

Introduced by: Mayor
Date: 07/05/11
Action: Adopted as Amended
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2011-072**

A RESOLUTION AUTHORIZING THE KENAI PENINSULA BOROUGH TO ISSUE KENAI PENINSULA BOROUGH GENERAL OBLIGATION REFUNDING SCHOOL BONDS, 2011 IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,500,000 TO REFUND CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE BOROUGH, FIXING CERTAIN DETAILS OF SUCH BONDS AND AUTHORIZING THEIR SALE AND PROVIDING FOR RELATED MATTERS

WHEREAS, the Kenai Peninsula Borough, Alaska (the "Borough") is a second class borough and is authorized to take the actions set forth in this resolution; and

WHEREAS, there is now outstanding the principal amount of \$9,965,000 of Kenai Peninsula Borough General Obligation School Bonds, Series 2003A of the Borough (the "2003 Bonds") maturing on or after December, 2011 issued under Resolution No. 2003-72 of the Borough; and

WHEREAS, the Assembly finds that it is in the best interest of the Borough to provide for the refunding, including the payment of principal of and interest on, those maturities of the 2003 Bonds (the "Refunded Bonds") whose refunding the Mayor or Borough Finance Director determines will produce the debt service savings specified in this resolution, by the issuance of general obligation refunding bonds in the aggregate principal amount of not to exceed \$10,500,000 (the "Bonds"); and

WHEREAS, the Assembly finds that it is necessary and appropriate to delegate to each of the Mayor and Borough Finance Director authority to determine the maturity amounts, interest rates and other details of the Bonds, and to determine other matters pertaining to the Bonds that are not provided for in this resolution; and

WHEREAS, the Alaska Municipal Bond Bank and the Borough intend to enter into an Amendatory Loan Agreement, which amends the Loan Agreement dated as of August 1, 2003 between the Alaska Municipal Bond Bank and the Borough to provide for the refunding of the 2003 Bonds through their exchange for refunding bonds to be issued by the Borough, and related matters;

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

SECTION 1. Definitions. The following terms shall have the following meanings in this resolution:

- (A) "Amendatory Loan Agreement" means the Amendatory Loan Agreement between the Borough and the Bond Bank, amending the Loan Agreement to provide for the refunding of the Refunded Bonds through their exchange for the Bonds, and related matters.
- (B) "Assembly" means the Assembly of the Kenai Peninsula Borough, as the general legislative authority of the Borough, as the same shall be duly and regularly constituted from time to time.
- (C) "Bond" or "Bonds" means any of the " Kenai Peninsula Borough General Obligation Refunding School Bonds, 2011" of the Borough, the issuance and sale of which are authorized herein.
- (D) "Bond Bank" means the Alaska Municipal Bond Bank, a public corporation of the State of Alaska.
- (E) "Bond Bank Bonds" means the General Obligation and Refunding Bonds, 2011 Series Three of the Bond Bank.
- (F) "Bond Register" means the registration books maintained by the Registrar, which include the names and addresses of the Registered Owners of the Bonds or their nominees.
- (G) "Borough" means the Kenai Peninsula Borough, a municipal corporation of the State of Alaska, organized as a second class borough under Title 29 of the Alaska Statutes.
- (H) "Borough Finance Director" means the Finance Director of the Borough.
- (I) "Code" means the Internal Revenue Code of 1986, as amended from time to time, together with all regulations applicable thereto.
- (J) "Loan Agreement" means the Loan Agreement between the Borough and the Bond Bank dated as of August 1, 2003, as amended by the Amendatory Loan Agreement.
- (K) "2003 Bonds" means the \$14,700,000 of Kenai Peninsula Borough General Obligation School Bonds, Series 2003A of the Borough.
- (L) "Refunded Bonds" means the maturities of the 2003 Bonds whose refunding is approved by the Mayor or Borough Finance Director under Section 12.

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

(N) "Registrar" means the Borough Finance Director.

(O) "Resolution" means this Resolution of the Assembly.

SECTION 2. Authorization of Bonds and Purpose of Issuance. For the purpose of effecting the refunding by exchange of the Refunded Bonds in the manner set forth hereinafter and in the Amendatory Loan Agreement, the Borough hereby authorizes and determines to issue and sell the Bonds in the aggregate principal amount of not to exceed \$10,500,000.

SECTION 3. Obligation of Bonds. The Bonds shall be direct and general obligations of the Borough and the full faith and credit of the Borough are hereby pledged to the payment of the principal of and interest on the Bonds. The Borough hereby irrevocably pledges and covenants that it will levy and collect taxes upon all taxable property within the Borough without limitation as to rate or amount, in amounts sufficient, together with other funds legally available therefor, to pay the principal of and interest on the Bonds as the same become due and payable.

SECTION 4. Designation, Maturities, Interest Rates, and Other Details of Bonds. The Bonds shall be designated " Kenai Peninsula Borough General Obligation Refunding School Bonds, 2011." The Bonds shall be in the denomination of \$5,000 or any integral multiple thereof, shall be numbered separately in the manner and with such additional designation as the Registrar deems necessary for purposes of identification, and may have endorsed thereon such legends or text as may be necessary or appropriate to conform to the rules and regulations of any governmental authority or any usage or requirement of law with respect thereto.

The dated date, the principal and interest payment dates, the aggregate principal amount, the principal amount of each maturity, and the interest rates on the Bonds shall be determined at the time of execution of the Amendatory Loan Agreement under Section 16.

SECTION 5. Redemption. The Bonds are subject to redemption as described in the Loan Agreement.

SECTION 6. Form of Bond. Each Bond shall be in substantially the following form, with such variations, omissions and insertions as may be required or permitted by this Resolution:

UNITED STATES OF AMERICA
STATE OF ALASKA

KENAI PENINSULA BOROUGH
(A Municipal Corporation of the State of Alaska)

NO. _____

\$ _____

KENAI PENINSULA BOROUGH
GENERAL OBLIGATION REFUNDING SCHOOL BONDS, 2011

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, the Principal Amount indicated above in the following installments on [_____ 1] of each of the following years, and to pay interest on such installments from the date hereof, payable on [_____ 1, 20__] and semiannually thereafter on the first days of ____ and _____ of each year, at the rates per annum as follows:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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For so long as this Bond is owned by the Alaska Municipal Bond Bank (the "Bank"), payment of principal and interest shall be made as provided in the Loan Agreement between the Bank and the Borough dated as of August 1, 2003, as amended by the Amendatory Loan Agreement dated _____ (the "Loan Agreement"). In the event that this Bond is no longer owned by the Bank, installments of principal of and interest on this Bond shall be made by check or draft mailed by first class mail to the registered owner as of the close of business on the fifteenth day of the month preceding each installment payment date; provided that the final installment of principal and interest on this Bond will be payable upon presentation and surrender of this Bond by the Registered Owner at the office of the Registrar. 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 which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts.

This Bond is one of the Kenai Peninsula Borough General Obligation Refunding School Bonds, 2011 of the Kenai Peninsula Borough, Alaska of like tenor and effect except as to interest rate, serial number and maturity, aggregating \$ _____ in principal amount, and constituting bonds authorized for the purpose of refunding certain general obligation bonds issued by the Borough, and is issued under Resolution 2011-__ of the Borough entitled:

A RESOLUTION AUTHORIZING THE KENAI PENINSULA
BOROUGH TO ISSUE KENAI PENINSULA BOROUGH
GENERAL OBLIGATION REFUNDING SCHOOL BONDS, 2011

IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,500,000
TO REFUND CERTAIN OUTSTANDING GENERAL
OBLIGATION BONDS OF THE BOROUGH, FIXING CERTAIN
DETAILS OF SUCH BONDS AND AUTHORIZING THEIR SALE
AND PROVIDING FOR RELATED MATTERS

(herein called the "Resolution").

The Bond is subject to redemption prior to maturity as described in the Loan Agreement.

This Bond is transferable as provided in the Resolution, (i) only upon the bond register of the Borough, and (ii) upon surrender of this Bond together with a written instrument of transfer duly executed by the registered owner or the duly authorized attorney of the registered owner, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount and maturity shall be issued to the transferee in exchange therefor as provided in the Resolution and upon the payment of charges, if any, as therein prescribed. The Borough may treat and consider the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price, if any, hereof and interest due hereon and for all other purposes whatsoever.

This Bond is a general obligation of the Borough, and the full faith and credit of the Borough are pledged for the payment of the principal of and interest on the Bond as the same shall become due.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts or things required by the constitution or statutes of the State of Alaska and the ordinances of the Borough to exist, to have happened or to have been performed precedent to or in the issuance of this Bond, exist, have happened and have been performed, and that the series of Bonds of which this is one, together with all other indebtedness of the Borough, is within every debt and other limit prescribed by said constitution, statutes, or ordinances.

IN WITNESS WHEREOF, THE KENAI PENINSULA BOROUGH, ALASKA, has caused this Bond to be signed in its name and on its behalf by its Mayor and its corporate seal to be hereunto impressed or otherwise reproduced and attested by its Clerk, all as of the ____ day of _____, 2011.

David R. Carey, Mayor

ATTEST:

Johni Blankenship, MMC, Borough Clerk

SECTION 7. Execution. The Bonds shall be executed in the name of the Borough by the Mayor or his designee, and its corporate seal shall be impressed or otherwise reproduced thereon and attested by the Borough Clerk. The execution of a Bond on behalf of the Borough by persons who at the time of the execution are duly authorized to hold the proper offices shall be valid and sufficient for all purposes, although any such person shall have ceased to hold office at the time of authentication of the Bond or shall not have held office on the date of the Bond.

SECTION 8. Payment of Principal and Interest. The Bonds shall be payable in lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debts. As long as the Bond Bank is the Registered Owner of the Bonds, payment of principal and interest on the Bonds shall be made as provided in the Loan Agreement. If the Bond Bank is no longer the Registered Owner of the Bonds, installments of principal and interest on the Bonds shall be paid by check mailed by first class mail to the Registered Owner as of the fifteenth day of the month preceding each installment payment date at the address appearing on the Bond Register; provided that the final installment of principal and interest on a Bond shall be payable upon presentation and surrender of the Bond by the Registered Owner at the office of the Registrar.

SECTION 9. Registration. The Bonds shall be issued only in registered form as to both principal and interest. The Borough designates the Borough Finance Director as Registrar for the Bonds. The Registrar shall keep, or cause to be kept, the Bond Register at the principal office of the Borough. The Borough covenants that, until all Bonds have been surrendered and canceled, it will maintain a system for recording the ownership of each Bond that complies with the provisions of Section 149 of the Code. The Borough and the Registrar may treat the person in whose name any Bond shall be registered as the absolute owner of such Bond for all purposes, whether or not the Bond shall be overdue, and all payments of principal of and interest on a Bond made to the Registered Owner thereof or upon its order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Borough nor the Registrar shall be affected by any notice to the contrary.

SECTION 10. Transfer and Exchange. Bonds shall be transferred only upon the books for the registration and transfer of Bonds kept at the office of the Registrar. Upon surrender for transfer or exchange of any Bond at such office, 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 the duly authorized attorney of the Registered Owner, the Borough shall execute and deliver an equal aggregate principal amount of Bonds of the same maturity of any authorized denominations, subject to such reasonable regulations as the Borough 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 canceled by the Registrar.

SECTION 11. Bonds Mutilated, Destroyed, Stolen or Lost. 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 execution and delivery of a new Bond under this section shall comply with such other reasonable regulations as the Borough may prescribe and pay such expenses as the Borough may incur in connection therewith.

SECTION 12. Designation of Refunded Bonds. The Mayor and the Borough Finance Director each is authorized to designate which maturities of 2003 Bonds authorized to be refunded in this Resolution shall be refunded, provided that the refunding of the 2003 Bonds so designated shall realize a substantial debt service savings, net of all issuance costs and underwriting discount, on a present value basis.

SECTION 13. Tax Covenants. The Borough covenants to comply with any and all applicable requirements set forth in the Code in effect from time to time to the extent that such compliance shall be necessary for the exclusion of the interest on the Bonds from gross income for federal income tax purposes. The Borough covenants that it will make no use of the proceeds of the Bonds which will cause the Bonds or the Refunded Bonds to be "arbitrage bonds" subject to federal income taxation by reason of section 148 of the Code. The Borough covenants that it will not take or permit any action that would cause the Bonds to be "private activity bonds" as defined in Section 141 of the Code.

SECTION 14. Amendatory and Supplemental Resolutions.

(A) The Assembly from time to time and at any time may adopt a resolution or resolutions supplemental hereto, 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 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.

(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 interests of the Registered Owners of the Bonds.

Any such supplemental resolution may be adopted without the consent of the Registered Owner of any of the Bonds at any time outstanding, notwithstanding any of the provisions of subsection (B) of this section.

- (B) With the consent of the Registered Owners of not less than 60 percent in aggregate principal amount of the Bonds at the time outstanding, the Assembly may adopt 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 Bonds, or reduce the rate of interest thereon, 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 Registered Owners of each Bond so affected; or
 - (2) reduce the aforesaid percentage of Registered Owners of Bonds required to approve any such supplemental resolution without the consent of the Registered Owners of all of the Bonds then outstanding.

It shall not be necessary for the consent of the Registered Owners of the Bonds under this subsection to approve the particular form of any proposed supplemental resolution, but it shall be sufficient if such consent approves the substance thereof.

- (C) Upon the adoption of any supplemental resolution under this section, this Resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Resolution of the Borough and all Registered Owners of outstanding Bonds shall thereafter be subject in all respects to such modification and amendment, and all the terms and conditions of the supplemental resolution shall be deemed to be part of the terms and conditions of this Resolution for any and all purposes.
- (D) Bonds executed and delivered after the execution of any supplemental resolution adopted under 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 Bonds modified so as to conform, in the opinion of the Borough, to any modification of this Resolution contained in any such supplemental resolution may be prepared by the Borough and delivered without cost to the Registered Owners of the Bonds then outstanding, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

SECTION 15. Defeasance. In the event money and/or non-callable direct obligations of, or obligations the timely payment of principal of and interest on which are unconditionally guaranteed by, the United States of America or an agency or

instrumentality of the United States of America, maturing at such 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 trust account to effect such redemption or retirement and such moneys and the principal of and interest on such obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made to pay or secure the payment of the principal of and interest on such Bonds and such Bonds shall be deemed not to be outstanding.

SECTION 16. Exchange of Bonds; Amendatory Loan Agreement. The Bonds shall be delivered to the Bond Bank in exchange for the Refunded Bonds. The Borough has been advised by the Bond Bank that bond market conditions are fluctuating and that the most favorable market conditions for the sale of the Bond Bank Bonds 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 Bonds. 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 Bonds as provided herein. Each of the Mayor and the Borough Finance Director is hereby authorized to determine the aggregate principal amount, maturity amounts, interest rates, yields, dated date, principal and interest payment dates, and redemption terms, if any, for the Bonds, so that such terms of the Bonds conform to the terms of the corresponding Bond Bank Bonds; provided that (i) the principal amount of each maturity of the Bonds shall not exceed the principal amount of the portion of the corresponding maturity of the Bond Bank Bonds that is allocated to the making of a loan to the Borough; and (ii) the interest rate on each maturity of the Bonds shall not exceed the interest rate on the corresponding maturity of the Bond Bank Bonds. Based upon the foregoing determinations, the Mayor and the Borough Finance Director each is authorized to negotiate and execute an Amendatory Loan Agreement. The authority granted to the Mayor and Borough Finance Director by this section shall expire 180 days after the effective date of this Resolution. If the Mayor or Borough Finance Director has not executed an Amendatory Loan Agreement within 180 days from the effective date of this Resolution, the Amendatory Loan Agreement may not be executed on behalf of the Borough without further authorization from the Assembly.

SECTION 17. Official Statement. The information in a preliminary Official Statement relating to the Borough and the Bonds may be modified as the Mayor or Borough Finance Director may determine. The Mayor and Borough Finance Director each is hereby authorized to approve the form of the preliminary and the final Official Statement for the Bond Bank Bonds as each pertains to the Borough and the Bonds.

SECTION 18. Authority of Officers. The Mayor and the Borough Finance Director, and the Borough Clerk are, and each of them hereby is, authorized and directed to do and perform all things and determine all matters not determined by this Resolution, to the end that the Borough may carry out its obligations under the Bonds and this Resolution.

SECTION 19. Miscellaneous.

- (A) All payments made by the Borough of, or on account of, the principal of or interest on the Bonds shall be made on the several Bonds ratably and in proportion to the amount due thereon, respectively, for principal or interest as the case may be.
- (B) No recourse shall be had for the payment of the principal of or the interest on the Bonds or for any claim based thereon or on this Resolution against any member of the Assembly or officer of the Borough or any person executing the Bonds. The Bonds are not and shall not be in any way a debt or liability of the State of Alaska or of any political subdivision thereof, except the Borough, and do not and shall not create or constitute an indebtedness or obligation, either legal, moral or otherwise, of said state or of any political subdivision thereof, except the Borough.

SECTION 20. Continuing Disclosure. The Borough hereby covenants and agrees that it will execute and carry out all of the provisions of a Continuing Disclosure Certificate in form and substance satisfactory to the Bond Bank. Notwithstanding any other provision of this Resolution, failure of the Borough to comply with the Continuing Disclosure Certificate shall not be considered a default of the Borough's obligations under this Resolution or the Bonds; however, the beneficial owner of any Bond or Bond Bank Bond may bring an action for specific performance, to cause the Borough to comply with its obligations under this section.

SECTION 21. Severability. If any one or more of the provisions of this Resolution 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 Resolution and shall in no way affect the validity of the other provisions of this Resolution or of the Bonds.

SECTION 22. Effective Date. This resolution shall take effect upon adoption by the Borough Assembly.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS
5TH DAY OF JULY, 2011.**

Gary Knopp, Assembly President

ATTEST:

Johni Blankenship, Borough Clerk

Yes: Haggerty, Johnson, McClure, Murphy, Pierce, Smalley, Smith, Tauriainen, Knopp
No: None
Absent: None