

Introduced by: Mayor
@ request of N.P.R.S.A.
Date: 7/13/93
Shortened Hearing: 8/03/93
Action: Enacted as Amended
Vote: Unanimous

KENAI PENINSULA BOROUGH
ORDINANCE 93-38

**AN ORDINANCE OF THE KENAI PENINSULA BOROUGH AUTHORIZING AND
PROVIDING FOR THE ISSUANCE OF \$3,000,000 NORTH PENINSULA
RECREATION SERVICE AREA GENERAL OBLIGATION BONDS OF THE KENAI
PENINSULA BOROUGH AND FIXING DETAILS OF SAID BONDS**

WHEREAS, pursuant to Ordinance No. 93-07 of the Borough, passed and approved on March 16, 1993, the following question:

NIKISKI POOL FACILITY RENOVATION BONDS

Shall the North Peninsula Recreation Service Area incur debt and issue general obligation bonds not to exceed Three Million Dollars (\$3,000,000) for planning, designing, acquiring property for, equipping and constructing renovations to the Nikiski Pool facility located in the North Peninsula Recreation Service Area? The bonds shall be secured by a pledge of the full faith and credit of the North Peninsula Recreation Service Area. Approval of this proposition also authorizes utilizing the proceeds of bonds together with funds from taxes and other sources available to the service area for construction of the pool renovations and additions in an estimated amount of Four Million Three Hundred Sixty-Five Thousand Dollars (\$4,365,000). (KPB Ord. 93-07)

(herein called the "Proposition") was passed and approved by a vote of 455 for and 417 against the Proposition, at the election held by mail ballot election in the North Peninsula Recreation Service Area closing on May 11, 1993, and said election has been duly canvassed and the results thereof certified and confirmed in accordance with law; and

WHEREAS, AS 29.47.410 states that the Assembly shall provide for the form and manner of sale of bonds; and

WHEREAS, the Kenai Peninsula Borough has determined and does hereby determine that

it is necessary to proceed to design, equip, and construct capital improvements as set forth in the Proposition, to wit: planning, designing, acquiring property for, equipping and constructing renovations to the Nikiski Pool facility located in the North Peninsula Recreation Service Area (hereinafter referred to as the "Project"); and

WHEREAS, it is deemed necessary and advisable and in the best interests of the North Peninsula Recreation Service Area and its inhabitants that \$3,000,000, principal amount of the general obligation bonds referred to in the Proposition, be issued at this time in a single series, as hereinafter fixed and determined, for the purpose of raising funds to pay the cost of constructing and acquiring the Project;

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

SECTION 1. Definitions. That the following terms shall have the following meanings in the Ordinance:

A. "Bonds" shall mean any of the North Peninsula Recreation Service Area 1993 General Obligation Pool Facility Renovation and Expansion Bonds issued pursuant to the Ordinance as the evidence of the indebtedness referred to in the Proposition.

B. "Borough" shall mean the Kenai Peninsula Borough, a municipal corporation of the State of Alaska, organized as a second-class borough pursuant to Title 29 of the Alaska Statutes.

C. "Cost" shall mean the cost of acquiring and developing the Project, including interest on the Bonds prior to and during the period of acquiring and developing the Project, and reasonable fees of the Paying Agents for the payment of such interest, the cost whether incurred by the Borough or another of field surveys and advance planning undertaken in connection with the Project properly allocable to the Project and the cost of acquisition of any land or interest therein required as the site of the Project or for use in connection therewith, the cost of preparation of the site of the Project and of any land to be used 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 and all related direct administrative and inspection expenses whether incurred by it 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, fees and expenses of the Paying Agents, cost of issuance of the Bonds by the Borough and financing charges and fees and expenses of bond counsel, financial advisors and consultants in connection therewith, costs of audits, the cost of all machinery, apparatus and equipment,

cost of engineering, architectural services, design, 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 incident 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 placing of the same in use and operation.

D. "Ordinance" shall mean this Ordinance of the Borough.

E. "Paying Agents" shall mean the banks, trust companies, or national banking associations appointed by the Borough pursuant to Section 14 hereof.

F. "Service Area" shall mean the North Peninsula Recreation Service Area of the Kenai Peninsula Borough established by the Borough Assembly pursuant to the provisions of Alaska Statutes Title 29.

SECTION 2. Authority for Ordinance. That 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 purposes of the Borough in accordance with the Constitution and statutes of the State of Alaska, and to incur the indebtedness and issue the Bonds as referred to in the Proposition.

SECTION 3. Purpose and Authorization of Bonds. That for the purpose of raising funds to pay the cost of acquiring and developing the Project as authorized by the Proposition, which, in accordance with the Proposition is hereby determined to be necessary, general obligation bonds of the Service Area referred to in the Proposition, each to be designated "North Peninsula Recreation Service Area of the Kenai Peninsula Borough 1993 General Obligation Pool Facility Renovation and Expansion Bond," shall be issued by the Borough in the aggregate principal amount of Three Million and No/100 Dollars (\$3,000,000) as a single issue and sold at public sale or at private sale as may be determined by resolution of the Assembly passed prior to the sale.

SECTION 4. Obligation of Bonds and Pledge. That the Bonds shall be direct and general obligations of the Service Area. The full faith and credit of the service area and the taxing power of the Borough within the Service Area are hereby pledged to the payment of the principal of and interest on the Bonds. The Borough hereby irrevocably pledges and covenants that it will levy and collect taxes upon all the taxable property within the Service Area without limitation as to rate or amount, in amounts sufficient, together with other funds available therefor, to pay principal and interest on the Bonds as the same become due and payable.

SECTION 5. Date, Maturities, Interest Rates and Other Details of Bonds. That the Bonds shall be dated and mature on such dates, may be redeemed in such manner, and shall bear interest from their date payable on such dates at such rates as may be fixed and determined by the Assembly by resolution adopted prior to the delivery of the Bonds.

The Bonds shall be registered as to principal and interest as herein provided. The Bonds shall each be of the denomination of Five Thousand Dollars \$5,000) or any integral multiple thereof, approved by the Borough, such approval to be evidenced by the execution of such Bonds. The Bonds shall be substantially in the form hereinafter set forth, with such appropriate variations, omissions or insertions as are permitted or required by this Ordinance, and may have endorsed thereon such legends or text as may be necessary or appropriate to conform to the rules and regulations of any governmental authority, or any usage or requirement of law with respect thereof. Each Bond shall bear a number or letter, or a number and letter, distinguishing it from every other Bond.

SECTION 6. Details of Bonds. Each of the Bonds shall be signed by the manual or facsimile signature of the Mayor and the official seal of the Borough (or a facsimile thereof) shall be affixed, imprinted or otherwise reproduced on the Bonds, and attested by the manual or facsimile signature of the Clerk. In case any officer whose signature or facsimile of whose signature shall appear on any Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery.

In the event both the signature of the Mayor and the signature of the Clerk are in facsimile form, the Bonds shall be signed by the manual signature of the Finance Director or shall contain a certificate of a Paying Agent certifying the authenticity of such signatures in the following form:

PAYING AGENT'S CERTIFICATE OF AUTHENTICATION

The Bond is one of the Bonds described in the within mentioned Ordinance and the signatures imprinted hereon are the authentic signatures in facsimile of the Mayor and Clerk of the Borough

(Name)
Paying Agent

By: _____
Authorized Officer

Both the principal and interest on the Bonds shall be payable in any coin or currency of the United States of America, which at the respective dates of payment thereof, is legal tender for the payment of public and private debts.

The principal on all Bonds shall be payable at the corporate trust offices of the Paying Agents. Payment of the interest on the Bonds shall be made by check or draft mailed to the registered owner at the address appearing on the bond register of the Borough kept at the corporate trust office of the Principal Paying Agent.

SECTION 7. Ownership of Bonds. That the person in whose name a Bond is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal on such Bond and the interest on such Bond shall be made only to or upon the order of the registered owner thereof or his legal representative, but such registration may be changed as hereinafter provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon to the extent of the sum or sums so paid.

SECTION 8. Mutilated, Destroyed, Stolen or Lost Bonds. That in case any Bond shall become mutilated or be destroyed, stolen or lost, the Borough may cause to be executed and delivered a new Bond of like interest rate, principal amount and maturity in exchange and substitution for and upon cancellation of such mutilated Bond, or in lieu of and in substitution for such Bond destroyed, stolen or lost, upon the holder paying the reasonable expenses and charges of the Borough in connection therewith and in the case of a Bond destroyed, stolen or lost, his filing with the Borough evidence satisfactory to it that such Bond was destroyed, stolen or lost, and of his ownership thereof, and furnishing the Borough with indemnity satisfactory to it. Any new Bond so delivered may bear a number differing from the number on the Bond it replaces.

SECTION 9. Transfer of Bonds and Delivery of New Bonds. That any Bond may be transferred only upon said books kept for the registration and transfer of Bonds, upon surrender thereof at the corporate trust offices of the Paying Agent, together with an assignment duly executed by the registered owner or his attorney in such form as shall be satisfactory to the Paying Agents. Upon the transfer of any such Bond, there shall be executed in the name of the transferee, and the Borough shall authenticate and deliver, a new Bond or Bonds of any denomination which is a multiple of \$5,000, of the same aggregate principal amount, maturity, and interest rate as the surrendered Bond.

In all cases in which Bonds shall be transferred under this Ordinance, there shall be executed, and the Borough shall authenticate and deliver, Bonds in accordance with the provisions of this Ordinance. The Borough and the Paying Agents may make a charge for every such transfer of Bonds sufficient to

reimburse them for any tax, fee or other governmental charge required to be paid with respect to such transfer or any other charges of the Borough incurred in connection therewith, and such charge or charges shall be paid before any such new Bond shall be delivered. Neither the Borough nor the Paying Agents shall be required to make any such transfer of a Bond during the fifteenth (15th) day next preceding an interest payment date on such Bond.

SECTION 10. Form of Bonds. That the Bonds shall be in substantially the following form, with such variations, omissions and insertions as may be required or permitted by this Ordinance:

UNITED STATES OF AMERICA
STATE OF ALASKA
KENAI PENINSULA BOROUGH
(A Municipal Corporation of the State of Alaska)

No. _____ \$ _____

NORTH PENINSULA RECREATION SERVICE AREA 1993 GENERAL OBLIGATION
POOL FACILITY RENOVATION AND EXPANSION BONDS

The Kenai Peninsula Borough (the "Service Area"), for value received acknowledges itself indebted and hereby promises to pay (but only from the sources described herein) to _____ or registered assigns, on the first day of January, 199____, upon presentation and surrender hereof, the principal sum of _____ Dollars (\$_____), and to pay (but only from the sources described herein) interest on such principal sum from the date hereof until its obligation with respect to the payment of such principal sum shall be discharged, at the rate of _____ per cent (_____%) per annum, payable on the first days of _____ and _____ in each year beginning _____. The principal and interest of this Bond shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Principal shall be paid to the registered owner or assigns upon presentation and surrender of this Bond at the corporate trust office of _____ (hereinafter called the "Principal Paying Agent") or _____ (hereintogether with the "Principal Paying Agent" collectively called the "Paying Agents") or their successors.

[Reference is hereby made to additional provisions of this Bond set forth on the reverse hereof and such additional provisions shall for all purposes have the same effect as if set forth in this space.]

This Bond is one of the North Peninsula Recreation Service Area 1993 General Obligation Pool Facility Renovation and Expansion Bonds, of like tenor and effect except as to interest rates, serial number and maturity, aggregating \$3,000,000 in principal amount, and constituting Bonds authorized for the purpose of raising funds to pay the costs of acquiring

property for, equipping and constructing pool facility renovation and expansion capital improvements in the North Peninsula Recreation Service Area (the "Service Area") with the question of their issuance for such purpose approved and ratified by a majority vote of the qualified voters of the Service Area, who voted on a Proposition in the Service Area election on May 11, 1993, and is issued pursuant to Ordinance 93-38 of the Borough entitled:

**AN ORDINANCE OF THE KENAI PENINSULA BOROUGH PROVIDING
FOR THE ISSUANCE OF \$3,000,000 NORTH PENINSULA
RECREATION SERVICE AREA GENERAL OBLIGATION BONDS OF
THE KENAI PENINSULA BOROUGH AND FIXING DETAILS OF SAID
BONDS**

(hereinafter called the "Ordinance").

The Bonds are numbered from one consecutively upwards in order of maturity.

The Bonds are subject to redemption by or on behalf of the Borough prior to maturity as provided in the Ordinance.

This Bond is transferable, as provided in the Ordinance, only upon the bond register of the Borough kept for that purpose at the corporate trust offices of the Paying Agents, upon surrender of this Bond together with a written instrument of transfer duly executed by the registered owner or his attorney duly authorized in writing, 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 presented. The Borough and the Paying Agents 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 and interest due hereon and for all other purposes whatsoever.

This Bond is a general obligation of the North Peninsula Recreation Service Area, and the full faith and credit of the North Peninsula Recreation Service Area are pledged for the payment of the principal of and the interest on this 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 the issuance of Bonds of which this one, 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 has caused this Bond to be signed in its name by the manual or facsimile signature of its Mayor and its

corporate seal (or facsimile thereof) to be hereunto affixed, imprinted or otherwise reproduced, and attested by the manual or facsimile signature of its Clerk, all as of the ___ day of _____, 1993.

Mayor

ATTEST:

Borough Clerk

SECTION 12. Authority of Officers. That the Mayor, Finance Director and the Clerk are, and each of 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 of the Borough, to the end that the Borough may carry out its obligations under the Bonds and this Ordinance.

SECTION 13. Miscellaneous. A. That all payments made by the Borough of, or on account of, the principal of or interest on the Bonds shall be made on the several Bonds ratably and in proportion to the amount due thereon respectively for principal or interest as the case may be.

B. No recourse shall be had for the payment of the principal of or the interest on the Bonds or for any claim based thereon or on this Ordinance against any member of the Borough Assembly or officer of the Borough or any person executing the Bonds. The Bonds are not and shall not be in any way a debt or liability of the State of Alaska or of any political subdivision thereof, except the Borough, and do not and shall not create or constitute any indebtedness or obligation, either legal, moral or otherwise, of said State or of any said political subdivision thereof, except the Borough. The Bonds are not a general obligation of the Borough, but are payable only from the sources described herein.

SECTION 14. Paying Agents. That the Principal Paying Agent and one additional Paying Agent may be appointed by a resolution adopted by the Borough Assembly prior to delivery of the Bonds. The Borough shall indemnify and save harmless the Paying Agents against any liabilities which they may incur in the exercise and performance of their powers and duties as Paying Agents which are not due to their negligence or default, and shall pay their reasonable charges for their services as Paying Agents. The Paying Agents may become the owners of or may deal in Bonds, as fully and with the same rights as if they were not the

Paying Agents.

SECTION 15. Arbitrage Covenant. That the Borough covenants with the holders of all Bonds at any time outstanding that it will make no use of the proceeds of the Bonds which will cause the Bonds to be "arbitrage bonds" subject to Federal income taxation by reason of Section 148 of the Internal Revenue Code of 1986. To that end, so long as any of the Bonds are outstanding, the Borough, with respect to the proceeds of the Bonds, shall comply with all requirements of said Section 148 and of all regulations of the United States Department of Treasury issued thereunder, to the extent that such requirements are, at the time, applicable and in effect.

SECTION 16. Compliance with Internal Revenue Code. That the Borough hereby covenants to comply with any and all applicable requirements set forth in the Internal Revenue Code of 1986 in effect from time to time to the extent that such compliance shall be necessary for the exemption from Federal income taxes of the interest on the Bonds. The Borough hereby further covenants to observe any and all applicable requirements in any future Federal tax legislation to the extent that such compliance is determined by the Borough to be legal and practicable and required for such exemption.

The covenants of this Section 16 shall also be deemed to have been made for the benefit of any bond insurer so long as the bond insurer maintains a policy of insurance with respect to the Bonds.

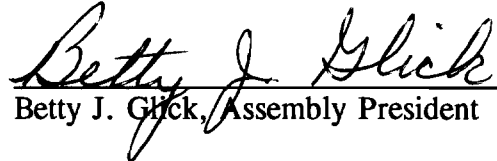
SECTION 17. Sale of Bonds. That the Bonds shall be sold at public or private sale upon such terms and conditions as may be fixed and determined by a resolution adopted by the Borough Assembly at or prior to the time of sale.

SECTION 18. Defeasance. That in the event cash and/or direct, noncallable obligations of the United States of America, maturing at such times and bearing interest to be earned thereon in amounts sufficient to redeem and retire any or all of the Bonds in accordance with their terms are set aside as 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 to be made to pay or secure the payment of the principal of and interest on such Bonds, and such Bonds shall be deemed not to be outstanding.

SECTION 19. Prohibited Sale of Bonds. That no person, firm or corporation, or any agent or employee thereof, acting as financial consultant to the Borough under an agreement for payment in connection with the sale of the Bonds is eligible to bid for the Bonds as a member of the original underwriting syndicate either at public or private sale.

SECTION 20. Effective Date. That this Ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS
3rd DAY OF AUGUST, 1993.**


Betty J. Glick, Assembly President

ATTEST:


Gaye J. Vaughan, Borough Clerk