



Kenai City Council - Regular Meeting

October 16, 2019 – 6:00 PM

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

www.kenai.city

AGENDA

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. **Election Certification**
4. **Administer Oaths of Office**
5. Agenda Approval
6. Consent Agenda (*Public comment 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 PUBLIC COMMENTS

(Public comment limited to ten (10) minutes per speaker)

C. UNSCHEDULED PUBLIC COMMENTS

(Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated)

D. PUBLIC HEARINGS

- 1. Ordinance No. 3089-2019** - Amending Kenai Municipal Code Section 1.15.040, Agenda, to Revise Public Notice Requirements and Amend the Agenda/Package Preparation, Distribution, and Publication Administrative Policies and Procedures to make Standard Revisions and Housekeeping Changes. (Council Members Molloy and Knackstedt)
- 2. Ordinance No. 3090-2019** - Increasing Estimated Revenues and Appropriations in the General and Public Safety Capital Project Funds and Accepting an Assistance to Firefighter Grant from the Federal Emergency Management Agency for the Cooperative Purchase of Self-Contained Breathing Apparatus for the City of Kenai

Fire Department, Nikiski Fire Department and Central Emergency Services.
(Administration)

- [3.](#) **Ordinance No. 3091-2019** - Amending Kenai Municipal Code Section 17.10.010 – Mandatory Connection and Abandonment of Old Well, and Section 17.20.010 - Mandatory Connections and Abandonment of Old On-Site Sewer Systems, to Clarify the Intent of Ordinance 3003-2018 and Make Housekeeping Changes. (Council Member Knackstedt)
- [4.](#) **Resolution No. 2019-67** - Establishing Dates for Regular Meetings of the City Council for 2020. (City Clerk)
- [5.](#) **Resolution No. 2019-68** - Approving a Memorandum of Agreement between the U.S. Fish and Wildlife Service, Alaska Region, Alaska State Parks, and the City of Kenai for a Gateway to Public Lands Display in the Kenai Municipal Airport. (Administration)
- [6.](#) **Resolution No. 2019-69** - Awarding Non-Exclusive On-Airport Car Rental Concession to EAN Holdings, LLC, for the Period of December 1, 2019 through June 30, 2021. (Administration)
- [7.](#) **Resolution No. 2019-70** - Approving a Standard Lease Form for City Lands Outside the Airport Reserve. (Administration)
- [8.](#) **Resolution No. 2019-71** - Repealing Policy No. 2017-02, Supervisory Sub-Committee. (Council Member Knackstedt)

E. MINUTES

- [1.](#) *Regular Meeting of October 2, 2019. (City Clerk)

F. UNFINISHED BUSINESS

G. NEW BUSINESS

- [1.](#) ***Action/Approval** - Bills to be Ratified. (Administration)
- [2.](#) ***Ordinance No. 3092-2019** - Amending Kenai Municipal Code, Section 1.10.030 – Organization Meeting, to Provide that the Terms of Office of the Mayor and Other Councilmembers Shall Begin the Monday Following Certification of the Election. (City Clerk)
- [3.](#) ***Ordinance No. 3093-2019** - Accepting and Appropriating a Grant From the U.S. Department of Homeland Security Passed through the State of Alaska Department of Military and Veterans' Affairs for the Purchase of a Fire Station Alerting System, an IT Security Audit, and Base Radio System Replacement for Dispatch. (Administration)

4. ***Ordinance No. 3094-2019** - Accepting and Appropriating a Donation from Hilcorp Energy Company to Assist with the Annual Kenai Senior Center Thanksgiving Dinner. (Administration)

H. 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
7. Mini-Grant Steering Committee

I. REPORT OF THE MAYOR

J. ADMINISTRATION REPORTS

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

K. ADDITIONAL PUBLIC COMMENT

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

L. EXECUTIVE SESSION

M. PENDING ITEMS

N. ADJOURNMENT

O. INFORMATION ITEMS

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.



CITY OF KENAI
REGULAR ELECTION OF OCTOBER 1, 2019

WE, the members of the Kenai City Council, do hereby certify the results of a canvass of the ballots for the Regular Election of October 1, 2019.

Absentee (in-person, by-fax/email, personal needs, by-mail) and Questioned Ballots Voted	102
Absentee/Questioned Ballots Rejected	4
Absentee/Questioned Ballots Counted	98
Poll Voter Turn Out	532 / 8.8 %
Total Voter Turn Out	630 / 10.4 %
Number of Kenai Registered Voters	6037

FOR MAYOR, ONE THREE-YEAR TERM

CANDIDATES	POLL VOTES RECEIVED	ABSENTEE, ETC. VOTES RECEIVED	TOTAL VOTES RECEIVED
Gabriel, Brian	447	85	532
Write-Ins	31	5	36

FOR CITY COUNCIL, TWO THREE-YEAR TERMS

CANDIDATES	POLL VOTES RECEIVED	ABSENTEE, ETC. VOTES RECEIVED	TOTAL VOTES RECEIVED
Petty, Glenese	296	58	354
Glendening, Jim	344	65	409
Write-Ins	43	11	54

PROPOSITION A

Shall Section 10-3, Filing, of the Charter of the City of Kenai be amended to eliminate the requirement that person running for Mayor or City Council submit a nominating petition signed by 20 or more registered City Voters.			
	POLL VOTES RECEIVED	ABSENTEE, ETC. VOTES RECEIVED	TOTAL VOTES RECEIVED
Yes	207	46	253
No	313	51	364

PROPOSITION B

Shall Section 10-2, Three-year terms – Election at Large – Nonpartisan Elections, of the Charter of the City of Kenai be amended to provide that the terms of office of the Mayor and other Councilmembers begin the Monday following certification of the election instead of at the second regular meeting of the council after their election.

	POLL VOTES RECEIVED	ABSENTEE, ETC. VOTES RECEIVED	TOTAL VOTES RECEIVED
Yes	379	75	454
No	136	19	155

Brian Gabriel, Sr., Mayor

Tim Navarre, Vice Mayor

Robert Peterkin, Council Member

Henry Knackstedt, Council Member

Robert J. Molloy, Council Member

Jim Glendening, Council Member

Glenese Pettey, Council Member

ATTEST:

Jamie Heinz, City Clerk

Date



Sponsored by: Council Members Knackstedt
And Molloy

CITY OF KENAI

ORDINANCE NO. 3089-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING KENAI MUNICIPAL CODE SECTION 1.15.040, AGENDA, TO REVISE PUBLIC NOTICE REQUIREMENTS AND AMEND THE AGENDA/PACKET PREPARATION, DISTRIBUTION, AND PUBLICATION ADMINISTRATIVE POLICIES AND PROCEDURES TO MAKE STANDARD REVISIONS AND HOUSEKEEPING CHANGES.

WHEREAS, identification and execution of strategies that result in efficiencies and cost savings within the departments of the City have been a focus of the administration; and,

WHEREAS, Kenai Municipal Code (KMC) Section 1.15.040(f) requires that the agenda for each Council meeting be published in a newspaper of general circulation, among other means of notification; and,

WHEREAS, the City has spent \$7,200, \$8,050, and \$6,760 in FY2019, FY2018, and FY2017 respectively in public meeting notification in a newspaper of general circulation; and,

WHEREAS, AS 44.62.310, also known as the Alaska Open Meetings Act, states that reasonable public noticing must include the date, time, and place of the meeting; and,

WHEREAS, it has been the intent of the City to exceed minimum statutory standards for notice of City Council meetings; and,

WHEREAS, amending notification requirements by reducing what is provided in paid notifications and providing alternative resources where additional information can be located is fiscally responsible and will continue to exceed minimum statutory standards.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, as follows:

Section 1. Amendment of Section 1.15.040 of the Kenai Municipal Code: That Kenai Municipal Code, Section 1.15.040 – Agenda, is hereby amended as follows:

- (a) The Mayor or other Council Member, City Clerk, City Attorney, or City Manager may sponsor an ordinance for introduction or a resolution for adoption, and such ordinance or resolution shall be placed on the agenda of the regular Council meeting requested by the sponsor.
- (b) The Mayor or other Council Member, City Clerk, City Attorney, or City Manager may request that a discussion item be placed on the agenda of a regular Council meeting, and

such discussion item shall be placed on the agenda of the regular Council meeting requested by the sponsor.

(c) A member of the public may request that a matter be placed on the agenda subject to policies and procedures adopted under subsection (j). Being placed on the agenda on the "Scheduled Public Comment" portion of the agenda does not limit or restrict the requestor's ability to speak on a different subject for which public comment is allowed.

(d) A sponsor, all co-sponsors, proposer or requester may request that an item be removed from the agenda before the agenda is published under the policies and procedures adopted under subsection (j) and such item shall be removed from the agenda, unless the item has been carried over or postponed from a previous agenda.

(e) The City Clerk shall prepare the agenda for each Council meeting after consultation with the Mayor and City Manager, subject to subsections (a) through (d). A draft agenda shall be circulated to the Mayor and other Council Members, and the City Manager.

(f) Notice [OF THE DATE, TIME, PLACE, AND AGENDA] for each Council meeting shall be given to the public under policies and procedures adopted under subsection (j). [BY PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION AND BY POSTING TO THE CITY'S WEBSITE AND TO THE OFFICIAL BULLETIN BOARD AT CITY HALL UNDER POLICIES AND PROCEDURES ADOPTED UNDER SUBSECTION (J)]. Additional public notice of meetings may be given by other means as required by code or at the direction of Council.

(g) A meeting packet containing the agenda, all legislative items, and supporting documentation for all agenda items shall be distributed to the Mayor, Council Members, and the City Manager.

(h) The City Clerk shall cause a copy of the meeting packet to be posted on the City's website and to be provided to the Kenai Community Library, in order to be made available for public viewing under policies and procedures adopted under subsection (j). The City Clerk shall cause a paper copy or electronic copy of the meeting packet to be provided to any member of the public, or to any organization, upon request under policies and procedures adopted under subsection (j). At least one paper copy of the meeting packet shall be made available to the public at the meeting.

(i) The City Clerk shall provide paper copies of any late materials to the Mayor, each Council Member, City Manager, and City Attorney. The City Clerk shall also make paper copies of late materials available to the public at the meeting.

(j) The administration shall [MAY] develop policies and procedures to implement this section, subject to review and approval of Council by Resolution or Ordinance.

(k) Failure to comply with the above policies and procedures or with any administrative policies will not invalidate any ordinance or Council action as long as there was a good faith effort at compliance by the City Clerk.

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. Policy Amendment: That the City Council of Kenai amends the Agenda and Packet Administrative Policies and Procedures as attached which will govern agenda and packet preparation, distribution, and publication. Future amendments to the policy may be made by resolution.

Section 4. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 16th day of October, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Introduced: October 2, 2019
Enacted: October 16, 2019
Effective: November 15, 2019

~~ADMINISTRATIVE POLICIES AND PROCEDURES~~

POLICY NO. 2019-01 - AGENDA AND PACKET – PREPARATION, DISTRIBUTION, AND PUBLICATION

A. Agenda Preparation and Format; Public Testimony

1. The City Clerk shall prepare the agenda for each Council meeting after consultation with the Mayor and the City Manager, subject to paragraphs (a) through (d) of KMC 1.15.040. The City Clerk shall circulate a draft agenda to the Mayor, to other Council Members, and to the City Manager.

2. Scheduled Public Comment. The agenda shall include time for “Scheduled Public Comment.” Any member of the public may request that an item be placed on the agenda for a regular Council meeting under “Scheduled Public Comment. A person who desires to address the Council under Scheduled Public Comment shall make that request in writing on a form provided by the City Clerk a minimum of eight (8) days in advance of the Council meeting. The speaker will be permitted 10 minutes to address the Council after which the speaker may elect whether to address any questions from the Council. The time limitation should be reflected on the agenda. The speaker shall identify themselves ~~in writing~~, providing their name, city of residency, and address for the record. Omission of an address will not bar a person from speaking. The person may speak on any topic except:

- a. items scheduled for consideration on that consent agenda;
- b. items scheduled for public hearing on that agenda;
- c. personnel matters; and,
- d. items upon which litigation involving the person or his/her representative and the City is currently pending.

3. Unscheduled Public Comment. The agenda shall include time for “Unscheduled Public Comment.” Any member of the public may address the Council during the schedule on the agenda. The speaker will be permitted three (3) minutes to address the Council after which the speaker may elect whether to address any questions from the Council. The time limitation should be reflected on the agenda. The speaker shall identify themselves ~~in writing~~, providing their name, city of residency, and address for the record. Omission of an address will not bar a person from speaking. The person may speak on any topic except:

- a. items scheduled for consideration on that consent agenda;
- b. items scheduled for public hearing on that agenda;
- c. personnel matters; and,
- d. items upon which litigation involving the person or his/her representative and the City is currently pending.

4. Public Hearings; Consent Agenda Testimony. (a) Any member of the public present may be heard at public hearings on resolutions and ordinances at the time designated on that agenda for the public hearing or as that time may be extended at the discretion of the Council. Any member of the public present may be heard at a time designated on that agenda to accept public comment on matters appearing on the consent agenda. The agenda shall state that the speaker will be permitted three (3) minutes to address the Council. The time limitation should be reflected on the agenda. The speaker shall identify themselves ~~in writing~~, providing their name, city of residency, and address for the record. Omission of an address will not bar a person from speaking. The person shall speak to the issue that is the subject of the public

hearing or item on the consent agenda. The speaker may elect whether to address any questions from the Council.

(b) With respect to public testimony in public hearings and relating to items on the consent agenda, persons present at a meeting may give their time over to another speaker present at the meeting; provided, however, that no single speaker present may speak for more than 30 minutes combined on their own and on others' behalf.

5. Citizen Discussion. The agenda shall include time for citizen discussion ("Discussion"). Any member of the public may be heard under an agenda section for "Citizens" under agenda item "Discussion." The speaker will be permitted five (5) minutes to address the Council after which the speaker may elect whether to address any questions from the Council. The time limitation should be reflected on the agenda. The speaker shall identify themselves in writing, providing their name, city of residency, and address for the record. Omission of an address will not bar a person from speaking. The person may speak on any topic except:

- a. personnel matters; and,
- b. items upon which litigation involving the person or his/her representative and the City is currently pending.

B. Council Packet Preparation

1. All reports, ordinances, resolutions, contracts, documents, or other matters to be submitted to the Council for a regular meeting shall be submitted to the City Clerk not later than four p.m. on the Thursday preceding the Wednesday meeting. The City Clerk shall prepare the agenda for all of these matters according to the order of business, numbering each item consecutively.

2. Council Members and Administration are each encouraged to submit explanatory memoranda for any ~~action~~ item requiring Council action that person requests be placed on the agenda.

C. Agenda and Council Packet Publication and Distribution

1. Notice of the date, time and place, and ~~the~~ non-routine agenda items for each regular Council meeting shall be published in a newspaper of general circulation no later than three (3) days prior to each regular Council meeting.

2. Notice of the date, time, and place, and the agenda for each regular Council meeting shall be posted on the City's official bulletin board at City Hall no later than six (6) days prior to each regular Council meeting.

3. The City Clerk shall post a copy of the meeting packet to the City's web site, and shall also provide a copy of the packet to the Kenai Municipal Library, no later than six (6) days prior to each regular Council meeting.

4. Any person and any organization may request a copy of the meeting packet, either by paper or electronic copy. The City Clerk will provide the copy as soon as practical.

5. "Day" is a calendar day. The day of posting and/or publication and the day of the Council meeting each shall be counted for the purpose of computing compliance with the posting and publication deadlines.

6. “Non-routine agenda items” means scheduled public comments, public hearings, unfinished business items, ordinances for introduction, action items not appearing on the consent agenda, and executive session items.

D. Special Meetings

The agenda format, preparation, posting, publication, and public participation policies set forth in sections A, B, and C, above, do not apply to special meetings of the Council. Notice of special meetings shall be made under KMC 1.10.060 and the agenda shall be circulated to each member of the Council and to the City Manager at least 24 hours prior to the special meeting where practicable. The City Clerk will prepare the agenda for a special meeting after consultation with the Mayor and the City Manager, subject to paragraphs (a) through (d) of KMC 1.15.040. The agenda for a special meeting will not include time for Scheduled Public Comment, Unscheduled Public Comment, or Discussion (Citizen) unless requested by a Council member, the City Manager, or the City Attorney. The agenda shall include time for a public hearing where otherwise required by law for adoption of ordinances and resolutions.

Effective Date: November 15, 2019

Established by Ordinance No. 2347-2009
Amended by Resolution No. 2010-07
Amended by Ordinance No. 3089-2019



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MEMORANDUM

TO: Mayor Gabriel and Kenai City Council
FROM: Council Members Knackstedt and Molloy
DATE: September 23, 2019
SUBJECT: **Ordinance No. 3089-2019**

At the August 21st City Council meeting, the City Clerk brought up a potential cost saving measure by reducing what from the Council's agenda is published in newspaper ads. We have worked with the City Clerk and the City Attorney to develop some amendments to Kenai Municipal Code and an accompanying policy. If enacted, this ordinance would amend Kenai Municipal Code to indicate that noticing requirements are included in policies and procedures which may be amended from time to time by the Council. This ordinance would also amend an associated policy, which has been in place since 2009, to indicate that proper notice includes the date, time and place, and non-routine agenda items being published in a newspaper. "Non-routine agenda items" is also defined in the policy.

Attached to this memo is a spreadsheet that provides examples from the last four months of actual costs to publish the agenda, the cost to publish non-routine agenda items as defined in the policy amendment, and the cost to publish only public hearing items.

Your consideration is appreciated.



Meeting Date	Actual	Non-Routine as defined in proposed policy amendment	Only Public Hearings
5/1/19	\$263.97	\$201.49	\$129.35
5/15/19	\$473.62	\$388.05	\$199.00
6/5/19	\$341.09	\$261.19	\$184.08
6/19/19	\$422.68	\$343.28	\$248.75
7/3/19	\$330.34	\$253.73	\$218.90
8/7/19	\$328.85	\$194.03	\$79.60
8/21/19	\$426.36	\$343.28	\$238.80
9/4/19	\$375.71	\$313.43	\$253.73
9/18/19	\$409.94	\$238.80	\$104.48
Totals	\$3372.56	\$2537.28	\$1656.69

Approximately 25% savings can be seen if Non-Routine items, as defined in the proposed policy amendment, were required to be published.

Approximately 50% savings can be seen if only public hearings were required to be published.

In her memo dated August 13, 2019, the Clerk provided the following actual annual costs:

Year	City Council Agenda
FY19	\$7,198.96
FY18	\$8,048.02
FY17	\$6,757.79
Totals:	\$22,004.77



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MEMORANDUM

TO: Mayor Gabriel and Kenai City Council
FROM: Council Member Knackstedt
DATE: September 23, 2019
SUBJECT: Ordinance No. 3089-2019 Amendments

Council Member Molloy and I worked with the City Clerk and the City Attorney to develop amendments to Kenai Municipal Code and an accompanying policy amending what is published in the newspaper as public notice. While my co-sponsor and I agree that the entire agenda does not need to be published, as reflected in the ordinance and policy, I think the City can go even further. I intend to make the following amendments to the policy:

Amend Policy item C.1. to read as follows:

1. Notice of the date, time and place, and the non-routine public hearing agenda items for each regular Council meeting shall be published in a newspaper of general circulation no later than three (3) days prior to each regular Council meeting.

Amend Policy item C.6. by removing it in its entirety:

6. "Non-routine agenda items" means scheduled public comments, public hearings, unfinished business items, ordinances for introduction, action items not appearing on the consent agenda, and executive session items.

The spreadsheet provided with the sponsor memo provides a cost savings difference of actual costs to publish the agenda, the cost to publish non-routine agenda items as defined in the policy amendment, and the cost to publish only public hearing items.

Consideration was given to also including Executive Sessions in the notice published in a newspaper but after discussions with the City Clerk and City Attorney, it was pointed out that the City Council should retain its ability to go into Executive Session regarding any item on the agenda and Executive Sessions are often informational and action is typically not taken after the session.

Your consideration is appreciated.





Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3090-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE GENERAL AND PUBLIC SAFETY CAPITAL PROJECT FUNDS AND ACCEPTING AN ASSISTANCE TO FIREFIGHTER GRANT FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY FOR THE COOPERATIVE PURCHASE OF SELF-CONTAINED BREATHING APPARATUS FOR THE CITY OF KENAI FIRE DEPARTMENT, NIKISKI FIRE DEPARTMENT AND CENTRAL EMERGENCY SERVICES.

WHEREAS, the City of Kenai Fire Department (KFD), Nikiski Fire Department (NFD), and Central Emergency Services (CES) were successfully awarded a regional Federal Emergency Management Agency, Assistance To Firefighter Grant to purchase new Self Contained Breathing Apparatus (SCBA's); and,

WHEREAS, the City of Kenai Fire Department was the author of the grant and will be responsible for purchasing the SCBA's; and,

WHEREAS, the total amount to purchase the SCBA's is \$1,094,400.00, including \$994,909.09 in Federal grant funding and 10%, \$99,490.91 in required matching funds; and,

WHEREAS, the Fire Department is requesting an increase in estimated revenues and appropriations in the General and Public Safety Capital Project Funds in the amount of \$12,218.19 to cover the City's matching funds portion of the grant; and,

WHEREAS, the City will accept and appropriate matching funds from the Kenai Peninsula Borough in the amount of \$87,272.72, \$68,654.53 from Central Emergency Services and \$18,618.19 from Nikiski Fire, in the Public Safety Capital Project Fund; and,

WHEREAS, it is in the best interest of the City and Borough to use these funds as 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 and expend an Assistance to Firefighter's grant from the Federal Emergency Management Agency for the cooperative purchase of self-contained breathing apparatus for the City of Kenai Fire Department, Nikiski Fire Department, and Central Emergency Services.

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

General Fund:

Increase Estimated Revenues –
Appropriation of Fund Balance

\$12,218.19

Increase Appropriations –
Non-Departmental – Transfer Out \$12,218.19

Section 3. That the estimated revenues and appropriations be increased as follows:

Public Safety Capital Project Fund:
Increase Estimated Revenues:
Transfer from General Fund \$ 12,218.19
Miscellaneous Revenue – Central Emergency Services 68,654.53
Miscellaneous Revenue – Nikiski Fire 18,618.19
Federal Grants – Fire 994,909.09
\$1,094,400

Increase Appropriations –
Machinery & Equipment \$1,094,400

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 16th day of October, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Approved by Finance: 

Introduced: October 2, 2019
Enacted: October 16, 2019
Effective: October 16, 2019



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Tony Prior, Deputy Chief
DATE: September 25, 2019
SUBJECT: Ordinance 3090-2019

The City of Kenai Fire Department (KFD), Nikiski Fire Department (NFD), and Central Emergency Services (CES) cooperatively applied for and were successful in receiving a U.S. Department of Homeland Security, Federal Emergency Management Agency, Assistance to Firefighter Grant (AFG) for the purchase of 171 Self Contained Breathing Apparatus (SCBAs). In order to maintain interoperability in the event of emergencies, and with an aging fleet of SCBA's for the three departments, a memorandum of agreement (MOA) was written to define roles if we were successful in receiving a regional grant for the replacement of the SCBA's. It was felt that chances for award were higher for regional applications and the application was successful in receiving a grant award totalling \$994,909.09 with a required 10% non-federal match of \$99,490.91 for a total project budget of \$1,094,400.00. The \$99,490.91 is divided among the three departments based on the number of air packs each department will receive through the grant.

The City of Kenai Fire Department is the grantee and will be responsible for procurement of the air packs and administration of the grant. As written in the MOA, each department is responsible for providing the 10% grant match funds for their respective number of air packs as listed in the grant. Of the \$99,490.91, KFD is responsible for \$12,218.19, NFD is responsible for \$18,618.18, and CES is responsible for \$68,654.54.

A joint selection and evaluation committee will be formed to test and evaluated air packs for the overall selection and purchase of these packs. We are anticipating on having an RFP done, testing completed and recommendation for purchase by the end of November, 2019.



The chart below describes funding and obligations for each department.

Entity	Awarded Value	90 % Federal Funds	10% Matching Obligation
City of Kenai Fire Dept.	\$134,400.00	\$122,181.82	\$12,218.19
Central Emergency Services	\$755,200.00	\$686,545.45	\$68,654.53
Nikiski Fire Department	\$204,800.00	\$186,181.82	\$18,618.19

We are requesting an increase in estimated revenue and appropriations of \$12,218.19 in the General and Public Safety Capital Projects Fund for the City's match, appropriation \$87,272.72 in match from Borough departments, and the grant amount of \$994,909.09 in the Public Safety Capital Projects Fund.

Your support is respectfully requested.





Sponsored by: Council Member Knackstedt

CITY OF KENAI

ORDINANCE NO. 3091-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING KENAI MUNICIPAL CODE SECTION 17.10.010 – MANDATORY CONNECTION AND ABANDONMENT OF OLD WELL, AND SECTION 17.20.010 - MANDATORY CONNECTIONS AND ABANDONMENT OF OLD ON-SITE SEWER SYSTEMS, TO CLARIFY THE INTENT OF ORDINANCE 3003-2018 AND MAKE HOUSEKEEPING CHANGES.

WHEREAS, Ordinance 3003-2018 was enacted February 7, 2018 limiting the mandatory water and sewer connection requirements in KMC 17.10.010 and 17.20.010 to situations where a mainline is located in a right-of-way or other applicable easement 200 feet or less from a structure and providing an alternative payment option in lieu of a connection; and,

WHEREAS, further review of the water and sewer connection requirements demonstrate that to accomplish the intended purpose of Ordinance 3003-2018 additional code changes are required; and,

WHEREAS, clarifying that the actual public water and sewer mains must be adjacent to a property line on either side of the right of way or easement and not just 200 feet from the applicable structure in a right of way or easement that is adjacent to the property line trigger a connection requirement is necessary; and,

WHEREAS, other housekeeping changes are needed to effectuate the intent of the Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, as follows:

Section 1. Amendment of Section 17.10.010 of the Kenai Municipal Code: That Kenai Municipal Code, Section 17.10.010- Mandatory connection and abandonment of old well, is hereby amended as follows:

17.10.10 Mandatory Connection and Abandonment of Old Well.

(a) Except as provided in subsection (c) below, it shall be mandatory for all structures susceptible to being or currently being a source from which water is being used, to be connected to the public water system provided that any part of the structure is or is to be within two hundred feet (200') of an existing public water main adjacent to the property line [THAT IS] in a right-of-way or other applicable easement (on either side of the right-of-way or easement) [ADJACENT TO THE PROPERTY LINE]. Such distance shall be measured by a straight line notwithstanding the possible impracticality of such being the necessary distance of line being required.

(b) It shall be mandatory for the owner, operator, or users of a private well supplying water to a structure to arrange and to pay for connection of said structure to the available municipal

water system and the abandonment of well(s) no longer being utilized. Connections to the City water distribution system and abandonment of old well(s) shall be as specified by ordinances and regulations of the City of Kenai, and applicable law and regulation of the State of Alaska relating to use of and connection to public water systems and abandonment of old wells.

(c) If a property owner does not connect to a public water main in a location that otherwise requires a property owner to connect as described above, the property owner shall pay the applicable water fee based on the use of the structure as if connected. A property owner cannot maintain a water well when the location of the well interferes with the City's ability to extend a sewer main in a right-of-way or easement. If a well is located in a location that would interfere with the City's ability to extend a sewer main, the property owner must connect to the City water main and appropriately abandon the well at the property owners cost.

Section 2. Amendment of Section 17.20.010 of the Kenai Municipal Code: That Kenai Municipal Code, Section 17.20.010- Mandatory connections and abandonment of old on-site sewer systems, is hereby amended as follows:

17.20.010. Mandatory Connections and Abandonment of Old On-Site Sewer Systems.

(a) Except as provided in subsection (c) below it shall be mandatory for all structures susceptible to being or currently being a source from which sewage may or is being generated, to be connected to the public sewage system provided that any part of the structure is or is to be within two hundred feet (200') of an existing public sewer main adjacent to the property line in a right-of-way or other applicable easement (on either side of the right-of-way or easement). Such distance shall be measured by a straight line notwithstanding the possible impracticality of such being the necessary distance of line being required.

(b) It shall be mandatory for the owner, operator, or users of a private sewer system to a structure to arrange and to pay for connection of said structure to the available municipal sewer system and the abandonment of the on-site sewer system no longer being utilized. Connections and extensions to the City sewer system and abandonment of the old on-site sewer system shall be as specified by ordinances and regulations of the City of Kenai, and applicable law and regulation of the State of Alaska relating to use of and connection to public sewer systems and abandonment of old on-site sewer systems .

(c) If a property owner does not connect to a public sewer main in a location that otherwise requires a property owner to connect as described above, the property owner shall pay the applicable [WATER] sewer fee based on the use of the structure as if connected.

(d) If a sewer service customer has the reasonable possibility they will produce grease or oil-laden wastes, the customer's facility shall be provided with interceptors as required in the plumbing code. This includes any establishment that uses a deep fat fryer or cooking grease or oil. Grease, oil, and sand interceptors shall be provided when, in the opinion of City, they are necessary for the proper handling of wastewater containing grease and oil, or sand. All interception units shall be of type and capacity approved by the Building Official and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at the customer's expense. The sewer service customer is required to keep an interceptor inspection, cleaning,

and repair log which contains information as to the date, time, what is removed, quantity removed, who removed the material and how, when, and where the material from the interceptor is disposed of.

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 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 16th day of October, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Introduced: October 2, 2019
Enacted: October 16, 2019
Effective: November 15, 2019



"Village with a Past, City with a Future"

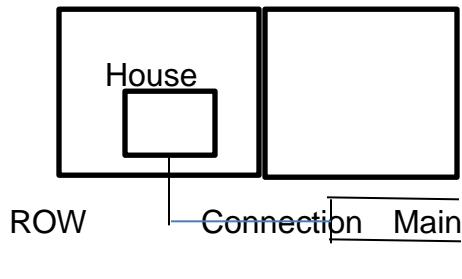
210 Fidalgo Ave, Kenai, Alaska 99611-7794
 Telephone: (907) 283-7535 | Fax: (907) 283-3014
 www.kenai.city

MEMORANDUM

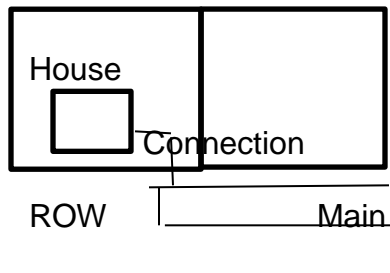
TO: Mayor Gabriel and Kenai City Council
FROM: Council Member Knackstedt
DATE: September 26, 2019
SUBJECT: Ordinance No. 3091-2019

Ordinance No 3091-2019 clarifies the intent of Ordinance 3003-2018 that limited the mandatory water and sewer connection requirements in KMC 17.10.010 and 17.20.010 to situations where a mainline is located in a right-of-way or other applicable easement 200 feet or less from a structure and providing an alternative payment option in lieu of a connection. The original ordinance was enacted in response to unreasonable hardships the prior code language imposed on property owners in certain situations where mains were located within 200 feet of structures but were not in adjacent rights-of ways to the property. The clarification in this Ordinance is that in order to trigger the mandatory connection requirement there must be a main line adjacent to the property line in a right-of-way or easement and the line must within 200 feet of the applicable structure. The prior language did not specify that the main line had to be adjacent to the property line, only that the right-of-way or easement had to be adjacent to the property line. The prior language could result in situations where a property owner runs a connection to a right-of-way or easement and then down the right-of-way or easement to connect to a main that is not adjacent to the property. The City does not want connections running down rights-of-ways or easements. The two scenarios are demonstrated below:

Ordinance 3003-2018



Ordinance 3091-2019



The house keeping amendments include adding the limiting language in 17.20.010 (a) regarding the main being in the right-of-way or an easement that was inadvertently left out of the prior Ordinance and changing the reference to water fee to sewer fee in 17.20.010(c).

Your consideration is appreciated.





Sponsored by: City Clerk

CITY OF KENAI

RESOLUTION NO. 2019-67

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, ESTABLISHING DATES FOR REGULAR MEETINGS OF THE CITY COUNCIL FOR 2020.

WHEREAS, pursuant to KMC 1.10.040(a), regular meetings of the Council shall be at a time set by a resolution of the Council on the first and third Wednesdays of every month; and,

WHEREAS, pursuant to KMC 1.10.040(b) on or before the last meeting of December, the City Clerk shall introduce a resolution, on behalf of Council, establishing the dates for the subsequent year's Council meetings; and,

WHEREAS, this calendar must include a minimum of twenty regular meetings each year and at least one regular meeting each month; and,

WHEREAS, the City's Charter allows for cancellation of meetings by the Mayor due to lack of a quorum or for an emergency, or by a majority of council members for any reason as long as at least twenty (20) regular meeting are held each calendar year and at least one each month; and,

WHEREAS, it is in the best interest of the City for the Council to provide as much advance notification as possible to the public and administration of any cancelled meetings; and,

WHEREAS, timely adopting a calendar of meeting dates, including any cancelled meetings, provides advance notice to the public and administration; and,

WHEREAS, cancelling the first regular meeting of the City Council in January, due to its proximity to the holidays, recognizes Council Members, staff, and residents might be travelling or on leave; and,

WHEREAS, cancelling the second regular meeting of the City Council in November, allows for Council and administration to attend Alaska Municipal League conferences; and,

WHEREAS, cancelling one Council Meeting in January and November, complies with the minimum standards for meeting requirements as provided in the City's Charter and Code.

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

Section 1. That the City Council of Kenai establishes the following Calendar of Meetings for 2020: regular meetings shall be held every first and third Wednesday of each month, except that there will not be a second meeting in November and there will only be one meeting in January on the third Wednesday of the month.

Section 2. That this Calendar may be further amended by Council in compliance with the City Charter and Kenai Municipal Code.

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

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 16th day of October, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk



"Village with a Past, City with a Future"

210 Fidalgo Ave, Kenai, Alaska 99611-7794
Telephone: (907) 283-7535 | Fax: (907) 283-3014
www.kenai.city

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Jamie Heinz, City Clerk
DATE: October 1, 2019
SUBJECT: Resolution No. 2019-67 – Setting Meeting Calendar

Pursuant to KMC 1.10.040(b), this Resolution is intended to establish a calendar for the regular meetings of the City Council in 2020.

Pursuant to City Charter, a meeting may be cancelled by the Mayor due to a lack of a quorum, for an emergency, or by a majority of Council Members for any reason as long as at least twenty (20) regular meetings are held each year and at least one each month. The proposed resolution maintains at least one regular meeting each month and more than the minimum twenty (20) regular meetings each year.

Consistent with previous calendars, this Resolution proposes scheduling regular meetings every first and third Wednesday of each month, except for the months of January and November, when only one meeting would be held. The first meeting in January recognizes the New Year Holiday and that many Council Members, staff, and residents may be travelling or on leave. The second meeting in November coincides with the AML conferences in Anchorage, which are attended by many Council Members and administrative personnel. This meeting schedule maintains more than the minimum twenty (20) regular meetings required each year by City Charter.

In previous years, the second regular meeting of the City Council in July had been cancelled to allow for Council, administration and residents to participate in the personal use fishery and other seasonal activities; however, in 2020, there are five Wednesdays and not having a Council meeting for five weeks so soon after the new budget has become effective would put a hardship on the Administration so a second meeting in July has been included in the proposed calendar.

The calendar attached to this memo is included for your reference and is not an exhibit to the Resolution.

Your consideration is appreciated.



2020

January						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

April						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

July						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

October						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

February						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

May						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

August						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

November						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

March						
Su	Mo	Tu	We	Th	Fr	Sa
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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

June						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

September						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

December						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		



Sponsored by: Administration

CITY OF KENAI

RESOLUTION NO. 2019-68

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE U.S. FISH AND WILDLIFE SERVICE, ALASKA REGION, ALASKA STATE PARKS, AND THE CITY OF KENAI FOR A GATEWAY TO PUBLIC LANDS DISPLAY IN THE KENAI MUNICIPAL AIRPORT.

WHEREAS, the U.S. Fish and Wildlife Service (USFWS), Alaska Region, and the Alaska State Parks, have requested the City to allow and jointly revitalize and produce an interpretive display in the Kenai Municipal Airport which was originally installed in 2004; and,

WHEREAS, a Gateway to Public Lands Display will provide public awareness that the Kenai Airport is the Gateway to the Kenai Peninsula and Western Cook Inlet's State and Federal Public Lands; and,

WHEREAS, the USFWS, State Parks and the City agree to continue their partnership of 15-years, for an additional 5 years; and,

WHEREAS, at the Airport Commission meeting on October 10, 2019, the Airport Commission recommended the City Council approve the Memorandum of Agreement.

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

Section 1. That the City Manager is authorized to execute the attached Memorandum of Agreement with the U.S. Fish and Wildlife Service, Alaska Region, and the Alaska State Parks in the same or substantially same form as attached to this resolution. The City Manager is further authorized to approve an extension of the Agreement.

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

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 16th day of October, 2019.

BRIAN GABRIEL, SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Memorandum of Agreement (MOA)

between

U.S. Fish and Wildlife Service, Alaska Region
1011 East Tudor Road
Anchorage, Alaska 99503-6199

And

- 1) City of Kenai (Kenai Municipal Airport)
- 2) Alaska State Parks

This Memorandum of Agreement between the U.S. Department of Interior, U.S. Fish and Wildlife Service – Alaska Region (hereinafter referred to as the “USFWS”) acting through the Regional National Wildlife Refuge Chief (hereinafter referred to as “Chief”), or their designee and City of Kenai (Kenai Municipal Airport) (hereinafter referred to as the “Airport”) and Alaska State Parks (hereinafter “State Parks”).

PURPOSE

The purpose of this agreement is to allow the USFWS, State Parks, and the Airport to jointly produce the Gateway to Public Lands Display (hereinafter referred to as “Display”) to be installed in the City of Kenai Municipal Airport in Kenai, Alaska. The display will provide travelers to Kenai with information on opportunities to learn about state and federal public lands that Kenai Municipal Airport serves as a Gateway to: Alaska State Parks, Kenai National Wildlife Refuge, Kenai Fjords National Park, Lake Clark National Park, Katmai National Park, Chugach National Forest, and the Alaska Department of Fish and Game Refuges.

Objectives of the joint project are:

- Use the opportunity during the current remodel of the Kenai Municipal Airport to build upon and revitalize a successful 15-year partnership and interpretive display at the Kenai Airport, which was installed in 2004.
- Maintain and improve public awareness that the Kenai Municipal Airport is the gateway to the Kenai Peninsula and Western Cook Inlet’s State and Federal public lands.
- Show of partnership and combine efforts by working together to inform and educate all Alaskans and Americans about their public lands.
- Provide public land neighbors with more information about their nearby public lands.
- Reach the air travel audiences that are not currently being addressed in Anchorage or Kenai airports.
- Encourage informed visitation and recreation on the Kenai Peninsula and Western Cook Inlet public lands thus fulfilling our respective agency missions for public enjoyment of their public lands.

- Support and encourage learning about these public lands, their value and management issues.
- Identify other sources of public lands information such as visitor and interpretive centers on the Kenai Peninsula.

WITNESSETH:

WHEREAS, it is the purpose of the USFWS to provide recreational opportunities within Service administrative units when compatible with the primary conservation objectives of such units, and

WHEREAS, interpretive and educational material and programs enhance the appreciation of our nation's fish and wildlife resources and thereby encourage utilization of recreational opportunities provided on USFWS administrative units, and

WHEREAS, the USFWS desires to promote interpretation, education, and wildlife-dependent recreation information and is one of the federal entities headquartered in Kenai Peninsula, Gateway to multiple state and federal public lands;

WHEREAS, a mission of the Kenai Municipal Airport is to be the commercial air transportation gateway to the Kenai Peninsula Borough and West Cook Inlet.

NOW THEREFORE. Pursuant to authority contained in the Act of October 15, 1966 (16 U.S.C. 460k-2,4); and other laws supplementary thereto and amendatory thereof, and in consideration of the mutual benefits which will accrue to the USFWS and Airport, the parties agree as follows:

- I. AUTHORIZATON: The USFWS and the Airport agree to continue their partnership in offering public lands information to travelers in the Kenai Airport hereinafter described for a period of 5 years commencing on the date of last signature.
- II. AIRPORT, STATE PARKS, AND USFWS RESPONSIBILITIES: For the periods set forth above, the Airport, State Parks, and the USFWS will provide the necessary materials, services, facilities, funds and otherwise perform all things necessary for, or incidental to, the performance of this agreement. It is mutually agreed as follows: the USFWS, State Parks, and the Airport will jointly support and sponsor a display on the public lands of the Kenai Peninsula and Western Cook Inlet, as provided below.
- III. SCOPE OF WORK:
 - A. **Specifically, the USFWS shall:**
 1. Plan, manage, and provide coordination of public lands entities and any vendors to design, fabricate, and install a public lands display in the Kenai Airport by May 15, 2020.
 2. Maintain the display in good condition.

3. Provide any peripherals such as computer or television screens and flip books with annual repair/replacement costs.
4. Seek funds from cooperating federal and state agencies to design, fabricate, and install the display.
5. Seek advice and receive approval from the Airport for any changes to the exhibit after installation.

B. Specifically, the Airport shall:

1. Provide wall space free of charge for the 'Gateway to Your Public Lands' Display.
2. Participate in the exhibit development process by appointing a point of contact to review design, fabrication, and installation proposals and drawings for a timely installation date of May 15, 2020.
3. Provide staff to coordinate on behalf the Airport, the installation of the Display.
4. Once the Display is installed, notify the USFWS of any maintenance or repairs needed to the Display in a timely manner.
5. Provide lighting in the form of 2 sets of track lighting along the north and east walls as part of the terminal renovation project of 2019-2020.

C. Specifically, State Parks shall:

1. Participate in the exhibit development process by appointing a point of contact to review design, fabrication, and installation proposals and drawings for a timely installation date of May 15, 2020.
2. Seek funds from cooperating federal and state agencies to design, fabricate, and install the display.

IV. PERIOD OF PERFORMANCE

The period of performance for this agreement shall be five years. This agreement will automatically renew for one additional 5-year period on October 1 of the last year, unless reasonable notice of cancellation is given by either party before the date of renewal. If no changes have been made in the agreement during the life of the agreement, the agreement may be renewed by memorandum. While the USFWS and Airport reserve the right to terminate the agreement, or any part thereof, at any time upon reasonable notice without the necessity of any legal process, the USFWS and Airport agree to hold a meeting prior to termination discussing the reasons for termination.

V. PROJECT OFFICERS

- A. For the USFWS: Andy Loranger, Refuge Manager, Kenai National Wildlife Refuge, P.O. Box 2139; Ski Hill Rd. Soldotna, Alaska 99669-2139, andy_loranger@fws.gov 907-260-2804
- B. For the Airport: Mary Bondurant, Airport Manager, Kenai Municipal Airport, 305 N. Willow Suite 200, Kenai, AK 99611, mbondurant@kenai.city, 907-283-8281
- C. For State Parks: Jack Blackwell, Superintendent Kenai/Prince William Sound Region, Alaska Division of Parks & Outdoor Recreation, P.O. Box 1247, Soldotna, AK 99669, jack.blackwell@alaska.gov, (907) 262-5581

VI. SPECIAL PROVISIONS

- A. The scope of work and other terms of the agreement may be modified at any time by mutual consent of the signatory parties. No change to this agreement shall be binding upon the USFWS or Cooperator(s) unless and until reduced to writing and signed by both/all parties.
- B. The parties to this agreement agree to be responsible for damages to their own property and injuries to their own employees/volunteers, except for damages/injuries resulting from the fault or negligence of the other party. Any claim for damage to property or persons made against the Government will be pursued in accordance with the provision of the Federal Tort Claims Act.
- C. This MOA may be modified or amended as necessary upon written consent of all parties or may be terminated by either party with a 30 day written notice to all other parties.
- D. This MOA does not affect any final transfer of funds, property, or services on behalf of the U.S. Fish and Wildlife Service. Any discussion of such transfers by the U.S. Fish and Wildlife Service is for planning purposes only, and the actual transfers will be accomplished in accordance with applicable laws, regulations, and procedures.
- E. The principle contacts for this MOA are:
 - a. For the USFWS: Andy Loranger, Refuge Manager, Kenai National Wildlife Refuge, P.O. Box 2139; Ski Hill Rd. Soldotna, Alaska 99669-2139, andy_loranger@fws.gov 907-260-2804
 - b. For the Airport: Mary Bondurant, Airport Manager, Kenai Municipal Airport, 305 N. Willow Suite 200, Kenai, AK 99611, mbondurant@kenai.city, 907-283-8281

- c. For State Parks: Jack Blackwell, Superintendent Kenai/Prince William Sound Region, Alaska Division of Parks & Outdoor Recreation, P.O. Box 1247, Soldotna, AK 99669, jack.blackwell@alaska.gov, (907) 262-5581

VII. TERMINATION

This agreement may be terminated by the Airport or USFWS by giving 30 days advance written notice to the Project Officer for the USFWS with an explanation of the reasons for the termination. If Cooperator(s) should fail to comply with material terms of this agreement after receiving written notice of the deficiencies and a reasonable opportunity to correct them, the USFWS may terminate the agreement by giving written notice to Cooperators. In that event, Cooperator(s) agree to reimburse the USFWS for either (1) any Federal funds previously paid to Cooperator(s), or (2) the reasonable value of the improvements made to Cooperator(s)' land. The USFWS or its agents or contractors may also enter Cooperator's land and remove any equipment and uninstalled materials or structures.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Agreement to be executed as of the date of last signature below.

U.S. FISH AND WILDLIFE SERVICE

CITY OF KENAI

Brian Glaspell, Alaska Region Refuge Chief

Paul Ostrander, Kenai City Manager

(Date)

(Date)

ALASKA STATE PARKS

Ricky Gease, Director

(Date)



"Village with a Past, City with a Future"

210 Fidalgo Ave, Kenai, Alaska 99611-7794
Telephone: (907) 283-7535 | Fax: (907) 283-3014
www.kenai.city

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Mary Bondurant, Airport Manager
DATE: October 4, 2019
SUBJECT: **Resolution No. 2019-68**

In 2003, the USFW Service, Alaska State Parks, and the City entered into an agreement for a public lands display at the north end of the terminal building. This display has been very popular to both travelers and patrons of the airport over the past 15 years.

Airport and City Administration met with USFW and State Parks representatives to discuss the opportunity to upgrade the display along with the terminal rehabilitation project. All agreed that this was an opportune time to revitalize the display and continue a partnership that provides education and public awareness that the Kenai Airport is the Gateway to the Kenai Peninsula and Western Cook Inlet's State and Federal Public lands.

The Airport Commission reviewed the MOA at the October 10, 2019 Commission meeting and recommends Council approval.

Thank you for your consideration.

Attachment





"Village with a Past, City with a Future"

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Telephone: (907) 283-7535 | Fax: (907) 283-3014
www.kenai.city

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Mary Bondurant, Airport Manager
DATE: October 4, 2019
SUBJECT: **Resolution No. 2019-69**

EAN (Enterprise, Alamo, and National) Holdings, LLC is requesting to operate a non-exclusive on-airport car rental concession in the Airport terminal building.

The car rental concession was put out to bid in 2016 for a term of 5 years beginning July 1, 2016 and ending June 30, 2021. There was a 2 year waiting period, which ended in July 2018, should another car rental agency want to enter the agreement. The minimum annual guarantee (MAG) would be the average of the initial 2 qualified bidders MAG.

There has been a vacant car rental counter in the terminal since 2016. Due to the remodel we can now offer the counter space with office space. There are vehicle parking spots in the car rental parking lot.

Thank you for your consideration.





Sponsored by: Legal

CITY OF KENAI

RESOLUTION NO. 2019-70

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, APPROVING A STANDARD LEASE FORM FOR CITY LANDS OUTSIDE THE AIRPORT RESERVE.

WHEREAS, Ordinance No. 3072-2019 (Substitute) was enacted by the Council on October 2, 2019 and created a new lease and sale program for City Lands Outside the Airport Reserve; and,

WHEREAS, a new Standard Lease Form is needed to reflect the changes created by Ordinance No. 3072-2019 (Substitute) and must be approved by Council pursuant to KMC22.05.086.

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

Section 1. That the Lease Form attached hereto for leasing of City Lands Outside the Airport Reserve is approved.

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

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 16th day of October, 2019.

BRIAN GABRIEL, SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

CITY OF KENAI LEASE OF CITY OWNED LANDS

THIS LEASE AGREEMENT entered into this _____ day of _____, 20____, by and between the CITY OF KENAI, 210 Fidalgo Avenue, Kenai, Alaska 99611-7794, and _____, whose address is _____ (“Lessee”).

DEFINITIONS

For the purposes of this Lease the following terms are defined in KMC 22.05.005 (effective as of the date of execution of the lease) as follows:

1. “Amendment” means a formal change to a lease of lands other than a lease extension or renewal.
2. “Annual rent” means an amount paid to the City annually according to the terms of the lease and Kenai Municipal Code.
3. “Assignment” means the transfer of all interest in a lease from one person or entity to another.
4. “City” means the City of Kenai, its elected officials, officers, employees or agents.
5. “Consumer Price Index (CPI)” means the annual CPI for all urban consumers (CPI-U) for Anchorage, Alaska.
6. “Existing lease” means a lease with at least one (1) year of term remaining.
7. “Expiring lease” means a lease with less than one (1) year of term remaining.
8. “Fair market value” means the most probable price which a property should bring in a competitive and open market as determined by a qualified independent appraiser, or the value as determined by the latest appraisal adjusted by the change in Consumer Price Index from the date of the latest appraisal.
9. “Lease extension” means extending the term of an existing lease.
10. “Lease rate percent” means a percentage that when applied to the fair market value of land establishes a rate of rent commensurate with rental rates prevalent in the local area as determined by a qualified real estate appraiser.
11. “Lease renewal” means a new lease of property currently under an existing or expiring lease to an existing lessee or a purchaser.
12. “Market analysis” means an analysis of data collected from other land leases to determine whether a market adjustment in either fair market value or lease rate percentage reflects the market.
13. “Permanent improvement” means a fixed addition or change to land that is not temporary or portable, including a building, building addition, retaining wall, storage tank, earthwork, fill material, gravel, and pavement, and remediation of contamination for which the applicant is not responsible and excluding items of ordinary maintenance, such as glass replacement, painting, roof repairs, door repairs, plumbing repairs, floor covering replacement, or pavement patching.

14. "Professional estimate of the remaining useful life of the principal improvement" means an estimate of the number of remaining years that the principal improvement will be able to function in accordance with its intended purpose prepared by a qualified real estate appraiser, engineer, or architect licensed in Alaska.
15. "Qualified independent appraiser" means a general real estate appraiser certified by the State of Alaska under AS 08.87.
16. "Site development materials" means materials used for preparing a lease site for building construction or to provide a firm surface on which to operate a vehicle or aircraft, including geotextile, fill, gravel, paving, utilities and pavement reinforcement materials.
17. "Site preparation work" means work on the leased premises to include clearing and grubbing, unclassified excavation, classified fill and back fill, a crushed aggregate base course and utility extensions.

**ARTICLE I
PREMISES LEASED**

A. PREMISES: In consideration of Lessee's payment of the rents and performance of all the covenants of this Lease, the City leases to the Lessee, and the Lessee leases from the City, the following described property ("Premises") in the Kenai Recording District, Third Judicial District, State of Alaska ; to wit:

Description of Lease Property

B. NO WARRANTY: Except as may be provided in this Lease, the City makes no specific warranties, expressed or implied, concerning the condition of the Premises including, survey, soils, wetlands, access, and suitability or profitability for any use including those authorized by this Lease, its environmental condition, or the presence or absence of Hazardous Substances in, on, and under the surface. The Lessee takes the Premises on an "as is" basis and without warranty, subject to any and all of the covenants, terms, and conditions affecting the City's title to the Premises.

**ARTICLE II
RIGHTS AND USES**

A. AUTHORIZED USES:

1. USE OF PREMISES: The City authorizes the Lessee to use the Premises for the following purposes only:

List authorized uses and limitations

- 2.

B. RIGHTS RESERVED TO THE CITY:

2. EASEMENTS: The City reserves the right to make grants to third parties or reserve to the City easements or rights of way through, on, or above the Premises. The City will not grant or reserve any easement or right of way that unreasonably interferes with the Lessee's authorized uses of the Premises.
 3. INGRESS, EGRESS AND INSPECTION: The City reserves the right of ingress to and egress from the Premises and the right to enter any part of the Premises, including buildings, for the purpose of inspection or environmental testing at any time. Except in the case of an emergency, all inspections and environmental testing will be coordinated with the Lessee to minimize interference with the Lessee's authorized uses of the Premises.
 4. RIGHT OF FLIGHT [Include for FAA Restricted Land only]: There is hereby reserved to the City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight will include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on the Airport.
- C. PROHIBITED USES: Unless specifically authorized by this Lease or an amendment to this Lease, the following are prohibited:
1. Any use of the Premises other than those authorized in this Lease.
 2. Any use of the Premises that is in violation of a City Ordinance.
 3. The outside storage on the Premises of junk, non-operational support equipment, unused or damaged equipment or material, or solid waste or debris unless allowed pursuant to a conditional use permit under KMC 14.20.
 4. The disposal on the Premises of waste, including any Hazardous Substance, slash, overburden, and construction waste.
 5. The stripping, wasting, or removing any material from the Premises without the prior written approval of the City.
 6. [Include for FAA Restricted Land only]Erecting structures or allowing growth of natural objects that would constitute an obstruction to air navigation, or allowing any activity on the Premises that would interfere with or be a hazard to the flight of aircraft, or interfere with air navigation or communication facilities, serving the Airport.
 7. Any use or activity that is prohibited by applicable law or regulation.

**ARTICLE III
TERM & HOLDOVER**

A. TERM: The initial term of this Lease is for _____ years, from the 1st day of _____, 20__, to the 30th day of _____, 20__.

B. HOLDOVER: If the Lessee holds over and remains in possession of the Premises after the expiration, cancellation or termination of this Lease, the holding over will not operate as an extension of the term of this Lease, but only creates a month-to-month tenancy, regardless of any rent payments accepted by the City. The Lessee's obligations for performance under this Lease will continue during the month-to-month tenancy. The City or Lessee may terminate the Lessee's holdover with ten days' advance written notice.

**ARTICLE IV
RENTS AND FEES**

A. RENT: The initial rent for the Premises is \$_____.00 per year, as established by the City pursuant KMC 22.05.060 and as subject to annual adjustment on July 1 of each year under Article V of this Lease, plus applicable sales tax. The rent shall be payable annually in advance of the first day of each year of the term of this Lease. All payments required by this Lease must be made in U.S. dollars. If the annual rent exceeds \$2,400, the Lessee may, upon written notice to the City, choose to pay the rent in equal monthly installments, payable in advance on or before the anniversary date of the term of this Lease and thereafter at monthly intervals. No conversion of the payment schedule from annual to monthly shall result in the City receiving less rent than it would have received had the conversion not taken place.

1. Rent Credit: A rent credit may be applied for a maximum of five years of lease payments as provided in KMC 22.05.070 (as effective at the time this lease is executed). Once the work is completed and value determined, a credit will be applied to the lease payments, prorated as necessary for the successive five years.

B. RENT PRORATED: Rental for any period less than one year shall be prorated on the basis of the rent payable under this Lease in last full year previous to the prorating.

C. ADDITIONAL RENT: In addition to the rent specified in (a) of this Article, Lessee agrees to pay to the appropriate parties all levies, assessments, and charges as follows:

1. Taxes pertaining to the leasehold interest of the Lessee.
2. Sales tax now enforced or levied in the future, computed upon rent payable in monthly installments whether the Lessee pays rent under this Lease on a monthly or annual basis.

3. All taxes and assessments levied in the future by the City, as if Lessee was the legal owner of record of the Premises.

D. **PAYMENTS:** The Lessee shall make checks, bank drafts, or postal money orders payable to the City of Kenai and deliver payments to City of Kenai, Finance Department, 210 Fidalgo Avenue, Suite 200, Kenai, Alaska 99611-7794 or any other address the City may designate in writing to the Lessee.

E. **INTEREST:** Beginning the day after payment is due, all unpaid rents, charges, and fees required under this Lease will accrue interest at the rate of eight percent (8.0%) per annum. Interest on disputed amounts will not be charged to the Lessee if the dispute is resolved in the Lessee's favor.

F. **LATE PAYMENT PENALTY:** In addition to any interest payable under Provision (E) of this Article, each time the Lessee fails to pay any rent or fee by the date required in this Lease, the City will charge, and the Lessee shall pay, an administrative penalty of ten percent (10.0%) of the amount due and unpaid.

G. **COURTESY BILLINGS:** Lessee acknowledges that any billing statement issued by the City is provided only as a courtesy. The Lessee is obligated to pay all rents and fees when due, regardless of whether or not the Lessee receives a billing statement from the City.

H. **LIEN AGAINST LESSEE:** Any rent, charge, fee, or other consideration which is due and unpaid at the expiration, termination, or cancellation of this Lease will be a lien against the Lessee's property, real or personal.

I. **PAYMENT OF CITY'S COSTS:** The Lessee will pay all reasonable actual expenses, costs, and attorney fees City may incur, with or without formal action, to enforce, defend, or protect this Lease or City's rights under this Lease, including any expense incurred with respect to environmental compliance, bankruptcy or any proceeding that involves the Lessee, the Lease, the Premises, or improvements or personal property on the Premises. The Lessee will make payment within 30 days of the date of each notice from City of any amounts payable under this provision.

J. **PAYMENT FOR SPECIAL SERVICES:** Lessee agrees to pay the City a reasonable fee for any special services or facilities the City agrees to perform, which the City is not otherwise obligated by this Lease to provide and which the Lessee requests from the City in writing.

ARTICLE V ADJUSTMENT OF RENT AND FEES

A. **RENT OR FEE ADJUSTMENT:** The City shall adjust rent or fees payable by the Lessee under Article IV or other provisions of this lease on July 1 of each year of the lease as proved in KMC 22.05.060 (as effective at the time this lease is executed) and shall make any other adjustments to rent as allowed for in KMC 22.05.060.

No rent or fee change shall be effective until 30 days after the date of the City's written notice to the Lessee. If the Lessee believes that any changed rent exceeds the fair market rent for the Premises, the Lessee may appeal a rent change to the City as provided in KMC 22.05.060.

**ARTICLE VI
ASSIGNMENT & SUBLETTING**

A. **INVALID WITHOUT CITY'S CONSENT:** The Lessee may not assign, sublet, or grant a security interest in, by grant or implication, the whole or any part of this Lease, the Premises, or any improvement on the Premises without the written consent of the City. Any proposed assignment, sublease, or security interest must be written and must be submitted to the City bearing the original, notarized signature of all parties. The Lessee may submit unsigned draft documents for the City's conceptual review. However, the City's conceptual approval of a draft document may not be construed as the City's consent to any assignment, sublease, or security interest. All provisions in this Lease extend to and bind the assignees and sub-lessees of the Lessee.

B. **NO WAIVER OF CONSENT:** The City's consent to one assignment, sublease, or security interest will not waive the requirement for the Lessee to obtain the City's consent to any other assignment, sublease, or security interest.

C. **ASSIGNEE / LESSEE OBLIGATIONS:** An assignment must include a provision stating that the assignee accepts responsibility for all of the assignor's (Lessee's) obligations under this Lease, including environmental liability and responsibility. However, unless the City specifically releases the Lessee in writing, the City may hold the Lessee responsible for performing any obligation under this lease which an assignee fails to perform.

D. **OCCUPANCY BEFORE CITY CONSENT:** An assignee or sub-lessee may not occupy the Premises before the City consents to the assignment or sublease in writing.

E. **CONFLICT OF PROVISIONS:** In the event of a conflict between this Lease and an assignment or a sublease, the terms of this Lease control.

F. **LESSEE NOT RELIEVED OF OBLIGATIONS:** The City's consent to any sublease does not relieve or otherwise alter the Lessee's obligations under this Lease.

G. **SECURITY ASSIGNMENTS AND FINANCING:**

1. Subject to the requirements of (A) of this Article VI, the Lessee may assign a security interest in this Lease. The security interest may be in the form of a mortgage, deed of trust, assignment or other appropriate instrument, provided
 - a. the security interest pertains only to the Lessee's leasehold interest;

- b. the security interest does not pertain to or create any interest in City's title to the Premises; and
 - c. the documents providing for the security interest are approved and acceptable to the City.
- 2. If the assignment of a security interest to which the City has consented shall be held by an established lending or financial institution, including a bank, an established insurance company and qualified pension or profit sharing trust, and the lending institution acquires the Lessee's interest in this Lease as a result of a foreclosure action or other remedy of the secured party, or through any transfer in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, the lending institution may transfer its interest in this Lease to a nominee or a wholly owned subsidiary corporation with the prior written consent of the City, provided, the transferee assumes all of the covenants and conditions required to be performed by the Lessee (including payment of any monies owed by Lessee to the City under the lease). In the event of such a transfer, the lending institution shall be relieved of any further liability under this Lessee.
- 3. A holder of a security interest in this Lease consented to by the City shall have, and be subrogated to, any and all rights of the Lessee with respect to the curing of any default of this Lease by Lessee.
- 4. A holder of a security interest consented to by the City that takes possession of this Lease shall not be released from the obligations and liabilities of this Lease unless the holder assigns its leasehold estate to an assignee who is financially capable and otherwise qualified to undertake to perform and observe the conditions of this Lease and the City consents to the assignment. The City's consent will not be unreasonably withheld.

**ARTICLE VII
MAINTENANCE, SNOW REMOVAL & UTILITIES**

A. MAINTENANCE:

- 1. At no cost to the City, the Lessee will keep the Premises and all improvements on the Premises clean, neat and presentable, as reasonably determined by the City.
- 2. At no cost to the City, the Lessee will provide for all maintenance and services at the Premises as may be necessary to facilitate the Lessee's compliance with this Lease and the Lessee's use of the Premises.

3. The Lessee shall comply with all regulations or ordinances of the City that are promulgated for the promotion of sanitation. At no cost to the City, the Lessee shall keep the Premises in a clean and sanitary condition, and control activities on the Premises to prevent the pollution of water.

- 4.

B. SNOW REMOVAL:

1. At no cost to the City, the Lessee is responsible for snow removal on the Premises. The Lessee shall dispose of snow in an off-Premises location approved or provide suitable snow storage within the boundaries of the Premises in accordance with all applicable federal and state laws.
2. Lessee shall not deposit snow in right-of-ways, easements, roads or on City property without written approval of the City..
3. Lessee agrees to not allow an accumulation of snow on the Premises that would cause interference with adjoining leaseholders or the public.

C. UTILITIES: Unless specifically provided otherwise in this Lease, the Lessee shall, at no cost to the City, provide for all utilities at the Premises necessary to facilitate the Lessee's use of the Premises.

**ARTICLE VIII
OPERATIONS**

A. OPERATIONS: The Lessee will ensure that the Lessee, its employees, guests, contractors, sub-lessees, and vendors that perform any activity or function authorized under this Lease shall do so in a manner that ensures the safety of people, the protection of public health and the environment, and the safety and integrity of the Premises.

B. LESSEE'S CONTROL AND RESPONSIBILITY:

1. The Lessee will assume full control and sole responsibility as between Lessee and City for the activities of the Lessee, the Lessee's personnel and employees, and anyone else acting by, on behalf of, or under the authority of the Lessee.
2. The Lessee will immediately notify the City of any condition, problem, malfunction or other occurrence that threatens the safety of the public or City employees, harm to public health or the environment, or the safety or integrity of the Premises.

C. RADIO INTERFERENCE: The Lessee will discontinue the use of any machine or device that interferes with any government-operated transmitter, receiver, or navigation aid

until the cause of the interference is eliminated.

D. **PARKING:** The Lessee will provide adequate vehicle and equipment, parking space on the Premises for Lessee's business or activities.

**ARTICLE IX
ENVIRONMENTAL PROVISIONS**

A. **HAZARDOUS SUBSTANCE:**

1. The lessee will conduct its business and/or operation on the Premises in compliance with all environmental laws and permits. If hazardous substances are handled on the Premises, the Lessee agrees to have properly trained personnel and adequate procedures for safely storing, dispensing, and otherwise handling Hazardous Substances in accordance with all applicable federal, state and local laws.
2. Lessee will promptly give the City notice of proceeding to abate or settle matters relating to the presence of a Hazardous Substance on the Premises or from Lessee's operations on the Premises. The Lessee will allow the City to participate in any such proceedings.

B. **ENVIRONMENTAL INDEMNIFICATION:** If Contamination of the Premises or other property by a Hazardous Substance occurs from the Lessee's operations on the Premises the Lessee will indemnify, defend, and hold the City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses, including, but not limited to, sums paid in settlement of claims, attorney's fees, consultant fees, and expert fees, which arise during or after the term of this Lease as a result of such Contamination. This indemnification of the City by Lessee includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, monitoring, or restorative work required by any federal, state, or local governmental agency because of a Hazardous Substance being present in the soil or groundwater or under the Premises or other properties affected by the Contamination.

C. **REMEDIATION:**

1. In the event of a Hazardous Substance spill on the Premises, the Lessee will immediately notify the City and the Alaska Department of Environmental Conservation and act, promptly, at its sole expense, to contain the spill, repair, any damage, absorb and clean up the spill area, and restore the Premises to a condition satisfactory to the City and otherwise comply with the applicable portions of any environmental law.
2. In addition to any notices required by this Lease, the Lessee will immediately notify and copy the City in writing of any of the following:

- a. Any permit, enforcement, clean up, lien, removal or other governmental or regulatory action instituted, completed, or threatened pursuant to an Environmental Law.
 - b. Any claim made or threatened by any person against the Lessee or arising from the Lessee's operations authorized by this Lease, relating to damage, contribution, compensation, loss or injury resulting from, or claimed to result from any Hazardous Substances in, on, or under the Premises; or
 - c. Any report made by, or on behalf of, the Lessee to any environmental agency arising out of or in connection with any Hazardous Substances in, on, or removed from the Premises, including any complaints, notices, warnings, or asserted violations.
3. Remediation and restoration of the contaminated area must meet all applicable state and federal regulations and must meet the requirements of all governing regulatory authorities.

D. ENVIRONMENTAL AUDIT: The Lessee will provide the City with all investigative data, test results, reports, and any other information gathered or analyzed as part of or in relation to any Environmental Assessment, characterization or audit on the Premises that Lessee performs or causes to be performed after the starting date of this Lease. The Lessee will submit the data, result, report or information to the City within 60 days following the date on which it becomes available to the Lessee.

E. RELEASE OF LESSEE: The City releases the Lessee from liability to the City for Contamination and the presence of Hazardous Substances that existed prior to the commencement date of this lease unless caused or materially contributed to by the Lessee.

F. SURVIVAL OF OBLIGATIONS: The obligations and duties of the City and Lessee under Article IX of this lease shall survive the cancellation, termination or expiration of this lease.

ARTICLE X INDEMNIFICATION & INSURANCE

A. INDEMNIFICATION:

1. The Lessee will indemnify, save harmless, and defend the City, its officers, agents, and employees from and against any and all liabilities, losses, suits, administrative actions, claims, awards, judgments, fines, demands, damages, injunctive relief or penalties of any nature or kind to the full extent of the loss or obligation for property damage, personal injury, death, violation of any regulation or grant agreement, or any other injury or harm resulting from or

arising out of any acts or commission of or omission by the Lessee, Lessee's agents, employees, customers, invitees or arising out of the Lessee's occupation or use of the premises demised or privileges granted, and to pay all costs connected therewith. This indemnification of the City by the Lessee shall include sums paid in settlement of claims, attorney fees, consultant fees, expert fees, or other costs and expenses, directly or indirectly arising from, connected to or on account of this Lease as it relates to the Lessee, the Lessee's activities at or relating to the Premises, or any act or omission by the Lessee, or by any of Lessee's officers, employees, agents, contractors or sub-lessees. These indemnity obligations are in addition to, and not limited by, the Lessee's obligation to provide insurance, and shall survive the expiration or earlier termination of this Lease.

2. The Lessee shall give the City prompt notice of any suit, claim, action or other matter affecting the City to which Paragraph 1, above, may apply, together with a copy of any letter by an attorney on behalf of a complainant, any complaint filed in court, and any notice or complaint by any regulatory agency. The City shall have the right, at its option, to participate cooperatively in the defense of, and settlement negotiations regarding, any such matter, without relieving the Lessee of any of its obligations under this provision.
3. As to any amount paid to others for personal injury or property damage with respect to which an act or omission of the City is a legal cause, notwithstanding Paragraph 1 of this section, the Lessee and the City shall reimburse each other according to the principles of comparative fault. If liability to a third party is subject to apportionment according to comparative fault under this provision, the Lessee and the City shall seek in good faith to achieve non-judicial agreement as to apportionment of fault as between themselves. This apportionment of liability between the City and the Lessee shall not be construed to affect the rights of any person who is not a party to this Lease.

B. **INSURANCE:** At no expense to the City, the Lessee will obtain and keep in force during the term of this Lease, insurance of the type and limits required by this provision. Where specific limits are set, they will be the minimum acceptable limits. If the Lessee's policy contains higher limits, the City will be entitled to coverage to the extent of the higher limits. At the time insurance is obtained by the Lessee, all insurance shall be by a company/corporation rated "A-" or better by A.M. Best. The following policies of insurance are required with the following minimum amounts:

1. Commercial General Liability, including Premises, all operations, property damage, products and completed operations, and personal injury and death, broad-form contractual, with a per-occurrence limit of not less than \$1,000,000 combined single limit. If this lease authorizes the Lessee to engage in the sale or the commercial dispensing or storage of aviation fuel, the policy must not exclude of Lessee's fuel handling activities. This policy must name the City as an additional insured.

2. 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 used by the Lessee.
3. Workers Compensation Insurance. The Lessee will provide and maintain, for all employees, coverage as required under AS 23.30.045, and, where applicable, any other statutory obligations. The policy must waive subrogation against the City.
4. The Lessee will provide the City with proof of insurance coverage in the form of an insurance policy or a certificate of insurance, together with proof that the premiums have been paid, showing the types and monetary limits of coverage secured. All insurance required by this provision must provide that the City be notified at least 30 days prior to any termination, cancellation, or material change in the insurance coverage.
5. If the Lessee's insurance coverage lapses or is canceled, Lessee will immediately, upon written notice by the City, halt all operations on the the Premises. The Lessee will not resume operations until the City receives evidence that the Lessee has obtained current insurance coverage meeting the requirements of this Lease.
6. The City may, at intervals of not less than five years from the beginning date of the term of this Lease and upon written notice to Lessee, revise the insurance requirements required under this Lease. City's determination to revise the insurance requirements will be based on the risks relative to the Lessee's operations, any insurance guidelines adopted by the City, and any applicable law.
7. If the Lessee subleases all or any portion of the Premises under the provisions of this Lease, the Lessee will require the sub-lessee to provide to the insurance coverage required of the Lessee under this Article X.

**ARTICLE XI
LAWS & TAXES**

A. **COMPLIANCE WITH LAW:** Lessee shall comply with all applicable laws, ordinances, and regulations of public authorities now or hereafter in any manner affecting the Premises or the sidewalks, alleys, streets, and ways adjacent to the Premises, or any buildings, structures, fixtures and improvements or the use thereof, whether or not any such laws, ordinances, and regulations which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same. Lessee agrees to hold City financially harmless:

1. From the consequences of any violation of such laws, ordinances, and/or regulations; and

2. From all claims for damages on account of injuries, death, or property damage resulting from such violation.

B. **UNLAWFUL ACTIVITY:** The Lessee shall not permit any unlawful use, occupation, business, or trade to be conducted on the Premises contrary to any law, ordinance, or regulation, including zoning ordinances, rules and regulations.

C. **LICENSES AND PERMITS:** The Lessee will obtain all necessary licenses and permits, pay all taxes and special assessments lawfully imposed upon the Premises, and pay other fees and charges assessed under applicable law. Nothing in this Lease prevents the Lessee from challenging any taxes or special assessments to the appropriate authority.

D. **LITIGATION:** The Kenai Municipal Code, including regulations promulgated thereunder, and the laws of the State of Alaska will govern in any dispute between the Lessee and City. If a dispute continues after exhaustion of administration remedies, any lawsuit must be brought in the courts of the State of Alaska, in Kenai, Alaska.

E. **LESSEE TO PAY TAXES:** Lessee shall pay all lawful taxes and assessments which, during the term of this Lease may become a lien upon or which may be levied by the State, Borough, City, or any other tax levying body, upon any taxable possessory right which Lessee may have in or to the Premises or improvements on the Premises by reason of its use or occupancy or the terms of this Lease provided, however, that nothing in this provision shall prevent Lessee from contesting any increase in a tax or assessment under any applicable law, ordinance, or regulation.

F. **PARTIAL INVALIDITY:** If any term, provision, condition, or part of this Lease is declared by a court of competent jurisdiction to be invalid or unconstitutional, the remaining terms, provisions, conditions, or parts shall continue in full force and effect as though the declaration had not been made.

ARTICLE XII LEASE TERMINATION

A. **CANCELLATION:** The City may, after 30 days' written notice to the Lessee, cancel this Lease and recover possession of the Premises if any of the following violations occur, unless the violation is cured within the 30 days:

1. The Lessee fails to pay when due the rents, additional rents, charges, or other sums specified in this Lease, including any increases made under this Lease.
2. The Lessee's check for payment of any sum due under this Lease is returned for insufficient funds.

3. The Lessee uses or authorizes the use of the Premises for any purpose not authorized by this Lease.
4. The Lessee fails to fully perform and comply with any provision in this Lease.
5. The Lessee violates a provision of Kenai Municipal Code applicable to this Lessee.
6. The court enters a judgment of insolvency against the Lessee.
7. A trustee or receiver is appointed for the Lessee's assets in a proceeding brought by or against the Lessee, or the Lessee files a voluntary petition in bankruptcy.
8. Failure by the Lessee to comply with any land development or permanent improvement construction required by this Lease.

B. ENTRY AND RE-ENTRY: In the event that the Lease should be terminated in accordance with this Article XII, or by summary proceedings or otherwise, or upon the Lessee's abandonment of the Premises or a portion of the Premises, the City or its agents, servants, or representatives may, immediately or any time thereafter, re-enter, and resume possession of the Premises or portion thereof, and remove all persons and property therefrom, without being liable for any damages therefore. No re-entry by the City shall be deemed an acceptance of a surrender of the Lease.

C. CONTINUING OBLIGATIONS UNTIL PREMISES VACATED: The Lessee will continue to pay City rent after the expiration, termination, or cancellation of this lease and to abide by the lease obligations, including providing proof of insurance coverage, through the date Lessee relinquishes possession of and completely vacates the Premises. City will consider the Premises completely vacated if the Lessee has

1. Remediated any environmental contamination for which the Lessee is responsible;
2. Restored the Premises to a neat and clean physical condition acceptable to the City.

D. REASONABLE CURE:

1. In the case of a violation that cannot be reasonably cured within 30 days, a notice of cancellation issued by the City to the Lessee under this Article is stayed if, within the 30-day notice period, the Lessee begins and continues expeditious action to cure the violation. The City will determine if a violation

cannot be reasonably cured within 30 days and what constitutes expeditious action.

2. In the case where, in City's sole determination, Lessee's violation is considered an imminent threat to public health or safety, or the environment, City will direct the Lessee to stop the activity immediately and may reduce the period to cure the violation, or the City may correct the violation pursuant to (E) of this Article.

E. RIGHT OF CITY TO PERFORM:

1. If, after 30 days following notice the Lessee fails or refuses to perform any action required by this Lease, the City will have the right, but not the obligation, to perform any or all such actions required by this Lease at the sole expense of the Lessee. The City will not take action if the Lessee begins and continues expeditious action to perform any action required by this Lease that cannot be reasonably completed within 30 days. The City will, at its sole discretion, determine what constitutes expeditious action and if an action cannot be reasonably performed in 30 days. The City will submit to the Lessee an invoice for the expenses incurred by the City in the performance by the City of any required action. The Lessee will pay the amount of each invoice within 30 days from issuance.
2. If Lessee fails or refuses to perform any action that has been deemed an imminent threat the City will have the right, but not the obligation, to perform any or all such actions required to expeditiously correct the imminent threat. Lessee shall reimburse the City for any cost, including legal fees and administrative costs reasonably incurred by the City in acting to correct the imminent threat violation.

F. WAIVER: A waiver by the City of any default by the Lessee of any provision of this Lease will not operate as a waiver of any subsequent default. If the City waives a default, the City is not required to provide notice to the Lessee to restore or revive any term or condition under this Lease. The waiver by the City of any provision in this Lease cannot be enforced or relied upon unless the waiver is in writing and signed on behalf of the City. The City's failure to insist upon the strict performance by the Lessee of any provision in this Lease is not a waiver or relinquishment for the future, and the provision will continue in full force.

G. NATIONAL EMERGENCY: If the federal government declares a national emergency, neither party may hold the other liable for any inability to perform any part of this Lease as a

result of the national emergency.

H. SURRENDER ON TERMINATION: Except as provided otherwise in this Article XII, Lessee shall, on the last day of the term of this Lease (including any extension or renewal thereof) or upon any earlier termination of this Lease, surrender and deliver up the premises into the possession and use of City without fraud or delay in good order, condition, and repair, except for reasonable wear and tear since the last necessary repair, replacement, restoration or renewal, free and clear of all lettings and occupancies unless expressly permitted by the City in writing, and free and clear of all liens and encumbrances other than those created by and for loans to City.

I. OWNERSHIP AND DISPOSITION OF IMPROVEMENTS:

1. Ownership of Permanent Improvements: Permanent improvements on the Premises, excluding Site Development Materials, constructed, placed, or purchased by the Lessee remain the Lessee's property as long as this Lease remains in effect, including any period of extension or holdover with the consent of the Lessor.
2. Disposition of Site Development Materials: The Lessee acknowledges that, once placed by the Lessee, the removal from the Premises of Site Development Materials can damage the Premises, adversely affect surface water drainage patterns, and destabilize adjacent structures. When placed on the Premises by the Lessee, Site Development Materials, including building pads, parking areas, driveways, and similar structures:
 - a. become a part of the realty and the property of the City of Kenai;
 - b. unless otherwise directed by the Lessor, must be maintained by the Lessee throughout the term of this Lease, including any extensions and periods of holdover; and
 - c. may not be removed by the Lessee without the prior written approval of the Lessor.
3. Disposition of Personal Property and Permanent Improvements Other Than Site Development Materials:
 - a. Unless the Lessor otherwise directs as provided below, when this Lease expires, terminates, or is cancelled and is neither extended nor followed by a successive lease, the departing Lessee may do one or more of the following:
 - i. remove Lessee-owned Permanent Improvements from the Premises, remediate any Contamination for which the Lessee

is responsible, and restore the Premises to a clean and neat physical condition acceptable to the Lessor within 60 days after the expiration, cancellation, or termination date of this Lease;

ii. with written approval from the Lessor, sell Lessee-owned Permanent Improvements to the succeeding lessee, remove all personal property, remediate, any Contamination for which the Lessee is responsible and leave the Premises in a clean and neat physical condition acceptable to the Lessor within 60 days after notice from the Lessor that the Lessor has approved an application for a lease of the Premises by another person or such longer period specified in the notice, but in no event more than 180 days after the expiration, termination, or cancellation date of this Lease;

iii. elect to have the Lessor sell Lessee-owned Permanent Improvements at public auction as provided below, remediate any Contamination for which the Lessee is responsible, and restore the premises to a clean and neat physical condition acceptable to the Lessor. If the Lessor sells Permanent Improvements under this Paragraph for removal from the Premises, the departing Lessee's obligation under this Paragraph continues until the Premises are remediated and restored to a clean and neat physical condition acceptable to the Lessor after the improvements have been removed.

b. If the departing Lessee elects to have the Lessor sell Lessee-owned Permanent Improvements at public auction per this Section, the Lessee shall, within 30 days after the expiration, cancellation, or termination of this Lease:

i. submit to the Lessor a written request and authorization to sell the Permanent Improvements by public auction;

ii. provide to the Lessor an executed conveyance document transferring clear title to the Permanent Improvements to the successful bidder at the public auction, along with authorization to the Lessor, as agent for the Lessee for purposes of the sale only, to endorse the name of the successful bidder on the conveyance document upon receipt of payment of the successful bid price; and

iii. before the date of the public auction, remove all personal property, remediate any Contamination for which the Lessee

is responsible and leave the Premises in a neat and clean physical condition acceptable to the Lessor.

- c. When selling Lessee-owned Permanent Improvements at public auction for the departing Lessee, the Lessor will establish the terms and conditions of the sale. The Lessor shall pay the Lessee any proceeds of the sale of the Permanent Improvements, less the administrative costs of the public auction and any financial obligation the Lessee owes to the Lessor under this Lease. Payment will be made within a reasonable time after the Lessor completes the sale transaction and receives the proceeds, but not to exceed 60 days. If all or a portion of the Permanent Improvements do not sell at public auction, the Lessee will remove those Permanent Improvements, remediate any Contamination for which the Lessee is responsible and restore the Premises to a clean and neat physical condition acceptable to the Lessor within 60 days after the auction.
- d. If the Lessee shows good cause to the Lessor and if it is not inconsistent with the best interest of the City of Kenai, the Lessor will grant an extension of time that is sufficient to allow the Lessee to remove or sell Lessee-owned Permanent Improvements, remediate any Contamination for which the Lessee is responsible and to restore the Premises to a clean and neat physical condition acceptable to the Lessor.
- e. The Lessor will, by written notice, direct the departing Lessee to remove Lessee-owned Permanent Improvements from the Premises, to remediate, consistent with applicable law, any Contamination for which the Lessee is responsible and to restore the Premises to a clean and neat physical condition acceptable to the Lessor if the Lessor determines in writing:
 - i. that the continued presence of the Permanent Improvements on the Premises are not consistent with any written City program or plan required for compliance with applicable federal, state, or local law;
 - ii. that the continued presence of the Permanent Improvements on the Premises is not in the best interest of the City of Kenai; or
 - iii. that the Permanent Improvements present a hazard to public health or safety.
- f. The departing Lessee to whom the Lessor has issued direction under Paragraph e of this Section shall comply with the Lessor's direction

within 60 days after issuance of the direction and at no cost to the Lessor. If the departing Lessee shows good cause to the Lessor, continues to work diligently to comply with Lessor's direction, and if it is not inconsistent with the best interest of the City of Kenai, the Lessor will allow in writing a longer period that is sufficient to allow the Lessee to comply with the Lessor's direction. A departing Lessee who fails to comply with a direction issued by the Lessor under Paragraph e of this Section, shall, within 30 days of being billed by the Lessor, reimburse the Lessor for any costs reasonably incurred by the Lessor, including legal fees and administrative costs, to enforce the Lessor's direction or to remove and dispose of unremoved Lessee-owned improvements, remediate any Contamination for which the Lessee is responsible and restore the Premises.

- g. If the departing Lessee does not timely remove or sell the Lessee-owned Permanent Improvements on the Premises in accordance with the requirements of this Section, any remaining Permanent Improvements and any remaining personal property of the departing Lessee will be considered permanently abandoned. The Lessor may sell, lease, demolish, dispose of, remove, or retain the abandoned property for use as the Lessor determines is in the best interest of the City of Kenai. The departing Lessee shall, within 30 days after being billed by the Lessor, reimburse the Lessor for any costs reasonably incurred by the Lessor, including legal and administrative costs, to demolish, remove, dispose, clear title to, or sell the abandoned property and to remediate and restore the Premises.
- h. After the expiration, termination, or cancellation of the Lease, including any holdover, the departing Lessee loses all right to occupy or use the premises without the express or implied consent of the Lessor. Except as the Lessor notifies the departing Lessee otherwise in writing, the Lessor consents to the departing Lessee's continued use and occupancy of the Premises to diligently accomplish the requirements of this Section. Until the departing Lessee relinquishes possession of and completely vacates the Premises and notifies the Lessor in writing that it has relinquished and vacated the Premises, the departing Lessee shall perform the following as if the lease were still in effect,
 - i. pay rent to the Lessor;
 - ii. maintain the premises;
 - iii. provide the Lessor with evidence of each insurance coverage, if any, required under the Lease; and

- iv. cease using the premises other than to diligently accomplish the requirements of this Section, and to comply with the other requirements of the Lease.
- i. A departing Lessee will not be considered to have relinquished possession and completely vacated the Premises until
 - i. the departing Lessee has:
 - (a) remediated, consistent with applicable law, any Contamination for which the Lessee is responsible; and
 - (b) restored the Premises to a clean and neat physical condition acceptable to the Lessor; and
 - ii. either
 - (a) removed all of the Lessee's Permanent Improvements and personal property from the premises or sold the Permanent Improvements and personal property to a succeeding Lessee under the provisions of this Lease; or
 - (b) transferred title to the Lessee's Permanent Improvements and personal property that remain on the premises to the Lessor.

**ARTICLE XIII
GENERAL COVENANTS**

A. **COSTS AND EXPENSES:** Costs and expenses incident to this lease, including but not limited to recording costs, shall be paid by Lessee.

B. **CARE OF THE PREMISES:** The Lessee shall keep the Premises clean and in good order at the Lessee's own expense, allowing no damage, waste, nor destruction thereof, nor removing any material therefrom, without written permission of the City. At the expiration of the term fixed, or any earlier termination of the Lease, the Lessee will peaceably and quietly quit and surrender the premises to the City.

E. **CONSTRUCTION APPROVAL AND STANDARDS:** Any building construction on the Premises by the Lessee must be compatible with its surroundings and consistent with the uses authorized under this Lease, as determined by the City. The Lessee must obtain the City's written approval before placing fill material, beginning any land development, or constructing or demolishing any improvements on the Premises, and before beginning any alterations,

modifications, or renovation of existing structures on the Premises. The Lessee must submit to the City detailed drawings of the proposed development, alteration, modification, or renovation, together with specifications or any other information the City reasonably requires. [Include for FAA Restricted Land only]Further, the Lessee will submit to City evidence of the Lessee's compliance with Federal Aviation Administration regulation 14 CFR Part 77.

E. LEASE SUBORDINATE TO CITY FINANCING REQUIREMENTS: Lessee agrees that City may modify this Lease to meet revised requirements for Federal or State grants, or to conform to the requirements of any revenue bond covenant. However, the modification shall not act to reduce the rights or privileges granted the Lessee by this Lease, nor act to cause the Lessee financial loss.

F. RIGHT TO ENJOYMENT AND PEACEABLE POSSESSION: City hereby agrees and covenants that the Lessee, upon paying rent and performing other covenants, terms, and conditions of this Lease, shall have the right to quietly and peacefully hold, use, occupy, and enjoy the Premises, except that the following shall not construed as a denial of the right of quiet or peaceable possession:

1. Any inconvenience caused by public works projects in or about the Premises; and
2. Any other entries by the City on the Premises reserved or authorized under other provisions of this Lease.

G. NO PARTNERSHIP OR JOINT VENTURE CREATED: It is expressly understood that the City shall not be construed or held to be a partner or joint venture of Lessee in the conduct of the Lessee's activities or business on the Premises. The relationship between the City and the Lessee is, and shall at all times remain, strictly that of landlord and tenant, respectively.

H. DISCRIMINATION: The Lessee will not discriminate on the grounds of race, color, religion, national origin, ancestry, age, or sex against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or state law. The Lessee recognizes the right of the City to take any action necessary to enforce this provision, including actions required pursuant to any federal or state law.

I. [Include for FAA Restricted Land only]AFFIRMATIVE ACTION: If required by 14 CFR Part 152, subpart E, the Lessee will undertake an affirmative action program to insure that no person will be excluded from participating in any employment activities offered by the Lessee on the grounds of race, creed, color, national origin, or sex. No person may be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by subpart E. The Lessee further agrees that it will require its sub-organization(s) provide assurance to the City to the same effect that they will also undertake affirmative action programs and require assurances from their sub-organization(s) as required by 14 CFR, Part 152, subpart E.

Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to title 49, code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulation may be amended.

J. INTEGRATION, MERGER, AND MODIFICATION: This Lease sets out all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the Premises whether oral or written. No modification or amendment of this Lease is effective unless in writing and signed on behalf of the City and the Lessee.

K. RIGHT TO ADOPT RULES: City reserves the right to adopt, amend, and enforce reasonable rules and regulations governing the City, including the Premises. The City shall not be liable to Lessee for any diminution or deprivation of possession, or of Lessee's rights under this Lease, on account of the exercise of the City's authority reserved under this provision. Furthermore, the Lessee shall not be entitled to terminate the whole or any portion of the leasehold estate created under this Lease, by reason of the exercise of the City's authority reserved under this provision, unless the exercise thereof so interferes with Lessee's use and occupancy of the Premises as to constitute a termination, in whole or in part, of this Lease by operation of law under the laws of the State of Alaska and of the United States made applicable to the states.

L. LESSEE'S OBLIGATION TO PREVENT AND REMOVE LIENS: Lessee will not permit any liens including, but not limited to, mechanics', laborers', or materialmen's liens obtainable or available under the then existing laws, to stand against the Premises or improvements on the Premises for any labor or material furnished to Lessee or claimed to have been furnished to Lessee or to the Lessee's agents, contractors, or sub-lessees, in connection with work of any character performed or claimed to have been performed on the Premises or improvements by or at the direction or sufferance of Lessee. Provided, however, the Lessee shall have the right to provide a bond as contemplated by Alaska law and contest the validity or amount of any such lien or claimed lien. Upon a final determination of the lien or claim for lien, the Lessee will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Lessee's own expense.

M. CONDEMNATION: In the event the Premises or any part thereof shall be condemned and taken for a public or a quasi-public use, then upon payment of any award or compensation

arising from the condemnation or taking, the City and the Lessee shall make a good faith effort to agree upon

1. the division of the proceeds;
2. the abatement in rent payable during the term or any extension of the term of this Lease; and
3. other adjustments as the parties may agree upon as being just and equitable under all the circumstances.

If, within thirty days after the award has been paid into Court, the City and Lessee are unable to agree upon what division, abatement in rent, and other adjustments as are just and equitable, the dispute shall be determined by arbitration.

N. SUCCESSORS IN INTEREST: This Lease shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto, subject to such specific limitations on assignment as are provided for in this Lease.

O. NOTICES:

1. Any notices required by this Lease must be in writing and must be delivered personally or mailed by certified or registered mail in a prepaid envelope. A mailed notice
 - a. must be addressed to the respective party at the address written on the first page of this Lease or to the latest address designated in accordance with (2) of this Provision (O); and
 - b. shall be deemed delivered on the date it is deposited in a U.S. general or branch post office.
2. The City or the Lessee may, from time to time, designate a new address at which they will receive notices by providing the other party with written notice at least 15 days prior to the effective date of the change. An address change notice must be delivered according to the procedure set out in (1) of this Provision (O).

P. RETENTION OF RENTAL: In the event the City terminates this Lease because of any breach by the Lessee, the City shall retain any unused balance of the rental payment last made by the Lessee City as partial or total liquidated damages for the breach.

Q. FIRE PROTECTION: The Lessee will take all reasonable precautions to prevent, and take all necessary action to suppress destructive or uncontrolled fires and comply with all laws, regulations, and rules promulgated and enforced by the City for fire protection.

R. PERSONAL USE OF MATERIALS: No interest in coal, oil, gas or any other mineral, or in any deposit of stone or gravel valuable for extraction or utilization is included in the Premises or in the rights granted by this lease. The Lessee shall not sell or remove from the Premises for use elsewhere any timber, stone, gravel, peat moss, topsoil or any other material valuable for building or commercial purposes.

S. APPROVAL OF OTHER AUTHORITIES: The granting of this lease by the City does not relieve the Lessee of the responsibility to obtain any license or permit as may be required by federal, state, or local law.

T. EXECUTION BY THE PARTIES: This Lease is of no effect unless signed by the Lessee, or a duly authorized representative of Lessee, and an authorized representative of the City.

U. CAPTIONS: The captions of the provisions of this Lease are for convenience only and do not necessarily define, limit, describe, or construe the contents of any provision.

V. RIGHTS OF CONSTRUCTION: This Lease is intended to make public property available for private use, while at all times protecting the public interest to the greatest extent possible. Following the rule that transfers of interest in public property are to be strictly construed in favor of the public property landlord, all rights granted to the Lessee under this Lease will be strictly construed, and all rights of the City and the protections of the public interest will be liberally construed.

W. LESSEE ACKNOWLEDGEMENT: The Lessee acknowledges that the Lessee has read this Lease and fully understands its terms, that the Lessee has been fully advised or has had the opportunity of advice by separate legal counsel, and voluntarily executes this Lease. Lessee also acknowledges and agrees that the rule of interpretation under which a document is construed against the drafter will not apply to this Lease.

X. APPROVAL BY LESSOR: Any approval required of the Lessor by this Lease will not be unreasonably withheld. The Lessor's approval does not waive the Lessee's legal responsibility or liability to comply with all applicable federal and state laws and regulations.

**ARTICLE XIV
SURVEY, IMPROVEMENTS AND PERFORMANCE BOND**

A. SURVEY: The Lessee is solely responsible, at its sole expense, to confirm or establish the physical location of the boundaries of the Premises prior to beginning any construction thereon, including clearing grubbing, back-filling and environmental sampling. Any survey of the Premises shall be performed by a Land Surveyor registered in the State of Alaska. The Lessee shall furnish the City with a copy of the plat of any survey performed on the Premises by, or on behalf of, the Lessee.

B. IMPROVEMENTS:

1. **REQUIRED IMPROVEMENTS:** At no cost to the City, Lessee agrees to complete land development and construction of Permanent Improvements including _____, by no later than _____, with an aggregate cost of at least \$ _____, excluding financing costs. In addition to the as-built drawings required by this Lease, the Lessee must submit to the City written evidence that the Lessee has completed the land development and constructed improvements on the Premises with an aggregate cost or investment of not less than \$ _____.

The evidence of cost must be submitted to the City within sixty days of the completion of the development and improvements, but by no later than _____.

- a. Costs considered toward the aggregate cost of permanent improvements include building construction, design, labor, materials, materials shipping, permits, equipment, soil testing, environmental baseline report, and environmental assessment directly related to the construction; premises and as-built surveys; site preparation, including excavation, geotextile fabric, filling, grading, fill material, gravel, and pavement, remediation of environmental contamination (unless Lessee caused or Materially Contributed To the Contamination); and utility connection costs.
 - b. The cost of Permanent Improvements excludes:
 1. work performed by the City and not reimbursed by the Lessee; and
 2. work performed by the Lessee and reimbursed by the City.
2. **FAILURE TO COMPLETE IMPROVEMENTS:** If the Lessee fails to complete the required construction within the time allowed under (b)(1) of this Article, including any extensions granted, the City will execute against and the Lessee will forfeit, any bond or other guarantee given by the Lessee and, as applicable, City will:
 - a. initiate cancellation of the lease; or
 - b. reduce the term of the lease to a period that is consistent with the portion of the required construction timely completed.
 3. **APPEARANCE:** When completed, all improvements on the Premises must be neat, presentable, and compatible with the authorized use of the Premises under this Lease, as determined by the City.

4. CITY APPROVAL REQUIRED: The Lessee must first obtain the City's written approval before beginning any land development, construction or demolition of any improvements on the Premises, or before beginning any alterations, modifications, or renovation of existing structures on the Premises. The Lessee must submit to the City detailed drawings of the proposed development, alteration, modification, or renovation. [Include for FAA Restricted Land only]Further, the Lessee will submit to City evidence of the Lessee's compliance with the FAA regulation 14 CFR Part 77.

5. CITY APPROVAL WITHHELD: The City's approval of any construction, alteration, modification, or renovation will not be withheld unless
 - a. the Lessee fails to demonstrate adequate financial resources to complete the project;
 - b. the project plans, specifications, and agency approvals are incomplete;
 - c. the proposed project would result in a violation of an applicable ordinance, regulation, or law;
 - d. the proposed project would interfere with or is incompatible with the safety, security, maintenance, or operations of the City;
 - e. [Include for FAA Restricted Land only]the proposed project is inconsistent with the Airport Master Plan;
 - f. the proposed project is inconsistent with the terms of the lease, zoning ordinances, or the City's Comprehensive Plan;
 - g. the project plans do not make sufficient provision for drainage, vehicle, and equipment parking, or for snow storage; or
 - h. the proposed project does not conform to generally recognized engineering principles or applicable fire or building codes.

6. DEMOLITION: Prior to any demolition of any structure(s) on the Premises, Lessee will deliver to City a written scope of work that, at a minimum, lists the structure(s) that are to be demolished and the timeframe for demolition and removal of the debris from the Premises. City will review Lessee's scope for demolition and issue Lessee written approval for the work to be done.

7. BUILDING SETBACK: No building or other permanent structure may be constructed or placed in violation of the City's setback requirements.

8. **AS-BUILT DRAWINGS:** Within sixty days after completion of construction or placement of improvements upon the Premises, the Lessee will deliver to the City a copy of an as-built drawing, acceptable to the City, showing the location and dimensions of the improvements, giving distances to all Premises' boundaries. If the Lessee constructs underground improvements, the Lessee will appropriately mark the surface of the land with adequate surface markers. The type, quantity, and distance between such markers will be subject to approval of the City.
9. **DAMAGE TO IMPROVEMENTS:** If Lessee's improvements on the Premises are damaged or destroyed, Lessee will cause the improvements to be repaired or rebuilt, and restored to normal function within two years following the damage or destruction. If the Lessee fails to timely rebuild or restore the improvements, the City may, at its sole discretion, either reduce the term of this Lease commensurate with the estimated value of the Lessee's remaining, fully functional improvements on the Premises, or cancel this Lease.
10. **DAMAGE NEAR EXPIRATION:** If Lessee's improvements are damaged to the extent that more than 50% of the space is unusable and the damage occurs within five years of the expiration of the term of this Lease, Lessee may remove the damaged improvements, restore the Premises and terminate this Lease.

C. **PERFORMANCE BOND (Optional):** Prior to beginning the construction of permanent improvements required under (1) of this Article, the Lessee shall submit to the City a performance bond, deposit, or other security in the amount of \$_____. The form of the bond or other security shall be subject to the City's approval.

D. **SURRENDER ON TERMINATION:** Lessee shall, on the last day of the term of this Lease or upon any earlier termination of this Lease, surrender and deliver upon the premises into the possession and use of City without fraud or delay in good order, condition, and repair, except for reasonable wear and tear since the last necessary repair, replacement, restoration or renewal, free and clear of all lettings and occupancies unless expressly permitted by the City in writing, and free and clear of all liens and encumbrances other than those created by and for loans to City. Upon the end of the term of this Lease, including any extension or renewal, or any earlier termination thereof, title to the buildings, improvements and building equipment shall automatically vest in City without requirement of any deed, conveyance, or bill of sale thereon. However, if City should require any such document in confirmation hereof, Lessee shall execute, acknowledge, and deliver the same and shall pay any charge, tax, and fee asserted or imposed by any and all governmental unites in connection herewith.

E. **NOTICE OF CONSTRUCTION:** The Lessee agrees to notify the City in writing three days prior to commencing any construction project valued in excess of \$1,000.00 on the Premises. The Lessee agrees to assist in the posting of a notice of non-responsibility and maintenance of the notice on the Premises during construction. Lessee agrees that in the event the Lessee fails to notify the City as required by this Provision (f), the Lessee shall

THIRD JUDICIAL DISTRICT) ss.
)

THIS IS TO CERTIFY that on this ____ day of _____, 20__, Paul Ostrander, City Manager of the City of Kenai, Alaska, being personally known to me or having produced satisfactory evidence of identification, appeared before me and acknowledged the voluntary and authorized execution of the foregoing instrument on behalf of said City.

Notary Public for Alaska
My Commission Expires: _____

ATTEST:

Jamie Heinz, City Clerk

SEAL:

Approved as to Lease Form:

Scott Bloom, City Attorney

AFTER RECORDING RETURN TO:
City of Kenai
210 Fidalgo Avenue
Kenai, AK 99611



"Village with a Past, City with a Future"

210 Fidalgo Ave, Kenai, Alaska 99611-7794
Telephone: (907) 283-7535 | Fax: (907) 283-3014
www.kenai.city

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Scott Bloom, City Attorney
DATE: October 10, 2019
SUBJECT: **Resolution No. 2019 – 70 Standard Lease Form**

The Council recently enacted a new lands code regulating the City's leasing of City lands outside the airport reserve. Pursuant to newly enacted KMC 22.05.086- Form of Lease, Council must approve a new Standard Lease Form. The new Lease form is very similar to the Standard Lease Form approved recently for Airport Reserve properties. A redline version of the lease form is provided so you can see the differences. Because City lands outside the airport reserve may be restricted by FAA deed/ grant language, the new standard lease form has optional clauses to use if such restrictions apply.

Also of note, the new Standard Lease Form does not include an option to purchase as contemplated by the new code provisions. This option, if desired by the lessee and approved by the City will be a separate form that will need to be approved individually by Council. Until the City goes through the process of executing a few of these, I am unsure if a standard form can be used efficiently given the potential uniqueness of each property and transaction.

Your consideration is appreciated.



CITY OF KENAI MUNICIPAL AIRPORT
LEASE OF AIRPORT RESERVE CITY OWNED LANDS

THIS LEASE AGREEMENT entered into this _____ day of _____, 20____, by and between the CITY OF KENAI, 210 Fidalgo Avenue, Kenai, Alaska 99611-7794, and _____, whose address is _____ (“Lessee”).

DEFINITIONS

For the purposes of this Lease the following terms are defined in KMC ~~224.0540.00520~~ (effective as of the date of execution of the lease) as follows:

- ~~1. Airport — the Kenai Municipal Airport, including all the runways, taxiways, aprons, water lanes, water taxiways, and all City-owned real estate located within the boundaries of the Airport Reserve as defined in KMC Chapter 21.05, Airport Administration and Operation.~~
- ~~2. Airport Manager — the official to whom the City Manager of the City has delegated the authority and responsibility of managing and directing the activities of the Airport. “Airport Manager” includes that person’s authorized representative.~~
- ~~3. City — the City of Kenai, its elected officials, officers, employees or agents.~~
- ~~4. City Manager — the official to whom the Kenai City Council has delegated the responsibility of managing and directing all activities of the City.~~
- ~~5. Contamination — the unpermitted presence of any released Hazardous Substance.~~
- ~~6. Environmental Law — any applicable federal, state, or local statute, law, regulation, ordinance, code, permit, order, decision, judgment of any governmental entity relating to environmental matters, including littering and dumping.~~
- ~~7. FAA — the abbreviation for the Federal Aviation Administration.~~
- ~~8. Hazardous Substance — any substance that is defined under an Environmental Law as hazardous waste, Hazardous Substance, hazardous material, toxic, pollutant, contaminant, petroleum, petroleum product, or oil.~~
- ~~9. KMC — the abbreviation for the Kenai Municipal Code.~~
- ~~10. Permanent Improvement — a fixed addition or change to land that is not temporary or portable, including a building, building addition, gravel fill, pavement, retaining wall, storage tank, well, and remediation of contamination for what the lessee is not responsible~~

1. "Amendment" means a formal change to a lease of lands other than a lease extension or renewal.
2. "Annual rent" means an amount paid to the City annually according to the terms of the lease and Kenai Municipal Code.
3. "Assignment" means the transfer of all interest in a lease from one person or entity to another.
4. "City" means the City of Kenai, its elected officials, officers, employees or agents.
5. "Consumer Price Index (CPI)" means the annual CPI for all urban consumers (CPI-U) for Anchorage, Alaska.
6. "Existing lease" means a lease with at least one (1) year of term remaining.
7. "Expiring lease" means a lease with less than one (1) year of term remaining.
8. "Fair market value" means the most probable price which a property should bring in a competitive and open market as determined by a qualified independent appraiser, or the value as determined by the latest appraisal adjusted by the change in Consumer Price Index from the date of the latest appraisal.
9. "Lease extension" means extending the term of an existing lease.
10. "Lease rate percent" means a percentage that when applied to the fair market value of land establishes a rate of rent commensurate with rental rates prevalent in the local area as determined by a qualified real estate appraiser.
11. "Lease renewal" means a new lease of property currently under an existing or expiring lease to an existing lessee or a purchaser.
12. "Market analysis" means an analysis of data collected from other land leases to determine whether a market adjustment in either fair market value or lease rate percentage reflects the market.
13. "Permanent improvement" means a fixed addition or change to land that is not temporary or portable, including a building, building addition, retaining wall, storage tank, earthwork, fill material, gravel, and pavement, and remediation of contamination for which the applicant is not responsible and excluding items of ordinary maintenance, such as glass replacement, painting, roof repairs, door repairs, plumbing repairs, floor covering replacement, or pavement patching.
14. "Professional estimate of the remaining useful life of the principal improvement" means an estimate of the number of remaining years that the principal improvement will be able to function in accordance with its intended purpose prepared by a qualified real estate appraiser, engineer, or architect licensed in Alaska.
15. "Qualified independent appraiser" means a general real estate appraiser certified by the State of Alaska under AS 08.87.
16. "Site development materials" means materials used for preparing a lease site for building construction or to provide a firm surface on which to operate a vehicle or aircraft, including geotextile, fill, gravel, paving, utilities and pavement reinforcement materials.
17. "Site preparation work" means work on the leased premises to include clearing and grubbing, unclassified excavation, classified fill and back fill, a crushed aggregate base course and utility extensions.

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**ARTICLE I
PREMISES LEASED**

A. PREMISES: In consideration of Lessee's payment of the rents and performance of all the covenants of this Lease, the City leases to the Lessee, and the Lessee leases from the City, the following described property ("Premises") in the Kenai Recording District, Third Judicial District, State of Alaska ~~and located on the Airport~~; to wit:

Description of Lease Property

B. NO WARRANTY: Except as may be provided in this Lease, the City makes no specific warranties, expressed or implied, concerning the condition of the Premises including, survey, soils, wetlands, access, and suitability or profitability for any use including those authorized by this Lease, its environmental condition, or the presence or absence of Hazardous Substances in, on, and under the surface. The Lessee takes the Premises on an "as is" basis and without warranty, subject to any and all of the covenants, terms, and conditions affecting the City's title to the Premises.

**ARTICLE II
RIGHTS AND USES**

A. AUTHORIZED USES:

1. USE OF PREMISES: The City authorizes the Lessee to use the Premises for the following purposes only:

List authorized uses and limitations

2. ~~CONTINUOUS OPERATIONS: Unless the City approves otherwise in writing, the Lessee will operate on the Premises on a continuous basis, uninterrupted by any period of closure over 15 consecutive days. The Lessee will give the City written notice before closing the Lessee's business on the Premises for more than 10 consecutive days. The notice must state the reason for the closure and the date on which the Lessee will re-open for business. This provision does not apply to any period during which the Lessee is unable to operate its business as a result of an act or directive of the City, or as a result of a closure of the Airport or loss of the Lessee's buildings on the Premises due to fire or natural disaster.~~

B. RIGHTS RESERVED TO THE CITY:

- ~~1. RIGHT TO GRANT TO OTHERS: The City reserves the right to grant to others any rights and privileges not specifically granted to the Lessee on an exclusive basis. The rights and privileges granted to the Lessee in this Lease are the only rights and privileges granted to the Lessee by this Lease.~~

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2. EASEMENTS: The City reserves the right to make grants to third parties or reserve to the City easements or rights of way through, on, or above the Premises. The City will not grant or reserve any easement or right of way that unreasonably interferes with the Lessee's authorized uses of the Premises.
 3. INGRESS, EGRESS AND INSPECTION: The City reserves the right of ingress to and egress from the Premises and the right to enter any part of the Premises, including buildings, for the purpose of inspection or environmental testing at any time. Except in the case of an emergency, all inspections and environmental testing will be coordinated with the Lessee to minimize interference with the Lessee's authorized uses of the Premises.
 4. RIGHT OF FLIGHT [Include for FAA Restricted Land only]: There is hereby reserved to the City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight will include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on the Airport.
- C. PROHIBITED USES: Unless specifically authorized by this Lease or an amendment to this Lease, the following are prohibited:
1. Any use of the Premises other than those authorized in this Lease.
 2. Any use of the Premises that is in violation of a City Ordinance ~~or an Airport regulation.~~
 3. The outside storage on the Premises of junk, ~~salvage aircraft or vehicle parts,~~ non-operational support equipment, unused or damaged equipment or material, or solid waste or debris unless allowed pursuant to a conditional use permit under KMC 14.20.
 4. The disposal on the Premises ~~or the Airport~~ of waste ~~materials generated by the Lessee,~~ including any Hazardous Substance, slash, overburden, and construction waste.
 5. The stripping, wasting, or removing any material from the Premises without the prior written approval of the City.
 6. [Include for FAA Restricted Land only] Erecting structures or allowing growth of natural objects that would constitute an obstruction to air navigation, or allowing any activity on the Premises that would interfere with or be a hazard to the flight of aircraft, or interfere with air navigation or communication facilities, serving the Airport.

7. Any use or activity that is prohibited by applicable law or regulation.

**ARTICLE III
TERM & HOLDOVER**

A. TERM: The initial term of this Lease is for _____ years, from the 1st day of _____, 20__, to the 30th day of _____, 20__.

B. HOLDOVER: If the Lessee holds over and remains in possession of the Premises after the expiration, cancellation or termination of this Lease, the holding over will not operate as an extension of the term of this Lease, but only creates a month-to-month tenancy, regardless of any rent payments accepted by the City. The Lessee's obligations for performance under this Lease will continue during the month-to-month tenancy. The City or Lessee may terminate the Lessee's holdover with ten days' advance written notice.

**ARTICLE IV
RENTS AND FEES**

A. RENT: The initial rent for the Premises is \$_____.00 per year, as established by the City pursuant KMC ~~224.0549.0690~~ and as subject to annual adjustment on July 1 of each year under Article V of this Lease, plus applicable sales tax. The rent shall be payable annually in advance of the first day of each year of the term of this Lease. All payments required by this Lease must be made in U.S. dollars. If the annual rent exceeds \$2,400, the Lessee may, upon written notice to the City, choose to pay the rent in equal monthly installments, payable in advance on or before the anniversary date of the term of this Lease and thereafter at monthly intervals. No conversion of the payment schedule from annual to monthly shall result in the City receiving less rent than it would have received had the conversion not taken place.

1. Rent Credit: A rent credit may be applied for a maximum of five years of lease payments as provided in KMC ~~224.0549.0740~~ (as effective at the time this lease is executed). Once the work is completed and value determined, a credit will be applied to the lease payments, prorated as necessary for the successive five years.

B. RENT PRORATED: Rental for any period less than one year shall be prorated on the basis of the rent payable under this Lease in last full year previous to the prorating.

C. ADDITIONAL RENT: In addition to the rent specified in (a) of this Article, Lessee agrees to pay to the appropriate parties all levies, assessments, and charges as follows:

1. Taxes pertaining to the leasehold interest of the Lessee.
2. Sales tax now enforced or levied in the future, computed upon rent payable in monthly installments whether the Lessee pays rent under this Lease on a monthly or annual basis.

3. All taxes and assessments levied in the future by the City, as if Lessee was the legal owner of record of the Premises.

D. **PAYMENTS:** The Lessee shall make checks, bank drafts, or postal money orders payable to the City of Kenai and deliver payments to City of Kenai, Finance Department, 210 Fidalgo Avenue, Suite 200, Kenai, Alaska 99611-7794 or any other address the City may designate in writing to the Lessee.

E. **INTEREST:** Beginning the day after payment is due, all unpaid rents, charges, and fees required under this Lease will accrue interest at the rate of eight percent (8.0%) per annum. Interest on disputed amounts will not be charged to the Lessee if the dispute is resolved in the Lessee's favor.

F. **LATE PAYMENT PENALTY:** In addition to any interest payable under Provision (E) of this Article, each time the Lessee fails to pay any rent or fee by the date required in this Lease, the City will charge, and the Lessee shall pay, an administrative penalty of ten percent (10.0%) of the amount due and unpaid.

G. **COURTESY BILLINGS:** Lessee acknowledges that any billing statement issued by the City is provided only as a courtesy. The Lessee is obligated to pay all rents and fees when due, regardless of whether or not the Lessee receives a billing statement from the City.

H. **LIEN AGAINST LESSEE:** Any rent, charge, fee, or other consideration which is due and unpaid at the expiration, termination, or cancellation of this Lease will be a lien against the Lessee's property, real or personal.

I. **PAYMENT OF CITY'S COSTS:** The Lessee will pay all reasonable actual expenses, costs, and attorney fees City may incur, with or without formal action, to enforce, defend, or protect this Lease or City's rights under this Lease, including any expense incurred with respect to environmental compliance, bankruptcy or any proceeding that involves the Lessee, the Lease, the Premises, or improvements or personal property on the Premises. The Lessee will make payment within 30 days of the date of each notice from City of any amounts payable under this provision.

J. **PAYMENT FOR SPECIAL SERVICES:** Lessee agrees to pay the City a reasonable fee for any special services or facilities the City agrees to perform, which the City is not otherwise obligated by this Lease to provide and which the Lessee requests from the City in writing.

**ARTICLE V
ADJUSTMENT OF RENT AND FEES**

A. **RENT OR FEE ADJUSTMENT:** The City shall adjust rent or fees payable by the Lessee under Article IV or other provisions of this lease on July 1 of each year of the lease as

proved in KMC ~~224.0540.06090~~ (as effective at the time this lease is executed) and shall make any other adjustments to rent as allowed for in KMC ~~224.0540.0690~~.

No rent or fee change shall be effective until 30 days after the date of the City's written notice to the Lessee. If the Lessee believes that any changed rent exceeds the fair market rent for the Premises, the Lessee may appeal a rent change to the City as provided in KMC ~~224.0540.0690~~.

ARTICLE VI ASSIGNMENT & SUBLETTING

A. **INVALID WITHOUT CITY'S CONSENT:** The Lessee may not assign, sublet, or grant a security interest in, by grant or implication, the whole or any part of this Lease, the Premises, or any improvement on the Premises without the written consent of the City. Any proposed assignment, sublease, or security interest must be written and must be submitted to the City bearing the original, notarized signature of all parties. The Lessee may submit unsigned draft documents for the City's conceptual review. However, the City's conceptual approval of a draft document may not be construed as the City's consent to any assignment, sublease, or security interest. All provisions in this Lease extend to and bind the assignees and sub-lessees of the Lessee.

B. **NO WAIVER OF CONSENT:** The City's consent to one assignment, sublease, or security interest will not waive the requirement for the Lessee to obtain the City's consent to any other assignment, sublease, or security interest.

C. **ASSIGNEE / LESSEE OBLIGATIONS:** An assignment must include a provision stating that the assignee accepts responsibility for all of the assignor's (Lessee's) obligations under this Lease, including environmental liability and responsibility. However, unless the City specifically releases the Lessee in writing, the City may hold the Lessee responsible for performing any obligation under this lease which an assignee fails to perform.

D. **OCCUPANCY BEFORE CITY CONSENT:** An assignee or sub-lessee may not occupy the Premises before the City consents to the assignment or sublease in writing.

E. **CONFLICT OF PROVISIONS:** In the event of a conflict between this Lease and an assignment or a sublease, the terms of this Lease control.

F. **LESSEE NOT RELIEVED OF OBLIGATIONS:** The City's consent to any sublease does not relieve or otherwise alter the Lessee's obligations under this Lease.

G. **SECURITY ASSIGNMENTS AND FINANCING:**

1. Subject to the requirements of (A) of this Article VI, the Lessee may assign a security interest in this Lease. The security interest may be in the form of a mortgage, deed of trust, assignment or other appropriate instrument, provided

- a. the security interest pertains only to the Lessee's leasehold interest;
 - b. the security interest does not pertain to or create any interest in City's title to the Premises; and
 - c. the documents providing for the security interest are approved and acceptable to the City.
2. If the assignment of a security interest to which the City has consented shall be held by an established lending or financial institution, including a bank, an established insurance company and qualified pension or profit sharing trust, and the lending institution acquires the Lessee's interest in this Lease as a result of a foreclosure action or other remedy of the secured party, or through any transfer in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, the lending institution may transfer its interest in this Lease to a nominee or a wholly owned subsidiary corporation with the prior written consent of the City, provided, the transferee assumes all of the covenants and conditions required to be performed by the Lessee (including payment of any monies owed by Lessee to the City under the lease). In the event of such a transfer, the lending institution shall be relieved of any further liability under this Lessee.
3. A holder of a security interest in this Lease consented to by the City shall have, and be subrogated to, any and all rights of the Lessee with respect to the curing of any default of this Lease by Lessee.
4. A holder of a security interest consented to by the City that takes possession of this Lease shall not be released from the obligations and liabilities of this Lease unless the holder assigns its leasehold estate to an assignee who is financially capable and otherwise qualified to undertake to perform and observe the conditions of this Lease and the City consents to the assignment. The City's consent will not be unreasonably withheld.

**ARTICLE VII
MAINTENANCE, SNOW REMOVAL & UTILITIES**

A. MAINTENANCE:

- 1. At no cost to the City, the Lessee will keep the Premises and all improvements on the Premises clean, neat and presentable, as reasonably determined by the City.
- 2. At no cost to the City, the Lessee will provide for all maintenance and services at the Premises as may be necessary to facilitate the Lessee's compliance with this Lease and the Lessee's use of the Premises.

3. The Lessee shall comply with all regulations or ordinances of the City that are promulgated for the promotion of sanitation. At no cost to the City, the Lessee shall keep the Premises in a clean and sanitary condition, and control activities on the Premises to prevent the pollution of water.

4. ~~The Lessee agrees to comply with all decisions and directions of the City's Airport Manager regarding maintenance and operation of the Airport, and the use of the Airport by the Lessee.~~

B. SNOW REMOVAL:

1. At no cost to the City, the Lessee is responsible for snow removal on the Premises. The Lessee shall dispose of snow in an off-Premises location approved ~~in writing by the City~~ or provide suitable snow storage within the boundaries of the Premises in accordance with all applicable federal and state laws. ~~At the request of the Airport Manager, the Lessee shall submit a snow removal plan for the Premises to the Manager for review. Upon approval of the Lessee's plan by the Airport Manager, the Lessee shall conduct all snow removal operations on the Premises in accordance with the approved plan.~~

2. Lessee shall not deposit snow ~~in right-of-ways, easements, roads or on City property without written approval of the City on an apron, taxiway, safety area, or other aircraft maneuvering surface provided for common use by others without the prior written of the Airport Manager.~~

3. Lessee agrees to not allow an accumulation of snow on the Premises that would cause interference with adjoining leaseholders or ~~other users of the Airport~~ the public.

C. UTILITIES: Unless specifically provided otherwise in this Lease, the Lessee shall, at no cost to the City, provide for all utilities at the Premises necessary to facilitate the Lessee's use of the Premises.

**ARTICLE VIII
OPERATIONS**

A. ~~OPERATIONS ON THE AIRPORT:~~ The Lessee will ensure that the Lessee, its employees, guests, contractors, sub-lessees, and vendors that perform any activity or function authorized under this Lease shall do so in a manner that ensures the safety of people, the protection of public health and the environment, and the safety and integrity of ~~the Airport and~~ the Premises.

B. LESSEE'S CONTROL AND RESPONSIBILITY:

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1. The Lessee will assume full control and sole responsibility as between Lessee and City for the activities of the Lessee, the Lessee's personnel and employees, and anyone else acting by, on behalf of, or under the authority of the Lessee, ~~on the Airport, including the Premises.~~
2. The Lessee will immediately notify the City of any condition, problem, malfunction or other occurrence that threatens the safety ~~of the public~~ ~~people~~ or ~~the Airport~~ ~~City employees~~, harm to public health or the environment, or the safety or integrity of the Premises.

C. RADIO INTERFERENCE: The Lessee will discontinue the use of any machine or device that interferes with any government-operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

~~D. WILDLIFE: The Lessee acknowledges that a concentration of birds or other wildlife on an airport constitutes a significant hazard to aircraft operations. The Lessee agrees to keep the Premises clean of fish slime, fish waste, or any other material that might attract birds or other wildlife. The Lessee accepts full responsibility to maintain the Premises, control operations, and take all reasonable measures to prevent a concentration of birds or other wildlife on the Premises.~~

~~D.E. PARKING: The Lessee will provide adequate vehicle and, equipment, and aircraft parking space on the Premises for Lessee's business or activities, or confine parking to such other places on the Airport as may be approved or designated in writing by the Airport Manager.~~

**ARTICLE IX
ENVIRONMENTAL PROVISIONS**

A. HAZARDOUS SUBSTANCE:

1. The lessee will conduct it business and/or operation on the Premises in compliance with all environmental laws and permits. If hazardous substances are handled on the Premises, the Lessee agrees to have properly trained personnel and adequate procedures for safely storing, dispensing, and otherwise handling Hazardous Substances in accordance with all applicable federal, state and local laws.
2. Lessee will promptly give the City notice of proceeding to abate or settle matters relating to the presence of a Hazardous Substance on the Premises or from Lessee's operations on the ~~Premises~~ ~~Airport~~. The Lessee will allow the City to participate in any such proceedings.

B. ENVIRONMENTAL INDEMNIFICATION: If Contamination of the Premises or other property by a Hazardous Substance occurs from the Lessee's operations on the Premises the

Lessee will indemnify, defend, and hold the City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses, including, but not limited to, sums paid in settlement of claims, attorney's fees, consultant fees, and expert fees, which arise during or after the term of this Lease as a result of such Contamination. This indemnification of the City by Lessee includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, monitoring, or restorative work required by any federal, state, or local governmental agency because of a Hazardous Substance being present in the soil or groundwater or under the Premises or other properties affected by the Contamination.

C. REMEDIATION:

1. In the event of a Hazardous Substance spill on the Premises, the Lessee will immediately notify the City and the Alaska Department of Environmental Conservation and act, promptly, at its sole expense, to contain the spill, repair, any damage, absorb and clean up the spill area, and restore the Premises to a condition satisfactory to the City and otherwise comply with the applicable portions of any environmental law.
2. In addition to any notices required by this Lease, the Lessee will immediately notify and copy the City in writing of any of the following:
 - a. Any permit, enforcement, clean up, lien, removal or other governmental or regulatory action instituted, completed, or threatened pursuant to an Environmental Law.
 - b. Any claim made or threatened by any person against the Lessee or arising from the Lessee's operations authorized by this Lease, relating to damage, contribution, compensation, loss or injury resulting, from, or claimed to result from any Hazardous Substances in, on, or under ~~the~~ the Premises~~Airport~~; or
 - c. Any report made by, or on behalf of, the Lessee to any environmental agency arising out of or in connection with any Hazardous Substances in, on, or removed from the Premises, including any complaints, notices, warnings, or asserted violations.
3. Remediation and restoration of the contaminated area must meet all applicable state and federal regulations and must meet the requirements of all governing regulatory authorities.

D. ENVIRONMENTAL AUDIT: The Lessee will provide the City with all investigative data, test results, reports, and any other information gathered or analyzed as part of or in relation to any Environmental Assessment, characterization or audit on the Premises ~~or the Airport~~ that Lessee performs or causes to be performed after the starting date of this Lease. The Lessee will submit the data, result, report or information to the City within 60 days following the date

on which it becomes available to the Lessee.

E. **RELEASE OF LESSEE:** The City releases the Lessee from liability to the City for Contamination and the presence of Hazardous Substances that existed prior to the commencement date of this lease unless caused or materially contributed to by the Lessee.

F. **SURVIVAL OF OBLIGATIONS:** The obligations and duties of the City and Lessee under Article IX of this lease shall survive the cancellation, termination or expiration of this lease.

**ARTICLE X
INDEMNIFICATION & INSURANCE**

A. **INDEMNIFICATION:**

1. The Lessee will indemnify, save harmless, and defend the City, its officers, agents, and employees from and against any and all liabilities, losses, suits, administrative actions, claims, awards, judgments, fines, demands, damages, injunctive relief or penalties of any nature or kind to the full extent of the loss or obligation for property damage, personal injury, death, violation of any regulation or grant agreement, or any other injury or harm resulting from or arising out of any acts or commission of or omission by the Lessee, Lessee's agents, employees, customers, invitees or arising out of the Lessee's occupation or use of the premises demised or privileges granted, and to pay all costs connected therewith. This indemnification of the City by the Lessee shall include sums paid in settlement of claims, attorney fees, consultant fees, expert fees, or other costs and expenses, directly or indirectly arising from, connected to or on account of this Lease as it relates to the Lessee, the Lessee's activities at or relating to the Premises Airport, or any act or omission by the Lessee, or by any of Lessee's officers, employees, agents, contractors or sub-lessees. These indemnity obligations are in addition to, and not limited by, the Lessee's obligation to provide insurance, and shall survive the expiration or earlier termination of this Lease.
2. The Lessee shall give the City prompt notice of any suit, claim, action or other matter affecting the City to which Paragraph 1, above, may apply, together with a copy of any letter by an attorney on behalf of a complainant, any complaint filed in court, and any notice or complaint by any regulatory agency. The City shall have the right, at its option, to participate cooperatively in the defense of, and settlement negotiations regarding, any such matter, without relieving the Lessee of any of its obligations under this provision.
3. As to any amount paid to others for personal injury or property damage with respect to which an act or omission of the City is a legal cause, notwithstanding Paragraph 1 of this section, the Lessee and the City shall reimburse each other according to the principles of comparative fault. If liability to a third party is

subject to apportionment according to comparative fault under this provision, the Lessee and the City shall seek in good faith to achieve non-judicial agreement as to apportionment of fault as between themselves. This apportionment of liability between the City and the Lessee shall not be construed to affect the rights of any person who is not a party to this Lease.

B. **INSURANCE:** At no expense to the City, the Lessee will obtain and keep in force during the term of this Lease, insurance of the type and limits required by this provision. Where specific limits are set, they will be the minimum acceptable limits. If the Lessee's policy contains higher limits, the City will be entitled to coverage to the extent of the higher limits. At the time insurance is obtained by the Lessee, all insurance shall be by a company/corporation rated "A-" or better by A.M. Best. The following policies of insurance are required with the following minimum amounts:

1. Commercial General Liability, including Premises, all operations, property damage, products and completed operations, and personal injury and death, broad-form contractual, with a per-occurrence limit of not less than \$1,000,000 combined single limit. If this lease authorizes the Lessee to engage in the sale or the commercial dispensing or storage of aviation fuel, the policy must not exclude of Lessee's fuel handling activities. This policy must name the City as an additional insured.
2. 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 used by the Lessee.
3. Workers Compensation Insurance. The Lessee will provide and maintain, for all employees, coverage as required under AS 23.30.045, and, where applicable, any other statutory obligations. The policy must waive subrogation against the City.
4. The Lessee will provide the City with proof of insurance coverage in the form of an insurance policy or a certificate of insurance, together with proof that the premiums have been paid, showing the types and monetary limits of coverage secured. All insurance required by this provision must provide that the City be notified at least 30 days prior to any termination, cancellation, or material change in the insurance coverage.
5. If the Lessee's insurance coverage lapses or is canceled, Lessee will immediately, upon written notice by the City, halt all operations on the ~~Airport, including~~ the Premises. The Lessee will not resume operations until the City receives evidence that the Lessee has obtained current insurance coverage meeting the requirements of this Lease.
6. The City may, at intervals of not less than five years from the beginning date of the term of this Lease and upon written notice to Lessee, revise the insurance

requirements required under this Lease. City's determination to revise the insurance requirements will be based on the risks relative to the Lessee's operations, any insurance guidelines adopted by the City, and any applicable law.

7. If the Lessee subleases all or any portion of the Premises under the provisions of this Lease, the Lessee will require the sub-lessee to provide to the insurance coverage required of the Lessee under this Article X.

ARTICLE XI LAWS & TAXES

A. **COMPLIANCE WITH LAW:** Lessee shall comply with all applicable laws, ordinances, and regulations of public authorities now or hereafter in any manner affecting ~~the Airport~~, the Premises or the sidewalks, alleys, streets, and ways adjacent to the Premises, or any buildings, structures, fixtures and improvements or the use thereof, whether or not any such laws, ordinances, and regulations which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same. Lessee agrees to hold City financially harmless:

1. From the consequences of any violation of such laws, ordinances, and/or regulations; and
2. From all claims for damages on account of injuries, death, or property damage resulting from such violation.

B. **UNLAWFUL ACTIVITY:** The Lessee shall not permit any unlawful use, occupation, business, or trade to be conducted on the Premises contrary to any law, ordinance, or regulation, including zoning ordinances, rules and regulations.

C. **LICENSES AND PERMITS:** The Lessee will obtain all necessary licenses and permits, pay all taxes and special assessments lawfully imposed upon the Premises, and pay other fees and charges assessed under applicable law. Nothing in this Lease prevents the Lessee from challenging any taxes or special assessments to the appropriate authority.

D. **LITIGATION:** The Kenai ~~M~~municipal ~~C~~ode, including regulations promulgated thereunder, and the laws of the State of Alaska will govern in any dispute between the Lessee and City. If a dispute continues after exhaustion of administration remedies, any lawsuit must be brought in the courts of the State of Alaska, in Kenai, Alaska.

E. **LESSEE TO PAY TAXES:** Lessee shall pay all lawful taxes and assessments which, during the term of this Lease may become a lien upon or which may be levied by the State, Borough, City, or any other tax levying body, upon any taxable possessory right which Lessee may have in or to the Premises or improvements on the Premises by reason of its use or occupancy or the terms of this Lease provided, however, that nothing in this provision shall

prevent Lessee from contesting any increase in a tax or assessment under any applicable law, ordinance, or regulation.

F. PARTIAL INVALIDITY: If any term, provision, condition, or part of this Lease is declared by a court of competent jurisdiction to be invalid or unconstitutional, the remaining terms, provisions, conditions, or parts shall continue in full force and effect as though the declaration had not been made.

**ARTICLE XII
LEASE TERMINATION**

A. CANCELLATION: The City may, after 30 days' written notice to the Lessee, cancel this Lease and recover possession of the Premises if any of the following violations occur, unless the violation is cured within the 30 days:

1. The Lessee fails to pay when due the rents, additional rents, charges, or other sums specified in this Lease, including any increases made under this Lease.
2. The Lessee's check for payment of any sum due under this Lease is returned for insufficient funds.
3. The Lessee uses or authorizes the use of the Premises for any purpose not authorized by this Lease.
4. The Lessee fails to fully perform and comply with any provision in this Lease.
5. The Lessee violates a provision of Kenai Municipal Code applicable to this Lessee.
6. The court enters a judgment of insolvency against the Lessee.
7. A trustee or receiver is appointed for the Lessee's assets in a proceeding brought by or against the Lessee, or the Lessee files a voluntary petition in bankruptcy.
8. Failure by the Lessee to comply with any land development or permanent improvement construction required by this Lease.

B. ENTRY AND RE-ENTRY: In the event that the Lease should be terminated in accordance with this Article XII, or by summary proceedings or otherwise, or upon the Lessee's abandonment of the Premises or a portion of the Premises, the City or its agents, servants, or representatives may, immediately or any time thereafter, re-enter, and resume possession of the Premises or portion thereof, and remove all persons and property therefrom, without being

liable for any damages therefore. No re-entry by the City shall be deemed an acceptance of a surrender of the Lease.

C. CONTINUING OBLIGATIONS UNTIL PREMISES VACATED: The Lessee will continue to pay City rent after the expiration, termination, or cancellation of this lease and to abide by the lease obligations, including providing proof of insurance coverage, through the date Lessee relinquishes possession of and completely vacates the Premises. City will consider the Premises completely vacated if the Lessee has

1. Remediated any environmental contamination for which the Lessee is responsible;
2. Restored the Premises to a neat and clean physical condition acceptable to the City.

D. REASONABLE CURE:

1. In the case of a violation that cannot be reasonably cured within 30 days, a notice of cancellation issued by the City to the Lessee under this Article is stayed if, within the 30-day notice period, the Lessee begins and continues expeditious action to cure the violation. The City will determine if a violation cannot be reasonably cured within 30 days and what constitutes expeditious action.
2. In the case where, in City's sole determination, Lessee's violation is considered an imminent threat to ~~the airport~~, public health or safety, or the environment, City will direct the Lessee to stop the activity immediately and may reduce the period to cure the violation, or the City may correct the violation pursuant to (E) of this Article.

E. RIGHT OF CITY TO PERFORM:

1. If, after 30 days following notice the Lessee fails or refuses to perform any action required by this Lease, the City will have the right, but not the obligation, to perform any or all such actions required by this Lease at the sole expense of the Lessee. The City will not take action if the Lessee begins and continues expeditious action to perform any action required by this Lease that cannot be reasonably completed within 30 days. The City will, at its sole discretion, determine what constitutes expeditious action and if an action cannot be reasonably performed in 30 days. The City will submit to the Lessee an invoice for the expenses incurred by the City in the performance by the City of any required action. The Lessee will pay the amount of each invoice within 30 days from issuance.

2. If Lessee fails or refuses to perform any action that has been deemed an imminent threat the City will have the right, but not the obligation, to perform any or all such actions required to expeditiously correct the imminent threat. Lessee shall reimburse the City for any cost, including legal fees and administrative costs reasonably incurred by the City in acting to correct the imminent threat violation.

F. WAIVER: A waiver by the City of any default by the Lessee of any provision of this Lease will not operate as a waiver of any subsequent default. If the City waives a default, the City is not required to provide notice to the Lessee to restore or revive any term or condition under this Lease. The waiver by the City of any provision in this Lease cannot be enforced or relied upon unless the waiver is in writing and signed on behalf of the City. The City's failure to insist upon the strict performance by the Lessee of any provision in this Lease is not a waiver or relinquishment for the future, and the provision will continue in full force.

~~G. AIRPORT CLOSURE:~~

- ~~1. If the City closes the airport to aircraft operations for sixty days or less, this Lease will remain in full force and effect without adjustment~~
- ~~2. If the City closes the Airport to aircraft operations for more than sixty days, but not permanently, and this Lease is for aviation or direct aviation support uses, the Lessee may, upon written notice to the City, either terminate the Lease or retain the Lease and receive a fifty (50%) percent rent reduction or credit for that portion of the closure that exceeds sixty days.~~
- ~~3. If the City permanently closes the Airport to aircraft operations and
 - ~~a. this Lease is for aviation or direct aviation support uses, the Lessee may terminate this agreement by written notice to the City; or~~
 - ~~b. this Lease is for non-aviation uses, the Lessee may request in writing to have the Lease terminated. The City will consider the Lessee's request in light of the City's best interest and either terminate the Lease, or deny the Lessee's request in writing.~~~~

~~H. DISASTERS: The Lessee or City may cancel this lease upon written notice to the other party if:~~

- ~~1. the Premises becomes unusable through no fault of either party and performance under this lease becomes impossible; or~~

~~2. the Airport becomes unusable through no fault of either party and the performance under this lease becomes impossible.~~

~~If the Lessee elects in writing that it will continue to operate after notice from City to Lessee that the Airport has become unusable, the Lessee's obligations under the Lease will continue, but City shall be under no obligation to continue to perform.~~

~~Causes for termination of the lease under this provision (G) include acts of God, the public enemy, and the United States.~~

~~G.~~ NATIONAL EMERGENCY: If the federal government declares a national emergency, neither party may hold the other liable for any inability to perform any part of this Lease as a result of the national emergency.

~~H.~~ SURRENDER ON TERMINATION: Except as provided otherwise in this Article XII, Lessee shall, on the last day of the term of this Lease (including any extension or renewal thereof) or upon any earlier termination of this Lease, surrender and deliver up the premises into the possession and use of City without fraud or delay in good order, condition, and repair, except for reasonable wear and tear since the last necessary repair, replacement, restoration or renewal, free and clear of all lettings and occupancies unless expressly permitted by the City in writing, and free and clear of all liens and encumbrances other than those created by and for loans to City.

~~I.~~ OWNERSHIP AND DISPOSITION OF IMPROVEMENTS:

1. Ownership of Permanent Improvements: Permanent improvements on the Premises, excluding Site Development Materials, constructed, placed, or purchased by the Lessee remain the Lessee's property as long as this Lease remains in effect, including any period of extension or holdover with the consent of the Lessor.
2. Disposition of Site Development Materials: The Lessee acknowledges that, once placed by the Lessee, the removal from the Premises of Site Development Materials can damage the Premises, adversely affect surface water drainage patterns, and destabilize adjacent structures. When placed on the Premises by the Lessee, Site Development Materials, including building pads, parking areas, driveways, and similar structures:
 - a. become a part of the realty and the property of the City of Kenai;
 - b. unless otherwise directed by the Lessor, must be maintained by the Lessee throughout the term of this Lease, including any extensions and periods of holdover; and

- c. may not be removed by the Lessee without the prior written approval of the Lessor.

3. Disposition of Personal Property and Permanent Improvements Other Than Site Development Materials:

- a. Unless the Lessor otherwise directs as provided below, when this Lease expires, terminates, or is cancelled and is neither extended nor followed by a successive lease, the departing Lessee may do one or more of the following:
 - i. remove Lessee-owned Permanent Improvements from the Premises, remediate any Contamination for which the Lessee is responsible, and restore the Premises to a clean and neat physical condition acceptable to the Lessor within 60 days after the expiration, cancellation, or termination date of this Lease;
 - ii. with written approval from the Lessor, sell Lessee-owned Permanent Improvements to the succeeding lessee, remove all personal property, remediate, any Contamination for which the Lessee is responsible and leave the Premises in a clean and neat physical condition acceptable to the Lessor within 60 days after notice from the Lessor that the Lessor has approved an application for a lease of the Premises by another person or such longer period specified in the notice, but in no event more than 180 days after the expiration, termination, or cancellation date of this Lease;
 - iii. elect to have the Lessor sell Lessee-owned Permanent Improvements at public auction as provided below, remediate any Contamination for which the Lessee is responsible, and restore the premises to a clean and neat physical condition acceptable to the Lessor. If the Lessor sells Permanent Improvements under this Paragraph for removal from the Premises, the departing Lessee's obligation under this Paragraph continues until the Premises are remediated and restored to a clean and neat physical condition acceptable to the Lessor after the improvements have been removed.
- b. If the departing Lessee elects to have the Lessor sell Lessee-owned Permanent Improvements at public auction per this Section, the Lessee shall, within 30 days after the expiration, cancellation, or termination of this Lease:

- i. submit to the Lessor a written request and authorization to sell the Permanent Improvements by public auction;
 - ii. provide to the Lessor an executed conveyance document transferring clear title to the Permanent Improvements to the successful bidder at the public auction, along with authorization to the Lessor, as agent for the Lessee for purposes of the sale only, to endorse the name of the successful bidder on the conveyance document upon receipt of payment of the successful bid price; and
 - iii. before the date of the public auction, remove all personal property, remediate any Contamination for which the Lessee is responsible and leave the Premises in a neat and clean physical condition acceptable to the Lessor.
- c. When selling Lessee-owned Permanent Improvements at public auction for the departing Lessee, the Lessor will establish the terms and conditions of the sale. The Lessor shall pay the Lessee any proceeds of the sale of the Permanent Improvements, less the administrative costs of the public auction and any financial obligation the Lessee owes to the Lessor under this Lease. Payment will be made within a reasonable time after the Lessor completes the sale transaction and receives the proceeds, but not to exceed 60 days. If all or a portion of the Permanent Improvements do not sell at public auction, the Lessee will remove those Permanent Improvements, remediate any Contamination for which the Lessee is responsible and restore the Premises to a clean and neat physical condition acceptable to the Lessor within 60 days after the auction.
- d. If the Lessee shows good cause to the Lessor and if it is not inconsistent with the best interest of the City of Kenai, the Lessor will grant an extension of time that is sufficient to allow the Lessee to remove or sell Lessee-owned Permanent Improvements, remediate any Contamination for which the Lessee is responsible and to restore the Premises to a clean and neat physical condition acceptable to the Lessor.
- e. The Lessor will, by written notice, direct the departing Lessee to remove Lessee-owned Permanent Improvements from the Premises, to remediate, consistent with applicable law, any Contamination for which the Lessee is responsible and to restore the Premises to a clean and neat physical condition acceptable to the Lessor if the Lessor determines in writing:

- i. that the continued presence of the Permanent Improvements on the Premises are not consistent with any written ~~Airport-City~~ program or plan required for compliance with applicable federal, state, or local law;
 - ii. that the continued presence of the Permanent Improvements on the Premises is not in the best interest of the City of Kenai; or
 - iii. that the Permanent Improvements present a hazard to public health or safety.
- f. The departing Lessee to whom the Lessor has issued direction under Paragraph e of this Section shall comply with the Lessor's direction within 60 days after issuance of the direction and at no cost to the Lessor. If the departing Lessee shows good cause to the Lessor, continues to work diligently to comply with Lessor's direction, and if it is not inconsistent with the best interest of the City of Kenai, the Lessor will allow in writing a longer period that is sufficient to allow the Lessee to comply with the Lessor's direction. A departing Lessee who fails to comply with a direction issued by the Lessor under Paragraph e of this Section, shall, within 30 days of being billed by the Lessor, reimburse the Lessor for any costs reasonably incurred by the Lessor, including legal fees and administrative costs, to enforce the Lessor's direction or to remove and dispose of unremoved Lessee-owned improvements, remediate any Contamination for which the Lessee is responsible and restore the Premises.
- g. If the departing Lessee does not timely remove or sell the Lessee-owned Permanent Improvements on the Premises in accordance with the requirements of this Section, any remaining Permanent Improvements and any remaining personal property of the departing Lessee will be considered permanently abandoned. The Lessor may sell, lease, demolish, dispose of, remove, or retain the abandoned property for ~~Airport~~ use as the Lessor determines is in the best interest of the City of Kenai. The departing Lessee shall, within 30 days after being billed by the Lessor, reimburse the Lessor for any costs reasonably incurred by the Lessor, including legal and administrative costs, to demolish, remove, dispose, clear title to, or sell the abandoned property and to remediate and restore the Premises.
- h. After the expiration, termination, or cancellation of the Lease, including any holdover, the departing Lessee loses all right to occupy or use the premises without the express or implied consent of the Lessor. Except as the Lessor notifies the departing Lessee otherwise in writing, the Lessor consents to the departing Lessee's continued use and

occupancy of the Premises to diligently accomplish the requirements of this Section. Until the departing Lessee relinquishes possession of and completely vacates the Premises and notifies the Lessor in writing that it has relinquished and vacated the Premises, the departing Lessee shall perform the following as if the lease were still in effect,

- i. pay rent to the Lessor;
 - ii. maintain the premises;
 - iii. provide the Lessor with evidence of each insurance coverage, if any, required under the Lease; and
 - iv. cease using the premises other than to diligently accomplish the requirements of this Section, and to comply with the other requirements of the Lease.
- i. A departing Lessee will not be considered to have relinquished possession and completely vacated the Premises until
- i. the departing Lessee has:
 - (a) remediated, consistent with applicable law, any Contamination for which the Lessee is responsible; and
 - (b) restored the Premises to a clean and neat physical condition acceptable to the Lessor; and
 - ii. either
 - (a) removed all of the Lessee's Permanent Improvements and personal property from the premises or sold the Permanent Improvements and personal property to a succeeding Lessee under the provisions of this Lease; or
 - (b) transferred title to the Lessee's Permanent Improvements and personal property that remain on the premises to the Lessor.

**ARTICLE XIII
GENERAL COVENANTS**

~~A. USE OF THE AIRPORT: Except as provided herein, any regular use of Airport lands or facilities without the written consent of the City is prohibited. This prohibition shall not apply~~

~~to use of areas designated by the City for specified public uses, such as passenger terminals, automobile parking areas, and streets.~~

~~AB.~~ COSTS AND EXPENSES: Costs and expenses incident to this lease, including but not limited to recording costs, shall be paid by Lessee.

~~BC.~~ CARE OF THE PREMISES: The Lessee shall keep the Premises clean and in good order at the Lessee's own expense, allowing no damage, waste, nor destruction thereof, nor removing any material therefrom, without written permission of the City. At the expiration of the term fixed, or any earlier termination of the Lease, the Lessee will peaceably and quietly quit and surrender the premises to the City.

~~ED.~~ CONSTRUCTION APPROVAL AND STANDARDS: Any building construction on the Premises by the Lessee must be compatible with its surroundings and consistent with the uses authorized under this Lease, as determined by the City. The Lessee must obtain the City's written approval before placing fill material, beginning any land development, or constructing or demolishing any improvements on the Premises, and before beginning any alterations, modifications, or renovation of existing structures on the Premises. The Lessee must submit to the City detailed drawings of the proposed development, alteration, modification, or renovation, together with specifications or any other information the City reasonably requires. ~~[Include for FAA Restricted Land only]~~ Further, the Lessee will submit to City evidence of the Lessee's compliance with Federal Aviation Administration regulation 14 CFR Part 77.

E. LEASE SUBORDINATE TO ~~CITY AIRPORT~~ FINANCING REQUIREMENTS: Lessee agrees that City may modify this Lease to meet revised requirements for Federal or State grants, or to conform to the requirements of any revenue bond covenant. However, the modification shall not act to reduce the rights or privileges granted the Lessee by this Lease, nor act to cause the Lessee financial loss.

F. RIGHT TO ENJOYMENT AND PEACEABLE POSSESSION: City hereby agrees and covenants that the Lessee, upon paying rent and performing other covenants, terms, and conditions of this Lease, shall have the right to quietly and peacefully hold, use, occupy, and enjoy the Premises, except that the following shall not construed as a denial of the right of quiet or peaceable possession:

1. Any inconvenience caused by public works projects in or about the Premises; and
2. Any other entries by the City on the Premises reserved or authorized under other provisions of this Lease.

G. NO PARTNERSHIP OR JOINT VENTURE CREATED: It is expressly understood that the City shall not be construed or held to be a partner or joint venture of Lessee in the conduct of the Lessee's activities or business on the Premises. The relationship between the City and the Lessee is, and shall at all times remain, strictly that of landlord and tenant, respectively.

H. DISCRIMINATION: The Lessee will not discriminate on the grounds of race, color, religion, national origin, ancestry, age, or sex against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or state law. The Lessee recognizes the right of the City to take any action necessary to enforce this provision, including actions required pursuant to any federal or state law.

I. [Include for FAA Restricted Land only]AFFIRMATIVE ACTION: If required by 14 CFR Part 152, subpart E, the Lessee will undertake an affirmative action program to insure that no person will be excluded from participating in any employment activities offered by the Lessee on the grounds of race, creed, color, national origin, or sex. No person may be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by subpart E. The Lessee further agrees that it will require its sub-organization(s) provide assurance to the City to the same effect that they will also undertake affirmative action programs and require assurances from their sub-organization(s) as required by 14 CFR, Part 152, subpart E.

Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to title 49, code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulation may be amended.

J. INTEGRATION, MERGER, AND MODIFICATION: This Lease sets out all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the Premises whether oral or written. No modification or amendment of this Lease is effective unless in writing and signed on behalf of the City and the Lessee.

K. RIGHT TO ADOPT RULES: City reserves the right to adopt, amend, and enforce reasonable rules and regulations governing the ~~Airport City~~, including the Premises. The City shall not be liable to Lessee for any diminution or deprivation of possession, or of Lessee's rights under this Lease, on account of the exercise of the City's authority reserved under this provision. Furthermore, the Lessee shall not be entitled to terminate the whole or any portion of the leasehold estate created under this Lease, by reason of the exercise of the City's authority reserved under this provision, unless the exercise thereof so interferes with Lessee's use and occupancy of the Premises as to constitute a termination, in whole or in part, of this Lease by operation of law under the laws of the State of Alaska and of the United States made applicable to the states.

L. LESSEE'S OBLIGATION TO PREVENT AND REMOVE LIENS: Lessee will not permit any liens including, but not limited to, mechanics', laborers', or materialmen's liens obtainable or available under the then existing laws, to stand against the Premises or improvements on the Premises for any labor or material furnished to Lessee or claimed to have been furnished to Lessee or to the Lessee's agents, contractors, or sub-lessees, in connection with work of any character performed or claimed to have been performed on the Premises or improvements

by or at the direction or sufferance of Lessee. Provided, however, the Lessee shall have the right to provide a bond as contemplated by Alaska law and contest the validity or amount of any such lien or claimed lien. Upon a final determination of the lien or claim for lien, the Lessee will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Lessee's own expense.

M. CONDEMNATION: In the event the Premises or any part thereof shall be condemned and taken for a public or a quasi-public use, then upon payment of any award or compensation arising from the condemnation or taking, the City and the Lessee shall make a good faith effort to agree upon

1. the division of the proceeds;
2. the abatement in rent payable during the term or any extension of the term of this Lease; and
3. other adjustments as the parties may agree upon as being just and equitable under all the circumstances.

If, within thirty days after the award has been paid into Court, the City and Lessee are unable to agree upon what division, abatement in rent, and other adjustments as are just and equitable, the dispute shall be determined by arbitration.

N. SUCCESSORS IN INTEREST: This Lease shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto, subject to such specific limitations on assignment as are provided for in this Lease.

O. NOTICES:

1. Any notices required by this Lease must be in writing and must be delivered personally or mailed by certified or registered mail in a prepaid envelope. A mailed notice
 - a. must be addressed to the respective party at the address written on the first page of this Lease or to the latest address designated in accordance with (2) of this Provision (O); and
 - b. shall be deemed delivered on the date it is deposited in a U.S. general or branch post office.
2. The City or the Lessee may, from time to time, designate a new address at which they will receive notices by providing the other party with written notice at least 15 days prior to the effective date of the change. An address change notice must be delivered according to the procedure set out in (1) of this Provision (O).

P. RETENTION OF RENTAL: In the event the City terminates this Lease because of any breach by the Lessee, the City shall retain any unused balance of the rental payment last made by the Lessee City as partial or total liquidated damages for the breach.

Q. FIRE PROTECTION: The Lessee will take all reasonable precautions to prevent, and take all necessary action to suppress destructive or uncontrolled fires and comply with all laws, regulations, and rules promulgated and enforced by the City for fire protection ~~on the Airport~~.

R. PERSONAL USE OF MATERIALS: No interest in coal, oil, gas or any other mineral, or in any deposit of stone or gravel valuable for extraction or utilization is included in the Premises or in the rights granted by this lease. The Lessee shall not sell or remove from the Premises for use elsewhere any timber, stone, gravel, peat moss, topsoil or any other material valuable for building or commercial purposes.

S. APPROVAL OF OTHER AUTHORITIES: The granting of this lease by the City does not relieve the Lessee of the responsibility to obtain any license or permit as may be required by federal, state, or local law.

T. EXECUTION BY THE PARTIES: This Lease is of no effect unless signed by the Lessee, or a duly authorized representative of Lessee, and an authorized representative of the City.

U. CAPTIONS: The captions of the provisions of this Lease are for convenience only and do not necessarily define, limit, describe, or construe the contents of any provision.

V. RIGHTS OF CONSTRUCTION: This Lease is intended to make public property available for private use, while at all times protecting the public interest to the greatest extent possible. Following the rule that transfers of interest in public property are to be strictly construed in favor of the public property landlord, all rights granted to the Lessee under this Lease will be strictly construed, and all rights of the City and the protections of the public interest will be liberally construed.

W. LESSEE ACKNOWLEDGEMENT: The Lessee acknowledges that the Lessee has read this Lease and fully understands its terms, that the Lessee has been fully advised or has had the opportunity of advice by separate legal counsel, and voluntarily executes this Lease. Lessee also acknowledges and agrees that the rule of interpretation under which a document is construed against the drafter will not apply to this Lease.

X. APPROVAL BY LESSOR: Any approval required of the Lessor by this Lease will not be unreasonably withheld. The Lessor's approval does not waive the Lessee's legal responsibility or liability to comply with all applicable federal and state laws and regulations.

**ARTICLE XIV
SURVEY, IMPROVEMENTS AND PERFORMANCE BOND**

A. SURVEY: The Lessee is solely responsible, at its sole expense, to confirm or establish

the physical location of the boundaries of the Premises prior to beginning any construction thereon, including clearing grubbing, back-filling and environmental sampling. Any survey of the Premises shall be performed by a Land Surveyor registered in the State of Alaska. The Lessee shall furnish the City with a copy of the plat of any survey performed on the Premises by, or on behalf of, the Lessee.

B. IMPROVEMENTS:

1. **REQUIRED IMPROVEMENTS:** At no cost to the City, Lessee agrees to complete land development and construction of Permanent Improvements including _____, by no later than _____, with an aggregate cost of at least \$_____, excluding financing costs. In addition to the as-built drawings required by this Lease, the Lessee must submit to the City written evidence that the Lessee has completed the land development and constructed improvements on the Premises with an aggregate cost or investment of not less than \$_____.

The evidence of cost must be submitted to the City within sixty days of the completion of the development and improvements, but by no later than _____.

- a. Costs considered toward the aggregate cost of permanent improvements include building construction, design, labor, materials, materials shipping, permits, equipment, soil testing, environmental baseline report, and environmental assessment directly related to the construction; premises and as-built surveys; site preparation, including excavation, geotextile fabric, filling, grading, fill material, gravel, and pavement, remediation of environmental contamination (unless Lessee caused or Materially Contributed To the Contamination); and utility connection costs.
- b. The cost of Permanent Improvements excludes:
 1. work performed by the City and not reimbursed by the Lessee; and
 2. work performed by the Lessee and reimbursed by the City.

2. **FAILURE TO COMPLETE IMPROVEMENTS:** If the Lessee fails to complete the required construction within the time allowed under (b)(1) of this Article, including any extensions granted, the City will execute against and the Lessee will forfeit, any bond or other guarantee given by the Lessee and, as applicable, City will:
 - a. initiate cancellation of the lease; or

- b. reduce the term of the lease to a period that is consistent with the portion of the required construction timely completed.
- 3. APPEARANCE: When completed, all improvements on the Premises must be neat, presentable, and compatible with the authorized use of the Premises under this Lease, as determined by the City.
- 4. CITY APPROVAL REQUIRED: The Lessee must first obtain the City's written approval before beginning any land development, construction or demolition of any improvements on the Premises, or before beginning any alterations, modifications, or renovation of existing structures on the Premises. The Lessee must submit to the City detailed drawings of the proposed development, alteration, modification, or renovation. Include for FAA Restricted Land only Further, the Lessee will submit to City evidence of the Lessee's compliance with the FAA regulation 14 CFR Part 77.
- 5. CITY APPROVAL WITHHELD: The City's approval of any construction, alteration, modification, or renovation will not be withheld unless
 - a. the Lessee fails to demonstrate adequate financial resources to complete the project;
 - b. the project plans, specifications, and agency approvals are incomplete;
 - c. the proposed project would result in a violation of an applicable ordinance, regulation, or law;
 - d. the proposed project would interfere with or is incompatible with the safety, security, maintenance, or operations of the City airport;
 - e. Include for FAA Restricted Land only the proposed project is inconsistent with the Airport Master Plan;
 - f. the proposed project is inconsistent with the terms of the lease, zoning ordinances, or the City's Comprehensive Plan;
 - g. the project plans do not make sufficient provision for drainage, aircraft, vehicle, and equipment parking, or for snow storage; or
 - h. the proposed project does not conform to generally recognized engineering principles or applicable fire or building codes.
- 6. DEMOLITION: Prior to any demolition of any structure(s) on the Premises, Lessee will deliver to City a written scope of work that, at a minimum, lists the structure(s) that are to be demolished and the timeframe for demolition and

removal of the debris from the Premises Airport. City will review Lessee's scope for demolition and issue Lessee written approval for the work to be done.

7. BUILDING SETBACK: No building or other permanent structure may be constructed or placed ~~in violation of the City's setback requirements, within twenty feet of any lot of the Premises without City's prior written approval. In addition, no building or other permanent structure may be constructed or placed within twenty feet of any boundary line of the Premises which fronts on a landing strip, taxiway, or apron.~~

8. AS-BUILT DRAWINGS: Within sixty days after completion of construction or placement of improvements upon the Premises, the Lessee will deliver to the City a copy of an as-built drawing, acceptable to the City, showing the location and dimensions of the improvements, giving distances to all Premises' boundaries. If the Lessee constructs underground improvements, the Lessee will appropriately mark the surface of the land with adequate surface markers. The type, quantity, and distance between such markers will be subject to approval of the City.

~~9. AIRPORT SECURITY FENCING: If any construction by the Lessee requires a realignment or alteration of an existing security fence on the Premises or boundary of the Premises, the Lessee agrees to realign or alter the fence in a manner approved in writing by the Airport Manager. Anytime the fence must be breached to allow the Lessee to complete improvement construction or fence modifications, the Lessee shall, at the Lessee's sole expense place temporary barriers to maintain the security of the Airport, as determined by the Airport Manager. If damage occurs to a security fence on the Premises or boundary of the Premises in connection with the Lessee's use or occupation of the Premises, the Lessee shall promptly repair the fence to the satisfaction of the Airport Manager.~~

~~10.9.~~ DAMAGE TO IMPROVEMENTS: If Lessee's improvements on the Premises are damaged or destroyed, Lessee will cause the improvements to be repaired or rebuilt, and restored to normal function within two years following the damage or destruction. If the Lessee fails to timely rebuild or restore the improvements, the City may, at its sole discretion, either reduce the term of this Lease commensurate with the estimated value of the Lessee's remaining, fully functional improvements on the Premises, or cancel this Lease.

~~11.10.~~ DAMAGE NEAR EXPIRATION: If Lessee's improvements are damaged to the extent that more than 50% of the space is unusable and the damage occurs within five years of the expiration of the term of this Lease, Lessee may remove the damaged improvements, restore the Premises and terminate this Lease.

C. PERFORMANCE BOND (Optional): Prior to beginning the construction of permanent improvements required under (1) of this Article, the Lessee shall submit to the City a performance bond, deposit, or other security in the amount of \$_____. The form of the bond or other security shall be subject to the City's approval.

D. SURRENDER ON TERMINATION: Lessee shall, on the last day of the term of this Lease or upon any earlier termination of this Lease, surrender and deliver upon the premises into the possession and use of City without fraud or delay in good order, condition, and repair, except for reasonable wear and tear since the last necessary repair, replacement, restoration or renewal, free and clear of all lettings and occupancies unless expressly permitted by the City in writing, and free and clear of all liens and encumbrances other than those created by and for loans to City. Upon the end of the term of this Lease, including any extension or renewal, or any earlier termination thereof, title to the buildings, improvements and building equipment shall automatically vest in City without requirement of any deed, conveyance, or bill of sale thereon. However, if City should require any such document in confirmation hereof, Lessee shall execute, acknowledge, and deliver the same and shall pay any charge, tax, and fee asserted or imposed by any and all governmental unites in connection herewith.

E. NOTICE OF CONSTRUCTION: The Lessee agrees to notify the City in writing three days prior to commencing any construction project valued in excess of \$1,000.00 on the Premises. The Lessee agrees to assist in the posting of a notice of non-responsibility and maintenance of the notice on the Premises during construction. Lessee agrees that in the event the Lessee fails to notify the City as required by this Provision (f), the Lessee shall indemnify the City against any materialmen's liens as defined in AS 34.35.050 which arise as a result of construction on the premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands, the day and year stated in the individual acknowledgments below.

LESSEE:

LESSOR:
City of Kenai

By: _____
Lessee Name Date
Its: Director

By: _____
Paul Ostrander Date
Its: City Manager

ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ____ day of _____, 20__, Name: Lessee Name, Director, of _____, being personally known to me or having produced satisfactory evidence of identification, appeared before me and acknowledged the voluntary and authorized execution of the foregoing instrument on behalf of said corporation.

Notary Public for Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ____ day of _____, 20__, Paul Ostrander, City Manager of the City of Kenai, Alaska, being personally known to me or having produced satisfactory evidence of identification, appeared before me and acknowledged the voluntary and authorized execution of the foregoing instrument on behalf of said City.

Notary Public for Alaska
My Commission Expires: _____

ATTEST:

Jamie Heinz, City Clerk

SEAL:

LEASE OF ~~CITY AIRPORT~~ LANDS

Approved as to Lease Form:

Scott Bloom, City Attorney

AFTER RECORDING RETURN TO:
City of Kenai
210 Fidalgo Avenue
Kenai, AK 99611



Sponsored by: Council Member Knackstedt

CITY OF KENAI

RESOLUTION NO. 2019-71

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, REPEALING THE ESTABLISHMENT OF A SUB-COMMITTEE OF COUNCIL FOR THE SUPERVISION OF THE CITY ATTORNEY, CITY CLERK AND CITY MANAGER AND REPEALING COUNCIL POLICY 2017-02 ESTABLISHING PROCEDURES AND RESPONSIBILITIES OF THE SUB-COMMITTEE.

WHEREAS, the City Attorney, City Manager and City Clerk are appointed and removed by the City Council; and,

WHEREAS, the City Council reviews these employees' performance; and,

WHEREAS, the Sub-Committee formed by the City Council to provide further review and supervision for these employees is not needed; and,

WHEREAS, rather than utilize a sub-committee, any additional needed review and communication can be accomplished by the Council as a whole.

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

Section 1. That the Sub-Committee of the City Council formed for the purpose of improving efficiency in the supervision of the City Attorney, City Clerk and City Manager is repealed along with Policy No. 2017-02: Supervisory Sub-Committee.

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

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 16th day of October 2019.

BRIAN GABRIEL, SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk



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210 Fidalgo Ave, Kenai, Alaska 99611-7794
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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Council Member Henry Knackstedt
DATE: October 7, 2019
SUBJECT: **Resolution No. 2019 – 71 Repealing the Council’s Supervisory Sub-Committee and Associated Policy No. 2017-02**

The City Council appoints and removes the City Attorney, City Clerk and City Manager as well as reviews these employees’ performance. In 2017, the Council created a Sub-Committee to provide an additional tool for communicating with these employees. The Sub-Committee was intended to act as an informal liaison between the Council and its employees. After trying this approach for a couple years, I do not find the Sub-Committee to be necessary and believe the Council as a whole can adequately provide performance reviews and communicate effectively with its employees. This resolution would repeal the formation of the Sub-Committee and associated Policy No 2017-02: Supervisory Sub-Committee.

Your consideration is appreciated.



**KENAI CITY COUNCIL – REGULAR MEETING
OCTOBER 2, 2019 – 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 October 2, 2019, 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	Robert Molloy
Henry Knackstedt	Tim Navarre
Jim Glendening	Robert Peterkin
Glenese Pettey	

A quorum was present.

Also in attendance were:

Paul Ostrander, City Manager
Scott Bloom, City Attorney
Jamie Heinz, City Clerk

3. Agenda Approval

Mayor Gabriel noted the following revisions to the packet:

Add to item D.1.	Ordinance No. 3083-2019 <ul style="list-style-type: none">• Amendment Memo
Add to item D.5.	Ordinance No. 3088-2019 <ul style="list-style-type: none">• Supplemental Information Provided by a Member of the Public
Add to item J.1.	City Manager's Report <ul style="list-style-type: none">• Letter to the Board of Fish

MOTION:

Council Member Molloy **MOVED** to approve the agenda with the requested revisions to the packet and requested **UNANIMOUS CONSENT**. Council Member Knackstedt **SECONDED** the motion.

VOTE: There being no objections, **SO ORDERED**.

4. Consent Agenda

MOTION:

Council Member Knackstedt **MOVED** to approve the consent agenda and requested **UNANIMOUS CONSENT**. Council Member Molloy **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: There being no objections, **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 councilmember 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 PUBLIC COMMENTS – None.

C. UNSCHEDULED PUBLIC COMMENTS – None.

D. PUBLIC HEARINGS

1. **Ordinance No. 3083-2019 (Substitute)** - Amending Kenai Municipal Code 14.20.175 - Adult Businesses, To Increase The Buffer Distances Between Adult Businesses And Sensitive Uses From 500 Feet To 1000 Feet And Define Sensitive Uses. (Council Members Pettey and Knackstedt) [**Clerk's Note:** *At the September 4 Meeting, this item was Referred to the Planning & Zoning Commission for a Recommendation and to be Scheduled for a Second Public Hearing at the October 2 Meeting. A Motion to Enact as Amended is On the Floor.*]

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

MOTION TO AMEND:

Council Member Knackstedt **MOVED** to amend the last whereas clause to enter "September 25, 2019," in the first blank and, "the City Council enact Ordinance No. 3083-2019 (substitute)," in the second blank. Council Member Molloy **SECONDED** the motion and requested **UNANIMOUS CONSENT**.

VOTE ON THE AMENDMENT: There being no objection; **SO ORDERED**.

VOTE ON THE MAIN MOTION AS AMENDED:

YEA: Knackstedt, Glendening, Pettey, Molloy, Gabriel
NAY: Peterkin, Navarre

MOTION PASSED.

2. **Ordinance No. 3085-2019** - Increasing Estimated Revenues and Appropriations in the Water and Sewer Fund for the Purchase of Well Radius Property Described as Tract A, Alaska State Land Survey No. 2013-49, Filed Under Plat 2017-8, for the City's Public Water System. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to enact Ordinance No. 3085-2019 and Council Member Glendening **SECONDED** the motion.

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

Clarification was provided that easements for the race track and the gun range were accounted for.

A history of the transaction was provided and it was noted the City received no concerns regarding the acquisition.

VOTE:

YEA: Knackstedt, Glendening, Pettey, Molloy, Navarre, Gabriel, Peterkin
NAY:

MOTION PASSED UNANIMOUSLY.

3. **Ordinance No. 3086-2019** - Accepting and Appropriating a Grant from the Rasmuson Foundation and Accepting and Appropriating Private Donations in the Senior Center Capital Improvement Fund for the Purchase of New Flooring for the Dining Room and Administration Offices of the Kenai Senior Center. (Administration)

MOTION:

Council Member Molloy **MOVED** to enact Ordinance No. 3086-2019 and Council Member Glendening **SECONDED** the motion.

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

The Rasmuson foundation and public donator were thanked for the generous grant and donations.

VOTE:

YEA: Knackstedt, Glendening, Pettey, Molloy, Navarre, Gabriel, Peterkin

NAY:

MOTION PASSED UNANIMOUSLY.

4. **Ordinance No. 3087-2019** - Authorizing a Budget Transfer in the Senior Center Capital Improvement Fund and Increasing Estimated Revenues and Appropriations in the Public Safety Improvement Capital Project Fund to Provide Supplemental Funding for the Fire Department Kitchen Remodel Project. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to enact Ordinance No. 3087-2019 and Vice Mayor Navarre **SECONDED** the motion.

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

An overview of the budget transfer was provided.

VOTE:

YEA: Knackstedt, Glendening, Pettey, Molloy, Navarre, Gabriel, Peterkin

NAY:

MOTION PASSED UNANIMOUSLY.

5. **Ordinance No. 3088-2019** - Amending Kenai Municipal Code, Section 14.20.330 – Standards for Commercial Marijuana Establishments, to Incorporate Limitations on Hours of Operation for Retail Marijuana Establishments. (Administration)

MOTION:

Council Member Molloy **MOVED** to enact Ordinance No. 3088-2019 and Council Member Glendening **SECONDED** the motion.

Mayor Gabriel opened for a public hearing.

Garrett Austin spoke against the ordinance noting he served in the military, cared for the welfare of the community, and hadn't seen marijuana as a problem drug in the community. He explained he has had several surgeries in the past six years, which have allowed him to stand and walk again, that a doctor introduced him to cannabis, and it has been a blessing to him to be able to go when needed to get relief at the times he needed it.

Ron Isaacs noted the letters of opposition in the packet and suggested the bars be closed, not the marijuana establishments; also suggested Kenai businesses were already at a disadvantage due to less traffic on the Kenai Spur Highway. He discussed service calls from police noting the only reason the police have called on marijuana establishments was to look at camera footage and also discussed hours of operation for marijuana establishments in other towns.

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

Appreciation was expressed for those that testified and provided written comment and the reason the ordinance came about was reiterated.

There was discussion regarding hours of operation required by the state, hours of operation in other communities, and rationale for further restrictions. The work of the Borough's task force was noted, specifically hours of operation they settled on due to concerns with the cash business being a temptation.

Amending the code to include the hours of operation required by the state for enforcement purposes, Personal Use Fishery time constraints, no onsite consumption with marijuana, letting business regulate itself were additional topics discussed.

The point was made that all of the establishments that are now marijuana retail stores had been gas stations, convenience stores, social clubs, or bars in the past and were more impactful to residential areas than now; it was noted the Planning and Zoning Commission could require conditions in order to mitigate some impacts. The point was also made that even if the hours of operation were reduced for marijuana retail stores, it was dark more than half the time and headlights would still be an issue.

MOTION:

Council Member Molloy **MOVED** to amend 14.20.330 (j) to add, "except for the month of July," at the end of the sentence and Council Member Glendening **SECONDED** the motion.

It was suggested this amendment be a starting point and then asking the cannabis industry for ideas on approaching establishments in our community.

There was discussion regarding the limitation for all but one month in the year suggesting the Personal Use Fishery was something to be managed, that it was incongruent to reduce restrictions for only one month, and that there may be other activities that have people out earlier in the day.

The point was made that the current cannabis retailers had shown that they don't have issues with their clientele and law enforcement; it was suggested restrictions were solving a problem that didn't exist.

VOTE:

YEA: Glendening, Molloy, Gabriel
NAY: Knackstedt, Pettey, Navarre, Peterkin

MOTION FAILED.

MOTION TO AMEND:

Vice Mayor Navarre **MOVED** to amend 14.20.330 (j) to change 2:00 a.m. to 5:00 a.m. and Council Member Glendening **SECONDED** the motion.

Clarification was provided that code enforcement would be enforcing the hours of operation, not the police department; it was also clarified that the City didn't enforce hours of operation on liquor establishments.

It was noted there should be code enforcement.

VOTE ON THE AMENDMENT:

YEA: Knackstedt, Glendening, Pettey, Molloy, Navarre, Gabriel, Peterkin
NAY:

MOTION PASSED UNANIMOUSLY.

VOTE ON THE MAIN MOTION AS AMENDED:

YEA: Knackstedt, Glendening, Pettey, Molloy, Navarre, Gabriel, Peterkin
NAY:

MOTION PASSED UNANIMOUSLY.

E. MINUTES

1. *Regular Meeting of September 18, 2019

Approved by the consent agenda.

F. UNFINISHED BUSINESS

1. **Ordinance No. 3072-2019 Substitute** - Renaming, Repealing and Re-Enacting Kenai Municipal Code Title 22-General Fund Lands, Renaming Title 21-City Airport and Airport Lands, and Repealing Kenai Municipal Code Chapter 21.15-Lease and Sale of Airport Lands Outside of the Airport Reserve to Encourage Responsible Growth and Development to Support a Thriving Business, Residential, Recreational and Cultural Community through Responsible Land Policies and Practices. (Administration) *[Clerk's Note: At the September 4 Meeting this Item was Postponed to this Meeting. A Motion to Enact is On the Floor.]*

Administration was commended on the process and it was noted the ordinance was a good product.

MOTION TO AMEND:

Council Member Molloy **MOVED** to amend KMC 22.05.010 (c) to add, "and the retention or acquisition of land needed or that may be needed for a public purpose," at the end of the sentence and Council Member Knackstedt **SECONDED** the motion.

It was noted the amendment included in the intent, reference to Council's responsibility for determination of what City lands should be retained or acquired for a public purpose or are no longer needed for a public purpose.

It was suggested the amendment went into too much specificity.

VOTE ON THE AMENDMENT:

YEA: Molloy
NAY: Knackstedt, Pettey, Navarre, Peterkin, Gabriel, Glendening

MOTION FAILED.

MOTION TO AMEND:

Council Member Molloy **MOVED** to amend KMC 22.05.040 (a) to read, "Applications shall be reviewed by City staff for application completeness and conformance with the intent of this chapter, City ordinances, and for substantial conformance with the City's Comprehensive Plan," and Council Member Peterkin **SECONDED** the motion.

It was noted the amendment provided that in addition to reviewing for completeness and conformance with City ordinances; they would review for conformance with the Comprehensive Plan, which would provide good recommendations and findings in the review.

It was noted that the Planning and Zoning Commission would review the application as related to the Comprehensive Plan.

VOTE ON THE AMENDMENT:

YEA: Molloy
NAY: Knackstedt, Pettey, Navarre, Peterkin, Gabriel, Glendening

MOTION FAILED.

VOTE ON THE MAIN MOTION:

YEA: Knackstedt, Glendening, Pettey, Navarre, Molloy, Gabriel, Peterkin
NAY:

MOTION PASSED UNANIMOUSLY.

2. **Resolution No. 2019-58** - Amending its Comprehensive Schedule of Rates, Charges, and Fees to Incorporate Changes to Application Fees for Lands Outside the Airport Reserve. (Administration) ***Clerk's Note:** At the September 4 Meeting this Item was Postponed to this Meeting. A Motion to Enact is On the Floor.*

UNANIMOUS CONSENT was requested

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

G. NEW BUSINESS

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

Approved by the consent agenda.

2. ***Action/Approval** – Purchase Orders Over \$15,000. (Administration)

Approved by the consent agenda.

3. ***Ordinance No. 3089-2019** - Amending Kenai Municipal Code Section 1.15.040, Agenda, to Revise Public Notice Requirements and Amend the Agenda/Package Preparation, Distribution, And Publication Administrative Policies and Procedures to make Standard Revisions and Housekeeping Changes. (Council Members Molloy and Knackstedt)

Introduced by the consent agenda and public hearing set for October 16.

4. ***Ordinance No. 3090-2019** - Increasing Estimated Revenues and Appropriations in the General and Public Safety Capital Project Funds and Accepting an Assistance to Firefighter Grant from the Federal Emergency Management Agency for the Cooperative Purchase of Self-Contained Breathing Apparatus for the City of Kenai Fire Department, Nikiski Fire Department, and Central Emergency Services. (Administration)

Introduced by the consent agenda and public hearing set for October 16.

5. ***Ordinance No. 3091-2019** - Amending Kenai Municipal Code Section 17.10.010 – Mandatory Connection and Abandonment of Old Well, and Section 17.20.010 - Mandatory Connections and Abandonment of Old On-Site Sewer Systems, to Clarify the Intent of Ordinance 3003-2018 and Make Housekeeping Changes. (Council Member Knackstedt)

Introduced by the consent agenda and public hearing set for October 16.

6. **Ordinance No. 3079-2019 Substitute** - Increasing Estimated Revenues and Appropriations in the Airport Special Revenue and Airport Improvements Capital Project Funds and Accepting a Grant from the Federal Aviation Administration for the Purchase of Two Aircraft Rescue and Firefighting (ARFF) Vehicles, Rehabilitation of the Fire Training Props, and Rehabilitation of the Training Facility for the Alaska Regional Fire Training Facility. (Administration) *[Clerk's Note: This ordinance was enacted at the 9/04/19 meeting. It has been discovered that a purchase order increase was inadvertently excluded from the amounts. A motion to amend something previously adopted is in order and as such, appearance on this agenda serves as notice.]*

MOTION:

Council Member Knackstedt **MOVED** to amend something previously adopted by inserting a new whereas clause before the final whereas clause that reads, "WHEREAS, pursuant to the Alaska Fire Training Center Facility Management Agreement, which was entered into in March 2008, a \$10.00 facility maintenance fee has been charged to each student for major maintenance on the facility and through June 30, 2019, total fees available in committed fund balance are \$136,328; and," deleting the final whereas clause and replacing it with a new whereas clause that reads, "WHEREAS, sufficient fund balance including, \$136,328 of committed fund balance and \$332,407 of assigned fund balance, are available in the Airport Special Revenue Fund to provide the additional \$168,735 of local match and \$300,000 of project contingency funding which may become eligible for grant reimbursement as change orders are processed," deleting "Appropriation of Fund Balance," and "\$468,735.00" in Section 2, inserting, "Appropriation of: Assigned Fund Balance, \$332,407.00, and Committed Fund Balance, \$136,328.00, totaling

\$468,735.00,” and, in Section 3, amend \$2,168,000.00, \$2,113,755.00 and \$5,866,755.00 to \$2,344,500, \$2,290,255 and \$6,239,755 respectively, and Council Member Molloy **SECONDED** the motion. **UNANIMOUS CONSENT** was requested.

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

7. **Action/Approval** - Supporting the Draft Environmental Impact Statement for the Alaska LNG Project and Approving Comments to be Submitted on Behalf of the City of Kenai to the Federal Environmental Regulatory Commission. (Administration)

MOTION:

Vice Mayor Navarre **MOVED** to unanimously support the Alaska LNG Project and Authorize Comments to be Submitted on Behalf of the City of Kenai to the Federal Environmental Regulatory Commission with all Council Members’ signatures and Council Member Peterkin **SECONDED** the motion. **UNANIMOUS CONSENT** was requested.

The Mayor noted he testified in support of the project when Federal Energy Regulatory Commission staff was in Nikiski. Appreciation was expressed for the work developing the comments.

VOTE: There being no objections, **SO ORDERED.**

H. COMMISSION/COMMITTEE REPORTS

1. Council on Aging – No report; next meeting October 10.
2. Airport Commission – No report; next meeting October 10.
3. Harbor Commission – No report; next meeting November 12.
4. Parks and Recreation Commission – No report; next meeting October 3.
5. Planning and Zoning Commission – It was reported that at their September 25 meeting the Commission approved a CUP for a gunsmithing business in a RR1 zone, recommended adoption of Ordinance No. 3088-2019, and approved a Home Occupation Permit for a home daycare; next meeting October 30.
6. Beautification Committee – No report; next meeting October 8.
7. Mini-Grant Steering Committee – No report; next meeting October 4.

I. REPORT OF THE MAYOR

Mayor Gabriel reported on the following:

- Participated in a Dog Park work party;
- A grandson was born recently; and
- Congratulated Pettey and Glendening on their election; also thanked others for running at the borough level noting appreciation for those that put forth the effort.

J. ADMINISTRATION REPORTS

1. City Manager –City Manager P. Ostrander reported on the following:
 - Attended a recent chamber meeting ensuring collaboration in marketing efforts;
 - Presented local information to the Alaska Mental Health Board and Advisory Board on Alcohol and Drug Abuse Meetings with Vice Mayor Navarre;
 - Provided an update on the surplus auction and noted another upcoming surplus auction for other items;
 - Noted an RFP was being prepared for City property appraisals;
 - Would be hosting Policy with a Pint at Main Street Tap & Grill again for Startup Week;
 - Announced Mark Maddox was the winner of the Silver Salmon Derby;
 - Thanked Council for their for adoption of Ordinance No. 3072-2019 noting the Land Management Plan was the next step;
 - Congratulated the winners of the recent election;
 - Noted there was no update on the Bluff Erosion Project; and
 - Pointed out a letter from the cities of Soldotna and Kenai to the Board of Fisheries in the laydown, asking for approval.

MOTION:

Council Member Molloy **MOVED** to authorize the manager to sign and send the letter in the laydown to the Board of Fisheries and Council Member Glendening **SECONDED** the motion. **UNANIMOUS CONSENT** was requested.

VOTE: There being no objections, **SO ORDERED.**

It was noted the manager would also be attending the meeting of the Board of Fisheries.

2. City Attorney – No Report.
3. City Clerk – City Clerk J. Heinz reported on the unofficial outcomes of the election noting the Canvass Board would conduct its review on October 8 and the election would be certified by Council on October 16.

K. ADDITIONAL PUBLIC COMMENT

1. Citizens Comments (*Public comment limited to five (5) minutes per speaker*)

None.

2. Council Comments

Everyone congratulated Council Members Pettey and Glendening and Mayor Gabriel on their recent election.

Council Member Pettey noted it was an honor to serve on City Council; thanked the Rasmuson Foundation for the grant and the staff for their work in applying for the grant. She also noted an upcoming art show opening and thanked the City Managers for their letter to the Board of Fisheries.

Council Member Peterkin noted upcoming Brown Bears hockey games.

Council Member Glendening thanked the City Planner for her work on the Alaska LNG Draft EIS comments and noted the upcoming Pumpkin Festival.

Council Member Molloy congratulated the Mayor for his new grandson and the City Manager's daughter for her personal best in Doha, Qatar.

Vice Mayor Navarre noted Council Members and staff gave a lot of time and energy to their responsibility and should be given the opportunity to do things with their families as they were important, too. He gave a brief overview of his presentation to the Alaska Mental Health Board and Advisory Board on Alcohol and Drug Abuse. He also noted upcoming Alaska Municipal League workshops and their value for municipalities adding that the Sales Tax collection policy was being reviewed by city managers and city attorneys and could be in place by next year.

L. EXECUTIVE SESSION – None.

M. PENDING ITEMS – None.

N. ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 8:14 p.m.

I certify the above represents accurate minutes of the Kenai City Council meeting of October 2, 2019.

Jamie Heinz, CMC
City Clerk

PAYMENTS OVER \$15,000.00 WHICH NEED COUNCIL RATIFICATION
COUNCIL MEETING OF: OCTOBER 16, 2019

VENDOR	DESCRIPTION	DEPARTMENT	ACCOUNT	AMOUNT
ALCAN ELECTRICAL & ENG.	POLICE SECURITY CAMERAS	POLICE	UTILITIES	114,475.64
PERS	PERS	VARIOUS	LIABILITY	92,350.24
DOORS AND WINDOWS	NEW ELECTRONIC DEVICES	BUILDINGS	REPAIR & MAINT.	16,795.00
PREMERA BLUE CROSS	OCTOBER PREMIUM	VARIOUS	INSURANCE	197,757.96
WINCE, CORTHELL & BRYSON	TERMINAL REHAB	AIRPORT	A/P TERMINAL ENG	21,696.30

INVESTMENTS

VENDOR	DESCRIPTION	MATURITY DATE	AMOUNT	Effect. Int.
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Sponsored by: City Clerk

CITY OF KENAI

ORDINANCE NO. 3092-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING KENAI MUNICIPAL CODE SECTION 1.10.030 – ORGANIZATION MEETING, TO PROVIDE THAT THE TERMS OF OFFICE OF THE MAYOR AND OTHER COUNCILMEMBERS SHALL BEGIN THE MONDAY FOLLOWING CERTIFICATION OF THE ELECTION.

WHEREAS, at the October 1, 2019 regular election, the voters ratified Resolution No. 2019-49, approving a Charter amendment providing that the terms of office of the Mayor and other Council Members shall begin the Monday following certification of the election; and,

WHEREAS, Kenai Municipal Code Section 1.10.030, Organization Meeting, stated substantially the same thing as the Charter regarding Mayor and Council Member terms; and,

WHEREAS, it is appropriate to amend KMC Section 1.10.030 to reflect the Charter amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, as follows:

Section 1. Amendment of Section 1.10.030 of the Kenai Municipal Code: That Kenai Municipal Code, Section 1.10.030 – Organization Meeting, is hereby amended as follows:

1.10.030 Organization [M]Meeting.

The terms of newly-elected Council Members shall begin [AT THE TIME PRESCRIBED FOR THE SECOND REGULAR COUNCIL MEETING AFTER THEIR] the Monday following certification of the election, as provided by the City Charter, Section 10-2. [AT SAID MEETING] On that Monday or as soon thereafter as practicable, the Council Member-elect [PRESENT] shall take and subscribe to the oath or affirmation of office, which shall be administered by the City Clerk or other authorized person. At [THIS] the first regular meeting following certification, or as soon thereafter as practicable, the Council shall elect a Vice-Mayor and otherwise organize for the ensuing year as needed and undertake its duties.

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 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 6th day of November, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Introduced: October 16, 2019
Enacted: November 6, 2019
Effective: December 6, 2019



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Jamie Heinz, City Clerk
DATE: October 7, 2019
SUBJECT: **Ordinance No. 3092-2019 – Terms and Organization Meeting**

Pursuant to voter ratification of Resolution No. 2019-49, providing that terms of office for the Mayor and Councilmembers be changed to the Monday following certification of the election, it is appropriate that Kenai Municipal Code (KMC) Section 1.10.030 – Organization meeting be amended to follow suit.

Proposed amendments provide that the elected candidate's term will begin the Monday after certification of the election and the candidate will take their oath on that Monday or as soon as practicable thereafter. It further provides that the election of the Vice Mayor and other organization will take place at the first meeting after certification or as soon as practicable thereafter.

Your consideration is appreciated.





Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3093-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, ACCEPTING AND APPROPRIATING A GRANT FROM THE U.S. DEPARTMENT OF HOMELAND SECURITY PASSED THROUGH THE STATE OF ALASKA DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS FOR THE PURCHASE OF A FIRE STATION ALERTING SYSTEM, AN IT SECURITY AUDIT, AND A BASE RADIO SYSTEM REPLACEMENT FOR DISPATCH

WHEREAS, the City of Kenai received a notice from the State of Alaska Department of Military and Veterans' Affairs that it was awarded \$473,000 for grant projects under the 2019 State Homeland Security Program; and,

WHEREAS, the projects that were awarded grant funding were the continuation of a Fire Station Alerting System project for \$45,000, a City IT Security Audit for \$35,000, and a Base Radio System Replacement for dispatch for \$393,000; and,

WHEREAS, the Fire Department in conjunction with other fire entities in the Borough started a Fire Station Alerting Project last year under a prior grant program and these additional grant funds will allow them to continue that project to include Fire Station 2; and,

WHEREAS, the Finance Department, which handles IT services for the City, has taken steps to secure the technology infrastructure within the City and the use of these funds to effect an audit on the security of that infrastructure will provide an evaluation of where improvements may be needed in the future; and,

WHEREAS, the Base Station Radio equipment used by Dispatch currently is based on very dated technology, and is no longer serviced by the manufacturer, leaving it vulnerable to major failures that would be difficult to service; and,

WHEREAS, the grants do not require a monetary match from 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 a grant from the U.S. Department of Homeland Security passed through the State of Alaska Department of Military and Veterans' Affairs for the purchase of a Fire Station Alerting System, an IT Audit, and a Base Station Radio System, execute any required grant documents and expend the funds in accordance with grant provisions and conditions.

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

Public Safety Capital Project Fund:	
Increase Estimated Revenues –	
Federal Grants	<u>\$473,000</u>
Increase Appropriations –	
Machinery and Equipment	\$438,000
Professional Services	<u>35,000</u>
	<u>\$473,000</u>

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 upon adoption.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 6th day of November, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Approved by Finance: 

Introduced: October 16, 2019
Enacted: November 6, 2019
Effective: November 6, 2019



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: David Ross, Police Chief

DATE: October 9, 2019

SUBJECT: **Ordinance No. 3093-2019 - Ordinance accepting and appropriating a grant from the Department of Homeland Security**

Grants were applied for by the City of Kenai, under the 2019 Homeland Security Program, and three of those grant requests were funded totaling \$473,000. The City received notice of award of a \$35,000 grant for the City to conduct an IT Security Audit. The City received notice of award of a grant for \$45,000 to continue work on the Fire Station Alerting System. The City received notice of award of \$393,000 for a Base Radio System replacement for the Dispatch Center. The first two grant requests were fully funded, while the Base Station Radio system grant application was partially funded. These grants do not require a monetary match by the City, however, with the radio system not fully funded we will be evaluating how to best move forward with the radio system upgrades, which may necessitate returning to Council to request additional appropriation of funds.

I am respectfully requesting consideration of the ordinance accepting and appropriating the currently awarded grant funds for the purposes they were intended.





Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3094-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, ACCEPTING AND APPROPRIATING A DONATION FROM HILCORP ENERGY COMPANY TO ASSIST WITH THE ANNUAL KENAI SENIOR CENTER THANKSGIVING DINNER.

WHEREAS, annually the Kenai Senior Center hosts a Thanksgiving Dinner that is open to seniors from all over the Peninsula; and,

WHEREAS, the City has received a donation from Hilcorp Energy Services in the amount of \$3,500 for the purchase of food and supplies for hosting the event; and,

WHEREAS, it is in the best interest of the City of Kenai to accept and appropriate this donation for the purposes described above.

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 donation from Hilcorp Energy Company in the amount of \$3,500 and to expend the donated funds to fulfill the purpose and intent of this ordinance.

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

Senior Citizen Fund:

Increase Estimated Revenues – Donations	<u>\$3,500</u>
--	----------------

Increase Appropriations:

Congregate Meals – Operating Supplies	\$2,625
Home Meals – Operating Supplies	<u>875</u>
	<u>\$3,500</u>

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 upon adoption.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 6th day of November, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Finance 

Introduced: October 16, 2019

Enacted: November 6, 2019

Effective: November 6, 2019



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Kathy Romain, Senior Center Director
DATE: October 4, 2019
SUBJECT: Ordinance No. 3094-2019 - Hilcorp Donation

Hilcorp has once again donated \$3,500.00 for the Annual Peninsula Wide Senior Thanksgiving Dinner which will be held on November 19, 2019. This is the seventh year Hilcorp has provided funding and volunteers for this event.

The Peninsula Wide Thanksgiving Dinner is a senior tradition that began in 1976. A Homemakers Club provided and served the first meal to the seniors. From there it grew and has been passed on through Unocal Oil, Agrium, and Marathon Oil. Since 2012, Hilcorp has continued the tradition by providing the funding and the volunteers. The donation will be used as follows:

Food	\$3,320.00
<u>Centerpieces</u>	<u>180.00</u>
Total Donation	\$3,500.00

Thank you for your consideration.





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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Jeff Tucker, Fire Chief
DATE: October 4, 2019
SUBJECT: Fire Department Mid-Month Report - September

In September the department responded to 118 calls for service as compared to 109 calls in September 2018. This is an 8% increase compared to September of 2018. Through September the department has responded to 1187 calls for service as compared to 1088 in 2018. This is a 9% year to date increase over the preceding year.

A working group comprised of members of the City of Kenai Fire Department, Nikiski Fire Department, and Central Emergency Services chaired by KFD Deputy Chief Tony Prior has been working on developing an evaluation process to be used to select the new Self-Contained Breathing Apparatuses that will be purchased through the FEMA Assistance to Firefighters Grant. The evaluation will hopefully take place mid-November.

October starts Fire Prevention Month in Alaska and the department is currently out in the schools doing fire prevention presentations.

Fire Fighter Scott Summers has completed the Paramedic course at Kenai Peninsula College and is now in Texas to complete a month long field internship program.

Fire Marshal Jeremy Hamilton attended the "Managing Effective Fire Prevention Programs" course at the National Fire Academy in Emmitsburg, Maryland.

Chief Tucker attended the Alaska Fire Conference in Ketchikan, Alaska.

The Kenai Fire Department along with the Kenai Police department participated in the Kenai Municipal Airports Tri-Annual drill. This year's drill focused on an active shooter on an aircraft with multiple casualties. The drill was effective and good lessons were learned.





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MEMORANDUM

TO: Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Mary Jo Joiner
DATE: October 4, 2019
SUBJECT: Library Mid-Month Report

SEPTEMBER Circulation Figures

Adult Fiction	1,292	Internet Access	804
Adult Non-Fiction	1,069	iPad use	182
Young Adult Fiction	195	Games	7
Periodicals	84	Room Booking	171
Juvenile Fiction	399	Music	22
Juvenile Non-Fiction	344	DVDs	2,173
Easy Fiction	1,077	Audio books	62
Easy Non-Fiction	254	Miscellaneous	89
Interlibrary Loan	0	Computer Programs	
Books – Consortium	288	Media – Consortium	163
Total Print	5,002	Total Non-Print	3,673

	Total Circulation 9/19	8,675	Downloadable Audio	671
	Total Circulation 9/18	8,403	Downloadable EBooks	586
	% change	+3%	% change in downloadable	+4%
	In-House circulation	264		





Library Door Count..... 6,637

Income

Fines	\$ 401.86
Xerox	251.60
Lost/Damaged	13.99
Test Proctoring Fee	20.00
Printing	361.25
<u>Other</u>	
Total income	\$ 1,050.70



Library Cards Issued SEPTEMBER

Kasilof	1
Kenai	29
Nikiski	15
Non-Resident	2
Other Peninsula	2
<u>Soldotna</u>	<u>2</u>
Total	51

Programs

In September 8 volunteers worked about 22 hours. There were 13 children’s programs with 289 total in attendance, and 14 adult and family programs with 171 attendees.



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Mary Bondurant, Airport Manager
DATE: October 4, 2019
SUBJECT: **October Mid-month Report**

2018 Terminal Rehabilitation Project – Construction: This project is well underway with new changes every week. Construction is completing on the west side ramp and beginning at the north end, both inside and out.

2019 Airfield Marking, Crack Sealing, & Pavement Repair – This project is complete and the closeout process will begin. This was a successful project accomplishing all tasks with some additional marking tasks.

2019 Alaska Fire Training Facility Rehabilitation & Acquire Aircraft Rescue and Firefighting Trucks (ARFF) – The City received the FAA grant on September 20, 2019. Pre-construction meetings for the equipment and building rehabilitation will be on October 10, 2019 starting at 9:30am.

In-house Activities –

Tri-annual Mass Casualty – The Tri-annual Mass Casualty Drill was held on October 2, 2019. The scenario was an active shooter on a RAVN aircraft. Thank you to the Kenai Police and Fire along with other Airport Emergency Control plan participants and volunteers for participating and volunteering to ensure we had a successful mock casualty drill.

Pre-Winter Operations Meeting – The Airport's pre-season winter operations meeting for all airport tenants and users will be held on October 23, 2019, 9:00a.m., in the City Council Chambers.

Airport Recruiting - October 4, 2019 was the final day for advertising of Airport winter positions for the 2019-2020 winter season. Review of applications will start the week of October 7th.





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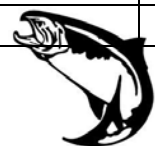
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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
THROUGH: Dave Ross, Police Chief
FROM: Jessica "JJ" Hendrickson, Animal Control Chief
DATE: October 1, 2019
SUBJECT: **September 2019 Monthly Report**

This month the Kenai Animal Shelter took in **76** animals. Animal intake and disposition:

DOGS:				
	INTAKE	34	DISPOSITION	38
	Waiver	5	Adopted	16
	Stray	20	Euthanized	0
	Impound	3	Claimed	10
	Protective Custody	0	Field Release	0
	Quarantine	1	Transferred to Rescue	12
	Other Intakes	5	Other Dispositions	0
CATS:				
	INTAKE	40	DISPOSITION	39
	Waiver	21	Adopted	15
	Stray	18	Euthanized	2
	Impound	0	Claimed	0
	Protective Custody	0	Field Release	0
	Quarantine	0	Transferred to Rescue	22
	Other Intakes	1	Other Dispositions	0
OTHER ANIMALS:				
	INTAKE	2	DISPOSITION	4
	Rabbit	1	Rabbit	3
	Guinea Pig	1	Guinea Pig	1
DOA:				
		1	OTHER STATISTICS:	
	Dog	0	Licenses (City of Kenai Dog Licenses)	8
	Cat	1	Microchips (Dog and Cat)	12



10	Animal dropped with After Hours (days we are closed but cleaning and with KPD)
38	Animals are <i>known</i> borough animals
14	Animals are <i>known</i> City of Kenai
6	Animals are <i>known</i> City of Soldotna
2	Animals from unknown location
23	Field Investigations & patrols
30.31	Volunteer Hours Logged
3	Citations
1	Educational Outreach

Statistical Data:

606	2017 YTD Intakes
631	2018 YTD Intakes
699	2019 YTD Intakes





FINANCE DEPARTMENT MID-MONTH REPORT

October 2019

To: Paul Ostrander, City Manager

From: Terry Eubank, Finance Director

Date: October 8, 2019

Re: Monthly Report

Auditors completed their fieldwork on October 7th and a draft of the FY2019 Comprehensive Annual Financial Report is near completion for review by the City's auditors. Presentation to the Council should be at the December 4th Council meeting. A year-end summation will be provided in the departments November monthly report.

The department completed its section of the City's Dip Net report. The report is a summation of information from various departments and includes a detailed analysis of the cost to operate the event.

Preparation will soon begin for the FY20 annual budget. Historical and future projections are provided to departments in December to assist in their budget preparation and much work takes place in putting this information together.





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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Elizabeth Appleby, City Planner
DATE: October 8, 2019
SUBJECT: **Planning and Zoning September 2019 Report**

Below are a summary of activity in September 2019 for the Planning and Zoning Department.

Planning and Zoning Commission Agenda Items and Resolutions

The Planning and Zoning Commission approved of one conditional use permit, one plat, two recommendations to City Council to amend Kenai Municipal Code, recommended approval of one lease of land within the Airport Reserve, had one discussion item, and had one work session:

- Resolution PZ2019-36 – Original Preliminary Plat of Bridge Road Subdivision 2019 Replat, submitted by McLane Consulting, Inc., P.O. Box 468, Soldotna, AK 99669, on behalf of Peninsula Mini Storage LLC, 47 Spur View Dr., Kenai, AK 99611
- Resolution PZ 2019-38 – Application for Transfer of Conditional Use Permit PZ15-28, for Professional Office in a Rural Residential Zone, from Clifford and Kristin Smith, to VIP Monitoring Services, LLC, located at 2785 Beaver Loop Road, and described as a portion of the NW ¼, Section 11, Township 5 North, Range 11 West, Seward Meridian
- Resolution PZ2019-37 – Application for a Conditional Use Permit to operate Gunsmithing Business, located at 310 Princess Street, Kenai, Alaska 99611, and further described as Lot 2, Cinderella Subdivision. The application was submitted by Ronald Carlson, 310 Princess Street, Kenai, Alaska 99611



- Resolution PZ2019-33 - Recommending the Kenai City Council Amend Kenai Municipal Code 14.20.175 – Adult Businesses, To Increase The Buffer Distances Between Adult Businesses And Sensitive Uses From 500 Feet To 1,000 Feet and Define Sensitive Uses and Amend Kenai Municipal Code 14.22.010 - Land Use Table, to Add Adult Businesses.
- Resolution PZ 2019-39 – Application for a Home Occupation Permit for a Home Day Care of No More Than Eight (8) Children Under the Age of Twelve (12) years, located at 604 Laurel Drive, Kenai, Alaska 99611, and further described as Lot 1, Block J, Woodland Subdivision Part One (1). The application was submitted by Mindy Dalebout, 604 Laurel Drive, Kenai, AK 99611

Code Enforcement

4 cases were opened in September 2019 for Garbage.

2 cases were opened in September 2019 for Abandoned Vehicles.



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Robert J. Frates, Parks & Recreation Director
DATE: October 8, 2019
SUBJECT: **Mid-month Activity Report**

Routine maintenance continued throughout the month of September, including turf mowing and trimming, inspections, restroom cleaning and waste management. Some of the non-routine tasks included winterizing and retrieving irrigation equipment, cleaning out flower beds, facility cleaning and pulling bases from the ball diamonds.

The big event for the department, however, was the Kenai River Marathon held on September 29. There were approximately 211 registered runners participating in the program comprised of the full marathon, half marathon, and the 5K fun run. This year's route was changed due to the highway construction and it is anticipated we'll be using an alternative route for the next two years.

Below is a list of work accomplishments and activities for the month of September:

- Assisted with the layout of the Kenai River Marathon race course by collaborating with Mark Blanning and Bobbi Lay; staff marked the course and assisted with race day tasks.
- Staff assessed areas and determined locations for bike racks.
- Staff caged (moose protection) six trees throughout town.
- All seasonal trash receptacles pulled from service.
- Staff painted and stenciled 10 new 50 gal. drums (trash receptacles)
- Staff responded to two graffiti incidences; one at the north beach restrooms and one at the Daubenspeck Family Park restrooms.
- Crews installed 1,200 LF of trail behind the Little League fields.
- There are currently a total of 111 hours reserved at the MPF for the month of October. KCHS hockey begins October 16.



Parks and Rec Mid-Month Report

- Site remediation was performed at the Lawton Dr. trail extension near the gate; approximately 23 small Spruce trees were transplanted in an area previously damaged by ATV's. This area will be seeded as well.
- Department handled the delivery and retrieval of election equipment.
- Wild West Seed, Inc. will be donating 1 pound of red poppy seeds to be used for Memorial Day services.



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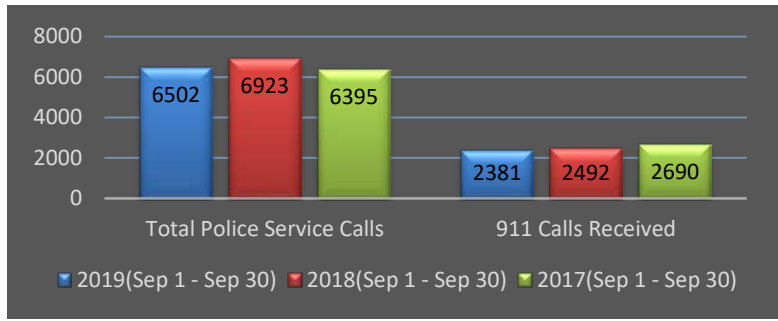
MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: David Ross, Police Chief
DATE: October 7, 2019
SUBJECT: **Police & Communications Department Activity – September 2019**

Police handled 660 calls for service in September. Dispatch received 252 9-1-1 calls. Officers made 66 arrests. Traffic enforcement resulted in 180 traffic contacts and 46 traffic citations. There were 7 DUI arrests (1 felony). Officers investigated 10 motor vehicle crashes. There were two collisions involving moose. There were two collisions involving drugs or alcohol.

September training included: All officers completed a rifle qualification. One officer attended a week long International Association of Women in Policing Conference in Anchorage. One officer attended a week long forensic device analysis training in anchorage. The KPD officer on the SERT team completed two days of training. One new hire continued through the month of September at the DPS Academy in Sitka. Two dispatchers attended a week long Incident Response to terrorism class in New Mexico.

An officer was hired to fill one of two remaining vacancies. That officer started field training and will attend the academy in February – June. We have started a new recruitment for the other vacant officer position.





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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Kathy Romain, Senior Center Director
DATE: October 7, 2019
SUBJECT: **September 2019 Monthly Report**

Congregate Meals Served (Dining Room)	1123
Home Delivered Meals	1294
Volunteer Hours	(26 individuals) = 300
Unassisted Transportation Rides	360
Assisted Transportation Rides	114
Social Security Video Service	29 individuals
Senior Center Rentals	2
Total Event Sign-Ins (through MySeniorCenter)	2405
Total Unduplicated Participants (through MySeniorCenter)	262

September activities highlights included:

- Due to the Swan Lake Fire, our last hike of the season took us to the Centennial Park Walk along the Kenai River in Soldotna, instead of the scheduled Russian River Falls. The group of 10 hiked around the Park and enjoyed a Senior Center packed lunch.
- The Mystery Drive headed out to Swanson River Road with stops at the Dolly Varden and Rainbow Lake Campgrounds. They ventured to the Swanson River Landing where they ran across a family fishing for silver and rainbows. They left some of the group use their fishing poles and to the delight of everyone, Anita Kwan got a nice silver! They continued down Swan Lake Road to Merganser Campground and to the East and West Canoe Trails entry/exit points before heading back to Kenai. This was our last Mystery Drive for the season.
- Our No-Host Dinner took a full bus to a group favorite, Magpyes in Sterling. The group of 13 left the restaurant with happy smiles and enough leftovers for another meal.
- The Annual Flu Shot Clinic with Kenai Safeway Pharmacy brought in over 50 seniors from around the area.
- The Senior Center hosted the Public Comment and Community Reception for the Alaska Mental Health Board and Advisory Board on Alcohol and Drug Abuse on September 25.

