

Introduced by: Mayor
Date: 09/19/17
Action: Adopted
Vote: 7 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2017-056**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO
THE SPECIALTY CLINIC OPERATING AGREEMENT TO EXTEND THE TERM OF
THE AGREEMENT TO DECEMBER 31, 2027 AND UPDATE BOND RELATED
MATTERS**

WHEREAS, in KPB Resolution 2013-072, as amended by KPB Resolution 2014-008, hereinafter jointly referred to as "Resolution 2013-072," the Borough Assembly authorized the issuance of not to exceed \$43,000,000 in revenue bonds, hereinafter "Bonds," for the purpose of providing funds to engineer, design, construct and equip the Specialty Clinic Building located in the Central Kenai Peninsula Hospital Service Area and owned by the Borough ("Specialty Clinic"); and

WHEREAS, issuance of the Bonds was subject to Borough Assembly approval of an agreement with a facility operator to operate the Specialty Clinic and apply revenues derived from the operation of the Specialty Clinic, and other medical facilities located in the Central Kenai Peninsula Hospital Service Area, towards payment of the principal of, and interest on, the Bonds when due; and

WHEREAS, in KPB Resolution 2014-006 the Borough Assembly authorized the mayor to sign an Agreement to Operate Specialty Clinic Building (hereinafter "Agreement") with CPGH, Inc. in substantially the form of the agreement accompanying that resolution which included an expiration date of December 31, 2017; the Agreement was signed January 16, 2014; and

WHEREAS, the Agreement was subsequently amended to comply with certain provisions contained in resolution 2013-072; the amendment was signed June 3, 2014; and

WHEREAS, certain terms of the Agreement refer to the existing operating agreement with Central Peninsula General Hospital, Inc. ("CPGH, Inc.") which will be replaced with a new operating agreement with CPGH, Inc. effective January 1, 2018, as approved by the Borough Assembly in ordinance 2017-14; the term of the new operating agreement extends to December 31, 2027; and

WHEREAS, it is in the best interest of the Borough to extend the term of the Agreement to December 31, 2027 to match that of the new operating agreement, subject to earlier termination as therein provided, to include references in the Agreement, as applicable, to the new operating agreement with an effective date of January 1,

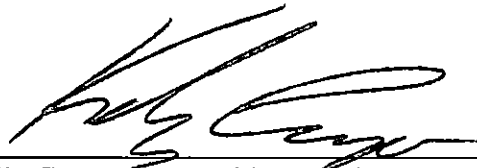
2018, and modify terms relating to more recent management contract rules applicable to tax exempt bonds;

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

SECTION 1. That the Mayor is authorized to execute a second Amendment to Operate Specialty Clinic substantially in the form of the Agreement attached hereto as Attachment A.

SECTION 2. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 19TH DAY OF SEPTEMBER, 2017.

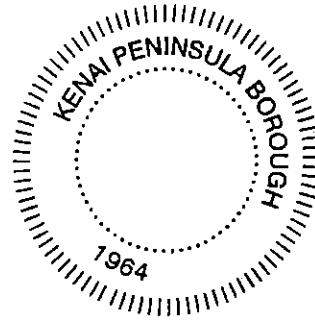


Kelly Cooper, Assembly President

ATTEST:



John Blankenship, MMC, Borough Clerk



Yes: Bagley, Carpenter, Dunne, Fischer, Hibbert, Ogle, Cooper
No: None
Absent: Schaefer

**SECOND AMENDMENT TO AGREEMENT TO OPERATE
SPECIALTY HEALTH CLINIC BUILDING**

This agreement is by and between Central Peninsula General Hospital, Inc., an Alaska nonprofit corporation, of 250 Hospital Place, Soldotna, Alaska 99669, hereinafter referred to as "CPGH, Inc." and the Kenai Peninsula Borough (hereinafter referred to as either "KPB" or "Borough"), an Alaska municipal corporation of 144 N. Binkley, Soldotna, Alaska 99669, collectively referred to as the "Parties".

WHEREAS, pursuant to KPB Resolution 2013-072, as amended by KPB Resolution 2014-008, hereinafter jointly referred to as "Resolution 2013-072," the Borough Assembly authorized the issuance of not to exceed \$43,000,000 in specialty clinic building revenue bonds, hereinafter "Bonds," for the purpose of providing funds to engineer, design, construct and equip a Specialty Clinic Building (hereinafter "Building") on behalf of the Central Kenai Peninsula Hospital Service Area; and

WHEREAS, KPB Resolution 2013-072 made issuance of the Bonds subject to prior Borough Assembly approval of an agreement with a facility operator to operate the Building and apply revenues generated therefrom, and other Borough medical facilities, toward payment of debt service on the Bonds; and

WHEREAS, in KPB Resolution 2014-006 the Borough Assembly authorized the mayor to sign an Agreement to Operate Specialty Clinic Building (hereinafter "Agreement") with CPGH, Inc. in substantially the form of the agreement accompanying that resolution; the Agreement was signed on January 16, 2014; and

WHEREAS, the Agreement was subsequently amended to more fully comply with requirements in KPB Resolution 2013-072; and

WHEREAS, the expiration date of the Agreement is December 31, 2017 unless terminated earlier or extended by the Parties; and

WHEREAS, the Borough Assembly recently approved a new Operating Agreement between the Borough and CPGH, Inc., relating to the operation and maintenance of the Building and other medical facilities of the Borough (hereinafter "Operating Agreement"), with an effective date of January 1, 2018 and expiration date of December 31, 2027, unless terminated earlier pursuant to the terms set forth therein; and

WHEREAS, to comply with certain tax requirements related to the Bonds, and Resolution 2013-072, the expiration date for the Specialty Clinic Operating Agreement needs to be amended to match the termination date of the Operating Agreement; and

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WHEREAS, since the Agreement was signed by the Parties, new revenue procedures have been issued by the Internal Revenue Service relating to safe harbor conditions under which a management contract does not result in private business use of property financed with governmental tax-exempt bonds; and

WHEREAS, the Agreement should be amended to account for new Internal Revenue Service guidelines relating to management contracts, as reflected in the Operating Agreement; and

WHEREAS, it is in the best interests of the Parties to amend the Agreement to extend the expiration date of the Agreement to December 31, 2027, and to amend the outdated provisions related to management contracts governing the use of property financed with governmental tax-exempt bonds and related matters;

NOW THEREFORE, in consideration of the mutual terms and covenants contained herein and the performance thereof, the parties agree as follows:

1. That paragraph 1 of the Agreement is hereby amended by including the following sentence:

All references in this Agreement to the LOA shall mean to include the LOA and the Operating Agreement, as applicable.

2. That paragraph 2 of the Agreement is hereby amended as follows:

2. Lease and Operating Agreement. All provisions in the LOA and Operating Agreement are hereby incorporated by reference into this Agreement *except* as follows:

- (a) Provisions concerning the lessor-lessee relationship between the Borough and CPGHI as this is an operating agreement, not a lease and operating agreement. It is intended that the provisions governing the operation and management of Medical Facilities set forth in the LOA will govern the operation and management of the Building in addition to the provisions contained in this Agreement.
- (b) The term of this Agreement shall be from the date of issuance of the Bonds by the Borough, to and including December 31, 2027 [2017], unless terminated earlier or extended by the parties. Issuance of the Bonds is conditioned upon and subject to execution and delivery of this Agreement and issuance of a Certificate of Need by the State of Alaska.

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- (c) The Borough grants to CPGHI the authority to negotiate lease space on behalf of the Borough within the Building for independent medical specialty clinics and other health care business, and to enter into leases with the owners or operators of independent medical specialty clinics and other health care business subject to Borough approval, the provisions in paragraph 15 of the Operating Agreement, and the provisions of paragraph 2(f) below. In the event that this ~~Operating~~ Agreement is not renewed or extended beyond December 31, 2027 ~~2017~~ for any reason, or is not replaced by an operating agreement between the Borough and CPGHI that includes this Building, then each lease of space within the Building shall continue, provided that the lessee is not in default of its lease with the Borough.
- (d) Section 13, paragraph a of the LOA, “Finances, Operating Expenses” and Section 16, paragraph a of the Operating Agreement, “Operating Revenues” is hereby amended for purposes of this Agreement to reflect that debt service payments on the B[b]onds shall be deemed usual and customary operating expenses of operating the Medical Facilities and all revenues and cash collections shall first be made available for debt service payments on the Bonds, pursuant to Resolution 2013-072. These debt service payments will be senior to all other payment obligations of CPGH, Inc., including other operating expenses. In other words, payment of debt service associated with the Bond Bank loan will be senior to payment of salaries, employee benefits, supplies and other costs associated with the Medical Facilities’ operations. Thereafter such revenues and cash collections shall be expended in accordance with Section 13 of the LOA and Section 16 of the Operating Agreement, or as otherwise set forth in an agreement among the Parties. Subsections 13(d) and (e) of the LOA shall not apply to this Agreement.
- (e) Section 21 of the LOA and Section 24(a) of the Operating Agreement, for purposes of this Agreement, ~~is~~ are hereby ~~deleted and replaced with~~ amended as follows:
- (i) Existing Level of Services. The parties acknowledge that the scope and level of services at the Building as approved in the Certificate of Need dated January 8, 2014 are consented to by both parties. CPGH, Inc. represents that that the existing scope and level of services at the Medical Facilities as of the effective date of this Agreement are within its charitable purpose under Section 501(c)(3) of the Internal Revenue

Code of 1986, as amended and are authorized under the terms of this Agreement.

- ~~(ii) Expansion of Services/New Services. The parties agree that CPGHI may provide for expanded or new Service Area health services at the Building, in accordance with powers authorized for the Service Area pursuant to the KPB Code of Ordinances, as now enacted or as may be amended, and in accordance with this Agreement. CPGHI shall give the Borough Contract Administrator notice of proposed new or expanded services. Notice may be provided orally unless the Borough Contract Administrator requests written confirmation thereof. Service Area board consideration and Borough Assembly approval shall be required and will require a favorable opinion of nationally recognized bond counsel selected by the Borough. Expansion of services or new services do not include changes in the method of delivering existing services or the use of new technology or techniques to provide those services even if this may involve additional personnel or training or enhancement of current capabilities to meet standards for proper patient care, or changes required to meet basic accreditation standards and licensing for the hospital. Any change in the level or type of services provided shall be included in the next quarterly report regardless of the cost.~~
- ~~(iii) Elimination of Services. CPGHI may eliminate services or levels of care being provided at the Building, but only after 60 days' prior written notice to the Borough. The Borough may then direct that CPGHI continue to provide such services or level of care, if deemed in the best interest of the residents of the Service Area, even when the Borough Assembly determines the service or level of care is not economically feasible; however, if the Borough decides to continue an economically unfeasible service or level of care, it shall consider providing an operating subsidy to CPGHI equivalent to at least the loss associated with providing such service or level of care; however, if the Borough decides not to provide any such operating subsidy, then CPGHI is not obligated to provide such services or level of care.~~
- ~~(iv) Disclosure of Other CPGHI Business. In the event that CPGHI engages in other business activities unrelated to the activities required or authorized by this Agreement, CPGHI shall notify the Borough~~

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~~Contract Administrator of the nature and extent of such other business activities, including upon request a disclosure of financial reports reflecting revenues and expenses, so that the Borough Contract Administrator may determine that they do not conflict with this Agreement, or otherwise impair either parties' rights or obligations under this Agreement. It is agreed that records of such other business activities are not public records. Disclosure to the Borough Contract Administrator of records under this provision shall not be deemed to convert such records to public records, to the extent allowed by law. In no case will the assets generated or provided through this Agreement be used to capitalize or otherwise fund any activities CPGHI conducted outside the scope of this Agreement.~~

3. That paragraph 7(d) of the Agreement is hereby amended as follows:

7. Tax-Exempt Bond Requirements. A portion of the Bonds not to exceed 60 percent of the principal amount of the Bond proceeds may be issued on a tax-exempt basis. In the event that a portion of the Bonds are designated Tax-Exempt Series, CPGHI shall identify the portions of the Building funded on a tax-exempt basis and covenants and agrees that it will use such portions in strict compliance with the Internal Revenue Code requirements for tax-exempt revenue Bonds. A drawing is attached as Exhibit B to this Agreement. It is understood that Building uses may move or change throughout the term of this Agreement. However, not more than 40 percent of the square footage and fair market value of the Building shall be used for taxable purposes over the life of the debt unless the Borough has amended its Certificate as to Arbitrage and Tax Compliance certificate dated February 20, 2014 providing for an alternative allocation methodology of tax-exempt bond proceeds and taxable bond proceeds used to finance the Building consistent with applicable requirements set forth in the Internal Revenue Code of 1986, as amended, and applicable Treasury Regulations. CPGHI shall not use the proceeds of the tax-exempt Bonds or the property financed with the tax-exempt proceeds of the Bonds, in such a manner as to cause the Bonds to be private activity Bonds under section 141 of the Internal Revenue Code of 1986, as amended, and applicable Treasury Regulations. These requirements include but are not limited to the following tests:

...

d. Management Contract Rules. CPGHI shall ensure that operations of the tax-exempt financed portions of the Building financed with Tax-Exempt

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Bonds shall comply with the management contract rules described in all rules and regulations applicable to municipal bonds issued on a tax-exempt basis including the Internal Revenue Code, Treasury Regulations, revenue procedures and other written rulings of the Internal Revenue Service and relating to permitted management contracts, as the same may be modified, amplified, superseded, and interpreted by the courts and the Internal Revenue Service. Rev. Proc. 97-13, as modified by Rev. Proc. 2001-39 and related Treasury Department regulations. CPGHI shall defend and indemnify the Borough against any claim by a holder of the Bonds or Parity Bonds.

4. This amendment shall be effective January 1, 2018.

5. All remaining terms and conditions of the Agreement to Operate Specialty Clinic Building, as amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates listed below.

KENAI PENINSULA BOROUGH

CENTRAL PENINSULA GENERAL
HOSPITAL, INC.

Mike Navarre
Borough Mayor

Trena Richardson
CPGH, Inc. Board President

Dated: _____

Dated: _____

ATTEST:

ATTEST:

Borough Clerk

Board Secretary

ACKNOWLEDGMENTS

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by Mike Navarre, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, on behalf of the corporation.

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by Trena Richardson, President, Central Peninsula General Hospital, Inc., an Alaska nonprofit corporation, on behalf of the corporation.

Notary Public in and for Alaska
My Commission Expires: _____