

CITY OF BETHEL, ALASKA

RESOLUTION NO. 199

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A LOAN AND NOTE PURCHASE AGREEMENT WITH ALASKA BANK OF COMMERCE AND THE ALASKA MUNICIPAL BOND BANK AUTHORITY PROVIDING FOR THE AUTHORIZATION AND PURCHASE OF NOT TO EXCEED \$795,000 OF BOND ANTICIPATION NOTES, AND AUTHORIZING SAID NOTES.

WHEREAS, at a Special Municipal Election held in the City of Bethel, Alaska on May 17, 1977, pursuant to Ordinance No. 96, passed and approved April 21, 1977, the provisions of the Code of Ordinances of the City of Bethel, and other proceedings of Council duly and regularly had, the qualified electors of the City authorized the issuance of general obligation bonds of the City in the total principal sum of not to exceed \$795,000 for the purpose of paying the costs of planning, designing, constructing and equipping the Bethel Court Building in the City of Bethel, Alaska, and

WHEREAS, the Alaska Municipal Bond Bank Authority and Alaska Bank of Commerce have authorized a Loan and Note Purchase Agreement with the City of Bethel providing for the purchase by Alaska Bank of Commerce of bond anticipation notes to be issued in anticipation of said general obligation bonds, which Loan and Note Purchase Agreement is in the form attached hereto as Exhibit "A" and incorporated by reference herein, and

WHEREAS, it is deemed necessary and in the best interests of the City and its inhabitants that \$795,000 principal amount of said bond anticipation notes (the "Notes") be issued and sold pursuant to said Loan and Note Purchase Agreement, to Alaska Bank of Commerce,

THEREFORE, BE IT RESOLVED by the City Council of the City of Bethel, Alaska, that:

The City hereby authorizes the issuance of the Notes in accordance with the terms of the Loan and Note Purchase Agreement. The Notes shall bear interest at the rates determined or to be determined in the Loan and Note Purchase Agreement and shall be issued in accordance with the Loan and Note Purchase Agreement and contain the terms and provisions set forth therein and the forms, terms and provisions of the Notes and the Loan and Note Purchase Agreement are hereby approved, and the City Manager and the City Clerk are hereby authorized and directed to execute, attest, seal and deliver the Loan and Note Purchase Agreement and the Notes.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF BETHEL, ALASKA, this ____ day of May, 1977.

CITY OF BETHEL, ALASKA

By


Mayor

ATTEST:

City Clerk

EXHIBIT "A"

LOAN AND NOTE PURCHASE AGREEMENT

AGREEMENT made and dated as of May 31, 1977, between Alaska Municipal Bond Bank Authority (the "Authority"), Alaska Bank of Commerce, (the "Bank"), and the City of Bethel, a municipal corporation of the State of Alaska, (the "Municipality").

W I T N E S S E T H:

WHEREAS, the Municipality desires from time to time to borrow, and the Bank is willing from time to time or at one time to lend to the Municipality, upon the terms and conditions herein set forth, various principal amounts not to exceed in the aggregate of \$795,000 at any time outstanding, to be evidenced by Notes of the Municipality to be delivered from time to time as herein provided; and

WHEREAS, the Municipality and the Authority have entered into a Loan Agreement dated as of May 31, 1977 (the "Loan Agreement") providing, among other things, for the purchase of Bonds of the Municipality by the Authority the proceeds of which would be used to pay the Notes, and otherwise, as set forth in said Loan Agreement.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

Article I

Terms of Loan

Section 1. Upon the terms and conditions and in the manner set forth in this Agreement, the Bank agrees to purchase Notes of the Municipality from the effective date of this Agreement, to and including March 1, 1978, in an aggregate principal amount not to exceed \$795,000.

Section 2. Disbursements of the Loan shall be made upon written application of the Municipality executed by an authorized officer who is knowledgeable as to the Municipality's financial condition and of the terms and conditions of this Agreement, which application shall constitute and express warranty and representation that such authorized officer has no personal knowledge of the existence of any event of default under this Agreement. If the Municipality has complied with the terms and conditions of this Agreement at the time of submission of said application, the Bank shall make available at its principal place of business in Anchorage, Alaska, no later than the second business day following receipt of said application by the Bank, funds in the principal amount specified in such application for disbursement.

Section 3. One or more Notes of the Municipality in substantially the form attached hereto and marked as Exhibit "A", shall be issued with respect to each disbursement hereunder. Each Note shall be payable to the order of the Bank and shall be in such principal amount as shall be designated by the Bank. The Notes shall be numbered consecutively from one upward in order of their delivery and shall mature on March 1, 1978. Each Note shall bear interest on the unpaid principal balance outstanding from time to time, with the first interest payment payable three months from the date of the Note and subsequent payments of interest payable quarterly thereafter at the principal office of the Bank. Each Note shall bear a rate of interest per annum computed as follows:

(a) For the first 90 days the Note is outstanding, the rate of interest shall equal 0.70 times the established Bank of America National Trust & Savings Association's prime rate, effective on the date of the Note.

(b) For the next 90 days the Note is outstanding, the rate of interest shall equal 0.80 times the said Bank of America National Trust & Savings Association's prime rate, effective on the first day of the said 90-day period.

(c) For the next 90 days the Note is outstanding, the rate of interest shall equal 0.90 times the said Bank of America National Trust & Savings Association's prime rate, effective on the first day of the said 90-day period.

Section 4. The Municipality may prepay any Notes in whole or in part prior to the stated maturity date thereof, and any time, or from time to time, upon 5 days' written notice to the Bank, without premium or penalty, by paying to the Bank the principal amount to be so repaid, together with unpaid interest accrued thereon to the date of such prepayment. The Notes shall constitute a Note described under the definition of "Municipal Bond" in AS 44.58.410(3).

Section 5. The Municipality shall duly and punctually pay or cause to be paid the principal of every Note and the interest thereon, at the dates and places and in the manner described in the Notes.

Section 6. The Authority will, subject to the provisions of the Loan Agreement and existing law, authorize, sell and deliver Bonds, Notes or other obligations so as to have available an amount sufficient, when taken together with other monies that may be available therefor, to purchase Municipal Bonds of the Municipality on or prior to the

time the principal of and interest on the Notes become due. The Authority will issue no other Bonds, Notes or other obligations prior to the issuance of the said Bonds, Notes or other obligations referred to in the preceding sentence. The Municipality shall promptly apply the proceeds of the Municipal Bonds sold to the Authority to pay the said principal of and interest on the Notes. While the Notes are outstanding, the Municipality shall issue no other indebtedness of any kind except the said Municipal Bonds.

Article II

Representations and Warranties of the Municipality

Section 1. The Municipality has a legal existence independent of and separate from the State which may not be terminated so long as the Notes of the Municipality are outstanding. The Municipality has the power to borrow money from time to time to carry out and effectuate its corporate purposes and to issue its Notes as evidence of any such borrowing as provided by law, and upon such terms as shall be necessary for achieving such purpose. The Municipality has the power to execute and deliver this Agreement and the Loan Agreement, to borrow the amounts and issue the Notes as herein provided and to perform and observe the provisions of this Agreement and the Loan Agreement on its part to be performed and observed. Pursuant to a Resolution the Municipality has authorized the execution and delivery of this Agreement and the Loan Agreement, and the issuance of the Notes on the terms and conditions herein provided for have been duly authorized and determined to be in the best interests of the Municipality and its inhabitants. The execution and delivery of this Agreement and the Loan Agreement do not, and the issuance of the Notes will not, result

in any violation of any of the terms and provisions of or constitute a default under the provisions of any other agreement or instrument, to which the Municipality is a party or by which it is bound.

Section 2. All conditions, acts and things required by the Constitution and Statutes of the State of Alaska to exist, to have happened and to have been performed precedent to or in the issuance of the Notes, shall exist, shall have happened, and shall have been performed, and the Notes, upon their issuance hereunder, and together with all other indebtedness of the Municipality, shall be within and every debt and other limit prescribed by law.

Section 3. There is no litigation pending or to the knowledge of the Municipality threatened, in any court, either state or federal, or before any administrative agency which will materially or adversely affect the financial condition or operation of the Municipality or which questions the creation, organization or existence of the Municipality in any way material to the transactions hereunder or the validity of the Notes to be issued hereunder.

Section 4. The financial statements of the Municipality as of September 30, 1976, which the Municipality has delivered to the Bank prior to the effective date of this Agreement correctly set forth the financial condition of the Municipality as of said date; and since that date, there has been no materially adverse change in the conditions or operations of the Municipality.

Article III

Representations and Warranties of the Authority

The Authority has a legal existence independent of and separate from the State which may not be terminated so

long as the Notes of the Municipality are outstanding. The Authority has the power to execute and deliver this Agreement and the Loan Agreement, and to perform and observe the provisions of this Agreement and the Loan Agreement on its part to be performed and observed. The execution and delivery of this Agreement and the Loan Agreement do not, and the issuance of the Notes will not, result in any violation of any of the terms and provisions of or constitute a default under the provisions of any other agreement or instrument, to which the Authority is a party or by which it is bound.

Article IV

Miscellaneous

Section 1. Pending the issuance and delivery of Municipal Bonds by the Municipality pursuant to the Loan Agreement, the portion of the rental with respect to the Lease referred to in Section 11 of the Loan Agreement directed to be paid to First National Bank of Anchorage - Bethel Office, for the account of the Authority, shall be applied directly by the Authority to the payment of interest on the Notes.

Section 2. The Municipality covenants with the holders of all Notes at any time outstanding that it will make no use of the proceeds of the Notes which will cause the Notes to be "arbitrage bonds" subject to federal income taxation by reason of Section 103(d) of the Internal Revenue Code of 1954. To that end, so long as any of the Notes are outstanding, the Municipality, with respect to the proceeds of the Notes, shall comply with all requirements of said Section 103(d) and all regulations of the United States Department of the Treasury thereunder, to the extent that

such requirements are, at the time, applicable and in effect.

Section 3. The Municipality will use the proceeds of the Notes to plan, design, construct and equip the Bethel Court Building located within the City of Bethel, or, if proper, to reimburse any fund of the Municipality which may have advanced or borrowed money for such purposes.

Section 4. The Bank hereby acknowledges that this Agreement has been duly authorized and approved and contains terms agreed to by it. The Bank is entering into this Agreement to evidence its agreement to make a loan in the ordinary course of its commercial banking business, is familiar with the legislation, rules and regulations relating to limitations upon the public distribution of securities and has no intention of making, nor will it make, any sale or other distribution of the Notes or any of its interests herein in violation of such legislation, rules or regulations.

Section 5. No failure to exercise, and no delay in exercising, on the part of the Bank, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right. The rights of the Bank hereunder shall be in addition to all other rights provided by law. No modification or waiver of any provision of this Agreement or the Notes, or consent to departure therefrom, shall be effective unless in writing and signed by the Bank and no such consent or waiver shall extend beyond the particular case and purpose involved. No notice or demand given in any case shall constitute a waiver of the right to take other action in the same, similar or other instances without such notice or demand.

Section 6. Interest on the Notes shall be computed on the basis of a 365-day year for the actual number of days elapsed.

Section 7. Whenever any payment to be made hereunder or under the Notes shall be stated to be due on a Saturday, Sunday, or any other day observed by the Bank as a legal holiday, such payment may be made on the next succeeding business day and such extension of time shall in such case be included in computing interest in connection with such payment.

Section 9. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

CITY OF BETHEL, ALASKA

By _____

(SEAL)

ATTEST:

ALASKA BANK OF COMMERCE

By _____

(SEAL)

ATTEST:

ALASKA MUNICIPAL BOND BANK
AUTHORITY

By _____

(SEAL)

ATTEST:

EXHIBIT "A"

[FORM OF NOTE]

STATE OF ALASKA
CITY OF BETHEL,
BOND ANTICIPATION NOTE

FOR VALUE RECEIVED, the City of Bethel, a municipal corporation of the State of Alaska, constituting a second-class city organized and existing under Title 29 of the Alaska Statutes, hereby promises to pay to the order of Alaska Bank of Commerce, at its principal office in Anchorage, Alaska, on March 1, 1978, the principal sum of _____
_____ DOLLARS (\$ _____)
in lawful money of the United States of America, and to pay interest thereon at the rates from time to time in effect pursuant to the Loan and Note Purchase Agreement hereinafter mentioned, in like money on the first day of _____,
_____, _____, and _____, commencing on _____ 1, 19__ and continuing until this Note is paid.

This Note is one of the Notes referred to in the Loan and Note Purchase Agreement dated _____, 19__, between the City and Alaska Bank of Commerce, dated as of May 31, 1977. The holder of this Note is entitled to the benefit of the rights and remedies provided in said Loan and Note Purchase Agreement.

The City shall have the right to prepay this Note in whole or in part prior to maturity, without premium or penalty, upon the terms provided in said Loan and Note Purchase Agreement.

This note is one of an authorized series of \$795,000 Bond Anticipation Notes of the City of Bethel, issued pursuant to the Constitution and laws of the State of Alaska, and a resolution of the City adopted on _____, authorizing the issuance of the Notes and the execution and delivery of the Loan and Note Purchase Agreement, and is issued in anticipation of bonds authorized for capital improvements of the City by Ordinance No. 99 of the City after a majority vote of the qualified voters of the City on the proposition to authorize said notes at an election held on May 17, 1977.

This note is a direct and general obligation of the City of Bethel and the full faith and credit of the City are pledged for the annual levy of taxes as provided in AS 29.53.410 to avoid a default on the notes.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required by the Constitution and statutes of the State of Alaska and said Loan and Note Purchase Agreement to exist, to have happened and to have been performed precedent to and in the issuance of this Note exist, have happened and have been performed in due time, form and manner as required by law and that the issue of this Note, along with all other indebtedness of the City, is within every debt and other limit prescribed by law.

IN WITNESS WHEREOF, the City has caused this Note to be executed in its name by the manual signature of its _____ and its official seal to be impressed hereon and attested to by the manual signature of _____, all of the ____ day of _____, 19____.

CITY OF BETHEL, ALASKA

By Gene Jettol

(SEAL)

ATTEST:

Atty. Hill