

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

**KENAI PENINSULA BOROUGH  
RESOLUTION 2011-073**

**A RESOLUTION AUTHORIZING THE ISSUE OF CENTRAL KENAI PENINSULA HOSPITAL SERVICE AREA GENERAL OBLIGATION REFUNDING BONDS, 2011 IN ONE OR MORE SERIES IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$33,965,000 TO REFUND CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE SERVICE AREA, FIXING CERTAIN DETAILS OF SUCH BONDS AND AUTHORIZING THEIR SALE AND REPEALING RESOLUTION 2010-091**

**WHEREAS,** there are now outstanding \$35,990,000 of the Central Kenai Peninsula Hospital Service Area General Obligation Bonds, Series 2003 of the Borough maturing on or after February 1, 2012 issued under Resolution 2003-121 of the Borough (the "2003 Bonds"); and

**WHEREAS,** the Assembly finds that it is in the best interest of the Borough to provide for the refunding, including payment of principal of, premium, if any, and interest on, those maturities of the 2003 Bonds (the "Refunded Bonds") whose refunding the Borough Mayor or Borough Finance Director determines will produce the debt service savings described in this resolution, by the issuance of Service Area general obligation refunding bonds in the aggregate principal amount of not to exceed \$33,965,000; and

**WHEREAS,** to effect such refunding in the most economical manner, part of the sale proceeds of the bonds authorized herein (the "Bonds") may be invested in obligations to be authorized and approved by the Borough Mayor or Borough Finance Director, maturing in such amounts and at such times as are required to pay interest on the Refunded Bonds prior to the date of their redemption and to redeem the Refunded Bonds on the earliest date on which the Refunded Bonds may be called for redemption; and

**WHEREAS,** Section 29.47.320 of the Alaska Statutes provides that general obligation refunding bonds may be issued without an election and that their issuance may be authorized by resolution, and Section 29.47.410 of the Alaska Statutes provides that the Assembly by resolution or resolution may provide for the form and manner of sale of bonds and notes; and

**WHEREAS,** the Assembly finds that it is necessary and appropriate to delegate to each of the Borough Mayor and Borough Finance Director authority to determine the maturity amounts, interest rates and other details of the Bonds, the amount of Bond proceeds and the obligations necessary to effect the refunding of the Refunded Bonds, and to determine other matters that are not provided for in this

resolution;

**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) "Assembly" means the Assembly of the Kenai Peninsula Borough, as the general legislative authority of the Kenai Peninsula Borough, as the same shall be duly and regularly constituted from time to time.
- (b) "Bond" or "Bonds" means any of the "Central Kenai Peninsula Hospital Service Area General Obligation Refunding Bonds, 2011" of the Kenai Peninsula Borough, in one or more series, the issuance and sale of which are authorized herein.
- (c) "Bond Bank" means the Alaska Municipal Bond Bank, a public corporation of the State of Alaska.
- (d) "Bond Bank Bonds" means the General Obligation and Refunding Bonds, 2011 Series Three of the Bond Bank.
- (e) "Bond Register" means the registration books maintained by the Paying Agent as Bond registrar, which include the names and addresses of the owners or nominee of the owners of the Bonds.
- (f) "Borough" means the Kenai Peninsula Borough, a municipal corporation of the State of Alaska, incorporated January 1, 1964 as a second class borough under the laws of the State of Alaska.
- (g) "Code" means the Internal Revenue Code of 1986, as amended from time to time, together with all regulations applicable thereto.
- (h) "Cost" or "Costs" means allocable portions of direct costs of the Borough, legal fees, fees and expenses of the Paying Agent, costs of issuance of the Bonds by the Borough, including financing charges and fees and expenses of bond counsel, financial advisors and consultants in connection therewith, and all other expenses necessary or incidental thereto.
- (i) "Escrow Agent" means The Bank of New York Trust Company, N.A., and its successors.
- (j) "Escrow Agreement" means the Escrow Agreement between the Escrow Agent and the Borough, under which the Escrow Obligations will be deposited, together with other moneys, if necessary, to pay the interest on and the redemption price of the Refunded Bonds.

- (k) "Escrow Obligations" means. 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.
- (l) "Letter of Representations" means the blanket letter of representations from the Borough to DTC, dated as of October 23, 2003.
- (m) "Loan Agreement" means the Loan Agreement between the Borough and the Bond Bank to be entered into in conjunction with issuing the Bonds.
- (n) "2003 Bonds" means the \$47,985,000 of Central Kenai Peninsula Hospital Service Area General Obligation Bonds, Series 2003 of the Borough.
- (o) "Refunded Bonds" means the maturities and sinking fund installments of the 2003 Bonds whose refunding is approved by the Borough Mayor or Borough Finance Director under Section 13 hereof.
- (p) "Refunding Account" means the special account established under Section 7(C) hereof and designated as the "Service Area General Obligation Bond Refunding Account," for the purpose of holding moneys, including Bond proceeds, to be used to pay the interest on and the redemption price of the Refunded Bonds.
- (q) "Registered Owner" means the person named as the registered owner of a Bond in the Bond Register.
- (r) "Registrar" means the Borough Finance Director.
- (s) "Resolution" means this Resolution 2011-\_\_ of the Borough.
- (t) "Service Area" means the Central Kenai Peninsula Hospital Service Area.

**SECTION 2.** Authorization of Bonds and Purpose of Issuance. For the purpose of providing part of the funds required to pay the Costs, providing the funds required to purchase Escrow Obligations and to provide beginning cash to effect the refunding of the Refunded Bonds in the manner and at the times hereinafter set forth, to provide for original issue discount, if any, and to pay all costs incidental thereto and to the issuance of the Bonds, the Borough hereby authorizes and determines to issue and sell the Bonds in the aggregate principal amount of not to exceed \$33,965,000.

**SECTION 3.** Obligation of Bonds. The Bonds shall be direct and general obligations of the Service Area and the full faith and credit of the Service Area 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 Service Area 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 the "Central Kenai Peninsula Hospital Service Area General Obligation Refunding 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 Loan Agreement under Section 13.

**SECTION 5.** Redemption. The bonds are subject to redemption as provided 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. \_\_\_\_\_ \$ \_\_\_\_\_

CENTRAL KENAI PENINSULA HOSPITAL SERVICE AREA  
GENERAL OBLIGATION REFUNDING 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 \_\_\_\_\_, 2011 (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 Central Peninsula Hospital Service Area General Obligation Refunding 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 ISSUE OF CENTRAL KENAI PENINSULA HOSPITAL SERVICE AREA GENERAL OBLIGATION REFUNDING BONDS, 2011 IN ONE OR MORE SERIES IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$\_\_\_\_\_ TO REFUND CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE SERVICE AREA, FIXING CERTAIN DETAILS OF SUCH BONDS AND AUTHORIZING THEIR SALE AND REPEALING RESOLUTION 2010-091.

(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 Central Peninsula Hospital Service Area, and the full faith and credit of the Service Area 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. Disposition of the Sale Proceeds of the Bonds.**

- (A) The sale proceeds of the Bonds representing accrued interest on the Bonds, if any, shall be applied to pay a portion of the interest due on the Bonds on the first interest payment date for the Bonds.
- (B) Sale proceeds of a principal amount of Bonds to be determined by the Borough Mayor or the Borough Finance Director shall be applied to pay Costs allocated to such Bonds, and shall be deposited in the appropriate funds or accounts of the Borough for such purposes.
- (C) Sale proceeds of a principal amount of Bonds to be determined by the Borough Mayor or the Borough Finance Director shall be deposited in the "Service Area General Obligation Bond Refunding Account" (the "Refunding Account") which is hereby created, and used, together with such other moneys as may be transferred to said account, to deposit cash and to purchase Escrow

Obligations maturing as to principal and interest in such amounts and at such times as necessary to provide for the payment of the interest on and the redemption price of the Refunded Bonds. Such money and escrow obligations shall be deposited in trust with the Escrow Agent pursuant to the Escrow Agreement, the terms of which shall be subject to approval by the Borough Finance Director. Such money and obligations are hereby pledged to be held and applied solely for the purpose set forth herein. When all of the Refunded Bonds shall have been redeemed and retired, the Borough may cause to be transferred to the Borough from the Refunding Account free of trust all moneys remaining therein.

**SECTION 8.** Designation of Refunded Bonds. The Borough Mayor and the Borough Finance Director each is authorized to designate which, if any, maturities of the 2003 Bonds, authorized to be refunded in this Resolution shall be refunded, provided that the refunding of the bonds so designated shall realize a debt service savings, net of all issuance costs and underwriting discount.

**SECTION 9.** Call of Refunded Bonds for Redemption. The Borough hereby elects to redeem the Refunded Bonds on August 1, 2013.

Notice of redemption of the Refunded Bonds shall be given in the manner set forth in Resolution 2003-121 authorizing the Refunded Bonds. The election to make such call for redemption shall be subject to the delivery of the Bonds to the initial purchasers thereof and shall become irrevocable upon such delivery.

**SECTION 10.** 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 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 11.** Amendatory and Supplemental Resolutions.

(A) The Assembly from time to time and at any time may adopt a resolution supplemental hereto, which 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 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 reduce the amount or change the date of any sinking fund installment, 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 12. 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, 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 13. Sale of Bonds.** The sale of not to exceed \$33,965,000 aggregate principal amount of the Bonds to the Bond Bank, as provided in the Loan Agreement is hereby authorized and approved. 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 a 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 a Loan Agreement within 180 days from the effective date of this Resolution, the Loan Agreement may not be executed on behalf of the Borough without further authorization from the Assembly.

**SECTION 14. Official Statement.** The Borough Mayor and Borough Finance Director each is hereby authorized to approve and deem a preliminary Official Statement final

for purposes of Securities and Exchange Commission Rule 15c2-12(b)(1), and to approve and execute a final Official Statement for the Bonds.

**SECTION 15.** Authority of Officers. The Mayor, 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 16.** Prohibited Sale of Bonds. 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 Bonds is eligible to purchase the Bonds as a member of the original underwriting syndicate either at public or private sale.

**SECTION 17.** 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 Service Area.

**SECTION 18.** Continuing Disclosure. The Borough hereby covenants and agrees that it will comply with and carry out all of the provisions of a Continuing Disclosure Agreement, to be entered into upon issuance of the Bonds in accordance with Securities and Exchange Commission Rule 15c2-12. Notwithstanding any other provision of this Resolution, failure of the Borough to comply with the Continuing Disclosure Agreement shall not be considered a default of the Borough's obligations under this Resolution or the Bonds.

**SECTION 19.** Repeal. Resolution 2010-091 is repealed.

**SECTION 20.** 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 21.** Effective date. This resolution shall take effect immediately upon its adoption.

**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