

Introduced by: City Manager, Ann K. Capela
Date: September 13, 2016
Public Hearing: September 27, 2016
October 11, 2016
Action: Passed
Vote: 7-0

CITY OF BETHEL, ALASKA

Ordinance #16-28

AN ORDINANCE AUTHORIZING THE CITY OF BETHEL TO ISSUE A LEASE REVENUE REFUNDING BOND, 2016 IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$2,400,000, TO REFUND CERTAIN OUTSTANDING LEASE REVENUE BONDS OF THE CITY, FIXING CERTAIN DETAILS OF SUCH BOND AND AUTHORIZING THE SALE OF SUCH BOND, AND PROVIDING FOR RELATED MATTERS

WHEREAS, the City of Bethel, Alaska (the "City"), a second class city organized under the Constitution and laws of the State, owns and operates the Nora Guinn Courthouse Building, formerly known as the Braund Building Courthouse (the "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, there is now outstanding \$2,470,000 principal amount of Lease Revenue Bond, 2007 of the City (the "2007 Bond") issued under Ordinance #07-14 approved by the Council on June 12, 2007; and

WHEREAS, the Council finds that it is in the best interest of the City to provide for the refunding, including the payment of principal of and interest on, those principal installments of the 2007 Bond maturing on and after September 1, 2018, in the aggregate principal amount of \$2,295,000, whose refunding the City Manager or City Finance Director determines will produce the debt service savings specified in this ordinance, by the issuance of a lease revenue refunding bond in the aggregate principal amount of not to exceed \$2,400,000 (the "Bond"); and

WHEREAS, AS 29.47.250 and 29.47.310 provide that the City may issue revenue bonds and refunding revenue bonds without ratification of the voters; and

WHEREAS, the Council finds that it is necessary and appropriate to delegate to each of the City Manager and City Finance Director authority to determine the principal installment amounts, interest rates and other details of the Bond, and to determine other matters pertaining to the Bond that are not provided for in this ordinance; and

WHEREAS, the Alaska Municipal Bond Bank will purchase the Bond with proceeds of its general obligation bonds pursuant to the terms of an amendatory loan agreement (the "Amendatory Loan Agreement"); and

WHEREAS, the Amendatory Loan Agreement will amend the Loan Agreement dated as of July 1, 2007, to provide for the refunding of the Refunded Bond, and related matters.

NOW, THEREFORE, BE IT RESOLVED:

Section 1. Definitions.

Terms not herein defined shall have the meaning set forth in the herein defined Parity Bond Ordinance. The following terms shall have the following meanings in this ordinance:

- A) "Amendatory Loan Agreement" means the Amendatory Loan Agreement between the City and the Bond Bank, amending the Loan Agreement to provide for the refunding of the Refunded Bond through their exchange for the Bond, and related matters.
- B) "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,
 - ii. the principal of all Serial Bonds due in such year, and
 - iii. the Sinking Fund Requirement, if any, for such year.
- C) "Bond" means the "Lease Revenue Refunding Bond, 2016" of the City of Bethel, the issuance and sale of which is authorized herein.
- D) "Bond Bank" means the Alaska Municipal Bond Bank, a public corporation of the State of Alaska, created pursuant to the provisions of Chapter 85, Title 44, Alaska Statutes, as amended.
- E) "Bond Bank Bonds" means a series of bonds issued by the Bond Bank.

- F) "Bond Fund" means the City of Bethel Lease Revenue Bond Fund established pursuant to Section 5.1 of the Parity Bond Ordinance to pay and secure the payment of all Parity Bonds.
- G) "Bond Register" means the registration books maintained by the Registrar, which include the names and addresses of the Registered Owners of the Bond or their nominees.
- H) "City" means the City of Bethel, a municipal corporation duly organized and existing under the Constitution and laws of the State of Alaska.
- I) "City Manager" means the City Manager or the Acting City Manager of the City or the successor to the duties of such office.
- J) "Code" means the Internal Revenue Code of 1986, as amended from time to time, together with all regulations applicable thereto.
- K) "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 16(B)(3) hereof, the term Consultant may also include an independent public accounting firm appointed by the City to provide such certificate.
- L) "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, 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.
- M) "Continuing Disclosure Certificate" means a certificate relating to the Bond executed in connection, and delivered by the City, with respect to compliance with paragraph (b)(5) of Rule 15c2-12 of the Securities and Exchange Commission, as such certificate may be amended or supplemented from time to time.
- N) "Council" means the legislative authority of the City as duly constituted from time to time.
- O) "Courthouse Complex" means the Nora Guinn Courthouse Building, formerly known as Braund Building Courthouse, located in Bethel, Alaska.
- P) "Debt Service Account" means the account of that name authorized to be established within the Bond Fund pursuant to Article V of the Parity Bond Ordinance.

- Q) "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.
- R) "Finance Director" means the Finance Director or Acting Finance Director of the City or the successor to the duties of such office.
- S) "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.
- T) "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 2007 Bond and the Bond.
- U) "Government Obligations" means direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States Government.
- V) "Junior Lien Obligations" means lease revenue bonds or other obligations issued by the City pursuant to the provisions of Section 18 of this ordinance.
- W) "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).
- X) "Loan Agreement" means the Loan Agreement between the City and the Bond Bank dated as of July 1, 2007, as amended by the Amendatory Loan Agreement.
- Y) "Net Revenue" means all Lease Revenue less the Costs of Maintenance and Operation.
- Z) "Parity Bonds" means the 2007 Bond, the Bond and any Future Parity Bonds.
- AA) "Parity Bond Ordinance" means Ordinance #07-14, approved by the Council on June 12, 2007.
- BB) "Refunded Bond" means the principal installments of the 2007 Bond whose refunding is approved by the City Manager or Finance Director under Section 11 of this ordinance.
- CC) "Registered Owner" means the person named as the registered owner of a Bond in the Bond Register.
- DD) "Registrar" means the City Finance Director.
- EE) "Reserve Account" means the account of that name established within the Bond Fund pursuant to Article V of the Parity Bond Ordinance.

FF) "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.

GG) "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.

HH) "2007 Bond" means the outstanding \$2,470,000 Lease Revenue Bond, 2007 of the City.

Section 2. Authorization of Bond and Purpose of Issuance.

For the purpose of effecting the refunding by exchange of the Refunded Bond in the manner set forth hereinafter and in the Amendatory Loan Agreement, the City hereby authorizes and determines to issue and sell the Bond in the aggregate principal amount of not to exceed \$2,400,000.

Section 3. Designation, Maturities, Interest Rates, and Other Details of the Bond.

The Bond shall be designated "City of Bethel, Alaska, Lease Revenue Refunding Bond, 2016." The Bond shall be in denominations of \$5,000 or any integral multiple thereof and with such designation as the Registrar deems necessary for purposes of identification, and may have endorsed thereon such legends or text as may be necessary or appropriate to conform to the rules and regulations of any governmental authority or any usage or requirement of law with respect thereto.

Installments of principal of the Bond shall be paid annually commencing on or after January 1, 2017 and continuing no later than December 31, 2027. The Bond shall bear interest from its dated date, payment commencing on a date on or after December 1, 2016, and semi-annually thereafter in each year. Interest will be computed on the basis of a 360-day year consisting of twelve 30-day months.

The dated date, the principal and interest payment dates, the aggregate principal amount, the principal amount of each installment, and the interest rates for each principal installment of the Bond shall be determined at the time of execution of the Amendatory Loan Agreement pursuant to Section 21 of this ordinance.

Section 4. Prepayment.

Provisions for the optional prepayment of some or all principal installments of the Bond may be established pursuant to Section 21 of this ordinance and shall be set forth in

the Amendatory 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 thirty (30) nor more than sixty (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.

Section 5. Form of Bond.

The Bond shall be in substantially the following form, with such variations, omissions and insertions as may be required or permitted by this ordinance:

**UNITED STATES OF AMERICA
STATE OF ALASKA**

CITY OF BETHEL
(A Municipal Corporation of the State of Alaska)

NO. _____

\$ _____

LEASE REVENUE REFUNDING BOND, 2016

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: \$ _____

The City of Bethel, Alaska (the "City"), 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, its registered assigns, the Principal Amount indicated above in the following installments on December of each of the following years, and to pay interest on such installments from the date hereof, payable on June 1, 20__ and semiannually thereafter on the 1st days of December and June of each year, at the rates per annum as follows:

Year

Principal Amount

Interest Rate

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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 #07-14 and Ordinance #16-__ of the City (the "Bond Ordinance"). Both principal of and interest on this Bond are payable in lawful money of the United States 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 Alaska Municipal Bond Bank (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 dated July 1, 2007, as amended on _____, 2016 (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 refund outstanding lease revenue bonds of the City. 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

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made on the Revenue Fund to pay and secure the payment of any Parity Bonds and Future Parity Bonds.

This Bond is transferable as provided in the Bond Ordinance, (i) only upon the bond register of the City, 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 therefor as provided in the Bond Ordinance and upon the payment of charges, if any, as therein prescribed. The City 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.

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 this Bond, together with all other indebtedness of the City, is within every debt and other limit prescribed by said constitution, statutes, or charter.

IN WITNESS WHEREOF, THE CITY OF BETHEL, ALASKA, has caused this Bond to be signed in its name and on its behalf by the manual or facsimile signature of its Mayor and its corporate seal (or a facsimile thereof) to be impressed or otherwise reproduced hereon and attested by the manual or facsimile signature of its Clerk, all as of the _____ day of _____, 2016.

Richard Robb, Mayor

ATTEST:

Lori Strickler, City Clerk

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[SEAL]

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells assigns and transfers unto

(Please insert Social Security or taxpayer identification number of transferee)

(Please print or typewrite name and address, including zip code of 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: _____

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 6. Execution.

The Bond shall be executed in the name of the City by the Mayor or her/his designee, and its corporate seal shall be impressed or otherwise reproduced thereon and attested by the City Clerk. The execution of the Bond on behalf of the City by persons who 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

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office at the time of authentication of the Bond or shall not have held office on the date of the Bond.

Section 7. Payment of Principal and Interest.

The Bond shall be payable in lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debts. As long as the Bond Bank is the Registered Owner of the Bond, payment of principal and interest on the Bond shall be made as provided in the Loan Agreement. If the Bond Bank is no longer the Registered Owner of the Bond, installments of principal and interest on the Bond shall be paid by check mailed by first class mail to the Registered Owner as of the fifteenth day of the month preceding each installment payment date at the address appearing on the Bond Register; provided that the final installment of principal and interest on the Bond shall be payable upon presentation and surrender of the Bond by the Registered Owner at the office of the Registrar.

Section 8. Registration.

The Bond shall be issued only in registered form as to both principal and interest. The City designates the City Finance Director as Registrar for the Bond. The Registrar shall keep, or cause to be kept, the Bond Register at the principal office of the City. The City covenants that, until the Bond has 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. The City and the Registrar may treat the person in whose name any Bond shall be registered as the absolute owner of such Bond for all purposes, whether or not the Bond shall be overdue, and all payments of principal of and interest on a Bond made to the Registered Owner thereof or upon its order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the City nor the Registrar shall be affected by any notice to the contrary.

Section 9. Transfer and Exchange.

The Bond shall be transferred only upon the books for the registration and transfer of the Bond kept at the office of the Registrar. Upon surrender for transfer or exchange of the Bond at such office, 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 the duly authorized attorney of the Registered Owner, the City shall execute and deliver an equal aggregate principal amount of Bond of the same maturity of any authorized denominations, subject to such reasonable

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regulations as the City 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. The Bond surrendered for transfer or exchange shall be canceled by the Registrar.

Section 10. Bond Mutilated, Destroyed, Stolen or Lost.

Upon surrender to the Registrar of a mutilated Bond, the City shall execute and deliver a new Bond of like maturity and principal amount. Upon filing with the Registrar of evidence satisfactory to the City that a Bond has been destroyed, stolen or lost and of the ownership thereof, and upon furnishing the City with indemnity satisfactory to it, the City shall execute and deliver a new Bond of like maturity and principal amount. The person requesting the execution and delivery of a new Bond under this Section shall comply with such other reasonable regulations as the City may prescribe and pay such expenses as the City may incur in connection therewith.

Section 11. Designation of Refunded Bonds.

The City Manager and the City Finance Director each is authorized to designate which principal installments of the 2007 Bond are authorized to be refunded in this ordinance shall be refunded, provided that the refunding of the 2007 Bond so designated shall realize an aggregate debt service savings, net of all issuance costs and underwriting discount, on a present value basis.

Section 12. Bond Fund; Debt Service Account.

A) Bond Fund. The Parity Bond Ordinance 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 was established a Debt Service Account and a Reserve Account.

B) Payments into Debt Service Account. So long as the Bond remains outstanding, the City 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

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- (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 13(B) hereof.

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 13. 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 2007 Bond, the Bond, and any Future Parity Bonds. The City hereby covenants and agrees when the Bond is issued, an amount sufficient to satisfy the Reserve Requirement for the Bond shall be on deposit in the Reserve Fund.

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 determined 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

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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 16(A) 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 14. Lien of Revenue Fund.

The amounts pledged by the Parity Bond Ordinance and 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.

Section 15. 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

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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.

Section 16. Bond Covenants.

- A) 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 Lease Revenue junior and inferior to the lien thereon for the payment of the principal of and interest on the Parity Bonds; and

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.

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

(1) 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 City shall not be in default under this subsection (1) 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.

(2) 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.

(3) 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

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provides for payment into the Bond Fund of one of the following (as the Council may determine in its sole discretion):

- (a) 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 thirty-six (36) of the forty-eight (48) months preceding such sale or disposition bears to total Lease Revenue for such period; or
- (b) an amount that will be in the same proportion of the net principal amount of all 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 thirty-six (36) of the forty-eight (48) months preceding such sale or disposition bears to total Net Revenue for such period; or
- (c) an amount that will be in the same proportion to the net principal amount of all 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 all Parity Bonds that remain outstanding.

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 16(B)(3) 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 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.

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- (4) Annual Audit. That it will within a period of one hundred eighty (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.
- (5) 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 17. Parity Bond Covenants.

The City hereby covenants with the owners of the Parity Bonds, including the Bonds:

- A) That at the time of the issuance of the Bonds there is no deficiency in the Bond Fund or any accounts therein.
- B) The Bonds shall be payable from the Bond Fund, in monthly payments as set forth in Section 12(B) of this ordinance.
- C) On the date of issuance of the Bond, amounts held in the Reserve Fund shall satisfy the Reserve Requirement.
- D) The issuance of the Bond results in a debt service savings and does not require an increase of more than \$5,000 in any year for Debt Service on the Bond or the Bond Bank has provided its written consent regarding the issuance of the Bond.

Section 18. Junior Lien Obligation.

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 19. Tax Covenants.

The City 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

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for the exclusion of the interest on the Bond from gross income for federal income tax purposes. The City covenants that it will make no use of the proceeds of the Bond which will cause the Bond or the Refunded Bonds to be "arbitrage bonds" subject to federal income taxation by reason of Section 148 of the Code. The City covenants that it will not take or permit any action that would cause the Bond to be "private activity bonds" as defined in Section 141 of the Code.

Section 20. Amendatory and Supplemental Ordinances.

- A) The Council from time to time and at any time may adopt an ordinance or ordinances supplemental hereto, which ordinance or ordinances thereafter shall become a part of this ordinance, for any one or more 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, 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 or in regard to matters or questions arising under this ordinance as the Council may deem necessary or desirable and not inconsistent with this ordinance and which shall not adversely affect the interests of the Registered Owners of the Bond.

Any such supplemental ordinance may be adopted without the consent of the Registered Owner of the Bond at any time outstanding, notwithstanding any of the provisions of subsection (B) of this Section.

- B) With the consent of the Registered Owners of not less than 60 percent in aggregate principal amount of the Bond at the time outstanding, 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; provided, however, that no such supplemental ordinance shall:
1. extend the fixed maturity of the Bond, or reduce the rate of interest thereon, 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

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thereof, without the consent of the Registered Owners of the Bond so affected; or

2. reduce the aforesaid percentage of Registered Owners of the Bond required to approve any such supplemental ordinance without the consent of the Registered Owners of the Bond then outstanding.

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

- C) Upon the adoption of any supplemental ordinance under this Section, this ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City and all Registered Owners of the outstanding Bond shall thereafter be subject in all respects to such modification and amendment, and all the terms and conditions of the supplemental ordinance shall be deemed to be part of the terms and conditions of this ordinance for any and all purposes.
- D) Each Bond executed and delivered after the execution of any supplemental ordinance adopted under this Section may bear a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, a new Bond modified so as to conform, in the opinion of the City, to any modification of this ordinance contained in any such supplemental ordinance may be prepared by the City and delivered without cost to the Registered Owners of the Bond then outstanding, upon surrender for cancellation of such Bond in equal aggregate principal amounts.

Section 21. Exchange of Bond; Amendatory Loan Agreement.

The Bond shall be delivered to the Bond Bank in exchange for the Refunded Bond. The City has been advised by the Bond Bank that bond market conditions are fluctuating and that the most favorable market conditions for the sale of the Bond Bank Bonds may not occur on the date of a regular Council meeting. The Council has determined that it would be inconvenient to hold a special meeting on short notice to approve the terms of the Bond. Therefore, the Council hereby determines that it is in the best interest of the City to delegate the authority to approve the terms of the Bond as provided herein. Each of the City Manager and the City Finance Director is hereby authorized to determine the aggregate principal amount, principal installment amounts, interest rates, yields, dated date, principal and interest payment dates, and prepayment terms, if any,

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for the Bond, so that such terms of the Bond conform to the terms of the corresponding Bond Bank Bonds; provided that the interest rate on each principal installment of the Bond shall not exceed the interest rate on the corresponding maturity of the Bond Bank Bonds. Based upon the foregoing determination, the City Manager and the City Finance Director each is authorized to negotiate and execute an Amendatory Loan Agreement. The authority granted to the City Manager and City Finance Director by this Section shall expire one hundred eighty (180) days after the effective date of this ordinance. If the City Manager or City Finance Director has not executed an Amendatory Loan Agreement within one-hundred eighty (180) days from the effective date of this ordinance, the Amendatory Loan Agreement may not be executed on behalf of the City without further authorization from the Council.

Section 22. Official Statement.

The City Manager and City Finance Director are each hereby authorized to approve the form of the preliminary and the final Official Statement for the Bond Bank Bonds as each pertains to the City and the Bond.

Section 23. Authority of Officers.

The Mayor, the City Manager, the City Finance Director, and the City 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 ordinance, to the end that the City may carry out its obligations under the Bond and this ordinance.

Section 24. Miscellaneous.

No recourse shall be had for the payment of the principal of or the interest on the Bond or for any claim based thereon or on this ordinance against any member of the Council or officer of the City or any person executing the Bond. The Bond is 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 City, and does 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 City.

Section 25. Continuing Disclosure.

The City hereby covenants and agrees that it will execute and carry out all of the provisions of a Continuing Disclosure Certificate in form and substance satisfactory to the Bond Bank if execution and delivery of such Certificate is required by the Bond

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Bank. Notwithstanding any other provision of this ordinance, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered a default of the City's obligations under this ordinance or the Bond; however, the beneficial owner of any Bond or Bond Bank Bond may bring an action for specific performance, to cause the City to comply with its obligations under this Section.

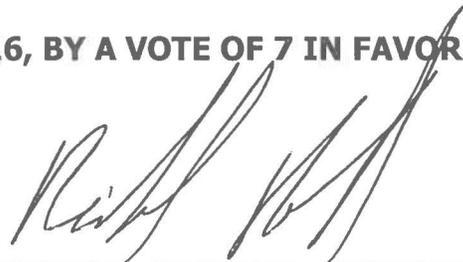
Section 26. Severability.

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 Bond.

Section 27. 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 11th DAY OF OCTOBER 2016, BY A VOTE OF 7 IN FAVOR AND 0 OPPOSED.



Richard Robb, Mayor

ATTEST:



Lori Strickler, City Clerk