

Kenai Peninsula Borough Legal Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *JCB*

FROM: Patty Burly, Deputy Borough Attorney *PB*

DATE: February 4, 2021

SUBJECT: Amendment to Ordinance 2021-04, 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 (Mayor) (Hearing on 03/02/21)

This ordinance, if approved, transfers assets from Ninilchik Emergency Services, Inc., (NES) to the borough on behalf of the newly expanded Western Emergency Service Area. Closing is scheduled for February 19, 2021 with recording and go live scheduled for February 22, 2021.

However, one item that will require time to complete post-closing is the registration of the wastewater systems (domestic water and non-domestic water). While NES has been diligent in its efforts to complete the registration with the State of Alaska, Department of Environmental Conservation, this process is a lengthy one that often takes a significant period of time. Realistically, it is not expected to be completed until sometime in June of this year.

All other steps have been completed and the parties are ready to begin the service area. The amendments requested below will authorize the mayor to enter into the attached agreement to protect the borough and ensure the process is completed while not needlessly delaying the closing.

[Please note the underlined bold text is new and the strikethrough bold language in brackets is to be deleted.]

- Insert a new eleventh whereas clause, as follows:

WHEREAS, it was recently discovered that the wastewater systems for both domestic and non-domestic wastewater will need to be registered with the State of Alaska Department of Environmental Conservation after the assets have been transferred to the borough; and

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RE: Amendment to O2021-04

➤ Amend Section 1, as follows:

SECTION 1. That the Borough Mayor is authorized to enter into a Purchase Agreement and an Agreement for Registration of Wastewater Systems, substantially in the form of the ~~[Purchase A]agreements~~ 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].~~

➤ Amend Section 3, as follows:

SECTION 3. That as a part of this transfer, all assets shall be free and clear of any liens and encumbrances, except that the parties agree to cooperate in registering the wastewater systems for both domestic and non-domestic wastewater located at the former NES station as soon as reasonably possible.

Your consideration is appreciated.

**REGISTRATION OF WASTEWATER SYSTEMS AGREEMENT
BETWEEN
KENAI PENINSULA BOROUGH AND
NINILCHIK EMERGENCY SERVICES**

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, the parties have agreed to enter into a Purchase Agreement simultaneously with this document for the purchase of a fire department located in Ninilchik, Alaska at

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

WHEREAS, during inspections of and preparation for closing on the fire department, the parties noted that registration of the (1) domestic wastewater system and the (2) non-domestic wastewater system with the State of Alaska, Department of Environmental Conservation had inadvertently not been completed; and

WHEREAS, NES has agreed to correct this oversight of the wastewater systems registration requirement but the process will extend past the date of closing on the building; and

WHEREAS, this agreement memorializes the requirement that NES complete the registration of the wastewater systems as a condition of the Purchase Agreement; and

WHEREAS, in consideration of the promises contained in the Purchase Agreement, NES hereby agrees to complete the wastewater system registrations with the State of Alaska per the terms and conditions set forth below.

1. Responsibilities of Ninilchik Emergency Services.

NES will provide all required domestic and non-domestic wastewater records as required by the State of Alaska, Department of Environmental Conservation required for registration of the wastewater systems at the Ninilchik Fire Department.

NES shall complete the registration of the wastewater systems no later than **June 30, 2021**.

2. Responsibilities of the Kenai Peninsula Borough.

None.

3. Time is of the essence in performance of this Agreement. The parties agree that they closed on a separate Purchase Agreement in good faith based on NES' promises to complete the registration.

4. Penalty for Failure to Register by the Deadline. Should NES fail to register both wastewater systems by the June 30, 2021 deadline and fail to request a written extension of the deadline from both the Borough and the State of Alaska no later than June 15, 2021, NES agrees to pay the Borough a late fee of One (\$1) dollar for each month or partial month it fails to complete the registration.

5. COUNTERPARTS. This Agreement may be executed in counterparts (whether by facsimile or PDF signature or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the date and year first above written.

NINILCHIK EMERGENCY SERVICES (NES)

KENAI PENINSULA BOROUGH

Katherine Covey, President

Charlie Pierce, Mayor

Catherine Laky, Secretary

Approved as to form and Legal
Sufficiency

Patty Burley, Deputy Borough Attorney

ATTEST:

Johni Blankenship, MMC, Borough Clerk

CORPORATE ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ___ day of February 2021, by Katherine Covey, President of Ninilchik Emergency Services, an Alaska nonprofit corporation, for and on behalf of the corporation.

Notary Seal:

Notary Public for State of Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ___ day of February 2021, by Catherine Laky, Secretary of Ninilchik Emergency Services, an Alaska nonprofit corporation, for and on behalf of the corporation.

Notary Seal:

Notary Public for State of Alaska
My Commission Expires: _____

KPB ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ___ day of February 2021, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Seal:

Notary Public for State of Alaska
My Commission Expires: _____