



KENAI PENINSULA BOROUGH

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DAVE CAREY
BOROUGH MAYOR

MEMORANDUM

TO: Milli Martin, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Dave Carey, Borough Mayor *DC Carey*

FROM: Craig Chapman, Finance Director *CC*
Colette Thompson, Borough Attorney *CT*
Scott Bloom, Assistant Borough Attorney *SB*

DATE: February 5, 2009

SUBJECT: Ordinance 2008-19-42, appropriating \$60,000 to the legal department contract services account to fund hiring outside counsel to assist the legal department

Beginning in 2007, Offshore Systems-Kenai ("OSK") began denying and/or restricting public access on Nikiska Beach Road crossing OSK property. OSK's facility as operated is subject to the Marine Transportation Security Act. The Nikishka Beach Road has been used by many people for public access to the beach in the Nikiski area since before statehood. Denying public beach access on this road has created significant problems as it is the only public beach access for miles in either direction.

In May 2008, the State of Alaska filed a lawsuit seeking a declaration that a public right-of-way exists across the property now owned by OSK and that OSK did not have authority to restrict access on Nikishka Beach Road. The assembly passed a motion on August 5, 2008, authorizing the administration to intervene in the lawsuit against OSK. The Kenai Peninsula Borough intervened in this lawsuit in September 2008 and to date has expended significant staff time and expense in the case. It is scheduled for trial in May 2009 and will require much more attorney time to properly represent the Kenai Peninsula Borough. Due to the current high workload and limited resources, the Legal Department respectfully requests an appropriation of \$60,000 to hire outside counsel and pay associated costs to represent the borough's interests in this case as it moves closer to trial. Your favorable consideration of this ordinance would be most appreciated.

FINANCE DEPARTMENT 232	
FUNDS VERIFIED <i>for CCC</i>	
\$60,000	
ACT #	<u>100.27900 FB</u>
BY: <i>CBW</i>	DATE: <u>2/5/09</u>