

Introduced by: Mayor  
Date: 06/17/03  
Action: Adopted  
Vote: 7 Yes, 0 No, 2 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2003-072**

**A RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF THE KENAI PENINSULA BOROUGH IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED FOURTEEN MILLION SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS (\$14,700,000) TO PAY THE COSTS OF EDUCATIONAL CAPITAL IMPROVEMENTS IN THE BOROUGH, FIXING CERTAIN DETAILS OF SUCH BONDS, AND PLEDGING THE FULL FAITH AND CREDIT OF THE BOROUGH TO THE PAYMENT THEREOF**

**WHEREAS**, pursuant to Ordinance 2003-35 of the Kenai Peninsula Borough (the "Borough") passed and approved on August 20, 2002, the following question, referred to at the election held on October 1, 2002 as Proposition No. 3 ("Proposition 3"), was passed and approved:

**PROPOSITION NO. 3**

Shall the Kenai Peninsula Borough borrow up to \$14,700,000 through the issuance of general obligation bonds?

The general Obligation bond proceeds will be used to pay costs of planning, designing, acquiring property for, site preparation, constructing, acquiring, renovating, installing, and equipping a Seward Middle School and related education capital improvements located within the Borough.

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 estimated 2002 taxable assessed valuation) to retire the total debt is \$11.67, assuming 60 percent debt service reimbursement from the State of Alaska, or \$29.16 without State reimbursement.

No bonds will be issued, unless and until the project qualifies for at least 60% debt service reimbursement from the State of Alaska under existing or new legislation. Receipt of State reimbursement is subject to annual legislative appropriations.

and said election has been duly canvassed and the results thereof certified and confirmed in accordance with law, and \$14,700,000 principal amount of general obligation bonds remains unissued under Proposition 3; and

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

**WHEREAS,** on April 23, 2003, the Borough received formal notification of from the Alaska Department of Education and Early Development (DEED) that the Seward Middle School project is eligible for debt reimbursement at a rate of 70%; and

**WHEREAS,** it is necessary and in the best interest of the Borough and its residents that the Borough proceed to plan, design, do site preparation for, construct, acquire, renovate, install and equip the capital improvements within the Borough described in Proposition 3 (the "Project"), and issue not to exceed \$14,700,000 principal amount of the general obligation bonds referred to in Proposition 3, constituting of all the unsold general obligation bonds referred to therein, to pay costs of the Project; and

**WHEREAS,** there has been presented to the Borough the form of a Loan Agreement between the Alaska Municipal Bond Bank and the Borough, which provides for the Alaska Municipal Bond Bank to purchase the Bonds on the terms and conditions set forth therein and in this resolution, it is in the best interest of the Borough that it sell the bonds to the Alaska Municipal Bond Bank under such terms and conditions;

**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 resolution:

- (a) "Assembly" means the Assembly of the Borough, as the general legislative authority of the Borough, as the same shall be duly and regularly constituted from time to time.
- (b) "Bond" or "Bonds" means any of the Bonds of the Borough, the issuance and sale of which are authorized herein as the evidence of the indebtedness referred to in Proposition 3.
- (c) "Bond Bank" means the Alaska Municipal Bond Bank.
- (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 Bonds.

- (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) "Code" means the Internal Revenue code of 1986, as amended from time to time, together with all regulations applicable thereto.
- (g) "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 Bonds 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 as the site or sites of the Project or for use in connection therewith, the cost of any indemnity and surety bonds and premiums on insurance incurred in connection with the Project prior to or during construction thereof, all related direct administrative and inspection expenses whether incurred by the Borough or by another in connection with the Project prior to or during construction thereof and allocable portions of direct costs of the Borough, legal fees, costs of issuance of the Bonds 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.
- (h) "Loan Agreement" means the Loan Agreement between the Borough and the Bond Bank, dated as of the date of the Bonds.
- (i) "Registered Owner" means the person named as the registered owner of a Bond in the Bond Register.
- (j) "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 the Costs of the Project, to provide for original issue discount, if any, and to pay all costs incidental thereto and to the issuance of the Bonds, the Borough hereby authorizes and determines to issue and sell the Bonds in the aggregate principal amount of not to exceed \$14,700,000. The Bonds shall

be designated "Kenai Peninsula Borough, Alaska General Obligation School Bonds 2003A."

The Borough has ascertained and hereby determines that each and every matter and thing as to which provision is made in this resolution is necessary in order to carry out and effectuate the purpose of the Borough in accordance with the Constitution and the statutes of the State of Alaska and to incur the indebtedness and issue the Bonds as referred to in Proposition 3.

**SECTION 3. Obligation of Bonds.** The Bonds shall be direct and general obligations 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 Bonds. 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 therefore, to pay the principal of and interest on the Bonds as the same become due and payable.

**SECTION 4. Date, Maturities, Interest Rates, and Other Details of Bonds.** The Bonds shall be dated July 1, 2003, shall be in the denomination of \$5,000 or any integral multiple thereof, or such other date and denominations as may be determined by the Mayor or Finance Director, and shall be numbered separately in such manner and with any additional designation as the Registrar deems necessary for purposes of identification.

The Bonds shall bear interest from the date thereof, on December 1, 2003 and semiannually thereafter on December 1 and June 1 of each year or such other dates 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 maturity dates and the rate of interest on each principal installment of the Bonds, 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 Bonds; (ii) the true interest cost of the Bonds shall not exceed 5% unless approved by resolution of the Assembly; and (iii) all of the Bonds shall mature on or before June 1, 2023.

**SECTION 5. 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 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 Alaska Municipal Bond Bank, payments of principal and interest thereon shall be made as provided in the Loan Agreement. In the event that the Bonds are no longer owned by the Bond Bank, payments of principal and interest on the Bonds will be made by check or draft mailed by first class mail to the Registered Owners of the Bonds at the addresses for such Registered Owners appearing on the Bond Register on the 15th day of the month preceding the

payment date, provided that the final installment of principal and interest on the Bonds will be payable at the principal office of the Registrar upon surrender of the Bond.

**SECTION 6. Optional Redemption.** The Finance Director is hereby authorized to establish redemption provisions, if any, for the Bonds maturing on and after June 1, 2014.

**SECTION 7. 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 2003A

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 June 1 of each of the following years, and to pay interest on such installments from the date hereof, payable on December 1, 2003 and semiannually thereafter on the first days of June and December of each year, at the rates per annum as follows:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
-------------	-----------------------------	--------------------------

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 one of the General Obligation School Bonds, 2003A of the Kenai Peninsula Borough, Alaska of like tenor and effect except as to interest rate, serial number and maturity, aggregating \$14,700,000 in principal amount, and constituting bonds authorized for the purpose of paying the cost of solid waste improvements in the Borough, and is issued under Resolution 2003-072 of the Borough entitled:

A RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF THE KENAI PENINSULA BOROUGH IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$14,700,000 TO PAY THE COSTS OF EDUCATIONAL CAPITAL IMPROVEMENTS IN THE BOROUGH, FIXING CERTAIN DETAILS OF SUCH BONDS, AND PLEDGING THE FULL FAITH AND CREDIT OF THE BOROUGH TO THE PAYMENT THEREOF.

(herein called the "Resolution").

The Bonds maturing on and after June 1, 2014 will be subject to redemption at the option of the Borough on and after June 1, 2013, in whole or in part on any date, in increments and with maturities to be selected by the Borough at 100% of the principal amount thereof to be redeemed plus accrued interest to the date of redemption.

This Bond is transferable as provided in the Resolution, (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 therefore as provided in the Resolution 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 the series of Bonds of which this is one, together with all other indebtedness of the Borough, is within every debt an 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 \_\_\_\_\_, 2003.

\_\_\_\_\_  
DALE BAGLEY  
Mayor

ATTEST:

\_\_\_\_\_  
LINDA S. MURPHY, Borough Clerk

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

**SECTION 9. Registration.** (a) The Bonds shall be issued only in registered form as to both principal and interest. The Borough designates the Borough Finance Director as Registrar for the Bonds. The Registrar shall keep, or cause to be kept, the Bond Register at the principal office of the Borough.

(b) The Borough, in its discretion, may deem and treat the Registered Owner of each Bond as the absolute owner thereof for all purposes, and neither the Borough nor the Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 5, but such registration may be transferred as herein provided. All such payments made as described in Section 5 shall be valid and shall satisfy and discharge the liability of the Borough upon such Bond to the extent of the amount or amounts so paid.

(c) 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 canceled by the Registrar. The Registrar shall not be required to transfer or exchange any Bond after the Bond has been called for redemption.

(d) The Borough covenants that, until all Bonds have been surrendered and canceled, 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.** Mutilated, Destroyed, Stolen or Lost Bonds. Upon surrender to the Registrar of Mutilated Bond, the Borough shall execute and deliver a new Bond of like maturity and principal amount. Upon filing with the Registrar of evidence satisfactory to the Borough that a Bond has been destroyed, stolen or lost and of the ownership thereof, and upon furnishing the Borough with identification satisfactory to it, the Borough shall execute and deliver a new Bond of like maturity and principal amount. The person requesting the authentication and delivery of a new Bond pursuant to this section shall comply with such other reasonable regulations as the Borough may prescribe and pay such expenses as the Borough may incur in connection therewith. 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.

**SECTION 11.** Disposition of the Sale Proceeds of the Bonds. The sale proceeds of the Bonds representing accrued interest on the Bonds shall be applied to pay a portion of the interest due on the Bonds on December 1, 2003. The remainder of the sale proceeds of the Bonds shall be applied to pay Costs. The sale proceeds of the Bonds shall be deposited in the appropriate funds or accounts of the Borough for such purposes.

**SECTION 12.** Tax Covenants. The Borough covenants to comply with any and all applicable requirements set forth in the Code in effect from time to time to the extent that such compliance shall be necessary for the exclusion of the interest on the Bonds from gross income for federal income tax purposes. The Borough covenants 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 Code. The Borough covenants that it will not take or permit any action that would cause the Bonds to be "private activity bonds" as defined in Section 141 of the Code.



**SECTION 13. Sale of the Bonds; Loan Agreement.** The sale of for not to exceed \$14,700,000 aggregate principal amount of the Bonds, as provided in the Loan Agreement and this resolution, is hereby authorized and approved. The Mayor or the Finance Director, are each hereby authorized to execute and deliver the Loan Agreement, and a Continuing Disclosure Certificate and such other documents as may be necessary to effectuate issuances of the Bonds on behalf of the Borough.

**SECTION 14. Authority of Officers.** The Mayor, the acting Mayor, the Borough Finance Director, the acting Borough Finance Director, the Borough Clerk and the acting Borough Clerk are, and each of them hereby is, authorized and directed to do and perform all things and determine all matters not determined by this resolution, or to be determined by a subsequent ordinance or resolution, to the end that the Borough may carry out its obligations under the Bonds and this resolution.

**SECTION 15. Amendatory and Supplemental Resolutions.** (a) The Assembly from time to time and at any time may adopt a resolution or resolutions supplemental hereof, which resolution or resolutions thereafter shall become a part of this resolution, for any one or more of the following purposes:

(i) To add to the covenants and agreements of the Borough in this resolution, other covenants and agreements thereafter to be observed, or to surrender any right or power herein reserved to or conferred upon the Borough.

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

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

(b) With the consent of a bond insurer, if any, or the Registered Owners of not less than 60 percent in aggregate principal amount of the Bonds at the time outstanding, the Assembly may adopt a resolution or resolutions supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this resolution or of any supplemental resolution; provided, however that no such supplemental resolution shall:

(i) extend the fixed maturity of any of the Bonds, or reduce the rate of interest thereon, or reduce the amount or change the date of any sinking fund installment, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the

redemption thereof, without the consent of the owners of each Bond so affected; or

(ii) reduce the aforesaid percentage of owners of Bonds required to approve any such supplemental resolution without the consent of the owners of all the Bonds then outstanding.

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

(c) Upon the adoption of any supplemental resolution under this section, this resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this resolution of the Borough and all Registered Owners of outstanding Bonds shall thereafter be subject in all respects to such modification and amendment, and all the terms and conditions of the supplemental resolution shall be deemed to be part of the terms and conditions of this resolution for any and all purposes.

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

**SECTION 16. Miscellaneous.** (a) 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 resolution against any member of the 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 an indebtedness or obligation, either legal, moral or otherwise, of said State or of any political subdivision thereof, except the Borough.

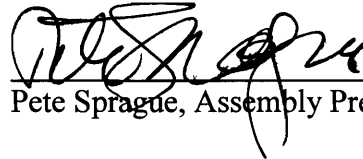
**SECTION 17. Continuing Disclosure.** The Borough covenants and agrees to comply with and carry out all provisions of the Continuing Disclosure Certificate, the form of which has been presented at this meeting. Notwithstanding any other provision of this Resolution, failure of the Borough to comply with the Continuing Disclosure

Certificate shall not be considered a default of the Borough's obligations under this Resolution, the Loan Agreement or the Bonds; however the beneficial owner of any Bond may bring an action for specific performance, to cause the Borough to comply with its obligations under the Continuing Disclosure Certificate.

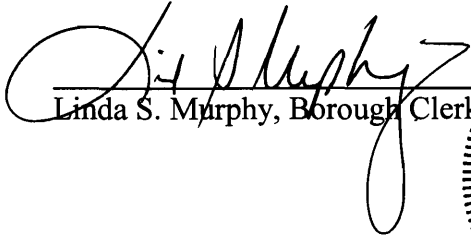
**SECTION 18. Severability.** If any one or more of the provisions of this resolution shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this resolution and shall in no way affect the validity of the other provisions of this resolution or of the Bonds.

**SECTION 19. Effective date.** This resolution shall take effect immediately.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 17TH DAY OF JUNE, 2003.**

  
Pete Sprague, Assembly President

ATTEST:

  
Linda S. Murphy, Borough Clerk

