

Introduced by:	Mayor
Date:	04/02/24
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2024-012**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT
TO THE SERVICE AND OPERATING AGREEMENT WITH
NIKISKI SENIOR CITIZENS, INC.**

WHEREAS, the Kenai Peninsula Borough (“KPB”), on behalf of the Nikiski Senior Citizens Service Area ("Service Area"), has entered into a Service and Operating Agreement ("Operating Agreement") with Nikiski Senior Citizens, Inc. (“NSC”) for senior citizen programs, services, and operations within the Service Area; and

WHEREAS, KPB and NSC desire to amend the operating agreement; and

WHEREAS, at its meeting on February 28, 2024, the NSC, Inc. Board of Directors recommended approval of this First Amendment to Service and Operating Agreement; and

WHEREAS, at its meeting on March 6, 2024, the Nikiski Senior Citizens Service Area Board of Directors recommended approval of this First Amendment to Service and Operating Agreement;

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

SECTION 1. That the Mayor is authorized to execute the First Amendment to Service and Operating Agreement to account for necessary updates and changes to the audit and reporting language, substantively in the form of the attached First Amendment to the Service and Operating Agreement document.

SECTION 2. That this resolution takes effect immediately.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 2ND DAY OF APRIL 2024.

Brent Johnson

Brent Johnson, Assembly President

ATTEST:

Michele Turner

Michele Turner, CMC, Borough Clerk



Yes: Cooper, Cox, Ecklund, Elam, Hibbert, Ribbens, Tunseth, Tupper, Johnson

No: None

Absent: None

**FIRST AMENDMENT TO
SERVICE AND OPERATING AGREEMENT**

Between the Kenai Peninsula Borough,
on behalf of the Nikiski Senior Citizens Service Area,
and the Nikiski Senior Citizens, Inc.
Amended April, 2024

THIS AGREEMENT is made and entered into by and between the Kenai Peninsula Borough, an Alaska municipal corporation, of 144 N. Binkley Street, Soldotna, Alaska 99669, hereinafter referred to as "the Borough", on behalf of the Nikiski Senior Citizens Service Area, hereinafter referred to as "Service Area", and Nikiski Senior Citizens, Inc., a non-profit corporation, of 50025 Lake Marie Ave, Nikiski, Alaska 99611, hereinafter referred to as "NSC". This agreement is effective as of the last date it is executed by any party.

RECITALS

WHEREAS, the Service Area has the power to provide for services and programs for senior citizens within the service area boundary as defined by Kenai Peninsula Borough Code of Ordinances (hereinafter "KPB" or "Code") 16.70.010 - .130, and to fund such services and programs through the levy of property taxes; and

WHEREAS, NSC is an Alaskan non-profit corporation formed for the purpose of providing charitable programs and services for senior citizens as defined in Chapter 5.22 of the Code, as amended, residing in the Nikiski 1, Nikiski 2 and Salamatof voting precincts of the State of Alaska; and

WHEREAS, only one provider servicing any defined population segment of the Nikiski senior citizens may be eligible for grants attributable to that defined population segment from the Borough paid pursuant to KPB Chapter 5.22; and

WHEREAS, the Borough, through the Service Area, and NSC, desire to enter into an agreement whereby the Service Area will provide funding from taxes to NSC for delivering selected programs and services to Nikiski senior citizens and whereby NSC will be the entity servicing those Nikiski area senior citizens within the portions of the defined service area boundary on the east side of Cook Inlet, to be eligible for grants paid under KPB Chapter 5.22;

NOW THEREFORE, the parties do hereby stipulate and agree as follows:

AGREEMENT

(1). **PURPOSE:** The purpose of this agreement is to provide terms and conditions whereby the Borough, through the Service Area, shall provide financial assistance to NSC for programs and services NSC shall deliver to senior citizens within the portions of the service area

boundary on the east side of Cook Inlet as set forth in KPB 17.70.010.

(2). DUTIES OF NSC: In accordance with and subject to Borough ordinances, regulations and applicable statutes, NSC shall perform the following duties under this agreement:

(a). Provide the following programs and services to the above-described senior citizens, including people sixty (60) years of age and older:

- (1) Operate a meal program furnishing nutritionally balanced meals to provide one-third the minimum daily requirements for adults as per federal U.S.D.A. guidelines.
- (2) Transportation to access services which may include:
 - (i). Access to medical appointments, prescriptions, hospital, and essential (non-emergency) health services;
 - (ii). Access to nutrition and other essential support services;
 - (iii). Essential shopping;
 - (iv). Job training and career education;
 - (v). Attendance at senior organization meetings;
 - (vi). Volunteer activities throughout the community; and
 - (vii). Nonessential shopping, business, beauticians, cultural and educational activities.
- (3) Information and assistance programs.
- (4) Recreation and social activities.

(b). Operate and maintain a senior center facility with sufficient capacity to reasonably accommodate the services and programs offered by NSC in accordance with state, federal and local laws. It is understood and agreed that NSC will employ a director who will manage the day-to-day administration of these programs, services and related duties.

(c). NSC may charge fees to recipients for the above-described programs and services. However, any such fees will be reasonable in relation to the actual cost of the program or service provided.

(d). Establish policies and procedures necessary to govern the operation of the senior citizen facility, the provision of programs and services, and to make such policies and procedures available to the staff and the public.

(e). Use funds derived from operation of the senior citizen facility only for purposes of operating the senior citizen facility, for providing the programs and services described herein, for building and equipment purchases, and other capital expenses. Service Area property taxes received from the SAB may not be used for capital expenses unless specifically

authorized in advance through legislation approved by the Borough Assembly and recommended by the SAB.

(f). Maintain accounting records in accordance with generally accepted accounting principles, including maintaining separate accounting records for activities beyond the programs and services funded by the Service Area through the Service Area Board (hereinafter "SAB").

(g). Provide a quarterly financial, budgetary, and activity report to the SAB and the Borough Mayor that includes the following:

- (1). The financial and budgetary report will accord with GAAP, to include balance sheet and income statement activity by program. The report will reflect all revenues from any source, including amounts received as donations (excluding minor donations), expenses by program, and any changes in the budgeted funds;
- (2). The activity portion of the report will include a narrative description of programs, activities, and services delivered within the previous quarter and highlight upcoming events.

The Borough Mayor may then provide the report or summarizing key aspects of the report to the Assembly. This provision in no way limits NSC's ability to request time for a presentation before the Assembly or to communicate with individual Assembly members.

(h). NSC Audits. NSC will periodically engage an independent third-party auditor to audit financial activities and compliance with this agreement under the following requirements:

- (1). All such audits will be prepared in accordance with GAAP accounting standards; and
- (2). The Borough Mayor, or Mayor's designee, will be afforded an opportunity at the outset of the engagement to request specific items be included or added to the scope of the audit necessary for oversight under this agreement. If Borough requested changes to the scope of the auditor's engagement increase the cost of the engagement, then such increase will be paid, subject to appropriation, with Service Area funds; and
- (3). At a minimum, an audit will be performed every three (3) years; and
- (4). Audit reports, including financial statements, reporting on internal controls, single audit reports, and management letters, will be provided to the Borough upon completion.

(i). Borough Audit or Agreed-Upon Procedures (AUPs). The Borough reserves the right to engage its own independent third-party auditor if the Borough Mayor determines that there is a reasonable basis for needing such an audit to give specific assurances to the Administration, Borough Assembly, and SAB. Subject to appropriation and approval by the Borough Assembly, such engagements will be paid for with Service Area funds upon consideration of the SAB recommendation. No more than one such audit will be requested within any twelve-month period. The NSC will be afforded an opportunity at the outset of any such engagement to request specific items be included or added to the scope of the audit or AUPs. If NSC requested changes to the scope of the engagement increase the cost of the engagement, then such increase will be paid by NSC.

(j). Pay for necessary utilities including, but not limited to, electricity, heat, water, sewer and telephone.

(k). Be fully responsible for maintenance and repair of all NSC property and equipment as reasonably necessary to minimize repair and replacement costs and ensure safety for all persons in connection with the entire operation. This shall include, without limitation, maintenance and repair of the senior center facility, parking lots, roads, grounds and vehicles, and snow and ice removal from roofs, overhangs, entry-ways and walkways.

(l). Purchase, maintain and replace equipment and supplies.

(m). Ensure full compliance with all applicable local, state and federal regulations governing NSC operations, programs, services facilities and equipment.

(n). On a timely basis, prepare and submit to the SAB annual proposals for the NSC budget, including without limitation a proposed budget of funds requested from the Service Area and a brief narrative explanation of all proposed programs and services. Each such proposed budget shall itemize the amount of funds attributable to each program and service. NSC shall submit any capital expenditure proposals as a part of this budget, and shall retain full ownership of any such assets purchased.

Unless otherwise requested and approved, the final approved budget shall be paid in twelve equal monthly installments with the first installment paid during the first accounts payable period following final approval of the budget. To assist with payment of one-time start-up costs, the first such budget proposal may include a larger first installment request.

Such budget proposals must include all other expected sources of income, including without limitation amounts expected to be received from the Code Section 5.22 grant program, or its successor.

To be timely, such proposals must be received by the SAB with sufficient time remaining as may be required for the SAB to timely submit the next proposed Service Area budget to the Borough. NSC shall also timely submit such other reports as may be required

for the Service Area and Borough to meet their obligations under this agreement.

(o). Submit financial information, if required by the SAB, regarding those activities of NSC which are separate from the operations funded by the Service Area, so that the SAB can determine if any such activity may have an adverse financial impact on the Service Area.

(p). Give prompt, good faith consideration of proposals from the SAB for new projects or services.

(q). On a timely basis, as the provider of senior programs within the boundaries of the Service Area, apply for grant funds available under KPB 5.22 from the Borough and comply with all applicable provisions of the Code.

(3). Duties of Service Area: In accordance with and subject to Borough ordinances, regulations and applicable statutes, the Service Area, through the SAB, shall perform the following duties under this agreement:

(a). Provide such funds as are necessary for NSC to provide services and programs as described above for all NSC programs and services as the SAB elects to fund, subject to appropriation and availability of funds. The SAB reserves the right to approve funding only for selected programs and services that NSC provides. If insufficient funds are approved for NSC to properly conduct its programs and services, or if the SAB, the Borough or the Assembly imposes material changes in its approval of any proposed NSC budget, then NSC may either accept the changes, re-negotiate and re-submit a new budget proposal or terminate this agreement as provided below.

(b). Consider and act reasonably promptly upon proposals submitted by NSC for modification, expansion or reduction of programs and services offered.

(c). Review each proposed annual budget for NSC and adopt a Service Area budget which reflects any funding decisions.

(d). The Service Area may, at its option, propose in writing to NSC specific projects that it wants NSC to provide.

(e). Refrain from directly operating any facility or program which may be construed to interfere with the ability of NSC to qualify as the sole provider of such services within the meaning of Chapter 5.22 of the Code, in that portion of the service area boundary governed by this agreement.

(4). Indemnification And Insurance: During the life of this agreement, NSC shall at all times:

(a). Maintain and provide workers' compensation insurance coverage as required by

Alaska law. Proof of such coverage shall be provided to the SAB or the Borough immediately upon request.

(b). Maintain and provide comprehensive general liability insurance with coverage of \$500,000 or more for all NSC operations.

(c). Maintain and provide insurance covering the physical structure and contents of the facility for fire and property damage to ensure their replacement and the continuation of all programs and services.

(d). Immediately notify the SAB and Borough of any lawsuits or claims filed against NSC.

(e). Indemnify and hold the SAB and Borough harmless from any and all liabilities incurred, of any nature or kind whatsoever, as a result of NSC operations.

(5). Destruction of the Premises: In the event of damage to, or destruction of, all or part of the facilities used for programs and services, or of any NSC equipment, NSC shall promptly make such arrangements as are reasonably necessary to repair or replace the damaged facilities or equipment, and to continue operating an adequate facility and providing programs and services with minimal interruption. In such event, NSC shall have the authority to temporarily suspend or reduce services it determines cannot be provided either until the repair or replacement of the facility or equipment has been completed, or, where the problem appears to be long-term, alternative facilities or equipment are located. NSC shall immediately notify the SAB of any suspension or reduction in services due to damage or destruction.

(6). Termination of Agreement for Cause: Either of the parties may terminate this agreement for any one of the reasons set forth below, by giving the other party thirty (30) days' written notice sent by certified mail.

(a). A material breach of this agreement when such breach has not been remedied within 30 days of notification. This time period shall be concurrent with the above-described 30-day written notice period for termination of the agreement.

(b). When NSC, because of conditions beyond its control, is unable to obtain or retain personnel to adequately meet its obligations under this agreement.

(c). For the reasons stated in Paragraph 3.a. of this agreement.

(7). Termination of Agreement at Will: The Borough Mayor may terminate this agreement for any reason upon 30 days written notice to NSC, or on the anniversary date of this agreement, whichever is earlier, for any reason. Any interim payment due and unpaid to NSC before the termination date shall be prorated on a daily basis through and including the

termination date.

The Borough Mayor may also terminate this agreement immediately in the event that the Assembly fails to approve any funding for the NSC.

(8). Continuation of Agreement: Subject to the above termination provisions, this agreement shall continue from year to year upon submission of each annual budget and the accompanying descriptions of services and programs.

(9). Independent Status of NSC: NSC is an independent business. The operation of the senior service center and provision of programs and services to senior citizens is the activity of NSC and not that of the Borough or the Service Area. No employees of NSC shall be deemed to be employees of the Borough. NSC does not act as the agent of the Borough by virtue of any provision of this agreement. NSC agrees that it shall in no way advertise or hold out its activities as being an operation of the Borough, but shall instead clarify that the senior center facility, programs and services it offers are those of a nonprofit corporation. The decisions and actions permitted and authorized under this agreement are those of NSC and not those of the Borough or the Service Area. Any restrictions on operation are those imposed for the protection of the public funds. NSC does not act as the agent of the Borough or the Service Area by virtue of any provision of this agreement.

(10). Additional Expenses: In the event that NSC expenses exceed budgeted amounts, for any reason whatsoever, neither the Borough nor the Service Area shall be liable for payment of additional funds to NSC to cover any such additional expenses.

(11). Risk Management: NSC shall use its best efforts to prevent unnecessary liability.

(12). Program Modification: In the event that NSC determines in good faith that a budgeted program or service, which was funded in whole or in part by the SAB, should be modified or eliminated for either practical or legal reasons, then NSC shall submit a written proposal to the SAB setting forth the proposed change, supporting documentation, and alternative proposals for any remaining funds attributable to the subject program or service. The SAB shall reasonably promptly consider any such proposal and may either accept the proposal, reject it, or suggest alternative solutions.

(13). Surrender on Termination: Upon termination of this agreement NSC shall quit, surrender and return to the Borough all property of the Borough in its possession, if any, in the same condition as on the effective date of this agreement or upon the date of purchase by NSC, whichever is later, normal wear and tear excepted. This clause shall not be construed to confer ownership on either the borough or the SAB for any purchases by the NSC using SAB funds.

(14). Inspection: The SAB and the Borough reserve the right to enter and inspect the facility at any reasonable time during normal business hours for the purpose of determining

the adequacy of compliance with this agreement, the maintenance, upkeep and repair of the facility, and any other matters relating to this agreement.

(15). Assignment and Subleasing: NSC shall not assign its rights, interests or duties under this agreement, without the prior written approval of the Borough.

(16). Final Accounting: Upon termination of this agreement there shall be a complete accounting and final payment and settlement of all accounts within (90) days following the submission of the final accounting report by NSC.

(17). Grants or Financial Assistance: NSC shall comply with the requirements accompanying any grants or other forms of financial assistance. Non-public funds must be accounted for separately from public funds. Any grant agreement that obligates the SAB and Borough shall have prior approval of both entities.

(18). Severability: If one or more provisions of this agreement are determined to be invalid, the remainder shall remain in force.

(19). Public Meetings and Public Participation: The public will be afforded reasonable notice of and access to regular business meetings of the Board of NSC. NSC will provide public notice of any vacancy on its Board of Directors and will solicit applications for the position.

(20). Nondiscrimination: In the event that NSC makes the senior center facility available for the use of any persons or groups other than Nikiski senior citizens, then NSC agrees that it shall operate in compliance with all applicable laws including making the facility available on a nondiscriminatory bases to any third party groups, regardless of race, creed, color, sex or national origin.

(21). Miscellaneous Provisions :

(a). The covenants and conditions of this agreement shall bind the parties, their successors and assigns and the actions of the parties pursuant to it shall be in full compliance with all applicable Borough ordinances and resolutions as may now exist or as may be amended or enacted during the term of this agreement.

(b). It is understood and agreed that NSC will first address questions regarding this agreement to members of the SAB before approaching other borough personnel.

(c). Time is of the essence in this agreement and each and every term and provision hereof.

(d). The failure by a party hereto to enforce any term, covenant or condition herein, or to exercise any right herein, shall not be deemed to be a waiver of such right, term, covenant

or condition, or of any subsequent breach of the same or any other term, covenant, or condition herein contained. Any suit regarding enforcement or application of this agreement must be filed in the Alaska court system at Kenai, Alaska.

(e). This Contract may be executed in counterparts, and may be executed using verified electronic signatures in compliance with AS 09.80, each of which when so executed will constitute an original and all of which together constitute one and the same instrument.

(f). All notices required by this agreement shall be in writing and delivered personally or mailed to:

Mayor, Kenai Peninsula Borough
144 N. Binkley St.
Soldotna, Alaska 99669

President
Nikiski Senior Citizens, Inc.
50025 Lake Marie Ave.
Nikiski, Alaska 99611

Chairman
Service Area Board
Nikiski Senior Service Area
Nikiski, Alaska 99635

KENAI PENINSULA BOROUGH

ATTEST:

By: Peter A. Micciche
Title: Mayor
Dated: _____

Michele Turner, Borough Clerk

NIKISKI SENIOR CITIZENS
SERVICE AREA BOARD

ATTEST:

By: _____
Title: _____
Dated: _____

Secretary - Treasurer

NIKISKI SENIOR CITIZENS, INC.

ATTEST:

By: _____
Title: _____
Date: _____

Secretary - Treasurer