

Introduced by: Mayor, Cooper
Date: 09/18/19
Hearing: 10/09/18
Action: Withdrawn by Sponsor
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2018-19-10**

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF A GENERAL OBLIGATION BOND OF THE KENAI PENINSULA BOROUGH IN THE PRINCIPAL AMOUNT NOT TO EXCEED FIVE MILLION FOUR HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$5,450,000.00) TO PAY COSTS OF EDUCATIONAL CAPITAL IMPROVEMENTS IN THE BOROUGH, AUTHORIZING THE SALE OF THE BOND TO THE ALASKA MUNICIPAL BOND BANK PURSUANT TO THE TERMS AND CONDITIONS PROVIDED IN THIS ORDINANCE; AND PLEDGING THE FULL FAITH AND CREDIT OF THE BOROUGH TO PAYMENT OF THE BOND.

WHEREAS, Kenai Peninsula Borough (the "Borough") sought grant funding from the State of Alaska, through the Alaska Department of Education and Early Development, for purposes of constructing a new school referred to as the Kachemak Selo K-12 School Project (the "Project"); and

WHEREAS, pursuant to Senate Bill 138, passed during the Fourth Special Session of the Twenty-Ninth Alaska State Legislature, an amount of Ten Million Eight Hundred Sixty-Seven Thousand Five Hundred Three and No/100 Dollars (\$10,867,503.00) was appropriated to the Alaska Department of Education and Early Development ("DEED") for purposes of paying a portion of the costs of the Project subject to certain terms and conditions, including a local match of funds by the Borough; and

WHEREAS, the amount of the grant appropriation was subsequently reduced by DEED to Ten Million Ten Thousand and No/100 Dollars (\$10,010,000.00) based upon certain grant criteria including student population projections; and

WHEREAS, pursuant to Ordinance 2018-21 of the Borough, enacted on August 5, 2018, the following question is to be presented to the qualified voters, at the election to be held on October 2, 2018, and referred to as Proposition No. 1 ("Proposition 1"):

PROPOSITION NO. 1

Shall the Kenai Peninsula Borough borrow up to \$5,450,000 through the issuance of general obligation bonds?

The general obligation bond proceeds will be used to pay the 35% local required contribution for the costs of planning, land acquisition, designing, site preparation, constructing, acquiring, renovating, installing and equipping the Kachemak-Selo New K-12 School Construction Project.

The debt will be paid from ad valorem taxes on all taxable property levied and collected areawide in the Borough. The Borough will also pledge its full faith and credit for payment of the debt. The approximate annual amount of taxes on \$100,000 of assessed real or personal property value (based on the Borough's FY 2018 taxable assessed valuation) to retire the debt is \$4.95.

Yes [A Yes vote approves the sale of the bonds.]

No [A No vote opposes the sale of the bonds.]

WHEREAS, it is necessary and in the best interest of the Borough and its residents that the Borough proceed with the planning, designing, site preparation (including acquiring property) renovating, installing and equipping the Project and issue the general obligation bond referred to in Proposition 1 (the "Bond"), subject to, and contingent upon, qualified voter authorization as herein provided; and

WHEREAS, Section 29.47.410 of the Alaska Statutes provides that the Borough 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 to sell the Bond to the Alaska Municipal Bond Bank (the "Bond Bank") pursuant to the terms of a loan agreement by and between the Borough and Bond Bank pursuant to the terms and conditions set forth in this ordinance and such loan agreement.

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

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

(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" or "Bonds" means the Bond of the Borough, the issuance and sale of which is authorized herein as the evidence of the indebtedness referred to in Proposition 2.

(c) "Bond Bank" has the meaning assigned under the seventh Whereas Clause of this ordinance.

(d) "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.

(e) "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.

(f) "Clerk" means the Clerk, or acting Clerk, of the Borough.

(g) "Code" means the Internal Revenue Code of 1986, as amended from time to time, together with all regulations applicable thereto.

(h) "Continuing Disclosure Certificate" means the certificate dated as of the date of the Bond, described in Section 18 of this ordinance.

(i) "Cost" or "Costs" means the cost of planning, designing, acquiring property for, site preparation, constructing, acquiring, renovating, installing and equipping the Project, including interest on the Bond during the period of planning, designing, acquiring property for, 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 at 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 allocable 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

incident to the acquisition and development of the Project, the financing thereof and the putting of the same in use and operation.

(j) "Federal Tax Certificate" means the certificate of that name executed and delivered by the Finance Director, on behalf of the Borough, at the time of issuance and delivery of the Bond.

(k) "Finance Director" means the Finance Director, or acting Finance Director, of the Borough.

(l) "Loan Agreement" means the Loan Agreement between the Borough and the Bond Bank.

(m) "Mayor" means the Mayor, or his designee, of the Borough.

(n) "Project" has the meaning assigned under the first Whereas Clause of this ordinance.

(o) "Proposition No. 1" has the meaning assigned under the fourth Whereas Clause of this ordinance.

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

(q) "Registrar" means the Finance Director of the Borough, or any successor that the Borough may appoint through resolution.

SECTION 2. Authorization of Bonds and Purpose of Issuance. For the purpose of providing the funds required to pay Costs of the Project, to provide for original issue discount or premium, if any, and to pay all costs incidental thereto and to the issuance of the Bond, the Borough hereby, subject to the terms and conditions of this ordinance, authorizes and determines to issue and sell the Bond in the principal amount of not to exceed Five Million Four Hundred Fifty Thousand Dollars (\$5,450,000). The Bond shall be designated "Kenai Peninsula Borough, Alaska, General Obligation School Bond, 2018."

Subject to qualified voter authorization of Proposition No. 1, the Borough has ascertained and hereby determines that each and every matter and thing as to which provision is made in this ordinance 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 referred to in Proposition 1.

Notwithstanding the foregoing, authorization to issue the Bond is subject to the condition that the qualified voters of the Borough approve Proposition No. 1 at the regular election to be held on October 2, 2018.

SECTION 3. Obligation of Bonds. The Bond shall be a 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 Bonds. The Bonds shall be dated as of the date of delivery, shall be in denominations of \$5,000 or any integral multiple thereof, and shall be numbered in such manner and with any additional designation as the Registrar deems necessary for purposes of identification.

The Bond shall bear interest from the date thereof, payable semiannually of each year as may be determined by the Mayor or Finance Director. Interest shall be computed on the basis of a 360-day year composed of twelve 30-day months. The Mayor or Finance Director is authorized to fix and determine the payment dates and the rate of interest of each principal installment of the Bond, provided that (i) no rate of interest on a principal installment shall exceed the rate of interest on the corresponding maturity of the bonds of the Bond Bank issued to provide funds to purchase the Bond; (ii) the true interest cost of the Bond shall not exceed five (5) percent unless approved by resolution of the Assembly; and (iii) the final principal installment date of the Bond shall be no later than December 31, 2039.

SECTION 5. Payment of Principal and Interest. 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. For so long as all outstanding Bonds are registered in the name of the Bond Bank, payments of principal and interest thereon shall be made as provided in the Loan Agreement. In the event that the Bond is no longer 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 Owner of the Bond at the addresses for such Registered Owner 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 Registrar upon surrender of the Bond.

SECTION 6. Defeasance. In the event money and/or non-callable direct obligations of, or obligations the timely payment of principal of and interest on which are unconditionally guaranteed by, the United States of America, maturing at such times and bearing interest to be earned thereon in amounts sufficient to redeem and retire the Bond, or a portion thereof in authorized denominations, in accordance with its terms are set aside in a special trust account to effect such redemption or retirement and such moneys and the principal of and interest on such obligations are irrevocably set aside and pledged for such purpose, then no further payments

need be made to pay or secure the payment of the principal of and interest on such Bond, or portion thereof, and such Bond, or portion thereof, shall be deemed not to be outstanding hereunder.

SECTION 7. Prepayment.

(a) Optional Prepayment. Principal installments of the Bond, if any, subject to optional prepayment by the Borough, the times when such principal installments of the Bond are subject to optional prepayment, the terms upon which such principal installments of the Bond may be prepaid, and the prepayment price or prices for such principal installments of the Bond, shall be determined at the time of sale of the Bond by the Mayor or Finance Director. For so long as the Bond is held by the Bond Bank, prepayment of principal installments of the Bond shall be in accordance with the provisions of the Loan Agreement.

(b) Notice of Prepayment. For so long as the Bond Bank is the Registered Owner of the Bond, notice of prepayment shall be as provided in the Loan Agreement. In the event the Bond Bank is no longer the Registered Owner of the Bond, notice of prepayment shall be given by the Borough not less than thirty (30) nor more than sixty (60) days prior to the date fixed for prepayment by first class mail, postage prepaid, to the Registered Owner of the Bond at the address appearing on the Bond Register. The requirements of this section shall be deemed complied with when notice is mailed as herein provided, regardless of whether it is actually received by the owner of the Bond. Each official notice of redemption shall be dated and shall state: (i) the prepayment date, (ii) the prepayment price payable upon such optional prepayment; (iii) if less than all of the principal amount outstanding is to be prepaid, the principal installments and amounts to be prepaid; (iv) that the interest on the Bond, or on the principal amount thereof to be prepaid, designated for prepayment in such notice, shall cease to accrue from and after such prepayment date; and (v) that on such date there will become due and payable on the Bond the principal amount thereof to be prepaid and the interest accrued on such principal amount to the prepayment date.

SECTION 8. Form of Bond. Each Bond shall be in substantially the following form, subject to the provisions of the Loan Agreement:

UNITED STATES OF AMERICA
STATE OF ALASKA

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

NO. _____

\$ _____

GENERAL OBLIGATION SCHOOL BOND, 20____

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____

The Kenai Peninsula Borough, Alaska (the "Borough"), a municipal corporation of the State of Alaska, hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or its registered assigns, the Principal Amount indicated above in the following installments on _____ 1 of each of the following years, and to pay interest on such installments from the date hereof, payable on _____ 1, 20__ and semiannually thereafter on the first days of _____ and _____ of each year, at the rates per annum as follows:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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For so long as this Bond is owned by the Alaska Municipal Bond Bank (the "Bank"), payment of principal and interest shall be made as provided in the Loan Agreement between the Bank and the Borough (the "Loan Agreement"). In the event that this Bond is no longer owned by the 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 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 at the office of the Borough 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 which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts.

This Bond is the General Obligation School Bond, 20__ of the Kenai Peninsula Borough, Alaska authorized for the purpose of paying the cost of certain educational capital improvements in the Borough, and is issued under Ordinance 2018-19-10 of the Borough entitled:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF A GENERAL OBLIGATION BOND OF THE KENAI PENINSULA BOROUGH IN THE PRINCIPAL AMOUNT NOT TO EXCEED FIVE MILLION FOUR HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$5,450,000.00) TO PAY COSTS OF EDUCATIONAL CAPITAL IMPROVEMENTS IN THE BOROUGH, AUTHORIZING THE SALE OF THE BOND TO THE ALASKA MUNICIPAL BOND BANK PURSUANT TO THE TERMS AND CONDITIONS PROVIDED IN THIS ORDINANCE; AND PLEDGING THE FULL FAITH AND CREDIT OF THE BOROUGH TO PAYMENT OF THE BOND;

(herein called the "Ordinance").

Principal installments due under the terms of the Bond are subject to prepayment as set

forth in the Loan Agreement.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Ordinance until the Certificate of Authentication hereon shall have been manually signed by the Registrar.

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

This Bond is a general obligation of the Kenai Peninsula 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 _____, 20____

CHARLIE PIERCE
Borough Mayor

ATTEST

JOHNI BLANKENSHIP, MMC, Borough Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____

This is the Kenai Peninsula Borough, Alaska, General Obligation Bond, 20__, dated _____, 20__, as described in the Ordinance.

Finance Director, Kenai Peninsula Borough,
Alaska, as Registrar

SECTION 9. 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 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.

Only a Bond that bears a Certificate of Authentication in the form set forth in Section 8 hereof, manually executed by the Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance. The executed Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated, registered, and delivered hereunder and is entitled to the benefits of this ordinance.

SECTION 10. Registration. (a) The Bonds shall be issued only in registered form as to both principal and interest. The Borough designates the 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 the 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 the 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 the 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 a bond which is equal in principal amount and the same installment

payment dates 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 the Bond, or portion thereof, after the Bond (or portion thereof), has been called for prepayment.

(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 11. 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 amount, date and tenor to the Registered Owner. 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. Any Bond issued pursuant to this section in substitution for Bond alleged to be destroyed, stolen or lost shall constitute original additional contractual obligations on the part of the Borough, whether or not the Bond alleged to be destroyed, stolen or lost be at any time enforceable by anyone.

SECTION 12. Disposition of the Sale Proceeds of the Bonds. The sale proceeds of the Bond representing accrued interest on the Bond, if any, shall be applied to pay a portion of the interest due on the Bond on the first interest payment date for the Bond. The remainder of the sale proceeds of the Bond shall be applied to pay Costs of the Project. The sale proceeds of the Bond shall be deposited into the "2018 Construction Fund," which shall be held separate and apart from all other funds or accounts of the Borough.

SECTION 13. Tax Covenants. The Borough covenants and agrees that it will not take or permit to be taken on its behalf any action that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bond and will take or require to be taken such acts as may be reasonably be within its ability and as may from time to time be required under applicable law to continue the exclusion from gross income for federal income tax purposes of the interest on the Bond. The Borough shall comply with its covenants set forth in the Federal Tax Certificate.

SECTION 14. Sale of the Bonds; Loan Agreement. The sale of not to exceed Five Million Four Hundred Fifty Thousand Dollars (\$5,450,000) principal amount of the Bond, as provided in the Loan Agreement and this ordinance, is hereby authorized and

approved. The Mayor and the Finance Director are each hereby authorized to execute and deliver the Loan Agreement, a Continuing Disclosure Certificate and such other documents as may be necessary to effectuate the issuance and sale of the Bond.

SECTION 15. Authority of Officers. The Mayor, the Finance Director, and the 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 ordinance, 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 ordinance.

SECTION 16. Amendatory and Supplemental Ordinances. (a) The Assembly from time to time and at any time may adopt an ordinance or ordinances supplemental hereof, which ordinance or ordinances thereafter shall become a part of this ordinance, for any one or more of the following purposes:

(i) To add to the covenants and agreements of the Borough in this ordinance, 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 ordinance or in regard to matters or questions arising under this ordinance as the Assembly may deem necessary or desirable and not inconsistent with this ordinance and which shall not adversely affect the interest of the Registered Owner of the Bonds.

Any such supplemental ordinance 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.

(b) ~~With the consent of the Registered Owners of not less than sixty percent (60%) in aggregate principal amount of the Bond at the time outstanding, the Assembly may adopt an ordinance or ordinances supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this ordinance or of any supplemental ordinance; provided, however that no such supplemental ordinance shall:~~

(i) extend the principal installment payment dates of the fixed maturity date 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 owner of the Bond so affected; or

(ii) reduce the aforesaid percentage of Bond owners required to approve any such supplemental ordinance without the consent of the owners of all 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 particulars of any proposed supplemental ordinance, but it shall be sufficient if such consent approves the substance thereof.

(c) Upon the adoption of any supplemental ordinance under this section, this ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the Borough and all 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 ordinance shall be deemed to be part of the terms and conditions of this ordinance for any and all purposes.

(d) A Bond executed and delivered after the execution of any supplemental ordinance adopted under this section may bear a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, a new Bond modified so as to conform, in the opinion of the Borough, to any modification of this ordinance contained in any such supplemental ordinance 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 17. 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 ordinance 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 does 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 18. Continuing Disclosure. The Borough acknowledges that now or in the future the Borough may be an "obligated person" under Rule 15c2-12 of the Securities and Exchange Commission (the "Rule"). In accordance with the Rule, the Borough agrees to comply with and carry out continuing disclosure obligations required under Rule 15c2-12 and the Loan Agreement. Notwithstanding any other provision of this ordinance, failure of the Borough to comply with the Continuing Disclosure Certificate shall not be considered a default of the Borough's obligations under this ordinance, the Loan Agreement or the Bond; however the beneficial owner of any Bond may bring an action for specific performance, to cause the Borough to comply with its continuing disclosure obligations.

SECTION 19. Severability. If any one or more of the provisions of this ordinance 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 ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bonds.

SECTION 20. Effective date. Sections 1 through 19 of this ordinance shall become effective upon approval of Proposition No. 1 by the qualified voters of the Borough. Section 20 of this ordinance takes effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS *
DAY OF * 2018.**

Wayne H. Ogle, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes: Bagley, Blakeley, Carpenter, Cooper, Dunne, Fischer, Hibbert, Smalley, Ogle
No: None
Absent: None

