



Kenai City Council - Regular Meeting

May 03, 2023 – 6:00 PM

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

****Telephonic/Virtual Information on Page 3****

www.kenai.city

Agenda

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. Approval of the Agenda and Consent Agenda (*Public comments on Consent Agenda Items limited to three (3) minutes per speaker; thirty (30) minutes aggregated*)

All items listed with an asterisk () are considered to be routine and non-controversial by the council and will be approved by one motion. There will be no separate discussion of these items unless a council member so requests, in which case the item will be removed from the consent agenda and considered in its normal sequence on the agenda as part of the General Orders.

B. SCHEDULED ADMINISTRATIVE REPORTS

C. SCHEDULED PUBLIC COMMENTS (*Public comments limited to ten (10) minutes per speaker*)

D. UNSCHEDULED PUBLIC COMMENTS (*Public comments limited to three (3) minutes per speaker; thirty (30) minutes aggregated*)

E. PUBLIC HEARINGS

1. **Ordinance No. 3345-2023** - Accepting and Appropriating Donations for Construction of the Kenai Community Dog Park. (Administration)
2. **Ordinance No. 3346-2023** - Increasing Estimated Revenues and Appropriations in the General Fund, Fire Department for the Purchase of an Inflatable Rescue Boat. (Administration)
3. **Ordinance No. 3347-2023** - Establishing the Storefront and Streetscape Improvement Program and Appropriating \$50,000 from the General Fund. (Askin, Sounart)
4. **Resolution No. 2023-29** - Deferring the Annual City Fee for Tideland Leases for Shore Fisheries to Provide Relief for Set Net Operators Leasing Tidelands from the City for Commercial Setnet Operations if Setnet Fisheries Remain Closed in the Upper Cook Inlet Eastside Set Net Fishery Salamatof Beach Section. (Gabriel)
5. **Resolution No. 2023-30** - Authorizing a Reallocation of Funds within the Congregate Housing Improvement Capital Project Fund. (Administration)
6. **Resolution No. 2023-31** - Authorizing a Reallocation of Funds within the Municipal Roadway Improvements Capital Project Fund. (Administration)
7. **Resolution No. 2023-32** - Approving a Lease Utilizing a Non-Standard Lease Form on Airport Reserve Lands Between the City of Kenai and the Federal Aviation Administration for the

Automated Flight Service Station and Satellite Communication Network Facilities on Lot 7A-1 FBO Subdivision No. 5. (Administration)

8. **Resolution No. 2023-33** - Approving an Amendment to the Lease and Concession Agreement for the Kenai Municipal Golf Course and Recreation Area Between the City of Kenai and Griffin Golf, LLC. (Administration)

F. **MINUTES**

1. *Regular Meeting of April 19, 2023. (City Clerk)

G. **UNFINISHED BUSINESS**

H. **NEW BUSINESS**

1. ***Action/Approval** - Bills to be Ratified. (Administration)
2. ***Action/Approval** - Purchase Orders and Purchase Order Amendments Requiring Council Approval in Accordance with KMC 7.15.020. (Administration)
3. ***Action/Approval** - Non-Objection to the Transfer of a Limited Marijuana Cultivation Facility License for Grateful Bud, LLC., DBA: Grateful Bud, LLC. - License No. 16474. (City Clerk)
4. ***Ordinance No. 3348-2023** - Accepting and Appropriating Funds from the Institute of Museum and Library Services, Passed through the State of Alaska, Department of Education and Early Development, Division of Library, Archives & Museums, for Library Employee Training. (Administration)
5. ***Ordinance No. 3349-2023** - Accepting and Appropriating a Donation to the Kenai Community Library for the Purchase of Early Literacy Equipment and Furniture. (Administration)
6. ***Ordinance No. 3350-2023** - Accepting and Appropriating Grant Funds from the Alaska High Intensity Drug Trafficking Area for Drug Investigation Overtime Expenditures. (Administration)
7. ***Ordinance No. 3351-2023** - Accepting and Appropriating Funding from the State of Alaska Department of Health and Social Services, Division of Public Health for the Healthy and Equitable Communities Program, and Authorizing the City Manager to Execute a Memorandum of Agreement for this Funding. (Administration)
8. ***Ordinance No. 3352-2023** - Increasing Estimated Revenues and Appropriation in the Kenai City Dock Improvement, Animal Control Improvement, and Airport Snow Removal Equipment Improvement Capital Project Funds to Transfer Residual Balance from Completed Projects Back to their Original Funding Sources. (Administration)
9. **Action/Approval** - Special Use Permit to Kenai Aviation Operations, LLC. for Airport Taxilane Space for Aircraft Parking. (Administration)
10. **Discussion** - Status and Path Forward for Wildwood Drive Rehabilitation Project. (Administration)

I. **COMMISSION / COMMITTEE REPORTS**

1. Council on Aging
2. Airport Commission
3. Harbor Commission
4. Parks and Recreation Commission

5. Planning and Zoning Commission
6. Beautification Committee

J. REPORT OF THE MAYOR

K. ADMINISTRATION REPORTS

1. City Manager
2. City Attorney
3. City Clerk

L. ADDITIONAL PUBLIC COMMENTS

1. Citizens Comments (*Public comments limited to five (5) minutes per speaker*)
2. Council Comments

M. EXECUTIVE SESSION

1. Review and Discussion of the City Attorney's Evaluation Which May be a Subject that Tends to Prejudice the Reputation and Character of the City Attorney [AS 44.62.310(C)(2)].
2. Review and Discussion of the City Clerk's Evaluation Which May be a Subject that Tends to Prejudice the Reputation and Character of the City Clerk [AS 44.62.310(C)(2)].

N. PENDING ITEMS

O. ADJOURNMENT

P. INFORMATION ITEMS

1. CIRCAC Director's Report

The agenda and supporting documents are posted on the City's website at www.kenai.city. Copies of resolutions and ordinances are available at the City Clerk's Office or outside the Council Chamber prior to the meeting. For additional information, please contact the City Clerk's Office at 907-283-8231.

Join Zoom Meeting

<https://us02web.zoom.us/j/86090121719>

Meeting ID: 860 9012 1719 **Passcode:** 016058

OR

Dial In: (253) 215-8782 or (301) 715-8592

Meeting ID: 860 9012 1719 **Passcode:** 016058



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3345-2023**

AN ORDINANCE ACCEPTING AND APPROPRIATING DONATIONS FOR CONSTRUCTION OF THE KENAI COMMUNITY DOG PARK.

WHEREAS, the Kenai Community Dog Park project is a community project involving volunteers, community fundraising and a partnership with the City to build the City's first dog park; and,

WHEREAS, the City of Kenai provided land at its Daubenspeck Family Park for the new park; and,

WHEREAS, fundraising efforts by Kenai Dog Park Friends, a devoted community group, has raised more than \$43,000 in cash and thousands more in materials, services and volunteer hours for construction of the project; and,

WHEREAS, donations were deposited with the Kenai Community Foundation, a local not-for-profit established to facilitate donations for programs and projects for the betterment of Kenai; and,

WHEREAS, acceptance of the remaining donations will provide supplemental funding to the \$88,000 previously appropriated by the City for construction of the project and is expected to provide sufficient funding to complete the project in the upcoming construction season; and,

WHEREAS, acceptance of and expending these funds consistent with the intended use is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the City Manager is authorized to accept donated funds in the amount of \$27,323.87 and expend those funds consistent with its intended use and this ordinance.

Section 2. That the following budget revision is authorized:

Park Improvement Capital Project Fund:

Increase/Decrease expenditures –
Donations

\$27,323.87

Increase/Decrease expenditures –
Construction

\$27,323.87

Section 3. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 4. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 3RD DAY OF MAY, 2023.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance:



Introduced: April 19, 2023
Enacted: May 3, 2023
Effective: May 3, 2023



MEMORANDUM

TO: Mayor Gabriel and Council Members
FROM: Terry Eubank, City Manager
DATE: April 13, 2023
SUBJECT: **Ordinance 3345-2023 Appropriation of donated funds for Kenai Community Dog Park**

Ordinance 3345-2023 will appropriate Kenai Community Dog Park donated funds. Kenai Dog Park Friends have raised more than \$43,000 in cash and thousands more in materials, services, and volunteer hours for the construction of the dog park. These donations were deposited with the Kenai Community Foundation, a local not-for-profit established to facilitate donations for programs and projects for the betterment of Kenai.

To date the City has appropriated \$88,000 to assist in the construction of the dog park and \$8,596 remains unspent and unencumbered at the is time. Appropriation of the remaining donated funds, in the amount of \$27,324, will provide sufficient funding to complete the summer construction plan for the project as detailed below. Your support is respectfully requested.

2023 Construction Plan

1. Construction of the park's pavilion/shelter.
2. Once site conditions permit, excavate and install a French drain through the center of the park to provide increased drainage.
3. Once the drain is complete, install additional fill and grade and prep the site for hydroseeding.
4. Upon completion of the park's pavilion/shelter and French drain, install the park's remaining fencing.
5. Once site work is complete, a volunteer day will be organized to install agility and other park features purchased, built and otherwise acquired by the volunteers.
6. Hydroseeding of the park.
7. If sufficient funding remains once the above tasks are completed, a manual water pump will be installed to provide drinking water for animals during the summer months.
8. Grand opening is expected in July, weather dependent.



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3346-2023**

AN ORDINANCE INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE GENERAL FUND, FIRE DEPARTMENT FOR THE PURCHASE OF AN INFLATABLE RESCUE BOAT.

WHEREAS, the Fire Department currently lacks the equipment to perform water-based rescue when the City’s boat launch is inaccessible and operable, nor do they have capabilities of responding above the Warren Ames bridge with the current deeper drafting Safe Boat; and,

WHEREAS, the Fire Department’s response areas include the Kenai River, up to Pillars boat launch; and,

WHEREAS, an inflatable rescue boat will provide rapid access to launch off area beaches, and other boat launch on the river that may provide the fastest route to an emergency; and,

WHEREAS, revenues in excess of budgeted amounts from ambulance billing will be used to purchase the inflatable rescue boat, motor, and trailer; and,

WHEREAS, purchase of the boat now will provide an opportunity for training on it during the Department’s upcoming Rescue Boat Operator Course.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the estimated revenues and appropriations be increased as follows:

General Fund:

Increase Estimated Revenues –	
Ambulance billing	<u>\$28,543</u>
Increase Appropriations – Fire Department	
Machinery & Equipment	\$24,043
Professional Services	<u>4,500</u>
	<u>\$28,543</u>

Section 2. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.


Section 3. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 3RD DAY OF MAY, 2023.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance:  _____

Introduced: April 19, 2023
Enacted: May 3, 2023
Effective: May 3, 2023



MEMORANDUM

TO: Mayor Gabriel and Council Members
THROUGH: Terry Eubank, City Manager
FROM: Tony Prior, Fire Chief
DATE: April 11, 2023
SUBJECT: Ordinance 3346-2023 Inflatable Rescue Boat

The department has the inability to perform water-based rescues in two geographic areas. Our current Safe Boat works for the majority of our rescues, however, when we are unable to launch year round due to the City's launch availability, we lose our ability to respond.

Area 1: Kenai River (from Warren Ames bridge down river) into the inlet. There are times of the year when the boat launch has ice or snow on it and we are unable to launch the Safe Boat, or during a low tide, we are also unable to get our Safe Boat across the sand bar at the convergence of the river and the inlet. These situations have happened multiple times, including recently when we had an individual stuck in the mud during a rising tide. This would have been a perfect opportunity to launch this proposed boat from the North beach and access the person in distress from the water. If we had a plane go down in the water at this particular time of year, it would also be an option for rescue.

Area 2: Our response area on the Kenai River from Warren Ames bridge up to Pillars boat launch. This area of the river is particularly influenced by the tide and can be very shallow in many areas. Our Safe Boat is a heavy boat that draws approximately 3 feet of water. We do not take this boat above the Warren Ames bridge unless there is a large/high tide, and even in that case, it would be a risk to do so. This boat would provide us access to this section of river to affect water-based rescues.

In addition to the 2 areas mentioned above, this additional boat bolsters our water rescue plan for airport emergencies as well as improves our overall capabilities of rescue with 2 boats in the water during any water-based emergency. The survival of any person in the water is crucially dependent upon the speed at which we get to them and how fast we get them out of the water. A person in our cold water has approximately 10 minutes before they lose meaningful movement <https://www.youtube.com/watch?v=ZtAM5ZTn4k&t=72> and 1 hour before they potentially succumb to hypothermia.

We have received additional revenue from the Supplemental Emergency Medical Transport program that was not budgeted in FY23. We are requesting to use a portion of this funding to

purchase this boat and provide training during our upcoming Rescue Boat Operator course in June.

We believe it is in the best interest of the City to improve our rescue capabilities by adding this rescue boat to our fleet and we thank you for your consideration of this Ordinance.





Sponsored by: Askin, Sounart

**CITY OF KENAI
ORDINANCE NO. 3347-2023**

AN ORDINANCE ESTABLISHING THE STOREFRONT AND STREETScape IMPROVEMENT PROGRAM AND APPROPRIATING \$50,000 FROM THE GENERAL FUND.

WHEREAS, a thriving commercial center is a pivotal aspect of the economic vitality in Kenai; and,

WHEREAS, storefront and streetscape improvements are one of the most effective ways of enhancing the image of individual businesses and our community as a whole; and,

WHEREAS, attractive storefronts attract customers, promote business activity, and increase community pride; and,

WHEREAS, Kenai has many older commercial buildings that would greatly benefit from an updated storefront; and,

WHEREAS, the Storefront and Streetscape Improvement Program meets several goals of the Kenai's Imagine Kenai 2030 Comprehensive Plan including the implementation of business-friendly regulations and incentives to create a stable, positive climate for private investment; and,

WHEREAS, the Storefront and Streetscape Improvement Program is intended to encourage and motivate local businesses to reinvest in Kenai by sharing the costs of storefront and streetscape improvement projects; and,

WHEREAS, this program will provide a matching fund source for existing businesses that may require financial assistance to renovate or update storefronts and streetscape up to \$10,000; and,

WHEREAS, participants will be selected based upon submission of a written application on a City form which includes the scope of work, proposed budget for the project, description of how the project will improve the current storefront and streetscape and the lasting impact of the improvement on the overall economic health of the Kenai business community and residents; and,

WHEREAS, grant funds will be disbursed upon submission of a contractor invoices(s) provided to the City and verification of compliance with the Project Agreement, which will be confirmed by a site visit; and,

WHEREAS, allocating \$50,000 from the General Fund to fund the program is a reasonable funding amount that may be reevaluated at a later date; and,

WHEREAS, initiation of a Storefront and Streetscape Improvement Program is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the City Manager is authorized to establish a Storefront and Streetscape Improvement Program in the amount of \$50,000.

Section 2. That the estimated revenues and appropriations be increased as follows:

New Text Underlined; [DELETED TEXT BRACKETED]

General Funds:

Increase Estimated Revenues – Appropriation of Fund Balance	<u>\$50,000</u>
Increase Expenditures – Planning – Grants to Agencies	<u>\$50,000</u>

Section 3. That the City Manager is authorized to execute agreements to expend funds pursuant to the this Ordinance

Section 4. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.


Section 5. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 3RD DAY OF MAY, 2023.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance: 

Introduced:	April 19, 2023
Enacted:	May 3, 2023
Effective:	May 3, 2023



MEMORANDUM

TO: Mayor Gabriel and Council Members

FROM: Council Members Victoria Askin and Deborah Sounart

DATE: April 12, 2023

SUBJECT: **Ordinance No. 3347-2023** - Establishing the Storefront and Streetscape Improvement Program and Appropriating \$50,000 from the General Fund.

The Storefront and Streetscape Improvement Program Ordinance is proposed as a way to provide our local brick and mortar businesses an avenue to repair, improve, and enhance their storefront and streetscape; thus, making them more accessible, aesthetically pleasing, and welcoming to potential consumers.

To this end, the Ordinance consists of a matching fund source up to \$10,000 to assist local business owners in renovating their storefront and streetscape.

Upon acceptance and completion of the proposed renovations by the City Planning Department, funds will be disbursed when confirmation of work has been verified by site visit and upon receipt of invoices documenting relevant costs.

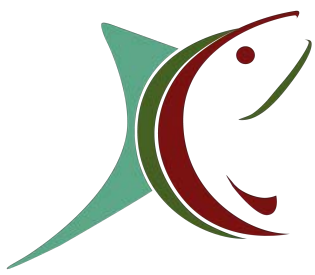
The timing is right for this program. Yes, most of our small businesses have survived the pandemic; but, they could benefit from a partnership with the City. Also, the natural foliage of the City, our beautiful spruce trees, have died and are in the process of being cut down, exposing aged buildings.

This program is designed to be an investment-partnership with our business owners and the City. By investing with our City businesses, the City will eventually see an economic return of increased sales tax, resulting in long-term economic health and stability, amongst other benefits.

This Ordinance demonstrates pride, support, and investment of our businesses. Furthermore, this program has the potential to begin developing a more aesthetic atmosphere to our spruce tree mitigated and denuded city.

In addition, it meets some of the goals set forth in our 2030 Comprehensive Plan.

Thank you for your consideration.



KENAI

Program Guide: Storefront and Streetscape Improvement Grant



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CITY HALL
210 FIDALGO AVENUE
KENAI, AK 99611

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Program Guide Storefront and Streetscape Improvement Grant

Table of Contents

This document provides information on the program, how it works, and how to qualify.

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Program Guide Storefront and Streetscape Improvement Grant

Program Overview

Improved storefront and streetscapes have a measurable impact on business sales and ability to attract new customers as well as improves community pride, and is an investment that provides benefits to businesses, residents, and visitors. The City of Kenai encourages property owners and tenants to invest in exterior renovations to commercial storefronts and streetscapes by providing matching funds to cover a portion of the eligible costs.

The Storefront and Streetscape Improvement Program makes matching funds available to local businesses to improve the appearance of commercial buildings, parking, landscaping, and signage by providing a 50% reimbursement, up to \$10,000 for each approved project for eligible expenses on eligible projects to businesses located in the City of Kenai.

Program Objectives

To encourage and motivate local business improvements and reinvestments in the City of Kenai by sharing the costs of storefront and streetscape improvement projects to strengthen the business activity and enhance economic vitality in Kenai.

The Storefront and Streetscape Improvement Program meets several goals and objectives of City of Kenai's *Imagine Kenai 2030 Comprehensive Plan*, including:

- Implement business-friendly regulations, taxation and incentives to create a stable positive climate for private investment
- Promote adaptive reuse of vacant commercial buildings in the city center and along Kenai Spur Highway
- Support development at emerging community centers that lie outside the major employment centers but provide a mix of retail, service, and residential uses



Program Guide Storefront and Streetscape Improvement Grant

Eligibility

To apply to the Storefront and Streetscape Improvement Grant, you must be the property owner(s) or business lessee (with written property owner authorization).

Eligible applications must answer YES to **all** of the following:

- Business(es) is/are locally owned and/or operated local franchises in City of Kenai
- Project is located within a commercial or mixed-use zoning district
- Project will support an existing commercial structure(s) (e.g., home-based businesses do not qualify) that was/were constructed at least five (5) years ago
- Project includes at least one eligible improvement (see Eligible Improvements)
- Storefront must be visible from a public street (i.e., street-facing)
- Construction work has not started
- Building(s) with existing or proposed window(s) will have clear, unobscured street-facing window(s) once construction is complete and for the five (5) year maintenance period
 - Window tints, vinyl wraps, tinted or frosted glass, large window decals, and window perforations that obscure views in and out of the building may not cover more than 50% of any one window panel and no more than 10% of the square footage of windows on the street-facing façade(s).
- Grant the City permission to use any image (photographs and/or video) for use in media publications including, but not limited to, email blasts, newsletters, magazines, general publications, website and/or affiliates, or videos.
- Be current on all financial obligations to the City of Kenai and Kenai Peninsula Borough.

Contact the Program Administrator if you are unsure whether or not your project meets the eligibility criteria. Contact information is on [page 11](#).



Program Guide Storefront and Streetscape Improvement Grant

Eligible Improvements

An eligible project includes any of the following improvements that are visible from a public street or right-of-way:

- Exterior façade improvements or repairs include, but are not limited to windows/doors, painting, architectural details, cladding/siding, awnings/canopies, outdoor lighting, art and permanent signage
- Installing landscaping or other streetscape improvements. Standalone streetscape improvement projects such as parking lot resurfacing/restriping must provide landscaping that meets the requirements of KMC Chapter 14.25 *Landscaping/Site Plan Regulations*
- Installing new accessibility features such as ramps or handrails
- Improvements/Repairs to bring nonconforming signage, site plan/landscaping into conformance with current Kenai Municipal Code

Other eligible work that may be reimbursed through the program includes construction, materials and labor. Work must be performed or overseen by a licensed general or specialty contractor with a valid State of Alaska business license and Kenai Peninsula Borough Sales Tax Certificate. If you wish to do the work yourself (no contractor) then only the cost of the materials is eligible for the grant. Eligible work may include, but is not limited to the following:

- contracted labor
- new paint
- adding new or replacing existing windows or doors
- electrical and light fixtures
- directional signage
- permanent outdoor dining area
- paving
- hardscaping
- canopies, awning and/or shade structures
- bike racks and/or benches
- planter boxes



Program Guide Storefront and Streetscape Improvement Grant

Ineligible Costs and Projects

Examples of ineligible costs include permit fees, insurance, gas, tools, consumables, cell phone fees and other incidental costs.

The following businesses and projects are **ineligible** for the Storefront and Streetscape Improvement Program.

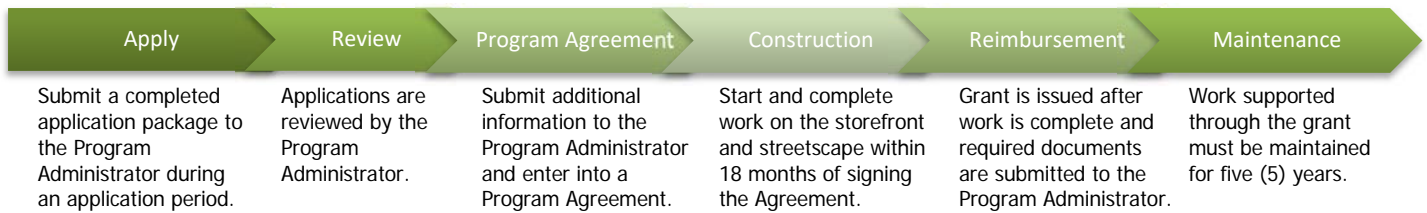
- Improvements for a national food chain, C Corporation traded on a U.S. stock exchange, or a corporate-equivalent entity traded on a foreign stock exchange, and owned in whole or majority-owned by such a publicly traded corporation
- New construction, residential renovations/alterations, re-roofing, structural foundations, temporary signage, security systems, interior improvements, personal property and equipment, in-kind labor or business operation costs
- Digital screens or flashing signage
- Building alterations that would alter the contributing status of properties identified in the *Kenai Townsite Historic District Survey Report*.
- Removing ramps, curb cuts or other accessibility features



Program Guide Storefront and Streetscape Improvement Grant

Program Process

There are six (6) steps in the Storefront and Streetscape Improvement Program process:



Step 1: Apply to the Program

The property owner or someone authorized by the property owner to act on their behalf may apply for the Storefront and Streetscape Improvement Program.

1. Contact the Program Administrator to confirm eligibility. The Program Administrator will visit your site to discuss your plans and help you plan for a successful project.
2. Complete an application package and submit it to the Program Administrator during an application period:
 - a. Application form
 - b. Building elevations showing design and materials
 - c. Conceptual drawings or renderings to support the building elevations
 - d. Site plan that shows the entire parcel(s) with existing structures, existing parking spaces, existing landscaping, and proposed scope of work.

Step 2: Application Review

Completed applications received during an application period are reviewed by the Program Administrator against the design principles and intent of the program. (see [page 10](#) for the design principles) This review may take up to four (4) weeks.

Applications will be approved, approved with conditions, or refused.

- If an application is **approved**, the applicant may enter into a Program Agreement.
- If an application is **approved with conditions**, the applicant must change the design to meet the conditions in order to be eligible for funding.
- If an application is **refused**, the applicant may change the design and re-apply during the next application period.

Program Guide Storefront and Streetscape Improvement Grant

Key things to know about the review process:

- Decisions by the Program Administrator are final and cannot be appealed.
- Due to limited funding, not all projects that apply to the program and meet the eligibility criteria and design principles will receive a grant, or the maximum grant amount.
- If the demand for grants exceed the City's available funds, the City reserves the right to reject, prorate, or prioritize projects based on the following criteria:
 - The value of the work and transformative impact of the project on the surrounding area
 - The number and type of specific improvements proposed
 - The degree to which the project furthers the goals and objectives of the current City of Kenai Comprehensive Plan
- Approval by the Program Administrator **is not** a formal plans review and does not guarantee that projects will be approved for development or building permits without alterations to the design. If you have questions about permitting, please visit the Building Official or Planning & Zoning Department for a preliminary review of the proposal.

Step 3: Program Agreement

Applicants must send the following documents to the Program Administrator within 60 days of the date on the approval letter.

- Two (2) quotes for the eligible scope of the work
- A cost breakdown from the chosen contractor(s)
- The State of Alaska business license number of the general contractor, or subcontractors if there is no general contractor
 - If you (the building owner or company) are doing the work yourself, only materials will be an eligible cost
- An overall budget summary of the project
- A copy of all permit applications

The Program Administrator or designee will pull the property owner(s) record on the Kenai Peninsula Borough Assessor's records and to confirm the legal address and property owner(s).

These documents are used to create a draft Program Agreement. The Program Agreement is a standard form contract identifying the maximum grant amount, the approved project design and the eligible improvements that the applicant may seek reimbursement for once construction is complete.

Program Guide Storefront and Streetscape Improvement Grant

If this documentation is not provided within 60 days of the approval letter, the project file will be closed and the funding reallocated. You may reapply to the program during the next application period provided that no construction has begun, and with the understanding that funding is not guaranteed.

Step 4: Construction

Projects have 18 months from when the Program Agreement is executed to complete construction in order to be eligible to receive the grant. Changes may require reevaluation of the approved grant amount from the Program Administrator. Changes to the design during the construction phase must be approved by the Program Administrator.

As soon as the project is complete, provide a written notification via email or letter to the Program Administrator.

Step 5: Reimbursement

The Program Administrator will visit the site to ensure that the project complies with the terms of the Program Agreement. Deficiencies will be noted and must be addressed to the satisfaction of the City before the grant is issued. The City is not obligated to disburse the entire grant amount if the actual cost of the project does not exceed the grant amount.

Applicants must send the following documents to the Program Administrator:

- All invoices and proof of payment for eligible work identified in the Grant Program Agreement. All contractor invoices must be paid in full. Purchase orders will not be accepted as proof of payment.
- State of Alaska contractor license numbers and Kenai Peninsula Borough Sales Tax Certificates for all subcontractors
- A cost summary for the work
- The most recent Kenai Peninsula Borough Tax Compliance certification showing the property is current on property and sale taxes

Documentation must be submitted in a timely manner. If documentation is not submitted within 30 days after completion of the project, the project file will be closed and grant funding reallocated. It may up to six weeks to issue a reimbursement check for the completion of the approved project or portion thereof.



Program Guide Storefront and Streetscape Improvement Grant

Step 6: Maintenance

All storefront and streetscape renovations supported by the Storefront and Streetscape Improvement Program must be maintained for five (5) years. If the owner fails to maintain the building or site improvements, they may be required to repay up to 50% of the grant.

Program Guide Storefront and Streetscape Improvement Grant

Important to Know

The Storefront and Streetscape Improvement Program team is here to support you through the program process; however, there are some key things to understand about the program in order to be successful.

- If you start work before the Program Agreement is signed, the project will not receive a grant-- even if it was approved by the Program Administrator.
- It is your responsibility to manage contractor(s) and keep track of invoices.
- It is your responsibility to obtain all required permits (e.g., building permits, site plan/landscape approval, sign permits, right-of-way permit).
- It is your responsibility to request approval from the Program Administrator for any changes in design after the Program Agreement is fully executed. Changes may require reevaluation of the approved grant amount from the Program Administrator. Changes to the design during the construction phase must be approved by the Program Administrator.
- It is your responsibility to be aware of deadlines. If you miss the deadline to submit documentation, the program file will be closed and the grant funding reallocated.
- Grant amounts will not be increased due to changes in project scope or cost overruns.

Program Guide Storefront and Streetscape Improvement Grant

Design Principles

Customers prefer to spend time in places that are interesting and attractive. The Storefront and Streetscape Improvement Program supports this by encouraging renovations to existing commercial buildings and properties that positively impact the overall community by assisting business owners who have struggled to keep up with costly repairs and improvements needed to their building(s) and business site.

The Storefront and Streetscape Improvement Program **design principles** identify the features/characteristics of a building that will support more functional, attractive and accessible businesses in existing commercial buildings or properties. The principles should guide the design of a storefront and streetscape renovation and are used to review applications to the program.

Applications should strive to meet or exceed as many of the design principles as possible. We encourage you to explore ways to fulfil the design principles that go beyond the examples listed here. Be creative!

Check out the [Ten Tips for Storefront and Streetscape Renovations](#) at the end of this Guide for more ideas. The design principles are:

Improvements contribute to a lively pedestrian experience.

Renovations to the building should improve how pedestrian friendly and lively the commercial corridor is by adding or improving things for shoppers or visitors to do. Ways to meet this principle could include:

- transparent, uncluttered windows for window shopping
- expanded or new windows or doors
- patios, walk-up counters or other commercial activities that creates an active urban design
- benches, bike parking, or other things for people to do or interact with

Improvements support the businesses, building and commercial corridors.

Building design should help to market the building to prospective tenants, or help communicate to customers what the business tenant offers. Ways to meet this principle could include:

- overall building design and/or colors that support business branding and the overall commercial character of the corridor
- improved signage for the tenants
- adding adaptable signage infrastructure should businesses change
- improving the usability of the building by adding entrances or adding/widening windows

Program Guide Storefront and Streetscape Improvement Grant

or adding space for window displays

Improvements are focused on people, not cars.

Buildings should feel comfortable and interesting for people walking by. This means avoiding long, uninterrupted storefronts and walls, and making business entrances obvious.

- storefronts should create visual interest through regular entrances, varied articulation, and visual permeability
- making sure the main entrance(s) are easy to identify
- signage can be easily read from the sidewalk
- lighting plans should be attractive and avoid overspill/light pollution

Improvements address all four seasons.

Renovations should make the building more functional and attractive throughout the year, and should be comfortable for customers in all kinds of weather. Ways to address all seasons might include:

- using durable and weather resistance materials
- adding landscaping that looks great in summer and winter
- adding permanent patios in sunny locations
- adding/repairing awnings/canopies
- use lights and colors to make buildings stand out

Improvements support accessibility.

Some people use canes, crutches, wheelchairs, strollers and other aids to get around. The more people who can enter your building means more customers overall. Ways to support accessibility may include:

- ramps in front of doorways
- handrails
- large address numbers
- wide entrances
- adding automated doors
- easy to read signs

Improvements contribute to safe streets.

People feel safer when they can clearly see what is happening on the street and inside the building. Ways to meet this principle could include:



Program Guide Storefront and Streetscape Improvement Grant

- lighting that illuminates alcoves and streetscape while minimizing light pollution
- landscaping that clearly identifies where people should and should not go
- landscaping that supports clear sight lines
- encouraging the uses you want to see in front of your building
- see-through or low-height fencing

Properties with off-street front parking lots must improve the connection and safety for pedestrians between the building and the sidewalk.

The aim of the program is to encourage attractive, pedestrian-friendly connectors/paths to commercial areas through investment in existing commercial buildings. The program supports buildings to become as street oriented as they can be. Examples may include:

- new sidewalks, walkways or crosswalks connecting the building with the public sidewalk
- new patios in parking stalls
- adding traffic calming such as painted markings, bollards or speed bumps
- adding landscaping between the sidewalk and parking, including rain garden or bioswales
- curb cuts or other improvements to support universal accessibility

Program Guide Storefront and Streetscape Improvement Grant

Who Does What?

The Applicant is responsible for:	The Program Administrator is responsible for:
<ul style="list-style-type: none"> • Reading and understanding this Program Guide • Completing the application package • Obtaining all Development Permits/Building Permits • Providing all required documentation to the Program Administrator in a timely manner • Completing the approved renovations as per the Program Agreement • Submitting all invoices and proof of payment in a timely manner • Ensuring all contractors have a valid state business license and sales tax certificate • Post-construction building maintenance for 5 years 	<ul style="list-style-type: none"> • Answering questions • Identifying application periods • Provide advice for successful applications • Reviewing submitted applications for completeness • Performing site visits • Creating Program Agreements • Coordinating with the Finance Department on Program funds and issuing reimbursements • Ensuring that projects supported by the program contribute to program outcomes

Contact the Program

Contact us today to discuss your project.

Storefront and Streetscape Improvement Program
 210 Fidalgo Avenue, Kenai, AK 99611
 Tel: 907-283-8237
 Email: planning@kenai.city
www.kenai.city/administration/page/storefront-improvement-program

Program Guide Storefront and Streetscape Improvement Grant

Ten tips for a well-designed storefront and streetscape renovation

The following 10 tips will help you design your new storefront and streetscape to support your business and fulfill the Storefront and Streetscape Improvement Program design principles. This will result in a better design for your business, a stronger application to the program, and a more attractive commercial corridor.

1. Choose a good designer and contractor.

Most storefront renovation work will need a permit from the City. Choose a designer and/or contractor who knows the regulations, bylaws and processes so your project is completed safely, quickly and legally.

2. Does your storefront sell your business?

As a property owner, what kind of tenants do you want to attract? Will your building support the branding and business image of your tenants through architectural style and colors? Does your building add to the experience for people walking through the Business Improvement Area?

3. Think about signage.

Signage supports brand awareness and helps customers find your business. Can you easily see your signage when you're standing on the sidewalk? Can you change the signage if the business tenant changes? Blade signage is easy for pedestrians to see and relatively low cost.

4. Where is the door?

Make it easy for customers to visit your business. Use color, lighting, signage, cladding and architectural details to make it obvious where the main entrance(s) are. Visually break up long buildings using color, texture and materials so you can easily spot individual businesses.

5. Make it easy for people to get inside.

Customers can't buy your product or service if they can't visit your building. What can you do to welcome people with mobility challenges into your place of business?

6. Support window shopping.

An attractive window display or a glimpse of the interior of your building is often the first impression a customer will have of your business. Large, clear windows also

Program Guide Storefront and Streetscape Improvement Grant

promote safety because employees can keep an eye on what's happening outside on the street.

7. Attract customers all year round.

Customers stay longer when they're not running from the weather. Consider installing awnings for sun and weather protection, patio heaters for spring and fall, and adding bright colors, winter-friendly landscaping and creative lighting to draw attention to your building in the darker winter months.

8. Take pride in your investment.

Inappropriate siding breaks down more quickly, especially in our winter climate. Where will the siding material be located? Will it need to withstand shovels, bikes, or high traffic areas? Consider including brick, natural stone, metal panels or stucco instead of vinyl or composite materials in high traffic areas. The Storefront and Streetscape Improvement grant only applies to a building once so make the most of it!

9. Think about safety.

A welcoming and well cared for storefront and streetscape discourage crime. Lighting and landscaping can be decorative and help keep your building and property safe and secure. Use light to illuminate alcoves and nooks.

10. It's more than the storefront.

Design doesn't have to end at the storefront. Blur the line between your business and the sidewalk or right-of-way. Adding patios, benches, window counters and landscaping makes your storefront lively and attractive.



KENAI



Sponsored by: Gabriel

**CITY OF KENAI
RESOLUTION NO. 2023-29**

A RESOLUTION DEFERRING THE ANNUAL CITY FEE FOR TIDELAND LEASES FOR SHORE FISHERIES TO PROVIDE RELIEF FOR SET NET OPERATORS LEASING TIDELANDS FROM THE CITY FOR COMMERCIAL SETNET OPERATIONS IF SETNET FISHERIES REMAIN CLOSED IN THE UPPER COOK INLET EASTSIDE SET NET FISHERY SALAMATOF BEACH SECTION.

WHEREAS, the City of Kenai owns tidelands that it leases to commercial set net operators in the Upper Cook Inlet Eastside Set Net Fishery, Salamatof Section; and,

WHEREAS, pursuant to KMC 11.20.790-Tideland Lease for Shore Fisheries, the City charges an annual rate of \$300 for each lease as provided in the City’s Schedule of Rates, Charges and Fees; and,

WHEREAS, the City currently has ten shore fishery leases for eleven tracts of land producing annual revenue of \$3,300; and,

WHEREAS, the State of Alaska Department of Fish and Game has preemptively closed the Upper Cook Inlet Eastside Set Net Fishery for the 2023 season; and,

WHEREAS, the only means for upper Cook Inlet Eastside Set Net Operators to participate in the fishery is if it is opened by emergency order; and,

WHEREAS, due to the unlikelihood of the fishing opportunity for the 2023 season, many set net operators may choose not to chance compounding their losses by spending additional funds to prepare for the season; and,

WHEREAS, it is in the best interest of the City to reduce the economic burden to its shore fishery lessees that likely will not be able to operate this summer by deferring the annual \$300 shore fishery lease fee for the ten City of Kenai shore fishery lease holders in the Salamatof Beach Section of the Upper Cook Inlet East Side Set Net Fishery.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1. That the annual lease fee of \$300 per track as provided for in the City’s Schedule of Rates Fees and Charges due July 1, 2023 for lease holders of shore fishery leases from the City of Kenai in the Salamatof Beach Section of the Upper Cook Inlet Eastside Set Net Fishery is deferred with no payments due until and unless further action is taken by the City to reestablish a fee for 2023 based on unexpected fishing opportunity.

Section 2. That this Resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 3RD DAY OF MAY, 2023.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk



MEMORANDUM

TO: Council Members
FROM: Mayor Gabriel
DATE: April 27, 2023
SUBJECT: Resolution 2023-29 – Eastside Set Net Fishery

The Upper Cook Inlet Eastside Set Net fishery has been preemptively closed by the Alaska Department of Fish and Game. The City leases tracts of tidelands to set net operators in the Salamatof Beach Section of this fishery for an annual fee of \$300 per tract. The fishery closure will have significant financial impacts to local set net operators. This Resolution proposes to defer the annual fee for the City’s tideland leases for shore fisheries to help offset some of the economic impact of this closure for fishery participants with City tideland leases. If the fishery is opened by emergency order and fishing time is allowed, the Resolution allows for implementing a prorated or reduced fee at a later date. The economic impact to the City of deferring or eliminating these fees is not large, and while the fees are relatively small, anything the City can do to help its local set netters during this unprecedented time is meaningful.

Your consideration is appreciated.



Sponsored by: Administration

**CITY OF KENAI
RESOLUTION NO. 2023-30**

A RESOLUTION AUTHORIZING A REALLOCATION OF FUNDS WITHIN THE CONGREGATE HOUSING IMPROVEMENT CAPITAL PROJECT FUND.

WHEREAS, RSA Engineering has finalized construction bid documents for the Vintage Pointe Boiler Design & Replacement Project; and,

WHEREAS, with completion of the design documents and a more refined understanding of the project requirements, it has been determined supplemental funding may be needed to allow the project to be bid and completed; and,

WHEREAS, it has been determined that the Fire Alarm Control System Upgrade project funding previously appropriated by Council is no longer needed at this time based on recommendations from the City’s consultant that performs annual fire systems testing and inspections; and,

WHEREAS, this Resolution reallocates those funds in support of the Boiler Replacement project.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1. That the City Manager is authorized to reallocate the existing capital projects funds as detailed below:

Congregate Housing – Congregate Housing Capital Project Fund:

Decrease Expenditures:

Fire Alarm / Control System Upgrade project - Construction \$128,744.21

Increase Expenditures:

Vintage Pointe Boiler Design & Replacement project - Construction \$128,744.21


Section 2. That this Resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 3RD DAY OF MAY, 2023.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance: 



MEMORANDUM

TO: Mayor Gabriel and Council Members
THROUGH: Terry Eubank, City Manager
FROM: Scott Curtin, Public Works Director
DATE: April 25, 2023
SUBJECT: Resolution 2023-30 - Vintage Pointe Boiler Design & Replacement

The purpose of this memo is to request Council’s approval to reallocate capital project funding within the Congregate Housing Improvement Capital fund. Funding for the Vintage Pointe Fire Alarm / Control System Upgrade project was provided through adoption of the FY2019 budget. Since that time, with the assistance of consultants, it has come to our understanding that the Fire Alarm Control Panel is not in need of replacement at this time. There were specific devices tied to the system, sensors and strobes as example that were not operating correctly. Those have and continue to be replaced as part of routine annual maintenance within the facility. The funding previously provided for that project, with passage of this Resolution, will now be used in support of the boiler replacement project.

RSA Engineering has provided final construction documents to the City on April 14th, 2023 for our final reviews. With the transfer of these funds, in the total amount of \$128,744.21, the project is anticipated to be bid in early May with completion expected within six months.

This is a priority project for the seniors residing at Vintage Pointe. Completion of the work will safeguard the facilities heating system for years to come and is expected to provide utility cost savings with the improved efficiencies the new equipment will provide.

Additionally within the current design, backup power generation equipment is listed as an additive alternate. Staff combined the design efforts to save on costs. The current budget and recently approved Capital Improvement Plan includes \$100,000 to purchase the backup power equipment after July 1st. Assuming project costs come in as anticipated, a contract amendment to the successful contractor awarding the additive alternate will be completed. Completion of the backup power generation equipment will provide further safeguards to the facility.

Photos below are of the Aerco Benchmark boilers intended as the basis of design.

Council’s approval is respectfully requested.





Sponsored by: Administration

**CITY OF KENAI
RESOLUTION NO. 2023-31**

A RESOLUTION AUTHORIZING A REALLOCATION OF FUNDS WITHIN THE MUNICIPAL ROADWAY IMPROVEMENTS CAPITAL PROJECT FUND.

WHEREAS, Nelson Engineering is nearing design completion on the North Willow Street Roadway Improvements, First Avenue Roadway Repairs, and Miscellaneous Road Repairs Capital Projects; and,

WHEREAS, with completion of these documents and a more refined understanding of the project requirements, it has been determined supplemental funding may be needed to allow these projects to be bid and completed; and,

WHEREAS, the Lilac Street Reconstruction project, having yet to begin design, will reprioritize funding to the higher priority projects listed above; and,

WHEREAS, the new fiscal year 2024 budget presented to Council as well as the newly approved Capital Improvement Plan, includes \$100,000 in new funding to allow the Lilac Street Reconstruction project to begin design work later this summer, slightly shifting the projects timeline for completion.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1. That the City Manager is authorized to reallocate the existing capital projects funds as detailed below:

Municipal Roadway Improvements Capital Project Fund

Decrease Expenditures:

Lilac Street Reconstruction - Construction \$393,000

Increase Expenditures:

N. Willow Street Roadway Improvements - Construction \$160,000

First Avenue Roadway Repairs - Construction 100,000

Miscellaneous Road Repairs - Construction 133,000

\$393,000

Section 2. That this Resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 3RD DAY OF MAY, 2023.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance:



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Gabriel and Council Members
THROUGH: Terry Eubank, City Manager
FROM: Scott Curtin, Public Works Director
DATE: April 25, 2023
SUBJECT: **Resolution 2023-31 – Municipal Roadway Improvements**

The purpose of this memo is to request Council's approval to reallocate funding within the Municipal Roadway Improvements Capital Project Fund to allow several projects to bid and ultimately be completed this year.

The Public Works Department is requesting to reallocate previously appropriated funds from the Lilac Street Reconstruction project and supplement the funding for the North Willow Street Roadway Improvements, First Avenue Roadway Repairs, and Miscellaneous Road Repairs Capital Projects.

Nelson Engineering has been developing the construction documents for these projects and they are nearing completion. The North Willow project extends from the intersection with Granite Pointe St. to just beyond the Forestry Service lot adjacent to Airport Operations. The First Avenue project repairs are taking place between the intersections of North Spruce and Birch St. The Miscellaneous Road Repairs project sites include the intersections of Haller and Fourth Avenue, Watergate and Pirate Lane, Watergate and Schooner Circle, Watergate and Set Net Drive, VIP Drive and Set Net Drive, VIP Drive and Dollar Drive, Eagle Rock Drive and Tern Place, Eagle Rock Drive and Sandpiper Lane, and Silver Salmon and King Salmon Drive.

The Lilac Street project will continue to move forward with new funding being provided with the adoption of the FY2024 budget, which will provide \$100,000 to allow design and survey efforts to begin later this summer. The existing funding within the project will be reallocated with \$160,000 towards the North Willow St. project, \$100,000 towards First Avenue, and \$133,000 toward the Miscellaneous Repairs.

Completion of these projects is in the best interest of the City. Council's support is respectfully requested.



Sponsored by: Administration

**CITY OF KENAI
RESOLUTION NO. 2023-32**

A RESOLUTION APPROVING A LEASE UTILIZING A NON-STANDARD LEASE FORM ON AIRPORT RESERVE LANDS BETWEEN THE CITY OF KENAI AND THE FEDERAL AVIATION ADMINISTRATION FOR THE AUTOMATED FLIGHT SERVICE STATION AND SATELLITE COMMUNICATION NETWORK FACILITIES ON LOT 7A-1 FBO SUBDIVISION NO. 5.

WHEREAS, the previous lease to the Federal Aviation Administration (FAA) for Automated Flight Service Station (AFSS) and Satellite Communication Network facilities on Lot 7A-1 FBO Subdivision No. 5, expired on September 30, 2022; and,

WHEREAS, on June 8, 2022, the FAA submitted an application for a lease renewal of the City-owned facility within the Airport Reserve, known as the AFSS, a 10,812 square foot building and 729 square foot detached shop located on a property described as Lot 7A-1 FBO Subdivision No. 5; and,

WHEREAS, the proposed lease would be mutually beneficial and would conform with Kenai Municipal Code Titles 14 & 21, Kenai's Comprehensive Plan, Kenai Municipal Airport Master Plan, Federal Aviation Administration regulations, Airport Improvement Program grant assurances, and airport operations; and,

WHEREAS, the City of Kenai did not receive a competing lease application within thirty (30) days of publishing a public notice of the lease application from the FAA; and,

WHEREAS, at their regular meeting on September 14, 2022, the Planning and Zoning Commission reviewed the lease application and recommended approval by the City Council; and,

WHEREAS, the receipt of the final approval of the non-standard lease form from FAA extended past the lease expiration date and a new lease must be executed; and,

WHEREAS, the City Manager may enter into a land lease that deviates from the standard form if (1) the City Manager believes the action is in the best interest of the City and (2) the lease is approved as to form by the City Attorney; and,

WHEREAS, it is in the best interest of the City of Kenai to authorize the City Manager to enter into a lease agreement with the FAA on behalf of the City and the lease will be approved as to form by the City Attorney; and,

WHEREAS, the holdover lessee has agreed to retroactively pay the difference in the rent amount; and,

WHEREAS, the continued use of the space for operating the AFSS and Satellite Communication Network facilities complies with Kenai Municipal Code and conforms with the Imagine Kenai 2030 Comprehensive Plan and Kenai Municipal Airport Master Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1. The Council of the City of Kenai approves the attached non-standard space lease form by the FAA for the lease of Lot 7A-1, Block 2, FBO Subdivision, located within the Airport Reserve, to the FAA for the use of an automated flight service station and satellite communication network facilities, for the lease rate of \$15,120.00 per month or \$181,440.00 per year for the 20-year lease term. The non-standard lease form is recommended by the City Manager and approved by the City Attorney.

Section 2. The City Manager is authorized to execute the lease between the City of Kenai, Lessor, and the FAA, Lessee.

Section 3. That this Resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 3RD DAY OF MAY, 2023.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk



MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Terry Eubank, City Manager

FROM: Linda Mitchell, Planning Director

DATE: April 25, 2023

SUBJECT: **Resolution No. 2023-32 – Approving a Lease Using a Non-Standard Lease Form on Airport Reserve Lands between the City of Kenai and the Federal Aviation Administration for the Automated Flight Service Station Facility and Satellite Communication Network Facilities on Lot 7A-1, FBO Subdivision No. 5.**

The City initially received a request for a renewal of the Federal Aviation Administration (FAA) lease of the Automated Flight Service Station (AFSS). The FAA has leased the space for the purpose of operating the AFSS and Satellite Communication Network (SACOM) facilities dating back to 1983. Due to the delay of receiving a final approval of the non-standard lease form from the FAA, a new lease is required.

The lease agreement is for a 3.44-acre parcel described as Lot 7A-1, FBO Subdivision No. 5 consisting of a 10,812 square foot building and a 729 square foot detached shop. The lease agreement will commence on October 1, 2022 since the previous lease expired on September 30, 2022 and FAA has remained on the premise to continue their operation.

Pursuant to Kenai Municipal Code 21.10.060 *Lease application review*, notice of the lease application was posted in the *Peninsula Clarion* and stated competing applications may be submitted for the parcel within 30 days to the City. The 30-day window from publication ended on July 16, 2022, no competing applications were submitted to the City.

The parcel is within the Airport Light Industrial (ALI) Zone. Pursuant to KMC 14.20.065, the purpose of the ALI Zone is to protect the viability of the Kenai Municipal Airport as a significant resource to the community by encouraging compatible land uses and reducing hazards that may endanger the lives and property of the public and aviation users. The proposed aeronautical use is a permitted and compatible use in the ALI Zone.

The Imagine Kenai 2030 Comprehensive Plan outlines goals, objectives, and action items for the City, including the following pertaining to the Kenai Municipal Airport:

Objective T- 1: Support future development near or adjacent to the airport when such development is in alignment with the Kenai Municipal Airport's primary mission, "To be the commercial air transportation gateway to the Kenai Peninsula Borough and Cook Inlet."

The continued use complies with the Imagine Kenai 2030 Comprehensive Plan by supporting development on lease lots with development that is in alignment with the Kenai Municipal Airport Master Plan.

Thank you for your consideration.

Attachments

Land Lease Application
Aerial Map
Plat No. 92-60
Non-Standard Lease Form





City of Kenai Land Lease Application

Application for:	<input type="checkbox"/> New Lease
<input type="checkbox"/> Amendment	<input type="checkbox"/> Extension
<input type="checkbox"/> Assignment	<input type="checkbox"/> Renewal

Application Date:	5/25/2022
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Applicant Information

Name of Applicant:	Department of Transportation - Federal Aviation Administration						
Mailing Address:	2200 S 216th St	City:	Des Moines	State:	WA	Zip Code:	98198
Phone Number(s):	Home Phone:		Work/ Message Phone:				
E-mail: (Optional)							
Name to Appear on Lease:	Federal Aviation Administration						
Mailing Address:	2200 S 216th St	City:	Des Moines	State:	WA	Zip Code:	98198
Phone Number(s):	Home Phone:		Work/ Message Phone:		206-231-3058		
E-mail: (Optional)							
Type of Applicant:	<input type="checkbox"/> Individual (at least 18 years of age) <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input checked="" type="checkbox"/> Government <input type="checkbox"/> Limited Liability Company (LLC) <input type="checkbox"/> Other _____						

Property Information and Term Requested

Legal description of property (or, if subdivision is required, a brief description of property):	
7A-I, Block 2 FBO Subdivision No. 5, according to Plat No. 92-60, in the Kenai Recording District, Third Judicial District, State of Alaska. Comprising more or less 3.445 acres, and a 3.214 acre building restr. clear zone easement	
Does the property require subdivision? (if Yes, answer next questions)	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
Subdivision costs are the responsibility of the applicant unless the City Council determines a subdivision serves other City purposes:	
1. Do you believe the proposed subdivision would serve other City purposes?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
2. If determined it does not, applicant is responsible for all subdivision costs.	Initials _____
If an appraisal is required to determine the minimum price on the land, applicant is responsible for the deposit to cover costs associated with appraisal. If a sale is approved, the cost of the appraisal will be either refunded or credited to the applicant.	Initials _____
It is the responsibility of the applicant to cover recording costs associated with lease.	Initials _____
Do you have or have you ever had a Lease with the City? (if Yes, answer next question)	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
1. Legal or brief description of property leased:	
7A-I, Block 2 FBO Subdivision No. 5, according to Plat No. 92-60, in the Kenai Recording District, Third Judicial District, State of Alaska. Comprising more or less 3.445 acres, and a 3.214 acre building restriction clear zone easement at 470 North Willow Street, Kenai, Alaska.	
Request a Lease with an Option to Purchase once development requirements are met?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
Requested term for Initial Lease or Renewal (based on Term Table, not to exceed 45 years): TBD	
Requested term for Lease Extension (based on Term Table, not to exceed a total of 45 Years):	
Requested Starting Date: 10/01/2022	

Proposed Use and Improvements

Proposed Use (check one): Aeronautical | Non-Aeronautical

Do you plan to construct new or additional improvements? (if Yes, answer next five questions) YES NO

1. Will the improvement change or alter the use under an existing lease? YES NO

2. What is the proposed use of the improvement? N/A

3. What is the estimated value of the improvement? N/A

4. What is the nature and type of improvement?
N/A

5. What are the dates construction is estimated to commence and be completed?
(generally, construction must be completed within two years)
Estimated Start Date: Estimated Completion Date:

Describe the proposed business or activity intended:
This space will be used by the Federal Aviation Administration for our Automated Flight Service Station and Satellite Communications Center (currently in place under prior lease with the City of Kenai)

How does the proposed lease support a thriving business, residential, recreational, or cultural community?
FAA is tasked with supporting the safety of the National Airspace. The operations are critical for flight safety in the local area of Kenai as well as for national flights throughout the country.

Lease Assignment Only: What is the name of the individual or legal entity the lease is to be assigned?
N/A

Lease Renewal Only

Renewal of an Existing Lease (at least one year of term remaining): Requires new development.
Lease Term based on: Estimated cost of new improvements and | Purchase Price (optional)

Renewal of an Expiring Lease (less than one year of term remaining): Does not require new development.
Lease Term based on: Purchase Price Professional Estimate of Remaining Useful Life
 Fair Market Value appraisal and/or Estimated cost of new improvements (optional)

Requested Term for Renewal Based on Term Table, not to exceed 45 Years: **TBD**

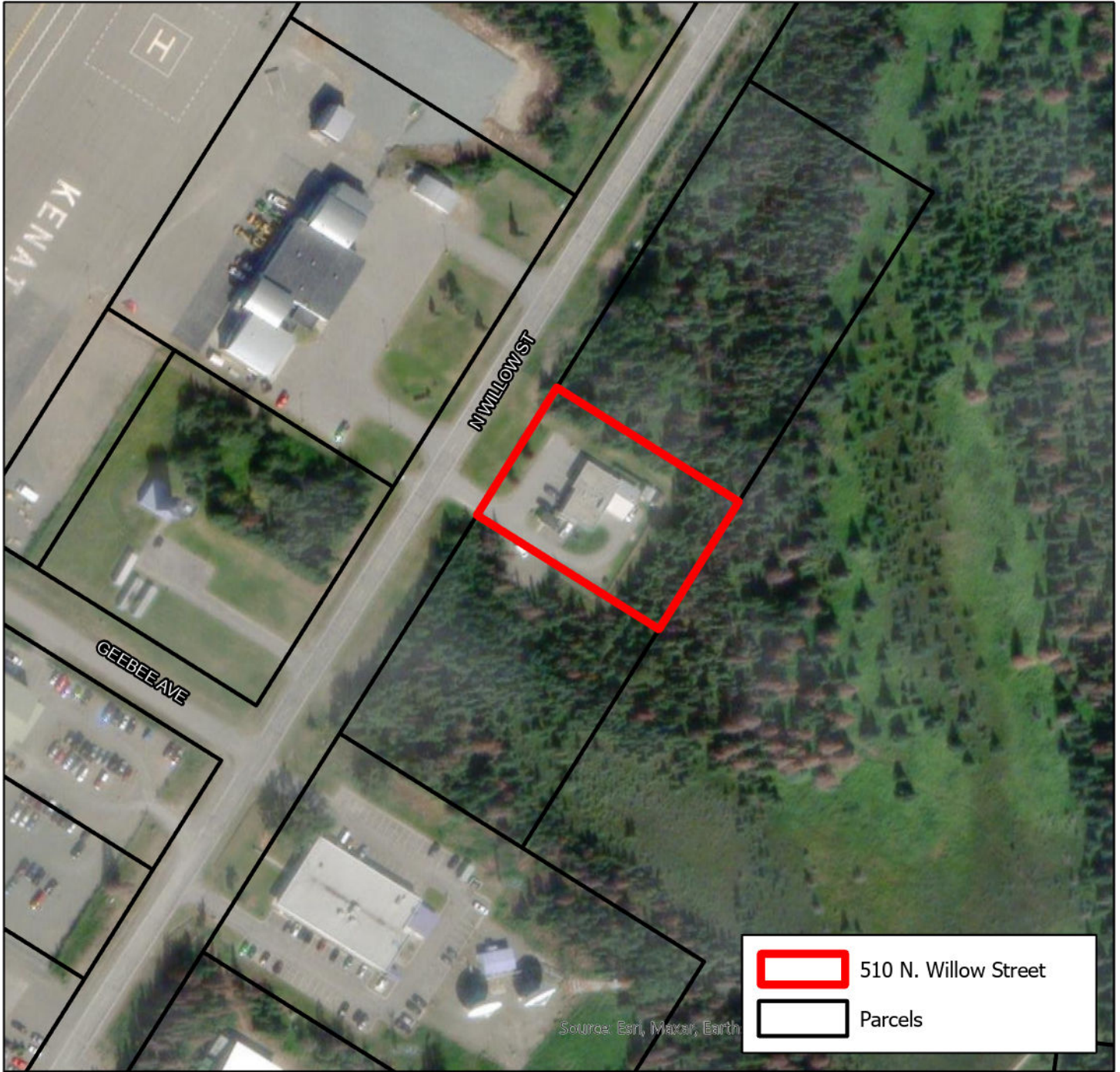
Submitting an application for a lease does not give the applicant a right to lease or use the land requested in the application. The application shall expire twelve (12) months after the date the application has been made if the City and the applicant have not, by that time, entered into a lease, unless the City Council for good cause grants an extension for a period not to exceed six (6) months. The City has no obligation to amend, renew or extend a lease and may decline to do so upon making specific findings as to why a lease renewal, extension, or amendment is not in the best interest of the City

Signature:	CORI A BEEKMAN <small>Digitally signed by CORI A BEEKMAN Date: 2022.06.08 06:30:16 -07'00'</small>	Date:	06/08/2022
Print Name:	Cori Beekman	Title:	RECO

<p>For City Use Only:</p> <p><input type="checkbox"/> General Fund <input type="checkbox"/> Airport Reserve Land</p> <p><input type="checkbox"/> Airport Fund <input type="checkbox"/> Outside Airport Reserve</p> <p>Account Number: _____</p>	<p>Date Application Fee Received: _____</p> <p>Date Application Determined Complete: _____</p> <p>30-Day Notice Publication Date: _____</p> <p>City Council Action/Resolution: _____</p>
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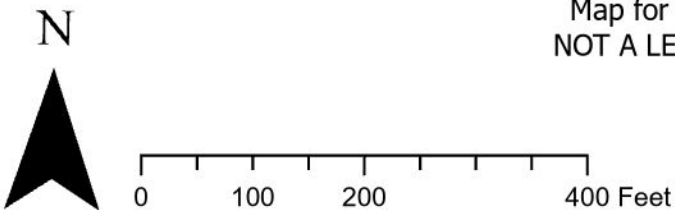


New Lease
Automated Flight Service Station (AFSS) and
Satellite Communication Network Facilities
510 N. Willow Street
KPB Parcel ID: 04336035



Date Printed: 4/27/2023

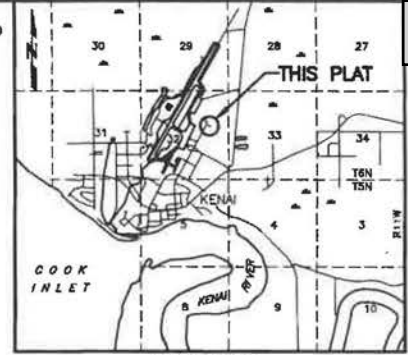
Map for Reference Only
NOT A LEGAL DOCUMENT



NOTE: NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED WITHIN AN EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.

LEGEND

- SET 5/8" REBAR WITH 1 1/2" ALCAP
- ⊙ FOUND 5/8" REBAR WITH 1 1/4" PLASTIC CAP
- ⊙ FOUND 1/2" REBAR WITH 1" PLASTIC CAP
- FOUND 1/2" REBAR
- ⊙ FOUND 3 1/4" ALCAP MONUMENT
- (R1) RECORD DATA - KR D 78-225
- (R2) RECORD DATA - KR D 84-145
- (R3) RECORD DATA - KR D 90-62
- (M) MEASURED DATA



VICINITY MAP
SCALE: 1" = 1 MILE

CERTIFICATE OF OWNERSHIP AND DEDICATION

I HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND THAT 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]
CITY MANAGER
CITY OF KENAI
210 FIDALGO STREET
KENAI, AK 99611

NOTARY'S ACKNOWLEDGEMENT

FOR: City of Kenai, Clares Brown
SUBSCRIBED AND SWORN BEFORE ME THIS 29th
DAY OF September, 1992
[Signature]
NOTARY PUBLIC FOR ALASKA
MY COMMISSION EXPIRES: 7/10/96

PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF July 20, 1992
BY: *[Signature]*
AUTHORIZED OFFICIAL

KPB FILE NO. 92-068

FBO SUBDIVISION NO. 5

A RESUBDIVISION OF LOT 7A, BLOCK 2, FBO SUBDIVISION NO. 2 AND A PORTION OF THE NE1/4, SEC. 32, T6N, R11W, S.M., AK.

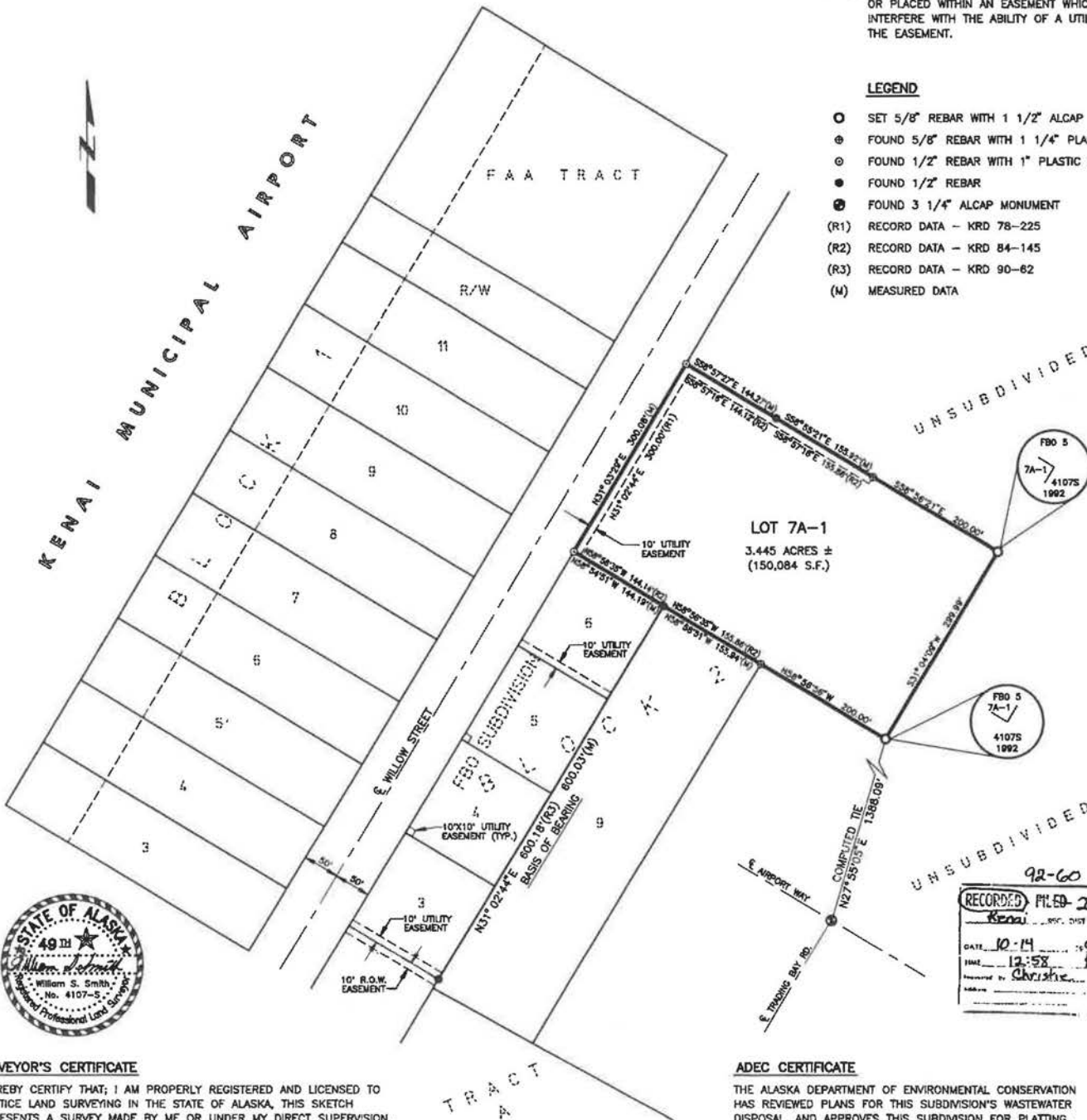
LOCATED WITHIN THE NE1/4, SEC. 32, T6N, R11W, S.M., AK, CITY OF KENAI, KENAI RECORDING DISTRICT, KENAI PENINSULA BOROUGH, ALASKA

CONTAINING 1 LOT OF 3.445 ACRES ±

RAYTHEON SERVICE COMPANY

550 W. 7th AVENUE, SUITE 1320
ANCHORAGE, AK 99501
279-5400

SURVEY DATE:	8-21-92	PLATTED:	
DRAWN:	BWC	FIELD BOOK:	N/A
CHECKED:	WSS	SCALE:	1" = 100'
DATE PREPARED:	9-28-92	PREPARED FOR:	FAA



LOT 7A-1
3.445 ACRES ±
(150,084 S.F.)

FBO 5
7A-1
41075
1992

FBO 5
7A-1
41075
1992

92-60
RECORDED FILED 20
Kenai REC. DIST
DATE 10-14-92
TIME 12:58 P
Prepared by Christine P

ADEC CERTIFICATE

THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS REVIEWED PLANS FOR THIS SUBDIVISION'S WASTEWATER DISPOSAL, AND APPROVES THIS SUBDIVISION FOR PLATTING.

[Signature] EE 9-29-92
SIGNATURE TITLE DATE



SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT, I AM PROPERLY REGISTERED AND LICENSED TO PRACTICE LAND SURVEYING IN THE STATE OF ALASKA, THIS SKETCH REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION, THE MONUMENTS SHOWN HEREON ACTUALLY EXIST AS DESCRIBED, AND ALL DIMENSIONS AND OTHER DETAILS ARE CORRECT TO THE NORMAL STANDARDS OF PRACTICE OF LAND SURVEYORS IN THE STATE OF ALASKA.

SURVEYOR'S SIGNATURE: *[Signature]* DATE: 9/22/92

STANDARD SPACE LEASE
Between
THE UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
And
City of Kenai

FAA CONTRACT NO: 690EG4-23-L-00007
ATID/FACILITY TYPE: ENA-AFSS
LOCATION: Kenai, AK

1. **Preamble (09/2021) 6.1.1** This Lease for real property is hereby entered into by and between the City of Kenai, hereinafter referred to as the Lessor or City, and the United States of America, acting by and through the Federal Aviation Administration, hereinafter referred to as the FAA.

2. **Definitions (09/2021) 6.1.1-1** For purposes of this document, the following definitions apply:

Contract- refers to this legal instrument used to acquire an interest in real property for the direct benefit or use by the FAA. As used herein, contract denotes the document (for example- lease, easement, memorandum of agreement, or other legally binding agreement) used to implement an agreement between a customer (buyer) and a seller (supplier).

Contractor- refers to the party(ies) receiving a direct procurement contract from the FAA and who is(are) responsible for performance of contract requirements. For purposes of this document, the contractor may also be called the Lessor, Permitter, Licensor, Grantor, Airport, or Offeror depending on the type of contract or the provision within the contract.

Government- refers to the United States of America acting by and through the Federal Aviation Administration (FAA). For purposes of this document, Government and FAA are interchangeable.

Real Estate Contracting Officer (RECO) - is a trained and warranted official who contracts for real property on behalf of the FAA. For purposes of this agreement, RECO is interchangeable with Contracting Officer (CO).

3. **Succeeding Contract (09/2021) 6.1.2** This contract succeeds DTFAWN-13-L-00002 and all other previous agreements between the parties for the property described in this document.
4. **Lease Witnesseth (09/2021) 6.1.3** Witnesseth: The parties hereto, for the consideration hereinafter mentioned, covenant and agree as follows:
5. **Leased Space Description (09/2021) 6.1.4** The Lessor hereby leases to the Government the following described premises;

470 N Willow St, Kenai, AK, further described as;

Lot 7A-1, FBO Subdivision No. 5, according to Plat No. 92-60.

A 150,084 SF or 3.45 acre lot, consisting of a 10,812 square foot office building with a 729 square foot detached shop for a gross building area of 11,541 square feet, with a rentable area of 10,500 RSF

The Lessor shall provide 90 reserved off-street parking spaces, located at the facility, at no additional cost to the Government. With respect to compliant accessible parking spaces, see the “Accessibility” clause.

The Lessor shall repaint parking lot markings every three (3) years, beginning with lease execution. The Lessor shall be responsible for asphalt sealing of parking lot every six years, beginning with lease execution.

- 6. **Purpose (09/2021) 6.1.5** It is understood and agreed that the use of the herein described premises shall be related to FAA’s activities in support of the National Airspace System (NAS).
- 7. **Legal Authority (09/2021) 6.2.1** This contract is entered into under the authority of 49 U.S.C. 106(l)(6) and (n), which authorizes the Administrator of the FAA to enter into contracts, acquisitions of interests in real property, agreements, and other transactions on such terms and conditions as the Administrator determines necessary.
- 8. **Term (09/2021) 6.2.3** To have and to hold, for the term commencing on October 1, 2022 and continuing through September 30, 2032 inclusive, provided that adequate appropriations are available from year to year for the consideration herein.
- 9. **Option(s) to Extend Term (09/2021) 6.2.3-4** The contract may, upon mutual agreement of both the Government and the lessor, be extended beyond September 30, 2032 at a rental rate agreed upon by both parties. The extension shall be upon the terms and conditions herein specified and no extension shall extend beyond September 30, 2042. The Government shall notify the contractor in writing, no later than 30 days before the expiration of the Lease term including all options exercised, of its intent to exercise the option(s) or of its intent to vacate the premises at the end of said term. Any extension exercised by the Government pursuant to this clause shall be subject to the availability of adequate appropriations from year to year for the payment of rentals.
- 10. **Consideration (Standard Space) (09/2021) 6.2.4-1**

A. The Government shall pay annual rent for the premises, payable in monthly installments in arrears, at the following rate(s)(monthly installments may vary based on rounding):

Initial Term DATES: 10/01/2022 through 09/30/2032		Rent Amount
	Annual Rental Rate	\$17.28/ RSF
	Monthly Rent	\$15,120
	Total Annual Rent	\$181,440.00

B. Payment shall be made in arrears, without the submission of invoices or vouchers. Payments are due on the first business day following the end of the payment period and are subject to available appropriations. The payments shall be directly deposited in accordance with the “Payment by Electronic Funds Transfer” clause in this contract. Payments shall be considered paid on the day an electronic funds transfer is made.

C. Payment shall be made in full to: City of Kenai, 210 Fidalgo Ave, Kenai, AK 99611-7750

Termination for Convenience (09/2021) 6.2.5-1 The Government may terminate this contract at any time, in whole or in part, if the Contracting Officer (CO) determines that a termination is in the best interest of the Government. The CO shall terminate by delivering to the contractor a written notice specifying the effective date of the termination. The termination notice shall be issued 60 days before the effective termination date.

After termination, the Contractor may submit a final termination settlement proposal to the CO in the form and with the certification prescribed by the CO. The proposal must include all documentation necessary to validate the proposal.

The contractor must submit the proposal no later than one (1) year from the effective date of termination unless the submission deadline is extended in writing by the CO upon written request of the contractor within this one (1) year period. However, if the CO determines that the facts justify it, a termination settlement proposal may be received and acted on after one (1) year or any extension. If the contractor fails to submit the proposal within the time allowed, the CO may determine, on the basis of information available, the amount, if any, due the contractor because of the termination and shall pay the amount so determined.

After submission of final termination settlement proposal, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination.

If the contractor and the CO fail to agree, the Government will pay the contractor the amounts determined by the CO as follows:

- 1) The contract price for any unpaid rents;
- 2) The remaining principle balance of Tenant Improvement allowance as described in the clause titled “Lessor’s Recovery of Tenant Improvement Allowance in the Event of Termination” within this contract; and
- 3) Reasonable costs associated with termination.

If the termination is partial, the contractor may file a proposal with the CO for an equitable adjustment of the price(s) of the continued portion of the contract. If agreed upon, the CO may make the equitable adjustment. Any proposal by the contractor for an equitable adjustment under this clause must be requested within 90 days from the effective date of termination unless extended in writing by the CO.

The contractor may file a claim with the Federal Aviation Administration Office of Dispute Resolution for Acquisition based on any determination made by the CO pursuant to this clause. Nothing in this clause will obligate the government to spend in excess of available appropriations.

11. Termination for Default (09/2021) 6.2.5-2

A. Subject to the provision of notice of default to the Lessor, and the provision of reasonable opportunity for the Lessor to cure the default, the following conditions constitute default by the Lessor:

i. Prior to Acceptance of the Premises. Failure by the Lessor to perform all obligations required for acceptance of the space, to include, but are not limited to, all obligations included within the statement of work and lease clauses, within the times specified, without such failure in performance being affirmatively excused, in writing, by the RECO.

ii. After Acceptance of the Premises. Failure by the Lessor to perform any service, or to make progress in the work so as to endanger performance; the failure to make any item; or the failure to satisfy any requirement of this Lease, without such failure being affirmatively excused, in writing, by the RECO.

B. Grounds for Termination. The Government may terminate the Lease, in whole or in part, if:

i. after given notice and reasonable opportunity to cure by the Government, the Lessor's default persists; or

ii. the Lessor fails to take such actions as necessary to prevent the recurrence of default conditions, and such conditions substantially impair the Government's use or occupancy of the Premises, as determined by the Government.

C. The rights and remedies specified in this clause are in addition to all remedies to which the Government may be entitled to as a matter of law.

12. Excuse (09/2021) 6.2.5-3

A. The Lessor will not be in default because of any failure to perform the requirements of this Lease under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Lessor.

B. Permissible causes for excuse are:

i. acts of God (e.g., fires, floods, pandemics, epidemics, unusually severe weather, etc.),

ii. acts of the public enemy,

iii. acts of the Government in either its sovereign or contractual capacity,

iv. pandemic, epidemic, or quarantine restrictions,

v. strikes, and

vi. freight embargoes. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Lessor.

C. Excuse will not be granted when:

i. the Lessor had actual or constructive knowledge prior to the Lease Award Date that he/she could not perform in accordance with the requirements of the Lease contract;

ii. the conditions of the property prevent performance;

iii. the Lessor, its employees, agents or contractors, by error or omission, fails to perform; or

iv. the Lessor is unable to obtain sufficient financial resources to perform its obligations.

D. The RECO will ascertain the facts and extent of the failure. If the RECO determines that any failure to perform is excusable, the RECO will revise the delivery schedule subject to the rights of the Government under the default and termination clauses of this contract.

13. Binding Effect (09/2021) 6.2.6

The provisions of this contract and the conditions herein shall be binding upon, and for the benefit of, the parties and their successors and assigns. In the event of any sale or transfer of ownership of the property or any portion thereof, the Government will be deemed

to have attorned to any purchaser, successor, assign, or transferee. The succeeding owner will be deemed to have assumed all rights and obligations of the contractor under this contract establishing direct privity of estate and contract between the Government and said succeeding owner, with the same force, effect, and relative priority in time and right as if the contract had initially been entered into between such succeeding owner and the Government.

14. **Holdover (09/2021) 6.2.12** If after the expiration of the Lease, the Government shall retain possession of the premises, the Lease shall continue in full force and effect on a month-to-month basis. Payment shall be made in accordance with the Consideration clause of the Lease at the rate paid during the Lease term. This period shall continue until the Government shall have signed a new lease with the Lessor, acquired the property in fee, or vacated the premises.
15. **RE Clauses Incorporated by Reference (09/2021) 6.3.0** This solicitation or contract, as applicable, incorporates by reference the provisions or clauses listed below with the same force and effect as if they were given in full text. Upon request, the RECO will make the full text available, or the full text may be obtained via internet at https://fast.faa.gov/RPF_Real_Property_Clauses.cfm.
- A. **Interest (09/2021) 6.3.0-1**
 - B. **Officials Not To Benefit (09/2021) 6.3.0-2**
 - C. **Assignment of Claims (09/2021) 6.3.0-3**
 - D. **Contracting Officer's Representative (09/2021) 6.3.0-4**
 - E. **Contingent Fees (09/2021) 6.3.0-5**
 - F. **Anti-Kickback Procedures (09/2021) 6.3.0-6**
 - G. **Equal Opportunity (09/2021) 6.3.0-7**
 - H. **Equal Opportunity for Veterans (04/2022) 6.3.0-8**
 - I. **Equal Opportunity for Workers with Disabilities (04/2022) 6.3.0-9**
 - J. **Davis Bacon Act (01/2022) 6.3.0-10**
 - K. **Minimum Wages for Contractor Workers Under Executive Order 14026 (01/2022) 6.3.0-11**
16. **Funding Responsibility for FAA Facilities (09/2021) 6.3.6** The Contractor agrees that all Contractor requested relocation(s), replacement(s), or modification(s) of any existing or future FAA navigational aid or communication system(s) necessitated by Contractor improvements or changes will be at the expense of the Contractor. In the event that the Contractor requested changes or improvements interferes with the technical and/or operational characteristics of the FAA's facility, the Contractor will immediately correct the interference issues at the Contractor's expense. Any FAA requested relocation, replacement, or modifications shall be at the FAA's expense. In the event such relocations, replacements, or modifications are necessary due to causes not attributable to either the Contractor or the FAA, funding responsibility shall be determined by mutual agreement between the parties, and memorialized in a Supplemental Agreement.
17. **Accessibility (09/2021) 6.3.7** The building and the leased premises must be accessible to persons with disabilities pursuant to the Architectural Barriers Act and Rehabilitation Act as detailed in the Architectural Barriers Act Accessibility Standards (ABAAS) 41 CFR Parts 102-71, 102-72, et al, and all applicable state and local accessibility laws and regulations. ABAAS is available at www.access-board.gov.

Subject to the exception set forth herein, separate ABAAS compliant restroom facilities for men and women must be provided on each floor where the Government leases space. Separate ABAAS compliant restroom facilities must not be required if due to the age of the building, design layout, or other structural requirements, it is technically infeasible to do so. In the event the Lessor determines that it is technically infeasible to provide separate ABAAS compliant restroom facilities, the Lessor must provide the basis for the determination of technical infeasibility in writing to the RECO, together with all supporting documentation.

With respect to all restrooms, water closets, and urinals, they must not be visible when the exterior door is open. Each restroom must contain toilet paper dispensers, soap dispensers, paper towel dispensers, waste receptacles, a sanitary napkin dispenser, and receptacle for each toilet in the women's restroom, disposable toilet seat cover dispensers, a convenience outlet, and hot and cold water. Two or more drinking fountains must be provided. One drinking fountain shall be a low unit commonly called a wheelchair unit and one drinking fountain shall comply with standing persons' requirements, unless sufficient space is not available to provide both a wheelchair unit and a unit for standing persons. In such instance, and subject to the approval of the RECO, a single unit able to accommodate both disabled and non-disabled persons must be provided.

In addition, compliant accessible parking spaces must be provided in accordance with the ABAAS requirements as detailed in 42 U.S.C. 4151 and as set forth in the ABAAS Scoping Requirements.

18. **Changes (09/2021) 6.3.8 (MODIFIED)**

A. The RECO may at any time, by written order via Supplemental Agreement *agreed to by the City*, make changes within the general scope of this Lease in any one or more of the following:

- i. Work or services;
- ii. Facilities or space layout;
- iii. Amount of space/land;
- iv. Any other change made within the scope of this lease.

B. If any such change causes an increase or decrease in the Lessor's cost or time required for performance under this lease, the RECO will modify this Lease to provide one or more of the following:

- i. An equitable adjustment in the rental rate;
- ii. A lump sum equitable adjustment;
- iii. An equitable adjustment of the annual operating costs per rentable square foot; or
- iv. An adjustment to the delivery date.

C. The Lessor must assert its right to an adjustment by written proposal under this clause within thirty (30) days from the date of receipt of the change order. Lessor's request must include all documentation necessary to validate his/her right to an adjustment. Failure to reach agreement on any adjustment constitutes grounds for dispute under the Contract Disputes clause.

D. Nothing in this clause excuses the Lessor from proceeding with the change as directed.

E. Absent written supplemental agreement the Government is not liable to the Lessor under this clause.

19. **Failure in Performance (09/2021) 6.3.16** In the event the Contractor fails to perform a service, provide an item, or satisfy a requirement under this Contract, the Government may:

- A. perform the service, provide the item, or satisfy the requirement itself, and abate the rent by its

actual costs (including administrative costs) incurred in doing so,

B. not correct the Contractor's performance and abate the rent by an amount reasonably calculated to approximate the decreased value of the Contract arising from the Contractor's failure to perform, or
 C. pursue termination of the contract under the "Termination" clause(s) in this Contract.

20. **No Waiver (09/2021) 6.3.17 (MODIFIED)** No failure by the Government *or the City* to insist upon strict performance of any provision of this Contract or failure to exercise any right, or remedy consequent to a breach thereof, will constitute a waiver of any such breach in the future.
21. **Non-Restoration (09/2021) 6.3.18 (MODIFIED)** It is hereby agreed between the parties that, upon termination of its occupancy, including any holdover period, the Government shall have no obligation to restore and/or rehabilitate, either wholly or partially, the property that is the subject of this contract. It is further agreed that the Government may abandon in place any or all of the structures and equipment installed in or located upon said property by the Government during its tenure. Such abandoned equipment may become the property of the contractor at its election.
22. **Quiet Enjoyment (09/2021) 6.3.25** The Contractor warrants that they have good and valid title to the premises, and rights of ingress and egress, and warrants and covenants to defend the Government's use and enjoyment of said premises against third party claims.
23. **Damage by Fire or Other Casualty or Environmental Hazards (09/2021) 6.3.26** If the premises is partially or totally destroyed or damaged by fire or other casualty or if environmentally hazardous conditions are found to exist so that the premises is untenable as determined by the Government, the Government may agree to allow restoration/reconstruction, or may elect to terminate the contract, in whole or in part, immediately by giving written notice to the contractor and no further rental will be due. The Government shall have no duty to pay rent while the premises are unoccupied.
24. **Delivery and Condition (09/2021) 6.3.27** Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit by the agreed upon occupancy date. The Government reserves the right to determine when the space is ready to occupy, and to assess damages in the event the occupancy date is not met.
25. **Occupancy Permit (09/2021) 6.3.27-1** The premises offered must have a valid Occupancy Permit, issued by the local jurisdiction, for the intended use of the Government, or the Lessor will complete and provide a certified copy of the "Checklist: FAA Safety & Environmental Certification" form, in lieu of an occupancy permit, at the RECO's discretion.
26. **Interference (09/2021) 6.3.28** In the event that FAA operations interfere with the Contractor's facility, the Contractor must immediately notify the RECO. The FAA will begin assessment of interference immediately upon notification.
 If the Contractor or its facility interferes with the FAA's equipment and the Contractor either knows of, or is notified by the FAA, of the interference, the Contractor will immediately remediate the interference at its own cost.
 Notification under this clause must include the following information, if known:
 A. type of interference,
 B. the commencement date of the interference, and
 C. the root cause of the interference.

27. **Alterations (09/2021) 6.3.29 (MODIFIED)** The Government *upon 30 days notice to the City*, shall have the right during the term of this Lease, including any extensions thereof, to make alterations, attach fixtures, and erect structures or signs in or upon the premises hereby leased, which fixtures, alterations or structures so placed in, on, upon, or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. The parties hereto mutually agree and understand, that no restoration rights shall accrue to the Lessor for any alterations or removal of alterations to the leased premises under this Lease, and that the Government shall have the option of abandoning alterations in place, when terminating the Lease, at no additional cost.
28. **Hold Harmless (09/2021) 6.3.30** In accordance with and subject to the conditions, limitations and exceptions set forth in the Federal Tort Claims Act, 28 U.S.C. Ch. 17, the Government will be liable to persons damaged by any personal injury, death or injury to or loss of property, which is caused by a negligent or wrongful act or omission of an employee of the Government while acting within the scope of his office or employment under circumstances where a private person would be liable in accordance with the law of the place where the act or omission occurred. The foregoing shall not be deemed to extend the Government's liability beyond that existing under the Act at the time of such act or omission or to preclude the Government from using any defense available in law or equity.
29. **Compliance with Applicable Laws (09/2021) 6.3.31** The Lessor shall comply with all federal, state and local laws applicable to the Lessor as owner or Lessor, or both, of building or premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation of both or either thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. This Lease shall be governed by federal law. The Government will comply with all federal, state, and local laws applicable to and enforceable against it as a tenant under this lease, provided that nothing in this lease shall be construed as a waiver of the sovereign immunity of the Government.
30. **Examination of Records (09/2021) 6.3.32** The Comptroller General of the United States, the Administrator of FAA or a duly authorized representative of either shall, until three (3) years after final payment under this contract, have access to and the right to examine any of the Lessor's directly pertinent books, documents, paper, or other records involving transactions related to this contract.
31. **Subordination, Nondisturbance and Attornment (09/2021) 6.3.33**
- A. The Government agrees, in consideration of the warranties and conditions set forth in this clause, that this contract is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this contract. Based on a written demand received by the RECO, the Government will review and, if acceptable, execute such instruments as the contractor may reasonably request to evidence further the subordination of this contract to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by the contractor if such easement does not interfere with the full enjoyment of any right granted the Government under this contract.

B. No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this contract so long as the Government is not in default under this contract. Contractor will include in any future mortgage, deed of trust or other security instrument to which this contract becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Contractor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the RECO promptly upon demand.

C. In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the contractor under this contract, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the contract had initially been entered into between such purchasers or transferees and the Government; provided, further, that the RECO and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this contract, or other writings, as shall be necessary to document the foregoing relationship.

D. None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

32. Notification of Change in Ownership or Control of Land (09/2021) 6.3.34 If the Contractor sells, dies or becomes incapacitated, or otherwise conveys to another party or parties any interest in the aforesaid land, rights of way thereto, and any areas affecting the premises, the Government shall be notified in writing, of any such transfer or conveyance within 30 calendar days after completion of the change in property rights. Concurrent with the written notification, the Contractor or Contractor's heirs, representatives, assignees, or trustees shall provide the Government copies of the associated legal document(s) (acceptable to local authorities) for transferring and/or conveying the property rights.

33. Change of Ownership/Novation (09/2021) 6.3.34-1

A. If during the term of the Lease, title to the Property is transferred or the Lessor changes its legal name, the Lessor shall notify the Government within five days of the transfer of title/change of name.

B. The Government and the Lessor must execute a Supplemental Agreement acknowledging the transfer of title or name change.

C. If title to the Property is transferred, the Government, the original Lessor (Transferor), and the new owner or assignee (Transferee) shall execute a Novation Agreement providing for the transfer of Transferor's rights and obligations under the Lease to the Transferee. When executed on behalf of the Government, a Novation Agreement will be made part of the Lease via Supplemental Agreement.

D. The RECO may request additional information (e.g., copy of the deed, bill of sale, certificate of merger, contract, court decree, articles of incorporation, operation agreement, partnership certificate of good standing, etc.) from the Transferor or Transferee to verify the parties' representations

regarding the transfer.

E. If the RECO determines that recognizing the Transferee as the Lessor will not be in the Government's interest, the Transferor shall remain fully liable to the Government for the Transferee's performance of obligations under the Lease, notwithstanding the transfer. Under no condition shall the Government be obligated to release the Transferor of obligations prior to (a) the rent commencement date; and (b) any amounts due and owing to the Government under the Lease that have been paid in full or completely set off against the rental payments due under the Lease.

F. As a condition for being recognized as the Lessor and entitlement to receiving rent, the Transferee must register in the System for Award Management (SAM) for purposes of "All Awards", and complete all required representations and certifications within SAM and the "Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment" in this contract.

G. If title to the Property is transferred, rent shall continue to be paid to the original Lessor, subject to the Government's rights as provided for in this Lease. The Government's obligation to pay rent to the Transferee shall commence on the effective date of the Lease Amendment incorporating the Novation Agreement. The Lease Amendment will not be issued until the Government has received all information reasonably required by the RECO, the Government has determined that recognizing the Transferee as the Lessor is in the Government's interest (which determination will be prompt and not unreasonably withheld), and the Transferee has met all conditions specified in sub-paragraph F.

34. **Sublease (09/2021) 6.3.35 (MODIFIED)** The Government *may* sublease the space covered under this Lease to another agency or private party, *with the City's consent*. In subleasing this space to another party, the Government is not relieved from its responsibilities under the terms of this Lease unless otherwise agreed upon with the Lessor.
35. **Integrated Agreement (09/2021) 6.3.36** This Contract, upon execution, contains the entire agreement of the parties, and no prior written or oral agreement, express or implied shall be admissible to contradict the provisions of this Contract.
36. **Unauthorized Negotiating (09/2021) 6.3.37** In no event shall the Contractor enter into negotiations concerning the premises with anyone other than the RECO or his/her designee.
37. **Inspection of Leased Premises (09/2021) 6.3.38** To ensure a safe and healthy work environment for government employees, agents, and assigns, and to ensure the Contractor's performance under this contract, the Government at all times and places during the term of the contract has the right to:
- A. inspect the leased premises and all other areas of the building to which access is necessary,
 - B. test all performance requirements under the contract, and
 - C. perform any necessary sampling and evaluation to ensure contract compliance.
- If inspection reveals a contractual non-conformance, then the Government may require the Contractor to perform in accordance with the contract requirements at no increase in contract amount or the Government, in its sole discretion, may perform the work itself in accordance with the "Failure in Performance" clause of this Contract.

The presence or absence of a government inspection does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the contract without the RECO's written authorization.

38. **Contract Disputes (09/2021) 6.3.39**

A. All contract disputes arising under or related to this contract shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A contractor may seek review of a final FAA decision only after its administrative remedies have been exhausted.

B. The filing of a contract dispute with the ODRA may be accomplished by mail, overnight delivery, hand delivery, or by facsimile, or if permitted by Order of the ODRA, by electronic filing. A contract dispute is considered to be filed on the date it is received by the ODRA during normal business hours. The ODRA's normal business hours are from 8:30 am to 5:00 pm Eastern Time.

C. Contract disputes are to be in writing and shall contain:

- i. The contractor's name, address, telephone and fax numbers and the name, address, telephone and fax numbers of the contractor's legal representative(s) (if any) for the contract dispute;
- ii. The contract number and the name of the Contracting Officer;
- iii. A detailed chronological statement of the facts and of the legal grounds for the contractor's positions regarding each element or count of the contract dispute (i.e., broken down by individual claim item), citing to relevant contract provisions and documents and attaching copies of those provisions and documents;
- iv. All information establishing that the contract dispute was timely filed;
- v. A request for a specific remedy, and if a monetary remedy is requested, a sum certain must be specified and pertinent cost information and documentation (e.g., invoices and terminated checks) attached, broken down by individual claim item and summarized; and
- vi. The signature of a duly authorized representative of the initiating party

D. Contract disputes shall be filed at the following address:

- i. For filing by hand delivery, courier or other form of in-person delivery:

Office of Dispute Resolution for Acquisition
 Federal Aviation Administration
 600 Independence Avenue SW., Room 2W100
 Washington, DC 20591; or

For filing by U.S. Mail:

Office of Dispute Resolution for Acquisition
 Federal Aviation Administration
 800 Independence Avenue SW
 Washington, DC 20591
 [Attention: AGC-70, Wilbur Wright Bldg. Room 2W100]; or

Telephone: (202) 267-3290

Facsimile: (202) 267-3720

Alternate Facsimile: (202) 267-1293; or

- ii. Other address as specified in 14 CFR Part 17.

E. A contract dispute against the FAA shall be filed with the ODRA within two (2) years of the accrual of the contract claim involved. A contract dispute by the FAA against a contractor (excluding contract disputes alleging warranty issues, fraud or latent defects) likewise shall be filed

within two (2) years after the accrual of the contract claim. If an underlying contract entered into prior to the effective date of this part provides for time limitations for filing of contract disputes with the ODRA which differ from the aforesaid two (2) year period, the limitation periods in the contract shall control over the limitation period of this section. In no event will either party be permitted to file with the ODRA a contract dispute seeking an equitable adjustment or other damages after the contractor has accepted final contract payment, with the exception of FAA claims related to warranty issues, gross mistakes amounting to fraud or latent defects. FAA claims against the contractor based on warranty issues must be filed within the time specified under applicable contract warranty provisions. Any FAA claims against the contractor based on gross mistakes amounting to fraud or latent defects shall be filed with the ODRA within two (2) years of the date on which the FAA knew or should have known of the presence of the fraud or latent defect.

F. A party shall serve a copy of the contract dispute upon the other party, by means reasonably calculated to be received on the same day as the filing is to be received by the ODRA.

G. After filing the contract dispute, the contractor should seek informal resolution with the Contracting Officer.

H. The FAA requires continued performance with respect to contract disputes arising under this contract, in accordance with the provisions of the contract, pending a final FAA decision.

I. The FAA will pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the contract dispute, or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on contract disputes shall be paid at the rate fixed by the Secretary of the Treasury that is applicable on the date the Contracting Officer receives the contract dispute and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary until payment is made. Interest will not accrue for more than one year.

J. Additional information and guidance about the ODRA dispute resolution process for contract disputes can be found on the ODRA website at <http://www.faa.gov>.

39. System for Award Management - Real Property (04/2022) 6.4.1-1

(a) Definitions. As used in this clause:

"Registered in the SAM database" means that the Contractor has entered all mandatory information, including the Unique Entity Identifier (UEI) or the Electronic Funds Transfer indicator, into the SAM database.

"System for Award Management (SAM) Database" means the primary Government repository for Contractor information required for the conduct of business with the Government.

"Unique Entity Identifier (UEI)" (also known as the Unique Entity ID) means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing Unique Entity Identifiers.

"Electronic Funds Transfer indicator" means a 4-character suffix to the Unique Entity Identifier. This 4-character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts for the same parent concern.

"Contractor" is synonymous with "Offeror" "Lessor" or "Grantor" for real property leases, easements, or other contracts.

(b)(1) By submission of an offer, the Contractor acknowledges the requirement that a prospective awardee will be registered in the SAM database prior to award, during performance,

and through final payment of any contract.

(2) The Contractor must enter, in the space below, the contractor's UEI that identifies the Contractor's name and address exactly as stated in the offer. The UEI will be used by the RECO to verify that the Contractor is registered in the SAM database.

UEI: _____

(c) If the Contractor does not have a UEI, it should contact www.sam.gov directly to obtain one. The Contractor should be prepared to provide the following information:

- (1) Company* legal business name.
- (2) Tradestyle, doing business, or other name by which your entity is commonly recognized.
- (3) Company Physical Street Address, City, State, and Zip Code.
- (4) Company Mailing Address, City, State and Zip Code (if separate from physical).
- (5) Company Telephone Number.
- (6) Date the company was started.
- (7) Number of employees at your location.
- (8) Chief executive officer/key manager.
- (9) Line of business (industry).
- (10) Company Headquarters name and address (reporting relationship within your entity).

* Individual (non-corporate) lessors/grantors of real property that are not normally in the business of leasing real property should consider leasing to the Government as a separate business (usually a sole proprietorship) then provide the pertinent ownership information as a sole proprietor when providing this information to www.sam.gov.

(d) If the offeror does not become registered in the SAM database in the time prescribed by the RECO, the RECO may proceed to award to the next otherwise successful registered offeror.

(e) Processing time should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of the solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after initial registration, the Contractor is required to review and update, on an annual basis from the date of initial registration or subsequent updates, its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)(1)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in AMS Procurement Guidance, the Contractor must provide the responsible RECO a minimum of one business day's written notification of its intention to:

- (A) Change the name in the SAM database;
- (B) Comply with the requirements of AMS regarding novation and change-of-name agreements; and
- (C) Agree in writing to the timeline and procedures specified by the RECO. The Contractor must

provide the RECO notification and sufficient documentation to support the legally changed name and then execute the appropriate supplemental agreement provided by the RECO to document the name change.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement/supplemental agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the Payment by Electronic Funds Transfer- System for Award Management clause of this contract.

(2) The Contractor must not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims. Assignees must be separately registered in the SAM database. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the Payment by Electronic Funds Transfer- System for Award Management clause of this contract.

(h) Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.sam.gov> or by calling 866-606-8220.

PRESCRIPTION: Insert in all leases or easements or supplemental agreements to existing leases or easements unless the FAA has granted a waiver from the use of SAM. Must be used in conjunction with 6.4.2-1 Payment by Electronic Funds Transfer- System for Award Management. NOTE: If the FAA has granted a waiver from the use of SAM, use clause 6.4.1 "System for Award Management (SAM Waiver)" and REMOVE this clause.

40. Payment by Electronic Funds Transfer- System for Award Management (09/2021) 6.4.2-1

A. Method of payment.

i. Unless waived by the RECO, all payments by the Government under this contract will be made by electronic funds transfer (EFT), except as provided in paragraph (A)(ii) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

ii. In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either:

- a. Accept payment by check or some other mutually agreeable method of payment; or
- b. Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (D) of this clause).

B. Contractor's EFT information. The Government will make payment to the Contractor using the EFT information contained in the System for Award Management (SAM) database. In the event that the EFT information changes, the Contractor must be responsible for providing the updated information to the SAM database.

C. Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.

D. Suspension of payment. If the Contractor's EFT information in the SAM database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the SAM database; and any invoice or contract financing request will be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

E. Liability for uncompleted or erroneous transfers.

i. If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for

- a. Making a correct payment;
- b. Paying any prompt payment penalty due; and
- c. Recovering any erroneously directed funds.

ii. If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and

a. If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

b. If the funds remain under the control of the payment office, the Government will not make payment, and the provisions of paragraph (D) of this clause will apply.

F. EFT and prompt payment. A payment will be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

G. EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor must require as a condition of any such assignment, that the assignee must register separately in the SAM database and will be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims, is not permitted. In all respects, the requirements of this clause will apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

H. Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

I. Payment information. The payment or disbursing office will forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (A) of this clause, the

Government will mail the payment information to the remittance address contained in the SAM database.

41. Work Performance (09/2021) 6.5.2 All work in performance of this Lease shall be done by skilled workers or mechanics and shall be acceptable to the RECO. The RECO retains the right to reject the Lessor's workers 1) if such are either unlicensed, unskilled, or otherwise incompetent, or 2) if such have demonstrated unacceptable performance in connection with work carried out in conjunction with this Lease. In the event of such rejection, the Lessor shall offer substitute/replacement workers, subject to the approval of the RECO.

42. Responsibility of the Lessor and Lessor's Architect/Engineer (09/2021) 6.5.3

A. The Lessor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Lessor under this contract. The Lessor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications or other services.

B. The Lessor remains solely responsible for designing, constructing, operating, and maintaining the leased premises in full accordance with the requirements of the lease. The Government retains the right to review and approve many aspects of the Lessor's design, including without limitation, review of the Lessor's design and construction drawings, shop drawings, product data, finish samples, and completed base building and tenant improvement construction. The Government shall work closely with the Lessor, in an integrated manner, to identify potential design flaws, to minimize costly misdirection of effort, and to assist the Lessor in its effort to monitor whether such design and construction comply with applicable laws and satisfy all lease requirements.

C. Neither the Government's review, approval or acceptance of, nor payment through rent of the services required under this lease, shall be construed to operate as a waiver of any rights under this Lease or of any cause of action arising out of the performance of this Lease, and the Lessor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Lessor's negligent performance of any of the services required under this Lease.

D. Design and construction and performance information is contained throughout several of the solicitation documents which shall comprise a resulting lease. The Lessor shall provide to space planners, architects, engineers, construction contractors, etc., all design and performance information required whether it is found in the submitted solicitation, the lease, price lists, or Design Intent Drawings. Reliance upon one of these documents to the exclusion of any other may result in an incomplete understanding of the scope of the work to be performed and/or services to be provided.

43. Wiring for Telephones (09/2021) 6.5.17 The Government reserves the right to provide its own telephone service in the space to be leased. It may have inside wiring and telephone equipment installed by the local telephone company or a private contractor. Alternately, the Government may consider using inside wiring installed by the Lessor, if available. However, the final decision will be made by the Government.

44. Installation of Antennas, Cables & Other Appurtenances (09/2021) 6.5.18 The Government shall have the right to install, operate and maintain antennas, wires and supporting structures, including any linking wires, connecting cables and conduits atop and within buildings and structures,

or at other locations, as deemed necessary by the Government. The Government will coordinate with the Lessor when installing antennas, cables, and other appurtenances.

45. **Doors (09/2021) 6.6.1** Exterior doors must be weather tight, equipped with cylinder locks and door checks, automatic door closures and open outward. The Lessor must furnish the Government at least two master keys and two keys for each lock. Interior doors must be solid cored and at least 32 by 80 inches with a minimum opening of 32 inches and be of sturdy construction. Fire doors must conform to NFPA Standard No. 80. As designated by the Government, doors must be equipped with non-removable hinge pins, and locks with 7-pin removable cores. The Government shall provide cores. Locks, locking arrangements and latches must be in accordance with local building and fire codes, as well as OSHA 29 CFR 1910.
46. **Lighting (09/2021) 6.6.2** Modern, diffused, energy efficient fixtures must be provided that maintain a uniform lighting level of 50 foot candles at working surfaces. Emergency lighting must provide at least 0.5 foot candles of illumination throughout the exit path, including exit access routes, exit stairways, or other routes such as passageways to the outside of the building. Additionally, normal and emergency egress lighting must comply with the requirements of local building and fire codes, as well as, the Life Safety Code NFPA 101.
47. **Adhesives and Sealants (09/2021) 6.6.3** The Lessor shall use adhesives and sealants that contain no formaldehyde, asbestos, polychlorinated biphenyls (PCBs), or heavy metals.
48. **Ceilings (09/2021) 6.6.4** Ceilings must have acoustical treatment with a flame spread of 25 or less and smoke development rating of 50 or less.
49. **Floor Load (09/2021) 6.6.5** All adjoining floor areas shall be:
- A. Of a common level not varying more than 1/4 inch over a 10-foot, 0-inch horizontal run in accordance with the American Concrete Institute standards,
 - B. Non-slip, and
 - C. Accepted by the RECO.

Under floor surfaces shall be smooth and level. Office areas shall have a minimum live load capacity of 50 pounds per square foot plus 20 pounds per square foot for moveable partitions. Storage areas shall have a minimum live load capacity of 100 pounds per square foot including moveable partitions. A report showing the floor load capacity, at no cost to the Government, by a registered professional engineer may be required by the RECO. Calculations and structural drawings may also be required.

50. **Painting (09/2021) 6.6.6** All surfaces must be newly painted with low-VOC, non-lead based paints in colors acceptable to the Government. All surfaces must be repainted after working hours at Lessor's expense at least once every five (5) years. Such repainting includes the moving and returning of the furniture, including dismantling, moving and re-assembling the Government's systems furniture, if directed by the Government, at the Lessor's expense. Any existing lead based paint must be properly maintained and managed per existing federal, state, and local regulatory requirements. If there is chipping, flaking, or peeling paint in the leased premises during the period of Government occupancy, it must be sampled for lead at the Lessor's expense. If the paint contains lead, it must be abated at the Lessor's expense. This could be performed either by removal or sealing with an encapsulating material.

51. **Display Advertising (09/2021) 6.6.7** If the leased premises are solely for Government use, no advertising matter shall be constructed on or over the premises, unless authorized by the RECO.
52. **Erection of Signs (09/2021) 6.6.8** The Government shall have the right to erect on or attach to the Lessor's premises such signs as may be required to clearly identify the Government's facility. Said signs so erected will remain the property of the Government and shall be removed from the premises upon termination of the lease.
53. **Window and Floor Covering (09/2021) 6.6.9 (MODIFIED)** All exterior windows shall be equipped with window covering. Floors will be carpeted with a commercial grade of carpet acceptable (carpet tiles or carpet broadloom) to the Government. Existing floor and window coverings may be accepted at the discretion of the RECO.

At no additional cost to the Government, the Lessor shall replace carpeting at least every 10 years during Government occupancy or any time during the lease when:

- A. Backing or underlayment is exposed,
 - B. There are noticeable variations in surface color or texture, and/or
 - C. The condition of the carpet is such that it presents a clear and present danger to pedestrians.
- Replacement includes moving and return of furniture including dismantling, moving and re-assembling the Government's systems furniture if directed by the Government.

FAA will be responsible for replacement of floor covering in the Operations and Equipment areas.

54. **Seismic Safety for Existing Building (09/2021) 6.6.10** All existing buildings leased by the Government under this contract must meet the minimum acceptable performance seismic standard of 'Life Safety' as specified in Section 2.2 of Standards of Seismic Safety for Existing Federally Owned or Leased Buildings and Commentary issued by the Interagency Committee on Seismic Safety in Construction as ICSSC Recommended Practice (RP-8), Seismic Standards for Existing Federally Owned and Leased Buildings, Dec 2011. RP-8 is available online and in print from the National Institute of Standards and Technology as NISTIR GCR 11-917-12.
- Compliance with Life Safety: The Lessor shall provide proof of compliance in the form of a written certification by an independent licensed structural engineer that the building was designed, built and maintained to the requirements of RP-8. The structural engineer certification shall be in the format of the Government-provided "Life Safety Compliance/Seismic Certification" form. If the building cannot be certified in accordance with RP-8, the structural engineer must evaluate the building using the American Society for Civil Engineers ASCE/SEI 41-13, Seismic Evaluation and Retrofit of Existing Buildings and attach the evaluation to the "Life Safety Compliance/Seismic Certification" form. Buildings meeting the requirements of ASCE/SEI 41-13 using a safety objective of 'Life Safety' are considered to meet the Government's requirement. Alternatively, if the building qualifies as a Benchmark Building in accordance with RP-8 and as certified on the "Life Safety Compliance/Seismic Certification" form, it will be deemed to meet minimum seismic requirements. In the event a building with a certification of seismic compliance is occupied by the Government and is later determined to not meet the standard indicated on the "Life Safety Compliance/Seismic Certification" form, the Government at its discretion may require the Lessor to meet the agreed upon

standard or may terminate this Lease upon giving written notice, with no cost accruing to the Government, notwithstanding any other agreements contained in this Lease.

55.

56. **Seismic Safety for Equipment (09/2021) 6.6.12** All Lessor-installed equipment, either Government provided or Lessor provided, shall be installed in strict accordance with the latest available edition of the International Building Code (IBC) at the time of execution of this contract and the DOT Specification FAA-G-2100H to ensure proper anchoring to protect personnel during a seismic event.

57. **Construction Waste Management (09/2021) 6.6.13**

A. The Lessor shall reuse or recycle construction and demolition waste to the maximum extent practicable and economically feasible. Items that shall be considered for recycling include: asphalt, bricks, concrete and masonry, metals, wood, cardboard, carpet, gypsum drywall, and ceiling tiles.

B. If any waste materials encountered during the demolition or construction phase are found to contain lead, asbestos, polychlorinated biphenyls (PCBs) (such as fluorescent lamp ballasts), or other harmful substances, they shall be handled, removed, transported, and disposed of in accordance with federal and state laws and requirements concerning hazardous waste.

C. The Lessor agrees, upon request, to provide the Government with additional information concerning the execution of construction waste recycling activities.

58. **Green Label Certification for Sustainability Verification (09/2021) 6.6.14** Following award of this Lease, the Lessor shall submit the information set forth herein to the facility manager, to be maintained on site, within the designated time frames.

A. Product Data Sheets for floor coverings, paints and wall coverings, ceiling materials, all adhesives, wood products, suite and interior doors, subdividing partitions, wall base, door hardware finishes, window coverings, millwork substrate and millwork finishes, lighting and lighting controls, and insulation to be used within the leased space. This information must be submitted no later than the date of submission of the final Design Intent Drawings for the leased space, as outlined in the “Design Intent Drawings” clause of this Contract.

B. Any waiver required by the failure or inability of the Lessor to use materials from the CPG and Recovered Materials Advisory Notice (RMAN) lists of acceptable products are due within 60 business days to the facility manager and copy to the RECO.

C. Radon test results as may be required in accordance with the “Radon Air Levels” clause.

D. Construction Waste Management Plan - Prior to issuance of the notice to proceed with construction, a proposed plan to recycle construction waste that follows industry standards must be submitted by the Lessor. The construction waste management plan shall at a minimum, include:

i. The Lessor's Waste Management Diversion goal;

ii. A statement of the relevant construction debris and materials to be diverted;

iii. Lessor's implementation protocols; and

iv. The names and contact information of the parties responsible for implementing the plan. The Lessor must provide documentation of the actual percentage of material diverted from the applicable landfill. If the quantity of material to be diverted is small, the waste disposal method is determined to be extraordinarily complex, or the cost of such diversion and recycling efforts would be cost-prohibitive and, consequently, would represent a genuine hardship, the Government, upon written request of the Lessor and approval of the facility manager and copy to the RECO, may permit an alternative means of disposal.

E. Building Recycling Service Plan - A building recycling service plan with floor plans annotating recycling area(s) shall be submitted as part of the Design Intent Drawings to be reflected on the Construction Drawing submission.

F. The Lessor shall provide to the RECO a signed statement explaining how all HVAC systems serving the leased space shall achieve the desired ventilation of the space during the flush-out period.

G. Prior to the submission by the Lessor of the completed Design Intent Drawings, the Lessor shall submit to the RECO a written commissioning plan that includes:

i. A schedule of systems commissioning dates (revised as needed during all construction phases of the project, subject to the review and approval of the RECO in accordance with the “Changes” clause of this Contract; and

ii. A description of how commissioning requirements shall be met and confirmed.

59. **Services, Utilities, and Maintenance of Premises (09/2021) 6.7.1 (MODIFIED)** The Lessor must maintain the demised premises, including but not limited to, the building grounds, all equipment, fixtures and appurtenances furnished by the Lessor under this Lease, in a good, clean and tenantable condition. The Lessor shall maintain landscape plants, lawns, walkways, and parking areas. The Lessor shall also remove snow, ice, and any other obstructions from the entrances, walkways, and parking areas around the premises, prior to and during normal business hours set forth below.

The Lessor must provide the labor, materials, equipment and supervision necessary to ensure good repair and tenantable condition.

Services, utilities, and maintenance will be provided daily, extending from <INSERT TIME> to <INSERT TIME> except Saturday, Sunday and federal holidays.

Utility and maintenance services supplied to space that houses technical equipment will be supplied twenty-four (24) hours per day, seven (7) days per week.

The Government will have unlimited access to the leased premises 24 hours per day, seven days per week, including, as applicable, the use of electrical services, toilets, lights, elevators, and Government office machines at no additional cost. Such access will allow the Government to service Government-owned technical equipment, or to perform other mission-critical related duties, as it determines necessary in its sole and absolute discretion.

In addition to such other services as are set forth elsewhere in this Contract, the Contractor must provide the following:

Potable water (see “Drinking Water” clause)

The Government shall be responsible for obtaining service and providing payment for the following utilities, within its space:

Water

Electricity

Gas

Waste

- 60. Utilities not provided by the Lessor (09/2021) 6.7.1-2** If the cost of utilities is not included as part of the rental consideration, the Lessor must specify which utilities are not included. For those utilities that are not included as part of the rental consideration, the Lessor will provide separate meters for utilities to be paid for by the Government. Proration is not permissible. The Lessor will furnish the RECO written verification of the meter numbers and certification that these meters will measure FAA usage only. The Lessor will notify the RECO of any changes in meter numbers or meter configuration during FAA occupancy.
- 61. HVAC (09/2021) 6.7.3** All heating, ventilation and air-conditioning systems that service the leased space must maintain a temperature range of 68-72 degrees Fahrenheit year-round or as dictated in the most recent version of ASHRAE Standard 62, "Ventilation for Acceptable Indoor Air Quality" and ASHRAE Standard 55, "Thermal Environmental Conditions for Human Occupancy". These temperatures must be maintained during hours of operation (as dictated by the lease) throughout the leased premises and service areas regardless of outside temperatures. An automatic control system will be provided to ensure compliance with heating and air conditioning provisions included in this contract.

In order to ensure that there is no degradation of air quality or air flow in the leased premises during the term of the lease, Lessor agrees to perform preventative maintenance on all HVAC units in accordance with the corresponding manufacturers operations and maintenance manuals (e.g. check for defects, lubricate, make adjustments, change the filters, cleaned and make other necessary service requirements). Lessor also agrees to service the VAV boxes annually (on or before each lease anniversary date) and provide the service date to the RECO and FAA facility manager. Such service will include checking the temperature ranges, checking all speeds on each fan, cleaning the fans and other components, replacing defective parts and completing other necessary repairs and maintenance.

62. Landscaping (09/2021) 6.7.4

A. Where conditions permit, the site shall be landscaped for low maintenance and water conservation with plants that are either native or well-adapted to local growing conditions.

B. Landscape management practices shall prevent or minimize pollution and storm water runoff by:

- i. Employing practices which avoid or minimize the need for fertilizers and pesticides;
- ii. Prohibiting the use of the 2,4-Dichlorophenoxyacetic Acid (2,4-D) herbicide and organophosphates; and
- iii. Composting/recycling all yard waste.

C. The Lessor shall use landscaping products with recycled content required by Environmental Protection Agency's (EPA's) Comprehensive Procurement Guidelines (CPG) for landscaping products. Refer to EPA's CPG web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

63. **Pest Control (09/2021) 6.7.5** Pesticide application to exterminate and control pests within the leased premises can be performed per periodic schedule for preventative maintenance and according to need with 24-hour notification to the FAA facility management. Prior to any addition/change in type of pesticides or other chemical pest control, Lessor must provide 48-hour written notice with applicable Safety Data Sheet(s) (SDS) to be provided to the FAA facility management. Herbicides/pesticides are not to be applied near the outside air intakes of the building when the HVAC system is in operation, nor within the leased premises during normal working hours or when the HVAC system is in operation.

64. **Fire and Life Safety Requirements (09/2021) 6.8.3** The facility, its systems and appurtenances must be in compliance with the following fire and life safety (FLS) requirements:

A. Construction features of the building must comply with state and local building codes in effect at the time of construction or most recent alteration.

B. Maintenance and operations of the building must comply with the current edition of state and local fire safety and fire prevention codes.

C. Construction features, maintenance and operations of the building must meet or exceed the minimum level of fire and life safety specified by OSHA 29 CFR 1910.

Where compliance with the literal requirements of these standards has not been achieved, the Lessor must document, in writing to the Government, the specific deviation(s) from these standards and the equivalencies or alternative methods used by the Lessor as alternative methods of compliance. Each approach used as an alternative method of compliance must be documented in accordance with the Equivalency and Technical Documentation requirements of NFPA 101, signed by a Fire Protection Engineer, licensed in the subject property's state, and a copy must be provided to the RECO.

As provided in this section, all codes, standards, orders and directives refer to the current edition in place at the signing of this contract. If construction or alterations to the premises are undertaken at any time during the term of this contract, fire protection and life safety systems must be brought into compliance where required by applicable codes and standards according to the then-current edition of local codes and standards and all requirements of OSHA 29 CFR 1910. The party initiating the construction or alterations is responsible for funding the upgrade of fire and life safety systems, construction or alteration to the facility must never decrease the level of fire and life safety provided.

Regardless of local code requirements, when the premises (including garage areas under contract by the Government) is on the 6th floor or above, or below grade, automatic sprinklers are required. All Airport Traffic Control Towers must meet the requirements of OSHA's Alternate Standard for Fire Safety in Airport Traffic Control Towers and the NFPA 101. Furthermore, buildings serving National Airspace System (NAS) air traffic control operations and constructed after June 2012, must be fully protected with an automatic, electrically supervised sprinkler system designed and installed in accordance with the requirements of NFPA 13.

When space is located in multi-tenant buildings, the Lessor is responsible for the following:

- i. Development of a building Emergency Action Plan (EAP) and Fire Prevention Plan.
- ii. Publishing and making copies of the EAP and Fire Prevention Plan, and making them available to all FAA occupants.

- iii. Conducting fire or other emergency evacuation drills, at least annually.
- iv. Conducting review and modification of the EAP and Fire Prevention Plan at least annually.
- v. Inviting FAA representation to develop, review and modify the EAP and Fire Prevention Plan.

65. Fall Protection (09/2021) 6.8.4 The Contractor must ensure proper fall protection safety systems are in place for all work areas where Government personnel are required to perform work at four feet or more above the next lowest level on fixed ladders and within access points to elevated work areas in accordance with FAA Order 3900.19, FAA Occupational Safety and Health Policy, 29 CFR 1910, Occupational Safety and Health Standards (General Industry), 29 CFR 1926 Subpart M, Safety and Health Regulations for Construction, and applicable regulatory required American National Standard Institute (ANSI) Standards. All such elevated work surfaces (platforms, catwalks, roofs, etc.) must have OSHA compliant guardrails, railings, toe boards and/or parapets where applicable to meet OSHA and ANSI requirements as referenced herein.

66. Environmental and Occupational Safety and Health (EOSH) Requirements (09/2021) 6.8.5 The Contractor must provide space, services, equipment, and conditions that comply with the following EOSH standards:

- A. 29 CFR 1910, Occupational Safety and Health Administration (OSHA) Standards (General Industry)
- B. 29 CFR 1926, Safety and Health Standards (Construction)
- C. National Fire Protection Association (NFPA) 101, Life Safety Code
- D. FAA Order 3900.19, FAA Occupational and Health Policy
- E. FAA Standard HF-STD-001, Human Factors Design Standard
- F. National Fire Protection Association (NFPA) 70, National Electrical Code, and NFPA 70E, Electrical Safety in the Workplace
- G. Local and state EOSH regulations
- H. Local and state fire codes and building codes.

Federal, state and local EOSH (OSHA and EPA) standards and building codes must be complied with when accomplishing any cleaning, construction, renovation, remodeling, maintenance activities or testing done in or on the leased premises and areas connected to or integrated with the premises. Additionally, whenever FAA standards require work processes or precautions to be provided, the Contractor will coordinate with the FAA before and during the work so that the proper requirements are met.

Any equipment designed, installed, or used that presents a potential safety hazard shall be marked with appropriate warning labels or placards, in accordance with 29 CFR 1910.145, Specifications for Accident Prevention Signs and Tags, FAA HF-STD-001, Human Factors Design Standard, Chapter 12.16, Safety Labels and Placards, American National Standards Institute (ANSI) Standard Z535.4, Product Safety Signs and Labels, and FAA-G-2100H, Electronic Equipment, General Requirements, Section 3.3.5.4.

67. Recycling (09/2021) 6.8.6 Where state or local law, code, or ordinance requires recycling programs (including those for mercury containing lamps) for the space, the Contractor shall comply with state and/or local law, code, or ordinance. In all other cases, the Contractor must establish a recycling program for paper, corrugated cardboard, glass, plastics, and metals to the extent practicable and

where local markets for those recovered materials exist. The Contractor agrees, upon request, to provide the Government with additional information concerning recycling programs maintained in the building and in the space after lease execution.

- 68. Indoor Air Quality (09/2021) 6.8.7** The Contractor must control contaminants at the source and/or operate the space in such a manner that the indicator levels are not exceeded for carbon monoxide (CO), carbon dioxide (CO₂), and formaldehyde (CH₂O). The indicator levels for office area are as follows: CO less than 5 parts per million (PPM); CO₂ - 700 PPM above outdoor air; CH₂O - 0.027 PPM. All indoor air contaminant levels in the space must be kept below appropriate OSHA regulations or OSHA required consensus standards. Air quality systems cleaning is required to prevent the growth of mold, mildew and bacteria. Any visual evidence of these will require immediate sampling and remediation. Moisture/standing water must be controlled to prevent the growth of these.

During working hours, ventilation must be provided in accordance with the latest edition of ANSI/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 62, Ventilation for Acceptable Indoor Air Quality and ASHRAE Standard 55, Thermal Environmental Conditions for Human Occupancy.

The Contractor must investigate indoor air quality (IAQ) complaints immediately and must implement controls including alteration of building operating procedures (e.g., adjusting air intakes, adjusting air distribution, cleaning and maintaining heating, ventilation and air conditioning (HVAC) systems, etc.). The Government is responsible for addressing IAQ problems resulting from its own activities.

The Contractor must provide SDS to FAA facility management for all chemicals and cleaning solutions at least 72 hours prior to their use in the FAA spaces or other areas of the buildings that might affect air quality in the FAA space(s). Materials should contain low or no Volatile Organic Compounds (VOC) and additional ventilation may be required when using chemicals and cleaning solutions.

- 69. Mold Growth Identification and Control (09/2021) 6.8.8** The contractor must prevent mold growth and excessive levels of moisture and humidity. Adequate air quality, moisture control and facility cleaning are required to prevent the growth of mold, mildew, and bacteria. Any visual evidence of mold requires immediate sampling and remediation by the contractor.

Following a water-intrusion event, the contractor must identify the water source and immediately implement water extraction and drying efforts. Once the water source is identified, the contractor must take action to prevent additional water damage and ensure that permanent fixes are in place prior to build-back and restoring building materials. Within 24-48 hours of water damage from clean water sources (e.g., water supply lines, rainwater, and snowmelt from rooftops), all building materials must be dried to a moisture level that will prevent mold growth.

All porous materials contaminated with sewage or other Category 2 (e.g., washing machine overflows, toilet overflows, and non-feces waters) or Category 3 (sewage backups and overflows from beyond toilet traps, feces, floodwaters, and groundwater intrusion) water sources must be discarded. All non-porous material must be cleaned and disinfected.

Mold remediation and cleaning must be conducted using recognized industry methods and practices (e.g. Institute of Inspection, Cleaning and Restoration Certification (IICRC) S500 Standard and Reference Guide for Professional Water Damage Restoration, IICRC-S520 Standard and Reference Guide for Professional Mold Remediation, 2008, and National Air Duct Cleaners Association (NADCA): Assessment, Cleaning and Restoration of HVAC Systems, ACR 2006). State requirements concerning mold remediation, contractors training and licensing must be followed.

The contractor must coordinate with the FAA facility management and RECO regarding all mold remediation operations. The FAA must be afforded the opportunity to provide input in the mold remediation process. Biocides must be used cautiously and in accordance with EPA requirements. A Certified Industrial Hygienist (CIH) must pre-approve the use of EPA-approved biocides in air conveyance systems.

70. **Drinking Water (09/2021) 6.8.9** The contractor must provide drinking water in the space that meets the standards prescribed in the Safe Drinking Water Act, 42 U.S.C. 300. Acceptable potable water must meet EPA's primary drinking water standards with contaminants being less than established Maximum Contaminant Levels (MCLs) and action levels. In cases where state and/or local authorities have their own standards, potable water must meet those or federal standards, whichever is more stringent.

The contractor must test the sources of drinking water in the space (faucets, drinking water fountains, ice machines, etc.) on a periodic basis, but no less than every three (3) years, to ensure water quality (e.g., lead, copper, total coliforms). If the contractor performs plumbing and/or renovation work in the space that impacts the drinking water (i.e., replacement of water lines), the contractor must test the drinking water in the system affected by the plumbing and/or renovation work. If at any time, the FAA or contractor's drinking water test results are not acceptable under the EPA's primary drinking water, and/or state and local authorities' standards as described above, the Lessor must immediately correct the deficiencies. The contractor must notify the Government prior to performing all tests and provide a copy of any test report to the RECO and facility management or their designee.

71. **Halon (09/2021) 6.8.10** Halon may not be used in any FAA space.
72. **Radon Air Levels (09/2021) 6.8.11** Contractor must provide the FAA with a Radon Evaluation Report for the facility when requested. Radon air levels in FAA premises must not exceed the level of 4.0 picocuries per liter (pCi/L). If radon levels are found to be at or above 4.0 pCi/L, the contractor must immediately notify the RECO and FAA facility management of its finding and its plan of corrective action, including testing, to ensure radon air levels are maintained below 4.0 pCi/L at all times. Radon testing shall be done by a radon professional certified according to state and local requirements using US EPA approved testing methods.
73. **Asbestos (09/2021) 6.8.12** The contractor must ensure that FAA personnel are protected from asbestos hazards, in accordance with:
- A. 29 CFR 1910.1001, Asbestos (General Industry)
 - B. 29 CFR 1926.1101, Asbestos (Construction)
 - C. 40 CFR 763, Subpart E, Asbestos Containing Materials in Schools, Asbestos Hazard Emergency Response Act (ASHERA)

D. 40 CFR 61, Subpart M, National Emissions Standards for Hazardous Air Pollutants (NESHAP)
E. State and local asbestos regulations

The contractor warrants that, notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, all space under this contract, including, but not limited to; space above suspended ceilings in the leased space, air plenums elsewhere in the building that service the leased space, engineering spaces in the same ventilation zone as the leased space, public spaces in the same ventilation zone as the leased space, and public spaces and common use spaces (e.g., lobbies, hallways) will, at the time of acceptance and during the term of this Lease, including all extensions thereof, comply with asbestos regulatory requirements.

All facilities are required to have a current asbestos building survey or an asbestos free certification (in accordance with federal, state or local regulations, and including sampling of all materials that have the potential to contain asbestos) conducted by a qualified inspector, including a visual examination and sampling of building materials. All asbestos identification survey reports must be sent to the RECO and FAA facility management.

The RECO must notify the contractor in writing of any failure to comply with asbestos requirements, within five (5) days after the discovery thereof. If Asbestos Containing Materials (ACMs) are found to be in the leased space, either prior to acceptance or during the course of the lease agreement, the Government reserves the right to require the contractor, at no cost to the Government, to take corrective action as required by OSHA, EPA, state and local requirements. In accordance with these regulations, the contractor must post asbestos warning labels and signs in accordance with OSHA regulations.

In addition, all construction by the contractor is required to comply with OSHA, EPA, state and local requirements for asbestos. Prior to the start of any construction, renovation or maintenance activities that impact the building, the contractor must determine whether ACM will or could be released as part of the work. If ACM will or could be released, the contractor must notify the FAA and take corrective actions to prevent FAA employees from exposure to asbestos fibers. Corrective actions must be coordinated with the FAA at least 30 days prior to the start of any construction, renovation or maintenance activities that impact the building.

After ACM remediation is performed, the contractor must adhere to regulatory required post-asbestos abatement air monitoring requirements. As a part of this process, the contractor must provide the RECO and the FAA facility manager with an asbestos re-inspection report indicating the location and condition of all remaining ACM in the FAA leased areas and common areas of the facility. If the contractor supplies the janitorial or maintenance contracts, those employees must also be informed of the presence and location of asbestos at the facility.

“Corrective Action“, as used in this clause, means the removal, encapsulation or enclosure of ACM. All corrective actions must be conducted by licensed asbestos abatement contractors in accordance with OSHA, EPA, state, local and FAA requirements.

74. **Warranty of Space (09/2021) 6.8.13** The contractor warrants that all space leased to the Government under this contract complies with federal, state, and local regulations. The space is not limited to that set forth in this contract, but also includes space above suspended ceilings in the leased space, air plenums elsewhere in the building that service the leased space, engineering spaces

in the same ventilation zone as the leased space, public spaces in the same ventilation zone as the leased space, and public spaces and common use spaces (e.g., lobbies, hallways).

75. **Electrical Safety (09/2021) 6.8.14** The contractor must ensure electrical safety requirements are met, including grounding, bonding, shielding, control of electrostatic discharge (ESD), and lightning protection requirements, in accordance with:

- A. 29 CFR 1910, Subpart S, Electrical
- B. FAA Standard HF-STD-001, Human Factors Design Standard, Chapter 12.4, Electrical Hazards
- C. DOT Specification FAA-G-2100H, Electronic Equipment, General Requirements
- D. National Fire Protection Association (NFPA) 70, National Electrical Code
- E. NFPA 70E, Electrical Safety in the Workplace
- F. American National Standards Institute/Institute of Electrical and Electronics Engineers (ANSI/IEEE) Standard 1100-2005, Recommended Practice for Powering and Grounding Electrical Equipment
- G. DOT Standard FAA-STD-019F, Lightning and Surge Protection, Grounding, Bonding and Shielding Requirements for Facilities and Equipment

The contractor must ensure that electrical equipment and infrastructure meets minimum clear working space requirements in accordance with 29 CFR 1910.303 and NFPA 70 Article 110.26, and is maintained and documented in accordance with NFPA 70E. Any change in the electrical equipment requires review of the current arc flash warning labels to determine if the arc flash warning labels posted meet the current safety requirements.

76. **Facility Security (09/2021) 6.9.1** Security requirements for Government occupied space must meet minimum-security accreditation standards for the type of facility covered by this Lease. The FAA Facility Security Management Program defines facility security accreditation standard levels. The security requirements identified below are tailored specifically for the type of facility covered by this Lease. The Lessor shall provide or make accommodation to provide for all the security requirements listed herein for the leased premises covered by this Lease agreement:

None

The local Servicing Security Element (SSE) will determine any additional security upgrades that are required to meet accreditation and shall conduct a final security assessment of the building. If that assessment indicates that additional upgrades are required to the Premises, those upgrades shall be contracted and paid for under separate contract at the Government's expense and subject to the availability of funds. The Lessor shall provide maintenance services to the security upgrades installed by the Lessor within the leased premises and covered under this Lease.

77. **Foreign Nationals as Contractor Employees (04/2022) 6.9.2**

- a) Definition. "Foreign National" is any citizen or national of a country other than the United States who has not immigrated to the United States and is not a Legal Permanent Resident (LPR) of the United States.
- b) Each contractor or subcontractor employee under this contract, having access to FAA facilities, sensitive information, or resources must be a citizen of the United States, or a foreign national who

has been lawfully admitted for permanent residence as evidenced by a Permanent Resident Card I-551, or who presents other evidence from the U.S. Citizenship and Immigration Service that employment must not affect his/her immigration status.

c) Foreign Nationals proposed under this contract must meet the following conditions in accordance with FAA Order 1600.1F, chapter 8, paragraph 10:

(1) Must have resided within the United States for a minimum of the last three (3) years unless a waiver of this requirement is requested and approved in accordance with the requirements stated in FAA Order 1600.1F, chapter 8, paragraph 10;

(2) A risk or sensitivity level designation can be made for the position; and

(3) The appropriate security-related background investigation can be adequately conducted, as determined by the Office of Security and Hazardous Materials (ASH) Office of Personnel Security (AXP).

d) Foreign Nationals proposed under this contract must meet the following additional conditions:

(1) Provide a current unexpired passport and their place of birth in order to begin the background investigation process in accordance with FAA Order 1600.1F, Personnel Security Program; and,

(2) Successfully pass an export control review as outlined in FAA Order 1240.13 FAA Export Control Compliance.

e) Interim suitability requirements may not be applied unless the position is low/moderate in risk, and/or temporary, and/or is not in a critical area position.

78. Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (04/2022) 6.9.5

(a) Definitions. As used in this clause--

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—
 - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
 - (ii) For reasons relating to regional stability or surreptitious listening.
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in AMS T3.6.4 A.17.e.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020 from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in AMS T3.6.4A.17.e. This prohibition applies to an entity that uses covered telecommunications equipment or services, including use not in support of the Government.

(c) Exceptions. This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor must report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information. For indefinite delivery contracts, the Contractor must report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order.

(2) The Contractor must report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor must describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor must insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

79. Covered Telecommunications Equipment or Services- Representations (09/2021) 6.9.5-1

a) Definitions. As used in this provision, “covered telecommunications equipment or services” has the meaning per the "Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment” clause in this contract.

(b) Procedures. The offeror must review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for covered telecommunications equipment or services.

(c) Representations.

1. The offeror represents that it _____ **does**, _____ **does not provide** covered telecommunications equipment or services as part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.
2. After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it _____ **does**, _____ **does not use** covered telecommunications equipment or services, or any equipment, system, or service that uses telecommunications equipment or services.

80. Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (09/2021) 6.9.5-2

NOTE: The offeror must not complete the representation at paragraph (d)(1) in this provision if the offeror has represented that it does not provide covered telecommunications equipment or services as part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument in the provision "Covered Telecommunications Equipment or Services – Representation" (c)(1). Additionally, The offeror must not complete the representation at paragraph (d)(2) in this provision if the offeror has represented that it does not use covered telecommunications equipment or services, or any equipment, system, or service that uses telecommunications equipment or services in the provision "Covered Telecommunications Equipment or Services – Representation" (c)(2).

PROVISION/CLAUSE:

(a) Definitions. As used in this provision--

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings provided in the clause AMS clause 6.9.5, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Prohibitions.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Nothing in this prohibition will be construed to—

- (i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot

permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020 from entering into a contract or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential part of any system or as critical technology as part of any system. This prohibition applies to any entity that uses covered telecommunications equipment or services, including uses not in support of the Government.

Nothing in this prohibition will be construed to-

- (i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) Procedures: The offeror must review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from Federal awards for covered telecommunications equipment or services.

(d) Representations.

(1) The Offeror represents that it will, will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.

(2) After conducting a reasonable inquiry for purposes of this representation, the Offeror represents that it does does not USE covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror must provide the additional disclosure information required at paragraph (e) if the Offeror indicates “does”.

(e) Disclosures. Disclosure for the representation in paragraph (d) (1) of this provision-

If the Offeror has responded “will” in the representation in paragraph (d) (1) of this provision, the Offeror must provide the following information as part of the offer—

(1) For covered equipment

- (i) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);
- (ii) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and
- (iii) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) (1) of this provision;

(2) For covered services-

- (i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or
- (ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

Disclosure for representation in paragraph (d) (2) of this provision. If the Offeror has responded “does” to paragraph (d)(2) of this provision, the offeror must provide the following information as part of the offer—

(3) For covered equipment

- (i) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);
- (ii) A description of all covered telecommunications equipment offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable); and
- (iii) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) (2) of this provision.

(4) For covered services-

- (i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or
- (ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

81. Notices (09/2021) 6.10.1 All notices/correspondence must be in writing, reference the Contract number, and be addressed as follows:

TO THE CONTRACTOR:

<Insert Contractor’s Name>
 <Insert correspondence address>
 <Insert City, State, Zip code>

TO THE GOVERNMENT:

<Real Estate Contracting Division>, <routing symbol>
 <insert address>
 <Insert City, State, Zip code>

82. Signature Block (09/2021) 6.10.3

This Contract shall become binding when it is fully executed by both parties. In witness whereof, the parties hereto have subscribed their names as of the date shown below.

<ENTER CONTRACTOR’S LEGAL NAME>

By: _____
Print Name: _____
Title: _____
Date: _____

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

By: _____
Print Name: _____
Title: Real Estate Contracting Officer
Date: _____

ATTACHMENTS/EXHIBITS:

Number	Title	Date	Number of Pages
1			
2			
3			
4			
5			



Sponsored by: Administration

**CITY OF KENAI
RESOLUTION NO. 2023-33**

A RESOLUTION APPROVING AN AMENDMENT TO THE LEASE AND CONCESSION AGREEMENT FOR THE KENAI MUNICIPAL GOLF COURSE AND RECREATION AREA BETWEEN THE CITY OF KENAI AND GRIFFIN GOLF, LLC.

WHEREAS, the Kenai Municipal Golf Course is an important asset to the City of Kenai providing recreational opportunities for residents and visitors; and,

WHEREAS, the Kenai Municipal Golf Course was constructed on City-owned lands partially restricted by Section 6(f)(3) of the Land & Water Conservation Fund (LWCF), which requires the property to be maintained in perpetuity for public outdoor recreation; and,

WHEREAS, on June 7, 1985 the City entered into a 20-year Lease and Concession Agreement with Richard Morgan for the construction and operation of a public golf facility with a 10-year option to extend; and,

WHEREAS, on May 28, 1987, the City entered into a second Lease and Concession Agreement for an expansion of the Golf Course with Richard Morgan with similar terms to the first Lease and Concession Agreement; and,

WHEREAS, since the initiation of the Lease and Concession Agreements there have been various amendments and assignments, and the Lease and Concession Agreements are currently held by Griffin Golf, LLC, and are set to expire on January 1, 2026 with an option to renew for an additional term of 10 years and an additional option to renew for an additional term of 20 years beginning July 1, 2036; and,

WHEREAS, on August 18, 2018, the City granted an amendment to extend the lease term and a reduce the annual lease amount in order for Griffin Golf, LLC to complete an investment of \$120,000 in permanent land and building improvements on the premises, which has been completed; and,

WHEREAS, Griffin Golf, LLC has successfully managed and improved the golf course for the City of Kenai maintaining an 18-hole course with reasonable green fees; and,

WHEREAS, the Leases provide for areas not being utilized for golf to be available to the public without charge for jogging and other uses not inconsistent with the primary use as a golf course; and,

WHEREAS, it is in the best interest of the City of Kenai to authorize the City Manager to enter into such an amendment with Griffin Golf, LLC on behalf of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1. That the Kenai City Council approves the Fourteenth Amendment to the Lease and Concession Agreement for the Kenai Municipal Golf Course and Recreation Area and in the Thirteenth Amendment to the Lease and Concession Agreement for the Kenai Municipal Golf Course and Recreation Area No. II.

Section 2. That pursuant to Article III of the Lease, the Kenai City Council has determined that the green fees shall not exceed Twenty-Five Dollars (\$25.00) per person for nine holes of golf on weekdays, and Twenty-Seven Dollars (\$27.00) per person for nine holes of golf on weekends. For 18 holes of golf, the green fees shall not exceed Thirty-Five Dollars (\$35.00) per person on the weekdays and Thirty-Seven Dollars (\$37.00) per person for weekends.

Section 3. That the Kenai City Manager is authorized to enter into such Amendments with Griffin Golf, LLC.

Section 4. That this Resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 3RD DAY OF MAY, 2023.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Gabriel and Council Members

THROUGH: Terry Eubank, City Manager

FROM: Linda Mitchell, Planning Director

DATE: April 27, 2023

SUBJECT: **Resolution No. 2023-33 – Approving an Amendment to the Lease and Concession Agreement for the Kenai Municipal Golf Course and Recreation Area between the City of Kenai and Griffin Golf, LLC.**

The City received a request from the lessee of the Kenai Municipal Golf Course, Mark Griffin, proposing an increase in the green fees. He indicates the proposed green fees are comparable rates to other 18 hole courses in Alaska. Article III of the referenced leases state that green fees shall be set at the sole option of the Kenai City Council upon petition by the lessee.

The Lessee has been amended over the years, and the most recent amendments (13th amendment for Parcel A and 12th amendment for Parcel B) were recorded on September 6, 2018 for incentivizing improvements and additional investments on the golf course. The lease expires on January 1, 2026 with an option to renew for an additional term of 10 years and an additional option to renew for an additional term of 20 years beginning July 1, 2036.

Mr. Griffin provided a list of website links to green fees for other Southcentral Alaska courses that show the Kenai Municipal Golf Course will be competitive in the current market. The Council last approved a rate increased in April 2013.

The green fees would change as follows:

	Approved Maximum Rates					Proposed Maximum Rates
	2003	2005	2007	2010	2013	2023
WEEKDAYS:						
9 holes	\$10.00	\$12.00	\$14.00	\$15.00	\$18.00	\$25.00
18 holes	\$18.00	\$20.00	\$24.00	\$27.00	\$28.00	\$27.00
WEEKENDS:						
9 holes	\$12.00	\$14.00	\$16.00	\$17.00	\$19.00	\$35.00
18 holes	\$22.00	\$24.00	\$26.00	\$30.00	\$30.00	\$37.00

Griffin Golf, LLC is current in payments to the City and Kenai Peninsula Borough.

Thank you for your consideration.

Attachment

Proposed Green Fees Request



From: [Mark and Lara Griffin](#)
To: [Christine Cunningham](#)
Cc: [Terry Eubank](#); [Linda Mitchell](#)
Subject: Re: Kenai Golf Course Green fees
Date: Friday, April 14, 2023 9:47:41 AM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

If possible, I'd like to have this on the 19th meeting in case there are any issues. Linda, let me know if you have any questions. I can be reached at 907-690-1398.

Thanks

Current Green Fees:

9 holes: Weekday (Except Holidays) \$20 Weekends/Holidays: \$22
18 holes: Weekday(Except Holidays) \$30 Weekends/Holidays: \$32
Seniors: Weekday(Except Holidays) 9 holes: \$18 Weekend/holiday \$20 18 holes: \$28
Weekends/Holidays: \$30
Juniors: \$12/\$20 and \$14/\$22

We propose changing rates for 2023 to the following:

9 holes: \$25.00/\$27.00 weekday/weekend/holiday
18 holes: \$35.00/\$37.00 Weekday/Weekend/holiday
Seniors: 9 holes: Weekday: \$23.00 Weekend/Holiday: \$25.00 18 holes: Weekday: \$33.00
Weekend/holiday: \$35.00
Juniors: No change

Rates at other 18 hole courses in Alaska:

<https://www.mooserungolfcourse.com/daily-rates>

<https://www.anchoragegolfcourse.com/golf/rates>

<https://palmergolfcourse.com/golf>

<https://www.settlersbay.com/golf-course/course-rates>

<https://midnightsungolfak.com/golf-course>

Rates at 9 hole courses in Alaska:

<https://www.fairbanksgolfcourse.com/>

<http://www.birchridgegolf.com/rates/>

<https://www.foxhollowak.com/golf-course/>

**FOURTEENTH AMENDMENT TO LEASE AND CONCESSION AGREEMENT
KENAI MUNICIPAL GOLF COURSE AND RECREATION AREA**

THIS Amendment to Lease and Concession Agreement is made as of the _____ day of _____, 2023, by and between the CITY OF KENAI (City), a municipal corporation whose address is 210 Fidalgo Avenue, Kenai, Alaska 99611, and GRIFFIN GOLF, LLC (Lessee), whose address is PO Box 289, Kenai, Alaska 99611.

WITNESSETH

WHEREAS, on June 7, 1985, the City entered into a lease with Richard I. Morgan, for City-owned lands identified as Exhibit “A”, a Preliminary Drawing for Field Survey to be replaced at a later date by a Field Survey, which lease was recorded at Book 265 Pages 720 - 731, on July 8, 1985, in the Kenai Recording District, Third Judicial District, State of Alaska (the Lease); and,

WHEREAS, since June 7, 1985, the rights under the Lease have been assigned or transferred to various Lessees and the current Lessee is Griffin Golf, LLC; and,

WHEREAS, the Lease has been amended over the years, which amendments are recorded in the Kenai Recording District and are summarized as follows:

Amendment to Lease, recorded at Book 362 Pages 004-005, on March 16, 1990, redetermining the green fees;

Amendment to Lease, recorded at Book 395 Pages 749-753, on February 21, 1992, incorporated Exhibit “A” and “B” to supersede the Exhibits recorded with the original lease on July 8, 1985;

Amendment to Lease, recorded at Book 411 Pages 642-646, on January 19, 1993, redetermining the green fees;

Amendment to Lease, recorded at Book 472 Pages 950-952, on October 23, 1995, redetermining the green fees;

Amendment to Lease, recorded at Book 515 Pages 816-820, on October 7, 1997, amending the lease rate;

Amendment to Lease, recorded at Book 522 Pages 726-729, on February 10, 1998, revising the legal description as follows:

Parcel A

The unsubdivided remainder of Government Lots 1 and 2, located within the N1/2 N1/2 Section 3, T5N, R11W, Seward Meridian, City of Kenai, Kenai Recording District, Kenai Peninsula Borough, Alaska containing 71.919 acres, according to Plat No. 97-105;

Amendment of Golf Course Fees redetermining the green fees dated February 18, 2000 (Lessee and Lessor signed the Amendment; however, it is not recorded in the Kenai Recording District);

Amendment to Lease, recorded at 2005-003854-0, on May 11, 2005, redetermining the green fees; incorporating language that is required by the State Division of Parks and Outdoor Recreation and the National Parks Service; granting the City the right to enter and occupy the premises for a ski trail or trails; and, extending the expiration dates for additional ten-year terms to December 31, 2015;

Amendment to Lease, recorded at 2007-004091-0, on April 20, 2007, redetermining the green fees;

Amendment to Lease, recorded at 2010-003222-0, on April 23, 2010, redetermining the green fees;

Amendment to Lease, recorded at 2013-004082-0, on April 29, 2013, redetermining the green fees;

Amendment to Lease, recorded at 2015-010220-0, on November 10, 2015, extending the term of the lease with a new lease rate and a 10-year renewal option;

Amendment to Lease, recorded at 2018-007904-0, on September 6, 2018, incentivizing improvements and additional investments on the golf course;

and,

WHEREAS, under article III of the Lease, the Lessee has petitioned the City to raise the green fees.

NOW THEREFORE, the parties agree as follows:

1. That pursuant to Article III of the Lease, the Kenai City Council has determined that the green fees shall not exceed Twenty-Five Dollars (\$25.00) per person for nine

holes of golf on weekdays, and Twenty-Seven Dollars (\$27.00) per person for nine holes of golf on weekends. For 18 holes of golf, the green fees shall not exceed Thirty-Five Dollars (\$35.00) per person on the weekdays and Thirty-Seven Dollars (\$37.00) per person for weekends.

- 2. Except as expressly modified or stated herein, all other terms and conditions of the Lease (as amended) remain in full force and effect.

CITY OF KENAI

By: _____
Terry Eubank
Its: City Manager

GRIFFIN GOLF, LLC

By: _____
Name: _____
Its: _____

Approved as to form:

Scott Bloom
City Attorney

State of Alaska)
) ss
Third Judicial District)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023,
by Terry Eubank, City Manager for the City of Kenai.

Notary Public of Alaska
My Commission Expires: _____

State of Alaska)
) ss
Third Judicial District)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023,
by _____(Name), _____(Title) for
GRIFFIN GOLF, LLC.

Notary Public of Alaska
My Commission Expires: _____

RETURN TO:
CITY OF KENAI
210 Fidalgo Avenue
Kenai, AK 99611-7794

**THIRTEENTH AMENDMENT TO LEASE AND CONCESSION AGREEMENT
KENAI MUNICIPAL GOLF COURSE AND RECREATION AREA NO. II**

THIS Amendment to Lease and Concession Agreement is made as of the _____ day of _____, 2023, by and between the CITY OF KENAI (City), a municipal corporation whose address is 210 Fidalgo Avenue, Kenai, Alaska 99611, and GRIFFIN GOLF, LLC (Lessee), whose address is PO Box 289, Kenai, Alaska 99611.

WITNESSETH

WHEREAS, on May 28, 1987, the City entered into a lease with Richard I. Morgan, for City-owned lands identified as Exhibit “A”, a Preliminary Drawing for Field Survey to be replaced at a later date by a Field Survey, which lease was recorded at Book 311 Pages 134 - 143, on May 28, 1987, in the Kenai Recording District, Third Judicial District, State of Alaska (the Lease); and,

WHEREAS, since May 28, 1987, the rights under the Lease have been assigned or transferred to various Lessees and the current Lessee is Griffin Golf, LLC; and,

WHEREAS, the Lease has been amended over the years, which amendments are recorded in the Kenai Recording District and are summarized as follows:

Amendment to Lease, recorded at Book 362 Pages 002-003, on March 16, 1990, redetermining the green fees;

Amendment to Lease, recorded at Book 395 Pages 754-756, on February 21, 1992, incorporated Exhibit “A” to supersede the Exhibit recorded with the original lease on May 28, 1987;

Amendment to Lease, recorded at Book 411 Pages 639-641, on January 19, 1993, redetermining the green fees;

Amendment to Lease, recorded at Book 515 Pages 816-820, on October 7, 1997, amending the lease rate;

Amendment to Lease, recorded at Book 522 Pages 726-729, on February 10, 1998, revising the legal description as follows:

Parcel B

The unsubdivided remainder of Government Lots 3 and 4, located within the N1/2 N1/2 Section 3, T5N, R11W, Seward Meridian, City of Kenai, Kenai Recording District, Kenai Peninsula Borough, Alaska containing 47.788 acres, according to Plat No. 97-105;

Amendment of Golf Course Fees redetermining the green fees dated February 18, 2000 (Lessee and Lessor signed the Amendment; however, it is not recorded in the Kenai Recording District);

Amendment to Lease, recorded at 2005-003854-0, on May 11, 2005, redetermining the green fees; incorporating language that is required by the State Division of Parks and Outdoor Recreation and the National Parks Service; granting the City the right to enter and occupy the premises for a ski trail or trails; and, extending the expiration dates for additional ten-year terms to December 31, 2015;

Amendment to Lease, recorded at 2007-004091-0, on April 20, 2007, redetermining the green fees;

Amendment to Lease, recorded at 2010-003222-0, on April 23, 2010, redetermining the green fees;

Amendment to Lease, recorded at 2013-004082-0, on April 29, 2013, redetermining the green fees;

Amendment to Lease, recorded at 2015-010220-0, on November 10, 2015, extending the term of the lease with a new lease rate and a 10-year renewal option;

Amendment to Lease, recorded at 2018-007904-0, on September 6, 2018, incentivizing improvements and additional investments on the golf course;

and,

WHEREAS, under article III of the Lease, the Lessee has petitioned the City to raise the green fees.

NOW THEREFORE, the parties agree as follows:

1. That pursuant to Article III of the Lease, the Kenai City Council has determined that the green fees shall not exceed Twenty-Five Dollars (\$25.00) per person for nine holes of golf on weekdays, and Twenty-Seven Dollars (\$27.00) per person for nine holes of golf on weekends. For 18 holes of golf, the green fees shall not exceed

Thirty-Five Dollars (\$35.00) per person on the weekdays and Thirty-Seven Dollars (\$37.00) per person for weekends.

- 2. Except as expressly modified or stated herein, all other terms and conditions of the Lease (as amended) remain in full force and effect.

CITY OF KENAI

By: _____
Terry Eubank
Its: City Manager

GRIFFIN GOLF, LLC

By: _____
Name: _____
Its: _____

Approved as to form:

Scott Bloom
City Attorney

State of Alaska)
) ss
Third Judicial District)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023,
by Terry Eubank, City Manager for the City of Kenai.

Notary Public of Alaska
My Commission Expires: _____

State of Alaska)
) ss
Third Judicial District)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023,
by _____(Name), _____(Title) for
GRIFFIN GOLF, LLC.

Notary Public of Alaska
My Commission Expires: _____

RETURN TO:
CITY OF KENAI
210 Fidalgo Avenue
Kenai, AK 99611-7794

**KENAI CITY COUNCIL – REGULAR MEETING
APRIL 19, 2023 – 6:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611
MAYOR BRIAN GABRIEL, PRESIDING**

MINUTES

A. CALL TO ORDER

A Regular Meeting of the Kenai City Council was held on April 19, 2023, in City Hall Council Chambers, Kenai, AK. Mayor Gabriel called the meeting to order at approximately 6:00 p.m.

1. Pledge of Allegiance

Mayor Gabriel led those assembled in the Pledge of Allegiance.

2. Roll Call

There were present:

Brian Gabriel, Mayor
Teea Winger
Alex Douthit
Henry Knackstedt

James Baisden, Vice Mayor
Deborah Sounart
Victoria Askin

A quorum was present.

Also in attendance were:

**Silas Thibodeau, Student Representative
Terry Eubank, City Manager
Scott Bloom, City Attorney
Larry Semmens, Acting Finance Director
Lana Metcalf, Controller
Kathy Romain, Senior Center Director
Linda Mitchell, Planning Director
Eland Conway, Airport Manager
Tony Prior, Fire Chief
Dave Ross, Police Chief
Shellie Saner, City Clerk

3. Agenda and Consent Agenda Approval

Mayor Gabriel noted the following additions to the Packet:

- Add item H.5. **Introduction of Ordinance No. 3347-2023**
 - Storefront and Streetscape Improvement Program Guide
- Add item H.6. **Discussion Action** - Scheduling a Work Session on Employee Recruitment and Retention Challenges and Recommendations
 - Memo
- Add item P.1. **Informational Item**
 - Letter of Support for the Kenai Art Center Rasmuson Grant Application

MOTION:

Council Member Knackstedt **MOVED** to approve the agenda and consent with the requested revisions. Vice Mayor Baisden **SECONDED** the motion.

The items on the Consent Agenda were read into the record.

Mayor Gabriel opened the floor for public comment on consent agenda items; there being no one wishing to be heard, the public comment period was closed.

UNANIMOUS CONSENT was requested.

VOTE: There being no objection; **SO ORDERED.**

All items listed with an asterisk () are considered to be routine and non-controversial by the council and will be approved by one motion. There will be no separate discussion of these items unless a council member so requests, in which case the item will be removed from the consent agenda and considered in its normal sequence on the agenda as part of the General Orders.

[Clerk's Note: Mayor Gabriel presented the Kardinal Cheer Squad with a Proclamation of congratulations.]

B. SCHEDULED ADMINISTRATIVE REPORTS

1. Fiscal Year 2022 Audit Report, Joy Merriner, BDO USA, LLP

Joy Merriner, Assurance Office Managing Partner of BDO USA, LLP reported on the FY22 Audit Wrap-up Document, noting the audit on the CARES Act, ARPA Act and Airport Improvement Program came through with flying colors; the clean opinion on the report; there were no audit adjustments; new GASB 87 standards required lease reporting; and summarized the Annual Comprehensive Financial Report document.

2. Spruce Bark Beetle Mitigation Update, City of Kenai Fire Chief Tony Prior.

Tony Prior, City of Kenai Fire Chief provided an update on the City's Spruce Bark Beetle Mitigation Program; provided imagery of the areas where trees had been cut; and reported on the progress so far and the plans for the next phase.

C. SCHEDULED PUBLIC COMMENTS - None.

D. UNSCHEDULED PUBLIC COMMENTS - None.

E. PUBLIC HEARINGS

1. **Ordinance No. 3342-2023** - Increasing Estimated Revenues and Appropriations in the Congregate Housing Fund for Costs in Excess of Budgeted Amounts. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to enact Ordinance No. 3342-2023. Council Member Askin **SECONDED** the motion.

Mayor Gabriel opened the floor for public comment. There being no one wishing to be heard, the public comment period was closed.

VOTE:

YEA: Askin, Douthit, Knackstedt, Sounart, Winger, Gabriel, Baisden

NAY: None

**Student Representative Thibodeau: Yea

MOTION PASSED.

2. **Ordinance No. 3343-2023** - Accepting and Appropriating a Volunteer Fire Assistance Grant from the United States Department of Agriculture Forest Service Passed through the State of Alaska Division of Forestry for the Purchase of Forestry Firefighting Equipment. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to enact Ordinance No. 3343-2023. Council Member Sounart **SECONDED** the motion.

Mayor Gabriel opened the floor for public comment. There being no one wishing to be heard, the public comment period was closed.

VOTE:

YEA: Douthit, Knackstedt, Sounart, Winger, Gabriel, Baisden, Askin

NAY: None

**Student Representative Thibodeau: Yea

MOTION PASSED.

- 3. Ordinance No. 3344-2023** - Amending Kenai Municipal Code Chapter 8.20 - Fireworks Control, by Removing References to City Permits - which are Redundant to the States Firework Display Permit. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to enact Ordinance No. 3344-2023. Council Member Sounart **SECONDED** the motion.

Mayor Gabriel opened the floor for public comment. There being no one wishing to be heard, the public comment period was closed.

It was reported that this would eliminate redundancy; the State requires a letter of non-objection from the City prior to issuing the State permit.

VOTE:

YEA: Knackstedt, Sounart, Winger, Gabriel, Baisden, Askin, Douthit

NAY: None

**Student Representative Thibodeau: Yea

MOTION PASSED.

- 4. Resolution No. 2023-26** - Amending the City Council's Procedures for Commissions, Committees and Council on Aging Policy No. 2016-01 and Renumbering to Policy No. 20.020. (Gabriel, Baisden)

MOTION:

Council Member Knackstedt **MOVED** to adopt Resolution No. 2023-26. Vice Mayor Baisden **SECONDED** the motion.

Mayor Gabriel opened the floor for public comment. There being no one wishing to be heard, the public comment period was closed.

UNANIMOUS CONSENT was requested.

VOTE: There being no objection; **SO ORDERED.**

- 5. Resolution No. 2023-27** - Repealing the City Council's Unnumbered Student Representative Policy, Repealing the Parks and Recreation Commission Student Representative Policy No. 2018-01, and Enacting City of Kenai Student Representative Policy No. 20.100. (Gabriel, Baisden)

MOTION:

Council Member Knackstedt **MOVED** to adopt Resolution No. 2023-27. Council Member Askin **SECONDED** the motion.

Mayor Gabriel opened the floor for public comment. There being no one wishing to be heard, the public comment period was closed.

UNANIMOUS CONSENT was requested.

VOTE: There being no objection; **SO ORDERED.**

- 6. Resolution No. 2023-28** - Approving a Twelve-Month Extension of Time for Good Cause for the Completion of Permanent Improvements for a Lease Between the City of Kenai and Schillings Rentals, LLC for Airport Reserve Lands Described as Lot 5A, Block 1, FBO Subdivision 2018 Replat. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to adopt Resolution No. 2023-28. Council Member Winger **SECONDED** the motion.

Mayor Gabriel opened the floor for public comment.

Duane Bannock representing Schilling Rentals LLC addressed the Council regarding the reasons for the requested the extension referencing the letter which was provided within the packet.

There was discussion with Mr. Bannock regarding the original request being for a twenty-four-month extension; Kenai Municipal Code only allowed for one, twelve-month extension and that a twenty-four-month extension would require a non-code ordinance; and the delay related to the required improvements was related to the increased costs for construction.

There being no one else wishing to be heard, the public comment period was closed.

UNANIMOUS CONSENT was requested.

VOTE: There being no objection; **SO ORDERED.**

F. MINUTES

1. *Regular Meeting of April 5, 2023. (City Clerk)

G. UNFINISHED BUSINESS - None.

H. NEW BUSINESS

1. ***Action/Approval** - Bills to be Ratified. (Administration)

Approved by the consent agenda.

2. ***Action/Approval** - Non-Objection to the Renewal of a Liquor License for AK Inc., DBA: Speedway Express #60206 - License No. 4544. (City Clerk)

Approved by the consent agenda.

3. ***Ordinance No. 3345-2023** - Accepting and Appropriating Donations for Construction of the Kenai Community Dog Park. (Administration)

Introduced by the consent agenda and Public Hearing set for May 3, 2023.

4. ***Ordinance No. 3346-2023** - Increasing Estimated Revenues and Appropriations in the General Fund, Fire Department for the Purchase of an Inflatable Rescue Boat. (Administration)

Introduced by the consent agenda and Public Hearing set for May 3, 2023.

5. ***Ordinance No. 3347-2023** - Establishing the Storefront and Streetscape Improvement Program and Appropriating \$50,000 from the General Fund. (Askin, Sounart)

Introduced by the consent agenda and Public Hearing set for May 3, 2023.

6. Discussion/Action - Scheduling a Council Work Session on Employee Recruitment and Retention Difficulties and Recommendations for May 3, 2023 at 4:30 p.m. (Administration)

An Employee Recruitment and Retention Difficulties and Recommendations work session was scheduled for Wednesday, May 3, 2023 at 4:30 p.m.

I. COMMISSION / COMMITTEE REPORTS

1. Council on Aging

Council Member Knackstedt reported on the April 13, 2023 meeting, next meeting May 11, 2023.

2. Airport Commission

Council Member Askin reported on the April 13, 2023 work session, next meeting May 11, 2023.

3. Harbor Commission

Council Member Douthit reported no quorum was present at the April 10, 2023 meeting, next meeting May 8, 2023.

4. Parks and Recreation Commission

No report, next meeting May 4, 2023.

5. Planning and Zoning Commission

No report, next meeting April 26, 2023.

6. Beautification Committee

Council Member Winger reported on the April 11, 2023 meeting, next meeting May 9, 2023.

J. REPORT OF THE MAYOR

Mayor Gabriel reported on the following:

- Attending the virtual Alaska Conference of Mayors meeting on May 19, 2023 where an update was provided on the status of Bills currently with the State Legislature.

K. ADMINISTRATION REPORTS

1. City Manager – City Manager Eubank reported on the following:

- The City would be receiving roughly \$43,000 from round two of the Healthy and Equitable Communities Program; the Kenai Peninsula Borough had been contacted to see if they would be allocation their share to the City like they did in the first round.
- With the City now being a member of the Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), new maps were generated by FEMA, who would like to present the maps at one meeting.

There was general agreement that the presentation could be made to the Planning and Zoning Commission and interested Council Members could watch the presentation remotely.

- Streets were now being swept which was a good indication that spring was here.
- Second interviews were being conducted for the Finance Director position.
- Interviews were being conducted for the Parks and Recreation Director.

2. City Attorney - No report.

3. City Clerk – City Clerk Saner reported on the following:

- With the approval of the last two policy amendment the final document containing all Council adopted policies would soon be available.

L. ADDITIONAL PUBLIC COMMENTS

1. Citizen Comments (*Public comments limited to (5) minutes per speaker*)

Marion Nelson, Kenai Art Center Board President informed Council about an upcoming Alaska Humanities Forum; the Potters Guild would be having their Annual Mother's Day Pottery sale; stated her appreciation for the City taking care of the snow levels; and provided an update on the upcoming Nathan Perry show.

2. Council Comments

Council Member Douthit reported that the Kenai Chamber of Commerce would host a Mother's Day Bizarre on May 29 & 30, 2023 and the June Fish Frenzy would be on June 24, 2023; and that the Chamber was fully staffed.

Student Representative Thibodeau provided an update on High School Sports and Prom.

Council Member Sounart thanked Fire Chief Prior for the presentation and wished everyone a happy spring.

Council Member Askin reminded everyone about the upcoming The Godfather Dinner Theater and Auction hosted by Triumvirate Theater on April 21 & 22, 2023 and the Annual Hospice Fundraiser on April 22, 2023; and wished everyone a happy spring.

Council Member Winger congratulated the Kenai Kardinal Cheer Squad; and thanked Fire Chief Prior for the Spruce Bark Beetle Mitigation update.

Council Member Knackstedt thanked the Kenai Chamber of Commerce noting that he was impressed with their current activities; and that he would be attending the Annual Hospice Fundraiser.

M. EXECUTIVE SESSION - None.

N. PENDING ITEMS - None.

O. ADJOURNMENT

P. INFORMATIONAL ITEMS - None.

There being no further business before the Council, the meeting was adjourned at 8:15 p.m.

I certify the above represents accurate minutes of the Kenai City Council meeting of April 19, 2023.

Michelle M. Saner, MMC
City Clerk

*** The student representative may cast advisory votes on all matters except those subject to executive session discussion. Advisory votes shall be cast in the rotation of the official council vote and shall not affect the outcome of the official council vote. Advisory votes shall be recorded in the minutes. A student representative may not move or second items during a council meeting.*

**PAYMENTS OVER \$35,000.00 WHICH NEED COUNCIL RATIFICATION
COUNCIL MEETING OF: MAY 3, 2023**

VENDOR	DESCRIPTION	DEPARTMENT	ACCOUNT	AMOUNT
PERS	PERS	VARIOUS	LIABILITY	96,786.10

INVESTMENTS

VENDOR	DESCRIPTION	MATURITY DATE	AMOUNT	Effect. Int.
PIPER JAFFRAY	US AGENCY SECURITY	10/28/2024	245,000.00	5.00%
PIPER JAFFRAY	US AGENCY SECURITY	04/26/2024	1,000,000.00	5.20%

PURCHASE ORDERS OVER \$35,000.00 WHICH NEED COUNCIL APPROVAL

COUNCIL MEETING OF: MAY 3, 2022

VENDOR	DESCRIPTION	DEPT.	ACCOUNT	AMOUNT
HOMER ELECTRIC	SAND STORAGE BUILDING ELECTRICAL REWORK	AP IMPROVEMENTS	CONSTRUCTION	42,303.00

INCREASE OF EXISTING PURCHASE ORDER

VENDOR	DESCRIPTION	P.O. # - DEPT.	REASON	AMOUNT	TOTAL PO AMT
---------------	--------------------	-----------------------	---------------	---------------	---------------------



MEMORANDUM

TO: Mayor Gabriel and Council Members
THROUGH: Terry Eubank, City Manager
FROM: Scott Curtin, Public Works Director
DATE: April 24, 2023
SUBJECT: **Purchase Order – Homer Electric Association**

The purpose of this memo is to request Council's approval to issue a Purchase Order to Homer Electric Association in the amount of \$42,303 for Electric Primary and Secondary Service modifications for the Kenai Municipal Airport Sand Storage Facility project. This project has been delayed due to COVID and supply chain issues, however, work is expected to finally be underway starting May 1st.

This work involves replacement of an existing ground mounted transformer and rerouting of electrical services for the new Sand Storage Building, existing Urea Building, and the adjacent Forestry Services. This work is necessary due to the location of the existing utilities being within the footprint of the new facility.

The easements for this work were previously approved by Council through an Action Approval at the October 26, 2021 council meeting. Staff has also already paid a \$500 deposit with the application submittal so the overall total proposed estimated cost for the work is \$42,803. The City will be billed actual costs from HEA at the completion of the work. All of the costs associated with this work are eligible for funding reimbursement through the Federal Aviation Administration grant in support of the Sand Storage Facility project.

The Utility work is anticipated to take place before June 30th. Council's approval is respectfully requested.



MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Shellie Saner, City Clerk
FROM: Meghan Thibodeau, Deputy City Clerk
DATE: April 28, 2023
SUBJECT: **Marijuana License Transfer of Ownership – Grateful Bud**

The following establishment has submitted applications to the Alcohol and Marijuana Control Office (AMCO) for the Transfer of Ownership of licenses:

Transferor: Jennifer Huffman
Transferee: Richard Huffman
D/B/A: Grateful Bud, LLC
License Type: Limited Marijuana Cultivation Facility
License No.: 16474

Pursuant to KMC 2.40 a review of City accounts has been completed and the applicant has satisfied all obligations to the City. With the approval of Council, a letter of non-objection to the marijuana license transfer will be forwarded to AMCO and applicant.

Your consideration is appreciated.



March 16, 2023

City of Kenai

Attn: City Clerk

Via Email: cityclerk@kenai.city

Kenai Peninsula Borough

Attn: Borough Clerk

Via email: jblankenship@kpb.us; micheleturner@kpb.us; assemblyclerk@kpb.us; mjenkins@kpb.us; maldridge@kpb.us; slopez@kpb.us; ncarver@kpb.us; jvanhoose@kpb.us; jratky@kpb.us; bcarter@kpb.us

License Number:	16474
License Type:	Limited Marijuana Cultivation Facility
Physical Address:	1817 Sunset Blvd. Kenai, AK 99611

Transferor (current licensee):	Grateful Bud, LLC – Jennifer Huffman 100%
Doing Business As:	Grateful Bud, LLC
Designated Licensee:	Jennifer Huffman
Phone Number:	907-283-2837
Email Address:	jhuffman_907@hotmail.com

Transferee (new licensee):	Grateful Bud, LLC – Richard Huffman 100%
Doing Business As:	Grateful Bud, LLC
Designated Licensee:	Richard Huffman
Phone Number:	907-283-2837
Email Address:	gratefulbudllc@gmail.com

Transfer of Ownership Application

Transfer of Controlling Interest

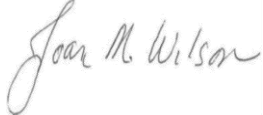
AMCO has received a complete application for a marijuana establishment within your jurisdiction. This notice is required under 3 AAC 306.045(c)(2). Application documents will be sent to you separately via ZendTo.

To protest the approval of this application pursuant to 3 AAC 306.060, you must furnish the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of the date of this notice, and provide AMCO proof of service of the protest upon the applicant. If the protest is a “conditional protest” as defined in 3 AAC 306.060(d)(2) and the application otherwise meets all the criteria set forth by the regulations, the Marijuana Control Board may approve the transfer, but require

the applicant to show to the board's satisfaction that the requirements of the local government have been met before the director issues the license.

3 AAC 306.010, 3 AAC 306.080, and 3 AAC 306.250 provide that the board will deny an application for a marijuana establishment license if the board finds that the license is prohibited under AS 17.38 as a result of an ordinance or election conducted under AS 17.38 and 3 AAC 306.200, or when a local government protests an application on the grounds that the proposed licensed premises are located in a place within the local government where a local zoning ordinance prohibits the marijuana establishment, unless the local government has approved a variance from the local ordinance.

Sincerely,

A handwritten signature in cursive script that reads "Joan M. Wilson". The signature is written in black ink on a white background.

Joan Wilson, Director

amco.localgovernmentonly@alaska.gov

Submit

by Meghan Thibodeau 3/17/2023 9:14:20 AM (Form Submission)

Approve

by Jeremy Hamilton 3/17/2023 9:17:40 AM (Fire Marshall Review)

- The task was assigned to Jeremy Hamilton. The due date is: March 28, 2023 5:00 PM
3/17/2023 9:14:20 AM

Approve

by Donald Hendrickson 3/17/2023 10:59:36 AM (Building Official Review)

- The task was assigned to Donald Hendrickson. The due date is: March 28, 2023 5:00 PM
3/17/2023 9:14:21 AM

Approve

by David Ross 3/21/2023 12:57:07 PM (Police Department Review)

- The task was assigned to David Ross. The due date is: March 28, 2023 5:00 PM 3/17/2023 9:14:21 AM

Approve

by Tina Williamson 3/17/2023 12:58:02 PM (Finance Asst Review)

- The task was assigned to Tina Williamson. The due date is: March 28, 2023 5:00 PM
3/17/2023 9:14:21 AM

Approve

by Cindy Herr 3/17/2023 9:23:13 AM (Legal Asst Review)

- There are no monies owed in restitution or traffic fines.
- The task was assigned to Cindy Herr. The due date is: March 28, 2023 5:00 PM 3/17/2023 9:14:22 AM

Approve

by Linda Mitchell 3/17/2023 9:47:40 AM (Lands Review)

- The task was assigned to Linda Mitchell. The due date is: March 28, 2023 5:00 PM
3/17/2023 9:14:22 AM

Approve

by Terry Eubank 4/4/2023 9:54:07 AM (Finance Review)

- The task was assigned to Terry Eubank. The due date is: March 28, 2023 5:00 PM
3/17/2023 12:58:03 PM

Approve

by Scott Bloom 3/22/2023 12:20:50 PM (Legal Review)

- The task was assigned to Scott Bloom. The due date is: March 28, 2023 5:00 PM
3/17/2023 12:58:03 PM

Approve

by Linda Mitchell 4/28/2023 10:05:51 AM (P&Z Department Review)

- P&Z Commission approved the CUP transfer at their meeting on April 26, 2023.
- The task was assigned to Linda Mitchell. The due date is: March 28, 2023 5:00 PM
3/17/2023 12:58:04 PM

AMCO License Application

Date

3/17/2023

Establishment Information

License Type

Limited Marijuana Cultivation Facility (Transfer)

Licensee

Grateful Bud, LLC

Doing Business As

Grateful Bud, LLC

Premises Address

1817 Sunset Blvd.

City, State

Kenai, AK

Contact Information

Contact Licensee

Jennifer Huffman (Current Licensee)

Contact Phone No.

907-283-2837

Contact Email

jhuffman_907@hotmail.com

Additional Contact Information

Name

Richard Huffman (New Licensee)

Phone No.

907-283-2837

Email

gratefulbudllc@gmail.com

Documents

File Upload

16474 Transfer-LG Notice-Grateful Bud, LLC.pdf	424.84KB
16474 MJ-17c License Transfer Application.pdf	1.33MB
16474 Affidavit of Publication.pdf	644.48KB
16474 Entity Docs.pdf	2.1MB
16474 MJ-00 Application Certifications.pdf	3.7MB
16474 MJ-01 Operating Plan.pdf	1.73MB
16474 MJ-04 Cultivation Supplemental.pdf	7.9MB
16474 MJ-07 Public Notice Posting Affidavit.pdf	778.86KB
16474 MJ-08 LG Notice Affidavit.pdf	777.6KB
16474 MJ-09 Financial Interest - redacted.pdf	1.11MB
16474 MJ-17d No Changes to Diagram only.pdf	1.71MB
16474 POPPP (1).pdf	1.55MB



Alaska Marijuana Control Board
**Marijuana Establishment
 Form MJ-17c: License Transfer Application**

Alcohol and Marijuana Control Board
 550 W 7th Avenue, Suite 1600
 Anchorage, AK 99501
marijuana.licensing@alaska.gov
<https://www.commerce.alaska.gov/web/amco>
 Phone: 907.269.0350

What is this form?

This form must be used to initiate a transfer of ownership of a marijuana establishment license under 3 AAC 306.045. This transfer application must be completed and submitted to AMCO's main office, along with all necessary supplemental documents and fees listed in **Form MJ-17b: License Transfer Application Checklist**, before a transfer of ownership, including a change that affects the controlling interest of an entity, will be considered by the Marijuana Control Board.

Please note that licensees seeking to change controlling interest of an entity that owns multiple licenses must submit a separate completed copy of this form and the required supplemental documents and fees for each license.

Section 1 – Transferor Information

Enter information for the *current* licensee and licensed establishment.

Licensee:	Grateful Bud LLC	License Number:	16474		
License Type:	Limited Marijuana Cultivation Facility				
Doing Business As:	Grateful Bud LLC				
Premises Address:	1817 Sunset Blvd				
City:	Kenai	State:	Alaska	ZIP:	99611
Email:	gratefulbudllc@gmail.com				
Local Government:	City of Kenai/Kenai Peninsula Borough				

Regular ownership transfer

Transfer of controlling interest in the licensed entity

Section 2 – Transferee Information

Enter information for the *new* applicant seeking to be licensed. The business license # should be issued for the DBA listed below, and held by the transferee.

Licensee:	Grateful Bud LLC	Alaska Entity #	10075543		
Mailing Address:	1817 Sunset Blvd				
City:	Kenai	State:	Alaska	ZIP:	99611
Doing Business As:	Grateful Bud LLC				
Business License #:	1064927	Business Phone:			
Designated Licensee:	Richard Huffman				
Contact Email:	gratefulbudllc@gmail.com	Phone #	907-283-2837		



Section 3 – Entity Ownership Information

This section must be completed by any entity, including a corporation, limited liability company (LLC), partnership, or limited partnership, that is applying for a license. Sole proprietors should skip to Section 4. If any entity official is another entity, you must include the AK Entity # of that entity in the Entity Official Name field, attach a separate completed copy of this page that breaks down the ownership information for that entity, and submit the supplemental documents and fingerprint fees listed on Form MJ-17b required for each individual entity official. Entity documents must be submitted for each entity listed on this form.

If more space is needed, please attach additional completed copies of this page.

- If the applicant is a corporation, list each officer or director, and owner of any of the corporation's stock.
- If the applicant is a limited liability company, list each member holding any ownership interest and each manager.
- If the applicant is a partnership or limited partnership, list each partner holding any interest and each general partner.

Entity Official Name:	Richard Huffman				
Title(s):	Member	Phone:	907-283-2837	% Owned:	100
Email:	gratefulbudllc@gmail.com				
Mailing Address:	1817 Sunset Blvd				
City:	Kenai	State:	Alaska	ZIP:	99611

Entity Official Name:					
Title(s):		Phone:		% Owned:	
Email:					
Mailing Address:					
City:		State:		ZIP:	

Entity Official Name:					
Title(s):		Phone:		% Owned:	
Email:					
Mailing Address:					
City:		State:		ZIP:	

Entity Official Name:					
Title(s):		Phone:		% Owned:	
Email:					
Mailing Address:					
City:		State:		ZIP:	

Entity Official Name:					
Title(s):		Phone:		% Owned:	
Email:					
Mailing Address:					
City:		State:		ZIP:	



Section 4 - Other Licenses

Ownership and financial interest in other marijuana establishments:

Yes No

Does any representative or owner named as a transferee in this application have any direct or indirect financial interest in any other marijuana establishment that is licensed in Alaska?

Yes: [] No: [x]

If "Yes", disclose which individual(s) has the financial interest, which license number(s), and license type(s):

[Empty box for disclosure]

Section 5 - Authorization

Communication with AMCO staff:

Yes No

Does any person other than a licensee named in this application have authority to discuss this license with AMCO staff?

Yes: [x] No: []

If "Yes", disclose the name of the individual and the reason for this authorization:

Jana Weltzin - JDW, LLC Attorney and staff

Section 6 - Transferee Certifications

Read the line below, and then sign your initials in the box to the right of the statement:

Initials

I certify that all proposed licensees (as defined in 3 AAC 306.020) have been listed on this application.

[RH]

Completed copies of all required documents and fees listed on Form MJ-17b are attached to this form.

[RH]

I certify that I understand that providing a false statement on this form or any other form provided by AMCO is grounds for rejection or denial of this application or revocation of any license issued.

[RH]

I agree to provide all information required by the Marijuana Control Board in support of this application.

[RH]

As an applicant for a marijuana establishment license, I declare under penalty of unsworn falsification that I have read and am familiar with AS 17.38 and 3 AAC 306, and that this form, including all accompanying schedules and statements, is true, correct, and complete.

Signature of transferee: [Richard Huffman]

Printed name of transferee: Richard Huffman



Signature of Notary: Mary Kernak, Notary Public in and for the State of Alaska.

My commission expires: 10/01/2022

Subscribed and sworn to before me this 13th day of July, 2022.



Section 7 - Transferor Certifications

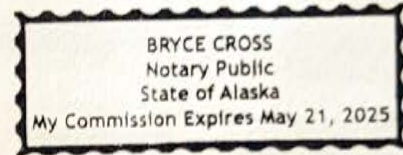
Additional copies of this page may be attached, as needed, for the controlling interest of the current licensee to be represented.

I declare under penalty of unsworn falsification that the undersigned represents a controlling interest of the current licensee. I additionally certify that I, as the current licensee (either the sole proprietor or the controlling interest of the currently licensed entity) approve of the transfer of this license, and that the information on this form is true, correct, and complete.

[Signature]
Signature of transferor
Jennifer Huffman
Printed name of transferor

[Signature]
Notary Public in and for the State of Alaska.
My commission expires: 5/21/2025

Subscribed and sworn to before me this 22nd day of March, 2022.



Signature of transferor

Printed name of transferor

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

Subscribed and sworn to before me this ____ day of _____, 20____.

Signature of transferor

Printed name of transferor

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

Subscribed and sworn to before me this ____ day of _____, 20____.



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3348-2023**

AN ORDINANCE ACCEPTING AND APPROPRIATING FUNDS FROM THE INSTITUTE OF MUSEUM AND LIBRARY SERVICES, PASSED THROUGH THE STATE OF ALASKA, DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, DIVISION OF LIBRARY, ARCHIVES & MUSEUMS, FOR LIBRARY EMPLOYEE TRAINING.

WHEREAS, the Kenai Community Library received \$1206.88 in federal grant funds from the Institute of Museum and Library Services, passed through the State of Alaska, Department of Education and Early Development, Division of Library, Archives & Museums, for continuing education expenses; and,

WHEREAS, the funds will be used to reimburse travel costs related to a staff member’s attendance at the annual Alaska Library Association conference; and,

WHEREAS, it is in the best interest of the City of Kenai to appropriate these grant funds for the purpose intended.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the City Manager is authorized to accept a grant in the amount of \$1206.88.

Section 2. That the following budget revision is authorized:

General Fund:

Increase Revenues –	
Federal Grants -Library	\$1206.88
Increase Appropriations –	
Library—Travel and Transportation	\$1206.88

Section 3. That the City Manager is authorized to execute grant agreements and to expend the grant funds to fulfill the purpose and intent of this ordinance.

Section 4. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.


Section 5. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 17TH DAY OF MAY, 2023.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance: 

Introduced: May 3, 2023
Enacted: May 17, 2023
Effective: May 17, 2023



MEMORANDUM

TO: Mayor Gabriel and Council Members
THROUGH: Terry Eubank, City Manager
FROM: Katja Wolfe, Library Director
DATE: April 20, 2023
SUBJECT: **Continuing Education Grant**

The State of Alaska, Department of Education and Early Development, Division of Library, Archives & Museums receives funds from the Institute of Museum and Library Services to pay for Continuing Education (CE) grants for Alaska library workers. These funds can be spent on travel, lodging, per diem and registration expenses for conferences and workshops.

The purpose of this ordinance is to accept and appropriate a CE grant of \$1206.88 to reimburse a staff member's attendance at the annual Alaska Library Association conference.

Thank you for your consideration.

Sponsored by: Administration



**CITY OF KENAI
ORDINANCE NO. 3349-2023**

AN ORDINANCE ACCEPTING AND APPROPRIATING A DONATION TO THE KENAI COMMUNITY LIBRARY FOR THE PURCHASE OF EARLY LITERACY EQUIPMENT AND FURNITURE.

WHEREAS, the Kenai Community Library received a \$10,000 donation from community member Deborah S. McCarthy; and,

WHEREAS, the funds will be used to purchase early literacy equipment and furniture for the Kids Spot; and,

WHEREAS, the early literacy equipment features interactive games and STEAM content designed to support school readiness and literacy skill-building in young learners; and,

WHEREAS, the furniture will provide additional shelving and storage for youth services materials and programming supplies; and,

WHEREAS, acceptance of these donations to further the mission of the Kenai Community Library is in the best interest of the City and its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the City Manager is authorized to accept these funds in the amount of \$10,000.

Section 2. That the following budget revision is authorized:

General Fund:

Increase Estimated Revenues–
Miscellaneous Donation \$10,000

Increase Appropriations –
Library – Small Tools/Equipment \$10,000

Section 3. That the City Manager is authorized to expend these funds in line with the intentions of the donors.

Section 4. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.


Section 5. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 17TH DAY OF MAY, 2023.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance: 

Introduced: May 3, 2023
Enacted: May 17, 2023
Effective: May 17, 2023



MEMORANDUM

TO: Mayor Gabriel and Council Members

THROUGH: Terry Eubank, City Manager

FROM: Katja Wolfe, Library Director

DATE: April 20, 2023

SUBJECT: **Accepting and Appropriating a Donation for the Purchase of Early Literacy Equipment and Furniture**

The purpose of this memo is to request acceptance and appropriation of a \$10,000 donation from community member Deborah S. McCarthy. The funds will be used to purchase early literacy equipment that is designed to support school readiness and literacy skill-building in young learners, as well as furniture intended to provide additional shelf space and storage for youth services material and programming supplies.

We appreciate the generosity of the donor!

Thank you for your consideration.



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3350-2023**

AN ORDINANCE ACCEPTING AND APPROPRIATING GRANT FUNDS FROM THE ALASKA HIGH INTENSITY DRUG TRAFFICKING AREA FOR DRUG INVESTIGATION OVERTIME EXPENDITURES.

WHEREAS, the Kenai Police Department assists the regional drug task force on initiatives with funding availability through the Alaska High Intensity Drug Traffic Area (AK HIDTA), which is funded through a Federal Government appropriation; and,

WHEREAS, funding through AK HIDTA is available to reimburse certain overtime expenditures for the Kenai Police Officers that assist the regional drug task force or directly participate in the task force on those HIDTA initiatives; and,

WHEREAS, the overtime expense that was eligible for reimbursement from July of 2022 through the end of March, 2023 was \$11,459.78; and,

WHEREAS overtime for these additional expenditures for drug investigations were not budgeted and the department is requesting appropriation into the overtime budget equal to the amount of the AK HIDTA funding.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the City Manager is authorized to accept these funds from the AK HIDTA in the amount of \$11,459.78 and to expend those funds to fulfill the purpose and intent of this ordinance

Section 2. That the estimated revenues and appropriations be increased as follows:

General Fund:

Increase Estimated Revenues – Federal Grants – Police	\$11,459.78
Increase Appropriations – Police – Overtime	\$11,459.78

Section 3. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.


Section 4. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 17TH DAY OF MAY, 2023.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance: 

Introduced: May 3, 2023
Enacted: May 17, 2023
Effective: May 17, 2023



MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Terry Eubank, City Manager

FROM: David Ross – Police Chief

DATE: April 21, 2023

SUBJECT: **Ordinance No. 3350-2023, Accepting HIDTA Grant Funds**

The Kenai Police Department participates in the regional drug task force. Between July of 2022 and March of 2023 certain overtime worked in conjunction with the regional drug task force was eligible for reimbursement through the Alaska High Intensity Drug Trafficking Area (AK HIDTA), which receives its funding through Federal appropriation. The Police Department requested reimbursement for \$11,459.78 in overtime expenditures.

I am respectfully requesting consideration of the ordinance accepting and appropriating the grant funds for the purpose they were intended.



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3351-2023**

AN ORDINANCE ACCEPTING AND APPROPRIATING FUNDING FROM THE STATE OF ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION OF PUBLIC HEALTH FOR THE HEALTHY AND EQUITABLE COMMUNITIES PROGRAM, AND AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF AGREEMENT FOR THIS FUNDING.

WHEREAS, the City was notified from the State of Alaska, DHSS, Division of Public Health for round two (2) grant funding in support of creating and sustaining healthy and equitable communities that strategically aim to build infrastructure to improve health outcomes for high risk, underserved populations; and,

WHEREAS, the City is eligible to receive \$134,331; and,

WHEREAS, the funding allocations for this opportunity considers both population size and local or regional factors that affect health outcomes, such as housing, household composition and disability status, transportation, and several other factors; and,

WHEREAS, the City proposed a list of projects that met the criteria of the grant in round one (1), and nine (9) projects were approved by the grant administrator; and,

WHEREAS, it is in the best interest of the City to accept grant funding to improve infrastructure within the City that will result in a healthier community.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the City Manager is authorized to accept a grant in the amount of \$134, 331 from the State of Alaska, Department of Health and Social Services, and to expend those funds in compliance with the grant’s requirements and this ordinance and execute a Memorandum of Agreement with DHSS.

Section 2. That the following budget revision is authorized:

Kenai Recreation Center Improvement Capital Project Fund:

Increase Estimated Revenues –	
Federal Grants	\$134,331

Increase Appropriations – Capital Projects	
Recreation Center Athletic Floor Refinishing -	
Construction	\$134,331

Section 3. That the City Manager is authorized to execute a memorandum of agreement with the State of Alaska, Department of Health and Social Services, Division of Public Health in requirements of the Healthy and Equitable Communities Grant.

Section 4. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in

which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.


Section 5. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 17TH DAY OF MAY, 2023.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance: 

Introduced: May 3, 2023
Enacted: May 17, 2023
Effective: May 17, 2023



MEMORANDUM

TO: Mayor Gabriel and Council Members
THROUGH: Terry Eubank, City Manager
FROM: Tony Prior, Fire Chief
DATE: April 24, 2023
SUBJECT: **Ordinance 3351-2023 Healthy & Equitable Communities Grant**

Administration applied for round 2 of the Healthy and Equitable Communities Grant from the State of Alaska, Department of Health and Social Services (DHSS), Division of Public Health (DPH), that provides funding for communities to improve infrastructure that will build and promote living healthy and future pandemic prevention. Funding from this Healthy and Equitable Communities grant must have an emphasis on high risk, underserved population groups. The grant notification specified a minimum of three (3) years of funding support and we are addressing round two (2) of the program in this memo.

Funding for the program is based on population of each community within Alaska and is calculated by the Alaska Health Equity Index. The City of Kenai is eligible for a municipal allocation of \$134,331.00 from the State.

A Memorandum of Agreement (MOA) will need to be executed between DPH and the City to meet requirements of the grant.

The City has been approved to use the original projects that were approved in round 1 of the grant application and one of the priorities on the list was the refinishing of the Recreation Center floors. This project truly has the potential to impact all KPB residents. Once the roof is completed, it will no longer pose a risk to the floor and that was the reason it was not the number 1 project in round 1. Administration is recommending to move forward with this project and then continue with the other projects on the list with the additional funds left over.

Additional approved projects are listed below from our original grant submission.

Health and Equitable Communities MOA (Additional Approved Projects)

If funds remain after completing the initial project listed in the application, funds will go towards one of the following pre-approved projects:

Municipal Park Boardwalk: This project supports category number 4 and would allow anyone the opportunity to get out and walk on trails in the city. This project constructs an engineered

elevated boardwalk that connects the park to an existing trail that meanders through a wooded area used throughout the year and heavily during dip net season as it travels down to the North Beach at the mouth of the Kenai River.

Nordic Trail Lighting: This project also supports category number 4 by promoting the outdoor use of an existing winter cross country ski trail and improving it so that citizens can use it at any hour they chose. This project is designed in multiple phases and the first phase would focus on lighting the trail around the central bowl area near the driving range and clubhouse at the Kenai Municipal Golf Course.

The following are projects that have been identified that are not in our current capital projects, mostly because they are under the dollar amount required to be a capital project, or they fit within another category for this funding.

Mobile Handwash and Restroom Trailers: This project would support categories 1 and 3 by allowing the City to mobilize a trailer to events where larger groups of people congregate. We know the key to prevention is practicing good hygiene. Trailers such as these have been used by FEMA and Incident Management Teams across the nations for all sizes of incidents. We would promote health and wellness by giving citizens a sanitary place to practice good hygiene at events around the City.

Videography Equipment and City of Kenai Website: This equipment would support categories 3 and 4 by placing cameras and equipment at sites that are designed for activities promoting a healthy lifestyle. Individuals would be able to go to the City's website/app and see available sites with current and past usage of the trails/playground/etc.

Emergency Preparedness Kits: These kits support categories 1 and 3 by supplying seniors over the age of 60 with items needed in the event of an emergency. This is a project our Senior Center has already been a part of, and quickly ran out of kits as the demand was high and funding was not available to fulfill the overall need. The kits include:

Training and exercise for updated Emergency Operations Plan: This would support categories 1 and 3 by providing training to individuals within the City of Kenai's Emergency Operation Plan (EOP), to prepare them to respond and mitigate future emergencies such as the COVID-19 pandemic. We are currently updating our EOP and following the update, individuals will need position specific training to effectively respond to and deal with larger emergencies. We would hire contractors to conduct ICS training for those within the plan and following the training, conduct an exercise to assess operations and critique for changes/updates to our newly added section of Pandemic Response.

We thank you for your consideration of this ordinance and we respectfully request your approval.





Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3352-2023**

AN ORDINANCE INCREASING ESTIMATED REVENUES AND APPROPRIATION IN THE KENAI CITY DOCK IMPROVEMENT, ANIMAL CONTROL IMPROVEMENT, AND AIRPORT SNOW REMOVAL EQUIPMENT IMPROVEMENT CAPITAL PROJECT FUNDS TO TRANSFER RESIDUAL BALANCE FROM COMPLETED PROJECTS BACK TO THEIR ORIGINAL FUNDING SOURCES.

WHEREAS, \$28,266 remains in Kenai City Dock Improvement, and Animal Control Improvement Capital Project Funds from completed capital projects, including Earthquake Damage Repairs, and Epoxy Floor Recoating; and,

WHEREAS, transfer of the residual \$28,266 to the General Fund, the fund from which the funds originated, will allow future appropriation of the funds for operations or future capital projects and is in the best interest of the City; and,

WHEREAS, \$286 remains in different Airport Capital Project Funds from the completed projects including the Airport Snow Removal Equipment Runway Broom Replacement; and,

WHEREAS, transfer of the residual \$286 to the Airport Fund, the fund from which the funds originated, will allow future appropriation of the funds for operations or future capital projects and is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the estimated revenues and appropriations be increase as follows:

Animal Control Improvement Capital Project Fund:

Increase Estimated Revenues–	
Appropriation of Fund Balance	\$3,364
 Increase Appropriations –	
Transfer to General Fund	\$3,364

Section 2. That the estimated revenues and appropriations be increase as follows:

Kenai City Dock Improvement Capital Project Fund:

Increase Estimated Revenues–	
Appropriation of Fund Balance	\$24,902
 Increase Appropriations–	
Transfer to General Fund	\$24,902

Section 3. That the estimated revenues and appropriations be increase as follows

Airport Snow Removal Equipment Improvement Capital Project Fund:

Increase Estimated Revenues–	
Appropriation of Fund Balance	\$286

Increase Appropriations–
Transfer to Airport Fund

\$286

Section 4. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.


Section 5. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 17TH DAY OF MAY, 2023.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance: 

Introduced: May 3, 2023
Enacted: May 17, 2023
Effective: May 17, 2023



MEMORANDUM

TO: Mayor Gabriel and Council Members
THROUGH: Terry Eubank, City Manager
FROM: Lana Metcalf, Controller/Acting Finance Director
DATE: April 13, 2023
SUBJECT: **Ordinance 3352-2023 Transferring Remaining Funds from Completed Capital Projects back to Original Funding Source**

The purpose of this memo is to recommend the enactment of Ordinance 3352-2023 that will transfer remaining balances from completed capital projects back to their original funding source. These transfers will allow the residual funds to be appropriated for operations or new capital projects in the future.

In total, \$28,266 will be returned to the General Fund from these completed capital projects:

1. Kenai City Dock Earthquake Damage Repairs, \$24,902.
2. Animal Control Epoxy Floor Recoating, \$3,364

\$286 will be returned to the Airport Fund from these completed capital projects -

1. Airport Snow Removal Equipment Runway Broom Replacement, \$286

We will also be administratively transferring back \$705,792 to the Airport fund from the following completed projects or projects for which Federal Airport Improvement Grant Funds have been awarded for expenditures previously paid by the City for design services:

1. Fire Training Facility Rehabilitation Project, \$292,111
2. Sand Storage Facility Project, \$114,451
3. KMA Airfield Drainage Improvements Project, \$299,230

With the enactment of Ordinance 3352-2023, these funds will be returned to their original funding source, where they will reside in fund balance until the passage of future ordinances appropriating the funds for operations or other capital projects. No authorization to spend is created by this appropriation, rather only the authority to transfer between funds is being provided.

Your support for the enactment of Ordinance 3352-2023 is respectfully requested.



MEMORANDUM

TO: Mayor Gabriel and Council Members
THROUGH: Terry Eubank, City Manager
FROM: Eland Conway, Airport Manager
DATE: April 26, 2023
SUBJECT: Kenai Municipal Airport Special Use Permit

Kenai Aviation Operations, LLC. has requested a Special Use Permit to use 2,714 square feet of airport taxilane space for aircraft parking. This space is located at the north end of taxilane GG. Use of this space does not present any concerns or impacts to any airport users, provides additional airport revenue, and accommodates the additional aircraft being added to the Kenai Aviation Operations' fleet.

Monthly Fee

April 2023 - June 2023	\$131.18
July 2023 – September 2023	\$137.96

The Administration recommends approval of the Special Use Permit. Your support and consideration are appreciated.



**City of Kenai
Special Use Permit
Application**

Application Date: **4/21/2023**

Applicant Information

Name of Applicant:	Kenai Aviation Operations, LLC			
Mailing Address:	101 N Willow St	City:	Kenai	State: AK Zip Code: 99611
Phone Number(s):	Home Phone: () 907-398-944		Work/ Message Phone: ()	
E-mail: (Optional)	jacob@kenaiaviation.com			
Name to Appear on Permit:	Kenai Aviation Operations			
Mailing Address:	101 N Willow St	City:	Kenai	State: AK Zip Code: 99611
Phone Number(s):	Home Phone: ()		Work/ Message Phone: () 9072834124	
E-mail: (Optional)				
Type of Applicant:	<input type="checkbox"/> Individual (at least 18 years of age) <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Government <input checked="" type="checkbox"/> Limited Liability Company (LLC) <input type="checkbox"/> Other _____			

Property Information

Legal or physical description of the property: **North end of Taxiway GG**

Description of the proposed business or activity intended: **Aircraft Storage**

Is the area to be used in front of or immediately adjacent to any established business offering the same or similar products or services upon a fixed location? YES NO

Would the use under this permit interfere with other businesses through excessive noise, odor, or other nuisances? YES NO

If you answered yes to any of the above questions, please explain:

What is the term requested (not to exceed one year)? **6 months**

Requested Starting Date: **4/8/2023**

Signature:		Date:	4/21/2023
Print Name:	Jacob Caldwell	Title:	President

For City Use Only:	Date Application Fee Received: <u>4/21/2023</u>
<input type="checkbox"/> General Fund <input checked="" type="checkbox"/> Airport Reserve Land	City Council Action/Resolution:
<input checked="" type="checkbox"/> Airport Fund <input type="checkbox"/> Outside Airport Reserve	Account Number:

XBP: 142912736

SPECIAL USE PERMIT

The CITY OF KENAI (City) grants to Kenai Aviation (Permittee), whose address is 101 N Willow Street, Kenai, AK 99611, a Special Use Permit to conduct aeronautical and/or aviation-related activities at the Kenai Municipal Airport subject to the requirements and the conditions set forth below.

1. Premises. Permittee shall have the non-exclusive right to use 2,714 square feet as described in the attached Exhibit A for the uses identified in this Permit.

2. Term. The term of this Permit shall be for six months commencing on April 1, 2023 and ending on September 30, 2023. Regardless of the date of signature, this Permit shall be effective as of April 1, 2023.

3. Permit Fees. Permittee shall pay the following fees for the privileges extended to Permittee under this Permit:

- A. Permit:** Permittee shall pay a monthly fee plus applicable sales tax as follows:

April – June 2023	\$131.18
July – October 2023	\$137.96

B. Proximity Card for Gate Access: In addition to the general permit fee, Permittee shall pay a deposit of one hundred dollars (\$100.00) for the use of each proximity card issued to Permittee by City to allow for gate access to the Airport to conduct the uses permitted hereunder. City shall refund this deposit to Permittee when the card is returned to City. City may exercise a right of offset to apply the deposit to any outstanding balance due to City from Permittee at the termination of this Permit.

C. Other Fees: City may assess additional fees for aviation or aviation support activities and uses not defined in this Permit. If a fee has not been established for those activities or services, a fee will be established by the Airport Manager.

Payment shall be directed to City of Kenai, ATTN: Finance Department, 210 Fidalgo Avenue, Kenai, AK 99611 and a courtesy notice of payment provided to Airport Administration at 305 North Willow Street, Suite 200, Kenai, AK 99611. All permit fees are payable in advance of each month unless otherwise provided. In the event of delinquency, interest at the rate of ten percent (10%) per annum, and penalty of ten percent (10%) shall also be due (KMC 1.75.010). Interest shall accrue from the date due until the date paid in full. Failure to timely make payments is grounds for termination of this Permit. (See ¶ 22, Termination)

4. Use. City authorizes Permittee’s non-exclusive use of the Premises for the following purpose(s):

Aircraft Parking. **NOTE:** This permit does not guarantee the exclusive use of the area identified in Exhibit A. City reserves the right to re-assign Permittee, upon reasonable notice, to other areas as airport needs may require.

Permittee shall have the right of ingress and egress to the Airport using only designated gate access locations (which may require a proximity card) for the use of the Premises. This Permit, and any access rights allowed hereunder, are for Permittee’s use only and may not be transferred or assigned.

Use of the Premises by Permittee is subject to the reasonable administrative actions of the City of Kenai for the protection and maintenance of the Premises and of adjacent and contiguous lands or facilities and is further subject to the following conditions:

Permittee acknowledges that the use granted herein is subject to the Kenai Municipal Code and municipal regulations governing the Kenai Municipal Airport and as those laws and regulations may be amended from time to time.

Solicitation of donations or operation of a business or other commercial enterprise not contemplated by this Permit is prohibited without the written consent of City.

No person may repair an aircraft, aircraft engine, propeller, or apparatus in an area of the Airport other than that specifically designated for that purpose by the Airport Manager or designated representative. The Airport Manager or designated representative reserves the right to designate reasonable areas where aircraft owners may perform services on their own aircraft.

5. Airport Operations. Permittee shall ensure that the Permittee, its employees, and guests, and anyone else acting by, on behalf of, or under the authority of Permittee on the Airport, that perform any repairs or activities authorized under this Permit act in a manner that ensures the safety of people and the Airport, the protection of public health and the environment, and the safety and integrity of the Airport and any premises on the Airport. Permittee shall employ qualified personnel and maintain equipment sufficient for the purposes of this provision. The Permittee shall immediately notify City of any condition, problem, malfunction, or other occurrence that threatens the safety of the Airport, the safety of persons using the Airport, the public health or the environment, or the safety or integrity of any premises on the Airport.

6. Inspection. The Federal Aviation Administration (FAA) and/or City shall have the right and authority to inspect, at any time for any purpose whatsoever, the Premises as well as any and all equipment used by the Permittee under this Permit.

7. Coordination with Airport Management. Permittee shall coordinate all activities on the Airport with Airport Management, or a designated representative, and shall abide by all reasonable decisions and directives of the Airport Management regarding general use of the Airport by Permittee.

8. Radio Transmitting Equipment. Permittee shall discontinue the use of any machine or device which interferes with any government-operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

9. Insurance. Permittee shall secure and keep in force adequate insurance, as stated below, to protect City and Permittee. Where specific limits are stated, the limits are the minimum acceptable limits. If Permittee's insurance policy contains higher limits, City is entitled to coverage to the extent of the higher limits.

A. Commercial General Liability insurance, including premises, all operations, property damage, personal injury and death, broad-form contractual, with a per-occurrence limit of not less than \$1,000,000 combined single limit. The policy must include an endorsement under which the insurer extends coverage to Permittee's fuel handling activities. The policy must name the City as an additional insured.

B. Worker's compensation insurance with coverage for all employees engaged in work under this Permit or at the Premises as required by AS 23.30.045. Permittee is further responsible to provide worker's compensation insurance for any subcontractor who directly or indirectly provides services to Permittee under this Permit.

C. Commercial Automobile Coverage with not less than \$1,000,000 combined single limit per occurrence. This insurance must cover all owned, hired, and non-owned motor vehicles the Permittee uses on the Airport. The policy must name the City as an additional insured.

D. All insurance required must meet the following additional requirements:

- i. All policies will be by a company/corporation currently rated "A-" or better by A.M. Best.
- ii. Permittee shall submit to the City proof of continuous insurance coverage in the form of insurance policies, certificates, endorsements,

or a combination thereof, and signed by a person authorized by the insurer to bind coverage on its behalf.

- iii. Permittee shall request a waiver of subrogation against City from Permittee’s insurer and the waiver of subrogation, where possible, shall be provided at no cost to City.
- iv. Provide the City with notification at least thirty (30) days before any termination, cancellation, or material change in insurance coverage of any policy required hereunder.
- v. Evidence of insurance coverage must be submitted to City by April 1, 2023. The effective date of the insurance shall be no later than April 1, 2023.

City may increase the amount or revise the type of required insurance on written demand without requiring amendments to this Permit. City will base any increase or revision on reasonable and justifiable grounds. Within two weeks of the written demand, Permittee shall submit to City evidence of insurance coverage that meets the requirements of the City.

10. Assumption of Risk. Permittee assumes full control and sole responsibility as between Permittee and City for the activities of Permittee, its personnel, employees, and persons acting on behalf of or under the authority of the Permittee anywhere on the Airport. Permittee shall provide all proper safeguards and shall assume all risks incurred in its activities on and access to the Kenai Municipal Airport and its exercise of the privileges granted in this Permit.

11. Indemnity, Defend, and Hold Harmless Agreement. Permittee agrees to fully indemnify, defend, and hold harmless, the City of Kenai, its officers, agents, employees, and volunteers from and against all actions, damages, costs, liability, claims, losses, judgments, penalties, and expenses of every type and description, including any fees and/or costs reasonably incurred by the City’s staff attorneys and outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as “Liabilities”), to which any or all of them may be subjected, to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of the Permittee in connection with or arising from or out of Permittee’s activities on or use of the Premises, Permittee’s access to the Kenai Municipal Airport, and/or Permittee’s exercise of the privileges granted in this Permit. This shall be a continuing obligation and shall remain in effect after termination of this Permit.

12. Fuel Spill Prevention and Response Plan. Areas of the Apron have been seal coated

to protect asphalt from adverse effects of petroleum product spills. The City requires that Permittee provide adequate absorbent materials and tools available on the Premises and at the airport in order to maintain a fuel spill and response capability. Permittee shall be liable for any damage caused by and costs associated with any spill, the cleanup of any spill, or the discharge of petroleum products or hazardous materials due to Permittee's use of the Apron and/or use of the Airport.

Permittee shall provide to City an acceptable fuel spill prevention and response plan and will maintain fuel spill and response capability. Permittee further agrees to have a copy of the fuel spill prevention and response plan located in the Permittee's fuel dispensing equipment at all times. Permittee must comply with the Airport's Storm Water Pollution Prevention Plan as appropriate to Permittee's activities.

Permittee shall not store any personal property, solid waste, petroleum products, Hazardous Material as defined by 14 CFR § 171.8, hazardous waste (ignitable, corrosive, reactive, or toxic) or any hazardous substance on any portion of the Airport. Permittee is aware that there are significant penalties for improperly disposing of the Hazardous Materials and other waste and for submitting false information regarding Hazardous Materials, including the possibility of fine and imprisonment for knowing violations.

Permittee shall immediately remove the material in the event of spillage or dripping of gasoline, oil, grease, or any other material which may be unsightly or detrimental to the pavement or surface in or on any area of the Airport.

Permittee may not construct or install any above-ground or underground fuel storage tanks or dispensing systems at the Airport.

No person shall smoke on an aircraft-parking ramp, inside an aircraft hangar, or within fifty feet (50') of any aircraft fuel facility or fuel truck.

Permittee is subject to FAA Advisory Circular 150/5230-4 Aircraft Fuel Storage, Handling, and Dispensing on Airports, the National Fire Protection Associations' "Standard for Aircraft Fueling Servicing" in NFPA 407 (1996 version), and the current version of the International Fire Codes. All inspections of fuel facilities, by City or other regulating entities to which Permittee is subject, shall be conducted to assure compliance with the fire safety practices listed in these referenced documents.

13. Hazardous Substances and Materials. Permittee shall conform and be subject to the requirements of 14 CFR § 139.321 regarding the handling and storage of hazardous substances and materials.

14. No Discrimination. Permittee shall not discriminate against any person because of the person's race, creed, color national origin, sex, age, or handicap. Permittee recognizes the right of City to take any action necessary to enforce this requirement of the Permit. Permittee will furnish services provided under this Permit on a reasonable, and not unjustly discriminatory, basis to all users of the Airport and shall charge reasonable, and not unjustly discriminatory, prices for each product or service provided at the Airport.

15. Licenses and Permits. Permittee shall obtain and maintain all required federal, state, and local licenses, certificates, and other documents required for its operations under the Permit. Permittee shall provide proof of compliance to City upon request by the City.

16. Compliance with Law/Grant Assurances. This Permit, and Permittee's activities conducted under this Permit, is subject to all executive orders, policies and operational guidelines and all applicable requirements of federal, state, and City statutes, ordinances, and regulations in effect during the term of this Permit. Further, Permittee shall comply with all applicable requirements imposed on the Airport by federal law to ensure that the Airport's eligibility for federal money or for participation in federal aviation programs is not jeopardized. This Permit is subordinate to the City's grant assurances and federal obligations.

17. No Exclusivity. The privileges granted under this Permit are not exclusive to Permittee. City has the right to grant to others any right or privilege on the Airport.

18. Assignment. The privileges granted under this Permit are personal to Permittee and may not be assigned by Permittee.

19. No Joint Venture. City shall not be construed or held to be a partner or joint venturer of Permittee in the conduct of its business or activities on the Premises or elsewhere at the Kenai Municipal Airport.

20. No Waiver. Failure to insist upon a strict compliance with the terms, conditions, and requirements herein contained, or referred to, shall not constitute or be construed as a waiver or relinquishment of the right to exercise such terms, conditions, or requirements.

21. Personality. Permittee shall remove any and all personal property, including all vehicles, from the Premises at the termination of this Permit (or any renewal thereof). Personal property placed or used upon the Premises will be removed and/or impounded by the City, if not removed upon termination of this Permit and when so removed and/or impounded, such property may be redeemed by the owner thereof only upon the payment to the City of the costs of removal plus storage charges of \$25.00 per day. The City of Kenai is not responsible for any damage to or theft of any personality of Permittee or of its customers.

22. Termination; Default. This Permit may be terminated by either party hereto by giving thirty (30) days advance written notice to the other party. City may terminate the Permit immediately, or upon notice shorter than thirty (30) days, to protect public health and safety or due to a failure of Permittee to comply with condition or term of this Permit which failure remains uncured after notice by City to Permittee providing Permittee with a reasonable time period under the circumstances to correct the violation or breach.

23. Landing Fees; Fee Schedule. Timely payment of landing fees and other required Airport fees is a condition of this Permit and, as such, failure to timely pay landing and other airport fees is grounds for termination. Without limiting the foregoing, Permittee shall pay landing fees for aircraft landings as set out in the City’s comprehensive schedule of rates, charges and fees. Permittee shall make payment within thirty (30) days following the end of each month and without demand or invoicing from City. Permittee shall also provide Airport Administration with monthly certified gross take-off weight reports within ten (10) days following the end of each month for landings for the preceding month. Airport landing fees shall be paid at the Airport Administration Building, 305 North Willow Street, Suite 200, Kenai, AK 99611.

24. Impoundment. At the discretion of the Airport Manager, City may impound any aircraft parked on the Premises after termination of this Permit. Impoundment may be accomplished by affixing a seal to the door of the aircraft or the moving of the aircraft for impoundment purposes. Inconvenience or damage that may result from such movement will be at the risk of Permittee. An impoundment fee plus a towage fee shall be charged on each aircraft impounded. In addition, a daily storage fee shall be charged for each day the aircraft remains impounded. Any impounded aircraft that is not redeemed within ninety (90) days after impoundment shall be considered abandoned and shall be subject to sale at public auction. Notice of any auction shall be published. Publication shall be in a newspaper of general circulation in that area for at least once during each of three (3) consecutive weeks not more than thirty (30) days nor less than seven (7) days before the time of the auction.

25. Definitions. As used in this Permit, “Permittee” means Kenai Aviation and where the context reasonably indicates, its officers, agents, and employees. “Airport” means the Kenai Municipal Airport.

CITY OF KENAI

KENAI AVIATION

Exhibit A





KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Gabriel and Council Members

FROM: Scott Curtin, Public Works Director

THROUGH: Terry Eubank, City Manager

DATE: April 27, 2023

SUBJECT: **Discussion Item – Status and Path Forward for Wildwood Drive Rehabilitation Project**

The purpose of this memo is to discuss the status and potential paths forward for the Wildwood Drive Rehabilitation Project.

The Council has allocated funds in the amount of \$329,000 for this project through the passage of Resolution 2021-26. The funds were originally appropriated in FY19 and FY20 budgets for projects yet to be identified. The Wildwood Drive Rehabilitation Project was funded because of the continued deterioration of the 50-plus-year-old roadway, identified as in a failed condition in the City's 2009 Roadway Improvement Survey conducted by Nelson Engineering, which has deteriorated since then, and is considered by many as the worst road in Kenai. Approximately \$40,000 of these funds were utilized to acquire engineering services for construction documents with the intent of bidding in early summer, with the remaining funds to be used for construction.

Based on a construction cost estimate of \$940,000, it has been determined that additional funding is necessary to construct this project in 2023. The design includes constructing approximately 2,300 linear feet of roadway from the Kenai Spur Highway to near the entrance of the Wildwood Correctional Complex, a State of Alaska Department of Corrections institution. As service to Wildwood Correction Complex is the primary use of this road, the City believes the State of Alaska should partner with the City and contribute to the project. The project was submitted as the City's number one priority request for consideration as part of the State's 2023 Capital Budget through the Commerce, Community and Economic Development Grants to Municipalities. Resolution 2023-23 was also adopted requesting funding support from the State of Alaska.

Based on the latest information available regarding the State's capital budget, it appears unlikely that infrastructure and maintenance projects without federal funding match opportunities will be included in the capital budget, and it is necessary for Administration to request additional guidance from the Council on how to proceed in the absence of the requested State funding support.

Administration has considered the following three options:

1. Do nothing and defer an upgrade to the road until such time as grant funding allows the City to construct the project.
2. Request a supplemental appropriation of City funds in the amount of approximately \$700,000 to bid and construct the project in 2023.
3. In the absence of necessary funding to construct the project, reduce the scope of the project to return the road to a gravel state as a cost-effective alternative to address the deteriorating asphalt surface. The project's current budget is expected to be sufficient for this option.

While gravel surfaces may be considered a step backward, in this case, no other options are available to address the deteriorated surface of Wildwood Drive that do not require additional funding.

Council's discussion of these options will provide the Administration with direction for the project and is appreciated.



Update from the Board of Directors
Cook Inlet Regional Citizens Advisory Council

John Williams, Vice President, representing the City of Kenai

The Cook Inlet Regional Citizens Advisory Council Annual and Board of Directors meeting was held April 14th, 2023 at the Cook Inlet Aquaculture Association building in Kenai. The Board also conducted its Annual Meeting.

CIRCAC recognized United States Coast Guard Capt. Leanne Lusk, Commander Sector Anchorage, as she will be retiring at the end of June. The Board unanimously adopted a resolution thanking Captain Lusk for her service in the USCG and as an Ex-Officio member of CIRCAC. We have been privileged to work with Captain Lusk the past three years and wish her well on her future endeavors, and equally look forward to working with the next Commander for Sector Anchorage, Capt. Chris Culpepper, who begins his deployment in July.

The Board also awarded service recognition to several volunteers with the organization. A. Bruce Magyar was recognized with the 5 Year Service Award as a public member of the Environmental Monitoring Committee. Grace Merkes was recognized with the 25 Year Service Award. Ms. Merkes currently represents the Kenai Peninsula Borough on the Council and also serves on the Prevention, Response, Operations and Safety (PROPS), Executive, and Audit Committees. Finally, James McHale was recognized as our 2022 Volunteer of the Year. Mr. McHale has served for many years as a public member and Chair of the PROPS Committee. We thank all of the public member volunteers for their continued dedication to the mission of CIRCAC and applaud them for the time, efforts and expertise they give the organization.

The Council also certified annual elections, welcoming back to the Board for a three-year term Mr. Michael Ophem, representing Alaska Native Groups and Mr. Deric Marcorelle, representing Environmental Interest Groups and also serving as the Council's Secretary/Treasurer. Grace Merkes was reappointed to another three-year term by the Kenai Peninsula Borough as was Scott Arndt, who represents the Kodiak Island Borough.

Our next meeting is scheduled for September and will be held in Homer.