



## Kenai City Council - Regular Meeting

September 21, 2022 – 6:00 PM

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

[www.kenai.city](http://www.kenai.city)

**\*\*Telephonic/Virtual Information on Page 4\*\***

### Agenda

#### A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. Agenda Approval
4. Consent Agenda (*Public comments 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 comments limited to ten (10) minutes per speaker*)

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

#### D. PUBLIC HEARINGS

1. **Ordinance No. 3306-2022** - Amending Kenai Municipal Code 7.15.020 Purchases Requiring Council Approval, to Provide Increased Flexibility for the Administration to Conduct City Business while Maintaining Sufficient Safeguards to Protect the Public Interest. (Baisden)
2. **Ordinance No. 3307-2022** - Amending Kenai Municipal Code 7.25.020 – City Budget Control, to Provide Increased Flexibility in the Expenditure of Funds and Management of City Budgets while Maintaining Adequate Internal Controls to Protect the Public's Interest. (Baisden)
3. **Ordinance No. 3308-2022** - Accepting and Appropriating a Grant from the State of Alaska for the Purchase of Library Materials. (Administration)
4. **Ordinance No. 3309-2022** - Accepting and Appropriating Funds from the Public Library Association and AT&T for the Kenai Community Library's Participation in the PLA Digital Literacy Workshop Training Incentive. (Administration)
5. **Ordinance No. 3310-2022** - Increasing Estimated Revenues and Appropriations in the General Fund, Police Department, for the Receipt of a Vehicle Forfeited to the State of Alaska. (Administration)
6. **Ordinance No. 3311-2022** - Determining that Real Property Described as Lot 5, Block 1, Gusto Subdivision Addition No. 1, According to Plat No. 83-126 KR, City-Owned Airport Land Located Outside the Airport Reserve, is not Needed for a Public Purpose, Waiving KMC 22.05.095 Methods of Sale or Disposal and Authorizing the Sale of the Property to Aaron Swanson DBA Forever Business Plaza LLC. (Administration)

- 7. Ordinance No. 3312-2022** - Determining Lot 4, Block 1, Gusty Subdivision Addition No. 1 Amended is not Needed for a Public Purpose and Approving the Execution of a Lease with an Option to Purchase between the City of Kenai and Aaron Swanson for the Property. (Administration)
- **Substitute Ordinance No. 3312-2022** - Determining Lot 4, Block 1, Gusty Subdivision Addition No. 1 Amended is not Needed for a Public Purpose and Approving the Execution of a Lease with an Option to Purchase between the City of Kenai and Aaron Swanson DBA Forever Business Plaza, LLC. for the Property. (Administration)
- 8. Ordinance No. 3313-2022** - Accepting and Appropriating Funds from the State of Alaska Department of Natural Resources, Division of Forestry and the United States Department of Agriculture, Forest Service to Support the City's Spruce Beetle Mitigation and Hazard Fuel Reduction Program and Authorizing the City Manager to Execute a Memorandum of Agreement for this Funding. (Administration)
- 9. Ordinance No. 3314-2022** - Extending the Time Period for Completion of the Action Items Necessary for the Conditional Donation of an Approximate 2 Acre Parcel to be Subdivided from a Portion of the 6.8 Acre More or Less Portion of the East of Tract 4A, Baron Park 2020 Replat (KPB Parcel No. 04501035) to Triumvirate Theatre for the Development of a Theatre Facility. (Administration)
- 10. Ordinance No. 3315-2022** - Increasing Estimated Revenues and Appropriations in the General Fund and Public Safety Capital Project Fund for Costs in Excess of Budgeted Amounts for the fire Department Apparatus Bay Floor Refinishing Project. (Administration)
- 11. Ordinance No. 3316-2022** - Amending Kenai Municipal Code 14.20.150-Conditional Use Permits, to Further Clarify Roles and Responsibilities of Applicants, the Planning Director, and the Planning Commission in the Conditional Use Process. (Glendering)
- 12. Resolution No. 2022-64** - Approving the Renewal of a Lease Utilizing a Non-Standard Lease Form on Airport Reserve Lands Between the City of Kenai and the Federal Aviation Administration for the Automated Flight Service Station and Satellite Communication Network Facilities on Lot 7A-1 FBO Subdivision No. 5. (Administration)
- 13. Resolution No. 2022-65** - Approving the Use of the Fleet Replacement Fund for the Purchase of Four Ford Police Interceptors Utilizing the State of Alaska Equipment Fleet Contract. (Administration)
- 14. Resolution No. 2022-66** - Amending the Kenai Municipal Airport Aircraft Parking Fees. (Administration)
- 15. Resolution No. 2022-67** - Allowing the City of Kenai, City Manager to Execute Federal Aviation Administration Grant Agreement for Airport Improvement Program Project No. 3-02-0142-072-2022 at the Kenai Municipal Airport. (Administration)
- 16. Resolution No. 2022-68** - Authorizing A FY2022 Budget Transfer in the Airport Fund, Airfield Department for Amounts in Excess of Budgeted Amounts Caused by Employee Retirement and Above Average Snow Removal Activity During the Fiscal Year. (Administration)
- 17. Resolution No. 2022-69** - Authorizing a FY2022 Budget Transfer in the General Fund, Street Department for Amounts in Excess of Budgeted Amounts Caused by Above Average Snow Removal Activity During the Fiscal Year. (Administration)

**E. MINUTES**

1. \*Regular Meeting of September 7, 2022. (City Clerk)

**F. UNFINISHED BUSINESS****G. NEW BUSINESS**

1. \***Action/Approval** - Bills to be Ratified. (Administration)
2. \***Action/Approval** - Special Use Permit for Corvus Airlines, Inc. DBA Ravn Alaska, LLC. for Use of 1,200 Square Feet of Warm Storage of a De-Ice Vehicle. (Administration)
3. \***Ordinance No. 3317-2022** - Increasing Estimated Revenues and Appropriations in the Airport Fund and Appropriating Funds in the Airport Snow Removal Equipment Capital Project Fund for the Purchase of Snow Removal Equipment Attachments and Installation of a Gate. (Administration)
4. **Action/Approval** - Appointment of the October 4, 2022 Election Precinct Boards for the October 4, 2022 Regular City Election. (City Clerk)
5. **Action/Approval** - Kenai Senior Center as a Residual Beneficiary of the Tamera Diane Cone Testamentary Trust – Options for Management of Funds. (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**

1. Childhood Cancer Awareness Proclamation
2. Government Finance Officers Association Letter

**J. ADMINISTRATION REPORTS**

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

**K. ADDITIONAL PUBLIC COMMENTS**

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

**L. EXECUTIVE SESSION**

1. Discussion for Resolving Delinquent Special Assessment Districts. Pursuant to AS 44.62.310(c)(1) a Matter of which the Immediate Knowledge may have an Adverse Effect upon the Finances of the City. (Administration)

**M. PENDING ITEMS****N. ADJOURNMENT****O. INFORMATION ITEMS**

1. Purchase Orders Between \$2,500 and \$15,000.

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

**Join Zoom Meeting**

<https://us02web.zoom.us/j/87092139083>

**Meeting ID:** 870 9213 9083 **Passcode:** 972752

OR

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

**Meeting ID:** 870 9213 9083 **Passcode:** 972752





Sponsored by: Council Member Baisden

**CITY OF KENAI  
ORDINANCE NO. 3306-2022**

AN ORDINANCE AMENDING KENAI MUNICIPAL CODE 7.15.020 PURCHASES REQUIRING COUNCIL APPROVAL, TO PROVIDE INCREASED FLEXIBILITY FOR THE ADMINISTRATION TO CONDUCT CITY BUSINESS WHILE MAINTAINING SUFFICIENT SAFEGUARDS TO PROTECT THE PUBLIC INTEREST.

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WHEREAS, KMC 7.15.020 establishes thresholds for and the types of purchases which require approval of the City Council prior to them being made; and,

WHEREAS, the limits of KMC 7.15.020 were last amended by Ordinance 2121-2005 which was adopted on September 21, 2005; and,

WHEREAS, the \$15,000 limit imposed by KMC 7.15.020 is overly restrictive and limits the Administration's ability to react to situations that arise during each budget year, especially with four or more weeks between some City Council Meetings; and,

WHEREAS, KMC 7.15.020 provides no ability for the Administration to issue change orders to contracts or purchase orders, causing delays in projects or requests for Council approval/ratification after the fact; and,

WHEREAS, seeking approval again for the purchase of items for which funds were approved with the adoption of the annual budget is redundant and causes delays in the purchase of needed equipment, supplies and services; and,

WHEREAS, review of other municipal codes shows that most only require further action by councils/assemblies when the purchase amount exceeds the amount at which formal solicitation for the purchase was required; and,

WHEREAS, KMC 7.15.040 requires formal solicitation for any purchase of \$35,000 or more; and,

WHEREAS, increasing the amount in KMC 7.15.020 to \$35,000, the same amount for which formal solicitation is required by KMC 7.15.040, will reduce delays and after-the-fact approvals by Council; and,

WHEREAS, inclusion of provisions to accommodate change orders to contracts will increase the efficiency of operations when unforeseen circumstances are encountered; and,

WHEREAS, the annual budget process, the purchasing policies promulgated in KMC 7.15 and the proposed amended limits will ensure sufficient controls to protect the public interest remain; and,

WHEREAS, providing a procurement system with sufficient controls without overly burdensome requirements is needed for the efficient administration of the City and is in its best interest.

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

**Section 1.** Amendment of Section of Kenai Municipal Code: That Kenai Municipal Code, Section 7.15.020 is hereby amended as follows:

**7.15.020 Purchases requiring Council approval.**

(a) Every contract for, or purchase of, thirty-five [FIFTEEN] thousand dollars \$35,000.00 [(\$15,000.00)] or more of supplies, materials, equipment, professional or contractual services shall require the prior approval of the Council. The only exceptions will be:

- (1) Utility bills (i.e., electricity, gas, fuel, and telephone);
- (2) City’s routine investment purchasing;
- (3) Monthly payments for payroll deductions (i.e., income tax, F.I.C.A., retirement, and fringe benefits), including both employer’s and employee’s share;
- (4) Authorized debt; or
- (5) Monthly contracted janitorial service.

(b) All such exceptions will be paid when they fall due and payments will be ratified by Council at the next regular Council meeting.

(c) Purchase order amendments.

(1) Purchase order amendments may not be used to avoid procurement by the competitive procedures established under this chapter.

(2) A purchase order amendment may not be executed by administration without Council approval if the amendment will cause the purchase order, as amended, to exceed:

- (i) Thirty-five thousand dollars \$35,000.00; or
- (ii) One hundred fifteen percent 115% of the original purchase order amount if the original purchase order exceeded \$35,000.

**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 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Saner, MMC, City Clerk

Introduced:	September 7, 2022
Enacted:	September 21, 2022
Effective:	October 21, 2022



## MEMORANDUM

**TO:** Mayor Gabriel and Council Members  
**FROM:** Council Member James Baisden  
**DATE:** August 31, 2022  
**SUBJECT:** **Ordinance 3306-2022 Amending Kenai Municipal Code (KMC) 7.15.020, Purchases Requiring Council Approval.**

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The purpose of this memo is to request your support for adoption of Ordinance 3306-2022 which will amend KMC 7.15.020. KMC 7.15.020 establishes thresholds for the types of purchases which require approval of the City Council prior to them being made. The \$15,000 or greater threshold requiring Council approval prior to the purchase has not increased since 2005 when it increased from \$2,500 to \$15,000.

The \$15,000 threshold is too restrictive, which delays the Administration in its efforts to provide services to the Citizens of Kenai. Limits are important to ensuring the public's interest is protected but should not be so restrictive as to limit the ability to effectively provide City services. In addition, KMC 7.15.020 is silent on change orders to contracts or purchase orders requiring additional council approval prior to issuance when the existing or amended contract amount exceeds the established threshold.

In preparing this Ordinance the limits of other governments were examined for comparative purposes. Municipal codes varied from least restrictive being the Kenai Peninsula Borough on which there is no limit on the Mayor's authority to contract or purchase to the City of Homer where no approval is needed for items specifically identified in the annual budget or \$10,000. The proposed change is modeled after the City of Wasilla's code which requires formal solicitation for purchases in excess of \$30,000, and allows contract or purchase order amendments up to 10% with no additional council action.

Proposed changes to KMC 7.15.020 will

1. Increase the threshold for purchases needing prior approval of Council to the same amount at which formal solicitation is required for purchase, \$35,000.
2. Add provisions for contract amendments which allow the Administration to increase PO's and contracts previously approved by Council by 15% without the need for additional Council action.

These proposed changes will maintain adequate controls and safeguards to protect the public while enhancing the Administration's ability to provide services to the citizens of Kenai. Your support is respectfully requested.



Sponsored by: Council Member Baisden

**CITY OF KENAI  
ORDINANCE NO. 3307-2022**

AN ORDINANCE AMENDING KENAI MUNICIPAL CODE 7.25.020 – CITY BUDGET CONTROL, TO PROVIDE INCREASED FLEXIBILITY IN THE EXPENDITURE OF FUNDS AND MANAGEMENT OF CITY BUDGETS WHILE MAINTAINING ADEQUATE INTERNAL CONTROLS TO PROTECT THE PUBLIC’S INTEREST.

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WHEREAS, the Kenai City Council adopts an annual budget which creates the legal authority to expend funds up to a fixed amount and within specific accounts by fund; and,

WHEREAS, amendments to the adopted budget are made by Council and Administration throughout the year within the specified limits of KMC 7.25.020; and,

WHEREAS, the limits on allowable administrative adjustments to the budget within KMC 7.25.020 were last amended by Ordinance 2120-2005, adopted on September 21, 2005; and,

WHEREAS, the \$5,000 limit on the authority of the City Manager to move funds in line item accounts imposed by KMC 7.25.020 is overly restrictive and limits the Administration’s ability to react to situations that arise during each budget year; and,

WHEREAS, waiting for Council action for budget adjustments with four or more weeks between some Council Meetings creates delays in the ability to provide essential services; and,

WHEREAS, the proposed amendments will not increase the authorized spending limit, the authority to increase this amount will remain the exclusive authority of Council, and the ability to transfer budget between different funds of the City is and will remain prohibited without an Ordinance of Council; and,

WHEREAS, the proposed amendments limit the Administration’s ability to move budgeted amounts between departments, within a fund, to \$10,000, twice the current limit of \$5,000; and,

WHEREAS, the proposed amendments will remove the now \$5,000 limit to move budgeted amounts between accounts within the same department of a fund; and,

WHEREAS, the proposed amendments will remove the monthly reporting requirement for amendments to capital project accounts, but the ability to increase the overall budget of a project will remain at the sole discretion of Council; and,

WHEREAS, the proposed amendments will increase the flexibility to initiate budget revisions, will enhance the Administration’s and Council’s ability to conduct business, will maintain sufficient controls to protect the public interest, and is in the best interest of the City.

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

**Section 1.** Amendment of Section of Kenai Municipal Code: That Kenai Municipal Code, Section 7.25.020 is hereby amended as follows:

**7.25.020 City budget control.**

- (a) After approval by the Finance Director as to availability of unencumbered balances, transfers [IN AMOUNTS LESS THAN FIVE THOUSAND DOLLARS (\$5,000.00)] up to the amount of available funds may be made in line item accounts within [THE GENERAL FUND, SPECIAL REVENUE FUNDS, DEBT SERVICE FUNDS, ENTERPRISE FUNDS AND INTERNAL SERVICE FUNDS WITHOUT APPROVAL BY THE CITY COUNCIL] a department of a fund and by up to ten thousand dollars (\$10,000.00) between the accounts of a department within a fund. The City Clerk may make such transfers within the General Fund Department of the City Clerk, and the City Attorney may make such transfers within the General Fund Department of Law. The City Manager may make such transfers in all other areas except in the Legislative Department, which may be made by the Mayor or designee. The budgetary level of control will be the project level for Capital Project Funds. [OBJECT LEVEL TRANSFERS OF FIVE THOUSAND DOLLARS (\$5,000.00) OR MORE WITHIN A PROJECT WILL BE REPORTED TO THE COUNCIL ON A MONTHLY BASIS.]
- (b) The City Council, by resolution, may make transfers in any amounts of unencumbered balances of line item accounts within a Department or within a fund.
- (c) The City Administrator is directed to charge all disbursements to “cost centers” established by the budget. A “cost center” is de-fined as a provision for expenditure specified by the budget of the City of Kenai for a department or activity specifically so recognized.

**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 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Saner, MMC, City Clerk

Introduced:	September 7, 2022
Enacted:	September 21, 2022
Effective:	October 21, 2022



## MEMORANDUM

**TO:** Mayor Gabriel and Council Members  
**FROM:** Council Member James Baisden  
**DATE:** August 31, 2022  
**SUBJECT:** **Ordinance 3307-2022 Amending Kenai Municipal Code (KMC) 7.25.020, City Budget Control**

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The purpose of this memo is to request your support for adoption of Ordinance 3307-2022 which will amend KMC 7.25.020. KMC 7.25.020 authorizes who may and under what circumstances transfers can be made in the City's annually adopted budget. Currently any budget transfers of \$5,000 or more requires the approval, by resolution, of the City Council except those for line items within capital projects for which revisions may be made in any amount within a project, but must be reported to Council monthly. The \$5,000 limit has not increased since 2005 when it increased from \$2,500 to \$5,000.

These limits are too restrictive and limiting, requiring numerous resolutions annually which inhibits the Administration in its efforts to provide services to the Citizens of Kenai. Limits are important to ensuring the public's interest is protected, but should not be so restrictive as to limit the ability to effectively provide City services.

In preparing this Ordinance the limits of other governments were examined for comparative purposes. City codes varied from least restrictive being Seward which allows its City Manager to move unlimited amounts within a fund to the City of Kenai's being most restrictive. The proposed change mirrors the City of Wasilla's code.

Propose changes to KMC 7.25.020 will

1. Limit the Administration's ability to move budget between departments of a fund to \$10,000. The limit is currently \$5,000 between accounts within a fund.
2. Allow for the city manager to move unlimited budgeted funds within a department of a fund.
3. Reduce the number of legislative items brought to Council for budget revisions which almost always pass by unanimous consent or a unanimous vote of Council.
4. Eliminate the need for reporting budget revisions between capital project accounts for which the budgetary control is unchanged at the project level.

The Authority to increase the budget will remain solely within Council's authority. These proposed changes will maintain adequate controls and safeguards to protect the public while enhancing the Administration's ability to provide services to the citizens of Kenai. Your support is respectfully requested.



Sponsored by: Administration

**CITY OF KENAI  
ORDINANCE NO. 3308-2022**

AN ORDINANCE ACCEPTING AND APPROPRIATING A GRANT FROM THE STATE OF ALASKA FOR THE PURCHASE OF LIBRARY MATERIALS.

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WHEREAS, the Kenai Community Library received a FY 2023 Public Library Assistance grant of \$7,000 from the State of Alaska, Department of Education and Early Development, Division of Library, Archives & Museums; and,

WHEREAS, the funds will be used to purchase library materials; and,

WHEREAS, it is in the best interest of the City of Kenai to appropriate these grant funds for the purpose intended.

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

**Section 1.** That the City Manager is authorized to accept this grant in the amount of \$7,000 and to execute grant agreements and to expend the grant funds to fulfill the purpose and intent of this Ordinance.

**Section 2.** That the following budget revision is authorized:

General Fund:

Increase Estimated Revenues –  
Library—State Grants \$7,000

Increase Appropriations –  
Library—Books \$7,000

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

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

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Saner, MMC, City Clerk



Approved by Finance: SB, Acting

Introduced:	September 7, 2022
Enacted:	September 21, 2022
Effective:	September 21, 2022



# KENAI

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

## MEMORANDUM

**TO:** Mayor Gabriel and Council Members

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Katja Wolfe, Library Director

**DATE:** August 29, 2022

**SUBJECT:** **Accepting and Appropriating a Grant for the Purchase of Library Materials**

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The Library has been awarded an annual Public Library Assistance Grant by the State of Alaska, Department of Education and Early Development, Division of Library, Archives & Museums. As per the grant award, the amount of \$7,000 is to be used for the purchase of library materials.

The Library Director completes an application each year in order to receive these funds. Certain minimum standards must be met in order to receive this grant. These include reporting requirements on expenditures and collection statistics, the number of hours that the library is open to the public, minimum educational requirements for the Library Director and continuing education requirements.

Your consideration is appreciated.



Sponsored by: Administration

**CITY OF KENAI  
ORDINANCE NO. 3309-2022**

AN ORDINANCE ACCEPTING AND APPROPRIATING FUNDS FROM THE PUBLIC LIBRARY ASSOCIATION AND AT&T FOR THE KENAI COMMUNITY LIBRARY’S PARTICIPATION IN THE PLA DIGITAL LITERACY WORKSHOP TRAINING INCENTIVE.

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WHEREAS, the Kenai Community Library is one of 160 libraries nationwide selected to participate in the PLA Digital Literacy Workshop Incentive 2022-2023 program; and,

WHEREAS, the PLA Digital Literacy Workshop Training Incentive is offered by the American Library Association through its division the Public Library Association and supported by AT&T; and,

WHEREAS, the purpose of this incentive program is to expand digital literacy learning opportunities and help bridge the digital divide in our community; and,

WHEREAS, the library will offer instructor-led workshops that focus on basic yet essential digital literacy skills; and,

WHEREAS, funds from this incentive program will be used to purchase updated computer manuals, supplies for workshops (e.g., food, flash drives, and handouts), and computer equipment and supplies; and,

WHEREAS, it is in the best interest of the City of Kenai and the Kenai Community Library to appropriate these grant funds for the purpose intended.

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

**Section 1.** That the City Manager is authorized to accept funds in the amount of \$4,000 and to expend them as authorized by this ordinance and in line with the requirements of the incentive program.

**Section 2.** That the following budget revision is authorized:

General Fund:

Increase estimated revenues –	
Library—Miscellaneous Donations	\$4,000
Increase appropriations –	
Library—Books	\$500
Library—Operating and Repair Supplies	\$500
Library—Advertising	\$500
Library—Small Tools and Minor Equipment	\$2500

**Section 3.** Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares

that it would have enacted the remainder of this ordinance even without such part, provision, or application.

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

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Saner, MMC, City Clerk

Approved by Finance: SB, Acting

Introduced:	September 7, 2022
Enacted:	September 21, 2022
Effective:	September 21, 2022



## MEMORANDUM

**TO:** Mayor Gabriel and Council Members

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Katja Wolfe, Library Director

**DATE:** August 29, 2022

**SUBJECT:** **PLA Digital Literacy Workshop Training Initiative**

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The Kenai Community Library has been selected through a competitive application process to participate in the PLA Literacy Workshop Training Initiative, an education initiative created to expand digital literacy learning opportunities and help bridge the digital divide in our community.

Through this initiative, we will offer instructor-led workshops that focus on basic yet essential digital literacy skills. We are planning a program series for more general audiences and a program series specifically geared to the needs of our senior residents. The former will be presented at the library and the latter will be held at the senior center. Funds will be used to purchase updated computer manuals, supplies for the workshops (e.g., food, flash drives, and handouts), and computer equipment.

This program is made possible by the American Library Association through its division the Public Library Association and supported by AT&T.

Thank you for your consideration.



Sponsored by: Administration

**CITY OF KENAI  
ORDINANCE NO. 3310-2022**

AN ORDINANCE INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE GENERAL FUND, POLICE DEPARTMENT, FOR THE RECEIPT OF A VEHICLE FORFEITED TO THE STATE OF ALASKA.

WHEREAS, the police department has use for a vehicle that has been forfeited to the State of Alaska and has been offered to the Kenai Police Department; and,

WHEREAS, the vehicle is valued at approximately \$30,000 and will be transferred to the City at no cost; and,

WHEREAS, it is anticipated that this vehicle will replace another vehicle currently used by the police department that was previously obtained in a similar fashion; however once accepted the vehicle may be used or traded for a different vehicle that will best suit the needs of the Department.

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 this forfeited vehicle to be put to use or traded for another vehicle of similar value.

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

General Fund

Increase estimated revenues – Forfeiture	\$30,000
Increase appropriations – Police Department Machinery & Equipment	\$30,000

**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 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

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Michelle M. Saner, MMC, City Clerk

Approved by Finance: SB, Acting

Introduced:	September 7, 2022
Enacted:	September 21, 2022
Effective:	September 21, 2022





## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** David Ross – Police Chief  
**DATE:** August 29, 2022  
**SUBJECT:** **Ordinance No. 3310-2022, Forfeited Vehicle**

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The Kenai Police Department participates in the regional drug task force. The Department has consistently been able to get and replace the vehicles for use in that task force through State Forfeiture. Accepting this forfeiture vehicle will allow the replacement of a high mileage vehicle. This forfeited vehicle may be put to use or traded for a vehicle that best suits the needs of the Department. The estimated value of the vehicle is approximately \$30,000, and it will be transferred to the City at no cost.

I am respectfully requesting consideration of the ordinance accepting this vehicle forfeiture from the State.



Sponsored by: Administration

**CITY OF KENAI  
ORDINANCE NO. 3311-2022**

AN ORDINANCE DETERMINING THAT REAL PROPERTY DESCRIBED AS LOT 5, BLOCK 1, GUSTY SUBDIVISION ADDITION NO. 1, ACCORDING TO PLAT NO. 83-126 KRD, CITY-OWNED AIRPORT LAND LOCATED OUTSIDE THE AIRPORT RESERVE, IS NOT NEEDED FOR A PUBLIC PURPOSE, WAIVING KMC 22.05.095 METHODS OF SALE OR DISPOSAL AND AUTHORIZING THE SALE OF THE PROPERTY TO AARON SWANSON DBA FOREVER BUSINESS PLAZA LLC.

WHEREAS, the City of Kenai received a quitclaim deed from the Federal Aviation Administration (FAA) on December 1, 1963, to nearly 2,000 acres of land subject to certain restrictions, including that no property shall be used, leased, sold salvaged, or disposed of for reasons other than for airport purposes; and,

WHEREAS, the City of Kenai received a deed of release from the Federal Aviation Administration (FAA) on January 16, 1984, for Gusty Subdivision Addition No.1, subject to certain reservations and conditions, that protect the Airports continued use for airport purposes; and,

WHEREAS, the City has received a request to purchase Lot 5, Block 1, Gusty Subdivision Addition No. 1, according to Plat No. 83-126, from the current Lessee; and,

WHEREAS, KMC 22.05.110 – Determination as to need for public purpose, provides that the City Council, may determine whether land is no longer needed for public purpose; and,

WHEREAS, the Property is leased to Aaron Swanson, dba Forever Business Plaza, for private commercial use and is not needed for a public purpose; and,

WHEREAS, Resolution No. 2018-12 amended the City's Policy for sale of specific Airport Land Lots and the subject property is one of the properties addressed in the policy; and,

WHEREAS, Resolution No. 2018-12 did not authorize the sale of these lands but only a method for sale; and,

WHEREAS, Resolution No. 2018-12 had a sunset of July 6, 2021 however the prior, now deceased lessee, was unable to take advantage of the policy timely; and,

WHEREAS, the sale of this property under the same terms and conditions established by Resolution No. 2018-12 is in the best interest of the City and Airport and encourages new development and/or improvements to the property; and,

WHEREAS, all provisions of KMC 22.05.100 - Sale procedure, shall be followed; and,

WHEREAS, the provision of KMC 22.05.095, Methods of Sale or Disposal, are hereby waived in recognition of the City's prior policy regarding the parcel and unique circumstances of the prior lessee and is in best interest of the City; and,

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

WHEREAS, at their regular meeting on September 8, 2022, the Airport Commission reviewed the sale application and recommended \_\_\_\_\_ by the City Council.

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

**Section 1.** Form: That this is a non-code ordinance waiving KMC 22.05.095 – Methods of Sale or Disposal.

**Section 2.** Statement of Ownership: That the City of Kenai is the owner of Lot 5, Block 1, Gusty Subdivision Addition No.1, according to plat 83-126 KR, (the Property).

**Section 3.** Public Purpose and Best Interest Findings: That the Property is not needed for future public municipal or airport purposes. Under the Airport Layout Plan, the Property is designated for non-aviation commercial or light-industrial uses. The sale of the Property is in the best interests of the City and Airport, as it serves a purpose of continuing commercial growth and investment in the City.

**Section 4.** Authorization of Sale: That the Kenai City Council hereby authorizes the City Manager to sell the City-owned lands described as Lot 5, Block 1, Gusty Subdivision Addition No. 1, according to Plat No. 83-126, under the procedures and terms established for the sale of lands, as set forth in KMC 22.05.100 et seq. and subject to the following additional essential terms and conditions of sale [under the Policy for Sale of Specific Airport Leased Lands approved by City of Kenai Resolution No. 2018-12]:

a) The sale will be made through a negotiated sale to Aaron Swanson, dba Forever Business Plaza LLC, for a sum not less than fair market value of the land excluding lessee-constructed improvements as determined by an appraisal and a minimum new investment in the construction of new permanent improvements on the premises equal to 25% of the fair market value of the land within three (3) years of sale.

**Section 5.** Title: That title shall be conveyed by quitclaim deed. Any instrument conveying title to the Property shall include the conditions covenants and reservations as described Deed of Release, recorded in Book 227, Page 416 and 417 KR.

**Section 6.** Proceeds of Sale: That should a sale of the Property be finalized, all revenues from the sale shall be deposited in the Airport Land Sale Permanent Fund for use in the development, improvement, and operation of the Kenai Municipal Airport and as otherwise required in the Deed of Release dated December 12, 1984.

**Section 7.** 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 8.** 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 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

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Michelle M. Saner, MMC, City Clerk

Approved by Finance: SB, Acting

Introduced:	September 7, 2022
Enacted:	September 21, 2022
Effective:	October 21, 2022



## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Max Best, Interim Planning Director

**DATE:** September 14, 2022

**SUBJECT:** **Ordinance No. 3311-2022 - Determining that real property described as Lot 5, Block 1, Gusty Subdivision Addition No. 1, city-owned airport land located outside the airport reserve, is not needed for a public purpose and authorizing the sale of the property to Aaron Swanson, dba as Forever Business Plaza LLC**

---

The City has received a request to purchase the above City-owned leased land outside the Airport Reserve with substantial constructed leasehold improvements.

Aaron Swanson, dba Forever Business Plaza, LLC, is the current lessee of Lot 5, Block 1, Gusty Subdivision Addition No. 1, which was obtained by transfer on April 27, 2022. The current use is for an office building and includes substantial recent improvements to the building made by the Lessee. The 99-year lease term expires on October 10, 2082 and is in good standing.

On January 16, 1984, the Federal Aviation Administration (FAA), released the property for sale for other than airport purposes, allowing the property to be sold at fair market value. All revenues from the sale would be deposited in the Airport Land Sale Permanent Fund for use in the development, improvement, and operation of the Kenai Municipal Airport as required by the Deed of Release.

Resolution No. 2018-12 amended the City's Policy for sale of specific Airport Land Lots and the subject property is one of the properties addressed in the policy. The policy did not provide for the sale of any specific property, but only a method for such sale, subject to the Ordinances of the City of Kenai. The policy was in effect until July 6, 2021. Any specific sale must be separately approved by the City Council, which may approve or disapprove any such sale, in its sole discretion. Administration recommends sale of the property under the same terms and conditions established by Resolution No. 2018-12 to encourage responsible growth and development to support a thriving business community. Aaron Swanson, dba Forever Business Plaza, LLC, requests to purchase the property at fair market value of the land excluding lessee-constructed improvements as determined by an appraisal and a minimum new investment in the construction of new permanent improvements on the premises equal to 25% of the fair market value of the land within three (3) years of sale.

Aaron Swanson, dba Forever Business Plaza, LLC, submitted a good-faith deposit and the City ordered an appraisal to be performed on the property as-if vacant. The fair market value of the property of \$135,000 was determined by an appraisal performed by MacSwain Associates, LLC on May 18, 2021. Based on the amount of the appraisal, Aaron Swanson, dba Forever Business Plaza, LLC, is committing to invest a minimum of \$33,750 in the construction of new permanent improvements on the premises.

If the City Council approves the sale, City Administration may proceed with a sale.

Thank you for your consideration.

Attachment A: Aerial Map of 11568 Kenai Spur Highway

Attachment B: Application

Attachment C: Resolution 2018-12







Basic Tools

Tool Labels X



☆ 04327015

**PARCEL ID: 04327015**  
**Municipal**  
**Commercial**

**Owner:**  
KENAI CITY OF  
210 FIDALGO AVE STE 200  
KENAI, AK 99611

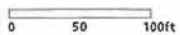
**Legal:**  
T 5N R 11W SEC 5 SEWARD MERIDIAN  
KN 0840183 GUSTY SUB ADDN NO 1  
AMD LOT 5 BLOCK 1

**Physical Addresses:**  
11568 KENAI SPUR HWY

[Add to Results](#) [View Additional Details](#)  
[Run a Report](#)



Lot: 5, Block: 1, Gusty Subdivision Add. No. 1  
K E N A





**RECEIVED**  
CITY OF KENAI  
6/28/22 DATE  
PLANNING DEPARTMENT



City of Kenai  
Competitive Land  
Purchase Application

2022-18

Application Date: 6/28/2022

**Applicant Information**

Name of Applicant:	Aaron Swanson						
Mailing Address:	37190 Aspenwood Ct	City:	Soldotna	State:	AK	Zip Code:	99669
Phone Number(s):	Home Phone: 907-252-3069		Work/ Message Phone:				
E-mail: (Optional)	aaronswanson907@gmail.com						
Name to Appear on Deed:	Forever Business Plaza						
Mailing Address:	37190 Aspenwood Ct	City:	Soldotna	State:	AK	Zip Code:	99669
Phone Number(s):	Home Phone: 907-252-3069		Work/ Message Phone:				
E-mail: (Optional)							
Type of Applicant:	<input type="checkbox"/> Individual (at least 18 years of age) <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Government <input checked="" type="checkbox"/> Limited Liability Company (LLC) <input type="checkbox"/> Other _____						

**Property Information**

Legal description of property (or, if subdivision is required, a brief description of property):  
*Lot 5 Blk 1 Gusty Sub*

Does the property require subdivision? (if Yes, answer next question)  YES  NO

Subdivision costs are the responsibility of the applicant unless the City Council determines a subdivision serves other City purposes

1. Do you believe the proposed subdivision would serve other City purposes?  YES  NO

2. If determined it does not, applicant is responsible for all subdivision costs. Initials \_\_\_\_\_

If an appraisal is required to determine the minimum price on the land, applicant is responsible for the deposit to cover costs associated with appraisal. If a sale is approved, the cost of the appraisal will be either refunded or credited toward the purchaser. Initials *AS*

It is the responsibility of the applicant to cover costs associated with title insurance. Initials *AS*

It is the responsibility of the applicant to cover recording costs associated with the purchase. Initials *AS*

The purchaser must pay not less than 50% of the costs of sale associated with a sale at not less than fair market value as determined by an appraisal or 100% of the costs of sale if the sale is at less than fair market value. Initials *AS*

Requested closing date: *February 2023*

**Proposed Use and Improvements**

Proposed Use (check one):     Aeronautical     Non-Aeronautical

Type of Land Use:     Commercial     Residential     Industrial     Public/Institutional     Tidelands     Other

Do you plan to construct new or additional improvements? (if Yes, answer next 3 questions)     YES     NO

1. What is the estimated value of the improvement?    *Repair existing structure both interior & exterior*

2. What is the type of improvement?     Building     Land     Other:    *\$100,000 plus*

3. What are the dates construction is estimated to commence and be completed? (Generally within two years)

Estimated Start Date: *Summer 2022*    Estimated Completion Date: *Summer 2023*

If you do not plan to construct new improvements, how does the proposed use benefit the community?


Describe the proposed business or activity intended:

*existing businesses include hair salon & dog groomer. Additional space for*

How does the proposed purchase benefit the City of Kenai and support a thriving business, residential, recreational, or cultural community?    *future tenants*

*Bring older run down building back to life with potential new tenants incoming along with current business tenants*

Submitting an application to purchase does not give the applicant a right to purchase or use the land requested in the application. If the land is sold in a competitive public sale set in response to this Competitive Land Purchase Application to anyone other than the applicant, the application fee and any deposit made to cover the cost of appraisal or subdivision will be refunded in total to the applicant. If the land is sold to the applicant, any deposit, after deducting the City's expenses, will be credited to the purchaser at closing.

Signature:		Date:	<i>6/28/2022</i>
Print Name:	Aaron Swanson	Title:	owner

For City Use Only:	Date Application Fee Received:	<i>6/28/22</i>
Account: <input type="checkbox"/> General Fund <input checked="" type="checkbox"/> Airport Fund	Date Application Determined Complete:	_____
Method of Sale (check one):	30-Day Notice Publication Date:	_____
<input type="checkbox"/> Public Auction <input type="checkbox"/> Over-the-Counter	City Council Ordinance:	_____
<input type="checkbox"/> Leased Land with Option to Purchase	Account Number:	_____





Sponsored by: Mayor Brian Gabriel  
Vice Mayor Tim Navarre  
Council Member Henry Knackstedt

## CITY OF KENAI

### RESOLUTION NO. 2018-12

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, APPROVING AN AMENDED POLICY FOR THE SALE OF TEN SPECIFIC CITY-OWNED AIRPORT FUND LEASED LANDS OUTSIDE THE AIRPORT RESERVE WITH SUBSTANTIAL CONSTRUCTED LEASEHOLD IMPROVEMENTS.

WHEREAS, the City of Kenai received a Quitclaim Deed through the Federal Aviation Administration (FAA) on December 1, 1963, to nearly 2,000 acres of land subject to certain restrictions, including that no property shall be used, leased, sold, salvaged, or disposed of for reasons other than for Airport purposes; and,

WHEREAS, in 2016, the City identified ten specific leases on Airport lands, as identified on Attachment A, that were, or were intended to be outside the Airport Reserve in the very near future, on which the lessees had constructed substantial improvements; and,

WHEREAS, the ten leased properties have been, or are available to be released for sale by the FAA; and,

WHEREAS, the City Council passed Resolution No. 2016-32, approving and adopting a policy for ten specific Airport owned leased lands on July 6, 2016 to provide an equitable and uniform purchase procedure for the current lessees to purchase the specific ten Airport-owned parcels; and,

WHEREAS, since the policy was adopted, none of the current lessees subject to the policy have elected to purchase the property they lease from the City; and,

WHEREAS, Administration formed a working group of City staff involved in land management to evaluate and develop recommendations related to the City's land sale and lease program to encourage growth, development, and a thriving business community through reasonable and responsible land policies and practices; and

WHEREAS, an alternative whereby the net present value of the leasehold is partially offset by the economic benefits provided by existing thriving businesses in the City such as job creation, economic activity, and stimulation of the business climate meets these goals; and,

WHEREAS, a third alternative that encourages investment in existing businesses on these leaseholds meets these goals as well; and,

WHEREAS, it is in the best interest of the City, Airport and lessees to approve an amendment to the temporary policy that provides alternative methods for the sale of these properties consistent with a City-wide land management approach.

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

**Section 1.** That the following policy adopted for the specific ten City-owned leased lands as identified on Attachment A attached hereto shall be amended as follows:

**POLICY FOR SALE OF SPECIFIC AIRPORT LEASED LANDS**

**Purpose:** To implement a policy regarding the sale of Airport owned property outside the Airport reserve currently leased with substantial leasehold improvements. This Policy is intended to provide an equitable and uniform purchase procedure for the current Lessees to purchase the specific ten Airport owned parcels identified in Attachment A.

**Disclaimer:** This Policy does not provide for the sale of any specific property, but only a method for such sale, subject to the Ordinances of the City of Kenai. Any specific sale must be separately approved by the City Council, which may approve or disapprove any such sale, in its sole discretion. It is intended that this Policy remain in effect [FOR A PERIOD OF NO MORE THAN FIVE YEARS] until July 6, 2021, however, it is recognized by the City Council and Administration, and should be recognized by any affected Lessee, that the City Council of Kenai may amend, modify, or rescind this Policy, or applicable City Ordinances which could affect this Policy, at any time.

**Sale Conditions:**

A. If a sale is approved by the City Council of any one of the ten specified leased properties, the sales price acceptable to the City shall be one of the following alternatives:

i. 125% of [A] the fair market value of the [RAW] land excluding lessee-constructed improvements as determined by an appraisal[.]; or,

ii. The fair market value of the land excluding lessee-constructed improvements as determined by an appraisal for properties in which minimum development requirements have been met according to the following calculation:

Value of Improvements greater than or equal to four times the Appraised Fair Market Value of the Land

; or,

iii. The fair market value of the land excluding lessee-constructed improvements as determined by an appraisal and a minimum new investment in the construction of new permanent improvements on the premises equal to 25% of the fair market value of the land within three (3) years of sale.

**B.** In order for such sale to occur subject to this Policy, the following conditions must be met:

1. Lessee has constructed lease-hold improvements exceeding current appraised value of [AIRPORT] the leased property.
2. Lessee is current with all financial obligations with the City.
3. Lessee will pay the City to perform a survey (if required).
4. Lessee will pay for the City to obtain an appraisal.
5. Property is outside of the Airport Reserve Boundary.
6. Property has been released for sale by the FAA.
7. Property is determined as not needed for a public purpose.

[B]C. Any conflicting provision, procedure, law or policy provided in Kenai City Code has precedent over this Policy.

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

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 21st day of February, 2018.

  
\_\_\_\_\_  
BRIEN GABRIEL, MAYOR

ATTEST:

  
\_\_\_\_\_  
Jamie Heinz, 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](http://www.kenai.city)

## MEMORANDUM

**TO:** Kenai City Council

**FROM:** Mayor Brian Gabriel  
 Vice Mayor Tim Navarre  
 Council Member Henry Knackstedt

**DATE:** February 13, 2018

**SUBJECT:** **Resolution No. 2018-12 – Amending a Policy for the Sale of Ten Specific City-Owned Airport Fund Leased Lands**

In 2016, the City Council passed Resolution No. 2016-32, approving and adopting a policy for City-owned leased lands in a distinct land management group to provide an equitable and uniform purchase procedure for those Lessees to purchase the property they lease from the City at 125% of the fair market value of the land. The ten specific City-owned Airport Fund parcels are located outside the Airport Reserve and the lessees have completed development requirements pursuant to their lease with the City.

Resolution No. 2018-12 amends the policy approved and adopted by Resolution No. 2016-32 by providing two alternative methods for the sale of these properties consistent with the City's new City-wide land management approach. These alternatives encourage investment in existing businesses on leaseholds, avoid land speculation, and recognizes that capital investments made by existing businesses in the City, have created jobs, increased economic activity, and stimulated the business environment.

The first added alternative allows for a sale of the land at fair market value to lessees that have met a minimum development requirement. The minimum development is calculated at four times the appraised fair market value of land. Four times the fair market value of the land represents the investment amount that equals or exceeds the net present value of leasing the land by quantifying the economic value of the investment to the City. Building valuation data as published by the International Code Council was also utilized to estimate construction costs to assure that the capital investment required is realistic. For example, land appraised at \$100,000 or less requires a minimum development of \$400,000.



Page 2 of 2  
Resolution No. 2018-12

The second added alternative allows for a sale of the land at fair market value with required minimum new investment in the construction of new improvements such as storefront improvements, building remodels, or parking lot improvements equal to 25% of the fair market value of the land within three years of sale. For example, land appraised at \$100,000 would require new investment equal to \$25,000.

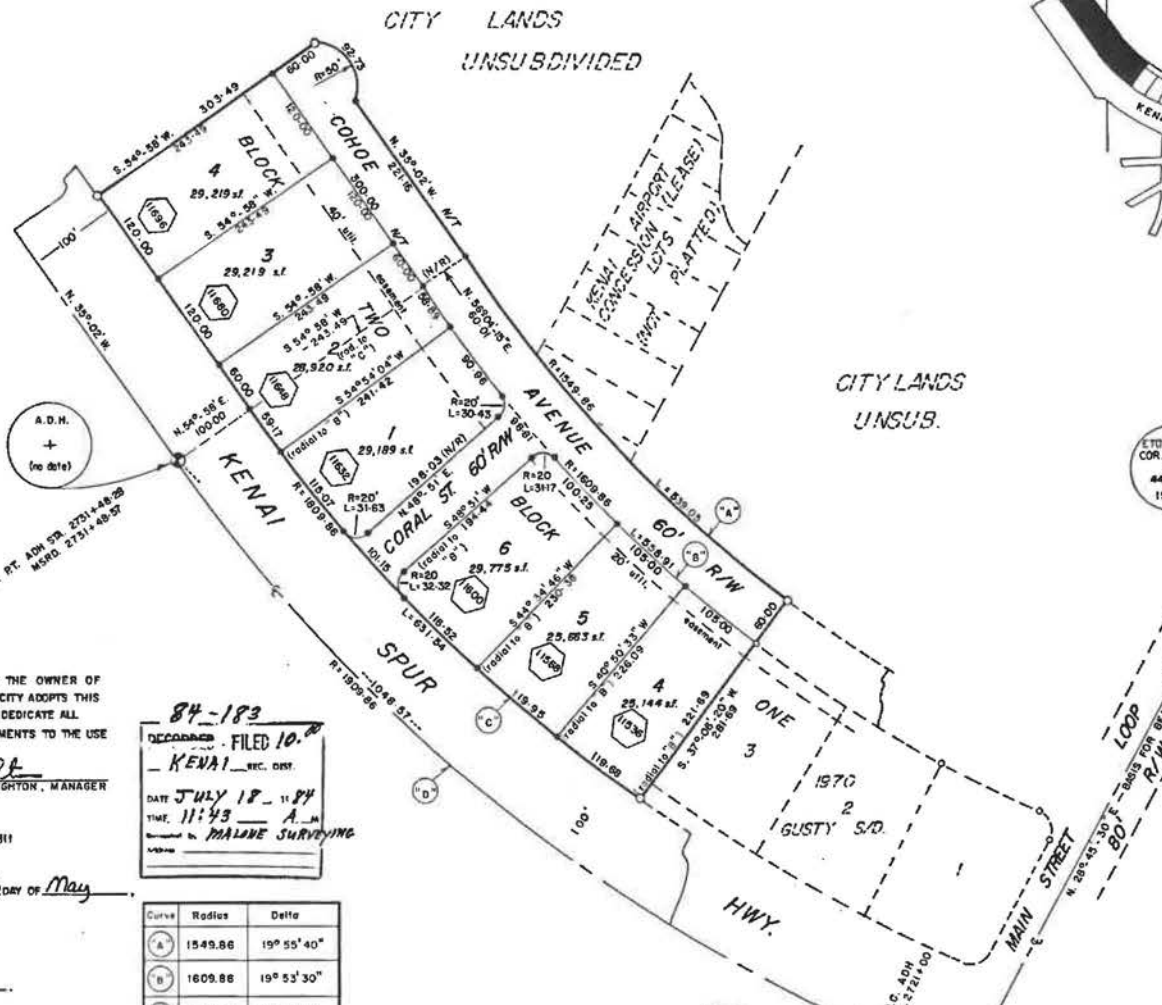
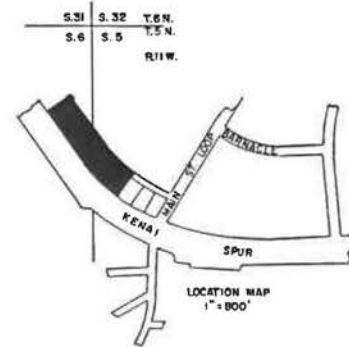
Resolution No. 2018-12 also makes minor changes to the policy to clarify appraisal instructions and conditions that must be met in order for a sale to occur so that the policy is consistent with the City Code and land practices. In particular, City land appraisals are performed with the assumption that the land is vacant and unencumbered by the lease, lands deeded to the City by the FAA must be released for sale, and land must be determined as not needed for a public purpose.

Like the prior Resolution in 2016, this Resolution does not authorize the sale of any property, but instead establishes a methodology for sale should the lessee desire to purchase the property and Council determine that it is in the City's best interest to sell the property,





Attachment A



83-126  
 RECORDED - FILED 10.00  
 Kenai sec. 5  
 DATE 6.29 1983  
 TIME 8:30 A.M.  
 Surveyed by Malone Surveying  
 Address Kenai

A.D.H.  
 +  
 (no date)  
 P.O. BOX 578 2701-448-28  
 MEMO 2731-48-57

**CERTIFICATE OF OWNERSHIP & DEDICATION**  
 I HEREBY CERTIFY THAT THE CITY OF KENAI IS THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON, AND THE CITY ADOPTS THIS PLAN. I FURTHER CERTIFY THAT THE CITY DOES HEREBY DEDICATE ALL RIGHTS OF WAY TO PUBLIC USE, AND GRANTS ALL EASEMENTS TO THE USE SHOWN.

W. J. Brighton  
 WILLIAM J. BRIGHTON, MANAGER  
 CITY OF KENAI  
 BOX 580  
 KENAI, AK. 99611

**NOTARY'S ACKNOWLEDGMENT FOR WILLIAM J. BRIGHTON**  
 SWORN AND SUBSCRIBED TO BEFORE ME THIS 10th DAY of May 1983

1983  
 Dana Th. Munkelauer  
 NOTARY PUBLIC FOR ALASKA

MY COMMISSION EXPIRES 9-24-85

**PLAT APPROVAL**  
 THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF JUNE 9, 1981

KENAI PENINSULA BOROUGH  
 BY: Steve Thompson  
 AUTHORIZED OFFICIAL

84-183  
 RECORDED - FILED 10.00  
 - KENAI - sec. 5  
 DATE JULY 18 11:43 A.M.  
 Surveyed by MALONE SURVEYING

Curve	Radius	Delta
(A)	1549.86	19° 55' 40"
(B)	1609.86	19° 53' 30"
(C)	1809.86	19° 59' 35"
(D)	1909.86	31° 27' 25"

I HEREBY CERTIFY THAT THE FOLLOWING CHANGES HAVE BEEN MADE & THAT NO OTHER CHANGES WERE MADE:  
 1. CURVES LABELED - "A", "B", "C" & "D"  
 2. CURVE TABLE ADDED  
 3. BEARING OF LOT LINE BETWEEN L-4 & L-5, BLK. 1; AMENDED FROM S 40° 50' 30" W TO S 40° 50' 33" W.  
 4. BEARING OF LOT LINE BETWEEN L-5 & L-6, BLK. 1; AMENDED FROM S 44° 34' 30" W TO S 44° 34' 46" W.  
 5. DISTANCE OF LOT LINE BETWEEN L-4 & L-5, BLK. 1; ADDED 226.03.  
 6. BEARING OF LOT LINE BETWEEN L-1 & L-2, BLK. 2; AMENDED FROM S 54° 54' W TO S 54° 54' 04" W.  
 7. LINE OF L-4 & L-5, BLK. 1, LABELED AS RADIAL TO CURVE "B".  
 8. LINE OF L-5 & L-6, BLK. 1, LABELED AS RADIAL TO CURVE "B".  
 9. S.E. R.O.W. LINE OF CORAL STREET; LABELED AS RADIAL TO CURVE "B".  
 10. RADIAL LINE (DASHED) SHOWN WITHIN LOT 2, BLK. 2.

11. LINE FROM RT. OF CURVE "A" TO RT. OF CURVE "B" LABELED AS NOT RADIAL (N/R).  
 12. S.E. BOUNDARY LINE BETWEEN LOTS 3 & 4, BLK. 1, LABELED AS RADIAL TO CURVE "B".  
 F. MALONE, 631-5  
 DATE 7/18/84



**AMENDED**  
**GUSTY SUBDIVISION ADDITION No. 1**  
 LOCATED WITHIN THE NW 1/4 SEC. 5, and THE NE 1/4 SEC. 6, T.5N., R.11W., S.M., City of Kenai, Alaska, containing 6.054 ac., m/1.



CITY OF KENAI  
 BOX 580.  
 KENAI, ALASKA 99611

MALONE SURVEYING  
 BOX 566  
 KENAI, ALASKA 99811

DATE 5/10/83

- = 1 1/2" diam. coated rebar set
  - = 3/8" x 24" rebar set
  - ⊙ = 5/8" rebar found
  - ⊕ = Brass cap monument found
  - N/T = Line not tangent to curve
- NOTE: ACCESS TO THESE LOTS FROM THE KENAI SPUR HWY. IS PROHIBITED. ACCESS PERMITTED FROM COHOE AVE. ONLY.
- ⊙1600 = STREET ADDRESS

1" = 100'



## DEED OF RELEASE

This Instrument, a Deed of Release, made by the United States of America, acting by and through the Manager, Airports Division, Alaskan Region, Federal Aviation Administration, pursuant to the authority contained in Public Law 81-311 (63 Stat. 700), as amended, to the City of Kenai, a body politic under the laws of the State of Alaska, Witnesseth:

WHEREAS, the United States of America, pursuant to the provisions of the Federal Property and Administration Act of 1949 (83 Stat. 377) and the Surplus Property Act of 1944 (58 Stat. 765), as amended, by instrument entitled, "Quitclaim Deed", dated December 1, 1963, did remise, release, and forever quitclaim to the City of Kenai in and to certain real property located near Kenai, Alaska, under and subject to the reservation, exceptions, restrictions, and conditions contained in the Deed, and

WHEREAS, the City of Kenai has requested the Administrator of the Federal Aviation Administration to release an area of land hereinafter described, from all conditions, reservations, and restrictions contained in said "Quitclaim Deed" to permit the long-term lease for nonairport purposes of said property exclusively for development, improvement, operation, and/or maintenance of the Kenai Municipal Airport, and

Whereas, the Administrator of the Federal Aviation Administration, under and pursuant to the powers and authority contained in Public Law 81-311 (3 Stat. 700) is authorized to grant a release from any of the terms, conditions, reservations, and restrictions contained in, and to convey, quitclaim, or release any right or interest reserved to the United States by any instrument of disposal under which surplus airport property was conveyed to a non-Federal public agency pursuant to Section 13 of the Surplus Property Act of 1944 (58 Stat. 765); and

WHEREAS, the Administrator of the Federal Aviation Administration has determined that said land no longer serves the purpose of which it was transferred, and that such property can be used or leased by the City of Kenai for other than airport purposes without materially and adversely affecting the development, improvement, operation, or maintenance of the Kenai Airport; and

WHEREAS, the City of Kenai, by City Ordinances No. 612-80, as amended, and No. 711-81, as amended, have established an acceptable procedure for disposing, through lease, of said property;

NOW, THEREFORE, in consideration of the benefits to accrue to the United States and to the civil aviation, the United States of America, acting by and through the Administrator of the Federal Aviation Administration, and pursuant to the authority contained in Public Law 81-311 (63 Stat. 700) and applicable rules, regulations, and orders, hereby consents to the release and subsequent lease of the hereinafter described property by the City of Kenai in accordance with the procedures established by City Ordinances No. 612-80, as amended, and No. 711-81, as amended.

## Legal Description

All that portion of the Kenai Airport Lands known as Gusty Subdivision Addition No. 1 (Tract G-3), within the NW 1/4 of Section 5 and the NE 1/4 of Section 6, T5N, R11W, S.M. Alaska. This Tract contains 6.054 acres, more or less and is depicted in red on the plat recorded 6-29-83 (83-126), attached to and made a part hereof.

This release is granted subject to the following conditions:

1. The instrument used to lease or sale the hereinabove described property shall expressly include the following reservations and covenants:

- A. There is hereby reserved to the City of Kenai, 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 herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used or navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on the Kenai Airport.
- B. The Lessee by accepting this conveyance expressly agrees for itself, its heirs, representatives, successors, and assigns that it will not erect nor permit the growth of any tree on the land conveyed hereunder which would be an airport obstruction within the standards established by the Federal Aviation Administration. In the event the aforesaid covenant is breached, the City of Kenai reserves the right to enter on the land conveyed hereunder and to remove the offending structure or object and to cut the offending tree, all of which shall be at the expense of the Lessee, or its heirs, successors, or assigns.
- C. The Lessee, by accepting this conveyance expressly agrees for itself, its heirs, representatives, successors, and assigns that it will not make use of said property in any manner which might interfere with the landing and taking off of aircraft from said Kenai Airport, or otherwise constitute and airport hazard. In the event the aforesaid covenant is breached, the Lessor reserves the right to enter on the land conveyed hereunder and cause the abatement of such interference at the expense of the Lessee.

2. All covenants herein contained shall run with the land and shall insure to the benefit of, and be binding upon, the heirs, representatives, successors, and assigns to the parties hereto.

3. In the event that any of the terms, conditions, reservations, and restrictions upon or subject to which the property is disposed of are not met, observed, or complied with, all of the property so disposed of or any portion thereof shall, at the option of the United States, revert to the United States and its then existing condition.

4. In the event, the subject property is needed or required in the future for airport operations, construction or management, the FAA will not participate in the acquisition of the lease hold interest of this property.

5. The United State resumes the right to review the proposed lease agreement prior to execution of said lease agreement.

IN WITNESS WHEREOF, the United States of America has caused this instrument to be executed as of the 29<sup>th</sup> day of December 1983.

UNITED STATES OF AMERICA

The Administrator of the Federal Aviation Administration

by: Rabie B. Strickland  
Manager, Airports Division, Alaskan Region

Accepted this 12<sup>th</sup> day of December 1983 by the City Manager of the City of Kenai.

84-000464

11.00

by: W. J. Bright  
Title City Manager

RECORDED - FILED  
KENAI REC.  
DISTRICT

Jan 16 11 02 AM '84  
REQUESTED BY City of Kenai

# MACSWAIN ASSOCIATES LLC

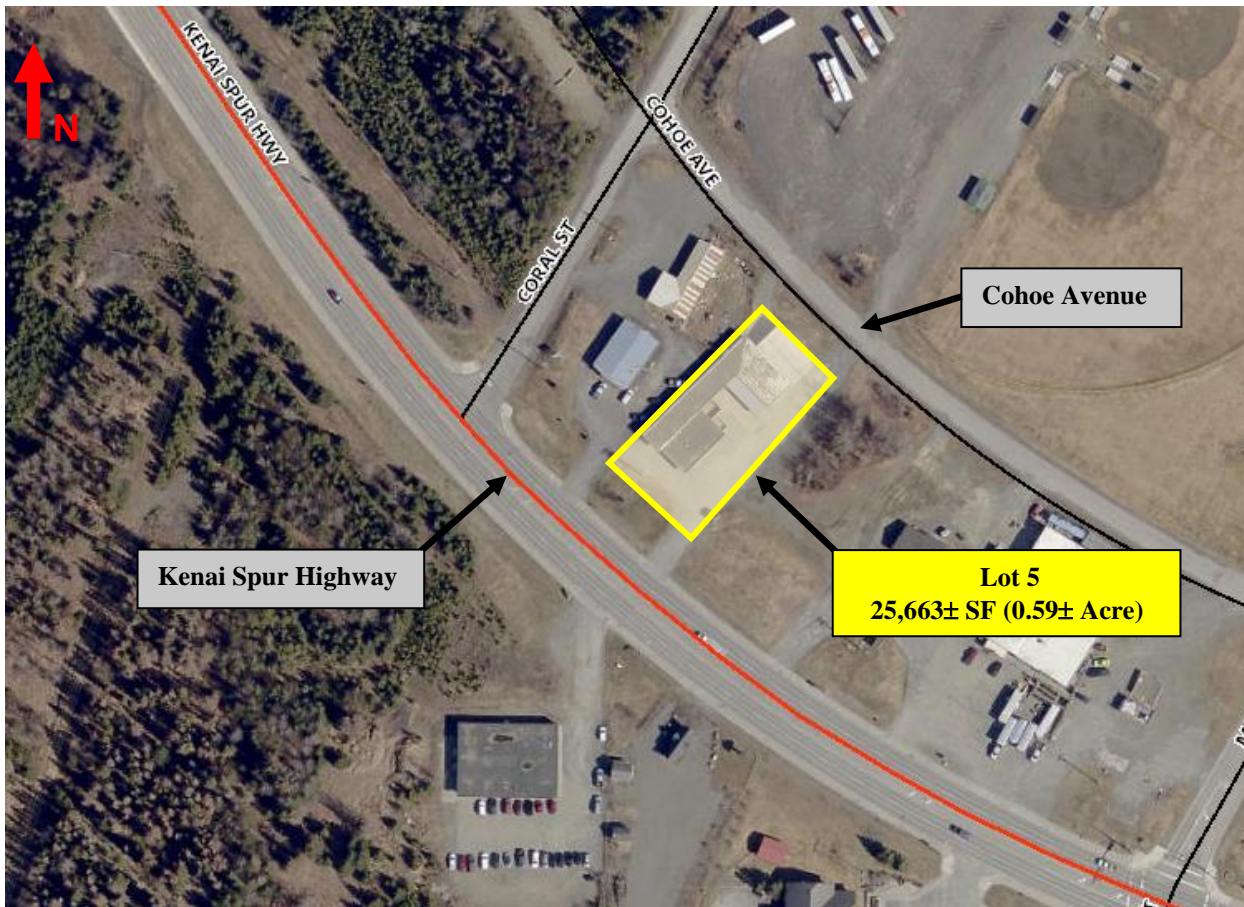
4401 Business Park Boulevard, Suite 22, Anchorage, Alaska 99503

## APPRAISAL REPORT

Kenai Lot: 25,663± SF (0.59± Acre)

Lot 5, Block 1, Gusty Subdivision

Kenai, Alaska



Date of Value: May 16, 2022

File No. 22-3698

### Submitted To:

Ryan Foster, Planning Director  
City of Kenai  
210 Fidalgo Avenue  
Kenai, AK 99611

**MacSwain Associates LLC**

4401 Business Park Blvd., Suite 22  
Anchorage, Alaska 99503  
Phone: 907-561-1965  
Fax: 907-561-1955  
s.macswain@macswain.com

June 15, 2022

Ryan Foster, Planning Director  
City of Kenai  
210 Fidalgo Avenue  
Kenai, AK 99611

Re: Kenai Lot: 25,663± SF (0.59± Acre)  
Lot 5, Block 1, Gusty Subdivision  
Kenai, Alaska

Dear Mr. Foster:

We have prepared an *Appraisal Report* of the above-referenced lot located in Kenai, Alaska. The appraised parcel contains 25,663± square feet or 0.59± acre. At the request of the client, we disregard the improvements and land lease and appraise only the subject land. The type of value estimated is *market value*. The property rights appraised is the *fee simple* estate. The report is prepared in accordance with the *Uniform Standards of Professional Appraisal Practice* (USPAP).

Based on the data, reasoning, and analysis that follows, the market value of the appraised property, as of May 16, 2022, is estimated as follows.

**ONE HUNDRED THIRTY FIVE THOUSAND DOLLARS**

**\$135,000**

Your attention is directed to the Assumptions Limiting Conditions of this report located in the addendum. We also direct your attention to the Statement of COVID-19 in the addendum. We hope the appraisal report assists your evaluation of the properties. If you have any questions regarding this report, please contact this office.

Respectfully submitted,



---

Steve MacSwain, MAI  
State of Alaska Certificate No. 42



## **Appraiser Certification**

---

The undersigned certifies that to the best of their knowledge and belief:

- ➔ The statements of fact contained in this report are true and correct.
- ➔ The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- ➔ We have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- ➔ We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- ➔ MacSwain Associates, LLC previously performed services as an appraiser on the subject property in September 2021.
- ➔ Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- ➔ Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- ➔ The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- ➔ The reported analyses, opinion, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- ➔ The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- ➔ Dwayne Roberts with MacSwain Associates, LLC inspected the appraised property on May 16, 2022. Steve MacSwain, MAI has previously inspected the property.
- ➔ Dwayne Roberts provided significant real property appraisal assistance to the person signing this certification.
- ➔ As of the date of this report, Steve MacSwain, MAI, is a certified General Real Estate Appraiser in the State of Alaska and has completed the education requirements through June 2023.

- ➔ As of the date of this report, Steve MacSwain, MAI has completed the Standards and Ethics Education requirements for Designated Members of the Appraisal Institute.
- ➔ As of the date of this report, Steve MacSwain, MAI has completed the continuing education requirements for Designated Members of the Appraisal Institute.
- ➔ As of the date of this report, Steve MacSwain, MAI is a certified General Real Estate Appraiser in the State of Alaska and has completed the education requirements through June 2023.



\_\_\_\_\_  
Steve MacSwain, MAI  
State of Alaska Certificate No. 42

6/15/22  
Date



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**Appraiser Certification**  
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**Addendum**

- Assumptions and Limiting Conditions
- Statement on COVID-19
- Short Form Agreement
- Appraiser Qualifications

Appraisal Summary

<b>Value Type:</b>	Market value
<b>Property Type:</b>	Commercial
<b>Property Rights Appraised:</b>	Fee simple estate
<b>Location:</b>	North side of Kenai Spur Highway between Coral Street and Main Street Loop Road, Kenai, Alaska
<b>Legal Description:</b>	Lot 5, Block 1, Gusty Subdivision
<b>Tax Parcel No:</b>	043-270-15
<b>Physical Address:</b>	11568 Kenai Spur Highway
<b>Property Owner:</b>	City of Kenai (per KPB)
<b>Zoning:</b>	Central Mixed-Use District (CMU)
<b>Site Description:</b>	Nearly-rectangular shaped lot containing 25,663± square feet or 0.59± acre
<b>Topography:</b>	Level and near grade with surrounding streets and properties
<b>Frontage/Exposure:</b>	120± feet of Kenai Spur Highway frontage and 105± feet of Cohoe Avenue frontage
<b>Access:</b>	Access via paved ingress/egress from Kenai Spur Highway on southern boundary and Cohoe Avenue, a gravel road on northern boundary
<b>Utility Service:</b>	All public utilities available
<b>Soil and Subsurface Conditions:</b>	Based on observations of surrounding development, soils appear to be suitable for development.
<b>Hazardous Substances:</b>	None observed or known, parcel is appraised as if “environmentally clean”
<b>Wetland Designation:</b>	None
<b>Flood Hazard Restrictions:</b>	Zone D, an area of undetermined, but possible flood hazard
<b>Easements and Restrictions:</b>	20-foot utility easement along north boundary

<b>Sale/Lease History:</b>	The leasehold interest was assigned from Mary Jane Doyle and Carolyn Lucille Doyle to Don Moffis and Joann Doyle in 2019. No details of this transaction were provided.
<b>Highest and Best Use:</b>	Commercial
<b>Extraordinary Assumption:</b>	None
<b>Hypothetical Condition:</b>	None
<b>Date of Property Inspection:</b>	May 16, 2022
<b>Effective Appraisal Date:</b>	May 16, 2022
<b>Date of Report:</b>	June 15, 2022

<b>Market Value Estimate:</b>	<b>\$70,000 (\$2.78/SF)</b>
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### Subject Property Photographs

Date: May 16, 2022

Taken By: Dwayne Roberts



Northeast view of property from Kenai Spur Highway



North view of property from Kenai Spur Highway

**Subject Property Photographs**

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Date: May 16, 2022

Taken By: Dwayne Roberts



Southwest view of property from Cohoe Avenue



South view of property from Cohoe Avenue

## **Chapter 1: Definition of the Appraisal Problem**

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**Overview** We prepare an *Appraisal Report* that analyzes a 25,663± square foot (0.59± acre) lot in Kenai, Alaska. At the request of the client, we disregard the improvements and appraise only the subject land. The type of value estimated is *market value*. The report is intended to comply with the *Uniform Standards of Professional Appraisal Practice* (USPAP).

**Value Type** Market value

**Client** City of Kenai

**Intended Use of Appraisal Report** Assist with a potential sale of the property

**Intended User of Appraisal Report** City of Kenai

**Property Inspection Date** May 16, 2022

**Effective Appraisal Date** May 16, 2022

**Date of Report** June 15, 2022

**Identification of Real Estate Appraised** The appraised property is an improved lot owned by the City of Kenai. At the request of the client, we disregard the improvements and appraise only the land. The subject property is located on the north side of Kenai Spur Highway between Coral Street and Main Street Loop Road in Kenai, Alaska. The subject’s physical address is 11568 Kenai Spur Highway and identified as Parcel ID 043-270-15 by the City of Kenai.

**Definition of Market Value**

The type of value estimated is market value. Market value is defined as follows.

*The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:*

- a. buyer and seller are typically motivated;*
- b. both parties are well informed or well advised, and acting in what they consider their own best interests;*
- c. a reasonable time is allowed for exposure in the open market;*
- d. payment is made in terms of cash in US dollars or in terms of financial arrangements comparable thereto; and*
- e. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.<sup>1</sup>*

**Property Rights Appraised**

We estimate the market value of the fee simple estate, which is defined as follows.

*Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.<sup>2</sup>*

**Legal Description**

Per DNR records, the legal description is as follows:

*Lot 5, Block 1, Gusty Subdivision, Kenai Recording District, Third Judicial District, State of Alaska.*

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<sup>1</sup> *Appraisal of Real Estate*, Fifteenth Edition (2020), by the Appraisal Institute, p. 49.

<sup>2</sup> *Appraisal of Real Estate*, Fifteenth Edition (2020), by the Appraisal Institute, p. 60.



**Property Owner** Public Records indicate the owner of the appraised property is as follows.

City of Kenai  
210 Fidalgo Avenue, Suite 200  
Kenai, AK 99611

**Assessed Value** The table below summarizes the historical KPB property assessment for the appraised property.

**KPB Historical Assessed Value (043-270-15)**

<b>Year</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
2022	\$105,300 (\$4.10/SF)	N/A	\$105,300
2021	\$126,400 (\$4.93/SF)	N/A	\$126,400
2020	\$120,400 (\$4.69/SF)	N/A	\$120,400

**Three Year Sale History** The leasehold interest was assigned from Mary Jane Doyle and Carolyn Lucille Doyle to Don Moffis and Joann Doyle in 2019. No details of this transaction were provided.

**Report Type and Methodology** This *Appraisal Report* develops the sales comparison approach to estimate market value. Neither the cost nor the income capitalization approach reflects market behavior for vacant land. Qualitative techniques are used to measure differences between the comparable sales and the subject. The appraisal report is a summary of the appraisers’ data, analyses, and conclusions with supporting documentation retained on file.

**Scope of Appraisal** Dwayne Roberts of MacSwain Associates, LLC performed the inspection of the appraised property and assisted Steve MacSwain, MAI with data collection and analysis. Steve MacSwain, MAI administered the appraisal process, reviewed draft appraisals, and concurred with an opinion of value. Preparation of this report encompassed the following scope of work that concluded with an opinion of market value.

- ➔ Inspected the appraised property on May 16, 2022;
- ➔ Discussed the property with Ryan Foster, Planning Director with the City of Kenai;



- Reviewed KPB assessor map 043-270-15;
- Reviewed plat 83-126;
- Reviewed City of Kenai’s Official Zoning Map and zoning codes;
- Gathered data from the KPB Assessor’s office and State of Alaska Recorder’s office regarding ownership, assessments, and general property information;
- Interviewed Kenai real estate Brokers, agents, and property owners regarding land sales;
- Interviewed Kenai market participants regarding current commercial and light industrial land market conditions, trends, and expectations;
- Gathered and confirmed information on comparable land sales;
- Inspected the primary comparable sales we relied upon in our comparative analysis; and
- Applied the sales comparison approach to arrive at a market value indication.

**Exposure Time**

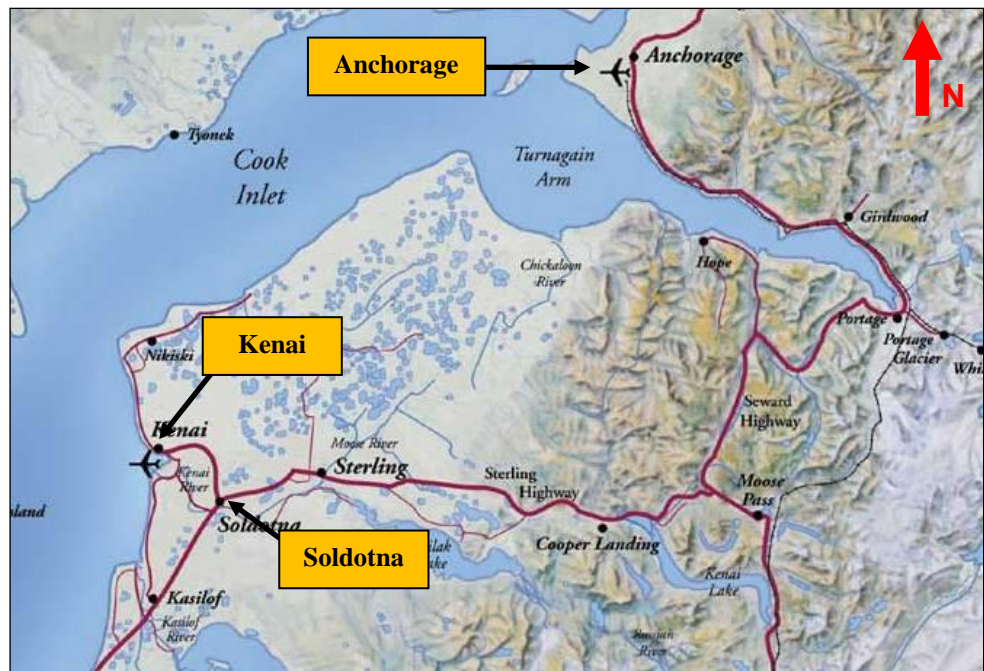
We have collected and analyzed market and economic data that projects real estate trends and activity for similar vacant parcels. Discussions with Brokers and analysis of similar property sales indicate that a period of approximately 6-9 months prior to our effective date of value is a reasonable exposure period.

## Chapter 2: Kenai Area Analysis and Industry Outlook

**Overview**

The appraised property is located in Kenai, Alaska. A demographic and economic summary of the Kenai Peninsula Borough (KPB) and City of Kenai follows. The reader is referred to the map below and on following pages that illustrate the location and assist in the description and analysis. We note that due to lack of funding, the KPB ceased economic and financial publications.

**Kenai Location Map**



**Kenai Peninsula Borough Summary**

The Kenai Peninsula Borough is comprised of the Kenai Peninsula and Cook Inlet including areas northeast of the Alaska Peninsula. The borough also includes portions of Chugach National Forest, Kenai Wildlife Refuge, Kenai Fjords National Park, Lake Clark National Park, and Katmai National Park. Encompassing 24,800 square miles, there are 16,000± square miles (65%) of land and 8,700± square miles (35%) of water. Three distinct communities and population centers are established within the Borough. Seward is located at the terminus of the Seward Highway on the Gulf of Alaska coast, Kenai/Soldotna are located on Cook Inlet and surrounding the mouth of the Kenai River, and Homer is located at the terminus of the Sterling Highway on Cook Inlet and Kachemak Bay. A large portion of the Borough

population is scattered along the road systems rather than in identifiable cities or communities.

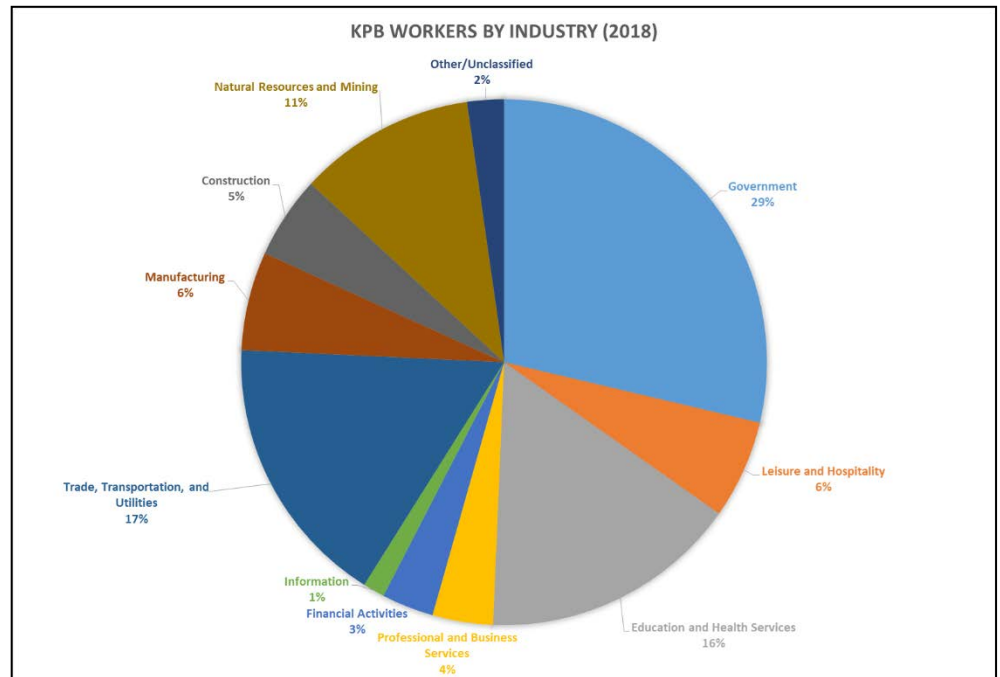
**Population**

Together, Kenai, Soldotna, Nikiski, Salamatof, and Kasilof have the largest population base in the Borough with an estimated 17,000± residents in 2019. Population within the Kenai census area is 7,056 residents and has remained flat over the past two decades. Similarly, surrounding communities have experienced population stability.

**Employment**

Borough employment is characterized as relatively diverse with no single dominant industry, with the exception of government. The five industry categories that have the highest economic influence, based on total wages, within the borough are Federal, State, and local government (29%) trade, transportation, and utilities (17%), education and health services (16%), natural resources and mining (11%), leisure and hospitality (6%), and manufacturing (6%). Supporting employment sectors include construction (5%), professional and business services (4%), and financial activities (4%). The table below indicates 2018 Borough wages by industry.

***KPB Total Wages by Industry (2018)***

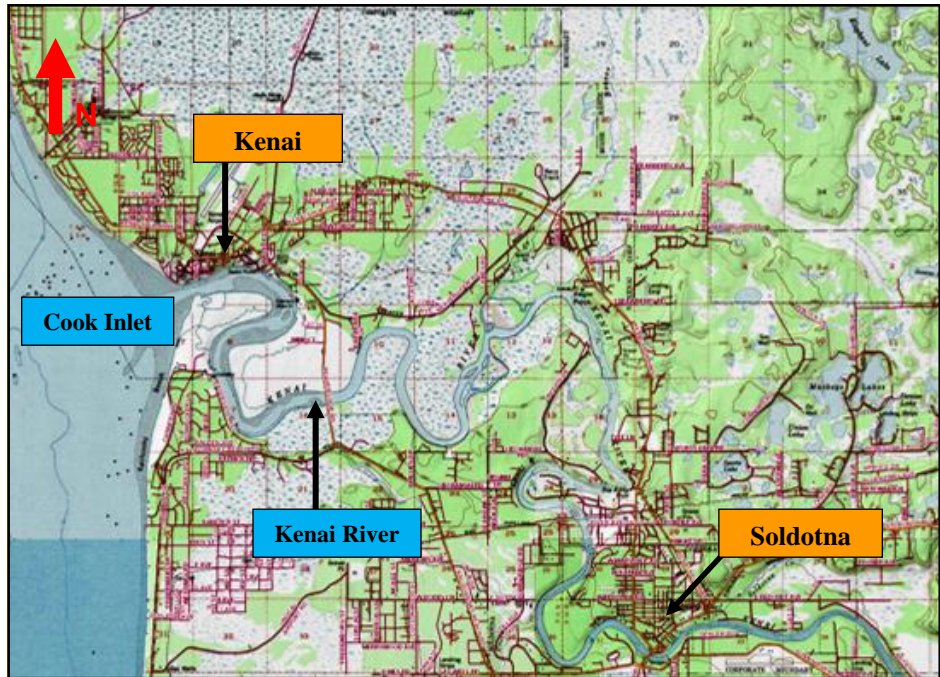


*Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section, January – December 2018*

Similar to most rural Alaska economies, government is one of the key employment factors. Leisure and hospitality (tourism) remains as a driving economic force of the Kenai Peninsula Borough’s economy. Both residents and non-residents utilize the Peninsula for its vast fishing, camping, sightseeing, and other recreational opportunities. The visitor industry is cyclical with most activity occurring during summer months. However, sales in the visitor industry are an important source of municipal revenues as both city and borough government use collected sales taxes to support government operations. The oil and gas industry is scattered throughout the Peninsula. Natural gas endeavors marked increases in new exploration projects in Kenai, on the Westside of Cook Inlet as well as lower Kenai Peninsula between Clam Gulch and Ninilchik. However, negative aspects of the industry exist that include closing oil platforms due to poor production levels. Overall, the outlook for Kenai Peninsula Borough’s oil and gas industry is continued steady natural gas exploration and production with stagnant oil efforts. Capital investment in storage development, reserves replacement, and pipeline infrastructure are necessary and pressure exploration cost and development upward.

**City of Kenai  
Summary**

**Location Map**



Kenai is located on the western coast of the Peninsula, and is often associated with Soldotna, which is located 11± miles to the southeast. These two cities have become known as the “twin cities”, sharing an

integrated economy, while maintaining their independence. Kenai is a home rule city with a population of 7,056. In the summer months, the area benefits from with tourists fishing the Kenai River. Kenai is also the center for the oil and gas industry on the Peninsula, providing services and supplies for Cook Inlet's oil and natural gas drilling and exploration. Nikiski, which lies north of Kenai, has two refineries established to process oil from the Cook Inlet oil platforms and the Swanson River oil fields. There are numerous oil field support businesses located in the area as well as the refineries. Kenai has the largest airport on the peninsula, the Kenai Municipal Airport, which has regular scheduled flights to/from Anchorage and other communities in the region.

The Nikiski industrial district located north of Kenai extends along the shore of Cook Inlet for 1.5± miles and one-mile inland. Despite the relatively small area, the value of industrial development exceeds \$1 billion. The Agrium, Inc. nitrogen plant, Tesoro Alaska refinery and former ConocoPhillips LNG export plant are the principal industrial development. The LNG plant ceased operations in 2011, and reopened for intermittent natural gas shipments until 2015. The plant was sold to Andeavor in 2018 for \$10M±, a significantly below market price. Agrium merged with PotashCorp in 2018, forming a new company called Nutrien, who currently owns the former Agrium plant.

In 2014, Homer Electric Association began generating its own power at the Nikiski Combined Plant, producing 80 megawatts of power. In addition, HEA purchased the Bernice Lake Power Plant from Chugach Electric Association for \$12M±. These facilities are primary employers in Nikiski and account for nearly 10% of KPB total employment. As Nikiski remains a hub for power generation in the Kenai Peninsula, we do not anticipate major change to the Nikiski industrial district in the near term. The potential Alaska LNG Project is on the horizon, with optimism remaining on the Kenai Peninsula for eventual construction. The project entails a gas processing plant on the North Slope, an 800-mile gas pipeline and a liquefaction facility in the Nikiski area. Tentatively, the total project cost is estimated at \$45B±. To date, 570± acres have been acquired in Nikiski to develop the project. The City of Kenai passed a resolution in December 2018, giving unanimous support to the LNG project; however, this joint venture between the State of Alaska and private oil and gas industry appears to have stalled, with no definite timetable for development.

In 2012, ENSTAR Natural Gas Company began injecting natural gas into their new storage facility in Kenai. The Cook Inlet Natural Gas Storage Alaska facility (CINGSA) is Alaska's first independent gas



storage facility with 11 billion cubic feet of capacity. The project cost is estimated at \$160M±.

Although most oil and gas fields in the Cook Inlet Basin are well past their peak, annual production has not declined significantly in the past decade. Moreover, smaller independent oil companies are prospecting in the Cook Inlet basin with the intent of using new technology to enhance production profitability. However, the maturing life-cycle of oil and gas production has caused attrition in smaller businesses that support this industry. More importantly, this economic trend has created a market imbalance for industrial and commercial real estate. For example, we observed several smaller industrial or commercial properties that are vacant or abandoned because of contraction in the oil and gas industry. Recent capital investments made by larger energy companies have helped revitalize Kenai Peninsula’s oil and gas sector. Natural gas prices gradually recovered into summer 2014 from their lows in early 2012. Late 2014 to early 2015 saw another downturn in natural gas prices before a mid-2016/17 recovery. After briefly spiking in 4<sup>th</sup> quarter 2018, natural gas prices trended downward into 2020, where they reached record low prices in March, and again in July due to lack of demand driven by the COVID-19 pandemic. Prices made a slight recovery in the second half of 2020, but continue to remain much lower than the 20-year average. If demand for natural gas from Asia and the Lower 48 recovers, additional capital investment in the Kenai Peninsula will become more viable. Expressed in the table below is the U.S. Average Natural Gas Price over the past ten-year period, which has experienced significant volatility.

**Historical Natural Gas Price (\$/MMBTU)**



Source: macrotrends

**Conclusion**

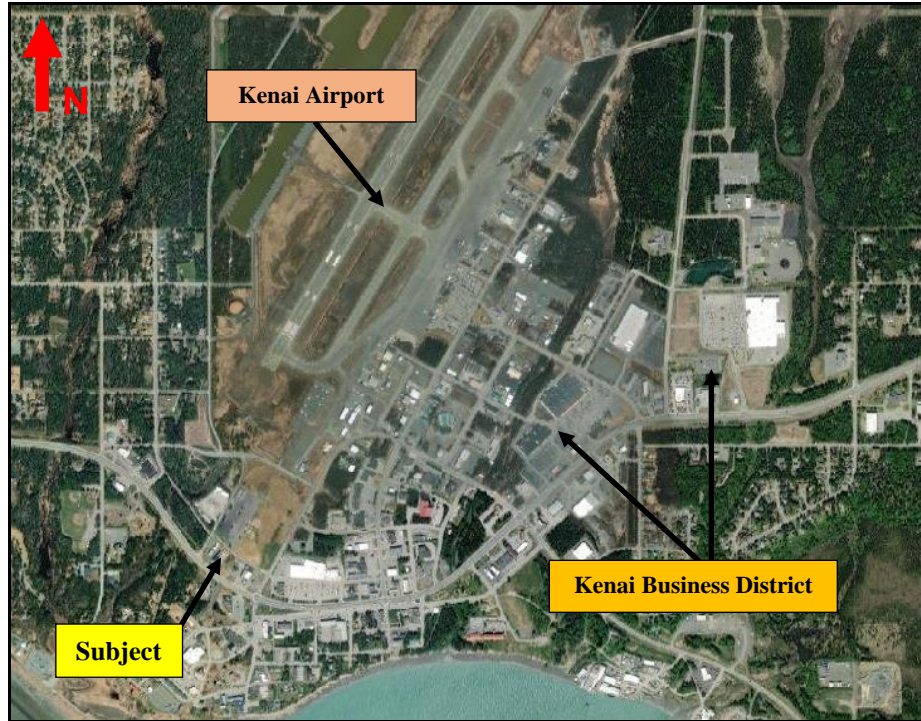
Optimism has been created by renewed investment in the Kenai Peninsula. Sale activity remains relatively scarce with assemblage, expansion, or special-purpose use representing the principal components of demand. Short-term uncertainty will likely continue to dampen the Kenai economy, which benefits from anglers and sightseeing tourism. Travel restrictions, and decreasing demand linked to the COVID-19 virus are slowly recovering from 2021 with cautious optimism for continued recovery in 2022. After analysis, we determined that industrial and commercial property values have been relatively stable over the past decade, but have declined from the 1980s peak.

### Chapter 3: Neighborhood Description and Analysis

#### Overview

The appraised land is located just south of the Kenai Municipal Airport and southwest of the Kenai Business District. This chapter will focus on the supply and demand factors of these neighborhoods, which affect the valuation process.

#### Kenai Neighborhood Map



#### Neighborhood Description

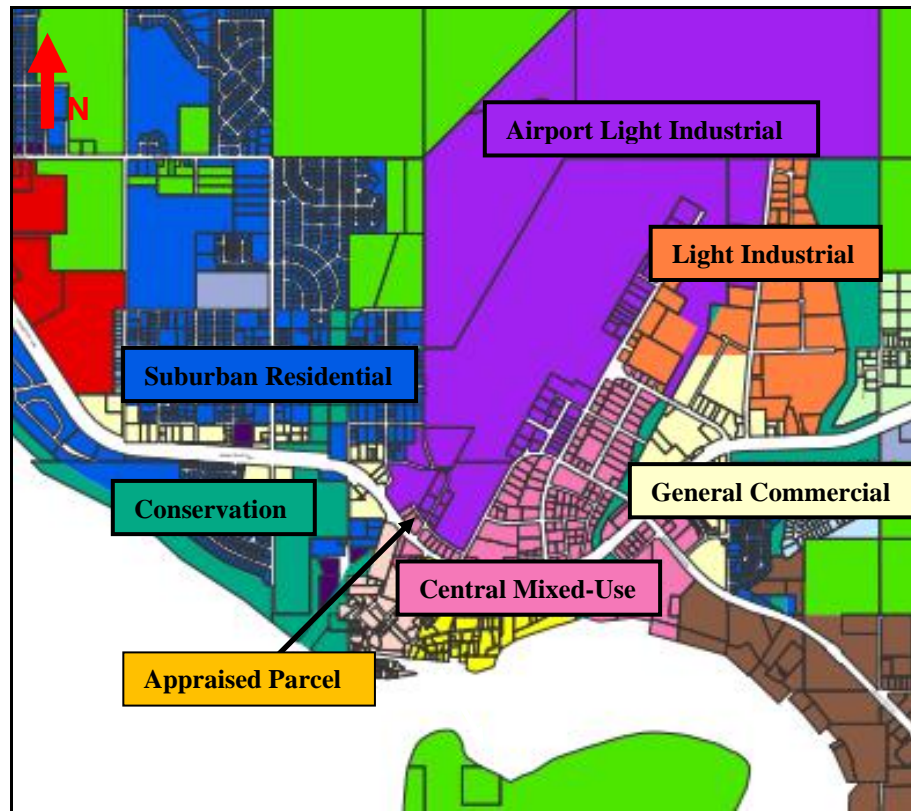
The subject neighborhood is bound by the Kenai Airport to the north, the Kenai Spur Highway to the south and east, and the Kenai Business District to the northeast. The Kenai Business District is the commercial core of Kenai. Development includes many types of commercial and industrial uses including big box retailers, strip and enclosed malls, restaurants, convenience stores, small businesses, and airport-related businesses. The Kenai Airport was recently remodeled modernizing the terminal building. Lowes, which was constructed in 2008, closed in 2011. After eight years of vacancy, the property sold to U-Haul in 2019. This City-owned, public-use airport contains a 7,855-foot asphalt paved runway, as well as an additional gravel runway and seaplane basin. Currently, scheduled flight service to Anchorage is available on both Ravn Alaska and Grant Aviation. Development in



the immediate neighborhood consists of both aviation and non-aviation related uses.

The zoning map below assists in visualizing neighborhood zoning districts. The immediate neighborhood is zoned Central Mixed-Use established to provide a centrally located area in the City for general retail shopping, personal and professional services, entertainment, restaurants, and related businesses. This district is also intended to accommodate a mixture of residential and commercial uses. The CMU Zone shall be designed to encourage pedestrian movement throughout the area. Building and other structures within the district should be compatible with one another and the surrounding area

**Zoning Map**



**Summary**

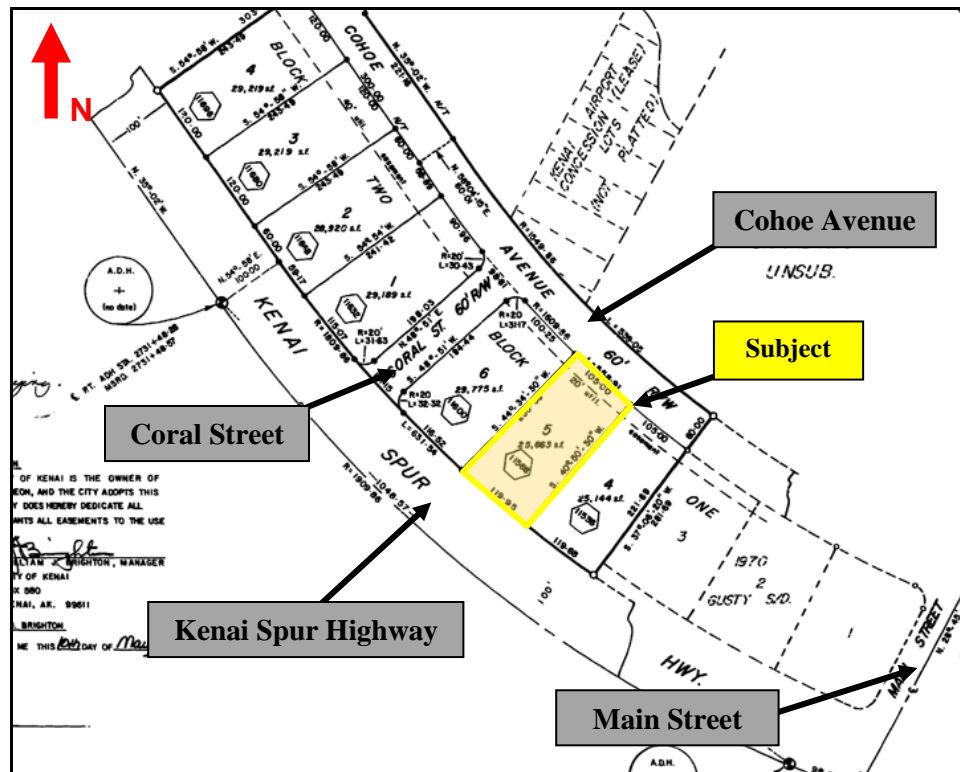
To summarize, the Kenai Business District is the commercial core of Kenai. The neighborhood is well-located and benefits from its proximity to the Kenai Spur Highway, as well as the airport and other commercial districts in the area. The outlook for the neighborhood is favorable as it continues to be a good commercial district for Kenai

## Chapter 4: Site Description and Analysis

### Overview

Analysis of land describes the characteristics that enhance or detract from its utility or marketability. The site description and analysis is based on our property inspection and review of plat 83-126, aerial, Borough and other mapping. The plat map below and aerial mapping on the following pages assist in the description and analysis of the parcel that follows.

### Plat 83-126

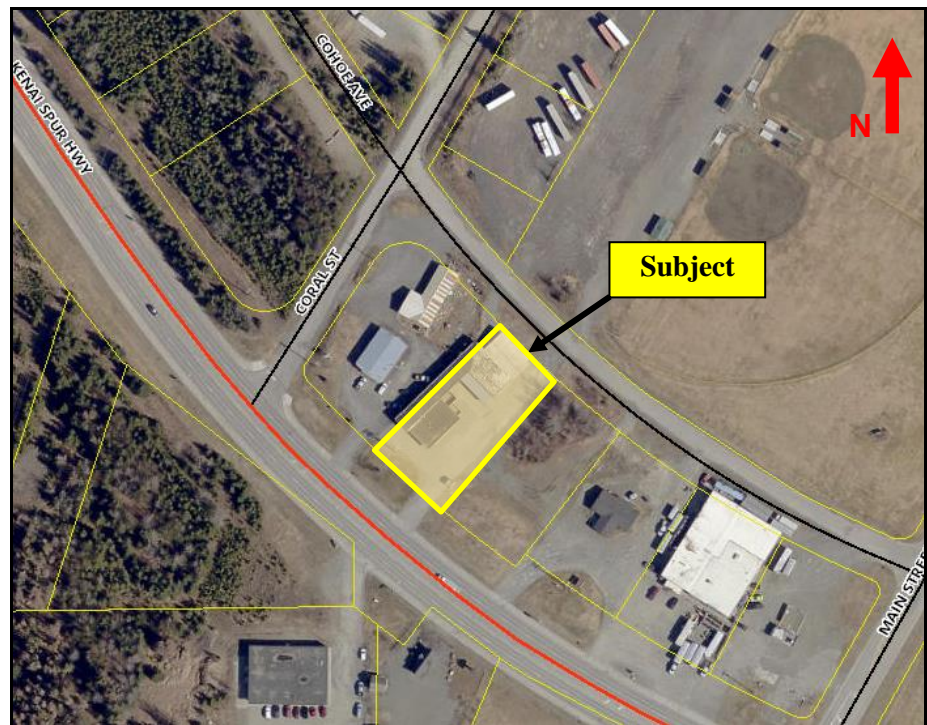


### Site Description

<b>Location:</b>	North side of Kenai Spur Highway between Coral Street and Main Street Loop Road, Kenai, Alaska
<b>Physical address:</b>	11568 Kenai Spur Highway, Kenai, Alaska
<b>Shape and Land Area:</b>	Nearly-rectangular shaped lot containing 25,663± square feet or 0.59± acre
<b>Access:</b>	Access via paved ingress/egress from Kenai Spur Highway on southern boundary and Cohoe

<b>Zoning:</b>	Avenue, a gravel road on northern boundary Central Mixed-Use District (CMU)
<b>Frontage and Exposure:</b>	120± feet of Kenai Spur Highway frontage and 105± feet of Cohoe Avenue frontage
<b>Easements and Restrictions:</b>	20-foot utility easement along north boundary
<b>Public Utilities:</b>	All public utilities available
<b>Topography:</b>	Level and near grade with surrounding streets and properties

**GIS Aerial Map (Kenai Peninsula Borough)**



<b>Soil Conditions:</b>	Soils mapped as urban lands, and appear suitable for construction based on surrounding development
<b>Wetland Designation:</b>	None
<b>Flood Hazard:</b>	Zone D, an area of undetermined, but possible flood hazard per FEMA

**Environmental  
Conditions:**

The existence of any hazardous material or other type of environmental contamination, which may or may not be present on the property, was not observed by the appraisers nor do the appraisers have any knowledge of the existence of such substances. Our value conclusion assumes that the property is free of environmental and hazardous contaminants.

**Site Utility:**

The subject site's positive attributes include good location, size, and access near the Kenai Airport and Downtown Kenai. Overall, physical character makes the site well suited for commercial development.

## Chapter 5: Highest and Best Use Analysis

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### Overview

Highest and best use is a market-driven concept rather than a subjective conclusion based on the experience of the appraiser or a property owner's wishes. Economic incentive is the motivation that has a market-effect on the productivity or profitability of the land. The *Dictionary of Real Estate Appraisal* (Seventh Edition) defines *highest and best use* as follows.

*The reasonably probably use of a property that results in the highest value. The four criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.*

A property's highest and best use as vacant may differ from that as improved. It is the appraiser's responsibility to analyze each scenario; then identify, explain, and justify the conclusion of each type of use. Per client instructions, the subject property is analyzed as though vacant.

Determination of a property's most profitable use requires analyzing all feasible alternatives. The criteria for testing potential uses as though vacant are legally permissible, physically possible, financially feasible, and maximally productive. The following highest and best use analysis is the foundation of the appraisal process for the subject properties.

### Highest and Best Use Analysis As If Vacant

**Physical Possibility:** The appraised parcel contains 25,663 square feet or 0.59± acre fronting the Kenai Spur Highway. Frontage measures 120± feet, which enhances access, exposure, and development potential. Demand along the Kenai Spur Highway commercial corridor is high when compared to alternative interior commercial locations. Highway frontage and linkage to alternative commercial locations in Kenai are positive characteristics.

**Legal Permissibility:** Although the appraised property is within the City of Kenai, zoning regulations do not generally apply to current ownership because the property remains in restricted status. The subject parcel is zoned Central Mixed Use (CMU) which encourages commercial-type development in a centrally located area in the City of Kenai, primarily for shopping, personal and professional services, entertainment services, entertainment establishments and restaurants and related businesses. The CMU district is also intended to accommodate a mixture of residential and commercial uses, and designed in a manner that encourages pedestrian movement throughout



the area. Although certain industrial use are allowed., most within the CMU zone require a conditional use permit to ensure compatibility with surrounding land uses. We are not aware of any recorded plat restrictions that may affect development potential of the subject property.

**Financial Feasibility:** Physically possible uses permitted are all financially viable. Financially feasible commercial uses include restaurants (both dining and fast food), hotel/motel, retail, and office use. Other commercial uses are possible, which may offer greater risk and lack economic feasibility. In conclusion, the Commercial neighborhood’s location, existing land use trends, and physical characteristics all support commercial development, which we consider to be the highest and best use.

**Highest and Best Use  
As Though Vacant**

The subject’s physical characteristics, surrounding land use, CMU zoning, location, access, etc., encourage commercial development. Based on these factors, the highest and best use, as vacant, is for commercial development.

<b>Highest and Best Use:      Commercial</b>
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**Chapter 6: Land Valuation - Sales Comparison Approach**

**Overview** The sales comparison approach is a systematic procedure of estimating the subject’s market value by comparing it directly to property sales afforded similar physical and economic character. The approach is founded on the principle of substitution, theorizing value is a function of a knowledgeable investor’s (buyer) intent to pay no more for a specific property than the cost of acquiring an alternative property offering similar utility (economic satisfaction). The sales comparison approach is the best approach for valuing vacant land.

**Comparative Market Analysis** Our sales search focused on vacant land with similar physical and economic character to the subject, located in the immediate neighborhood. In order to facilitate a comparative analysis, we expanded our search to include commercial and light industrial properties in other Kenai neighborhoods. These criteria produced five sales that transpired in from 2016 to 2022. The primary land sales we relied upon are listed in the table below. Additional details of the comparables are retained on file.

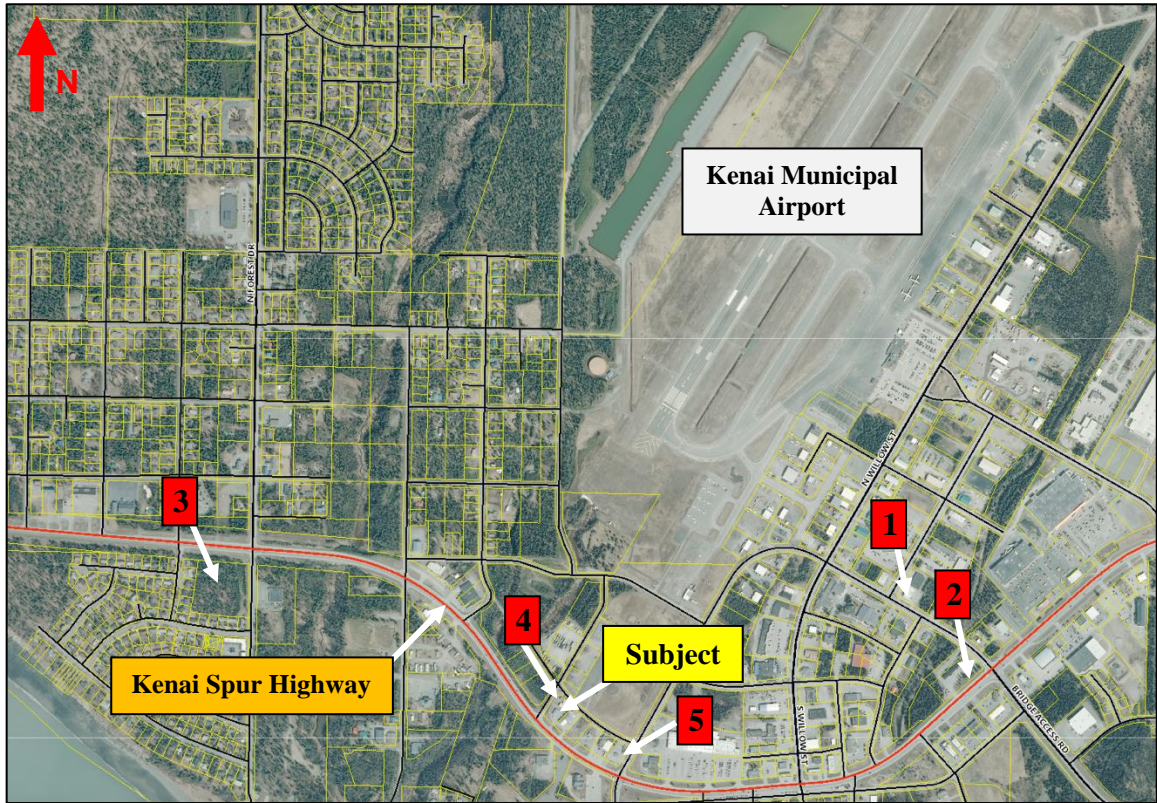
**Summary of Primary Land Sales**

No.	Location	Zone	Sale Date	Sale Price	Size (SF)	\$/SF
1	Northeast corner of Trading Bay Road and Main Street Loop	CMU	5/22	\$300,000	114,497	\$2.62
2	Northwest corner of Kenai Spur Highway and Main Street Loop Road (east)	CMU	1/20	\$605,000	121,091	\$5.00
3	Southwest corner of Kenai Spur Highway and S. Forest Drive	CG	2/19	\$455,000	219,107	\$2.08
4	Northeast corner of Kenai Spur Highway and Coral Street	CMU	8/18	\$180,000	35,851	\$5.02
5	Northwest corner of Kenai Spur Highway and Main Street Loop Road (west)	CMU	8/16	\$170,400	28,520	\$5.97
	<b>North side of Kenai Spur Highway between Coral Street and Main Street Loop Road (Subject)</b>	<b>CMU</b>		<b>-- --</b>	<b>25,663</b>	<b>-- --</b>

**Elements of Comparison**

The elements of comparison that have the greatest influence on market behavior and the price paid for similar land in Kenai is location and physical character, including clearing/grading, frontage/access, and size. Importantly, the subject lot has highway frontage with very good exposure and access. We use a qualitative comparison technique that rates elements of comparison as superior, inferior, or similar.

**Comparable Land Sales Map**



**Land Sale 1**

Land Sale 1 is the May 2022 sale located on the northeast corner of Trading Bay Road and Main Street Loop Road. Northeast of the subject, the irregular-shaped parcel consists of 114,497± square feet. All public utilities are available in the immediate neighborhood. Topography is generally level, and the parcel is partially cleared and developed with a retail strip mall. Zoning is CMU, Central Mixed-Use. The sale was between the City of Kenai and former land lessee who purchased the land underlying the improvements. The sale price of \$300,000 indicates a unit value of \$2.62 per square foot. By comparison, this sale lacks highway frontage, and no improvements were included in the sale. Conversely, its good corner location with



frontage near the Kenai Airport and within the Kenai Commercial Core. Overall, Land Sale 1 is rated inferior, indicating a unit value greater than \$2.62 per square foot for the appraised land.

**Land Sale 2**



Land Sale 2 is the January 2020 sale located on the northwest corner of Kenai Spur Highway and Main Street Loop Road (east), proximate to the Commercial Core of Kenai. Located 1.3± road miles south of the subject, the nearly rectangular-shaped parcel consists of two totaling 121,091± square feet. All public utilities are available in the immediate neighborhood. Topography is generally level, and the parcel is cleared and developed with a motel. Zoning is CMU, Central Mixed-Use. The sale was between the City of Kenai and former land lessee who purchased the land underlying the improvements. The sale price of \$605,000 indicates a unit value of \$5.00 per square foot. By comparison, this sale is inferior for size, and similar to the subject for location with highway frontage near the Kenai Commercial Core. Overall, Land Sale 2 is rated similar, indicating a unit value approximating \$5.00 per square foot for the appraised land.

**Land Sale 3**



Land Sale 3 is the February 2019 sale located on the southwest corner of Kenai Spur Highway and S. Forest Drive, west of the Kenai Commercial Core. This location is 2.2± road miles southwest of the subject. The nearly rectangular-shaped lot contains 219,107± square feet. All public utilities are available in the immediate neighborhood. Topography is generally level, and the property was cleared and leveled at the time of sale. The property is zoned CG, General Commercial. Originally listed for \$499,000, the property sold after 132 days of market exposure. The sellers previously purchased the property in 2007 for \$175,000, and subsequently cleared the site. The price appreciation is attributed to passage of time, as well as value added due to clearing and leveling. The 2019 sale price of \$455,000 indicates a unit value of \$2.08 per square foot. By comparison, this sale is rated inferior for size differential and location. Land Sale 3 is rated inferior, indicating a unit value greater than \$2.08 per square foot for the appraised land.



**Land Sale 4**



Land Sale 4 is the August 2018 sale located at the northeast corner of Kenai Spur Highway and Coral Street, just outside of the Airport Reserve. This location is adjacent to the subject. The irregular-shaped site contains 35,851± square feet. The site is cleared and improved with a commercial building. All public utilities are available in the immediate neighborhood. Zoning is CMU, Central Mixed-Use. Per the plat, no direct Kenai Spur Highway access is permitted, although curb cuts allow for direct physical access. The sale was between the City of Kenai and former land lessee who purchased the land underlying the improvements. The sale price of \$180,000 indicates a unit value of \$5.02 per square foot. By comparison, this sale has good corner location with highway frontage proximate to the Commercial Core. Land Sale 4 is slightly inferior for size, superior for corner location, and similar in terms of physical character and access. Thus, Land Sale 4 is rated similar, indicating a unit value approximating \$5.02 per square foot for the appraised land.

**Land Sale 5**



Land Sale 5 is the August 2016 sale located on the northwest corner of Kenai Spur Highway and Main Street Loop Road (west) just south of the Airport Reserve and the Commercial Core. The property is located near the subject with similar access and frontage. The nearly rectangular-shaped lot contains 28,520± square feet. All public utilities are available in the immediate neighborhood. The property is cleared and zoned CMU, Central Mixed Use. The property was purchased from the City of Kenai by the land lessee, who owned two small commercial structures on the property. The sale price of \$170,400 was based on a 2015 appraisal, with a 20% premium paid. Land Sale 5 is similar in size and superior for location and access indicating a unit value less than \$5.97 per square foot for the appraised land.



**Reconciliation of Comparative Market Analysis**

Presented below is a rating grid and analysis of the land sales used in comparative analysis.

<b>Land Sale</b>	<b>\$/SF</b>	<b>Rank</b>	<b>Net Adjustment</b>
<b>5</b>	\$5.97	Superior	↓
<b>Subject</b>	-- --	-- --	-- --
<b>4</b>	\$5.02	Similar	-- --
<b>2</b>	\$5.00	Similar	-- --
<b>1</b>	\$2.62	Inferior	↑
<b>3</b>	\$2.08	Inferior	↑

The comparable land sales indicate a value range from \$2.08 to \$5.97 per square foot. Land Sale 5 is rated superior indicating a unit value less than \$5.97 per square foot. Conversely, Land Sales 1 and 3 are rated inferior indicating a unit value greater than \$2.62 per square foot. Land Sales 2 and 4 are rated similar indicating a unit value approximating \$5.00 per square foot. After comparative analysis and making the necessary adjustments, we conclude with a market value between \$5.00 and \$5.50 per square foot, which develops the following indicators.

<b>25,663 SF × \$5.00/SF =</b>	<b>\$128,315</b>
<b>25,663 SF × \$5.50/SF =</b>	<b>\$141,147</b>

Based on the preceding analysis, the market value of the appraised land, as of May 16, 2022, is estimated as follows.

<b>Market Value Estimate</b>	<b>\$135,000 (R)</b>
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**Marketing and Exposure Time**

Estimated 6 to 12 months

## **Assumptions and Limiting Conditions**

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This appraisal is subject to the following **assumptions and limiting conditions**.

- ➔ No responsibility is assumed for the legal description provided or for matters pertaining to legal or title considerations. Title to the property is assumed to be marketable unless otherwise stated.
- ➔ The property is appraised free and clear of all liens or encumbrances unless otherwise stated.
- ➔ The information furnished by others is believed to be reliable, but no warranty is given for its accuracy.
- ➔ All maps, plot plans, and other illustrative material are believed to be accurate, but are included only to help the reader visualize the property.
- ➔ It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for obtaining the engineering studies that may be required to discover them.
- ➔ It is assumed the property is in full compliance with all applicable federal, state, and local environmental regulations and laws unless the lack of compliance is stated, described, and considered in the appraisal report.
- ➔ It is assumed the property conforms to all applicable zoning, land use regulations, and platting restrictions unless the nonconformity is identified, described, and considered in the appraisal report.
- ➔ Possession of this report, or a copy thereof, does not carry with it the right of publication.
- ➔ The appraisers, by reason of this appraisal, is not required to give consultation or testimony or to be in attendance in court with reference to the property in question unless arrangements have been previously made.
- ➔ Neither all nor any part of the contents of this report shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraisers.
- ➔ The existence of any hazardous material or other type of environmental contamination, which may or may not be present on the property, was not observed by the appraisers nor do the appraisers have any knowledge of the existence of such substances. However, the presence of these substances may affect the value of the property. Therefore, the client is urged to retain an environmental assessment for discovery and evaluation.

**Statement of COVID-19**

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This appraisal was performed following public awareness that COVID-19 was affecting residents in the United States. At the time of the appraisal, COVID-19 is having widespread health and economic impacts. The effects of COVID-19 on the real estate market in the subject neighborhood are not yet measurable based on reliable data. The analysis and value opinion in this appraisal are based on the data available to the appraisers at the time of the assignment and apply only as of the effective date indicated. No analysis or opinions contained in this appraisal should be construed as predictions of future market conditions or value.

# MacSwain Associates LLC

4401 Business Park Boulevard, Suite 22, Anchorage, Alaska 99503

**Appraiser:** Steve MacSwain, MAI

Member of Appraisal Institute - No. 5700

State of Alaska, Certified General Real Estate Appraiser - No. 42

**Professional Experience:** 1986 to Present - MacSwain Associates LLC

1976 to 1986 - Appraisal Company of Alaska - President

1970 to 1975 - Real Estate Services Corporation – Appraiser

1969 to 1970 - State of Alaska Department of Highways - Right of Way Agent

Real estate appraiser and consultant of all property types throughout Alaska including commercial, industrial, subdivisions and special-purpose properties. Appraisals have been performed for financing, leasing, insurance, condemnation, taxation, property damages, investment analysis, and buy-sell decisions. Appraisals include valuation of both real property and business enterprises. Professional experience totals 49 years. Life-long Alaskan resident of Alaskan Native descent.

**Education:** Bachelor of Business Administration, Finance (1969), University of Alaska Fairbanks

**Appraisal Education:** The following is a list of completed appraisal courses and seminars.

2021 – *Cool Tools: New Technology for Real Estate Appraisers* by the Appraisal Institute

2021 – *Desktop Appraisals (Bifurcated, Hybrid) and Evaluations* by the Appraisal Institute

2021 – *Hot Topics & Myths in Appraiser Liability* by LIA Administrators & Insurance Services

2020 – *Uniform Standards of Professional Appraisal Practice – Update* by the Appraisal Institute

2019 – *How Tenants Create or Destroy Value: Leasehold Valuation and its Impact on Value* –by the Appraisal Institute

2017 – *Appraising Environmentally Contaminated Properties* by the Appraisal Institute

2017 – *Residential & Commercial Valuation of Solar* by the Appraisal Institute

2017 – *Right of Way Acquisition for Pipeline Projects* by the International Right of Way Association

2015 – *Litigation Appraising: Specialized Topics and Applications* by the Appraisal Institute

2015 – *Business Practices and Ethics* by the Appraisal Institute

2013 – *Complex Litigation Appraisal Case Studies* by the Appraisal Institute

2013 – *Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book)* by the Appraisal Institute

2012 – *Appraisal Curriculum Overview* by the Appraisal Institute

2010 – *Reviewing Appraisals in Eminent Domain* by the International Right of Way Association

2010 – *Commercial Appraisal Engagement and Review Seminar for Bankers and Appraisers* by the Appraisal Institute

2009 – *The Appraiser as an Expert Witness: Preparation and Testimony* by the Appraisal Institute

2009 – *Attacking and Defending an Appraisal in Litigation* by Whitmer Education

2008 – *Uniform Standards of Professional Appraisal Practice* by the Appraisal Institute

2007 – *Business Practices and Ethics* by the Appraisal Institute

2007 – *Eminent Domain Law for Right of Way Professionals* by the International Right of Way Association

2007 – *Appraisal Review for Federal Aid Programs* by the International Right of Way Association

2007 – *Analyzing Operating Expenses* by the Appraisal Institute

1969-2006: Numerous appraisal classes pertaining to principles, income capitalization, cost analysis, sale comparison approach, and highest and best use analysis by the Appraisal Institute, Society of Real Estate Appraisers, International Right-of-Way Association, International Association of Assessing Officers, and Marshall Valuation Service

**Membership and Organizations:** Member of Appraisal Institute – No. 5700, International Right of Way Association (IRWA), and Building Owners and Managers Association (BOMA)

**Public Service:** Past Chairman of the State Board of Certified Appraisers

Past Member of Board of Equalization, Municipality of Anchorage, National Experience Review Committee of the Appraisal Institute, and Regional Ethics and Counseling Panel of the Appraisal Institute

Past President of Alaska Chapter 57 of the Appraisal Institute

**Significant Assignments:**

- ➔ Appraised Pacific Spaceport Complex-Alaska (PSCA) land and facilities for Alaska Aerospace Corporation on Kodiak Island.
- ➔ Appraised proposed LNG Pipeline, a FERC-regulated 860-mile pipeline transporting liquefied natural gas.
- ➔ Appraised the Trans-Alaska Pipeline System, a FERC-regulated 800- pipeline that transports crude oil from Prudhoe Bay to Valdez, for TAPS ownership.
- ➔ Appraised remote lands (65,000± acres) owned by three Native corporations damaged by the *Selendang Ayu* grounding and subsequent oil spill.
- ➔ Appraised Calais Company, Inc., a real estate holding company consisting of 39 commercial parcels in Anchorage.
- ➔ Principal real estate consultant and expert witness for all lands affected by the *Exxon Valdez* oil spill. Project involved over 2,000,000 acres of remote land and nearly 2,000 private property owners.
- ➔ Appointed as a representative of a three-member panel that analyzed and valued over 1,000,000 acres and 8,000 parcels for the Mental Health Lands Settlement.
- ➔ Contract assessor for the North Slope Borough, Kodiak Island Borough, City of Nome, and the City of Valdez.
- ➔ Represented Seibu Alaska, Inc. (Alyeska Resort and Alyeska Prince Hotel) in preparing of their property tax appeal with the Municipality of Anchorage that resulted in a \$65 million reduction in assessed value.
- ➔ Appraised submerged tideland parcels and wetlands parcels located in Womens Bay on Kodiak Island for the purpose of an exchange between Koniag, Inc. and U.S. Fish and Wildlife Service.
- ➔ Appraised Common Carrier Pipeline right-of-ways leased and operated by BP Transportation Alaska and ConocoPhillips Alaska.
- ➔ Appraised 3,600 acres consisting of the former Adak Naval Air Station and Submarine Base conveyed to the City of Adak and the State of Alaska.

**Expert Witness Experience:** Steve MacSwain, MAI is qualified as an expert witness in both the United States Federal Court and the State of Alaska Superior Court. Steve has testified as an expert witness in State and Federal courts. In addition, Steve has testified as expert witness in numerous Alaskan municipal tax courts, public hearings, and depositions on matters related to real property.

**Arbitrator Experience:** Appointed a Master by the Superior Court of Alaska and Municipality of Anchorage to serve as an arbitrator in determining just compensation.

License #: APRG42 Effective: 6/8/2021 Expires: 06/30/2023	<b>State of Alaska</b> Department of Commerce, Community, and Economic Development Division of Corporations, Business, and Professional Licensing
<b>Board of Certified Real Estate Appraisers</b>	
Licensee: <b>STEVEN JAMES MACSWAIN</b>	
License Type: <b>Certified General Real Estate Appraiser</b>	
Status: <b>Active</b>	
Commissioner: Julie Anderson	
Relationships No relationships found.	Designations No designations found.





# KENAI

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

## MEMORANDUM

**TO:** Mayor Gabriel and Council Members

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Max Best, Interim Planning Director

**DATE:** September 15, 2022

**SUBJECT:** **Ordinance No. 3311-2022 - Determining that real property described as Lot 5, Block 1, Gusty Subdivision Addition No. 1, city-owned airport land located outside the airport reserve, is not needed for a public purpose and authorizing the sale of the property to Aaron Swanson, dba as Forever Business Plaza LLC.**

The purpose of the memo is to request an amendments to Ordinance No. 3311-2022.

At the regularly scheduled Planning and Zoning Commission meeting of September 14, 2022 the Planning Commission voted to recommend approval of Ordinance No. 3311-2022. The Administration is requesting an amendment to fill in the blank in the 12<sup>th</sup> WHEREAS by adding the word "approval".

At the regularly Scheduled Airport Commission meeting of September 8, 2022 the Airport Commission voted to recommend approval of Ordinance No. 3311-2022 .The Administration is requesting an amendment to fill in the blank in the 13<sup>th</sup> WHEREAS by adding the word "approval".

The following amendment is respectfully requested.

### Motion

I move to fill in the blanks on the 12<sup>th</sup> and 13<sup>th</sup> WHEREAS with the word approval.

Thank you for your consideration.



Sponsored by: Administration

**CITY OF KENAI  
ORDINANCE NO. 3312-2022**

AN ORDINANCE DETERMINING LOT 4, BLOCK 1, GUSTY SUBDIVISION ADDITION NO. 1 AMENDED IS NOT NEEDED FOR A PUBLIC PURPOSE AND APPROVING THE EXECUTION OF A LEASE WITH AN OPTION TO PURCHASE BETWEEN THE CITY OF KENAI AND AARON SWANSON DBA FOREVER BUSINESS PLAZA LLC. FOR THE PROPERTY.

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WHEREAS, Kenai Municipal Code 22.05.095(b)(2)(iv) provides for a land lease in which the lease is subject to competition through the lease application review process and which contains an option to purchase once the minimum development requirements have been met for the fair market value of the land excluding permanent improvements made by the lessee; and,

WHEREAS, on June 28, 2022, Aaron Swanson submitted an application for a lease of City owned properties with the option to purchase, described as Lot 4, Block 1, Gusty Subdivision Addition No. 1 Amended; and,

WHEREAS, the Applicant's application states the intention is to construct a Pita Pit restaurant, with initial construction being site preparation and a temporary building; and,

WHEREAS, the proposed development would be mutually beneficial and would conform with the Kenai Municipal Code for zoning and Kenai's Comprehensive Plan; and,

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

WHEREAS, the property has been released by the Federal Aviation from its Deed Restriction and is available for sale or lease; and,

WHEREAS, the property is no longer needed for a public purpose for airport uses and is suitable for private development; and,

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

WHEREAS, at their regular meeting on September 8, 2022, the Airport Commission reviewed the lease application and recommended \_\_\_\_\_ by the City Council; and,

WHEREAS, funds from the lease and sale will benefit the Airport Fund.

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

**Section 1.** Form: This is a non-code ordinance.

**Section 2.** That a Lease with an option to purchase City owned lands described as Lot 4, Block 1 Gusty Subdivision Addition No. 1 Amended is approved as attached hereto and the City Manager is authorized to execute a lease with an option to purchase between the City of Kenai, Lessor, and Aaron Swanson DBA Forever Business Plaza, Lessee, as follows:

The lease or sale shall be subject to the reservations and covenants as contained in Federal Aviation Administration Deed of Release, Book 227, Page 416, Kenai Recording District;

**Section 3.** That the Council determines that the property is no longer needed for a public purpose by the airport and is available for lease or sale.

**Section 4.** Any sale will be made at fair market value of the land only, as determined by a professional appraiser from an appraisal made not more than one year prior to the date of sale. Any sale will be conveyed through a quitclaim deed. Further Council authorization is not required for a sale; however, completion of all required improvements is required prior to sale. All proceeds from the sale will be deposited in the Airport Land Sale Permanent Fund.

**Section 5.** The following improvements are required to be completed within two years of execution of the lease, and the option to purchase cannot be made until the improvements are completed:

**Section 6.** 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 7.** 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 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Saner, MMC, City Clerk

Introduced: September 7, 2022  
Enacted: September 21, 2022  
Effective: October 21, 2022



## MEMORANDUM

**TO:** Mayor Gabriel and City Council Members  
**FROM:** Max Best, Interim Planning Director  
**DATE:** July 17, 2022  
**SUBJECT:** **Ordinance No. 3312-2022 – Approving the Lease with a Sale option of 11536 Kenai Spur Highway to Aaron Swanson**

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On June 28, 2022, staff received a competitive Lease with Sale Purchase Option application pursuant to KMC 22.05.095(i) for 11536 Kenai Spur Highway, Lot 4, Block 1, Gusty Subdivision Addition No. 1 Amended, from Aaron Swanson. The proposed use of the parcel, which is currently vacant, is to construct a Pita Pit restaurant.

11536 Kenai Spur Highway is a 24,829 square foot (.57 ac.) cleared lot south of the baseball fields with 120' of Kenai Spur Highway frontage. The Lot has additional access from Coho Avenue. City water and sewer is available. This parcel is located outside the Airport Reserve.

The parcel is within the Central Mixed-Use District (CMU). Per KMC 14.20.125, the purpose of the CMU Zone is intended to provide for a centrally located area in the City for general retail shopping, personal and professional services, entertainment establishments, restaurants and related businesses.

Pursuant to Kenai Municipal Code 22.05.040 application review, notice of the application was posted in the Peninsula Clarion and stated competing applications may be submitted for the parcel within 30 -days to the City. The 30-day window from publication ended on August 29, 2022, and no competing applications were submitted to the City.

The recently adopted City of Kenai Land Management Inventory and Recommendations lists the property as not needed for a public purpose and recommends disposal for lease or sale. Funds from the sale will benefit the Airport fund. The property is deed restricted with covenants and conditions that protect the ongoing operation of the airport.

The current fair market value of the property as determined by MacSwain Associates, LLC on May 18, 2021 is \$110,000. The lease rate will be 8% of the fair market value.

The applicant will be responsible for completing development of the property within two years of the execution of the lease and the option to purchase cannot be made until the improvements are completed. The Ordinance will be updated to provide the required improvements for the public

hearing on September 21, 2022. Pursuant to Kenai Municipal Code 22.05.070, site preparation work on the leased premises to include clearing and grubbing, unclassified excavation, classified fill and back fill, crushed aggregate base course, and utility extensions may be applied toward rent for a maximum of five years.

Your consideration is appreciated.





**CITY OF KENAI LEASE OF CITY OWNED LANDS  
WITH OPTION TO PURCHASE**

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. The lease or sale shall be subject to the reservations and covenants as contained in Federal Aviation Administration Deed of Release, Book 227, Page 416, Kenai Recording District;
- 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 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 CITYFINANCING 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



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:

\_\_\_\_\_  
Shellie Saner, 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



Basic Tools



Tool Labels X

☆ 04327014

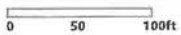
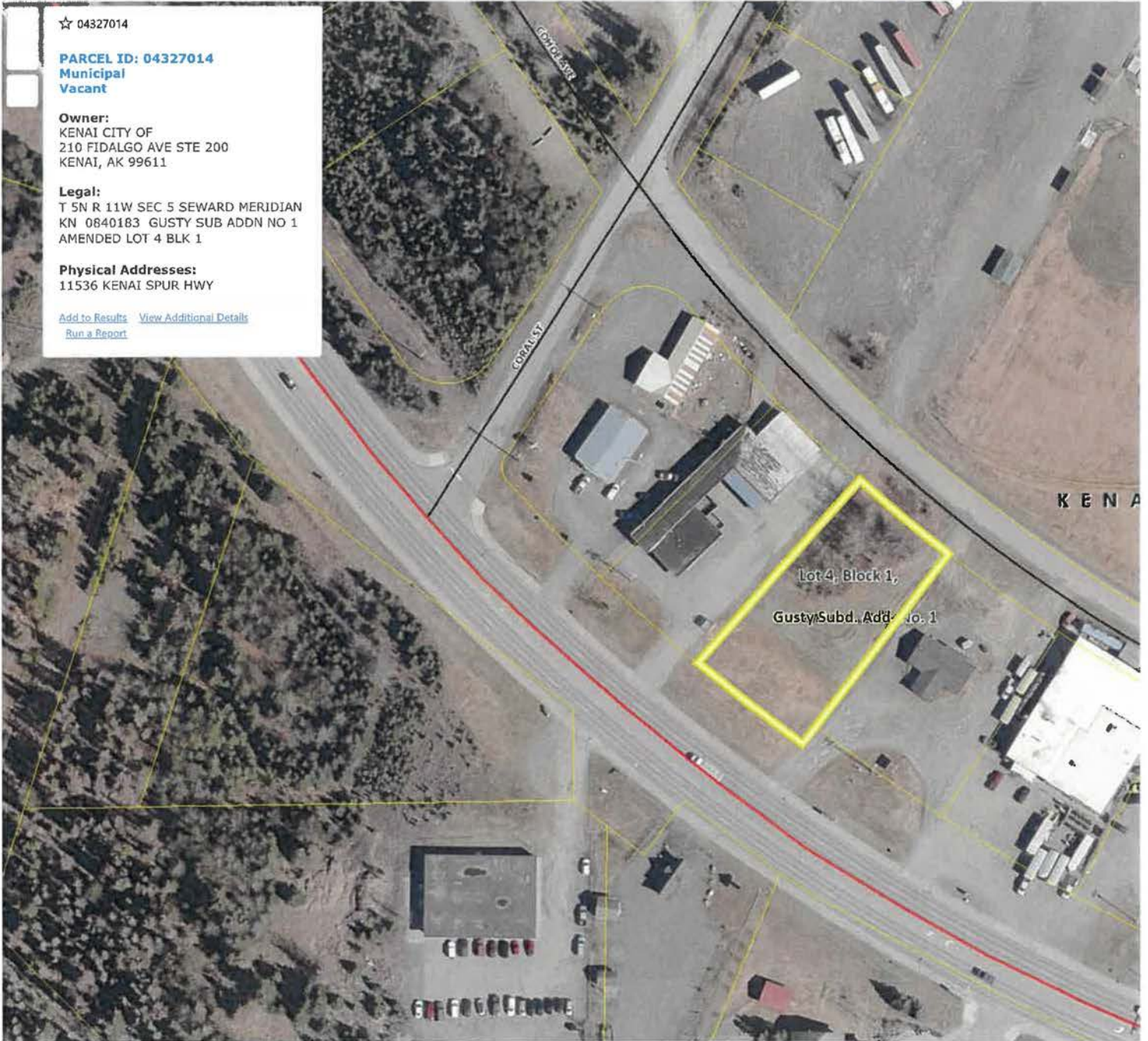
**PARCEL ID: 04327014**  
Municipal  
Vacant

**Owner:**  
KENAI CITY OF  
210 FIDALGO AVE STE 200  
KENAI, AK 99611

**Legal:**  
T 5N R 11W SEC 5 SEWARD MERIDIAN  
KN 0840183 GUSTY SUB ADDN NO 1  
AMENDED LOT 4 BLK 1

**Physical Addresses:**  
11536 KENAI SPUR HWY

[Add to Results](#) [View Additional Details](#)  
[Run a Report](#)





RECEIVED

CITY OF KENAI  
6/28/22 DATE  
PLANNING DEPARTMENT

City of Kenai  
Competitive Land  
Purchase Application



2022-17

Application Date: 6/28/2022

Applicant Information

Name of Applicant:	Aaron Swanson						
Mailing Address:	37190 Aspenwood Ct	City:	Soldotna	State:	AK	Zip Code:	99669
Phone Number(s):	Home Phone: 907-252-3069		Work/ Message Phone:				
E-mail: (Optional)	aaronswanson907@gmail.com						
Name to Appear on Deed:	Forever Business Plaza						
Mailing Address:	37190 Aspenwood Ct	City:	Soldotna	State:	AK	Zip Code:	99669
Phone Number(s):	Home Phone: 907-252-3069		Work/ Message Phone:				
E-mail: (Optional)							
Type of Applicant:	<input checked="" type="checkbox"/> Individual (at least 18 years of age) <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Government <input checked="" type="checkbox"/> Limited Liability Company (LLC) <input type="checkbox"/> Other _____						

Property Information

Legal description of property (or, if subdivision is required, a brief description of property):  
*Lot 4 Blk 1 Gustly Sub.*

Does the property require subdivision? (if Yes, answer next question)  YES  NO

Subdivision costs are the responsibility of the applicant unless the City Council determines a subdivision serves other City purposes

1. Do you believe the proposed subdivision would serve other City purposes?  YES  NO

2. If determined it does not, applicant is responsible for all subdivision costs. Initials \_\_\_\_\_

If an appraisal is required to determine the minimum price on the land, applicant is responsible for the deposit to cover costs associated with appraisal. If a sale is approved, the cost of the appraisal will be either refunded or credited toward the purchaser. Initials *AS*

It is the responsibility of the applicant to cover costs associated with title insurance. Initials *AS*

It is the responsibility of the applicant to cover recording costs associated with the purchase. Initials *AS*

The purchaser must pay not less than 50% of the costs of sale associated with a sale at not less than fair market value as determined by an appraisal or 100% of the costs of sale if the sale is at less than fair market value. Initials *AS*

Requested closing date: *September 2022*

**Proposed Use and Improvements**

Proposed Use (check one):     Aeronautical     Non-Aeronautical

Type of Land Use:     Commercial     Residential     Industrial     Public/Institutional     Tidelands     Other

Do you plan to construct new or additional improvements? (if Yes, answer next 3 questions)     YES     NO

1. What is the estimated value of the improvement?    \$ 300,000

2. What is the type of improvement?     Building     Land     Other:

3. What are the dates construction is estimated to commence and be completed? (Generally within two years)

Estimated Start Date: this fall

Estimated Completion Date: Summer 2023

If you do not plan to construct new improvements, how does the proposed use benefit the community?

N/A

Describe the proposed business or activity intended:

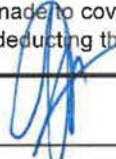
Pita Pit Restaurant

How does the proposed purchase benefit the City of Kenai and support a thriving business, residential, recreational, or cultural community?

Creates an opportunity for fabulous food locally while providing additional employment opportunities within town.

Submitting an application to purchase does not give the applicant a right to purchase or use the land requested in the application. If the land is sold in a competitive public sale set in response to this Competitive Land Purchase Application to anyone other than the applicant, the application fee and any deposit made to cover the cost of appraisal or subdivision will be refunded in total to the applicant. If the land is sold to the applicant, any deposit, after deducting the City's expenses, will be credited to the purchaser at closing.

Signature:



Date:

6/28/2022

Print Name:

Aaron Swanson

Title:

owner

For City Use Only:

Account:     General Fund     Airport Fund

Method of Sale (check one):

Public Auction     Over-the-Counter

Leased Land with Option to Purchase

Date Application Fee Received:

6/28/22

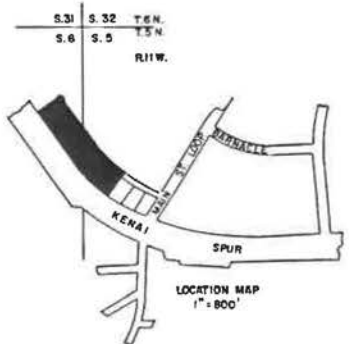
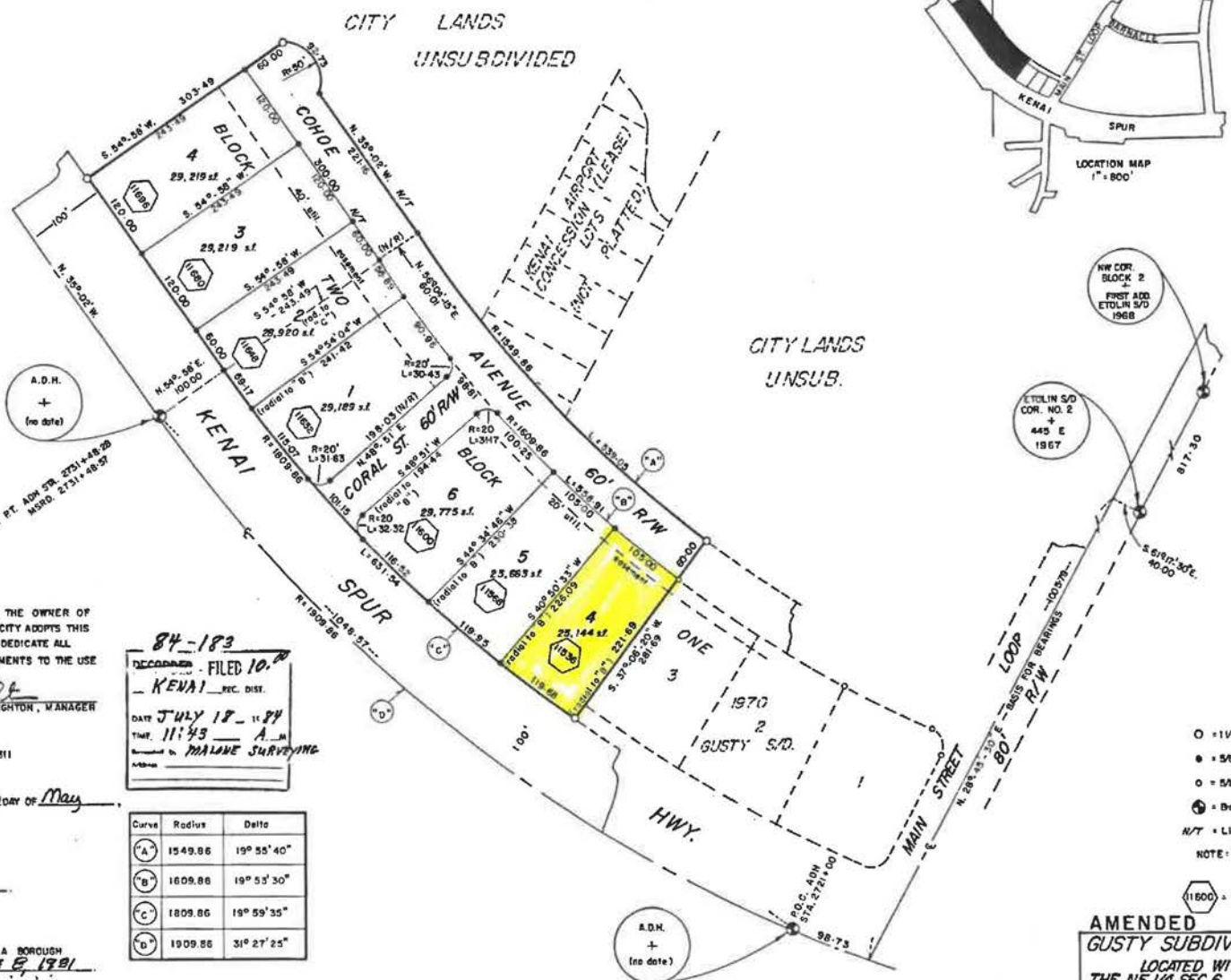
Date Application Determined Complete:

30-Day Notice Publication Date:

City Council Ordinance:

Account Number:





83-126  
 RECORDED - FILED 10/20  
 Kenai SEC. DIST.  
 DATE 6-29 1983  
 TIME 8:30 A.M.  
 Submitted by Malone Surveying  
 Kenai

A.D.H. +  
 (no date)  
 C. FT. ADP 579, 273+48+25  
 WORDS 273+48+27

**CERTIFICATE OF OWNERSHIP & DEDICATION**  
 I HEREBY CERTIFY THAT THE CITY OF KENAI IS THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON, AND THE CITY ADOPTS THIS PLAN. I FURTHER CERTIFY THAT THE CITY DOES HEREBY DEDICATE ALL RIGHTS OF WAY TO PUBLIC USE, AND GRANTS ALL EASEMENTS TO THE USE SHOWN.

WILLIAM J. BRIGHTON, MANAGER  
 CITY OF KENAI  
 BOX 560  
 KENAI, AK. 99811

**NOTARY'S ACKNOWLEDGMENT FOR WILLIAM J. BRIGHTON**  
 SWORN AND SUBSCRIBED TO BEFORE ME THIS 18th day of May, 1983.  
 Dana M. Goodlander  
 NOTARY PUBLIC FOR ALASKA  
 MY COMMISSION EXPIRES 9-24-85

84-183  
 RECORDED - FILED 10/20  
 KENAI SEC. DIST.  
 DATE JULY 18 11 84  
 TIME 11:43 A.M.  
 Submitted by MALONE SURVEYING

Curve	Radius	Delta
(A)	1549.86	19° 55' 40"
(B)	1609.86	19° 53' 30"
(C)	1809.86	19° 59' 35"
(D)	1909.86	31° 27' 25"

**PLAT APPROVAL**  
 THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF JUNE 8, 1981.  
 KENAI PENINSULA BOROUGH  
 BY: Alan Thomson  
 AUTHORIZED OFFICIAL

I HEREBY CERTIFY THAT THE FOLLOWING CHANGES HAVE BEEN MADE & THAT NO OTHER CHANGES WERE MADE:  
 1) CURVES LABELED - "A", "B", "C" & "D"  
 2) CURVE TABLE ADDED  
 3) BEARING OF LOT LINE BETWEEN L-4 & L-5, BLK. 1; AMENDED FROM S 40° 50' 30" W TO S 40° 50' 35" W  
 4) BEARING OF LOT LINE BETWEEN L-5 & L-6, BLK. 1; AMENDED FROM S 44° 34' 30" W TO S 44° 34' 46" W  
 5) DISTANCE OF LOT LINE BETWEEN L-4 & L-5, BLK. 1; ADDED 228.09  
 6) BEARING OF LOT LINE BETWEEN L-1 & L-2, BLK. 2; AMENDED FROM S 54° 54' W TO S 54° 54' 04" W  
 7) LINE OF L-4 & L-5, BLK. 1, LABELED AS RADIAL TO CURVE "B"  
 8) LINE OF L-5 & L-6, BLK. 1, LABELED AS RADIAL TO CURVE "B"  
 9) S.E. R.O.W. LINE OF CORAL STREET, LABELED AS RADIAL TO CURVE "B"  
 10) RADIAL LINE (DASHED) SHOWN WITHIN LOT 2, BLK. 2.

11) LINE FROM PT. OF CURVE "A" TO PT. OF CURVE "B" LABELED AS NOT RADIAL (N/R).  
 12) S.E. BOUNDARY LINE BETWEEN LOTS 3 & 4, BLK. 1, LABELED AS RADIAL TO CURVE "B".  
 F. & MALONE, 631-S  
 DATE 7/18/84



- = 1 1/2" diam. capped rebar set
  - = 5/8" x 24" rebar set
  - = 5/8" rebar found
  - ⊕ = Brass cap monument found
  - N/T = Line not tangent to curve
- NOTE: ACCESS TO THESE LOTS FROM THE KENAI SPUR HWY. IS PROHIBITED. ACCESS PERMITTED FROM COHDE AVE. ONLY
- ⬡ = STREET ADDRESS

**AMENDED**  
**GUSTY SUBDIVISION ADDITION No. 1**  
 LOCATED WITHIN THE NW 1/4 SEC. 5, and THE NE 1/4 SEC. 6, T.5N, R.11W, S.M., City of Kenai, Alaska, containing 6.054 ac., m/l.

STATE OF ALASKA  
 1971  
 REGISTERED LAND SURVEYOR  
 NO. 631-S

CITY OF KENAI  
 BOX 560,  
 KENAI, ALASKA 99811

MALONE SURVEYING  
 BOX 566  
 KENAI, ALASKA 99811

DATE 5/10/83

## DEED OF RELEASE

This Instrument, a Deed of Release, made by the United States of America, acting by and through the Manager, Airports Division, Alaskan Region, Federal Aviation Administration, pursuant to the authority contained in Public Law 81-311 (63 Stat. 700), as amended, to the City of Kenai, a body politic under the laws of the State of Alaska, Witnesseth:

WHEREAS, the United States of America, pursuant to the provisions of the Federal Property and Administration Act of 1949 (83 Stat. 377) and the Surplus Property Act of 1944 (58 Stat. 765), as amended, by instrument entitled, "Quitclaim Deed", dated December 1, 1963, did remise, release, and forever quitclaim to the City of Kenai in and to certain real property located near Kenai, Alaska, under and subject to the reservation, exceptions, restrictions, and conditions contained in the Deed, and

WHEREAS, the City of Kenai has requested the Administrator of the Federal Aviation Administration to release an area of land hereinafter described, from all conditions, reservations, and restrictions contained in said "Quitclaim Deed" to permit the long-term lease for nonairport purposes of said property exclusively for development, improvement, operation, and/or maintenance of the Kenai Municipal Airport, and

Whereas, the Administrator of the Federal Aviation Administration, under and pursuant to the powers and authority contained in Public Law 81-311 (3 Stat. 700) is authorized to grant a release from any of the terms, conditions, reservations, and restrictions contained in, and to convey, quitclaim, or release any right or interest reserved to the United States by any instrument of disposal under which surplus airport property was conveyed to a non-Federal public agency pursuant to Section 13 of the Surplus Property Act of 1944 (58 Stat. 765); and

WHEREAS, the Administrator of the Federal Aviation Administration has determined that said land no longer serves the purpose of which it was transferred, and that such property can be used or leased by the City of Kenai for other than airport purposes without materially and adversely affecting the development, improvement, operation, or maintenance of the Kenai Airport; and

WHEREAS, the City of Kenai, by City Ordinances No. 612-80, as amended, and No. 711-81, as amended, have established an acceptable procedure for disposing, through lease, of said property;

NOW, THEREFORE, in consideration of the benefits to accrue to the United States and to the civil aviation, the United States of America, acting by and through the Administrator of the Federal Aviation Administration, and pursuant to the authority contained in Public Law 81-311 (63 Stat. 700) and applicable rules, regulations, and orders, hereby consents to the release and subsequent lease of the hereinafter described property by the City of Kenai in accordance with the procedures established by City Ordinances No. 612-80, as amended, and No. 711-81, as amended.

## Legal Description

All that portion of the Kenai Airport Lands known as Gusty Subdivision Addition No. 1 (Tract G-3), within the NW 1/4 of Section 5 and the NE 1/4 of Section 6, T5N, R11W, S.M. Alaska. This Tract contains 6.054 acres, more or less and is depicted in red on the plat recorded 6-29-83 (83-126), attached to and made a part hereof.

This release is granted subject to the following conditions:

1. The instrument used to lease or sale the hereinabove described property shall expressly include the following reservations and covenants:

- A. There is hereby reserved to the City of Kenai, 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 herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used or navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on the Kenai Airport.
- B. The Lessee by accepting this conveyance expressly agrees for itself, its heirs, representatives, successors, and assigns that it will not erect nor permit the growth of any tree on the land conveyed hereunder which would be an airport obstruction within the standards established by the Federal Aviation Administration. In the event the aforesaid covenant is breached, the City of Kenai reserves the right to enter on the land conveyed hereunder and to remove the offending structure or object and to cut the offending tree, all of which shall be at the expense of the Lessee, or its heirs, successors, or assigns.
- C. The Lessee, by accepting this conveyance expressly agrees for itself, its heirs, representatives, successors, and assigns that it will not make use of said property in any manner which might interfere with the landing and taking off of aircraft from said Kenai Airport, or otherwise constitute and airport hazard. In the event the aforesaid covenant is breached, the Lessor reserves the right to enter on the land conveyed hereunder and cause the abatement of such interference at the expense of the Lessee.

2. All covenants herein contained shall run with the land and shall insure to the benefit of, and be binding upon, the heirs, representatives, successors, and assigns to the parties hereto.

3. In the event that any of the terms, conditions, reservations, and restrictions upon or subject to which the property is disposed of are not met, observed, or complied with, all of the property so disposed of or any portion thereof shall, at the option of the United States, revert to the United States and its then existing condition.

4. In the event, the subject property is needed or required in the future for airport operations, construction or management, the FAA will not participate in the acquisition of the lease hold interest of this property.

5. The United State resumes the right to review the proposed lease agreement prior to execution of said lease agreement.

IN WITNESS WHEREOF, the United States of America has caused this instrument to be executed as of the 29<sup>th</sup> day of December 1983.

UNITED STATES OF AMERICA

The Administrator of the Federal Aviation Administration

by: Rabie B. Strickland  
 Manager, Airports Division, Alaskan Region

Accepted this 12<sup>th</sup> day of December 1983 by the City Manager of the City of Kenai.

84-000464

11.00

RECORDED-FILED  
 KENAI REC.  
 DISTRICT

Jan 16 11 02 AM '84  
 REQUESTED BY City of Kenai

by: W. J. Bright  
 Title City Manager



# MACSWAIN ASSOCIATES LLC

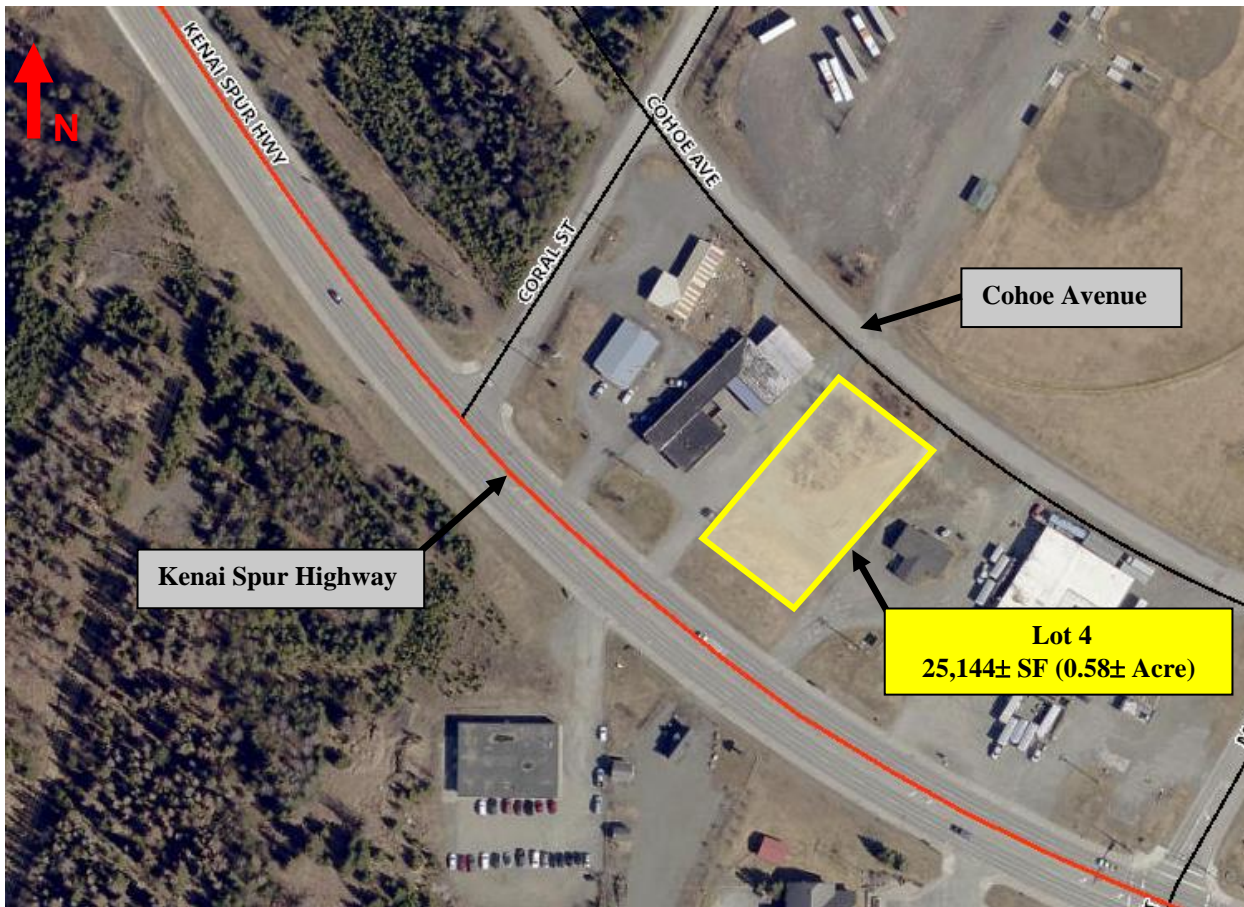
4401 Business Park Boulevard, Suite 22, Anchorage, Alaska 99503

## APPRAISAL REPORT

Kenai Lot: 25,144± SF (0.58± Acre)

Lot 4, Block 1, Gusty Subdivision

Kenai, Alaska



Date of Value: May 16, 2022

File No. 22-3697

### Submitted To:

Ryan Foster, Planning Director  
City of Kenai  
210 Fidalgo Avenue  
Kenai, AK 99611

**MacSwain Associates LLC**

**4401 Business Park Blvd., Suite 22  
Anchorage, Alaska 99503  
Phone: 907-561-1965  
Fax: 907-561-1955  
s.macswain@macswain.com**

June 15, 2022

Ryan Foster, Planning Director  
City of Kenai  
210 Fidalgo Avenue  
Kenai, AK 99611

Re: Kenai Lot: 25,144± SF (0.58± Acre)  
Lot 4, Block 1, Gusty Subdivision  
Kenai, Alaska

Dear Mr. Foster:

We have prepared an *Appraisal Report* of the above-referenced vacant lot located in Kenai, Alaska. The appraised parcel contains 25,144± square feet or 0.58± acre. The type of value estimated is *market value*. The property rights appraised is the *fee simple* estate. The report is prepared in accordance with the *Uniform Standards of Professional Appraisal Practice* (USPAP).

Based on the data, reasoning, and analysis that follows, the market value of the appraised property, as of May 16, 2022, is estimated as follows.

**ONE HUNDRED TEN THOUSAND DOLLARS                      \$110,000**

Your attention is directed to the Assumptions Limiting Conditions of this report located in the addendum. We also direct your attention to the Statement of COVID-19 in the addendum. We hope the appraisal report assists your evaluation of the properties. If you have any questions regarding this report, please contact this office.

Respectfully submitted,



Steve MacSwain, MAI  
State of Alaska Certificate No. 42

## **Appraiser Certification**

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The undersigned certifies that to the best of their knowledge and belief:

- ➔ The statements of fact contained in this report are true and correct.
- ➔ The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- ➔ We have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- ➔ We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- ➔ MacSwain Associates, LLC previously performed services as an appraiser on the subject property in September 2021.
- ➔ Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- ➔ Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- ➔ The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- ➔ The reported analyses, opinion, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- ➔ The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- ➔ Dwayne Roberts with MacSwain Associates, LLC inspected the appraised property on May 16, 2022. Steve MacSwain, MAI has previously inspected the property.
- ➔ Dwayne Roberts provided significant real property appraisal assistance to the person signing this certification.
- ➔ As of the date of this report, Steve MacSwain, MAI, is a certified General Real Estate Appraiser in the State of Alaska and has completed the education requirements through June 2023.

- ➔ As of the date of this report, Steve MacSwain, MAI has completed the Standards and Ethics Education requirements for Designated Members of the Appraisal Institute.
- ➔ As of the date of this report, Steve MacSwain, MAI has completed the continuing education requirements for Designated Members of the Appraisal Institute.
- ➔ As of the date of this report, Steve MacSwain, MAI is a certified General Real Estate Appraiser in the State of Alaska and has completed the education requirements through June 2023.



\_\_\_\_\_  
Steve MacSwain, MAI  
State of Alaska Certificate No. 42

6/15/22  
Date

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**Appraiser Certification**  
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**Addendum**

- Assumptions and Limiting Conditions
- Statement on COVID-19
- Short Form Agreement
- Appraiser Qualifications

Appraisal Summary

<b>Value Type:</b>	Market value
<b>Property Type:</b>	Commercial
<b>Property Rights Appraised:</b>	Fee simple estate
<b>Location:</b>	North side of Kenai Spur Highway between Coral Street and Main Street Loop Road, Kenai, Alaska
<b>Legal Description:</b>	Lot 4, Block 1, Gusty Subdivision
<b>Tax Parcel No:</b>	043-270-14
<b>Physical Address:</b>	11536 Kenai Spur Highway
<b>Property Owner:</b>	City of Kenai (per KPB)
<b>Zoning:</b>	Central Mixed-Use District (CMU)
<b>Site Description:</b>	Nearly-rectangular shaped lot containing 25,144± square feet or 0.58± acre
<b>Topography:</b>	Partially cleared with some spruce and birch trees, lot is nearly level and at grade with surrounding streets and properties
<b>Frontage/Exposure:</b>	120± feet of Kenai Spur Highway frontage and 105± feet of Cohoe Avenue frontage
<b>Access:</b>	Access via Cohoe Avenue, a gravel road on northern boundary. No improved access from Kenai Spur Highway
<b>Utility Service:</b>	All public utilities available
<b>Soil and Subsurface Conditions:</b>	Based on observations of surrounding development, soils appear to be suitable for development.
<b>Hazardous Substances:</b>	None observed or known, parcel is appraised as if “environmentally clean”
<b>Wetland Designation:</b>	None
<b>Flood Hazard Restrictions:</b>	Zone D, an area of undetermined, but possible flood hazard
<b>Easements and Restrictions:</b>	20-foot utility easement along north boundary
<b>Sale/Lease History:</b>	No known sales or leases in the previous three years



<b>Highest and Best Use:</b>	Commercial
<b>Extraordinary Assumption:</b>	None
<b>Hypothetical Condition:</b>	None
<b>Date of Property Inspection:</b>	May 16, 2022
<b>Effective Appraisal Date:</b>	May 16, 2022
<b>Date of Report:</b>	June 15, 2022

<b>Market Value Estimate:</b>	<b>\$110,000 (\$4.37/SF)</b>
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## Subject Property Photographs

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Date: May 16, 2022

Taken By: Dwayne Roberts



Northeast view of property from Kenai Spur Highway



South view of property

**Subject Property Photographs**

Date: May 16, 2022

Taken By: Dwayne Roberts



Southeast view of Cohoe Avenue frontage (property on the right)



Southeast view of Kenai Spur Highway frontage (property on the left)

## **Chapter 1: Definition of the Appraisal Problem**

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<b>Overview</b>	We prepare an <i>Appraisal Report</i> that analyzes a 25,144± square foot (0.59± acre) vacant lot in Kenai, Alaska. The type of value estimated is <i>market value</i> . The report is intended to comply with the <i>Uniform Standards of Professional Appraisal Practice</i> (USPAP).
<b>Value Type</b>	Market value
<b>Client</b>	City of Kenai
<b>Intended Use of Appraisal Report</b>	Assist with a potential sale of the property
<b>Intended User of Appraisal Report</b>	City of Kenai
<b>Property Inspection Date</b>	May 16, 2022
<b>Effective Appraisal Date</b>	May 16, 2022
<b>Date of Report</b>	June 15, 2022
<b>Identification of Real Estate Appraised</b>	The appraised property is a vacant lot owned by the City of Kenai. The subject property is located on the north side of Kenai Spur Highway between Coral Street and Main Street Loop Road in Kenai, Alaska. The subject’s physical address is 11536 Kenai Spur Highway and identified as Parcel ID 043-270-14 by the City of Kenai.



**Definition of Market Value**

The type of value estimated is *market value*. Market value is defined as follows.

*The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:*

- a. buyer and seller are typically motivated;*
- b. both parties are well informed or well advised, and acting in what they consider their own best interests;*
- c. a reasonable time is allowed for exposure in the open market;*
- d. payment is made in terms of cash in US dollars or in terms of financial arrangements comparable thereto; and*
- e. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.<sup>1</sup>*

**Property Rights Appraised**

We estimate the market value of the *fee simple estate*, which is defined as follows.

*Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.<sup>2</sup>*

**Legal Description**

Per DNR records, the legal description is as follows:

*Lot 5, Block 1, Gusty Subdivision, Kenai Recording District, Third Judicial District, State of Alaska.*

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<sup>1</sup> *Appraisal of Real Estate*, Fifteenth Edition (2020), by the Appraisal Institute, p. 49.

<sup>2</sup> *Appraisal of Real Estate*, Fifteenth Edition (2020), by the Appraisal Institute, p. 60.

**Property Owner** Public Records indicate the owner of the appraised property is as follows.

City of Kenai  
210 Fidalgo Avenue, Suite 200  
Kenai, AK 99611

**Assessed Value** The table below summarizes the historical KPB property assessment for the appraised property.

**KPB Historical Assessed Value (043-270-15)**

<b>Year</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
2022	\$105,300 (\$4.10/SF)	N/A	\$105,300
2021	\$126,400 (\$4.93/SF)	N/A	\$126,400
2020	\$120,400 (\$4.69/SF)	N/A	\$120,400

**Three Year Sale and Lease History** No known sales or leases in the previous three years.

**Report Type and Methodology** This *Appraisal Report* develops the sales comparison approach to estimate market value. Neither the cost nor the income capitalization approach reflects market behavior for vacant land. Qualitative techniques are used to measure differences between the comparable sales and the subject. The appraisal report is a summary of the appraisers’ data, analyses, and conclusions with supporting documentation retained on file.

**Scope of Appraisal** Dwayne Roberts of MacSwain Associates, LLC performed the inspection of the appraised property and assisted Steve MacSwain, MAI with data collection and analysis. Steve MacSwain, MAI administered the appraisal process, reviewed draft appraisals, and concurred with an opinion of value. Preparation of this report encompassed the following scope of work that concluded with an opinion of market value.

- ➔ Inspected the appraised property on May 16, 2022;
- ➔ Discussed the property with Ryan Foster, Planning Director with the City of Kenai;
- ➔ Reviewed KPB assessor map 043-270-14;
- ➔ Reviewed plat 83-126;



- ➔ Reviewed City of Kenai’s Official Zoning Map and zoning codes;
- ➔ Gathered data from the KPB Assessor’s office and State of Alaska Recorder’s office regarding ownership, assessments, and general property information;
- ➔ Interviewed Kenai real estate Brokers, agents, and property owners regarding land sales;
- ➔ Interviewed Kenai market participants regarding current commercial and light industrial land market conditions, trends, and expectations;
- ➔ Gathered and confirmed information on comparable land sales;
- ➔ Inspected the primary comparable sales we relied upon in our comparative analysis; and
- ➔ Applied the sales comparison approach to arrive at a market value indication.

**Exposure Time**

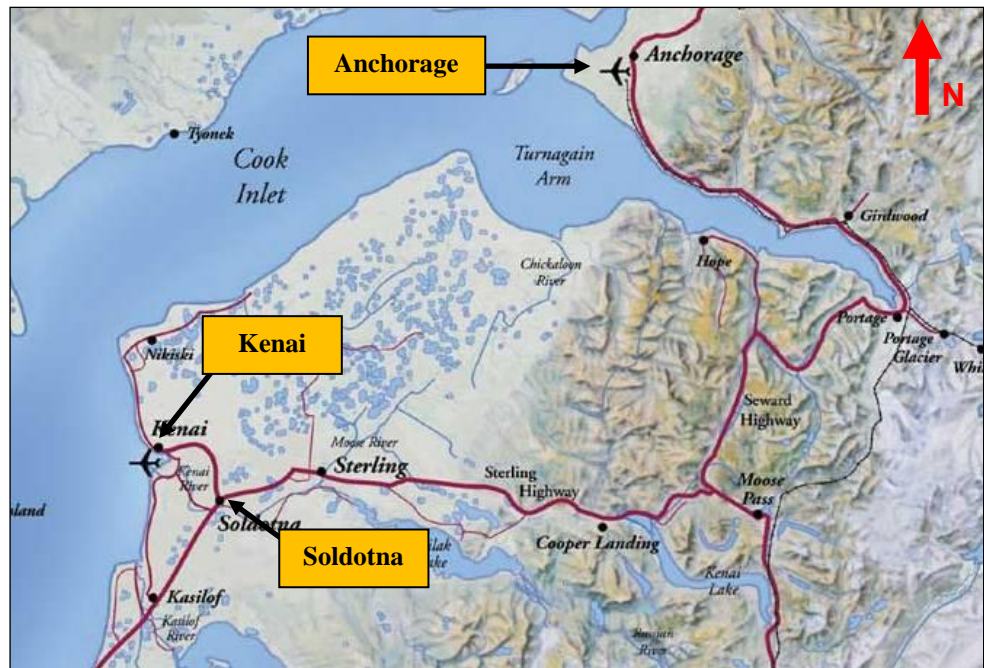
We have collected and analyzed market and economic data that projects real estate trends and activity for similar vacant parcels. Discussions with Brokers and analysis of similar property sales indicate that a period of approximately 6-9 months prior to our effective date of value is a reasonable exposure period.

## Chapter 2: Kenai Area Analysis and Industry Outlook

### Overview

The appraised property is located in Kenai, Alaska. A demographic and economic summary of the Kenai Peninsula Borough (KPB) and City of Kenai follows. The reader is referred to the map below and on following pages that illustrate the location and assist in the description and analysis. We note that due to lack of funding, the KPB ceased economic and financial publications.

### Kenai Location Map



### Kenai Peninsula Borough Summary

The Kenai Peninsula Borough is comprised of the Kenai Peninsula and Cook Inlet including areas northeast of the Alaska Peninsula. The borough also includes portions of Chugach National Forest, Kenai Wildlife Refuge, Kenai Fjords National Park, Lake Clark National Park, and Katmai National Park. Encompassing 24,800 square miles, there are 16,000± square miles (65%) of land and 8,700± square miles (35%) of water. Three distinct communities and population centers are established within the Borough. Seward is located at the terminus of the Seward Highway on the Gulf of Alaska coast, Kenai/Soldotna are located on Cook Inlet and surrounding the mouth of the Kenai River, and Homer is located at the terminus of the Sterling Highway on Cook Inlet and Kachemak Bay. A large portion of the Borough population is scattered along the road systems rather than in identifiable cities or communities.

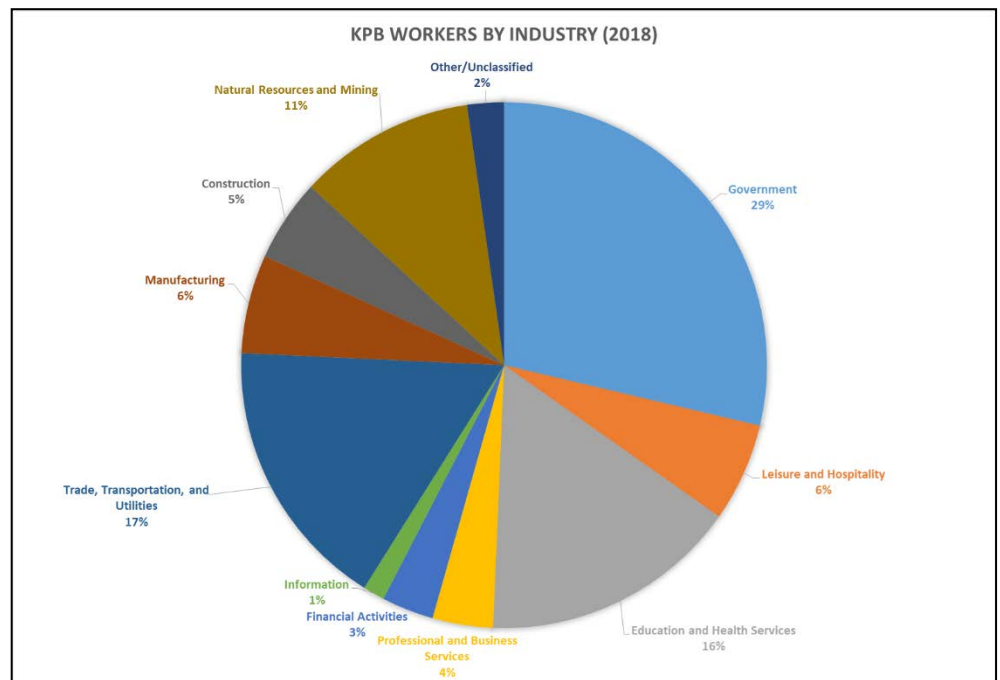
**Population**

Together, Kenai, Soldotna, Nikiski, Salamatof, and Kasilof have the largest population base in the Borough with an estimated 17,000± residents in 2019. Population within the Kenai census area is 7,056 residents and has remained flat over the past two decades. Similarly, surrounding communities have experienced population stability.

**Employment**

Borough employment is characterized as relatively diverse with no single dominant industry, with the exception of government. The five industry categories that have the highest economic influence, based on total wages, within the borough are Federal, State, and local government (29%) trade, transportation, and utilities (17%), education and health services (16%), natural resources and mining (11%), leisure and hospitality (6%), and manufacturing (6%). Supporting employment sectors include construction (5%), professional and business services (4%), and financial activities (4%). The table below indicates 2018 Borough wages by industry.

***KPB Total Wages by Industry (2018)***



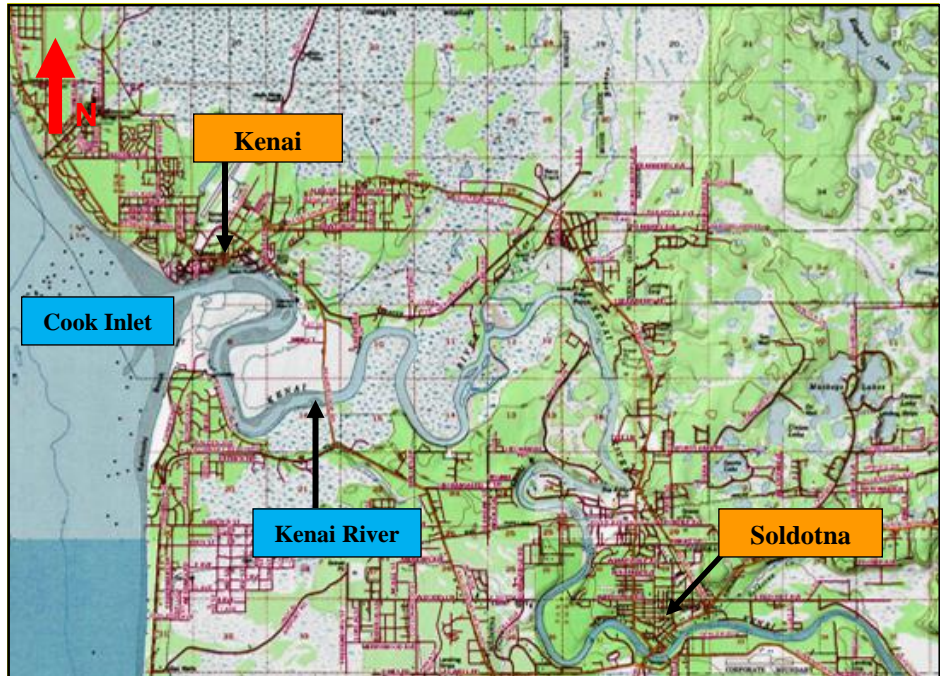
*Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section, January – December 2018*

Similar to most rural Alaska economies, government is one of the key employment factors. Leisure and hospitality (tourism) remains as a driving economic force of the Kenai Peninsula Borough’s economy.

Both residents and non-residents utilize the Peninsula for its vast fishing, camping, sightseeing, and other recreational opportunities. The visitor industry is cyclical with most activity occurring during summer months. However, sales in the visitor industry are an important source of municipal revenues as both city and borough government use collected sales taxes to support government operations. The oil and gas industry is scattered throughout the Peninsula. Natural gas endeavors marked increases in new exploration projects in Kenai, on the Westside of Cook Inlet as well as lower Kenai Peninsula between Clam Gulch and Ninilchik. However, negative aspects of the industry exist that include closing oil platforms due to poor production levels. Overall, the outlook for Kenai Peninsula Borough’s oil and gas industry is continued steady natural gas exploration and production with stagnant oil efforts. Capital investment in storage development, reserves replacement, and pipeline infrastructure are necessary and pressure exploration cost and development upward.

**Location Map**

**City of Kenai  
Summary**



Kenai is located on the western coast of the Peninsula, and is often associated with Soldotna, which is located 11± miles to the southeast. These two cities have become known as the “twin cities”, sharing an integrated economy, while maintaining their independence. Kenai is a home rule city with a population of 7,056. In the summer months, the area benefits from with tourists fishing the Kenai River. Kenai is also the center for the oil and gas industry on the Peninsula, providing

services and supplies for Cook Inlet's oil and natural gas drilling and exploration. Nikiski, which lies north of Kenai, has two refineries established to process oil from the Cook Inlet oil platforms and the Swanson River oil fields. There are numerous oil field support businesses located in the area as well as the refineries. Kenai has the largest airport on the peninsula, the Kenai Municipal Airport, which has regular scheduled flights to/from Anchorage and other communities in the region.

The Nikiski industrial district located north of Kenai extends along the shore of Cook Inlet for 1.5± miles and one-mile inland. Despite the relatively small area, the value of industrial development exceeds \$1 billion. The Agrium, Inc. nitrogen plant, Tesoro Alaska refinery and former ConocoPhillips LNG export plant are the principal industrial development. The LNG plant ceased operations in 2011, and reopened for intermittent natural gas shipments until 2015. The plant was sold to Andeavor in 2018 for \$10M±, a significantly below market price. Agrium merged with PotashCorp in 2018, forming a new company called Nutrien, who currently owns the former Agrium plant.

In 2014, Homer Electric Association began generating its own power at the Nikiski Combined Plant, producing 80 megawatts of power. In addition, HEA purchased the Bernice Lake Power Plant from Chugach Electric Association for \$12M±. These facilities are primary employers in Nikiski and account for nearly 10% of KPB total employment. As Nikiski remains a hub for power generation in the Kenai Peninsula, we do not anticipate major change to the Nikiski industrial district in the near term. The potential Alaska LNG Project is on the horizon, with optimism remaining on the Kenai Peninsula for eventual construction. The project entails a gas processing plant on the North Slope, an 800-mile gas pipeline and a liquefaction facility in the Nikiski area. Tentatively, the total project cost is estimated at \$45B±. To date, 570± acres have been acquired in Nikiski to develop the project. The City of Kenai passed a resolution in December 2018, giving unanimous support to the LNG project; however, this joint venture between the State of Alaska and private oil and gas industry appears to have stalled, with no definite timetable for development.

In 2012, ENSTAR Natural Gas Company began injecting natural gas into their new storage facility in Kenai. The Cook Inlet Natural Gas Storage Alaska facility (CINGSA) is Alaska's first independent gas storage facility with 11 billion cubic feet of capacity. The project cost is estimated at \$160M±.

Although most oil and gas fields in the Cook Inlet Basin are well past their peak, annual production has not declined significantly in the past



decade. Moreover, smaller independent oil companies are prospecting in the Cook Inlet basin with the intent of using new technology to enhance production profitability. However, the maturing life-cycle of oil and gas production has caused attrition in smaller businesses that support this industry. More importantly, this economic trend has created a market imbalance for industrial and commercial real estate. For example, we observed several smaller industrial or commercial properties that are vacant or abandoned because of contraction in the oil and gas industry. Recent capital investments made by larger energy companies have helped revitalize Kenai Peninsula’s oil and gas sector. Natural gas prices gradually recovered into summer 2014 from their lows in early 2012. Late 2014 to early 2015 saw another downturn in natural gas prices before a mid-2016/17 recovery. After briefly spiking in 4<sup>th</sup> quarter 2018, natural gas prices trended downward into 2020, where they reached record low prices in March, and again in July due to lack of demand driven by the COVID-19 pandemic. Prices made a slight recovery in the second half of 2020, but continue to remain much lower than the 20-year average. If demand for natural gas from Asia and the Lower 48 recovers, additional capital investment in the Kenai Peninsula will become more viable. Expressed in the table below is the U.S. Average Natural Gas Price over the past ten-year period, which has experienced significant volatility.

**Historical Natural Gas Price (\$/MMBTU)**



Source: macrotrends



**Conclusion**

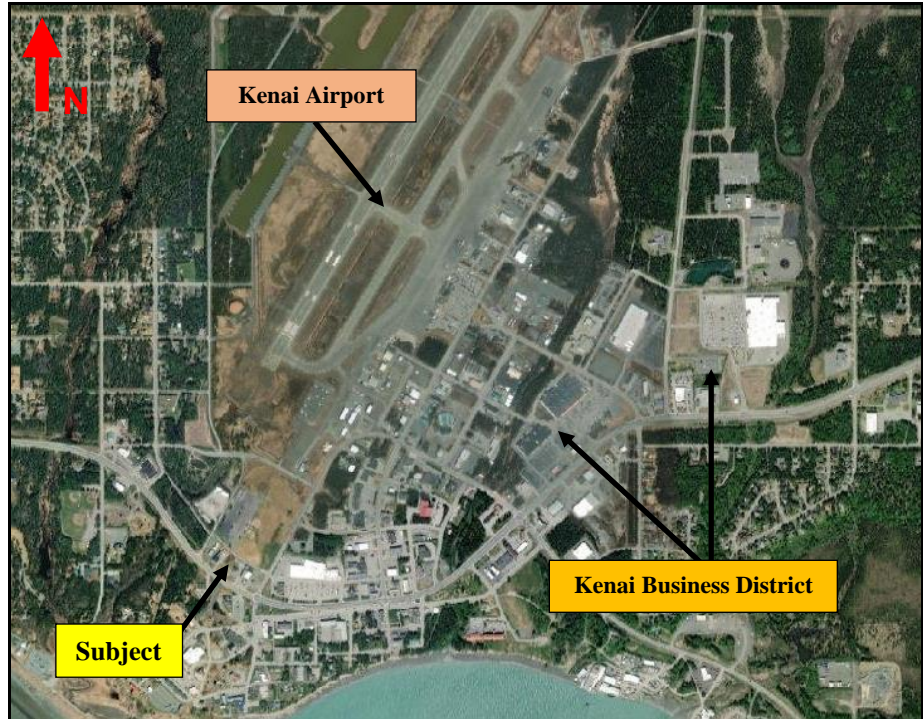
Optimism has been created by renewed investment in the Kenai Peninsula. Sale activity remains relatively scarce with assemblage, expansion, or special-purpose use representing the principal components of demand. Short-term uncertainty will likely continue to dampen the Kenai economy, which benefits from anglers and sightseeing tourism. Travel restrictions, and decreasing demand linked to the COVID-19 virus are slowly recovering from 2021 with cautious optimism for continued recovery in 2022. After analysis, we determined that industrial and commercial property values have been relatively stable over the past decade, but have declined from the 1980s peak.

### Chapter 3: Neighborhood Description and Analysis

#### Overview

The appraised land is located just south of the Kenai Municipal Airport and southwest of the Kenai Business District. This chapter will focus on the supply and demand factors of these neighborhoods, which affect the valuation process.

#### Kenai Neighborhood Map

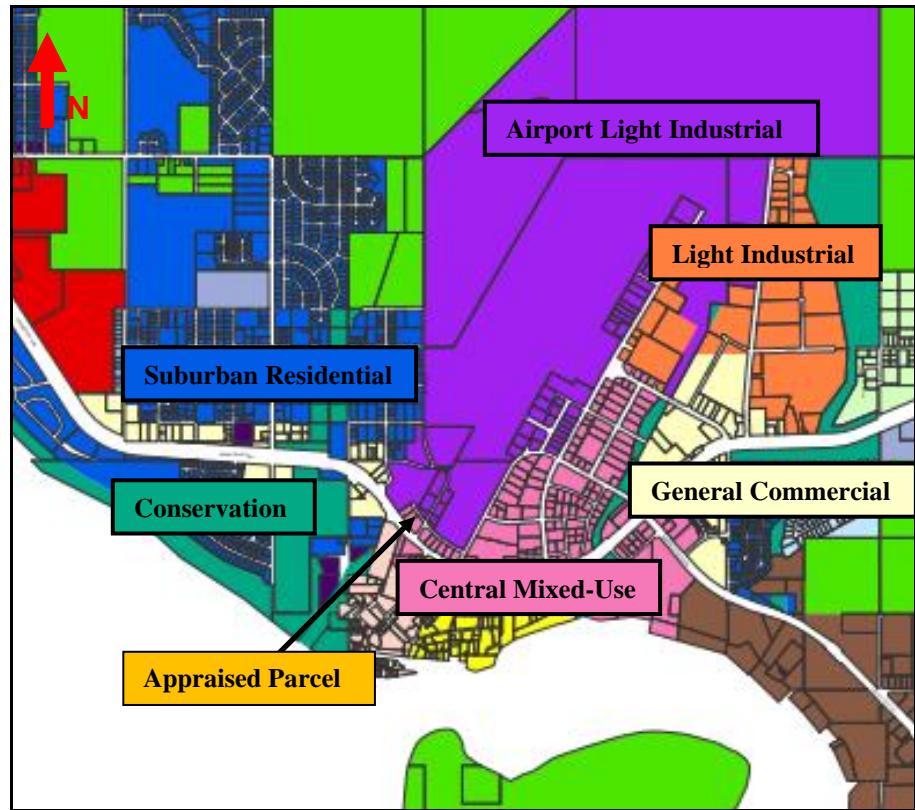


#### Neighborhood Description

The subject neighborhood is bound by the Kenai Airport to the north, the Kenai Spur Highway to the south and east, and the Kenai Business District to the northeast. The Kenai Business District is the commercial core of Kenai. Development includes many types of commercial and industrial uses including big box retailers, strip and enclosed malls, restaurants, convenience stores, small businesses, and airport-related businesses. The Kenai Airport was recently remodeled modernizing the terminal building. Lowes, which was constructed in 2008, closed in 2011. After eight years of vacancy, the property sold to U-Haul in 2019. This City-owned, public-use airport contains a 7,855-foot asphalt paved runway, as well as an additional gravel runway and seaplane basin. Currently, scheduled flight service to Anchorage is available on both Ravn Alaska and Grant Aviation. Development in the immediate neighborhood consists of both aviation and non-aviation related uses.

The zoning map below assists in visualizing neighborhood zoning districts. The immediate neighborhood is zoned Central Mixed-Use established to provide a centrally located area in the City for general retail shopping, personal and professional services, entertainment, restaurants, and related businesses. This district is also intended to accommodate a mixture of residential and commercial uses. The CMU Zone shall be designed to encourage pedestrian movement throughout the area. Building and other structures within the district should be compatible with one another and the surrounding area

**Zoning Map**



**Summary**

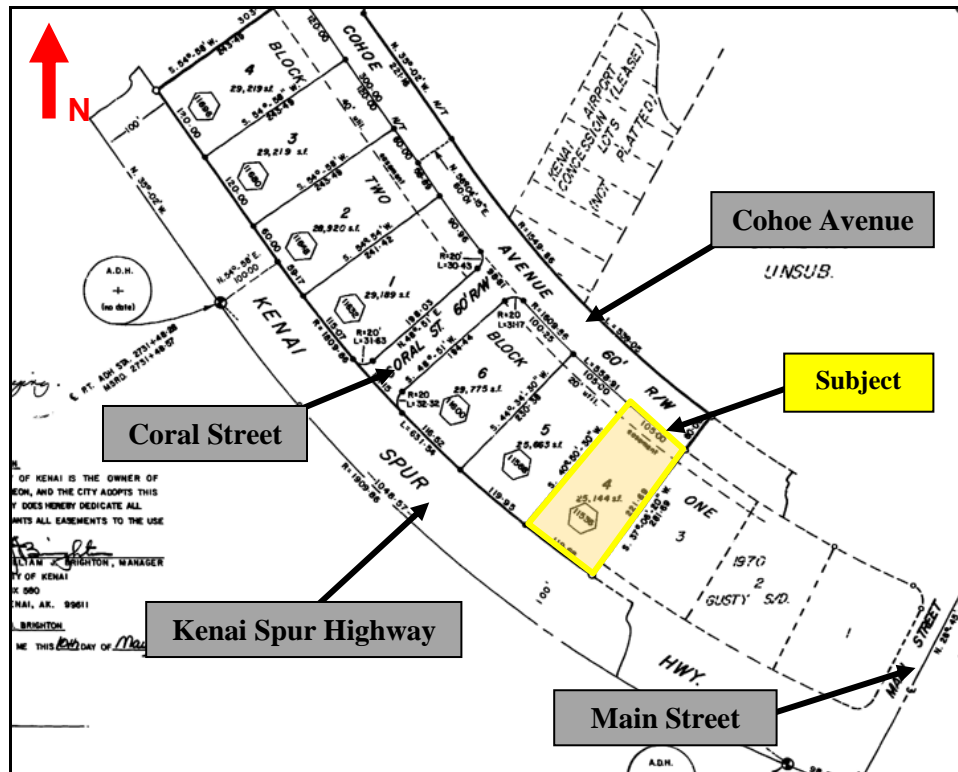
To summarize, the Kenai Business District is the commercial core of Kenai. The neighborhood is well-located and benefits from its proximity to the Kenai Spur Highway, as well as the airport and other commercial districts in the area. The outlook for the neighborhood is favorable as it continues to be a good commercial district for Kenai

## Chapter 4: Site Description and Analysis

### Overview

Analysis of land describes the characteristics that enhance or detract from its utility or marketability. The site description and analysis is based on our property inspection and review of plat 83-126, aerial, Borough and other mapping. The plat map below and aerial mapping on the following pages assist in the description and analysis of the parcel that follows.

### Plat 83-126



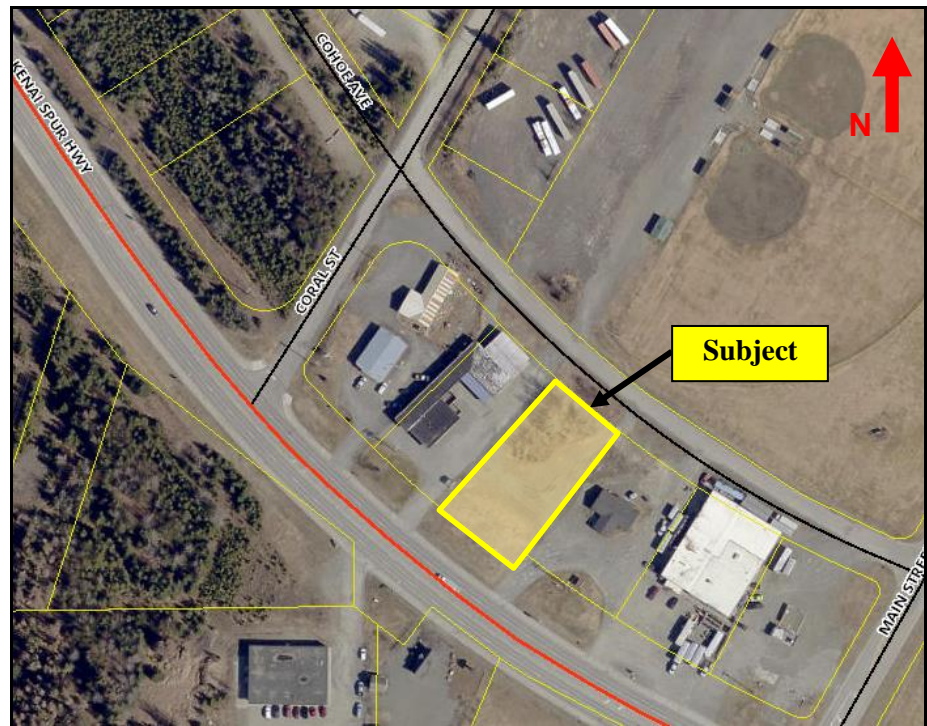
### Site Description

<b>Location:</b>	North side of Kenai Spur Highway between Coral Street and Main Street Loop Road, Kenai, Alaska
<b>Physical address:</b>	11536 Kenai Spur Highway, Kenai, Alaska
<b>Shape and Land Area:</b>	Nearly-rectangular shaped lot containing 25,144± square feet or 0.58± acre
<b>Access:</b>	Access via paved ingress/egress from Kenai Spur Highway on southern boundary and Cohoe Avenue, a gravel road on northern boundary



<b>Zoning:</b>	Central Mixed-Use District (CMU)
<b>Frontage and Exposure:</b>	120± feet of Kenai Spur Highway frontage and 105± feet of Coho Avenue frontage
<b>Easements and Restrictions:</b>	20-foot utility easement along north boundary
<b>Public Utilities:</b>	All public utilities available
<b>Topography:</b>	Partially cleared with some spruce and birch trees, lot is nearly level and at grade with surrounding streets and properties.

GIS Aerial Map (Kenai Peninsula Borough)



<b>Soil Conditions:</b>	Soils mapped as urban lands, and appear suitable for construction based on surrounding development
<b>Wetland Designation:</b>	None
<b>Flood Hazard:</b>	Zone D, an area of undetermined, but possible flood hazard per FEMA

**Environmental  
Conditions:**

The existence of any hazardous material or other type of environmental contamination, which may or may not be present on the property, was not observed by the appraisers nor do the appraisers have any knowledge of the existence of such substances. Our value conclusion assumes that the property is free of environmental and hazardous contaminants.

**Site Utility:**

The subject site's positive attributes include good location, size, and access near the Kenai Airport and Downtown Kenai. Overall, physical character makes the site well suited for commercial development.



## Chapter 5: Highest and Best Use Analysis

### Overview

Highest and best use is a market-driven concept rather than a subjective conclusion based on the experience of the appraiser or a property owner's wishes. Economic incentive is the motivation that has a market-effect on the productivity or profitability of the land. The *Dictionary of Real Estate Appraisal* (Seventh Edition) defines *highest and best use* as follows.

*The reasonably probably use of a property that results in the highest value. The four criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.*

A property's highest and best use as vacant may differ from that as improved. It is the appraiser's responsibility to analyze each scenario; then identify, explain, and justify the conclusion of each type of use. Per client instructions, the subject property is analyzed as though vacant.

Determination of a property's most profitable use requires analyzing all feasible alternatives. The criteria for testing potential uses as though vacant are legally permissible, physically possible, financially feasible, and maximally productive. The following highest and best use analysis is the foundation of the appraisal process for the subject properties.

### Highest and Best Use Analysis As If Vacant

**Physical Possibility:** The appraised parcel contains 25,144 square feet or 0.58± acre fronting the Kenai Spur Highway. Highway frontage measures 110± feet, which enhances access, exposure, and development potential. Demand along the Kenai Spur Highway commercial corridor is high when compared to alternative interior commercial locations. Highway frontage and linkage to alternative commercial locations in Kenai are positive characteristics.

**Legal Permissibility:** Although the appraised property is within the City of Kenai, zoning regulations do not generally apply to current ownership because the property remains in restricted status. The subject parcel is zoned Central Mixed Use (CMU) which encourages commercial-type development in a centrally located area in the City of Kenai, primarily for shopping, personal and professional services, entertainment services, entertainment establishments and restaurants and related businesses. The CMU district is also intended to accommodate a mixture of residential and commercial uses, and designed in a manner that encourages pedestrian movement throughout the area. Although certain industrial use are allowed., most within the CMU zone require a conditional use permit to ensure compatibility with

surrounding land uses. We are not aware of any recorded plat restrictions that may affect development potential of the subject property.

**Financial Feasibility:** Physically possible uses permitted are all financially viable. Financially feasible commercial uses include restaurants (both dining and fast food), hotel/motel, retail, and office use. Other commercial uses are possible, which may offer greater risk and lack economic feasibility. In conclusion, the Commercial neighborhood’s location, existing land use trends, and physical characteristics all support commercial development, which we consider to be the highest and best use.

**Highest and Best Use  
As Though Vacant**

The subject’s physical characteristics, surrounding land use, CMU zoning, location, access, etc., encourage commercial development. Based on these factors, the highest and best use, as vacant, is for commercial development.

**Highest and Best Use: Commercial**

**Chapter 6: Land Valuation - Sales Comparison Approach**

**Overview** The sales comparison approach is a systematic procedure of estimating the subject’s market value by comparing it directly to property sales afforded similar physical and economic character. The approach is founded on the principle of substitution, theorizing value is a function of a knowledgeable investor’s (buyer) intent to pay no more for a specific property than the cost of acquiring an alternative property offering similar utility (economic satisfaction). The sales comparison approach is the best approach for valuing vacant land.

**Comparative Market Analysis** Our sales search focused on vacant land with similar physical and economic character to the subject, located in the immediate neighborhood. In order to facilitate a comparative analysis, we expanded our search to include commercial and light industrial properties in other Kenai neighborhoods. These criteria produced five sales that transpired in from 2016 to 2022. The primary land sales we relied upon are listed in the table below. Additional details of the comparables are retained on file.

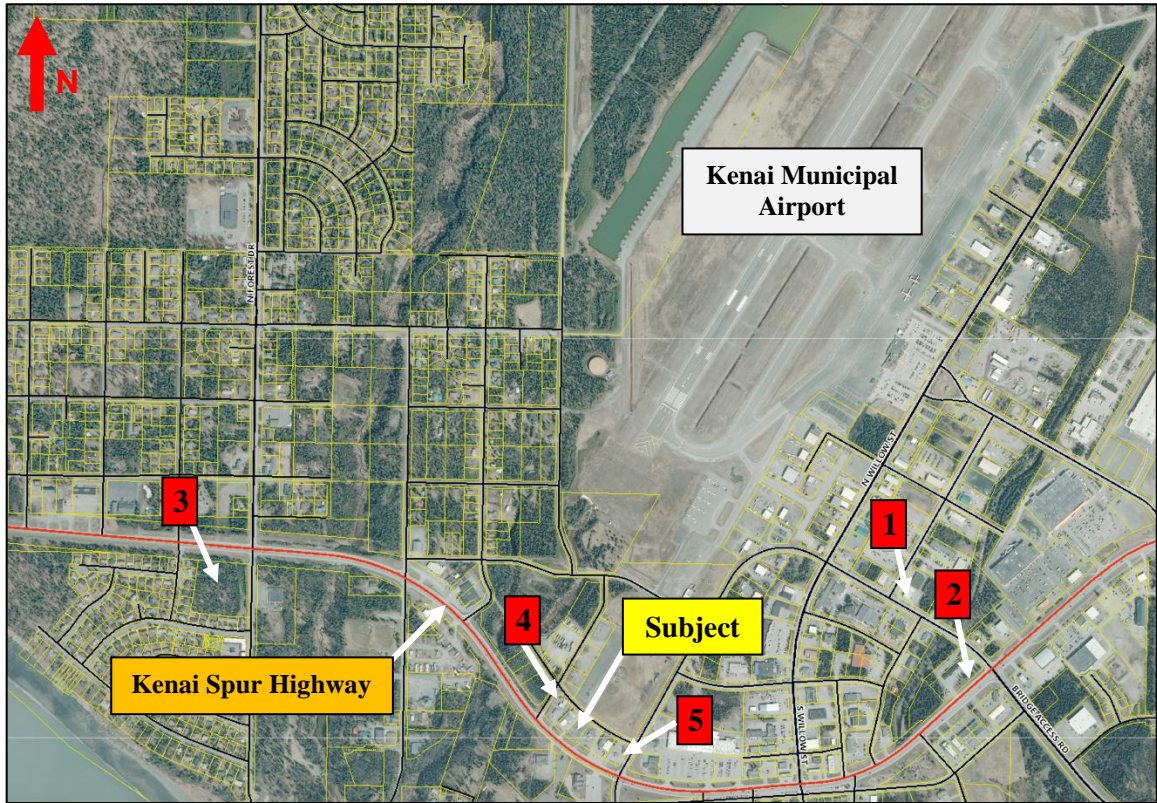
**Summary of Primary Land Sales**

No.	Location	Zone	Sale Date	Sale Price	Size (SF)	\$/SF
1	Northeast corner of Trading Bay Road and Main Street Loop	CMU	5/22	\$300,000	114,497	\$2.62
2	Northwest corner of Kenai Spur Highway and Main Street Loop Road (east)	CMU	1/20	\$605,000	121,091	\$5.00
3	Southwest corner of Kenai Spur Highway and S. Forest Drive	CG	2/19	\$455,000	219,107	\$2.08
4	Northeast corner of Kenai Spur Highway and Coral Street	CMU	8/18	\$180,000	35,851	\$5.02
5	Northwest corner of Kenai Spur Highway and Main Street Loop Road (west)	CMU	8/16	\$170,400	28,520	\$5.97
	<b>North side of Kenai Spur Highway between Coral Street and Main Street Loop Road (Subject)</b>	<b>CMU</b>		<b>-- --</b>	<b>25,144</b>	<b>-- --</b>

**Elements of Comparison**

The elements of comparison that have the greatest influence on market behavior and the price paid for similar land in Kenai is location and physical character, including clearing/grading, frontage/access, and size. Importantly, the subject lot has highway frontage with very good exposure and access. We use a qualitative comparison technique that rates elements of comparison as superior, inferior, or similar.

**Comparable Land Sales Map**



**Land Sale 1**

Land Sale 1 is the May 2022 sale located on the northeast corner of Trading Bay Road and Main Street Loop Road. Northeast of the subject, the irregular-shaped parcel consists of 114,497± square feet. All public utilities are available in the immediate neighborhood. Topography is generally level, and the parcel is partially cleared and developed with a retail strip mall. Zoning is CMU, Central Mixed-Use. The sale was between the City of Kenai and former land lessee who purchased the land underlying the improvements. The sale price of \$300,000 indicates a unit value of \$2.62 per square foot. By comparison, this sale lacks highway frontage, and no improvements were included in the sale. Size differential and location are inferior to the subject. Overall, Land Sale





1 is rated inferior, indicating a unit value greater than \$2.62 per square foot for the appraised land.

**Land Sale 2**



Land Sale 2 is the January 2020 sale located on the northwest corner of Kenai Spur Highway and Main Street Loop Road (east), proximate to the Commercial Core of Kenai. Located 1.3± road miles south of the subject, the nearly rectangular-shaped parcel consists of two totaling 121,091± square feet. All public utilities are available in the immediate neighborhood. Topography is generally level, and the parcel is cleared and developed with a motel. Zoning is CMU, Central Mixed-Use. The sale was between the City of Kenai and former land lessee who purchased the land underlying the improvements. The sale price of \$605,000 indicates a unit value of \$5.00 per square foot. By comparison, this sale is superior for access, inferior for size, and similar to the subject for location with highway frontage near the Kenai Commercial Core. Overall, Land Sale 2 is rated superior, indicating a unit value less than \$5.00 per square foot for the appraised land.

**Land Sale 3**



Land Sale 3 is the February 2019 sale located on the southwest corner of Kenai Spur Highway and S. Forest Drive, west of the Kenai Commercial Core. This location is 2.2± road miles southwest of the subject. The nearly rectangular-shaped lot contains 219,107± square feet. All public utilities are available in the immediate neighborhood. Topography is generally level, and the property was cleared and leveled at the time of sale. The property is zoned CG, General Commercial. Originally listed for \$499,000, the property sold after 132 days of market exposure. The sellers previously purchased the property in 2007 for \$175,000, and subsequently cleared the site. The price appreciation is attributed to passage of time, as well as value added due to clearing and leveling. The 2019 sale price of \$455,000 indicates a unit value of \$2.08 per square foot. By comparison, this sale is rated inferior for size differential and location. Land Sale 3 is rated inferior, indicating a unit value greater than \$2.08 per square foot for the appraised land.

**Land Sale 4**



Land Sale 4 is the August 2018 sale located at the northeast corner of Kenai Spur Highway and Coral Street, just outside of the Airport Reserve. This location is adjacent to the subject. The irregular-shaped site contains 35,851± square feet. The site is cleared and improved with a commercial building. All public utilities are available in the immediate neighborhood. Zoning is CMU, Central Mixed-Use. Per the plat, no direct Kenai Spur Highway access is permitted, although curb cuts allow for direct physical access. The sale was between the City of Kenai and former land lessee who purchased the land underlying the improvements. The sale price of \$180,000 indicates a unit value of \$5.02 per square foot. By comparison, this sale has good corner location with highway frontage proximate to the Commercial Core. Land Sale 4 is slightly inferior for size, superior for corner location, physical character and access. Thus, Land Sale 4 is rated superior, indicating a unit value less than \$5.02 per square foot for the appraised land.

**Land Sale 5**



Land Sale 5 is the August 2016 sale located on the northwest corner of Kenai Spur Highway and Main Street Loop Road (west) just south of the Airport Reserve and the Commercial Core. The property is located near the subject with superior access and frontage. The nearly rectangular-shaped lot contains 28,520± square feet. All public utilities are available in the immediate neighborhood. The property is cleared and zoned CMU, Central Mixed Use. The property was purchased from the City of Kenai by the land lessee, who owned two small commercial structures on the property. The sale price of \$170,400 was based on a 2015 appraisal, with a 20% premium paid. Land Sale 5 is similar in size and superior for location and access indicating a unit value less than \$5.97 per square foot for the appraised land.



**Reconciliation of Comparative Market Analysis**

Presented below is a rating grid and analysis of the land sales used in comparative analysis.

<b>Land Sale</b>	<b>\$/SF</b>	<b>Rank</b>	<b>Net Adjustment</b>
5	\$5.97	Superior	↓
4	\$5.02	Superior	↓
2	\$5.00	Superior	↓
<b>Subject</b>	-- --	-- --	-- --
1	\$2.62	Inferior	↑
3	\$2.08	Inferior	↑

The comparable land sales indicate a value range from \$2.08 to \$5.97 per square foot. Land Sales 2, 4, and 5 are rated superior indicating a unit value less than \$5.00 per square foot. Conversely, Land Sales 1 and 3 are rated inferior indicating a unit value greater than \$2.62 per square foot. After comparative analysis and making the necessary adjustments, we conclude with a market value between \$4.00 and \$4.50 per square foot, which develops the following indicators.

<b>25,144 SF × \$4.00/SF =</b>	<b>\$100,576</b>
<b>25,144 SF × \$4.50/SF =</b>	<b>\$113,148</b>

Based on the preceding analysis, the market value of the appraised land, as of May 16, 2022, is estimated as follows.

<b>Market Value Estimate</b>	<b>\$110,000 (R)</b>
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**Marketing and Exposure Time**

Estimated 6 to 12 months

## **Assumptions and Limiting Conditions**

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This appraisal is subject to the following **assumptions and limiting conditions**.

- ➔ No responsibility is assumed for the legal description provided or for matters pertaining to legal or title considerations. Title to the property is assumed to be marketable unless otherwise stated.
- ➔ The property is appraised free and clear of all liens or encumbrances unless otherwise stated.
- ➔ The information furnished by others is believed to be reliable, but no warranty is given for its accuracy.
- ➔ All maps, plot plans, and other illustrative material are believed to be accurate, but are included only to help the reader visualize the property.
- ➔ It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for obtaining the engineering studies that may be required to discover them.
- ➔ It is assumed the property is in full compliance with all applicable federal, state, and local environmental regulations and laws unless the lack of compliance is stated, described, and considered in the appraisal report.
- ➔ It is assumed the property conforms to all applicable zoning, land use regulations, and platting restrictions unless the nonconformity is identified, described, and considered in the appraisal report.
- ➔ Possession of this report, or a copy thereof, does not carry with it the right of publication.
- ➔ The appraisers, by reason of this appraisal, is not required to give consultation or testimony or to be in attendance in court with reference to the property in question unless arrangements have been previously made.
- ➔ Neither all nor any part of the contents of this report shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraisers.
- ➔ The existence of any hazardous material or other type of environmental contamination, which may or may not be present on the property, was not observed by the appraisers nor do the appraisers have any knowledge of the existence of such substances. However, the presence of these substances may affect the value of the property. Therefore, the client is urged to retain an environmental assessment for discovery and evaluation.

**Statement of COVID-19**

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This appraisal was performed following public awareness that COVID-19 was affecting residents in the United States. At the time of the appraisal, COVID-19 is having widespread health and economic impacts. The effects of COVID-19 on the real estate market in the subject neighborhood are not yet measurable based on reliable data. The analysis and value opinion in this appraisal are based on the data available to the appraisers at the time of the assignment and apply only as of the effective date indicated. No analysis or opinions contained in this appraisal should be construed as predictions of future market conditions or value.

# MacSwain Associates LLC

4401 Business Park Boulevard, Suite 22, Anchorage, Alaska 99503

**Appraiser:** Steve MacSwain, MAI

Member of Appraisal Institute - No. 5700

State of Alaska, Certified General Real Estate Appraiser - No. 42

**Professional Experience:** 1986 to Present - MacSwain Associates LLC

1976 to 1986 - Appraisal Company of Alaska - President

1970 to 1975 - Real Estate Services Corporation – Appraiser

1969 to 1970 - State of Alaska Department of Highways - Right of Way Agent

Real estate appraiser and consultant of all property types throughout Alaska including commercial, industrial, subdivisions and special-purpose properties. Appraisals have been performed for financing, leasing, insurance, condemnation, taxation, property damages, investment analysis, and buy-sell decisions. Appraisals include valuation of both real property and business enterprises. Professional experience totals 49 years. Life-long Alaskan resident of Alaskan Native descent.

**Education:** Bachelor of Business Administration, Finance (1969), University of Alaska Fairbanks

**Appraisal Education:** The following is a list of completed appraisal courses and seminars.

2021 – *Cool Tools: New Technology for Real Estate Appraisers* by the Appraisal Institute

2021 – *Desktop Appraisals (Bifurcated, Hybrid) and Evaluations* by the Appraisal Institute

2021 – *Hot Topics & Myths in Appraiser Liability* by LIA Administrators & Insurance Services

2020 – *Uniform Standards of Professional Appraisal Practice – Update* by the Appraisal Institute

2019 – *How Tenants Create or Destroy Value: Leasehold Valuation and its Impact on Value* –by the Appraisal Institute

2017 – *Appraising Environmentally Contaminated Properties* by the Appraisal Institute

2017 – *Residential & Commercial Valuation of Solar* by the Appraisal Institute

2017 – *Right of Way Acquisition for Pipeline Projects* by the International Right of Way Association

2015 – *Litigation Appraising: Specialized Topics and Applications* by the Appraisal Institute

2015 – *Business Practices and Ethics* by the Appraisal Institute

2013 – *Complex Litigation Appraisal Case Studies* by the Appraisal Institute

2013 – *Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book)* by the Appraisal Institute

2012 – *Appraisal Curriculum Overview* by the Appraisal Institute

2010 – *Reviewing Appraisals in Eminent Domain* by the International Right of Way Association

2010 – *Commercial Appraisal Engagement and Review Seminar for Bankers and Appraisers* by the Appraisal Institute

2009 – *The Appraiser as an Expert Witness: Preparation and Testimony* by the Appraisal Institute

2009 – *Attacking and Defending an Appraisal in Litigation* by Whitmer Education

2008 – *Uniform Standards of Professional Appraisal Practice* by the Appraisal Institute

2007 – *Business Practices and Ethics* by the Appraisal Institute

2007 – *Eminent Domain Law for Right of Way Professionals* by the International Right of Way Association

2007 – *Appraisal Review for Federal Aid Programs* by the International Right of Way Association

2007 – *Analyzing Operating Expenses* by the Appraisal Institute

1969-2006: Numerous appraisal classes pertaining to principles, income capitalization, cost analysis, sale comparison approach, and highest and best use analysis by the Appraisal Institute, Society of Real Estate Appraisers, International Right-of-Way Association, International Association of Assessing Officers, and Marshall Valuation Service

**Membership and Organizations:** Member of Appraisal Institute – No. 5700, International Right of Way Association (IRWA), and Building Owners and Managers Association (BOMA)

**Public Service:** Past Chairman of the State Board of Certified Appraisers

Past Member of Board of Equalization, Municipality of Anchorage, National Experience Review Committee of the Appraisal Institute, and Regional Ethics and Counseling Panel of the Appraisal Institute

Past President of Alaska Chapter 57 of the Appraisal Institute

**Significant Assignments:**

- ➔ Appraised Pacific Spaceport Complex-Alaska (PSCA) land and facilities for Alaska Aerospace Corporation on Kodiak Island.
- ➔ Appraised proposed LNG Pipeline, a FERC-regulated 860-mile pipeline transporting liquefied natural gas.
- ➔ Appraised the Trans-Alaska Pipeline System, a FERC-regulated 800- pipeline that transports crude oil from Prudhoe Bay to Valdez, for TAPS ownership.
- ➔ Appraised remote lands (65,000± acres) owned by three Native corporations damaged by the *Selendang Ayu* grounding and subsequent oil spill.
- ➔ Appraised Calais Company, Inc., a real estate holding company consisting of 39 commercial parcels in Anchorage.
- ➔ Principal real estate consultant and expert witness for all lands affected by the *Exxon Valdez* oil spill. Project involved over 2,000,000 acres of remote land and nearly 2,000 private property owners.
- ➔ Appointed as a representative of a three-member panel that analyzed and valued over 1,000,000 acres and 8,000 parcels for the Mental Health Lands Settlement.
- ➔ Contract assessor for the North Slope Borough, Kodiak Island Borough, City of Nome, and the City of Valdez.
- ➔ Represented Seibu Alaska, Inc. (Alyeska Resort and Alyeska Prince Hotel) in preparing of their property tax appeal with the Municipality of Anchorage that resulted in a \$65 million reduction in assessed value.
- ➔ Appraised submerged tideland parcels and wetlands parcels located in Womens Bay on Kodiak Island for the purpose of an exchange between Koniag, Inc. and U.S. Fish and Wildlife Service.
- ➔ Appraised Common Carrier Pipeline right-of-ways leased and operated by BP Transportation Alaska and ConocoPhillips Alaska.
- ➔ Appraised 3,600 acres consisting of the former Adak Naval Air Station and Submarine Base conveyed to the City of Adak and the State of Alaska.

**Expert Witness Experience:** Steve MacSwain, MAI is qualified as an expert witness in both the United States Federal Court and the State of Alaska Superior Court. Steve has testified as an expert witness in State and Federal courts. In addition, Steve has testified as expert witness in numerous Alaskan municipal tax courts, public hearings, and depositions on matters related to real property.

**Arbitrator Experience:** Appointed a Master by the Superior Court of Alaska and Municipality of Anchorage to serve as an arbitrator in determining just compensation.

License #: APRG42 Effective: 6/8/2021 Expires: 06/30/2023	<b>State of Alaska</b> Department of Commerce, Community, and Economic Development Division of Corporations, Business, and Professional Licensing
<b>Board of Certified Real Estate Appraisers</b>	
Licensee: <b>STEVEN JAMES MACSWAIN</b>	
License Type: <b>Certified General Real Estate Appraiser</b>	
Status: <b>Active</b>	
Commissioner: Julie Anderson	
<b>Relationships</b>	<b>Designations</b>
No relationships found.	No designations found.



Sponsored by: Administration

**CITY OF KENAI  
ORDINANCE NO. 3312-2022 SUBSTITUTE**

AN ORDINANCE DETERMINING LOT 4, BLOCK 1, GUSTY SUBDIVISION ADDITION NO. 1 AMENDED IS NOT NEEDED FOR A PUBLIC PURPOSE AND APPROVING THE EXECUTION OF A LEASE WITH AN OPTION TO PURCHASE BETWEEN THE CITY OF KENAI AND AARON SWANSON DBA FOREVER BUSINESS PLAZA LLC. FOR THE PROPERTY.

WHEREAS, Kenai Municipal Code 22.05.095(b)(2)(iv) provides for a land lease in which the lease is subject to competition through the lease application review process and which contains an option to purchase once the minimum development requirements have been met for the fair market value of the land excluding permanent improvements made by the lessee; and,

WHEREAS, on June 28, 2022, Aaron Swanson submitted an application for a lease of City owned properties with the option to purchase, described as Lot 4, Block 1, Gusty Subdivision Addition No. 1 Amended; and,

WHEREAS, the Applicants application states the intention is to construct a Pita Pit restaurant, with initial construction being site preparation and a temporary building; and,

WHEREAS, the proposed development would be mutually beneficial and would conform with the Kenai Municipal Code for zoning and Kenai's Comprehensive Plan; and,

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

WHEREAS, the property has been released by the Federal Aviation Administration from its Deed Restriction and is available for sale or lease; and,

WHEREAS, the property is no longer needed for a public purpose for airport uses and is suitable for private development; and,

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

WHEREAS, at their regular meeting on September 8, 2022, the Airport Commission reviewed the lease application and recommended approval by the City Council; and,

WHEREAS, funds from the lease and sale will benefit the Airport Fund.

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

**Section 1.** Form: This is a non-code ordinance.

**Section 2.** That a Lease with an option to purchase City owned lands described as Lot 4, Block 1 Gusty Subdivision Addition No. 1 Amended is approved as attached hereto and the City Manager is authorized to execute a lease with an option to purchase between the City of Kenai, Lessor, and Aaron Swanson DBA Forever Business Plaza, Lessee, as follows:



The lease or sale shall be subject to the reservations and covenants as contained in Federal Aviation Administration Deed of Release, Book 227, Page 416, Kenai Recording District;

**Section 3.** That the Council determines that the property is no longer needed for a public purpose by the airport and is available for lease or sale.

**Section 4.** Any sale will be made at fair market value of the land only, as determined by a professional appraiser from an appraisal made not more than one year prior to the date of sale. Any sale will be conveyed through a quitclaim deed. Further Council authorization is not required for a sale; however, completion of all required improvements is required prior to sale. All proceeds from the sale will be deposited in the Airport Land Sale Permanent Fund.

**Section 5.** The following improvements are required to be completed within two years of execution of the lease, and the option to purchase cannot be exercised until the improvements are completed:

Develop a restaurant space capable of providing drive thru and carry out service with outdoor eating space and parking, including a U-shaped drive thru around the building structure, and a restaurant type building structure of approximately 450 square feet which will be developed in a manner to allow for expansion.

Estimated development cost of this project for site improvements and construction but excluding land cost and restaurant equipment is \$200,000.

**Section 6.** 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 7.** 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 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Saner, MMC, City Clerk

Introduced: September 7, 2022  
Enacted: September 21, 2022  
Effective: October 21, 2022



## MEMORANDUM

**TO:** Mayor Gabriel and Council Members

**FROM:** Paul Ostrander, City Manager

**DATE:** September 14, 2022

**SUBJECT:** **Ordinance No. 3312-2022 Substitute – Lease with an Option to Purchase of Lot 4 Block 1, Gusty Subdivision**

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This substitute ordinance changes the original title by adding “DBA Forever Business Plaza LLC” to the title to clarify that Aaron Swanson does business as Forever Business Plaza LLC. It also adds the specific improvement requirements that must be completed within two years of execution of the lease in Section 5.

Thank you for your consideration.

**CITY OF KENAI LEASE OF CITY OWNED LANDS  
WITH OPTION TO PURCHASE**

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:

Lot 4, Block 1, Gusty Subdivision Addition No. 1, Amended, according to plat No. 84-183, in the Kenai Recording District, Third Judicial District, State of Alaska.

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:

*Restaurant Business*

B. RIGHTS RESERVED TO THE CITY:

1. 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.
2. 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.
3. 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. The lease or sale shall be subject to the reservations and covenants as contained in Federal Aviation Administration Deed of Release, Book 227, Page 416, Kenai Recording District;

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.

**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 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 CITYFINANCING 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.

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 a restaurant space capable of providing drive-through and carry-out service, outdoor eating space, and parking with a u shaped drive-way around the building \_\_\_\_\_, by no later than two years from date of execution of this Lease with an aggregate cost of at least \$200,000, 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.

- 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 \$\_\_NA\_\_\_\_\_. 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.

**ARTICLE XV  
OPTION TO PURCHASE**

A. At any time during the term of this Lease after construction of the minimum improvements required in Article XIV, the Lessee may purchase the property from the City for fair market value as determined by an appraisal made by a licensed professional appraiser within one year of the purchase. No lease payments or other payments to the City prior to the purchase will be credited towards the purchase price.

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



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

#### Lot 4 Gusty Sub improvements description

As a general description of the development for Lot 4 Gusty Sub:

If approved my intention is to develop a restaurant space capable of providing drive thru and carry out service. Additionally the site development would have outdoor eating space and parking. This would consist of:

A U shaped drive thru around the building structure.

A restaurant type building structure of approximately 450 square feet which will be developed in a manor to allow for expansion.

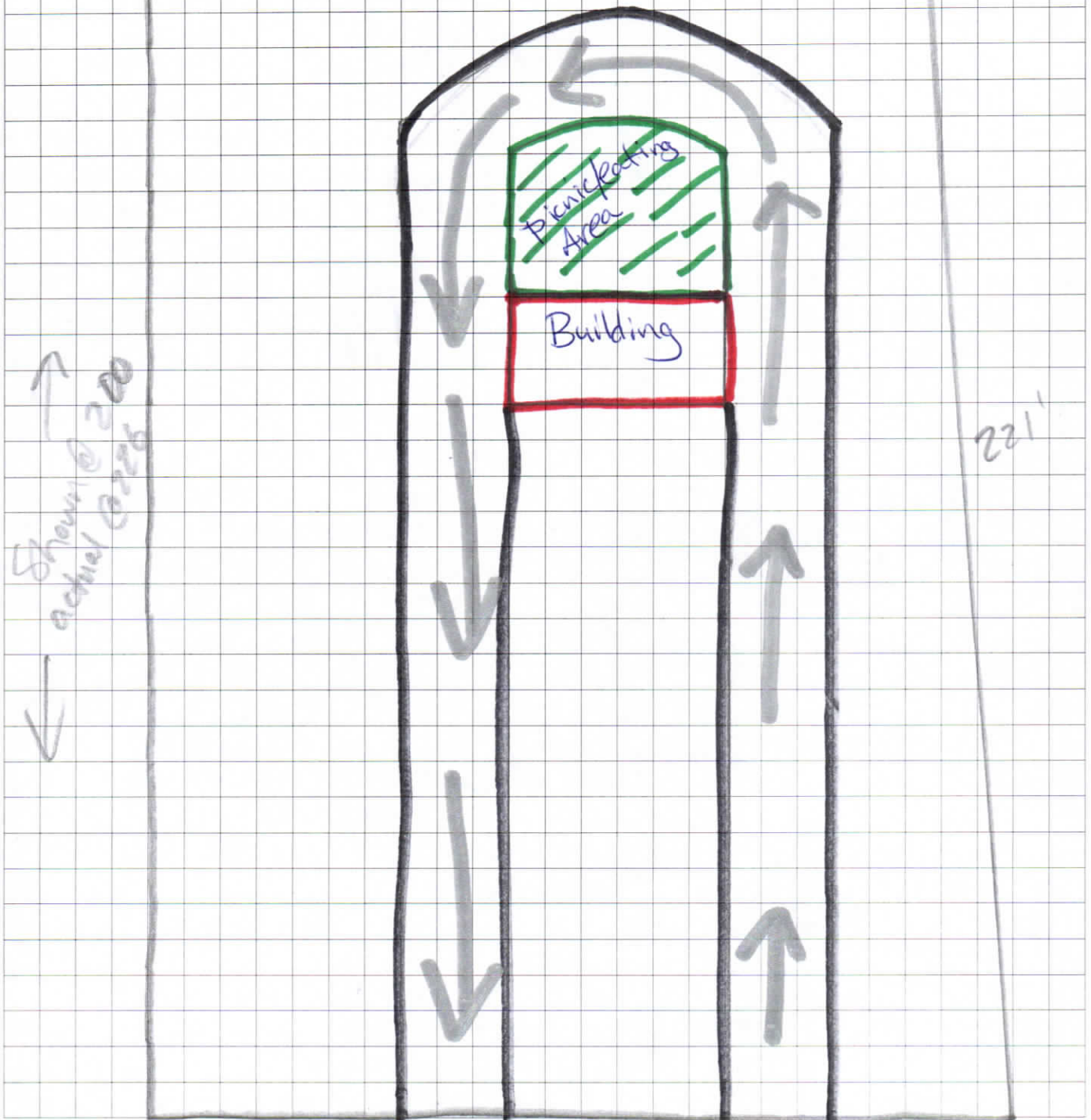
Estimated development cost of tis project for site improvements and construction but excluding land cost and restaurant equipment is \$200,000 which becomes significantly higher with the excluded items.



Lot 4 Gusty Sub

105' Coho Ave

□ = 5A



Shower @ 200  
actual @ 226

221'

Kenai Spur Hwy 119'



Sponsored by: Administration

**CITY OF KENAI  
ORDINANCE NO. 3313-2022**

AN ORDINANCE ACCEPTING AND APPROPRIATING FUNDS FROM THE STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES, DIVISION OF FORESTRY AND THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE TO SUPPORT THE CITY'S SPRUCE BEETLE MITIGATION AND HAZARD FUEL REDUCTION PROGRAM AND AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF AGREEMENT FOR THIS FUNDING.

WHEREAS, the City adopted a Borough-wide Community Wildfire Protection Plan (CWPP) through Resolution 2022-34 on May 18, 2022; and,

WHEREAS, the City has been notified by the State of Alaska, Division of Forestry of approval of a grant in the amount of \$385,000 for a three-year project to support the City of Kenai's mitigation efforts identified in our Community Wildfire Protection Plan; and,

WHEREAS, the City has also been notified by the US Department of Agriculture (USDA), Forest Service of a grant in the amount of \$385,000 to support the City of Kenai's mitigation efforts identified in our Community Wildfire Protection Plan with a 50% match requirement; and,

WHEREAS, the State of Alaska, Division of Forestry grant may be used to meet the matching requirements of the USDA grant; and,

WHEREAS, it is in the best interest of the City to accept these grants and execute agreements with State of Alaska, Division of Forestry, and the US Department of Agriculture, US Forest Service to provide funding for the City's Spruce Beetle Mitigation and Hazard Fuel Reduction Program.

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

**Section 1.** That the City Manager is authorized to accept a grant in the amount of \$385,000 from State of Alaska Department of Natural Resources, Division of Forestry, execute any necessary documents to accept and administer the grant, and expend the funds in accordance to the grant's provisions and this ordinance.

**Section 2.** That the City Manager is authorized to accept a grant from the United States Department of Agriculture, Forest Service in the amount of \$385,000, execute any necessary documents to accept and administer the grant, and expend the funds in accordance to the grant's provisions and this ordinance.

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

Public Safety Capital Project Fund:	
Increase Estimated Revenues –	
Federal Revenue	\$385,000
State Revenue	<u>385,000</u>
	<u>\$770,000</u>

Increase Appropriations –  
Professional Services

\$770,000

**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 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Saner, MMC, City Clerk

Approved by Finance: SB, Acting

Introduced: September 7, 2022  
Enacted: September 21, 2022  
Effective: September 21, 2022



## MEMORANDUM

**TO:** Mayor Gabriel and Council Members

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Tony Prior, Fire Chief

**DATE:** August 29, 2022

**SUBJECT:** **Ordinance 3313-2022 Department of Natural Resources DOF Funding and Federal Match.**

---

We applied to the State of Alaska, Division of Forestry (DOF) to request funding to mitigate dead and dying spruce trees in the Shqui Tsatnu Creek from the beach to the Northern end bordering Woodland Subdivision and Airport lands. This project is part of our mitigation needs, identified in our Community Wildfire Protection Plan (CWPP), and continues with the efforts we have already started with the community's slash disposal site. The area described in the maps attached is approximately 105 acres that will require different approaches to mitigation dependent upon the terrain in each City owned lot. Some areas will be accessible with mechanical equipment and some areas will need hand falling of trees.

We were notified today of approval for this 105-acre project from DOF which will require a Memorandum of Agreement to spend up to \$385,000.00 over a 3-year period. This is a significant project that has one of the highest urban interfaces within the City. We will work with DOF to write RFP's based on past projects DOF has completed with similar goals and objectives that meet the requirements of this grant. We are anticipating on beginning this project as early as late fall.

Additionally, we have been awarded a grant from the United State Division of Agriculture (USDA), Forest Service for the amount of \$385,000.00 to assist the City of Kenai in our Community Wildfire Protection efforts. This grant requires a 50% match of funds in the amount of \$385,000.00. The funding from the State of Alaska, DOF qualifies for the matching funds of the USDA grant, allowing us to accept both grants and proceed with projects identified in our CWPP. Total amount from both grants will give us \$770,000.00 to begin mitigation work identified in our CWPP.

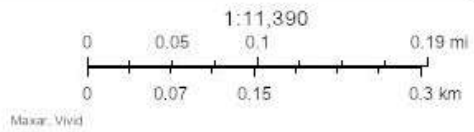
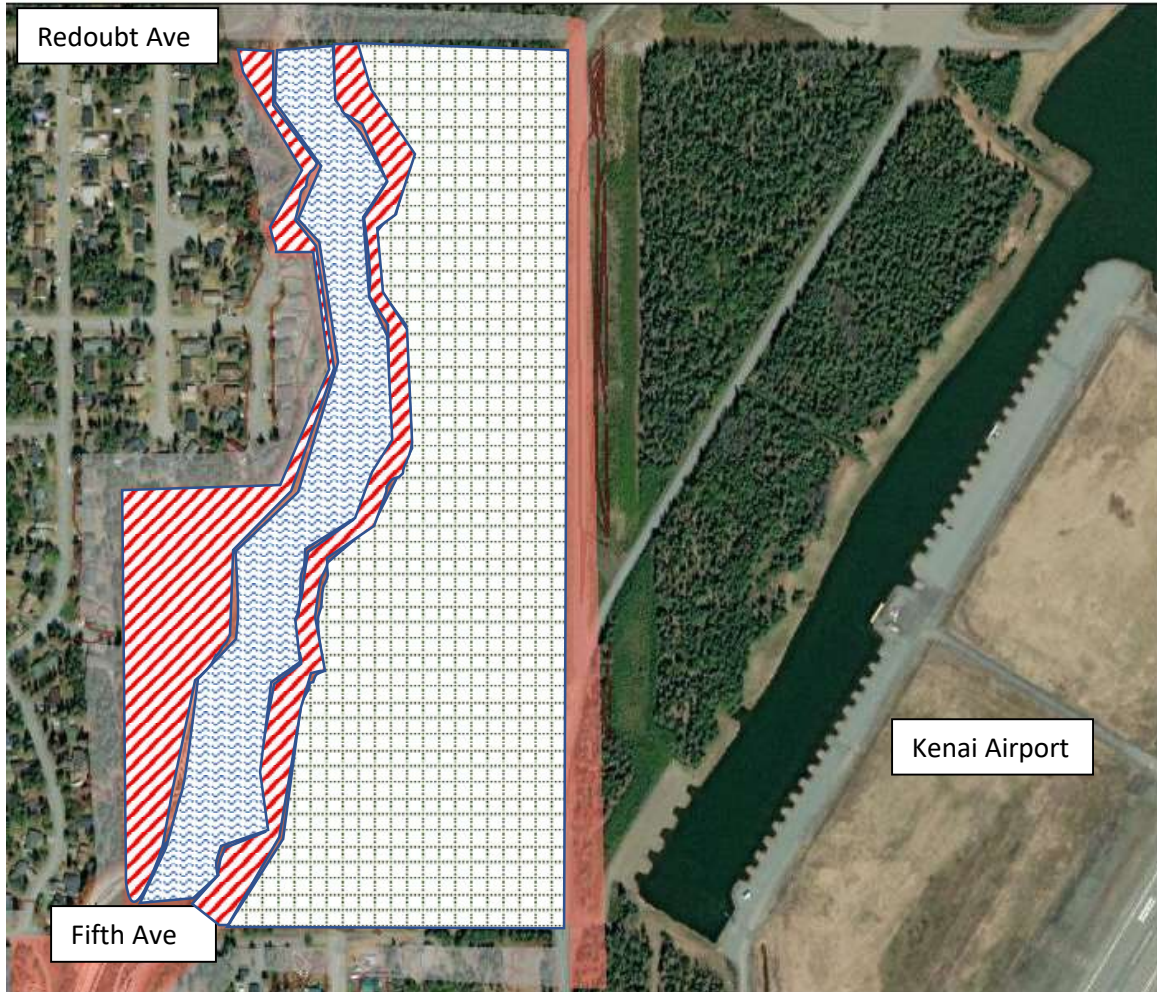
This is an amazing opportunity to begin our efforts of actually removing beetle kill trees from areas of high risk and to start improving the safety of homeowners and businesses from wildfire. This is a project that has taken 2 years to make happen and I urge you to pass this Ordinance as it is in the best interest of the City. It will improve the safety of homeowners, businesses, recreational users, while improving the aesthetics throughout our beautiful City.

See attached maps of Kenai CWPP Gully






North end of gully, Redoubt Ave to Fifth Ave

Kenai gully CWPP-north

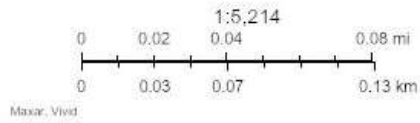
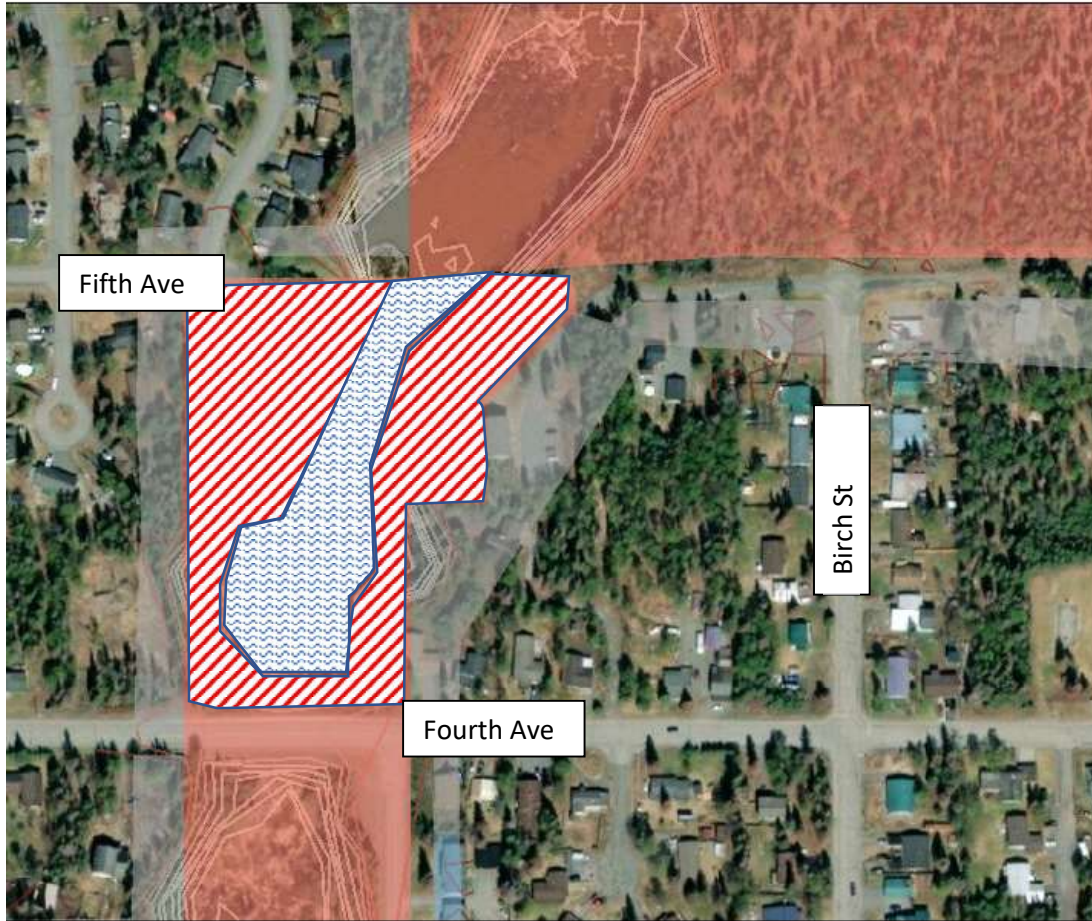


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


	= flat area; suitable for either mechanical or hand-falling; cut & limb, deck logs where accessible
	= steep area; hand-falling only; lop & scatter
	= watery/marshy; no tree removal here

Mid-gully, Fifth Ave to Fourth Ave

Kenai gully CWPP-4-5



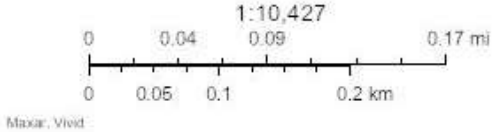
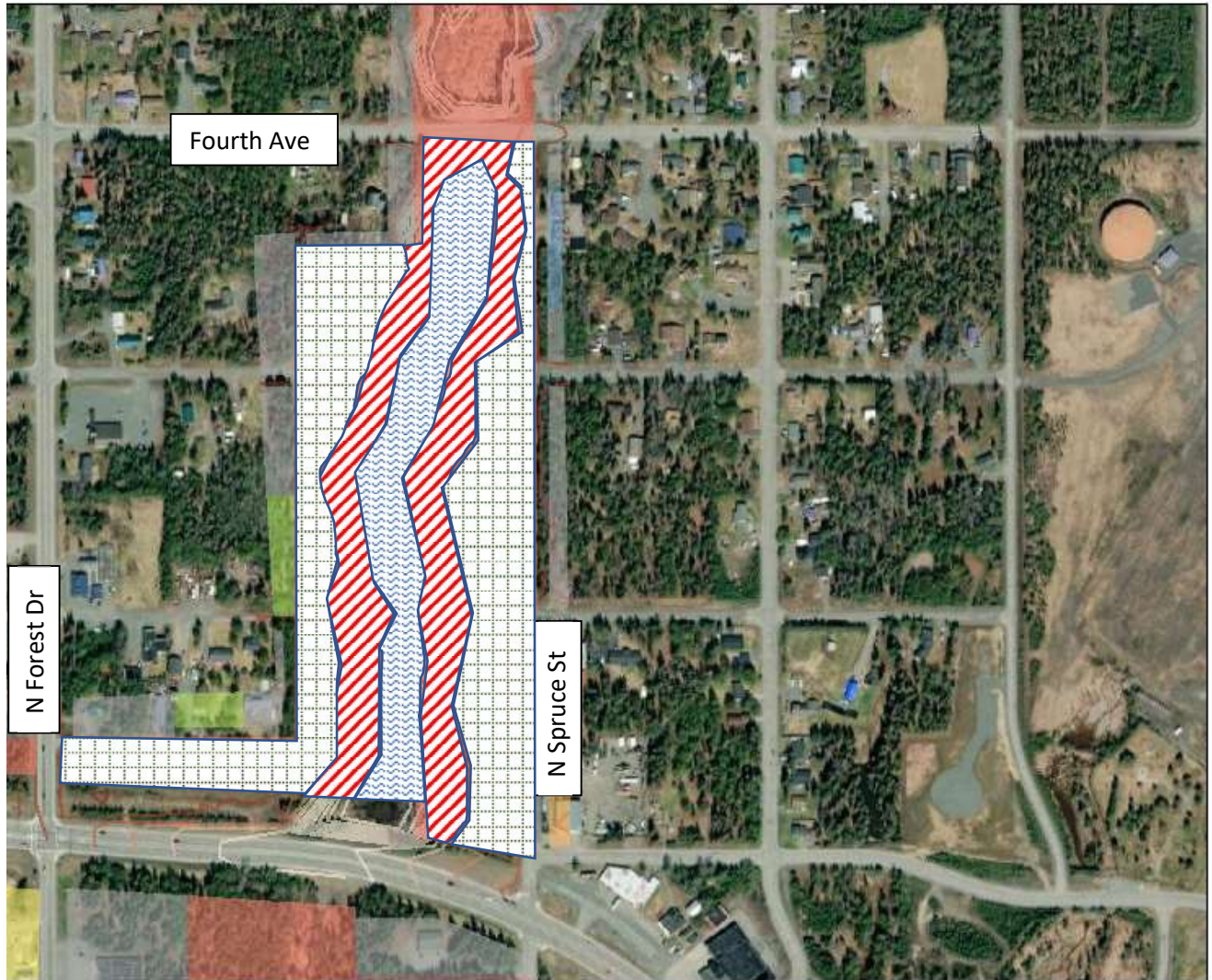
**LEGEND**

-  = flat area; suitable for either mechanical or hand-falling; cut & limb, deck logs where accessible
-  = steep area; hand-falling only; lop & scatter
-  = watery/marshy; no tree removal here






Mid-gully, Fourth Ave to Kenai Spur Hwy

### Kenai gully CWPP-mid



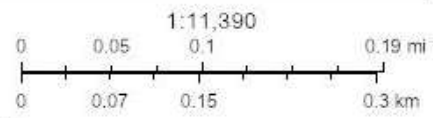
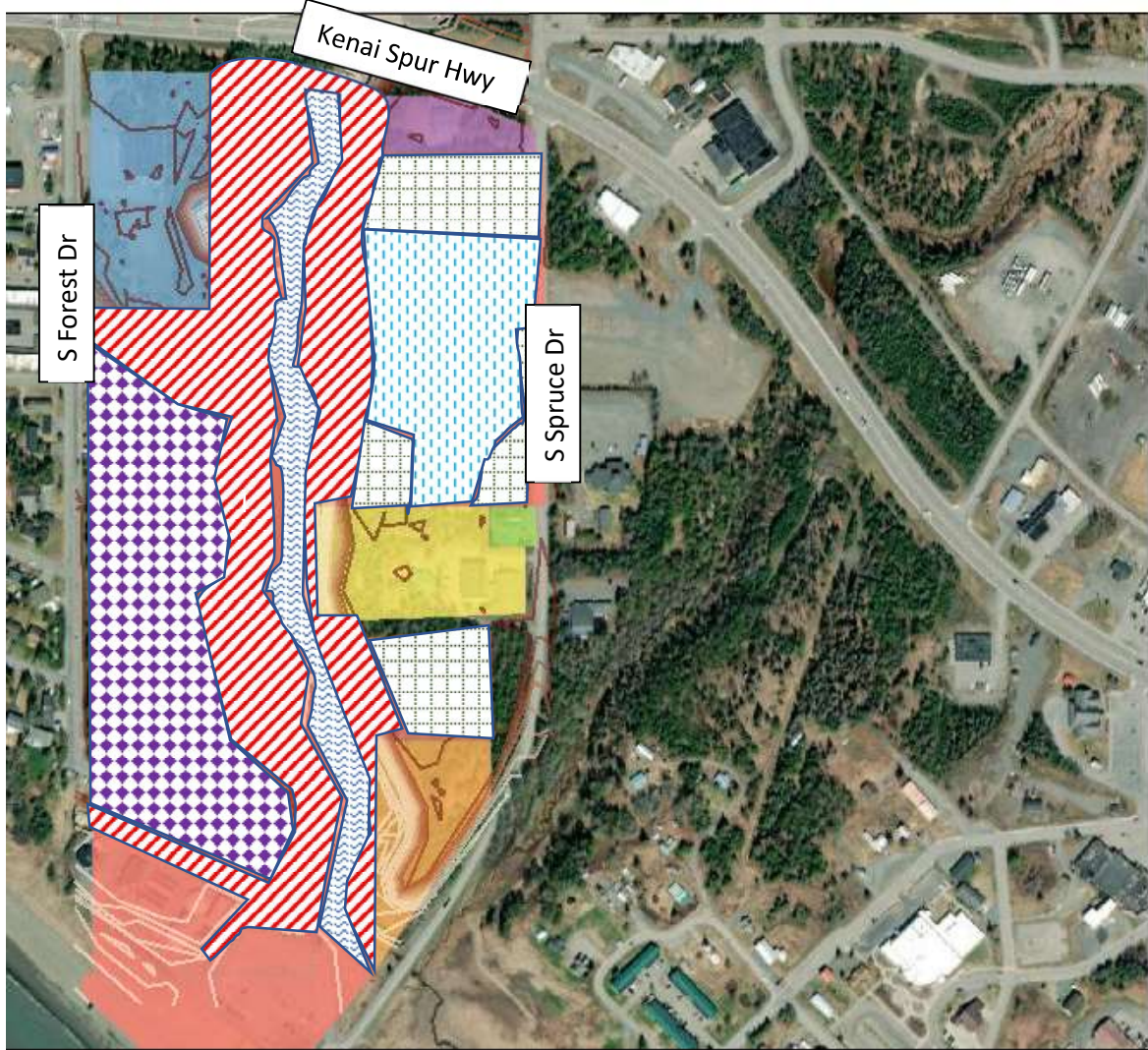
#### **LEGEND**

-  = flat area; suitable for either mechanical or hand-falling; cut & limb, deck logs where accessible
-  = steep area; hand-falling only; lop & scatter
-  = watery/marshy; no tree removal here








South of Kenai Spur Hwy

### Kenai gully CWPP-south



**LEGEND**

	= flat area; suitable for either mechanical or hand-falling; cut & limb, deck logs where accessible
	= steep area; hand-falling only; lop & scatter
	= watery/marshy; no tree removal here
	= municipal park; likely hand-falling only; full haul-off
	= recreational area; no removal needed



Sponsored by: Administration

**CITY OF KENAI  
ORDINANCE NO. 3314-2022**

AN ORDINANCE EXTENDING THE TIME PERIOD FOR COMPLETION OF THE ACTION ITEMS NECESSARY FOR THE CONDITIONAL DONATION OF AN APPROXIMATE 2 ACRE PARCEL TO BE SUBDIVIDED FROM A PORTION OF THE 6.8 ACRE MORE OR LESS PORTION OF THE EAST OF TRACT 4A, BARON PARK 2020 REPLAT (KPB PARCEL NO. 04501035) TO TRIUMVIRATE THEATRE FOR THE DEVELOPMENT OF A THEATRE FACILITY.

---

WHEREAS, Council enacted Ordinance 3219-2021 at their meeting of August 6, 2021 conditionally donating an approximate 2-acre parcel of land to the Triumvirate Theatre for the sole purpose of developing a theatre facility; and,

WHEREAS, Ordinance 3219-2021 required that development of the property be completed by July 16, 2023; and,

WHEREAS, while the Triumvirate Theatre has raised significant funds for construction of the theatre and has identified several other opportunities to significantly increase the amount of capital funds they have available, it will not be possible for them to complete construction by July 16, 2023; and,

WHEREAS, Triumvirate Theatre has requested that the deadline for completion of their facility be extended two years to July 16, 2025; and,

WHEREAS, administration is not aware of any other entities interested in developing this land; and,

WHEREAS, at its meeting on September 14, 2022, the Planning and Zoning Commission recommended \_\_\_\_\_ of this Ordinance; and,

WHEREAS, giving the Triumvirate Theatre time to complete their capital campaign will give them the greatest possibility of building a facility that meets all of the needs of the theatre community and is in the best interests of the City.

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

**Section 1.** That the Kenai City Council extends the time period granted in Ordinance 3219-2021 for completion of the action items necessary for the conditional donation of an approximate 2-acre parcel to be subdivided from a portion of the 6.8 acre more or less portion of the east of Tract 4A, Baron Park 2020 Replat (KPB Parcel No. 04501035) to Triumvirate Theatre for the development of a theatre facility from July 16, 2023 to July 16, 2025.

**Section 2.** That all other provisions of Ordinance 3219-2021 remain unchanged.

**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 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Saner, MMC, City Clerk

Approved by Finance: SB, Acting

Introduced:	September 7, 2022
Enacted:	September 21, 2022
Effective:	October 21, 2022



## MEMORANDUM

**TO:** Mayor Gabriel and City Council Members

**FROM:** Paul Ostrander, City Manager

**DATE:** August 30, 2022

**SUBJECT:** **Ordinance 3314-2022 – Extending the Time Period for Completion of Improvements for Triumvirate Theatre**

---

Ordinance 3219-2021 authorized the City Manager to execute, upon completion of a subdivision and necessary proof of financing for the development, the transfer of title an approximate 2-acre parcel near Daubenspeck Family Park to Triumvirate Theatre, for less than fair market value (\$1.00) and for the sole purpose of developing a theatre facility. It further required that Triumvirate Theatre must complete at its own expense all actions necessary for the subdivision and development of the properties by July 16, 2023; and to provide proof of financing sufficient for the projects as prior conditions of the transfer of title; and to pay all closing costs and fees for said property and said consideration to the City for the property.

Triumvirate Theatre has had a very successful capital campaign to date, but has asked the City to extend the time that they have to complete their development to July 16, 2025 to allow them time to complete their fundraising.

Joe Rizzo, the Executive Director of Triumvirate Theatre has kept the Administration and Council apprised of their progress over the past year and will be providing another update on their capital campaign and current plans for development to Council at the September 21 meeting where this ordinance is scheduled for a public hearing.





Sponsored by: Administration

**CITY OF KENAI**

**ORDINANCE NO. 3219-2021**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, CONDITIONALLY DONATING CERTAIN CITY OWNED PROPERTY DESCRIBED AS ONE APPROXIMATE 2 ACRE PARCEL TO BE SUBDIVIDED FROM A PORTION OF THE 6.8 ACRE MORE OR LESS PORTION OF THE EAST OF TRACT 4A, BARON PARK 2020 REPLAT (KPB PARCEL NO. 045 01 035) TO TRIUMVIRATE THEATRE FOR THE DEVELOPMENT OF A THEATRE FACILITY.

WHEREAS, Kenai Municipal Code 22.05.110, Determination as to need for public purpose, allows the Council, by Ordinance, to donate real property that is no longer needed by the City for a public purpose, to a non-profit corporation for consideration; agreed upon between the City and grantee without a public sale if the devotion is advantageous to the City; and,

WHEREAS, Triumvirate Theatre is a 501(c)3 non-profit corporation with a mission to provide performing arts opportunities with an emphasis on theatre with and for children; and,

WHEREAS, there is a need for a community theatre in the City of Kenai; and,

WHEREAS, the City desires to support performing arts in the community; and,

WHEREAS, donating the subject parcel to Triumvirate Theatre at less than fair market value is in the best interest of the City, and;

WHEREAS, the Planning and Zoning Commission recommended approval of the conditional land donation at their meeting on June 23, 2021; and

WHEREAS, conditions must be placed on the transfer or condition the transfer to ensure a theatre facility is developed or the property is returned to the City including in the event of a land sale, to a for profit entity, the value of the property shall be reimbursed to the City, if the sale occurs within twenty years after transfer to Triumvirate Theatre.

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

**Section 1.** Form: That this is a non-code ordinance.

**Section 2.** That the Kenai City Council hereby authorizes the City Manager to execute, upon completion of a subdivision and necessary proof of financing for the development, the transfer of title for the property: one approximate 2 acre parcel to be subdivided from a portion of the 6.8 acre more or less portion of the east of Tract 4A, Baron Park 2020 Replat (KPB PARCEL No. 045 01 035), to Triumvirate Theatre, on a form approved by the City Attorney, for less than fair market value (\$1.00) and for the sole purpose of developing a theatre facility.

**Section 3.** That Triumvirate Theatre must complete at its own expense all actions necessary for the subdivision and development of the properties; and to provide proof of financing sufficient for the projects as prior conditions of the transfer of title; and to pay all closing costs and fees for said property and said consideration to the City for the property.

**Section 4.** That the Kenai City Council further finds the disposal of the parcel to be in the best interests of the citizens of the City of Kenai and that the public interest shall be served by disposing of the property interest for less than the fair market value, in accordance with the recitals above which are incorporated herein.

**Section 5.** That the Kenai City Council further finds that if the action items described herein are not completed by July 16, 2023, the authorization to transfer the land lapses unless further authorized by the City Council.

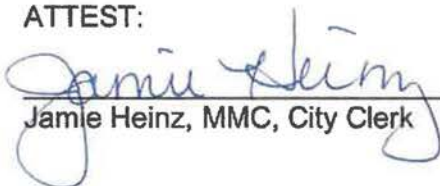
**Section 6. Severability:** That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all 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 7. 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 7<sup>th</sup> day of July, 2021.

  
BRIAN GABRIEL SR., MAYOR

ATTEST:

  
Jamie Heinz, MMC, City Clerk



Introduced: June 2, 2021  
Enacted: July 7, 2021  
Effective: August 6, 2021





# KENAI

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

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Ryan Foster, Planning Director

**DATE:** May 24, 2021

**SUBJECT:** **Ordinance No. 3219-2021 - Conditionally Donating a Portion of Tract 4, Baron Park Subdivision 2012 Addition for the Development of a Theatre Facility.**

---

The purpose of this correspondence is to respond to the City Manager request to bring an ordinance to consider conditionally donating the properties referenced in the above described ordinance to the Triumvirate Theatre.

On May 20, 2021, Joseph Rizzo, on behalf of the Triumvirate Theatre, requested consideration of a donation of approximately 2 acres to the north of Daubensbeck Park to construct a theatre facility. The Triumvirate Theatre has been looking for a new home since a February 20, 2021 fire which resulted in a complete loss of their 5,000 square foot theatre facility. A donation of approximately 2 acres would require a subdivision of the approximately 6.8 acres of Tract 4, Baron Park Subdivision 2012 Addition. The parcel is zoned Light Industrial, which allows a theater with a conditional use permit, requiring submission of an application and approval by the Planning and Zoning Commission.

Thank you for your consideration.

**Attachment A:** Letter from Triumvirate Theatre proposing a land donation for construction of a theatre facility.

**Attachment B:** Aerial Map illustrating the proposed parcel to be subdivided for a theatre facility.



May 20, 2021

Joseph Rizzo  
ACIPA  
PO Box 322  
Kenai, Alaska 99611

Dear Mr. Ostrander:

Thank you for all your assistance and guidance in helping us put together this proposal that the City of Kenai donate a piece of property on which to build the new Triumvirate Theatre facility. The following information will be helpful for the City Council in determining if this proposal is viable.

***History of Alaska Children's Institute for the Performing Arts (Triumvirate Theatre)***

Our organization was formed as a 501(c)3 nonprofit in November 1998. For over 20 years, we have provided performing arts opportunities for members of our community with a special emphasis on theatre with and for children. We serve people in the communities of Kenai, Soldotna, Sterling, Nikiski and Kasilof.

In 2005, we began renting a 3,000-square-foot space in the Peninsula Center Mall in Soldotna, where we operated a 100-seat theatre and a bookstore for almost 10 years. In 2006, four members of the board formed an LLC, North Road Properties, and bought a mechanic shop just a few miles north of the Kenai city limits with the intention of remodeling it to have a permanent home for the theatre's operations, renting it to us for well below market value. Through many grants and thousands of volunteer hours, the remodel was completed in 2013. The last two years of the remodel, the bulk of the interior work was completed by the Nikiski High shop class. White Christmas, the first of dozens of productions and events that would be held at the new facility, opened that December.

Plays, concerts, fundraisers for cancer victims, corporate events, Eagle Scout award ceremonies, wedding receptions and movies are just some of the activities that have taken place in our facility over the last eight years. It was truly a community space for the whole central Kenai.

***The Fire***

In the early morning hours of Feb. 20, 2021, a fire broke out in the backstage area of the theatre and engulfed the building in flames. In spite of valiant efforts by the Nikiski and Kenai Fire Departments, it was a complete loss of the 5,000-square-foot facility. Both the insurance forensic expert and the state fire marshal's office could not determine the cause of the blaze.

Currently, fundraising efforts are underway to rebuild the theatre. Meanwhile, the Kenai Peninsula Borough School District is providing our organization use of the Little Theatre at Kenai High to continue our operations throughout the next school year.

***Some highlights of services provided by Triumvirate Theatre in the community and the state:***

- We have produced well over a hundred plays, musicals and events over the last 23 years.
- Working with James Adcox, kids and adults in the community created a 240-square-foot mural depicting the history of the Kenai Peninsula.
- Large stained glass artwork was created by children under the direction of Sandy Stevens, a stained glass artist in our community.
- The Class Act Drama Troupe was established in 2005. This troupe is made up of seventh- to 12th-grade youth. Half of funds raised from their shows are distributed back to the kids in the form of scholarships when they graduate high school. Thousands of dollars have been awarded in scholarships over the years. To our knowledge, this is the only program of its kind in the U.S.

HOME OF THE ALASKA CHILDREN'S INSTITUTE FOR THE PERFORMING ARTS



***Highlights cont.***

- Working with the Alaska Humanities Forum, we have made two television programs teaching children about Alaska history. *Baranov's Castle* won a Best Indie Film Award at the Kids First Film Festival, the largest such festival in the world. It was also translated into Russian for Russian Television. *Davenport Flagstop and the Case of the Golden Spike* is a 45-minute film created in cooperation with the Alaska Railroad and has enjoyed extensive play on KTUU-TV.
- *Eight Stars of Comedy Gold* was a 90-minute history of the State of Alaska funded through a \$30,000 grant from the Rasmuson Foundation, commemorating the 50th anniversary of statehood.
- Mental Health Mondays is one of our current programs done in cooperation with KSRM Radio. Youth actors produce radio dramas about mental health issues facing teens. The dramas are followed by a round table discussion between the actors and Dr. Paul Turner, a Kenai psychologist.

***Description of Beneficiaries***

We know that the performing arts are critical to children's development and we provide opportunities for them to discover how much the stage can teach them about themselves and the world around them. By getting kids on stage to perform, parents and families that come to see them perform are also important beneficiaries of our programs. Lastly, we are heavily involved in fundraisers for local causes from kids who have cancer to people who lose their homes to house fires. We often provide entertainment for fundraising events and, before our facility burned down, provided a place for the community to hold such events.

***Current Status of the Project (Rebuilding efforts), timeline, and funds raised to date.***

We are currently in the fundraising and planning stages of rebuilding the theatre. Our hope is to have the new theatre open by April or May 2023.

***Fundraising Efforts***

Shortly after the fire occurred, the Rasmuson Foundation helped us set up a disaster relief fund with the Alaska Community Foundation, generously seeding that fund with \$10,000. Through an outpouring of community support, we have raised over \$100,000 in cash donations from over 500 individual donors over the last 10 weeks. This includes a \$10,000 donation from Marathon Oil. We have also received several significant in-kind donations including: \$10,000 in free radio advertising from KSRM Radio Group, a grand piano from the Kenai Peninsula College and excavating services for clean-up.

With the help of a \$25,000 Tier 1 grant from the Rasmuson Foundation, we are working with John Conway, a Foraker consultant hired to help us plan our rebuild efforts. This grant is also paying for architectural services from K&A Design Studios, a local Kenai firm, to develop conceptual drawings and determine an estimated cost of the rebuilding of the facility.

Fundraising efforts will continue over the summer with a goal of raising another \$100,000 in cash donations. We have some great help from local businesses, including Kenai Catering, which is planning on holding a fundraising dinner for us.

In addition to cash that the theatre has raised so far, our former landlord, North Road Properties, is committed to donating over \$200,000 from the insurance settlement so the theatre can build its own facility. We estimate that cost of rebuilding the theatre with the enormous rise in the cost of building materials will exceed \$1,000,000. We are hoping to raise additional funds from foundations and trusts.

Our goal is to submit a Tier 2 grant letter of inquiry to the Rasmuson Foundation by July 31. We will have no less than \$400,000 in funds to bring to this project. A land donation from the City of Kenai for the new theatre will be critical to our request to pursue a Tier 2 grant. The Rasmuson Foundation generally funds capital projects at 50% of the total cost. They have told me that the land donation would be considered matching funds.



triumvirate  
THEATRE



***The Property***

At your suggestion and working with Ryan Foster, we have considered four possible donated sites for the new facility in the City of Kenai. After careful consideration and in consultation with you, John Conway and our architect, we believe KPB Parcel No. 04501035 would best suit the purposes of the new theatre. This facility would require approximately 2 acres to accomodate adequate parking and the footprint of the building. Triumvirate would pay to have Parcel No. 04501035 subdivided so that we would occupy the east part of the parcel.

**The following information comes from Ryan Foster:**

Legal Description: Tract 4, Baron Park Subdivision 2012 Addition Physical Address: 450 Marathon Road

Size: 6.85 acres (298,386 square feet)

City Zoning: Light Industrial

Land Value: \$417,500 (from KPB)

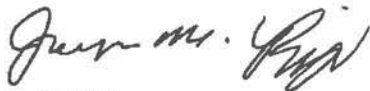
This parcel would likely require a subdivision of the 6.85 acres for a theater project/donation. The new Kenai Dog Park is being constructed on this parcel and the City is amending the plat to remove the dog park from Tract 4 and add it to Tract 5. Water and sewer is adjacent to the property from Marathon Road and Daubensbeck Road. Theaters are allowed in the Light Industrial zoning district with a conditional use permit.

***Advantages for the City of Kenai***

Theatres are economic engines for communities. Not only would Triumvirate Theatre patronize hardware stores and grocery stores in the course of our operations but our patrons will eat at local restaurants before or after shows. In addition to paying property tax, Triumvirate would also hire locals in teaching drama camps, running operations and conducting maintenance on the building.

The other advantage, of course, is having the arts in the community and the educational opportunities for local kids. We have no doubt that being in town will increase the number of children we serve with our programs.

Thank you for considering this proposal. If you need further information, please contact me on my cell at: (907) 394-1159 or by email.

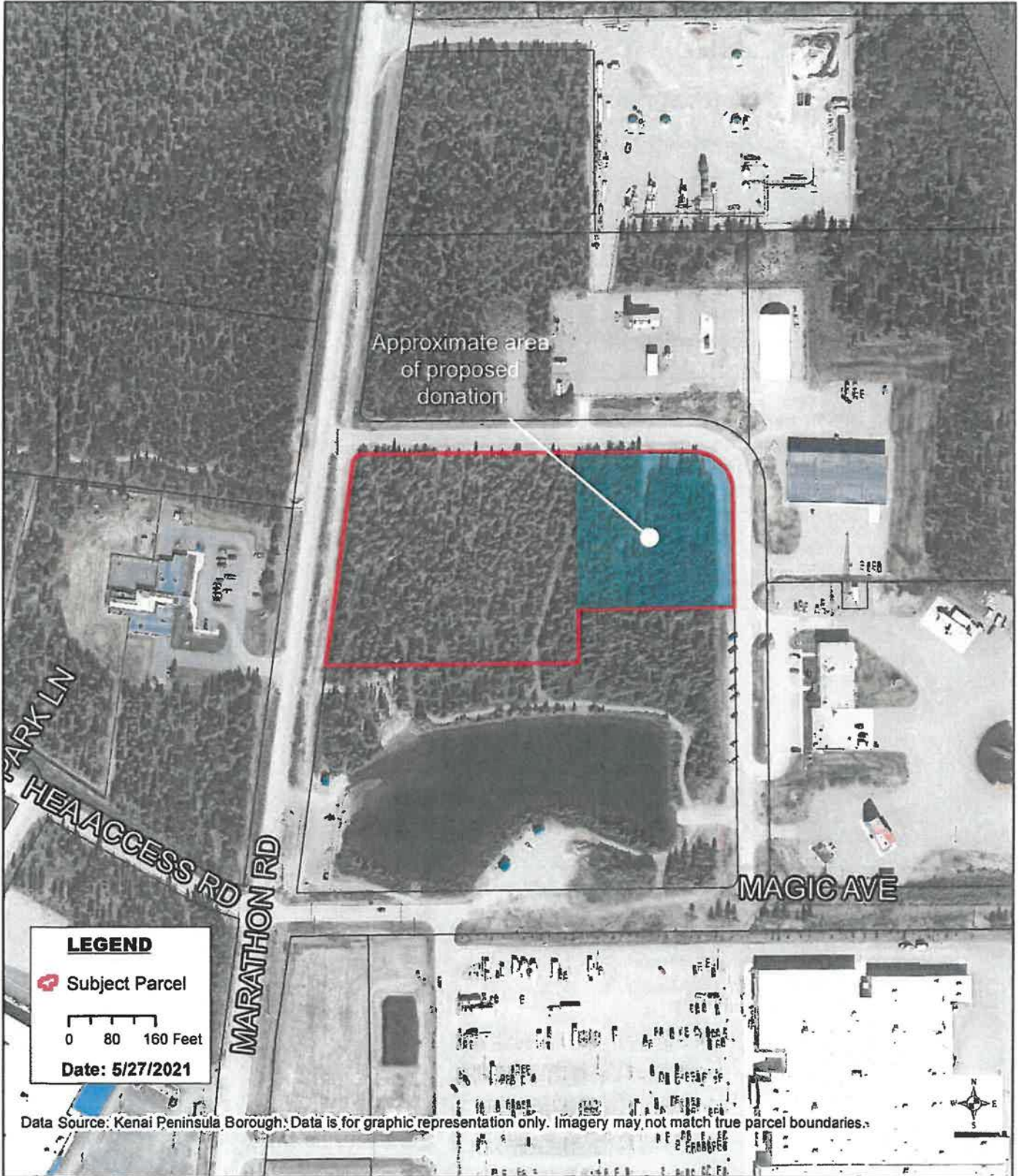


Joe Rizzo  
Executive Director  
ACIPA





**RESOLUTON 3219-2021  
PROPOSED DONATION TO TRIUMVIRATE THEATRE  
KPB #045 01 035  
APPROXIMATELY 2 ACRE PORTION OF  
TRACT 4, BARON PARK SUBDIVISION 2012 ADDITION**







## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Ryan Foster, Planning Director

**DATE:** June 8, 2021

**SUBJECT:** Requested Postponement and Hold for a Second Public Hearing to July 7, 2021 for Ordinance No. 3219-2021 - Conditionally Donating a Portion of Tract 4, Baron Park Subdivision 2012 Addition to Triumvirate Theatre for the Development of a Theatre Facility.

---

On June 2, 2021 City Council approved via consent agenda the introduction of Ordinance 3219-2021 for a public hearing on June 16, 2021. This memorandum requests a postponement and a hold for a second public hearing to July 7, 2021. This postponement would allow for the Planning and Zoning Commission to review Ordinance 3219-2021 at their meeting on June 23, 2021 and provide a recommendation to City Council.

Thank you for your consideration.



## MEMORANDUM

**TO:** Mayor Gabriel and Council Members  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Max Best, Interim Planning Director  
**DATE:** September 15, 2022  
**SUBJECT:** Ordinance 3314-2022 – Extending the Time Period for Completion of Improvements for Triumvirate Theatre

---

The purpose of the memo is to request an amendment to Ordinance No. 3314-2022.

At the regularly scheduled Planning and Zoning Commission meeting of September 14, 2022 the Planning Commission voted to recommend approval of Ordinance No. 3314-2022.

The following amendment is respectfully requested.

### Motion

I move to add a 7<sup>th</sup> WHEREAS to read as follows:

WHEREAS, at their regular meeting on September 14, 2022, the Planning and Zoning Commission reviewed the time extension request and recommended approval by the City Council.

Thank you for your consideration.





Sponsored by: Administration

**CITY OF KENAI  
ORDINANCE NO. 3315-2022**

AN ORDINANCE INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE GENERAL FUND AND PUBLIC SAFETY CAPITAL PROJECT FUND FOR COSTS IN EXCESS OF BUDGETED AMOUNTS FOR THE FIRE DEPARTMENT APPARATUS BAY FLOOR REFINISHING PROJECT.

WHEREAS, the FY23 budget was approved with a \$45,000 Capital project for refinishing the apparatus bay floor at the Kenai Fire Department; and,

WHEREAS, Public Works staff is updating estimates and has determined an additional \$15,000 is required to allow the project to move forward; and,

WHEREAS, the additional funding will account for inflationary pressures, contract administrative services for department staff as well as some contingency; and,

WHEREAS, this remains a priority project for the Department and provides appropriate maintenance in the continued protection of a city asset.

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

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

General Fund:

Increase Estimated Revenues –  
Appropriation of Fund Balance \$15,000

Increase Appropriations –  
Transfer to Public Safety Capital Project Fund \$15,000

Public Safety Capital Project Fund:

Increase Estimated Revenues –  
Transfer from General Fund \$15,000

Increase Appropriations –  
Fire Department Apparatus Bay Floor Refinishing - Construction \$15,000

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

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

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

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Brian Gabriel Sr., Mayor

ATTEST:

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Michelle M. Saner, MMC, City Clerk

Approved by Finance: SB, Acting

Introduced:	September 7, 2022
Enacted:	September 21, 2022
Effective:	September 21, 2022



## MEMORANDUM

**TO:** Mayor Gabriel and Council Members

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Scott Curtin, Director of Public Works

**DATE:** August 27, 2022

**SUBJECT:** Ordinance for Kenai Fire Department Apparatus Bay Floor Refinishing

---

The purpose of this Ordinance is to provide supplemental funding in support of the Kenai Fire Department's (KFD) Apparatus Bay Floor Refinishing Project, approved and as detailed on page 297 of the FY23 budget. The preliminary estimate used for the project is about nine months old now and as staff is preparing for the release of the bid documents for the project it was determined project funds are likely light in the current bidding environment. The City's current purchasing policy does not allow the department to release projects for bid without an understanding we will likely have sufficient funds to award. This Ordinance is being brought at this time to comply with that requirement.

The additional \$15,000 requested is intended to cover likely inflationary costs associated with labor and materials, allow billable hours for the department's staff for contract admin services associated with the project as well as providing a small contingency to cover minor unforeseen conditions that may be encountered during the work.

Completion of this work is effectively maintaining an existing City asset. Allowing the space to be easier to clean while protecting the concrete surfaces to extend service life. The Fire Department, Public Works Department, and Administration are in support of the project. Council's approval is respectfully requested.



Sponsored by: Vice Mayor Glendening

**CITY OF KENAI  
ORDINANCE NO. 3316-2022**

AN ORDINANCE AMENDING KENAI MUNICIPAL CODE 14.20.150-CONDITIONAL USE PERMITS, TO FURTHER CLARIFY ROLES AND RESPONSIBILITIES OF APPLICANTS, THE PLANNING DIRECTOR, AND THE PLANNING COMMISSION IN THE CONDITIONAL USE PROCESS.

WHEREAS, Council recently, through Ordinance No. 3243-2021, amended KMC 14.20.150- Conditional Use Permits, to improve the conditional use process for applicants and the public; and,

WHEREAS, recent public hearings at the Planning and Zoning Commission's meetings and board of adjustment hearings demonstrate further changes are needed to define the roles and responsibilities within the process and improve decisions made by the Commission; and,

WHEREAS, the amendments within this Ordinance are primarily intended to ensure decisions are made based on applicable standards within city code based on substantial evidence; and,

WHEREAS, other changes include reporting requirements to Council and that public hearings are held prior to any permit revocations; and,

WHEREAS, at its meeting on September 14, 2022, the Planning and Zoning Commission recommended \_\_\_\_\_ of this Ordinance.

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

**Section 1.** Amendment of Section 14.20.150 of Kenai Municipal Code: That Kenai Municipal Code, Section 14.20.15 Conditional Use Permits, is hereby amended as follows:

**14.20.150 Conditional use permits.**

(a) *Intent.* It is recognized that there are some uses that may be compatible with designated principal uses in specific zoning districts provided certain conditions are met. The conditional use permit procedure is intended to allow flexibility in the consideration of the impact of the proposed use on surrounding property and the application of controls and safeguards to assure that the proposed use will be compatible with the surroundings. The Commission may permit this type of use if the conditions and requirements listed in this chapter are met. The conditional uses are listed in the Land Use Table. Before a conditional use permit may be granted, the procedures specified in this chapter must be followed. The grant, denial, modification, or revocation of a conditional use permit is discretionary but must be based on findings supported by substantial evidence and City ordinances.

(b) *Pre-Application Meeting.* Every conditional use permit applicant must contact the Planning Director for a pre-application meeting with the Planning Director or designee before the application is submitted to the Commission in order to ensure applications are complete and the applicant is familiar with the conditional use permit public hearing process. If an application is determined to be

incomplete by the Planning Director, the application may be resubmitted to the Planning Director with changes or new information as many times as necessary, or the applicant may request a review with the City Manager whose determination shall be final and reported to the City Council. The review by the Planning Director is to determine that sufficient information is presented to allow the Commission a meaningful review [AND HAS NO BEARING ON WHETHER AN APPLICATION SHOULD BE GRANTED OR DENIED BY THE COMMISSION].

(c) *Applications.* Applications for a conditional use permit shall be filed in writing with the Planning Department. The application shall include, but is not limited to, the following:

- (1) Name and address of the applicant and name and address of the property owner if not the applicant;
- (2) Verification by the owner of the property concerned if other than the applicant;
- (3) The street address and a legal description of the property involved;
- (4) A description of the proposed use and how the use satisfies the review criteria including any applicable evidentiary support;
- (5) Dimensioned plot plans showing the location of all existing and proposed buildings or alteration, conceptual drawing and such data as may be required; and
- (6) The appropriate fee as set forth in the City’s schedule of fees adopted by the City Council.

The application and its plans shall be posted to the City’s website at time of publication of Commission packet.

(d) *Public Hearing.* If the application is in order, a public hearing shall be scheduled in accordance with the requirements of KMC [14.20.280](#). An applicant or representative of the applicant must be present in person or by remote device for the application to be considered at the public hearing. If the applicant or representative is not present at the scheduled public hearing and has not provided reasonable timely notice of unavailability to the Planning Department or Commission, the application will be dismissed by the Commission without a public hearing and the applicant may reapply at any time after paying a new application fee.

(e) *Review Criteria.* Prior to granting a conditional use permit, it shall be established by substantial evidence that the use satisfies all the following criteria:

- (1) The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district;
- (2) The economic and noneconomic value of the adjoining property and neighborhood will not be significantly impaired;

- (3) The proposed use is in harmony with the Comprehensive Plan;
- (4) Public services and facilities are adequate to serve the proposed use;
- (5) The proposed use will not be harmful to the public safety, health or welfare; and
- (6) Any and all specific conditions deemed necessary by the Commission to fulfill the above-mentioned conditions. These may include, but are not limited to, measures relative to access, screening, site development, building design, operation of the use and other similar aspects related to the proposed use as provided for in City ordinance, including the Land Use Table.

The Commission may approve, approve with conditions, dismiss, or deny the application. The Commission must make specific findings in its decision addressing all six (6) of the required criteria stated above. Any relevant evidence may be considered by the Commission in its decision.

(f) *Burden of Proof.* The applicant for a conditional use permit has the burden to show by substantial evidence that the six (6) criteria above are satisfied. Substantial evidence is such relevant evidence a reasonable mind might accept as adequate to support a conclusion.

(g) *Staff Report.* The Planning Director or designee will provide a staff report on the application to the Commission at the public hearing. The staff report may contain any information deemed pertinent by the Planning Director or designee, and may include a recommendation and proposed findings on whether the requirements of this chapter have been met and whether any additional specific conditions are recommended. The Commission may consider the recommendations of the Planning Director or designee, but shall accord it no deference. Evidentiary findings by the Planning Director or designee shall be considered. The staff report does not relieve the applicant's burden of proof.

(h) *Issuance of the Permit.* Following approval by the Commission, the administrative official shall not issue the permit until the expiration of the fifteen (15) day appeal period contained in KMC [14.20.290](#). After approval by the Commission and before the issuance of the permit, the administrative official must determine that the applicant is current on all obligations (e.g., sales tax, property tax, lease payments, utility payments) to the City or has entered into an approved payment plan with the City on any obligations owed and the applicant is in compliance with the payment plan and (if the permit is for a use required to collect sales tax) must show a valid borough sales tax account. If a timely appeal is filed pursuant to KMC [14.20.290](#), the permit shall not be issued unless authorized by the Board of Adjustment.

(i) *Yearly Reports.* The permit holder shall submit a yearly report between October 1st and December 31st to the administrative official. Such report shall include a summary of the on-site activity.

(j) *Revocation for Noncompliance/Compliance Notices.* If the Commission determines after a public hearing, based on the yearly review or any other investigation undertaken by the official, that the conduct of the operation(s) is not in compliance with: (1) the terms and conditions of the permit; (2)



the provisions of the Kenai Zoning Code; (3) or that the permit holder is not current on any obligations (e.g., sales tax, property tax, utility payments, lease payments) to the City unless the applicant has entered into an approved payment with the City on any obligations owed and the applicant is in compliance with the payment plan, the Commission may revoke the permit. The Commission shall not revoke the permit until the permit holder has been notified and given reasonable opportunity to correct the deficiency(s) or to provide information relating to or rebutting the alleged deficiency(s). Appeals from decisions under this section shall be made in accordance with the provisions of KMC [14.20.290](#). If the administrative official determines the permit holder is in compliance with the conditions in this subsection, or notifies the permit holder of a potential violation in writing, the administrative official shall send any notice of compliance or notice of violation to the Commission and the permit holder in a timely manner.

(k) *Modification of Final Approval.*

(1) An approved conditional use permit may, upon application by the permittee, be modified by the Planning and Zoning Commission:

(i) When changed conditions cause the conditional use to no longer conform to the standards for its approval;

(ii) To implement a different development plan conforming to the standards for its approval;

(2) The modification application shall be subject to a public hearing and the appropriate fee as set forth in the City's schedule of fees adopted by the City Council in order to help cover the costs of the public hearing notice.

(l) *Expiration—Extensions—Transferability.*

(1) An approved conditional use permit lapses twelve (12) months after approval if no building permit is procured or if the allowed use is not initiated.

(2) A conditional use permit shall automatically expire if for any reason the conditioned use ceases for a period of one (1) year or longer.

(3) The Commission may grant time extensions to stay the lapse or the expiration of a permit for periods not to exceed one (1) year each upon a finding that circumstances have not changed sufficiently to warrant reconsideration of the approval of the conditional use permit or that good cause exists to grant the time extension. A permittee must request a time extension in writing, and submit any supporting materials, within ninety (90) days of the date of the administrative official's written notice to the permittee that either the permit has lapsed under subsection [\(l\)\(1\)](#) of this section or that the permit has expired under subsection [\(l\)\(2\)](#) of this section by a date certain. If the administrative official does not issue a written notice concerning lapse or expiration, the permittee may request a time extension at any time within two (2) years of the date the permit was issued or the use ceased, whichever is later. A permittee may be granted time extensions

not to exceed a total of two (2) years from the date of the Commission’s grant of the first time extension. The Commission may, but is not required to, hold a public hearing prior to issuing a decision under this subsection.

(4) A permittee who disputes the administrative official’s determination that the conditioned use has not been timely initiated or has ceased for a period of one (1) year or longer may appeal the official’s determination to the Board of Adjustment in accordance with KMC [14.20.290](#). If the permittee has requested a stay under subsection [\(1\)\(3\)](#) of this section, the time for appeal of the administrative official’s determination of lapse or expiration shall not run until such time as the Commission has made a final decision on the request for a stay.

(5) A conditional use permit is not transferable from one (1) parcel of land to another. Conditional use permits may be transferred from one (1) owner to another for the same use, but if there is a change in use on the property, a new permit must be obtained.

(6) Appeals from decisions of the Commission under this section shall be made in accordance with the provisions of KMC [14.20.290](#).

(m) A proposed conditional use permit shall not be considered if a substantially similar conditional use permit has been considered and denied within the nine (9) months immediately preceding.

**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 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Saner, MMC, City Clerk

Introduced: September 7, 2022  
Enacted: September 21, 2022  
Effective: October 21, 2022



## MEMORANDUM

**TO:** Mayor Gabriel and Council Members

**FROM:** Jim Glendening, Vice Mayor

**DATE:** August 25, 2022

**SUBJECT:** **Ordinance No. 3316-2022 Amending the Conditional Use Permits Process**

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Council recently enacted Ordinance No. 3243-2021 amending KMC 14.20.150- Conditional Use Permits, to improve the conditional use process for applicants and the public. Recent public hearings at the Planning and Zoning Commission’s meetings and board of adjustment hearings demonstrate further changes are needed to define the roles and responsibilities within the process and improve decisions made by the Commission. The following outlines the proposed changes:

1. Amend 14.20.150(a) to clarify that while the Commission has the discretion to grant, deny, modify or revoke a conditional use permit, such discretion must be based on substantial evidence and City Code supported by findings.
2. Amend 14.20.150(b) to require the City Manager report the results of any CUP application appeals made to him or her to the City Council.
3. Amend 14.20.150(b) by removing the language in the last sentence that states “and has no bearing on whether an application should be granted or denied by the commission” as it is unnecessary. It is already clearly stated that the Planners job in his review is to ensure that sufficient information is provided in the application to allow the Commission to have a meaningful review of the application.
4. Amend 14.20.150(c)(4) by adding that applicable evidentiary support for the granting of a conditional use permit should be included within the application process.
5. Amend 14.20.150(e) by emphasizing that the Commission must find that all required criteria in code are met **and** supported by substantial evidence prior to granting a conditional use permit.
6. Amend 14.20.150(e)(6) by adding language that clarifies that conditions placed on conditional use permits by the Commission must be based on applicable City Code.
7. Amend 14.20.150(g) by adding language to clarify that while the Commission does not have to give weight or deference to recommendations of the Planning Director with regard to whether a conditional use permit should be a granted or not, evidence presented to the Commission must be considered. This means that if the Planner provides evidence and

the Commission chooses to rely on other evidence or disagrees with the Planner regarding the evidence presented, the Commission must explain its decision in this regard.

8. Amend 14.20.150(j) to require that a public hearing is held prior to the revocation of any conditional use permit.

I request this Ordinance be removed from the Consent Agenda for introduction, so that it can be referred to the Planning and Zoning Commission to make a recommendation at its September 14, 2022 meeting, prior to Council's public hearing at its September 21, 2022 meeting.

Your consideration is appreciated.





## MEMORANDUM

**TO:** Mayor Gabriel and Council Members  
**FROM:** Scott Bloom, City Attorney  
**DATE:** September 15, 2022  
**SUBJECT:** **Ordinance 3316-2022 Requested Amendment**

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The purpose of this memo is to request an amendment to Ordinance 3316-2022 based on Planning and Zoning Commission action.

The following amendment is respectfully requested.

### Motion

Amend the last WHEREAS to read:

At its meeting on September 14,2022, the Planning and Zoning Commission recommended approval of this Ordinance.

Thank you for your consideration.



# KENAI

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

## MEMORANDUM

**TO:** Mayor Gabriel and Council Members

**FROM:** Henry Knackstedt, Council Member

**DATE:** September 15, 2022

**SUBJECT:** **Ordinance 3316-2022 Comments and Proposed Amendments**

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The Ordinance proposing changes to 14.20.150-Conditional Use Permits does little to further define roles and responsibilities of the Planner or Planning & Zoning Commission in a constructive way. Instead the proposed changes make it easier to attack the decision of the Planning and Zoning Commission and arguably switch the burden from the applicant to prove the conditions for a conditional use permit are met to the Commission. Additionally, the proposed changes restrict the ability of the Commission to impose conditions and restrict the Commissions flexibility. Regardless of how good the findings may be, the public always has the right to appeal, and these changes largely place the decision of the Commission at greater risk by imposing more restrictions.

The following are my proposed amendments to the Ordinance:

- 1) 14.20.150(a) Delete the proposed amendment at the end of the paragraph.

Substantial findings are good, but all lesser findings should also make up the evaluation by the Commission. Additionally, City ordinances (code) are not always completely inclusive, and the Commission needs the ability to make applicable restrictive findings that could be outside of code. Additionally, KMC 14.50.150(f) provides that the applicant has the burden to show by substantial evidence that all six required criteria for grant a CUP are met, this new language adds an unnecessary burden on the Commission to substantiate a CUP.

- 2) 14.20.150(b) Retain the stricken language at the end of the paragraph.

The stricken words are accurate and should remain. This section of code addresses the review by the Planner of CUP applications for completeness as related only to information provided in the application. Regardless of whether the information in an application supports the granting of a conditional use permit or not, all complete applications (application with sufficient information) are provided the Commission for a decision. It is unclear to me what the sponsor's intentions are in removing the verbiage.

- 3) 14.20.150(e) Delete the added language or modify as provided below.



The new proposed language states that before granting a conditional use permit all criteria must be established by substantial evidence. It is the applicants burden to show this, as specifically stated in subsection (f) "The applicant for a conditional use permit has the burden to show by substantial evidence that the six (6) criteria above are satisfied." This new language is either duplicative and unnecessary, or means something else? If it is purely duplicative it should be removed or clarified by adding additional language as follows: "by substantial evidence as presented by the applicant" (New language in bold) If it is not duplicative and means something new, it should be explained and made clear.

4) 14.20.150 (e)(6) Delete added language.

This new language arguably restricts the ability and flexibility of the Planning and Zoning Commission to grant a CUP and add conditions to lessen the CUP's potential impact. For example; quiet times are not found in City Code, nor are the requirement for site obscuring fences, outdoor lighting restrictions or occupancy limits outside of fire marshal safety concerns. These are all conditions that could be reasonable to mitigate the impact of a business in a residential zone. I attended the Commission's review of this Ordinance and heard the City Attorney state that he would argue these types of conditions could be supported by language found in 14.20.150(a) regarding intent, but why require the City to make this argument, one that we could lose, when it was previously clear these conditions could be imposed. Is the sponsor's intent not to allow the imposition of these types of conditions? If it is not the intent to prohibit these types of conditions, then no change to the existing code language is necessary. If the intent is to prohibit these types of conditions, then I can not support the new proposed language.





Sponsored by: Administration

**CITY OF KENAI  
RESOLUTION NO. 2022-64**

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

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

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

WHEREAS, the proposed lease would be mutually beneficial and would conform with Kenai Municipal Code for zoning, Kenai's Comprehensive Plan, the Airport Land Use Plan, Airport Layout Plan, Federal Aviation Administration regulations, Airport Master Plan, Airport Improvement Program grant assurances, and Airport operations; and,

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

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

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

**Section 1.** The Council of the City of Kenai approves the attached non-standard space lease form by the FAA for the lease of Lot 7A-1, Block 2, FBO Subdivision, locate within the Airport Reserve, to the FAA for the use of an automated flight service station.

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

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

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21<sup>st</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Saner, MMC, City Clerk



## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Max Best, Interim Planning Director

**DATE:** August 15, 2022

**SUBJECT:** **Resolution No. 2022-64 – Approving the Renewal of a Lease on Airport Reserve Lands between the City of Kenai and the Federal Aviation Administration for the Automated Flight Service Station Facility on Lot 7A-1, FBO Subdivision No. 5.**

The City has received a request for a renewal of the Federal Aviation Administration (FAA) lease of the Automated Flight Service Station (AFSS). The FAA has leased the space for the purpose of operating the AFSS and Satellite Communication Network (SACOM) facilities dating back to 1983.

The lease agreement is for Lot 7A-1, FBO Subdivision No. 5, a 3.445 acre parcel the parcel contains the City owned Automated Flight Service Station a 10,812 square foot building.

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

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

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

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

The proposed use complies with the Imagine Kenai 2030 Comprehensive Plan by supporting development on lease lots with development that is in alignment with the Kenai Municipal Airport's marketing strategy.

Please review the attached materials.

Your consideration is appreciated.

Attachments:

City of Kenai Land Lease Application from FAA

470 N. Willow Street Map & Plat





## City of Kenai Land Lease Application

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

Application Date:	5/25/2022
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### Applicant Information

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

### Property Information and Term Requested

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

**Proposed Use and Improvements**

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

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

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

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

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

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

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

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

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

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

**Lease Renewal Only**

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

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

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

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

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

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

Tool Labels X



☆ 04336033

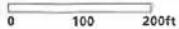
**PARCEL ID: 04336033**  
**Municipal**  
**Institutional**

**Owner:**  
KENAI CITY OF  
210 FIDALGO AVE STE 200  
KENAI, AK 99611

**Legal:**  
T 6N R 11W SEC 32 SEWARD MERIDIAN  
KN 0920060 FBO SUB NO 5 LOT 7A-1

**Physical Addresses:**  
470 N WILLOW ST

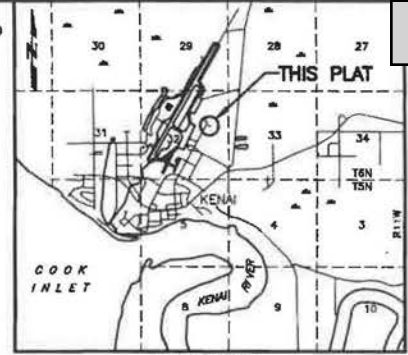
[Add to Results](#) [View Additional Details](#)  
[Run a Report](#)



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

**LEGEND**

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



**VICINITY MAP**  
SCALE: 1" = 1 MILE

**CERTIFICATE OF OWNERSHIP AND DEDICATION**

I HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND THAT WE HEREBY ADOPT THIS PLAN OF SUBDIVISION AND BY OUR FREE CONSENT DEDICATE ALL RIGHTS-OF-WAY AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

*[Signature]*  
CITY MANAGER  
CITY OF KENAI  
210 FIDALGO STREET  
KENAI, AK 99611

**NOTARY'S ACKNOWLEDGEMENT**

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

**PLAT APPROVAL**

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

KPB FILE NO. 92-068

**FBO SUBDIVISION NO. 5**

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

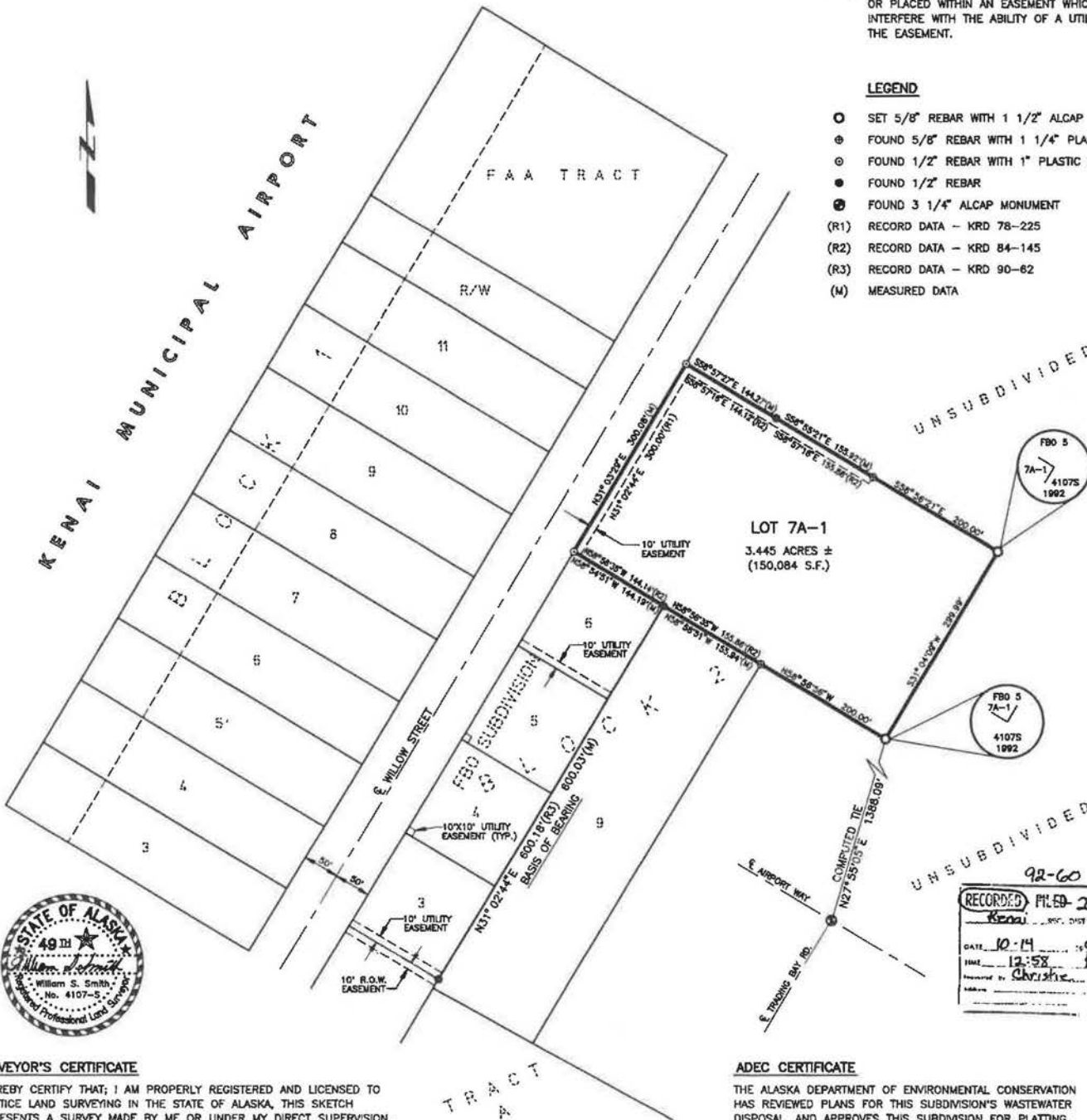
LOCATED WITHIN THE NE1/4, SEC. 32, T6N, R11W, S.M., AK, CITY OF KENAI, KENAI RECORDING DISTRICT, KENAI PENINSULA BOROUGH, ALASKA

CONTAINING 1 LOT OF 3.445 ACRES ±

**RAYTHEON SERVICE COMPANY**

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

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

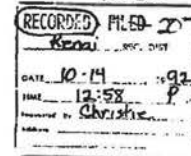


**SURVEYOR'S CERTIFICATE**

I HEREBY CERTIFY THAT, I AM PROPERLY REGISTERED AND LICENSED TO PRACTICE LAND SURVEYING IN THE STATE OF ALASKA, THIS SKETCH REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION, THE MONUMENTS SHOWN HEREON ACTUALLY EXIST AS DESCRIBED, AND ALL DIMENSIONS AND OTHER DETAILS ARE CORRECT TO THE NORMAL STANDARDS OF PRACTICE OF LAND SURVEYORS IN THE STATE OF ALASKA.  
SURVEYOR'S SIGNATURE: *[Signature]* DATE: 9/22/92

**ADEC CERTIFICATE**

THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS REVIEWED PLANS FOR THIS SUBDIVISION'S WASTEWATER DISPOSAL, AND APPROVES THIS SUBDIVISION FOR PLATTING.  
*[Signature]* TITLE: EE DATE: 9-29-92





Sponsored by: Administration

**CITY OF KENAI  
RESOLUTION NO. 2022-65**

A RESOLUTION APPROVING THE USE OF THE FLEET REPLACEMENT FUND FOR THE PURCHASE OF FOUR FORD POLICE INTERCEPTORS UTILIZING THE STATE OF ALASKA EQUIPMENT FLEET CONTRACT.

WHEREAS, the city conducted an evaluation of utility vehicles within its fleet to determine the efficiency of current vehicles and replacement needs of aged vehicles; and,

WHEREAS, due to the lack of availability of government contract pricing the Police Department was unable to meet the requirements of the City fleet replacement plan, which calls for the replacement of four (4) vehicles between FY22 and FY23; and,

WHEREAS, the Police Department requests to order/purchase four (4) Ford Police Interceptors (Explorers) for a total estimate cost of \$185,680, funds for these purchases are available in the Fleet Replacement Fund and this does not require further appropriation; and,

WHEREAS, KMC 7.15.070(b)(4) allows the City of Kenai to purchase equipment without giving an opportunity for competitive bidding if the equipment is purchasable under the contract of another governmental agency in which contract the City is authorized to participate; and,

WHEREAS, in past years the City of Kenai has purchased police department vehicles through the State of Alaska equipment fleet contract.

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

**Section 1.** That the City Manager is authorized to use the Fleet Replacement Fund for the purchase of four (4) police vehicles at an estimated cost of \$185,680.

**Section 2.** That the City Manager is authorized to use State of Alaska fleet contract for the purchase of four (4) Ford Police Interceptors (Explorers), per KMC 7.15.070(b)(4), in lieu of the City conducting its own bid process.

**Section 3.** That the City manager is authorized to issue a purchase order in the amount of \$185,680 for the purchase of four (4) Ford Police Interceptors (Explorers) from Kendall Ford.

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

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Saner, MMC, City Clerk

Approved by Finance: \_\_\_\_\_





## MEMORANDUM

**TO:** Mayor Gabriel and Council Members

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Dave Ross, Police Chief

**DATE:** September 2, 2022

**SUBJECT:** **Resolution No. 2022-65 - Purchase of Police Vehicles with Fleet Replacement Fund**

---

This Resolution authorizes the purchase of four Ford Interceptors (Explorers) for use as police vehicles. It authorizes the use of the City's Fleet Replacement Fund for those purchases. Additionally, it authorizes the purchase of the vehicles through Kendal Ford, because they are able to give us the Alaska State equipment fleet contract pricing for the selected vehicles. The total cost of the four vehicles is \$185,680.

In accordance with the City's fleet replacement plan, the police department was scheduled to replace two police vehicles in FY22 but was unable to make those replacements due to unavailability of the vehicles through the State Contract. The Police Department is scheduled to replace two more vehicles in FY23. All four vehicles (FY22 and FY23) are part of this purchase. Sales of the vehicles under the government contracts have been spotty, with lots of cancelled orders by the manufactures and long delays in arrival of those vehicles. It is not known yet when these vehicles might arrive. Installation of the police vehicle equipment will be done in-house by the City shop with these purchases rather than outsourced to a vendor for installation of the equipment. Based on that cost savings, the cost of equipment purchase/installation is estimated to be approximately \$11,000 per vehicle based on recent vehicle outfitting. It is anticipated that there will be adequate funds in the vehicle replacement fund for the purchase of these vehicles and the equipment to outfit them.

KMC 7.15.070(b)(4) allows the City of Kenai to purchase equipment without giving an opportunity for competitive bidding if the equipment is purchasable under the contract of another government agency in which contract the City is authorized to participate.

Thank you for your consideration



**CITY OF KENAI  
RESOLUTION NO. 2022-66**

**A RESOLUTION AMENDING THE KENAI MUNICIPAL AIRPORT AIRCRAFT PARKING FEES.**

WHEREAS, the Principles Applicable to Airport Rates and Charges in the Federal Aviation Administration (FAA) Policy Regarding Airport Rates and Charges state rates, fees, rentals, landing fees, and other service charges (“fees”) imposed on aeronautical users for aeronautical use of airport facilities (“aeronautical fees”) must be fair and reasonable, and Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible; and,

WHEREAS, Assurances of Airport Sponsors accepting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended, require a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection; and,

WHEREAS, in accordance with Kenai Municipal Code, Airport § 6.05.070(c), a person parking an aircraft in a designated transient aircraft parking area shall pay the fees set forth in the City’s schedule of rates, charges and fees adopted by the City Council; and,

WHEREAS, on June 1, 2022, City Council adopted Resolution 2022-39 amending the comprehensive schedule of rates, charges, and fees to incorporate changes included in the FY 2023 budget; and,

WHEREAS, the City of Kenai Schedule of Rates, Charges and Fees Effective July 1, 2022, does not consider quick-turn aircraft operations; and,

WHEREAS, by dividing the existing transient aircraft parking fees the airport is refining its structure of fair and reasonable fees, and recognizing aircraft operators using the transient aircraft parking areas less than 12 hours per occurrence; and,

WHEREAS, Airport Administration surveyed other airport rates & fees structures with similar users; and,

WHEREAS, at a regular meeting on Thursday, September 8, 2022, the City of Kenai Airport Commission reviewed this resolution and recommended adoption by City Council; and,

WHEREAS, amending the Airport’s Transient Aircraft Parking Fees is in the best interest of the City.

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

**Section 1.** That Airport Fees be amended as follows:

<b>APX – Airport Regulations</b>	<b>Aircraft Parking Fees</b>	
6.05.070 (c)	-transient, under 4,000 lbs. 0 - 4 hrs.	FREE
6.05.070 (c)	-transient, under 4,000 lbs. over 4 hrs.	\$5.00
6.05.070 (c)	<u>-transient, 4,001 - 12,500 lbs. 0-12 hrs.</u>	<u>\$25.00</u>
6.05.070 (c)	-transient, 4,001 – 12,500 lbs. [per day] <u>12-24 hrs.</u>	\$50.00
6.05.070 (c)	<u>-transient, 12,501 – 100,000 lbs. 0-12 hrs.</u>	<u>\$50.00</u>
6.05.070 (c)	-transient, 12,501 – 100,000 lbs. [per day] <u>12-24 hrs.</u>	\$100.00
6.05.070 (c)	-transient, 100,001 lbs. per day	\$250.00

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

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Saner, MMC, City Clerk





# KENAI

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

## MEMORANDUM

**TO:** Mayor Gabriel and Council Members

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Eland Conway, Airport Manager

**DATE:** September 8, 2022

**SUBJECT:** Resolution 2022-66 - Amending Airport Aircraft Parking Fees

In accordance with Kenai Municipal Code, Airport § 6.05.070(c), the Kenai Municipal Airport (ENA) began strict enforcement of Transient Aircraft Parking Fees in the Summer of 2021. Aided by flight tracking programs, the Airport has captured use of transient aircraft parking aprons that had historically been missed. While strict enforcement of apron usage fees has not drawn any significant attention, four regular operators questioned a discrepancy between historical charges and recent charges: Iliamna Air Taxi, Kroger Co. Lake and Peninsula Airlines, and Curtis Glenn – all were satisfied with the Airport’s response, and remitted payment accordingly.

Airport Administration noted the interest of the four operators, considered their time on ground, surveyed other airport rates & fee structures with similar users, and determined that the current ENA fee structure does not consider quick-turn aircraft operations. By dividing the existing fees below, the Airport is refining its structure of fair and reasonable fees. Airport administration believes that dividing the fee structure in half adequately balances the Federal Aviation Administration’s principles and Grant Assurance that the Airport “maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible,” the use of transient parking aprons by revenue generating operations as well as non-revenue generating operations, and still capturing revenue, historically, not captured – in good faith.

The Airport is proposing the following amendments to the City of Kenai Schedule of Rates, Charges and Fees Effective July 1, 2022:

-transient, 4,001 – 12,500 lbs. 0-12 hrs.	\$25.00
-transient, 4,001 – 12,500 lbs. <del>per day</del> 12-24 hrs.	\$50.00
-transient, 12,501 – 100,000 lbs. 0-12 hrs.	\$50.00
-transient, 12,501 – 100,000 lbs. <del>per day</del> 12-24 hrs.	\$100.00

Your consideration is appreciated.



Sponsored by: Administration

**CITY OF KENAI  
RESOLUTION NO. 2022-67**

A RESOLUTION ALLOWING THE CITY OF KENAI, CITY MANAGER TO EXECUTE FEDERAL AVIATION ADMINISTRATION GRANT AGREEMENT FOR AIRPORT IMPROVEMENT PROGRAM PROJECT NO. 3-02-0142-072-2022 AT THE KENAI MUNICIPAL AIRPORT.

---

WHEREAS, on August 9, 2022, the airport (ENA) submitted to the Federal Aviation Administration (FAA) a Project Application for a grant for Federal funds for a project associated with ENA in the amount of \$150,000; and,

WHEREAS, on September 9, 2022, the FAA approved a project for the ENA consisting of installation of a cantilever gate, and acquiring a snow removal equipment edge light cleaning attachment; and,

WHEREAS, the obligation of the FAA is 93.75%, or \$140,625; and,

WHEREAS, the obligation of ENA is 6.25%, or \$9,375; and,

WHEREAS, this project will significantly improve snow removal operational efficiency, and reduce fuel consumption; and,

WHEREAS, the executed grant must be finalized by September 30, 2022, the end of the Federal Fiscal Year.

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

**Section 1.** That a Grant Agreement with the FAA for AIP Project No. 3-02-0142-072-2022 at the Kenai Municipal Airport (ENA) be executed by the City Manager.

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

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Saner, MMC, City Clerk



## MEMORANDUM

**TO:** Mayor Gabriel and Council Members

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Eland Conway, Airport Manager

**DATE:** September 12, 2022

**SUBJECT:** **Executing FAA Grant Agreement for Airport Improvement (AIP)  
Project No. 3-02-0142-072-2022**

---

The Kenai Municipal Airport (ENA) applied for Federal Aviation Administration (FAA) grant funds to install a sliding cantilever gate, and acquire a snow removal equipment edge light cleaning attachment on August 9, 2022. The FAA provided the grant agreement for execution on September 9, 2022.

These grant funds will facilitate the procurement and installation of assets that significantly improve ENA's snow removal operations:

- Installation of the cantilever gate will provide access to substantial snow storage space where snow storage is extremely limited and snow hauling routes are lengthy and time consuming. By making snow storage space readily accessible snow is handled once and stored in location not encroaching on taxiway safety areas or wingtip clearances.
- Acquiring a edge light cleaning attachment reduces the amount of equipment, personnel, time, and fuel required to clear the runway and taxiway edge lights.



Sponsored by: Administration

**CITY OF KENAI  
RESOLUTION NO. 2022-68**

A RESOLUTION AUTHORIZING A FY2022 BUDGET TRANSFER IN THE AIRPORT FUND, AIRFIELD DEPARTMENT FOR AMOUNTS IN EXCESS OF BUDGETED AMOUNTS CAUSED BY EMPLOYEE RETIREMENT AND ABOVE AVERAGE SNOW REMOVAL ACTIVITY DURING THE FISCAL YEAR.

WHEREAS, two Airport Operations Employees left the Kenai Municipal Airport between November 1, 2021 and November 19, 2021; and,

WHEREAS, the accrued leave of the Airport Operations Employees leaving the Kenai Municipal Airport paid out upon separation was in excess of budgeted amounts; and,

WHEREAS, the Airport accrued salaries in excess of budgeted amounts due to an exceptional snow season; and,

WHEREAS, Kenai Municipal Code 7.25.020 requires City Council approval for the transfer of funds within line item accounts within the Airport Special Revenue Fund in excess of \$5,000.

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

**Section 1.** That the following budget transfer is authorized.

<u>Airport Fund:</u>	
Decrease Expenditures:	
Airfield Utilities	<u>\$14,600</u>
Increase Expenditures:	
Airfield Salaries	\$ 7,600
Airfield Leave	<u>7,000</u>
	<u>\$14,600</u>


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

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Saner, MMC, City Clerk

Approved by Finance: 



## MEMORANDUM

**TO:** Mayor Gabriel and Council Members

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Eland Conway, Airport Manager

**DATE:** September 14, 2022

**SUBJECT:** **Resolution No. 2022-68 - Kenai Municipal Airport Budget Revision**

---

The purpose of this memo is to clarify Resolution 2022-68, authorizing a budget transfer within the Airport Special Revenue Fund to resolve budget shortfalls within Airfield Salaries and Leave Budgets.

The excess expenditures in salaries is attributed to an extraordinary 2021-22 snow season. The Airport also incurred a significant expenditure in leave when, in November 2021 the separation of two Airport Operations Employees resulted in all their accrued leave being paid out.

As a result of these circumstances the Airport exceeded the FY22 Airfield Salaries and Leave Budget by \$14,518.36. With the assistance of the Finance Director, I am seeking to resolve this budget shortfall through a \$14,600 budgetary transfer from Airfield Utilities.

Council's support is respectfully requested.



Sponsored by: Administration

**CITY OF KENAI  
RESOLUTION NO. 2022-69**

A RESOLUTION AUTHORIZING A FY2022 BUDGET TRANSFER IN THE GENERAL FUND, STREET DEPARTMENT FOR AMOUNTS IN EXCESS OF BUDGETED AMOUNTS CAUSED BY ABOVE AVERAGE SNOW REMOVAL ACTIVITY DURING THE FISCAL YEAR.

WHEREAS, the Streets Division of the Public Works Department incurred costs in excess of budgeted amounts for the end of the 2022 fiscal year; and,

WHEREAS, these costs were associated with personnel time in performing snow removal services during the winter months; and,

WHEREAS, this Resolution will provide for a budget transfer within Streets operational budget to cover these unforeseen expenses in account 001-433-0200 Streets Overtime; and,

WHEREAS, the cost is \$7,200 and will be transferred from unused funds within account 001-433-4539 Streets Rentals; and,

WHEREAS, as these excesses were known and previously discussed with Council, the FY23 budget was approved with additional funding to address potential future impacts, this Resolution is to balance last year's accounts which closed on June 30, 2022.

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

**Section 1.** That the following budget revision is authorized:

General Fund:

Decrease Expenditures:

001-433-4539 Streets - Rentals \$7,200

Increase Expenditures:

001-433-0200 Streets – Overtime \$7,200

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

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Saner, MMC, City Clerk

Approved by Finance: \_\_\_\_\_





## MEMORANDUM

**TO:** Mayor Gabriel and Council Members  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Scott Curtin, Director of Public Works  
**DATE:** September 14, 2022  
**SUBJECT:** Resolution 2022-69 Streets Budget Revision

---

The purpose of this memo is to clarify Resolution 2022-69 which authorizes a budget transfer within the Streets division of Public Works to resolve budget shortfalls within the Streets Overtime budget. As council may recall in discussions during the approval of the FY2023 budget, additional funds were requested to allow the department some flexibility in responding to future conditions.

The FY2022 budget included \$21,632 in overtime funds. The FY2023 budget increased that number to \$33,907. The requested budget transfer today is for \$7,200 to balance out the FY2022 Streets Overtime account which covers our actual costs incurred ending June 30, 2022.

The Department will continue to monitor conditions throughout the year, managing tax payer funds as effectively as we can while meeting the needs of the community. Staff appreciates Council's support in providing the tools and funding needed to successfully perform our responsibilities.

As Director I apologize for not having this Resolution before you in July. In coordination and with assistance from the Finance Department we are seeking to resolve this now. Council's support is respectfully requested.

**KENAI CITY COUNCIL – REGULAR MEETING  
SEPTEMBER 7, 2022 – 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 September 7, 2022, in City Hall Council Chambers, Kenai, AK. Mayor Gabriel called the meeting to order at approximately 6:00 p.m.

**1. Pledge of Allegiance**

Mayor Gabriel led those assembled in the Pledge of Allegiance.

**2. Roll Call**

There were present:

Brian Gabriel, Mayor  
Teea Winger  
Glenese Pettey  
Henry Knackstedt

James Baisden  
Deborah Sounart  
Jim Glendening, Vice Mayor

A quorum was present.

Also in attendance were:

\*\*Silas Thibodeau, Student Representative  
Paul Ostrander, City Manager  
Scott Bloom, City Attorney  
Dave Ross, Police Chief  
Scott Curtain, Public Works Director  
Shellie Saner, City Clerk

**3. Agenda Approval**

Mayor Gabriel noted the following additions to the Packet:

Add item O.

**Information Items**

- Dog Park, Thursday, September 1, 2022

**MOTION:**

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

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

**4. Consent Agenda**

**MOTION:**

Council Member Knackstedt **MOVED** to approve the consent agenda. Council Member Pettey **SECONDED** the motion.

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

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

**UNANIMOUS CONSENT** was requested.

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

\*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** – None.

**C. UNSCHEDULED PUBLIC COMMENTS**

Bob Molloy stated his appreciation for the Kenai Fire Department (KFD) for their ability to help recover COVID vaccination documents and the contributions they make to public health and safety; he encouraged continued support for KFD clinics.

Marian Nelson provided an update on the Annual Harvest Auction scheduled for September 24, 2022; and reported on facility repairs and upgrades.

**D. PUBLIC HEARINGS**

- 1. Ordinance No. 3304-2022** - Increasing Estimated Revenues and Appropriations in the Airport Special Revenue and Airport Improvements Capital Project Funds for Kenai Municipal Airport Disadvantage Business Enterprise Program Updates. (Administration)

**MOTION:**

Council Member Knackstedt **MOVED** to enact Ordinance No. 3304-2022. Council Member Baisden **SECONDED** the motion.

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

**VOTE:**

YEA: Sounart, Pettey, Winger, Knackstedt, Gabriel, Glendening, Baisden

NAY: None

\*\*Student Representative Thibodeau: YEA

**MOTION PASSED.**

- 2. Ordinance No. 3305-2022** - Conditionally Granting Certain Foreclosed City-Owned Properties Described as Lots 8 & 11, Block 9 and Lot 4, Block 10, Mommsen's Replat of Additions No. 1 & 2 (Parcel Numbers 03910211, 03910208 and 03910304) to Central Peninsula Habitat for Humanity, Inc. for Construction of Housing. (Administration)

**MOTION:**

Council Member Knackstedt **MOVED** to enact Ordinance No. 3305-2022. Council Member Winger **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.

There was discussion regarding similar land donations in the past; the importance of affordable housing in the City; and the process and requirements when building the homes.

**VOTE:**

YEA: Pettey, Winger, Knackstedt, Gabriel, Glendening, Baisden, Sounart

NAY: None

\*\*Student Representative Thibodeau: YEA

**MOTION PASSED.**

3. **Resolution No. 2022-62** – Supporting the Kenai Peninsula Borough’s Application for a Safe Streets and Roads for All Action Plan Grant and Authorizing the City of Kenai to be Included as a Joint Applicant. (Administration)

**MOTION:**

Council Member Knackstedt **MOVED** to adopt Resolution No. 2022-62. Council Member Pettey **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.

Clarification was provided regarding this being a planning grant to determine safe travel routes for vehicles, pedestrians, bicycles, etc.; there would be a 20% match requirement; and if the City was not part of the planning grant process, they would not be eligible later for the implementation grant.

**UNANIMOUS CONSENT** was requested.

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

4. **Resolution No. 2022-63** – Awarding a Professional Services Agreement and Corresponding Purchase Order for Professional Mechanical and Electrical Engineering Services for the Kenai Municipal Airport (KMA) Operations Building HVAC Controls and Boiler Replacement Project. (Administration)

**MOTION:**

Council Member Baisden **MOVED** to adopt Resolution No. 2022-63. Council Member Knackstedt **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.

There was discussion regarding the contractor being the same one who did the original design and having the original drawings; and the benefits of staggering the replacement process.

**UNANIMOUS CONSENT** was requested.

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

**E. MINUTES**

1. \*Regular Meeting of August 17, 2022. (City Clerk)

**F. UNFINISHED BUSINESS** – None.

**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. 3306-2022** - Amending Kenai Municipal Code 7.15.020 Purchases Requiring Council Approval, to Provide Increased Flexibility for the Administration to Conduct City Business while Maintaining Sufficient Safeguards to Protect the Public Interest. (Baisden)

Introduced by the consent agenda and Public Hearing set for September 21, 2022.

4. **\*Ordinance No. 3307-2022** - Amending Kenai Municipal Code 7.25.020 – City Budget Control, to Provide Increased Flexibility in the Expenditure of Funds and Management of City Budgets while Maintaining Adequate Internal Controls to Protect the Public's Interest. (Baisden)

Introduced by the consent agenda and Public Hearing set for September 21, 2022.

5. **\*Ordinance No. 3308-2022** - Accepting and Appropriating a Grant from the State of Alaska for the Purchase of Library Materials. (Administration)

Introduced by the consent agenda and Public Hearing set for September 21, 2022.

6. **\*Ordinance No. 3309-2022** - Accepting and Appropriating Funds from the Public Library Association and AT&T for the Kenai Community Library's Participation in the PLA Digital Literacy Workshop Training Incentive. (Administration)

Introduced by the consent agenda and Public Hearing set for September 21, 2022.

7. **\*Ordinance No. 3310-2022** - Increasing Estimated Revenues and Appropriations in the General Fund, Police Department, for the Receipt of a Vehicle Forfeited to the State of Alaska. (Administration)

Introduced by the consent agenda and Public Hearing set for September 21, 2022.

8. **\*Ordinance No. 3311-2022** - Determining that Real Property Described as Lot 5, Block 1, Gusto Subdivision Addition No. 1, According to Plat No. 83-126 KRD, City-Owned Airport Land Located Outside the Airport Reserve, is not Needed for a Public Purpose, Waiving KMC 22.05.095 Methods of Sale or Disposal and Authorizing the Sale of the Property to Aaron Swanson DBA Forever Business Plaza LLC. (Administration)

Introduced by the consent agenda and Public Hearing set for September 21, 2022.

9. **\*Ordinance No. 3312-2022** - Determining Lot 4, Block 1, Gusto Subdivision Addition No. 1 Amended is not Needed for a Public Purpose and Approving the Execution of a Lease with an Option to Purchase between the City of Kenai and Aaron Swanson for the Property. (Administration)

Introduced by the consent agenda and Public Hearing set for September 21, 2022.

10. **\*Ordinance No. 3313-2022** - Accepting and Appropriating Funds from the State of Alaska Department of Natural Resources, Division of Forestry and the United States Department of Agriculture, Forest Service to Support the City's Spruce Beetle Mitigation and Hazard Fuel Reduction Program and Authorizing the City Manager to Execute a Memorandum of Agreement for this Funding. (Administration)

Introduced by the consent agenda and Public Hearing set for September 21, 2022.

11. **\*Ordinance No. 3314-2022** - Extending the Time Period for Completion of the Action Items Necessary for the Conditional Donation of an Approximate 2 Acre Parcel to be Subdivided from a Portion of the 6.8 Acre More or Less Portion of the East of Tract 4A, Baron Park 2020 Replat (KPB Parcel No. 04501035) to Triumvirate Theatre for the Development of a Theatre Facility. (Administration)

Introduced by the consent agenda and Public Hearing set for September 21, 2022.

- 12. \*Ordinance No. 3315-2022** - Increasing Estimated Revenues and Appropriations in the General Fund and Public Safety Capital Project Fund for Costs in Excess of Budgeted Amounts for the fire Department Apparatus Bay Floor Refinishing Project. (Administration)

Introduced by the consent agenda and Public Hearing set for September 21, 2022.

- 13. Ordinance No. 3316-2022** - Amending Kenai Municipal Code 14.20.150-Conditional Use Permits, to Further Clarify Roles and Responsibilities of Applicants, the Planning Director, and the Planning Commission in the Conditional Use Process. (Glendening)

**MOTION:**

Vice Mayor Glendening **MOVED** to introduce Ordinance No. 3316-2022, refer the ordinance to the Planning and Zoning Commission for consideration and recommendation at their September 14, 2022 meeting; and schedule the public hearing before City Council for September 21, 2022. Council Member Knackstedt **SECONDED** the motion.

**UNANIMOUS CONSENT** was requested on the motion.

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

**H. COMMISSION / COMMITTEE REPORTS**

1. Council on Aging

No report.

2. Airport Commission

No report, next meeting September 8, 2022.

3. Harbor Commission

No report, next meeting November 7, 2022.

4. Parks and Recreation Commission

Council Member Winger reported on the September 1, 2022 meeting.

5. Planning and Zoning Commission

Vice Mayor Glendening reported on the August 24, 2022 meeting.

6. Beautification Committee

No report, next meeting September 13, 2022.

7. Mini-Grant Steering Committee

Mayor Gabriel reported on the August 26, 2022 meeting.

**I. REPORT OF THE MAYOR**

Mayor Gabriel reported on the following:

- Attendance and participation as the Master of Ceremonies during the Industry Appreciation Event; and recommended additional focus on activities for children at future events.
- Attendance at the Soup Supper Fundraiser for the Kenai Peninsula Food Bank.

**J. ADMINISTRATION REPORTS**

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



- September 21, 2021 Joint Work Session with all City of Kenai Boards and Commissions to receive the final Waterfront Revitalization Report from the McKinley Group.
- Meeting with Peter Evon, Executive Director for the Kenaitze Indian Tribe; reporting to the Tribal Council regarding possible joint projects and a possible joint meeting with the Tribe and City Council.
- Increased code enforcement issues; the current process being complaint driven; and the need for future discussion regarding a more proactive enforcement role by the City.
- Upcoming Silver Salmon Derby; and the prizes.
- Working through the Army Corps of Engineers process for the Bluff Erosion project.

2. City Attorney – No Report

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

- Logic and Accuracy Testing at the Kenai Peninsula Borough for the upcoming Regular Election.
- Absentee Voting for the Regular Election will begin on September 19, 2022.

**K. ADDITIONAL PUBLIC COMMENTS**

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

Marian Nelson addressed the Council in favor of making improvements to Lawton Drive; and increased snow removal on sidewalks.

2. Council Comments

Student Representative Thibodeau reported on the upcoming Kenai Central High School, Home Coming activities; and provided a sports and band update.

Council Member Sounart noted that the recent conditional use permit appeals helped her identify the Home Occupation Permit requirement within the city; she suggested working with the Kenai Peninsula Boroughs Sales Tax department to help make residents aware of these types of requirements.

Council Member Winger reported she toured the new Kenaitze Education Center and attended the recent city employee retirement parties; thanked Max Best for filling in as the Interim Planning Director; and reminded everyone to keep an eye open for the upcoming Fall Carnivals.

Council Member Knackstedt reported touring the new Kenaitze Education Center and commended the architectural design, noting the class rooms were of the river.

**L. EXECUTIVE SESSION – None.**

**M. PENDING ITEMS – None.**

**N. ADJOURNMENT**

**O. INFORMATIONAL ITEMS**

1. Purchase Orders Between \$2,500 and \$15,000.

There being no further business before the Council, the meeting was adjourned at 7:18 p.m.

I certify the above represents accurate minutes of the Kenai City Council meeting of September 7, 2022.

---

Michelle M. Saner, MMC  
City Clerk

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

DRAFT

**PAYMENTS OVER \$15,000.00 WHICH NEED COUNCIL RATIFICATION  
COUNCIL MEETING OF: SEPTEMBER 21, 2022**

<b>VENDOR</b>	<b>DESCRIPTION</b>	<b>DEPARTMENT</b>	<b>ACCOUNT</b>	<b>AMOUNT</b>
PERS	PERS	VARIOUS	LIABILITY	98,853.65
HOMER ELECTRIC	ELECTRIC USAGE	VARIOUS	UTILITIES	106,332.76
REBORN AGAIN JANITORIAL	AUGUST SERVICES	AIRPORT	REPAIR & MAINTENANCE	4,231.25

**INVESTMENTS**

<b>VENDOR</b>	<b>DESCRIPTION</b>	<b>MATURITY DATE</b>	<b>AMOUNT</b>	<b>Effect. Int.</b>
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## MEMORANDUM

**TO:** Mayor Gabriel and Council Members

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Eland Conway, Airport Manager

**DATE:** September 8, 2022

**SUBJECT:** **Ravn Alaska, LLC. – Special Use Permit**

---

Corvus Airlines, Inc, d/b/a Ravn Alaska, LLC requests a special use permit to use 1,200 square feet of warm storage for storage of a De-ice vehicle. The special use permit will be effective for seven months beginning October 1, 2022 to April 30, 2023. The monthly fee will be \$1,200 plus applicable sales tax.

Your consideration is appreciated.

## SPECIAL USE PERMIT

The **CITY OF KENAI** (City), for the consideration, and pursuant to the conditions set out below, hereby grants to **CORVUS AIRLINES, INC, d/b/a RAVN ALASKA, LLC** (PERMITTEE) the non-exclusive right to use 1,200 square feet of area as described below:

Tract A FBO Subdivision consisting of approximately 1,200 square feet in an area described as Warm Storage 1.

and as further shown in the attached Exhibit A.

1. **TERM.** This special use permit shall be for approximately seven (7) months from October 1, 2022 to April 30, 2023.
2. **PERMIT FEES.** The Permittee shall be charged a monthly permit fee of \$1,200 plus applicable sales tax.

The Permittee shall pay the City the permit fee by the 10<sup>th</sup> day of the preceding month.

Checks, bank drafts, or postal money orders shall be made payable to the City of Kenai and delivered to the City Hall, 210 Fidalgo Avenue, Kenai, Alaska 99611.

In addition to the permit fee specified above, the Permittee agrees to pay to the appropriate parties all levies, assessments, and charges as hereinafter provided:

- A. Sales tax not enforced, or levied in the future, computed upon the permit fee payable in monthly installments whether said fee is paid on a monthly or yearly basis;
  - B. All necessary licenses and permits; all lawful taxes and assessments which, during the term hereof may become a lien upon or which may be levied by the State, Borough, City, or by any other tax levying body, upon any taxable possessory right which Permittee may have in or to the Premises by reason of its use or occupancy or by reason of the terms of this Permit, provided however, that nothing herein contained shall prevent Permittee from contesting any increase in such tax or assessment through procedures provided by law.
  - C. Interest at the rate of eight percent (8%) per annum and penalties of ten percent (10%) of any amount of money owed under this Special Use Permit which are not paid on or before the due date.
  - D. Costs and expenses incident to this Special Use Permit, including but not limited to recording costs.
  - E. Annual Special Use Permit Application fee of \$100.00 plus applicable sales tax.
3. **USE.** The use by the Permittee of the Premises is limited to the purpose of Storage for De-ice Vehicle. This use is subject to City, Borough, and State laws and regulations and the

reasonable administrative actions of the City for the protection and maintenance of the Premises and of adjacent and contiguous lands or facilities. Use of the Premises is subject to the following conditions:

- A. Permittee shall use the Premises only for storage of one de-ice vehicle.
  - B. The premises shall be returned to its current condition prior to the end of the term of this Special Use Permit.
4. **INSURANCE.** Permittee shall secure and keep in force adequate insurance, as stated below, to protect City and Permittee. Where specific limits are stated, the limits are the minimum acceptable limits. If Permittee's insurance policy contains higher limits, the City is entitled to coverage to the extent of the higher limits.
- A. Garage Liability or Commercial General Liability Insurance, including Premises, all operations, property damage, personal injury and death, broad-form contractual, with a per-occurrence limit of not less than \$1,000,000 combined single limit. The policy must name the City as an additional insured.
  - B. Worker's Compensation Insurance with coverage for all employees engaged in work under this Permit or at the Premises as required by AS 23.30.045. Permittee is further responsible to provide Worker's Compensation Insurance for any subcontractor who directly or indirectly provides services to Permittee under this Permit.
  - C. Commercial Automobile Coverage with not less than \$1,000,000 combined single limit per occurrence. This insurance must cover all owned, hired, and non-owned motor vehicles the Permittee uses for snow moving and storage activities to, from, or on the Premises. The policy must name the City as an additional insured.
  - D. All insurance required must meet the following additional requirements:
    - i. All policies will be by a company/corporation currently rated "A-" or better by A.M. Best.
    - ii. Permittee shall submit to the City proof of continuous insurance coverage in the form of insurance policies, certificates, endorsements, or a combination thereof, and signed by a person authorized by the insurer to bind coverage on its behalf.
    - iii. Permittee shall request a waiver of subrogation against City from Permittee's insurer and the waiver of subrogation, where possible, shall be provided at no cost to City.
    - iv. Provide the City with notification at least 30 days before any termination, cancellation, or material change in insurance coverage of any policy required hereunder.



- v. Evidence of insurance coverage must be submitted to City by October 1, 2022. The effective date of the insurance shall be no later than October 1, 2022.
  - vi. This insurance shall be primary and exclusive of any other insurance carried by the City of Kenai. This insurance shall be without limitation on the time within which the resulting loss, damage, or injury is actually sustained.
5. **INDEMNITY, DEFEND, AND HOLD HARMLESS AGREEMENT.** The Permittee shall fully indemnify, hold harmless, and defend the City of Kenai, its officers, agents, employees, and volunteers at its own expense from and against any and all actions, damages, costs, liability, claims, losses, judgments, penalties, including reasonable Attorney's fees of or for liability for any wrongful or negligent acts, errors, or omissions of the Permittee, its officers, agents or employees, or any subcontractor under this Permit. The Permittee shall not be required to defend or indemnify the City for any claims of or liability for any wrongful or negligent act, error, or omission solely due to the independent negligence of the City. If there is a claim of or liability for the joint negligence of the Permittee and the independent negligence of the City, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. Apportionment shall be established upon final determination of the percentage of fault. If any such determination is by settlement, the percentage of fault attributed to each party for purposes of this indemnification provision shall only be binding upon the parties included in the settlement agreement. "Permittee" and "City" as used in this article include the employees, agents, officers, directors, and other contractors who are directly responsible, respectively, for each party. The term "independent negligence of the City" is negligence other than in the City's selection, administration, monitoring, or controlling of the Permittee.
6. **PERMITTEE'S OBLIGATION TO PREVENT AND REMOVE LIENS.** Permittee will not permit any liens, including mechanic's, laborer's, construction, supplier's, mining, or any other liens obtainable or available under existing law, to stand against the Premises or improvements on the Premises for any labor or material furnished to Permittee or to any related entity or claimed entity. The Permittee shall have the right to provide a bond as contemplated by State of Alaska law and contest the validity or amount of any such lien or claimed lien. Upon the final determination of the lien or claim for lien, the Permittee will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Permittee's own expense.
7. **PERSONALTY.** Permittee shall remove any and all personal property, including all vehicles, from the Premises at the termination of this Permit. Personal property placed or used upon the Premises and not removed upon termination of this Permit will be removed and/or impounded by the City. Property removed or impounded by the City may be redeemed by the owner thereof only upon the payment to the City of the costs of removal plus a storage fee of \$25 per day. The City of Kenai is not responsible for any damage to or theft of any personalty of Permittee or its customers.
8. **FORBEARANCE.** Failure to insist upon a strict compliance with the terms, conditions, and/or any requirement herein contained, or referred to, shall not constitute or be construed as a waiver or relinquishment of the right to exercise such terms, conditions, or requirements.

- 9. **TERMINATION, DEFAULT.** This Permit may be terminated by either party hereto by giving 30 days advance written notice to the other party. The City may terminate the Permit immediately, or upon notice shorter than 30 days, to protect public health and safety. The City may also terminate this Permit immediately, or upon notice shorter than 30 days, due to a failure of Permittee to comply with conditions and terms of this Permit, which failure remains uncured after notice by City to Permittee providing Permittee with a reasonable time period to correct the violation or breach.
- 10. **NO DISCRIMINATION.** Permittee 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. Permittee recognizes the right of the City to take any action necessary to enforce this requirement.
- 11. **ASSIGNMENT.** Permittee may not assign, by grant or implication, the whole any part of this Permit, the Premises, or any improvement on the Premises without the written consent of the City. Unless the City specifically releases the Permittee in writing, the City may hold the Permittee responsible for performing any obligation under this permit which an assignee fails to perform.
- 12. **ASSUMPTION OF RISK.** Permittee shall provide all proper safeguards and shall assume all risks incurred in its activities on the Premises and its exercise of the privileges granted in this Permit.
- 13. **NO JOINT VENTURE.** The City shall not be construed or held to be a partner or joint venturer of Permittee in the conduct of its business or activities on the Premises.
- 14. **SURVIVAL.** The obligations and duties of Permittee under paragraphs 5 and 6 of this Permit shall survive the cancellation, termination, or expiration of this Permit.
- 15. **AUTHORITY.** By signing this Permit, Permittee represents that is has read this agreement and consents to be bound by the terms and conditions herein and that the person signing this Permit is duly authorized by the business to bind the business hereunder.

**CITY OF KENAI**

**Corvus Airlines, Inc. dba Ravn Alaska, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Paul Ostrander  
City Manager

Date:

Dallas Anthony  
Director of Airports

Date:

**ACKNOWLEDGMENTS**

STATE OF ALASKA )  
 ) ss  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_day of \_\_\_\_\_, 2022, the foregoing instrument was acknowledged before me by Paul Ostrander, City Manager of the City of Kenai, Alaska, an Alaska home rule municipality, on behalf of the City.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA )  
 ) ss  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_day of \_\_\_\_\_, 2022, the foregoing instrument was acknowledged before me by Dallas Anthony, Director of Airports of Corvus Airlines, Inc. dba Ravn Alaska, LLC, an Alaska limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott Bloom, City Attorney



Sponsored by: Administration

**CITY OF KENAI  
ORDINANCE NO. 3317-2022**

AN ORDINANCE INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE AIRPORT FUND AND APPROPRIATING FUNDS IN THE AIRPORT SNOW REMOVAL EQUIPMENT CAPITAL PROJECT FUND FOR THE PURCHASE OF SNOW REMOVAL EQUIPMENT ATTACHMENTS AND INSTALLATION OF A GATE.

WHEREAS, on August 9, 2022, the Airport (ENA) submitted to the Federal Aviation Administration (FAA) a Project Application for a grant for Federal funds for a project associated with ENA in the amount of \$150,000; and,

WHEREAS, on September 9, 2022, the FAA approved a project for the Kenai Municipal Airport consisting of installation of a cantilever gate, and acquiring a snow removal equipment edge light cleaning attachment; and,

WHEREAS, the obligation of the FAA is 93.75%, or \$140,625; and,

WHEREAS, the obligation of ENA is 6.25%, or \$9,375; and,

WHEREAS, this project will significantly improve snow removal operational efficiency, and reduce fuel consumption; and,

WHEREAS, the airport solicited written quotes for the installation of a sliding cantilever gate in September 2022; and,

WHEREAS, the airport is seeking concurrence from the FAA for a noncompetitive bid procuring an edge light cleaning attachment available from only one manufacturer; and,

WHEREAS, this appropriation is in the best interest of the City.

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

**Section 1.** That the City Manager is authorized to accept a grant in the amount of \$140,625.

**Section 2.** That the following budget revision is authorized:

Airport Special Revenue Fund:

Increase Estimated Revenues –	
Appropriation of Fund Balance	<u>\$9,375</u>
Increase Appropriations –	
Transfer to Airport Snow Removal Equipment Capital Fund	<u>\$9,375</u>

Airport Snow Removal Capital Project Fund:

Increase Estimated Revenues –	
Transfer from Airport Special Revenue Fund	\$ 9,375
Federal Grants	<u>140,625</u>
	<u>\$150,000</u>

Increase Appropriations –  
Equipment

\$150,000

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


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

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.

\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Saner, MMC, City Clerk

Approved by Finance: 

Introduced: September 21, 2022  
Enacted: October 05, 2022  
Effective: October 05, 2022



## MEMORANDUM

**TO:** Mayor Gabriel and Council Members

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Eland Conway, Airport Manager

**DATE:** September 12, 2022

**SUBJECT:** **Ordinance No. 3317-2022 - Increasing Estimated Revenues and Appropriations in the Airport Special Revenue Fund and Appropriating Funds in the Airport Snow Removal Capital Project Fund**

---

The Kenai Municipal Airport (ENA) applied for FAA grant funds to install a sliding cantilever gate, and acquire a snow removal equipment edge light cleaning attachment on August 9, 2022. The FAA provided the grant agreement for execution on September 9, 2022, and the agreement was fully executed on Monday, September 12, 2022.

This ordinance transfers and appropriates the 6.25% (\$9,375) Airport share of the \$150,000 project from the Airport Special Revenue Fund to the Airport Snow Removal Capital Project Fund. It also accepts and appropriates the 93.75% (\$140,625) FAA share of the project into the Airport Snow Removal Capital Project Fund. A separate Resolution authorizes the execution of this grant due to timing restrictions.

This capital project includes the installation of a sliding cantilever gate, and edge light cleaning attachment for the snow blower. The sliding cantilever gate makes available an additional 36,000 square feet of snow storage area in an area where snow storage is limited, is required to be hauled away, and encroaches on wing tip clearance. The edge light cleaning attachment is fit to an existing snow blower, it will significantly increase light cleaning efficiency and reduce by half the amount of equipment and personnel required to traditionally clear edge lights.

Council's support is respectfully requested.





# KENAI

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

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council

**FROM:** Shellie Saner, City Clerk

**DATE:** September 21, 2022

**SUBJECT:** **October 4, 2022 Regular City Election – Precinct Election Boards**

Pursuant to Kenai Municipal Code 6.20.020(a), the Clerk, subject to approval by the Council shall appoint an election board of at least four judges in a precinct. The following persons have consented to serve as election officials, Council approval is respectfully requested.

Kenai No. 1, 07-015	Kenai No. 2, 07-020	Kenai No. 3, 07-025
Carol Freas	Barbara Norbeck	Sharon Efta
June Harris	Karen Monell	Deborah Sounart
Kit Hill	TBD	Mike Efta
Paul Klaben	TBD	Michael Sounart
Joan Seaman		Rebecca Lunsford
Susan Smalley		
Virginia Walters		

Thank you for your consideration.



# KENAI

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

## MEMORANDUM

**TO:** Mayor Gabriel and Council Members

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Terry Eubank, Finance Director

**DATE:** August 9, 2022

**SUBJECT:** **Kenai Senior Center as a residual beneficiary of The Tamara Diane Cone Testamentary Trust**

The City received notice via letter dated July 12, 2022 that the Kenai Senior Center is a residual beneficiary of The Tamara Diane Cone Testamentary Trust. Miss Cone passed on July 2, 2022 and per the trust documents, the Kenai Senior Center is to receive one third (1/3) of the trust residual balance. The estimated value of the City’s one third (1/3) distribution is approximately \$700,000. The purpose of this memo is to seek Council’s direction for these funds. Besides being left explicitly to the Kenai Senior Center, no other limitations were place upon the use of the funds.

General guidance for municipal budgeting is to utilize recurring revenues for operational expenditures and one-time sources of revenue for nonrecurring expenditures. The logic being that once a nonrecurring revenue source is spent it is gone and a new source of revenue would be needed to continue to support operational needs versus utilizing the revenue for a one-time capital expenditure. Following this logic, it is recommended that these funds either be used for nonrecurring expenditures or structured to provide a consistent revenue stream over time to support an operational need.

Employing this guidance, potential Options for the use of these funds are:

### OPTION 1

Recognize the revenue in the City’s General Fund, establish a commitment, via ordinance, of General Fund, Fund Balance in the same amount, and appropriate the funds in the future, via ordinance, as specific nonrecurring projects are identified. The funds would be invested with the City’s non-permanent fund investments due to the potential short-term life of the funds.

Examples of nonrecurring expenditures can be found in the adopted City of Kenai Capital Improvement Plan for fiscal years 2023-2027:

- |  |           |
|--|-----------|
| 1. FY2024 – Emergency Backup Generator           | \$125,000 |
| 2. FY2025 – Senior Center South Lawn Landscaping | 40,000    |

## 3. FY2026 – Community Fire Pit &amp; Memorial Benches

35,000

**OPTION 2**

Establish a Kenai Senior Center Permanent Fund, via ordinance, in Kenai Municipal Code with similar or the same annual distribution guidelines as used by the City's Airport Permanent Fund. Annual distributions could be for any operational or nonrecurring expenditures approved by Council during the annual budget process. Funds would be invested in the same manner as the City's permanent funds.

**OPTION 3**

Establish a Kenai Senior Center Permanent Fund, via ordinance, in Kenai Municipal Code limiting distributions for nonrecurring expenditures to the amount above the fund's inflation adjusted balance. In other words, funds available for projects or other nonrecurring expenditures would be limited to the funds fair market value less the fund's initial balance, adjusted for inflation. Funds would be invested in the same manner as the City's permanent funds.



**KENAI AIRPORT COMMISSION  
REGULAR MEETING  
SEPTEMBER 8, 2022 – 6:00 P.M.  
KENAI CITY COUNCIL CHAMBERS  
CHAIR GLENDA FEEKEN, PRESIDING**

**MEETING SUMMARY**

**1. CALL TO ORDER**

Chair Feeken called the meeting to order at 6:00 p.m.

**a. Pledge of Allegiance**

Chair Feeken led those assembled in the Pledge of Allegiance.

**b. Roll was confirmed as follows:**

Commissioners Present: G. Feeken, P. Minelga, D. Pitts, J. Caldwell, J. Zirul,  
J. Daily (via Zoom; unable to vote due to technical issues)

Commissioners Absent: J. Bielefeld

Staff/Council Liaison Present: Airport Manager E. Conway, Administrative Assistant E.  
Brincefield, Council Liaison Baisden

A quorum was present.

**c. Agenda Approval**

**MOTION:**

Commissioner Zirul **MOVED** to approve the agenda and Commissioner Caldwell **SECONDED** the motion. There were no objections; **SO ORDERED**.

**2. SCHEDULED PUBLIC COMMENT – None.**

**3. UNSCHEDULED PUBLIC COMMENT – None.**

**4. APPROVAL OF MEETING SUMMARY**

**a. August 11, 2022**

It was noted that the summary showed Commissioner Pitts as absent when he had been present for the meeting, and that the word “enplanements” was misspelled under the Manager’s Report.

**MOTION:**

Commissioner Zirul **MOVED** to approve the meeting summary of August 11, 2022 with the noted corrections. Commissioner Pitts **SECONDED** the motion. There were no objections; **SO ORDERED**.

**5. UNFINISHED BUSINESS – None.**

**6. NEW BUSINESS**

**a. Discussion/Recommendation – Recommending the Kenai City Council Approve a**

Special Use Permit to Corvus Airlines, Inc. d/b/a Ravn Alaska LLC for 1,200 Square Feet of Warm Storage of a De-Ice Vehicle.

**MOTION:**

Commissioner Zirul **MOVED** to recommend Council approve a Special Use Permit to Corvus Airlines, Inc. d/b/a Ravn Alaska. Commissioner Pitts **SECONDED** the motion.

It was noted that this was a standard Special Use Permit, and was beneficial to the airport as well as Ravn Alaska.

**UNANIMOUS CONSENT** was requested.

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

- b. **Discussion/Recommendation** – Recommending the Kenai City Council Adopt Resolution No. 2022-XX - Amending the Kenai Municipal Airport (ENA) Aircraft Parking Fees Effective June 1, 2022.

**MOTION:**

Commissioner Caldwell **MOVED** to recommend Council adopt a resolution amending the Kenai Municipal Airport Aircraft Parking Fees. Commissioner Zirul **SECONDED** the motion.

Clarification was provided that the resolution amended the rates and fees to accommodate aircraft using apron parking for short turnaround time.

**UNANIMOUS CONSENT** was requested.

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

- c. **Discussion/Recommendation** – Recommending the Kenai City Council Enact Ordinance No. 3311-2022 - Determining that Real Property Described as Lot 5, Block 1, Gusty Subdivision Addition No. 1, According to Plat No. 83-126 KRD, City-Owned Airport Land Located Outside the Airport Reserve, is not Needed for a Public Purpose, Waiving KMC 22.05.095 Methods of Sale or Disposal and Authorizing the Sale of the Property to Aaron Swanson DBA As Forever Business Plaza LLC.

Chair Feeken declared a conflict of interest, stating that Aaron Swanson is a client of hers; she recused herself from voting.

**MOTION:**

Commissioner Caldwell **MOVED** to recommend Council enact Ordinance No. 3311-2022. Commissioner Zirul **SECONDED** the motion.

Clarification was provided that this property is located on the Kenai Spur Highway where an old car wash is located.

**VOTE:**

YEA: Minelga, Zirul, Caldwell, Pitts

NAY: None.

**MOTION PASSED UNANIMOUSLY.**

- d. **Discussion/Recommendation** –Recommending the Kenai City Council Enact Ordinance No. 3312-2022 - Determining Lot 4, Block 1, Gusty Subdivision Addition No. 1 Amended is not Needed for a Public Purpose and Approving the Execution of a Lease with an Option to Purchase between the City of Kenai and Aaron Swanson for the Property.

Chair Feeken declared a conflict of interest, stating that Aaron Swanson is a client of hers; she recused herself from voting.

**MOTION:**

Commissioner Caldwell **MOVED** to recommend Council enact Ordinance No. 3312-2022. Commissioner Zirul **SECONDED** the motion.

Clarification was provided that this property is adjacent to the lot in Ordinance No. 3311-2022. A new lease form will be used, because the lessee is looking to purchase the property.

**VOTE:**

YEA: Minelga, Zirul, Caldwell, Pitts

NAY: None.

**MOTION PASSED UNANIMOUSLY.**

**7. REPORTS**

a. **Airport Manager** – Airport Manager Conway reported on the following:

- Parking Revenue continues to grow; August is up 32%.
- My Alaskan Gifts did well; 20% of gross sales; further financial information provided.
- There will be a resolution going before Council for spruce beetle mitigation.
- ENA received new broom/blower this week.
- Upcoming projects and grant funding.

b. **City Council Liaison** – Council Member Baisden reminded the Commission about the upcoming work session.

**8. NEXT MEETING ATTENDANCE NOTIFICATION** – October 13, 2022

**9. COMMISSIONER COMMENTS AND QUESTIONS** – None.

**10. ADDITIONAL PUBLIC COMMENT** – None.

**11. INFORMATION ITEMS**

a. July 2022 Enplanement Report

**12. ADJOURNMENT**

There being no further business before the Commission, the meeting was adjourned at 6:27 p.m.

Meeting summary prepared and submitted by:

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Meghan Thibodeau  
Deputy City Clerk

**MINI-GRANT STEERING COMMITTEE  
AUGUST 26, 2022 – 10:00 A.M.  
KENAI CITY HALL  
KENAI CITY COUNCIL CHAMBERS  
CHAIR BRIAN GABRIEL, PRESIDING**

**MEETING SUMMARY**

**1. CALL TO ORDER & ROLL CALL**

Chair Gabriel called the meeting to order at approximately 10:00 a.m.

Roll was confirmed as follows:

Members present: B. Gabriel, S. Douthit, M. Bernard, B. Perry

Members absent:

A quorum was present.

**2. AGENDA APPROVAL**

**MOTION:**

Committee Member Douthit **MOVED** to approve the agenda as presented. Committee Member Perry **SECONDED** the motion. There were no objections; **SO ORDERED**.

**3. APPROVAL OF MEETING SUMMARY**

- a. July 15, 2022

It was requested that under Announcements, the wording be changed to “Perry noted that this is his first meeting.”

**MOTION:**

Committee Member Douthit **MOVED** to approve the meeting summary from July 15, 2022 with the requested revision. Committee Member Perry **SECONDED** the motion. There were no objections; **SO ORDERED**.

**4. PERSONS SCHEDULED TO BE HEARD**

- a. Ned Whitney, Peninsula Crime Stoppers

Ned Whitney noted that Peninsula Crime Stoppers has been partnering with the Kenai Police Department and Walmart to utilize the P3 Navigate 360 program. He explained how the program can help identify criminals globally as well as locally, and played a role in solving the local disappearance of Anesha “Duffy” Murnane. He provided clarification on how the program is used to provide anonymous tips to authorities, and provided a demonstration of the web-based version of the program.

Further discussion involved local advertising and outreach efforts. Clarification was provided that the P3 program is monitored 24/7 by the Kenai Police Department, but is not yet integrated with the Alaska State Troopers tip system. He explained that the annual cost is \$3600, and advertising and marketing costs are provided through fundraising; in previous years the annual fee had been paid for through fundraising as well. He clarified that the mini-grant would go towards paying the annual fee, and explained their current financial status along with fundraising and marketing efforts.

**5. PERSONS PRESENT NOT SCHEDULED TO BE HEARD – None.**



Chair Gabriel requested the rules be suspended to hear New Business before Unfinished Business.

## 7. NEW BUSINESS

- a. Review of Mini-Grant Application for Award
  - Peninsula Crime Stoppers – Navigate 360 Anonymous Tips

### MOTION:

Committee Member Douthit **MOVED** to approve the Mini-Grant application for Peninsula Crime Stoppers – Navigate 360 Anonymous Tips. Committee Member Perry **SECONDED** the motion.

The committee reviewed the application and discussed the scope of projects eligible for mini grant funding, and considered how the program benefits the community and whether it qualifies as new and innovative. It was noted that advertising and public awareness of the program is important as its success is user-based.

The committee discussed providing the mini-grant once all but \$500 of the project's goal has been raised; and also that the applicant report back within a year about how effective that donation was within the City of Kenai, how much funds were raised in total, and how much of the funds were spent on local advertising.

### MOTION TO AMEND:

Committee Member Perry **MOVED** to amend approval to specify that the \$500 mini-grant will be provided once the applicant has shown that all but \$500 has been raised of their funding goal, and that the applicant will provide a report of the program's effectiveness to the City of Kenai within one year. Committee Member Douthit **SECONDED** the motion.

**UNANIMOUS CONSENT** was requested for the amendment.

**VOTE ON AMENDMENT:** There were no objections; **SO ORDERED.**

**UNANIMOUS CONSENT** was requested for the main motion as amended.

**VOTE ON MAIN MOTION AS AMENDED:** There were no objections; **SO ORDERED.**

## 6. UNFINISHED BUSINESS

- a. Review of Mini-Grant Application for Award
  - Kenai Central High School Construction – Dog Park Ramp/House

Chair Gabriel noted that during the meeting of July 15, 2022, this action was postponed to this meeting; a motion to approve is on the floor.

Clarification was provided that the Clerk's Office had reached out to the applicant several times over voicemail and email, and had not received a response.

It was noted that the school year had just begun and the applicant may be busy. The committee considered postponing again to provide more time for the applicant to respond.

### MOTION TO POSTPONE:

Committee Member Perry **MOVED** to postpone the Mini-Grant application for Kenai Central High School Construction – Dog Park Ramp/House until September 27, 2022; or if the applicant does not respond, until the next Mini-Grant Steering Committee Meeting. Committee Member Douthit **SECONDED** the motion.

**UNANIMOUS CONSENT** was requested for the motion to postpone.

**VOTE ON POSTPONEMENT:** There were no objections; **SO ORDERED.**

**8. ANNOUNCEMENT** – None.

**9. ADJOURNMENT**

There being no further business before the Committee, the meeting was adjourned at approximately 10:40 a.m.

Meeting summary prepared and submitted by:

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Meghan Thibodeau  
Deputy City Clerk

DRAFT

## **PROCLAMATION**

**WHEREAS**, the American Cancer Fund for Children and Kids Cancer Connection report cancer is the leading cause of death by disease among U.S. children between infancy and age 15. This tragic disease is detected in more than 16,000 of our country's young people each and every year; and

**WHEREAS**, one in five of our nation's children loses his or her battle with cancer. Many infants, children and teens will suffer from long-term effects of comprehensive treatment, including secondary cancers. An estimated 400,000 children and adolescents are diagnosed with cancer globally each year; and

**WHEREAS**, founded nearly thirty years ago by Steven Firestein, a member of the philanthropic Max Factor cosmetics family, the American Cancer Fund for Children, Inc., Kids Cancer Connection, Inc. along with Lions Clubs International are dedicated to helping these children and their families; and

**WHEREAS**, the American Cancer Fund for Children and Kids Cancer Connection provide a variety of vital patient psychosocial services to children undergoing cancer treatment at The Children's Hospital at Providence Alaska Medical Center in Anchorage, as well as participating hospitals throughout the country, thereby enhancing the quality of life for these children and their families; and

**WHEREAS**, the American Cancer Fund for Children and Kids Cancer Connection also sponsor toy distributions, family sailing programs, pet-assisted therapy, Laughternoon - Laughter is Healing, KCC Supercar Experience, positive appearance programs, educational programs and hospital celebrations in honor of a child's determination and bravery to fight the battle against childhood cancer.

**NOW, THEREFORE**, I, Brian Gabriel, Sr., Mayor of the City of Kenai, Alaska, hereby proclaim the week of September 25<sup>th</sup> through October 1<sup>st</sup>, 2022 as:

### **Childhood Cancer Awareness Week**

in the City of Kenai and encourage all citizens to help increase public awareness and support for the children and families who are affected by cancer.

DATED:            This 21<sup>st</sup> day of September, 2022.

\_\_\_\_\_  
Brian Gabriel, Sr., Mayor

ATTEST:

\_\_\_\_\_  
Shellie Saner, MMC, City Clerk



**Government Finance Officers Association**  
203 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601-1210  
312.977.9700 fax: 312.977.4806

8/12/2022

Brian Gabriel  
Mayor  
City of Kenai, Alaska

Dear Mayor Gabriel:

We are pleased to notify you that your annual comprehensive financial report for the fiscal year ended June 30, 2021 qualifies for GFOA's Certificate of Achievement for Excellence in Financial Reporting. The Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management.

When a Certificate of Achievement is awarded to a government, an Award of Financial Reporting Achievement (AFRA) is also presented to the individual(s) or department designated by the government as primarily responsible for its having earned the Certificate. This award has been sent to the submitter as designated on the application.

We hope that you will arrange for a formal presentation of the Certificate and Award of Financial Reporting Achievement, and give appropriate publicity to this notable achievement. A sample news release is included to assist with this effort.

We hope that your example will encourage other government officials in their efforts to achieve and maintain an appropriate standard of excellence in financial reporting.

Sincerely,

Michele Mark Levine  
Director, Technical Services



GOVERNMENT FINANCE OFFICERS ASSOCIATION  
**NEWS RELEASE**

**FOR IMMEDIATE RELEASE**

8/12/2022

**For more information contact:**  
**Michele Mark Levine, Director/TSC**  
**Phone: (312) 977-9700**  
**Fax: (312) 977-4806**  
**Email: [mlevine@gfoa.org](mailto:mlevine@gfoa.org)**

(Chicago, Illinois)—Government Finance Officers Association of the United States and Canada (GFOA) has awarded the Certificate of Achievement for Excellence in Financial Reporting to **City of Kenai** for its annual comprehensive financial report for the fiscal year ended June 30, 2021. The report has been judged by an impartial panel to meet the high standards of the program, which includes demonstrating a constructive "spirit of full disclosure" to clearly communicate its financial story and motivate potential users and user groups to read the report.

The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management.

*Government Finance Officers Association (GFOA) advances excellence in government finance by providing best practices, professional development, resources, and practical research for more than 21,000 members and the communities they serve.*



# KENAI

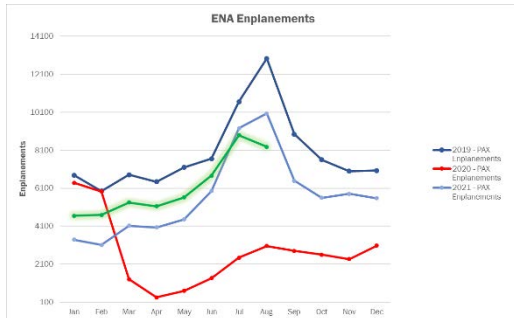
City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Eland Conway, Airport Manager  
**DATE:** September 12, 2022  
**SUBJECT:** Kenai Municipal Airport (ENA) Mid-Month Report

### Enplanements

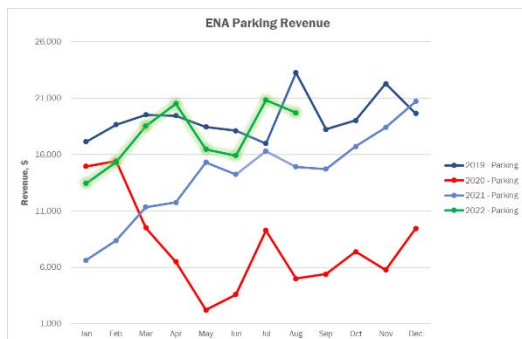
Dipping below last year's July and August numbers, 2022 passenger enplanements still remain higher YOY, up 11.31% YTD compared to 2021.



	2021	2022	% Δ
	<b>PAX Enplanements</b>	<b>PAX Enplanements</b>	
Jan	3389	4646	▲ 37.09%
Feb	3112	4695	▲ 50.87%
Mar	4127	5349	▲ 29.61%
Apr	4035	5150	▲ 27.63%
May	4464	5621	▲ 25.92%
Jun	5953	6760	▲ 13.56%
Jul	9259	8896	▼ -3.92%
Aug	10035	8276	▼ -17.53%
<b>Grand Total</b>	<b>44374</b>	<b>49393</b>	<b>▲ 11.31%</b>

### Parking Revenue

Parking revenue continues to perform strong YOY, up 32% for the month of August, and up 42% YTD.



	2021	2022	% Δ
	<b>Parking</b>	<b>Parking</b>	
Jan	6,626	13,448	▲ 103%
Feb	8,373	15,338	▲ 83%
Mar	11,315	18,532	▲ 64%
Apr	11,757	20,530	▲ 75%
May	15,309	16,467	▲ 8%
Jun	14,236	15,920	▲ 12%
Jul	16,295	20,847	▲ 28%
Aug	14,924	19,719	▲ 32%
<b>Grand Total</b>	<b>98,834</b>	<b>140,801</b>	<b>▲ 42%</b>

### Snow Removal Equipment

On Tuesday, September 6, ENA took delivery of the replacement Multi-purpose Broom/Blower. The Larue T-95 was procured through the FAA Airport Improvement Program using 100% Federal Funds. This equipment replaces the 1993 Oshkosh Snowblower that suffered a catastrophic auxiliary engine failure early in the 2019-2020 snow season.

Factory personnel will provide onsite operator and maintenance training on October 13 and 14.







## 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:** September 2, 2022

**SUBJECT:** August 2022 Monthly Report

This month the Kenai Animal Shelter took in **67** animals. Animal intake and disposition:

DOGS:				
	INTAKE	32	DISPOSITION	25
	Waiver	11	Adopted	8
	Stray	13	Euthanized	1
	Impound	1	Claimed	15
	Protective Custody	4	Field Release	0
	Quarantine	1	Transferred	1
	Microchips	2	Other Dispositions	0
	Other Intakes	0		
CATS:				
	INTAKE	35	DISPOSITION	20
	Waiver	17	Adopted	14
	Stray	17	Euthanized	2
	Impound	0	Claimed	4
	Protective Custody	1	Field Release	0
	Quarantine	0	Transferred	0

Microchips	0	Other Dispositions	0
Other Intakes	0		0
OTHER ANIMALS:			
INTAKE	<b>0</b>	DISPOSITION	<b>0</b>
Chinchilla	0	Chinchilla	0
Rabbit	0	Rabbit	0
Other	0	Guinea Pig	0
DOA:	<b>10</b>	OTHER STATISTICS:	
Dog	9	Licenses (City of Kenai Dog Licenses)	12
Cat	1		
Rabbit	0		

- 11** Animal dropped with After Hours (days we are closed but cleaning and with KPD)
- 20** Animals are *known* borough animals
- 25** Animals are *known* City of Kenai
- 11** Animals are *known* City of Soldotna
- 1** Animals from unknown location
- 30** Field Investigations & patrols
- 8.25** Volunteer Hours Logged
- 1** Citations
- 0** Educational Outreach

Statistical Data:

- 502** 2020 YTD Intakes
- 421** 2021 YTD Intakes
- 309** 2022 YTD Intakes





## MEMORANDUM

**TO:** Mayor Gabriel and Council Members

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Terry Eubank, Finance Director

**DATE:** September 14, 2022

**SUBJECT:** Finance Department, September 2022 Mid-month Report

---

With the end of FY2022, the department's focus has switched to closing of that year's books and completion of the City's Annual Comprehensive Financial Report. This process includes closing of the FY22 financial records, fiscal year end grant reporting, completion of the annual Audit and finally financial statement preparation. The annual audit is scheduled for the week of October 3<sup>rd</sup>.

Cybersecurity is a constant priority of the department. Implementation of multi-factor authentication by City employees is currently being tested with full deployment expected by yearend. Multi-factor authentication requires the use of a password and secondary identification tool when logging into the City's network and is considered a best practice in the industry.



## MEMORANDUM

**TO:** Mayor Gabriel and Council Members  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Tony Prior, Fire Chief  
**DATE:** September 12, 2022  
**SUBJECT:** Fire Department Mid-Month Report – August

---

Calls for service for August were slightly down from 2021 as we move towards the end of Summer. Here is the breakdown for August 2022.

August	2021	2022	% change
Totals	133	131	-1.5%
EMS	104	95	-8.7%
All Other	29	36	24.1%
Year total	948	986	4.0%

### Training:

- Jeremy Hamilton attended an Incident Safety Officer course.
- Steve Turkington completed his check off on Engine 2 as a Driver/Operator.
- John Harris had 2 weeks of transition with Mark Anderson as the new Deputy Chief.

### Projects/Grants:

- We are continuing work with the Division of Forestry and US Forest Service on grants that will provide funding to mitigate dead and dying trees in the Shqui Tsatnu Creek drainage, which is the gully between Forest Drive and Spruce Street, and the Beaver Loop corridor. We have a Memorandum of Agreement ready to sign pending approval of Ordinance 3313-2022. All in supported of the CWPP.
- We have completed the application, expanded budget narrative, and supporting documents for USDA grant in support of the CWPP. Also tied to passing of Ordinance 3313-2022.
- Completed the Emergency Operations Plan and working on closing out this grant with final documentation.
- Internal promotional processes are scheduled for the positions of Captain and Engineer.



## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Christine Cunningham, Human Resources Director  
**DATE:** September 6, 2022  
**SUBJECT:** **Human Resources Activity – August 2022**

---

### **Recruitment**

Human Resources worked with the Library and Fire Department to actively recruit a Part-Time Library Aide and Fire Captain. Applications continue to trend low, with most job postings requiring an extension to allow for a larger applicant pool; however, the City saw an increase in applications for the Part-Time Library Aide position. The Fire Captain position followed an internal recruitment process. The City is currently recruiting Temporary Equipment Operators at the Kenai Municipal Airport.

### **Safety/Training**

Two accidents were reported in August, one that resulted in property damage and one that resulted in a near-miss injury. Human Resources worked with Finance and Public Works to renew the City's participation in the Loss Control Incentive Program offered through the City's insurance provider, AMLJIA. The activity-based incentive safety program is designed to reduce losses and provide up to a 5% credit.

### **Special Projects**

Human Resources continued to work with multiple departments and the City Attorney on a City-wide update to position descriptions, completing updates to 12 position descriptions.

The Employee Handbook was reviewed, updated, and submitted to the City Attorney for review prior to being finalized.

Human Resources worked with the City's Health and Life Insurance Benefits Consultant to create an Employee Health Benefits survey to obtain employee feedback on the quality and types of health benefits offered by the City in advance of open enrollment in December.

In the coming months, Human Resources will work with Administration and a working group of Department Heads to complete a comprehensive review of the City's personnel practices and processes in key areas (recruitment, pay and benefits, policies and procedures) and provide recommendations.



## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council





**THROUGH:** Paul Ostrander, City Manager

**FROM:** Hannah Meyer, Assistant to the Library Director

**DATE:** September 9, 2022

**SUBJECT:** Library Mid-Month Report for August 2022

### August 2022 at a Glance

Items Borrowed		Aug-21	Aug-22	2022 YTD
Physical		5,982	7,575	52,579
Digital		1,502	1,604	12,360
<b>Services</b>				
New Memberships		54	60	421
Room Reservations		100	118	946
<b>Programs</b>				
Number of Programs		20	34	238
Program Attendance		389	522	3,920
<b>Technology Sessions</b>				
Computer sessions		472	547	3,921
WiFi Sessions		5,978	8,420	58,995
Early Literacy Station Sessions		129	292	2,033

### August 2022 programming highlights

- 34 total in-person programs – 522 attendees
  - 5 Story Times (total of 56 participants)
  - 5 Wee Read Story Times (total of 45 participants)
  - 2 American Girl Clubs (total of 18 participants)
  - 5 Lego Clubs (total of 48 participants)
  - 5 Chess Clubs (total of 6 participants)
  - 2 Writing Groups (total of 2 participants)
  - Crafternoon (14 participants)
  - DIY Ice cream (9 participants)
  - Garden Party (5 participants)
  - Raspberry Pi Club (4 participants)
  - Senior Center Tech Class (2 participants)
  - Teen Advisory Board (7 participants)
  - Teen After Hours Escape Room (9 participants)
- Summer Reading Programs
  - Grand Finale Party (total of 150 participants)
  - 2 DIY Kits (147 kits given away)

### August 2022 library services highlights

- Volunteers logged 41 hours this past month. Tasks included shelving and program support.
- Our study and conference rooms were used by 118 individuals/groups for a total of 263 hours.
- Our Summer Reading Grand Finale Party was attended by 150 participants!
- Our first StoryWalk® was installed at Daubenspeck Family Park. Discover the story of Leopold the Moose (written by James Adcox and illustrated by Ms. Cunningham's 2021-2022 3<sup>rd</sup> and 4<sup>th</sup> grade class at Mountain View Elementary) by reading each sign along the trail.







## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Brad Walker, Parks & Recreation Director  
**DATE:** August 10, 2022  
**SUBJECT:** **Mid-month Report – July 2022**

---

- The department had fifteen shelter reservations for the month of August.
- All staff worked on clean up and tear down of the PU Fishery as it ended July 31<sup>st</sup>.
- Director and Assistant started meeting with the Industry Appreciation committee the first Monday of every month to help plan for the event.
- Staff picked up and stored all 18 bicycles from Wal-Mart, Industry Days committee arranged for purchase/donation of bikes.
- Staff worked and set up for the Industry Days event on August 20<sup>th</sup>. (Total of three extra staff scheduled for event)
- Assistant Director met with the Chamber of Commerce for planning the 2022 Kenai River Marathon that takes place on September 25.
- Park staff delivered election materials/equipment to three locations
- Park staff worked with Wal-Mart volunteers to complete the story walk installation at Daubenspeck Family Park.
- Park Director worked on inventory and uploading numerous auction items for the public auction in September.
- Staff repainted interior of men's side of the Green strip bathrooms.
- Staff installed new workout equipment at Kenai Rec. Center.
- Staff assisted Streets Dept. on removing numerous beetle kill trees on Ryan's Trail.
- Staff removed mounded dirt from eight graves at the Kenai Cemetery.
- Circulation motor #1 control board and power control board burnt up do to over voltage. Parts were ordered but have a 3-4-week lead time. Voltage regulators will be installed on both systems to prevent over voltage type issues from happening again.
- Three panes of ice rink specific glass have been ordered to replace the broken pieces at the MPF. Four weeks is the lead time before delivery.
- Park staff worked with the street department on tree removal at the dog park in preparation installing the new fence that better reflects the current boundaries of the dog park.
- Enroll full-time Parks Maintenance working in Alaska Applicators class.

- **The Kenai Recreation Center August visitation**
  - Gym Check In: 1005
  - Reserved Gym Hours: 53
  - Weight/Cardio Room Check In: 826
  - Showers/Sauna: 280
  - Racquetball: 52
  - Wallyball: 13
  - Other: 24
  - Student: 689
  - Kenai City Employee: 92
- **August Slash Site Numbers.**
  - 145 Total visits
  - 1.6 Total of acres treated





## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Max Best, Interim Planning Director

**DATE:** September 14, 2022

**SUBJECT:** **Planning and Zoning August 2022 Report**

### Planning and Zoning Commission Agenda Items and Resolutions

- On August 10, 2022 the Planning and Zoning Commission approved the following meeting agenda items.
  - **Action/Approval** - Recommending the Kenai City Council Enact Ordinance No. 3298-2022 Kenai Municipal Code Chapter 14.30 - Floodplain Management, within Title 14 - Planning and Zoning, to Regulate Land Use within the Flood Plain and Authorizing the City to Participate in the National Flood Insurance Program.
  - **Resolution PZ2022-20** – Application for a Conditional Use Permit for an Elementary through High School in the Suburban Residential zone, on Tract A, Kenai Fellowship Church, located at 8333 Kenai Spur Highway, Kenai, Alaska 99611. The application was submitted by Kenai Fellowship, a Church of Christ, P.O. Box 538, Kenai, AK 99611.
  
- On August 24, 2022 the Planning and Zoning Commission approved the following meeting agenda items:
  - **Resolution PZ2022-22**– Application for a Home Occupation Permit for music instruction submitted by Deborah Sounart, 112 Linwood Lane, Kenai, Alaska 99611, for property described as Lot 1A, Eventyr Subdivision Sounart Replat. .

### Building Permit and Site Plan Reviews

One Landscape/Site Plan application reviewed and approved.

### Code Enforcement

After site visits based on complaints of code violations 12 letters were sent to property owners.

### City Council Agenda Items

- On August 3, 2022, Kenai City Council approved the following agenda items:
  - Postponed Ordinance No. 3298-2022 – Enacting Kenai Municipal Code Chapter 14.30 - Floodplain Management, within Title 14 - Planning and Zoning, to Regulate Land Use within the Flood Plain and Authorizing the City to Participate in the National Flood Insurance Program. (Administration) 4. Ordinance No. 3299-2022
  - Resolution No. 2022-59 – Granting Sewer System and Street Improvement Exceptions to KMC 14.10.080, Minimum Improvements, for King Cove Subdivision Pursuant to KMC 14.10.090, Variations and Exceptions. (Administration)
- On August 17, 2022, Kenai City Council approved the following agenda items:
  - Substitute Ordinance No. 3298-2022 – Enacting Kenai Municipal Code Chapter 14.30 - Floodplain Management, within Title 14 - Planning and Zoning, to Regulate Land Use within the Flood Plain and Authorizing the City to Participate in the National Flood Insurance Program.





# MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council

**THROUGH:** Paul Ostrander, City Manager

**FROM:** David Ross, Police Chief

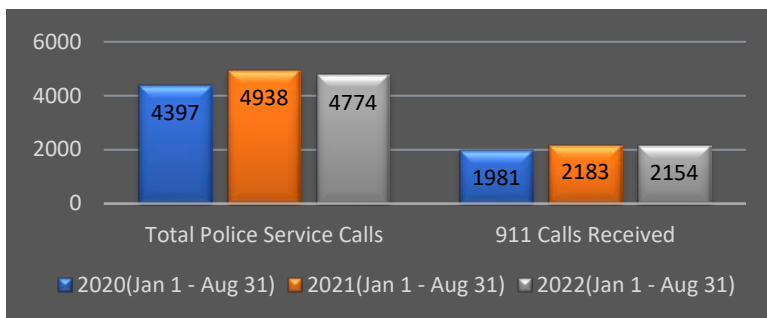
**DATE:** September 6, 2022

**SUBJECT:** Police & Communications Department Activity – August 2022

Police handled 614 calls for service in August, which was approximately a 9% reduction from August of 2021. Dispatch received 263 9-1-1 calls. Officers made 52 arrests. Traffic enforcement resulted in 283 traffic contacts and 64 traffic citations. There were 8 DUI arrests. Officers investigated 7 motor vehicle collisions in August. There were three collisions involving moose and one collision involving drugs or alcohol.

One new KPD officer completed his field training in August and is now working on his own. One officer attended a three day 'Advanced Roadside Impaired Driving Enforcement' training in Wasilla. One investigator attended a week long 'Crimes Against Children' training conference in Texas. Attendance at this training was funded by the Kenaitze Indian Tribe. One officer attended a three-day tactical medical instructor course in Anchorage. One Investigator attended a three day 'substance abuse trauma' training in Kenai. One Officer attended a two-day pepperball instructor course in Palmer. The dispatch supervisor attended a week-long emergency dispatcher training conference in California

The School Resource officer has started back into the schools and is handling calls and providing police related guidance to the schools. He also started teaching DARE at Mountain View Elementary.





# KENAI

Kenai Police Department | 107 S. Willow St., Kenai, AK 99611 | 907.283.7879 | [www.kenai.city](http://www.kenai.city)

August 19, 2022

Kenaitze Indian Tribe  
Attn: Maria Guerra  
Na'ini Family and Social Service Director

Dear Ms. Guerra,

On behalf of the Kenai Police Department, I would like to offer thanks for the generosity of the Kenaitze Indian Tribe in sharing their funds.

We appreciate the effort put in by the Kenaitze Indian Tribe to obtain grant funding and then be willing share some of those resources with the police department.

Your contribution of funds to send one of our investigators to the Crimes Against Children Conference in Texas this year will be a benefit to both of our organizations and to the community we serve. We have previously sent investigators to this conference and in 2018 you also helped us send a School Resource Officer and investigator to this same conference. Our investigators have always come back impressed with training they have received and ready to put it to use in helping child victims of crime.

Sincerely,

A handwritten signature in dark ink, appearing to read 'D R', followed by a horizontal line extending to the right.

David Ross  
Chief of Police



## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Scott Curtin, Public Works Director  
**DATE:** September 2022  
**SUBJECT:** **Mid-Month Report; Public Works / Capital Projects**

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- Kenai Municipal Airport Sand Storage Facility – Orion Construction is currently under contract in the amount of \$2,289,000. The project has experienced extreme supply chain issues. March 8<sup>th</sup> had meeting with City Staff, FAA, and HDL Engineering to discuss alternatives. Held Meeting May 12, 2022 with Orion Construction and City personnel to discuss ongoing project issues. June 7<sup>th</sup> received confirmation from Orion that Steel Building is now on order through Superstructures, wall and roof panel submittals are in process as of August 9, 2022. Received word that steel is preparing for shipment to Alaska and may arrive around first of September. This project is now moving again, however with winter approaching it will be delayed until spring 2023 to start the foundation to avoid the building being exposed to winter conditions without the ability to enclose and provide heat. Some utility work will take place this fall, rerouting of HEA electrical lines, and then the project will temporarily shut down. *No new update.*
- Kenai Municipal Airport Airfield Drainage – Project consists of the replacement of approximately 500 lf of failing storm water pipelines located in the safety area off the northern end of the runway. 10/13/21 Contract Documents were executed with BMGC LLC in the amount of \$360,225. Airport staff has requested this project hold off until spring for operational concerns. Update: With the addition of Kenai Aviation to the airport the availability of runway closure times has been further reduced. Staff is working to reduce the length of the available runway for a limited period of time, three weeks range, to allow the contractor to work with minimal limitations within the project area. This will slightly delay the start of the project to allow for the required notifications to take place. A monitoring well was installed to verify water table elevation in the project area on June 6<sup>th</sup>. Conditions continue to be monitored, work anticipated to start likely October 2022, working a revised Construction Safety Phasing Plan (CSPP) in coordination with the FAA and expecting the runway to be shortened for a period of time to allow the work to be completed. The revised CSPP has been approved by the FAA





and this work is anticipated to be completed during October 2022 with the runway being shortened for a period of time to accommodate the Contractor. *Update: The water table within the project area is currently very high, measured at 47" below grade on 9/12/22 which may make the viability of construction starting this fall extremely challenging. We are not sure if we can successfully dewater the project area to a depth of 12-14' and complete the work. Conditions continue to be monitored daily.*

- Kenai Municipal Airport Snow Removal Equipment (SRE) – Update: This equipment is on order and dependent upon supply chain logistics will likely arrive in spring 2022. *Update: The Unit arrived on September 6, 2022 with the snow blower head, sweeper head arrived separately on September 8, 2022. Equipment is being prepped to be placed into service. Manufacturer's Representatives will be conducting staff training on October 13-14, 2022. Unit is impressive.*

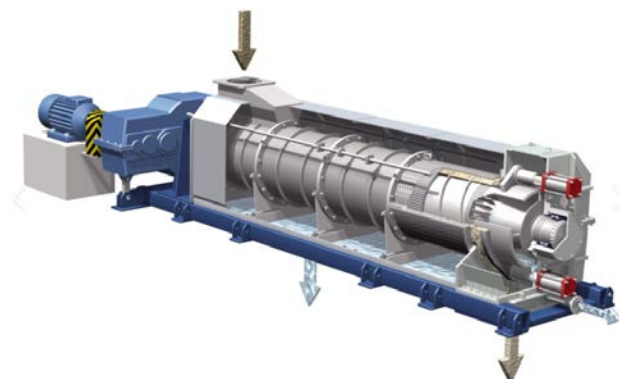


- Kenai Municipal Airport Runway Rehabilitation Project – This project known as Task 4 within HDL Engineering Consultants LLC term service agreement with the City shall provide an initial assessment of the current condition of the airport runway. This will include geotech work, coring numerous locations of the runway. This work will provide the necessary information to coordinate with the FAA to seek grant funding for an overall runway rehabilitation project which will ultimately include the runway, taxiways, drainage, lighting, markings, etc. On August 4<sup>th</sup>, 2021 HDL Engineering and staff successfully completed geotech borings of the runway after hours. On October 13<sup>th</sup> HDL Engineering, City staff and the FAA discussed the findings of



the geotech report. On December 6, 2021 the City received the draft Engineer's Design Report (EDR) along with the draft Geotechnical Report. Ordinance 3278-2022 was approved on April 20<sup>th</sup> to secure HDLs services through Bid Phase with a contract amendment of \$781,833 executed on May 6, 2022, bringing the total cost of design to \$1,031,833. *Update: 9/14/22 Design team continues to develop design documents. Environmental services are now engaged with pending decisions on PFAS scope being discussed. The City anticipates formal 35% Design documents available for review in October 2022. Project is currently tracking for Runway Rehab Construction in 2025 with the Taxiways 2026 the following year.*

- Kenai Municipal Airport (KMA) Terminal Landscaping – A Request for Proposals for Landscape Design Services was released on July 14, 2022 with proposals due on July 28, 2022 where Earthscape LLC was determined to have provided the highest scoring proposal at a cost of \$28,255. The Purchase Order to Earthscape LLC was approved by Council at the 9/7/22 council meeting. Design work is anticipated to continue through the winter months with a construction bid expected for spring 2023.
- Waste Water Treatment Plant Replacement Sludge Press – Resolution 2020-95 approved at the December 16, 2020 Council meeting authorized HDL Engineering to begin the Design Phase of the WWTP Replacement Sludge Press. Contract Documents were executed on January 6, 2021 with a Notice to Proceed issued on January 11, 2021. A Request for Proposals from press manufactures was released on April 27, 2021 with proposals due on May 25<sup>th</sup>, 2021. Resolution 2021-42 to award an equipment purchase agreement to Andritz Corp in the amount of \$285,000 was approved by Council at the June 16, 2021 meeting. The screw press is on order and is expected to arrive in Kenai in late *October 2022*. A formal Invitation to Bid for Construction was released on June 7<sup>th</sup>, 2022. Bids were originally due on June 28<sup>th</sup> but the deadline was extended to July 22<sup>nd</sup> due to a lack of bidders interested in the project. On July 22<sup>nd</sup> two bids were received, with Blazy Construction being the lowest responsive responsible bidder at a cost of \$1,437,913. *Ordinance 3302-2022 awarded the Construction Agreement to Blazy Construction on 8/17/22. Work is not actively underway and is anticipated to run through March 2023.*





- Kenai Wellhouse Relocation – Contract was executed with Polar North Construction on August 4, 2021 in the amount of \$243,172.25. Update: Polar North is nearly complete with the project. The building is now residing in the new permanent location adjacent to the trailer at the water treatment plant. The well has now been capped, new building site has been graded. Removal of the old fencing at the old site, along with some previously stored materials is pending to complete the overall project. The department extends our appreciation to Polar North for their efforts in completion of the project. *Update: 9/7/22 Council meeting approved a PO Increase to cover Change Order 1 costs associated with site grading in the total amount of \$9,792.13. Contract is nearing completion. Photos below are of old well being capped, and building in its new location.*



- Lift Station Renovations – Resolution 2021-58 awarded HDL Engineering agreement in the amount of \$59,560 to provide bid ready construction documents for three lift stations. HDL has completed on site evaluations and are nearing completion of three sites to receive upgrades. These locations included the stations at mile posts 13 and 14, which are near the soccer fields and Spur / Redoubt Ave respectively, as well as a station on Lawton Drive. These locations are intended to receive new pumps and pump control panels as part of this project. Update: After determination of which lift stations would receive renovations to start, a design meeting was held on 12/3/21 to discuss pump and control panel design. Basis of design memo received on January 6, 2022. *Update: Design documents are approaching 95% with a revised anticipated release for Construction Bids late October 2022. Construction will continue through the summer of 2023.*
- Multi-purpose Facility – The Building Maintenance Department went through the Ice Rink and pressure washed all of the algae that has been growing on the steel beams. Nelson Engineering was also able to come out and assess the structure and condition of the rusting. Formal report was received on October 6, 2020. Staff began repair work on the ice rink starting May 2<sup>nd</sup>, An aerial lift is being used to apply 100 gallons of Ospho rust reformer and 200 gallons of POR15 rust preventive finish coating to the steel elements within the ceiling. Staff continues working on ventilation improvements with planned upgrades to exhaust fans pending, to assist with humidity control. All planned coatings have been completed including the larger main support beams and fire sprinkler risers. Work will continue on mechanical system upgrades, rink was given back to Parks & Rec July 21<sup>st</sup> to start the process of placing



ice by August 1<sup>st</sup>. *Update: Purchasing documents are in review for additional services associated with ventilation and radiant heat lamps.*

- USACE Bluff Erosion –Council approved Resolution 2021-35 at the June 2, 2021 meeting awarding an agreement to HDR along with issuance of a purchase order in the amount of \$791,832.68. Design services are expected to run approximately twelve months to provide bid ready plans and specifications. July 6, 2021 the formal agreement between the City of Kenai and HDR was executed. On August 11, 2021 the City Manager and Public Works Director met and walked the project site with representatives from the Army Corp of Engineers including the Regional Commander in charge of the project. Project kickoff meeting with Engineers was conducted on August 19<sup>th</sup> at 3:00pm. On August 29<sup>th</sup> the Data Collection Plan was received. Detailed work plan has been received by HDR, Data Collection of existing site condition is now complete. On October 4, 2021 a project meeting was held providing updates on data collection progress. On January 2, 2022 the City received 35% Design Documents from HDR, staff was able to review those documents with HDR uploading them to the Corps website on January 25<sup>th</sup>. Comments were received by the Corps over several days with a formal response to questions provided back to the Corps on February 9<sup>th</sup>. On February 10<sup>th</sup> a meeting was conducted with the Corps, HDR and the City to discuss review comments. On March 3<sup>rd</sup> federal funding in the amount of \$650,000 was received by the USACE to be used toward the design effort of the project. This allows Corps staff to bill time to the project in support of our efforts. On March 10<sup>th</sup> the City submitted a letter for Request for Work in Kind, to cover the expenses the City has incurred through HDR Engineers Inc. in the amount of \$248,676.73, which covers progress from July through November 2021. On March 25<sup>th</sup> meeting with USACE reps where full team of Corp reps are being introduced to the project in anticipation of providing full project review support. 65% Docs are on track for receipt by May 11<sup>th</sup> from HDR Engineering. 65% Design Docs were received ahead of schedule on April 28<sup>th</sup>. Staff and USACE counterparts are actively reviewing the documents. The documents have been uploaded to the City website under the Public Works page and are available for review by the public. Below is one example of proposed wall section. Value Engineering Workshop was conducted with USACE on June 21-24 at JBER. This completed the requirement of completion of a VE Study for the project. Final 65% documents with the items addressed at the VE Study workshop *were received 8/25/22. The next step will be moving into Advanced Technical Review (ATR) with the Corp as documents continue toward 95% design. First ATR meeting is scheduled for 9/15/22. The project is tracking toward an April 3, 2023 Invitation to Bid release for Construction with an anticipated Construction Contract award anticipated in May/June 2023. Project continues to track well and as expected.*
- Cemetery Expansion – This project is located at the corner of First Ave and Float Plane Rd and will provide for additional burial space as the existing adjacent cemetery has reached capacity. The Public Works Department using in house personnel has already cleared, leveled and graded the site, and placed and compacted a gravel sub-base for the parking area. Update: the Cemetery site has been fine graded and grass seed and fertilizer placed. Staff has successfully surveyed in 64 adult plot sites and 12 infant plot sites. These sites are available through the Clerk's office. Additional sites will be available in the summer 2022 after installation of HEA power and irrigation well have been installed. HEA is developing design



documents for City approval to bring in a 100amp electrical service to the property from off of Second St. *Update: Nothing new to report. Weather has delayed progress. Work expected to begin again in spring 2023.*

- Recreation Center Improvements – The Public Works Department released an RFP on November 18, 2021 with proposals due on December 10, 2021 to provide professional AE services for the Kenai Rec Center. This project will provide a code assessment of the facility, architectural drawings for a complete roof replacement of the facility, and mechanical / electrical drawings for the replacement of aging HVAC equipment. *Update: Resolution 2022-06 was approved at the 1/19/22 council meeting to award a design agreement to K+A Design Studios in the amount of \$92,085. Design agreement has now been executed and project meetings are set to begin in mid-February. Resolution 2022-09 within the February 16<sup>th</sup> packet is combining funding from several smaller projects into this one larger one. Update: On March 21<sup>st</sup> the design team provided the code assessment for the facility identifying several issues which are under review by Public Works Staff. Update: Design is running behind schedule and bid documents have not yet been received as of September 14, 2022. On August 17, 2022 council approved a PO increase to include rain leader design to address storm water concerns. Total authorized design to date is \$108,085.*
- Kenai Fire Department Flooring Replacement – This project will be replace aging flooring materials within the station. Based on the age of the facility and previous encounters with asbestos, a Proposal Quote Request was released on 12/1/21 with proposals due on 12/10/21 to sample and test for asbestos containing materials within the proposed work area. Contract was awarded on 12/20/21 with a Notice to Proceed granted on 1/11/21 with report due back to City on 2/14/22. The results of the testing will determine our next course of action. If asbestos is discovered steps to conduct abatement will need to be completed prior to replacement of flooring materials. The testing costs are \$4,112 at this time. May 18<sup>th</sup> council meeting has an Ordinance requesting an additional \$20,000 in supplemental funding to complete abatement and allow the project to proceed. *Update: Supplemental funding approved and request for quotes is in progress to complete the asbestos abatement previously identified. Invitation to Bid released on 9/15/22, work anticipated to carry well into the winter months.*
- Kenai Fire Department Apparatus Bay Coating – *Ordinance 3315-2022 is up for Council approval on 9/21/22 to provide supplemental funding to allow the project to bid. Once additional funds are approved project is prepped for bid release. Existing budget was \$45,000 with approval of Ordinance 3315-2022 new budget will be \$60,000. This work involves cleaning and replacement of concrete floor markings with the installation of a new concrete sealer to protect and extend the life of the garage bay floors.*
- Visitor Center Roof Replacement – Request for Proposal Documents are pending to obtain professional services to provide bid ready construction documents for the planned roof replacement at the Visitors Center. RFP release is anticipated for late January 2022 to provide for shingle replacements during the summer months 2022. *Update: A Proposal Quote Request was released on January 25<sup>th</sup> with proposals due on February 15<sup>th</sup> to provide Bid Ready Construction documents for this project. Council can expect to see legislation in March awarding the design agreement. Update: K+A Architecture was the successful proposer and 95% design documents were provided for staff review on May 31, 2022. Invitation to Bid for construction was released on 6/21/22 with bids due on 7/19/22. Two bids were received and*



were both well in excess of budgeted amounts. Project is unable to be awarded at this time and will be adjusted slightly with the intent of rebidding 1<sup>st</sup> quarter 2023.

- DOT Kenai Spur Highway to Sports Lake Rd – In speaking with representatives from DOT on June 10, 2021, it is my understanding this project will likely be released for construction bids in late fall 2021 for an anticipated construction start of Spring/Summer 2022. This project is intended to continue the widening of the roadway similar to the previous project that extended to approximately Swires Rd. *Nothing new to report at this time.*
- DOT Bridge Access Road Bike Path – Council passed Resolution 2021-53 on August 4, 2021 authorizing the City Manager execute a memorandum of agreement with DOT for design, construction, and maintenance of the Kenai Bridge Access Road Pathway project. In speaking with representatives from DOT the state has not provided funding as yet for this project to move forward. To date the City has appropriated \$294,947 in support of this project which is intended to provide a 1.2 mile path connecting the paths between the Spur Highway and Beaver Loop. Total cost of project per DOT estimates equals \$3,266,301. Per communications with the DOT, design funding is in place and they are waiting on final signatures for the Reimbursable Services Agreement (RSA) with DNR. Once the RSA is approved they will be able to begin design work. Process is expected to be completed by the end of January. Update: Formal kickoff meeting took place on March 30<sup>th</sup> with the City Manager and Public Works Director in attendance. From appearances this design process will be a slow one, we are not anticipating seeing construction on the path this calendar year. Will continue to update as more information becomes available. Update: A site meeting will be taking place between the City, DNR, & DOT on 6/9/22 to review the project. HDL Engineering appears to be conducting surveying services in support of the project, crews were in the area on 6/7/22. *Nothing new to report at this time.*
- Kenai Dog Park – Public Works Director has been coordinating with representatives from the Dog Park Committee. A formal meeting has been scheduled for April 19<sup>th</sup> to discuss path forward. Committee also has a planned presentation scheduled for the Council meeting on April 20<sup>th</sup>. Additional land was granted for the park, and staff is working with volunteers to get the additional area staked and cleared. Currently \$63,000 of funding is available for the project. Update: Surveying services through McLane's Consulting have been contracted, communications with Dog Park representatives, volunteers, and Parks & Recs is ongoing. The new fence line has now been cleared of trees and stumps. New fence line has been staked, public works streets department has installed the entry path, front culvert and drainage rock. Concrete pad has been quoted with Polar North Construction providing the low bid of \$9,982, remaining Fence work has been quoted with Fireweed Fence providing the low bid of \$24,901.50. Volunteers are anticipated to construct the framing of the pavilion once the concrete work has been completed. The constant rain over the last two months has seriously affected the Department, Contractors & Volunteer's ability to work on the project. The rain has created some significant drainage issues within the main field area which will be addressed as site conditions allow. Little additional work beyond the concrete and fence is anticipated until site conditions dry out. This project will carry over into the spring before hydro-seeding can be completed and agility equipment can be placed.
- Roadway Improvements – Nelson Engineering was the successful proposer to provide bid ready construction documents for improvements to Wildwood Dr, Willow Ave, First St. as well as multiple smaller misc. repairs. Update: Contract documents have been executed, geotech soil borings have been completed, site survey work has begun. Wildwood Drive 65% design



docs were received on July 14, 2022 for review *with 95% documents anticipated by end of September 2022. Geotech and site surveys have been completed on First Ave and Willow Street project areas, with design work expected to start as Wildwood design is finished. Projects will not be ready for bid release this season and will be released for bids first quarter 2023.*

- Little League Restrooms – Public Works Staff has started on the Scope of Work for the planned new restroom facilities at the ball fields on South Spruce St. In coordination with the Parks & Rec Director, design services will be secured to finalize bid ready construction documents. Current anticipated release for Construction Bids is late summer. A Request for Quotes for design services was released on May 5<sup>th</sup> to provide bid ready documents to construct three new restrooms adjacent to the existing snack shack. Update: No proposals were received by the City for this release, comments from firms were everyone is too busy with work for this small of a project. We will modify our delivery requirements so work may be completed into the fall / winter with a spring 2023 construction start expectation. *Nothing new to report.*







# KENAI

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

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Kathy Romain, Senior Center Director

**DATE:** September 8, 2022

**SUBJECT:** August 2022 Monthly Report

August brought many end-of-the-summer activities to the Kenai Senior Center. Participants enjoyed movie night, a no-host dinner at the Tree House Restaurant, outings to the Kenai Peninsula Fair, and shopping at the Soldotna Farmers Market. The Kenai Senior Center Bell ringers were again featured performers of the fair and all participants enjoyed being able to entertain fair goers.

To close the month of August, the Kenai Senior Center was visited by Samaritans Feet International, a non-profit organization that serves and inspires hope by providing shoes as the foundation to a spiritual and healthy life. Seniors attending the Center were provided new shoes, socks, footcare bags, and a complimentary foot washing. Seniors voiced how appreciative they were of the entire process, as did the volunteers who reported their enjoyment at being able to spend time with Seniors at the Center.

	2022	2021
Home Delivered Meals	1535	1786
Individuals	95	93
Dining Room (Congregate) Meals	676	514
Individuals	115	74
Transportation (1-way rides)	210	0
Individuals	19	0
Grocery Shopping Assistance	12/76	0
SIGN-INS VIA MySeniorCenter© _ Unduplicated individuals		
Writers Group	12	8
Caregiver Support Group	2	5
Growing Stronger Exercise	33	35
Tai Chi Class	8	8
TOPS Weight Loss Class	11	10
Bluegrass & Music Sessions	60	26
Card Games	36	41
Wii Bowling	7	10
Arts & Crafts	18	6
Total Event Sign-ins *	1786	1477
Individuals *	192	169
Vintage Pointe Manor Vacancies	0	0

\* (not including home meals clients)



# KENAI

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## MEMORANDUM

**TO:** Mayor Gabriel and Council Members  
**FROM:** Meghan Thibodeau, Deputy City Clerk  
**DATE:** September 9, 2022  
**SUBJECT:** Report to Council – Destruction of Records

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In accordance with the City of Kenai Public Records Management Schedule and Record Retention Policy, approved and adopted under Resolution No. 2017-22, the City Clerk's Office disposed of certain City Records on September 8, 2022, which were subject to disposal under the Schedule.

Animal Control	1 box
Clerk's Office	5 boxes
Finance Department	23 boxes
Human Resources	4 boxes
Lands	1 box
Legal Department	3 boxes
Public Works	13 boxes

The records were authorized for destruction by the respective department managers and the city attorney, as per KMC10.30. A complete list of the above referenced obsolete records is available for review in the Clerk's Office.

**PURCHASE ORDERS BETWEEN \$2,500.00 AND \$15,000.00 FOR COUNCIL REVIEW**  
**COUNCIL MEETING OF: SEPTEMBER 21, 2022**

<b>VENDOR</b>	<b>DESCRIPTION</b>	<b>DEPT.</b>	<b>ACCOUNT</b>	<b>AMOUNT</b>
INSIGHT PUBLIC SECTOR	VMWARE SUPPORT	NON-DEPARTMENTAL	SOFTWARE	3,164.00
CROWLEY	FLOAT PLANE FUEL	AIRPORT	OPERATING SUPPLIES	4,020.50
ALASKA WASTE	DUMPSTER SERVICE	WWTP	PROFESSIONAL SERVICES	12,000.00
IMAGE TREND	ANNUAL RESCUE BRIDGE FEE	FIRE	PROFESSIONAL SERVICES	3,000.00