

DRAINAGE INSTALLATION AND WORK AGREEMENT AND RELEASE OF LIABILITY

SECTION 1. PARTIES

This Drainage Installation and Work Agreement and Release of Liability (“Agreement”) is between the Kenai Peninsula Borough (“KPB”), an Alaska municipal corporation, whose address of record is 144 N. Binkley St., Soldotna, AK 99669, and Bunkhouse Properties, LLC, by and through its manager-member Bruce Neeno (“Bunkhouse Properties”) whose mailing address is PO Box 90737, Anchorage, AK 99509, is made this _____ day of _____, 2022.

SECTION 2. PROPERTY/PROJECT

For the purposes of this Agreement:

PROPERTY means: That portion of U.S. Survey 2522-HS 35 lying north of the Sterling Highway, Section 27, T5N, R3W, S.M., Alaska

PROJECT means: Installation of temporary drainage measures to divert water and sediment away from structures with flow temporarily directed to the east away from rental uses, engineering reinspection to prescribe repair and maintenance actions of slope and drainage system, and repair and maintain slope and drainage system, with drainage extension as needed, reseeded disturbed soils, all conduct surveying of project features, subject to KPB Assembly approval and budget, if required. Project includes a monitoring period such that the Project will be deemed complete if all drainage features are properly functioning and all work areas and slopes are stable and vegetation established to June 30, 2023. Proper functioning of drainage features includes a measurable outcome indicating drain capacity and efficacy such that groundwater level downslope of drain collection features is lower than drain elevation observable by test holes. Project shall avoid disturbance of renter trailers and vehicles. Project shall be conducted in a neat, workmanlike manner, grading and stabilizing all work areas and adjacent slopes.

SECTION 3. APPLICABLE AUTHORITY

The undersigned KPB representative has the necessary authority to execute this Agreement.

Bunkhouse Properties is entering into this Agreement of its own free will, with full knowledge of the proposed project and access to legal and engineering counsel. The undersigned manager-member of Bunkhouse Properties represents that he has full authority to bind the entity and execute this Agreement on behalf of Bunkhouse Properties.

SECTION 4. AGREEMENT

KPB agrees to:

1. Contract for work to complete the Project.
2. Manage and fund the Project, subject to KPB Assembly approval and budget, if required.
3. Submit to the KPB Assembly for its consideration, a proposal to transfer the Project slope area to Bunkhouse Properties thereby transferring any and all ownership, control, and maintenance responsibilities of the slope and drainage features to Bunkhouse Properties and its successors in interest, surveyed and platted by KPB. Subject areas are shown on Exhibit A. Proposal is subject to Assembly approval by ordinance.

BUNKHOUSE PROPERTIES agrees to:

1. Grant KPB and KPB's contractors the right, permission, and authority, for the duration of the Project, to enter upon Property, stage equipment and materials, and perform work necessary to complete the Project. Project is to be completed by August 31, 2022.
2. Keep Property in a condition that does not inhibit KPB's ability to complete the Project or perform any activities which will jeopardize the stability of the Project.
3. Allow storage of material on site for the duration of the Project.
4. Accept completion of the Project as specified as just compensation for its role and contribution to the Project.
5. Grant KPB a drainage and work access easement as set forth in the *Drainage and Work Access Easement*, in the location of the Project and drainage system, attached and incorporated into this Agreement by reference.

SECTION 5. RELEASE AND COVENANT NOT TO SUE.

Bunkhouse Properties agrees to the following:

1. Bunkhouse Properties hereby voluntarily and specifically, without any coercion whatsoever, assumes all risk of injury or harm as well as releases and forever discharges KPB and its employees, volunteers, counsel, elected and appointed directors, officers, and agents of any and all liability, claims, and demands of whatever kind or nature, either in law or in equity, which may arise or may hereafter arise from KPB's performance of the Project.
2. Bunkhouse Properties hereby releases, waives, discharges, and covenants not to sue KPB and its employees, volunteers, counsel, elected and appointed directors, officers, and agents from any and all liability, claims, demands, actions, and causes of actions whatsoever arising out of or related to any past loss, damage, acts of God, natural occurrences, or injury, including death arising from the Incident.
3. INCIDENT means: The slope instability on, over, under, and along Tract A, ASLS 2003-2, SW2005-10, within Sec 27, T5N, R3W, Seward Meridian, described in the December 17, 2021 Slope Instability Investigation in Cooper Landing report by Wince-Corthell-Bryson Consulting Engineers and associated progression of events or effects.
4. Bunkhouse Properties hereby releases, waives, discharges, and covenants not to sue KPB and its employees, volunteers, counsel, elected and appointed directors, officers, and agents from any and all liability, claims, demands, actions, and causes of actions

whatsoever arising out of or related to any loss, damage, or injury, including death that may be sustained by Bunkhouse Properties or to any property belonging to Bunkhouse Properties due to construction defects, fire, pollution, or any other possibility stemming from KPB's performance of the Project.

5. It is Bunkhouse Properties' expressed intent that this Agreement shall bind the members of its family, heirs, assigns, next of kin, legal representatives, and/or executors.

SECTION 6. NO FAULT

By entering into this Agreement, KPB does not admit fault nor assume any fault for any damages that occurred or is occurring due to movement of earthen materials and/or water on, over, under, or through the Project area.

SECTION 7. INTERPRETATION.

Bunkhouse Properties expressly agrees that this Agreement is intended to be as broad and inclusive as permitted by laws of the State of Alaska, and that this Agreement shall be governed by and interpreted in accordance with the laws of the State of Alaska. The parties agree that the release was mutually written by the parties and is to be interpreted according to its fair intent. Any lawsuit brought arising from this agreement shall be filed in the courts of the Third Judicial District, State of Alaska, located in the City of Kenai, Alaska.

SECTION 8. MODIFICATIONS

This Agreement may be modified only by written agreement signed by both parties.

SECTION 9. SEVERABILITY

Any clause or provision of this Agreement deemed invalid by any court of competent jurisdiction or otherwise by law shall not affect the validity of the remaining provisions of this Agreement which shall continue to be enforceable.

SECTION 10. SAVINGS CLAUSE

If any term of this Agreement is found to be void or invalid, such invalidity will not affect the remaining terms of this Agreement, which will continue in full force and effect.

SECTION 11. COUNTERPARTS

This Agreement may be executed in counterparts each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

SECTION 12. ENTIRE AGREEMENT

This Agreement and exhibits, appendices or incorporated attachments hereto, constitute the entire agreement and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

BUNKHOUSE PROPERTIES LLC

KENAI PENINSULA BOROUGH

By: Bruce Neeno
Its: Manager-Member
Dated: _____

By: Charlie Pierce
Its: Mayor
Dated: _____

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Johni Blankenship
Borough Clerk

A. Walker Steinhage
Deputy Borough Attorney

BUNKHOUSE PROPERTIES LLC ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Bruce Neeno, Bunkhouse Properties, LLC, for and on behalf of the Limited Liability Corporation.

Notary Public for the State of Alaska
My commission expires: _____

KENAI PENINSULA BOROUGH ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, for and on behalf of the municipal corporation.

Notary Public for the State of Alaska
My commission expires: _____

EXHIBIT A
PROPOSED LAND TRANSFER FROM KPB TO BUNKHOUSE PROPERTIES
PROPOSED SURVEY DESIGN

