

Introduced by: Mayor
Date: 10/22/13
Action: Adopted as Amended
Vote: 7 Yes, 2 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2013-072**

**A RESOLUTION PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED
\$43,000,000 SPECIALTY CLINIC BUILDING REVENUE BONDS OF THE BOROUGH,
IN ONE OR MORE SERIES, FOR THE PURPOSE OF PROVIDING AMOUNTS TO
ENGINEER, DESIGN, CONSTRUCT, AND EQUIP A SPECIALTY CLINIC BUILDING
IN THE CENTRAL KENAI PENINSULA HOSPITAL SERVICE AREA AND
PROVIDING FOR THE DETAILS OF THE BONDS**

WHEREAS, the Kenai Peninsula Borough, Alaska, (the "Borough") owns a hospital in the Central Kenai Peninsula Hospital Service Area and desires to design and construct a specialty clinic building near the hospital; and

WHEREAS, the Constitution and statutes of the State of Alaska permit the Borough to issue revenue bonds to finance any project which serves a public purpose which bonds are secured only by the revenues of the project and which do not constitute a debt or pledge of the faith and credit or taxing power of the Borough and which may be authorized by the Assembly; and

WHEREAS, it is necessary to establish the form, conditions, covenants, and method of sale of such bonds and to make provision for establishing the amount, maturities, interest rates, and redemption rights and other terms; and

WHEREAS, a portion of the Bonds, not to exceed \$21,500,000, in principal amount, may be issued on a tax-exempt basis to the extent the underlying agreements relating to the use of proceeds, and otherwise, are consistent with relevant provisions of the Internal Revenue Code relating to tax-exempt bonds; and

WHEREAS, a public hearing has been held in accordance with Section 147(f) of the Internal Revenue Code; and

WHEREAS, issuance of the bonds and construction of the specialty clinic building are subject to receipt of a Certificate of Need from the State of Alaska and successful negotiation of an agreement with an operator of the specialty clinic building, and approval of the agreement by the Assembly; and

WHEREAS, at its October 14, 2013, meeting the Central Kenai Peninsula Hospital Service Area Board recommended approval by unanimous consent;

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

SECTION 1. Purpose. The purpose of this resolution is to authorize the issuance and sale of not to exceed \$43,000,000 of specialty clinic building revenue bonds, to fix the form, covenants, and method of sale of the bonds, to provide for establishing the amount, maturities, interest rates, redemption rights, and other terms of the bonds, and to fix the conditions under which additional specialty clinic building revenue bonds may be issued on a parity with the bonds. The financing, construction, and operation of a specialty clinic building serve a public purpose.

SECTION 2. Definitions. As used in this resolution, unless a different meaning clearly appears from the context:

"Annual Debt Service Requirement" means, with respect to any particular Fiscal Year and to any specified bonds, an amount equal to (i) interest accruing during such Fiscal Year on such bonds, except to the extent such interest is to be paid from deposits in the Debt Service Subaccount from bond proceeds; (ii) the principal amount of such bonds due during such Fiscal Year for which no sinking fund installments have been established; plus (iii) the unsatisfied balance of any sinking fund installment for such bonds due during such Fiscal Year.

"Assembly" means the general legislative authority of the Borough, as the same may be constituted from time to time.

"Bond Account" means the Specialty Clinic Building Revenue Bond Account created by Section 12 of this resolution.

"Bond Register" means the registration books maintained by the Registrar containing the names and addresses of the owners of the Bonds.

"Bonds" means the Kenai Peninsula Borough, Alaska, Central Kenai Peninsula Hospital Service Area Specialty Clinic Building Revenue Bonds, 20XX.

"Borough" means the Kenai Peninsula Borough, Alaska, a municipal corporation organized and existing under the Constitution and laws of the State of Alaska.

"Code" means the Internal Revenue Code of 1986, as amended, and all applicable regulations thereunder.

"Consulting Engineer" means an independent consulting engineer or engineering firm licensed to practice in the State of Alaska, retained and appointed pursuant to Section 15(E).

"Debt Service Subaccount" means the Debt Service Subaccount created in the Bond Account by Section 12 hereof.

"Facility" means the Borough's specialty clinic building.

"Fiscal Year" means the 12-month period commencing on July 1 each year through and including June 30 of the following calendar year.

"Future Parity Bonds" means any specialty clinic building revenue bonds, notes, or other obligations of the Borough, other than the Bonds, issued under a resolution wherein the Borough pledges that the payments to be made out of the Pledged Revenues into the Bond Account and Reserve Subaccount therein to pay and secure the payment of the principal of and interest on such revenue bonds, notes, or other obligations will be on a parity with the payments required by this resolution to be made out of such Pledged Revenues into such Bond Account and Reserve Subaccount to pay and secure the payment of the principal of and interest on the Bonds.

"Loan Agreement" means the Loan Agreement between the Borough and the Alaska Municipal Bond Bank.

"Net Revenues" means all amounts received by the Borough for the specialty clinic and deposited in the Specialty Clinic Building Fund and interest and profits derived from the investment of moneys held in the Specialty Clinic Building Fund.

"Operator" means the operator or lessee of the Facility pursuant to an agreement to be approved by the Assembly.

"Parity Bonds" means the Bonds and any Future Parity Bonds.

"Pledged Revenues" means 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 payment of any Parity Bonds issued under this resolution.

"Registered Owner" means the person named as the registered owner of a Parity Bond in the Bond Register.

"Registrar" means the Finance Director of the Borough.

"Reserve Subaccount" means the Reserve Subaccount created in the Bond Account by Section 12 hereof.

"Reserve Subaccount Requirement" means an amount equal to the least of (i) 10% of the initial principal amount of all outstanding Parity Bonds; (ii) 125% of the average Annual Debt Service Requirement for all outstanding Parity Bonds; and (iii) the maximum Annual Debt Service Requirement on all outstanding Parity Bonds.

SECTION 3. Authorization of Bonds and Purpose of Issuance. The Borough shall enter into the Loan Agreement and issue and sell revenue bonds, in one or more series, designated "Central Kenai Peninsula Hospital Service Area Specialty Clinic Building Revenue Bonds, 20XX" (the "Bonds") in the aggregate principal amount of not to exceed \$43,000,000. The proceeds of the Bonds shall be used to pay the costs of design, engineering, construction, installation, and equipping of the Borough's Facility. Issuance of the Bonds is subject to the prior approval by the Assembly of an agreement with an Operator of the Facility for operating the Facility and committing to pay all debt service on the Bonds when due. The said agreement shall clearly delineate the portion of the Facility which may be financed on a tax-exempt basis and the Bonds relating therein and the provisions of the agreement relating to that portion shall be subject to opinion of bond counsel that said provisions are consistent with appropriate provisions of the Code governing tax-exempt bonds.

Issuance of the Bonds is subject to confirmation that a Certificate of Need for the Facility has been issued by the State of Alaska.

SECTION 4. Date, Maturities, Interest Rates, and Other Details of the Bonds. The Bonds shall be dated on such dates, and mature on such dates not later than December 31, 2034, and be designated "Taxable Series" or "Tax-Exempt Series" and shall bear interest from their date payable on such dates, and at such rates, not exceeding 6% per annum, as the Finance Director may fix and determine at or prior to the time of sale of the Bonds. The Tax-Exempt Series of Bonds shall not exceed \$21,500,000 in principal amount.

The Bonds shall be fully registered as to both principal and interest, shall be in the denomination of \$5,000 each or any integral multiple thereof, and shall be numbered separately in such manner and with any additional designation as the Registrar deems necessary for purposes of identification.

SECTION 5. Place and Medium of Payment. Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. For so long as all outstanding Bonds are registered in the name of the Alaska Municipal Bond Bank, payments of principal and interest thereon shall be made as provided in the Loan Agreement. In the event that the Bonds are no longer registered in the name of the Alaska Municipal Bond Bank, interest on the Bonds shall be paid to the Registered Owners of the Bonds at the addresses for such Registered Owners appearing on the Bond Register on the 20th day of the month preceding the interest payment date. Principal of the Bonds shall be payable upon presentation and surrender of the Bonds by the Registered Owners at the principal office of the Registrar.

SECTION 6. Registration.

- A. **Bond Register.** The Bonds shall be issued only in registered form as to both principal and interest. The Registrar shall keep, or cause to be kept, a bond register.
- B. **Registered Ownership.** The Borough and the Registrar, each in its discretion, may deem and treat the Registered Owner of each Bond as the absolute owner thereof for all purposes, and neither the Borough nor the Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 5 hereof, but such registration may be transferred as herein provided. All such payments made as described in Section 5 shall be valid and shall satisfy and discharge the liability of the Borough upon such Bond to the extent of the amount or amounts so paid.
- C. **Transfer or Exchange.** Bonds shall be transferred only upon the Bond Register kept by the Registrar. Upon surrender for transfer or exchange of any Bond at the office of the Registrar, with a written instrument of transfer or authorization for exchange in form and with guaranty of signature satisfactory to the Registrar, duly executed by the registered owner or its duly authorized attorney, the Borough shall execute and the Registrar shall deliver an equal aggregate principal amount of Bonds of the same maturity of any authorized denominations, subject to such reasonable regulations as the Registrar may prescribe and upon payment sufficient to reimburse it for any tax, fee, or other governmental charge required to be paid in connection with such transfer or exchange. All Bonds surrendered for transfer or exchange shall be cancelled by the Registrar. The Registrar shall not be required to transfer or exchange Bonds subject to redemption during the 15 days preceding any principal or interest payment date or the date of mailing of notice of redemption of such Bonds, or any Bond after such Bond has been called for redemption.
- D. **Registration Covenant.** The Borough covenants that, until all Bonds have been surrendered and cancelled, it will maintain a system for recording the ownership of each Bond that complies with the provisions of Section 149 of the Code.

SECTION 7. Redemption. The Bonds maturing on or after November 1, 2024 are subject to redemption on or after November 1, 2023, and may be redeemed at the times and in the manner described in the Loan Agreement. When the Borough determines to redeem any Bonds not owned by the Bond Bank:

- A. The Borough shall give notice of such redemption, which notice shall state the redemption date and identify the Bonds to be redeemed by reference to their numbers and further state that on such redemption date there shall become due and payable upon each such Bond the principal amount thereof plus the applicable premium, if any (the "Redemption Price"), together with interest

accrued to the redemption date, and that from and after such date interest thereon shall cease to accrue. Such notice shall be given at least 30 days but not more than 45 days prior to the redemption date by first class mail, postage prepaid, to the registered owner of any Bond to be redeemed at the address appearing on the Bond Register.

- B. Notice of Redemption having been given in the manner provided in this Resolution, the Bonds so called for redemption shall become due and payable on the redemption date stated in the notice at the applicable Redemption Price, plus interest, accrued and unpaid to the redemption date upon presentation and surrender thereof, together with a written instrument of transfer duly executed by the registered owner or the owner's duly authorized attorney.

SECTION 8. Form of Bonds. The form of the Bonds shall be substantially as follows:

No. _____ \$ _____

UNITED STATES OF AMERICA

KENAI PENINSULA BOROUGH, ALASKA
CENTRAL KENAI PENINSULA HOSPITAL SERVICE AREA
SPECIALTY CLINIC BUILDING REVENUE BOND, (TAXABLE
SERIES/TAX-EXEMPT SERIES) 20XX

REGISTERED OWNER:

PRINCIPAL AMOUNT:

The Kenai Peninsula Borough, Alaska (the "Borough"), a municipal corporation of the State of Alaska, hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or its registered assigns, from the sources stated herein, the Principal Amount indicated above in the following installments on _____ of each of the following years, and to pay, from the sources stated herein, interest on such installments from the date hereof, payable on _____, 20XX, and semiannually thereafter on the first days of each _____ and _____ of each year, at the rates per annum as follows:

Maturity <u>Date</u>	Principal <u>Amount</u>	Interest <u>Rate</u>
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For so long as this Bond is owned by the Alaska Municipal Bond Bank (the "Bond Bank"), payment of principal and interest shall be made as provided in the Loan Agreement between the Bond Bank and the Borough. In the event that this Bond is no longer owned by the Bond Bank, payment of principal of and interest on this Bond will be made by check or draft mailed by first class mail to the registered owner at the address appearing on the Bond Register of the Borough, provided that the final installment of principal and interest on this Bond

will be payable at the office of the Finance Director (the "Registrar") upon surrender of this Bond. Interest shall be computed on the basis of a 360-day year composed of twelve 30-day months. Both principal of and interest on this Bond are payable in lawful money of the United States of America solely out of the special fund of the Borough known as the "Specialty Clinic Building Revenue Bond Account" created by Section 12 of Resolution No. 2013-XX.

This Bond is one of an issue of bonds (the "Bonds") of like date and tenor except as to number, rate of interest, and date of maturity, aggregating the principal sum of \$_____ and is issued pursuant to the Constitution and statutes of the State of Alaska and the duly adopted resolutions and ordinances of the Borough, including Resolution No. 2013-XX (the "Bond Resolution"). The definitions contained in the Bond Resolution shall apply to capitalized terms contained herein. The Bonds are being issued for the purpose of financing the design, engineering, construction, and equipping of the Borough's Central Kenai Peninsula Hospital Service Area Specialty Clinic Building.

Bonds owned by the Bond Bank, or its registered assigns, maturing on or after _____, 20XX, may be called for redemption on or after _____, 20XX on any date, in whole or in part, at the option of the Borough at a price equal to 100% of the principal amount thereof to be redeemed plus accrued interest to the date of redemption as described in the Loan Agreement.

Bonds not owned by the Bond Bank maturing on or after _____ 1, 2024 may be called for redemption by or on behalf of the Borough prior to maturity and upon notice as set forth in the Bond Resolution as a whole on any date or in part on or after _____ 1, 2023, at a redemption price of 100% of the principal amounts thereof, together with interest thereon to the redemption date.

The Borough does hereby pledge and bind itself to set aside out of Pledged Revenues of the Borough and to pay into the Bond Account the various amounts required by the Bond Resolution to be paid into and maintained in the Bond Account all within the times provided in the Bond Resolution.

The pledge of Pledged Revenues contained herein and in the Bond Resolution may be discharged by making provision, at any time, for the payment of the principal of and interest on this Bond in the manner provided in the Bond Resolution.

The pledge of amounts to be paid into the Bond Account is hereby declared to be a lien and charge upon the Pledged Revenues superior to all other charges of any kind or nature and equal in rank to the lien and charge thereon for amounts pledged to the payment of any Future Parity Bonds hereafter issued.

This Bond is a special, limited obligation of the Borough giving rise to no charge against the Borough's general credit, and is payable solely from, and constitute claims of the owners thereof against, only the revenues, funds, and assets of the Borough pledged under the Resolution. This Bond shall never constitute a debt or indebtedness of the State of Alaska within the meaning of any provision or limitation of the Constitution or statutes of the State of Alaska or the Borough, or of any political subdivision thereof, and shall never constitute nor give rise to a general pecuniary liability of the State or the Borough or a charge against their general credit or taxing powers.

This Bond is a special, limited obligation of the Borough, issued in order to provide funds to finance the acquisition, design, construction, and equipping of a specialty clinic building in the Central Kenai Peninsula Hospital Service Area.

No officer, agent, or employee of the Borough, and no officer, official, agent, or employee of the State of Alaska, nor any person executing this Bond, shall in any event be subject to any personal liability or accountability by reason of the issuance of this Bond.

The Borough has further bound itself to maintain the Facility in good condition and repair, to operate the same in an efficient manner and at a reasonable cost, and to establish, maintain, and collect fees 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 Debt Service Requirement for such year on all outstanding Parity Bonds.

[For Tax-Exempt Series: This Bond is a "qualified 501(c)(3) bond" as such term is defined in the Internal Revenue Code of 1986, as amended (the "Code").]

It is hereby certified that all acts, conditions, and things required by the Constitution and statutes of the State of Alaska, and the resolutions of the Borough to be done precedent to and in the issuance of this Bond have happened, been done, and performed.

IN WITNESS WHEREOF, the Kenai Peninsula Borough, Alaska, has caused this Bond to be executed with the manual or facsimile signature of its Mayor and to be countersigned with the manual or facsimile signature of its Clerk and the official seal of the Borough to be impressed or imprinted hereon, as of this _____ day of _____, 20XX.

KENAI PENINSULA BOROUGH, ALASKA

Mike Navarre, Mayor

ATTEST:

Johni Blankenship, MMC, Borough Clerk

SECTION 9. Execution of Bonds. The Bonds shall be executed on behalf of the Borough with the manual or facsimile signature of the Mayor of the Borough, attested by the manual or facsimile signature of the Clerk. The official seal of the Borough shall be impressed or imprinted on each Bond. The execution of a Bond on behalf of the Borough by persons that at the time of the execution are duly authorized to hold the proper offices shall be valid and sufficient for all purposes, regardless of whether any such person shall have ceased to hold office at the time of issuance and delivery of the Bond, or shall not have held office on the date of the Bond.

SECTION 10. Mutilated, Destroyed, Stolen, or Lost Bonds. Upon surrender to the Registrar of a mutilated Bond, the Borough shall execute and deliver a new Bond of like maturity and principal amount. Upon filing with the Registrar of evidence satisfactory to the Borough that a Bond has been destroyed, stolen, or lost and of the ownership thereof, and upon furnishing the Borough with indemnity satisfactory to it, the Borough shall execute and deliver a new Bond of like maturity and principal amount. The person requesting the authentication and delivery of a new Bond pursuant to this section shall comply with such other reasonable regulations as the Borough may prescribe and pay such expenses as the Borough may incur. Any Bonds issued pursuant to this section in substitution for Bonds alleged to be destroyed, stolen, or lost shall constitute original additional contractual obligations on the part of the Borough, whether or not the Bonds alleged to be destroyed, stolen, or lost be at any time enforceable by anyone, and shall be equally and proportionately secured with all other Bonds issued hereunder.

SECTION 11. Priority of Use of Pledged Revenues. Pledged Revenues are hereby pledged to and shall be used only for the following purposes and in the following order of priority:

First, to make all payments, including sinking fund payments, required to be made into the Debt Service Subaccount for the payment of the principal of and interest on Parity Bonds;

Second, to make all payments required to be made into the Reserve Subaccount;

Third, to make all payments, including sinking fund payments, required to be made into a subordinate lien debt service account for the payment of the principal of and interest on any subordinate lien bonds; and

Fourth, to make all payments required to be made into a reserve account for subordinate lien bonds.

SECTION 12. Specialty Clinic Building Revenue Bond Account and Subaccounts. There is hereby created a special restricted account of the Borough known as the "Specialty Clinic Building Revenue Bond Account" (the "Bond Account"), which account is to be drawn upon for the sole purpose of paying the principal of and interest and premium, if any, on all Parity Bonds. The Bond Account consists of two subaccounts, the Debt Service Subaccount and the Reserve Subaccount. Amounts pledged to be paid into the Bond Account are hereby declared to be a lien and charge upon Pledged Revenues superior to all other charges of any kind or nature and equal in rank to the charge thereon to pay and secure the payment of the principal of and interest on all Parity Bonds.

From and after the time of issuance and delivery of the Bonds and as long thereafter as any of the same remain outstanding, the Borough hereby irrevocably obligates and binds itself to set aside and pay the following each month into the Debt Service Subaccount out of Pledged Revenues on or before the date due:

- A. Such amounts, in approximately equal monthly installments, as will be sufficient to accumulate the amount required to pay the interest scheduled to become due on Parity Bonds on the next interest payment date; and
- B. Such amounts, in approximately equal monthly installments, as will be sufficient to accumulate (i) the principal amount of all Parity Bonds due for which no sinking fund installments have been established; plus (ii) the unsatisfied balance of any sinking fund installment for Parity Bonds, in each case during the next 12 months.
- C. For so long as Parity Bonds are held by the Bond Bank, the Borough will pay such amounts into the Debt Service Subaccount out of Pledged Revenues as may be required by the Loan Agreement.

Moneys in the Debt Service Subaccount may be held in cash or invested in accordance with Borough policy such that investments will mature prior to the time such money is required for the payment of the principal of or interest on the Parity Bonds. All interest earned on and profits derived from such investments shall remain in and become a part of the Debt Service Subaccount.

In the event a portion of the Bonds are designated Tax-Exempt Series, the Finance Director is authorized to modify the foregoing provisions by establishing further subaccounts within the Bond Account and the Reserve Subaccount and otherwise as the Finance Director deems necessary or desirable in order that interest on the Tax-Exempt Series is tax exempt under the Code.

SECTION 13. Reserve Subaccount. The Borough hereby covenants and agrees that it will at the time of issuance of the Bonds cause amounts to be paid into the Reserve Subaccount such that the total amount in the Reserve Subaccount will be equal to the Reserve Subaccount Requirement.

The Borough further covenants and agrees that it will set aside and pay into the Reserve Subaccount amounts from Pledged Revenues, commencing with the first month following the closing and delivery of the Bonds, so that the amount on deposit in the Reserve Subaccount will at all times be at least equal to the Reserve Subaccount Requirement.

The Borough further covenants and agrees that in the event it issues any Future Parity Bonds hereafter it will provide in each resolution authorizing the same that at the time of issuance of such Future Parity Bonds payments will be made into the Reserve Subaccount such that the total amount of such payments together with the money already in the Reserve Subaccount will be equal to the Reserve Subaccount Requirement.

The Borough further covenants and agrees that it will at all times maintain therein an amount at least equal to the Reserve Subaccount Requirement until there is a sufficient amount in the Bond Account and Reserve Subaccount to pay the principal of, premium, if any, and interest on all outstanding Parity Bonds in the manner set forth in Section 16 hereof, at which time the money in the Reserve Subaccount may be used to pay such principal, premium, if any, and interest; provided, however, that moneys in the Reserve Subaccount may be withdrawn or set aside in a special account in the Bond Account pursuant to Section 16 of this resolution, to pay (with or without other available funds) the principal, premium, if any, and interest on all of the outstanding Parity Bonds of any single issue or series payable out of the Bond Account, so long as the moneys remaining on deposit in the Reserve Subaccount are at least equal to the Reserve Subaccount Requirement on all of the remaining outstanding Parity Bonds. The Borough may, from time to time, transfer from the Reserve Subaccount to the Debt Service Subaccount amounts in excess of the Reserve Subaccount Requirement.

In the event there shall be a deficiency in the Debt Service Subaccount for meeting maturing installments of either principal of or interest on Parity Bonds, such deficiency shall be made up from the Reserve Subaccount by the withdrawal of cash therefrom. Any deficiency created in the Reserve Subaccount by reason of any such withdrawal shall then be made up from Pledged Revenues first available therefor after making necessary provision for the required payments into the Debt Service Subaccount.

SECTION 14. Investment of Certain Accounts. Moneys held in the Bond Account and in the Reserve Subaccount shall be invested and reinvested to the fullest extent practicable in accordance with Borough policy, such investments to mature not

later than at such times as shall be necessary to provide moneys when needed for payments to be made from such Accounts.

Obligations purchased as an investment of moneys in any Account or Subaccount created under this resolution shall be deemed at all times to be a part of such Account or Subaccount and any profit realized from the liquidation of such investment shall be credited to such Account or Subaccount and any loss resulting from the liquidation of such investment shall be charged to the respective Account or Subaccount.

In the event a portion of the Bonds are designated "Tax-Exempt Series," the Finance Director is authorized to restrict investments in the subaccounts established within the Bond Account and the Reserve Account as the Finance Director deems necessary or desirable in order to ensure that interest on the Tax-Exempt Series is tax exempt under the Code.

SECTION 15. Specific Covenants. The Borough hereby covenants with the owners of each of the Parity Bonds for so long as any of the same remain outstanding as follows:

- A. The Borough will establish, maintain, and collect Net Revenues in each Fiscal Year that will provide Pledged Revenues in an amount equal to the amount of the Annual Debt Service Requirement for such year on all outstanding Parity Bonds. For so long as the Parity Bonds are held by the Alaska Municipal Bond Bank, the Borough will establish, maintain, and collect Net Revenues as required by the terms of the Loan Agreement.
- B. The Borough will require the Operator to at all times maintain, preserve, and keep the Facility and every part and parcel thereof in good repair, working order, and condition; will from time to time make or cause to be made all necessary and proper repairs, renewals, and replacements to the Facility, and will at all times operate the Facility in an efficient manner.
- C. The Facility, including the buildings, equipment, and property, shall be insured in such amounts and with such deductibles as under good business practice are ordinarily carried on such facilities.
- D. The Borough will require the Operator to keep and maintain proper books and accounts with respect to the operation of the Facility in such manner as prescribed by any authorities having jurisdiction over the Facility; 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 Parity Bonds.
- E. The Borough will not sell or otherwise dispose of the Facility unless contemporaneously with such sale or disposal there shall be paid into the

Bond Account a sum sufficient to pay the principal of and interest on all Parity Bonds then outstanding to the date or dates on which they first may be redeemed, nor will it sell or otherwise dispose of any part of the Facility which is material to the production of Pledged Revenues unless, in the opinion of a Consulting Engineer, the remaining Facility will generate Pledged Revenues sufficient to enable the Borough to comply with the requirements of this resolution and each resolution authorizing the issuance of Future Parity Bonds.

- F. The Borough will require the Operator to not at any time create or permit to accrue or exist any lien or other encumbrance or indebtedness upon the Facility or the Pledged Revenues, or any part thereof, or upon any Account or Subaccount created hereunder, prior or superior to the lien thereon for the payment of the Parity Bonds, 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 Revenue, or any part thereof, or upon any Account or Subaccount in the hands of the Borough, prior or superior to the lien of the Parity Bonds, or which might impair the security of the Parity Bonds.
- G. The Borough will require the Operator to not expend any of the Pledged Revenues or the proceeds of any indebtedness payable from Pledged Revenues for any additions, betterments, or improvements to the Facility which are not economically sound and which will not properly and advantageously contribute to the conduct of the business of the Facility in an efficient and economical manner.
- H. The Borough shall require the Operator to 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 resolution, or intended so to be, or which the Borough may become bound to pledge or assign.
- I. The Borough is duly authorized under all applicable laws to create and issue the Bonds and to adopt this resolution and to pledge the Pledged Revenues and other funds, moneys, and securities purported to be pledged by this resolution in the manner and to the extent provided in this resolution. The Pledged Revenues and other funds, moneys, and securities so pledged are and will be free and clear of any pledge, lien, charge, or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge and assignment created by this resolution, and all corporate or other action on the part of the Borough to that end has been and will be duly and validly taken. The Bonds and the provisions of this resolution are and will be the valid and legally enforceable obligations of

the Borough in accordance with their terms and the terms of this resolution.

- J. The Borough, through the Operator, will have so long as any Parity Bonds are outstanding, good, right, and lawful power to operate, maintain, and repair the Facility and to fix and collect rates, fees, and other charges related to the Facility.
- K. The Borough shall require the Operator to do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the Borough under applicable laws and this resolution.
- L. In the event a portion of the Bonds are designated "Tax-Exempt Series," the Finance Director is authorized, on behalf of the Borough, to enter into such other covenants and agreements which may be inconsistent with the foregoing, as the Finance Director deems necessary or desirable in order to ensure that interest on the Tax-Exempt Series is tax exempt under the Code.

SECTION 16. Parity Bonds. As described in this Section 16, the Borough may issue Parity Bonds. The Borough hereby covenants with the owners of each of the Parity Bonds for so long as the same remain outstanding that it will not issue any bonds having a greater or equal lien on Pledged Revenues to pay and secure the payment of the principal of and interest on such bonds than the lien created thereon to pay and secure the payment of the principal of and interest on the Parity Bonds, except that the Borough reserves the right to issue future Parity Bonds as follows:

- A. For the purpose of acquiring, constructing, and installing additions, betterments, and improvements to and extensions of, acquiring necessary property, and equipment for, or making necessary replacements or repairs to the Facility, for funding interest and reserves, and for the purpose of refunding at or prior to their redemption or maturity any outstanding revenue bonds or notes of the Borough that have a lien on Pledged Revenues for the payment of the principal thereof and interest thereon junior and inferior to the lien on Pledged Revenues for the payment of the principal of and interest on the Bonds and upon compliance with the following conditions:
 - (1) The Borough will covenant in each resolution authorizing the issuance of Future Parity Bonds that it will pay into and maintain in the Reserve Subaccount the amounts required by Section 13 of this resolution to be paid into and maintained in the Reserve Subaccount in the event Future Parity Bonds are issued.
 - (2) At the time of the issuance of such Future Parity Bonds, the Borough shall have on file a certificate of the Finance Director showing that

the "annual income available for revenue bond debt service," as hereinafter set forth, shall be at least equal to 1.25 times the maximum Annual Debt Service Requirement on all outstanding Parity Bonds and the Future Parity Bonds being issued.

Such "annual income available for revenue bond debt service" shall be determined by adding the following:

- (i) The historical Pledged Revenues for any 12 consecutive months out of the 24 months immediately preceding the month of delivery of the Future Parity Bonds being issued.
- (ii) The estimated annual Pledged Revenues to be derived from the operation of any additions or improvements to or extensions of the Facility under construction but not completed at the time of such certificate and not being paid for out of the proceeds of sale of such Future Parity Bonds being issued, and which Pledged Revenues are not otherwise included in any of the sources of Pledged Revenues described in this subsection (2).
- (iii) The estimated Pledged Revenues to be derived from the operation of any additions and improvements to or extensions of the Facility being paid for out of the proceeds of sale of such Future Parity Bonds being issued.

The computation of "annual income available for revenue bond debt service" shall be adjusted to reflect the Facility fees or rents effective on the date of such certificate or approved by the regulatory authority with jurisdiction to become effective thereafter if there has been any change in such rates and charges put into effect or so approved during or after such 12 consecutive month base period.

Notwithstanding the preceding provisions of this subparagraph (2), the certificate referred to above shall not be required if one-half of Pledged Revenues, verified from certain financial statements of the Facility, for a period of any consecutive two out of the three Fiscal Years immediately preceding the issuance and delivery of such Future Parity Bonds, was equal to at least 1.25 times the maximum Annual Debt Service required to be paid in any Fiscal Year succeeding the date of issuance of such Future Parity Bonds on all outstanding Parity Bonds and the Future Parity Bonds being issued.

Further, notwithstanding the preceding provisions of this subparagraph (2), Future Parity Bonds may be issued if the Borough shall have on file a certificate stating that the Pledged Revenues for the next full Fiscal Year after the initial operation of any additions or improvements to or extensions of the Facility being paid for out of the proceeds of the Future Parity Bonds will be at

least equal to 1.25 times the maximum Annual Debt Service Requirement on all outstanding Parity Bonds and the Future Parity Bonds being issued; and that at the time of the issuance of such Future Parity Bonds there is no deficiency in the Debt Service Subaccount or Reserve Subaccount.

- B. For the purpose of refunding at or prior to their redemption or maturity, any part or all of the then outstanding Parity Bonds if the issuance of such refunding Future Parity Bonds does not require a greater amount to be paid out of Pledged Revenues for principal and interest over the life of such refunding Future Parity Bonds being refunded, and if the conditions required in subsections (A)(1) and (A)(2) of this section are complied with.

Proceeds of Parity Bonds to be used to fund interest or reserves shall be deposited in the Debt Service Subaccount or the Reserve Subaccount, as the case may be.

SECTION 17. Subordinate Lien Bonds. Nothing contained herein shall prevent the Borough from issuing revenue bonds or notes which are a charge upon Pledged Revenues subordinate or inferior to the payments required herein to be made therefrom into the Debt Service Subaccount and Reserve Subaccount, or from issuing specialty clinic building revenue bonds to refund maturing bonds for the payment of which moneys are not otherwise available.

SECTION 18. Defeasance. In the event that money and/or investments maturing at such time or times and bearing interest to be earned thereon in amounts sufficient to redeem and retire any or all of the Bonds in accordance with their terms are set aside in a special restricted account in the Bond Account to effect such redemption or retirement and such money and the principal of and interest on such obligations are irrevocably set aside and pledged for such purpose, then no further payments need to be made into the Bond Account for the payment of the principal of and interest on such Bonds, and such Bonds shall cease to be entitled to any lien, benefit, or security of this resolution, except the right to receive the funds so set aside and pledged, and such Bonds shall be deemed not to be outstanding hereunder or under any other resolution authorizing the issuance of Future Parity Bonds.

SECTION 19. General Authorization to Municipal Officials. After the sale of the Bonds, the proper officials of the Borough are hereby authorized and directed to do everything necessary to complete such sale and to deliver the Bonds to the purchaser thereof upon payment of the purchase price thereof.

SECTION 20. Amendatory and Supplemental Resolutions.

- A. The Assembly from time to time and at any time may pass a resolution or resolutions supplemental hereof, which resolution or resolutions thereafter

shall become a part of this resolution, for any one or more of the following purposes:

- (1) To add to the covenants and agreements of the Borough contained in this resolution, other covenants and agreements thereafter to be observed, or to surrender any right or power herein reserved to or conferred upon the Borough and, in the event any Tax-Exempt Bonds are outstanding, as the Borough acting through the Finance Director deems necessary or desirable to ensure that interest on the Tax-Exempt Series is tax exempt under the Code.
- (2) To make such provisions for the purpose of curing any ambiguities or of curing, correcting, or supplementing any defective provision contained in this resolution, or in regard to matters or questions arising under this resolution as the Assembly may deem necessary or desirable and not inconsistent with this resolution, and which shall not adversely affect the interest of the owners of Parity Bonds.

Any such supplemental resolution of the Assembly may be adopted without the consent of the owner of any Parity Bonds at any time outstanding, notwithstanding any of the provisions of subsection B of this section.

B. With the consent of the owners of not less than 60% in aggregate principal amount of Parity Bonds at the time outstanding, the Assembly may pass a resolution or resolutions supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this resolution or of any supplemental resolution; provided, however, that no such supplemental resolution shall:

- (1) Extend the fixed maturity of any of the Parity Bonds, or reduce the rate of interest thereon, or reduce the amount or change the date of any sinking fund installment requirement, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the owner of each Parity Bond so affected; or
- (2) Reduce the percentage of owners of Parity Bonds required to approve any such supplemental resolution without the consent of the owners of all of the Parity Bonds then outstanding; or
- (3) Remove the pledge and lien of this resolution on Pledged Revenues.

It shall not be necessary for the consent of the owners of Parity Bonds under this subsection B to approve the particular form of any proposed supplemental

resolution, but it shall be sufficient if such consent shall approve the substance thereof.

- C. Upon the passage of any supplemental resolution pursuant to the provisions of this section, this resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties, and obligations of the Borough under this resolution and all owners of Parity Bonds outstanding hereunder shall thereafter be determined, exercised, and enforced thereunder, subject in all respects to such modification and amendment, and all the terms and conditions of any such supplemental resolution shall be deemed to be part of the terms and conditions of this resolution for any and all purposes.
- D. Parity Bonds executed and delivered after the execution of any supplemental resolution adopted pursuant to the provisions of this section may bear a notation as to any matter provided for in such supplemental resolution, and if such supplemental resolution shall so provide, new Parity Bonds so modified as to conform, in the opinion of the Assembly, to any modification of this resolution contained in any such supplemental resolution, may be prepared by the Borough and delivered without cost to the owners of Parity Bonds then outstanding, upon surrender for cancellation of such Parity Bonds in equal aggregate principal amounts.

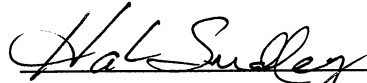
SECTION 21. Disposition of the Proceeds of Sale of the Bonds. The proceeds received from the sale of the Bonds (exclusive of accrued interest, if any, which shall be paid into the Debt Service Subaccount) shall be deposited into the fund of the Borough designated by the Finance Director and shall be used to pay all costs allocable to the issuance of the Bonds and to undertake improvements authorized by Section 3 of this resolution.

SECTION 22. Loan Agreement and Other Documents. The Finance Director is authorized to enter into a Loan Agreement or Loan Agreements with the Alaska Municipal Bond Bank providing for and relating to the sale of the Bonds to the Alaska Municipal Bond Bank, and the Finance Director is authorized to execute and deliver on behalf of the Borough any other documents reasonably.

SECTION 23. Severability. If any one or more of the covenants or agreements provided in this resolution to be performed on the part of the Borough shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements shall be null and void and shall be deemed separable from the remaining covenants and agreements in this resolution and shall in no way affect the validity of the other provisions of this resolution or of the Bonds.

SECTION 24. Effective Date. This resolution shall become effective immediately.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS
22ND DAY OF OCTOBER, 2013.

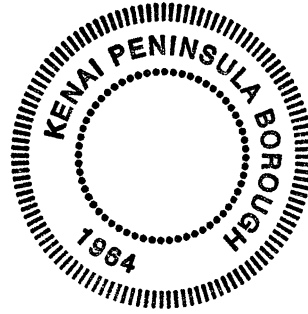


Hal Smalley, Assembly President

ATTEST:



John Blankenship, MMC, Borough Clerk



Yes: Bagley, Haggerty, Johnson, McClure, Pierce, Smith, Smalley

No: Ogle, Wolf

Absent: None