

NON-CODE ORDINANCE

By: Borough Manager  
Introduced: 08/07/07  
Public Hearing: 08/21/07  
Adopted: 08/21/07

**MATANUSKA-SUSITNA BOROUGH  
ORDINANCE SERIAL NO. 07-116**

AN ORDINANCE AUTHORIZING THE MATANUSKA-SUSITNA BOROUGH TO ISSUE AND SELL NOT TO EXCEED \$5,750,000 ANIMAL CARE FACILITY LEASE CERTIFICATES OF PARTICIPATION, 2007; THE EXECUTION AND DELIVERY OF A LEASE AND A LEASE PURCHASE AGREEMENT AND TRUST INDENTURE TO SECURE THE CERTIFICATES; THE EXECUTION OF A CERTIFICATE PURCHASE AGREEMENT; AND PROVIDING FOR RELATED MATTERS.

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WHEREAS, the Assembly of the Matanuska-Susitna Borough (the "Borough") finds that it is in the best interest of the Borough and in furtherance the of the public purposes of the Borough, to acquire, construct, and equip an animal care facility (the "Project") within the Borough; and

WHEREAS, the Assembly finds that the Project will be used for an essential public function of the Borough; and

WHEREAS, the Assembly finds that it is in the best interest of the Borough and in furtherance of the public purposes of the Borough, to finance the construction and acquisition of the Project by the issuance of certificates of participation (the "Certificates") in rent to be paid by the Borough for the use and occupancy of the project; and

WHEREAS, the Borough has acquired title to real property more particularly described in Exhibit A hereto (the "Property") as the site for the Project; and

WHEREAS, the Borough proposes to lease the Property, and the Project to be constructed thereon, to a corporate trustee, which will lease the Project back to the Borough under a lease-purchase agreement under which the Borough will pay rent consisting of a principal component and an interest component; and

WHEREAS, the right to receive the principal and interest component of rent to be paid by the Borough under the lease-purchase agreement will be represented by the Certificates, which will be issued to investors in exchange for proceeds which will be used to finance the construction and acquisition of the Project; and

WHEREAS, there have been presented to the Borough the form of the following documents:

1. a Lease (the "Lease") between the Borough and U.S. Bank National Association, as Trustee (the "Trustee"); and

2. a Lease Purchase Agreement and Trust Indenture (the "Indenture") between the Borough and the Trustee;

and it appears that each such document, which now is before the Borough, is an appropriate document for the purpose intended.

BE IT ENACTED:

Section 1.       Classification. This ordinance is a non-code ordinance.

Section 2.       Authorization of Lease. The Assembly finds under Matanuska-Susitna Borough Code 23.05.030(G) that leasing the Property to the Trustee under the Lease without regard to its fair rental value is in the best interest of the Borough. The Property may be leased under the Lease without first being classified as required by Matanuska-Susitna Borough Code 23.10.030(B). Notwithstanding Matanuska-Susitna Borough Code 23.10.060(C), the Property may be leased for the consideration that is provided in the Lease. The Assembly finds that the leasing of the Project by the Trustee to the Borough under the terms of the Indenture, and the financing of the Project through the issuance of the Certificates in the aggregate principal amount of not to exceed \$5,750,000, will serve the public interest and be in the best interest of the Borough, and are hereby approved.

Section 3.       Approval of Documents. The form and content of the Lease and the Indenture hereby are in all respects authorized, approved, and confirmed, and the Borough Manager is authorized, empowered, and directed to execute and deliver said documents to the counterparty for and on behalf of the Borough

in substantially the form and content now before this meeting but with such changes, modifications, additions, and deletions therein as shall to him seem necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of the approval of any and all changes, modifications, additions, or deletions therein from the form and content of the said documents now before this meeting, and from and after the execution and delivery of the said documents the Borough Manager and Borough Clerk each is hereby authorized, empowered, and directed to do all such acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of the said document as executed.

Section 4.      Sale of Certificates.      The Certificates shall be sold at negotiated sale to RBC Dain Rauscher Inc. (the "Underwriter"). The Borough's financial advisor has advised the Assembly that bond market conditions are fluctuating and that the most favorable market conditions for the sale of the Certificates may not occur on the date of a regular Assembly meeting. The Assembly has determined that it would be inconvenient to hold a special meeting on short notice to approve the terms of the sale of the Certificates. Therefore, the Assembly hereby determines that it is in the best interest of the Borough to delegate the authority to approve the terms of

the sale of the Certificates as provided herein. Subject to the limitation provided in Section 2, each of the Borough Manager and the Borough Finance Director is hereby authorized to determine the aggregate principal amount, maturity amounts, sinking fund installments, if any, interest rates, yields, dated date, principal and interest payment dates, redemption terms, if any, for the Certificates, and other details of the Certificates; provided that the true interest cost of the Certificates, expressed as an annual rate, does not exceed 7.0 percent. In determining the maturity amounts, sinking fund installments, if any, interest rates, yields, and redemption terms, if any, for the Certificates, the Borough Manager or Borough Finance Director shall, in consultation with the Borough's financial advisor, take into account those factors which, in his or her judgment, will result in the lowest true interest cost on the Certificates to their maturity, including without limitation current financial market conditions and current interest rates for obligations comparable in tenor and quality to the Certificates. The Borough Manager and Borough Finance Director each is further authorized to determine, in consultation with the Borough's financial advisor and the Underwriter, whether there shall be bond insurance for the Certificates, provided that bond insurance shall be obtained

only if the present value of the bond insurance premium will be less than the present value of the expected interest savings on the Certificates as a result of the bond insurance. Based upon the foregoing determinations, the Borough Manager and the Borough Finance Director each is authorized to execute a purchase contract for the Certificates with the Underwriter. The authority granted to the Borough Manager and Borough Finance Director by this section shall expire 270 days after the effective date of this ordinance. If the Borough Manager or Borough Finance Director has not executed a purchase contract with the Underwriter within 270 days from the effective date of this ordinance, no purchase contract for the Bonds may be executed on behalf of the Borough without further authorization from the Assembly.

Section 5.     Official Statement.   The Borough Manager or Borough Finance Director each is hereby authorized to approve a preliminary official statement for distribution in relation to the offering of the Certificates for sale. The Borough Manager and Borough Finance Director each is hereby authorized to deem the preliminary Official Statement final for purposes of Security and Exchange Commission Rule 15c2-12(b)(1), and to approve the form of the final Official Statement for the Certificates.

Section 6.       Authority of Officers.       The Mayor, the acting Mayor, the Borough Manager, the acting Borough Manager, the Borough Finance Director, the acting Borough Finance Director, the Borough Clerk, and the acting Borough Clerk each is authorized and directed to execute and deliver for and on behalf of the Borough any and all additional certificates, documents, opinions, or other papers and to do and perform all things and determine all matters not determined by this ordinance, to the end that the Borough may carry out its obligations under the Certificates and this ordinance.

Section 7.       Prohibited Sale of Certificates.       No person, firm, or corporation, or any agent or employee thereof, acting as financial consultant to the Borough under an agreement for payment in connection with the sale of the Certificates is eligible to purchase the Certificates as a member of the original underwriting syndicate either at public or private sale.

Section 8.       Continuing Disclosure.       The Borough hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate in substantially the form presented at this meeting. Notwithstanding any other provision of this ordinance, failure of the Borough to comply with the Continuing Disclosure

Certificate shall not be considered a default of the Borough's obligations under the Indenture or the Certificates; however, the Beneficial Owner of any Certificate may bring an action for specific performance, to cause the Borough to comply with its obligations under this section.

Section 9. Severability. If any one or more of the provisions of this ordinance shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Certificates.

Section 10. Effective Date. This ordinance shall take effect upon adoption by the Matanuska-Susitna Borough Assembly.

ADOPTED by the Matanuska-Susitna Borough Assembly this 21 day of August, 2007.

**/S/**

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CURTIS D. MENARD, Borough Mayor

ATTEST:

**/S/**

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MICHELLE M. MCGEHEE, CMC, Borough Clerk

[SEAL]

PASSED UNANIMOUSLY: Woods, Church, Bettine, and Kluberton.



Exhibit A  
to Ordinance Serial No. 07-116

Property Description

A parcel of land located entirely within the east one-half of the southeast one-quarter (E1/2SE1/4) of Section 2, Township 17 North, Range 1 East, Seward Meridian, Palmer Recording District, Third Judicial District, State of Alaska and more particularly described as follows:

Commencing for reference at the one-quarter corner common with Sections 1 and 2, Township 17 North, Range 1 East, monumented by an encased brass cap monument dated 2002, whence the section corner common with Sections 11, 12, 13 and 14 bears South 00°02'40" East and the Basis of Bearing for this description; thence from said one-quarter corner, westerly on north boundary of said E1/2SE1/4 for 765 feet to the centerline of a one-hundred foot wide Electrical Transmission and Distribution line easement recorded at the Palmer Recording Office under document Serial Number 2005-025766-0. Said centerline point being identical to the TRUE POINT OF BEGINNING of this parcel; thence

On the easement centerline, South 00°02'40" East for 621.06 feet; thence

Leaving the centerline and continuing on the boundary of this parcel, North 90°00'00" East for 200.16 feet; thence

North 60°57'09" East for 183.17 feet; thence

North 00°01'00" East for 532.03 feet to the north boundary of aforesaid E1/2SE1/4; thence

Westerly on said north boundary for 360.92 feet to the TRUE POINT OF BEGINNING thus encompassing 5.00 acres more or less.