

Introduced by: Mayor
Date: 09/05/17
Hearing: 09/19/17
Action: Enacted as Amended
Vote: 7 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2017-27**

AN ORDINANCE AMENDING ORDINANCE 2016-19-12 WHICH, AMONG OTHER THINGS, AUTHORIZED THE ISSUANCE OF NOT TO EXCEED \$28,955,000 OF CENTRAL KENAI PENINSULA HOSPITAL SERVICE AREA HOSPITAL REVENUE BONDS AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT RELATING TO THE BONDS

WHEREAS, the Kenai Peninsula Borough, Alaska, (the "Borough") owns the Central Peninsula Hospital ("Hospital") located in the Central Kenai Peninsula Hospital Service Area and has identified the need for new obstetrics facilities, a cardiac catheterization laboratory and related projects located at, or adjacent to but part of, the Hospital (the "Projects"); and

WHEREAS, on October 25, 2016, the Borough Assembly adopted Ordinance 2016-19-12 which, among other things, authorized the issuance of not to exceed \$28,955,000 of Hospital revenue bonds (the "Bonds") to finance a portion of the costs of the Projects; and

WHEREAS, payment of the principal of, and interest on the Bonds will be paid with revenues of the Hospital subordinate to the Borough's Central Kenai Peninsula Hospital Service Area Specialty Clinic Building Revenue Bonds issued pursuant to Resolution No. 2013-072, as amended by Resolution No. 2014-006, and bonds issued on a parity therewith; and

WHEREAS, it has been determined to be in the best interest of the Borough to cause the Bonds, or a portion thereof, to be sold to the Alaska Bond Bank Authority ("Bond Bank"); and

WHEREAS, it has been determined to be in the best interest of the Borough to make clear the subordinate nature of the Bonds and clarify certain matters set forth in Ordinance No. 2016-19-12; and

WHEREAS, it has been determined to be in the best interests of the Borough to enter into an agreement with Central Peninsula General Hospital, Inc. relating to the Bonds; and

WHEREAS, at its meeting of September 5, 2017, the Central Peninsula General Hospital, Inc. board of directors' executive committee recommended approval of the agreement relating to Central Kenai Peninsula Hospital Service Area Hospital Revenue Bonds;

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

SECTION 1. That Section 4 of Ordinance No. 2016-19-12, is hereby amended by adding the following sentence:

The Bonds, and any Future Parity Bonds, shall be subordinate and junior in right to payment of the Borough's Senior Lien Bonds.

SECTION 2. That Section 5 of Ordinance No. 2016-19-12, Definitions, is hereby amended by revising the definition of "Finance Director" as follows:

"Finance Director" means the finance director, or acting finance director, of the Borough.

SECTION 3. That Section 5 of Ordinance No. 2016-19-12, Definitions, is hereby amended by revising the definition of "Net Revenues" as follows:

"Net Revenues" means, for any Fiscal Year or Base Period, Gross Revenues less any part thereof that must be used to pay (i) debt service on Senior Lien Bonds, and (ii) Operating Expenses.

SECTION 4. That Section 5 of Ordinance No. 2016-19-12, Definitions, is hereby amended by revising the definition of "Operating Expenses" as follows:

"Operating Expenses" means the current expenses incurred for operation, maintenance or repair of the Hospital of a non-capital nature, and shall include without limitation payments required by any management or operating agreement, patient account expenses, administrative and general expenses, insurance premiums, lease rentals, legal and engineering expenses, payments to pension, retirement, group life insurance, health and hospitalization funds or other employee benefit funds that are properly chargeable to current operations, interest on patient deposits, payroll tax expenses, and any other expenses required to be paid under the provisions of this ordinance or by law or permitted by standard practices for a hospital [SPECIALTY HEALTH CLINIC] similar to the properties and business of the Hospital and applicable in the circumstances.

SECTION 5. That Section 5 of Ordinance No. 2016-19-12, Definitions, is hereby amended by adding the definition of "Senior Lien Bonds" as follows:

“Senior Lien Bonds” means those Central Kenai Peninsula Service Area Specialty Clinic Revenue Bonds issued pursuant to Resolution No. 2013-72, as amended by Resolution No. 2014-008, and bonds issued on a parity therewith.

SECTION 6. That Section 6 of Ordinance No. 2016-19-12, is hereby amended by adding the following paragraph:

Issuance of the Bonds is subject to the execution and delivery of an agreement by and between the Borough and Operator which sets forth certain terms and conditions regarding payment of debt service on the Bonds and use of the Hospital facilities in a form substantially similar to Exhibit A attached hereto. The Mayor is hereby authorized to execute the final form of such agreement on behalf of the Borough.

SECTION 7. That Section 18(A) of Ordinance No. 2016-19-12, is hereby amended by adding the following sentence:

The Borough will establish, maintain, and collect Gross Revenues for as long as any Parity Bonds are outstanding that will provide Pledged Revenues in an amount equal to at least 1.25 times the maximum Annual Debt Service requirement for each Fiscal Year.

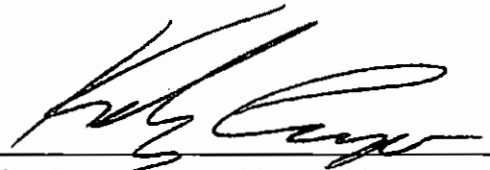
SECTION 8. That Section 25 of Ordinance No. 2016-19-12, Loan Agreement and Other Documents, is hereby amended by revising the language as follows:

If the Bonds are sold to the Bond Bank, the Finance Director is hereby authorized to enter into a Loan Agreement or Loan Agreements with the Bond Bank providing for and relating to the sale of such Bonds, including covenants and agreements in connection therewith. [AND T] The Finance Director is further authorized to execute and deliver on behalf of the Borough any other documents reasonably required by the Bond Bank.


SECTION 9. That the mayor is authorized to execute an agreement substantially in the form attached hereto as Exhibit A and referred to as an Agreement Relating to Central Peninsula Hospital Service Area Hospital Revenue Bonds.

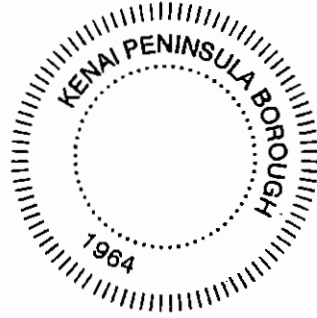
SECTION 10. That this ordinance shall take effect immediately upon its enactment.

ENACTED 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

EXHIBIT A

**AGREEMENT RELATING TO
CENTRAL KENAI PENINSULA HOSPITAL SERVICE AREA
HOSPITAL REVENUE BONDS**

Between

**KENAI PENINSULA BOROUGH
AN ALASKA MUNICIPAL CORPORATION**

and

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**AGREEMENT RELATING TO CENTRAL KENAI PENINSULA HOSPITAL SERVICE
AREA HOSPITAL REVENUE BONDS**

This Agreement Relating to Central Kenai Peninsula Hospital Service Area Hospital Revenue Bonds ("Hospital Agreement") is by and between _____, an Alaska _____ of _____, ("_____"), and the Kenai Peninsula Borough, a second class borough organized under the Constitution and laws of the State of Alaska of 144 N. Binkley, Soldotna, Alaska 99669 ("Borough," and together with _____, the "Parties").

WHEREAS CLAUSES

WHEREAS, the Borough is the owner of the Central Peninsula Hospital, located at 250 Hospital Place, Soldotna, Alaska 99669 and depicted in Exhibit A attached hereto, ("Hospital") and related medical facilities (collectively, the "Borough's Medical Facilities") located in the Central Kenai Peninsula Hospital Service Area ("Service Area"); and

WHEREAS, _____ serves as the manager and operator of the Borough's Medical Facilities pursuant to the terms of a Lease and Operating Agreement, with an effective date of January 1, 2008 (to be replaced with an Operating Agreement, with an effective date of January 1, 2018) and an Agreement to Operate Specialty Medical Clinic Building, dated January 16, 2014 (collectively, the "Agreements"); and

WHEREAS, pursuant to Ordinance No. 2016-19-12, as amended by Ordinance No. 2017-_____ (together, the "Hospital Bond Legislation"), the Borough Assembly authorized the issuance of Central Kenai Peninsula Hospital Service Area Hospital Revenue Bonds ("Hospital Bonds"), to be issued on or about the date hereof, payment of which is to be secured by revenues generated by the operation and use of the Hospital; and

WHEREAS, the Borough has outstanding certain Central Kenai Peninsula Hospital Service Area Specialty Clinic Building Revenue Bonds ("Specialty Clinic Bonds") payment of which is secured by revenues generated by the Borough's Medical Facilities as more fully described in the Borough's Resolution No. 2013-072, as amended by Resolution No. 2014-008 ("Specialty Clinic Bond Legislation"); and

WHEREAS, payment of the debt service on the Hospital Bonds is to be subordinate and junior to payment on the Specialty Clinic Bonds; and

WHEREAS, the Agreements authorize _____ to collect, on behalf of the Borough, all revenues derived from the use and operation of the Borough's Medical Facilities, including the Hospital; and

WHEREAS, it is in the best interests of the Parties that the terms and conditions relating to the use of the Hospital facilities, and revenues derived therefrom, be clearly set forth in this Agreement;

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

1. Terms of Agreements Superseded. This Hospital Agreement, to the extent its terms and provisions conflict with those set out in the Agreements, supersede and replace such terms and provisions. _____ covenants and agrees to comply with the terms and agreements set forth in this Hospital Agreement.

2. Hospital Revenues.

(a) The Borough, pursuant to the terms of the Hospital Bond Legislation, has pledged for the security of holders of the Hospital Bonds, and future parity bonds, revenues generated by the use and operation of the Hospital and referred to as “Pledged Revenues.”

“Pledged Revenues” are defined in the Hospital Bond Legislation as “Net Revenues” and interest received and profits derived from the investment of moneys obtained from moneys held in any fund solely to pay or secure the Hospital Bonds and any future parity bonds.

“Net Revenues” are defined in the Hospital Bond Legislation for any fiscal year or base period as “Gross Revenues” less any part thereof that must be used to pay debt service on Specialty Clinic Bonds and “Operating Expenses” of the Hospital.

“Gross Revenues” are defined in the Hospital Bond Legislation as all income, receipts and revenue derived by or for the account of the Hospital from to time to time from any source from the ownership, leasing or operations of the Hospital, and all earnings on any fund or account that is pledged to secure the Hospital Bonds and any future parity bonds. Gross Revenues do not include (i) proceeds of any borrowing of the Borough and the earnings thereon, (ii) the proceeds of insurance or condemnation proceeds other than business interruption insurance, and (iii) income from investments irrevocably pledged to the payment of Hospital Bonds and any future parity bonds issued or to be defeased under any refunding plan of the Borough.

“Operating Expenses” of the Hospital are defined in the Hospital Bond Legislation as current expenses incurred for the operation, maintenance or repair of the Hospital of a non-capital nature, and shall include without limitation payments required by any management or operating agreement, patient account expenses, administrative and general expenses, insurance premiums, lease rentals, legal and engineering expenses, payments to pension, retirement, group life insurance, health and hospitalizations funds or other employee benefit funds that are properly chargeable to current operations, interest on patient deposits, payroll tax expenses, and any other expenses required to be paid under the provisions of the Hospital Bond

Legislation or by law or permitted by standard practices for a hospital similar to the properties and business of the Hospital and applicable in the circumstances.

(b) Pursuant to the terms of the Hospital Bond Legislation, _____ covenants and agrees to remit Pledged Revenues to the Borough as follows:

- (i) On or before the 5th day of each month amounts, in approximately equal monthly installments as will be sufficient to accumulate the amount required to pay interest of and principal on (including sinking fund payments, if any) the Hospital Revenue Bonds (including bonds issued on a parity therewith), in each case, during the following twelve months. Payments shall commence with the first month following the date of the issuance of the Hospital Bonds. [The Borough will provide _____ a schedule of payments reflecting amounts to be paid to the Borough each month.]
- (ii) Upon written notification by the Borough, _____ shall immediately (within 5 business days) remit amounts necessary to cause amounts held in the reserve subaccount securing payment of the Hospital Revenue Bonds (and bonds issued on a parity therewith) to satisfy the reserve subaccount requirement.

3. Leasing of Hospital Facilities. _____ shall not assign, lease or sublease any portion of the Hospital, including common areas, without the prior written approval of the Borough.

4. Relationship among the Parties. Any provisions in the Agreements which characterize the relationship among the Parties as a lessor-lessee relationship shall be construed as an owner-operator/manager relationship.

5. Conflicting Provisions. Should there be any conflict between this Hospital Agreement and the Agreements, relating to the operations and management of the Hospital, or the priority of revenues to be used for debt service on the Hospital Bonds (and bonds issued on a parity therewith), the provisions of this Hospital Agreement shall govern.

6. Tax-Exempt Bond Requirements. The Hospital Bonds will be issued by the Borough on a tax-exempt basis under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations related thereto (together, the "Code"). _____ covenants and agrees that it will operate and manage the Hospital in strict compliance with the Code requirements for tax-exempt governmental bonds and agrees that the Hospital shall not be used in a manner as to cause the Hospital Bonds (and bonds issued on a parity therewith if issued on a tax-exempt basis) to be private activity bonds under Section 141 of the Code.

- (a) Allocation of Use Reports. On January 20, 2018, and January 20th of each year thereafter, _____ will provide the Borough a report of Hospital allocation of use for the prior calendar year. This report shall include the allocation and value of square footage of the Hospital that is being leased out, or used by non-governmental parties, and the amount and value being used in-house by _____, along with the common and shared areas. For the common and shared areas _____ shall provide the allocation of use

between _____ and other nongovernmental users. This allocation determination shall meet Building Owners and Managers Association standards.

- (b) **Contracts or Agreements with Outside Medical Providers.** Prior to entering into any contracts or agreements with outside medical providers for services conducted in the Hospital such proposed contracts or agreements shall first be reviewed by the Borough's bond counsel.
- (c) **Modification to Comply with Code requirements.** If the Borough determines that any use of the Hospital facilities fails to comply with the Code requirements for tax-exempt governmental bonds then _____ shall promptly modify such use to comply with any such requirement(s) pursuant to the written direction of the Borough.

7. **Books and Accounts.** _____ covenants that it shall keep and maintain proper books and accounts with respect to the operation of the Hospital in such manner as prescribed by any authorities having jurisdiction over the Hospital; will cause its books and accounts to be audited annually by a certified public accountant not later than 210 days following the end of each fiscal year, copies of which audits shall, upon request, be furnished to the owners of the Bonds (or bonds issued on a parity therewith). A single audit with other properties operated and managed by _____ on behalf of the Borough is acceptable so long as sufficient information is provided regarding receipt and allocation of revenues derived from Hospital facilities.

8. **Liens and Encumbrances Prohibited.** _____ shall not at any time create or permit to accrue or exist any lien or other encumbrance or indebtedness upon the Hospital or Pledged Revenues of the Hospital prior or superior to the lien thereon for the payment of the Hospital Bonds (and bonds issued on a parity therewith), and will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials, or supplies which, if unpaid, might become a lien or charge upon the Pledged Revenues, or any part thereof, or upon any account or subaccount in the hands of the Borough, prior or superior to the lien of the Hospital Bonds (and bonds issued on a parity therewith), or which might impair the security of the Bonds (and bonds issued on a parity therewith).

9. **Further Resolutions, Actions and Assurances.** _____ shall, at any and all times, as far as it may be authorized by law, make, do, execute, acknowledge, and deliver all further resolutions, acts, deeds, conveyances, assignments, transfers, and assurances as may be necessary or desirable for better assuring, conveying, granting, pledging, assigning, and confirming all and singular the rights, revenues, and other funds, moneys, and securities pledged or assigned under the Hospital Bond Legislation, or intended so to be, or which the Borough may become bound to pledge or assign.

10. **Notice.** All notices required or permitted to be given under this Agreement shall be in writing and shall be sent by registered or certified mail, return receipt requested, postage prepaid, or by hand delivery addressed to the parties at the following addresses:

Kenai Peninsula Borough
Borough Mayor
144 N. Binkley Street
Soldotna, Alaska 99669

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Either party may by notice change its address for all subsequent notices. Except where otherwise expressly provided to the contrary, notice shall be deemed given upon delivery.

11. Governing Law. Construction and interpretation of this Hospital Agreement shall be governed by the laws of the State of Alaska.

12. Severability. If any clause or provision of this Hospital Agreement is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the Parties that such clause or provision is severable and the remainder of this Hospital Agreement shall not be affected thereby. It is also the intention of the parties to this Hospital Agreement that in lieu of each clause or provision of this Hospital Agreement that is illegal, invalid or unenforceable, there be added, as a part of this Hospital Agreement, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable as reasonably agreed to by the parties within one hundred twenty (120) days after the clause or provision in question is found to be illegal, invalid or unenforceable.

13. Forum and Venue. The forum and venue for any law suit between these parties arising out of this Agreement shall be in the Trial Courts for the State of Alaska in the Third Judicial District, Kenai Venue District.

14. Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Hospital Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.

15. Term of this Agreement. The term of this Agreement shall be from the date of issuance of the Bonds, to and including December 31, 2027, unless terminated earlier or extended later by the Parties. Issuance of the Hospital Bonds is condition upon and subject to execution and delivery of this Agreement and issuance of a Certificate of Need by the State of Alaska for the Hospital Projects.

16. WHEREAS Clauses. The WHEREAS Clauses to this Hospital Agreement are hereby incorporated into this Hospital Agreement as if fully set forth herein.

17. Counterparts. This Hospital Agreement may be executed in several or separate counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

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

KENAI PENINSULA BOROUGH

Mike Navarre
Borough Mayor

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Dated: _____

Dated: _____

ATTEST:

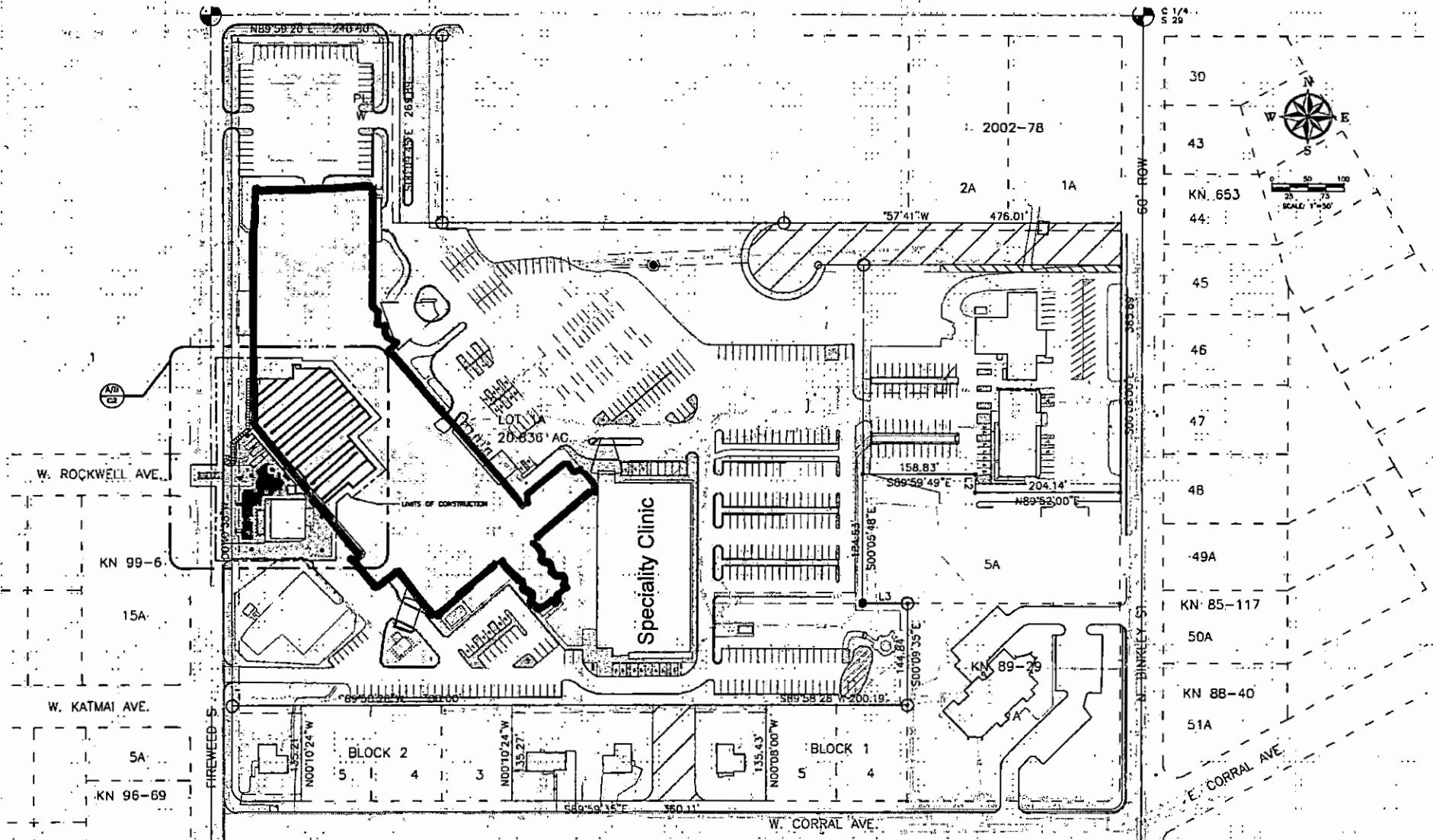
ATTEST:

Johni Blankenship, MMC
Borough Clerk


Board Secretary

EXHIBIT A

Diagram of the Hospital Facilities attached hereto.



C1
 CIVIL SITE PLAN - OVERALL
 GRAPHIC SCALE: 1" = 50'

 OB/CATH Lab Project
 Hospital

					<p>KPB CPH PHASE VI - OB CATH LAB PROJECT SOLDOTNA, ALASKA DESIGN DEVELOPMENT</p>	<p>Sheet Title: CIVIL SITE PLAN - OVERALL</p> <p>Drawn: GW/MJT Check: MJD Created: MJD Project: W014</p>
					<p>Sheet No: C1</p>	