

Introduced by: Mayor
Date: 11/22/16
Action: Adopted
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2016-068**

A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF THE KENAI PENINSULA BOROUGH IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$6,000,000 TO FINANCE THE COSTS OF SOLID WASTE IMPROVEMENTS IN THE BOROUGH AS AUTHORIZED BY ORDINANCE NO. 2016-14 OF THE BOROUGH AND RATIFIED BY THE BOROUGH'S VOTERS AT AN ELECTION HELD ON OCTOBER 4, 2016, FIXING CERTAIN DETAILS OF SUCH BONDS, AND PLEDGING THE FULL FAITH AND CREDIT OF THE BOROUGH TO THE PAYMENT THEREOF

WHEREAS, at an election held in the Kenai Peninsula Borough, Alaska (the "Borough"), on October 4, 2016, a majority of the qualified electors of the Borough voting thereon voted in favor of a Proposition 1 authorizing the issuance of general obligation bonds of the Borough in an aggregate principal amount not to exceed \$10,600,000 to finance costs of planning, designing, site preparation, constructing, and equipping the solid waste facility ("Proposition No. 1"), as authorized by Ordinance No. 2016-14 of the Borough, passed by the Assembly on June 7, 2016 (the "Election Ordinance"); and

WHEREAS, Section 29.47.410 of the Alaska Statutes provides that the Assembly by ordinance or resolution may provide for the form and manner of sale of bonds and notes; and

WHEREAS, it is in the best interest of the Borough and its residents that the Borough proceed to plan, design, do site preparation for, construct, acquire, renovate, install and equip the capital improvements within the Borough described in Proposition 1 (the "Project"), and issue not to exceed \$6,000,000 principal amount of general obligation bonds referred to in Proposition No. 1, constituting a portion of the unsold general obligation bonds referred to therein, to pay costs of the Project; and

WHEREAS, the Assembly wishes to delegate to each the Mayor and Finance Director the authority to sell the general obligations bonds referred to herein to the Alaska Municipal Bond Bank pursuant to the terms of a loan agreement, or a financial institution pursuant to the terms of a bond purchase agreement, as determined to be in the best interests of the Borough;

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 Borough, as the general legislative authority of the Borough, as the same shall be duly and regularly constituted from time to time.
- (B) “Bond” means the general obligation bonds of the Borough authorized by this resolution to be issued as a single bond if sold to the Bond Bank, or issued as a single or serial bonds if sold to a financial institution, each in an aggregate principal amount not to exceed \$6,000,000.
- (C) “Bond Bank” means the Alaska Municipal Bond Bank, a public corporation and instrumentality of the State of Alaska, created pursuant to the provisions of Chapter 85, Title 44, Alaska Statutes, as amended.
- (D) “Bond Purchase Contract” means the agreement by and between the Borough and a financial institution, dated on or about the sale date of the Bond.
- (E) “Bond Register” means the registration books maintained by the Registrar, which include the names and addresses of the owners or nominees of the Registered Owners of the Bond.
- (F) “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.
- (G) “Code” means the Internal Revenue Code of 1986, as amended from time to time, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the United States Treasury Department or the Internal Revenue Service, to the extent applicable to the Bond.
- (H) “Cost” or “Costs” means the cost of planning, designing, site preparation, constructing, acquiring, renovating, installing and equipping the Project, including interest on the Bond during the period of planning, designing, site preparation, constructing, acquiring, renovating, installing and equipping the Project, the cost whether incurred by the Borough or by another of field surveys and advance planning undertaken in connection with the Project properly allocable to the Project, the cost of acquisition of any land or interest therein required as the site or sites of the Project or for use in connection therewith, the cost of any indemnity and surety bonds and premiums on insurance incurred in connection with the Project prior to or during construction thereof, all related direct administrative and inspection expenses whether incurred by the Borough or by another in

connection with the Project prior to or during construction thereof and allocation portions of direct costs of the Borough, legal fees, costs of issuance of the Bond by the Borough, including financing charges and fees and expenses of bond counsel, financial advisors and consultants in connection therewith, the cost of any bond insurance premium, the cost of audits, the cost of all machinery, apparatus and equipment, cost of engineering, architectural services, designs, plans, specifications and surveys, estimates of cost, the reimbursement of all moneys advanced from whatever source for the payment of any item or items of cost of the Project, and all other expenses necessary or incidental to determining the feasibility or practicability of the Project, and such other expenses not specified herein as may be necessary or incidental to the acquisition and development of the Project, the financing thereof and the putting of the same in use and operation.

- (I) "Loan Agreement" means a Loan Agreement between the Borough and the Bond Bank, dated on or about the sale date of the Bond.
- (J) "Project" means the capital improvements to the solid waste facilities of the Borough that are authorized and more fully described in the Election Ordinance and Proposition 1.
- (K) "Registered Owner" means the person named as the registered owner of a Bond in Bond Register.
- (L) "Registrar" means the Finance Director of the Borough, or any successor that the Borough may appoint by resolution, for the purposes of registering and authenticating the Bond, maintaining the Bond Register, and paying the principal of and interest on the Bond.
- (M) "Rule" means Rule 15c2-12 of the United Securities and Exchange Commission under the Securities Exchange Act of 1934.

SECTION 2. Authorization of Bond and Purpose of Issuance. The Borough shall now issue and sell not to exceed \$6,000,000 of the general obligation bonds authorized by the Election Ordinance and approved by the qualified electors of the Borough at an election held on October 4, 2016, to finance a plan of capital improvements to the solid waste facilities of the Borough and pay costs of issuance of the Bond. The Bond shall be designated "Kenai Peninsula Borough, Alaska General Obligation Solid Waste Bond, 2017," or such designation the Finance Director determines is appropriate and reasonable.

The Mayor and Finance Director are each hereby authorized to determine whether the Bond shall be sold to the Bond Bank, pursuant to the terms of a Loan Agreement, or a financial institution, pursuant to the terms of a Bond Purchase Agreement, based on the best interests of the Borough. If the Bond is sold to the Bond Bank, the Bond will be issued as a single bond in an

aggregate principal amount not to exceed \$6,000,000. If the Bond is sold to a financial institution, the Bond may be issued as serial bonds or a single bond in an aggregate principal amount not to exceed \$6,000,000.

The Borough has ascertained and hereby determines that each and every matter and thing as to which provision is made in this resolution is necessary in order to carry out and effectuate the purpose of the Borough in accordance with the Constitution and the statutes of the State of Alaska and to incur the indebtedness and issue the Bond as referred to in Proposition 1.

SECTION 3. Obligation of Bond. The Bond shall be a direct and general obligation 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 Bond. 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 Bond as the same become due and payable.

SECTION 4. Date, Maturities, Interest Rates, and Other Details of Bond. The Bond shall be dated the date of sale and delivery to the purchaser shall be in the denomination of \$5,000 or any integral multiple thereof, or such other denominations as may be determined by the Mayor or Finance Director, and shall be numbered in such manner and with any additional designation as the Registrar deems necessary for purposes of identification and control.

The Bond shall bear interest from the date thereof, and semiannually thereafter of each year. Interest shall be computed on the basis of a 360-day year composed of twelve 30-day months. The Mayor and Finance Director are each authorized to fix and determine the principal installment payment dates and the rate of interest on each principal installment of the Bond, provided that (i) the true interest cost of the Bond shall not exceed five percent (5%) unless approved by resolution of the Assembly; and (ii) the final principal installment date shall of the Bond shall be on or before December 31, 2025.

SECTION 5. Place and Medium of Payment. Both principal of and interest on the Bond shall be 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. If the Bond is registered in the name of the Bond Bank, payments of principal and interest thereon shall be made as provided in a Loan Agreement. If the Bond is not owned by the Bond Bank, payments of principal and interest on the Bond will be made by check or draft mailed by first class mail to the Registered Owners of the Bond at the addresses for such Registered Owners appearing on the Bond Register on the 15th day of the month preceding the payment date, provided that the final installment of principal and interest on the Bond will be payable at the principal office of the Bond.

SECTION 6. Prepayment. Provisions for the prepayment of some or all of the principal installments of the Bond shall be established pursuant to Section 13 of this resolution and shall be as set forth in a Loan Agreement or a Bond Purchase Contract, as applicable.

SECTION 7. Form of Bond. The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA
STATE OF ALASKA

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

NO. _____ \$ _____

GENERAL OBLIGATION SOLID WASTE BOND, 2017

REGISTERED OWNER:

PRINCIPAL AMOUNT:

FINAL MATURITY DATE:

INTEREST RATES; See below.

Kenai Peninsula Borough, Alaska (the "Borough"), a municipal corporation organized and existing under and by virtue of the laws and Constitution 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 accordance with the installment payment schedule set forth below (unless prepaid prior thereto as provided herein), together with interest on such installments from the date hereof or the most recent date to which interest has been paid or duly provided for, at the interest rates set forth below, on _____, __, 20__, and on each _____ 1 and _____ 1 thereafter:

Year of Principal Installment Payment (_____)	Principal Installment Amount	Interest Rate
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Both principal or and interest on this bond are payable in lawful money of the United States of America. Installments of principal of and interest on this bond are payable by check or draft of the Finance Director of the Borough ("Registrar") mailed (on the date such interest is due) to the Registered Owner hereof at the address appearing on the bond register of the Borough on the 15th day of the month preceding the payment date, provided that the final installment of

principal and interest on this Bond will be payable upon surrender of this bond at the office of the Registrar. Notwithstanding the foregoing, so long as the Alaska Municipal Bond Bank (the "Bank") is the Registered Owner of this bond, payments of principal and interest shall be made as provided in the Loan Agreement between the Bank and the Borough (the "Loan Agreement"). Interest shall be computed on the basis of a 360-day year composed of twelve 30-day months.

This bond is a general obligation bond of the Borough, as authorized by the voters of the Borough and issued pursuant to Ordinance No. 2016-14 of the Borough and Resolution No. 2016-068 adopted by the Borough Assembly on November 22, 2016 (the "Bond Resolution, and together with Ordinance No. 2016-14, the "Bond Legislation"), to provide funds for making certain capital improvements to solid waste facilities of the Borough. Capitalized terms used in this bond and not otherwise defined herein have the meanings given those terms in the Bond Legislation.

The Bond is subject to prepayment as provided in the Bond Legislation and [Loan Agreement] [Bond Purchase Agreement].

This Bond is transferable as provided in the Bond Legislation, (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 in the same aggregate principal amount and maturity shall be issued to the transferee in exchange therefor as provided in the Bond Legislation 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 prepayment price, if any, hereof and interest due hereon and for all other purposes whatsoever.

Upon surrender to the Registrar, this bond is interchangeable for a bond or bonds (in denominations of \$5,000 or any integral multiple thereof) of an equal aggregate principal amounts and of the same interest rates and principal amounts as this bond. Such exchange or transfer shall be without cost to the Registered Owner or transferee. The Borough may deem the person in whose name this bond is registered to be the absolute owner hereof the purpose of receiving payment of the principal of and interest on this bond and for any and all other purposes.

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 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 this bond, together with all other indebtedness of the Borough, is within every debt and other limit prescribed by said constitution or statutes.

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 _____, 2017.

_____, Mayor

ATTEST:

_____, Borough Clerk

SECTION 8. Execution. The Bond shall be executed in the name of the Borough by the Mayor, and its corporate seal shall be impressed or otherwise reproduced thereon and attested by the Borough Clerk. The execution of the 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, although any such person shall have ceased to hold office at the time of delivery of the Bond or shall not have held office on the date of the Bond.

SECTION 9. Registration.

- (A) The Bond shall be issued only in registered form as to both principal and interest. The Borough designates the Borough Finance Director as Registrar for the Bond. The Registrar shall keep, or cause to be kept, the Bond Register at the principal office of the Borough.
- (B) The Borough, 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, 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) The Bond 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 delivery an equal aggregate principal amount of Bond 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. Any Bond surrendered for transfer or exchange shall be canceled by the Registrar. The Registrar shall not be required to transfer or exchange any Bond after the Bond has been called for redemption.

- (D) The Borough covenants that, until the Bond has been surrendered and canceled, it will maintain a system for recording the ownership of the Bond that complies with the provisions of Section 149 of the Code.

SECTION 10. Mutilated, Destroyed, Stolen or Lost Bond. 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 identification 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 in connection therewith.

SECTION 11. Disposition of the Sale Proceeds of the Bond. The Finance Director is hereby authorized and directed to create an account in the Solid Waste Capital Project Fund to be used for the payment of Costs of the Project, to be designated as the "Central Peninsula Landfill Cell #3 and Equipment Project Account." The proceeds of the Bond (except for accrued interest, if any, which shall be applied to payment of interest on the Bond) shall be deposited into the Solid Waste Capital Project Fund to be used to pay costs of issuing the Bond and costs of the plan of capital improvements to solid waste facilities of the Borough as authorized by the Election Ordinance; provided however, that any Bond premium exceeding the costs of issuing the Bond shall be deposited into the fund for payment of principal and interest on the Bond, or for other lawfully authorized purposes.

SECTION 12. 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 Bond from gross income for federal income tax purposes. The Borough covenants that it will make no use of the proceeds of the Bond which will cause the Bond to be an "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 Bond to be "private activity bonds" as defined in Section 141 of the Code.

The Borough covenants to comply with the tax certificate executed upon issuance of the Bond unless it receives advice from nationally recognized bond counsel or

the Internal Revenue Service that certain provisions have been amended or no longer apply to the Bond.

SECTION 13. Sale of the Bond; Loan Agreement/Bond Purchase Agreement. The Borough Mayor and Finance Director each is hereby authorized to negotiate the sale of the Bond to the Bond Bank or financial institution on terms and conditions consistent with the Election Ordinance and this resolution and as set forth in a Loan Agreement or a Bond Purchase Agreement. Such Agreement shall include the aggregate principal amount, principal installment payment schedule, interest rates, the interest rate payment schedule and prepayment provisions, all as provided for in this resolution. Approval of the Borough Mayor or Finance Director of the terms and conditions of a Loan Agreement or a Bond Purchase Agreement shall be evidenced by execution of such Agreement. The Mayor or Borough Finance Director is hereby authorized to execute and deliver a Loan Agreement or a Bond Purchase Agreement, and a Continuing Disclosure Certificate if required by the purchaser of the Bond.

If the Bond is sold to the Bond Bank, in accordance with the Rule and as the Bond Bank may require, the Borough may now or in the future be an "obligated person" with respect to bonds issued by the Bond Bank.

The Mayor and Finance Director are each authorized to execute and deliver all such documents as may be necessary to effectuate issuances of the Bond on behalf of the Borough.

SECTION 14. Authority of Officers. The Mayor, the acting Mayor, the Borough Finance Director, the acting Borough Finance Director, the Borough Clerk and the acting 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, or to be determined by a subsequent ordinance or resolution, to the end that the Borough may carry out its obligations under the Bond and this resolution.

SECTION 15. Amendatory and Supplemental Resolutions.

(A.) The Assembly from time to time and at any time may adopt 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:

(i) 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.

(ii) 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 Registered Owner of the Bond.

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

- (A) With the consent of a bond insurer, if any, or the Registered Owners of not less than 60 percent in aggregate principal amount of the Bond 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:
 - (i) extend the fixed maturity of the Bond, 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 owners of each Bond so affected; or
 - (ii) reduce the aforesaid percentage of owners of the Bond required to approve any such supplemental resolution without the consent of the owners of the Bond then outstanding.

It shall not be necessary for the consent of the Registered Owners of the Bond 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.

- (B) 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 the Registered Owners of the outstanding Bond 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.
- (C) Any Bond 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, a new Bond 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 Owner of the Bond then outstanding, upon surrender for cancellation of such Bond in equal aggregate principal amounts.

SECTION 16. Miscellaneous. No recourse shall be had for the payment of the principal of or the interest on the Bond 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 Bond. The Bond is 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 17. 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 Bond.

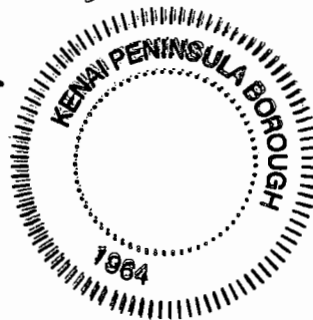
SECTION 18. Effective date. This resolution shall take effect immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 22ND DAY OF NOVEMBER, 2016.


Kelly Cooper, Assembly President

ATTEST:


Jonni Blankenship, MMC, Borough Clerk



Yes: Bagley, Dunne, Fischer, Gilman, Holmdahl, Knopp, Ogle, Welles, Cooper
No: None
Absent: None