CITY OF BETHEL

City Council Meeting Agenda, October 29, 2019 – 6:00 PM

Website: https://www.cityofbethel.org/council

Location: Council Chambers, City Hall, 300 Chief Eddie Hoffman Highway, Bethel

Council Members: Mayor Perry Barr, Vice-Mayor Haley Hanson, Fred Watson, Alyssa Leary, Mark Springer, Cece Franko

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1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **PEOPLE TO BE HEARD – FIVE MINUTES PER PERSON**
5. **NEW BUSINESS**
   - 5.1. Introduction of Ordinance 19-21: Authorizing the Disposal of Lot 4, Block 15, USS 3230 A&B, Bethel Recording District 4th Judicial District (781 Third Ave.) Pursuant to BMC 4.08.030 (D), Disposal to compromise Claim (Mayor Barr)
   - 5.2. Introduction of Ordinance 19-11 (j) Amending the City of Bethel Fiscal Year 2020 Budget- City Manager and Attorney Recruitment Service (Mayor Barr)
6. **APPROVAL OF AGENDA**
7. **EXECUTIVE SESSION**
   - 7.1. AS 44.62.310 (c) (1) Matters, The Immediate Knowledge Of Which Would Clearly Have An Adverse Effect Upon The Finances Of The Public Entity - Potential Litigation Essenkay (Mayor Barr)
8. **ADJOURNMENT**

Posted October 25, 2019 at City Hall, AC Co., Swanson's, and the Post Office.

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Kevin Morgan, Asst. City Clerk

City Clerk's Office Contact Information: Email cityclerk@cityofbethel.net **Phone** 907-543-1384

Items noted with an asterisk (*) are consent agenda items, unless removed from the consent agenda they are approved upon the approval of the agenda.

Ordinances introduced at this meeting may be set for public hearing at the next regular meeting.

The Council may by unanimous consent, after 12:00 AM Fix the Time to Which To Adjourn until the following day at 6:30 PM

Introduced by: Mayor Barr
Date: October 29, 2019
Public Hearing: November 12, 2019
Action:
Vote:

CITY OF BETHEL, ALASKA

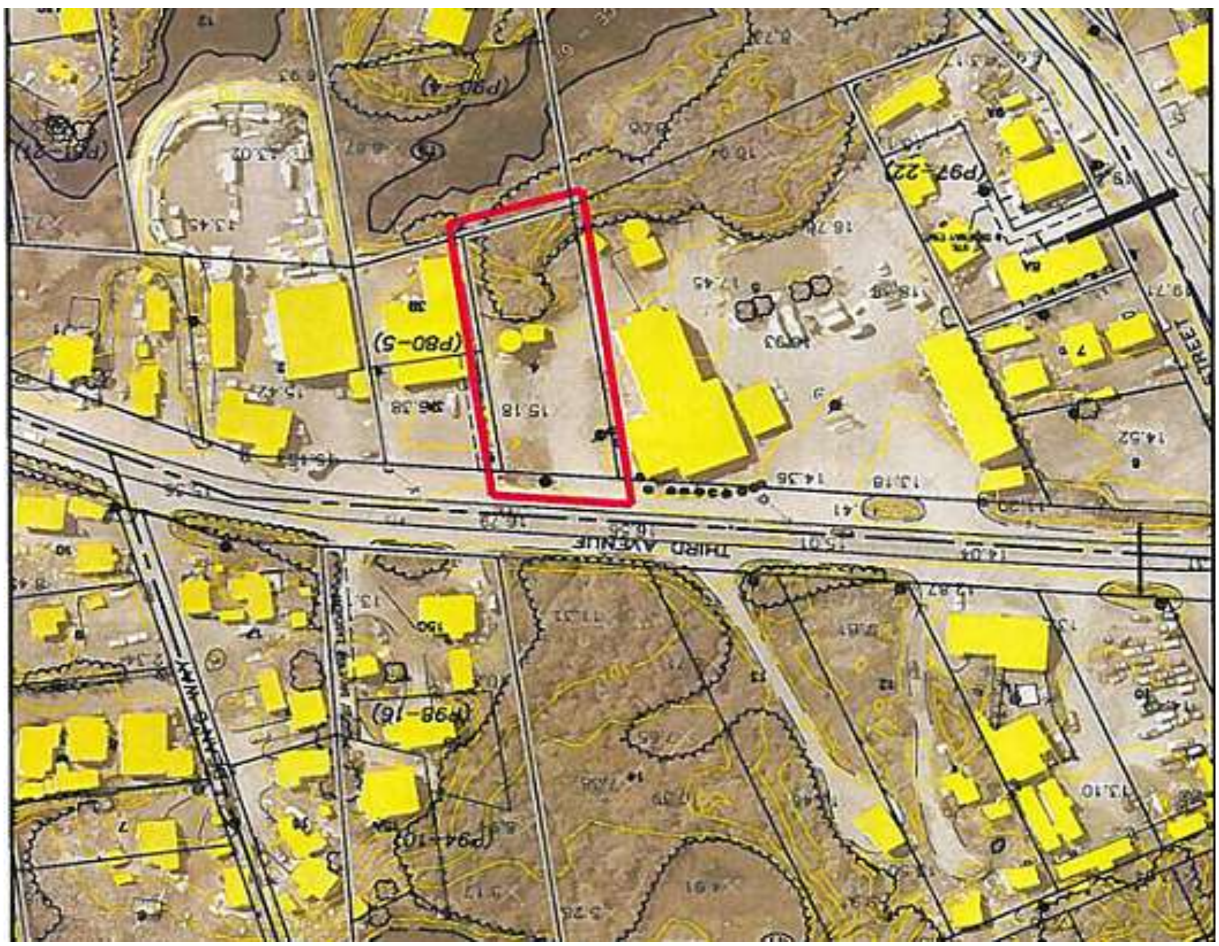
Ordinance #19-21

AN ORDINANCE AUTHORIZING THE DISPOSAL OF LOT 4, BLOCK 15, UNITED STATES SURVEY 3230 A & B, BETHEL RECORDING DISTRICT 4TH JUDICIAL DISTRICT (781 THIRD AVE.) PURSUANT TO BMC 4.08.030(D), DISPOSAL TO COMPROMISE CLAIM

WHEREAS, the City of Bethel owns a parcel of land situated at 781 Third Avenue;

WHEREAS, the legal description for the land is Lot 4, Block 15, United States Survey 3230 A & B, Bethel Recording District, Fourth Judicial District, State of Alaska;

WHEREAS, the property is pictorially depicted as:



WHEREAS, on April 23, 2019, the City of Bethel entered into a 15-year lease agreement with Essenkay, LLC, authorized by the City Council through Ordinance 19-04;

WHEREAS, Article 4.06 of the lease agreement requires that tenant "shall observe and comply with all state and federal laws, municipal ordinances, rules and regulations" which may be applicable to the leased premises;

WHEREAS, on May 28, 2019, the Administration signed a "Lease Addendum", which purported to modify the lease to allow Essenkay, LLC to operate a marijuana business on the leased premises, however, the addendum was not approved by the City Council pursuant to Bethel Municipal Code 4.08.010(B);

WHEREAS, in an August 28, 2019 letter to Essenkay, LLC, the Administration provided notice that the purported lease addendum is of no force and effect under these circumstances because the use of the leased premises for the operation of a marijuana business would violate Article 4.06 of the lease;

WHEREAS, on September 9, 2019, the City of Bethel received a letter from an attorney representing Essenkay, LLC, alleging that the City was in breach of the lease, alleging liability for damages, and threatening litigation;

WHEREAS, Bethel Municipal Code 4.08.030(D) authorizes the City Council to dispose of real property owned by the City to compromise disputed claims of litigation;

WHEREAS, in compromise of a disputed claim, and without any admission of liability, the City wishes to sell the property at the pre-lease fair market value, less Essenkay's improvements to the land;

WHEREAS, the land area consists of 23,748 square feet falling in the General Use Zone;

SECTION 1. Classification. This ordinance is of a general nature and shall not become a part of the Bethel Municipal Code.

SECTION 2. Authorization. Pursuant to Bethel Municipal Code 04.08.030(D) "Disposal to Compromise Claim."

SECTION 3. NOW, BE IT ORDAINED, the City Council authorizes the disposal of Lot 4, Block 15, United States Survey 3230 A & B, Bethel Recording District in the amount of the pre-lease fair market value to compromise a disputed claim of litigation, in accordance with Bethel Municipal Code 4.08.030(D).

SECTION 4. Effective Date. This Ordinance shall become effective upon passage by the Bethel City Council.

ENACTED THIS __ DAY OF NOVEMBER 2019, BY A VOTE OF _ IN FAVOR AND 0 OPPOSED.

____
Perry Barr, Mayor

ATTEST:

____
Lori Strickler, City Clerk

COMMERCIAL LEASE BETWEEN
CITY OF BETHEL and
ESSENKAY, LLC

This LEASE is made on April 23, 2019 by and between the City of Bethel, a municipal corporation ("Landlord") and Essenkay, LLC ("Tenant").

ARTICLE 1
LEASED PREMISES AND TERM

1.01 **Leased Land**. Landlord, for and in consideration of the rents, covenants and conditions hereinafter specified to be paid, performed and observed by Tenant, hereby leases to Tenant and Tenant hereby leases from Landlord, a parcel of land situated in the Bethel Recording District, Fourth Judicial District, State of Alaska, more particularly described as:

> Lot 4, Block 15, United States Survey 3230 A & B, Bethel Recording District, Fourth Judicial District, State of Alaska.
>
> Latitude/Longitude: 67° 47' 41" North / 164° 45' 27" West, NAD 83 Datum

together will all rights, easements, privileges, both subterranean and vertical, and appurtenances attaching or belonging to the described land, but subject to the reservation contained in paragraph 1.02 and the Covenants contained in Article 4 hereof (herein called the "Leased Premises").

1.02 **Reservation of Minerals**. All oil, gas, coal, geothermal resources and minerals whatever nature in or under the above-described land are excluded from the Leased Premises and are reserved to Landlord; provided, however, that during the term of this Lease, Landlord shall not have the right to enter on the surface of the Leased Premises for the purpose of mining and/or excavating such oil, gas, coal, geothermal resources or minerals.

1.03 **Improvements Owned by Landlord**. The following described improvements ("Landlord's Improvements") are situated on and are part of the Leased Premises and are and shall remain throughout the term of this Lease the property of the Landlord:

All fill, retaining walls, berms, earth contours, wells, utility pipes and lines and all other at-surface or below-surface improvements situated on the Leased Premises on the date of this Lease. Tenant may improve the Leased Premises by removing Landlord's improvements but only after the written consent of the Landlord has been obtained. Such consent shall not be unreasonably withheld.

1.04 **Lease Term.** This Lease shall be and continue in full force and effect for a term of fifteen (15) years commencing on April 23, 2019 and terminating on April 30, 2034 unless earlier terminated in accordance with the terms of this Lease.

1.04 **Holdover (with Consent).** If Tenant continues occupying the Premises after the Term ends (Holdover) and if the Holdover is with Landlord's written consent, it shall be a month-to-month tenancy, terminable on thirty (30) days advance notice by either party. During the holdover period, rent shall automatically be increased by ten (10%) percent and will remain due and owing on the first day of each month.

A. **Holdover (without consent).** If the Holdover is without Landlord's written consent, then Tenant shall be a tenant-at-sufferance and shall be liable for any damages suffered by Landlord because of Tenant's Holdover. Landlord shall retain all remedies against Tenant who holds over without written consent.

B. **Holdover Terms.** The Holdover shall be on the same terms and conditions of the Lease except: (i) the Term; (ii) Rent; (iii) any extension Term is deleted; (iv) the Quiet Possession provision is deleted; (v) consent to a sublease may be unreasonably withheld and delayed; (vi) the provision on Landlord's Default is deleted; and (vii) the Defaulting Party may be Tenant only.

ARTICLE 2
RENT

2.01 **Rent.** Effective May 1, 2019, Tenant shall pay to Landlord, without deduction and without notice or demand, net of all real property taxes, assessments, rates and other charges required to be paid by Tenant under this Lease with respect to the Leased Premises, Two Thousand and One Dollars ($2,001) per month on or before the 1st day of each month during the Lease Term.

ARTICLE 3
QUIET ENJOYMENT

Upon timely payment by Tenant of all rent and other payments required to be paid by Tenant under this Lease, and upon full and faithful observance and performance by Tenant of all of its covenants contained in this Lease, and so long as such observance and performance continues, Tenant shall peaceably hold and enjoy the Leased Premises during the Lease Term without hindrance or interruption by Landlord or anyone lawfully claiming by, through, or under it.

ARTICLE 4
TENANT'S COVENANTS

4.01 **Improvements Required by Law.** Tenant, at Tenant's own expense, during the Lease Term and subject to the requirements of this Lease, shall make, build, maintain and repair all fences, sewers, drains, roads, road widening, driveways, sidewalks, water, underground electric and telecommunications lines, curbs, gutters and other installations which may be required by law to be made, built, maintained, or repaired upon, and in connection with, or for use of the Leased Premises or any part of it, and regardless of whether the same were erected by Landlord or in existence at the inception of this Lease. In case any such installations required by law shall be made, built, maintained or repaired by Landlord after giving the required notice provided for in paragraph 4.08, and if Tenant does not complete the required work within the timeframe provided for in the notice, Tenant shall reimburse Landlord for the actual reasonable costs to cover Landlord's overhead, upon presentation of a bill therefore, as additional rent.

4.02 **Landlord's Improvements on the Premises.** Landlord currently has a number of improvements on the Premises such as, but not limited to, a well and a small Shack. Tenant is not responsible for maintaining any of Landlord's improvements. However, Landlord currently has no plans to utilize the improvements, especially the well. Tenant agrees that Landlord has no responsibility for maintaining the improvements or making them useable for Tenant.

Should Tenant wish to remove any of Landlord's improvements currently situated on the Premises, Tenant shall file a written request to the Landlord. Consent by the Landlord shall not be unreasonably withheld.

4.03 **Additions and Alterations to Leased Premises.** "Significant Work" as used in this section, means all work which (1) involves the excavation, filling, or other alteration of the grade or drainage of the eased Premises, or (2) involves the construction, demolition, or removal on or from the Leased Premises of any improvement.

Tenant shall not make alterations to the grade or drainage of the Leased Premises without the written approval of the Landlord. Landlord shall not alter the grade or drainage of the adjacent properties such that drainage will flow over or through the Leased Premises of the Tenant.

4.04 **Repair and Maintenance.** Tenant shall, at Tenant's expense and without notice from Landlord, at all times during the Lease Term, keep all improvements now or hereafter built, purchased, installed or owned by Tenant on the Leased Premises, especially those improvements constructed thereon which are exposed to the view of the public (including but not limited to exterior building walls, windows, doors, fences, signs, landscaping, and yard areas) in good order, condition, maintenance, operability, and repair and of a neat, clean and pleasing appearance to Landlord.

4.05 **Snow Removal**. Tenant shall be responsible for snow removal on the Leased land.

4.06 **Observance of Laws.** Tenant, at all times during the Lease Term, at its own expense, and with all due diligence shall observe and comply with all state and federal laws, municipal ordinances, rules and regulations which are now in effect or may later be adopted by any governmental agency, and which may be applicable to the Leased Premises or any improvement on it or any use of it, and shall promptly furnish such evidence of compliance with such laws, ordinances, rules and regulations as Landlord may request from time to time.

In furtherance, and not in limitation, Tenant must, at its own expense, comply with all laws, ordinances, regulations and administrative agency or court orders relating to health, safety, noise, environmental protection, waste disposal, hazardous or toxic materials, and water and air quality. In the event any discharge, leakage, spillage, emission or pollution of any type occurs upon or from the Leased Premises during the Lease Term or any holdover thereafter, Tenant, at its own expense, must clean and restore the Leased Premises to the satisfaction of the Landlord and any governmental body or court having jurisdiction over the matter. However, Tenant shall not be responsible for the clean-up or restoration of the Leased Premises resulting from any discharge, leakage, spillage, emission or pollution to the Leased Premises from surrounding or adjacent premises unless Tenant's actions caused in whole or in part such discharge, leakage, spillage, emission, or pollution, in which case Tenant shall be responsible for the portion of such discharge, leakage, spillage, emission or pollution which was caused by Tenant.

Landlord warrants that at the time this Lease between the parties, Landlord is not aware of any hazardous or toxic materials on the land.

4.07 Tenant agrees to hold harmless Landlord against all liability, cost and expense (including without limitation, any fines, clean-up costs, judgments, litigation costs, and attorneys' fees) incurred by or levied against Landlord as a result of Tenant's breach of this Lease.

4.08 **Inspection and Repair by Landlord**. Tenant shall repair, maintain, and make good, all conditions required under the provisions of this Lease to be repaired or maintained within five (5) working days from the date of written notice from Landlord with regard to removal of trash or debris, landscape or yard maintenance, snow removal or cleaning, or parking lot lighting replacement and repair, and within thirty (30) days from the date of written notice from Landlord with regard to all other matters. If Tenant refuses or neglects to repair or maintain the Leased Premises as required under the terms of this Lease to the reasonable satisfaction of the Landlord after written demand, then Landlord, without prejudice to any other right or remedy it has under this Lease or otherwise, may perform such maintenance work or make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's property or Tenant's business by reason of the work or repairs. Upon completion of any such repair or maintenance, and no later than ten (10) days after presentation of a bill therefore, Tenant shall pay, as additional rent, Landlord's actual costs for making such repairs or performing such maintenance. However, Tenant shall not be responsible for the replacement or repair of any street lights that may illuminate the Premises.

4.09 **Waste and Wrongful Use**. Tenant shall not commit or suffer any waste of the Leased Premises or any unlawful, unsafe, improper, or offensive use thereof or any public or private nuisance thereon.

4.10 **Setback**. Tenant shall observe all setback lines applicable to the Leased Premises and shall not construct or maintain any building or other structure between any street boundary of the Leased Premises and any setback along such boundary, except for fences or walls approved by Landlord.

4.11 **Liens**. Tenant shall not commit or suffer any act or neglect whereby the Leased Premises or the interest of Landlord or Tenant therein at any time during the Lease Term may become subject to any attachment, execution lien, charge, or other encumbrance, and shall defend, indemnify and hold Landlord harmless against all losses, costs, and expenses, including reasonable attorney's fees, paid or incurred by Landlord in connection therewith.

4.12 **Indemnification.** Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims arising from (1) Tenant's use of the Leased Premises, or from the conduct of Tenant's business, or from any activity, work or things done, permitted or suffered by Tenant in or about the Leased Premises; (2) any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease; (3) any negligence of Tenant, or any of Tenant's agents, contractors, customers or employees, or any person claiming by, through or under Tenant; and (4) any accident on or in connection with the Leased Premises, or any fire thereon, or any nuisance made or suffered thereon when and to the extent such claim arises from the negligence of Tenant.

Tenant, upon notice from Landlord, shall defend any of the above described claims at Tenant's expense. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Leased Premises. However, this section does not require Tenant to indemnify, defend and hold harmless Landlord from and against any portion of a claim to the extent that portion of the claim is caused by Landlord's negligence, or the negligence of Landlord's agents, contractors or employees arising from Landlord's activities on the Leased Premises. To the extent permitted by law, Landlord shall indemnify, defend, and hold harmless Tenant from and against any portion of a claim to the extent that portion of the claim is caused by Landlord's negligence, or the negligence of Landlord's agents, contractors or employees arising from Landlord's activities on the Leased Premises.

Tenant acknowledges that before entering into this Lease it has fully inspected or been provided with an opportunity to fully inspect the Leased Premises and all documents in the possession of Landlord relating to the condition of the Leased Premises, and to test or examine all conditions of or on the Leased Premises. Tenant further acknowledges that, at the time this Lease is entered into and on the basis of the foregoing inspection or opportunity to inspect, Tenant is as knowledgeable about the physical condition of the Leased Premises as Landlord, and on that basis, assumes all risks relating to the condition of the Leased Premises, except risks relating to environmental pollution not caused by Tenant.

4.13 **Costs and Expenses of Landlord**. Tenant shall forthwith pay to Landlord all costs and expenses, including reasonable attorney's fees, which are (1) paid or incurred by Landlord but are required to be paid by Tenant under any provision of this Lease; (2) paid or incurred by Landlord in enforcing any covenant of Tenant contained in this Lease, in protecting itself against or remedying any breach thereof, in recovering possession of the Leased Premises or any part thereof, or in collecting or causing to be paid any delinquent rents, taxes, assessments, or rates; (3) incurred by Landlord in reviewing any matter for which Landlord's approval is sought and in processing such approval under this Lease; or (4) incurred by Landlord in connection with any other action in any respect related to this Lease, the Leased Premises, or Tenant's actions or omissions and the Leased Premises, other than a condemnation action filed by or against Tenant, to and in which Landlord is made a party but not adjudicated to be at fault. The term "costs and expenses" as used in this Lease shall include but not be limited to all of Landlord's out-of-pocket expenditures attributable to the matter involved. Except as otherwise expressly provided herein, all costs and expenses of Landlord shall be payable by Tenant to Landlord forthwith after mailing or personal delivery of statements therefore to Tenant. Such obligations and interest shall constitute additional rents.

4.14 **Surrender of Leased Premises and Improvements**. Upon the expiration or termination (including termination resulting from Tenant's breach) of this Lease, Tenant, without further notice, shall deliver to Landlord, possession of the Leased Premises. Tenant's improvements shall remain the property of Tenant. At the expiration or termination of the Lease, or any extended term thereof, Tenant shall remove, demolish, or otherwise dispose of all Tenant's improvements within one hundred twenty (120) days of expiration or termination, unless Landlord agrees otherwise, in writing, and shall leave Leased Premises in a clean and cleared condition. In the event of failure or refusal of Tenant to surrender possession of the Leased Premises or to remove Tenant's improvements from the Leased Premises in accordance with this paragraph, Landlord shall have the right to re-enter the Leased Premises and remove therefrom Tenant or any other person, form or corporation claiming by, through or under Tenant, and to declare abandoned and/or remove Tenant's improvements therefrom, and to obtain damages for trespass from Tenant, including but not limited to the actual costs of removal.

4.15 **Utility Services**. Tenant shall arrange for its own utility services and bear all costs for utilities.

4.16 **Discrimination Prohibited**. Tenant will not unlawfully discriminate in allowing access to and use of the Leased Premises on the grounds of race, color, religion, national origin, ancestry, marital status, disability, gender, sex, sexual orientation, gender identification, or other legally protected status.

4.17 **Underground Conditions and Water Drainage**. Tenant has made, or prior to the construction of any improvements on the Leased Premises will make, its own soil tests of the Leased Premises. This Lease is made subject to and without any liability on the part of the Landlord, its agents or employees because of or resulting from any fill or any subsurface or soil condition on the Leased Premises. Tenant shall not drain or discharge water from the Leased Premises onto adjoining land. The Leased Premises shall be graded and drained to cause the discharge of all water on the Leased Premises at a location or locations approved by Landlord, or into an established drainage easement, if any, on the Leased Premises.

ARTICLE 5
INSURANCE

5.01 **Liability Insurance**. During the entire Lease Term, and during any holdover thereafter, whether or not authorized by Landlord, Tenant shall keep in full force and effect, a policy or policies of general liability and property damage insurance which satisfies the coverage requirements set by Landlord with respect to the Leased Premises and the business operated by Tenant in which the limit of bodily injury, death, and property damage liability shall be not less than ONE MILLION DOLLARS per occurrence and not less than TWO MILLION DOLLARS in the aggregate, or such higher limits as Landlord may specify; provided, however, that no such limit shall in any way limit Tenant's liability or be construed as a representation of sufficiency to fully protect Tenant or Landlord. The policy or policies purchased pursuant to this paragraph shall name the Tenant as an insured and the Landlord as an additional insured with respect to the Leased Premises and the business operated by Tenant on the Leased Premises. A copy of each policy shall be provided to Landlord within three (3) days of the date this Lease is entered into.

5.02 **Policy Provisions.** Each policy of comprehensive general liability described above shall:

Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim, any right of setoff; counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for Landlord, for any person claiming by, through or under Landlord.

Contain no provision relieving the insurer from liability for loss occurring while the hazard to buildings and/or other improvements is increased, whether or not within the knowledge of control of; or because of any breach of warranty or condition or any other act or neglect by Landlord, or any person claiming by, through or under Landlord.

Provide that such policy may not be canceled, whether or not requested by Tenant, unless the insurer first gives not less than thirty (30) days prior written notice thereof to Landlord.

Contain a waiver by the insurer of any right to subrogation to any right of Landlord or Tenant against either of them or against any person claiming by either of them.

ARTICLE 6
EMINENT DOMAIN

6.01 **Permanent Taking**. In the event of a taking by an entity of competent jurisdiction of all or materially all of the Leased Premises, or the determination of the Landlord that all or materially all of the Leased Premises is necessary for a public purpose, this Lease shall terminate on the earlier of vesting of title in, or the taking of possession by the condemner, or the written determination of the Landlord.

If less than materially all of the Leased Premises are taken or if the Landlord determines that it needs less than materially all of the Leased Premises for a public purpose (herein called a "partial taking"), this Lease shall continue in effect except as to the portion so taken or condemned, but the rent to be paid by Tenant shall thereafter be reduced by a percentage equal to the proportion that the number of square feet in the Leased Premises so taken bears to the number of square feet of Leased Premises before the partial taking.

6.02 **Disposition of Proceeds**. Landlord is entitled to all proceeds of condemnation except those proceeds specifically allocated for Tenant's improvements.

6.03 **Temporary Taking**. If the whole or any part of the Leased Premises or of Tenant's interest under this Lease is taken by any competent authority for its temporary use or occupancy, this Lease shall not terminate by reason thereof and Tenant shall continue to pay all rental payments and other charges payable by Tenant hereunder and to perform all other terms, covenants, and conditions contained herein, except to the extent Tenant is prevented from so doing by the terms of the order of the taking authority. In the event of a temporary taking, Tenant shall be entitled to receive the entire amount of the award and shall be obligated, at its sole expense, to restore the Leased Premises as nearly as may be reasonably possible to the condition in which they existed immediately prior to such taking; provided, however, that if the period of temporary use or occupancy extends beyond the expiration of the Lease Term, the award shall be apportioned between Landlord and Tenant as of said date of expiration, after Landlord shall have received the entire portion of the award attributable to physical damage to the Leased Premises and any improvements thereon and to the restoration thereof to the condition existing immediately prior to the taking or condemnation.

6.04 Casualty. If the improvements on the Leased Premises shall be damaged or rendered wholly or partially unusable for Tenant's business purposes by fire or other casualty during the Term of this Lease, Tenant may terminate this Lease by giving notice to Landlord within ninety (90) days of the date of the fire or other casualty. If Tenant does not terminate this Lease, no rent shall abate after the date of the casualty, whether the Leased Premises is usable or not, and Tenant shall promptly rebuild or repair the improvements to substantially their former condition.

ARTICLE 7
ASSIGNMENTS AND MORTGAGES

Landlord 's Consent Required. Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Leased Premises without Landlord's prior written consent. Because Landlord's Premises are publicly owned, such consent may not be easily granted and will require significant City Council involvement. Any attempted assignment, transfer, mortgage, or encumbrance without such consent shall be void and shall constitute a breach of this Lease.

ARTICLE 8
SUBLETTING OF PREMISES

8.01 Tenant intends to sublease all or a portion of the Premises. Landlord acknowledges and accepts Tenant's intent to sublease and hereby consents to any subleases subject to the provisions set forth herein.

Tenant acknowledges that any subleases of the Premises shall be in compliance with (a) all applicable covenants, conditions and restrictions of record; and (b) all laws, ordinances and government regulations in effect during the Term of this Lease.

8.02 **Landlord's Consent**. Tenant shall make written application to Landlord for any and all subleases. Consent to Tenant's request to sublease shall not be unreasonably withheld. Tenant acknowledges that Landlord's refusal to consent to a sublease for a subtenant who is in arrears with the City of Bethel shall not be unreasonable. Tenant further acknowledges that Landlord's consent to a Sublease shall not in any way reduce, modify or absolve the Tenant from its obligations under this Lease Agreement.

8.03 **Conditions**. Subleases by Tenant are also subject to the terms of this Lease and the Term shall not extend beyond the Lease Term.

8.04 **Subtenants.** Subtenants shall not assign the Sublease nor sublet the subleased Premises in whole or in part and shall not permit the subtenant's interest in the sublease or the subleased Premises to be vested in a third party by operation of law or otherwise.

8.05 The execution of consent by Landlord shall not be deemed to be a consent to any subsequent assignment or subletting by either sublandlord or subtenant.

ARTICLE 9
TERMINATION, DEFAULT AND DEFEASANCE

9.01 **Event of Default**: Each of the following events shall be a default by Tenant and a breach of this Lease:

A. **Failure to Continuously Operate a Facility for the General Public**.
If the land is used for commercial or retail purposes, to be available to the general public does not require that all members of the general public be admitted, only that there be no discrimination in admission based on race, gender, sexual orientation, gender identify age, sex or other protected category. Additionally, continuously operate shall be defined as open and operating regularly scheduled days and hours with no more than ninety (90) calendar days closure during any calendar year.

B. **Failure to Perform Covenants.** Abandonment or surrender of the Leased Premises or of the leasehold estate, or failure or refusal to pay when due any installment of rent or any other sum required by this Lease to be paid by Tenant or to perform as required or conditioned by any other covenant or condition of this Lease.

C. Appointment of Receiver. The appointment of a receiver or trustee to take possession of the Leased Premises or improvements or of the Tenant's interest in the leasehold estate or of Tenant's operation on the Leased Premises for any reason, including but not limited to, assignment of benefit of creditors, but not including receivership pursuant to administration of the estate of any deceased or incompetent Tenant.

9.02 **Notice and Right to Cure**

A. **Notices**. As a precondition to pursuing any remedy for an alleged default by Tenant, Landlord shall, before pursuing any remedy, give notice of default to Tenant.

B. **Method of Giving Notice.** Landlord shall give notice of default by either personal service or by first class mail.

C. **Tenant's Right to Cure Default(s).** If the alleged default is nonpayment of rent, Tenant shall have five (5) days after the notice is given to cure the default. For the cure of any other default, Tenant shall promptly and diligently cure the default and shall have thirty (30) days after notice is given to complete the cure.

D. **Non-Waiver.** Acceptance by Landlord of any rents shall not be deemed to be a waiver by it of any breach by Tenant of any of its covenants contained in this Lease or of the right of Landlord to re-enter the Leased Premises or to declare forfeiture for any such breach. Waiver by Landlord of any breach by Tenant shall not be deemed to be a waiver of the right of Landlord to declare forfeiture for any other breach or of any other covenant.

9.03 **Right of Landlord to Protect Against Default**

If Tenant fails to observe or perform any of its covenants contained herein, Landlord, at any time thereafter and with seven (7) days' notice, or in the case of a situation deemed by Landlord to constitute an emergency, without notice, shall have the right but not the obligation to observe or perform such covenant for the account and at the expense of Tenant, and shall not be liable to Tenant or anyone claiming by, through, or under it for any loss or damage by reason thereof to the occupancy, business, or property of any of them. All costs and expenses paid or incurred by Landlord in observing or performing such covenant shall constitute additional rents, which Tenant shall forthwith pay to Landlord upon statements therefore.

9.04 **Landlord's Remedies**

If any default by Tenant shall continue uncured, following notice of default as required by this Lease, for the period applicable to the default, Landlord has the following remedies in addition to all other rights and remedies provided by law or equity or other provisions of this Lease, to which Landlord may resort cumulatively or in the alternative. The election of one remedy for any one default shall not foreclose an election of any other remedy for another default or for the same default at a later time.

A. **Termination in the Event of Default.** Landlord may, at Landlord's election, terminate this Lease in the event of default by giving Tenant notice of termination. On the giving of the notice, all Tenants' rights in the Leased Premises shall terminate. Promptly after notice of termination, Tenant shall surrender and vacate the Leased Premises and all Improvements not required to be removed, and Landlord may re-enter and take possession of the Leased Premises and all remaining improvements. Termination under this paragraph shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages previously accrued or accruing against Tenant, or any other relief available to Landlord.

B. **Recovery of Rent.** Landlord shall be entitled, at Landlord's election, to each installment of rent or to any combination of installments for any period before termination, plus interest at the rate of twelve and a half (12.5%) percent from the due date of each installment.

C. **Tenant's Personal Property.** Landlord may, if Tenant fails to remove personal property or Tenant's improvements within the time allowed above, use Tenant's personal property, Tenant's improvements and trade fixtures on the Leased Premises, or any of such property without liability for use or damage, or store them at the sole risk and cost to Tenant.

D. **Damages.** Landlord shall also be entitled, at Landlord's election, to damages in the following sums: (1) all amounts that would have fallen due as rent between the time of termination and the time the Leased premises are relet; (2) the amount, if any, by which the rent under this Lease exceeds the rent under any subsequent Lease upon reletting calculated over the Lease Term; and (3) all administrative, marketing, maintenance, repair, cleaning and similar costs incurred by Landlord.

E. **Application of Sums Collected by Landlord.** Landlord shall apply all proceeds of reletting as follows: First, to the payment of reasonable expenses (including attorney's fees and broker's commissions or both) paid or incurred by or on behalf of Landlord. Second, in recovering possession, placing the Leased Premises and improvements in good condition, and preparing or altering the Leased Premises or improvements for reletting. Third, to the reasonable expenses of securing new Tenants. Fourth, to the fulfillment of Tenant's covenants to the end of the Lease term; and finally, to Landlord's uses and purposes.

F. **Costs.** In the event Tenant shall be in default in the performance of any of its obligations under this Lease, and Landlord takes any action to enforce this Lease, including, but not limited to, court action, Tenant shall pay Landlord all the expenses incurred by Landlord in taking such action including full and reasonable attorney's fees.

9.05 **Early Termination by Tenant.** In the event Tenant desires to terminate the Lease Agreement before the natural expiration date, Tenant may so cancel provided that the following conditions are fully met. Failure to fulfill all of the conditions will be a breach of this Lease Agreement.

A. Written notice of early termination must be received by Landlord not later than one hundred twenty (120) calendar days prior to the proposed termination date.
B. Rent must be paid through the termination date.
C. The termination date must be the end of the month. No mid-month termination dates will be accepted.
D. If Tenant terminates the Lease prior to the completion of the Lease as contemplated by this Agreement, Tenant shall pay a penalty equal to twelve (12) months' rent, payable within no more than thirty (30) days upon termination of the Lease. Such payment will be considered liquidated damages as penalty for early termination.
E. Upon payment by Tenant to Landlord of liquidated damages, Landlord formally waives its rights to any additional remedies it may have under paragraphs 9.04(B), (D) and (E) above.

ARTICLE 10
GENERAL PROVISIONS

10.01 **Landlord's Right to Entry, Inspection and Repair**
Landlord may enter and inspect the Premises, at any time during regular business hours, with or without the presence of Tenant or its authorized representative, after giving twenty-four (24) hours advance notice to Tenant of such inspection. To protect the confidentiality of Tenant's clients, Landlord shall take every step possible to not enter without the presence and consent of Tenant except in an emergency or upon agreement by Tenant, such agreement not to be unreasonably withheld or refused. In the event of an emergency, Landlord may enter and inspect the Leased Premises on reasonable notice to Tenant (including no notice if the circumstances warrant) and make such repairs or institute such measures, on the account and at the expense of Tenant, as may be necessary to avert or terminate the emergency. An emergency is any action, event or condition, either extant or imminent, that threatens significant damage to property or injury to persons on or near the Leased Premises, and includes, but is not limited to, flood, fire, explosion, uncontrolled dangerous discharge or release of water or fluids, or the unauthorized or illegal placement of hazardous or toxic materials on Leased Premises). The provisions of this paragraph apply to Landlord solely in its capacity as Landlord hereunder and not in any other capacity.

10.02 **Notices**

All notices, requests, demands and other communications hereunder shall be deemed given only if in writing signed by an authorized representative of the sender and delivered by facsimile, email (with a hard copy mailed first class) or mailed and addressed to the respective parties as follows:

To Landlord:
City Manager
City of Bethel
P.O. Box 1388
Bethel, Alaska 99559

With Required Copy to:

City of Bethel Legal Department
PO Box 1388
Bethel, Alaska 99559-1388

To Tenant:
Essenkay, LLC
PO Box 2343
Bethel AK 99559-2343

10.03 **Covenants and Conditions**

Every provision in this Lease which imposes an obligation upon Tenant or invests an option, power, or right in Landlord shall be deemed to be a covenant of Tenant in favor of Landlord, and the time of observance and performance by Tenant of each such covenant shall be of the essence. Full and faithful observance and performance by Tenant of each of its covenants contained in this Lease shall be a condition of this Lease.

10.04 **Integration and Amendment**

Except as otherwise expressly provided in this Lease, this Lease is a complete integration of every agreement and representation made by or on behalf of Landlord and Tenant with respect to the Leased Premises, and no implied covenant or prior oral or written agreement shall be held to vary the provisions of this Lease, any law or custom to the contrary notwithstanding. No amendment or other modification of the provisions of this Lease shall be effective unless incorporated in a written instrument duly executed and acknowledged by Landlord and Tenant.

10.05 **Survival and Severability**
If any provision of this Lease shall be deemed to be void or otherwise unenforceable by any court or other tribunal of competent jurisdiction, other than at the initiative or with the support of Landlord, within thirty (30) days of receipt of written notice of such holding, Landlord shall have the right and option, exercisable by written notice thereof to Tenant, to terminate this Lease effective as of the date of such written notice of exercise. It is understood and agreed that otherwise this Lease, except for such provision so held to be void or otherwise unenforceable, shall remain in full force and effect.

10.06 **Binding Effect**
This Lease shall be binding upon and shall inure to the benefit of Landlord and Tenant and their respective successors and assigns. The designations "Landlord" and "Tenant" include their respective successors and assigns and shall be so construed that the use of the singular includes the plural number, and vice versa, and the use of any gender include the other genders. If at any time during the Lease Term Tenant is more than one person or entity, including persons who are partners and operate Tenancy as a partnership, their liability thereunder shall be joint and several.

10.07 **Landlord's Authority to Convey Fee Title**
Landlord retains the absolute and unconditional right to convey fee title in the Leased Premises or an interest or estate therein, subject to this Lease and the interest of any Qualified Mortgagee.

10.08 **Tenant's Authority to Execute Lease**
The Tenant represents that the person signing this Lease on its behalf has been duly authorized to sign this Lease and has the authority to bind the Tenant.

10.09 **Captions**
The captions of the paragraphs are for convenience only, are not operative, and neither limit nor amplify in any way the provisions hereof.

10.10 **Execution and Counterparts**
This Lease may be executed in two or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

10.11 **Governing Law/Construction**
This Lease shall be construed and governed by the laws of the State of Alaska. This Lease was negotiated between the parties and shall not be strictly construed against either party. In the event that a question, dispute, or requirements for interpretation or construction shall arise with respect to this Lease, jurisdiction and venue shall lie exclusively with the Bethel Court in the Fourth Judicial District at Bethel, Alaska.

IN WITNESS WHEREOF. Landlord and Tenant have duly executed and acknowledged this Lease.

CITY OF BETHEL	ESSENKAY, LLC
William F. Howell, III Acting City Manager	Naim Shabani Member
	Jared Karr Member

LEASE ADDENDUM #1

This Lease Addendum #1 is made the 28th day of May, 2019, by and between the City of Bethel, ("Lessor"), and Essenkay, LLC, ("Lessee"), an Alaska corporation.

Whereas, Lessor and Lessee understand and agree to the following:

1. The Lessee/Lessor understand and agree the property at 781 3rd Avenue is going to be used for a marijuana business.

2. The Lessee/Lessor understand and agree that in case of default, Lessee will not take possession or remove marijuana from the premises and AMCO enforcement will be contacted to take possession.

Lessor

Date: 5-28-19

Bill Howell, Acting City Manager

City of Bethel, Alaska

Lessee

Date: 06-04-19

Naim Shabani, Owner

Essenkay, LLC

Date: 5/28/19

Jared Karr, Owner

Essenkay, LLC

City of Bethel

P.O. Box 1388 • Bethel, Alaska 99559-1388
907-543-1386
Fax # 543-1388
Website: www.cityofbethel.org

August 28, 2019

Essenkay, LLC
P.O. Box 2343
Bethel, AK 99559-2343

RE: Commercial lease between the City of Bethel and Essenkay, dated April 23, 2019.

Dear Mr. Shabani and Mr. Karr:

It has come to my attention that Lease Addendum #1 to the Commercial Lease between the City of Bethel and Essenkay, LLC (hereinafter the "Lease") is in violation of Article 4.06 of the Lease. Article 4.06 requires that the tenant "shall observe and comply with all state and federal laws, municipal ordinances, rules and regulations" which may be applicable to the leased premises. Lease Addendum #1 states that the leased premises "is going to be used for a marijuana business." The possession, sale, or distribution of marijuana is prohibited by federal law. As a result, Lease Addendum #1 is of no force and effect.

Sincerely,

W. E. Howell

Bill Howell, Acting City Manager
City of Bethel

Introduced by:	Mayor Barr
Introduction Date:	October 29, 2019
Public Hearing Date:	November 12, 2019
Action:	
Vote:	

CITY OF BETHEL, ALASKA

Ordinance 19-11 (j)

AN ORDINANCE AMENDING THE CITY OF BETHEL FISCAL YEAR 2020 BUDGET

WHEREAS, the City of Bethel entered into a contract with GovHR for the recruitment of City Manager and City Attorney;

WHEREAS, that contract lists a required payment of $28,000 for recruitment fees, and guarantees their recruitment services until a suitable candidate is confirmed for the two vacant positions;

WHEREAS, in addition to the recruitment fees, there was an allocation in the contract for incidentals and travel in the amount of $10,000 as well as advertising in the amount of $5,000;

WHEREAS, with the extension of the recruitment for each, there is a need for additional advertising of the two positions and additional allocation for incidentals and travel for the GovHR representative;

WHEREAS, the proposed budget amendment supports an allocation for advertisement costs based off the last recruitment fees as well as two trip for GovHR Representative to attend onsite interviews with Council;

THEREFORE BE IT ORDAINED by the City Council of Bethel, Alaska, as follows:

SECTION 1. Classification. This is a non-codified Ordinance and shall not become part of the Bethel Municipal Code.

SECTION 2. Fiscal Year Budget Amendments. The following estimated revenues and expenditures are hereby appropriated for the corporate purposes and objects of the City of Bethel for Fiscal Year 2020.

J-1				
Line Item	Description	Approved Appropriations	Proposed Amendment	Proposed Total Appropriations
10-52-644	Consulting Services	41,000	10,000	51,000
50-71-699	Undesignated Fund Balance	0	(10,000)	0

Introduced by: Mayor Barr
Introduction Date: October 29, 2019
Public Hearing Date: November 12, 2019
Action:
Vote:

SECTION 3. Effective Date. This Ordinance shall become effective upon the passage by the Bethel City Council.

ENACTED THIS 12TH DAY OF NOVEMBER 2019 BY A VOTE OF _ IN FAVOR AND _ OPPOSED.

Perry Barr, Mayor

ATTEST:

Lori Strickler, City Clerk

General Information Manager/Attorney Recruitment

Total paid in Recruitment Fee: $14,168 $13,832 outstanding

Total Paid in Incidentals and Travel: $3,141.96 $6,858.04 remaining in the budget.

Total Paid in Advertising: $3,632 $1,368 remaining in the budget.

**The above expenses and allocations do not include the October travel/invoice.*

The Council previously approved the Position Announcements with a salary range $125,000- 145,000. Below are some comparable. There are only a few in house attorneys listed because some communities have contracts with firms as opposed to in house. With this, there is a comparison of in house and contract below. The annual estimates for the contract attorney below are pulled from the Administration's budget which is an accurate estimate but does not include appropriations associated to grants which are expensed out under the grant accounts.

State Salary Range In House Attorney	State Salary Range City Manager
$125,000 - $145,000 Bethel's Proposed $86,300 – 137,600 Anchorage $109,300 - 153,920 Fairbanks $81,100 - 133,120 Kenai $151.800 Juneau $141,400 Ketchikan $124,800 – 135,200 Sitka	$125,000 - $145,000 Bethel's Proposed $102,488-143,483 Anchorage $107,286 - 153,420 Fairbanks $165,006 Juneau $109,990 Ketchikan $130,000 Sitka $123,510 City of Palmer $80,017 – 143,998 City of Kotzebue $103,480 City of Nome

Comparison -City Attorney in House/Contract

	In House Attorney	Contract Attorney
Timeline	3 Months + GovHR to initiate the advertisements and application acceptance/interviews/backgrounds.	2 months + Request for proposal drafting 1 week, proposal response period 30 days, evaluation period 1 week and contract agreement 2-3 weeks.
Costs	$9,000 ($2,500 for advertisement and $7,000 for Recruitment Expenses to include travel for GovHR Representative). Not Budgeted $3,000 per candidate to travel to Bethel for onsite interview. Not Budgeted	Personnel costs associated with the preparation and evaluation of the RFP.
Annual Estimates	$175,856 FY 2013 *Includes salary/benefits* $244,402 FY 2014 $270,773 FY 2015 $317,855 FY 2016 $217,467 FY2017 $219,296 FY2018	$137,311 FY 2010 *Grant EXP excluded* $193,781 FY 2011 $119,323 FY 2012 $99,748 FY 2013

POSITION ANNOUNCEMENT
CITY ATTORNEY

BETHEL, AK (Population: 6,500) is a remote city on the western coast of Alaska, approximately 400 miles west of Anchorage. Bethel is only accessible by air and water and it is the largest Kuskokwim River port, serving as a transportation and administrative hub for over 50 Alaskan villages. With a population of over 6,500, the city is contains about 48 square miles of land with approximately 5 square miles as water. Bethel has been a conservative driven community placing value on keeping the financial stability of the community at the forefront of their capital planning and growth. The total budget for 2019-2020 including all funds is about $31 million with a general fund budget of around $15.6 million. The city currently has approximately 100 FTE employees.

Within Bethel, there are approximately 36 miles of roads which are not connected to any contiguous highway system. The Port of Bethel is the northernmost medium-draft port in the U.S.A. River travel is the primary means of local transportation in the summer and supports barge service that provides goods to Kuskokwim villages. The state-owned Bethel Airport is a regional transportation hub served by four passenger carriers and three major cargo carriers. The airport ranks third in the state for total number of flights.

Bethel is a vibrant and bustling community and continues to be a hub of commerce and transportation for its residents and surrounding villages. The city could see some potential growth in the coming years through two proposed housing developments. The median household income is approximately $83,400 with 32% of the population under the age of 18 and only 7% of the population over the age of 65, it is a young community.

The successful candidate will have the following qualifications and experiences:

- A demonstrated knowledge of federal, tribal, state and local laws and ordinances, rules and regulations, particularly with respect to municipal operations and the ability to interpret and ensure compliance with applicable federal, tribal, state and local polices, rules, laws and regulations specific to the State of Alaska and the City of Bethel.
- Ability to work in conjunction with the Mayor, Council, City Manager as a credible and impartial legal advisor, maintaining professional objectivity and neutrality with respect to policy and procedural matters which may affect the municipal operations of Bethel.
- A Juris Doctorate Degree from an accredited law school and be admitted to and in good standing with the Alaska Bar or able to be admitted to the Alaska Bar prior to commencing employment with the City. A minimum of five (5) years of full-time experience (preferably seven (7)) as a practicing attorney in Civil or Administrative law, preferably for a municipality. Experience in Alaska is preferred. Residency is required.

The starting salary range for the position is $125,000 - $145,000 DOQ. The City will also offer an outstanding fringe benefit package including low cost health, dental and vision. Residency within the City is required. Interested candidates should apply online by August 30, 2019 with a cover letter, resume, and contact information for at least five (5) professional references to www.GovHRjobs.com and to the attention of Sarah McKee, Senior Vice President, GovHR USA, 630 Dundee Road, Suite 130, Northbrook, IL 60062. Tel: (847) 380-3240.

DRAFT

POSITION ANNOUNCEMENT

BETHEL, AK (Population: 6,500) is a remote city on the western coast of Alaska, approximately 400 miles west of Anchorage. Bethel is only accessible by air and water and it is the largest Kuskokwim River port, serving as a transportation and administrative hub for over 50 Alaskan villages. With a population of over 6,500, the city has about 48 square miles of which approximately 5 square miles is water. Bethel has been a conservative driven community placing value on keeping the financial stability of the community at the forefront of their capital planning and growth. The total budget for 2019-2020 including all funds is about $31 million with a general fund budget of around $15.6 million. The city currently has 100 FTE employees.

Within Bethel, there are approximately 16 miles of roads which are not connected to any contiguous highway system. The Port of Bethel is the northernmost medium-draft port in the U.S.A. River travel is the primary means of local transportation in the summer and supports barge service that provides goods to Kuskokwim villages. The state-owned Bethel Airport is a regional transportation hub served by four passenger carriers and three major cargo carriers. The airport ranks third in the state for total number of flights.

Bethel is a vibrant and bustling community and continues to be a hub of commerce and transportation for its residents and surrounding villages. The city could see some potential growth in the coming years through two proposed housing developments. The median household income is approximately $83,400 with 32% of the population under the age of 18 and only 7% of the population over the age of 65, it is a young community.

The successful candidate will have the following qualifications and experiences:

- A strong commitment to creative problem-solving through teamwork and professionalism, outstanding supervisory and administrative skills, highly developed interpersonal and oral/written communication skills and ability to develop policies and procedures that evolve with the organization.
- A demonstrated record of leadership with a comprehensive knowledge of city/county management, governmental finances and budgeting, planning and growth, and consensus building.
- A bachelor's degree in public administration, public policy, business or related field and a Master's in Public/Business Administration from an accredited college or university is preferred along with extensive progressively responsible experience (5 to 7 years) in local government management, including significant experience at a senior level interacting with elected officials and other stakeholder groups. Experienced assistant and/or deputy managers/administrators are also encouraged to apply. Experience in Alaska is preferred.

The starting salary range for the position is $125,000 - $145,000 DOQ. The City will also offer an outstanding fringe benefit package including low cost health, dental and vision. Residency within the City is required. Interested candidates should apply online by XXXXX, 2019 with a cover letter, resume, and contact information for at least five (5) professional references to (INSERT LINK) and to the attention of Sarah McKee, Senior Vice President, GovHR USA, 630 Dundee Road, Suite 130, Northbrook, IL 60062. Tel: (847) 401-3240.