

Introduced by: Mayor  
Date: 02/02/21  
Hearing: 02/16/21  
Action: Enacted as Amended  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-04**

**AN ORDINANCE APPROVING THE TRANSFER OF ASSETS FROM NINILCHIK  
EMERGENCY SERVICES, INC. TO THE KENAI PENINSULA BOROUGH ON  
BEHALF OF THE NEWLY EXPANDED FIRE & EMERGENCY MEDICAL SERVICE  
AREA**

**WHEREAS**, Ordinance 2020-31 expanded the Anchor Point Fire and Emergency Medical Service Area (APFEMSA) boundaries to include the Ninilchik area subject to approval by the voters residing in the APFEMSA and also by voters residing in the proposed expanded boundaries outside of APFEMSA in the October 6, 2020 regular borough election; and

**WHEREAS**, the voters in both areas approved the expansion of APFEMSA as described in Ordinance 2020-31; and

**WHEREAS**, Section 8 of Ordinance 2020-31 also provided that the ordinance shall only take effect if the Ninilchik Emergency Services (NES) non-profit organization transfers free and clear title, ownership, and possession of all real and personal property located in or obtained for use at or by the Ninilchik Fire Department to the borough on behalf of the newly expanded fire and emergency medical service area on or before January 31, 2021; and

**WHEREAS**, Ordinance 2020-49 extended the deadline for the transfer of assets to April 20, 2021; and

**WHEREAS**, NES has agreed to execute a Purchase Agreement to transfer free and clear title, ownership, and possession of all real and personal property located in and obtained for use by the Ninilchik Fire Department to the Kenai Peninsula Borough (Borough) for the sum of ten dollars (\$10.00), not to include costs associated with the sale or transfer of the assets; and

**WHEREAS**, the conditions of the transfer were memorialized in a Purchase Agreement negotiated between the Borough and NES; and

**WHEREAS**, Borough employees have inventoried and inspected the assets; and

**WHEREAS,** the best interests of the Borough would be served by authorizing the transfer of these assets to the Borough on behalf of the new service area approved by the voters; and

**WHEREAS,** as stated in Ordinance 2020-31, upon the transfer of assets, the Anchor Point Fire and Emergency Service Area shall be expanded to encompass the areas approved by the voters on October 6, 2020; and

**WHEREAS,** also as stated in Ordinance 2020-31, upon the expansion of the service area, it shall be renamed the Western Emergency Service Area (WESA); and

**WHEREAS,** the WESA board at its special meeting held on December 17, 2020, voted unanimously to approve the Purchase Agreement; and

**WHEREAS,** the Planning Commission at its regularly scheduled meeting held on February 8, 2021, recommended approval by unanimous consent;

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

**SECTION 1.** That the Borough Mayor is authorized to enter into a Purchase Agreement, substantially in the form of the Purchase Agreement attached hereto and incorporated herein by reference, of the real and personal property located in Ninilchik, Alaska as described in Attachment A to the Purchase Agreement.

**SECTION 2.** That the sale price, not including all associated closing costs, shall not exceed ten dollars (\$10.00).

**SECTION 3.** That as a part of this transfer, all assets shall be free and clear of any liens and encumbrances.

**SECTION 4.** The sum of ten dollars (\$10.00) is available in account 209.51410.48620 for the acquisition of NES assets as authorized by this ordinance.

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

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF FEBRUARY, 2021.**

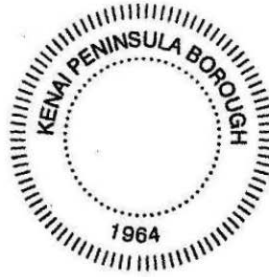


\_\_\_\_\_  
Brent Hibbert, Assembly President

ATTEST:



\_\_\_\_\_  
Jonni Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert  
No: None  
Absent: None

## PURCHASE AGREEMENT

This Agreement is made on this \_\_\_\_ day of February, 2021 by and between the Kenai Peninsula Borough, a State of Alaska municipal corporation, whose address is 144 N. Binkley Street, Soldotna, Alaska 99669 (hereinafter referred to as the Borough”) and Ninilchik Emergency Services, an Alaska nonprofit corporation, whose address is PO Box 39446, Ninilchik, Alaska 99639 (hereinafter referred to as “NES”).

**WHEREAS**, NES is a nonprofit corporation organized to provide fire and emergency medical services in the Ninilchik area; and

**WHEREAS**, NES is the owner of real property located in the Homer Recording District, Third Judicial District, State of Alaska, and more particularly described as follows:

TRACT A OF ALASKA STATE LAND SURVEY NO. 2010-20, CONTAINING 3.502 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT RECORDED IN THE HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA, ON AUGUST 27, 2012, AS PLAT 2012-31

and

LOT ONE, COOPER-ENGLE SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED UNDER PLAT NO. 97-9, RECORDS OF THE HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA

hereinafter “the Property”; and

**WHEREAS**, during the regular October 6, 2020 borough election the voters of the proposed expanded boundary outside the boundaries of the Anchor Point Fire and Emergency Medical Service Area (APFEMSA) and the voters of the APFEMSA approved passage of Proposition No. 1 which approved expanding the Anchor Point Fire and Emergency Medical Service Area to include the Ninilchik area and creating a new service area to be called the Western Emergency Service Area (WESA); and

**WHEREAS**, as a condition of the new service area taking effect, NES agrees to transfer free and clear title, ownership, and possession of all real and personal property located in or obtained for use at or by the Ninilchik Fire Department to the borough on behalf of the new service area; and

**WHEREAS**, the Borough is willing to accept the property, which is located within the newly established service area along with certain equipment and supplies as described in **Exhibit A**, attached hereto and incorporated herein by reference; and

**WHEREAS**, the Borough and NES have negotiated additional terms and conditions to ensure that the Property is primarily used to provide fire and emergency medical services to the Ninilchik community, firefighting and emergency medical services equipment, and that it will be manned by WESA personnel; and

**WHEREAS**, the Borough agrees to adequately staff both stations with paid staff and volunteers as necessary for proper operation and to ensure adequate coverage of the entire service area; and

**WHEREAS**, during the initial transition hiring, the Borough agrees to provide current NES employees and volunteers the opportunity to apply as internal applicants; and

**WHEREAS**, in consideration of the promises herein contained, NES hereby agrees to transfer to the Borough, and the Borough hereby agrees to accept from NES, the Property and the equipment described in Exhibit A and to use and operate the equipment and facility on the Property on the terms and conditions as set forth below.

1. PURCHASE PRICE

The purchase price of the Property and equipment listed in Exhibit A shall be TEN dollars and no cents (\$10.00) to be paid at the time of closing.

2. TITLE

Title to the real property shall be delivered at time of closing by warranty deed which shall be issued to the Borough. Title shall be subject to reservations, easements, rights-of-way, covenants, conditions, and restrictions of record. Title to personal property shall be delivered at time of closing by Bill of Sale or other applicable document.

3. ESCROW AND CLOSING COSTS

In addition to the purchase price, the Borough agrees to pay for all closing costs in connection with this Agreement, including without limitation all escrow fees, title insurance charges, and recording fees. All costs must be paid in full at the time of closing.

4. CLOSING

Unless otherwise agreed in writing, and approved by the Assembly by ordinance, closing will occur prior to February 28, 2021. At closing, the Borough will pay the purchase price and any

remaining unpaid closing costs. Both parties will execute all documents required to complete the conditions of this Purchase Agreement.

5. POSSESSION

Possession shall be delivered to the Borough at time of recording. Recording shall be accomplished no later than April 20, 2021.

6. PERSONNEL

Upon recording of title, the Borough shall staff the NES station in accordance with the staffing plan approved by the borough administration which shall be developed in consultation with the Western Emergency Service Area Board and subject to funding appropriated by the Assembly. All new borough positions must first be approved by the assembly per KPB 3.04.100. Thereafter staffing and funding levels shall continue to be as determined by the borough administration in consultation with the Board provided that staffing remains within both the funding and position limits approved by the Assembly.

7. HAZARDOUS MATERIALS

- A. NES covenants and agrees that no hazardous substances or wastes have been located on or stored on the property, or any adjacent property, nor shall any such substance be owned, stored, used, or disposed of on the property or any adjacent property by NES, its agents, employees, contractors, or invitees, prior to the Borough's ownership, possession, or control of the property.
- B. NES covenants and agrees that if the presence of hazardous material on the property is caused or permitted by NES, its agents, employees, contractors, or invitees, or if contamination of the property by hazardous material otherwise occurs on the property prior to closing, NES shall defend, indemnify, and hold harmless the Borough from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses, (including, but not limited to, sums paid in the settlement of claims, attorney's fees, consultant fees and expert fees) which may arise as a result of such contamination. This defense and indemnification includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local government or under the property. As used herein, the term "hazardous material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local government authority, State of Alaska, or the United States Government.

8. RIGHT OF FIRST REFUSAL

The Borough shall maintain the Station and associated assets in a safe and useable condition which shall include, but not be limited to, providing preventative maintenance, repairing

damage, and responding to maintenance concerns. In the event the Borough elects to permanently close the NES station or in the event the voters elect to abolish the Western Emergency Service Area, it is agreed that NES shall have the first right of refusal to purchase the property and equipment under the same terms and conditions as the Borough purchased them from NES, except that the borough shall not be responsible for repairing any damages to the assets occurring prior to its possession of the assets or cleaning up of any hazardous materials located on the premises at the time of transfer to the borough.

#### 9. BREACH AND REMEDIES

In the event of a default in the performance or observance of any of the Agreement terms, conditions, covenants or stipulations thereto prior to the closing of the sale, and such default continues ten (10) or more days after written notice of default, the non-defaulting party may cancel this Agreement or take any legal action for damages or recovery of the property.

In the event of a default in the performance or observance of any of the Agreement terms, conditions, covenants or stipulations thereto after the closing of the sale, and such default continues ten (10) or more days after written notice of the default, the non-defaulting party may enforce the terms and conditions of this Agreement through equitable remedies including specific performance and injunctive relief. In the case of default after closing, no improvements may be removed during the time that the contract is in default. This provision shall survive the execution of sale documents and shall continue in full force and effect until either the parties agree otherwise, in writing, or ten (10) years from the date of execution of this Agreement, whichever shall occur first.

#### 10. ENTIRE AGREEMENT

This Agreement and the document(s) referred to herein contain the entire agreement of the parties with respect to the subject matter hereof. Any changes, additions, or deletions hereto must be made in writing and signed by both the Borough and NES or their respective successors in interest. Provisions of this Agreement, unless inapplicable on their face, shall be covenants constituting terms and conditions of the sale and of the Agreement to operate the station, and shall continue in full force and effect until the Agreement is terminated.

#### 11. NOTICES

Any notice or demand, which under the terms of this Agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by certified mail, addressed to the other party at the address shown herein. However, either party may designate, in writing, such other address to which such notice or demand shall thereafter be so given, made, or mailed. A notice given hereunder shall be deemed received three (3) calendar days after deposit in a U.S. general or branch post office by the addressor.

Kenai Peninsula Borough  
Attn: Legal Department  
144 N. Binkley Street  
Soldotna, AK 99669

Ninilchik Emergency Services  
Attn: Board President  
PO Box 39446  
Ninilchik, AK 99639

## 12. MISCELLANEOUS

- A. Not Residential Property. The parties mutually agree that this transfer will not be covered by the Residential Real Property Transfer Act, AS 34.70.010, et. seq.
- B. Time. Time is of the essence in performance of each and every provision of this Agreement.
- C. Cancelation. This Agreement, while in good standing, may be canceled, in whole or in part prior to the Deed being recorded, upon the mutual written agreement by the parties.
- D. Integration. This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties.
- E. Written Waiver. Failure of either party to enforce any covenant or provision therein contained shall not discharge or invalidate such covenants or provision or affect the right of that party to enforce the same in the event of any subsequent breach or default.
- F. Severability. If any action or clause in 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.
- G. No Third-Party Beneficiary. This Agreement is intended solely for the benefit of each party thereto. Nothing contained herein shall be construed or deemed to confer any benefit or right upon any third party.
- H. Construction. This Agreement shall be deemed to have been jointly drafted by both 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.





