

Kenai Peninsula Borough

*144 North Binkley Street
Soldotna, AK 99669*



Meeting Agenda

Tuesday, April 6, 2021

6:00 PM

Zoom ID: 938 6524 5999 Passcode: 886199

Betty J. Glick Assembly Chambers

Assembly

Brent Hibbert, President

Brent Johnson, Vice President

Jesse Bjorkman

Kenn Carpenter

Lane Chesley

Tyson Cox

Richard Derkevorkian

Willy Dunne

Bill Elam

Zoom ID: 938 6524 5999 Passcode: 886199

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 Iris Fontana.]

ROLL CALL

COMMITTEE REPORTS

APPROVAL OF AGENDA AND CONSENT AGENDA

(All 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:

KPB-3020 03/02/2021 Regular Meeting Minutes
Resolution 2021-020 Appointment to PWSRCAC
Resolution 2021-021 Mutual Aid/Op Plans BCF & MPVF
Resolution 2021-022 Supporting SB17
Resolution 2021-023 Amending CARES Act Spending Plan
Ordinance 2020-19-25 COVID-19 Community Funding
Ordinance 2020-19-26 Reimbursement Grant 2018 Earthquake
Ordinance 2020-19-27 Grant VFA Program
Ordinance 2021-12 Amend Title 5 – Remote Sales Tax
Ordinance 2021-13 Lease Kiewit staging area in Cooper Landing
Ordinance 2021-14 Lease DOT staging area in Cooper Landing
KPB-3024 Petition to Vacate ASLS No. 96-42
KPB-3025 Confirming Borough Assessor
KPB-3026 Confirming Maintenance Director

ACTION ITEMS ELIGIBLE TO BE ADDED TO THE CONSENT AGENDA:

Ordinance 2020-19-23 Redoubt Elementary Roof Project
Ordinance 2021-10 Kenai Spur Extension Road Standards Exception

APPROVAL OF MINUTES

- *1. [KPB-3020](#) March 2, 2021 Regular Assembly Meeting Minutes

Attachments: [March 2, 2021 Regular Assembly Meeting Minutes](#)

COMMENDING RESOLUTIONS AND PROCLAMATIONS

1. [KPB-3029](#) Mayor's Proclamation Declaring April 2021 as "Safe Digging Month"

Attachments: [Proclamation - Safe Digging Month](#)

PRESENTATIONS WITH PRIOR NOTICE

(20 minutes total)

1. [KPB-3038](#) Northern Enterprises Boat Yard in Homer, Aaron Fleenor, Board Member (10 Minutes)

Attachments: [Presentation](#)
 [Boat Yard Northern Enterprises expansion doc. 2021 Revised March 30 2021](#)
 [Boat Yard Pictures and verpages changed for all uses](#)

2. [KPB-3039](#) Kachemak Moose Habitat, Inc., Lynn Whitmore, Board Member (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)

Ordinances referred to Finance Committee

1. [2020-19-23](#) An Ordinance Appropriating School Bond Interest to Cover the Cost of Ineligible Scope of Work on the Redoubt Elementary Roof Project (Mayor)

Attachments: [Ordinance 2020-19-23](#)
 [Memo](#)

Ordinances referred to Lands Committee

2. [2021-10](#) An Ordinance Providing an Exemption from KPB Chapter 14.06 Road Standards to Allow Acceptance of a Non-Conforming Road into the Borough Road Maintenance Program (Mayor)

Attachments: [Ordinance 2021-10](#)
 [Memo](#)
 [Map](#)

3. [2021-11](#) An Ordinance Authorizing a Communications Site Lease Agreement to Vertical Bridge Development, LLC (Mayor)

Attachments: [Ordinance 2021-11](#)
 [Postponement Request 040621](#)
 [PC Recommendations](#)
 [Memo](#)
 [LEASE](#)
 [APPENDIX A](#)
 [APPENDIX B](#)
 [Attachment A - Map](#)
 [Attachment B - IMAGERY](#)

UNFINISHED BUSINESS

1. Notice to Reconsider/Rescind

- a. [KPB-2958](#) Petition to Vacate 30-foot-wide Oliver Street Right-of-way, Including the Associated Utility Easement, North of Half Moon Avenue as Dedicated on Arrowhead Estates Phase 1 Plat KN 2000-7. The right-of-way being Vacated is Unconstructed and Located within the NW1/4 NW1/4 of Section 19, Township 5 North, Range 9 West, Seward Meridian, Alaska, Within the Kenai Peninsula Borough. KPB File 2020-147V. (Referred to Lands Committee) (Notice to Rescind Previous Action Offered by Derkevorkian)

Attachments: [Derkevorkian - Motion to Rescind - Oliver Str Petition to Vacate](#)
 [Petition to Vacate Oliver Street](#)

NEW BUSINESS

1. Resolutions

Resolutions referred to Finance Committee

- *a.** [2021-023](#) A Resolution Amending the Spending Plan Approved for CARES Act Coronavirus Relief Funds Received from the State of Alaska, to Transfer Lapsed Funding to Reimburse KPB Emergency Response, Personal Protection Equipment, and Personnel Costs (Mayor)

Attachments:

[Resolution 2021-023](#)
[Memo](#)
[CARES Plan Rev #8 Summary 3-25-21](#)
[CARES Rev #8 - 20CAR Project Report Summary](#)
[Reference Copy - Resolution 2020-047](#)
[Reference Copy - Resolution 2020-056](#)
[Reference Copy - Resolution 2020-057](#)
[Reference Copy - Resolution 2020-069](#)
[Reference Copy - Resolution 2020-070](#)
[Reference Copy - Resolution 2020-071](#)
[Reference Copy - Resolution 2020-076](#)
[Reference Copy - Resolution 2020-083](#)

Resolutions referred to Policies and Procedures Committee

- *b.** [2021-020](#) A Resolution Confirming the Appointment of Mako Haggerty to the Prince William Sound Regional Citizen's Advisory Council (Hibbert)

Attachments:

[Resolution 2021-020](#)
[Request from PWSRCAC](#)

- *c.** [2021-021](#) A Resolution Approving Mutual Aid and Operational Plan Between Seward Bear Creek Fire Service Area and Moose Pass Volunteer Fire Company(Mayor)

Attachments:

[Resolution 2021-021](#)
[Memo](#)
[Mutual Aid Agreement](#)
[Operational Plan](#)

Resolutions referred to Legislative Committee

- *d. [2021-022](#) A Resolution Supporting Senate Bill 17 Relating to Performing Energy Audits on Certain Public and Community Facilities with the Goal that by 2026 the State Shall Enter Contracts to Retrofit Public Facilities, Buildings and Schools in a Manner that will Result in Net Savings in Energy Costs to the State Within 15 Years After Completion of the Retrofits (Dunne)

Attachments: [Resolution 2021-022](#)
[Memo](#)
[SB17 Sponsor's Statement](#)
[SB17 Sectional Analysis](#)
[Waterman Letter](#)

2. Ordinances for Introduction

Ordinances for Introduction and referred to the Finance Committee

- *a. [2020-19-25](#) An Ordinance Approving and Appropriating Funding from the State of Alaska in the Amount Up to \$2,037,529.59 for COVID-19 Community Funding, a Federal Pass-Thru Program under the Center for Disease Control and Prevention (Mayor) (Hearing on 04/20/21)

Attachments: [Memo](#)
[SOW and Budget Narrative](#)
[MOA](#)

- *b. [2020-19-26](#) An Ordinance Approving and Accepting Grant Funds from the State of Alaska Division of Homeland Security & Emergency Management to Reimburse Repairs at the Central Peninsula Landfill Resulting from the November 30, 2018 Cook Inlet 7.0 Earthquake (Mayor) (Hearing on 04/20/21)

Attachments: [Ordinance 2020-19-26](#)
[Memo](#)
[Award Letter](#)
[FEMA PW 367 Agreement](#)
[Reference Copy - Ordinance 2018-19-26](#)

- *c. [2020-19-27](#) An Ordinance Approving and Appropriating Grant Funds Totaling \$14,610.43 from the Alaska Department of Natural Resource for the Volunteer Fire Assistance Program on Behalf of Western Emergency Service Area, Kachemak Emergency Service Area, and Nikiski Fire Service Area (Mayor) (Hearing on 04/20/21)

Attachments: [Ordinance 2020-19-27](#)
[Memo](#)
[VFA Grant Awards Letter](#)
[Award Statement](#)

- *d. [2021-12](#) An Ordinance Amending KPB Chapter 5.19, Uniform Remote Seller Sales Tax Code, in Accordance with Updates and Changes Adopted by the Alaska Remote Seller Sales Tax Commission (Hibbert, Mayor) (Hearing on 05/04/21)

Attachments: [Ordinance 2021-12](#)
[Memo](#)
[Reference Copy - Ordinance 2020-03](#)

Ordinances for Introduction and referred to the Lands Committee

- *e. [2021-13](#) An Ordinance Authorizing a Negotiated Lease of Tract C Quartz Creek Subdivision with Kiewit Infrastructure West Company for Project Staging Activities in Support of the Sterling Highway MP 45-60 Construction Project near Cooper Landing (Mayor) (Hearing on 04/20/21)

Attachments: [Ordinance 2021-13](#)
[Memo](#)
[KIEWIT Lease with Attachments - FINAL](#)
[Sterling Hwy 45-60 Staging Area Map #1](#)
[Sterling Hwy 45-60 Staging Area Map #2](#)
[Sterling Hwy 45-60 Project Phasing Schedule](#)

- *f. [2021-14](#) An Ordinance Authorizing a Negotiated Lease with Alaska Department of Transportation and Public Facilities for Staging and Material Extraction and Disposal Activities in Support of the Sterling Highway MP 45-60 Construction Project near Cooper Landing (Mayor) (Hearing on 04/20/21)

Attachments:

[Ordinance 2021-14](#)
[Memo](#)
[DOT Master Lease with Attachments](#)
[Sterling Hwy 45-60 Staging Area Map #1](#)
[Sterling Hwy 45-60 Staging Area Map #2](#)
[Sterling Hwy 45-60 Project Phasing Schedule](#)

Ordinances for Introduction and referred to the Policies and Procedures Committee

- *g. [2021-15](#) An Ordinance Amending KPB 21.18, Anadromous Waters Habitat Protection, in Accordance with Recommendations Contained in the Final Report of the Work Group Formed to Provide a Review of Chapter 21.18 (Johnson) (Hearing on 05/04/21)

[Clerk's Note: Robert Ruffner, Chair, Anadromous Waters Habitat Protection Work Group, will give a 10 minute presentation during the Policies and Procedures Committee.]

Attachments:

[Ordinance 2021-15](#)
[Memo](#)
[AWHPWG CAPD Map Final](#)
[AWHPWG Final Report](#)
[Reference Copy - Resolution 2019-058](#)
[Reference Copy - Resolution 2020-009](#)

3. Other

- *a. [KPB-3024](#) Petition to Vacate the 10' Utility Easement within Tract A, Alaska State Land Survey No. 96-42, Adjoining the Former Seward Highway Right-of-Way, Granted by Alaska State Land Survey No. 96-42, Plat SW 99-1; within Section 22, Township 5 North, Range 1 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2021-019V

[Clerk's Note: The Planning Commission approved the above referenced petition to vacate at its March 15, 2021 meeting by unanimous consent.]

Attachments: [Petition to Vacate AK State Land Survey 96-42](#)

- *b. [KPB-3025](#) Confirming Adeena Wilcox as Borough Assessor (Mayor)

Attachments: [Adeena Wilcox - Job Description & Resume](#)

- *c. [KPB-3026](#) Confirming Dil Uhlin as Maintenance Director (Mayor)

Attachments: [Dil Uhlin - Job Description & Resume](#)

PUBLIC COMMENTS AND PUBLIC PRESENTATIONS

MAYOR'S REPORT

[KPB-3040](#) Mayor's Report Cover Memo

Attachments: [Mayor's Report Cover Memo](#)

1. Assembly Requests/Responses - None.

2. Agreements and Contracts

- a. [KPB-3041](#) Authorization to Award a Contract for ITB21-023 Crack Sealant Purchase FY21 to NorthStar Supply, LLC, Palmer, AK.

Attachments: [Authorization to Award Contract for ITB21-023](#)

- b. [KPB-3042](#) Authorization to Award a Contract for ITB21-019 Homer Transfer Facility Operations and Maintenance 2021 to D&L Construction of Cooper Landing, AK.

Attachments: [Authorization to Award Contract for ITB21-019](#)

- c. [KPB-3043](#) Authorization to Award a Contract for ITB-022 Kenai Middle School Boiler Replacement to Norcoast Mechanical, Inc., Anchorage, AK.

Attachments: [Auth to Award Contract ITB-022](#)

- d. [KPB-3044](#) Central Peninsula Hospital ADA Parking Lot Design Sole Source Waiver (Contract) with Nelson Engineering.

Attachments: [CPGH ADA Parking Lot Sole Source](#)

- e. [KPB-3045](#) Authorization to Award a Contract for ITB21-020 Earthquake Repairs; North Peninsula Recreation Service Area, Kenai Middle School, and Skyview Middle School to Pro Grind Rental, LLC, Soldotna, AK.

Attachments: [Authorization to Award Contract ITB21-020](#)

3. Other

- a. [KPB-3046](#) Revenue-Expenditure Report - February 2021

Attachments: [Revenue-Expenditure Report - February 2021](#)

- b. [KPB-3047](#) Budget Revisions - February 2021

Attachments: [Budget Revisions - February 2021](#)

- c. [KPB-3048](#) Tax Adjustment Request Approval

Attachments: [Tax Adjustment Request Approval](#)

- d. [KPB-3049](#) Certification of the 2020 Real Property Supplemental Assessment Roll

Attachments: [Certification of the 2020 Real Property Supplemental Assessment Roll](#)

ASSEMBLY COMMENTS

PENDING LEGISLATION

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

- [2020-19-07](#) An Ordinance Appropriating Refinanced 2013 Bear Creek Fire Service Area General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor) Tabled as amended

Attachments: [Ordinance 2020-19-07](#)
[Memo](#)
[Admin's Request to Table \(Dealt with on 12/01/20\)](#)
[Amendment Memo \(Dealt with 10/13/20\)](#)
[Reference copy: Resolution 2020-044](#)
[Reference copy: Resolution 2012-091](#)

[2020-19-08](#) An Ordinance Appropriating Refinanced 2013 School General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor) Tabled as amended

Attachments:

[Ordinance 2020-19-08](#)

[Memo](#)

[Admin's Request to Table \(Dealt with on 12/01/20\)](#)

[Amendment Memo \(Dealt with 10/13/20\)](#)

[Reference copy: Resolution 2013-071](#)

[Reference copy: Resolution 2020-042](#)

[2020-19-09](#) An Ordinance Appropriating Refinanced 2011 Hospital General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor) Tabled as amended

Attachments:

[Ordinance 2020-19-09](#)

[Memo](#)

[Admin's Request to Table \(Dealt with on 12/01/20\)](#)

[Amendment Memo \(Dealt with 10/13/20\)](#)

[Reference copy: Resolution 2011-073](#)

[Reference copy: Resolution 2020-043](#)

[2020-19-24](#) An Ordinance Appropriating Funds and Authorizing the Borough Clerk to Contract for Necessary Voting Machines, Software, and Related Equipment to Provide an Accessible Voting System for Persons with Disabilities (Hibbert, Johnson) (Hearing on 04/20/21)

Attachments:

[Ordinance 2020-19-24](#)

[Memo](#)

[Public Comment 030221](#)

INFORMATIONAL MATERIALS AND REPORTS

ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

1. April 20, 2021 Regular Assembly Meeting
6:00 PM This meeting will be held through Zoom Meeting ID: 938 6524 5999 Passcode: 886199 and in person from the Betty J. Glick Assembly Chambers Borough Administration Building.

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).

The meeting will be held through Zoom, the Meeting ID: 938 6524 5999 Passcode: 886199 and in-person from the Betty J. Glick Assembly Chambers, Borough Administration Building, Soldotna, Alaska. COVID-19 mitigation protocols will be observed. To join the meeting from a computer, visit <https://zoom.us/j/93865245999>. To attend the Zoom meeting by telephone call toll free 1-888-788-0099 or 1-877-853-5247 and enter the Meeting ID: 938 6524 5999 Passcode: 886199. Detailed instructions will be posted on at the Kenai Peninsula Borough's main page at kpb.us: "Meeting and Public Notices" "Current Assembly Agenda".

Copies of the agenda and ordinances to be considered can be viewed on the website referenced above or at the Public Bulletin Board located on the window right of the double doors in the back of the Borough Administration Building. 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.



Kenai Peninsula Borough

144 North Binkley Street
Soldotna, AK 99669

Meeting Minutes

Assembly

Brent Hibbert, President

Brent Johnson, Vice President

Jesse Bjorkman

Kenn Carpenter

Lane Chesley

Tyson Cox

Richard Derkevorkian

Willy Dunne

Bill Elam

Tuesday, March 2, 2021

6:00 PM

Betty J. Glick Assembly Chambers

Zoom ID: 938 6524 5999 Passcode: 886199

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

[Clerk's Note: The invocation was offered by Ty Handley.]

ROLL CALL

Present: 9 - Jesse Bjorkman, Kenn Carpenter, Tyson Cox, Willy Dunne, Brent Hibbert, Brent Johnson, Richard Derkevorkian, Bill Elam, and Lane Chesley

Also present were:

Charlie Pierce, Borough Mayor

Colette Thompson, Borough Attorney

Johni Blankenship, Borough Clerk

Michele Turner, Deputy Borough Clerk

Randi Broyles, Borough Clerk Assistant

COMMITTEE REPORTS

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

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

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

Vice President Johnson stated the Legislative Committee met and discussed its agenda items.

APPROVAL OF AGENDA AND CONSENT AGENDA

Johnson 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 resolutions and ordinances on the consent agenda.

[KPB-3013](#) February 16, 2021 Regular Assembly Meeting Minutes
approved.

[2020-19-19](#) An Ordinance Accepting and Appropriating Funding from the State of Alaska in the Amount of \$426,303 for Fiscal Year 2021 and Approving Projects to be Completed for Community Purposes Under the State's 2019/2020 and 2020/2021 Community Assistance Programs (Mayor)

[Clerk's Note: Vice President Johnson declared a possible conflict with Ordinance 2020-19-19 as he is on the board of the Kasilof Regional Historical Association. President Hibbert ruled a conflict did exist. Vice President Johnson abstained from the discussion and vote on Ordinance 2020-19-19.]

This Budget Ordinance was enacted.

[2020-19-20](#) An Ordinance Appropriating \$63,791.65 from the Equipment Replacement Fund for Imagery Acquisition and Approving a Sole Source Award to EagleView™ for the Purchase and Implementation of Pictometry Imagery (Mayor)

[Clerk's Note: The final Whereas clause was amended to read, "the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of February 22, 2021 recommended approval by unanimous consent."]

This Budget Ordinance was enacted as amended.

[2020-19-21](#) An Ordinance Appropriating General Fund Fund Balance for Design Development of Phase I of the Homer High School Roof Replacement (Mayor)

This Budget Ordinance was enacted.

[2020-19-22](#) An Ordinance Accepting and Appropriating \$9,600 from the State of Alaska Division of Forestry to Supplement Costs to Manage the Slash Disposal Site Located in Cooper Landing (Mayor)

This Ordinance was enacted.

[2021-07](#) An Ordinance Accepting Emergency Response Equipment from the Nikiski Firefighters Association, Inc. on Behalf of Nikiski Fire Service Area (Mayor)

[Clerk's Note: The second to last Whereas clause was amended to read, "at its regularly scheduled meeting held February 10, 2021, the Service Area Board recommended approval by unanimous consent."]

This Ordinance was enacted as amended.

[2021-08](#) An Ordinance Authorizing Leases of Space at the Kenai River Center Building with the State of Alaska Department of Fish and Game and Department of Natural Resources and Repealing Ordinance 2020-30 (Mayor)

[Clerk's Note: The final Whereas clause was amended to read, "the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of February 22, 2021 recommended approval by unanimous vote."]

This Ordinance was enacted as amended.

[2021-019](#) A Resolution Extending the Disaster Emergency Declaration for the Kenai Peninsula Borough Issued Due to the Current and Expected Imminent Impacts of the COVID-19 Pandemic to June 30, 2021 (Cox)

This Resolution was adopted.

[2021-017](#) A Resolution Supporting Regional Aquaculture Associations and Opposing Proposed Changes to the Management Plan of Kachemak Bay State Park and State Wilderness Park that would Negatively Impact Tutka Bay Lagoon Hatchery (Chesley)

[Clerk's Note: Vice President Johnson declared a possible conflict with Resolution 2021-017 as he was on the board of the Cook Inlet Aquaculture Association. President Hibbert ruled a conflict did exist. Vice President Johnson abstained from the discussion and vote on Resolution 2021-017.]

This Resolution was adopted.

[2021-018](#) A Resolution Asking the US Secretary of Commerce to Consider Vetoing the North Pacific Fishery Management Council's Adoption of Measures that Will Close Commercial Salmon Fishing in the Cook Inlet Exclusive Economic Zone (Dunne, Johnson, Mayor, Cox, Hibbert, Chesley, Elam, Carpenter, Derkevorkian)

[Clerk's Note: Mr. Bjorkman declared a possible conflict with Resolution 2021-018 as he is a commercial fisherman that fished in the cook inlet exclusive

economic zone. After consulting with legal counsel, President Hibbert ruled a conflict did exist. Mr. Bjorkman abstained from the discussion and vote on Resolution 2021-018.]

This Resolution was adopted.

[2020-19-23](#) An Ordinance Appropriating School Bond Interest to Cover the Cost of Ineligible Scope of Work on the Redoubt Elementary Roof Project (Mayor)

This Budget Ordinance was introduced and set for public hearing.

[2020-19-24](#) An Ordinance Appropriating Funds and Authorizing the Borough Clerk to Contract for Necessary Voting Machines, Software, and Related Equipment to Provide an Accessible Voting System for Persons with Disabilities (Hibbert, Johnson) (Hearing on 04/20/21)

This Budget Ordinance was introduced and set for public hearing.

[2021-10](#) An Ordinance Providing an Exemption from KPB Chapter 14.06 Road Standards to Allow Acceptance of a Non-Conforming Road into the Borough Road Maintenance Program (Mayor)

This Ordinance was introduced and set for public hearing.

[2021-11](#) An Ordinance Authorizing a Communications Site Lease Agreement to Vertical Bridge Development, LLC (Mayor)

This Ordinance was introduced and set for public hearing.

[KPB-3009](#) Petition to Vacate a 30' by 273' Right-of-Way Permit ADL 220394 Adjoining the South Boundary of Government Lot 17 Within Section 34 Township 8 North Range 11 West

[Clerk's Note: The Planning Commission approved the referenced petition at its February 8, 2021 meeting by unanimous consent.]

approved.

[KPB-3010](#) Confirming an Appointment to the Kachemak Emergency Service Area Board

Jeffrey Serio, Seat B, Term Expires October, 2021

approved.

[KPB-3003](#) Confirming the Appointments to the Kenai Peninsula Borough Advisory Planning Commissions

Anchor Point APC, Sonshine D. Konovalov; Seat A; Term Expires September 30, 2023

Kalifornsky APC, Kathryn A. Medcoff; Seat A; Term Expires September 30, 2023

Kalifornsky APC, Krista Schooley; Seat C; Term Expires September 30, 2023

approved.

[KPB-3015](#)

Petition to Vacate Utility Easement: PC Resolution 2021-01 - Vacating a 5' x 5' Area, Centered on the Existing Well, Within the 5' Underground Utility Easement Adjoining the South Boundary of Lot 14, Block 2, Granted by Mackey Lake Subdivision Addition No. 1 Part 3 (Plat KN 74-92); within Section 14, Township 5 North, Range 10 West, Seward Meridian, Alaska; KPB File 2021-001V.

[Clerk's Note: At its regularly scheduled meeting of February 22, 2021 the Kenai Peninsula Borough Planning Commission granted approval of the above vacations by unanimous consent.]

approved.

[KPB-3019](#)

Petition to Vacate Utility Easement Vacating a 10' Utility Easement and Anchor Easement within Lot 6 and Lot 7 Kimbrel Subdivision KN 82-63 Granted by Kimbrel Subdivision KN 76-68 Located within Section 27, Township 4 North, Range 11 West, Seward Meridian, Alaska, Within the Kenai Peninsula borough. KPB File 2020-150V.

[Clerk's Note: At its regularly scheduled meeting of February 22, 2021 the Kenai Peninsula Borough Planning Commission granted approval of the above vacations by unanimous consent.]

approved.

Approval of the Agenda and Consent Agenda

President Hibbert called for public comment.

Debbie Cary, Ninilchik spoke in support of Ordinance 2020-19-21.

Nancy Hilstrand, Spoke in support of Resolution 2021-018 and in opposition to Resolution 2021-017.

Robert Wall, Sterling spoke in opposition to Ordinance 2020-19-24

Tracy Silta, Soldotna spoke in support of Resolution 2021-019.

Ray Debardelaben, Sterling spoke in opposition to Resolution 20201-017.

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 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

COMMENDING RESOLUTIONS AND PROCLAMATIONS

PRESENTATIONS WITH PRIOR NOTICE

1. [KPB-3014](#) Kenai Peninsula Tourism and Marketing Council Update, Debbie Speakman, Executive Director (10 Minutes)

[Clerk's Note: Debbie Speakman, KPTMC Executive Director gave a presentation to the assembly.]

2. [KPB-3011](#) Alaska Long Trail and Land and Water Conservation Fund (LWCF) Alaska Trails Initiative, Mariyam Medovaya (10 Minutes)

[Clerk's Note: Chris Beck and Jessica Szelag gave a presentation to the assembly.]

PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

President Hibbert called for public comment.

Debbie Cary, Ninilchik gave a school board update to the assembly and offered her admiration for the hard work of students parents during the COVID-19 global pandemic.

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

ITEMS NOT COMPLETED FROM PRIOR AGENDA

PUBLIC HEARINGS ON ORDINANCES

- [2021-09](#) An Ordinance Authorizing a Community Trail Management Agreement with Snomads, Inc. (Mayor)

Derkevorkian moved to enact Ordinance 2021-09.

President Hibbert called for public comment.

Dave Mastolier, Snomads Inc., spoke in support of Ordinance 2021-09.

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

Derkevorkian moved to amend Ordinance 2021-09 as follows:

Amend the final Whereas to read, "the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of February 22, 2021 recommended approval by unanimous consent."

The motion to amend Ordinance 2021-09 carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

Derkevorkian moved to amend Ordinance 2021-09 as follows:

Amend Section 3 to read, "That the mayor is authorized, through the CTMA, to provide for the regulation of public uses on the trail facilities to [PROHIBIT] reasonably regulate the use of motorized wheeled vehicles on the groomed trails during the winter season to prolong the investment of trail grooming and prevent trail damage."

Amend the Community Trail Management Plan, at page 4 to read, "Trail Usage Restrictions: Wheeled ATV/UTA or any motorized Off Road Recreational Vehicle (ORRV) are not authorized on groomed Snomads Managed CHS trails at any time that the wheeled vehicle is leaving visible fire depressions exceeding 1" depth and degrading the condition of the groomed trail during the Winter Months. Fat Tire bikes are permitted on the CHS Groomed Trails.

The motion to amend Ordinance 2021-09 carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

Dunne moved to Amend Ordinance 2021-09 as follows:

Amend the Community Trail Management Agreement, at page 2 to read, "VII. Rules, Regulation, and Safety. C. Trail Manager shall post signs or signals necessary to guide safe use of the Trail Facilities by the general public. Signs at the Watermelon Trailhead shall include language informing trail users that the Anchor River/Fritz Creek Critical Habitat Area ahead imposes certain specific restrictions on motorized vehicles."

Assembly Member Bjorkman spoke in support of the amendment.

The motion to amend Ordinance 2021-09 carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

The motion to enact Ordinance 2021-09 as amended carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

20, Subdivisions, and KPB 21.20, Hearing and Appeals, to Correct Grammatical Errors, and Clarify and Improve Certain Administrative Procedures (Mayor)

A motion to enact Ordinance 2021-45 was on the floor from the 11/10/2020 meeting.

President Hibbert called for public comment.

Bob Molloy, Kenai spoke in support of amendments to Ordinance 2020-45.

Kristine Schmidt, Kenai spoke in opposition to Ordinance 2020-45.

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

Dunne withdrew his amendment that was on the floor from the 12/01/20 meeting.

Bjorkman moved to amend Ordinance 2020-45 as follows:

Amend Section 37 to read, "20.65.010 - Authority; Legislative Intent; Scope. This chapter is enacted under the authority of AS 29.40. A vacation decision is a discretionary legislative land use decision. The purpose of this chapter is to establish procedures for the vacation of a platted public right-of-way, public area, or other public easement dedicated [DEPICTED] on a borough approved plat, and to provide procedures for the alteration, including removal, of platted utility easements. This chapter does not apply to easements or property owned or held by a city of the borough in their proprietary capacity which may only be extinguished through the terms of the controlling document or applicable law. This chapter does not apply to private easements."

The motion to amend Ordinance 2020-45 carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

Bjorkman moved to amend Ordinance 2020-45 as follows:

Amend Section 37 to read, "The planning commission recommendation on state-managed easements. The planning commission serving as the platting authority has no authority to vacate public easements under the jurisdiction of the state. The planning commission will provide a recommendation on proposed vacations of state-managed easements within the borough. Applications to vacate a section line easement or other [PUBLIC] state-managed easement[S OF THE STATE] must comply with KPB 20.65.040 and will be considered in accordance with KPB 20.65.050. The applicant is responsible for all submittals required by the state. Final authority for approval and platting of the vacation of any public easement under the jurisdiction of the state rests with the state."

The motion to amend Ordinance 2020-45 carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

Bjorkman moved to amend Ordinance 2020-45 as follows:

Amend Section 37 to read, "20.65.050 Action on vacation application.

A. Staff shall review the application and supporting materials for compliance. If the application is incomplete, staff will return it to the applicant with a written list of deficiencies to be satisfied for acceptance.

B. After acceptance of the application, staff will:

1. Send notice of the proposed vacation and the public hearing in accordance with KPB 20.10.100.

2. Prepare a staff report that evaluates the merits of the proposed vacation. Revisions to the application submitted subsequent to the preparation of the staff report and after notice is sent will not be considered at the scheduled public hearing. Any such revisions will be treated as a revised application under this chapter.

C. An accepted application shall be placed on the agenda of a regularly scheduled planning commission meeting. The public hearing on the vacation may not be more than 60 days after acceptance of the application, unless the applicant requests postponement.

D. The planning commission shall consider the merits of each vacation request. A platted dedication to public use of land or interest in land may be vacated if the dedication is no longer necessary for present or future public use and in all cases the planning commission shall deem the area being vacated to be of value to the public. [IT SHALL BE INCUMBENT UPON THE APPLICANT TO SHOW THAT THE AREA PROPOSED FOR VACATION IS NO LONGER PRACTICAL FOR THE USES OR PURPOSES AUTHORIZED, OR THAT OTHER PROVISIONS HAVE BEEN MADE WHICH ARE MORE BENEFICIAL TO THE PUBLIC.] In evaluating the merits of the proposed vacation, the planning commission shall consider whether:

1. The right-of-way or public easement to be vacated is being used;

2. A road is impossible or impractical to construct, and alternative access has been provided;

3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;

4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;

5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;

6. Other public access, other than general road use, exists or are feasible for the right-of-way.

7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will not be available.

Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right of way; and

8. Any otehr factors that are relevant to the vacation application or the area proposed to be vacated"; and

The remaining subsections should be re-lettered accordingly.

The motion to amend Ordinance 2020-45 carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

Bjorkman moved to amend Ordinance 2020-45 as follows:

Amend Section 37 to read, "20.65.060 Title to vacated area
C. Other provisions of this subsection notwithstanding, the planning commission may determine that [ALL OR] a portion of the area proposed to be vacated should be reserved [A VACATED AREA SHOULD BE DEDICATED, FOR ANOTHER PUBLIC EASEMENT PURPOSE] and if so, title to the area [VACATED] reserved and held for another public easement purpose remains in the borough or city, as applicable."

The motion to amend Ordinance 2020-45 carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

Bjorkman moved to amend Ordinance 2020-45 as follows:

Amend Section 47 to read, "That this ordinance [IS EFFECTIVE JANUARY 1, 2021] shall take effect April 1, 2021.

The motion to amend Ordinance 2020-45 carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

Bjorkman moved to amend Ordinance 2020-45 as follows:

Amend the title of the Ordinance to read, "An Ordinance Amending KPB 2.40, Planning Commission, KPB Title 20, Subdivisions, Repealing KPB 20.70 Vacation Requirements, Enacting a New Vacations Chapter KPB 20.65, and Amending KPB 21.20, Hearings and Appeals, to Correct Grammatical Errors and Clarify and Improve Administrative Procedures."

The motion to amend Ordinance 2020-45 carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

Bjorkman moved to amend Ordinance 2020-45 as follows:

Add a new sixteenth Whereas clause to read, "the planning commission held a public work session on January 25, 2021 to consider the proposed amendments, and on February 8, 2021 the planning commission recommended approval of the six proposed amendments as described in an updated memo dated February 18, 2021."

The motion to amend Ordinance 2020-45 carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

The motion to enact Ordinance 2020-45 as amended carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

[2021-06](#) Amending KPB 16.04 - Establishment of Service Areas to Establish Residency Requirements for Appointed Service Area Board Members (Mayor)

Bjorkman moved to enact Ordinance 2012-06.

President Hibbert called for public comment with none being offered.

The motion to enact Ordinance 2021-06 carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

UNFINISHED BUSINESS

NEW BUSINESS

MAYOR'S REPORT

[KPB-2996](#) Mayor's Report Cover Memo

1. Assembly Requests/Responses - None.
2. Agreements and Contracts
 - a. [KPB-2997](#) Authorization to Award a Contract for ITB21-018 Gravel Road Project - Escape Route N2 Region to Foster Construction, LLC., Soldotna, AK
3. Other
 - a. [KPB-2998](#) Revenue - Expenditure Report - January 2021
 - b. [KPB-2999](#) Budget Revisions - January 2021

PUBLIC COMMENTS AND PUBLIC PRESENTATIONS

President Hibbert called for public comment.

Chris Perry, Homer spoke in opposition to Resolution 2021-017.

Ray Debardelaben, Sterling spoke in opposition to 2021-017.

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

ASSEMBLY COMMENTS

Assembly Member Chesley thanked the assembly, administration and Clerk's Office for their hard work and support.

Assembly Member Carpenter discussed the joint budget work session with the KPBSD school board and administration. He stated that the highways were icy and dangerous and encouraged everyone to drive safely. He congratulated the Seward High School boys basketball team on their win over Kenai and wished everyone a good evening.

Vice President Johnson offered his condolences to the family of former Assembly President Jack Brown. He congratulated Mayor Pierce's granddaughter on her game winning basket during the Kenai/Seward basketball game. He stated his appreciation for Dan Nelson, KPB Emergency Manager and his staff for their hard work with the vaccination clinics. He thanked everyone for their participation in the meeting.

Assembly Member Bjorkman thanked the assembly for a great meeting. He stated he was happy with the amount of participation from the community. He thanked the Clerk's Office and President Hibbert for their work on making the agenda more easily understood by the general public. He stated he was excited to begin working on new legislation that included codifying new election security measures to ensure the borough continued to have safe, accountable and accurate elections. He wished everyone a good evening.

Assembly Member Dunne wished everyone a good evening.

Assembly Member Cox thanked the assembly for passing Resolution 2020-019 that extended the emergency declaration. He stated the importance of the Resolution as it would continue to provide vaccinations for the public. He congratulated local cross country teams for their successful season.

Assembly Member Derkevorkian thanked the public for coming to the borough assembly chambers to participate in the meeting. He encouraged everyone to continue to participate in person.

Assembly Member Elam thanked everyone for their participation. He thanked the Clerk's Office for their support. He shared his thoughts regarding the road to the community of Kachemak-Selo. He wished everyone a good night.

President Hibbert expressed his condolences to the family of Jack Brown. He thanked the Clerk's Office, the Legal Department and the IT department for their hard work and continued support. He thanked the assembly for their hard work throughout the evening. He thanked KPBSD school board and administration for their participation in the second joint budget work session. He shared his thoughts

regarding the road to the community of Kachemak-Selo. He encouraged the public to reach out to the assembly regarding issues they were passionate about and wished everyone a safe spring break.

PENDING LEGISLATION

1. [2020-19-07](#) An Ordinance Appropriating Refinanced 2013 Bear Creek Fire Service Area General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor) Tabled as amended
2. [2020-19-08](#) An Ordinance Appropriating Refinanced 2013 School General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor) Tabled as amended
3. [2020-19-09](#) An Ordinance Appropriating Refinanced 2011 Hospital General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor) Tabled as amended

INFORMATIONAL MATERIALS AND REPORTS

ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

1. April 6, 2021 Regular Assembly Meeting
6:00 PM This meeting will be held through Zoom Meeting ID: 938 6524 5999 Passcode: 886199

And in person from the
Betty J. Glick Assembly Chambers
Borough Administration Building

ADJOURNMENT

With no further business to come before the assembly, President Hibbert adjourned the meeting at 9:09 p.m.

I certify the above represents accurate minutes of the Kenai Peninsula Borough Assembly meeting of March 2, 2021.

Johni Blankenship, MMC, Borough Clerk

Approved by the Assembly: _____

Kenai Peninsula Borough

Alaska

Proclamation

WHEREAS, each year, Alaska's underground utility infrastructure is jeopardized by unintentional damage; and

WHEREAS, undesired consequences such as service interruption, damage to the environment, and potential personal injury can occur; and

WHEREAS, 811 was designated as the national call-before-you-dig number in 2005 and is an active, free service throughout Alaska that dispatches utilities to locate lines at the subject property; and

WHEREAS, placing a call to 811 two days before digging, respecting the marked lines, and digging with care around the marked areas, greatly reduces the risk of hitting a utility line; and

WHEREAS, April is nationally recognized as safe digging month and serves to promote public awareness about the importance of call 811 and digging safety; and

WHEREAS, the rate at which Alaskans hit utility lines is three times greater than the national average, thus local and statewide efforts are necessary to increase awareness of 811 and safe digging, to prevent damage to underground utility infrastructure, and ensure public safety.

NOW, THEREFORE, I, Charlie Pierce, Mayor of the Kenai Peninsula Borough, do hereby proclaim April as:

Safe Digging Month

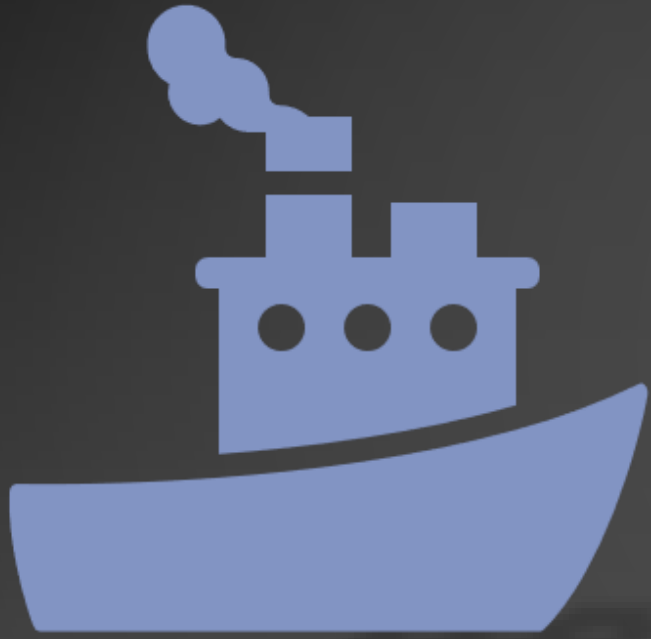
In furtherance of this proclamation, I encourage all residents of the Kenai Peninsula Borough to spread awareness about safe digging practices, and to always call 811 before digging.



Charlie Pierce
Mayor



EXPANSION PROJECT 2021



Celebrating
40 years:
1981-2021

Our Boat Yard: A History

1975
11 acres purchased



1978
50x100ft steel building x3 built



1981
Officially opened



1982
95ft dock built;
fabric and gravel laid



1984
15 more acres purchased



1987
Fabric, electrical
and gravel laid on
10 more acres



1995
25 acres now filled;
several new
buildings added



1975

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11 acres purchased



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50x100ft steel
building x3 built



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Officially opened



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95ft dock built;
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Officially opened



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95ft dock built;
fabric and gravel laid



1984
15 more acres purchased



1987
Fabric, electrical and gravel laid on 10 more acres



1995
25 acres now filled;
several new buildings added



1982



1986



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11 acres purchased



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50x100ft steel building x3 built



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and gravel laid on
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1995

25 acres now filled;
several new
buildings added



Boat Yard
about 1995

1995

Our Boat Yard Today



Largest privately owned dry dock marina in Alaska

- Veteran and Native owned and operated
- 4 generationally operated





**400+ boats each
winter**



What it takes to run our Yard

- 70 metric ton x1
- 75 metric ton x2
- Mobile cranes x3
- Forklifts x4
- Hydraulic trailers x4
- Water trucks w/pressure washing equipment x2





**35 acres of fabric
-lined gravel
area**



Rent space to 40+ local businesses that employ 150 tradesmen in the Yard. 50+ businesses that work out of our Yard.

- **Marine Safety**
- **Marine Hardware store**
- **Fiberglass/fabrication**
- **Welding supplier**
- **Welding/fabrication**
- **Machine Shop**
- **Net building**
- **Propeller repair**
- **Restaurant on site**





15 min haul times



- **We receive boats from:**
 - Southeast Alaska
 - Prince William Sound
 - Norton Sound
 - King cove
 - Sand point
 - False Pass
 - The whole Alaska Peninsula



Our Plans for Expansion

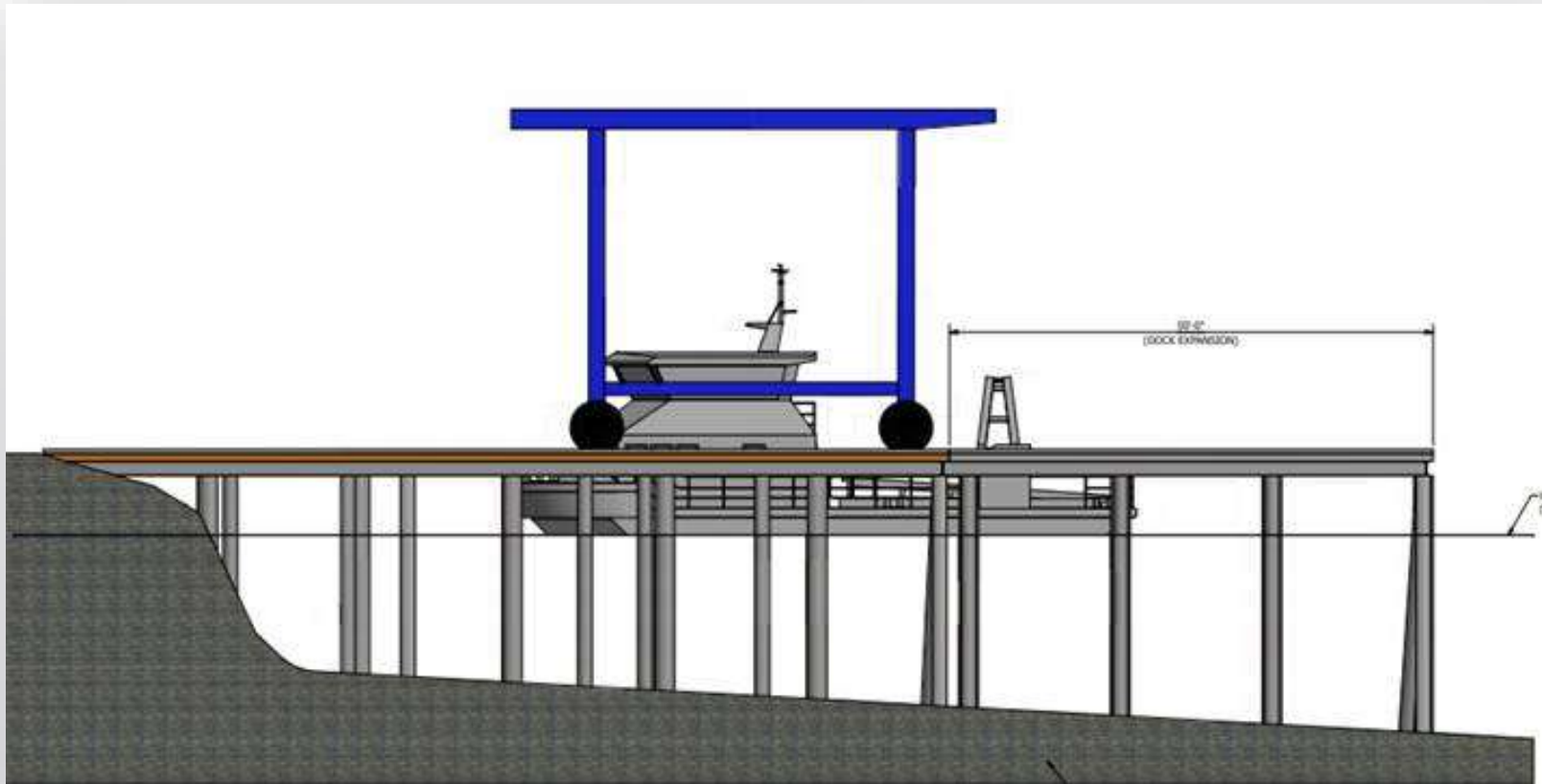




**A new addition to
the existing 95 ft
dock**

- **Investment for
expansion is 4.2
million**





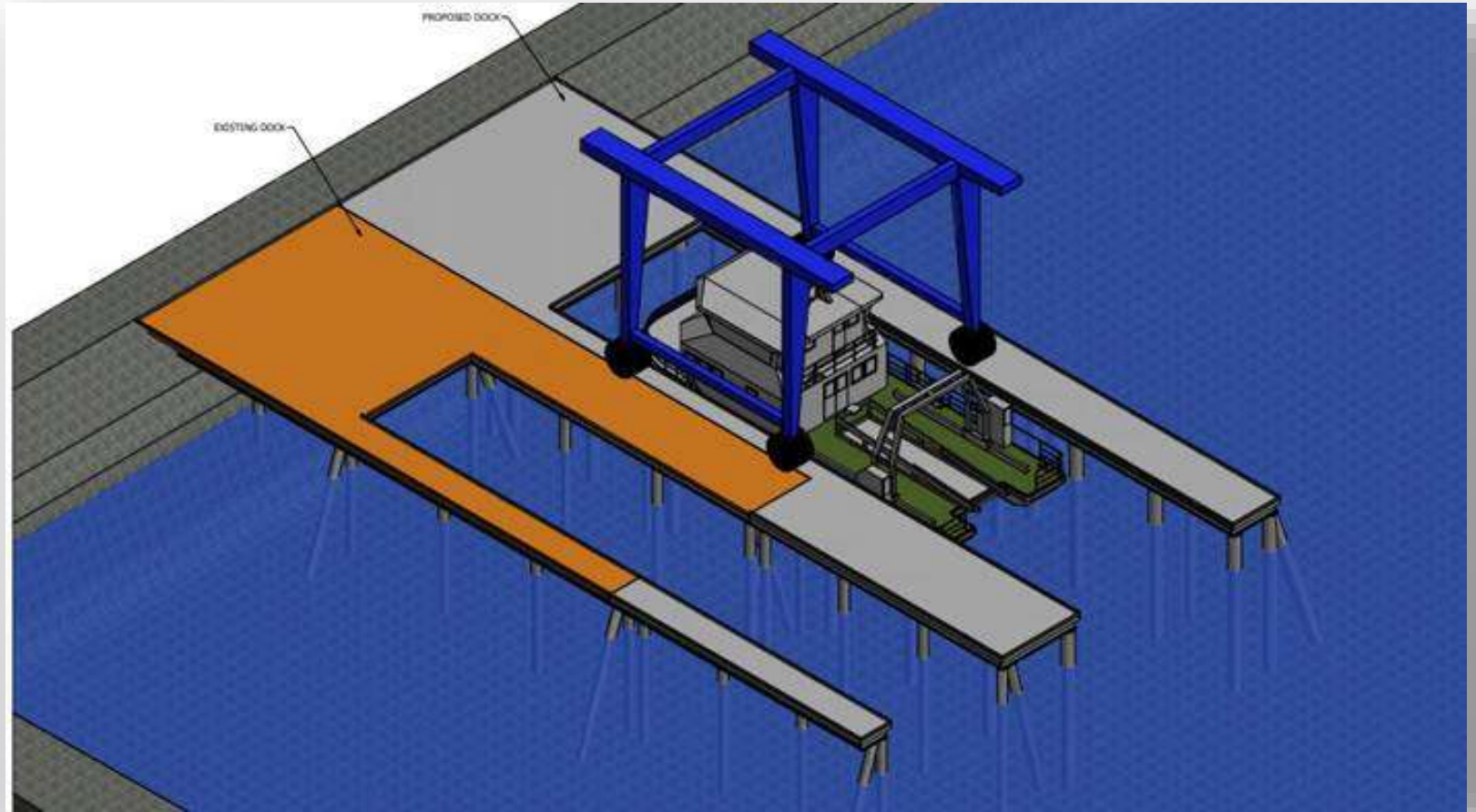
**Gains 2 feet of water
from added 50ft
dock extension**

- Increasing our usable tides for our existing customers



**Currently being
fabricated and
assembled in
Seattle.**

**Being built by
Alaskan
Businesses**





200 metric ton travel lift

- 32ft wide boats
- 38ft inside clear height
- 150ft long boats

The Need for More Land





**20 buildings and 36 bays
but still not enough room
for the boats we currently
have**



New dock and lift allows for even bigger boats

- An estimated 30 more of these larger boats will need space each season





We currently own the orange lots.

With owning the red, blue and green lots, we can expand our yard extensively.

A brief video





**Thank you for taking time out of
your day to listen to us.**

We truly appreciate it.



(907) 235-8234
FAX 235-7083
email: kshores@ptialaska.net

5140 Kachemack Drive
Homer, Alaska 99603

After 15 years of commercial fishing my wife Snooks and I decided, Homer just had to have some means to get fishing vessels out of the water for repair and winter storage. Between us, we had enough boating experience all up and down the coast of Alaska to personally know many of the boat owners and their problems. Homer has always had better weather than most of the coast, a road to the states, many flights in and out, and most important of all, an unbelievable pool of talent to do repairs, build and support the boat owner.

Northern Enterprises Boat Yard Inc. lifted its first boat from the water in 1981. From there we learned and built more facilities each year. Our policy and business plan have always been based on "Convenience for the boat owner", whatever it takes.

You cannot fix, build and repair without infrastructure. Over the years we have increased the gravel filled land mass to almost 38 acres, built 20 buildings of all sorts. Including one we can drive a 75-ton travel lift into, with a 58-foot boat and mast. One of our biggest buildings is 60 feet wide by 204 feet long, sectioned into 8 bays to build and repair vessels in. All together we have 36 bays or shops of various sizes that we use ourselves, and rent out to boat owners, boat builders and repair companies.



This is what our yard looked like as of January 2018

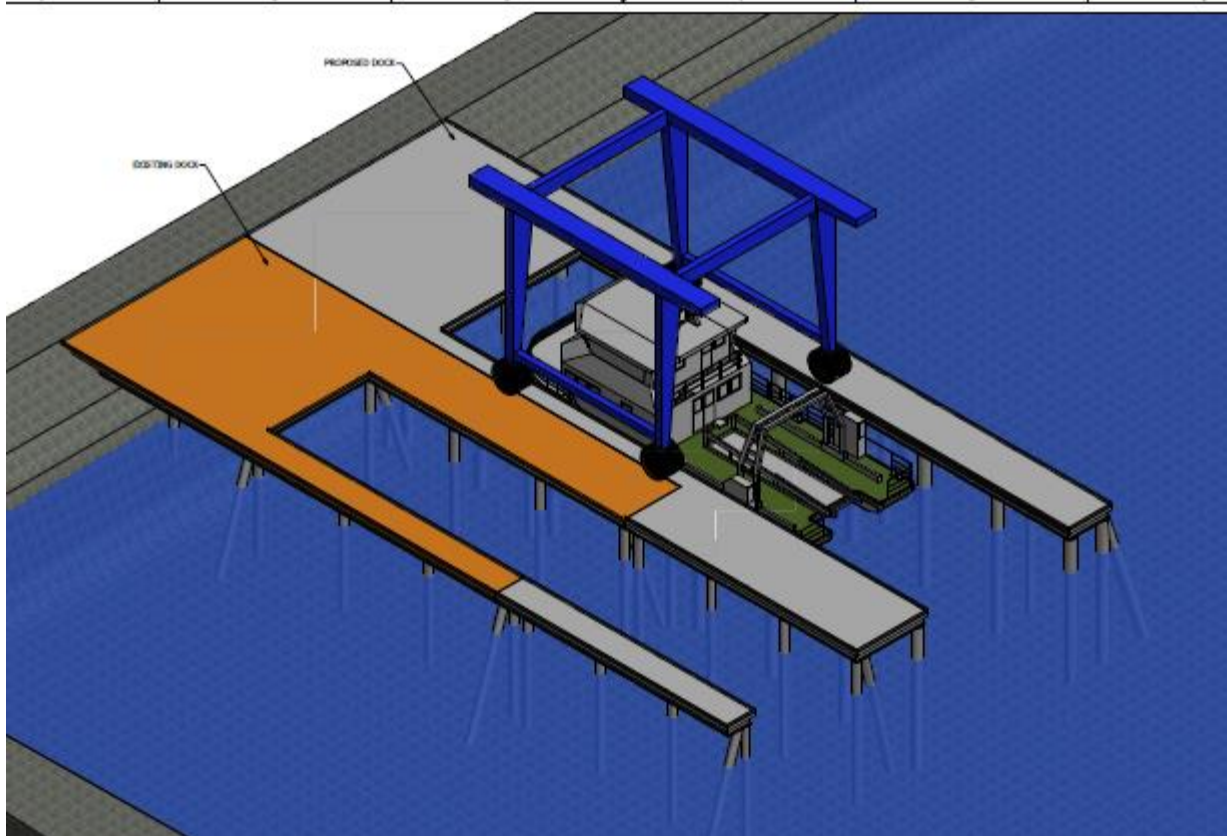
Our equipment includes 1 -70-ton travel lift, 2- 75 Metric Ton Travelifts, 1 -15-ton crane,1-18ton crane, 1- 50-ton crane, 2-Large front-end loaders with forks and snow removing equipment, 2- water tankers, 1-5,500 lb rough terrain forklift, 1- Mobile manlift, and 4 hydraulic trailers for moving boats in and out of buildings.

Each winter we will have in excess of 400 vessels in our yard. Some for repairs, some to change gear to go for another species of fish and many for storage and spring outfitting. Not just a few people work in our yard, we rent to about 40 business, some of which have multiple employees and then about 50 or more businesses around town do contract work or supply parts, pieces and expertise.

So, we have been in operation 40 years and the boats both commercial and sports have gotten larger and larger. Commercial seiners are almost all over 50 feet now, many are now 58 feet long and due to 58 foot being the limit length a seiner can be, they are getting wider and wider, to make them haul more to work better for other fisheries. Our current dock and lift size will allow us to lift boats up to 20 feet wide and 150,000 pounds. Many boats are being built that are over 20 feet wide, even in the 58 footers. For some years we have been sending away, boats that are the right size for our lift, but are too heavy or too wide. Some leave and come back with less fuel, Pull the mast and booms off, just lighten the vessel any way they can. Some vessels come back 3 or 4 times trying to get below our machines (Travelift) alarm weight. However there just isn't much we can do for too wide. If it won't fit through the piling or up through the dock, there is not much to say. This also has happened many times. We lift a boat that is marginable by weight. The boat is repaired and refitted and in so doing it gains considerable weight. We get it back in the water and have to tell the owner, "Don't bring it back here, because we can't lift it out again". That's not convenience for the boat owner and it certainly isn't good for the ship yard.

We also get vessels that are 70 or 80 feet in Length and we can lift them weight wise and width wise, however balance becomes difficult due to length of our present dock , so extending our present dock out to 50 feet will be of great benefit. Gaining a couple feet more water will also give us more operating time.

In 1981 our dock and at that time the one 60-ton travel-lift took care of most of the harbor full of boats. Now there are many boats that are too wide, too long and too heavy. We are tidal and our water depth limits us to about a maximum 10-foot draft vessel. Our plan is a 200 Metric Ton (220 US tons or 440,000 lb.) Travelift 34 feet wide inside. We have to expand our boat yard to meet the growing demand.



The orange brown is the present dock. The gray will be the new addition.

The extension on the old dock would make us more efficient in many ways. We would intermittently have to dig away the sand that has been building up the last 20 years. We have a permit and keep a bulldozer standing by to, a few times a year, push some sand toward the Spit (the direction it is all going anyway, to get depth back for long boats or little tides).

By extending the dock, we would also gain a couple feet of water, which is actually a big thing. It would give us the length to better deal with the longer boats and not have to back them in or juggle them around trying to get a proper balance.

The very wide 200 Metric Ton Travelift, will lift a vessel up to 32 feet wide. Some 58-foot seiners are 28 feet wide these days. It will make it where, we no longer have to tell these medium size vessels that live in homer area, we just can't do it or to strip their boat, get rid of the fuel and we will try. These boat owners desperately need a way to get their vessels out of the water for repairs and storage.

Over the years we have had several hundred new boats built in our yard. Built in buildings and in make shift sheds when the buildings are full. For the most part the largest have been 58 by 20 feet wide. Due to the fact that 20 feet wide is just about the largest we can get through our dock to water and with the inside of the dock being 21 feet 11 inches, with the blocks and spreader bars on the lift, it's a very careful slow operation.

Our next-door neighbor is a business built and owned by a Commercial Fisherman named Bay Welding Boats Inc. They build aluminum vessels; in fact, they celebrated the building of their 200th vessel last spring. They depend upon us to launch their larger boats. It's just been 3 years ago that they built a 660-foot road to the back of our

premises. Since then, we have launched 5 boats for them all new builds. A 54 foot long by 20 feet wide, a 64 foot long by 20 feet wide, four 53 foot long by 20 feet wide Catamarans and there is definitely more for this spring. Notice they are all 20 feet wide. Probably, some of them would have been a foot or two bigger, but we can't do it. At present they are building 15 somewhat smaller boats.

This is a list of the type of business renting our shop spaces at present.

One welding supply company

7 aluminum and steel welders

Halibut cove ferry

1 Vessel management company

1-Machine shop

10 companies that do vessel repair and building

6 personal workshops for boat owners

1 Propeller shop

1 restaurant, they own the building, we lease then the ground space.

Several of the small business are fisherman in the summer, however in the winter they have a small crew (probably also fisherman) and they build, many from Mold to finished boats, each winter and have been for years. Others build for themselves and family. Our boat Bay building and other shops allow people to be builders without having to own a several hundred thousand dollar building and huge equipment. We roll the hulls, Pull the hulls from molds, set decks and houses and flying bridges, put the engines in, and so on.

When we started Northern Enterprises, boat haul out and commercial yard in 1981, I was commercial fishing nearly year around and my wife fished a long gillnet season at False Pass Alaska (area M). We couldn't even think about doing the boat repair and out fitting and building. So, our plan became to grow the most infrastructure possible for the huge amount of talent in and around Homer. I knew about the talent because I worked with a lot of it at Kachemak Marine building boats and doing repairs on the Homer spit in the 1960's. So, our business is the back bone and bases for many businesses to build and repair from. We furnish the place and the heavy lifting and all the machinery to make what ever they need to do possible. The money we take in for lifting, storing and renting building space is a pittance compared to the over all income and employment from the multitude of business that operate at our place.

I guess what I'm trying to point out is that, helping us put in a bigger dock and larger boat lift will probably give more bang for the buck, to more people and more small companies and more fisherman and boat owners, than most things you could do with the land. I started to say across this area, but its more than that, because we have infrastructure and the talent to use that infrastructure, we have boats come from Southeast Alaska, Prince William Sound, Norton sound and most of all, King cove, Sand point, false pass, all the Alaska Peninsula. A lot of these places already have a 150-ton boat lift bought and installed by the government, but no way to get work done. They can't just stay there and have people fly out and refit their boat, the facilities just aren't available.

It now is a fact that the expansion is going to happen. The 200-metric ton Travelift is ordered. The money has been arranged to start building the dock this spring. We have the space to do bigger boat haul out and repair in a limited manner, however to do storage and have space for boat or barge building, we would be very cramped. We badly need to acquire adjacent property to grow at this point. The additional property to our yard would benefit the Kenai Peninsula borough for many decades to come.

The new dock and boat lift here in Homer, will turn a lot of our small repair business into large repair business. It will put a lot of people to work and make our small business grow. Also, it will solve a big part of a growing problem for our local vessel owners and others that wish to haul out here for repair work.

My wife and I are not exactly young, so what's next? Aaron Fleenor (one of ten grandsons) who has worked in our business for 13 years who now manages daily operations of the boat yard. Our son has a business, but helps us with development through his experience and equipment. All of our family are of native heritage, except myself and I was in the Army in the 1960's. So, I'm not too worried about the future of this yard as long as they keep one thing in mind, it's all about taking care of the people in our community and our great state of Alaska, making it work for the boat owner, will make it work for us.

Thank You,

Ken and Snooks Moore

Owner of Northern Enterprises Boat yard Inc.

**NORTHERN
ENTERPRISES
BOAT YARD, INC.**

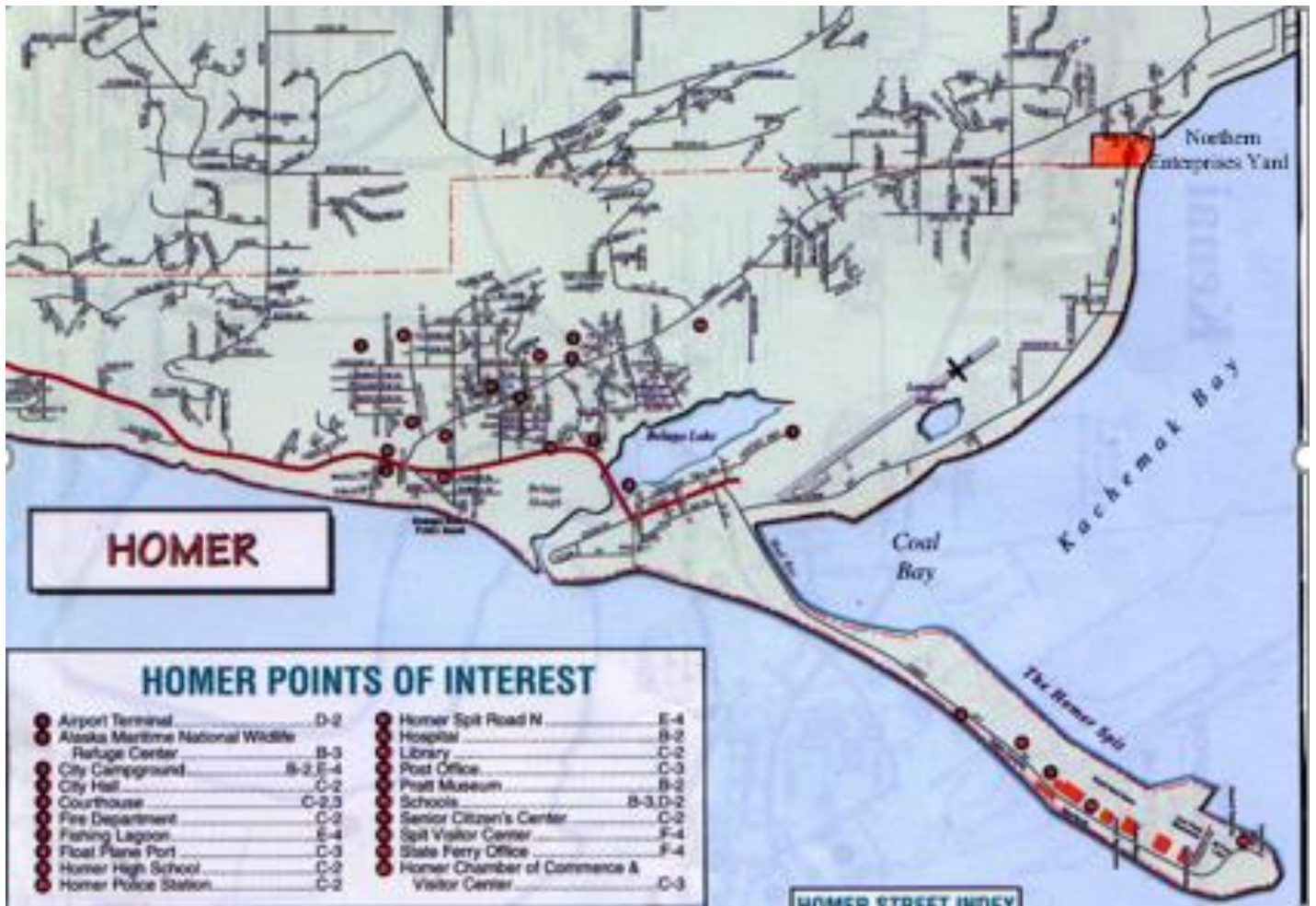


(907) 235-8234
FAX 235-7083
email: kshores@ptialaska.net

5140 Kachemack Drive
Homer, Alaska 99603



Northern Enterprises Boat Yard is approximately 30 acres, with another 5 acres off in the back, left hand corner, we are now starting to use that acreage for equipment and Boat mold storage. The road over to Bay Welding is visible in that top left corner also.



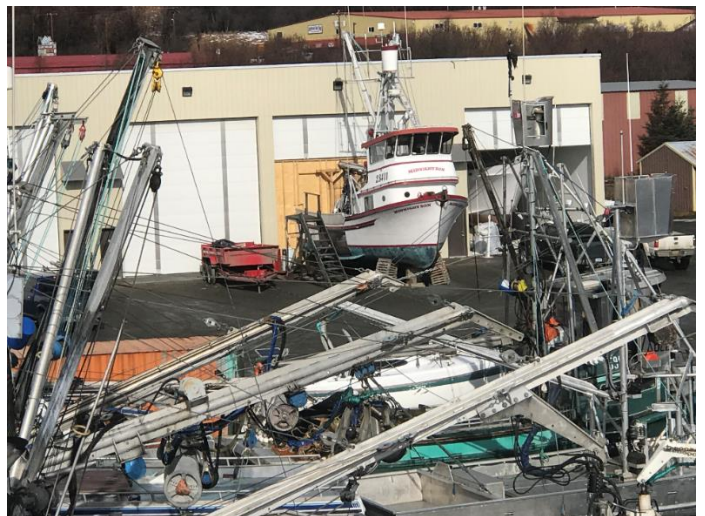
Northern Enterprises yard is located a little more than 3 miles North across Kachemak bay, from the Homer boat Harbor at the tip of the Homer spit. Homer is 221 miles from Anchorage on the Kenai Peninsula. We are about 90 water miles from Kodiak. Kenai and Soldotna are about 75 miles up the highway towards Anchorage.



Most of the next pictures will be taken from the guard house tower. It is manned 7 nights a week and has controls to the front gate. It also gives a view of all the yard and buildings for fire watch and general yard control. The night watch also monitors cameras located around the boat yard.



These pictures were just taken and the weather hasn't been very dry or cold lately. (March 15 2019) This is a view out our front gate toward the dock. To get an idea of size, the Boulder Bay, to the right in the pic. Is a 58-foot seiner.



This building is 204 feet long with 8 bays, 25 by 60 each. All are full, a boat in each. We will roll as many in and out as the time allows before summer. On the right is a seiner being lengthened out to nearer 58 feet. The bow you can see in the other bay is a 53-foot charter boat from Seward, getting a complete over haul. Its sister ship was done last winter.



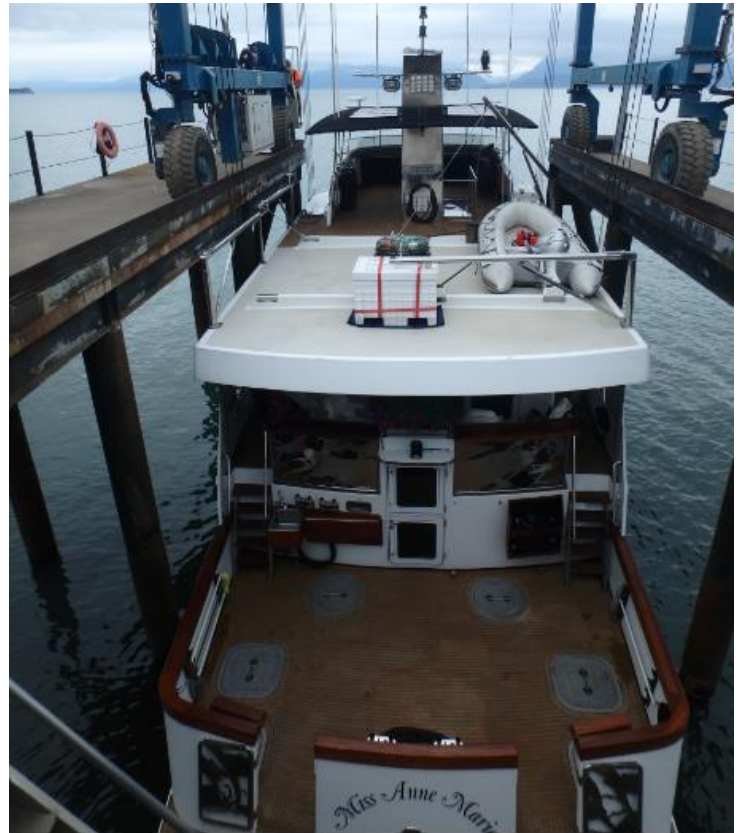
These two buildings in the distance are 50 by 50 on the left, used for storage of a wooden ferry and the blue one on the right is 70 by 35 a boat shop. The right picture is 3 boat shops. The one on the left is 40 by 60 and two 50 by 50 buildings.



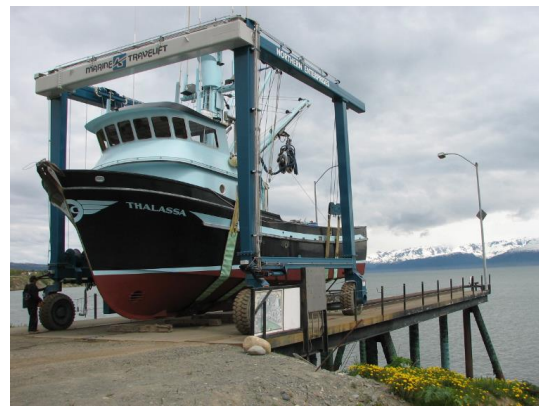
There is an aluminum welding shop in the building on the left front and another in the back 50 foot by 50-foot area. The 40 by 60 building at the end of this boat row is base for 3 different small aluminum welding companies. Under the roof in the foreground, this 50 by 100 building with a 30 by 100 net alley on the side is a marine supply store and a net hanging business.



These buildings are 50 feet by 100. The one in the for ground has the 2 aluminum welders, the other a welding supply.



This vessel illustrates one of our problems. It is over 70-foot-long, while we can lift it, it is very stern heavy with two engines in the stern and so long that, it had to be backed in. not every one could do such a thing with a little tide running and a breeze. Then it is touchy pulling it out so close to the dock on each side. See the picture above.



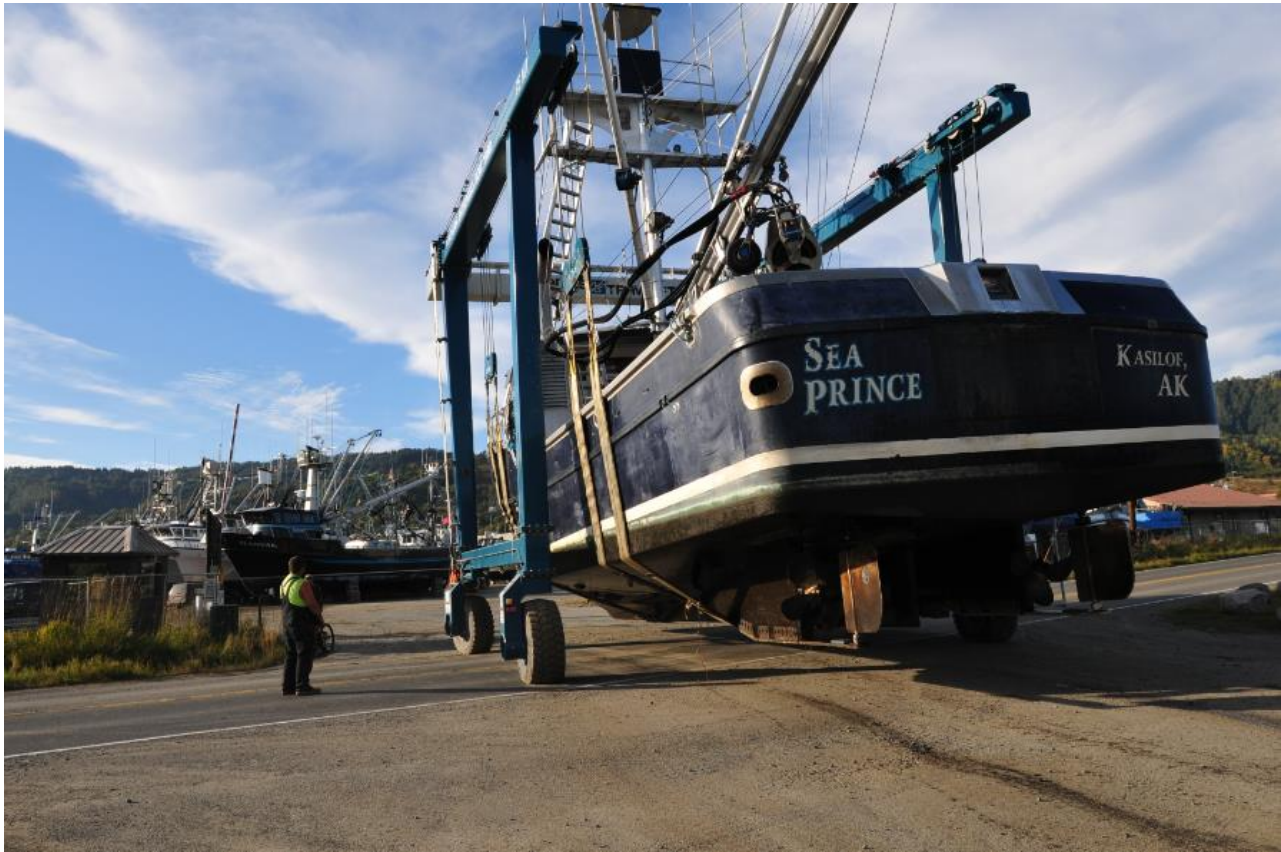
Three boats being worked on now



A 58-foot mold being built a few years ago.



This picture was taken this fall. The Sea Prince was built in our yard several years ago and is coming back in for a paint job and small work. It is Fiberglass, 58 by 20. Two of our crew in front, Aaron and Blade. The vessel on the left, The Ocean star, had to be lightened for us to lift it and It is getting a major refit, from some sort of cargo to a fishing tender.



Bay welding 62 -footer, look at the space between the side of vessel and dock, to go down to water. Bay welding 50 Foot long by 20 wide.

Sometime ago I heard it said that "it's too bad Homer, Alaska doesn't have an active marine industrial business with the weather and harbor they have. Well, we do and I'm betting we store, repair and build more boats in a year than any other town on the coast of Alaska. The difference is, No fanfare and little government sponsored projects or money.

But we do have better weather, more talent and easier excess to materials than just about any place on the coast. However, all bragging aside, I would like to thank you for taking a look at our operation and we are hoping to just keep on growing. Our next plan for expansion is a larger dock and a new travel lift double the size of our three present lifts.

Thank you, Ken and Snooks Moore

Introduced by:	Mayor
Date:	03/02/21
Hearing:	04/06/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-19-23**

**AN ORDINANCE APPROPRIATING SCHOOL BOND INTEREST TO COVER THE
COST OF INELIGIBLE SCOPE OF WORK ON THE REDOUBT ELEMENTARY
ROOF PROJECT**

WHEREAS, in the application process for the approval of the Redoubt Elementary Roof project, by the Department of Education and Early Development (DEED), it was determined that a portion of the roof was ineligible for replacement under the DEED grant reimbursement program; and

WHEREAS, the assembly on May 5, 2020, approved an appropriation for \$100,000 to cover the ineligible portion of the Redoubt Elementary Roof project; and

WHEREAS, in the design and bidding process this section of roof was compartmentalized using an additive alternate approach that clearly identified the cost for this portion of the scope of work; and

WHEREAS, in the construction process it was discovered that due to a moisture damaged portions of the roof and structure needed to be repaired; and

WHEREAS, a change order to the construction contract was processed to address the work, however there were insufficient interest funds in the contract to cover the cost of this work; and

WHEREAS, interest funds from school bond proceeds must be used on related school projects, the work is ineligible to be paid for by bond funds and therefore, available school bond interest is being appropriated to cover this portion of the work;

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

SECTION 1. That the amount of \$41,000 in school bond interest earnings from bonds issued in 2014 and prior are appropriated from account 401.27910 to account 401.76040.20SCH.49999 to cover the ineligible costs of the Redoubt Elementary Roof Project.

SECTION 2. That upon enactment this ordinance shall be effective retroactively on September 1, 2020.

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

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough
Purchasing & Contracting Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*

FROM: John Hedges, Purchasing & Contracting Director *JH*
Brandi Harbaugh, Finance Director *BH*

DATE: February 18, 2021

RE: Ordinance 2020-19- 23, Appropriating School Bond Interest to Cover the Cost of Ineligible Scope of Work on the Redoubt Elementary Roof Project (Mayor)

In the application process for the approval of the Redoubt Elementary Roof project, by the Department of Education and Early Development (DEED), it was determined that a 2,803 square foot portion of the roof was ineligible for replacement under the DEED grant reimbursement program.

In the design and bidding process this section of roof was compartmentalized using an additive alternate approach that clearly identified the \$100,000 cost for this portion of the scope of work.

Interest funds from the bond proceeds that are not regulated by DEED were appropriated through Ordinance 2019-19-32 to cover this portion of the work.

In the construction process it was discovered that due to a moisture issue some sheeting and structural damage had occurred and needed to be repaired. The condition of the roof that led to the moisture issues was also identified and corrected.

A change order to the construction contract was processed to address the work, however there were insufficient interest funds in the contract to cover the cost of this work.

This ordinance appropriates school bond interest from bonds issued in 2014 and prior to cover the cost of the ineligible scope of work.

Your consideration of this ordinance is appreciated.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED	
Acct. No. <u>401.27910</u>	Amount: <u>\$41,000.00</u>
By: <u><i>PP</i></u>	Date: <u>2/19/2021</u>

Introduced by:	Mayor
Date:	03/02/21
Hearing:	04/06/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-10**

**AN ORDINANCE PROVIDING AN EXEMPTION FROM KPB CHAPTER 14.06
“ROAD STANDARDS” TO ALLOW ACCEPTANCE OF A NON-CONFORMING
ROAD INTO THE BOROUGH ROAD MAINTENANCE PROGRAM**

- WHEREAS**, in 2016 the Kenai Peninsula Borough (Borough) accepted a grant agreement from the US Department of Transportation, Western Federal Lands Division (DOT-WFL) for the construction of 7.5 miles of road located along the Kenai Spur Highway right-of-way; and
- WHEREAS**, the grant was contingent upon a scope of work that would mitigate impacts to wetlands and sensitive habitat currently being impacted by off-road vehicle traffic that utilizes the right-of-way for recreational and private property access purposes; and
- WHEREAS**, as a condition of accepting the grant funding from DOT-WFL, the Borough agreed to maintain the road; and
- WHEREAS**, the grant provided to the Borough by DOT-WFL sought to direct the flow of traffic away from the wetlands and sensitive habitat and onto a roadway in order to protect the environment; and
- WHEREAS**, as a condition of accepting the grant funding from DOT-WFL, the Borough agreed to maintain the road; and
- WHEREAS**, chapter 14.06.090 requires that all Category IV Roads be built to a minimum of 26 feet in width; and
- WHEREAS**, roads that are not built to Borough Standards are not eligible under the code for inclusion into the Borough Road Maintenance Program; and
- WHEREAS**, it is in the best interest of the Borough to provide winter maintenance for this 7.5 miles of road on a regular basis to allow for public use of the access and monitoring of the road conditions; and
- WHEREAS**, summer maintenance should be applied along this section of road on an as needed basis when deemed necessary to preserve the integrity of the road embankment and infrastructure; and

WHEREAS, because the road was not constructed to meet road service area standards the typical application of road service area maintenance practices would not be an efficient use of Borough resources; and

WHEREAS, it is in the best interest of the Borough to include the Kenai Spur Extension into the road maintenance program provided by the Road Service Area in conjunction with its standard maintenance program; and

WHEREAS, the Kenai Peninsula Borough Road Service Area Board at its regularly scheduled meeting of February 9, 2021, recommended unanimous approval of this ordinance.

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

SECTION 1. That notwithstanding the requirements of KPB Chapter 14.06, which sets construction standards to be met by roads for acceptance into the Borough's Road Maintenance Program, the Kenai Spur Extension is hereby granted an exception from the KPB Chapter 14.06 road construction standards and is hereby accepted onto the Borough's Road Maintenance Program.

SECTION 2. That this ordinance shall become effective upon enactment and also upon the Borough's receipt of the DOT-WFL's acceptance of final completion of the Kenai Spur Extension Project.

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

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Purchasing & Contracting Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor CP

FROM: John Hedges, Purchasing & Contracting Director JH
Dil Uhlin, Purchasing & Contracting Director DU

DATE: February 18, 2021

RE: Ordinance 2021-10, Providing an Exemption from KPB Chapter 14.06 Road Standards to Allow Acceptance of a Non-Conforming Road into the Borough Road Maintenance Program (Mayor)

In 2016, the Kenai Peninsula Borough (Borough) accepted a grant agreement from the US Department of Transportation, Western federal Lands Division (DOT-WFL) for the construction of 7.5 miles of road located along the Kenai Spur Hwy right-of-way.

The grant was contingent upon a scope of work that would mitigate impacts to wetlands and sensitive habitat currently being impacted by off-road vehicle traffic that utilize the right-of-way for recreational and private property access purposes.

As part of the grant agreement, under Section C, Jurisdictional and Maintenance Commitment, the Borough has jurisdictional authority to operate and maintain the existing facility and will operate and maintain the completed project at its expense.

It is in the best interest of the Borough to provide winter maintenance on a regular basis to allow for public use of the access and monitoring of the road conditions. Summer maintenance should be applied on an as needed basis when deemed necessary to preserve the integrity of the road embankment and infrastructure.

Chapter 14.06 of the Kenai Peninsula Borough Code of Ordinances requires that all roads accepted into maintenance meet Borough standards. Per the grant agreement this road was not built to meet all necessary Road Service Area standards.

Pursuant to the DOT-WFL grant agreement the Borough is obligated to provide road maintenance at its expense.

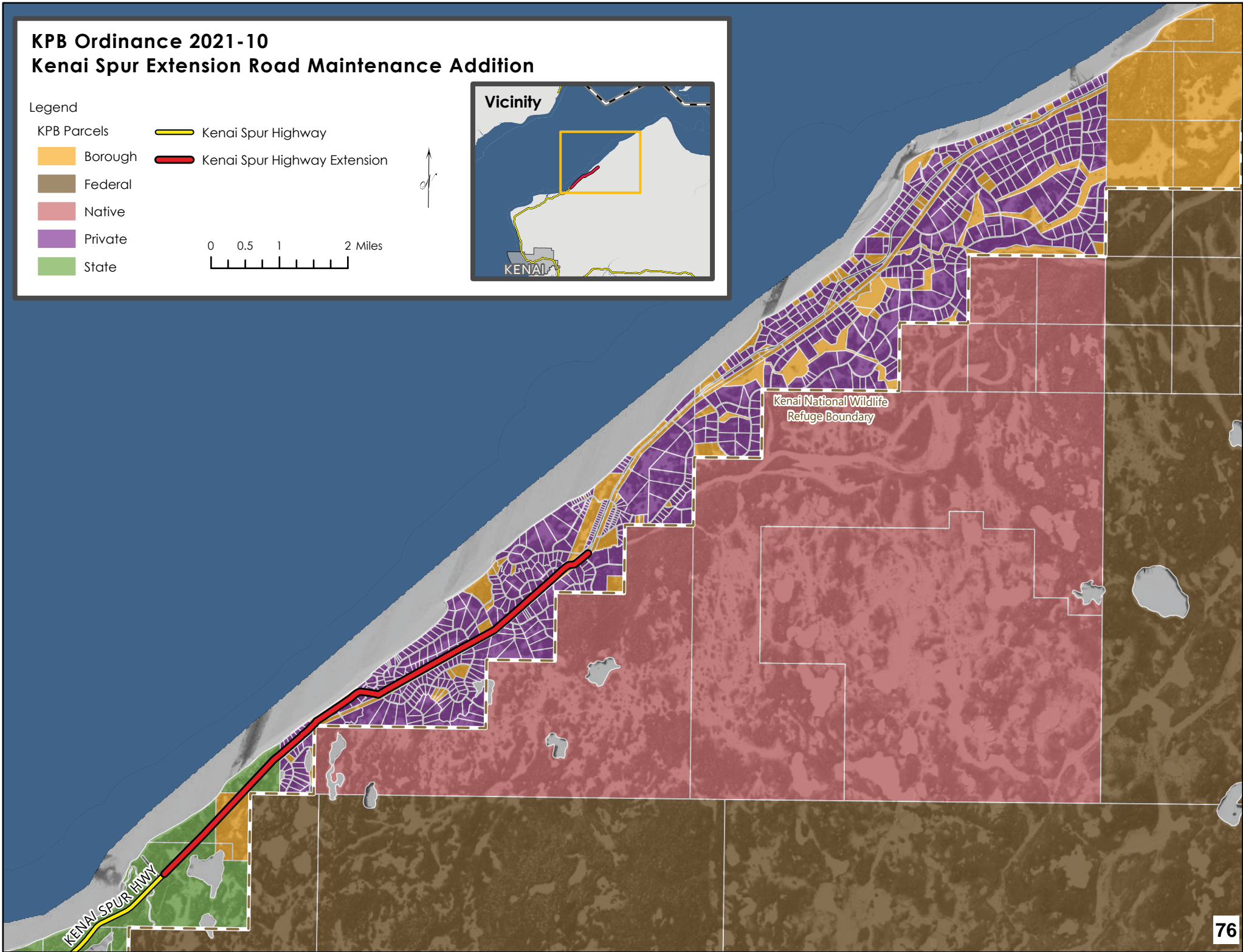
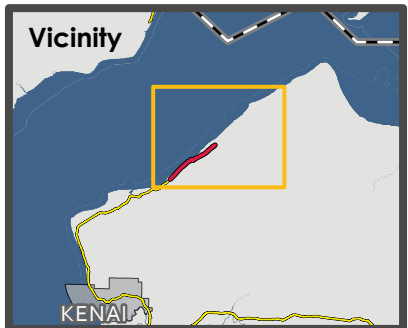
It is in the best interest of the Borough to include the Kenai Spur Extension into the road maintenance program provided by the Road Service Area in conjunction with its standard maintenance program.

Your consideration of this ordinance is appreciated.

KPB Ordinance 2021-10
Kenai Spur Extension Road Maintenance Addition

Legend

- KPB Parcels
- Borough
 - Federal
 - Native
 - Private
 - State
- Kenai Spur Highway
- Kenai Spur Highway Extension
- 0 0.5 1 2 Miles



Introduced by:	Mayor
Date:	03/02/21
Hearing:	04/06/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-11**

**AN ORDINANCE AUTHORIZING A COMMUNICATIONS SITE LEASE
AGREEMENT WITH VERTICAL BRIDGE DEVELOPMENT, LLC**

WHEREAS, Vertical Bridge Development, LLC is seeking to improve wireless services in the Summit Lake area; and

WHEREAS, Vertical Bridge Development, LLC is proposing to install a communication tower and equipment at Kenai Peninsula Borough (“borough”) managed land in the rural community of Summit Lake; and

WHEREAS, in 2015, the borough received a final decision approving conveyance of the land; and

WHEREAS, Vertical Bridge Development, LLC has determined that a 2,187 square foot site on borough-managed land to the west of Summit Lake is the most desirable to meet its requirements; and

WHEREAS, the 2,187 square-foot site is located within the 317.86-acre borough-managed parcel described as Govt. Lot 1 excluding ASLS 97-32 and ASLS 2000-01, Section 5, Township 6 North, Range 1 West, Seward Meridian, Seward Recording District, Third Judicial District, State of Alaska; and

WHEREAS, Vertical Bridge Development, LLC proposes a market value lease; and

WHEREAS, entering into a negotiated lease of the property with Vertical Bridge Development, LLC is consistent with Goal 2 of the Moose Pass comprehensive plan, and furthers Goal 2, Focus Area: Land Use and Changing Environment, Objective C of the Kenai Peninsula Borough Comprehensive Plan; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of March 15, 2021, recommended _____;

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

SECTION 1. The assembly finds that entering into a Communications Site Lease Agreement with Vertical Bridge Development, LLC is in the best interest of the public and the borough. This finding is based on the following facts:

- a. The borough will receive a fair market rent for the term of the lease.
- b. The land will be used to provide a new communications site that will benefit communication network users, including public safety providers.
- c. The leasing of land for communication purposes is supported by Goal 2 of the Moose Pass Comprehensive Plan and Goal 2, Focus Area: Land Use and Changing Environment, Objective C of the Kenai Peninsula Borough Comprehensive Plan.

SECTION 2. The mayor is authorized, pursuant to KP 17.10.100(I), Negotiated Sale or Lease, to negotiate and enter into a lease of the above-described area to Vertical Bridge Development, LLC, subject to all lease conditions required by this ordinance and the applicable provisions of KP 17.10, Borough Land and Resources.

SECTION 3. The assembly makes an exception to KP 17.10.090 requiring classification prior to disposal. This exception is based on the following findings of facts pursuant to KP 17.10.230:

1. Special circumstances or conditions exist.
 - a. KP 17.10.080(A) states, classification of property is for review, plan implementation and management purposes. The classification system designates the most appropriate uses of the land and thereby guides borough management of such lands and implementation actions to provide for the identified users.
 - b. KP 17.10.080(E) states, classification or reclassification shall be based on a need identified in the borough Comprehensive Plan or upon recommendations from the mayor, the planning commission, an advisory planning commission, the public, or a local, state, or federal government agency. The borough has no identified management plan for this property at this time.
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is in the most practical manner of complying with the intent of this chapter.
 - a. The notice requirement is intended to make the public aware of an opportunity to purchase borough property, which is not applicable to the lease of property solely to Vertical Bridge Development, LLC.

3. That the granting of this exception will not be detrimental to the public welfare or injurious to other property in the area.

- a. The communication tower site is compatible with the surrounding vacant, utility and recreational land uses.

SECTION 4. Pursuant to KPB 17.10.230, the assembly authorizes an exception to the requirements of 17.10.110, Notice of Disposition, based on the following findings of facts:

1. Special circumstances or conditions exist.

- a. The proposed lease is solely with Vertical Bridge Development, LLC and for the purpose of operating and maintaining a communication tower site.
- b. The notice requirement is intended to make the public aware of an opportunity to purchase borough property, which is unnecessary since the intent of the disposal is to lease the property solely to Vertical Bridge Development, LLC.

2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter.

- a. The notice requirement is intended to make the public aware of an opportunity to purchase property, which is not applicable to the lease of property solely to Vertical Bridge Development, LLC.

3. That the granting of this exception will not be detrimental to the public welfare or injurious to other property in the area.

- a. The communication tower site is compatible with the surrounding land uses.

SECTION 4. This lease is subject to a condition that the Director of the State of Alaska, Department of Natural Resources, Division of Mining, Land, and Water consents to the lease.

SECTION 5. The mayor is authorized to execute a Communications Site Lease Agreement with terms and conditions substantially similar to the agreements attached to this resolution.

SECTION 5. Vertical Bridge Development, LLC shall have 90 days from the date of enactment of this ordinance to execute the agreement.

SECTION 6. That this ordinance shall take effect immediately upon its enactment.

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

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

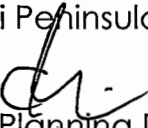


No:


Absent:

Kenai Peninsula Borough
Planning Department – Land Management Division

MEMORANDUM

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

THRU: Charlie Pierce, Mayor 
Melanie Aeschliman, Planning Director 
Marcus Mueller, Land Management Officer 

FROM: Julie Denison, Land Management Technician 

DATE: March 25, 2021

RE: Postponement of Ordinance 2021-11
Option and Communications Site Lease Agreement

Ordinance 2021-11 is scheduled for hearing on April 6, 2021. Additional time is needed to finalize the negotiated terms. We respectfully request that the hearing be postponed until the next assembly meeting on April 20th.

Thank you.

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

THRU: Charlie Pierce, Borough Mayor *ch*

FROM: Melanie Aeschliman, Planning Director *MA*

DATE: March 18, 2021

RE: Ordinance 2021-11: An ordinance authorizing a communications site lease agreement with Vertical Bridge Development, LLC

The Kenai Peninsula Borough Planning Commission reviewed the subject ordinance during their regularly scheduled March 15, 2020 meeting.

A motion passed by unanimous vote (10 Yes, 0 No, 1 Absent) to recommend approval of Ordinance 2021-11.

In the ordinance, please amend the last WHEREAS statement:

WHEREAS, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of March 15, 2021 recommended approval by unanimous vote.

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

March 15, 2021 Planning Commission Draft Meeting Minutes

AGENDA ITEM E ORDINANCE

5. Ordinance 2021-11: Authorizing a communications site lease agreement with Vertical Bridge Development, LLC.

Staff report given by Marcus Mueller

Vertical Bridge Development, LLC has submitted an application for a lease of borough land in the Summit Lake area for a communication tower site. In 2015, the subject land was approved to the Kenai Peninsula Borough by the State of Alaska under municipal land entitlement ADL 227985. The communications site lease has been negotiated using standard practices.

This ordinance will be brought before the Kenai Peninsula Borough Planning Commission at its March 15, 2021 meeting. The recommendations of the Planning Commission will be provided to the assembly prior to the scheduled hearing on this ordinance.

END OF STAFF REPORT

Chair Martin opened the item for public comment. Hearing no one wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

MOTION: Commissioner Morgan moved, seconded by Commissioner Ecklund to forward to the Assembly a recommendation to approve Ordinance 2021-11: An ordinance authorizing a communications site lease agreement with Vertical Bridge Development, LLC.

Commissioner Ecklund asked staff if the tower will be camouflaged. Mr. Mueller replied that it would sit off the roadway and would have a 150-foot vegetative buffer. He also noted there was no camouflaging planned for the steel framed tower. Commissioner Ecklund then asked if this tower would sit up high enough to be visible from the road. Mr. Mueller replied that the side of the road where the tower will sit slopes up so it will sit higher than the road and will be visible.

MOTION PASSED: Hearing no discussion or objection, the motion was carried by the following vote.

Yes	10	No	0	Absent	1
Yes	Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No					
Absent	Bentz				

AGENDA ITEM E. ANADROMOUS WATERS HABITATE PROTECTION DISTRICT

6. A Conditional Use Permit is sought pursuant to KPB 21.18 to replace existing twin culverts with a box culvert within the 50-foot Habitat Protection District of the North Fork Anchor River as established in KPB 21.18.081(B)(5). KPB Planning Commission Resolution 2021-07

Staff report given by Nancy Carver

Applicant: Kenai Watershed Forum
44129 Sterling Highway
Soldotna, Alaska 99669

Alaska Resource Solutions, LLC
48460 Lakeside Avenue
Soldotna, Alaska 99669



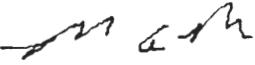
Project Location: Section 26, T4S R14W, Seward Meridian, HM N1/2 SE1/4 within the Nikolaevsk Road ADOT right-of-way on both banks of the North Fork Anchor River.


KPB Parcel #: 165-200-49

Kenai Peninsula Borough
Planning Department – Land Management Division

MEMORANDUM

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

THRU: Charlie Pierce, Mayor 
Melanie Aeschliman, Planning Director 
Marcus Mueller, Land Management Officer 

FROM: Julie Denison, Land Management Technician 

DATE: February 18, 2021

RE: Ordinance 2021-11, Authorizing a Communications Site Lease Agreement to Vertical Bridge Development, LLC (Mayor)

Vertical Bridge Development, LLC has submitted an application for a lease of borough land in the Summit Lake area for a communication tower site. In 2015, the subject land was approved to the Kenai Peninsula Borough by the State of Alaska under municipal land entitlement ADL 227985. The communications site lease has been negotiated using standard practices.

This ordinance will be brought before the Kenai Peninsula Borough Planning Commission at its March 15, 2021 meeting. The recommendations of the Planning Commission will be provided to the assembly prior to the scheduled hearing on this ordinance.

Your consideration of this ordinance is appreciated.

COMMUNICATIONS SITE LEASE AGREEMENT

This COMMUNICATIONS SITE LEASE AGREEMENT (this “Agreement”) will become effective when all parties have signed the Agreement (the “Effective Date”). This Agreement is entered into by the **Kenai Peninsula Borough**, a municipal corporation, whose mailing address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter the “KPB” or “Lessor”), and **Vertical Bridge Development, LLC**, a Delaware limited liability company, whose mailing address is 750 Park of Commerce Drive, Suite 200, Boca Raton, FL 33487 (hereinafter “Lessee”).

PART I. BACKGROUND, AUTHORIZED CONTACT AND CONTRACT DOCUMENTS

1. Background. The KPB owns certain real property located in the Kenai Peninsula Borough, in the state of Alaska, that is more particularly described and/or depicted in Exhibit 1 attached hereto (the “Property”). For good and valuable consideration, the parties agree that the KPB will grant the Lessee the right to use a portion of the Property in accordance with the terms of this Agreement.

2. Authorized Contact. All communications about this Agreement shall be directed as follows, any reliance on a communication with a person other than the listed below is at the party’s own risk.

KPB

Name: Kenai Peninsula Borough
Attn: Land Management Division
Mailing Address: 144 N. Binkley St.
Soldotna, AK 99669

LESSEE

Name: Vertical Bridge Development, LLC
Attn:
Mailing Address: 750 Park of Commerce Dr., Suite 200
Boca Raton, FL 33487

Name:
Attn:
Mailing Address:

3. Contract Documents. As authorized by KPB Ordinance 2021-_____, this lease agreement (“Agreement”) is the final and complete understanding of the parties. The following exhibits and appendices are attached and are considered part of this Agreement as well as anything incorporated by reference or attached to those exhibits or appendices:

Appendix A: Lease Provisions Required by KPB 17.10

Appendix B: Site Specific Lease Provisions

Exhibit 1: Description of the “Property” and the “Leased Premises”

Exhibit 2: Leased Premises site sketch

Exhibit 3: Memorandum of Lease

If in conflict, the Agreement shall control. If in conflict, the order of precedence shall be: Appendix B, the Agreement, Appendix A, Exhibit 1, Exhibit 2, and then Exhibit 3.

PART II. LEASE DESCRIPTION AND TERMS

4. DESCRIPTION OF PROPERTY.

(a) Subject to the terms and conditions of this Agreement, KPB hereby grants to Lessee an exclusive option to lease a certain portion of the Property containing approximately 2,187 square feet (5-sided perimeter measuring 25'- 50'- 50'- 25'- 35.4') including the air space above such ground space as described and depicted on Exhibit 1 and Exhibit 2 attached hereto (the "Leased Premises") for the placement of a Communication Facilities.

5. TERM.

(a) The initial term will be five (5) years (the "Initial Term"), commencing on the Effective Date.

(b) Lessee will have the option to extend the term of this Agreement for four (4) successive terms of five (5) years each (each, a "Renewal Term"). Each Renewal Term will commence automatically, unless Lessee delivers notice to KPB, not less than thirty (30) days prior to the end of the then-current Term, of Lessee's intent not to renew. For purposes of this Agreement, "Term" includes the Initial Term and any applicable Renewal Term(s).

(c) Should Lessee or any assignee, sublessee or licensee of Lessee hold over the Leased Premises or any part thereof after the expiration of this Agreement, such holdover shall constitute and be construed as a tenancy from month-to-month only, but otherwise upon the same terms and conditions.

6. CONDITIONAL LEASE.

This Lease is issued on a conditional basis and shall be cancelled in whole or in part in the event the borough is denied title to said lands. However, the borough shall in no way be liable for any damage that may be done to the land by the Lessee or liable for any claim of any third party, or to any claim that may arise from ownership. In the event the borough does receive title to the land under lease, the conditional lease shall have the same standing, force and effect as non-conditional leases issued under the provisions of KPB 17.10.

7. TERMINATION. This Agreement may be terminated, without penalty or further liability, as follows:

(a) by Lessee upon written notice to KPB, if Lessee is unable to obtain, or maintain any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Lessee; or if Lessee in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(b) by Lessee upon written notice to KPB, if Lessee determines, in its sole discretion, due to the title reports or survey results, that the condition of the Leased Premises is unsatisfactory for its intended uses;

(c) by Lessee upon written notice to KPB for any reason or no reason, at any time prior to commencement of construction by Lessee; or

(d) by Lessee upon sixty (60) days' prior written notice to KPB for any reason or no reason, so long as Lessee pays KPB a termination fee equal to six (6) months' Rent, at the then-current rate, and subject to removal requirements contained within Section 13. No such termination fee will be payable on account of the termination of this Agreement by Lessee under any termination provision contained in any other Section of this Agreement.

8. RENT. Beginning on the Effective Date, Lessee shall pay to KPB a monthly rent payment of One Thousand and No/100 Dollars (\$1,000.00) ("Rent"), at the address set forth above on or before the fifth (5th) day of each calendar month in which Rent is due, in advance. Rent will be prorated for any partial month. On each anniversary of the Term Commencement Date, Rent shall adjust annually by Two percent (2%) over the prior year's Rent amount.

9. TAXES. Lessee shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Communication Facilities located on the Leased Premises, including private leasehold interests.

10. USE. The Leased Premises are being leased for the purpose of erecting, installing, operating and maintaining radio or communications towers, transmitting and receiving equipment, antennas, dishes, mounting structures, equipment shelters and other supporting structures, and related equipment (collectively, the "**Communication Facilities**"). Lessee may, subject to the foregoing, make any improvement, alteration or modification to the Leased Premises as are deemed appropriate by Lessee for the permitted use herein. Lessee will have the right to clear the Leased Premises of any trees, vegetation, or undergrowth which interferes with Lessee's use of the Leased Premises for the intended purposes. Notwithstanding Section 14 below, Lessee will have the exclusive right to install and operate upon the Leased Premises communications towers, buildings, equipment, antennas, dishes, fencing, and other accessories related thereto, and to alter, supplement, and/or modify same as may be necessary.

11. SECURITY AND BUFFER LANDSCAPING.

(a) **Fence & Site Security.** Notwithstanding Section 4 above, the Lessee will install a locked, sight-obscuring fence at least six feet (6') in height around the perimeter of the Leased Premises to protect against unauthorized access to the Leased Premises. The fence must be of a color that blends in with the surrounding landscape (i.e. brown, green or similar color). Lessee may also elect, at its expense, to construct such other enclosures and/or fences as Lessee reasonably determines to be necessary to secure its improvements, including the tower(s), building(s), guy anchors, and related improvements situated upon the Leased Premises. Lessee may also undertake any other appropriate means to restrict access to its communications towers, buildings, applicable guy anchors, applicable guy wires, and related improvements, including, without limitation, posting signs for security purposes.

12. ACCESS, MAINTENANCE, AND UTILITIES.

(a) **Access.** During the Term, Lessee, and its guests, agents, customers, lessees, sublessees and assigns will have the unrestricted, exclusive right to use, and will have free and unfettered access to, the Leased Premises seven (7) days a week, twenty-four (24) hours a day. KPB for itself, its successors and assigns, hereby grants and conveys unto Lessee, its customers, employees, agents, invitees, sublessees, sublicensees, successors and assigns a nonexclusive easement to the extent depicted on Exhibit 2 (a) for ingress and egress, and (b) for the construction, installation, operation and maintenance of overhead and underground electric and other utility facilities (including fiber, backhaul, wires, poles, guys, cables, conduits and appurtenant equipment), with the right to reconstruct, improve, add to, enlarge, change and remove such facilities, over, across and through any easement for the benefit of and access to the Leased

Premises, subject to the terms and conditions herein set forth. KPB agrees to cooperate with Lessee's efforts to obtain such utilities and services. If there are utilities already existing on the Leased Premises which serve the Leased Premises, Lessee may utilize such utilities and services. Upon Lessee's request, KPB will execute and deliver to Lessee requisite recordable documents evidencing the easements contemplated hereunder within fifteen (15) days of Lessee's request.

(b) **Maintenance.** Lessee will keep and maintain the Leased Premises in good condition.

(c) **Utilities.** The Lessee is solely responsible for installing separate meters for utility use and payment, as applicable, and shall not connect to any KPB-owned electrical, communication, or other utility without KPB's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed.

13. EQUIPMENT, FIXTURES AND REMOVAL. The Communication Facilities will at all times be the personal property of Lessee and/or its sublessees and licensees, as applicable. Lessee or its customers shall have the right to erect, install, maintain, and operate on the Leased Premises such equipment, structures, fixtures, signs, and personal property as Lessee may deem necessary or appropriate, and such property, including the equipment, structures, fixtures, signs, and personal property currently on the Leased Premises, will not be deemed to be part of the Leased Premises, but will remain the property of Lessee or its customers. Unless otherwise agreed to in writing by the parties, within ninety (90) days after the expiration or earlier termination of this Agreement, or upon cessation, abandonment, or non-use of the tower for communication purposes for a period of 6 consecutive months following construction of the tower (the "Removal Period"), Lessee must remove its improvements and restore the Leased Premises to grade in a natural condition free of contamination, reasonable wear and tear excepted, which shall include removal of all concrete and other foundation materials to a depth of ten feet (10') below grade, and perform all obligations under this Agreement during the Removal Period, including without limitation, the payment of Rent on a prorated per diem basis, at the rate in effect upon the expiration or termination of this Agreement. Any property not so removed shall be deemed abandoned and may be removed and disposed of by KPB in such manner as KPB will determine, without any obligation on the part of KPB to account to Lessee for any proceeds therefrom. Time is of the essence.

14. ASSIGNMENT. Lessee may assign this Agreement to any person or entity, at any time with prior written consent of KPB's mayor which will not be unreasonably withheld or delayed so long as the Assignee agrees to the assignment and novation and complies with all terms of this Agreement. Notwithstanding the foregoing, upon thirty (30) days' written notice to KPB, Lessee may assign this Agreement or its rights or obligations to (a) any person or entity controlling, controlled by, or under common control with Lessee, or (b) in connection with the sale or other transfer of substantially all of Lessee's assets in the FCC market area where the Leased Premises is located.

15. SUBLEASING AND REVENUE SHARE.

(a) **Subleasing.** Lessee will have the exclusive right to sublease or grant licenses to use the improvements or any other towers, structures, equipment, or ground space on the Leased Premises, provided that Lessee sends Lessor written notice within (15) days of such sublease or grant licenses.

(b) **Revenue Share.** In addition to and separate from the Rent, Lessee shall pay to the Lessor thirty-three percent (33%) of rents actually collected by Lessee from any applicable sublessees, sublicenses, collocation or similar vertical space rental agreements, exclusive of non-recurring fees (e.g. structural analysis fees, mount analysis fees, and capital expenditures) and reimbursements (such as for taxes and utilities) ("Revenue Share"). The Revenue Share shall be paid to Lessor with the Rent in the month immediately following receipt by Lessee from the applicable sublessee. Upon reasonable written request,

Lessee will provide Lessor redacted copies of any applicable Sublease for the purpose of confirming relevant financial terms and information. For the purposes of this Agreement: (i) "Sublease" is defined as any arrangement in which the Lessee or any sublessee leases to another party or entity, any portion of the Lease Premises described in this Agreement or improvements thereon, including but not limited to a sublease for an antenna, microwave dish, or wireless communications equipment; and (ii) "Sublessee" means any sublessee or licensee of Lessee, that: (A) has entered into a sublease or license with Lessee for the use of the improvements after the Effective Date; and (B) is not paying any rent or fees directly to Lessor for the use of ground space related to the use of Lessee's improvements.

(c) **Authorized Contact of Sublessee.** Lessee shall provide the KPBB the name, telephone number, and email address of the authorized contact for the sublessee who is responsible for sublessee's day-to-day operations or activities on the Leased Premises.

16. CO-LOCATE RIGHTS RESERVED BY KPBB. KPBB reserves the right to install emergency response communication equipment on Lessee's tower. Ninety (90) days prior to the exercise of this reservation, KPBB shall provide Lessee with a complete inventory of equipment and proposed vertical location. Lessee shall confirm KPBB's equipment will not interfere with Lessee's or then-existing sublessee's equipment or propose an alternate location. Upon installation of KPBB's equipment on the Leased Premises, any future sublessee's equipment shall not interfere with KPBB's emergency response communication equipment, provided such equipment is properly installed and lawfully operated. Notwithstanding the foregoing, KPBB's right to install equipment on Lessee's tower will be subject to Lessee's reasonable determination that, at the time in which KPBB proposes to install its equipment, Lessee's tower shall have sufficient space and structural capacity to accommodate the additional loading associated with KPBB's proposed equipment installation. In connection with the foregoing, each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Section 15 and the consummation of the transactions contemplated hereby.

17. COVENANTS, WARRANTIES AND REPRESENTATIONS.

(a) KPBB shall not do or knowingly permit anything during the Term that will unreasonably interfere with or negate any Lessee's quiet enjoyment and use of the Leased Premises or cause Lessee's use of the Leased Premises to be in nonconformance with applicable local, state, or federal laws. KPBB will cooperate with Lessee in any effort by Lessee to obtain certificates, permits, licenses and other approvals that may be required by any governmental authorities. KPBB agrees to promptly execute any necessary applications, consents or other documents as may be reasonably necessary for Lessee to apply for and obtain the proper zoning approvals required to use and maintain the Leased Premises and the Communication Facilities.

(b) To the best of KPBB's knowledge, KPBB has complied and will comply with all laws with respect to the Property. No asbestos-containing thermal insulation or products containing PCB, formaldehyde, chlordane, or heptachlor or other hazardous materials have been placed on or in the Property by KPBB or, to the knowledge of KPBB, by any prior owner or user of the Property. To the knowledge of KPBB, there has been no release of or contamination by hazardous materials on the Property.

(c) Subject to Section 11 above, Lessee will have access to all utilities required for the operation of Lessee's improvements on the Leased Premises that are existing on the Property.

(d) Except for the sublessees and licensees of Lessee, there currently exist no licenses, sublicenses, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the Leased Premises; there are no outstanding options or rights of first refusal to purchase the Property or any portion thereof or interest therein, or any equity or interest in KPB if KPB is an entity; and there are no parties (other than KPB) in possession of the Leased Premises except as to those that may have been disclosed to Lessee in writing prior to the execution hereof.

(f) Each party hereto warrants and represents that it has the necessary power and authority to enter into and perform its respective obligations under this Agreement.

18. WAIVERS.

(a) KPB hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Communication Facilities or any portion thereof, regardless of whether or not such is deemed real or personal property under applicable laws. KPB will not assert any claim whatsoever against Lessee for loss of anticipatory profits or any other indirect, special, incidental or consequential damages incurred by KPB as a result of the construction, maintenance, operation or use of the Leased Premises by Lessee.

(b) EACH PARTY HERETO WAIVES ANY AND ALL CLAIMS AGAINST THE OTHER FOR ANY LOSS, COST, DAMAGE, EXPENSE, INJURY OR OTHER LIABILITY WHICH IS IN THE NATURE OF INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHICH ARE SUFFERED OR INCURRED AS THE RESULT OF, ARISE OUT OF, OR ARE IN ANY WAY CONNECTED TO THE PERFORMANCE OF THE OBLIGATIONS UNDER THIS AGREEMENT.

19. INSURANCE. Insurance coverage required under this Agreement shall be primary and exclusive of any other insurance carried by the Borough. Minimum levels of insurance coverage required under this Agreement shall remain in effect for the life of this Agreement and shall be a part of the contract price. If Contractor's policies contain higher limits, the KPB shall be entitled to coverage to the extent of such higher limits. There shall be no cancellation or material change of the insurance coverages, or intent not to renew the insurance coverages as specified in this Agreement, without thirty (30) calendar days' prior written notice to the Borough. Certificates of Insurance, acceptable in form and content, will be delivered to the Borough at the time of submission of the signed Agreement and updated certificates shall be provided upon insurance coverage renewal, where applicable. Lessee and subcontractor(s), sublessees, sublicenses, of any tier shall provide and maintain:

(a) Commercial General Liability (CGL): The CGL Policy shall be written on an occurrence basis and with a limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) each occurrence and aggregate. CGL insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, broad form property damage, independent contractors, products-completed operations, personal injury and advertising injury, explosion, collapse, underground hazards, and liability assumed under a contract including the tort liability of another assumed in a business contract. If necessary to provide the required limits, the Commercial General Liability policy's limits may be layered with a Commercial Umbrella or Excess Liability policy. This policy shall name the KPB as Additional Insured. To the extent damages are covered by commercial general liability insurance, subrogation shall be waived.

(b) Umbrella / Excess policy: With limits of \$2,000,000 per occurrence and in the aggregate. Lessee may use any combination of primary and excess insurance to meet the total limits required.

(c) **Worker's Compensation Insurance:** For all employees engaged in work under this Agreement, Workers' Compensation Insurance in accordance with the laws of the State of Alaska. The Contractor shall be responsible for Workers' Compensation Insurance for any subcontractor(s) who directly or indirectly provides services under this Agreement. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) each accident, FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) each person and FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) policy limit. Where applicable, coverage for all federal acts (i.e., U.S.L. & H and Jones Act) must also be included.

(d) **Property Insurance:** Insuring against all risks of loss to any Lessee improvements at full replacement cost with no insurance penalty provision. Lessee shall have the right to self-insure such Property Insurance.

(e) **Automobile Liability:** The Auto Liability Policy shall include a Combined Single Limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Underinsured and Uninsured Motorists limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Coverage shall include Non-Owned and Hired Car coverage. This policy shall name the KPB as Additional Insured. To the extent damages are covered by auto liability insurance, subrogation shall be waived.

(f) **Full policies.** At its option, the Borough may request copies of required policies and endorsements. Such copies shall be provided within (10) TEN CALENDAR DAYS of the Borough's request. All insurance required hereunder shall be maintained in full force and effect with insurers with Best's rating of AV or better and be licensed and admitted in Alaska.

(g) **No Representation of Coverage Adequacy.** By requiring insurance herein, the Borough does not represent that coverage and limits will necessarily be adequate to protect Lessee, sublessee, and/or contractor or subcontractor(s) of any tier, and such coverage and limits shall not be deemed as a limitation on the liability of the Contractor and subcontractor(s) of any tier under the indemnities granted to the Borough in this Agreement.

(h) **Self-insurance.** Notwithstanding the foregoing, Lessee may self-insure any required coverage under the same terms as required by this Agreement.

20. WAIVER OF SUBROGATION. To the extent allowed by law, Lessee hereby grants to KPB a waiver of any right of subrogation which any insurer of said Lessee may acquire against the KPB by virtue of the payment of any loss under such insurance. It is the Lessors sole and strict responsibility to notify its insurer of this obligation and obtain a waiver of subrogation endorsement from the insurer, if required.

21. NON-EXCLUSIVITY. KPB acknowledges and agrees that, except as may be disclosed to Lessee in writing prior to the execution hereof, there are no prior existing rights, uses, or authorization granted to third parties or retained by KPB to locate improvements below grade or in proximity to the Leased Premises. Upon at least sixty (60) days prior written notice to Lessee, KPB reserves the right to grant further or additional rights or authorization to locate improvements below grade or in proximity to the Leased Premises to the extent such rights or authorizations do not unreasonably interfere with Lessee's equipment or operations.

22. LESSEE LIABILITIES. In addition to other liabilities under this Agreement, the Lessee has the following liabilities and agrees:

(a) The Lessee assumes all risk of loss, damage or destruction to Lessee's improvements on the Leased Premises.

(b) The Lessee will comply with all applicable federal, state, and local laws or regulations, including relevant environmental laws, as well as public health and safety laws and other laws relating to the sitting, permitting, construction, operation and maintenance of any facility, improvement or equipment on the Leased Premises.

(c) The KPB has no duty, either before or during the lease term, to inspect the Leased Premises or warn of hazards and if the KPB inspects the Leased premises, it shall incur no additional duty nor any liability for hazards not identified or discovered through such inspections. This Section shall survive the termination or revocation of this Agreement, regardless of cause.

(d) The Lessee has an affirmative duty to protect from damage the Property and interests of the KPB related to this Agreement.

23. INDEMNIFICATION.

(a) Lessee agrees to defend, indemnify, and hold harmless KPB, its employees, public officials, and volunteers, with respect to any action claim or lawsuit arising out of (1) a breach of this Agreement or (2) the use and occupancy of the Leased Premises or the Property by the Lessee. This agreement to defend, indemnify, and hold harmless includes all losses and liabilities without limitation as to any damages resulting from judgment, or verdict, and includes the award of any attorney's fees even if in excess of Alaska Civil Rule 82. The obligations of Lessee arise immediately upon notice to the KPB of any action, claim, or lawsuit. KPB will notify Lessee in a timely manner of the need for indemnification but such notice is not a condition precedent to Lessee's obligation and may be waived where the Lessee has actual notice. This agreement applies and is in full force and effect whenever and wherever any action, claim or lawsuit is initiated, filed, or otherwise brought against KPB relating to the Lessee's use and occupancy of the Leased Premises or the Property. Notwithstanding the foregoing, Lessee's duty to indemnify, defend, and hold harmless KPB as set forth above shall not apply to the extent a claim arises from the negligence or willful misconduct of KPB, its employees, public officials, and volunteers.

(b) To the extent allowed by law and subject to a specific appropriation by the KPB Assembly for this purpose, KPB agrees to defend, indemnify, and hold harmless Lessee, its employees, affiliates, officers, directors, successors and assigns, with respect to any action claim or lawsuit arising out of (1) a breach of this Agreement or (2) the use and occupancy of the Leased Premises or the Property by the KPB. This agreement to defend, indemnify, and hold harmless includes all losses and liabilities without limitation as to any damages resulting from judgment, or verdict, and includes the award of any attorney's fees even if in excess of Alaska Civil Rule 82. The obligations of KPB arise immediately upon notice to the Lessee of any action, claim, or lawsuit. Lessee will notify KPB in a timely manner of the need for indemnification but such notice is not a condition precedent to KPB's obligation and may be waived where the KPB has actual notice. This agreement applies and is in full force and effect whenever and wherever any action, claim or lawsuit is initiated, filed, or otherwise brought against Lessee relating to the KPB's use and occupancy of the Leased Premises or the Property. Notwithstanding the foregoing, KPB's duty to indemnify, defend, and hold harmless Lessee as set forth above shall not apply to the extent a claim arises from the negligence or willful misconduct of Lessee, its employees, its employees, affiliates, officers, directors, successors and assigns. Lessee further acknowledges the following: (1) KPB currently has no

appropriation currently available to it to defend and indemnify Lessee under this provision; (2) the enactment of any such appropriation remains in the sole discretion of the KPB Assembly; and (3) the KPB Assembly's failure to make such an appropriation creates no further obligation or duty on behalf of KPB.

24. INSPECTION. The KPB reserves the right to enter upon and inspect the Leased Premises at any time to assure compliance with the conditions of this Lease. Except in case of emergency, KPB shall provide Lessee with at least forty-eight (48) hours' prior written notice of KPB's intention to enter upon and inspect the Leased Premises. Lessee reserves the right to have a representative present at all times during KPB's inspection.

25. FORCE MAJEURE. The time for performance by KPB or Lessee of any term, provision, or covenant of this Agreement will be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, material or labor restrictions by governmental authority, and any other cause not within the control of KPB or Lessee, as the case may be.

26. DEFAULT. The failure of Lessee or KPB to perform any of the covenants of this Agreement will constitute a default. The non-defaulting party must give the other written notice of such default, and the defaulting party must cure such default within thirty (30) days after receipt of such notice. In the event any such default cannot reasonably be cured within such thirty (30) day period, the defaulting party must provide prompt notice of inability to cure and provide a plan to cure the default within a time frame provided. The time for curing a default will be extended for such period of time as may be necessary and reasonable; however, in no event will this extension of time to cure be in excess of ninety (90) days, unless agreed upon in writing by the non-defaulting party.

27. REMEDIES. Should the defaulting party fail to cure a default under this Agreement, the other party will have all remedies available either at law or in equity, including the right to terminate this Agreement.

28. LESSEE MORTGAGES.

(a) KPB consents to the granting by Lessee of a lien and security interest (each, a "**Lessee Mortgage**") in Lessee's interest in this Agreement and all of Lessee's personal property and fixtures attached to the real property described herein to one or more lenders (any such lender, and any successor, assign, designee or nominee of such lender, hereinafter a "**Lender**") only to the extent and amount necessary to maintain improvements on the Leased Premises. The Lessee may not encumber the leasehold interest or the Leased Premises to finance projects or improvements outside of the Leased Premises. KPB agrees to recognize Lender as Lessee hereunder upon any such exercise by Lender of its rights of foreclosure. Any such encumbrance shall be subordinate to KPB's rights and interest in the Leased Premises and the Property. Any such encumbrance shall be limited to the Lessee's interest in the Leased Premises. It is a material breach of this Agreement for Lessee to attempt to encumber any interest in KPB's title to or interest in the Leased Premises or the Property.

(b) KPB acknowledges that nothing contained herein shall be deemed or construed to obligate Lender to take any action hereunder, or to perform or discharge any obligation, duty or liability of Lessee under this Agreement. No Lender shall become liable under the provisions of this Agreement unless and until such time as the Lender assumes ownership of the leasehold estate created hereby and agrees to comply with the terms and conditions of this Agreement or any extensions and modifications thereof.

29. MISCELLANEOUS.

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

(b) **Non-waiver.** Failure of party to insist on strict performance of any of the conditions or provisions of this Agreement, or failure to exercise any of a party's rights hereunder, will not waive such rights.

(c) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Alaska.

(d) **Bind and Benefit.** This Agreement is binding upon and will inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

(e) **Memorandum.** A short-form Memorandum of Lease may be recorded at KPB or Lessee's option in the form as depicted in Exhibit 3, attached hereto. KPB will promptly execute any Memorandum of Lease or Memorandum of Amendment to Lease, or corrective amendments thereto, upon written request of Lessee.

(f) **W-9.** As a condition precedent to payment, the KPB agrees to provide the Lessee with a complete IRS Form W-9, or its equivalent, upon execution of this Agreement.

(g) **Counterparts.** This Agreement may be executed in counterpart, each of which when so executed and delivered shall be considered an original and all of which when taken together will constitute one and the same instrument.

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

[SIGNATURES BEGIN ON NEXT PAGE]

PART III. EXECUTION

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date (date last signed by a party hereto).

LESSOR: The Kenai Peninsula Borough

Charlie Pierce, Mayor

Date: _____

LESSEE: Vertical Bridge Development, LLC

By: _____

Print Name: _____

Its: _____

Date: _____

LESSEE: Vertical Bridge Development, LLC

By: _____

Print Name: _____

Its: _____

Date: _____

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Johni Blankenship, Borough Clerk

Sean Kelley, Deputy Borough Attorney

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Notary Public for State of Alaska
My Commission Expires: _____

STATE OF _____)
) ss:
COUNTY OF _____)

Notary Public: _____
My Commission Expires: _____

STATE OF _____)
) ss:
COUNTY OF _____)

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page 1 of 1

The Property is legally described as follows:

Govt Lot 1 excluding ASLS 97-32 and ASLS 2000-01, Section 5, Township 6 North, Range 1 West, Seward Meridian, Third Judicial District, State of Alaska.

The Leased Premises are described and/or depicted as follows:

On the above described Property, a 2,187 square foot area bounded by a 5-sided perimeter measuring 25'-50'-50'-25'-35.4' and a 15' wide non-exclusive access road as depicted on Exhibit 2.

EXHIBIT 3

Memorandum of Lease

(Attached)

(Above 2" Space for Recorder's Use Only)

Prepared by and Return to:

Kenai Peninsula Borough
Attn: Land Management Division
144 N. Binkley Street
Soldotna, AK 99669

Grantor: Kenai Peninsula Borough
Grantee: Vertical Bridge Development, LLC
Legal Description: Attached as Exhibit 1
Tax Parcel ID #: 03525005
Site Name: AK3 Canyon Creek
State: Alaska
Borough: Kenai Peninsula Borough
Recording District: Seward Recording District

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is entered into by and between **KENAI PENINSULA BOROUGH**, an Alaska Municipal Corporation, having a mailing address of 144 N. Binkley St., Soldotna, AK 99669 (hereinafter called "**Lessor**") and **Vertical Bridge Development, LLC**, a Delaware limited liability company, having a mailing address of 750 Park of Commerce Drive, Boca Raton, FL 33487 ("**Lessee**").

1. Lessor and Lessee entered into a certain Communications Site Lease Agreement ("Agreement") on the ____ day of _____, 20__, for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be five (5) years commencing on the Effective Date with four (4) successive automatic five (5) year options to renew.
3. The portion of the land being leased to Tenant ("Premises") and associated easements are described in Exhibit 1 annexed hereto.
4. Lessor and Lessee now desire to execute this Memorandum to provide constructive knowledge of Tenant's lease of the Premises.
5. This Memorandum and Agreement are governed by the laws of the state of Alaska.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

LESSOR: The Kenai Peninsula Borough

Charlie Pierce, Mayor

Date: _____

LESSEE:

Vertical Bridge Development, LLC

By: _____

Print Name: _____

Its: _____

Date: _____

LESSEE:

Vertical Bridge Development, LLC

By: _____

Print Name: _____

Its: _____

Date: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Notary Public for State of Alaska
My Commission Expires: _____

STATE OF _____)
) ss:
COUNTY OF _____)

Notary Public: _____
My Commission Expires: _____

STATE OF _____)
) ss:
THIRD JUDICIAL DISTRICT)

Notary Public: _____
My Commission Expires: _____

APPENDIX A: LEASE PROVISIONS REQUIRED BY KPB 17.10

(1) **Accounts Current.** The Lessee shall not be delinquent in the payment of any tax, debt or obligation owed to the KPB prior to execution of the Agreement.

(2) **Assignment.** Lease may assign the lands upon which he has an agreement only if approved by the mayor or land management officer when applicable. Applications for assignment shall be made in writing on a form provided by the land management division. The assignment shall be approved if it is found that all interests of the borough are fully protected.

(3) **Breach of Agreement.** In the event of a default in the performance or observance of any of the Agreement terms or conditions, and such default continues thirty days after written notice of the default, the borough may cancel Agreement or take any legal action for damages or recovery of the property. No improvements may be removed during the time which the contract is in default.

(4) **Cancellation.** This Agreement may be cancelled at any time upon mutual written agreement of the parties.

(5) **Entry or Re-entry.** In the event the Agreement is terminated, canceled or forfeited, or in the event of abandonment of Leased Premises by Lessee during the Term, the KPB its agents, or representatives, may immediately enter or re-enter and resume possession of the Leased Premise. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the Agreement.

(6) **Fire Protection.** The Lessee shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the Property under Agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the Property is located.

(7) **Hazardous Waste.** The storage, handling and disposal of hazardous waste shall not be allowed on the Leased Premises.

(8) **Modification.** The Agreement may not be modified orally or in any manner other than by an agreement in writing signed by all parties or their respective successors in interest.

(9) **Notice.** Any notice or demand, which under the terms of the Agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

(10) **Notice of Default.** Notice of the default will be in writing as provided in paragraph 10 above.

(11) **Removal or Reversion of Improvements Upon Cancellation of Purchase Agreement or Lease.**

(a) Improvements on Leased Premises owned by Lessee shall, within thirty calendar days after the termination of the agreement, be removed by him; provided, such removal will not cause injury or damage to the land; and further provided, that the mayor or land management officer when applicable may extend the time for removing such improvements in cases where hardship is proven. The Lessee may, with the consent of the mayor or land management officer when applicable, dispose of its improvements to the Sublessee or Assignee, if applicable.

(b) If any improvements and/or chattels having an appraised value in excess of ten thousand dollars, as determined by a qualified appraiser, are not removed within the time allowed, such improvements and/or chattels shall, upon due notice to the Lessee be sold at public sale under the direction of the mayor and in accordance with the provisions of KPB Chapter 5. The proceeds of the sale shall inure to the former Lessee who placed such improvements and/or chattels on the lands, or his successors in interest, after paying to the borough all moneys due and owing and expenses incurred in making such a sale. In case there are no other bidders at any such sale, the mayor is authorized to bid, in the name of the borough, on such improvements and/or chattels. The bid money shall be taken from the fund to which said lands belong, and the fund shall receive all moneys or other value subsequently derived from the sale of leasing of such improvements and/or chattels. The borough shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of the purchase.

(c) If any improvements and/or chattels having an appraised value of ten thousand dollars or less, as determined by the mayor, are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in the borough. Upon request, the Lessee shall convey said improvements and/or chattels by appropriate instrument to the KPB.

(12) Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to the Lessee or placed on the Property and remaining upon the premises after the termination of the contract shall entitle the KPB to charge a reasonable rent therefor.

(13) Re-rent. In the event that the Agreement should be terminated, canceled, forfeited or abandoned, the KPB may offer said lands for lease or other appropriate disposal pursuant to the provisions of this chapter or other applicable regulations.

(14) Responsibility for Location. It shall be the responsibility of the Lessee to properly locate improvements on the Leased Premises.

(15) Rights of Mortgage or Lienholder. In the event of cancellation or forfeiture the Agreement for cause, the holder of a properly recorded mortgage, conditional assignment, or collateral assignment will have the option to acquire the lease for the unexpired term thereof, subject to the same terms and conditions as in the Agreement. Any party acquiring the lease agreement must meet the same requirements as the Lessee.

(16) Sanitation. The Lessee shall comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for the promotion of sanitation. The Leased Premises under the Agreement shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of the waters and lands.

(17) Shore Land Public Access Easement. As established by AS 38.05, borough lands sold or leased may be subject to a minimum 50 foot public access easement landward from the ordinary high water mark or mean high water mark.

(18) **Subleasing.** No lessee may sublease lands or any part thereof without written permission of the mayor or land management officer when applicable. A sublease shall be in writing and subject to the terms and conditions of the original lease.

(19) **Violation.** Violation of any provision KPB 17.10 or of the terms of the Agreement of may expose the Lessee to appropriate legal action including forfeiture of purchase interest, termination, or cancellation of its interest in accordance with state law.

(20) **Written Waiver.** The receipt of payment by the borough, regardless of knowledge of any breach of the purchase agreement by the purchaser, lessee or permittee, or of any default on the part of the purchaser, lessee or permittee in observance or performance of any of the conditions or covenants of the agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of the borough to enforce any covenant or provision therein contained shall not discharge or invalidate such covenants or provision or affect the right of the borough to enforce the same in the event of any subsequent breach or default. The receipt by the borough of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and payment fully satisfies the breach.

APPENDIX B

SITE SPECIFIC LEASE PROVISIONS

CO-LOCATE RIGHTS RESERVED BY KPB: In addition to paragraph 15 of the Communications Site Lease Agreement (the “Agreement”), the KPB reserves forty (40) vertical feet of tower space. This reservation shall start from twenty (20) feet from the top of the tower structure and descent 40 feet, unless other space is mutually agreed to by the parties (the “Reserved Space”). To the extent this appendix conflicts with paragraph 15 of the Agreement, the terms of this appendix shall control.

The KPB may sublease the Reserved Space to other government agencies or organizations for the purpose of facilitating communications for first responders, disaster management, general government operations, or other public safety uses. The sublessee will provide an inventory of equipment and proposed vertical location to the Lessee for the purposes of ensuring that no interference is likely for the proposed installation. KPB and any sublessee will be responsible for frequency coordination and adherence to all applicable regulations to prevent interference.

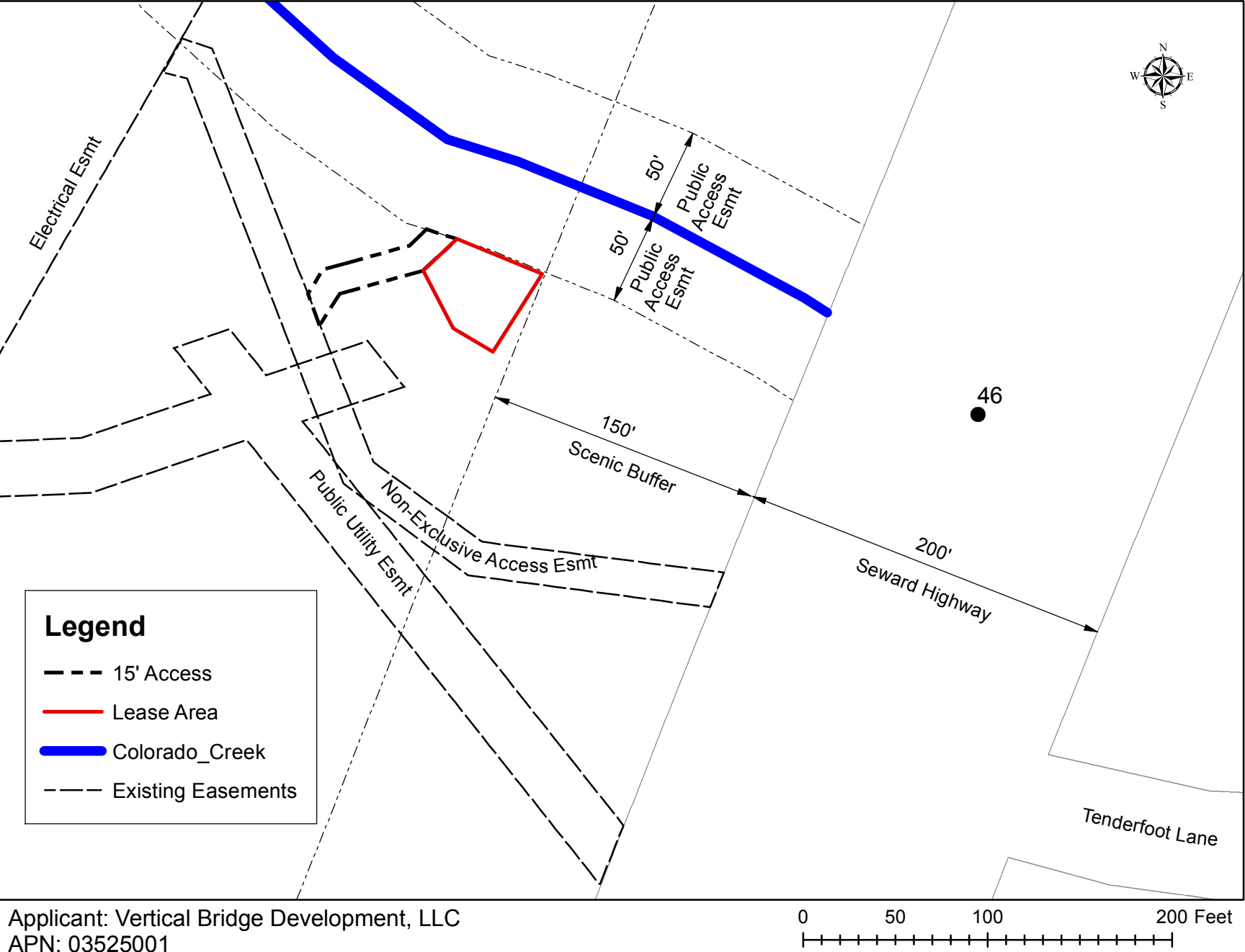
KPB AND SUBLESSEE USAGE: The KPB and any sublessee (the “KPB”) may use the Reserved Space for the purposes of providing public safety communications. The KPB may choose to install equipment to provide general government communications, monitoring equipment, and other similar uses. In general, equipment may include, but is not limited, to VHF Radio Frequency (RF) transceivers, RF repeaters, licensed or unlicensed point to point antennas, microwave backhaul, surveillance cameras and other monitoring devices, and associated items that may support conventional or trunked radio systems. All equipment or facilities placed within the Reserved Space or on the Leased Premises shall remain the personal property of the KPB or its sublessee.

INTERFERENCE WITH LESSEE EQUIPMENT: In the event that proposed or installed equipment from the KPB or sublessee interferes with equipment of the Lessee, all parties will work to explore technical solutions or changes to mitigate such interference. If mitigations are not available, the Lessee has the right to deny access to the tower for such equipment. All other provisions of paragraph 15 related to interference remain in effect.

ACCESS: The KPB may establish outdoor equipment cabinets or full equipment shelters on or within the Leased Premises, provided that such facilities do not interfere with similar facilities of the Lessee. Access will only be permitted to the Lessee upon separate mutual agreement. Such premises may have restrictions due to State or Federal policy and regulations, in such event, these regulations will prevail over the lease terms.

RENT: The Reserved Space is free of charge. The KPB is not responsible for any additional or direct rent payment to Lessee for the use of the tower or associated premises. The KPB is responsible for the costs of establishing, maintaining, and removing equipment during the life of this agreement, as well as for any utilities required to maintain KPB equipment.

LMD 20-24; Communications Site Lease Agreement




LMD 20-24; Communications Site Lease Agreement



Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly Member 

DATE: April 6, 2021

RE: Petition to Vacate 30-foot-wide Oliver Street right of way, including the associated utility easement, north of Half Moon Avenue as dedicated on Arrowhead Estates Phase 1 Plat KN 2000-7. The right-of-way being vacated is unconstructed and located within the NW1/4 NW1/4 of Section 19, Township 5 North, Range 9 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-147V.

It has been brought to my attention by the petitioner, Nathan Moore, that he was not aware that the above-referenced petition was going to be considered at the February 2nd Assembly meeting; therefore, he did not participate and did not provide public testimony. The assembly vetoed the Planning Commission's approval of this vacation without any public testimony being offered.

I will be moving to rescind the previous action vetoing the Planning Commission's decision in order to reopen public testimony and hear from the petitioner.

This motion is debatable and public testimony may be taken before the assembly discusses and votes on the motion. Five yes votes would be required to approve this motion.

If the motion to rescind passes, the Planning Commission's approval of the vacation would stand, and no further action may be taken by the assembly as the 30 days to veto that action will have expired. If the motion fails, then the assembly's veto would stand and the vacation petition denied.


Thank you for your consideration.

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

FROM: Melanie Aeschliman, Planning Director 

DATE: January 13, 2021

RE: Vacate 30 foot wide Oliver Street right of way, including the associated utility easement, north of Half Moon Avenue as dedicated on Arrowhead Estates Phase 1 Plat KN 2000-7. The right-of-way being vacated is unconstructed and located within the NW1/4 NW1/4 of Section 19, Township 5 North, Range 9 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-147V.

In accordance with AS 29.40.140, no vacation of a Borough right-of-way and/or easement may be made without the consent of the Borough Assembly.

During their regularly scheduled meeting of January 11, 2021 the Kenai Peninsula Borough Planning Commission granted approval of the above proposed vacation by majority vote (6 Yes, 4 No) based on the means of evaluating public necessity established by KPB 20.70. This petition is being sent to you for your consideration and action.

A draft copy of the unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

January 11, 2021 Planning Commission Draft Meeting Minutes
January 11, 2021 Agenda Item E1 Meeting Packet Materials

***6. Commissioner Excused Absences**

- a. Virginia Morgan, East Peninsula

***Approved with adoption of consent agenda.**

***7. Minutes**

- a. December 14, 2020 Planning Commission Meeting

***Approved with adoption of consent agenda.**

Chair Martin asked if anyone present want to speak or had concerns about any of the items on the consent agenda. Seeing and hearing no one, Chair Martin returned the discussion to the Commission.

MOTION: Commissioner Gillham moved, seconded by Commissioner Fikes to approve the consent agenda and the regular agenda.

Seeing and hearing no objection or discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Ruffner, Venuti				
No	None				
Absent	Morgan				

AGENDA ITEM E. NEW BUSINESS**AGENDA ITEM E.**

1. Vacate 30 foot wide Oliver Street right of way, including the associated utility easement, north of Half Moon Avenue as dedicated on Arrowhead Estates Phase 1 Plat KN 2000-7. The right-of-way being vacated is unconstructed and located within the NW1/4 NW1/4 of Section 19, Township 5 North, Range 9 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-147V.

Staff report given by Scott Huff.

Purpose as stated in petition: The Oliver Street right of way has been previously cleared allowing access by other individuals. We would like to have this right of way abandoned as there is a history of unwanted traffic and others using it for undesirable purposes presenting a danger to our young children. The Borough owns 150 acres to the east of our property with multiple other access points off of Deville, Sterling Highway and Jim Dahler. This right of way does not have an outlet as our neighbor to the north does not have an Oliver Street right of way. This results in others littering, causing damage to vegetation and trees while turning around or getting stuck, and dumping of carcasses causing an increase in predator activity. We feel this short 630 foot section of right of way is unneeded and the abandonment would not adversely affect anyone in our area subdivisions or the borough. Thank you for your consideration.

Petitioners: Nathan D. and Julie A. Moore of Soldotna, AK.

Notification: Public notice appeared in the December 31, 2020 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the January 7, 2021 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

Four certified mailings were sent to owners of property within 300 feet of the proposed vacation. None of the receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to two owners within 600 feet of the proposed vacation.

Seventeen public hearing notices were emailed to agencies and interested parties as shown below;

State of Alaska Dept. of Fish and Game

State of Alaska DNR

Kenai Peninsula Borough

State of Alaska DOT
State of Alaska DNR Forestry
Emergency Services of CES
Kenai Peninsula Borough Land Management
Alaska Communication Systems (ACS)
ENSTAR Natural Gas
General Communications Inc., (GCI)
Homer Electric Association (HEA)

Public hearing notices were made available to five KPB staff/Departments (Addressing, Code Compliance, Planner, Roads Dept., River Center) via a shared database.

Notices were mailed to the Sterling Post Office and Soldotna Community Library with a request to be posted in public locations.

The notice and maps were posted on the Borough bulletin board and Planning Department public hearing notice web site.

Comments Received:

ACS: Not available at the time the staff report was prepared.

ENSTAR: No comments, recommendations, or objections.

Homer Electric Association: Not available at the time the staff report was prepared.

KPB Addressing: Not available at the time the staff report was prepared.

KPB Planning: There are no material site or local option zone issues that affect this right of way vacation.

KPB River Center: Not within a flood hazard area.

KPB Roads Department: Within KPB jurisdiction. RSA objects to the ROW vacation. Removing this ROW could present a problem with future development of the surrounding lots that have not been subdivided.

State Parks: No comments.

Staff Discussion: Arrowhead Estates Phase 1, Plat KN 2000-7, dedicated a 30 foot wide right of way, named Ridge Street that was approximately 630 feet long. This dedication extends north from the Half Moon Avenue dedication. At that time the property to the north and east were unsubdivided. Resolution SN 2006-12 changed Ridge Street to Oliver Street. Oliver Street was depicted on plat KN 2010-47. The purpose of that plat was to combine two lots into one.

Oliver Street is an approximate 3,680 foot long right of way that is near milepost 89.5 of the Sterling Highway. The only portion of Oliver Street that appears to be constructed is directly off the Sterling Highway and is used as a driveway to a lot owned by the Kenai Peninsula Borough with an accessory building on the premises. The remaining length of the right of way appears to be partially cleared and not improved as a vehicular roadway. It appears that a trail may exist within Oliver Street.

The area proposed to be vacated is the northern 630 feet of the Oliver Street right of way. This area is located at the end of Half Moon Avenue. Half Moon Avenue is a 60 foot right of way located off of Jim Dahler Road. Half Moon Avenue is approximately 1,270 feet long. It is constructed and maintained by the Kenai Peninsula Borough. The maintenance of Half Moon Avenue ends shortly after the driveway to Lot 11A of Arrowhead Estates Moore Replat, which the proposed vacation abuts. It appears that the remainder of the right of way is cleared but is not constructed to borough standards.

To the north of the vacation, Barkman Subdivision 2014 Addition, Plat KN 2014-63, was finalized without extending the dedication of Oliver Street. The parent plat to Barkman Sub 2014 received an exception for extending Oliver Street which was carried over. Reasons given were that due to low wet areas and slopes

greater than 20 percent extending Oliver Street was impractical. There is a drainage way north of the proposed vacation as well as dedications for Arrowhead Avenue and Appaloosa Lane that may need to be extended in the future from the 15 acre parcel.

To the east is a 154 acre parcel owned by the Kenai Peninsula Borough. That parcel currently has access from Appaloosa Lane, Deville Rd, Half Moon Avenue, the southern portion of Oliver Street as well as 50 foot section line easements that run east-west north of the proposed vacation.

A 100 foot wide section line easement is located at the northerly end of Oliver Street. The section line easement extends in an east-west direction.

If approved, a plat will finalize the proposed right of way vacations. At this time a plat has not been submitted. Once a complete application is submitted it will be scheduled to be reviewed by the Plat Committee. Staff would like to note that an exception to KPB 20.30.170, block length requirements, will be required.

KPB 20.70 – Vacation Requirements.

Platting staff comments: Staff reviewed the vacation and all the items required by 20.70 were met, unless otherwise noted below:

20.70.040. Application—Petition required.

- C. In areas where right-of-way is being vacated due to excessive topographic features, a contour map or centerline profile and/or right-of-way cross sectional view may be required by the commission to substantiate the unusable right-of-way and show alternate and dedicated routes to insure ingress and egress to adjacent lands.

Platting Staff Comments: Staff prepared a contour map that can be found in the packet.

20.70.130. Vacation plat—Preparation, approval and recording. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent in KPB 20.70.110.

Platting Staff Comments: If the vacation is approved a preliminary plat submittal is required. An exception will be required and cannot be finalized by a right of way vacation plat.

Staff recommendation: Comply with 20.70.130.

20.70.150. Title to vacated area.

- A. The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

Platting Staff Comments: A plat has not yet been submitted but the vacated right of way will attach to parcel that the dedication came from, Lot 11A of Arrowhead Estates Moore Replat, KN 2010-47.

20.70.160. Partial vacation allowed. Where the planning commission finds that a right-of-way must be preserved, but determines there is excessive width for all intended uses within the right-of-way, the commission may approve a partial vacation of a right-of-way such that the width is reduced to the maximum necessary for the intended use. Such vacation shall conform to this title for the class of right-of-way involved except where the right-of-way is not intended to be used for vehicular purposes.

Platting Staff Comments: This is currently a half width dedication of 30 feet. If approved the entire 30 foot width will be vacated.

20.70.170. Vehicular Access. The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where

two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential use.

Platting Staff Comments: Additional right of way is not proposed. The right of way is unconstructed and ends in an area of steep terrain. The undeveloped 50 foot section line easement provides similar access as this right of way. All lots in the area have access and some have multiple access points. Large acreage tracts surround the proposed vacation. When the large acreage tracts are further subdivided right of way dedications will be required to provide continuous access between Halfmoon Avenue, Oliver Street, Deville Road and Appaloosa Lane. Future right of way dedications will be based on lot configuration and topographic features. Those dedications can take into account the terrain and layout the right of ways in a way that allows for vehicular access.

20.70.180. Other access. Other lawful uses that exist or are feasible for the right-of-way shall be considered when evaluating a vacation request. When such uses exist or could exist within rights-of-way which are not suited for general road use, the commission shall not approve the vacation request, unless it can be demonstrated that equal or superior access is or will be available. The planning commission shall consider whether alternate uses present public safety issues which support approval of the vacation.

Platting Staff Comments: Oliver Street provides legal access for pedestrian use. The large tract to the east is borough property and open to the public for recreational use. The dedicated right of way does provide access to the KPB parcel to the east. There are multiple access points to the borough lands.

20.70.190. Utility provisions. All existing and future utility requirements shall be considered when evaluating a vacation request. Rights-of-way which are utilized by a public utility or which logically would be required by a public utility shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a public utility easement be granted in place of the right-of-way.

Platting Staff Comments: The petition included associated utility easements. The vacation has been sent to the utility providers for comment. Not all comments were not received when the staff report was prepared. The right of way and the associated utility easement could be used for the placement of utility lines. Electric lines are already in place to service the existing parcels.

Staff recommendation: Preserve existing utility easements or grant requested easements as requested by the utility providers.

STAFF RECOMMENDATION: Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and the KPB Roads Department review, **staff recommends denial.**

If the Planning Commission recommends approval of the vacation, it will be subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the utility providers.
4. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

KPB 20.70.110:

A vacation of a street right-of-way, public area, or public easement within the borough outside of the limits of cities may not be made without the consent of the borough assembly.

The assembly shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the borough shall be considered to have given consent to the vacation.

KPB 20.70.120:

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.**
- B. Upon denial by the planning commission, no reapplication or petition concerning the same**

vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.

KPB 20.70.130:

THE FINAL PLAT MUST BE RECORDED WITHIN ONE YEAR OF THE VACATION CONSENT IN KPB 20.70.110.

END OF STAFF REPORT

Chair Martin open the item for public comment

Nathan Moore, Petitioner; 39750 Half Moon Ave., Soldotna, AK 99669: Mr. Moore is the petitioner and would ask that the commission grant his request. The reason they would like this easement to be abandoned is they get a lot of unwanted traffic down the easement. In the past, he has confronted young people back in the area partying and doing drugs. He had to chase them out and clean up the trash and drug paraphernalia. He does not want drug paraphernalia left around for his kids and pets. This area has also become a dumping zone for folks; they have found dead dogs, cats, beer cans and other types of trash. The trail that has been created on the easement has deep ruts and is getting worse with continued use. He does not see where it would be detrimental to the borough or the public to abandon this easement. He know the borough owns a 150-acre lot back there but there are already other ways to access this property. He would not consider Half Moon Ave, which is a borough maintained road, a good thoroughfare for traffic, as it is very steep. He has no plans for the area other than to put up "private property," signs to keep the riff-raff out. The borough has put up "dead end" signs on Half Moon and it still does not keep people out.

Commissioner Brantley asked Mr. Moore how is the public getting back to this area – are they using Half Moon Ave.? Also what kind of vehicles are they using? Mr. Moore responded that when they built Half Moon Ave. they built a cul-de-sac at the end of road that connects to his driveway. Half Moon also connects with Oliver St. Folks on ATVs, snow machines, horses and other types of vehicles, use it. The public uses Half Moon Ave. to access the borough property.

Seeing and hearing no one else from the public wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

MOTION: Commissioner Brantley moved, seconded by Commissioner Fikes to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

Commissioner Ecklund noted the staff report referred to a contour map but she did not see one. The applicant mentions that there are steep hills on Half Moon Ave. and she wondered if the right-of-way being petitioned to vacate has steep grades as well. Mr. Huff replied the missing map was an oversight and apologized. He did not believe the section of Oliver St. being requested to vacate was steep. To the north where the Barkman property was granted an exception, it does have a steep drop off. He referred the commission to the map found on page 22 of the meeting packet where it shows a depression just off to the left at the end of Oliver St. as well as a depression, with what appears to be standing water, west of the section of Oliver St. being requested to vacate. Mr. Huff then stated that Mr. Moore might be able to address the grade of Oliver St. more accurately. Mr. Moore replied that the portion of Oliver St. he would like abandoned does not have steep grades.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY MAJORITY VOTE:

Yes	6	No	4	Absent	1
Yes	Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham				
No	Bentz, Martin, Ruffner, Venuti				
Absent	Morgan				

E. NEW BUSINESS

1. Right-of-Way Vacation

**Arrowhead Estates Moore Replat Oliver Street Vacation
KPB File 2020-147V**

Petitioners: Nathan D. & Julie A. Moore

TR. B1

Proposed Right of Way
Vacation

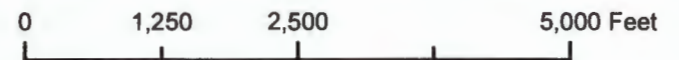
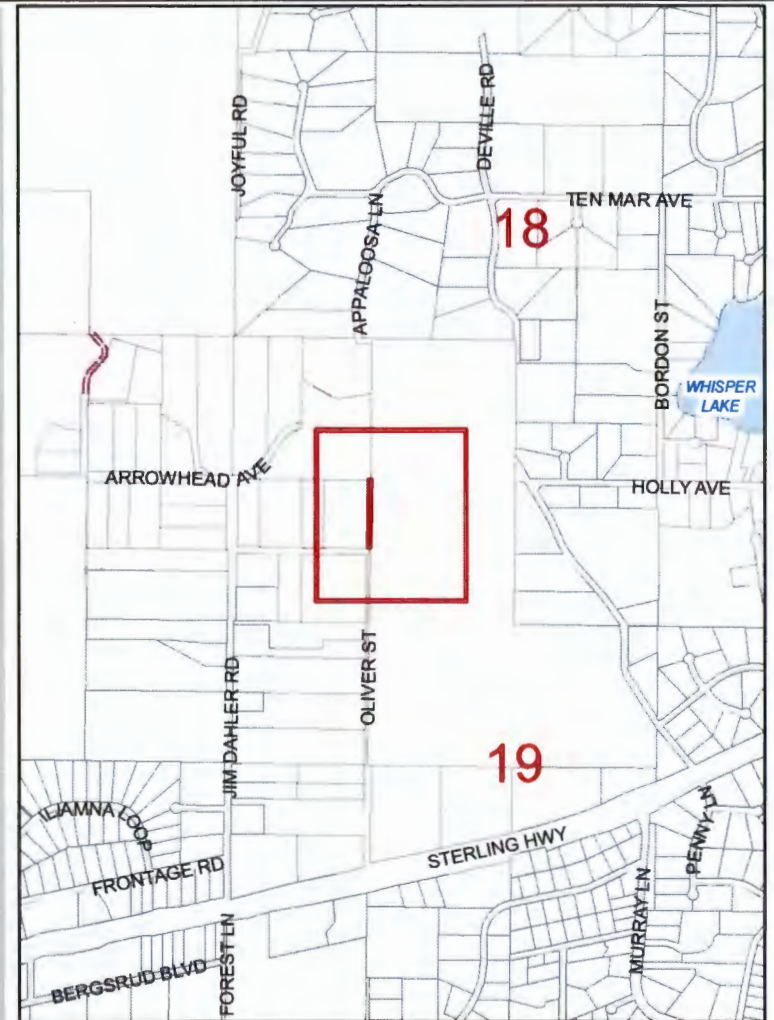
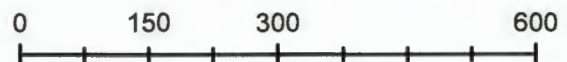
OLIVER ST

11A

HALE MOON AVE

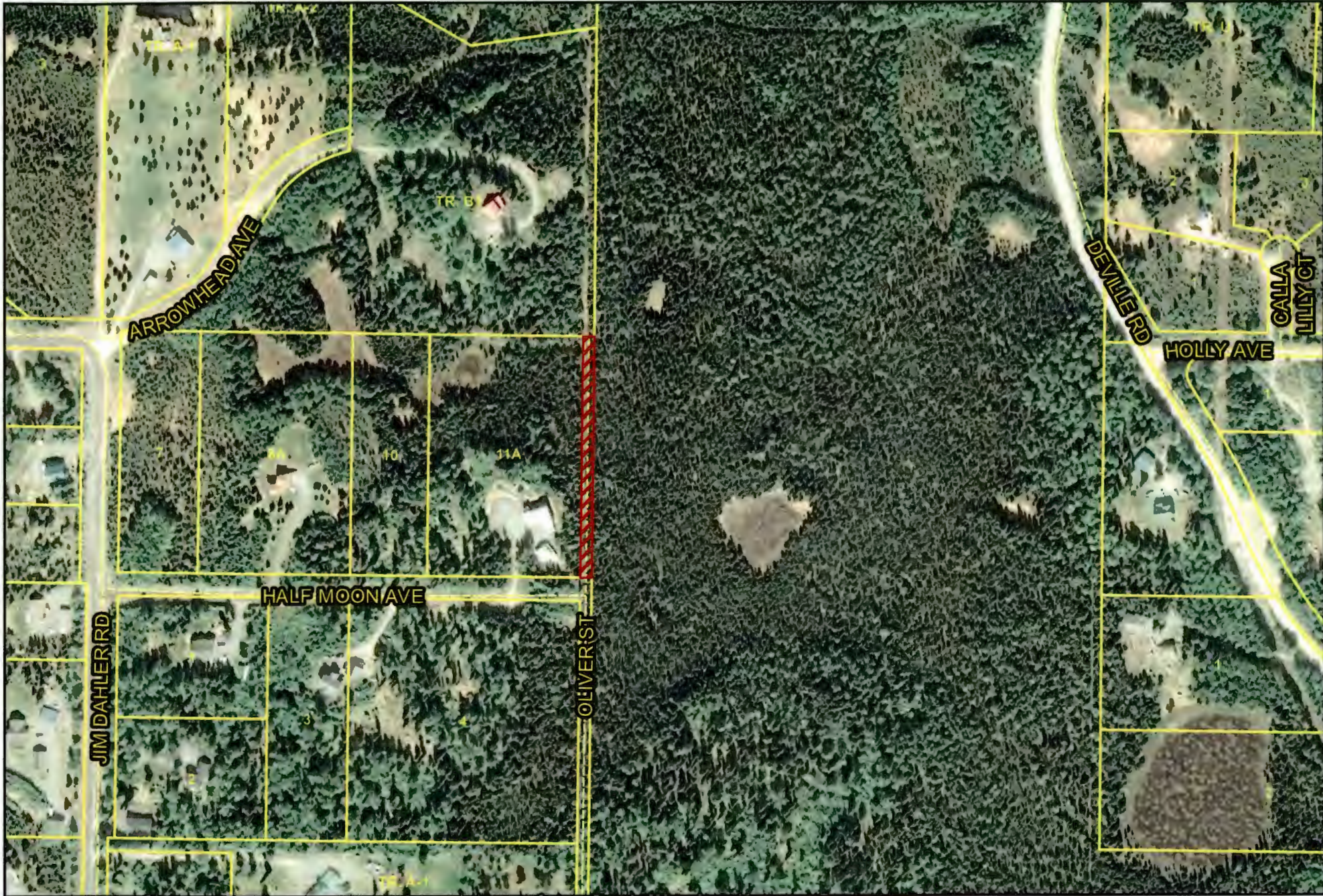


The information depicted hereon
is for a graphical representation
only of best available sources.
The Kenai Peninsula Borough
assumes no responsibility
for any errors on this map.



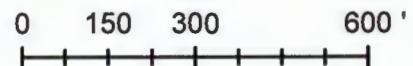
KPB 2020-147V
S19 T05N R09W
STERLING


Date: 11/30/2020
PClements, KPB 2020-147V



The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

Aerial View



**Right of Way Vacation**

PClements, KPB 2020-147V
Date: 11/30/2020
Imagery 2018 Sterling

AGENDA ITEM E. PUBLIC HEARINGS

1. Vacate 30 foot wide Oliver Street right of way, including the associated utility easement, north of Half Moon Avenue as dedicated on Arrowhead Estates Phase 1 Plat KN 2000-7. The right-of-way being vacated is unconstructed and located within the NW1/4 NW1/4 of Section 19, Township 5 North, Range 9 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-147V.

STAFF REPORT

PC Meeting: January 11, 2021

Purpose as stated in petition: The Oliver Street right of way has been previously cleared allowing access by other individuals. We would like to have this right of way abandoned as there is a history of unwanted traffic and others using it for undesirable purposes presenting a danger to our young children. The Borough owns 150 acres to the east of our property with multiple other access points off of Deville, Sterling Highway and Jim Dahler. This right of way does not have an outlet as our neighbor to the north does not have an Oliver Street right of way. This results in others littering, causing damage to vegetation and trees while turning around or getting stuck, and dumping of carcasses causing an increase in predator activity. We feel this short 630 foot section of right of way is unneeded and the abandonment would not adversely affect anyone in our area subdivisions or the borough. Thank you for your consideration.

Petitioners: Nathan D. and Julie A. Moore of Soldotna, AK.

Notification: Public notice appeared in the December 31, 2020 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the January 7, 2021 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

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The notice and maps were posted on the Borough bulletin board and Planning Department public hearing notice web site.

Comments Received:

ACS: Not available at the time the staff report was prepared.

ENSTAR: No comments, recommendations, or objections.

Homer Electric Association: Not available at the time the staff report was prepared.

KPB Addressing: Not available at the time the staff report was prepared.

KPB Planning: There are no material site or local option zone issues that affect this right of way vacation.

KPB River Center: Not within a flood hazard area.

KPB Roads Department: Within KPB jurisdiction. RSA objects to the ROW vacation. Removing this ROW could present a problem with future development of the surrounding lots that have not been subdivided.

State Parks: No comments.

Staff Discussion: Arrowhead Estates Phase 1, Plat KN 2000-7, dedicated a 30 foot wide right of way, named Ridge Street, that was approximately 630 feet long. This dedication extends north from the Half Moon Avenue dedication. At that time the property to the north and east were unsubdivided. Resolution SN 2006-12 changed Ridge Street to Oliver Street. Oliver Street was depicted on plat KN 2010-47. The purpose of that plat was to combine two lots into one.

Oliver Street is an approximate 3,680 foot long right of way that is near milepost 89.5 of the Sterling Highway. The only portion of Oliver Street that appears to be constructed is directly off the Sterling Highway and is used as a driveway to a lot owned by the Kenai Peninsula Borough with an accessory building on the premises. The remaining length of the right of way appears to be partially cleared and not improved as a vehicular roadway. It appears that a trail may exist within Oliver Street.

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To the north of the vacation, Barkman Subdivision 2014 Addition, Plat KN 2014-63, was finalized without extending the dedication of Oliver Street. The parent plat to Barkman Sub 2014 received an exception for extending Oliver Street which was carried over. Reasons given were that due to low wet areas and slopes greater than 20 percent extending Oliver Street was impractical. There is a drainage way north of the proposed vacation as well as dedications for Arrowhead Avenue and Appaloosa Lane that may need to be extended in the future from the 15 acre parcel.

To the east is a 154 acre parcel owned by the Kenai Peninsula Borough. That parcel currently has access from Appaloosa Lane, Deville Rd, Half Moon Avenue, the southern portion of Oliver Street as well as 50 foot section line easements that run east-west north of the proposed vacation.

A 100 foot wide section line easement is located at the northerly end of Oliver Street. The section line easement extends in an east-west direction.

If approved, a plat will finalize the proposed right of way vacations. At this time a plat has not been submitted. Once a complete application is submitted it will be scheduled to be reviewed by the Plat Committee. Staff would like to note that an exception to KPB 20.30.170, block length requirements, will be required.

KPB 20.70 – Vacation Requirements.

Platting staff comments: Staff reviewed the vacation and all the items required by 20.70 were met, unless otherwise noted below:

20.70.040. Application—Petition required.

- C. In areas where right-of-way is being vacated due to excessive topographic features, a contour map or centerline profile and/or right-of-way cross sectional view may be required by the commission to substantiate the unusable right-of-way and show alternate and dedicated routes to insure ingress and egress to adjacent lands.

Platting Staff Comments: Staff prepared a contour map that can be found in the packet.

20.70.130. Vacation plat—Preparation, approval and recording. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent in KPB 20.70.110.

Platting Staff Comments: If the vacation is approved a preliminary plat submittal is required. An exception will be required and cannot be finalized by a right of way vacation plat.

Staff recommendation: *Comply with 20.70.130.*

20.70.150. Title to vacated area.

- A. The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

Platting Staff Comments: A plat has not yet been submitted but the vacated right of way will attach to parcel that the dedication came from, Lot 11A of Arrowhead Estates Moore Replat, KN 2010-47.

20.70.160. Partial vacation allowed. Where the planning commission finds that a right-of-way must be preserved, but determines there is excessive width for all intended uses within the right-of-way, the commission may approve a partial vacation of a right-of-way such that the width is reduced to the maximum necessary for the intended use. Such vacation shall conform to this title for the class of right-of-way involved except where the right-of-way is not intended to be used for vehicular purposes.

Platting Staff Comments: This is currently a half width dedication of 30 feet. If approved the entire 30 foot width will be vacated.

20.70.170. Vehicular Access. The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential use.

Platting Staff Comments: Additional right of way is not proposed. The right of way is unconstructed and ends in an area of steep terrain. The undeveloped 50 foot section line easement provides similar access as this right of way. All lots in the area have access and some have multiple access points. Large acreage tracts surround the proposed vacation. When the large acreage tracts are further subdivided right of way dedications will be required to provide continuous access between Halfmoon Avenue, Oliver Street, Deville Road and Appaloosa Lane. Future right of way dedications will be based on lot configuration and topographic features. Those dedications can take into account the terrain and layout the right of ways in a way that allows for vehicular access.

20.70.180. Other access. Other lawful uses that exist or are feasible for the right-of-way shall be considered when evaluating a vacation request. When such uses exist or could exist within rights-of-way which are not suited for general road use, the commission shall not approve the vacation request, unless it can be demonstrated that equal or superior access is or will be available. The planning commission shall consider whether alternate uses present public safety issues which support approval of the vacation.

Platting Staff Comments: Oliver Street provides legal access for pedestrian use. The large tract to the east is borough property and open to the public for recreational use. The dedicated right of way does provide access to the KPB parcel to the east. There are multiple access points to the borough lands.

20.70.190. Utility provisions. All existing and future utility requirements shall be considered when evaluating a vacation request. Rights-of-way which are utilized by a public utility or which logically would be required by a public utility shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a public utility easement be granted in place of the right-of-way.

Platting Staff Comments: The petition included associated utility easements. The vacation has been sent to the utility providers for comment. Not all comments were not received when the staff report was prepared. The right of way and the associated utility easement could be used for the placement of utility lines. Electric lines are already in place to service the existing parcels.

Staff recommendation: Preserve existing utility easements or grant requested easements as requested by the utility providers.

STAFF RECOMMENDATION: Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and the KPB Roads Department review, **staff recommends denial.**

If the Planning Commission recommends approval of the vacation, it will be subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the utility providers.
4. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

KPB 20.70.110:

A vacation of a street right-of-way, public area, or public easement within the borough outside of the limits of cities may not be made without the consent of the borough assembly.

The assembly shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the borough shall be considered to have given consent to the vacation.

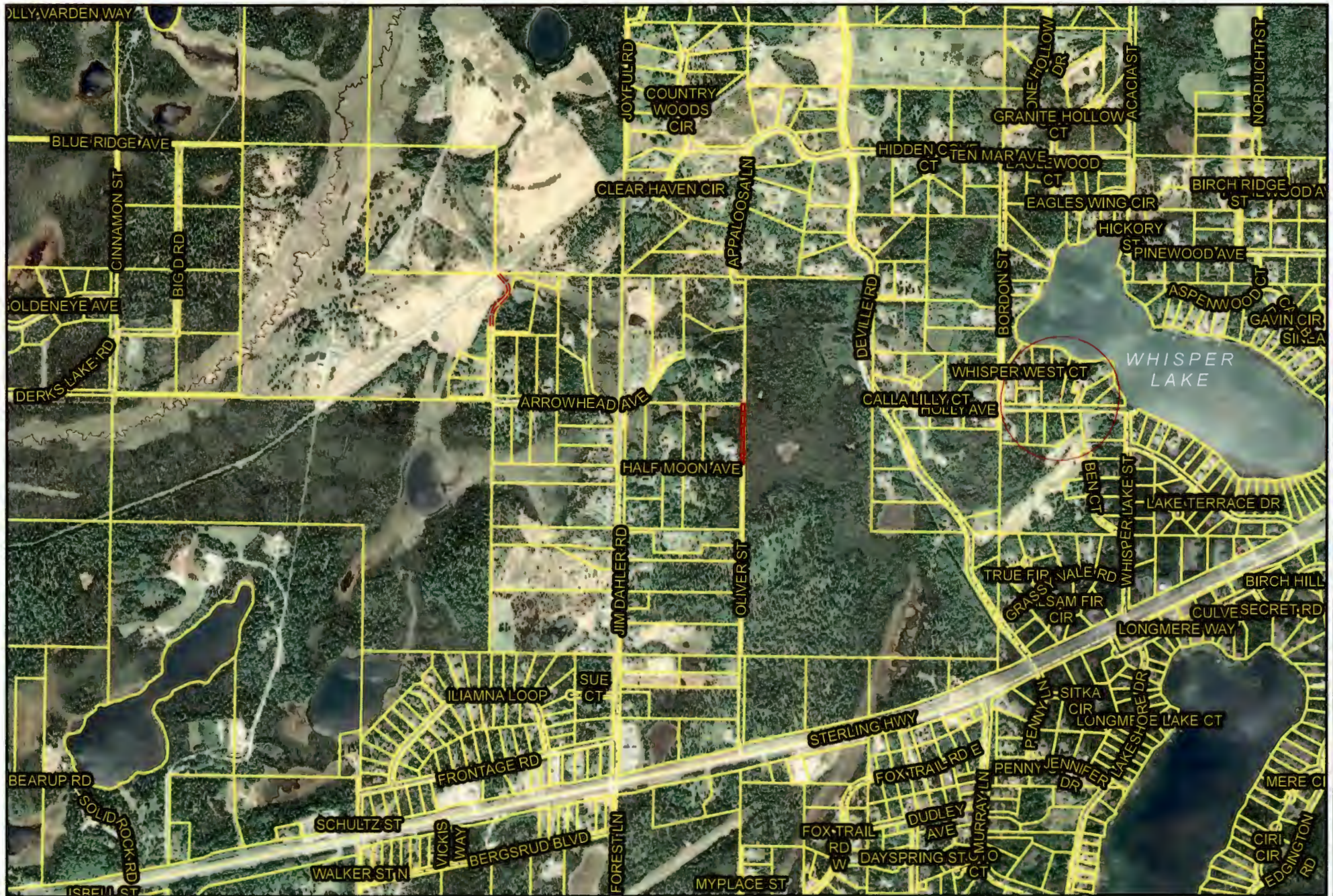
KPB 20.70.120:

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.**
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**

KPB 20.70.130:

THE FINAL PLAT MUST BE RECORDED WITHIN ONE YEAR OF THE VACATION CONSENT IN KPB 20.70.110.

END OF STAFF REPORT



The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

Aerial View

0 500 1,000 2,000'



Right of Way Vacation

PClements, KPB 2020-147V
Date: 11/30/2020
Imagery 2018 Sterling



The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

0 500 1,000 2,000 Feet

AERIAL IMAGERY - 2016
SECTION LINE EASEMENT



Date: 12/18/2020
S. Huff, KPB



The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

0 500 1,000 2,000 Feet

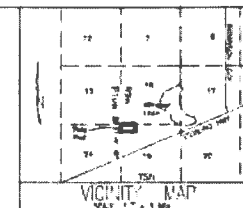
AERIAL IMAGERY - 2016 KENAI WATERSHED WETLAND MAPPING



Date: 12/18/2020
S. Huff, KPB

John Kallist CE 7251 March 6, 2000
ENGINEER LICENSE # DATE

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[illegible]

- N 90°55'26" W 1271.73

ARROWHEAD
ESTATES

JIM DAILLAR ROAD

198 50	198 52	198 52	198 57	198 57	198 62
LOT 7	LOT 8	LOT 9	LOT 10	LOT 11	LOT 12
2.874 ACRES	2.874 ACRES	2.874 ACRES	2.874 ACRES	2.873 ACRES	2.873 ACRES
N 00°04'25" W 630.10	N 00°03'51" E 533.56	N 00°02'36" E 533.02	N 00°01'46" E 523.38	N 0°00'55" E 629.94	N 00°00'00" E 629.90
198 78	198 78	198 78	198 78	198 78	198 78

S 85°5E'09" E 1272.74

PARCEL 2 PLAT WAIVER RESOLUTION 97-24
S1/2 NW1/4 NW1/4
Section 19

Γεν 2 + 1^{ος} Διήμερο Γεν

MICHAEL A. SWAN
REGISTRATION NO. LS-6940

[illegible]

At Vincent's, Trustee, of the Newark Capital Corporation Profit Sharing Plan Trust

NEW HANOVER, TRUSTEE OF THE AMERICAN (ST. CATHARINE)
CONGREGATION PRIMITIVE METHODIST CHURCH

Subscribed and sworn before me on this 3rd day
of February, 2022. For Local Hunger Relief, Treasurer of the
Benedict County Council, Commissioned Notary Public in and for the State of Maryland

CC: [Signature]
 + [Signature]
 MY COMMISSION EXPIRES 1/2/2015



This job was supported by the Office of Naval Research
under Grant N00014-80-1-0700.

by Alfred Burt

THE FORTHcoming

1945 年 12 月 10 日，在柏林舉行的「蘇聯對德戰爭勝利週年紀念大會」上，蘇聯最高蘇維埃主席馬林科夫在致詞時，曾提到「蘇聯在戰爭期間，曾受到盟國之援助，而盟國之援助，亦曾受到蘇聯之協助」。

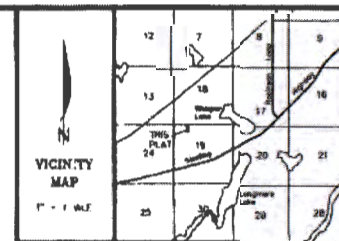
OWNER: The Trustees of the Broadhead
Eppig Corporation Profit Sharing
Plan Trust
4755 S 100 W # 8
Salt Lake City, UT 84107

LOCATED IN THE NW 1/4 NW 1/4 NW 1/4 SECTION 18
T56N R9E S10N IN KERN COUNTY, CALIFORNIA
ALL WITHIN THE NATHANIEL H. HARRIS DISTRICT.
CONTAINING 0.375 ACRES

SWAN SURVEYING

P.O. Box 9A7
504 00THA AK 99660
PHN: 907-762-1014

ਸਰਕਾਰੀ ਕਾਲਜ ਮਾਛੀਵਾਲਾ - 151001	ਦੀਵਾਨਾ ਪੰ. 10	ਦੀਵਾਨਾ ਮਾਛੀਵਾਲਾ
ਪੰ. 10	ਮਾਛੀਵਾਲਾ	ਦੀਵਾਨਾ ਕਾਲਜ ਮਾਛੀਵਾਲਾ



LEGEND:

- ① MEASUREMENT OF RECORD
- ② 5/8" REBAR OF RECORD
- () RECORD CANNOT BE PLAT 2000-7 KOD



NOTES:

- 1) Record information taken from Arrowhead Estates Phase 1, plat 2000-7, Rural Recording District.
- 2) Building Setback - A setback of 20 feet is required from all street Right-of-Way unless a lesser standard is approved by resolution by the appropriate Planning Commission.
- 3) Development may be subject to Erosion Prevention Management and Control of Erosion measures and permitting.
- 4) Covenants, conditions and restrictions which affect this plat are recorded in Book 560 Page 887 and Book 581 Page 57 in the Rural Recording District.
- 5) From 10 feet of the 20-foot building setback and the entire setback after 5 feet of the side (of this is a utility easement, the permanent structure shall be constructed or placed within a utility easement which would interfere with the ability of a utility to use the easement).
- 6) **WATERWAY DISCHARGE** - This lot is at least 200,000 square feet or more and is used and conditions may not be suitable for water treatment and disposal. Any wastewater treatment or disposal system must meet the regulatory requirements of the Alaska Department of Environmental Conservation. A safe route from the present plat of this subdivision is on the side the Koyuk River through.



SURVEYOR'S CERTIFICATE

I hereby certify that, I am properly registered and licensed to practice land surveying in the State of Alaska, this plat represents a survey made by me or under my direct supervision, the measurements shown herein actually exist as described, and all dimensions and other details are correct.

Date 8-30-10

Barkman Subdivision
Tract B

Lot 10

Lot 11A
5.748 Ac.

Unsubdivided

Half Moon Avenue

Sunset Hill Subdivision

Lot 4

CERTIFICATE of OWNERSHIP and DEDICATION

I HEREBY CERTIFY THAT I AM THE OWNER OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I HEREBY ADAPT THIS PLAN OF SUBDIVISION AND BY MY FREE CONSENT DEDICATE ALL RIGHTS-OF-WAY AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO BE USED THEREON.

Nathan D. Moore
NATHAN D. MOORE
30485 ROSELAND ST.
SOLDOTNA, ALASKA 99689

NOTARY'S ACKNOWLEDGEMENT

SUBSCRIBED AND SWORN BEFORE ME THIS 3 DAY OF September 2010
FOR Nathan D. Moore



Karen Fadden
NOTARY PUBLIC FOR ALASKA
MY COMMISSION EXPIRES 7-29-2012

PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF JUNE 28, 2010.

KENAI PENINSULA BOROUGH

Maya Alpert
AUTHORIZED OFFICIAL

KPB FILE No 2010-082

Arrowhead Estates Moore Replat

A Subdivision of Lots 11 and 12, Arrowhead Estates Phase 1, Plat 2000-7, Rural Recording District.

Located within the NE1/4 NW1/4 NW1/4 Section 16, T24N, R24W, S44E, Kenai Peninsula Borough, Alaska.

Containing 5.748 Ac.

SEGESSER SURVEYS

30485 Roseland St.
Soldotna, AK 99689

JOB NO	10044	DRAWN	8-18-10
SURVEYED	N/A	SCALE	1"=100'
FIELD BOOK	N/A	SHEET	1 of 1

2010-47
RECORDED
MENAS REC. DEPT.
DATE: 9-21-2010
TIME: 3:15 PM
REQUESTED BY:
SEGESSER SURVEYS
30485 ROSELAND ST.
SOLDOTNA, AK 99689

Introduced by:

Mayor

Date:

04/06/21

Action:

Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2021-023**

**A RESOLUTION AMENDING THE SPENDING PLAN FOR CARES ACT
CORONAVIRUS RELIEF FUNDS RECEIVED FROM THE STATE OF ALASKA TO
TRANSFER LAPSED FUNDING TO REIMBURSE KPB EMERGENCY RESPONSE,
PERSONAL PROTECTION EQUIPMENT, AND PERSONNEL COSTS**

WHEREAS, the Alaska State Legislature has provided funding to the Kenai Peninsula Borough through the Coronavirus Relief Fund (CRF), a pass-through program authorized by federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act); and

WHEREAS, Resolution 2020-047 approved the Coronavirus Relief Fund Spending Plan (“spending plan”) for the funding to the borough in the total amount of \$37,458,449.47 and Resolutions 2020-056, 2020-057, 2020-069, 2020-070, 2020-071, 2020-076 and 2020-083 approved numerous amendments to the spending plan to meet project developments; and

WHEREAS, this eighth amendment to the spending plan will transfer remaining lapsed funding from the completed CAR projects to CAR06 project title Emergency Response-PPE-Personnel to provide for funding dedicated to the COVID-19 response; and

WHEREAS, it is in the borough’s best interest to approve the amended spending plan for the purpose of addressing the impacts of the coronavirus pandemic;

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

SECTION 1. That the assembly hereby approves the portion of the Coronavirus Relief Fund Spending Plan – Amended April 06, 2021, transferring lapsed balances from projects CAR08, CAR10, CAR13, CAR17, and CAR21 to project CAR06.

SECTION 2. That the assembly hereby approves the portion of the Coronavirus Relief Fund Spending Plan – Amended April 06, 2021, providing that an amount up to \$186,955 from the lapsed CAR project funds will be transferred to CAR06 project title Emergency Response-PPE-Personnel to provide for funding dedicated to the COVID-19 response, ending June 30, 2021.

SECTION 3. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF APRIL, 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Community & Fiscal Projects

MEMORANDUM

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

THRU: Charlie Pierce, Mayor CP

FROM: Brenda Ahlberg, Community & Fiscal Projects Manager BA
Brandi Harbaugh, Finance Director BH
Dan Nelson, Emergency Manager DN

DATE: March 25, 2021

RE: Resolution 2021-023, Amending the Spending Plan Approved for CARES Act Coronavirus Relief Funds Received from the State of Alaska, to Transfer Lapsed Funding to Reimburse KPB Emergency Response, Personal Protection Equipment, and Personnel Costs (Mayor)

This resolution upon approval is the eighth amended plan to the borough's Coronavirus Relief Fund Spending Plan (CRF). The amended plan identifies remaining projects that have been completed and estimated lapsed balances that may be transferred to CAR06 project title Emergency Response-PPE-Personnel.

Your consideration of this resolution is appreciated.

Attachments:

20CAR – Summary Reports Ending 03/23/2021

Coronavirus Relief Fund Spending Plan Proposed for Amendment (03/25/2021)

Segments	Account Number	Original Budget (7/11/20)	Revised budget after Amended Reso (12/01/20 prelim)	Estimated Expenditures/ commitments LTD	Estimated up to remaining Expenditures/ commitments	Available grant funds
CAR01	GRANTS TO SMALL BUSINESS/NONPROFIT/SR CENTERS	15,000,000	6,592,571	(6,592,571)	-	\$ -
CAR02	SINGLE AUDIT FEES	25,000	14,000	(14,000)	-	-
CAR03	REIMB HOSPITAL COSTS	800,000	700,000	(700,000)	-	-
CAR04	VOLUNTEER FIRE & EMS	70,000	291,739	(291,739)	-	-
CAR05	FIRE & EMS SA PERSONNEL COSTS	2,800,000	3,681,610	(3,681,610)	-	-
CAR06	KPB EMERG RESPONSE-PPE-PERSONNEL	500,000	1,631,695	(1,305,900)	325,795	-
CAR07	ABSENTEE VOTE BY MAIL	600,000	129,821	(129,821)	-	-
CAR08	TECH-REMOTE MEETING INTEGRATION	80,000	100,000	(95,951)	-	4,049
CAR09	TECH-COMMUNICATIONS TOWER SITE DVLPMNT	2,000,000	2,398,311	(2,398,311)	-	-
CAR10	TECH-RETROFIT ASSEMBLY CHAMBERS	200,000	665,013	(557,404)	66,488	41,121
CAR11	KPBSD RESPONSE & PREPAREDNESS	1,700,000	146,088	(146,088)	-	-
CAR12	HOSPITAL TESTING EQUIPMENT	650,000	-	-	-	-
CAR13	RETROFIT KPB FACILITIES	500,000	2,950,276	(2,439,407)	506,398	4,470
CAR14	TECH-IMT REMOTE WORK-PC UPGRADES	67,000	66,839	(66,839)	-	-
CAR15	TECH-REMOTE WORK KITS FOR TELEWORK	116,000	115,772	(115,772)	-	-
CAR16	GIS UPDATE FOR REMOTE ASSESSMENT	600,000	375,492	(375,492)	-	-
CAR17	TECH-911 BACKUP DISPATCH ANSWERING CENTER	802,000	1,012,000	(631,866)	361,946	18,188
CAR18	TECH-COMMUNICATIONS ENGINEERING ANALYSIS	100,000	67,481	(67,481)	-	-
CAR19	GRANTS TO SMALL BUSINESS-2ND DISTRIBUTION/CONTENGECY	3,648,449	1,554,976	(1,554,976)	-	-
CAR20	SOLID WASTE DEBRIS/SLASH DISPOSAL	200,000	116,807	(116,807)	-	-
CAR21	FY21 KPB RESPONSE-PPE-PERSNL & RECOUP LOST REVENUE	7,000,000	4,030,938	(3,487,529)	441,279	102,130
CAR22	CITY ALLOCATION	-	9,155,990	(9,155,990)	-	-
CAR23	HOUSING RELIEF PROGRAM	-	1,646,956	(1,646,956)	-	-
CAR24	POPPY LANE FACILITY SOCIAL DISTANCING RETROFIT	-	14,075	(14,075)	-	-
Totals:		37,458,449	37,458,449.47	(35,586,584)	1,701,906	\$ 169,959

Open Projects:

		Unexpended Funds as of 3/25/21	Encumbered and or committed as of 3/25/21	Actual Anticipated Lapse
CAR08	TECH-REMOTE MEETING INTEGRATION	\$ 4,049	\$ -	\$ 4,049
CAR10	TECH-RETROFIT ASSEMBLY CHAMBERS	107,609	66,488	41,121
CAR13	RETROFIT KPB FACILITIES	510,869	506,398	4,470
CAR17	TECH-911 BACKUP DISPATCH ANSWERING CENTER	380,134	361,946	18,188
CAR21	FY21 KPB RESPONSE-PPE-PERSNL & RECOUP LOST REVENUE	102,130	-	102,130
Up to lapse amount		\$ 1,104,792	\$ 934,832	\$ 169,959
10% Contingency				16,996
				\$ 186,955

Kenai Peninsula Borough

Community & Fiscal Projects

MEMORANDUM

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

THRU: Charlie Pierce, Mayor
Brandi Harbaugh, Finance Director

FROM: Brenda Ahlberg, Community & Fiscal Projects Manager

DATE: March 23, 2021

RE: 20CAR Summary Reports as of 03/23/21

The CARES Act Coronavirus Relief Fund, federal pass-through grant from the state to the borough in the amount of \$37,458,449.47 funded projects under the guiding principles of public safety, community resilience and economic recovery. The projects and life-to-date costs are updated weekly on the borough's dashboard at <https://cares.kpb.us/>.

The remaining projects listed in this memo have approved time extensions based upon vendors' failure to deliver goods or services prior to December 30, 2020, which is an allowable exception as defined by the U.S. Treasury Guidance. The following updates are provided for your consideration:

CAR06 & CAR21 KPB EMERGENCY RESPONSE-PPE-PERSONNEL (Harbaugh, Nelson and Team)

The performance period for CAR06 ends June 30, 2021 to support response and recovery costs. These projects represent the costs related to the Incident Management Team and emergency protective measures. Emergency protective measures includes labor and equipment needed to provide Personal Protective Equipment (PPE), engineered controls and disinfection measures to Borough employees and facilities. Additionally, Borough employees that are out on leave related to federal Payroll Protection Program, Emergency Paid Sick Leave Act and the Emergency Family Medical Leave Expansive Act were funded through this project. See CAR21 update for balance of funds to be transferred to the school district.

CAR08 & CAR10 REMOTE MEETING INTEGRATION & RETROFIT ASSEMBLY CHAMBERS TO ACCOMMODATE PHYSICAL AND TECHNOLOGY INTEGRATIONS (Blankenship, Frey and Team)

This project addresses safety concerns to conduct in-person, public meetings with separated workspaces as well as remote attendance options that include either online participation or through analogue phone. The first assembly meeting since March 17, 2020 was held in the Betty J. Glick Assembly Chambers January 5, 2021.

CAR08: Key Code Media returned the “Mobile Meeting AV Kit” on March 5th, and KPB initiated testing of the reconfigured hardware. Although it appears that the newly configured kit will be viable with the equipment provided, KPB IT identified what appears to be an electrical ground fault which is complicating testing of overall functionality. KPB IT will continue to work with Key Code Media to finalize equipment configuration, and will attempt to complete testing before the March 31st project completion date.

CAR10: The renovation contractor has completed the assembly chambers reconfiguration and construction; the closeout paperwork is being completed.

Both projects performance period was extended to March 31, 2021. Final liquidation and closeout procedures will be completed by April 15, 2021.

CAR09 TECH-COMMUNICATIONS TOWER SITE DEVELOPMENT (Hanson and Team)

This project funds two subrecipient grant agreements to increase rural internet service to support distance education and teleworkers.

SpitWSspots (SwS) has service active and tower locations in Bear Creek, Coho, Nikiski, Ninilchik, Nikolaevsk and a building antenna in Tyonek. This project performance period was extended to February 26, 2021 to ensure final installation was completed for the Tyonek site. SwS met all grant objectives; grant closeout totaled \$2,133,757.92.

Alaska Communication Systems (ACS) has upgraded communications equipment at six different ACS communications hubs. Six Digital Subscriber Line Access Multiplexers (DSLAM) units are online to deliver higher bandwidth up to 50 megabits per second to equipment (Mbps) for the areas of service in Homer, Soldotna, Kenai. The ACS project was completed November 30, 2020; grant closeout totaled \$262,485.82.

CAR13 RETROFIT KPB FACILITIES (Frey, Griebel, Hedges and Team)

This project installed air purification systems to existing air supply systems in borough facilities, schools and fire stations, known as O2prime systems. The needed equipment will purify air in main building corridors, reducing viral spread, mold spore and odors as well as the reduction of airborne particulates. This project performance period was extended to March 31, 2021 for equipment manufacturing delays. Final liquidation and closeout procedures are expected to be completed by April 30, 2021.

CAR17 TECH-911 BACKUP DISPATCH ANSWERING CENTER (Frey, Kosto, Nelson and Team)

This project creates a backup 911 center to allow for social distancing during COVID and similar events, as well as to provide backup for all types of emergencies and disasters that could occur at the primary facility. Tower construction has been completed and radio contractor has completed installation of equipment. 911 IT staff has substantially completed their work. A few punch list items remain until final closeout, including final placement of backup generator and completion of access control system. This project performance period was extended to March 31, 2021. Final liquidation and closeout procedures will be completed by April 15, 2021.

CAR21 FY21 KPB RESPONSE-PPE-PERSONNEL & RECOUP LOST REVENUE (Harbaugh, Nelson and Team)

This project has been updated based upon assembly's approval to supplement three additional projects to the school district under CAR21 by way of R2020-083: The Telephony Project, Student Home-to-School Transportation Costs and Funding to Support Presumed COVID-19 Education-Related Expenditures. The grant agreements for the Telephony Project and the Student Home-to-School Transportation Costs have been completed. The third agreement reimburses COVID-19 Education-Related Expenditures, and final payment will be issued by April 30, 2021.

Introduced by:	Mayor
Date:	06/16/20
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-047**

**A RESOLUTION APPROVING THE PAYMENT THRESHOLDS AND PROPOSED
SPENDING PLAN FOR CARES ACT CORONAVIRUS RELIEF FUNDS RECEIVED
FROM THE STATE OF ALASKA**

WHEREAS, the Alaska State Legislature has provided funding to the Kenai Peninsula Borough through the Coronavirus Relief Fund (CRF), a pass-through program authorized by federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act); and

WHEREAS, funding to the borough in the total amount of \$37,458,449.47 will be provided in three installments, and all funds received must be liquidated by December 30, 2020; and

WHEREAS, these funds may only be used to cover costs that (1) are necessary expenditures incurred due to the public health emergency with respect to the coronavirus disease 2019, (2) were not accounted for in the budget most recently approved as of March 27, 2020 by the borough, and (3) were incurred during the performance period of March 1, 2020 through December 30, 2020; and

WHEREAS, to ensure the borough complies with the applicable grant requirements the administration has developed Payment Thresholds and Proposed Spending Plan for disseminating the funds subject to the applicable provisions of the CARES Act, the State of Alaska Grant Agreement to the borough as a sub-recipient of the grant, and Alaska law; and

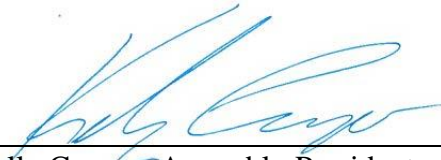
WHEREAS, approving this plan will enable the administration to move forward with establishing the procedures and documentation necessary to implement the plan in a timely manner to help defray costs resulting from the impacts of the coronavirus pandemic;

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

SECTION 1. That the assembly hereby approves the CARES Act Coronavirus Relief Fund Spending Plan, a copy of which is attached hereto and incorporated herein by reference.

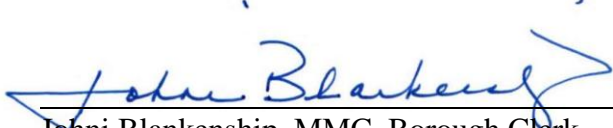
SECTION 2. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JUNE, 2020.

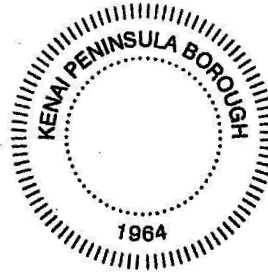


Kelly Cooper, Assembly President

ATTEST:



Johni Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper
No: None
Absent: None



Kenai Peninsula Borough

CARES Act Coronavirus Relief Fund

Assembly Work Session Presentation ~ June 11, 2020 ~ 2:00 PM

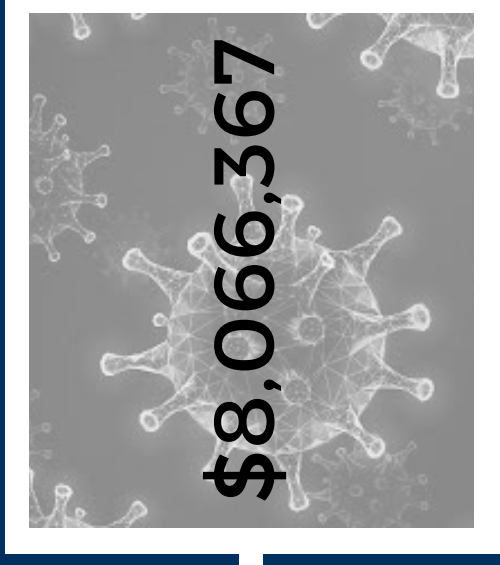
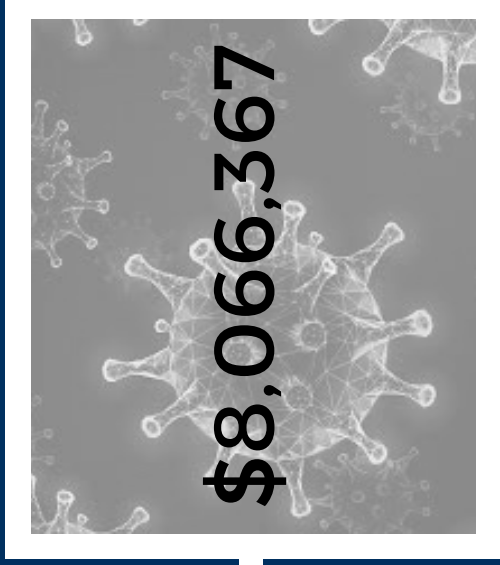
Project Introduction: The Bullet Points

- \$ Fund uses and restrictions**
- \$ Payment Installments**
- \$ Application Process**
- \$ Transparency and Public Engagement**
- \$ Program Demobilization**

CARES Act: Coronavirus Relief Fund

- \$ Social Security Act, Section 601**
- \$ OMB Unified Guidance 2 CFR 200**
- \$ Borough Code of Ordinances**
- \$ Alaska State Statutes**

Relief Fund Payments & Proposed Spending Plan



PAYMENT #1

- Businesses/Nonprofits
- Sales tax waivers
- Hospital Protective Measures
- Volunteer Fire Departments
- KPB Fire & EMS, Response, and Personnel costs
- Absentee Vote-by-Mail
- Public Access through Technology - Phase 1

PAYMENT #2

- School District Projects
- Mass Testing Equipment
- Building Retrofits
- IMT & Telework Remote Work Kits/Upgrades
- GIS Upgrades for Remote Assessments
- Public Access through Technology - Phase 2

PAYMENT #3

- Second Distribution to Businesses/Nonprofits
- Solid Waste Disposal Sites
- FY21 KPB personnel, response, recovery costs
- Lost Revenue*

PAYMENT #1 = \$21,325,715

Public Access through Technology Phase 1

- Remote meeting integration in chambers, remote site public meeting hard/software
- Retrofit Chambers - physical distancing
- Improved public access to internet, i.e. towers and communication infrastructure grants.

KPB Departments,
Service Areas response,
supplies, and personnel
Costs (06/30/20)

15%

Absentee Vote Campaign 2%

Hospitals Fund Reserve (~\$2M) 1%

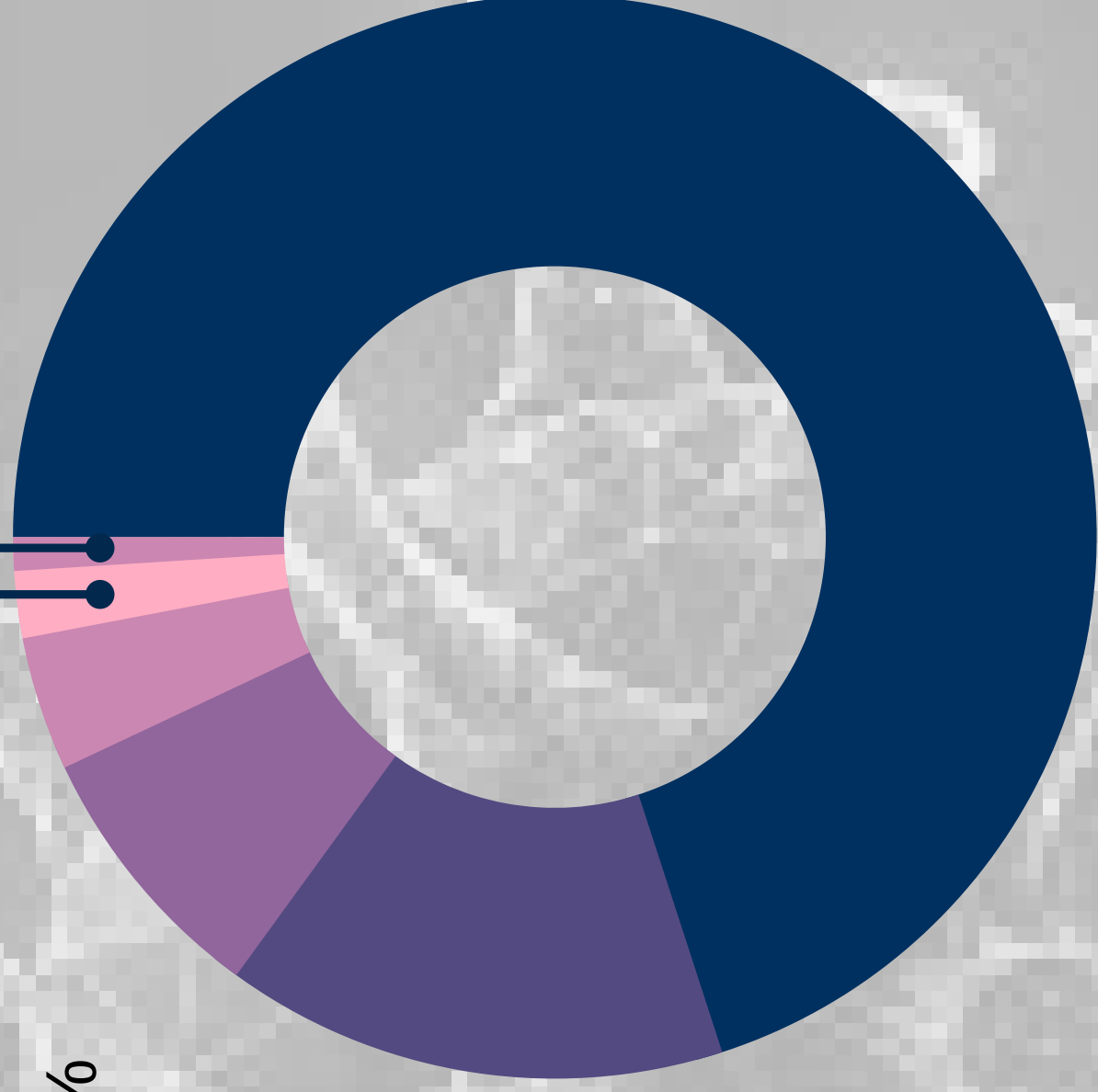
4%

Public

Access

Phase 1

8%

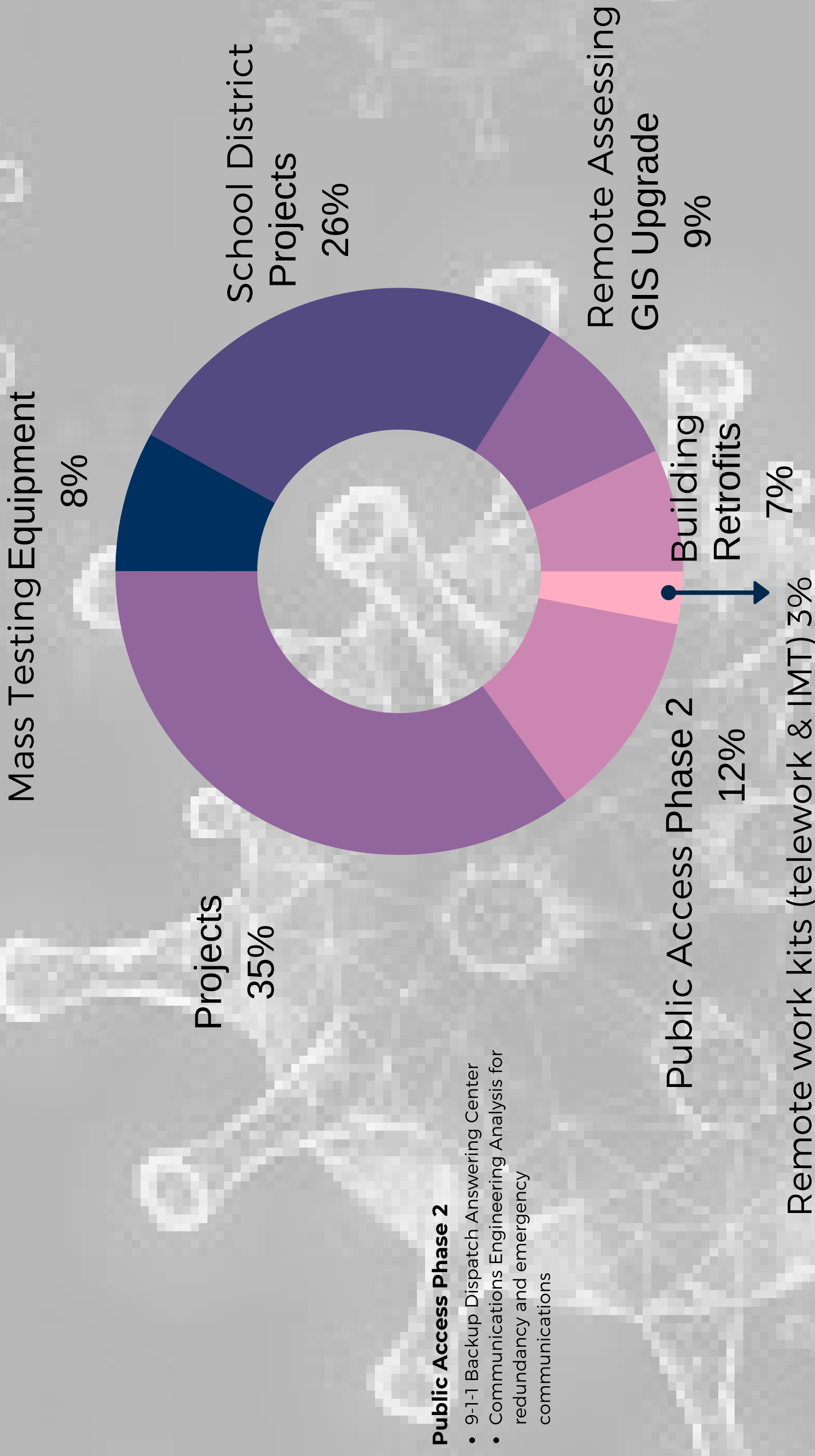


Businesses/Nonprofits,
KPB Sales Tax Penalty Waivers,
and Volunteer Fire
Departments

70%

5

PAYMENT #2 = \$6,453,094 (80%)



PAYMENT #3 + 20% OF PAYMENT #2 = \$9,679,640

Businesses and
Nonprofits Second
Distribution

26%

Solid Waste
Woody Debris
Slash Disposal

2%

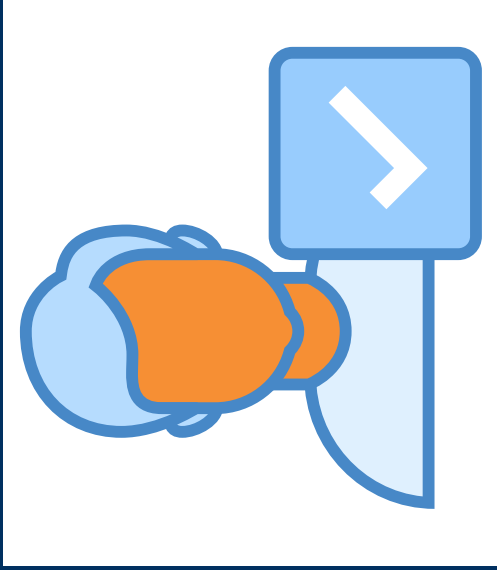


FY21 KPBB Personnel,
Response costs and
Recoup Lost Revenue
(03/01-12/30/20)*

72%

*Pending CARES Act amendment

BUSINESSES & NONPROFITS: Pre-award to Closeout



Eligibility and Verification

1. Sales Tax History, 990 and/or IRS Schedule C
2. KPBP Compliance
3. Application (online option)
4. Certification & Self-attestation
5. Finance threshold verification
6. Grant Program Review
7. Payment Release

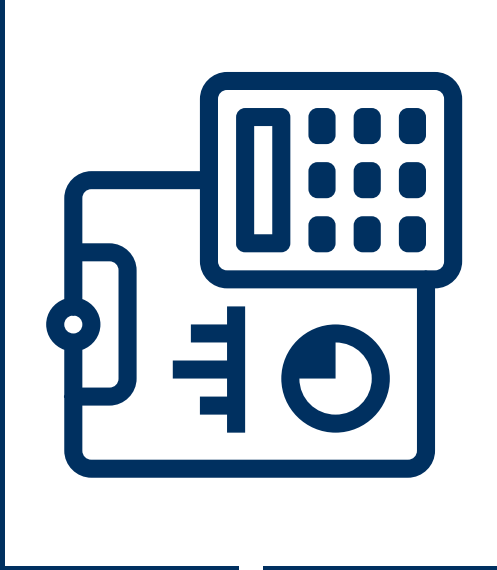


Award

Thresholds

Per KPBP R2020-047: Motion approved the change of "up to amounts" of 3.5 percent funding ranges applied to each of the thresholds. See page 14.

- | | |
|-----------------|------------------|
| \$20K - \$50K | = up to \$4,500 |
| \$50K - \$100K | = up to \$11,250 |
| \$100K - \$250K | = up to \$17,500 |
| \$250K - \$500K | = up to \$28,000 |
| >\$500K | = up to \$28,000 |



Accountability and Closeout

1. Oversight and test awards
2. Issue grant agreements for large awards
3. Adhere to federal regulations
4. Adhere to KPBP code and AK Statutes

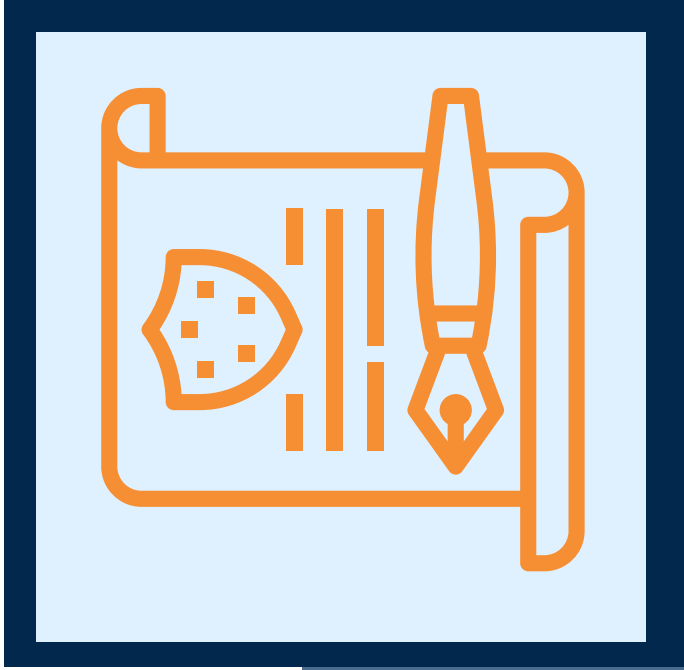
8

PUBLIC TRUST: Project Tracking & Transparency

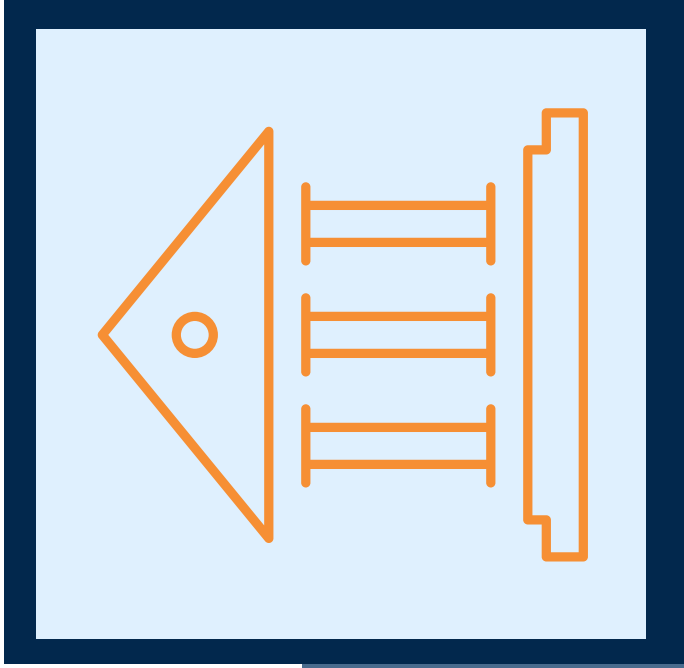
- ✓ **SharePoint - Common Operation Picture**
- ✓ **Informational Campaign**
- ✓ **Facebook Live/Call Center Event(s)**
- ✓ **GIS Dashboard - Life to Date Actions**
- ✓ **In-person Application Sites**
- ✓ **Communications w/ State Programs & Cities**



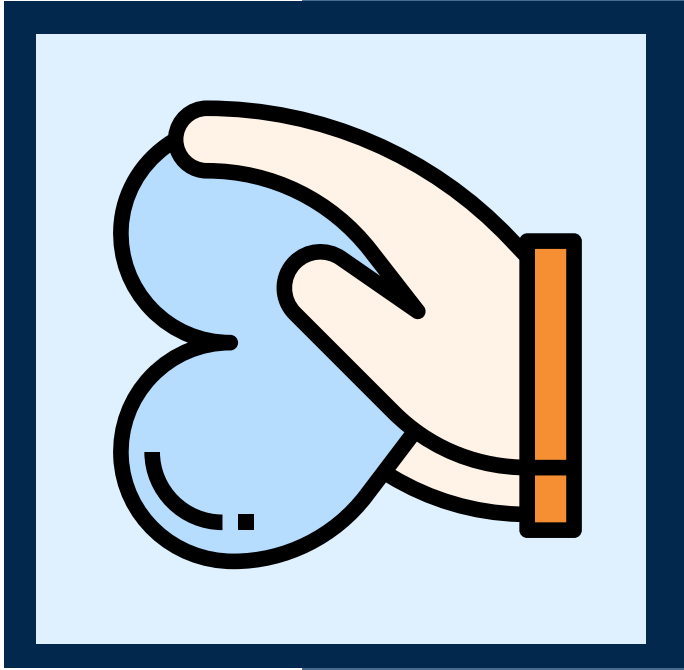
WHOLE TEAM: Project Engagement & Demobilization



POLICY MAKERS
and
ADMINISTRATION



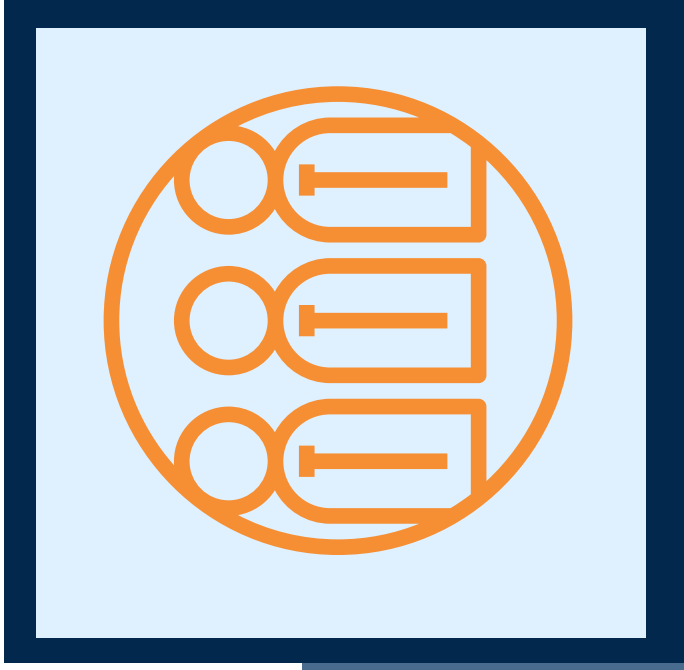
DEPARTMENTS
DIVISIONS
and
SCHOOL
DISTRICT



SERVICE AREAS
First Responders
Hospitals
Recreation
Roads

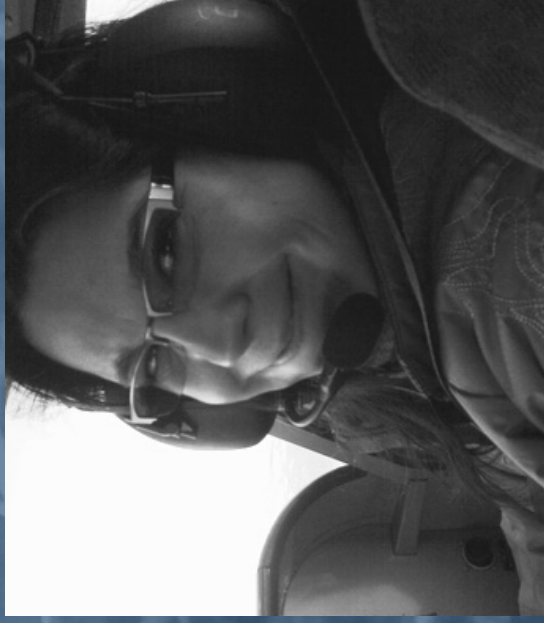


EMERGENCY
MANAGEMENT
and
DISPATCH
CENTER



CITIZENS
COMMUNITIES
CITIES
and
PARTNERS

Questions & Comments



BRENDA AHLBERG

Community & Fiscal Projects Manager

bahlberg@kpb.us

907-714-2153

Scope of Work, Justification and Estimated Funds						
	ESTIMATED Funding Ranges		Public Safety	Community Resilience	Economic Recovery	
Distribution to qualified businesses and nonprofits outside of city limits that demonstrate economic hardships based on previous sales tax history, 990, IRS Schedule C	\$15,000,000	\$8,000,000	✓	✓	✓	
Provide waivers for borough sales tax penalties	\$25,000	\$20,000	✓	✓	✓	
Reimburse Central Peninsula and South Peninsula hospitals' costs for emergency protective measures not reimbursed through other federal agencies.	\$800,000	\$650,000	✓	✓		
Support the volunteer fire & EMS departments' response, protective and preparedness measures (seven entities)	70,000	\$70,000	✓	✓	✓	
Fire & EMS service area first responders: reimburse 75 percent of eligible personnel costs for COVID19-related response (FY20 costs ending 06/30/20)	\$2,800,000	\$2,000,000	✓	✓	✓	
Reimburse borough emergency protective measures, personnel, supplies, software/hardware, sick leave, unemployment (FY20 ending 06/30/20)	500,000	\$300,000	✓			
Absentee vote by mail campaign: advertising, online application with signature verifications, database integration, GIS verification	600,000	\$400,000	✓	✓		
Public access through technology - Phase 1:						
Remote meeting integration in assembly chambers Granicus Streaming platform (Portable Encoder and Sound/Video System); closed captioning	\$80,000	\$60,000	✓	✓		
Support improved public access to internet through communications tower site development and through communications infrastructure grants	\$2,000,000	\$1,200,000	✓	✓	✓	
Retrofit assembly chambers to accommodate physical and technological integrations.	\$200,000	\$150,000	✓			

Kenai Peninsula Borough School District response and preparedness measures.	\$1,700,000	\$1,000,000	✓	✓	✓
COVID19 testing equipment to provide mass testing capabilities on the central peninsula. Equipment to reside at Central Peninsula Hospital.	\$650,000	\$525,000	✓	✓	✓
Retrofit borough facilities, i.e. touchless sinks, bathroom doors, physical separation barriers, etc.	\$500,000	\$300,000	✓	✓	
Incident Management Team remote work/PC upgrades	\$67,000	\$60,000	✓		
Remote work kits for telework	\$116,000	\$100,000	✓		
GIS upgrades to complete remote assessment needs	\$600,000	\$500,000	✓	✓	✓
Public access through technology - Phase 2:					
9-1-1 Backup dispatch answering center	\$802,000	\$780,000	✓	✓	✓
Communications engineering analysis for redundant and emergency communications	\$100,000	\$75,000	✓	✓	
Second distribution to businesses/nonprofits	\$3,648,449	\$3,000,000	✓	✓	✓
Solid Waste woody debris, slash disposal four (4) sites	\$200,000	\$120,000	✓	✓	
FY21 KPB personnel, response, recover costs (07/01/20 - 12/30/20). Recoup projected loss revenue to restore the borough general fund, fund balance for 03/01/20 - 12/30/20 (pending amendment to the CARES Act).	\$7,000,000	\$5,000,000	✓	✓	✓
➤ ESTIMATES ONLY - RANGE TOTALS	\$37,458,449	\$24,310,000			

Count borough wide	Count outside the cities	Estimated Gross Revenues	Sales tax collected	Kenai Grant (Reference)	Borough grants		Borough High Range	
					bottom	Up to	bottom	Up to
2,247	881	-	-	-	-	-	-	-
1,241	500	20,000.00	600.00	-	-	1,750.00	-	875,000.00
833	300	50,000.00	1,500.00	-	-	3,500.00	525,000.00	1,050,000.00
835	225	100,000.00	3,000.00	2,500.00	1,750.00	3,500.00	787,500.00	1,968,750.00
471	200	250,000.00	7,500.00	5,000.00	3,500.00	8,750.00	1,750,000.00	3,500,000.00
826	200	500,000.00	15,000.00	7,500.00	8,750.00	17,500.00	3,500,000.00	7,000,000.00
6,453	2,306	1,000,000.00	30,000.00	10,000.00	17,500.00	35,000.00	6,562,500.00	14,393,750.00
	4,147	inside cities						

Introduced by:	Mayor, Cooper
Date:	08/11/20
Action:	Adopted as Amended
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-056**

**A RESOLUTION AMENDING THE PAYMENT THRESHOLDS AND SPENDING
PLAN APPROVED IN RESOLUTION 2020-047 FOR CARES ACT CORONAVIRUS
RELIEF FUNDS RECEIVED FROM THE STATE OF ALASKA**

WHEREAS, the Alaska State Legislature has provided funding to the Kenai Peninsula Borough through the Coronavirus Relief Fund (CRF), a pass-through program authorized by federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act); and

WHEREAS, Resolution 2020-047 approved the Coronavirus Relief Fund Spending Plan (“spending plan”) for the funding to the borough in the total amount of \$37,458,449.47; and

WHEREAS, the administration proposes to distribute \$8,134,023 among the six municipalities within the borough by way of sub-recipient grant awards as authorized by the State of Alaska and potentially cooperative agreements as authorized by Alaska State Statute AS 29.35.010(13) to address impacts created by the coronavirus pandemic; and

WHEREAS, the CRF funds distributed to the cities may only be used to cover costs that (1) are necessary expenditures incurred due to the public health emergency with respect to the coronavirus disease 2019, (2) were not accounted for in the budget most recently approved as of March 27, 2020 by the borough, and (3) were incurred during the performance period of March 1, 2020 through November 30, 2020; and

WHEREAS, the amended spending plan also reflects budget revisions necessary to achieve individual project outcomes; and

WHEREAS, KPB Ordinance 2019-19-39 approved the eligible costs for reimbursement effective March 1, 2020 through December 30, 2020;

WHEREAS, it is in the borough’s best interest to approve the amended spending plan for the purpose of addressing the impacts of the coronavirus pandemic;

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

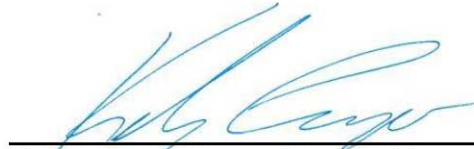
SECTION 1. That the assembly hereby approves the Coronavirus Relief Fund Spending Plan – Amended August 11, 2020, a copy of which is attached hereto and incorporated herein by reference.

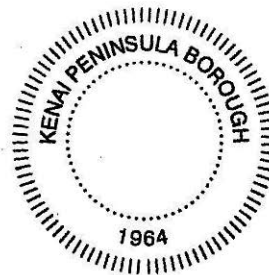
SECTION 2. That this resolution shall take effect retroactively on June 16, 2020.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 11TH DAY OF AUGUST, 2020.

ATTEST:


John Blankenship, MMC, Borough Clerk


Kelly Cooper, Assembly President



Yes: Bjorkman, Blakeley, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper
No: None
Absent: Carpenter



Kenai Peninsula Borough

CARES Act Coronavirus Relief Fund

Assembly Work Session Presentation ~ June 11, 2020 ~ 2:00 PM

Project Introduction: The Bullet Points

- \$ Fund uses and restrictions**
- \$ Payment Installments**
- \$ Application Process**
- \$ Transparency and Public Engagement**
- \$ Program Demobilization**

CARES Act: Coronavirus Relief Fund

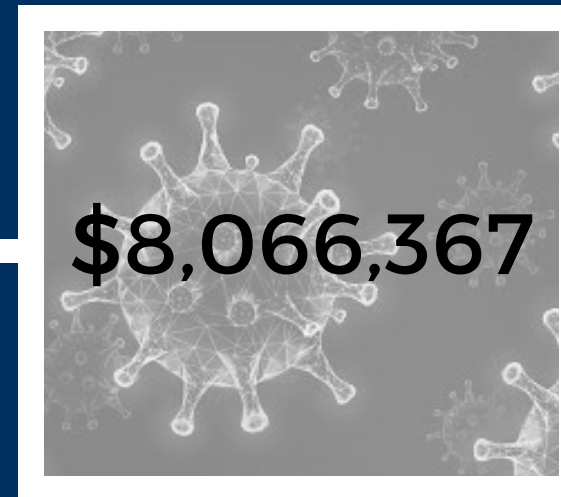
- 💰 Social Security Act, Section 601**
- 💰 OMB Unified Guidance 2 CFR 200**
- 💰 Borough Code of Ordinances**
- 💰 Alaska State Statutes**

Relief Fund Payments & Proposed Spending Plan



PAYMENT #1

- Businesses/Nonprofits
- Sales tax waivers
- Hospital Protective Measures
- Volunteer Fire Departments
- KPB Fire & EMS, Response, and Personnel costs
- Absentee Vote-by-Mail
- Public Access through Technology - Phase 1



PAYMENT #2

- School District Projects
- Mass Testing Equipment
- Building Retrofits
- IMT & Telework Remote Work Kits/Upgrades
- GIS Upgrades for Remote Assessments
- Public Access through Technology - Phase 2



PAYMENT #3

- Second Distribution to Businesses/Nonprofits
- Solid Waste Disposal Sites
- FY21 KPB personnel, response, recovery costs
- Lost Revenue*

PAYMENT #1 = \$21,325,715

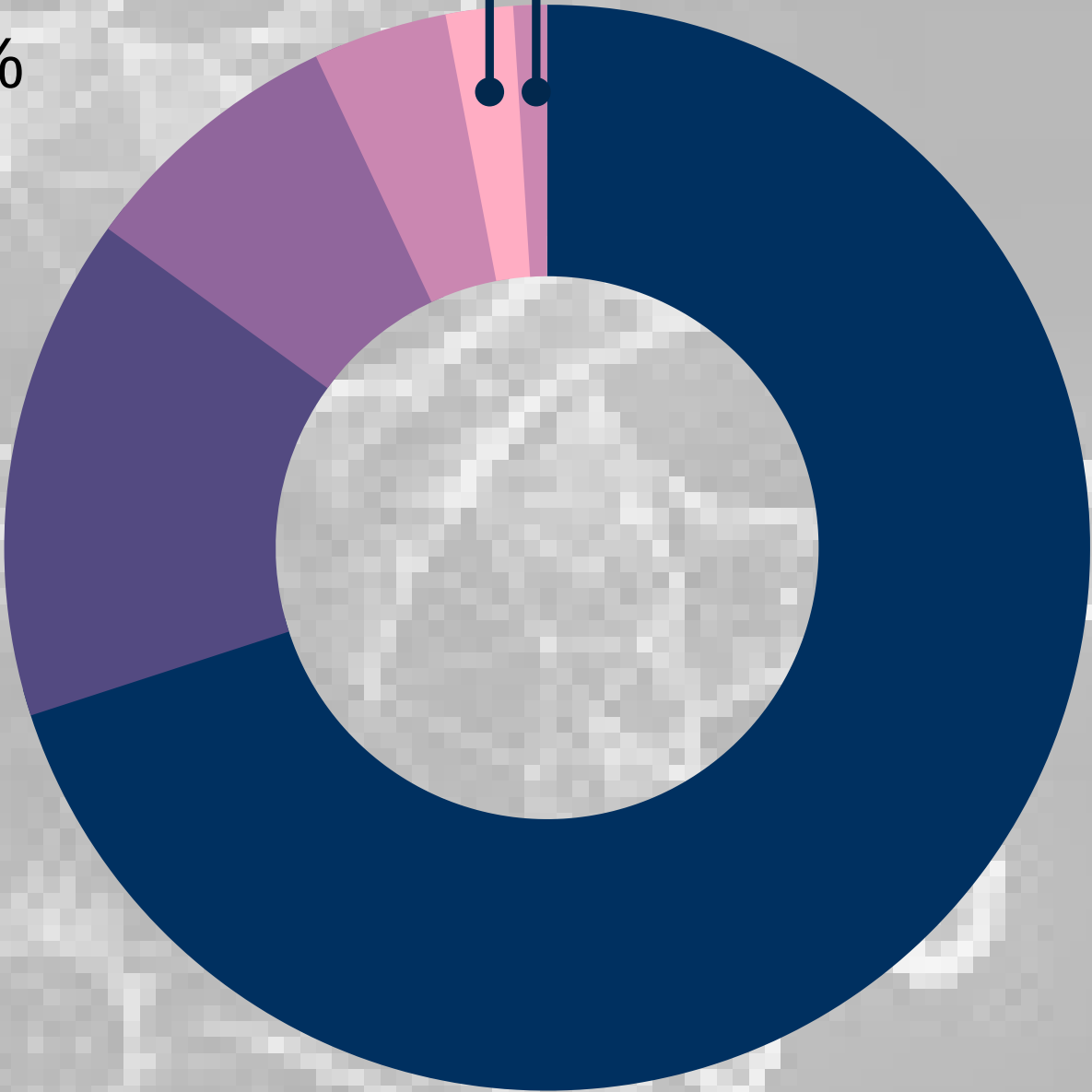
Public Access through Technology Phase 1

- Remote meeting integration in chambers, remote site public meeting hard/software
- Retrofit Chambers - physical distancing
- Improved public access to internet, i.e. towers and communication infrastructure grants.

KPB Departments,
Service Areas response,
supplies, and personnel
Costs (06/30/20)
15%

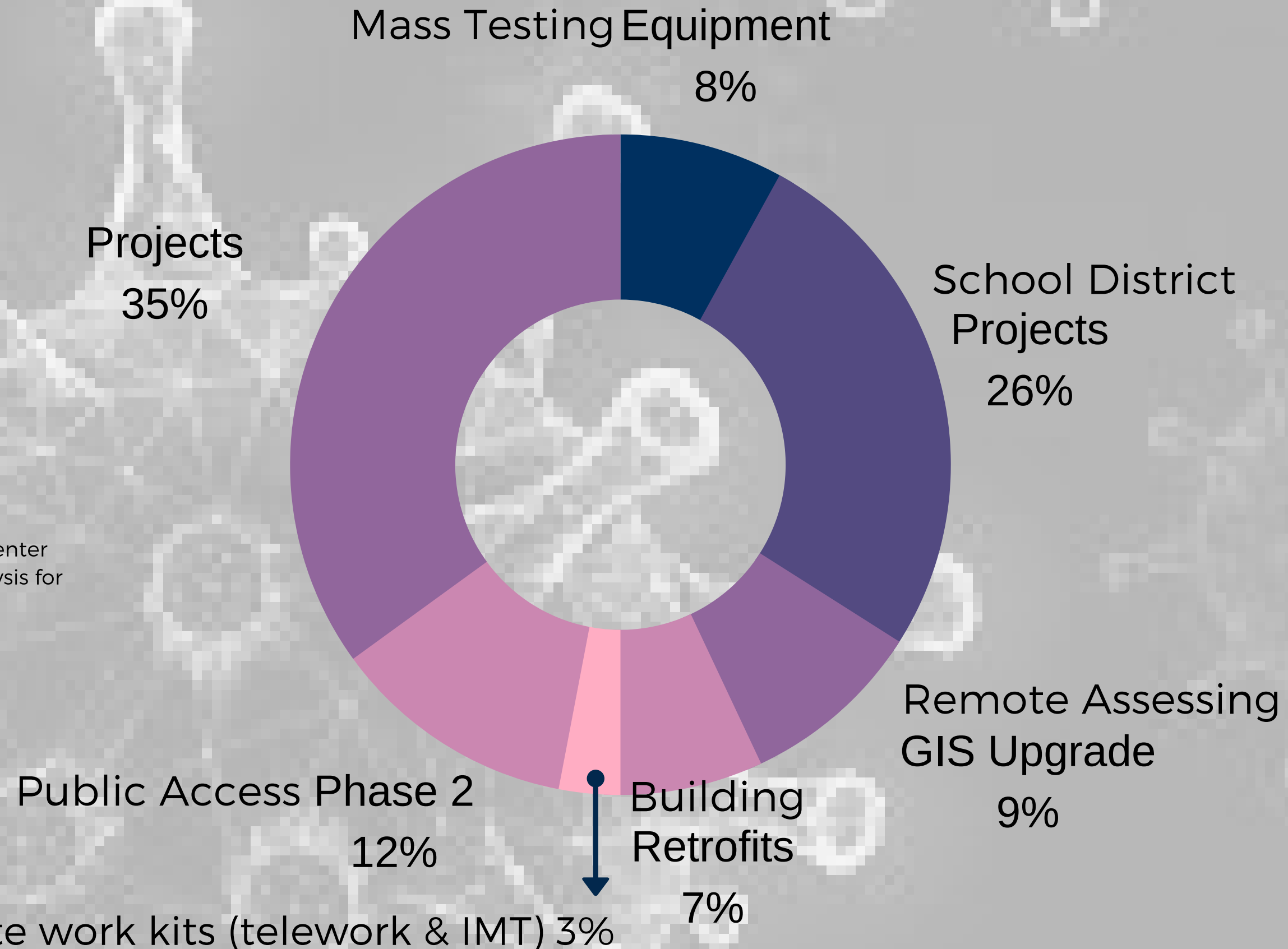
Public
Access
Phase 1
8%

Absentee Vote Campaign 2%
Hospitals 4%
Fund Reserve (~\$2M) 1%



Businesses/Nonprofits,
KPB Sales Tax Penalty Waivers,
and Volunteer Fire
Departments
70%

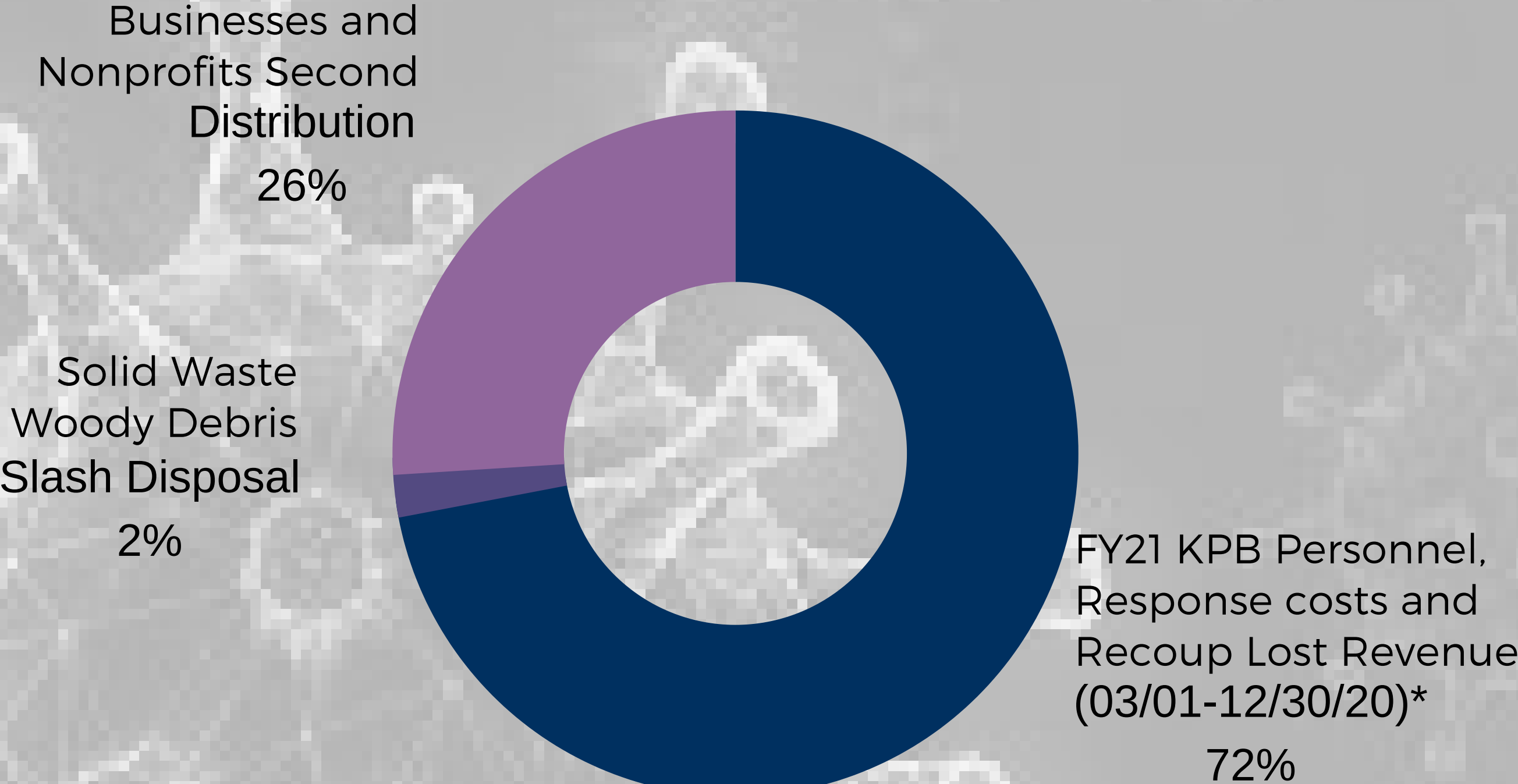
PAYMENT #2 = \$6,453,094 (80%)



Public Access Phase 2

- 9-1-1 Backup Dispatch Answering Center
- Communications Engineering Analysis for redundancy and emergency communications

PAYMENT #3 + 20% OF PAYMENT #2 = \$9,679,640



*Pending CARES Act amendment

BUSINESSES & NONPROFITS: Pre-award to Closeout



Eligibility and Verification

1. Sales Tax History, 990 and/or IRS Schedule C
2. KPB Compliance
3. Application (online option)
4. Certification & Self-attestation
5. Finance threshold verification
6. Grant Program Review
7. Payment Release



Award Thresholds

- \$20K - \$50K = up to \$1,500
- \$50K - \$100K = up to \$4,500
- \$100K - \$250K = up to \$11,250
- \$250K - \$500K = up to \$17,500
- >\$500K = up to \$28,000



Accountability and Closeout

1. Oversight and test awards
2. Issue grant agreements for large awards
3. Adhere to federal regulations
4. Adhere to KPB code and AK Statutes

PUBLIC TRUST: Project Tracking & Transparency

- ✓ **SharePoint - Common Operation Picture**
- ✓ **Informational Campaign**
- ✓ **Facebook Live/Call Center Event(s)**
- ✓ **GIS Dashboard - Life to Date Actions**
- ✓ **In-person Application Sites**
- ✓ **Communications w/ State Programs & Cities**

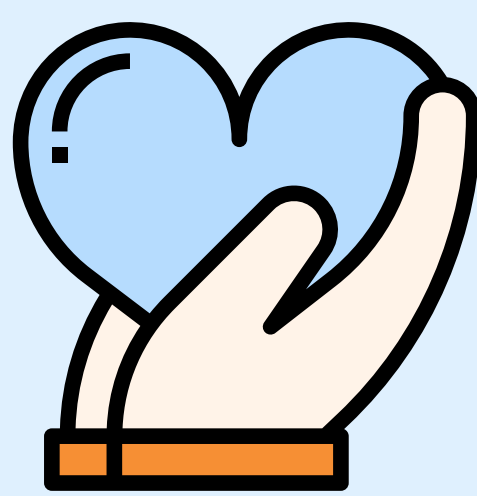
WHOLE TEAM: Project Engagement & Demobilization



POLICY MAKERS
and
ADMINISTRATION



DEPARTMENTS
DIVISIONS
and
SCHOOL
DISTRICT



SERVICE AREAS
First Responders
Hospitals
Recreation
Roads

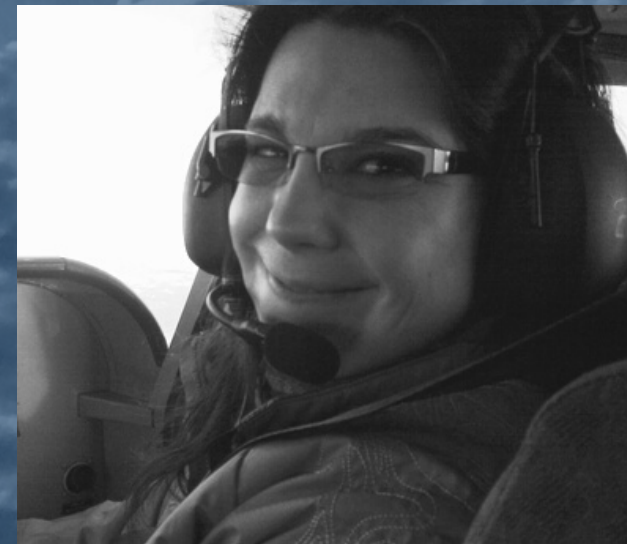


EMERGENCY
MANAGEMENT
and
DISPATCH
CENTER



CITIZENS
COMMUNITIES
CITIES
and
PARTNERS

Questions & Comments



BRENDA AHLBERG

Community & Fiscal Projects Manager

bahlberg@kpb.us

907-714-2153

Segments	Account Number	Revised Budget	LTD Actuals	Total Encumbered	Total Committed	Amount Remaining	Increase (decrease)	Proposed revised budget	New remaining funds
CAR01	GRANTS TO SMALL BUSINESS/NONPROFIT/SR CENTERS	15,000,000.47	10,686.66	2,325.90	13,012.56	14,986,987.91	(8,134,023.00)	6,865,977.47	6,852,964.91
CAR02	WAIVERS FOR SALES TAX PENALTIES Changed to SINGLE AUDIT FEES	25,000.00	0.00	0.00	0.00	25,000.00		25,000.00	25,000.00
CAR03	REIMB HOSPITAL COSTS	800,000.00	0.00	400,000.00	400,000.00	400,000.00		800,000.00	400,000.00
CAR04	VOLUNTEER FIRE & EMS	70,000.00	0.00	0.00	0.00	70,000.00	130,000.00	200,000.00	200,000.00
CAR05	FIRE & EMS SA PERSONNEL COSTS	2,800,000.00	1,736,609.87	0.00	1,736,609.87	1,063,390.13	236,609.87	3,036,609.87	1,300,000.00
CAR06	KPB EMERG RESPONSE-PPE-PERSONNEL	500,000.00	553,167.03	12,093.57	565,260.60	(65,260.60)	531,695.07	1,031,695.07	466,434.47
CAR07	ABSENTEE VOTE BY MAIL	600,000.00	0.00	0.00	0.00	600,000.00		600,000.00	600,000.00
CAR08	TECH-REMOTE MEETING INTEGRATION	80,000.00	1,378.54	0.00	1,378.54	78,621.46		80,000.00	78,621.46
CAR09	TECH-COMMUNICATIONS TOWER SITE DVLPMNT	2,000,000.00	0.00	0.00	0.00	2,000,000.00		2,000,000.00	2,000,000.00
CAR10	TECH-RETROFIT ASSEMBLY CHAMBERS	200,000.00	0.00	0.00	0.00	200,000.00		200,000.00	200,000.00
CAR11	KPBSD RESPONSE & PREPAREDNESS	1,700,000.00	1,563.22	5,250.00	6,813.22	1,693,186.78	(1,300,000.00)	400,000.00	393,186.78
CAR12	HOSPITAL TESTING EQUIPMENT	650,000.00	0.00	0.00	0.00	650,000.00		650,000.00	650,000.00
CAR13	RETROFIT KPB FACILITIES	500,000.00	9,223.39	664.84	9,888.23	490,111.77	1,831,695.06	2,331,695.06	2,321,806.83
CAR14	TECH-IMT REMOTE WORK-PC UPGRADES	67,000.00	0.00	39,329.76	39,329.76	27,670.24		67,000.00	27,670.24
CAR15	TECH-REMOTE WORK KITS FOR TELEWORK	116,000.00	15,015.91	5,234.64	20,250.55	95,749.45		116,000.00	95,749.45
CAR16	GIS UPDATE FOR REMOTE ASSESSMENT	600,000.00	0.00	0.00	0.00	600,000.00		600,000.00	600,000.00
CAR17	TECH-911 BACKUP DISPATCH ANSWERING CENTER	802,000.00	0.00	0.00	0.00	802,000.00	200,000.00	1,002,000.00	1,002,000.00
CAR18	TECH-COMMUNICATIONS ENGINEERING ANALYSIS	100,000.00	0.00	0.00	0.00	100,000.00		100,000.00	100,000.00
CAR19	GRANTS TO SMALL BUSINESS-2ND DISTRIBUTION	3,648,449.00	0.00	0.00	0.00	3,648,449.00	(1,630,000.00)	2,018,449.00	2,018,449.00
CAR20	SOLID WASTE DEBRIS/SLASH DISPOSAL FY21 KPB RESPONSE-PPE-PERSNL & RECOUP LOST	200,000.00	0.00	0.00	0.00	200,000.00		200,000.00	200,000.00
CAR21	REVENUE	7,000,000.00	0.00	0.00	0.00	7,000,000.00		7,000,000.00	7,000,000.00
CAR22	CITY ALLOCATION	0.00	0.00	0.00	0.00	0.00	8,134,023.00	8,134,023.00	8,134,023.00
Totals:		37,458,449.47	2,327,644.62	464,898.71	2,792,543.33	34,665,906.14	0.00	37,458,449.47	34,665,906.14
							37,458,449.47	TRUE	TRUE
							TRUE		

Count borough wide	Count outside the cities	Estimated Gross Revenues		Sales tax collected		Kenai Grant (Reference)	Borough grants		Borough High Range	
						<i>up to</i>	<i>bottom</i>	<i>Up to</i>	<i>bottom</i>	<i>Up to</i>
2,247	881	-	20,000.00	-	600.00	-	-	-	-	-
1,241	500	20,000.00	50,000.00	600.00	1,500.00	-	-	1,750.00	-	875,000.00
833	300	50,000.00	100,000.00	1,500.00	3,000.00	2,500.00	1,750.00	3,500.00	525,000.00	1,050,000.00
835	225	100,000.00	250,000.00	3,000.00	7,500.00	5,000.00	3,500.00	8,750.00	787,500.00	1,968,750.00
471	200	250,000.00	500,000.00	7,500.00	15,000.00	7,500.00	8,750.00	17,500.00	1,750,000.00	3,500,000.00
826	200	500,000.00	1,000,000.00	15,000.00	30,000.00	10,000.00	17,500.00	35,000.00	3,500,000.00	7,000,000.00
6,453	2,306	inside cities							6,562,500.00	14,393,750.00
	4,147									

Introduced by:	Mayor
Date:	09/01/20
Action:	Adopted
Vote:	7 Yes, 0 No, 2 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-057**

**A RESOLUTION AMENDING THE SPENDING PLAN APPROVED IN RESOLUTIONS
2020-047 AND 2020-056 FOR CARES ACT CORONAVIRUS RELIEF FUNDS
RECEIVED FROM THE STATE OF ALASKA**

WHEREAS, the Alaska State Legislature has provided funding to the Kenai Peninsula Borough through the Coronavirus Relief Fund (CRF), a pass-through program authorized by federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act); and

WHEREAS, Resolution 2020-047 approved the Coronavirus Relief Fund Spending Plan (“spending plan”) for the funding to the borough in the total amount of \$37,458,449.47 and Resolution 2020-056 approved numerous amendments to the spending plan; and

WHEREAS, the borough has received requests from Ninilchik Emergency Services, Inc. and the Seldovia Village Tribe Volunteer Fire Department for CRF to reimburse costs for emergency protective measures; and

WHEREAS, the amended plan includes a transfer of \$100,000 from CAR19, Grants To Small Businesses – 2nd Distribution, to CAR04, Volunteer Fire & EMS, to support volunteer fire and EMS departments’ response, protective and preparedness measures; and

WHEREAS, upon reviewing the approved city distribution plan approved by Resolution 2020-056 the administration recently determined that the amount allocated to the City of Homer should be corrected by transferring \$1,047,934 from CAR19, Grants To Small Businesses – 2nd Distribution to CAR 22, City Allocation and increasing Homer’s share by that amount; and

WHEREAS, KPB Ordinance 2019-19-39 accepted and appropriated the eligible costs for reimbursement effective March 1, 2020 through December 30, 2020; and

WHEREAS, it is in the borough’s best interest to approve the amended spending plan for the purpose of addressing the impacts of the coronavirus pandemic;

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

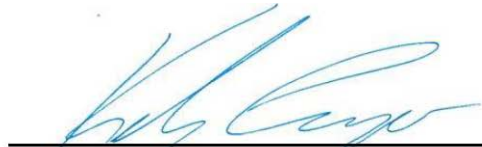
SECTION 1. That the assembly hereby approves the Coronavirus Relief Fund Spending Plan – Amended September 1, 2020, a copy of which is attached hereto and incorporated herein by reference.

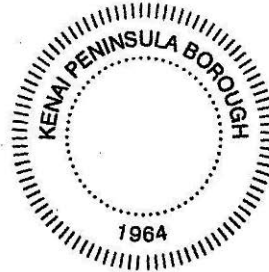
SECTION 2. That this resolution shall take effect retroactively on June 16, 2020.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 1ST DAY OF SEPTEMBER, 2020.

ATTEST:


John Blankenship, MMC, Borough Clerk


Kelly Cooper, Assembly President



Yes: Bjorkman, Carpenter, Cox, Dunne, Johnson, Smalley, Cooper
No: None
Absent: Blakeley, Hibbert



Kenai Peninsula Borough

CARES Act Coronavirus Relief Fund

Assembly Work Session Presentation ~ June 11, 2020 ~ 2:00 PM

Project Introduction: The Bullet Points

- \$ Fund uses and restrictions**
- \$ Payment Installments**
- \$ Application Process**
- \$ Transparency and Public Engagement**
- \$ Program Demobilization**

CARES Act: Coronavirus Relief Fund

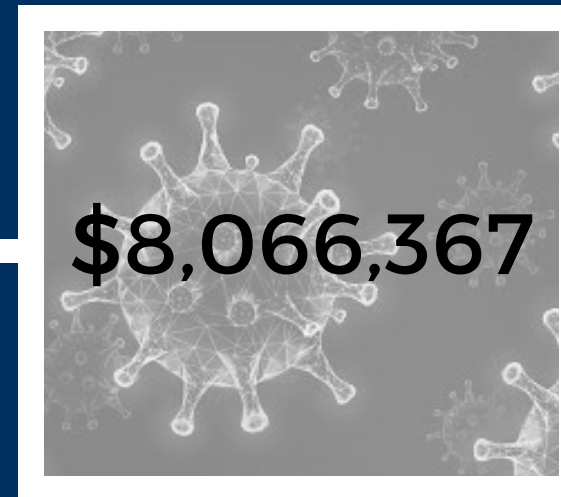
- 💰 Social Security Act, Section 601**
- 💰 OMB Unified Guidance 2 CFR 200**
- 💰 Borough Code of Ordinances**
- 💰 Alaska State Statutes**

Relief Fund Payments & Proposed Spending Plan



PAYMENT #1

- Businesses/Nonprofits
- Sales tax waivers
- Hospital Protective Measures
- Volunteer Fire Departments
- KPB Fire & EMS, Response, and Personnel costs
- Absentee Vote-by-Mail
- Public Access through Technology - Phase 1



PAYMENT #2

- School District Projects
- Mass Testing Equipment
- Building Retrofits
- IMT & Telework Remote Work Kits/Upgrades
- GIS Upgrades for Remote Assessments
- Public Access through Technology - Phase 2



PAYMENT #3

- Second Distribution to Businesses/Nonprofits
- Solid Waste Disposal Sites
- FY21 KPB personnel, response, recovery costs
- Lost Revenue*

PAYMENT #1 = \$21,325,715

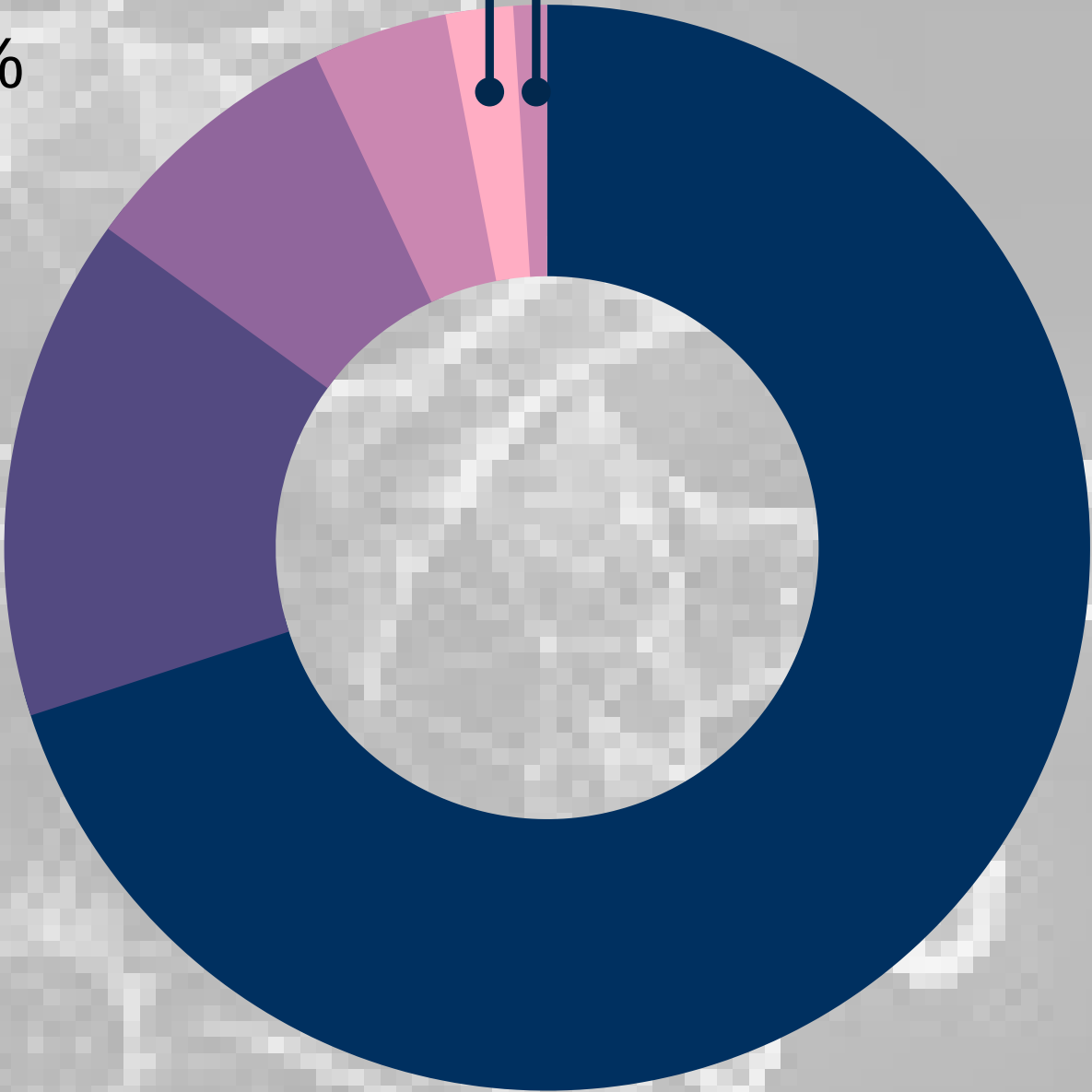
Public Access through Technology Phase 1

- Remote meeting integration in chambers, remote site public meeting hard/software
- Retrofit Chambers - physical distancing
- Improved public access to internet, i.e. towers and communication infrastructure grants.

KPB Departments,
Service Areas response,
supplies, and personnel
Costs (06/30/20)
15%

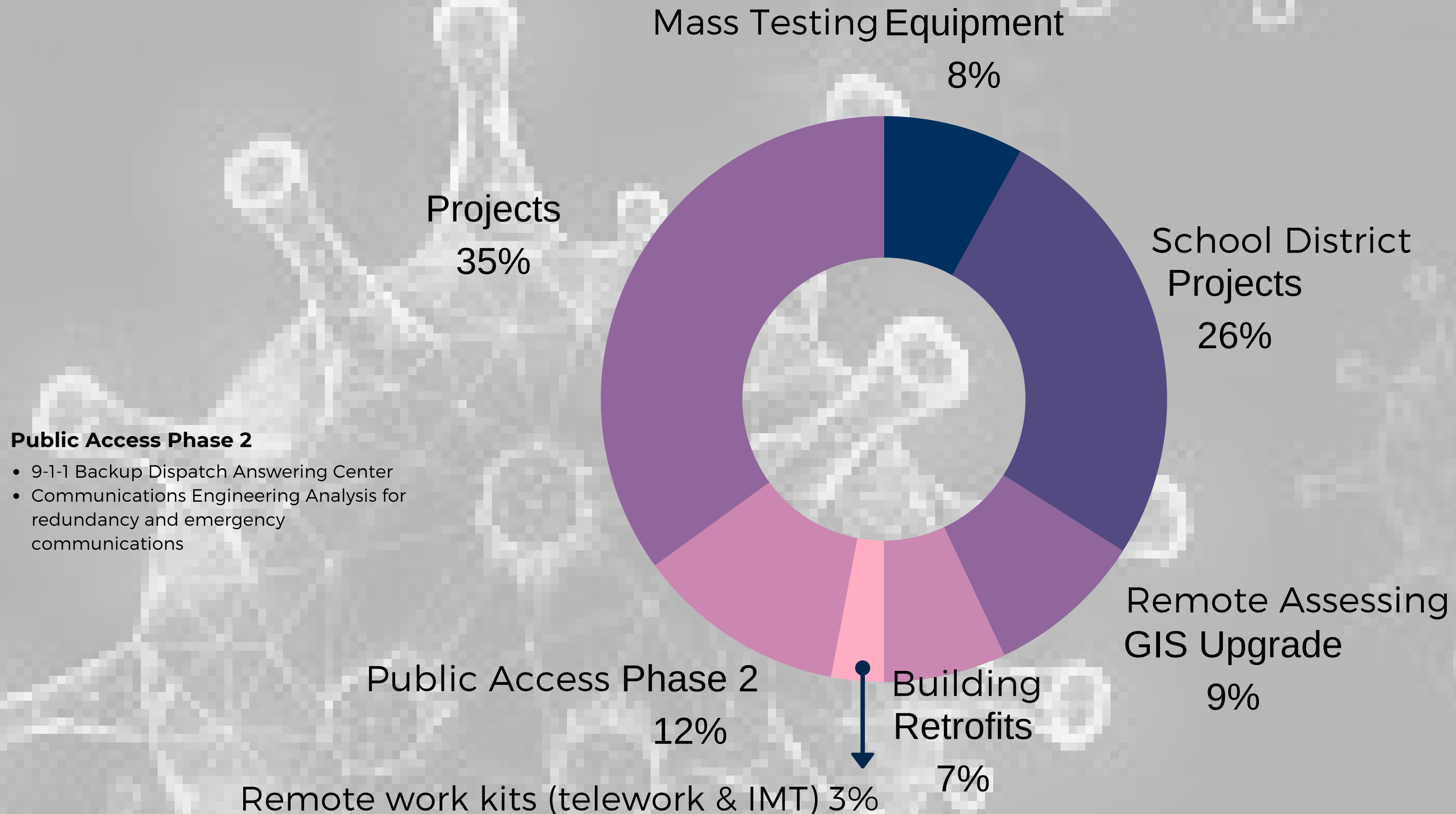
Public
Access
Phase 1
8%

Absentee Vote Campaign 2%
Hospitals 4%
Fund Reserve (~\$2M) 1%

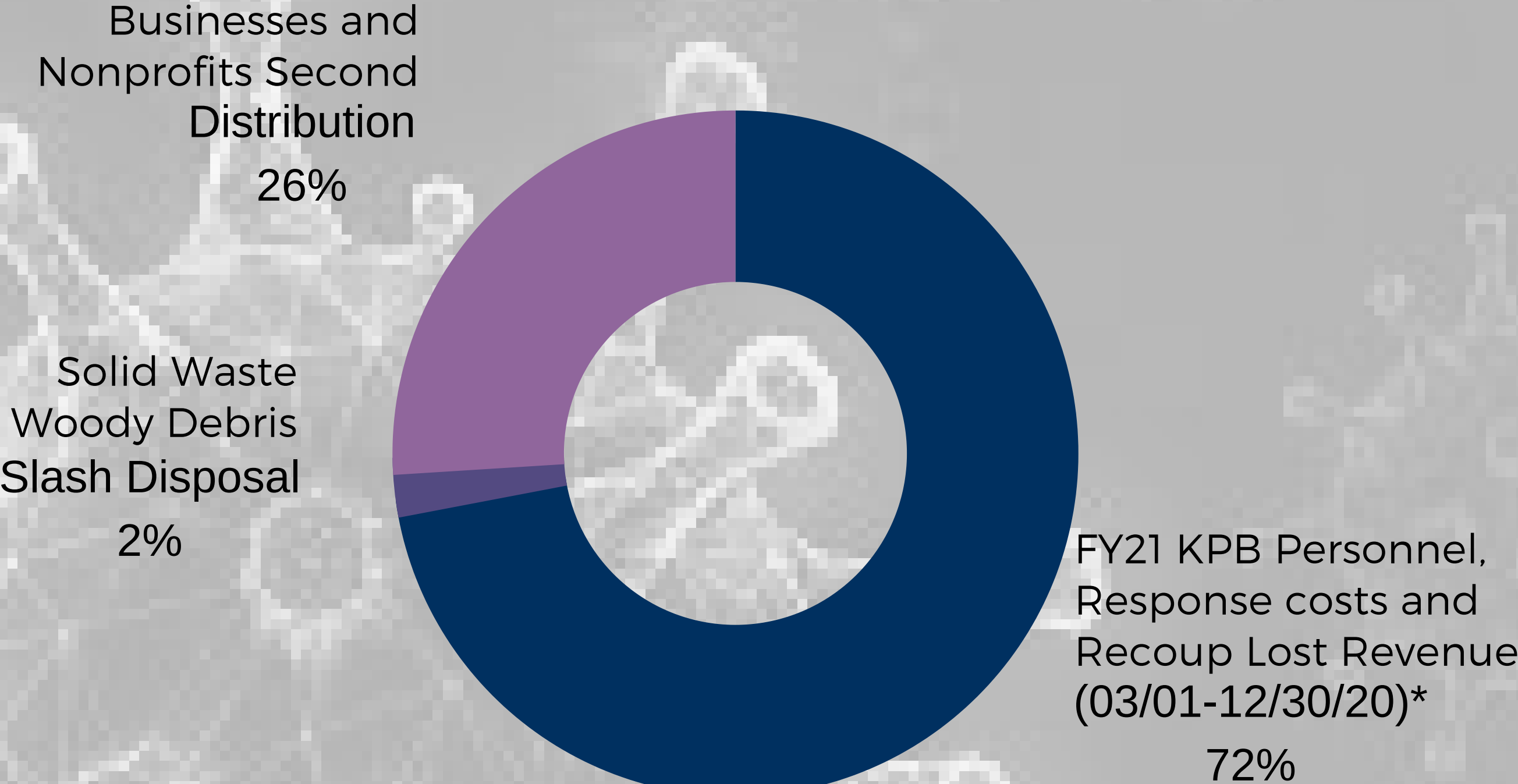


Businesses/Nonprofits,
KPB Sales Tax Penalty Waivers,
and Volunteer Fire
Departments
70%

PAYMENT #2 = \$6,453,094 (80%)



PAYMENT #3 + 20% OF PAYMENT #2 = \$9,679,640



*Pending CARES Act amendment

BUSINESSES & NONPROFITS: Pre-award to Closeout



Eligibility and Verification

1. Sales Tax History, 990 and/or IRS Schedule C
2. KPB Compliance
3. Application (online option)
4. Certification & Self-attestation
5. Finance threshold verification
6. Grant Program Review
7. Payment Release



Award Thresholds

- \$20K - \$50K = up to \$1,500
- \$50K - \$100K = up to \$4,500
- \$100K - \$250K = up to \$11,250
- \$250K - \$500K = up to \$17,500
- >\$500K = up to \$28,000



Accountability and Closeout

1. Oversight and test awards
2. Issue grant agreements for large awards
3. Adhere to federal regulations
4. Adhere to KPB code and AK Statutes

PUBLIC TRUST: Project Tracking & Transparency

- ✓ **SharePoint - Common Operation Picture**
- ✓ **Informational Campaign**
- ✓ **Facebook Live/Call Center Event(s)**
- ✓ **GIS Dashboard - Life to Date Actions**
- ✓ **In-person Application Sites**
- ✓ **Communications w/ State Programs & Cities**

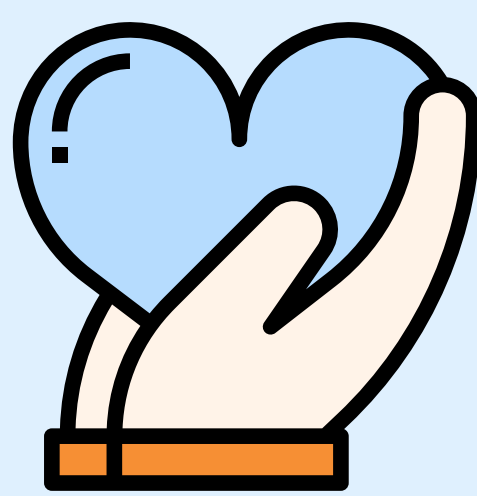
WHOLE TEAM: Project Engagement & Demobilization



POLICY MAKERS
and
ADMINISTRATION



DEPARTMENTS
DIVISIONS
and
SCHOOL
DISTRICT



SERVICE AREAS
First Responders
Hospitals
Recreation
Roads

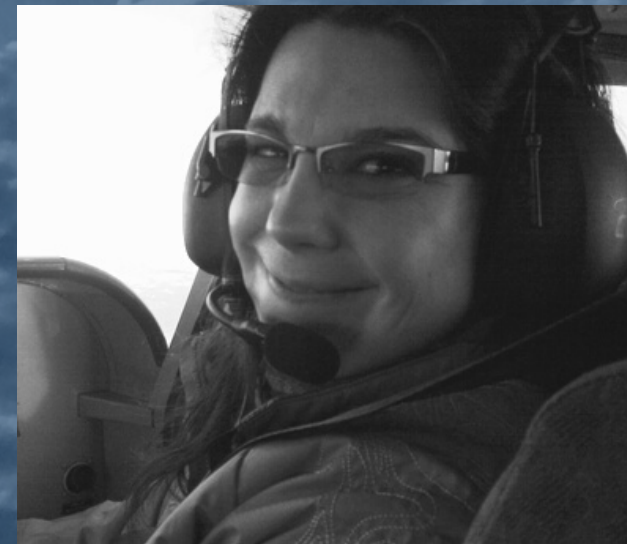


EMERGENCY
MANAGEMENT
and
DISPATCH
CENTER



CITIZENS
COMMUNITIES
CITIES
and
PARTNERS

Questions & Comments



BRENDA AHLBERG

Community & Fiscal Projects Manager

bahlberg@kpb.us

907-714-2153

Segments	Account Number	Revised Budget	LTD Actuals	Total Encumbered	Total Committed	Amount Remaining	Increase (decrease)	Proposed revised budget	New remaining funds
CAR01	GRANTS TO SMALL BUSINESS/NONPROFIT/SR CENTERS	6,865,977.47	10,686.66	2,325.90	13,012.56	6,852,964.91		6,865,977.47	6,852,964.91
CAR02	SINGLE AUDIT FEES	25,000.00	0.00	0.00	0.00	25,000.00		25,000.00	25,000.00
CAR03	REIMB HOSPITAL COSTS	800,000.00	0.00	400,000.00	400,000.00	400,000.00		800,000.00	400,000.00
CAR04	VOLUNTEER FIRE & EMS	200,000.00	0.00	0.00	0.00	200,000.00	100,000.00	300,000.00	300,000.00
CAR05	FIRE & EMS SA PERSONNEL COSTS	3,036,609.87	1,736,609.87	0.00	1,736,609.87	1,300,000.00		3,036,609.87	1,300,000.00
CAR06	KPB EMERG RESPONSE-PPE-PERSONNEL	1,031,695.07	553,167.03	12,093.57	565,260.60	466,434.47		1,031,695.07	466,434.47
CAR07	ABSENTEE VOTE BY MAIL	600,000.00	0.00	0.00	0.00	600,000.00		600,000.00	600,000.00
CAR08	TECH-REMOTE MEETING INTEGRATION	80,000.00	1,378.54	0.00	1,378.54	78,621.46		80,000.00	78,621.46
CAR09	TECH-COMMUNICATIONS TOWER SITE DVLPMNT	2,000,000.00	0.00	0.00	0.00	2,000,000.00		2,000,000.00	2,000,000.00
CAR10	TECH-RETROFIT ASSEMBLY CHAMBERS	200,000.00	0.00	0.00	0.00	200,000.00		200,000.00	200,000.00
CAR11	KPBSD RESPONSE & PREPAREDNESS	400,000.00	1,563.22	5,250.00	6,813.22	393,186.78		400,000.00	393,186.78
CAR12	HOSPITAL TESTING EQUIPMENT	650,000.00	0.00	0.00	0.00	650,000.00		650,000.00	650,000.00
CAR13	RETROFIT KPB FACILITIES	2,331,695.06	9,223.39	664.84	9,888.23	2,321,806.83		2,331,695.06	2,321,806.83
CAR14	TECH-IMT REMOTE WORK-PC UPGRADES	67,000.00	0.00	39,329.76	39,329.76	27,670.24		67,000.00	27,670.24
CAR15	TECH-REMOTE WORK KITS FOR TELEWORK	116,000.00	15,015.91	5,234.64	20,250.55	95,749.45		116,000.00	95,749.45
CAR16	GIS UPDATE FOR REMOTE ASSESSMENT	600,000.00	0.00	0.00	0.00	600,000.00		600,000.00	600,000.00
CAR17	TECH-911 BACKUP DISPATCH ANSWERING CENTER	1,002,000.00	0.00	0.00	0.00	1,002,000.00		1,002,000.00	1,002,000.00
CAR18	TECH-COMMUNICATIONS ENGINEERING ANALYSIS	100,000.00	0.00	0.00	0.00	100,000.00		100,000.00	100,000.00
CAR19	GRANTS TO SMALL BUSINESS-2ND DISTRIBUTION/CONTENGECY	2,018,449.00	0.00	0.00	0.00	2,018,449.00	(1,147,934.00)	870,515.00	870,515.00
CAR20	SOLID WASTE DEBRIS/SLASH DISPOSAL	200,000.00	0.00	0.00	0.00	200,000.00		200,000.00	200,000.00
CAR21	FY21 KPB RESPONSE-PPE-PERSNL & RECOUP LOST REVENUE	7,000,000.00	0.00	0.00	0.00	7,000,000.00		7,000,000.00	7,000,000.00
CAR22	CITY ALLOCATION	8,134,023.00	0.00	0.00	0.00	8,134,023.00	1,047,934.00	9,181,957.00	9,181,957.00
Totals:		37,458,449.47	2,327,644.62	464,898.71	2,792,543.33	34,665,906.14	0.00	37,458,449.47	34,665,906.14
							37,458,449.47 TRUE	TRUE	TRUE

Count borough wide	Count outside the cities	Estimated Gross Revenues		Sales tax collected		Kenai Grant (Reference)	Borough grants		Borough High Range	
						<i>up to</i>	<i>bottom</i>	<i>Up to</i>	<i>bottom</i>	<i>Up to</i>
2,247	881	-	20,000.00	-	600.00	-	-	-	-	-
1,241	500	20,000.00	50,000.00	600.00	1,500.00	-	-	1,750.00	-	875,000.00
833	300	50,000.00	100,000.00	1,500.00	3,000.00	2,500.00	1,750.00	3,500.00	525,000.00	1,050,000.00
835	225	100,000.00	250,000.00	3,000.00	7,500.00	5,000.00	3,500.00	8,750.00	787,500.00	1,968,750.00
471	200	250,000.00	500,000.00	7,500.00	15,000.00	7,500.00	8,750.00	17,500.00	1,750,000.00	3,500,000.00
826	200	500,000.00	1,000,000.00	15,000.00	30,000.00	10,000.00	17,500.00	35,000.00	3,500,000.00	7,000,000.00
6,453	2,306								6,562,500.00	14,393,750.00
	4,147	inside cities								

Introduced by:	Mayor
Date:	09/15/20
Action:	Adopted
Vote:	6 Yes, 0 No, 1 Absent, 2 Abstained

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-069**

**A RESOLUTION AMENDING THE SPENDING PLAN APPROVED IN RESOLUTIONS
2020-047, 2020-056 AND 2020-057 FOR CARES ACT CORONAVIRUS RELIEF FUNDS
RECEIVED FROM THE STATE OF ALASKA**

WHEREAS, the Alaska State Legislature has provided funding to the Kenai Peninsula Borough through the Coronavirus Relief Fund (CRF), a pass-through program authorized by federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act); and

WHEREAS, Resolution 2020-047 approved the Coronavirus Relief Fund Spending Plan (“spending plan”) for the funding to the borough in the total amount of \$37,458,449.47 and Resolutions 2020-056 and 2020-057 approved numerous amendments to the spending plan to meet project developments; and

WHEREAS, the amended plan includes a transfer of \$650,000 from CAR12 and a transfer of \$250,000 from CAR11 to support the air purification systems to be installed in borough and school facilities under CAR13 “Retrofits to KPB Facilities” project; and

WHEREAS, the amended plan includes a transfer of \$20,000 from CAR21 to support the CAR08 “Tech-Remote Meeting Integration” project; and

WHEREAS, the amended plan includes a transfer of \$465,013 from CAR21 to support the CAR10 “Tech-Retrofit Assembly Chambers” project; and

WHEREAS, KPB Ordinance 19-19-39 accepted and appropriated the eligible costs for reimbursement effective March 1, 2020 through December 30, 2020; and

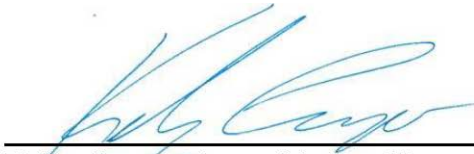
WHEREAS, it is in the borough’s best interest to approve the amended spending plan for the purpose of addressing the impacts of the coronavirus pandemic;

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

SECTION 1. That the assembly hereby approves the Coronavirus Relief Fund Spending Plan – Amended September 15, 2020, a copy of which is attached hereto and incorporated herein by reference.

SECTION 2. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 15TH DAY OF SEPTEMBER, 2020.

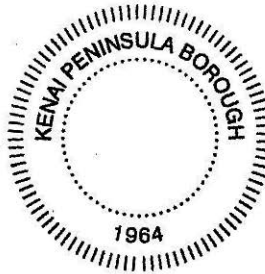


Kelly Cooper, Assembly President

ATTEST:



John Blankenship, MMC, Borough Clerk



Yes: Blakeley, Carpenter, Dunne, Hibbert, Johnson, Smalley, Cooper
No: None
Absent: Blakeley
Abstained: Bjorkman, Cox



Kenai Peninsula Borough

CARES Act Coronavirus Relief Fund

Assembly Work Session Presentation ~ June 11, 2020 ~ 2:00 PM

Project Introduction: The Bullet Points

- \$ Fund uses and restrictions**
- \$ Payment Installments**
- \$ Application Process**
- \$ Transparency and Public Engagement**
- \$ Program Demobilization**

CARES Act: Coronavirus Relief Fund

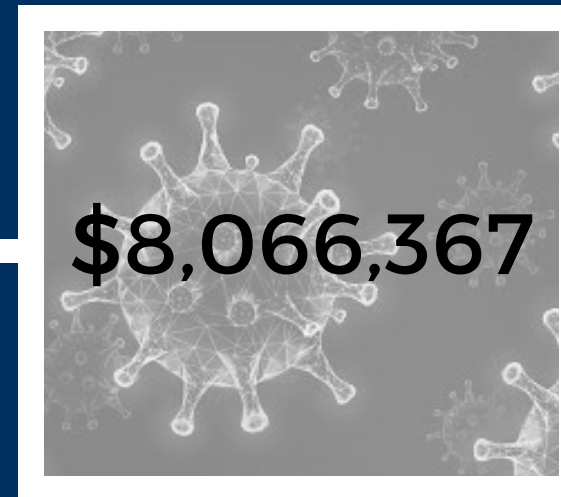
- 💰 Social Security Act, Section 601**
- 💰 OMB Unified Guidance 2 CFR 200**
- 💰 Borough Code of Ordinances**
- 💰 Alaska State Statutes**

Relief Fund Payments & Proposed Spending Plan



PAYMENT #1

- Businesses/Nonprofits
- Sales tax waivers
- Hospital Protective Measures
- Volunteer Fire Departments
- KPB Fire & EMS, Response, and Personnel costs
- Absentee Vote-by-Mail
- Public Access through Technology - Phase 1



PAYMENT #2

- School District Projects
- Mass Testing Equipment
- Building Retrofits
- IMT & Telework Remote Work Kits/Upgrades
- GIS Upgrades for Remote Assessments
- Public Access through Technology - Phase 2



PAYMENT #3

- Second Distribution to Businesses/Nonprofits
- Solid Waste Disposal Sites
- FY21 KPB personnel, response, recovery costs
- Lost Revenue*

PAYMENT #1 = \$21,325,715

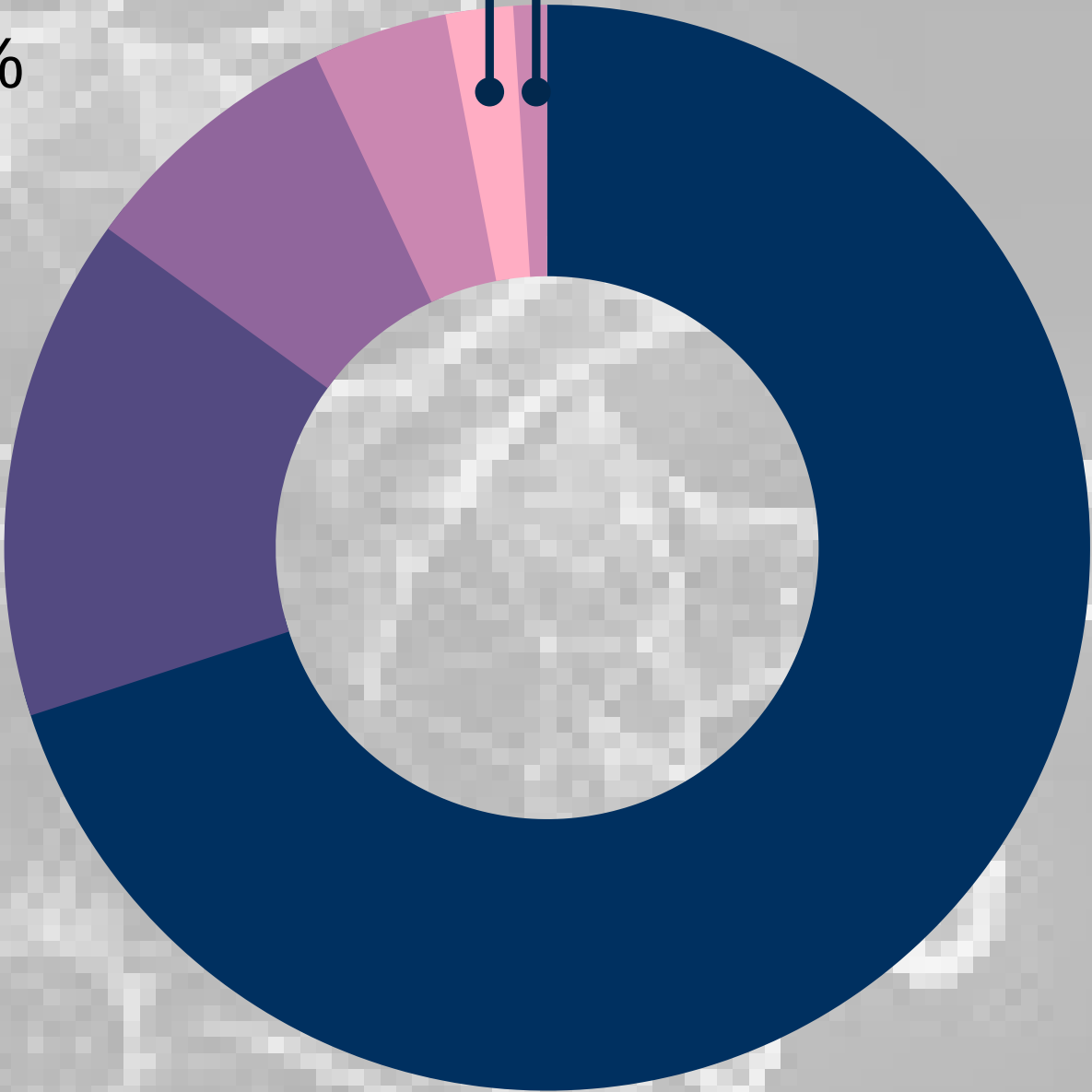
Public Access through Technology Phase 1

- Remote meeting integration in chambers, remote site public meeting hard/software
- Retrofit Chambers - physical distancing
- Improved public access to internet, i.e. towers and communication infrastructure grants.

KPB Departments,
Service Areas response,
supplies, and personnel
Costs (06/30/20)
15%

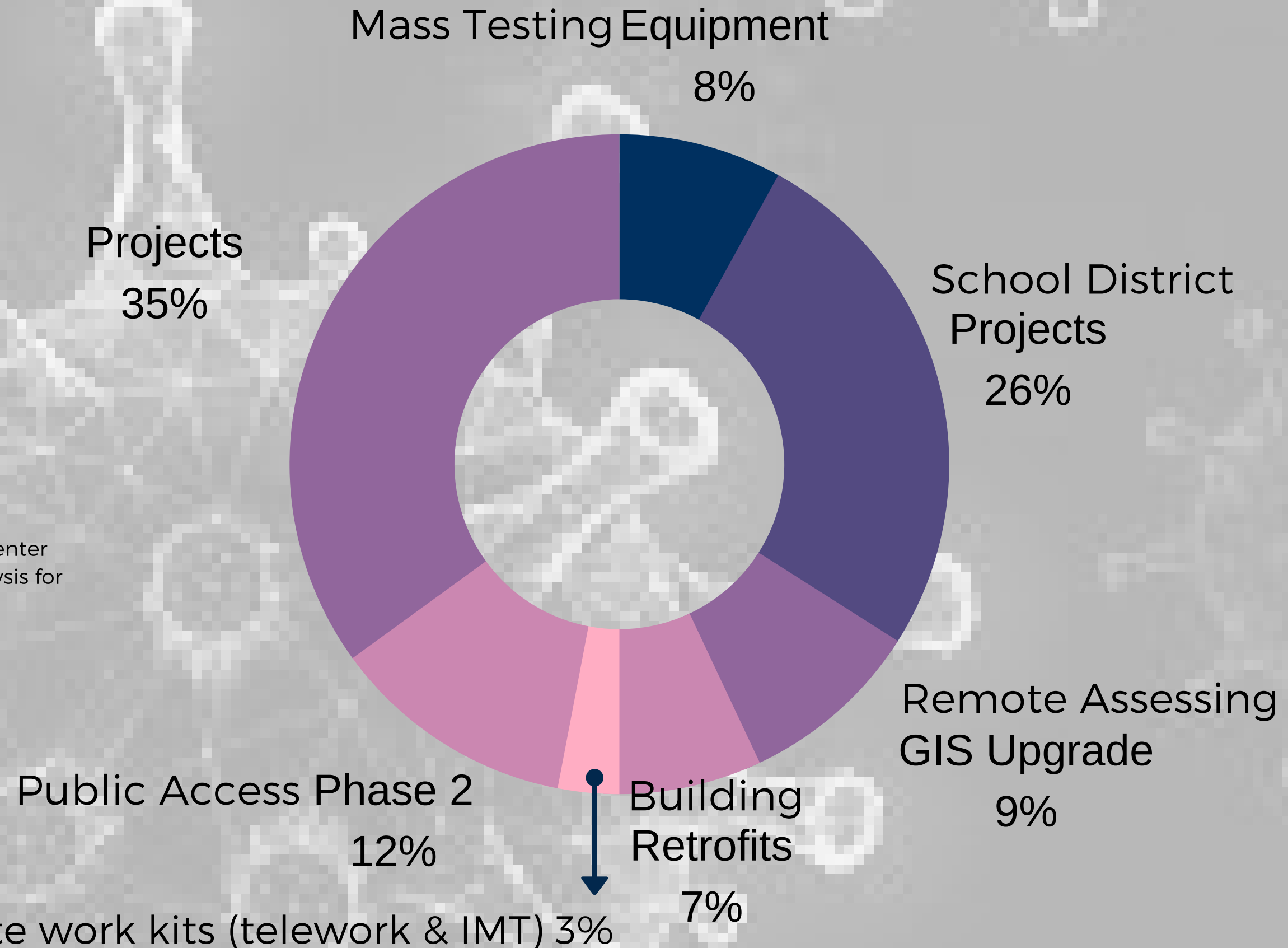
Public
Access
Phase 1
8%

Absentee Vote Campaign 2%
Hospitals 4%
Fund Reserve (~\$2M) 1%



Businesses/Nonprofits,
KPB Sales Tax Penalty Waivers,
and Volunteer Fire
Departments
70%

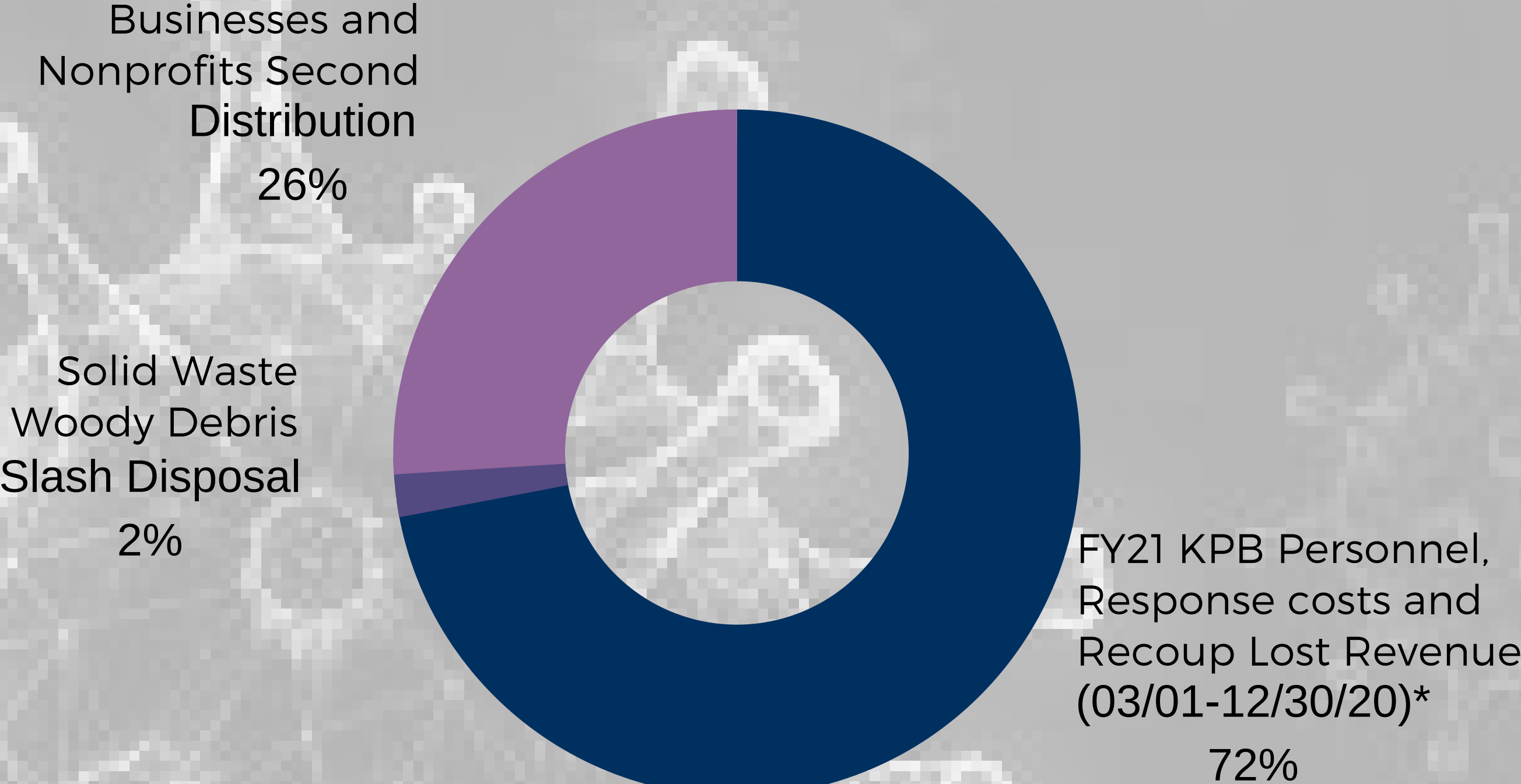
PAYMENT #2 = \$6,453,094 (80%)



Public Access Phase 2

- 9-1-1 Backup Dispatch Answering Center
- Communications Engineering Analysis for redundancy and emergency communications

PAYMENT #3 + 20% OF PAYMENT #2 = \$9,679,640



*Pending CARES Act amendment

BUSINESSES & NONPROFITS: Pre-award to Closeout



Eligibility and Verification

1. Sales Tax History, 990 and/or IRS Schedule C
2. KPB Compliance
3. Application (online option)
4. Certification & Self-attestation
5. Finance threshold verification
6. Grant Program Review
7. Payment Release



Award Thresholds

- \$20K - \$50K = up to \$1,500
- \$50K - \$100K = up to \$4,500
- \$100K - \$250K = up to \$11,250
- \$250K - \$500K = up to \$17,500
- >\$500K = up to \$28,000



Accountability and Closeout

1. Oversight and test awards
2. Issue grant agreements for large awards
3. Adhere to federal regulations
4. Adhere to KPB code and AK Statutes

PUBLIC TRUST: Project Tracking & Transparency

- ✓ **SharePoint - Common Operation Picture**
- ✓ **Informational Campaign**
- ✓ **Facebook Live/Call Center Event(s)**
- ✓ **GIS Dashboard - Life to Date Actions**
- ✓ **In-person Application Sites**
- ✓ **Communications w/ State Programs & Cities**

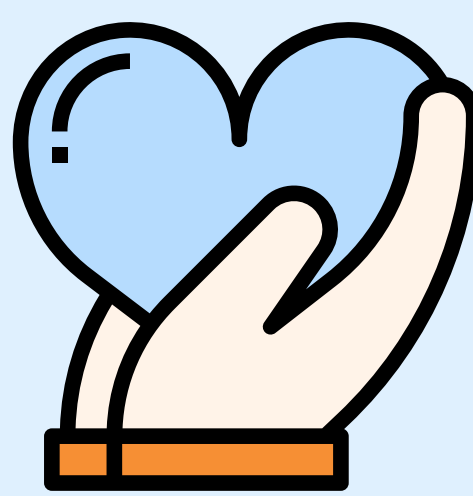
WHOLE TEAM: Project Engagement & Demobilization



POLICY MAKERS
and
ADMINISTRATION



DEPARTMENTS
DIVISIONS
and
SCHOOL
DISTRICT



SERVICE AREAS
First Responders
Hospitals
Recreation
Roads

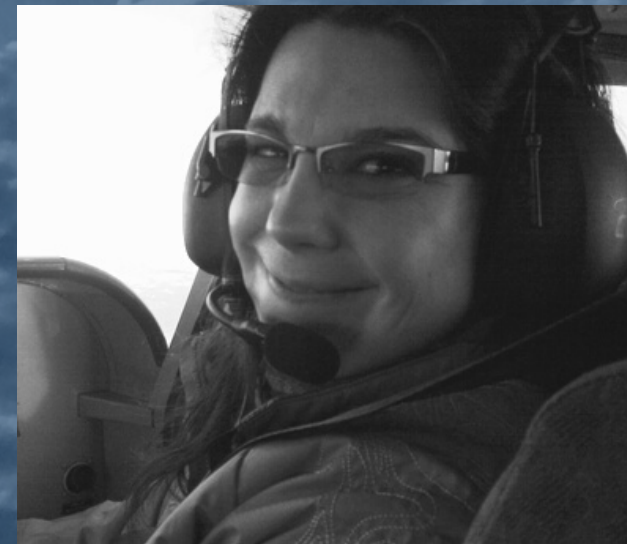


EMERGENCY
MANAGEMENT
and
DISPATCH
CENTER



CITIZENS
COMMUNITIES
CITIES
and
PARTNERS

Questions & Comments



BRENDA AHLBERG

Community & Fiscal Projects Manager

bahlberg@kpb.us

907-714-2153

Segments	Account Number	Original Budget (7/11/20)	Amendments (8/11/20)	Revised Budget (08/11/20)	Proposed amendments (9/1/20) Increase (decrease)	Proposed revised budget (9/1/20)	Additional amendments proposed via Laydown (9/1/20)	Proposed revised budget after laydown (9/1/20)	Amendments proposed via Laydown (9/15/20)	Proposed revised budget after laydown (9/15/20)
CAR01	GRANTS TO SMALL BUSINESS/NONPROFIT/SR CENTERS	15,000,000.47	(8,134,023.00)	6,865,977.47	-	6,865,977.47	200,000.00	7,065,977.47	-	7,065,977.47
CAR02	SINGLE AUDIT FEES	25,000.00	-	25,000.00	-	25,000.00	-	25,000.00	-	25,000.00
CAR03	REIMB HOSPITAL COSTS	800,000.00	-	800,000.00	-	800,000.00	-	800,000.00	-	800,000.00
CAR04	VOLUNTEER FIRE & EMS	70,000.00	130,000.00	200,000.00	100,000.00	300,000.00	-	300,000.00	-	300,000.00
CAR05	FIRE & EMS SA PERSONNEL COSTS	2,800,000.00	236,609.87	3,036,609.87	-	3,036,609.87	(200,000.00)	2,836,609.87	-	2,836,609.87
CAR06	KPB EMERG RESPONSE-PPE-PERSONNEL	500,000.00	531,695.07	1,031,695.07	-	1,031,695.07	-	1,031,695.07	-	1,031,695.07
CAR07	ABSENTEE VOTE BY MAIL	600,000.00	-	600,000.00	-	600,000.00	-	600,000.00	-	600,000.00
CAR08	TECH-REMOTE MEETING INTEGRATION	80,000.00	-	80,000.00	-	80,000.00	-	80,000.00	20,000.00	100,000.00
CAR09	TECH-COMMUNICATIONS TOWER SITE DVLPMNT	2,000,000.00	-	2,000,000.00	-	2,000,000.00	-	2,000,000.00	-	2,000,000.00
CAR10	TECH-RETROFIT ASSEMBLY CHAMBERS	200,000.00	-	200,000.00	-	200,000.00	-	200,000.00	465,013.00	665,013.00
CAR11	KPBSD RESPONSE & PREPAREDNESS	1,700,000.00	(1,300,000.00)	400,000.00	-	400,000.00	-	400,000.00	(250,000.00)	150,000.00
(1) CAR12	HOSPITAL TESTING EQUIPMENT	650,000.00	-	650,000.00	-	650,000.00	-	650,000.00	(650,000.00)	-
(1) CAR13	RETROFIT KPB FACILITIES	500,000.00	1,831,695.06	2,331,695.06	-	2,331,695.06	-	2,331,695.06	900,000.00	3,231,695.06
CAR14	TECH-IMT REMOTE WORK-PC UPGRADES	67,000.00	-	67,000.00	-	67,000.00	-	67,000.00	-	67,000.00
CAR15	TECH-REMOTE WORK KITS FOR TELEWORK	116,000.00	-	116,000.00	-	116,000.00	-	116,000.00	-	116,000.00
CAR16	GIS UPDATE FOR REMOTE ASSESSMENT	600,000.00	-	600,000.00	-	600,000.00	(200,000.00)	400,000.00	-	400,000.00
CAR17	TECH-911 BACKUP DISPATCH ANSWERING CENTER	802,000.00	200,000.00	1,002,000.00	-	1,002,000.00	-	1,002,000.00	-	1,002,000.00
CAR18	TECH-COMMUNICATIONS ENGINEERING ANALYSIS	100,000.00	-	100,000.00	-	100,000.00	-	100,000.00	-	100,000.00
CAR19	GRANTS TO SMALL BUSINESS-2ND DISTRIBUTION/CONTENGENCY	3,648,449.00	(1,630,000.00)	2,018,449.00	(1,147,934.00)	870,515.00	1,700,000.00	2,570,515.00	-	2,570,515.00
CAR20	SOLID WASTE DEBRIS/SLASH DISPOSAL	200,000.00	-	200,000.00	-	200,000.00	-	200,000.00	-	200,000.00
CAR21	FY21 KPB RESPONSE-PPE-PERSNL & RECOUP LOST REVENUE	7,000,000.00	-	7,000,000.00	-	7,000,000.00	(1,500,000.00)	5,500,000.00	(485,013.00)	5,014,987.00
CAR22	CITY ALLOCATION	-	8,134,023.00	8,134,023.00	1,047,934.00	9,181,957.00	-	9,181,957.00	-	9,181,957.00
Totals:		37,458,449.47	-	37,458,449.47	-	37,458,449.47	-	37,458,449.47	-	37,458,449.47
					37,458,449.47	TRUE	37,458,449.47	TRUE	37,458,449.47	TRUE
					TRUE		TRUE		TRUE	

(1) Transferring \$650,000 from CAR12 Hospital Testing Equipment to CAR13 retrofit KPB Facilities to provide funds for air purification systems.

(2) Transferring \$250,000 from CAR11 to CAR13 retrofit KPB Facilities to provide funds for air purification systems.

(3) Transferring \$485,013 from CAR21 to CAR10 and CAR08 to fund the additional costs of the retrofit Assembly Chambers and remote meeting integration.

Count borough wide	Count outside the cities	Estimated Gross Revenues		Sales tax collected		Kenai Grant (Reference)	Borough grants		Borough High Range	
						<i>up to</i>	<i>bottom</i>	<i>Up to</i>	<i>bottom</i>	<i>Up to</i>
2,247	881	-	20,000.00	-	600.00	-	-	-	-	-
1,241	500	20,000.00	50,000.00	600.00	1,500.00	-	-	1,750.00	-	875,000.00
833	300	50,000.00	100,000.00	1,500.00	3,000.00	2,500.00	1,750.00	3,500.00	525,000.00	1,050,000.00
835	225	100,000.00	250,000.00	3,000.00	7,500.00	5,000.00	3,500.00	8,750.00	787,500.00	1,968,750.00
471	200	250,000.00	500,000.00	7,500.00	15,000.00	7,500.00	8,750.00	17,500.00	1,750,000.00	3,500,000.00
826	200	500,000.00	1,000,000.00	15,000.00	30,000.00	10,000.00	17,500.00	35,000.00	3,500,000.00	7,000,000.00
6,453	2,306								6,562,500.00	14,393,750.00
	4,147	inside cities								

Introduced by:	Mayor, Cox, Smalley
Date:	10/13/20
Action:	Adopted
Vote:	7 Yes, 0 No, 0 Absent, 2 Abstained

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-070**

**A RESOLUTION AMENDING THE SPENDING PLAN FOR CARES ACT
CORONAVIRUS RELIEF FUNDS RECEIVED FROM THE STATE OF ALASKA, AND
AUTHORIZING THE MAYOR TO ENTER INTO GRANT OR OTHER AGREEMENTS
WITH ALASKA HOUSING FINANCE CORPORATION TO ADMINISTER A
HOUSING RELIEF PROGRAM**

- WHEREAS,** the Alaska State Legislature has provided funding to the Kenai Peninsula Borough through the Coronavirus Relief Fund (CRF), a pass-through program authorized by federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act); and
- WHEREAS,** Resolution 2020-047 approved the Coronavirus Relief Fund Spending Plan (“spending plan”) for the funding to the borough in the total amount of \$37,458,449.47 and Resolutions 2020-056, 2020-057, and 2020-069 approved numerous amendments to the spending plan to meet project developments; and
- WHEREAS,** the amended plan transfers \$2,000,000 from CAR21 which will be the “up to” amount available to provide individual housing grants for mortgage and rent relief to qualifying borough residents in the areas outside of the cities who are experiencing economic hardship due to the COVID-19 public health emergency and to assist non-profit organizations that have organized homeless programs; and
- WHEREAS,** the individual grant housing relief program will be administered by the Alaska Housing Finance Corporation (AHFC) at no cost to the borough; and
- WHEREAS,** the AHFC will develop the website, application portal, and provide for a verification process without charging an administrative fee; and
- WHEREAS,** this program will largely mirror the criteria and programs that the cities of Kenai, Soldotna, and the City of Kachemak have partnered with the AHFC to administer; and
- WHEREAS,** the AHFC administered the Alaska Housing Relief Program earlier this summer, which provided up to \$1,200 for each eligible household to assist with housing costs for the period of September 1, 2020 to December 30, 2020, payable directly to their lender or landlord; and

WHEREAS, there is a community need for additional housing support which may only continue to grow as this health emergency extends into the winter; and

WHEREAS, AHFC will administer the housing relief program for the area outside the cities via a sub-recipient grant agreement and using CARES Act CRF funds granted to the borough; and

WHEREAS, the use of these funds for this purpose follows CARES Act CRF requirements as interpreted by the US Department of the Treasury's guidance for local governments, which allows for necessary expenditures incurred due to the COVID-19 public health emergency and for second order effects of the emergency; and

WHEREAS, the AHFC and the borough may also need to enter into a Memorandum of Agreement (MOA) to accomplish the goals of this program in partnership with the AHFC; and

WHEREAS, this spending plan amendment is described as the "housing relief program amendment" due to the fact that two separate proposed amendments to the spending plan will be considered at the October 13, 2020 assembly meeting; and

WHEREAS, Alaska Statute 29.35.040 authorizes the borough in an area declared by the President or Governor to be a disaster area to participate in and provide for housing on a nonareawide basis; and

WHEREAS, it is in the borough's best interest to approve the amended spending plan for the purpose of addressing the impacts of the coronavirus pandemic;

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

SECTION 1. That the assembly hereby approves the Coronavirus Relief Fund Spending Plan – Amended October 13, 2020, a copy of which is attached hereto and incorporated herein by reference.

SECTION 2. That the mayor is authorized to execute a sub-recipient grant agreement with AHFC for the administration of the housing relief program, and the mayor is authorized to enter into an MOA, or other necessary agreements, to establish and make amendments to grant guidelines or other program criteria as necessary to carry out the lawful and efficient administration of the program.

SECTION 3. Any unused or undistributed funds allocated for the purpose of this housing relief program to provide individual housing grants for mortgage and rent relief to qualifying borough residents in the areas outside of the cities who are experiencing economic hardship due to the COVID-19 public health emergency may be allocated to provide assistance to non-profit organizations that have established homeless or

temporary housing programs up to a total assistance amount of \$200,000 per grantee, including any previously issued borough CRF grants.

SECTION 4. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 13TH DAY OF OCTOBER, 2020.

Yes: Bjorkman, Blakeley, Carpenter, Hibbert, Johnson, Smalley, Cooper

No: None

Absent: None

Abstained: Cox, Dunne



Kenai Peninsula Borough

CARES Act Coronavirus Relief Fund

Assembly Work Session Presentation ~ June 11, 2020 ~ 2:00 PM

Project Introduction: The Bullet Points

- \$ Fund uses and restrictions**
- \$ Payment Installments**
- \$ Application Process**
- \$ Transparency and Public Engagement**
- \$ Program Demobilization**

CARES Act: Coronavirus Relief Fund

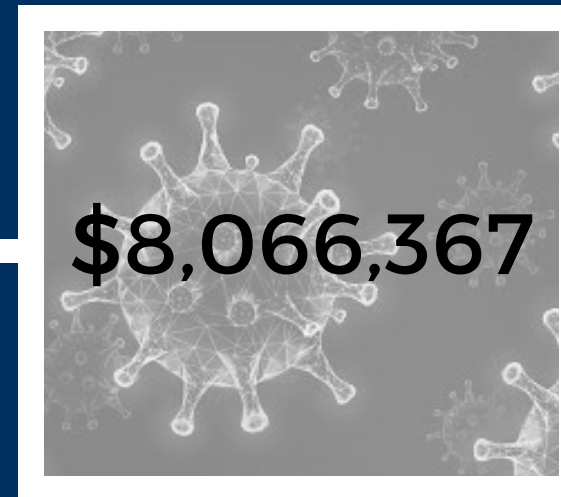
- 💰 Social Security Act, Section 601**
- 💰 OMB Unified Guidance 2 CFR 200**
- 💰 Borough Code of Ordinances**
- 💰 Alaska State Statutes**

Relief Fund Payments & Proposed Spending Plan



PAYMENT #1

- Businesses/Nonprofits
- Sales tax waivers
- Hospital Protective Measures
- Volunteer Fire Departments
- KPB Fire & EMS, Response, and Personnel costs
- Absentee Vote-by-Mail
- Public Access through Technology - Phase 1



PAYMENT #2

- School District Projects
- Mass Testing Equipment
- Building Retrofits
- IMT & Telework Remote Work Kits/Upgrades
- GIS Upgrades for Remote Assessments
- Public Access through Technology - Phase 2



PAYMENT #3

- Second Distribution to Businesses/Nonprofits
- Solid Waste Disposal Sites
- FY21 KPB personnel, response, recovery costs
- Lost Revenue*

PAYMENT #1 = \$21,325,715

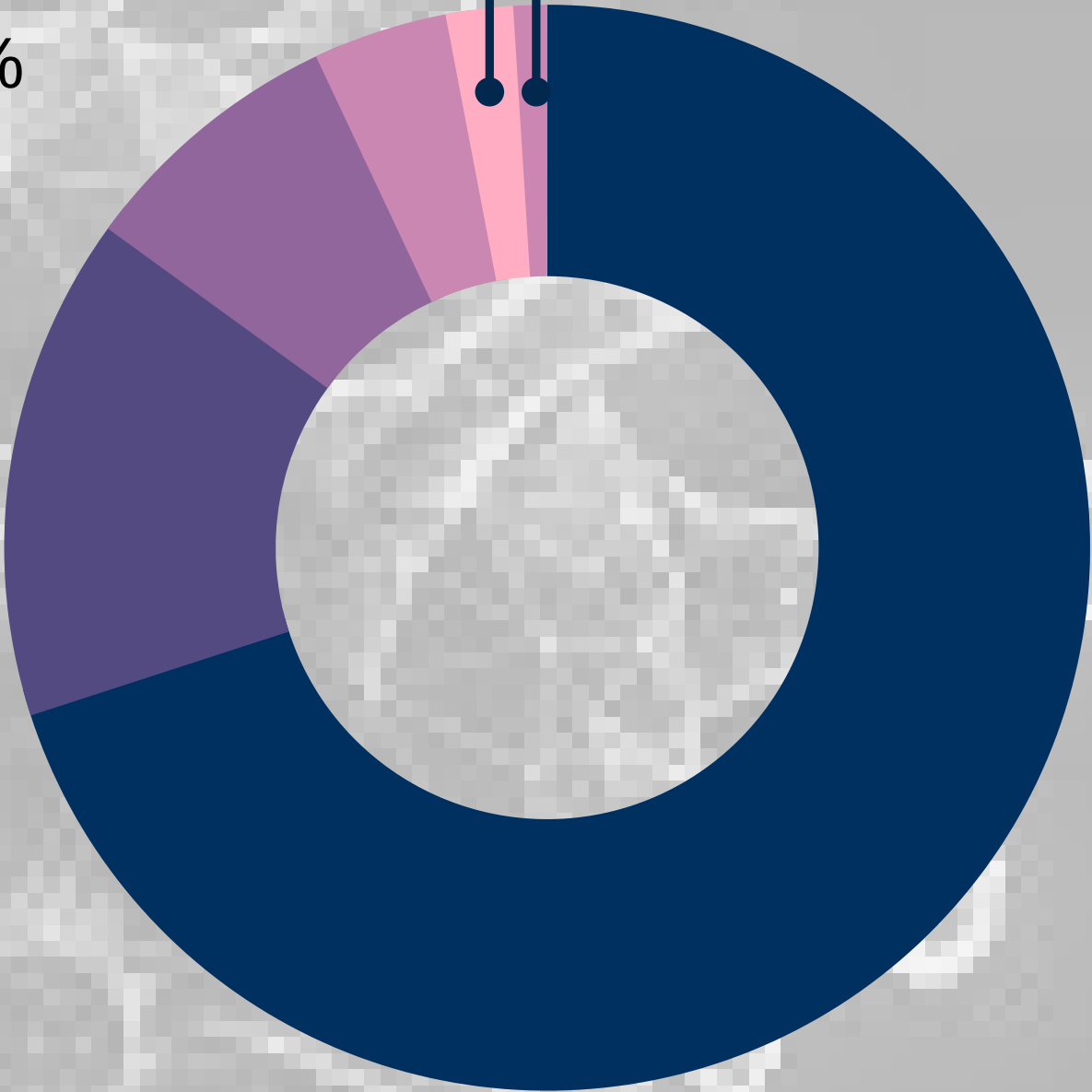
Public Access through Technology Phase 1

- Remote meeting integration in chambers, remote site public meeting hard/software
- Retrofit Chambers - physical distancing
- Improved public access to internet, i.e. towers and communication infrastructure grants.

KPB Departments,
Service Areas response,
supplies, and personnel
Costs (06/30/20)
15%

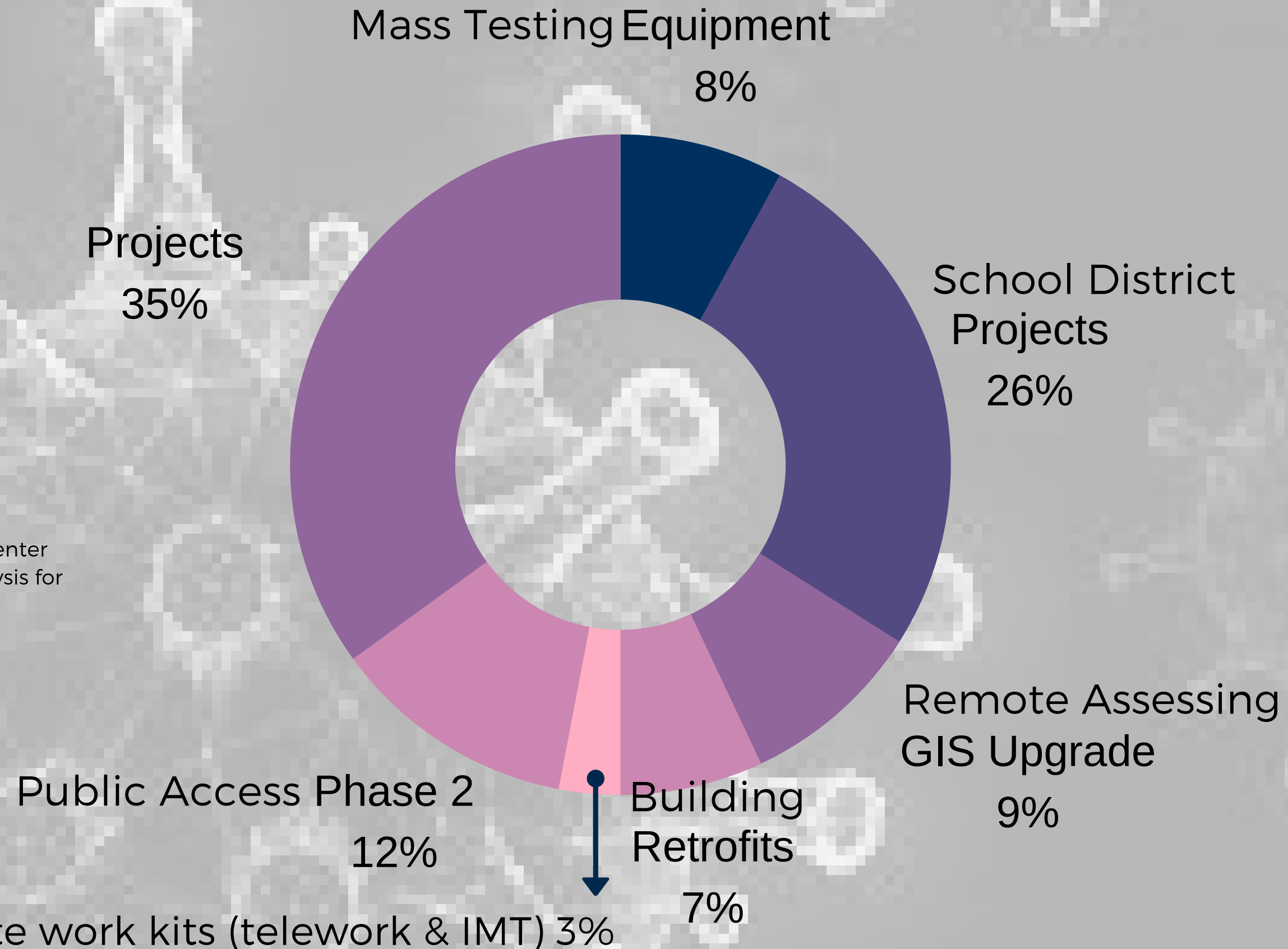
Public
Access
Phase 1
8%

Absentee Vote Campaign 2%
Hospitals 4%
Fund Reserve (~\$2M) 1%



Businesses/Nonprofits,
KPB Sales Tax Penalty Waivers,
and Volunteer Fire
Departments
70%

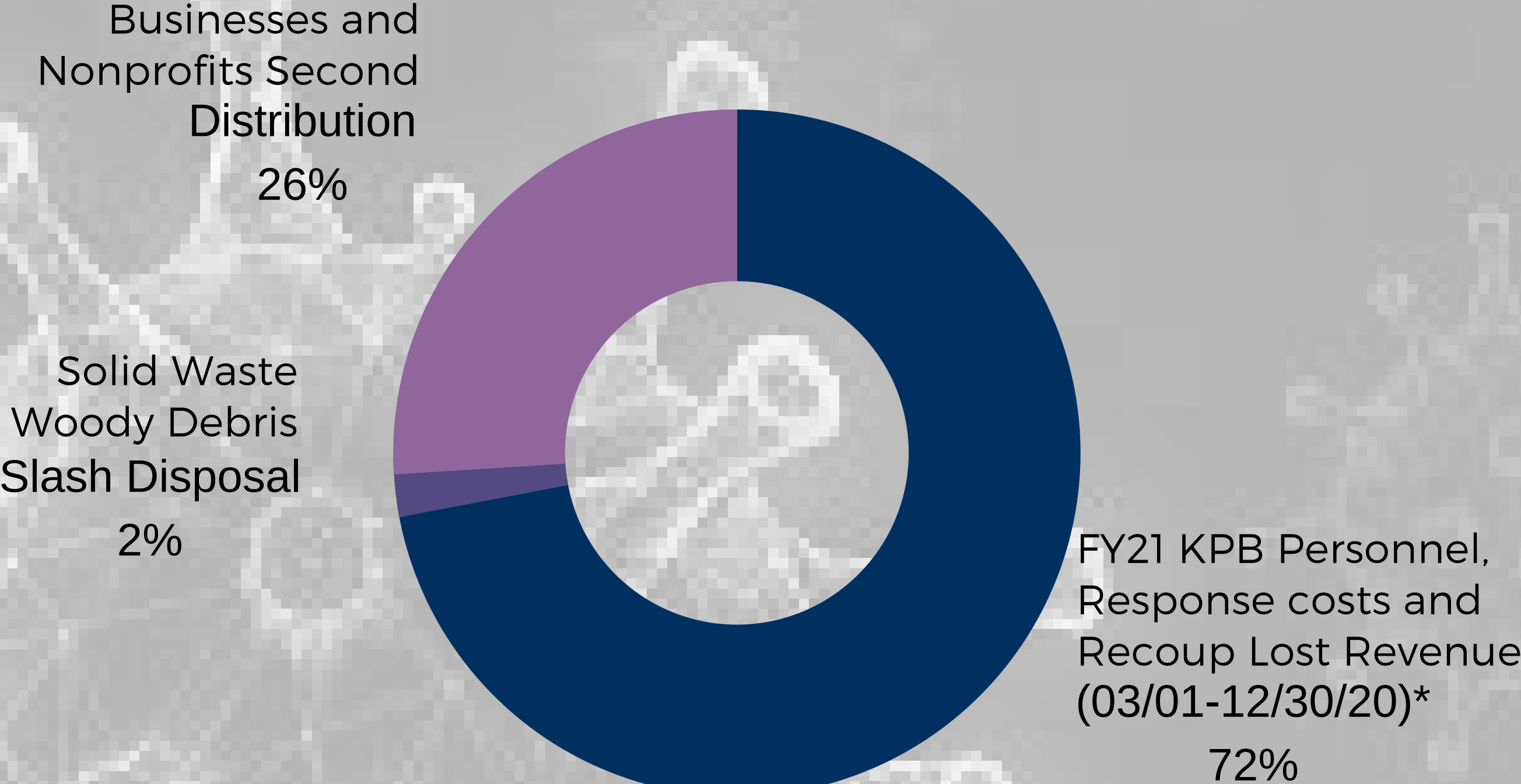
PAYMENT #2 = \$6,453,094 (80%)



Public Access Phase 2

- 9-1-1 Backup Dispatch Answering Center
- Communications Engineering Analysis for redundancy and emergency communications

PAYMENT #3 + 20% OF PAYMENT #2 = \$9,679,640



*Pending CARES Act amendment

BUSINESSES & NONPROFITS: Pre-award to Closeout



Eligibility and Verification

1. Sales Tax History, 990 and/or IRS Schedule C
2. KPB Compliance
3. Application (online option)
4. Certification & Self-attestation
5. Finance threshold verification
6. Grant Program Review
7. Payment Release



Award Thresholds

- \$20K - \$50K = up to \$1,500
- \$50K - \$100K = up to \$4,500
- \$100K - \$250K = up to \$11,250
- \$250K - \$500K = up to \$17,500
- >\$500K = up to \$28,000



Accountability and Closeout

1. Oversight and test awards
2. Issue grant agreements for large awards
3. Adhere to federal regulations
4. Adhere to KPB code and AK Statutes

PUBLIC TRUST: Project Tracking & Transparency

- ✓ **SharePoint - Common Operation Picture**
- ✓ **Informational Campaign**
- ✓ **Facebook Live/Call Center Event(s)**
- ✓ **GIS Dashboard - Life to Date Actions**
- ✓ **In-person Application Sites**
- ✓ **Communications w/ State Programs & Cities**

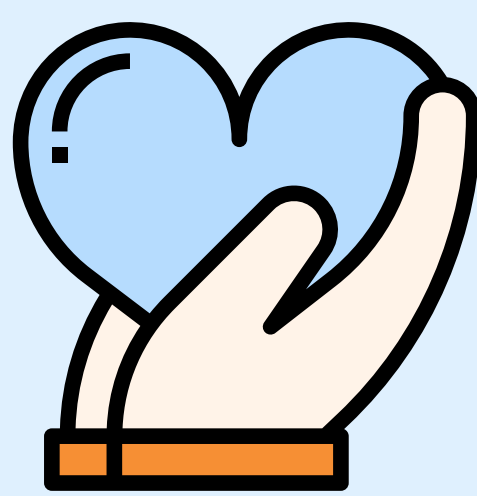
WHOLE TEAM: Project Engagement & Demobilization



POLICY MAKERS
and
ADMINISTRATION



DEPARTMENTS
DIVISIONS
and
SCHOOL
DISTRICT



SERVICE AREAS
First Responders
Hospitals
Recreation
Roads

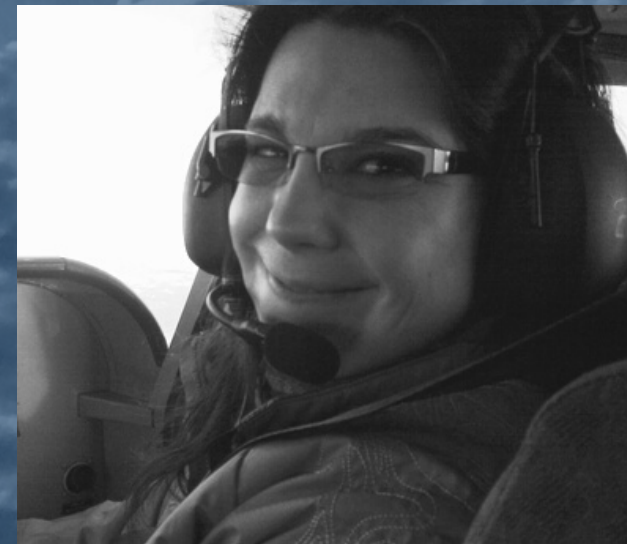


EMERGENCY
MANAGEMENT
and
DISPATCH
CENTER



CITIZENS
COMMUNITIES
CITIES
and
PARTNERS

Questions & Comments



BRENDA AHLBERG

Community & Fiscal Projects Manager

bahlberg@kpb.us

907-714-2153

		Proposed amendments (9/1/20)				Additional amendments proposed via Laydown (9/1/20)		Proposed revised budget after laydown (9/1/20)	Amendments proposed via Laydown (9/15/20)	Proposed revised budget after laydown (9/15/20)	Amendments proposed Reso (10/13/20)	Proposed revised budget after Reso (10/13/20)	LTD Exp + Encumbrances	Remaining Bal
Segments	Account Number	Original Budget (7/11/20)	Amendments (8/11/20)	Revised Budget (08/11/20)	Increase (decrease)	Proposed revised budget (9/1/20)								
CAR01	GRANTS TO SMALL BUSINESS/NONPROFIT/SR CENTERS	15,000,000.47	(8,134,023.00)	6,865,977.47	-	6,865,977.47	200,000.00	7,065,977.47	-	7,065,977.47	-	7,065,977.47	6,320,365.25	745,612.22
CAR02	SINGLE AUDIT FEES	25,000.00	-	25,000.00	-	25,000.00	-	25,000.00	-	25,000.00	-	25,000.00	-	25,000.00
CAR03	REIMB HOSPITAL COSTS	800,000.00	-	800,000.00	-	800,000.00	-	800,000.00	-	800,000.00	-	800,000.00	300,000.00	500,000.00
CAR04	VOLUNTEER FIRE & EMS	70,000.00	130,000.00	200,000.00	100,000.00	300,000.00	-	300,000.00	-	300,000.00	-	300,000.00	160,000.00	140,000.00
CAR05	FIRE & EMS SA PERSONNEL COSTS	2,800,000.00	236,609.87	3,036,609.87	-	3,036,609.87	(200,000.00)	2,836,609.87	-	2,836,609.87	-	2,836,609.87	891,121.00	1,945,488.87
CAR06	KPB EMERG RESPONSE-PPE-PERSONNEL	500,000.00	531,695.07	1,031,695.07	-	1,031,695.07	-	1,031,695.07	-	1,031,695.07	-	1,031,695.07	205,842.11	825,852.96
CAR07	ABSENTEE VOTE BY MAIL	600,000.00	-	600,000.00	-	600,000.00	-	600,000.00	-	600,000.00	-	600,000.00	113,780.11	486,219.89
CAR08	TECH-REMOTE MEETING INTEGRATION	80,000.00	-	80,000.00	-	80,000.00	-	80,000.00	20,000.00	100,000.00	-	100,000.00	1,249.19	98,750.81
CAR09	TECH-COMMUNICATIONS TOWER SITE DVLPMNT	2,000,000.00	-	2,000,000.00	-	2,000,000.00	-	2,000,000.00	-	2,000,000.00	-	2,000,000.00	391.48	1,999,608.52
CAR10	TECH-RETROFIT ASSEMBLY CHAMBERS	200,000.00	-	200,000.00	-	200,000.00	-	200,000.00	465,013.00	665,013.00	-	665,013.00	36,235.78	628,777.22
CAR11	KPBSD RESPONSE & PREPAREDNESS	1,700,000.00	(1,300,000.00)	400,000.00	-	400,000.00	-	400,000.00	(250,000.00)	150,000.00	-	150,000.00	104,928.72	45,071.28
CAR12	HOSPITAL TESTING EQUIPMENT	650,000.00	-	650,000.00	-	650,000.00	-	650,000.00	(650,000.00)	-	-	-	-	-
CAR13	RETROFIT KPB FACILITIES	500,000.00	1,831,695.06	2,331,695.06	-	2,331,695.06	-	2,331,695.06	900,000.00	3,231,695.06	-	3,231,695.06	30,370.72	3,201,324.34
CAR14														
CAR15	TECH-IMT REMOTE WORK-PC UPGRADES	67,000.00	-	67,000.00	-	67,000.00	-	67,000.00	-	67,000.00	-	67,000.00	51,693.76	15,306.24
CAR16	TECH-REMOTE WORK KITS FOR TELEWORK	116,000.00	-	116,000.00	-	116,000.00	-	116,000.00	-	116,000.00	-	116,000.00	53,244.51	62,755.49
CAR17	GIS UPDATE FOR REMOTE ASSESSMENT	600,000.00	-	600,000.00	-	600,000.00	(200,000.00)	400,000.00	-	400,000.00	-	400,000.00	382,063.94	17,936.06
CAR18	TECH-911 BACKUP DISPATCH ANSWERING CENTER	802,000.00	200,000.00	1,002,000.00	-	1,002,000.00	-	1,002,000.00	-	1,002,000.00	-	1,002,000.00	754,320.13	247,679.87
CAR19	TECH-COMMUNICATIONS ENGINEERING ANALYSIS	100,000.00	-	100,000.00	-	100,000.00	-	100,000.00	-	100,000.00	-	100,000.00	83,721.04	16,278.96
CAR20	GRANTS TO SMALL BUSINESS-2ND DISTRIBUTION/CONTENGENCY	3,648,449.00	(1,630,000.00)	2,018,449.00	(1,147,934.00)	870,515.00	1,700,000.00	2,570,515.00	-	2,570,515.00	-	2,570,515.00	8,457.42	2,562,057.58
CAR21	SOLID WASTE DEBRIS/SLASH DISPOSAL	200,000.00	-	200,000.00	-	200,000.00	-	200,000.00	-	200,000.00	-	200,000.00	64,090.73	135,909.27
(1)	FY21 KPB RESPONSE-PPE-PERSNL & RECOUP LOST REVENUE	7,000,000.00	-	7,000,000.00	-	7,000,000.00	(1,500,000.00)	5,500,000.00	(485,013.00)	5,014,987.00	(2,000,000.00)	3,014,987.00	14,158.17	3,000,828.83
CAR22	CITY ALLOCATION	-	8,134,023.00	8,134,023.00	1,047,934.00	9,181,957.00	-	9,181,957.00	-	9,181,957.00	-	9,181,957.00	9,181,957.00	-
CAR23	HOUSING RELIEF PROGRAM	-	-	-	-	-	-	-	-	-	2,000,000.00	2,000,000.00	-	2,000,000.00
CAR24	POPPY LANE FACILITY SOCIAL DISTANCING RETROFIT	-	-	-	-	-	-	-	-	-	-	-	-	-
Totals:		37,458,449.47	0.00	37,458,449.47	-	37,458,449.47	-	37,458,449.47	-	37,458,449.47	-	37,458,449.47	18,757,991.06	18,700,458.41

(1) Transferring \$2,000,000 from CAR21 to (new) CAR23 to provide funding for COVID-related assistance to qualified households outside of municipal boundaries.

Count borough wide	Count outside the cities	Estimated Gross Revenues		Sales tax collected		Kenai Grant (Reference)	Borough grants		Borough High Range	
						<i>up to</i>	<i>bottom</i>	<i>Up to</i>	<i>bottom</i>	<i>Up to</i>
2,247	881	-	20,000.00	-	600.00	-	-	-	-	-
1,241	500	20,000.00	50,000.00	600.00	1,500.00	-	-	1,750.00	-	875,000.00
833	300	50,000.00	100,000.00	1,500.00	3,000.00	2,500.00	1,750.00	3,500.00	525,000.00	1,050,000.00
835	225	100,000.00	250,000.00	3,000.00	7,500.00	5,000.00	3,500.00	8,750.00	787,500.00	1,968,750.00
471	200	250,000.00	500,000.00	7,500.00	15,000.00	7,500.00	8,750.00	17,500.00	1,750,000.00	3,500,000.00
826	200	500,000.00	1,000,000.00	15,000.00	30,000.00	10,000.00	17,500.00	35,000.00	3,500,000.00	7,000,000.00
6,453	2,306								6,562,500.00	14,393,750.00
	4,147	inside cities								

Introduced by:	Mayor
Date:	10/13/20
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-071**

**A RESOLUTION AMENDING THE SPENDING PLAN APPROVED FOR CARES ACT
CORONAVIRUS RELIEF FUNDS RECEIVED FROM THE STATE OF ALASKA, TO
FUND RETROFITTING OF THE BOROUGH'S POPPY LANE FACILITY AND TO
SUPPLEMENT THE TECH-911 BACKUP DISPATCH ANSWERING CENTER
PROJECT**

WHEREAS, the Alaska State Legislature has provided funding to the Kenai Peninsula Borough through the Coronavirus Relief Fund (CRF), a pass-through program authorized by federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act); and

WHEREAS, resolution 2020-047 approved the Coronavirus Relief Fund Spending Plan ("spending plan") for the funding to the borough in the total amount of \$37,458,449.47 and Resolutions 2020-056, 2020-057, and 2020-069 approved numerous amendments to the spending plan to meet project developments; and

WHEREAS, Resolution 2020-070, the fourth amendment to the spending plan, was submitted separately for the assembly's consideration at the October 13, 2020 meeting; and

WHEREAS, this fifth amendment to the spending plan will transfer \$216,901.15 from CAR13 to new CAR24 to retrofit the borough's Poppy Lane facility for purposes of providing for the separation of public and KPB employee spaces, allow for queuing of public and contract personnel, provide a larger conference room space to allow for better social distancing practices for both public and KPB employees, reconfiguration of four office spaces that currently do not maintain recommended social distancing, and improvement to building circulation; and

WHEREAS, this amendment to the spending plan will transfer \$10,000 from CAR18 to CAR17 project title Technology 911 Backup Dispatch Answering Center; and

WHEREAS, it is in the borough's best interest to approve the amended spending plan for the purpose of addressing the impacts of the coronavirus pandemic;

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

SECTION 1. That the assembly hereby approves the portion of the Coronavirus Relief Fund Spending Plan – Amended October 13, 2020, transferring \$216,901.15 from CAR 13 to new CAR24, and transferring \$10,000 from CAR18 to CAR17 project title

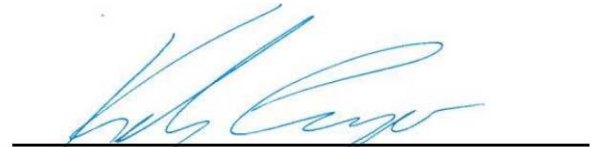
Technology 911 Backup Dispatch Answering Center a copy of which is attached hereto and incorporated herein by reference.

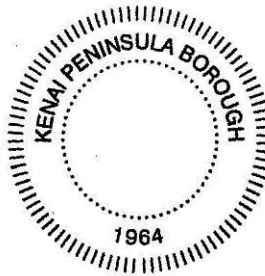
SECTION 2. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 13TH DAY OF OCTOBER, 2020.

ATTEST:


John Blankenship, MMC, Borough Clerk


Kelly Cooper, Assembly President



Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper
No: None
Absent: None



Kenai Peninsula Borough

CARES Act Coronavirus Relief Fund

Assembly Work Session Presentation ~ June 11, 2020 ~ 2:00 PM

Project Introduction: The Bullet Points

- \$ Fund uses and restrictions**
- \$ Payment Installments**
- \$ Application Process**
- \$ Transparency and Public Engagement**
- \$ Program Demobilization**

CARES Act: Coronavirus Relief Fund

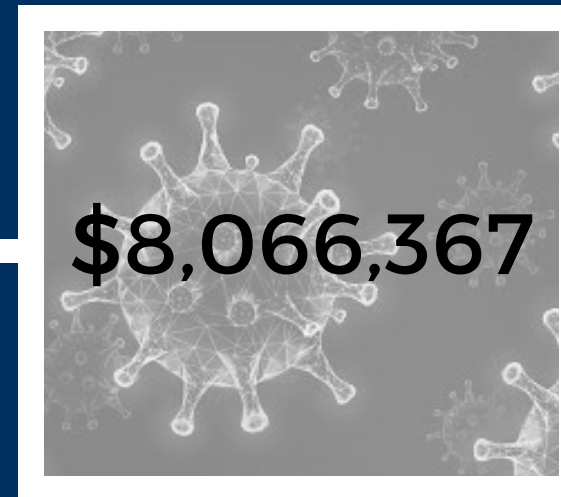
- 💰 Social Security Act, Section 601**
- 💰 OMB Unified Guidance 2 CFR 200**
- 💰 Borough Code of Ordinances**
- 💰 Alaska State Statutes**

Relief Fund Payments & Proposed Spending Plan



PAYMENT #1

- Businesses/Nonprofits
- Sales tax waivers
- Hospital Protective Measures
- Volunteer Fire Departments
- KPB Fire & EMS, Response, and Personnel costs
- Absentee Vote-by-Mail
- Public Access through Technology - Phase 1



PAYMENT #2

- School District Projects
- Mass Testing Equipment
- Building Retrofits
- IMT & Telework Remote Work Kits/Upgrades
- GIS Upgrades for Remote Assessments
- Public Access through Technology - Phase 2



PAYMENT #3

- Second Distribution to Businesses/Nonprofits
- Solid Waste Disposal Sites
- FY21 KPB personnel, response, recovery costs
- Lost Revenue*

PAYMENT #1 = \$21,325,715

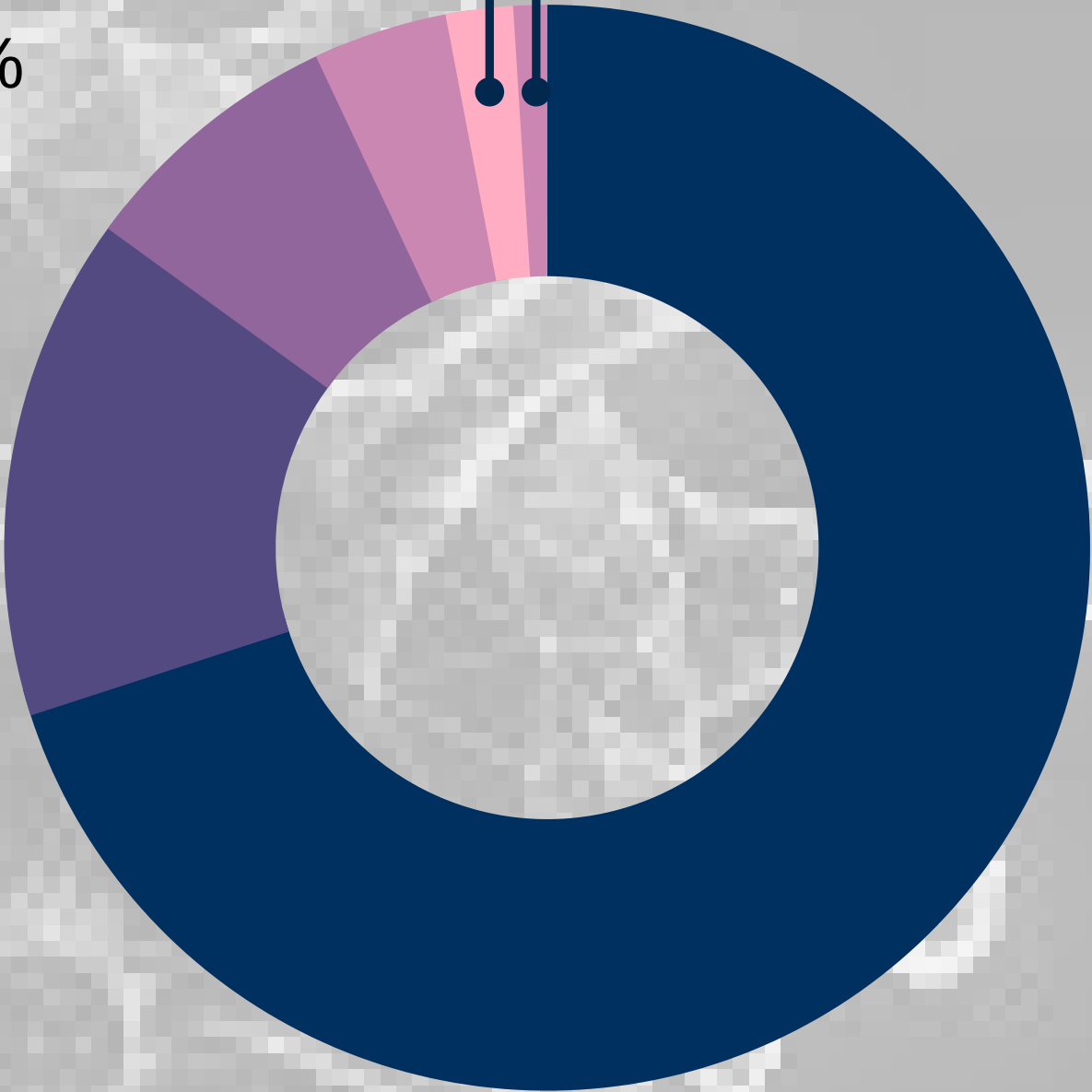
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- Retrofit Chambers - physical distancing
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KPB Departments,
Service Areas response,
supplies, and personnel
Costs (06/30/20)
15%

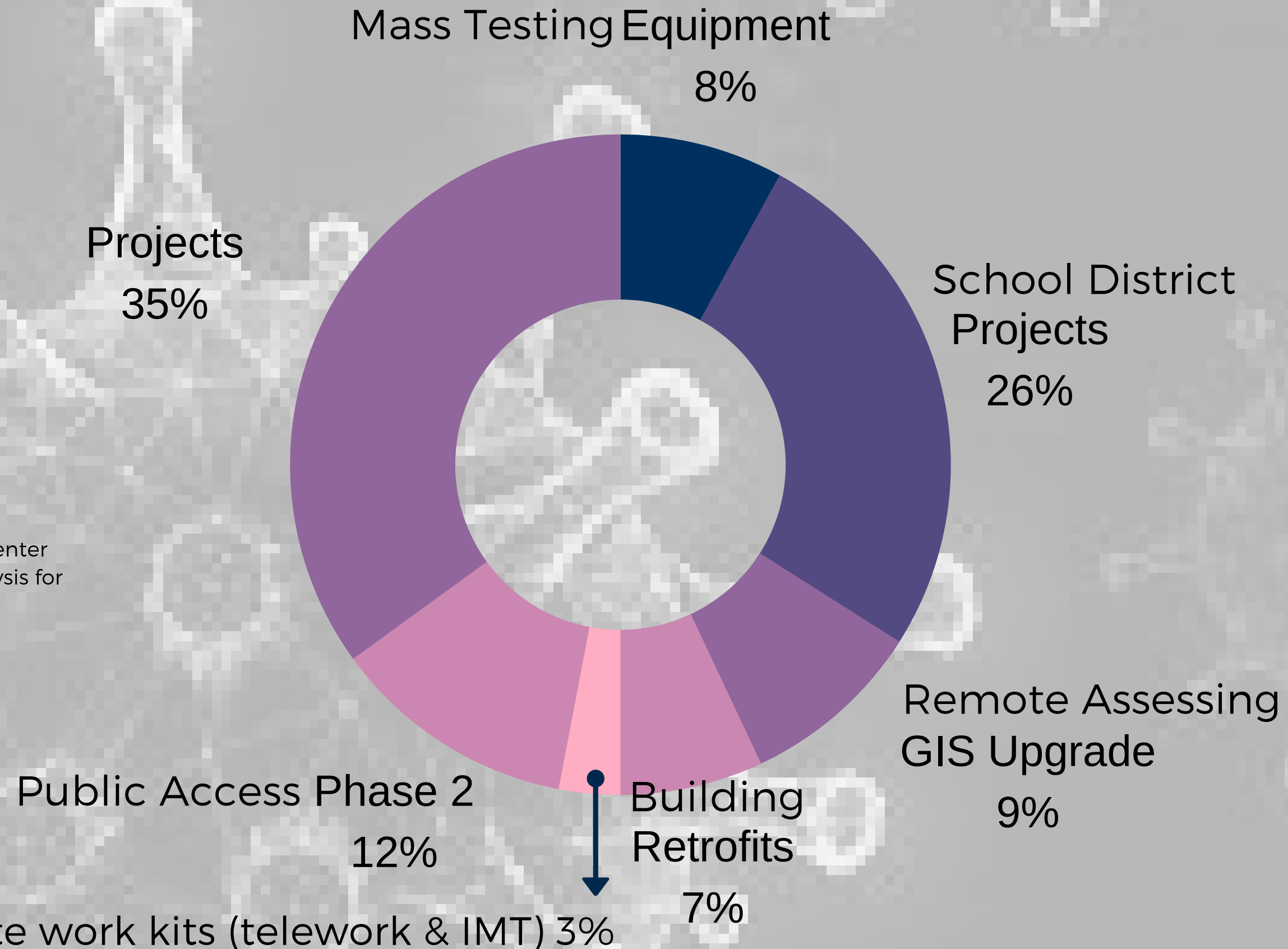
Public
Access
Phase 1
8%

Absentee Vote Campaign 2%
Hospitals 4%
Fund Reserve (~\$2M) 1%



Businesses/Nonprofits,
KPB Sales Tax Penalty Waivers,
and Volunteer Fire
Departments
70%

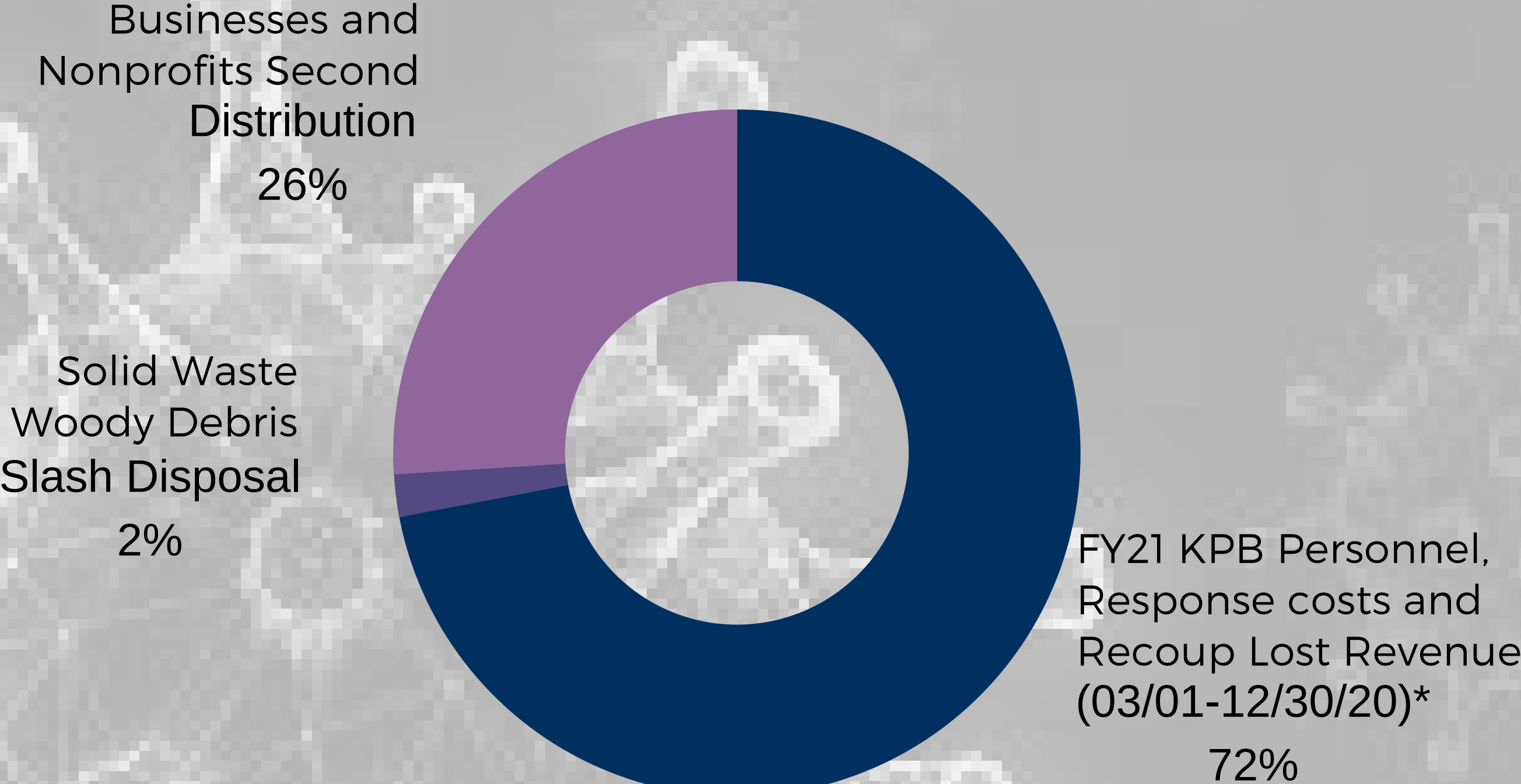
PAYMENT #2 = \$6,453,094 (80%)



Public Access Phase 2

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- Communications Engineering Analysis for redundancy and emergency communications

PAYMENT #3 + 20% OF PAYMENT #2 = \$9,679,640



*Pending CARES Act amendment

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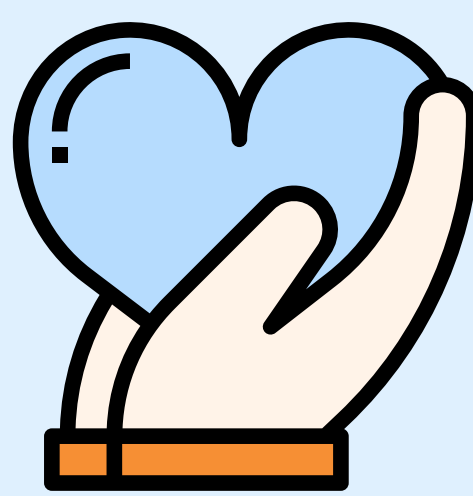
WHOLE TEAM: Project Engagement & Demobilization



POLICY MAKERS
and
ADMINISTRATION



DEPARTMENTS
DIVISIONS
and
SCHOOL
DISTRICT



SERVICE AREAS
First Responders
Hospitals
Recreation
Roads

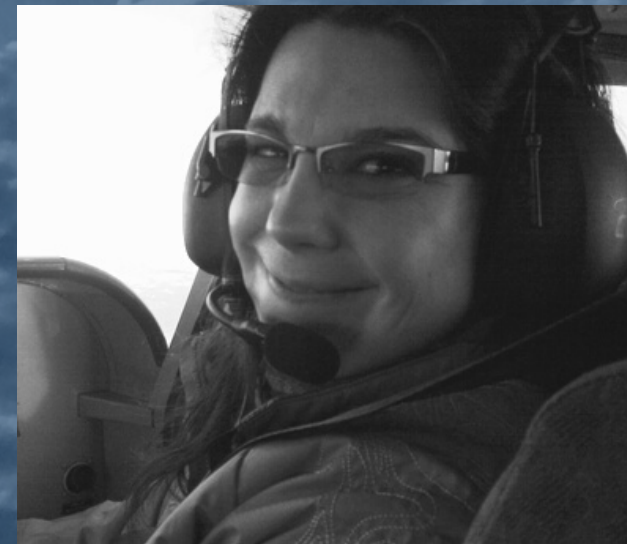


EMERGENCY
MANAGEMENT
and
DISPATCH
CENTER



CITIZENS
COMMUNITIES
CITIES
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Questions & Comments



BRENDA AHLBERG

Community & Fiscal Projects Manager

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CAR01	GRANTS TO SMALL BUSINESS/NONPROFIT/SR CENTERS	15,000,000.47	(8,134,023.00)	6,865,977.47	-	6,865,977.47	200,000.00	7,065,977.47	-	7,065,977.47	-	7,065,977.47	6,320,365.25	745,612.22
CAR02	SINGLE AUDIT FEES	25,000.00	-	25,000.00	-	25,000.00	-	25,000.00	-	25,000.00	-	25,000.00	-	25,000.00
CAR03	REIMB HOSPITAL COSTS	800,000.00	-	800,000.00	-	800,000.00	-	800,000.00	-	800,000.00	-	800,000.00	300,000.00	500,000.00
CAR04	VOLUNTEER FIRE & EMS	70,000.00	130,000.00	200,000.00	100,000.00	300,000.00	-	300,000.00	-	300,000.00	-	300,000.00	160,000.00	140,000.00
CAR05	FIRE & EMS SA PERSONNEL COSTS	2,800,000.00	236,609.87	3,036,609.87	-	3,036,609.87	(200,000.00)	2,836,609.87	-	2,836,609.87	-	2,836,609.87	891,121.00	1,945,488.87
CAR06	KPB EMERG RESPONSE-PPE-PERSONNEL	500,000.00	531,695.07	1,031,695.07	-	1,031,695.07	-	1,031,695.07	-	1,031,695.07	-	1,031,695.07	205,842.11	825,852.96
CAR07	ABSENTEE VOTE BY MAIL	600,000.00	-	600,000.00	-	600,000.00	-	600,000.00	-	600,000.00	-	600,000.00	113,780.11	486,219.89
CAR08	TECH-REMOTE MEETING INTEGRATION	80,000.00	-	80,000.00	-	80,000.00	-	80,000.00	20,000.00	100,000.00	-	100,000.00	1,249.19	98,750.81
CAR09	TECH-COMMUNICATIONS TOWER SITE DVLPMNT	2,000,000.00	-	2,000,000.00	-	2,000,000.00	-	2,000,000.00	-	2,000,000.00	-	2,000,000.00	391.48	1,999,608.52
CAR10	TECH-RETROFIT ASSEMBLY CHAMBERS	200,000.00	-	200,000.00	-	200,000.00	-	200,000.00	465,013.00	665,013.00	-	665,013.00	36,235.78	628,777.22
CAR11	KPBSD RESPONSE & PREPAREDNESS	1,700,000.00	(1,300,000.00)	400,000.00	-	400,000.00	-	400,000.00	(250,000.00)	150,000.00	-	150,000.00	104,928.72	45,071.28
CAR12	HOSPITAL TESTING EQUIPMENT	650,000.00	-	650,000.00	-	650,000.00	-	650,000.00	(650,000.00)	-	-	-	-	-
(2)	CAR13 RETROFIT KPB FACILITIES	500,000.00	1,831,695.06	2,331,695.06	-	2,331,695.06	-	2,331,695.06	900,000.00	3,231,695.06	(216,901.15)	3,014,793.91	30,370.72	2,984,423.19
CAR14	TECH-IMT REMOTE WORK-PC UPGRADES	67,000.00	-	67,000.00	-	67,000.00	-	67,000.00	-	67,000.00	-	67,000.00	51,693.76	15,306.24
CAR15	TECH-REMOTE WORK KITS FOR TELEWORK	116,000.00	-	116,000.00	-	116,000.00	-	116,000.00	-	116,000.00	-	116,000.00	53,244.51	62,755.49
CAR16	GIS UPDATE FOR REMOTE ASSESSMENT	600,000.00	-	600,000.00	-	600,000.00	(200,000.00)	400,000.00	-	400,000.00	-	400,000.00	382,063.94	17,936.06
(3)	CAR17 TECH-911 BACKUP DISPATCH ANSWERING CENTER	802,000.00	200,000.00	1,002,000.00	-	1,002,000.00	-	1,002,000.00	-	1,002,000.00	10,000.00	1,012,000.00	754,320.13	257,679.87
(3)	CAR18 TECH-COMMUNICATIONS ENGINEERING ANALYSIS	100,000.00	-	100,000.00	-	100,000.00	-	100,000.00	-	100,000.00	(10,000.00)	90,000.00	83,721.04	6,278.96
CAR19	GRANTS TO SMALL BUSINESS-2ND DISTRIBUTION/CONTINGENCY	3,648,449.00	(1,630,000.00)	2,018,449.00	(1,147,934.00)	870,515.00	1,700,000.00	2,570,515.00	-	2,570,515.00	-	2,570,515.00	8,457.42	2,562,057.58
CAR20	SOLID WASTE DEBRIS/SLASH DISPOSAL	200,000.00	-	200,000.00	-	200,000.00	-	200,000.00	-	200,000.00	-	200,000.00	64,090.73	135,909.27
(1)	CAR21 FY21 KPB RESPONSE-PPE-PERSNL & RECOUP LOST REVENUE	7,000,000.00	-	7,000,000.00	-	7,000,000.00	(1,500,000.00)	5,500,000.00	(485,013.00)	5,014,987.00	(2,000,000.00)	3,014,987.00	14,158.17	3,000,828.83
CAR22	CITY ALLOCATION	-	8,134,023.00	8,134,023.00	1,047,934.00	9,181,957.00	-	9,181,957.00	-	9,181,957.00	-	9,181,957.00	9,181,957.00	-
(1)	CAR23 HOUSING RELIEF PROGRAM	-	-	-	-	-	-	-	-	-	2,000,000.00	2,000,000.00	-	2,000,000.00
(2)	CAR24 POPPY LANE FACILITY SOCIAL DISTANCING RETROFIT	-	-	-	-	-	-	-	-	-	216,901.15	216,901.15	-	216,901.15
Totals:		37,458,449.47	0.00	37,458,449.47	-	37,458,449.47	-	37,458,449.47	-	37,458,449.47	-	37,458,449.47	18,757,991.06	18,700,458.41

(1) Transferring \$2,000,000 from CAR21 to (new) CAR23 to provide funding for COVID-related assistance to qualified households outside of municipal boundaries.

(2) Transferring \$216,901.15 from CAR13 to (new) CAR24 to fund retrofits to the Poppy Lane Borough Facility to accommodate separation for the public and better social distancing practices.

(3) Transferring \$10,000 from CAR18 to CAR17 to supplement "Technology 911 Backup Dispatch Answering Center."

Count borough wide	Count outside the cities	Estimated Gross Revenues		Sales tax collected		Kenai Grant (Reference)	Borough grants		Borough High Range	
						<i>up to</i>	<i>bottom</i>	<i>Up to</i>	<i>bottom</i>	<i>Up to</i>
2,247	881	-	20,000.00	-	600.00	-	-	-	-	-
1,241	500	20,000.00	50,000.00	600.00	1,500.00	-	-	1,750.00	-	875,000.00
833	300	50,000.00	100,000.00	1,500.00	3,000.00	2,500.00	1,750.00	3,500.00	525,000.00	1,050,000.00
835	225	100,000.00	250,000.00	3,000.00	7,500.00	5,000.00	3,500.00	8,750.00	787,500.00	1,968,750.00
471	200	250,000.00	500,000.00	7,500.00	15,000.00	7,500.00	8,750.00	17,500.00	1,750,000.00	3,500,000.00
826	200	500,000.00	1,000,000.00	15,000.00	30,000.00	10,000.00	17,500.00	35,000.00	3,500,000.00	7,000,000.00
6,453	2,306	inside cities							6,562,500.00	14,393,750.00
	4,147									

Introduced by:	Mayor
Date:	11/10/2020
Action:	Adopted as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-076**

**A RESOLUTION AMENDING THE SPENDING PLAN APPROVED FOR CARES ACT
CORONAVIRUS RELIEF FUNDS RECEIVED FROM THE STATE OF ALASKA, TO
SUPPLEMENT FIRE AND EMERGENCY SERVICE AREA PERSONNEL COSTS,
HOSPITAL COSTS FOR AIR PURIFICATION PROJECT, AND THE TECHNOLOGY
COMMUNICATIONS TOWER SITE DEVELOPMENT PROJECT**

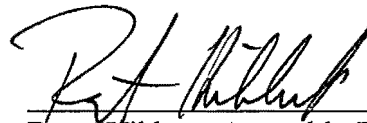
- WHEREAS,** the Alaska State Legislature has provided funding to the Kenai Peninsula Borough through the Coronavirus Relief Fund (CRF), a pass-through program authorized by federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act); and
- WHEREAS,** Resolution 2020-047 approved the Coronavirus Relief Fund Spending Plan (“spending plan”) for the funding to the borough in the total amount of \$37,458,449.47 and Resolutions 2020-056, 2020-057, 2020-069, 2020-070 and 2020-071 approved numerous amendments to the spending plan to meet project developments; and
- WHEREAS,** this sixth amendment to the spending plan will transfer \$845,000 from CAR21, project title FY21 KPB Response-PPE-Personnel & Recoup Lost Revenue to CAR05 project title Fire & EMS Service Area Personnel Costs to provide for October and November 2020 funding for emergency medical services personnel substantially dedicated to the COVID-19 healthcare emergency due to the ongoing impacts to the fire service areas; and
- WHEREAS,** this amendment to the spending plan will transfer \$100,000 from CAR03 project title Reimburse Hospital Costs to CAR13 project title Retrofits KPB Facilities to supplement the costs to install air purification systems in the Central and South Peninsula Hospitals; and
- WHEREAS,** this amendment to the spending plan will transfer \$600,000 from CAR21 to CAR09 project title Technology Communications Tower Site Development to provide broadband capabilities to the north/northwestern area of the Kenai Peninsula that supports telework and online education using the Nikiski Fire Station #3 location for tower construction; and
- WHEREAS,** it is in the borough’s best interest to approve the amended spending plan for the purpose of addressing the impacts of the coronavirus pandemic;

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

SECTION 1. That the assembly hereby approves the portion of the Coronavirus Relief Fund Spending Plan – Amended November 10, 2020, transferring \$845,000 from CAR21 to CAR05, transferring \$100,000 from CAR13 to CAR03, and transferring \$600,000 from CAR21 to CAR09, a copy of which is attached hereto and incorporated herein by reference.

SECTION 2. That this resolution shall take effect retroactively on October 1, 2020.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 10TH DAY OF NOVEMBER, 2020.

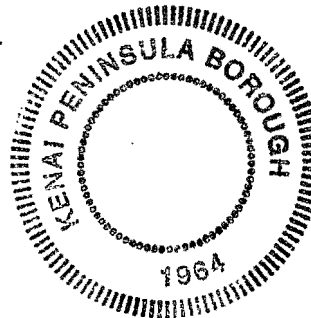


Brent Hibbert, Assembly President

ATTEST:



John Blankenship, MMC, Borough Clerk



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



Kenai Peninsula Borough

CARES Act Coronavirus Relief Fund

Assembly Work Session Presentation ~ June 11, 2020 ~ 2:00 PM

Project Introduction: The Bullet Points

- \$ Fund uses and restrictions**
- \$ Payment Installments**
- \$ Application Process**
- \$ Transparency and Public Engagement**
- \$ Program Demobilization**

CARES Act: Coronavirus Relief Fund

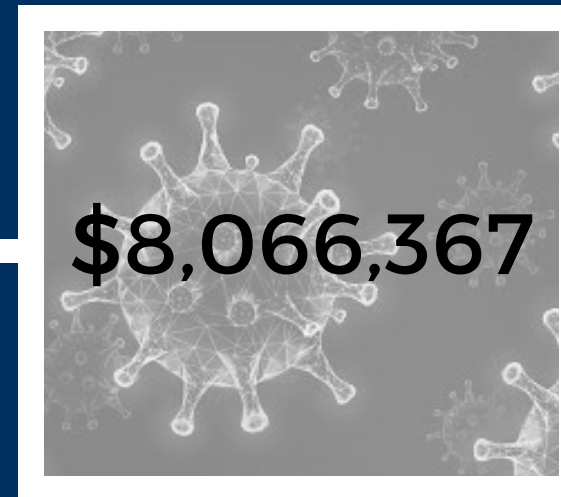
- 💰 Social Security Act, Section 601**
- 💰 OMB Unified Guidance 2 CFR 200**
- 💰 Borough Code of Ordinances**
- 💰 Alaska State Statutes**

Relief Fund Payments & Proposed Spending Plan



PAYMENT #1

- Businesses/Nonprofits
- Sales tax waivers
- Hospital Protective Measures
- Volunteer Fire Departments
- KPB Fire & EMS, Response, and Personnel costs
- Absentee Vote-by-Mail
- Public Access through Technology - Phase 1



PAYMENT #2

- School District Projects
- Mass Testing Equipment
- Building Retrofits
- IMT & Telework Remote Work Kits/Upgrades
- GIS Upgrades for Remote Assessments
- Public Access through Technology - Phase 2



PAYMENT #3

- Second Distribution to Businesses/Nonprofits
- Solid Waste Disposal Sites
- FY21 KPB personnel, response, recovery costs
- Lost Revenue*

PAYMENT #1 = \$21,325,715

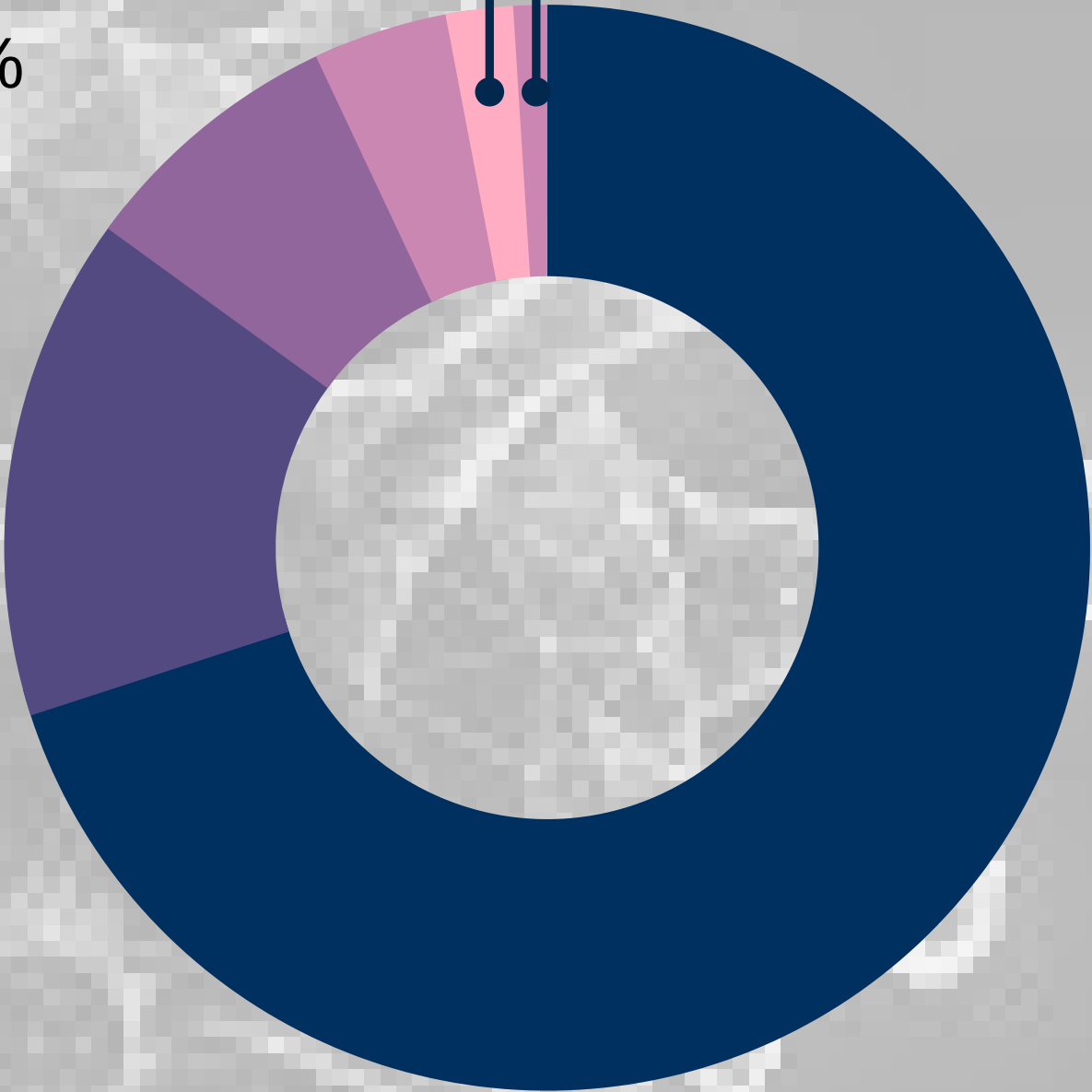
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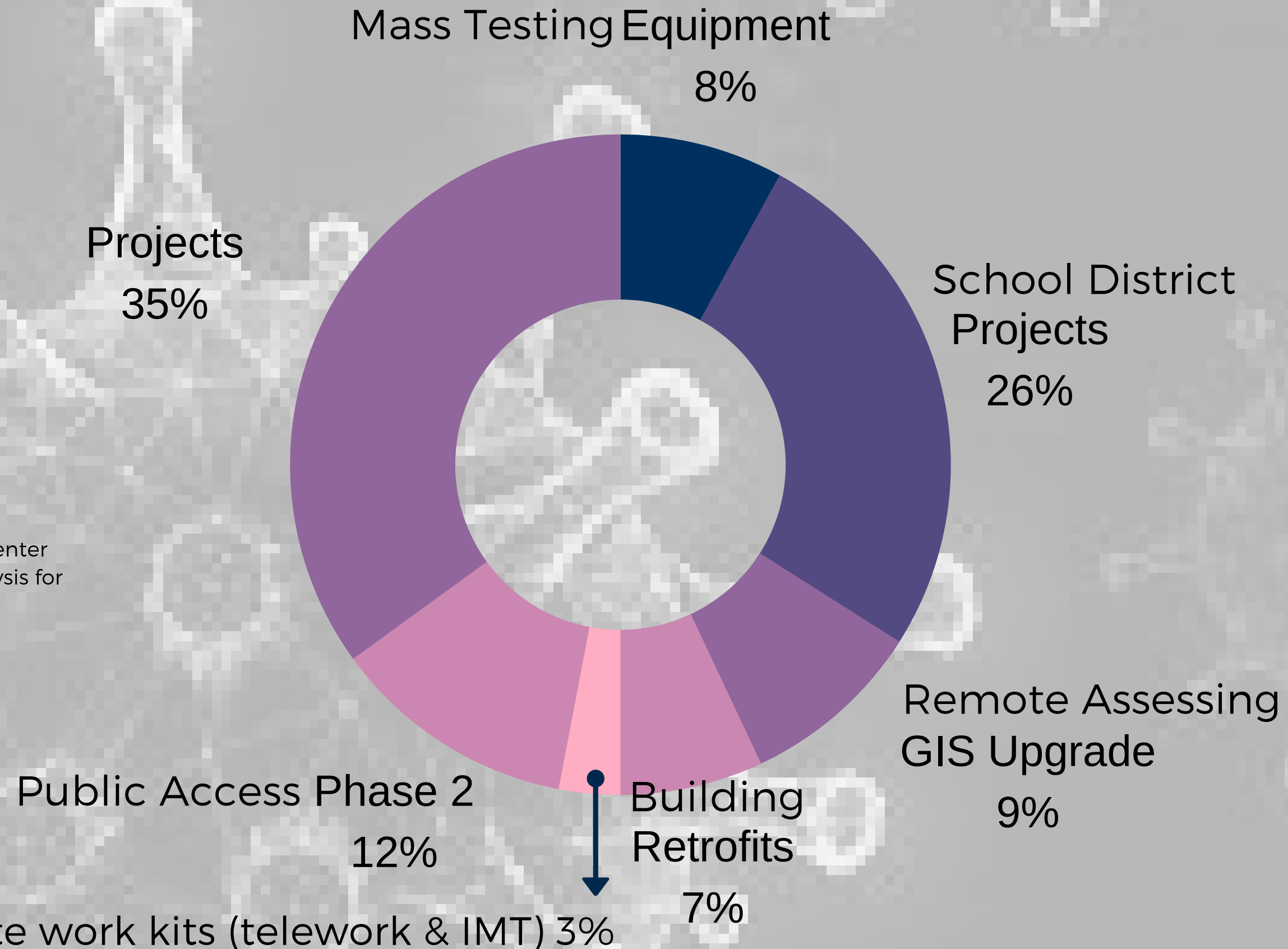
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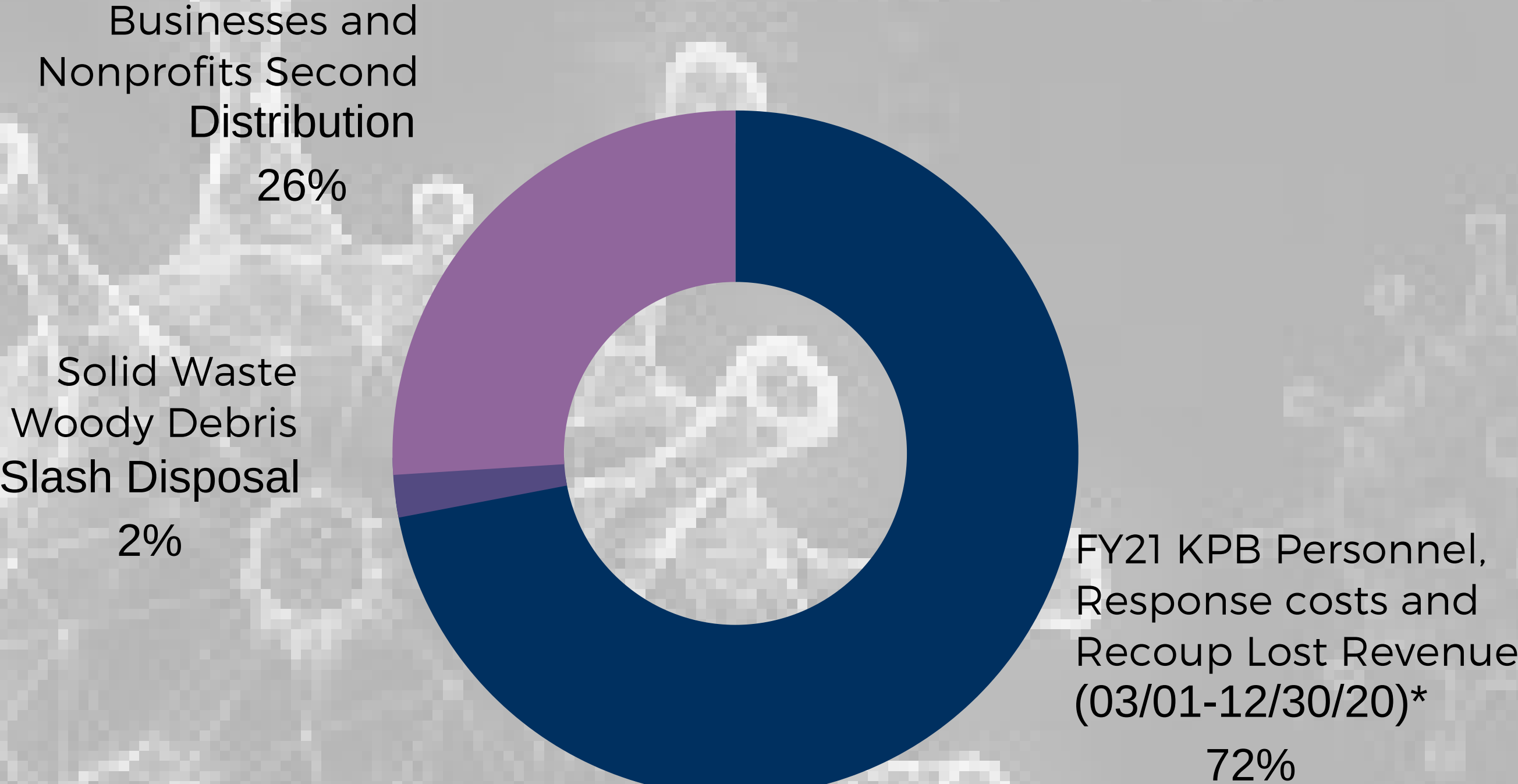
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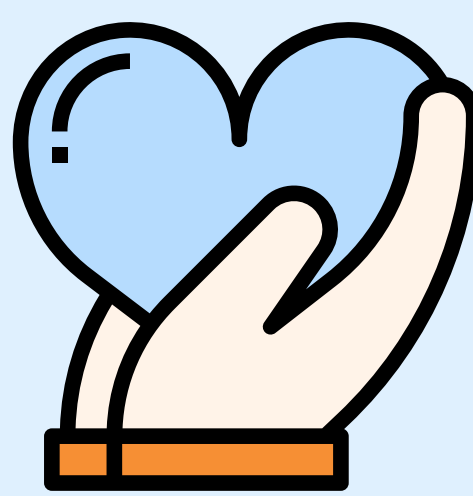
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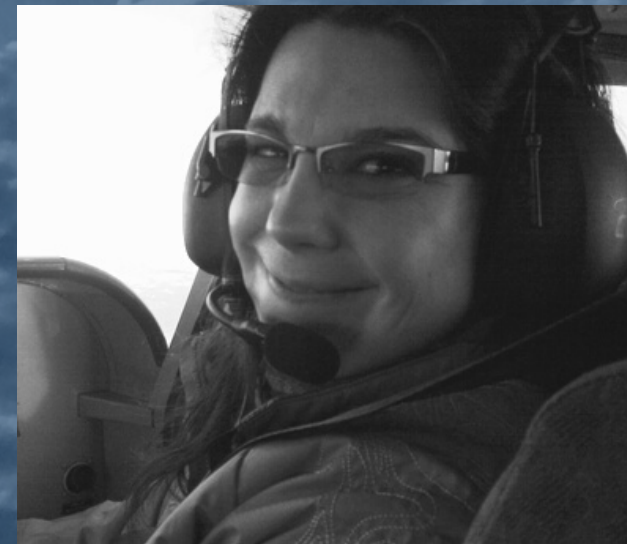


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	CAR01 GRANTS TO SMALL BUSINESS/NONPROFIT/SR CENTERS	15,000,000.47	(8,134,023.00)	6,865,977.47	-	6,865,977.47	200,000.00	7,065,977.47	-	7,065,977.47	-	7,065,977.47	-	7,065,977.47
	CAR02 SINGLE AUDIT FEES	25,000.00	-	25,000.00	-	25,000.00	-	25,000.00	-	25,000.00	-	25,000.00	-	25,000.00
(2)	CAR03 REIMB HOSPITAL COSTS	800,000.00	-	800,000.00	-	800,000.00	-	800,000.00	-	800,000.00	-	800,000.00	77,734.19	877,734.19
	CAR04 VOLUNTEER FIRE & EMS	70,000.00	130,000.00	200,000.00	100,000.00	300,000.00	-	300,000.00	-	300,000.00	-	300,000.00	-	300,000.00
(1)	CAR05 FIRE & EMS SA PERSONNEL COSTS	2,800,000.00	236,609.87	3,036,609.87	-	3,036,609.87	(200,000.00)	2,836,609.87	-	2,836,609.87	-	2,836,609.87	845,000.00	3,681,609.87
	CAR06 KPB EMERG RESPONSE-PPE-PERSONNEL	500,000.00	531,695.07	1,031,695.07	-	1,031,695.07	-	1,031,695.07	-	1,031,695.07	-	1,031,695.07	-	1,031,695.07
	CAR07 ABSENTEE VOTE BY MAIL	600,000.00	-	600,000.00	-	600,000.00	-	600,000.00	-	600,000.00	-	600,000.00	-	600,000.00
	CAR08 TECH-REMOTE MEETING INTEGRATION	80,000.00	-	80,000.00	-	80,000.00	-	80,000.00	20,000.00	100,000.00	-	100,000.00	-	100,000.00
(3)	CAR09 TECH-COMMUNICATIONS TOWER SITE DVLPMNT	2,000,000.00	-	2,000,000.00	-	2,000,000.00	-	2,000,000.00	-	2,000,000.00	-	2,000,000.00	600,000.00	2,600,000.00
	CAR10 TECH-RETROFIT ASSEMBLY CHAMBERS	200,000.00	-	200,000.00	-	200,000.00	-	200,000.00	465,013.00	665,013.00	-	665,013.00	-	665,013.00
	CAR11 KPBSD RESPONSE & PREPAREDNESS	1,700,000.00	(1,300,000.00)	400,000.00	-	400,000.00	-	400,000.00	(250,000.00)	150,000.00	-	150,000.00	-	150,000.00
	CAR12 HOSPITAL TESTING EQUIPMENT	650,000.00	-	650,000.00	-	650,000.00	-	650,000.00	(650,000.00)	-	-	-	-	-
(2)	CAR13 RETROFIT KPB FACILITIES	500,000.00	1,831,695.06	2,331,695.06	-	2,331,695.06	-	2,331,695.06	900,000.00	3,231,695.06	(216,901.15)	3,014,793.91	(77,734.19)	2,937,059.72
	CAR14 TECH-IMT REMOTE WORK-PC UPGRADES	67,000.00	-	67,000.00	-	67,000.00	-	67,000.00	-	67,000.00	-	67,000.00	-	67,000.00
	CAR15 TECH-REMOTE WORK KITS FOR TELEWORK	116,000.00	-	116,000.00	-	116,000.00	-	116,000.00	-	116,000.00	-	116,000.00	-	116,000.00
	CAR16 GIS UPDATE FOR REMOTE ASSESSMENT	600,000.00	-	600,000.00	-	600,000.00	(200,000.00)	400,000.00	-	400,000.00	-	400,000.00	-	400,000.00
	CAR17 TECH-911 BACKUP DISPATCH ANSWERING CENTER	802,000.00	200,000.00	1,002,000.00	-	1,002,000.00	-	1,002,000.00	-	1,002,000.00	10,000.00	1,012,000.00	-	1,012,000.00
	CAR18 TECH-COMMUNICATIONS ENGINEERING ANALYSIS	100,000.00	-	100,000.00	-	100,000.00	-	100,000.00	-	100,000.00	(10,000.00)	90,000.00	-	90,000.00
	CAR19 GRANTS TO SMALL BUSINESS-2ND DISTRIBUTION/CONTINGENCY	3,648,449.00	(1,630,000.00)	2,018,449.00	(1,147,934.00)	870,515.00	1,700,000.00	2,570,515.00	-	2,570,515.00	-	2,570,515.00	-	2,570,515.00
	CAR20 SOLID WASTE DEBRIS/SLASH DISPOSAL	200,000.00	-	200,000.00	-	200,000.00	-	200,000.00	-	200,000.00	-	200,000.00	-	200,000.00
(1)(3)	CAR21 FY21 KPB RESPONSE-PPE-PERSNL & RECOUP LOST REVENUE	7,000,000.00	-	7,000,000.00	-	7,000,000.00	(1,500,000.00)	5,500,000.00	(485,013.00)	5,014,987.00	(2,000,000.00)	3,014,987.00	(1,445,000.00)	1,569,987.00
	CAR22 CITY ALLOCATION	-	8,134,023.00	8,134,023.00	1,047,934.00	9,181,957.00	-	9,181,957.00	-	9,181,957.00	-	9,181,957.00	-	9,181,957.00
	CAR23 HOUSING RELIEF PROGRAM	-	-	-	-	-	-	-	-	-	2,000,000.00	2,000,000.00	-	2,000,000.00
	CAR24 POPPY LANE FACILITY SOCIAL DISTANCING RETROFIT	-	-	-	-	-	-	-	-	-	216,901.15	216,901.15	-	216,901.15
Totals:		37,458,449.47	0.00	37,458,449.47	-	37,458,449.47	-	37,458,449.47	-	37,458,449.47	-	37,458,449.47	-	37,458,449.47

(1) Transferring \$845,000 from CAR21 to CAR05 to provide for October and November 2020 funding for EMS personnel substantially dedicated to the COVID-19 healthcare emergency due to the ongoing impacts to the fire service areas.

(2) Transferring \$77,734.19 from CAR13 to CAR03, to increase to provide for costs and install pf air purification systems in Central Peninsula Hospital and South Peninsula Hospital.

(3) Transferring \$600,000 from CAR21 to CAR09 to provide for broadband capabilities to the north/northwestern area of the Kenai Peninsula Borough, using the Nikiski Fire Station #3 location for tower construction.

Count borough wide	Count outside the cities	Estimated Gross Revenues		Sales tax collected		Kenai Grant (Reference)	Borough grants		Borough High Range	
						<i>up to</i>	<i>bottom</i>	<i>Up to</i>	<i>bottom</i>	<i>Up to</i>
2,247	881	-	20,000.00	-	600.00	-	-	-	-	-
1,241	500	20,000.00	50,000.00	600.00	1,500.00	-	-	1,750.00	-	875,000.00
833	300	50,000.00	100,000.00	1,500.00	3,000.00	2,500.00	1,750.00	3,500.00	525,000.00	1,050,000.00
835	225	100,000.00	250,000.00	3,000.00	7,500.00	5,000.00	3,500.00	8,750.00	787,500.00	1,968,750.00
471	200	250,000.00	500,000.00	7,500.00	15,000.00	7,500.00	8,750.00	17,500.00	1,750,000.00	3,500,000.00
826	200	500,000.00	1,000,000.00	15,000.00	30,000.00	10,000.00	17,500.00	35,000.00	3,500,000.00	7,000,000.00
6,453	2,306								6,562,500.00	14,393,750.00
	4,147	inside cities								

Introduced by:	Mayor
Date:	12/01/20
Action:	Adopted as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-083**

**A RESOLUTION AMENDING THE SPENDING PLAN FOR CARES ACT
CORONAVIRUS RELIEF FUNDS RECEIVED FROM THE STATE OF ALASKA, TO
SUPPLEMENT AUDIO VIDEO CAPABILITIES TO ALLOW REMOTE MEETINGS
AT THE DONALD E. GILMAN KENAI RIVER CENTER, KENAI PENINSULA
BOROUGH SCHOOL DISTRICT TELEPHONY PROJECT, STUDENT HOME-TO-
SCHOOL TRANSPORTATION COSTS AND FUNDING TO SUPPORT PRESUMED
COVID-19 EDUCATION-RELATED EXPENDITURES**

- WHEREAS,** the Alaska State Legislature has provided funding to the Kenai Peninsula Borough through the Coronavirus Relief Fund (CRF), a pass-through program authorized by federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act); and
- WHEREAS,** Resolution 2020-047 approved the Coronavirus Relief Fund Spending Plan (“spending plan”) for the funding to the borough in the total amount of \$37,458,449.47 and Resolutions 2020-056, 2020-057, 2020-069, 2020-070, 2020-071 and 2020-076 approved numerous amendments to the spending plan to meet project developments; and
- WHEREAS,** this seventh amendment to the spending plan will utilize \$10,000 from the CAR08 project to provide for audio/video capabilities in the conference room for the Donald E. Gilman River Center; and
- WHEREAS,** this amendment to the spending plan will transfer \$23,341 from lapsed project funds in all other CAR project codes to CAR21 to provide funds to the Kenai Peninsula Borough School District (School District) as a subgrantee to support telework voice calling support in response to COVID-19 telework situations; and
- WHEREAS,** this amendment to the spending plan indicates that if the aggregate lapsed CAR project funds are less than or equal to \$3,481,884, that up to \$1,740,942 or 50% will be transferred to CAR21 to provide funds to the Kenai Peninsula Borough School District as a subgrantee to support student home-to-school transportation and up to \$1,740,942 or 50% will be applied towards the existing local contribution; and

WHEREAS, this amendment to the spending plan indicates that if the aggregate lapsed CAR project funds are greater than \$3,481,884, but less than \$3,852,034 then the amount of up to \$1,740,942 will be transferred to CAR21 to provide funds to the Kenai Peninsula Borough School District as a subgrantee to support student home-to-school transportation and up to \$2,111,091 may be transferred to CAR21 to provide funds to the Kenai Peninsula Borough School District to support COVID-19 related expenditures substantially different than originally expected in such a line item, allotment, or allocation; and

WHEREAS, the Kenai Peninsula Borough is also recognizing that the School District has utilized a significant portion of the current FY2021 local contribution for expenditures significantly different than that of the originally intended use when the contribution was made, allowing the Kenai Peninsula Borough to utilize CARES funding for that portion as long as they continue to meet the minimum required contribution per State of Alaska statute and the \$45 million floor established in Resolution 2020-027 with general fund local monies; and

WHEREAS, this amendment transfers \$600,000 from the CAR21 project to the CAR06 project, KPB Emergency Response, PPE, Personnel to provide funds, to cover overtime, backfill, Family First Coronavirus Response Act leave and other payroll-related costs associated with COVID-19-related public health and safety response; and

WHEREAS, it is in the borough's best interest to approve the amended spending plan for the purpose of addressing the impacts of the coronavirus pandemic;

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

SECTION 1. That the assembly hereby approves the portion of the Coronavirus Relief Fund Spending Plan – Amended December 1, 2020, spending \$10,000 from CAR08 on remote meeting audio/video capabilities, transferring \$600,000 from CAR21 to CAR06, transferring \$23,341 from lapsed CAR project funds to CAR21, and transferring up to \$3,481,884 from lapsed CAR project funds to CAR21 of which 50% will be provided for transportation over and above the local contribution for fiscal year 2021 and 50% will be applied towards the existing local contribution, providing the original \$50 million payment to the School District through two funding sources.

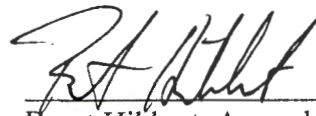
SECTION 2. That the assembly hereby approves the portion of the Coronavirus Relief Fund Spending Plan – Amended December 1, 2020, providing that if the lapsed CAR project funds are greater than \$3,481,884 and less than \$3,852,034, that up to \$1,740,942 will be transferred from lapsed CAR project funds to CAR21 to provide for transportation over and above the local contribution for the fiscal year 2021 and the remaining amount up to \$2,111,091 will be applied towards the existing local

contribution, providing the original \$50 million payment to the School District through two funding sources.

SECTION 3. That the assembly hereby reduces the General Fund transfer Local Contribution to the School District account 100.94910.50241 to account Transfer in from the General Fund 241.38100 by up to \$2,111,091, equal to the Coronavirus Relief Funds provided to the School District to support COVID-19 related expenditures substantially different than originally expected in such a line item, allotment in Sections 1 or 2.

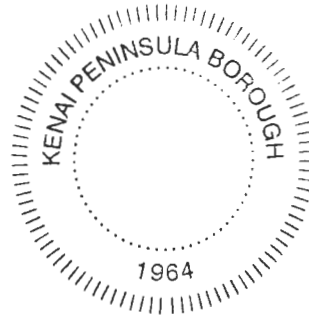
SECTION 4. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 1ST DAY OF DECEMBER 1, 2020.



Brent Hibbert, Assembly President

ATTEST:


John Blankenship, MMC, Borough Clerk

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

Introduced by: Hibbert
Date: 04/06/2021
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2021-020**

**A RESOLUTION CONFIRMING THE APPOINTMENT OF MAKO HAGGERTY TO
THE PRINCE WILLIAM SOUND REGIONAL CITIZEN'S ADVISORY COUNCIL**

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. The appointment of Mako Haggerty to the Prince William Sound Regional Citizens Advisory Council for a two-year term to expire in May 2023 is hereby confirmed.

SECTION 2. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY APRIL, 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:



Regional Citizens' Advisory Council / "Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

In Anchorage: 3709 Spenard Road / Suite 100 / Anchorage, Alaska 99503 / (907) 277-7222 / FAX (907) 277-4523
In Valdez: P.O. Box 3089 / 130 South Meals / Suite 202 / Valdez, Alaska 99686 / (907) 834-5000 / FAX (907) 835-5926

MEMBERS February 18, 2021

Sent via email and USPS mail

Alaska State
Chamber of Commerce

Brent Hibbert
Kenai Peninsula Borough Assembly
144 N. Binkley Street
Soldotna, AK 99669

Chugach Alaska
Corporation

City of Cordova

Dear Assembly President Hibbert:

City of Homer

The Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) is writing to advise you that Mako Haggerty's term on our Board of Directors expires at the upcoming May 6-7, 2021, annual meeting.

City of Kodiak

City of Seldovia

The dedicated seat for the Kenai Peninsula Borough Assembly is its opportunity to influence decisions having profound implications for oil transportation safety in Alaska, and for the state's oil spill prevention and response capabilities. We greatly value your past participation.

City of Seward

City of Valdez

The Kenai Peninsula Borough Assembly is best served by a representative who:

- Understands her/his organization and/or community, its needs, concerns and perspectives;
- Has at least a rudimentary familiarity with oil transportation issues;
- Has a home and work schedule flexible enough to allow participation and travel;
- Is committed to our mission of promoting environmentally safe operation of the Alyeska terminal and associated tankers; and
- Seeks opportunities to foster cooperative and constructive relationships between citizens, industry and regulatory agencies.

City of Whittier

Community of
Chenega

Community of
Tatitlek

Cordova District
Fishermen United

PWSRCAC Board members can expect to devote an average of 25 hours a month on PWSRCAC business. The full Board conducts three 2-day meetings in January, May, and September. Other time commitments include attending annual budget and planning meetings, as well as special meetings and opportunities to participate in committees or work groups. PWSRCAC staff provides support to board members whenever possible.

Kenai Peninsula
Borough

Kodiak Island
Borough

Please notify us in writing, no later than Monday, March 31, 2021, of your selected individual for the Kenai Peninsula Borough Assembly's next two-year term on the PWSRCAC board. Ideally, this individual will then be expected to attend our May 6-7, 2021 virtual meeting for confirmation and participation. **If Mako Haggerty will continue to be your representative, we ask that you still notify PWSRCAC in writing.**

Kodiak Village Mayors
Association

Oil Spill Region
Environmental
Coalition

If you have further questions about the PWSRCAC or the responsibilities of its directors, please don't hesitate to call. Thank you for your cooperation, and we look forward to the Kenai Peninsula Borough Assembly's continued contribution.

Port Graham
Corporation

Sincerely,

Jennifer Fleming
Executive Assistant

Prince William Sound
Aquaculture
Corporation

Cc via email: Mako Haggerty

Introduced by:

Mayor

Date:

04/06/21

Action:

Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2021-021**

**A RESOLUTION APPROVING A MUTUAL AID AGREEMENT AND OPERATIONAL
PLANS BETWEEN THE BEAR CREEK FIRE SERVICE AREA AND THE MOOSE
PASS VOLUNTEER FIRE COMPANY FOR FIRE AND EMERGENCY RESPONSE
SERVICES**

WHEREAS, mutual aid agreements and their operation 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, 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, in recent years the operational plans have been considered as matters within the expertise of the agencies providing the mutual aid and automatic aid and, therefore, future amendments to the operational plans have been left to the discretion of the agencies; and

WHEREAS, at its meeting on March 9, 2021, the Bear Creek Fire Service Area Board recommended unanimous approval of this resolution;

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

SECTION 1. That the mutual aid agreement between Bear Creek Fire Service Area and the Moose Pass Volunteer Fire Company is hereby approved. The mayor is authorized to execute a mutual aid agreement substantially in the form of the attached agreement.

SECTION 2. That the operational plan substantially in the form of the attached plan is hereby approved and the Bear Creek Fire Service Area and the Moose Pass Volunteer Fire Company boards and chiefs 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 THI 6TH DAY OF APRIL, 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Bear Creek Fire Service Area

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*
Roy Browning, Fire Chief, Central Emergency Services *RB*

FROM: Richard Brackin, Fire Chief, Bear Creek Fire Service Area *RB*

DATE: March 25, 2021

RE: Resolution 2021-021, Approving a Mutual Aid and Operational Plan
Between Seward Bear Creek Fire Service Area and Moose Pass
Volunteer Fire Company (Mayor)

This resolution would approve the attached mutual aid agreement and the operational plan between Bear Creek Fire Service Area and the Moose Pass Volunteer Fire Company 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 agreements and operational plans.

The agreements are for mutual aid response of fire and emergency medical resources and personnel, and will continue in effect per the terms of the agreement unless earlier terminated. The resolution would allow the operational plans, which detail specific response procedures, to be modified in the future without assembly approval as long as changes do not conflict with the basic elements of the mutual aid agreement.

Your consideration is appreciated.

**MUTUAL AID AGREEMENT
BETWEEN
MOOSE PASS VOLUNTEER FIRE COMPANY
AND
KPB BEAR CREEK FIRE SERVICE AREA**

THIS AGREEMENT is made and entered into this ____ day of February, 2021, by and between MOOSE PASS VOLUNTEER FIRE COMPANY and the KENAI PENINSULA BOROUGH, a municipal corporation, on behalf of the BEAR CREEK FIRE SERVICE AREA for the provision of emergency services.

1. Each of the parties owns and maintains equipment for the suppression of fires and for the supplying of emergency medical services. Each of the parties also retains firefighting personnel who are trained to provide various levels of emergency medical services.
2. In the event of a fire, disaster, or other emergency, one department may need the assistance of the other department to provide supplemental fire suppression and/or emergency medical service equipment and personnel.
3. Each of the departments has the necessary equipment and personnel to enable it to provide such service to the other department in the event of such an emergency.
4. The geographical boundaries of each department are located in such a manner as to enable each department to render mutual aid to the other.

The parties, to carry out the purposes and functions described above and in consideration of the benefits to be received by each of the parties, agree as follows:

1. Mutual Aid Requests. 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. Requests for aid may include direct response to the incident(s), cover assignments, or any other form of assistance needed. Requests for aid shall include as much detail as circumstance and time allow.
2. Response to Mutual Aid Request. 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. 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.

3. Emergencies – Information Provided. Upon dispatch by the requested department, the requesting department shall, at a minimum:
 - a. 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;
 - b. Describe the type of emergency, and provide a description of the planned utilization of the requested Department's resources; and
 - c. Provide communications channels for command functions as well as any tactical channels.
4. Command Authority. Upon arrival of the requested department's resources at the incident scene, staging area, or cover assignment location, all such personnel, equipment, and materials shall remain under the command of the requested department's senior responding personnel. The requested department's senior responding personnel shall report to and operate under the direction of the requesting (jurisdictional) department's Incident Command ("IC"). In no case shall any equipment be loaned for use to personnel who have not been trained in its use.
5. Responsibility for Costs and Liability.
 - a. Each department shall be responsible for its own liabilities incurred traveling to the scene, at the scene, and returning to the station of origin.
 - b. In rendering emergency services, each department will bear the responsibility for its own acts and any liability incurred by such acts.
 - c. Each department shall bear its own costs for responding to a mutual aid request.
6. Mutual Aid Withdrawal or Assignment Turn Down – Circumstances.
 - a. After arrival at an 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 department's 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. In either case, the requested department's senior personnel shall coordinate the withdrawal or assignment turn-down with the requested department's IC in such a manner as to best mitigate the consequences of a withdrawal or a turn down of assignment to avoid endangering personnel and property of either department.
7. Term of Agreement. This Agreement shall commence upon the date of the last signature and shall continue until December 31, 2025. This Agreement may be renewed by the Parties via written request, approved by both parties, no later than November 1st of each year. This Agreement may not extend beyond fifteen (15) years.
8. Termination of or Withdrawal from Agreement. Notwithstanding the above, either party may terminate or withdraw from this Agreement by giving no less than thirty (30) calendar days' written notice to the other Party and upon the running of thirty (30) days from such written notice, this Agreement shall be terminated.
9. Modification. This Agreement may only be amended, modified, or changed by a writing executed by authorized representatives of the parties.
10. Liability.
- a. There shall be no liability imposed on any department or its personnel for failure to respond to an incident due to resource limitations or as a result of any act or omission in good faith to fulfill the terms of this Agreement.
 - b. For purposes of this Agreement, each Party's employees shall be deemed to be the employees and agents of that Party only, and under no circumstances shall any employee be deemed to be an employee or agent of any other entity or the other Party.
 - c. All damages or repairs to any equipment or apparatus shall be the responsibility of the department that owns such equipment or apparatus, provided however that compensation for damages to equipment or apparatus that occurs during a natural

- disaster, a state of emergency, as declared by a local, state or federal governing authority, or any other incident for which state or federal aid is provided to the department requesting aid, shall be distributed to the department providing aid in proportion to the level of actual involvement while providing automatic aid.
- d. Nothing contained in this Agreement shall be construed to be a waiver of either department's qualified immunity, official immunity, or any other immunity or exemption from liability provided for by law.
11. Training. At a minimum, joint training exercises shall be carried out annually between the parties to this Agreement under the direction of the Chief or Training Officers in each department.
12. Annual Operating Plan.
- a. It is in the best interests of the citizens of both communities served by the departments to be provided the most expeditious and professional response available. The details as to amounts and type of assistance to be dispatched, response areas, methods of requesting aid, and the names or rank of persons authorized to receive to send or receive such requests, lists of personnel and resources which will be utilized, shall be developed by the Fire Chiefs of both departments.
 - b. Such details shall be recorded in an Operational Plan.
 - c. The Operational Plan shall be approved and signed by both departments and the Borough Mayor, dated and attached hereto and shall be incorporated herein by reference as an Exhibit.
 - d. The Fire Chief's shall strive to review and, if necessary, update and amend the Operational Plan annually.
 - e. The failure to attach an Operational Plan to this Agreement shall not render this Agreement null and void.
13. Release of Claims. Except as provided in 10(C) above, and to the extent allowed by law, each of the Parties agree to hold harmless and release the other Party from any and all liabilities, suits, claims, judgments, cost or demands for damage to its own property whether directly existing or indirectly arising out of the use of any vehicle, equipment or apparatus being used by either Party during the provision of service pursuant to this Agreement.
14. Injuries to Personnel. Any damage or other compensation which is required to be paid to any department employee or volunteer by reason of his/her injury occurring

while his/her services are being utilized pursuant to this Agreement shall be the sole liability and responsibility of the Department regularly employing that person.

15. No Benefit to Third Parties. This Agreement shall not be construed as, or deemed to be, an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action hereunder for any cause whatsoever.
16. Conflict with Laws. Nothing in this Agreement is intended to conflict with Federal, State, or local laws or regulations. If there are conflicts, this Agreement will be amended at the first opportunity to bring it into conformance with applicable laws or regulations.
17. Counterparts. This Agreement may be executed in counterparts, each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

APPROVED:

Bear Creek Fire Service Area

Moose Pass Volunteer Fire Company

Richard Brackin, Fire Chief

Phillip Ingersoll, Fire Chief

Date: _____

Date: _____

Kenai Peninsula Borough

Charlie Pierce, Mayor

Date: _____

ATTEST:

APPROVED as to Form and Legal
Sufficiency:

Johni Blankenship, MMC
Borough Clerk

Patty Burley, Deputy Borough Attorney
Dated: _____

OPERATIONAL PLAN (Exhibit A)
To
MUTUAL AID AGREEMENT BETWEEN
BEAR CREEK FIRE SERVICE AREA
and
MOOSE PASS VOLUNTEER FIRE COMPANY

This Operational Plan (hereinafter the “Plan”) between the Bear Creek Fire Service Area (BCFSA) and the Moose Pass Volunteer Fire Company (MPVFC) is for mutual aid response of fire apparatus and personnel.

The purpose of the Plan is to outline the procedures for carrying out a mutual aid response between BCFSA and MPVFC. This Plan is a guide for day-to-day operations, and may be revised, amended or altered annually by mutual consent of BCFSA and MPVFC with approval by the Borough Mayor and the Moose Pass Fire Company for the purpose of carrying out the original intent of the Mutual Aid Agreement. Should the mutual aid agreement between the parties be terminated, this Plan shall automatically terminate.

I. MUTUAL AID RESPONSE AREAS and AMOUNT AND TYPE OF ASSISTANCE

- a. When staffing levels and call volumes permit, BCFSA will respond to a MPVFC request for any structural fire within the MPVFC boundaries (map attached), and will provide a tanker/pumper and four personnel on a first alarm response. Unless redirected 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. The deployment of designated mutual aid may be restricted by current staffing and conditions, and will be at the discretion of the Fire Chief, Chief of Operations, or On-Call Command Officer.
- b. When staffing levels and call volumes permit, MPVFC will respond upon request for any structural fire within the BCFSA boundaries (map attached), and will provide a tanker/pumper and four personnel on a first alarm response. Unless redirected by the 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. The deployment of designated mutual aid may be restricted by current staffing and conditions, and will be at the discretion of the Fire Chief, Chief of Operations, or On-Call Command Officer.
- c. Each Agency may also request assistance for EMS, Rescue, Brush type incidents as needed.
- d. 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, Deputy Chief, Chief of 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 – When dispatching a call, dispatch shall state that a Mutual Aid is needed. The responding agency, 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 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, Borough or Community Council policy and procedures.

V. REVISIONS

The Operational Plan shall be reviewed annually and remain a part of the Mutual Aid Agreement upon consent of the agencies and execution by the Borough Mayor and Moose Pass Volunteer Fire Company.

BEAR CREEK FIRE SERVICE AREA

By: _____
Richard Brackin, Fire Chief

Date: _____

MOOSE PASS VOLUNTEER FIRE COMPANY

By: _____
Phillip Ingersoll, Fire Chief

Date: _____

KENAI PENINSULA BOROUGH

By: _____
Charlie Pierce, Mayor

Date: _____

ATTEST

By: _____
Johni Blankenship, Borough Clerk

Introduced by:

Dunne

Date:

04/06/21

Action:

Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2021-022**

**A RESOLUTION SUPPORTING SENATE BILL 17 RELATING TO PERFORMING
ENERGY AUDITS ON CERTAIN PUBLIC AND COMMUNITY FACILITIES WITH
THE GOAL THAT BY 2026 THE STATE SHALL ENTER CONTRACTS TO
RETROFIT PUBLIC FACILITIES, BUILDINGS AND SCHOOLS IN A MANNER
THAT WILL RESULT IN NET SAVINGS IN ENERGY COSTS TO THE STATE
WITHIN 15 YEARS AFTER COMPLETION OF THE RETROFITS**

WHEREAS, the borough's Resilience and Security Advisory Commission ("RSAC") recently become aware of Senate Bill 17 and believes this legislation could enable efficiency upgrades to Kenai Peninsula Borough School District facilities that are known to be cost-saving opportunities but which have been challenged by funding and organizational issues; and

WHEREAS, this legislation might also provide opportunities to retrofit other KPB buildings and community buildings within the borough and ultimately save the borough and state money, improve our facilities, and benefit the environment; and

WHEREAS, the RSAC passed a resolution during its meeting of March 10, 2021 advising the assembly to pass a resolution in support of SB 17 and requesting that a copy be sent to the sponsor, Senator Tom Begich;

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

SECTION 1. That the assembly hereby supports Senate Bill 17, which, among other actions, authorizes the Alaska Energy Authority to conduct energy audits of public facilities upon request. It also requires the Department of Transportation and Public Facilities to perform energy audits for public school buildings every seven years, and sets a target date of 2026 for a state energy policy to have at least 50 percent of total energy used by the state to come from clean energy sources. The intent is to reach that target date by entering into contracts valued at \$100 million to retrofit a variety of public facilities in a manner that will result in a net savings in energy costs within 15 years after completing the retrofits.

SECTION 2. That copies of this resolution shall be submitted to Senator Peter Micciche, Senator Tom Begich, and Senator Gary Stevens.

SECTION 3. That this resolution shall become effective immediately upon its adoption

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF APRIL, 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Willy Dunne, Assembly Member (V/M) for: WD

DATE: March 30, 2021

RE: Resolution 2021-022, Supporting Senate Bill 17 Relating to Performing Energy Audits on Certain Public and Community Facilities with the Goal that by 2026 the State Shall Enter Contracts to Retrofit Public Facilities, Buildings and Schools in a Manner that will Result in Net Savings in Energy Costs to the State Within 15 Years After Completion of the Retrofits (Dunne)

Senator Begich introduced Senate Bill No. 17 on January 19, 2021. It amends statutes to establish processes and funding for certain public facilities and public schools in Alaska to undergo energy audits, and to be retrofitted in a manner that will result in net savings in energy costs in the state within 15 years after the retrofits are completed. The Resilience & Security Advisory Commission requested this resolution supporting SB 17 as it may be beneficial to the borough.

Public facilities include facilities owned and controlled by the state for governmental, educational, or public use that are 5,000 s.f. or more and are not a legislative building or a court building. "Public schools" include schools operated by publicly elected or appointed school officials, public funds support the programs under the control of those officials, but does not include charter schools.

The Alaska Energy Authority would conduct Energy audits of community facilities upon request of the Alaska Housing Finance Corporation. It directs the Alaska Industrial Development and Export Authority to establish a rapid economic recovery office to facilitate state energy policy and encourage private investment. Energy service performance contracts valued in total at \$100 million would be entered by 2026 to retrofit public facilities and public schools in a manner that would result in a net savings in energy costs to the state within 15 years after completion of the retrofits.

Your consideration is appreciated.

ALASKA STATE LEGISLATURE

EDUCATION

ETHICS

HEALTH & SOCIAL SERVICES

RULES



SENATOR Tom Begich
Senate Democratic Leader

WHILE IN SESSION
STATE CAPITOL
JUNEAU, AK 99801
(907) 465-3704

•
WHILE IN ANCHORAGE
1500 W BENSON BLVD
ANCHORAGE, AK 99503
(907) 269-0169

Energy Efficiency & Policy: Public Buildings Sponsor Statement

*Senate Bill 17
Version: 32-LS0187\A*

The State of Alaska is responsible for over \$650 million in energy costs associated with close to 5,000 state owned public facilities. With significant economic headwinds visible on the horizon, reducing the state's energy costs through sound investments in clean energy not only makes good fiscal sense; it also fulfills a legislative promise of bringing renewable energy to Alaskan communities.

In 2010, the Alaska State Legislature passed HB 306 which established a State goal of obtaining 50 percent of our State energy needs from renewable energy by 2025. With some of the highest energy costs in the nation, increasing the share of renewable electricity and heat will save the State money and help insulate costs from volatility in fuel pricing. Also, in 2010, the Alaska Sustainable Energy Act set forth a goal of retrofitting 25% of the state's buildings over 10,000 square feet for energy efficiency by 2020, successfully achieving that goal in 2014.

Building on the successes of the Alaska Sustainable Energy Act, SB 17 extends the energy efficiency retrofit program to schools and community centers which are eligible for the Power Cost Equalization Program. This creates incentives to reform retrofits for buildings which receive State support for their energy bills, which will save the State, school districts, and communities money.

However, single retrofit projects may not be attractive or profitable to private retrofit enterprises. SB 17 also directs the Alaska Industrial Development and Export Authority (AIDEA) to establish a **rapid economic recovery office** to facilitate state energy policy and encourage private investment. This new office will review energy audits, identify retrofit and other clean energy projects to be bundled, marketing those projects to and engage with Department of Transportation and Public Facilities to contract with private investors. This will ensure the benefits of the state's energy policy, clean energy, and energy retrofitting will proliferate into rural communities, rather than just reaching the goal through one large Railbelt project.

32-LS0187\A | 1.26.2021 | 1

SB 17 will provide rapid economic recovery by bringing in new investment to support an Alaska-based clean energy industry and reduce the challenges and barriers that may prevent private companies from investing in Alaska's infrastructure development.

ALASKA STATE LEGISLATURE

EDUCATION

ETHICS

HEALTH & SOCIAL SERVICES

RULES



SENATOR Tom Begich
Senate Democratic Leader

WHILE IN SESSION
STATE CAPITOL
JUNEAU, AK 99801
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•
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(907) 269-0169

Energy Efficiency & Policy: Public Buildings Sectional Analysis

Senate Bill 17
Version: 32-LS0187\A

Section 1.

Establishes Legislative Intent to outfit public buildings, facilities, and schools with new energy upgrades to ultimately reduce net energy costs by 2026.

Section 2.

Amends AS 18.56 by adding a section, AS 18.56.865, authorizing the Alaska Energy Authority (AEA) to conduct energy audits of public facilities upon request.

Section 3.

Amends AS 42.45.110 by adding a new subsection (j), permitting owners of public facilities that use power cost equalization under subsection (b) of this statute to allow the Alaska Energy Authority, the Alaska Housing Finance Corporation, or the Department of Transportation and Public Facilities to perform energy audits and retrofits.

Section 4.

Amending AS 44.42.065(a) by adding public school buildings to the list of community facilities that the Department of Transportation and Public Facilities must perform energy audits for every 7 years.

Section 5.

Amends AS 44.42.065(c) by including the definition of public school as defined by AS 14.25.220, but not including a charter school as defined by AS 14.03.290.

Section 6.

Amends AS 44.42.065 by adding a new subsection (d) which authorizes the Department of Transportation and Public Facilities to coordinate with the Alaska Energy Authority to conduct energy audits by request.

Section 7.

Amends the date under AS 44.42.067(a) to which Department of Transportation and Public Facilities shall retrofit at least 25% of all public facilities to no later than January 1, 2026.

Section 8.

Amends AS 44.42.067(e) to include education facilities as well as government and public use facilities in the definition of public facilities and reduces the square foot requirement to 5,000 for public use facilities.

Section 9.

Adds a new section under AS 44.83, AS 44.83.088 which directs the Alaska Industrial Development and Export Authority to coordinate with the Department of Public Transportation and Public Facilities for energy audits on public facilities that use power cost equalization as defined by AS 42.45.110(b). Directs the Alaska Energy Authority (AEA) to perform these audits at least once every seven years. Allows the AEA to work with entities that own public facilities to identify sources of funding for audits or retrofits.

Section 10.

Amends AS 44.88 by inserting a new section, AS 44.88.179, which directs the Alaska Industrial Development and Export Authority to establish a rapid economic recovery office to facilitate state energy policy and encourage private investment. Directs this new office of rapid economic recovery to review energy audits, identify energy retrofit projects to be bundled, market bundled projects, and engage with Department of Transportation and Public Facilities to contract with private investors.

Section 11.

Adds a new subsection under AS 44.99.115, subsection (b) which establishes a state energy policy target date of 2026 to have at least 50 percent of total energy used by the state to come from clean energy sources and authorizes the Alaska Energy Authority to request periodic updates from state facilities on the estimated percent of total energy used obtained from clean energy sources. For the purpose of this legislation, this section includes definitions for clean energy. This section also includes the previously used definitions of power cost equalization and a state-funded public facility which includes a public school building, but excludes a charter school.

March 21, 2021

Assemblyman Willy Dunne

KPB Resilience & Security Advisory Commission Liaison

Assemblyman Dunne:

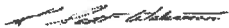
The Resilience & Security Advisory Commission (RSAC) has become aware of proposed legislation that may be beneficial to the Kenai Peninsula Borough (KPB). The proposed legislation, Senate Bill 17, is an Act relating to the retrofitting of certain public and community facilities. It is the goal of this legislation that the state, by 2026, enter into energy service performance contracts valued at \$100,000,000 to retrofit public facilities, public buildings, and public school buildings in a manner that will result in a net savings in energy costs to the state within 15 years after completion of the retrofit.

The legislation could enable efficiency upgrades to Kenai Peninsula Borough School District (KPBSD) facilities that are known both by KPBSD and the KPB to be cost-savings opportunities, but which have been challenged by funding and organizational issues. It may also provide opportunities to other KPB buildings and to community buildings within the KPB. This legislation, if passed, could save the state and the Borough money, improve KPBSD facilities, and benefit the environment.

Because of the possible benefits to the KPB, the RSAC passed a resolution at its March 10, 2021 meeting advising the Assembly to pass a resolution of support for SB 17 and send the resolution to Senator Tom Begich, the sponsor of the proposed legislation.

As additional information attached to this letter are copies of the Sponsor Statement and Sectional Analysis for the proposed resolution.

Respectfully,



Scott Waterman

Chairman KPB Resilience & Security Advisory Commission

Kenai Peninsula Borough Community & Fiscal Projects

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*
Brandi Harbaugh, Finance Director *BH*
Dan Nelson, Emergency Manager *DN*

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

DATE: March 25, 2021

RE: Ordinance 2020-19-25, Approving and Appropriating Funding from the State of Alaska in the Amount Up to \$2,037,529.59 for COVID-19 Community Funding, a Federal Pass-Thru Program under the Center for Disease Control and Prevention (Mayor)

The State of Alaska Department of Health and Social Services (DHHS), Division of Public Health is providing funding to municipalities and tribal entities to help improve efforts and increase access to COVID-19 testing; to build capacity to increase access to vaccinations; and to implement strategies that decrease health inequities. A minimum of 10 percent of the funds must be dedicated to assisting those who have difficulty accessing vaccines and other disadvantaged populations or communities. The Office of Emergency Management will oversee the program, ending March 31, 2022.

Eligible activities may also include recovery activities based upon lessons learned from post-response outcomes due to the coronavirus pandemic. Upon approval, the borough will enter into a memorandum of agreement with DHHS to reimburse the proposed activities in the attached budget narrative.

Your consideration of this ordinance is appreciated.

**FINANCE DEPARTMENT
FUNDS/ACCOUNT VERIFIED**

Acct. No. 271.11250.21VAC.49999

Amount: \$2,037,529.59

By: PP Date: 3/23/2021

Kenai Peninsula Borough Project Scope of Work and Budget Detail

Project Description	Unit Amount	Total	Narrative
<i>Personnel</i>			
One PTE position: Program Manager		\$ 80,000.00	The program manager manages these contracts and all other details related to the vaccination program, including contract administration and monitoring, public information activities, and works with emergency management, fire departments, and Borough administration.
Two PTE positions: 1 Call Center Manager and 1 Vaccine Clinic Assistant	\$ 31,200.00	\$ 62,400.00	Personnel costs include one year of a call center manager and vaccine clinic assistant. These personnel perform all logistics and planning for vaccine clinics, answer incoming calls, make outbound reminder calls, and other details.
Firefighter/EMS Vaccine Administration		\$ 150,000.00	Overtime for vaccine administration reflects the portion of mobile, fixed, and pop-up vaccination clinics that are performed by Borough fire/EMS service areas as overtime (see contract section).
<i>Contractual</i>			
Public information campaign		\$ 250,000.00	Public relations/communications firm to provide for communication and outreach for vaccine clinics and information, with a particular emphasis on underserved communities and populations. Scope of work will include outreach campaigns, arranging for translation of materials into native and other languages, producing electronic, printed, and other materials, and other strategies to reach the target audiences. COVID-19 topics to include vaccine distribution, testing, recovery and prevention messaging. Includes costs for direct advertising in radio, newspaper, social media, and other outlets.
Extended Site Clinics		\$ 125,000.00	Funding to support private medical providers, pharmacies, and qualified entities to provide smaller clinics during extended hours. For example, a medical office may keep staff from 5pm – 9pm on weeknights or open on weekends for the sole purpose of providing vaccinations.

Mobile Vaccination Clinics	\$	175,000.00	Commission medical providers to provide services to individual homes, group homes, isolated communities, public events, villages, and other areas where the population may be limited in mobility and not able to travel to a fixed site.
Transportation	\$	75,000.00	Local taxi cab companies, transportation, or agencies to provide transportation to vaccine clinics when the individuals' health allows. These would reimburse these companies agencies for the costs of trips taken (i.e. cab rides) or could be a hire for certain days to provide for one or more vaccine clinics.
Preparedness and Planning	\$	30,000.00	Develop the after action report and improvement plan for vaccination process undertaken by the OEM and partners.
	\$	50,000.00	Revise the Borough Continuity of Operations Plan (COOP) to take into account pandemic procedures and other updates.
Borough Code Revisions	\$	150,000.00	Update sections of code specific to response and recovery in areawide and nonareawide capacities. Updates and additions should not conflict with fire & EMS and hospital service area powers, but complement existing powers and identify potential changes or other recommendations based upon lessons-learned in correlation with COVID-19 response actions.
<i>Subrecipient Agreements to KPB Service Areas</i>			
South Peninsula Hospital (SPH)	\$	200,000.00	Pass-through funding to address the hospital service area needs specific to the COVID-19 MOA. SPH serves communities of Homer, Kachemak City, Seldovia and unincorporated communities (CDPs) of Anchor Point, Ninichik, Nikolaevsk, Fritz Creek, Diamond Ridge and smaller CDPs along the Kachemak Bay coastline.
Central Peninsula Hospital (CPH)	\$	200,000.00	Pass-through funding to address the hospital service area needs specific to the COVID-19 MOA. CPH serves Kenai, Soldotna and CDPs along the the Sterling and Spur Highways as well as CDPs across upper Cook Inlet.

North Peninsula Recreation (NPRSA)	\$ 340,129.59	NPRSA parks, recreational facility, pool, hockey rink and trails give all families and individuals opportunities to boost physical and mental health, and offer young children an opportunity to develop social skills, regardless of their socioeconomic status. The focus will be to develop and implement avenues for promoting health and wellness, and keys to prevention of COVID-19. These projects will develop more multi-programming with varied user groups, emphasize outdoor recreation, open spaces, programming and event areas, encourage social distancing and sanitation and focus on our community's health and well-being. An investment in these COVID-19 recovery projects is an investment in continued health, vitality and resiliency of the people who live on the KPB. Projects to emphasize health and wellness in safe spaces include: Pool Lap Lanes/Dividers, Gym Curtains/Dividers, Outdoor tents-large / stage, Virtual streaming of classes (fitness and other) for public, Upgrades and equipment for outdoor multi-purpose court, sanitation stations for the playground, no touch fixtures in pool and recreation facilities (lights, toilets, sinks, urinals).
Seldovia Recreation (SRSA)	\$ 150,000.00	SRSA provides a meeting place for Seldovia residents with a focus on arts, cultural awareness, health and wellness for young and young at heart. Projects to emphasize health and wellness in safe spaces include: Curtains/Dividers, Sanitation stations for playground, No touch fixtures in the facility.
TOTAL ALLOCATION (LESS CITIES)	\$ 2,037,529.59	



COVID 19 Community Memorandum of Agreement Information

PURPOSE:

The State of Alaska, Department of Health and Social Services, Division of Public Health will provide funding to Alaskan local governments and Tribal entities to help with the following activities:

- Improve efforts and increase access to COVID testing in the community
- Build capacity to increase access to COVID vaccine in the community
- Implement strategies that decrease health inequities

*Health Equity

According to the Robert Wood Johnson Foundation, health equity means that everyone has a fair and just opportunity to be as healthy as possible. This requires removing obstacles to health such as poverty, discrimination, and their consequences, including powerlessness and lack of access to good jobs with fair pay, quality education and housing, safe environments, and health care. (<https://www.rwjf.org/en/library/research/2017/05/what-is-health-equity-.html>)

COVID-19 HEALTH EQUITY ACTIVITY REQUIREMENT:

One goal of these projects is to implement community-driven strategies around COVID-19 vaccines, testing, case interviews, contact tracing, and other COVID-19 topics, with specific emphasis on population groups that have been disproportionately impacted by the COVID-19 pandemic due to external social factors and systemic inequities. Funding is calculated on population size. A portion of the funds are required to be used to help those who have difficulty accessing testing, vaccine or complying with recommendations from contract tracers. A minimum of 10% will be required for each MOA and will increase based on the levels of deprivation experienced in your community. Information on higher levels of deprivation by community is available for comparison to surrounding areas here: [Neighborhood Atlas - Home \(wisc.edu\)](#).

ELIGIBILITY:

Local governments are eligible to apply and may propose plans to engage one or more communities and geographic areas. The definition of communities may also include a group of people who have particular characteristic in common (e.g. share similar cultural beliefs or interests). Please work with your local tribes, borough, or municipality to ensure that efforts are coordinated. DHSS allows recipients to act as pass-through entities in order to provide funding to other recipients, including community-based organizations serving populations who may experience health inequities.

Technical assistance will be provided throughout the funding period to assist with reporting, advancing health equity projects, pre-approval of projects and invoice processing.

REPORTING:

Reporting requirements will be due at the same time as invoices. Payment will not be issued unless necessary reporting is attached. Reporting requirements will be determined during the MOA preparation and will be dependent upon the type of activities selected. Entities are encouraged to collaborate with hospitals, schools and community organizations to improve the outcomes for their population. **See attachment of COVID-19 Community Memorandum of Agreement fund amounts.**

PERIOD OF AGREEMENT, DATES AND DEADLINES:

March 15, 2021 – March 31, 2022

Important dates:

February 22, 2021	Pre award meeting with technical assistance (4pm)
February 25, 2021	2 nd Pre award meeting with technical assistance (10am)
March 15, 2021	Funding Requests due to Maria.caruso@alaska.gov
March 31, 2021	Award funding to Communities via signed MOA
March 31, 2022	Final receipts due to DPH, payments issued to Communities

Submit questions to: Maria.caruso@alaska.gov

TERMS OF PAYMENT: Funds will be reimbursed through invoicing upon approval of MOA.

PRIOR APPROVAL REQUIRED:

- Computer software
- Equipment
- Construction projects

FUNDS CANNOT BE USED FOR:

- Resources funded by another HSS Contract or HSS-Cares source
- Research
- Purchasing vehicles
- Reimbursement of Pre-Award costs
- Hospital bills or insurance claims
- Fund raising activities or lobbying
- No indirect costs will be considered
- Food and/or water

Please complete the application in order to develop MOA.

1. Complete selected activities by dates prescribed above.
2. Please include an updated W9 with your request.

Submit completed application and W9 to: Maria.caruso@alaska.gov

COVID 19 Community Memorandum of Agreement Application

Primary Contact Information:

(Please make sure to include name, phone number, email and physical address for all contacts listed.)

Program Contact: _____

Phone number: _____

Email: _____

Physical Address: _____

Finance Contact: _____

Phone number: _____

Email: _____

Physical Address: _____

Other Contact that needs to sign/be listed on the Memorandum of Agreement (MOA):

Contact: _____

Phone number: _____

Email: _____

Physical Address: _____

Please list communities and partners intended to be part of this funding, either through subawards or support.

Community/Partner Name(s):

SCOPE and AMOUNTS:

Please check activities from the menu below. In the final box, indicate the dollar amount anticipated.

Menu of Activities

1. Improve efforts and increase access to COVID testing in the community: <ul style="list-style-type: none"> <input type="checkbox"/> Develop new test sites or mobile testing capacity <input type="checkbox"/> Expand capacity in existing locations where testing is offered <input type="checkbox"/> Overtime for personnel to report lab results <input type="checkbox"/> Transportation costs associated with testing* <input type="checkbox"/> New or mobile testing sites targeted at underserved community members* <input type="checkbox"/> Develop targeted, culturally relevant communication efforts* <input type="checkbox"/> Staff training to support reporting of lab results <input type="checkbox"/> Purchasing necessary supplies for testing <input type="checkbox"/> Other activities (Please describe in the box below) 		
If there is not sufficient space to provide details, please attach a spreadsheet or addendum to your application.		Amount Requested per Activity:
Description of "Other" activities:		
Personnel (expected overtime, job title)		
Contracts (sub-contractor name, activity to be performed)		
Supplies/Materials (type of supply, quantity)		
Total		

* These activities are examples of how to meet the minimum 10% budget requirements to address health inequities. Other activities may also be counted but will require a description of how they address health inequities.

2. Build capacity to increase access to COVID vaccine in the community:

- ☐ Overtime for personnel to administer vaccine
- ☐ Overtime for support staff to make appointments or reminder calls for patients
- ☐ Additional sites for vaccine administration
- ☐ Mobile vaccine administration*
- ☐ Transportation costs associated with vaccinations*
- ☐ New or mobile vaccine sites targeted at underserved community members*
- ☐ Develop targeted, culturally relevant communication efforts*
- ☐ Incentivize providers to improve reporting race, ethnicity, and occupation data into VacTrak.
- ☐ Rent space or expand hours where vaccine can be administered
- ☐ Supplies needed to administer vaccines
- ☐ Other activities (Please describe in the box below)

If there is not sufficient space to provide details, please attach a spreadsheet or addendum to your application.**Amount Requested per Activity:****Description of "Other" activities:****Personnel
(expected overtime number, job titles)****Contracts
(sub-contractor name, activity to be performed)****Site Rental for Vaccine
Administration****Supplies/Materials
(type of supply, quantity)****Total:**

* These activities are examples of how to meet the minimum 10% budget requirements to address health inequities. Other activities may also be counted but will require a description of how they address health inequities.

Introduced by:	Mayor
Date:	04/06/21
Hearing:	04/20/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-19-26**

**AN ORDINANCE APPROVING AND ACCEPTING GRANT FUNDS FROM THE
STATE OF ALASKA DIVISION OF HOMELAND SECURITY & EMERGENCY
MANAGEMENT TO REIMBURSE REPAIRS AT THE CENTRAL PENINSULA
LANDFILL 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 tsunami warnings were issued for coastal communities, including Seward and the Kachemak Bay communities of Homer, Seldovia, Nanwalek and Port Graham; 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, repair costs for the Central Peninsula Landfill leachate tank in the amount of \$205,797.38 will be reimbursed to the borough as a 75 percent federal pass-through and a 25 percent state-matching grant awarded by the State of Alaska Division of Homeland Security & Emergency Management;

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 \$205,797.38 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 \$450,000 appropriation from the general fund for disaster response and recovery by way of ordinance 2018-19-26 are project length in nature and as such do not lapse at the end of any particular fiscal year.

SECTION 3. That this grant award exceeds the original appropriation of \$450,000 by \$141,427.56 and grant funds in the amount of \$141,427.56 are appropriated to account number 260.32122.19EQ1.49999 for Central Peninsula Landfill earthquake repairs.

SECTION 4. 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 5. 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 6. That this ordinance shall be effective upon its enactment.

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

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Community & Fiscal Projects

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*
Brandi Harbaugh, Finance Director *BH*
Dan Nelson, Emergency Manager *DN*
John Hedges, Purchasing & Contracting Director *JH*

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

DATE: March 25, 2021

SUBJECT: Ordinance 2020-19-26, Approving and Accepting Grant Funds from the State of Alaska Division of Homeland Security & Emergency Management to Reimburse Repairs at the Central Peninsula Landfill Resulting from the November 30, 2018 Cook Inlet 7.0 Earthquake (Mayor)

This ordinance accepts \$205,797.38 from the State of Alaska Division of Homeland Security & Emergency Management (AKDHSEM) for costs incurred at the Central Peninsula Landfill (CPL) in responding to the November 30, 2018 Cook Inlet 7.0 Earthquake, Federal Disaster Declaration DR4413. Funds in the amount of \$64,369.82 were previously appropriated by way of ordinance 2018-19-26 as a portion of the overall \$450,000 total appropriation, therefore \$141,427.56 in grant funds will be appropriated through this ordinance.

The project applications and approved grant awards are managed through the Federal Emergency Management Agency online system named Grants Portal, and the award agreements created through the AKDHSEM as project worksheets.

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 under project worksheet 367 for CPL Leachate Tank Repairs.

Attachment: Award Letter 03/11/21.

FINANCE DEPARTMENT	
MATCH & ADMIN FEE FUNDS/ACCOUNT VERIFIED	
Account	<u>260.32122.19EQ1.49999</u>
Amount	<u>\$64,369.82</u>
By: <u>PP</u>	Date: <u>3/24/2021</u>



THE STATE
of **ALASKA**
GOVERNOR MIKE 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

March 11, 2021

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): 0367

Mr. Nelson:

Enclosed is your initial Grant Award Package for Project Worksheet (PW) 0367 under DR-4413-AK, 2018 Cook Inlet Earthquake. A pre-signed Obligating Award Document (OAD) and Grant Requirements Form are enclosed. Please return by email once signed to our office no later than two weeks after receipt.

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.

No payments will be processed until we receive our copy of the signed forms. A current quarterly report (DHS&EM 30-60) is also due for the current quarter of this obligation and every quarter until the project is closed. Please use the table below when submitting your quarterly reports in the future.

Period	Date Due	Period	Date Due
Jan 1 – Mar 31	April 15	Apr 1 – Jun 30	July 15
Jul 1 – Sep 30	October 15	Oct 1 – Dec 31	January 15

Mr. Nelson
March 11, 2021
Page 2 of 2

If you have any questions, please contact Duane Ruch, your assigned Division Representative, at 907-428-7076 or by email at duane.ruch@alaska.gov.

Sincerely,



William A. Dennis
Alternate Governor's Authorized Representative

Enclosure(s): Obligating Award Document
Grant Requirements Forms
Project Reports
Project Worksheet 0367



**DEPARTMENT OF MILITARY AND VETERANS AFFAIRS
DIVISION OF HOMELAND SECURITY
AND EMERGENCY MANAGEMENT**
Obligating Award Document for
Disaster - Public Assistance Presidentially Declared

FAIN: (Disaster Number) DR-4413-AK

CFDA No. 97.036 Date of Disaster Declaration 0113112019

1. Project Worksheet# 0367	2. DUNS# 071845168	3. Award Amendment LJ Amendment Number	14. Employer Tax ID# 92-0030894										
5. Recipient Name and Address Kenai Peninsula Borough 144 North Binkley Street Soldotna, Alaska 99669		6. Issuing Office and Address Department of Military and Veterans Affairs Division of Homeland Security and Emergency Management PO Box 5750 JBER, AK 99505-5750 http://www.read.alaska.gov											
7. PW Obligation Date 0211812021		Agency: Federal Emergency Management Agency (FEMA)											
9. Purpose of Award/Amendment: Initial Award													
10. Grant Award and Terms and Conditions: (see attached Grant Terms and Conditions) <table> <tr> <td>Total Approved Amount:</td> <td>\$205,797.38</td> </tr> <tr> <td>Total Awarded Amount:</td> <td>\$205,797.38</td> </tr> <tr> <td>Federal Share:</td> <td>\$154,348.04</td> </tr> <tr> <td>State Share:</td> <td>\$51,449.34</td> </tr> <tr> <td>Sub-Grantee Share:</td> <td>\$ 0.00</td> </tr> </table> <p>See attached: Approved PAGP Project Worksheet Grant Performance Period: 0113112019 through 0713112021</p>				Total Approved Amount:	\$205,797.38	Total Awarded Amount:	\$205,797.38	Federal Share:	\$154,348.04	State Share:	\$51,449.34	Sub-Grantee Share:	\$ 0.00
Total Approved Amount:	\$205,797.38												
Total Awarded Amount:	\$205,797.38												
Federal Share:	\$154,348.04												
State Share:	\$51,449.34												
Sub-Grantee Share:	\$ 0.00												
11. Grant Requirements Assurances and Agreements: (see attached Grant Requirements, Assurances and Agreements) The acceptance of a grant from the United States creates a legal duty on the part of the grantee to use the funds or property made available in accordance with the conditions of the grant. (GAO Accounting Principles and Standards for Federal Agencies, Chapter 2, Section 16.B(f)). Federal awarding agency is the Federal Emergency Management Agency (FEMA).													
12. Project Award Title: Peninsula Landfill													
13. Recipient is required to sign and return one (1) copy of this document with the terms and conditions to the issuing address in Block 6, within 30 days from the date in Block 17.													
14. DHS&EM Project Manager Printed Name of SPAO: Duane Ruch		Phone: (907) 428 7076 Fax: (907) 428-7009 Email: duane.ruch@alaska.gov											
15. Signature of Jurisdiction Project Manager Printed Name: Dan Nelson		Phone: 907- 252-0369 Fax: 907-714-2395 Email: dnelson@kpb.us											
16. Signature of Jurisdiction Chief Financial Officer Printed Name: Brandi Harbaugh		Phone: 907-714-2176 Fax: 907-714-2376 Email: bharbaugh@kpb.us											
17. Signature of Jurisdiction Signatory Official Printed Name and Title: Charlie Pierce, Mayor		Date: Phone: (907) 714-2150 Fax: 907-714-2377 Email: mayor@kpb.us											
18. DHS&EM Signatory Official William A. Dennis Alternate Governor's Authorized Representative		Date: j. I/- 2/ Phone: (907) 428-7000 Fax: (907) 428-7009 Email: bill.dennis@alaska.gov											

Turn over to complete instruction acknowledgement.

Introduced by:	Mayor
Date:	01/08/19
Hearing:	01/22/19
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2018-19-26**

**AN ORDINANCE APPROPRIATING FUNDS FROM THE GENERAL FUND FOR
EARTHQUAKE RESPONSE UNDER THE LOCALLY DECLARED DISASTER
EMERGENCY WITHIN THE KENAI PENINSULA**

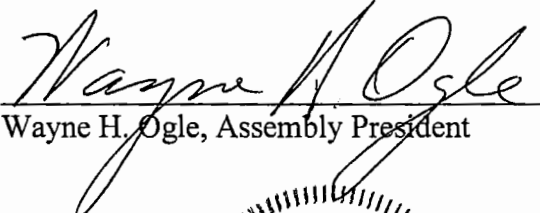
- WHEREAS,** on November 30, 2018 at 8:29 am a 7.0 earthquake shook from an epicenter five miles north of Anchorage which was felt across Southcentral Alaska and tsunami warnings were issued for coastal communities, including Seward and the Kachemak Bay communities of Homer, Seldovia, Nanwalek and Port Graham; and
- WHEREAS,** an appropriation is needed to provide funding for the borough's response and damage assessments; and
- WHEREAS,** both the State of Alaska and federal government issued an emergency declaration to assist the Municipality of Anchorage, Kenai Peninsula Borough, and Matanuska-Susitna Borough on November 30, 2018;
- WHEREAS,** the Kenai Peninsula Borough Mayor issued a local emergency declaration for the entire Kenai Peninsula Borough on December 4, 2018, subsequently extended to June 7, 2019 by the assembly; and
- WHEREAS,** the borough has completed some work and continues to conduct repairs and damage assessments borough-wide for the following departments and service areas: Maintenance, Purchasing and Contracting, Roads, Office of Emergency Management, Solid Waste, North Peninsula Recreation, Nikiski Fire, Central Emergency Services, Kachemak Emergency Services, and Central Peninsula Hospital Service Area; and
- WHEREAS,** departments and service areas have financially supported the initial response, and this appropriation will reimburse these operational funds; and
- WHEREAS,** it is expected that significant expenses will be incurred in responding to this event and repairing damages to facilities and public infrastructure caused by the earthquake; and
- WHEREAS,** this ordinance appropriates funds in the amount of \$450,000 to enable the borough to continue repairs and assessments associated with the disaster;

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

SECTION 1. That the sum of \$450,000 is hereby appropriated from the general fund balance and transferred to account no. 260.11251.19EQ1.49999 for response and assessment by the borough through the declared earthquake disaster emergency within the Kenai Peninsula Borough.

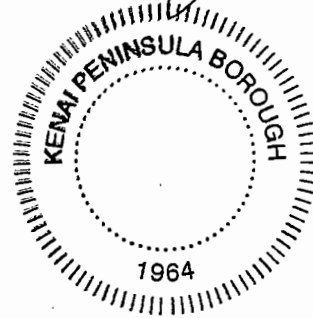
SECTION 2. That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 22ND
DAY OF JANUARY, 2019.**


Wayne H. Ogle, Assembly President

ATTEST:


Johni Blankerish, MMC, Borough Clerk



Yes: Bagley, Blakeley, Carpenter, Cooper, Dunne, Fischer, Hibbert, Smalley, Ogle
No: None
Absent: None

Introduced by:	Mayor
Date:	04/06/21
Hearing:	04/20/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-19-27**

**AN ORDINANCE APPROVING AND APPROPRIATING GRANT FUNDS TOTALING
\$14,610.43 FROM THE ALASKA DEPARTMENT OF NATURAL RESOURCES FOR
THE VOLUNTEER FIRE ASSISTANCE PROGRAM ON BEHALF OF WESTERN
EMERGENCY SERVICE AREA, KACHEMAK EMERGENCY SERVICE AREA AND
NIKISKI FIRE SERVICE AREA**

WHEREAS, Western Emergency Service Area, Kachemak Emergency Service Area and the Nikiski Fire Service Area applied for individual grants under the 2021 Volunteer Fire Assistance (“VFA”) program administered by the Alaska Department of Natural Resources, Division of Forestry; and

WHEREAS, the borough received an award notification, allowing the service areas to purchase wildland firefighting equipment; and

WHEREAS, the VFA program requires a 10 percent match of local expenditures toward the grant funds; and

WHEREAS, the service areas will meet the 10 percent match requirement and 1 percent administration fee through expenditures made from their approved FY21 operating budget if purchases are made prior to June 30, 2021 or, from their FY22 operating budget, if purchases are made between July 1 and December 1, 2021; and

WHEREAS, at its regular meeting on April 14, 2021, the Western Emergency Service Area board recommended _____; and

WHEREAS, at its regular meeting held on April 15, 2021, the Kachemak Emergency Service Area board recommended _____; and

WHEREAS, at its regular meeting held on April 14, 2021, the Nikiski Fire Service Area board recommended _____; and

WHEREAS, it is in the best interest of the borough to accept the grant funds;

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

SECTION 1. That the mayor is authorized to accept the 2021 VFA program grant funds from the Alaska Department of Natural Resource on behalf of the Western Emergency

Service Area, Kachemak Emergency Service Area and the Nikiski Fire Service Area and is authorized execute a grant agreement and any other documents deemed necessary to expend the grant and to fulfill the intents and purposes of this ordinance.

SECTION 2. That Western Emergency Service Area grant funds in the amount of \$4,998.42 are appropriated to the account 209.51410.22VF1.49999.

SECTION 3. That Kachemak Emergency Service Area grant funds in the amount of \$4,986.01 are appropriated to the account 212.51810.22VF2.49999.

SECTION 4. That Nikiski Fire Service Area grant funds in the amount of \$4,626 are appropriated to the account 206.51110.22VF3.49999.

SECTION 5. This ordinance shall become effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS *
DAY OF * 2021.**

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Community & Fiscal Projects

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members of the Kenai Peninsula Assembly

THRU: Charlie Pierce, Mayor *CP*
Brandi Harbaugh, Finance Director *BH*
Brenda Ahlberg, Community & Fiscal Projects Manager *BA*

FROM: Jon Marsh, WESA Fire Chief *JM*
Bob Ciccarella, KESA Fire Chief *RC*
Bryan Crisp, NFSA Fire Chief *BC*

DATE: March 25, 2021

SUBJECT: Ordinance 2020-19-27, Approving and Appropriating Grant Funds
Totaling \$14,610.43 from the Alaska Department of Natural Resource
for the Volunteer Fire Assistance Program on Behalf of Western
Emergency Service Area, Kachemak Emergency Service Area, and
Nikiski Fire Service Area (Mayor)

The Alaska Department of Natural Resources, Division of Forestry provides assistance in training, equipment purchases and prevention activities through the Volunteer Fire Assistance ("VFA") program. The VFA program may be used for both wildland and structure protection needs. The assistance is provided to increase firefighter safety, improve the firefighting capabilities of rural volunteer fire departments, and enhance protection in the urban-wildland interface.

The following service areas were notified of grant award: Western Emergency Service Area (WESA), Kachemak Emergency Service Area (KESA), and Nikiski Fire Service Area (NFSA). At the time of application, the Anchor Point and Ninilchik response areas were not formally one entity under WESA. Upon award, the Division of Forestry approved the award transfer to WESA.

The 2021 VFA awards by service area match:

Service Area	Award	Project Description	Account	Match	Admin Service Fee
WESA	\$4,998.42	Protective gear, suppression hand tools	209.51410.48760	\$499.84	\$54.98



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources

Division of Forestry

550 West 7th Avenue, Suite 1450
Anchorage, AK 99501-3561
Main: 907.269-8463
Fax: 907-269-8931

March 10, 2021

Dear Volunteer Fire Department:

Thank you for applying for the 2021 Volunteer Fire Assistance (VFA) grants. Thirty-five (35) volunteer fire departments applied for a VFA grant requesting a total of \$164,044.58 in assistance. Thirty-four (34) of the thirty-five (35) VFDs will receive some level of funding. A total of \$159,026.50 was awarded. This letter is the official notification.

The enclosed spreadsheet lists all applicants and amount requested/amount awarded. If a fire department was awarded a grant, the amount awarded will be listed in the column titled "Amount Awarded". Some VFDs will not receive an award this year and one will receive a partial award. If a VFD did not receive any funding or will be receiving a partial award, please contact your respective DOF Fire Management Officer with any questions you may have.

- Checks will be distributed electronically by association with the VFD's SOA vendor number and the SOA electronic payment agreement. Electronic disbursements are expected by May 2021.
- To be eligible for a 2022 VFA grant, compliance documentation, such as copies of receipts for 2021 grant expenditures, must be submitted to your nearest Forestry office at the time of, or prior to, submitting a 2022 application.
- Volunteer Fire Assistance is an award of Federal Financial Assistance with funding from the USDA Forest Service. Prime and sub recipients to this award are subject to OMB guidance in sub parts A through F of 2 CFR Part 200 as adapted and supplemented by the USDA in 2 CFR Part 400. Adaption by USDS of the OMB guidance in 2 CFR 400 gives regulatory effect to OMB guidance in 2 CFR 200 where full text may be found.
- The brochure, Complying with Civil Rights, FS-850, can be found here:
https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd526908.pdf.
- The OMB Circulars are available on the internet at www.ecfr.gov.

If an application was not fully successful do not be discouraged and continue to apply every year by submitting a complete online application package by the deadline.

Sincerely,

Sarah Saarloos

Sarah Saarloos, Fire Staff Officer

2021 VFA Grant Awards

Fire Department	Amount Requested	Amount Awarded	Division of Forestry Office
Delta Junction VFD	\$4,990.25	\$4,972.27	Delta Area Office
Rural Deltana VFD	\$4,972.50	\$4,972.50	Delta Area Office
Chena-Goldstream Fire & Rescue	\$5,000.00	\$5,000.00	Fairbanks Area Office
City of Anderson	\$4,998.63	\$4,998.63	Fairbanks Area Office
McKinley VFD	\$4,961.02	\$4,961.02	Fairbanks Area Office
Steese Area VFD	\$4,500.00	\$4,500.00	Fairbanks Area Office
Tri-Valley VFD	\$5,000.00	\$5,000.00	Fairbanks Area Office
Anchor Point Fire & Emergency Medical Service Area	\$4,998.42	\$4,998.42	Kenai Kodiak Area Office
Cooper Landing VFD	\$4,449.10	\$4,449.10	Kenai Kodiak Area Office
Fire Protection Area No. 1 (Bayside Fire Station)	\$4,500.00	\$4,500.00	Kenai Kodiak Area Office
Homer VFD	\$4,998.50	\$4,998.50	Kenai Kodiak Area Office
Kachemak Emerg. Services	\$4,986.01	\$4,986.01	Kenai Kodiak Area Office
Kenai FD	\$4,974.92	\$4,974.92	Kenai Kodiak Area Office
Lowell Point VFD	\$4,995.00	\$4,995.00	Kenai Kodiak Area Office
Nikiski FD	\$4,626.00	\$4,626.00	Kenai Kodiak Area Office
Ninilchik Emergency Services	\$4,778.80	\$4,778.80	Kenai Kodiak Area Office
Seward FD	\$4,979.00	\$4,979.00	Kenai Kodiak Area Office
Womens Bay VFD	\$4,350.06	\$4,350.06	Kenai Kodiak Area Office
Butte FD	\$4,970.70	\$4,970.70	Mat Su Area
Caswell Lakes FSA #135	\$4,988.39	\$4,988.39	Mat Su Area
Chickaloon Fire Service, Inc.	\$5,000.00	\$0.00	Mat Su Area
Houston FD	\$4,608.00	\$4,608.00	Mat Su Area
Palmer Fire and Rescue	\$4,875.00	\$4,875.00	Mat Su Area
Sutton VFD	\$3,224.00	\$3,224.00	Mat Su Area
Talkeetna VFD	\$5,000.00	\$5,000.00	Mat Su Area
West Lakes FD	\$4,885.65	\$4,885.65	Mat Su Area
Willow VFD	\$4,973.43	\$4,973.43	Mat Su Area
Whale Pass VFD	\$2,215.45	\$2,215.45	Southeast Alaska
Aniak VFD	\$4,590.00	\$4,590.00	Southwest District
Port Alsworth VFD	\$4,499.00	\$4,499.00	Southwest District
Northway VFD	\$4,625.00	\$4,625.00	Tok Area Office
Tok VFD	\$4,034.71	\$4,034.71	Tok Area Office
Gakona VFD	\$5,000.00	\$5,000.00	Valdez-Copper River Area Office
Kennicott/McCarthy VFD	\$4,997.05	\$4,997.05	Valdez-Copper River Area Office
Valdez FD	\$4,499.99	\$4,499.99	Valdez-Copper River Area Office
GRAND TOTAL	\$164,044.58	\$159,026.60	

From: [Kent, Howard J \(DNR\)](#)
To: [Ahlberg, Brenda](#)
Cc: [Saarloos, Sarah \(DNR\)](#); [Marsh, Jon](#); [Mathis, Robert](#); [Bear, David](#)
Subject: <EXTERNAL-SENDER>RE: 2021 VFA awards
Date: Monday, March 22, 2021 12:01:06 PM
Attachments: [image003.png](#)

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Good morning Brenda,

It is my understanding that the 2021 VFA Grant Application submitted by Anchor Point Fire & Emergency Medical Service Area will be awarded under the Western Emergency Service Area for the amount of \$4,998.42 that was applied for.

Because Anchor Point Fire & Emergency Medical Service Area and Ninilchik Emergency Services have officially combined to become one Fire Department the 2021 VFA Grant Application submitted by Ninilchik will no longer be awarded. The 2021 VFA Grant Award per Fire Department cannot exceed the \$5,000.00 maximum amount. Due to the recent merge of these two Fire Departments only one could be awarded so it was decided that Anchor Point's submitted VFA Application would be the one to receive funding. Please let me know if you have additional questions or need further clarification. Thanks.

Howie Kent
Fire Management Officer
Alaska Division of Forestry
Kenai/Kodiak Area Office
42499 Sterling Highway
Soldotna, AK. 99669
907-260-4220 (Office)
907-394-2606 (Cell)



From: Ahlberg, Brenda <bahlberg@kpb.us>
Sent: Monday, March 22, 2021 10:20 AM
To: Kent, Howard J (DNR) <howard.kent@alaska.gov>
Cc: Saarloos, Sarah (DNR) <sarah.saarloos@alaska.gov>; Marsh, Jon <JMarsh@kpb.us>; Mathis, Robert <RMathis@kpb.us>; Bear, David <dbear@kpb.us>
Subject: 2021 VFA awards

Good morning Howie:

Thanks so much for your support and the recent announcement of VFA awards. May I please have an official statement acknowledging that the award \$4,998.42 to Anchor Point Fire & Emergency Medical Service Area will be transferred to the new legal name Western Emergency Service Area.

Also, what are your thoughts on the Ninilchik Emergency Services award \$4,778.80? Will this be issued to the volunteer nonprofit? If transferred to WESA, I'll need an official statement acknowledging this transfer too.

Smiles, B

Brenda Ahlberg
Community & Fiscal Projects Manager
Public Information Officer, MPIO, Type 1(t)

907-714-2153 direct

907-231-6505 mobile

907-714-2377 fax

bahlberg@kpb.us

<https://cares.kpb.us> – CARES Act Relief Fund Project Updates

www.kpb.us – Information by departments and service areas

www.kpboem.com – Updates from agencies responding to area-wide response

@Kenai.Peninsula.Borough – Facebook Page for general government topics

@KPBalerts – Facebook Page for areawide response topics

@KPBinfo – Twitter Account

@KPBalerts – Twitter Account

KENAI PENINSULA BOROUGH

144 North Binkley Street

Soldotna, Alaska 99669



Introduced by:	Hibbert, Mayor
Date:	04/06/21
Hearing:	05/04/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-12**

**AN ORDINANCE AMENDING KPB CHAPTER 5.19, UNIFORM REMOTE SELLER
SALES TAX CODE, IN ACCORDANCE WITH UPDATES AND CHANGES ADOPTED
BY THE ALASKA REMOTE SELLER SALES TAX COMMISSION**

- WHEREAS**, following the U.S. Supreme Court decision in *South Dakota v. Wayfair*, the borough joined with other Alaska municipalities to form an intergovernmental commission and enter into an intergovernmental agreement (“Agreement”) to combat the inability to effectively collect sales tax on online retail sales that would otherwise be subject to borough and city sales tax; and
- WHEREAS**, in enacting Ordinance 2020-03, the assembly determined that the inability to effectively collect sales tax on sales of personal property, products or services transferred or delivered into Alaska by sellers who do not have a physical presence in the borough (“remote seller”) was eroding the sales tax base of Alaska communities and resulting in revenue losses that are causing imminent harm to residents through the loss of critical funding for local education; and
- WHEREAS**, after a recent omnibus review of the Uniform Remote Seller Sales Tax Code, at its meeting on February 24, 2021, the Alaska Remote Sellers Sales Tax Commission (“Commission”) unanimously approved updates to the code aimed to improve code inconsistencies and administrative processes; and
- WHEREAS**, per the governing intergovernmental agreement, to retain full membership status the borough must enact the code amendments within 120 days of the date the Commission adopted the changes; and
- WHEREAS**, all the incorporated cities within the borough are also members of the Commission and signatories to the Agreement; and
- WHEREAS**, the incorporated cities have opted to adopt the Chapter 5.19 of the borough’s code by reference; and
- WHEREAS**, failure to enact the Commission’s code amendments may impact the ability of the borough and the cities to remain full members of the Commission;

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

SECTION 1. That KPB Chapter 5.19 is amended as follows:

KPB 5.19. Uniform Remote Seller Sales Tax Code

5.19.010. Interpretation.

- A. In order to prevent evasion of the sales taxes and to aid in its administration, it is presumed that all sales and services by a person or entity engaging in business are subject to the sales tax.
- B. The application of the tax [LEVIED]to be collected under this Code shall be broadly construed and shall favor inclusion rather than exclusion.
- C. Exemptions from the tax [LEVIED]to be collected under this Code [OR FROM THE TAXING JURISDICTION] shall be narrowly construed against the claimant and allowed only when such exemption clearly falls within an exemption defined in [THIS CODE OR] the [TAXING]member jurisdiction's Code.
- D. The scope of this Code shall apply to remote sellers or marketplace facilitators, delivering products or services into Member municipalities adopting this Code, within the state of Alaska.

5.19.020. Title to Collected Sales Tax.

Upon collection by the remote seller or marketplace facilitator, title to collected sales tax vests in the Commission for remittance to the [TAXING] member jurisdiction. The remote seller or marketplace facilitator remits collected sales tax to the Commission on behalf of the [TAXING] member jurisdiction, from whom that power is delegated, in trust for the [TAXING] member jurisdiction and is accountable to the Commission and [TAXING] member jurisdiction.

5.19.030. [IMPOSITION]Collection – Rate.

- A. To the fullest extent permitted by law, [A]the sales tax [IS]levied and assessed by the member jurisdiction shall be collected on all remote sales where delivery is made within [THE LOCAL TAXING JURISDICTION(S) THAT IS A] member jurisdiction, within the state of Alaska.
- B. The applicable tax shall be added to the sales price as provided in the member jurisdiction's sales tax code, based on Point of Delivery.

- C. The tax rate added to the sale price shall be the tax rate for the [TAXING] member jurisdiction(s) where the property or product is sold, or service that was rendered is received, and based on the date the property or product was sold or the date the service rendered was received.
- D. An Address and Tax Rate Database will be made available to remote sellers and marketplace facilitators, indicating the appropriate tax rate to be applied.
- E. The tax assessed shall be consistent with relevant jurisdictional tax caps, single unit sales, and exemptions.
- F. When a sale is made on an installment basis, the applicable sales tax shall be collected at each payment, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered, based on the [LOCAL] member jurisdictions' Code(s).
- G. When a sales transaction involves placement of a single order with multiple deliveries made at different points in time that are separately invoiced, the applicable sales tax shall be collected on each separately invoiced delivery, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered.

5.19.040. - Obligation to Collect Tax - Threshold Criteria.

- A. Any remote seller or marketplace facilitator must collect and remit sales tax in compliance with all applicable procedures and requirements of law, provided the remote seller or marketplace facilitator has met one of the following Threshold Criteria ("Threshold Criteria") in the current or previous calendar year:
 - 1. The remote seller's statewide gross sales, including the seller's marketplace facilitator's statewide gross sales, from the sale(s) of property, products or services delivered in[TO] the state meets or exceeds one hundred thousand dollars (\$100,000); or
 - 2. The remote seller, including the seller's marketplace facilitator, sold property, products, or services delivered in[TO] the state in two hundred (200) or more separate transactions.
- B. For purposes of determining whether the Threshold Criteria are met, remote sellers or marketplace facilitators shall include all gross sales, from all sales of goods, property, products, or services rendered within the state of Alaska.

5.19.050. - Reporting and remittance requirements for local and remote sales.

- A. Sellers with a physical presence in a member jurisdiction conducting only local sales shall report and remit to, and comply with standards of, including audit authority, the member jurisdiction.
- B. Sellers with a physical presence in a member jurisdiction that also have remote or internet-based sales where the Point of Delivery is in a different Member Jurisdiction shall (i) report and remit the remote or internet sales to the Commission; and ii) report and remit the local sales to the Member Jurisdiction.
- C. Sellers with a physical presence in a Member Jurisdiction that also have remote or internet-based sales where the Point of Delivery is in the same Member Jurisdiction shall report and remit those remote sales to the Member Jurisdiction.
- D. Sellers and marketplace facilitators that do not have a physical presence in a Member Jurisdiction must report and remit to the Commission all remote sales where the Point of Delivery is in a Member Jurisdiction.

A marketplace facilitator is considered the remote seller for each sale facilitated through its marketplace and shall collect, report, and remit sales tax to the Commission. A marketplace facilitator is not considered to be the remote seller for each sale or rental of lodging facilitated through its marketplace, wherein the seller is considered to have a physical presence in the member jurisdiction.

5.19.0[5]60. No Retroactive Application.

The obligations to collect and remit sales tax required by this chapter are applicable at the effective date of the member jurisdiction's ordinance adopting the Alaska Remote Seller Sales Tax Code.

5.19.0[6]70. Payment and Collection.

Pursuant to this Code, taxes imposed shall be due and paid by the buyer to the remote seller or marketplace facilitator at the time of the sale of property or product or date service is rendered, or with respect to credit transactions, at the time of collection. It shall be the duty of each remote seller or marketplace facilitator to collect the taxes from the buyer and to hold those taxes in trust for the taxing authority of the [TAXING] member jurisdiction. Failure by the remote seller or marketplace facilitator to collect the tax shall not affect the remote seller's, or marketplace facilitator's, responsibility for payment to the Commission.

5.19.0[7]80. Remote Seller and Marketplace Facilitator Registration Requirement.

- A. If a remote seller's gross statewide sales [WITHIN THE LAST CALENDAR YEAR]meets or exceeds the Threshold Criteria under KPB 5.19.040, the remote seller shall register with the Commission. [IF A MARKETPLACE FACILITATOR'S GROSS STATEWIDE SALES WITHIN THE LAST CALENDAR YEAR MEETS OR EXCEEDS THE THRESHOLD CRITERIA, THE MARKETPLACE FACILITATOR SHALL REGISTER WITH THE COMMISSION.] If the remote seller is a marketplace seller and only makes sales in Alaska through a marketplace, the marketplace seller is not required to register with the Commission. The marketplace seller must submit an affidavit attesting to these facts on a form provided by the Commission.
- B. If a marketplace facilitator's gross statewide sales meets or exceeds the Threshold Criteria under KPB 5.19.040, the marketplace facilitator shall register with the Commission.
- [B]C. A remote seller or marketplace facilitator meeting the Threshold Criteria shall apply for a certificate of sales tax registration within thirty (30) calendar days of the effective date of this Code or within thirty (30) calendar days of meeting the Threshold Criteria whichever occurs second. Registration shall be to the Commission on forms prescribed by the Commission.
- [C]D. An extension may be applied for and granted based on criteria established by the Commission, based on evidence produced to describe time necessary to update software or other technical needs, not to exceed ninety (90) days.
- [D]E. Upon receipt of a properly executed application, the Commission shall confirm registration, stating the legal name of the remote seller or marketplace facilitator, the primary address, and the primary sales tax contact name and corresponding title. The failure of the Commission to confirm registration does not relieve the remote seller or marketplace facilitator of its duty to collect and remit sales tax.
- [E]E. Each business entity shall have a sales tax registration under the advertised name.
- G. The sales tax certificate is non-assignable and non-transferable.
- H. The sales tax certificate satisfies a member jurisdiction's requirement to obtain a municipal business license, provided the remote seller does not have a physical presence in that member jurisdiction.

5.19.0[8]90. Tax Filing Schedule.

- A. All remote sellers or marketplace facilitators subject to this Code shall file a return on a form or in a format prescribed by the Commission and shall pay the tax due.
- B. Filing of sales tax returns are due monthly; quarterly or less frequent filing is optional upon application and approval by the Commission, consistent with the code of the [LOCAL]member jurisdiction.
- C. A remote seller or marketplace facilitator who has filed a sales tax return will be presumed to be making sales in successive periods unless the remote seller or marketplace facilitator files a return showing a termination or sale of the business in accordance with this Code.
- D. The completed and executed return, together with the remittance in full for
- E. the tax due, shall be transmitted to and must be received by the Commission on or before midnight Alaska Standard Time on the due date. Monthly returns are due the last day of the immediate subsequent month. Quarterly returns are due as follows:

Quarter 1 (January – March)	April 30
Quarter 2 (April – June)	July 31
Quarter 3 (July – September)	October 31
Quarter 4 (October – December)	January 31
- F. If the last day of the month following the end of the filing period falls on a Saturday, Sunday, federal holiday or Alaska state holiday, the due date will be extended until the next business day immediately following.
- G. Any remote seller or marketplace facilitator holding a remote seller registration shall file a sales tax return even though no tax may be due. This return shall show why no tax is due. If the remote seller or marketplace facilitator intends to continue doing business a return shall be filed reflecting no sales and a confirmation of the intent to continue doing business and shall continue to do so each filing period until the entity ceases doing business or sells the business. If the remote seller or marketplace facilitator intends to cease doing business, a final return shall be filed along with a statement of business closure.
- H. The remote seller or marketplace facilitator shall prepare the return and remit sales tax to the Commission on the same basis, cash or accrual, which the remote seller or marketplace facilitator uses in preparing its federal income tax return. The remote seller or marketplace facilitator shall sign

the return, and transmit the return, with the amount of sales tax and any applicable penalty, interest or fees that it shows to be due, to the Commission.

- I. Remote sellers and marketplace facilitators failing to comply with the provisions of this Code shall, if required by the Commission and if quarterly filing has been chosen, file and transmit collected sales taxes more frequently until such time as they have demonstrated to the Commission that they are or will be able to comply with the provisions of this Code. Six (6) consecutive on-time sales tax filings, with full remittance of the sales taxes collected, shall establish the presumption of compliance and return to quarterly filing.
- J. The preparer of the sales tax return shall keep and maintain all documentation supporting any and all claims of exempted sales and purchases. Documentation for exempted sales should include the number of the exemption authorization card presented by the buyer at the time of the purchase; the date of the purchase; the name of the person making the purchase; the organization making the purchase; the total amount of the purchase; and the amount of sales tax exempted. This documentation shall be made available to the Commission upon request. Failure to provide such documentation may invalidate that portion of the claim of exemption for which no documentation is provided.

5.19.[09]100 Estimated Tax

- A. In the event the Commission is unable to ascertain the tax due from a remote seller or marketplace facilitator by reason of the failure of the remote seller or marketplace facilitator to keep accurate books, allow inspection, or file a return, or by reason of the remote seller or marketplace facilitator filing a false or inaccurate return, the Commission may make an estimate of the tax due based on any evidence in their possession.
- B. Sales taxes may also be estimated, based on any information available, whenever the Commission has reasonable cause to believe that any information on a sales tax return is not accurate.
- C. A remote seller's or marketplace facilitator's tax liability under this Code may be determined and assessed for a period of [SIX (6)] three (3) years after the date the return was filed or due to be filed with the Commission. No civil action for the collection of such tax may be commenced after the expiration of the [SIX (6)] three (3) year period except an action for taxes, penalties and interest due from those filing periods that are the subject of a written demand or assessment made within the [SIX (6)] three (3) year period, unless the remote seller or marketplace facilitator waives the protection of this section.

- D. The Commission shall notify the remote seller or marketplace facilitator, in writing, that the Commission has estimated the amount of sales tax that is due from the remote seller or marketplace facilitator. The Commission shall serve the notice on the remote seller or marketplace facilitator by delivering the notice to the remote seller's or marketplace facilitator's place of business, or by mailing the notice by certified mail, return receipt requested, to the remote seller's or marketplace facilitator's last known mailing address. A remote seller or marketplace facilitator who refuses the certified mail will be considered to have accepted the certified mail for purposes of service.
- E. The Commission's estimate of the amount of sales tax that is due from a remote seller or marketplace facilitator shall become a final determination of the amount that is due unless the remote seller or marketplace facilitator, within thirty (30) calendar days after service of notice of the estimated tax:
1. Files a complete and accurate sales tax return for the delinquent periods supported by satisfactory records and accompanied by a full remittance of all taxes, interest, penalties, costs and other charges due; or
 2. Files a written notice with the Commission appealing the estimated tax amount in accordance with the appeal procedures, under the provisions of KPB 5.19.160.
 3. Arguments or reasons for failure to timely file a return and remit taxes collected shall not be considered a valid basis or grounds for granting an appeal. The basis and grounds for granting an appeal of an assessment are:
 - a. The identity of the remote seller or marketplace facilitator is in error;
 - b. The amount of the debt is erroneous due to a clerical error (and the nature and extent of the error is specified in the request for appeal); or
 - c. The remote seller or marketplace facilitator disputes the denial of exemption(s) for certain sales.
- F. The amount of sales tax finally determined to be due under this section shall bear interest and penalty from the date that the sales tax originally was due, plus an additional civil penalty of fifty dollars (\$50) for each calendar month or partial month for which the amount of sales tax that is due has been determined.

5.19.1[0]10. Returns – Filing Contents.

- A. Every remote seller or marketplace facilitator required by this chapter to collect sales tax shall file with the Commission upon forms furnished by the Commission a return setting forth the following information [WITH TOTALS ROUNDED TO THE NEAREST DOLLAR]:
 - 1. Gross sales rounded to the nearest dollar;
 - 2. The nontaxable portions separately stating the amount of sales revenue attributable to each class of exemption, rounded to the nearest dollar;
 - 3. Computation of taxes to be remitted;
 - 4. Calculated discount (if applicable) based on [TAXING] member jurisdiction's code; and
 - 5. Such other information as may be required by the Commission.
- B. Each tax return remitted by a remote seller or marketplace facilitator shall be signed (digital or otherwise) by a responsible individual who shall attest to the completeness and accuracy of the information on the tax return.
- C. The Commission reserves the right to reject a filed return for failure to comply with the requirements of this Code for up to three (3) months from the date of filing. The Commission shall give written notice to a remote seller or marketplace facilitator that a return has been rejected, including the reason for the rejection.

5.19.1[1]20. Refunds.

- A. Upon request from a buyer or remote seller or marketplace facilitator the Commission shall provide a determination of correct tax rate and amount applicable to the transaction. In the case of an overpayment of taxes, the remote seller or marketplace facilitator shall process the refund and amend any returns accordingly.
- B. If the claimant is a remote seller or marketplace facilitator, and the tax refund is owed to any buyer, the remote seller or marketplace facilitator submits, and the Commission approves, a refund plan to all affected buyers.
- C. Interest will not be paid on tax refund requests filed with the Commission.

[C]D. The [TAXING] Member Jurisdictions may allow a buyer to request a refund directly from the [TAXING] Member Jurisdiction.

5.19.1[2]30. Amended Returns.

- A. A remote seller or marketplace facilitator may file an amended sales tax return, with supporting documentation, and the Commission may accept the amended return, but only in the following circumstances:
 - i. The amended return is filed within one (1) year of the original due date for the return; and
 - ii. The remote seller or marketplace facilitator provides a written justification for requesting approval of the amended return; and
 - iii. The remote seller or marketplace facilitator agrees to submit to an audit upon request of the Commission.
- B. The Commission shall notify the remote seller or marketplace facilitator in writing (by email or otherwise) whether the Commission accepts or rejects an amended return, including the reasons for any rejection.
- C. The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation, the Commission determines the figure included in the original returns are incorrect; and the Commission adjusts the return within [TWO (2)] three (3) years of the original due date for the return.
- D. A remote seller or marketplace facilitator may file a supplemental sales tax return, with supporting documentation, and the Commission may accept the supplemental return, but only in the following circumstances:
 - i. The remote seller or marketplace facilitator provides a written justification for requesting approval of the supplemental return; and
 - ii. The remote seller or marketplace facilitator agrees to submit to an audit upon request of the Commission.

5.19.1[3]40. Extension of Time to File Tax Return.

Upon written application of a remote seller or marketplace facilitator, stating the reasons therefor, the Commission may extend the time to file a sales tax return but only if the Commission finds each of the following:

1. For reasons beyond the remote seller's or marketplace facilitator's control, the remote seller or marketplace facilitator has been unable to maintain in a current condition the books and records that contain the information required to complete the return;
2. Such extension is a dire necessity for bookkeeping reasons and would avert undue hardship upon the remote seller or marketplace facilitator;
3. The remote seller or marketplace facilitator has a plan to cure the problem that caused the remote seller or marketplace facilitator to apply for an extension and the remote seller or marketplace facilitator agrees to proceed with diligence to cure the problem;
4. At the time of the application, the remote seller or marketplace facilitator is not delinquent in filing any other sales tax return, in remitting sales tax to the Commission or otherwise in violation of this chapter;
5. No such extension shall be made retroactively to cover existing delinquencies.

5.19.1[4]50. Audits.

- A. Any remote seller or marketplace facilitator who has registered with the Commission, who is required to collect and remit sales tax, or who is required to submit a sales tax return is subject to a discretionary sales tax audit at any time. The purpose of such an audit is to examine the business records of the remote seller or marketplace facilitator in order to determine whether appropriate amounts of sales tax revenue have been collected by the remote seller or marketplace facilitator and remitted to the Commission.
- B. The Commission is not bound to accept a sales tax return as correct. The Commission may make an independent investigation of all retail sales or transactions conducted within the State or [TAXING]member jurisdiction.
- C. The records that a remote seller or marketplace facilitator is required to maintain under this chapter shall be subject to inspection and copying by authorized employees or agents of the Commission for the purpose of auditing any return filed under this chapter, or to determine the remote seller's or marketplace facilitator's liability for sales tax where no return has been filed.
- D. In addition to the information required on returns, the Commission may request, and the remote seller or marketplace facilitator must furnish, any reasonable information deemed necessary for a correct computation of the tax.

- E. The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation or audit, the Commission determines that the figures included in the original return are incorrect, and that additional sales taxes are due; and the Commission adjusts the return within [TWO (2)] three (3) years of the original due date for the return.
- F. For the purpose of ascertaining the correctness of a return or the amount of taxes owed when a return has not been filed, the Commission may conduct investigations, hearings and audits and may examine any relevant books, papers, statements, memoranda, records, accounts or other writings of any remote seller or marketplace facilitator at any reasonable hour on the premises of the remote seller or marketplace facilitator and may require the attendance of any officer or employee of the remote seller or marketplace facilitator. Upon written demand by the Commission, the remote seller or marketplace facilitator shall present for examination, in the office of the Commission, such books, papers, statements, memoranda, records, accounts and other written material as may be set out in the demand unless the Commission and the person upon whom the demand is made agree to presentation of such materials at a different place.
- G. The Commission may issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda. If any remote seller or marketplace facilitator refuses to obey any such subpoena, the Commissioner may refer the matter to the Commission's attorney for an application to the superior court for an order requiring the remote seller or marketplace facilitator to comply therewith.
- H. Any remote seller, marketplace facilitator, or person engaged in business who is unable or unwilling to submit their records to the Commission shall be required to pay the Commission for all necessary expenses incurred for the examination and inspection of their records maintained outside the Commission.
- I. After the completion of a sales tax audit, the results of the audit will be sent to the business owner's address of record.
- J. In the event the Commission, upon completion of an audit, discovers more than five hundred dollars (\$500) in additional sales tax due from a remote seller or marketplace facilitator resulting from a remote seller's or marketplace facilitator's failure to accurately report sales and taxes due thereupon, the remote seller or marketplace facilitator shall bear responsibility for the full cost of the audit. The audit fee assessment will be in addition to interest and penalties applicable to amounts deemed to be delinquent by the Commission at the time of the conclusion of the audit.

5.19.1[5]60. Audit or Estimated Tax protest.

- A. If the remote seller or marketplace facilitator wishes to dispute the amount of the estimate, or the results of an examination or audit, the remote seller or marketplace facilitator must file a written protest with the Commission, within thirty (30) calendar days of the date of the notice of estimated tax or results of an audit or examination. The protest must set forth:
 - 1. The remote seller's or marketplace facilitator's justification for reducing or increasing the estimated tax amount, including any missing sales tax returns for the periods estimated; or
 - 2. The remote seller's or marketplace facilitator's reasons for challenging the examination or audit results.
- B. In processing the protest, the Commission may hold an informal meeting or hearing with the remote seller or marketplace facilitator, either on its own or upon request of the remote seller or marketplace facilitator, and may also require that the remote seller or marketplace facilitator submit to an audit, if one was not previously conducted or a more formal audit, if an estimation audit was previously performed.
- C. The Commission shall make a final written determination on the remote seller's or marketplace facilitator's protest and mail a copy of the determination to the remote seller or marketplace facilitator.
- D. If a written protest is not filed within thirty (30) days of the date of the notice of estimated tax or the result of a review, audit or examination, then the estimated tax, review, audit or examination result shall be final, due and payable to the Commission.

5.19.1[6]70. Penalties and Interest for Late Filing.

- A. A late filing fee of twenty-five dollars (\$25) per month [(OR QUARTER) SHALL BE ADDED TO ALL LATE-FILED SALES TAX REPORTS IN ADDITION TO INTEREST AND PENALTIES], or fraction thereof, shall be added to all late-filed sales tax reports, until a total of one-hundred dollars (\$100) has been reached. An incomplete return shall be treated as the filling of no return.
- B. Delinquent sales tax bear interest at the rate of fifteen percent (15%) per annum until paid.

- C. In addition, delinquent sales tax shall be subject to an additional penalty of 5% per month, or fraction thereof, until a total of 20% of delinquent tax has been reached. The penalty does not bear interest.
- D. Penalties and interest shall be assessed and collected in the same manner as the tax is assessed and collected, and applied first to penalties and interest, second to past due sales tax.
- E. The filing of an incomplete return, or the failure to remit all tax, shall be treated as the filing of no return.
- F. A penalty assessed under this section for the delinquent remittance of sales tax or failure to file a sales tax return may be waived by the Commission, upon written application of the remote seller or marketplace facilitator accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed by the remote seller or marketplace facilitator, within forty-five (45) calendar days after the date of delinquency. A remote seller or marketplace facilitator may not be granted more than one (1) waiver of penalty under this subsection in any one calendar year, in accordance with the Commission's penalty waiver policy. The Commission shall report such waivers of penalty to the [TAXING] member jurisdiction, in writing.

5.19.180. Remote Reseller Certificate of Exemption

- A. A remote seller with no physical presence in a member jurisdiction purchasing goods or services for the express purpose of resale to buyer(s) located in that member jurisdiction shall apply for a resale certificate through the Commission.
- B. The Remote Reseller Certificate of Exemption will expire at the end of the calendar year it is issued.

5.19.1[7]90. Repayment Plans.

- A. The Commission may agree to enter into a repayment plan with a delinquent remote seller or marketplace facilitator. No repayment plan shall be valid unless agreed to by both parties in writing.
- B. A remote seller or marketplace facilitator shall not be eligible to enter into a repayment plan with the Commission if the remote seller or marketplace facilitator has defaulted on a repayment plan in the previous two (2) calendar years.
- C. The repayment plan shall include a secured promissory note that substantially complies with the following terms:

- i. The remote seller or marketplace facilitator agrees to pay a minimum of ten percent (10%) down payment on the tax, interest and penalty amount due. The down payment shall be applied first to penalty, then to accumulated interest, and then to the tax owed.
 - ii. The remote seller or marketplace facilitator agrees to pay the balance of the tax, penalty and interest owed in monthly installments over a period not to exceed two (2) years.
 - iii. Interest at a rate of fifteen percent (15%) per annum shall accrue on the principal sum due. Interest shall not apply to penalties owed or to interest accrued at the time the repayment plan is executed or accruing during the term of the repayment plan.
 - iv. If the remote seller or marketplace facilitator is a corporation or a limited liability entity, the remote seller or marketplace facilitator agrees to provide a personal guarantee of the obligations under the repayment plan.
 - v. The remote seller or marketplace facilitator agrees to pay all future tax bills in accordance with the provisions of this chapter.
 - vi. The remote seller or marketplace facilitator agrees to provide a security interest in the form of a sales tax lien for the entire unpaid balance of the promissory note to be recorded by the Commission at the time the repayment plan is signed. The remote seller or marketplace facilitator shall be responsible for the cost of recording the tax lien.
- D. If a remote seller or marketplace facilitator fails to pay two (2) or more payments [AS REQUIRED BY] in accordance with the terms of the repayment plan agreement, the remote seller or marketplace facilitator shall be in default and the entire amount owed at the time of default shall become immediately due. The Commission will send the remote seller or marketplace facilitator a notice of default. The Commission may immediately foreclose on the sales tax lien or take any other remedy available under the law.

5.19.[18]200. Remote Seller or Marketplace Facilitator Record Retention.

Remote sellers or marketplace facilitators shall keep and preserve suitable records of all sales made and such other books or accounts as may be necessary to determine the amount of tax which the remote seller or marketplace facilitator is obliged to collect. Remote sellers or marketplace facilitators shall preserve suitable records of sales for a period of [SIX (6)] three (3) years from the date of the return reporting

such sales, and shall preserve for a period of [SIX (6)] three (3) years all [INVOICES] documentation supporting exempted sales of goods [AND MERCHANDISE PURCHASED FOR RESALE] or services, and all such other books, invoices and records as may be necessary to accurately determine the amount of taxes which the remote seller or marketplace facilitator was obliged to collect under this chapter.

5.19.[19]210. Cessation or Transfer of Business.

- A. A remote seller or marketplace facilitator who sells, leases, conveys, forfeits, assigns, gifts or otherwise, transfers [OR ASSIGNS](collectively, a “transfer”) the majority of their business interest, including to a creditor or secured party, shall make a final sales tax return within thirty (30) days after the date of such conveyance.
- B. At least ten (10) business days before any such [SALE] transfer is completed, the remote seller or marketplace facilitator shall send to the Commission, by approved communication (email confirmation, certified first-class mail, postage prepaid) a notice that the remote seller’s or marketplace facilitator’s interest is to be conveyed and shall include the name, address and telephone number of the person or entity to whom the interest is to be conveyed.
- C. Upon notice of [SALE] transfer and disclosure of buyer, the Commission shall be authorized to disclose the status of the remote seller’s or marketplace facilitator’s sales tax account to the named buyer or assignee.
- D. Upon receipt of notice of a [SALE OR] transfer, the Commission shall send the transferee a copy of this Code with this section highlighted.
- E. Neither the Commission’s failure to give the notice nor the transferee’s failure to receive the notice shall relieve the transferee of any obligations under this section.
- F. Following receipt of the notice, the Commission shall have sixty (60) days in which to perform a final sales tax audit and assess sales tax liability against the remote seller [OF THE BUSINESS] or marketplace facilitator. If the notice is not mailed at least ten (10) business days before the [SALE] transfer is completed, the Commission shall have twelve (12) months from the date of the completion of the [SALE] transfer or the Commission’s knowledge of the completion of the [SALE] transfer within which to begin a final sales tax audit and assess sales tax liability against the remote seller [OF THE BUSINESS] or marketplace facilitator. The Commission may also initiate an estimated assessment if the requirements for such an assessment exist.

- G. A person acquiring any interest of a remote seller or marketplace facilitator in a business required to collect the tax under this chapter assumes the liability of the remote seller or marketplace facilitator for all taxes due the Commission, whether current or delinquent, whether known to the Commission or discovered later, and for all interest, penalties, costs and charges on such taxes.
- H. Before the effective date of the transfer, the transferee of a business shall obtain from the Commission an estimate of the delinquent sales tax, penalty and interest, if any, owed by the remote seller or marketplace facilitator as of the date of the transfer, and shall withhold that amount from the consideration payable for the transfer, until the remote seller or marketplace facilitator has produced a receipt from the Commission showing that all tax obligations imposed by this chapter have been paid. A transferee that fails to withhold the amount required under this subsection shall be liable to the Commission and [TAXING] member jurisdiction for the lesser of the amount of delinquent sales tax, penalty and interest due from the remote seller or marketplace facilitator as of the date of transfer, and the amount that the transferee was required to withhold.
- I. In this section, the term “transfer” includes the following:
1. A change in voting control, or in more than fifty percent (50%) of the ownership interest in a remote seller or marketplace facilitator that is a corporation, limited liability company or partnership; or
 2. A sale of all or substantially all the assets used in the business of the remote seller or marketplace facilitator; or
 3. The initiation of a lease, management agreement or other arrangement under which another person becomes entitled to the remote seller’s or marketplace facilitator’s gross receipts from sales, rentals or services.
- J. Subsection H of this section shall not apply to any person who acquires their ownership interest in the ongoing business as a result of the foreclosure of a lien that has priority over the Commission’s sales tax lien.
- K. Upon termination, dissolution or abandonment of a [CORPORATE] business entity, any officer having control or supervision of sales tax funds collected, or who is charged with responsibility for the filing of returns or the payment of sales tax funds collected, shall be personally liable for any unpaid taxes, interest, administrative costs and penalties on those taxes if such [OFFICER] person willfully fails to pay or cause to be paid any taxes due from the corporation. In addition, regardless of willfulness, each director, member, or general partner of the [CORPORATION] entity shall

be jointly and severally liable for unpaid amounts. The [OFFICER] person shall be liable only for taxes collected which became due during the period he or she had the control, supervision, responsibility or duty to act for the corporation. This section does not relieve the [CORPORATION] entity of other tax liabilities or otherwise impair other tax collection remedies afforded by law.

- L. A remote seller or marketplace facilitator who terminates the business without the benefit of a purchaser, successor or assign shall make a final tax return and settlement of tax obligations within thirty (30) days after such termination. If a final return and settlement are not received within thirty (30) days of the termination, the remote seller or marketplace facilitator shall pay a penalty of one hundred dollars (\$100), plus an additional penalty of twenty-five dollars (\$25) for each additional thirty-(30-) day period, or part of such a period, during which the final return and settlement have not been made, for a maximum of six (6) additional periods.

5.19.2[0]20. Use of Information on Tax Returns.

- A. Except as otherwise provided in this chapter, all returns, reports and information required to be filed with the Commission under this Code, and all information contained therein, shall be kept confidential and shall be subject to inspection only by:
 - 1. Employees and agents of the Commission and [TAXING] member jurisdiction whose job responsibilities are directly related to such returns, reports and information;
 - 2. The person supplying such returns, reports and information; and
 - 3. Persons authorized in writing by the person supplying such returns, reports and information.
- B. The Commission will release information described in subsection A of this section pursuant to subpoena, order of a court or administrative agency of competent jurisdiction, and where otherwise required by law to do so.
- C. Notwithstanding subsection A of this section, the following information is available for public inspection:
 - 1. The name and address of sellers and marketplace facilitators;
 - 2. Whether a business is registered to collect taxes under this chapter;

3. The name and address of businesses that are sixty (60) days or more delinquent in filing returns or in remitting sales tax, or both filing returns and remitting sales tax; and, if so delinquent, the amount of estimated sales tax due, and the number of returns not filed.
- D. The Commission may provide the public statistical information related to sales tax collections, provided that no information identifiable to a particular remote seller or marketplace facilitator is disclosed.
- E. Nothing contained in this section shall be construed to prohibit the delivery to a person, or their duly authorized representative, of a copy of any return or report filed by them, nor to prohibit the publication of statistics so classified as to prevent the identification of particular buyers, remote sellers, or marketplace facilitators, nor to prohibit the furnishing of information on a reciprocal basis to other agencies or political subdivisions of the state or the United States concerned with the enforcement of tax laws.
- F. Nothing contained in this section shall be construed to prohibit the disclosure through enforcement action proceedings or by public inspection or publication of the name, estimated balance due, and current status of payments, and filings of any remote seller or marketplace facilitator or agent of any remote seller or marketplace facilitator required to collect sales taxes or file returns under this chapter, who fails to file any return and/or remit in full all sales taxes due within thirty (30) days after the required date for that business. Entry into any agreement whether pursuant to the provisions of this chapter or otherwise shall not act as any prohibition to disclosure of the records of that remote seller or marketplace facilitator as otherwise provided in this chapter.
- G. A prospective lessee or purchaser of any business or business interest may inquire as to the obligation or tax status of any business upon presenting to the Commission a release of tax information request signed by the authorized agent of the business.
- H. Except as otherwise provided herein, [A]all returns referred to in this chapter, and all data taken therefrom, shall be kept secure from public inspection, and from all private inspection.

5.19.2[1]30. Violations.

- A. A remote seller or marketplace facilitator that fails to file a sales tax return or remit sales tax when due, in addition to any other liability imposed by this Code, shall pay to the Commission all costs incurred by the Commission to determine the amount of the remote seller's or marketplace facilitator's liability or to collect the sales tax, including, without

limitation, reviewing and auditing the remote seller's or marketplace facilitator's business records, collection agency fees, and actual reasonable attorney's fees.

- B. A person who causes or permits a corporation of which the person is an officer or director, a limited liability company of which the person is a member or manager, or a partnership of which the person is a partner, to fail to collect sales tax or to remit sales tax to the Commission as required by this Code shall be liable to the Commission for the amount that should have been collected or remitted, plus any applicable interest and penalty.
- C. Notwithstanding any other provision of law, and whether or not the Commission initiates an audit or other tax collection procedure, the Commission may bring a declaratory judgment action against a remote seller or marketplace facilitator believed to meet the criteria to establish that the obligation to remit sales tax is applicable and valid under local, state and federal law. The action shall be brought in the judicial district of the [TAXING] member jurisdiction.
- D. The Commission may cause a sales tax lien to be filed and recorded against all real and personal property of a remote seller or marketplace facilitator where the remote seller or marketplace facilitator has:
 - 1. Failed to file sales tax returns for two (2) consecutive filing periods as required by the Code; or
 - 2. Failed within sixty (60) days of the end of the filing period from which taxes were due to either (a) remit all amounts due or (b) to enter into a secured payment agreement as provided in this Code.
 - 3. Prior to filing a sales tax lien, the Commission shall cause a written notice of intent to file to be mailed to the last known address of the delinquent remote seller or marketplace facilitator.
- E. In addition to other remedies discussed in this Code, the Commission may bring a civil action to:
 - 1. Enjoin a violation of this Code. On application for injunctive relief and a finding of a violation or threatened violation, the superior court shall enjoin the violation.
 - 2. Collect delinquent sales tax, penalty, interest and costs of collection, either before or after estimating the amount of sales tax due.
 - 3. Foreclose a recorded sales tax lien as provided by law.

- F. All remedies hereunder are cumulative and are in addition to those existing at law or equity.

5.19.2[2]40. Penalties for Violations.

- A. In the event that a penalty provided below is different from the same penalty in a member jurisdiction's sales tax code, the penalty prescribed in the member jurisdiction's sales tax code will apply.
- [A]B. A buyer, remote seller, or marketplace facilitator who knowingly or negligently submits false information in a document filed with the Commission pursuant to this Code is subject to a penalty of five hundred dollars (\$500).
- [B]C. A remote seller or marketplace facilitator who knowingly or negligently falsifies or conceals information related to its business activities with the Commission or [TAXING] member jurisdiction is subject to a penalty of five hundred dollars (\$500).
- [C]D. A person who knowingly or negligently provides false information when applying for a certificate of exemption is subject to a penalty of five hundred dollars (\$500).
- [D. ANY REMOTE SELLER OR MARKETPLACE FACILITATOR WHO FAILS TO FILE A RETURN REQUIRED UNDER THIS CHAPTER BY THE DUE DATE, REGARDLESS OF WHETHER ANY TAXES WERE DUE FOR THE REPORTING PERIOD FOR WHICH THE RETURN WAS REQUIRED, SHALL BE SUBJECT TO A PENALTY OF TWENTY-FIVE DOLLARS (\$25) FOR THE FIRST SALES TAX RETURN NOT TIMELY FILED. THE FILING OF AN INCOMPLETE RETURN SHALL BE TREATED AS THE FILING OF NO RETURN.]
- E. A remote seller or marketplace facilitator who fails or refuses to produce requested records or to allow inspection of their books and records shall pay to the Commission a penalty equal to three (3) times any deficiency found or estimated by the Commission with a minimum penalty of five hundred dollars (\$500).
- F. A remote seller or marketplace facilitator who falsifies or misrepresents any record filed with the Commission is guilty of an infraction and subject to a penalty of five hundred dollars (\$500) per record.
- G. Misuse of an exemption card is a violation and subject to a penalty of fifty dollars (\$50) per incident of misuse;

- H. Nothing in this chapter shall be construed as preventing the Commission from filing and maintaining an action at law to recover any taxes, penalties, interest and/or fees due from a remote seller or marketplace facilitator. The Commission may also recover attorney's fees in any action against a delinquent remote seller or marketplace facilitator.

[5.19.230. -REMOTE SELLERS WITH A PHYSICAL PRESENCE IN THE TAXING JURISDICTION.

- A. SELLERS WITH A PHYSICAL PRESENCE IN A TAXING JURISDICTION AND NO REMOTE OR INTERNET-BASED SALES SHALL REPORT, REMIT, AND COMPLY WITH STANDARDS, INCLUDING AUDIT AUTHORITY, OF THE TAXING JURISDICTION.
- B. SELLERS WITH A PHYSICAL PRESENCE IN A TAXING JURISDICTION THAT ALSO HAVE REMOTE OR INTERNET-BASED SALES WHERE THE POINT OF DELIVERY IS IN A DIFFERENT TAXING JURISDICTIONS SHALL (I) REPORT AND REMIT THE REMOTE OR INTERNET SALES TO THE COMMISSION; AND (II) REPORT AND REMIT THE IN-STORE SALES TO THE TAXING JURISDICTION.
- C. SELLERS WITH A PHYSICAL PRESENCE IN A TAXING JURISDICTION THAT ALSO HAVE REMOTE OR INTERNET-BASED SALES WHERE THE POINT OF DELIVERY IS IN THE SAME TAXING JURISDICTIONS SHALL REPORT AND REMIT THOSE REMOTE SALES TO THE TAXING JURISDICTION.
- D. REMOTE SELLERS AND MARKETPLACE FACILITATORS THAT DO NOT HAVE A PHYSICAL PRESENCE IN A TAXING JURISDICTION MUST REPORT AND REMIT ALL REMOTE SALES TO THE COMMISSION.
- E. FOR ALL PURCHASES THE TAX RATE ADDED TO THE SALE PRICE SHALL BE AS PROVIDED IN THE TAXING JURISDICTION'S SALES TAX CODE, BASED ON POINT OF DELIVERY.
- F. A MARKETPLACE FACILITATOR IS CONSIDERED THE REMOTE SELLER FOR EACH SALE FACILITATED THROUGH ITS MARKETPLACE AND SHALL COLLECT, REPORT, AND REMIT SALES TAX TO THE COMMISSION. A MARKETPLACE FACILITATOR IS NOT CONSIDERED TO BE THE REMOTE SELLER FOR EACH SALE OR RENTAL OF LODGING

FACILITATED THROUGH ITS MARKETPLACE, WHEREIN THE SELLER IS CONSIDERED TO HAVE A PHYSICAL PRESENCE IN THE TAXING JURISDICTION.]

5.19.2[4]50. Remittance of Tax; Remote Seller Held Harmless.

- A. Any remote seller or marketplace facilitator that collects and remits sales tax to the Commission as provided by law may use an electronic database of state addresses that is certified by the Commission pursuant to subsection (C) of this section to determine the member jurisdictions to which tax is owed.
- B. Any remote seller or marketplace facilitator that uses the data contained in an electronic database certified by the Commission pursuant to subsection (C) of this section to determine the jurisdictions to which tax is owed shall be held harmless for any tax, charge, or fee liability to any [TAXING] member jurisdiction that otherwise would be due solely as a result of an error or omission in the database.
- C. Any electronic database provider may apply to the Commission to be certified for use by remote sellers or marketplace facilitators pursuant to this section. Such certification shall be valid for three years. In order to be certified, an electronic database provider shall have a database that satisfies the following criteria:
 - 1. The database shall designate each address in the state, including, to the extent practicable, any multiple postal address applicable to one location and the taxing jurisdictions that have the authority to impose a tax on purchases made by purchasers at each address in the state.
 - 2. The information contained in the electronic database shall be updated as necessary and maintained in an accurate condition. In order to keep the database accurate, the database provider shall provide a convenient method for [TAXING] member jurisdictions that may be affected by the use of the database to inform the provider of apparent errors in the database. The provider shall have a process in place to promptly correct any errors brought to the provider's attention.

5.19.260. Savings Clause.

If any provision of Chapter 5.19, the Uniform Remote Seller Sales Tax Code, and Chapter 5.18, Sales Tax Code, is determined by the Commission or an adjudicatory body of competent jurisdiction to discriminate against a remote seller in favor of a local seller with a physical presence in the taxing jurisdiction, the discriminatory

provision shall continue in effect only to the extent such provision does not discriminate against a remote seller, and the comparable code provision applicable to a local seller will apply to a remote seller, and the remainder of Chapter 5.19 and Chapter 5.18 shall continue in full force and effect.

5.19.2[5]70. Definitions.

For purposes of this chapter, the following definitions shall apply:

“Buyer” or “purchaser” means a person to whom a sale of property or product is made or to whom a service is furnished.

“Commission” means the Alaska [INTERGOVERNMENTAL] Remote Seller Sales Tax Commission established by Agreement between local government taxing jurisdictions within Alaska, and delegated tax collection authority.

“Delivered electronically” means delivered to the purchaser by means other than tangible storage media.

“Delivery Charges” means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating and packing.

“Entity-based exemption” means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

“Goods for resale” means:

- A. The sale of goods by a manufacturer, wholesaler or distributor to a retail vendor; sales to a wholesale or retail dealer who deals in the property sold, for the purpose of resale by the dealer.
- B. Sales of personal property as raw material to a person engaged in manufacturing components for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of, a product manufactured for sale by the manufacturer.
- C. Sale of personal property as construction material to a licensed building contractor where the property sold becomes part of the permanent structure.

“Lease” or “rental” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

“Local Sale” means a sale by a seller with a physical presence in a taxing jurisdiction, where the point of delivery is a location within the same taxing jurisdiction.

“Marketplace” means a physical or electronic place, platform or forum, including a store, booth, internet website, catalog or dedicated sales software application, where products or services are offered for sale.

“Marketplace facilitator” means a person that contracts with remote sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the remote seller’s property, product, or services through a physical or electronic marketplace operated by the person, and engages:

- A. Directly or indirectly, through one or more affiliated persons in any of the following:
 - (i) Transmitting or otherwise communicating the offer or acceptance between the buyer and remote seller;
 - (ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and remote sellers together;
 - (iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the remote seller; or
 - (iv) Software development or research and development activities related to any of the activities described in (b) of this subsection [(3)], if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and
- B. In any of the following activities with respect to the seller’s products:
 - (i) Payment processing services;
 - (ii) Fulfillment or storage services;
 - (iii) Listing products for sale;
 - (iv) Setting prices;
 - (v) Branding sales as those of the marketplace facilitator;
 - (vi) Order taking;
 - (vii) Advertising or promotion; or

(viii) Providing customer service or accepting or assisting with returns or exchanges.

“Marketplace seller” means a person that makes retail sales through any physical or electronic marketplace that is operated by a marketplace facilitator.

“Member Jurisdiction” means a taxing jurisdiction that is a signatory of the Alaska Remote Seller Sales Tax [INTERGOVERNMENTAL] Agreement, thereby members of the Commission, and who have adopted the Alaska Uniform Remote Seller Sales Tax Code.

“Monthly” means occurring once per calendar month.

“Nonprofit organization” means a business that has been granted tax-exempt status by the Internal Revenue Service [(IRS); MEANS AN ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION WHERE NO PART OF THE NET EARNINGS OF THE ORGANIZATION INURES TO THE BENEFIT OF ANY MEMBER, SHAREHOLDER, OR OTHER INDIVIDUAL, AS CERTIFIED BY REGISTRATION WITH THE IRS].

“Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

“Physical presence” for the purposes of KPB 5.19.050 means a seller who establishes any one or more of the following within a [LOCAL TAXING] member jurisdiction:

1. Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the [LOCAL TAXING] member jurisdiction;
2. Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the [LOCAL TAXING] member jurisdiction [OR ENGAGES IN ACTIVITIES IN THIS STATE THAT ARE SIGNIFICANTLY ASSOCIATED WITH THE SELLER’S ABILITY TO ESTABLISH OR MAINTAIN A MARKET FOR ITS PRODUCTS IN THIS STATE];
3. Provides services or holds inventory within the boundaries of the [LOCAL TAXING] member jurisdiction;
4. Rents or Leases property located within the boundaries of the [LOCAL TAXING] member jurisdiction.

A seller that establishes a physical presence within the local taxing jurisdiction in any calendar year will be deemed to have a physical presence within the [LOCAL TAXING] member jurisdiction for the following calendar year.

“Point of delivery” means the location at which property or a product is delivered or service is rendered.

A. When the product is not received or paid for by the purchaser at a business location of a remote seller in a [TAXING]Member Jurisdiction, the sale is considered delivered to the location where receipt by the purchaser (or the purchaser's recipient, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery as supplied by the purchaser (or recipient) and as known to the seller.

B. When the product is received or paid for by a purchaser who is physically present at a business location of a Remote Seller in a [TAXING] Member Jurisdiction the sale is considered to have been made in the [TAXING] Member Jurisdiction where the purchaser is present even if delivery of the product takes place in another [TAXING]Member Jurisdiction. Such sales are reported and tax remitted directly to the [TAXING] Member Jurisdiction not to the Commission.

[B]C. When the service is not received by the purchaser at a business location of a remote seller, the service is considered delivered to the location where the purchaser receives the service.

[C]D. For products or services transferred electronically, or other sales where the remote seller or marketplace facilitator lacks a delivery address for the purchaser, the remote seller or marketplace facilitator shall consider the point of delivery of the sale to be the billing address of the buyer.

“Product-based exemptions” means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

“Professional services” means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations that require a professional license under Alaska Statute

“Property” and “product” and “good” means both tangible property, an item that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses; and intangible property, anything that is not physical in

nature (i.e.; intellectual property, brand recognition, goodwill, trade, copyright and patents).

“Quarter” means trimonthly periods of a calendar year; January-March, April-June, July-September, and October-December.

“Receive” or “receipt” for purposes of section .030 and the definition of “Point of Delivery” means

- A. Taking possession of property or product;
- B. Making first use of services; or
- C. Taking possession or making first use of digital goods, whichever comes first.

The terms “receive” and “receipt” do not include temporary possession by a shipping company on behalf of the purchaser.

“Remote sales” means sales of goods or services by a remote seller or marketplace facilitator.

“Remote seller” means a seller or marketplace facilitator making sales of goods or services [DELIVERED] for delivery within the State of Alaska, without having a physical presence in [A TAXING] the member jurisdiction in which deliver is made[, OR CONDUCTING BUSINESS BETWEEN TAXING JURISDICTIONS, WHEN SALES ARE MADE BY INTERNET, MAIL ORDER, PHONE OR OTHER REMOTE MEANS. A MARKETPLACE FACILITATOR SHALL BE CONSIDERED THE REMOTE SELLER FOR EACH SALE FACILITATED THROUGH ITS MARKETPLACE].

“Resale of services” means sales of intermediate services to a business where the charge for which will be passed directly by that business to a specific buyer.

“Sale” or “retail sale” means any transfer of property or product or any provision of service(s) for consideration for any purpose other than for resale.

“Sales price or purchase price” means the total amount of consideration, including cash, credit, property, products, and services, for which property, products, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- A. The seller’s cost of the property or product sold;
- B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other

expense of the seller;

- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- D. Delivery charges;
- E. Installation charges; and
- F. Credit for any trade-in, as determined by state law.

“Seller” means a person making sales of property, products, or services, or a marketplace facilitator facilitating sales on behalf of a seller.

“Services” means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise [OUTSIDE THE TAXING] into a member jurisdiction [(BUT EXCLUDING ANY THAT ARE RENDERED PHYSICALLY WITHIN THE TAXING JURISDICTION,)] including but not limited to:

- A. Professional services;
- B. Services in which a sale of property or product may be involved, including property or products made to order;
- C. Utilities and utility services not constituting a sale of property or products, including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services;
- D. The sale of transportation services;
- E. Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission;
- F. Advertising, maintenance, recreation, amusement, and craftsman services.

“Tax cap” means a maximum taxable transaction.

“Taxing jurisdiction” means a local government in Alaska that has a sales tax [AND IS A MEMBER OF THE ALASKA REMOTE SELLERS SALES TAX COMMISSION].

“Transferred electronically” means obtained by the purchaser by means other than tangible storage media.

5.19.2[6]80 Supplemental Definitions.

For purposes of this Chapter, [T]he Commission [SHALL] may promulgate Supplemental Definitions that are incorporated into this Remote Seller Sales Tax Code, provided they are not in conflict with or contrary to definitions set forth in the general sales tax ordinance of the member jurisdiction. Supplemental Definitions are available at www.arsstc.org. Provisions of the Supplemental Definitions that are amended, deleted, or added prior to or after the effective date of the latest amendment to this chapter shall be applicable for purposes of this chapter on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

SECTION 2. This ordinance is effective immediately upon enactment.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Legal Department

MEMORANDUM

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

THRU: Brent Hibbert, Assembly President *BH*
Charlie Pierce, Mayor *CP*

FROM: Sean Kelley, Deputy Borough Attorney *SK*
Brandi Harbaugh, Finance Director *BH*

DATE: March 25, 2021

RE: Ordinance 2021-12, Amending KPB Chapter 5.19, Uniform Remote Seller Sales Tax Code, in Accordance with Updates and Changes Adopted by the Alaska Remote Seller Sales Tax Commission (Hibbert, Mayor)

Following the U.S. Supreme Court decision in *South Dakota v. Wayfair*, the borough joined with other Alaska municipalities to form an intergovernmental commission and enter into an intergovernmental agreement ("Agreement") to combat the inability to effectively collect sales tax on online retail sales that would otherwise be subject to borough and city sales tax.

After a recent omnibus review of the Uniform Remote Seller Sales Tax Code, at its meeting on February 24, 2021, the Alaska Remote Sellers Sales Tax Commission ("Commission") unanimously approved updates to the code aimed to improve code inconsistencies and administrative processes.

A review by the borough's finance and legal departments revealed that the changes will not substantively or negatively impact remote sellers or residents in the borough who purchase products, goods, or services online.

The borough is a signatory to the Agreement and per the Agreement, in order to retain full membership status, the borough must enact the code amendments within 120 days of the date the Commission adopted the changes. All the incorporated cities within the borough are also members of the Commission and signatories to the Agreement. Therefore, failure to enact the Commission's amendments to Chapter 5.19 may impact the ability of the borough and the cities to remain full members of the Commission.

Your consideration of this ordinance is appreciated.

Introduced by:	Cooper, Smalley
Date:	01/21/20
Hearing:	02/25/20
Action:	Enacted as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-03**

**AN ORDINANCE AMENDING KPB 5.18 SALES TAX CODE AND ENACTING KPB
5.19 UNIFORM REMOTE SELLER SALES TAX CODE**

- WHEREAS,** the inability to effectively collect sales tax on sales of personal property, products or services transferred or delivered into Alaska by sellers who do not have a physical presence in the borough (“remote seller”) is eroding the sales tax base of Alaska communities and resulting in revenue losses that are causing imminent harm to residents through the loss of critical funding for local education; and
- WHEREAS,** the harm from the loss of revenue is especially problematic in Alaska because the state has no broad-based sales tax, and sales tax revenues are essential in funding the provision of services by local governments; and
- WHEREAS,** the failure to collect tax on remote sales creates artificial market distortions and competitive advantages for remote sellers by perpetuating tax shelters for businesses that limit their physical presence in the state or its municipalities but still sell goods and services to local consumers without collecting sales tax, something that becomes easier and more prevalent as technology continues to advance; and
- WHEREAS,** the structural advantages for remote sellers, including the absence of point-of-sale tax collection, combined with the general growth of online retail sales, means that the erosion of the sales tax base is a growing problem that will only worsen in the near future if the borough is not able to legally collect remote seller sales tax within the framework of current United States Supreme Court case law; and
- WHEREAS,** the failure to effectively collect sales tax on remote or internet-based sales results in the creation of incentives for businesses to avoid a physical presence in the borough, resulting in less jobs and increasing the share of taxes paid by those consumers who buy from competitors with a physical presence in the borough; and
- WHEREAS,** remote sellers who make a substantial number of deliveries into or have large gross revenues from Alaska benefit extensively from the Alaska market, affecting the economy generally, as well as local infrastructure; and
- WHEREAS,** the recent decision by the United States Supreme Court in *South Dakota v. Wayfair* (“*Wayfair*”) allows for the amendment of the sales tax code to account for remote sellers who do not have a physical presence in the borough, but do have a taxable connection with the borough; and

WHEREAS, the *Wayfair* decision provides guidance that includes the defensibility of a single-level statewide administration of remote sales tax collection and remittance so long as the law is not retroactive in its application and provides a safe harbor to sellers who have limited sales or transactions in Alaska; and

WHEREAS, in order to implement a single-level statewide sales tax administration, numerous local taxing jurisdictions within Alaska worked together to establish an intergovernmental entity known as the Alaska Remote Seller Sales Tax Commission (the “Commission”); and

WHEREAS, currently 23 municipalities in Alaska are members of the Commission; and

WHEREAS, the function and powers of the Commission are set forth in the Alaska Intergovernmental Remote Seller Sales Tax Agreement (the “Agreement”), a cooperative agreement between Commission members; and

WHEREAS, as part of the process to implement a remote seller sales tax code and pursuant to Resolution 2019-056, the borough signed the Agreement and is currently a full member of the Commission; and

WHEREAS, five of the incorporated cities within the borough are members of the Commission; and

WHEREAS, representatives from the borough, the City of Soldotna, and the City of Kenai also currently hold three of the seven Board of Director seats on the Commission; and

WHEREAS, under the terms of the Agreement, in order to maintain membership in the Commission, local governments must enact the Uniform Remote Seller Sales Tax Code (“Uniform Code”) as adopted by the Commission’s Board of Directors;

WHEREAS, the Board of Directors adopted the Uniform Code at its meeting on January 6, 2020; and

WHEREAS, the Uniform Code will govern the collection and remittance of municipal sales tax applicable to remote or internet-based sales; and

WHEREAS, the purpose of the Uniform Code is to comply with guidance in *Wayfair* by providing statewide threshold criteria, streamlined single-level tax administration for remote sellers, and no retroactive application; and

WHEREAS, the Uniform Code will provide for streamlined remote sales tax collection and remittance process which is necessary to avoid claims that local municipal tax unduly burdens interstate sellers; and

WHEREAS, this ordinance will adopt the Uniform Code, amend current borough sales tax code for consistency, and authorize the Commission to administer the remote sales tax collection and remittance for the borough; and

WHEREAS, this is the culmination of a process that began in June of 2019 and is the last step before municipal tax collected by remote sellers can be remitted to the borough through the Commission; and

WHEREAS, in light of the *Wayfair* decision, failure to adopt a uniform, streamlined, remote seller sales tax code will jeopardize the ability of the borough and its cities to collect tax on remote sales;

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

SECTION 1. That KPB 5.18.450(A) is hereby amended as follows:

5.18.450. Tax jurisdiction Point of Taxation.

A. The rate of tax to be added to the sale price is based on the place of sale. The place of sale of goods, services, and merchandise is the location of the seller's [RETAIL OUTLET] physical presence at which or from which delivery was made, including installation charges and in-store pickups. If a seller has a physical presence in the borough, any remote sales delivered within the borough shall be taxed at the rate of the point of delivery. [THIS PROVISION APPLIES TO GOODS DELIVERED TO BUYERS WITHIN THE BOROUGH AND TO GOODS DELIVERED TO BUYERS OUTSIDE THE BOROUGH BUT WITHIN THE STATE OF ALASKA. IF THE INVOICE INCLUDES A CHARGE FOR INSTALLATION, THEN THE PLACE OF THE SALE FOR THE GOODS AND SERVICE IS THE RETAIL OUTLET AT WHICH OR FROM WHICH DELIVERY WAS MADE. WHEN GOODS ARE DELIVERED INTO THE BOROUGH FROM A POINT OUTSIDE OF THE BOROUGH AND THE SELLER MAINTAINS AN ONGOING PHYSICAL PRESENCE IN THE BOROUGH, THEN THE LOCATION OF THE SELLER'S IN-BOROUGH PRESENCE WILL DETERMINE THE PLACE OF SALE. IF A SELLER HAS NO ONGOING PHYSICAL PRESENCE IN THE BOROUGH BUT HAS ESTABLISHED NEXUS WITH THE BOROUGH, THE POINT OF DELIVERY WILL DETERMINE THE PLACE OF SALE. IF THE SELLER HAS NO ONGOING PHYSICAL PRESENCE IN, OR NEXUS WITH, THE BOROUGH THE SALE IS NOT SUBJECT TO THE BOROUGH SALES TAX. FOR PURPOSES OF THIS SECTION THE FOLLOWING TERMS ARE DEFINED AS SHOWN BELOW:

1. "NEXUS" MEANS THE SELLER HAS ESTABLISHED A TAXABLE CONNECTION WITHIN THE BOROUGH BY USE OF MARKETING TECHNIQUES, SUCH AS DIRECTED ADVERTISING IN THE BOROUGH VIA TELEPHONE OR INTERNET, OR DOOR-TO-DOOR SALES WITHIN THE BOROUGH, OR BY USE OF CONTRACT WORKERS OR CONTRACT OR COMMISSION AGENTS OR BUSINESSES, WHICH ARE ASSOCIATED WITH THE SELLER'S EFFORTS TO ESTABLISH OR MAINTAIN A MARKET FOR ITS GOODS OR SERVICES, DELIVER THOSE GOODS OR SERVICES, OR PROVIDE WARRANTY OR OTHER REPAIR OR RETURN SERVICES IN THE BOROUGH.

2. THE "POINT OF DELIVERY" WHERE THERE IS NO ONGOING PHYSICAL PRESENCE IN THE BOROUGH IS THE PLACE WHERE PHYSICAL POSSESSION OF THE GOODS IS TRANSFERRED TO THE CUSTOMER.]

...

SECTION 2. That KPB 5.18.680 is hereby enacted as follows:

5.18.680 Uniform Remote Seller Sales Tax Code

Sellers with no physical presence in the borough that have remote or internet-based sales in the borough are subject to KPB 5.19 instead of KPB 5.18.

Sellers with a physical presence in the borough that have remote or internet-based sales delivered to a taxing jurisdictions in Alaska outside the borough boundaries are subject to KPB 5.18 and KPB 5.19.

Sellers with a physical presence in the borough that have remote or internet-based sales delivered within the borough boundaries are subject to KPB 5.18.450.

SECTION 3. That KPB 5.18.900 is hereby amended to include a definition of “Physical presence” as follows:

...

“Physical presence” means a seller who establishes any one or more of the following within the borough:

1. Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the local taxing jurisdiction;
2. Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the borough or engages in activities in the borough that are significantly associated with the seller’s ability to establish or maintain a market for its products in the borough;
3. Provides services or holds inventory within the borough;
4. Rents or Leases property located within the boundaries of the borough.

A seller that establishes a physical presence within the borough in any calendar year will be deemed to have a physical presence within the borough for the following calendar year.

...

SECTION 4. That KPB 5.19 is enacted as follows:

KPB 5.19. Uniform Remote Seller Sales Tax Code

5.19.010. Interpretation.

- A. In order to prevent evasion of the sales taxes and to aid in its administration, it is presumed that all sales and services by a person or entity engaging in business are subject to the sales

tax.

- B. The application of the tax levied under this Code shall be broadly construed and shall favor inclusion rather than exclusion.
- C. Exemptions from the tax levied under this Code or from the taxing jurisdiction shall be narrowly construed against the claimant and allowed only when such exemption clearly falls within an exemption defined in this Code or the taxing jurisdiction's Code.
- D. The scope of this Code shall apply to remote sellers or marketplace facilitators, delivering products or services to Member municipalities adopting this Code, within the state of Alaska.

5.19.020. Title to Collected Sales Tax.

Upon collection by the remote seller or marketplace facilitator, title to collected sales tax vests in the Commission for remittance to the taxing jurisdiction. The remote seller or marketplace facilitator remits collected sales tax to the Commission on behalf of the taxing jurisdiction, from whom that power is delegated, in trust for the taxing jurisdiction and is accountable to the Commission and taxing jurisdiction.

5.19.030. Imposition – Rate.

- A. To the fullest extent permitted by law, a sales tax is levied and assessed on all remote sales where delivery is made within the local taxing jurisdiction(s) that is a Member, within the state of Alaska.
- B. The applicable tax shall be added to the sales price.
- C. The tax rate added to the sale price shall be the tax rate for the taxing jurisdiction(s) where the property or product is sold, or service that was rendered is received, and based on the date the property or product was sold or the date the service rendered was received.
- D. An Address and Tax Rate Database will be made available to remote sellers and marketplace facilitators, indicating the appropriate tax rate to be applied.
- E. The tax assessed shall be consistent with relevant jurisdictional tax caps, single unit sales, and exemptions.
- F. When a sale is made on an installment basis, the applicable sales tax shall be collected at each payment, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered, based on the local jurisdictions' Code(s).
- G. When a sales transaction involves placement of a single order with multiple deliveries made at different points in time that are separately invoiced, the applicable sales tax shall be collected on each separately invoiced delivery, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered.

5.19.040. Obligation to Collect Tax - Threshold Criteria.

- A. Any remote seller or marketplace facilitator must collect and remit sales tax in compliance with all applicable procedures and requirements of law, provided the remote seller or marketplace facilitator has met one of the following Threshold Criteria (“Threshold Criteria”) in the previous calendar year:
1. The remote seller’s statewide gross sales, including the seller’s marketplace facilitator’s statewide gross sales, from the sale(s) of property, products or services delivered into the state meets or exceeds one hundred thousand dollars (\$100,000); or
 2. The remote seller, including the seller’s marketplace facilitator, sold property, products, or services delivered into the state in two hundred (200) or more separate transactions.
- B. For purposes of determining whether the Threshold Criteria are met, remote sellers or marketplace facilitators shall include all gross sales, from all sales of goods, property, products, or services rendered within the state of Alaska.

5.19.050. No Retroactive Application.

The obligations to collect and remit sales tax required by this chapter are applicable at the effective date of the ordinance adopting the Alaska Remote Seller Sales Tax Code.

5.19.060. Payment and Collection.

Pursuant to this Code, taxes imposed shall be due and paid by the buyer to the remote seller or marketplace facilitator at the time of the sale of property or product or date service is rendered, or with respect to credit transactions, at the time of collection. It shall be the duty of each remote seller or marketplace facilitator to collect the taxes from the buyer and to hold those taxes in trust for the taxing authority of the taxing jurisdiction. Failure by the remote seller or marketplace facilitator to collect the tax shall not affect the remote seller’s, or marketplace facilitator’s, responsibility for payment to the Commission.

5.19.070. Remote Seller and Marketplace Facilitator Registration Requirement.

- A. If a remote seller’s gross statewide sales within the last calendar year meets or exceeds the Threshold Criteria, the remote seller shall register with the Commission. If a marketplace facilitator’s gross statewide sales within the last calendar year meets or exceeds the Threshold Criteria, the marketplace facilitator shall register with the Commission.
- B. A remote seller or marketplace facilitator meeting the Threshold Criteria shall apply for a certificate of sales tax registration within thirty (30) calendar days of the effective date of this Code or within thirty (30) calendar days of meeting the Threshold Criteria whichever occurs second. Registration shall be to the Commission on forms prescribed by the Commission.

- C. An extension may be applied for and granted based on criteria established by the Commission, based on evidence produced to describe time necessary to update software or other technical needs, not to exceed ninety (90) days.
- D. Upon receipt of a properly executed application, the Commission shall confirm registration, stating the legal name of the remote seller or marketplace facilitator, the primary address, and the primary sales tax contact name and corresponding title. The failure of the Commission to confirm registration does not relieve the remote seller or marketplace facilitator of its duty to collect and remit sales tax.
- E. Each business entity shall have a sales tax registration under the advertised name.
- F. The sales tax certificate is non-assignable and non-transferable.

5.19.080. Tax Filing Schedule.

- A. All remote sellers or marketplace facilitators subject to this Code shall file a return on a form or in a format prescribed by the Commission and shall pay the tax due.
- B. Filing of sales tax returns are due monthly; quarterly filing is optional upon application and approval by the Commission, consistent with the code of the local jurisdiction.
- C. A remote seller or marketplace facilitator who has filed a sales tax return will be presumed to be making sales in successive periods unless the remote seller or marketplace facilitator files a return showing a termination or sale of the business in accordance with this Code.
- D. The completed and executed return, together with the remittance in full for the tax due, shall be transmitted to and must be received by the Commission on or before midnight Alaska Standard Time on the due date. Monthly returns are due the last day of the immediate subsequent month. Quarterly returns are due as follows:

<u>Quarter 1 (January – March)</u>	<u>April 30</u>
<u>Quarter 2 (April – June)</u>	<u>July 31</u>
<u>Quarter 3 (July – September)</u>	<u>October 31</u>
<u>Quarter 4 (October – December)</u>	<u>January 31</u>

- E. If the last day of the month following the end of the filing period falls on a Saturday, Sunday, federal holiday or Alaska state holiday, the due date will be extended until the next business day immediately following.
- F. Any remote seller or marketplace facilitator holding a remote seller registration shall file a sales tax return even though no tax may be due. This return shall show why no tax is due. If the remote seller or marketplace facilitator intends to continue doing business a return shall be filed reflecting no sales and a confirmation of the intent to continue doing business and shall continue to do so each filing period until the entity ceases doing

business or sells the business. If the remote seller or marketplace facilitator intends to cease doing business, a final return shall be filed along with a statement of business closure.

- G. The remote seller or marketplace facilitator shall prepare the return and remit sales tax to the Commission on the same basis, cash or accrual, which the remote seller or marketplace facilitator uses in preparing its federal income tax return. The remote seller or marketplace facilitator shall sign the return, and transmit the return, with the amount of sales tax and any applicable penalty, interest or fees that it shows to be due, to the Commission.
- H. Remote sellers and marketplace facilitators failing to comply with the provisions of this Code shall, if required by the Commission and if quarterly filing has been chosen, file and transmit collected sales taxes more frequently until such time as they have demonstrated to the Commission that they are or will be able to comply with the provisions of this Code. Six (6) consecutive on-time sales tax filings, with full remittance of the sales taxes collected, shall establish the presumption of compliance and return to quarterly filing.
- I. The preparer of the sales tax return shall keep and maintain all documentation supporting any and all claims of exempted sales and purchases. Documentation for exempted sales should include the number of the exemption authorization card presented by the buyer at the time of the purchase; the date of the purchase; the name of the person making the purchase; the organization making the purchase; the total amount of the purchase; and the amount of sales tax exempted. This documentation shall be made available to the Commission upon request. Failure to provide such documentation may invalidate that portion of the claim of exemption for which no documentation is provided.

5.19.090 Estimated Tax

- A. In the event the Commission is unable to ascertain the tax due from a remote seller or marketplace facilitator by reason of the failure of the remote seller or marketplace facilitator to keep accurate books, allow inspection, or file a return, or by reason of the remote seller or marketplace facilitator filing a false or inaccurate return, the Commission may make an estimate of the tax due based on any evidence in their possession.
- B. Sales taxes may also be estimated, based on any information available, whenever the Commission has reasonable cause to believe that any information on a sales tax return is not accurate.
- C. A remote seller's or marketplace facilitator's tax liability under this Code may be determined and assessed for a period of six (6) years after the date the return was filed or due to be filed with the Commission. No civil action for the collection of such tax may be commenced after the expiration of the six (6) year period except an action for taxes, penalties and interest due from those filing periods that are the subject of a written demand or assessment made within the six (6) year period, unless the remote seller or marketplace facilitator waives the protection of this section.

- D. The Commission shall notify the remote seller or marketplace facilitator, in writing, that the Commission has estimated the amount of sales tax that is due from the remote seller or marketplace facilitator. The Commission shall serve the notice on the remote seller or marketplace facilitator by delivering the notice to the remote seller's or marketplace facilitator's place of business, or by mailing the notice by certified mail, return receipt requested, to the remote seller's or marketplace facilitator's last known mailing address. A remote seller or marketplace facilitator who refuses the certified mail will be considered to have accepted the certified mail for purposes of service.
- E. The Commission's estimate of the amount of sales tax that is due from a remote seller or marketplace facilitator shall become a final determination of the amount that is due unless the remote seller or marketplace facilitator, within thirty (30) calendar days after service of notice of the estimated tax:
1. Files a complete and accurate sales tax return for the delinquent periods supported by satisfactory records and accompanied by a full remittance of all taxes, interest, penalties, costs and other charges due; or
 2. Files a written notice with the Commission appealing the estimated tax amount in accordance with the appeal procedures.
 3. Arguments or reasons for failure to timely file a return and remit taxes collected shall not be considered a valid basis or grounds for granting an appeal. The basis and grounds for granting an appeal of an assessment are:
 - a. The identity of the remote seller or marketplace facilitator is in error;
 - b. The amount of the debt is erroneous due to a clerical error (and the nature and extent of the error is specified in the request for appeal); or
 - c. The remote seller or marketplace facilitator disputes the denial of exemption(s) for certain sales.
- F. The amount of sales tax finally determined to be due under this section shall bear interest and penalty from the date that the sales tax originally was due, plus an additional civil penalty of fifty dollars (\$50) for each calendar month or partial month for which the amount of sales tax that is due has been determined.

5.19.100. Returns – Filing Contents.

- A. Every remote seller or marketplace facilitator required by this chapter to collect sales tax shall file with the Commission upon forms furnished by the Commission a return setting forth the following information with totals rounded to the nearest dollar:
1. Gross sales;

2. The nontaxable portions separately stating the amount of sales revenue attributable to each class of exemption;
 3. Computation of taxes to be remitted;
 4. Calculated discount (if applicable) based on taxing jurisdiction's code; and
 5. Such other information as may be required by the Commission.
- B. Each tax return remitted by a remote seller or marketplace facilitator shall be signed (digital or otherwise) by a responsible individual who shall attest to the completeness and accuracy of the information on the tax return.
- C. The Commission reserves the right to reject a filed return for failure to comply with the requirements of this Code for up to three (3) months from the date of filing. The Commission shall give written notice to a remote seller or marketplace facilitator that a return has been rejected, including the reason for the rejection.

5.19.110. Refunds.

- A. Upon request from a buyer or remote seller or marketplace facilitator the Commission shall provide a determination of correct tax rate and amount applicable to the transaction. In the case of an overpayment of taxes, the remote seller or marketplace facilitator shall process the refund and amend any returns accordingly.
- B. If the claimant is a remote seller or marketplace facilitator, and the tax refund is owed to any buyer, the remote seller or marketplace facilitator submits, and the Commission approves, a refund plan to all affected buyers.
- C. The Taxing Jurisdictions may allow a buyer to request a refund directly from the Taxing Jurisdiction.

5.19.120. Amended Returns.

- A. A remote seller or marketplace facilitator may file an amended sales tax return, with supporting documentation, and the Commission may accept the amended return, but only in the following circumstances:
- i. The amended return is filed within one (1) year of the original due date for the return; and
 - ii. The remote seller or marketplace facilitator provides a written justification for requesting approval of the amended return; and
 - iii. The remote seller or marketplace facilitator agrees to submit to an audit upon request

of the Commission.

- B. The Commission shall notify the remote seller or marketplace facilitator in writing (by email or otherwise) whether the Commission accepts or rejects an amended return, including the reasons for any rejection.
- C. The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation, the Commission determines the figure included in the original returns are incorrect; and the Commission adjusts the return within two (2) years of the original due date for the return.
- D. A remote seller or marketplace facilitator may file a supplemental sales tax return, with supporting documentation, and the Commission may accept the supplemental return, but only in the following circumstances:
 - i. The remote seller or marketplace facilitator provides a written justification for requesting approval of the supplemental return; and
 - ii. The remote seller or marketplace facilitator agrees to submit to an audit upon request of the Commission.

5.19.130. Extension of Time to File Tax Return.

Upon written application of a remote seller or marketplace facilitator, stating the reasons therefor, the Commission may extend the time to file a sales tax return but only if the Commission finds each of the following:

- 1. For reasons beyond the remote seller's or marketplace facilitator's control, the remote seller or marketplace facilitator has been unable to maintain in a current condition the books and records that contain the information required to complete the return;
- 2. Such extension is a dire necessity for bookkeeping reasons and would avert undue hardship upon the remote seller or marketplace facilitator;
- 3. The remote seller or marketplace facilitator has a plan to cure the problem that caused the remote seller or marketplace facilitator to apply for an extension and the remote seller or marketplace facilitator agrees to proceed with diligence to cure the problem;
- 4. At the time of the application, the remote seller or marketplace facilitator is not delinquent in filing any other sales tax return, in remitting sales tax to the Commission or otherwise in violation of this chapter;
- 5. No such extension shall be made retroactively to cover existing delinquencies.

5.19.140. Audits.

- A. Any remote seller or marketplace facilitator who has registered with the Commission, who is required to collect and remit sales tax, or who is required to submit a sales tax return is subject to a discretionary sales tax audit at any time. The purpose of such an audit is to examine the business records of the remote seller or marketplace facilitator in order to determine whether appropriate amounts of sales tax revenue have been collected by the remote seller or marketplace facilitator and remitted to the Commission.
- B. The Commission is not bound to accept a sales tax return as correct. The Commission may make an independent investigation of all retail sales or transactions conducted within the State or taxing jurisdiction.
- C. The records that a remote seller or marketplace facilitator is required to maintain under this chapter shall be subject to inspection and copying by authorized employees or agents of the Commission for the purpose of auditing any return filed under this chapter, or to determine the remote seller's or marketplace facilitator's liability for sales tax where no return has been filed.
- D. In addition to the information required on returns, the Commission may request, and the remote seller or marketplace facilitator must furnish, any reasonable information deemed necessary for a correct computation of the tax.
- E. The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation or audit, the Commission determines that the figures included in the original return are incorrect, and that additional sales taxes are due; and the Commission adjusts the return within two (2) years of the original due date for the return.
- F. For the purpose of ascertaining the correctness of a return or the amount of taxes owed when a return has not been filed, the Commission may conduct investigations, hearings and audits and may examine any relevant books, papers, statements, memoranda, records, accounts or other writings of any remote seller or marketplace facilitator at any reasonable hour on the premises of the remote seller or marketplace facilitator and may require the attendance of any officer or employee of the remote seller or marketplace facilitator. Upon written demand by the Commission, the remote seller or marketplace facilitator shall present for examination, in the office of the Commission, such books, papers, statements, memoranda, records, accounts and other written material as may be set out in the demand unless the Commission and the person upon whom the demand is made agree to presentation of such materials at a different place.
- G. The Commission may issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda. If any remote seller or marketplace facilitator refuses to obey any such subpoena, the Commissioner may refer the matter to the Commission's attorney for an application to the superior court for an order requiring the remote seller or marketplace facilitator to comply therewith.

- H. Any remote seller, marketplace facilitator, or person engaged in business who is unable or unwilling to submit their records to the Commission shall be required to pay the Commission for all necessary expenses incurred for the examination and inspection of their records maintained outside the Commission.
- I. After the completion of a sales tax audit, the results of the audit will be sent to the business owner's address of record.
- J. In the event the Commission, upon completion of an audit, discovers more than five hundred dollars (\$500) in additional sales tax due from a remote seller or marketplace facilitator resulting from a remote seller's or marketplace facilitator's failure to accurately report sales and taxes due thereupon, the remote seller or marketplace facilitator shall bear responsibility for the full cost of the audit. The audit fee assessment will be in addition to interest and penalties applicable to amounts deemed to be delinquent by the Commission at the time of the conclusion of the audit.

5.19.150. Audit protest.

- A. If the remote seller or marketplace facilitator wishes to dispute the amount of the estimate, or the results of an examination or audit, the remote seller or marketplace facilitator must file a written protest with the Commission, within thirty (30) calendar days of the date of the notice of estimated tax or results of an audit or examination. The protest must set forth:
 - 1. The remote seller's or marketplace facilitator's justification for reducing or increasing the estimated tax amount, including any missing sales tax returns for the periods estimated; or
 - 2. The remote seller's or marketplace facilitator's reasons for challenging the examination or audit results.
- B. In processing the protest, the Commission may hold an informal meeting or hearing with the remote seller or marketplace facilitator, either on its own or upon request of the remote seller or marketplace facilitator, and may also require that the remote seller or marketplace facilitator submit to an audit, if one was not previously conducted or a more formal audit, if an estimation audit was previously performed.
- C. The Commission shall make a final written determination on the remote seller's or marketplace facilitator's protest and mail a copy of the determination to the remote seller or marketplace facilitator.
- D. If a written protest is not filed within thirty (30) days of the date of the notice of estimated tax or the result of a review, audit or examination, then the estimated tax, review, audit or examination result shall be final, due and payable to the Commission.

5.19.160. Penalties and Interest for Late Filing.

- A. A late filing fee of twenty-five dollars (\$25) per month (or quarter) shall be added to all late-filed sales tax reports in addition to interest and penalties.
- B. Delinquent sales tax bear interest at the rate of fifteen percent (15%) per annum until paid.
- C. In addition, delinquent sales tax shall be subject to an additional penalty of 5% per month, or fraction thereof, until a total of 20% of delinquent tax has been reached. The penalty does not bear interest.
- D. Penalties and interest shall be assessed and collected in the same manner as the tax is assessed and collected, and applied first to penalties and interest, second to past due sales tax.
- E. The filing of an incomplete return, or the failure to remit all tax, shall be treated as the filing of no return.
- F. A penalty assessed under this section for the delinquent remittance of sales tax or failure to file a sales tax return may be waived by the Commission, upon written application of the remote seller or marketplace facilitator accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed by the remote seller or marketplace facilitator, within forty-five (45) calendar days after the date of delinquency. A remote seller or marketplace facilitator may not be granted more than one (1) waiver of penalty under this subsection in any one calendar year. The Commission shall report such waivers of penalty to the taxing jurisdiction, in writing.

5.19.170. Repayment Plans.

- A. The Commission may agree to enter into a repayment plan with a delinquent remote seller or marketplace facilitator. No repayment plan shall be valid unless agreed to by both parties in writing.
- B. A remote seller or marketplace facilitator shall not be eligible to enter into a repayment plan with the Commission if the remote seller or marketplace facilitator has defaulted on a repayment plan in the previous two (2) calendar years.
- C. The repayment plan shall include a secured promissory note that substantially complies with the following terms:
 - i. The remote seller or marketplace facilitator agrees to pay a minimum of ten percent (10%) down payment on the tax, interest and penalty amount due. The down payment shall be applied first to penalty, then to accumulated interest, and then to the tax owed.

- ii. The remote seller or marketplace facilitator agrees to pay the balance of the tax, penalty and interest owed in monthly installments over a period not to exceed two (2) years.
 - iii. Interest at a rate of fifteen percent (15%) per annum shall accrue on the principal sum due. Interest shall not apply to penalties owed or to interest accrued at the time the repayment plan is executed or accruing during the term of the repayment plan.
 - iv. If the remote seller or marketplace facilitator is a corporation or a limited liability entity the remote seller or marketplace facilitator agrees to provide a personal guarantee of the obligations under the repayment plan.
 - v. The remote seller or marketplace facilitator agrees to pay all future tax bills in accordance with the provisions of this chapter.
 - vi. The remote seller or marketplace facilitator agrees to provide a security interest in the form of a sales tax lien for the entire unpaid balance of the promissory note to be recorded by the Commission at the time the repayment plan is signed. The remote seller or marketplace facilitator shall be responsible for the cost of recording the tax lien.
- D. If a remote seller or marketplace facilitator fails to pay two (2) or more payments as required by the repayment plan agreement, the remote seller or marketplace facilitator shall be in default and the entire amount owed at the time of default shall become immediately due. The Commission will send the remote seller or marketplace facilitator a notice of default. The Commission may immediately foreclose on the sales tax lien or take any other remedy available under the law.

5.19.180. Remote Seller or Marketplace Facilitator Record Retention.

Remote sellers or marketplace facilitators shall keep and preserve suitable records of all sales made and such other books or accounts as may be necessary to determine the amount of tax which the remote seller or marketplace facilitator is obliged to collect. Remote sellers or marketplace facilitators shall preserve suitable records of sales for a period of six (6) years from the date of the return reporting such sales, and shall preserve for a period of six (6) years all invoices of goods and merchandise purchased for resale, and all such other books, invoices and records as may be necessary to accurately determine the amount of taxes which the remote seller or marketplace facilitator was obliged to collect under this chapter.

5.19.190. Cessation or Transfer of Business.

- A. A remote seller or marketplace facilitator who sells, leases, conveys, forfeits, transfers or assigns the majority of their business interest, including a creditor or secured party, shall make a final sales tax return within thirty (30) days after the date of such conveyance.

- B. At least ten (10) business days before any such sale is completed, the remote seller or marketplace facilitator shall send to the Commission, by approved communication (email confirmation, certified first-class mail, postage prepaid) a notice that the remote seller's or marketplace facilitator's interest is to be conveyed and shall include the name, address and telephone number of the person or entity to whom the interest is to be conveyed.
- C. Upon notice of sale and disclosure of buyer, the Commission shall be authorized to disclose the status of the remote seller's or marketplace facilitator's sales tax account to the named buyer or assignee.
- D. Upon receipt of notice of a sale or transfer, the Commission shall send the transferee a copy of this Code with this section highlighted.
- E. Neither the Commission's failure to give the notice nor the transferee's failure to receive the notice shall relieve the transferee of any obligations under this section.
- F. Following receipt of the notice, the Commission shall have sixty (60) days in which to perform a final sales tax audit and assess sales tax liability against the seller of the business. If the notice is not mailed at least ten (10) business days before the sale is completed, the Commission shall have twelve (12) months from the date of the completion of the sale or the Commission's knowledge of the completion of the sale within which to begin a final sales tax audit and assess sales tax liability against the seller of the business. The Commission may also initiate an estimated assessment if the requirements for such an assessment exist.
- G. A person acquiring any interest of a remote seller or marketplace facilitator in a business required to collect the tax under this chapter assumes the liability of the remote seller or marketplace facilitator for all taxes due the Commission, whether current or delinquent, whether known to the Commission or discovered later, and for all interest, penalties, costs and charges on such taxes.
- H. Before the effective date of the transfer, the transferee of a business shall obtain from the Commission an estimate of the delinquent sales tax, penalty and interest, if any, owed by the remote seller or marketplace facilitator as of the date of the transfer, and shall withhold that amount from the consideration payable for the transfer, until the remote seller or marketplace facilitator has produced a receipt from the Commission showing that all tax obligations imposed by this chapter have been paid. A transferee that fails to withhold the amount required under this subsection shall be liable to the Commission and taxing jurisdiction for the lesser of the amount of delinquent sales tax, penalty and interest due from the remote seller or marketplace facilitator as of the date of transfer, and the amount that the transferee was required to withhold.
- I. In this section, the term "transfer" includes the following:
 - 1. A change in voting control, or in more than fifty percent (50%) of the ownership interest in a remote seller or marketplace facilitator that is a corporation, limited

- liability company or partnership; or
2. A sale of all or substantially all the assets used in the business of the remote seller or marketplace facilitator; or
 3. The initiation of a lease, management agreement or other arrangement under which another person becomes entitled to the remote seller's or marketplace facilitator's gross receipts from sales, rentals or services.
- J. Subsection H of this section shall not apply to any person who acquires their ownership interest in the ongoing business as a result of the foreclosure of a lien that has priority over the Commission's sales tax lien.
- K. Upon termination, dissolution or abandonment of a corporate business, any officer having control or supervision of sales tax funds collected, or who is charged with responsibility for the filing of returns or the payment of sales tax funds collected, shall be personally liable for any unpaid taxes, interest, administrative costs and penalties on those taxes if such officer willfully fails to pay or cause to be paid any taxes due from the corporation. In addition, regardless of willfulness, each director of the corporation shall be jointly and severally liable for unpaid amounts. The officer shall be liable only for taxes collected which became due during the period he or she had the control, supervision, responsibility or duty to act for the corporation. This section does not relieve the corporation of other tax liabilities or otherwise impair other tax collection remedies afforded by law.
- L. A remote seller or marketplace facilitator who terminates the business without the benefit of a purchaser, successor or assign shall make a final tax return and settlement of tax obligations within thirty (30) days after such termination. If a final return and settlement are not received within thirty (30) days of the termination, the remote seller or marketplace facilitator shall pay a penalty of one hundred dollars (\$100), plus an additional penalty of twenty-five dollars (\$25) for each additional thirty- (30-) day period, or part of such a period, during which the final return and settlement have not been made, for a maximum of six (6) additional periods.

5.19.200. Use of Information on Tax Returns.

- A. Except as otherwise provided in this chapter, all returns, reports and information required to be filed with the Commission under this Code, and all information contained therein, shall be kept confidential and shall be subject to inspection only by:
1. Employees and agents of the Commission and taxing jurisdiction whose job responsibilities are directly related to such returns, reports and information;
 2. The person supplying such returns, reports and information; and
 3. Persons authorized in writing by the person supplying such returns, reports and

information.

- B. The Commission will release information described in subsection A of this section pursuant to subpoena, order of a court or administrative agency of competent jurisdiction, and where otherwise required by law to do so.
- C. Notwithstanding subsection A of this section, the following information is available for public inspection:
 - 1. The name and address of sellers;
 - 2. Whether a business is registered to collect taxes under this chapter;
 - 3. The name and address of businesses that are sixty (60) days or more delinquent in filing returns or in remitting sales tax, or both filing returns and remitting sales tax; and, if so delinquent, the amount of estimated sales tax due, and the number of returns not filed.
- D. The Commission may provide the public statistical information related to sales tax collections, provided that no information identifiable to a particular remote seller or marketplace facilitator is disclosed.
- E. Nothing contained in this section shall be construed to prohibit the delivery to a person, or their duly authorized representative, of a copy of any return or report filed by them, nor to prohibit the publication of statistics so classified as to prevent the identification of particular buyers, remote sellers, or marketplace facilitators, nor to prohibit the furnishing of information on a reciprocal basis to other agencies or political subdivisions of the state or the United States concerned with the enforcement of tax laws.
- F. Nothing contained in this section shall be construed to prohibit the disclosure through enforcement action proceedings or by public inspection or publication of the name, estimated balance due, and current status of payments, and filings of any remote seller or marketplace facilitator or agent of any remote seller or marketplace facilitator required to collect sales taxes or file returns under this chapter, who fails to file any return and/or remit in full all sales taxes due within thirty (30) days after the required date for that business. Entry into any agreement whether pursuant to the provisions of this chapter or otherwise shall not act as any prohibition to disclosure of the records of that remote seller or marketplace facilitator as otherwise provided in this chapter.
- G. A prospective lessee or purchaser of any business or business interest may inquire as to the obligation or tax status of any business upon presenting to the Commission a release of tax information request signed by the authorized agent of the business.
- H. All returns referred to in this chapter, and all data taken therefrom, shall be kept secure from public inspection, and from all private inspection.

5.19.210. Violations.

- A. A remote seller or marketplace facilitator that fails to file a sales tax return or remit sales tax when due, in addition to any other liability imposed by this Code, shall pay to the Commission all costs incurred by the Commission to determine the amount of the remote seller's or marketplace facilitator's liability or to collect the sales tax, including, without limitation, reviewing and auditing the remote seller's or marketplace facilitator's business records, collection agency fees, and actual reasonable attorney's fees.
- B. A person who causes or permits a corporation of which the person is an officer or director, a limited liability company of which the person is a member or manager, or a partnership of which the person is a partner, to fail to collect sales tax or to remit sales tax to the Commission as required by this Code shall be liable to the Commission for the amount that should have been collected or remitted, plus any applicable interest and penalty.
- C. Notwithstanding any other provision of law, and whether or not the Commission initiates an audit or other tax collection procedure, the Commission may bring a declaratory judgment action against a remote seller or marketplace facilitator believed to meet the criteria to establish that the obligation to remit sales tax is applicable and valid under local, state and federal law. The action shall be brought in the judicial district of the taxing jurisdiction.
- D. The Commission may cause a sales tax lien to be filed and recorded against all real and personal property of a remote seller or marketplace facilitator where the remote seller or marketplace facilitator has:

 - 1. Failed to file sales tax returns for two (2) consecutive filing periods as required by the Code; or
 - 2. Failed within sixty (60) days of the end of the filing period from which taxes were due to either (a) remit all amounts due or (b) to enter into a secured payment agreement as provided in this Code.
 - 3. Prior to filing a sales tax lien, the Commission shall cause a written notice of intent to file to be mailed to the last known address of the delinquent remote seller or marketplace facilitator.
- E. In addition to other remedies discussed in this Code, the Commission may bring a civil action to:

 - 1. Enjoin a violation of this Code. On application for injunctive relief and a finding of a violation or threatened violation, the superior court shall enjoin the violation.
 - 2. Collect delinquent sales tax, penalty, interest and costs of collection, either before or after estimating the amount of sales tax due.

3. Foreclose a recorded sales tax lien as provided by law.

F. All remedies hereunder are cumulative and are in addition to those existing at law or equity.

5.19.220. Penalties for Violations.

A. A buyer, remote seller, or marketplace facilitator who knowingly or negligently submits false information in a document filed with the Commission pursuant to this Code is subject to a penalty of five hundred dollars (\$500).

B. A remote seller or marketplace facilitator who knowingly or negligently falsifies or conceals information related to its business activities with the Commission or taxing jurisdiction is subject to a penalty of five hundred dollars (\$500).

C. A person who knowingly or negligently provides false information when applying for a certificate of exemption is subject to a penalty of five hundred dollars (\$500).

D. Any remote seller or marketplace facilitator who fails to file a return required under this chapter by the due date, regardless of whether any taxes were due for the reporting period for which the return was required, shall be subject to a penalty of twenty-five dollars (\$25) for the first sales tax return not timely filed. The filing of an incomplete return shall be treated as the filing of no return.

E. A remote seller or marketplace facilitator who fails or refuses to produce requested records or to allow inspection of their books and records shall pay to the Commission a penalty equal to three (3) times any deficiency found or estimated by the Commission with a minimum penalty of five hundred dollars (\$500).

F. A remote seller or marketplace facilitator who falsifies or misrepresents any record filed with the Commission is guilty of an infraction and subject to a penalty of five hundred dollars (\$500) per record.

G. Misuse of an exemption card is a violation and subject to a penalty of fifty dollars (\$50) per incident of misuse;

H. Nothing in this chapter shall be construed as preventing the Commission from filing and maintaining an action at law to recover any taxes, penalties, interest and/or fees due from a remote seller or marketplace facilitator. The Commission may also recover attorney's fees in any action against a delinquent remote seller or marketplace facilitator.

5.19.230. Remote Sellers with a physical presence in the taxing jurisdiction.

A. Sellers with a physical presence in a Taxing Jurisdiction and no remote or internet-based sales shall report, remit, and comply with standards, including audit authority, of the

Taxing Jurisdiction.

- B. Sellers with a physical presence in a Taxing Jurisdiction that also have remote or internet-based sales where the Point of Delivery is in a different Taxing Jurisdictions shall (i) report and remit the remote or internet sales to the Commission; and (ii) report and remit the in-store sales to the Taxing Jurisdiction.
- C. Sellers with a physical presence in a Taxing Jurisdiction that also have remote or internet-based sales where the Point of Delivery is in the same Taxing Jurisdictions shall report and remit those remote sales to the Taxing Jurisdiction.
- D. Remote Sellers and marketplace facilitators that do not have a physical presence in a Taxing Jurisdiction must report and remit all remote sales to the Commission.
- E. For all purchases the tax rate added to the sale price shall be as provided in the Taxing Jurisdiction's sales tax code, based on point of delivery.
- F. A marketplace facilitator is considered the remote seller for each sale facilitated through its marketplace and shall collect, report, and remit sales tax to the Commission. A marketplace facilitator is not considered to be the remote seller for each sale or rental of lodging facilitated through its marketplace, wherein the seller is considered to have a physical presence in the Taxing Jurisdiction.

5.19.240. Remittance of Tax; Remote Seller Held Harmless.

- A. Any remote seller or marketplace facilitator that collects and remits sales tax to the Commission as provided by law may use an electronic database of state addresses that is certified by the Commission pursuant to subsection (C) of this section to determine the jurisdictions to which tax is owed.
- B. Any remote seller or marketplace facilitator that uses the data contained in an electronic database certified by the Commission pursuant to subsection (C) of this section to determine the jurisdictions to which tax is owed shall be held harmless for any tax, charge, or fee liability to any taxing jurisdiction that otherwise would be due solely as a result of an error or omission in the database.
- C. Any electronic database provider may apply to the Commission to be certified for use by remote sellers or marketplace facilitators pursuant to this section. Such certification shall be valid for three years. In order to be certified, an electronic database provider shall have a database that satisfies the following criteria:
 - 1. The database shall designate each address in the state, including, to the extent practicable, any multiple postal address applicable to one location and the taxing jurisdictions that have the authority to impose a tax on purchases made by purchasers at each address in the state.

2. The information contained in the electronic database shall be updated as necessary and maintained in an accurate condition. In order to keep the database accurate, the database provider shall provide a convenient method for taxing jurisdictions that may be affected by the use of the database to inform the provider of apparent errors in the database. The provider shall have a process in place to promptly correct any errors brought to the provider's attention.

5.19.250. Definitions.

For purposes of this chapter, the following definitions shall apply:

“Buyer or purchaser” means a person to whom a sale of property or product is made or to whom a service is furnished.

“Commission” means the Alaska Intergovernmental Remote Sales Tax Commission established by Agreement between local government taxing jurisdictions within Alaska, and delegated tax collection authority.

“Delivered electronically” means delivered to the purchaser by means other than tangible storage media.

“Entity-based exemption” means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

“Goods for resale” means:

- A. the sale of goods by a manufacturer, wholesaler or distributor to a retail vendor; sales to a wholesale or retail dealer who deals in the property sold, for the purpose of resale by the dealer.
- B. Sales of personal property as raw material to a person engaged in manufacturing components for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of, a product manufactured for sale by the manufacturer.
- C. Sale of personal property as construction material to a licensed building contractor where the property sold becomes part of the permanent structure.

“Marketplace facilitator” means a person that contracts with remote sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the remote seller’s property or services through a physical or electronic marketplace operated by the person, and engages:

- A. Directly or indirectly, through one or more affiliated persons in any of the following:

(i) Transmitting or otherwise communicating the offer or acceptance between the buyer and remote seller;

(ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and remote sellers together;

(iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the remote seller; or

(iv) Software development or research and development activities related to any of the activities described in (b) of this subsection (3), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

B. In any of the following activities with respect to the seller's products:

(i) Payment processing services;

(ii) Fulfillment or storage services;

(iii) Listing products for sale;

(iv) Setting prices;

(v) Branding sales as those of the marketplace facilitator;

(vi) Order taking;

(vii) Advertising or promotion; or

(viii) Providing customer service or accepting or assisting with returns or exchanges.

“Member” means a taxing jurisdiction that is a signatory of the Alaska Remote Sales Tax Intergovernmental Agreement, thereby members of the Commission, and who have adopted the Remote Seller Sales Tax Code.

“Monthly” means occurring once per calendar month.

“Nonprofit organization” means a business that has been granted tax-exempt status by the Internal Revenue Service (IRS); means an association, corporation, or other organization where no part of the net earnings of the organization inures to the benefit of any member, shareholder, or other individual, as certified by registration with the IRS.

“Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

“Physical presence” means a seller who establishes any one or more of the following within a local taxing jurisdiction:

5. Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the local taxing jurisdiction;
6. Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the local taxing jurisdiction or engages in activities in this state that are significantly associated with the seller’s ability to establish or maintain a market for its products in this state;
7. Provides services or holds inventory within the boundaries of the local taxing jurisdiction;
8. Rents or Leases property located within the boundaries of the local taxing jurisdiction.

A seller that establishes a physical presence within the local taxing jurisdiction in any calendar year will be deemed to have a physical presence within the local taxing jurisdiction for the following calendar year.

“Point of delivery” means the location at which property or a product is delivered or service rendered.

- A. When the product is not received or paid for by the purchaser at a business location of a remote seller in a Taxing Jurisdiction, the sale is considered delivered to the location where receipt by the purchaser (or the purchaser's recipient, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery as supplied by the purchaser (or recipient) and as known to the seller.
- B. When the product is received or paid for by a purchaser who is physically present at a business location of a Remote Seller in a Taxing Jurisdiction the sale is considered to have been made in the Taxing Jurisdiction where the purchaser is present even if delivery of the product takes place in another Taxing Jurisdiction. Such sales are reported and tax remitted directly to the Taxing Jurisdiction not to the Commission.
- C. For products transferred electronically, or other sales where the remote seller or marketplace facilitator lacks a delivery address for the purchaser, the remote seller or marketplace facilitator shall consider the point of delivery the sale to the billing address of the buyer.

“Product-based exemptions” means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

“Property” and **“product”** means both tangible property, an item that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses; and intangible property, anything that is not physical in nature (i.e.; intellectual property, brand recognition, goodwill, trade, copyright and patents).

“Quarter” means trimonthly periods of a calendar year; January-March, April-June, July-September, and October-December.

“Receive or receipt” means

- A. Taking possession of property;
- B. Making first use of services; or
- C. Taking possession or making first use of digital goods, whichever comes first.

The terms “receive” and “receipt” do not include temporary possession by a shipping company on behalf of the purchaser.

“Remote sales” means sales of goods or services by a remote seller or marketplace facilitator.

“Remote seller” means a seller or marketplace facilitator making sales of goods or services delivered within the State of Alaska, without having a physical presence in a taxing jurisdiction, or conducting business between taxing jurisdictions, when sales are made by internet, mail order, phone or other remote means. A marketplace facilitator shall be considered the remote seller for each sale facilitated through its marketplace.

“Resale of services” means sales of intermediate services to a business the charge for which will be passed directly by that business to a specific buyer.

“Sale” or “retail sale” means any transfer of property for consideration for any purpose other than for resale.

“Sales or purchase price” means the total amount of consideration, including cash, credit, property, products, and services, for which property, products, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- A. The seller’s cost of the property or product sold;
- B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- D. Delivery charges;
- E. Installation charges; and

F. Credit for any trade-in, as determined by state law.

“Seller” means a person making sales of property, products, or services, or a marketplace facilitator facilitating sales on behalf of a seller.

“Services” means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise outside the taxing jurisdiction (but excluding any that are rendered physically within the taxing jurisdiction, including but not limited to:

A. Professional services;

B. Services in which a sale of property or product may be involved, including property or products made to order;

C. Utilities and utility services not constituting a sale of property or products, including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services;

D. The sale of transportation services;

E. Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission;

F. Advertising, maintenance, recreation, amusement, and craftsman services.

“Tax cap” means a maximum taxable transaction.

“Taxing jurisdiction” means a local government in Alaska that has a sales tax and is a member of the Alaska Remote Sellers Sales Tax Commission.

“Transferred electronically” means obtained by the purchaser by means other than tangible storage media.

5.19.260 Supplemental Definitions.


The Commission shall promulgate Supplemental Definitions that are incorporated into this Remote Seller Sales Tax Code. Supplemental Definitions are available at www.arsstc.org. Provisions of the Supplemental Definitions that are amended, deleted, or added prior to or after the effective date of the latest amendment to this chapter shall be applicable for purposes of this chapter on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

SECTION 5. That the Alaska Intergovernmental Remote Sales Tax Commission is hereby authorized to implement, administer, and enforce the provisions of KPB 5.19 Uniform Remote Seller Sales Tax Code. This authority remains in full force and effect until the assembly revokes this authorization or otherwise withdraws from the Alaska Remote Seller Sales Tax Commission.

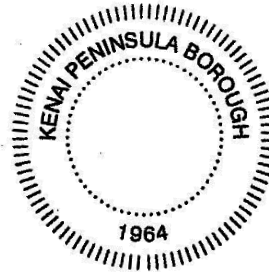
SECTION 6. This ordinance is effective March 1, 2020.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 25TH DAY OF FEBRUARY, 2020.

ATTEST:


Johni Blankenship, MMC, Borough Clerk


Kelly Cooper, Assembly President



Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper
No: None
Absent: None

Introduced by:	Mayor
Date:	04/06/21
Hearing:	04/20/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-13**

**AN ORDINANCE AUTHORIZING A NEGOTIATED LEASE OF TRACT C QUARTZ
CREEK SUBDIVISION WITH KIEWIT INFRASTRUCTURE WEST COMPANY FOR
PROJECT STAGING ACTIVITIES IN SUPPORT OF THE STERLING HIGHWAY MP
45-60 CONSTRUCTION PROJECT NEAR COOPER LANDING**

WHEREAS, the Alaska Department of Transportation & Public Facilities (“DOT&PF” is actively working on the Sterling Highway MP 45-60 construction project near Cooper Landing; and

WHEREAS, the borough owns Tract C Quartz Creek Subdivision (Tract C) at the east end of the project; and

WHEREAS, Kiewit Infrastructure West Company (KIWC) is a Construction Manager/General Contractor for DOT&PF on the Sterling Highway MP45-60 project; and

WHEREAS, KIWC has identified Tract C as being a practical and important location for project staging activities; and

WHEREAS, Tract C is classified as Commercial, and development of the parcel for project staging is compatible with the commercial land classification; and

WHEREAS, land management has worked with project officials to develop an agreement involving borough lands and resources based on project needs; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of April 12, 2021 recommended _____;

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

SECTION 1. That the assembly finds that leasing Kenai Peninsula Borough owned Tract C Quartz Creek Subdivision pursuant to KPB 17.10.100(I) 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 to Kiewit Infrastructure West in cooperation with the Sterling Highway MP 45-60 project.

SECTION 3. Based on the foregoing, the mayor is hereby authorized pursuant to KPB 17.10.100(I) to lease Tract C Quartz Creek Subdivision, Plat No 94-11 Seward Recording District, according to the terms and conditions and substantially in the form of the Land Lease and Development Agreement accompanying this ordinance. The authorization is for lease solely to Kiewit Infrastructure West Company (KIWC), 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 Agreement form approved by the assembly.

SECTION 5. KIWC shall have 90 days from the time of enactment of this ordinance to execute the lease document.

SECTION 6. That revenue from the subject lease shall be deposited in the Land Trust Fund.

SECTION 7. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*
Melanie Aeschliman, Planning Director *MA*

FROM: Marcus A Mueller, Land Management Officer *MA*

DATE: March 25, 2021

RE: Ordinance 2021-____, Authorizing a Negotiated Lease of Tract C Quartz Creek Subdivision with Kiewit Infrastructure West Company for Project Staging Activities in Support of the Sterling Highway MP 45-60 Construction Project near Cooper Landing (Mayor)

Kiewit Infrastructure West Company (KIWC) is a construction manager/ general contractor for Alaska Department of Transportation's Sterling Highway MP 45-60 project near Cooper Landing. A 16-acre KPB-owned parcel at the east end of the project has been identified by Kiewit for project staging.

Proposed staging uses include building a durable pad, installing utilities, a well and septic system to house and stage project offices, personnel, resources, supplies and equipment and to operate an asphalt batch plant.

KPB Land Management worked with KIWC last fall through a land use permit to conduct clearing activities while leaving a vegetated buffer around the property, in anticipation of the lease proposal. The cleared area would be available for the development and use proposed by Kiewit under the lease.

The lease would have a 5-year term, which corresponds to DOT's construction schedule, and would provide for a one-year renewal option at a rent of \$35,640 per year with a 3% annual increase. The lease is proposed to start on May 1st to meet the 2021 construction schedule.

Your consideration is appreciated.

Land Lease and Development Agreement

KPBL# 21-0501-02

The Kenai Peninsula Borough (KPB), an Alaska municipal corporation, whose address is 144 N. Binkley Street, Soldotna, AK 99669 (hereinafter “KPB” or “Lessor”) and Kiewit Infrastructure West Co. (KIWC), whose address is 2000 W. International Airport Rd. C-6 (hereinafter “KIWC” or “Lessee”) enter into this Land Lease Development Agreement and agree as follows:

I. Background; Contract Documents; Authorized Contact; Definitions

1. **Background.** The KPB owns certain real property located in the Kenai Peninsula Borough, in the state of Alaska, that is more particularly described as Tract C Quartz Creek Subdivision, Plat No 94-11, Seward Recording District (the “Property”). The parties intend that for good and valuable consideration KPB grants KIWC the right to develop and use the Property for the purposes of Sterling Highway MP45-60 project operations including staging and housing equipment, personnel or resources, and processing construction materials in accordance with the terms and conditions of this Agreement and all attachments hereto. KIWC agrees that it will conduct its use and operations according to the terms and conditions contained in This Agreement for purposes integral to the Alaska Department of Transportation & Public Facilities’ (“DOT&PFs”) Sterling Highway MP45-60 Project near Cooper Landing, Alaska.
2. **Authorized Contact.** All communications about This Agreement shall be directed as follows. Any reliance on a communication with a person other than those listed below is at the party’s own risk. KPB staff do not have authority to bind the KPB. Any material amendments or changes to The Agreement must be approved by the KPB Assembly by ordinance.

KPB

Name: Kenai Peninsula Borough
Attn: Land Management Division
Mailing Address: 144 N. Binkley St.
Soldotna, AK 99669

KIWC

Name:
Attn:

3. **Contract Documents.** As authorized by the Borough Assembly, this Lease and Development Agreement, and incorporated contract agreements, together form the entire agreement (“Agreement”). Collectively, the Agreement is the final and complete agreement and understanding of the parties. The following agreements or attachments, are attached to, incorporated herein by reference, and together form the Agreement:
 - i. Lease and Development Agreement
 - ii. Attachment 1: Survey Plat of Tract C, Quartz Creek Subdivision
 - iii. Attachment 2: Lease Provisions Required by KPB 17.10

- iv. Attachment 3: Clearing Plan
- v. Attachment 4: Tract C Lease Application

If in conflict, the Lease and Development Agreement shall control.

4. **Definitions.**

- 4.1. Agreement - the final and complete agreement of the parties and shall encompass the Lease and Development Agreement and all Attachments to the Lease and Development Agreement that are incorporated by reference.
- 4.2. Environmental Assessment - An assessment of property, prepared in a manner consistent with generally accepted professional practices, that is supported by reports and tests that determine the environmental condition of property and the presence, type, concentration, and extent of any Contamination in, on, and under the surface of the property.
- 4.3. Environmental Law - Any federal, state, or local statute, law, regulation, ordinance, code, Lease, order, decision, or judgment from a governmental entity relating to environmental matters, including littering and dumping. It includes, as applicable, 42 U.S.C. 7401-7671 (Clean Air Act); 33 U.S.C. 1251-1387 (Federal Water Pollution Control Act); 42 U.S.C. 6901-6992 (Resource Conservation and Recovery Act); 42 U.S.C. 9601-9657 (Comprehensive Environmental Response, Compensation, and Liability Act); S.C. 5101-5127 (Hazardous Materials Transportation Act); 15 U.S.C. 2601-2692 (Toxic Substances Control Act); AS 46 (Alaska Water, Air, Energy, and Environmental Conservation Acts); and the provisions of 18 AAC (Environmental Conservation) implementing AS 46.
- 4.4. Environmental Liability Baseline - A description, accepted by the Lessor and documented by one or more Environmental Assessments and any other relevant documents, of the existence, location, level, and extent of Contamination in, on, or under the surface of the Property that was neither caused nor Materially Contributed To by the Lessee, nor assumed by the Lessee by reason of assignment.
- 4.5. Lessee – Kiewit Infrastructure West Co., or KIWC.
- 4.6. Lessor - Kenai Peninsula Borough or KPB.
- 4.7. Project - DOT&PF's Sterling Highway MP45-60 Project.
- 4.8. Property –Real Property legally described as Tract C Quartz Creek Subdivision, Plat No 94-11, Seward Recording District
- 4.9. Site Development Materials - Materials used for Site Development. Site Development Materials includes geotextile, gravel, paving, pavement reinforcement materials, and utilities.

II. Leased Property Description; Term; Rent

5. **The Property.** The KPB leases to KIWC and KIWC leases from the KPB, the following described Property in an “as-is” condition. The KPB makes no specific warranties, express or implied, concerning the title, condition, or use of the Property, including survey, soils, wetlands, access, or suitability for any use, including those uses authorized by the Agreement, unless otherwise specified in this Agreement:

Tract C Quartz Creek Subdivision, Plat No 94-11 Seward
Recording District., State of Alaska.

6. **Term.**

- 6.1. Initial Term. The Initial Term of this Agreement shall be for a period of 5 years commencing on May 1, 2021 and terminating on April 30, 2026.
- 6.2. Renewal Term(s). Unless notice of non-renewal is provided prior to expiration of the Initial Term or KIWC is otherwise in breach of this Agreement, the Agreement may be automatically renewed by KIWC for one additional 1-year Renewal Term on the same rent schedule as the initial term.

7. **Rent.**

- 7.1. Surface Use Rent (“Rent”). The Rent for the use of the Property is Thirty five thousand six hundred forty dollars (\$35,640) per year payable on the commencement date of the Agreement and each anniversary thereof. This Rent shall increase annually at 3% per annum.

III. Uses; Reservation of Rights by KPB

8. **Authorized Uses.** The Agreement is entered into for the use of the Property for the following authorized uses:

- 8.1. Subject to Section 12 below, Rights Reserved by KPB, KIWC shall have exclusive surface use and possession of the Property. The surface uses shall be governed by this Agreement. Surface uses include, but are not limited to, staging and housing of personnel and equipment, material processing operations, temporary facilities, and related uses reasonably necessary to support completing the Project. Authorized uses specifically include those described in Attachment 4- Tract C Lease Application.
- 8.2. Subject to reclamation obligations, KIWC shall have the right to develop Tract C sufficient for its authorized uses included importing clean, construction grade gravel fill material, installation of utilities, installation of DEC approved septic system or holding tanks, drilling of on-site water wells, and installation of road approaches, pads, and durable surfaces. KIWC shall conserve topsoil on site and maintain such material available for site reclamation at the end of the Agreement.

9. **Prohibited Uses.** Under this Agreement, the following uses on the Property are prohibited:

- 9.1. Installing permanent structures;

9.2. Storage of bulk fuel. Bulk fuel is defined as storage of 25,000 Gallons or more fuel.

10. **Vegetated Buffers/ Clearing Plan.** Uses under this agreement are subject to preserving certain vegetated buffers along the perimeter of the property. Prior to commencement of the Agreement, a clearing plan had been agreed upon and implemented through which certain areas of vegetation were preserved. The cleared area shall be available for KIWC's development and use under this agreement. No further clearing or expansion of use into vegetated areas will take place unless approved by KPB in writing. Vegetated areas may be incorporated into KIWC's storm water management practices. Individual trees within the vegetated buffer that are a substantial hazard risk may be removed by KIWC as necessary without changing the buffer status.

11. **Site Closure.**

11.1. Notwithstanding KPB 17.10.240, prior to termination of this Agreement the KPB reserves the right, at KPB's sole option, to require Lessee to restore the site to a natural condition, free of contamination, to leave the site in a condition suitable for use by another, or any combination thereof. KPB declares an intent for the site to be useful for a commercial business subdivision at the end of the Agreement.

11.2. Pre-closure Inspection. KPB and Lessee will jointly inspect the site for the purpose of KPB determining the condition that site will be left in prior to termination of Agreement. KPB and Lessee shall agree in writing the condition that site will be left in prior to termination of Agreement. KPB, at its sole discretion, may require Lessee to take any or all of the actions listed in paragraphs A and B of this section.

A. Removal of Improvements. The KPB may require Lessee to remove any and all improvements including septic systems, utilities, imported materials, and closure of wells.

B. Reclamation. Site shall be reclaimed by adding organic topsoil material to bring site to a consistent topographic level as adjacent features and then planted with local plant species.

11.3. Post-closure Inspection. KPB and Lessee will jointly inspect site to confirm site is left in a condition acceptable to KPB and KPB will issue a document to Lessee affirming its findings.

12. **Rights Reserved by KPB.**

12.1. The KPB reserves a 60 foot x 60 foot area on the Property ("Reserved Area"), the exact location is subject to mutual agreement of the parties hereto, for the purposes of siting a communications facility (tower) on the Property. This reservation includes the exclusive right to grant to a third party the right, license and privilege to site, construct, install, and maintain a communications site (tower) or to place commercial communications equipment on the Property and includes ingress and egress rights. This provision is subordinate to the rights and privileges granted under this Agreement

- and shall not unreasonably interfere with KIWC's authorized use of the Property or limit KIWC from installing non-commercial communications equipment for the project.
- 12.2. The KPB reserves the right of ingress and egress from the Property, and the right to enter any part of the Property for the purposes of inspection at any reasonable time subject only to the KPB's best efforts, except in the case of an emergency, to coordinate its inspection with the KIWC to minimize interference with the KIWC's operations and activities on the Property.

IV. Cancellation, Expiration or Other Termination

13. Cancellation.

- 13.1. This Agreement may be cancelled by KIWC by 90-days written notice to KPB, provided that KIWC is in good standing with the terms and conditions of the lease.
- 13.2. This Agreement may be cancelled at any time upon mutual written agreement of the parties.
- 13.3. Rent will be prorated to the partial term in the case of early cancellation.

14. Lessee Default.

- 14.1. If KIWC violates a term of the Agreement and the KPB considers that term to be a material obligation of the Agreement, or the violation to be a material deviation from the requirements of the Agreement, the KPB will mail or deliver to KIWC a written notice of the violation. The notice must allow KIWC not less than sixty (60) days to correct the violation, unless the violation constitutes an imminent threat to public health or safety.
- 14.2. If the KIWC does not correct the violation by the time allowed in the notice, the KPB shall:
- a. grant an extension of time to correct the violation if KIWC shows good cause;
 - b. take enforcement action as provided under this Agreement or as available by law; or
 - c. cancel this Agreement.
- 14.3. If the KPB determines that a violation creates an imminent threat to public health or safety, the KPB shall:
- a. Direct KIWC to stop the activity immediately
 - b. Provide KIWC less time than otherwise specified in the Agreement to correct the violation; or
 - c. Correct the violation.
- 14.4. Without limitation, the following shall be deemed either violations of material obligations of this Agreement or material deviations from the requirements of the Agreement:
- a. KIWC fails to pay when due any rent, charge, or fee or royalty specified in the Agreement, including any increase made under this Agreement ;
 - b. KIWC blocks or restricts KPB or its Contractor's access to the Property in violation of Section 11 above;
 - c. KIWC is otherwise found to be in violation of State or Federal law.

15. **Waiver.**

- 15.1. A waiver by the KPB of any default by KIWC of any provision of this Agreement will not operate as a waiver of any subsequent default. If the KPB waives a default, the KPB is not required to provide notice to KIWC to restore or revive any provision under this Agreement. The waiver by the KPB of any provision in this Agreement cannot be enforced or relied upon unless the waiver is in writing and signed on behalf of the KPB.
- 15.2. The KPB's failure to insist upon the strict performance by KIWC of any provision in this Agreement is not a waiver or relinquishment for the future, and the provision will continue in full force.

16. **Disposition of Improvements and Personal Property.** All temporary improvements and personal property of KIWC shall be removed by KIWC, at its sole expense, within ninety (90) days of cancellation, termination, or expiration of the Agreement.

17. **Disposition of Site Development Materials.** Site Development Materials that KIWC completes or places on the Property become part of the KPB-owned realty and property of the KPB upon completion or placement. KIWC may not remove the Site Development Materials unless the KPB approves in writing.

18. **Natural Disasters.** If the parties agree in writing that the Property is unusable, not due to the fault or negligence of either party, to the extent that performance of this Agreement is impossible, this Agreement may be terminated. If KIWC elects to continue to operate, the KPB is under no obligation to continue to perform. Causes for termination under this provision include, but are not restricted to, acts of God, fires, floods, epidemics, quarantine restrictions, earthquakes, landslides, mudslides, avalanches, tsunamis, or volcanic activity.

19. **National Emergency.** If the federal government declares a national emergency, neither party may hold the other liable for any inability to perform any part of this Agreement as a result of the national emergency.

20. **Survival.**

- 20.1. At the expiration, cancellation, or other termination of this Agreement, the KIWC shall peaceably and quietly vacate the Property and return possession to the KPB.
- 20.2. KIWC's obligations under the following provisions of this Agreement shall survive and remain binding on KIWC after the expiration, cancellation, or other termination of the Agreement:
- a. Section 7 – Rent – of the Agreement;
 - b. Section 14 – Disposition of Improvements and Personal Property – of the Agreement;
 - c. Sections 19 through 24 – Environmental Issues – of this Agreement; and
 - d. All terms related to Reclamation of the Property under Attachment 1 – material Extraction and Disposal Terms & Conditions.

V. Environmental Issues

21. Environmental Liability Baseline

- 21.1. Responsibility for Ascertaining Environmental Condition of Property. The Lessee has the sole responsibility under this Agreement to ascertain the environmental condition and presence of Contamination in, on, and under the surface of the Property, and is conclusively presumed to have caused or to have Materially Contributed To any Contamination of, or originating on, the Property except as identified in an Environmental Liability Baseline. If known Contamination is on the property that has been closed out under alternate cleanup levels approved by ADEC, Lessee is responsible for following all restrictions set by ADEC, including, but not limited to notifying any assignee of this Agreement in writing of ADEC's restrictions.
- 21.2. Financial Responsibility for Contamination on the Property and on any Affected Property. The Lessee assumes financial responsibility to the Lessor for any Contamination in, on, and under the Property, except for Contamination that is identified in an Environmental Liability Baseline. This is without prejudice to the Lessee's right to seek contribution or indemnity from either prior lessees of the Property, or other potentially responsible parties except for the Lessor.
- 21.3. Establishing an Environmental Liability Baseline.
- a. If the Lessee wants to establish an Environmental Liability Baseline for all or any portion of the Property, the Lessee shall provide the Lessor with an Environmental Assessment for that portion of the Property.
 - b. If the Lessee discovers Contamination in, on, or under the surface of the Property, for any portion of the Contamination to be considered for inclusion in the Environmental Liability Baseline, the Lessee must demonstrate by clear and convincing evidence to the satisfaction of the Lessor that the Contamination proposed for inclusion was not caused or Materially Contributed to by the Lessee or the Lessee's operations or activities nor assumed by the Lessee. Contamination caused or Materially Contributed to by activities of the Lessee's sublessees, contractors, and guests on the Property are deemed to be Materially Contributed To by the Lessee.
 - c. Only that portion of Contamination not caused or Materially Contributed to by the Lessee or the Lessee's operations or activities shall be included in the Environmental Liability Baseline.
- 21.4. Adding to an Existing Environmental Liability Baseline.
- a. If, after an Environmental Liability Baseline is established for any portion of the Property the Lessee discovers Contamination in, on, or under the surface of that portion of the Property having an Environmental Liability Baseline, which Contamination the Lessee or the Lessee's operations or activities did not cause or Materially Contribute To, and which the Lessee did not assume by reason of assignment, the Lessee may, at its own cost, submit an additional Environmental Assessment reflecting that information to the Lessor for the Lessor's consideration to add to the Environmental Liability Baseline. The Lessee's additional Environmental Assessment must demonstrate by clear and convincing evidence to the satisfaction of the Lessor which portion of the additional Contamination on the Property was not caused or Materially Contributed to by the Lessee or the Lessee's operations or activities.

- b. Only that portion of Contamination not caused or Materially Contributed to by the Lessee or the Lessee's operations or activities may be added to the existing Environmental Liability Baseline.
- 21.5. Lessor's Acceptance or Rejection of Lessee's Environmental Assessment. When the Lessor receives the Lessee's Environmental Assessment to establish an Environmental Liability Baseline or to add to an existing Environmental Liability Baseline, the Lessor, in its sole discretion, will do one of the following:
- a. Accept the findings of the Lessee's Environmental Assessment and any other relevant documents to establish an Environmental Liability Baseline for that portion of the Property being assessed or to add to the existing Environmental Liability Baseline.
 - b. Reject the findings of the Lessee's Environmental Assessment for that portion of the Property being assessed and offer the Lessee the opportunity to perform additional environmental testings if the Lessor determines in writing that the findings of the Environmental Assessment are inadequate to establish an Environmental Liability Baseline or to add to an existing Environmental Liability Baseline. The Lessor's written rejection of the Lessee's Environmental Assessment will be based on failure of the Lessee's Environmental Assessment to either:
 - (1) follow generally accepted professional practices in determining the environmental condition of the Property and the presence of Contamination in, on, or under the surface of the Property; or
 - (2) demonstrate the portion of the Contamination that was not caused or Materially Contributed To by the Lessee or the Lessee's operations or activities.
 - c. Perform additional environmental testing at the Lessor's expense to verify the environmental condition of that portion of the Property being assessed. If the results of the Lessor's tests conflict with the Lessee's Environmental Assessment, the Lessor and the Lessee will negotiate in good faith an Environmental Liability Baseline or an addition to the existing Environmental Liability Baseline for that portion of the Property being assessed.
- 21.6. Amending the Environmental Liability Baseline to Delete Contamination Caused, Materially Contributed to, or Assumed by Lessee
- a. If, after the Environmental Liability Baseline for any portion of the Property is established, it is discovered that the presence of Contamination identified in the Environmental Liability Baseline was caused or materially contributed to by the Lessee or the Lessee's operations or activities, or assumed by the Lessee by reason of assignment, the Environmental Liability Baseline may be amended to delete that portion of the Contamination that was caused or Materially Contributed to by the Lessee or the Lessee's operations or activities.
 - b. The Lessor will have the burden of proof in establishing that the Lessee or the Lessee's operations or activities caused or Materially Contributed to this Contamination.
 - c. If it is discovered that Contamination identified in the Environmental Liability Baseline was caused or Materially Contributed To by the Lessee or the Lessee's operations or activities, the parties will agree upon an amendment to the Environmental Liability Baseline within a reasonable time.

22. **Release of Lessee.** The Lessor releases the Lessee from liability to the Lessor for Contamination identified by the Environmental Liability Baseline that was not caused or Materially Contributed to by the Lessee or the Lessee's operations or activities.
23. **Required Remediation.** The Lessor is under no obligation to remediate Contamination identified in an Environmental Assessment, except the Lessor shall remediate, or have responsible parties remediate, the Contamination identified in the Environmental Liability Baseline if an agency with such authority requires the Lessee or Lessor to remediate. In the event of such required remediation, the Lessor will make a reasonable effort to coordinate the remediation with the Lessee to minimize disruption of the Lessee's operations or activities and damage to the Lessee's improvements and property. The Lessee releases and holds the Lessor harmless for all costs associated with any damage to, and relocation, removal, and repair of Lessee's improvements and property that result from remediation performed in compliance with this paragraph with respect to Contamination that existed before construction of affected improvements.
24. **Action Against Potentially Responsible Parties.** This article does not restrict either the Lessor or the Lessee from seeking and obtaining cleanup efforts, costs, or damages from other potentially responsible parties for Contamination identified in the Environmental Liability Baseline.

VI. Additional Terms and Conditions

25. **Defense and Indemnification.** To the extent allowed by law and subject to legislative appropriation of available funds, the parties shall mutually indemnify, defend, save and hold each other, including their elected and appointed officers, agents and employees, as applicable, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorney's fees resulting from either parties' performance or failure to perform in accord with the terms of the Agreement in any way whatsoever. This defense and indemnification shall not mean that a party is responsible for any damages or claims arising from the sole negligence or willful misconduct of the other party, its agents or employees. Each party is solely responsible for damages or claims arising from their sole negligence or willful misconduct.
26. **Insurance.** It is understood that both parties to the Agreement are self-insured at adequate and acceptable to both parties. However, any contractors or subcontractors that use or perform work at the Property shall maintain the following insurance coverages:
- 26.1. **Commercial General Liability Insurance (CGL).** All Contractors and subcontractors of any tier shall provide and maintain, Commercial General Liability Insurance (CGL). The CGL Policy shall be written on an occurrence basis and with a limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) each occurrence and aggregate. CGL insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from Property, operations, broad form property damage, independent contractors, products-completed operations, personal injury and advertising injury, explosion,

collapse, underground hazards, and liability assumed under a contract including the tort liability of another assumed in a business contract. If necessary to provide the required limits, the Commercial General Liability policy's limits may be layered with a Commercial Umbrella or Excess Liability policy. This policy shall name the KPB as an Additional Insured. To the extent damages are covered by commercial general liability insurance, subrogation shall be waived.

- 26.2. Worker's Compensation, Employer's Liability Insurance. Contractor and subcontractor(s) of any tier shall provide and maintain, for all of its employees engaged in work under this Agreement, Workers' Compensation Insurance in accordance with the laws of the State of Alaska. The Contractor shall be responsible for Workers' Compensation Insurance for any subcontractor(s) who directly or indirectly provides services under this Agreement. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than the minimum amounts required by law. Where applicable, coverage for all federal acts (i.e., U.S.L. & H and Jones Act) must also be included.
 - 26.3. Auto Liability. Contractor and subcontractor(s) of any tier shall provide and maintain, Auto Liability Insurance (ALI). The Auto Liability Policy shall include a Combined Single Limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Underinsured and Uninsured Motorists limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Coverage shall include Non-Owned and Hired Car coverage. This policy shall name the KPB as Additional Insured. To the extent damages are covered by auto liability insurance, subrogation shall be waived.
 - 26.4. Proof of Coverage. All insurance shall be primary and exclusive of any other insurance held by the KPB. Upon renewal of insurance coverage during the license, certificates of insurance shall be delivered to the KPB. KIWC on behalf of its contractors shall deliver, within 30 days, complete insurance coverage policy documents to the KPB upon request.
27. Assignments. The Agreement is not assignable.
28. Subleasing. KIWC may not sublease the Property or any part thereof without written permission of the KPB Mayor when applicable. A sublease shall be in writing and subject to the terms and conditions of this Master Lease.
29. Waste. KIWC shall not commit waste upon or injury to the lands leased herein.
30. Fire Protection. KIWC shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the Property, and comply with all laws, regulations, and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the Property is located.
31. Safety. KIWC shall be solely responsible for maintaining the Property in a safe and fit condition, including without limitation snow and ice removal from all improvements and areas on the Property as needed for KIWC's use of the Property. KIWC is responsible for the safety of all persons conducting activities on the Property under the Agreement.
32. Sanitation. KIWC shall comply with all laws, regulations or ordinances promulgated for the promotion of sanitation. The Property shall be kept in a clean and sanitary condition and

every effort shall be made to prevent pollution of the waters and lands. Sanitary facilities shall be in accordance with the State of Alaska, Department of Environmental Conservation regulations.

33. **Compliance with Laws.** KIWC shall abide by all applicable federal, state, city, and borough statutes, ordinances, rules, and regulations. KIWC is responsible for obtaining all federal, state, and local permits applicable to licensee's activities and shall keep such permits in good standing.
34. **Responsibility of Location.** It shall be the responsibility of KIWC to properly locate itself and its improvements on the Property.
35. **Liens and Mortgages.** KIWC shall not cause or allow any lien or encumbrance of any kind or nature whatsoever to attach to the Property during the term of the Agreement. In the event that any prohibited lien is placed against the Property, KIWC shall immediately cause the lien to be released.
36. **No Warranty, Express or Implied.** The KIWC accepts the Property AS-IS, WHERE-IS. The Agreement shall be without warranty whatsoever, whether implied or expressed, as to quality, fitness for purpose or suitability for development, or physical condition (including, without limitation the environmental condition of the property). It is the responsibility of the KIWC to satisfy itself prior to executing the Agreement and/or prior to closing as to the type, condition, and quality of the Property.
37. **Jurisdiction.** Any lawsuits filed in connection with the terms and conditions of the Agreement, and of the rights and duties of the parties, shall be filed and prosecuted at Kenai, Alaska and shall be governed by Alaska law, without regard to conflict of law principles.
38. **Savings Clause.** Should any provision of the Agreement fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of the Agreement or constitute any cause of action in favor of either party as against the other.
39. **Binding Effect.** It is agreed that all covenants, terms, and conditions of the Agreement shall be binding upon the successors, heirs and assigns of the parties hereto.
40. **Integration and Merger.** The Agreement sets out all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the Property whether oral or written. Unless specifically authorized within a provision, no modification or amendment of the Agreement is effective unless in writing and signed by both of the parties.
41. **Warranty of Authority.** KIWC warrants that the person executing the Agreement is authorized to do so on behalf of KIWC.
42. **Counterparts.** The Agreement may be executed in counterpart, each of which when so executed and delivered shall be considered an original and all of which when taken together will constitute one and the same instrument.

43. **Quiet Enjoyment.** During the term of the Agreement, KIWC will have quiet enjoyment of the Property subject to the terms and conditions stated in the Agreement.

44. **Interpretation.** Both parties have had an opportunity to review the Agreement, to suggest changes, and to consult with legal counsel before signing. The Agreement will not be interpreted in favor of or against either Party.

LESSOR:

LESSEE:

Kenai Peninsula Borough

Kiewit Infrastructure West, Co.

By: Charlie Pierce
Its: Mayor
Date: _____

By: _____
Its: _____
Date: _____

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Johni Blankenship, MMC, Borough Clerk

Sean Kelley, Deputy Borough Attorney

KPB NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2021, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Charlie Pierce, known to me to be the Mayor of the Kenai Peninsula Borough, and who acknowledged to me that the foregoing instrument was executed freely and voluntarily on behalf of Kenai Peninsula Borough, for the uses and purposes therein set forth and who is authorized to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year written above.

Notary Public in and for Alaska
Commission expires: _____

KIWC NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2021, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared _____, known to me to be the _____, Kiewit Infrastructure West, Co., and who acknowledged to me that the foregoing instrument was executed freely and voluntarily on behalf of Kiewit Infrastructure West, Co., for the uses and purposes therein set forth and who is authorized by said company to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year written above.

Notary Public in and for Alaska
Commission Expires:_____

CURVE TABLE

LOT	CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C/L Highway	C1	818.38'	1070.80'	627.60'	986.03'	S 80°40'29" E	74°58'04"
R/W Highway	C2	918.38'	131.34'	65.84'	131.34'	N 65°56'31" E	08°12'03"
TRACT C	C3	170.00'	89.01'	45.55'	88.00'	N 71°23'36" E	30°00'00"
TRACT D	C4	230.00'	120.43'	61.63'	119.06'	N 71°23'36" E	30°00'00"
CL 60' R/W	C5	200.00'	104.72'	53.59'	103.53'	N 71°23'36" E	30°00'00"
CL 60' R/W	C6	200.00'	104.72'	53.59'	103.53'	N 71°23'36" E	30°00'00"

LINE TABLE

LINE	DIRECTION	DISTANCE
L1	S 27°51'10" E	194.13'
L2	N 56°29'51" W	190.16'
L3	S 28°31'36" E	135.53'
L4	N 86°23'36" E	60.84'
L5	N 33°36'24" W	154.17'
L6	S 11°51'21" E	32.30'
L7	N 11°51'21" W	32.30'
L8	N 56°23'36" E	24.00'
L9	S 56°23'36" W	93.72'
L10	N 61°47'15" E	117.02'
L11	N 61°47'15" E	74.50'

Detail "A"

(NTS)

WC-8

ASLS 88-30

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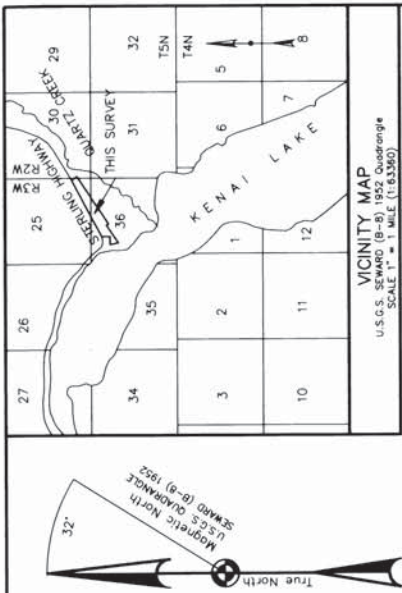
1/4" = 100'

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LEGEND

- PRIMARY MONUMENT RECOVERED THIS SURVEY
- SECONDARY MONUMENT RECOVERED THIS SURVEY
- AK DOT & PF 6" x 6" CONC. R/W MONUMENT RECOVERED THIS SURVEY
- PRIMARY MONUMENT SET THIS SURVEY
- SECONDARY MONUMENT SET THIS SURVEY
- 1/2" REBAR WITH PLASTIC CAP

NOTES

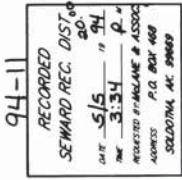
- Water supply and sewage disposal systems shall be permitted only in conformance with applicable requirements of 18 AAC 70, 18 AAC 72, and 18 AAC 80.
- No direct access to state maintained ROWS permitted unless approved by State of Alaska Department of Transportation.
- No permanent structure shall be constructed or placed within an easement which would interfere with the ability of a utility to use the easement.
- BUILDING SET BACK - A building set back of 20 ft. is required from all street rights-of-way unless a lesser standard is approved by resolution of the appropriate Planning Commission.



PLAT APPROVAL

This plat was approved by the KENAI PENINSULA BOROUGH PLANNING COMMISSION at the meeting of December 13, 1993.

KENAI PENINSULA BOROUGH by
Authorized Official



SCALE



WASTEWATER DISPOSAL

TRACTS A,B,C & D

Wastewater treatment and disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation. The Alaska Department of Environmental Conservation approves this subdivision for platting.

TRACT E

Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single-family or duplex residences and meeting the regulatory requirements of the Alaska Department of Environmental Conservation. Any other type of wastewater treatment and disposal system must be approved by the Alaska Department of Environmental Conservation.

Subject to any noted restrictions, the Alaska Department of Environmental Conservation approves this subdivision for platting.

Signature: Donald E. Gilman
Title: Environmental Engineer
Date: 3-23-94

NOTARY'S ACKNOWLEDGEMENT

FOR: RICHARD A. LEFEBVRE

Subscribed and sworn before me this 18TH day of April, 1994.

My commission expires 12-10-96

Notary Public for the State of Alaska



CERTIFICATE OF OWNERSHIP AND DEDICATION

We hereby certify that we are the owners of the real property shown and described hereon and we hereby adopt this plan of subdivision and by our free consent dedicate all rights-of-way and public areas to public use and grant all easements to the use shown.

Signature: Donald E. Gilman
Title: Mayor Kenai Peninsula Borough

Signature: Donald E. Gilman
Title: Director, Division of Land, State of Alaska

Signature: Donald E. Gilman
Title: Director, Division of Land, State of Alaska



NOTARY'S ACKNOWLEDGEMENT

FOR: Donald E. Gilman

Subscribed and sworn before me this 23rd day of March, 1994.

My commission expires 7/24/97

Notary Public for the State of Alaska

QUARTZ CREEK SUBDIVISION
(A Resubdivision of Tract A ASLS 92-22)

KENAI PENINSULA BOROUGH, OWNER
144 N. Binkley
Soldotna, AK 99669

LOCATION

58.814 AC. M/V. WITHIN UNSURVEYED SEC. 30, T. 5 N., R. 3 W., S.W. 1/4, THE KENAI PENINSULA BOROUGH IN SEWARD RECORDING DISTRICT.

Surveyed by: MCLANE & ASSOCIATES
P.O. BOX 468
Soldotna, AK 99669

Date: Nov. 29, 1993
Book No.: 92-08
Project No.: 922018p
Drawn by: Scale 1" = 200'
Checked by: MSM
KPB File No.: 93-185

ATTACHMENT 2
LEASE PROVISIONS REQUIRED BY KPB 17.10

(1) **Accounts Current.** The Lessee shall not be delinquent in the payment of any tax, debt or obligation owed to the KPB prior to execution of the Agreement.

(2) **Assignment.** Lessee may assign the lands upon which Lessee has an agreement only if approved by the mayor or land management officer when applicable. Applications for assignment shall be made in writing on a form provided by the land management division. The assignment shall be approved if it is found that all interests of the borough are fully protected.

(3) **Breach of Agreement.** In the event of a default in the performance or observance of any of the Agreement terms or conditions, and such default continues thirty days after written notice of the default, the borough may cancel the Agreement or take any legal action for damages or recovery of the property. No improvements may be removed during the time which the contract is in default.

(4) **Cancellation.** This Agreement may be cancelled at any time upon mutual written agreement of the parties.

(5) **Entry or Re-entry.** In the event the Agreement is terminated, canceled or forfeited, or in the event of abandonment of Leased Premises by Lessee during the Term, the KPB its agents, or representatives, may immediately enter or re-enter and resume possession of the Leased Premise. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the Agreement.

(6) **Fire Protection.** The Lessee shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the Property under Agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the Property is located.

(7) **Hazardous Waste.** The storage, handling and disposal of hazardous waste shall not be allowed on the Leased Premises.

(8) **Modification.** The Agreement may not be modified orally or in any manner other than by an agreement in writing signed by all parties or their respective successors in interest.

(9) **Notice.** Any notice or demand, which under the terms of the Agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice or demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

(10) **Notice of Default.** Notice of the default will be in writing as provided in paragraph 9 above.

(11) **Removal or Reversion of Improvements Upon Cancellation of Purchase Agreement or Lease.**

(a) Improvements on Leased Premises owned by Lessee shall, within thirty calendar days after the termination of the agreement, be removed by him; provided, such removal will not cause injury or damage to the land; and further provided, that the mayor or land management officer when applicable may extend the time for removing such improvements in cases where hardship is proven. The Lessee may, with the consent of the mayor or land management officer when applicable, dispose of its improvements to the Sublessee or Assignee, if applicable.

(b) If any improvements and/or chattels having an appraised value in excess of ten thousand dollars, as determined by a qualified appraiser, are not removed within the time allowed, such improvements and/or chattels shall, upon due notice to the Lessee be sold at public sale under the direction of the mayor and in accordance with the provisions of KPB Chapter 5. The proceeds of the sale shall inure to the former Lessee who placed such improvements and/or chattels on the lands, or Lessee's successors in interest, after paying to the borough all moneys due and owing and expenses incurred in making such a sale. In case there are no other bidders at any such sale, the mayor is authorized to bid, in the name of the borough, on such improvements and/or chattels. The bid money shall be taken from the fund to which said lands belong, and the fund shall receive all moneys or other value subsequently derived from the sale of leasing of such improvements and/or chattels. The borough shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of the purchase.

(c) If any improvements and/or chattels having an appraised value of ten thousand dollars or less, as determined by the mayor, are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in the borough. Upon request, the Lessee shall convey said improvements and/or chattels by appropriate instrument to the KPB.

(12) Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to the Lessee or placed on the Property and remaining upon the premises after the termination of the contract shall entitle the KPB to charge a reasonable rent therefor.

(13) Re-rent. In the event that the Agreement should be terminated, canceled, forfeited or abandoned, the KPB may offer said lands for lease or other appropriate disposal pursuant to the provisions of this chapter or other applicable regulations.

(14) Responsibility for Location. It shall be the responsibility of the Lessee to properly locate improvements on the Leased Premises.

(15) Rights of Mortgage or Lienholder. In the event of cancellation or forfeiture the Agreement for cause, the holder of a properly recorded mortgage, conditional assignment, or collateral assignment will have the option to acquire the lease for the unexpired term thereof, subject to the same terms and conditions as in the Agreement. Any party acquiring the lease agreement must meet the same requirements as the Lessee.

(16) Sanitation. The Lessee shall comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for the promotion of sanitation. The Leased Premises under the Agreement shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of the waters and lands.

(17) Shore Land Public Access Easement. As established by AS 38.05, borough lands sold or leased may be subject to a minimum 50 foot public access easement landward from the ordinary high water mark or mean high water mark.

(18) **Subleasing.** No lessee may sublease lands or any part thereof without written permission of the mayor or land management officer when applicable. A sublease shall be in writing and subject to the terms and conditions of the original lease.

(19) **Violation.** Violation of any provision KPB 17.10 or of the terms of the Agreement of may expose the Lessee to appropriate legal action including forfeiture of purchase interest, termination, or cancellation of its interest in accordance with state law.

(20) **Written Waiver.** The receipt of payment by the borough, regardless of knowledge of any breach of the purchase agreement by the purchaser, lessee or permittee, or of any default on the part of the purchaser, lessee or permittee in observance or performance of any of the conditions or covenants of the agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of the borough to enforce any covenant or provision therein contained shall not discharge or invalidate such covenants or provision or affect the right of the borough to enforce the same in the event of any subsequent breach or default. The receipt by the borough of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and payment fully satisfies the breach.

NOTE: All dimensions given in feet

adjust as
required by DOT

STERLING HIGHWAY 300' R/W

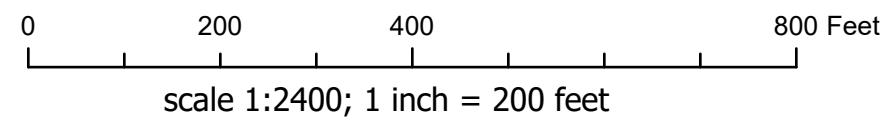
TRACT B

TRACT D-2

TRACT D-1

PERSISTANT WAY R/W

AIRSTRIP



Legend

- Clearing Limits
- TRACT C
- Parcels

LEGAL DESCRIPTION:

T 5N R 3W SEC 36 SEWARD
MERIDIAN SW 0940011
QUARTZ CREEK SUB TRACT C

Attachment 3
Clearing Plan

Proposed Clearing Limits
for LMD 20-17.

Permittee: Kiewit
Infrastructure

-KPB Land Management
9/23/2020



Project Number:
OA33028/CFHWY00684
Date: 1/20/2021

Sterling Highway MP 45-60 Sunrise to Skilak Lake Rd Phases 2-5 CM/GC

Tract C Lease Application

ATTACHMENT 4 to Lease Agreement

Prepared For:

Kenai Peninsula Borough Land Management
Division

Section

Page

Prepared By:

Kiewit Infrastructure West Co.
2000 W. International Airport Rd. C-6
Anchorage, AK 99502

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Existing Improvements.....	2
Proposed Permanent Improvements	3
Plan for Future Use	4
SWPPP and SPCC.....	4

Acronyms and Abbreviations

ADOT&PF	Alaska Department of Transportation & Public Facilities
KIWC	Kiewit Infrastructure West Co.
KPB	Kenai Peninsula Borough
SWPPP	Storm Water Pollution Prevention Plan
APDES	Alaska Pollutant Discharge Elimination System
SPCC	Spill Prevention Control and Countermeasure
HMA	Hot Mix Asphalt

Introduction

KIWC proposes a negotiated lease of Tract C.

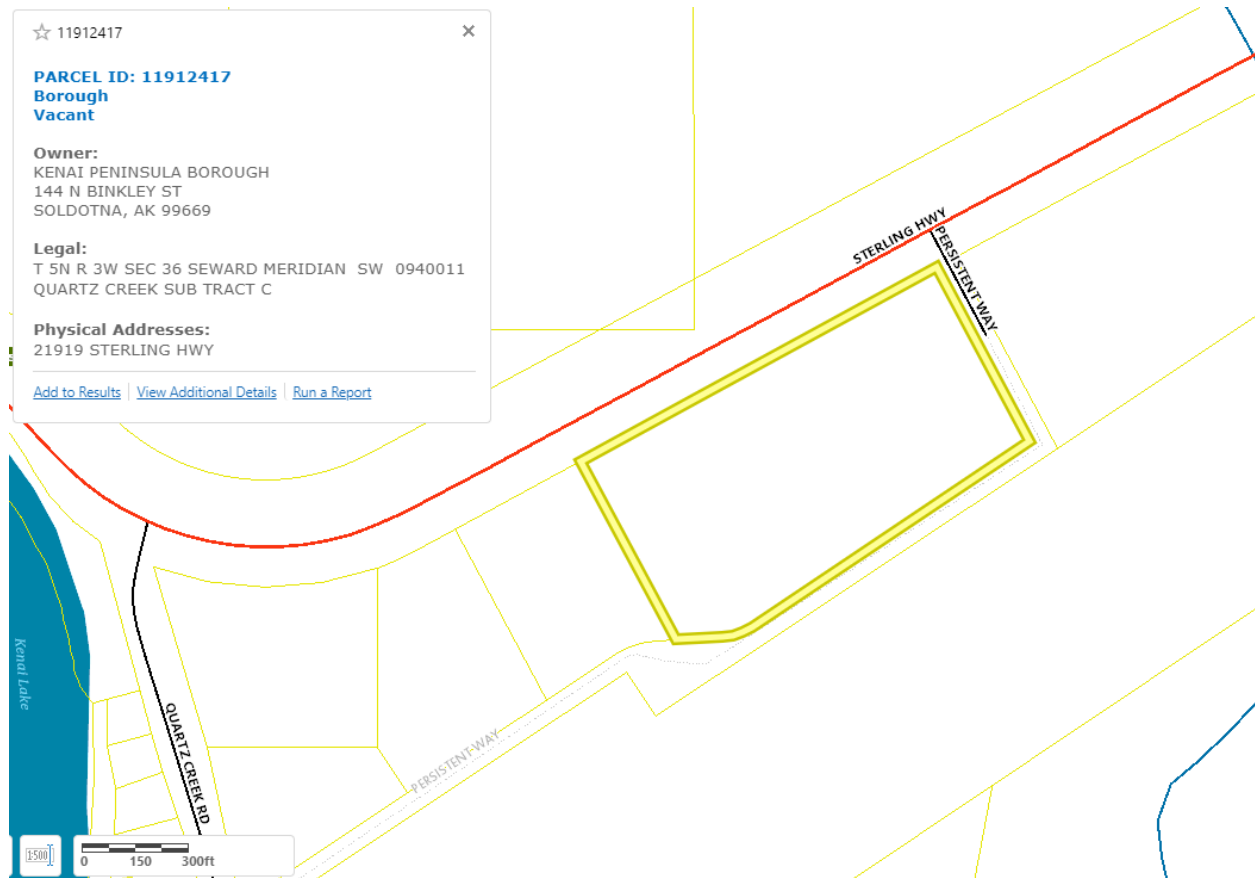
The parcel known as Tract C is described as the following:

Legal Description: T 5N R 3W SEC 36 SEWARD MERIDIAN SW 0940011 QUARTZ CREEK SUB TRACT C

Physical Address: 21919 Sterling Hwy

Tax Parcel ID: 11912417

Acreage: 15.81 Acres



The proposed primary use for this parcel under the negotiated lease is to develop a temporary project field office; and temporary materials and equipment laydown area to facilitate construction activities for the Sterling Highway MP 45-60 Sunrise to Skilak Lake Rd Phases 2-5 CM/GC Project for AKDOT&PF.

The proposed term for the negotiated lease is April 2021 until the highway project completion. The project is anticipated to be completed by the end of year 2025.

Existing Improvements

Under existing KPB Land Use Permit LMD 20-17, KIWC has completed 10.8 Acres of timber clearing and salvage; and soil sampling at Tract C during the week of November 16th, 2020. The current condition of the parcel is shown in the photo below.



Figure 1 - Site Photo 11/20/2020

A copy of Land Use Permit LMD 20-17 is attached.

Prior to the work performed in 2020 under the land use permit, the parcel existed as a wooded lot with a paved driveway apron access at the intersection of Persistence Way and Sterling Hwy leading to a single lane gravel road.

Proposed Permanent Improvements and Temporary Structures

During the lease, KIWC proposes to develop Tract C to be a working field office. Site work including utility installation and earthwork will be required to facilitate access and installation of the temporary office structures. A portion of this work may be considered permanent improvement for integration into the future development plan.

Proposed permanent improvements include the following:

- Utility Installation
 - Electric Service (Chugach Electric Association Inc.)
 - Phone Service (TelAlaska)
 - Leach Field Sewage System
 - Potable Drinking Water Well System
- Site Earthwork
 - Grubbing
 - Drainage
 - Grading and placing gravel for a driveable working surface

The preliminary plan for the site is shown below in Figure 2. This plan includes several temporary structures that are planned to be removed by the end of the lease term.

Proposed temporary structures include the following examples:

- Job office - consisting of mobile trailer units
- Area Lighting
- Fencing and Entrance Gates
- Hot Mix Asphalt (HMA) Plant
- Concrete Batch Plant
- Bathroom facilities
- Parking area
- Secondary Access to Sterling Hwy
- Materials testing lab
- Maintenance facility
- Fuel Storage

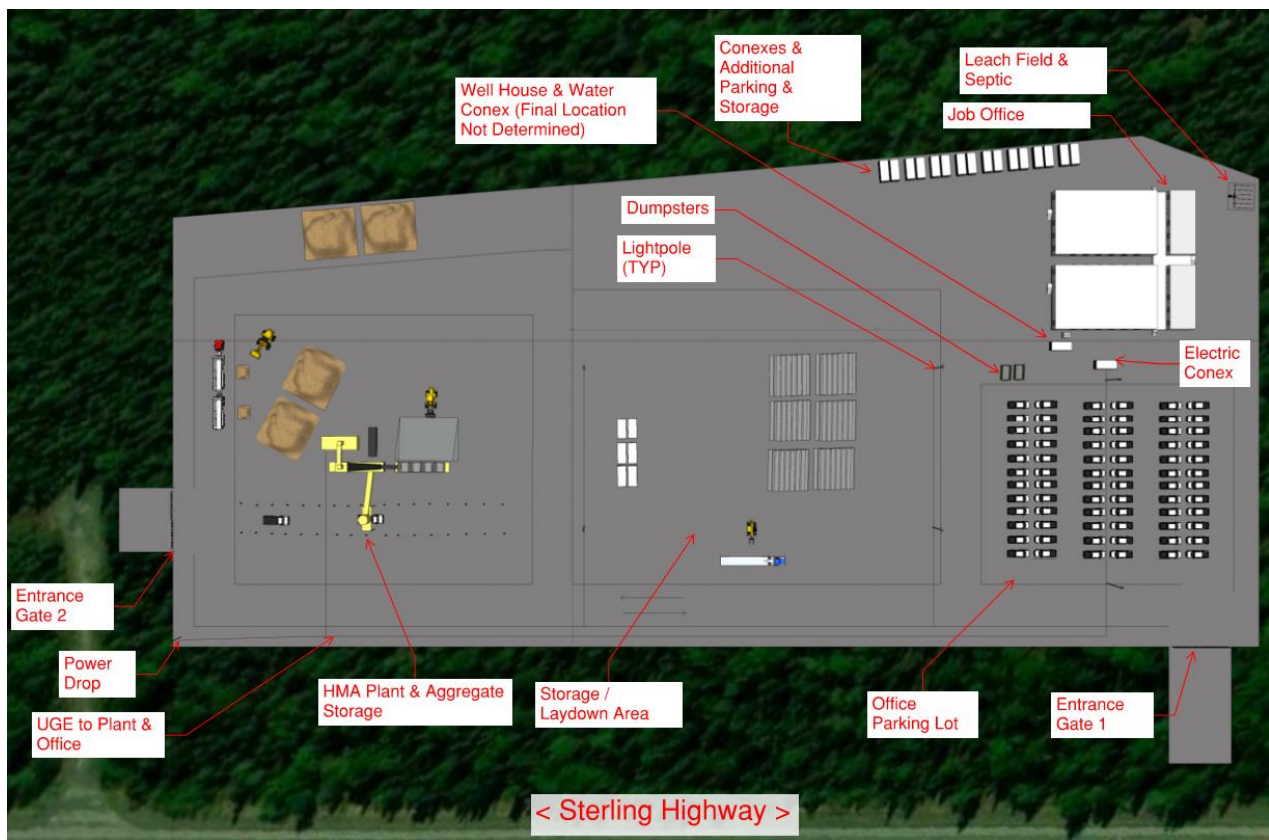


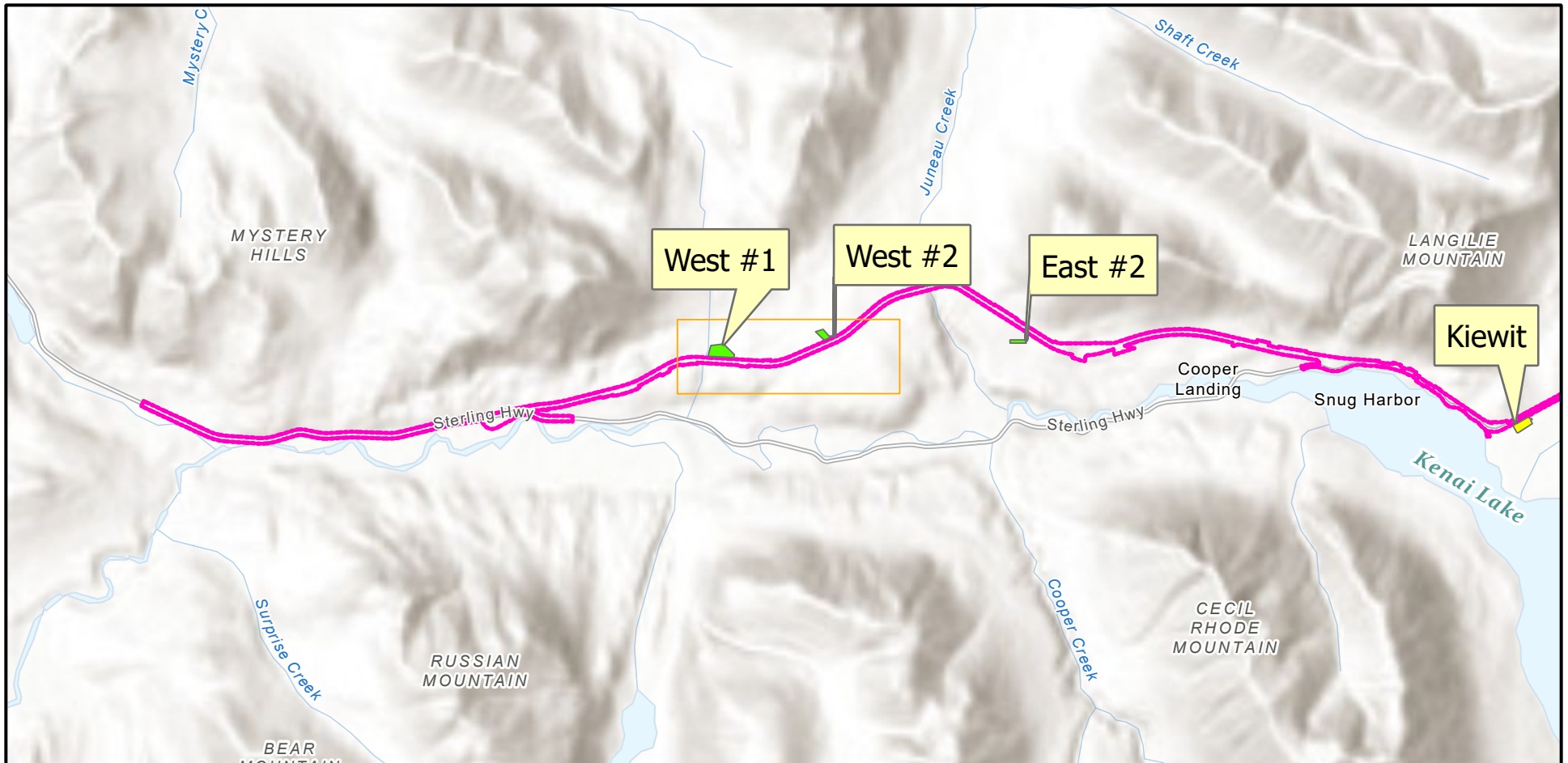
Figure 2 - Preliminary Site Layout

Plan for Future Use

KIWC intends to cooperate with KPB's future development plan for Tract C. Engineering resources will be available.

SWPPP and SPCC

The site work at Tract C including ground disturbing work, will be performed and maintained in adherence with the APDES Construction General Permit (CGP) and the project SWPPP and SPCC Plan programs for the duration of the lease. Documentation for this program will be located at the project office. Reporting of spills or discharges will follow the protocols listed in the program.



0 2.5 5 10 Miles



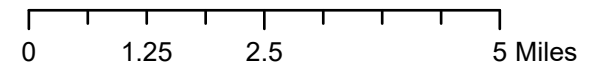
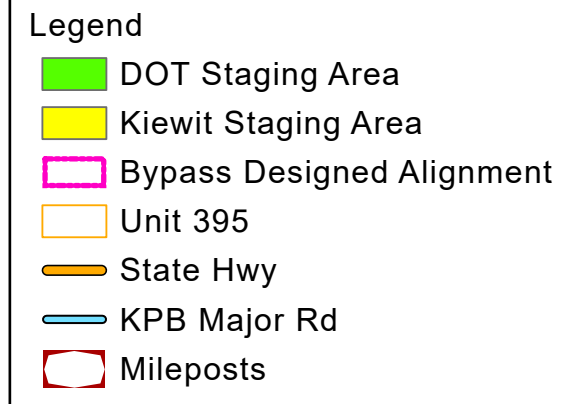
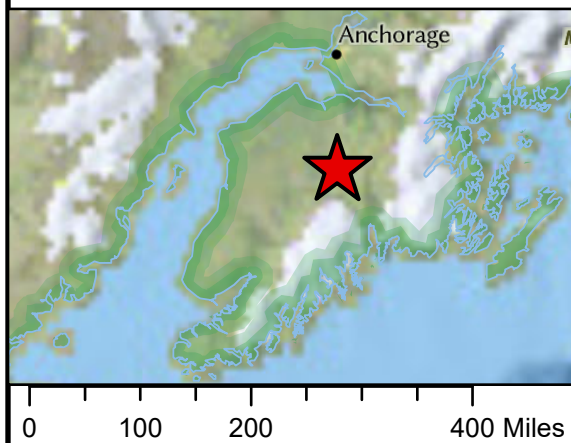
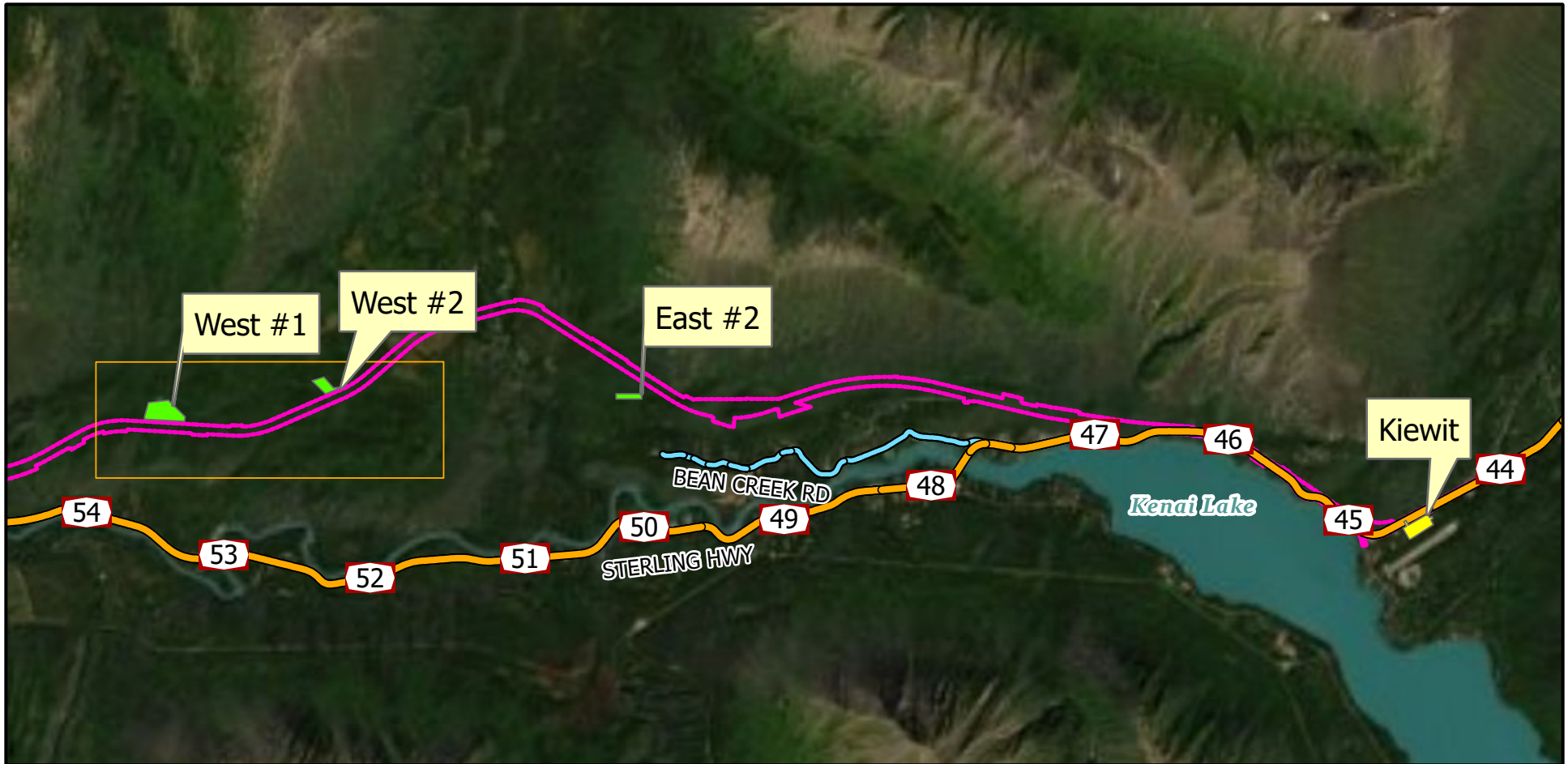
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Legend

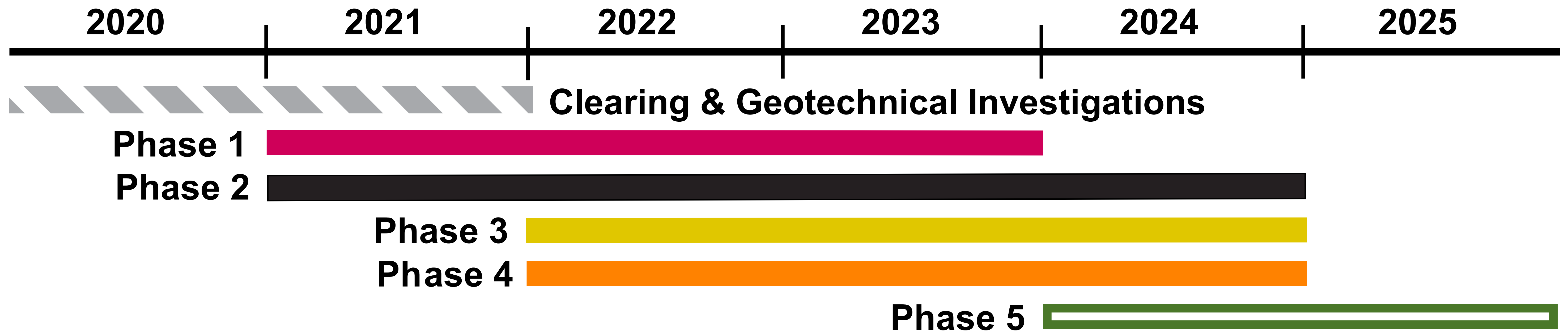
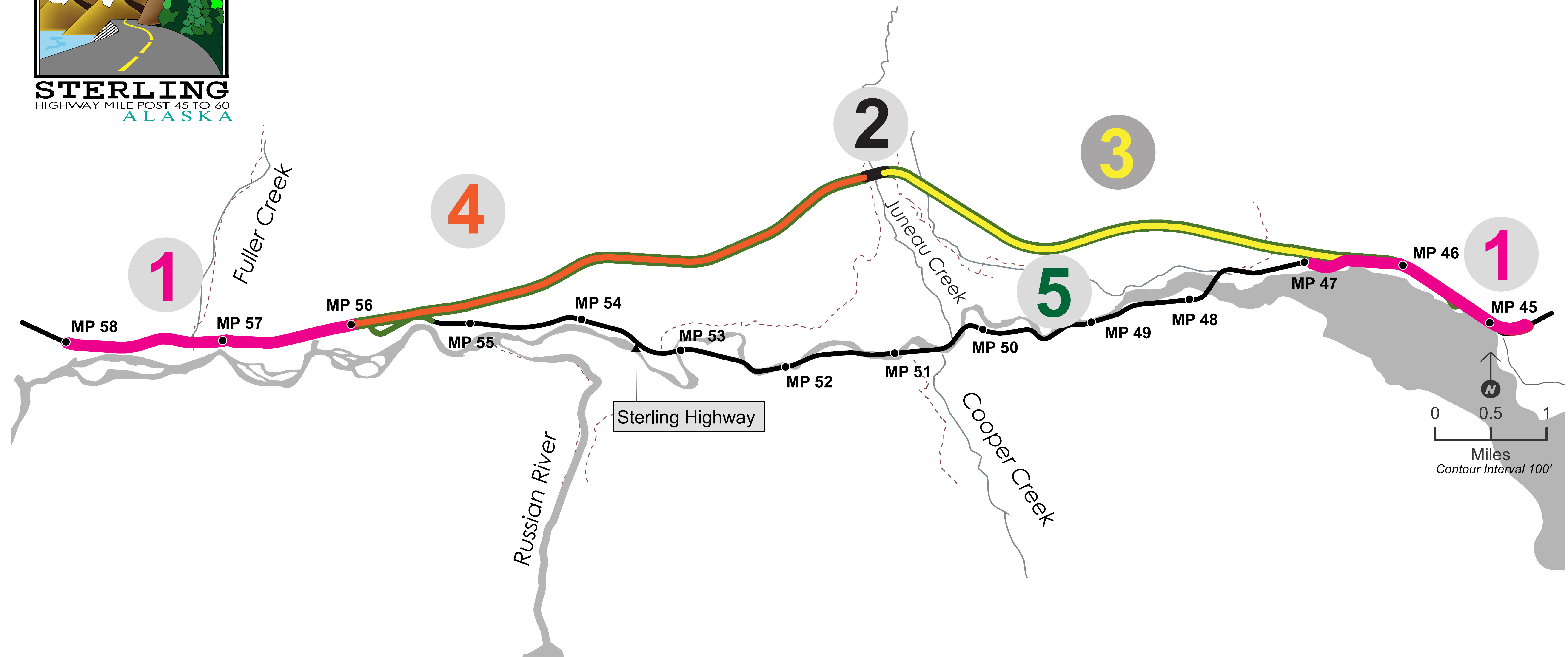
- DOT Staging Area
- Kiewit Staging Area
- Bypass Designed Alignment
- Unit 395



Sterling Highway MP 45-60 Proposed Staging Areas



Sterling Highway MP 45-60 Proposed Staging Areas



Introduced by:	Mayor
Date:	04/06/21
Hearing:	04/20/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-14**

**AN ORDINANCE AUTHORIZING A NEGOTIATED LEASE WITH ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES FOR STAGING
AND MATERIAL EXTRACTION AND DISPOSAL ACTIVITIES IN SUPPORT OF
THE STERLING HIGHWAY MP 45-60 CONSTRUCTION PROJECT NEAR COOPER
LANDING**

WHEREAS, the Alaska Department of Transportation and Public Facilities (“DOT&PF”) is actively working on the Sterling Highway MP 45-60 construction project near Cooper Landing (the “project”); and

WHEREAS, the borough owns or manages certain lands along and adjacent to the parts of the project alignment; and

WHEREAS, DOT&PF has identified certain sites that would be useful for project staging and material extraction, as well as earthen material disposal activities to serve the project needs; and

WHEREAS, land management has worked with project officials to develop a Master Land Lease and Development Agreement involving borough lands and resources based on project needs; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of April 12, 2021 recommended _____;

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

SECTION 1. That the assembly finds that leasing three sites of Kenai Peninsula Borough owned and managed land pursuant to KPB 17.10.100(I) as described in the accompanying Master Land Lease Development Agreement 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 to DOT&PF in cooperation with the Sterling Highway MP 45-60 project.

SECTION 3. Based on the foregoing, the mayor is hereby authorized pursuant to KPB 17.10.100(I) to lease three sites referred to as West #1, West #2 and East #2 Staging and Disposal Sites, located within Sections 26 & 27 T5N, R4W, and Section 30 T 5N, R3W, Seward Meridian Alaska, according to the terms and conditions and substantially in the form of the Master Land Lease Development Agreement accompanying this ordinance. The authorization is for lease solely to the State of Alaska Department of Transportation and Public Facilities (DOT&PF), 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 Land Lease and Development Agreement substantially similar in form to the accompanying Master Land Lease Development Agreement form approved by the assembly in this ordinance..

SECTION 5. DOT&PF shall have 90 days from the date of enactment of this ordinance to execute the lease document.

SECTION 6. That revenue from the subject Master Land lease Development Agreement shall be deposited in the Land Trust Fund.

SECTION 7. That this ordinance shall take effect immediately upon its enactment.

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

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:



Absent:


Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

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

THRU: Charlie Pierce, Mayor 
Melanie Aeschliman, Planning Director 

FROM: Marcus A Mueller, Land Management Officer 

DATE: March 25, 2021

RE: Ordinance 2021-14, Authorizing a Negotiated Lease with Alaska Department of Transportation and Public Facilities for Staging and Material Extraction and Disposal Activities in Support of the Sterling Highway MP 45-60 Construction Project near Cooper Landing (Mayor)

Alaska Department of Transportation and Public Facilities (DOT&PF) is actively working on the Sterling Highway MP 45-60 Construction Project, which follows the Juneau Creek Alternative near Cooper Landing. The Kenai Peninsula Borough is a landowner in the project area and the borough is the managing authority to certain lands under its municipal entitlement land grant.

KPB Land Management has been working with the project team as it seeks to implement the major project. DOT&PF has proposed three project staging and disposal sites on borough owned or managed land. A fourth site related to the project has been proposed directly by DOT&PF's Construction Management/General Contractor.

The project timeline includes construction activities from 2021-2026. The project includes construction of a 4-lane highway to national highway standards and a substantial bridge span over Juneau Creek.

The proposed master lease agreement provides terms for both project staging activities and material extraction and disposal. The staging activities are handled through a surface use rental structure and the material disposal is addressed in resource management terms with a fee structure based on the volume and types of materials from the project that are left on site. Environmental protections and practices are enumerated in the agreement and all materials deposited would be uncontaminated natural materials. The proposed commencement date is May 1, 2021 to work with the project schedule.

Your consideration is appreciated.

Master Land Lease Development Agreement

KPBL# 21-0501-01

The Kenai Peninsula Borough, an Alaska municipal corporation, whose address is 144 N. Binkley Street, Soldotna, AK 99669 (hereinafter “KPB” or “Lessor”), and the State of Alaska, Department of Transportation and Public Facilities, whose address is 4111 Aviation Avenue, Anchorage, AK 99519 (hereinafter “DOT&PF” or “Lessee”) enter into this Master Land Lease Development Agreement (Master Lease) and agree as follows:

I. Background; Contract Documents; Authorized Contact; Definitions

1. **Background.** The KPB owns or manages certain real property located in the Kenai Peninsula Borough, in the State of Alaska, that is more particularly described and/or depicted in Attachment 3 attached hereto (the “Property”). For good and valuable consideration, the parties agree that the KPB will grant the DOT&PF the right to use the Property for the purposes of staging equipment, personnel and resources, and to dispose, develop, process, explore, excavate, crush, stockpile, remove, and reclaim gravel, soil, and other natural resource materials on the Property. DOT&PF agrees that it will conduct its use and operations according to the terms and conditions contained in this Master Lease for purposes integral to DOT&PF’s Sterling Highway MP45-60 Project near Cooper Landing, Alaska.
2. **Authorized Contact.** All communications about this Master Lease shall be directed as follows, and any reliance on a communication with a person other than the contacts listed below is at the party’s own risk. KPB staff do not have authority to bind the KPB. Any material amendments or changes to the Agreement must be approved by the KPB Assembly and also in writing signed by the KPB Mayor.

KPB

Kenai Peninsula Borough
Attn: Land Management Division
Mailing Address: 144 N. Binkley St.
Soldotna, AK 99669

DOT&PF

DOT&PF Central Region Construction
Attn: Sean Holland
4111 Aviation Avenue
Anchorage, AK 99519-6900

3. **Contract Documents.** As authorized by the Borough Assembly, this Master Lease and incorporated contract agreements together form the entire agreement (“Agreement”). Collectively, the Agreement is the final and complete understanding of the parties. The

following agreements or attachments, are attached to, incorporated herein by reference, and together form the entire Agreement:

- i. Master Lease Agreement
- ii. Attachment 1: Material Extraction and Disposal Terms & Conditions
- iii. Attachment 2: Lease Provisions Required by KPB 17.10
- iv. Attachment 3: Site Survey Drawings
- v. Attachment 4: Staging/Disposal Site Operations Plan

If in conflict, the Master Lease shall control, except that the Material Extraction and Disposal Terms & Conditions shall control with respect to the authorized uses, fees or royalties, and reclamation terms specific to the disposal, processing, exploration, extraction, stockpiling, removal, and reclamation of natural material resources on the Property.

4. **Definitions.**

- 4.1. **Agreement** - the final and complete agreement of the parties and shall encompass the Master Land Lease Development Agreement and Attachments 1, 2, 3 and 4 as described above in paragraph 3, Contract Documents, of this agreement. .
- 4.2. **Environmental Assessment** - An assessment of property, prepared in a manner consistent with generally accepted professional practices, that is supported by reports and tests that determine the environmental condition of property and the presence, type, concentration, and extent of any Contamination in, on, and under the surface of the property.
- 4.3. **Environmental Law** - Any federal, state, or local statute, law, regulation, ordinance, code, Lease, order, decision, or judgment from a governmental entity relating to environmental matters, including littering and dumping. It includes, as applicable, 42 U.S.C. 7401-7671 (Clean Air Act); 33 U.S.C. 1251-1387 (Federal Water Pollution Control Act); 42 U.S.C. 6901-6992 (Resource Conservation and Recovery Act); 42 U.S.C. 9601-9657 (Comprehensive Environmental Response, Compensation, and Liability Act); S.C. 5101-5127 (Hazardous Materials Transportation Act); 15 U.S.C. 2601-2692 (Toxic Substances Control Act); AS 46 (Alaska Water, Air, Energy, and Environmental Conservation Acts); and the provisions of 18 AAC (Environmental Conservation) implementing AS 46.
- 4.4. **Environmental Liability Baseline** - A description, accepted by the Lessor and documented by one or more Environmental Assessments and any other relevant documents, of the existence, location, level, and extent of Contamination in, on, or under the surface of the Property that was neither caused nor Materially Contributed To by the Lessee, nor assumed by the Lessee by reason of assignment.
- 4.5. **Lessee** - State of Alaska, Department of Transportation and Public Facilities or DOT&PF.
- 4.6. **Lessor** - Kenai Peninsula Borough or KPB.

- 4.7. Project - DOT&PF's Sterling Highway MP45-60 Project.
- 4.8. Property –Sites that will be leased by DOT&PF from KPB as part of the Project more particularly described in Section 5 below in this Agreement, and also shown on Attachment 3.
- 4.9. Site Development Materials - Materials used for Site Development. Site Development Materials includes geotextile, fill, gravel, paving, and pavement reinforcement materials.

II. Leased Property Description; Term; Rent

- 5. **The Property.** The KPB leases to DOT&PF and DOT&PF leases from the KPB, the following described Property in an "as-is" condition. The KPB makes no specific warranties, express or implied, concerning the title, condition, or use of the Property, including survey, soils, wetlands, access, or suitability for any use, including those uses authorized by the Agreement, unless otherwise specified in this Agreement:

West #1 Staging and Disposal Site; 14.0 acres +/-, located within the N1/2 Section 27, T5N, R4W, S.M. AK

West #2 Staging and Disposal Site; 4.6 acres +/-, located within the N1/2 Section 26, T5N, R4W, S.M. AK

East #2 Staging and Disposal Site; 4.7 acres +/-, located within Tract A USS 5105 situated within Section 30, T5N, R3W, S.M. AK

Each Site more particularly described and depicted in Attachment 3- Site Survey Drawings.

- 6. **Additional Lands.** By mutual written agreement of the parties, the Property may be added to, amended, or otherwise changed to fit the needs of the Project. This provision shall be interpreted to mean that the KPB and DOT&PF may agree to add additional lands owned or managed by the KPB to the Agreement and DOT&PF may agree to lease such additional lands under the same rental & fees basis, terms and conditions set forth in this Agreement.

- 7. **Term.**

- 7.1. Initial Term. The Initial Term of this Agreement shall be for a period of 5 years commencing on May 1, 2021 and terminating on April 30, 2026.
 - 7.2. Renewal Term(s). Unless notice of non-renewal is provided prior to expiration of the Initial Term or the DOT&PF is otherwise in breach of this Master Lease, the Agreement may be automatically renewed by DOT&PF for two additional 1-year Renewal Terms.

8. **Rent.**

- 8.1. Surface Use Rent ("Rent"). The Rent for the use of the surface area of the Property is shown on the table below, for the first year of the Agreement, payable on the commencement date of the Master Lease and each anniversary thereof. This Rent shall increase annually at 3% per annum.

SITE DESCRIPTION	AREA	INITIAL RENT
West #1 Staging and Disposal Site	14.0 acres +/-	\$8,400/YR
West #2 Staging and Disposal Site	4.6 acres +/-	\$5,520/YR
East #2 Staging and Disposal Site	4.7 acres +/-	\$5,640/YR
TOTAL		\$19,560/YR

- 8.2. Material Extraction and Disposal. The consideration, fees or royalties associated with material extraction, disposal, and reclamation under the Agreement shall be set forth in Attachment 1 – Materials Extraction and Disposal Terms & Conditions

III. **Uses; Reservation of Rights by KPB**

9. **Authorized Uses.** The Agreement is entered into for the use of the Property for the following authorized uses:

- 9.1. Subject to Section 11 below, Rights Reserved by KPB, DOT&PF shall have exclusive surface use and possession of the Property. The surface uses shall be governed by this Master Lease. Surface uses include, but are not limited to, staging of personnel and equipment, material processing operations, temporary facilities, and related uses reasonably necessary to support completing the Project. Authorized uses specifically include those described in Attachment 4- Staging/Disposal Operations Plan.
- 9.2. Subject to the terms set forth in Attachment 1, Materials Extraction and Disposal Agreement, DOT&PF may use the Property to dispose, develop, process, explore, excavate, crush, stockpile, remove, gravel, soil, and other natural resource materials on the Property. The reclamation obligations set forth in Attachment 1 survive termination of the Agreement.

10. **Prohibited Uses.** Under this Agreement, the following uses on the Property are prohibited:

- 10.1. Installing permanent structures;
- 10.2. Storage of bulk fuel. Bulk fuel is defined as storage of 25,000 Gallons or more fuel per site.

11. **Rights Reserved by KPB.**

- 11.1. The KPB reserves a 60 foot x 60 foot area on the Property ("Reserved Area"), the exact location is subject to mutual agreement of the parties hereto, for the purposes of siting

a communications facility (tower) on the Property. This reservation includes the exclusive right to grant to a third party the right, license or privilege to site, construct, install, and maintain a communications site (tower) or to place commercial communications equipment on the Property and includes ingress and egress rights. This provision is subordinate to the rights and privileges granted under this Agreement and shall not unreasonably interfere with DOT&PF's authorized use of the Property or limit DOT&PF from installing non-commercial communications equipment for the project.

- 11.2. The KPB reserves the right of ingress and egress from the Property, and the right to enter any part of the Property for the purposes of inspection at any reasonable time subject only to the KPB's best efforts, except in the case of an emergency, to coordinate its inspection with the DOT&PF to minimize interference with the DOT&PF's operations and activities on the Property.
- 11.3. Upon KPB entering into a third party agreement for a communication facility on the Property, DOT&PF shall be automatically released from liabilities under this agreement as to the reserved area.

IV. Cancellation, Expiration or Other Termination

12. DOT&PF Default.

- 12.1. If DOT&PF violates a term of the Agreement and the KPB considers that term to be a material obligation of the Agreement, or the violation to be a material deviation from the requirements of the Agreement, the KPB will mail or deliver to DOT&PF a written notice of the violation. The notice must allow DOT&PF not less than sixty (60) days to correct the violation, unless the violation constitutes an imminent threat to public health or safety.
- 12.2. If the DOT&PF does not correct the violation by the time allowed in the notice, the KPB shall:
 - a. grant an extension of time to correct the violation if the DOT&PF shows good cause;
 - b. take enforcement action as provided under this Master Lease or as available by law; or
 - c. cancel this Master Lease.
- 12.3. If the KPB determines that a violation creates an imminent threat to public health or safety, the KPB shall:
 - a. Direct DOT&PF to stop the activity immediately
 - b. Provide DOT&PF less time than otherwise specified in the Agreement to correct the violation; or
 - c. Correct the violation.
- 12.4. Without limitation, the following shall be deemed either violations of material obligations of this Agreement or material deviations from the requirements of the Agreement:

- a. DOT&PF fails to pay when due any rent, charge, or fee or royalty specified in the Agreement, including any increase made under this Master Lease;
- b. DOT&PF blocks or restricts KPB or its Contractor's access to the Property in violation of Section 11 above;
- c. DOT&PF is otherwise found to be in violation of State or Federal law.

13. Waiver.

- 13.1. A waiver by the KPB of any default by DOT&PF of any provision of this Agreement will not operate as a waiver of any subsequent default. If the KPB waives a default, the KPB is not required to provide notice to DOT&PF to restore or revive any provision under this Agreement. The waiver by the KPB of any provision in this Agreement cannot be enforced or relied upon unless the waiver is in writing and signed on behalf of the KPB.
- 13.2. The KPB's failure to insist upon the strict performance by DOT&PF of any provision in this Agreement is not a waiver or relinquishment for the future, and the provision will continue in full force.

14. Disposition of Improvements and Personal Property. All temporary improvements and personal property of DOT&PF shall be removed by DOT&PF, at its sole expense, within ninety (90) days of cancellation, termination, or expiration of the Agreement.

15. Disposition of Site Development Materials. Site Development Materials that DOT&PF completes or places on the Property become part of the KPB-owned or managed realty and property of the KPB upon completion or placement. DOT&PF may not remove the Site Development Materials unless the KPB approves in writing.

16. Natural Disasters. If the parties agree in writing that the Property are unusable, not due to the fault or negligence of either party, to the extent that performance of this Master Lease is impossible, this Master Lease may be terminated. If the DOT&PF elects to continue to operate, the KPB is under no obligation to continue to perform. Causes for termination under this provision include, but are not restricted to, acts of God, fires, floods, epidemics, quarantine restrictions, earthquakes, landslides, mudslides, avalanches, tsunami, or volcanic activity.

17. National Emergency. If the federal government declares a national emergency, neither party may hold the other liable for any inability to perform any part of this Master Lease as a result of the national emergency.

18. Survival.

- 18.1. At the expiration, cancellation, or other termination of this Master Lease, the DOT&PF shall peaceably and quietly vacate the Property and return possession to the KPB.
- 18.2. The DOT&PF's obligations under the following provisions of this Master Lease shall

survive and remain binding on the DOT&PF after the expiration, cancellation, or other termination of the Agreement:

- a. Section 7 – Rent – of the Master Lease;
- b. Section 14 – Disposition of Improvements and Personal Property – of the Master Lease;
- c. Sections 19 through 24 – Environmental Issues – of this Master Lease; and
- d. All terms related to Reclamation of the Property under Attachment 1 – material Extraction and Disposal Terms & Conditions.

V. Environmental Issues

19. Environmental Liability Baseline.

- 19.1. Responsibility for Ascertaining Environmental Condition of Property. The Lessee has the sole responsibility under this Agreement to ascertain the environmental condition and presence of Contamination in, on, and under the surface of the Property, and is conclusively presumed to have caused or to have Materially Contributed To any Contamination of, or originating on, the Property except as identified in an Environmental Liability Baseline. If known Contamination is on the property that has been closed out under alternate cleanup levels approved by ADEC, Lessee is responsible for following all restrictions set by ADEC, including, but not limited to notifying any assignee of this Agreement in writing of ADEC's restrictions.
- 19.2. Financial Responsibility for Contamination on the Property and on any Affected Property. The Lessee assumes financial responsibility to the Lessor for any Contamination in, on, and under the Property, except for Contamination that is identified in an Environmental Liability Baseline. This is without prejudice to the Lessee's right to seek contribution or indemnity from either prior lessees of the Property, or other potentially responsible parties except for the Lessor.
- 19.3. Establishing an Environmental Liability Baseline
 - a. If the Lessee wants to establish an Environmental Liability Baseline for all or any portion of the Property, the Lessee shall provide the Lessor with an Environmental Assessment for that portion of the Property.
 - b. If the Lessee discovers Contamination in, on, or under the surface of the Property, for any portion of the Contamination to be considered for inclusion in the Environmental Liability Baseline, the Lessee must demonstrate by clear and convincing evidence to the satisfaction of the Lessor that the Contamination proposed for inclusion was not caused or Materially Contributed to by the Lessee or the Lessee's operations or activities nor assumed by the Lessee. Contamination caused or Materially Contributed to by activities of the Lessee's sublessees, contractors, and guests on the Property are deemed to be Materially Contributed To by the Lessee.
 - c. Only that portion of Contamination not caused or Materially Contributed to by the Lessee or the Lessee's operations or activities shall be included in the Environmental Liability Baseline.

19.4. Adding to an Existing Environmental Liability Baseline.

- a. If, after an Environmental Liability Baseline is established for any portion of the Property the Lessee discovers Contamination in, on, or under the surface of that portion of the Property having an Environmental Liability Baseline, which Contamination the Lessee or the Lessee's operations or activities did not cause or Materially Contribute To, and which the Lessee did not assume by reason of assignment, the Lessee may, at its own cost, submit an additional Environmental Assessment reflecting that information to the Lessor for the Lessor's consideration to add to the Environmental Liability Baseline. The Lessee's additional Environmental Assessment must demonstrate by clear and convincing evidence to the satisfaction of the Lessor which portion of the additional Contamination on the Property was not caused or Materially Contributed to by the Lessee or the Lessee's operations or activities.
- b. Only that portion of Contamination not caused or Materially Contributed to by the Lessee or the Lessee's operations or activities may be added to the existing Environmental Liability Baseline.

19.5. Lessor's Acceptance or Rejection of Lessee's Environmental Assessment. When the Lessor receives the Lessee's Environmental Assessment to establish an Environmental Liability Baseline or to add to an existing Environment Liability Baseline, the Lessor, in its sole discretion, will do one of the following:

- a. Accept the findings of the Lessee's Environmental Assessment and any other relevant documents to establish an Environmental Liability Baseline for that portion of the Property being assessed or to add to the existing Environmental Liability Baseline.
- b. Reject the findings of the Lessee's Environmental Assessment for that portion of the Property being assessed and offer the Lessee the opportunity to perform additional environmental testings if the Lessor determines in writing that the findings of the Environmental Assessment are inadequate to establish an Environmental Liability Baseline or to add to an existing Environmental Liability Baseline. The Lessor's written rejection of the Lessee's Environmental Assessment will be based on failure of the Lessee's Environmental Assessment to either:
 - (1) follow generally accepted professional practices in determining the environmental condition of the Property and the presence of Contamination in, on, or under the surface of the Property; or
 - (2) demonstrate the portion of the Contamination that was not caused or Materially Contributed To by the Lessee or the Lessee's operations or activities.
- c. Perform additional environmental testing at the Lessor's expense to verify the environmental condition of that portion of the Property being assessed. If the results of the Lessor's tests conflict with the Lessee's Environmental Assessment, the Lessor and the Lessee will negotiate in good faith an Environmental Liability Baseline or an addition to the existing Environmental Liability Baseline for that portion of the Property being assessed.

19.6. Amending the Environmental Liability Baseline to Delete Contamination Caused, Materially Contributed to, or Assumed by Lessee.

- a. If, after the Environmental Liability Baseline for any portion of the Property is established, it is discovered that the presence of Contamination identified

in the Environmental Liability Baseline was caused or Materially Contributed To by the Lessee or the Lessee's operations or activities, or assumed by the Lessee by reason of assignment, the Environmental Liability Baseline may be amended to delete that portion of the Contamination that was caused or Materially Contributed to by the Lessee or the Lessee's operations or activities.

- b. The Lessor will have the burden of proof in establishing that the Lessee or the Lessee's operations or activities caused or Materially Contributed to this Contamination.
 - c. If it is discovered that Contamination identified in the Environmental Liability Baseline was caused or Materially Contributed To by the Lessee or the Lessee's operations or activities, the parties will agree upon an amendment to the Environmental Liability Baseline within a reasonable time.
20. **Release of Lessee.** The Lessor releases the Lessee from liability to the Lessor for Contamination identified by the Environmental Liability Baseline that was not caused or Materially Contributed to by the Lessee or the Lessee's operations or activities.
21. **Required Remediation.** The Lessor is under no obligation to remediate Contamination identified in an Environmental Assessment, except the Lessor shall remediate, or have responsible parties remediate, the Contamination identified in the Environmental Liability Baseline if an agency with such authority requires the Lessee or Lessor to remediate. In the event of such required remediation, the Lessor will make a reasonable effort to coordinate the remediation with the Lessee to minimize disruption of the Lessee's operations or activities and damage to the Lessee's improvements and property. The Lessee releases and holds the Lessor harmless for all costs associated with any damage to, and relocation, removal, and repair of Lessee's improvements and property that result from remediation performed in compliance with this paragraph with respect to Contamination that existed before construction of affected improvements.
22. **Action Against Potentially Responsible Parties.** This article does not restrict either the Lessor or the Lessee from seeking and obtaining cleanup efforts, costs, or damages from other potentially responsible parties for Contamination identified in the Environmental Liability Baseline.

VI. Additional Terms and Conditions

23. **Defense and Indemnification.** To the extent allowed by law and subject to legislative appropriation, the parties shall mutually indemnify, defend, save and hold KPB, 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's fees resulting from either parties' performance or failure to perform in accord with the terms of the Agreement in any way whatsoever. This defense and indemnification shall not mean that a party is responsible for any damages or claims arising from the sole negligence or willful misconduct of the other party, its agents or employees.

24. **Insurance.** It is understood that both parties to the Agreement are self-insured at adequate and acceptable to both parties. However, any contractors or subcontractors that use or perform work at the Property shall maintain the following insurance coverages:

24.1. **Commercial General Liability Insurance (CGL).** All Contractors and subcontractors of any tier shall provide and maintain, Commercial General Liability Insurance (CGL). The CGL Policy shall be written on an occurrence basis and with a limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) each occurrence and aggregate. CGL insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from Property, operations, broad form property damage, independent contractors, products-completed operations, personal injury and advertising injury, explosion, collapse, underground hazards, and liability assumed under a contract including the tort liability of another assumed in a business contract. If necessary to provide the required limits, the Commercial General Liability policy's limits may be layered with a Commercial Umbrella or Excess Liability policy. This policy shall name the KPB as Additional Insured. To the extent damages are covered by commercial general liability insurance, subrogation shall be waived.

24.2. **Worker's Compensation, Employer's Liability Insurance.** Contractor and subcontractor(s) of any tier shall provide and maintain, for all of its employees engaged in work under this Agreement, Workers' Compensation Insurance in accordance with the laws of the State of Alaska. The Contractor shall be responsible for Workers' Compensation Insurance for any subcontractor(s) who directly or indirectly provides services under this Agreement. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than the minimum amounts required by law. Where applicable, coverage for all federal acts (i.e., U.S.L. & H and Jones Act) must also be included.

24.3. **Auto Liability.** Contractor and subcontractor(s) of any tier shall provide and maintain, Auto Liability Insurance (ALI). The Auto Liability Policy shall include a Combined Single Limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Underinsured and Uninsured Motorists limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Coverage shall include Non-Owned and Hired Car coverage. This policy shall name the KPB as Additional Insured. To the extent damages are covered by auto liability insurance, subrogation shall be waived.

24.4. **Proof of Coverage.** All insurance shall be primary and exclusive of any other insurance held by the KPB. Upon renewal of insurance coverage during the license, certificates of insurance shall be delivered to the KPB. DOT&PF on behalf of its contractors shall deliver, within 30 days, complete insurance coverage policy documents to the KPB upon request.

25. **Assignments.** The Agreement is not assignable.

26. **Subleasing.** DOT&PF may not sublease the Property or any part thereof without written permission of the KPB Mayor when applicable. A sublease shall be in writing and subject to the terms and conditions of this Master Lease.

27. **Waste.** DOT&PF shall not commit waste upon or injury to the lands leased herein.

28. **Fire Protection.** DOT&PF shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on

the Property, and comply with all laws, regulations, and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the Property is located.

29. **Safety.** DOT&PF shall be solely responsible for maintaining the Property in a safe and fit condition, including without limitation snow and ice removal from all improvements and areas on the Property as needed for DOT&PF's use of the Property. DOT&PF is responsible for the safety of all persons conducting activities on the Property under the Agreement.
30. **Sanitation.** DOT&PF shall comply with all laws, regulations or ordinances promulgated for the promotion of sanitation. The Property shall be kept in a clean and sanitary condition and every effort shall be made to prevent pollution of the waters and lands. Sanitary facilities shall be in accordance with the State of Alaska, Department of Environmental Conservation regulations.
31. **Compliance with Laws.** DOT&PF shall abide by all applicable federal, state, city, and borough statutes, ordinances, rules, and regulations. DOT&PF is responsible for obtaining all federal, state, and local permits applicable to licensee's activities and shall keep such permits in good standing.
32. **Responsibility of Location.** It shall be the responsibility of DOT&PF to properly locate itself and its improvements on the Property.
33. **Liens and Mortgages.** DOT&PF shall not cause or allow any lien or encumbrance of any kind or nature whatsoever to attach to the Property during the term of the Agreement. In the event that any prohibited lien is placed against the Property, DOT&PF shall immediately cause the lien to be released.
34. **No Warranty, Express or Implied.** The DOT&PF accepts the Property AS-IS, WHERE-IS. The Agreement shall be without warranty whatsoever, whether implied or expressed, as to quality, fitness for purpose or suitability for development, or physical condition (including, without limitation the environmental condition of the property). It is the responsibility of the DOT&PF to satisfy itself prior to executing the lease and/or prior to closing as to the type, condition, and quality of the Property.
35. **Jurisdiction.** Any lawsuits filed in connection with the terms and conditions of the Agreement, and of the rights and duties of the parties, shall be filed and prosecuted at Kenai, Alaska and shall be governed by Alaska law, without regard to conflict of law principles.
36. **Savings Clause.** Should any provision of the Agreement fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of the Agreement or constitute any cause of action in favor of either party as against the other.
37. **Binding Effect.** It is agreed that all covenants, terms, and conditions of the Agreement shall be binding upon the successors, heirs and assigns of the parties hereto.
38. **Integration and Merger.** The Agreement sets out all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the Property whether oral or written. Unless specifically authorized within a provision, no

modification or amendment of the Agreement is effective unless in writing and signed by both of the parties.

39. **Warranty of Authority.** DOT&PF warrants that the person executing the Agreement is authorized to do so on behalf of DOT&PF.
40. **Counterparts.** The Agreement may be executed in counterpart, each of which when so executed and delivered shall be considered an original and all of which when taken together will constitute one and the same instrument.
41. **Quiet Enjoyment.** During the term of the Agreement, DOT&PF will have quiet enjoyment of the Property subject to the terms and conditions stated in the Agreement.
42. **Interpretation.** Both parties have had an opportunity to review the Agreement, to suggest changes, and to consult with legal counsel before signing. The Agreement will not be interpreted in favor of or against either Party.

LESSOR:

Kenai Peninsula Borough

By: Charlie Pierce
Its: Mayor
Date: _____

LESSEE:

**State of Alaska, Department of
Transportation and Public Facilities**

By: _____
Its: _____
Date: _____

ATTEST:

Johni Blankenship, Borough Clerk

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:**

Sean Kelley, Deputy Borough Attorney

KPB NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2021, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Charlie Pierce, known to me to be the Mayor, Kenai Peninsula Borough, and who acknowledged to me that the foregoing instrument was executed freely and voluntarily on behalf of Kenai Peninsula Borough, for the uses and purposes therein set forth and who is authorized to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year written above.

Notary Public in and for Alaska
Commission Expires: _____

DOT&PF NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2021, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared _____, known to me to be the _____, Department of Transportation and Public Facilities, State of Alaska, and who acknowledged to me that the foregoing instrument was executed freely and voluntarily on behalf of the State of Alaska, Department of Transportation and Public Facilities, for the uses and purposes therein set forth and who is authorized by said State of Alaska to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year written above.

Notary Public in and for Alaska
Commission Expires: _____

MATERIAL EXTRACTION AND DISPOSAL TERMS & CONDITIONS

KPB 17.10.210

Attachment 1 to Master Lease Agreement

1. DISPOSAL TERMS AND CONDITIONS:

- 1.1. DOT shall not dispose of material on KPB property other than material from the Sterling Highway MP 45-60 Project.
- 1.2. DOT represents and warrants that the Disposal Material to be deposited on the Property satisfies the definition of uncontaminated fill as defined here:

***“Uncontaminated fill”** means uncontaminated solid material including soil, rock, stone, and grubbings (Stumps, roots, moss, grass, turf, debris, mulch or other organic-laden materials stripped from the land). Uncontaminated fill does not include human waste or refuse, industrial refuse, equipment parts, rubber tires, or any other materials not occurring naturally in the project zone.*

- 1.3. DOT represents and warrants that the Disposal Material does not contain and will not release Hazardous Materials in quantities that would require investigation, monitoring, clean-up, containment, restoration, removal, governmental notification, or other remedial work under any applicable federal, state, or local law or regulation. The term “Hazardous Materials” means any hazardous or toxic substance, material or waste which is regulated by any governmental authority of the State of Alaska or the United States government, including without limitation, any material or substance which (i) is defined or listed as a “hazardous material”, “toxic pollutant”, “hazardous waste”, “hazardous substance” or “hazardous pollutant,” under applicable federal, state or local law or administrative codes promulgated thereunder, (ii) contains hydrocarbons of any kind, nature or description, including, but not limited to, gas, oil, or similar petroleum products, other than reclaimed asphalt pavement, (iii) contains asbestos, (iv) contains PCBs or (v) contains radioactive materials.
- 1.4. DOT, or its contractor, will establish methods of volumetric measurement and recording such as load records with volume average truck counts, or before and after cross section survey, LiDAR elevation surveys, or implement other tracking procedures sufficient to track the site location, volume, and type of materials deposited.
- 1.5. DOT will produce auditable project records showing the quantity and type of materials deposited under this agreement which shall be provided in summary form with payments.
 - a. For the purpose of providing progressive evidence to KPB of the classification of

materials and respective location deposited, DOT will capture low-level high-resolution imagery at least monthly of each disposal area during active periods. Images will be delivered to KPB by the expiration of this agreement. Progress images are to support general-tracking information and may be either orthomosaic or oblique.

- 1.6. KPB reserves the right to reject the placement of any disposal materials which do not fit within the classifications outlined in Section 3 of this agreement.
- 1.7. Fees will be charged for material disposal according to the table in Section 3 of this agreement.
- 1.8. Construction quality materials to be stockpiled for credit require a stockpile design plan and are subject to inspection and acceptance based on conventional material testing standards for the material type.

2. EXTRACTION TERMS AND CONDITIONS:

- 2.1 Extraction of material to be transported off-site will require a Conditional Land Use Permit from KPB Planning Dept in accordance with KPB 21.29.
- 2.2 The DOT or its contractor will provide auditable project records showing the quantity and type of materials removed under this agreement, and their origin.
- 2.3 Fees will be charged for extracted materials according to the table in Section 3 of this agreement.

3. CLASSIFICATION OF MATERIALS and SCHEDULE OF FEES:

Classification	Description	Unit Disposal Fee	Unit Extraction Fee	Creditable Value
Type C Material	Compactable Mineral Aggregate (see DOT SSHC 2020, 703-2.07)	\$0.40/ cubic yard	n/a	n/a
Grubbed Material and Muck Excavation	Stumps, roots, moss, grass, turf, debris, mulch or other organic-laden material (DOT SSHC 2020, 201-3.03)	\$0.40/ cubic yard	n/a	n/a
Topsoil and Peat	Topsoil and peat, free of muck and large debris	\$0.40/ cubic yard		A volume of up to 8" per unit

				area used as reclamation topdressing materials can be deducted from Fee
Construction quality materials stockpiles	Sorted, stockpiled aggregates meeting KPB road construction specifications, sorted, stockpiled clean topsoil, or sorted, stockpiled topsoil grade peat	n/a	n/a	\$1.50/ cubic yard, credit may not exceed disposal fee total
Pad Area Materials	Compacted aggregate, not underlain with organic material, capped with NFS gravel to form a durable pad or driving surface	n/a	n/a	Volume not subject to fees
Unclassified excavation	Any material extracted from KPB land and transported off-site	n/a	\$3.00/ cubic yard	n/a

4. PAYMENT:

Partial payment shall be due at the end of each calendar year, within the contract term. Full and final payment shall be due at the end of the contract term. Payments shall be accompanied by an auditable record showing the quantity and types of material deposited and extracted from KPB lands, and the respective sites of origin/ disposal. Credits against fees, if any, shall be accounted with appropriate documentation and signed off by both parties prior to final payment becoming due.

5. STABILIZATION:

The parties agree that all fill deposited on KPB land shall be stabilized to safeguard

against slope failures of any kind. Specifically:

- 5.1 All deposited fill shall be layered in maximum 3' lifts and mechanically compacted using vibratory equipment.
- 5.2 No constructed embankment shall exceed a 2:1, or 50%, slope.
- 5.3 Any travel ways, road surfaces, or pads constructed under this agreement shall have a minimum 2% cross-slope gradient, to allow for low-energy surface drainage and to prevent water perching.
- 5.4 No travel way or road surface constructed on KPB land shall exceed 10% gradient.
- 5.5 Any area within the Property used as a foundation for material processing equipment, such as an asphalt plant or a concrete batch plant, shall be structurally sound, constructed only of compactable mineral aggregate, and shall be compacted in lifts of 1' or less.

6. EROSION and SEDIMENT CONTROL:

All activities taking place upon KPB land during the term of this contract and within the scope of the Sterling Highway MP 45-60 project shall adhere to the Best Management Practices, adopted under the project's SWPPP plan, stipulated by the DOT SSHC 2020 - section 641, and enforced by the DOT. Under no circumstances shall any constructed embankments be left for the winter months, without being mulched and seeded, or the equivalent.

7. SAFETY

The DOT shall be responsible for ensuring that all mining and extraction activities adhere to applicable workers protection and mining safety laws and regulations.

8. PERMITS

The DOT shall have in place any necessary municipal, state, or federal permits prior to commencing extraction and material processing activities.

9. CLOSE-OUT and RECLAMATION PLAN:

Prior to breaking ground on the Property, the DOT shall provide to the KPB a reclamation plan which includes an overview of the long-term stabilization measures to be implemented on the pads, berms, and other earthen structures constructed pursuant to this agreement. All roads/ travel ways shall be closed-out at KPB's direction. This may include removing culverts, installing drivable or non-drivable water bars, remedial landscaping, blocking access with "tank traps" or construction barriers, or installation of a simple gate. The reclamation plan shall include contouring the site for positive drainage,

slope stability measures, topsoiling and revegetation, continuation of durable pad areas and construction quality materials stockpile access. The reclamation plan may be revised by agreement of the parties prior to close-out to promote long term site management goals.

10. MODIFICATIONS:

The parties may mutually agree to modify these terms and conditions. Modifications shall be incorporated into the Master Lease contract by written amendments.

11. MASTER LEASE AGREEMENT:

The terms and conditions herein apply to disposal and extraction activities on the Property under the Master Lease Agreement. Except as specifically stated herein, the Master Lease Agreement controls.

ATTACHMENT 2
LEASE PROVISIONS REQUIRED BY KPB 17.10

(1) **Accounts Current.** The Lessee shall not be delinquent in the payment of any tax, debt or obligation owed to the KPB prior to execution of the Agreement.

(2) **Assignment.** Lessee may assign the lands upon which Lessee has an agreement only if approved by the mayor or land management officer when applicable. Applications for assignment shall be made in writing on a form provided by the land management division. The assignment shall be approved if it is found that all interests of the borough are fully protected.

(3) **Breach of Agreement.** In the event of a default in the performance or observance of any of the Agreement terms or conditions, and such default continues thirty days after written notice of the default, the borough may cancel Agreement or take any legal action for damages or recovery of the property. No improvements may be removed during the time which the contract is in default.

(4) **Cancellation.** This Agreement may be cancelled at any time upon mutual written agreement of the parties.

(5) **Entry or Re-entry.** In the event the Agreement is terminated, canceled or forfeited, or in the event of abandonment of Leased Premises by Lessee during the Term, the KPB its agents, or representatives, may immediately enter or re-enter and resume possession of the Leased Premise. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the Agreement.

(6) **Fire Protection.** The Lessee shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the Property under Agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the Property is located.

(7) **Hazardous Waste.** The storage, handling and disposal of hazardous waste shall not be allowed on the Leased Premises.

(8) **Modification.** The Agreement may not be modified orally or in any manner other than by an agreement in writing signed by all parties or their respective successors in interest.

(9) **Notice.** Any notice or demand, which under the terms of the Agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice or demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

(10) **Notice of Default.** Notice of the default will be in writing as provided in paragraph 9 above.

(11) **Removal or Reversion of Improvements Upon Cancellation of Purchase Agreement or Lease.**

(a) Improvements on Leased Premises owned by Lessee shall, within thirty calendar days after the termination of the agreement, be removed by him; provided, such removal will not cause injury or damage to the land; and further provided, that the mayor or land management officer when applicable may extend the time for removing such improvements in cases where hardship is proven. The Lessee may, with the consent of the mayor or land management officer when applicable, dispose of its improvements to the Sublessee or Assignee, if applicable.

(b) If any improvements and/or chattels having an appraised value in excess of ten thousand dollars, as determined by a qualified appraiser, are not removed within the time allowed, such improvements and/or chattels shall, upon due notice to the Lessee be sold at public sale under the direction of the mayor and in accordance with the provisions of KPB Chapter 5. The proceeds of the sale shall inure to the former Lessee who placed such improvements and/or chattels on the lands, or Lessee's successors in interest, after paying to the borough all moneys due and owing and expenses incurred in making such a sale. In case there are no other bidders at any such sale, the mayor is authorized to bid, in the name of the borough, on such improvements and/or chattels. The bid money shall be taken from the fund to which said lands belong, and the fund shall receive all moneys or other value subsequently derived from the sale of leasing of such improvements and/or chattels. The borough shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of the purchase.

(c) If any improvements and/or chattels having an appraised value of ten thousand dollars or less, as determined by the mayor, are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in the borough. Upon request, the Lessee shall convey said improvements and/or chattels by appropriate instrument to the KPB.

(12) Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to the Lessee or placed on the Property and remaining upon the premises after the termination of the contract shall entitle the KPB to charge a reasonable rent therefor.

(13) Re-rent. In the event that the Agreement should be terminated, canceled, forfeited or abandoned, the KPB may offer said lands for lease or other appropriate disposal pursuant to the provisions of this chapter or other applicable regulations.

(14) Responsibility for Location. It shall be the responsibility of the Lessee to properly locate improvements on the Leased Premises.

(15) Rights of Mortgage or Lienholder. In the event of cancellation or forfeiture the Agreement for cause, the holder of a properly recorded mortgage, conditional assignment, or collateral assignment will have the option to acquire the lease for the unexpired term thereof, subject to the same terms and conditions as in the Agreement. Any party acquiring the lease agreement must meet the same requirements as the Lessee.

(16) Sanitation. The Lessee shall comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for the promotion of sanitation. The Leased Premises under the Agreement shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of the waters and lands.

(17) Shore Land Public Access Easement. As established by AS 38.05, borough lands sold or leased may be subject to a minimum 50 foot public access easement landward from the ordinary high water mark or mean high water mark.

(18) **Subleasing.** No lessee may sublease lands or any part thereof without written permission of the mayor or land management officer when applicable. A sublease shall be in writing and subject to the terms and conditions of the original lease.

(19) **Violation.** Violation of any provision KPB 17.10 or of the terms of the Agreement of may expose the Lessee to appropriate legal action including forfeiture of purchase interest, termination, or cancellation of its interest in accordance with state law.

(20) **Written Waiver.** The receipt of payment by the borough, regardless of knowledge of any breach of the purchase agreement by the purchaser, lessee or permittee, or of any default on the part of the purchaser, lessee or permittee in observance or performance of any of the conditions or covenants of the agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of the borough to enforce any covenant or provision therein contained shall not discharge or invalidate such covenants or provision or affect the right of the borough to enforce the same in the event of any subsequent breach or default. The receipt by the borough of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and payment fully satisfies the breach.

THESE PLATS MAY BE USED FOR THE ESTABLISHMENT OF THE RIGHT-OF-WAY BOUNDARY ONLY, AND SHOULD NOT BE USED AS A BASIS FOR ESTABLISHING ADJOINING PROPERTY LINES AND CORNERS.

NOTE: THE ALIGNMENT OF CHUNKWOOD AND WEST JUNEAU ROADS SHOWN ON THIS EXHIBIT IS APPROXIMATE. STAGING AREA BOUNDARIES DEFINED ON SHEETS 4 & 6 MUST BE LOCATED A MINIMUM OF 35 FEET FROM EXISTING CENTERLINE OF CHUNKWOOD & WEST JUNEAU ROADS AND MAY BE ADJUSTED TO MEET THIS REQUIREMENT.

THIS SEAL IS FOR ALL WORK CONTAINED ON PLATS 2 THROUGH 6 OF 6.

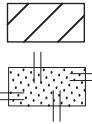


R&M CONSULTANTS, INC.

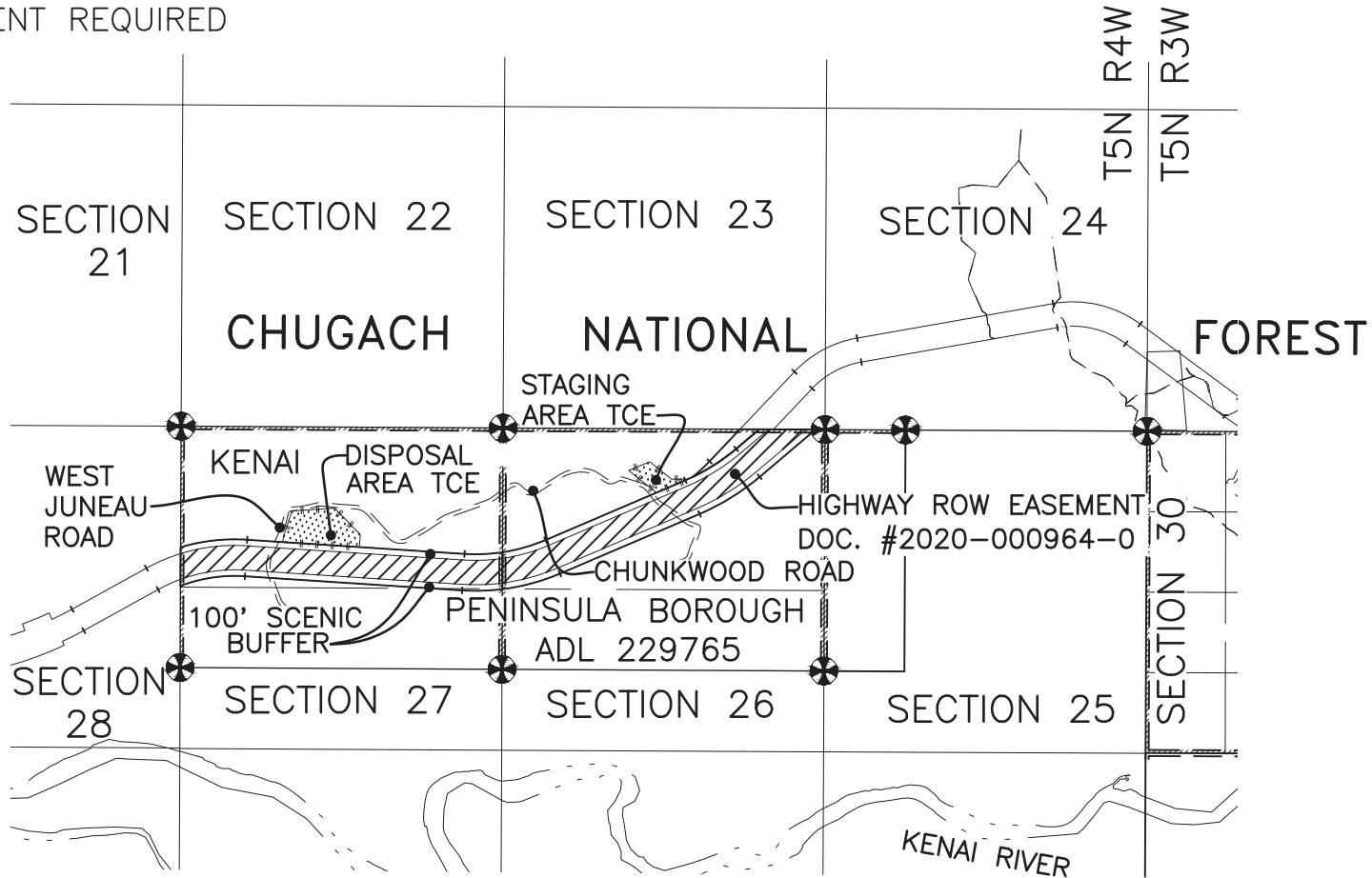
9101 VANGUARD DRIVE
ANCHORAGE, AK 99507
PHONE (907) 522-1707
AUTH. NO. AECC111

ATTACHED TO _____ PAGE 1 OF 6 DATED _____

PROJECT NO. 0A33029/CFHWY00694 PARCEL NO. KPB 395 DISPOSAL/STAGING AREA TCE



EXISTING RIGHT-OF-WAY
TEMPORARY CONSTRUCTION
EASEMENT REQUIRED



T5N R4W
S. M.
SEC. 26, 27

STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

TEMPORARY CONSTRUCTION EASEMENT REQUIRED FOR
STERLING HIGHWAY
MP 44.5 TO 58
PROJECT NO. 0A33029/CFHWY00694

OWNER'S INITIAL _____
ATTACHED TO _____
PAGE ____ OF ____ DATED _____

PLAT 2 OF 6

ROE AREA _____ 18.602 AC.

DRAWN BY _____ KFT

DATE _____ Dec 2020

PARCEL NO.
KPB 395 DISPOSAL/
STAGING AREAS TCE





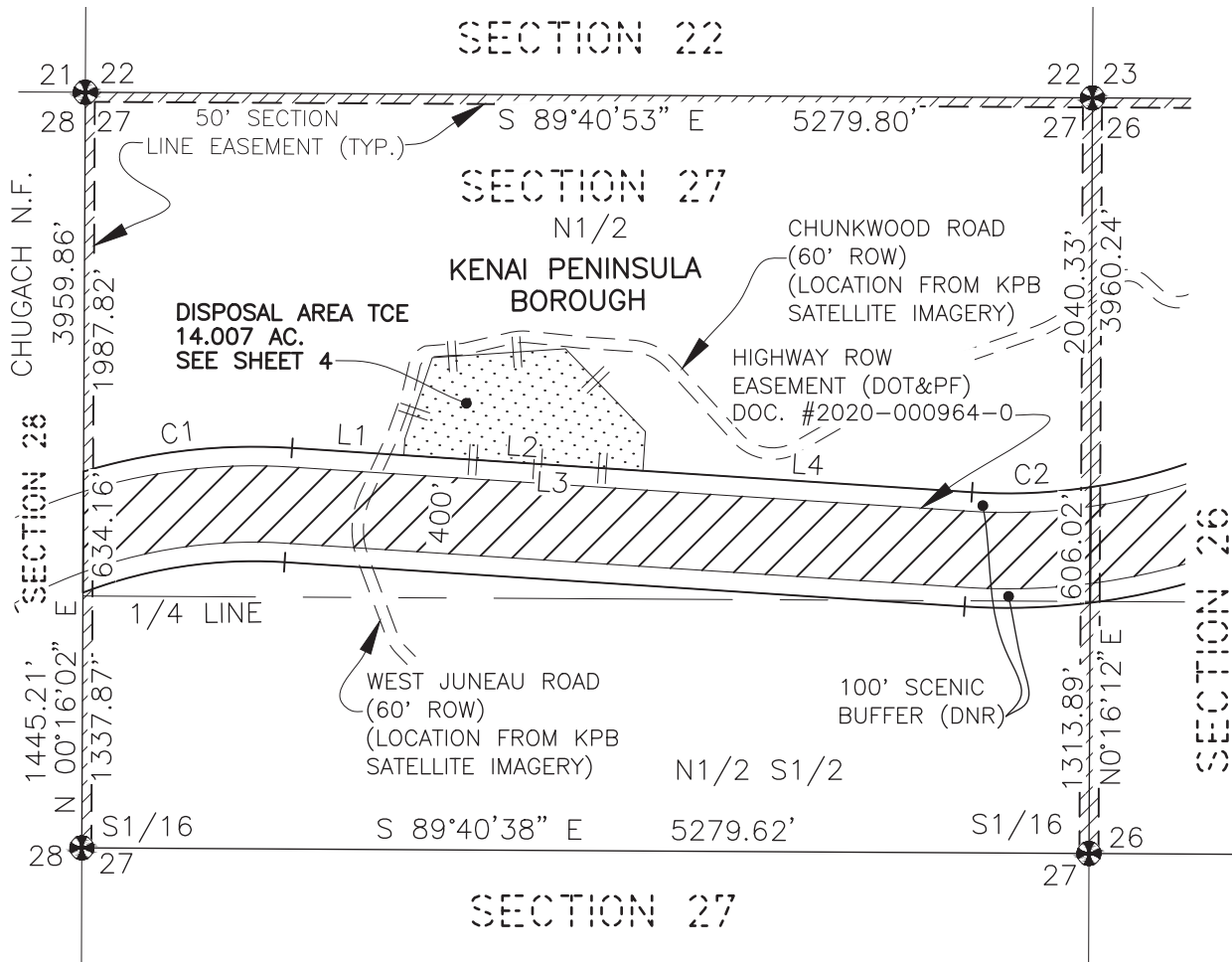
EXISTING RIGHT-OF-WAY



TEMPORARY CONSTRUCTION
EASEMENT REQUIRED

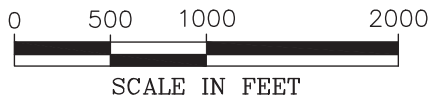


= RECOVERED PRIMARY MONUMENT [BLM]



CURVE TABLE

CURVE #	LENGTH	RADIUS	DELTA
C1	1105.99	3112.56	20°21'32"
C2	623.78	2896.21	12°20'25"



LINE TABLE

LINE #	LENGTH	DIRECTION
L1	587.17	S 86°16'28" E
L2	1255.79	S 86°16'28" E
L3	3571.72	S 86°16'28" E
L4	1728.76	S 86°16'28" E

STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

TEMPORARY CONSTRUCTION EASEMENT REQUIRED FOR
STERLING HIGHWAY
MP 44.5 TO 58
PROJECT NO. OA33029/CFHWY00694

OWNER'S INITIAL _____
ATTACHED TO _____
PAGE ____ OF ____ DATED _____

PLAT 3 OF 6

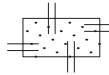
TCE AREA 14.007 AC.

DRAWN BY KFT

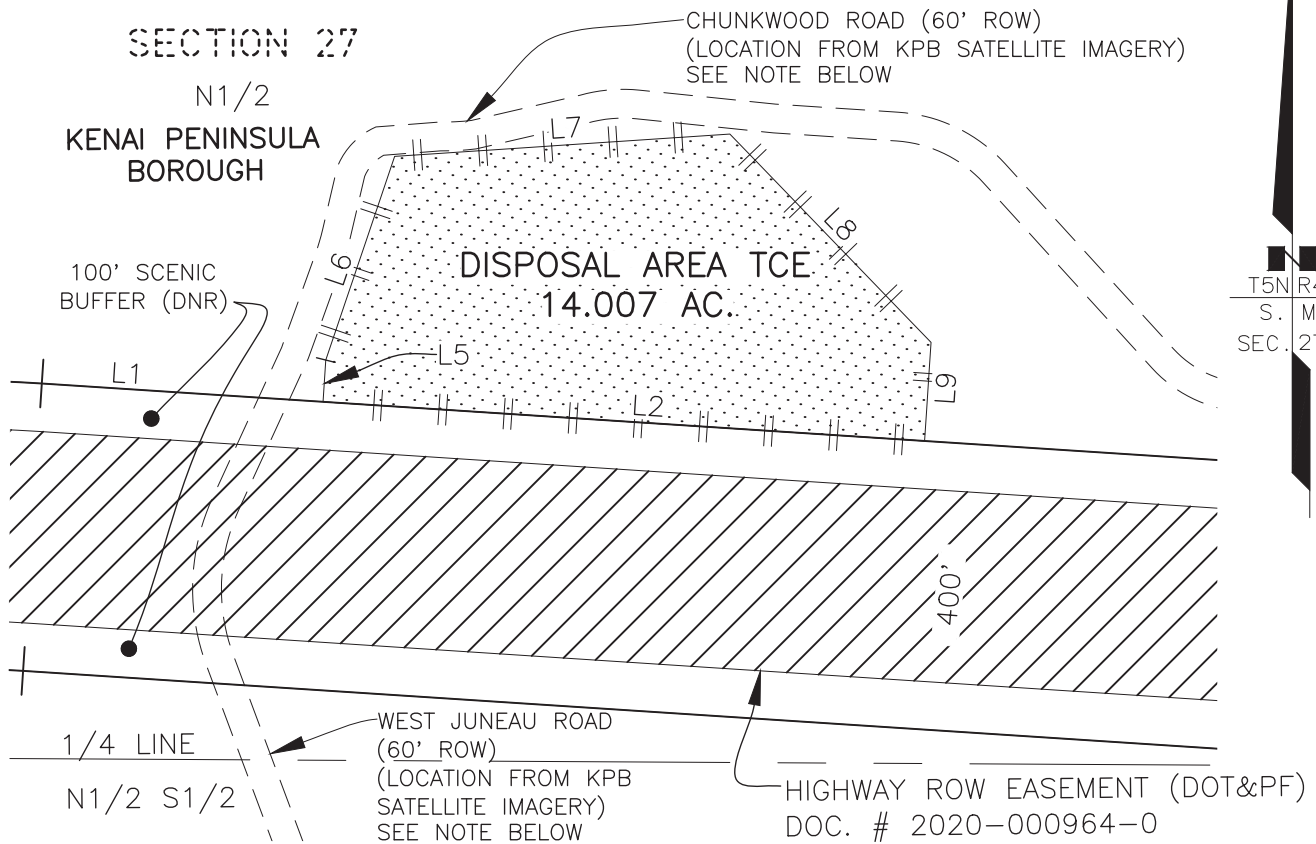
PARCEL NO.
**KPB 395 DISPOSAL/
STAGING AREA TCE**

DATE Dec 2020

EXISTING RIGHT-OF-WAY

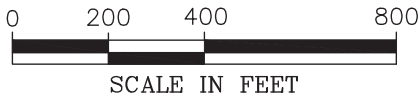


TEMPORARY CONSTRUCTION
EASEMENT REQUIRED



LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	587.17	S 86°16'28" E
L2	1255.79	S 86°16'28" E
L5	87.16	N 03°43'32" E
L6	447.83	N 18°40'14" E

LINE TABLE		
LINE #	LENGTH	DIRECTION
L7	699.96	N 86°10'48" E
L8	603.36	S 43°59'37" E
L9	205.83	S 03°43'32" W



NOTE: ALIGNMENT OF CHUNKWOOD & WEST JUNEAU ROADS SHOWN IS APPROXIMATE. STAGING AREA BOUNDARY MUST BE LOCATED A MINIMUM OF 35 FEET FROM EXISTING CENTERLINE OF CHUNKWOOD & WEST JUNEAU ROADS & MAY BE ADJUSTED TO MEET THIS REQUIREMENT.

STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

TEMPORARY CONSTRUCTION EASEMENT REQUIRED FOR
**STERLING HIGHWAY
MP 44.5 TO 58**
PROJECT NO. 0A33029/CFHWY00694

OWNER'S INITIAL _____
ATTACHED TO _____
PAGE ____ OF ____ DATED _____

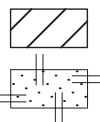
PLAT 4 OF 6

TCE AREA 14.007 AC.

DRAWN BY KFT

**PARCEL NO.
KPB 395 DISPOSAL/
STAGING AREA TCE**

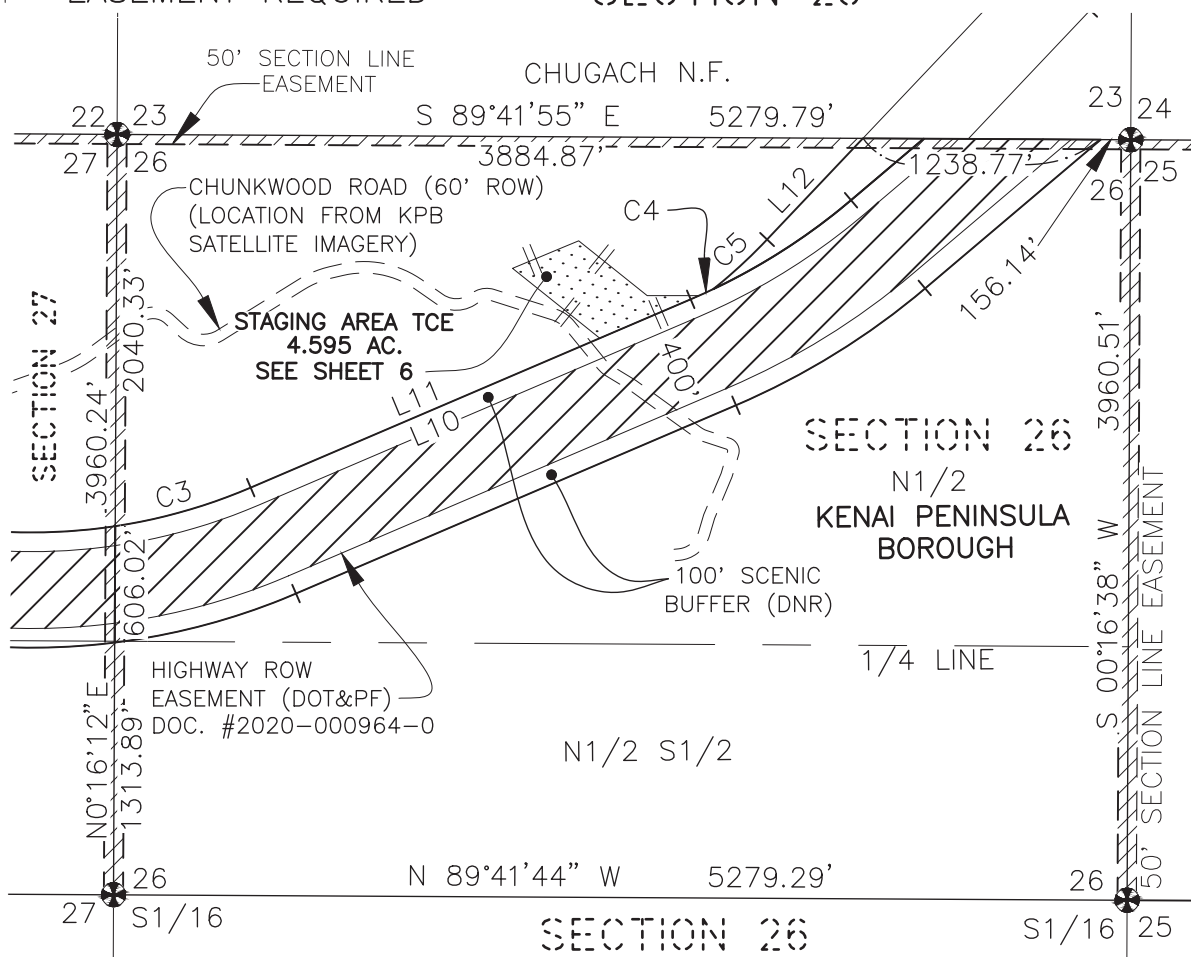
DATE Dec 2020



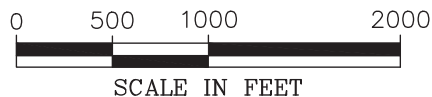
EXISTING RIGHT-OF-WAY
TEMPORARY CONSTRUCTION
EASEMENT REQUIRED

 = RECOVERED PRIMARY MONUMENT [BLM]

SECTION 23



CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C3	735.59	2896.21	14°33'08"
C4	80.12	3300.41	1°23'27"
C5	382.52	2800.00	7°49'39"



LINE TABLE		
LINE #	LENGTH	DIRECTION
L10	2492.68	N 66°50'00" E
L11	1977.69	N 66°50'00" E
L12	725.74	N 43°27'21" E

STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

TEMPORARY CONSTRUCTION EASEMENT REQUIRED FOR
STERLING HIGHWAY
MP 44.5 TO 58
 PROJECT NO. 0A33029/CFHWY00694

OWNER'S INITIAL _____
ATTACHED TO _____
PAGE____ OF____ DATED _____

PLAT 5 OF 6

TCE AREA 4.595 AC

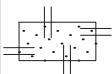
DRAWN BY KFT

PARCEL NO.
KPB 395 DISPOSAL/
STAGING AREA TCE

DATE Dec 2020



EXISTING RIGHT-OF-WAY



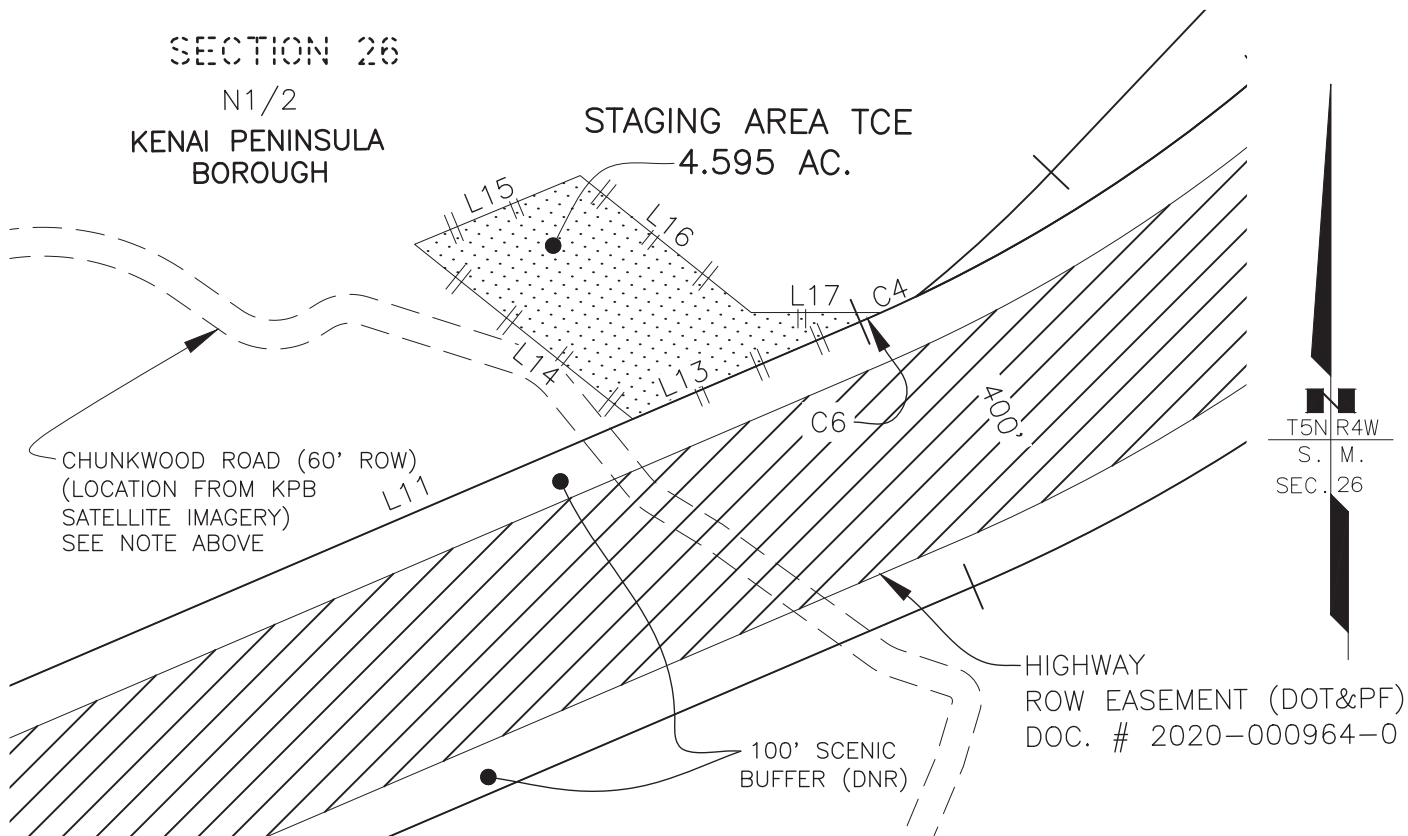
TEMPORARY CONSTRUCTION
EASEMENT REQUIRED

NOTE: ALIGNMENT OF CHUNKWOOD ROAD SHOWN IS APPROXIMATE. STAGING AREA BOUNDARY MUST BE LOCATED A MINIMUM OF 35 FEET FROM EXISTING CENTERLINE OF CHUNKWOOD ROAD AND MAY BE ADJUSTED TO MEET THIS REQUIREMENT.

SECTION 26

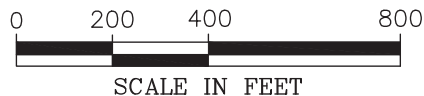
N1/2
KENAI PENINSULA
BOROUGH

STAGING AREA TCE
4.595 AC.



CURVE TABLE

CURVE #	LENGTH	RADIUS	DELTA
C4	80.12	3300.41	1°23'27"
C6	48.01	3300.41	0°50'01"



LINE TABLE

LINE #	LENGTH	DIRECTION
L11	1977.69	N 66°50'00" E
L13	514.99	N 66°50'00" E
L14	582.30	N 51°18'52" W
L15	373.30	N 67°25'48" E
L16	456.66	S 51°18'52" E
L17	270.83	N 90°00'00" E

STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

TEMPORARY CONSTRUCTION EASEMENT REQUIRED FOR
STERLING HIGHWAY
MP 44.5 TO 58
PROJECT NO. 0A33029/CFHWY00694

OWNER'S INITIAL _____
ATTACHED TO _____
PAGE ____ OF ____ DATED _____

PLAT 6 OF 6

TCE AREA 4.595 AC.

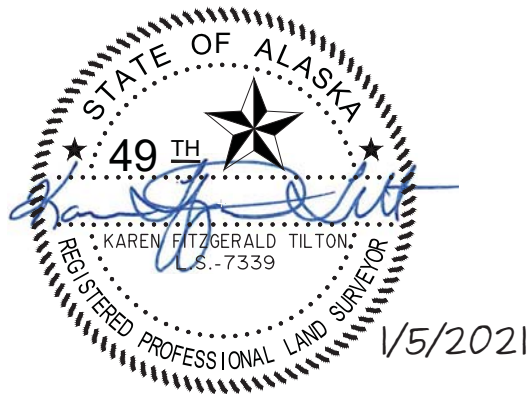
DRAWN BY KFT

PARCEL NO.
**KPB 395 DISPOSAL/
STAGING AREA TCE**

DATE Dec 2020

THESE PLATS MAY BE USED FOR THE ESTABLISHMENT OF
THE RIGHT-OF-WAY BOUNDARY ONLY, AND SHOULD NOT
BE USED AS A BASIS FOR ESTABLISHING ADJOINING
PROPERTY LINES AND CORNERS.

THIS SEAL IS FOR ALL WORK CONTAINED ON PLATS 2 THROUGH 4 OF 4.



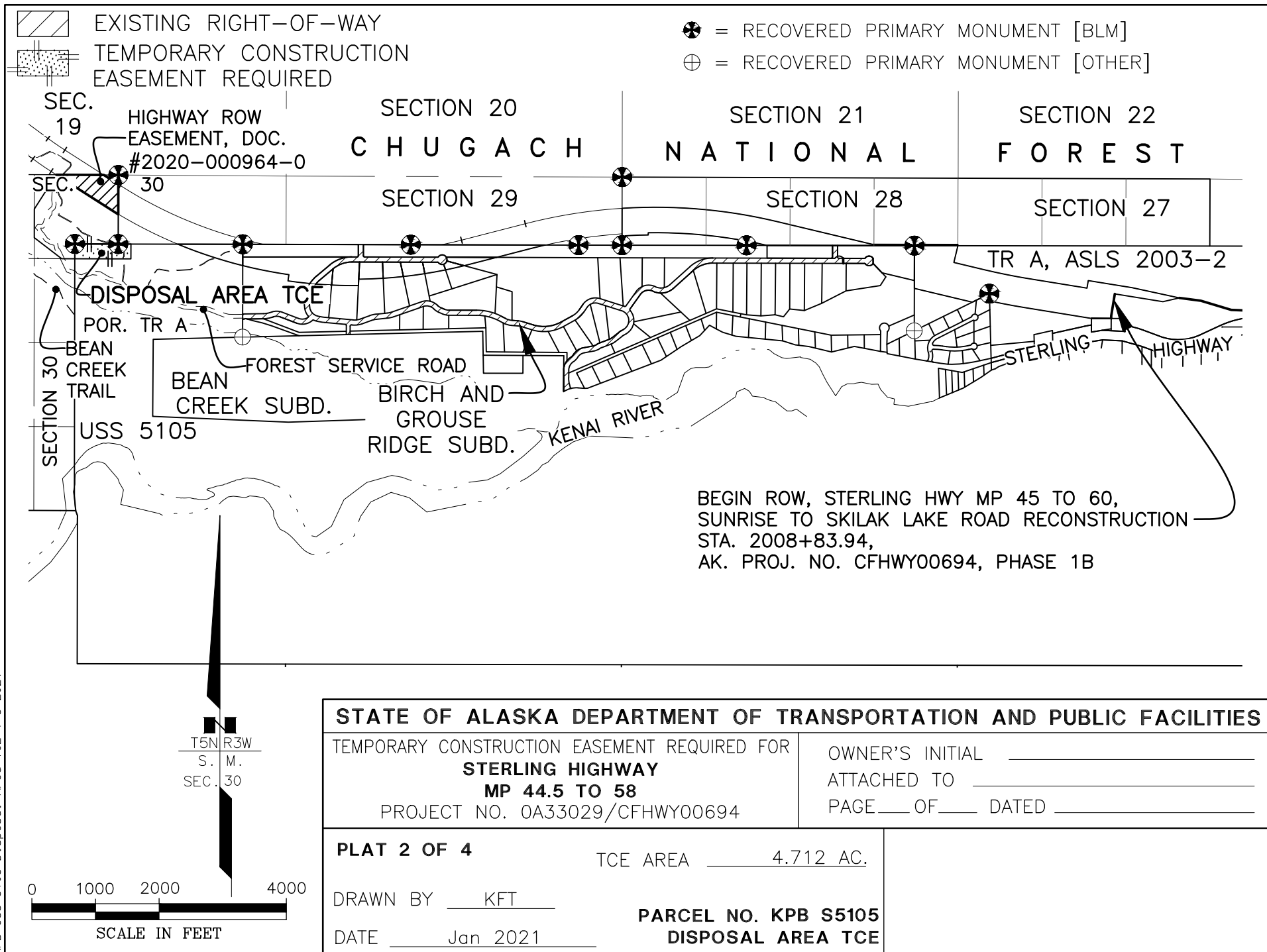
R&M CONSULTANTS, INC.

9101 VANGUARD DRIVE
ANCHORAGE, AK 99507
PHONE (907) 522-1707
AUTH. NO. AECC111

ATTACHED TO _____ PAGE 1 OF 4 DATED _____

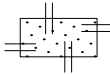
PROJECT NO. 0A33029/CFHWY00694

PARCEL NO.
KPB S5105 DISPOSAL AREA TCE





EXISTING RIGHT-OF-WAY



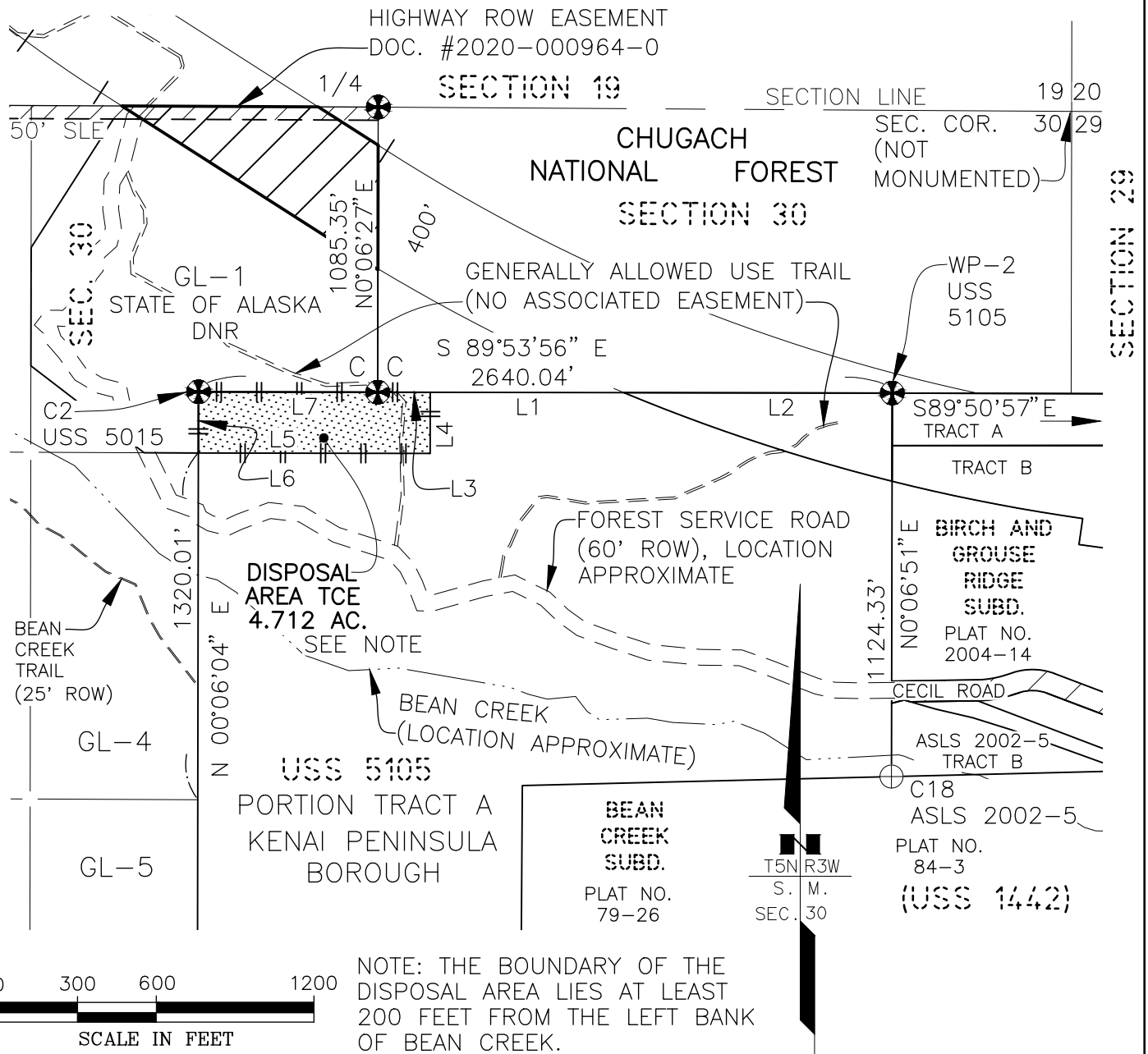
TEMPORARY CONSTRUCTION
EASEMENT REQUIRED



= RECOVERED PRIMARY MONUMENT [BLM]



= RECOVERED PRIMARY MON. [4928-S]



STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

TEMPORARY CONSTRUCTION EASEMENT REQUIRED FOR

**STERLING HIGHWAY
MP 44.5 TO 58**

PROJECT NO. 0A33029/CFHWY00694

OWNER'S INITIAL _____

ATTACHED TO _____

PAGE ____ OF ____ DATED _____

PLAT 3 OF 4

TCE AREA 4.712 AC.

DRAWN BY KFT

DATE Jan 2021

**PARCEL NO. KPB S5105
DISPOSAL AREA TCE**

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	736.70	S 89°53'56" E
L2	1021.35	S 89°53'56" E
L3	200.00	S 89°53'56" E
L4	232.70	S 00°06'04" W
L5	881.99	N 89°53'56" W
L6	232.70	N 00°06'04" E
L7	681.99	S 89°53'56" E

STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

TEMPORARY CONSTRUCTION EASEMENT REQUIRED FOR
STERLING HIGHWAY
MP 44.5 TO 58
 PROJECT NO. 0A33029/CFHWY00694

OWNER'S INITIAL _____
 ATTACHED TO _____
 PAGE ____ OF ____ DATED _____

PLAT 4 OF 4

TCE AREA 4.712 AC.

DRAWN BY KFT

DATE Jan 2021

PARCEL NO. KPB S5105
DISPOSAL AREA TCE

Project No.:	CFHWY00753
Date Prepared:	01/28/2021

Sterling Highway MP 45-60 Sunrise to Skilak Lake Rd Phases 2-5 CM/GC Staging/Disposal Site Operations Plan

Prepared For:

KPB and ADOT&PF

Prepared By:

Kiewit Infrastructure West Co.
2000 W. International Airport Rd. C-6
Anchorage, AK 99502

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Appendixes

Appendix A – Site location and 3D Model

Table(s)

Table 1 – West #1

Table 2 – West #2

Table 3 – East #2

Acronyms and Abbreviations

ADOT	Alaska Department of Transportation & Public Facilities
BMP	Best Management Practice
DNR	Alaska Department of Natural Resources
HMCP	Hazardous Material Control Plan
KIWC	Kiewit Infrastructure West Co.
KPB	Kenai Peninsula Borough
ROW	Right of Way
SOA	State of Alaska
USACE	United States Army Corps. of Engineers
USFS	United States Forest Service

1 Project Description

The following is KIWC's Operation Plan pertaining to staging and disposal areas within the limits of KPB. Kiewit Infrastructure West Co (KIWC) is the CM/GC contractor for the Sterling Highway Milepost 45-60; Sunrise to Skilak Lake Rd – Phases 2-5. Staging and disposal sites will be developed/utilized during construction of the project and reclaimed upon completion of the permanent construction according to an approved plan. This work will include three separate locations as identified in the visuals attached.

2 Scope

Identified in this plan are three staging & disposal sites for use during the construction of the Sterling Highway Milepost 45-60 Project. Two of the sites are on the West side (West #1 & #2) and one site is on the East side (East #2) at approximately Station 1500. West #1 is located near USFS Rd. #1 and will primarily be used as a disposal site for slash, peat, topsoil and excess excavation. Eventually, this site will be developed into a staging area for storage and miscellaneous operations. West #2 is located adjacent to USFS Rd #2. West #2 will be home to field offices, permanent materials, maintenance facility, fuel storage and potentially a batch plant. East #2 is located near Station 1500 and will be the designated East side disposal area. Over time it may be developed into an additional area for staging of bridge materials and/or a material crushing and hot plant location for the project.

KIWC is planning on using the requested sites as follows:

2.1 West Site #1

The first location is East of USFS Road #1, near Stations 1314+25 to 1329+00 (Approx. 14 AC). This site will include minimal grubbing to develop an access road into the site. It will be used to dispose of material such as slash, muck excavation, grubbing, and excess excavation material generated by KIWC during construction activities. The slash will be buried at the bottom of the site to reduce further impacts from activities in the site. This site will be broken into quadrants to include specific areas to place materials. For example, the far west section will include a mixture of peat and topsoil that could be used later during the reclamation of the site. The middle section will be material that will be unusable for future aspects of the project such as common excavation with high fines content. The northern section of the site will be used for excess embankment that may later be utilized as a staging area. Clearing will consist of machine clearing, hand clearing, mulching, and decking timber. Grubbing will consist of removal of the top organic layer to develop access into the site and staging area. Reclamation will include covering the site with topsoil and seeding it for permanent stabilization in compliance with the applicable revegetation plan for the project (currently in development).

2.2 West Site #2

The second location is East of USFS Road #2, near Stations 1379+00 to 1387+00 (Approx. 4.6 AC). The use of this parcel will consist of removal and stockpiling the existing organics, creating an earth berm around the perimeter of the site. Clearing will consist of machine clearing, hand clearing, mulching, and decking timber. The top organics layer will be removed in order to access more useable soils. The berm will be track walked for added stability in accordance with Alaska BMP practices. Within the boundaries of the site this area will be transformed into a uniformly flat but free draining area, the site will be capped with aggregate developed on site to provide an all weather running surface. The site will be used

for storage of permeant materials, aggregates, plant operation, field offices, fuel and a maintenance facility. Reclamation will include using the earth berm around the area to cover it with topsoil and follow an applicable revegetation plan.

2.3 East Site #2

On the East side a disposal site will be developed at ~Station 1500. This site will be cleared and built up with the disposal of excess material from the project. Similar to the other sites, the material placed into this site will include grubbing, muck ex, and other material that do not meet the project needs for embankment or are excess. As this site is built up, it will be constructed with side slopes 2:1 (H:V) to allow for proper drainage and surrounded by BMPs to mitigate the risk of storm runoff. The site may also be utilized as a staging area during later phases of the project and will be reclaimed in accordance with an approved revegetation plan at the end of the project.

3 Timeline - Schedule

Notice to Proceed (NTP): Anticipated – May 1, 2021

Final Completion: October 31, 2025

3.1 Order of Precedence for Staging and Disposal Sites

1. Establish staging and disposal areas in relation to the project corridor development.
2. Establish access throughout the project corridor.
3. Construct remaining permanent work for the project alignment.
4. Upon completion of the project reclaim staging and disposal areas used during construction activities to applicable requirements.

4 Operations

4.1 Locations

4.1.1 West #1

This site is ~14 acre parcel located near Juneau Creek Rd. in Parcel 395. As depicted, it is capable of holding approximately 700,000 CY of material. The site will maintain a minimum 1% slope for drainage with slopes anticipated to be 2:1(H:V) around the site. The site will contain grubbing and peat (muck excavation) that could be used later in the project as a topsoil source, in addition to excess or unusable excavation generated from the project. Beyond a disposal site, this is a potential location to place an asphalt hot plant during paving operations. For reclamation, topsoil will be spread across the site in accordance with a revegetation plan for the project. The site will be accessed by Juneau Creek Rd and off the project alignment. A summary of quantities is provided below:

Table 1 – West #1*Disposal and Staging Area*

PROPERTY OWNER	TOTAL (ACRE)
KPB	14.0
Fill Possible	~700,000 CY
Grubbing/Muck Ex	~200,00 CY
Excess Materials	~500,000 CY

4.1.2 West #2

This site is ~4.6 Acres and is intended to be used primarily as a staging area. It will consist primarily of clearing and grubbing along with the balancing of approximately 20,000 cubic yards material within the site. The site will maintain a minimum 1% drainage and 2:1(H:V) slopes around the outside. Once the site is balanced, the site will become a staging area for permanent materials, maintenance facility, fuel storage and a possible location for a batch plant during bridge construction. The grubbing will create a vegetative earth berm around the site as a BMP with temporary seed added for stabilization. During reclamation, the berm will be spread back across the site which will be reclaimed according to an agreed upon plan. The site will be accessed from USFS Road #2 (Juneau Creek Rd) or off the project alignment. A summary of quantities is provided below:

Table 2 – West #2*Staging area*

PROPERTY OWNER	TOTAL (ACRE)
KPB	4.6
Cut	~15,000 CY
Fill	~22,000 CY

4.1.3 East #2 (~Sta. 1500)

The footprint of this site will be ~21 acres and will be contained within the boundaries of the DNR and KPB. Clearing will take place before any material is disposed into this area. Initially this site will be used for material disposal but as the site develops, parts of this area may be utilized as bridge material storage and crushing / production operations. Finish surfaces will be constructed to provide positive drainage with 2:1 (H:V) slopes around the site while avoiding concentrated flows. Final reclamation of this area will follow an approved revegetation plan. A summary of quantities is provided below:

Table 3: East #2*Disposal and Staging Area*

PROPERTY OWNER	FILL (CY)	AREA (ACRE)
DNR	834,000	17.5
KPB	208,000	3.5
TOTAL	1,042,000	21.0

4.2 Timber

Trees to be salvaged shall meet the criteria of the current Firewood plan on the project.

4.3 Final Site Clean Up

During construction the job Storm Water Pollution Prevention Plan (SWPPP) will be followed. Upon Completion of all work any materials that are not to be incorporated into the final project shall be removed and disposed of according to applicable requirements.

4.4 Equipment

- | | |
|---------------------------------------|-----------------------|
| - Feller Bunchers | - Bulldozer |
| - Excavators with mulching attachment | - Pickup Truck |
| - Skidsteers with mulching attachment | - Maintenance vehicle |
| - Wheel loaders | - Excavators |
| - Skidders | - Haul Trucks |
| - Grinders / Mulchers | - Blade (Grader) |

4.5 Safety Protocol

Vehicle and pedestrian access to all trails, KPB roadways, USFS roadways and other recreational resources shall always be maintained for the duration of the project, except for when closures are necessary.

Special Construction signs, in accordance with Subsection 643-2.01, shall be used to advise the public of work in the vicinity of trails. Special Construction signs shall be placed at trailheads at least two weeks before construction begins and be maintained in serviceable condition for the duration of the project. Signs shall state dates and duration of work and dates and duration of road closures.

Use Plastic Safety Fence, in accordance with Subsection 643-2.01, or other means approved by the Engineer to delineate trails through the work site as necessary.

See Appendix A – Special Construction Signs for examples of signage and corresponding locations.

4.6 Hazardous Materials

4.6.1 Personnel, Training & Discharge Prevention Procedure – 40 CFR 112.7(f)

- During handling of hazardous materials operations will follow our Hazardous Material Control Plan (HMCP) that complies with applicable state and federal regulations.
- Maintenance personnel have been trained in the operation and maintenance of equipment to prevent and control discharges; discharge notification; facility operations; and the contents of the SPCC plan.
- Ongoing orientation and training of spill prevention and control is conducted pursuant to the commitments of Kiewit Infrastructure West Co's Sterling Highway MP 45-60 Project and District policies. Discharge prevention training is addressed as necessary during project start-up, regularly scheduled safety meetings, and new-hire orientation.

4.6.2 Tank Truck Loading / Unloading Rack – 40 CFR 112.7(h)

Tank trucks are operated by an independent vendor responsible for ensuring their operations are performed in accordance with applicable state and federal regulations. Spill kits are kept on hand when fuel deliveries are made, and a fueling procedure is followed to minimize the risk of an accidental discharge.

4.6.3 Emergency Telephone Numbers – 40 CFR 112.7(a3vi)

- Bob Falk, Project Manager
 - Phone: (360)319-3075
- Jim Dennison, Project Environmental Coordinator
 - Phone: (907) 406-9652
- Jim Dilworth, District Environmental Manager
 - Phone: (360) 693-1478
- Pat Harrison, Area Manager
 - Phone: (907) 222-9350
- Alaska Department of Environmental Conservation
 - Anchorage: (907) 269-3063
 - Outside normal business hours: (800) 478-9300
- National Response Center
 - (800) 424-8802
- Emerald Alaska Inc.
 - (888) 506-7220

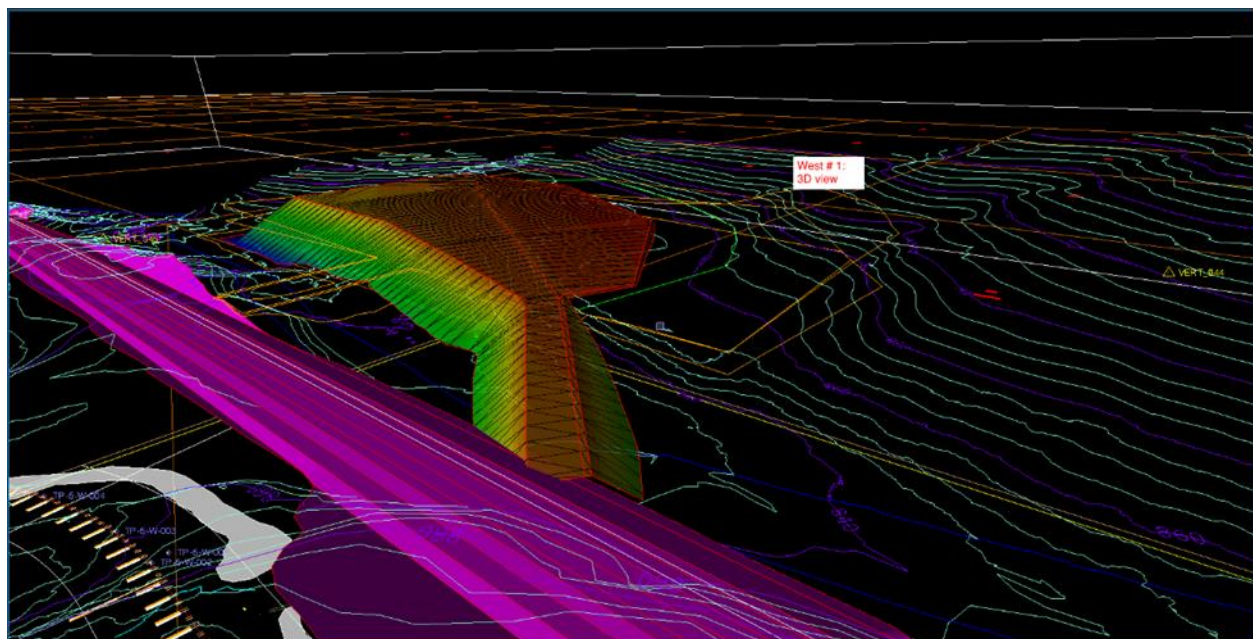
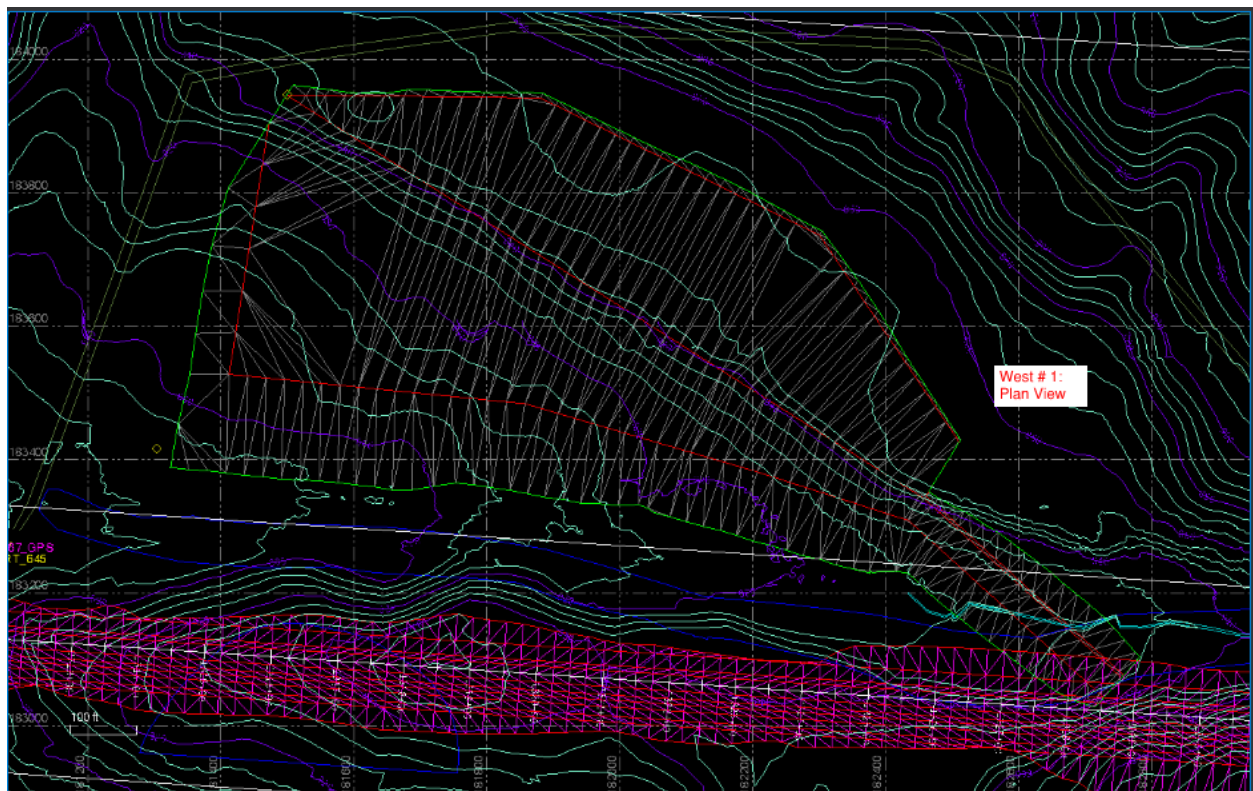
4.7 Contaminated Site Clean Up

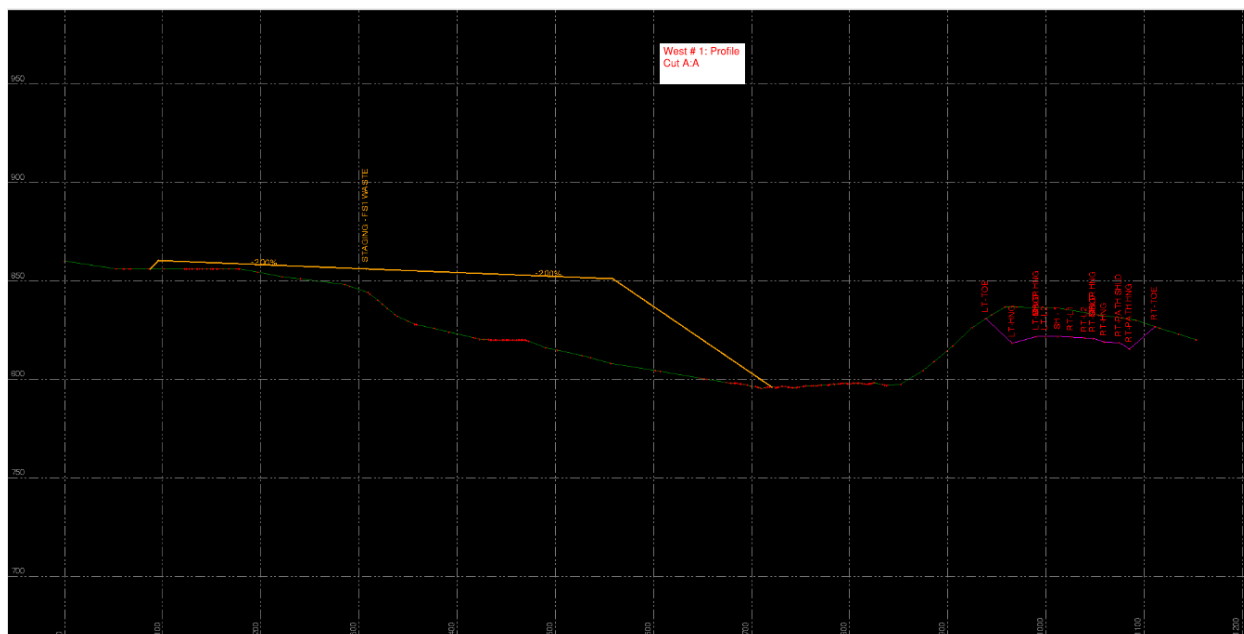
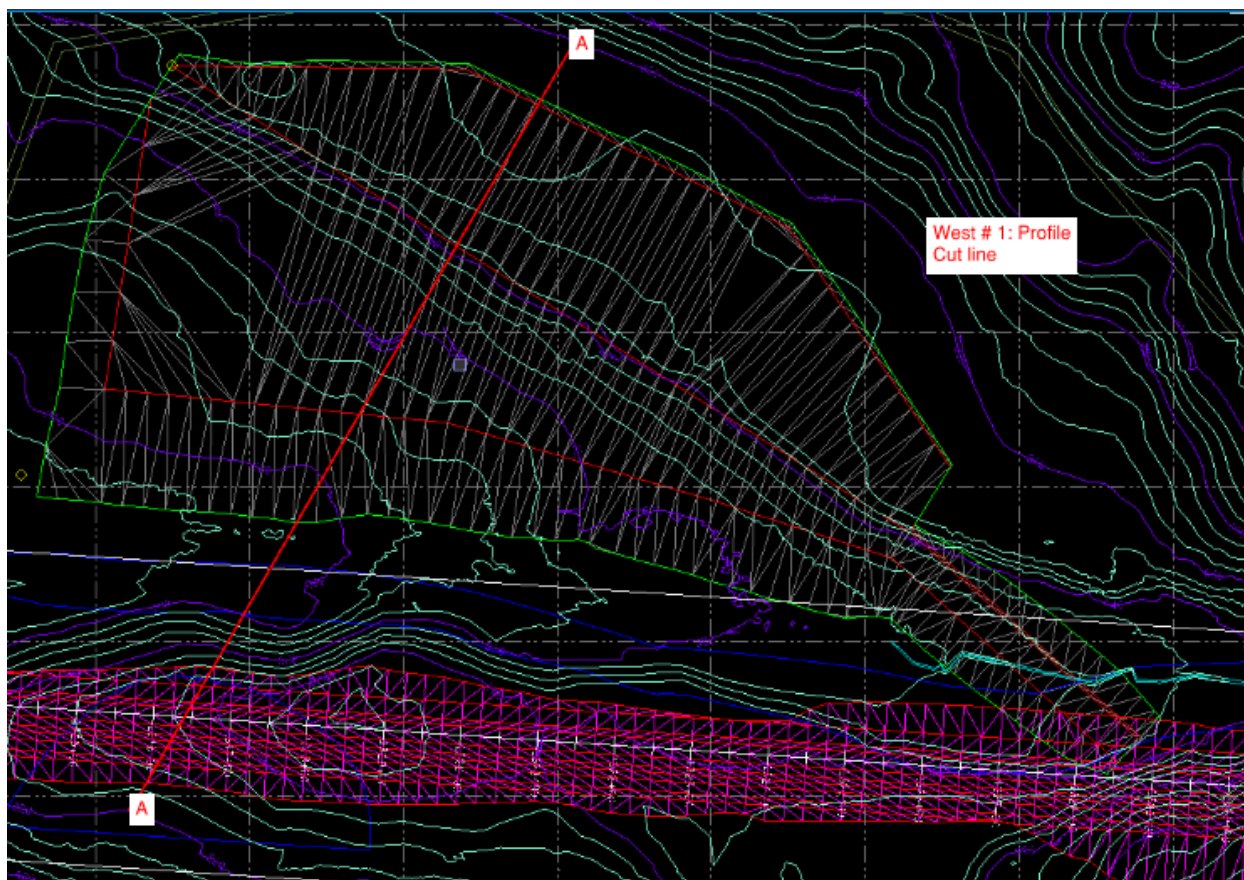
In the event of a spill or release, the initial response actions include the following:

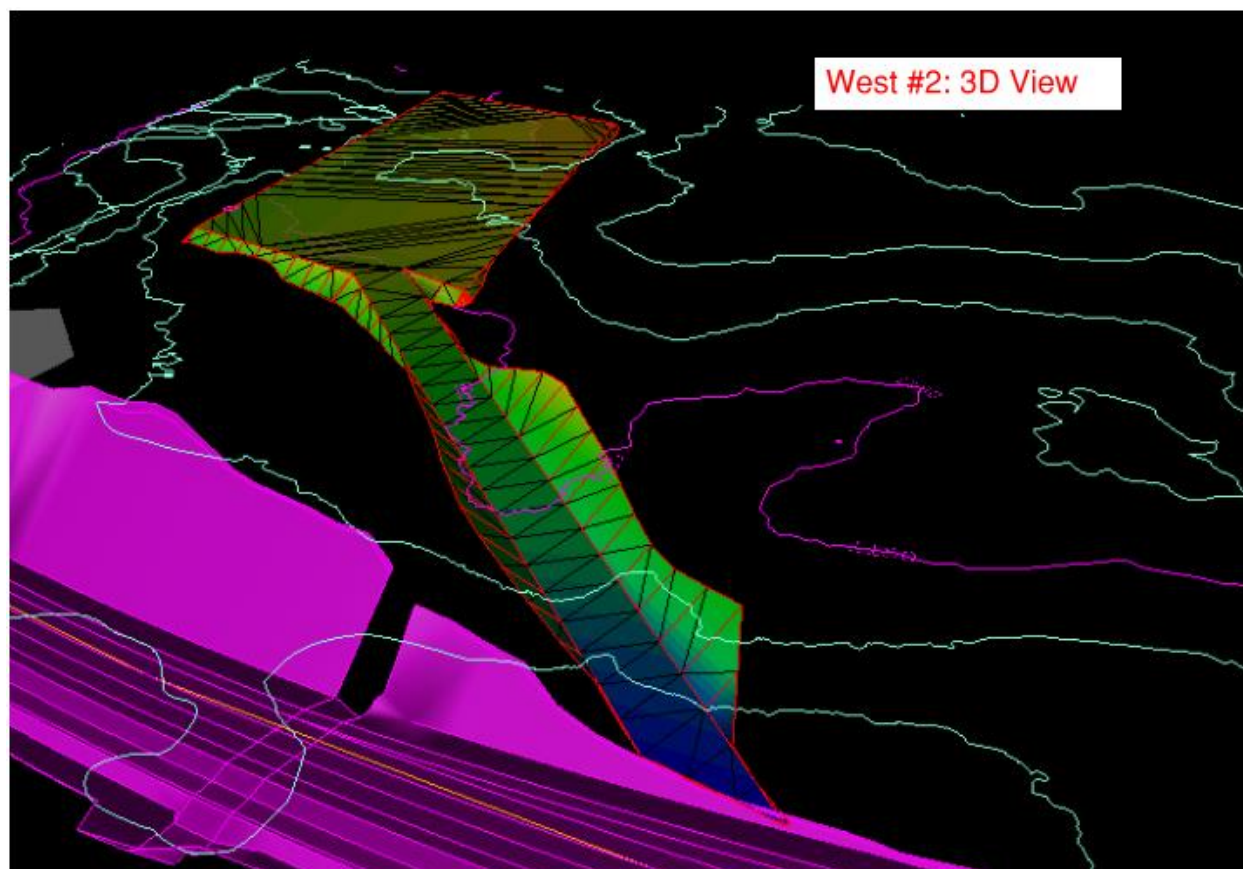
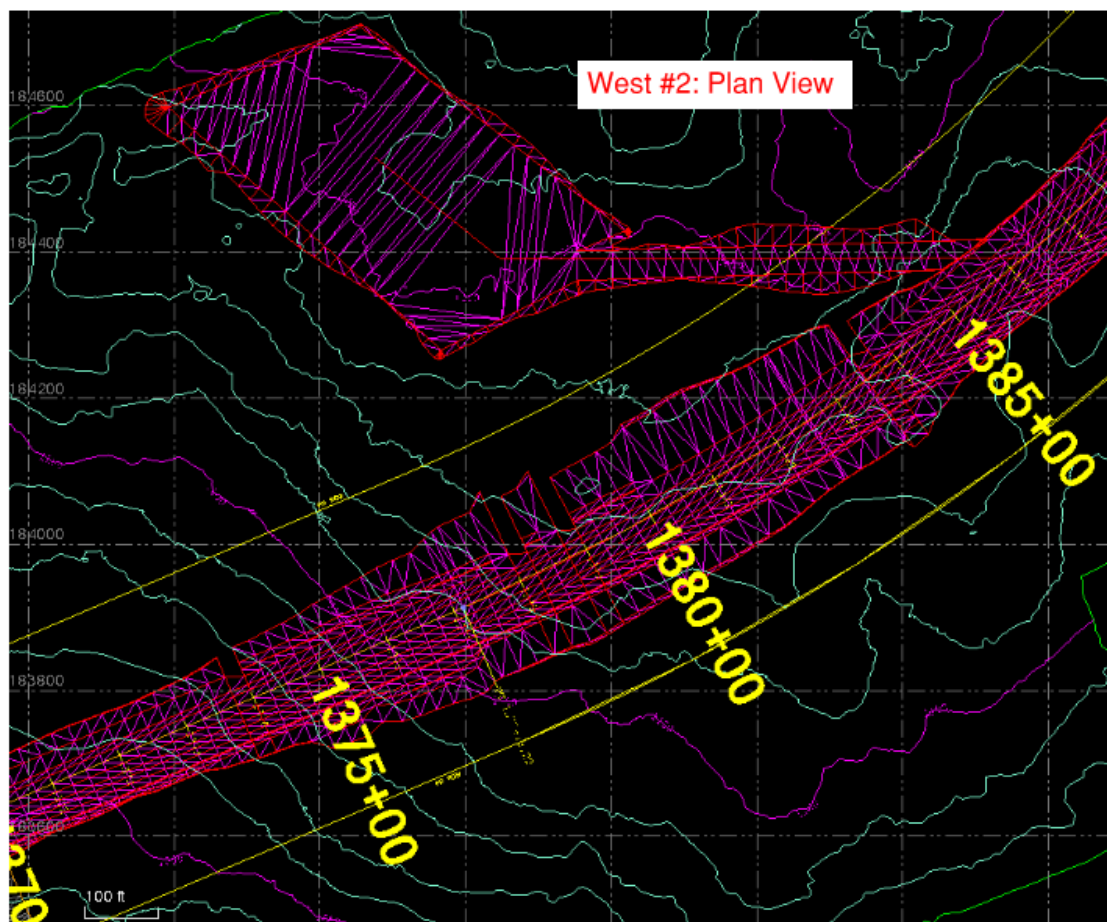
- **Action 1.** Evacuate all non-essential personnel
- **Action 2.** Identify the source of the release
- **Action 3.** Isolate equipment, restrict all sources of ignition, cordon off the area, contain and stop the discharge to the extent possible, close off drainage courses that may lead to a discharge into the waters of the State or other sensitive off-site areas.
 - Note: Only attempt to contain and stop the discharge if you have received the proper training, unless containing or stopping the discharge will involve a simple action such as closing a valve. Avoid direct contact with or the breathing of gases from the spilled product. When responding, use the proper Personal Protection Equipment (PPE) (Consult the Material Safety Data Sheet). Do not hose down or attempt to dilute the spilled material.
- **Action 4.** Provide the Project Environmental Coordinator with the following information:
 - Date and time of the release and/or discovery
 - Type of materials released and estimated quantity
 - Injuries involved, and fire and/or explosion potential
 - Need for additional assistance
 - Immediate actions taken to contain or stop the release
 - Location of the release and direction of flow
 - Probability of offsite migration and/or environmental damages
- **Action 5.** The Project Environmental Coordinator will be responsible for notifying the ADEC and the State of Alaska Department of Transportation (ADOT) and will assign additional personnel and resources to contain or stop the discharge, make the appropriate notification, and begin cleanup activities.

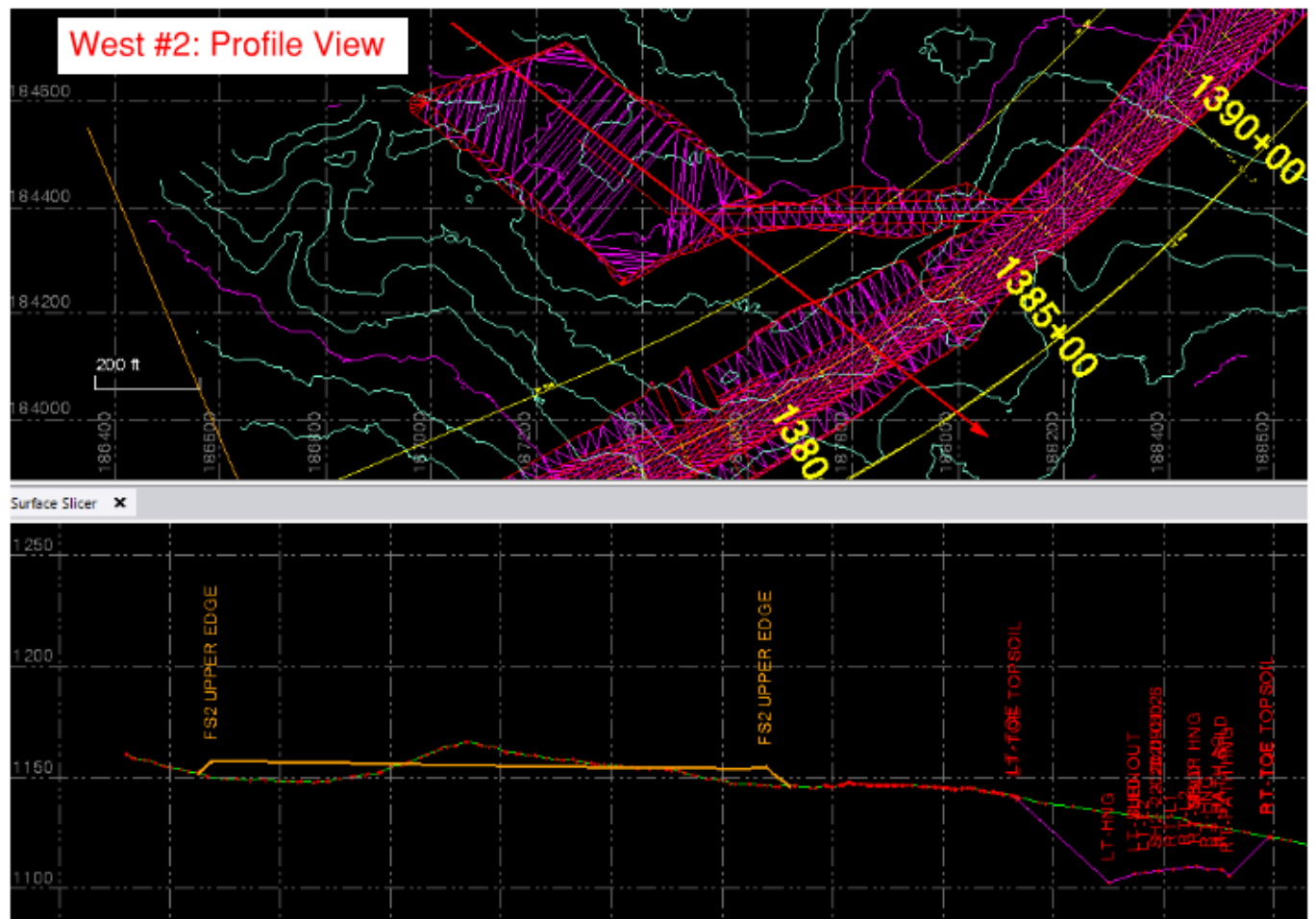
- For the cleanup of minor spills, absorbent materials are available on site at the spill kit locations.
- If the spill cannot be contained within the facility area with materials and equipment on hand, facility personnel are instructed to contain the spill as the situation allows and contact the following contractor for assistance: Emerald Alaska Inc. 2020 Viking Drive, Anchorage, AK 99501(888) 506-7220
- In accordance with Title 18 of the Alaska Administrative Code, Chapter 75.300, discharges shall be reported to the Alaska Department of Environmental Conservation:
 - As soon as there is knowledge of a...
 - Discharge or release of a hazardous substance other than oil;
 - Discharge or release of oil to water; or
 - Discharge or release, including a cumulative discharge or release, of oil in excess of 55 gallons solely to land outside an impermeable secondary containment area or structure; and
 - Within 48 hours after there is knowledge of a discharge or release, including a cumulative discharge, of oil solely to land
 - In excess of 10 gallons, but 55 gallons or less; or
 - In excess of 55 gallons, if the discharge or release is the result of the escape or release of oil from its original storage tank, pipeline, or other immediate container into an impermeable secondary containment area or structure.
 - All spills between 1 and 10 gallons will be logged monthly and reported to Alaska Department of Environmental Conservation.
- The District Environmental Manager and Area Manager shall also be notified.
- In accordance with Title 18 of the Alaska Administrative Code, Chapter 75.007, the operator shall maintain for the life of the facility a history of spills over 42 gallons, including the source, cause, amount and corrective action taken.
- All reported spills will be documented as to what action was taken to clean up the material and prevent a similar type of spill from recurring. Photos will be taken of the area and stored with the spill documentation at the project office location.

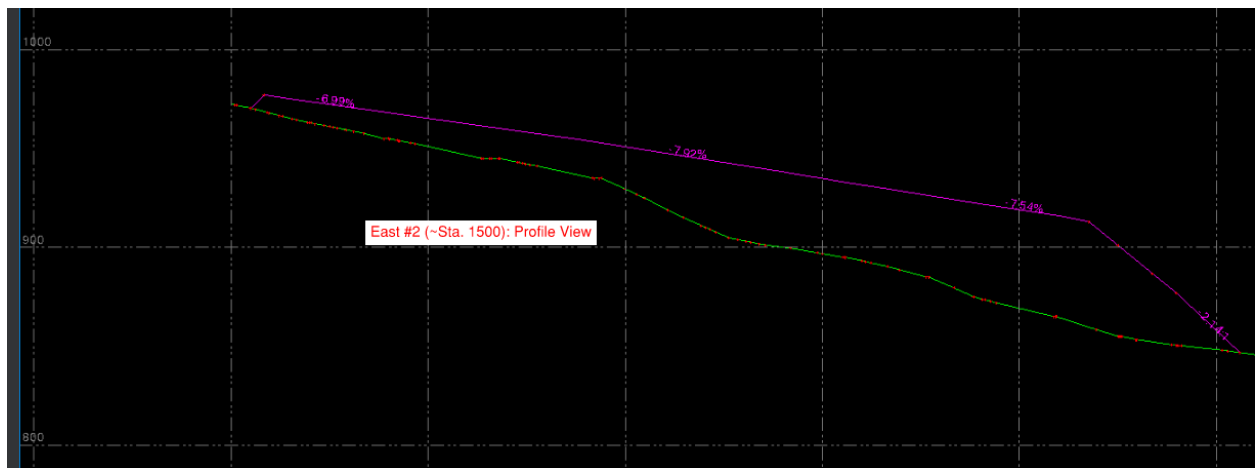
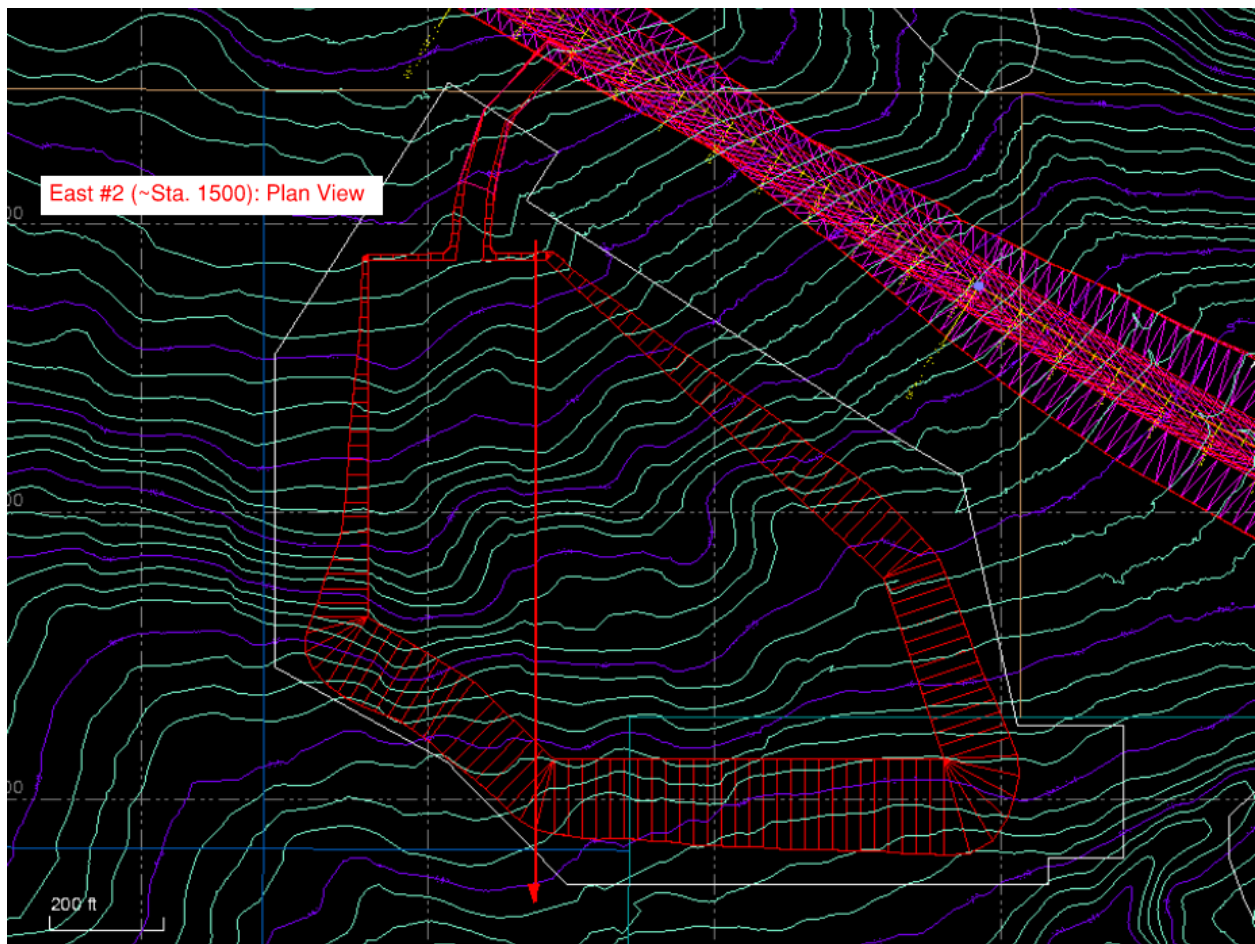
Appendix A – Site location and 3D Model

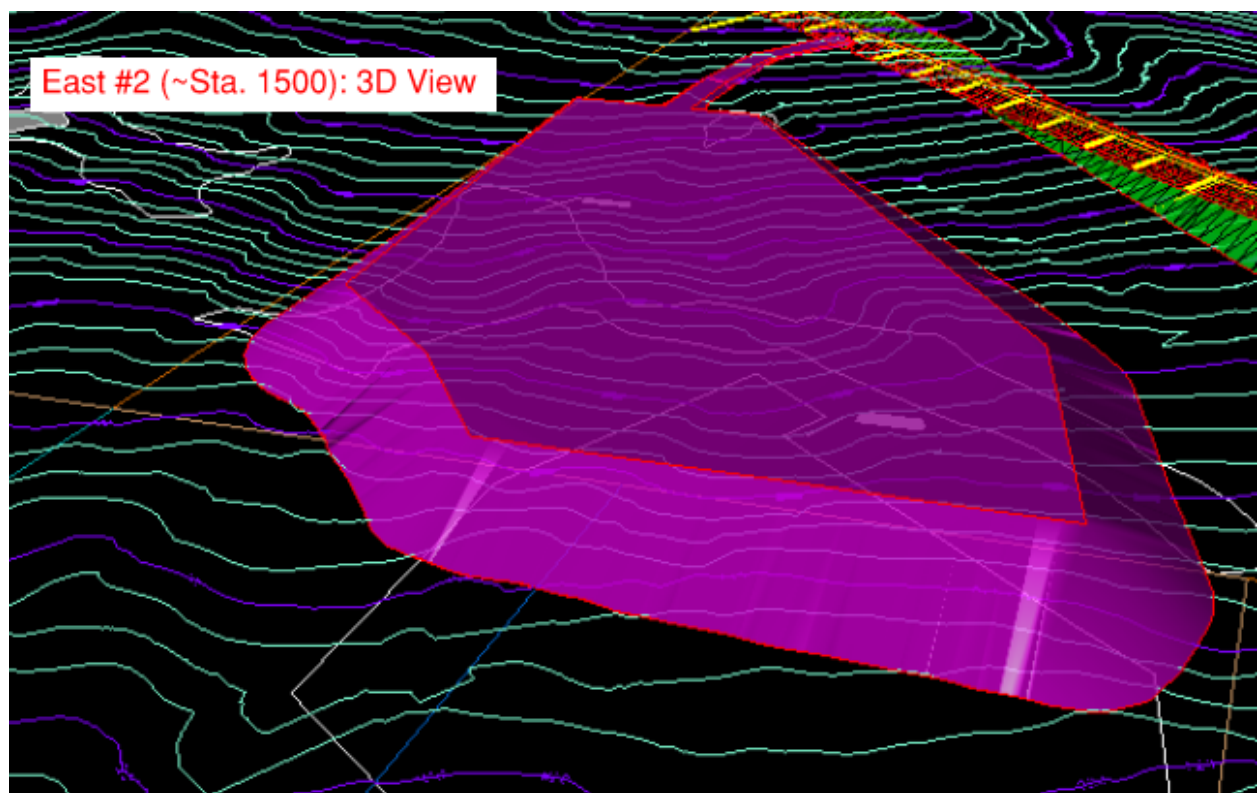
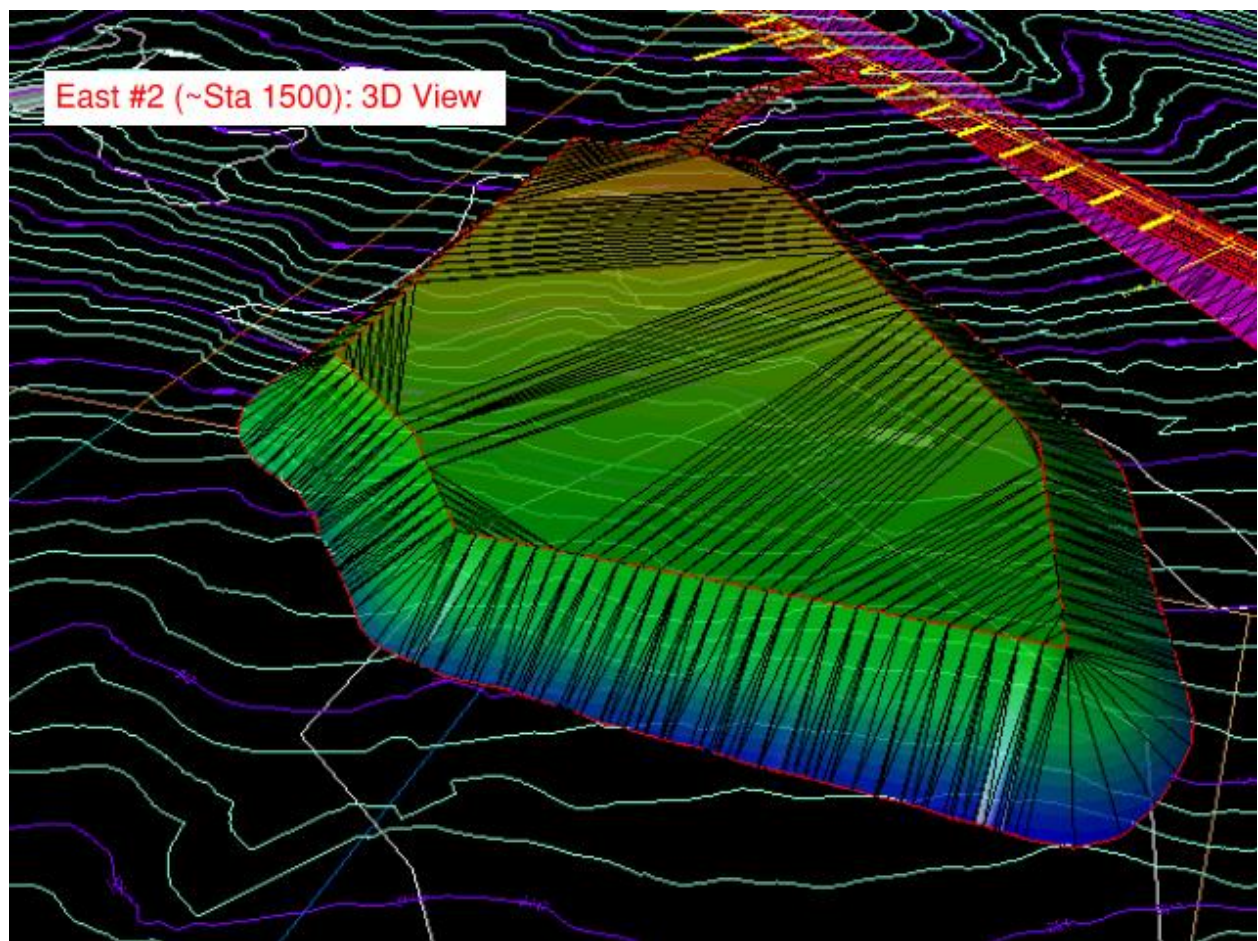




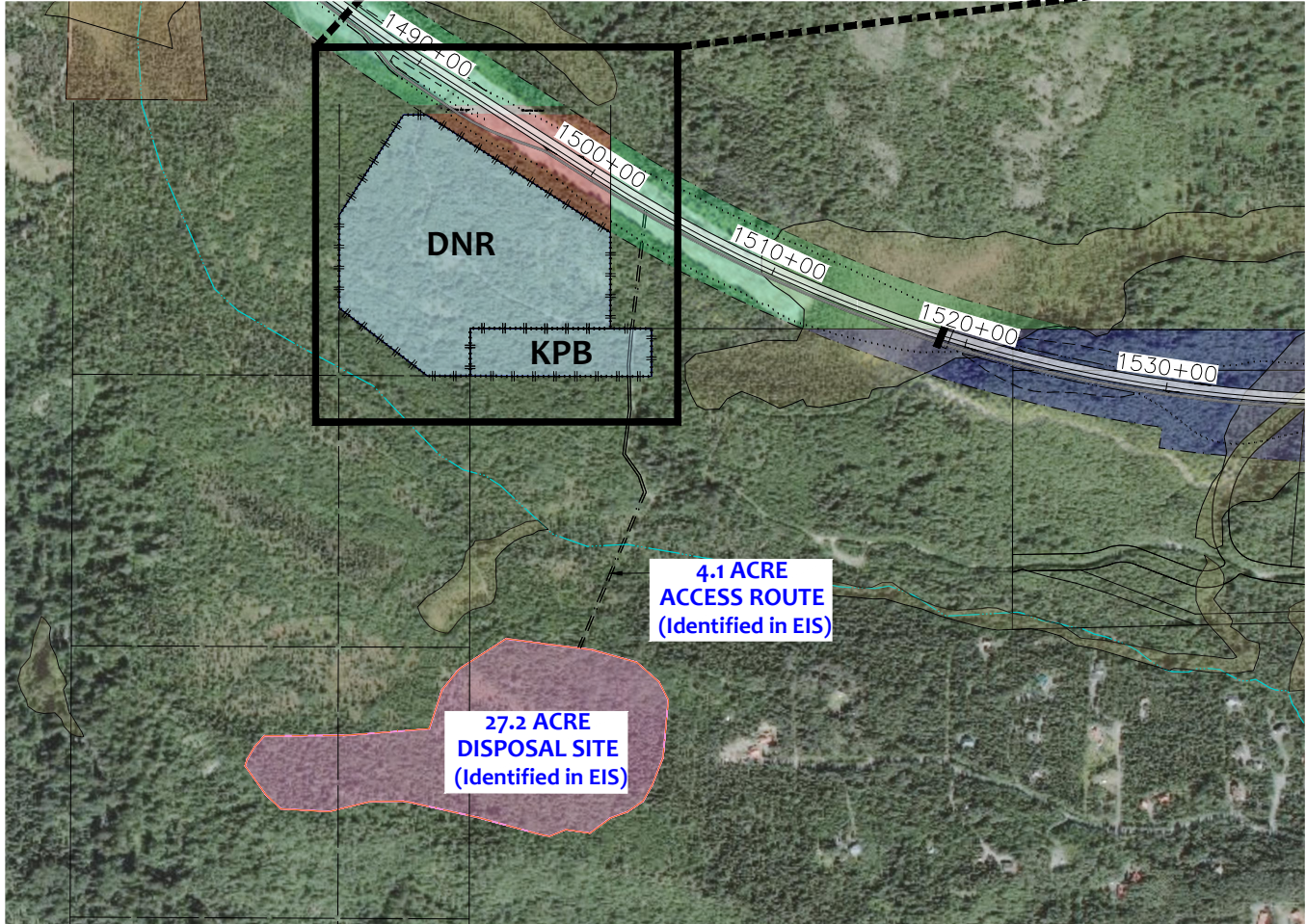
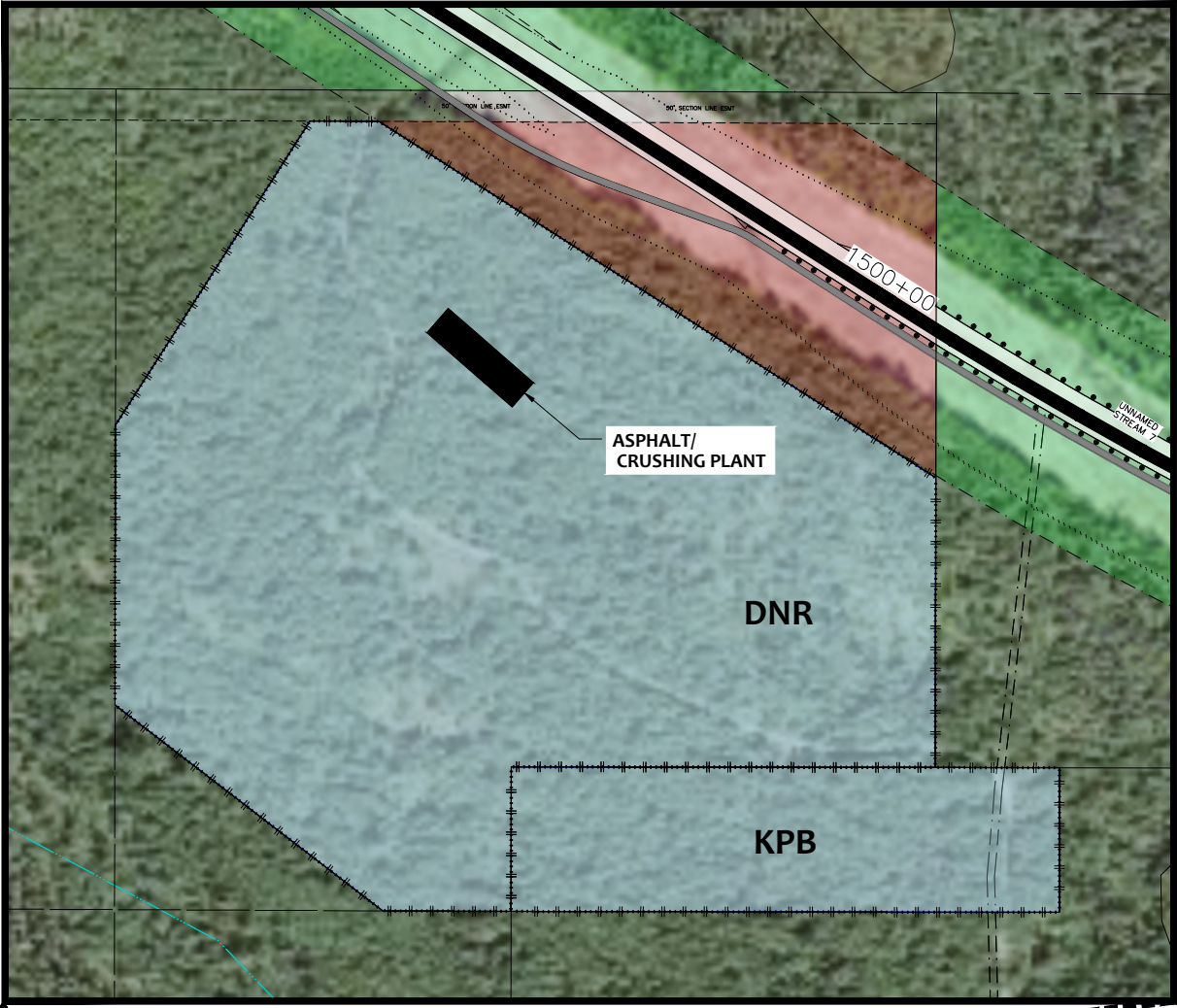








"EAST #2"
ALTERNATE 30.3 ACRE
STAGING AND DISPOSAL SITE
(NOT Identified in EIS)



EAST #2 STAGING AND DISPOSAL SITE

LEGEND

STAGING/
DISPOSAL

WETLANDS

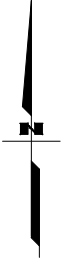
ROW
(PROPOSED)

LAND OWNERSHIP

USFS

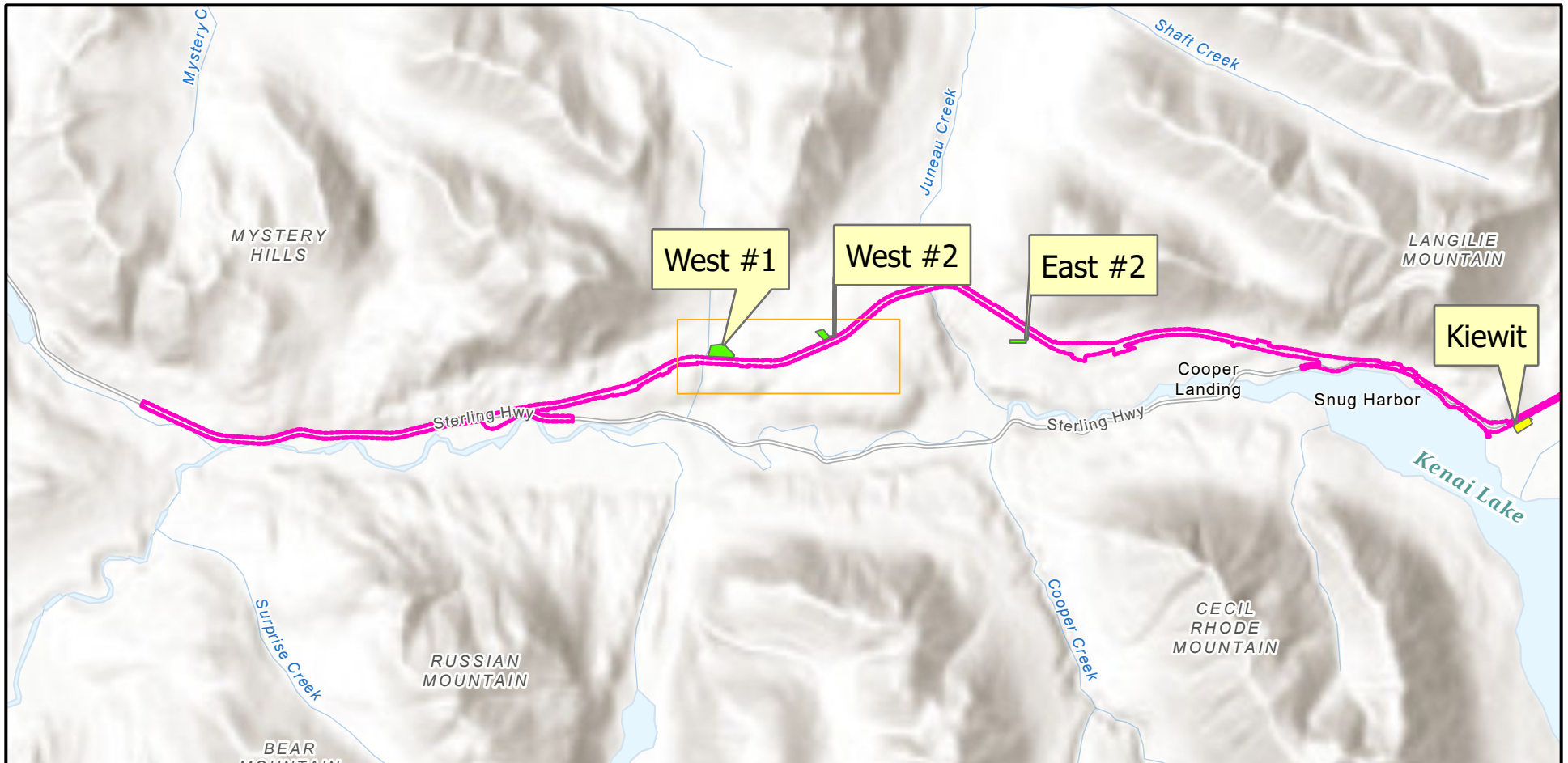
STATE

KPB



SITE	EIS		PROPOSED	
	DISPOSAL /ACCESS (ACRES)	STAGING (ACRES)	DISPOSAL (ACRES)	STAGING/ ACCESS (ACRES)
EAST #2	31.3	NA	20.4 (DNR)	4.7 (KP) 5.2 (DNR)
TOTAL IMPACTED AREA				
	31.3 ACRES		30.3 ACRES	

January 12, 2021



0 2.5 5 10 Miles



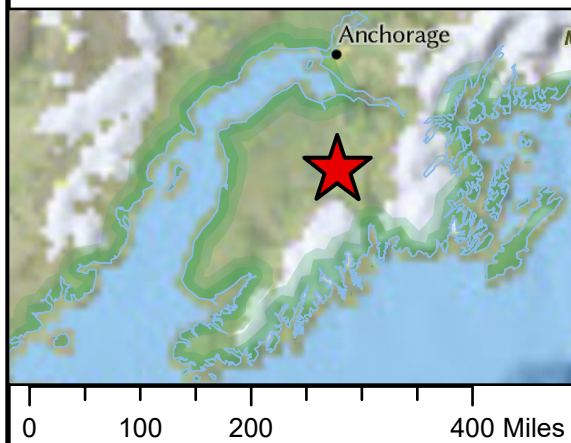
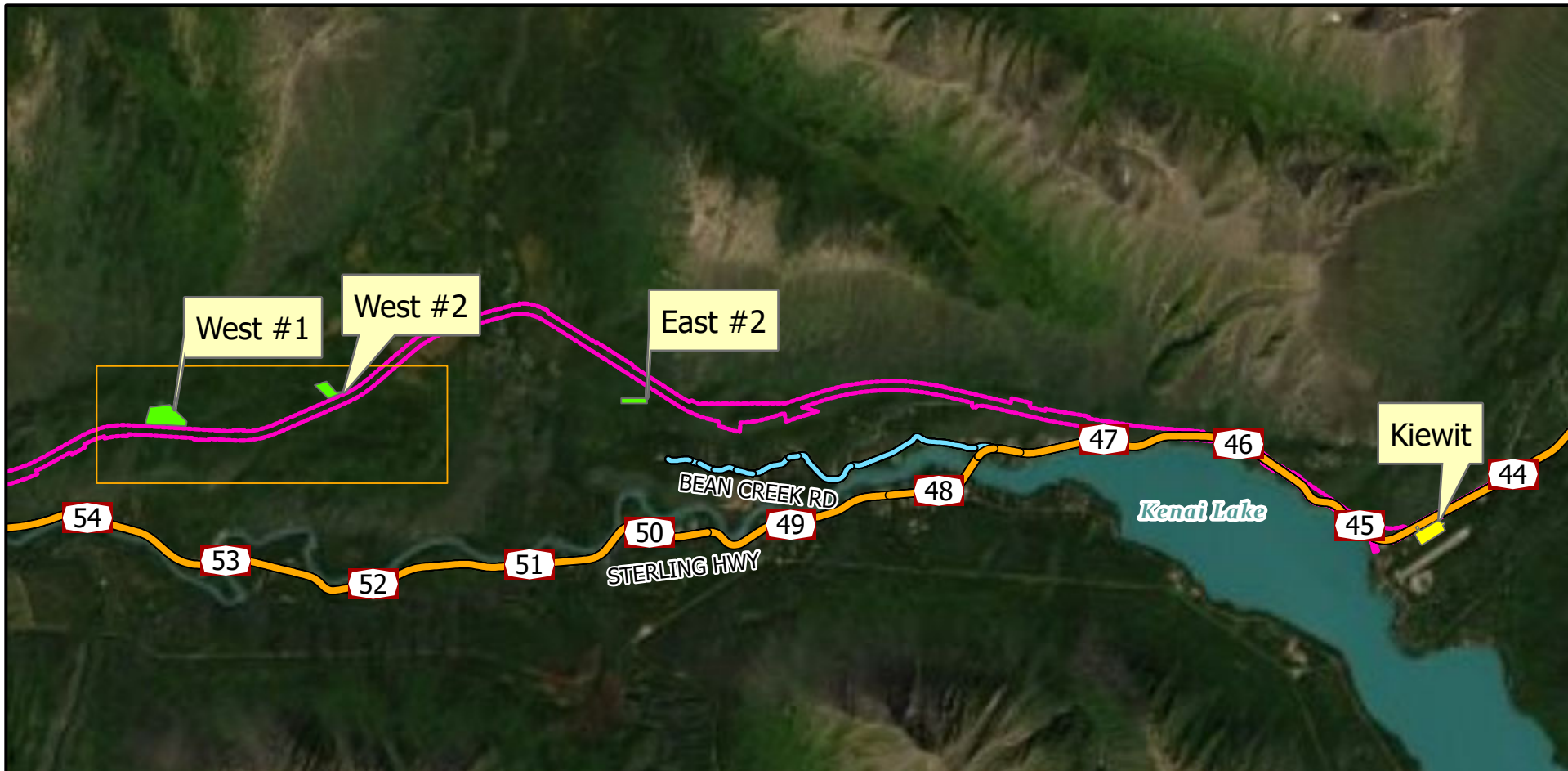
0 100 200 400 Miles

Legend

- DOT Staging Area
- Kiewit Staging Area
- Bypass Designed Alignment
- Unit 395



Sterling Highway MP 45-60 Proposed Staging Areas



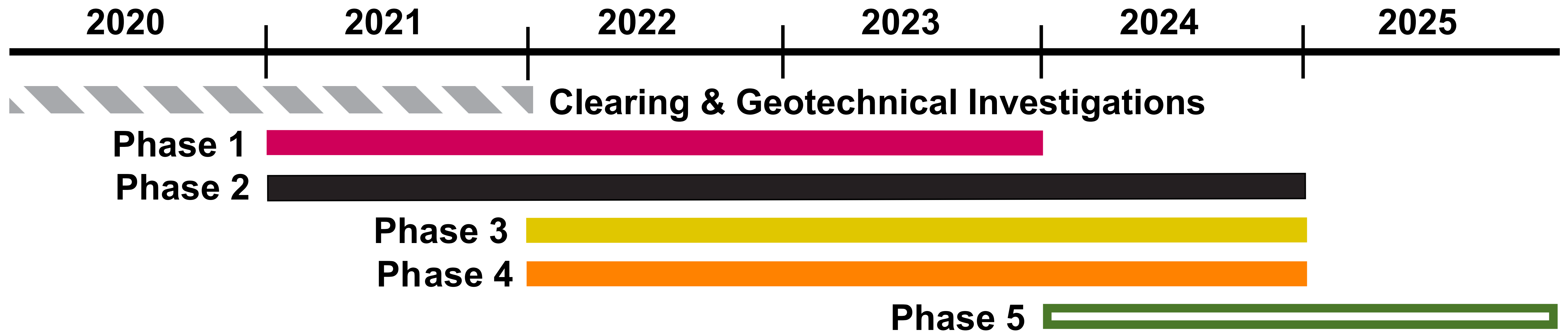
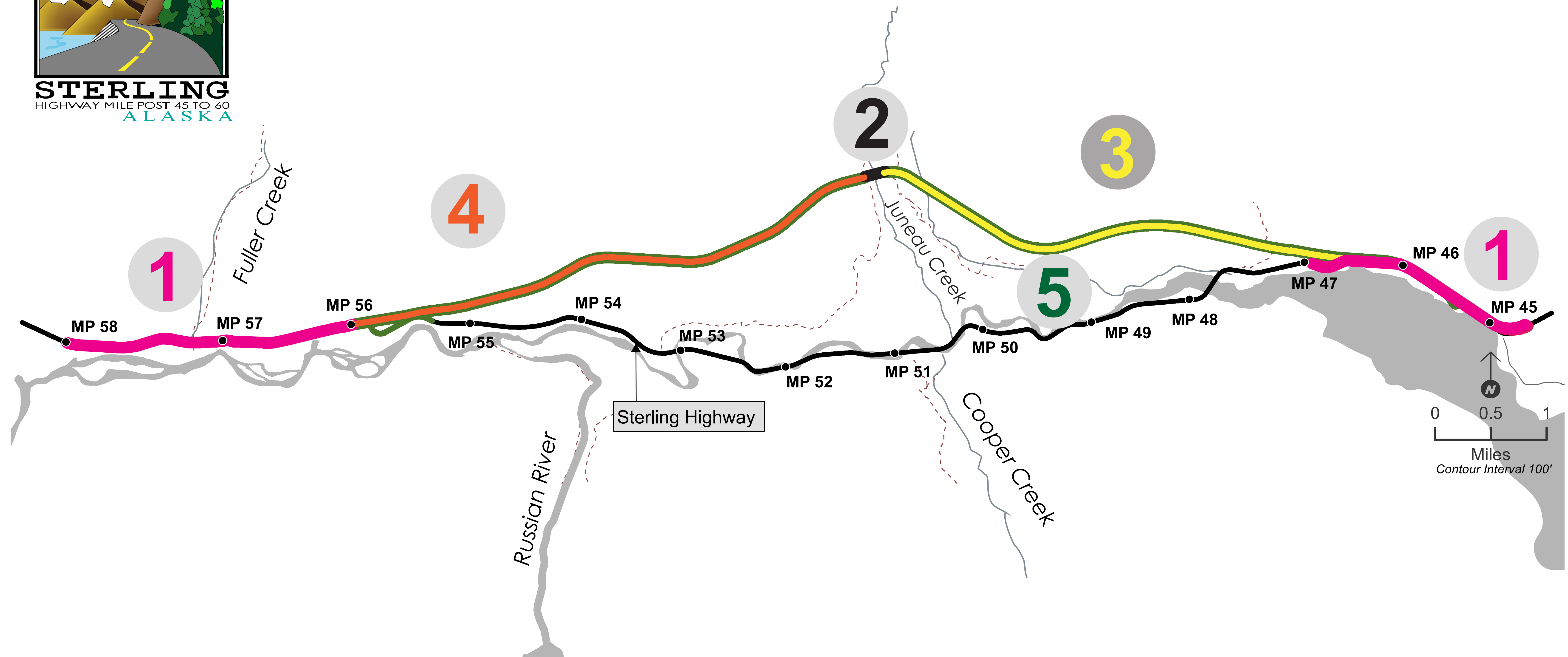
Legend

- DOT Staging Area
- Kiewit Staging Area
- Bypass Designed Alignment
- Unit 395
- State Hwy
- KPB Major Rd
- Mileposts

0 1.25 2.5 5 Miles



Sterling Highway MP 45-60 Proposed Staging Areas



Introduced by:	Johnson
Date:	04/06/21
Hearing:	05/04/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-15**

**AN ORDINANCE AMENDING KPB 21.18, ANADROMOUS WATERS HABITAT
PROTECTION, IN ACCORDANCE WITH RECOMMENDATIONS CONTAINED IN
THE FINAL REPORT OF THE WORK GROUP FORMED TO PROVIDE A REVIEW
OF CHAPTER 21.18**

WHEREAS, Resolution 2019-058, as amended by Resolution 2020-09, established the Anadromous Waters Habitat Protection Work Group (work group), for the purpose of examining the current anadromous waters habitat protection permit process and potentially recommending amendments to KPB 21.18; and

WHEREAS, the first work group meeting occurred on March 12, 2020;

WHEREAS, in total the work group held eight meetings which were all noticed and open to the public in accordance with Alaska's Open Meetings Act; and

WHEREAS, at its final meeting on January 28, 2021, the work group approved its final report; and

WHEREAS, the only work group recommendation not incorporated into this ordinance is recommendation #10, Education Recommendation, because it relates to budgetary matters and did not recommend a change to borough code; and

WHEREAS, the work group's final report is available on the borough's website and accompanies this ordinance; and

WHEREAS, the Kenai Peninsula Borough Planning Commission, at its regular meeting of March 15, 2021, recommended approval by unanimous consent;

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

SECTION 1. That KPB 21.18.010(G) is hereby amended as follows:

KPB 21.18.010. Findings.

...

- G. The assembly finds that it is in the public interest to further public knowledge of, and the maintenance of safe and healthful conditions; prevent and control water pollution; protect anadromous fish spawning grounds, rearing waters, and migration corridors and aquatic life; control building sites, placement of structures, and land uses; and to preserve [NATIVE SHORE COVER] the riparian habitat and natural beauty. These responsibilities are hereby recognized by the Kenai Peninsula Borough.

SECTION 2. That KPB 21.18.020(A)(2) is hereby amended as follows:

KPB 21.18.020. Purpose.

- A. Protect and preserve the stability of anadromous fish through:
1. Controlling shoreline alterations and disturbances;
 2. Preserving nearshore habitat and restricting the removal of [NATURAL RIPARIAN] native vegetation;
 3. Controlling pollution sources; and
 4. Prohibiting certain uses and structures detrimental to anadromous waters and habitat.
 5. Decreasing significant erosion, sedimentation, damage to the habitat protection district, ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems.

...

SECTION 3. That KPB 21.18.025(B) is hereby amended as follows:

KPB 21.18.025. Application.

...

- B. The reach of streams subject to this Chapter shall be defined by the beginning points and end points of the anadromous waters as identified in the Catalog at the time they are approved by the assembly and as indicated by published borough GIS data, unless otherwise specified in KPB 21.18. To the extent the borough's mapping of the location of waters subject to this Chapter conflict with the location identified in the Catalog, the borough's published mapping data controls.

...

SECTION 4. That KPB 21.18.065 is hereby amended as follows:

21.18.065. - Activities not requiring a permit.

[A. THE PERMIT REQUIRED BY THIS CHAPTER IS NOT REQUIRED FOR NONCOMMERCIAL RECREATIONAL AND OTHER NON-INTRUSIVE ACTIVITIES WHICH DO NOT INVOLVE CONSTRUCTION, EXCAVATION, OR FILL OF LAND AND DO NOT RESULT IN SIGNIFICANT EROSION, SEDIMENTATION, DAMAGE TO THE HABITAT PROTECTION DISTRICT, AN INCREASE IN GROUND OR SURFACE WATER POLLUTION, AND DAMAGE TO THE RIPARIAN WETLANDS AND RIPARIAN ECOSYSTEMS.]

A permit required under this chapter is not required for:

A. Listed vegetation removal activities. Natural vegetation on land abutting lakes and streams protects scenic beauty, controls erosion, provides fish and wildlife habitat, moderates temperature, stabilizes the banks, and reduces the flow of effluents and nutrients from the shoreland into the water. Vegetation removal and land disturbing activities within the habitat protection district are prohibited, with the following exceptions [WHICH DO NOT REQUIRE A PERMIT]:

1. Routine maintenance of existing legally established landscaping and landscape features developed prior to regulation by KPB 21.18, in the habitat protection district, may be continued without a permit. To be considered routine maintenance, activities must have been consistently carried out so that lawns or ornamental plants predominate over native or invasive species. Maintenance is performed with hand tools or light equipment only. Tree removal is not included. "Routine maintenance" activities include mowing; pruning; weeding; planting annuals, perennials, fruits and vegetables; and other activities associated with an ornamental landscape.
2. Pruning of trees and woody shrubs for the health and/or renewal of vegetation shall not result in removal of more than 25% of the living crown of a tree, nor jeopardize the health and natural shape of a tree or shrub.
3. The removal of trees downed by force of nature.
4. The planting of native vegetation does not require a permit provided runoff and erosion are controlled and do not enter the water body.

- B. A single flagpole with a surface area footprint not to exceed 4 square feet and above ground height not to exceed 30 feet.

...

SECTION 5. That KPB 21.18.071(A) and (A)(1) are hereby amended as follows:

21.18.071. Staff permits.

- A. An application for a permit shall be made and a permit issued before commencement of certain activities, uses, and structures set forth in this section if they do not result in significant erosion, sedimentation, damage to the habitat protection district, an increase in ground or surface water pollution, and damage to the riparian wetlands and riparian ecosystems. Property owners are encouraged to contact the Kenai River Center staff to determine if these impacts are likely to occur before starting the project. An application for a permit shall be made to the Kenai Peninsula Borough planning department central office or at the river center. Upon determination that the submitted information of record supporting the permit application meets the requirements of this section, staff shall issue a permit for the following activities, uses, and structures in the habitat protection district:

1. Tree and Shrub Management

- a. A tree or shrub, or portion thereof, may be removed for one or more of the following reasons:

- (i) The tree or shrub, or portion thereof, is dead[.];
- (ii) The tree or shrub is a safety hazard to persons or property[.]; or
- (iii) The tree or shrub removal is for the purpose of preventing the spread of disease to other trees.

Whenever a tree is removed, it shall be replaced with two seedlings less than 5.5 feet tall of a species native to the region.

...

SECTION 6. That KPB 21.18.072 is hereby repealed and replaced as follows:

21.18.072. Limited commercial activity within habitat protection district.

Within the habitat protection district and subject to the requirements of this chapter, the planning commission may issue a permit for commercial activities to be

conducted within a line parallel to and 900 feet west of the section line common to Section 4 and Section 5 of Township 5N, Range 11 W, Seward Meridian (approximately near river mile 1) to the north 1/16th aliquot division line of Section 17, T5N, R11W, Seward Meridian (approximately near river mile 3.5). Commercial activities are operations, uses, structures or other activities implemented for a private business purpose. Public parks, docks, and other public infrastructure are not considered commercial activities for purposes of this section.

A. Activities not requiring permit. Commercial activities of the same nature as those allowed under KPB 21.18.065 do not require a permit under this section.

B. Allowed Activities. The following commercial activities, uses or structures may be permitted under this section:

1. Dock and boat launch.
2. Stairs and pedestrian use boardwalks.
3. Gas, electric, water or other utility connections, lines, or poles.
4. Other activities, uses, or structures that either do not expand the applicant's surface area footprint within the habitat protection district or are necessary to the operation of the applicant's business and cannot be located outside of the habitat protection district due to conditions specific to the property. The burden is on the applicant, through a registered professional engineer, to show that conditions specific to the property exist.

C. General standards. The following standards apply to permits issued under this section:

1. The use or structure will not damage the riparian ecosystem or riparian wetlands. If substantial evidence supports a finding that the use or structure will damage the riparian ecosystem or riparian wetlands, then mitigation shall be required.
2. Granting of the permit shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough code, and other applicable planning documents adopted by the borough;
3. The development of the use or structure shall not physically damage the adjoining property;

4. The proposed use or structure is water-dependent or does not expand the surface area footprint of the structure or use in the habitat protection district.
 5. Applicant or owner's compliance with other borough permits and ordinance requirements.
 6. If the use or structure expands the applicant's surface area footprint within the habitat protection district, then appropriate mitigation shall be required in order to offset impacts to the habitat protection district.
- D. General Conditions. The planning commission may impose permit conditions that it finds are necessary to meet the standards under this section and establish such conditions on the commercial activity, use or structure, for which the permit is granted as it determines necessary to prevent erosion, sedimentation, ground or surface water pollution, or damage to the habitat protection district, riparian wetlands, or riparian ecosystems. The planning commission may require the performance of appropriate mitigation to offset impacts that the planning commission finds may occur as a result of the proposed project or activity.
- E. Prohibited activity. A commercial activity, use or structure, that is not allowed under this section and does not qualify for prior existing status under KPB 21.18.090 is prohibited.
- F. Application procedure. A person seeking a permit under this section must complete the application and pay any applicable filing fee(s) to the river center on a form provided by the river center and receive planning commission approval prior to commencement of the project. An applicant's failure to abide by the terms and conditions of the planning commission's resolution approving the permit is grounds for revocation of the permit and removal of all non-compliant uses or structures.

SECTION 7. That KPB 21.18.075 is hereby amended as follows:

21.18.075. Prohibited uses and structures.

Any use or structure within the habitat protection district that is not permitted [IN] or allowed under KPB 21.18.065, KPB 21.18.071, KPB 21.18.072, or KPB 21.18.081 is prohibited.

SECTION 8. That KPB 21.18.100(B) is hereby amended as follows:

21.18.100. Administration by cities – Delegation – Legal proceedings.

- A. The administration and enforcement of this ordinance may be undertaken by a city.
- B. A city may adopt the standards established in this chapter or prescribe standards more stringent than those established in this chapter for the areas of the city within the habitat protection [AREA] district or other areas regulated by this chapter. A conditional use permit issued by a city planning commission may serve to satisfy the requirements of 21.18.072 and 21.18.080.

...

SECTION 9. That KPB 21.18.140 is hereby amended as follows:

21.18.140. Definitions.

As used in this chapter:

“100-year floodplain” means the land area susceptible to being inundated by water from any source during a 100-year flood, which is a flood event that has a 1 percent change of being equaled or exceed in any year.

...

"Conditional use" shall mean a use that would not be appropriate without restrictions throughout the habitat protection district[AREA] but which, if controlled as to number, area, location, relation to the habitat or method of operation, would not cause or lead to significant erosion, sedimentation, damage to the habitat protection district, an increase in ground or surface pollution and damage to riparian wetlands and riparian ecosystems.

...

“Elevated light penetrating structures” mean structures, including walkways, that are off the ground, allow for sunlight ingress, and constructed in such a manner that allow vegetation to grow up to prevent vegetation trampling and increased sedimentation caused by recreational use activities within the habitat protection district.

...

"Ground or water pollution" shall mean the discharge, application, spread or release of chemicals, toxic materials, fuels, pesticides, petroleum based fuels on or into the soil and waters within the habitat protection [AREA] district.

“Habitat protection district” shall mean the anadromous waters habitat protection district land area as established in KPB 21.18.040.

...

“Impervious Material” means material that impedes or prevents natural infiltration of water into soil.

...

"Mitigation" means the reduction of adverse effects of a proposed project by considering:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and
5. Compensating for the impact by replacing or providing a comparable substitute.

"Native vegetation" means [NATIVE PLANT COMMUNITIES THAT ARE UNDISTURBED OR MIMICKED] the indigenous flora, to include all plant life, which naturally and historically occur in the Kenai Peninsula Borough region. A species shall be considered non-native if it is tracked and listed on the Alaska Center for Conservation Science’s Non-Native Plant Species List.

“Riparian” means land abutting anadromous waters subject to this chapter.

...

“Shrub” means a woody perennial plant differing from a tree by its low stature and by generally producing several basal stems instead of a single bole and from a perennial herb by its persistent and woody stems.

...

"Wetlands" [SHALL HAVE THE MEANING GIVEN IN 16 USC § 1302 AS APPLIED TO LAND WITHIN THE HABITAT PROTECTION AREA] means land areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

SECTION 10. That this ordinance shall become effective immediately upon enactment.

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

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Legal Department

MEMORANDUM

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

THRU: Brent Johnson, Assembly Vice-President BJ
Melanie Aeschliman, Planning Director MA

FROM: Sean Kelley, Deputy Borough Attorney SK
Samantha Lopez, Acting River Center Manager SL

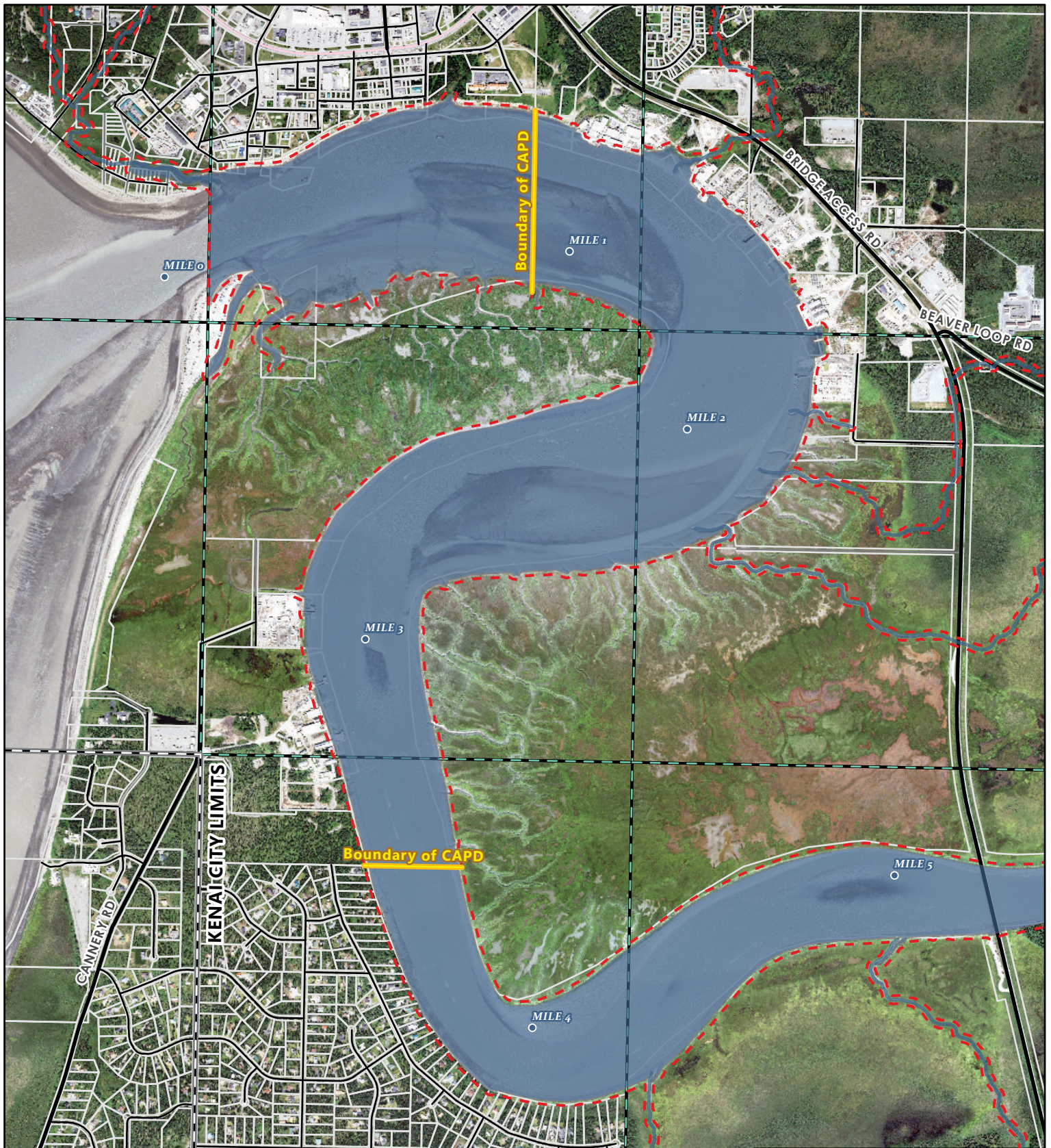
DATE: March 25, 2021

RE: Ordinance 2021-15, Amending KPB 21.18, Anadromous Waters Habitat Protection, in Accordance with Recommendations Contained in the Final Report of the Work Group Formed to Provide a Review of Chapter 21.18 (Johnson)

The assembly formed the Anadromous Waters Habitat Protection Work Group (work group) via Resolution 2019-058, as amended by Resolution 2020-09, for the purpose of examining the current anadromous waters habitat protection permit process and potentially recommending amendments to KPB 21.18.

The final report, approved by the work group January 28, 2021, provides discussion and justification for the recommendations. The recommendations range from a flagpole exemption to "housekeeping" items that are aimed to clean up and clarify code to repeal and replace KPB 21.18.072 concerning limited commercial activity within the habitat protection district. A map provided by GIS that depicts the recommended commercial activity permit area and the final report accompanies this ordinance.

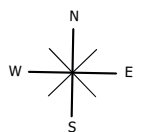
Your consideration of this ordinance is appreciated.



Commercial Activity Permit District (CAPD)

- Boundary Of CAPD
- Approximate River Mile
- 21.18 Anadromous Streams
- - - Approximate Boundary of 21.18 Habitat Protection District

- City Limits
- Section Lines
- Tax Parcels



0 0.5 Miles

Kenai Peninsula Borough
Anadromous Waters Habitat Protection Work Group
Final Report and Recommendations
(Approved January 28, 2021)



Committee Members: Robert Ruffner (Chair), Branden Bornemann (Vice Chair), Brent Johnson, Ed Oberts, Wayne Ogle, Kaitlin Vadla, Bob White, Dawson Slaughter

Staff Support: Melanie Aeschliman (Planning Director), Morgan Aldridge (River Center), Johni Blankenship (Borough Clerk), Randi Broyles (Clerk's Office), Nancy Carver (River Center), Charles Combs (River Center), Sean Kelley (Legal Department), Bobbi Lay (GIS), Samantha Lopez (River Center).

Kenai Peninsula Borough
Anadromous Waters Habitat Protection Work Group
Final Report and Recommendations
(Approved January 28, 2021)

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PURPOSE

The Anadromous Waters Habitat Protection Work Group was established to examine the current anadromous waters habitat protection permit process and potentially recommend amendments to KPB 21.18.

The establishing resolution provides that the work group shall provide a final report to the planning commission.

Resolution 2019-058, and as amended by Resolution 2020-009, established the Anadromous Waters Habitat Protection Work Group (hereinafter “work group”), “for the purpose of examining the current anadromous [waters] habitat protection permit process and potentially recommending amendments to KPB 21.18.” Per the establishing resolution, the work group “shall provide a final report” to the planning commission which may include recommendations for ordinance amendments.

KPB 21.18.010 through KPB 21.18.145 are the code sections within the borough’s Anadromous Waters Habitat Protection Chapter. The habitat protection district was established to: (A) Protect and preserve the stability of anadromous fish; (B) Provide a guide for growth and development along anadromous waters in accordance with the Kenai Peninsula Borough Comprehensive Plan; (C) Achieve the goals and implement the policies of the Kenai Peninsula Borough Comprehensive Plan; (D) Protect and enhance real property values; and (E) Continuing to enjoy the prosperity and abundance provided by anadromous fish to the citizens of the Kenai Peninsula Borough.¹

The work group was comprised of one assembly member (Johnson), one planning commission member (Ruffner), and six other members of the public appointed by the mayor and confirmed by the assembly – though one member (Slaughter) was unable to attend the meetings due to the timing of the meetings and therefore did not participate in any of the work group meetings. The group was staffed by the Borough Clerk’s Office, the Legal Department, the River Center, and GIS.

The first work group meeting was held on March 13, 2020. Due to the COVID-19 pandemic, the work group was on hiatus for approximately 7 months, reconvening on December 3, 2020. Subsequent meetings were held weekly, but for a change of schedule and two week break of the Christmas/New Years

¹ See KPB 21.18.020. – Purpose.

holiday. The meetings were noticed in accordance with the Open Meetings Act and the public was encouraged to attend; however due to the ongoing COVID-19, public health emergency all meetings were via tele/video-conference held over Zoom.

Upon reconvening the work group met via Zoom on the following dates: December 3, 2020, December 10, 2020, December 17, 2020, January 7, 2021, January 14, 2021, January 21, 2021, and January 28, 2021.

RECOMMENDATIONS

Recommendation #1 – Amendment to KPB 21.18.025(B) (GIS DATA)

Recommendation #1 carried by unanimous consent recommending an amendment to KPB 21.18.025(B) to clarify that the borough's published GIS data controls as to the location and application of waters that are subject to KPB 21.18.

Code Change: KPB 21.18.025. –Application.

...

- B. The reach of streams subject to this Chapter shall be defined by the beginning points and end points of the anadromous waters as identified in the Catalog at the time they are approved by assembly and as indicated by published borough GIS data, unless otherwise specified in KPB 21.18. To the extent the borough's mapping of the location of waters subject to this Chapter conflict with the location identified in the Catalog, the borough's published mapping data controls.

Justification and Discussion: This amendment clarifies that the borough's published GIS maps control as to the location and jurisdiction of waters subject to KPB 21.18. Currently, KPB 21.18.025 does not say anything about borough published mapping data and instead indicates that the "Atlas and Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish" (Catalog) published by the Alaska Department of Fish and Game (ADF&G) controls regarding the location and description of the waters subject to KPB 21.18. Unfortunately, the Catalog does not contain accurate descriptions or clearly identified mapping of streams subject to KPB 21.18. The borough's GIS division does provide updated and clearly identified mapping of the waters subject to KPB 21.18. Input was provided by River Center staff, and Bobbi Lay, GIS Specialist,

highlighting the need for the proposed amendment to align with current best practice. The group discussed if this would change practices on the ground. River center staff assured the group that on-the-ground measurements and real-time identification of locations of streams and rivers would always be most accurate to determine KPB 21.18 jurisdiction boundaries.

Recommendation #2 – Amendment to KPB 21.18.071(A) (Encouraging pre-project consultation with River Center staff).

Recommendation #2 carried by unanimous consent recommending an amendment to KPB 21.18.071(A) encouraging property owners to consult with River Center staff prior to starting a project under KPB 21.18.071(A) and/or going through the permitting process.

Code Change: 21.18.071. - Staff permits.

- A. An application for a permit shall be made and a permit issued before commencement of certain activities, uses, and structures set forth in this section if they do not result in significant erosion, sedimentation, damage to the habitat protection district, an increase in ground or surface water pollution, and damage to the riparian wetlands and riparian ecosystems. **Property owners are encouraged to contact the Kenai River Center staff to determine if these impacts are likely to occur before starting the project.** An application for a permit shall be made to the Kenai Peninsula Borough planning department central office or at the river center. Upon determination that the submitted information of record supporting the permit application meets the requirements of this section, staff shall issue a permit for the following activities, uses, and structures in the habitat protection district:

...

Justification and Discussion: This amendment was brought forward by River Center staff. The purpose of the change is to reduce “after the fact” permitting needs because land owners didn’t think they needed a permit after performing their own assessment. River Center staff stated that they commonly receive permit requests after the fact where the property owners contact the river center after they find out their projects required permit, either due to complaints or a misreading of ordinances. River Center staff stated its belief that this amendment to KPB 21.18.071(A) would result in increased voluntary compliance and positive partnering with borough property owners.

Recommendation #3 – Amendment to KPB 21.18.065 - (Flagpole exemption amendment, Repeal of Subsection A)

Recommendation #3 was handled as two separate amendments, each of which carried by unanimous consent, recommending amendments to KPB 21.18.065 to repeal subsection "A", to improve the formatting of this section of code, and to provide a new item – known as the flagpole exception - to allow a single flagpole within the Habitat Protection District as an activity not requiring a permit under KPB 21.18.

Code Change: 21.18.065. - Activities not requiring a permit.

[A.] [THE] **A** permit required under[by] this chapter is not required for:

[A. NONCOMMERCIAL RECREATIONAL AND OTHER NON-INTRUSIVE ACTIVITIES WHICH DO NOT INVOLVE CONSTRUCTION, EXCAVATION, OR FILL OF LAND AND DO NOT RESULT IN SIGNIFICANT EROSION, SEDIMENTATION, DAMAGE TO THE HABITAT PROTECTION DISTRICT, AN INCREASE IN GROUND OR SURFACE WATER POLLUTION, AND DAMAGE TO THE RIPARIAN WETLANDS AND RIPARIAN ECOSYSTEMS.]

A. Listed vegetation removal activities. Natural vegetation on land abutting lakes and streams protects scenic beauty, controls erosion, provides fish and wildlife habitat, moderates temperature, stabilizes the banks, and reduces the flow of effluents and nutrients from the shoreland into the water. Vegetation removal and land disturbing activities within the habitat protection district are prohibited, with the following exceptions: [WHICH DO NOT REQUIRE A PERMIT:]

1. Routine maintenance of existing legally established landscaping and landscape features developed prior to regulation by KPB 21.18, in the habitat protection district, may be continued without a permit. To be considered routine maintenance, activities must have been consistently carried out so that lawns or ornamental plants predominate over native or invasive species. Maintenance is performed with hand tools or light equipment only. Tree removal is not included. "Routine maintenance" activities include mowing; pruning; weeding; planting annuals, perennials, fruits and vegetables; and other activities associated with an ornamental landscape.
2. Pruning of trees and woody shrubs for the health and/or renewal of vegetation shall not result in removal of more than

25% of the living crown of a tree, nor jeopardize the health and natural shape of a tree or shrub.

3. The removal of trees downed by force of nature.
4. The planting of native vegetation does not require a permit provided runoff and erosion are controlled and do not enter the water body.

B. A single flagpole with a surface area footprint not to exceed 4 square feet and above ground height not to exceed 30 feet.

Justification and Discussion: The proposed amendment repealing KPB 21.18.065(A) will eliminate language related to non-intrusive activities and undefined terms therein, such as “significant erosion,” “damage to the habitat,” “increase in ground or surface water pollution,” “damage to the riparian wetlands,” and “damage to riparian ecosystems”. In the past 5 years, the river center is not aware of any activities that landowners performed under this “non-intrusive activities” paragraph. The group therefore determined that repealing this paragraph of KPB 21.18.065 would not appear to impact landowners, aligns with the intent of KPB 21.18, and would improve the overall readability of this chapter. The recommendation is to repeal subsection A as a measure of code clean-up, to make the entire chapter easier to read and understand. Additionally, an objective stated by a few group members during this KPB 21.18 review process was to provide a streamlined process for landowners desiring to install a single flagpole within the habitat protection district on their property. The flagpole amendment provides lists a single flagpole, that meets the not to exceed language provided, as an activity that does not require a permit under KPB 21.18.

[Recommendation #4 – Amendment to KPB 21.18.010\(G\) \(“Housekeeping Amendment #1”\)](#)

Recommendation #4 carried by unanimous consent recommending an amendment to KPB 21.18.010(G) to delete the term “native shore cover” and replace it with “the riparian habitat)

Code Change: KPB 21.18.010. – Findings.

- G. The assembly finds that it is in the public interest to further public knowledge of, and the maintenance of safe and healthful conditions; prevent and control water pollution; protect anadromous

fish spawning grounds, rearing waters, and migration corridors and aquatic life; control building sites, placement of structures, and land uses; and to preserve **the riparian habitat** [NATIVE SHORE COVER] and natural beauty. These responsibilities are hereby recognized by the Kenai Peninsula Borough.

Justification and Discussion: The term “native shore cover” is not used elsewhere in KPB 21.18 and is not defined. Using riparian habitat instead appears to fit better within the overall purpose and intent of KPB 21.18. This amendment was introduced at the work group’s meeting on January 7, 2021 and voted on at the work group’s meeting on January 14, 2021.

Recommendation #5 – Amendment to KPB 21.18.020 (“Housekeeping Amendment #2”)

Recommendation #5 carried by unanimous consent recommending an amendment to KPB 21.18.020 deleting the word “natural” and replacing it with the word “native” (vegetation) to align better with other references in code to native vegetation.

Code Change:

KPB 21.18.020. – Purpose.

- A. Protect and preserve the stability of anadromous fish through:
 - 1. Controlling shoreline alterations and disturbances;
 - 2. Preserving nearshore habitat and restricting the removal of [NATURAL] **native** [RIPARIAN] vegetation;

Justification and Discussion: The term “natural riparian vegetation” is not defined in code and is not used anywhere else in the chapter. The term native vegetation is defined in KPB 21.18.140. This amendment was introduced at the work group’s meeting on January 7, 2021 and voted on at the work group’s meeting on January 14, 2021.

Recommendation #6 – Amendment to KPB 21.18.071(A) (add the term “shrub”)

Recommendation #6 carried by unanimous consent recommending an amendment to KPB 21.18.071(A) to add the term “shrub”.

Code Change: KPB 21.18.071. – Staff permits.

- A. An application for a permit shall be made and a permit issued before commencement of certain activities, uses, and structures set forth in this section if they do not result in significant erosion, sedimentation, damage to the habitat protection district, an increase in ground or surface water pollution, and damage to the riparian wetlands and riparian ecosystems. An application for a permit shall be made to the Kenai Peninsula Borough planning department central office or at the river center. Upon determination that the submitted information of record supporting the permit application meets the requirements of this section, staff shall issue a permit for the following activities, uses, and structures in the habitat protection district:

1. Tree **and Shrub** Management

- a. A tree **or shrub**, or portion thereof, may be removed for one or more of the following reasons:
- (i) The tree **or shrub**, or portion thereof, is dead[.];
 - (ii) The tree **or shrub** is a safety hazard to persons or property[.]; **or**
 - (iii) The tree **or shrub** removal is for the purpose of preventing the spread of disease to other trees.

Whenever a tree is removed, it shall be replaced with two seedlings less than 5.5 feet tall of a species native to the region.

Justification and Discussion: This amendment addresses public comments that raised confusion about whether shrubs can also be removed when they are dead or pose a safety hazard.

Recommendation #7 – Amendment to KPB 21.18 throughout to replace the term “habitat protection area” with term “habitat protection district” (7 total changes in code)

Recommendation #7 carried by unanimous consent recommending replacing the term “habitat protection area” with “habitat protection district”

Code Change: There are seven instances in KPB 21.18 where this amendment would change “habitat protection area” to habitat protection district. The Impacted code sections are KPB 21.18.072 (limited commercial activity) (3 reference changes), KPB 21.18.100 (administration by cities) (1 reference change), KPB 21.18.140 (definitions) (3 reference changes).

Justification and Discussion: In KPB 21.18, “habitat protection area” is used 7 times. It is apparent that the use of “habitat protection area” was intended to have the same meaning as “habitat protection district”. This change would delete the word AREA and replace it with the word DISTRICT in all 7 places that is used as “habitat protection area”

Recommendation #8 – Amend KPB 21.18.075 (Clarify prohibited uses and structures section)

Recommendation #8 carried by unanimous consent recommending amendment to KPB 21.18.075 adding clarifying language regarding the prohibition of uses and structures under KPB 21.18 and to add a section of code to the list in this section.

Code Change: 21.18.075. - Prohibited uses and structures.

Any use or structure **within the habitat protection district** that is not permitted **or allowed under**[IN] KPB 21.18.065, KPB 21.18.071, **KPB 21.18.072**, or **KPB** 21.18.081 is prohibited.

Justification and Discussion: Current code omits KPB 21.18.072 from the list in this section. The additions aim to clarify that any use or structure within the HPD that is not allowed under code is prohibited. The phrase “not permitted in” may have been a source of confusion so that language is adjusted with this change. The group considered trying to develop a non-exhaustive list of prohibited uses or structures but determined such a list may only increase confusion.

Recommendation #9 – Amendment to KPB 21.18.140 (adds 7 definitions for unique terms used within KPB 21.18 but not defined in code)

Recommendation #9 carried by unanimous consent recommending 9 definition changes to KPB 21.18.140.

Code Change: 21.18.140. - Definitions.

9 definition additions or adjustments to code:

- “100-year floodplain” means the land area susceptible to being inundated by water from any source during a 100-year flood, which is a flood event that has a 1 percent change of being equaled or exceed in any year.
- “Habitat protection district” shall mean the anadromous waters habitat protection district land area as established in KPB 21.18.040.
- “Elevated light penetrating structures” mean structures, including walkways, that are off the ground, allow for sunlight ingress, and constructed in such a manner that allow vegetation to grow up to prevent vegetation trampling and increased sedimentation caused by recreational use activities within the habitat protection district
- “Impervious Material” means material that impedes or prevents natural infiltration of water into soil.
- “Mitigation” means the reduction of adverse effects of a proposed project by considering:
 1. Avoiding the impact altogether by not taking a certain action or parts of an action;
 2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
 3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
 4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and
 5. Compensating for the impact by replacing or providing a comparable substitute.
- “Native vegetation” means the indigenous flora, to include all plant life, which naturally and historically occur in the Kenai Peninsula Borough region. A species shall be considered non-native if it is tracked and listed on the Alaska Center for Conservation Science’s

Non-Native Plant Species List. [NATIVE PLANT COMMUNITIES THAT ARE UNDISTURBED OR MIMICKED.]

- **"Riparian" means land abutting anadromous waters subject to this chapter.**
- **"Shrub" means a woody perennial plant differing from a tree by its low stature and by generally producing several basal stems instead of a single bole and from a perennial herb by its persistent and woody stems.**
- **"Wetlands" means land areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.** [SHALL HAVE THE MEANING GIVEN IN 16 USC § 1302 AS APPLIED TO LAND WITHIN THE HABITAT PROTECTION AREA.]

Justification and Discussion: The above terms are either undefined in code or could benefit from some fine-tuning. Sources: Chester L. Arnold, Jr. & C. James Gibbons, Impervious Surface Coverage: The Emergence of a Key Environmental Indicator, 62 J. Am. Plan. Ass'n 244 (1996)(impervious surfaces/material); Alaska Department of Natural Resources, Division of Agriculture, Strategic Plan (invasive species, non-native vegetation) Alaska Center for Conservation Science (native vegetation); United States Department of Agriculture, The Alaska Vegetation Classification, Viereck et al (Shrub); U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) (Wetlands); Oregon City, Oregon (Mitigation).

Recommendation #10 – Education Recommendation

Recommendation #10 carried by majority vote recommending that the KPB River Center Staff prioritize education opportunities and partner with local non-profits and other organizations or agencies to accomplish education outreach goals. The recommendation adopted by the work group is as follows:

"Recommendation for consideration regarding education at the Kenai River Center

The working group recognizes the value in providing education on riparian habitat and the 21.18 habitat ordinance, including direct landowner outreach. Further we perceive a gap in services that would provide meaningful public engagement and help defray costs incurred

by existing River Center staff. At the same time the working group does not wish to recommend to the Assembly that the Kenai Peninsula Borough create a new position due to the current fiscal climate. To accomplish this we recommend seeking partnership through local and willing non-profit organizations.

To enhance education and outreach to landowners the working group provides the following recommendation:

- Establish a mechanism to provide for a dedicated education/ outreach position in the Kenai River Center, in conjunction with a non-profit as the employer
- Work with a local non-profit to develop an education/ outreach work plan and budget, with regular reporting back to the Assembly
- Include funding in the KPB budget to support education/ outreach to be used only if outside matching funds can be secured and only as a portion of the total budget for services provided. We suggest 25% of 1 full-time employee (FTE), approximately \$25,000.
- (Vadla Amendment, passed by majority vote) Historically the river center has operated with 5 FTE and in last two years has gone from 5 to 3 FTE. Recommendation is full staff of 5 FTE as normal operating capacity for river center. However, recognizing current budget issues 4 FTE is reasonable in short-term to achieve education outreach goals.

Seek outside funding in collaboration with non-profit to fund the remaining 75% of the budget."

Code Change: No code change required.

Justification and Discussion: The group's objective was to highlight the importance of education and outreach to borough residents, and specifically property owners who own property abutting waters that are subject to KPB 21.18.

Recommendation #11– Re-Write of KPB 21.18.072 (Limited Commercial Activities)

Recommendation #11 carried by unanimous consent recommending a re-write (repeal and replace) of KPB 21.18.072 to provide for certain industrial activities from approximately near river mile 3.5 (West of Ames Bridge) to approximately near river mile 1 on the Kenai River.

Code Change: 21.18.072. - Limited commercial activity within habitat protection district [AREA].

Within the habitat protection district and subject to the requirements of this chapter, the planning commission may issue a permit for commercial activities to be conducted within a line parallel to and 900 feet west of the section line common to Section 4 and Section 5 of Township 5N, Range 11 W, Seward Meridian (approximately near river mile 1) to the north 1/16th aliquot division line of Section 17, T5N, R11W, Seward Meridian (approximately near river mile 3.5). Commercial activities are operations, uses, structures or other activities implemented for a private business purpose. Public parks, docks, and other public infrastructure are not considered commercial activities for purposes of this section.

- A. Activities not requiring permit. Commercial activities of the same nature as those allowed under KPB 21.18.065 do not require a permit under this section.
- B. Allowed Activities. The following commercial activities, uses or structures may be permitted under this section:
 - 1. Dock and boat launch.
 - 2. Stairs and pedestrian use boardwalks.
 - 3. Gas, electric, water or other utility connections, lines, or poles.
 - 4. Other activities, uses, or structures that either do not expand the applicant's surface area footprint within the habitat protection district or are necessary to the operation of the applicant's business and cannot be located outside of the habitat protection district due to conditions specific to the property. The burden is on the applicant, through a registered professional engineer, to show that conditions specific to the property exist.
- C. General standards. The following standards apply to permits issued under this section:
 - 1. The use or structure will not damage the riparian ecosystem or riparian wetlands. If substantial evidence supports a finding that

the use or structure will damage the riparian ecosystem or riparian wetlands, then mitigation shall be required.

2. Granting of the permit shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough code, and other applicable planning documents adopted by the borough;
3. The development of the use or structure shall not physically damage the adjoining property;
4. The proposed use or structure is water-dependent or does not expand the surface area footprint of the structure or use in the habitat protection district.
5. Applicant or owner's compliance with other borough permits and ordinance requirements.
6. If the use or structure expands the applicant's surface area footprint within the habitat protection district, then appropriate mitigation shall be required in order to offset impacts to the habitat protection district.

- D. General Conditions. The planning commission may impose permit conditions that it finds are necessary to meet the standards under this section and establish such conditions on the commercial activity, use or structure, for which the permit is granted as it determines necessary to prevent erosion, sedimentation, ground or surface water pollution, or damage to the habitat protection district, riparian wetlands, or riparian ecosystems. The planning commission may require the performance of appropriate mitigation to offset impacts that the planning commission finds may occur as a result of the proposed project or activity.
- E. Prohibited activity. A commercial activity, use or structure, that is not allowed under this section and does not qualify for prior existing status under KPB 21.18.090 is prohibited.
- F. Application procedure. A person seeking a permit under this section must complete the application and pay any applicable filing fee(s) to the river center on a form provided by the river center and receive planning commission approval prior to commencement of the project. An applicant's failure to abide by the terms and conditions of the planning commission's resolution approving the permit is grounds for revocation of the permit and removal of all non-compliant uses or structures.

[THE PLANNING COMMISSION MAY ISSUE A PERMIT FOR ACTIVITIES TO BE CONDUCTED WITHIN OR USING THE HABITAT PROTECTION AREA AS PROVIDED IN THIS SECTION. PERMITS ARE REQUIRED FOR COMMERCIAL ACTIVITIES OF THE SAME NATURE AS THOSE ALLOWED UNDER KPB 21.18.065 FOR PRIVATE NON-COMMERCIAL USE UPON CONDITIONS THAT THE ACTIVITY IS LIMITED TO PEDESTRIAN USE OVER BOARDWALKS, STAIR AND DOCKS NECESSARY TO ALLEVIATE THE INCREASED LEVELS OF ACTIVITY ATTENDANT TO THE COMMERCIAL ACTIVITY. A PERMIT MAY NOT BE ISSUED UNLESS THE PLANNING COMMISSION DETERMINES THE ACTIVITY WILL BE CONDUCTED IN A MANNER THAT DOES NOT RESULT IN SIGNIFICANT EROSION, SEDIMENTATION, DAMAGE TO THE HABITAT PROTECTION DISTRICT, AN INCREASE IN GROUND OR SURFACE WATER POLLUTION, AND DAMAGE TO RIPARIAN WETLANDS AND RIPARIAN ECOSYSTEMS. IN GRANTING A PERMIT, THE PLANNING COMMISSION MAY ESTABLISH SUCH CONDITIONS ON THE DEVELOPMENT, USE OR OPERATION OF THE ACTIVITY OR FACILITY FOR WHICH THE CONDITIONAL USE PERMIT IS GRANTED AS IT DETERMINES NECESSARY TO PREVENT SIGNIFICANT EROSION, SEDIMENTATION, DAMAGE TO THE HABITAT PROTECTION DISTRICT, AN INCREASE IN GROUND OR SURFACE WATER POLLUTION, AND DAMAGE TO RIPARIAN WETLANDS AND RIPARIAN ECOSYSTEMS. THE ACTIVITY MUST BE CONDUCTED ON A PORTION OF PROPERTY ADJACENT TO THE PROPERTY WITHIN THE HABITAT PROTECTION AREA FOR WHICH THE PERMIT IS SOUGHT.]

Justification and Discussion: KPB 21.18.072 (Limited commercial activity within the habitat protection area) is the only section of code within KPB 21.18 specific to commercial or business activities, uses or structures with the HPD. The current wording of this section is difficult to interpret, often open to debate, and has proven to have little useful, practical application. For example, in the past 5 years, it appears that no permits have been issued under this section of code.

The proposed amendment repeals current KPB 21.18.072 and replaces it with a standard-driven permitting process specific to commercial activities. The opening paragraph establishes a permit process for commercial activities within the area described. Subsection A provides for activities that do not require a permit pursuant to KPB 21.18.065. Subsection B provides 4 categories of allowed commercial activities with the HPD. Subsection C provides the general standards applicable to a permit application under this section. Subsection D sets out the general conditions. Subsection E provides that commercial activities not permitted under this section are prohibited, unless the use or structure otherwise qualifies for prior existing status under KPB 21.18.090.

This proposed amendment provides the planning commission authority to impose permit conditions necessary to meet the general standards. The proposed amendments will require mitigation when the proposed activity seeks to expand the applicant's surface footprint within the HPD.

This amendment was requested by and worked on in collaboration with the City of Kenai Administration to allow for commercial activities permitting within the industrialized area of the Kenai River within the City of Kenai. For all intents and purposes, this would create a permitting process similar to the conditional use permit process except that it is specific to commercial activities. There was discussion about extending the permit area west to the near the mouth of the Kenai River, but that amendment did not receive a second. There was also discussion about putting this under KPB 21.18.081 as a conditional use permit but no amendment was put on the floor and the group ultimately unanimously voted to recommend this re-write of KPB 21.18.072 to provide for a clearer permitting process for commercial activities within the area described.

Code Amendments Considered by Work Group but Not Passed

1. Flagpole amendment "option 2".

Proposed code amendment language considered by the group:

21.18.065. - Activities not requiring a permit.

- C. A single flagpole with a surface area footprint not to exceed 8 square feet and above ground height not to exceed 30 feet, installed per manufacture instructions. The flagpole may be lighted by solar or 12-gauge direct burial cable from the existing residence. The cable shall be buried in a trench not to exceed 6 inches in depth or 4 inches in width using hand tools only.

Action: No action taken. A motion was not put on the floor. The work group unanimously passed the flagpole amendment language reflected in Recommendation #3 above.

2. Staff proposed amendment to KPB 21.18.071 (A) adding new number 6

Proposed code amendment language considered by the group:

21.18.071. - Staff permits.

Adding a new (A)(6):

6. **Projects disturbing no more than 1 cubic yard of material that will not have significant negative impacts within the HPD as 21.18.020 provides protection against may be permitted if staff deems appropriate based on project design and/or mitigating native vegetation restoration**

Action: Motion to recommend failed by unanimous consent. The expressed concern was providing too much discretion to permitting decisions at the staff level.

3. Housekeeping amendment #3 to KPB 21.18.071 (A)

Proposed code amendment language considered by the group:

21.18.065. - Activities not requiring a permit.

- A. [n]Noncommercial recreational and other non-intrusive activities which do not involve construction, excavation, or fill of land and do not result in significant erosion, sedimentation, damage to the habitat protection district, an increase in ground or surface water pollution, and damage to the riparian wetlands and riparian ecosystems. **Whether or not a proposed noncommercial recreational activity or other non-intrusive activity may proceed without a permit under this subsection shall be determined by river center staff after consultation with the applicant and appropriate local, state or federal regulatory authorities.**

Action: Motion to recommend failed by unanimous consent. The group discussing adding a new (A)(6) to this section, the expressed concern was providing too much discretion to permitting decisions at the staff level. Alternatively, the group instead voted to repeal KPB 21.18.065(A) to address potential issues with open-to-interpretation terms that are used in this subsection of code.

4. KPB 21.18.075 (Specific reference to Private Boat Launches)

Proposed code amendment language considered by the group:

21.18.075. - Prohibited uses and structures.

Any use or structure within the habitat protection district that is not permitted or allowed under[IN] KPB 21.18.065, KPB 21.18.071, KPB 21.18.072, or **KPB 21.18.081** is prohibited. **A developed private boat launch that does not meet the criteria for a conditional use permit under KPB 21.18.081 or under KPB 21.18.072 is prohibited.**

Action: Motion to recommend failed by unanimous consent. The group expressed concern that the public might see this as a major change and was concerned with singling out boat launches specifically, especially because as far as the group was concerned there does not appear to be an ongoing proliferation of prohibited boat launches and because state parks already regulates boat launches in the water.

5. Amending KPB 21.18.090 (Specific reference to Prior Existing Status for Private Boat Launches)

Code change: **21.18.090. – Prior Existing uses and structures.**

- E. Impervious materials placed in the habitat protection district which are not structures are not allowed as either prior existing uses or prior existing structures. The planning department may require removal of these materials. **For the purposes of this subsection, the term “impervious materials” does not include a private boat launch established prior to July 2, 2013, that otherwise meets the criteria for prior existing uses under KPB 21.18.090(D).**

Action: No action taken. A motion was not put on the floor.

6. Repealing lakes from KPB 21.18 jurisdiction

Proposed code amendment language considered by the group: The action would amend KPB 21.18.025 and the appendix to remove all lakes from KPB 21.18 jurisdiction.

Action: Motion to recommend failed. The expressed concern was that the science and majority of public comments did not support repealing lakes.

Final Report and Completion of Purpose

This report was first provided as a draft in the work group’s January 21, 2021, meeting packet. The draft report was published online in advance of the meeting as part of the work group’s packet. The work group held a final meeting on January 28, 2021 for the sole purpose of discussing and approving this final report. On January 28, 2021, the work group unanimously approved the final report reflecting the recommendations passed or considered by the work group. Upon approval of the final report, the Anadromous Waters Habitat Protection Work Group completed its purpose as set out in the assembly’s establishing legislation and then discontinued its work pursuant to Resolution 2019-058.

Introduced by:	Mayor
Date:	11/05/19
Action:	Adopted as Amended
Vote:	7 Yes, 2 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2019-058**

**A RESOLUTION ESTABLISHING AN ANADROMOUS STREAMS HABITAT
PROTECTION WORK GROUP**

WHEREAS, in 1996 the Kenai Peninsula Borough Assembly enacted KPB Chapter 21.18 which established areas for regulation of activities for habitat protection within the Kenai River watershed; and

WHEREAS, through Ordinance 2000-08 the assembly expanded the scope of KPB 21.18 to apply to ten tributaries of the Kenai River and 14 additional streams within the east side of Cook Inlet; and

WHEREAS, through Ordinance 2011-12 the assembly expanded the protection area to anadromous waterbodies as listed in the “Atlas and Catalogue of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish”; and

WHEREAS, through Ordinance 2013-18 the assembly identified regulated waterbodies as those in the “Atlas and Catalogue of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish” and in the KPB 21.18 Appendix; and

WHEREAS, on April 6, 2010, May 4, 2010, June 8, 2010, June 21, 2012, May 15, 2102, and April 7, 2013 the assembly enacted amendments to KPB 21.18; and

WHEREAS, KPB 21.18.030 requires a staff review of KPB 21.18 to be presented to the planning commission and assembly every five years beginning in 2015; and

WHEREAS, this work group would establish a public process to fully review this chapter; and

WHEREAS, the review shall recommend whether it is advisable to amend the regulations to make them consistent with the purpose and findings of KPB 21.18 and the comprehensive plan, to take advantage of new information and techniques, to correct deficiencies or difficulties which may have developed in administration, or for other reasons as staff may determine;

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

SECTION 1. That the work group is established for the purpose of examining the current anadromous stream habitat protection permit process and potentially recommending amendments to KPB 21.18.

SECTION 2. Staff support for the work group shall include a representative from the Kenai Peninsula Borough clerk's office, legal department, and the planning department.

SECTION 3. 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 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.

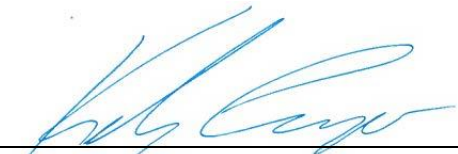
SECTION 4. That each meeting time and place shall be advertised, open to the public and subject to the Open Meetings Act.

SECTION 5. The anadromous streams work group shall have no authority to act on behalf of the assembly or the administration or communicate on the borough's behalf other than to make recommendations to the planning commission, administration and assembly.

SECTION 6. The work group shall provide a final report to the planning commission, which may include recommendations for ordinance amendments, by March 23, 2020 and then discontinue unless extended by the assembly.


SECTION 7. That this resolution shall become effective immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 5TH DAY OF NOVEMBER, 2019.



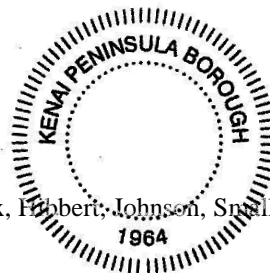
Kelly Cooper, Assembly President

ATTEST:



Johni Blankenship, MMC, Borough Clerk

Yes: Bjorkman, Blakeley, Carpenter, Cox, Hobert, Johnson, Smalley
No: Cooper, Dunne
Absent: None



Introduced by: Carpenter, Mayor
Date: 01/21/20
Action: Adopted
Vote: 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-009**

**A RESOLUTION AMENDING RESOLUTION 2019-058 TO INCLUDE
AN AT-LARGE SEAT ON THE ANADROMOUS WATERS HABITAT PROTECTION
WORK GROUP**

WHEREAS, the assembly adopted Resolution 2019-058 establishing an Anadromous Streams Habitat Protection Work Group to examine the current anadromous stream habitat protection permit process and potentially recommend amendments to KPB 21.18; and

WHEREAS, in discussions of potential members during the December 3, 2019 meeting the assembly considered adding an at-large member of the public to the work group; and

WHEREAS, this resolution amends Resolution 2019-058 to change the word “streams” to “waters” in the title and to increase the number of public members from five to six, with the sixth member representing the borough at-large;

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

SECTION 1. That the title of Resolution 2019-058 is hereby amended as follows:


**A RESOLUTION AMENDING RESOLUTION 2019-058 TO INCLUDE
AN AT-LARGE SEAT ON THE ANADROMOUS [STREAMS] WATERS HABITAT
PROTECTION WORK GROUP**

SECTION 2. That Section 3 of Resolution 2019-058 is hereby amended as follows:

SECTION 3. That the work group shall consist of at least one assembly member; one planning commissioner; and, [FIVE]six 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 mayor will appoint a member of the planning commission and provide a list of [5] six members of the public to be approved by the assembly with representation from one at-large member and one each from the north, south, central, east and west regions of the borough.


SECTION 3. That this resolution shall become effective immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 21ST DAY OF JANUARY, 2020.

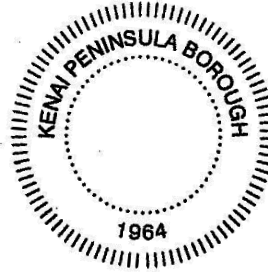


Kelly Cooper, Assembly President

ATTEST:



Johni Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Cooper
No: None
Absent: Smalley

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

FROM: Melanie Aeschliman, Planning Director *MA*

DATE: March 18, 2021

RE: Vacate the 10' Utility Easement within Tract A, Alaska State Land Survey No 96-42, adjoining the former Seward Highway right of way, granted by Alaska State Land Survey No 96-42, Plat SW 99-1; within Section 22, Township 5 North, Range 1 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2021-019V

In accordance with AS 29.40.140, no vacation of a Borough right-of-way and/or easement may be made without the consent of the Borough Assembly.

During their regularly scheduled meeting of March 15, 2021 the Kenai Peninsula Borough Planning Commission granted approval of the above vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70 by unanimous vote (10Yes, 0-No, 1-Absent).

A draft copy of the unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

March 15, 2021 Planning Commission Draft Meeting Minutes
March 15, 2021 Agenda Item E2 Meeting Packet Materials

AGENDA ITEM E. UTILITY EASEMENT VACATIONS

2. Vacate the 10' Utility Easement within Tract A, Alaska State Land Survey No 96-42, adjoining the former Seward Highway right of way, granted by Alaska State Land Survey No 96-42, Plat SW 99-1; within Section 22, Township 5 North, Range 1 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2021-019V.

Staff report given by Scott Huff.

Purpose as stated in petition: The utility easements should be vacated because the original southern lot line for Tract A as shown on ASLS No 96-42, Plat SW 99-1, Seward Recording District is vacated as well, per recorded deed of vacation serial number SW 2016-001325-0, making this utility easement unnecessary since it was created to follow the edge of the highway right of way. Also, the utility easement is not utilized for any utilities and extends through the existing Hatchery Building.

Petitioners: State of Alaska - Department of Natural Resources - Division of Mining, Land and Water of Anchorage, AK.

Location: Milepost 32.5 of the Seward Highway

Notification: Notice of vacation mailings were sent by regular mail to 2 owners of property within 300 feet. Notice of the proposed vacation was emailed to 5 agencies and interested parties.

DFG	Dubour, Adam	E-MAIL	adam.dubour@alaska.gov
AK DNR	Horton, George	E-MAIL	george.horton@alaska.gov
AK DOT	Kastner, Lorraine	E-MAIL	lorraine.kastner@alaska.gov
AK DOT & PF	Biloon, Joselyn	E-MAIL	joselyn.biloon@alaska.gov
AK DOT & PF	Hooyer, Louise	E-MAIL	louise.hooyer@alaska.gov

The public notice was posted on the Planning Department's bulletin board at the KPB Administration Building.

Comments Received:

CEA: no objection.

ENSTAR Natural Gas: No objection, comments or recommendations to the ten foot wide utility easement vacation.

GCI: No objection to the proposed vacation of the utility easement as shown along the south edge of the original property line of Tract A ASLS No. 96-42 recorded on plat 99-1, Seward Recording District.

TelAlaska: (summarized) TelAlaska does not have any facilities that will be affected by the vacation. TelAlaska does have service connections to the site including access to the hatchery building and the two housed just to the north, however the services to not require this easement. No objections or concerns with the vacation of the utility easement shown.

KPB Roads: Within KPB jurisdiction, no comments.

SUPPORTING INFORMATION:

The current utility easement was created adjoining the right of way within the first 10 feet of the building setback. The vacation is proposed to be finalized by plat. The plat for ASLS No. 2019-34 has been received and is scheduled to be reviewed by the Plat Committee on March 15, 2021.

The petition refers to the 10 foot utility easement along the former right of way. The parent plat granted a 10 foot utility easement in the front ten feet of the building setback and the full setback within 5 feet from side lot lines. While the additional depth on the side lot lines is not mentioned, it is depicted correctly on the sketch. The 20 foot building setback will also be removed with the recording of the plat due to the relocation of the right of way boundary.

Per KPB Code 20.70.110, the vacation will require consent from the Kenai Peninsula Borough Assembly. The Assembly shall have 30 calendar days from the date of approval in which to veto the Planning Commission approval. If no veto is received within the specified period, the assembly shall be considered to have given consent to the vacation. Reviewing the Assembly schedule, this action shall be heard by the Assembly at their April 6, 2021 meeting. Additional information regarding the Assembly meeting may be acquired from the Kenai Peninsula Borough Clerk's Office.

Findings:

1. The petition does not state that the utility easement proposed to be vacated is in use by a utility company.
2. ENSTAR, GCI, TelAlaska and Chugach Electric provided written non-objection to the proposed vacation.
3. Tract A, Alaska State Land Survey No 96-42, Plat SW 99-1, granted a 10' wide utility easement adjoining the south boundary of Tract A for 769.86'.
4. A Commissioner's Deed of Vacation recorded November 16, 2016 as Serial No. 2016-001325-0 vacated a portion of the Seward Highway Right of Way easement.
5. No surrounding properties will be denied utilities.
6. The existing utility easement goes through existing structures.
7. Additional utility easements will be granted on the plat for ASLS No. 2019-34.

Staff reviewed the vacation request and recommends granting approval with Findings 1-7 supporting the vacation request.

STAFF RECOMMENDATION: Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff findings, staff recommends approval of the vacations as petitioned and depicted on the sketch, subject to:

8. Consent by KPB Assembly
9. Finalize the approval of the vacation by either
 - a. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).
 - OR
 - b. Recording of a resolution within 90 days of adoption of the resolution by the Planning Commission, with the following requirements
 - i. Provide an exhibit drawing, prepared by a licensed land surveyor, clearly indicating the portion of the utility easement being vacated to be recorded with KPB Planning Commission Resolution 2020-18, becoming Page 2 of 2.
 - ii. The applicants will provide the recording fee for the resolution and its attachment to the Planning Department.
 - iii. The Planning Department is responsible for filing the Planning Commission resolution.

KPB 20.70.110:

A vacation of a street right-of-way, public area, or public easement within the borough outside of the limits of cities may not be made without the consent of the borough assembly.

The assembly shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the borough shall be considered to have given consent to the vacation.

KPB 20.70.120:

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.

END OF STAFF REPORT

Chair Martin opened the item for public comment. Hearing no one wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

MOTION: Commissioner Ecklund moved, seconded by Commissioner Gillham to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

MOTION PASSED: Hearing no discussion or objection, the motion was carried by the following vote.

Yes	10	No	0	Absent	1
Yes	Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No					
Absent	Bentz				

AGENDA ITEM E. STREET NAME CHANGE

3. Street Name Change: Beadford Avenue, a public right of way, named by plat KN 84-8; Section 17, T5N, R10W; Seward Meridian, Kenai Peninsula Borough, AK; in the Ridgeway Community; ESN 302

Staff report given by Scott Huff.

Applicant: Steve and Tesa Sturman of Kenai, Alaska

Existing right-of-way names: Beadford Avenue

Name proposed by petitioner: Brothers Avenue

Reason for Change: Petition from property owner

Background:

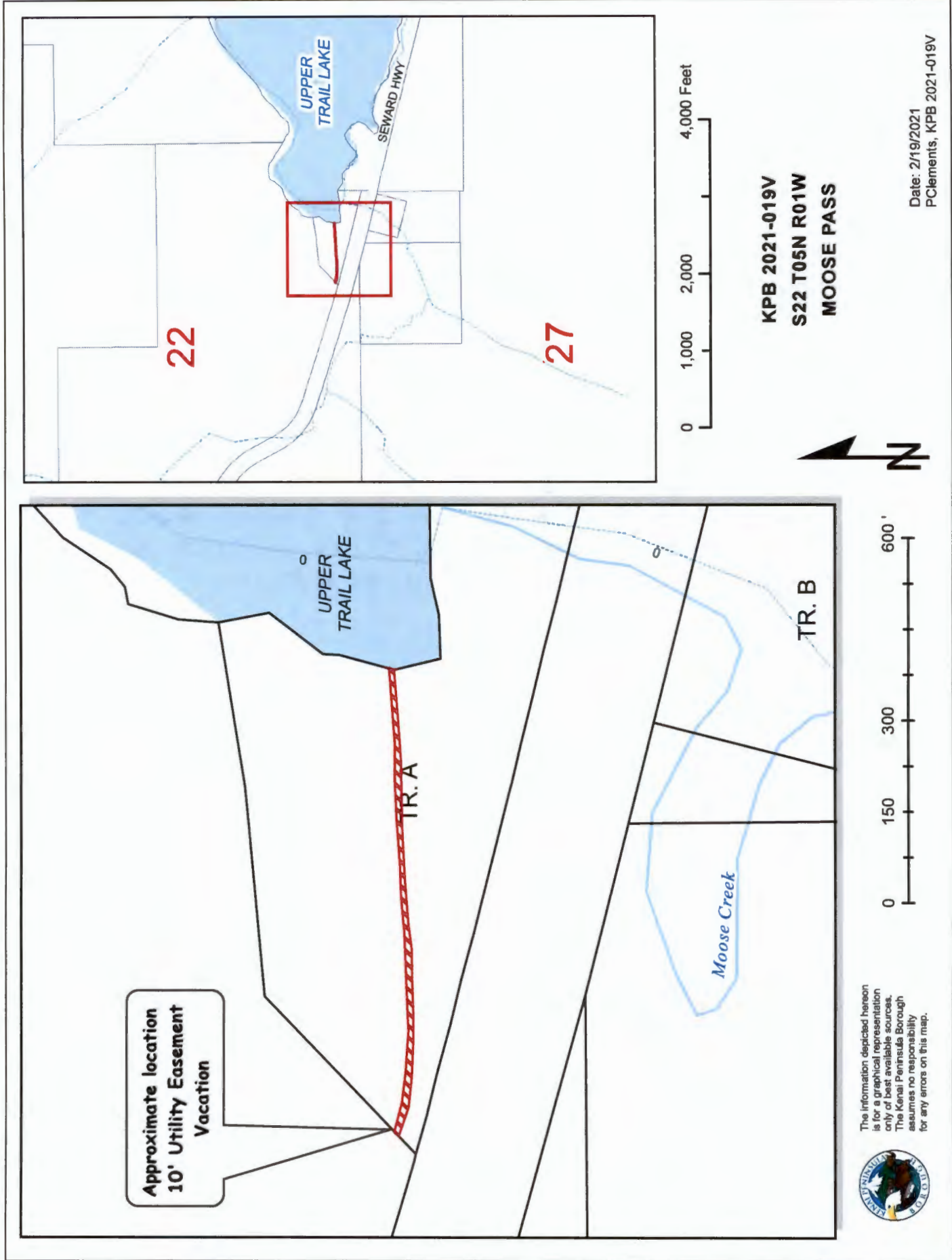
Name	BEADFORD AVE
ESN (emergency service number)	302
Community	Ridgeway
YR Named	1984
Constructed	Partially
Total Lots	8
Residential	7
Commercial	1
E911 Address	2
Mailing	0
Decision	Rename

Review and Comments:

Notice was sent by regular mail to the six property owners of the eight parcels fronting Beadford Avenue, as listed on the KPB tax roll.

E. NEW BUSINESS

- 2. Utility Easement Vacation: Vacating the 10' Utility Easement adjoining the former south boundary of Tract A, Alaska Land Survey No. 96-42, granted by Alaska State Land Survey No 96-42, Plat SW 99-1; within Section 22, Township 5 North, Range 1 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2021-019V**





The information depicted hereon is for a graphical representation only of best available sources. The Kanai Peninsula Borough assumes no responsibility for any errors on this map.



Aerial View



Utility Easement Vacation

PClements, KPB 2021-019V
Date: 2/19/2021
Imagery Seward 2020



AGENDA ITEM E. UTILITY EASEMENT VACATIONS

2. Vacate the 10' Utility Easement within Tract A, Alaska State Land Survey No 96-42, adjoining the former Seward Highway right of way, granted by Alaska State Land Survey No 96-42, Plat SW 99-1; within Section 22, Township 5 North, Range 1 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2021-019V.

STAFF REPORT

PC Meeting: March 15, 2021

Purpose as stated in petition: The utility easements should be vacated because the original southern lot line for Tract A as shown on ASLS No 96-42, Plat SW 99-1, Seward Recording District is vacated as well, per recorded deed of vacation serial number SW 2016-001325-0, making this utility easement unnecessary since it was created to follow the edge of the highway right of way. Also, the utility easement is not utilized for any utilities and extends through the existing Hatchery Building.

Petitioners: State of Alaska - Department of Natural Resources - Division of Mining, Land and Water of Anchorage, AK.

Location: Milepost 32.5 of the Seward Highway

Notification: Notice of vacation mailings were sent by regular mail to 2 owners of property within 300 feet. Notice of the proposed vacation was emailed to 5 agencies and interested parties.

DFG	Dubour, Adam	E-MAIL	adam.dubour@alaska.gov
AK DNR	Horton, George	E-MAIL	george.horton@alaska.gov
AK DOT	Kastner, Lorraine	E-MAIL	lorraine.kastner@alaska.gov
AK DOT & PF	Biloon, Joselyn	E-MAIL	joselyn.biloon@alaska.gov
AK DOT & PF	Hooyer, Louise	E-MAIL	louise.hooyer@alaska.gov

The public notice was posted on the Planning Department's bulletin board at the KPB Administration Building.

Comments Received:

CEA: no objection.

ENSTAR Natural Gas: No objection, comments or recommendations to the ten foot wide utility easement vacation.

GCI: No objection to the proposed vacation of the utility easement as shown along the south edge of the original property line of Tract A ASLS No. 96-42 recorded on plat 99-1, Seward Recording District.

TelAlaska: (summarized) TelAlaska does not have any facilities that will be affected by the vacation. TelAlaska does have service connections to the site including access to the hatchery building and the two housed just to the north, however the services do not require this easement. No objections or concerns with the vacation of the utility easement shown.

KPB Roads: Within KPB jurisdiction, no comments.

SUPPORTING INFORMATION:

The current utility easement was created adjoining the right of way within the first 10 feet of the building setback. The vacation is proposed to be finalized by plat. The plat for ASLS No. 2019-34 has been received and is scheduled to be reviewed by the Plat Committee on March 15, 2021.

The petition refers to the 10 foot utility easement along the former right of way. The parent plat granted a 10 foot utility easement in the front ten feet of the building setback and the full setback within 5 feet from side lot lines. While the additional depth on the side lot lines is not mentioned, it is depicted correctly on the sketch. The 20 foot building setback will also be removed with the recording of the plat due to the relocation of the right of way boundary.

Per KPB Code 20.70.110, the vacation will require consent from the Kenai Peninsula Borough Assembly. The Assembly shall have 30 calendar days from the date of approval in which to veto the Planning Commission approval. If no veto is received within the specified period, the assembly shall be considered to have given consent to the vacation. Reviewing the Assembly schedule, this action shall be heard by the Assembly at their April 6, 2021 meeting. Additional information regarding the Assembly meeting may be acquired from the Kenai Peninsula Borough Clerk's Office.

Findings:

1. The petition does not state that the utility easement proposed to be vacated is in use by a utility company.
2. ENSTAR, GCI, TelAlaska and Chugach Electric provided written non-objection to the proposed vacation.
3. Tract A, Alaska State Land Survey No 96-42, Plat SW 99-1, granted a 10' wide utility easement adjoining the south boundary of Tract A for 769.86'.
4. A Commissioner's Deed of Vacation recorded November 16, 2016 as Serial No. 2016-001325-0 vacated a portion of the Seward Highway Right of Way easement.
5. No surrounding properties will be denied utilities.
6. The existing utility easement goes through existing structures.
7. Additional utility easements will be granted on the plat for ASLS No. 2019-34.

Staff reviewed the vacation request and recommends granting approval with Findings 1-7 supporting the vacation request.

STAFF RECOMMENDATION: Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff findings, staff recommends approval of the vacations as petitioned and depicted on the sketch, subject to:

1. Consent by KPB Assembly
2. Finalize the approval of the vacation by either
 - a. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).OR
 - b. Recording of a resolution within 90 days of adoption of the resolution by the Planning Commission, with the following requirements
 - i. Provide an exhibit drawing, prepared by a licensed land surveyor, clearly indicating the portion of the utility easement being vacated to be recorded with KPB Planning Commission Resolution 2020-18, becoming Page 2 of 2.
 - ii. The applicants will provide the recording fee for the resolution and its attachment to the Planning Department.
 - iii. The Planning Department is responsible for filing the Planning Commission resolution.

KPB 20.70.110:

A vacation of a street right-of-way, public area, or public easement within the borough outside of the limits of cities may not be made without the consent of the borough assembly.

The assembly shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the borough shall be considered to have given consent to the vacation.

KPB 20.70.120:

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.**
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**

END OF STAFF REPORT



Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

PETITION TO VACATE UTILITY EASEMENT

PUBLIC HEARING REQUIRED

Upon receipt of complete application with fees and all required attachments, a public hearing before the Planning Commission will be scheduled. The petition with all required information and attachments must be in the Planning Department at least 30 days prior to the preferred hearing date. By State Statute and Borough Code, the public hearing must be scheduled within 60 days of receipt of complete application.

SUBMITTAL REQUIREMENTS

A utility easement vacation application will be scheduled for the next available planning commission meeting after a complete application has been received.

- ☒ \$75 non-refundable fee to help defray costs of advertising public hearing.
- ☐ Utility easement requested to be vacated was granted by subdivision plat, files as Plat No. 99-1 in Seward Recording District. **OR**
- ☐ Utility easement requested to be vacated was granted by _____ Subdivision, filed as Plat No. _____ in the _____ Recording District.
- ☐ Utility easement requested to be vacated was granted by _____ (specify type of document) as recorded under _____ in _____ Recording District.
(Copy of recorded document must be submitted with petition.)
- ☒ Comments from Chugach Electric Association attached.
- ☒ Comments from Enstar Gas Company attached.
- ☒ Comments from TelAlaska Telephone Company attached.
- ☒ Comments from GCI Cable Company attached.
- ☒ Comments from KPB Roads Department attached.
- ☐ Comments from City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
- ☒ 1 copy of the plat or map showing the utility easement to be vacated. Must not exceed 11 x 17 inches in size. Area to be vacated shall be marked clearly with cross hatching or other identifiable markings.
- ☐ If an existing improvement is encroaching into the easement, an As-Built drawing showing the encroachment must be attached.
- ☐ Yes ☒ No Is the right of way/utility easement in use by any utility company? If yes, which utility?

- ☒ **REASON FOR VACATING** The petitioner must attach a statement with reasonable justification for the vacation of the section line easement.

LEGAL DESCRIPTION OF PARCEL CONTAINING THE UTILITY EASEMENT TO BE VACATED:

ASLS 96-42, Plat 99-1, Seward Recording District	
Section, township, range <u>Sec 22, T5N, R1W</u>	
City (if applicable)	General area <u>Upper Trail Lake</u>

The petition must be signed by owners of a majority of the land affected by the section line easement proposed to be vacated. Each petitioner must include address and legal description of his/her property. Attach additional signature sheets if needed.

Submitted by:

☒ Petitioner

☐ Representative

Name (printed): <u>Gwen Gervelis DNR</u>	Signature <u>Gwen Gervelis</u> <small>Digitally signed by Gwen Gervelis Date: 2021.02.02 12:38:38 -09'00'</small>
e-mail: <u>gwen.gervelis@alaska.gov</u>	Address: <u>550 West 7th Ave, Suite 650 Anchorage, AK 99501-3576</u>
Owner of: <u>Tract A, ASLS 96-42</u>	

Petitioners:

Name (printed): <u>Michael Jokela, CRW Engineering Group</u>	Signature <u>[Signature]</u>
e-mail: <u>mjokela@crweng.com</u>	Address: <u>3940 Arctic Blvd. Suite 300</u>
Owner of: <u>Representative</u>	<u>Anchorage, AK 99503</u>

FOR OFFICE USE ONLY

RECEIVED BY _____

DATE SUBMITTED _____

KPB FILE # _____

Kenai Peninsula Borough

Office of the Borough Mayor

MEMORANDUM

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

FROM: Charlie Pierce, Mayor *CP*

DATE: March 25, 2021

RE: Confirmation of Adeena Wilcox as Borough Assessor

Pursuant to Chapter 2.20 of the Kenai Peninsula Borough Code, Adeena Wilcox is hereby submitted for confirmation as the Borough Assessor.

KPB 2.20.030 states:

The assembly shall examine the qualifications of the executive for the purpose of determining whether they comply with the requirements prescribed by statute or ordinance for the position occupied. If they comply, the assembly shall so find and shall confirm the appointment. If they find the executive not qualified, they shall deny confirmation and the mayor shall thereafter hire a qualified person. No more than 31 days shall pass after the mayor has submitted the name of a new executive officer before the assembly shall determine by majority vote whether or not the qualifications set by statute and ordinance have been met. Failure to consider the matter within this time shall be deemed to constitute a finding that the officer possesses the requisite qualifications.

Ms. Wilcox's resumé and job description are attached. Based on her qualifications, past experience, accomplishments, and proven performance, I strongly recommend confirmation.



Position Description

Kenai Peninsula Borough

Borough Assessor

Service Type: Administrative – Level 6

Definition: Under the general direction and supervision of the borough Mayor and/or his designee, the **Borough Assessor** is responsible for operation, management and administration of the Assessment Department as set forth in KPB 2.24, Assessment Department. The assessing department is responsible for identifying, valuing and maintaining accurate records of all taxable real and personal property within the boundaries of the Kenai Peninsula Borough, a second class borough, and maintains a comprehensive database of all taxable property within our borough's boundaries.

Minimum Qualifications: A bachelor's degree in a closely related field and six years of progressively more responsible experience as an assessor or deputy/assistant assessor or five years of progressively responsible real estate appraisal work including management duties. Work experience must include use of the principles, methods and techniques of real property appraisal. Must possess a basic knowledge of laws, rules and regulations governing real property appraisal. Candidate will have a demonstrated ability to exercise authority and instill confidence in managing programs subject to high scrutiny. Must demonstrate confidence and experience in public speaking. Advanced education may be substituted for up to one half of the experience requirement on a year-for-year basis; and experience may be substituted for educational requirements on a two-for-one basis (two years of additional relevant experience equates to one year of college requirement). Availability of a personal vehicle and a valid, unrestricted Alaska driver's license to perform job functions is required for this position.

1. Preferred Knowledge, Skills and Certifications:

Possession of a professional certification with the International Association of Assessing Officers (CAE or RES), the Appraisal Institute (SRPA or SREA), or Alaska Certified Assessor/Appraiser (ACAA) designation is strongly preferred.

Essential Functions:

1. Manages and evaluates activities of property appraisers and support personnel engaged in evaluating, reporting and verifying of data and records; ensures statutory deadlines are met in producing assessment rolls.

2. Assures the development of office procedures and records systems designed to produce and maintain assessment and tax rolls, tax notices and records appropriate to the mission of the department and the borough.
3. Evaluates existing methods of technical and procedural operations, implements necessary improvements; develops and initiates long and short-term appraisal programs.
4. Assumes the responsibility for the technical accuracy and internal efficiency of the department's work product.
5. Certifies the assessment roll; supervises the investigation and resolution of assessment complaints; reviews appraisal cases; defends appraisals and coordinates presentations before the Board of Equalization or in court as needed. Prepares and delivers testimony.
6. Assists in tax code changes, annexations and incorporations.
7. Maintains working relationships and communication with other departments whose work relates to the assessor's office.
8. Interprets assessment policies and valuations to the public.
9. Develops procedures for appraisal process. Organizes and directs appraisal of borough property.
10. Directs and supervises subordinate staff; conducts performance appraisals and assigns and monitors work activities.
11. Formulates and analyzes statistical data on real estate and economic conditions. Submits reports as requested to Mayor and Assembly.
12. Negotiates settlements with property owners over disputed appraisals.
13. Develops and recommends departmental budget. Administers approved budget.
14. Drafts new and modified property tax ordinances for approval by the Mayor and Assembly.

Other Functions:

1. Other related duties as assigned.

Physical Demands: While performing the duties of this job, the employee is frequently required to communicate orally; regularly required to sit; and occasionally required to use hands and fingers dexterously to operate office equipment, to stand, walk, and reach with hands and arms. Specific vision abilities required include close vision and the ability to adjust focus. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Position Description Record:

Date Updated: 11.05.2019

Reason for Update: Reformatted

Date Updated: 08.2018

Reason for Update Updated, SSB

Adeena D. Wilcox

Proven Leadership • Safety Minded • Organization Skills • Employee Relations
• Fiscally Responsible

Certified Mass Appraiser with over 30 years of real estate experience on the Kenai Peninsula. Proven success representing the Kenai Peninsula Borough (KPB) with the Board of Equalization (BOE). Clear communication skills with senior leaders and successfully implements policies and procedures while motivating and encouraging subordinates. Positive and respectful interaction with team members as well as members of the public.

CAREER SYNOPSIS

Acting Director of Assessing

Kenai Peninsula Borough

11/2020-present

The senior administrative staff for the Assessing Department. Responsible for locating, identifying and valuing all parcels within the Kenai Peninsula according to State of Alaska Statute and KPB Code. Responsible for oversight and administration of exemptions. Oversee all hiring, staffing and training of 2 departments and 20 staff.

- Prepared and presented a reduced budget to Mayor for FY2022 (3.1 Million)
- Met all department deadlines to submit the preliminary real property tax roll (65,539 parcels), Oil and Gas properties (198) and Personal Property (7,328) to vender for appeal periods.
- Oversees the administration of all exemptions managed by KPB (36,754)
- Assisted Commercial Appraiser and System Analyst to complete all required tasks due to staffing shortage.
- Suggested and implemented a weekly safety program for appraisal staff.
- Worked with departments of Planning, GIS, Purchasing and Finance to propose securing Pictometry Imagery for KPB.
- Acts as liaison between Borough Assembly, property owners and general public and the Mayor's office.
- Participates in monthly Assessor work groups with Municipalities from around the state.

Appraisal Manager

Kenai Peninsula Borough

01/2020-11/2020

Lead a team of Appraisers and Appraiser Technicians to complete yearly inspections. Completed all appeals and represented the department and KPB at the BOE appeals. Responsible for all hiring, training and deadlines for appraisal division.

- Managed 571 informal appeal review, 192 formal appeal and 8 hearings to BOE with 6 of those finalized in favor of KPB.
- Organized and managed property inspections totaling 15,556.
- Instrumental in the department successfully reducing a 7-year canvas inspection cycle down to a 5-year canvas inspection cycle as mandated by KPB code.
- Oversaw the rewrite of the department appraiser field manual and inspection procedures.
- Project Manager for CARES Funding Pictometry project in the amount of \$374,855. Closing on time and under budget.
- Responsible for overseeing the hiring, training and disciplinary issues for appraisal division.

Adeena D. Wilcox

- Responsible for preparing and maintaining appraisal budget.
- Organized all out of town inspections including workload, travel, transportation and housing.
- Responsible for all appraisal staff continuing education and firearms training.

Appraiser III

Kenai Peninsula Borough

12/2011-01/2020

Senior staff certified appraiser responsible for locating, identifying and valuing properties within the Kenai Peninsula Borough.

- Worked independently and part of a team to complete all assigned tasks on time.
- Responsible for training new appraisal staff on all department policies and procedures.
- Responsible for organizing and assigning all yearend inspections.
- Participated in preparing appraisal division budget.
- Completed 1000's of property inspections and 100's of appeal hearings.
- Worked both in the residential property and land sections of the department.
- Served on the contract negotiation team.
- Chairperson for the KPB Holiday food drive.

Associate Broker

Stenga Real Estate Group

10/2005-12/2011

State of Alaska licensed real estate associate broker facilitating hundreds of real estate transactions including residential, land and commercial properties. Served as Supervising Broker as needed. Possess vast interaction with the public including conflict resolutions and contract negotiations. Responsible for bookkeeping including payables, receivables, sales tax, IRS reporting, budgeting, equipment contracts, insurance and commission processing.

Associate Broker/Managing Broker

Freedom Realty

12/1993-10/2005

State of Alaska licensed real estate Broker responsible for overseeing 2 offices, 25 licensees, support staff and office staff. Extensive experience with employee interaction, conflict resolution, training, discipline, positive reinforcement and public interaction. Expansive knowledge of KPB including most remote areas, parcel maps, climate interference, limited access and real estate values. In addition to manager duties I was continually a top producer for the firm.

EDUCATION, TRAINING, LICENSE & CERTIFICATIONS


- Alaska Association of Assessing Officers Certified Level III Appraiser #264
- Council of Residential Specialists Certified Residential Specialist (CRS) – Surrendered
- State of Alaska Real Estate Broker Licenses – Surrendered
- State of Alaska Real Estate Licensee – Upgraded to Broker
- Student at Oregon State University 1984-1987 – No Degree
- Trained and proficient with Proval, Excel, Word, Office, ArcMap

Kenai Peninsula Borough

Office of the Borough Mayor

MEMORANDUM

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

FROM: Charlie Pierce, Mayor 

DATE: March 25, 2021

RE: Confirmation of Dil Uhlin, Jr. as Director of Maintenance

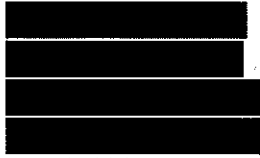
Pursuant to Chapter 2.20 of the Kenai Peninsula Borough Code, Dil Uhlin, Jr. is hereby submitted for confirmation as the Borough Director of Maintenance. Upon confirmation, Mr. Uhlin will serve as the Director of Maintenance and the Roads Director.

KPB 2.20.030 states:

The assembly shall examine the qualifications of the executive for the purpose of determining whether they comply with the requirements prescribed by statute or ordinance for the position occupied. If they comply, the assembly shall so find and shall confirm the appointment. If they find the executive not qualified, they shall deny confirmation and the mayor shall thereafter hire a qualified person. No more than 31 days shall pass after the mayor has submitted the name of a new executive officer before the assembly shall determine by majority vote whether or not the qualifications set by statute and ordinance have been met. Failure to consider the matter within this time shall be deemed to constitute a finding that the officer possesses the requisite qualifications.

Mr. Uhlin's resumé and job description are attached. Based on his qualifications, past experience, accomplishments, and proven performance, I strongly recommend confirmation.

DIL E. UHLIN Jr.



OBJECTIVE

To secure a career in which the professional environment and corporate policies allow me to use my experience and knowledge as a Maintenance Manager.

EDUCATION

- Bachelor of Science, Criminal Justice, Troy University
 - Graduated Cum Laude
- Associates in Arts, Criminal Justice, Harrisburg Area Community College
 - Graduated with High Honors
 - Award the Michael C. Ament Award for the First-Year Outstanding Student
 - President of the Lambda Alpha Epsilon Criminal Justice Honorary Fraternity
 - Dean's List
- Automotive Maintenance Warrant Officer Basic Course, United States Army Logistics University
Warrant Officer Candidate School
 - Served as the Executive Officer
- Basic Non-Commissioned Officers Course
 - USAOC&S Certificate of Achievement for Top All Around Graduate
 - Ordnance Corps Top Graduate Award for earning 100% Academic Average
 - Awarded Colonel Decius Wadsworth Award of Scholarship
 - Selected by peers to receive MSG James D. Bainer coin for group contribution
- Warrior Leader's Course
 - Commandant's List for being in the top 20% of the class
- Heavy Wheel Vehicle Mechanic Course, Army Institute for Professional Development
- Light Wheel Vehicle Mechanic Course, Army Institute for Professional Development
- Mine Resistant Armor Protected Vehicle Maintainers Course
- Rough Terrain Container Handler Maintenance Course

EMPLOYMENT HISTORY

- MagTec Alaska LLC, Director of Services 2016 – Current

Duties Summary

Oversee, direct and coordinate service and repair activities in the State of Alaska. Forecast and execute scheduled maintenance requirements for fleet of more than 500 pieces of equipment consisting of light duty trucks, heavy trucks, construction equipment, oilfield equipment, generators, heaters, light sets, environmental units and miscellaneous equipment. Designates, maintains, and monitors current maintenance repair priorities of equipment to ensure contractual compliance and customer satisfaction. Responsibilities include interviewing, hiring, and training employees; planning, assigning, and directing work; appraising performance; rewarding and disciplining employees; addressing complaints and

resolving problems. Supervises a variety of complex maintenance and/or specialized repair tasks on automotive, construction, and/or special vehicles and equipment; inspects and tests completed work of subordinate employees to ensure conformance to prescribed standards of quality and safety; provides technical assistance and guidance or solves unusual or complex mechanical problems. Establishes and controls preventive maintenance requirements for vehicles and similar types of automotive equipment based upon the manufacturers' recommended preventive maintenance schedules; reviews preventive maintenance criteria and recommends adjustments based on local environmental operating conditions and availability of shop resources. Prepares and maintains records and reports incidental to servicing, inspection; maintenance, and/or documents repair work accomplished by the work unit, and records supplies, and materials used; prepares time, material, and cost estimates for maintenance, repair, and inspection of vehicles/equipment. Reviews work orders for completeness and accuracy; ensures that time and parts are reasonable for repair; enters appropriate notes into system. Prepare bid proposals for client review. Stand in for the Chief Operations Officer while on vacation or out of town on business.

- Peak Oilfield Service Company LLC., HSE Manager

2014 – 2016

Duties Summary

Responsible for Environmental and Occupational Health Program to include: Perform regular, formally documented, audits of facilities and operations to identify and evaluate accident producing conditions and practices. Actively assist in the formulation and adoption of recommendations designed to eliminate or maintain optimum control of the hazards and exposures observed. Assist management in the environmental evaluation of hazards and exposures of planned or proposed facilities, operations or product. Assist in the implementation and conduct of bi-monthly formal audit program. Assure instruction of supervisory personnel in hazard identification techniques. Identify non-compliance issues and bring them to the attention of the environmental attorney and upper management to determine proper response. Evaluate new employee orientation requirements and assist in the development of appropriate programs. Assist in the evaluation and development of employee training programs as required. Coordinate administration of general employee training programs as mandated in the Peak Training Program. Train new employees in regards to orientation, health and safety training, environmental responsibilities, and assure necessary follow up training is complete where necessary. Assure accurate maintenance of employee training records. Act as a liaison between client, management and regulatory agencies. Conduct annual review of EMS plan. Receive and respond to requests for information about the Environmental Management System. Ensure that all waste management personnel receive appropriate training; Determine specific environmental training required by Peak personnel; Monitor training needs in conjunction with HSE&T Director and HSE&T Specialists; Assist members of HSET Department in review of training requirements. Develop SOP's for environmentally related operations considered to have a significant impact according to EMS and Best Management Practice. Disseminate environmental SOP's to all appropriate supervisors and assist in employee training and maintain Environmental SOPs.

- United States Army,

2004 – 2014

Position: Battalion Maintenance Officer and Organizational Senior Automotive Maintenance

Duties Summary

Battalion Maintenance Office for the 553 D CSSB comprised of nine companies consisting of 1600 employees. Served as the principle adviser to the battalion commander in all areas of operational maintenance. Responsible for accountability, maintenance and operational readiness of all organizational equipment worth over \$100 million. Implemented and operated vehicle maintenance programs, practices, and procedures for developing optimal utilization of maintenance personnel. Implemented procedures and processes to monitor and apply maintenance work orders and safety of use messages, totaling the execution of 2,000 completed actions for the battalion. Provided technical advise to nine motor sergeants to ensure that they and their units maintenance programs were successful. Supervised the integration of three units into the battalion's internal maintenance infrastructure. Developed and implemented a man hour accounting training program to increase battalions efficiency and overall understanding and execution of the Army's man hour accounting system. Implemented environmental compliance policies that resulted in 100% on the battalions inspections and the battalions selection for the Fort Hood Environmental Stewardship Award.

• 53D Quartermaster Company

2011 - 2012

Unit Maintenance Warrant Officer

Duties Summary

Maintenance Officer for a general support petroleum company in support of all Divisional and Non-Divisional units located on Fort Hood Texas. Supervised daily field level maintenance operations and reporting requirements for just over 200 pieces of rolling stock and various support equipment. Served as the principal adviser to the Company Commander on all maintenance and repair issues and was responsible for operational readiness of unit equipment. Responsible for all maintenance coordination with external organizations and reception and issue of new equipment assigned to the unit to support the units daily mission requirements. Overseen all logistical training exercises, contingency planning and submission of all unit logistical reports to higher headquarters. Established company standard operating procedures manual for the company, enabling the Company to be selected FY11 III CORPS Army Award for Maintenance Excellence.

• Division Special Troops Battalion, 3rd Infantry Division,

2008 - 2011

Motor Sergeant

Duties Summary

Provided maintenance management oversight and technical guidance for a Company consisting of 200 employees and 150 pieces of military, commercial and construction equipment with an estimated value of \$10,000,000. Managed an organizational maintenance budget of \$2,500,000. Planed and organize work schedules; assigned duties; instructed and supervised subordinates in appropriate practices, procedures, and safety. Developed and implemented organizational maintenance training program, managing and monitoring parts requisitions, job prioritization,

vehicle recovery operations and systems troubleshooting/diagnostics. Conduct in-process inspection/troubleshooting procedures, during repairs and overhaul of engines, transmissions and power train major assemblies and components, hydraulic system and fuel system components.

- US Army, HHSC, STB, 3rd Infantry Division

2007 - 2008

Senior Wheeled Vehicle Mechanic

Duties Summary

Diagnosed and troubleshot heavy and light military, commercial, construction and support equipment. Supervised and provided technical guidance to junior mechanics in their accomplishment of their duties. Conducted in-process inspections and troubleshooting procedures during repairs and overhaul of engines, transmissions and power trains, major assemblies and components, hydraulic system and fuel system components. Supervised recovery team performance of wheeled vehicle recovery operations. Instructed mechanical, electrical, hydraulic and pneumatic malfunctions troubleshooting and diagnostic training.

- 348th Quartermaster Company

2004 - 2007

Wheeled Vehicle Mechanic

Duties Summary

Performed troubleshooting and diagnosis of mechanical, electrical, hydraulic and pneumatic systems. Replaced engine components such as fuel pumps, generators, starters, voltage regulators, relays, radiators, universal joints, brake shoes, engine mounts, and lines and fittings.

CERTIFICATES

- Demonstrated Senior Logistician, The International Society of Logistics
- Contracting Officer Representative
- Contracting Officer's Representative in a Contingency Environment
- Contracting Officer's Representative with a Mission Focus
- Project Management
- Six Sigma Introduction
- Performance Based Logistics Product Support
- Introduction to Earned Value Management
- Cost Analysis
- Overview of Acquisition Ethics
- Ethics for Acquisitions and Logistics
- Acquisitions Logistics Fundamentals
- Fundamental of Systems Acquisitions Management
- Motor Pool Managers Course
- Risk Management
- Commanders Safety Course
- Environmental Compliance Officer
- Refrigerant Recovery/Recycle

- **Test Measurement Diagnostic Equipment Support Coordinator**
- **Army Oil Analysis Coordinator**
- **AMC Air-lift/Air-load Equipment Preparation Course**



Position Description

Kenai Peninsula Borough

Director of Maintenance

Service Type: Administrative Level 6

Definition: Under the general direction and supervision of the borough mayor and/or his designee, the director of maintenance is responsible for the operation, management and administration of the maintenance department as set forth in KPB 2.50, Department of Maintenance.

Minimum Qualifications: Bachelor's degree in a related field and at least ten years of progressively responsible experience in the areas of administration, building trades and maintenance or an equivalent combination of training and experience. Must possess an ability to supervise a crew of sixty or more workers; and to plan, budget and regulate expenditures. Must have a valid Alaska driver's license to perform all functions.

Essential Functions:

1. Responsible for maintenance and repair of all borough buildings, structures, facilities and mechanized equipment owned, operated or leased by the Kenai Peninsula Borough.
2. Responsible for expedient repairs on school complexes, insuring emergency situations are corrected in the shortest period of time possible.
3. Works closely with local, state and federal agencies to ensure all regulations are met and strictly enforced.
4. Works closely with Capital Projects Department, Risk Management and school district to ensure the objectives of each department are implemented and followed.
5. Prepares budgets and regulates expenditures and purchase orders for the department.
6. Prepares and accepts bids of maintenance, equipment and supplies as required.

7. Works closely with human resources in employment related matters. Interviews, hires and terminates classified employees in the maintenance department. Gives recommendations to the mayor and participates in the interviews, hiring and termination of administrative employees.
8. Monitors schedule of inspection and repair on all borough facilities.
9. Responsible for minor/major borough and school related capital projects.

Other Functions:

1. Other related duties as assigned.

Physical Demands: While performing the duties of this job, the employee is frequently required to communicate orally; regularly required to sit; and occasionally required to use hands and fingers dexterously to operate office equipment, to stand, walk, and reach with hands and arms. Specific vision abilities required include close vision and the ability to adjust focus. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Position Description Record:

Date Updated: 11.21.2019

Reason for Update: Reformatted

Date Updated: 11.01.2011

Reason for Update: Adopted by Borough Assembly, Resolution 2011-105

Date Updated: 10.2011

Reason for Update: Revised, (MAD)

Kenai Peninsula Borough
Office of the Borough Mayor

MAYOR'S REPORT TO THE ASSEMBLY

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

FROM: Charlie Pierce, Kenai Peninsula Borough Mayor



DATE: April 20, 2021

Assembly Request / Response

None

Agreements and Contracts

- a. Authorization to Award a Contract for ITB21-023 Crack Sealant Purchase FY21 to NorthStar Supply, LLC, Palmer, AK.
- b. Authorization to Award a Contract for ITB21-019 Homer Transfer Facility Operations and Maintenance 2021 to D&L Construction of Cooper Landing, AK.
- c. Authorization to Award a Contract for ITB-022 Kenai Middle School Boiler Replacement to Norcoast Mechanical, Inc., Anchorage, AK.
- d. Central Peninsula Hospital ADA Parking Lot Design Sole Source Waiver (contract) with Nelson Engineering.
- e. Authorization to Award a Contract for ITB21-020 Earthquake Repairs; North Peninsula Service Area, Kenai Middle School, and Skyview Middle School to Pro Grind Rental, LLC, Soldotna, AK.

Other

- a. Revenue - Expenditure Report – February 2021
- b. Budget Revisions – February 2021
- c. Tax Adjustment Request Approval
- d. Certification of the 2020 Real Property Supplemental Assessment Roll

Kenai Peninsula Borough

Roads Department

MEMORANDUM

TO: Charlie Pierce, Mayor

THRU: John Hedges, Purchasing & Contracting Director *JH*

FROM: Dil Uhlin, Roads Director *JP*

DATE: March 18, 2021

RE: Authorization to Award a Contract for ITB21-023 Crack Sealant Purchase FY21

The Purchasing and Contracting Office formally solicited and received bids for the ITB21-023 Crack Sealant Purchase FY21. Bid packets were released on February 25, 2021 and the Invitation to Bid was advertised in the Peninsula Clarion and the Anchorage Daily News on February 25, 2021.

The project consists of purchasing an estimated 67,000 pounds of Deery Super Stretch 1 Hot Applied Sealant. *(The Borough is purchasing 38,250 pounds, the City of Kenai is purchasing 10,000 pounds, the City of Seward is purchasing 7,500 pounds and the City of Homer is purchasing 11,250 pounds.)*

On the due date of March 11, 2021, three (3) bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$50,662.50 was submitted by NorthStar Supply, LLC, Palmer, Alaska. *(The Borough cost will be \$28,687.50, the City of Kenai cost will be \$7,500, the City of Seward cost will be \$5,700 and the City of Homer cost will be \$8,775.)*

Your approval for this bid award is hereby requested. Funding for this project is in account number 236.33950.00000.43952 & 241.41010.00000.42310.

CP

 Charlie Pierce, Mayor

3/22/2021

 Date

NOTES:

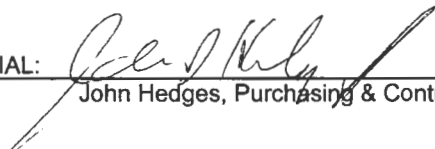
FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No. <u>236.33950.00000.43952 - \$20,250.00</u>	
Acct. No. <u>241.41010.00000.42310 - \$8,437.50</u>	
By: <i>PP</i> <i>BH</i>	Date: <u>3/22/2021</u>

**KENAI PENINSULA BOROUGH
PURCHASING & CONTRACTING**

BID TAB FOR: ITB21-023 Crack Sealant Purchase

CONTRACTOR	LOCATION	TOTAL BASE BID
Northstar Supply LLC	Palmer, AK	\$50,662.50
Spenard Buildings Supply dba Polar Supply	Anchorage, AK	\$56,955.00
Anchorage Sand & Gravel	Anchorage, AK	\$59,917.50

DUE DATE: March 11, 2021

KPB OFFICIAL: 
John Hedges, Purchasing & Contracting Director

Kenai Peninsula Borough

Solid Waste Department

MEMORANDUM

TO: Charlie Pierce, Mayor

THRU: John Hedges, Purchasing & Contracting Director *JH*

FROM: Dan Kort, Solid Waste Director *DK*

DATE: March 19, 2021

RE: Authorization to Award a Contract for ITB21-019 Homer Transfer Facility Operations and Maintenance 2021

The Purchasing and Contracting Office formally solicited and received bids for ITB21-019 Homer Transfer Facility Operations and Maintenance 2021 project. Bid packets were released on February 12, 2021, and the Invitation to Bid was advertised in the Peninsula Clarion on February 12, 2021.

The project consists of the operations and maintenance of the Homer Transfer Facility as specified in the ITB document.

On the due date of March 11, 2021, two (2) bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$654,400 was submitted by D & L Construction of Cooper Landing, Alaska.

Your approval for this bid award is hereby requested. Funding for this project is in account number 290.32310.00000.43011 (FY2022 Budget).



Charlie Pierce, Mayor

3/19/2021

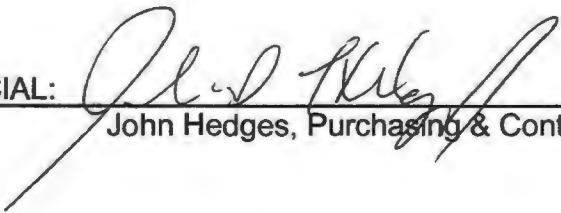
Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	290.32310.00000.43011
Amount	\$654,400
By: <i>PP</i> <i>BH</i>	Date: 3/19/2021

NOTES: Contingent upon Assembly approval of FY22 budget.

**KENAI PENINSULA BOROUGH
PURCHASING & CONTRACTING****BID TAB FOR: ITB21-019 Homer Transfer Facility Operations & Maintenance 2021**

CONTRACTOR	LOCATION	TOTAL BASE BID
D & L Construction Co., Inc.	Cooper Landing, AK	\$654,400.00
Moore & Moore Services, Inc. dba Quick Sanitation	Homer, AK	\$711,547.84

DUE DATE: March 11, 2021**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 JH

FROM: Carmen Vick, Project Manager

DATE: March 19, 2021


RE: Authorization to Award a Contract for ITB21-022
Kenai Middle School Boiler Replacement

The Purchasing and Contracting Office formally solicited and received bids for ITB21-022 Kenai Middle School Boiler Replacement. Bid packets were released on February 16, 2021 and the Invitation to Bid was advertised in the Peninsula Clarion and the Anchorage Daily News on February 16, 2021.

The project consists of the following: Provide all labor and materials to demolish and replace 2 boilers and DHW heater/expansion tanks and related electrical/mechanical hardware per contract documents at Kenai Middle School.

On the due date of March 12, 2021 two (2) bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$479,000.00 was submitted by Norcoast Mechanical, Inc., Anchorage, Alaska.

Your approval for this bid award is hereby requested. Funding for this project is in account number 400.73030.20801.



Charlie Pierce, Mayor

3/19/2021

Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	400.73030.20801.43011
Amount	\$479,000.00
By: PP BH	Date: 3/19/2021

NOTES:

**KENAI PENINSULA BOROUGH
PURCHASING & CONTRACTING****BID TAB FOR: ITB21-022 Kenai Middle School Boiler Replacement**

CONTRACTOR	LOCATION	BASE BID
Norcoast Mechanical Inc.	Anchorage, AK	\$479,000.00
Peninsula Construction, Inc.	Kenai, AK	\$518,928.00

DUE DATE: March 12, 2021**KPB OFFICIAL:**
John Hedges, Purchasing & Contracting Director

Kenai Peninsula Borough

Purchasing & Contracting Department

MEMORANDUM

TO: Charlie Pierce, Borough Mayor

THRU: John D. Hedges, Purchasing & Contracting Department JH

FROM: Lee Frey, Project Manager LF

DATE: March 10, 2021

RE: Central Peninsula Hospital ADA Parking Lot Design Sole Source Waiver

In Summer of 2020, we solicited quotes from several consultants on the Kenai Peninsula to complete designs for a new heated handicap accessible parking lot at Central Peninsula Hospital (CPH). Nelson Engineering was selected by providing the lowest quote and completed the designs for a partial reconstruction of the parking lot based on available budget. The construction project was put out for bidding and came in significantly over budget. At that time, the project was put on hold as funding was not available.

Under the terms of the lease and operating agreement, Section 13 Capital Improvement Projects, Through the winter months, CPH hired an architectural consultant to review concepts for reconstruction of the entire parking lot between the main entrance and the river tower entrance, including removal of the canopy structure at the employee entrance and renovation of the exterior structure in this area. After concepts were reviewed, it was determined they only wanted to move forward with the revised parking lot layout and removal of the canopy structure. Some mechanical infrastructure was reviewed internally to see if a different heating system in the mechanical space closest to the parking lot could be installed to provide more efficient heat than the existing steam system and heat exchangers present, but it was determined that significantly more work was needed before that would be feasible and not within the timeline needed to construct the heated parking lot in 2021.

We contacted Nelson Engineering to get a quote to redesign their plans to reconstruct the entire parking area and enlarge the heated concrete footprint. The internal mechanical concept and sidewalk by the main entrance are similar to the previous design, but the rest of the parking lot layout was modified. Utilizing Nelson Engineering to design the parking lot is the most cost effective plan for KPB

as they have completed significant onsite investigation of the exterior area, existing utilities and layout and connections to the mechanical system to provide heat for the heated parking areas. They have also participated in many conversations with CPH support staff regarding the requirements needed for internal mechanical operations and how the exterior area will be maintained. Significant time and effort from KPB and CPH personnel would be necessary to complete this project with a different consultant. They provided a quote of \$29,928.00.

Your approval is hereby requested to contract with Nelson Engineering in the amount of \$29,928.00 to complete design of the CPH ADA Parking Lot Reconstruction project. Funding for this project is in account number 490.81110.17OBL.43011.

Approved: Charlie Pierce
Charlie Pierce, Mayor

3/11/2021
Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	<u>490.81110.17OBL.43011</u>
Amount	<u>\$29,928.00</u>
By: <u>PP</u>	<u>SD for Bk</u> 3/11/2021
Date: _____	
NOTES:	

Kenai Peninsula Borough

Purchasing and Contracting Department

MEMORANDUM

TO: Charlie Pierce, Mayor

THRU: John Hedges, Purchasing & Contracting Director *JH*

FROM: Carmen Vick, Project Manager *CV*

DATE: February 23, 2021

RE: Authorization to Award a Contract for ITB21-020 Earthquake Repairs

The Purchasing and Contracting Office formally solicited and received bids for ITB21-020 Earthquake Repairs. Bid packets were released on January 26, 2021 and the Invitation to Bid was advertised in the Peninsula Clarion and the Anchorage Daily News on January 26, 2021.

The project consists of providing all labor and materials to complete repairs per contract documents at North Peninsula Recreation Service Area, Kenai Middle School and Skyview Middle School. Schedule of repairs to be coordinated with Owner and Schools. All work to be completed by June 21, 2021.

On the due date of February 16, 2021 one bid (1) bid was received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$26,725.00 was submitted by Pro Grind Alaska Rental, LLC, Soldotna, Alaska 99669.

Your approval for this bid award is hereby requested. Funding for this project is in account number 260.61110.19EQ1.43011, 260.73030.19EQ1.43011 and 260.71180.19EQ1.43011.

CP

Charlie Pierce, Mayor

2/24/2021

Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	260.61110.19EQ1.43011
Amount	\$7,200.00
By: <i>PP</i> <i>BT</i>	Date: 2/23/2021

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	260.73030.19EQ1.43011
Amount	\$12,000.00
By: <i>PP</i> <i>BT</i>	Date: 2/23/2021

NOTES;

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	260.71180.19EQ1.43011
Amount	\$7,525.00
By: <i>PP</i> <i>BT</i>	Date: 2/23/2021

**KENAI PENINSULA BOROUGH
PURCHASING & CONTRACTING**

BID TAB FOR: ITB21-020 Earthquake Repairs

CONTRACTOR	LOCATION	BASE BID
Pro Grind Alaska Rental LLC	Soldotna, AK	\$26,725.00

DUE DATE: February 16, 2021

KPB OFFICIAL:


John Hedges, Purchasing & Contracting Director

Kenai Peninsula Borough

Finance Department

MEMORANDUM

TO: Brent Hibbert, 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: March 11, 2021

RE: Revenue-Expenditure Report – February 2021

Attached is the Revenue-Expenditure Report of the General Fund for the month of February 2021. Please note that 66.67% of the year has elapsed, 80.63% of budgeted revenues have been collected, and 57.95% of budgeted expenditures have been made.

KENAI PENINSULA BOROUGH
Revenue Report
For the Period
February 1 through February 28, 2021

ACCOUNT NUMBER	DESCRIPTION	ESTIMATED REVENUE	YEAR TO DATE RECEIPTS	MONTH TO DATE RECEIPTS	VARIANCE	% COLLECTED
31100	Real Property Tax	\$ 31,332,188	\$ 30,568,553	\$ 318,836	\$ (763,635)	97.56%
31200	Personal Property Tax	1,814,997	2,134,784	16,630	319,787	117.62%
31300	Oil Tax	7,019,116	7,025,200	-	6,084	100.09%
31400	Motor Vehicle Tax	676,400	263,760	27,741	(412,640)	38.99%
31510	Property Tax Penalty & Interest	590,931	448,883	79,437	(142,048)	75.96%
31610	Sales Tax	27,431,594	19,149,952	3,112,155	(8,281,642)	69.81%
33110	In Lieu Property Tax	3,600,000	-	-	(3,600,000)	0.00%
33117	Other Federal Revenue	160,000	31,521	-	(128,479)	19.70%
34221	Electricity & Phone Revenue	155,000	-	-	(155,000)	0.00%
34222	Fish Tax Revenue Sharing	500,000	(51,838)	-	(551,838)	-10.37%
34210	Revenue Sharing	300,000	-	-	(300,000)	0.00%
37350	Interest on Investments	352,913	373,075	7,887	20,162	105.71%
39000	Other Local Revenue	275,000	202,984	52,308	(72,016)	73.81%
290	Solid Waste	802,000	335,786	11,176	(466,214)	41.87%
Total Revenues		\$ 75,010,139	\$ 60,482,662	\$ 3,626,169	\$ (14,527,477)	80.63%


KENAI PENINSULA BOROUGH
Expenditure Report
For the Period
February 1 through February 28, 2021


DESCRIPTION	REVISED BUDGET	YEAR TO DATE EXPENDED	MONTH TO DATE EXPENDED	AMOUNT ENCUMBERED	AVAILABLE BALANCE	% EXPENDED
Assembly:						
Administration	\$ 484,528	\$ 297,218	\$ (8,626)	\$ 40,061	\$ 147,249	61.34%
Clerk	579,316	337,957	44,403	12,233	229,126	58.34%
Elections	182,920	129,697	15,856	314	52,909	70.90%
Records Management	327,678	193,358	22,884	11,914	122,405	59.01%
Mayor Administration	792,424	433,526	55,766	4,784	354,113	54.71%
Purch/Contracting/Cap Proj	648,943	349,508	50,123	9,270	290,165	53.86%
Human Resources:						
Administration	700,918	420,944	49,652	4,519	275,454	60.06%
Print/Mail	204,217	91,306	10,149	24,266	88,645	44.71%
Custodial Maintenance	95,548	70,770	9,054	204	24,575	74.07%
Information Technology	2,093,923	1,160,569	131,354	9,323	924,031	55.43%
Emergency Management	933,183	611,617	37,582	63,093	258,473	65.54%
Legal Administration	1,120,116	552,208	76,726	149,309	418,598	49.30%
Finance:						
Administration	505,711	315,615	38,188	1,037	189,060	62.41%
Services	1,072,179	636,556	73,469	950	434,673	59.37%
Property Tax	1,141,576	583,800	59,923	75,856	481,920	51.14%
Sales Tax	901,144	583,722	63,717	6,029	311,393	64.78%
Assessing:						
Administration	1,350,530	797,598	95,357	15,599	537,333	59.06%
Appraisal	1,993,482	1,016,219	123,549	7,328	969,935	50.98%
Resource Planning:						
Administration	1,261,643	580,227	85,765	18,689	662,727	45.99%
GIS	499,590	320,198	27,535	3,206	176,186	64.09%
River Center	675,967	366,946	35,590	19,028	289,992	54.28%
Senior Citizens Grant Program	719,494	409,085	-	310,409	-	56.86%
School District Operations	55,004,255	33,867,015	45,500	-	21,137,240	61.57%
Solid Waste Operations	9,102,389	3,587,639	335,687	1,739,573	3,775,177	39.41%
Economic Development	360,000	140,789	9,539	170,675	48,536	39.11%
Non-Departmental	3,503,109	2,132,013	15,067	-	1,371,096	60.86%
Total Expenditures	\$ 86,254,783	\$ 49,986,099	\$ 1,503,810	\$ 2,697,671	\$ 33,571,012	57.95%


Kenai Peninsula Borough
Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Borough Mayor 

THRU: Brandi Harbaugh, Finance Director 

FROM: Sarah Hostetter, Payroll Accountant 

DATE: March 11, 2021

RE: Budget Revisions – February 2021

Attached is a budget revision listing for February 2021. 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 postage and freight charges for the rest of the Fiscal Year.

211-51610-00000-42210 (Operating Supplies)		\$300.00
211-51610-00000-43140 (Postage & Freight)	\$300.00	

CENTRAL EMERGENCY SERVICES

To replace a failed washing machine at Station 6.

211-51610-00000-43780 (Building & Grounds Maintenance)		\$600.00
211-51610-00000-48740 (Minor Machines & Equipment)	\$600.00	

CLERK'S OFFICE - ASSEMBLY

To purchase two video cards for the newly remodeled Assembly Chamber work stations.

100-11110-00000-43210 (Transportation & Subsistence)		\$260.00
100-11110-00000-48710 (Minor Office Equipment)	\$260.00	

CLERK'S OFFICE - ASSEMBLY

To purchase a license for McAfee antivirus software for the Assembly Chambers.

100-11110-00000-43210 (Transportation & Subsistence)		\$30.00
100-11110-00000-42120 (Computer Software)	\$30.00	

CLERK'S OFFICE - ELECTIONS

Moving funds for a fund verification to create Ordinance 20-19-24.

100-11130-00000-40120 (Temporary Wages)		\$23,809.21
100-11130-00000-40130 (Overtime Wages)		\$1,825.86
100-11130-00000-40210 (FICA)		\$3,594.23
100-11130-00000-43810 (Rents & Operating Leases)		\$100.00
100-11130-00000-42410 (Small Tools & Minor Equipment)		\$405.80
100-11130-00000-43011 (Contractual Services)		\$3,690.78
100-11130-00000-43019 (Software Licensing)		\$51.82
100-11130-00000-43140 (Postage & Freight)		\$32.87
100-11130-00000-43210 (Transportation & Subsistence)		\$487.75
100-11130-00000-43310 (Advertising)		\$4,345.34
100-11130-00000-43410 (Printing)	\$38,343.66	

CLERK'S OFFICE - ELECTIONS

To purchase mailer project paper for the 2021 Election.

100-11130-00000-43410 (Printing)		\$70.00
100-11130-00000-42210 (Operating Supplies)	\$70.00	

HUMAN RESOURCES - CUSTODIAL & PRINT SHOP

Move funds for expense that will be charged to 911/OEM/River Center for temporary custodial needs while the buildings were not under a janitorial contract.

100-11233-00000-40110 (Regular Wages)		\$572.17
100-11235-00000-43210 (Transportation & Subsistence)	\$572.17	

HUMAN RESOURCES - PRINT SHOP

To purchase Adobe software for the Print Shop computer.

100-11233-00000-43720 (Equipment Maintenance)		\$400.00
100-11233-00000-42120 (Computer Software)	\$400.00	

MAINTENANCE DEPARTMENT

Revision for multiple items. To cover additional purchases for general repair/maintenance. To cover additional snow removal. To purchase equipment and attachments for increased efficiencies. To purchase a wire pulling machine.

241-41010-00000-40110 (Regular Wages)		\$400,000.00
241-41010-00000-42310 (Repair & Maintenance Supplies)	\$124,000.00	
241-41010-00000-42410 (Small Tools & Minor Equipment)	\$10,000.00	
241-41010-00000-43764 (Snow Removal)	\$200,000.00	
241-41010-00000-48311 (Machinery & Equipment)	\$60,000.00	
241-41010-00000-48740 (Minor Machines & Equipment)	\$6,000.00	

MAYOR'S OFFICE

To replace an out of date phone.

100-11210-00000-43210 (Transportation & Subsistence)		\$365.00
100-11210-00000-48710 (Minor Office Equipment)	\$365.00	

FEBRUARY 2021 continued**INCREASE DECREASE****PLANNING - RIVER CENTER**

To cover remaining expense for janitorial services by Borough employees before moving to a janitorial contract.

100-21135-00000-43011 (Contractual Services)		\$1,769.86
100-21135-00000-60000 (Charges (to) from Other Departments)	\$1,769.86	

PURCHASING DEPARTMENT

To cover Maintenance chargebacks for making keys and replacing a battery backup.

100-11227-00000-48720 (Minor Office Furniture)		\$200.00
100-11227-00000-43780 (Building & Grounds Maintenance)	\$200.00	

SELDOVIA RECREATION

To purchase a skate sharpener and a climbing wall.

227-61210-00000-43960 (Recreational Program Expenses)		\$2,650.00
227-61210-00000-48755 (Minor Recreational Equipment)	\$2,650.00	

Kenai Peninsula Borough
Assessing Department

MEMORANDUM

TO: Charlie Pierce, Borough Mayor
FROM: Adeena Wilcox, Acting Director of Assessing
DATE: March 10, 2021
RE: Tax Adjustment Request Approval

Attached is a spreadsheet of tax adjustment requests required by changes to the assessment roll. These adjustments are being submitted to the Finance Department for processing.

Borough code 5.12.119 (D) authorizes the mayor to approve tax adjustment requests prepared by the borough assessor.

I hereby certify that I have reviewed the tax adjustment requests submitted for your signature and I find them to be proper and correct.

DATED: March 10, 2021


Adeena Wilcox
Acting Director of Assessing

APPROVED



Charlie Pierce
Borough Mayor

MARCH TARS CITY VALUES

	2020	2019	2018	2017	2016
TAG 10 (assessed)					
(taxable)					
Seldovia Flat Tax					
TAG 20 (assessed)					
(taxable)					
Homer Flat Tax	(\$30)				
TAG 21 (assessed)					
(taxable)					
TAG 30 (assessed)					
(taxable)					
Disability Tax Credit					
TAG 40 (assessed)					
(taxable)					
TAG 41 (assessed)					
(taxable)					
TAG 70 (assessed)					
(taxable)					
Soldotna Flat Tax					
TAG 80 (assessed)					
(taxable)					

MARCH TARS

	2020	2019	2018	2017	2016
TAG 10 (assessed)					
(taxable)					
TAG 11 (assessed)					
(taxable)					
TAG 20 (assessed)					
(taxable)					
TAG 21 (assessed)					
(taxable)					
TAG 30 (assessed)					
(taxable)					
TAG 40 (assessed)					
(taxable)					
TAG 41 (assessed)					
(taxable)					
TAG 42 (assessed)					
(taxable)					
TAG 43 (assessed)					
(taxable)					
TAG 52 (assessed)					
(taxable)					
TAG 53 (assessed)					
(taxable)					
TAG 54 (assessed)					
(taxable)					
TAG 55 (assessed)					
(taxable)					
TAG 57 (assessed)					
(taxable)	(\$172,100)				
TAG 58 (assessed)					
(taxable)					
TAG 61 (assessed)					
(taxable)					
TAG 63 (assessed)					
(taxable)					
TAG 64 (assessed)					
(taxable)					
TAG 65 (assessed)					
(taxable)					
TAG 67 (assessed)	(\$14,500)				
(taxable)	(\$14,500)				
TAG 68 (assessed)					
(taxable)					
TAG 70 (assessed)					
(taxable)					
TAG 80 (assessed)					
(taxable)					
TAG 81 (assessed)					
(taxable)					
TOTAL ASSESSED	(\$14,500)	\$0	\$0	\$0	\$0
TOTAL TAXABLE	(\$186,600)	\$0	\$0	\$0	\$0
KPB FLAT TAX	(\$650)				

TAX ADJUSTMENT REQUEST

ROLL/YEAR	<u>2020</u>	TAR NUMBER	<u>20-20-031</u>
PARCEL ID	<u>98479</u>		
PRIMARY OWNER	<u>MAZE DAVID W</u>		

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>20</u>	<u>20</u>
BOAT CLASS/COUNT	<u>BC4-1</u>	<u>BC4-0</u>
PLANE CLASS/COUNT	<u></u>	<u></u>
KPB ASSESSED (VT 1001)	<u></u>	<u></u>
KPB TAXABLE (VT 1003)	<u></u>	<u></u>
CITY ASSESSED (VT 1011)	<u></u>	<u></u>
CITY TAXABLE (V 1013)	<u></u>	<u></u>

EXPLANATION MANIFEST CLERICAL ERROR. 2020 SUPP ROLLOVER ACCOUNT. STORAGE YARD
PURCHASED BOAT AT AUCTION DEC 2019 FOR UNPAID FEES. BOAT DESTROYED BY YARD. LAST
SITUS OCT 2019. ACCT SHOULD HAVE BEEN CLOSED FOR 2020.

CHANGE SUMMARY

DATE	<u>03/08/21</u>	KPB ASSESSED	<u>\$0</u>
SUBMITTED BY	<u>CLYDE JOHNSON</u>	KPB TAXABLE	<u>\$0</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED	<u>\$0</u>
		CITY TAXABLE	<u>\$0</u>
		KPB FLAT TAX	<u>(\$150)</u>
		CITY FLAT TAX	<u>(\$30)</u>

TAX ADJUSTMENT REQUESTROLL/YEAR 2020

TAR NUMBER

67-20-003

PARCEL ID 014-150-24PRIMARY OWNER SULLINS DENISE

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>55</u>	<u>55</u>
CLASS CODE	<u>110</u>	<u>110</u>
LAND ASSESSED (VT4)	<u>23,500</u>	<u>23,500</u>
IMPROVEMENT ASSESSED (VT5)	<u>109,700</u>	<u>109,700</u>
KPB ASSESSED (VT 1001)	<u>133,200</u>	<u>133,200</u>
KPB TAXABLE (VT 1003)	<u>83,200</u>	<u>83,200</u>
CITY ASSESSED (VT 1011)	<u>0</u>	<u>0</u>
CITY TAXABLE (VT 1013)	<u>0</u>	<u>0</u>

EXPLANATION DISABLED RESIDENT EXEMPTION APPROVED AFTER APPROVAL FOR SSDI GRANTED
2020 APPLICATION HAS BEEN PENDING FOR DOCUMENTATION SINCE 3/13/2020

		CHANGE SUMMARY
DATE	<u>02/22/21</u>	KPB ASSESSED <u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE <u>\$0</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED <u>\$0</u>
		CITY TAXABLE <u>\$0</u>
		KPB FLAT TAX <u>(\$500.00)</u>
		CITY FLAT TAX <u></u>

TAX ADJUSTMENT REQUESTROLL/YEAR 2020

TAR NUMBER

57-20-005

PARCEL ID 125-380-14PRIMARY OWNER REAM, MICKEY

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>57</u>	<u>57</u>
CLASS CODE	<u>110</u>	<u>110</u>
LAND ASSESSED (VT4)	<u>82,800</u>	<u>82,800</u>
IMPROVEMENT ASSESSED (VT5)	<u>139,300</u>	<u>139,300</u>
KPB ASSESSED (VT 1001)	<u>222,100</u>	<u>222,100</u>
KPB TAXABLE (VT 1003)	<u>172,100</u>	<u>0</u>
CITY ASSESSED (VT 1011)	<u>0</u>	<u>0</u>
CITY TAXABLE (VT 1013)	<u>0</u>	<u>0</u>

EXPLANATION 2020 SENIOR CITIZEN EXEMPTION APPLICATION APPROVED AFTER CONFIRMING
HIS 2020 PFD WAS APPROVED

CHANGE SUMMARY

DATE	<u>02/22/21</u>	KPB ASSESSED	<u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE	<u>(\$172,100)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED	<u>\$0</u>
		CITY TAXABLE	<u>\$0</u>
		KPB FLAT TAX	<u></u>
		CITY FLAT TAX	<u></u>

TAX ADJUSTMENT REQUESTROLL/YEAR 2020

TAR NUMBER

67-20-004

PARCEL ID 189-220-24PRIMARY OWNER WRIGHT, AMY

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>67</u>	<u>67</u>
CLASS CODE	<u>110</u>	<u>190</u>
LAND ASSESSED (VT4)	<u>32,900</u>	<u>32,900</u>
IMPROVEMENT ASSESSED (VT5)	<u>19,600</u>	<u>5,100</u>
KPB ASSESSED (VT 1001)	<u>52,500</u>	<u>38,000</u>
KPB TAXABLE (VT 1003)	<u>52,500</u>	<u>38,000</u>
CITY ASSESSED (VT 1011)	<u>0</u>	<u>0</u>
CITY TAXABLE (VT 1013)	<u>0</u>	<u>0</u>

EXPLANATION BOE APPEAL OF SUPPLEMENTAL RECEIVED AFTER CERTIFICATION WITH
TIMELY POSTMARK. VALUE ADJUSTED DURING INFORMAL REVIEW AND ACCEPTED BY
APPELLANT.

CHANGE SUMMARY

DATE	<u>03/08/21</u>	KPB ASSESSED	<u>(\$14,500)</u>
SUBMITTED BY	<u>B. ANDERSON</u>	KPB TAXABLE	<u>(\$14,500)</u>
VERIFIED BY	<u>C. MCHOOD</u>	CITY ASSESSED	<u>\$0</u>
		CITY TAXABLE	<u>\$0</u>
		KPB FLAT TAX	<u></u>
		CITY FLAT TAX	<u></u>

Kenai Peninsula Borough

Assessing Department

MEMORANDUM

TO: Charlie Pierce, Borough Mayor
FROM: Adeena Wilcox, Director of Assessing (Acting)
DATE: March 1, 2021
RE: Certification of the 2020 Real Property Supplemental Assessment Roll

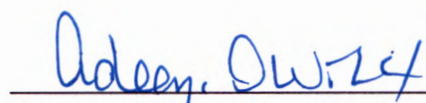
The undersigned, duly qualified and appointed Assessing Director of the Kenai Peninsula Borough, does hereby certify that the following is the total valuation contained in the 2020 Real Property Supplemental Assessment Roll as of March 1, 2021.

The total assessed value for the Kenai Peninsula Borough, including all properties on this assessment roll is as follows:

REAL PROPERTY	TOTAL PROPERTY
<hr/>	
\$1,321,300	\$1,321,300

The total taxable value for the Kenai Peninsula Borough is as follows:

REAL PROPERTY	TOTAL PROPERTY
<hr/>	
\$1,203,500	\$1,203,500


Adeena Wilcox, Director of Assessing (Acting)

Introduced by:	Mayor
Date:	09/15/20
Hearing:	10/13/20
Action:	Postponed as Amended to 12/01/20
Vote:	9 Yes, 0 No, 0 Absent
Date:	12/01/20
Action:	Tabled as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-19-07**

**AN ORDINANCE APPROPRIATING REFINANCED 2013 BEAR CREEK FIRE
SERVICE AREA GENERAL OBLIGATION BOND PROCEEDS FOR THE PURPOSE
OF PAYING BOND REFINANCING ISSUANCE COSTS**

WHEREAS, the Kenai Peninsula Borough, Alaska (the “Borough”), to finance certain capital improvements in the Bear Creek Fire Service Area, issued and sold its Bear Creek Fire Service Area General Obligation Bonds, Series 2013, dated March 12, 2013, in the original principal amount of \$1,215,000 (the “2013 Bond”) to the Alaska Municipal Bond Bank (the “Bond Bank”), as authorized by Resolution No. 2012-091 of the Borough adopted on December 4, 2012 (the “Bond Resolution”), based on terms and conditions set forth in the Bond Resolution and a loan agreement between the Borough and the Bond Bank dated as of March 1, 2013 (the “Loan Agreement”); and

WHEREAS, the Bond Bank issued and sold its General Obligation and Refunding Bonds, 2013 Series One (the “Bond Bank Bonds”), to, among other things, provide funds to purchase the 2013 Bond, as provided in the Loan Agreement; and

WHEREAS, Section 6 of the Loan Agreement provides that payments of principal of and interest on the 2013 Bond may be adjusted to reduce debt service on the 2013 Bond if the Bond Bank is able to achieve debt service savings by refunding the Bond Bank Bonds; and

WHEREAS, the Bond Bank now intends to issue a series of its general obligation refunding bonds (the “Bond Bank Refunding Bonds”) for the purpose, among others, of refunding all, or a portion, of the outstanding Bond Bank Bonds and achieving debt service savings; and

WHEREAS, through Resolution 2020-044, the assembly approved the Borough’s participation in this refinancing and to authorize the mayor or his designee to accept a revised debt service schedule for the 2013 Bond if the Bond Bank successfully refinances the Bond Bank Bonds; and

WHEREAS, the Bond Bank anticipates a refinancing closing date following October 1, 2020;

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

SECTION 1. That 2013 refinanced Bear Creek Fire Service Area bond proceeds in the amount of up to \$6,860 are appropriated to the Bear Creek Fire Service Area Capital Project Fund, account number 442.51210.21BND.49999 to pay costs related to the issuance.

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 4. This ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

10/13/20 Vote on motion to postpone as amended to 12/01/20:

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

No: None

Absent: None

12/01/20 Vote on motion to table:

Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert

No: None

Absent: None

Kenai Peninsula Borough
Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*

FROM: Brandi Harbaugh, Finance Director *BH*

DATE: September 3, 2020

SUBJECT: Ordinance 2020-19- 07, Appropriating Refinanced 2013 Bear Creek Fire Service Area General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor)

In May 2020, the Kenai Peninsula Borough Assembly approved Resolution 2020-044, authorizing the Borough's participation in the refinancing of select series for the 2013 Bear Creek Fire Service Area general obligation bonds.

Due to reductions in long term interest rates, the Alaska Municipal Bond Bank has determined that a portion of the outstanding 2013 Bear Creek Fire Service Area bonds could be refinanced, with potential savings to borough residents of approximately \$50,000 in interest over the remaining life of the debt. This ordinance appropriates refinanced bond proceeds for the purpose of paying costs related to the issuance of the bond refinancing.

Your consideration is appreciated.

**FINANCE DEPARTMENT
ACCOUNT / FUNDS VERIFIED**

Acct. No. 442.00000.21BND.39010

Amount: \$6,860.00

By: *PP* Date: 9/2/2020

Kenai Peninsula Borough

Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*

FROM: Brandi Harbaugh, Finance Director *BH*

DATE: November 19, 2020

SUBJECT: Request to Table Ordinance 2020-19-07, Appropriating Refinanced 2013 Bear Creek Fire Service Area General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor)

The Alaska Supreme Court's recent decision which invalidated a plan to sell bonds to pay oil tax credits has caused a certain amount of uncertainty in the Alaska bond market. The Alaska Department of Law has requested a rehearing to better define the scope of the ruling.

The Alaska Municipal Bond Bank has delayed its bond issue for a time uncertain as a result of the recent decision. Therefore, pending further analysis of the effect of the Supreme Court ruling we are looking to postpone the refinancing of the 2013 Bear Creek Service Area General Obligation Bonds until calendar year 2021.

Therefore, we are requesting to table this ordinance until early 2021, providing more time for analysis and review of the market

Your consideration is appreciated.

Kenai Peninsula Borough

Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor CP

FROM: Brandi Harbaugh, Finance Director BH

DATE: October 1, 2020

SUBJECT: Amendment to Ordinance 2020-19-07, Appropriating Refinanced 2013 Bear Creek Fire Service Area General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs & Request to Postpone Hearing (Mayor)

The Alaska Supreme Court's recent decision which invalidated a plan to sell bonds to pay oil tax credits has caused a certain amount of uncertainty in the Alaska bond market. The Alaska Department of Law has requested a rehearing to better define the scope of the ruling. The Alaska Municipal Bond Bank has delayed its bond issue for a time uncertain as a result of the recent decision. Therefore, pending further analysis of the effect of the Supreme Court ruling we are seeking to postpone the refinancing of the Bear Creek Fire Service Area General Obligation Bonds until after October 2020.

Based on the above circumstances, postponement of the hearing on this ordinance to the December 1, 2020, meeting is requested as well as the following amendment:

(Please note the bold underlined language is new and the bracketed strikeout language is to be deleted.)

➤ Amend the last whereas clause, as follows:

WHEREAS, the Bond Bank anticipates a refinancing closing date
[of September 2020] following October 1, 2020;

Your consideration is appreciated.

Introduced by:	Mayor
Date:	06/16/20
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-044**

A RESOLUTION APPROVING THE KENAI PENINSULA BOROUGH'S PARTICIPATION IN A PROPOSED REFINANCING BY THE ALASKA MUNICIPAL BOND BANK OF ITS GENERAL OBLIGATION BONDS THAT PROVIDED FUNDS TO PURCHASE THE BEAR CREEK FIRE SERVICE AREA GENERAL OBLIGATION BONDS, SERIES 2013 OF THE KENAI PENINSULA BOROUGH, UNDER A LOAN AGREEMENT BETWEEN THE KENAI PENINSULA BOROUGH AND THE ALASKA MUNICIPAL BOND BANK; AND AUTHORIZING THE KENAI PENINSULA BOROUGH MAYOR OR DESIGNEE TO APPROVE A REVISED SCHEDULE OF PRINCIPAL AND INTEREST PAYMENTS ON THE KENAI PENINSULA BOROUGH'S 2013 BOND, IN ACCORDANCE WITH THE LOAN AGREEMENT, IF THE ALASKA MUNICIPAL BOND BANK SUCCESSFULLY REFINANCES ITS BONDS

WHEREAS, the Kenai Peninsula Borough, Alaska (the "Borough"), to finance certain capital improvements in the Bear Creek Fire Service Area, issued and sold its Bear Creek Fire Service Area General Obligation Bonds, Series 2013, dated March 12, 2013, in the original principal amount of \$1,215,000 (the "2013 Bond") to the Alaska Municipal Bond Bank (the "Bond Bank"), as authorized by Resolution No. 2012-091 of the Borough adopted on December 4, 2012 (the "Bond Resolution"), based on terms and conditions set forth in the Bond Resolution and a loan agreement between the Borough and the Bond Bank dated as of March 1, 2013 (the "Loan Agreement"); and

WHEREAS, the Bond Bank issued and sold its General Obligation and Refunding Bonds, 2013 Series One (the "Bond Bank Bonds"), to, among other things, provide funds to purchase the 2013 Bond, as provided in the Loan Agreement; and

WHEREAS, Section 6 of the Loan Agreement provides that payments of principal of and interest on the 2013 Bond may be adjusted to reduce debt service on the 2013 Bond if the Bond Bank is able to achieve debt service savings by refunding the Bond Bank Bonds; and

WHEREAS, the Bond Bank now intends to issue a series of its general obligation refunding bonds (the "Bond Bank Refunding Bonds") for the purpose, among others, of refunding all, or a portion, of the outstanding Bond Bank Bonds and achieving debt service savings; and

WHEREAS, the Assembly wishes to approve the Borough's participation in this refinancing and to authorize the Borough Mayor or his designee to accept a revised debt service schedule for the 2013 Bond if the Bond Bank successfully refinances the Bond Bank Bonds;

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

SECTION 1. Approval of Refinancing. The Assembly hereby approves the Borough's participation in the Bond Bank's refinancing of the Bond Bank Bonds and authorizes the Borough Mayor or his designee to approve a revised schedule of principal payment amounts and interest rates for the 2013 Bond, in accordance with Section 6 of the Loan Agreement, so long as the revised debt service schedule is financially advantageous to the Borough. The revised schedule of debt service on the 2013 Bond and other provisions as may be required by the Bond Bank will be set forth in an amendatory loan agreement (the "Amendatory Loan Agreement") and a refunding bond (the "2020 Refunding Bond") to be issued in exchange for the 2013 Bond. Notwithstanding, if only a portion of the outstanding principal amount of the 2013 Bond is refinanced, the 2013 Bond shall be exchanged for a bond reflecting the unrefunded portion of the 2013 Bond (the "Exchanged 2013 Bond"). The Borough Mayor or Finance Director is hereby authorized to execute and deliver the Amendatory Loan Agreement on behalf of the Borough and to deliver the 2020 Refunding Bond and Exchanged 2013 Bond, as the case may be, executed in accordance with the provisions of the Bond Resolution and this resolution, to the Bond Bank in exchange for the 2013 Bond. The Borough Mayor, Finance Director and other appropriate officers and employees of Borough are also hereby authorized to provide financial information about the Borough that the Bond Bank may require for the official statement for the Bond Bank Refunding Bonds.

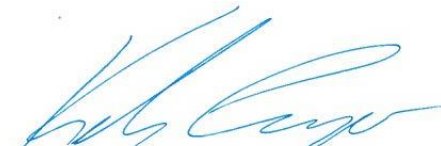
SECTION 2. Tax Matters. The 2013 Bond was issued as a tax-exempt obligation under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). Subject to applicable law, the 2020 Refunding Bond may be issued on a tax-exempt or taxable basis, as determined by the Mayor or Finance Director. The Exchanged 2013 Bond shall retain its original tax treatment under the Code.

SECTION 3. General Authorization. The Mayor, Finance Director, Borough Clerk, Borough Attorney, and any other appropriate officers, agents, attorneys and employees of the Borough are each hereby authorized and directed to cooperate with the Bond Bank and to take such steps, do such other acts and things, and execute such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable to carry out the terms and provisions of, and complete the transactions contemplated by, this Resolution.

SECTION 4. Prior Acts. Any and all acts heretofore taken by officers, agents, attorneys and employees of the Borough in connection with refinancing the 2013 Bond are hereby ratified and confirmed.**SECTION 5. Recitals.** The recitals to this resolution are hereby incorporated into this resolution as if fully set forth herein.

SECTION 6. Effective Date. This resolution shall become effective immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JUNE, 2020.

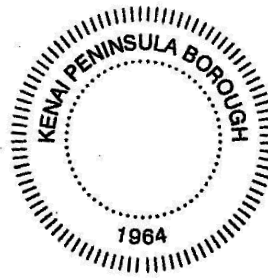


Kelly Cooper, Assembly President

ATTEST:



John Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper
No: None
Absent: None


CERTIFICATE

I, the undersigned, Clerk of the Kenai Peninsula Borough, Alaska (the "Borough"), Do
HEREBY CERTIFY:

1. That the attached resolution is a true and correct copy of Resolution No. 2020-044 (the "Resolution") of the Borough as approved at a regular meeting of the Assembly of the Kenai Peninsula Borough, Alaska (the "Assembly") held on the 16th day of June, 2020, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such regular meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Assembly voted in the proper manner for the approval of the Resolution; that all other requirements and proceedings incident to the proper approval of the Resolution have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of June, 2020.



John Blankenship, MMC, Borough Clerk
Kenai Peninsula Borough

Introduced by:	Mayor
Date:	12/04/12
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2012-091**

**A RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF GENERAL
OBLIGATION BONDS OF THE KENAI PENINSULA BOROUGH IN THE
AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED ONE MILLION
FOUR HUNDRED THOUSAND DOLLARS (\$1,400,000) TO PAY THE COSTS
OF CAPITAL IMPROVEMENTS IN THE BEAR CREEK FIRE SERVICE
AREA, FIXING CERTAIN DETAIL OF SUCH BONDS, AND PLEDGING THE
FULL FAITH AND CREDIT OF THE BEAR CREEK FIRE SERVICE AREA TO
THE PAYMENT THEREOF**

WHEREAS, pursuant to Ordinance 2007-24 of the Kenai Peninsula Borough (the "Borough") passed and approved on August 7, 2007, and as further clarified by the assembly on August 21, 2007, the following question, referred to at the election held on October 2, 2007, as Proposition No. 4, ("Proposition 4") was passed and approved:

PROPOSITION NO. 4
BEAR CREEK FIRE SERVICE AREA CAPITAL IMPROVEMENT PROJECT AND
ISSUANCE OF GENERAL OBLIGATION BONDS

Shall the Kenai Peninsula Borough spend \$3,500,000 for capital improvements related to the Bear Creek Fire Service Area and issue up to \$1,400,000 of general obligation bonds to provide funding for the project?

The bond proceeds of \$1,400,000 will be used to pay the costs of planning, designing, acquiring property for, site preparation, financing, constructing, acquiring, renovating, expanding, installing and equipping the Bear Creek Fire Service Area facility located within the Bear Creek Fire Service Area. Issuance of the bonds is subject to availability of grant funds for the remaining costs of the project; if the grant funding is not received the bonds will not be issued.

The general obligation bond debt will be paid from operating revenues generated by the Bear Creek Fire Service Area and from ad valorem taxes on all taxable property levied and collected in the Bear Creek Fire Service Area. The Bear Creek Fire Service Area will pledge its full faith and credit for payment of the general obligation bond debt.

Voter approval of this bond proposition authorizes for each \$100,000 of assessed real and personal property value in the Bear Creek Fire Service Area (based on the estimated 2007 tax year assessed valuation) an annual tax of approximately \$100.00 (an amount equal to approximately 1.0 mill) to retire the proposed general obligation bond debt.

YES [A Yes vote approves the sale of the bonds and construction of a new fire and emergency services facility – based on receiving \$2,100,000 of additional grant funding.]

NO [A No vote prohibits the issuance of the bonds and the construction project.]

WHEREAS, Section 29.47.410 of the Alaska Statutes provides that the Assembly by ordinance or resolution may provide for the form and manner of sale of bonds and notes; and

WHEREAS, it is necessary and in the best interest of the Borough and its residents that the Borough proceed to plan, design, do site preparation for, construct, acquire, renovate, install, and equip the capital improvements within the Borough described in Proposition 4 (the "Project"), and issue not to exceed \$1,400,000 principal amount of the general obligation bonds referred to in Proposition 4, constituting all of the unsold general obligation bonds referred to therein, to pay a portion of costs of the Project; and

WHEREAS, a Loan Agreement would be entered into between the Alaska Municipal Bond Bank and the Borough, which provides for the Alaska Municipal Bond Bank to purchase the Bonds on the terms and conditions set forth therein and in this resolution, and it is in the best interest of the Borough that it sell the bonds to the Alaska Municipal Bond Bank under such terms and conditions;

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

SECTION 1. Definitions. The following terms shall have the following meanings in this resolution:

- (a) "Acquired Obligations" means and includes any of the following securities, if and to the extent the same are at the time legal for investment of funds of the Borough: any noncallable bonds or other noncallable obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America.

- (b) "Assembly" means the Assembly of the Borough, as the general legislative authority of the Borough, as the same shall be duly and regularly constituted from time to time.
- (c) "Bond" or "Bonds" means any of the Bonds of the Borough, the issuance and sale of which are authorized herein as the evidence of the indebtedness referred to in Proposition 4.
- (d) "Bond Bank" means the Alaska Municipal Bond Bank.
- (e) "Bond Register" means the registration books maintained by the Registrar, which include the names and addresses of the owners or nominees of the Registered Owners of the Bonds.
- (f) "Borough" means the Kenai Peninsula Borough, a municipal corporation of the State of Alaska, organized as a second class borough under Title 29 of the Alaska Statutes.
- (g) "Code" means the Internal Revenue Code of 1986, as amended from time to time, together with all regulations applicable thereto.
- (h) "Cost" or "Costs" means the cost of planning, designing, site preparation, constructing, acquiring, renovating, installing, and equipping the Project, including interest on the Bonds during the period of planning, designing, site preparation, constructing, acquiring, renovating, installing, and equipping the Project, the cost whether incurred by the Borough, the Service Area, or by another of field surveys and advance planning undertaken in connection with the Project properly allocable to the Project, the cost of acquisition of any land or interest therein required as the site or sites of the Project or for use in connection therewith, the cost of any indemnity and surety bonds and premiums on insurance incurred in connection with the Project prior to or during construction thereof, all related direct administrative and inspection expenses whether incurred by the Borough, the Service Area, or by another in connection with the Project prior to or during construction thereof, and allocation of portions of direct costs of the Borough or the Service Area, legal fees, costs of issuance of the Bonds by the Borough, including financing charges and fees and expenses of bond counsel, financial advisors, and consultants in connection therewith, the cost of any bond insurance premium, the cost of audits, the cost of all machinery, apparatus, and equipment, cost of engineering, architectural services, designs, plans, specifications, and surveys, estimates of cost, the reimbursement of all moneys advanced from whatever source for the payment of any item or items of cost of the Project, and all other expenses necessary or incidental to determining the feasibility or practicability of the Project, and such other expenses not specified herein as may be necessary or incidental to the acquisition and

development of the Project, the financing thereof and the putting of the same in use and operation.

- (i) "Loan Agreement" means the Loan Agreement between the Borough and the Bond Bank, dated as of the first day of the month in which the Bonds are delivered.
- (j) "Registered Owner" means the person named as the registered owner of a Bond in Bond Register.
- (k) "Registrar" means the Finance Director of the Borough, or any successor that the Borough may appoint by resolution.
- (l) "Service Area" means the Bear Creek Fire Service Area located within the Borough.

SECTION 2. Authorization of Bonds and Purpose of Issuance. For the purpose of providing the funds required to pay a portion of the Costs of the Project, to provide for original issue premium or discount, if any, and to pay all costs incidental thereto and to the issuance of the Bonds, the Borough hereby authorizes and determines to issue and to sell the Bonds in the aggregate principal amount of not to exceed \$1,400,000. The Bonds shall be designated "Kenai Peninsula Borough, Alaska Bear Creek Fire Service Area General Obligation Bonds."

The Borough has ascertained and hereby determines that each and every matter and thing as to which provision is made in this resolution is necessary in order to carry out and effectuate the purpose of the Borough in accordance with the Constitution and the statutes of the State of Alaska and to incur the indebtedness and issue the Bonds as referred to in Proposition 4.

SECTION 3. Obligation of Bonds. The Bonds shall be direct and general obligations of the Service Area and the full faith and credit of the Service Area are hereby pledged to the payment of the principal of and interest on the Bonds. The Borough hereby irrevocably pledges and covenants that it will levy and collect taxes upon all taxable property within the Service Area without limitation as to rate or amount, in amounts sufficient, together with other funds legally available therefor, to pay the principal of and interest on the Bonds as the same become due and payable.

SECTION 4. Date, Maturities, Interest Rates, and Other Details of Bonds. The Bonds shall be dated the date of delivery, shall be in the denomination of \$5,000 or any integral multiple thereof, or such other date and denominations as may be determined by the Mayor or Finance Director, and shall be numbered separately in such manner and with any additional designation as the Registrar deems necessary for purposes of identification.

The Bonds shall bear interest from the date thereof, payable and semiannually on such dates as may be determined by the Mayor or Finance Director. Interest shall be computed on the basis of a 360-day year composed of twelve 30-day months. The Mayor or Finance Director is authorized to fix and determine the maturity dates and the rate of interest on each principal installment of the Bonds, provided that (i) no rate of interest on a principal installment shall exceed the rate of interest on the corresponding maturity of the bonds of the Bond Bank issued to provide funds to purchase the Bonds; (ii) the true interest cost of the Bonds shall not exceed 6.0% unless approved by resolution of the Assembly; and (iii) all of the Bonds shall mature on or before December 31, 2033.

SECTION 5. Place and Medium of Payment. Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts. For so long as all outstanding Bonds are registered in the name of the Alaska Municipal Bond Bank, payments of principal and interest thereon shall be made as provided in the Loan Agreement. In the event that the Bonds are no longer owned by the Alaska Municipal Bond Bank, payments of principal and interest on the Bonds will be made by check or draft mailed by first class mail to the Registered Owners of the Bonds at the addresses for such Registered Owners appearing on the Bond Register on or before the payment date, provided that the final installment of principal and interest on the Bonds will be payable upon presentation and surrender of the Bonds by the Registered Owner at the principal office of the Registrar.

SECTION 6. Optional Redemption. The Bonds may be subject to redemption, at the Borough's option, as provided in the Loan Agreement.

SECTION 7. Form of Bond. Each Bond shall be in substantially the following form, subject to the provisions of the Loan Agreement:

UNITED STATES OF AMERICA
STATE OF ALASKA

KENAI PENINSULA BOROUGH
(A Municipal Corporation of the State of Alaska)

NO. _____ \$ _____

KENAI PENINSULA BOROUGH, ALASKA BEAR CREEK FIRE
SERVICE AREA GENERAL OBLIGATION BONDS

REGISTERED OWNER:

PRINCIPAL AMOUNT:

The Kenai Peninsula Borough, Alaska (the "Borough"), a municipal corporation of the State of Alaska, hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or its registered assigns, the Principal Amount indicated above in the following installments on ____ 1 of each of the following years, and to pay interest on such installments from the date hereof, payable on [____ 1, 20__] and semiannually thereafter on the first days of June and December of each year, at the rates per annum as follows:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
_____	_____	_____

For so long as this Bond is owned by the Alaska Municipal Bond Bank (the "Bank"), payment of principal and interest shall be made as provided in the Loan Agreement between the Bank and the Borough (the "Loan Agreement"). In the event that this Bond is no longer owned by the Bank, payment of principal of and interest on this Bond will be made by check or draft mailed by first class mail to the registered owner at the address appearing on the bond register of the Borough on or before the payment date, provided that the final installment of principal and interest on this Bond will be payable at the office of the Borough Finance Director (the "Registrar") upon surrender of this Bond. Interest shall be computed on the basis of a 360-day year composed of twelve 30-day months. Both principal of and interest on this bond are payable in lawful money of the United States of America which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts.

This Bond is one of the Bear Creek Fire Service Area General Obligation Bonds of like tenor and effect except as to interest rate, serial number, and maturity, aggregating \$_____ in principal amount, and constituting bonds authorized for the purpose of paying the cost of the educational capital improvements in the Borough, and is issued under Resolution 2012-091 of the Borough entitled:

A RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF THE KENAI PENINSULA BOROUGH IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED ONE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$1,400,000) TO PAY THE COSTS OF CAPITAL IMPROVEMENTS IN THE BEAR CREEK FIRE SERVICE AREA, FIXING CERTAIN DETAIL OF SUCH BONDS, AND PLEDGING THE FULL FAITH AND CREDIT OF THE BEAR CREEK FIRE SERVICE AREA TO THE PAYMENT THEREOF

(herein called the "Resolution").

The Bonds will be subject to redemption at the option of the Borough as described in the Loan Agreement.

This Bond is transferable as provided in the Resolution, (i) only upon the bond register of the Borough, and (ii) upon surrender of this Bond together with a written instrument of transfer duly executed by the registered owner or the duly authorized attorney of the registered owner, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount and

maturity shall be issued to the transferee in exchange therefor as provided in the Resolution and upon the payment of charges, if any, as therein prescribed. The Borough may treat and consider the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price, if any, hereof and interest due hereon and for all other purposes whatsoever.

The full faith and credit of the Bear Creek Fire Service Area are pledged for the payment of the principal of and interest on the Bond as the same shall become due.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, or things required by the constitution or statutes of the State of Alaska to exist, to have happened, or to have been performed precedent to or in the issuance of this Bond, exist, have happened, and have been performed, and that the series of Bonds of which this is one, together with all other indebtedness of the Borough, is within every debt and other limit prescribed by said constitution or statutes.

IN WITNESS WHEREOF, THE KENAI PENINSULA BOROUGH, ALASKA, has caused this Bond to be signed in its name and on its behalf by its Mayor and its corporate seal to be hereunto impressed or otherwise reproduced and attested by its Clerk, all as of the ____ day of _____, 2012.

Mike Navarre, Mayor

ATTEST:

Johni Blankenship, MMC, Borough Clerk

SECTION 8. Execution. The Bonds shall be executed in the name of the Borough by the Mayor, and its corporate seal shall be impressed or otherwise reproduced thereon and attested by the Borough Clerk. The execution of a Bond on behalf of the Borough by persons that at the time of the execution are duly authorized to hold the proper offices shall be valid and sufficient for all purposes, although any such person shall have ceased to hold office at the time of delivery of the Bond or shall not have held office on the date of the Bond.

SECTION 9. Registration.

- (a) The Bonds shall be issued only in registered form as to both principal and interest. The Borough designates the Borough Finance Director as Registrar for the Bonds. The Registrar shall keep, or cause to be kept, the Bond Register at the principal office of the Borough.
- (b) The Borough, in its discretion, may deem and treat the Registered Owner of each Bond as the absolute owner thereof for all purposes, and neither the Borough nor the Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 5, but

such registration may be transferred as herein provided. All such payments made as described in Section 5 shall be valid and shall satisfy and discharge the liability of the Borough upon such Bond to the extent of the amount or amounts so paid.

- (c) Bonds shall be transferred only upon the Bond Register kept by the Registrar. Upon surrender for transfer or exchange of any Bond at the office of the Registrar, with a written instrument of transfer or authorization for exchange in form and with guaranty of signature satisfactory to the Registrar, duly executed by the registered owner or its duly authorized attorney, the Borough shall execute and the Registrar shall deliver an equal aggregate principal amount of Bonds of the same maturity of any authorized denominations, subject to such reasonable regulations as the Registrar may prescribe and upon payment sufficient to reimburse it for any tax, fee or other governmental charge required to be paid in connection with such transfer or exchange. All Bonds surrendered for transfer or exchange shall be canceled by the Registrar. The Registrar shall not be required to transfer or exchange any Bond after the Bond has been called for redemption.
- (d) The Borough covenants that, until all Bonds have been surrendered and canceled, it will maintain a system for recording the ownership of each Bond that complies with the provisions of Section 149 of the Code.

SECTION 10. Mutilated, Destroyed, Stolen, or Lost Bonds. Upon surrender to the Registrar of Mutilated Bond, the Borough shall execute and deliver a new Bond of like maturity and principal amount. Upon filing with the Registrar of evidence satisfactory to the Borough that a Bond has been destroyed, stolen, or lost and of the ownership thereof, and upon furnishing the Borough with identification satisfactory to it, the Borough shall execute and deliver a new Bond of like maturity and principal amount. The person requesting the authentication and delivery of a new Bond pursuant to this section shall comply with such other reasonable regulations as the Borough may prescribe and pay such expenses as the Borough may incur in connection therewith. Any Bonds issued pursuant to this section in substitution for Bonds alleged to be destroyed, stolen or lost shall constitute original additional contractual obligations on the part of the Borough, whether or not the Bonds alleged to be destroyed, stolen, or lost be at any time enforceable by anyone.

SECTION 11. Disposition of the Sale Proceeds of the Bonds. The sale proceeds of the Bonds representing accrued interest on the Bonds may be applied to pay a portion of the interest due on the Bonds on the first interest payment date. The remainder of the sale proceeds of the Bonds shall be applied to pay Costs. The sale proceeds of the Bonds shall be deposited in the appropriate funds or accounts of the Borough for such purposes.

SECTION 12. Tax Covenants. The Borough covenants to comply with any and all applicable requirements set forth in the Code in effect from time to time to the extent that

such compliance shall be necessary for the exclusion of the interest on the Bonds from gross income for federal income tax purposes. The Borough covenants that it will make no use of the proceeds of the Bonds which will cause the Bonds to be "arbitrage bonds" subject to federal income taxation by reason of Section 148 of the Code. The Borough covenants that it will not take or permit any action that would cause the Bonds to be "private activity bonds" as defined in Section 141 of the Code.

SECTION 13. Sale of the Bonds; Loan Agreement. The sale of for not to exceed \$1,400,000 aggregate principal amount of the Bonds, as provided in the Loan Agreement and this resolution, is hereby authorized and approved. The Mayor or Borough Finance Director is hereby authorized to execute and deliver the Loan Agreement, and a Continuing Disclosure Certificate and such other documents as may be necessary to effectuate issuances of the Bonds on behalf of the Borough.

SECTION 14. Authority of Officers. The Mayor, the Borough Finance Director, the Borough Clerk are, and each of them hereby is, authorized and directed to do and perform all things and determine all matters not determined by this resolution, or to be determined by a subsequent ordinance or resolution, to the end that the Borough may carry out its obligations under the Bonds and this resolution.

SECTION 15. Defeasance. In the event that money and/or non-callable Acquired Obligations maturing at such times and bearing interest to be earned thereon in amounts sufficient to redeem and retire any or all of the Bonds in accordance with their terms are set aside in a special trust account to effect such redemption or retirement and such moneys and the principal of and interest on such Acquired Obligations are irrevocably set aside and pledged for such purpose, then no further payments need to be made to pay or secure the payment of the principal of and interest on such Bonds and such Bonds shall be deemed not to be outstanding.

SECTION 16. Amendatory and Supplemental Resolutions.

- (a) The Assembly from time to time and at any time may adopt a resolution or resolutions supplemental hereof, which resolution or resolutions thereafter shall become a part of this resolution, for any one or more of the following purposes:
 - (i) To add to the covenants and agreements of the Borough in this resolution, other covenants and agreements thereafter to be observed, or to surrender any right or power herein reserved to or conferred upon the Borough.
 - (ii) To make such provisions for the purpose of curing any ambiguities or of curing, correcting or supplementing any defective provision contained in this resolution or in regard to matters or questions arising

under this resolution as the Assembly may deem necessary or desirable and not inconsistent with this resolution and which shall not adversely affect the interest of the Registered Owner of the Bonds.

Any such supplemental resolution may be adopted without the consent of the Registered Owner of any of the Bonds at any time outstanding, notwithstanding any of the provisions of subsection (b) of this section.

- (b) With the consent of a bond insurer, if any, or the Registered Owners of not less than 60 percent in aggregate principal amount of the Bonds at the time outstanding, the Assembly may adopt a resolution or resolutions supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this resolution or of any supplemental resolution; provided, however that no such supplemental resolution shall:

- (i) extend the fixed maturity of any of the Bonds, or reduce the rate of interest thereon, or reduce the amount or change the date of any sinking fund installment, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the owners of each Bond so affected; or

- (ii) reduce the aforesaid percentage of owners of Bonds required to approve any such supplemental resolution without the consent of the owners of all the Bonds then outstanding.

It shall not be necessary for the consent of the Registered Owners of the Bonds under this subsection to approve the particular form of any proposed supplemental resolution, but it shall be sufficient if such consent approves the substance thereof.

- (c) Upon the adoption of any supplemental resolution under this section, this resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this resolution of the Borough and all Registered Owners of outstanding Bonds shall thereafter be subject in all respects to such modification and amendment, and all the terms and conditions of the supplemental resolution shall be deemed to be part of the terms and conditions of this resolution for any and all purposes.

- (d) Bonds executed and delivered after the execution of any supplemental resolution adopted under this section may bear a notation as to any matter provided for in such supplemental resolution, and if such supplemental resolution shall so provide, new Bonds modified so as to conform, in the opinion of the Borough, to any modification of this resolution contained in any such supplemental resolution may be prepared by the Borough and delivered without cost to the Registered Owner of the Bonds then

outstanding, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

SECTION 17. Miscellaneous.

- (a) All payments made by the Borough of, or on account of, the principal of or interest on the Bonds shall be made on the several Bonds ratably and in proportion to the amount due thereon, respectively, for principal or interest as the case may be.
- (b) No recourse shall be had for the payment of the principal of or the interest on the Bonds or for any claim based thereon or on this resolution against any member of the Assembly or officer of the Borough or any person executing the Bonds. The Bonds are a debt only of the Service Area and are not and shall not be in any way a debt or liability of the Borough, the State of Alaska or of any political subdivision thereof, and do not and shall not create or constitute an indebtedness or obligation, either legal, moral or otherwise, of the Borough, the State or of any political subdivision thereof.

SECTION 18. Severability. If any one or more of the provisions of this resolution shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this resolution and shall in no way affect the validity of the other provisions of this resolution or of the Bonds.

SECTION 19. Effective date. This resolution shall take effect immediately.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 4TH DAY OF DECEMBER, 2012.

Linda Murphy, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes: Haggerty, Johnson, McClure, Pierce, Smalley, Smith, Tauriainen, Wolf, Murphy
No: None
Absent: None

Introduced by:	Mayor
Date:	09/15/20
Hearing:	10/13/20
Action:	Postponed as Amended to 12/01/20
Vote:	9 Yes, 0 No, 0 Absent
Date:	12/01/20
Action:	Tabled as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-19-08**

**AN ORDINANCE APPROPRIATING REFINANCED 2013 SCHOOL GENERAL
OBLIGATION BOND PROCEEDS FOR THE PURPOSE OF PAYING BOND
REFINANCING ISSUANCE COSTS**

WHEREAS, the Kenai Peninsula Borough, Alaska (the “Borough”), to finance certain educational capital improvements, issued and sold its Education Capital Improvement General Obligation Bond, Series 2013, dated November 14, 2013, in the original principal amount of \$20,860,000 (the “2013 Bond”) to the Alaska Municipal Bond Bank (the “Bond Bank”), as authorized by Resolution No. 2013-071 of the Borough adopted on October 8, 2013 (the “Bond Resolution”), based on terms and conditions set forth in the Bond Resolution and a loan agreement between the Borough and the Bond Bank dated as of November 1, 2013 (the “Loan Agreement”); and

WHEREAS, the Bond Bank issued and sold its General Obligation Bonds, 2013 Series Three (the “Bond Bank Bonds”), to, among other things, provide funds to purchase the 2013 Bond, as provided in the Loan Agreement; and

WHEREAS, Section 6 of the Loan Agreement provides that payments of principal of and interest on the 2013 Bond may be adjusted to reduce debt service on the 2013 Bond if the Bond Bank is able to achieve debt service savings by refunding the Bond Bank Bonds; and

WHEREAS, the Bond Bank now intends to issue a series of its general obligation refunding bonds (the “Bond Bank Refunding Bonds”) for the purpose, among others, of refunding all, or a portion, of the outstanding Bond Bank Bonds and achieving debt service savings; and

WHEREAS, through Resolution 2020-042, the assembly approved the Borough’s participation in this refinancing and to authorize the mayor or his designee to accept a revised debt service schedule for the 2013 Bond if the Bond Bank successfully refinances the Bond Bank Bonds; and

WHEREAS, the Bond Bank anticipates a refinancing closing date following October 1, 2020;

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

SECTION 1. That 2013 refinanced school bond proceeds in the amount of up to \$6,860.00 are appropriated to the School Bond Capital Project Fund, account number 401.78050.21BND.49999 to pay costs related to the issuance.

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 4. This ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

10/13/20 Vote on motion to postpone as amended to 12/01/20:

Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper
No: None
Absent: None

12/01/20 Vote on motion to table as amended:

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

Kenai Peninsula Borough
Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*

FROM: Brandi Harbaugh, Finance Director *BH*

DATE: September 3, 2020

SUBJECT: Ordinance 2020-19 08, Appropriating Refinanced 2013 School General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor)

In May 2020, the Kenai Peninsula Borough approved Resolution 2020-042, authorizing the Borough's participation in the refinancing of select series for the 2013 school general obligation bonds.

Due to reductions in long term interest rates, the Alaska Municipal Bond Bank has determined that a portion of the outstanding 2013 school bonds could be refinanced, with potential savings to borough residents of approximately \$670,000 in interest over the remaining life of the debt. This ordinance appropriates refinanced bond proceeds for the purpose of paying costs related to the issuance of the bond refinancing.

Your consideration is appreciated.

**FINANCE DEPARTMENT
ACCOUNT / FUNDS VERIFIED**

Acct. No. 401.00000.21BND.39010

Amount: \$6,860.00

By: *PP* Date: 9/2/2020

Kenai Peninsula Borough

Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor CP

FROM: Brandi Harbaugh, Finance Director BH

DATE: November 19, 2020

SUBJECT: Request to Table Ordinance 2020-19-08, Appropriating Refinanced 2013 School General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor)

The Alaska Supreme Court's recent decision which invalidated a plan to sell bonds to pay oil tax credits has caused a certain amount of uncertainty in the Alaska bond market. The Alaska Department of Law has requested a rehearing to better define the scope of the ruling.

The Alaska Municipal Bond Bank has delayed its bond issue for a time uncertain as a result of the recent decision. Therefore, pending further analysis of the effect of the Supreme Court ruling we are looking to postpone the refinancing of the 2013 School General Obligation Bonds until calendar year 2021.

Therefore, we are requesting to table this ordinance until early 2021, providing more time for analysis and review of the market

Your consideration is appreciated.

Kenai Peninsula Borough

Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor CP

FROM: Brandi Harbaugh, Finance Director BH

DATE: October 1, 2020

SUBJECT: Amendment to Ordinance 2020-19-08, Appropriating Refinanced 2013 School General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs & Request to Postpone Hearing (Mayor)

The Alaska Supreme Court's recent decision which invalidated a plan to sell bonds to pay oil tax credits has caused a certain amount of uncertainty in the Alaska bond market. The Alaska Department of Law has requested a rehearing to better define the scope of the ruling. The Alaska Municipal Bond Bank has delayed its bond issue for a time uncertain as a result of the recent decision. Therefore, pending further analysis of the effect of the Supreme Court ruling we are seeking to postpone the refinancing of the 2013 School General Obligation Bonds until after October 2020.

Based on the above circumstances, postponement of the hearing on this ordinance to the November 10, 2020, meeting is requested as well as the following amendment:

(Please note the bold underlined language is new and the bracketed strikeout language is to be deleted.)

- Amend the last whereas clause, as follows:

WHEREAS, the Bond Bank anticipates a refinancing closing date ~~[of September 2020]~~ following October 1, 2020;

Your consideration is appreciated.

Introduced by:	Mayor
Date:	10/08/13
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2013-071**

**A RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF GENERAL
OBLIGATION BONDS OF THE KENAI PENINSULA BOROUGH IN THE
AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$22,987,000 TO PAY THE
COSTS OF EDUCATIONAL CAPITAL IMPROVEMENTS IN THE BOROUGH,
FIXING CERTAIN DETAILS OF SUCH BONDS, AND PLEDGING THE FULL FAITH
AND CREDIT OF THE BOROUGH TO THE PAYMENT THEREOF**

WHEREAS, pursuant to Ordinance 2013-28 of the Kenai Peninsula Borough (the "Borough") enacted on August 6, 2013, the following question, referred to at the election held on October 1, 2013 as Proposition No. 2 ("Proposition 2"), was passed and approved:

PROPOSITION NO. 2

Shall the Kenai Peninsula Borough borrow up to \$22,987,000 through the issuance of general obligation bonds?

The general obligation bond proceeds will be used to pay costs of planning, designing, site preparation, constructing, acquiring, renovating, installing and equipping educational capital improvement projects consisting of a new Homer High School field and roof replacements at Tustumena Elementary School, Skyview School, Soldotna Middle School, Homer Junior High School, Paul Banks School, Kenai Central High School, Soldotna High School, Kenai Middle School, Kenai Alternative School, and Ninilchik School, and similar education capital improvements in the Borough.

The debt will be paid from ad valorem taxes on all taxable property levied and collected areawide in the Borough. The Borough will also pledge its full faith and credit for payment of the debt. The approximate annual amount of taxes on \$100,000 of assessed real or personal property value (based on the Borough's FY2014 taxable assessed valuation) to retire the debt is \$6.77, assuming 70 percent debt service reimbursement from the State of Alaska.

No bonds will be issued, unless and until the project qualifies for at least 70 percent debt service reimbursement from the State of Alaska under existing or new legislation. Receipt of State reimbursement is subject to annual legislative appropriations.

FISCAL NOTE: it is estimated that the annual debt service for the school bonds would be approximately \$1,574,500 of which \$1,102,150 would be received from the State of Alaska under the 70% debt reimbursement program, resulting in a net cost to the Borough of \$472,350; an amount equal to \$6.77 per \$100,000 of assessed real or personal property (based upon the Borough's FY2014 taxable assessed valuation).

Shall the Kenai Peninsula Borough borrow up to \$22,987,000 through the issuance of general obligation bonds?

Yes [A "Yes" vote approves the sale of bonds only if, and to the extent that, such project qualifies for at least 70% debt reimbursement from the State of Alaska.]

No [A "No" vote opposes the sale of bonds.]

WHEREAS, Section 29.47.410 of the Alaska Statutes provides that the Assembly by ordinance or resolution may provide for the form and manner of sale of bonds and notes; and

WHEREAS, the Borough received formal notification from the Alaska Department of Education and Early Development ("DEED") that the Project herein is eligible for debt reimbursement at a rate of 70 percent; and

WHEREAS, it is necessary and in the best interest of the Borough and its residents that the Borough proceed to plan, design, do site preparation for, construct, acquire, renovate, install and equip the capital improvements within the Borough described in Proposition 2 (the "Project"), and issue the general obligation bonds referred to in Proposition 2 in the principal amount not to exceed \$22,987,000, constituting all of the unsold general obligation bonds referred to therein, to pay costs of the Project; and

WHEREAS, it is in the best interest of the Borough to enter into a Loan Agreement between the Alaska Municipal Bond Bank and the Borough, which provides for the Alaska Municipal Bond Bank to purchase the Bonds on the terms and conditions set forth therein and in this resolution;

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

SECTION 1. Definitions. The following terms shall have the following meanings in this resolution:

- (a) "Assembly" means the Assembly of the Borough, as the general legislative authority of the Borough, as the same shall be duly and regularly constituted from time to time.
- (b) "Bond" or "Bonds" means any of the Bonds of the Borough, the issuance and sale of which are authorized herein as the evidence of the indebtedness referred to in Proposition 2.
- (c) "Bond Bank" means the Alaska Municipal Bond Bank.
- (d) "Bond Register" means the registration books maintained by the Registrar, which include the names and addresses of the owners or nominees of the Registered Owners of the Bonds.
- (e) "Borough" means the Kenai Peninsula Borough, a municipal corporation of the State of Alaska, organized as a second class borough under Title 29 of the Alaska Statutes.
- (f) "Code" means the Internal Revenue Code of 1986, as amended from time to time, together with all regulations applicable thereto.
- (g) "Continuing Disclosure Certificate" means the certificate dated as of the date of the Bonds, described in Section 18 of this resolution.
- (h) "Cost" or "Costs" means the cost of planning, designing, acquiring property for, site preparation, constructing, acquiring, renovating, installing and equipping the Project, including interest on the Bonds during the period of planning, designing, acquiring property for, site preparation, constructing, acquiring, renovating, installing, and equipping the Project, the cost whether incurred by the Borough or by another of field surveys and advance planning undertaken in connection with the Project properly allocable to the Project, the cost of acquisition of any land or interest therein required as the site or sites of the Project or for use in connection therewith, the cost of any indemnity and surety bonds and premiums on insurance incurred in connection with the Project prior to or during construction thereof, all related direct administrative and inspection expenses whether incurred by the Borough or by another in connection with the Project prior to or during construction thereof and allocable portions of direct costs of the Borough, legal fees, costs of issuance of the Bonds by the Borough, including financing charges and fees and expenses of bond counsel, financial advisors and consultants in connection therewith, the cost of any bond insurance premium, the cost of audits, the cost of all machinery, apparatus and equipment, cost of engineering, architectural services, designs, plans, specifications and surveys, estimates of cost, the reimbursement of all moneys advanced from whatever source for the payment of any item or items of cost of the Project, and all other expenses necessary or incidental to

determining the feasibility or practicability of the Project, and such other expenses not specified herein as may be necessary or incident to the acquisition and development of the Project, the financing thereof and the putting of the same in use and operation.

- (i) "Loan Agreement" means the Loan Agreement between the Borough and the Bond Bank.
- (j) "Registered Owner" means the person named as the registered owner of a Bond in the Bond Register.
- (k) "Registrar" means the Finance Director of the Borough, or any successor that the Borough may appoint through resolution.

SECTION 2. Authorization of Bonds and Purpose of Issuance. For the purpose of providing the funds required to pay the Costs of the Project, to provide for original issue discount or premium, if any, and to pay all costs incidental thereto and to the issuance of the Bonds, the Borough hereby authorizes and determines to issue and sell the Bonds in the aggregate principal amount of not to exceed \$22,987,000. The Bonds shall be designated "Kenai Peninsula Borough, Alaska General Obligation School Bonds."

The Borough has ascertained and hereby determines that each and every matter and thing as to which provision is made in this resolution is necessary in order to carry out and effectuate the purpose of the Borough in accordance with the Constitution and the statutes of the State of Alaska and to incur the indebtedness and issue the Bonds as referred to in Proposition 2.

SECTION 3. Obligation of Bonds. The Bonds shall be direct and general obligations of the Borough, and the full faith and credit of the Borough are hereby pledged to the payment of the principal of and interest on the Bonds. The Borough hereby irrevocably pledges and covenants that it will levy and collect taxes upon all taxable property within the Borough without limitation as to rate or amount, in amounts sufficient, together with other funds legally available therefor, to pay the principal of and interest on the Bonds as the same become due and payable.

SECTION 4. Date, Maturities, Interest Rates, and Other Details of Bonds. The Bonds shall be dated as of the date of delivery, shall be in the denomination of \$5,000 or any integral multiple thereof, or such other date and denominations as may be determined by the Mayor or Finance Director, and shall be numbered separately in such manner and with any additional designation as the Registrar deems necessary for purposes of identification.

The Bonds shall bear interest from the date thereof, payable on May 15, 2014, and semiannually thereafter on November 15 and May 15 of each year or such other dates as may be determined by the Mayor or Finance Director. Interest

shall be computed on the basis of a 360-day year composed of twelve 30-day months. The Mayor or Finance Director is authorized to fix and determine the maturity dates and the rate of interest on each principal installment of the Bonds, provided that (i) no rate of interest on a principal installment shall exceed the rate of interest on the corresponding maturity of the bonds of the Bond Bank issued to provide funds to purchase the Bonds; (ii) the true interest cost of the Bonds shall not exceed 6.0 percent unless approved by resolution of the Assembly; and (iii) all of the Bonds shall mature on or before November, 2034.

SECTION 5. Payment of Principal and Interest. Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts. For so long as all outstanding Bonds are registered in the name of the Alaska Municipal Bond Bank, payments of principal and interest thereon shall be made as provided in the Loan Agreement. In the event that the Bonds are no longer owned by the Bond Bank, payments of principal and interest on the Bonds will be made by check or draft mailed by first class mail to the Registered Owners of the Bonds at the addresses for such Registered Owners appearing on the Bond Register on the 15th day of the month preceding the payment date, provided that the final installment of principal and interest on the Bonds will be payable at the principal office of the Registrar upon surrender of the Bond.

SECTION 6. Defeasance. In the event money and/or non-callable direct obligations of, or obligations the timely payment of principal of and interest on which are unconditionally guaranteed by, the United States of America, maturing at such times and bearing interest to be earned thereon in amounts sufficient to redeem and retire any or all of the Bonds in accordance with their terms are set aside in a special trust account to effect such redemption or retirement and such moneys and the principal of and interest on such obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made to pay or secure the payment of the principal of and interest on such Bonds and such Bonds shall be deemed not to be outstanding.

SECTION 7. Redemption. The Bonds, if any, subject to optional redemption by the Borough, the times when such Bonds are subject to optional redemption, the terms upon which such Bonds may be redeemed, and the redemption price or prices for such Bonds, shall be determined at the time of sale of the Bonds by the Mayor or Finance Director. For so long as the Bonds are held by the Bond Bank, redemption shall be in accordance with the provisions of the Loan Agreement.

SECTION 8. Form of Bond. Each Bond shall be in substantially the following form, subject to the provisions of the Loan Agreement:

UNITED STATES OF AMERICA
STATE OF ALASKA

KENAI PENINSULA BOROUGH
(A Municipal Corporation of the State of Alaska)

NO. _____

\$ _____

GENERAL OBLIGATION SCHOOL BONDS 20____

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____

The Kenai Peninsula Borough, Alaska (the "Borough"), a municipal corporation of the State of Alaska, hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or its registered assigns, the Principal Amount indicated above in the following installments on _____ 1 of each of the following years, and to pay interest on such installments from the date hereof, payable on _____ 1, 2014 and semiannually thereafter on the first days of _____ and _____ of each year, at the rates per annum as follows:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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For so long as this Bond is owned by the Alaska Municipal Bond Bank (the "Bank"), payment of principal and interest shall be made as provided in the Loan Agreement between the Bank and the Borough (the "Loan Agreement"). In the event that this Bond is no longer owned by the Bank, payment of principal of and interest on this Bond will be made by check or draft mailed by first class mail to the registered owner at the address appearing on the bond register of the Borough on the 15th day of the month preceding the payment date, provided that the final installment of principal and interest on this Bond will be payable at the office of the Borough Finance Director (the "Registrar") upon surrender of this Bond. Interest shall be computed on the basis of a 360-day year composed of twelve 30-day months. Both principal of and interest on this bond are payable in lawful money of the United States of America which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts.

This Bond is one of the General Obligation School Bonds, 20____ of the Kenai Peninsula Borough, Alaska of like tenor and effect except as to interest rate, serial number and maturity, aggregating \$_____ in principal amount, and constituting bonds authorized

for the purpose of paying the cost of the educational capital improvements in the Borough, and is issued under Resolution 2013-071 of the Borough entitled:

A RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF THE KENAI PENINSULA BOROUGH IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$22,987,000 TO PAY THE COSTS OF EDUCATIONAL CAPITAL IMPROVEMENTS IN THE BOROUGH, FIXING CERTAIN DETAILS OF SUCH BONDS, AND PLEDGING THE FULL FAITH AND CREDIT OF THE BOROUGH TO THE PAYMENT THEREOF

(herein called the "Resolution").

The Bonds will be subject to redemption at the option of the Borough as described in the Loan Agreement.

This Bond is transferable as provided in the Resolution, (i) only upon the bond register of the Borough, and (ii) upon surrender of this Bond together with a written instrument of transfer duly executed by the registered owner or the duly authorized attorney of the registered owner, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount and maturity shall be issued to the transferee in exchange therefor as provided in the Resolution and upon the payment of charges, if any, as therein prescribed. The Borough may treat and consider the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price, if any, hereof and interest due hereon and for all other purposes whatsoever.

This Bond is a general obligation of the Kenai Peninsula Borough, and the full faith and credit of the Borough is pledged for the payment of the principal of and interest on the Bond as the same shall become due.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts or things required by the constitution or statutes of the State of Alaska to exist, to have happened or to have been performed precedent to or in the issuance of this Bond, exist, have happened and have been performed, and that the series of Bonds of which this is one, together with all other indebtedness of the Borough, is within every debt and other limit prescribed by said constitution or statutes.

IN WITNESS WHEREOF, THE KENAI PENINSULA BOROUGH, ALASKA, has caused this Bond to be signed in its name and on its behalf by its Mayor and its corporate seal to be hereunto impressed or otherwise reproduced and attested by its Clerk, all as of the ____ day of _____, 20__.

MIKE NAVARRE
Borough Mayor

ATTEST:

JOHNI BLANKENSHIP, MMC, Borough Clerk

SECTION 9. Execution. The Bonds shall be executed in the name of the Borough by the Mayor, and its corporate seal shall be impressed or otherwise reproduced thereon and attested by the Borough Clerk. The execution of a Bond on behalf of the Borough by persons that at the time of the execution are duly authorized to hold the proper offices shall be valid and sufficient for all purposes, although any such person shall have ceased to hold office at the time of delivery of the Bond or shall not have held office on the date of the Bond.

SECTION 10. Registration. (a) The Bonds shall be issued only in registered form as to both principal and interest. The Borough designates the Borough Finance Director as Registrar for the Bonds. The Registrar shall keep, or cause to be kept, the Bond Register at the principal office of the Borough.

- (b) The Borough, in its discretion, may deem and treat the Registered Owner of each Bond as the absolute owner thereof for all purposes, and neither the Borough nor the Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 5, but such registration may be transferred as herein provided. All such payments made as described in Section 5 shall be valid and shall satisfy and discharge the liability of the Borough upon such Bond to the extent of the amount or amounts so paid.
- (c) Bonds shall be transferred only upon the Bond Register kept by the Registrar. Upon surrender for transfer or exchange of any Bond at the office of the Registrar, with a written instrument of transfer or authorization for exchange in form and with guaranty of signature satisfactory to the Registrar, duly executed by the registered owner of its duly authorized attorney, the Borough shall execute and the Registrar shall deliver an equal aggregate principal amount of Bonds of the same maturity of any authorized denominations, subject to such reasonable regulations as the Registrar may prescribe and upon payment sufficient to reimburse it for any tax, fee or other governmental charge required to be paid in connection with such transfer or exchange. All Bonds surrendered for transfer or exchange shall be canceled by the Registrar. The Registrar shall not be required to transfer or exchange any Bond after the Bond has been called for redemption.
- (d) The Borough covenants that, until all Bonds have been surrendered and canceled, it will maintain a system for recording the ownership of each Bond that complies with the provisions of Section 149 of the Code.

- SECTION 11.** Mutilated, Destroyed, Stolen or Lost Bonds. Upon surrender to the Registrar of a mutilated Bond, the Borough shall execute and deliver a new Bond of like maturity and principal amount. Upon filing with the Registrar of evidence satisfactory to the Borough that a Bond has been destroyed, stolen or lost and of the ownership thereof, and upon furnishing the Borough with identification satisfactory to it, the Borough shall execute and deliver a new Bond of like maturity and principal amount. The person requesting the authentication and delivery of a new Bond pursuant to this section shall comply with such other reasonable regulations as the Borough may prescribe and pay such expenses as the Borough may incur in connection therewith. Any Bonds issued pursuant to this section in substitution for Bonds alleged to be destroyed, stolen or lost shall constitute original additional contractual obligations on the part of the Borough, whether or not the Bonds alleged to be destroyed, stolen or lost be at any time enforceable by anyone.
- SECTION 12.** Disposition of the Sale Proceeds of the Bonds. The sale proceeds of the Bonds representing accrued interest on the Bonds, if any, shall be applied to pay a portion of the interest due on the Bonds on the first interest payment date for the Bonds. The remainder of the sale proceeds of the Bonds shall be applied to pay Costs. The sale proceeds of the Bonds shall be deposited in the appropriate funds or accounts of the Borough for such purposes as may be determined by the Finance Director.
- SECTION 13.** Tax Covenants. The Borough covenants to comply with any and all applicable requirements set forth in the Code in effect from time to time to the extent that such compliance shall be necessary for the exclusion of the interest on the Bonds from gross income for federal income tax purposes. The Borough covenants that it will make no use of the proceeds of the Bonds which will cause the Bonds to be "arbitrage bonds" subject to federal income taxation by reason of Section 148 of the Code. The Borough covenants that it will not take or permit any action that would cause the Bonds to be "private activity bonds" as defined in Section 141 of the Code.
- SECTION 14.** Sale of the Bonds; Loan Agreement. The sale of not to exceed \$22,987,000 aggregate principal amount of the Bonds, as provided in the Loan Agreement and this resolution, is hereby authorized and approved. The Mayor and the Finance Director are each hereby authorized to execute and deliver the Loan Agreement, a Continuing Disclosure Certificate and such other documents as may be necessary to effectuate issuance of the Bonds on behalf of the Borough.
- SECTION 15.** Authority of Officers. The Mayor, the Borough Finance Director, and the Borough Clerk are, and each of them hereby is, authorized and directed to do and perform all things and determine all matters not determined by this resolution, or to be determined by a subsequent ordinance or resolution, to the end that the Borough may carry out its obligations under the Bonds and this resolution.

SECTION 16. Amendatory and Supplemental Resolutions. (a) The Assembly from time to time and at any time may adopt a resolution or resolutions supplemental hereof, which resolution or resolutions thereafter shall become a part of this resolution, for any one or more of the following purposes:

- (i) To add to the covenants and agreements of the Borough in this resolution, other covenants and agreements thereafter to be observed, or to surrender any right or power herein reserved to or conferred upon the Borough.
- (ii) To make such provisions for the purpose of curing any ambiguities or of curing, correcting or supplementing any defective provision contained in this resolution or in regard to matters or questions arising under this resolution as the Assembly may deem necessary or desirable and not inconsistent with this resolution and which shall not adversely affect the interest of the Registered Owner of the Bonds.

Any such supplemental resolution may be adopted without the consent of the Registered Owners of any of the Bonds at any time outstanding, notwithstanding any of the provisions of subsection (b) of this section.

- (b) With the consent of a bond insurer, if any, or the Registered Owners of not less than 60 percent in aggregate principal amount of the Bonds at the time outstanding, the Assembly may adopt a resolution or resolutions supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this resolution or of any supplemental resolution; provided, however that no such supplemental resolution shall:
 - (i) extend the fixed maturity of any of the Bonds, or reduce the rate of interest thereon, or reduce the amount or change the date of any sinking fund installment, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the owners of each Bond so affected; or
 - (ii) reduce the aforesaid percentage of owners of Bonds required to approve any such supplemental resolution without the consent of the owners of all the Bonds then outstanding.

It shall not be necessary for the consent of the Registered Owners of the Bonds under this subsection to approve the particulars of any proposed supplemental resolution, but it shall be sufficient if such consent approves the substance thereof.

- (c) Upon the adoption of any supplemental resolution under this section, this resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this resolution of the Borough and all Registered Owners of outstanding Bonds shall thereafter be subject in all respects to such modification and amendment, and all the terms and conditions of the supplemental resolution shall be deemed to be part of the terms and conditions of this resolution for any and all purposes.
- (d) Bonds executed and delivered after the execution of any supplemental resolution adopted under this section may bear a notation as to any matter provided for in such supplemental resolution, and if such supplemental resolution shall so provide, new Bonds modified so as to conform, in the opinion of the Borough, to any modification of this resolution contained in any such supplemental resolution may be prepared by the Borough and delivered without cost to the Registered Owner of the Bonds then outstanding, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

SECTION 17. Miscellaneous. (a) All payments made by the Borough of, or on account of, the principal of or interest on the Bonds shall be made on the several Bonds ratably and in proportion to the amount due thereon, respectively, for principal or interest as the case may be.

- (b) No recourse shall be had for the payment of the principal of or the interest on the Bonds or for any claim based thereon or on this resolution against any member of the Assembly or officer of the Borough or any person executing the Bonds. The Bonds are not and shall not be in any way a debt or liability of the State of Alaska or of any political subdivision thereof, except the Borough, and do not and shall not create or constitute an indebtedness or obligation, either legal, moral or otherwise, of said State or of any political subdivision thereof, except the Borough.

SECTION 18. Continuing Disclosure. The Borough acknowledges that now or in the future the Borough may be an "obligated person" under Rule 15c2-12 of the Securities and Exchange Commission (the "Rule"). In accordance with the Rule, the Borough agrees to comply with and carry out continuing disclosure obligations required under Rule 15c2-12 and the Loan Agreement. Notwithstanding any other provision of this Resolution, failure of the Borough to comply with the Continuing Disclosure Certificate shall not be considered a default of the Borough's obligations under this Resolution, the Loan Agreement or the Bonds; however the beneficial owner of any Bond may bring an action for specific performance, to cause the Borough to comply with its continuing disclosure obligations.

SECTION 19. Severability. If any one or more of the provisions of this resolution shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this resolution and shall in no way affect the validity of the other provisions of this resolution or of the Bonds.

SECTION 20. Effective date. This resolution shall take effect immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 8TH DAY OF OCTOBER, 2013.

Linda Murphy, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes: Haggerty, Johnson, McClure, Pierce, Smalley, Smith, Tauriainen, Wolf, Murphy
No: None
Absent: None

Introduced by:	Mayor
Date:	06/16/20
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-042**

A RESOLUTION APPROVING THE KENAI PENINSULA BOROUGH'S PARTICIPATION IN A PROPOSED REFINANCING BY THE ALASKA MUNICIPAL BOND BANK OF ITS GENERAL OBLIGATION BONDS THAT PROVIDED FUNDS TO PURCHASE THE EDUCATION CAPITAL IMPROVEMENT GENERAL OBLIGATION BOND, SERIES 2013 OF THE KENAI PENINSULA BOROUGH, UNDER A LOAN AGREEMENT BETWEEN THE KENAI PENINSULA BOROUGH AND THE ALASKA MUNICIPAL BOND BANK; AND AUTHORIZING THE KENAI PENINSULA BOROUGH MAYOR OR DESIGNEE TO APPROVE A REVISED SCHEDULE OF PRINCIPAL AND INTEREST PAYMENTS ON THE KENAI PENINSULA BOROUGH'S 2013 BOND, IN ACCORDANCE WITH THE LOAN AGREEMENT, IF THE ALASKA MUNICIPAL BOND BANK SUCCESSFULLY REFINANCES ITS BONDS

WHEREAS, the Kenai Peninsula Borough, Alaska (the "Borough"), to finance certain educational capital improvements, issued and sold its Education Capital Improvement General Obligation Bond, Series 2013, dated November 14, 2013, in the original principal amount of \$20,860,000 (the "2013 Bond") to the Alaska Municipal Bond Bank (the "Bond Bank"), as authorized by Resolution No. 2013-071 of the Borough adopted on October 8, 2013 (the "Bond Resolution"), based on terms and conditions set forth in the Bond Resolution and a loan agreement between the Borough and the Bond Bank dated as of November 1, 2013 (the "Loan Agreement"); and

WHEREAS, the Bond Bank issued and sold its General Obligation Bonds, 2013 Series Three (the "Bond Bank Bonds"), to, among other things, provide funds to purchase the 2013 Bond, as provided in the Loan Agreement; and

WHEREAS, Section 6 of the Loan Agreement provides that payments of principal of and interest on the 2013 Bond may be adjusted to reduce debt service on the 2013 Bond if the Bond Bank is able to achieve debt service savings by refunding the Bond Bank Bonds; and

WHEREAS, the Bond Bank now intends to issue a series of its general obligation refunding bonds (the "Bond Bank Refunding Bonds") for the purpose, among others, of refunding all, or a portion, of the outstanding Bond Bank Bonds and achieving debt service savings; and

WHEREAS, the Assembly wishes to approve the Borough's participation in this refinancing and to authorize the Borough Mayor or his designee to accept a revised debt service schedule for the 2013 Bond if the Bond Bank successfully refinances the Bond Bank Bonds;

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

SECTION 1. Approval of Refinancing. The Assembly hereby approves the Borough's participation in the Bond Bank's refinancing of the Bond Bank Bonds and authorizes the Borough Mayor or his designee to approve a revised schedule of principal payment amounts and interest rates for the 2013 Bond, in accordance with Section 6 of the Loan Agreement, so long as the revised debt service schedule is financially advantageous to the Borough. The revised schedule of debt service on the 2013 Bond and other provisions as may be required by the Bond Bank will be set forth in an amendatory loan agreement (the "Amendatory Loan Agreement") and a refunding bond (the "2020 Refunding Bond") to be issued in exchange for the 2013 Bond. Notwithstanding, if only a portion of the outstanding principal amount of the 2013 Bond is refinanced, the 2013 Bond shall be exchanged for a bond reflecting the unrefunded portion of the 2013 Bond (the "Exchanged 2013 Bond"). The Borough Mayor or Finance Director is hereby authorized to execute and deliver the Amendatory Loan Agreement on behalf of the Borough and to deliver the 2020 Refunding Bond and Exchanged 2013 Bond, as the case may be, executed in accordance with the provisions of the Bond Resolution and this resolution, to the Bond Bank in exchange for the 2013 Bond. The Borough Mayor, Finance Director and other appropriate officers and employees of Borough are also hereby authorized to provide financial information about the Borough that the Bond Bank may require for the official statement for the Bond Bank Refunding Bonds.

SECTION 2. Tax Matters. The 2013 Bond was issued as a tax-exempt obligation under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). Subject to applicable law, the 2020 Refunding Bond may be issued on a tax-exempt or taxable basis as determined by the Mayor or Finance Director. The Exchanged 2013 Bond shall retain its original tax treatment under the Code.

SECTION 3. General Authorization. The Mayor, Finance Director, Borough Clerk, Borough Attorney, and any other appropriate officers, agents, attorneys and employees of the Borough are each hereby authorized and directed to cooperate with the Bond Bank and to take such steps, do such other acts and things, and execute such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable to carry out the terms and provisions of, and complete the transactions contemplated by, this Resolution.


SECTION 4. Prior Acts. Any and all acts heretofore taken by officers, agents, attorneys and employees of the Borough in connection with refinancing the 2013 Bond are hereby ratified and confirmed.


SECTION 5. Recitals. The recitals to this resolution are hereby incorporated into this resolution as if fully set forth herein.

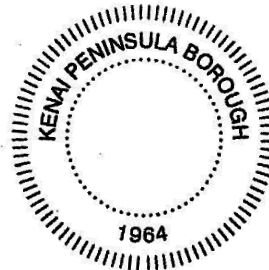
SECTION 6. Effective Date. This resolution shall become effective immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JUNE, 2020.

ATTEST:


Johni Blankenship, MMC, Borough Clerk


Kelly Cooper, Assembly President



Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper
No: None
Absent: None


CERTIFICATE

I, the undersigned, Clerk of the Kenai Peninsula Borough, Alaska (the "Borough"), Do
HEREBY CERTIFY:

1. That the attached resolution is a true and correct copy of Resolution No. 2020-042 (the "Resolution") of the Borough as approved at a regular meeting of the Assembly of the Kenai Peninsula Borough, Alaska (the "Assembly") held on the 16th day of June, 2020, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such regular meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Assembly voted in the proper manner for the approval of the Resolution; that all other requirements and proceedings incident to the proper approval of the Resolution have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of June, 2020.


John Blankenship, MMC, Borough Clerk
Kenai Peninsula Borough

Introduced by:	Mayor
Date:	09/15/20
Hearing:	10/13/20
Action:	Postponed as Amended to 12/01/20
Vote:	9 Yes, 0 No, 0 Absent
Date:	12/01/20
Action:	Tabled as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-19-09**

**AN ORDINANCE APPROPRIATING REFINANCED 2011 HOSPITAL GENERAL
OBLIGATION BOND PROCEEDS FOR THE PURPOSE OF PAYING BOND
REFINANCING ISSUANCE COSTS**

WHEREAS, the Kenai Peninsula Borough, Alaska (the “Borough”), refunded its Central Kenai Peninsula Hospital Service Area General Obligation Bonds, Series 2003, dated December 18, 2003, with proceeds of its Central Kenai Peninsula Hospital Service Area General Obligation Refunding Bonds, 2011, in the original principal amount of \$27,905,000 (the “2011 Bond”); and

WHEREAS, the 2011 Bond was issued pursuant to Borough Resolution 2011-073, adopted by the Assembly on July 5, 2011 (the “Bond Resolution”) and purchased by the Alaska Municipal Bond Bank (the “Bond Bank”), based on the terms and conditions set forth in the Bond Resolution and a loan agreement between the Borough and the Bond Bank dated as of September 15, 2011 (the “Loan Agreement”); and

WHEREAS, the Bond Bank issued and sold its General Obligation and Refunding Bonds, 2011 Series Three (the “Bond Bank Bonds”), to, among other things, provide funds to purchase the 2011 Bond, as provided in the Loan Agreement; and

WHEREAS, Section 6 of the Loan Agreement provides that payments of principal of and interest on the 2011 Bond may be adjusted to reduce debt service on the 2011 Bond if the Bond Bank is able to achieve debt service savings by refunding the Bond Bank Bonds; and

WHEREAS, the Bond Bank now intends to issue a series of its general obligation refunding bonds (the “Bond Bank Refunding Bonds”) for the purpose, among others, of refunding all, or a portion, of the outstanding Bond Bank Bonds and achieving debt service savings; and

WHEREAS, through Resolution 2020-043, the assembly approved the Borough’s participation in this refinancing and to authorize the mayor or his designee to accept a revised debt service schedule for the 2011 Bond if the Bond Bank successfully refinances the Bond Bank Bonds; and

WHEREAS, the Bond Bank anticipates a refinancing closing date following October 1, 2020;

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

SECTION 1. That 2011 refinanced hospital bond proceeds in the amount of up to \$6,860 are appropriated to the Central Peninsula Hospital Capital Project Fund, account number 490.81110.21BND.49999 to pay costs related to the issuance.

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 4. This ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

10/13/20 Vote on motion to postpone as amended to 12/01/20:

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

No: None

Absent: None

12/01/20 Vote on motion to table as amended:

Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert

No: None

Absent: None

Kenai Peninsula Borough
Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*

FROM: Brandi Harbaugh, Finance Director *BH*

DATE: September 3, 2020

SUBJECT: Ordinance 2020- 19-09, Appropriating Refinanced 2011 Hospital General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor)

In May 2020, the Kenai Peninsula Borough Assembly approved Resolution 2020-043, authorizing the Borough's participation in the refinancing of select series for the 2011 hospital general obligation bonds.

Due to reductions in long term interest rates, the Alaska Municipal Bond Bank has determined that a portion of the outstanding 2011 hospital bonds could be refinanced, with potential savings to borough residents of approximately \$200,000 in interest over the remaining life of the debt. This ordinance appropriates refinanced bond proceeds for the purpose of paying costs related to the issuance of the bond refinancing.

Your consideration is appreciated.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED	
Acct. No.	<u>490.00000.21BND.39010</u>
Amount:	<u>\$6,860.00</u>
By: <u><i>PP</i></u>	Date: <u>9/2/2020</u>

Kenai Peninsula Borough

Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*

FROM: Brandi Harbaugh, Finance Director *BH*

DATE: November 19, 2020

SUBJECT: Request to Table Ordinance 2020-19-09, Appropriating Refinanced 2011 Hospital General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor)

The Alaska Supreme Court's recent decision which invalidated a plan to sell bonds to pay oil tax credits has caused a certain amount of uncertainty in the Alaska bond market. The Alaska Department of Law has requested a rehearing to better define the scope of the ruling.

The Alaska Municipal Bond Bank has delayed its bond issue for a time uncertain as a result of the recent decision. Therefore, pending further analysis of the effect of the Supreme Court ruling we are looking to postpone the refinancing of the 2011 Central Peninsula Hospital General Obligation Bonds until calendar year 2021.

Therefore, we are requesting to table this ordinance until early 2021, providing more time for analysis and review of the market

Your consideration is appreciated.

Kenai Peninsula Borough

Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor CP

FROM: Brandi Harbaugh, Finance Director BH

DATE: October 1, 2020

SUBJECT: Amendment to Ordinance 2020-19-09, Appropriating Refinanced 2011 Hospital General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs & Request to Postpone Hearing (Mayor)

The Alaska Supreme Court's recent decision which invalidated a plan to sell bonds to pay oil tax credits has caused a certain amount of uncertainty in the Alaska bond market. The Alaska Department of Law has requested a rehearing to better define the scope of the ruling. The Alaska Municipal Bond Bank has delayed its bond issue for a time uncertain as a result of the recent decision. Therefore, pending further analysis of the effect of the Supreme Court ruling we are seeking to postpone the refinancing of the 2011 CPGH Hospital General Obligation Bonds until after October 2020.

Based on the above circumstances, postponement of the hearing on this ordinance to the November 10, 2020, meeting is requested as well as the following amendment:

(Please note the bold underlined language is new and the bracketed strikeout language is to be deleted.)

- Amend the last whereas clause, as follows:

WHEREAS, the Bond Bank anticipates a refinancing closing date ~~[of September 2020]~~ **following October 1, 2020;**

Your consideration is appreciated.

Introduced by:	Mayor
Date:	07/05/11
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2011-073**

**A RESOLUTION AUTHORIZING THE ISSUE OF CENTRAL KENAI PENINSULA
HOSPITAL SERVICE AREA GENERAL OBLIGATION REFUNDING BONDS, 2011 IN
ONE OR MORE SERIES IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED
\$33,965,000 TO REFUND CERTAIN OUTSTANDING GENERAL OBLIGATION
BONDS OF THE SERVICE AREA, FIXING CERTAIN DETAILS OF SUCH BONDS
AND AUTHORIZING THEIR SALE AND REPEALING RESOLUTION 2010-091**

WHEREAS, there are now outstanding \$35,990,000 of the Central Kenai Peninsula Hospital Service Area General Obligation Bonds, Series 2003 of the Borough maturing on or after February 1, 2012 issued under Resolution 2003-121 of the Borough (the "2003 Bonds"); and

WHEREAS, the Assembly finds that it is in the best interest of the Borough to provide for the refunding, including payment of principal of, premium, if any, and interest on, those maturities of the 2003 Bonds (the "Refunded Bonds") whose refunding the Borough Mayor or Borough Finance Director determines will produce the debt service savings described in this resolution, by the issuance of Service Area general obligation refunding bonds in the aggregate principal amount of not to exceed \$33,965,000; and

WHEREAS, to effect such refunding in the most economical manner, part of the sale proceeds of the bonds authorized herein (the "Bonds") may be invested in obligations to be authorized and approved by the Borough Mayor or Borough Finance Director, maturing in such amounts and at such times as are required to pay interest on the Refunded Bonds prior to the date of their redemption and to redeem the Refunded Bonds on the earliest date on which the Refunded Bonds may be called for redemption; and

WHEREAS, Section 29.47.320 of the Alaska Statutes provides that general obligation refunding bonds may be issued without an election and that their issuance may be authorized by resolution, and Section 29.47.410 of the Alaska Statutes provides that the Assembly by resolution or resolution may provide for the form and manner of sale of bonds and notes; and

WHEREAS, the Assembly finds that it is necessary and appropriate to delegate to each of the Borough Mayor and Borough Finance Director authority to determine the maturity amounts, interest rates and other details of the Bonds, the amount of Bond proceeds and the obligations necessary to effect the refunding of the Refunded Bonds, and to determine other matters that are not provided for in this

resolution;

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

SECTION 1. Definitions. The following terms shall have the following meanings in this resolution:

- (a) "Assembly" means the Assembly of the Kenai Peninsula Borough, as the general legislative authority of the Kenai Peninsula Borough, as the same shall be duly and regularly constituted from time to time.
- (b) "Bond" or "Bonds" means any of the "Central Kenai Peninsula Hospital Service Area General Obligation Refunding Bonds, 2011" of the Kenai Peninsula Borough, in one or more series, the issuance and sale of which are authorized herein.
- (c) "Bond Bank" means the Alaska Municipal Bond Bank, a public corporation of the State of Alaska.
- (d) "Bond Bank Bonds" means the General Obligation and Refunding Bonds, 2011 Series Three of the Bond Bank.
- (e) "Bond Register" means the registration books maintained by the Paying Agent as Bond registrar, which include the names and addresses of the owners or nominee of the owners of the Bonds.
- (f) "Borough" means the Kenai Peninsula Borough, a municipal corporation of the State of Alaska, incorporated January 1, 1964 as a second class borough under the laws of the State of Alaska.
- (g) "Code" means the Internal Revenue Code of 1986, as amended from time to time, together with all regulations applicable thereto.
- (h) "Cost" or "Costs" means allocable portions of direct costs of the Borough, legal fees, fees and expenses of the Paying Agent, costs of issuance of the Bonds by the Borough, including financing charges and fees and expenses of bond counsel, financial advisors and consultants in connection therewith, and all other expenses necessary or incidental thereto.
- (i) "Escrow Agent" means The Bank of New York Trust Company, N.A., and its successors.
- (j) "Escrow Agreement" means the Escrow Agreement between the Escrow Agent and the Borough, under which the Escrow Obligations will be deposited, together with other moneys, if necessary, to pay the interest on and the redemption price of the Refunded Bonds.

- (k) "Escrow Obligations" means. non-callable direct obligations of, or obligations the timely payment of principal of and interest on which are unconditionally guaranteed by, the United States of America or an agency or instrumentality of the United States of America.
- (l) "Letter of Representations" means the blanket letter of representations from the Borough to DTC, dated as of October 23, 2003.
- (m) "Loan Agreement" means the Loan Agreement between the Borough and the Bond Bank to be entered into in conjunction with issuing the Bonds.
- (n) "2003 Bonds" means the \$47,985,000 of Central Kenai Peninsula Hospital Service Area General Obligation Bonds, Series 2003 of the Borough.
- (o) "Refunded Bonds" means the maturities and sinking fund installments of the 2003 Bonds whose refunding is approved by the Borough Mayor or Borough Finance Director under Section 13 hereof.
- (p) "Refunding Account" means the special account established under Section 7(C) hereof and designated as the "Service Area General Obligation Bond Refunding Account," for the purpose of holding moneys, including Bond proceeds, to be used to pay the interest on and the redemption price of the Refunded Bonds.
- (q) "Registered Owner" means the person named as the registered owner of a Bond in the Bond Register.
- (r) "Registrar" means the Borough Finance Director.
- (s) "Resolution" means this Resolution 2011-__ of the Borough.
- (t) "Service Area" means the Central Kenai Peninsula Hospital Service Area.

SECTION 2. Authorization of Bonds and Purpose of Issuance. For the purpose of providing part of the funds required to pay the Costs, providing the funds required to purchase Escrow Obligations and to provide beginning cash to effect the refunding of the Refunded Bonds in the manner and at the times hereinafter set forth, to provide for original issue discount, if any, and to pay all costs incidental thereto and to the issuance of the Bonds, the Borough hereby authorizes and determines to issue and sell the Bonds in the aggregate principal amount of not to exceed \$33,965,000.

SECTION 3. Obligation of Bonds. The Bonds shall be direct and general obligations of the Service Area and the full faith and credit of the Service Area are hereby pledged to the payment of the principal of and interest on the Bonds. The Borough hereby irrevocably pledges and covenants that it will levy and collect taxes upon all taxable property within the Service Area without limitation as to rate or amount,

in amounts sufficient, together with other funds legally available therefor, to pay the principal of and interest on the Bonds as the same become due and payable.

SECTION 4. Designation, Maturities, Interest Rates, and Other Details of Bonds. The Bonds shall be designated the "Central Kenai Peninsula Hospital Service Area General Obligation Refunding Bonds, 2011." The Bonds shall be in the denomination of \$5,000 or any integral multiple thereof, shall be numbered separately in the manner and with such additional designation as the Registrar deems necessary for purposes of identification, and may have endorsed thereon such legends or text as may be necessary or appropriate to conform to the rules and regulations of any governmental authority or any usage or requirement of law with respect thereto.

The dated date, the principal and interest payment dates, the aggregate principal amount, the principal amount of each maturity, and the interest rates on the Bonds shall be determined at the time of execution of the Loan Agreement under Section 13.

SECTION 5. Redemption. The bonds are subject to redemption as provided in the Loan Agreement.

SECTION 6. Form of Bond. Each Bond shall be in substantially the following form, with such variations, omissions and insertions as may be required or permitted by this Resolution:

UNITED STATES OF AMERICA
STATE OF ALASKA

KENAI PENINSULA BOROUGH
(A Municipal Corporation of the State of Alaska)

NO. _____ \$ _____

CENTRAL KENAI PENINSULA HOSPITAL SERVICE AREA
GENERAL OBLIGATION REFUNDING BONDS, 2011

REGISTERED OWNER:

PRINCIPAL AMOUNT:

The Kenai Peninsula Borough, Alaska (the "Borough"), a municipal corporation of the State of Alaska, hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or its registered assigns, the Principal Amount indicated above in the following installments on [_____] 1] of each of the following years, and to pay interest on such installments from the date hereof, payable on [_____] 1, 20__] and semiannually thereafter on the first days of _____ and _____ of each year, at the rates per annum as follows:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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For so long as this Bond is owned by the Alaska Municipal Bond Bank (the "Bank"), payment of principal and interest shall be made as provided in the Loan Agreement between the Bank and the Borough dated as of _____, 2011 (the "Loan Agreement"). In the event that this Bond is no longer owned by the Bank, installments of principal of and interest on this Bond shall be made by check or draft mailed by first class mail to the registered owner as of the close of business on the fifteenth day of the month preceding each installment payment date; provided that the final installment of principal and interest on this Bond will be payable upon presentation and surrender of this Bond by the Registered Owner at the office of the Registrar. Interest shall be computed on the basis of a 360-day year composed of twelve 30-day months. Both principal of and interest on this bond are payable in lawful money of the United States of America which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts.

This Bond is one of the Central Peninsula Hospital Service Area General Obligation Refunding Bonds, 2011 of the Kenai Peninsula Borough, Alaska of like tenor and effect except as to interest rate, serial number and maturity, aggregating \$_____ in principal amount, and constituting bonds authorized for the purpose of refunding certain general obligation bonds issued by the Borough, and is issued under Resolution 2011-__ of the Borough entitled:

A RESOLUTION AUTHORIZING THE ISSUE OF CENTRAL KENAI PENINSULA HOSPITAL SERVICE AREA GENERAL OBLIGATION REFUNDING BONDS, 2011 IN ONE OR MORE SERIES IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$_____ TO REFUND CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE SERVICE AREA, FIXING CERTAIN DETAILS OF SUCH BONDS AND AUTHORIZING THEIR SALE AND REPEALING RESOLUTION 2010-091.

(herein called the "Resolution").

The Bond is subject to redemption prior to maturity as described in the Loan Agreement.

This Bond is transferable as provided in the Resolution, (i) only upon the bond register of the Borough, and (ii) upon surrender of this Bond together with a written instrument of transfer duly executed by the registered owner or the duly authorized attorney of the registered owner, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount and maturity shall be issued to the transferee in exchange therefor as provided in the Resolution and

upon the payment of charges, if any, as therein prescribed. The Borough may treat and consider the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price, if any, hereof and interest due hereon and for all other purposes whatsoever.

This Bond is a general obligation of the Central Peninsula Hospital Service Area, and the full faith and credit of the Service Area are pledged for the payment of the principal of and interest on the Bond as the same shall become due.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts or things required by the constitution or statutes of the State of Alaska and the ordinances of the Borough to exist, to have happened or to have been performed precedent to or in the issuance of this Bond, exist, have happened and have been performed, and that the series of Bonds of which this is one, together with all other indebtedness of the Borough, is within every debt and other limit prescribed by said constitution, statutes, or ordinances.

IN WITNESS WHEREOF, THE KENAI PENINSULA BOROUGH, ALASKA, has caused this Bond to be signed in its name and on its behalf by its Mayor and its corporate seal to be hereunto impressed or otherwise reproduced and attested by its Clerk, all as of the ____ day of _____, 2011.

David R. Carey, Mayor

ATTEST:

Johni Blankenship, MMC, Borough Clerk

SECTION 7. Disposition of the Sale Proceeds of the Bonds.

- (A) The sale proceeds of the Bonds representing accrued interest on the Bonds, if any, shall be applied to pay a portion of the interest due on the Bonds on the first interest payment date for the Bonds.
- (B) Sale proceeds of a principal amount of Bonds to be determined by the Borough Mayor or the Borough Finance Director shall be applied to pay Costs allocated to such Bonds, and shall be deposited in the appropriate funds or accounts of the Borough for such purposes.
- (C) Sale proceeds of a principal amount of Bonds to be determined by the Borough Mayor or the Borough Finance Director shall be deposited in the "Service Area General Obligation Bond Refunding Account" (the "Refunding Account") which is hereby created, and used, together with such other moneys as may be transferred to said account, to deposit cash and to purchase Escrow

Obligations maturing as to principal and interest in such amounts and at such times as necessary to provide for the payment of the interest on and the redemption price of the Refunded Bonds. Such money and escrow obligations shall be deposited in trust with the Escrow Agent pursuant to the Escrow Agreement, the terms of which shall be subject to approval by the Borough Finance Director. Such money and obligations are hereby pledged to be held and applied solely for the purpose set forth herein. When all of the Refunded Bonds shall have been redeemed and retired, the Borough may cause to be transferred to the Borough from the Refunding Account free of trust all moneys remaining therein.

SECTION 8. Designation of Refunded Bonds. The Borough Mayor and the Borough Finance Director each is authorized to designate which, if any, maturities of the 2003 Bonds, authorized to be refunded in this Resolution shall be refunded, provided that the refunding of the bonds so designated shall realize a debt service savings, net of all issuance costs and underwriting discount.

SECTION 9. Call of Refunded Bonds for Redemption. The Borough hereby elects to redeem the Refunded Bonds on August 1, 2013.

Notice of redemption of the Refunded Bonds shall be given in the manner set forth in Resolution 2003-121 authorizing the Refunded Bonds. The election to make such call for redemption shall be subject to the delivery of the Bonds to the initial purchasers thereof and shall become irrevocable upon such delivery.

SECTION 10. Tax Covenants. The Borough covenants to comply with any and all applicable requirements set forth in the Code in effect from time to time to the extent that such compliance shall be necessary for the exclusion of the interest on the Bonds from gross income for federal income tax purposes. The Borough covenants that it will make no use of the proceeds of the Bonds which will cause the Bonds to be "arbitrage bonds" subject to federal income taxation by reason of Section 148 of the Code. The Borough covenants that it will not take or permit any action that would cause the Bonds to be "private activity bonds" as defined in Section 141 of the Code.

SECTION 11. Amendatory and Supplemental Resolutions.

- (A) The Assembly from time to time and at any time may adopt a resolution supplemental hereto, which thereafter shall become a part of this Resolution, for any one or more of the following purposes:
 - (1) To add to the covenants and agreements of the Borough in this Resolution, other covenants and agreements thereafter to be observed, or to surrender any right or power herein reserved to or conferred upon the Borough.

- (2) To make such provisions for the purpose of curing any ambiguities or of curing, correcting or supplementing any defective provision contained in this Resolution or in regard to matters or questions arising under this Resolution as the Assembly may deem necessary or desirable and not inconsistent with this Resolution and which shall not adversely affect the interests of the Registered Owners of the Bonds.

Any such supplemental resolution may be adopted without the consent of the Registered Owner of any of the Bonds at any time outstanding, notwithstanding any of the provisions of subsection (B) of this section.

- (B) With the consent of the Registered Owners of not less than 60 percent in aggregate principal amount of the Bonds at the time outstanding, the Assembly may adopt a resolution supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Resolution or of any supplemental resolution; provided, however, that no such supplemental resolution shall:
 - (1) extend the fixed maturity of any of the Bonds, or reduce the rate of interest thereon, or reduce the amount or change the date of any sinking fund installment, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the Registered Owners of each Bond so affected; or
 - (2) reduce the aforesaid percentage of Registered Owners of Bonds required to approve any such supplemental resolution without the consent of the Registered Owners of all of the Bonds then outstanding.

It shall not be necessary for the consent of the Registered Owners of the Bonds under this subsection to approve the particular form of any proposed supplemental resolution, but it shall be sufficient if such consent approves the substance thereof.

- (C) Upon the adoption of any supplemental resolution under this section, this Resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Resolution of the Borough and all Registered Owners of outstanding Bonds shall thereafter be subject in all respects to such modification and amendment, and all the terms and conditions of the supplemental resolution shall be deemed to be part of the terms and conditions of this Resolution for any and all purposes.
- (D) Bonds executed and delivered after the execution of any supplemental resolution adopted under this section may bear a notation as to any matter provided for in such supplemental resolution, and if such supplemental

resolution shall so provide, new Bonds modified so as to conform, in the opinion of the Borough, to any modification of this Resolution contained in any such supplemental resolution may be prepared by the Borough and delivered without cost to the Registered Owners of the Bonds then outstanding, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

SECTION 12. Defeasance. In the event money and/or non-callable direct obligations of, or obligations the timely payment of principal of and interest on which are unconditionally guaranteed by, the United States of America, maturing at such times and bearing interest to be earned thereon in amounts sufficient to redeem and retire any or all of the Bonds in accordance with their terms are set aside in a special trust account to effect such redemption or retirement and such moneys and the principal of and interest on such obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made to pay or secure the payment of the principal of and interest on such Bonds and such Bonds shall be deemed not to be outstanding.

SECTION 13. Sale of Bonds. The sale of not to exceed \$33,965,000 aggregate principal amount of the Bonds to the Bond Bank, as provided in the Loan Agreement is hereby authorized and approved. The Borough has been advised by the Bond Bank that bond market conditions are fluctuating and that the most favorable market conditions for the sale of the Bond Bank Bonds may not occur on the date of a regular Assembly meeting. The Assembly has determined that it would be inconvenient to hold a special meeting on short notice to approve the terms of the Bonds. Therefore, the Assembly hereby determines that it is in the best interest of the Borough to delegate the authority to approve the terms of the Bonds as provided herein. Each of the Mayor and the Borough Finance Director is hereby authorized to determine the aggregate principal amount, maturity amounts, interest rates, yields, dated date, principal and interest payment dates, and redemption terms, if any, for the Bonds, so that such terms of the Bonds conform to the terms of the corresponding Bond Bank Bonds; provided that (i) the principal amount of each maturity of the Bonds shall not exceed the principal amount of the portion of the corresponding maturity of the Bond Bank Bonds that is allocated to the making of a loan to the Borough; and (ii) the interest rate on each maturity of the Bonds shall not exceed the interest rate on the corresponding maturity of the Bond Bank Bonds. Based upon the foregoing determinations, the Mayor and the Borough Finance Director each is authorized to negotiate and execute a Loan Agreement. The authority granted to the Mayor and Borough Finance Director by this section shall expire 180 days after the effective date of this Resolution. If the Mayor or Borough Finance Director has not executed a Loan Agreement within 180 days from the effective date of this Resolution, the Loan Agreement may not be executed on behalf of the Borough without further authorization from the Assembly.

SECTION 14. Official Statement. The Borough Mayor and Borough Finance Director each is hereby authorized to approve and deem a preliminary Official Statement final

for purposes of Securities and Exchange Commission Rule 15c2-12(b)(1), and to approve and execute a final Official Statement for the Bonds.

SECTION 15. Authority of Officers. The Mayor, the Borough Finance Director, and the Borough Clerk, are, and each of them hereby is, authorized and directed to do and perform all things and determine all matters not determined by this Resolution, to the end that the Borough may carry out its obligations under the Bonds and this Resolution.

SECTION 16. Prohibited Sale of Bonds. No person, firm or corporation, or any agent or employee thereof, acting as financial consultant to the Borough under an agreement for payment in connection with the sale of the Bonds is eligible to purchase the Bonds as a member of the original underwriting syndicate either at public or private sale.

SECTION 17. Miscellaneous.

- (A) All payments made by the Borough of, or on account of, the principal of or interest on the Bonds shall be made on the several Bonds ratably and in proportion to the amount due thereon, respectively, for principal or interest as the case may be.
- (B) No recourse shall be had for the payment of the principal of or the interest on the Bonds or for any claim based thereon or on this Resolution against any member of the Assembly or officer of the Borough or any person executing the Bonds. The Bonds are not and shall not be in any way a debt or liability of the State of Alaska or of any political subdivision thereof, except the Borough, and do not and shall not create or constitute an indebtedness or obligation, either legal, moral or otherwise, of said state or of any political subdivision thereof, except the Service Area.

SECTION 18. Continuing Disclosure. The Borough hereby covenants and agrees that it will comply with and carry out all of the provisions of a Continuing Disclosure Agreement, to be entered into upon issuance of the Bonds in accordance with Securities and Exchange Commission Rule 15c2-12. Notwithstanding any other provision of this Resolution, failure of the Borough to comply with the Continuing Disclosure Agreement shall not be considered a default of the Borough's obligations under this Resolution or the Bonds.

SECTION 19. Repeal. Resolution 2010-091 is repealed.

SECTION 20. Severability. If any one or more of the provisions of this Resolution shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this Resolution and shall in no way affect the validity of the other provisions of this Resolution or of the Bonds.

SECTION 21. Effective date. This resolution shall take effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS
5TH DAY OF JULY, 2011.**

Gary Knopp, Assembly President

ATTEST:

Johni Blankenship, Borough Clerk

Yes: Haggerty, Johnson, McClure, Murphy, Pierce, Smalley, Smith, Tauriainen, Knopp
No: None
Absent: None

Introduced by:	Mayor
Date:	06/16/20
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-043**

A RESOLUTION APPROVING THE KENAI PENINSULA BOROUGH'S PARTICIPATION IN A PROPOSED REFINANCING BY THE ALASKA MUNICIPAL BOND BANK OF ITS GENERAL OBLIGATION BONDS THAT PROVIDED FUNDS TO PURCHASE THE CENTRAL KENAI PENINSULA HOSPITAL SERVICE AREA GENERAL OBLIGATION REFUNDING BONDS, 2011 OF THE KENAI PENINSULA BOROUGH, UNDER A LOAN AGREEMENT BETWEEN THE KENAI PENINSULA BOROUGH AND THE ALASKA MUNICIPAL BOND BANK; AND AUTHORIZING THE KENAI PENINSULA BOROUGH MAYOR OR DESIGNEE TO APPROVE A REVISED SCHEDULE OF PRINCIPAL AND INTEREST PAYMENTS ON THE KENAI PENINSULA BOROUGH'S 2011 BOND, IN ACCORDANCE WITH THE LOAN AGREEMENT, IF THE ALASKA MUNICIPAL BOND BANK SUCCESSFULLY REFINANCES ITS BONDS

WHEREAS, the Kenai Peninsula Borough, Alaska (the "Borough"), refunded its Central Kenai Peninsula Hospital Service Area General Obligation Bonds, Series 2003, dated December 18, 2003, with proceeds of its Central Kenai Peninsula Hospital Service Area General Obligation Refunding Bonds, 2011, in the original principal amount of \$27,905,000 (the "2011 Bond"); and

WHEREAS, the 2011 Bond was issued pursuant to Borough Resolution 2011-73, adopted by the Assembly on July 5, 2011 (the "Bond Resolution") and purchased by the Alaska Municipal Bond Bank (the "Bond Bank"), based on the terms and conditions set forth in the Bond Resolution and a loan agreement between the Borough and the Bond Bank dated as of September 15, 2011 (the "Loan Agreement"); and

WHEREAS, the Bond Bank issued and sold its General Obligation and Refunding Bonds, 2011 Series Three (the "Bond Bank Bonds"), to, among other things, provide funds to purchase the 2011 Bond, as provided in the Loan Agreement; and

WHEREAS, Section 6 of the Loan Agreement provides that payments of principal of and interest on the 2011 Bond may be adjusted to reduce debt service on the 2011 Bond if the Bond Bank is able to achieve debt service savings by refunding the Bond Bank Bonds; and

WHEREAS, the Bond Bank now intends to issue a series of its general obligation refunding bonds (the "Bond Bank Refunding Bonds") for the purpose, among others, of refunding all, or a portion, of the outstanding Bond Bank Bonds and achieving debt service savings; and

WHEREAS, the Assembly wishes to approve the Borough's participation in this refinancing and to authorize the Borough Mayor or his designee to accept a revised debt service schedule for the 2011 Bond if the Bond Bank successfully refinances the Bond Bank Bonds;

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

SECTION 1. Approval of Refinancing. The Assembly hereby approves the Borough's participation in the Bond Bank's refinancing of the Bond Bank Bonds and authorizes the Borough Mayor or his designee to approve a revised schedule of principal payment amounts and interest rates for the 2011 Bond, in accordance with Section 6 of the Loan Agreement, so long as the revised debt service schedule is financially advantageous to the Borough. The revised schedule of debt service on the 2011 Bond and other provisions as may be required by the Bond Bank will be set forth in an amendatory loan agreement (the "Amendatory Loan Agreement") and a refunding bond (the "2020 Refunding Bond") to be issued in exchange for the 2011 Bond. Notwithstanding, if only a portion of the outstanding principal amount of the 2011 Bond is refinanced, the 2011 Bond shall be exchanged for a bond reflecting the unrefunded portion of the 2011 Bond (the "Exchanged 2011 Bond"). The Borough Mayor or Finance Director is hereby authorized to execute and deliver the Amendatory Loan Agreement on behalf of the Borough and to deliver the 2020 Refunding Bond and Exchanged 2011 Bond, as the case may be, executed in accordance with the provisions of the Bond Resolution and this resolution, to the Bond Bank in exchange for the 2011 Bond. The Borough Mayor, Finance Director and other appropriate officers and employees of Borough are also hereby authorized to provide financial information about the Borough that the Bond Bank may require for the official statement for the Bond Bank Refunding Bonds.

SECTION 2. Tax Matters. The 2011 Bond was issued as a tax-exempt obligation under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). Subject to applicable law, the 2020 Refunding Bond may be issued on a tax-exempt or taxable basis, as determined by the Mayor or Finance Director. The Exchanged 2011 Bond shall retain its original tax treatment under the Code.

SECTION 3. General Authorization. The Mayor, Finance Director, Borough Clerk, Borough Attorney, and any other appropriate officers, agents, attorneys and employees of the Borough are each hereby authorized and directed to cooperate with the Bond Bank and to take such steps, do such other acts and things, and execute such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable to carry out the terms and provisions of, and complete the transactions contemplated by, this Resolution.


SECTION 4. Prior Acts. Any and all acts heretofore taken by officers, agents, attorneys and employees of the Borough in connection with refinancing the 2011 Bond are hereby ratified and confirmed.


SECTION 5. Recitals. The recitals to this resolution are hereby incorporated into this resolution as if fully set forth herein.

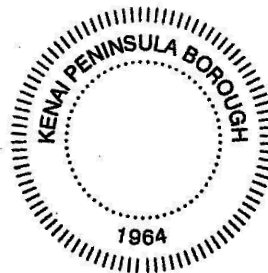
SECTION 6. Effective Date. This resolution shall become effective immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JUNE, 2020.

ATTEST:


Johni Blankenship, MMC, Borough Clerk


Kelly Cooper, Assembly President



Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper
No: None
Absent: None


CERTIFICATE

I, the undersigned, Clerk of the Kenai Peninsula Borough, Alaska (the "Borough"), Do
HEREBY CERTIFY:

1. That the attached resolution is a true and correct copy of Resolution No. 2020-043 (the "Resolution") of the Borough as approved at a regular meeting of the Assembly of the Kenai Peninsula Borough, Alaska (the "Assembly") held on the 16th day of June, 2020, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such regular meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Assembly voted in the proper manner for the approval of the Resolution; that all other requirements and proceedings incident to the proper approval of the Resolution have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of June, 2020.



John Blankenship, MMC, Borough Clerk
Kenai Peninsula Borough

Introduced by: Hibbert, Johnson
Date: 03/02/21
Hearing: 04/20/21
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-19-24**

**AN ORDINANCE APPROPRIATING FUNDS AND AUTHORIZING THE BOROUGH
CLERK TO CONTRACT FOR NECESSARY VOTING MACHINES, SOFTWARE, AND
RELATED EQUIPMENT TO PROVIDE AN ACCESIBLE VOTING SYSTEM FOR
PERSONS WITH DISABILITIES**

- WHEREAS,** the Americans with Disabilities Act (ADA) and the Help America Vote Act of 2002 (HAVA), as applicable to federal elections, along with other federal laws related to protecting the right to vote, require full and equal opportunity to vote for all eligible voters and an accessible voting system for persons with disabilities; and
- WHEREAS,** a complaint was filed following the October 6, 2015 borough election with the Alaska State Commission for Human Rights (“ASCHR”) alleging discrimination on the basis of a physical disability due to the borough allegedly not accommodating the complainant’s vision disability by providing an accessible voting machine; and
- WHEREAS,** the case caption is *Richard Malley v. Kenai Peninsula Borough*, ASCHR No. J-15-351 (hereinafter the “*Malley case*”);
- WHEREAS,** on October 16, 2018 ASCHR issued its substantial evidence determination in the *Malley case* and offered a conciliation agreement in lieu of proceeding to public hearing; and
- WHEREAS,** the borough entered into the conciliation agreement on December 18, 2018; and
- WHEREAS,** as part of the conciliation agreement entered into in the *Malley case* the borough committed to adopting a voting system to provided private, independent voting by visually impaired citizens; and
- WHEREAS,** the borough must acquire voting equipment and related software that will accommodate individuals with disabilities by providing accessible voting machines and related software and services that allow for “meaningful access to private and independent voting” (hereinafter collectively “ADA compliant voting system”); and

- WHEREAS,** the ADA compliant voting system must be provided at every polling precinct or location in the borough where voting occurs; and
- WHEREAS,** on February 9, 2021, ASCHR approved an amendment to the conciliation agreement to provide the borough more time to acquire an ADA compliant voting system in order to comply with the terms of the conciliation agreement; and
- WHEREAS,** the current voting equipment used by the borough has passed its serviceable life; and
- WHEREAS,** the current voting tabulation server used by the borough is no longer supported by software or hardware vendors; and
- WHEREAS,** current voting equipment used by the borough is incapable of accommodating individuals with disabilities by providing accessible voting machines that allow for “meaningful access to private and independent voting”; and
- WHEREAS,** the State of Alaska is not able to provide the borough use of its ADA compliant voting system; and
- WHEREAS,** KPB 4.10.120 provides that the borough clerk may contract for the provision of specialized materials and supplies without obtaining competitive bids; and
- WHEREAS,** since 2007, only nine voting system providers in the United States have been able to meet the testing standards and accreditation requirements necessary to obtain Election Assistance Commission (EAC) certification under HAVA to provide the necessary ADA compliant voting system that will fit the borough’s needs; and
- WHEREAS,** only two EAC certified companies responded to a request for quotes for an ADA compliant voting system that will fit the borough’s needs, Dominion Voting Systems Inc. (Dominion) and Election Systems & Software, Inc. (ES&S); and
- WHEREAS,** after vetting the quotes, capabilities and services that each company could provide the borough for the costs quoted, Dominion was determined to be the superior choice to fulfill the borough’s needs; and
- WHEREAS,** Dominion is a Colorado based company that provides a certified ADA compliant election system which is used by the State of Alaska, as well as many other boroughs and other municipalities in Alaska for the purposes of conducting and administering federal, state, and local municipal elections; and
- WHEREAS,** the borough has used Dominion, including predecessors in interest, elections products, equipment and software since 1999; and
- WHEREAS,** the borough is collaborating with the cities within the borough to provide for intergovernmental administration of local elections; and

WHEREAS, the funds appropriated by this ordinance will be utilized to cover the cost of the necessary election equipment to include ADA compliant voting equipment and related software;

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

SECTION 1. That \$100,816 is appropriated from the General Fund fund balance account number 100.27910 to be transferred to the General Government Capital Project Fund to account number 407.11130.21VOT.49999 for the purchase of seven ADA compliant voting machines plus \$5,000 for estimated shipping costs.

SECTION 2. That \$48,000 is currently available through the FY2021 annual budgetary process in the General Fund Assembly - Elections Division account number 100.11130.43410 to supplement the FY2021 total annual lease cost of \$148,976 for the ADA compliant voting system, which includes necessary system hardware, implementation, software licensing, support services, and \$20,000 in estimated shipping costs.

SECTION 3. That \$100,976 is appropriated from General Fund fund balance account number 100.27910 to account number 100.11130.43011 to provide funding for the FY2021 total annual lease cost of \$148,976 for the ADA compliant voting system, which includes necessary system hardware, implementation, software licensing, support services and \$20,000 in estimated shipping costs.

SECTION 4. Pursuant to KPB 4.10.120(C), the borough clerk is authorized to execute an agreement, pursuant to terms and conditions substantially similar to the attached document, between Dominion Voting Inc. and the Kenai Peninsula Borough for an ADA compliant voting system.

SECTION 5. That this ordinance shall be effective immediately upon enactment.

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

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Office of the Borough Clerk

MEMORANDUM

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

THRU: Brent Hibbert, Assembly President
Brent Johnson, Assembly Vice President

FROM: Johni Blankenship, Borough Clerk JB
Ben Hanson, IT Director BH
John Hedges, Purchasing Director JH

DATE: February 18, 2021

RE: Ordinance 2020-19-24, Appropriating Funds and Authorizing the Borough Clerk to Contract for Necessary Voting Machines, Software, and Related Equipment to Provide an Accessible Voting System for Persons with Disabilities (Hibbert, Johnson)

A complaint was filed following the October 6, 2015 borough election with the Alaska State Commission for Human Rights ("ASCHR") alleging discrimination on the basis of a physical disability due to the borough allegedly not accommodating the complainant's vision disability by providing an accessible voting machine.

The borough entered into the conciliation agreement on December 18, 2018. As part of the conciliation agreement entered into in the Malley case, the borough committed to adopting a voting system to provide private, independent voting by visually impaired citizens. The ADA compliant voting equipment must be provided at every polling precinct or location in the borough where voting occurs. On February 9, 2021, ASCHR approved an amendment to the conciliation agreement to provide the borough more time to acquire ADA compliant voting equipment in order to comply with the terms of the conciliation agreement.

The implementation of a new, ADA compliant voting system will require considerable effort from multiple borough departments (Clerks, Information Technology, Maintenance). Given the competing priorities facing each of these departments, it is essential that this purchase and implementation move forward prior to the new fiscal year start.

KPB 4.10.120 provides that the borough clerk may contract for the provision of specialized materials and supplies without obtaining competitive bids. Quotes

were obtained from two companies, Dominion Voting Systems Inc. (Dominion) and Election Systems & Software (ES&S). After vetting the quotes, capabilities and services that each company could provide the borough for the costs quoted, Dominion was determined to be the superior choice to fulfill the borough's needs.

In addition, the borough is benefiting from the ability to incorporate the scope of work, deliverables, and specifications terms from the State of Alaska's Voting System RFP pursuant to KPB 5.28.030 which allows the borough to join other units of government in cooperative purchasing venture that serves the best interests of the borough.

Pursuant to this ordinance and the contract that the parties would enter into, the borough will purchase 7 ADA compliant voting machines for use at borough vote centers. The purchase price includes \$5,000 in estimated shipping costs. The Borough would lease 26 ADA complaint voting machines and related hardware components and services, to include an annual software use license, for a period of two years with an option to purchase or terminate after two years. The first year lease total includes \$20,000 in estimated shipping costs for the 26 machines and related components.

Your consideration is appreciated.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
Acct. No. 100.27910	- Amount \$100,816
Acct. No. 100.11130.43410	- Amount \$48,000
Acct. No. 100.27910	- Amount \$100,976
By: <u>PP</u>	Date: <u>2/19/2021</u>
By: <u>BH</u>	

Robert K. Wall
PO Box 761
Sterling, AK 99672

March 2, 2021

Kenai Peninsula Borough Assembly
144 Binkley St.
Soldotna, AK 99669

Re: Ordinance 2020-19-24, to be entered as public comment for the March 2nd meeting.

Dear Assembly,

I am strongly opposed to the Borough purchasing any Dominion equipment.

- 1.) Dominion is embroiled in at least 6 lawsuits in the lower 48. These lawsuits are still in litigation, and their outcomes are unknown currently. The allegations are substantial and have not been challenged at this time.
- 2.) The State of Texas considered and then refused to purchase any Dominion machines in 2019. I request the Assembly find out what the reasoning was behind their decision.
- 3.) Please note that the State of Florida primarily uses the ES&S election system. They counted 11 million votes by midnight of the General election on November 3rd, 2020, and have not had any lawsuits filed. How did Florida count 11 million votes and release all the results on election day without ANY accusations or lawsuits filed? In fact, ES&S, itself, is not embroiled in any lawsuits.

Additionally, our Kenai Peninsula Clerk's office currently does not have a Standard Operating Procedure for managing our elections. Before the KPB purchases ANY voting tabulation machines, I request that the Assembly produce a SOP detailing 1.) how our current elections are managed, and 2.) how the machines are distributed, including a tracking system containing all the serial numbers of our current machines. The public has a right to know how our current elections are managed; a written Standard Operating Procedure should exist and be available for public scrutiny.

I also request to know where specifically the machines were used in the last election, and be provided a detailed history of their current software upgrades.

Election integrity is a sacred right of our great nation, and here on the Kenai Peninsula. Public confidence in our elections must be retained through a clear and open process that can be reviewed and shared with the voters.

I urge you, at this time, do not buy any Dominion machines. Also, we must review and codify the system that we now have.

Respectfully,



Robert Wall