

Introduced by: Mayor
Date: 01/07/14
Action: Adopted as Amended
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2014-008**

**A RESOLUTION AMENDING RESOLUTION 2013-072 WHICH AUTHORIZED THE
ISSUANCE OF NOT TO EXCEED \$43,000,000 SPECIALTY CLINIC BUILDING
REVENUE BONDS OF THE BOROUGH, TO INSERT ADDITIONAL TERMS
RELATING TO PLEDGED REVENUES FOR DEBT SERVICE REQUIREMENTS AND
COMPLIANCE WITH INTERNAL REVENUE CODE REQUIREMENTS, ADDING
DEFINITIONS, AND MAKING OTHER CLARIFICATIONS**

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 Borough Assembly adopted Resolution 2013-072 which authorized the issuance of not to exceed \$43,000,000 revenue bonds to fund the engineering, design, construction and equipping of a specialty clinic building in the Central Kenai Peninsula Hospital Service Area; and

WHEREAS, since then the Alaska Bond Bank Authority has requested that Resolution 2013-072 be amended to insert additional terms relating to revenues pledged for payment of the bonds, compliance with Internal Revenue Code provisions relating to tax exempt bonds, adding more defined terms and making other corrections and clarifications; and

WHEREAS, at a special meeting held January 6, 2014, the CKPHSA board recommended approval by unanimous consent;

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

SECTION 1. That the fourth Whereas clause in Resolution 2013-072 is amended as follows:

WHEREAS, a portion of the Bonds, not to exceed [\$21,500,000] \$25,800,000, 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

SECTION 2. That Section 2 of Resolution 2013-072, Definitions, is hereby amended by inserting the definition of "Medical Facilities" immediately after the definition of "Loan Agreement" and revising the definition of "Net Revenues" as follows:

"Medical Facilities" means all facilities operated by the Operator either directly or indirectly for the Borough.

"Net Revenues" means all amounts received by the Borough [FOR THE SPECIALTY CLINIC] from the operation of all Medical Facilities and the Facility 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] Bond Account as set forth in Section 12.

SECTION 3. That Section 4 of Resolution 2013-072 is hereby amended as follows:

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] December 31, 2035, 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] \$25,800,000 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 4. That Section 7 of Resolution 2013-072 is hereby amended as follows:

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 5. That Section 11 of Resolution 2013-072 is hereby amended as follows:

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; and

Fifth, where the funds can be used for operation of the Medical Facilities and the Facility.

SECTION 6. That Section 15 of Resolution 2013-072 is hereby amended as follows:

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. The Borough will 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 Annual Debt Service requirement for each fiscal year.

- 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.
- M. The Borough covenants to comply with any and all applicable requirements set forth in the Code to the extent that such compliance shall be necessary for the exclusion of the interest on the tax-exempt 2013 Bonds from gross income for federal income tax purposes. The Borough covenants that it will make no use of the proceeds of the Bonds that will cause any tax-exempt Bond to be an "arbitrage bond" subject to federal income taxation by reason of Section 148 of the Code.

SECTION 7. That Section 16 of Resolution 2013-072 is hereby amended as follows:

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 superior to the lien thereon of the bonds, [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 Requirement [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.

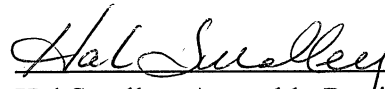
Proceeds of Parity Bonds to be used to fund interest or reserves shall be deposited in the Debt Service Subaccount or the Reserve Subaccount, as the case may be.

SECTION 8. That Section 22 of Resolution 2013-072 is hereby amended as follows:

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 required, including a continuing disclosure undertaking in accordance with Rule 15c-2-12 of the Securities and Exchange Commission.

SECTION 9. Effective Date. This resolution shall become effective immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 7TH DAY OF JANUARY, 2014.

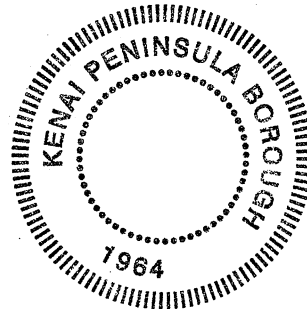


Hal Smalley, Assembly President

ATTEST:



Johni Blankenship, MMC, Borough Clerk



Yes: Bagley, Haggerty, Johnson, McClure, Ogle, Pierce, Smith, Wolf, Smalley
No: None
Absent: None