

**AUGUST 11, 2023
CITY COUNCIL SPECIAL MEETING
ADDITIONAL MATERIAL/REVISIONS**

REQUESTED ADDITIONS TO THE PACKET

<u>ACTION</u>	<u>ITEM</u>	<u>REQUESTED BY</u>
Add to Item B.1	Resolution No. 2023-50 <ul style="list-style-type: none">• Recommendation Memo	Administration



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Gabriel and Council Members

FROM: Terry Eubank, City Manager

FROM: Scott Bloom, City Attorney

DATE: August 11, 2023

SUBJECT: **Resolution 2023-50 Bond Counsel Opinion and Recommendation.**

Yesterday the administration received the attached memo from bond counsel Jemain, Dunnagan & Ownes, P.C. regarding the \$1,200,000 loan and principal subsidy awarded to the City for construction of a new water pumphouse at the City's water treatment facility on Shotgun Drive. Based upon the administration's work with Alaska Department of Environmental Conservation (ADEC) staff which resulted in changes to the draft loan agreement and a cover letter from ADEC indicating the \$1,200,000 subsidy to be provided to the City will not require repayment, bond counsel concluded voter authorization is not necessary as neither the City nor ADEC anticipate the City to incur debt through the agreement. The agreement, despite being called a loan, will repay the City for final construction costs of the project with "Subsidy" and no loan or accrual of interest on the "Subsidy."

Essentially the agreement will function like a grant. The City, in construction of the project, will have to comply with all program guidelines and provision for costs to be eligible. This is a normal process for the City which administers dozens of state and federal grants annually.

The City will be required to appropriate funds for construction which will result in delay of three previously budgeted projects. These projects include \$100,000 for Disinfectant Generation Equipment Design, \$300,000 for Reservoir #1 Pump House Improvements, and \$300,000 for Waste Water Treatment Plant Operations Building Renovation Design. Construction of the new pump house is the utilities highest priority project but was contingent upon grant funding in the City's Capital Improvement Plan for Fiscal Years 2024 – 2028. Delay of these projects will likely be until fiscal year 2026 and will not negatively impact the operations of the utility. With other scheduled projects involving the utility, it is unlikely the City would be able to complete the pump house and these other three projects prior to fiscal year 2026 even if funding was not temporarily taken from these projects. Construction of the new pumphouse will improve the City's capacity to provide water to residents by creating redundancy in the system. A boil water notice was issued in 2022 which likely would have been avoided with the added capacity of a second pumphouse.

As the City will not be incurring debt, bond counsel concurs the agreement does not trigger the debt provisions of Section 6-3 of the City's Charter, and the project is the utility's number one priority, the administration recommends postponing Resolution 2023-50 indefinitely. This

recommendation is not intended to avoid voter input, but instead to move forward in the most secure and expedient manner for the utility safeguarding public health and safety. An ordinance to redirect funding from the aforementioned projects and appropriating the remaining project funds will be prepared for Councils consideration.



MEMORANDUM

TO: Members of the City Council
City of Kenai, Alaska

THRU: City Attorney
Scott Bloom

FROM: Jermain, Dunnagan & Owens, P.C.
Bond Counsel

DATE: August 10, 2023

RE: Loan Subsidy from the Department of Environmental Conservation,
Division of Water

The State of Alaska, Department of Environmental Conservation, through the Division of Water (“Department”), by letter dated August 1, 2023 (“Letter”), extended financing to the City of Kenai (“City”), through the Alaska State Revolving Fund Program, Alaska Drinking Water Fund, to finance costs associated with the City’s Water Treatment Plant Pumphouse (“Project”). The Letter includes a requested loan amount of \$1.2 million, with loan forgiveness in the amount of \$1.2 million. In addition, the Department provided the City with a draft loan agreement to be entered into in connection with the financing which characterizes the 100% loan forgiveness as a “Subsidy.”

City officials contacted us to determine whether the proposed funding triggered City debt limitations thereby requiring voter authorization. We understand the City proposes to forward fund Project costs and request (one disbursement) the full “Subsidy” in the amount of \$1.2 million within the required timeframe.

The Department has represented that it does not expect or require repayment of the “Subsidy” and has, in fact, agreed to include language in the final loan agreement which states: *“Nothing contained in this [loan] Agreement shall be construed as an obligation or pledge of the Borrower to appropriate or expend general funds or revenues of the Borrower to repay the Subsidy, or operate or maintain the Project Facility.”* Further, the Department provided the City with a form letter to be attached to the proposed loan agreement which states, in part, *“this project is 100% subsidized in the form of loan forgiveness. ... When the project has been completed and the last disbursement request*

has been received, the closeout process will be initiated. ... Repayment will not be required under this agreement since this project is 100% subsidized."

Based on the above, neither party anticipates the City will incur debt to fund the Project. Rather, both parties anticipate final costs of the Project will be paid with the "Subsidy" as described herein. There will be no loan or accrual of interest on the "Subsidy."

Subject to the above, we do not believe voter authorization is necessary for the City to enter into the above described financing arrangement with the Department.