



# KENAI PENINSULA BOROUGH

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**MIKE NAVARRE**  
**BOROUGH MAYOR**

## MEMORANDUM

**TO:** Gary Knopp, Assembly President  
Members, Kenai Peninsula Borough Assembly

**THRU:** Mike Navarre, Mayor *MN*

**FROM:** Colette Thompson, Borough Attorney *CT*

**DATE:** February 2, 2012

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No. <u>100,27900</u>	Amount <u>35000.00</u>
By: <u>C. Knopp</u>	Date: <u>2/2/12</u>

**SUBJECT:** Ordinance 2011-19-71, appropriating \$35,000 to defend the borough in the lawsuit involving construction of the Central Peninsula Hospital's fourth operating room and Kahtnu Venture, LLC's application for a certificate of need for an ambulatory surgery center

Central Peninsula General Hospital, Inc. (CPGHI) obtained a certificate of need (CON) in 2004 authorizing construction of the Mountain Tower addition to Central Peninsula Hospital, including construction of four operating rooms by December 31, 2010. The fourth operating room was not built by that date and CPGHI, having decided to proceed with it, asked the State to determine whether a CON was required to complete the operating room. The state concluded a CON was not required.

Kahtnu Ventures, LLC (Kahtnu) is a limited liability company that is applying for a certificate of need authorizing it to construct and operate an ambulatory surgery center in Kenai. It recently filed a lawsuit against the State of Alaska Department of Health and Social Services, its Commissioner and CPGHI. Kahtnu seeks an order from the court enjoining the construction of the fourth operating room at Central Peninsula Hospital and asks the court to prohibit the State of Alaska from considering that fourth operating room when determining whether or not to issue a CON to Kahtnu. Kahtnu Ventures has since filed a motion to amend its complaint to include the Kenai Peninsula Borough as a defendant in the lawsuit.

Due to time constraints and expertise needed in this case the legal department intends to hire outside counsel to represent the borough in this case. We anticipate hiring the same counsel as CPGHI because our interests are aligned, which will save costs. The current available balance of the legal department contract services account is approximately \$32,500. At this time we anticipate significant attorneys' fees will likely be spent for outside counsel during this fiscal year for other matters including a potential complex appeal to the board of equalization, a court action to compel disclosure of information to the assessor by a large taxpayer, appeals to the BOA, and other court or administrative actions. This appropriation is sought solely for the Kahtnu case. Shortened hearing is requested as this case is expected to proceed quite rapidly. Your favorable consideration would be appreciated.