

Introduced by:	Mayor
Date:	10/11/16
Hearing:	10/25/16
Action:	Enacted
Vote:	8 Yes, 1 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2016-19-12**

**AN ORDINANCE APPROPRIATING \$10,000,000 FROM THE CENTRAL  
PENINSULA HOSPITAL PLANT REPLACEMENT AND EXPANSION  
FUND FOR THE DESIGN AND CONSTRUCTION OF THE  
OBSTETRICS FACILITIES, CARDIAC CATHETERIZATION  
LABORATORY AND RELATED PROJECTS AT CENTRAL PENINSULA  
HOSPITAL AND AUTHORIZING THE ISSUANCE OF CENTRAL  
KENAI PENINSULA HOSPITAL SERVICE AREA HOSPITAL  
REVENUE BONDS (OBSTETRICS, CATHETERIZATION AND  
RELATED PROJECTS), IN ONE OR MORE SERIES, IN AN AMOUNT  
NOT TO EXCEED \$28,955,000**

**WHEREAS,** the Kenai Peninsula Borough, Alaska (the "Borough"), a second class borough organized under the Constitution and laws of the State of Alaska, owns the Central Peninsula Hospital (the "Hospital"), located in the Central Kenai Peninsula Hospital Service Area, and has identified the need for new obstetrics facilities, a cardiac catheterization laboratory and related projects located at, or adjacent to, the Hospital; and

**WHEREAS,** the new obstetrics facilities, cardiac catheterization laboratory and related projects (the "Project") is expected to consist of a building of approximately 30,000 GSF that provides obstetrics services with a C-section room, five labor/delivery/recovery rooms, and four postpartum rooms, a cardiac catheterization laboratory with six pre/post-operative rooms; three new intensive care patient rooms; site improvements to accommodate increased parking, a new heated helipad, and improved truck delivery area; and full or partial remodel and/or replacement of areas impacted by the construction including pre-operative clinic, physical rehabilitation, cardiopulmonary, pharmacy, outpatient lab, dietary, and several offices; and

**WHEREAS,** the estimated cost of the Project is \$38,955,000, including \$3,100,000 for related design work; and

**WHEREAS,** the Project is expected to be financed with (i) cash in the amount of \$10,000,000 derived from amounts held in the Central Peninsula Hospital Plant and Expansion Fund, and (ii) not to exceed \$28,955,000 from proceeds of hospital revenue bonds; and

**WHEREAS,** the Constitution and statutes of the State of Alaska permit the Borough to issue revenue bonds to finance projects which serve public purposes and which bonds are secured only by revenues of such projects and do not constitute a debt or pledge of the faith and credit or taxing power of the Borough, subject to authorization by the Assembly; and

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

**WHEREAS,** at its September 29, 2016, meeting the Central Peninsula Hospital Inc., Board of Directors recommended approval by unanimous consent of the Project, the use of Central Peninsula Hospital Plant Replacement and Expansion funds for partial funding of the Project, and the issuance of revenue bonds for partial funding of the Project;

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

**SECTION 1.** That construction of new obstetrics facilities, cardiac catheterization laboratory and related projects (the "Project"), located at or adjacent to the Kenai Peninsula Borough Service Area Central Peninsula Hospital (the "Hospital") is approved with funding to be provided from the Central Peninsula Hospital Plant Replacement and Expansion Fund and the issuance of hospital revenue bonds, subject to the conditions set forth in this ordinance.

**SECTION 2.** That \$3,100,000 is appropriated from the Central Peninsula Hospital Plant Replacement and Expansion Fund for the estimated design cost of the Project.

**SECTION 3.** That \$6,900,000 is appropriated from the Central Peninsula Hospital Plant Replacement and Expansion Fund for estimated construction costs of the Project. Availability of these funds is subject to the issuance of the herein defined Bonds.

**SECTION 4.** This ordinance also authorizes the issuance and sale of not to exceed \$28,955,000 of Central Kenai Peninsula Hospital Service Area Hospital Revenue Bonds, 20XX (Obstetrics, Catheterization and Related Projects) (the "Bonds"), to fix the form, covenants, and method of sale of the Bonds, to provide for establishing the amount, maturities, interest rates, redemption rights, and other terms of the Bonds, and to fix the conditions under which additional Central Kenai Peninsula Hospital Service Area hospital revenue bonds may be issued on a parity with the Bonds. It is hereby determined that the financing, construction, and operation of the Project serves a public purpose.

**SECTION 5. Definitions.** The following terms shall have the meanings in this ordinance as set forth below:

"Annual Debt Service Requirement" means, for any Fiscal Year, the total amount of Debt Service on all Parity Bonds then Outstanding.

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

"Base Period" means any consecutive 12-month period selected by the Borough out of the 30-month period immediately preceding the date of issuance of the Bonds or any Future Parity Bonds.

"Bond Account" means the Hospital Revenue Bond Account created by Section 15 of this ordinance.

"Bond Bank" means the Alaska Municipal Bond Bank, an instrumentality of the State of Alaska within the Department of Revenue but with a legal existence independent of, and separate from, the State of Alaska.

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

"Bonds" means the Kenai Peninsula Borough, Alaska, Central Kenai Peninsula Hospital Service Area Hospital Revenue Bonds, 20XX (Obstetrics, Catheterization, and Related Projects), issued in one or more series.

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

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

"Consulting Engineer" means an independent consulting engineer or engineering firm licensed to practice in the State of Alaska, retained and appointed pursuant to Section 18(E).

"Costs of Construction" means all costs paid or incurred by the Borough in connection with the acquisition and construction of capital additions, improvements and betterments to and extensions of the Hospital, and the placing of the same in operation, including without limitation paying all or a portion of the interest on the series of Bonds, or any Future Parity Bonds, or any portion thereof issued to finance the costs of such improvements during the period of construction of such improvements and for a period of time thereafter; paying amounts required to satisfy any reserve requirement for the fund or account established or maintained for such series of Bonds or Future Parity Bonds; paying or reimbursing the Borough or any fund thereof or any other person for expenses incident and properly allocable to the acquisition and construction of such

improvements and the placing of the same in operation; and all other items of expense incident and properly allocable to the acquisition and construction of such additions and improvements, the financing of the same and the placing of the same in operation.

"Debt Service" means, with respect to any Parity Bonds for any Fiscal Year, an amount equal to the sum of (i) the principal amount of such Parity Bonds due or subject to any mandatory redemption during such period and for which no sinking fund installments have been established, (ii) the amount of any payment required to be made during such period into any sinking fund established for the payment of such Parity Bonds, and (iii) all interest payable during such period on such Parity Bonds and with respect to Parity Bonds with mandatory sinking fund requirements, calculated on the assumption that mandatory sinking fund installments will be applied to the redemption or retirement of such Parity Bonds on the date specified in an ordinance or resolution authorizing such Parity Bonds.

"Debt Service Subaccount" means the Debt Service Subaccount created in the Bond Account by Section 15 hereof.

"Finance Director" means the finance director of the Borough.

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

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

"Gross Revenue" means all income, receipts and revenue derived by or for the account of the Hospital from time to time from any source from the ownership, leasing or operation of the Hospital, and all earnings on any fund or account that is pledged to secure the Bonds and any Future Parity Bonds. However, the following shall be excluded from Gross Revenue: (i) the proceeds of any borrowing of the Borough and the earnings thereon, (ii) the proceeds of insurance or condemnation proceeds other than business interruption insurance, and (iii) income from investments irrevocably pledged to the payment of Bonds and any Future Parity Bonds issued or to be defeased under any refunding plan of the Borough.

"Hospital" means the Central Peninsula Hospital, owned by the Borough, and located in the Central Kenai Peninsula Hospital Service Area.

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

"Net Revenues" means, for any Fiscal Year or Base Period, Gross Revenues less any part thereof that must be used to pay Operating Expenses.

"Operating Expenses" means the current expenses incurred for operation, maintenance or repair of the Hospital of a non-capital nature, and shall include without limitation payments required by any management or operating agreement, patient account expenses, administrative and general expenses, insurance premiums, lease rentals, legal and engineering expenses, payments to pension, retirement, group life insurance, health and hospitalization funds or other employee benefit funds that are properly chargeable to current operations, interest on patient deposits, payroll tax expenses, and any other expenses required to be paid under the provisions of this ordinance or by law or permitted by standard practices for a specialty health clinic similar to the properties and business of the Hospital and applicable in the circumstances.

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

"Outstanding" means, as of any date, any Parity Bonds issued except such Parity Bonds no longer Outstanding as provided in the authorizing ordinance or resolution.

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

"Pledged Revenues" means Net Revenues and interest received and profits derived from the investment of moneys obtained from moneys held in any fund solely to pay or secure the payment of any Parity Bonds.

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

"Registrar" means the Finance Director of the Borough or any other person the Assembly may appoint from time to time.

"Reserve Subaccount" means the Reserve Subaccount created in the Bond Account by Section 16 hereof.

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

(iii) the maximum Annual Debt Service Requirement on all Outstanding Parity Bonds.

"Resolution" means a resolution authorizing the issuance of Future Parity Bonds, as such resolution may thereafter be amended or supplemented. Each such Resolution shall be supplemental to this Ordinance.

**SECTION 6.** Authorization of Bonds and Purpose of Issuance. For purposes of providing a portion of the funds required to pay the Costs of Construction of the Project, to reimburse the Borough for any expenditures on such Costs of Construction, to make any required deposit into the Reserve Subaccount, and to pay all costs incidental thereto and to the issuance of the Bond, the Borough hereby authorizes and determines to issue and sell the Bonds in one or more series in the aggregate principal amount not to exceed \$28,955,000.

The Bonds shall be designated "Central Kenai Peninsula Hospital Service Area Hospital Revenue Bonds, 20XX" (Obstetrics, Catheterization and Related Projects)," with such changes or further designation as determined appropriate by the Finance Director,

Issuance of the Bonds is subject to the approval by the Assembly of an agreement with an Operator of the Hospital relating to the management and operations of the Hospital.

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

The Finance Director is hereby authorized to determine whether the Bonds, or a portion thereof, 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. The Finance Director is hereby authorized to determine whether the Bonds will be sold in one or more series, but in no event shall the aggregate principal amount of Bonds exceed \$28,955,000.

The Bonds shall only be an obligation of the Bond Account and shall be payable and secured as provided herein. The Bonds shall not in any manner or to any extent constitute general obligations of the Borough, the Central Kenai Peninsula Hospital Service Area or the State of Alaska or of any political subdivision of the State of Alaska. Neither the faith or credit nor the taxing power of the Borough or the Central Kenai Peninsula Hospital Service Area is pledged for the payment of the Bonds.

**SECTION 7.** 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, 2037, 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. If the Bonds, or a portion thereof, qualify for tax-exempt status under the Code, the principal amount of such Bonds shall not exceed \$28,955,000.

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 8. Place and Medium of Payment.** Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Payments of principal of and interest on Bonds registered in the name of the Bond Bank shall be made as provided in the Loan Agreement. Bonds which are not registered in the name of the Bond Bank shall be paid to the Registered Owners of such Bonds at the addresses for such Registered Owners appearing on the Bond Register on the 20th day of the month preceding the interest payment date. Principal of the Bonds shall be payable upon presentation and surrender of the Bonds by the Registered Owners at the principal office of the Registrar.

**SECTION 9. Registration.**

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

interest payment date or the date of mailing of notice of redemption of such Bonds, or any Bond after such Bond has been called for redemption.

- D. Registration Covenant. The Borough covenants that, until all Bonds have been surrendered and cancelled, it will maintain a system for recording the ownership of each Bond that complies with the provisions of Section 149 of the Code.

**SECTION 10. Redemption.** The Bonds, or portions thereof, may be redeemed, at the times and in the manner described in the Loan Agreement or bond purchase agreement, as applicable. In the event the Bond Bank is not the owner of the Bonds, the Borough shall redeem Bonds in the manner provide below:

- 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 ordinance, 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 11. Form of Bonds.** The form of the Bonds shall be substantially as follows:

No. \_\_\_\_\_

\$ \_\_\_\_\_

UNITED STATES OF AMERICA

KENAI PENINSULA BOROUGH, ALASKA  
CENTRAL KENAI PENINSULA HOSPITAL SERVICE AREA  
HOSPITAL REVENUE BONDS, 20XX  
(OBSTETRICS, CATHETERIZATION AND RELATED PROJECTS)

REGISTERED OWNER:

PRINCIPAL AMOUNT:

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

Maturity <u>Date</u>	Principal <u>Amount</u>	Interest <u>Rate</u>
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For so long as this Bond is owned by the Alaska Municipal Bond Bank (the "Bond Bank"), payment of principal and interest shall be made as provided in the Loan Agreement between the Bond Bank and the Borough. In the event that this Bond is no longer owned by the Bond Bank, payment of principal of and interest on this Bond will be made by check or draft mailed by first class mail to the registered owner at the address appearing on the Bond Register of the Borough, provided that the final installment of principal and interest on this Bond will be payable at the office of the Finance Director (the "Registrar") upon surrender of this Bond. Interest shall be computed on the basis of a 360-day year composed of twelve 30-day months. Both principal of and interest on this Bond are payable in lawful money of the United States of America solely out of the special fund of the Borough known as the "Hospital Revenue Bond Account" created by Section 15 of Ordinance No. 2016-19-12.

This Bond is a special obligation of the Borough, is one of the duly authorized hospital revenue bonds designated "Kenai Peninsula Borough, Alaska, Central Kenai Peninsula Hospital Service Area Hospital Revenue Bonds, 20XX (Obstetrics, Catheterization and Related Projects) (the "Bonds"), and is issued

pursuant to the Constitution and statutes of the State of Alaska and the duly adopted resolutions and ordinances of the Borough, including Ordinance No. 2016-19-12 (the "Bond Ordinance"). The definitions contained in the Bond Ordinance shall apply to capitalized terms contained herein and not defined. The Bonds are being issued for the purpose of financing the design, engineering, construction, and equipping of improvements and betterments to the Borough's Central Peninsula Hospital, located in Central Kenai Peninsula Hospital Service Area.

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

Bonds not owned by the Bond Bank maturing on or after \_\_\_\_\_ 1, 20XX may be called for redemption by or on behalf of the Borough prior to maturity and upon notice as set forth in the Bond Ordinance as a whole on any date or in part on or after \_\_\_\_\_ 1, 20XX, at a redemption price of 100% of the principal amounts thereof, together with interest thereon to the redemption date.

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

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

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

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

give rise to a general pecuniary liability of the State or the Borough or a charge against their general credit or taxing powers.

This Bond is a special, limited obligation of the Borough, issued in order to provide funds to finance the acquisition, design, construction, and equipping of an obstetrics facility, cardiac catheterization laboratory and related projects at, or adjacent to, the Central Peninsula Hospital, located in the Central Kenai Peninsula Hospital Service Area.

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

The Borough has further bound itself to maintain the Hospital in good condition and repair, to operate the same in an efficient manner and at a reasonable cost, and to establish, maintain, and collect fees for as long as any Parity Bonds are outstanding that will provide Pledged Revenues in an amount equal to at least 1.25 times the maximum Debt Service Requirement for such year on all outstanding Parity Bonds.

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

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

KENAI PENINSULA BOROUGH, ALASKA

\_\_\_\_\_, Mayor

ATTEST:

\_\_\_\_\_, Borough Clerk

**SECTION 12.** Execution of Bonds. The Bonds shall be executed on behalf of the Borough with the manual or facsimile signature of the Mayor of the Borough, attested by the manual or facsimile signature of the Clerk. The official seal of the

Borough shall be impressed or imprinted on each Bond. The execution of a Bond on behalf of the Borough by persons that at the time of the execution are duly authorized to hold the proper offices shall be valid and sufficient for all purposes, regardless of whether any such person shall have ceased to hold office at the time of issuance and delivery of the Bond, or shall not have held office on the date of the Bond.

**SECTION 13.** Mutilated, Destroyed, Stolen, or Lost Bonds. Upon surrender to the Registrar of a mutilated Bond, the Borough shall execute and deliver a new Bond of like maturity and principal amount. Upon filing with the Registrar of evidence satisfactory to the Borough that a Bond has been destroyed, stolen, or lost and of the ownership thereof, and upon furnishing the Borough with indemnity satisfactory to it, the Borough shall execute and deliver a new Bond of like maturity and principal amount. The person requesting the authentication and delivery of a new Bond pursuant to this section shall comply with such other reasonable regulations as the Borough may prescribe and pay such expenses as the Borough may incur. Any Bonds issued pursuant to this section in substitution for Bonds alleged to be destroyed, stolen, or lost shall constitute original additional contractual obligations on the part of the Borough, whether or not the Bonds alleged to be destroyed, stolen, or lost be at any time enforceable by anyone, and shall be equally and proportionately secured with all other Bonds issued hereunder.

**SECTION 14.** Priority of Use of Pledged Revenues. Pledged Revenues are hereby pledged to and shall be used only for the following purposes and in the following order of priority:

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

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

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

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

**SECTION 15.** Hospital Revenue Bond Account and Subaccounts. There is hereby created a special restricted account of the Borough known as the "Hospital Revenue Bond Account" (the "Bond Account"), which account is to be drawn upon for the sole purpose of paying the principal of and interest and premium, if any, on all Parity Bonds. The Bond Account consists of two subaccounts, the Debt

Service Subaccount and the Reserve Subaccount. Amounts pledged to be paid into the Bond Account are hereby declared to be a lien and charge upon Pledged Revenues superior to all other charges of any kind or nature and equal in rank to the charge thereon to pay and secure the payment of the principal of and interest on all Parity Bonds.

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

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

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

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

**SECTION 16.** Reserve Subaccount. The Borough hereby covenants and agrees that it will at the time of issuance of the Bonds cause amounts to be paid into the Reserve Subaccount such that the total amount in the Reserve Subaccount will be equal to the Reserve Subaccount Requirement.

The Borough further covenants and agrees that it will set aside and pay into the Reserve Subaccount amounts from Pledged Revenues, commencing with the first month following the closing and delivery of the Bonds, so that the amount

on deposit in the Reserve Subaccount will at all times be at least equal to the Reserve Subaccount Requirement.

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

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

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

**SECTION 17.** Investment of Certain Accounts. Moneys held in the Bond Account and in the Reserve Subaccount shall be invested and reinvested to the fullest extent practicable in accordance with Borough policy, such investments to mature not later than at such times as shall be necessary to provide moneys when needed for payments to be made from such Accounts.

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

and any loss resulting from the liquidation of such investment shall be charged to the respective Account or Subaccount.

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

**SECTION 18.** 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 Bond Bank, the Borough will establish, maintain, and collect Net Revenues as required by the terms of the Loan Agreement.
- B. The Borough will, or require an Operator to, at all times maintain, preserve, and keep the Hospital 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 Hospital, and the Hospital in an efficient manner.
- C. The Hospital, 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, or require an Operator to, keep and maintain proper books and accounts with respect to the operation of the Hospital in such manner as prescribed by any authorities having jurisdiction over the Hospital; the Borough will, or require an Operator to, cause the Hospital 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 Hospital 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 Hospital which is material to the production of Pledged Revenues unless, in the opinion of a Consulting Engineer, the remaining Hospital will

generate Pledged Revenues sufficient to enable the Borough to comply with the requirements of this ordinance and each Resolution authorizing the issuance of Future Parity Bonds.

- F. The Borough will not, or authorize an Operator to, at any time create or permit to accrue or exist any lien or other encumbrance or indebtedness upon the Hospital 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 not, or authorize an Operator to, expend any of the Pledged Revenues or the proceeds of any indebtedness payable from Pledged Revenues for any additions, betterments, or improvements to the Hospital which are not economically sound and which will not properly and advantageously contribute to the conduct of the business of the Hospital in an efficient and economical manner.
- H. The Borough shall, or 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 ordinance and to pledge the Pledged Revenues and other funds, moneys, and securities purported to be pledged by this ordinance in the manner and to the extent provided in this ordinance. 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 ordinance, 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 ordinance are and will be the valid and legally enforceable obligations of the Borough in accordance with their terms and the terms of this ordinance.



- J. The Borough shall, so long as any Parity Bonds are outstanding, have good, right, and lawful power to operate, maintain, and repair the Hospital and to fix and collect rates, fees, and other charges related to the Hospital.
- K. The Borough shall, or 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 ordinance.
- 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 remain excludable under the Code.

**SECTION 19.** Parity Bonds. As described in this Section 19, the Borough may issue Parity Bonds. The Borough hereby covenants with the owners of each of the Parity Bonds for so long as the same remain outstanding that it will not issue any bonds having a greater or equal lien on Pledged Revenues to pay and secure the payment of the principal of and interest on such bonds than the lien created thereon to pay and secure the payment of the principal of and interest on the Parity Bonds, except that the Borough reserves the right to issue future Parity Bonds as follows:

- A. For the purpose of acquiring, constructing, and installing additions, betterments, and improvements to and extensions of, acquiring necessary property, and equipment for, or making necessary replacements or repairs to the Hospital, 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 16 of this ordinance 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 Base Period.
- (ii) The estimated annual Pledged Revenues to be derived from the operation of any additions or improvements to or extensions of the Hospital 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 (ii).
- (iii) The estimated Pledged Revenues to be derived from the operation of any additions and improvements to or extensions of the Hospital 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 Hospital 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-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 financial statements of the Hospital, for a period of any consecutive two out of the three Fiscal Years immediately preceding the issuance and delivery of such Future Parity Bonds, was equal to at least 1.25 times the maximum Annual Debt Service required to be paid in any Fiscal Year succeeding the date of issuance of such Future Parity Bonds on all outstanding Parity Bonds and the Future Parity Bonds being issued.

Further, notwithstanding the preceding provisions of this subparagraph (2), Future Parity Bonds may be issued if the Borough shall have on file a certificate stating that the Pledged Revenues for the next full Fiscal Year after the initial operation of any additions or improvements to or extensions of the Hospital 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 20.** Subordinate Lien Bonds. Nothing contained herein shall prevent the Borough from issuing revenue bonds, notes or other obligations which are a charge upon Pledged Revenues subordinate or inferior to the payments required herein to be made therefrom into the Debt Service Subaccount and Reserve Subaccount, or from issuing hospital revenue bonds to refund maturing bonds for the payment of which moneys are not otherwise available.

**SECTION 21.** Defeasance. In the event that money and/or investments maturing at such time or times and bearing interest to be earned thereon in amounts sufficient to redeem and retire any or all of the Bonds in accordance with their terms are set aside in a special restricted account in the Bond Account to effect such redemption or retirement and such money and the principal of and interest on such obligations are irrevocably set aside and pledged for such purpose, then no further payments need to be made into the Bond Account for the payment of the principal of and interest on such Bonds, and such Bonds shall cease to be entitled to any lien, benefit, or security of this ordinance, except the right to receive the funds so set aside and pledged, and such Bonds shall be deemed not to be outstanding hereunder or under any other resolution authorizing the issuance of Future Parity Bonds.

**SECTION 22.** General Authorization to Municipal Officials. After the sale of the Bonds, the proper officials of the Borough are hereby authorized and directed to do everything necessary to complete such sale and to deliver the Bonds to the purchaser thereof upon payment of the purchase price thereof.

**SECTION 23.** Amendatory and Supplemental Resolutions.

- A. The Assembly from time to time and at any time may pass a resolution or resolutions supplemental hereof, which resolution or resolutions thereafter shall become a part of this resolution, for any one or more of the following purposes:

- (1) To add to the covenants and agreements of the Borough contained in this resolution, other covenants and agreements thereafter to be observed, or to surrender any right or power herein reserved to or

conferred upon the Borough and, in the event any Tax-Exempt Bonds are outstanding, as the Borough acting through the Finance Director deems necessary or desirable to ensure that interest on the Tax-Exempt Series is tax exempt under the Code.

- (2) To make such provisions for the purpose of curing any ambiguities or of curing, correcting, or supplementing any defective provision contained in this resolution, or in regard to matters or questions arising under this resolution as the Assembly may deem necessary or desirable and not inconsistent with this resolution, and which shall not adversely affect the interest of the owners of Parity Bonds.

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

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

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

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

- C. Upon the passage of any supplemental resolution pursuant to the provisions of this section, this resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties, and obligations of the Borough under this resolution and all owners of

Parity Bonds outstanding hereunder shall thereafter be determined, exercised, and enforced thereunder, subject in all respects to such modification and amendment, and all the terms and conditions of any such supplemental resolution shall be deemed to be part of the terms and conditions of this resolution for any and all purposes.

- D. Parity Bonds executed and delivered after the execution of any supplemental resolution adopted pursuant to the provisions of this section may bear a notation as to any matter provided for in such supplemental resolution, and if such supplemental resolution shall so provide, new Parity Bonds so modified as to conform, in the opinion of the Assembly, to any modification of this resolution contained in any such supplemental resolution, may be prepared by the Borough and delivered without cost to the owners of Parity Bonds then outstanding, upon surrender for cancellation of such Parity Bonds in equal aggregate principal amounts.

**SECTION 24.** Disposition of the Proceeds of Sale of the Bonds. The proceeds received from the sale of the Bonds (exclusive of accrued interest, if any, which shall be paid into the Debt Service Subaccount) shall be deposited into the fund of the Borough designated by the Finance Director and shall be used to pay all Costs of Construction allocable to the issuance of the Bonds and to undertake improvements authorized by Section 6 of this ordinance.

**SECTION 25.** Loan Agreement and Other Documents. If Bonds are sold to the Bond Bank, the Finance Director is hereby authorized to enter into a Loan Agreement or Loan Agreements with the Bond Bank providing for and relating to the sale of such Bonds to the Bond Bank, and the Finance Director is authorized to execute and deliver on behalf of the Borough any other documents reasonably required by the Bond Bank.

**SECTION 26.** Severability. If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the Borough shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements shall be null and void and shall be deemed separable from the remaining covenants and agreements in this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bonds.

**SECTION 27.** Official Intent. This ordinance satisfies the "official intent" requirements of Section 1.150-2 of the Treasury Regulations adopted under the authority of the Code. The Borough reasonably expects to issue up to \$28,955,000 principal amount of taxable and tax-exempt hospital revenue bonds in one or more series. The Borough intends to use proceeds of the Bonds to finance Costs of Construction of the Project, and certain other eligible costs. Costs of Construction for the Project incurred up to 60 days before the effective date of this ordinance will be eligible for reimbursement with proceeds of the Bonds.

**SECTION 28.** Incorporation of Whereas Clauses. The WHEREAS clauses set forth in this ordinance are hereby incorporated in, and made a part of, this ordinance.

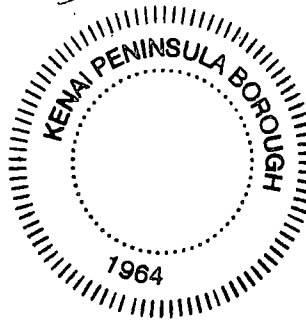
**SECTION 29.** Effective Date. That this ordinance takes effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 25TH DAY OF OCTOBER, 2016.**

ATTEST:

  
John Blankenship, MMC, Borough Clerk

  
Kelly Cooper, Assembly President



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