NON-CODE ORDINANCE

Sponsored By: Borough Manager
Introduced: 05/17/16
Public Hearing: 06/07/16
Adopted: 06/07/16

MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 16-065

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AUTHORIZING THE ISSUANCE OF STATE OF ALASKA LEASE REVENUE REFUNDING BONDS, SERIES 2016 (GOOSE CREEK CORRECTIONAL CENTER PROJECT) IN AN AMOUNT NOT TO EXCEED $65,000,000; APPROVING THE FORM AND SUBSTANCE OF A SECOND SUPPLEMENT TO TRUST INDENTURE, A THIRD AMENDMENT TO LEASE PURCHASE AGREEMENT, A REFUNDING TRUST AGREEMENT, AND A BOND PURCHASE AGREEMENT; AUTHORIZING AN OFFERING DOCUMENT; MAKING CERTAIN FINDINGS AND DETERMINATIONS; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO ACCOMPLISH THE FOREGOING; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT.

WHEREAS, the Borough has issued its Alaska State Lease Revenue Bonds, Series 2008 (Goose Creek Correctional Center Project) in an aggregate principal amount of $244,285,000 (the "Series 2008 Bonds") pursuant to a Trust Indenture dated as of September 1, 2008 (the "Original Indenture"), between the Borough and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), to finance the construction of the Goose Creek Correctional Facility; and

WHEREAS, in connection with the issuance of the Series 2008 Bonds, the Borough entered into a Lease Purchase Agreement dated as of December 1, 2008, among the Borough, as lessor, the Alaska State Department of Administration (the "DOA"), as lessee, and the Alaska State Department of Corrections, as tenant agency, a First Amendment thereto dated October 26, 2010, and a Second Amendment thereto dated as of April 1, 2015 (together, the "Lease Purchase Agreement"); and

WHEREAS, pursuant to the Original Indenture, the Series 2008 Bonds maturing in 2023 and later years (the "Refundable Series 2008 Bonds") are subject to redemption at the option of the Borough on any date on or after September 1, 2019, at a redemption price equal to the principal amount thereof plus accrued interest to the redemption date; and

WHEREAS, to effect a savings in the principal and interest cost of certain of the Refundable Series 2008 Bonds, the Borough issued its Alaska State Lease Revenue Refunding Bonds, Series 2015 (Goose Creek Correctional Center Project); and

WHEREAS, the Refundable Series 2008 Bonds remain outstanding in an aggregate principal amount of $59,340,000; and

WHEREAS, after due consideration, it appears that the outstanding Refundable Series 2008 Bonds may be refunded by the issuance and sale of the lease revenue refunding bonds authorized by this ordinance (the "Series 2016 Bonds") so that a substantial savings will be effected by the difference between the principal and interest cost over the life of the Series 2016 Bonds and the principal and interest cost over the life of the outstanding Refundable Series 2008 Bonds but for such refunding; and

WHEREAS, pursuant to the Original Indenture, the Borough may, subject to certain conditions, issue the Series 2016 Bonds to advance refund of the outstanding Refundable Series 2008 Bonds; and

WHEREAS, the DOA has requested, and the Borough deems it to be in its best interests, that the Borough issue and sell the Series 2016 Bonds to refund all or a portion of the outstanding Refundable Series 2008 Bonds pursuant to a Refunding Trust Agreement (the "Refunding Trust Agreement") with the Trustee; and

WHEREAS, the Borough has determined to sell the Series 2016 Bonds to RBC Capital Markets, LLC (the "Underwriter"), pursuant to a Bond Purchase Agreement (the "Bond Purchase Agreement"); and

WHEREAS, the Borough and its advisors have examined proposed forms of the Second Supplement to Trust Indenture, Third Amendment to Lease Purchase Agreement, Refunding Trust Agreement, and Bond Purchase Agreement, each of which has been presented to the Assembly on this date; have found the form and substance of such documents to be satisfactory and proper; and have determined to proceed in accordance with such documents by authorizing the issuance of the Series 2016 Bonds and the refunding of all or a portion of the outstanding Refundable Series 2008 Bonds, the execution and delivery of such documents, and the taking of such other action as may be necessary or convenient.

BE IT ENACTED:

Section 1. Classification. This is a non-code ordinance.

Section 2. Authorization for Series 2016 Bonds. The Series 2016 Bonds are authorized to be issued in the principal amount

of not to exceed $65,000,000 to refund all or a portion of the outstanding Refundable Series 2008 Bonds. The Series 2016 Bonds may be issued in one or more series of bonds to be designated "Matanuska-Susitna Borough Alaska State Lease Revenue Refunding Bonds, Series 2016 (Goose Creek Correctional Center Project)," with such varying or additional designations as the Borough Manager or the Borough Finance Director may determine.

Section 3. Amendment of Lease Purchase Agreement. The Assembly finds under Matanuska-Susitna Borough Code 23.05.030(G) that amending the Lease Purchase Agreement to reflect the savings effected by refunding all or a portion of the Refundable Series 2008 Bonds without regard to the fair rental value of the property conveyed by the Lease Purchase Agreement (the "Project") is in the best interest of the Borough. The Assembly ratifies the lease of the Project under the Lease Purchase Agreement, as amended by the Third Amendment thereto, without first being classified as required by Matanuska-Susitna Borough Code 23.10.030(B), and for the consideration that is provided in the Third Amendment thereto. The Assembly finds that the issuance of the Series 2016 Bonds to refund all or a portion of the Refundable Series 2008 Bonds will serve the public interest and be in the best interest of the Borough, and is hereby approved.

Section 4. Approval of financing documents. The form and content of the Second Supplement to Trust Indenture, Third Amendment to Lease Purchase Agreement, and Refunding Trust

Agreement are in all respects authorized, approved, and confirmed, and the Borough Manager and the Borough Finance Director are each individually and severally authorized, empowered, and directed to execute and deliver those documents for and on behalf of the Borough in substantially the form and content now before this Assembly but with such changes, modifications, additions, and deletions therein as shall to him or her seem necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of the approval of any and all changes, modifications, additions, or deletions therein from the form and content of those documents now before this Assembly, and from and after the execution and delivery of those documents, the Borough Manager, the Borough Financial Director, the Borough Attorney, and the Borough Clerk are each individually and severally authorized, empowered, and directed to do all such acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of those documents as executed.

Section 5. Sale of the Series 2016 Bonds. The Series 2016 Bonds shall be sold at negotiated sale to the Underwriter. The Borough's financial advisor has advised the Assembly that bond market conditions are fluctuating and that the most favorable market conditions for the sale of the Series 2016 Bonds may not occur on the date of a regular Assembly meeting. The Assembly has determined that it would be inconvenient to hold a special meeting on short notice to approve the terms of the sale of the

Series 2016 Bonds. Therefore, the Assembly determines that it is in the best interest of the Borough to delegate the authority to approve the terms of the sale of the Series 2016 Bonds as provided herein. Subject to the limitations provided in Section 2, the Borough Manager and the Borough Finance Director are each individually and severally authorized to determine the Refundable Series 2008 Bonds to be refunded and the aggregate principal amount, maturity amounts, sinking fund installments, if any, interest rates, yields, dated date, principal and interest payment dates, and redemption terms, if any, for the Series 2016 Bonds, and other details of the Series 2016 Bonds. In determining the aggregate principal amount, maturity amounts, sinking fund installments, if any, interest rates, yields, dated date, principal and interest payment dates, and redemption terms, if any, for the Series 2016 Bonds, the Borough Manager or the Borough Finance Director shall, in consultation with the Borough's financial advisor and the Alaska State Department of Revenue (the "DOR"), take into account those factors which, in his or her judgment, will result in the lowest true interest cost on the Series 2016 Bonds to their maturity or prior redemption, including current financial market conditions and current interest rates for obligations comparable in tenor and quality to the Series 2016 Bonds. The Borough Manager and the Borough Finance Director are each individually and severally authorized to determine, in consultation with the Borough's financial advisor, the DOR, and the Underwriter, whether there

shall be bond insurance for the Series 2016 Bonds, provided that bond insurance shall be obtained only if the present value of the bond insurance premium will be less than the present value of the expected interest savings on the Series 2016 Bonds as a result of the bond insurance. Based upon the foregoing determinations, the Borough Manager and the Borough Finance Director are each individually and severally authorized to execute the Bond Purchase Agreement with the Underwriter, in substantially the form presented at this meeting. The authority granted to the Borough Manager and the Borough Finance Director by this Section shall expire 270 days after the effective date of this ordinance. If the Borough Manager or the Borough Finance Director has not executed a Bond Purchase Agreement with the Underwriter within 270 days after the effective date of this ordinance, the Bond Purchase Agreement may not be executed on behalf of the Borough without further authorization from the Assembly.

Section 6. Call of Refunded Bonds for Redemption. The Borough Manager and the Borough Finance Director are each individually and severally authorized and directed to call the Refundable Series 2008 Bonds to be refunded by the Series 2016 Bonds (the "Refunded Bonds") for redemption on September 1, 2019. The call for redemption of the Refunded Bonds shall be subject to the delivery of the Series 2016 Bonds to the Underwriter, and such call shall become irrevocable upon such

delivery. Notice of redemption of the Refunded Bonds shall be given in the manner set forth in the Original Indenture.

Section 7. Ratings on the Series 2016 Bonds. The Borough Manager or the Borough Finance Director, in consultation with the Borough's financial advisor, the Underwriter, and the DOR, shall obtain a rating on the Series 2016 Bonds from at least one nationally recognized securities rating service. The Series 2016 Bonds shall not be sold if such rating is below investment grade.

Section 8. Offering Document for the Series 2016 Bonds. The Borough Manager and the Borough Finance Director, in consultation with the Borough's financial advisor, the Underwriter, and the DOR, are each individually and severally authorized and directed to prepare and approve a preliminary Official Statement and an Official Statement with respect to the Series 2016 Bonds to be used in connection with the sale of the Series 2016 Bonds. The Borough Manager and the Borough Finance Director are each individually and severally authorized to deem the preliminary Official Statement final as of its date for purposes of Securities and Exchange Commission Rule 15c2-12, to approve any addendum, supplement, or amendment thereto, and to approve the form of the final Official Statement for the Series 2016 Bonds.

Section 9. Execution and Delivery of other Documents. The Mayor, the Borough Manager, the Borough Finance Director, the Borough Attorney, and the Borough Clerk are each individually

and severally authorized and directed to execute and deliver for and on behalf of the Borough any and all additional certificates, documents, opinions, or other papers and to do and perform all things and determine all matters not determined by this ordinance, to the end that the Borough may carry out its obligations under the Original Indenture, as supplemented by the First Supplement and the Second Supplement thereto (together, the "Indenture"), the Lease Purchase Agreement, as amended by the Third Amendment thereto, the Refunding Trust Agreement, the Series 2016 Bonds, the Bond Purchase Agreement, and this ordinance.

Section 10. Prohibited Sale of Series 2016 Bonds. 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 Series 2016 Bonds is eligible to purchase the Series 2016 Bonds as a member of the original underwriting syndicate either at public or private sale.

Section 11. Continuing Disclosure. The Borough covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate in substantially the form presented at this meeting. 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 the Indenture or the Series 2016 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 this Section.

Section 12. Ratification of Certain Prior Actions. All prior actions taken by or on behalf of the Borough in connection with the Series 2016 Bonds are authorized, ratified, confirmed, and approved.

Section 13. Limited Obligations. The Series 2016 Bonds and the interest thereon shall be limited obligations of the Borough payable solely from the revenues, funds, and assets pledged under the Indenture to secure payment of the Series 2016 Bonds, and under no circumstances shall the Series 2016 Bonds be payable from any other revenues, funds, assets, or income of the Borough.

Section 14. Savings Provision. 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 Series 2016 Bonds.

Section 15. Incorporation of Recitals. The findings and determinations contained in the preambles of this ordinance are incorporated herein as part of this ordinance.

Section 16. Effective date. This ordinance shall become effective upon adoption.

ADOPTED by the Matanuska-Susitna Borough Assembly this 7 day of June, 2016.

for VERN HALTER, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

PASSED UNANIMOUSLY: Sykes, McKee, Colligan, Mayfield, Doty, and Kowalke