

Introduced by: Mayor Leinberger
Introduction Date: June 7, 2007
Public Hearing: June 12, 2007
Action: Passed
Vote: 5-1

CITY OF BETHEL, ALASKA

Ordinance #07-14

AN ORDINANCE AUTHORIZING THE ISSUANCE OF LEASE REVENUE BONDS

WHEREAS, the City of Bethel, Alaska (the "City") owns and operates the Braund Building Courthouse complex; and

WHEREAS, pursuant to Section 4.19.020 of the Bethel Municipal Code ("BMC"), the City has established the Braund Building Enterprise Fund into which are deposited all revenues derived from the leasing, licensing, and other revenue-producing uses of the Courthouse Complex (as further defined herein, the "Lease Revenue"); and

WHEREAS, the City issued its Courthouse Complex Revenue Bond, 1999 (the "1999 Bond") in the original principal amount of \$1,700,000, to finance renovations of the Braund Building, which bond remains outstanding in the approximate principal amount of \$1,114,000; and

WHEREAS, the City has undertaken certain improvements to the Courthouse Complex, including the acquisition, construction and equipping of additional courtroom facilities, a new elevator and related capital improvements (the "Improvements"); and

WHEREAS, the City now wishes to refinance the 1999 Bond and provide long-term financing for a portion of the cost of the Improvements by the issuance of lease revenue bonds in the principal amount of not to exceed \$4,000,000; and

WHEREAS, the Alaska Municipal Bond Bank (the "Bond Bank") has approved the City's application for a loan to be secured by the sale of such bonds to the Bond Bank on terms to be established by the City's acting Finance Director and City Manager, as provided herein;

THEREFORE BE IT ORDAINED by the City Council of Bethel, Alaska, as follows:

ARTICLE I DEFINITIONS

SECTION 1.1 Definitions. As used in this ordinance, the following terms shall have the following meanings:

"Annual Debt Service" means, for any Fiscal Year the sum of:

- (i) all interest due in such year on all outstanding Parity Bonds, excluding interest to be paid from the proceeds of Parity Bonds,

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- (ii) the principal of all Serial Bonds due in such year, and
- (iii) the Sinking Fund Requirement, if any, for such year.

"Bond" means the City's Lease Revenue Bond, 2007 (Alaska Municipal Bond Bank Loan), in the principal amount of not to exceed \$4,000,000 authorized to be issued pursuant to this ordinance.

"Bond Bank" means the Alaska Municipal Bond Bank, a public corporation and instrumentality of the State of Alaska, created pursuant to the provisions of Chapter 85, Title 44, Alaska Statutes, as amended.

"Bond Bank Bonds" means a series of bonds issued by the Bond Bank to provide funds to lend to the City in accordance with the Loan Agreement.

"Bond Fund" means the City of Bethel Lease Revenue Bond Fund established pursuant to Section 5.1 of this ordinance to pay and secure the payment of all Parity Bonds.

"Bond Insurance Policy" means any municipal bond insurance policy that may be issued to insure the payment when due of the principal of and interest on the Bond Bank Bonds.

"Bond Register" means the registration records for the Bond maintained by the Registrar.

"City" means the City of Bethel, Alaska, a municipal corporation duly organized and existing under the Constitution and laws of the State of Alaska.

"Code" means the Internal Revenue Code of 1986, as amended, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the United States Treasury Department of the Internal Revenue Service, to the extent applicable to the Bond.

"Consultant" means at any time an independent consultant having a favorable reputation for skill and experience with the operation of properties comparable to the Courthouse Complex selected by the City to perform the duties of the Consultant as required by this ordinance. For the purpose of providing a certificate required by Section 7.2© hereof, the term Consultant may also include an independent public accounting firm appointed by the City to provide such certificate.

"Costs of Maintenance and Operation" means all necessary operating expenses (net of any reimbursement of such expenses by any tenant of the Courthouse Complex), current maintenance expenses, expenses of reasonable upkeep and repairs, and insurance and administrative expense with respect to the courthouse Complex, but excludes depreciation,

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payments for debt service or into debt service reserve accounts with respect to obligations of the City payable from Lease Revenue, costs of capital additions to or replacements of the Courthouse Complex, municipal taxes, or payments to the City in lieu of taxes.

“Council” means the legislative authority of the City, as duly constituted from time to time.

“Courthouse Complex” means the Braund Building courthouse complex located in Bethel, Alaska.

“Debt Service Account” means the account of that name authorized to be established within the Bond Fund pursuant to Article V of this ordinance.

“Federal Tax Certificate” means the certificate executed by the City setting forth certain covenants relating to the tax-exempt status of interest on the Bond.

“Finance Director” means the Finance Director or Acting Finance Director of the City or the successor to the duties of such office.

“Fiscal Year” means the fiscal year used by the City at any time. At the time of the adoption of this ordinance, the Fiscal Year is the twelve-month period beginning July 1 of each year and ending June 30 of the following year.

“Future Parity Bonds” means any lease revenue bonds of the City, the principal of and interest on which are payable from the Revenue Fund on a parity with the payments required to be made from such Fund to pay and secure the payment of the principal of and interest on the Bond.

“Government Obligations” means direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States Government.

“Improvements” means the acquisition, construction and equipping of additional courtroom facilities, a new elevator, and related capital improvements to the Courthouse Complex heretofore authorized by the City Council

“Junior Lien Obligations” means lease revenue bonds or other obligations issued by the City pursuant to the provisions of Section 7.4 of this ordinance.

“Lease Revenue” means all revenues derived from the leasing, licensing, and other revenue-producing uses of the Courthouse Complex, including income from the investment of any money in the Revenue Fund, the Bond Fund and any other bond or redemption fund for lease revenue bonds (but excluding bond proceeds, income from investments of bond proceeds, and income from investments irrevocably pledged to the payment of lease revenue bonds pursuant to a plan of defeasance or refunding).

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"Loan Agreement" means the Loan Agreement authorized to be entered into by and between the City and the Bond Bank pursuant to Section 8.3 of this ordinance.

"Net Revenue" means all Lease Revenue less the Costs of Maintenance and Operation.

"Parity Bonds" means the Bond and any Future Parity Bonds.

"Project Fund" means the Courthouse Complex Expansion Capital Improvement Projects Fund heretofore established by the City.

"Rebate Amount" means the amount, if any, determined to be payable with respect to the bond by the City to the United States of America in accordance with Section 148(f) of the Code.

"Registered Owner" means the person in whose name a Bond is registered on the Bond Register.

"Registrar" means the Finance Director, for the purposes of registering and authenticating the Bond, maintaining the Bond Register, and paying the principal of and interest on the Bond.

"Reserve Account" means the account of that name established within the bond Fund pursuant to Article V of this ordinance.

"Reserve Requirement" means the least of (i) maximum Annual Debt Service, (ii) 125% of average Annual Debt Service, or (iii) 10% of the face amount of the Parity Bonds.

"Revenue Fund" means the "Braund Building Enterprise Fund" established pursuant to Section 4.19.020 of the BMC, into which all Lease Revenue is deposited as received.

"Serial Bond" means the Bond and Future Parity Bonds other than Term Bonds.

"Sinking Fund Requirement" means, for any Fiscal Year, the principal amount of Term Bonds required to be purchased, redeemed or paid at maturity in such year as established by the ordinance or resolution of the City authorizing the issuance of such Term Bonds.

"Term Bonds" means any Future Parity Bonds identified as such in the ordinance or resolution authorizing the issuance thereof, the payment of the principal of which is provided for by deposits of money into the Debt Service Account equal (in the aggregate) to the full principal amount of such Term Bonds and by a mandatory redemption schedule corresponding (as to time and amounts) to such schedule of deposits.

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ARTICLE II FINDINGS

Section 2.1. Best Interests of the City. The Council hereby finds and determines that it is in the best interests of the City and its residents that the City issue its lease revenue bonds to refinance the 1999 Bond, finance a portion of the cost of the Improvements, and pay the costs of issuing such bonds.

Section 2.2. Declaration as to Obligations. The council hereby declares, in fixing the amounts to be paid into the Bond Fund and the accounts therein, that it has exercised due regard for the Costs of Maintenance and Operation of the Courthouse Complex and has not obligated the City to set aside and pay into the Bond fund and accounts therein more of the Lease Revenue that in its judgment will be available over the above such Costs of Maintenance and Operation.

ARTICLE III AUTHORIZATION, ISSUANCE AND PREPAYMENT OF BONDS

Section 3.1. Authorization of Bond. The City shall now issue and sell not to exceed \$4,000,000 principal amount of lease revenue bonds for the purposes of refinancing the 1999 Bond, financing a portion of the cost of the Improvements, and paying costs of issuance of the bonds. Such bonds shall be issued to the Bond Bank as a single bond, designated as the "City of Bethel Lease Revenue Bond, 2007 (Alaska Municipal Bond Bank Loan)" (the "Bond"), shall be fully registered as to principal and interest, shall be dated as of the date to be established in accordance with Section 8.3 hereof, shall be numbered in such manner and with any additional designation as the Registrar deems necessary for purposes of identification and control, and shall bear interest at the rate of rates, mature on the date or dates and be paid in installments in the principal amounts and on the dates to be determined in accordance with Section 8.3. Interest on the Bond shall be calculated based on a 360-day year of twelve 30-day months.

Section 3.2. Payment, Registration and Transfer. The Finance Director shall act as authenticating agent, paying agent and registrar for the Bond (collectively, the "Registrar"). Both principal of and interest on the Bond shall be payable in lawful money of the United States of America. Installments of principal of and interest on the bond shall be paid by check or draft of the Registrar mailed (on the date such interest is due) to the Registered Owner at the address appearing on the bond Register on the fifteenth day of the month preceding each interest payment date. The final installment of principal of the bond shall be payable upon presentation and surrender of the Bond to the Registrar by the Registered Owner at the office of the Registrar in Bethel, Alaska. Notwithstanding the foregoing, so long as the Bond Bank is the Registered Owner of the Bond, payments of principal of and interest on the Bond shall be made to the Bond Bank in accordance with the Loan Agreement.

The Bond may be transferred only on the Bond Register maintained by the Registrar for that purpose upon the surrender thereof by the Registered Owner or his/her duly authorized agent and only if endorsed in the manner provided thereon, and thereupon a new fully

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registered Bond of like principal amount, maturity and interest rate shall be issued to the transferee in exchange therefor. Upon surrender thereof to the Registrar, the Bond is interchangeable for a bond or bonds (in denominations of \$5,000 or any integral multiple thereof) of an equal aggregate principal amount and of the same interest rates and principal payment amounts as the Bond. Such transfer or exchange shall be without cost to the Registered Owner or transferee.

The City may deem the person in whose name the Bond is registered to be the absolute owner thereof for the purpose of receiving payments of the principal of and interest on the Bond and for any and all other purposes whatsoever.

Section 3.3. Prepayment. Provisions for the optional prepayment of some or all principal installments of the Bond may be established pursuant to Section 8.3 and shall be set forth in the Loan Agreement. Portions of the principal amount of the Bond, in installments of \$5,000 or any integral multiple of \$5,000, may be prepaid.

So long as the Bond Bank is the Registered Owner of the Bond, notice of prepayment shall be given according to the terms of the Loan Agreement. If the Bond Bank is not the Registered Owner of the bond, notice of prepayment shall be given not less than 30 not more than 60 days prior to the date fixed for prepayment by first class mail, postage prepaid, to the Registered Owner of the Bond at the address appearing on the Bond Register. The requirements of this section shall be deemed complied with when notice is mailed as herein provided, regardless of whether or not it is actually received by the owner of the Bond.

Each official notice of prepayment shall be dated and shall state: (i) the prepayment date; (ii) the prepayment price or prepayment premium, if any, payable upon such prepayment; (iii) if less than all of an installment of principal is to be prepaid, the principal amount to be prepaid (which must be an integral multiple of \$5,000); (iv) that the interest on the Bond, or on the principal amount thereof to be prepaid, designated for prepayment in such notice, shall cease to accrue from and after such prepayment date; and (v) that on such date there will become due and payable on the Bond the principal amount thereof to be prepaid and the interest accrued on such principal amount to the prepayment date.

ARTICLE IV FORM OF BOND AND GENERAL TERMS

Section 4.1. Form of Bond. The bond shall be in substantially the following form, with such modifications as may be necessary or advisable to comply with the Loan Agreement:

UNITED STATES OF AMERICA

STATE OF ALASKA

CITY OF BETHEL
LEASE REVENUE BOND, 2007

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(ALASKA MUNICIPAL BOND BANK LOAN)

FINAL MATURITY DATE:

INTEREST RATES: See Below

REGISTERED OWNER: ALASKA MUNICIPAL BOND BANK

PRINCIPAL AMOUNT: _____ AND NO/100
 DOLLARS

The City of Bethel, Alaska (the "City"), a municipal corporation organized and existing under and by virtue of the laws and Constitution of the State of Alaska, hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns, the Principal Amount indicated above in accordance with the installment payment schedule set forth below (unless prepaid prior thereto as provided herein), together with interest on such installments from the date hereof or the most recent date to which interest has been paid or duly provided for, at the interest rates set forth below, on _____, 20____, and on each _____1 and _____1 thereafter:

Year of Principal Installment Payment (_____)	Principal Installment Amount	Interest Rate
2008	\$	
2009		
2010		
2011		
2012		
2013		
2014		
2015		
2016		
2017		
2018		
2019		
2020		
2021		
2022		
2023		
2024		
2025		
2026		
2027		
2028		

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Principal of, interest, and premium, if any, on this Bond are payable solely out of the special fund of the City known as the "City of Bethel Lease Revenue Bond Fund" (the "Bond Fund") established pursuant to Ordinance No. 14 of the City (the "Bond Ordinance"). Both principal of and interest on this Bond are payable in lawful money of the United State of America. Installments of principal of and interest on this Bond are payable by check or draft of the City's Finance Director (the "Registrar") mailed (on the date such interest is due) to the Registered Owner hereof at the address appearing on the records maintained by the Registrar as of the fifteenth day of the month preceding the interest payment date. The final installment of principal of and interest on this Bond shall be paid to the Registered Owner hereof upon presentation and surrender of this bond at the office of the Registrar in Bethel, Alaska. Notwithstanding the foregoing, so long as the bond Bank is the Registered Owner of this Bond, payments of principal of and interest on this Bond shall be made to the Bond Bank in accordance with the Loan Agreement.

This Bond is issued under and pursuant to the Bond Ordinance, and under the authority of and in full compliance with the Constitution and laws of the State of Alaska. This Bond is issued to refinance an outstanding lease revenue obligation of the City and to finance the costs of certain capital improvements to the City's Courthouse Complex. Capitalized terms used and not otherwise defined on this Bond shall have the meanings given such terms in the Bond Ordinance.

This Bond is subject to prepayment as provided in the Bond Ordinance and the Loan Agreement.

By the Bond Ordinance, the City has pledged to set aside from the Revenue fund, and to pay into the bond fund and Debt Service Account and Reserve Account therein, the various amounts required by the Bond Ordinance to be paid into and maintained in said fund and accounts, all within the times provided by the bond Ordinance. The City has further pledged and bound itself to pay into the Revenue Fund as collected all of the Lease Revenue.

Said amounts so pledged to be paid out of the Revenue Fund into the bond Fund and the Accounts therein are hereby declared to be a prior lien and charge upon the money in the Revenue Fund superior to all other charges of any kind or nature except the Costs of Maintenance and Operation and equal in rank to any charges that may be made on the Revenue Fund to pay and secure the payment of any Future Parity Bonds.

The obligations of the City under the Bond Ordinance may be discharged upon the making of provision for the payment of this Bond on the terms and conditions set forth in the Bond Ordinance and the Loan Agreement.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the bond Ordinance until the Certificate of Authentication hereon shall have been manually signed by the Registrar.

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It is hereby certified, recited and declared that the Bond is issued pursuant to and in strict compliance with the constitution and laws of the State of Alaska, and ordinances and resolutions of the City of Bethel, and that all acts, conditions and things required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed.

IN WITNESS WHEREOF, the City of Bethel, Alaska, has caused this Bond to be signed on behalf of the City with the manual or facsimile signature of the Mayor, to be attested by the manual or facsimile signature of the City Clerk, and the seal of the City to be imprinted or impressed hereon, as of June, 2007.

CITY OF BETHEL, ALASKA

By 
Daniel C. Leinberger, Mayor

(SEAL)

Attest:


Sandra Modigh, City Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____, 2007

This is the City of Bethel Lease Revenue Bond, 2007 (Alaska Municipal Bond Bank Loan), dated _____, 2007, as described in the Bond Ordinance.

By _____
Finance Director, City of Bethel,
as Registrar

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR TAXPAYER IDENTIFICATION NUMBER OF TRANSFEREE

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(Please print or typewrite name and address, including zip code, or Transferee)

the within bond and does hereby irrevocably constitute and appoint _____ of _____, or its successor, as Registrar to transfer said bond on the books kept for registration thereof with full power of substitution in the premises.

DATED: _____, 20____

SIGNATURE GUARANTEED:

NOTICE: Signature(s) must be guaranteed
Pursuant to law.

NOTE: The signature on this Assignment must correspond with the name of the registered owner as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

Section 4.2. Execution and Authentication of Bond. The Bond shall be signed on behalf of the City with the facsimile or manual signature of the Mayor, shall be attested by the facsimile or manual signature of the City Clerk, and the seal of the City shall be impressed or imprinted thereon. Only such Bond as shall bear thereon a Certificate of Authentication in the form set forth in Section 4.1 hereof, manually executed by the Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance. Such Certificate of Authentication shall be conclusive evidence that the bond so authenticated has been executed, duly authenticated, registered, and delivered under this ordinance and is entitled to the benefits of this ordinance.

In case any of the officers of the City who shall have signed, attested, authenticated, registered, or sealed the Bond shall cease to be such officers before the Bond so signed, attested, authenticated, registered or sealed has been actually issued and delivered, such Bond shall be valid nevertheless and may be issued by the City with the same effect as though the persons who had signed, attested, authenticated, registered or sealed the Bond had not ceased to be such officers. The Bond may also be signed and attested on behalf of the City by such persons as at the actual date of execution of the Bond shall be the proper officers of the City although at the original date of the Bond any such person shall not have been such officer.

Section 4.3. Lost or Destroyed Bond. If the Bond is lost, stolen or destroyed, the Registrar may authenticate and deliver a new Bond of like amount, maturity and tenor to the Registered Owner upon the owner's paying the expenses and charges of the City in connection

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with preparation and authentication of the replacement Bond and upon his or her filing with the Registrar evidence satisfactory to him or her that such Bond was actually lost, stolen or destroyed and of his or her ownership, and upon furnishing the City with indemnity satisfactory to the Registrar.

ARTICLE V
BOND FUND AND DEFEASANCE

Section 5.1. Bond Fund; Debt Service Account.

(a) Bond Fund. There is hereby authorized to be established a special fund of the City designated as the "City of Bethel Lease Revenue Bond Fund" (the "Bond Fund"), which fund is to be drawn upon for the sole purpose of paying the principal of, premium, if any, and interest on Parity Bonds. Within the Bond Fund there is hereby authorized to be established a Debt Service Account and a Reserve Account.

(b) Payments into Debt Service Account. So long as the Bond remains outstanding, the City hereby obligates and binds itself to set aside and pay into the Debt Service Account out of money in the Revenue Fund, the following:

(i) On or before the 25th day of each month, commencing in the first month following the issuance of the Bond, a proportional amount of the interest due on the Bond on the next succeeding interest payment date; and

(ii) On or before the 25th day of each month, commencing in the first month following the issuance of the Bond, a proportional amount of the principal due on the Bond on the next succeeding principal payment date; and

(iii) Amounts required to be transferred from the Reserve Account pursuant to Section 5.2(b) hereof.

The City covenants that in the event it issues any Future Parity Bonds that are Term Bonds, it will provide in each ordinance or resolution authorizing the issuance of the same for payments to be made from the Revenue Fund into the Debt Service Account in amounts sufficient, together with any money available therefor in the Debt Service Account, to satisfy the Sinking Fund Requirement with respect to such Term Bonds.

Money in the Debt Service Account shall be held for the benefit of the owners of all Parity Bonds then outstanding and payable equally and ratably and without preference or distinction as between different series, installments or maturities.

Section 5.2. Reserve Account.

(a) Reserve Account. The Reserve Account shall be maintained to secure the payment of the principal of, premium, if any, and interest on the Bond and any Future Parity

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Bonds. The City hereby covenants and agrees to deposit into the Reserve Account when the Bond is issued, from Bond proceeds or other funds of the City available therefor, an amount sufficient to satisfy the Reserve Requirement for the Bond.

The City further covenants and agrees that in the event it issues any Future Parity Bonds it will provide in each ordinance authorizing the issuance of such Future Parity Bonds that on or prior to the date of issuance of such Future Parity Bonds money shall be deposited into the Reserve Account, from proceeds of such bonds or other funds available therefor, so that the total amount of money in the Reserve Account will at least equal the Reserve Requirement.

The City further covenants that it will at all times maintain an amount in the Reserve Account sufficient to satisfy the Reserve Requirement, as redetermined each Fiscal Year with respect to the Parity Bonds secured thereby. Whenever there is a sufficient amount in the Bond fund, including all accounts therein, to pay the principal of, premium, if any, and interest on all Parity Bonds then outstanding, the money in the Reserve Account may be used to pay the principal of, premium, if any, and interest on the Parity Bonds secured thereby, after all funds available for such purpose in the Debt Service Account have been so used. Money in the Reserve Account may also be withdrawn to redeem and retire, and to pay the premium, if any, and interest due to such date of redemption, of the parity Bonds secured thereby, so long as the money remaining on deposit in the Reserve Account is at least equal to the Reserve Requirement determined with respect to the parity Bonds then outstanding.

(b) Deficiency in Debt Service Account. In the event there shall be a deficiency in the Debt Service Account to make any payment of interest on or principal of and interest on any Parity Bonds, such deficiency shall be made up by withdrawal of money from the Reserve Account and the sale or redemption of obligations held in the Reserve Account, if necessary, in such amounts as will provide cash in the Reserve Account sufficient to make up any such deficiency. Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up out of Net Revenue, after making necessary provision for the payments required to be made by paragraphs First through Third, inclusive, of Section 7.1 of this ordinance, as soon as sufficient Net Revenue is available, but in any event no later than six months following any such withdrawal.

(c) Investment of Reserve Account Funds. Money in the Reserve Account may be kept in cash or invested in lawful investments for City funds maturing not later than the final maturity of the bond. Interest earned on any such investments and/or any profits realized from the sale thereof shall be deposited in and become a part of the Revenue Fund.

Section 5.3. Lien of bond. The amounts pledged by this ordinance to be paid out of the Revenue Fund into the Bond Fund and the Debt Service Account and Reserve Account therein are hereby declared to be a prior lien and charge upon all the money in the Revenue Fund superior to all other charges of any kind or nature except the charges required to pay Costs of Maintenance and Operation and equal in rank to any charges that may later be made on money in the Revenue Fund to pay the principal of, premium, if any, and interest on any Future Parity Bonds.

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Section 5.4. Defeasance. In the event that money and/or government Obligations maturing at such time or times and bearing interest to be earned thereon in amounts (together with such money, if necessary) sufficient to prepay and retire the bond or a portion thereof in accordance with its terms, are set aside in a trust or escrow account held by a bank or trust company to effect such prepayment and retirement, and such money and the principal of and interest on such obligations are irrevocably set aside and pledged for such purpose for the benefit of the owner of the Bond or portion thereof, then no further payments need be made into the Debt Service Account for the payment of the principal of and interest on the Bond or portion thereof so provided for, and the bond or portion thereof shall cease to be entitled to any lien, benefit or security of this ordinance except the right to receive the money so set aside and pledged, and such Bond or portion thereof shall be deemed not to be outstanding hereunder.

ARTICLE VI DISPOSITION OF BOND PROCEEDS

Section 6.1. Project Fund. There has heretofore been established a special fund of the City designated as the "Courthouse Complex Expansion Capital Improvement projects Fund" (the "Project Fund"). The Project Fund shall be used to pay costs of the Improvements, including reimbursing any fund of the City that has advanced money for such purposes and, if necessary, paying interest on the bond during the construction of the Improvements and for a period not to exceed six months after completion of the Improvements, and to pay costs of issuing the Bond. Money in the Project Fund may be invested as permitted by Alaska law. Earnings on the investment of money in the Project Fund shall be deposited in such fund.

After the payment in full of all costs of the Improvements, or after adequate provision has been made for such payment, any money remaining in the Project Fund shall, at the direction of the City Council, be applied to additional capital improvements of the courthouse Complex or be deposited into the Bond Fund.

Section 6.2. Disposition of Bond Proceeds. The proceeds of the Bond shall be deposited as follows:

- (1) Accrued interest, if any, received at the time of delivery of the Bond shall be paid into the Bond Fund.
- (2) The amount sufficient to satisfy the Reserve Requirement shall be deposited into the Reserve Account.
- (3) An amount sufficient to pay in full the 1999 bond shall be deposited in the Leased Property Courthouse Complex Fund and paid to Wells Fargo Bank, owner of the 1999 Bond.

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(4) The balance of the proceeds of the Bond shall be deposited in the Project Fund and applied as provided in Section 6.1.

ARTICLE VII
BOND COVENANTS

Section 7.1. Revenue Fund. Pursuant to Section 4.19.020 BMC, there has heretofore been established a special fund of the City known as the "Braund Building Enterprise Fund" (the "Revenue Fund"), into which all Lease Revenue shall be deposited as collected. The Revenue Fund shall be held separate and apart from all other funds and accounts of the City. The Lease Revenue deposited in the Revenue Fund shall be used only for the following purposes and in the following order of priority; provided, however, that any payments in lieu of taxes shall be subordinate to the payments required to be made into the Bond fund out of the Revenue Fund:

First, to pay the Costs of Maintenance and Operation;

Second, to make all payments required to be made into the Debt Service Account to pay the interest on any Parity Bonds;

Third, to make all payments required to be made into the Debt Service Account to pay the maturing principal of any Serial Bonds and to satisfy the Sinking Fund Requirement;

Fourth, to make all payments required to be made into the Reserve Account;

Fifth, to make all payments required to be made into any bond redemption fund, debt service account, reserve account or sinking fund account established to pay and secure the payment of the principal of and interest on any revenue bonds or other revenue obligations of the City having a lien on the Lease Revenue junior and inferior to the lien thereon for the payment of the principal of and interest on the Parity Bonds;

Sixth, to retire by redemption or purchase in the open market any outstanding revenue bonds or other obligations of the City payable from the Revenue Fund, to make necessary additions, betterments, improvements and repairs to or replacements of the Courthouse Complex, or for any other lawful City purpose.

Section 7.2. General Covenants. The City hereby covenants with the owner of the Bond, so long as the Bond is outstanding, as follows:

(a) Rate Covenant. That it will at all times establish, maintain and collect rentals, fees, and charges in the operation of the Courthouse Complex for as long as the Bond is outstanding that will produce Net Revenue in each Fiscal Year in an amount equal to at least 1.25 times Annual Debt Service. If this rate covenant is not met in any Fiscal Year, the City will retain a Consultant to make recommendations regarding the operation of the Courthouse Complex and the rentals, fees and charges established for use of the Courthouse Complex. The

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City shall not be in default under this subsection (a) so long as the Council, to the extent permitted by law, within the next Fiscal Year, adopts the recommendations of such Consultant regarding the operations of the courthouse Complex and any changes in rentals, fees and charges for use of the Courthouse Complex.

(b) Operation and Maintenance of Courthouse Complex; Enforcement of Leases. That it will at all times maintain and keep the Courthouse Complex in good repair, working order and condition, and will at all times operate the courthouse Complex and the business in connection therewith in an efficient manner and at a reasonable cost. The City will perform at all times all of its covenants, undertakings, stipulations and provisions under any lease by the City of any portion of the Courthouse Complex, including but not limited to the leases by the City of portions of the Courthouse Complex to the State of Alaska, and the City will enforce against any tenant under such lease, including but not limited to the State of Alaska, all of the tenant's covenants, undertakings, stipulations and provisions under such lease.

(c) Sale or Disposition. That it will not mortgage, sell or otherwise encumber or dispose of the Courthouse Complex unless provision is made for payment into the Bond Fund of a sum sufficient to pay the principal and interest of all the outstanding Parity Bonds in accordance with the terms thereof, nor will it sell or otherwise dispose of any portion of the real property constituting the Courthouse Complex unless (i) the City (A) replaces such property with property that produces for the Revenue Fund approximately the same amount of revenue and (B) receives the prior written consent of the Bond Bank to such replacement or (ii) the City provides for payment into the bond Fund of one of the following (as the Council may determine in its sole discretion):

(1) an amount that will be in the same proportion of the net principal amount of Parity bonds then outstanding (defined as the total principal amount of such bonds then outstanding less the amount of cash and investments in the Bond Fund) that the Lease Revenue attributable to the portion of the Courthouse Complex to be sold or disposed of for any consecutive 36 of the 48 months preceding such sale or disposition bears to total Lease Revenue for such period; or

(2) an amount that will be in the same proportion of the net principal amount of Parity Bonds then outstanding (as defined above) that the Net Revenue attributable to the portion of the courthouse Complex to be sold or disposed of for any consecutive 36 of the 48 months preceding such sale or disposition bears to total Net Revenue for such period; or

(3) an amount that will be in the same proportion to the net principal amount of Parity Bonds then outstanding (as defined above) that the book value of the portion of the courthouse Complex sold or disposed of bears to the book value of all of the Courthouse complex immediately prior to such sale or disposition; and

the City obtains a certificate from a consultant to the effect that the portion of the courthouse Complex remaining after such sale or disposition shall provide sufficient Lease Revenue to pay when due the principal of and interest on the Parity Bonds that remain outstanding.

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Any such money so paid into the Bond Fund shall be used to retire Parity Bonds at the earliest possible date.

Notwithstanding anything in this Section 7.2(c) to the contrary, the City may sell or otherwise dispose of any real or personal property constituting part of the Courthouse Complex with a value of less than 5% of the net book value of the courthouse Complex or that has become unserviceable, inadequate, obsolete or unfit to be used in the operation of the Courthouse Complex, or no longer necessary, material to or useful in such operation, without making any deposit into the Bond Fund.

(d) Annual Audit. That it will within a period of 180 days following the close of each Fiscal Year cause an audit of the Revenue Fund and any other books and accounts of the Courthouse Complex to be made by an independent certified public accountant or firm of certified public accountants, which audit shall show the income and expenditures of the Courthouse Complex, the balance sheet as of the end of such Fiscal Year, comments in regard to the manner in which the City has carried out the requirements of this ordinance, a list and amount of insurance policies in force on any part of the Courthouse Complex, and the number and classification of Courthouse Complex customers.

(e) Insurance. That it will at all times carry fire and extended coverage, commercial general liability and property damage and such other forms of insurance with responsible insurers and with policies payable to the City for the full replacement value of the Courthouse Complex.

Section 7.3. Future Parity Bonds. The City hereby covenants and agrees with the owner of the Bond for as long as it remains outstanding that the City will not create any special fund or funds for the payment of any other lease revenue bonds that will rank on a parity with or have any priority over the payments out of the Revenue Fund into the bond Fund and the accounts therein, except that it hereby reserves the right, for the purpose of refunding any outstanding bonds that are a lien upon Lease Revenue or the money in the Revenue Fund, or for the purpose of acquiring, constructing and equipping improvements to and making necessary replacements or other capital improvements to the courthouse Complex, to issue Future Parity bonds upon compliance with the following conditions:

(1) That at the time of the issuance of such Future Parity bonds there is no deficiency in the Bond Fund or any accounts therein.

(2) The Future Parity bonds shall be payable from the Bond Fund, and the ordinance authorizing such Future Parity Bonds shall provide for monthly payments into the Debt Service Account comparable to the provisions of Section 5.1(b) and payments into the Reserve Account to satisfy the Reserve Requirement in accordance with Section 5.2.

(3) The City shall have received the prior written consent of the Bond Bank to the issuance of such Future Parity Bonds.

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(4) Notwithstanding the foregoing requirements, if Future Parity Bonds are to be issued for the purpose of refunding at or prior to their maturity any part or all of then outstanding Parity Bonds and the issuance of such refunding bonds results in a debt service savings and does not require an increase of more than \$5,000 in any year for Debt Service on such refunding bonds, the consent of the Bond Bank required by subsection (3) of this section need not be obtained.

Section 7.4. Junior Lien Obligations. Nothing contained in this ordinance shall prevent the City from issuing obligations payable from a lien on Lease Revenue that is junior and inferior to the lien thereon of the Parity Bonds.

Section 7.5. Tax Covenants; Special Designation.

(a) General. The City intends that interest on the bonds shall be excludable from gross income for federal income tax purposes pursuant to sections 103 and 141 through 150 of the Code, and the applicable regulations. The City covenants not to take any action, or knowingly omit to take any action within its control, that if taken or omitted would cause the interest on the Bonds to be includable in gross income, as defined in section 61 of the Code, for federal income tax purposes.

(b) Federal Tax Certificate. Upon the issuance of the Bonds, the Finance Director is authorized to execute a federal tax certificate (the "Federal Tax Certificate"), which will certify to various facts and representations concerning the Bonds, based on the facts and estimates known or reasonably expected on the date of issuance of the Bonds, and make certain covenants with respect to the Bonds, including the following:

(1) *No Arbitrage Bonds.* The City hereby covenants that it will not make any use of the proceeds of sale of the Bonds or any other funds of the City that may be deemed to be proceeds of the Bonds pursuant to Section 148 of the Code and the applicable regulations thereunder that will cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code (or any successor provision thereof applicable to the Bonds) and the applicable regulations thereunder throughout the term of the Bonds.

(2) *No Federal Guarantee.* The City has not and will not take any action, and has not knowingly omitted and will not knowingly omit to take any action within its control, that, if taken or omitted would cause the Bonds to be "federally guaranteed" within the meaning of the Code, as further described in the Federal Tax Certificate.

(3) *Arbitrage Rebate.* The City will pay the Rebate Amount, if any, to the United States of America at the times and in the amounts necessary to meet the requirements of the Code to maintain the federal income tax exemption for interest payments on the Bonds, in accordance with the Federal Tax Certificate.

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The City covenants that it will comply with the Federal Tax Certificate unless it receives advice from nationally recognized bond counsel or the Internal Revenue Service that certain provisions have been amended or no longer apply to the Bonds.

ARTICLE VIII MISCELLANEOUS

Section 8.1. Ordinance a Contract. This ordinance shall constitute a contract with the owner of the Bond, enforceable by the owner of the Bond by mandamus or any other appropriate suit or action in any court of competent jurisdiction.

Section 8.2. Benefits of Ordinance Limited. Nothing in this ordinance expressed or implied, is intended or shall be construed to confer upon or give to any person or corporation other than the City, the Registrar, and the owner from time to time of the Bond any rights, remedies or claims under or by reason of this ordinance or any covenant, condition or stipulation thereof; and all the covenants, stipulations, promises and agreements in this ordinance contained by or on behalf of the City shall be for the sole and exclusive benefit of the City, the Registrar, and the owner from time to time of the Bond.

Section 8.3. Sale of the Bond; Ongoing Disclosure. The Finance Director is hereby authorized to negotiate the sale of the Bond to the Bond Bank on terms and conditions, consistent with this ordinance. The terms and conditions of the Bond shall be set forth in a Loan Agreement by and between the City and the Bond Bank in substantially the form set forth as Exhibit A hereto, and shall include the principal amount of the Bond, the date, interest payment dates, maturity schedule, interest rates, and prepayment provisions of the Bond, provisions for an undertaking for ongoing disclosure with respect to the Bond, and any other matters provided for by or not in conflict with this ordinance. The Finance Director is hereby authorized and directed to sign the Loan Agreement on behalf of the City. If the Loan Agreement negotiated pursuant to this Section 8.3 provides for the issuance of a Bond Insurance Policy, the Council may, by resolution (Notwithstanding any provisions of Section 8.5 of this ordinance to the contrary), modify or supplement any terms of this ordinance as may be required to comply with the commitment of the bond insurer to provide such Bond Insurance Policy. The authority delegated to the Finance Director to provide for sale of the Bond shall terminate on December 31, 2007, unless hereafter extended by resolution of the Council.

Section 8.4. General Authorization; Prior Acts. The Mayor, City Manager, City Clerk and Finance Director of the City and any other appropriate officers of the City are each hereby authorized and directed to take such steps, to do such other acts and things, and to execute such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable to carry out the terms and provisions of, and complete the transactions contemplated by this ordinance. All acts taken pursuant to the authority of this ordinance but prior to its effective date are hereby ratified and confirmed.

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Section 8.5. Amendments.

(a) Without Consent of Bondowner. The Council from time to time and at any time may adopt an ordinance or ordinances supplemental hereof, which ordinance or ordinances thereafter shall become a part of this ordinance, for any one or more or all of the following purposes:

(1) To add to the covenants and agreements of the City in this ordinance other covenants and agreements thereafter to be observed that do not adversely affect the interests of the owner of the Bond in any material respect, or to surrender any right or power herein reserved to or conferred upon the City.

(2) To make such provisions for the purpose of curing any ambiguities or of curing, correcting or supplementing any defective provision contained in this ordinance in regard to such matters or questions as the Council may deem necessary or desirable and not inconsistent with this ordinance and that do not adversely affect the interests of the owner of the Bond in any material respect.

(3) To amend or supplement any provision contained in this ordinance for the purpose of obtaining or maintaining a rating on the Bond or the Bond Bank Bonds so long as such amendment or supplement is not inconsistent with this ordinance and will not adversely affect the interests of the owner of the Bond in any material respect.

Any such supplemental ordinance of the Council may be adopted without the consent of the owner of the Bond at any time outstanding, notwithstanding any of the provisions of subsection (b) of this section; provided, however, that the City shall obtain an opinion of nationally recognized bond counsel to the effect that such supplemental ordinance complies with this subsection (a) and will not adversely affect the interests of the owner of the Bond in any material respect.

(b) With Bondowner's Consent. With the consent of the owner of the Bond, the Council may adopt an ordinance or ordinances supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this ordinance or of any supplemental ordinance. It shall not be necessary for the consent of the Bondowner under this subsection (b) to approve the particular form of any proposed supplemental ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

(c) Effective Date of Supplemental Ordinance. Upon the adoption of any supplemental ordinance pursuant to the provisions of this Section 8.5, this ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City under this ordinance and the owner of the Bond shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and

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amendments, and all the terms and conditions of any such supplemental ordinance shall be deemed to be part of the terms and conditions of this ordinance for any and all purposes.

Section 8.6. Severability. If any one or more of the covenants or agreements provided in this ordinance on the part of the City to be performed shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements shall be null and void and shall be deemed separable from the remaining covenants and agreements, and shall in no way affect the validity of the other provisions of this ordinance or of the Bonds issued hereunder.

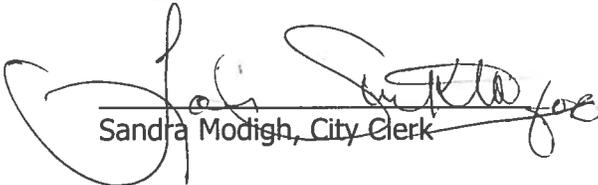
SECTION 3. Effective Date. In accordance with Section 2.04.160(D) of the BMC, this ordinance shall be in full force and effect immediately upon its passage by the Bethel City Council.

ENACTED THIS 7th DAY OF JUNE 2007, BY A VOTE OF 5 IN FAVOR AND 1 OPPOSED.



Daniel C. Leinberger, Mayor

ATTEST:



Sandra Modigh, City Clerk