

Introduced by: Mayor
Date: 04/07/09
Hearing: 05/05/09
Action: Postponed Until 06/02/09
Date: Enacted as Amended
Action: 7 Yes, 1 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2009-22**

**AN ORDINANCE APPROVING A COOPERATIVE AGREEMENT BETWEEN THE
KENAITZE/SALAMATOF TRIBALLY DESIGNATED HOUSING ENTITY AND THE
KENAI PENINSULA BOROUGH THAT PROVIDES FOR THE BOROUGH TO
ACCEPT A PAYMENT IN LIEU OF TAXES IN EXCHANGE FOR CONTINUED
BOROUGH SERVICES**

WHEREAS, the Kenaitze Indian Tribe and Salamatof Tribal Council (aka "Village of Salamatof") are federally recognized Indian tribal governments; and

WHEREAS, the Kenaitze Indian Tribe, IRA and the Salamatof Tribal Council formed the Kenaitze/Salamatof Tribally Designated Housing Entity (TDHE); and

WHEREAS, the Kenaitze/Salamatof TDHE was formed to provide safe, secure, and affordable housing to meet the needs of the low and moderate income Alaskan Native and American Indian families residing in the Kenaitze/Salamatof TDHE jurisdictional area; and

WHEREAS, the Kenaitze/Salamatof TDHE has used federal funds through the Native American Housing Assistance and Self-Determination Act (NAHASDA) and an Indian Housing Block Grant (IHGB) through the U.S. Department of Housing and Urban Development to purchase a fourplex located at 45941 Miller Loop Road, Nikiski, Alaska; and

WHEREAS, the fourplex is operated by the Kenaitze/Salamatof TDHE to provide housing for low and moderate income Alaskan Native and American Indian families; and

WHEREAS, Alaskan Native and American Indian families residing in the Kenaitze/Salamatof TDHE housing must meet income guidelines set by NAHASDA, provide proof of Alaskan Native or of American Indian decent, and undergo a criminal background check; and

WHEREAS, section 101(c) and (d) of NAHASDA and 25 U.S.C. Sec. 411 prohibit IHGB recipients from using funds on projects where the TDHE has not entered into an agreement with the taxing authority for a tax exemption or agreement for payments in lieu of taxes unless the recipient has made a good faith effort to obtain the same; and

WHEREAS, the Kenaitze/Salamatof TDHE has stated that any money saved through a cooperative agreement between the Borough and the Kenaitze/Salamatof TDHE will be reinvested back into the TDHE's housing program to provide needed services; and

WHEREAS, the Kenaitze/Salamatof TDHE Board has approved a proposed agreement with the Borough to pay \$150 per unit (\$600 total for the fourplex) in lieu of real property taxes; and

WHEREAS, there is no current provision in KPB code for accepting a payment in lieu of taxes from the Kenaitze/Salamatof TDHE necessitating an ordinance for approval of the same;

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

SECTION 1. That the Mayor is authorized to execute a cooperative agreement, substantially in the form as attached, with the Kenaitze/Salamatof TDHE to accept an annual payment of \$150 per unit in lieu of real property taxes and commit the Borough to provide similar borough services to the subject property as are furnished from time to time without cost or charge to other similarly situated dwellings and inhabitants subject to the availability and appropriation of funds.


SECTION 2. That this ordinance takes effect on January 1, 2010.

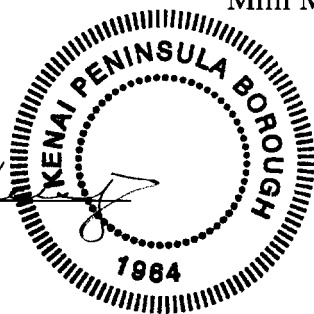
ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 2ND DAY OF JUNE, 2009.



Milli Martin, Assembly President

ATTEST:


Johni Blankenship, Borough Clerk



Yes: Fischer, Long, Smalley, Smith, Sprague, Superman, Martin
No: Knopp
Absent: Pierce

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COOPERATION AGREEMENT

This agreement entered into this ____ day of _____, 2009, by and between the Kenaitze/Salamatof Tribally Designated Housing Entity (hereinafter called the "Recipient"), and the Kenai Peninsula Borough, 144 N. Binkley St., Soldotna, AK 99669, (hereinafter called the "Local Governing Body").

In consideration of the mutual covenants hereinafter set forth, the parties do hereby agree as follows:

1. Whenever used in this agreement, the term "project" shall mean the Kenaitze/Salamatof Tribally Designated Housing Entity (TDHE) low income housing located at 45941 Miller Loop Rd, Nikiski, Alaska 99635 (Parcel ID No. 01519219) acquired by the Recipient with financial assistance of the United States of America, acting by and through the Secretary of the Department of Housing and Urban Development (hereinafter called the "Government"), and under the Native American Housing Assistance and Self Determination Act of 1996.
2. The Recipient, with funding from the Government, acquired a low-income housing project, comprising approximately four rental units. The project is located within the jurisdictional limits of the Local Governing Body.
3. Pursuant to this agreement and 25 USC § 4111(d)(1), this project within the jurisdictional limits of the Local Governing Body is exempt from all real property taxes levied or imposed by the Local Governing Body so long as such project is owned by the Recipient and is used for low-income rental or low-income lease-purchase homeownership purposes. The Local Governing Body agrees that it will not levy or impose any real property taxes upon this project consistent with Section 101(d) of the Native American Housing and Self Determination Act of 1996, 25 U.S.C. § 4111 (d).
4. During such period in which the project is exempt from all real property taxes levied or imposed by the Local Governing Body, the Recipient shall make annual payments of either user fees or Payments in Lieu of Taxes (PILOT) instead of taxes in payment for public services and facilities furnished from time to time without other cost or charge to such project.
5. Each such annual payment of user fees or PILOT shall be made no later than October 15 of each calendar year and shall be in an amount equal to at least \$150 per dwelling unit.
6. During the period commencing with the date of the acquisition of any part of the site of this project and continuing so long as this agreement is in effect and the project is used for low-income rental or lease-purchase homeownership purposes, the Local Governing Body, without cost or charge to the Recipient or the tenants of such project other than user fees or PILOT described above, shall furnish or cause to be furnished to the Recipient and the tenants of such project any and all public services, facilities and infrastructure of the same character and to the same extent as are furnished from time to time without cost or charge to other similarly situated dwellings and inhabitants within

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the Local Governing Body's jurisdictional limits subject to the availability and appropriation of funds by the Kenai Peninsula Borough Assembly.

7. No cooperation agreement previously entered into between the Local Governing Body and the Recipient shall be construed to apply to the project covered by this agreement.
8. This agreement shall not be abrogated, changed, or modified without the consent of both the Local Governing Body and the Recipient. The privileges and obligations of the Local Governing Body hereunder shall remain in full force and effect with respect to this project so long as the project is used to meet low-income housing needs. However, if at any time the title to, or possession of, this project is held by a public body or governmental agency, including the Government, the provisions hereto shall inure to the benefit of and may be enforced by such public body or governmental agency, including the Government.
9. Notwithstanding any other provision in this Agreement, the Local Governing Body and Recipient agree to renegotiate, in good faith, user fees or PILOT within five years of the effective date of this agreement, and every five years thereafter. If the Local Governing Body and Recipient cannot reasonably mutually agree upon user fees or PILOT, either party may terminate this Agreement. Either party may also immediately terminate this agreement if the project is no longer used exclusively for low-income housing.

IN WITNESS WHEREOF, the Local Governing Body and the Recipient have respectively signed this agreement and caused their seals to be affixed and attested as of the day and year first above written.

KENAI PENINSULA BOROUGH

(SEAL)

By: David R. Carey, Borough Mayor

Attest:

Approved as to Form and Legal Sufficiency:

Johni Blankenship, CMC
Borough Clerk

Scott Bloom
Assistant Borough Attorney

KENAITZE/SALAMATOF TRIBALLY
DESIGNATED HOUSING ENTITY

(SEAL)

By:
Its:

Attest:

Approved as to Form and Legal Sufficiency:

Introduced by: Superman
Date: 04/21/09
Hearing: 05/19/09
Action: Enacted
Vote: 7 Yes, 2 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2009-23**

**AN ORDINANCE DESIGNATING CERTAIN ADMINISTRATIVE EMPLOYEES AS
UPPER MANAGEMENT AND PROVIDING FOR DISCIPLINARY AND
TERMINATION APPEAL PROCEDURES**

WHEREAS, the borough code provides middle management and confidential employees with an appeal process for disciplinary action and termination appeal rights; and

WHEREAS, no similar provisions exist for upper management personnel; and

WHEREAS, including such rights in the code is expected to help in the recruitment and retention of upper management personnel;

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

SECTION 1. That KPB 3.04.283 is hereby enacted as follows:

3.04.283. Upper management service—Definition—Employment.

- A The upper management service to the borough shall consist of those administrative personnel who are directors of borough departments and other positions designated as upper management employees by assembly resolution or through the annual budgeting process.
- B. Upper management service personnel shall be accorded the same benefits and conditions of employment as accrue to other administrative personnel of the borough.

SECTION 2. That KPB 3.04.285 is hereby enacted as follows:

3.04.285. Upper management service—Disciplinary and termination appeal procedures.

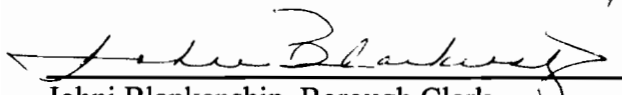
- A. Any upper management service employee other than the Chief Executive Officer or Special Assistant to the Mayor, or other similar position, who is suspended, demoted, reduced in pay, or discharged from the upper management service may appeal that decision to the mayor in writing within 14 calendar days of notice of the decision.
- B. The following procedures shall be used for appeal if the employee is not satisfied with the mayor's final decision. Within 14 calendar days of notice of the mayor's final decision, the affected employee shall request a hearing through the mayor's office before a management disciplinary appeal board consisting of three assembly members appointed by the assembly president. The board, through its chairperson, shall schedule a hearing within 21 calendar days after receipt by the mayor's office of the request for a hearing, at which time the reasons for the action shall be reviewed. Within seven calendar days following the close of the hearing, the board shall render a written decision and set forth the reasons upon which the decision is based. The decision shall be binding upon the administration.
- C. The first 12 months of employment shall be considered a probationary period. Probationary upper management employees may be discharged if, in the sole opinion of the mayor, they will not reach satisfactory status within the 12-month period. Discharges under such circumstances are not subject to the appeal procedures described in paragraphs (A) and (B) above.

SECTION 3. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 19TH DAY OF MAY, 2009.


 Milli Martin, Assembly President

ATTEST:


 Johni Blankenship, Borough Clerk



Yes: Knopp, Long, Smalley, Smith, Sprague, Superman, Martin
 No: Fischer, Pierce
 Absent: None