond control in accordance with the definition set forth in this section.

10. **Brokerage Fee.** A real estate brokerage fee will be paid by LESSEE along with, and in addition to, the first month's rent. Said brokerage fee will be collected by LESSOR and dispersed on behalf of LESSEE to Five Star Realty, 312 Tyee Street, Soldotna, AK 99669. Said brokerage fee shall equal 10% of the sum of ten months rent, or \$1,500.00.
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 agreement and the performance of either party hereto, are merged and integrated into the terms of this document.
14. **Modification.** The parties may mutually agree to modify the terms of this agreement. Any modifications shall be in writing executed by both parties.
15. **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.
16. **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.
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: Planning Director
144 N. Binkley Street
Soldotna, AK 99669

LESSEE:
Lockheed Martin Corporation
C/O LMC Properties, Inc
100 South Charles St., Suite 1400
Baltimore, MD 21015

Attn: Lease Administration

LOCKHEED MARTIN CORPORATION
PROPERTIES, INC.

KENAI PENINSULA BOROUGH

John R. Happick
Senior Manager, Real Estate

John J. Williams
Mayor

Date: _____

Date: _____

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Sherry Biggs, Borough Clerk

Holly B. Montague
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ___ day of _____, 2008 by John J. Williams, 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: _____

