

SUBJECT: INFORM THE ASSEMBLY OF THE BOROUGH'S INTENT TO ENTER INTO A MANAGEMENT AGREEMENT FOR A FIVE-YEAR TERM WITH THE WASILLA KNIK HISTORICAL SOCIETY FOR THE USE OF BOROUGH-OWNED LAND AND BUILDING LOCATED WITHIN SECTION 24, TOWNSHIP 16 NORTH, RANGE 3 WEST (LONG LEGAL) AND IDENTIFIED AS TAX PARCEL 16N03W24D007 (MSB003559).

AGENDA OF: May 4, 2021

ASSEMBLY ACTION:

presented to the Assembly without
objection 5-4-21 *(BSP)*

MANAGER RECOMMENDATION: For information only.

APPROVED BY MICHAEL BROWN, BOROUGH MANAGER: *MB*

Route To:	Department/Individual	Initials	Remarks
	Originator	<i>HKM</i>	
	Community Development Director	<i>EP</i>	
	Public Works Director	<i>TDL</i>	<i>19 Apr 2021</i>
	Planning Director	<i>(B)</i>	
	Finance Director	<i>CX</i>	
	Borough Attorney	<i>NS</i>	
	Borough Clerk	<i>Yam 4/26/21</i>	<i>(BSP)</i>

ATTACHMENT(S): Fiscal Note: YES _____ NO X
Management Agreement (18 pp)

SUMMARY STATEMENT: This is to inform the Assembly of the Borough's intent to enter into a Management Agreement with the Wasilla Knik Historical Society (WKHS), a non-profit corporation, at no cost for a five year term for the use of the land and building commonly known as the Knik Museum and Dog Musher's Hall of Fame. This site is one of the two remaining buildings of the original Knik Townsite, and listed as an historic building on the National Register of Historic Places for contributing to the settlement of the region.

The WKHS has managed and operated the land and the building used as the Knik Museum for many years under a management agreement with the Borough. The current agreement expired March 31, 2021, with no provision for renewal without an application request for an additional five year period.

The management agreement allows WKHS to utilize the land and building for promoting the preservation of the Mat-Su Valley's rich cultural and historical resources for the Wasilla and Knik areas. This includes operating the museum, assisting in research and preservation of historical sites and artifacts, and caring for the historical building and sharing in the costs associated with the maintenance and upkeep (Exhibit B). There were no objections or concerns from an inter-department review or from the 30-day public notice.

MANAGEMENT AGREEMENT

This Agreement dated this ____ day of _____, 2021, by and between the Matanuska-Susitna Borough (hereinafter the "Borough"), a municipal corporation, whose address of record is 350 E. Dahlia Avenue, Palmer, Alaska 99645, and the Wasilla Knik Historical Society (hereinafter the "WKHS"), an Alaska non-profit corporation, whose address of record is 300 N. Boundary Street, Wasilla, Alaska 99654.

RECITALS:

WHEREAS, the Borough owns certain real property and WKHS wishes to manage the Borough-owned land commonly known as the site of the Knik Museum and Dog Musher's Hall of Fame (Knik Museum), for purposes of promoting the preservation of cultural and historical resources of the Wasilla and Knik areas by operating museums, caring for historical buildings, and assisting in research and preservation of historical sites and artifacts pursuant to the terms and conditions of this Agreement, and subject to valid existing rights.

WHEREAS, the Borough owns the museum building and land that has been established as the Knik Museum; and

WHEREAS, WKHS owns the building known as the Herning Warehouse located on the property, personal property, furnishings, equipment, as well as historical collections and displays, and arranges for the lending and display of artifacts from other organizations, all being used in the operation of the Knik Museum and grounds; and

WHEREAS, the WKHS has managed and operated the land and the building used as the Knik Museum for many years under a management agreement that is expired and had no provisions are authorized for renewal without an application request for renewal; and

NOW THEREFORE, in consideration of the covenants and agreements contained herein, the Borough and WKHS agree as follows:

Section 1. PROPERTY

WKHS does hereby agree to manage, operate, and maintain the Borough-owned land and building known as the Knik Museum located thereon, attached as Exhibit A and the land legally described as follows:

Beginning at USS 1726 C-8 and running North 51°35' West along the line common to C-8 and C-9 of USS 1726 a distance of 109.11 feet to the True Point of Beginning; Thence North 51°35' West along the line common to C-8 and C-9 of USS 1726 a distance of 109.11 feet to the True Point of Beginning; Thence North 51°35' West 316.44 feet; thence North 38°25' East 207.97 feet; Thence South 51°35' East 207.91 feet; Thence South 10°51'30" West 234.59 feet to the True Point of Beginning, being in the Palmer Recording District, Third Judicial District, State of Alaska; and as shown on the attached as Exhibit A (hereinafter called "Property").

WKHS acknowledges it has examined the Property and accepts the Property in its current condition, "as is, where is." The Borough makes no warranties either expressed or implied, nor assumes any liability whatsoever, regarding the cultural, social, economic, or environmental aspects of the Property, to include without limitation, soil conditions, water drainage, practical or feasible physical access, availability of gravel or personal use wood supplies, cultural artifacts which may or may not exist, natural or artificial hazards which may or may not exist, merchantability, suitability or profitability of the parcel for any use or purpose or development.

It is the responsibility of WKHS to, among other things, review regulations, restrictions, and potential defects, which would affect the use of the Property. The feasibility and costs to remedy defects, obtain permits or variances, engineer septic systems, provide water and utilities, or determine and construct access to the parcel, will be borne by WKHS, without exception.

Section 2. TERM.

This Agreement shall be effective from April 1, 2021 through March 31, 2026. Pursuant to MSB 23.10.160, this Agreement cannot exceed five (5) years without Borough Assembly approval.

Section 3. RESPONSIBILITIES OF THE PARTIES

The Borough, as owner, is responsible for the land and the building, commonly known as the Knik Museum, including its security, care, and maintenance. The Borough, as owner, reserves its right to enter the property at any time for any reason. The WKHS agrees to manage the facility, keep it open to the public at the established times, and to perform the security, care, and maintenance as set forth in this agreement.

The WKHS, as owner of the Herning Warehouse building, which occupies the land, is responsible for its security, care, and maintenance. The WKHS is also responsible for the security, care, and maintenance of the artifacts and displays located on the premises, whether owned or on loan to WKHS.

WKHS must obtain written approval from the Borough for any additions, alterations, relocations, or new structures of any kind. The Borough (Operations and Maintenance Division of the Department of Public Works) and WKHS shall meet once each calendar year to jointly inspect the building and grounds and to identify any needed repairs and maintenance. This meeting shall be the responsibility of the Borough to schedule, preferably in May or June. Exhibit "B" is hereby incorporated by reference, which sets out the responsibilities of the Borough and WKHS covered by this Agreement.

This agreement is not intended to prevent the WKHS to apply for and receive grants for operation and maintenance of the facility through the Matanuska-Susitna Borough Historical Commission or such other funding that can be secured by WKHS without encumbering the title to the real property, including improvements thereon, owned by the Borough.

Section 4. UTILITIES AND SERVICES

Services shall be provided as follows:

- (a) Custodial services: WKHS agrees to provide all janitorial services and supplies for the area.
- (b) Utilities: WKHS will be solely responsible for all heating fuel, utility bills, and telephone charges to its phone numbers.
- (c) Solid waste disposal: The WKHS is responsible for the safe and sanitary storage of all solid waste and disposal of the same from the building and grounds, which disposal shall occur on at least a weekly basis during the operational season and daily for any special or large events.
- (d) Snow Removal: WKHS is responsible for any snow removal services needed, except in the unlikely event an unusually heavy snow load must be removed from the roof of the Museum Building, which shall be the responsibility of the Borough upon notice from WKHS that it is needed.
- (e) Septic: Inspection of the septic system shall be monitored during the operational year by WKHS, the Borough will also inspect the septic system during its annual inspection. The Borough will be responsible for pumping the septic system on alternating years if deemed necessary based on the inspection by the Borough, and WKHS will be responsible for the cost of all other septic pumping, including during any special or large events.
- (f) Well: It is acknowledged by each party that the well for the facility is located within the S. Knik-Goose Bay Road right-of way, which is under the control of the Alaska Department of Transportation and Public Facilities (ADOT/PF). ADOT/PF issued a permit to the Borough in 1985 for the well to remain within the road right of way; however the permit can be revoked with 90 days written notice by ADOT/PF at any time. The Borough nor WKHS is obligated by this agreement to replace the well in the event ADOT/PF revokes the permit.
- (g) Building Repairs: Needed repairs will be done in accordance with this Agreement. WKHS will be responsible for any expenses incurred for repair if the damage is caused by its negligence, including vandalism due to lack of security.
- (h) Other: All other costs of services not specifically covered by this Agreement shall be the sole responsibility of WKHS and the Borough shall furnish no guarantee of other compensation to WKHS.

Section 5. DISPUTES

Disputes over the terms of this Agreement shall be resolved by negotiation between the parties. In the event the parties are unable to agree, the decision of the Borough Manager shall be final.

Section 6. TERMINATION

Termination for Cause: If, through any cause WKHS shall fail to fulfill its obligations under this agreement, or shall violate any of the covenants, agreements, or stipulations of this

agreement, the Borough shall thereupon have the right to secure it immediately and terminate this agreement by giving written notice at least five (5) days before the effective date of such termination. In such event, all property, equipment, supplies, other materials owned by the Borough shall be returned to the Borough. The WKHS shall remove all property, equipment, supplies, or other materials it owns within 30 days from date of notice.

Termination for Convenience: The Borough may terminate this agreement at any time for any reason, or no reason, by giving written notice to WKHS of such termination and specifying the effective date of such termination. The Borough shall provide at least thirty (30) days notice of such termination. In that event, all property, equipment, supplies, or other materials owned by the Borough shall be returned to the Borough. The WKHS shall remove all real and personal property, equipment, supplies, or other materials it owns within 30 days from date of notice.

Section 7. INSURANCE REQUIREMENTS

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof a third party benefit hereunder, or authorizes anyone not a party to this Agreement to maintain a suit for personal or property damage pursuant to the terms or provisions of this Agreement. Insurance shall be purchased and maintained by WKHS throughout the term of this Agreement, naming the Borough as "Additionally Insured" and as outlined and attached as Exhibit C. WKHS shall secure such additional insurance, as it deems prudent for the items owned, brought, or constructed onto the Property by WKHS.

Section 8. DESTRUCTION OF THE AREA COVERED

In the event that the area covered or any part of the area covered shall be destroyed by fire, explosion, or other casualty, so that all or a substantial portion of the area covered cannot be operated, and the Borough fails to rebuild, repair, and reopen the same for use within two hundred and forty (240) days after the happening of said fire or other casualty, WKHS or the Borough shall have the right to cancel and terminate this Agreement.

Section 9. DEFENSE AND INDEMNIFICATION

WKHS shall indemnify, defend, and hold and save the Borough, its elected and appointed officials, officers, agents, and employees harmless from any and all claims, demands, civil suits, or liability of any nature, kind, or character, including costs, expenses, and attorney's fees. WKHS shall be responsible under this clause for any and all legal actions or claims of any character resulting from injury, death, economic loss, damages, violation of statutes, ordinances, constitutions, or other laws, rules, or regulations, deprivation of constitutional rights, contractual claims or any other kind of loss, tangible or intangible, sustained by any person or property arising from WKHS or its officers, agents, employees, partners, attorneys, suppliers, subcontractors, or volunteers performance or failure to perform under this Agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the Borough or its agents which are said to have contributed to the loss, failure, violation, or damages.

WKHS shall not be responsible for any damage or claim arising from the sole negligence or willful misconduct of the Borough, its agents, or its employees.

Section 10. ASSIGNMENT, SUB-LEASE, DELEGATION OF DUTIES

WKHS may not assign any interest, or sub-lease any portion of the Property, or delegate any duties under this Agreement to any person, nor enter into any contracts for commercial concession or vending on the Property without the prior written approval of the Borough. Further, WKHS shall not allow liens of any nature for any reason to be placed against the Property. Any attempt by WKHS to assign any part of its interest, sub-lease any portion of the Property, delegate any duties, or allow any liens against the Property under this Agreement shall give the Borough the right to immediately terminate this Agreement without any liability to the Borough.

Section 11. FUEL STORAGE, HAZARDOUS MATERIAL, ENVIRONMENTAL IMPAIRMENT

The storage of petroleum or toxic chemicals and substances is prohibited on the Property. Discharge, spills, contamination, or environmental impairment on or to the Property shall be controlled and recovered immediately by WKHS at WKHS expense, and be reported immediately to the State of Alaska, Department of Environmental Conservation, and to the Borough as required by federal and state laws. WKHS shall remediate at WKHS expense any environmental impairment to the satisfaction of the Borough. Nothing herein shall prohibit or prevent WKHS from seeking recovery of its expenses for such control and recovery from the responsible party.

Section 12. PERMITS, LICENSES, LAWS, AND TAXES

All activities authorized under this Agreement shall be conducted in compliance with applicable federal and state constitutions, federal, state and local laws, regulations, and orders of governmental authorities having jurisdiction over the Property in effect during the term of this Agreement. WKHS agrees to obtain the necessary approvals from all third parties and obtain any permit, license, or written authorization required by the applicable laws, rules, and regulations from governing authorities, which includes but is not limited to flood hazard area development permits, for any excavation, fill, gravel, or development proposed. WKHS agrees that approvals required by this Agreement or otherwise are not being promised by this Agreement. The issuance of approval will be evaluated on its own merit, and nothing in this Agreement obligates the Borough or any other agency to issue approvals of permits or licenses. WKHS agrees to provide documentation of all applicable permits and licenses to the Borough. All taxes and assessments if any, related to the Property shall be paid by WKHS and shall be kept current.

Section 13. NON-WAIVER

That no assent, expressed or implied, by the Borough to any breach of any WKHS covenants shall be deemed to be waiver of any succeeding breach of the same covenant, nor shall any forbearance by the Borough to seek a remedy for any breach of WKHS be deemed a waiver by the Borough of the rights or remedies with respect to such breach.

Section. 14. MODIFICATIONS

The parties may mutually agree to modify the terms of this Agreement. All modifications to this Agreement shall be incorporated by written amendments to this Agreement and be executed by both parties. In the event modifications are required to this Agreement in order to implement recommendations set forth by changes to Borough Plans, SpUDs, or other enacted mandates by Borough adoption of such, it is expressly understood that refusal by WKHS to agree to modifications to this Agreement will be the basis for termination of this Agreement for cause.

Section 15. CHOICE OF LAW

Any civil action arising from this contract shall be brought in the Alaska Superior Court, Third Judicial District at Palmer. The titles of sections in this agreement are not to be construed as limitations or definitions but are for identification purposes only.

Section 16. SEVERABILITY

If any section or clause of this agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of the agreement shall remain in full force and effect.

Section 17. NOTICES

All notices required by this Agreement shall be in writing and shall be sufficiently given and served upon the other party if sent by registered or certified United States mail, postage prepaid, and addressed as follows:

IF SENT TO BOROUGH: Land Management Division
Matanuska-Susitna Borough
350 East Dahlia Avenue
Palmer, Alaska 99645

Or, such other places as the Borough may, from time-to-time, designate by written notice to WKHS. In the event emergency maintenance, including notification of an oil or other hazardous substance spill, is required, the borough Operations and Maintenance Department (745-9804, weekdays and as periodically advised for nights, weekends or holidays) shall be immediately notified as provided.

IF SENT TO WKHS: Wasilla-Knik-Willow Creek Historical Society
300 N. Boundary Street
Wasilla, Alaska 99654

Or at such other place as WKHS may, from time-to-time, designate by written notice to the Borough.

Section 18. INTERPRETATION and ENFORCEMENT

This agreement has been jointly drafted by the parties and shall be construed according to the fair intent of the language as a whole, not for or against any party. The laws of the state of Alaska shall govern the interpretation and enforcement of this agreement

Section 19. INTEGRATION AND ENTIRE AGREEMENT

This document and all appendices and amendments hereto embody the entire agreement of the parties. All negotiations, statements, representations, warranties, and assurances, whether oral or written, which are in any way related to the subject matter of this Agreement and the performance of either party hereto, are merged and integrated into the terms of this document. To the extent they are not inconsistent with the terms of this Agreement, the following documents are incorporated by reference into this Agreement as if fully set forth herein:

Exhibit A - Property Location

Exhibit B – Management Plan of Operation/Scope of Work

Exhibit C – Insurance Requirements

Section 20. UNDERSTANDING

The participants acknowledges that they have read and understand the terms of this agreement, have had the opportunity to review the same with counsel of their choice, and are executing this agreement of their own free will.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

Michael Brown, Borough Manager

STATE OF ALASKA)
)ss.
Third Judicial District)

WITNESS my hand and official seal the day and year herein and above written.

WKHS INITIAL

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21-083

WASILLA KNIK HISTORICAL SOCIETY, INC.

President

ACKNOWLEDGEMENT OF WKHS

State of Alaska)
) ss.
Third Judicial District)

THIS IS TO CERTIFY that on this ____day of _____, 2021 before me, the undersigned a Notary Public in and for the state of Alaska, duly commissioned and sworn as such personally appeared to me _____, President of the Wasilla Knik Historical Society, Inc., who acknowledged to me that they executed the within and foregoing document on behalf of said organization as the voluntary act and deed of said organization, for the uses and purposes stated therein mentioned.

WITNESS my hand and official seal the day and year herein and above written.

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

EXHIBIT "B"

GENERAL

<u>ITEM</u>	<u>MSB</u>	<u>WKHS</u>
<u>PREVENTATIVE MAINTENANCE</u>		
Items included under preventative maintenance are heating, major plumbing, electrical, snow and ice removal from the building roof (in years when the roof does not offload), and other repetitive, scheduled maintenance work which will prolong or extend the useful life of the structure and its associated equipment and systems, ensure the continued safety of persons in or about borough facilities, maintain or reduce energy and operating costs, and work which will reduce unscheduled downtime, repair, and replacement costs, or failure.	X	
<u>CUSTODIAL SERVICE</u>		
Custodial service is all work that deals with the day-to-day janitorial, cosmetic, and custodial upkeep of the building and surrounding property, and the maintenance of equipment related to the presentation of the programs and displays specific to the facility. It includes all janitorial work, carpet cleaning, grounds keeping, unplugging toilets, patching small holes in walls (example, nail holes), touch up and minor repainting (up to 80 sq. feet per area), replacement of burned out light bulbs, furniture repairs, and the purchase and maintenance of any other equipment not directly related to the physical operation of the facility and its support systems.		X
<u>GROUNDS KEEPING:</u>		
Grounds keeping is snow plowing and snow removal, sidewalk sanding and sweeping, parking lot cleanup, maintenance, line painting, and minor repairs (curbs, grading and patching), litter pickup and trash removal, lawn fertilizing, reseeding, watering, mowing, tree and hedge maintenance, and other turf maintenance, changing exterior and parking lot light bulbs, maintenance of parking lot and exterior signage and displays, including the maintenance and repair of gates and fences, playground/ park equipment, and the upkeep of all equipment and machinery used in performing the above work.		X

SPECIFIC

<u>ITEM</u>	<u>MSB</u>	<u>WKHS</u>
<u>BUILDING STRUCTURE:</u>		
Repairs, Maintenance, & Replacement to the: Walls Floors Ceiling Roof and roofing Windows (including jambs & sashes) Doors (including jambs, hardware & sashes) Major painting (greater than 80 sq. ft. per area) Sheet rock repairs and replacement Carpet replacement <i>Replacement of the above items must be requested by WKHS in writing no later than December 30th of each year as a capital expenditure and will be performed by MSB O&M as the Assembly appropriates funding.</i>	X	
<u>HEATING & AIR CONDITIONING SYSTEMS:</u>		
Maintain HVAC equipment including boilers, stacks, pumps, fans, storage tanks, air compressors, and air conditioning equipment, expansion tanks, ductwork, diffusers, VFD units, VAV boxes, filters, coils, valves, and associated control devices, sensors, and controllers. Cleaning of diffusers, ceiling grills, or exterior ductwork.	X	X
<u>PLUMBING SYSTEMS:</u>		
Major replacement and repairs to broken or frozen pipes and lines, fixtures, faucets, lavatories, shower trees and leads, interior and exterior hose bibs, traps and cleanouts, drywells and roofing drainage equipment, valves, backflow devises, strainers, meters, PRV's, and flushometers. Unclogging lines and pipes smaller than 2" in diameter. Plunging toilets, cleaning out sink traps or shower drains, exterior hoses, exterior water lines, and lawn watering devices.	X	X

<u>BUILDING FIRE SUPPRESSION EQUIPMENT</u>	<u>MSB</u>	<u>WKHS</u>
Certification, testing, and recharging or replacement costs for portable fire extinguishers/kitchen extinguishers, if any.	X	
Testing and replacement costs of battery operated smoke detectors		X
<u>ELECTRICAL AND LIGHTING SYSTEMS</u>		
Power distribution equipment, panels, disconnects, lighting relays, and all lighting ballasts; Testing and repairs to exit fixtures and emergency light fixtures.	X	
Provide and change light bulbs and light tubes as needed		X
<u>EXTERIOR FINISHED SURFACES</u>		
Structural repair due to heaving, settling, or other ground movement of sidewalks, steps, ramps, or outside paved areas.		X
<u>EQUIPMENT AND SYSTEM MONITORING AND CHECKS</u>		
Conduct periodic inspections of all the systems and equipment mentioned in this section. Maintain a written log of inspection observations and provide prompt notification to MSB Facilities Maintenance Division of any abnormalities, equipment breakdown or failures, or system malfunctions.		X
<u>SOLID WASTE REMOVAL</u>		
Removal and proper disposal of all solid waste from the facility and grounds.		X
<u>PARKING LOT SNOW AND ICE REMOVAL</u>		
All access and parking lot plowing and snow and ice removal from sidewalk and steps.		X
<u>WATER</u>		
The well shall be maintained and tested and shall include water quality testing and sanitary surveys. * Water testing is accomplished under the borough's facilities contract with reimbursement to the borough by WKHS from other funding sources.		X

<u>SEPTIC</u>	<u>MSB</u>	<u>WKHS</u>
Biennial based on borough inspection	X	
Special events		X

EXHIBIT C
INSURANCE

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of the Agreement to create in the public or any member thereof a third party benefit hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

It is highly recommended that the WKHS confer with their respective insurance companies or brokers to determine if their insurance program complies with the Borough's Insurance requirements.

The WKHS shall procure and maintain the following insurance:

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services office form number CG 0001 (Edition 04/13) covering Commercial General Liability.
2. Insurance Services office form number CA 0001 (Edition 04/13) covering Automobile Liability, symbol 1 "any auto", if applicable.
3. Workers' Compensation Insurance as required by the State of Alaska and Employers Liability Insurance, if applicable.

B. Minimum Limits of Insurance

WKHS shall maintain limits no less than:

1. General Liability:

\$1,000,000 combined single limit per occurrence for bodily injury, property damage, personal injury and advertising injury. Minimum general aggregate limit of \$1,000,000.

General liability insurance shall be maintained in effect throughout the term of the Agreement.

If the general liability insurance is written on a claim made form, the WKHS shall provide insurance for a period of two years after termination or expiration of this Agreement. The policy(s) shall evidence a retroactive date, no later than the beginning of this Agreement.

2. Auto Liability (if applicable):

\$100,000,000 combined single limit per accident for bodily injury and property damage.

3. Excess Liability:

In order to meet the required minimum limits of insurance it is permissible for the WKHS to combine an excess liability or umbrella policy with the general liability or auto liability. In the instance where the Lessee/ Permittee/ Manager purchases an excess liability or umbrella policy the occurrence limit and the aggregate limit may be of the same amount.

C. Deductibles and Self-Insured Retention

Prior to agreement effective date, any deductible or self-insured retention must be declared and approved by the Borough. WKHS may be requested to demonstrate how the deductible or self-insured retention will be funded in the event of a claim. At the option of the Borough, the WKHS shall reduce or eliminate such deductibles or self-insured retention.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability, Automobile Liability

- a. The Borough, its Administrator, officers, officials, employees, and volunteers shall be covered as additional insured. The coverage shall contain no special limitation on the scope of protection afforded to the Borough, its Administrator, officers, officials, employees, and volunteers.
- b. Coverage shall be primary and non-contributory as respects the Borough, its Administrator, officers, officials, employees, and volunteers.
- c. Coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability (if applicable)

Lessee shall ensure that, with respect to all personnel performing work on the Property, WKHS maintains in effect at all times during the term of the

Agreement, coverage or insurance in accordance with the applicable laws relating to workers' compensation and employer's liability insurance, regardless of whether such coverage or insurance is mandatory or merely elective under the law.

The insurer shall agree to waive all rights of subrogation against the Borough, its Administrator, officers, officials, employees, and volunteers for losses arising from work performed by the WKHS or any subcontractor of the WKHS in relation to this Agreement

3. All Insurance

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days prior written notice for nonpayment of premium or fraud on the part of the WKHS or 60 days prior written notice for any other reason by certified mail, return receipt requested, has been given to the Borough. Such notice shall be mailed by the WKHS to the attention of the Borough's Land Management Officer.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A-VII.

F. Verification of Coverage

WKHS shall furnish the Borough with certificates of insurance and with certified copies of all endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms acceptable to the Borough. All certificates are to be received and approved by the Borough before the agreement commences. The Borough reserves the rights to require complete, certified copies of all required insurance policies, at any time.

G. Subcontractors and Sublessee's

WKHS shall include all subcontractors and sublessees as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor and sublessees. All coverage for subcontractors and sublessees shall be subject to all requirements stated herein.

H. Lapse in Insurance Coverage

A lapse in insurance coverage, any change that restricts, reduces insurance provided, or changes name of insured without Borough approval is a material

breach of this agreement, which shall result in immediate termination of the agreement.

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21-03