

Kenai Peninsula Borough

*144 North Binkley Street
Soldotna, AK 99669*



Meeting Agenda

Tuesday, December 3, 2019

6:00 PM

Betty J. Glick Assembly Chambers

Assembly

Norm Blakeley

Jesse Bjorkman

Kenn Carpenter

Kelly Cooper

Tyson Cox

Willy Dunne

Brent Hibbert

Brent Johnson

Hal Smalley



Assembly Meeting Schedule

TUESDAY, DECEMBER 3, 2019

12:00PM **Assembly Photographs**

1:30 PM **Finance Committee**

“Comprehensive Annual Financial Report for the Year Ended June 30, 2019”, Joy Merriner, BDO USA, LLP
(30 Minutes)

“Review of 2019 Fiscal Year Outcome”, Brandi Harbaugh, Finance Director (20 Minutes)

3:00 PM **Lands Committee**

3:45 PM **Policies and Procedures Committee**

4:45 PM **Legislative Committee**

6:00 PM **Regular Assembly Meeting**

Above listed meetings will be held in:

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula Borough Administration Building
144 North Binkley Street, Soldotna, Alaska



Finance Committee

December 3, 2019

1:30 PM

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula
Borough Administration Building

Brent Hibbert, Chair

Tyson Cox, Vice Chair

Brent Johnson

AGENDA

ITEMS NOT APPEARING ON REGULAR MEETING AGENDA

1. "Comprehensive Annual Financial Report for the Year Ended June 30, 2019", Joy Merriner, BDO USA, LLP (30 Minutes)
2. "Review of 2019 Fiscal Year Outcome", Brandi Harbaugh, Finance Director (20 Minutes)

PUBLIC HEARINGS ON ORDINANCES

1. Ordinance 2019-19-18: Appropriating Additional Funding for the Construction of the Nikiski Fire Station Number Three (Mayor) 14
2. Ordinance 2019-19-19: Appropriating Phase Two Bond Proceeds for the Purpose of Purchasing Emergency Vehicles in the Central Emergency Service Area (Mayor) 19
3. Ordinance 2019-19-20: Appropriating Additional Funding for the Anchor Point Fire and Emergency Medical Service Area Station One Boiler Replacement (Mayor) 22

NEW BUSINESS

1. Resolutions
 - *a. Resolution 2019-064: Authorizing Community Assistance Program Expenditures for Unincorporated Communities (Mayor) 191
 - *b. Resolution 2019-066: Redirecting Project Funds Previously Appropriated for the Former Soldotna Prep Building Campus Operational Costs to be Utilized for Design and Feasibility Analysis (Mayor) (Referred to Finance Committee) 196

2. Ordinances for Introduction

- *a. Ordinance 2019-38: Approving and Accepting \$13,738.95 from the State of Alaska Division of Homeland Security and Emergency Management to Reimburse Repairs at the Tebughna School Resulting from the November 30, 2018 Cook Inlet 7.0 Earthquake (Mayor) (Hearing on 01/07/20) 267

*Consent Agenda Items



Lands Committee

December 3, 2019

3:00 PM

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula
Borough Administration Building

Brent Johnson, Chair

Kenn Carpenter, Vice Chair

Norm Blakeley

AGENDA

PUBLIC HEARINGS ON ORDINANCES

- 4. Ordinance 2019-24: Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions (Mayor) 25

Ordinance 2019-24 (Mayor) Substitute: Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions (Mayor) 35

[Clerk's Note: A teleconference site will be established at Homer City Hall to take public testimony on the above referenced ordinance.]

- 5. Ordinance 2019-30: Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Mayor) 54

Ordinance 2019-30 (Mayor) Substitute: Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Mayor) 79

NEW BUSINESS

- 1. Resolutions

- *c. Resolution 2019-070: Authorizing the Borough to Enter into a Resource Exchange Agreement with Trimark Earth Reserve, LLC for the Construction of a Road to and through Borough Property (Mayor) 199

2. Ordinances for Introduction

*b. Ordinance 2019-33: Amending KPB 20.10.030 and KPB 20.90.010 to Clarify Applicability of Subdivision Requirements (Mayor) (Hearing on 01/07/20)272

*c. Ordinance 2019-34: Amending KPB 21.46.040 to Create the Kalifornsky Center Single Family Residential R-1 Local Option Zoning District on an Approximately 55-Acre Borough-Owned Parcel (Mayor) (Hearing on 01/07/20)277

*d. Ordinance 2019-35: Approving C & H Estates Single-Family Residential R-1 Local Option Zoning District and Amending KPB 21.46.040 (Mayor) (Hearing on 01/07/20)281

*e. Ordinance 2019-36: Authorizing the Negotiated Lease of Garage Space at the Bear Creek Fire Station with Alaska State Troopers A Detachment North (Mayor) (Hearing on 01/07/20)287

*f. Ordinance 2019-37: Amending KPB 17.10.120, Terms of a Land Sale, to Address Kenai Peninsula Borough Employee and Contractor Participation in Certain Land Disposal Methods (Mayor) (Hearing on 01/07/20)296

*Consent Agenda Items



Policies and Procedures Committee

December 3, 2019

3:45 PM

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula
Borough Administration Building

Willy Dunne, Chair

Hal Smalley, Vice Chair

Kenn Carpenter

AGENDA

PUBLIC HEARINGS ON ORDINANCES

- 6. Ordinance 2019-31: Adopting the Updated 2019 Kenai Peninsula Borough All-Hazard Mitigation Plan and Removing the Word "All" from KPB 2.80.010 (Mayor) 117
- 7. Ordinance 2019-32: Approving an Operating Agreement with South Peninsula Hospital, Inc. for South Peninsula Hospital and Other Medical Facilities (Mayor) 121

NEW BUSINESS

- 1. Resolutions
 - *d. Resolution 2019-067: Approving an Automatic Aid Agreement and Operational Plan Between Anchor Point Fire and Emergency Medical Service Area and the City of Homer Volunteer Fire Department for Fire Response Services (Mayor) 211
 - *e. Resolution 2019-068: Approving a Mutual Aid Agreement and Operational Plan Between Anchor Point Fire and Emergency Medical Service Area and the City of Homer Volunteer Fire Department for Fire Response Services (Mayor) 220
 - *f. Resolution 2019-069: Authorizing the Borough, on Behalf of the South Kenai Peninsula Hospital Service Area, to Enter into a Long-Term Lease Agreement for a Professional Office Building 4201 Bartlett Street, Homer, Alaska (Mayor) 229
 - *g. Resolution 2019-071: Confirming Appointments to Non-Borough Committees and Boards (Cooper) 261

2.	Ordinances for Introduction	
	*g. <u>Ordinance 2019-39: Repealing KPB 12.06 and Enacting 12.08 Junk and Abandoned Vehicles (Mayor) (Hearing on 01/07/20)</u>	300
3.	Other	
	*a. Confirming an Appointment to the Road Service Area Board (Mayor)	313
	Larry Smith Seat At-Large Term Expires 09/30/2022	
	*b. Confirming an Appointment to the Anchor Point Fire and Emergency Medical Service Area Board (Mayor)	317
	Edward Jolly Seat C Term Expires 10/2021	
	*c. Confirming the Appointment of Assembly Member Brent Johnson to the Anadromous Waters Habitat Protection Work Group (Cooper)	322
	*d. Approving the Mayor's List of Members to the Anadromous Waters Habitat Protection Work Group (Mayor)	323
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1.	Assembly Requests/Responses – None.	
2.	Agreements and Contracts	
	a. Authorization to Award a Contract for ITB20-009 Homer High School Boiler Replacement to Mechanical Specialists, Inc., Wasilla, AK.....	325
	b. Authorization to Award a Contract for ITB20-014 Central Peninsula Landfill (CPL) Brush Burning 2019 to Evergreen Alaska, Inc., Kasilof, AK.	327
	C. Authorization to Award a Contract for RFP20-005 North Peninsula Recreation Service Area Remodel Professional Designs Services to Architects Alaska, Inc., Anchorage, AK.	329

3. Other

- a. Capital Project Reports – September 30, 2019 331
- b. Budget Revisions – October 2019..... 346
- c. Revenue – Expenditure Report – October, 2019 349
- d. Investment Report Quarter Ended 09/30/19 352

*Consent Agenda Items



Legislative Committee

December 3, 2019

4:45 PM

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula
Borough Administration Building

Hal Smalley, Chair

Jesse Bjorkman, Vice Chair

Willy Dunne

AGENDA

NEW BUSINESS

1. Resolutions

- *h. Resolution 2019-063: Requesting the Alaska State Legislature Approve a Coastal Infrastructure General Obligation Bond for the 2020 Election (Cooper, Smalley, Cox) 262
- *i. Resolution 2019-065: Supporting the Transportation Priorities to be Considered for Grant Funding to be Submitted to the State of Alaska Department of Transportation and Public Facilities (Mayor) 264

*Consent Agenda Items



Assembly Agenda

December 3, 2019 - 6:00 PM

Regular Meeting

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula
Borough Administration Building

Kelly Cooper
Assembly President
Seat 8 – Homer
Term Expires 2020

Harold "Hal" Smalley
Assembly Vice
President
Seat 2 - Kenai
Term Expires 2020

Jesse Bjorkman
Assembly Member
Seat 3 - Nikiski
Term Expires 2022

Norm Blakeley
Assembly Member
Seat 5-Sterling/Funny
River
Term Expires 2020

Kenn Carpenter
Assembly Member
Seat 6 – East Peninsula
Term Expires 2021

Tyson Cox
Assembly Member
Seat 4 - Soldotna
Term Expires 2022

Willy Dunne
Assembly Member
Seat 9 - South
Peninsula
Term Expires 2021

Brent Johnson
Assembly Member
Seat 7 – Central
Term Expires 2022

Brent Hibbert
Assembly Member
Seat 1 – Kalifornsky
Term Expires 2021

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

Any invocation that may be offered at the beginning of the assembly meeting shall be a voluntary offering of a private person, to and for the benefit of the assembly. No member of the community is required to attend or participate in the invocation.

[Clerk's Note: The invocation will be offered by Tom Anthony.]

ROLL CALL

COMMITTEE REPORTS

APPROVAL OF AGENDA AND CONSENT AGENDA

(Action items listed with an asterisk (*) are considered to be routine and non-controversial by the Assembly and will be approved by one motion. Public testimony will be taken. There will be no separate discussion of these items unless an Assembly Member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.)

ACTION ITEMS CURRENTLY ON CONSENT AGENDA

- Resolution 2019-064
- Resolution 2019-066
- Resolution 2019-070
- Resolution 2019-067
- Resolution 2019-068
- Resolution 2019-069
- Resolution 2019-071
- Resolution 2019-063
- Resolution 2019-065
- Ordinance 2019-38
- Ordinance 2019-33
- Ordinance 2019-34
- Ordinance 2019-35
- Ordinance 2019-36

- Ordinance 2019-37
- Ordinance 2019-39
- Confirming Appointments to the RSA Board
- Confirming Appointments to APFEMSA Board
- Confirming Assembly Member's Appointment to the AWHPWG
- Approving Mayor's List of Members for AWHPWG

ACTION ITEMS ELIGIBLE TO BE ADDED TO THE CONSENT AGENDA

- Ordinance 2019-19-18
- Ordinance 2019-19-19
- Ordinance 2019-19-20
- Ordinance 2019-31
- Ordinance 2019-32

APPROVAL OF MINUTES

- *1. November 5, 2019 Regular Assembly Meeting Minutes 1

COMMENDING RESOLUTIONS AND PROCLAMATIONS

PRESENTATIONS WITH PRIOR NOTICE (20 Minutes total)

- 1. Central Peninsula Hospital Quarterly Report (10 Minutes)
- 2. South Peninsula Hospital Quarterly Report (10 Minutes)

PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

(3 minutes per speaker; 20 Minutes aggregate)

ITEMS NOT COMPLETED FROM PRIOR AGENDA

PUBLIC HEARINGS ON ORDINANCES (Testimony limited to 3 minutes per speaker)

- 1. Ordinance 2019-19-18: Appropriating Additional Funding for the Construction of the Nikiski Fire Station Number Three (Mayor) (Referred to Finance Committee) 14
- 2. Ordinance 2019-19-19: Appropriating Phase Two Bond Proceeds for the Purpose of Purchasing Emergency Vehicles in the Central Emergency Service Area (Mayor) (Referred to Finance Committee) 19
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4.	<u>Ordinance 2019-24: Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions (Mayor) (Referred to Lands Committee)</u>	25
	<u>Ordinance 2019-24 (Mayor) Substitute: Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions (Mayor) (Referred to Lands Committee)</u>	35
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5.	<u>Ordinance 2019-30: Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Mayor) (Referred to Lands Committee)</u>	54
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6.	<u>Ordinance 2019-31: Adopting the Updated 2019 Kenai Peninsula Borough All-Hazard Mitigation Plan and Removing the Word "All" from KPB 2.80.010 (Mayor) (Referred to Policies and Procedures Committee)</u>	117
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UNFINISHED BUSINESS

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- *c. Confirming the Appointment of Assembly Member Brent Johnson to the Anadromous Waters Habitat Protection Work Group (Cooper) (Referred to Policies and Procedures Committee)322
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MAYOR'S REPORT.....324

- 1. Assembly Requests/Responses – None.
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c.	Revenue – Expenditure Report – October, 2019	349
d.	Investment Report Quarter Ended 09/30/19	352

PUBLIC COMMENTS AND PUBLIC PRESENTATIONS (3 minutes per speaker)

ASSEMBLY COMMENTS

PENDING LEGISLATION (This item lists legislation which will be addressed at a later date as noted.)

INFORMATIONAL MATERIALS AND REPORTS

ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

- | | | |
|----|----------------------------|--|
| 1. | January 7, 2020
6:00 PM | Regular Assembly Meeting
Betty J. Glick Assembly Chambers
Soldotna, Alaska |
|----|----------------------------|--|

ADJOURNMENT

This meeting will be broadcast on KDLL-FM 91.9 (Central Peninsula), KBBI-AM 890 (South Peninsula), K201AO(KSKA)-FM 88.1 (East Peninsula).

Copies of agenda items are available at the Borough Clerk's Office and in the Meeting Room just prior to the meeting. For further information, please call the Clerk's Office at 714-2160 or toll free within the Borough at 1-800-478-4441, Ext. 2160. Visit our website at www.kpb.us for copies of the agenda, meeting summaries, ordinances and resolutions.



Meeting Minutes

Assembly

Norm Blakeley
Jesse Bjorkman
Kenn Carpenter
Kelly Cooper
Tyson Cox
Willy Dunne
Brent Hibbert
Brent Johnson
Hal Smalley

Tuesday, November 5, 2019

6:00 PM

Betty J. Glick Assembly Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

[Clerk's Note: The invocation was given by Willy Dunne.]

ROLL CALL

Present: 9 - Brent Hibbert, Kenn Carpenter, Norm Blakeley, Kelly Cooper, Hal Smalley, Willy Dunne, Jesse Bjorkman, Tyson Cox, and Brent Johnson

Also present were:

Charlie Pierce, Borough Mayor

James Baisden, Chief of Staff

Colette Thompson, Borough Attorney

Johni Blankenship, Borough Clerk

Randi Broyles, Borough Clerk Assistant

COMMITTEE REPORTS

Assembly Member Hibbert stated the Finance Committee met and discussed its agenda items.

Assembly Member Johnson stated the Lands Committee met and discussed its agenda items.

Assembly Member Dunne stated the Policies and Procedures Committee met and discussed its agenda items.

Assembly Member Smalley stated the Legislative Committee met and discussed its

agenda item.

This was approved.

APPROVAL OF AGENDA AND CONSENT AGENDA

Smalley moved to approve the Agenda and Consent Agenda.

Copies have been made available to the public, Borough Clerk Johni Blankenship noted by title only the action items on the consent agenda.

[KPB-2358](#) October 22, 2019 Assembly Regular Meeting Minutes
approved

The following public hearing items met the required conditions of KPB 22.40.110 and were added to the consent agenda:

[2019-19-16](#) An Ordinance Appropriating Funds for the Cost of Hiring a Part Time Administrative Assistant to Provide Administrative Functions for the Print Shop and Cross Departmental Coverage (Mayor)

This Budget Ordinance was enacted

[2019-19-17](#) An Ordinance Accepting and Appropriating \$55,784 from the State of Alaska Department of Military and Veterans Affairs, Division of Homeland Security and Emergency Management for the Cybersecurity Vulnerability Assessment and Disaster Management Training (Mayor)

This Budget Ordinance was enacted

New Business

[2019-056](#) A Resolution Authorizing the Kenai Peninsula Borough to Join the Alaska Remote Seller Sales Tax Commission for the Purpose of Developing, Implementing, and Enforcing a Remote Seller Sales Tax Code and Designating the Commission Representative (Mayor)

This Resolution was adopted.

[2019-057](#) A Resolution Supporting Three Applications to Supplement Eligible Hazard Mitigation Projects Under the Federal Emergency Management Agency and Alaska Division of Homeland Security & Emergency Management "Hazard Mitigation Grant Program (Mayor)

This Resolution was adopted.

[2019-060](#) A Resolution Urging the Alaska Department of Transportation and Public Facilities to Keep the Silvertip Maintenance Station Open (Assembly)

This Resolution was adopted.

[2019-061](#) A Resolution Supporting the Efforts of the Tsalteshi Trails Association to Secure a 2020 Recreational Trails Grant from the State of Alaska (Johnson, Cox)

This Resolution was adopted.

[2019-062](#) A Resolution Authorizing the Borough, on Behalf of the South Kenai Peninsula Hospital Service Area, to Amend the Existing Lease Agreement for 4201 Bartlett Street, Homer, Alaska, to Add an Office Space on a Temporary Basis, and Authorizing an Amendment to the Sublease and Operating Agreement with South Peninsula Hospital, Inc. (Mayor)

This Resolution was adopted.

[2019-19-18](#) An Ordinance Appropriating Additional Funding for the Construction of Nikiski Fire Station Number Three (Mayor)

This Budget Ordinance was introduced and set for public hearing.

[2019-19-19](#) An Ordinance Appropriating Phase Two Bond Proceeds for the Purpose of Purchasing Emergency Vehicles in the Central Emergency Service Area (Mayor)

This Budget Ordinance was introduced and set for public hearing.

[2019-19-20](#) An Ordinance Appropriating Additional Funding for the Anchor Point Fire and Emergency Medical Service Area Station One Boiler Replacement (Mayor)

This Budget Ordinance was introduced and set for public hearing.

[2019-30](#) An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Mayor)

This Ordinance was introduced and set for public hearing.

[2019-31](#) An Ordinance Adopting the Updated 2019 Kenai Peninsula Borough All-Hazard Mitigation Plan and Removing the Word “All” from KPB 2.80.010 (Mayor)

This Ordinance was introduced and set for public hearing.

[2019-32](#) An Ordinance Approving an Operating Agreement with South Peninsula Hospital, Inc. for South Peninsula Hospital and Other Medical Facilities (Mayor)

This Ordinance was introduced and set for public hearing.

[KPB-2347](#) Confirming Appointments to the Kenai Peninsula Borough advisory Planning Commissions (Mayor)

Kalifornsky Beach Advisory Planning Commission
Geoffrey E. Knuth, Seat C, Term Expires 09/30/20
Gary “Rusty” Swan, Seat D, Term Expires 09/30/21
Aaron Dolifka, Seat E, Term Expires 09/30/21
Richard R. Homan, Seat F, Term Expires 09/30/22
Robin Davis, Seat G, Term Expires 09/30/22

Anchor Point Advisory Planning Commission
Donna White, Seat D, Term Expires 09/30/22
Raymond Drake, Seat E, Term Expires 09/30/22
Chris Platter, Seat F, Term Expires 09/30/21

Cooper Landing Advisory Planning Commission
Janette Cadieux, Seat A, Term Expires 09/30/22
Chris Degernes, Seat B, Term Expires 09/30/22
Laura Johnson, Seat G, Term Expires 09/30/22

Hope/Sunrise Advisory Planning Commission
Peter Smith Jr., Seat D, Term Expires 09/30/22

Moose Pass Advisory Planning Commission
John C. Smart, Seat B, Term Expires 09/30/20
Jeff Hetrick, Seat G, Term Expires 09/30/22
Kristin Bates, Seat F, Term Expires 09/30/22

Funny River Advisory Planning Commission
Richard Galloway, Seat F, Term Expires 09/30/22
Michael Masters, Seat G, Term Expires 09/30/22

approved

[KPB-2360](#) A petition to Vacate a 50-foot Section Line Easement (Running

North-South) - 50 Feet in Width on the East Side of the NE1/4 NE1/4 Section 35, Township 5 North, Range 10 West, Seward Meridian Approximately 1,265 Feet;

Vacate a 50-foot Section Line Easement (Running North-South) - 50 Feet in Width on the West Side of the NW1/4 N1/4 Section 36, Township 5 North, Range 10 West, Seward Meridian Approximately 1,315 feet;

Vacate 33-foot Mountain Ash Street Right-of-Way (Running North-South) and a Portion of the Intersection with Paper Birch Lane, Including the Adjoining 10-Foot Utility Easement within Section 36, Township 5 North, Range 10 West, Dedicated by Forest Hills Lookout Sub Amended KN86-204.KPB

[Clerk's Note: The Planning Commission approved the above referenced petition to vacate at its October 28, 2019 meeting by unanimous consent.]

approved

Approval of the Consent Agenda

President Cooper called for public comment.

Carrie Henson, Soldotna, questioned the appointments to the Kalifornsky Beach Advisory Planning Commission.

Bill Holt, Kasilof, thanked the assembly for their support of Resolution 2019-061.

Tim Navarre, Kenai, thanked the assembly for their support of Resolution 2016-056.

There being no one else who wished to speak, the public comment period was closed.

The motion to approve the agenda and consent agenda as amended carried by the following vote:

Yes: 9 - Hibbert, Carpenter, Blakeley, Cooper, Smalley, Dunne, Bjorkman, Cox, and Johnson

PRESENTATIONS WITH PRIOR NOTICE

[KPB-2356](#) Alaska Small Business Development Program Review, Cliff Cochran, Director and Business Advisor (10 Minutes)

[Clerk's Note: Cliff Cochran, Director and Business Advisor for Alaska Small Business Development Center gave a presentation to the assembly.]

PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

President Cooper called for public comment.

Carrie Henson, Soldotna, spoke in opposition to the Kalifornsky Beach Advisory Planning Commission appointments.

There being no one else who wished to speak, the public comment period was closed.

ITEMS NOT COMPLETED FROM PRIOR AGENDA

None.

PUBLIC HEARINGS ON ORDINANCES

[2019-19-15](#) An Ordinance Appropriating Funds to Award a Grant to the Kenai Peninsula Tourism Marketing Council to Support its Planned Projects to Promote the Borough (Hibbert)

Hibbert moved to enact Ordinance 2019-19-15.

President Cooper called for public comments.

The following people spoke in support of Ordinance 2019-19-15:

Debbie Speakman, Homer
Carol Brookman, Soldotna
Debbie Cary, Ninilchik
Shannon Davis, Soldotna

The following people spoke in opposition to Ordinance 2019-19-15:

Duanne Bannock, Kenai
Wilma Hampson, Nikiski
Fred Sturman, Soldotna
Chris Hayes, Kenai

There being no one else who wished to speak, the public comment period was closed.

Assembly Members Cox, Johnson, Dunne and Smalley spoke in support of Ordinance 2019-19-15.

Assembly Members Carpenter, Blakeley and Bjorkman spoke in opposition to Ordinance 2019-19-15.

Johnson moved to amend Ordinance 2019-19-15 as follows:

The seventh Whereas to read, "to provide KPTMC with an opportunity to update its grant application to include projects for the total appropriated amount of [\$150,000] \$100,000, this ordinance authorizes KPTMC to submit an updated application within 45 days of the date this ordinance is enacted;" and Section 1 to read, "The sum of [\$150,000] \$100,000 is appropriated from the General Fund, fund balance to account 100.94900.00000.43021, Peninsula Promotion - KPTMC for the purpose of promoting tourism in the areas outside of the cities inside the Kenai Peninsula Borough."

The motion to amend Ordinance 2019-19-15 failed by the following vote:

Yes: 4 - Cooper, Bjorkman, Cox, and Johnson

No: 5 - Hibbert, Carpenter, Blakeley, Smalley, and Dunne

Hibbert moved to amend Ordinance 2019-19-15 as follows:

Add a new Section 2 to read "KPTMC shall submit its program objectives to the assembly for approval by resolution prior to the grant award." and renumber the remaining sections.

The motion to amend Ordinance 2019-19-15 carried by the following vote:

Yes: 7 - Hibbert, Cooper, Smalley, Dunne, Bjorkman, Cox, and Johnson

No: 2 - Carpenter, and Blakeley

The motion to enact Ordinance 2019-19-15 as amended carried by the following vote:

Yes: 6 - Hibbert, Cooper, Smalley, Dunne, Cox, and Johnson

No: 3 - Carpenter, Blakeley, and Bjorkman

[2019-25](#)

An Ordinance Amending KPB 2.56.006 and KPB 2.56.007, Adopting the 2019 Kenai Peninsula Borough Comprehensive Plan (Mayor)

[Clerk's Note: Shelly Wade, Project Manager with Agnew::Beck gave a brief synopsis on the comprehensive plan at the regular meeting.]

Johnson moved to enact Ordinance 2019-25.

President Cooper called for public comments.

The following people spoke in support of including a climate action plan in the comprehensive plan:

Celia Anderson, Kenai

Ann Mueller, Sterling

Kristin Mitchell, Kenai
Peggy Mullen, Soldotna
Carrie Henson, Soldotna
Carol Strickland, Nikiski

Bjorkman moved to postpone Ordinance 2019-25 to December 3, 2019.

The motion to postpone Ordinance 2019-25 failed by the following vote:

Yes: 4 - Blakeley, Cooper, Bjorkman, and Johnson

No: 5 - Hibbert, Carpenter, Smalley, Dunne, and Cox

The motion to enact Ordinance 2019-25 carried by the following vote:

Yes: 6 - Carpenter, Cooper, Smalley, Dunne, Cox, and Johnson

No: 3 - Hibbert, Blakeley, and Bjorkman

[2019-23](#)

An Ordinance Amending KPB Titles 2, 4, and 16 regarding Service Areas to Provide that All Kenai Peninsula Borough Service Area Boards are Appointed Instead of Elected (Dunne, Hibbert)

[Clerk's Note: A teleconference site was established at Homer City Hall to take public testimony on the above referenced ordinance with none being offered.]

Dunne moved to enact Ordinance 2019-23.

President Cooper called for public comments.

The following people spoke in opposition to Ordinance 2019-23:

Wilma Hampson, Nikiski
Stacy Oliva, Nikiski
Kristine Schmidt, Kenai
Carrie Henson, Soldotna
Carol Strickland, Nikiski
Chris Hayes, Kenai

Dunne moved to amend Ordinance 2019-23 as follows:

The last three Whereas clauses to read, "at its October 9, 2019 regular meeting the Nikiski Fire Service Area board [RECOMMENDED] opposed enactment by unanimous consent;" and "at its October 23, 2019 regular meeting the Nikiski Senior Service Area board [RECOMMENDED] opposed enactment by unanimous consent;" and "at its October 28, 2019 regular meeting the North Peninsula Recreation Service Area board [RECOMMENDED] opposed enactment by unanimous consent;"

The motion to amend Ordinance 2019-23 carried by the following vote:

Yes: 9 - Hibbert, Carpenter, Blakeley, Cooper, Smalley, Dunne, Bjorkman, Cox, and Johnson

Bjorkman moved to amend Ordinance 2019-23 as follows:

Delete Sections 9, 10 and 18 in their entirety and renumber the remaining sections.

The motion to amend Ordinance 2019-23 carried by the following vote:

Yes: 9 - Hibbert, Carpenter, Blakeley, Cooper, Smalley, Dunne, Bjorkman, Cox, and Johnson

Dunne moved to amend Ordinance 2019-23 as follows:

The title to read, "AN ORDINANCE AMENDING KPT TITLES 2[,4] AND 16 REGARDING SERVICE AREAS TO PROVIDE THAT CERTAIN [ALL] KENAI PENINSULA BOROUGH SERVICE AREA BOARDS ARE APPOINTED INSTEAD OF ELECTED" and delete Sections 2, 3, 4, 5, 6 and 7, in their entirety and renumber the remaining sections.

The motion to amend Ordinance 2019-23 carried by the following vote:

Yes: 9 - Hibbert, Carpenter, Blakeley, Cooper, Smalley, Dunne, Bjorkman, Cox, and Johnson

Bjorkman moved to amend Ordinance 2019-23 as follows:

Delete Section 8 and renumber the remaining sections.

The motion to amend Ordinance 2019-23 carried by the following vote:

Yes: 9 - Hibbert, Carpenter, Blakeley, Cooper, Smalley, Dunne, Bjorkman, Cox, and Johnson

Dunne called the question.

The motion to call the question carried by the following vote:

Yes: 9 - Hibbert, Carpenter, Blakeley, Cooper, Smalley, Dunne, Bjorkman, Cox, and Johnson

The motion to enact Ordinance 2019-25 as amended failed by the following vote:

Yes: 1 - Johnson

No: 8 - Hibbert, Carpenter, Blakeley, Cooper, Smalley, Dunne, Bjorkman, and Cox

[2019-26](#)

An Ordinance Amending KPB 2.60.027 to Modify the Designation of Demarcation Points for Delivery of 911 Calls by Carriers (Mayor)

Dunne moved to enact Ordinance 209-26.

President Cooper called for public comments with none being offered.

The motion to enact Ordinance 2019-26 carried by the following vote:

Yes: 9 - Hibbert, Carpenter, Blakeley, Cooper, Smalley, Dunne, Bjorkman, Cox, and Johnson

[2019-29](#)

An Ordinance Establishing the Appeal Procedure before the Borough Assembly for the Appeal Filed by Echo Trading Company, LLC of a Planning Commission Decision (Mayor)

Dunne moved to enact Ordinance 2019-29.

President Cooper called for public comments.

The following person spoke in support of Ordinance 2019-29:

Annalisa Cox, Homer

The following people spoke in opposition to Ordinance 2019-29:

Kristine Schmidt, Kenai

Tony Neil, Homer

Gwen Neil, Homer

Bob Molloy, Kenai

Bjorkman moved to amend Ordinance 2019-29 as follows:

Add an additional 10 minutes to both parties initial statements and an additional 5 minutes to rebuttal.

The motion to amend Ordinance 2019-29 carried by the following vote:

Yes: 9 - Hibbert, Carpenter, Blakeley, Cooper, Smalley, Dunne, Bjorkman, Cox, and Johnson

The motion to enact Ordinance 2019-29 as amended carried by the following vote:

Yes: 9 - Hibbert, Carpenter, Blakeley, Cooper, Smalley, Dunne, Bjorkman, Cox, and Johnson

UNFINISHED BUSINESS

None.

NEW BUSINESS

Resolutions

[2019-058](#)

A Resolution Establishing an Anadromous Streams Habitat Protection Work Group (Mayor)

Johnson moved to adopt Resolution 2019-058.

President Cooper called for public comments with none being offered.

[Clerk's Note: President Cooper passed the gavel to Vice President Smalley.]

Cooper moved to amend Resolution 2019-058 as follows:

Amended Section 3 to read, "That the work group shall consist of at least one assembly member; one planning commissioner; and, five members of the public. The group shall elect from among its members a chair and vice-chair who may serve in the absence of the chair. The meetings will be conducted under Roberts Rules of Order.

The assembly member shall be appointed by the assembly. [THE REMAINING MEMBERS SHALL BE APPOINTED BY THE MAYOR.] The mayor will provide a list of 5 members of the public to be approved by the assembly with representation from the north, south, central, east and west regions of the borough."

The motion to amend Resolution 2019-058 carried by the following vote:

Yes: 9 - Hibbert, Carpenter, Blakeley, Cooper, Smalley, Dunne, Bjorkman, Cox, and Johnson

The motion to adopt Resolution 2019-058 as amended carried by the following vote:

Yes: 7 - Hibbert, Carpenter, Blakeley, Smalley, Bjorkman, Cox, and Johnson

No: 2 - Cooper, and Dunne

[Clerk's Note: Vice President Smalley returned the gavel to President Cooper.]

[2019-059](#)

A Resolution Approving Labor Negotiation Procedures for a New Collective Bargaining Agreement with the Kenai Borough Employees Association (Mayor)

Dunne moved to adopt Resolution 2019-059.

President Cooper called for public comment.

The following people spoke in support of Resolution 2019-059:

Julie Dennison, Soldotna

Carrie Henson, Soldotna

The follow person spoke in opposition to Resolution 2019-059:

Fred Sturman, Soldotna

Assembly Member Bjorkman spoke in support of an open negotiation process.

The motion to adopt Resolution 2019-059 carried by the following vote:

Yes: 9 - Hibbert, Carpenter, Blakeley, Cooper, Smalley, Dunne, Bjorkman, Cox, and Johnson

Other

[KPB-2348](#)

Approval of the 2020 Assembly Meeting Schedule (Cooper)

Dunne moved to approve the 2020 Assembly Meeting Schedule.

Dunne moved to amend the 2020 assembly meeting schedule as follows:

Amend the July meeting to read, "[JULY 7, 2020] July 14, 2020".

The motion to amend the 2020 Assembly Meeting Schedule failed by the following vote:

Yes: 1 - Dunne

No: 8 - Hibbert, Carpenter, Blakeley, Cooper, Smalley, Bjorkman, Cox, and Johnson

The motion to approve the 2020 Assembly Meeting Schedule carried by the following vote:

Yes: 9 - Hibbert, Carpenter, Blakeley, Cooper, Smalley, Dunne, Bjorkman, Cox, and Johnson

MAYOR'S REPORT

1. Assembly Requests/Responses - None.
2. Agreements and Contracts
 - a. [KPB-2351](#) Authorization to Award a Contract for RFP20-003 KPB Communication Strategy and Implementation Plan to Agnew::Beck Consulting, Inc.
3. Other
 - a. [KPB-2350](#) Revenue-Expenditure Report - September 2019
 - b. [KPB-2352](#) Budget Revisions - September 2019
 - c. [KPB-2353](#) FY20-1Q Senior Grant Reports
 - d. [KPB-2354](#) FY20 - Economic Development Center
 - e. [KPB-2355](#) FY20-1Q Land Trust Investment Fund - Investment Report

PUBLIC COMMENTS AND PUBLIC PRESENTATIONS

President Cooper called for public comment.

Fred Sturman, Soldotna addressed the assembly regarding the silver salmon in the river and borough exemptions.

Carrie Henson, Soldotna spoke in opposition to Ordinance 2019-23.

There being no one else who wished to speak, the public comment period was closed.

ASSEMBLY COMMENTS

Assembly Member Johnson offered his condolences to the family of Dr. Boras and expressed his appreciation for his contributions the community. He thanked the

assembly for their hard work and looked forward to working with everyone.

Assembly Member Dunne wished everyone a good night.

Assembly Member Bjorkman thanked the assembly members for their hard work and patience. He encouraged his fellow assembly members to keep engaging the citizens of the borough to participate in the local government process.

Assembly Member Cox offered his condolences to the family of SoHi student Macie Marie Schroeder-Dalebout.

Assembly Member Hibbert thanked Lee Hartman in the legal department for her hard work and congratulated her for being awarded employee of the month. He encouraged everyone to stay safe.

Assembly Member Carpenter encouraged everyone to stay safe on their commute home. He congratuated Ken Bartlett from Cooper Landing on his retirement.

Assembly Member Smalley congratuated Lee Hartman in the legal department on her employee of the month award. He thanked the public for their testimony throughout the evening and offered his condolences to Dr. Boras's family.

President Cooper thanked the assembly for their engagement over the course of the 11 hour day.

INFORMATIONAL MATERIALS AND REPORTS

ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

1. December 3, 2019 Regular Assembly Meeting
6:00 PM Betty J. Glick Assembly Chambers, Soldotna, Alaska

ADJOURNMENT

With no further business to come before the assembly, President Cooper adjourned the meeting at 11:16 p.m.

I certify the above represents accurate minutes of the Kenai Peninsula Borough Assembly meeting of November 5, 2019.

Johni Blankenship, MMC, Borough Clerk

Approved by the Assembly: _____

Introduced by: Mayor
Date: 11/05/19
Hearing: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-19-18**

**AN ORDINANCE APPROPRIATING ADDITIONAL FUNDING FOR THE
CONSTRUCTION OF NIKISKI FIRE STATION NUMBER THREE**

WHEREAS, in 2003 Nikiski Fire Service Area expended funds to acquire property and design a new fire station facility (“Nikiski Fire Station #3”) at the corner of Holt Lamplight Road and Escape Route Road; and

WHEREAS, in the fiscal year 2019 budget process \$3,200,000 was appropriated to update design documents, complete construction, and purchase necessary equipment for the new Nikiski Fire Station #3; and

WHEREAS, third party project cost estimates indicate that the current funding is not adequate to complete the scope of work; and

WHEREAS, a project Invitation to Bid was released on October 3, 2019 with a bid opening date of November 6, 2019; and

WHEREAS, actual project costs will be provided to the Nikiski Fire Service Area Board at the regularly scheduled meeting on November 13, 2019 for their recommendation; and

WHEREAS, in order to ensure that the funds necessary to award the contract are available an appropriation will need to be made to offset the difference in the project cost;

WHEREAS, at its meeting on November 13, 2019, the Nikiski Fire Service Area Board recommended _____;

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

SECTION 1. That funds in the amount of \$1,000,000 are appropriated from the Nikiski Fire Service Area fund balance 206.27910 to be transferred to project account 441.51110.19411.49999.

SECTION 2. That the appropriations made in this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.

SECTION 3. This ordinance takes effect immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2019.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Purchasing and Contracting Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*

FROM: John Hedges, Purchasing & Contracting Director *JH*
Brandi Harbaugh, Finance Director *BH*
Bryan Crisp, Chief - Nikiski Fire Service Area *JBC*

DATE: November 21, 2019

RE: Amendment to Ordinance 2019-19-18, Appropriating Additional Funding for the Construction of Nikiski Fire Station Number Three (Mayor)

On October 3, 2019, an invitation to bid was released with an opening bid date of November 6, 2019. On November 6, 2019, bids were received and opened that exceeded the estimated amount of \$4,200,000.

To ensure that the funds necessary to award the contract are available an additional \$1,000,000 was proposed as introduced in Ordinance 2019-19-18. Since the bids came in higher than anticipated on November 6, 2019, the requested amount of \$1,000,000 will need to be increased to \$1,519,000. The additional \$519,000 is proposed to be appropriated from the Nikiski Fire Service Area Capital Project Fund, fund balance.

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

- Add a new Section 2 as follows:

SECTION 2.

That funds in the amount of \$519,000 are appropriated from the Nikiski Fire Service Area Capital Project Fund, fund balance 441.27910 to be transferred to project account 441.51110.19411.49999.

- Renumber Section 2 as Section 3.
- Renumber Section 3 as Section 4.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED	
Acct. No.	441.27910
Amount:	\$ 519,000.00
By: <i>PP</i>	Date: 11/20/2019

Kenai Peninsula Borough

Purchasing & Contracting Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *JCB*

FROM: John Hedges, Purchasing & Contracting Director *JH*
Brandi Harbaugh, Finance Director *BH*
Bryan Crisp, Chief - Nikiski Fire Service Area *JBC*

DATE: October 24, 2019

RE: Ordinance 2019-19-18, Appropriating Additional Funding for the Construction of Nikiski Fire Station Number Three (Mayor)

In 2003 Nikiski Fire Service Area Board approved a design project for Nikiski Fire Station #3 to be located at the intersection of Holt Lamplight Road and Escape Route Road. The project advance was halted pending the availability of funds for construction.

In the fiscal year 2019 budget process \$3,200,000.00 was appropriated to update the 16-year-old design documents, complete construction, and equip the station with its basic facility needs.

In the design process a third party estimate was provided by the design team identifying an estimated project cost of \$4,200,000.00. Refinement of the project scope, while still addressing the basic facility service needs, was completed and the total project budget is currently estimated at \$4,025,000.00

A project invitation to bid was released on October 3, 2019 with a bid opening date of November 6, 2019.

On November 13, 2019, the Nikiski Fire Service Area Board will be presented with the bid results at their regularly scheduled meeting for the board's recommendation.

Page -2-
October 24, 2019
RE: O2019-19- 18

In order to ensure that the funds necessary to award the construction contract are available an appropriation will need to be made to offset the difference in the project cost after construction bids are opened on November 6, 2019.

This ordinance appropriates \$1,000,000.00 from the Nikiski Fire Service Area fund balance to be transferred to the Nikiski Fire Service Area Capital project fund, project account 441.51110.19411.49999.

Your consideration of this ordinance is appreciated.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED	
Acct. No.	<u>206.27910</u>
Amount:	<u>\$1,000,000.00</u>
By: <u>PP</u>	Date: <u>10/25/2019</u>

Introduced by: Mayor
Date: 11/05/19
Hearing: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-19-19**

**AN ORDINANCE APPROPRIATING PHASE TWO BOND PROCEEDS FOR THE
PURPOSE OF PURCHASING EMERGENCY RESPONSE VEHICLES IN THE
CENTRAL EMERGENCY SERVICE AREA**

WHEREAS, Ordinance 2015-21, authorized an election to be held on October 5, 2015, for the purpose of submitting the question of authorizing the issuance of general obligation bonds to purchase emergency response vehicles to the qualified voters of the Central Emergency Service Area; and

WHEREAS, at that election the qualified voters approved the issuance of such bonds not to exceed \$4,400,000; and

WHEREAS, Resolution 2016-003 authorized the issuance of bonds not to exceed \$4,400,000 for the purchase of emergency response vehicles for the Central Emergency Service Area; and

WHEREAS, the borough administration elected to issue the debt in two phases with phase one to be issued in February 2016 and the remainder amount for phase two in the fall of 2019 depending on the emergency response vehicle replacement schedule; and

WHEREAS, in January 2016 Ordinance 2015-19-23 appropriated \$2,795,137.58 to fund the first phase for Emergency Response Vehicles; and

WHEREAS, in January 2016 Ordinance 2015-19-23 over-appropriated \$9,508.33 requiring a deobligation of \$9,508.33 for bond cost of issuance; and

WHEREAS, this ordinance would appropriate the remaining proceeds for the second phase of the debt issuance which are expected to be received on November 21, 2019 in the amount of \$1,611,195.75; and

WHEREAS, the first debt service payment for the 2019 CES bond issuance will be due in June 2020;

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

SECTION 1. That bond proceeds in the amount of \$1,611,195.75 are appropriated to the Central Emergency Service Area Capital Project Fund, account number 443.51610.20CES.49999.

SECTION 2. That the appropriations made in this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.

SECTION 3. That eligible costs incurred prior to the appropriation date will be charged to the project.

SECTION 3. That \$9,508.33 is deobligated from account 443.51610.16CES.48310 for bond cost of issuance.

SECTION 3. That \$24,104.17 is appropriated from the CES Service Area fund balance 211.27910 to be transferred to account 358.51610.20CES.44020 to pay the first debt service payment for the 2019 CES bonds.

SECTION 4. This ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2019.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Finance Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *JCB*

FROM: Brandi Harbaugh, Finance Director *BH*

DATE: October 24, 2019

RE: Ordinance 2019-19-19, Appropriating Phase Two Bond Proceeds for the Purpose of Purchasing Emergency Vehicles in the Central Emergency Service Area (Mayor)

Ordinance 2015-21, authorized an election to be held on October 5, 2015, for the purpose of submitting a proposition to the qualified voters of the Central Emergency Service Area for approval or rejection of the bonds. At that election the qualified voters of the service area approved the issuance of the Bonds, not to exceed \$4,400,000.00

The assembly, through resolution 2016-003, authorized the issuance of General Obligation Bonds in the not-to-exceed amount of \$4,400,000 for the purchase of emergency response vehicles for the Central Emergency Service Area. The borough administration elected to issue the debt in two phases with phase I to be issued in February 2016 and the remainder amount in the fall of 2019 depending on the emergency response vehicle replacement schedule.

In January 2016 ordinance 2015-19-23 appropriated \$2,795,137.58 to fund the first phase for emergency response vehicles. This ordinance would appropriate the remaining proceeds for the second phase of the debt issuance which are expected to be received on November 21, 2019 in the amount of \$1,611,195.75 and deobligate \$9,508.33 from the 16CES bond proceeds for cost of bond issuance.

Due to the timing of the bond issuance, the first debt service payment will become due in April 2020, therefore this ordinance also appropriates fund balance from the CES Service Area Operating fund to pay the first debt service payment.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED	
Acct. No.	<u>443.51610.20CES.49999</u>
Amount:	<u>\$1,611,195.75</u>
Acct. No.	<u>211.27910</u>
Amount:	<u>\$24,104.17</u>
By: <i>PP</i>	Date: <u>10/24/2019</u>

Introduced by: Mayor
Date: 11/05/19
Hearing: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-19-20**

**AN ORDINANCE APPROPRIATING ADDITIONAL FUNDING FOR THE ANCHOR
POINT FIRE & EMERGENCY MEDICAL SERVICE AREA STATION NUMBER ONE
BOILER REPLACEMENT.**

- WHEREAS,** in the fiscal year 2019 budget process \$50,000 was appropriated to replace the boilers at Anchor Point Fire Station #1; and
- WHEREAS,** the two existing boilers have reached the end of their useful life and a design has been completed that will replace them with newer high efficiency boilers; and
- WHEREAS,** on October 14, 2019 five bids were received for the replacement project with a low bid of \$75,990; and
- WHEREAS,** after the design and bidding phase of the project \$38,718 is remaining in the project account balance; and
- WHEREAS,** at the October 16, 2019 Anchor Point Fire and Emergency Medical Service Area Board meeting the board unanimously voted to support appropriating the funds necessary to complete the project; and
- WHEREAS,** an additional \$45,203 will need to be appropriated to award the contract and cover the cost of the borough administration fee and construction administration services;

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

SECTION 1. That funds in the amount of \$45,203 are appropriated from the Anchor Point Fire and Emergency Medical Service Area Capital Project fund balance 444.27910 to project account 444.51410.19443.49999.

SECTION 2. That the appropriations made in this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.

SECTION 3. This ordinance takes effect immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF *, 2019.**

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Purchasing & Contracting Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *JCB*

FROM: John Hedges, Purchasing & Contracting Director *JH*
Brandi Harbaugh, Finance Director *BH*
Jon Marsh, Acting Chief APFEMSA *JM*

DATE: October 24, 2019

RE: Ordinance 2019-19-20 Appropriating Additional Funding for the Anchor Point Fire and Emergency Medical Service Area Station One Boiler Replacement (Mayor)

In the fiscal year 2019 budget process \$50,000.00 was appropriated to replace the boilers at the Anchor Point Fire Station #1. The existing boilers have exceeded their useful life and the installation of new energy efficiency boilers will decrease the long term building maintenance costs of the facility.

On October 14, 2019 five bids were received and the low bidder was Peninsula Plumbing and Heating at a value of \$75,990.00.

After the completion of design services and the bidding phase the project currently has \$38,718.00 in unencumbered funds, and an additional \$45,203.00 will need to be appropriated from the Anchor Point Fire & Emergency Medical Service Area fund balance to complete the work.

At the October 16, 2019 meeting the Anchor Point Fire & Emergency Medical Service Area Board unanimously voted to support appropriating the funds necessary to complete the project.

This ordinance appropriates \$45,203.00 from the Anchor Point Fire Service Area Capital Project fund balance to project account 444.51410.19443.49999.

Your consideration of this ordinance is appreciated.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED	
Acct. No.	<u>444.27910</u>
Amount:	<u>\$45,203.00</u>
By: <i>PP</i>	Date: <u>10/25/2019</u>

Introduced by: Mayor
Date: 09/03/19
Hearing: 10/08/19
Action: Postponed to 12/03/19
Vote: 9 Yes, 0 No, 0 Absent
Date: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-24**

**AN ORDINANCE ADOPTING KPB 20.80, SUBDIVISION PRIVATE STREETS
AND GATED SUBDIVISIONS**

WHEREAS, privacy, security, and public safety concerns expressed by residents may be addressed by private streets in subdivisions; and

WHEREAS, Goal 6.5 of the 2005 Comprehensive Plan is to maintain the freedom of property owners in the rural areas of the borough to make decisions and control use of their private land; and

WHEREAS, private streets can only be approved through the KPB 20.50 exception process and there are currently no designated standards and requirements, nor established procedures to create subdivisions with private streets and gated access; and

WHEREAS, there is a need for designated standards and requirements and establishment of procedures for creating gated communities; and

WHEREAS, designating standards, requirements and procedures for establishing private streets within subdivisions with gated access will address residents as well as the public's privacy, security, and access concerns; and

WHEREAS, the Kenai Peninsula Borough Road Service Area board at its meeting held on August 13, 2019, recommended unanimous approval of this ordinance; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its meeting held on August 26, 2019, recommended _____;

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

SECTION 1. That KPB Chapter 20.80, entitled "Private Streets and Gated Communities" is enacted as follows:

20.80.010. Purpose.

This chapter provides standards and requirements for the establishment of private streets in subdivisions in the borough. A subdivision with private streets and gated access may be created at the time of subdivision by the owner of the parcel being subdivided or, where streets have been previously dedicated to the public which access lots in different ownerships, by the owners of those parcels in accordance with the provisions of this chapter.

20.80.020. Requirements.

Private streets in subdivisions shall meet the following requirements:

- A. The general provisions of KPB Title 14 and 20 as they relate to development, streets and utilities shall apply, except as otherwise provided for in this chapter.
- B. Private streets shall conform to the same standards regulating the design and construction of streets, street naming and street addressing in KPB 14.06, 14.10, 14.20 and KPB 20.30.
- C. A public vehicular turn around shall be provided to allow vehicles that have been denied entry to the private streets the ability to exit without having to backup.
- D. A homeowners' association (HOA) is required for approval of private streets within a subdivision. All property to be served by the private streets must be members in or part of the HOA. The HOA shall own and be responsible for the maintenance of the private streets and appurtenances.
- E. Private streets shall be contained within a separate lot owned by the HOA.
- F. The borough shall not pay for or contribute to any cost to construct, improve, or maintain a private street.
- G. The subdivision final plat and HOA documents shall note that borough maintenance shall not be provided on any private streets.
- H. Gated subdivisions and private streets may be approved, provided they meet the following criteria:
 - 1. Internal streets shall conform to the requirements of KPB 20.30, Subdivision Design Requirements, except as otherwise allowed in this section;
 - 2. Emergency services shall be provided access to deliver services within the private subdivision. Approval by the fire and emergency services

provider with jurisdiction in the area of the gated subdivision is required. The fire and emergency services provider must be satisfied that fire and emergency services providers will have safe access into and within the gated subdivision;

3. The requirements of KPB title 20 are met because alternate legal access to adjoining properties is available and that access is constructible in accordance with KPB 20.30, Subdivision Design Requirements and KPB 14.06, Road Standards;
4. There shall be a note on the plat that the streets are not public and are subject to private construction and maintenance;
5. The HOA shall execute a defense and indemnification agreement in favor of the borough in the following form: The HOA shall indemnify, defend, and hold and save the borough, its elected and appointed officers and officials, agents and employees, hereinafter collectively referred to as “agents,” harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys’ fees. The HOA shall be responsible under this clause for any and all legal actions or claims of any character arising from the HOA or the HOA’s acts or omissions related to its private streets and gates in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations, or damages, except for acts or omissions solely attributable to the borough.
6. The HOA and all of the HOA’s subcontractors, if any, shall be responsible for the purchase and maintenance of all insurance required by law and any other insurance the HOA deems necessary or appropriate.

20.80.030. Gates

If a gate is installed to prevent public access to a subdivision with private streets the gate shall conform to the following requirements:

- A. Each gate must be approved prior to installation by the fire and emergency services provider that serves the proposed gated subdivision. The entrances to all private streets shall be marked with a sign stating that it is a private street.
- B. Gates, approach and departure areas shall be designed by a licensed professional civil engineer.
- C. In order to allow access for the provision of emergency services, each security gate designed and installed shall be equipped so that access is by a radio operated controller or keypad. The fire and emergency services provider serving the gated subdivision, borough assessing department,

borough planning department, and law enforcement shall be provided either radio controlled or keypad access to the subdivision.

- D. Approach and departure areas on both sides of a gated entrance must provide adequate setbacks and proper alignment to allow free and unimpeded passage of emergency vehicles through the entrance area.
- E. After installation, all emergency access systems must be approved by the fire and emergency services providers serving the gated subdivision. The HOA must maintain all components of the gate system in a normal operating condition and have them serviced on a regular basis, as needed, to ensure proper gate operation. A proper power supply shall be provided and maintained to all electrical components at all times. Each electrical vehicular gate must be provided with a fail-open device to open during power failures and be equipped for emergency access.
- F. A public vehicular turn around shall be provided to allow vehicles that have been denied entry the ability to exit without having to backup.
- G. No part of the gate system shall be placed in a public right-of-way.
- H. The HOA is responsible for the gate, its signage and its costs, and shall be responsible for any violations of this section.

20.80.040. Converting to gated subdivision.

- A. A subdivision HOA may seek to convert a subdivision to a gated community with private street(s) and restrict public access by filing a replat and vacation petition with the planning director, which shall be considered a request to vacate public street(s) and/or right-of-way(s), as well as replat the subdivision. The request shall comply with the applicable replat and vacation requirements and procedures in this title, except as provided otherwise in this chapter.
- B. Upon determination by the planning director that the replat application is complete, the request shall be subject to review and approval by the borough planning commission regarding whether the gated subdivision requirements and procedures have been met, as set out in this chapter. The borough planning commission decision is subject to appeal to the hearing officer pursuant to KPB 21.20.
- C. Converting public street to private street – standards.

 - 1. Vacation of the public right-of-way shall be in accordance with the criteria set forth in KPB 20.70.
 - 2. The proposed gated subdivision shall not cause discontinuity in the existing or proposed public street system or distribute an

unacceptable amount of traffic through an existing neighborhood than would otherwise result if public streets were used. Converted private streets may not unduly impair access to public facilities, including schools, parks and libraries. Utilities proposed for vacation must not provide service to customers outside the proposed gated subdivision boundary.

3. The proposed gated subdivision must not cause discontinuity in the existing or proposed road system to any property owner in the proposed gated subdivision with frontage on the public right-of-way that is to be vacated.
4. Prior to recording the final plat the property owners abutting the vacated public street shall file with the borough fully executed deeds conveying their interest in the vacated street to the HOA.
5. Prior to recording the HOA shall accept the road “as-is” in its present condition and shall agree to indemnify, hold harmless, and defend the borough against any claims arising from the HOA’s ownership, maintenance and control of the converted street.
6. HOA shall execute a defense and indemnification agreement in favor of the borough in the following form: The HOA shall indemnify, defend, and hold and save the borough, its elected and appointed officers, officials, agents and employees, hereinafter collectively referred to as “agents”, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys’ fees. The HOA shall be responsible under this clause for any and all legal actions or claims of any character arising from the HOA or the HOA’s acts or omissions related to its private streets and gates in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations, or damages, except for acts or omissions solely attributable to the borough.

20.80.050. Converting private streets to public streets in gated subdivision.

- A. The owners of a private street may petition to dedicate the private street through the platting process. The street must meet the design criteria set forth in KPB 20.30 and KPB 14.06.
- B. A civil engineer at the HOA’s expense shall determine whether the private streets meet KPB Title 14 and Title 20 standards for street design and construction. If the streets do not meet borough standards the dedication shall be denied.

- C. The borough may also require, at the HOA's expense, the removal of any improvements, access control devices, gates, landscaping or other aesthetic amenities associated with the private street.

20.80.060. Enforcement.

Violations of this chapter shall be in accordance with KPB 20.10.030 and KPB 21.050.

SECTION 2. That KPB Chapter 20.90, entitled "Definitions is amended as follows:

20.90.010. Definitions generally.

In this title, unless otherwise provided, or the context otherwise requires, the following definitions shall apply.

...

"Gated subdivision" means a residential subdivision consisting of five (5) or more parcels of land where vehicular and/or pedestrian access by the general public from a public street and street(s) within the gated community and/or public right-of-way(s) is restricted as a result of a barrier that may include, but is limited to gates, security personnel, fences or walls. This definition does not include gates or other barriers limiting access to an individual parcel or lot.

...

"Private street" is defined as a vehicular access way shared by and serving two or more lots, which is not publicly maintained, but maintained by a homeowners' association. The term "private street" shall be inclusive of alleys. The term "street" also includes the term "street" as used in KPB title 14.

SECTION 3. That this ordinance shall become effective upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2019.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

10/08/19 Vote on motion to postpone to 12/03/19:

Yes: Bagley, Blakeley, Carpenter, Cooper, Dunne, Fischer, Hibbert, Smalley, Ogle

No: None

Absent: None

Yes:

No:

Absent:

Kenai Peninsula Borough
Assembly

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Willy Dunne, Assembly Member (W.D.) for W.D.

DATE: November 21, 2019

RE: Amendments to Ordinance 2019-24, Adopting KPB 20.80, Subdivision Private Streets and Gated Communities (Mayor)

Following are some proposed amendments to Ordinance 2019-24 for your consideration. The first amendment would prohibit conversion of a public street to a private street if there exists any form of public access easement accessible by any public street being vacated and converted to private property.

The second amendment would impose fees on the Home Owners Association prior to conversion of a public street to private property. These are based on discussions with local road contractors and the borough road service area director.

The third amendment would require that as a part of converting private streets to public streets in a gated subdivision, all rights of way that were public when the gated subdivision was formed shall also be dedicated to the public.

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

- In Section 1 amend KPB 20.80.020 by inserting a new subparagraph H.2 as follows and renumbering the remaining subparagraphs in H:

20.80.020 – Requirements

Private streets in subdivisions shall meet the following requirements:

...

H. Gated subdivisions and private streets may be approved, provided they meet the following criteria:

...

- 2.. A public street may not be converted to a private street under this chapter if it provides public access to any form of a public access easement.**

- In Section 1 amend KPB 20.80.040 by inserting a new subparagraph B as follows and re-lettering the remaining subparagraphs:

20.80.040. – Converting to gated subdivision.

...

- B. Prior to approval of a gated subdivision in which any public streets are vacated and converted to private property, the subdivision HOA must pay to the borough a fee of:**
 - a. \$200 per linear foot for unpaved roads; or
 - b. \$250 per linear foot for paved roads; and
 - c. Fair market value of acreage for any undeveloped rights-of-way.

- In Section 1 amend KPB 20.80.050 by inserting a new subparagraph B as follows and re-lettering the remaining subparagraphs:

20.80.050. – Converting private streets to public streets in gated subdivision.

...



- B. To convert a private street back to a public street under this section, all rights of way in the subdivision that were public rights of way immediately before the gated subdivision was formed, whether developed or undeveloped, must be dedicated to the public.**


...

Kenai Peninsula Borough
Planning Department

MEMORANDUM

TO: Wayne Ogle, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor 
Dil Uhlin, Roads Director 

FROM: Max Best, Planning Director 

DATE: August 22, 2019

RE: Ordinance 2019- 24, Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions (Mayor)

Goal 6.5 of the 2005 Comprehensive Plan is to maintain the freedom of property owners in the rural areas of the borough to make decisions and control use of their private land. Privacy, security, and public safety concerns expressed by residents may be addressed by private streets in subdivisions. Private streets can only be approved through the KPB 20.50 exception process and there are currently no designated standards and requirements, nor established procedures to create subdivisions with private streets and gated access.

There is a need for standardization, criteria, and establishment of procedures for creating both subdivisions with private streets and gated subdivisions. This ordinance codifies the requirements and procedures for creating these types of subdivisions.

This matter is scheduled to come before the KPB Road Service Area Board's at its August 13, 2019 meeting and the KPB Planning Commission at its August 26, 2019 meeting. The recommendations of both boards will be presented to the assembly prior to the final hearing on this ordinance.

Your consideration of this ordinance is appreciated.

Introduced by: Mayor
Substitute 12/03/19
Introduced:
O2019-24 (Mayor) See Original Ordinance for Prior History
Hearing: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-24
(MAYOR) SUBSTITUTE**

**AN ORDINANCE ADOPTING KPB 20.80, SUBDIVISION PRIVATE STREETS
AND GATED SUBDIVISIONS**

WHEREAS, privacy, security, and public safety concerns expressed by residents may be addressed by private streets in subdivisions; and

WHEREAS, Goal 2, Focus Area: Land Use and Changing Environment, Objective A of the 2019 Comprehensive Plan is to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms; and

WHEREAS, private streets can only be approved through the KPB 20.50 exception process and there are currently no designated standards and requirements, nor established procedures to create subdivisions with private streets and gated access; and

WHEREAS, there is a need for designated standards and requirements and establishment of procedures for creating gated communities; and

WHEREAS, designating standards, requirements and procedures for establishing private streets within subdivisions with gated access will address residents as well as the public's privacy, security, and access concerns; and

WHEREAS, the Kenai Peninsula Borough Road Service Area board at its meeting held on November 19, 2019, recommended unanimous approval of this ordinance; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its meeting held on November 12, 2019 recommended approval by majority vote;

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

SECTION 1. That KPB Chapter 20.80, entitled "Private Streets and Gated Communities" is enacted as follows:

20.80.010. - Purpose.

This chapter provides standards and requirements for the establishment of private streets in subdivisions in the borough. In accordance with the requirements of this chapter, a subdivision with private streets and gated access may be created either at the time of subdivision by the owner of the parcel being subdivided or by the owners of the parcels along public street(s).

20.80.020. Requirements.

Private streets in subdivisions shall meet the following requirements:

- A. Provisions of KPB Title 20, excluding 20.30.210 and 20.50, apply and must be met.
- B. All private streets shall comply with street naming and street addressing per KPB 14.10 and 14.20.
- C. A public vehicular turn around shall be provided to allow vehicles that have been denied entry to the private streets the ability to exit. An unrestricted turn around, located within the private street, shall be provided to allow vehicles that have been denied entry to the private streets the ability to exit. If borough maintenance of a turnaround is requested, then the turnaround must: (1) remain a public right-of-way; (2) be constructed with a minimum radius of 30 feet with a grade of 4 percent or less per KPB 14.06.160(D); and (3) be accepted into the borough's road maintenance program. The owner(s) of an approved gated subdivision shall be responsible for providing maintenance to all private streets and unmaintained turnarounds.
- D. Private streets shall be contained within a separate lot which meets the right of way requirements of Chapter 20. The entrances to all private streets will be marked with a sign stating that it is a private street in compliance with KPB 14.06.200.
- E. The borough shall not pay for or contribute to any cost to construct, improve, or maintain a private street.
- F. The following notes are required on the subdivision final plat
 - 1. Borough maintenance shall not be provided on any private streets.
 - 2. Private streets are not public and are subject to private construction and maintenance.

3. To convert private streets back to a public right of way, the requirements of KPB 14.06 – Road Standards, must be met.

G. Gated subdivisions and private streets may be approved, provided they meet the following criteria:

1. Emergency services shall be provided access within the private subdivision. Approval by the fire and emergency services provider, with jurisdiction in the area of the gated subdivision, is required. The fire and emergency services provider must be satisfied that fire and emergency services providers will have safe access into and within the gated subdivision.

2. When located within a city, a final plat of a subdivision with a private street must comply with KPB 20.60.080 – Improvements – Installation agreement required.

20.80.030. Gates

If a gate is installed to prevent public access to a subdivision with private streets the gate must conform to the following requirements:

A. The fire and emergency services provider that serves the proposed gated subdivision must approve the fire and emergency services access plan for each gate prior to installation. The fire and emergency services provider should consider access for emergency vehicles into, and within, the private streets and gated subdivision.

B. The approach and departure areas for the gate(s) must be designed by a licensed professional civil engineer.

C. Approach and departure areas on both sides of a gated entrance must provide adequate setbacks and proper alignment to allow free and unimpeded passage of emergency vehicles through the entrance area.

D. After installation, all emergency access systems must be approved by the fire and emergency services providers serving the gated subdivision. The owner(s) of the private street parcel must maintain all components of the gate system in a normal operating condition and have them serviced on a regular basis, as needed, to ensure proper gate operation.

E. No part of the gate system may be placed in a public right-of-way.

20.80.040. Converting to gated subdivision.

A. A platted right of way may not be vacated, except upon petition by resolution of the governing body from a municipality in which the property

is located or by the owner(s) of the majority of land fronting or abutting the right of way to be vacated. The request shall comply with the applicable replat and vacation requirements and procedures in this title, except as provided otherwise in this chapter.

B. Converting public street to private street – standards.

1. Vacation of the public right-of-way shall be in accordance with the criteria set forth in KPB 20.70.
2. The proposed gated subdivision shall not cause discontinuity in the existing or proposed public street system for adjoining lands.
3. The proposed gated subdivision must not cause discontinuity in the existing or proposed road system to any property owner within the proposed gated subdivision that fronts on the public right-of-way that is to be vacated.
4. Prior to recording, the private tract owner(s) shall accept the road “as-is” in its present condition and shall agree to indemnify, hold harmless, and defend the borough against any claims arising from the private ownership, maintenance and control of the converted street.
5. The private tract owner(s) shall execute a defense and indemnification agreement in favor of the borough in the following form: Except to the extent limited by law, the private tract owner(s) shall indemnify, defend, and hold and save the borough, its elected and appointed officers, officials, agents and employees, hereinafter collectively referred to as “agents”, harmless from any claim of, or liability for, the independent negligent acts, errors, and omissions or willful misconduct, including costs, expenses, and attorneys’ fees, in connection with or relating to the private tract owner(s) construction, improvement, maintenance, regulation, or use of any gates or private streets. The private tract owner(s) shall be responsible under this clause for any and all legal actions or claims of any character arising from the private tract owner(s) acts or omissions related to its private streets and gates in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations, or damages, except for acts or omissions solely attributable to the borough.

C. A public street constructed or improved with borough funds, either through a Capital Improvement Project (CIP) or Road Improvement Assessment District (RIAD), cannot be converted to a private street within ten (10) years of the CIP or RIAD completion date for that street.

20.80.050. – Converting private streets to public right-of-way in gated subdivision.

- A. The owner(s) of a private street may petition to dedicate the private street through the platting process. The plat must comply with KPB Chapter 20.
- B. The private street to be dedicated to a public right of way must meet the design criteria set forth in KPB 20.30 and KPB 14.06.
- C. At the expense of the private street tract owner(s), a civil engineer will determine whether the private streets meet KPB Title 14 and Title 20 standards for street design and construction. If the streets do not meet borough standards the dedication shall be denied.
- D. The borough may also require, at the private street tract owner’s expense, the removal of any improvements, access control devices, gates, landscaping or other aesthetic amenities associated with the private street.

20.80.060. Enforcement.

Violations of this chapter shall be in accordance with KPB 20.10.030 and KPB 21.50,

SECTION 2. That KPB Chapter 20.90, entitled “Definitions is amended as follows:

20.90.010. Definitions generally.

In this title, unless otherwise provided, or the context otherwise requires, the following definitions shall apply:

...

“Gated subdivision” means a residential subdivision consisting of multiple parcels of land where vehicular and/or pedestrian access by the general public from a public street and street(s) within the gated community and/or public right-of-way(s) is restricted as a result of a barrier that may include, but is not limited to gates, security personnel, fences or walls.

...

“Private street” is defined as a vehicular access way shared by and serving two or more lots, which is not publicly maintained, but maintained by the private tract owner(s). The term “private street” shall be inclusive of alleys. The term “street” also includes the term “street” as used in KPB title 14.

SECTION 3. That this ordinance shall become effective 180 days after its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF *, 2019.**

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Planning Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor CP
Max Best, Planning Director MB

FROM: Scott Huff, Platting Manager SA

DATE: November 21, 2019

RE: Substitute Ordinance 2019-24, Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions (Mayor)

Ordinance 2019-24 was introduced to the borough assembly on September 3, 2019. On October 8, 2019, the assembly moved to postpone action on the ordinance until the December 3, 2019 assembly meeting.

With the additional time, staff met with representatives of the cities of Homer, Seward, Kenai and Soldotna to discuss this ordinance. During the discussions with the cities, and staff work sessions, further edits and changes were made to the ordinance. As a result, a substitute ordinance has been prepared. The following summarizes the changes that the substitute ordinance incorporates:

SECTION 1

KPB 20.80.010. – Purpose.

- Re-worded for clarity regarding how a subdivision with private streets and gated access may be created.

KPB 20.80.020. – Requirements.

- The provisions were changed to follow KPB Chapter 20 - Subdivisions, excluding KPB 20.30.210 fronting on a dedicated right of way and KPB 20.50 - Exceptions.
- Reference to the construction of roadways within a private street tract was removed. The borough will not inspect, or regulate, the construction of roads within a private tract.
- Private streets must follow KPB street naming and street addressing standards.

Page 2

November 21, 2019

Re: Substitute Ordinance 2019-24

- Language was added regarding minimum requirements for turnarounds where borough maintenance is requested.
- All reference to home owners associations (HOA) has been removed from the ordinance.
- Plat notes were identified that must be added to the subdivision plat.
- Reference was added that any final plat located within a city must comply with KPB 20.60.080 – Installation Agreement.

KPB 20.80.030. – Gates.

- All reference to the HOA owning the private tract was removed.
- Language was clarified that the fire and emergency service provider that serves the proposed gated subdivision must approve the access plan prior to installation.
- The fire and emergency service provider will also approve the emergency access systems after installation.

KPB 20.80.040. – Converting to gated subdivision.

- Language was added to follow KPB 20.70.040(A) – Application for vacating the public right of way. This complies with Alaska Statute 29.40.120.
- At the request of utility providers, a line was removed which read, 'Utilities proposed for vacation must not provide service to customers outside the proposed gates subdivision boundary.' Staff was agreeable to this as all plats are sent to utility providers for review and comments.
- All reference to the HOA owning the private tract was removed.
- The requirement for all land owners to submit fully executed deeds conveying their interest in the vacated street to the HOA was eliminated.
- Language was added that a public road cannot be converted if a RIAD or CIP has been performed on the road within the last 10 years.

KPB 20.80.050. – Converting private streets to public right of way in gates subdivision.

- A section was added to clarify that the private street to be dedicated to a right-of-way must comply with borough design criteria.
- All reference to the HOA owning the private tract was removed.

KPB 20.80.060. – Enforcement.

- The KPB code reference has been corrected.

Page 3
November 21, 2019
Re: Substitute Ordinance 2019-24

SECTION 2

KPB 20.90.010. – Definitions.

- The definition of "gated subdivision" has been edited by
 - Removing the number of lots required (5) so that any number of lots will comply.
 - Revising the language to not limit gates, security personnel, fences or walls.
 - Remove the portion that addressed gates or other barriers on private parcels.
- The definition of "private street" has been edited by removing reference to the homeowner's association.

SECTION 3

- Revised the effective date to be 180 days after the ordinance is enacted. This will allow cities additional time to review their code and make changes to address private streets within cities. This extra time will also allow staff to prepare application forms for reviewing the projects and completing staff reports.

At its meeting on November 12, 2019, the planning commission recommended approval of this substitute ordinance by majority vote.

At its meeting on November 19, 2019, the road service area board recommended approval of this substitute ordinance.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Willy Dunne, Assembly Member (W.D.) for W.D.

DATE: November 21, 2019

RE: Amendments to Ordinance 2019-24 Mayor Substitute, Adopting KPB 20.80, Subdivision Private Streets and Gated Communities (Mayor)

In the event the assembly amends ordinance 2019-24 by substitution, following are some proposed amendments to the substitute ordinance 2019-24 for your consideration. The first amendment would prohibit conversion of a public street to a private street if there exists any form of public access easement accessible by any public street being vacated and converted to private property.

The second amendment would impose fees on the property owners prior to conversion of a public street to private property. These are based on discussions with local road contractors and the borough road service area director.

The third amendment would require that as a part of converting private streets to public streets in a gated subdivision, all rights of way that were public when the gated subdivision was formed shall also be dedicated to the public.

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

- In Section 1 amend KPB 20.80.020 by inserting a new subparagraph G.3 as follows:

20.80.020 – Requirements

Private streets in subdivisions shall meet the following requirements:

...

G. Gated subdivisions and private streets may be approved, provided they meet the following criteria:

...

- 3. A public street may not be converted to a private street under this chapter if it provides public access to any form of a public access easement.**

- In Section 1 amend KPB 20.80.040 by inserting a new subparagraph D as follows:

20.80.040. – Converting to gated subdivision.

...

D. Prior to approval of a gated subdivision in which any public streets are vacated and converted to private property, the subdivision property owners must pay to the borough a fee of:

- a. **\$200 per linear foot for unpaved roads; or**
- b. **\$250 per linear foot for paved roads; and**
- c. **Fair market value of acreage for any undeveloped rights-of-way.**

- In Section 1 amend KPB 20.80.050 by inserting a new subparagraph B as follows and re-lettering the remaining subparagraphs:

20.80.050. – Converting private streets to public streets in gated subdivision.

...

B. To convert a private street back to a public street under this section, all rights of way in the subdivision that were public rights of way immediately before the gated subdivision was formed, whether developed or undeveloped, must also be dedicated to the public.

MEMORANDUM

TO: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Borough Mayor *CP*
Max J. Best, Planning Director *MB*

FROM: Scott Huff *SH*

DATE: November 20, 2019

RE: Ordinance 2019-24; An Ordinance Adopting KPB 20.80 Subdivision Private Streets and Gated Subdivisions.

The Kenai Peninsula Borough Planning Commission reviewed the subject Ordinance during their regularly scheduled November 12, 2019 meeting.

A motion passed by majority vote (6 Yes, 4 No, 2 Absent) to recommend approval of Substitute Ordinance 2019-24.

In addition, the Kenai Peninsula Borough Planning Commission passed a motion by unanimous consent to recommend that Section 3 of Substitute Ordinance 2019-24 be changed to "That this ordinance shall become effective 180 days after its enactment.

In the Substitute Ordinance, please make the following amendment to the last WHEREAS statement:

WHEREAS, the Kenai Peninsula Borough Planning Commission at its meeting held on November 12, 2019 recommended approval by majority vote.

Attached are the unapproved minutes of the subject portion of the meeting.

AGENDA ITEM E. UNFINISHED BUSINESS

1. Ordinance 2019-24; An Ordinance Adopting KPB 20.80 Subdivision Private Streets and Gated Subdivisions. (*Postponed from the August 26, 2019 Planning Commission meeting. Motion on floor.*)

Staff Report given by Scott Huff

PC Meeting: November 12, 2019

Mr. Huff let everyone know that the laydown packet had an updated version of the Ordinance. At the August 26, 2019 Planning Commission meeting the motion was made to approve Ordinance 2019-24, an Ordinance for Private Streets and Gated Subdivisions. At the September 23, 2019 Planning Commission meeting the Planning Commission moved and approved the motion to postpone until brought back by staff. The Assembly will be reviewing and voting on this on December 3, 2019.

Since the September 23, 2019 Planning Commission meeting staff has worked with the various cities. Staff met with Kenai, Soldotna, and Homer. Staff also reached out to Seward and Seldovia to discuss with them the ordinance. More staff work sessions have been held which has led to some edits and revisions. A substitute ordinance has been prepared.

Mr. Huff highlighted some of the proposed changes. KPB 20.80.020 the provisions were changed to have the new gated subdivision follow all of KPB Chapter 20, excluding only 20.30.210, which is fronting on a dedicated right-of-way, and 20.50, which is exceptions. Any plat under 20.80 will not have to front a dedicated road but cannot have any exceptions to borough code requirements. All references to Home Owner Associations were removed from the ordinance. Staff felt it was not the borough's place to determine if a HOA was valid or who controlled the HOA. All the adjoining lot owners or the HOA could own the private tract but the borough will not be the deciding body of who has that ownership. A reference was added that any final plat located within a city must comply with borough code 20.60.080, which is installation agreements. That gives the city a final say on a private subdivision within the city. If they have something in their code that requires roads to be built or that water and sewer must be supplied then the subdivider must get the installation agreement from the city before the plat can be recorded. 20.80.040 is for converting to a gated subdivision from a regular subdivision. The references to the Home Owner Association were removed. Language was added that a public road could not be converted if a road improvement assessment district or central improvement project had been performed on the road within the last 10 years. This is to address any funds the borough may have put into major road improvements. Under 20.80.050, a section was added to clarify that any private streets that are to be dedicated to public right-of-way must comply with borough road design criteria. Any private street can become or revert to a public right-of-way if it complies with borough standards. Under Section 3, the effective date was changed to be 90 days after the Ordinance is enacted. That change gives the cities some time to review and make any changes to their code to address private streets and gated subdivisions.

END OF STAFF REPORT

Chairman Martin asked if anyone from the public wished to comment on this item.

1. Frank Turpin, PO Box 1113, Sterling, AK 99672-1113

Mr. Turpin lives in Kenai River Keys Subdivision. He is on the board of the Kenai River Keys Property Owners Association. They have a gate serving two subdivisions, Kenai River Keys and Stephenkie Subdivision No. 2. There are 130 residential lots behind the gate and the association maintains 2 miles of road. They also have neighboring property owners that use the gate and private road for their access. They have an issue that should be considered before the propose ordinance creates confusion for a new private subdivision. In written comments to the Planning Commission, he cited the challenge of having roads dedicated to public use behind their subdivision gate. Kenai River Keys Subdivision was established in 1972 after the developer requested and received approval for an exception to the subdivision ordinance. The plat depicted roads with private road easements. Lots adjacent to platted roads have side lot line extended to the road

centerlines. The plat designated road easements for use of subdivision lot owners only. The Association manages private road easements by enforcing covenants, which address utilities, encroachments, and allowed uses. Enforcement actions or permissions are directed to the owner of the land and all lot owners are required to be members of the Association. One year after the final subdivision plat was approved the developer had sold all lots available for sale. The developer then proposed resubdividing a tract that created additional lots within an area of the subdivision that remained undeveloped. For access to these new lots, the resubdivision included an extension of a stub street that had been platted as a private road easement. The extension was not encumbered with private easements. The developer requested approval of the resubdivision with dedications of roadways to the public, which the Planning Commission approved and the Mayor signed. This created a dilemma. The plat did not depict private ownerships within the road right-of-way and the Association's ability to enforce covenants was meaningless without a lot owner. Rather than address the issue the borough has maintained that the street extension was a private road easement even though notes and developer's intent show that it is a public right-of-way. The Property Owners Association has no authority to enforce covenants on land dedicated to the public. The Association is still searching for authority to regulate use of dedicated streets that are behind their gate. It is not hard to imagine the same problem in a new private subdivision.

Commissioner Ruffner asked if Mr. Turpin had anything specific in the Substitute Ordinance for them to review. Mr. Turpin noted that the subdivision was more successful than the developer anticipated. After the sale of all the lots, the developer wanted to subdivide a tract to create new lots. A mistake was made. A lot was sold that is adjacent to the extended stub street. It was dedicated as public so signatures by adjacent lot owners were not needed. This could happen again. He does not have specific words for the Ordinance. Commissioner Ruffner said he understood what they went through but wanted to make sure it was not something to address specifically in the Substitute Ordinance. Mr. Turpin said that they support the ordinance but hate to see it pass if it may breed confusion on the future authority to regulate the use of roadways within a private subdivision. He does not propose a correction but looks to the Planning Commission. He thinks there is a problem with the "to and through". In his letter, he talked about the subdivision and how the Association lets the property owners outside their subdivision use the gate and roads. Three property owners have property adjacent to the subdivision and are allowed to use the gate and private roads. He is not sure there is language that would work for a "to and through" subdivision because there are too many variations. He thought there should be some rule that a road cannot be dedicated in a private subdivision, and that would help. Commissioner Ruffner said that would lead to a point that lots cannot be subdivided anymore once a private subdivision is created. Mr. Turpin said nothing in the ordinance states that.

Commissioner Venuti was still trying to understand the concept of gated subdivisions. He wondered why Mr. Turpin chose to live in one and what some advantages are to living within a gated subdivision. Mr. Turpin said that there are two main advantages. One is that when the subdivision first started there were no year round residents. They were people from Anchorage or other places that would come down on weekends to enjoy the Kenai River. A gated subdivision was an ideal way to protect their property. Now about fifteen property owners live there year round. The subdivision works. Security is a big issue, they feel better with a gate, and it helps. The other advantage is that it gives a sense of community. Everybody takes care of their own streets, problems, and neighbors. It is a slightly different mentality. There is no intent to bar anyone with legitimate business reasons to be in the subdivision but they do not want to provide access to people to use private property for fishing. It protects the river habitat that they have as well as provide security and sense of community. He can see reasons that other subdivisions would want to be gated. An airport subdivision may want it for safety purposes. A subdivision around a lake to keep people from wandering through their yards. There are many examples that work for a private subdivision. Theirs has worked for 47 years but they just do not have authority to control uses on dedicated roads.

Mr. Best asked Mr. Turpin if emergency responders and utility company access have been a problem or issue. Mr. Turpin said that there has not been an issue. The emergency responders

come out every couple of years and check things. They have a Knox box on the gate and they check it to make sure all the keys still work. There are two gates, an electric gate and padlocked gate. The padlock or chain can be cut if needed. Usually emergency responders will call before they come out. The subdivision has gotten to know the people they need to know. Each utility is approached separately and the subdivision has to find out what each utility company needs. They have all worked with the Association. Mr. Nelson with the borough has a clicker, and Mr. Uhlin has a clicker or a key. The River Center usually calls before they come out. They had an assessor out a few weeks ago and he walked in. Mr. Turpin has been trying to find out who it was so they can call him next time to be let in. Borough employees come into the subdivision frequently. ENSTAR and Homer Electric drive the neighborhood to read the meters. They all know the rules and it works well. The tricky part is those that live next to the subdivision that have no other way to get access. There are three private properties that have no other access but through the Kenai River Keys subdivision. One of the properties is actually across the river; there is a portion of the fish camp on the subdivision's side of the canal. That owner has a key and can come in anytime he wants. The State of Alaska also comes in often. Usually DNR or Fish and Game to do fish work or look at trap lines. If they want a clicker, they contact the Association and they provide them one. It is very casual and they get to know those people very quickly. He will say that for a new subdivision it will take years to develop those kind of relationships with the utilities, borough and emergency responders. It is an ongoing effort. There are also contractors and realtors. It is something developed over time.

Seeing and hearing no one else wishing to comment, Chairman Martin closed public comment and opened discussion among the Commission. Chairman Martin noted that a motion is on the floor.

Motion from August 26, 2019 meeting: move to forward to the Assembly a recommendation to approve Ordinance 2019-___; an ordinance adopting KPB 20.80, Subdivision private streets and gated subdivisions.

AMENDMENT A MOTION: Commissioner Ruffner moved, seconded by Commissioner Whitney, to amend the motion on the floor, which is a recommendation for Ordinance 2019-___, by substituting the language found in the desk packet.

Commissioner Ruffner asked if staff had any additional notes on the changes. Mr. Huff said the main changes were discussed during the staff report. He asked if anyone had any specific changes to discuss Commissioner Ruffner said this was a substantial piece of code to address. When it is presented in a laydown it can be hard to review. Mr. Huff said the only thing that changed from the original packet was there were some comments from the roads department. Commissioner Ruffner said that only one person from the public came to speak. He is putting a lot of trust into staff because no one will not know the issues until it is implemented. He wanted to know if staff had enough time to work through it. Last time it was postponed was because the cities were concerned about it. What he understood from Soldotna was that they wanted to make sure they had more say in whether it goes through. He wanted to know if first class cities have the ability to say no or does the borough retain the platting authority to authorize or not. Mr. Huff said the borough is the platting authority. The cities could request to be but they would have to comply with borough code in terms of notification and appeal process. None of the cities currently has that in their code. They could implement that to have the platting authority within their city. The first submittal received will have to be worked through because there are so many scenarios. Mr. Best added that this ordinance has some high standards since no exceptions can be requested other than fronting on a dedicated right-of-way. The postponement gave staff time to go back and review past subdivision plats. From the ones they reviewed only two or three could work under this code and a few that could if minor adjustments were made. There will only be a few situations that this code will work. Commissioner Ruffner said that he is supportive of sending it through to the Assembly but it is at the discretion of staff. He does feel that it has been rushed but if staff feels comfortable having a recommendation go to the Assembly he supports that.

Commissioner Whitney said that the Soldotna City Council had it before them at a recent meeting. There was not much support from the Council. There were many questions and a lot of concern about how it would work inside the city limits. If this passes there will need to be changes to City Ordinances on how to accomplish a change if someone proposed a gated community. They did not see an issue with a new

subdivision going in and creating a gated community because many factors can be built in during the creation. It is an issue to take an existing neighborhood and change it to a gated subdivision and how it would be done.

Commissioner Venuti said he did not understand how a public road would be transferred to a gated subdivision and how the cost of that road would be reimbursed to the borough. Mr. Best said that was a major discussion with the Road Service Area Board. If there was a recent capital improvement project or local improvement district it was figured that after 10 years the borough's half of the road is used. After talking with Mr. Uhlin and the Road Service Area Board, 10 years was determined to be about the period to get half of the use out of the road. After 10 years, they do not care if the road is taken over. This does not apply to the cities and they will need to come up with a way to handle and determine what they will allow. Commissioner Venuti could see in an area like Homer, which has high valued land that is valued at the square foot, it could add up to be expensive property. He understands the recovering the cost of the road but the land also has value. He does not see it being to the advantage of the public to give it away. Mr. Best said that most of the roads are by expressed dedication on a plat. That is fee simple property that is given to the borough. There was no compensation. The borough did not go out and purchase the property it was given to them. Statutes says the land would be given back so there is no value being exchanged. There are situations where rights-of-way are purchased and that the money would then be asked back for the value of the property. Commissioner Whitney said the City of Soldotna had that concern also. There are quite a few paved roads with concrete sidewalks and there are would be more value to those roads than a gravel road that is not well maintained. The special assessment districts usually have a 10-year payback with the city financing about 75% and adjoining property owners financing the remaining 25%.

Commissioner Morgan wanted to know how a gated community would affect public easement access such as a section line easement. Mr. Huff said that if a right-of-way went to a section line easement, as long as there is public access at each end of the easement, there could be a private street. The public cannot be limited to getting through the section line easement. Commissioner Whitney said if a section line easement ran through the street people could still walk across it and the homeowners that have created the gated community could not stop them. Mr. Best wanted to clarify if he meant a dedication on top of the section line easement or a section line easement crossing through a dedication. Commissioner Whitney said it would be when there is a section line easement and a private gated road goes across it. If someone is walking on that section line easement they can still cross the road and not have any interference from the homeowners telling him that he is not allowed. Mr. Huff said that is correct. The section line easement's public access still exists across the private tract.

Mr. Huff noticed that under definitions on the substitute ordinance Home Owner's Association is still in there and he would like to change that. Under private street definition, instead of "by a homeowners' association" and change it to "by the private tract owner". That would be a minor change to the substitute ordinance. Chairman Martin asked if the maker of the motion and second agreed to that change. Commissioners Ruffner and Whitney agreed to that change.

Commissioner Bentz asked if the 90-day effective date was consistent with the city zoning departments to give them time to react to the changes and make necessary changes to their codes. Mr. Best said they have given the cities advanced notice. To have something drafted, a reading and have a hearing, 90 days should be sufficient.

Commissioner Whitney wanted to know if a gated community is authorized who gets ownership of the road if there is no homeowner association. Mr. Huff said if within an existing subdivision and a right-of-way is made private all lots bordering the road would be joint owners of the private tract. They can all share in the cost as common owners of the tract or form an HOA. Commissioner Whitney asked if they would pay property tax on their portion of the tract. Mr. Best said yes, it would be absorbed into each lot. There would be a \$100 value put on the parcel that is the right-of-way. This is similar to how condominiums and areas with common ownership are handled. The value is allocated to all of the property owners. If there is a paved road with sidewalks and lights, the assessment values will reflect that. Mr. Whitney asked if it would be valued at fair market value. Mr. Best said the value for the assets in the right-of-way would be allocated

to each lot. Commissioner Whitney asked if he meant the property the road is on. Mr. Best said yes. Chairman Martin stated that a parcel with a road on it could be foreclosed upon if the taxes are not paid. Mr. Best that is why they would allocate a \$100 value on the parcel itself.

Commissioner Bentz was considering the public testimony heard about the issues with public rights-of-way within in gated subdivisions. Looking at 20.80.050 is there anything to think about adding to prevent those issues from arising in the future. Mr. Huff said that any future subdivision within a private subdivision could only have private streets dedicated. No public streets will be dedicated. It is a good point that if a subdivision has a three acre lot on a private street that lot could be subdivided in half. Depending on who owned the tract there could be some access issues.

Commissioner Whitney thought the original version said that a hundred percent of the surrounding property owners had to agree to go to a gated community. The new ordinance says a majority. Mr. Huff said a right-of-way vacation can be started with a majority but a hundred percent of the landowners have to sign the final plat to agree to it. The code for vacations requires a majority of owners fronting on a right-of-way to start a petition. Commissioner Whitney gave an example of 50 lots along a street and 49 want to do it and one says no then they cannot do it. Mr. Huff said that was correct.

Commissioner Ruffner wanted to discuss a case as described in the Kenai River Keys. There is a gated subdivision and then someone is going to subdivide within the subdivision. He wanted to know how they ensure that everyone has access if the other landowners or the HOA controls it. Mr. Best said any future subdivision within the subdivision would require access. If they could not do flag lots or have enough frontage then it would require an extension of the private tract. In the Keys situation, there is dedicated access to those other subdivisions but they are not constructed because they go through wetlands. Commissioner Ruffner said that the platting authority would be retained even within a private subdivision. It would be required that lots have frontage or place a new private easement across the property for access. Mr. Huff said that under any new plat, even in a private subdivision, they would have to comply with all of Chapter 20. Under 20.30.050 is legal access. "The applicant shall provide an access plan to the planning department verifying the existence of legal access to the subdivision boundary." That may be a private tract inside the subdivision. "In this title, legal access exists where an unrestricted, public right-of-way connects the subdivision to the state highway system", etc. They have to show that there is public access to a private lot so it could not be further subdivided because exceptions cannot be granted.

Commissioner Bentz felt that she understood more, especially the part about converting private streets to public right-of-way after already being privatized. She felt that what Commissioner Ruffner said about public dedication that was not built, such as a riparian area, it would not meet the criteria of 20.80.050(B) so that would help address the issues about future dedications and make sure they do not cause problems in the future.

Commissioner Venuti saw that this would be a great idea if a developer bought a piece of land and turned it into a gated subdivision. It would be less complicated than converting existing roads. He is concerned that the concept, while attractive to some people, promotes divisiveness and he thinks there is enough of that in the world. It is hard for him to support this.

Commissioner Fikes shares some of the same concerns as Commissioner Venuti. The testifier talked about access as far as the basics such as emergency responders. There are many additional people that may need access that are not thought about. What if a relative wishes to stay there, there is a sublet or rental, how would they get the correct access and how would others in the subdivision know they are allowed to have access? She also wanted to know where the burden of responsibility falls if there is disaster. Many other agencies may need access. The gate can be cut right away but it is still someone's property that people have to try to get access to in an emergency.

Commissioner Bentz said she did not notice in the packet if there was anything from the conversations had with the first class cities about their concerns. The City of Homer had a discussion at a work session and some issues were brought up there. A sentiment was how the city could make its own choices about this. She asked how the cities regain platting authority if they want it and how does a city say no. She does not

think it is easy to get code revisions done within 90 days. She would think about a longer time to enactment to give the cities more time to understand how it affects their ordinance.

Commissioner Morgan said that very little public testimony has been heard. She is curious on the history of this ordinance and how it started. Mr. Best said that over the past twenty years he has been asked several times if there was a provision for gated subdivisions. Some people are only here seasonally that live on cul-de-sacs and wanted to have a gate. They cannot gate a public right-of-way. Administration also advised that they wanted to it come through and based on everyone's past experiences they drafted something to move forward.

Commissioner Whitney agreed with Commissioner Venuti that if it is a large parcel that someone wants to create a gated community he understands. It is trying to do it after the fact and there are too many problems and concerns from everyone involved.

Commissioner Ruffner asked staff if a bunch of neighbors get together and create a gated subdivision there would be somebody on the boundary or edge of the subdivision. That lot could be subdivided or replatted and give new access into the private subdivision that others in the subdivision do not agree with. He wanted to make sure there are protections for those within the subdivision. Mr. Huff said that if there was a three-acre lot abutted to a five-acre lot that fronted on a right of way they could be combined and someone could break out of the subdivision because it meets right-of-way frontage. It would still have to go through code. It could be broken out and no longer be part of the private subdivision. Chairman Martin wanted to know if Commissioner Ruffner wanted to know about breaking out or breaking into a gated subdivision. Commissioner Ruffner wanted to look at both sides. He said Mr. Huff's example would be breaking out but they could add more lots into the subdivision. Mr. Best said that it would be up to the HOA if one is formed and civil court. He would encourage a subdivision to form a HOA to collect dues to operate and maintain their right-of-way as they do in Kenai River Keys and to help regulate it. Commissioner Ruffner asked if staff looked at other municipality's codes with gated subdivisions and wanted to know if there are protections built in that we are lacking. Mr. Best said that most jurisdictions build the roads before subdivision and also build walls and confine access through the gated areas.

Commissioner Fikes asked if one of these gated communities had a land owner that wants to put in some type of mixed use and the HOA is upset, where would that leave the borough. Mr. Best said hopefully on the sideline.

Commissioner Venuti wanted to know if a gated community could have mixed residential and commercial usage. Mr. Huff said there is no regulations in the borough on mixed use or commercial being in the same private subdivision as residential unless within a local option zoning district.

Commissioner Ruffner felt they were done discussing if staff felt it was ready to send to the Assembly. The Assembly has the final word on it. He does not feel good about this but also is fine sending it to the Assembly to discuss.

AMENDMENT B MOTION: Commissioner Bentz moved, seconded by Commissioner Ruffner, to amend Section 3 that this ordinance shall become effective 180 days after its enactment.

Commissioner Bentz said she was thinking of the seasonality or capacity for the cities to respond to this. She thought there might be more public comment at the city levels than at the borough level. More time would be welcomed by the City of Homer to process and discuss the issues that are being raised about converting existing subdivisions to private subdivisions.

AMENDMENT B MOTION PASSED: Seeing and hearing no objection or discussion, the motion passed by unanimous consent.

Chairman Martin noted that they were back to the motion to amend the motion to staff recommendations found in the desk packet.

Commissioner Whitney asked if they were just substituting with this motion and then they would vote on the recommendation to approve. Chairman Martin said that was correct, this motion is just to substitute the ordinance.

AMENDMENT A MOTION PASSED: Seeing and hearing no objection or discussion, the motion passed by unanimous consent.

Chairman Martin stated they were now discussing the main motion as amended.

Commissioner Ruffner said that it would be to recommend to the Assembly to take up the substitute.

Commissioner Morgan said she felt that she was not ready to support passing this onto the Assembly. She did not feel comfortable giving the Assembly something that does not feel ready or complete.

MOTION PASSED BY MAJORITY VOTE: 6 Yes, 4 No, 2 Absent

Yes: Bentz, Brantley, Ernst, Foster, Martin, Ruffner

No: Fikes, Morgan, Venuti, Whitney

Absent: Carluccio, Ecklund

Introduced by: Mayor
Date: 11/05/19
Hearing: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-30**

**AN ORDINANCE AMENDING KPB 21.29, KPB 21.25, AND KPB 21.50.055
REGARDING MATERIAL SITE PERMITS, APPLICATIONS, CONDITIONS, AND
PROCEDURES**

- WHEREAS,** Goal 6.5, Objective 1 of the 2005 Kenai Peninsula Borough Comprehensive Plan is to ensure that land use regulations adopted by the borough are necessary to control uses that affect public health and safety and address adverse impacts on the rights of adjacent property owners; and
- WHEREAS,** Goal 6.5, Objective 1, Implementation Action A, is to continue to periodically review and update existing regulations to reflect changing conditions and policies in the borough; and
- WHEREAS,** Goal 6.6 of the 2005 comprehensive plan is to reduce land use conflicts outside of the cities; and
- WHEREAS,** Goal 6.6, Objective 1, Implementation Action D, is to improve the land use regulations currently in existence including those related to material sites to minimize the impacts of erosion and flooding of neighboring properties and to minimize conflicts with surrounding land uses; and
- WHEREAS,** Goal 7.1, Objectives 1 and 2, of the 2005 comprehensive plan are to work with other agencies to protect public health and environment, to avoid duplications of other agencies' regulations, and to provide input to federal and state agencies on local conditions and opinions; and
- WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and
- WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and
- WHEREAS,** Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee's report; and

WHEREAS, the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and

WHEREAS, KPB 21.25.040 requires a permit for the commencement of certain land uses within the rural district of the Kenai Peninsula Borough; and

WHEREAS, the planning department has recognized that certain provisions of the material site ordinance could be better clarified for the operators, public, and staff; and

WHEREAS, the planning commission and planning department received comments expressing concerns about dust, noise, and aesthetics; and

WHEREAS, approximately 253 registered prior existing use material sites and approximately 99 conditional land use permits for material sites have been granted since 1996;

WHEREAS, the planning department receives numerous complaints regarding unreclaimed parcels registered as nonconforming prior existing material sites which have not been regulated by KPB; and

WHEREAS, the assembly established a material site work group by adoption of resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and

WHEREAS, assembly resolution 2018-025 extended the deadline for the final report to be submitted to the assembly, administration and planning commission to April 30, 2019; and

WHEREAS, certain additional conditions placed on material site permits would facilitate a reduction in the negative secondary impacts of material sites, e.g. dust, noise, and unsightliness of material sites; and

WHEREAS, at its regularly scheduled meeting of November 12, 2019, the Planning Commission recommended _____;

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

SECTION 1. That KPB 21.25.030 is hereby amended, as follows:

21.25.030. Definitions.

Unless the context requires otherwise, the following definitions apply to CLUPs:

Abandon means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal

periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.

Animal feeding operation means a lot or facility (other than an aquatic animal production facility) where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.

- a. The same animals need not remain on the lot for 45 days or more; rather, some animals are fed or maintained on the lot 45 days out of any 12-month period, and
- b. Animals are "maintained" for purposes of this ordinance when they are confined in an area where waste is generated and/or concentrated or are watered, cleaned, groomed, or medicated in a confined area, even if the confinement is temporary.
- c. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other.
- d. Slaughterhouses are animal feeding operations.

Animal unit means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighting [weighing] over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

Animal waste means animal excrement, animal carcasses, feed wasted, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation.

Animal waste management system means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste.

Aquifer means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.

Aquifer-confining layer means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.

Assisted living home means a residential facility that serves three or more adults who are not related to the owner by blood or marriage, or that receives state or that receives state or federal payment for service of the number of adults served. The services and activities may include, but are not limited to, housing and food services to its residents, assistance with activities of daily living, and personal

assistance, and that complies with Alaska Statutes 47.32.0101 – 47.60.900, as amended.

Child care facility means a place where child care is regularly provided for children under the age of 12 for periods of time that are less than 24 hours in duration and that is licensed pursuant to AS 47.35.005 et seq., excluding child care homes and child care group homes, as currently written or hereafter amended.

Commercial means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.

Concentrated animal feeding operation (CAFO) means an animal feeding operation confining at least: (1) 1,000 swine weighing at least approximately 55 pounds; (2) 1,000 slaughter and feeder cattle; (3) 700 mature dairy cattle; (4) 500 horses; (5) 10,000 sheep or lambs; (6) 55,000 turkeys; (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering); (8) 30,000 laying hens or broilers (if the facility has a liquid manure system); (9) 5,000 ducks; (10) 1,000 animal units; or (11) a combination of the above resulting in at least 1,000 animal units. Each individual parcel upon which a CAFO is located is a separate CAFO unless they adjoin each other.

Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.

Correctional community residential center (CCRC) means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

Correctional institution means a facility other than a correctional community residential center providing for the imprisonment or physical confinement or detention of prisoners under guard or twenty-four hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.

Development plan means a plan created to describe a proposed development on a specific building site excluding material sites under KPB 21.29.020.

Disturbed includes active excavation and all areas necessary to use a parcel as a material site including but not limited to berms, stockpiles, and excavated areas excluding all areas reclaimed for alternate post mining land uses.

[EXHAUSTED MEANS THAT ALL MATERIAL OF A COMMERCIAL QUALITY IN A SAND, GRAVEL, OR MATERIAL SITE HAS BEEN REMOVED.]

Federal prisoners means offenders in the custody or control or under the care or supervision of the United States Attorney General or the Bureau of Prisons.

Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.

Haul route includes the roads used to haul materials from the permit area to a roadway designated as collector, arterial or interstate by the Alaska Department of Transportation & Public Facilities.

Liquid manure or liquid animal waste system means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure.

Multi-purpose senior center is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

Permit area includes all excavation, processing, buffer and haul route areas of a CLUP or counter permit.

Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.

Prisoner means:

- a. a person held under authority of state law in official detention as defined in AS 11.81.900;
- b. includes a juvenile committed to the custody of the Alaska Department of Corrections Commissioner when the juvenile has been charged, prosecuted, or convicted as an adult.

Private school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that does not receive direct state or federal funding and that complies with either Alaska Statute 14.45.030 or 14.45.100—14.45.130, as currently written or hereafter amended.

Public school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that is operated by the State of Alaska or any political subdivision of the state.

Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.

Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.

Senior housing project means senior housing as defined for purposes of construction or operation in 15 Alaska Administrative Code 151.950(c), as currently written or hereafter amended.

Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.

Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

Topsoil means material suitable for vegetative growth.

Vicinity means the same as the area of notification.

Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which storm water runoff is directed.

Water source means a well, spring or other similar source that provides water for human consumptive use.

SECTION 2. That KPB 21.29 is hereby amended, as follows:

CHAPTER 21.29. MATERIAL SITE PERMITS

21.29.010. Material extraction exempt from obtaining a permit.

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within ten feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.
- C. A prior existing use under KPB 21.29.120 does not require a material extraction permit, but a floodplain development permit is required for all activities within any mapped special flood hazard area.
- D. Material extraction incidental to site development does not require a permit when an approved site development plan is on file with the planning department. Site development plans are approved by the planning director

and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

21.29.020. Material extraction and activities requiring a permit.

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

21.29.030. Application procedure.

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
 - 1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
 - 2. Expected life span of the material site;
 - 3. A buffer plan consistent with KPB 21.29.050(A)(2);
 - 4. Reclamation plan consistent with KPB 21.29.060;
 - 5. The depth of excavation;
 - 6. Type of material to be extracted and type of equipment to be used;
 - 7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;
 - 8. Surface water protection measures, if any, for adjacent properties designed by a civil engineer, including the use of diversion channels,

interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;

9. A site plan and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
 - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
 - b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
 - c. Identification of all encumbrances, including, but not limited to easements;
 - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit;
 - e. Anticipated haul routes;
 - f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug. The test holes shall be at least four feet below the proposed depth of excavation;
 - g. Location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;
 - h. Location of any water body on the parcel, including the location of any riparian wetland as determined by "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps created by the Kenai Watershed Forum;
 - [I]. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]
 - [J]i. Location of any processing areas on parcel, if applicable;
 - [K]j. North arrow;
 - [L]k. The scale to which the site plan is drawn;
 - [M]l. Preparer's name, date and seal;
 - [N]m. Field verification shall include staking the boundary of the parcel at sequentially visible intervals. The planning director

may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.

- B. In order to aid the planning commission or planning director's decision-making process, the planning director shall provide vicinity, aerial, land use, and ownership maps for each application and may include additional information.

21.29.040. Standards for sand, gravel or material sites.

- A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:
1. Protects against the lowering of water sources serving other properties;
 2. Protects against physical damage to [OTHER] adjacent properties;
 3. [MINIMIZES] Protects against off-site movement of dust;
 4. [MINIMIZES] Protects against noise disturbance to other properties;
 5. [MINIMIZES] Protects against visual impacts of the material site; [AND]
 6. Provides for alternate post-mining land uses[.];
 7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;
 8. Protects against traffic impacts; and
 9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.

21.29.050. Permit conditions.

- A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:
1. [PARCEL]Permit boundaries. [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit.
 - [2. *BUFFER ZONE.* A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT,

UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.

- A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:
 - I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR
 - II. A MINIMUM SIX-FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR
 - III. A MINIMUM SIX-FOOT FENCE.
- B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION FLOOR ON ALL INACTIVE SITE WALLS. MATERIAL FROM THE AREA DESIGNATED FOR THE 2:1 SLOPE MAY BE REMOVED IF SUITABLE, STABILIZING MATERIAL IS REPLACED WITHIN 30 DAYS FROM THE TIME OF REMOVAL.
- C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.
- D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.
- E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

2. Buffer Area. Material sites shall maintain buffer areas in accord with this section.

- a. A buffer area of a maximum of 100 feet shall be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed

- natural vegetation, a minimum six-foot fence, a minimum six-foot berm or a combination thereof.
- b. A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
 - c. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable.
 - d. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan. The alternate buffer plan must consist of natural undisturbed vegetation, a minimum six-foot berm, or a minimum six-foot fence or a combination thereof; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.
 - e. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.
 - f. There is no requirement to buffer a material site from uses that commence after approval of the permit.
 - g. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.
3. *Processing.* In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of [OF ADJACENT PROPERTY AT THE TIME] the properties in the vicinity at the time of approval of the permit.
 4. *Water source separation.*
 - a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
 - b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.
 - c. All CLUPS shall be issued with a condition which requires that a [TWO] four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.

- d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.
5. *Excavation in the water table.* Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:
- a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
 - b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
 - c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
 - d. Operations shall not breach an aquifer-confining layer.
6. *Waterbodies.*
- a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within [100] 200 linear feet from excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
 - b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.
7. *Fuel storage.* Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or

smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.

8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
 - a. Processing equipment shall not be operated between 7:00 p.m. and 6:00 a.m.
 - b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and visual impacts caused by the material site.
12. *Reclamation.*
 - a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
 - b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE PURSUANT TO AS 27.19.050.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.

13. *Other permits.* Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC air and water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives. Any violation of these regulations or permits reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.
14. [VOLUNTARY]Volunteered permit conditions. Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [VOLUNTARY] Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [VOLUNTARY] volunteered permit conditions may be proposed [AT] by permit [RENEWAL OR AMENDMENT] modification.
15. *Signage.* For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.
16. Appeal. The permit shall not be issued nor operable until the deadline for filing an appeal pursuant to KPB 21.20 has expired.
17. Sound level.
 - a. No sound resulting from the materials extraction activities shall create a sound level, when measured at or within the property boundary of the adjacent land, that exceeds 75 dB(A).

- b. For any sound that is of short duration between the hours of 7 a.m. and 7 p.m. the levels may be increased by:
 - i. Five dB(A) for a total of 15 minutes in any one hour; or
 - ii. Ten dB(A) for a total of five minutes in any hour; or
 - iii. Fifteen db(A) for a total of one and one-half minutes in any one-hour period.
 - c. At its discretion, the planning commission or planning director, as applicable, may reduce or waive the sound level requirements on any or all property boundaries. Sound level requirements shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
 - d. Mandatory condition KPB 21.29.050(A)(17) shall expire 365 days from adoption of KPB 21.29.050(A)(17) unless extended or modified by the assembly
18. *Reverse signal alarms.* Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment shall be more technically advanced devices; such as, a multi-frequency “white noise” alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
19. *Ingress and egress.* The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an “Approval to Construct” or a borough road service area as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
20. *Dust suppression.* Dust suppression shall be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes.

21. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer.
22. Groundwater elevation. All material sites must maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation.
23. Setback. Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback.

21.29.055. Decision.

The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings explaining how the application meets the mandatory permit conditions, and when applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), (2)(e), (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan.

21.29.060. Reclamation plan.

- A. All material site permit applications require an overall reclamation plan along with a five-year reclamation plan. A site plan for reclamation shall be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit extension request.
- B. The applicant shall revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE, RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at \$2,000.00 per acre for all

acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a civil engineer's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans shall be enforced under KPB 21.50.

- C. The following measures must be considered in the [PREPARING] preparation, approval and [IMPLEMENTING] implementation of the reclamation plan, although not all will be applicable to every reclamation plan.
1. Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. [THIS MATERIAL WILL BE PROTECTED FROM EROSION AND CONTAMINATION BY ACIDIC OR TOXIC MATERIALS AND PRESERVED IN A CONDITION SUITABLE FOR LATER USE.]
 2. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil [TO A CONDITION THAT ALLOWS FOR THE REESTABLISHMENT OF RENEWABLE RESOURCES ON THE SITE WITHIN A REASONABLE PERIOD OF TIME. IT WILL BE STABILIZED TO A CONDITION THAT WILL ALLOW SUFFICIENT MOISTURE FOR REVEGETATION] so that it will be stabilized to a condition that will allow for the revegetation as required by KPB 21.29.060(B).
 3. [SUFFICIENT QUANTITIES OF STOCKPILED OR IMPORTED TOPSOIL WILL BE SPREAD OVER THE RECLAIMED AREA TO A DEPTH OF FOUR INCHES TO PROMOTE NATURAL PLANT GROWTH THAT CAN REASONABLY BE EXPECTED TO REVEGETATE THE AREA WITHIN FIVE YEARS. THE APPLICANT MAY USE THE EXISTING NATURAL ORGANIC BLANKET REPRESENTATIVE OF THE PROJECT AREA IF THE SOIL IS FOUND TO HAVE AN ORGANIC CONTENT OF 5% OR MORE AND MEETS THE SPECIFICATION OF CLASS B TOPSOIL REQUIREMENTS AS SET BY ALASKA TEST METHOD (ATM) T-6.] The [MATERIAL] topsoil used for reclamation shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.
 4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
 5. [PEAT AND T]Topsoil mine operations shall ensure a minimum of [TWO] four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
 6. Ponding may be used as a reclamation method as approved by the planning commission.
- D. The five-year reclamation plan shall describe the total acreage to be reclaimed [EACH YEAR, A LIST OF EQUIPMENT (TYPE AND QUANTITY) TO BE USED IN

RECLAMATION, AND A TIME SCHEDULE OF RECLAMATION MEASURES] relative to the total excavation plan.

21.29.070. Permit extension and revocation.

- A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.
- B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.
- C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be processed pursuant to KPB 21.29.030-050 with public notice given as provided by KPB 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KPB 21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.50. 21.29.080. - Permit termination.

When a permit expires, is revoked, or a permittee requests termination of their permit, a review of permit conditions and site inspections will be conducted by the planning department to ensure code compliance and verify site reclamation prior to termination. When the planning director determines that a site qualifies for termination, a termination document shall be issued to the permittee.

21.29.090. Permit modifications.

If a permittee revises or intends to revise operations (at a time other than permit extension) so that they are no longer consistent with the original application, a permit modification is required. The planning director shall determine whether the

revision to operations requires a modification. Permit modification shall be processed in the same manner as original permits.

21.29.100. Recordation.

All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded. Failure to record a material site document does not affect the validity of the documents.

21.29.110. Violations.

- A. Violations of this chapter shall be governed by KPB 21.50.
- B. In addition to the remedies provided in KPB 21.50, the planning director may require bonding in a form and amount adequate to protect the borough's interests for an owner or operator who has been cited for three violations of KPB 21.50, 21.25, and 21.29 within a three-year period. The violations need not be committed at the same material site. Failure to provide requested bonding may result in permit revocation proceedings.

21.29.120. Prior existing uses.

- A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.
- B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.
- C. [ANY PRIOR EXISTING USE THAT HAS NOT OPERATED AS A MATERIAL SITE BETWEEN MAY 21, 1996, AND MAY 21, 2011, IS CONSIDERED ABANDONED AND MUST THEREAFTER COMPLY WITH THE PERMIT REQUIREMENTS OF THIS CHAPTER. THE PLANNING DIRECTOR SHALL DETERMINE WHETHER A PRIOR EXISTING USE HAS BEEN ABANDONED. AFTER GIVING NOTICE TO THE PARCEL OWNER THAT A PEU IS CONSIDERED ABANDONED, A PARCEL OWNER MAY PROTEST THE TERMINATION OF THE PEU BY FILING WRITTEN NOTICE WITH THE PLANNING DIRECTOR ON A FORM PROVIDED BY THE PLANNING DEPARTMENT.

WHEN A PROTEST BY A PARCEL OWNER IS FILED, NOTICE AND AN OPPORTUNITY TO MAKE WRITTEN COMMENTS REGARDING PRIOR EXISTING USE STATUS SHALL BE ISSUED TO OWNERS OF PROPERTY WITHIN A ONE-HALF MILE RADIUS OF THE PARCEL BOUNDARIES OF THE SITE. THE OWNER OF THE PARCEL SUBJECT TO THE PRIOR EXISTING USE MAY SUBMIT WRITTEN INFORMATION, AND THE PLANNING DIRECTOR MAY GATHER AND CONSIDER ANY INFORMATION RELEVANT TO WHETHER A MATERIAL SITE HAS OPERATED. THE PLANNING DIRECTOR MAY CONDUCT A HEARING IF HE OR SHE BELIEVES IT WOULD ASSIST THE DECISION-MAKING PROCESS. THE PLANNING DIRECTOR SHALL ISSUE A WRITTEN DETERMINATION WHICH SHALL BE DISTRIBUTED TO ALL PERSONS MAKING WRITTEN COMMENTS. THE PLANNING DIRECTOR'S DECISION REGARDING TERMINATION OF THE PRIOR EXISTING USE STATUS MAY BE APPEALED TO THE PLANNING COMMISSION WITHIN 15 DAYS OF THE DATE OF THE NOTICE OF DECISION.]

The owner of a material site that has been granted a PEU determination shall provide proof of compliance with AS 27.19.030 – 050 concerning reclamation to the planning department no later than July 1, 2021. The proof shall consist of an Alaska Department of Natural Resources (DNR) approved reclamation plan and receipt for bonding or a letter of intent filed with DNR.

1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.
2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.

SECTION 3. That KPB 21.50.055 is hereby amended, as follows:

21.50.055. Fines.

- A. Following are the fines for violations of this title. Each day a violation occurs is a separate violation. Violations begin to accrue the date the enforcement notice is issued and continue to the date the enforcement is initially set for hearing. The fine for a violation may not be reduced by the hearing officer to less than the equivalent of one day's fine for each type of violation.

Code Chapter & Section	Violation Description	Daily Fine
KPB 20.10.030(A)	Offering land for sale without final plat approval	\$300.00
KPB 20.10.030(B)	Filing/recording unapproved subdivision/plat	\$300.00
KPB 20.10.030(C)	Violation of subdivision code or condition	\$300.00
KPB 21.05.040(C)	Violation of variance conditions	\$300.00
KPB 21.06.030(D)	Structure or activity prohibited by KPB 21.06	\$300.00
KPB 21.06.040	Failure to obtain a Development Permit/Floodplain Management	\$300.00
KPB 21.06.045	Failure to obtain a SMFDA Development Permit/Violation of SMFDA permit conditions/Floodplain Management	\$300.00
KPB 21.06.050	Violation of permit conditions/Floodplain Management	\$300.00
KPB 21.18.071	Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.072	Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.075	Prohibited use or structure/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.081	Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.090	Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.135(C)	Violation of emergency permit conditions/anadromous stream habitat protection	\$300.00

KPB 21.25.040	Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation	\$300.00
KPB 21.28.030	Violation of permit conditions/Concentrated Animal Feeding Operations	\$300.00
KPB 21.29.020	Failure to Obtain a counter permit/Material Site Permits	\$300.00
KPB 21.29.050	Violation of Conditional Land Use Permit Conditions/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
<u>KPB 21.29.120</u>	<u>Failure to Provide Reclamation Plan and Proof of Bonding or Letter of Intent</u>	<u>\$300.00</u>
KPB 21.44.100	Violation of Pre-existing structures/Local Option Zoning	\$300.00
KPB 21.44.110(D)	Prohibited expansion of nonconforming use/Local Option Zoning	\$300.00
KPB 21.44.110(E)	Prohibited Change in Use/Local Option Zoning	\$300.00
KPB 21.44.110(G)	Violation of Conditions on Nonconforming Use/Local Option Zoning	\$300.00
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00

KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

SECTION 4. That this ordinance shall become effective upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2019.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Planning Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *JCB*

FROM: Max Best, Planning Director *MB*

DATE: October 24, 2019

RE: Ordinance 2019-30, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Mayor)

KPB 21.25.040 requires a permit for the commencement of certain land uses within the rural district of the Kenai Peninsula Borough. KPB Chapter 21.29 is the material site permit code.

Approximately 253 registered prior existing use material sites and approximately 99 conditional land use permits for material sites have been granted since 1996. The planning commission and planning department received comments expressing concerns about dust, noise, and aesthetics. The planning department receives numerous complaints regarding unreclaimed parcels registered as nonconforming prior existing material sites which have not been regulated by KPB.

The assembly established a Material Site Work Group (MSWG) by adoption of resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code. The MSWG submitted a final report to the assembly recommending the majority of code changes found in this ordinance. In addition, the borough's planning commission recommended changes, most of which are contained in this ordinance. The ordinance places certain additional conditions on material site permits that would facilitate a reduction in the negative secondary impacts of material sites, e.g. dust, noise, and unsightliness of material sites.

Your consideration of this ordinance is appreciated.

Introduced by: Mayor
Substitute Introduced: 12/03/19
Ordinance 2019-30 (Mayor): See Original Ordinance for Prior History
Hearing: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-30
(MAYOR) SUBSTITUTE**

**AN ORDINANCE AMENDING KPB 21.29, KPB 21.25, AND KPB 21.50.055
REGARDING MATERIAL SITE PERMITS, APPLICATIONS, CONDITIONS, AND
PROCEDURES**

- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A of the 2019 Kenai Peninsula Borough Comprehensive Plan is to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 1 of the 2019 Comprehensive Plan is to adopt limited development standards for specific areas and uses to reduce potential off site impacts of development on adjoining uses and the natural environment; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2 of the 2019 Comprehensive Plan is to update the Borough’s existing conditional use regulations for gravel extraction and other uses to better address reoccurring land use conflicts; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2a of the 2019 Comprehensive Plan is to clarify the broad purpose of the conditional use process and clear parameters for allowable conditional uses that include reasonable, project-specific conditions that reduce impacts on surrounding uses, and if/when a conditional use permit can be denied and consider establishing conditions that require larger setbacks, safety and visual screening, control on access routes, control on hours of operation, and address environmental concerns; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2d of the 2019 Comprehensive Plan is to complete improvements to the rules guiding gravel extraction, with the goal of providing an appropriate balance between providing access to affordable materials for development and protecting quality of life for borough residents; and

- WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and
- WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and
- WHEREAS,** Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee’s report; and
- WHEREAS,** the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and
- WHEREAS,** KPB 21.25.040 requires a permit for the commencement of certain land uses within the rural district of the Kenai Peninsula Borough; and
- WHEREAS,** the planning department has recognized that certain provisions of the material site ordinance could be better clarified for the operators, public, and staff; and
- WHEREAS,** the planning commission and planning department received comments expressing concerns about dust, noise, safety, and aesthetics; and
- WHEREAS,** approximately 253 registered prior existing use material sites and approximately 99 conditional land use permits for material sites have been granted since 1996;
- WHEREAS,** the planning department receives numerous complaints regarding unreclaimed parcels registered as nonconforming prior existing material sites which have not been regulated by KPB; and
- WHEREAS,** the assembly established a material site work group by adoption of resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and
- WHEREAS,** assembly resolution 2018-025 extended the deadline for the final report to be submitted to the assembly, administration and planning commission to April 30, 2019; and
- WHEREAS,** certain additional conditions placed on material site permits would facilitate a reduction in the negative secondary impacts of material sites, e.g. dust, noise, safety, and unsightliness of material sites; and
- WHEREAS,** at its regularly scheduled meeting of November 12, 2019, the Planning Commission recommended approval by unanimous consent;

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

SECTION 1. That KPB 21.25.030 is hereby amended, as follows:

21.25.030. - Definitions.

Unless the context requires otherwise, the following definitions apply to CLUPs:

Abandon means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.

Animal feeding operation means a lot or facility (other than an aquatic animal production facility) where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.

- a. The same animals need not remain on the lot for 45 days or more; rather, some animals are fed or maintained on the lot 45 days out of any 12-month period, and
- b. Animals are "maintained" for purposes of this ordinance when they are confined in an area where waste is generated and/or concentrated or are watered, cleaned, groomed, or medicated in a confined area, even if the confinement is temporary.
- c. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other.
- d. Slaughterhouses are animal feeding operations.

Animal unit means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighting [weighing] over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

Animal waste means animal excrement, animal carcasses, feed wasted, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation.

Animal waste management system means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste.

Aquifer means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.

Aquifer-confining layer means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.

Assisted living home means a residential facility that serves three or more adults who are not related to the owner by blood or marriage, or that receives state or that receives state or federal payment for service of the number of adults served. The services and activities may include, but are not limited to, housing and food services to its residents, assistance with activities of daily living, and personal assistance, and that complies with Alaska Statutes 47.32.0101 – 47.60.900, as amended.

Child care facility means a place where child care is regularly provided for children under the age of 12 for periods of time that are less than 24 hours in duration and that is licensed pursuant to AS 47.35.005 et seq., excluding child care homes and child care group homes, as currently written or hereafter amended.

Commercial means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.

Concentrated animal feeding operation (CAFO) means an animal feeding operation confining at least: (1) 1,000 swine weighing at least approximately 55 pounds; (2) 1,000 slaughter and feeder cattle; (3) 700 mature dairy cattle; (4) 500 horses; (5) 10,000 sheep or lambs; (6) 55,000 turkeys; (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering); (8) 30,000 laying hens or broilers (if the facility has a liquid manure system); (9) 5,000 ducks; (10) 1,000 animal units; or (11) a combination of the above resulting in at least 1,000 animal units. Each individual parcel upon which a CAFO is located is a separate CAFO unless they adjoin each other.

Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.

Correctional community residential center (CCRC) means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

Correctional institution means a facility other than a correctional community residential center providing for the imprisonment or physical confinement or detention of prisoners under guard or twenty-four-hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.

Development plan means a plan created to describe a proposed development on a specific building site excluding material sites under KPB 21.29.020.

Disturbed includes active excavation and all areas necessary to use a parcel as a material site including but not limited to berms, stockpiles, and excavated areas excluding all areas reclaimed for alternate post mining land uses.

[EXHAUSTED MEANS THAT ALL MATERIAL OF A COMMERCIAL QUALITY IN A SAND, GRAVEL, OR MATERIAL SITE HAS BEEN REMOVED.]

Federal prisoners means offenders in the custody or control or under the care or supervision of the United States Attorney General or the Bureau of Prisons.

Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.

Haul route includes the roads used to haul materials from the permit area to a roadway designated as collector, arterial or interstate by the Alaska Department of Transportation & Public Facilities.

Liquid manure or liquid animal waste system means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure.

Multi-purpose senior center is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The

services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

Permit area includes all excavation, processing, buffer and haul route areas of a CLUP or counter permit.

Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.

Prisoner means:

- a. a person held under authority of state law in official detention as defined in AS 11.81.900;
- b. includes a juvenile committed to the custody of the Alaska Department of Corrections Commissioner when the juvenile has been charged, prosecuted, or convicted as an adult.

Private school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that does not receive direct state or federal funding and that complies with either Alaska Statute 14.45.030 or 14.45.100—14.45.130, as currently written or hereafter amended.

Public school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that is operated by the State of Alaska or any political subdivision of the state.

Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.

Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.

Senior housing project means senior housing as defined for purposes of construction or operation in 15 Alaska Administrative Code 151.950(c), as currently written or hereafter amended.

Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of

renewable resources on the site within a reasonable period of time by natural processes.

Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

Topsoil means material suitable for vegetative growth.

Vicinity means the same as the area of notification.

Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which storm water runoff is directed.

Water source means a well, spring or other similar source that provides water for human consumptive use.

SECTION 2. That KPB 21.29 is hereby amended, as follows:

CHAPTER 21.29. MATERIAL SITE PERMITS

21.29.010. Material extraction exempt from obtaining a permit.

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within ten feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.
- C. A prior existing use under KPB 21.29.120 does not require a material extraction permit, but a floodplain development permit is required for all activities within any mapped special flood hazard area.
- D. Material extraction incidental to site development does not require a permit when an approved site development plan is on file with the planning department. Site development plans are approved by the planning director and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

21.29.020. Material extraction and activities requiring a permit.

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.

- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

21.29.030. Application procedure.

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
 - 1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
 - 2. Expected life span of the material site;
 - 3. A buffer plan consistent with KPB 21.29.050(A)(2);
 - 4. Reclamation plan consistent with KPB 21.29.060;
 - 5. The depth of excavation;
 - 6. Type of material to be extracted and type of equipment to be used;
 - 7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;

8. Surface water protection measures, if any, for adjacent properties designed by a civil engineer, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
9. A site plan and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
 - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
 - b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
 - c. Identification of all encumbrances, including, but not limited to easements;
 - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit;
 - e. Anticipated haul routes;
 - f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug. The test holes shall be at least four feet below the proposed depth of excavation;
 - g. Location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;
 - h. Location of any water body on the parcel, including the location of any riparian wetland as determined by "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps created by the Kenai Watershed Forum;
 - [I. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH

STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]

[J]i. Location of any processing areas on parcel, if applicable;

[K]j. North arrow;

[L]k. The scale to which the site plan is drawn;

[M]l. Preparer's name, date and seal;

[N]m. Field verification shall include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.

B. In order to aid the planning commission or planning director's decision-making process, the planning director shall provide vicinity, aerial, land use, and ownership maps for each application and may include additional information.

21.29.040. Standards for sand, gravel or material sites.

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:

1. Protects against the lowering of water sources serving other properties;
2. Protects against physical damage to [OTHER] adjacent properties;
3. [MINIMIZES] Protects against off-site movement of dust;
4. [MINIMIZES] Protects against noise disturbance to other properties;
5. [MINIMIZES] Protects against visual impacts of the material site; [AND]
6. Provides for alternate post-mining land uses[.];
7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;

- 8. Protects against traffic impacts; and
- 9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.

21.29.050. Permit conditions.

A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:

1. [PARCEL]Permit boundaries. [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit.

[2. *BUFFER ZONE. A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.*

A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR

II. A MINIMUM SIX-FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR

III. A MINIMUM SIX-FOOT FENCE.

B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION FLOOR ON ALL INACTIVE SITE WALLS. MATERIAL FROM THE AREA DESIGNATED FOR THE 2:1 SLOPE MAY BE REMOVED IF SUITABLE, STABILIZING MATERIAL IS REPLACED WITHIN 30 DAYS FROM THE TIME OF REMOVAL.

C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED

APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

- D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.
- E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

2. Buffer Area. Material sites shall maintain buffer areas in accord with this section.

- a. A buffer area of a maximum of 100 feet shall be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation, a minimum six-foot fence, a minimum six-foot berm or a combination thereof.
- b. A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- c. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable.
- d. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan. The alternate buffer plan must consist of natural undisturbed vegetation, a minimum six-foot berm,

or a minimum six-foot fence or a combination thereof; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.

e. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.

f. There is no requirement to buffer a material site from uses that commence after approval of the permit.

g. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.

3. *Processing.* In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of [OF ADJACENT PROPERTY AT THE TIME] the properties in the vicinity at the time of approval of the permit.

4. *Water source separation.*

a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.

b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.

c. All CLUPS shall be issued with a condition which requires that a [TWO] four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.

d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial

civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

5. *Excavation in the water table.* Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:

- a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
- b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
- c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
- d. Operations shall not breach an aquifer-confining layer.

6. *Waterbodies.*

- a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within [100] 200 linear feet from excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
- b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.

7. *Fuel storage.* Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
 - a. Processing equipment shall not be operated between 7:00 p.m. and 6:00 a.m.
 - b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and visual impacts caused by the material site.
12. *Reclamation.*
 - a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
 - b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL

OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE PURSUANT TO AS 27.19.050.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.

13. *Other permits.* Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC air and water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives. Any violation of these regulations or permits reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.
14. [~~VOLUNTARY~~]Volunteered permit conditions. Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [~~VOLUNTARY~~] Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [~~VOLUNTARY~~] volunteered permit conditions may be proposed [AT] by permit [RENEWAL OR AMENDMENT] modification.
15. *Signage.* For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.

16. Appeal. No clearing of vegetation shall occur within the 100-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired.
17. Sound level.
- a. No sound resulting from the materials extraction activities shall create a sound level, when measured at or within the property boundary of the adjacent land, that exceeds 75 dB(A).
 - b. For any sound that is of short duration between the hours of 7 a.m. and 7 p.m. the levels may be increased by:
 - i. Five dB(A) for a total of 15 minutes in any one hour; or
 - ii. Ten dB(A) for a total of five minutes in any hour; or
 - iii. Fifteen db(A) for a total of one and one-half minutes in any one-hour period.
 - c. At its discretion, the planning commission or planning director, as applicable, may reduce or waive the sound level requirements on any or all property boundaries. Sound level requirements shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
 - d. Mandatory condition KPB 21.29.050(A)(17) shall expire 365 days from adoption of KPB 21.29.050(A)(17) unless extended or modified by the assembly.
18. Reverse signal alarms. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment shall be more technically advanced devices; such as, a multi-frequency “white noise” alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
19. Ingress and egress. The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the

parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an “Approval to Construct” or a borough road service area as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.

20. Dust suppression. Dust suppression shall be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes.
21. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer.
22. Groundwater elevation. All material sites must maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation.
23. Setback. Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback.

21.29.055. Decision.

The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings supporting the decision, and when applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), (2)(e), (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan.

21.29.060. Reclamation plan.

- A. All material site permit applications require an overall reclamation plan along with a five-year reclamation plan. A site plan for reclamation shall be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit extension request.
- B. The applicant shall revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A

PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE, RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at \$2,000.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a civil engineer's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans shall be enforced under KPB 21.50.

C. The following measures must be considered in the [PREPARING] preparation, approval and [IMPLEMENTING] implementation of the reclamation plan, although not all will be applicable to every reclamation plan.

1. Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. [THIS MATERIAL WILL BE PROTECTED FROM EROSION AND CONTAMINATION BY ACIDIC OR TOXIC MATERIALS AND PRESERVED IN A CONDITION SUITABLE FOR LATER USE.]
2. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil [TO A CONDITION THAT ALLOWS FOR THE REESTABLISHMENT OF RENEWABLE RESOURCES ON THE SITE WITHIN A REASONABLE PERIOD OF TIME. IT WILL BE STABILIZED TO A CONDITION THAT WILL ALLOW SUFFICIENT MOISTURE FOR REVEGETATION] so that it will be stabilized to a condition that will allow for the revegetation as required by KPB 21.29.060(B).
3. [SUFFICIENT QUANTITIES OF STOCKPILED OR IMPORTED TOPSOIL WILL BE SPREAD OVER THE RECLAIMED AREA TO A DEPTH OF FOUR INCHES TO PROMOTE NATURAL PLANT GROWTH THAT CAN REASONABLY BE EXPECTED TO REVEGETATE THE AREA WITHIN FIVE YEARS. THE APPLICANT MAY USE THE EXISTING NATURAL ORGANIC BLANKET REPRESENTATIVE OF THE PROJECT AREA IF THE SOIL IS FOUND TO HAVE AN ORGANIC CONTENT OF 5% OR MORE AND MEETS THE SPECIFICATION OF CLASS B TOPSOIL REQUIREMENTS AS SET BY ALASKA TEST METHOD (ATM) T-6.] The [MATERIAL] topsoil used for reclamation shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes

greater than 2:1 require special consideration and design for stabilization by a licensed engineer.

4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
 5. [PEAT AND T]Topsoil mine operations shall ensure a minimum of [TWO] four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
 6. Ponding may be used as a reclamation method as approved by the planning commission.
- D. The five-year reclamation plan shall describe the total acreage to be reclaimed [EACH YEAR, A LIST OF EQUIPMENT (TYPE AND QUANTITY) TO BE USED IN RECLAMATION, AND A TIME SCHEDULE OF RECLAMATION MEASURES] relative to the total excavation plan.

21.29.070. Permit extension and revocation.

- A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.
- B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.
- C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be processed pursuant to KP.B 21.29.030-050 with public notice given as provided by KP.B 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KP.B

21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.

- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.50. 21.29.080. - Permit termination.

When a permit expires, is revoked, or a permittee requests termination of their permit, a review of permit conditions and site inspections will be conducted by the planning department to ensure code compliance and verify site reclamation prior to termination. When the planning director determines that a site qualifies for termination, a termination document shall be issued to the permittee.

21.29.090. Permit modifications.

If a permittee revises or intends to revise operations (at a time other than permit extension) so that they are no longer consistent with the original application, a permit modification is required. The planning director shall determine whether the revision to operations requires a modification. Permit modification shall be processed in the same manner as original permits.

21.29.100. Recordation.

All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded. Failure to record a material site document does not affect the validity of the documents.

21.29.110. Violations.

- A. Violations of this chapter shall be governed by KPB 21.50.
- B. In addition to the remedies provided in KPB 21.50, the planning director may require bonding in a form and amount adequate to protect the borough's interests for an owner or operator who has been cited for three violations of KPB 21.50, 21.25, and 21.29 within a three-year period. The violations need not be committed at the same material site. Failure to provide requested bonding may result in permit revocation proceedings.

21.29.120. Prior existing uses.

- A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.
- B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.
- C. [ANY PRIOR EXISTING USE THAT HAS NOT OPERATED AS A MATERIAL SITE BETWEEN MAY 21, 1996, AND MAY 21, 2011, IS CONSIDERED ABANDONED AND MUST THEREAFTER COMPLY WITH THE PERMIT REQUIREMENTS OF THIS CHAPTER. THE PLANNING DIRECTOR SHALL DETERMINE WHETHER A PRIOR EXISTING USE HAS BEEN ABANDONED. AFTER GIVING NOTICE TO THE PARCEL OWNER THAT A PEU IS CONSIDERED ABANDONED, A PARCEL OWNER MAY PROTEST THE TERMINATION OF THE PEU BY FILING WRITTEN NOTICE WITH THE PLANNING DIRECTOR ON A FORM PROVIDED BY THE PLANNING DEPARTMENT. WHEN A PROTEST BY A PARCEL OWNER IS FILED, NOTICE AND AN OPPORTUNITY TO MAKE WRITTEN COMMENTS REGARDING PRIOR EXISTING USE STATUS SHALL BE ISSUED TO OWNERS OF PROPERTY WITHIN A ONE-HALF MILE RADIUS OF THE PARCEL BOUNDARIES OF THE SITE. THE OWNER OF THE PARCEL SUBJECT TO THE PRIOR EXISTING USE MAY SUBMIT WRITTEN INFORMATION, AND THE PLANNING DIRECTOR MAY GATHER AND CONSIDER ANY INFORMATION RELEVANT TO WHETHER A MATERIAL SITE HAS OPERATED. THE PLANNING DIRECTOR MAY CONDUCT A HEARING IF HE OR SHE BELIEVES IT WOULD ASSIST THE DECISION-MAKING PROCESS. THE PLANNING DIRECTOR SHALL ISSUE A WRITTEN DETERMINATION WHICH SHALL BE DISTRIBUTED TO ALL PERSONS MAKING WRITTEN COMMENTS. THE PLANNING DIRECTOR'S DECISION REGARDING TERMINATION OF THE PRIOR EXISTING USE STATUS MAY BE APPEALED TO THE PLANNING COMMISSION WITHIN 15 DAYS OF THE DATE OF THE NOTICE OF DECISION.]

The owner of a material site that has been granted a PEU determination shall provide proof of compliance with AS 27.19.030 – 050 concerning

reclamation to the planning department no later than July 1, 2021. The proof shall consist of an Alaska Department of Natural Resources (DNR) approved reclamation plan and receipt for bonding or a letter of intent filed with DNR.

1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.
2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.

SECTION 3. That KPB 21.50.055 is hereby amended, as follows:

21.50.055. Fines.

- A. Following are the fines for violations of this title. Each day a violation occurs is a separate violation. Violations begin to accrue the date the enforcement notice is issued and continue to the date the enforcement is initially set for hearing. The fine for a violation may not be reduced by the hearing officer to less than the equivalent of one day's fine for each type of violation.

Code Chapter & Section	Violation Description	Daily Fine
KPB 20.10.030(A)	Offering land for sale without final plat approval	\$300.00
KPB 20.10.030(B)	Filing/recording unapproved subdivision/plat	\$300.00
KPB 20.10.030(C)	Violation of subdivision code or condition	\$300.00
KPB 21.05.040(C)	Violation of variance conditions	\$300.00
KPB 21.06.030(D)	Structure or activity prohibited by KPB 21.06	\$300.00
KPB 21.06.040	Failure to obtain a Development Permit/Floodplain Management	\$300.00
KPB 21.06.045	Failure to obtain a SMFDA Development Permit/Violation of SMFDA permit conditions/Floodplain Management	\$300.00
KPB 21.06.050	Violation of permit conditions/Floodplain Management	\$300.00

KPB 21.18.071	Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.072	Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.075	Prohibited use or structure/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.081	Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.090	Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.135(C)	Violation of emergency permit conditions/anadromous stream habitat protection	\$300.00
KPB 21.25.040	Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation	\$300.00
KPB 21.28.030	Violation of permit conditions/Concentrated Animal Feeding Operations	\$300.00
KPB 21.29.020	Failure to Obtain a counter permit/Material Site Permits	\$300.00
KPB 21.29.050	Violation of Conditional Land Use Permit Conditions/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
<u>KPB 21.29.120</u>	<u>Failure to Provide Reclamation Plan and Proof of Bonding or Letter of Intent</u>	<u>\$300.00</u>
KPB 21.44.100	Violation of Pre-existing structures/Local Option Zoning	\$300.00
KPB 21.44.110(D)	Prohibited expansion of nonconforming use/Local Option Zoning	\$300.00

KPB 21.44.110(E)	Prohibited Change in Use/Local Option Zoning	\$300.00
KPB 21.44.110(G)	Violation of Conditions on Nonconforming Use/Local Option Zoning	\$300.00
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00

KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

SECTION 4. That this ordinance shall become effective upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2019.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Planning Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor CP
Max Best, Planning Director MB

FROM: Bruce Wall, Planner BW

DATE: November 21, 2019

RE: Ordinance 2019-30 (Mayor) Substitute, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Mayor)

The borough assembly passed ordinance 2019-25 which adopted the 2019 Kenai Peninsula Borough Comprehensive Plan. Ordinance 2019-30, regarding amending code provisions relating to material site permits, was introduced prior to the assembly adopting the 2019 Comprehensive Plan. The first six "whereas clauses" found in ordinance 2019-30 reference the 2005 Comprehensive Plan. Therefore, this substitute ordinance changes the first six whereas clauses to reference the 2019 Comprehensive Plan goals.

In addition, the planning commission recommended three further amendments to this substitute ordinance which are incorporated into this substitute ordinance sponsored by the mayor. The planning commission amendments are as follows:

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

- Amend two of the whereas clauses as follows:

The 12th Whereas clause (also described as the 4th whereas clause on page two of the substitute ordinance) is amended to read: "WHEREAS, the planning commission and planning department received comments expressing concern about dust, noise, safety, and aesthetics;"

The 17th whereas clause (also described as the 9th whereas on page two of the ordinance) is amended to read: "WHEREAS, certain additional conditions placed on material site permits would facilitate a reduction in

Page -2-
November 21, 2019
RE: O2019-30 (Mayor) Substitute

the negative secondary impacts of material sites, e.g. dust, noise, **safety**, and unsightliness of material sites;"

- In Section 2 amend KPB 21.29.050(A)(16) as follows:

21.29.050. – Permit conditions.

A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:

...

16. Appeal. "No clearing of vegetation shall occur within the 100 foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired."

- In Section 2 amend KPB 21.29.055(A)(16) as follows:

21.29.055. – Decision

The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings **supporting the decision**, ~~explaining how the application meets the mandatory permit conditions~~ and when applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), ~~(2)(e)~~, (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan.

Your consideration of this substitute ordinance is appreciated.

MEMORANDUM

TO: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Borough Mayor *ch*

FROM: Max J. Best, Planning Director *mb*

DATE: November 20, 2019

RE: Ordinance 2019-30; An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures

The Kenai Peninsula Borough Planning Commission reviewed the subject Ordinance during their regularly scheduled November 12, 2019 meeting.

A motion passed by unanimous consent to recommend approval of Ordinance 2019-30.

In addition the Kenai Peninsula Borough Planning Commission passed several amendment motions.

- A motion passed by unanimous consent to recommend amending 21.29.050(A)(16) Appeal to "No clearing of vegetation shall occur within the 100 foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for filing an appeal, pursuant to KPB 21.20 has expired."
- A motion passed by unanimous consent to recommend amending 21.29.055 – Decision to "The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings supporting the decision, and when applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), (2)(e), (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan.
- A motion passed by majority vote (7 Yes, 3 No, 2 Absent) to recommend amending the fourth whereas statement located on page two to read as "WHEREAS, the planning commission and planning department received comments expressing concerns about dust, noise, safety, and aesthetics; and" and to amend the ninth whereas statement located

Page -2-

Date: November 20, 2019

To: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

RE: Ordinance 2019-30; An Ordinance Amending KPB 21.29, KPB 21.25,
and KPB 21.50.055 Regarding Material Site Permits, Applications,
Conditions, and Procedures

on page two to read as "WHEREAS, certain additional conditions placed on material site permits would facilitate a reduction in the negative secondary impacts of material sites, e.g. dust, noise, safety, and unsightliness of material sites; and".

In the Ordinance, please make the following amendment to the last WHEREAS statement:

WHEREAS, at its regularly scheduled meeting of November 12, 2019, the Planning Commissioner recommended approval by unanimous consent.

Attached are the unapproved minutes of the subject portion of the meeting.

AGENDA ITEM E. UNFINISHED BUSINESS

2. Ordinance 2019-30; An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures

Staff Report given by Bruce Wall

PC MEETING: November 12, 2019

Several months ago, the Material Site Work Group concluded their business and submitted a report to the Planning Commission, Assembly, and the Administration. That report was in the form of a draft ordinance. The Planning Commission has taken that report and proposed significant changes to it. There is currently a motion on the floor to approve the Ordinance with a number of amendments. Administration has taken most of the amendments, incorporated them into the ordinance, and introduced it to the Assembly on November 5, 2019. The recommendation is to withdraw the motion that is on the floor and move to forward to the Assembly a recommendation to approve Ordinance 2019-30 - Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions and Procedures. The amendments that the Planning Commission made to the draft ordinance have been incorporated with the exception of the proposal concerning 21.29.050(A)(2), which is the condition regarding buffers. That amendment was not in the ordinance that was introduced to the Assembly. The Planning Commission can make an additional amendment motion. Additional, at the work session that was held for the Planning Commission and Assembly on November 5, 2019 there was some suggested changes proposed by Commissioner Ecklund. The proposed changes are in a memorandum found in the laydown packet. Commissioner Ecklund is not present but if someone wanted to move to include those amendments, she would appreciate it. Staff does support the proposed changes as they help clarify the intent.

Mr. Best said that they would like the motion to be handled as the last item on the agenda was done. It is recommended that an amendment motion be made to consider the revised ordinance. Legal is advising it be handled in that manner.

END OF STAFF REPORT

Commissioner Ruffner asked if they had a copy of the Ordinance that was before the Assembly. Mr. Wall said that it could be found on page 96 of the packet.

AMENDMENT A MOTION: Commissioner Ruffner moved, seconded by Commissioner Whitney, to amend the motion on the floor by substituting the Material Site Ordinance 2019-30 found in the packet.

Commissioner Ruffner stated that the Working Group went through a long process to get to a point where they agreed to the changes to the code. The Planning Commission reviewed and made a number of changes to the ordinance. The Administration accepted all of the changes except for the one regarding an unlimited buffer. That is what he understands as to have happened and what can be found in the Ordinance.

AMENDMENT A MOTION PASSED: Seeing and hearing no objection or discussion, the motion passed by unanimous consent.

Commissioner Morgan wanted to make an amendment motion to include Commissioner Ecklund's recommended changes as found on page 89.1 of the laydown packet. The motion was made after some revisions for clarity. Commissioner Morgan had some additional motions to make on behalf of Commissioner Ecklund but Commissioner Ruffner asked to address those presented to them in the desk packet first.

AMENDMENT B MOTION: Commissioner Morgan moved, seconded by Commissioner Whitney, to amend 21.29.050(A)(16) – Appeal, add “No clearing of vegetation shall occur nor shall the”, strike “The”, “permit” shall remain, strike “shall not”, continue on “be issued”, strike “n”, to change the word to “or” and the remainder stays the same “operable until the deadline for filing an appeal, pursuant to KPB 21.20 has expired.” also, to 21.29.050 – Decision, “The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that

do not meet the mandatory conditions. The decision shall include written findings”, strike “explaining how the application meets the mandatory permit conditions”, add “supporting the decision”, and leave the rest to stay the same.

Commissioner Ruffner said that this is saying to not start working on a site until the appeal process is over, including clearing. Chairman Martin asked if that was implying clearing in the setback area only. Commissioner Ruffner said it sounds like no clearing until the permit has gone through the appeal process. He interpreted it to mean that someone could have a counter permit to work on the 2.5-acre portion while waiting for the appeal process to go forward. Chairman Martin felt that the intent was to keep them from fowling the buffer. He felt that it seemed onerous to prohibit clearing in the middle of the parcel. He asked if staff knew the intent. Mr. Wall said that if the Planning Commission wants to be less restrictive the language could be changed to say no clearing of vegetation shall occur within 100 feet of the boundaries.

Commissioner Brantley said this did not make sense to him since a permit can be denied and a landowner can still clear their lot including the buffers. The lot belongs to the owner and it can be cleared whether a permit is received or not. An owner is not to clear into the buffers anyway. Mr. Wall thought that Commissioner Ecklund was concerned that the Planning Commission may approve certain buffers but on appeal those buffers could be increased beyond what the Planning Commission had approved. She wanted to make sure that option was still available throughout the appeal process. Commissioner Brantley agreed and said that the wording could be changed to say no clearing within 100 feet of the boundary.

Commissioner Ruffner suggested that Commissioner Morgan withdraw her amendment and handle each amendment separately.

AMENDMENT B MOTION WITHDRAWN: Commissioner Morgan withdrew her amendment and Commissioner Whitney agreed.

Commissioner Morgan made an amendment motion but Commissioner Foster noted that the motion did not contain the wording regarding the 100 feet. Commissioner Morgan revised her motion.

AMENDMENT C MOTION: Commissioner Morgan moved, seconded by Commissioner Whitney, to amend 21.29.050(A)(16) Appeal, add “No clearing of vegetation shall occur within the 100 foot buffer nor shall the”, strike “The”, leave “permit”, strike “shall not”, leave “be issued”, strike the “n” to continue on “or operable until” with the rest staying the same and add a comma after “appeal”.

Commissioner Ruffner felt that was clearer that they should stay out of the 100-foot potential maximum buffer. Mr. Wall referred to Mr. Kelley. Mr. Kelley thought it would be clearer from parcel boundaries instead of buffer. Commissioner Bentz stated that parcel boundaries is not necessarily the same as permit areas and the permit area is what the buffers are linked to not the parcel boundaries. She wanted to have staff clarify that the 100-foot maximum buffer is linked to the permit area. Mr. Wall said that he though Commissioner Bentz had the correct wording, permit area or proposed permit area would be a more accurate description. That is defined in the code to include the extraction area plus all of the proposed buffers.

Chairman Martin asked the maker of the motion and the second could concur to the change. They both concurred to change the motion as stated by Commissioner Bentz after requesting her to restate the proposed motion.

AMENDMENT C MOTION: Commissioner Morgan moved, seconded by Commissioner Whitney, to amend 21.29.050(A)(16) Appeal to read as “No clearing of vegetation shall occur within the 100 foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for filing an appeal, pursuant to KPB 21.20 has expired.”

AMENDMENT C MOTION PASSED: Seeing and hearing no objection or discussion, the motion passed by unanimous consent.

AMENDMENT D MOTION: Commissioner Morgan moved, seconded by Commissioner Whitney, to amend 21.29.055. – Decision “The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings”, strike “explaining how the application meets the mandatory permit conditions”, add “supporting the decision”, and leave the rest to stay the same.

Commissioner Ruffner said he did not understand the change and asked if anyone was present when Commissioner Ecklund discussed this change to explain it to him. Commissioner Morgan thought it just cleaned up the language. Mr. Wall added that the language that is in the ordinance assumes that the application meets the permit conditions and it is being approved. Since the language was added that it could be denied if the conditions are not met, it takes into consideration both scenarios.

AMENDMENT D MOTION PASSED: Seeing and hearing no objection or discussion, the motion passed by unanimous consent.

Commissioner Morgan said that there were a couple of other things Commissioner Ecklund pointed out that she would like to have added. Commissioner Morgan said she did not see them changing the ordinance a lot. They are changes to the whereas statements.

AMENDMENT E MOTION: Commissioner Morgan moved, seconded by Commissioner Fikes, to add to page 2, the fourth whereas statement “the planning commissioner and planning department received comments expressing concerns about dust, noise,” add “safety,” then continue “and aesthetics.”, also add safety to the page 2, ninth whereas that reads “...dust, noise,” add “safety,” and continue “and unsightliness of material sites; and”.

Commissioner Ruffner said this would just add safety to two of the whereas statements. He knew that during a discussion with legal that the language of safety within the material site ordinance had been discussed. He did not recall it being anywhere in the ordinance. Mr. Kelley said it is not in the standards. He was not part of those original conversations but does know that it is not one of the standards. Mr. Wall said the closest thing in the standards is the mention of traffic impacts. He could not think of any place within the ordinance where safety is discussed. It would not be in the ordinance if it were not tied to one of the standards. Since the standards do not discuss safety, it is not in the ordinance. There were many comments on safety but they were not incorporated into the ordinance.

Commissioner Morgan pointed out that the first whereas statement does include safety. The first addition is saying that complaints about safety had been received and heard. Safety has been addressed in the ordinance.

Commissioner Ruffner said these would just be suggestions to the Assembly through a memo. Mr. Wall said yes.

AMENDMENT E MOTION PASSED BY MAJORITY VOTE: 7 Yes, 3 No, 2 Absent

Yes: Bentz, Ernst, Fikes, Foster, Morgan, Venuti, Whitney

No: Brantley, Martin, Ruffner

Absent: Carluccio, Ecklund

Commissioner Foster noted that when looking at the new definitions that “aquifer” and “groundwater” were added but within the conditional land use permit requirement of 21.29.020(B) water table is used. He wanted to know if it would cause a problem by not having a definition for that or if there was one somewhere else. Mr. Wall said there is not a definition anywhere else except in the common usage. The common usage matches similar language to how ground water is defined. He sees no problem to add a definition for the water table if the Commission wants one but he did not feel it was needed.

Chairman Martin asked if there were any additional proposed amendments. Seeing none they moved onto the main motion as amended.

Kenai Peninsula Borough Legal Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Mayor

FROM: Sean Kelley, Deputy Borough Attorney
Max Best, Planning Director

DATE: October 24, 2019

RE: Material Site Sectional Analysis

Please find following a sectional analysis of the amendments to the material site ordinance proposed by the Kenai Peninsula Borough Planning Commission.

1. In KPB 21.25.030. - Definitions.

A definition of "assisted living home" is added because a setback is proposed to be required from those facilities. A definition for "development plan" is added to support a new exemption from the material site ordinance that allows extraction for on-site development. A definition of "disturbed" is added and the definition of "exhausted" is eliminated. This change is made to avoid the situation where reclamation is delayed or avoided by asserting a material site is not yet exhausted, instead reclamation is in reference to disturbed areas. The term "disturbed" is also consistent with the state of Alaska reclamation language. A definition of "haul route" is added to support the proposed requirement for off-site dust suppression. A definition of "permit area" is added—this clarifies that a portion of a parcel, as opposed to an entire parcel, may be subject to a material site permit and defines what attributes will be considered part of the permitted area. A definition of "vicinity" is added to include all existing uses within the ½-mile notification area. This defines the area that should be considered when waiving or lessening the conditions on the permit.

2. KPB 21.29.010. -Material extraction exempt from obtaining a permit.

Subsection (D) adds a new exemption for parcels with a development plan on file with the planning department. This provision exempts from the ordinance short-term extraction that is incidental to site development for a building project.

3. KPB 21.29.030. -Application procedure.

Surface water protection measures are moved from the site plan section of the application to Paragraph (A)(8) because a surveyor is required to prepare the site plan, but an engineer is necessary to design the surface water protection measures.

Paragraph (A)(9)(f) is clarified to require more than 1 test hole placed anywhere on the parcel as that requirement allowed for taking the test hole at the highest elevation on a parcel which may not be the most accurate measurement of depth to groundwater. The proposed ordinance requires a test hole for every ten acres of excavated area and the test holes must be four feet below the proposed depth of excavation. This is consistent with the proposed increased requirement that excavation remain four feet above ground water which is consistent with Alaska DEC User's Manual Best Management Practices for Gravel/Rock Aggregate Extraction Projects – Protecting Surface Water & Groundwater Quality in Alaska (Sept. 2012) (hereinafter "Best Management Practices") and is also consistent with the current requirement for counter permits.

4. KPB 21.29.040. -Standards for sand, gravel or material sites.

Three new standards are added that either existing or proposed conditions will meet. Receiving waters are protected for fish and wildlife. This standard is consistent with mandatory condition #6 which requires a setback from waterbodies for material site extraction. Standard #8 is added to protect against traffic impacts which is consistent with the conditions regarding damage to borough roads, proposed ingress and egress, noise, and dust. Standard #9 is added because planning decisions should be consistent with the comprehensive plan.

5. KPB 21.20.050(A)(1) is changed to require staking the permit boundaries, rather than the parcel boundaries prior to issuance of the permit. (Staking the boundaries of the parcel is currently required at time of application.)
6. KPB 21.20.050(A)(2) is changed to require a maximum buffer of 100 feet unless the operator can demonstrate to the planning commission that there are good reasons for a reduced buffer. A fence, vegetation, or berm or a combination thereof may be used as a buffer. Unlike the current code, the maximum vegetative buffer is not 50 feet but could be up to the entire 100 foot of buffer required. Another new requirement is that when a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required. This is to avoid the practice of making application and then destroying the vegetation that could have served as a buffer. Finally, there is a new condition allowing the buffer to be reduced with an approved alternate buffer plan which may consist of a berm, vegetation, fence or other type of buffer solution. For example, a moveable wall that would screen noise and the visual impact of the material site could be allowed.
7. Language is revised in KPB 21.29.050(A)(3) for consistency by using the term "vicinity" rather than the term "adjacent".
8. In KPB 21.20.050(A)(6) the buffer from waterbodies is increased to 200 feet. This condition is consistent with the Alaska DEC User Manual Best Management Practices and the newly proposed standard regarding the protection of "receiving waters".
9. Paragraph KPB 21.29.050(A)(11) is revised to prohibit processing from 7 p.m. to 6 a.m. The current prohibition is 10 p.m. to 6 a.m. for rock crushing. Paragraph (b) is added to allow the planning commission to grant exceptions to the restrictions on processing hours based on a variety of factors including surrounding land uses, topography, screening the material site from adjacent properties and conditions placed on the permit by the planning commission to mitigate the noise, dust, and visual impacts caused by the material site.
10. Paragraph KPB 21.29.050(A)(12)(b) clarifies the requirement for a reclamation plan and bonding for material sites that are not exempt from the state bonding requirements. This condition is further detailed in KPB 21.29.060(B) addressing reclamation.

11. Air quality is added to the list of other regulations in condition KPB 21.29.050(A)(13) that a material site is responsible for following.
12. Language is revised in KPB 21.29.050(A)(14) for consistency by using the term "volunteered" rather than the term "voluntary".
13. In KPB 21.29.050(A)(16), a new condition clarifies that a material site permit shall not be issued until the 15-day appeal period has passed to avoid someone operating prior to an appeal being filed only to be required to cease because of the stay required by KPB 21.20.260.
14. A new condition is added in KPB 21.29.050(A)(17), Sound Level. The condition requires that sound levels from material site activities not exceed 75 dB(A), measured at or within the property boundary of the material site. Some exceptions are made to increase that limit for sound of a short duration between 7 a.m. and 7 p.m. The planning commission may reduce the sound level requirements in consideration of the existing land uses in the vicinity. This sound level requirement has a sunset clause of 365 days after adoption unless extended by the assembly in order to gather information on noise levels and ensure that this new requirement is workable for site operations. This condition meets the standard regarding reduction of noise impacts generated by a material site.
15. KPB 21.29.050(A)(18) is a new requirement that white noise devices be used instead of high-pitched tone alarms. This requirement may be waived based on existing land uses in the vicinity of the material site. This condition meets the standard regarding reduction of noise impacts generated by a material site.
16. KPB 21.29.050(A)(19) is a new condition allowing the planning commission or planning director as appropriate to determine the points of ingress and egress of a material site as concerns regarding the direction of haul route traffic are frequently raised. Driveway authorizations for access to public roads must be received prior to permit issuance. This condition meets the standards regarding traffic, noise, and dust.
17. KPB 21.29.050(A)(20) is a new condition requiring dust suppression on haul routes. The condition can be relaxed based on surrounding land uses. This condition meets the standard regarding reduction of dust generated by material sites.

18. KPB 21.29.050(A)(21) provides that if surface water protection measures are to be provided as defined in KPB 21.29.030(A)(8), they must be approved by a licensed civil engineer.
19. KPB 21.29.050(A)(22) is a new condition requiring material sites to maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation. This condition is consistent with the new requirement that excavation remain four feet above groundwater. This condition addresses the standard of protection of surrounding water sources.
20. KPB 21.29.050(A)(23) is a new requirement for a setback from local option zoning districts, schools, child care facilities, senior centers, assisted living homes and licensed health care facilities.
21. KPB 21.20.055, Decision, is added which clarifies the planning commission's authority to approve or disapprove a permit application and authority to modify permit conditions.
22. KPB 21.29.060 is amended to clarify that reclamation plans last for five years consistent with the five-year renewal requirement for material site permits. Bonding is required at \$2000.00 per acre for all acreage included in the five-year reclamation plan, or the planning director may accept a civil engineer's estimate for determining the amount of the bond. If the applicant is bonded with the state, the applicant need not be bonded with the borough.
23. KPB 21.29.120, Prior Existing Uses, is amended to delete the provision regarding terminating abandoned material site permits since it was only applicable to permits that did not operate between May 21, 1996 and May 21, 2011. New language is added requiring PEUs to provide proof of compliance with the state reclamation, bonding, and letter of intent requirements. Failure to file this documentation may result in an enforcement action.
24. KPB 21.50.055, Fines, is amended to include a \$300.00 fine for failure to provide a reclamation plan and proof of bonding or letter of intent pursuant to KPB 21.29.120.

Introduced by: Mayor
Date: 11/05/19
Hearing: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-31**

**AN ORDINANCE ADOPTING THE UPDATED 2019 KENAI PENINSULA BOROUGH
HAZARD MITIGATION PLAN AND REMOVING THE WORD “ALL” FROM
KPB 2.80.010**

WHEREAS, the Kenai Peninsula Borough is vulnerable to damages from natural hazard events which pose a threat to public health and safety and could result in property loss and economic hardship; and

WHEREAS, the KPB Hazard Mitigation Plan (“Plan”), formally titled All-Hazard Mitigation Plan, recommends actions to protect people and property at risk from natural and man-made hazards that will reduce future public and personal costs of disaster response and recovery, and will reinforce the borough’s leadership in emergency preparedness efforts; and

WHEREAS, the assembly initially adopted the Plan in 2004 and subsequently adopted updated Plans in July 2010 and June 2014; and

WHEREAS, the Federal Emergency Management Agency (“FEMA”) disaster recovery funding and grant programs require regular updates to the mitigation plans; and

WHEREAS, the 2019 Plan has been updated to meet FEMA’s requirements through the work of the KPB Planning Department and the State of Alaska Division of Homeland Security & Emergency Management; and

WHEREAS, the word “all” is being removed from KPB 2.80.010 in recognition that the plan does not and cannot cover all possible hazards; and

WHEREAS, the planning commission held a public hearing on this ordinance at its August 12, 2019 meeting and recommended approval by unanimous consent;

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

SECTION 1. That KPB 2.80.010 is hereby amended as follows:

2.80.010. Adoption of [ALL-] hazard mitigation plan.

The document entitled Kenai Peninsula [ALL-H]Hazard Mitigation Plan which includes the Interagency All Lands/All Hands Action Plan is hereby adopted as the [ALL-] hazard mitigation plan for the Kenai Peninsula Borough. The mayor is authorized to make administrative changes to these plans provided the assembly shall be advised of all such changes.

SECTION 2. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2019.

Wayne H. Ogle, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Community & Fiscal Projects

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*
Dan Nelson, OEM Senior Manager *JBL/S*
Max Best, Planning Director *MB*

FROM: Brenda Ahlberg, Community & Fiscal Projects Manager *BA*

DATE: October 24, 2019

RE: Ordinance 2019- 31. Adopting the Updated 2019 Kenai Peninsula Borough All-Hazard Mitigation Plan and Removing the Word "All" from KPB 2.80.010 (Mayor)

In October 2004, the Kenai Peninsula Borough ("KPB") enacted ordinance 2004-33, adopting a borough-wide multi-jurisdictional All-Hazard Mitigation Plan ("Plan"). The Plan was subsequently updated in 2010 by assembly enactment of ordinance 2010-26 and again in 2014 by enactment of ordinances 2014-03 and 2014-22 to include the Seward-Bear Creek Flood Service Area Annex I. The 2019 update of the Plan was reviewed by FEMA Region X, which required additional modifications for the borough to be eligible to make applications through FEMA hazard mitigation grant programs. These modifications are included in the proposed 2019 updated Plan and will be submitted to FEMA for approval following assembly adoption.

Additionally, this ordinance would amend code to remove the word "All" from KPB 2.80.010. The proposed code amendment is made to better reflect the borough's intent and recognition that the Plan does not and cannot cover all possible hazards.

The purpose of this hazard mitigation planning effort is twofold: (1) As a viable tool for reducing community vulnerability to disaster loss and damage; and, (2) as a prerequisite for receiving certain types of future federal and state hazard mitigation funding.

The KPB cooperated and coordinated the 2019 update with the Alaska Division of Homeland Security and Emergency Management.

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October 24, 2019
Re: O2019- 31

The Plan is available for review at the borough clerk's office and also online through the planning department's web page under hot topics at:

[https://www.kpb.us/images/KPB/PLN/PlansReports/Hazard Mitigation Plan - Review Draft 2018.pdf](https://www.kpb.us/images/KPB/PLN/PlansReports/Hazard_Mitigation_Plan_-_Review_Draft_2018.pdf)

The planning commission held a hearing on this ordinance at its August 12, 2019, meeting and recommended approval by unanimous consent.

Approval of this ordinance would be appreciated.

Introduced by: Mayor
Date: 11/05/19
Hearing: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-32**

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN OPERATING
AGREEMENT WITH SOUTH PENINSULA HOSPITAL, INC. FOR
SOUTH PENINSULA HOSPITAL AND OTHER MEDICAL FACILITIES**

WHEREAS, South Peninsula Hospital, Inc. (“SPHI”), a private non-profit corporation, has operated South Peninsula and associated medical facilities pursuant to a series of agreements with the borough, the most recent of which is a six-year agreement that expires December 31, 2019; and

WHEREAS, the borough administration and members of the SPHI board and administration have met and negotiated mutually agreeable changes to the previous agreement, and have tentatively agreed upon an Operating Agreement which the parties believe addresses the borough’s and SPHI’s concerns with the existing contract; and

WHEREAS, at its meeting of _____, 2019, the South Kenai Peninsula Hospital Service Area Board recommended _____;

WHEREAS, at its meeting of _____, 2019, the SPHI board of directors recommended _____; and

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

SECTION 1. The assembly finds that entering into the proposed Operating Agreement with SPHI, in which SPHI agrees to operate the South Peninsula Hospital and other medical facilities for ten years, and to lease them from the borough for one dollar per year, is in the best interest of the borough because SPHI has successfully operated the hospital and other medical facilities under the existing and previous contracts, demonstrating its capability to continue doing so. This maintains local control over these assets, and all assets generated through the agreement remain borough property under the proposed agreement.

SECTION 2. The Operating Agreement draft, effective January 1, 2020, to be entered between SPHI and the borough on behalf of the South Kenai Peninsula Hospital Service Area, a copy of which is attached and incorporated herein by reference, is approved. The mayor is authorized to execute an Operating Agreement substantially in the form of

the attached approved draft and to take such actions as are necessary to implement its terms and conditions.

SECTION 3. The provisions of KPB 17.10.240, containing general terms and conditions for standard borough leases, shall not apply to leases associated with the attached Operating Agreement and the associated subleases or leases.

SECTION 4. This ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2019.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Legal Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Member, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*

FROM: Colette Thompson, Borough Attorney *CT*

DATE: November 21, 2019

RE: Amendment to Ordinance 2019-32, Authorizing the Mayor to Execute an Operating Agreement with South Peninsula Hospital, Inc. for South Peninsula Hospital and Other Medical Facilities (Mayor)

Five members of the borough administration attended by video conference the November 14, 2019 Committee of the Whole and evening meetings of the South Kenai Peninsula Hospital Service Area Board (Service Area) to discuss the proposed Operating Agreement.

Board members expressed concerns that their recommendations on items brought to the assembly for approval relating to the service area be considered by the assembly. The Service Area Board represents the borough's and service area residents' interests, and borough code charges the board with advising and making recommendations to the mayor and assembly regarding the operation and management of service activities. The administration supports the board's request and proposes the following amendments to this ordinance:

[Please note the underlined bold language is new.]

- Amend the third Whereas clause, as follows:

WHEREAS, at its meeting of **November 14**, 2019, the South Kenai Peninsula Hospital Service Area Board recommended **approval by majority vote**;

- Add a new Section 2 as follows:

SECTION 2. The assembly shall consider all recommendations submitted to it by the South Kenai Peninsula Hospital Service Area Board on matters submitted for assembly consideration pursuant to the Operating Agreement.

- Renumber existing Section 2 as Section 3.
- Renumber existing Section 3 as Section 4.
- Renumber existing Section 4 as Section 5.



South Peninsula Hospital Operating Agreement Overview of 2019 Changes

Kenai Peninsula Borough Mayor Charlie Pierce

Borough negotiation team and goals

Negotiation Team Members

- Charlie Pierce
- James Baisden
- Colette Thompson
- Brandi Harbaugh
- Kim Saner
- John Hedges

Goals

- Improve communication between the hospital and KPB
- Identify areas where increased flexibility for hospital is needed
- Identify areas where increased reporting and avenues for KPB input are needed
- Identify and fix any legal issues or out of date elements of the contract, including bond financing concerns

Top four changes in the 2019 agreement

New Reporting and Communication Requirements

The new contract establishes additional communication requirements including annual reports detailing the status of assets, upcoming projects, changes to purchasing procedures, and copies of leases. See the table on pages 4 and 5 for the details of the new communication and reporting requirements.

New Approval Requirements for Purchases and Projects

Instead of a single dollar figure for all spending, the new agreement has separate thresholds and requirements for capital projects, maintenance projects, and equipment purchasing. Detail provided in the table on page 6.

Title Changed to Operating Agreement

Changed from Sublease and Operating Agreement to Operating Agreement.

Term Length Changed

The term length was increased from six to ten years; however, the automatic renewal if no notice of termination is given was reduced from six to five years.

Other significant elements

- Bond financing and safe harbor language added
- Purchasing procedure notice requirements modified
- New section outlining real property acquisitions and leases
- New section outlining approval process for subleases
- Finances section was modified to clarify approval is needed for any use of the plant replacement and expansion fund (PREF)
- New defense and indemnification clause
- Level of services and other business activities modified

New reporting requirements

	Description	What is included on list	Change from 2014
Annual Hospital Assets Schedule Par. 10.b	Annually updated breakdown of important capital infrastructure assets and major moveable equipment	Assets, location, remaining useful life	*New*
Annual Projects List Par. 10.c	Annual list of reportable maintenance projects, equipment purchases, and capital improvements for the upcoming year	Project description, schedule, estimated cost, location	*New*
Annual Property Lease List Par. 10.d	All real property leases regardless of term length or cost All other operating and capital leases with terms greater than 1 year	Leased property, lessor/lessee, term, and cost. Copies of leases upon request	*New*
Risk Management Report Para.10.f	Annual reports describing Risk Management Program	Total costs and numbers of workers' compensation claims filed in prior year, list of safety-related training classes and other efforts taken	*New*
Annual Purchasing Policy List Par.10.e	Annual list of policies related to purchasing	List and copies of all policies that have been updated in the past year	*New*
Quarterly Activity Report Par.6.b	Activity report, written and presented to assembly	Financial report plus statement of activities, issues and events	Unchanged
Updated CEO Contract Par.18.d	CEO contract	Full copy of contract	Unchanged
Executive Incentive plan Par 18.e	Incentive plan for all "key employees" (IRS definition)	Full copies of plans upon request	*New*
Form 990 Par.6	IRS Form 990 Information – reporting not needed when the form is publicly available, but may be needed in the event SPHI is no longer required to complete the form	Info previously available on the 990 as required by KPB	

Thresholds for borough approval

Item	Reporting	Contract Admin	Assembly	Other KPB Involvement
Maintenance and Repair Par. 11	Notify before all major maintenance and minor maintenance exceeding \$100,000 Annual list & notify in writing before starting work	Major maintenance & minor maintenance exceeding \$100,000 that was not included on the annual list	N/A	KPB reserves right to manage any major maintenance projects. KPB can require submittals for approval of components, equipment and material for major maintenance projects. KPB can require major maintenance is done
Major Moveable Equipment Par. 12	Exceeding \$250,000 Annual list & notify when equipment is purchased	N/A	Exceeding \$500,000 or requiring Certificate of Need	Assembly may approve either during annual budget or on individual basis.
Capital Improvement Projects Par.13	Exceeding \$250,000 or requiring permit from Authority Having Jurisdiction (AHJ) Annual list, notify at start, periodic updates, notify at completion.	Leasehold improvements over \$100,000 Projects requiring a permit from an AHJ	Exceeding \$1M or if cost \$500K to \$1M unless previously appropriated for that project.	KPB reserves right to manage any capital improvement project, and shall manage any project in excess of \$1M unless contract admin gives authorization to SPHI to manage Can require submittals for approval on components, equipment, and material for any capital improvement project
Capital Improvement Planning Par. 13.a	Projects expected to cost in excess of \$1M or require authorization by AHJ	Involved in planning for all projects in excess of \$1M	N/A	Borough purchasing and contracting involved in all aspects of planning. SPHI may spend less than \$25K on preliminary conceptual designs, diagram, etc. before notice
Real Property Acquisitions Par 14.a	All real property acquisitions	N/A	All	All real property acquisitions are conducted by KPB unless SPHI is given written authorization to do so
Leases (in which SPHI is the lessee) Par. 14.b	Included in annual list	\$100K or more annual cost (each lease)	Exceeding \$400K annual cumulative cap	Cannot obligate KPB in any way; leases must contain clause stating this
Subleases Par. 15	Notify 7 business days prior for under \$250,000, and 21 days prior for over \$250,000	\$250K or more annually (each lease)	N/A	Requirements for subleases to be at fair market value, in furtherance of purposes of Agreement, within authorized powers of the Service Area
New or expanded services Par. 25.b	Prior notice of all new or expanded services	N/A	Exceeding \$250,000 capital cost, and all joint ventures	All other approval requirements apply to new & expanded services

FAQS – Term Length

- Why are we proposing ten years?
 - Frequent negotiations have disadvantages
 - Frequent negotiations paired with turnover of mayoral administrations could reduce institutional knowledge on the borough's side in particular
 - With a 6-year term, renegotiating hospital agreements would happen very frequently, potentially leaving little time for new borough administrations to get up to speed, understand the relationship, and prioritize changes
 - Can be significantly time intensive on both ends
 - Shorter term could have potential negative impacts on hospital
 - Need for long term planning and stability
 - Increases difficulty in recruiting qualified professionals needed for hospital operations and provision of services to public.
 - 6-year term could have negative impacts on negotiations for other subleases, contracts, etc. due to the limited ability of SPHI to enter into agreements that extend beyond the length of the agreement with the borough.
 - Sublessees or others contracting with the hospital may not be comfortable signing short term agreements unless the conditions are significantly favorable for them
 - KPB still retains control and ability to address issues
 - Paragraph 37.e. allows the borough contract administrator to request any problem be remedied if they "become dissatisfied with the performance or results of SPHI's operation and maintenance of any of the Medical Facilities or services provided pursuant to the contract." If the Contract Administrator determines the SPHI has failed to take reasonable action to remedy the problem within sixty days, the Borough can terminate the agreement. (Assembly approval is required)

Kenai Peninsula Borough Office of the Mayor

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Borough Mayor *JCB*
James Baisden, Chief of Staff *JCB*

FROM: Colette Thompson, Borough Attorney *CT*
Brandi Harbaugh, Finance Director *BH*
Kim Saner, Human Resources Director *KS*
John Hedges, Purchasing and Contracting Director *JH*

DATE: October 24, 2019

SUBJECT: Ordinance 2019-32, Approving an Operating Agreement with South Peninsula Hospital, Inc. for South Peninsula Hospital and Other Medical Facilities (Mayor)

The borough administration and South Peninsula Hospital, Inc. ("SPHI") representatives have negotiated a new operating agreement for South Peninsula Hospital and other medical facilities. Following is a summary of the most significant changes to the existing contract with SPHI. Many of the changes align this agreement with the Central Peninsula Hospital, Inc. Operating Agreement which is expected to ease the borough's efforts to administer both agreements and provide SPHI with more flexibility. It also provides SPHI with clearer reporting requirements by listing them in a separate paragraph. Further, it provides for regular communications with the borough administration and departments.

1. The title of the document was changed from "Lease and Operating Agreement" to "Operating Agreement". Modifications were made throughout the document to reflect this change. In the past, the term "Lease" in the title has resulted in legal concerns with obtaining bond financing due to the strict limitations on private use of tax exempt bond financing. The title was also changed as it is in fact an agreement to operate the medical facilities. While the borough continues to lease or sublease property to SPHI for the nominal sum of \$1 per year, all revenues and expenditures of SPHI under this agreement are an enterprise fund of the borough.
2. Paragraph 4, Term. The new agreement includes a ten-year term, which is four years longer than the expiring six-year agreement. It was increased to address concerns about difficulties recruiting and retaining qualified administrative staff and service providers under a shorter term

October 24, 2019

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Re: O2019-32, South Peninsula Hospital Operating Agreement

agreement. It provides for a five-year renewal instead of a ten-year renewal if no notice of termination is given one year before the ten-year term expires. This is the same length as the current Operating Agreement with Central Peninsula Hospital, Inc.

3. Paragraph 6, Communications with the Borough. New notification and communication requirements were added, including making reasonable efforts to meet at least quarterly with the borough administrator, providing new annual information and other notifications.
4. Paragraph 8, Taxes; Cooperation on Bond Financing, Tax Exempt Status; Safe Harbor Compliance. Additional subparagraphs were added to address concerns about bond financing, tax-exempt status, and safe harbor compliance.
5. Paragraph 9(c), Purchasing Procedures was modified to remove the requirement that the borough contract administrator approve all changes to SPHI purchasing policies. The new language requires that SPHI establish and follow competitive procedures, that copies of all updated policies related to purchasing are provided to the borough annually, and that the purchasing policies are publicly available.
6. Paragraph 10, Annual List Reporting Requirements. This new section was added to improve communication between SPHI and the borough. On or before March 1st of each year, SPHI must provide an updated annual list including capital infrastructure assets; major movable equipment assets (e.g. MRIs, CTs, etc.); all current SPHI real property leases; all updated purchasing policies; all maintenance projects, capital projects, and equipment purchases planned for the next year, and a report describing SPHI's risk management program.
7. Paragraph 11, Maintenance and Repair. The previous agreement did not clearly define maintenance and repair projects. The new agreement defines both "Minor" and "Major" Maintenance based on the American Hospital Association estimated useful life of the asset. All Major Maintenance must be approved by the borough contract administrator, and SPHI is required to notify the borough of Minor Maintenance Projects exceeding \$100,000. For example, replacing a large stretch of lights would be considered Minor Maintenance and not require borough approval if it cost more than \$100,000 because of the type of work performed. However, if this project cost \$100,000 or more, advance notification would still be required.
8. Paragraph 12, Major Movable Equipment Purchases. A new section was added addressing Major Moveable Equipment Purchases such as

October 24, 2019

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Re: O2019- 32, South Peninsula Hospital Operating Agreement

diagnostic equipment. The new section requires reporting all such purchases costing more than \$250,000, and assembly approval for purchases costing more than \$500,000 or requiring a Certificate of Need.

9. Paragraph 13, Capital Improvement Projects. The capital improvement project section was revised to spell out communication and reporting requirements throughout the capital project process. Additionally, the thresholds for projects requiring assembly approval were raised. Under the new agreement, all capital improvement projects costing \$500,000 or more that were not previously appropriated, require assembly approval and appropriation. Contract administrator approval is needed for certain projects below that threshold, such as leasehold improvements costing \$100,000 or more.
10. Paragraph 14, Real Property Acquisitions and Leases. A new section was added to clarify the requirements for real property acquisitions. All real property acquisitions, defined as acquiring any interest in real property that may obligate the borough in any way, require approval by the assembly. Further, the process of acquiring these properties will be led by the borough.

Leases in the name of SPHI as Lessee that do not obligate the borough in any way are not subject to these requirements. However, any such leases costing \$100,000 or more annually do require borough approval. For example, a storage space rented in the name of SPHI for \$10,000 annually would need to be reported to the borough, but does not require approval. Additionally, the cumulative annual cost of all such leases is capped at \$400,000. Increases to the cap require assembly approval.

11. Paragraph 15, Subleases of Medical Facilities. A new section was added to address subleases to third parties. Previously, the contract required borough approval of all such subleases. The new section authorizes SPHI to negotiate subleases under specific conditions, including giving advance notice to the borough contract administrator before executing the lease, the lease being in furtherance of the purposing of the Agreement, and the lease being at fair market value. Leases of \$250,000 or more per year require approval by the contract administrator. Any sublease of the hospital property owned by the City of Homer and leased by the borough will require approval by the City of Homer.
12. Paragraph 16, Finances. This paragraph was revised to clarify that all transfers from the Plant Replacement and Expansion Fund (PREF) require appropriation by the assembly. While PREF funds cannot be spent

October 24, 2019

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Re: O2019-32, South Peninsula Hospital Operating Agreement

without appropriation, the SPHI Operating Reserve can be spent in accordance with this agreement. The Operating Reserve may hold up to "90 days' cash-on-hand".

13. Paragraph 17, Performance Measures. This section requires objective standards to be identified in the SPHI Strategic Plan against which SPHI performance will be measured. It also requires SPHI to prepare a Strategic Plan within the first 12 months of the agreement, maintain certification and staffing requirements, funding requirements for the now grandfathered pension plan, and processes to be followed to address problems if performance consistently does not meet the standards.
14. Paragraph 18, Accounting/Audit/Reporting. Subparagraph (c), Audit was revised to require the auditors to give presentations to the assembly as well as the SPHI board and Service Area Board. Subparagraph (e) Hospital Executive Incentive Plan was added to ensure access to incentive plan information that may be needed for bond financing compliance purposes.
15. Paragraph 21, Defense and Indemnification. A defense and indemnification clause to protect the borough from liability for certain claims was added to the contract.
16. Paragraph 22, Risk Management. This provision was expanded clarify the objectives and reporting requirements for SPHI's risk management program.
17. Paragraph 24, Level of Services and Other Business Activities. The approval requirements in subparagraph (b) Expansion of Services/New Services were revised. The previous contract required prior notice of new or expanded services with a capital cost "in excess of \$100,000 on an annual basis". The revised contract requires assembly approval for all new or expanded services with an expected total capital cost in excess of \$250,000 and for all joint ventures.

As the health care landscape continues to change, the parties recognize that the hospital will need flexibility to adapt to a quickly evolving system, and that the borough will need avenues to remedy any concerns and to ensure the best interests of the borough and its residents are being met. Regular communication between the two entities, structured vehicles for feedback and updates, and increased authority for the hospital to make certain operational decisions are expected to accommodate these requirements.

Your consideration and approval would be appreciated.

OPERATING
AGREEMENT

FOR

SOUTH PENINSULA
HOSPITAL

Effective January 1, 2020

Approved by Kenai Peninsula Borough Assembly

December __, 2019 in Ordinance 2019-____

Approved by South Peninsula Hospital, Inc. Board of Directors

_____, 2019

**SOUTH PENINSULA HOSPITAL, INC.
OPERATING AGREEMENT**

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ATTACHMENTS

Exhibit A. Description of Medical Facilities

Exhibit B. Example of Operating Statistics

Exhibit C. Memorandum of Agreement dated _____

OPERATING AGREEMENT

THIS OPERATING AGREEMENT (“Agreement”) is made and entered into on this ___ day of _____, 2019, between the Kenai Peninsula Borough, an Alaska municipal corporation, hereinafter referred to as “Borough,” “KPB” or “Owner,” 144 N. Binkley Street, Soldotna, Alaska 99669, and South Peninsula Hospital, Inc., an Alaska nonprofit corporation, hereinafter referred to as “SPHI or “Operator,” 4300 Bartlett Street, Homer, Alaska 99603.

WHEREAS, the Borough established and the voters approved the South Kenai Peninsula Hospital Service Area, hereinafter referred to as the “Service Area,” to assure residents that hospital services would be provided within its boundaries; and

WHEREAS, through tax levies and revenues generated within that service area the Borough has leased, constructed and acquired healthcare facilities located in Homer, Alaska to meet the needs of the residents; and

WHEREAS, the Borough provides for the operation of South Peninsula Hospital and other facilities, hereinafter referred to as the “Medical Facilities,” through the authority granted by the voters of the South Kenai Peninsula Hospital Service Area; and

WHEREAS, the Medical Facilities have been administered by SPHI under a series of lease and operating agreements between the Borough and SPHI, the last of which expires on December 31, 2019; and

WHEREAS, the Borough and SPHI desire to enter into a new agreement for the management and operation of the Medical Facilities and for SPHI, operating as a non-profit corporation, to operate the Medical Facilities for nonprofit hospital purposes to ensure continued availability of health care services and facilities for Service Area residents and visitors, as authorized by KPB Ordinance 2019-____ (approving execution and delivery of this Agreement); and

WHEREAS, the parties agree that SPHI shall endeavor to operate the Medical Facilities on a self-supporting basis while preserving the same or a better level of service as was previously provided to the residents of the Service Area; and

WHEREAS, the parties agree that the Borough shall retain all powers incident to ownership of the Medical Facilities;

NOW THEREFORE, in consideration of mutual covenants contained herein the parties agree as follows:

1. **PRIOR AGREEMENTS SUPERSEDED.** This Operating Agreement (“Agreement”) supersedes and replaces the existing Sublease and Operating Agreement with an effective date of January 1, 2014, and all other prior agreements concerning the use of the real property and improvements thereon described in this Agreement or the operation and management of any or all of the Medical Facilities, except for the Sublease Agreements described in paragraph 2.b and all amendments to those Agreements. In addition to compliance with this Agreement, SPHI covenants to continue to comply with those Agreements, which are integrated into this Agreement.

2. **AGREEMENT TO OPERATE AND MANAGE MEDICAL FACILITIES; AUTHORIZATION TO CONTINUE OTHER AGREEMENTS; LEASED FACILITIES.**

a. Agreement to Operate and Manage Medical Facilities. The Borough hereby contracts with SPHI to operate and manage the property described in attached Exhibit A, including all fixtures and appurtenances thereto (hereinafter referred to collectively as the “Medical Facilities”) for the term of this Agreement and any extension thereof for the Borough consistent with the terms and conditions of this Agreement.

b. Authorization to Continue Agreements for Certain Facilities. SPHI is hereby authorized to continue subleasing, managing and operating facilities under the following agreement subject to approval by the City of Homer:

Sublease Agreement between SPHI and Veteran’s Administration originally dated October 1, 2009 and amended September 27, 2019.

c. Leased Facilities. The Borough leases the property described in attached Exhibit A to SPHI for the term of this Agreement and any extension thereof. SPHI shall pay the Borough a lease payment in the sum of one dollar (\$1.00) per year to lease the property described in this Agreement. Such payment shall be due in full on or before the 1st day of January 2020 for the first 10-year period. If the contract is extended, the payment for the extended term shall be due and payable on January 1st of the first year of the new term.

The Borough warrants that it has good and marketable title to the Medical Facilities it owns free and clear and leases to SPHI as described in Exhibit A, paragraph a, subject only to encumbrances of record prior to the effective date of this Agreement.

The Parties further acknowledge that the sublease of the portion of property owned by the City of Homer, described in Exhibit A at paragraph a, to SPHI is subject to consent by the City of Homer, which consent may not be unreasonably withheld. The parties agree to cooperate in seeking such consent upon execution of this Agreement.

3. PROVISION OF SERVICES. SPHI agrees to operate and manage for the benefit of the Borough and residents of the Service Area the Medical Facilities described in this Agreement. SPHI agrees that so long as this Agreement is in effect it will continuously operate and manage the Medical Facilities as a duly licensed hospital, skilled nursing facility, or health care facilities, as applicable, under Alaska licensing laws and in accordance with all applicable state and federal laws, regulations and rules governing hospitals, skilled nursing and other facilities as applicable, and in accordance with the terms and conditions of this Agreement. In addition, SPHI may provide any other health service and operate any other health facility for the Service Area, to the extent that such services and/or operations of other health facilities are authorized or otherwise approved as provided in paragraph 25.d of this Agreement.

All services provided by SPHI under the terms of this Agreement, excepting other SPHI business activities described in paragraph 24.d. of this Agreement, shall be limited in scope to the services that the Borough is legally authorized to provide through the Service Area.

If authorized, by the Borough and by law, these services may be provided either directly or by contract, and shall be provided in accordance with this Agreement and all applicable state and federal laws, regulations and rules governing such health services or health facilities. If SPHI enters into a contract with an independent contractor to be the exclusive provider of any program or service, then the contractor shall be required to comply with all applicable terms and conditions of this Agreement.

4. TERM. This Agreement shall be in effect from January 1, 2020, to and including December 31, 2029, unless terminated earlier in accordance with the provisions of this Agreement. By mutual agreement of the parties this Agreement may be extended for an additional period, not to exceed five years. If no notice of termination has been given or no agreement to extend has been signed before December 31, 2028, then a five-year extension of this term shall be deemed to have been agreed upon. The terms of the Agreement for the additional five-year extension period shall be the same as this Agreement, with all amendments, unless the parties negotiate new terms before the effective date of the extension, January 1, 2030, and document those new terms in writing.

5. NOTICES. All notices, reports or documents or other communications required or authorized to be given by one party to the other party to this Agreement shall be in writing and delivered personally or by depositing the same in the United States mail, postage prepaid, certified, return receipt requested, and addressed to the parties as hereinafter provided, or by either email or facsimile transmission (“fax”) with advance telephonic notice and a hard copy sent by first class mail:

FOR THE BOROUGH:
Mayor
Kenai Peninsula Borough
144 N. Binkley Street
Soldotna, AK 99669
Email: cpierce@kpb.us
Fax # (907) 714-2377

FOR SPHI
President, Board of Directors
SPHI
4300 Bartlett Street
Homer, AK 99603
Email: dgroesbeck@sphosp.org
Fax # (907) 235-0253

Notice shall be effective upon the date of personal delivery or, if mailed, upon the date of delivery as shown by certified receipt or, if sent via fax or email, upon the date of receipt of the fax or email. The Borough Mayor shall be responsible for forwarding any such notice, report or document to the South Kenai Peninsula Hospital Service Area Board (“SAB”), other interested Borough boards, Borough departments, or any other appropriate individual or agency for consideration or action. The President of SPHI shall be responsible for forwarding any such notice, report or document to the SPHI Board members, chief executive officer, or any other appropriate individual or agency for consideration or action.

6. COMMUNICATIONS WITH BOROUGH. SPHI shall provide the following information and reports to the Borough Contract Administrator, the SAB Chair and the Borough Finance Director:

a. A written monthly financial report which shall include a balance sheet, a statement of cash flow, an income statement, and operating statistics substantially in the form attached hereto as Exhibit B;

b. A written quarterly activity report, which shall include all the items as set forth in the monthly financial report, plus a statement of activities, issues and events, which shall in addition be orally presented by a representative of SPHI to the SAB and then to the Borough Assembly;

c. An Annual List complying with reporting requirements set forth in paragraph 10 of this Agreement; and

d. All other notifications in accordance with this Agreement.

In the event that SPHI is no longer required by the IRS to complete a publicly available Form 990, SPHI shall notify the borough in writing at the time of the change. The borough may then require additional reporting of relevant information previously available on Form 990. SPHI shall clearly identify all such information it considers to be proprietary or privileged or confidential. To the extent allowed by law, the Borough shall treat such information as proprietary, privileged or confidential.

Unless otherwise provided herein, (i) monthly reports shall be delivered within 60 days after the end of the month; (ii) quarterly reports shall be delivered within 60 days after the end of the quarter; and (iii) annual lists shall be delivered on or before March 1st of each year. Additionally, SPHI's representatives shall make reasonable efforts to meet at least quarterly with the Borough Contract Administrator to discuss any concerns by either party, the current status of ongoing projects and upcoming plans for the Medical Facilities. The parties recognize that such meetings are subject to the protections for records and information of SPHI's business plans as provided in this Agreement.

7. UTILITIES. SPHI shall be responsible for and ensure the payment of all the utilities necessary to operate the Medical Facilities, including, but not limited to: electricity, heat, water, sewer service, garbage collection, snow removal and sanding, and telephone/internet service.

8. TAXES; COOPERATION ON BOND FINANCING; TAX-EXEMPT STATUS; SAFE HARBOR COMPLIANCE.

a. Taxes. SPHI shall be responsible for and shall ensure payment before delinquency all governmental taxes, assessments, charges or liens assessed during the term of this Agreement against any leasehold interest or property of any kind or income or sales of any kind by SPHI related to this Agreement.

b. Cooperation on Bond Financing. SPHI acknowledges that the Borough has issued, and may issue bonds during the term of this Agreement (together, the "Municipal Bonds"), the proceeds of which have been, or may be, used to finance component parts of the Medical Facilities. The Borough has, and may in the future, determined to issue such Municipal Bonds on a tax-exempt basis pursuant to the Internal Revenue Code of 1986, as amended from time to time (the "Code"). As a means to ensure Municipal Bonds issued by the Borough on a tax-exempt basis remain tax exempt under the Code, SPHI agrees to cooperate with the Borough to ensure compliance with all rules and regulations applicable to such Municipal Bonds, including the Code, Treasury Regulations, revenue procedures and or other written rulings of the Internal Revenue Service and relating to permitted management contracts, including Rev. Proc. 2017-13 (if applicable), as the same may be modified, amplified, superseded, and interpreted by the courts and Internal Revenue Service. Such cooperation by SPHI may include certifications and opinions related to the management and operation of bond-financed component parts of the Medical Facilities.

c. Tax-Exempt Status. SPHI shall not take any action which would endanger its ability to obtain and maintain its status as an organization exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any successor or similar provision. SPHI covenants that it will not operate

the Medical Facilities in any way or engage in any activity that might reasonably be expected to cause any of the Borough bonds to lose their tax-exempt status, both existing Municipal Bonds and Municipal Bonds that may later be issued during the term of this Agreement.

d. Safe Harbor Compliance. The parties intend this Agreement be construed as a management contract for federal income tax purposes generally, and specifically in relation to any Municipal Bonds issued on a tax-exempt basis under the Code. The parties intend that this Agreement comply, and that in its performance of this Agreement SPHI comply, with all safe harbor conditions established by the Code, Treasury Regulations, revenue procedures or other written rulings of the Internal Revenue Service, including in Rev. Proc. 2017-13 (as applicable), as such conditions now exist or may hereafter be amended, under which an arrangement for services for management and operation of Medical Facilities owned by the Borough is characterized as a management contract for federal income tax purposes. The parties intend that this Agreement, and SPHI's performance under the terms of this Agreement, do not result in private business use of property financed with governmental tax-exempt bonds under § 141(b) of the Internal Revenue Code or cause the modified private business use test for property financed with qualified 501(c)(3) bonds under § 145(a)(2)(B) to be met. The parties agree that this Agreement shall be interpreted and construed in a manner consistent, and comply, with all safe harbor conditions relating to tax-exempt Municipal Bonds issued or to be issued, including Rev. Proc. 2017-13 (as applicable), as such conditions now exist or may hereafter be amended, and the parties agree to take such actions as are necessary to construe and administer this Agreement consistent with such compliance. In the event any federal court or the U.S. Department of the Treasury, Internal Revenue Service determines that any portion of this Agreement is not in compliance with such safe harbor condition or conditions, then the parties immediately agree to take any such actions as are necessary to ensure compliance with the applicable safe harbor condition or conditions. If the parties are unable to reach an agreement on the manner of compliance within thirty (30) days, then such compliance, and the manner of such compliance, shall be in the sole discretion of the Borough.

9. SUPPLIES, MATERIALS AND INVENTORY.

a. Use of Existing Supplies, Materials and Inventory. During the term of this Agreement, all supplies, materials, and inventory located in or on the Medical Facilities shall be subject to the control, consumption, disposition and replacement by SPHI for use solely for services provided under this Agreement.

b. Repair or Replacement. Supplies, materials and inventory that need to be repaired or replaced will be repaired or replaced by SPHI if necessary for the operation and management of the Medical Facilities. At the termination of this

Agreement, replacement supplies, materials, and inventory shall remain the sole property of the Borough or its successors or assigns, if any.

c. Purchasing Procedures. All purchases made by SPHI shall be done in accordance with SPHI corporate and operational policies related to purchasing and in coordination with the Borough Purchasing and Contracting Director pursuant to paragraph 9(d). These policies shall establish and follow competitive procedures for purchases above a threshold set by the SPHI board, and these policies shall be available to the public. SPHI shall provide copies of updated policies annually, in accordance with reporting requirements set forth in paragraph 10 of this Agreement.

d. Coordination with Borough Purchasing and Contracting. SPHI shall coordinate its purchases with other borough entities and organizations by communicating regularly with the Borough Purchasing and Contracting Department to develop compatible and standardized supplies and equipment and to save expenses through bulk purchases. Additionally, it shall coordinate with emergency service providers to ensure compatible equipment is acquired to the extent feasible.

e. Group Purchasing Organizations. SPHI is specifically authorized to purchase supplies, materials, equipment and inventory from group purchasing organizations (“GPOs”) such as Intalere, or other GPOs, their successors or assigns, provided such purchases are otherwise authorized by this Agreement. It is understood and agreed that exclusive health care service providers hired or contracted with by SPHI pursuant to this Agreement are not required to comply with this provision unless otherwise stated in the contract between SPHI and the provider. Finally, SPHI, per the existing business practice, agrees to communicate and cooperate with the Borough Purchasing and Contracting Director on all purchases made that will require Borough Assembly approval.

f. Disposal. Disposal of any supplies, materials, inventory, and equipment that are owned by the Borough and that are surplus to the needs of the Medical Facilities shall be made in accordance with the Borough Code requirements for disposal of surplus property. Net proceeds from the sale of surplus property shall be used by SPHI to pay for costs of operating and maintaining the Medical Facilities. Nothing in this provision shall be construed to confer ownership of such assets or funds upon SPHI. All disposals of hazardous substances shall be in accordance with applicable local, state, and federal laws and regulations. Proceeds from the sale of items funded with gifts or grants shall be distributed in accordance with the donor’s intent or grant requirements, as applicable. If the intent of a donor cannot be determined, then proceeds shall be used by SPHI for the operation and maintenance of the Medical Facilities.

10. ANNUAL LIST REPORTING REQUIREMENTS.

a. Annual Report Deadline. On or before March 1 of each year, SPHI shall provide an updated *Hospital Assets Schedule, Annual Projects List, Property Lease List, Purchasing Policies List, the Risk Management Report, and the Changes in Services* to the Borough Contract Administrator and the Borough Purchasing and Contracting Director.

b. Hospital Assets Schedule. The updated *Hospital Assets Schedule* shall include reportable Capital Infrastructure Assets and reportable Major Moveable Equipment Assets as defined in sections 11.a.i and 12.a.i of this Agreement. At a minimum, the updated *Hospital Assets Schedule* shall list the reportable assets, and include the location, and remaining useful life of each asset.

c. Annual Project List. The *Annual Project List* shall include reportable proposed Maintenance Projects, Major Moveable Equipment Purchases, and Capital Improvements as defined in paragraphs 11.a.ii, 12.a.ii, and 13.a.i of this Agreement. At a minimum the *Annual Projects List* shall include a description of each project, the project schedule, and the estimated cost. All projects must be categorized by property and/or building location.

In the event that reportable projects that are not included in the *Annual Projects List* are identified and approved by SPHI's board of directors, SPHI shall provide written notification to the Borough Contract Administrator and the Borough Purchasing and Contracting Director upon SPHI board approval.

d. Property Lease List. The *Property Lease List* shall include a list of all real property leases, regardless of term length or cost, and of all other operating and capital leases with terms greater than one year. This shall apply to all leases entered into by SPHI as lessee or lessor. At a minimum, the list must identify the leased property (including the address or legal property description), lessor/lessee, term, and cost. SPHI shall provide copies of any leases related to the services provided under the terms of this Agreement upon request by the Borough Contract Administrator.

e. Purchasing Policies List. The *Purchasing Policies List* shall include a list of all corporate and operational policies related to purchasing, and shall include copies of all such updated policies.

f. Risk Management Report. SPHI shall provide annual reports to the Borough Administrator and Human Resources Director describing SPHI's Risk Management program as described in paragraph 23.

g. Change in Services. Any change in the level or type of services provided shall be included in the Annual List and as a part of the quarterly report of such changes as required in paragraph 25.b.

11. MAINTENANCE AND REPAIR. SPHI shall perform all work necessary within its authority, and shall advise the Borough Contract Administrator and the Borough Purchasing and Contracting Director as soon as reasonably possible of other projects it deems necessary, to maintain the Medical Facilities in reasonably safe condition and in good repair and operating condition throughout the term of this Agreement, in accordance with the requirements of this paragraph. SPHI shall be responsible for all maintenance and repair of the Medical Facilities, including the upkeep and maintenance of the Medical Facilities and the walkways, roads and grounds of the Medical Facilities subject to the following terms and conditions in this Agreement. For the purposes of identifying and evaluating capital infrastructure assets covered under this Agreement, SPHI shall use the guidelines in the American Hospital Association (“AHA”), Estimated Useful Lives of Depreciable Hospital Assets, Revised 2018 Edition (“AHA Estimated Useful Lives”).

a. Minor and Major Maintenance Reporting and Communication

- i. For the purposes of this Agreement, reportable capital infrastructure assets are defined as all capital infrastructure assets located in the Medical Facilities that are included in Part 1 of the AHA Estimated Useful Lives with a projected useful life in excess of eight (8) years. All such assets must be included on the annual *Hospital Assets Schedule*. The Borough Contract Administrator may choose to waive reporting requirements for any asset or allow identification of reportable components as a composite asset.
- ii. For the purposes of this Agreement, reportable maintenance projects are defined as Minor Maintenance Projects with a cost in excess of \$100,000 and all major maintenance projects.
- iii. Major maintenance is defined as the renovation or replacement of any capital infrastructure asset on the *Hospital Assets Schedule*. Minor Maintenance is defined as the renovation or replacement of assets listed under Part 1 of the AHA Estimated Useful Lives with a projected useful life of eight (8) years or less. Reportable maintenance projects must be included on the *Annual Projects List*.
- iv. SPHI shall notify the Borough Contract Administrator and the Purchasing and Contracting Director in writing prior to commencing any work on any reportable maintenance project, as defined in paragraph 11.a.ii of this Agreement, which is managed by the SPHI.

- b. Minor and Major Maintenance Approval and Management
- i. SPHI must follow all reporting and notification requirements before commencing with a minor or major maintenance project. In the event that maintenance needs are identified and not included on the Annual Project List, any reportable projects as defined in paragraph 11.a.ii of this Agreement must be reported to the Borough Contract Administrator, and SPHI may not commence Major Maintenance Project work unless authorized to do so in writing by the Contract Administrator. The Borough will provide a response to SPHI's requests for approval of Major Maintenance Projects within 14 calendar days of submittal of the Annual Project List or submittal of projects that are identified after the submittal of such list.
 - ii. The Borough may in its sole discretion manage any Major Maintenance Projects or may give written authorization to SPHI to do so. The Borough reserves the right to require SPHI to provide written submittals for approval by the Borough Purchasing and Contracting Department on components, equipment, and material to be used in any Major Maintenance Project. Reportable Minor Maintenance Projects included in the Maintenance Projects List do not require Borough approval.
 - iii. The Borough may require, within one year of notification to SPHI to undertake major maintenance as it deems necessary and appropriate to maintain the Medical Facilities in good condition, subject to the availability and, if necessary, appropriation of funds to finance such major maintenance.

12. MAJOR MOVABLE EQUIPMENT PURCHASES

- a. Major Movable Equipment Reporting and Communication
- i. For the purpose of this Agreement reportable Major Movable Equipment Assets include all equipment identified in the AHA Estimated Useful Lives, under Table 8, Diagnostic and Treatment Departments, and exceeding \$250,000 in value. All such assets shall be included on the annual *Hospital Assets Schedule*.
 - ii. For the purpose of this Agreement, reportable Major Movable Equipment Purchases include purchases of all equipment identified in the AHA Estimated Useful Lives, under Table 8, Diagnostic and Treatment Departments, and exceed \$250,000 in value. All such purchases, and associated capital improvement requirements, shall be included on the *Annual Projects List*.
 - iii. SPHI shall promptly notify the Borough Contract Administrator and Borough Purchasing and Contracting Director in writing when

any reportable Major Movable Equipment is purchased.

b. Major Movable Equipment Approval and Management

All Major Movable Equipment purchases including associated capital improvement requirements expected to cost in excess of \$500,000 or requiring an Alaska Certificate of Need (CON) must be approved by the Borough Assembly by ordinance. Major Movable Equipment purchases that do not require appropriation and costing less than or equal to \$500,000 do not require Borough Assembly approval. Purchases requiring Borough Assembly approval may be approved during the annual Borough budgeting process or on an individual basis. The Borough Assembly or Borough Contract Administrator may decline to consider any project during the budgeting process and instead may review it separately as an individual approval.

13. CAPITAL IMPROVEMENT PROJECTS. To the extent approved by the Borough Assembly and the appropriation and availability of funds, the Borough may finance capital improvements for the Medical Facilities as necessary for the provision of services and functions to meet the needs of the residents of the Service Area.

a. Capital Improvement Projects Reporting, Planning, and Communication

i. DEFINITIONS. For the purposes of this Agreement, Capital Improvement Projects include all such projects not identified in this Agreement as Minor or Major Maintenance (Paragraph 11), Major Movable Equipment (Paragraph 12), or Real Property Acquisitions (Paragraph 14).

All projects expected to cost over \$250,000, or requiring a permit through any Authority Having Jurisdiction (“AHJ”) as defined in the International Building Code, such as the 2015 IBC section 105, impacting Life Safety Requirements, and/or decommissioning any asset or part of assets identified on the *Hospital Assets Schedule*, shall be included on the *Annual Projects List*.

ii. PLANNING. For all Capital Improvement Projects expected to cost in excess of \$1,000,000 or expected to require authorization under paragraph 13.b.ii, whether or not included on the *Annual Projects List*, SPHI will notify the Borough Contract Administrator and Borough Purchasing and Contracting Director in writing prior to any design, engineering or procurement efforts or grant application submission. Included with this notification shall be a description of the project concept and the specific needs that justify

the project. To the extent allowed by law, the notice, including the description and other information contained in or submitted with the notice, is confidential and privileged information regarding SPHI's business plans that is protected as provided in this Agreement. Prior written notice is not required for preliminary conceptual designs, diagrams, or schematics, costing less than \$25,000.

The Borough Purchasing and Contracting Department shall be involved in all aspects of the analysis and planning of these projects, unless the Borough notifies SPHI in writing that it will not be involved. Such notice will not preclude the Borough from requiring involvement in the planning process at a later point. The Borough Contract Administrator will notify SPHI's Contract Administrator in writing of the Borough's change of the Borough's decision on involvement. In the case that the Borough is not involved in the planning of a project, SPHI shall immediately notify in writing the Borough Contract Administrator and Purchasing and Contracting Director if a change during planning increases the estimated total project cost by \$100,000 or more.

- iii. **PROJECT START AND ONGOING REPORTING.** SPHI shall maintain clear and consistent communication with the Borough Contract Administrator and the Borough Purchasing and Contracting Director regarding ongoing and potential capital projects.

SPHI shall notify the Borough Contract Administrator and Borough Purchasing and Contracting Director in writing at the start of any Capital Improvement Project managed by SPHI.

During the project period, the Borough Contract Administrator or Borough Purchasing and Contracting Director may require periodic project reports from SPHI, which shall provide all requested information as soon as reasonably possible.

Upon the completion of any project managed by SPHI, SPHI shall provide to the Borough Contract Administrator and the Borough Purchasing and Contracting Director a final project report providing details of the final project scope, expenses incurred, as-builts, site surveys, project plans, occupancy permits, AHJ inspection reports, conditional-use permits, utility service agreements, and any further information required by the Borough.

b. Capital Improvement Projects Approval and Management

- i. All Capital Improvement Projects expected to cost in excess of \$1,000,000 must be approved as well as appropriated by the Borough Assembly by ordinance. Unless requiring appropriation or Borough Contract Administrator approval under paragraphs 13.b.ii or 13.b.iii of this Agreement, Capital Improvement Projects costing between \$500,000 and \$1,000,000 must be approved and appropriated by the assembly by ordinance unless the funds have previously been appropriated for that project. If the funds for such projects have been previously appropriated they do not require Borough Assembly approval but must be approved by the Purchasing and Contracting Director. Projects requiring Borough Assembly approval may be approved during the annual Borough budgeting process or on an individual basis. The Borough Assembly or Borough Contract Administrator may decline to consider any project during the budgeting process and instead may review it separately as an individual approval.
- ii. Regardless of estimated cost, any Capital Improvement Project requiring a permit through any AHJ as defined in the International Building Code, such as the 2015 IBC section 105, impacting Life Safety Requirements, and/or decommissioning any asset or part of assets identified on the *Hospital Assets Schedule*, must receive Authorization to Proceed from the Borough Contract Administrator prior to the procurement of any equipment, materials, or services. The Borough will provide a response to SPHI within 14 calendar days of receiving the request.
- iii. Any leasehold improvements on properties not owned by the Borough and costing in excess of \$100,000 require prior approval by the Borough Contract Administrator.
- iv. The Borough may require SPHI to provide submittals for approval on components, equipment, and material to be used in any Capital Improvement Project.
- v. The Borough may in its sole discretion manage any Capital Improvement Project. The Borough shall manage all Capital Improvement Projects expected to cost in excess of \$1,000,000 unless the Borough Contract Administrator provides written authorization to SPHI to manage the project.

14. REAL PROPERTY ACQUISITIONS AND LEASES.

- a. Real Property Acquisitions. For the purposes of this Agreement, a real property acquisition is defined as acquiring any interest in real property that may

obligate the Borough in any way. The acquisition of any interest in real property may not occur without Borough Assembly approval. All such acquisitions shall be conducted by the Borough unless SPHI is given written authorization to do so by the Borough Contract Administrator.

Requests for acquisition of any real property interest shall be conveyed to the Borough Contract Administrator and the Borough Planning Director. SPHI is authorized to conduct operational assessments of a property's ability to meet operational needs, and this assessment may include acquisition of a competent property appraisal. However, SPHI may not initiate negotiations for the acquisition of any such interest unless it has been given written authorization to do so by the Borough Contract Administrator. In any event, all acquisitions of any interest in real property shall only be in furtherance of the purposes of this Agreement and within the authorized powers of the Service Area.

b. Leases in Which SPHI is the Lessee. Leases in the name of SPHI in which SPHI is the Lessee and no obligation whatsoever is imposed upon the Borough, either express or implied, are not subject to the requirements in subparagraph 14.a. of this agreement. Under no circumstances shall such leases obligate the Borough in any way whatsoever without advance Borough Assembly approval. All such leases shall contain a clause stating: "In the event that the Operating Agreement between SPHI and the Kenai Peninsula Borough is terminated and not renewed or extended, and the Kenai Peninsula Borough either assumes operation of the Medical Facilities or contracts with another entity to continue such operation, the continuation of this lease with the Borough or a subsequent operator is subject to Borough Assembly approval and the availability and appropriation of funds." In any event, written approval by the Borough Contract Administrator is required for all such leases costing \$100,000 or more annually. Total cumulative annual costs of such leases shall not exceed \$400,000. Increases to the cumulative annual limitation must be approved by the Borough Assembly by resolution.

15. SUBLEASES OF MEDICAL FACILITIES TO THIRD PARTIES. SPHI is hereby authorized to negotiate the sublease of those Medical Facilities leased to SPHI by the Borough under the following conditions:

(a) Any sublease of the property leased to the Borough by the City of Homer must first be approved by the City of Homer as required in the Consent to Sublease signed by the City of Homer and attached to this agreement;

(b) Such subleases shall be for fair market value and on such terms and conditions that are commercially reasonable in the medical industry;

(c) Such subleases shall be in furtherance of the purposes of this Agreement, in compliance with all applicable laws, within the authorized powers of the Service Area, and comply with all requirements associated with tax-exempt bond financing when applicable;

(d) SPHI's written notices to the Borough Contract Administrator and Borough Finance Director shall include the location leased or proposed to be leased, the sublessee's name, lease terms, and purpose;

(e) The Borough Contract Administrator and Borough Finance Director shall be provided prior written notice of intent to execute each sublease agreement valued at less than \$250,000 per year at least seven (7) business days before execution of the lease; and

(f) All such sublease agreements valued at \$250,000 or more per year must be approved by the Contract Administrator on behalf of the Borough. The Borough Contract Administrator and Borough Finance Director shall be provided written notice of SPHI's intent to enter into such sublease agreement at least twenty-one (21) days prior to executing the lease. The Contract Administrator shall not unreasonably withhold his or her approval. If the Contract Administrator does not respond to SPHI within twenty-one (21) days of SPHI's written notice of intent to enter into such sublease, then the sublease agreement is deemed to be approved by the Contract Administrator provided that the notice to the Contract Administrator includes specific notice of this automatic approval provision.

16. FINANCES.

a. Operating Revenue. During the term of this Agreement, all revenue and cash collections from patients, third-party payers, including, but not limited to, Medicaid and Medicare, rents billed and collected by SPHI, and all other sources, arising out of or related to services rendered pursuant to this Agreement, or any renewal or extensions thereto, including but not limited to lease or rental revenues, shall be received and managed by SPHI for the Borough consistent with the terms and conditions of this Agreement. These funds shall first be used by SPHI to pay the usual, customary, and reasonable expenses of operating the Medical Facilities and programs operated by SPHI for the Service Area pursuant to this Agreement, and the reasonable expenses of compliance with the terms and conditions of this Agreement. SPHI shall maintain an operating reserve ("Operating Reserve") of not more than ninety (90) days cash on hand ("the operating reserve amount"). For purposes of the operating reserve amount, "cash on hand" is calculated based on the "days cash on hand ratio" used in the health care industry. On a quarterly basis, SPHI shall transfer all cash on hand in excess of the operating reserve amount to the Borough for deposit into the South Peninsula Hospital Plant Replacement and Expansion Fund ("PREF"), described in paragraph 16(b). If the cash on hand is less than ninety (90) days at any time, then SPHI may request that the Borough authorize the transfer of an amount from the PREF to its operating reserve to maintain the operating reserve amount, by SPHI Board action.

The PREF shall be invested with other Borough funds although the interest earned on that fund will be credited to the PREF. All Borough held funds, including amounts deposited into the PREF, must be appropriated by the Borough Assembly prior to obligation.

b. Plant Replacement and Expansion Fund. The PREF is a fund designated as a source of funding for major repairs and replacement of Medical Facilities; improvements, fixtures, and equipment for Medical Facilities; acquisition of property, improvements, fixtures and equipment related to operation of the Medical Facilities; and to replenish the operating reserves, as provided in paragraph 16.a. above. Amounts held in the PREF are funds of the Borough Service Area. Neither the Borough nor SPHI shall obligate or attempt to spend or transfer funds from the PREF without the prior approval and appropriation by the Borough Assembly. Any transfer into or out of this fund shall first be considered by the SPHI board and its recommendation shall be forwarded to the Assembly. An appropriation is not needed to transfer operating reserve funds into the PREF. Any transfer of funds out of the PREF shall also first be considered by the SPHI board whose recommendation shall be forwarded to the Assembly, which must appropriate the funds prior to any such transfer out of the PREF.

c. Cash Management. All cash reserves in excess of the ninety (90) days cash on hand described in paragraph 16.a. of this Agreement shall be deposited into the Borough's central investment pool within 45 days of the quarter end and managed pursuant to the parties' Memorandum of Agreement dated _____, 2019, or successor Agreement, a copy of which is attached hereto as Attachment C and incorporated herein by reference.

d. Financial Reporting. SPHI shall at all times meet all applicable financial reporting requirements and, unless otherwise agreed by the Borough Finance Director, promptly provide all documentation requested as needed to satisfy financial reporting requirements, concerns regarding financial performance, concerns regarding any SPHI receipts and expenditures, and other financial issues that may arise in SPHI's performance of this Agreement.

e. Capital Grants or Gifts. With the assistance of SPHI the Borough may apply to the State of Alaska, U.S. government, nonprofit foundations, or other entities for financial aid or grants to municipalities for hospitals, skilled nursing facilities, other health care facilities, or capital acquisitions for health care programs. Funds received through such application will be spent only for those purposes set forth in the application or a donor-written directive. SPHI agrees to comply with all terms and conditions required by the granting agency or donor directive. All applications for financial assistance or grants shall be subject to review and comment by SPHI before the submission thereof to a government, governmental agency, or other entity.

f. Service Area Revenues. Service Area revenues shall be used to support operations of the Service Area, including operational and capital support of the Medical Facilities and programs operated by SPHI for the Service Area, and other services and projects approved by the Borough Assembly, subject to the appropriation and availability of funds.

g. Medical Service Operating Grants, Gifts and Donations. On behalf of the Service Area, SPHI may apply to the State of Alaska, U.S. government, nonprofit foundations, or other entities for financial aid or grants to support the operation of the Medical Facilities and/or the provision of services or programs pursuant to this agreement. In the event that gifts or donations of money or other property are made to SPHI for the Medical Facilities or the provision of services or programs pursuant to this Agreement, SPHI may accept such gifts, on behalf of the Borough, only if their use is compatible with the operations of the Medical Facilities or the provision of services or programs pursuant to this Agreement. SPHI may accept, on behalf of the Service Area, donations of interest in real property only upon written borough approval, subject to the provisions of Borough Code. The expenditure of funds from such gifts or donations shall be subject to the same restrictions as apply to the expenditure of operating revenues in this Agreement. All gifts or charitable contributions received from South Peninsula Health Foundation are subject to this provision.

h. No Debt Authority. SPHI may not incur debt to finance the acquisition or expansion of the Medical Facilities, equipment, or major or minor maintenance projects without approval by the Borough Assembly.

i. Bonds. All requests for the issuance of bonds to finance the acquisition, expansion, or major or minor maintenance of the Medical Facilities, or the purchase of equipment must be approved by the Borough Assembly.

17. PERFORMANCE MEASUREMENT.

a. Performance Standards. SPHI performance under this Agreement shall be measured against objective standards established by one or more organizations such as The Advisory Board Company, The Center for Medicare and Medicaid Services, The Alaska State Hospital and Nursing Home Association, The Alaska Small Hospital Performance Improvement Network, or The American Hospital Association. The performance standards against which SPHI performance will be measured will be set forth in the SPHI Strategic Plan.

b. SPHI Performance. SPHI will:

i. Establish a Board Orientation and Continuing Education Program for all board members and provide an annual report to the Contract Administrator on compliance with the requirements of the program.

ii. Ensure compliance with the Medicare and Medicaid Conditions of Participation as determined through the state's licensing and certification processes.

iii. Ensure that the Hospital complies with all quality measurement reporting requirements necessary to ensure full payment under all applicable Medicare and Medicaid programs.

iv. Establish goals for the Hospital's Performance Improvement Program and metrics to measure progress toward those goals. An annual report on the Performance Improvement Program will be provided to the Contract Administrator.

v. Conduct an annual review of the Hospital's Corporate Compliance Program and include the results of that review in the annual report to the Contract Administrator.

c. Strategic Plan. Within 12 months of the execution of this Agreement, SPHI shall prepare and present to the Borough Administration and SAB, for information purposes, a Strategic Plan containing, at a minimum, the following elements:

- An overview of the Service Area.
- Service area demographics.
- Hospital utilization and market share information and plans.
- Medical staff analysis.
- Hospital analysis.
- Financial results and trends.
- South Peninsula Hospital strategy map.
- South Peninsula Hospital planning calendar.
- Mission, vision, values and competitive position.
- Key strategies.
- Performance measurement.
- Orientation and Training Plan for SPHI Board.

All amendments to the Strategic Plan shall be provided to the SAB and Borough Administration within thirty days of their approval by the SPHI Board. It is agreed and understood that elements of the Strategic Plan may be confidential proprietary information, the public disclosure of which could cause competitive harm to the Medical Facilities. SPHI shall clearly mark all such information as confidential and proprietary. Disclosure of this information to the SAB and Borough Administration shall not be construed to require their disclosure to the general public.

d. Certification. SPHI shall maintain State of Alaska certification of its operation of the Medical Facilities. Due to the critical need for maximum participation in the Medicare/Medicaid programs and the reliance on these programs as a critical source of revenue, SPHI shall maintain Critical Access Hospital status and shall review this status on an annual basis to determine whether this status continues to provide the best revenue structure for the Hospital. SPHI shall notify the Borough

Contract Administrator of any change to this status within 14 days of the decision to change. In addition, SPHI shall strive to attain Joint Commission on Accreditation of Healthcare Organizations (“Joint Commission”) or other similar accreditation status as part of its long-term strategic program, when it becomes financially feasible to do so.

e. Staffing. In order to help ensure fiscal responsibility and that the desired level of services is provided, SPHI shall diligently take all reasonable steps needed to ensure that it has adequate qualified management and staffing in place at all times to, at a minimum, successfully provide the level of services needed to operate a hospital of its capacity in accordance with industry standards. This staffing shall be consistent with the goals and objectives identified in the most recent Strategic Plan. Senior management staff shall consist of the Chief Executive Officer, Chief Financial Officer and Chief Nursing Officer, and SPHI shall notify the Borough within 14 days of any changes in these positions. SPHI shall diligently attempt to fill any vacancies in any of these positions with a regular replacement as soon as possible by using every reasonable process and mechanism available. SPHI shall prepare and maintain a Senior Management Succession Plan and provide a copy of the plan to the Contract Administrator. In the event that SPHI is not successful in recruiting and hiring an appropriately qualified CEO, CFO or Chief Nursing Officer replacement within a commercially reasonable time, SPHI may utilize the services of an interim CEO, CFO or Chief Nursing Officer until an appropriately qualified replacement can be hired. SPHI shall not employ one individual to perform the duties of more than one senior management position. If a vacant senior management position has not been filled within six months, and SPHI has not filled the position with an interim replacement, the Borough Contract Administrator may require that SPHI utilize the services of a management or recruiting company to hire or provide an interim replacement until a regular replacement is hired. SPHI will report to the Borough Contract Administrator, at least monthly, on its progress in recruiting and hiring senior management replacements.

f. Pension Plan Funding. At the time of entering this Agreement SPHI provides a Defined Contribution Pension Plan for its employees. It previously provided a Defined Benefit Pension Plan for its employees which is now only available to employees who are already enrolled. SPHI agrees to annually fund its obligations for the Defined Benefit Pension Plan at least in the amount determined by the Plan Actuary to be the required minimum contribution necessary to adequately fund the plan, including interest on net pension obligation, and to provide to the Borough Finance Director, upon request, reasonable assurances that the Pension Plan is adequately funded and managed. SPHI shall maintain insurance coverage for the Plan through the Pension Benefit Guaranty Corporation. SPHI shall provide to the Borough Finance Director, on an annual basis, a copy of the IRS Form 5500 and associated schedules.

g. Sub-standard Performance. If the Borough Contract Administrator determines that any aspect of actual performance under this Agreement is consistently below standards established under this Agreement, within 60 days of notice from the Borough Contract Administrator the parties shall develop and SPHI shall implement a Specific Performance Improvement Plan approved by the Borough to correct the deficiency. The Specific Performance Improvement Plan shall specify the corrective action(s) to be taken and the time frame within which performance will be returned to established standards. In cases where the parties agree that the operating environment has changed to the point where a performance standard or standards are no longer appropriate, new or revised performance standards may be established. The parties may agree, in writing, to amend any provision of the Specific Performance Improvement Plan.

18. SERVICE AREA BUDGET.

a. SPHI Budget Proposal. SPHI shall prepare and submit a proposal to the SAB containing anticipated funding needs from service area funds for the operations and maintenance of the Medical Facilities and programs operated by SPHI for the Service Area. The Borough Contract Administrator will notify SPHI in advance of the dates when the SPHI budget must be submitted to the Service Area Board and the Administration.

b. Service Area Budget Proposal. The Service Area Board shall prepare and submit a proposal to the Borough administration for the annual Service Area budget, which may include debt service payment for outstanding bonds, property insurance, audit fees, and operating and maintenance expenses of the Medical Facilities. SPHI shall provide assistance in the process, or written documentation, at the request of the SAB or the Borough Assembly. The SAB budget shall give preference to anticipated funding needs for the Medical Facilities and programs operated by SPHI for the Service Area pursuant to this Agreement. This may include repairs, renovations or additions to those facilities. It is recognized by the parties that the Service Area budget proposal may not necessarily include all items recommended by SPHI.

c. Service Area Final Budget. The Borough Administration shall review the Service Area operating and capital budget proposals, and submit the administration's proposed Service Area budget to the Borough Assembly, designating revenues available to fund Service Area capital expenditures and operations and the mill rate necessary to fund the Service Area's portion of the budget. SPHI shall assist, as requested by the Borough Contract Administrator, in presenting the budget to the Borough Assembly. Subject to assembly approval and the availability of funds, funding shall be provided by appropriation with preference for the operational and capital requirements of the Medical Facilities.

19. ACCOUNTING/AUDIT/REPORTING.

a. Accounting. SPHI shall account for all financial transactions involving Service Area funds and all other funds received from the operation of, or to operate, the Medical Facilities and programs operated by SPHI for the Service Area. Both parties shall maintain accounting records involving Service Area operations in a manner that complies with generally accepted accounting principles.

b. Investment of Funds. All cash held and investments of funds by SPHI must meet the requirements established by KPB 5.10, "Investment of Moneys," or other comparable requirements approved by the Borough's Finance Director, and any related policies of the Borough.

c. Audit. The Borough shall be responsible for compliance with any single-audit requirements of the Medical Facilities, or portions thereof. The independent auditing firm selected by the Borough to comply with any such audit requirements shall submit written annual audit reports and shall make verbal presentations to SPHI's board of directors, the SAB, and the Borough Assembly.

d. Chief Executive Officer or Management Contract. SPHI shall hire, for reasonable compensation, a chief executive officer, or shall enter into a contract for the management of the Medical Facilities; provided, however, the term of any such employment or management contract shall not exceed the term of this Agreement, unless the contract contains a clause which terminates the contract if this Agreement is terminated and not extended or renewed. The provisions of the contract concerning compensation upon severance of the employment relationship shall not exceed the reasonable and customary amount paid to similar positions by similar publicly owned hospitals in Alaska and the Pacific Northwest. A copy of the Management Contract or Employment Contract and copies of all contract renewals or amendments shall be provided to the Borough Contract Administrator immediately upon execution.

e. Hospital Executive Incentive Plan. SPHI agrees that no employee incentive plan shall take into account, or be contingent upon, either share of net profits of the Medical Facilities or share of both revenues and expenses of the Medical Facilities for any fiscal period. Incentive compensation plans implemented by SPHI may be based on performance in meeting one or more standards that measure quality of service, performance or productivity, and that are reasonable for services rendered. SPHI agrees to provide, upon request, the Borough with any and all incentive plan agreements of any employees fitting the IRS definition of key employees, as defined in IRS Form 990 reporting requirements. To the extent allowed by law, such information shall be treated as privileged and confidential. It may be required for bond financing purposes and

therefore may be disclosed to professionals associated with approving the issuance of such financing who require such disclosure.

20. RATES. SPHI shall have the exclusive right to establish rates, fees and charges for services provided at the Medical Facilities SPHI, operating as a nonprofit organization, will use its best efforts to ensure that the rates, fees and charges it has established are reasonable and will cover the operating and maintenance expenses of the Medical Facilities and SPHI's other obligations under this Agreement.

21. INSURANCE.

a. SPHI's Insurance. During the term of this Agreement SPHI, at all times, shall maintain industry-specific insurance coverage for the requested types and total limits approved by the Borough Contract Administrator, including but not limited to the following insurance coverage, in amounts approved by the Borough:

- i. Workers' compensation insurance coverage as required by Alaska law;
- ii. Comprehensive general liability insurance for the Medical Facilities and operations provided by SPHI pursuant to this Agreement;
- iii. Cyber liability coverage;
- iv. Auto liability coverage;
- v. Medical malpractice or errors and omissions by SPHI and its employees; and
- vi. Directors' and officers' liability coverage, with employment liability.

SPHI may purchase additional insurance coverage that it deems to be necessary and appropriate to insure the management and operation of the Medical Facilities and other services provided by SPHI pursuant to this Agreement, after receiving written approval from the Borough Contract Administrator, which approval shall not be unreasonably withheld.

Unless otherwise agreed or prohibited, the Borough shall be named as an additional insured on all policies. All coverages shall be written on a primary and non-contributory basis and must contain a waiver of subrogation in favor of the Borough, unless a waiver of subrogation is not available in the market for the type of the required industry-specific insurance coverage.

b. Verification of Coverage. SPHI shall furnish the Borough Administrator with approved certificates of insurance and with certified copies of all endorsements affecting coverage upon request from the Borough Contract

Administrator or when policies are amended or renewed. The certificates and endorsements for each insurance policy are to be on forms which meet industry standard. The Borough reserves the right to require complete, certified copies of all required insurance policies at any time.

In the event of subcontractors contracted with SPHI, SPHI shall ensure that separate certificates and endorsements are received for each subcontractor, including workers' compensation, to the extent required by state law, and other insurance SPHI deems appropriate.

c. Borough Insurance. During the term of this Agreement the Borough shall, at all times, maintain and provide fire and property damage insurance in amounts sufficient to replace the Medical Facilities, including personal property. It is the intent of the Borough to use proceeds received as a result of insurance claims to address the losses of covered facilities and property.

SPHI must provide an updated schedule of all Borough property and contents located in or on the Medical Facilities, upon request by the Borough.

d. Notice of Claims. Each party shall immediately notify the other party to this Agreement of any lawsuits or claims asserted against SPHI, any of the Medical Facilities or the Borough related to operations of SPHI under this Agreement or of any potential claims that may be asserted.

e. Extended Reporting Period or Tail Coverage. Except as otherwise provided below, SPHI shall obtain, carry and maintain tail or extended reporting period coverage for all types of insurance coverage obtained pursuant to paragraph 20.a. of this Agreement, effective as of the date of termination of this Agreement, in the same amounts as or more than existing coverage at the time of termination for the named insureds. SPHI is not required to obtain such tail or extended reporting period coverage for workers' compensation insurance or for other coverage obtained on a per occurrence basis. SPHI and all of its directors who served as directors during the term of this Agreement shall be named insureds.

22. **DEFENSE AND INDEMNIFICATION.** Except as otherwise provided in this paragraph, SPHI shall indemnify, defend, save and hold the Borough, its elected and appointed officers, board members and employees harmless for any and all losses, claims, damages, demands, suits or liability of any nature, kind or character including costs, expenses and attorney's fees resulting from, arising out of, or in any way connected with SPHI's performance or failure to perform under the terms of this Agreement in any way whatsoever. If there is a claim of, or liability for, a joint negligent act or failure to act of SPHI, including its officers, board members and employees, and the Borough, including its elected and appointed officers, board members, and employees, the indemnification, defense and hold harmless obligation of this provision

shall be apportioned on a comparative-fault basis between the Borough and SPHI, provided the borough's obligation is subject to the appropriation and availability of funds. Neither party shall be responsible for any claims arising from the sole negligence or willful misconduct of the other party for damage or loss that has been found to be attributed to an independent contractor directly responsible to the other party under separate written contract.

The defense and indemnification provisions in this paragraph shall only survive the termination of this Agreement to the extent that coverage is available for any claims made under applicable insurance policies.

Nothing in this Agreement may be construed to modify (1) the sovereign immunity afforded the borough in AS 09.65.070 as now enacted or may be hereinafter amended, or as otherwise provided by law, or (2) the limitations of liability for certain directors and officers provided in AS 09.65.170 as now enacted or may be hereinafter amended, or as otherwise provided by law.

23. RISK MANAGEMENT. SPHI shall administer a risk management program with the objective of managing all risks of accidental losses and/or claims. This must include the protection of Kenai Peninsula Borough assets through structured internal procedures and continuous assessment of exposures to losses and/or claims. It should also be an objective of the program, to the extent possible, to create in incident-free facility that fosters a safe and secure environment for SPHI's employees, physicians and other health care providers, contractors, borough personnel, as well as members of the public.

SPHI shall provide annual reports to the Borough Administrator and Human Resources Director describing SPHI's Risk Management program by March 1 of the following year. The report shall include total costs and numbers of all workers' compensation claims, including those classified as no treatment and minor medical, filed in the previous calendar year. SPHI will deliver a list of safety-related training classes provided to employees, and a report describing other efforts taken to develop and implement best practice risk management techniques.

24. EMERGENCY REPAIRS. In the event of damage to, or destruction of all or part of the Medical Facilities in which immediate repairs are necessary to keep the Medical Facilities or portions thereof, including equipment, operational, SPHI may perform such needed repairs and replace equipment to the extent necessary to keep the Medical Facilities or portions thereof, including equipment, operational. In such event, SPHI shall have authority to suspend or reduce services it determines cannot be provided until such time, if any, building, repair or replacement of the Medical Facilities or portions thereof, including equipment, has been completed. SPHI must notify the Borough as soon as reasonably possible of the entire situation and its response thereto

including providing any contracts for reconstruction, equipment or replacement in excess of \$250,000 and information regarding any suspension or reduction in services as a result of damage or destruction.

25. LEVEL OF SERVICES AND OTHER BUSINESS ACTIVITIES.

a. Existing Level of Services. SPHI represents that the existing scope and level of services at the Medical Facilities as of the effective date of this Agreement are within its charitable purpose under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended and are authorized under the terms of this Agreement.

b. Expansion of Services/New Services. The parties agree that SPHI may provide for expanded or new health services pursuant to this Agreement, subject to the provisions of this section and in accordance with powers authorized for the Service Area as described in the Borough's Code of Ordinances as now enacted or as may be amended, including but not limited to joint ventures or ownership participation or management participation in other health care services, and other business arrangements with other health care providers and businesses. All joint ventures or ownership participation or management participation in other health care services require prior approval by the Borough Assembly by ordinance. Prior notice of expansion of services or new services shall be provided in writing to the Borough Contract Administrator. To the extent allowed by law, such notice may be considered privileged or confidential information as defined in this Agreement. Borough Assembly approval shall be required to the extent it would otherwise be required in this Agreement, and for new services that have an expected total capital cost in excess of \$250,000.

Expansion of services or new services do not include changes in the method of delivering existing services or the use of new technology or techniques to provide those services even if this may involve additional personnel or training or enhancement of current capabilities to meet standards for proper patient care, or changes required to meet basic accreditation standards and licensing for the hospital. Any change in the level or type of services provided shall be included in the next quarterly report regardless of the cost as well as the annual report issued pursuant to paragraph 10.

c. Elimination of Services. SPHI may eliminate services or levels of care being provided at the Medical Facilities or otherwise pursuant to this Agreement, but only after 90 days' prior written notice to the Borough Assembly and Borough Contract Administrator. Within that 90-day notice period, the Borough may then direct that SPHI continue to provide such services or level of care, if deemed in the best interest of the residents of the Service Area, even when not economically feasible. However, if the Borough decides to continue an economically unfeasible service or level of care, it shall consider providing an operating subsidy to SPHI equivalent to at least the loss associated with providing such service or level of care. If the Borough decides not to

provide any such operating subsidy, then SPHI is not obligated to provide such services or level of care.

d. Disclosure of Other SPHI Business. In the event that SPHI engages in other business activities unrelated to the activities required or authorized by this Agreement, SPHI shall immediately notify the Borough Contract Administrator of the nature and extent of such other business activities, including upon request a disclosure of financial reports reflecting revenues and expenses, so that the Borough Contract Administrator may determine that such activities do not conflict with this Agreement, or otherwise impair either parties' rights or obligations under this Agreement. To the extent allowed by law, the parties agree that records of such other business activities are not public records. Disclosure to the Borough Contract Administrator of records under this provision shall not be deemed to convert such records to public records, to the extent allowed by law. In no case will the assets generated or provided through this Agreement be used to capitalize or otherwise fund any activities of SPHI conducted outside the scope of this Agreement.

26. APPOINTMENTS TO THE MEDICAL STAFF. SPHI shall establish written policies for granting privileges to practice in the Medical Facilities in cases in which application for privilege to practice is required. These written policies must prohibit discrimination against applicants on the basis of race, religion, color, national origin, age, sex, sexual orientation, gender identity, physical or mental disability, marital status, changes in marital status, pregnancy, or parenthood, or any other classification prohibited by law. The language in this paragraph does not prohibit SPHI from entering into an exclusive contract for the professional services of a specialist, or to require health care providers to be SPHI employees rather than independent contractors, if SPHI deems there to be business justification for the exclusive contract or employment model or relationship.

27. NONDISCRIMINATION IN ADMISSIONS. All persons in need of medical care shall be admitted to the appropriate Medical Facilities without regard to race, religion, color, national origin, age, sex, sexual orientation, gender identity, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, or the financial ability to pay for such medical care to the extent required by law.

28. MEDICAL RECORDS. During the term of this Agreement, SPHI shall have the full use and control of all medical records, and shall be responsible for complying with all applicable federal and state laws regarding the maintenance, security and privacy thereof. Medical records shall remain under the supervision and control of SPHI so long as provided for in this Agreement; provided, however, that SPHI may make arrangements for electronic storage and back-up of electronic records. If SPHI ceases at any time to be the Operator as provided for herein, the Borough shall reacquire

the full use and control of such medical records, and shall be required to ensure they are preserved the same for such period of time as is required by Alaska or Federal laws, but, in any event, a minimum of five (5) years following the date on which SPHI ceases to be the Operator. After SPHI ceases to be the Operator and so long as such medical records are preserved by the Borough or its contractor as required above, to the extent allowed by law and for such purposes as are consistent with its prior duties and responsibilities as the Operator and in connection with any investigation or litigation in which SPHI may be involved or may become involved, SPHI shall at all times be provided free and complete access to such medical records and may copy all or any part of the same, and may maintain electronic records.

29. OTHER GOVERNMENTAL ACCESS TO BOOKS AND RECORDS. In order to ensure that any expense which might be incurred by or on behalf of the Medical Facilities or other authorized Service Area activity administered by SPHI pursuant to this Agreement is included to the extent appropriate in determining the reasonable costs reimbursed by Medicare and Medicaid programs, or other similar government programs, SPHI shall retain all records which are necessary to audit and certify the nature and extent of the services provided and the cost thereof, for at least the minimum period of time required by applicable state and federal law after the furnishing of such services as are described in this Agreement, and make available all such records upon request by the duly authorized representatives of a federal or state government agency with jurisdiction thereof. SPHI also agrees that if it subcontracts for any of the duties under this Agreement, to the extent required by federal or Alaska law, the subcontract shall contain a clause requiring that the subcontractor organization must also satisfy all applicable record retention and disclosure requirements which are necessary to an audit and certification of the nature and extent of the services provided and the cost thereof.

30. PUBLIC ACCESS. Recognizing that SPHI is operating publicly owned facilities under this Agreement, SPHI shall make all meetings of its board of directors open to the public, and copies of non-confidential board materials shall be made available to the public at or before the meeting, unless the subject matter under discussion involves privileged or confidential information as defined in this Agreement. Nothing in this section shall be construed as affecting the status of SPHI as a §501(c)(3) nonprofit, private corporation or bringing SPHI within the scope of the Alaska Open Meetings Act, AS 44.62.310-.312.

a. Privileged or Confidential Information. As used herein, the term “privileged or confidential information” means the following records or information in the possession of SPHI:

- i. Medical records, patient information and patient billing files, except patient information that may be disclosed without violating patient privacy rights;
- ii. Medical review organization information and records prepared and retained pursuant to AS 18.23.010 – 18.23.070;
- iii. Employee records and information including but not limited to background and reference checks, substance abuse tests, employee credit checks, employee grievances, employee disciplinary actions and workplace investigations;
- iv. Physician and other health-care provider records and information including but not limited to credentials and disciplinary files;
- v. Director records and information except the name, mailing address, and term of office of each director;
- vi. Records and information regarding pending or threatened litigation by or against SPHI or the Borough, the disclosure of which could adversely affect the finances or litigation strategy of SPHI, the Borough, or the Medical Facilities operated pursuant to this Agreement;
- vii. Records and information regarding the business plans of SPHI, the disclosure of which could be used by competitors or others to the detriment of SPHI, the Borough, or the Medical Facilities;
- viii. Information and records that pertain exclusively to SPHI and not to activities performed pursuant to this Agreement; and
- ix. All other records and information that SPHI is required or permitted by applicable federal, state or local law to keep confidential.

Privileged or confidential information and records may be discussed by the SPHI board of directors privately, in executive session. Nothing herein shall be deemed as precluding the SPHI board of directors from holding private work sessions, training sessions and informational meetings at which no board action is taken.

b. Board of Director Meetings. It is agreed and understood that prior to final board action on any matter referred to a board committee, the SPHI board will fully disclose the substance of committee consideration of the matter, except for any of

the above-referenced confidential matters. Disclosure may occur either verbally or in the text of a resolution, at the discretion of the board. The parties further agree that the board's executive committee has authority to take action on behalf of SPHI in between regular board meetings to the extent allowed by law and SPHI's Bylaws. All such final actions that are not required or permitted to be kept confidential shall be disclosed to the board in a public meeting of the board.

c. Public Comment. Members of the public who wish to comment upon policies or proposed actions of the SPHI board of directors shall be given a reasonable opportunity to do so during the "Public Comment" section of the regular Board meeting open to the public, before final action is taken and after applicable information concerning the matter, if any, has been made available to the public.

d. Notice of Meetings and Agenda. The proposed agenda of all regular and special meetings of the SPHI board of directors, including the date, time, place and proposed agenda of the meeting, shall be posted online and on the public bulletin board of the South Peninsula Hospital, and a copy made available for posting by the Borough Clerk at least five days prior to the date and time set for the meeting. Should an emergency or other bona fide issue requiring immediate attention arise, a special meeting may be held with notice posted for less than the five days otherwise required by this section.

e. Meetings Unrelated to This Agreement. Nothing in this provision shall be construed to require meetings of the SPHI Board of Directors to be open to the public or to the Borough Contract Administrator when the subject matter discussed is not related to this Agreement.

f. Records. It is further agreed and understood that records of the Medical Facilities managed and operated by SPHI pursuant to this Agreement are subject to the Public Records Act, AS 40.25.100 – 40.25.220 and to KPB 2.54.010 – 2.54.070, including all requirements and exceptions contained therein or listed above, because of its status as an independent contractor of the Borough. Nothing in this section shall be construed to compel public disclosure of internal SPHI documents not related to the management and operation of the Medical Facilities, nor shall SPHI be deemed a public entity or quasi-public corporation unless required by law.

31. EMPLOYEES AND CONTRACTORS. SPHI is an independent business and is not an employee or agent of the Borough, either by virtue of this Agreement or otherwise. SPHI's activities conducted under this Agreement are the activities of SPHI as an independent contractor, and not that of the Borough or the Service Area. SPHI has the exclusive authority to hire and fire employees of the Medical Facilities administered by SPHI, and such employees are the employees of SPHI and not the Borough or Service Area. SPHI shall in no transaction or endeavor make any

representation that it has authority to act for the Borough in any capacity or that it has authority to bind the Borough in any manner through its actions. SPHI shall not advertise or hold out its activities under this Agreement as being an operation of the Borough. The decisions and actions permitted and authorized under this Agreement are those of SPHI acting in its capacity as an operator on behalf of the Borough or Service Area and not those of the Borough or the Service Area. The restrictions in this Agreement on SPHI's activities are imposed for the protection of the public funds and assets that the Borough authorized SPHI to utilize as provided in this Agreement.

32. INSPECTION. The Borough reserves the right to enter and inspect the books and records of the Medical Facilities and any other Service Area activity or facility operated by SPHI at any reasonable time during normal business hours for administrative personnel, for the purpose of ensuring compliance with this Agreement and determining the adequacy of the operations, maintenance, upkeep and repair of the Borough's property, and any other matters relating to this Agreement. This does not authorize the Borough to inspect medical, personnel or other records legally considered confidential without other authorization.

33. ASSIGNMENT. SPHI shall not have any power to assign its rights or interests under this Agreement without the prior approval of the Borough Assembly.

34. AMENDMENT. The parties may amend any term in this Agreement by written agreement signed by both parties, subject to approval by the Borough Assembly by resolution.

35. GOOD FAITH AND FAIR DEALING. The respective contract administrators for the parties will interpret the provisions of this Agreement in good faith. The parties will act in accordance with good faith and fair dealing in carrying out their obligations under this Agreement.

36. BREACH AND REMEDIES.

a. By Borough. If the Borough breaches this Agreement by failing to comply with any of the terms and conditions herein and has not cured the breach within sixty (60) days of receipt of written notice thereof from SPHI, SPHI may terminate this Agreement.

b. By SPHI. If SPHI breaches this Agreement by failing to comply with any of the terms and conditions herein, and has not cured the breach within sixty (60) days of receipt of written notice thereof from the Borough, the Borough may terminate this Agreement.

c. Cooperation in Transition. SPHI and Borough agree that if this Agreement is terminated, the parties will cooperate and assist in a smooth transition to another operator of the Medical Facilities.

37. TERMINATION. Either of the parties hereto may for the reasons hereinafter set forth in this paragraph terminate this Agreement by giving the other party ninety (90) days' prior notice in writing, sent by certified mail, return receipt requested, or personally delivered. Assembly approval by resolution shall be required for the Borough to terminate this Agreement. Grounds for such termination are:

a. A breach of any of the terms and conditions herein contained when such breach is not remedied as herein provided; or

b. When and if either party, because of conditions beyond its control, is unable to obtain or retain medical doctors to adequately staff the Medical Facilities managed and operated by SPHI either directly or through a contract; or

c. When either party requests a modification of the terms hereof necessary to relieve it from financial loss in the proper conduct, operation and management of the Medical Facilities, and is unable to obtain the consent of the other party to a reasonable change or modification sufficient to alleviate such condition; or

d. If the Borough has received or makes application for and receives financial assistance or grants of operating and capital funds from any government agency, nonprofit foundation, or other entity for Service Area activities administered by SPHI, and SPHI materially breaches the terms of such grant Agreement, the Borough in its sole discretion may determine such breach to be a material breach of this Agreement; or

e. If the Borough Contract Administrator becomes dissatisfied with the performance or results of SPHI's operation and maintenance of any of the Medical Facilities or services provided pursuant to this contract, the Borough Contract Administrator may issue a written notice describing the problem and requesting it be remedied. If the Borough Contract Administrator determines that SPHI has failed to take reasonable action to remedy the problem within sixty (60) days of the written notice, this failure constitutes cause and the Borough may terminate this Agreement.

38. SURRENDER ON TERMINATION. SPHI, upon termination of this Agreement pursuant to the provisions hereof, or any extension thereof, and in the event there is no successor agreement between the parties, shall work cooperatively with the Borough and subsequent operator to facilitate a smooth transition of the operation and management of the Medical Facilities. SPHI shall promptly quit, surrender and reconvey to the Borough and shall surrender its possession and control of all tangible and

intangible assets including without limitation all real and personal property covered by this Agreement in as good a state and condition that such property was in on the effective date of this Agreement, normal wear excepted. That property includes, but is not limited to, all rental and leasehold interests of SPHI in all the Medical Facilities, all improvements, capital improvements, fixtures, equipment, materials, supplies, inventory, medical records, business records, revenues, cash, cash equivalents, accounts receivable, trust accounts and other property necessary for or associated with the operation of the Medical Facilities.

Notwithstanding the foregoing, SPHI shall not be required to convey to the Borough such cash, income or other assets, if any, as are received by SPHI from sources independent of and unrelated to this Agreement that were previously disclosed to the Borough as required by this agreement.

SPHI shall give to the Borough, or such other person identified by the Borough, all records required for continued operations of the Medical Facilities.

The parties shall cooperate so that all licenses and permits incident to operation of the Medical Facilities can be transferred or changed to either the Borough or an operator identified by the Borough. SPHI shall file a final cost report with the Borough within 45 days after termination.

39. FINAL ACCOUNTING. Upon termination of this Agreement for any reason there shall be complete accounting and final payment and settlement of accounts within ninety (90) days following the submission of the accounting report covering the period of time from the end of the last fiscal year audit through the end of operation by SPHI.

40. SEVERABILITY. No provision of this Operating Agreement shall be effective which is in violation of any state or federal law or regulation or agreement heretofore entered into between the Borough and any state or federal agency, relating to the use or operation of the Medical Facilities administered by SPHI; provided, however, if one or more provisions of this Agreement are hereinafter determined to be invalid and unenforceable, this shall not operate to defeat or invalidate the remainder of this Agreement unless the lack of enforceability or invalidity has the effect of substantially changing the terms and conditions of this Agreement or operates in such a manner as to invalidate or defeat the primary purpose or objectives of this Agreement.

41. SUCCESSORS AND ASSIGNS BOUND. The covenants and conditions herein contained shall apply to bind the successors and assigns of the parties hereto.

42. TIME OF THE ESSENCE. Time is declared to be of the essence in this Agreement and each and every term and provision hereof.

43. **FORCE MAJEURE.** Neither party to this Agreement shall be liable for delays in performance or for non-performance directly occasioned or caused by Force Majeure. Force Majeure means any event beyond the reasonable control of the party claiming to be affected thereby including without limitation acts of God, storms, war, fire, strikes of general application, acts of a public enemy, insurrections, riots, or rules or regulations of any governmental authority asserting jurisdiction or control, compliance with which makes continuance of operations impossible. Strikes, lockouts or differences with workers which are limited to SPHI's personnel or those of SPHI's Subcontractors and inability of either party to secure funds shall not be regarded as Force Majeure. Upon the occurrence of Force Majeure, the party affected shall give prompt notice thereof to the other party and shall do all things reasonably necessary to remove or mitigate its effects.

44. **WAIVER.** The waiver by a party hereto of any term covenant or condition herein contained shall not be deemed to be a waiver of such term, condition, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

45. **VENUE.** Any suit regarding enforcement or application of this Agreement shall be filed and prosecuted in the Kenai Venue District, Third Judicial District, State of Alaska.

46. **NO RIGHTS CONFERRED.** Nothing in this Agreement shall be construed to confer any right or cause of action or suit, either at law or in equity, upon any person, group of persons, firm, corporation or public officer, other than the parties signing this contract, and SPHI shall have no authority to bind the Borough or create any liability on the Borough's part, unless expressly authorized in this Agreement.

47. **NON-COMPETITION.** The parties understand and agree that, except as authorized by the Borough Assembly, SPHI shall not engage in any activities that compete with hospital service area activities within the boundaries of the Service Area during the term of this Agreement, any extension thereof, and for a period of two years from the date this Agreement is terminated. Borough Assembly authorization of such activities may be in the form of a resolution unless an ordinance is otherwise required by law, and may be considered granted if the Borough Assembly appropriates funds for such an activity.

Nothing herein shall be deemed as precluding any person who serves or served as an officer or director of SPHI from engaging in the practice of medicine or other health care-related endeavors. However, no such person may use any "privileged or confidential information" whatsoever gained from their involvement with SPHI as an officer or director, to compete with SPHI or Service Area activities while serving as an

officer or director, or for a period of two years thereafter, unless a longer period is required by law, from the date the person ends their service as an officer or director of SPHI, within the boundaries of the Service Area. "Privileged or confidential information" has the meaning defined in paragraph 29.a above. Any information in the public domain or that becomes part of the public domain as a public record, pursuant to paragraph 29.f, above, is not "privileged or confidential information."

48. CONTRACT ADMINISTRATION. The Borough Mayor is the Borough Contract Administrator under this Agreement. The President of SPHI is the administrator of this Agreement on behalf of SPHI.

49. INTEGRATION. This Agreement, the Agreements described in section 2, all amendments to those Agreements, and all attachments to this agreement which are integrated herein, constitute the entire agreement between the parties. This Agreement supersedes all previous communications, memoranda, correspondence, proposals, understandings, agreements and contracts, both verbal and written, between these parties. Both parties specifically acknowledge that, in entering into and executing this Agreement, they rely solely upon the representations and agreements contained in this Agreement and no others. No oral statements or prior written material not specifically incorporated herein shall be recognized by either party or bind either party unless incorporated herein by amendment, such amendment to become effective on the date stipulated in such amendment. Further, this Agreement may not be enlarged, modified, amended, supplemented, or altered except by amendment pursuant to this Agreement.

50. RECITALS. The Recitals to this Agreement are hereby incorporated into this Agreement as if fully set forth herein.

KENAI PENINSULA BOROUGH

SOUTH PENINSULA HOSPITAL,
INC.

By: _____
Honorable Charlie Pierce
Its: Mayor

By: _____
David Groesbeck
Its: President, Board of Directors

Approved by KPB Ord. 2019-_____
Date: _____

Approved by SPHI Motion _____
Date: _____

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Johni Blankenship, Borough Clerk

By: _____
Colette Thompson, Borough Attorney

ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

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 _____, 2019, by David Groesbeck, the President of South Peninsula Hospital, Inc., a non-profit corporation, for and on behalf of the corporation.

Notary Public for State of Alaska
My Commission Expires: _____

EXHIBIT A

DESCRIPTION OF MEDICAL FACILITIES

The Borough leases the following described property to SPHI (hereinafter the “Medical Facilities”) for the term of this Agreement and any extension thereof:

a. The South Peninsula Hospital and its grounds, located at 4300 Bartlett Street, Homer, Alaska, owned by the City of Homer, more particularly described as:

Tract A-2, South Peninsula Hospital Subdivision 2008 Addition, filed under Plat No. 2008-92, Homer Recording District, Third Judicial District, State of Alaska.

b. The hospital parking lot property and buildings owned by the Borough, more particularly described as:

Lots 3, 4, 5 and 6, Block 7; Lot 4, Block 8, Lot 6, Block 9, Fairview Subdivision Plat No. HM 56-2936 Volume 8, Page 196, Homer Recording District, Third Judicial District, State of Alaska.

c. The following leased property located at 4251 Bartlett Street, Homer, Alaska, owned by Mark Halpin and B. Isabel Halpin subject to the terms and conditions of the lease, more particularly described as:

L2-A Block 8 Fairview Subdivision Halpin Addition, according to Plat No. 2009-43, Homer Recording District, Third Judicial District, State of Alaska,

d. 4,904 sq. ft. of office space located at 4136 Bartlett Street, Homer, Alaska 99603 subject to the terms and conditions of the lease, more particularly described as:

Lot 2-A, Block 5, Fairview Subdivision No. 11, as shown on Plat No. 85-28, Homer Recording District, Third Judicial District, State of Alaska.

e. Approximately 1,500 square feet of the office space owned by Westwing LLC located at 4117 Bartlett Street, Homer, Alaska 99603

subject to the terms and conditions of the lease, more particularly described as:

Lot 4, Block 10, Fairview Subdivision, as shown on Plat No. 56-2936, Homer Recording District, Third Judicial District, State of Alaska.

f. 3,780 square feet of office space and 3,225 square feet of basement office space both within the Kachemak Bay Professional Building, 4201 Bartlett Street, Homer, Alaska 99603 subject to the terms and conditions of the lease more particularly described as:

Lot 1-A Block 9, Fairview Subdivision 2003 Addition, as shown on Plat No. 2004-101, Homer Recording District, Third Judicial District, State of Alaska.

g. The following leased property owned by Jonas Ridge, LLC located at 203 Pioneer Avenue, Suite 1, Homer, Alaska 99603, subject to the terms and conditions of the lease, more particularly described as:

Tract A, Chamberlain & Watson Sub Plat of Tract A, Section 19, T6S, R13W, S.M., Plat 075063, Homer Recording District, Third Judicial District, State of Alaska.

h. Office space owned by the Kenai Peninsula Borough located at 348 Cityview Avenue, Homer, Alaska 99603, more particularly described as:

Lot 4, Block 8, Fairview Sub., Section 18, T6N, R13W, Seward Meridian, Plat 1956-2936, Homer Recording District, Third Judicial District, State of Alaska.

i. Office space owned by the Kenai Peninsula Borough located at 347 Cityview Avenue, Homer, Alaska 99603, more particularly described as:

Lot 6, Block 9, Fairview Sub., Section 18, T6N, R13W, Seward Meridian, Plat 1956-2936, Homer Recording District, Third Judicial District, State of Alaska.

j. Such other Borough-owned or leased facilities, if any, as are authorized by the Borough pursuant to this Agreement for SPHI to sublease and operate pursuant to this Agreement.

EXHIBIT B



October 2017 Financial Performance Report

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South Peninsula Hospital

CFO Report FY 2018 Overview of October Financials

Income Statement-

Patient Service Revenue (PSR)

Inpatient PSR of \$2.2M is down \$478K from September and budget by \$308K, this is attributed to an increase in Medicare/Medicaid, almost half patient days were swing days (110/267=42%) as reflected in the elevated LOS. We experienced a slight increase in Medicare payer mix to 39% from 35% in September and drop in Commercial to 28% from 34% which negatively impacts our contractual deductions. LTC was slightly ahead of September and budget, currently census is at 100% ahead of budget by 4% YTD. Outpatient Ancillary at \$6.5M is down from Sept by \$673K of most attributed to less lab and ER charges offset by increases in surgery charges.

Deductions for Contractual and Bad Debt

Contractual discounts were down in October which averaged 35% from September's 38% due to the shift from inpatient to outpatient revenue and a positive adjustment of \$167K to Medicare contractual from a more favorable settlement payment on the FY 2016 Cost Report than estimated. Additionally, we had a substantial drop in bad debt as the Aging continues to improve for the hospital AR and we have flushed out most of the old clinic and LTC AR from Evident. Since our bad debt reserve % is higher for the older aging buckets so our reserve against AR is dropping each month. Back in January we had \$6.6M in over 120 days old and at the end of October we have less than \$5M. Charity care had trended down as we have processed all approved applications but we had several large applications approved for high dollar surgeries for several Medicare age patients who can't afford the co-pays and deductibles. It's rewarding to assist many of the families or couples from our community who have applied recently they are truly deserving of the assistance.

Volumes for October

Acute care occupancy down at 41% (PY October also 41%) compared to 568 in September. Our LOS is running high at 4.3 but down from 5.8 in September, YTD is 4.3 still high for a CAH and acute/swing days were 267, YTD we are above prior year with an average of 300 days compared to 294 days for the first 4 months of the fiscal year. October's ADC (average daily census) of 8.6 is well below avg of 11.3 in September as reflected in our patient days.

October surgical volumes picked up slightly to 15 inpatient surgeries and 117 O/P surgeries from 84 in September;

contributing to improved revenues for surgery (Dr. [redacted] had 29 surgeries

[redacted]). So far this year we are trending down 11%, 390 surgeries YTD versus 453 YTD in FY2017. [redacted] (30), -E (16) and [redacted] E (14) and [redacted] -E (9) comprise 58% of Surgeries in October. E=Employed

The remainder of the outpatient departments had solid volumes in October, with total lab tests at 11,002 (health fair month) compared to 9,042 last October (drop from 12,071 in September-employee and health fair labs) and Radiology had 1,334 procedures compared to 1,380 last October but in line with September's 1,422. ER was down in October at 353 visits versus September at 449 but up from 404 visits last October. Even with less ER visits we had 35 inpatient admissions to Acute/ICU compared to 39 last month.

LTC occupancy was at 98%. AR at 10/31/17 was little over \$950K with AR over 120 less than \$25K. We have 2 residents with \$250K of outstanding AR going back to July and August due to the State requesting reapplication for services, the new LTC Director and I met this week and she is investigating the status.

Operating Expenses

Overall, expenses of **\$5.9M were within \$200K of September** and were 2% or \$120K below budget of \$6M due to favorable budget variances in most expense categories except supplies and professional fees. YTD total expenses are at \$22,683K compared to a budget of \$23,994K, a favorable variance of 5.5% and we are only trending up slightly from the PY YTD of \$22,065 which is less than 3% increase.

Overall most categories are below budget YTD except for contract staffing some of which is due to prior year invoices submitted in FY18. We are down to 6 travelers this year from a high of 17 in the prior year and are our cap for FY 18. Software maintenance was budgeted in R&M but netted against the favorable variance we are still over due to timing and unbudgeted expenditures.

Overall Results and Non-Recurring Expense

Operations resulted in a surplus of 3.2% or \$194K above budget for October which was anticipated to be break even. The total surplus for October was \$552K or 9.0% compared to \$279K budgeted or 4.6% putting us at 12.7%. **YTD we are at \$3.4M thru first 4 months of FY18; this is compared to 8.4% and \$2.1M in the budget a favorable variance of \$1.3M or 60%.** In prior year the total surplus YTD was \$668K so we are ahead of prior year by \$2.7M.

It is essential that we stay focused on cost reductions as our Commercial volume is highly concentrated with few payers (Blue Cross, Triwest and Aetna) and unreliable month to month and government changes will most likely continue to erode our reimbursement and it comprised **Medicare/Medicaid represent 68%** of our revenues for the past 12 months.

BALANCE SHEET

Cash is up from September at \$13.7M versus \$11.7M and day's cash on hand for operations is at 75 days. The Cash collections report highlights where our collections spiked in October as the revenue cycle team continues to improve in all areas. Net Accounts Receivable is down slightly from September at \$10.5M compared to \$10.9M and I anticipate this will be predictable level for FY18. **October collections were \$6.3M from operations and we received \$680K for cost reports settlements from Medicare boosting total cash collections to \$7M our highest month in history.**

South Peninsula Hospital
BALANCE SHEET
FOR THE MONTH ENDING: 10/31/17

	This Year 10/31/17	Last Year 10/31/16	Last Month 09/30/17
ASSETS			
CURRENT ASSETS			
CASH AND CASH EQUIVALENTS	13,612,930	7,134,664	13,741,431
EQUITY IN CENTRAL TREAS-KPB	7,173,824	3,655,499	7,173,999
	-----	-----	-----
TOTAL CASH AND CASH EQUIVALENTS	20,786,754	10,790,164	20,915,430
PATIENT RECEIVABLES	19,541,786	19,138,895	18,627,400
LESS ESTIMATED UNCOLLECTIBLES	(8,350,406)	(7,222,585)	(8,108,286)
	-----	-----	-----
NET PATIENT ACCT RECEIVABLE	11,191,379	11,916,309	10,519,113
PROPERTY TAXES RECV - KPB	163,250	144,246	163,250
LESS: ALLOW PROP TAX - KPB	(3,842)	(3,598)	(3,842)
	-----	-----	-----
NET PROPERTY TAX RECV - KPB	159,407	140,647	159,407
OTHER RECEIVABLES	276,231	116,843	238,149
INVENTORIES	1,801,285	1,888,789	1,813,691
PREPAID EXPENSES	753,302	661,536	714,045
	-----	-----	-----
TOTAL CURRENT ASSETS	34,968,362	25,514,291	34,359,839
ASSETS WHOSE USE IS LIMITED			
EMPLOYEE HEALTH RESERVE	108,697	108,396	108,697
MALPRACTICE RESERVE	85,000	85,000	85,000
STUDENT LOAN PROGRAM		3,584	
OTHER RESTRICTED FUNDS	18,364	18,364	18,364
	-----	-----	-----
TOTAL ASSETS WHOSE USE IS LIMITED	212,062	215,346	212,062
CAPITAL ASSETS			
LAND AND LAND IMPROVEMENTS	3,816,772	3,816,772	3,816,772
BUILDING	56,585,542	56,333,204	56,459,983
EQUIPMENT	23,309,382	22,233,546	23,309,382
IMPROVEMENTS OTHER THAN BUILDINGS	140,474	140,474	140,474
CONSTRUCTION IN PROGRESS	4,159,008	526,753	4,124,059
LESS: ACCUMULATED DEPRECIATION	(45,710,704)	(42,816,789)	(45,467,021)
	-----	-----	-----
NET CAPITAL ASSETS	42,300,476	40,233,961	42,383,651
	-----	-----	-----
TOTAL ASSETS	77,480,901	65,963,599	76,955,553
DEFERRED OUTFLOWS OF RESOURCES			
PENSION RELATED	1,361,341	1,523,460	1,361,341
UNAMORTIZED DEFERRED CHARGE ON REFUNDI	818,347	921,256	818,347
	-----	-----	-----
TOTAL DEFERRED OUTFLOWS OF RESOURCES	2,179,688	2,444,716	2,179,688
	-----	-----	-----
TOTAL ASSETS AND DEFERRED OUTFLOWS O	79,660,589	68,408,316	79,135,241

	=====	=====	=====
LIABILITIES			
CURRENT LIABILITIES:			
ACCOUNTS AND CONTRACTS PAYABLE	2,427,040	1,003,332	2,687,367
ACCRUED LIABILITIES	6,691,358	4,544,502	6,001,817
DEFERRED CREDITS	128,363	104,535	138,745
CURRENT PORTION OF NOTE DUE KP			
CURRENT PORTION OF BONDS PAYABLE	1,440,000	1,195,000	1,440,000
BOND INTEREST PAYABLE	211,924	199,675	211,924
ADVANCES FROM MEDICAID	265,659	1,000,444	395,774
CURRENT PORTION OF CAPITAL LEASE	(42,366)	41,153	(27,939)
	-----	-----	-----
TOTAL CURRENT LIABILITIES	11,121,979	8,088,642	10,847,690
LONG-TERM LIABILITIES			
BONDS PAYABLE NET OF CURRENT PORTION	16,645,000	13,890,000	16,645,000
PREMIUM ON BONDS PAYABLE	1,869,660	1,457,160	1,869,660
CAPITAL LEASE, NET OF CURRENT PORTION	215,221	215,221	215,221
NET PENSION LIABILITY	1,954,217	2,203,993	1,954,217
	-----	-----	-----
TOTAL NONCURRENT LIABILITIES	20,684,098	17,766,375	20,684,098
TOTAL LIABILITIES	31,806,077	25,855,017	31,531,789
DEFERRED INFLOW OF RESOURCES			
PROPERTY TAXES RECEIVED IN ADVANCE	716,695	524,705	716,695
NET POSITION			
INVESTED IN CAPITAL ASSETS	5,731,962	5,731,962	5,731,962
CONTRIBUTED CAPITAL - KP			
RESTRICTED	25,286	25,286	25,286
UNRESTRICTED FUND BALANCE - SPH	42,119,532	37,027,118	41,566,960
UNRESTRICTED FUND BALANCE - KP	(738,964)	(755,774)	(437,451)
	-----	-----	-----
TOTAL NET POSITION	47,854,512	42,553,298	47,603,452
TOTAL LIAB , DEFERRED INFLOW & NET P	79,660,589	68,408,316	79,135,241
	=====	=====	=====

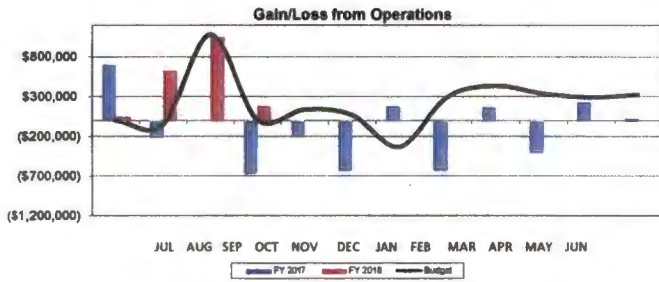
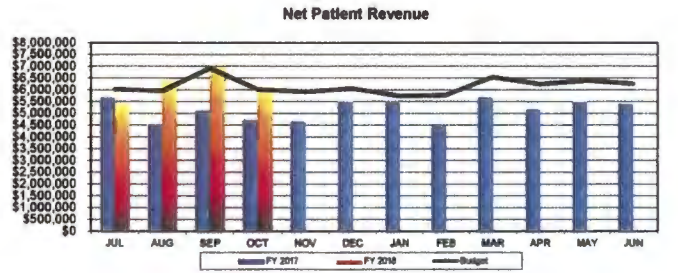
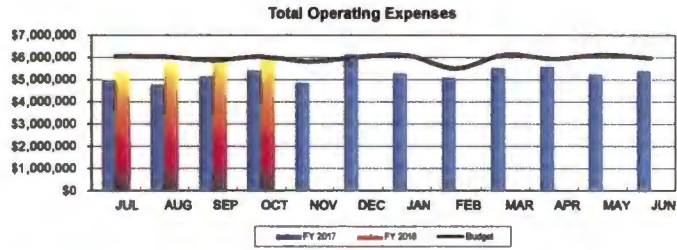
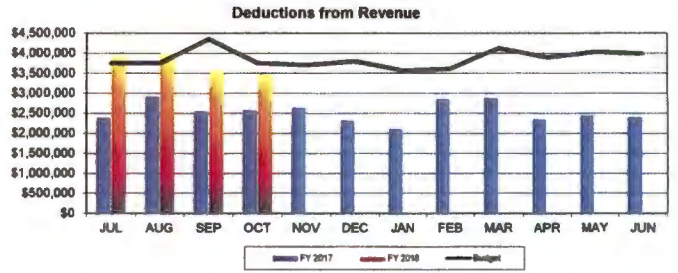
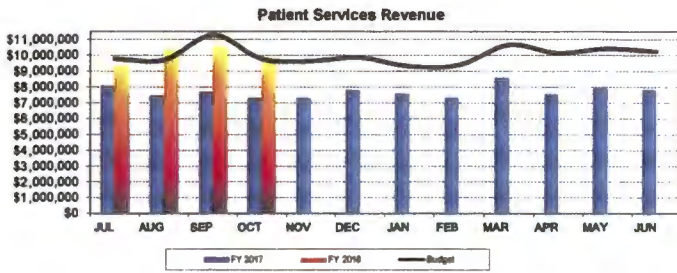
SOUTH PENINSULA HOSPITAL
Summary Income Statement
FOR THE 4 MONTHS ENDING 10/31/17

	S I N G L E M O N T H				Y E A R T O D A T E			
	ACTUAL	BUDGET	\$ VARIANCE	% VAR	ACTUAL	BUDGET	\$ VARIANCE	% VAR
REVENUES								
PATIENT SERVICE REVENUE								
INPATIENT	2,178,209	2,485,995	(307,785)	(12)	9,893,774	10,971,524	(1,077,749)	(9)
OUTPATIENT	6,510,143	6,484,480	25,663	0	26,563,099	26,352,615	210,483	0
LONG TERM CARE	838,524	804,452	34,071	4	3,361,501	3,217,810	143,691	4
TOTAL PATIENT	9,526,877	9,774,927	(248,050)	(2)	39,818,376	40,541,950	(723,574)	(1)
DEDUCTIONS FROM REVENUE								
MEDICARE	1,596,914	1,580,480	(16,434)	(1)	7,491,891	6,575,577	(916,313)	(13)
MEDICAID	718,133	1,170,725	452,592	38	4,225,548	4,870,795	645,247	13
CHARITY CARE	185,082	141,361	(43,721)	(30)	543,402	588,132	44,729	7
OTHER ADJUSTMENT	867,639	628,422	(239,216)	(38)	2,488,164	2,614,547	126,382	4
BAD DEBT	95,268	231,012	135,743	58	396,201	961,124	564,922	58
TOTAL DEDUCTIO	3,463,038	3,752,001	288,962	7	15,145,209	15,610,177	464,967	2
NET PATIENT SE	6,063,838	6,022,926	40,911	0	24,673,167	24,931,773	(258,606)	(1)
OTHER REVENUE	52,634	27,242	25,391	93	146,374	108,008	38,365	35
TOTAL OPERATIN	6,116,472	6,050,169	66,303	1	24,819,541	25,039,782	(220,240)	(0)
OPERATING EXPENSES								
SALARIES & WAGES	2,674,439	2,739,871	65,431	2	10,741,095	10,861,632	120,536	1
EMPLOYEE BENEFIT	1,192,862	1,274,854	81,992	6	4,357,947	5,053,999	696,052	13
SUPPLIES DRUGS &	661,778	619,877	(41,901)	(6)	2,325,333	2,502,100	176,767	7
CONTRACT STAFFIN	82,363	75,267	(7,096)	(9)	493,721	335,013	(158,708)	(47)
PROFESSIONAL FEE	589,473	542,818	(46,655)	(8)	1,923,287	2,152,132	228,844	10
UTILITIES & TELE	109,250	113,296	4,045	3	414,851	449,187	34,336	7
INSURANCE	39,249	44,402	5,152	11	169,457	176,023	6,565	3
DUES BOOKS SUBSC	20,267	24,744	4,476	18	90,227	98,130	7,903	8
SOFTWARE MAINT/S	83,028	0	(83,028)	(0)	206,254	0	(206,254)	(0)
TRAVEL MEETINGS	22,045	52,746	30,700	58	94,957	183,489	88,531	48
REPAIRS & MAINT	97,174	125,859	28,685	22	403,550	498,995	95,445	19
LEASES & RENTALS	41,036	48,441	7,404	15	201,279	192,056	(9,222)	(4)
OTHER OP EXPENSE	65,442	131,836	66,394	50	286,830	520,208	233,377	44
DEPRECIATION	243,683	244,851	1,168	0	973,841	970,661	(3,179)	(0)
TOTAL OPERATIN	5,922,096	6,038,867	116,770	1	22,682,635	23,993,631	1,310,995	5
GAIN (LOSS) FR	194,376	11,302	183,074	1619	2,136,905	1,046,151	1,090,754	104

SOUTH PENINSULA HOSPITAL
 Summary Income Statement
 FOR THE 4 MONTHS ENDING 10/31/17

	----- S I N G L E M O N T H -----				----- Y E A R T O D A T E -----			
	ACTUAL	BUDGET	\$ VARIANCE	% VAR	ACTUAL	BUDGET	\$ VARIANCE	% VAR
NON-OPERATING REVENUES:								
GENERAL PROPERTY	377,173	344,998	32,175	9	1,508,692	1,367,815	140,876	10
GAIN (LOSS) ON D	(2,306)	0	(2,306)	(0)	(2,306)	0	(2,306)	(0)
TOTAL NON-OPER	374,866	344,998	29,868	8	1,506,386	1,367,815	138,570	10
NON-OPERATING EXPENSES:								
SERVICE AREA BOA	(35,616)	13,769	49,385	358	32,371	54,585	22,214	40
ADMINISTRATION N	0	0	0	0	3,664	0	(3,664)	(0)
INTEREST EXPENSE	65,660	63,428	(2,231)	(3)	262,640	251,448	(11,192)	(4)
TOTAL NON-OPER	30,044	77,197	47,153	61	298,675	306,034	7,358	2
GRANTS:								
GRANT REVENUE	10,233	0	10,233	0	10,318	0	10,318	0
TOTAL GRANT RE	10,233	0	10,233	0	10,318	0	10,318	0
INCOME (LOSS)	549,432	279,102	270,329	96	3,354,934	2,107,932	1,247,002	59
OPERATING TRANSF	3,140	0	3,140	0	3,140	0	3,140	0
NET INCOME	552,572	279,102	273,469	97	3,358,074	2,107,932	1,250,142	59

Executive Summary



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PERFORMANCE INDICATORS REPORT FY2017

Indicator	YTD			
	Oct-17	Prior Year	Target	Variance
Gross Patient Revenue	\$39,818,374	32,288,110	\$40,541,951	-\$723,576
Deductions From Revenue	\$14,945,208	10,748,535	\$15,610,177	\$664,969
Net Patient Revenue	\$24,873,166	21,539,574	\$24,931,774	-\$58,607
Acute Care Occupancy including Observation	47%	48%	50%	-3.0%
Average Length of Stay	4.30	2.97	4.00	0.3
Total Surgeries	453	520	500	(47)
Emergency Room Visits	1,805	1,997	2,000	(195)
Average Daily Revenue	\$436,366	1,997	\$444,295	-\$7,930
Inpatient Charge per Patient Day	\$80,437	\$87,438	\$89,199	(8,762)
Outpatient Charge per visit *		1,071		0
Total Operating Expense	\$23,065,043	\$22,064,600	\$23,993,631	\$928,588
Gain/Loss from Operations	\$1,954,496	-\$426,864	\$1,046,151	\$908,345
EBITDA	\$2,928,337	\$543,349	\$2,016,813	\$911,524
Net Income	\$2,909,361	\$668,961	\$3,358,075	-\$448,714
Average Daily Expense	\$187,521	\$179,276	\$195,070	\$7,549
Cash on Hand - Bank	\$13,612,930	7,134,665	\$17,556,315	3,230,440
Cash on Hand - KPB Investment	\$7,173,825	\$189,523		
Days of Cash on Hand without Investment	73	42	60	13
Net Accounts Receivable Days	55	72	45	(10)
Gross Accounts Receivable Days	45	71	45	0
Payer Mix				
Medicare	38.72%	35.35%	40.0%	-1.3%
Medicaid	29.65%	35.97%	25.0%	4.7%
Commercial	28.05%	20.30%	35.0%	-7.0%
Self-Pay	3.58%	8.38%	5.0%	-1.4%
Contractual % by Payer				
Medicare	49.7%	36.0%	45.0%	-4.7%
Medicaid	38.2%	23.6%	30.0%	-8.2%
Commercial	20.7%	30.3%	20.0%	-0.7%
Self-Pay	58.9%	70.8%	10.0%	-48.9%

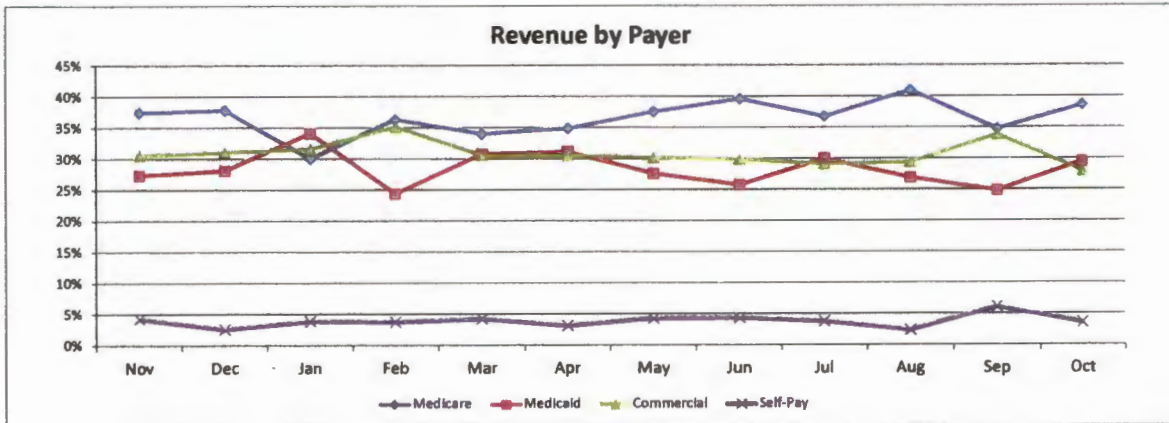
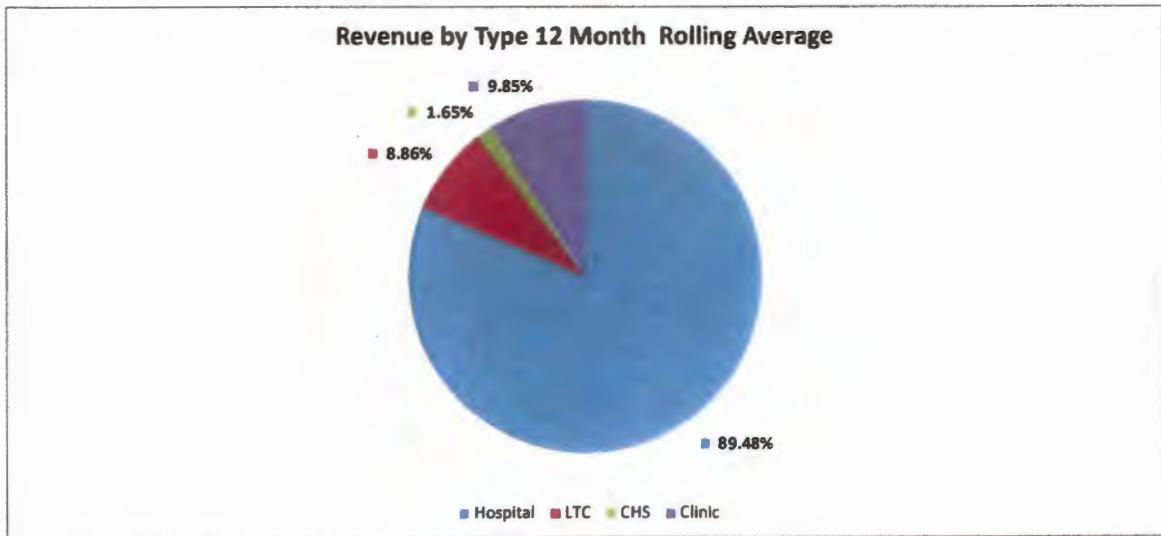
SPH Revenue by Type Table FY2016

	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Average
Hospital	\$ 7,724,270	\$ 8,403,831	\$ 8,859,563	\$ 9,232,427	\$ 9,135,857	\$ 8,794,639	\$ 9,517,579	\$ 9,303,211	\$ 8,871,422	\$ 8,369,867	\$ 8,731,288	\$ 7,909,668	\$ 8,470,506
LTC	\$ 761,545	\$ 804,533	\$ 747,734	\$ 695,988	\$ 777,303	\$ 732,186	\$ 754,585	\$ 770,849	\$ 755,588	\$ 838,152	\$ 793,578	\$ 968,562	\$ 838,970
CHS	\$ 120,024	\$ 116,040	\$ 114,482	\$ 71,180	\$ 137,259	\$ 60,569	\$ 52,496	\$ 46,754	\$ 86,850	\$ 110,754	\$ 114,132	\$ 310,822	\$ 156,389
Clinic									\$ 801,955	\$ 964,078	\$ 944,134	\$ 1,020,929	\$ 932,774
Total	\$ 8,605,838	\$ 9,324,404	\$ 9,721,779	\$ 9,999,575	\$ 10,050,418	\$ 9,587,394	\$ 10,324,659	\$ 10,120,815	\$ 10,518,815	\$ 10,282,650	\$ 10,583,110	\$ 10,209,981	\$ 9,485,865

Medicare	\$ 3,234,896	\$ 3,540,893	\$ 2,928,463	\$ 3,647,963	\$ 3,432,053	\$ 3,355,082	\$ 3,889,680	\$ 4,020,845	\$ 3,213,491	\$ 4,225,632	\$ 3,693,934	\$ 3,953,702	\$ 3,771,680
Medicaid	\$ 2,363,455	\$ 2,635,035	\$ 3,330,716	\$ 2,452,022	\$ 3,107,385	\$ 2,995,573	\$ 2,863,387	\$ 2,622,757	\$ 2,622,408	\$ 2,777,375	\$ 2,645,240	\$ 3,026,900	\$ 2,767,981
Commercial	\$ 2,639,739	\$ 2,904,229	\$ 3,082,481	\$ 3,524,050	\$ 3,084,394	\$ 2,936,819	\$ 3,126,431	\$ 3,033,100	\$ 2,544,727	\$ 3,034,377	\$ 3,592,345	\$ 2,864,244	\$ 3,008,923
Self-Pay	\$ 367,748	\$ 244,248	\$ 380,138	\$ 375,540	\$ 426,605	\$ 299,920	\$ 445,162	\$ 444,113	\$ 333,349	\$ 245,266	\$ 651,591	\$ 365,134	\$ 388,835
Total	\$ 8,605,838	\$ 9,324,404	\$ 9,721,779	\$ 9,999,575	\$ 10,050,418	\$ 9,587,394	\$ 10,324,659	\$ 10,120,815	\$ 8,713,975	\$ 10,282,650	\$ 10,583,110	\$ 10,209,981	\$ 9,947,429

Hospital	89.76%	90.13%	91.13%	92.33%	90.90%	91.73%	92.18%	91.92%	84.34%	81.40%	82.50%	77.47%	89.48%
LTC	8.85%	8.63%	7.69%	6.96%	7.73%	7.64%	7.31%	7.62%	7.18%	8.15%	7.50%	9.49%	8.86%
CHS	1.39%	1.24%	1.18%	0.71%	1.37%	0.63%	0.51%	0.46%	0.85%	1.08%	1.08%	3.04%	1.65%
Clinic	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	7.62%	9.38%	8.92%	10.00%	9.85%
Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Medicare	37.59%	37.97%	30.12%	36.48%	34.15%	34.99%	37.67%	39.73%	36.88%	41.09%	34.90%	38.72%	37.82%
Medicaid	27.46%	28.26%	34.26%	24.52%	30.92%	31.24%	27.73%	25.91%	30.09%	27.01%	24.99%	29.65%	27.83%
Commercial	30.67%	31.15%	31.71%	35.24%	30.69%	30.63%	30.28%	29.97%	29.20%	29.51%	33.94%	28.05%	30.25%
Self-Pay	4.27%	2.62%	3.91%	3.76%	4.24%	3.13%	4.31%	4.39%	3.83%	2.39%	6.16%	3.58%	4.01%
Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%



ACUTE CARE INCLUDING SWING BED

PATIENT DAYS	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	Totals	Monthly Average	Percent Change
TOTAL FY 18	236	346	352	267	0	0	0	0	0	0	0	0	1,201	300.3	1.8%
TOTAL FY 17	294	335	341	269	302	280	211	314	314	346	317	216	3,539	294.9	-4.6%
TOTAL FY 16	308	282	292	325	356	329	299	234	332	352	332	270	3,711	309.3	6.3%

FY 17 ADMISSION	71	80	68	62	0	0	0	0	0	0	0	0	281	70.3	
FY17 AVERAGE LOS	3.3	4.3	5.2	4.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	17.1	4.3	

ACUTE CARE OCCUP	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
% OCC FOR MONTH	36%	53%	56%	41%	0%	0%	0%	0%	0%	0%	0%	0%
% OCC YEAR TO DATE	36%	45%	48%	47%	0%	0%	0%	0%	0%	0%	0%	0%

LTC

PATIENT DAYS	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	Totals	Monthly Average	Percent Change
LTC 18	868	868	840	850	0	0	0	0	0	0	0	0	3,426	856.5	7.6%
LTC 17	830	850	804	825	795	811	779	728	796	755	783	795	9,551	795.9	-1.3%
LTC 16	843	864	822	834	780	836	811	776	785	754	792	779	9,676	806.3	-4.6%

LTC OCCUPANCY

% OCC FOR MONTH	100%	100%	100%	98%	0%	0%	0%	0%	0%	0%	0%	0%
% OCC YEAR TO DATE	100%	100%	100%	99%	0%	0%	0%	0%	0%	0%	0%	0%

NEWBORN

# OF BIRTHS	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	Totals	Monthly Average	Percent Change
NEWBORN 18	10	0	0	0	0	0	0	0	0	0	0	0	10	10	-22.6%
NEWBORN 17	13	21	9	15	10	12	10	9	10	13	14	19	155	13	6.2%
NEWBORN 16	12	14	13	15	10	5	14	11	10	15	14	13	146	12	6.6%

EMERGENCY VISITS - ER & OP

	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	Totals	Monthly Average	Percent Change
VISITS 18	616	0	0	0	0	0	0	0	0	0	0	0	616	616.0	19.1%
VISITS 17	712	595	491	502	496	490	535	449	477	457	568	557	6,206	517.2	-6.4%
VISITS 16	661	639	550	479	472	482	552	436	616	619	547	577	6,630	552.5	4.7%

HOME HEALTH CLIENTS

	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	Totals	Monthly Average	Percent Change
FY 18	0	0	0	63	0	0	0	0	0	0	0	0	63	0.0	0.0%
FY 17	44	45	41	49	52	55	57	57	57	51	53	51	612	51.0	24.1%
FY 16	41	38	39	45	39	39	42	40	39	38	44	49	493	41.1	22.6%

SURGERY PROCEDURES

	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	Totals	Monthly Average	Percent Change
I/P 18	18	15	15	15	0	0	0	0	0	0	0	0	63	15.8	-19.6%
I/P 17	18	17	15	22	23	24	27	23	19	13	16	18	235	19.6	-7.1%
I/P 16	16	14	9	23	19	16	22	27	30	29	24	24	253	21.1	36.0%
O/P 18	94	89	90	117	0	0	0	0	0	0	0	0	390	97.5	-9.0%
O/P 17	100	113	105	130	98	100	99	96	118	94	127	106	1,286	107.2	3.7%
O/P 16	104	97	93	110	85	140	89	88	110	126	97	101	1,240	103.3	-10.1%
TOTAL FY 18	112	104	105	132	0	0	0	0	0	0	0	0	453	113.3	-10.7%
TOTAL FY 17	118	130	120	152	121	124	126	119	137	107	143	124	1,521	126.8	1.9%
TOTAL FY 16	120	111	102	133	104	156	111	115	140	155	121	125	1,493	124.4	3.5%

OTHER OUT PATIENT VISITS * * Observation, Lab, Radiology, Rehabilitation

	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	Totals	Monthly Average	Percent Change
VISITS 18	3239	3379	3954	4172	0	0	0	0	0	0	0	0	14,744	3,686.0	64.0%
VISITS 17	1964	2171	2778	1997	2196	2106	2066	2086	2415	2210	2538	2438	26,965	2,247.1	9.0%
VISITS 16	2096	1984	2619	2089	1786	2033	1960	1919	2147	1924	2012	2160	24,729	2,060.8	9.2%

South Peninsula Hospital
 Summary Aging by Financial Class-including Athena and LTC (PCC)and HH (Kinser)

	10/31/17	9/30/17	8/31/17	7/31/17	6/30/17	5/31/17	4/30/17
Long Term Care	968,562	948,128	1,482,088	1,487,196	1,671,522	1,611,839	1,476,141
Medicare	6,557,924	6,255,332	6,002,287	4,724,828	5,968,222	5,131,460	4,842,117
Medicaid	2,800,729	1,954,274	2,553,184	2,324,681	2,459,804	3,142,926	3,357,633
Private Insurance	6,123,148	6,606,331	5,553,561	5,527,323	5,713,826	5,928,949	6,171,623
Self-Pay	3,098,416	2,945,987	2,961,313	3,161,685	3,221,792	3,378,886	3,734,052
Home Health	310,822	330,730	326,602	332,706	326,980	412,995	453,269
Month End Accrual	56,115	452,880	670,019	502,200	698,454	644,318	537,601

Totals	19,915,714	19,493,662	19,549,054	18,060,619	20,060,601	20,251,373	20,572,436
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Aged Over 120 Days

Long Term Care	24,303	37,775	323,654	549,571	211,524	228,408	293,861
Medicare	658,590	554,267	353,425	287,050	239,175	550,376	506,081
Medicaid	413,752	418,863	572,487	477,369	519,256	591,176	685,314
Private Insurance	969,786	846,379	950,417	1,210,707	1,068,534	782,987	907,473
Self-Pay	2,606,775	2,618,155	2,613,430	2,456,959	2,651,904	2,635,422	3,120,807
Home Health	93,401	130,431					

Totals	4,766,607	4,605,870	4,813,413	4,981,656	4,690,393	4,788,369	5,513,536
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Percentage over 120 days

Long Term Care	3%	4%	22%	37%	13%	14%	20%
Medicare	10%	9%	6%	6%	4%	11%	10%
Medicaid	15%	21%	22%	21%	21%	19%	20%
Private Insurance	16%	13%	17%	22%	19%	13%	15%
Self-Pay	84%	89%	88%	78%	82%	78%	84%

Totals	24%	24%	25%	28%	23%	24%	27%
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EXHIBIT C

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is made between South Peninsula Hospital, Inc. ("SPHI") and the Kenai Peninsula Borough ("Borough"), to set forth the terms and conditions for the transfer of funds between SPHI's Plant, Replacement and Expansion Fund and the Borough's central investment pool, as follows:

1. When SPHI determines that a deposit or withdrawal should be made to or from the PREF, SPHI shall notify the Borough Finance Director or designee of the amount, date, method and other necessary information to effectuate the deposit or withdrawal. Except under emergency circumstances, SPHI shall give advance notice of at least one day for deposits. For withdrawals from the PREF, SPHI shall make reasonable efforts to provide at least two days' notice before the next assembly meeting packet deadline of the requested withdrawal amount and date. Upon receipt of notice from SPHI, the Finance Director or designee shall take action to accept the deposit on the date requested by SPHI or, for withdrawals, make reasonable efforts to submit an ordinance to the assembly for introduction at the next regular assembly meeting, appropriating the designated PREF funds.
2. The Borough shall separately account to SPHI for PREF deposits, withdrawals and investment earnings each calendar quarter. PREF funds on deposit in the Borough central investment pool, and earnings thereon, shall be managed according to Borough ordinances and resolutions governing investment of funds, and allocation of earnings on investments, in the central investment pool. All earnings allocated to the SPHI PREF funds on deposit in the central investment pool are deemed to be reinvested to the PREF and their use also is restricted to investment for the PREF.
3. It is the parties' intent that all promises, covenants, agreements, terms and conditions of the Operating Agreement between SPHI and the Borough shall remain in full force and effect and this Memorandum of Agreement is not intended to vary the terms of the Operating Agreement.

KENAI PENINSULA BOROUGH

SOUTH PENINSULA HOSPITAL,
INC.

Charlie Pierce
Borough Mayor
Dated: _____

David Groesbeck
SPHI Board President
Dated: _____

Approved by KPB Ord. 2019-____
Dated: _____

Approved by Board Res. _____
Dated: _____

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Borough Clerk

Borough Attorney

ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Charlie Pierce, Mayor of Kenai Peninsula Borough, an Alaska municipal corporation, on behalf of the corporation.

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by David Groesbeck, President, South Peninsula Hospital, Inc., an Alaska nonprofit corporation, on behalf of the corporation.

Notary Public in and for Alaska
My Commission Expires: _____

CONSENT TO SUBLEASE

The City of Homer, Alaska, as Lessor under that certain Lease of Homer Hospital entered into on the 10th day of November, 1969, and amended March 17, 1999, October 31, 2005, and June 22, 2006, between the City of Homer and the Kenai Peninsula Borough (the "Lease"), hereby consents to the Operating Agreement for South Peninsula Hospital set forth above and entered into on _____, 2019, between the Kenai Peninsula Borough and South Peninsula Hospital, Inc., upon the express conditions that (a) this Consent shall not be deemed a waiver or relinquishment of the covenant against assignment or subletting set forth in Section 14 of the Lease; and (b) the City of Homer does not hereby consent to any further assignment or subletting of the premises; and (c) this Consent shall not release the Kenai Peninsula Borough from the full performance of the provisions of the Lease, as now existing or as may hereafter be amended.

Dated this ____ day of _____, 2019.

CITY OF HOMER ALASKA

By: _____
Its: _____

ATTEST:

City of Homer – City Clerk

Introduced by: Mayor
Date: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2019-064**

**A RESOLUTION AUTHORIZING COMMUNITY ASSISTANCE PROGRAM
EXPENDITURES FOR UNINCORPORATED COMMUNITIES**

WHEREAS, the Alaska State Legislature has provided funding to municipalities and unincorporated communities through the Community Assistance Program (“Program”); and

WHEREAS, AS 29.60.865 and 3 AAC 180.070 require the assembly of a borough or unified municipality to adopt a resolution identifying those unincorporated communities located within their municipal boundaries that the assembly determines meet the Program eligibility criteria established under AS 29.60.865, AS 29.60.879, and 3 AAC 180.110; and

WHEREAS, the assembly approved the list of 27 unincorporated communities within the Kenai Peninsula Borough that are eligible for participation in the state’s fiscal year 2019 Program by way of resolution 2019-019; and

WHEREAS, public community meetings were held throughout the borough as well as direct mail and electronic communications to provide Program information to community residents and eligible nonprofit or tribal entities; and

WHEREAS, the assembly approved acceptance of Program funds and appropriated \$426,303 to a project contingency account through enactment of KPB Ordinance 2019-19-12; and

WHEREAS, the Program allows funds to be used for any public purpose at the discretion of the local governing body and as allowed by state statutes and borough code; and

WHEREAS, the non-profit corporations or tribal entities representing the communities of Anchor Point, Bear Creek, Clam Gulch, Cohoe, Cooper Landing, Crown Point, Diamond Ridge, Fritz Creek, Funny River, Kachemak Selo, Kalifornsky Beach, Kasilof, Lowell Point, Moose Pass, Nikiski, Nikolaevsk, Ninilchik, Port Graham, Primrose, Salamatof, Seldovia, Sterling, Voznesenka and Tyonek have submitted grant requests to fund community projects; and

WHEREAS, it is in the best interest of the borough and the communities to approve the proposed projects and to distribute community assistance funds to eligible non-profit or tribal entities;

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

SECTION 1. That the mayor is authorized to enter into grant agreements and any other documents necessary with tribal or nonprofit organizations on behalf of the qualified unincorporated communities for public projects that benefit the community as identified in the following chart:

FY19 Community Assistance Program - Recipients and Projects			
Community	Recipient	Project	Amount
Anchor Point	Anchor Point Food Pantry	Office equipment / transportation	\$5,159.81
	Anchor Point Public Library	General operations	\$5,159.80
	Anchor Point Senior Citizens, Inc.	Office and surveillance equipment	\$5,159.80
Bear Creek	Bear Creek Volunteer Fire & EMS	Preparedness & Education	\$15,479.41
Clam Gulch	Caribou Hills Cabin Hoppers	Parking lot and trail improvements	\$15,479.41
Cohoe	Kasilof Public Library	Personnel costs	\$7,739.70
	Boys & Girls Club of Kenai Peninsula	Personnel costs	\$7,739.71
Cooper Landing	Cooper Landing Community Club, Inc.	Community projects	\$15,479.41
Crown Point	Moose Pass Volunteer Fire Company	General operations	\$15,479.41
Diamond Ridge	Kachemak Ski Club, Inc.	General operations	\$4,739.71
	Homer Cycling Club	Trail grooming equipment	\$4,739.70
	Kachemak Nordic Ski Club, Inc.	Trail improvements	\$3,000
	Snomads, Inc.	Trails maintenance	\$3,000
Fritz Creek	Kachemak Nordic Ski Club, Inc.	Trail improvements/equipment	\$7,739.70
	Snomads, Inc.	Trails maintenance	\$7,739.71
Funny River	Funny River Chamber of Commerce and Community Association	General operations	\$15,479.41
Kachemak Selo	Village of Kachemak Selo Water Co., Inc.	Village roads lighting	\$15,479.41
Kalifornsky Beach	Love, Inc.	Breakfast program at K-Beach EI	\$3,869.85
	Tsalteshi Trails Association, Inc.	Trail maintenance	\$3,869.85
	Bridges Community Resource Network, Inc. on behalf of Peninsula Spay/Neuter Fund	Area Spay/Neuter campaign	\$3,869.86
	Kenai Peninsula Food Bank, Inc.	Food provisions	\$3,869.85
Kasilof	Kasilof-Cohoe Cemetery Assoc.	General operations	\$7,739.70

	Kasilof Regional Historical Assoc.	General operations	\$7,739.71
Lowell Point	Lowell Point Community Council, Inc.	General operations	\$15,479.41
Moose Pass	Moose Pass Chamber of Commerce	Tourism and economic development	\$15,479.41
Nikiski	Nikiski Senior Citizens, Inc.	Meal programs	\$7,739.71
	North Peninsula Community Council, Inc.	Community park project	\$7,739.70
Ninilchik	Ninilchik Senior Citizens, Inc.	Van transportation costs	\$3,619.85
	Ninilchik Community Library	General operations	\$3,619.85
	Ninilchik Emergency Services	General operations	\$3,619.85
	Kenai Peninsula Fair Association	General operations	\$3,619.85
	Bridges Community Resource Network, Inc. on behalf of Ninilchik Saturday Lunch Program	Student meals	\$1,000.01
Nikolaevsk	Nikolaevsk, Inc.	General operations	\$15,479.41
Port Graham	Port Graham Village Council	Safety facility expenses	\$15,479.41
Primrose	Moose Pass Volunteer Fire Company	General operations	\$15,479.41
Salamatof	AK Children's Institute for the Performing Arts, Inc.	General operations	\$15,479.41
Seldovia Village	Seldovia Village Tribe	Fire station expenses	\$15,479.41
Sterling	Sterling Community Club	General operations	\$5,159.80
	Rural Alaska Community Action Program, Inc. dba Sterling Head Start	General operations	\$5,159.81
	Sterling Area Senior Citizens	General operations	\$5,159.80
Tyonek	Boys & Girls Clubs of Southcentral Alaska	Elder and youth program	\$15,479.41
Voznesenka	Voznesenka Community Council, Inc.	General operations	\$15,479.41

SECTION 2. That each eligible non-profit or tribal entity, representing an unincorporated community, shall enter into a grant agreement with the borough prior to receipt of any community assistance program funds.

SECTION 3. This resolution shall become effective immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 3RD DAY OF DECEMBER, 2019.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Community & Fiscal Projects

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*
Brandi Harbaugh, Finance Director *BD*

FROM: Brenda Ahlberg, Community & Fiscal Projects Manager *BA*

DATE: November 15, 2019

RE: Resolution 2019-064, Authorizing Community Assistance Program Expenditures for Unincorporated Communities (Mayor)

The state legislature has approved funding to municipalities and unincorporated communities through the Community Assistance Program ("Program"). The Program requires that the borough assembly identify communities within the borough that are eligible for funds. By way of resolution 2019-019, the borough assembly approved a list of 27 unincorporated communities that are eligible to receive Program funds for fiscal year 2019/2020. Program funds in the amount of \$426,303 were accepted and appropriated by way of ordinance 2019-19-12. This proposed resolution recognizes the projects and expenditures per the non-profit or tribal entities representing their unincorporated community. Each community will receive \$15,479.41 for fiscal year 2020 public projects. A second resolution will be introduced January 7, 2020 to approve the following entities that did not meet the packet deadline: Hope, Nanwalek, and Razdolna.

The entities will be required to execute a grant agreement with the borough prior to receiving any funds. The agreement identifies the grant recipient, the amount allocated and the narrative/fiscal reporting requirements. Upon execution of the grant agreement, the entities will be reimbursed for eligible project costs. Please note that tribal entities will be required to complete a "Waiver of Sovereign Immunity," as required by the State of Alaska in addition to the grant agreement.

Brenda Ahlberg, Community & Fiscal Projects Manager will oversee the program requirements.

FINANCE DEPARTMENT ACCOUNT VERIFIED	
Acct. No.	<u>271.94910.20CAP.43011 - \$417,944.07</u>
	<u>271.94910.20CAP.61990 - \$ 8,358.93</u>
By: <u>PP</u>	Date: <u>11/20/2019</u>

Introduced by: Mayor
Date: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2019-066**

**RESOLUTION REDIRECTING PROJECT FUNDS PREVIOUSLY APPROPRIATED
FOR THE FORMER SOLDOTNA PREP BUILDING CAMPUS OPERATIONAL COSTS
TO BE UTILIZED FOR DESIGN AND FEASIBILITY ANALYSIS**

WHEREAS, on June 3, 2019 the Kenai Peninsula Borough School District (“KPBSD”) took formal action to surplus the Soldotna Prep School facility and transferred it to the Kenai Peninsula Borough (“borough”) since the KPBSD will no longer be using the facility; and

WHEREAS, on July 2, 2019, due to the facility being an asset of the borough, funds were appropriated in the amount of \$375,000 to support the annual FY2020 utilities, maintenance and insurance for the building; and

WHEREAS, as the facility is currently unoccupied, the utilities and maintenance costs for FY2020 are anticipated to be significantly less than the original estimate which was based on full occupancy and use, project funds are available; and

WHEREAS, in initial facility assessments, it has been determined that the Soldotna Elementary School facility will require significant capital expenditures to extend its useful life while the former Soldotna Prep building and campus are in much better physical condition and have a longer expected useful life remaining; and

WHEREAS, the borough is looking to contract with a consulting firm for development of a conceptual design associated with the Redoubt Elementary and Soldotna Elementary School consolidation to provide a draft educational spec; and

WHEREAS, this draft analysis will then be utilized to assess project feasibility and project costs;

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

SECTION 1. That the assembly approves an amount not to exceed \$75,000 to be redirected from utilities, maintenance and insurance for the Soldotna Prep building and campus to the design and feasibility account 100.94910.SPREP.49311 for development of a conceptual design associated with the Redoubt Elementary and Soldotna elementary consolidation project.

SECTION 2. That this resolution shall become effective upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 3RD DAY OF DECEMBER, 2019.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Purchasing & Contracting

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Borough Mayor *CP*

FROM: John Hedges, Acting Purchasing and Contracting Director *JH*
Brandi Harbaugh, Finance Director *BH*

DATE: November 21, 2019

RE: Resolution 2019-066, Redirecting Project Funds Previously Appropriated for the Former Soldotna Prep Building and Campus Operational Costs to be Utilized for Design and Feasibility Analysis (Mayor)

On June 3, 2019 the Kenai Peninsula Borough School District (KPBSD) took formal action to surplus the Soldotna Prep School facility and transferred it to the Kenai Peninsula Borough since the KPBSD will no longer be using the facility.

On July 2, 2019, because the facility is a borough asset, funds were appropriated in the amount of \$375,000 to support the annual FY2020 utilities, maintenance and insurance for the building. As the facility is currently unoccupied, the utilities and maintenance costs for FY2020 are anticipated to be significantly less than the original estimate which was based on full occupancy and use making project funds available.

In initial facility assessments, it has been determined that the Soldotna Elementary School facility will require significant capital expenditures to extend its useful life while the former Soldotna Prep building and campus are in much better physical condition and have a longer expected useful life remaining. To provide adequate analysis, the borough is looking to contract with a consulting firm for development of a conceptual design associated with the Redoubt Elementary and Soldotna Elementary School consolidation to provide a draft educational spec. This draft analysis will then be utilized to assess project feasibility and project cost.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED	
Acct. No.	<u>100.94910.SPREP.4XXXX</u>
Amount:	<u>\$75,000.00</u>
By: <i>PP</i>	Date: <u>11/20/2019</u>

Introduced by: Mayor
Date: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2019-070**

A RESOLUTION AUTHORIZING THE BOROUGH TO ENTER INTO A RESOURCE EXCHANGE AGREEMENT WITH TRIMARK EARTH RESERVE, LLC FOR THE CONSTRUCTION OF A ROAD TO AND THROUGH BOROUGH PROPERTY

- WHEREAS,** the borough owns a parcel of land, parcel identification number (PIN) 16913125, in the Anchor Point area; and
- WHEREAS,** the borough-owned parcel PIN 16913125 has dedicated but undeveloped right-of-way access to the property; and
- WHEREAS,** there are properties to the west and south of PIN 16913125 that do not have legal access; and
- WHEREAS,** the proposed resource exchange agreement (“agreement”) will enable Trimark Earth Reserve, LLC (“Trimark”) to develop the dedicated Van Seventer Avenue right-of-way and build a road through PIN 16913125 utilizing sand and gravel resources discovered within PIN 16913125 should they be available; and
- WHEREAS,** the agreement provides that if suitable material is found on PIN 16913125 then Trimark may use sand or gravel for the purpose of constructing a KPB Category III gravel road to borough road standards; and
- WHEREAS,** the agreement provides that, should Trimark need to provide its own sand and gravel resources for road construction, Trimark may remove a volume of sand and gravel resources from PIN 16913125 equal to the amount provided by Trimark, up to 10,000 cubic yards; and
- WHEREAS,** the sand and gravel resource exchange provided for in the agreement is contingent upon the discovery of suitable materials found on PIN 16913125; and
- WHEREAS,** the agreement does not obligate Trimark to build the road if suitable materials are not found on PIN 16913125; and
- WHEREAS,** the agreement benefits borough land through the construction of gravel road access to and through PIN 16913125 that complies with borough road standards; and
- WHEREAS,** if constructed, the road will benefit properties to the west and south of PIN 16913125 by providing road access to those properties; and

WHEREAS, all road improvement will remain the property of the borough upon completion; and

WHEREAS, pursuant to KPB 17.10.030(C)(3) assembly approval of the exchange shall be by resolution; and

WHEREAS, the planning commission at its regularly scheduled meeting of November 25, 2019, recommended _____;

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

SECTION 1. That the mayor is authorized to execute a resource exchange agreement with Trimark Earth Reserve, LLC on substantially the same terms as the attached agreement providing for an exchange of sand and gravel resources for the construction of a road through the following described borough lands:

The S½ and S½NW¼ of Section 15, T5S, R15W, Seward Meridian, Alaska identified as parcel identification number (PIN) 169-131-25; and,

The Van Seventer Avenue right-of-way between the Old Sterling Highway as shown on the Van Seventer Lakes Subdivision plat, filed under Plat No. 92-37, Homer Recording District, Third Judicial District, State of Alaska.

SECTION 2. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 3RD DAY OF DECEMBER, 2019.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:



Absent:

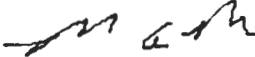
Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor 
Max Best, Planning Director 

FROM: Marcus Mueller, Land Management Officer 

DATE: November 21, 2019

RE: Resolution 2019-070, Authorizing the Borough to Enter into a Resource Exchange Agreement with Trimark Earth Reserve, LLC for the Construction of a Road to and through Borough Property (Mayor)

The borough owns a parcel of land, identified for borough assessing purposes as parcel identification number (PIN) 16913125 (hereinafter the "property"). The property has dedicated but undeveloped right-of-way access.

The proposed resource exchange agreement (the "agreement") will enable Trimark Earth Reserve, LLC (Trimark) to develop the dedicated Van Seventer Avenue right-of-way and build a road through the property utilizing sand and gravel resources discovered within the property, should such resources be discovered. The agreement provides that if suitable material is found on the property then Trimark may use the sand or gravel for the purpose of constructing a KPB Category III gravel road to borough road standards. The agreement provides that, should Trimark need to provide its own sand and gravel resources for road construction, Trimark may remove a volume of sand and gravel resources from the property equal to the amount provided by Trimark, up to 10,000 cubic yards. The sand and gravel resource exchange provided for in the agreement is contingent upon the discovery of suitable materials found on the property and does not obligate Trimark to build the road if suitable materials are not found on the property.

Your consideration of this resolution is appreciated.

RESOURCE EXCHANGE AGREEMENT
KPB 17.10.030(C)(3)

This Resource Exchange Agreement (hereinafter the “Agreement”) is entered into by and between the Kenai Peninsula Borough, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter referred to as "KPB") and Trimark Earth Reserve, LLC, whose address is 34481 North Fork Road, Anchor Point, AK 99556 (hereinafter referred to as “TRIMARK”). This is effective upon the execution date of the last party to sign the Agreement.

1. LANDS

Subject to other applicable provisions of this Agreement, and by KPB Resolution 2019-____ adopted December 3, 2019, the KPB will exchange with TRIMARK sand and gravel resources with respect to gravel road improvements upon the following described lands:

The S½ and S½NW¼ of Section 15, T5S, R15W, Seward Meridian, Alaska (hereinafter called "PROPERTY") identified as parcel identification number (PIN) 169-131-25 on Attachment A, attached hereto and incorporated by reference; and,

The Van Seventer Avenue right-of-way between the Old Sterling Highway and the above described PROPERTY (hereinafter called “VAN SEVENTER AVE”) as shown on the Van Seventer Lakes Subdivision plat, filed under Plat No. 92-37, Homer Recording District, Third Judicial District, State of Alaska.

2. RESOURCE EXCHANGE

Should suitable materials be discovered, KPB authorizes TRIMARK to utilize sand and gravel resources from an approved site on the PROPERTY for construction of a KPB Category III gravel road across the PROPERTY and/or through VAN SEVENTER AVE. All road improvement will remain the property of KPB. Construction activities must be authorized separately from this agreement. This agreement does not constitute a permit for any extraction activities. Any permits necessary for extraction of sand and gravel resources must be obtained by TRIMARK separately.

If it is necessary for TRIMARK to utilize its own sand and gravel resources for the construction of the KPB Category III gravel road across the PROPERTY and/or through

VAN SEVENTER AVE due to logistics of construction activities or the quality of available resources on the PROPERTY, KPB authorizes TRIMARK to remove a volume of sand and gravel material from the PROPERTY equal to the volume brought to the PROPERTY or the VAN SEVENTER AVE by TRIMARK for the purpose of constructing a KPB Category III gravel road through VAN SEVENTER AVE or across the PROPERTY as described within Land Use Permit LMD 19-25.

3. CONSIDERATION

The KPB and TRIMARK agree that use of sand and gravel resources from the PROPERTY for construction of the KPB Category III gravel road and the sand and gravel resource exchange described in Section 2 above mutually benefit each party. Each party agrees that any sand and gravel resources exchanged are contingent upon the discovery of suitable materials on the PROPERTY and represents the entire compensation due each party under this Agreement. Each party agrees that all sand and gravel resources utilized in the construction of a KPB Category III gravel road across the PROPERTY and/or through VAN SEVENTER AVE will remain the property of KPB.

4. QUANTITIES

The KPB authorizes TRIMARK to excavate and remove a volume of sand and gravel resources from the PROPERTY equal to the volume of resources Trimark brings to the PROPERTY and/or VAN SEVENTER AVE for the purpose of constructing a KPB Category III gravel road, not to exceed 10,000 cubic yards.

For any quantities exchanged under this agreement, TRIMARK shall generate load records with volume average truck counts or scale tickets. Tons will be converted to cubic yards on the basis of 1.6 tons per cubic yard. Records for any volume of sand and gravel material must be provided to KPB prior to removal of the equal volume from the PROPERTY.

TRIMARK shall keep dated records and delivery receipts denoting quantity and type of material removed from the PROPERTY and provide those records along with the attached certification form (Attachment B).

5. TERM

This exchange agreement is valid from December 4, 2019 through December 4, 2021, and may be extended beyond this date by mutual written agreement of both parties. Material extraction, equipment removal, and site cleanup must be completed on or before expiration of this agreement.

6. VIOLATION

Violation of agreement conditions, or the conduct of activities not authorized, will result in cancellation and may result in a claim for damages by KPB and/or other civil or criminal penalties as applicable under law. The KPB may direct that all activity under this agreement cease until a violation of the agreement conditions is corrected. Continued activity after notice to cease will be deemed a trespass. TRIMARK controls TRIMARK's activities on the PROPERTY and retains sole responsibility for ensuring that activities are conducted in a safe manner. TRIMARK shall comply with all federal, state and local requirements for its activities and shall obtain all necessary permits as may be required.

The KPB reserves the right to allow other concurrent, compatible uses or to exclude other uses of KPB-owned land on the PROPERTY. Should circumstances warrant, this Agreement may be modified or suspended, upon written notice by KPB, to protect resources, health, safety, and the environment.

7. DEFENSE AND INDEMNIFICATION

TRIMARK shall indemnify, defend, save and hold the borough, 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 TRIMARK's negligent acts or omissions, willful misconduct, or performance or failure to perform in accord with the terms of this permit in any way whatsoever. TRIMARK shall be responsible under this clause for any and all claims of any character resulting from TRIMARK or TRIMARK '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 the borough or its agents which are said to have contributed to the losses, failure, violations, or damage. However, TRIMARK shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of the borough, its agents, or employees.

TRIMARK, ITS EMPLOYEES, OFFICERS AND ASSIGNEES ARE NOT EMPLOYEES OR CONTRACTORS OF THE KENAI PENINSULA BOROUGH AND DO NOT PERFORM ANY WORK AT THE DIRECTION OR UNDER THE SUPERVISION OF THE KENAI PENINSULA BOROUGH.

8. LIABILITY INSURANCE

TRIMARK shall purchase at its own expense and maintain in force at all times during the term of this agreement the following insurance policies:

Commercial general liability and automobile insurance: Policy to include bodily injury, personal injury, and property damage with respect to the property and the ACTIVITIES

conducted by TRIMARK in which the coverage shall not be less than \$1,000,000.00 per occurrence or such higher coverage as specified by KPB. The policy purchased shall name KPB as an additional insured with respect to the ACTIVITIES conducted on the property.

Proof of insurance: TRIMARK shall deliver to KPB certificates of insurance prior to commencing operations. This insurance shall be primary and exclusive of any other insurance held by KPB. TRIMARK must also provide certificates of insurance for its Worker's Compensation policy that provides for coverage limits that meet or exceed State of Alaska minimum requirements.

9. LOCATION

TRIMARK shall be responsible for locating itself and its resource extraction activities within the boundaries of KPB designated areas open to sand and gravel extraction, as shown on Attachment A.

10. CULTURAL RESOURCES

TRIMARK shall not disturb historic or prehistoric resources. Should previously undiscovered artifacts or areas of historic, prehistoric, or archaeological importance be discovered, the site shall be protected from further disturbance and TRIMARK shall immediately cease activities and contact KPB and the State Historic Preservation Office.

11. HAZARDOUS MATERIAL

TRIMARK shall not cause or permit any hazardous material or hazardous waste to be brought upon, kept, or used in or about the PROPERTY. The defense and indemnification clause of Section 7 extends to personal injury, property damage, and economic losses resulting from hazardous material or waste disposal.

12. SUITABILITY

The KPB does not represent or guarantee the safety, suitability, or condition of the PROPERTY. The KPB does not guarantee the presence of sand and gravel resources suitable for exchange under this agreement.

13. MINING PLAN

A Mining Plan shall be submitted by TRIMARK to KPB and shall be subject to written approval by KPB. The Mining Plan identifies the location of extraction areas for resources exchanged under this agreement. The Mining Plan also identifies methods for overburden removal and disposal from the PROPERTY. The Mining Plan shall consist of cross-section survey of uplands, methodology for site clearings, stripping and stockpiling of overburden, site restoration, provisions for drainage ditching and development of access, and other

information as may be required. The Mining Plan shall be the guiding documents for all extraction activities on the PROPERTY carried out under this agreement.

14. BOND

A bond in the amount of \$10,000 shall be provided by TRIMARK as a condition of this agreement. This bond shall be in the in the KPB'S name. The bond warrants TRIMARK will faithfully observe the terms and conditions of the agreement and may be used to partially defray any costs for restoration and rehabilitation of the PROPERTY, including without limitation environmental damage and clean up. Upon satisfactory compliance with all permit stipulations and termination of this permit, any balance remaining, including any remaining accrued interest will be returned to TRIMARK. This bond is in addition to other bonding that may be required as a condition of this agreement. This bond requirement is concurrent with, and not in addition to, the bond requirement in Trimark's Land Use Permit (19-25).

15. MODIFICATIONS

The parties may mutually agree to modify the terms of the agreement. Modifications to the agreement shall be incorporated into the agreement by written amendments.

16. JURISDICTION; CHOICE OF LAW

Any civil action arising from this agreement shall be brought in the superior court for the third judicial district of the State of Alaska at Kenai. The law of the State of Alaska shall govern the rights and obligations of the parties.

17. NON-WAIVER

The failure of KPB at any time to enforce a provision of this agreement shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this agreement or any part thereof, or the right of KPB thereafter to enforce each and every protection hereof.

18. ENTIRE AGREEMENT

This exchange agreement and the documents 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 KPB and TRIMARK or their respective successors in interest. Provisions of this agreement, unless inapplicable on their face, shall be covenants constituting terms and conditions of the exchange.

19. INTERPRETATION AND ENFORCEMENT

This agreement is being executed by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The titles of sections in this agreement are not to be construed as limitations or definitions but are for identification purposes only.

20. 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.

21. NOTICES

Any notice required pertaining to the subject matter of this agreement shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following addresses:

KENAI PENINSULA BOROUGH
Planning Director
144 N. Binkley
Soldotna, AK 99669-7599

TRIMARK
Trimark Earth Reserve LLC
34481 North Fork Rd.
Anchor Point, Alaska 99556

20. COUNTERPARTS

This Agreement may be executed in two or more counterparts, all of which shall constitute one and the same instrument. Each such counterpart shall be deemed an original.

KENAI PENINSULA BOROUGH:

Trimark Earth Reserve, LLC:

By: Charlie Pierece
Its: Mayor
Date: _____

By: Cap Shafter
Its: Member
Date: _____

OLD STERLING HIGHWAY

VAN SEVENTER AVE

PIN 169-131-25



Tree Plot Sites

Areas Open to Gravel Extraction

Attachment A

Cook Inlet



Tree Plot Sites

Project Overview

Introduced by: Mayor
Date: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2019-067**

**A RESOLUTION APPROVING AN AUTOMATIC AID AGREEMENT AND
OPERATIONAL PLAN BETWEEN ANCHOR POINT FIRE AND EMERGENCY
MEDICAL SERVICE AREA AND THE CITY OF HOMER VOLUNTEER FIRE
DEPARTMENT FOR FIRE RESPONSE SERVICES**

- WHEREAS,** automatic aid agreements are a form of mutual aid agreements and their operational plans provide for automatic requests for additional resources to residents of the peninsula in the form of fire response personnel and apparatus when required; and
- WHEREAS,** automatic aid agreements and operational plans are common in the fire and emergency service professions; and
- WHEREAS,** Alaska Statute 18.70.150 provides that: “[a] city, other incorporated entity, and other fire protection groups may organize a mutual-aid program by adopting an ordinance or resolution authorizing and permitting their fire department, fire company, emergency relief squad, fire police squad, or fire patrol to go to the aid of another city, incorporated entity, or fire protection group, or territory outside of it...”; and
- WHEREAS,** this automatic aid agreement and operational plan between Anchor Point Fire & Emergency Medical Service Area (“APFEMSA”) and the City of Homer Volunteer Fire Department (“HVFD”) sets forth response areas and terms of automatic aid; and
- WHEREAS,** all associated costs are borne by each responding agency, and in this manner, costs for manpower, materials, supplies and equipment are exchanged between the agencies, ultimately resulting in service area funds being expended for the benefit of the service area; and
- WHEREAS,** for years, the operational plans have been considered as matters within the expertise of the agencies providing automatic aid and, therefore, future amendments to the operational plans have been left to the discretion of the agencies; and
- WHEREAS,** significant cost savings for fire insurance can be afforded local taxpayers through rating determinations by the Insurance Services Office (ISO) when automatic aid agreements are in effect; and

WHEREAS, this automatic aid agreement is for the provision of fire response services; and

WHEREAS, at its meeting of October 16, 2019 the Anchor Point Fire & Emergency Medical Service Area unanimously recommended approval;

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

SECTION 1. That an automatic aid agreement between APFEMSA and HVFD serves the best interests of APFEMSA and is hereby approved. The mayor is authorized to execute an automatic aid agreement substantially in the form of the attached agreement.

SECTION 2. That the operational plan substantially in the form attached hereto is hereby approved and the APFEMSA boards and chief are hereby authorized to approve amendments to the operational plan with the mayor's approval without further review by the Assembly so long as any such amendments do not conflict with the automatic aid agreement.

SECTION 3. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 3RD DAY OF DECEMBER, 2019.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

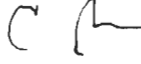

Absent:


Kenai Peninsula Borough

Anchor Point Fire & Emergency Medical Service Area

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor 
Roy Browning, Chief of Emergency Services 

FROM: Jon Marsh, Acting Chief Anchor Point Fire & Emergency 
Medical Service Area

DATE: November 21, 2019

RE: Resolution 2019-061, Approving an Automatic Aid Agreement and Operational Plan Between Anchor Point Fire & Emergency Service Area and the City of Homer Volunteer Fire Department for Fire Response Services (Mayor)

This resolution would approve the attached automatic aid agreement and initial operational plan between Anchor Point Fire & Emergency Medical Service Area and the City of Homer Volunteer Fire Department for fire response services.

Automatic aid agreements are a form of mutual aid agreements that allow for automatic requests between the agencies to assist each other with emergency responses. Assistance is through the provision of equipment and personnel as set out in the automatic aid agreement and operational plan.

The agreement is for automatic aid response of fire apparatus and personnel, and will continue in effect until modified or a party withdraws. The resolution would allow the operational plan, which details specific response procedures, to be modified in the future without assembly approval as long as changes do not conflict with the automatic aid agreement.

Your consideration is appreciated.

AGREEMENT FOR EXCHANGE OF AUTOMATIC AID

This agreement, hereinafter referred to as the Automatic Aid Agreement, dated for reference purposes on this ___ day of _____, 2019, is made by and between Kenai Peninsula Borough on behalf of Anchor Point Fire & Emergency Medical Service Area (APFEMSA) and Homer Volunteer Fire Department (HVFD).

1. Response to Automatic Aid Requests.

- a. Both parties to this agreement provide fire protection services within their jurisdictions.
- b. In return for the services to be provided by APFEMSA, HVFD agrees to provide a designated fire response, as determined by the Fire Chiefs of APFEMSA and HVFD.
- c. In return for the services to be provided by HVFD, APFEMSA agrees to provide a designated fire response, as determined by the Fire Chiefs of APFEMSA and HVFD.

2. Emergencies – Information Provided.

Upon receipt of an alarm through a 9-1-1 Call Center within the automatic aid response area of either service area, APFEMSA or HVFD will automatically dispatch its nearest available and appropriate designated fire response to that alarm. The automatic aid response areas are determined by the Fire Chiefs of APFEMSA and HVFD and set forth in the Annual Operational Plan.

3. Jurisdiction.

"Jurisdiction" is defined to be that political and geographical boundary designating the respective service areas that are party to this agreement.

4. Authority to Establish the Automatic Aid Agreement.

- a. Alaska State Statute, AS 18.70.150 states that "[a] city, other incorporated entity, and other fire protection groups may organize a mutual-aid program ..."
- b. Automatic Aid is automatic mutual aid.

5. Command Authority.

- a. When the aiding department arrives before the jurisdictional department, the aiding department will take the necessary action dictated by the situation.
- b. Upon arrival of the jurisdictional department, the operational responsibility for the situation will be immediately assumed by the jurisdictional department.
- c. The aiding department personnel will be under the direction of the officer in charge of the jurisdictional department.

- d. The aiding department will be released from the scene as soon as practical by the officer in charge of the jurisdictional department.

6. Withdrawal of Resources or Assignment Turndown.

- a. If, after arrival at the emergency scene or staging area with the resources as identified in the annual operational plan, it becomes necessary to withdraw a portion or all of such resources in order to address an emergency situation in the jurisdiction served by the requested department, such withdrawal may be initiated at the sole discretion of the officer in charge of the requested department.
- b. Such withdrawal may also be made at the sole discretion of the officer in charge of the requested department if they determine that the requested department's resources are being subjected to unnecessary or unreasonable danger.
- c. In either case, the officer in charge shall coordinate the withdrawal with the requesting department's officer in charge in a manner that avoids endangering personnel of either department.
- d. It is mutually understood and agreed that this agreement does not relieve either party from the necessity and obligation of using its own resources to provide fire protection within any part of its own jurisdiction.
- e. In the event a jurisdictional department ever fails to respond to an alarm within its jurisdiction to which an aiding department has responded, at the sole discretion of the aiding department, this agreement may be terminated by the aiding department immediately, or within a reasonable time thereafter.
- f. It is further agreed that that either party may terminate the agreement at any time by giving written notice to the other party at least thirty (30) days prior to the date of termination.

7. Responsibility for Costs & Liability.

- a. Each party desires to provide to the other a reasonable, professional and reciprocal exchange of fire response services on a day to day basis at no additional cost.
- b. Each party shall bear its own costs for responding to an automatic aid request.
- c. Each responding agency shall be responsible for its own liabilities incurred traveling to the scene, at the scene and returning to the station of origin.
- d. In rendering emergency services, each agency will bear the responsibility for its own acts and any liability incurred by such acts.

8. Annual Operational Plan.

- a. It is in the best interests of the citizens of APFEMSA and HVFD to be provided the most expeditious and professional response to suppress fires. The details as to amounts and type of assistance to be dispatched, response areas, methods of dispatching, communications, training programs and

procedures, methods of requesting aid, and the names or ranks of persons authorized to send and receive such requests, lists of personnel and resources which will be utilized, shall be developed by the Fire Chiefs of the service areas.

- b. Such details shall be recorded in an Operational Plan.
- c. The Operational Plan shall be approved and signed by the agencies, the Borough Mayor, and Homer City Manager dated and attached hereto.

9. Mutual Aid Agreement Not Affected.

It is mutually understood that this agreement will in no way affect or have any bearing on existing area mutual aid agreements.

ANCHOR POINT FIRE & EMERGENCY
MEDICAL SERVICE AREA

By: _____
Jon Marsh, Acting Chief
Date: _____

HOMER VOLUNTEER FIRE
DEPARTMENT

By: _____
Mark Kirko, Chief
Date: _____

ANCHOR POINT FIRE & EMERGENCY
MEDICAL SERVICE AREA BOARD

By: _____
Robert Craig, Chair
Date: _____

CITY OF HOMER

By: _____
Katie Koester, City Manager
Date: _____

KENAI PENINSULA BOROUGH

By: _____
Charlie Pierce, Mayor
Date: _____

ATTEST:

By: _____
Johni Blankenship, Borough Clerk

APPROVED as to Form and Legal
Sufficiency

By: _____
Patty Burley, Deputy Borough Attorney

OPERATIONAL PLAN

ATTACHMENT TO AUTOMATIC AID AGREEMENT

ANCHOR POINT FIRE & EMERGENCY MEDICAL SERVICE AREA / HOMER VOLUNTEER FIRE DEPARTMENT

This Operational Plan (Plan) between Kenai Peninsula Borough on behalf of Anchor Point Fire & Emergency Medical Service Area (APFEMSA) and Homer Volunteer Fire Department (HVFD) is for automatic aid response of fire apparatus and personnel.

The purpose of this Plan is to outline the procedures for carrying out an automatic aid response between APFEMSA and HVFD. This Plan is a guide for day-to-day operations, and may be revised, amended or altered annually by mutual consent of APFEMSA and HVFD, with approval by the KPB Mayor and Homer City Manager, for the purpose of carrying out the original intent of the Automatic Aid Agreement. In addition, this Plan may be cancelled by the borough on behalf of either entity after a 30-day written notice has been given to the other party involved in the Automatic Aid Agreement.

I. AUTOMATIC AID RESPONSE AREAS AND AMOUNT AND TYPE OF ASSISTANCE

- a. APFEMSA will automatically respond to the city limits of Homer, and will provide a tanker/pumper and four personnel on a first alarm response. Unless re-directed by the On-Scene Incident Commander (OIC), the response will be to the fire scene. If the tanker/pumper responding can only safely carry two personnel, the additional responders will accompany the tanker/pumper in a utility vehicle or other vehicle suitable for emergency response.
- b. HVFD will automatically respond to the Anchor Point Fire and Emergency Medical Service Area, and will provide a tanker/pumper and four personnel on a first alarm response. Unless re-directed by the On-Scene Incident Commander, the response will be to the fire scene. If the tanker/pumper responding can only safely carry two personnel, the additional responders will accompany the tanker/pumper in a utility vehicle or other vehicle suitable for emergency response.
- c. Cancellation may occur in small, uncomplicated incidents that may be false alarms, out on arrival, out immediately after arrival, etc.

II. TRAINING

Joint training exercises shall be carried out at least annually under the direction of the Chief or the Chief's Operations or Training Officers in each department. Classroom instruction should be available upon request by each department, and should include ICS and unified command exercises.

III. COMMUNICATIONS

- a. RADIO – Dispatch shall announce by radio that Automatic Aid is needed. This will occur without direction by either department for fire incidents. The responding agency, after notifying dispatch that they are en route, will switch to the requesting agency's dispatch channel and advise the OIC they are en route.
- b. The responding agency will communicate with the OIC unless advised otherwise.
- c. Radio traffic will be kept to a minimum.
- d. Clear text will be used at all times.

IV. FIRE INCIDENT REPORTING

Each agency shall be responsible for reporting the incident in accordance with their department and Borough policy and procedures.

V. REVISIONS

The Operational Plan shall be cooperatively developed, reviewed annually and become part of the Automatic Aid Agreement upon consent of the agencies and execution by the Borough Mayor and Homer City Manager.

ANCHOR POINT FIRE & EMERGENCY
MEDICAL SERVICE AREA

HOMER VOLUNTEER FIRE
DEPARTMENT

By: _____
Jon Marsh, Acting Chief
Date: _____

By: _____
Mark Kirko, Chief
Date: _____

ANCHOR POINT FIRE & EMERGENCY
MEDICAL SERVICE AREA BOARD

CITY OF HOMER

By: _____
Robert Craig, Chair
Date: _____

By: _____
Katie Koester, City Manager
Date: _____

KENAI PENINSULA BOROUGH

By: _____

Charlie Pierce, Mayor

Date: _____

ATTEST:

APPROVED as to Form and Legal
Sufficiency

By: _____

Johni Blankenship, Borough Clerk

By: _____

Patty Burley, Deputy Borough Attorney

Introduced by: Mayor
Date: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2019-068**

A RESOLUTION APPROVING A MUTUAL AID AGREEMENT AND OPERATIONAL PLAN BETWEEN ANCHOR POINT FIRE AND EMERGENCY MEDICAL SERVICE AREA AND THE CITY OF HOMER VOLUNTEER FIRE DEPARTMENT FOR FIRE AND EMERGENCY RESPONSE SERVICES

WHEREAS, mutual aid agreements and their operational plans provide for additional resources to residents of the Kenai Peninsula Borough in the form of fire and medical personnel when required; and

WHEREAS, mutual aid agreements and operational plans are common in the fire and emergency medical service professions; and

WHEREAS, Alaska Statute 18.70.150 provides that: “A city, other incorporated entity, and other fire protection groups may organize a mutual-aid program by adopting an ordinance or resolution authorizing and permitting their fire department, fire company, emergency relief squad, fire police squad, or fire patrol to go to the aid of another city, incorporated entity, or fire protection group, or territory outside of it;” and

WHEREAS, the Alaska Administrative Code authorizes state certified emergency medical service providers to enter into mutual aid agreements with other such providers in accordance with a municipal ordinance or resolution; and

WHEREAS, resolution 2012-12 adopted by the assembly on February 28, 2012, provided for a mutual aid agreement and initial operational plan between Anchor Point Fire and Emergency Medical Service Area (“APFEMSA”) and Homer Volunteer Fire Department (“HVFD”); and

WHEREAS, this mutual aid agreement and operational plan, which will replace the mutual aid agreement and operational plan adopted in resolution 2012-12, updates and clarifies the terms of mutual aid between APFEMSA and HVFD; and

WHEREAS, all associated costs will be borne by each responding agency, and in this manner, costs for manpower, materials, supplies and equipment are exchanged between the agencies, ultimately resulting in service area funds being expended for the benefit of the service area served; and

WHEREAS, in recent years the operational plans have been considered as matters within the expertise of the agencies providing the mutual aid and, therefore, future

amendments to the operational plans have been left to the discretion of the agencies;
and

WHEREAS, at its meeting on October 16, 2019, the Anchor Point Fire and Emergency Medical Service Area Board unanimously recommended approval;

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

SECTION 1. A mutual aid agreement between APFEMSA and HVFD is in the best interest of the service areas and is hereby approved. The mayor is authorized to execute a mutual aid agreement substantially in the form of the attached agreement.

SECTION 2. An operational plan substantially in the form of the attached plan is hereby approved and the service area boards and chiefs of APFEMSA and HVFD are hereby authorized to approve amendments to the operational plan with the mayor's approval without further review by the assembly so long as any such amendments do not conflict with the mutual aid agreement.

SECTION 3. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 3RD DAY OF DECEMBER, 2019.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Anchor Point Fire & Emergency Medical Service Area

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*
Roy Browning, Chief of Emergency Services *RB*

FROM: Jon Marsh, Acting Chief Anchor Point Fire & Emergency *JM*
Medical Service Area

DATE: November 21, 2019

RE: Resolution 2019-068, Approving a Mutual Aid Agreement and Operational Plan Between Anchor Point Fire & Emergency Medical Service Area and the City of Homer Volunteer Fire Department for Fire Response Services (Mayor)

This resolution would approve the attached mutual aid agreement and initial operational plan between Anchor Point Fire & Emergency Medical Service Area (APFEMSA) and the City of Homer Volunteer Fire Department (HVFD) for fire and emergency response services.

Mutual aid agreements allow for specific resource requests between the agencies to assist each other with emergency responses. Assistance is through the provision of resources as set out in the mutual aid agreement and operational plan.

The agreement is for mutual aid response of fire and EMS resources and personnel, and will continue in effect until modified or a party withdraws. The resolution would allow the operational plan, which details response procedures, to be modified in the future without assembly approval as long as changes do not conflict with the mutual aid agreement.

Your consideration is appreciated.

MUTUAL AID AGREEMENT
ANCHOR POINT FIRE & EMERGENCY MEDICAL SERVICE AREA / HOMER
VOLUNTEER FIRE DEPARTMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2019, by and between KENAI PENINSULA BOROUGH on behalf of ANCHOR POINT FIRE & EMERGENCY MEDICAL SERVICE AREA (APFEMSA) and the HOMER VOLUNTEER FIRE DEPARTMENT (HVFD) for the provision of fire and emergency services as follows:

1. Mutual Aid Requests.

- a. Aid may be requested by either department in the form of personnel, equipment, facilities or materials for the purpose of assisting in fighting fires or responding to other emergency incidents.
- b. Requests for aid may include direct response to the incident(s), covering assignments, or any other form of assistance needed.
- c. Requests for aid shall include as much detail as circumstance and time allow.

2. Response to Mutual Aid Request.

- a. The senior officer on duty at the requested department shall determine whether to respond in whole, in part, or to deny the request based on a determination of what level of response can be provided without unreasonably limiting the requested department's ability to meet its responsibility within its own jurisdictional area.
- b. The senior officer at the requested department shall promptly notify the requesting department of the level of response, if any, the requested department will provide.
- c. Departments that cannot meet a request should document in writing why the request could not be met.

3. Emergencies - Information Provided.

- a. Upon dispatch by the requested department, the requesting department shall at a minimum:
 - i. Give concise directions as to the location of the emergency and/or to the location at which the requested department's equipment/personnel will be staged;
 - ii. Describe the type of emergency, and provide a description of the planned utilization of the requested department's resources; and
 - iii. Provide communications channels for command functions as well as any tactical channels.

4. Command Authority.
 - a. Upon arrival of the requested department's resources at the incident scene, staging area or cover assignment location, all personnel, equipment, and materials shall remain under the command of the requested department's senior responding personnel.
 - b. The requested department's senior responding personnel shall report to and operate under the direction of the requesting department's Incident Command ("IC").
 - c. In no case shall any equipment be loaned for use to personnel who have not been trained in its use.
5. Responsibility for Costs & Liability.
 - a. Each party desires to provide to the other a reasonable, professional and reciprocal exchange of fire response services on a day to day basis at no additional cost.
 - b. Each party shall bear its own costs for responding to a mutual aid request.
 - c. Each responding department shall be responsible for its own liabilities incurred traveling to the scene, at the scene and returning to the station of origin.
 - d. In rendering emergency services, each department will bear the responsibility for its own acts and any liability incurred by such acts.
6. Mutual Aid Withdrawal or Assignment Turn Down - Circumstances.
 - a. After arrival at the incident, staging area or location of cover assignment, if it becomes necessary to withdraw a portion or all of such requested personnel, equipment or materials in order to meet an emergency situation in the jurisdictional area served by the requested department, such withdrawal may be initiated at the sole discretion of the requested department's senior personnel at the scene.
 - b. Turn down of an assignment may be made at the scene of an incident at the sole discretion of the requested department's senior personnel, if she/he determines that the requested personnel, equipment, or materials are being exposed to unnecessary or unreasonable danger, or if the requested department's personnel do not have the training or resources to accomplish the requested assignment.
 - c. The requested department's senior personnel shall coordinate a withdrawal or assignment turn down with the requesting department's IC in a manner that best mitigates consequences of a withdrawal or turn down of assignment to avoid endangering personnel and property of either department.
7. Withdrawal from Agreement.

This Agreement shall continue until either department gives thirty (30) days' notice of its withdrawal, in writing, to the other department.
8. Training.

Joint training exercises shall be carried out at least annually under the direction of the Chief or Training Officers in each department.

9. Annual Operating Plan.

- a. Annual operating plans shall be cooperatively developed by the departments and become part of this Agreement upon execution by the Chiefs and Borough Mayor.
- b. The Annual Operating Plan in effect at the time of execution of this Agreement is attached hereto and incorporated herein by reference as "Exhibit A".

ANCHOR POINT FIRE & EMERGENCY
MEDICAL SERVICE AREA

HOMER VOLUNTEER FIRE
DEPARTMENT

By: _____
Jon Marsh, Acting Chief
Date: _____

By: _____
Mark Kirko, Chief
Date: _____

ANCHOR POINT FIRE & EMERGENCY
MEDICAL SERVICE AREA BOARD

CITY OF HOMER

By: _____
Robert Craig, Chair
Date: _____

By: _____
Katie Koester, City Manager
Date: _____

KENAI PENINSULA BOROUGH

By: _____
Charlie Pierce, Mayor
Date: _____

ATTEST:

APPROVED as to Form and Legal
Sufficiency

By: _____
Johni Blankenship, Borough Clerk

By: _____
Patty Burley, Deputy Borough Attorney

OPERATIONAL PLAN (Exhibit A)

MUTUAL AID AGREEMENT

ANCHOR POINT FIRE & EMERGENCY MEDICAL SERVICE AREA / HOMER VOLUNTEER FIRE DEPARTMENT

This Operational Plan (Plan) between Kenai Peninsula Borough on behalf of Anchor Point Fire & Emergency Medical Service Area (APFEMSA) and Homer Volunteer Fire Department (HVFD) is for mutual aid response and the exchange of emergency services equipment and personnel.

The purpose of this Plan is to outline the procedures for carrying out a mutual aid response between APFEMSA and HVFD. This Plan is a guide for day-to-day operations, and may be revised, amended or altered annually by mutual consent of APFEMSA and HVFD, with approval by the KPB Mayor, for the purpose of carrying out the original intent of the mutual aid agreement. In addition, this Plan may be cancelled by the Borough (on behalf of APFEMSA) or by HVFD by giving a 30-day written notice to the other party involved in the Agreement.

I. AMOUNT AND TYPE OF ASSISTANCE

- a. For fire responses, APFEMSA will provide a tanker/engine company with a minimum crew of four for response to an incident scene, or as requested by the HVFD On-Scene Incident Commander (OIC). The HVFD OIC retains the option to direct the responding department to any other location as needed within the HVFD jurisdiction.
- b. An APFEMSA medic unit may be requested within the HVFD jurisdiction. The response will be at least a BLS unit with a minimum of two personnel. Upon dispatch, the HVFD OIC may alter the manning level of apparatus to best suit the needs of call.
- c. For fire responses, HVFD will provide a tanker/engine company with a minimum crew of four for response to an incident scene, or as requested by the APFEMSA OIC. The APFEMSA OIC retains the option to direct the responding department to any other location as needed within the APFEMSA jurisdiction.
- d. A HVFD medic unit may be requested within the APFEMSA jurisdiction. The response will be at least a BLS unit with a minimum of two personnel. Upon dispatch, the APFEMSA OIC may alter the manning level of apparatus to best suit the needs of call.
- e. Upon dispatch, the responding department will respond to the location provided by requesting department's OIC unless directed to respond to a different location.

- f. Cancellation may occur per the requesting department’s OIC as with small, uncomplicated incidents that may be false alarms, out on arrival, out immediately after arrival, no injuries, etc.

II. TRAINING

Joint training exercises shall be carried out at least annually under the direction of the Chief or the Chief’s Operations or Training Officers in each department. Classroom instruction should be available upon request by each department, and should include ICS and unified command exercises.

III. COMMUNICATIONS

- a. RADIO – Dispatch will tone out the Mutual Aid request as instructed by the requesting department’s OIC. Mutual Aid will occur as directed by either department for any incident it may be needed. The responding department, after notifying dispatch that they are en route, will switch to the requesting department’s dispatch channel and advise the OIC they are en route.
- b. The responding department will communicate with the OIC unless advised otherwise.
- c. Radio traffic will be kept to a minimum.
- d. Clear text will be used at all times.

IV. INCIDENT REPORTING

Each department shall be responsible for reporting the incident in accordance with their department policy and procedures and, in the case of APFEMSA, in accordance with Borough policy and procedures.

V. REVISIONS

The Annual Operations Plan shall be cooperatively developed, reviewed annually and become part of the Mutual Aid Agreement upon consent of the departments and execution by the Borough Mayor.

ANCHOR POINT FIRE & EMERGENCY
MEDICAL SERVICE AREA

HOMER VOLUNTEER FIRE DEPT

By: _____
Jon Marsh, Acting Chief

By: _____
Mark Kirko, Chief

Date: _____

Date: _____

ANCHOR POINT FIRE & EMERGENCY
MEDICAL SERVICE AREA BOARD

By: _____
Robert Craig, Chair
Date: _____

CITY OF HOMER

By: _____
Katie Koester City Manager
Date: _____

KENAI PENINSULA BOROUGH

By: _____
Charlie Pierce, Mayor
Date: _____

ATTEST:

By: _____
Johni Blankenship, Borough Clerk

APPROVED as to Form and Legal
Sufficiency

By: _____
Patty Burley, Deputy Borough Attorney

Introduced by: Mayor
Date: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2019-069**

**A RESOLUTION AUTHORIZING THE BOROUGH, ON BEHALF OF THE SOUTH
KENAI PENINSULA HOSPITAL SERVICE AREA, TO ENTER INTO A LONG-TERM
LEASE AGREEMENT FOR A PROFESSIONAL OFFICE BUILDING 4201 BARTLETT
STREET, HOMER, ALASKA**

WHEREAS, South Peninsula Hospital is subleased and operated by South Peninsula Hospital, Inc. (“SPH, Inc.”) under the Operating Agreement for South Peninsula Hospital effective January 1, 2020; and

WHEREAS, the borough, on behalf of the South Kenai Peninsula Hospital Service Area, holds two leases within the building located at 4201 Bartlett Street, known as the Kachemak Bay Professional Building; and

WHEREAS, the remaining space of this building has become available for rent and the parties are interested in renting the newly available space along with consolidating all existing leases into a single long-term lease agreement; and

WHEREAS, the proposed new leased area contains 11,000 square feet of building space for a 10-year initial term with two 10-year renewal options and a first right-of-refusal to purchase the land and building; and

WHEREAS, this resolution does not authorize the purchase of the leased property, nor does the execution of the lease obligate the borough to purchase the leased property; and

WHEREAS, pursuant to the Operating Agreement the borough may enter into the leases on behalf of the South Kenai Peninsula Hospital Service Area and subsequently sublease them to SPH, Inc.; and

WHEREAS, pursuant to KPB 17.10.040, assembly approval of the acquisition of interests in lands shall be by resolution upon receipt of the planning commission’s recommendation; and

WHEREAS, the SPH, Inc. Board at its regularly scheduled meeting of October 23, 2019, recommended assembly approval of the lease; and

WHEREAS, the South Kenai Peninsula Hospital Service Area Board at its regularly scheduled meeting of November 14, 2019, recommended approval of this resolution; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of November 25, 2019, recommended_____;

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

SECTION 1. That the borough is authorized to lease from Prodigy Development, the approximately 11,000 sq. ft. Kachemak Bay Professional Building, 4201 Bartlett Street, Homer, Alaska 99603, situated within the property described as follows:

Lot 1-A, Block 9, Fairview Subdivision 2003 Addition, as shown on Plat No. 2004-101, Homer Recording District, Third Judicial District, State of Alaska.

SECTION 2. That the lease term shall be 10-years with two 10-year renewal options. Initial rental rate shall be \$22,000 per month (\$264,000.00 per year) during the first two years of the lease and shall be annually adjusted by 2 percent in years three through 10, and adjusted 1 percent in years 11-30.

SECTION 3. That the lease shall contain a first right-of-refusal to purchase, subject to separate authorizations, including those required under KPB 17.10 and the appropriation and availability of funds.

SECTION 4. The purpose of this acquisition is to provide hospital office space and other hospital related uses.

SECTION 5. That pursuant to KPB 17.10.080(C), no land classification is proposed for this rental property.

SECTION 6. That the mayor is authorized to execute a lease agreement as described in this resolution and substantially in the form of the lease agreement presented herewith, and to make any other agreements deemed necessary in accordance with this resolution. If the Operating Agreement terminates during the term of the lease without a new similar agreement in place, then the borough may sublet the property to another entity subject to approval of the owner. Additionally, the lease term shall be subject to the appropriation and availability of funds.

SECTION 7. That expenditures for the lease will be paid by SPH, Inc. for the term of the Operating Agreement, including any extension or renewal thereof and any subsequent similar agreement with the borough, or until the lease is terminated, whichever occurs first.

SECTION 8. That this resolution takes effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS
3RD DAY OF DECEMBER, 2019.**

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*
Max Best, Planning Director *MB*

FROM: Marcus Mueller, Land Management Officer *mm*

DATE: November 21, 2019

RE: Resolution 2019-069, Authorizing the Borough, on Behalf of the South Kenai Peninsula Hospital Service Area, to Enter into a Long-Term Lease Agreement for a Professional Office Building at 4201 Bartlett Street, Homer, Alaska (Mayor)

On behalf of South Peninsula Hospital, Inc. (SPH, Inc.), the borough has leased medical office space at the Kachemak Bay Professional Building located at 4201 Bartlett Street in Homer. A copy of the proposed lease is attached.

This resolution would authorize a lease of the entire property located at 4201 Bartlett Street, commonly known as the Kachemak Bay Professional Building. The leased property is an 11,000 square foot medical-professional building on 1.2 acres and includes a parking area. The lease term is a 10-year initial term with the possibility of two 10-year renewal terms. Rent begins at \$2.00 per square foot per month plus utilities, upkeep, taxes, and insurance. The lease will allow SPH, Inc. to occupy all of the Kachemak Bay Professional Building.

Additionally, the lease agreement authorized by this resolution will be included in the Operating Agreement between the borough and SPH, Inc. Per the terms of the agreement, SPH, Inc. will be directly responsible for the costs of this lease.

Your consideration of this resolution is appreciated.

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is entered by and between PRODIGY DEVELOPMENT, LLC, an Alaska limited liability company, whose address is PO Box 2483, Homer, AK 99603 ("Lessor"), and KENAI PENINSULA BOROUGH, an Alaska Municipal Corporation, whose address is 144 N. Binkley St., Soldotna, AK 99669, on behalf of SOUTH KENAI PENINSULA HOSPITAL SERVICE AREA ("SKPHSA"), hereinafter referred to as either "KPB" or "Lessee," and SOUTH PENINSULA HOSPITAL, INC., whose address is 4300 Bartlett St., Homer, Alaska 99603, a not-for-profit Alaska corporation, hereinafter referred to as "Sublessee."

1. DEFINITIONS AND TERMS

- 1.1 Lessor:** PRODIGY DEVELOPMENT, LLC
- 1.2 Lessee:** KENAI PENINSULA BOROUGH
- 1.3 Sublessee:** SOUTH PENINSULA HOSPITAL, INC.

1.4 Term: Ten (10) Years

1.5 Commencement Date: January 1, 2020

1.6 Expiration Date: December 31, 2029

1.7 Building:
Kachemak Bay Professional Building
4201 Bartlett Street
Homer, Alaska 99603

1.8 Rent: As defined in Sections 4.1 and 4.2

1.9 Use: The Leased Premises will be used by Sublessee SOUTH PENINSULA HOSPITAL, INC., an Alaska non-profit corporation, and any additional Lessee's permitted Sublessees, for the operation and conduct of medical and business offices, storage, and other hospital related uses.

1.10 Definitions:

a. KPB: The Kenai Peninsula Borough, a municipal corporation.

b. KPB Assembly: The Assembly of the Kenai Peninsula Borough.

c. SKPHSA: The South Kenai Peninsula Hospital Service Area.

2. **PREMISES**

2.1 **Leased Premises.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the following described Leased Premises:

(a) The entirety of the Kachemak Bay Professional Building together with the right to use and manage the exterior parking areas and grounds all together being the real property described as follows:

LOT 1-A, BLOCK 9, Fairview Subdivision 2003 Addition, T 6S R 13W Sec. 18 Seward Meridian HM 2004101, located in the Homer Recording District, Third Judicial District, State of Alaska.

Street address: 4201 Bartlett Street, Homer, Alaska 99603

Assessor's Parcel No.: 17505509

Approximate building area: 11,000 sq. ft.

Hereinafter referred to as "Leased Premises;"

(b) Together with the exclusive right to use the exterior grounds, driveways and other access for ingress and egress, and the parking areas provided by the Lessor, its successors, or assigns, in the designated areas for the parking of automobiles, which are contiguous to the building in which the leased premises are located.

(c) Leased premises are delivered "as-is" and are accepted in its current condition.

3. **TERM, RENEWALS, HOLDING OVER, AND SURRENDER OF PREMISES**

3.1 **Commencement of Term; Term.** The Term shall begin on the Commencement Date, January 1, 2020. The Term shall be for a period of ten (10) years from the Commencement Date, ending on December 31, 2029, subject to §3.1(a), §3.1(b), §3.2, and to §14 RIGHT OF FIRST REFUSAL below.

(a) **Early Termination.** Lessee may terminate the Lease without any cause or reason on ninety (90) days' prior written notice of termination delivered to the address set forth in Section 15.4 below. Termination is effective immediately upon expiration of the ninety days' notice period

without penalty.

- (b) **Subject to KPB Assembly Approval and Annual Appropriation of Funds.** This Lease is subject to KPB Assembly approval and to the annual appropriation and availability of funds. In the event that the KPB Assembly fails to approve this Lease or fails to annually appropriate funds for the obligations due under this Lease, then the Borough may provide ninety (90) days' written notice of termination and this Lease will terminate per Section 3.1(a).
- (c) **Sublessee's Payment of Lessee's Expenditures.** Upon Lessee's sublease of the Leased Premises to Sublessee pursuant to Section 9, the Lessee's expenditures for this lease will be paid by Sublessee for the remaining term of the Sublease and Operating Agreement between the Lessee and Sublessee, and for any extension or renewal of the term of the Sublease and Operating Agreement.

3.2 Renewal Options. Provided that this Lease is in full force and effect and Lessee is not in default hereunder, Lessee shall have the right and option to renew this Lease for two (2) successive Additional Terms, with each individual Additional Term being a period of ten (10) years each, and under the same terms, conditions, and provisions herein for the original Term of the Lease, except for Rent. The renewal options to be effective must be exercised by the Lessee by written notice to Lessor in the form and manner provided herein at least six (6) months prior to the commencement date of the renewal term.

3.3 Holding Over. Any holding over after the expiration of the term of this Lease without a signed lease agreement shall be construed to be a tenancy from month to month, at the monthly rental applicable to the rent due for the last month under this Lease Agreement, and may not exceed six (6) months' holdover period without execution of an extension, renewal, or replacement lease agreement. The provisions of this Section do not exclude Lessor's rights of reentry or any other right hereunder.

3.4 Surrender of Premises. Upon the expiration of or termination of this Lease, the Lessee and Sublessee shall remove all of their property from the leased premises, except plumbing and other permanent fixtures and leasehold renovations, alterations, and

improvements which may have been installed by the Lessee or Sublessee and except as otherwise provided in this Lease, and shall repair any damage caused by removal of any property which it is permitted hereunder to remove, and shall surrender the leased premises to the Lessor "broom clean" in as good order and condition as they were upon Sublessee commencing business, ordinary wear and tear and loss by fire or other unavoidable casualty excepted. Any property left on the premises after the expiration or other termination of this Lease may be disposed of by Lessor in any manner and without any liability to the Lessee or Sublessee.

- (a) Absent a request to renew, during the final four (4) months of the Lease's Term, Lessor shall be permitted to show prospective tenants the leased premises upon giving the Lessee and its Sublessee at least twenty-four (24) hours' prior notice.

4. RENT; OTHER FINANCIAL OBLIGATIONS, DEPOSIT; COMPLIANCE

4.1 Rent for Premises.

- (a) **Rent for Years 1 and 2.** Commencing on the Commencement Date and during the years one (1) and two (2) of the Term of this Lease, Lessee shall pay the Annual Rent at fair market value for the Leased Premises in monthly installments, as follows:

<u>Time Period</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>
Years 1 and 2	\$22,000	\$264,000

- (b) **Rent for Years 3 through 10.** Commencing on the first day of the third (3rd) year through the tenth (10th) year of the Term of this Lease, Lessee shall pay the Annual Rent at fair market value, adjusted by 2% annually, for the Leased Premises in monthly installments, as follows:

<u>Time Period</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>
Years 3 through 10	Prior Year Monthly Rent x 1.02	Prior Year Rent x 1.02
Year 3	\$22,440	\$269,280
Year 4	\$22,888.80	\$274,665.60
Year 5	\$23,346.58	\$280,158.91
Year 6	\$23,813.51	\$285,762.09
Year 7	\$24,289.78	\$291,477.33

Year 8	\$24,775.57	\$297,306.88
Year 9	\$25,271.08	\$303,253.02
Year 10	\$25,776.51	\$309,318.08

- (c) **Payment Terms** Rent shall be paid monthly in advance, on the first (1st) day of each month, without notice or demand, to Lessor at the address of Lessor, or at such other place as Lessor shall from time to time designate in writing. In the event the Lessee fails to pay any monthly installment of rent within twenty (20) days of the due date of such installment, Lessee shall pay, in addition to such rent due, a late charge of \$50.00. Furthermore, Lessee shall pay interest at a rate of 1.0% per month on all delinquent unpaid rent after 30 days of the day the monthly installment was due. Such interest shall be calculated from the due date of the installment until the date received by Lessor.
- (d) **Renewal Rent.** For each renewal option exercised under §3.2 above, the Annual Rent, and the corresponding Monthly Rent, shall be adjusted 1% annually.
- (e) Sublessee shall perform Lessee’s obligation to pay rent to Lessor.

4.2 OTHER FINANCIAL OBLIGATIONS.

- a) Utilities. Lessee agrees to be responsible for and to pay for the cost of electricity, heat, power, fuel, water, sewer and other utility services for the term of this lease. Lessor remains responsible for and liable to pay for all other costs. Lessee shall be responsible for all lot maintenance, landscaping, lawn maintenance, including snow removal and ice sanding, at Lessee's expense.
- b) Janitorial Services. Lessee agrees to keep all rubbish and garbage in containers while on the leased premises and shall dispose of all of such rubbish and garbage in the Dumpster or other containers provided by Lessee. The Lessee shall perform and provide for all of Lessee's janitorial services required inside of the leased premises
- c) Taxes. Lessee is responsible for payment of taxes, if any, on Lessee's business operations. and for payment of Kenai Peninsula Borough and City of Homer real property taxes on the premises. Lessee is not responsible for any other tax related to either Lessor's businesses or property.
- d) Sublessee may perform Lessee’s obligation to pay Lessee’s financial obligations to Lessor.

4.3 Security Deposit. The Lessee shall deposit with the Lessor upon execution of this Lease the sum of \$2,000.00 as security for the payment of rent provided herein and for the observance and performance by Lessee or Sublessee of all of the terms, provisions, and conditions of this Lease on its part to be kept and performed; and further to indemnify the Lessor for any loss, costs, fees and expenses which the Lessor may incur by reason of any default by the Lessee. The Lessor shall repay to the Lessee the security deposit or any balance thereof upon the termination or expiration of the Term of this Lease or any extension thereof, either (1) by crediting the same on account of payment of the rent for the last month of the Lease or additional term, as the case may be; or (2) refunding the security deposit to Lessee, net or less any loss, costs, fees and expenses which the Lessor may incur by reason of any default by the Lessee. In the event of any failure in the payment of rent or other sum, or of any default by the Lessee in the performance of the terms, provisions, and conditions of this Lease, the Lessor shall have the right to apply the security deposit against any loss, costs, fees, and expenses caused thereby. The security deposit shall bear no interest.

- (a) Sublessee may perform Lessee's obligation to pay the security deposit to Lessor.
- (b) Lessor & Lessee acknowledge the \$2,000 Security is in deposit as carry-over from preceding leases between the parties which were superseded by this lease.

4.4 Compliance with Anti-Kickback & Stark Laws Requirements. The purpose of this Lease is to provide Lessee and Sublessee with Leased Premises that are suitable for the Permitted Use as provided in Sections 1.9 and 6. The volume or value of any business generated between these parties and Sublessee was not considered, and is not a factor, in determining the fair market value of the annual rental of the Leased Premises for the term of this Lease, and for any Additional Terms. Except as specifically required by duties hereunder, nothing in this Agreement shall be construed to require Lessor, or any Physician, any other health care provider, or any

provider of Designated Health Services retained or employed by Lessor (if any), or who has a financial interest in or financial arrangement with Lessor, to refer patients to South Peninsula Hospital (“Hospital”), to the Medical Clinic or Imaging Service also located in the Building, or to utilize Hospital, Medical Clinic, or Imaging Service to provide inpatient, outpatient or other services to patients, or otherwise generate business for Lessee or for Sublessee or for any of their Medical Facilities or programs, or for Lessee or Sublessee to generate business for Lessor. Notwithstanding any unanticipated effect of any of the provisions herein, the parties intend to comply with 42 U.S.C. §1320a-7b(b), commonly known as the federal Anti-Kickback Statute, 42 U.S.C. §1395nn, commonly known as Stark II, Stark III (“Stark Laws”), and any federal or state law provision governing fraud and abuse or self-referrals under the Medicare or Medicaid programs, or any other federal or state health care program, as such provisions may be amended from time to time. The parties intend that this Lease comply with the conditions for meeting the Anti-Kickback Statute “space rental” safe harbor set forth in 42 C.F.R. §1001.952(b), and comply with the requirements of the “rental of office space” exception to the Stark Laws at 42 CFR §411.357(a), as such regulations may be amended. This Lease shall be construed in a manner consistent with compliance with such statutes and regulations, and the parties agree to take such actions as are necessary to construe and administer this Lease consistent with compliance. In the event any court or administrative agency of competent jurisdiction determines that this Lease violates any of such statutes or regulations, or that the compensation hereunder exceeds reasonable compensation for purposes of any limitations applicable to tax-exempt entities, then the parties agree to take such actions as are necessary to amend this Lease for compliance with the applicable statutes or regulations, as provided herein.

5. LEASEHOLD IMPROVEMENTS

- 5.1 Structural Additions, Alterations, or Improvements to Leased Premises. Lessee shall manage and determine all space use and function, all parking, all buildout or modification of space, however Lessee and Sublessee shall not make any structural alterations, additions, or improvements in or to the Leased Premises without first obtaining the express written consent of the Lessor. Any

such structural alterations, additions, or improvements approved by Lessor shall be made at Lessee's or Sublessee's expense, except as may be otherwise agreed by those parties in writing; and Lessor may require, as a condition for approval, that Lessee or Sublessee deposit with Lessor sufficient security to protect Lessor from any liens for materials or labor supplied to the Leased Premises and require Lessor or Sublessee to furnish proof prior to the commencement of any work on the premises that the persons employed in connection with the work have workers' compensation insurance and liability insurance. Non-structural alterations or changes in the Leased Premises are addressed in §8.2 below.

6. **USE AND OTHER COMPLIANCE WITH LAWS**

6.1 **General Use and Compliance with Laws.** Lessee certifies that it or its Sublessee shall use the Leased Premises for the operation and conduct of business offices, storage, and an outpatient clinic for the benefit of KPBA and the SKPHSA as defined as the Permitted Use above, and all activities incident thereto, and for no other purposes whatsoever without the written consent of Lessor. Lessor certifies that, to the best of its knowledge, the Leased Premises, Building, and Land, as of the date of delivery of possession of the Leased Premises to Lessee, are or will be in compliance with all applicable laws, ordinances, rules, regulations and orders of any governmental authority, including but not limited to those governing zoning, health, safety and occupational hazards and pollution and environmental control, and with the Americans with Disabilities Act, and with all recorded declarations, restrictions and covenants applicable to the Land. Subject to such certification, Lessee and its Sublessee shall, at their sole cost and expense, comply with all applicable laws and regulations, specifically including, but not limited to, the generation, handling, storage, and disposal of biohazardous medical waste materials and other materials and matter commonly used in the health care industry.

6.2 **Condition of Leased Premises.** The continued possession by Lessee's and its Sublessee's shall be conclusive evidence against Lessee and its Sublessee that the Leased Premises were then in good, safe, and clean order and satisfactory condition. No promise of Lessor to alter, remodel, improve, repair (taking into account the

specific health care nature of the Leased Premises), decorate or clean the Leased Premises or any part thereof, and no representation respecting the condition of the Leased Premises or the Building has been made to Lessee and Sublessee by Lessor, except as made herein.

7. UTILITIES, MAINTENANCE AND REPAIRS

7.1 Utilities. Lessee or Sublessee shall pay for utilities metered to the leased premises, including electricity, natural gas, telecommunications, water and sewer. Non-metered utilities shall be paid by the Lessor and reimbursed by the Lessee.

7.2 Maintenance, Repair and Replacement.

(a) Lessor Responsibilities. Lessor shall be responsible for the following:

(1) Lessor shall keep, maintain, repair and replace as necessary or appropriate the foundations, roof, and structural portions of the Building in good operating condition and in compliance with all requirements of applicable governmental authorities. Lessor shall keep the exterior and interior of the Building in good repair in a condition comparable to other medical office space in the City of Homer.

(2) All equipment, excluding Lessee's and Sublessee's own equipment, including but not limited to heating, air conditioning, electric, water and plumbing equipment and facilities in the Premises, shall be maintained and kept in proper working condition by Lessor at Lessor's sole expense, except that the cost of any repairs to the plumbing and heating lines necessitated by the action of the Lessee or its Sublessee, agents or employees shall be at the expense of the Lessee and Sublessee. Lessor will provide such maintenance and repairs with reasonable promptness and Lessee and Sublessee are prohibited from performing any maintenance or repairs to any of the aforesaid equipment and from hiring any contractors or persons to repair the same without the prior written approval of Lessor except in the case of emergency.

(3) Lessor will maintain in a neat and sightly condition the exterior grounds, parking areas, ingress and egress, and shall provide lawn and landscape maintenance, snow removal and ice sanding, trash

removal, parking lot maintenance and repair, and other requisite services as needed to maintain the aesthetic appearance of the Building in a manner comparable to other medical office complexes in the City of Homer.

- (4) Lessor shall not be required to make any such repairs occasioned by an act or negligence of Lessee, or Sublessee, their agents, employees, invitees, or licensees, except to the extent that Lessor is reimbursed therefore under any policy of insurance permitting waiver of subrogation in advance of loss.

(b) **Lessee Responsibilities.** Lessee will be responsible for the following:

- (1) Lessee shall maintain the Leased Premises in a good, neat and clean condition, including but not limited to all doors, door frames, windows and tenant improvements. Lessee shall comply with all requirements of law, ordinance, health officer, fire marshal or building inspector regarding its use of the Leased Premises. Lessee shall permit no waste, damage, or injury to the Leased Premises and shall, at its own cost and expense, replace any plate or window glass which may become broken in its Suites in the Leased Premises. Lessee shall be responsible for its own maintenance, upkeep, and fix-its including lightbulb replacement, toilet maintenance, locks, hot-cold balancing, and sidewalk servicing.
- (2) Lessee shall keep the Leased Premises and exterior grounds, driveways and parking areas free and clean from rubbish, trash, and garbage at all times; shall provide routine maintenance for the Leased Premises; and shall keep all rubbish, trash and garbage within the Building in containers, and shall dispose of all rubbish, trash and garbage in dumpsters or other containers specified by the Lessor.
- (3) Lessee shall, in all matters, act in compliance and conformity with all Federal, State, and local laws and regulations and in conformity with generally accepted health and safety standards. Any and all hazardous medical wastes materials and other materials and matter commonly used in the health care industry shall be generated, dealt with, handled, stored, and disposed of by Sublessee at Sublessee's sole cost and expense in conformity with said Federal, State, and

local laws and regulations and in conformity with generally accepted health and safety standards, and shall not be disposed of in any respect in any area of the property. To the extent permitted by law and to the extent funds have been appropriated by the Assembly for indemnification of Lessor, Lessee agrees to indemnify, defend, and hold harmless Lessor, its Managing Agent, and any of their officers, directors, employees, agents, licensees, or invitees from and against any and all claims, demands, liabilities, suits, actions, judgments, losses, costs, damages, and any expenses, including, without limitation, attorneys' fees, arising or resulting from, or suffered, sustained or incurred by said parties with respect to violation of any Federal, State, and local laws and regulations or violation of any generally accepted health and safety standards.

- (4) Lessee may assign by sublease the Lessee's Responsibilities to the Sublessee, including the Lessor's indemnity obligation, and Sublessee may perform Lessee's Responsibilities, including the obligation to indemnify Lessor.

7.3 Inspection of Premises and Access. Lessor, at reasonable times with the consent of Lessee or its Sublessee (excepting emergencies, as to which no consent shall be required), which consent shall not be unreasonably withheld, may enter the Leased Premises to complete improvements undertaken by Lessor on the Leased Premises or Building, to inspect, clean, maintain or repair the same, and for other reasonable purposes. Lessor shall give Lessee or its Sublessee at least twenty four (24) hours' notice prior to any entry into the Leased Premises (excepting emergencies, as to which such notice, if any, as is reasonable under the circumstances shall be given, and Lessor's entry shall be solely for the purpose of taking necessary actions to remedy and/or repair the emergency situation), and in no event shall Lessor unreasonably interfere with access to or use of the Leased Premises or Parking Area by Lessee, its Sublessee, its agents, employees or invitees.

8. **FIXTURES AND NON-STRUCTURAL ALTERATIONS; MECHANICS LIENS**

8.1 Fixtures. Lessee and its Sublessee may install any trade fixtures, equipment, furnishings, furniture and other fixtures or removable personal property in the Leased Premises, provided, that the same are installed and removed without permanent or structural damage to the Building. All such property shall remain Lessee's or Sublessee's property and shall be removed by Lessee and its Sublessee upon expiration or termination of this Lease.

8.2 Other Non-Structural Alterations. Lessee or Sublessee may make other non-structural alterations or changes in or to the Leased Premises with prior notification to and written consent of the Lessor, provided that Lessor may require Lessee or Sublessee to remove them upon expiration or termination of this Lease, at Lessee's or Sublessee's expense and without damage to the Leased Premises. Except as may be otherwise provided in §5.1 above, Lessee and its Sublessee shall not make alterations or changes to the Leased Premises affecting the structure of the Building without Lessor's prior written consent.

8.3 Mechanic's Liens. No person shall be entitled to any lien upon the Leased Premises or the Land, in whole or in part, or any interest or estate in any such property, by reason of any work, labor, services or material claimed to have been performed or furnished to or for Lessee or Sublessee, or otherwise on account of any act or failure to act on the part of Lessee or its Sublessee, and Lessee and its Sublessee shall neither cause nor permit the filing of any such lien. If any such lien claim or notice shall be filed, Lessee or its Sublessee shall cause the same to be released or provide other satisfactory security to Lessor with respect to the same (which may be in the form of a bond, title insurance endorsement or other assurance reasonably satisfactory to Lessor) within sixty (60) days; and if not so released or secured, Lessor, at its option, may pay up to the full amount of such lien claim to cause its release, and such amount, together with interest thereon from the date of payment at a rate of 1.0% per month, shall be deemed due and payable by Lessee immediately. Nothing in this Lease shall be deemed or construed to constitute consent to or request to any party for the performance of any labor or services or the furnishing of any

materials for the improvement, alteration or repairing of the Leased Premises; nor as giving Lessee and its Sublessee the right or authority to contract for, authorize or permit the performance of any labor or services or the furnishing of any material that would permit the attaching of a valid mechanic's lien.

9. ASSIGNMENT AND SUBLETTING

Lessor hereby approves subletting this Lease to SOUTH PENINSULA HOSPITAL, INC. ("Sublessee") under the terms and conditions of this Lease and of the Operating Agreement between Lessee and Sublessee, as may be amended from time to time. Except as previously approved herein, Lessee shall not assign, mortgage, encumber or otherwise transfer this Lease or its interests hereunder, in whole or in part, or sublet the Leased Premises in whole or in part, without the prior written consent of Lessor as to both the terms of such assignment or sublease and the identity of such assignee or Sublessee, which consent will not be unreasonably withheld. The Lessor and the Lessee also agree that if the Operating Agreement terminates without renewal before this Lease Agreement terminates, then the Lessee may sublease the Leased Premises to another entity with the written consent of the Lessor, which consent shall not be unreasonably withheld. In the event Lessor consents to any such transaction, Lessee shall remain fully liable to perform all the obligations of Lessee under this Lease, including but not limited to payment of Rent, unless the Lessor has also consented in writing to the release of Lessee from this Lease.

10. INSURANCE AND INDEMNIFICATION

10.1 Lessor's Insurance. During the Term, and any Additional Terms, Lessor, at its sole cost and expense, agrees to keep the Land, Building, and improvements (including the Leased Premises) insured against loss or damage by fire or other casualty insurable under standard fire and extended coverage insurance in an amount equal to the full current replacement cost of said building(s).

10.1 Lessee's Insurance.

(a) Lessee shall, at its own cost and expense, keep and maintain in full force during the Term, and any Additional Terms, the following:

(1) Comprehensive general liability insurance, insuring Lessee's activities in or about the Leased Premises against loss, damage or liability for personal injury or death of any person or loss or damages to property occurring in, upon or about the Leased Premises covering bodily injury in the amounts of not less than One Million Dollars

(\$1,000,000) per person and not less than One Million Dollars (\$1,000,000) per claim or occurrence, and covering property damage in the amount of not less than Two Million Dollars (\$2,000,000), in aggregate or combined single limit coverage. Lessor shall be named as an additional insured on such policy or policies of insurance; and

- (2) Insurance coverage for Lessee's or Sublessee's fixtures, furniture, equipment, machinery, goods, supplies, contents, and other personal property on the Leased Premises or used in connection with Lessee's business.
- (b) Lessee may assign to Sublessee the Lessor's insurance obligation, and Sublessee may perform Lessee's obligation to provide insurance.

10.2 Indemnification of Lessor.

- (a) To the extent permitted by law and subject to Assembly appropriation of funds for indemnification, Lessee shall indemnify, defend and save harmless Lessor from and against any and all claims, demands, causes of action, law suits, judgments, losses, and liabilities for personal injury, death or property damage, and from and against all expenses incident thereto or incurred by Lessor as a result thereof, including attorney's fees and costs, that arise out of or relate to Lessee's use and occupation of the Premises during the Term or any Additional Terms of this Lease. Notwithstanding the preceding sentence, however, Lessee shall not be required to indemnify, defend or save harmless Lessor from or against any claim, demand, cause of action, law suit, judgments, loss, and liability to the extent it results from or is alleged to result from any negligent or intentional conduct of Lessor, Lessor's agents, employees or independent contractors.
- (b) Lessee may assign to Sublessee the Lessor's indemnity obligation, and Sublessee may perform Lessee's obligation to indemnify Lessor.
- (c) To the extent permitted by law, Lessor shall indemnify, defend and save harmless Lessee from and against any and all claims, demands, causes of action, lawsuits, judgments, losses, and liabilities for personal injury, death or property damage, and from and against all expenses incident thereto or incurred by Lessee as a result thereof, including attorney's fees and costs, that arise out of or relate to Lessor's use and occupation of the Premises during the Term or any Additional Terms of the Lease.

Notwithstanding the preceding sentence, however, Lessor shall not be required to indemnify, defend or save harmless Lessee from or against any claim, demand, cause of action, lawsuit, judgements, loss, or liability to the extent it results from any negligent or intentional conduct of Lessee or Sublessee, their agents, employees, or independent contractors.

10.3 Insurance Certificates. At the Lessor's request, Lessee or Sublessee shall provide Lessor with a certificate or certificates of insurance evidencing the insurance coverage required under Section 10.3, and Lessee or Sublessee shall promptly notify the Lessor of any cancellation, reduction, or other material change in the amount or scope of any coverage required hereunder.

11. DAMAGE AND DESTRUCTION

11.1 Damage and Restoration. If either the Leased Premises or Building is damaged or destroyed to the extent that Lessor or Lessee reasonably determines that it cannot, with reasonable diligence, be fully repaired or restored by Lessor within one hundred eighty (180) days after the date of such damage or destruction, either Lessor or Lessee may terminate this Lease. Lessor or Lessee shall notify the other party of any such determination in writing, within thirty (30) days after the date of such damage or destruction. If Lessor so determines that the Building can be fully repaired or restored within the one hundred eighty (180) day period, or if Lessor so determines to the contrary but neither party terminates this Lease, then this Lease shall remain in full force and effect and Lessor shall, to the extent insurance proceeds are not required to be applied to mortgage indebtedness on the Building or Land, diligently repair or rebuild the Leased Premises and/or Building to return such improvements to the condition in which it/they existed immediately prior to such damage or destruction, as soon as possible and within the maximum period of one hundred eighty (180) days, if applicable.

11.2 Rent Abatement. Rent due and payable hereunder shall be abated proportionately during any period in which, by reason of any such damage or destruction to the Leased Premises or the Building, the operation of Lessee's business in the Leased Premises experiences substantial interference, and that continuation of all or part of

Lessee's business in the Leased Premises is not practical pending reconstruction. In such event, the Rent payable hereunder, or an equitable proportion thereof in the event Lessee continues to conduct business in the Leased Premises, shall abate from the date of damage or destruction until Lessee is able to conduct its full business operations in the Leased Premises.

12. EMINENT DOMAIN

12.1 Permanent Taking. In the event of a taking by an entity of competent jurisdiction of all or materially all of the Leased Premises, or the determination by the Lessor that all or materially all of the Leased Premises is necessary for a public purpose, this Lease shall terminate on the earlier of vesting of title in, or the taking of possession by condemner, or the written determination of the Lessor.

12.2 Partial Condemnation. If less than materially all of the Leased Premises is taken or if the Lessor determines that it needs less than all of the Leased Premises for a public purpose (herein called a "partial taking") but such partial condemnation renders the Leased Premises unusable for the full and normal conduct of the business of Lessee, or constitutes a substantial portion of the Building, as reasonably determined by Lessor or Lessee, then the Lease shall terminate as of the date of the title vesting in such proceeding or conveyance in lieu of any proceeding and Rent shall be prorated to the date of termination. Otherwise, Lessor shall promptly restore the Leased Premises to a condition comparable to its condition immediately prior to such partial Condemnation, less the portion thereof lost in such partial Condemnation, and this Lease shall continue in full force and effect, except that after the date of such title vesting, the Rent shall be proportionately reduced to reflect the percentage of the Leased Premises, Building and/or the Parking Area Condemned.

12.3 Notices and Award. Lessor shall, immediately upon receipt of notice in connection with any condemnation or potential condemnation, give Lessee notice in writing thereof. If Lessee receives notice of any such occurrence, Lessee shall immediately notify Lessor thereof. If the Leased Premises are wholly or partially

Condemned, Lessor shall be entitled to the entire award paid for such condemnation, except as set forth herein. Lessee shall have the right to claim such compensation as may be separately awarded or recoverable by Lessee in Lessee's own right on account of any and all costs or loss that Lessee would incur in removing Lessee's furniture, fixtures, leasehold improvements and equipment to a new location.

12.4 Temporary Taking. If the whole or any part of the Leased Premises or of Lessee's interest under this Lease is taken by any competent authority for its temporary use or occupancy, this Lease shall not terminate by reason thereof and Lessee shall continue to pay all rental payments and other charges payable by Lessee hereunder and to perform all other terms, covenants, and conditions contained herein, except to the extent Lessee is prevented from so doing by the terms of the order of the taking authority. In the event of a temporary taking, Lessee shall be entitled to receive the entire amount of the award and shall be obligated, at its sole expense, to restore the Leased Premises as nearly as may be reasonably possible to the condition in which they existed immediately prior to such taking; provided, however, that if the period of temporary use or occupancy extends beyond the expiration of the Lease Term, the award shall be apportioned between Lessor and Lessee as of said date of expiration, after Lessor shall have received the entire portion of the award attributable to physical damage to the Leased Premises and any improvements thereon and to the restoration thereof to the condition existing immediately prior to the taking or condemnation.

12.5 Casualty. If the improvements on the Leased Premises shall be damaged or rendered wholly or partially unusable for Lessee's or Sublessee's business purposes by fire or other casualty during the Term of this Lease, Lessee may terminate this Lease by giving notice to Lessor within ninety (90) days of the date of the fire or other casualty. If Lessee does not terminate this Lease, no rent shall abate after the date of the casualty, whether the Leased Premises is usable or not, and Lessee shall promptly rebuild or repair the improvements to substantially their former condition.

13. DEFAULT

13.1 Events of Default. Each of the following shall constitute an “Event of Default” on the part of Lessee and Sublessee:

- (a) **Non-Payment.** Failure to pay any installment of Rent or other monies when due and payable under this Lease, if such failure continues for a period of thirty (30) days after written notice of such failure from Lessor to Lessee;
- (b) **Non-Performance.** Except as otherwise set forth below, if default in the performance of any of Lessee’s or Sublessee’s non-payment obligations or covenants under this Lease, including Lessee’s or Sublessee’s compliance with the Permitted Use as defined in Sections 2.0 and 6, continues for thirty (30) days after written notice thereof from Lessor to Lessee and Sublessee, provided, however, that if the obligation or covenant to be performed by Lessee and Sublessee cannot reasonably be performed or cured within such thirty (30) day period, such default shall not constitute an Event of Default if Lessee or Sublessee commences such performance or cure within said thirty (30) day period and thereafter diligently undertakes to complete, and does so complete, the required performance or cure within a reasonable time;
- (c) **Assignment.** A general assignment by Lessee or Sublessee for the benefit of creditors;
- (d) **Bankruptcy.** The filing of a voluntary petition by Lessee or Sublessee seeking the rehabilitation, liquidation or reorganization of Lessee or Sublessee under any law relating to bankruptcy, insolvency or other relief of debtors, or the filing of an involuntary petition by any of Lessee’s or Sublessee’s creditors seeking any such relief, if not dismissed or otherwise removed within ninety (90) days;
- (e) **Receivership.** The appointment of a receiver or other custodian to take possession of substantially all of Lessee’s assets or Sublessee’s assets or of this leasehold, if not dismissed or otherwise removed within ninety (90) days;
- (f) **Dissolution.** Entry of a court decree or order directing the winding up or liquidation of Lessee or Sublessee or of substantially all of either of their assets, if not reversed or otherwise removed within ninety (90) days; or any action by Lessee or Sublessee toward the dissolution or

winding up of its affairs; or

- (g) **Attachment.** Attachment, execution or other judicial seizure of substantially all of Lessee's or Sublessee's assets or this leasehold, if not dismissed or otherwise removed within ninety (90) days.

13.2 Lessor's Remedies. Upon the occurrence of an Event of Default, Lessor may, at its option:

- (a) Terminate this Lease by written notice to the Lessee, without terminating Lessee's and Sublessee's obligations hereunder, including but not limited to the Lessee's obligation to pay Rent;
- (b) Relet the Leased Premises or any part thereof following repossession of the Leased Premises by Lessor, whether or not this Lease has been terminated, for such term or terms, which extend beyond the Term, at such rental or rentals and upon such other terms and conditions, as Lessor in its sole discretion shall determine, and making such alterations and repairs to the Leased Premises as Lessor may reasonably determine to be necessary in connection therewith, provided that the net amount, if any, realized by Lessor from such reletting shall be credited against the amounts owed by Lessee and Sublessee under this Lease;
- (c) Following termination of this Lease, recover from Lessee and Sublessee all rent and other amounts due and unpaid under the terms of this Lease as of the date of termination, together with such other amounts as may be recoverable under applicable law to compensate Lessor for all damages proximately caused by Lessee's and Sublessee's failure to perform their obligations under this Lease;
- (d) Exercise or seek any other right or remedy allowed at law or in equity under the statutes or common law of the state in which the Land is located.

In connection with any of the foregoing, Lessor shall be entitled to recover from Lessee and Sublessee, promptly upon demand, any and all costs and expenses incurred by Lessor, including but not limited to reasonable attorneys' fees and costs of reletting, following any such Event of Default by Lessee and Sublessee. Lessee and Sublessee, jointly and severally, also shall be liable for and agree to pay to Lessor interest at a rate of 1.0% per month, with respect to the following: (1) all Rent under this Lease remaining unpaid for thirty (30) days after the due date, from the due day until paid; (2) all costs and expenses incurred by Lessor following any Event of Default, from the date paid or incurred by Lessor until reimbursed; and (3) all other amounts at any time

becoming due and payable hereunder, from the date due and payable until paid.

13.3 Lessor's Default. It shall be a default under this Lease by Lessor if Lessor shall fail to perform or observe any obligation or covenant required to be performed or observed by it under this Lease for a period of thirty (30) or more days after written notice thereof from Lessee or Sublessee. Upon the occurrence of any such default, if the same has not been reasonably cured by Lessor within said period of thirty (30) or fewer days (provided, however, that if no emergency exists and the default is of such nature that the same cannot reasonably be cured within a thirty (30) day period, such cure period shall be extended for a reasonable time if Lessor commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same), then Lessee or Sublessee may, at its option cure the default and offset against the rents next due and payable hereunder the reasonable costs, if any, advanced by Lessee and Sublessee to effect such cure. Provided, however, that Lessee's and Sublessee's right of offset shall be subject to the following limitations: (A) The subject default must be of a nature that materially affects Lessee's or Sublessee's parking, access to the Building or Leased Premises, or ability to conduct its Permitted Use in the Leased Premises; (B) Lessee or Sublessee shall submit to Lessor a written statement of their actual expenditures incurred to effect the cure of the default, and Lessor shall not have paid the same within fifteen (15) days after receipt of said statement; and (C) Lessee or Sublessee shall submit a written notice of its exercise of said right of offset at the time the Rent payment or portion thereof against which the right is exercised otherwise would be due;

13.4 Remedies Cumulative; No Waiver. Each right and remedy provided to a party under this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, shall not constitute a waiver of any other right or remedy provided for in this Lease or now or hereafter existing at law in equity or by statute or otherwise. No failure by a party to

insist upon the strict performance of any term hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial payment by a party during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term. The waiver by one party of the performance of any covenant, condition or promise shall not invalidate this Lease nor shall it be considered a waiver by such party of any other covenant, condition or promise hereunder. The waiver by any party of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

14. RIGHT OF FIRST REFUSAL.

14.1 Right of First Refusal. In consideration of this Lease, in the event that the Lessor receives an offer to purchase the building and land described in § 2.1 during the term of this Lease or any Additional Terms, and while Lessee is in compliance with the Lease, the Lessor agrees to first offer the property to Lessee for the same price and on the same terms and conditions as the offer made by the third party to Lessor.

- (a) Lessor agrees to notify Lessee in writing, as provided in §15.4, of the offer to purchase the land and building described in § 2.1, including all terms and conditions of the intended sale.
- (b) Lessee shall have ninety (90) days from the date of receipt of Lessor's written notice in which to exercise Lessee's right of first refusal by written notice to Lessor, as provided in §15.4, of Lessee's acceptance or rejection of the intended sale upon the same price, terms, and conditions as the offer made by the third party to Lessor.
- (c) If Lessee determines to exercise the right of first refusal by acceptance of the intended sale, then, to be valid and binding, Lessee must deliver written notice of its acceptance of the intended sale to Lessor, as provided in §15.4, before the ninety-first (91st) day following the date of Lessee's receipt of Lessor's written notice of intended sale.
- (d) If Lessee determines to exercise its right of first refusal by rejection of the intended sale, then Lessor may accept the offer from the third party and the land and building described in §2.1 may be sold, transferred and conveyed to the third party free and clear of any right of first refusal in Lessee under this Lease. In addition, at Lessor's request, Lessee agrees

to execute any other instrument suitable for recording, if necessary, to document for the record Lessee's rejection of the intended sale and termination of its right of first refusal.

- (e) The parties agree that if Lessee does not provide written notice to Lessor of Lessee's exercise of its right of first refusal by acceptance or rejection of the intended sale before the ninety-first (91st) day following the date of Lessee's receipt of written notice of intended sale from Lessor, or if Lessee does not provide an instrument suitable for recording to document its rejection of the intended sale and the termination of its right of first refusal before the ninety-first (91st) day following the date of Lessee's receipt of written notice of intended sale from Lessor, then Lessee's right of first refusal will terminate automatically as of the ninety-first (91st) day following the date of Lessee's receipt of written notice of the intended sale from Lessor, and this right of first refusal shall terminate without any need for further action or documentation by Lessor or Lessee.
- (f) The termination of the right of first refusal does not terminate this Lease.

15. **MISCELLANEOUS**

15.1 Quiet Possession. If Lessee or Sublessee shall perform all of the covenants and obligations herein provided to be performed by Lessee, either directly or through Sublessee, Lessee and its Sublessee shall at all times during the Term have the peaceable and quiet enjoyment of possession of the Leased Premises without any manner of hindrance from Lessor or any persons lawfully claiming under Lessor.

15.2 Taxes and Assessments. For this Lease Agreement, Lessee is responsible for the real property taxes for the land and improvements leased hereby. It is expressly agreed that Lessee shall not be obligated to pay any other assessment, income tax, profits tax, excise tax, personal property tax, capital gains tax, or other tax or charge that may be payable by or chargeable to Lessor or to Lessor's separate businesses, under any present or future law of the United States or of the State of Alaska or of any political or taxing subdivision thereof, or of any other governmental agency, upon or with respect to Lessor's separate businesses or Lessor's rental income under this Lease.

15.3 Signage. The Lessee and Sublessee shall be able to install and maintain reasonable signage for Lessee or Sublessee's business on the Leased Premises without need for the consent of Lessor.

15.4 Notices. All notices, demands and other communications authorized or required

under this Agreement shall be given in writing, and shall be given by (i) personal delivery, or (ii) registered or certified mail, postage prepaid, and return receipt requested, or (iii) delivery by commercially recognized courier service. Notice shall be considered given on the date of delivery or refusal to accept delivery. Notices shall be addressed as shown below for each party, except that, if any party gives notice of a change of name or address, notices to that party shall thereafter be given as shown in that notice.

Lessor:
PRODIGY DEVELOPMENT, LLC
PO Box 2483
Homer, AK, 99603

Lessee:
KENAI PENINSULA BOROUGH
Attn: Mayor
144 N. Binkley St.
Soldotna, AK 99669

Sublessee:
SOUTH PENINSULA HOSPITAL, INC.
Attn: Chief Executive Officer
4300 Bartlett Street
Homer, AK 99603

The foregoing addresses for purposes of notice may be changed by giving notice of such change to the other parties as provided herein.

15.5 Parties. This Lease and all of the terms and provisions hereof shall inure to the benefit of and be binding upon Lessor and Lessee, and their respective heirs, successors, assigns and legal representatives.

15.6 Time. Time is of the essence of every provision hereof.

15.7 Captions. The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

15.8 Severability. If any provision of this Lease shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Lease shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

15.9 Governing Law, Forum and Venue. This Lease, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the internal laws of the State of Alaska and in accordance with any applicable federal laws. The forum and venue for any law suit between these parties arising out of this Agreement

shall be in the Trial Courts for the State of Alaska in the Third Judicial District, Kenai Venue District.

15.10 Entire Agreement. This Lease sets forth all covenants, promises, agreements, conditions and understandings between Lessor and Lessee concerning the Leased Premises, Building and Land, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Lessor and Lessee as to those subjects other than as are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by Lessor and Lessee.

15.11 Agreement Not to be Construed Against Drafter. All parties to this Lease have had a full opportunity to obtain legal advice concerning this Lease or have declined to obtain such advice. The fact that this Lease may be drafted by an attorney for one of the parties or by one of the parties is a matter of convenience to all parties. Accordingly, the parties agree that the rule of construction that an instrument or document is to be construed and interpreted most strictly against the drafter of the instrument or document shall not apply in the construction or interpretation of this Lease.

15.12 Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Lease shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.

15.13 Counterparts. This Lease may be executed in several or separate 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 be deemed an original and all of which together shall constitute but one and the same instrument.

15.14 Replaces and Supersedes Prior Leases. This Lease replaces and supersedes two lease agreements concerning portions of the premises, dated May 23, 2011 and September 1, 2012, as amended on April 24, 2018.

15.15 Memorandum of Lease. The parties agree that they will not record this Lease at full length, but may record a Memorandum of Lease in compliance with AS 40.17.120.

IT IS SO UNDERSTOOD AND AGREED.

DATED this _____ day of _____, 2019.

PRODIGY DEVELOPMENT, LLC,
LESSOR,

By: MARK D. HALPIN, Member

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by MARK D. HALPIN, Member of PRODIGY DEVELOPMENT, LLC, an Alaska Limited Liability Company, on behalf of the LLC.

Notary Public in and for State of Alaska
My Commission Expires: _____

DATED this _____ day of _____, 2019.

PRODIGY DEVELOPMENT, LLC,
LESSOR,

By: B. ISABEL HALPIN, Member

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____ 2019, by B ISABEL HALPIN, Member of PRODIGY DEVELOPMENT, LLC, an Alaska Limited Liability Company, on behalf of the LLC.

Notary Public in and for State of Alaska
My Commission Expires: _____

DATED this _____ day of _____, 2019.

KENAI PENINSULA BOROUGH,
LESSEE,

By: CHARLIE PIERCE, Mayor

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____ 2019, by CHARLIE PIERCE, Mayor of KENAI PENINSULA BOROUGH, an Alaska municipal corporation, on behalf of the corporation.

Notary Public in and for State of Alaska
My Commission Expires: _____

ATTEST:

APPROVED AS TO FORM:

JOHNI BLANKENSHIP, Borough Clerk

Sean Kelley, Deputy Borough Attorney

DATED this _____ day of _____, 2019.

SOUTH PENINSULA HOSPITAL, INC.,
SUBLESSEE,

By: RYAN SMITH, Chief Executive Officer

STATE OF ALASKA)

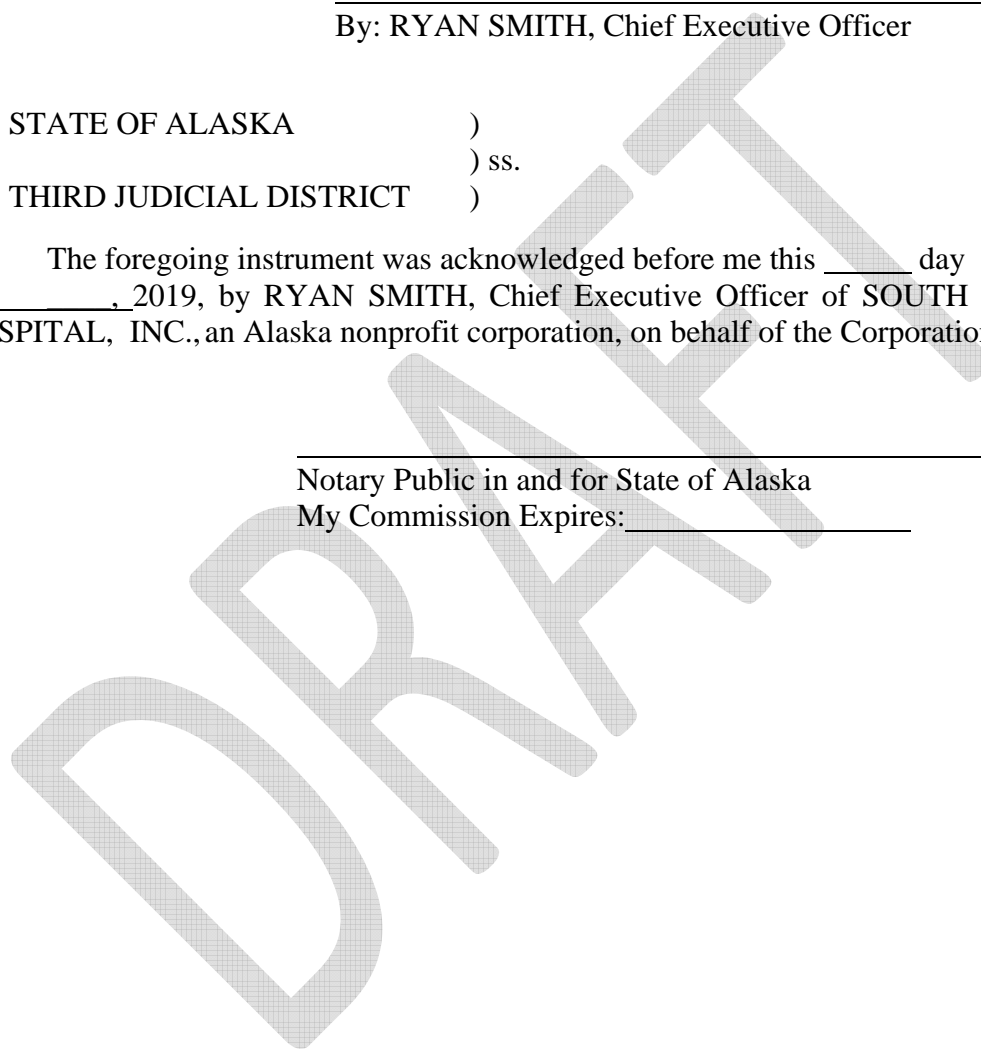
) ss.

THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by RYAN SMITH, Chief Executive Officer of SOUTH PENINSULA HOSPITAL, INC., an Alaska nonprofit corporation, on behalf of the Corporation.

Notary Public in and for State of Alaska

My Commission Expires: _____





PARCEL REPORT

PARCEL ID: 17505509

Total Acreage: 1.20



LEGAL DESCRIPTION:

T 6S R 13W SEC 18 SEWARD MERIDIAN HM 2004101 FAIRVIEW SUB 2003 ADDN LOT 1-A BLK 9

ALL PHYSICAL ADDRESSES ON THIS PARCEL:

4201 BARTLETT ST

LAND VALUE: \$58,900

ASSESSED VALUE: \$1,486,400

IMPROVEMENT VALUE: \$1,427,500

TAXABLE VALUE: \$1,486,400

BUILDINGS ON THIS PARCEL:

Building Type	Square Footage	Year Built
1 1/2 L FRAME	3,220	1976
MEDOFF	11,352	2002

OWNERS:

Name:
PRODIGY DEVELOPMENT LLC

Address:
PO BOX 2483
HOMER, AK 99603

Introduced by: Cooper
Date: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2019-071**

**A RESOLUTION CONFIRMING APPOINTMENTS TO NON-BOROUGH
COMMITTEES AND BOARDS**

WHEREAS, it is the duty of the Assembly President to make certain appointments and/or nominations to various borough and non-borough boards, commissions and committees; and

WHEREAS, the Borough Assembly's adopted Rules of Procedure require Assembly confirmation of all appointments to non-borough committees and boards;

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

SECTION 1. That the appointments listed below are confirmed as follows:

Kenai Peninsula College Council
Brent Johnson, term to expire June 30, 2020

Cook Inlet Aquaculture Association
Dale Bagley

SECTION 2. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 3RD DAY DECEMBER, 2019.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Introduced by: Cooper, Smalley, Cox
Date: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2019-063**

**A RESOLUTION REQUESTING THE ALASKA STATE LEGISLATURE APPROVE
A COASTAL INFRASTRUCTURE GENERAL OBLIGATION
BOND FOR THE 2020 ELECTION**

- WHEREAS**, there is a critical need for coastal infrastructure repair and maintenance in Alaska and the *Report Card for Alaska's Infrastructure 2017* by the Alaska Section of the American Society of Civil Engineers, awarded a grade of "D" to Alaska's ports and harbors; and
- WHEREAS**, many port, harbors, and docks need replacement or repair and have little financial ability to do so, including those in Anchorage, Ketchikan, Skagway, Juneau, Petersburg, Cordova, Kenai, Seward, Homer, Nenana, and others; and
- WHEREAS**, coastal infrastructure throughout the state, from Utqiagvik, Dutch Harbor, Unalaska, Whittier, Nome, Mat Su Borough, Sitka, Kodiak and more play key roles in local economies;
- WHEREAS**, many states in the Lower 48 take responsibility for maintaining coastal infrastructure, including the Maryland Port Administration which invested \$105.5 million in a new 50-foot berth for the Port of Baltimore, and the Florida State Transportation Trust Fund which allocates \$100 million annually to various seaport programs, among others; and
- WHEREAS**, a 2011 study on Alaska's ports and harbors recommended the State of Alaska create a Transportation Infrastructure Development Program to create a comprehensive baseline assessment of coastal infrastructure and state funding of such infrastructure; and
- WHEREAS**, the State of Alaska has supported infrastructure projects across the state through voter-approved general obligation bonds, with a total of 51 bond packages being approved since statehood totaling \$2.2 billion, including a 2010 bond package for education infrastructure; and
- WHEREAS**, the Alaska State Legislature must approve a general obligation bond package during the 2020 legislative session for a bond package to appear on the November 3, 2020 ballot; and

WHEREAS, ports throughout the State of Alaska are in immediate need of maintenance and repair and cannot wait until the November 2022 election to undergo such repairs;

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

SECTION 1. That the Kenai Peninsula Borough Assembly supports funding critical coastal infrastructure throughout the state with general obligation bonds.

SECTION 2. That the Kenai Peninsula Borough Assembly requests the State of Alaska Legislature approve a coastal infrastructure general obligation bond to be included on the November 3, 2020 ballot.

SECTION 3. That this resolution shall become effective immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 3RD DAY OF DECEMBER, 2019.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Introduced by: Mayor
Date: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2019-065**

**A RESOLUTION SUPPORTING THE TRANSPORTATION PRIORITIES TO BE
CONSIDERED FOR GRANT FUNDING TO BE SUBMITTED TO THE STATE OF
ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES**

WHEREAS, people with specialized transportation needs have rights to mobility;

WHEREAS, individuals with limited incomes and people with disabilities rely heavily, sometimes exclusively, on public and specialized transportation services to live independent and fulfilling lives and these services are essential for travel to work and medical appointments, to run essential errands, or simply to take advantage of social or cultural opportunities; and

WHEREAS, under MAP-21, projects funded by Federal Transit Administration (“FTA”) Section 5310, Enhanced Mobility for Seniors and Individuals with Disabilities Program, must be included in a locally developed, coordinated public transit-human services transportation plan; and

WHEREAS, the Alaska Department of Transportation and Public Facilities requires any human service transit projects funded by the Alaska Mental Health Trust to also be included in a coordinated public transit-human services transportation plan; and

WHEREAS, the borough supported the “2019 Kenai Peninsula Coordinated Public Transit-Human Services Transportation Plan” by way of resolution 2019-045; and

WHEREAS, the FTA Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Program provides operating and capital assistance funding to provide transit and purchase of services to private nonprofit agencies, federally recognized tribes, and to qualifying local public bodies that provide specialized transportation services to elderly persons and to persons with disabilities; and

WHEREAS, Alaska Mental Health Trust provides grants to private non-profit agencies, federally recognized tribes and to qualifying local public bodies that serve community transit needs of trust beneficiaries, namely Alaskans who experience mental illness, developmental disabilities, chronic alcoholism with psychosis, or Alzheimer's disease and related dementia through funding for operating assistance, purchase of services, capital and coordinated transportation system planning; and

WHEREAS, a local transportation committee consisting of seniors, individuals with disabilities, representatives of public, private, and non-profit transportation and human services

providers and participation by other members of the public, met on November 18, 2019; and

WHEREAS, the committee reviewed and recommended the prioritization of projects as presented by the Independent Living Center, Inc. (“ILC”) finding the first priority is the ILC Supported Transportation Voucher Program for the Central Kenai Peninsula, the second priority is the ILC Supported Transportation Voucher Program for the Homer and Anchor Point Area, and the third priority is the ILC Supported Transportation Voucher Program for the Seward Area; and

WHEREAS, the full funding of these projects as presented by ILC will be beneficial to more individuals living on the Central, Southern and Eastern Kenai Peninsula; and

WHEREAS, these project priorities will be submitted to the State of Alaska Department of Transportation and Public Facilities to be considered for grant awards through state and federal grant programs;

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

SECTION 1. That the Kenai Peninsula Borough Assembly supports the Independent Living Center, Inc’s pursuit of state and federal grant funding opportunities.

SECTION 2. That the Kenai Peninsula Borough Assembly supports the local transportation committee’s efforts to prioritize the project applications.

SECTION 3. This resolution shall become effective immediately upon enactment.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 3RD DAY OF DECEMBER, 2019.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Community & Fiscal Projects Manager

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*
Max Best, Planning Director *MB*

FROM: Brenda Ahlberg, Community & Fiscal Projects Manager *Bl*

DATE: November 21, 2019

SUBJECT: Resolution 2019-065 Supporting the Transportation Priorities to be Considered for Grant Funding to be Submitted to the State of Alaska Department of Transportation and Public Facilities (Mayor)

This resolution supports the local transportation committee's efforts to prioritize projects identified in the Kenai Peninsula Coordinated Transportation Plan as updated in 2019. The committee is made up of diverse stakeholders, including nonprofit, medical, tribal, governmental, private business, agencies, transportation providers and users of public transportation. The prioritized projects will be submitted by the Independent Living Center, Inc. to the Alaska Department of Transportation for the purpose of applying for federal pass-through funding from Federal Transit Administration programs as well as the Alaska Mental Health Trust. The Independent Living Center, Inc. was the only organization that presented applications to the committee for consideration and ranking.

The prioritized projects must be supported by a local governing body for the projects to be eligible for federal and state transit funding. This resolution requests such support and has no fiscal note attached for the borough assembly.

Introduced by: Mayor
Date: 12/03/19
Hearing: 01/07/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-38**

AN ORDINANCE APPROVING AND ACCEPTING \$13,738.95 FROM THE STATE OF ALASKA DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT TO REIMBURSE REPAIRS AT THE TEBUGHNA SCHOOL RESULTING FROM THE NOVEMBER 30, 2018 COOK INLET 7.0 EARTHQUAKE

WHEREAS, on November 30, 2018 at 8:29 am a 7.0 earthquake shook from an epicenter five miles north of Anchorage which was felt across Southcentral Alaska; and

WHEREAS, as a result of the earthquake, the Tebughna School suffered a substantial loss of ceiling tiles in the gym; and

WHEREAS, the borough appropriated \$450,000 from the general fund for disaster response and recovery by way of ordinance 2018-19-26; and

WHEREAS, the Federal Disaster Declaration DR-4413 approved eligible expenses associated with response, recovery and mitigation to be reimbursed by the Federal Emergency Management Agency and the State of Alaska through the Public Assistance Program (FEMA PA); and

WHEREAS, the borough has submitted eight project applications through the FEMA PA program for damages sustained to borough facilities; and

WHEREAS, the incurred and estimated costs to complete response, recovery or mitigation for the Tebughna School debris removal totaling \$13,738.95 will be reimbursed to the borough as a 75% federal pass-thru and a 25% state-matching grant awarded by the State of Alaska Division of Homeland Security & Emergency Management; and

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

SECTION 1. That the mayor is authorized to accept grant funds totaling \$13,738.95 from the State of Alaska Division of Homeland Security & Emergency Management for the November 30, 2018 Cook Inlet 7.0 Earthquake, Federal Disaster Declaration DR4413.

SECTION 2. That the mayor is authorized to negotiate, administer and execute on behalf of the borough the applicant agreement package for disaster presently identified as the November 30, 2018 Cook Inlet 7.0 Earthquake, Federal Disaster Declaration DR4413, and to negotiate, execute, and administer any other documents, agreements, and contracts required under or related to the grant agreements including without limitation the Assurances and Agreements, the Summary of Grant Conditions for All Applicants, and the Indemnity and Hold Harmless Agreement required as a condition of the grant agreements and any subsequent grant amendments.

SECTION 3. That the \$450,000 appropriation from the general fund for disaster response and recovery by way of ordinance 2018-19-26 are project length nature and as such do not lapse at the end of any particular fiscal year.

SECTION 4. The Kenai Peninsula Borough agrees that upon award assistance through the Alaska Division of Homeland Security & Emergency Management as described in this ordinance it shall waive its sovereign immunity to the extent required by paragraph 27 of the DHS&EM Form 30-57f State Assurance and Agreements and be subject to suit for actions arising out of the project activities for the November 30, 2018 Cook Inlet 7.0 Earthquake disaster in the same manner, and to the same extent as any person and shall not be immune or exempt from any administrative or judicial process, sanction or judgement.

SECTION 5. That this ordinance shall be effective upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Community & Fiscal Projects

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members of the Kenai Peninsula Assembly

THRU: Charlie Pierce, Mayor *CP*
Brandi Harbaugh, Finance Director *BH*
Dan Nelson, Senior Manager - OEM *DN*

FROM: Brenda Ahlberg, Community & Fiscal Projects Manager *BA*

DATE: November 21, 2019

SUBJECT: Ordinance 2019- 38, Approving and Accepting \$13,738.95 from the State of Alaska Division of Homeland Security & Emergency Management to Reimburse Repairs at the Tebughna School Resulting from the November 30, 2018 Cook Inlet 7.0 Earthquake (Mayor)

This ordinance accepts money from the State of Alaska Division of Homeland Security & Emergency Management (AKDHSEM) for costs incurred or to be incurred in responding to the November 30, 2018 Cook Inlet 7.0 Earthquake, Federal Disaster Declaration DR4413. The funds were previously appropriated by way of Ordinance 2018-19-26. The project application and approved grant is managed through the Federal Emergency Management Agency online system named Grants Portal, and the award agreement created through the AKDHSEM.

The approved expenses associated with response, recovery and mitigation that are eligible for reimbursement by the Federal Emergency Management Agency (75% share) and the State of Alaska (25%) through the FEMA Public Assistance Program totals \$13,738.95 for the Tebughna School project worksheet 0064 (PW64).

Attachment: award letter

FINANCE DEPARTMENT ACCOUNT VERIFIED	
Account:	<u>260-71140-19EQ1-49999</u>
Amount	<u>\$ 13,738.95</u>
By: <i>PP</i>	Date: <u>11/21/2019</u>



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

**Department of Military and
Veterans Affairs**

Division of Homeland Security and
Emergency Management

P.O. Box 5750
JBER, AK 99505-0800
Main: 907.428.7000
Fax: 907.428.7009
ready.alaska.gov

October 30, 2019

Dan Nelson, Emergency Manager
Kenai Peninsula Borough
253 Wilson Lane
Soldotna, AK 99669

RE: Obligating Award Document
Disaster: DR-4413-AK, 2018 Cook Inlet Earthquake
Subrecipient: Kenai Peninsula Borough
PA ID: 122-00276-00
Project Worksheet(s): 0064

Certified Mail: 9171 9690 0935 0210 4309 77

Mr. Nelson:

Enclosed is your initial Grant Award Package for Project Worksheet (PW) 0064 under DR-4413-AK, 2018 Cook Inlet Earthquake.

Two pre-signed Obligating Award Documents (OAD), Grant Requirements Form and the Assurances and Agreements Forms are enclosed; one is for your records, the other is for ours. Please return one set of the original signed forms to our office by November 13, 2019

Please note the following signature guide:

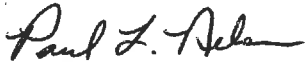
- Obligating Award Document: Three subrecipient signatures on the front page plus one subrecipient signature on the back page.
- Grant Requirements Form: Three subrecipient signatures on the back page.
- Assurances and Agreements Form: Initial all 37 numbered paragraphs and provide one subrecipient signature, on page five.

No payments will be processed until we receive our copy of the signed forms.

Mr. Nelson
Page 2 of 2
October 30, 2019

If you have any questions, please contact Brian Fisher, your assigned Division Representative, at 907-428-7014 or by email at brian.fisher@alaska.gov.

Sincerely,



Paul Nelson
Alternate Governor's Authorized Representative

Enclosure(s): (2 Originals) Obligating Award Documents
(2 Originals) Grant Requirements Forms
(2 Originals) Assurances and Agreements Forms
Project Worksheet 0064

Introduced by: Mayor
Date: 12/03/19
Hearing: 01/07/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-33**

**AN ORDINANCE AMENDING KPB 20.10.030 AND 20.90.010 TO CLARIFY
APPLICABILITY OF SUBDIVISION REQUIREMENTS**

- WHEREAS**, borough code Title 20 relates to the subdivision of land within the Kenai Peninsula Borough; and
- WHEREAS**, language within Title 20 pertaining to subdivision requirements for transfers of land can be interpreted to include land leases; and
- WHEREAS**, borough subdivision requirements are not appropriate for certain land lease types, such as communication tower leases or agricultural leases, where the lessee only desires to use a portion of a larger parcel of land; and
- WHEREAS**, the subdivision of land solely for leases would potentially create undesirable tracts of land that require multiple exceptions to subdivision requirements and that are not suitable for conveyance; and
- WHEREAS**, Kenai Peninsula Borough Comprehensive Plan Goal 2, Focus Area: Land Use and Changing Environment, Objective A is to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms; and
- WHEREAS**, Kenai Peninsula Borough 2019 Comprehensive Plan Goal 2, Focus Area: Land Use and Changing Environment, Objective C is to guide land use at the regional scale to promote economic development, improve public roads and other services and facilities, and maintain environmental quality; and
- WHEREAS**, exempting land leases from subdivision requirements furthers the Kenai Peninsula Borough 2019 Comprehensive Plan Goal 2, Focus Area: Land Use and Changing Environment, Objectives A and C; and
- WHEREAS**, the Kenai Peninsula Borough Planning Commission held a public hearing on December 16, 2019, and recommended _____;

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

SECTION 1. That KPB 20.10.030 is hereby amended to read as follows:

20.10.030. Subdivisions – General Provisions – Violations and Remedies.

- A. No person shall transfer, sell, offer to sell, or enter into a contract to sell land that must be subdivided under this ordinance until an approved final plat has been recorded. For purposes of this provision the term “transfer” means transfer of ownership and does not include a lease, license or permit.

SECTION 2. That KPB 20.90.010 is hereby amended to read as follows:

20.90.010. Definitions.

...

"Subdivision" means the division of a tract or parcel of land into two or more lots, or other divisions for the purpose of sale or building development, and includes resubdivision and relates to the process of subdividing or to the land or areas subdivided. As used in this Chapter, it also includes the elimination of lot lines. A designation of boundaries of a portion of a parcel of land solely for the purpose of a land lease is not a subdivision.

...

SECTION 3. This ordinance shall become effective immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

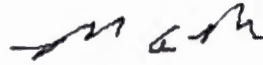
Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor CP
Max Best, Planning Director MB
Scott Huff, Platting Manager SH

FROM: Marcus Mueller, Land Management Officer 

DATE: November 21, 2019

RE: Ordinance 2019-33, Amending KPB 20.10.030 and KPB 20.90.010 to Clarify Applicability of Subdivision Requirements (Mayor)

KPB Title 20 governs matters related to the subdivision of land within the Kenai Peninsula Borough. Language within this title has caused uncertainty about whether leases must meet subdivision requirements. To promote the efficient use of land within the borough, the land management division recommends that clarifying language be adopted to exempt leases from subdivision requirements.

KPB 20.10.030(A) provides that, "No person shall transfer, sell, offer to sell, or enter into a contract to sell land that must be subdivided under this ordinance until an approved final plat has been recorded." This language can be interpreted to apply to leases. This ordinance would clarify that KPB 20.10.030(A) does not apply to land leases.

Other Alaska municipalities have adopted similar language by either excepting leases from their subdivision requirements or defining the parameters for when leases would need to meet subdivision requirements. The proposed language is very similar to the language used by the Ketchikan Gateway Borough and the City and Borough of Juneau.

Currently, the borough requires itself to subdivide prior to leasing a portion of a piece of borough property. Due to efficiency and logistical issues, subdivision prior to leasing is not always in the best interest of the borough. Currently the borough does not affirmatively enforce private leases that strictly speaking would need to meet borough subdivision requirements. Exempting leases from the

Page -2-
November 21, 2019
RE: Ordinance 2019-33

applicability of the subdivision requirements would provide clarity and allow for consistent treatment of leases.

If the borough continues to require subdivision prior to leasing a portion of larger parcels of land, it will result in subdivision of small lease areas within larger parcels. These subdivided areas for lease purposes would often be undesirable tracts of land and, under the current code, these tracts would require numerous exceptions to the subdivision requirements. Specific to communication tower sites, requiring subdivision is a burden that will cost the borough in lost revenue opportunity and also burden the development of communications systems.

In addition, requiring leases to meet subdivision requirements impacts private enterprise. Where a landowner wants to lease a small area of a larger parcel, requiring subdivision can leave the landowner with the option of either having to lease the entire parcel, even if the tenant is not in need of the entire parcel, or creating an undesirable tract to encompass the lease area which may only be used for a limited term. Such an option fails to promote the efficient use of land.

Your consideration of this ordinance is appreciated.

Introduced by: Mayor
Date: 12/03/19
Hearing: 01/07/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-34**

**AN ORDINANCE AMENDING KPB 21.46.040 TO CREATE THE KALIFORNSKY
CENTER SINGLE FAMILY RESIDENTIAL R-1 LOCAL OPTION ZONING DISTRICT
ON AN APPROXIMATELY 55-ACRE BOROUGH-OWNED PARCEL**

- WHEREAS,** the borough has created several local option zoning districts under KPB 21.44 in conjunction with the platting and sale of subdivision lots; and
- WHEREAS,** the borough encourages the private sector to develop residential subdivisions; and
- WHEREAS,** the borough owns an approximately 55-acre parcel off Kalifornsky Beach Road that is appropriate for single family residential use; and
- WHEREAS,** on April 2, 2019, the assembly approved resolution 2019-020, which classified this property as residential; and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A of the borough's comprehensive plan is to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms; and
- WHEREAS,** Goal 3, Focus Area: Housing, Objective A, Strategy 1 is, in part, to identify Borough lands that are most suitable for residential development; and
- WHEREAS,** the Kalifornsky Advisory Planning Commission reviewed this ordinance at its regularly scheduled meeting of _____, 2019 and recommended _____; and
- WHEREAS,** the Kenai Peninsula Borough Planning Commission reviewed this ordinance at its regularly scheduled meeting of December 16, 2019 and recommended _____; and

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

SECTION 1. That the assembly finds the adoption of the Kalifornsky Center Local Option Zoning District ("LOZD") to be consistent with surrounding land uses and the KPB Comprehensive Plan.

SECTION 2. That KPB 21.46.040 is hereby amended as follows:

21.46.040. Single-Family Residential (R-1) Districts.

A. The following Single-Family Residential (R-1) districts and official maps are hereby adopted:

...

13. Kalifornsky Center is described as follows:

Tract A, Kalifornsky Center Subdivision, according to Plat 2020-____, Kenai Recording District.

a. The local option zoning applies to any further replats within the Kalifornsky Center LOZD.

SECTION 3. The assembly hereby waives the requirements of KPB 21.44.040 through KPB 21.44.060 with regards to establishment of the Kalifornsky Center LOZD.

SECTION 4. That the Kalifornsky Center LOZD shall be recorded in the proper recording district.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Planning Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*
Max Best, Planning Director *MB*

FROM: Bruce Wall, Planner *BW*

DATE: November 21, 2019

RE: Ordinance 2019-34, Amending KPB 21.46.040 to Create the Kalifornsky Center Single Family Residential R-1 Local Option Zoning District on an Approximately 55-Acre Borough-Owned Parcel (Mayor)

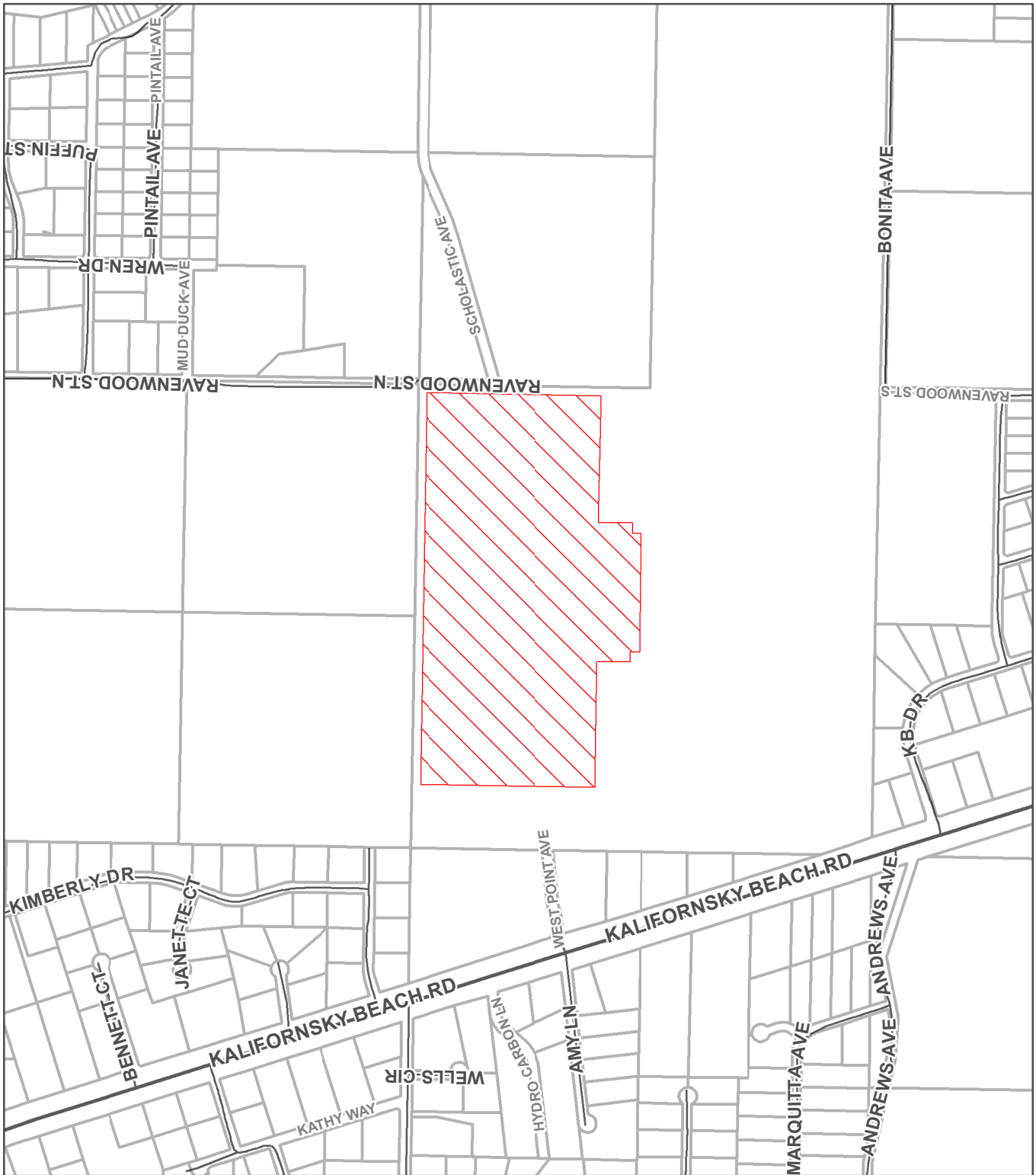
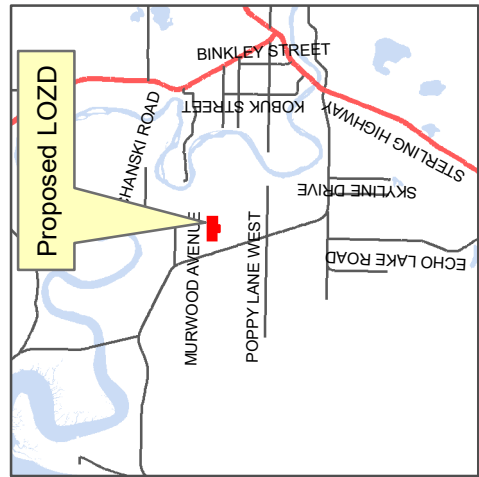
A 55-acre borough-owned parcel off Kalifornsky Beach Road was classified as residential on April 2, 2019 via resolution 2019-020 in anticipation of its eventual sale. This property is now proposed for sale during the 2020 KPБ sealed bid land sale. The area adjacent to the parcel is subject to significant residential use. The borough has previously subdivided and sold lots after creating residential local option zoning districts for subdivisions.

The borough has also previously created a residential local option zoning prior to subdividing land so that the private sector can develop the subdivision, as is being done with this proposed LOZD. The standard formation requirements are waived for the formation of the LOZD. However, the KPB 21.44 standards applicable to a single-family residential zoning district will remain applicable for the subdivision.

Your consideration of this ordinance is appreciated.

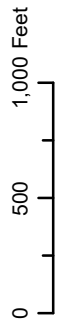
Proposed Local Option Zoning District

Kalifornsky Center LOZD Single-Family Residential (R-1) District



LEGEND

-  Proposed LOZD
-  Parcels



Date: 11/8/2019

The information depicted hereon is a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

Introduced by: Mayor
Date: 12/03/19
Hearing: 01/07/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-35**

**AN ORDINANCE APPROVING C & H ESTATES SINGLE-FAMILY RESIDENTIAL
R-1 LOCAL OPTION ZONING DISTRICT AND AMENDING KPB 21.46.040**

- WHEREAS,** an application was submitted to the Kenai Peninsula Borough Planning Department signed by the record owner of six lots within the proposed local option zoning district (“LOZD”); and
- WHEREAS,** the planning department held a neighborhood meeting at Kachemak Community Center on August 8, 2019, regarding this proposed LOZD as required by KPB 21.44.040(C); and
- WHEREAS,** three of the lots within the proposed LOZD are larger than the generally allowed maximum lot size of five acres for R-1 districts that are considered non-conforming lots pursuant to KPB 21.44.120; and
- WHEREAS,** pursuant to KPB 21.44.040(E) the borough has received written requests from the owners of the three non-conforming lots requesting to be included in the LOZD; and
- WHEREAS,** the borough has received the signatures of 60 percent of the parcel owners within the proposed LOZD indicating that they are in favor of the formation of the LOZD; and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A of the Kenai Peninsula Borough's 2019 Comprehensive Plan is to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms; and
- WHEREAS,** the Kenai Peninsula Borough Planning Commission reviewed the proposed LOZD at its regularly scheduled meeting of September 23, 2019 and recommended approval;

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

SECTION 1. That the assembly finds the adoption of the C & H Estates Local Option Zoning District to be consistent with surrounding land uses and the 2019 Kenai Peninsula Borough Comprehensive Plan.

SECTION 2. That KPB 21.46.040 is hereby amended as follows:

21.46.040. Single-Family Residential (R-1) Districts.

A. The following Single-Family Residential (R-1) districts and official maps are hereby adopted:

...

12. C & H Estates is described as follows:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 37, 38, 39, 40, 41, 42, 43, 44, and 45, C & H Estates, according to Plat 80-23; Lot 17C, C & H Estates Bell Addition No. 2, according to Plat 2000-58; and Lots 27A and 35A, C & H Estates Four, according to Plat 2005-86; all within the Homer Recording District.

a. The local option zoning applies to any further replats within the C & H Estates LOZD.

SECTION 4. That C & H Estates LOZD shall be recorded in the proper recording district.

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

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Planning Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor CP
Max Best, Planning Director MB

FROM: Bruce Wall, Planner BW

DATE: November 21, 2109

RE: Ordinance 2019-35, Approving C & H Estates Single-Family Residential (R-1) Local Option Zoning District and Amending KPB 21.46.040 (Mayor)

This ordinance would approve the formation of a Single-Family Residential (R-1) Local Option Zoning District (LOZD) and, if approved, amend KPB 21.46.040 to include the C & H Estates LOZD.

An application was submitted to the Kenai Peninsula Borough Planning Department signed by the record owner of six lots within the proposed LOZD. On August 8, 2019, the planning department held a neighborhood meeting at the Kachemak Community Center. The meeting was attended by 25 area residents. The borough has since received the signatures of 60 percent of the parcel owners within the proposed LOZD indicating that they are in favor of the formation of the zoning district.

Three of the lots within the proposed LOZD are larger than the generally allowed maximum lot size of five acres for R-1 districts that are considered non-conforming lots pursuant to KPB 21.44.120. Pursuant to KPB 21.44.040(E) the borough has received written requests from the owners of the three non-conforming lots requesting to be included in the LOZD.

This proposal is consistent with the 2019 Kenai Peninsula Borough Comprehensive Plan which states, "Establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms".

KPB 21.44.060(A) states, "The assembly shall approve, disapprove, or modify the proposed LOZD. The assembly, in its legislative capacity, may disapprove an LOZD notwithstanding the district's meeting the criteria of this chapter."

Page -2-
November 21, 2019
RE: Ordinance 2019-35,

The Kenai Peninsula Borough Planning Commission reviewed the proposed LOZD at its regularly scheduled meeting held on September 23, 2019 and recommended approval.

Your consideration of this ordinance is appreciated.

Introduced by: Mayor
Date: 12/03/19
Hearing: 01/07/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-36**

**AN ORDINANCE AUTHORIZING THE NEGOTIATED LEASE OF GARAGE SPACE
AT THE BEAR CREEK FIRE STATION WITH ALASKA STATE TROOPERS A
DETACHMENT NORTH**

WHEREAS, the Bear Creek Fire Station is operated and budgeted by the Bear Creek Fire Service Area (“BCFSA”) on behalf of the Kenai Peninsula Borough; and

WHEREAS, the building has vacant space suited for use by the Alaska State Troopers (“AST”); and

WHEREAS, BCFSA and AST have identified mutually agreeable terms for entering a rental agreement for garage space; and

WHEREAS, the BCFSA board at its regularly scheduled meeting of November 12, 2019 recommended approval; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of December 16, 2019 recommended _____;

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

SECTION 1. That the assembly finds that leasing of garage space at the Bear Creek Fire Station to Alaska State Troopers, A Detachment North, pursuant to KPB 17.10.100(I), authorizing the negotiated sales or leases of borough lands, is in the best interest of the borough.

SECTION 2. That the provisions of KPB 17.10.080-090 and KPB 17.10.110-240 governing classification, disposition, and leasing of borough lands and related natural resources shall not apply to this lease of building space.

SECTION 3. Based on the foregoing, the mayor is hereby authorized pursuant to KPB 17.10.100(I) to lease Bear Creek Fire Station Room #126, being 495 sq.ft., with common use of bathrooms and parking to Alaska State Troopers, A Detachment North, for an initial term of 18 months, with five 12-month extensions thereafter, at the monthly rental of \$155.00. The authorization is for lease solely to Alaska

State Troopers, and it may not assign any rights to negotiate or enter an agreement for lease to any other person or entity.

SECTION 4. The mayor is authorized to execute a lease substantially similar to the lease attached to this resolution.

SECTION 5. The Alaska State Troopers shall have 180 days from the date of enactment of this ordinance to execute the lease document.

SECTION 6. That rent revenue from the subject lease shall be submitted to the Borough Finance Department and deposited in Bear Creek Fire Service Area account 207.00000.00000.36315.

SECTION 7. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*
Max Best, Planning Director *MB*
Connie Bacon, Chief of Bear Creek Fire Service Area *CB*

FROM: Marcus Mueller, Land Management Officer *mm*

DATE: November 21, 2019

RE: Ordinance 2019-36, Authorizing the Negotiated Lease of Garage Space at the Bear Creek Fire Station with the Alaska State Troopers A Detachment North (Mayor)

The Bear Creek Fire Station is operated and budgeted by the Bear Creek Fire Service Area ("BCFSA") located at 13105 Seward Highway (MP 5.2) on behalf of the Kenai Peninsula Borough.

The original design of the fire station facility was to provide for multiple public safety uses. The building has vacant space suited for use by the Alaska State Troopers ("AST"). Chief Bacon has worked with the Alaska State Troopers Seward Post (A Detachment North) to identify cooperative use of the facility. The BCFSA and the AST have identified mutually agreeable terms for entering a rental agreement for garage space. The proposed lease will provide garage storage space to the AST and offset holding costs for the service area. The lease would provide 495 square feet of garage space for a monthly rental of \$155.00 for an 18-month initial term, with five 12-month renewal options, for a total term of 6.5 years.

The BCFSA board at its regularly scheduled meeting of November 12, 2019 recommended approval.

The planning commission will hold a public hearing on this item at its regularly scheduling meeting on December 16, 2019.

Your consideration of this ordinance is appreciated.

LEASE

This lease agreement (hereinafter the "Lease"), entered by and between the Kenai Peninsula Borough, 144 N Binkley St, Soldotna, AK 99669, hereinafter referred to as "Lessor" and Alaska State Troopers, A Detachment North ("AST"), A Detachment Headquarters, 46333 Kalifornsky Beach Road, Soldotna, Alaska 99669, hereinafter referred to as "Lessee". The effective date of this Lease is the date of execution of the last party to sign the Lease.

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 four hundred and ninety-five (495) square feet garage storage space, more particularly described as Room #126, Bear Creek Fire Station, 13105 Seward Highway, situated on Lot 1A, Bear Creek Fire Station 2013 Replat, Plat No. 2013-5, records of the Seward Recording District, Third Judicial District, State of Alaska.

Lessee shall also have common use of public restrooms and parking spaces.

2. **Rent.** In consideration of the Lease of the Premises by Lessor, Lessee covenants to pay to the Lessor as rent the sum of one-hundred fifty-five dollars (\$155.00) per month. Rent is due and payable in advance, on or before the 1st day of the month. Rent may be adjusted at time of renewal by agreement of the parties in writing.
3. **Term, Renewal Terms.** The Lease term is 18 months commencing on January 1, 2020 and ending on June 30, 2021 and may be renewed for up to five additional 12-month terms. Renewals shall be automatic while the Lease is in good standing. Lessee may cancel the lease with 90-days written notice to Lessor.
4. **Services.**
 - A. **Utilities/Snow Removal.** Heating fuel, electric, water, septic, and refuse shall be provided by Lessor.
 - B. **Grounds Maintenance.** Grounds maintenance, including snow removal, shall be provided by Lessor.
 - C. **Phone/ Network.** Phone and network service, if any, is the responsibility of the Lessee. Phone accounts, network servers, and internet connections shall be established and paid for by Lessee at the option of the Lessee. The Lessee is required to coordinate installation with the Lessor. The Lessor reserves the right to request that the Lessee must properly secure any wireless network provisions.
 - D. **Janitorial Service.** Lessee is responsible for its own janitorial or custodial services.

- E. Security. Lessee will be responsible for securing garage storage space. Lessor retains responsibility for general security over the remainder of the site.
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 Section 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 Lease, Lessee will peaceably yield up to Lessor the premises, in good repair in all respects, reasonable wear and tear 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 in writing signed by both parties..
- F. Acceptance of Premises. Lessee has examined and knows the condition of the premises and accepts the same "as is," subject to Lessor's obligations under this lease.
- G. Use of Premises. Lessee hereby covenants that the use of the premises shall be for professional use (office/conference/meetings) 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.
7. **Default by Either Party.** Should either Lessor or Lessee default in the performance of the obligations of any covenants of this Lease and fail to fully remedy such default within thirty days after written notice by the non-defaulting party, then the Lease may be terminated by

written notice to the defaulting party. Upon termination of this Lease, Lessor shall refund to Lessee any unearned advance rent paid by Lessee less any damages caused by Lessee's occupancy beyond reasonable wear and tear.

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 attorney fees resulting from Lessee's failure to perform in accord with the terms of this Lease 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, attorneys, suppliers, and subcontractor's acts, omissions, or failure to perform under this Lease in any way whatsoever. This defense and indemnification responsibility shall not include claims alleging acts or omissions by Lessor or its agents, which are said to have contributed to the losses, failure, violations, or damage. Lessee shall not be responsible for any damages or claims arising from the 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 at least thirty (30) days written notice of any 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 Lease, and at the time of each renewal of insurance, Lessee shall deliver to the Lessor certificates of insurance or letters of self-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 this Lease upon 14 days' written notice given in the manner set out in Section 15 of this Lease. 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 this Lease: 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 Lease. 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.

10. **Compliance with Laws.** Lessee agrees to comply with all applicable federal, state, borough and local laws and regulations.
11. **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.
12. **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 and the performance of either party hereto, are merged and integrated into the terms of this document.
13. **Interpretation and Enforcement.** This Lease 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 Lease 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.
14. **Counterparts; Electronic Signature.** This Lease may be executed in counterpart and may be executed by way of facsimile or electronic signature in compliance with AS 09.80, each of which when executed shall be considered an original and all of which together shall constitute one agreement.
15. **Severability.** If any section or clause of this Lease is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Lease shall remain in full force and effect.
16. **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
Land Management Division
144 N. Binkley Street
Soldotna, Alaska 99669

LESSEE:

Alaska State Troopers
A Detachment North
46333 Kalifornsky Beach Road
Soldotna, Alaska 99669

KENAI PENINSULA BOROUGH

ALASKA STATE TROOPERS
A DETACHMENT NORTH

By: Charlie Pierce

Its: Mayor

Date: _____

By: Capt. Maurice Hughes

Its: Detachment Commander

Date: _____

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Johni Blankenship, Borough Clerk

Sean Kelley, Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ___ day of _____ 2019 by Charlie Pierce, 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: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____ 2019 by _____, Capt. Maurice Hughes, A Detachment North Commander of Alaska State Troopers, a Division of the Department of Public Safety, State of Alaska, for and on behalf of the Detachment.

Notary Public in and for Alaska
My commission expires:_____

Introduced by: Mayor
Date: 12/03/19
Hearing: 01/07/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-37**

**AN ORDINANCE AMENDING KPB 17.10.120, TERMS OF A LAND SALE, TO
ADDRESS KENAI PENINSULA BOROUGH EMPLOYEE AND CONTRACTOR
PARTICIPATION IN CERTAIN LAND DISPOSAL METHODS**

WHEREAS, KPB 17.10 authorizes the sale of borough land through several methods of disposition; and

WHEREAS, KPB 17.10.010 directs the borough to ensure that the disposition of borough land is carried out in a manner which is fair to all; and

WHEREAS, the borough wishes to adopt certain qualifications to ensure a fair process is in place for borough employees or contractors to participate in land sales; and

WHEREAS, Kenai Peninsula Borough Comprehensive Plan Goal 2, Focus Area: Land Use and Changing Environment, Objective A, establishes policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms; and

WHEREAS, ensuring fair land disposal procedures furthers the Kenai Peninsula Borough Comprehensive Plan Goal 2, Focus Area: Land Use and Changing Environment, Objectives A; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its meeting held on December 16, 2019, recommended _____;

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

SECTION 1. That KPB 17.10.120, Terms of a Land Sale, is amended as follows:

17.10.120. – Terms of a Land Sale.

- A. The assembly shall by ordinance fix the terms of all sales of borough lands. The ordinance shall contain the date of sale, the method or methods of sale, the manner in which payment is to be made, the interest to be conveyed, the

instrument of conveyance to be used, and any other terms the assembly deems appropriate.

- B. Land disposal actions will be in conformance with the land classification system.
- C. The assembly may authorize payment to be made over time only if:
 - 1. The down payment is at least 10% of the sale price;
 - 2. The rate of interest is the prime rate on the authorized date of sale plus two percent (2%);
 - 3. The period for total payment does not exceed ten years;
 - 4. The period for total payment does not exceed twenty years if the land is sold for agricultural use;
 - 5. A late fee of ten percent of the monthly payment shall be charged whenever a payment is received ten or more calendar days past the due date.
 - 6. Any unpaid balance due the borough must be paid in full if the purchaser sells the property unless the assembly has provided otherwise.
- D. The assembly may authorize the sale of land for an amount other than fair market value only if the ordinance authorizing the sale contains:
 - 1. A finding that sale for an amount other than fair market value is in the best public interest;
 - 2. A statement of the facts on which the finding is based; and
 - 3. The period of time during which the offer may be accepted.
- E. If the assembly requires a prospective buyer to pay to the borough a down payment, bond or other deposit, and if the prospective buyer breaches a term of the sale, then the borough shall retain as liquidated damages the prospective buyer's down payment, bond or other deposit.
- F. [THE MAYOR SHALL NOT SELL, LEASE OR AUTHORIZE ANY OTHER USE OR DISPOSITION OF BOROUGH LAND TO A PERSON WHO IS DELINQUENT IN THE PAYMENT OF ANY TAX, DEBT OR OBLIGATION OWED TO THE BOROUGH.] Restrictions:

1. A person who is delinquent in the payment of any tax, debt or obligation owed to the borough may not buy, lease, or be authorized for any other use or disposition of borough land.
2. An employee of the Kenai Peninsula Borough is not eligible to acquire land by negotiated sale or negotiated lease.
3. An employee or contractor of the Kenai Peninsula Borough that was in a position to obtain information not available to the general public about the disposal process may not submit an application for a sealed bid sale held under 17.10.100(F) within the final 15 days of the offering period.

...

SECTION 2. That this ordinance takes effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS *
DAY OF *, 2020.**

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

TO: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Mayor *CP*
Max Best, Planning Director *MB*

FROM: Marcus Mueller, Land Management Officer *mm*

DATE: November 21, 2019

RE: Ordinance 2019- 31, Amending KPB 17.10.120, Terms of a Land Sale, to Address Kenai Peninsula Borough Employee and Contractor Participation in Land Disposal Methods (Mayor)

Policies regarding borough management of lands and resources are outlined within KPB 17.10.010. Paragraph 17.10.010(A)(6) provides for "the orderly disposal of lands and resources in a manner which is fair to all".

The Land Management Division recommends that amendments to KPB 17.10.120, Terms of a Land Sale, be adopted to maintain a high standard of fairness with regard to management of borough lands. Other agencies, including the Alaska Department of Natural Resources and the Trust Land Office of the Alaska Mental Health Trust Authority, have policies similar to those recommended here to ensure fair processes for land disposal. The recommended amendments would support the borough's policy to maintain a fair process by removing areas with potential for conflicts of interest or advantage, or the public perception thereof, for borough employees and borough contractors.

This ordinance includes additional restrictions regarding those qualified to participate in land disposals offered by the borough. The proposed code changes will lessen or remove the possibility of conflicts of interest regarding the participation of borough employees and borough contractors in borough land sales. The purpose of this ordinance is to ensure a fair process is in place for employees and contractors who would like to participate in borough land sales.

Your consideration of this ordinance is appreciated.

Introduced by: Mayor
Date: 12/03/19
Hearing: 01/07/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-39**

**AN ORDINANCE REPEALING KPB 12.06 AND ENACTING 12.08 JUNK AND
ABANDONED VEHICLES**

WHEREAS, current borough code regarding the abatement of junk or abandoned vehicles is a mixture of code and state statutory process; and

WHEREAS, state law provides that a municipality may adopt by ordinance established procedures for the abatement and removal of junk or abandoned vehicles so long as the requirements AS 28.11.100 are met; and

WHEREAS, vehicles abandoned on public roadways or public property are public nuisances that create health and safety hazards; and

WHEREAS, it is in the best interests of the borough to have a clearly established procedure for the abatement, removal, and disposal of vehicles abandoned on public property; and

WHEREAS, the public is served by the establishment of code-driven procedures that meet the requirements of state law; and

WHEREAS, the public is further served by having procedures to follow when junk or abandoned vehicles are left on private property without the owner's consent; and

WHEREAS, due to significant changes to borough code as enacted by this ordinance KPB 12.06 is repealed in its entirety and replaced by a new chapter KPB 12.08; and

WHEREAS, at its regularly scheduled meeting held on October 29, 2019, the Kenai Peninsula Borough Road Service Area board recommended approval of this ordinance by unanimous consent;

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

SECTION 1. KPB 12.06. ABANDONED VEHICLE ABATEMENT PROCEDURE is hereby repealed.

SECTION 2. KPB 12.08. JUNK AND ABANDONED VEHICLES is hereby enacted as follows:

CHAPTER 12.08. JUNK AND ABANDONED VEHICLES

12.08.010. Purpose--Authority—Administration.

The assembly declares that abandoned and junk vehicles are a public nuisance and must be properly disposed of as solid waste in accordance with this chapter and current rules and regulations regarding solid waste disposal, including use fees. The borough may cause to be removed from public property and borough roads abandoned, junk, wrecked or inoperative vehicles following the procedures set forth in this chapter. The Road Service Area Director (“roads director”) shall administer this chapter in coordination with the solid waste director.

12.08.020. Abandoned Vehicles Prohibited.

- A. It is unlawful for a person to abandon a vehicle on a road, vehicular way, or area that is publicly dedicated to or maintained by the borough.
- B. It is unlawful for a person to abandon a vehicle on public property of the borough not set aside by ordinance as a refuse disposal open for the disposal of vehicles.
- C. It is unlawful for a person, without consent of the property owner or person in possession or control of the property, to abandon a vehicle on private property unless such property is licensed as a junkyard, is open for disposal, all necessary fees for removal and storage have been paid, and all other requirements of disposal have been met.
- D. The owner of the vehicle, as shown by the records of the State of Alaska, Department of Administration, Department of Motor Vehicles (DMV) is considered responsible for the abandonment of the vehicle and is liable for the cost of its removal and disposition unless:
 - 1. The vehicle was abandoned by a person without the permission of the owner; and
 - 2. The identity of the person abandoning the vehicle is established and the abandonment as well as the lack of consent of the owner.

State Law Reference - Similar provisions in AS 28.11.010

12.08.030. Presumption of Abandonment.

A vehicle is presumed abandoned if:

- A. The vehicle is registered or titled as required under AS 28.10 and reasonably appears to have been left unattended, standing, or parked upon or within ten (10) feet of the traveled portion of a road or vehicular way or area in excess of 48 hours; or
- B. The vehicle is registered or titled as required under AS 28.10 and reasonably appears to have been left standing or parked upon public property owned or managed by the borough for more than thirty (30) calendar days; or
- C. The vehicle is a wrecked or junk vehicle that reasonably appears to have been left unattended, standing, or parked upon or within ten (10) feet of the traveled portion of a road or vehicular way or area in excess of 48 hours; or
- D. It is a wrecked or junk vehicle that reasonably appears to have been left standing or parked on public property owned or managed by the borough, in excess of two (2) days and without the consent of the owner or the borough.
- E. Private Property.
 - 1. A vehicle that is registered or titled as required under AS 28.10 and reasonably appears to have been left unattended, standing, or parked upon private property in excess of 24 hours may be removed by the borough at the request of the private property owner. The borough shall not be responsible for the costs of removal and will assess such costs to the private property owner.
 - 2. A vehicle that is a wrecked or junk vehicle that reasonably appears to have been left standing or parked on private property in excess of 48 hours and without the consent of the owner or the property owner may be removed by the borough at the request of the private property owner. The borough shall not be responsible for the costs of removal and will assess such costs to the private property owner.

State Law Reference – AS 28.11.020

12.08.040. Junk Vehicles Prohibited.

- A. It is unlawful for the registered owner, tenant or other person with legal right to possession of or control over a junk vehicle to place or allow such vehicle to remain, for two (2) or more calendar days, in public view on any road, vehicular way or area that is publicly dedicated to or maintained by the borough.

- B. Upon observation of what appears to be a junk vehicle, the roads director, or their designee, shall give written notice as outlined in section 12.08.060 of this chapter.
- C. Notwithstanding the provisions of subsection A of this section, if the director has reasonable grounds to believe that repairs can be made to render a junk vehicle operable, that the registered owner or other person entitled to possession of the vehicle is willing to undertake or have performed such repairs, that the vehicle does not pose any health or safety hazard, and that there is no reasonable means for removing the vehicle from public view while repairs are being performed, the director may authorize a period of no more than thirty (30) calendar days for the performance of such repairs. In no case, however, may this section be construed as authorizing the operation of a junkyard or other salvage or repair business where other requirements of law, including ordinances, have not been met.

12.08.050. Abandoned and Junk Vehicles.

If a vehicle is both junk and abandoned, the borough may pursue its abatement under either the junk or abandoned vehicle provisions of this chapter or parts of both.

12.08.060. Removal of Abandoned - Junk Vehicles.

- A. A vehicle that is presumed abandoned or junked may be impounded and disposed of by the director or their designee in accordance with this chapter. Notwithstanding, the borough shall not be responsible for removal or disposal of junk or abandoned vehicles on private property. Removal and disposition of abandoned or junked vehicles on private property is the responsibility of the owner of the property.
- B. Notice to remove abandoned or junked vehicles shall be given at least 48 hours prior to removal unless the vehicle constitutes an immediate hazard to the public by reason of its condition or location, or if it impedes the regular flow of traffic or the ordinary use of the public property on which it is located. Notice shall be given by posting a copy of the notice on the vehicle stating:
1. A description of the vehicle;
 2. The grounds for removal of the vehicle;
 3. The proposed action to be taken;
 4. Contact information for the director; and

5. That the vehicle will be towed and impounded, and may be disposed of in accordance with this chapter if unclaimed.

C. A written report of removal shall be made by an employee causing a vehicle to be removed under this chapter, and the report shall be sent to the person or entity storing the removed vehicle and to the director. The written report shall contain the description of the vehicle, the date, time, grounds, and place of removal, and the place where the vehicle is impounded.

12.08.070. Waiver of Claim for Damages.

A. An owner of an abandoned or junk vehicle waives any claims they may have for damage to or loss of their vehicle which may result from actions taken pursuant to this chapter. Such damage or loss includes, but is not limited to, accidental damage or destruction occasioned by removal, transport and storage, and acts of third parties.

B. Should a vehicle purchased at auction pursuant to KP.B 12.08.090 be damaged or destroyed prior to release, the purchaser's remedy is limited to a return of the purchase price.

12.08.080. Notice to Owners and Lienholders.

A. As soon as practicable, but not later than ten (10) calendar days after removal, the director, or their designee, shall issue notice of the impoundment by either certified mail, return receipt requested, or personal service to:

1. The registered owner of record and to lienholders of record, if any;
2. Persons known to be lawfully entitled to the possession of the abandoned/junk vehicle; and
3. The Department of Motor Vehicles ("DMV").

B. The giving of notice by mail is considered complete upon the return of the receipt or upon return of the notice as undeliverable, refused or unclaimed. If the vehicle is not registered in the State of Alaska or the name and address of the registered or legal owner or lienholder cannot be ascertained, notice shall be by publication at least once in a newspaper of general circulation for the borough at least twenty (20) calendar days before any final action, such as a sale is undertaken. The director, or their designee, shall use reasonable efforts to ascertain ownership, including but not limited to contacting the DMV.

C. Notice under this section shall contain:

1. The description of the vehicle; and
2. The date, time, grounds and place of removal; and
3. The place where the vehicle is impounded; and
4. An itemized statement of amounts due the borough for towing and storage (impoundment), administrative fees (DMV search, certified mail, advertising), vehicle prep fees, and stating that such fees must be paid prior to redemption of the vehicle; and
5. A statement that unless the right to possession is established to the satisfaction of the director and the vehicle reclaimed, or unless arrangements are made for the storage of the vehicle within that time, the vehicle and its contents may be sold at public auction or, in the director's discretion, if the vehicle is determined by the director to be inoperable or worth less than One Thousand Five Hundred (\$1,500.00) Dollars, disposed of by crushing or other means of destruction; and
6. A statement that the owner of the vehicle may, at any time within ten (10) calendar days, provide a written request for a hearing before the Road Service Area (RSA) Board, pursuant to section 12.08.130, concerning whether the vehicle was abandoned or is a junk vehicle in violation of this chapter and subject to disposal.

12.08.090. Disposition – Sale.

- A. Upon expiration of the time period to request a hearing, the director may sell abandoned or junk vehicles impounded in accordance with this chapter at a public auction.
- B. The public auction shall be preceded by at least twenty (20) calendar days' notice of public auction posted within the borough. The auction may be conducted online.
- C. The notice of public auction shall state the description of the vehicle, date, time and place of auction, the name of the owner, if known, and a statement that, subject to the provisions of subsection (E) of this section, the vehicle shall be sold to the highest bidder.

D. A certificate of sale shall be issued for all vehicles sold at the auction. The certificate shall stipulate that the vehicle must be registered and titled with the DMV within thirty (30) calendar days and that the vehicle will not be released to the buyer until proof of same has been received by the borough. If no such showing has been made within the thirty (30) day period, one-half (1/2) of the purchase price will be forfeited and the vehicle will be returned to auction status to be disposed of pursuant to this section.

E. The owner of the vehicle may redeem an abandoned or junk vehicle at any time prior to actual sale upon presenting satisfactory proof of ownership and upon payment of all fees and costs incurred and/or imposed by the borough.

12.08.100. Disposition – Destruction.

A. If the director determines that an abandoned or junk vehicle impounded pursuant to this chapter has been scrapped, dismantled or destroyed beyond repair, or that because of the age and condition of the vehicle it is no longer of significant value, the director may authorize disposal by crushing, recycling, or other means of destruction upon the expiration of the fifteen (15) calendar day period required by KPB 12.08.080(c)(6).

B. The borough may also dispose of abandoned or junk vehicles at the written request of the registered owner of the vehicle or person in lawful possession or control of the vehicle. This written request shall be on a form prescribed by the borough. Disposal by written request of the owner shall not relieve the owner of removal and disposition costs. After receipt of a written request for disposal from the owner, the director may determine, after receipt of removal and disposition costs from the owner, that it is in the best interests of the borough to waive all or part of the fine.

12.08.110. - Recovery of costs.

The costs of impounding, towing, storing, selling and/or destroying abandoned or junk vehicles may be charged or assessed by the borough against the registered owner of the vehicle, any person who has acquired legal title to the vehicle from or through the registered owner, any person who has violated sections 12.08.020 or 12.08.040, and/or any proceeds received from the sale of the vehicle pursuant to this chapter.

12.08.120. - Liability for abandoned or junk vehicles.

The registered owner of an abandoned or junk vehicle, and any other person responsible for the vehicle, shall be jointly and severally liable for the costs of towing, storing and selling or otherwise disposing of the vehicle, as well as the costs of abating any safety or pollutant hazard that is caused by the vehicle.

12.08.130. Hearing.

- A. A person claiming an interest in a vehicle that is the subject of a notice under this chapter may obtain a hearing on whether the vehicle is subject to disposal by filing a written appeal to the Road Service Area (RSA) Board within ten (10) calendar days after the date of the notice.
- B. All appeals shall be in writing, signed by the person filing the appeal, and submitted to the Road Service Area Director by delivery to the borough clerk. All notices of appeal shall also contain the following information:
1. Name, address and telephone number of the person filing the appeal;
 2. A specific and detailed statement of the basis for the appeal, with reference to the specific sections of this Title which are claimed to have been violated.
 3. A statement of the relief sought.
- C. Failure to file an appeal within the time and manner provided shall be deemed a waiver of the right to any appellate review.
- D. A request for an appeal is filed on the date it is personally delivered or, if delivered to the borough by United States mail, the date of the United States Postal Service postmark stamped on the properly addressed cover in which the request is mailed.
- E. A current mailing address must be provided to the borough with the request for appeal and any change in mailing address after the request for appeal is filed must be reported in writing to the borough clerk's office.
- F. Within five (5) business days of receiving the notice of appeal, the borough clerk will give notice of the date and time for the appeal hearing. The hearing will be scheduled a minimum of 15 (fifteen) days after the date of the request for appeal has been received. The notice of the hearing will advise the parties of all deadlines for the exchange of discovery.
- G. At least seven (7) days before the hearing, the parties will provide the following to the borough clerk:
1. The names, mailing address and telephone number for all witnesses intended to be called at the hearing.

2. The name, mailing address and telephone number of the person who will speak on behalf of each party at the hearing.

Copies of all documents or exhibits intended to be used as evidence during the hearing.

Copies of all documents filed by the parties shall be served upon the remaining parties by the borough clerk, either by mail, email or personal service, within three (3) business days of the filing deadline.

12.08.135. - Appeal Hearing.

- A. A matter shall proceed to hearing only on those allegations and claimed in the notice issued pursuant to Section 12.08.080. If no allegations or claims in the notice are contested, the matter shall proceed to a decision by the RSA Board without the taking of evidence or argument.
- B. The RSA Board Chair shall set the agenda for the hearing. The hearing shall be open to the public. The RSA Board may permit telephonic participation in the hearing by a party or a witness. The RSA Board may continue the hearing if necessary to obtain additional evidence.
- C. The hearing shall be conducted in an informal manner and shall not be subject to the technical rules of evidence. Any person claiming an interest in the vehicle may appear, present evidence, and cross-examine witnesses.
- D. Formality in pleadings, motions, and the introduction of evidence is not required. A writing filed as a complaint, answer or application shall be legible and brief.
- E. At the hearing, the parties may appear in person or through counsel. The parties may present evidence and testimony on their own behalf, call witnesses, and cross examine other parties' witnesses to the extent the RSA Board determines reasonably necessary to explore any matters which tend to contradict, modify, or explain testimony given on direct. The RSA Board may call witnesses, may ask questions of the witnesses and may request additional evidence.
- F. Each party shall have a maximum of thirty (30) minutes to present their case, including any opening and/or closing statements.
- G. Evidence.
 1. All testimony shall be given under oath or affirmation.

2. The RSA Board is authorized to admit or exclude evidence and to rule upon all objections regarding evidence. The RSA Board may exclude irrelevant, immaterial or unduly repetitious evidence. An erroneous ruling on the admission or exclusion of evidence shall not affect the validity of the RSA Board's decision unless the ruling is shown to have substantially prejudiced the rights of a party.

3. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule which makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be considered provided there are guarantees of its trustworthiness and that it is more probative on the point for which it is offered than any other evidence which the proponent can procure by reasonable efforts.

4. The RSA Board may take notice of judicially recognizable facts. The RSA Board shall notify the parties during the proceeding, and before the final decision, of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed.

H. The Appellant shall bear the burden of proof by clear and convincing evidence regarding whether the vehicle was abandoned or junk.

I. The hearing shall be recorded. Any party desiring a formal transcript of the hearing may order one at their own expense.

J. Within ten (10) business days after the conclusion of the hearing, the RSA Board shall prepare a written decision as to whether the vehicle is subject to disposal under this chapter, and specifying the reasons for their decision. The borough clerk shall provide a copy of the decision to each person who appeared at the hearing and claimed an interest in the vehicle and to the roads director.

K. A decision under this section is appealable to the Superior Court in the Third Judicial District at Kenai as provided by court rules for administrative appeals.

12.08.140. Preservation of certain rights regarding junk or abandoned vehicles.

A. *Right to operate lawful junkyard or storage yard.* Nothing in this chapter shall be construed as limiting the right of any person to operate a lawful junkyard or storage yard.

- B. Authority to abate public nuisances. Nothing in this chapter shall be construed to limit the right of the borough, pursuant to other provisions of this title and the common law, to abate summarily a public nuisance, including but not limited to the nuisances defined elsewhere in this code.

12.08.150. Definitions.

- A. “Abandoned vehicle” means a motor vehicle left unattended, standing, or parked upon or within ten (10’) feet of the traveled portion of a public roadway, or a public right-of-way without the consent of the owner or person reasonably in charge of the property.
- B. “Director” means the road service area director, or their designee.
- C. “Junk vehicle” means a vehicle that:
1. Is not currently registered, except for a vehicle used exclusively for competitive racing; or
 2. Is stripped, wrecked, or otherwise inoperable due to mechanical failure; or
 3. Has not been repaired because of mechanical difficulties or because the cost of repairs required to make it operable exceeds the fair market value of the vehicle; or
 4. Is in a condition that exhibits more than one of the following: broken glass, missing wheels or tires, missing body panels or parts, or missing drive train parts.
- D. “Responsible Person” means the owner of a vehicle or a person authorized to drive, store, or control a vehicle.
- E. “Vehicle” means a device in, upon, or by which a person or property may be transported or drawn upon or immediately over a highway or vehicular way or area and that is subject to registration; “vehicle” does not include (1) devices used exclusively upon stationary rails or tracks; (2) mobile homes. A vehicle includes but is not limited to cars, trucks, motorcycles, motorbikes, three and four wheelers, and snow machines; outboard, inboard or air boats; other recreational vehicles commonly driven; and all trailers and semitrailers.
- F. “Vehicular way or area” means a way, path, or area, other than a highway or private property, that is designated by official traffic control devices or customary usage and that is open to the public for purposes of pedestrian or

vehicular travel, and which way or area may be restricted in use to pedestrians, bicycles, or other specific types of vehicles.

G. “Wrecked vehicle” means a vehicle that is disabled and cannot be used as a vehicle without substantial repair or reconstruction.

These definitions are for the purpose of this chapter only and shall not be used as definitions for other chapters.

12.08.160. General Penalty for Violation.

A violation of this section is an infraction within the terms of AS 28.90.010 and is punishable by the following fines:

<u>KPB 12.08.020</u>	<u>Unlawful Abandoned vehicle</u>	<u>\$100.00</u>
<u>KPB 12.08.040</u>	<u>Unlawful Junk vehicle</u>	<u>\$100.00</u>

SECTION 3. That this ordinance shall become effective immediately upon its enactment

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:


Absent:


Kenai Peninsula Borough

Road Service Area

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor 

FROM: Dil Uhlin, Roads Director 

DATE: November 21, 2019

RE: Ordinance 2019-39, Repealing KPB 12.06 and Enacting KPB 12.08. –
Junk and Abandoned Vehicles (Mayor)

This ordinance would repeal KPB 12.06, Abandoned Vehicle Abatement Procedure, and replace it with KPB 12.08, Junk and Abandoned Vehicles. KPB 12.06 has proven to be inadequate for enforcing the removal of junk and abandoned vehicles within the borough as it lacks many of the requirements of Alaska Statute and fails to address junk vehicles.


The proposed KPB 12.08 not only incorporates Alaska Statutes, it also addresses vehicles which could be considered both junk and abandoned. The proposed code revision provides a mechanism for the Road Service Area to address the growing issue regarding the abandonment of vehicles on borough right-of-ways and/or borough property. Currently, due to the lack of an enforcement mechanism, individuals are abandoning their vehicles on borough property in order to avoid paying the landfill fees or the fees to drain the fluids in the vehicle. The aim of this ordinance is to make it more expensive to abandon a vehicle than to properly dispose of a vehicle, thereby encouraging owners to properly dispose of these vehicles.

This ordinance was introduced at the September 24, 2019 Road Service Area Board meeting and a motion was made to postpone this ordinance to allow more time for review. At its meeting held on October 29, 2019, the Road Service Area Board voted unanimously to recommend approval.

Kenai Peninsula Borough
Office of the Borough Mayor

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, of the Kenai Peninsula Borough Assembly

FROM: Charlie Pierce, Kenai Peninsula Borough Mayor 

DATE: December 3, 2019

RE: Appointment to the Road Service Area Board

Pursuant to KPB 16.41.020(A) and KPB 16.41.050, I hereby submit the following appointment to the Road Service Area Board for confirmation by the Assembly. The applicant is a registered voter and resides with the designated region of the Road Service Area to be represented. Attached for your review; voter verifications and request for appointment.

<u>Appointment</u>	<u>Board Seat</u>	<u>Term Expires</u>
Larry Smith	At-Large	9/30/2022

Attachments: Request for Appointment,
Voter Verification

Cc: Dil Uhlin, Roads Director
KPB Clerk's Office

Kenai Peninsula Borough
Office of the Borough Clerk

MEMORANDUM

TO: Charlie Pierce, Mayor
THRU: Johni Blankenship, Borough Clerk *(M) for JB.*
FROM: Tatyana Shassetz, Borough Clerk Secretary *(AS)*
DATE: November 8, 2019
RE: Verification of Road Service Area Board Applicant

Pursuant to KPB 16.41.020(A), the applicant listed below has been verified as registered voter of the Borough and resides within their area to be represented.

<u>Applicant</u>	<u>Board Seat</u>	<u>Term Expires</u>
Larry L. Smith	At-Large	September 30, 2022

Shassetz, Tatyana

From: Blankenship, Johni
Sent: Wednesday, October 30, 2019 2:25 PM
To: Shassetz, Tatyana
Cc: Turner, Michele
Subject: FW: Road Service Area Board Application has been submitted

T, please review the attached applicant as per our usual process. Upon verification we will send a memo and a copy of the application to Dil in roads for review and completion of the process with the Mayor.

Thank you, Johni

From: Larry L. Smith [mailto:llsmith907@gmail.com]
Sent: Tuesday, October 29, 2019 4:23 PM
To: Blankenship, Johni <JBlankenship@kpb.us>; Turner, Michele <MicheleTurner@kpb.us>
Subject: Road Service Area Board Application has been submitted

Name

Larry L. Smith

Mailing Address

P. O. Box 810

City

Cooper Landing

State

Alaska

Zip

99572

My Residence Address is DIFFERENT from my Mailing Address

My Residence Address is DIFFERENT from my Mailing Address

Residence Address

320 Artifact Street

City

Soldotna

State

Alaska

Zip

99669

Email

llsmith907@gmail.com

Work Phone

907-262-6160

Home Phone

Mobile Phone

907-398-4284

Occupation or place of employment

Construction contractor

How long have you lived in the area served by this service area?

67 years

What knowledge, experience, or expertise will you bring to this board?

Forty years road construction and maintenance experience. Six years prior service on the KPB Road Board.

Have you, or do you currently, serve on other Kenai Peninsula Borough commissions, boards or task forces?

KPB Road Board. KPB Gravel Work Group.

Are you available for

Night meetings

Day meetings


Comments (areas of interest, additional experience or qualifications, etc.):

Truck driver; equipment operator.

Enjoy fishing, hunting and playing with grandchildren.

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members of the Kenai Peninsula Borough Assembly

FROM: Charlie Pierce, Kenai Peninsula Borough Mayor 

DATE: November 21, 2019

RE: Appointment to Anchor Point Fire & Emergency Medical
Service Area Board

Pursuant to KPB 16.60.060 I hereby submit my recommendation for confirmation by the Assembly, of the following appointment to the Anchor Point Fire & Emergency Medical Service Area Board. The applicant is a registered voter and resides within the service area to be represented. Attached for your review is the request for appointment:

<u>Anchor Point S.A.</u>	<u>Board Seat</u>	<u>Term Expires</u>
Edward Jolly	Seat C	October, 2021

Kenai Peninsula Borough
Office of the Borough Clerk

MEMORANDUM

TO: Charlie Pierce, Mayor
THRU: Johni Blankenship, Borough Clerk (M.) for JB.
FROM: Tatyana Shassetz, Borough Clerk Secretary DS
DATE: November 13, 2019
RE: Verification of Anchor Point Service Area Board Applicant

Pursuant to KPB 16.60.020(a), the applicant listed below have been verified as registered voter of the Borough and resides within their area to be represented.

<u>Applicant</u>	<u>Board Seat</u>	<u>Term to Expire</u>
Edward Jolly	Seat C	October, 2021

Shassetz, Tatyana

From: Blankenship, Johni
Sent: Friday, October 25, 2019 3:48 PM
To: Shassetz, Tatyana
Subject: FW: Service Area Appointment Application received

T, please process. Thank you, Johni

From: Kenai Peninsula Borough [mailto:webmaster@borough.kenai.ak.us]
Sent: Friday, October 25, 2019 3:37 PM
To: Blankenship, Johni <JBlankenship@kpb.us>
Cc: Turner, Michele <MicheleTurner@kpb.us>
Subject: Service Area Appointment Application received

Select One
Anchor Point Fire & Emergency Service Area Board

Select One
APFESA Seat C – Term to expire 10/2021

{BCFSA_Seat_Choice:caption}
{BCFSA_Seat_Choice:value}

{EPHESA_Seat_Choice:caption}
{EPHESA_Seat_Choice:value}

{KESA_Seat_Choice:caption}
{KESA_Seat_Choice:value}

{NPRSA_Seat_Choice:caption}
{NPRSA_Seat_Choice:value}

{SPH_Seat_Choice:caption}
{SPH_Seat_Choice:value}

Select One

Select One

Applicant Name
Edward Jolly

Physical Residence Address
33695 Sterling HWY

City
Anchor Point

State
AK

Zip
99556

Mailing Address

City

State

Zip

Email

Daytime Phone
9072999512

Voter #
[REDACTED]

SS #

Date of Birth

I have been a Resident of the Kenai Peninsula Borough for:

Years

45

Months

0

I have been a Resident of the selected Service Area for:

Years

45

Months

0

If you would like to upload a copy of your resume, you may do that below.

Attachments **must** be in .PDF, .DOC or .DOCX format only.

Upload your Resume

APPLICANT CERTIFICATION: I certify that the information in this Application for Appointment is true and complete and that I meet the specific residency and citizenship requirements of this office. I further certify that I shall meet the age requirements upon taking the oath of office, if appointed. I further acknowledge that by typing my initials below I intend to fully sign this document.

Type your initials to sign

EJ

MEMORANDUM

TO: Kenai Peninsula Borough Assembly Members
FROM: Kelly Cooper, Assembly President *(K.C.) for K.C.*
DATE: November 5, 2019
RE: Appointing Assembly Member Brent Johnson to the Anadromous Waters Habitat Protection Work Group

On November 5, 2019, the Assembly adopted Resolution 2019-058 Establishing an Anadromous Waters Habitat Protection Work Group.


As the resolution states, the work group shall consist of at least one assembly member; one planning commissioner; and, five members of the public. The assembly member shall be appointed by the Assembly. The Mayor will provide a list of public members to be approved by the Assembly.


I am submitting Assembly Member Brent Johnson's name for Assembly approval.

Thank you.

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor 

FROM: Max Best, Planning Director 

DATE: November 25, 2019

RE: Anadromous Waters Habitat Protection Work Group

The borough assembly passed Resolution 2019-058 which established an anadromous waters habitat protection work group. The work group shall consist of at least one member from the assembly; one from the planning commission; and five members of the public. An amendment to Section 3 was made requiring the Mayor to provide a list of 5 members of the public to be approved by the assembly with representation from the north, south, central, east, and west regions of the borough. In addition to Brent Johnson, Assembly, and Robert Ruffner, Planning Commission, the following individuals were selected to provide balance to the group.

Wayne Ogle, past Assembly President (north)

Branden Bornemann, Executive Director, Kenai Watershed Forum (west)

Ed Oberts, local realtor, past KPB Chief of Staff (east)

Dawson Slaughter, Anchor Point Advisory Planning Commission (south)

Kaitlin Vadla, Soldotna Planning Commissioner (central)

Your support of this list is appreciated.

Kenai Peninsula Borough
Office of the Borough Mayor

MAYOR'S REPORT TO THE ASSEMBLY

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Charlie Pierce, Kenai Peninsula Borough Mayor



DATE: December 3, 2019

Assembly Request / Response

None

Agreements and Contracts

- a. Authorization to Award a Contract for ITB20-009 Homer High School Boiler Replacement to Mechanical Specialist, Inc., Wasilla, AK.
- b. Authorization to Award a Contract for ITB20-014 Central Peninsula Landfill (CPL) Brush Burning 2019 to Evergreen Alaska, Inc., of Kasilof, AK.
- c. Authorization to Award a Contract for RFP20-005 North Peninsula Recreation Service Area Remodel Professional Designs Services to Architects Alaska, Inc., Anchorage, AK.

Other

- a. Capital Project Reports – September 30, 2019
- b. Budget Revisions – October 2019
- c. Revenue-Expenditure Report – October 2019
- d. Investment Report Quarter Ended 09/30/19

**Kenai Peninsula Borough
Purchasing and Contracting Department**

MEMORANDUM

TO: Charlie Pierce, Mayor *CP*
THRU: John Hedges, Purchasing & Contracting Director *JH*
FROM: Carmen Vick, Project Manager *CV*
DATE: October 29, 2019
RE: Authorization to Award a Contract for ITB20-009
Homer High School Boiler Replacement

The Purchasing and Contracting Office formally solicited and received bids for ITB20-009 Homer High School Boiler Replacement. Bid packets were released on September 24, 2019 and the Invitation to Bid was advertised in the Peninsula Clarion and Anchorage Daily News on September 24, 2019 and the Homer News on September 26, 2019.

The project consists of the following: Procurement of new and demo / replacement of three (3) existing cast iron boilers, stack-vents, piping and related equipment. All work to be done per owner provided construction documents and in a scheduled, Phased process & time-line beginning after the NTP. Coordination with KPB and the School will be required. The building is in use and will remain in use throughout the school session ending in May 2020.

On the due date of October 14, 2019 five (5) bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$519,617.00 was submitted by Mechanical Specialists, Inc., Wasilla, Alaska.

Your approval for this bid award is hereby requested. Funding for this project is in account number 400.72010.20801.43011 and 400.72010.19801.43011.

James C. Baerlein For
Charlie Pierce, Mayor

11-1-2019
Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No. _____	400.72010.20801.43011
Amount _____	\$127,000.00
Acct. No. _____	400.72010.19801.43011
Amount _____	\$392,617.00
By: _____	Date: 10/29/19

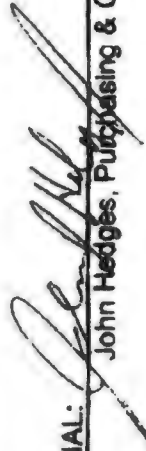
**KENAI PENINSULA BOROUGH
PURCHASING & CONTRACTING**

BID TAB FOR: ITB20-009 Homer High School Boiler Replacement

CONTRACTOR	LOCATION	BASE BID
Mechanical Specialists, Inc.	Wasilla, AK	\$519,617.00
JGH Plumbing & Heating, Inc.	Palmer, AK	\$539,421.00
Steiner's North Star Construction	Homer, AK	\$628,589.00
Norcoast Mechanical, Inc.	Anchorage, AK	\$635,000.00
Weldin Construction	Palmer, AK	\$745,434.54

DUE DATE: October 14, 2019

KPB OFFICIAL:





John Hedges, Purchasing & Contracting Director

Kenai Peninsula Borough
Solid Waste Department

MEMORANDUM

TO: Charlie Pierce, Mayor

THRU: John Hedges, Interim Purchasing & Contracting Director 

FROM: Jack Maryoff, Solid Waste Director 

DATE: November 6, 2019

RE: Authorization to Award a Contract for ITB20-014 Central Peninsula Landfill (CPL) Brush Burning 2019

The Purchasing and Contracting Office formally solicited and received bids for the ITB20-014 Central Peninsula Landfill (CPL) Brush Burning 2019. Bid packets were released on October 16, 2019 and the Invitation to Bid was advertised in the Peninsula Clarion on October 16, 2019.

The project consists of open burning approximately 2,000 tons of slash and land clearing debris located at CPL.

On the due date of October 29, 2019 six (6) bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$47,500.00 was submitted by Evergreen Alaska, Inc. of Kasilof, Alaska.


Your approval for this bid award is hereby requested. Funding for this project is in account number 290.32122.20BUR.43011



Charlie Pierce, Mayor

11/06/2019

Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	290.32122.20BUR.43011
Amount	\$47,500.00
By: 	Date: 11/6/19

**KENAI PENINSULA BOROUGH
PURCHASING & CONTRACTING**

BID TAB FOR: ITB20-014 CPL Brush Burning 2019

CONTRACTOR	LOCATION	BASE BID
Evergreen Alaska, Inc.	Kasilof, AK	\$47,500.00
Property Improvements	Fritz Creek, AK	\$64,892.00
CIC, Inc.	Soldotna, AK	\$67,500.00
Foster Construction, LLC	Soldotna, AK	\$91,220.00
Youth Restoration Corps	Soldotna, AK	\$99,200.00
Endries Company	Soldotna, AK	\$140,000.00

DUE DATE: October 29, 2019

KPB OFFICIAL: 
John Hedges, Purchasing & Contracting Director

**Kenai Peninsula Borough
PURCHASING AND CONTRACTING DEPARTMENT**

MEMORANDUM

TO: Charlie Pierce, Mayor
THRU: John Hedges, Purchasing & Contracting Director 
FROM: Carmen Vick, Project Manager 
DATE: November 7, 2019
RE: Authorization to Award a Contract for RFP20-005 North Peninsula Recreation Service Area Remodel Professional Design Services

The Purchasing and Contracting Office formally solicited and received proposals for RFP20-005 North Peninsula Recreation Service Area Remodel Professional Design Services. Proposal packets were released on September 12, 2019 and the Request for Proposal was advertised in the Peninsula Clarion and the Anchorage Daily News on September 12, 2019.

The project consists of professional architectural and engineering services necessary to remodel portions of the (NPRSA) recreation center. Design is to include, but is not limited to all drawings and specifications (Architectural, Structural, Electrical, Mechanical / HVAC, Procurement) necessary for completion of the bid ready construction documents.

On the due date of October 11, 2019 three (3) proposals were received and ranked by a review committee as follows:

<u>FIRM</u>	<u>LOCATION</u>	<u>TOTAL SCORE</u>
Architects Alaska, Inc.	Anchorage, AK	341
K+A designstudios	Kenai, AK	286
McCool Carlson Green	Anchorage, AK	242

The highest ranking proposal, which includes a cost factor, was submitted by Architects Alaska, Inc. with a lump sum cost proposal of \$20,000. The proposal review committee recommends award of a contract to Architects Alaska, Inc., Anchorage, Alaska. Your approval for this award is hereby requested.

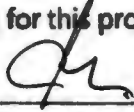
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Date

To:

RE:


Funding for this project is in account number 459.61110.19451.49311.



Charlie Pierce, Mayor

11/13/2019

Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	459.61110.19451.49311
Amount	\$20,000
By: 	Date: 11/7/19

Kenai Peninsula Borough
Finance Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members of the Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Borough Mayor *cp*

THRU: Brandi Harbaugh, Finance Director *BA*

FROM: Sarah Hostetter, Payroll Accountant *SH*

DATE: October 30, 2019

RE: Capital Project Reports – September 30, 2019

Attached are the quarterly project reports for the Borough's capital project funds:

Fund 400 - Borough and Grant Funded School Capital Projects Fund
Fund 401 - Bond Funded Capital Projects Fund
Fund 407 - General Government Capital Projects Fund
Fund 411 - Solid Waste Capital Projects Fund
Fund 434 - Road Service Area Capital Projects Fund
Fund 441 - Nikiski Fire Service Area Capital Projects Fund
Fund 442 - Bear Creek Service Area Capital Projects Fund
Fund 443 - CES Service Area Capital Projects Fund
Fund 444 - Anchor Point Service Area Capital Projects Fund
Fund 446 - Kachemak Emergency Service Area Capital Projects Fund
Fund 455 - Communication Center 911 Capital Projects Fund
Fund 459 - North Peninsula Recreation Service Area Capital Projects Fund
Fund 490 - Central Peninsula Hospital Capital Projects Fund
Fund 491 - South Peninsula Hospital Capital Projects Fund

School Revenue Projects - Fund 400

Balances through September 30, 2019

	Project	Year Appropriated	Site Number	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
Sch	13DSG	2013	78050	A/W Design Improvements	\$ 200,000	\$ 147,565	\$ -	\$ 52,435	\$ 147,565
Sch	13FLR	2013	19010	Admin Building Flooring	35,000	5,109	-	29,891	5,109
	14000	2014	78050	A/W Auditorium Lighting Upgrades	75,000	15,938	-	59,062	15,938
Sch	14SEC	2014	78050	A/W Security/Safety Improvements	1,370,000	955	-	1,369,045	955
	16782	2016	78050	A/W ADA Upgrades	150,000	226	226	150,000	-
	16855	2016	78050	A/W Locker Replacement	125,000	99,390	-	25,610	99,390
	17714	2017	78050	A/W Window/Siding Replacement	275,000	34,399	-	240,601	34,399
	17727	2017	78050	A/W Bleacher Replacement	100,000	22,675	-	77,325	22,675
	17780	2017	78050	A/W Playground Upgrades	75,000	16,716	-	58,284	16,716
	17782	2017	78050	A/W ADA Upgrades	75,000	22,576	-	52,424	22,576
	17802	2017	78050	A/W Asphalt/Sidewalk Repair	75,000	734	-	74,266	734
	17860	2017	78050	A/W Generator/Hardware	100,000	5,546	-	94,454	5,546
	18728	2018	78050	A/W Doors/Entries	100,000	11,982	-	88,018	11,982
	18759	2018	78050	A/W Water Quality Improvements	125,000	80,743	22,505	66,762	58,238
	18802	2018	78050	A/W Asphalt/Sidewalk Repair	150,000	97,876	-	52,124	97,876
	18851	2018	78010	A/W Portables/Outbuildings	75,000	18,347	5,068	61,722	13,278
	18860	2018	78050	A/W Generator/Hardware	75,000	17,574	-	57,426	17,574
	19714	2019	78050	A/W Window/Siding Replacement	150,000	150,000	-	-	150,000
	19758	2019	78050	A/W Electrical/Lighting	150,000	22,216	7,667	135,450	14,550
	19782	2019	78050	A/W ADA Upgrades	75,000	56,900	13,359	31,459	43,541
	19801	2019	78050	A/W HVAC/DDC Upgrades	75,000	65,772	25,706	34,934	40,066
	19802	2019	78050	A/W Asphalt/Sidewalk Repair	150,000	150,000	-	-	150,000
	19803	2019	78050	A/W Elevator Upgrades	50,000	50,000	-	-	50,000
	19851	2019	78010	A/W Portables/Outbuildings	75,000	75,000	38,635	38,635	36,365
	19856	2019	78050	A/W Security/Safety	300,000	158,241	69,642	211,401	88,599
	19860	2019	78050	A/W Generator/Hardware	50,000	50,000	-	-	50,000
	19801	2019	72010	Homer High Boiler Replacement	425,000	411,299	5,728	19,429	405,571
KSELO	2019	71065	KSELO New School Construction	10,010,000	10,010,000	-	-	-	10,010,000
SPREP	2019	76030	Relocate Portables From SPREP	300,000	300,000	206,539	206,539	93,461	
	20728	2020	78050	A/W Doors/Entries	100,000	100,000	9,825	9,825	90,175
	20755	2020	78050	A/W Flooring Upgrades	125,000	125,000	-	-	125,000
	20756	2020	78050	A/W Asbestos Removal/Repair	75,000	75,000	-	-	75,000
	20758	2020	78050	A/W Electrical/Lighting	125,000	125,000	2,272	2,272	122,728
	20759	2020	78050	A/W Water Quality Improvements	100,000	100,000	-	-	100,000
	20780	2020	78050	A/W Playground Upgrades	75,000	75,000	-	-	75,000
	20782	2020	78050	A/W ADA Upgrades	75,000	75,000	-	-	75,000
	20801	2020	78050	A/W HVAC/DDC/Boiler Upgrades	1,225,000	1,225,000	-	-	1,225,000
	20803	2020	78050	A/W Elevator Upgrades	50,000	50,000	-	-	50,000
	20851	2020	78010	A/W Portables/Outbuildings	75,000	75,000	-	-	75,000
	20855	2020	78050	A/W Locker Replacement	75,000	75,000	-	-	75,000
	20856	2020	78050	A/W Security/Safety	100,000	100,000	-	-	100,000
	20860	2020	78050	A/W Generator/Hardware	50,000	50,000	-	-	50,000
20PRP	2020	73030/20	Kenai Intensive Needs Remodel	410,000	410,000	84,364	84,364	325,636	

Project Totals

\$ 17,650,000 \$ 14,757,779 \$ 491,534 \$ 3,383,756 \$ 14,266,244

Beginning Fund Balance 7/1/19

\$ 1,934,965

Funds Provided:

	FY20 Transfer from General Fund	\$ 2,660,000	
13DSG	FY13 Local Contribution - KPBSD Design	147,565	
13FLR	FY13 Local Contribution - KPBSD Admin Bldg Floor	5,109	
14SEC	FY14 Local Contribution - KPBSD Security-Safety	955	
KESLO	AK Dept of Education & Early Development	10,010,000	
	Miscellaneous Revenue	1,075	
	Total Funds Provided		12,824,704
	Funds applied - current year expenditures		(491,534)
	Funds obligated to existing projects		(14,266,244)
	Projects completed, cancelled or other funding source identified		-
	Funds available for appropriation and for future capital expansion plans		\$ 1,891

Bond Projects - Fund 401

Balances through September 30, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
11SCH	2011	KPBSD Roof Replacements	\$ 16,894,646	\$ 25,523	\$ -	\$ 16,869,123	\$ 25,523
20SCH	2020	FY20 School Roof Replacements	2,377,363	2,377,363	-	-	2,377,363
Project Totals			\$ 19,272,009	\$ 2,402,886	\$ -	\$ 16,869,123	\$ 2,402,886
Beginning Fund Balance 7/1/19							\$ 2,664,020
Funds Provided:							
FY20 School Bond (FY14 issued) Interest						\$ 13,470	
Total Funds Provided							13,470
Funds applied - current year expenditures							-
Funds obligated to existing projects							(2,402,886)
Projects completed or cancelled							-
Funds available for appropriation and for future capital expansion plans							<u>\$ 274,604</u>
Fund Balance:							
School Bond interest prior to FY2011							44,831
School Bond FY11							217
School Bond FY14							229,556
Ending Fund Balance							<u>\$ 274,604</u>

General Government Projects - Fund 407

Balances through September 30, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
14MAN	2014	Manatron Software Upgrade	\$ 75,000	\$ 73,800	\$ -	\$ 1,200	\$ 73,800
15SOF	2015	Software Upgrade	75,000	64,364	-	10,636	64,364
16KRC	2016	River Center Bldg Repairs	49,000	12,395	-	36,605	12,395
16REC	2016	Records Mgmt Software	100,000	100,000	96,130	96,130	3,870
18ITR	2018	IT Dept Remodel	100,000	7,484	-	92,516	7,484
19407	2019	Card Entry Security System	150,000	99,158	28,385	79,227	70,773
Project Totals			<u>\$ 549,000</u>	<u>\$ 357,201</u>	<u>\$ 124,514</u>	<u>\$ 316,314</u>	<u>\$ 232,686</u>
Beginning Fund Balance 7/1/19							\$ 660,706
Funds Provided:							
FY20 Transfer from General Fund						<u>\$ 250,000</u>	
Total Funds Provided							250,000
Funds applied - current year expenditures							(124,514)
Funds obligated to existing projects							(232,686)
Projects completed or cancelled							-
Funds available for appropriation and for future capital expansion plans							<u>\$ 553,506</u>

Solid Waste Projects - Fund 411

Balances through September 30, 2019

	Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
Bond	17SWB	2017	SW CPL Equip/Plan/Design/Construction	\$ 5,999,365	\$ 1,092,524	\$ 533,329	\$ 5,440,170	\$ 559,195
	18CDE	2018	FY18 C&D Cell Expansion	350,000	173,659	277	176,618	173,382
	18GAS	2018	Landfill Gas to Energy Project	100,000	29,400	-	70,600	29,400
	19CDE	2019	FY19 C&D Cell Expansion	50,000	50,000	-	-	50,000
	19HLC	2019	FY19 SW-Homer Landfill Closure - Phase 2	2,322,000	2,247,948	3,706	77,758	2,244,242
	20FUN	2020	Funny River Transfer Site Expansion	670,525	670,525	1,769	1,769	668,756
Project Totals				<u>\$ 9,491,890</u>	<u>\$ 4,264,056</u>	<u>\$ 539,081</u>	<u>\$ 5,766,915</u>	<u>\$ 3,724,975</u>

	Capt Proj Fund	Closure/Post	17SWB Bond	Total
Beginning Fund Balance 7/1/19	\$ 1,056,090	\$ 8,729,484	\$ 1,192,121	\$ 10,977,695
Funds Provided:				
FY20 Transfer from Operating Fund	250,000			
FY20 Transfer for Closure/Post		1,083,280		
FY20 Interest Earnings on 17SWB Bond Proceeds			6,059	1,339,339
Funds applied - current year expenditures	(2,046)	(3,706)	(533,329)	(539,081)
Funds obligated to existing projects	(921,538)	(2,244,242)	(559,195)	(3,724,975)
Projects completed or cancelled	-	-	-	-
Funds available for approp. and future capital expansion plans	<u>\$ 382,507</u>			382,507
Closure/post closure liability		<u>\$ 7,564,816</u>		7,564,816
Funds restricted for SWD bond			<u>\$ 105,656</u>	105,656
Ending fund balance				<u>\$ 8,052,979</u>

Road Service Area Projects - Fund 434

Balances through September 30, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
2014 DCCED for Borough Wide Road Grant (\$100,000)							
14JAC	2014	Jacobs Ladder Repair	\$ 100,000	\$ 94,347	\$ -	\$ 5,653	\$ 94,347
2016-17 North Road Extension							
16NRD	2016	North Road Extension	7,123,591	3,678,424	274,015	3,719,182	3,404,409
2015 DCCED Borough Wide Road Grant (\$4,000,000)							
15089	2015	Borough Wide Road Grant	-	-	-	-	-
C2HUS	2017	Huske & Betty Lou	465,080	13,045	-	452,035	13,045
S8WYO	2017	Wyoh Way	1,123,638	60,350	-	1,063,288	60,350
N1MOR	2018	Morning Cir	29,511	536	-	28,975	536
N5HEI	2018	Heights Ln/Hillside Dr	362,326	85,311	-	277,015	85,311
S8MOD	2018	Morrison Dr	105,629	197	-	105,432	197
W4MYR	2018	Myra/David/Peggy/Sharon	379,060	63,657	30,083	345,487	33,574
S5BDR	2019	Flintlock Ln/Bidarki Dr/Bridger Rd	30,550	1,895	403	29,058	1,492
S7GLE	2019	Glenn Rd/Kipling Cir	31,091	1,463	1,463	31,091	-
20GRV	2020	FY20 Borough Gravel Projects	12,724	12,724	-	-	12,724
Projects Completed in Prior Years: 2015-2019			1,460,391	-	-	1,460,391	-
			4,000,000				
2019 Road CIP Projects (\$2,428,000)							
19CIP	2019	Borough Wide FY19 Local Funds	501,830	501,830	-	-	501,830
C2DIA	2017	Diane St/Glacier Ave	10,000	10,000	-	-	10,000
S7TRA	2017	Tracy Ave	10,000	10,000	-	-	10,000
W7IGL	2017	Divine Estates/Igloo-Dana Bayes	10,000	10,000	-	-	10,000
S5BDR	2019	Flintlock Ln/Bidarki Dr/Bridger Rd	383,450	383,267	-	183	383,267
S7GLE	2019	Glenn Rd/Kipling Cir	523,909	523,726	52,703	52,886	471,023
S7HLR	2019	Hulter Road	606,486	606,486	-	-	606,486
W4TIM	2019	Tim Ave/Muir St/Creek View Rd	302,940	302,940	504	504	302,436
W6TER	2019	Tern Cir/Jacnjil Cir/Jitney Cir	79,385	79,385	-	-	79,385
			2,428,000				
2020 Road CIP Projects (\$2,519,000)							
20CIP	2020	Borough Wide FY20 Local Funds	-	-	-	-	-
20GRV	2020	FY20 Borough Gravel Projects	200,000	200,000	-	-	200,000
20WRT	2020	Warranty Funds	20,000	20,000	-	-	20,000
S7WAL	2020	Walters St/Wilderness Ln	1,006,500	1,006,500	-	-	1,006,500
S8BSG	2020	Basargin Rd	1,155,000	1,155,000	-	-	1,155,000
W6ROC	2020	Roosevelt Cir	137,500	137,500	-	-	137,500
			2,519,000				
20431	2020	Inspector Vehicle	39,175	39,175	-	-	39,175
Project Totals			\$ 16,209,766	\$ 8,997,757	\$ 359,171	\$ 7,571,180	\$ 8,638,586
Beginning Fund Balance 7/1/19							\$ 7,876,198
Funds Provided:							
FY20 Transfer from Operating Fund						\$ 2,000,000	
14JAC	DCCED Boro Wide Improvement					94,347	
15089	DCCED Boro Wide Improvement					239,177	
16NRD	US Dept. of Transportation					3,678,424	
Total Funds Provided							6,011,948
Funds applied - current year expenditures							(359,171)
Funds obligated to existing projects							(8,638,586)
Projects completed or cancelled by Service Area Board Action							-
Funds available for appropriation and for future capital expansion plans							\$ 4,890,389

Nikiski Fire Projects - Fund 441

Balances through September 30, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
15416	2015	Vehicle Computer Aided Dispatch	\$ 250,000	\$ 201,802	\$ 8,383	\$ 56,582	\$ 193,418
16412	2016	Roadway Emergency Signs	75,000	6,588	1,020	69,432	5,568
18411	2018	ST 1 Repairs/Maintenance	150,000	98,396	1,910	53,514	96,486
18412	2018	ST 1 Exhaust Removal System	100,000	97,910	-	2,090	97,910
19411	2019	NFSA Fire ST 3 New Construction	3,200,000	3,096,500	548	104,048	3,095,952
19412	2019	Parking Lot Repairs ST 1 & 2	100,000	74,957	303	25,346	74,654
19413	2019	Fire Station Alerting Systems	100,000	61,836	59,126	97,291	2,709
19GEN	2019	Emergency Generator/Parts	92,000	91,680	8,054	8,374	83,626
20411	2020	CPR Devices/Defibrillators	125,000	125,000	57,837	57,837	67,163
20412	2020	Emergency Response Vehicle	75,000	75,000	51,369	51,369	23,631
20413	2020	Enclosed Conex Carport	150,000	150,000	-	-	150,000
Project Totals			<u>\$ 4,417,000</u>	<u>\$ 4,079,669</u>	<u>\$ 188,551</u>	<u>\$ 525,882</u>	<u>\$ 3,891,118</u>

Beginning Fund Balance 7/1/19	\$ 4,398,151
Funds Provided:	
FY20 Transfer from Operating Fund	\$ 400,000
Total Funds Provided	400,000
Funds applied - current year expenditures	(188,551)
Funds obligated to existing projects	(3,891,118)
Projects completed or cancelled by Service Area Board Action	-
Funds available for appropriation and for future capital expansion plans	<u>\$ 718,482</u>

Bear Creek Fire Service Area Projects - Fund 442

Balances through September 30, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
13566	2013	Multi-Use Facility Construction	\$ 5,488,263	\$ 278	\$ -	\$ 5,487,984	\$ 278
14421	2014	Dispatch/Communication Equip	25,000	2,547	-	22,453	2,547
19421	2019	Turnout Gear	21,267	284	-	20,983	284
19422	2019	SCBA Bottle Replacement	20,786	20,786	-	-	20,786
20421	2020	Turnout Gear	10,820	10,820	-	-	10,820
Project Totals			<u>\$ 5,566,136</u>	<u>\$ 34,715</u>	<u>\$ -</u>	<u>\$ 5,531,421</u>	<u>\$ 34,715</u>
Beginning Fund Balance 7/1/19							\$ 370,362
Funds Provided:							
FY20 Transfer from Operating Fund						\$ 100,000	
Total Funds Provided							100,000
Funds applied - current year expenditures							-
Funds obligated to existing projects							(34,715)
Projects completed or cancelled by Service Area Board Action							-
Funds available for appropriation and for future capital expansion plans							<u>\$ 435,647</u>

Central Emergency Services Projects - Fund 443

Balances through September 30, 2019

	Year	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance	
	12469	2012	Training Facility Relocation	\$ 350,000	\$ 68,671	\$ 18	\$ 281,348	\$ 68,652
	13465	2013	Mobile Data Terminals	105,000	7,931	-	97,069	7,931
Bond	16CES	2016	Emergency Response Vehicles	2,795,138	35,241	-	2,759,897	35,241
	17463	2017	CES Lighting Improvements	110,000	23,796	-	86,204	23,796
	18461	2018	Fire Station Alerting System	400,000	229,965	14,294	184,329	215,671
	19461	2019	SCBA Compressor	450,000	450,000	-	-	450,000
	19462	2019	Rescue Boat	125,000	125,000	-	-	125,000
	19463	2019	Enclosed Cargo Trailer	35,000	35,000	-	-	35,000
	19465	2019	Mobile Data Terminals	35,000	33,231	-	1,769	33,231
	19469	2019	Training Site Phase 2 Expansion	150,000	150,000	-	-	150,000
Grant	19TKR	2019	CES Pumper/Tanker	656,500	656,500	630,271	630,271	26,229
	20461	2020	CES Station 1 Land Acquisition	900,000	900,000	-	-	900,000
	20462	2020	CES Ambulance	250,000	250,000	22,316	22,316	227,684
Project Totals				<u>\$ 6,361,638</u>	<u>\$ 2,965,334</u>	<u>\$ 666,899</u>	<u>\$ 4,063,202</u>	<u>\$ 2,298,435</u>

	Capt Proj Fund	16CES Bond	Total
Beginning Fund Balance 7/1/19	\$ 1,824,386	\$ 44,630	\$ 1,869,016
Funds Provided:			
FY20 Transfer from Operating Fund	1,250,000		
State of AK Dept CCED - 19TKR	487,500		
FY20 Interest Earnings on 16CES Bond Proceeds		232	1,737,732
Funds applied - current year expenditures	(666,899)	-	(666,899)
Funds obligated to existing projects	(2,263,194)	(35,241)	(2,298,435)
Projects completed or cancelled by Service Area Board Action	-	-	-
Funds available for approp. and for future capital expansion plans	<u>\$ 631,793</u>		631,793
Funds restricted for 16CES bond		<u>\$ 9,621</u>	9,621
Ending fund balance			<u>\$ 641,414</u>

Anchor Point Fire Service Area Projects - Fund 444

Balances through September 30, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
11TNK	2011	Water Storage Tank Installation	\$ 50,000	\$ 16,438	\$ -	\$ 33,562	\$ 16,438
18441	2018	Emergency Water Fill Site FY18	100,000	9,665	-	90,335	9,665
19441	2019	Emergency Water Fill Site FY19	100,000	75,797	520	24,722	75,278
19443	2019	ST 1 Boiler Replacement	50,000	48,036	5,419	7,384	42,616
20441	2020	Command Vehicle	60,000	60,000	-	-	60,000
Project Totals			<u>\$ 360,000</u>	<u>\$ 209,936</u>	<u>\$ 5,939</u>	<u>\$ 156,003</u>	<u>\$ 203,997</u>

Beginning Fund Balance 7/1/19	\$ 178,719
Funds Provided:	
FY20 Transfer from Operating Fund	<u>\$ 200,000</u>
Total Funds Provided	200,000
Funds applied - current year expenditures	(5,939)
Funds obligated to existing projects	(203,997)
Projects completed or cancelled by Service Area Board Action	<u>-</u>
Funds available for appropriation and for future capital expansion plans	<u>\$ 168,784</u>

Kachemak Service Area Projects - Fund 446

Balances through September 30, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
17482	2017	ST 2 Water Tank/Generator	\$ 25,000	\$ 6,962	\$ -	\$ 18,038	\$ 6,962
19PMP	2019	KESA Pumper/Tanker	501,000	501,000	500,756	500,756	244
20481	2020	ATV Rescue/Brush Unit	20,000	20,000	-	-	20,000
Project Totals			<u>\$ 546,000</u>	<u>\$ 527,962</u>	<u>\$ 500,756</u>	<u>\$ 518,795</u>	<u>\$ 27,205</u>

Beginning Fund Balance 7/1/19	\$ 540,889
Funds Provided:	
FY20 Transfer from Operating Fund	<u>\$ 100,000</u>
Total Funds Provided	100,000
Funds applied - current year expenditures	(500,756)
Funds obligated to existing projects	(27,205)
Projects completed or cancelled by Service Area Board Action	<u>-</u>
Funds available for appropriation and for future capital expansion plans	<u>\$ 112,928</u>

Communication Center 911 Projects - Fund 455

Balances through September 30, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
17CCR	2017	SPSCC Renovation Project	\$ 316,000	\$ 112,276	\$ 48,122	\$ 251,846	\$ 64,154
		Transfer to General Fund	175,000	175,000	175,000	175,000	-
Totals			<u>\$ 491,000</u>	<u>\$ 287,276</u>	<u>\$ 223,122</u>	<u>\$ 426,846</u>	<u>\$ 64,154</u>

Beginning Fund Balance 7/1/19	\$ 287,276
Funds applied - current year expenditures	(223,122)
Funds obligated to existing projects	(64,154)
Projects completed or cancelled	<u>-</u>
Funds available for appropriation and for future capital expansion plans	<u>\$ -</u>

North Peninsula Recreation Projects - Fund 459

Balances through September 30, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
18451	2018	Fire Alarm System Replacement	\$ 165,000	\$ 73,808	\$ -	\$ 91,192	\$ 73,808
19451	2019	Community Center Remodel	355,000	354,255	2,665	3,410	351,590
19SEP	2019	Pool Septic System	90,000	18,561	-	71,439	18,561
20451	2020	Gymnasium Lighting	62,000	62,000	-	-	62,000
20452	2020	Fitness Equipment	75,000	75,000	-	-	75,000
20453	2020	Furniture/Furnishings	60,000	60,000	-	-	60,000
20454	2020	Tractor/Mower	35,000	35,000	24,175	24,175	10,825
20455	2020	Pool Boiler/HVAC Replacements	725,000	725,000	917	917	724,083
Project Totals			<u>\$ 1,567,000</u>	<u>\$ 1,403,624</u>	<u>\$ 27,758</u>	<u>\$ 191,134</u>	<u>\$ 1,375,866</u>

Beginning Fund Balance 7/1/19	\$ 745,393
Funds Provided:	
FY20 Transfer from Operating Fund	<u>\$ 850,000</u>
Total Funds Provided	850,000
Funds applied - current year expenditures	(27,758)
Funds obligated to existing projects	(1,375,866)
Projects completed or cancelled by Service Area Board Action	<u>-</u>
Funds available for appropriation and for future capital expansion plans	<u>\$ 191,770</u>

Central Peninsula Hospital Projects - Fund 490

Balances through September 30, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
Provided by Bond Proceeds							
14CPH	2014	CPH Specialty Clinic Bld	\$ 41,249,563	\$ 143,067	\$ -	\$ 41,106,496	\$ 143,067
18CPH	2018	CPH OB/Cath Lab	29,140,645	6,691,924	3,732,258	26,180,979	2,959,666
Funds Provided by Hospital Plant Replacement Fund							
15IMG	2015	CPH Imaging Dept Project	8,153,785	75,622	-	8,078,163	75,622
17OBL	2017	CPH OB/Cardiac Cath Lab	10,000,000	4,755,966	61,213	5,305,247	4,694,753
19DAV	2019	Surgical Robotic System	2,261,250	92,616	-	2,168,634	92,616
19ELV	2019	Elevator Repair	126,505	17,871	-	108,634	17,871
19EQU	2019	OB/Cath Lab Equipment	1,244,308	1,244,308	-	-	1,244,308
Total Funds Provided by Hospital Plant Replacement Fund			21,785,848	6,186,382	61,213	15,660,679	6,125,169
Project Totals			\$ 92,176,056	\$ 13,021,374	\$ 3,793,472	\$ 82,948,154	\$ 9,227,902

	Capl Proj Fund	KHCTR	CPH Bonds	Total
Beginning Fund Balance 7/1/19	\$ 724,748	\$ 707,474	\$ 7,591,872	\$ 9,024,094
Funds Provided:				
15IMG CPH Local Contribution - CPH Imaging Center	75,622			
17OBL CPH OB / Card Cath Lab	4,755,966			
19DAV CPH Local Contribution - Surgical Robotics	92,616			
19ELV CPH Local Contribution - Elevator Repair	17,871			
19EQU CPH Local Contribution - OB/Cath Lab Equip	1,244,308			
FY20 Interest Earnings on CPH Bond Proceeds			45,625	6,232,007
Funds applied - current year expenditures	(61,213)	-	(3,732,258)	(3,793,472)
Funds obligated to existing projects	(6,125,169)	-	(3,102,733)	(9,227,902)
Projects completed or cancelled	-	-	-	-
Funds available for approp. and future capital projects	\$ 724,748			724,748
Funds restricted For Kenai Health Center Maintenance		\$ 707,474		707,474
Funds restricted for CPH bonds			\$ 802,505	802,505
Ending fund balance				\$ 2,234,728

South Peninsula Hospital Projects - Fund 491

Balances through September 30, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance	
Funds Provided by Local Funds								
	17SHB	2017	Operating Room Heat/Humidity	\$ 300,000	\$ 69,607	\$ -	\$ 230,393	\$ 69,607
	17SHV	2017	GYN Equipment	30,000	30,000	-	-	30,000
Bond	17SPH	2017	HVAC System	1,778,996	2,126	-	1,776,871	2,126
Bond	17SPM	2017	Homer Medical Center	3,018,898	63,238	13,025	2,968,685	50,213
	18SHF	2018	Patient Monitoring System Upgrades	122,800	122,800	-	-	122,800
	18SHG	2018	HVAC Zone Digital Controls	110,945	110,945	-	-	110,945
	18SHJ	2018	Elevator Upgrade	83,000	83,000	-	-	83,000
	19SHB	2019	Nurse Call System Upgrade FY19	251,095	235,542	-	15,553	235,542
	19SHE	2019	Access Control/Security Cameras	95,000	66,290	4,786	33,496	61,504
	19SHZ	2019	Ultrasound Machines	375,000	306,980	92,550	160,570	214,430
	20SHB	2020	Shelled Space Remodel	1,412,500	1,412,500	-	-	1,412,500
	20SHC	2020	CT Scanner	931,314	931,314	-	-	931,314
	20SHD	2020	HIS Server Replacement	114,894	114,894	11,349	11,349	103,545
	20SHE	2020	Steris 1E	111,737	111,737	-	-	111,737
	20SHF	2020	Fire Alarm Upgrade	105,000	105,000	-	-	105,000
	20SHG	2020	Micro Analyzer	86,670	86,670	-	-	86,670
	20SHH	2020	Re-Key Hospital Doors	48,225	48,225	-	-	48,225
	20SHJ	2020	Stryker Drill Platform	40,358	40,358	-	-	40,358
	20SHK	2020	Van	36,500	36,500	-	-	36,500
	20SHL	2020	Virtual Server Replacement	24,000	24,000	-	-	24,000
	20SHM	2020	Blast Chiller for Nutrition Services	20,000	20,000	20,000	20,000	-
	20SHN	2020	Glidescope	19,433	19,433	-	-	19,433
	20SHP	2020	Bladderscan	15,375	15,375	-	-	15,375
	20SHQ	2020	Advanta2 Bed System	15,278	15,278	-	-	15,278
	20SHR	2020	EFI Total Gym Power Tower	9,195	9,195	-	-	9,195
	20SHS	2020	Bloodbank Centrifuge	7,320	7,320	-	-	7,320
	20SHU	2020	Blood Plasma Thawer	4,915	4,915	-	-	4,915
	20DTK	2020	Deaerator Tank	180,000	180,000	-	-	180,000
	20STB	2020	Steris Orthovision Table	25,800	25,800	-	-	25,800

Funds Provided by Hospital Plant Replacement Fund

19MON	2019	Patient Monitors	756,000	755,100	-	900	755,100
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Project Totals	\$ 10,130,248	\$ 5,054,141	\$ 141,710	\$ 5,217,817	\$ 4,912,432
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	Capt Proj Fund	17SPH/M Bond	Total
Beginning Fund Balance 7/1/19	\$ 3,151,728	\$ 86,148	\$ 3,237,876
Funds Provided:			
FY20 Transfer from Operating Fund	1,700,000		
19MON SPH Local Contribution - Patient Monitors	755,100		
FY20 Interest Earnings on 17SPH/M Bond Proceeds		405	2,455,505
Funds applied - current year expenditures	(1,288,685)	(13,025)	(141,710)
Funds obligated to existing projects	(4,860,093)	(52,339)	(4,912,432)
Projects completed or cancelled	-	-	-
Funds available for approp. and future capital expansion plans	\$ 618,050		618,050
Funds restricted for 17SPH Bond		\$ 21,190	21,190
Ending fund balance			\$ 639,240

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members of the Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Borough Mayor *chi*

THRU: Brandi Harbaugh, Finance Director *BH*

FROM: Sarah Hostetter, Payroll Accountant *SH*

DATE: November 5, 2019

RE: Budget Revisions – October 2019

Attached is a budget revision listing for October 2019. The attached list contains budget revisions between major expenditure categories (i.e., maintenance & operations and capital outlay). Other minor transfers were processed between object codes within major expenditure categories.

CENTRAL EMERGENCY SERVICES

To cover costs of custodial services provided by KPB staff.

211-51610-00000-43011 (Contract Services)		\$3,500.00
211-51610-00000-40110 (Regular Wages)	\$3,500.00	

FINANCE - FINANCIAL SERVICES

To cover replacement of old computer monitors.

100-11430-00000-40110 (Regular Wages)		\$1,042.00
100-11430-00000-48710 (Minor Office Equipment)	\$1,042.00	

KACHEMAK EMERGENCY SERVICES

To cover outside vehicle maintenance costs due to vacant mechanic position.

212-51810-00000-40110 (Regular Wages)		\$20,000.00
212-51810-00000-43750 (Vehicle Maintenance)	\$20,000.00	

LEGAL

To purchase unanticipated replacement of office chair.

100-11310-00000-43210 (Transport/Subsistence)		\$400.00
100-11310-00000-42410 (Small Tools and Minor Equipment)	\$400.00	

MAYOR

To replace damaged laptop.

100-11210-00000-43920 (Dues and Subscriptions)		\$672.36
100-11210-00000-48710 (Minor Office Equipment)	\$672.36	

PLANNING - ADMINISTRATION

To purchase an outdoor notice board for the newly formed Funny River Advisory Planning Commission.

100-21110-00000-43011 (Contract Services)		\$500.00
100-21110-00000-42410 (Small Tools and Minor Equipment)	\$500.00	

PLANNING - GEOGRAPHIC INFORMATION SYSTEMS

To purchase software that will allow monitoring of critical components of GIS systems (servers, online services, etc.)

100-11232-00000-40110 (Regular Wages)		\$8,500.00
100-11232-00000-42120 (Computer Software)	\$8,500.00	

ROADS

To purchase sanding equipment.

236-33950-00000-43952 (Road Maintenance)		\$30,000.00
236-33950-00000-48311 (Machinery and Equipment)	\$30,000.00	

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members of the Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Borough Mayor *CP*

THRU: Brandi Harbaugh, Finance Director *BH*

FROM: Sarah Hostetter, Payroll Accountant *SH*

DATE: November 5, 2019

RE: Revenue-Expenditure Report – October 2019

Attached is the Revenue-Expenditure Report of the General Fund for the month of October 2019. Please note that 33.33% of the year has elapsed, 50.62% of budgeted revenues have been collected, and 32.73% of budgeted expenditures have been made.

KENAI PENINSULA BOROUGH
 Revenue Report
 For the Period
 October 1 through October 31, 2019

ACCOUNT NUMBER	DESCRIPTION	ESTIMATED REVENUE	YEAR TO DATE RECEIPTS	MONTH TO DATE RECEIPTS	VARIANCE	% COLLECTED
31100	Real Property Tax	\$ 30,759,296	\$ 23,009,636	\$ 7,609,451	\$ (7,749,660)	74.81%
31200	Personal Property Tax	1,988,657	1,823,541	723,784	(165,116)	91.70%
31300	Oil Tax	7,347,971	7,342,988	-	(4,983)	99.93%
31400	Motor Vehicle Tax	712,000	-	-	(712,000)	0.00%
31510	Property Tax Penalty & Interest	499,969	81,341	50,390	(418,628)	16.27%
31610	Sales Tax	32,272,462	6,605,565	2,835,898	(25,666,897)	20.47%
33110	In Lieu Property Tax	3,600,000	78,795	78,795	(3,521,205)	2.19%
33117	Other Federal Revenue	185,000	-	-	(185,000)	0.00%
34110	School Debt Reimbursement	1,324,359	1,088,768	-	(235,591)	82.21%
34221	Electricity & Phone Revenue	155,000	-	-	(155,000)	0.00%
34222	Fish Tax Revenue Sharing	750,000	-	-	(750,000)	0.00%
34210	Revenue Sharing	843,079	843,613	-	534	100.06%
37350	Interest on Investments	936,944	497,478	79,305	(439,466)	53.10%
38000	Trans From Other Funds	175,000	175,000	-	-	100.00%
39000	Other Local Revenue	300,000	110,913	31,282	(189,087)	36.97%
290	Solid Waste	800,000	175,624	3,067	(624,376)	21.95%
Total Revenues		\$ 82,649,737	\$ 41,833,264	\$ 11,411,972	\$ (40,816,473)	50.62%

KENAI PENINSULA BOROUGH
Expenditure Report
For the Period
October 1 through October 31, 2019

DESCRIPTION	REVISED BUDGET	YEAR TO DATE EXPENDED	MONTH TO DATE EXPENDED	AMOUNT ENCUMBERED	AVAILABLE BALANCE	% EXPENDED
Assembly:						
Administration	\$ 494,065	\$ 176,180	\$ 29,816	\$ 85,054	232,831.16	35.66%
Clerk	555,004	145,699	42,544	23,129	386,176.20	26.25%
Elections	113,910	78,230	53,361	16,135	19,544.55	68.68%
Records Management	269,852	67,918	18,286	18,133	183,801.18	25.17%
Mayor Administration	818,559	214,296	57,624	1,657	602,606.07	26.18%
Purch/Contracting/Cap Proj	625,305	122,501	30,115	7,318	495,485.84	19.59%
Human Resources:						
Administration	676,140	187,923	48,409	9,654	478,562.65	27.79%
Print/Mail	161,071	37,695	14,402	30,833	92,543.06	23.40%
Custodial Maintenance	119,209	29,834	7,966	-	89,374.98	25.03%
Information Technology	2,015,513	534,717	126,668	13,196	1,467,599.75	26.53%
Emergency Management	825,019	202,270	44,947	88,733	534,015.67	24.52%
Legal Administration	994,040	232,648	63,044	79,809	681,582.57	23.40%
Finance:						
Administration	500,734	160,421	42,806	2,463	337,850.30	32.04%
Services	1,013,361	277,337	60,273	3,273	732,751.96	27.37%
Property Tax	1,141,518	344,590	54,960	61,136	735,792.69	30.19%
Sales Tax	700,683	197,210	34,622	24,674	478,798.89	28.15%
Assessing:						
Administration	1,426,441	419,644	84,954	44,173	962,624.07	29.42%
Appraisal	1,973,606	480,607	124,395	19,417	1,473,582.16	24.35%
Resource Planning:						
Administration	1,264,985	304,294	78,214	35,880	924,810.94	24.06%
GIS	596,596	185,218	30,790	12,070	399,308.10	31.05%
River Center	802,751	134,604	37,537	6,900	661,246.32	16.77%
Senior Citizens Grant Program	608,969	-	-	608,969	-	0.00%
School District Operations	58,965,977	21,806,219	4,563,508	-	37,159,757.99	36.98%
Solid Waste Operations	8,858,901	1,644,522	557,503	1,995,180	5,219,198.89	18.56%
Economic Development	275,000	-	-	100,000	175,000.00	0.00%
Non-Departmental	1,876,065	712,542	167,188	2,055	1,161,468.25	37.98%
Total Expenditures	\$ 87,673,275	\$ 28,697,121	\$ 6,373,932	\$ 3,289,840	\$ 55,686,314	32.73%

Kenai Peninsula Borough

Finance Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members of the Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Borough Mayor *CP*

THRU: Brandi Harbaugh, Finance Director *BH*

DATE: December 3, 2019

RE: Investment Report quarter ended 9/30/19

Attached is the Quarterly Investment Report of the Kenai Peninsula Borough for the quarter ending September 30, 2019.

Portfolio Statistics	Quarter Ended 06/30/19	Quarter Ended 09/30/19
Average Daily Balance	\$218,262,360	\$225,066,849
Earned Interest Yield	2.317%	2.149%
Duration in Years	2.13	2.10
Book Value	\$226,732,960	\$245,051,944
Market Value	\$228,041,689	\$246,662,076
Percent % of Market Value	99.43%	99.35%

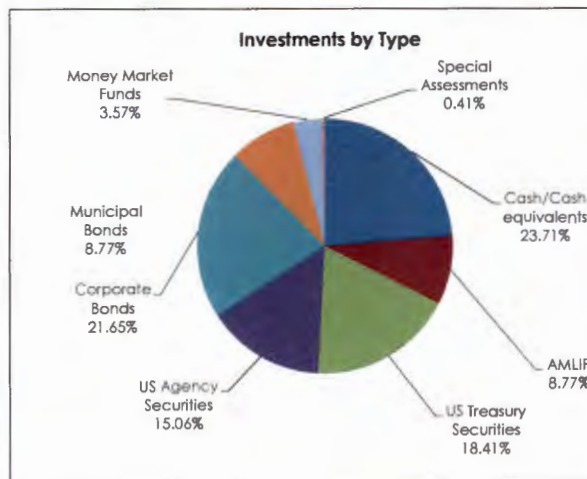
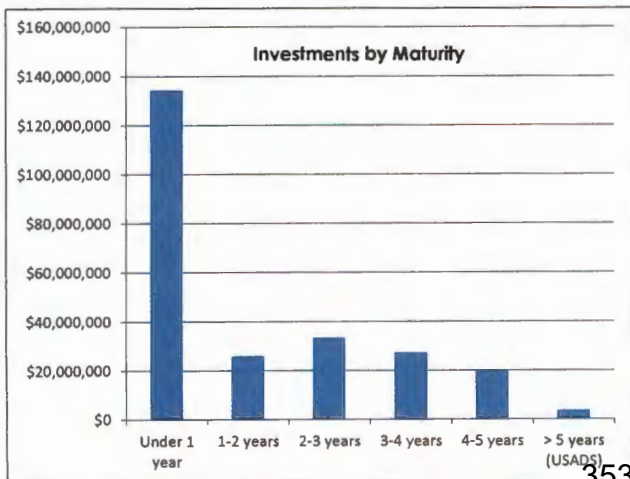
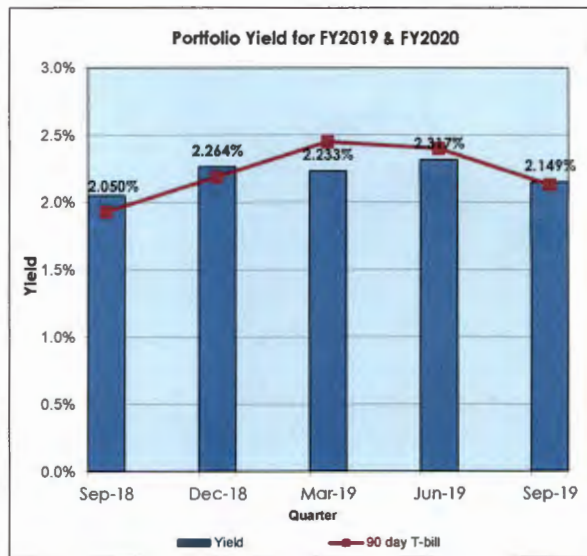
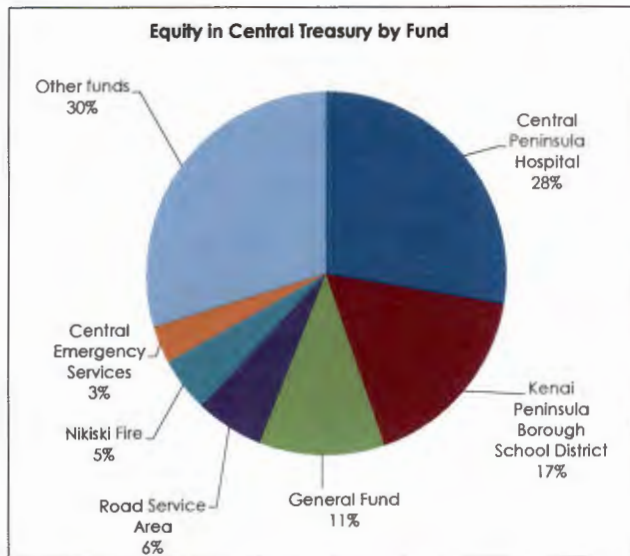
Investment Description	Yield quarter ending 06/30/2019	Yield quarter ending 09/30/2019	Market Value quarter ending 09/30/2019
Cash and Cash Equivalents	1.98%	1.73%	58,111,591
AMLIP	2.23%	1.87%	21,480,863
U.S. Treasury Securities	.53%	.63%	46,145,584
US Agencies	.56%	.53%	37,158,747
Corporate Bonds	.86%	.84%	53,642,768
Municipal Bonds	.32%	.26%	20,363,154
Money Market Mutual Funds	.17%	.09%	8,745,644
Special Assessments	5.55%	5.55%	1,013,725
Total			\$246,662,076

Major Categories:	Percentage of Portfolio	Book Value quarter ending 9/30/19
Bond related funds	10.47%	\$25,658,034
Hospital plant/equipment replacement funds (PERF)-unobligated	17.63%	43,205,463
School District	20.43%	50,074,675
Capital Project fund restrictions	18.42%	45,148,807
Special Revenue funds restrictions	17.50%	42,882,256
Internal Service/Agency fund restrictions	5.87%	14,375,418
General Fund	9.68%	23,707,291
Total	100.00%	\$245,051,944

INVESTMENT PORTFOLIO
September 30, 2019

	Par Value	Purchase Price	Fair Value 9/30/2019
Investments by Borough Finance Director			
CORPORATE	20,820,000.00	20,788,764.20	20,856,962.60
COMMERCIAL PAPER	0.00	0.00	0.00
MUNICIPAL	0.00	0.00	0.00
AGENCY	12,000,000.00	11,956,198.00	12,012,280.00
US TREASURY - less than 1 year	15,000,000.00	14,947,899.38	14,986,415.00
Total Investment by Borough Finance Director:	47,820,000.00	47,692,861.58	47,855,657.60
Investment with External manager:			
CORPORATE	32,388,000.00	32,272,310.53	32,785,805.51
MUNICIPAL	20,085,000.00	20,622,368.70	20,363,154.10
AGENCY	24,616,373.02	24,949,076.51	25,146,467.27
US TREASURY	30,500,000.00	30,163,504.51	31,159,169.00
Total Security Investment with External manager:	107,589,373.02	108,007,260.25	109,454,595.88
TOTAL SECURITY INVESTMENTS	155,409,373.02	155,700,121.83	157,310,253.48
CASH & CASH EQUIVALENTS	88,338,097.79	88,338,097.79	88,338,097.79
SPECIAL ASSESSMENTS	1,013,724.76	1,013,724.76	1,013,724.76
TOTAL PORTFOLIO	244,761,195.57	245,051,944.38	246,662,076.03

Investment Portfolio - Purchase Price	\$ 155,786,941.47
Investment Portfolio - Fair Value 9/30/19	157,397,073.12
Fair Value Adjustment - 9/30/19	1,610,131.65
Fair Value Adjustment - 6/30/19	1,308,728.94
Change in Fair Value FY2020	\$ 301,402.71



Kenai Peninsula Borough Assembly Committees 2019 – 2020

ASSEMBLY COMMITTEES

- **Finance Committee**
Brent Hibbert, Chair
Tyson Cox, Vice Chair
Brent Johnson
- **Lands Committee**
Brent Johnson, Chair
Kenn Carpenter, Vice Chair
Norm Blakeley
- **Policies & Procedures Committee**
Willy Dunne, Chair
Hal Smalley, Vice Chair
Kenn Carpenter
- **Legislative Committee**
Hal Smalley, Chair
Jesse Bjorkman, Vice Chair
Willy Dunne
- **President Pro Tem**
Brent Hibbert
- **OTHER BOROUGH COMMITTEES**
- **School Board**
Tyson Cox
Brent Johnson, Alternate

SERVICE AREA BOARD LIAISONS

- **Anchor Point Fire & EMS** – Willy Dunne
- **Bear Creek Fire** – Kenn Carpenter
- **CES/CPEMS** – Norm Blakeley
- **Kachemak Emergency Service Area** – Willy Dunne
- **KPB Roads** – Kelly Cooper
- **Nikiski Seniors** – Jesse Bjorkman
- **Nikiski Fire** – Jesse Bjorkman
- **North Peninsula Recreation** – Jesse Bjorkman
- **Seldovia Recreational** – Willy Dunne
- **Seward/Bear Creek Flood** – Kenn Carpenter
- **South Kenai Peninsula Hospital** - Kelly Cooper, Willy Dunne
- **NON-BOROUGH COMMITTEES**
- **Cook Inlet Aquaculture**
Dale Bagley
- **Cook Inlet R.C.A.C.**
Grace Merkes, term expires April 2020
- **Kenai Peninsula Economic Development District**
Hal Smalley, term expires with office
- **Kenai Peninsula College Council**
VACANT, term expires with office
- **Kenai River Special Management Area Advisory Board**
Brent Hibbert, term expires with office
- **Prince William Sound R.C.A.C.**
Mako Haggerty, term expires May 2019
- **Kachemak Bay Research Reserve Community Council**
Willy Dunne, term expires with office